

Exhibit 101: 2016 12 12 - 1003 email reply from Krabill

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, December 12, 2016 10:03 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Invoice Questions

See answers in ALL CAPS below.

## KENT D. KRABILL | Partner

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**From:** Seth Washburne <sethpw1@gmail.com>  
**Date:** Sunday, December 11, 2016 at 9:25 PM  
**To:** Kent Krabill <kkrabill@lynnllp.com>  
**Cc:** Stephen Cole <SCole@lynnllp.com>  
**Subject:** Invoice Questions

Kent,

I reviewed the invoices and have a few questions. These are not written with any emotion, just matter-of-fact, so please read them as such. I refer to you all by your initials, because it is shorter to write, and how billed.

### Terry Case

1. 9/19-I am quite sure that for our first meeting you said there was no charge. I could be mistaken, but in September when meeting with firms I always asked them this, and almost all said no charge for the first meeting. You billed me 0.9 for each of the cases, \$612 total.

YOU WERE NOT BILLED FOR THE TIME FOR THE MEETING. AS YOU SEE, I BILLED NOTHING FOR THAT DAY. STEPHEN BILLED EACH MATTER 0.9 HOURS, WHICH WAS FOR THE TIME HE TOOK TO INITIALLY REVIEW THE CASE DOCUMENTS AND ANALYZE THE STATUS OF THE MOTIONS, HEARINGS, DEPOS, DEADLINES, ETC.

2. 9/20-SMC billed for calls with court regarding hearings, and wrote "1/2 time." Does this mean he charged only half his time, to lower his effective rate, or half of this 2 hours was spent on this? Also this seems like an administrative thing that someone could do at a lower cost, and MC, too, billed 0.3 hours for this, so seems to have done it. STEPHEN WROTE ½ TIME BECAUSE HE WAS SIMULTANEOUSLY DOING WORK THAT WENT TOWARD BOTH CASES (TERRY AND MUSEUM), SO HIS TIME WAS SPLIT BETWEEN THEM. THERE WAS A LOT TO COORDINATE WITH THE COURT, AS THERE WERE SETTINGS WE NEEDED TO GET IMMEDIATELY CONTINUED AND HEARINGS WE NEEDED TO GET SET IMMEDIATELY, SO STEPHEN WAS PERSONALLY HAVING TO COMMUNICATE WITH THE COURT SOME. ALSO, THE COURT IN THE TERRY CASE WANTED TO SPEAK WITH STEPHEN SPECIFICALLY TO MAKE SURE THAT HE HAD YOU ATTEND THE HEARING ON THE MOTION TO SUBSTITUTE/WITHDRAW.
3. 9/21-MC – Who is Ms. Baker with whom she worked on that day, and why is there no charge for Baker's time preparing case notebooks? MS. BAKER IS STEPHEN'S ASSISTANT. HER TIME IS NOT BILLED. THIS KIND OF WORK (PREPARING NOTEBOOKS) IS ORDINARILY DONE BY A PARALEGAL, WHICH IS BILLED, SO HAVING MS. BAKER DO IT ON THIS OCCASION SAVED YOU SOME MONEY.
4. 9/22-SMC billed 1.5 hours for preparing for and attending the hearing on the motion for substitution. Does this include driving time? If so, is that billed at the same rate?

YES AND YES. ALL TIME IS BILLED AT THE SAME RATE.

5. 10/4-On the first hangar visit day, you billed 6.4 hours vs. SMC 3.0, and say this included reviewing documents provided by me. I dropped off all those boxes that had been in my trunk after our meeting, around 1 p.m. I think, and would like to know if you reviewed a lot of those or not. I got the impression they went on the shelf and were not looked at since then. I realize you did other things on this day, including reviewing depositions, which you were doing in the car when I first met you, but wonder if you have spent much time yet with all those boxes.

I DID EXACTLY AS I WROTE ON THAT DAY, WHICH ALL TOOK 6.4 HOURS. REVIEW AND DIGEST DEPOSITIONS; MEET WITH MESSRS. WASHBURNE AND COLE AT AIRPORT TO INSPECT AIRCRAFT AND PARTS; REVIEW DOCUMENTS PROVIDED BY MR. WASHBURNE; CONFER WITH MS. BIBLO REGARDING REVIEWING DISCOVERY RESPONSE, EXHIBITS, AND DOCUMENTS AND DRAFTING DEPOSITION NOTICES.

6. 10/12-who is Mr. Marshall who emailed you about discovery responses? THE NAME IS A MISTAKE. IT SHOULD SAY WASHBURNE.
7. 10/ - you write that you "Review and digest depositions on many days with large hours, 35.1 hours in total, below. Are you pretty much done with those now? Is that a long time to read the depositions? I know they took that long and longer when taken, but thought it might be shorter to read them, but maybe not, just wondering.
  - a. 10/4 3.4 hour more than SMC for meeting in LNC, 10/5
  - b. 10/5 – 3.8
  - c. 10/6 – 4.3
  - d. 10/11 – 7.4
  - e. 10/12 - 3.1
  - f. 10/13 - 5.4

- g. 10/14 - 3.3
- h. 10/17 - 4.8

FIRST, THERE WERE MANY OTHER TASKS COMPLETED ON THOSE DAYS BESIDES REVIEWING DEPOS. SECOND, I REVIEWED AND DIGESTED ALL DEPOS. THIS TAKES MORE TIME WHEN OUR FIRM WASN'T THE ONE TAKING THE DEPOS. THE TIME RECORDED IS ACCURATE.

- 8. 10/29—who is Mr. Waters?, who MTB emailed regarding court order granting MTC? Which MTC was this? I SPOKE TO MALLORY AND THE TIME IS CORRECT, BUT IT WAS FOR REVIEWING DOCUMENTS.
- 9. 11/1-MTB starts charging time on this case to “Review and analyze documents received from former counsel” Is this an efficient way to review things, just a little bit each day, for so many days? These are all for her to just come up to speed, a third person on your team, and she did not do much on the Terry case after up to speed, only on 11/28 a telephone conference with process server. Her total time on reviewing documents was 25.54, which at \$335 was \$8,555.90 of her total \$8,723 for the month, and seems unreasonable.

MALLORY REVIEWED ALL DOCS AND MARKED AS RELEVANT, HOT DOC, PRIVILEGED, AND ISSUE CODED. THIS HAD TO BE DONE BY SOMEBODY, AND MALLORY DID AN EXCELLENT, EFFICIENT JOB. REVIEWING DOCS, MARKING THEM AS HOT AND ISSUE CODING TAKES TIME.

When you asked me if you could bring her, too, on, you said it was because Stephen was going to be unavailable for a while, that he had to work on another case, but that never seems to have happened. Even if it did, this was sort of your problem, not mine, so I shouldn't have to pay \$8,500 to bring another person up to speed due your scheduling conflicts. The defendants each have one low-priced attorney, and you said Dowdy does a great job. I have gone along with you saying you need Stephen, too, so I have two very high-priced attorneys, and it seems unfair to tell me, and bill me, that I need three. I see she did a lot of great work on the VFM case, but all this time coming up to speed on the Terry case seems unnecessary so far.

YOU DIDN'T PAY ADDITIONAL MONEY TO BRING MALLORY UP TO SPEED. SHE REVIEWED THE DOCS, MARKED HOT, AND ISSUE CODED, WHICH IS WHAT HAD TO BE DONE BY SOMEBODY ANYWAYS. MALLORY HAS HANDLED A NUMBER OF TASKS THAT STEPHEN AND I DID NOT HAVE TIME TO AT THE TIME, PARTICULARLY SINCE STEPHEN WAS, IN FACT, PREPARING FOR TRIAL IN EARLY OCTOBER (WHICH EVENTUALLY SETTLED ON THE EVE OF TRIAL). MALLORY WILL CONTINUE TO PROVIDE ESSENTIAL WORK (AT A LOWER PRICE) ON BOTH CASES. FOR EXAMPLE, SHE HAS BEEN HANDLING THE SCHEDULING OF THE VARIOUS 3<sup>RD</sup> PARTY DEPOSITIONS WE ARE TAKING IN THE TERRY CASE. SHE IS ALSO REVIEWING DOCS, MARKING HOT DOCS, ISSUE CODING AS SHE REVIEWS, AND PREPARING FOR DEPOS.

- a. 11/1 – 1.6
- b. 11/3 – 1.8
- c. 11/4 – 1.8
- d. 11/5 – 0.54 – this is 32.4 minutes – do you really measure time to hundreds of an hour?
- e. 11/13 - 2.7
- f. 11/14 – 1.3
- g. 11/15 – 5.8
- h. 11/17 - 4.7

- i. 11/18 – 3.1 – incl. call Gary Worthy
- j. 11/19 – 0.8
- k. 11/20 -1.4

NONE OF THIS WAS GETTING UP TO SPEED.. RATHER, IT IS GETTING THROUGH THE DOCS, WHICH WE NEEDED TO DO.

10. 11/18- you billed 8.2 for the day at LNC, which began at 8 a.m. and were finished at 4 p.m. – my photo of you and Paul was taken outside at 3:51 p.m. – you can click on the attached, and select properties, and see it was a 3:51 p.m., so until then was 7.8, hours, including lunch. You said beforehand that you would bring some work with you to do, and so did you do anything else during this time? I know you could not do work at your office during this time, but is this normal, to bill the full time for mostly hanging out there? I realize we talked about the case for a few minutes, but don't recall any substantive discussion, other than you saying you wanted the spreadsheets. Does this include any driving time? SMC also billed 6.7 for this day, and I recall had a call in the afternoon so would be less, but wonder if it is normal for both of you to charge a full rate for a day like that when partly or mostly bs-ing? Since you billed 8.2 hours, did you includes the time we sat at lunch, and what was the additional 0.4? Perhaps reading docs I your car before the others arrived? I was expecting these to reflect less than the total time there, to reflect you bringing some other work with you, or for non-legal work time. STEPHEN'S TIME WAS LESS THAN MINE BECAUSE, AS YOU NOTE, HE HAD A CALL THAT HE HAD TO HANDLE THAT DAY, WORKED A LITTLE ON SOME OTHER MATTERS, AND WORKED SOME ON THE MUSEUM MSJ RESPONSE. IT WAS NECESSARY FOR US TO BE THERE SO WE COULD BE AVAILABLE TO TALK WITH YOU AND PAUL ABOUT HIS TESTIMONY AND THE CASE STRATEGY IN GENERAL (WHICH WE DISCUSSED AT LENGTH ON SEVERAL OCCASIONS THROUGHOUT THE DAY). I TOLD YOU THIS BEFORE THE INSPECTION AND YOU APPROVED IT.

11. 11/21 – which chair does Mr. Dowdy want returned? MR. DOWDY WANTS TO RETURN THE RADIO OPERATOR'S CHAIR THAT MAHAFFEY "FOUND" IN THE HANGAR.

12. November additional charges

- a. Why is the process server for Wood \$213? Montgomery \$236? I thought these were a standard \$75, or \$125 if not a contiguous county.

HERE ARE THE CHARGES:

321- 0421—MONTGOMERY \$236.00

Available Date	Order No.	Charge Code	Description	Tax Amount	Total Charge
11/16/16	3210421	DELIVERY	Delivery Charge	0.00	99.50
11/16/16	3210421	WF	Witness fee	0.00	11.00
11/16/16	3210421	CO	Cash Outlay - Driver paid cash	0.00	5.00
11/16/16	3210421	OCS	Out of County Surcharge	0.00	65.50 (JOHNSON COUNTY)
11/16/16	3210421	E-FILE P	E-File Proof of Service	0.00	10.00
11/16/16	3210421	SA1	Service Attempts @ 1st Address	0.00	45.00 (BAD ADDRESS, SERVICE COMPLETED AT DIFFERENT ADDRESS SAME COUNTY)

321-0431---WOOD \$213.00

Available Date	Order No.	Charge Code	Description	Tax Amount	Total Charge
11/16/16	3210431	DELIVERY	Delivery Charge	0.00	99.50
11/16/16	3210431	OCS	Out of County Surcharge	0.00	40.00 (NORTHWEST TARRANT COUNTY)

11/16/16	3210431	E-FILE P	E-File Proof of Service	0.00	10.00	
11/16/16	3210431	PRT75	Print Docs -1 to 15-.75 a Page	0.00	7.50	
11/16/16	3210431	WF	Witness fee	0.00	11.00	
11/16/16	3210431	SA1	Service Attempts @ 1st Address	0.00	45.00	(BAD ADDRESS, SERVICE COMPLETED AT DIFFERENT ADDRESS SAME COUNTY)

b. What is “Disco monthly hosting \$258.50?”

THIS IS THE SYSTEM WE USE TO HOST YOUR DOCS.

c. What did you courier to the 153<sup>rd</sup> on 11/22 for \$83.72, and why was a courier necessary?

Courtesy copies of MSJ filings sent to the judge per his requirements.

**VFM**

1. 9/19 – same as before, you billed me for this meeting, and my recollection is you said it was not billed. SAME ANSWER AS ABOVE
2. 10/24 – MC billed 4.1 hours to review and organize files from prior counsel. May I learn the status of the file organization there, e.g. is this referring to electronic files, or paper files, too? How are they arranged? THIS IS INGESTING AND ORGANIZING THE DOCS, WHICH MUST BE DONE ANYTIME WE RECEIVE DOCS. THE FILES WE RECEIVED FROM PRIOR COUNSEL WERE ON DISKS AND WERE ARRANGED IN A MANNER THAT, WHILE IT MAY MAKE SENSE TO PRIOR COUNSEL, DID NOT ALLOW FOR CONVENIENT SEARCHING AND LOCATING PARTICULAR DOCUMENTS OR ITEMS. THE TIME MARIELA SPENDS ORGANIZING THESE FILES WILL BE SAVED OVER AND OVER AGAIN AS WE GO BACK TO FILES FOR USE IN THE FUTURE. These files are all organized and stored electronically so we can search when we need them for pleadings, motions, depositions, etc.
3. October additional charges - what is your copying charge rate per page? I THINK 10 CENTS A PAGE FOR BLACK AND WHITE.
4. 11/3 – I see MTB drafted the response to Monk’s MSJ. The hours below for MTB alone add up to 28.9 hours, are \$9,681, and with KDK about \$11,000. This before final reviews. Is this a normal efficient rate? Perhaps it is low, I just don’t know.
  - a. 11/3 – 3.1
  - b. 11/6 = 5.1
  - c. 11/7 = 7.7
  - d. 11/14 – 0.8
  - e. 11/16 – 1.2 – incl. phone call with court coordinator
  - f. 11/20 – 1.0
  - g. 11/21 – 5.4 – incl. email oc, revise declaration.
  - h. 11/22 – 4.2 – KDK reviews both 4.2 total, maybe 2.1 here
  - i. 11/25 – 0.4 to review my proposed addendum.

AN ASSOCIATE ALWAYS DRAFTS FIRST DRAFT AND THEN THE PARTNER REVIEWS, REVISES, ETC. AS YOU KNOW, YOU ASKED FOR A LOT OF EDITS ON MULTIPLE OCCASIONS. ALL OF THIS TAKES TIME. THIS IS TOWARD THE LOWER TO MEDIUM END OF WHAT WE TYPICALLY SPEND ON AN MSJ RESPONSE (UNDERSTANDING THAT EVERY MOTION IS DIFFERENT, DEPENDING ON WHAT IS BEING CHALLENGED).

5. 11/8 – I see SMC began working on response to no-evidence MSJ, and billed 44.7 hours, for \$15,198, plus your time reviewing this, about \$16,000, this before final reviews. Is this a normal ok time and cost?
- a. 11/8 – 4.2
  - b. 11/9 – 4.0
  - c. 11/10 – 2.5
  - d. 11/11 – 0.2
  - e. 11/14 – 5.6
  - f. 11/15 – 6.4
  - g. 11/16 – 6.9
  - h. 11/17 – 4.4, KDK, too, for 1.5
  - i. 11/20 – 5.9 – reviewing my responses and revising.
  - j. 11/21 – 3.4 – continue to revise, and declaration
  - k. 11/22 – KDK reviews both 4.2 total, maybe 2.1 here
  - l. 11/25 – 1.2 – review amended declaration

AN ASSOCIATE ALWAYS DRAFTS FIRST DRAFT AND THEN THE PARTNER REVIEWS, REVISES, ETC. THE NO-EVIDENCE MOTION INCLUDED 5 SEPARATE DEFENDANTS CHALLENGING EVERY SINGLE CLAIM (5 CAUSES OF ACTION, PLUS 3 VICARIOUS THEORIES OF LIABILITY), AND EVERY OR NEARLY ELEMENT OF EACH CLAIM. SO, THIS RESPONSE INVOLVED SUBSTANTIALLY MORE WORK THAN THE MONK RESPONSE. FOR A CASE OF THIS COMPLEXITY, WITH THIS MANY DIFFERENT PARTIES, THIS IS NOT AN UNUSUAL AMOUNT TO BILL FOR AN MSJ RESPONSE.

6. 11/21 – MC notes creating a CD to send an audio file to the court. What was on this? Just wondering if my songs were produced. THE AUDIO FILE WAS ONE OF DANA'S 911 CALLS TO THE POLICE, WHICH WAS ONE OF OUR EXHIBITS TO THE NO-EVIDENCE MOTION. TO MY KNOWLEDGE, YOUR SONGS HAVE NOT BEEN PRODUCED.
7. 11/22 – MC – who is Ms. Sweeney, and why is her time not billed? MY SECRETARY. WE DO NOT CHARGE FOR SECRETARY TIME.
8. 11/27 – SMC – what is the Rule 11 issue with Wood? WOOD'S COUNSEL (BURGESS) RAISED AN ISSUE ABOUT HER DEPOSITION AND PROVIDING US HER ADDRESS (SHE DID NOT WANT HER ADDRESS DISCLOSED TO YOU). THE "RULE 11" REFERS TO WOOD'S COUNSEL'S PROPOSED AGREEMENT (WHICH WE HAVE NOT AGREED TO) ON THIS ISSUE.
9. 11/28 to 11/30 – preparing for hearing was \$10,871 more, meaning the \$11k and \$16 costs are more like \$16k and \$22k, maybe \$38k just preparing these two responses. Is this high or low? FOR TWO MOTIONS, ONE OF WHICH INCLUDES 5 DEFENDANTS CHALLENGING VIRTUALLY EVERY ELEMENT OF OUR MANY CLAIMS, THIS IS NOT HIGH. REMEMBER ALSO THAT PREPARING FOR THESE HEARINGS, PARTICULARLY THE NO-EVIDENCE HEARING, REQUIRED US TO LAY OUT WHAT IS ESSENTIALLY THE ROADMAP FOR HOW WE WILL PROVE OUR CLAIMS AT TRIAL. WE NOW KNOW WHAT OUR BEST EVIDENCE IS ON OUR CLAIMS, AND WHERE SOME OF OUR WEAKNESSES ARE. SO, THE WORK THAT WENT INTO THESE RESPONSES WILL CONTINUE TO YIELD SUBSTANTIAL VALUE AS WE PROSECUTE THE CASE GOING FORWARD. THESE ARE MAJOR MSJ'S. IT TAKES TIME TO PREPARE FOR HEARINGS, DRAFT POWERPOINTS, ETC.

In the future I will try to review these right away, so you don't have to think back as far.

Thank you.

Seth



## Exhibit 102: Washburne Suits Background

## **Seth P. Washburne and Thirsty 13<sup>th</sup> LLC Pending Lawsuits – Background**

### **Potential Clients**

Seth P. Washburne - 5200 Meadowcreek Drive, Apt. 2060, Dallas, TX 75248, (212) 289-1506,  
[sethpw1@gmail.com](mailto:sethpw1@gmail.com)

Thirsty 13<sup>th</sup> LLC - A Delaware LLC, single-member, owned by Washburne

### **Suits**

1. Washburne vs. Terry et al - about a WWII airplane restoration at Meacham Airport 2010-2012, so is breach of contract, fraud, theft, negligence, scheduled for trial September 12, eight weeks from Monday. Depositions are done, but there are three fact witnesses who should be interviewed, and then this needs to be presented at trial. I think the judge is Mark Pittman.
2. Washburne vs. the Vintage Flying Museum, et al, its property owner and three others, about malicious prosecution and defamation, scheduled for trial December 5. Depositions have not started.

## Timeline

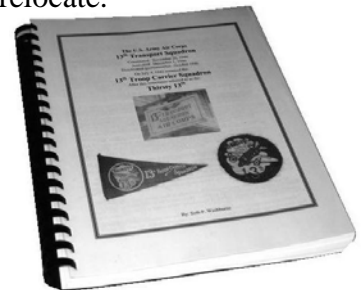
December 31, 2007: Washburne Capital Management, L.P., a hedge fund doing merger arbitrage, at 230 Park Avenue, NY, NY, managing about \$200 million. Most investors withdrew this day, reducing the capital to \$12 million.



May 2008: Searched on Internet for “The Thirsty 13<sup>th</sup>,” nickname of my dad’s WWII squadron, and found only two posts, by children of members. Learned of squadron yearbook, ordered it, found my dad’s name, and names of others. Began finding member’s phone numbers on the Internet, calling them, doing phone interviews, and writing notes. Worked on this on weekends and evenings until July 2008, then stopped.

March 31, 2009 Closed hedge fund, officially taking a “sabbatical for 9 months, to a) finish Thirsty 13<sup>th</sup> book, b) travel, and c) research cities to which to relocate.

June 20, 2009 Restarted Thirsty 13<sup>th</sup> research, and by July 31 completed the ~200-page comb-bound book at right. It was mostly the story’s of officers, and so I knew of photos in Ohio, and decided in August to delve back in and get the stories of all the enlisted men as well. He stays in NYC for 2 more years.



July 2009 I had a list of the serial numbers for the first 13 C-47s, and many others, and tracked down where many were today, and discovered one was still flying, C-47 41-18590, nicknamed “Billie,” registered as N86553, flying as a cargo plane in Puerto Rico. I called to see if I could go touch it someday, and learned it was for sale, for \$75,000. I thought it might be nice to buy it and donate it to a museum.



October 30, 2009 I was on a 17-day car trip, from NY to Houston, to Abilene, to Iowa and back, and while scanning photos at a home in Lake Worth mentioned I might buy this plane, and the woman suggested I donate it to the Vintage Flying Museum at Meacham Airport in Fort Worth. I stopped by their next, and saw they already had a DC-3 there, at right. I learned it was owned by Jim Terry, and was introduced to him, who also owned a B-25, who made many verbal representations.



November 2009 I fly Terry to Puerto Rico to inspect Billie, and he makes more representations.



January 2009 I fly Terry, and his associates Rob Diver and Charles Montgomery, to Puerto Rico to bring the plane to Fort Worth, and it is a thrill. But Terry raises four red flags.



February 2, 2010 Terry starts work on plane at the Vintage Flying Museum, promising it would be done by June 1, then July 1. Seth wires \$25,000 to \$50,000 a month to an account at Pinnacle Bank to cover payroll.

February 3, 2010 Terry insists Seth buy a second DC-3 Rob is selling, N141JR, for parts, and needs it immediately. Seth strongly opposes this, but Terry insists he has to have it to finish Billie. Seth buys it, too, for \$75,000. Terry then lets it sit in perhaps Rhome for five weeks.

March 2010 Terry determines JR flew in Europe, is a historical national treasure that must be restored, too. Seth refuses.

April 2010 Terry has done so many bad things, that Seth starts a list of them.

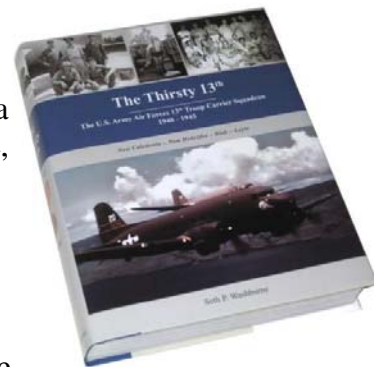
May 2010 Terry insists Seth needs to buy a third DC-3 for parts. Seth goes along with this and buys one Terry found in Rolla, Missouri, referred to as "Missouri."

October 2011 Seth finishes the book, at right; it is big, beautiful, perfect, a major accomplishment. Seth ends his NYC apartment lease, puts all he has in storage in NJ, and wants to do the second thing on his list, to travel a bit. He flies his Cessna 172 to McKinney, where his mother lives, bringing only his computer, and a few changes of clothes.

November 2011 He has a mini-reunion of squadron pilots, spends much time in McKinney setting up a fulfillment service for the book, and a few times flies his plane to Meacham.

December 2011 Seth spends his first full day at the Vintage Flying Museum December 5, and stays at a hotel during the week, going back to McKinney on the weekend. He plans to only stay a few days or weeks, but finds many problems. He has been the biggest tenant for two years, occupying the SE corner, below, and has the most and highest paid workers. Things turn bad rather quickly. He buys a car December 24, 2011, as a sign he will be staying a while.

January 2012 He moves to an apartment in Haltom City.



January-April 2012 Workers at right, in order, Ricky, Steve, and Pat quit. Terry on right was essentially fired in Jan 2011. This photo is in September 2010.



January-June 2012 Seth has been asking where some of his parts are, and cannot get answers.

May 22, 2012 The left elevator of plane “JR,” at right is missing, and everyone told Seth one was bad and they threw it out. Jim’s plane had been blown into a fence in June 2011, and Seth suspected Jim borrowed or stole Seth’s elevator, but Jim and Pat refused to say. On this day, worker Ricky, by phone, told Seth Jim had stolen it. Seth filed theft charge with the police. In depositions Jim and Pat admitted hiding this from Seth. Seth got it back, but is missing more than 100 other parts.



August 14, 2012 A wind gust destroys Billie’s fuselage, JR’s left wing, and both Missouri wings.

September 27, 2012 Seth receives a lease termination letter from VFM board member and lawyer Hal Monk, that he must vacate in 30 days, i.e. by October 27, 2012.

November 2, 2012 Monk asks Seth to not move JR until this date, so VFM head of maintenance Bill Gorin can help move it, and he does, and this is the day he is out of VFM. Jim Terry or his marketing person Dana Wood adds Seth to their email distribution list, to invite him to events at the hangar.

December 20, 2012 JR rolls off a truck when being moved, causing an estimated \$105,000 damage. The trucker and his insurance company refuse any liability, so Seth sues them. This suit, Washburne vs. Les Chapman Transport, lasts until April 2015. Lawyer is Kevin Vice.

March 2, 2013 Seth is on email distribution list for Jim Terry’s Part Auction, and shows up. Two armed guards in flak jackets are there to keep Seth away, and a police cruiser is parked, and issues Seth a trespass warning, despite his being on a public street, and cannot tell Seth where the property line is.

April 15, 2013 Seth researches where the property line is, and finds Tarrant Appraisal District website, and emails Hal Monk to confirm the property line.

July 2013 Seth purchases building 880 at Lancaster Airport, with three 70 x 70s. His DC-3 parts are in the middle unit, and he rents out the left and right units.

April 26, 2014 Seth returns to the VFM area at NW 38<sup>th</sup> Street to see if Terry is in town, and see the B-29 from out in the street, staying on the public road. Seth talks with Terry's marketing person, Dana Wood, tell her he likes her, they shake hands. But she stands in the middle of the road to block him driving past her, because having an event that day. Seth starts to drive around her, and she runs at his car, and runs into the side mirror after he stops. She steps back, and is not hurt. Seth waits, and talks to her. A police car shows up, and she tells them he tried to run her over, a bunch of lies. Seth receives another trespass warning, though on the public street. He emails the hangar owner she has to stop lying about her property line.

April 27, 2014 VFM's Hal Monk calls Seth and tells him he can park on NW 38<sup>th</sup> Street all the way to the fence that afternoon and not be bothered, yet still VFM calls the police and has Seth arrested and thrown in the Fort Worth jail, from where he is transported to Mansfield Prison at midnight.

May 2014 Jim Terry and Dana Wood write the FAA and get Seth's pilot medical certificate suspended or terminated.

March 2015 The lawsuit against the trucking company is finally settled, for \$150,000, vs. \$100,000 legal fees, so provides \$50,000 toward fixing the plane JR. This suit has delayed work on JR, and JR takes up so much room in the hangar in Lancaster, so it has delayed any work on Billie.

Since then In spring of 2015 Seth prepared deposition questions for Vice for the Terry suit, then went on trip to National Archives, then searched for more Thirsty 13<sup>th</sup> members, so still has not started work on any airplanes.



**Terry Suit – Billie before and after 500,000**



## VFM Suit Arrest





Exhibit 103: 2017 09 27 - 6.35 pm Seth to Cole mt Vice 2.5 hours

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Tuesday, September 27, 2016 6:35 PM  
**To:** 'Stephen Cole'  
**Subject:** Meeting with Kevin Vice Friday

Stephen,

Scott Dilbeck emailed me Tuesday afternoon that you and Kent want Kevin Vice and Scott to come to your office for a meeting Friday morning to go over the cases, and Scott wants to know if I approve of this, i.e. if I will pay them for their time.

Scott noted Kevin is concerned that I have not paid the court reporter invoice yet from around July, nor his latest invoice which he sent last Monday.

The court reporter billed \$13,051.95 for four days, and Jen Gjesvold told me that seemed about 2x the going rate, so I have wanted to review this, but have not had time to.

The latest invoices last Monday (the 19<sup>th</sup>) of \$16,728 for the VFM case and \$2,902 for the Terry case, a total \$19,630, included many items for sending me emails, and I have wanted to compare the amounts to the emails sent, and see if they are reasonable, and have not had time to do that.

Much of the almost \$17,000 for the VFM case was for Scott to draft the MSJ responses, which he said he would finish last Wednesday, and I have wanted to get those responses before paying for them, and also have you review them to see if they have any value to you or if they are worthless. For the last MSJ hearing, Scott lost on it, and admitted not noticing the word “retract” clearly written in the one email he attached, so I now wonder how good he is. Scott emailed me last Tuesday he would finish the latest two replies by last Wednesday because he had a “big mess” in his office relevant to the MSJs, and it made sense to finish them, but today emailed me he decided to stop work on them when he learned of the extension, so that seems inefficient. I am reluctant to pay for this work before seeing what he produced, and that it has some value.

I have always paid every invoice 100% in full, without ever questioning an amount, but with this being almost the last one, would also like to review my entire relationship with MMV to see if they have been overpaid in the past. In May he charged me \$6,000 to print out 9,000 documents, only about 3,000 which I have now, and told me they would be of great value going forward, but I doubt they will ever be used. He billed me maybe \$10,000 for his secretary to create some sort of document tree, to easily find documents, which I have never seen, other than a handwritten page – I would like to him to at least explain what this is before paying him. I may find enough disputable charges to go against the full latest invoice. MMV has a \$10,000 retainer of mine, they can probably use to set-off, so might not be out that much, but in any case I won't be able to pay these amounts to them before Friday, and will probably dispute some of them.

I wonder what you expect to get out of this meeting with Kevin? It has been my experience that despite his billing me \$240,000 on the Terry case he has little to no knowledge of any of the facts, no idea which claims are the best, and no idea what evidence exists. All he has done is write me hundreds of worthless emails, and drag it out. He said he would create a folder for each of the claims, with documents included in the folder, and I found just a few of these, with just a few documents in each, not even very relevant. He told me he always waits to put the case together until everything is done, i.e. the depositions, and so has done nothing on

this yet. Regarding the damage model which the RFP and ROG responses need, he has never done a single thing on this. Regarding the VFM case, despite billing me \$120,000 on that case, he has little knowledge of it either.

If you have the meeting, they will enjoy getting paid a combined \$495 an hour for just driving time, basically a boondoggle downtown, and in the meeting will primarily tell you what a nice guy Pat Mahaffey is, and that Pat will hurt the case and should be let out because he is such a friendly guy – Kevin really bonded with defendant Mahaffey during his deposition of him, refusing to ask him any hard questions, because Kevin was completely unprepared. He'll tell you the experts are good, just a bunch of stuff that is not new or insightful, so I think the meeting will be a complete waste.

Could you make a list of what exactly you want to know from Kevin and Scott and share it with me? Then maybe tell them something came up, and ask them if they can just talk to you over the phone about the items – then don't let them talk in generalities?

Let me know if you definitely want to meet them, but please know I will not be paying their full invoices before then. I can agree to pay them by separate invoice for that one day, but would like to keep it to \$2,000 total for them, which at their combined \$495 per hour (\$295 and \$200) is 4 hours, which with their 36 minute commute each way, 45 minutes with parking, 1.5 hours total, would be a 2.5 hour meeting. But again I think it will be a complete waste of your time and my money.

Seth

Exhibit 104: Washburne Response to Museum Defs' 4th RFA

CAUSE NO. 153-275478-14

<b>SETH WASHBURNE,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>VINTAGE FLYING MUSEUM, INC.,</b>	§	
<b>HOSPERS FAMILY TRUST “D”,</b>	§	<b>TARRANT COUNTY, TEXAS</b>
<b>CHARLYN HOSPERS, HAL MONK, BILL</b>	§	
<b>GORIN, DANA WOOD, JAMES TERRY,</b>	§	
<b>INDIVIDUALLY and d/b/a GREATEST</b>	§	
<b>GENERATION AIRCRAFT, PACIFIC</b>	§	
<b>PROWLER (NON-PROFIT), and PACIFIC</b>	§	
<b>PROWLER, LLC,</b>	§	
	§	
<b>Defendants.</b>	§	<b>153RD JUDICIAL DISTRICT</b>

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**RESPONSE TO VINTAGE FLYING MUSEUM, INC., HOSPERS FAMILY TRUST “D”, CHARLYN HOSPERS, HAL MONK AND BILL GORIN’S FOURTH REQUEST FOR ADMISSIONS**

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TO: Defendants Vintage Flying Museum, Inc., Hospers Family Trust “D”, Charlyn Hospers, Hal Monk and Bill Gorin, by and through their counsel of record, Randall E Turner, Law Offices of Randall E. Turner, PLLC, 4255 Bryant Irvin Rd., Ste. 210, Fort Worth, Texas 76109.

Plaintiff Seth Washburne (“Washburne”) hereby responds to Defendants Vintage Flying Museum, Inc., Hospers Family Trust “D”, Charlyn Hospers, Hal Monk and Bill Gorin’s (“Museum Defendants”) Fourth Request for Admissions as follows:

**I. PRELIMINARY STATEMENT**

The following objections apply to all requests, as well as to the definitions and instructions accompanying the requests. Additionally, Washburne reserves the right to reiterate or make additional objections to any specific instructions, definitions, or requests. As discovery is continuing, Washburne reserves the right to supplement or amend any of these responses as permitted.

## **I. GENERAL OBJECTIONS**

1. Washburne objects to each request in which Museum Defendants seek to impose duties and obligations on Washburne that exceed those required by the Texas Rules of Civil Procedure.
2. Washburne objects to each request that is not relevant to any claim or defense asserted by any party and/or not reasonably calculated to lead to admissible evidence. By responding to a request, Washburne is not admitting that the request is relevant or reasonably calculated to lead to admissible evidence. Any response, in whole or in part, to any request is not intended to be, and should not be construed as, a waiver by Washburne of all or any part of his objections. Washburne reserves all objections to the admissibility of any disclosed information, including, without limitation, objections of relevance and materiality.
3. Washburne objects to each request that is unreasonably cumulative or duplicative.
4. Washburne objects to each request that seeks any privileged information.
5. Washburne objects to each request that is overly broad or unduly burdensome.
6. Washburne objects to each request that is vague or ambiguous.
7. Washburne objects to each request to the extent that it seeks to elicit any confidential and/or proprietary information, regardless of the form in which it is contained, including trade secrets and other sensitive commercial information, of Washburne, or any third party to whom Washburne owes any obligation of confidentiality, whether by third-party confidentiality agreement, protective order, settlement agreement, or otherwise, with regard to the relevant information. In responding to any request, Washburne will disclose such information, if any exists, only subject to the limitations imposed by Washburne's objections and with permission by the relevant third party or court to produce or disclose such information to Mahaffey.
8. Washburne objects to each request that seeks any information that is not in Washburne's possession, custody, or control or is not reasonably available to Washburne.

Washburne will provide his answers based on terms as they are commonly understood, and consistent with the Texas Rules of Civil Procedure. Washburne objects to and will refrain from extending or modifying any words employed in the requests to comport with expanded definitions or instructions. The responses and objections contained herein are made on the basis of information now known to Washburne and are made without waiving any further objections to

or admitting the relevancy or materiality of any of the information requested. Washburne's investigation, discovery and preparation for proceedings are continuing, and all responses are given without prejudice to his right to introduce or object to the discovery of any documents, facts, or information discovered after the date hereof.

If any request for admission has no response or an objection is overruled, then it is responded to as "Denied as stated."

### **RESPONSES TO ADMISSION REQUESTS**

**REQUEST FOR ADMISSION NO. 1.** Admit that your "threatened legal action" mentioned in Petition § 4.28 was not the first time you had threatened to sue VFM.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 2.** Admit that in October of 2012, you asked Fort Worth lawyer Douglas Hudman to sue VFM.

**RESPONSE:** Washburne objects that the request explicitly seeks privileged attorney-client communications. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 3.** In your Petition § 4.29 you allege that on April 27, 2014 you "...hoped to speak peaceably to Wood." Admit that on that date you had not spoken peaceably to Wood since April 1, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 4.** Admit that you have no documents, tangible things, or information supporting your contention that on October 27, 2014, Monk told you that you would not be arrested for trespassing.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 5.** Admit that Monk did not communicate with any police officer on April 26 or April 27 of 2014.

**RESPONSE:** Washburne objects that the request calls for speculation, as Washburne cannot possibly be aware of what all communications Monk did or did not have on a particular date. Subject to and without waiving the forgoing objections, Washburne admits that he has no knowledge of Monk communicating with police officers on April 26 or 27, 2014. Washburne denies the remainder of the request.

**Comment [SC1]:** Seth, they phrased this a little tricky. You have "information supporting your contention..." I know you said admit, but based on the way this is phrased, I think we should deny because it isn't entirely limited to "tangible" things.

**REQUEST FOR ADMISSION NO. 6.** Admit that Gorin's actions of which you complain of in Petition §4.35 were done at the direction of a Fort Worth police officer.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 7.** Admit that you have no documents tangible things, or information supporting your belief that Defendants Wood and Terry acted as representatives of the Museum and/or the Trust in conspiring to file a complaint to FAA about your pilot fitness, as you allege in Petition § 4.50.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 8.** Regarding your allegations in Petition §4.51, admit that you did not make "... full disclosure of the repeated events to the evaluator" as you were directed to do by FAA.

**RESPONSE:** Washburne objects that the term "full disclosure" is vague and ambiguous. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 9.** Regarding your allegations in Petition Sec. 5.2, admit that you have no documents, tangible things or information that supports your accusation in Petition § 5.2 that any Defendant "provided known false information to the police."

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 10.** Admit that you sustained the damages alleged in Petition § 5.4 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 11.** Admit that you sustained the "special damages" alleged in Petition § 6.3 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 12.** Admit that you sustained the damages alleged in Petition § 7.8 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.



**REQUEST FOR ADMISSION NO. 13.** Admit that you sustained the damages alleged in Petition §8.3 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 14.** Admit that you sustained the “injury” alleged in Petition § 9.6 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 15.** Admit that you sustained the damages alleged in Petition § 10.5 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 16.** Admit that you sustained the damages alleged in Petition § 10.6 after you violated terms of the Trespass Warning issued to you by a Fort Worth police officer on April 26, 2014.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 17.** Regarding your Petition § 11.2 allegation, admit that the Museum did not have any employees at any relevant times.

**RESPONSE:** Washburne objects that the request calls for speculation, as Washburne cannot know the employee status, *vel non*, of every individual associated with the Museum. Subject to and without waiving the forgoing objections, despite making a reasonable inquiry, the information known or easily obtained is insufficient to enable the responding party to admit or deny the request.

**REQUEST FOR ADMISSION NO. 18.** Regarding your Petition § 11.2 allegation, admit that at all relevant times, Hospers, Monk and Gorin were volunteers of Vintage Flying Museum, Inc.

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne admits that Hospers, Monk, and Gorin volunteered certain services for the Musuem, but also states that Hospers was the founder/owner of the Museum and Monk was a board member for the Museum.

Comment [SC2]: Seth, does this work?

**REQUEST FOR ADMISSION NO. 19.** Admit that you have no documents, tangible things and other information supporting your allegation in Petition § 11.2 that “At all relevant times ...” Wood was an agent of the Museum.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 20.** Admit that in April of 2014, you stated in writing that Dana Wood was not a representative of VFM.

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne admits that on April 27, 2014, he emailed Monk, Hospers, and Wood as follows: “Also, as shown on the attached Trespass Warning, Dana Wood is holding herself out to the police as ‘a representative of’ Vintage Flying Museum, who knows very well where the property lines are. You know full well, Hal, that this is not true. Please advise her to stop lying to the police about being a museum representative.”

**REQUEST FOR ADMISSION NO. 21.** Admit that in October of 2012 in VFM’s Hangar, you stated to Bob Hospers that you were going to burn one of your airplanes to the ground to demonstrate VFM’s termination of your lease.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 22.** Admit that that the photograph mentioned in Petition § 4.11 h) is a true and accurate representation of the scene where it was taken.

**RESPONSE:** Washburne objects that the request is vague and ambiguous, in that it requests Washburne to represent the contents of a photograph without attaching the photograph. Washburne further objects that the term “scene” is vague and ambiguous. Washburne admits that there was a photograph taken, as discussed in paragraph 4.11 h) of the Petition. Washburne can neither admit or deny whether any copies of such photograph within the possession of any of the Museum Defendants has been altered or changed in any way.

**Comment [SC3]:** Seth, this is a weirdly worded RFA. I think this is all we need to admit.

**REQUEST FOR ADMISSION NO. 23.** Admit that you have no documents, tangible things and other information that on October 5, 2012, Monk had seen or heard credible evidence that crimes had been committed on VFM premises.

**RESPONSE:** Washburne objects that the term “credible evidence” is vague. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 24.** Admit that you initiated the October 17, 2012 mediation mentioned in Petition §4.12 e) by an email to Mediator Kay Elliott.

**RESPONSE:** Washburne objects that the term “initiated” is vague. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 25.** Admit that VFM’s willingness to mediate its disputes with you was conditioned on you staying away from VFM until mediation was concluded.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 26.** Regarding your allegations at in Petition § 4.12 e) admit that terms of the Lease Agreement governed rights and obligations of you and VFM, unless same were subsequently modified by mediation or negotiated agreement.

**RESPONSE:** Washburne objects that the request is misleading to the extent it suggests the mediator had any right or authority to modify the Lease Agreement between Washburne and the Museum. Subject to and without waiving the forgoing objections, Washburne admits that the Lease Agreement, in conjunction with applicable statutory and common law, governed the rights and obligations between Washburne and the Museum as it related to Washburne's lease of space from the Museum.

**REQUEST FOR ADMISSION NO. 27.** Regarding your allegations in Petition § 4.12 h) admit that on October 18, 2012, you had not moved any airplane from VFM's premises.

**RESPONSE:** Washburne objects that the term "airplane" is vague and ambiguous, as it is unclear to which part or parts of Washburne's various planes the term refers. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 28.** Admit that October 18, 2012 was 21 days after you had received VFM's notice of termination.

**RESPONSE:** Subject to and without waiving the forgoing objections, admit.

**REQUEST FOR ADMISSION NO. 29.** Admit that you have no documents or tangible things that support your allegations in Petition § 4.12 j) that you were "Greatly harassed" during VFM's October 20, 2012 annual hangar dance.

**RESPONSE:** Subject to and without waiving the forgoing objections, admit.

**REQUEST FOR ADMISSION NO. 30.** Admit that Monk's email referred to in Petition § 4.12 l) was sent after you refused to cease disparaging VFM, its director and tenants.

**RESPONSE:** Washburne objects that the request is argumentative and misleading. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 31.** Admit that Monk's email referred to in Petition § 4.12 l) was sent more than 25 days after you received VFM's 30-day notice of termination of your lease.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 32.** Admit that when Monk's email referred to in Petition § 4.12 l) was sent, you had not removed any of your airplanes from VFM.

**RESPONSE:** Washburne objects that the term “airplane” is vague and ambiguous, as it is unclear to which part or parts of Washburne’s various planes the term refers. Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 33.** Admit that prior to March 2, 2013, VFM’s attorney Hal Monk had told you that VFM wanted you to “stay the hell away” from VFM.

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

**REQUEST FOR ADMISSION NO. 34.** Admit that you have no documents or tangible things that support your allegation in Petition § 4.18 that Dana Wood was a “... representative of the Trust on March 2, 2013.

**RESPONSE:** Subject to and without waiving the forgoing objections, admit.

**REQUEST FOR ADMISSION NO. 35.** Admit that you signed the Trespass Warning issued to you on April 26, 2014, as referenced in Petition § 4.23.

**RESPONSE:** Subject to and without waiving the forgoing objections, admit.

**REQUEST FOR ADMISSION NO. 36.** Admit that you have no documents or tangible things that support your allegation in Petition § 4.28 that “Hospers and Monk allowed Wood to make the trespassing allegation on Saturday, April 26, 2014.”

**RESPONSE:** Subject to and without waiving the forgoing objections, deny.

DATED: November \_\_\_, 2016

Respectfully submitted,

/s/ Kent D. Krabill  
Kent D. Krabill  
State Bar No. 24060115  
[kkrabill@lynllp.com](mailto:kkrabill@lynllp.com)  
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2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the \_\_\_ day of November, 2016.

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
4255 Bryant Irvin Rd., Ste. 210  
Fort Worth, TX 76109

Charles Burgess  
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Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

/s/ Kent D. Krabill  
Kent D. Krabill

## RFA Responses

1. Deny
2. Deny – In October 2012 after receiving the lease termination letter from Monk, I thought I should explore my legal options to extend the lease. I called a firm out of the phone book in Fort Worth, Tom Farrier of Murphy Mahon. He referred me to Walker Holland. Mr. Holland said he would have someone called me, and this was Doug Hudman. I sent Doug an email October 15, attached. My recollection is we had a very short conversation, and rather friendly and even fun, him saying “Well you basically have no rights at all,” and my agreeing it was a pretty straightforward lease, I had to be out on that date. And we hung up. I am quite sure I never said I wanted to sue VFM, but perhaps I did in chatting, but there would be no basis for doing so. I thought this was confidential, but apparently Chuckie learned of this, and Doug seems to be on her side. That seems wrong legally for Doug to share what was a confidential conversation.
3. Deny – I spoke peaceably with Wood the day before, on April 26, 2014. We shook hands.
4. Admit – nothing tangible – this is what they are most concerned about, if I recorded the conversation with Monk, when he DID tell me I would not be arrested.
5. Have no knowledge of what Monk did – only Admit I have no knowledge of him communicating with a police officer on either day.
6. Deny – I was in the back of the police car, the window down (I think, at least a little), and could hear what was going on, and Gorin walking up and saying this on his own.
7. Deny – Dana signed the trespass warning as a representative of the museum in the arrest, and the FAA filing followed soon after that. Jim Terry and Jim Reynolds (who assisted filing this, he works for the FAA) were the two biggest tenants at the museum, and so can be assumed to represent the museum.
8. Deny – yes, I did make full disclosure. They might try to pin me down on something, so should object to this as vague and open to interpretation.
9. Deny – the trespass warning is a document with false information – listing her as a representative. I doubt she went and told the police she was not a representative, and she knew this was wrong.
10. Deny – I never violated the terms of any trespass warning – it was for 505 NW 38<sup>th</sup> Street, and I never trespassed there.
11. Deny – same reason as #10.
12. Deny – same reason as #10.

13. Same
14. Same
15. Same
16. Same
17. Cannot admit or deny – I do not know – though I expect it had no employees, that is why we said “or agents.” But Hospers could have been an employee.
18. Deny – yes they were, but they were also agents, and Hospers was the founder / owner, and Monk a board member.
19. Deny – we have the trespass warning in which she says she is a representative of the museum.
20. Admit that on April 27, 2014, Seth emailed Hal Monk, Chuckie and Dana: “Also, as shown on the attached Trespass Warning, Dana Wood is holding herself out to the police as “a representative of” Vintage Flying Museum, who knows very well where the property lines are. You know full well, Hal, that this is not true. Please advise her to stop lying to the police about being a museum representative.”
21. Deny – I would never burn one of them – they don’t burn, and I never spoke to Bob in my life, other than the night of the hangar dance twice asking if I may please speak to him, and him saying no. I recall at that time I had never had a conversation with him.
22. Admit that this is a photo of an occurrence on that day; the word “scene” is vague.
23. Deny – on September 29 I emailed Monk my second letter to the VFM board attaching a long list of crimes by Terry.
24. Deny – Monk proposed mediation, and I had no idea why, and he provided the names of people to choose from. So he initiated the idea of it. Object that the word “initiate” is vague.
25. Deny – they are the ones who wanted the mediation – Monk wrote this once, but it was just a threat, and meaningless.
26. Admit, I guess.
27. Deny – airplane if vague; I had moved some parts off of the premises; or can admit, but I had to box things up.
28. Admit.
29. Admit – nothing tangible.
30. Deny. I never disparaged them.

31. Deny – I can't find the one I am referring to there, but he said this earlier, and my saying "days" before could mean more than 5 days before.
32. Deny – airplane if vague; I had moved some parts off of the premises; or can admit, but I had to box things up.
33. Object because no time frame. Admit only that certain emails unfairly demanded this for short times in October 2014.
34. Admit I guess – no tangible documents, but she called the police.
35. Admit.
36. Deny – the tangible thing I have is my emails to them that night, and they did not call the police and object, or set the police correct, so they DID allow those allegations to be made.



Exhibit 105: Washburne Response to Museum Defs' 4th RFP

CAUSE NO. 153-275478-14

SETH WASHBURNE,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	
HOSPERS FAMILY TRUST “D”,	§	TARRANT COUNTY, TEXAS
CHARLYN HOSPERS, HAL MONK, BILL	§	
GORIN, DANA WOOD, JAMES TERRY,	§	
INDIVIDUALLY and d/b/a GREATEST	§	
GENERATION AIRCRAFT, PACIFIC	§	
PROWLER (NON-PROFIT), and PACIFIC	§	
PROWLER, LLC,	§	
	§	
Defendants.	§	153RD JUDICIAL DISTRICT

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**RESPONSE TO VINTAGE FLYING MUSEUM, INC., HOSPERS FAMILY TRUST “D”, CHARLYN HOSPERS, HAL MONK AND BILL GORIN’S FOURTH REQUEST FOR PRODUCTION**

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TO: Defendants Vintage Flying Museum, Inc., Hospers Family Trust “D”, Charlyn Hospers, Hal Monk and Bill Gorin, by and through their counsel of record, Randall E Turner, Law Offices of Randall E. Turner, PLLC, 4255 Bryant Irvin Rd., Ste. 210, Fort Worth, Texas 76109.

Plaintiff Seth Washburne (“Washburne”) hereby responds to Defendants Vintage Flying Museum, Inc., Hospers Family Trust “D”, Charlyn Hospers, Hal Monk and Bill Gorin’s (“Museum Defendants”) Fourth Request for Production as follows:

**I. PRELIMINARY STATEMENT**

The following objections apply to all requests, as well as to the definitions and instructions accompanying the requests. Additionally, Washburne reserves the right to reiterate or make additional objections to any specific instructions, definitions, or requests. As discovery is continuing, Washburne reserves the right to supplement or amend any of these responses as permitted.

## **I. GENERAL OBJECTIONS**

1. Washburne objects to each request in which Museum Defendants seek to impose duties and obligations on Washburne that exceed those required by the Texas Rules of Civil Procedure.
2. Washburne objects to each request that is not relevant to any claim or defense asserted by any party and/or not reasonably calculated to lead to admissible evidence. By responding to a request, Washburne is not admitting that the request is relevant or reasonably calculated to lead to admissible evidence. Any response, in whole or in part, to any request is not intended to be, and should not be construed as, a waiver by Washburne of all or any part of his objections. Washburne reserves all objections to the admissibility of any disclosed information, including, without limitation, objections of relevance and materiality.
3. Washburne objects to each request that is unreasonably cumulative or duplicative.
4. Washburne objects to each request that seeks any privileged information.
5. Washburne objects to each request that is overly broad or unduly burdensome.
6. Washburne objects to each request that is vague or ambiguous.
7. Washburne objects to each request to the extent that it seeks to elicit any confidential and/or proprietary information, regardless of the form in which it is contained, including trade secrets and other sensitive commercial information, of Washburne, or any third party to whom Washburne owes any obligation of confidentiality, whether by third-party confidentiality agreement, protective order, settlement agreement, or otherwise, with regard to the relevant information. In responding to any request, Washburne will disclose such information, if any exists, only subject to the limitations imposed by Washburne's objections and with permission by the relevant third party or court to produce or disclose such information to Museum Defendants.
8. Washburne objects to each request that seeks any information that is not in his possession, custody, or control or is not reasonably available to Washburne.
9. Washburne objects to each request to the extent that it seeks any information which is publicly available, otherwise equally available to Museum Defendants, or uniquely available from third parties.
10. As discovery is ongoing in this matter, Washburne reserves the right to supplement and/or amend their answers upon the discovery of additional information.

## **RESPONSES TO PRODUCTION REQUESTS**

**REQUEST FOR PRODUCTION NO. 1:** All documents and tangible things which support your allegation in Petition § 4.4 that "... the Museum supported or acquiesced" in theft of your "more than seventy parts."

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 2:** All documents and other tangible things that support Petition § 4.5 allegation that Jim Terry "... placed a baby bottle in the middle of Plaintiff's desk."

**RESPONSE:** Subject to and without waiving the forgoing objections, responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 3:** All documents and tangible things that support your allegation in Petition § 4.7 that Gorin was complicit in filing any police report.

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 4:** All documents and tangible things that support your allegation in Petition § 4.7 that "... the Museum, Trust, Hospers, Monk, Gorin, Terry Defendants and Wood conspired and colluded to maliciously prosecute Plaintiff ..."

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 5:** All documents and tangible things that show Bob Hospers touched you at any time on October 20, 2012.

**RESPONSE:** Subject to and without waiving the forgoing objections, responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 6:** All documents and tangible things that show Monk's actions complained of in your Petition were in any capacity other than as an attorney for Vintage Flying Museum, Inc., the Hospers Family Trust and/or Charlyn Hospers.

**RESPONSE:** Washburne objects that the request is vague and ambiguous, as Washburne cannot be expected to know the capacity in which Monk was acting in any given transaction or communication. Subject to and without waiving the forgoing objections, Washburne has

previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 7:** If you have denied any Request for Admission previously or contemporaneously served upon you in this lawsuit please produce any and all documents, tangible things or other evidence that supports each such denial.

**RESPONSE:** Washburne objects that the request fails to identify the documents sought with sufficient specificity. Washburne further incorporates all objections asserted in response to any given Request for Admission to which this Request refers. Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 8:** All documents and tangible things that support your conclusion in Petition § 4.30 that Monk "... set a trap for Plaintiff."

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 9:** All documents and tangible things you provided, or authorized to be provided, to Randall Price, PhD between January 1, 2012 and December 1, 2013.

**RESPONSE:** Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 10:** All documents, tangible things and other evidence created since January 1, 2010, in which you alleged in writing that persons had told lies to you and/or about you. This request includes, but is not limited to, mentions of: 1. Directors, volunteers, tenants and workers at VFM; 2. Fort Worth police officers, 3. New York City Fire Department staff, and, 4. Contractors and vendors with whom you had business relationships.

**RESPONSE:** Washburne objects that the request is overbroad and unduly burdensome in seeking any document, from a period of nearly 7 years, related to any incident in which Washburne alleged that another person had been dishonest about Washburne, regardless of whether such allegation is relevant to the parties' claims and defenses in this suit. Washburne further objects that the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request, insofar as the request relates to the parties and matters at issue in this case. Additional responsive, relevant documents (meaning, documents relevant to the parties and matters at issue in this case), if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 11:** All records from psychiatrists, psychologists, therapists, counselors or other mental health providers pertaining to any evaluation, examination, testing, diagnosis, of your mental condition during the preceding ten (10) years.

**RESPONSE:** Washburne objects that the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Washburne further objects that the request is harassing, as it seeks to unnecessarily invade Washburne's private medical history. Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Washburne is not aware of any additional responsive documents.

**Comment [SC1]:** Seth, I'm guessing the FAA thing is the only "mental health evaluation" that you've had in the last 10 years. Is that right?

**REQUEST FOR PRODUCTION NO. 12:** All pages of your pilot log book containing entries of your pilot flight time between January 1, 2010 and December 31, 2013.

**RESPONSE:** Washburne objects that the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as Washburne's pilot flight time occurring between January 1, 2010 and December 31, 2013 (or any other time frame, for that matter) has no bearing on the parties' claims and defenses in this case. Based on these objections, Washburne is not producing documents in response to this request.

**REQUEST FOR PRODUCTION NO. 13:** All affidavits and documents showing criminal charges, deposition testimony and other statements you have made regarding your experiences at, and with, VFM since you relocated "... to Fort Worth in early 2012," as you stated in Petition §4.4.

**RESPONSE:** Washburne objects that the request is overbroad and unduly burdensome, as it is not sufficiently narrowly tailored to allow Washburne to identify the documents sought. As Defendants are well aware, Washburne and certain of the Defendants are parties to a separate lawsuit concerning certain of Washburne's "experiences at, and with, VFM," however not all of the "criminal charges, deposition testimony and other statements" related to such experiences are relevant to this lawsuit. Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

**REQUEST FOR PRODUCTION NO. 14:** All documents and tangible things relating in any manner to your engagement of investigators, researchers or other persons or entities to gather adverse information and/or evidence against any defendants in this lawsuit prior to the date this lawsuit was filed.

**RESPONSE:** Washburne objects to the extent this request seeks privileged information. Subject to and without waiving the forgoing objections, Washburne will produce responsive, relevant, nonprivileged documents, if any, at a mutually agreeable time and place

**REQUEST FOR PRODUCTION NO. 15:** All documents and tangible things that support your contention that VFM and/or its invitees and tenants did not have exclusive use and occupancy since January 1, 2010 of the land where you were arrested on April 27, 2014.

**RESPONSE:** Washburne objects that the phrase “exclusive use and occupancy” is vague and ambiguous. Plaintiffs further object that the phrase “the land where you were arrested” is vague and ambiguous. Subject to and without waiving the forgoing objections, Washburne has previously produced documents responsive to this request. Additional responsive, relevant documents, if any, will be produced at a mutually agreeable time and place.

DATED: November \_\_\_, 2016

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the \_\_\_ day of November, 2016.

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/s/ Kent D. Krabill

Kent D. Krabill



Exhibit 106: 2016 11 07 - Draft Response to No-Evidence MSJ, without exhibits



misrepresented to the police the location of the VFM's property line in order to cause the police to wrongfully arrest Washburne. The evidence also reveals that each of the Museum Defendants participated in and substantially contributed to Plaintiff's wrongful arrest and imprisonment

As shown below, Washburne has evidence supporting each of the challenged elements of his claims against the Museum Defendants. Accordingly, the Museum Defendants' No-Evidence Motion must be denied.

## **II. SUMMARY JUDGMENT EVIDENCE**

This response relies upon the following evidence, which is attached in the appendix filed herewith and incorporated fully herein:

<u>Exhibit 1</u>	Declaration of Seth Washburne
<u>Exhibit 2</u>	[exhibit]

## **III. FACTUAL BACKGROUND**

In 2010, Washburne acquired, and began to restore, a World War II C-47a airplane, nicknamed "Billie."<sup>1</sup> In connection with those efforts, Washburne leased space at the VFM and retained the services of Defendant James Terry—a fellow VFM tenant—to restore Billie.<sup>2</sup>

Washburne had a falling out with Terry and others who were hired to work on Billie, due to Terry's and others' negligent and/or defective work on Billie and Terry's theft of more than seventy of Washburne's airplane parts.<sup>3</sup> As a result of the theft, Washburne brought criminal charges against Mr. Terry.<sup>4</sup> For reasons unknown to Washburne, the VFM—and the other Museum Defendants—sided with Terry in this dispute and engaged a retaliatory campaign

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<sup>1</sup> Ex. 1, Decl. of S. Washburne at ¶

<sup>2</sup> *Id.* at ¶

<sup>3</sup> *Id.* at ¶

<sup>4</sup> *Id.* at ¶

against Washburne, beginning with the VFM’s termination of Washburne’s lease and culminating in Washburne’s wrongful arrest and imprisonment.

**1. Washburne is invited to the VFM only to be wrongfully accused of trespassing while parked on public property.**

Washburne’s lease at the VFM was terminated on October 27, 2012.<sup>5</sup> In early 2013, Washburne received an invitation to a March 2, 2013 parts auction, hosted by Terry’s company and taking place at the VFM.<sup>6</sup> Because Terry—a fellow VFM member—had stolen a significant number of Washburne’s parts, Washburne was interested in seeing if any of his stolen parts were placed for auction and, thus, traveled to the VFM for the auction on March 2, 2013.<sup>7</sup>

Washburne arrived at the west end of NW 38th Street—an area of public property—and was met by Defendant Dana Wood, an admitted representative of the VFM, the Trust, and of Hospers.<sup>8</sup> While Washburne was still in his car, Wood called security guards who then waived down a police cruiser that had been parked outside the VFM.<sup>9</sup> Wood, on behalf of the VFM, the Trust, and Hospers, misrepresented to the police that Washburne was on the Trust’s property without permission.<sup>10</sup> As a result of this misrepresentation, a police officer then issued a warning to Washburne not to return to “505 NW 38th Street” and threatened to arrest Washburne if he returned anywhere on NW 38th Street west of Ross Avenue, despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.<sup>11</sup>

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<sup>5</sup> *Id.* at ¶

<sup>6</sup> *Id.* at ¶; Ex.\_\_\_\_ (WASHBURNE 595-622)

<sup>7</sup> *Id.* at ¶

<sup>8</sup> *Id.* at ¶

<sup>9</sup> *Id.* at ¶

<sup>10</sup> *Id.* at ¶ \_\_\_\_.

<sup>11</sup> *Id.* at ¶ \_\_\_\_.

**2. Washburne determines the Trust/VFM property line through legal records.**

Disturbed by his trespass “warning” while parked on what he believed to be public property, Washburne investigated the property line for the VFM property that the Trust owned.<sup>12</sup> After researching various records, on April 13, 2013, Washburne emailed Monk—a director for the VFM—and attached documents from the Tarrant County Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Wood had suggested to the police.<sup>13</sup> Monk failed to respond.<sup>14</sup> On April 15, 2013, Washburne again sent Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers—identifying the lots owned by the Trust.<sup>15</sup> Monk forwarded this email to Hospers, asking for direction on responding to Washburne’s evidence regarding the property line.<sup>16</sup>

**3. The Museum Defendants misrepresent their property line to the police and wrongfully procure a “trespass warning” against Washburne.**

In early 2014, Terry and Wood again invited Washburne to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.<sup>17</sup> Washburne declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to observe a B-29 plane.<sup>18</sup> Washburne stayed on public roads and stopped just before the end of NW 38th Street to have what he expected to be a friendly chat with Wood.<sup>19</sup> Although Washburne stayed on the public roads, the VFM—through Wood—again called the police on

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<sup>12</sup> *Id.* as ¶ \_\_.

<sup>13</sup> *Ex.* [redacted] (WASHBURNE 239-241)

<sup>14</sup> *Ex. 1* at ¶ \_\_.

<sup>15</sup> *Ex.* [redacted] (WASHBURNE 250, 246-248).

<sup>16</sup> *Ex.* [redacted] (WASHBURNE 249)

<sup>17</sup> *Id.* at ¶; *Ex.* [redacted] (WASHBURNE 992-94).

<sup>18</sup> *Ex. 1* at ¶

<sup>19</sup> *Id.* at ¶ \_\_.

Washburne.<sup>20</sup> Prior to the police’s arrival, certain of the Museum Defendants and/or their representatives, held down Washburne until the police arrived.<sup>21</sup>

The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that Washburne was trespassing.<sup>22</sup> These misrepresentations resulted in the officers manhandling Washburne, temporarily detaining Washburne in a police cruiser, wrongly informing Washburne he was trespassing, issuing Washburne a Trespass Warning at the VFM’s request,<sup>23</sup> and stating that he would be arrested if he returned to “505 NW 38th Street.”<sup>24</sup> As a result of Wood’s misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued Washburne a “Trespass Warning.”<sup>25</sup>

The Trust, VFM, Hospers, Monk, and Gorin all allowed Wood to act as the VFM and Trust’s representative in procuring this false Trespass Warning.

**4. The Museum Defendants continue with their misrepresentations and have Washburne wrongfully arrested.**

On April 27, 2014, Washburne notified the Museum Defendants that he intended to drive to the end of NW 38th Street—which the undisputed public records which he had previously provided to the Museum Defendants demonstrated was public property—and look out at the airplanes at Meacham Airport.<sup>26</sup> Washburne requested that Monk or Hospers call him to confirm his understanding of the property line.<sup>27</sup> Later that afternoon, Monk called Washburne and confirmed to him that he was allowed to park anywhere on NW 38th Street, including along the

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<sup>20</sup> *Id.* at ¶

<sup>21</sup> Ex. \_\_\_ (BG0027)

<sup>22</sup> Ex. 1 at ¶

<sup>23</sup> Ex. \_\_\_ (BG0007).

<sup>24</sup> Ex. 1 at ¶

<sup>25</sup> Ex. \_\_\_ (BG007).

<sup>26</sup> Ex. \_\_\_ (WASHBURNE 356)

<sup>27</sup> Ex. 1 at ¶ \_\_\_.

fence at the west end of the street, and the Museum Defendants would not consider him to be trespassing on the Trust's property.<sup>28</sup> Monk even clarified exactly where the Trust/VFM property began and ended, and he assured Washburne that he had informed Hospers and other Trust/VFM representatives of these facts.<sup>29</sup> Monk also confirmed that the Museum Defendants would not involve the police if Washburne remained on public property.<sup>30</sup> As it turned out, this was merely a ruse to draw Washburne to the property so that the Museum Defendants could have him wrongfully arrested.

At around 4:45 p.m. on April 27, 2014, Washburne arrived at NW 38th Street near the VFM and parked exactly where Monk had told Washburne he could park (and where the public records demonstrated that it was public property).<sup>31</sup> Washburne did not drive onto the Trust/VFM property, but stayed strictly on public roads the entire time.<sup>32</sup> Shortly thereafter, the Museum Defendants' ruse was revealed, as two police cars arrived at Washburne's car, and Wood and Gorin appeared, wrongfully telling the police that Washburne was trespassing.<sup>33</sup> The police reports reveal that Gorin represented to the police the alleged boundaries of the Trust/VFM property lines.<sup>34</sup> Of course, Gorin's representations were wrong.

Washburne immediately called Monk so that he could inform the police and the other Museum representatives of the information he had told Washburne just a few hours before.<sup>35</sup> While Monk briefly responded to Washburne, he refused to speak to Wood, Gorin, or the police and refused to correct Wood and Gorin's misrepresentations that Washburne was trespassing on

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<sup>28</sup> *Id.* at \_\_\_. Of course, Washburne did not need Monk's permission to park on public property. The public records established that the area Washburne intended to park was not on the Trust or VFM's property.

<sup>29</sup> *Id.* at \_\_\_.

<sup>30</sup> *Id.* at \_\_\_.

<sup>31</sup> *Id.* at \_\_\_.

<sup>32</sup> *Id.* at \_\_\_.

<sup>33</sup> *Id.* at \_\_\_.

<sup>34</sup> Ex. 1 (WASHBURNE 1174)

<sup>35</sup> Ex. 1 at \_\_\_.

Trust/VFM property.<sup>36</sup> Washburne tried to call Monk again multiple times, but Monk ignored Washburne's calls, leaving the police to believe the lies of Gorin and Wood regarding the property line.<sup>37</sup>

Based on the Museum Defendants' misrepresentations regarding the Trust/VFM property line, the police arrested Washburne for criminal trespass.<sup>38</sup> The police handcuffed Washburne, placed him in a police cruiser, and took him to the Fort Worth jail around 5:45 p.m.<sup>39</sup> Washburne spent six more hours in the Fort Worth Jail, with other accused criminals, before being transported to the prison at Mansfield, Texas, where he spent the night and had his mugshot taken.<sup>40</sup> Washburne was finally released the next morning and got a van back to Fort Worth, arriving more than 18 hours after he was wrongfully arrested.<sup>41</sup>

**5. In private communications, Monk admits the wrongfulness of the Museum Defendants' actions.**

Monk's refusal to correct the Museum Defendants' misinformation to the police is made all the more startling by his private conversations with other Museum Defendants, which reveal his knowledge and awareness of the potential liability the Museum Defendants were exposed to as a result of their misrepresentations. On April 28, 2014, the day after Washburne's arrest, Monk emailed Hospers and Gorin and admitted that (1) the VFM and the Trust allowed Wood to hold herself out as a representative of the VFM and the Trust, (2) Wood likely made false representations to the police, and (3) the VFM and the Trust were likely responsible for these false representations.<sup>42</sup> Likewise, in a later email to Wood, Monk noted that the Museum

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<sup>36</sup> *Id.* at \_\_\_\_.

<sup>37</sup> *Id.* at \_\_\_\_.

<sup>38</sup> *Id.* at \_\_\_\_; Ex. \_\_\_\_ (WASHBURNE 1172-95).

<sup>39</sup> Ex. 1, at \_\_\_\_; Ex. \_\_\_\_ (WASHBURNE 1172-95).

<sup>40</sup> Ex. 1 at \_\_\_\_; Ex. \_\_\_\_ (WASHBURNE 1172-95).

<sup>41</sup> Ex. 1 at \_\_\_\_.

<sup>42</sup> Ex. \_\_\_\_ (WASHBURNE 632-34)



Defendants' actions left them "treading on dangerous ground" because Washburne "well may be" correct about where the VFM/Trust property line is.<sup>43</sup>

Monk's knowledge of the Museum Defendants' violations of Washburne's rights is made most clear by his May 29, 2014 correspondence to Hospers and Gorin, wherein he laments the VFM/Trust's actions in ratifying Wood's misrepresentations to the police and confirms that Washburne, indeed, was not trespassing when the police were called:

[Washburne's intent] does not in any way preclude his right to travel as he darn well pleased up and down NW 38th Street, or which now, uncomfortably, seems to still be Von Street. *Dana Wood had no right whatsoever to impede such travel.* Contrary to her assertions below, *I find no indication that Seth ever set foot on any of VFM's leasehold or Hospers Trust property, or expressed any intention of doing so . . . .* In any event, I now have information that she walked in front of his car *while he was exercising his right to travel on a public street . . . .* I am much concerned that *actions, or inactions, of some folks connected with VFM may have lent credence to her erroneous assertions to [the police] that she was a 'representative of VFM.'*<sup>44</sup>

Monk's understanding of the wrongfulness of the Museum Defendants' actions makes his silence on the day of Washburne's arrest all the more malicious.

Meanwhile, other VFM/Museum representatives—including Wood, Gorin, and Hospers—continued to communicate with Fort Worth police, and continued to misrepresent the extent of the VFM/Trust's property line, in an effort to bring about a prosecution of Washburne.<sup>45</sup> As Hospers put it in an email to Monk, the Fort Worth police "accepted the trespassing charge against Seth" based on an evaluation of the property line that was—to that point—entirely informed by the misrepresentations of the Museum Defendants.<sup>46</sup> Thankfully, the police eventually consulted the official record, which contradicted the Museum Defendants' representations.

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<sup>43</sup> Ex. \_\_\_ (HM0019)

<sup>44</sup> Ex. \_\_\_ (WASHBURNE 641-42)

<sup>45</sup> Ex. \_\_\_ (WASHBURNE 1231-32; 1237) Ex. \_\_\_ (Supplemental docs at 129)

<sup>46</sup> Ex. \_\_\_ (Supplemental docs at 129).

**6. After a review of the public record, the charges are dropped against Washburne.**

The police who arrested Washburne had only the misinformation supplied by the Museum Defendants to go on, and, thus, were led to believe that Washburne was on the VFM/Trust property when he was arrested. However, after Washburne's arrest, during the scope of the investigation into his charges, law enforcement and the prosecution determined that Washburne was, in fact, right about the property lines all along. They determined that Washburne was standing on public property—as Monk and the other Museum Defendants knew or should have known—and, accordingly, that Washburne should not be prosecuted (and should have never been arrested).<sup>47</sup> For these reasons, the charges were dropped against Washburne.<sup>48</sup>

**7. Washburne suffered damages as a result of Defendants' actions.**

Washburne's prison stay was a harrowing experience for Washburne—a lifelong professional who had never experienced any legal troubles prior to the Museum Defendants' (successful) campaign to get him wrongfully arrested.<sup>49</sup> In addition to suffering shame, humiliation, reputational damage, and emotional distress, Washburne incurred the expense of hiring a criminal attorney to defend himself against the Museum Defendants' false accusations and paying for a professional survey to be completed to provide his attorney with the necessary information to defend Washburne against the charges.<sup>50</sup>

This evidence, as discussed below, more than satisfies Washburne's burden to raise a genuine issue of fact on each of his claims.

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<sup>47</sup> Ex. \_\_\_ (WASHBURNE 1172-95)

<sup>48</sup> *Id.*; Ex. 1 at ¶ \_\_.

<sup>49</sup> Ex. 1 at \_\_.

<sup>50</sup> Ex. 1 at \_\_; Ex. \_\_\_ (Brown receipt); Ex. \_\_\_ (Sempco invoice)

#### IV. ARGUMENT AND AUTHORITIES

##### 1. Malicious Prosecution

To prove a claim for malicious prosecution, a plaintiff must establish: (1) a criminal prosecution was commenced against the plaintiff; (2) the defendant initiated or procured the prosecution; (3) the prosecution was terminated in the plaintiff's favor; (4) the plaintiff was innocent of the charge; (5) the defendant did not have probable cause to initiate or procure the prosecution; (6) the defendant acted with malice; and (7) the plaintiff suffered damages as a result of the prosecution. *See Kroger Tex. L.P. v. Suberu*, 216 S.W.3d 788, 792 n.3 (Tex. 2006).

In their No-Evidence Motion, the Museum Defendants challenge Washburne's evidence on elements (2), (5), and (6).

*a. The Museum Defendants initiated or procured the prosecution.*

A "prosecution" includes the lawful arrest of a person based on a criminal charge. *Airgas-Southwest, Inc. v. IWS Gas and Supply of Tex., Ltd.*, 390 S.W.3d 472, 479 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (noting that "courts have affirmed judgments for malicious prosecution when the claimant was physically detained, even if the detention lasted a relatively short time"); Restatement (2d) of Torts § 654(2)(c). A defendant initiates or procures a prosecution when his actions are the cause-in-fact of the plaintiff's criminal prosecution. *Browning-Ferris Indus. v. Lieck*, 881 S.W.2d 288, 292 (Tex. 1994). A defendant also "procures" a prosecution when his actions were enough to cause the prosecution and if the prosecution would not have occurred but for his actions. *King v. Graham*, 126 S.W.3d 75, 77 (Tex. 2003). A defendant may also be liable for malicious prosecution when he provides false information to law enforcement officials that result in the prosecution. *Id.* at 76.

Here, the evidence clearly demonstrates that the Museum Defendants initiated or procured Washburne's prosecution. Defendant Monk, on behalf of the Trust, informed

Washburne that the Trust would pursue criminal trespass charges against him if he came onto the Trust/VFM property.<sup>51</sup> Defendant Wood, while holding herself out as a representative of the VFM and the Trust, called the police on Washburne on April 26, 2014, and procured a trespass warning against Washburne.<sup>52</sup> Furthermore, Wood and Gorin, while holding themselves out as representatives of the VFM and the Trust, contacted the police on April 27, 2014, and accused Washburne of trespassing on the VFM/Trust property, which led to Washburne's arrest on a criminal trespass charge.<sup>53</sup> Gorin, Hospers, and Monk—representatives of the VFM and the Trust—then supplied the police with false information regarding the boundary of the VFM/Trust's property lines and/or failed to correct such false information, in an effort to further Washburne's prosecution.<sup>54</sup>

This evidence is more than sufficient to raise a genuine issue of fact on the issue of whether the Museum Defendants initiated or procured Washburne's prosecution. *Forbes, Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003); Tex. R. Civ. P. 166a(i).

*b. The Museum Defendants did not have probable cause to initiate or procure the prosecution.*

A defendant lacks probable cause to initiate or procure a prosecution when the defendant, acting on the facts within his knowledge, would not have had a reasonable belief that the plaintiff was guilty of a crime. *Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex. 1983).

Here, Washburne had taken great pains to demonstrate and explain to the Museum Defendants where exactly the VFM/Trust property line ended.<sup>55</sup> Monk forwarded Washburne's information to at least Hospers, providing Hospers with the information on where the VFM/Trust

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<sup>51</sup> Ex. \_\_\_ (HM0017)

<sup>52</sup> Ex. \_\_\_ (BG007-8); Ex. \_\_\_ (WASHBURNE 1170); Ex. \_\_\_ (WASHBURNE 505-06).

<sup>53</sup> Ex. \_\_\_ (WASHBURNE 1174; 1196)

<sup>54</sup> Ex. \_\_\_ (WASHBURNE 1174; 632); Ex. \_\_\_ (Supplemental docs at 129); Exs. \_\_\_ (WASHBURNE 632-34; 641-42; HM 0019)

<sup>55</sup> Ex. \_\_\_ ((WASHBURNE 239-241; 246-250)

property line ended.<sup>56</sup> Later, Monk confirmed that he had fully informed Hospers and other Trust/VFM representatives of these facts.<sup>57</sup> Monk also confirmed that the Museum Defendants would not involve the police if Washburne remained on public property.<sup>58</sup>

And, yet, when Washburne appeared on public property near the VFM on April 27, 2014, the Museum Defendants procured Washburne's prosecution despite having a clear understanding—provided by Washburne and confirmed by Monk—that Washburne was not on the VFM/Trust property. If the Museum Defendants believed that Washburne was committing a crime on April 27, 2014, such a belief was wholly unreasonable based on the facts provided to the Museum Defendants. *See Suberu*, 216 S.W.3d at 792-93 (defendant must *reasonably* believe that a crime has been committed in order for defendant to have probable cause).

The evidence raises a genuine issue of fact as to whether the Museum Defendants had probable cause to initiate or procure a prosecution against Washburne. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

*c. The Museum Defendants acted with malice.*

Malice is defined as ill will, evil motive, or such gross indifference or reckless disregard for the rights of others as to amount to a willful and wanton act. *See, e.g., Thrift v. Hubbard*, 974 S.W.2d 70, 82 (Tex. App.—San Antonio 1998, pet. denied). Proof of spite or ill will is not required for this element; the plaintiff may prove malice by showing the defendant committed wrongful acts in reckless disregard to the plaintiff's rights. *J.C. Penny Co. v. Ruth*, 982 S.W.2d 586, 590 (Tex. App.—Texarkana 1998, no pet.). Evidence that a defendant did not fully and fairly disclose all material information and knowingly provided false information is relevant to this inquiry. *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 519 (Tex. 1997).

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<sup>56</sup> *Id.*

<sup>57</sup> *Ex. 1* at \_\_\_.

<sup>58</sup> *Id.* at \_\_\_.

Here, the evidence demonstrates that the Museum Defendants were, at a minimum, grossly indifferent to Washburne’s rights. Again, Washburne had provided the Museum Defendants with extensive evidence of the Trust/VFM’s property lines, yet the Museum Defendants proceeded anyway with Washburne’s prosecution, choosing to recklessly disregard the actual boundary of its own property.<sup>59</sup>

Further, although such proof is not necessary, the evidence shows that Washburne’s prosecution was the result of personal ill will and/or spite toward Washburne, rather than a sincere belief that Washburne was committing a crime. Washburne’s lease at the VFM had been terminated after he had a falling out with a fellow VFM member and tenant.<sup>60</sup> This caused the Museum Defendants to have a negative feeling toward Washburne. Indeed, communications among the Museum Defendants from 2012, after a failed mediation between Washburne and the Museum Defendants, reveal that the Museum Defendants were already conspiring against Washburne, taking steps to hire a private investigator to follow Washburne at an event he was invited to, and lamenting that they could not legally obtain a temporary restraining order against him.<sup>61</sup>

Additionally, Wood, a representative of the VFM and the Trust, attempted to concoct a story about Washburne hitting her with his car—in fact, she walked into Washburne’s car and barely made contact with it—and tried to get additional charges brought against Washburne.<sup>62</sup> Gorin—a fellow Museum Defendant and representative of the VFM and Trust—referred to Washburne as a “nut job” in emails with other Museum Defendants.<sup>63</sup>

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<sup>59</sup> Ex. \_\_\_ ((WASHBURNE 239-241; 246-250).

<sup>60</sup> Ex. 1 at \_\_\_.

<sup>61</sup> Ex. \_\_\_ (

<sup>62</sup> Ex. 1 at \_\_\_; Ex. \_\_\_ (BG0015-16)

<sup>63</sup> Ex. \_\_\_ (WASHBURNE 697)

This evidence strongly suggests that the motive for initiating a prosecution against Washburne was the ill will and spite that the Museum Defendants held toward Washburne, rather than any interest in prosecuting alleged criminal activity. This is sufficient evidence to raise a genuine issue of fact as to whether the Museum Defendants acted with malice. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

Because Washburne has evidence of each of the challenged elements of his malicious prosecution claim, this Court should deny the Museum Defendants' Motion as to this claim.

## **2. Intentional Infliction of Emotional Distress**

To prove a claim for intentional infliction of emotional distress, a plaintiff must establish: (1) the defendant acted intentionally or recklessly; (2) the emotional distress suffered by the plaintiff was severe; (3) the defendant's conduct was extreme and outrageous; (4) the defendant's conduct proximately caused the plaintiff's emotional distress; and (5) no alternative cause of action would provide a remedy for the severe emotional distress caused by the defendant's conduct. *Suberu*, 216 S.W.3d at 796.

In their No-Evidence Motion, the Museum Defendants challenge Washburne's evidence on elements (1) and (3).

### *a. The Museum Defendants acted intentionally or recklessly.*

A defendant's conduct is intentional if the defendant either desires to cause the consequences of his act or believes the consequences are substantially certain to result from his act. *Toles v. Toles*, 45 S.W.3d 252, 259 (Tex. App.—Dallas 2001, pet. denied). Intent can be inferred from the circumstances of the defendant's conduct. *Id.* at 260. A defendant's conduct is reckless if the defendant knows or has reason to know of facts that create a high degree of risk of harm to another and then deliberately proceeds to act in conscious disregard of or with indifference to that risk. *Twyman v. Twyman*, 855 S.W.2d 619, 624 (Tex. 1993).

Here, the Museum Defendants acted intentionally or recklessly by procuring a prosecution of Washburne based on false information supplied to the police—information that the Museum Defendants knew was false or had reason to believe was false.<sup>64</sup> They also acted recklessly by failing to correct the false information that had been supplied to the police.

Furthermore, the Museum Defendants’ internal communications reveal that they believed Washburne to be particularly susceptible to emotional or mental distress before they ever began their scheme to falsely accuse Washburne of trespass.<sup>65</sup> With this understanding, the Museum Defendants’ malicious actions in procuring Washburne’s arrest based on false information is all the more intentional and/or reckless.

This evidence is sufficient to raise a genuine issue of fact as to whether the Museum Defendants acted intentionally and/or recklessly toward Washburne. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

*b. The Museum Defendants’ conduct was extreme and outrageous.*

A defendant’s conduct is extreme and outrageous when it is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Tiller v. McLure*, 121 S.W.3d 709, 713 (Tex. 2003). In determining whether conduct is extreme and outrageous, the court may consider a course of harassing conduct. *GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 616-17 (Tex. 1999).

Here, the Museum Defendants’ conduct in lying to police regarding the VFM/Trust property line and failing to correct the police’s misunderstanding regarding the property line despite having an abundance of information to correct such misunderstanding is extreme and

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<sup>64</sup> See, *supra*, section IV.1.a. above, and the evidence relied upon therein.

<sup>65</sup> Ex. \_\_\_ (WASHBURNE 569-570) (referring to Washburne as “suffering from . . . mental/personality disorders”



outrageous behavior, especially when combined with the Museum Defendants' pattern of harassing Washburne over a period of years, including by: (1) terminating Washburne's lease because he got into a dispute with a fellow tenant that stole from him; (2) openly questioning Washburne's mental stability; (3) lying to police about Washburne striking Defendant Wood with his car; and (4) publicly embarrassing Washburne by posting online photos depicting Washburne being detained by police and placed in a police cruiser.<sup>66</sup>

This evidence creates a genuine issue of fact as to whether the Museum Defendants' actions were extreme and outrageous. *Forbes*, 124 S.W.3d at 172; Tex. R. Civ. P. 166a(i).

Because Washburne has evidence of each of the challenged elements of his intentional infliction of emotional distress claim, this Court should deny the Museum Defendants' Motion as to this claim.

### **3. Negligence**

To prove an action for negligence, the plaintiff must establish: (1) the defendant owed a legal duty to the plaintiff; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff's injury. The Museum Defendants challenge Washburne's evidence on each of these elements.

*a. The Museum Defendants owed a legal duty to Washburne.*

Individuals owe others a duty to use ordinary care in making representations and in ascertaining the accuracy of information given to others. *See, e.g., EDCO Prod., Inc. v. Hernandez*, 794 S.W.2d 69, 76-77 (Tex. App.—San Antonio 1990, writ denied); Restatement (2d) of Torts, § 311. Here, the Museum Defendants owed Washburne a legal duty to use ordinary care in making representations and ascertaining the accuracy of the information provided to Washburne and to the police.

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<sup>66</sup> Ex. \_\_\_ (BG 0004).

b. *The Museum Defendants breached their duty.*

The Museum Defendants breached their duty to Washburne by (1) representing to Washburne that he would not be arrested if he stayed on public property,<sup>67</sup> and (2) providing inaccurate information to the Fort Worth police concerning the VFM/Trust property line.<sup>68</sup>

c. *The Museum Defendants' breach proximately caused Washburne's injuries.*

Unless the evidence is undisputed, proximate cause is typically a question of fact. *Ambrosio v. Carter's Shooting Ctr., Inc.*, 20 S.W.3d 262, 266 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). An act is the “proximate cause” of the plaintiff’s injuries when it is the cause-in-fact of the injuries and the injury was foreseeable. *Western Invs. V. Urena*, 162 S.W.3d 547, 551 (Tex. 2005).

Here, the evidence shows that the Museum Defendants’ acts were clearly the cause-in-fact of Washburne’s injuries. Washburne would not have suffered humiliation, reputational harm, emotional distress, and the expenses of defending himself against criminal charges had the Museum Defendants not wrongfully procured his arrest by supplying false information to the police.<sup>69</sup> Likewise, Washburne’s injuries—typical of anyone who is arrested for something they did not do—were easily foreseeable by the Museum Defendants.

Because Washburne has evidence of each of the challenged elements of his negligence claim, this Court should deny the Museum Defendants’ Motion as to this claim.

#### **4. Civil Conspiracy<sup>70</sup>**

To prove a civil conspiracy claim, a plaintiff must establish that: (1) the defendant was a member of a combination of two or more persons; (2) the objection of the combination was to

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<sup>67</sup> Ex. 1 at \_\_\_\_.

<sup>68</sup> *See, supra*, section IV.1.a-c above, and the evidence relied upon therein

<sup>69</sup> Ex. 1 at \_\_\_\_; Ex. \_\_\_\_ (Brown payments); Ex. \_\_\_\_ (Sempco invoices).

<sup>70</sup> The Court has previously dismissed Plaintiff’s defamation claim against the Museum Defendants. Accordingly, Plaintiff will not address this claim in his response.

accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means; (3) the members had a meeting of the minds on the object or course of action; (4) one of the members committed an unlawful, overt act to further the object or course of action; and (5) the plaintiff suffered injury as a proximate result of the wrongful act.

*a. The Museum Defendants were members of a combination of two or more persons.*

Each of the Museum Defendants—Monk, Gorin, Hospers, the VFM, and the Trust—were members of a combination with each other and with Defendant Wood. The Museum Defendants regularly communicated with each other and discussed their plans and strategy as it pertained to Washburne.<sup>71</sup> The entities in the combination—the VFM and the Trust—authorized the individuals, including Wood, to act on behalf of the combination with respect to Washburne.<sup>72</sup>

*b. The combination's object was an unlawful purpose.*

A combination to achieve a malicious prosecution can form the basis of a conspiracy claim. *Akin v. Dahl*, 661 S.W.2d 917, 921-22 (Tex. 1983). For the reasons and based on the evidence set forth in section IV.1 above, the evidence demonstrates that the Museum Defendants' purpose in conspiring was to maliciously prosecute Washburne for trespass, a crime he did not commit.

*c. The members of the conspiracy—including the Museum Defendants—had a meeting of the minds concerning their unlawful purpose.*

Conspirators must have knowledge of the object of the conspiracy and have an agreement or understanding between them to inflict a wrong on another party. *San Antonio Credit Union v. O'Connor*, 115 S.W.3d 82, 91 (Tex. App.—San Antonio 2003, pet. denied). This agreement,

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<sup>71</sup> See, e.g., Ex. \_\_\_\_ (BG0015-16); Ex. \_\_\_\_ (CH0019); Ex. \_\_\_\_ (HM0043-45); Ex. \_\_\_\_ (WASHBURNE 632-34); Ex. \_\_\_\_ (WASHBURNE 641-42).

<sup>72</sup> Ex. \_\_\_\_ (HM002-03) (trespass warning designating Wood as a representative of the VFM).

though, may be proved by evidence of a course of conduct from which a tacit agreement to act in concert may be inferred. *See Wackman v. Rubsamen*, 602 F.3d 391, 409 (5th Cir. 2010).

For the reasons and evidence set forth in section IV.2.b above—which discussed the Museum Defendants’ course of wrongful conduct against Washburne—the evidence shows that the Museum Defendants had a meeting of the minds concerning the purpose of their conspiracy to maliciously prosecute Washburne.

*d. One or more of the members of the conspiracy committed an unlawful, overt act in furtherance of the conspiracy.*

For the reasons and evidence set forth in Section IV.1 above—which discusses the Museum Defendants’ and Wood’s malicious prosecution of Washburne—the evidence shows one or more members of the conspiracy committed malicious prosecution—an unlawful, overt act—against Washburne in furtherance of the conspiracy.

*e. The wrongful act underlying the conspiracy proximately caused Washburne’s damages.*

For the reasons and evidence set forth in Section IV.3.c above—which sets forth the proximate cause of Washburne’s damages—the evidence demonstrates that the conspiracy’s malicious prosecution of Washburne proximately caused his damages.

Because Washburne has evidence of each of the challenged elements of his civil conspiracy claim, this Court should deny the Museum Defendants’ Motion as to this claim.

## **5. False Imprisonment**

To prove a claim for false imprisonment, a plaintiff must establish: (1) the defendant willfully detained the plaintiff; (2) the detention was without the plaintiff’s consent; and (3) the detention was without legal authority or justification. The Museum Defendants challenge Washburne’s evidence on elements (1) and (3) of this claim.

a. *The Museum Defendants willfully detained Washburne.*

Liability for false imprisonment extends to anyone who directs, requests, or participates in the arrest or detention of the plaintiff. *Wal-Mart Stores v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002).

For the reasons and evidence set forth above in section IV.1.a—which sets forth the Museum Defendants’ initiation and/or procurement of Washburne’s arrest for criminal trespass—the evidence demonstrates that the Museum Defendants directed, requested, and/or participated in the arrest or detention of Washburne. *Rodriguez*, 92 S.W.3d at 506. Notably, the Museum Defendants directed, requested, and/or participated not only in Washburne’s arrest on April 27, 2014, but they also directed, requested, and/or participated in his temporary detention on April 26, 2014.<sup>73</sup>

b. *Washburne’s detention was without legal authority or justification.*

When a plaintiff is arrested or detained without an arrest warrant, there is no presumption that the arrest or detention was legal, and the burden is on the defendant to show legal authority for the arrest or detention. *Cowboys Concert Hall-Arlington, Inc. v. Jones*, 2014 WL 1713472, at \*10 (Tex. App.—Fort Worth 2014, pet. denied).

Here, the Museum Defendants clearly cannot carry their burden, as the evidence is undisputed that Washburne’s arrest was without legal authority.<sup>74</sup> Monk, in his emails to the other Museum Defendants, admitted that Washburne had the right to be where he was when the Museum Defendants had him arrested.<sup>75</sup> And the police reports reflect that the charges were

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<sup>73</sup> Ex. 1 at \_\_; Ex. \_\_ (BG 0004).

<sup>74</sup> Ex. 1 at \_\_.

<sup>75</sup> Ex. \_\_ (WASHBURNE 632); Ex. \_\_ (WASHBURNE 641).

dropped against Washburne when it became apparent that the public records revealed that Washburne was not trespassing on either April 26 or April 27, 2014.<sup>76</sup>

Because Washburne has evidence of each of the challenged elements of his false imprisonment claim, this Court should deny the Museum Defendants' Motion as to this claim.

## **6. Vicarious Liability for Negligence of Employee or Agent**

An employer is vicariously liable for the negligence of (1) an agent or employee (2) acting within the scope of his or her agency or employment.” *Baptist Memorial Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 947 (Tex. 1998). The Museum Defendants challenge Washburne's evidence on each of these elements.

*a. Hospers, Monk, Gorin, and Wood were agents or employees of the VFM and the Trust.*

A principal is liable for its agent's acts when the agent has actual or apparent authority to do those acts or when the principal ratifies those acts. *See Currey v. Lone Star Steel Co.*, 676 S.W.2d 205, 209 (Tex. App.—Fort Worth 1984, no writ) (actual and apparent authority); *Little v. Clark*, 592 S.W.2d 61, 64 (Tex. Civ. App.—Fort Worth 1979, writ ref'd n.r.e.).

### **1. Actual Authority**

Actual authority denotes the authority that a principal 1) intentionally confers upon on agent, 2) intentionally allows the agent to believe that he possess, or 3) allows an agent to believe that he or she possesses through want of due care. *Spring Garden 79U, Inc. v. Stewart Title Co.*, 874 S.W.2d 945, 948 (Tex. App.—Houston [1st Dist.] 1994, no writ). The evidence shows that the VFM and the Trust conferred actual and apparent authority on Hospers, Monk, Gorin, and Wood to act as their agent, representative, or employee.

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<sup>76</sup> Ex. \_\_\_ (WASHBURNE 1174).

Hospers, Monk, and Gorin all had actual authority to act on behalf of the VFM and the Trust, as they were intentionally conferred authority by the Trust and the VFM. *Spring Garden*, 874 S.W.2d at 948. Hospers and Monk were each directors of the Trust, which owned and controlled the VFM.<sup>77</sup> Gorin was the Director of Maintenance for the VFM.<sup>78</sup> Accordingly, Hospers, Monk, and Gorin were intentionally conferred actually authority by the Trust and the VFM.

Wood also had actual authority to act on behalf of the Trust and the VFM, as the Trust and VFM's want of due care allowed Wood to believe she had actual authority. When speaking to police on multiple occasions in April 2014, Wood held herself out to be a representative of the VFM, and held herself out as having authority to complain of an alleged trespasser on VFM and Trust property.<sup>79</sup> If the Trust and the VFM contend that Wood did not have authority to act on their behalf, they failed to take the steps necessary to disabuse Wood of that belief, thus conferring upon her actual authority. *See Spring Garden*, 874 S.W.2d at 948.

## 2. Ratification

A principal is also liable for an agent or employee's acts that the principal ratifies. To establish ratification, a plaintiff must show: (1) the plaintiff entered into a transaction with or was injured by an agent or nonagent of the defendant; (2) the agent or nonagent committed the act on behalf of the defendant; (3) the defendant approved the act by word, act, or conduct after acquiring full knowledge of the act; and (4) the defendant's approval was given with the intention of giving validity to the agent's or nonagent's act. *See St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 536-37 (Tex. 2002); *Land Title Co. v. F.M. Stigler, Inc.*, 609 S.W.2d 754, 756-57 (Tex. 1980).

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<sup>77</sup> Ex. 1 at \_\_.

<sup>78</sup> Ex. \_\_\_ (WASHBURNE 1174)

<sup>79</sup> Ex. \_\_\_ (BG0007); Ex. \_\_\_ (WASHBURNE 1174)

As shown by the evidence above, Washburne was harmed by Monk's, Gorin's, Wood's, and Hospers' acts in having him wrongfully arrested, providing false information to the police, and/or failing to correct the false information provided to the police. Furthermore, the evidence discussed above shows that the individual Museum Defendants acted on behalf of the Trust and VFM, as they were procuring Washburne's arrest for allegedly trespassing on the Trust's and VFM's property.<sup>80</sup>

These acts were approved by the Trust and VFM, at the very least through the Trust's and VFM's conduct after acquiring full knowledge of the act. Even before Washburne was arrested, but after the criminal trespass warning was issued, Washburne emailed Hospers and Monk—both directors of the Trust, which owned the VFM—explaining clearly that Wood was misrepresenting to the police the extent of the Trust/VFM property line.<sup>81</sup> Despite this knowledge, the Trust and the VFM took *no action* to inhibit Wood from calling the police the very next day and committing the same wrongful acts on behalf of the Trust/VFM. The Trust and the VFM accepted the benefit of Wood's actions—Washburne's wrongful arrest—knowing that they could have repudiated Wood's actions but choosing not to do so. *See Household Credit Servs. v. Driscoll*, 989 S.W.2d 72, 87 (Tex. App.—El Paso 1998, pet. denied) (holding that plaintiff proved defendant's ratification of agent's improper acts when the defendant allowed improper acts on its behalf to continue after notice of the impropriety of agent's actions). For these same reasons, the evidence shows that the Trust and the VFM approved of Wood's actions with the intent of validating her acts. *See Motel Enters. v. Nobani*, 784 S.W.2d 545, 547 (Tex. App.—Houston [1st Dist.] 1990, no writ) (holding that an intent to give validity may be inferred

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<sup>80</sup> See, e.g., Ex.\_\_\_\_ (HM0017) (telling Washburne “on behalf of” the Trust, that the Museum Defendants would pursue criminal trespass charges against Washburne).

<sup>81</sup> Ex.\_\_\_\_ (WASHBURNE 346-355).



when the defendant retains the benefit of an agent's improper actions with full knowledge surrounding the improper act).

Because Washburne has evidence of each of the challenged elements of his theory of the Trust and VFM's vicarious liability for the negligent acts of Monk, Hospers, Wood, and Gorin, this Court should deny the Museum Defendants' Motion as to this theory.

## **7. Vicarious Liability for Intentional Tort by Agent or Representative**

The Museum Defendants' No-Evidence Motion misstates the law as it pertains to a principal's vicarious liability for the intentional torts of its agents or representatives. The principal's vicarious liability for such actions are not limited, as the Museum Defendants contend, to only those acts committed by "vice principals."<sup>82</sup> Rather, a principal is liable for its agent's torts, including intentional torts, when the acts constituting the tort were either authorized by the employer or closely connected with the agent's authorized duties. *See GTE Sw., Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). An agent's status, *vel non*, as a vice-principal is only relevant when the acts complained of are outside the agent's scope. *Id.* at 618.

For the reasons discussed above, Hospers, Wood, Gorin, and Monk were acting within the course of the authority conferred upon them by the Trust and the VFM when they initiated and procured Washburne's wrongful arrest and false imprisonment. Accordingly, their status as "vice principals" of the Trust or VFM are irrelevant to the Trust and VFM's vicarious liability for their actions. *GTE Sw.*, 998 S.W.2d at 617-18.<sup>83</sup>

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<sup>82</sup> *See* Motion, at ¶ 37.

<sup>83</sup> Nevertheless, Hospers and Monk, as directors of the Trust, which owns the VFM, are clearly vice-principals of the Trust and VFM. *See Bennett v. Reynolds*, 315 S.W.3d 867, 884 (Tex. 2010) (a person who manages all or part of the defendant's business is a vice-principal). Accordingly, the Trust and VFM are automatically liable for Hospers' and Monk's actions, regardless of whether those acts were committed in the course of their duties for the Trust and VFM. *See GTE Sw.*, 998 S.W.2d at 618.

Because Washburne has evidence of each of the challenged elements of his theory of the Trust and VFM's vicarious liability for the intentional acts of Monk, Hospers, Wood, and Gorin, this Court should deny the Museum Defendants' Motion as to this theory.<sup>84</sup>

I. **CONCLUSION**

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny the Museum Defendants' No-Evidence Motion for Summary Judgment, and requests all further relief at law or in equity to which he may be justly entitled.

DATED: **November 7, 2016**

Respectfully submitted,

*/s/ Kent D. Krabill*

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**ATTORNEYS FOR PLAINTIFF**

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<sup>84</sup> The Museum Defendants also challenge Washburne's evidence on his "concert of action" theory of liability. Washburne intends to amend his petition in the coming weeks and will be dropping the "concert of action" theory of liability from his pleadings.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the 7th day of November, 2016.

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4841-2642-8221, v. 4

Exhibit 107: Monk's MSJ response sent 11.16 1.26 p.m

CAUSE NO. 153-275478-14

SETH WASHBURNE,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY, TEXAS
HOSPERS FAMILY TRUST “D”,	§	
CHARLYN HOSPERS, HAL MONK, BILL	§	
GORIN, DANA WOOD, JAMES TERRY,	§	
INDIVIDUALLY and d/b/a GREATEST	§	
GENERATION AIRCRAFT, PACIFIC	§	
PROWLER (NON-PROFIT), and PACIFIC	§	
PROWLER, LLC,	§	
	§	
Defendants.	§	153RD JUDICIAL DISTRICT

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**PLAINTIFF SETH WASHBURNE’S RESPONSE  
TO DEFENDANT HAL MONK’S MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Seth Washburne files this Response to Defendant Hal Monk’s Motion for Summary Judgment and respectfully shows as follows:

**I. INTRODUCTION**

This case concerns the malicious prosecution and false imprisonment of Plaintiff, orchestrated by a number of individuals working for and/or associated with the Vintage Flying Museum, Inc. (“VFM”). One of those individuals is Defendant Hal Monk, a member of the VFM’s board of directors who made material misrepresentations and omissions to Plaintiff, causing Plaintiff’s injuries.

Monk seeks summary judgment on Plaintiff’s claims against him, alleging that he is entitled to immunity because his wrongful conduct occurred in the course of his legal

representation of his clients. Monk’s motion—which conveniently (and tellingly) omits his status as a VFM director—should be denied for three reasons: **First**, regardless of the capacity in which Monk was acting when he committed the wrongful acts against Plaintiff, he was not representing any client *in litigation or any other proceeding*, as required for the attorney-immunity doctrine to apply. **Second**, Monk was acting in his capacity as a director of the VFM, rather than as its attorney, when he committed the wrongful acts. **Third**, even assuming Monk was acting in his capacity as an attorney representing his clients in litigation, his wrongful conduct was foreign to the duties of an attorney.

## **II. FACTUAL BACKGROUND**

In 2010, Plaintiff acquired, and began to restore, a World War II C-47a airplane, nicknamed “Billie.”<sup>1</sup> In connection with those efforts, Plaintiff leased space at the VFM and retained the services of Defendant James Terry—a fellow VFM tenant—to restore Billie.<sup>2</sup>

Plaintiff had a falling out with Terry and others who were hired to work on Billie, due to Terry’s and others’ negligent and/or defective work on Billie and Terry’s theft of more than seventy of Plaintiff’s airplane parts.<sup>3</sup> As a result of the theft, Plaintiff brought criminal charges against Mr. Terry.<sup>4</sup> For reasons unknown to Plaintiff, VFM and its representatives—including Monk—sided with Terry and engaged in a retaliatory campaign against Plaintiff, beginning with the VFM’s termination of Plaintiff’s lease and culminating in Plaintiff’s wrongful arrest and imprisonment.

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<sup>1</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>2</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>3</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>4</sup> Exhibit A, Decl. of S. Washburne at ¶

**A. Plaintiff received invitations to attend events at the VFM but was met by police officers when he drove in the vicinity of the VFM.**

Plaintiff was invited to a March 2, 2013 auction at the VFM.<sup>5</sup> Accordingly, on March 2, 2013, Plaintiff drove to the west end of NW 38th Street, where he was in the public right of way, for the auction.<sup>6</sup> While still at his car, Defendant Dana Wood called security guards who then waived down a police cruiser that had been parked outside the VFM.<sup>7</sup> A police officer then issued a warning to Plaintiff not return to “505 NW 38th Street” and further threaten arrest if Plaintiff returned anywhere on NW 38th Street west of Ross Avenue, despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.<sup>8</sup>

On April 26, 2014, Mr. Terry and Ms. Wood invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.<sup>9</sup> Plaintiff had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to observe a B-29 plane.<sup>10</sup> Although Plaintiff stayed on the public roads, Ms. Wood called the police on Plaintiff.<sup>11</sup> She informed the police that she (i) was VFM’s representative, (ii) knew the ownership boundary lines of VFM’s property, and (iii) Plaintiff was trespassing.<sup>12</sup> These misrepresentations resulted in the officers manhandling Plaintiff, wrongly informing him that he was trespassing, and issuing him a Trespass Warning and stating that he would be arrested if he returned to “505 NW 38th Street.”<sup>13</sup>

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<sup>5</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit B, Invitation. to the March 2, 2013 auction at the VFM.

<sup>6</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>7</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>8</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit C, Official Records.

<sup>9</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit D, Invitations to the VFM dated April 26, 2014; Exhibit E, Invitations.

<sup>10</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>11</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>12</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>13</sup> Exhibit A, Decl. of S. Washburne at ¶

**B. Monk, in his capacity as a director of the VFM, conspires with the other Defendants to have Plaintiff falsely arrested.**

After the allegation of trespass on April 26, 2014, Plaintiff emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Hospers Family Trust or the VFM owns NW 38th Street and Von Avenue.<sup>14</sup> The next day, Plaintiff again emailed Monk, along with others, and indicated that he would like to drive to the end of NW 38th Street and look out at the airport.<sup>15</sup> The area Plaintiff planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM.<sup>16</sup>

Plaintiff was seeking advance confirmation from Ms. Hospers or Monk that they had told Ms. Wood that NW 38th Street and Von Avenue were public roads and to check that Ms. Wood would not call the police again.<sup>17</sup> In response to Plaintiff's email, Monk phoned Plaintiff and told Plaintiff that he could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing.<sup>18</sup> Plaintiff specifically inquired as to whether Monk had provided Ms. Hospers and Ms. Wood this information, which Monk confirmed and represented that there would be no police involvement if Plaintiff parked in that area.<sup>19</sup> At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Ms. Hospers, Ms. Wood, or any other Defendant.<sup>20</sup>

On the afternoon of April 27, Plaintiff arrived and parked his vehicle where Monk told him he was permitted to park.<sup>21</sup> Immediately thereafter, two police cars arrived and Ms. Wood

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<sup>14</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit F, Email from S. Washburne to C. Hospers and H. Monk, dated April 26, 2014.

<sup>15</sup> Exhibit A, Decl. of S. Washburne at ¶ ; Exhibit G, Email from S. Washburne to H. Monk, dated April 27, 2014.

<sup>16</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>17</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>18</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>19</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>20</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>21</sup> Exhibit A, Decl. of S. Washburne at ¶



and Mr. Gorin appeared and told the police that Plaintiff was trespassing.<sup>22</sup> Plaintiff then called Monk – the party that clearly and unequivocally told him he was allowed to park there – but Monk failed to take any action and hung up the phone.<sup>23</sup> Plaintiff was subsequently arrested.<sup>24</sup>

At no point during any of these conversations did Monk state that he was acting as an attorney representing any client.<sup>25</sup> Further, there is no engagement letter or any written document showing the scope of Monk’s services as an attorney to any of the purported clients that are Defendants in this matter.<sup>26</sup>

### III. ARGUMENT AND AUTHORITIES

#### **A. Monk was not representing the VFM—or any client—in litigation when he committed the wrongful acts.**

The Texas Supreme Court held that a defendant asserting attorney immunity must prove conclusively that the actions complained of were “taken in connection with representing a client *in litigation.*” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015);<sup>27</sup> *see also Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *see also Toles v. Toles*, 113 S.W.3d 899, 910 (Tex. App.—Dallas 2003, no pet.); *Renfro v. Jones & Assocs.*, 947 S.W.2d 285, 287-88 (Tex. App.—Fort Worth 1997, pet. denied). There is no dispute that, at the time that Monk made his various misrepresentations to Plaintiff concerning the VFM’s property line and participated in the malicious prosecution and

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<sup>22</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>23</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>24</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>25</sup> Exhibit A, Decl. of S. Washburne at ¶

<sup>26</sup> Exhibit H, Monk’s Response to Plaintiff’s Interrogatory No.¶

<sup>27</sup> Remarkably, Monk cites this case as support for their proposition that “[A]ttorney immunity is not limited to actions or conduct by an attorney during litigation.” *See* Motion, at p. 4. To the contrary, the *Byrd* case concerns a litigant suing opposing counsel for claims made in connection with the counsel’s representation of the opposing litigation. *Byrd*, 467 S.W.3d at 479. The Court was clear that application of the attorney immunity defense required the existence of litigation and the attorneys’ complained of action to be within the scope of representation in litigation. *See id.* at 484 (“*Cantey Hanger* is entitled to summary judgment on its immunity defense if it conclusively established that its alleged conduct was within the scope of its legal representation of Simenstad *in the divorce proceedings.*”) (emphasis added).

false imprisonment of Plaintiff, *Monk was not representing the VFM or any client in connection with any litigation*. This fact alone is sufficient to defeat Monk’s claim of attorney immunity. *See, e.g., Byrd*, 467 S.W.3d at 481. For this reason, the Court should deny Monk’s Motion for Summary Judgment.

**B. Monk was acting as a director of the VFM when engaging in the tortious conduct.**

It is undisputed that Monk maintained an ongoing role as director of the VFM—a fact that was conveniently (and tellingly) omitted from his motion and attached exhibits.<sup>28</sup> Further, the motion for summary judgment does not dispute that Monk engaged in the tortious conduct related to the false arrest of Plaintiff. *See e.g., Mot.* at 5. Monk did not inform Plaintiff in any of the emails or calls related to the property line that he was acting as an attorney representing any client. Monk did not take any action consistent with that of an attorney in a similar situation—*i.e.*, Monk did not confirm the property line to the officers before the false arrest or advise his “client” of the property line before the false arrest. To the contrary, Monk simply acted as a director of the VFM taking an inquiry from an individual regarding property lines.<sup>29</sup> As such, the motion for summary judgment should be denied.

**C. Even if Monk was acting as an attorney, his actions were foreign to the duties of an attorney and, thus, not subject to immunity.**

In order for the attorney immunity defense to apply, the acts complained of by the Plaintiff must not be “foreign to the duties of an attorney.” *Byrd*, 467 S.W.3d at 483-85. While the Supreme Court of Texas has not articulate a legal standard, it did provide three examples of conduct foreign to the duties of an attorney—(1) participation in a fraudulent business scheme with a client outside the litigation context, (2) drafting and filing fraudulent legal documents in a

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<sup>28</sup> Exhibit I, Secretary of State

<sup>29</sup> Monk’s actions after the arrest are telling—he got a survey done and recommended that Plaintiff’s trespass charges be dismissed.

non-litigation context, for the purpose of conspiring to hide the client's assets from judgment creditors in violation of the Uniform Fraudulent Transfer Act, and (3) a physical assault committed by the attorney during trial. *See id.* at 482-85.

Similar to two of the examples provided by the Supreme Court, the scheme to arrest Plaintiff outside the litigation context is conduct foreign to the duties of an attorney. Like the first two examples that involve illegal schemes between attorneys and clients outside the litigation context, the scheme between Monk and others to have Plaintiff arrested occurred outside of any litigation context, and thus is conduct foreign to the duties of an attorney. Similar to the third example, Monk participated in a scheme that involved the physical restraint of Plaintiff, which is far outside of the scope of duties of an attorney. Thus, because Monk engaged in acts "foreign to the duties of an attorney," the attorney immunity defense does not apply. *Byrd*, 467 S.W.3d at 483-85. Accordingly, this Court should deny Defendant Hal Monk's motion for summary judgment.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny Defendant Hal Monk's motion for summary judgment and all further relief at law or in equity to which he may be justly entitled.

DATED: November 15, 2016

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill  
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Stephen Cole  
State Bar No. 24078358  
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**LYNN PINKER COX & HURST, L.L.P.**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the 15th day of November, 2016.

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
4255 Bryant Irvin Rd., Ste. 210  
Fort Worth, TX 76109

Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

/s/ Kent D. Krabill

Kent D. Krabill

Exhibit 108: Burgess' Mtn to Withdraw as Atty for Wood 11-18-16, 2016 11 19- 10.28 a.m. Seth email to Cole re Burgess MTW, 2016 11 19- 10.30 a.m. Seth email to Cole re Burgess MTW, 2016 11 19- 4.07 p.m. Seth email to Cole re Burgess MTW, Exhibit 108e: First Draft Response to MTW 11 21 16, Response to MTW 11 21 16 - Seth's comments, and Washburne's Response to Motion to Withdraw 11-21-16

SETH WASHBURNE	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	
	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY, TEXAS
HOSPERS FAMILY TRUST "D", CHARLYN	§	
HOSPERS, HAL MONK BILL GORIN, AND	§	
DANA WOOD, DEFENDANTS	§	153RD JUDICIAL DISTRICT

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Charles Burgess, attorney of record for Dana Wood in the above cause, and makes this his Motion to Withdraw as Counsel in the above-styled and numbered causes, and for cause would show as follows:

I.

Withdrawal can be accomplished without material adverse effect on the interests of the client and without unnecessarily delaying the due administration of justice.

II.

The Defendant has failed to substantially fulfill an obligation to counsel regarding the lawyer's services, including payment of legal fees. Defendant has been given reasonable warning that the lawyer will withdraw unless communication is made with the attorney. Continued representation of the Defendant by Counsel will result in an unreasonable financial burden on the lawyer and has been rendered unreasonably difficult by the client. (*Tex.Disp.R.Prof.Conduct.* 1.15(a)(6)).

III.

APPROVED AS TO FORM AND SUBSTANCE:

I, Dana Wood, have read, understood and agree to this Motion to Withdraw.

Signature: Dana Wood, Date: May 11, 2016.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the above and foregoing instrument has been mailed, certified mail, return receipt requested, on this 18 day of Nov. 2016, to the following counsel of record:

All Counsel of Record

*via efile*



---

CHARLIE BURGESS

Continued representation of the Defendant by counsel will result in prejudice to the Defendant in that he will not receive effective assistance of counsel and/or a fair trial in this case for the reasons stated above.

IV.

A copy of this Motion has been given to Defendant; her signature agreeing to this motion is below.

Dana Wood's last known address is 4602 Spruce Dr., Arlington, Texas 76106.

WHEREFORE, PREMISES CONSIDERED, Charles Burgess, Movant, respectfully requests that the Court grant his motion and withdraw his name as attorney of record in the above styled and numbered cause.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charlie Burgess".

---

CHARLIE BURGESS  
State Bar No. 24050354  
521 N. Riverside DR.  
Fort Worth, Texas 76111  
Phone: (817) 808-4731  
Fax: (817) 451-4869  
Cburgess72@yahoo.com



## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Saturday, November 19, 2016 10:28 AM  
**To:** 'Stephen Cole'  
**Cc:** 'Mallory Biblo'; 'Kent Krabill'  
**Subject:** Burgess MTW re Dana Wood

Stephen,

Please ask the court to DENY Burgess' MTW, regarding Dana, because:

1. Dana DOES NOT provide any address at which she may receive communications, but instead only a "last known address."
2. Her last known address is an apartment complex, but yet no apartment number is indicated.
3. Dana signed this agreed motion on May 11, 2016, but Burgess waited more than six months, until November 18, to file it.

Together these suggest to me she is going to move and then claim ignorance that she was never told the date to show up.

Please file an objection immediately, so this is not signed Monday morning.

Please confirm.

Seth

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Saturday, November 19, 2016 10:30 AM  
**To:** 'Stephen Cole'  
**Cc:** 'Mallory Biblo'; 'Kent Krabill'  
**Subject:** Burgess MTW re Dana Wood - additional info - her fake name

Please also note to the judge that "Dana Wood" is a fake name. The name on her driver's license was I think Dana Torres. This will make it even harder to find her.

Seth

## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Saturday, November 19, 2016 4:07 PM  
**To:** 'Stephen Cole'  
**Subject:** RE: Burgess MTW re Dana Wood

Stephen,

Please also note to the judge that Dana provided no email or phone number. Having no apartment number either, there is virtually no way for you to contact her. And as noted she uses a fake name, I think the drivers license name may actually be Flores, not Torres, but you should have that.

You should ask the court to require she provide a primary personal address, email and phone number, and a backup second address, email and phone number for her business which would go directly to her. Her business has website [www.ggaproductions.org](http://www.ggaproductions.org), which has a phone number and email which I believe go directly to her. Dana should certify she receives communications at the [info@ggaproductions.org](mailto:info@ggaproductions.org) email address, and commit to notify the court and you if this changes.

We should require she register with the court e-file system to get notifications directly from the court.

I was surprised when Googling gun shows to learn of <http://whippfarmproductions.com/>, run by Charles Montgomery. He is Terry's friend, the fourth person who came on the Puerto Rico trip, in addition to Rob Diver, Terry and me, and helped Dana with many of her events. He is older and rather slow, and perhaps his wife Mo, who also came on that trip does much of the work, but they are directly competing with Dana, and took over the Ennis Gun Show which Dana used to have. Perhaps Dana finally split off from Terry with her business and had to give up some shows, or Terry just decided to set Charles up to compete with Dana, but this is very odd.

I'll try to look at the response to the no-evidence motion this evening.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Saturday, November 19, 2016 11:12 AM  
**To:** Seth Washburne  
**Cc:** Mallory Biblo; Kent Krabill  
**Subject:** Re: Burgess MTW re Dana Wood

Seth, will do. We will get something drafted and send it to you.

**STEPHEN M. COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** "[sethpw1@gmail.com](mailto:sethpw1@gmail.com)" <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>

**Date:** Saturday, November 19, 2016 at 10:28 AM

**To:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>

**Cc:** Mallory Biblo <[MBiblo@lynnllp.com](mailto:MBiblo@lynnllp.com)>, Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>

**Subject:** Burgess MTW re Dana Wood

Stephen,

Please ask the court to DENY Burgess' MTW, regarding Dana, because:

1. Dana DOES NOT provide any address at which she may receive communications, but instead only a "last known address."
2. Her last known address is an apartment complex, but yet no apartment number is indicated.
3. Dana signed this agreed motion on May 11, 2016, but Burgess waited more than six months, until November 18, to file it.

Together these suggest to me she is going to move and then claim ignorance that she was never told the date to show up.

Please file an objection immediately, so this is not signed Monday morning.

Please confirm.

Seth



*Third*, the motion fails to comply with the Local Rules of Court of Tarrant County, Texas. Therefore, the motion should be denied until, at least, contact information is provided or replacement counsel is identified.

### **ARGUMENT AND AUTHORITIES**

*First*, Defendant's motion fails to identify even the most basic contact information for Defendant Wood. The address provided—4603 Spruce Drive, Arlington, Texas 76106—appears to be an apartment complex but fails to identify the apartment number of Defendant Wood. Additionally, there is no email address or phone number for Defendant Wood. And, upon information and belief, Dana Wood is not Defendant's legal name, making it more difficult to communicate with her. Further, no replacement counsel is identified. As such, there is no way for Defendant Wood to receive any information from the Court or otherwise related to this lawsuit, which will pave the way for undue delay and create substantial prejudice on Plaintiff to prosecute his claims against Defendant Wood.

*Second*, Defendant's motion lacks indicia of reliability. The motion was filed on November 18, 2016, but Defendant Wood signed it on May 16, 2016—over six months prior to filing. This was before Plaintiff was represented by his current counsel, and Defendant Wood is likely unaware of the identity of Plaintiff's current counsel. Accordingly, if Defendant Wood is unrepresented, she would not know that a notice from Plaintiff's current counsel is related to this lawsuit. Again, this causes undue delay and prejudice to Plaintiff.

*Third*, the Local Rules require parties proceeding pro se "to provide address and telephone listing at which they can be reached by Court personnel and opposing counsel." Local Rule 1.02(a). Again, this information is missing for Defendant Wood. Further, Mr. Burgess failed to conference with the other parties before filing the motion to withdraw, as the motion is

missing a certificate of conference. Local Rule 3.06. Thus, the motion should be denied for failure to follow the rules of the Court.

### **CONCLUSION**

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny the motion to withdraw until Defendant Wood has signed an updated approval that indicates she is aware of Plaintiff's current counsel. Further, the motion should be denied until Defendant Wood provides the Court with her current address, email, and phone number and registers with the Court's e-file system or replacement counsel has been identified. Finally, Plaintiff requests all further relief at law or in equity to which he may be justly entitled.

DATED: November 21, 2016

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill  
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Stephen Cole  
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Mallory Biblo  
State Bar No.  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the 21st day of November, 2016.

Randall E Turner  
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Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

/s/ Kent D. Krabill

Kent D. Krabill





~~despite her -and-being leftleaves her~~ unrepresented by an attorney. [I don't object to her not being respresented – I respect that, but do object to not having contact info when she is unrepresented] *Second*, the motion is unreliable given that Defendant Wood signed it over six months prior to its filing. *Third*, the motion fails to comply with the Local Rules of Court of Tarrant County, Texas. Therefore, the motion should be denied until, at least, contact information is provided or replacement counsel is identified.

### **ARGUMENT AND AUTHORITIES**

*First*, Defendant's motion fails to identify even the most basic contact information for Defendant Wood. The address provided—4603 Spruce Drive, Arlington, Texas 76106—appears to be an apartment complex but fails to identify the apartment number of Defendant Wood.

Additionally, there is no email address or phone number for Defendant Wood.

~~And, u~~Upon information and belief, Dana Wood is not Defendant's legal name, making it more difficult to communicate with her. Her Texas Driver's License, produced during Discovery on May 29, 2015, #14568272, dated 8/14/2010, states her name as Dana Gayle Flores.

~~Further, Nn~~o replacement counsel is identified. As such, there is no way for Defendant Wood to receive any information from the Court or otherwise related to this lawsuit, which will pave the way for undue delay and create substantial prejudice on Plaintiff to prosecute his claims against Defendant Wood.

*Second*, Defendant's motion lacks indicia of reliability. The motion was filed on November 18, 2016, but Defendant Wood signed it on May 16, 2016—over six months prior to filing. This was before Plaintiff was represented by his current counsel, and Defendant Wood is likely unaware of the identity of Plaintiff's current counsel. Accordingly, if Defendant Wood is

unrepresented, she would not know that a notice from Plaintiff's current counsel is related to this lawsuit. Again, this causes undue delay and prejudice to Plaintiff.

*Third*, the Local Rules require parties proceeding pro se "to provide address and telephone listing at which they can be reached by Court personnel and opposing counsel." Local Rule 1.02(a). Again, this information is missing for Defendant Wood. Further, Mr. Burgess failed to conference with the other parties before filing the motion to withdraw, as the motion is missing a certificate of conference. Local Rule 3.06. Thus, the motion should be denied for failure to follow the rules of the Court.

### CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny the motion to withdraw until Defendant Wood has signed an updated approval that indicates she is aware of Plaintiff's current counsel including its name, contact persons, phone numbers, and emails. Further, the motion should be denied until Defendant Wood provides the Court with her current address, including any apartment number, plus her email, and phone number, and a work phone number and email as backup, registers with the Court's e-file system, and pledges to contact Plaintiff's counsel and the court if any of her contact information changes, or if replacement counsel has been identified. Plaintiff requests compensation for his attorney's fees in preparing this motion. Finally, Plaintiff requests all further relief at law or in equity to which he may be justly entitled.

DATED: November 21, 2016

Respectfully submitted,

*/s/ Kent D. Krabill*

---

Kent D. Krabill  
State Bar No. 24060115  
[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

Stephen Cole  
State Bar No. 24078358  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on the 21st day of November, 2016.

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
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Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

*/s/ Kent D. Krabill*

---

Kent D. Krabill



to be an apartment complex but fails to identify the apartment number of Defendant Wood. Additionally, there is no email address or phone number for Defendant Wood. And, upon information and belief, Dana Wood is not Defendant's legal name, making it more difficult to communicate with her. Her Texas Driver's License, produced during Discovery on May 29, 2015, states her name as Dana Gayle Flores. Further, no replacement counsel is identified. As such, there is no way for Defendant Wood to receive any information from the Court or otherwise related to this lawsuit, which will pave the way for undue delay and create substantial prejudice on Plaintiff to prosecute his claims against Defendant Wood.

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*Third*, the Local Rules require parties proceeding pro se "to provide address and telephone listing at which they can be reached by Court personnel and opposing counsel." Local Rule 1.02(a). Again, this information is missing for Defendant Wood. Further, Mr. Burgess failed to conference with the other parties before filing the motion to withdraw, as the motion is missing a certificate of conference. Local Rule 3.06. Thus, the motion should be denied for failure to follow the rules of the Court.

### **CONCLUSION**

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny the motion to withdraw until Defendant Wood has signed an updated approval that indicates she is aware of Plaintiff's current counsel, including name, address, and phone number of the law

firm and email addresses of the attorneys. Further, the motion should be denied until Defendant Wood provides the Court with her current address, including any apartment number, email address, and phone number and registers with the Court's e-file system or replacement counsel has been identified. Finally, Plaintiff requests all further relief at law or in equity to which he may be justly entitled.

DATED: November 21, 2016

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-service* on the 21st day of November, 2016.

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/s/ Kent D. Krabill

Kent D. Krabill

Exhibit 109: Monk's MSJ email to Cole 11.20, 3.36 a.m., and Monk's  
MSJ response fr SW 11.21 6.23 p.m



## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Sunday, November 20, 2016 3:36 AM  
**To:** 'Stephen Cole'  
**Subject:** RE: Response to Hal Monk MSJ  
**Attachments:** 2013 04 13 Email Washburne to Monk.pdf; 2012 09 28 Email to Monk.pdf; 2012 10 01 Monk email re directors.pdf; 2012 10 13 Monk email re directors.pdf; 2012 10 23 Monk email re the VFM directors.pdf

Stephen,

You probably emailed me the Hal Monk MSJ response but I cannot find it, and so please resend it, after making the changes we discussed at the hangar, and those below.

As noted, please include references to Monk as a director. These would include:

1. His action of terminating my lease was done as a board member, casting one of three votes.
2. In my first email to Hal 9/28/2012 about the lease termination I wrote: "May I please have the opportunity to meet you and the other non-Chuckie director "Mike" in person to present my side of the story." I note a museum requires an independent board of directors, and because I had never even heard of him or Mike Coup, they obviously did not do their own research into the situation, but relied upon someone else telling them. So I addressed him as a board member.
3. Monk replied October 1, 2012, attached, stating he was aware of the roles of directors. He does, though, in the second to last paragraph refer to himself as a lawyer – so maybe leave this one out.
4. Monk 10/13/12, attached, writes: "I have asked the other directors not to waste their time reading such and...I intend to do the same." Later on he writes: "Please restrain from any further attempts at communication with me or other VFM Directors until after conclusion of mediation," specifically stating his role as a director.
5. 2012 10 23 – he closes with "...the VFM directors do sincerely wish you the very best... respect and admiration WE have..."
6. Attached email 2013 04 13 in which I wrote him for the first time about the property line: "Because you are one of the three members of the board, the board representative, and the one who did the paperwork for the initial purchase, you an appropriate person to ask this question."

These show he continually identified himself as acting as one of the directors.

Seth

SETH WASHBURNE,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
VINTAGE FLYING MUSEUM, INC.,	§	TARRANT COUNTY, TEXAS
HOSPERS FAMILY TRUST “D”,	§	
CHARLYN HOSPERS, HAL MONK, BILL	§	
GORIN, DANA WOOD, JAMES TERRY,	§	
INDIVIDUALLY and d/b/a GREATEST	§	
GENERATION AIRCRAFT, PACIFIC	§	
PROWLER (NON-PROFIT), and PACIFIC	§	
PROWLER, LLC,	§	
	§	
Defendants.	§	153RD JUDICIAL DISTRICT

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**PLAINTIFF SETH WASHBURNE’S RESPONSE  
TO DEFENDANT HAL MONK’S MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Seth Washburne files this Response to Defendant Hal Monk’s Motion for Summary Judgment and respectfully shows as follows:

**I. INTRODUCTION**

This case concerns the malicious prosecution and false imprisonment of Plaintiff, orchestrated by a number of individuals working for and/or associated with the Vintage Flying Museum, Inc. (“VFM”). One of those individuals is Defendant Hal Monk, a member of the VFM’s board of directors who made material misrepresentations and omissions to Plaintiff, causing Plaintiff’s injuries.

Monk seeks summary judgment on Plaintiff’s claims against him, alleging that he is entitled to immunity because his wrongful conduct occurred in the course of his legal

representation of his clients. Monk’s motion—which conveniently (and tellingly) omits his status as a VFM director—should be denied for three reasons: **First**, regardless of the capacity in which Monk was acting when he committed the wrongful acts against Plaintiff, he was not representing any client *in litigation or any other proceeding*, as required for the attorney-immunity doctrine to apply. **Second**, Monk was acting in his capacity as a director of the VFM, rather than as its attorney, when he committed the wrongful acts. **Third**, even assuming Monk was acting in his capacity as an attorney representing his clients in litigation, his wrongful conduct was foreign to the duties of an attorney.

## II. FACTUAL BACKGROUND

In 2010, Plaintiff acquired, and began to restore, a World War II C-47a airplane, nicknamed “Billie.”<sup>1</sup> In connection with those efforts, Plaintiff leased space at the VFM and retained the services of Defendant James Terry—a fellow VFM tenant—to restore Billie.<sup>2</sup>

Plaintiff had a falling out with Terry and others who were hired to work on Billie, due to Terry’s and others’ negligent and/or defective work on Billie and Terry’s theft of more than seventy of Plaintiff’s airplane parts.<sup>3</sup> As a result of the theft, Plaintiff brought criminal charges against Terry.<sup>4</sup> For reasons unknown to Plaintiff, VFM and its representatives—including Monk—sided with Terry and engaged in a retaliatory campaign against Plaintiff, including terminating Plaintiff’s lease for no reason and culminating in Plaintiff’s wrongful arrest and imprisonment.

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<sup>1</sup> Ex. 1, Decl. of S. Washburne at ¶ 2.

<sup>2</sup> *Id.* at ¶ 3.

<sup>3</sup> *Id.* at ¶ 4.

<sup>4</sup> *Id.* at ¶ 5.

**A. Plaintiff received invitations to attend events at the VFM but was met by police officers when he drove in the vicinity of the VFM.**

Barely three months after his last day at VFM, Plaintiff was invited to a March 2, 2013 auction at the VFM.<sup>5</sup> Accordingly, on March 2, 2013, Plaintiff drove to the west end of NW 38th Street, where he was in the public right of way, for the auction.<sup>6</sup> While still in his car, Plaintiff was met by security guards who, upon receiving Plaintiff's name, waived down a police cruiser that had been parked outside the VFM.<sup>7</sup> A police officer then issued a warning to Plaintiff not return to "505 NW 38th Street", despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land,<sup>8</sup> and further threaten arrest if Plaintiff returned anywhere on NW 38th Street west of Ross Avenue, ~~despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.~~<sup>9</sup>

**B. Plaintiff determines the Trust/VFM property line through legal records.**

Disturbed by his trespass "warning" while parked on what he believed to be public property, Plaintiff investigated the property line for the VFM property that the Trust owned.<sup>10</sup> After researching various records, on April 13, 2013, Plaintiff emailed Monk, directing his letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant ~~County~~ Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Defendant Dana Wood had suggested to the police.<sup>11</sup> Monk failed to respond.<sup>12</sup> On April 15, 2013, Plaintiff again sent

<sup>5</sup> *Id.* at ¶ 6; Ex. 2, (WASHBURNE000013-16).

<sup>6</sup> Ex. 1, Decl. of S. Washburne at ¶ 6.

<sup>7</sup> *Id.* at ¶ 7.

<sup>8</sup> Id. at ¶ 7; Ex. 3, (WASHBURNE000291-297).

<sup>9</sup> ~~Id. at ¶ 7; Ex. 3, (WASHBURNE000291-297).~~

<sup>10</sup> Ex. 1, Decl. of S. Washburne at ¶ 8.

<sup>11</sup> Ex. 1, Decl. of S. Washburne at ¶ 9; Ex. 4, (WASHBURNE000239-241).

<sup>12</sup> Ex. 1, Decl. of S. Washburne at ¶ 9.

Monk an email regarding the Trust/VFM property line, this time attaching a distribution deed—drafted by Monk and signed by Hospers—identifying the lots owned by the Trust.<sup>13</sup> Monk forwarded this email to Hospers, asking for direction on responding to Plaintiff’s evidence regarding the property line.<sup>14</sup> In Plaintiff’s communications with Monk regarding the VFM property line, Plaintiff at all times understood that he was communicating with Monk in Monk’s capacity as ~~the~~ VFM’s director.<sup>15</sup>

- B. Monk, in his capacity as a director of the VFM, conspires with the other Defendants to have Plaintiff falsely arrested.

In early 2014, Terry and Wood again invited Plaintiff to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.<sup>16</sup> Plaintiff declined the invitation, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to perhaps observe a B-29 plane.<sup>17</sup> Plaintiff stayed on public roads and stopped just before the end of NW 38th Street to have what he expected to be a friendly chat with Wood.<sup>18</sup> Although Plaintiff stayed on the public road, and even though Plaintiff had communicated clearly to Monk regarding the extent of the VFM’s property line, the VFM—through Wood—again called the police on Plaintiff.<sup>19</sup>

The VFM represented to the police that it had actual awareness of the ownership of the property at issue and represented that Plaintiff was trespassing.<sup>20</sup> These misrepresentations resulted in the officers manhandling Plaintiff, temporarily detaining Plaintiff in a police cruiser, wrongly informing Plaintiff he was trespassing, issuing Plaintiff a Trespass Warning at the

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<sup>13</sup> Ex. 5, (WASHBURNE000246-248, 250).

<sup>14</sup> Ex. 6, (WASHBURNE 249).

<sup>15</sup> Ex. 1, Decl. of S. Washburne at ¶ 10.

<sup>16</sup> *Id.* at ¶ 11; Ex. 7, (WASHBURNE 992-94).

<sup>17</sup> Ex. 1, Decl. of S. Washburne at ¶ 12.

<sup>18</sup> *Id.* at ¶ 13.

<sup>19</sup> *Id.* at ¶ 14.

<sup>20</sup> *Id.* at ¶ 15.

VFM's request,<sup>21</sup> and stating that he would be arrested if he returned to "505 NW 38th Street."<sup>22</sup> As a result of Wood's misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued Plaintiff a "Trespass Warning."<sup>23</sup> Monk, as director for the VFM, allowed Wood to act as the VFM and Trust's representative in procuring this false Trespass Warning.

After the allegation of trespass on April 26, 2014, Plaintiff emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Hospers Family Trust or the VFM owns NW 38th Street and Von Avenue.<sup>24</sup> The next day, Plaintiff again emailed Monk, along with others, and indicated that he would like to drive to the end of NW 38th Street and look out at the airport.<sup>25</sup> The area Plaintiff planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM.<sup>26</sup>

Plaintiff was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.<sup>27</sup> In response to Plaintiff's email, Monk phoned Plaintiff and told Plaintiff that he could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing.<sup>28</sup> Plaintiff specifically inquired as to whether Monk had provided Wood this information, which Monk confirmed and represented that there would be no police involvement if Plaintiff parked in that area.<sup>29</sup> At no time during this conversation did

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<sup>21</sup> Ex. 8, (BG0007).

<sup>22</sup> Ex. 1, Decl. of S. Washburne at ¶ 16.

<sup>23</sup> *Id.* at ¶ 17; Ex. 8, (BG0007).

<sup>24</sup> Ex. 1, Decl. of S. Washburne at ¶ 18; Ex. 9, (WASHBURNE000346-355).

<sup>25</sup> Ex. 1, Decl. of S. Washburne at ¶ 19; Ex. 10, (WASHBURNE000356-357).

<sup>26</sup> *Id.* at ¶ 20.

<sup>27</sup> *Id.* at ¶ 21.

<sup>28</sup> *Id.* at ¶ 22.

<sup>29</sup> *Id.*

Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant.<sup>30</sup>

On the afternoon of April 27, Plaintiff arrived and parked his vehicle where Monk told him he was permitted to park.<sup>31</sup> Immediately thereafter, two police cars arrived and Wood and Gorin appeared and told the police that Plaintiff was trespassing.<sup>32</sup> Plaintiff then called Monk—the party that clearly and unequivocally told him he was allowed to park there.<sup>33</sup> Monk answered Plaintiff’s call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action.<sup>34</sup> Plaintiff was subsequently arrested.<sup>35</sup>

At no point during any of these conversations did Monk state that he was acting as an attorney representing any client.<sup>36</sup> Further, there is no engagement letter or any written document showing the scope of Monk’s services as an attorney to any of the purported clients that are Defendants in this matter.<sup>37</sup>

### III. ARGUMENT AND AUTHORITIES

#### **A. Monk was not representing the VFM—or any client—in litigation when he committed the wrongful acts.**

The Texas Supreme Court held that a defendant asserting attorney immunity must prove conclusively that the actions complained of were “taken in connection with representing a client *in litigation.*” *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015);<sup>38</sup> *see also Alpert*

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at ¶ 23.

<sup>32</sup> *Id.* at ¶ 24.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at ¶ 26.

<sup>37</sup> Ex. 11, Defendant, Hal Monk’s, Responses to Plaintiff Seth Washburne’s First Set of Interrogatory No. 2.

<sup>38</sup> Remarkably, Monk cites this case as support for their proposition that “[A]ttorney immunity is not limited to actions or conduct by an attorney during litigation.” *See* Motion, at p. 4. To the contrary, the *Byrd* case concerns a litigant suing opposing counsel for claims made in connection with the counsel’s representation of the opposing litigation. *Byrd*, 467 S.W.3d at 479. The Court was clear that application of the attorney immunity defense required the existence of litigation and the attorneys’ complained of action to be within the scope of representation in

*v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *see also Toles v. Toles*, 113 S.W.3d 899, 910 (Tex. App.—Dallas 2003, no pet.); *Renfro v. Jones & Assocs.*, 947 S.W.2d 285, 287-88 (Tex. App.—Fort Worth 1997, pet. denied). There is no dispute that, at the time that Monk made his various misrepresentations to Plaintiff concerning the VFM’s property line and participated in the malicious prosecution and false imprisonment of Plaintiff, ***Monk was not representing the VFM or any client related to the VFM in connection with any litigation.*** This fact alone is sufficient to defeat Monk’s claim of attorney immunity. *See, e.g., Byrd*, 467 S.W.3d at 481. For this reason, the Court should deny Monk’s Motion for Summary Judgment.

**B. Monk was acting as a director of the VFM when engaging in the tortious conduct.**

It is undisputed that Monk maintained an ongoing role as director of the VFM—a fact that was conveniently (and tellingly) omitted from his motion and attached exhibits.<sup>39</sup> **Even** **p**Prior to the issue with the VFM’s property line, Plaintiff engaged in substantial discussions with Monk regarding his lease.<sup>40</sup> On September 28, 2012, Plaintiff explicitly requested an opportunity to meet with Monk and another director to discuss his lease situation.<sup>41</sup> Monk himself acknowledged that he was acting in his capacity as a director in communicating with Plaintiff.<sup>42</sup> Plaintiff sent a number of letters directed explicitly to Monk in his capacity as a director of the VFM.<sup>43</sup> Monk cast a vote in his capacity as one of three directors of the VFM to

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litigation. *See id.* at 484 (“Cantey Hanger is entitled to summary judgment on its immunity defense if it conclusively established that its alleged conduct was within the scope of its legal representation of Simenstad ***in the divorce proceedings.***”) (emphasis added).

<sup>39</sup> Ex. 12, Periodic Report of a Nonprofit Corporation, December 31, 2007, Vintage Flying Museum; Ex. 13, Periodic Report of a Nonprofit Corporation, January 5, 2012, Vintage Flying Museum.

<sup>40</sup> Ex. 1, Decl. of S. Washburne at ¶ 25.

<sup>41</sup> Ex. 14, (WASHBURNE001015-1018).

<sup>42</sup> Ex. 15, (WASHBURNE000223-224; 358-359; 1029-1030).

<sup>43</sup> *Id.*; Ex. 16, (WASHBURNE000252-279).



terminate Plaintiff's lease.<sup>44</sup> Negotiating or terminating a lease is not even in the purview of lawyers, but done by property managers. Plaintiff himself during 2016 negotiated leases with three tenants for airplane hangars he rents out. In the initial discussions regarding the VFM property line, Plaintiff explained that he was communicating to Monk because he was "one of the three members of the board, the board representative, and the one who did the paperwork for the initial purchase."<sup>45</sup>

During this time Monk explicitly wrote in two emails that he was acting as a Director. On October 13, 2012, he wrote Plaintiff: "I have asked the other directors not to waste their time reading such, and...I intend to do the same," and "Please refrain from any further attempts at communications with me or other VFM Directors..." On October 23, 2012, he closed with: "the VFM directors do sincerely wish you the very best."

Monk did not inform Plaintiff in any of the emails or calls related to the property line that he was acting as an attorney representing any client.<sup>46</sup> At all times that Plaintiff communicated with Monk—whether regarding his lease or the VFM property line—Plaintiff understood and believed that he was communicating with Monk in Monk's capacity as a VFM director, not as an attorney.<sup>47</sup> As such, the motion for summary judgment should be denied.

**C. Even if Monk was acting as an attorney, his actions were foreign to the duties of an attorney and, thus, not subject to immunity.**

In order for the attorney immunity defense to apply, the acts complained of by the Plaintiff must not be "foreign to the duties of an attorney." *Byrd*, 467 S.W.3d at 483-85. While the Supreme Court of Texas has not articulate a legal standard, it did provide three examples of conduct foreign to the duties of an attorney—(1) participation in a fraudulent business scheme

<sup>44</sup> Ex. 17, (WASHBURNE000358-359).

<sup>45</sup> Ex. 18, (WASHBURNE000241).

<sup>46</sup> Ex. 1, Decl. of S. Washburne at ¶ 26.

<sup>47</sup> *Id.* at ¶ 26.

with a client outside the litigation context, (2) drafting and filing fraudulent legal documents in a non-litigation context, for the purpose of conspiring to hide the client's assets from judgment creditors in violation of the Uniform Fraudulent Transfer Act, and (3) a physical assault committed by the attorney during trial. *See id.* at 482-85.

Similar to two of the examples provided by the Supreme Court, the scheme to arrest Plaintiff outside the litigation context is conduct foreign to the duties of an attorney. Like the first two examples that involve illegal schemes between attorneys and clients outside the litigation context, the scheme between Monk and others to have Plaintiff arrested occurred outside of any litigation context, and thus is conduct foreign to the duties of an attorney. Monk's action on August 27, 2014, was not to discuss a property line, but to plot with the other Museum Defendants how they could undertake an illegal act. Similar to the third example, Monk participated in a scheme that involved the physical restraint of Plaintiff, which is far outside of the scope of duties of an attorney. Thus, because Monk engaged in acts "foreign to the duties of an attorney," the attorney immunity defense does not apply. *Byrd*, 467 S.W.3d at 483-85. Accordingly, this Court should deny Defendant Hal Monk's motion for summary judgment.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court deny Defendant Hal Monk's motion for summary judgment and all further relief at law or in equity to which he may be justly entitled.

DATED: November 22, 2016

Respectfully submitted,

/s/ Kent D. Krabill

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-serve* on the 22nd day of November, 2016.

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/s/ Kent D. Krabill

---

Kent D. Krabill

Exhibit 110: Declaration ISO Monk's MSJ Resp - first draft 11.20 1.57 pm, and Declaration ISO Monk's MSJ Resp - my edits 11.21 5.49 pm



4. I had a falling out with Terry and others who were hired to work on Billie, due to Terry's and others' negligent and/or defective work on Billie and Terry's theft of more than seventy of my airplane parts.

5. As a result of the theft, I brought criminal charges against Terry.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way, for the auction.

7. While still in his car, I was met by security guards who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer then issued a warning to me not return to "505 NW 38th Street" and further threaten arrest if I returned anywhere on NW 38th Street west of Ross Avenue, despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.

8. Disturbed by this trespass "warning" while parked on what I believed to be public property, I investigated the property line for the VFM property that the Hospers Family Trust owned.

9. After researching various records, on April 13, 2013, I emailed Hal Monk, directing his letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant County Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood ("Wood") had suggested to the police. Monk failed to respond.

10. In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk's capacity as the VFM's director.

11. In early 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

12. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to observe a B-29 plane.

13. I stayed on public roads and stopped just before the end of NW 38th Street to have what he expected to be a friendly chat with Wood.

14. Although I stayed on the public road, and even though I had communicated clearly to Monk regarding the extent of the VFM's property line, the VFM—through Wood—again called the police on me.

15. The VFM represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

16. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

17. As a result of Wood's misrepresentations—made on behalf of the VFM and the Trust—the police wrongfully issued me a "Trespass Warning."

18. After the allegation of trespass on April 26, 2014, I emailed board members Charlyn Hospers ("Hospers") and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

19. The next day, I again emailed Monk, along with others, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

20. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM.

21. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

22. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Hospers and Wood this information, which Monk confirmed and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

23. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

24. Immediately thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I then called Monk—the party that clearly and unequivocally told him he was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood's false representations, but he failed to take any action. I was subsequently arrested.

25. Even prior to the issue with the VFM's property line, I engaged in substantial discussions with Monk regarding my lease.

26. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls



related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that he was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney.

27. My name is Seth Washburne. My date of birth is \_\_\_\_\_ and my current address is \_\_\_\_\_, United States of America.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_, State of Texas on the \_\_\_\_\_ day of November, 2016.

\_\_\_\_\_  
Seth Washburne



4. I had a falling out with Terry and others who were hired to work on Billie, due to ~~their Terry's and others'~~ negligent and/or defective work on Billie and Terry's theft of more than seventy of my airplane parts.

5. As a result of the theft, I brought criminal charges against Terry.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way, ~~for the auction.~~

7. While still in ~~his~~my car, I was met by an armed security guards [only one met me] who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer ~~then~~ issued a warning to me not return to "505 NW 38th Street" , despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land [It ticks me off a little that you did not accept this change in order, to have this clause follow the address, which is obvious, and instead want to have the address reference after Ross Avenue, which is not appropriated] and further threatened arrest if I returned anywhere on NW 38th Street west of Ross Avenue, ~~despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land.~~

8. Disturbed by this trespass "warning" while stopped momentarily-parked [I never parked there - I stopped to talk to the guard] on what I believed to be public property, I investigated the property line for the lots-VFM property that the Hospers Family Trust owned.

9. After researching various records, on April 13, 2013, I emailed Hal Monk, directing his-my [these pronoun errors are sloppy, please be more careful and proof read] letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant County

[the word county is not in the name] Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust did not, in fact, own NW 38th Street or Von Avenue, as

Dana Wood (“Wood”) had ~~suggested~~represented to the police. Monk failed to respond.

~~10.~~—In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk’s capacity as ~~the~~a VFM’s director [“the” makes no sense – there were three directors]- [Why are we leaving out pieces, e.g. April 15? Perhaps this is referenced somewhere, but it makes an incomplete and awkward story here.]

~~11.~~10. In ~~April~~early 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

~~12.~~11. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for only the second time since March 2, 2013 to observe a B-29 plane [that was not my only reason, and sounds odd. I think we should include all three reasons I provided], and see if Jim Terry was in town, because his lawyer had, 7 days before, requested an extension of time for Terry to provide interrogatory responses because Terry was out of town.

~~13.~~12. I stayed on public roads and stopped just before the end of NW 38th Street to have what ~~he~~I expected to be a friendly chat with Wood.

~~14.~~13. Although I stayed on the public road, and even though I had communicated clearly to Monk, and he to Hospers, regarding the extent of the ~~Trust-VFM~~Trust’s property line, the VFM, Hospers and the Trust—through Wood—again called the police on me.

~~15.~~14. The VFM represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

~~16.~~15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing

me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

~~17. As a result of Wood's misrepresentations made on behalf of the VFM and the Trust the police wrongfully issued me a "Trespass Warning." [Duplicative with prior sentence]~~

~~18.~~16. After the allegation of trespass on April 26, 2014, I emailed board members Charlyn Hospers ("Hospers" – this defined term should be at the first mention of Hospers) and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

~~19.~~17. The next day, I again emailed Monk, Hospers, and Wood ~~along with others~~, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

~~20.~~18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5 p.m. on a Sunday afternoon when almost no one would be around.

~~21.~~19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

~~22.~~20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided ~~Hospers and~~ Wood this information, which and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

~~23.21.~~ On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

~~24.22.~~ ~~Shortly~~~~Immediately~~ [it was about 15 minutes] thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I then called Monk—the party that clearly and unequivocally told ~~him~~ ~~he~~ me I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

~~25.23.~~ ~~Even~~ ~~p~~ Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease. The role of negotiating or terminating a lease does not require a law degree, and perhaps 99.99% of lease discussions are conducted by non-lawyers. I own an airplane hangar building and lease two units, and am not a lawyer, and so Monk’s work on the lease termination was in no way acting as a lawyer, but as all the non-lawyers who do this.

~~26.24.~~ At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I ~~he~~ was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

~~27.25.~~ My name is Seth Washburne. My date of birth is Novmber 4, 1959  
\_\_\_\_\_ and my current address is 5200 Meadowcreek Dr, Apt 2060, Dallas,  
TX 75248 \_\_\_\_\_ [If you modify this again, please add these

two items that I added, so I do not have to add them a third time], United States of America. I  
declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_, State of Texas on the \_\_\_\_\_ day  
of November, 2016.

\_\_\_\_\_  
Seth Washburne

Exhibit 111: Declaration ISO Monk's MSJ Resp - first draft 11.25 11.24  
am, Declaration ISO Monk's MSJ Resp - email 11.25 11.24 am,  
Declaration ISO Monk's MSJ Resp - email 11.25 2.43 pm



## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, November 25, 2016 11:24 AM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** RE: Monk MSJ Declaration Deadline - Addendum  
**Attachments:** Declaration of Seth Washburne ISO Response to Monk's MSJ 11 22 16 (FINAL).docx

Kent, and by cc Stephen and Mallory,

Kent, you emailed me Wednesday regarding supplement info I wanted to add: "As I said, knowing what to argue, and when to argue it, is key in any lawsuit. I will review this info and see if any of it will be a good fit for oral argument. If not, we will address it, if necessary, in the future."

I fully respect the fact that the three of you know the laws, and are great trial lawyers, but please understand there are thousands of facts which I lived and know very well, which to you may not come to mind.

I added a 9-page addendum to my previously 5-page, as shown attached, addressing the specific points in Monk's motion, and the three affidavits (which I had not reviewed before we finalized the submission). These are packed with lies, including 12 in the MSJ introduction, and 3 in his arguments. If we are trying to prove there are issues of facts, I would think that pointing out to the court that Monk is deliberately lying to the court would be a good place to start. For example, he says there was already a mediation over this issue, which there was not. He says he told me to stay away after I left which he did not. He says I made repeated attempts to get on the property after I left, and actually did get on it, none of which happened.

Also I know you don't care about how they characterize me, but imagine if someone made a public filing that anyone of you were uncontrollably screaming, battering women, slugging employees, demanding employees brake federal laws, plotting murder, and much more, and someone told you not to challenge these, just to leave them out there, they won't affect what the judge thinks of you. I think they will, and would like to stand up for myself. The statement about chasing Wood until she tripped over – Dana in her interrogatory already denied this. How am I supposed to attend the hearing, and sit out there, seen by the judge, as the uncontrollable screamer and murderer? I dread that moment. We didn't challenge any of their lies about me.

I know the 7-day-before point passed, but we could say that was Thanksgiving, and this is the next day, so just one day late, and was held up due to the holiday, so I think we could squeak this in.

Would you please read my addendum pages and let me know if we may please, please, submit this? You can delete some if you want, or make changes, especially to my suggesting the judge recuse herself if fond of Hal, but I would greatly, greatly appreciate it if you would give serious consideration to including as much of this as possible.

This suit is of course about malicious prosecution, but for me it is also very much about challenging all the false lies they told about me – hence the defamation claim which was very important to me. That is gone now, but I am still hugely concerned about them making false statements about me, and want to challenge them, and this would be a best-ever way to do it, and with consequences to them all, of keeping Hal in, and letting the judge know they are liars.

Again, please please consider what I wrote, and consider adding it. I can go sign the signature page and resend it to you.

Seth  
(212) 289-1506



4. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie, and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I brought criminal charges against Terry.

5. For reasons unknown to me, VFM and its representatives—including Hal Monk ("Monk")—sided with Terry and engaged in a retaliatory campaign against me, including terminating my lease for no reason and culminating in my wrongful arrest and imprisonment.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way.

7. While still in my car, I was met by an armed security guard who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer issued a warning to me not return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and further threatened arrest if I returned anywhere on NW 38th Street west of Ross Avenue.

8. I was eager to respect the wishes of the owner of "505 NW 38th Street," but was uncertain where this property was, because this address was not posted on a specific building. I Googled "Fort Worth Property Ownership" and the first suggestion was the Tarrant Appraisal District website; searched this for this address and found nothing, and then searched under owner "Hospers" and found all the property owned by the Hospers Trust "D" (the "Trust"), and a map showing exactly where this was. Notably, anyone could find this in under five minutes.

9. After researching various records, on April 13, 2013, I emailed Monk, directing my letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that

the Trust did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood (“Wood”) had represented to the police. Monk failed to respond.

10. In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk’s capacity as a VFM director.

11. In April of 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

12. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for two primary reasons. First, I returned to the vicinity of the VFM because the invitation had a photo a B-29 in front of the VFM hangar, and I, a WWII history enthusiast, noted a slot in the top of the building for the plane’s tail which I never noticed before, and thought would be fun to see, possibly along with observing how the B-29 fit in the hangar. Second, I returned to the vicinity of the VFM because Terry’s lawyer, only six days before, had requested an extension for interrogatory responses due to Terry being out of town, and I wanted to observe from a distance whether Terry was in fact still out of town. I stayed on public roads and stopped just before the end of NW 38th Street to have what I expected to be a friendly chat with Wood.

13. Wood immediately told me that I was trespassing. I offered the papers I carried with me, which Wood rejected. Wood said she would call someone who could determine the property line, and so I parked on the grass north of NW 38<sup>th</sup> Street, east of the Von Avenue, far from any Trust property, and had what I believed was a friendly conversation under a canopy with a worker as I waited for the person Wood called. In the meantime, Wood called the police

14. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

16. After the allegation of trespass on April 26, 2014, I emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

17. On April 27, 2014, I again emailed Monk, Hospers, and Wood, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5:00 p.m. on a Sunday afternoon when almost no one would be around.

19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Wood this information, and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

21. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

22. Shortly thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I immediately called Monk—the party that clearly and unequivocally told me that I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

23. Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease.

24. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

25. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the \_\_\_\_\_ day of November, 2016.

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Seth P. Washburne

### **Addendum Addressing Specific Points in Defendants' Filings**

26. Defendants' Motion and Sworn Affidavits are full of outright lies, and references that don't exist, including in Monk's critically important Argument and Authorities section.

27. Lies in the Motion's Introduction include:

- a. Lie: "In 2010 Plaintiff, a New York hedge fund manager..." Fact: I closed my fund in March 2009, and so was not a hedge fund manager.
- b. Lie: "In 2010 Plaintiff leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore an old airplane. [Exhibit 2, p. 2]" Fact: Nowhere in Exhibit 2, on page 2 or elsewhere, does it say Plaintiff leased space at VFM in 2010. Plaintiff did not sign a lease with VFM until mid-2011.
- c. Lie: "In 2012 Plaintiff came to Texas and began spending time at VFM's hangar. [Exhibit 1, p. 2]." Fact: I came to Texas October 31, 2011, and began spending time at VFM in November 2011.
- d. Lie: "Almost immediately, VFM started receiving numerous complaints from other tenants, volunteers, and workers in the hangar about erratic, irrational and extremely bizarre behavior of Plaintiff. [Exhibit 1, p. 2, 3] [Exhibit 2, p. 2] [Exhibit 3, p. 2]" Fact: Exhibit 1, pages 2 and 3 don't mention any complaints. Exhibit 2 page 2 states the complaints were in the summer of 2012, i.e. after June 21, 2012, more than 8 months after Plaintiff arrived. Exhibit 3 p. 2, says "mid-2012."
- e. Lie: "As VFM's attorney, Hal Monk, would handle the lease termination and respond to Plaintiff's demands to remain on or return to the premises. [Exhibit 1, p. 2] [Exhibit 2, p. 2]." Fact: Exhibit 2 p2 also never says this. Plaintiff never once demanded to return to the premises. There is not a shred of evidence of this anywhere, because it never happened.
- f. Lie: "He tried to persuade another attorney to sue VFM." Fact: On October 15, 2012, I emailed J. Walker Holland asking simply: "What I want is to: a) learn what my options are, b) perhaps to file this Thursday morning to get a stay of the lease termination on the basis that this is retaliatory, similar to firing someone who says they were raped at a company, and c) to pursue any rights as a result of this." He asked Douglas Hudman to reply to me. I had a very short conversation with Mr. Hudman, in which I started out telling him the lease seems very clear and unambiguous that I had no right to stay on, and he said yes this was exactly so, and I said thanks and we hung up.
- g. Lie: "He began defaming VFM on his website, in emails and posts on various internet sites such as Trip Advisor, Google, etc., referring to VFM as "Villain Flying Museum." [Exhibit 2, p. 3]." Fact: None of this happened before the lease termination, as Monk asserts. The first post on TripAdvisor was February 13, 2014, 1.5 years after leaving.

- h. Lie: “After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises...Plaintiff made several attempts to go onto the property occupied by VFM. [Exhibit 2, p. 3].” Fact: Regarding the first part, these “repeated” warnings were two emails from Monk. Monk deliberately lies to the court by leaving out the rest of the sentences. On October 12, 2012, he wrote “You will stay the hell away from VFM premises until after conclusion of that mediation,” with the mediation being October 17, and so for 5 days. On Thursday, October 18, 2012, at 3:29 p.m. he wrote “Your decision to remain away from VFM premises until Monday or Tuesday (to let the dust settle a little) will greatly assist me in coming up with some proposals I hope will inure to your benefit in the area of additional time to vacate VFM’s properties,” i.e. for 3 days. Again, these were short-term bans for 5 and 3 days, which Monk has deliberately misrepresents to the court.

Plaintiff had a valid leasehold at the time, and these demands by Monk were extremely illegal, similar to demanding someone who is renting an apartment “stay the hell away” from their apartment for which they are paying rent. Monk and Hospers notably made no offer to return the rent Plaintiff paid for the days in which he was banned from his leasehold.

Monk had threatened Plaintiff that any of Plaintiff’s property not removed by midnight October 27, 2012, would be considered abandoned. Plaintiff had purchased three enormous DC-3 airplanes, two which flew in but none of which were in flying condition, two completely dismantled, weighing an estimated 30 tons, with thousands of parts, all over the property, plus supplies, from almost three years. On October 12 I had only 15 days to pack and move, and so Monk banned me from my valid leasehold for one-third of this time, and on October 18 I had only nine days left, and was banned for one third of these. This was extremely tortuous and illegal of Monk, and perhaps part of Monk’s own scheme to steal everything left behind.

Additional evidence that I was never barred from the property is that I emailed Monk April 15, 2012, at 7:12 p.m.: “I was also disappointed that, rather than in the past five months simply sending me a polite email informing me that my presence was no longer appreciated on the property, you instead chose to hire armed security guards in flak jackets, and waste Fort Worth taxpayer’s money on a police car, to convey your simple message in a very humiliating fashion.”

Factually the only time I was told I was banned from the property was on April 27, 2014, in the phone conversation with Monk, when I begged Monk to ban me. I complained that these trespass warnings were initiated by Dana Wood, and I had no idea if VFM was really behind them, and on the phone asked Monk to please ban me. Monk recited a sentence banning me from the property.

I went even further, and then asked Monk to please ban me in writing. Monk refused, and said it was not necessary. I had to insist, and beg Monk, to ban me in writing and Monk finally agreed to send me an email. That is the only reason I was ever barred from VFM, and was the first time, in Monk’s email 4/27/14 at 2:26 p.m. I received this after released from prison. Therefore



factually Monk was not enforcing any ban against me for the prior 1.5 years before this, did not even want to ban me, and I had to ask him to, and beg him to put it in writing.

- i. Lie: The second part of Monk's statement is also false, that "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises, Plaintiff made several attempts to go onto the property occupied by VFM." [Exhibit 2, p. 3]." The reference here is to Hospers statement that "he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013, and April 26 and 27, 2014." On March 2, 2013, I drove up to attend the parts auction March 2, 2013, to which I had received three invitations, but the only words I said to anyone were my name when asked while still in my car on NW 38<sup>th</sup> Street, and then was handed over to the police. On this day I did not express to the police any interest in going on the property. On April 26 and 27 I made no attempt to intrude on the premises, and had no interest in doing so. At no other time did I ever seek to intrude on the premises. After I vacated I thought VFM was evil ground, and would never want to set foot in there again.
- j. Lie: "Hal Monk was not involved in any way in Plaintiff's arrest. [Exhibit 1, p. 3] [Exhibit 2, p. 3]." Fact: The second reference does not say this. Monk was the key person who caused the arrest.
- k. Lie: "An unsuccessful pre-lawsuit mediation was held in which Monk represented Defendants. When the case did not settle at mediation Plaintiff filed this lawsuit. [Exhibit 1, p. 3]." Fact: Exhibit 1 p. 3, Monk's own affidavit, refers to a mediation in October 2012. There has never been any mediation about the current issue. This is another bold-faced, outright lie to the court.
- l. Lie: "All of Hal Monk's dealings with Plaintiff and all his responses to Plaintiff's demands to remain on, or return to, the property occupied by VFM were performed in his capacity as attorney for VFM, the Hospers Family Trust "D," and Charlyn Hospers. [Exhibit 1, p. 3]. [Exhibit 2, p. 2-3] [Exhibit 3, p. 3]." Fact: Plaintiff never once demanded to return to the property, and so Monk had almost zero dealings at all with Plaintiff after October 2012.

28. Lies in the Monk's Argument and Authorities include:

- a. Lie: "All dealings and communications Monk had with, or concerning, Plaintiff pertained to the termination of the lease, occupancy of the hangar, ownership of property, the boundaries of the property occupied by VFM, and responding to Plaintiff's continuing demands to go on that property. [Exhibit 1, p. 3] [Exhibit 2, p. 2-3]. Fact: Plaintiff never even once even remotely suggested to anyone that he wanted to go on any VFM or Trust property.
- b. Lie: "Likewise, labeling an attorney's conduct in terminating a lease and responding to a former tenant's repeated demands to go on the property..." Fact: I never even once even

remotely suggested to anyone that I wanted to go on any VFM or Trust property, and never had a single communication with Hal Monk about wanting to go on the property.

- c. Lie: “Reliance is not justified when the representation takes place in an adversarial context. Communications between Plaintiff and Monk after Plaintiff had been told his lease was terminated and to stay away from the property certainly took place in an adversarial context.” Fact: Plaintiff’s relationship with Monk was not adversarial, but was rather one of profound mutual respect and trust. Heretofore unmentioned are two critical facts: Monk is a WWII veteran, who was a mechanic on cargo planes in the Philippines, Japan, and Guam, which he described as “the salad days of his youth,” i.e. the best time in his life, and a role which was mostly never written about and so is forgotten to time, and Plaintiff is the #1 author and researcher of this role, having devoted eight years of his life, mostly full time, to making this role remembered. Plaintiff’s father, who died in 1967, was in such a unit, and Plaintiff wrote an 800-page book about this squadron, which was at the same locations where Monk served, with the same types of planes. Monk wrote Plaintiff October 5, 2012: “Hey Guy, I like you, respect and admire you. Your book is great.” On October 12, 2012, Monk wrote Plaintiff, addressing him as “My dear fellow,” explaining he was in “sincere awe” of Plaintiff. He wrote a glowing review of Plaintiff’s book, with a P.S. that Plaintiff could use Monk’s review to sell the book, even without attribution.

Plaintiff’s communications with Monk after the termination day of October 27, 2012, were even more very friendly, and all about Monk’s WWII experience, on October 28, November 13, November 16, November 17, November 18, and November 19, the last four titled “317<sup>th</sup> TCG,” i.e. troop carrier squadron. Monk liked Plaintiff so much that he even mailed Plaintiff his favorite paperback book as a gift, about a football kicker who could hit from anywhere on the field.

Plaintiff to this day devotes almost full time to WWII research of a troop carrier squadron and the places Monk served. The profound respect and trust he had in Monk made this double cross, by a WWII troop carrier squadron member, extremely hard to take. Monk’s friendly and respectful emails to Plaintiff, and gifting him his favorite book after Plaintiff left, is evidence there was no adversarial relationship.

The 12 lies in his Introduction and 3 lies in his arguments clearly demonstrate there are very genuine issues of material fact regarding Hal Monk’s immunity from suit and liability. That Monk was himself once a lawyer, and practiced before this very court, makes his deliberate lies to the court – even that a mediation already occurred over Plaintiff’s current claim of malicious prosecution, all the more shocking and appalling. Therefore, a summary judgment on all claims against him should be denied.

29. Lies in Monk’s affidavit include:

- a. Lie: “8a. Upon finding a baby bottle on his desk in the VFM hangar, he went into a rage, chased a female employee of another tenant across the hangar floor screaming 'mother fucker' and other obscenities, until she fell backwards while trying to get away

from him. He was so out of control that he broke a toe when he kicked a huge metal tool box.” Fact: Dana Wood was standing on the far side of the conference table in Jim Terry’s conference room off of the hangar, looking down going over something, but facing me. I called out to her from about 60 feet away, “Dana, do you know what Jim did?” She looked up, and said “We can’t talk to you.” Her feet did not move and were riveted in place. I told her he put a baby bottle on my desk. She again said “We can’t talk to you” and didn’t move. I then said he was a bad person, and she did not reply, but may have walked toward me to close the sliding door between us. About half an hour later she came out and was walking nearby and I called out and apologized and said “Hey Dana, this is just about Jim, and has nothing to do with you, I still like you.” Wood in her response to her interrogatory #12 about this replied: “I was in the mancave [i.e. the conference room] trying to set things up for kids camp and I was distracted by Seth’s yelling and I tripped and fell. I then walked over [toward me] and shut the door to the mancave with Seth standing on the other side of the door.” This confirms I was not chasing her, not even in the same room as her, that she walked toward me, not away from me, and she fell on her own due to tripping. I don’t recall seeing her trip – that must have been when walking toward me around the side of the conference table I could not see. Nevertheless, Wood herself denies everything Monk describes.

- b. Lie: “8c. A VFM volunteer reported him saying that he wanted to kill another hangar tenant "so bad, I can't stand it." Fact: Around June 19, after breaking my toe, it was maybe 1:30 p.m., and I told my worker Joe that we were done for the day and I was leaving. I had parked behind the hangar that day for some reason. The next day I told Joe that if as I was leaving the day before Jim Terry had walked in front of my car I would have been tempted to not slow down, but never said I wanted to otherwise hurt Terry. Factually I would have slowed down and would never harm him or anyone.
- c. Lie: “9. "After the lease was terminated Mr. Washburne demanded to go onto the property occupied by VFM. In response, as VFM's attorney, I instructed him several times to stay away from the property.” Fact: As previously noted, after my lease was terminated I never expressed the slightest interest to anyone of going on the property. After I vacated Monk also had not one single communication with me about the property line or staying away. These are deliberate lies to the court.
- d. Lie: “Paragraph 9: “I never conspired with anyone to cause Mr. Washburne's arrest.” Fact: Monk’s actions were the primary drivers of my arrest.
- e. Lie: “Paragraph 9: “All my dealings and communications with Mr. Washburne after advising him that the lease was terminated were in my capacity as attorney for VFM, representing the interests of VFM.” Fact: Monk never once communicated with me after his friendly November 19 email about his troop carrier squadron, other than to cc me on one email to Hospers.
- f. Lie: “All my dealings and communications with and about Mr. Washburne, pertained to the lease termination, his occupancy of the hangar, ownership of property in the hangar,

his conduct in the hangar, the boundaries of the property occupied by VFM, and his demands to go on the property.” Lie: I never once demanded to go on the property.

- g. Lie: “10. All my actions regarding Mr. Washburne were performed in my capacity as attorney for my clients. In my opinion they were appropriate and necessary to achieve my client's legal objectives of terminating the lease and ending Mr. Washburne's disruptive presence on the property, while ensuring the safety of all tenants, volunteers, workers, and visitors to the museum.” Fact: These actions were in October 2012, and ended then. Monk’s plan in April 2014 was completely apart from those prior actions.

30. Lies in Charlyn Hospers’ affidavit include:

- a. Lie: “Page 2. In the summer of 2012, I got numerous complaints from tenants, volunteers and workers in the VFM hangar about intolerable behavior of tenant Seth Washburne.” Facts: This is a lie which will be shown during depositions. In 2012 the first day of summer was June 20. My last two workers were driven off by Jim Terry on June 19, quitting June 20, and with no workers there, I rarely set foot in VFM again until after October 2012, after summer was over, other than when my airplane fuselage and three wings were destroyed August 14, 2012, due to the actions of Terry and Patrick Mahaffey. When I did stop by it was during the week when almost no one was around and I had almost no interaction with anyone in the summer of 2012. Before that, three tenants, of an F-86, a Beech 18, and a bi-plane, had planes that never flew, and I saw two of these tenants only once in the year that I was there, and never saw the third person. A tenant building a PT-22 was on good terms with me. The CAF people I got along with. The only other tenants were Jim Terry and Jim Reynolds, who was under Terry’s umbrella, and Terry stole from me. Most of the volunteers greeted me with enthusiasm the entire time I was there, other than those associated with Terry.
- b. Lie: “Page 3” He demanded that his licensed aircraft mechanics violate FAA regulations in doing restoration work on his airplanes in our hangar.” Fact: This has already been proved false in depositions in my other case. It relates to my request that original airplane skin be preserved where possible, and Mahaffey thinking this was an absolute requirement, but emails show this is not true.
- c. Lie: “Reports of his stated wishes to commit suicide and murder were most alarming.” Fact: I never once stated any wish to commit suicide or murder. My saying I would be tempted to not slow down if Terry walked in front of my car led to this “wants to commit murder” allegation.
- d. Lies: “Episodes of uncontrollable screaming, cursing tantrums, and actual physical assaults on a former employee and a female employee of another tenant...” Fact: Each and every part of this statement is a lie. I raised my voice only once ever, in calling out to Dana that once, and never physically touched a single other person there – not any former employee, e.g. Joe, and not any female employee. This is another outright lie by Hospers, typical of her prior statements, and the reason the defamation claim was included.

- e. Lie: “8. "He told his employee how much he enjoyed suing people (said he found it challenging) and that he had made a lot of money doing so.” Fact: I had never sued anyone in my life before late 2013, almost a year after leaving VFM, and certainly never made any money doing so. I also had no employees. Again this is an outright lie.
- f. Lie: “He commenced a series of untruthful defamatory posts on his website, emails, and posts on internet sites such as Trip Advisor, Google, etc., referring to VFM as the "Villain Flying Museum." Fact: I made no posts at all until well after I left.
- g. Lies: “10. After he vacated, despite having been warned numerous times to "Stay the hell away from VFM, he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013 and April 26 and 27, 2014.” Fact: As previously noted, VFM never once asked me to stay away after my lease was terminated, and I never once expressed any interest in returning, and never ever did.
- h. Lie: “11. "Contrary to the many accusations in his Petitions filed in this Lawsuit, no representative of VFM or the Trust ever initiated a call to police about his attempted intrusions, or had any communication whatsoever with a police officer, other than responding to investigating officers' requests for information.” Fact: the first Trespass in 2012 was issued by the VFM. The second in 2014 was by Dana Wood listed as a representative of VFM. The arrest on April 27, 2014 was due to Gorin as a representative of the VFM, Hospers, and the Trust.
- i. Lie: “Neither did any such representative ever request a police officer to arrest him.” Fact: Yes, Gorin did.
- j. Lie: “12. "During the eviction process and Mr. Washburne's ensuing actual and attempted intrusions on premises occupied by VFM...” Fact: After the evacuation I never made a single actual or attempted intrusion on any premises occupied by VFM.

31. Lies in Robert Hospers’ affidavit include:

- a. Lies: “Page 2. 5. In mid-2012, we all became alarmed upon learning of the irrational threats [none], cursing rages [none], violations of FAA regulations [none], statements of wishes to commit suicide [none] and murder [none], attempted bodily assaults [none] and other antics in VFM's hangar by tenant Seth Washburne. Other hangar tenants, their employees, volunteers and Museum visitors [none] were complaining about his manifestations of severe, and possibly dangerous, mental aberrations [none].” Fact: These have been addressed above, and are all lies copied from his mother
- b. Lie: “6. Upon receipt of the notice of lease termination, Mr. Washburne declared open warfare on my mother, Hal and other people connected with VFM.” Fact: No evidence of this whatsoever, and instead I wrote very respectful pleas to have my lease extended, and treated Ms. Hospers with the utmost respect. The afternoon of the hangar dance, three weeks after receiving the lease termination, when Bob threatened to slug me, his

mother rebuked him and was friendly and nice to me and said I had a right to be there, and we had a nice conversation.

- c. Lie: "His proclivity to make false accusations and to generally prevaricate about facts became more evident at VFM's annual hangar dance on October 20, 2012. He approached me to complain about the injustice of terminating the lease." Fact: I saw him outside, behind his truck, with another man, and politely said "May I speak to you for a second," and he said in a friendly way "Well no, not right now" or something like that. Later that evening I saw him sitting in his truck talking to his nephew Patrick Faram, and asked if I could speak to him then, and he said the same. I did not want to talk to him about extending the lease, but rather to ask him why he hated me, what had he heard about me, and try to address any lies he had been told, because at that point I had literally never spoken a word to him in my life. Notably, this Patrick Faram standing there, is Charlyn's grandson, and responded enthusiastically to seeing me, and said he still would love a copy of my book. My car was parked nearby, and I went and got one out of my trunk and gave it to him, for which he thanked me profusely. If I was at war with his grandmother he would have been hostile toward me, but instead was very friendly.
- d. Lie: "I simply told him he needed to leave." Fact: The conversation on this night was as shown above.
- e. Lie: "If there was any physical contact between us, it was a handshake." Fact: Earlier in the day was when I approached Chuckie to confirm I could be around that night in my work area, he raised a fist and told me "Get the hell out of here!" I never shook his hand or had any contact with him

32. In conclusion, Monk, Charlyn Hospers, and Robert Hospers, have filed affidavits full of outright lies. Monk has filed an affidavit full of 12 outright lies in his introduction, and 3 in his arguments. Monk's affidavit has 7 lies; Charlyn Hospers' affidavit more than 10 lies, Robert Hospers affidavit more than 5 lies. That Monk was once long ago a lawyer before this very court, and now would deliberately choose to lie to it, is utterly shocking. It also revealing. The only reason he would lower himself to such base acts is due to his fear of the consequences if the truth is revealed. In other words, he knows full well that he is 100% guilty of everything as charged.

33. Lastly, with all due respect to the court, I heard earlier in this suit that the judge looked out over her glasses and said "Is that you Hal?" and something like "Great to see you

again.” If your honor cannot separate her emotional attachment to Hal from ruling on this and rule correctly to deny this motion he asks that she recuse herself.

34. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the \_\_\_\_\_ day of November, 2016.

## Seth Washburne

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**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Friday, November 25, 2016 2:43 PM  
**To:** 'Kent Krabill'  
**Cc:** 'Stephen Cole'; 'Mallory Biblo'  
**Subject:** RE: AMENDED DECLARATION - full scan with 2 signatures, but 2-3 corrections  
**Attachments:** Declaration of Seth Washburne ISO Response to Monk's MSJ 11 22 16 (FINAL).pdf

Kent,

Please change:

- a. Page 7 at the top where you wrote: "Monk sent me an email April 27, 2014, at 2:26 pm. after I was released from jail.." to add after pm: "which I received" ...after.... The arrest was at 5 p.m. that day. He sent it to me before the arrest, but I did not own a smart phone at the time, only a flip phone, so had no way to receive it.
- b. Page 10, paragraph g, change 2012 to 2013.
- c. If you want – no big deal - Page 11, #31, paragraph b, perhaps add at the end: "On my last day there, October 27, 2012, Hospers' top lieutenant, Mae McKnight, greeted me with a very enthusiastic "Hi Seth! Great to see you! How's everything?"

Attached is the full document, before the above changes.

On the first page I added the county as Dallas, vs. previously this was blank.

I signed both places, and inserted the pages.

Thank you so, so, so, so, so much for doing this!!! I immediately started humming the 1970s song by Chicago "I Am Alive Again" and continued to do so!

Seth

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**From:** Kent Krabill [<mailto:kkrabill@lynnlp.com>]  
**Sent:** Friday, November 25, 2016 1:42 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole; Mallory Biblo  
**Subject:** AMENDED DECLARATION

Seth,

Here is the amended declaration. We removed information that was either already addressed or unnecessary to address in this context. I think this should now address your concerns. I would like to file ASAP, so please get both signatures done and scan back to us.

**KENT D. KRABILL** | Partner  
**LynnPinkerCoxHurst**





4. I had a falling out with Terry and others who were hired to work on Billie, due to their negligent and/or defective work on Billie, and Terry's theft of more than seventy of my airplane parts. As a result of the theft, I brought criminal charges against Terry.

5. For reasons unknown to me, VFM and its representatives—including Hal Monk ("Monk")—sided with Terry and engaged in a retaliatory campaign against me, including terminating my lease for no reason and culminating in my wrongful arrest and imprisonment.

6. I was invited to a March 2, 2013 auction at the VFM. Accordingly, on March 2, 2013, I drove to the west end of NW 38th Street, where I was in the public right of way.

7. While still in my car, I was met by an armed security guard who, upon receiving my name, waived down a police cruiser that had been parked outside the VFM. A police officer issued a warning to me not return to "505 NW 38th Street," despite this address not being visible on any buildings or recorded in any official records as being associated with any piece of land, and further threatened arrest if I returned anywhere on NW 38th Street west of Ross Avenue.

8. I was eager to respect the wishes of the owner of "505 NW 38th Street," but was uncertain where this property was, because this address was not posted on a specific building. I Googled "Fort Worth Property Ownership" and the first suggestion was the Tarrant Appraisal District website; searched this for this address and found nothing, and then searched under owner "Hospers" and found all the property owned by the Hospers Trust "D" (the "Trust"), and a map showing exactly where this was. Notably, anyone could find this in under five minutes.

9. After researching various records, on April 13, 2013, I emailed Monk, directing my letter to Monk in his capacity as a VFM board member, and attached documents from the Tarrant Appraisal District showing the lots owned by the Trust, and asking for confirmation that the Trust

did not, in fact, own NW 38th Street or Von Avenue, as Dana Wood (“Wood”) had represented to the police. Monk failed to respond.

10. In my communications with Monk regarding the VFM property line, at all times I understood that I was communicating with Monk in Monk’s capacity as a VFM director.

11. In April of 2014, Terry and Wood again invited me to an event at the hangar at the VFM, just as they had more than 30 times in the prior year.

12. I had declined all prior invitations, and declined this one, but elected to return to the vicinity of the VFM for two primary reasons. First, I returned to the vicinity of the VFM because the invitation had a photo a B-29 in front of the VFM hangar, and I, a WWII history enthusiast, noted a slot in the top of the building for the plane’s tail which I never noticed before, and thought would be fun to see, possibly along with observing how the B-29 fit in the hangar. Second, I returned to the vicinity of the VFM because Terry’s lawyer, only six days before, had requested an extension for interrogatory responses due to Terry being out of town, and I wanted to observe from a distance whether Terry was in fact still out of town. I stayed on public roads and stopped just before the end of NW 38th Street to have what I expected to be a friendly chat with Wood.

13. Wood immediately told me that I was trespassing. I offered the papers I carried with me, which Wood rejected. Wood said she would call someone who could determine the property line, and so I parked on the grass north of NW 38<sup>th</sup> Street, east of the Von Avenue, far from any Trust property, and had what I believed was a friendly conversation under a canopy with a worker as I waited for the person Wood called. In the meantime, Wood called the police.

14. The VFM, through Wood, represented to the police that it had actual awareness of the ownership of the property at issue and represented that I was trespassing.

15. These misrepresentations resulted in the officers manhandling me, temporarily detaining me in a police cruiser, wrongly informing me that I was trespassing, wrongfully issuing me a Trespass Warning at the VFM's request and stating that I would be arrested if I returned to "505 NW 38th Street."

16. After the allegation of trespass on April 26, 2014, I emailed board members Hospers and Monk demanding that representatives of the VFM stop telling the police that the Trust or the VFM owns NW 38th Street and Von Avenue.

17. On April 27, 2014, I again emailed Monk, Hospers, and Wood, and indicated that I would like to drive to the end of NW 38th Street and look out at the airport.

18. The area I planned to stop is approximately 250 feet north of the northern boundary of the leasehold of VFM, at almost 5:00 p.m. on a Sunday afternoon when almost no one would be around.

19. I was seeking advance confirmation from Hospers or Monk that they had told Wood that NW 38th Street and Von Avenue were public roads and to check that Wood would not call the police again.

20. In response to my email, Monk phoned me and told me that I could park anywhere on NW 38th Street, including along the fence at the west end of the street, and not be trespassing. I specifically inquired as to whether Monk had provided Wood this information, and Monk confirmed that he told Wood and Hospers, and represented that there would be no police involvement if I parked in that area. At no time during this conversation did Monk state or in any other way indicate that he was acting as an attorney on behalf of the VFM, Hospers, Wood, or any other Defendant in the above-referenced matter.

21. On the afternoon of April 27, I arrived and parked my vehicle where Monk told me that I was permitted to park.

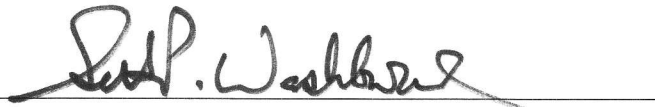
22. Shortly thereafter, two police cars arrived and Wood and Bill Gorin appeared and told the police that I was trespassing. I immediately called Monk—the party that clearly and unequivocally told me that I was allowed to park there. Monk answered my call and was made fully aware of the situation and Wood’s false representations, but he failed to take any action. I was subsequently arrested.

23. Prior to the issue with the VFM’s property line, I engaged in substantial discussions with Monk regarding my lease.

24. At no point during any of these conversations did Monk state that he was acting as an attorney representing any client. Monk did not inform me in any of the emails or calls related to the property line that he was acting as an attorney representing any client. At all times that I communicated with Monk—whether regarding his lease or the VFM property line—I understood and believed that I was communicating with Monk in Monk’s capacity as a VFM director, not as an attorney. Monk several times specifically identified himself to me in writing as acting as a VFM director.

25. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 25<sup>th</sup> day of November, 2016.

  
Seth P. Washburne

## **Declaration Addendum Addressing Specific Points in Defendants' Filings**

26. Defendants' Motion and Sworn Affidavits are full of inaccuracies, and references that don't exist, including in Monk's critically important Argument and Authorities section.

27. Inaccuracies in the Motion's Introduction include:

- a. Inaccuracy: "In 2010 Plaintiff, a New York hedge fund manager..." Fact: I closed my fund in March 2009, and so was not a hedge fund manager.
- b. Inaccuracy: "In 2010 Plaintiff leased space in a hangar at the Vintage Flying Museum where he planned to keep and restore an old airplane. [Exhibit 2, p. 2]" Fact: Nowhere in Exhibit 2, on page 2 or elsewhere, does it say Plaintiff leased space at VFM in 2010. Plaintiff did not sign a lease with VFM until mid-2011.
- c. Inaccuracy: "In 2012 Plaintiff came to Texas and began spending time at VFM's hangar. [Exhibit 1, p. 2]." Fact: I came to Texas October 31, 2011, and began spending time at VFM in November 2011.
- d. Inaccuracy: "Almost immediately, VFM started receiving numerous complaints from other tenants, volunteers, and workers in the hangar about erratic, irrational and extremely bizarre behavior of Plaintiff. [Exhibit 1, p. 2, 3] [Exhibit 2, p. 2] [Exhibit 3, p. 2]" Fact: Exhibit 1, pages 2 and 3 don't mention any complaints. Exhibit 2 page 2 states the complaints were in the summer of 2012, i.e. after June 21, 2012, more than 8 months after Plaintiff arrived. Exhibit 3 p. 2, says "mid-2012."
- e. Inaccuracy: "As VFM's attorney, Hal Monk, would handle the lease termination and respond to Plaintiff's demands to remain on or return to the premises. [Exhibit 1, p. 2] [Exhibit 2, p. 2]." Fact: Exhibit 2 p.2 also never says this. Plaintiff never once demanded to return to the premises.
- f. Inaccuracy: "He began defaming VFM on his website, in emails and posts on various internet sites such as Trip Advisor, Google, etc., referring to VFM as "Villain Flying Museum." [Exhibit 2, p. 3]." Fact: None of this happened before the lease termination, as Monk asserts. The first post on TripAdvisor was February 13, 2014, 1.5 years after leaving.
- g. Inaccuracy: "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises...Plaintiff made several attempts to go onto the property occupied by VFM. [Exhibit 2, p. 3]." Fact: Regarding the first part, these "repeated" warnings were two emails from Monk. Monk deliberately misleads the court by leaving out the rest of the sentences. On October 12, 2012, he wrote "You will stay the hell away from VFM premises until after conclusion of that mediation," with the mediation being October 17, and so for 5 days. On Thursday, October 18, 2012, at 3:29 p.m. he wrote "Your decision to remain away from VFM premises until Monday or

Tuesday (to let the dust settle a little) will greatly assist me in coming up with some proposals I hope will inure to your benefit in the area of additional time to vacate VFM's properties," i.e. for 3 days. Again, these were short-term bans for 5 and 3 days, which Monk has deliberately misrepresented to the court. Factually the only time I was told I was banned from the property was on April 27, 2014, in the phone conversation with Monk. I complained that these trespass warnings were initiated by Dana Wood. Monk sent me an email on April 27, 2014 at 2:26 p.m., after I was released from jail, notifying me of the ban.

- h. Inaccuracy: The second part of Monk's statement is also false, that "After Plaintiff finally vacated the premises and after he was repeatedly warned by Hal Monk to stay away from the premises, Plaintiff made several attempts to go onto the property occupied by VFM." [Exhibit 2, p. 3]." The reference here is to Hospers statement that "he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013, and April 26 and 27, 2014." On March 2, 2013, I drove up to attend the parts auction March 2, 2013, to which I had received three invitations, but the only words I said to anyone were my name when asked while still in my car on NW 38<sup>th</sup> Street, and then was handed over to the police. On this day I did not express to the police any interest in going on the property. On April 26 and 27 I made no attempt to intrude on the premises, and had no interest in doing so. At no other time did I ever seek to intrude on the premises.
- i. Inaccuracy: "Hal Monk was not involved in any way in Plaintiff's arrest. [Exhibit 1, p. 3] [Exhibit 2, p. 3]." Fact: The second reference does not say this. Monk was the key person who caused the arrest.
- j. Inaccuracy: "An unsuccessful pre-lawsuit mediation was held in which Monk represented Defendants. When the case did not settle at mediation Plaintiff filed this lawsuit. [Exhibit 1, p. 3]." Fact: Exhibit 1 p. 3, Monk's own affidavit, refers to a mediation in October 2012. There has never been any mediation about the current issue. This is another bold-faced, outright lie to the court.

28. Inaccuracies in the Monk's Argument and Authorities include:

- a. Inaccuracy: "All dealings and communications Monk had with, or concerning, Plaintiff pertained to the termination of the lease, occupancy of the hangar, ownership of property, the boundaries of the property occupied by VFM, and responding to Plaintiff's continuing demands to go on that property. [Exhibit 1, p. 3] [Exhibit 2, p. 2-3]. Fact: Plaintiff never even once even remotely suggested to anyone that he wanted to go on any VFM or Trust property.
- b. Inaccuracy: "Likewise, labeling an attorney's conduct in terminating a lease and responding to a former tenant's repeated demands to go on the property..." Fact: I did not make repeated demands to go on any VFM or Trust property.

- c. Inaccuracy: “Reliance is not justified when the representation takes place in an adversarial context. Communications between Plaintiff and Monk after Plaintiff had been told his lease was terminated and to stay away from the property certainly took place in an adversarial context.” Fact: Plaintiff’s relationship with Monk was not adversarial, but was rather one of profound mutual respect and trust. Heretofore unmentioned are two critical facts: Monk is a WWII veteran, who was a mechanic on cargo planes in the Philippines, Japan, and Guam, which he described as “the salad days of his youth,” i.e. the best time in his life, and a role which was mostly never written about and so is forgotten to time, and Plaintiff is the #1 author and researcher of this role, having devoted eight years of his life, mostly full time, to making this role remembered. Plaintiff’s father, who died in 1967, was in such a unit, and Plaintiff wrote an 800-page book about this squadron, which was at the same locations where Monk served, with the same types of planes. Monk wrote Plaintiff October 5, 2012: “Hey Guy, I like you, respect and admire you. Your book is great.” On October 12, 2012, Monk wrote Plaintiff, addressing him as “My dear fellow,” explaining he was in “sincere awe” of Plaintiff. He wrote a glowing review of Plaintiff’s book, with a P.S. that Plaintiff could use Monk’s review to sell the book, even without attribution.

Plaintiff’s communications with Monk after the termination day of October 27, 2012, were even more very friendly, and all about Monk’s WWII experience, on October 28, November 13, November 16, November 17, November 18, and November 19, the last four titled “317<sup>th</sup> TCG,” i.e. troop carrier squadron. Monk liked Plaintiff so much that he even mailed Plaintiff his favorite paperback book as a gift, about a football kicker who could hit from anywhere on the field.

Plaintiff to this day devotes almost full time to WWII research of a troop carrier squadron and the places Monk served. The profound respect and trust he had in Monk made this double cross, by a WWII troop carrier squadron member, extremely hard to take. Monk’s friendly and respectful emails to Plaintiff, and gifting him his favorite book after Plaintiff left, is evidence there was no adversarial relationship.

29. Inaccuracies in Monk’s affidavit include:

- a. Inaccuracy: “8a. Upon finding a baby bottle on his desk in the VFM hangar, he went into a rage, chased a female employee of another tenant across the hangar floor screaming 'mother fucker' and other obscenities, until she fell backwards while trying to get away from him. He was so out of control that he broke a toe when he kicked a huge metal tool box.” Fact: Dana Wood was standing on the far side of the conference table in Jim Terry’s conference room off of the hangar, looking down going over something, but facing me. I called out to her from about 60 feet away, “Dana, do you know what Jim did?” She looked up, and said “We can’t talk to you.” Her feet did not move and were riveted in place. I told her he put a baby bottle on my desk. She again said “We can’t talk to you” and didn’t move. I then said he was a bad person, and she did not reply, but may have walked toward me to close the sliding door between us. About half an hour later she came out and was walking nearby and I called out and apologized and said “Hey



Dana, this is just about Jim, and has nothing to do with you, I still like you.” Wood in her response to her interrogatory #12 about this replied: “I was in the man cave [i.e. the conference room] trying to set things up for kid’s camp and I was distracted by Seth's yelling and I tripped and fell. I then walked over [toward me] and shut the door to the mancave with Seth standing on the other side of the door.” This confirms I was not chasing her, not even in the same room as her, that she walked toward me, not away from me, and she fell on her own due to tripping. I don’t recall seeing her trip – that must have been when walking toward me around the side of the conference table I could not see. Nevertheless, Wood herself denies everything Monk describes.

- b. Inaccuracy: “9. "After the lease was terminated Mr. Washburne demanded to go onto the property occupied by VFM. In response, as VFM's attorney, I instructed him several times to stay away from the property.” Fact: As previously noted, after my lease was terminated I never expressed the slightest interest to anyone of going on the property. After I vacated Monk also had not one single communication with me about the property line or staying away.
- c. Inaccuracy: “Paragraph 9: “All my dealings and communications with Mr. Washburne after advising him that the lease was terminated were in my capacity as attorney for VFM, representing the interests of VFM.” Fact: Monk never once communicated with me after his friendly November 19 email about his troop carrier squadron, other than to cc me on one email to Hospers.
- d. Inaccuracy: “All my dealings and communications with and about Mr. Washburne, pertained to the lease termination, his occupancy of the hangar, ownership of property in the hangar, his conduct in the hangar, the boundaries of the property occupied by VFM, and his demands to go on the property.” Inaccuracy: I never once demanded to go on the property.
- e. Inaccuracy: “10. All my actions regarding Mr. Washburne were performed in my capacity as attorney for my clients. In my opinion they were appropriate and necessary to achieve my client's legal objectives of terminating the lease and ending Mr. Washburne's disruptive presence on the property, while ensuring the safety of all tenants, volunteers, workers, and visitors to the museum.” Fact: These actions were in October 2012, and ended then. Monk’s plan in April 2014 was completely apart from those prior actions.

30. Inaccuracies in Charlyn Hospers’ affidavit include:

- a. Inaccuracy: “Page 3” He demanded that his licensed aircraft mechanics violate FAA regulations in doing restoration work on his airplanes in our hangar.” Fact: This has already been proved false in depositions in my other case. It relates to my request that

original airplane skin be preserved where possible, and Mahaffey thinking this was an absolute requirement, but emails show this is not true.

- b. Inaccuracy: “Reports of his stated wishes to commit suicide and murder were most alarming.” Fact: I never once stated any wish to commit suicide or murder.
- c. Inaccuracy: “Episodes of uncontrollable screaming, cursing tantrums, and actual physical assaults on a former employee and a female employee of another tenant...”  
Fact: Each and every part of this statement is a lie. I raised my voice only once ever, in calling out to Dana one time, and never physically touched a single person there – not any former employee, e.g. Joe, and not any female employee.
- d. Inaccuracy: “8. "He told his employee how much he enjoyed suing people (said he found it challenging) and that he had made a lot of money doing so.” Fact: I had never sued anyone in my life before late 2013, almost a year after leaving VFM, and certainly never made any money doing so. I also had no employees.
- e. Inaccuracy: “He commenced a series of untruthful defamatory posts on his website, emails, and posts on internet sites such as Trip Advisor, Google, etc., referring to VFM as the "Villain Flying Museum." Fact: I made no posts at all until well after I left.
- f. Inaccuracy: “10. After he vacated, despite having been warned numerous times to "Stay the hell away from VFM, he attempted intrusions onto premises long occupied by VFM several times, including those on March 2, 2013 and April 26 and 27, 2014.” Fact: As previously noted, VFM never once asked me to stay away after my lease was terminated, and I never once expressed any interest in returning, and never ever did.
- g. Inaccuracy: “11. "Contrary to the many accusations in his Petitions filed in this Lawsuit, no representative of VFM or the Trust ever initiated a call to police about his attempted intrusions, or had any communication whatsoever with a police officer, other than responding to investigating officers' requests for information.” Fact: the first Trespass in 2012 was issued by the VFM. The second in 2014 was by Dana Wood listed as a representative of VFM. The arrest on April 27, 2014 was due to Gorin as a representative of the VFM, Hospers, and the Trust.
- h. Inaccuracy: “Neither did any such representative ever request a police officer to arrest him.” Fact: Yes, Gorin and Wood did.
- i. Inaccuracy: “12. "During the eviction process and Mr. Washburne's ensuing actual and attempted intrusions on premises occupied by VFM...” Fact: After the eviction, I never made a single actual or attempted intrusion on any premises occupied by VFM.

31. Inaccuracies in Robert Hospers' affidavit include:

- a. Inaccuracies: "Page 2. 5. In mid-2012, we all became alarmed upon learning of the irrational threats [none], cursing rages [none], violations of FAA regulations [none], statements of wishes to commit suicide [none] and murder [none], attempted bodily assaults [none] and other antics in VFM's hangar by tenant Seth Washburne. Other hangar tenants, their employees, volunteers and Museum visitors [none] were complaining about his manifestations of severe, and possibly dangerous, mental aberrations [none]." Fact: These have been addressed above, and are all inaccuracies copied from his mother.
- b. Inaccuracy: "6. Upon receipt of the notice of lease termination, Mr. Washburne declared open warfare on my mother, Hal and other people connected with VFM." Fact: No evidence of this whatsoever, and instead I wrote very respectful pleas to have my lease extended, and treated Ms. Hospers with the utmost respect. The afternoon of the hangar dance, three weeks after receiving the lease termination, when Bob threatened to slug me, his mother rebuked him and was friendly and nice to me and said I had a right to be there, and we had a nice conversation.
- c. Inaccuracy: "His proclivity to make false accusations and to generally prevaricate about facts became more evident at VFM's annual hangar dance on October 20, 2012. He approached me to complain about the injustice of terminating the lease." Fact: I saw him outside, behind his truck, with another man, and politely said "May I speak to you for a second," and he said in a friendly way "Well no, not right now" or something like that. Later that evening I saw him sitting in his truck talking to his nephew Patrick Faram, and asked if I could speak to him then, and he said the same. I did not want to talk to him about extending the lease, but rather to ask him why he hated me, what had he heard about me, and try to address any lies he had been told, because at that point I had literally never spoken a word to him in my life. Notably, this Patrick Faram standing there, is Charlyn's grandson, and responded enthusiastically to seeing me, and said he still would love a copy of my book. My car was parked nearby, and I went and got one out of my trunk and gave it to him, for which he thanked me profusely. If I was at war with his grandmother he would have been hostile toward me, but instead was very friendly.
- d. Inaccuracy: "I simply told him he needed to leave." Fact: The conversation on this night was as shown above.
- e. Inaccuracy: "If there was any physical contact between us, it was a handshake." Fact: Earlier in the day was when I approached Chuckie to confirm I could be around that night in my work area, he raised a fist and told me "Get the hell out of here!" I never shook his hand or had any contact with him.

32. My name is Seth Washburne. My date of birth is November 4, 1959 and my current address is 5200 Meadowcreek Drive, Apt 2060, Dallas, TX 75248, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas on the 25<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Seth P. Washburne

Direct [214 981 3831](tel:2149813831)  
Cell [817 881 8113](tel:8178818113)  
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Exhibit 112: 2016 12 12 - 10.03 reply Krabill to Seth

## Seth Washburne

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**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Monday, December 12, 2016 10:03 PM  
**To:** Seth Washburne  
**Cc:** Stephen Cole  
**Subject:** Re: Invoice Questions

See answers in ALL CAPS below.

## KENT D. KRABILL | Partner

LynnPinkerCoxHurst

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**From:** Seth Washburne <sethpw1@gmail.com>  
**Date:** Sunday, December 11, 2016 at 9:25 PM  
**To:** Kent Krabill <kkrabill@lynnllp.com>  
**Cc:** Stephen Cole <SCole@lynnllp.com>  
**Subject:** Invoice Questions

Kent,

I reviewed the invoices and have a few questions. These are not written with any emotion, just matter-of-fact, so please read them as such. I refer to you all by your initials, because it is shorter to write, and how billed.

### Terry Case

1. 9/19-I am quite sure that for our first meeting you said there was no charge. I could be mistaken, but in September when meeting with firms I always asked them this, and almost all said no charge for the first meeting. You billed me 0.9 for each of the cases, \$612 total.

YOU WERE NOT BILLED FOR THE TIME FOR THE MEETING. AS YOU SEE, I BILLED NOTHING FOR THAT DAY. STEPHEN BILLED EACH MATTER 0.9 HOURS, WHICH WAS FOR THE TIME HE TOOK TO INITIALLY REVIEW THE CASE DOCUMENTS AND ANALYZE THE STATUS OF THE MOTIONS, HEARINGS, DEPOS, DEADLINES, ETC.

2. 9/20-SMC billed for calls with court regarding hearings, and wrote "1/2 time." Does this mean he charged only half his time, to lower his effective rate, or half of this 2 hours was spent on this? Also this seems like an administrative thing that someone could do at a lower cost, and MC, too, billed 0.3 hours for this, so seems to have done it. STEPHEN WROTE 1/2 TIME BECAUSE HE WAS SIMULTANEOUSLY DOING WORK THAT WENT TOWARD BOTH CASES (TERRY AND MUSEUM), SO HIS TIME WAS SPLIT BETWEEN THEM. THERE WAS A LOT TO COORDINATE WITH THE COURT, AS THERE WERE SETTINGS WE NEEDED TO GET IMMEDIATELY CONTINUED AND HEARINGS WE NEEDED TO GET SET IMMEDIATELY, SO STEPHEN WAS PERSONALLY HAVING TO COMMUNICATE WITH THE COURT SOME. ALSO, THE COURT IN THE TERRY CASE WANTED TO SPEAK WITH STEPHEN SPECIFICALLY TO MAKE SURE THAT HE HAD YOU ATTEND THE HEARING ON THE MOTION TO SUBSTITUTE/WITHDRAW.
3. 9/21-MC – Who is Ms. Baker with whom she worked on that day, and why is there no charge for Baker's time preparing case notebooks? MS. BAKER IS STEPHEN'S ASSISTANT. HER TIME IS NOT BILLED. THIS KIND OF WORK (PREPARING NOTEBOOKS) IS ORDINARILY DONE BY A PARALEGAL, WHICH IS BILLED, SO HAVING MS. BAKER DO IT ON THIS OCCASION SAVED YOU SOME MONEY.
4. 9/22-SMC billed 1.5 hours for preparing for and attending the hearing on the motion for substitution. Does this include driving time? If so, is that billed at the same rate?

YES AND YES. ALL TIME IS BILLED AT THE SAME RATE.

5. 10/4-On the first hangar visit day, you billed 6.4 hours vs. SMC 3.0, and say this included reviewing documents provided by me. I dropped off all those boxes that had been in my trunk after our meeting, around 1 p.m. I think, and would like to know if you reviewed a lot of those or not. I got the impression they went on the shelf and were not looked at since then. I realize you did other things on this day, including reviewing depositions, which you were doing in the car when I first met you, but wonder if you have spent much time yet with all those boxes.

I DID EXACTLY AS I WROTE ON THAT DAY, WHICH ALL TOOK 6.4 HOURS. REVIEW AND DIGEST DEPOSITIONS; MEET WITH MESSRS. WASHBURNE AND COLE AT AIRPORT TO INSPECT AIRCRAFT AND PARTS; REVIEW DOCUMENTS PROVIDED BY MR. WASHBURNE; CONFER WITH MS. BIBLO REGARDING REVIEWING DISCOVERY RESPONSE, EXHIBITS, AND DOCUMENTS AND DRAFTING DEPOSITION NOTICES.

6. 10/12-who is Mr. Marshall who emailed you about discovery responses? THE NAME IS A MISTAKE. IT SHOULD SAY WASHBURNE.
7. 10/ - you write that you "Review and digest depositions on many days with large hours, 35.1 hours in total, below. Are you pretty much done with those now? Is that a long time to read the depositions? I know they took that long and longer when taken, but thought it might be shorter to read them, but maybe not, just wondering.
  - a. 10/4 3.4 hour more than SMC for meeting in LNC, 10/5
  - b. 10/5 – 3.8
  - c. 10/6 – 4.3
  - d. 10/11 – 7.4
  - e. 10/12 - 3.1
  - f. 10/13 - 5.4



- g. 10/14 - 3.3
- h. 10/17 - 4.8

FIRST, THERE WERE MANY OTHER TASKS COMPLETED ON THOSE DAYS BESIDES REVIEWING DEPOS. SECOND, I REVIEWED AND DIGESTED ALL DEPOS. THIS TAKES MORE TIME WHEN OUR FIRM WASN'T THE ONE TAKING THE DEPOS. THE TIME RECORDED IS ACCURATE.

- 8. 10/29-who is Mr. Waters?, who MTB emailed regarding court order granting MTC? Which MTC was this? I SPOKE TO MALLORY AND THE TIME IS CORRECT, BUT IT WAS FOR REVIEWING DOCUMENTS.
- 9. 11/1-MTB starts charging time on this case to "Review and analyze documents received from former counsel" Is this an efficient way to review things, just a little bit each day, for so many days? These are all for her to just come up to speed, a third person on your team, and she did not do much on the Terry case after up to speed, only on 11/28 a telephone conference with process server. Her total time on reviewing documents was 25.54, which at \$335 was \$8,555.90 of her total \$8,723 for the month, and seems unreasonable.

MALLORY REVIEWED ALL DOCS AND MARKED AS RELEVANT, HOT DOC, PRIVILEGED, AND ISSUE CODED. THIS HAD TO BE DONE BY SOMEBODY, AND MALLORY DID AN EXCELLENT, EFFICIENT JOB. REVIEWING DOCS, MARKING THEM AS HOT AND ISSUE CODING TAKES TIME.

When you asked me if you could bring her, too, on, you said it was because Stephen was going to be unavailable for a while, that he had to work on another case, but that never seems to have happened. Even if it did, this was sort of your problem, not mine, so I shouldn't have to pay \$8,500 to bring another person up to speed due your scheduling conflicts. The defendants each have one low-priced attorney, and you said Dowdy does a great job. I have gone along with you saying you need Stephen, too, so I have two very high-priced attorneys, and it seems unfair to tell me, and bill me, that I need three. I see she did a lot of great work on the VFM case, but all this time coming up to speed on the Terry case seems unnecessary so far.

YOU DIDN'T PAY ADDITIONAL MONEY TO BRING MALLORY UP TO SPEED. SHE REVIEWED THE DOCS, MARKED HOT, AND ISSUE CODED, WHICH IS WHAT HAD TO BE DONE BY SOMEBODY ANYWAYS. MALLORY HAS HANDLED A NUMBER OF TASKS THAT STEPHEN AND I DID NOT HAVE TIME TO AT THE TIME, PARTICULARLY SINCE STEPHEN WAS, IN FACT, PREPARING FOR TRIAL IN EARLY OCTOBER (WHICH EVENTUALLY SETTLED ON THE EVE OF TRIAL). MALLORY WILL CONTINUE TO PROVIDE ESSENTIAL WORK (AT A LOWER PRICE) ON BOTH CASES. FOR EXAMPLE, SHE HAS BEEN HANDLING THE SCHEDULING OF THE VARIOUS 3<sup>RD</sup> PARTY DEPOSITIONS WE ARE TAKING IN THE TERRY CASE. SHE IS ALSO REVIEWING DOCS, MARKING HOT DOCS, ISSUE CODING AS SHE REVIEWS, AND PREPARING FOR DEPOS.

- a. 11/1 – 1.6
- b. 11/3 – 1.8
- c. 11/4 – 1.8
- d. 11/5 – 0.54 – this is 32.4 minutes – do you really measure time to hundreds of an hour?
- e. 11/13 - 2.7
- f. 11/14 – 1.3
- g. 11/15 – 5.8
- h. 11/17 - 4.7

- i. 11/18 – 3.1 – incl. call Gary Worthy
- j. 11/19 – 0.8
- k. 11/20 -1.4

NONE OF THIS WAS GETTING UP TO SPEED.. RATHER, IT IS GETTING THROUGH THE DOCS, WHICH WE NEEDED TO DO.

10. 11/18- you billed 8.2 for the day at LNC, which began at 8 a.m. and were finished at 4 p.m. – my photo of you and Paul was taken outside at 3:51 p.m. – you can click on the attached, and select properties, and see it was a 3:51 p.m., so until then was 7.8, hours, including lunch. You said beforehand that you would bring some work with you to do, and so did you do anything else during this time? I know you could not do work at your office during this time, but is this normal, to bill the full time for mostly hanging out there? I realize we talked about the case for a few minutes, but don't recall any substantive discussion, other than you saying you wanted the spreadsheets. Does this include any driving time? SMC also billed 6.7 for this day, and I recall had a call in the afternoon so would be less, but wonder if it is normal for both of you to charge a full rate for a day like that when partly or mostly bs-ing? Since you billed 8.2 hours, did you includes the time we sat at lunch, and what was the additional 0.4? Perhaps reading docs I your car before the others arrived? I was expecting these to reflect less than the total time there, to reflect you bringing some other work with you, or for non-legal work time. STEPHEN'S TIME WAS LESS THAN MINE BECAUSE, AS YOU NOTE, HE HAD A CALL THAT HE HAD TO HANDLE THAT DAY, WORKED A LITTLE ON SOME OTHER MATTERS, AND WORKED SOME ON THE MUSEUM MSJ RESPONSE. IT WAS NECESSARY FOR US TO BE THERE SO WE COULD BE AVAILABLE TO TALK WITH YOU AND PAUL ABOUT HIS TESTIMONY AND THE CASE STRATEGY IN GENERAL (WHICH WE DISCUSSED AT LENGTH ON SEVERAL OCCASIONS THROUGHOUT THE DAY). I TOLD YOU THIS BEFORE THE INSPECTION AND YOU APPROVED IT.

11. 11/21 – which chair does Mr. Dowdy want returned? MR. DOWDY WANTS TO RETURN THE RADIO OPERATOR'S CHAIR THAT MAHAFFEY "FOUND" IN THE HANGAR.

12. November additional charges

- a. Why is the process server for Wood \$213? Montgomery \$236? I thought these were a standard \$75, or \$125 if not a contiguous county.

HERE ARE THE CHARGES:

321- 0421—MONTGOMERY \$236.00

Available Date	Order No.	Charge Code	Description	Tax Amount	Total Charge
11/16/16	3210421	DELIVERY	Delivery Charge	0.00	99.50
11/16/16	3210421	WF	Witness fee	0.00	11.00
11/16/16	3210421	CO	Cash Outlay - Driver paid cash	0.00	5.00
11/16/16	3210421	OCS	Out of County Surcharge	0.00	65.50 (JOHNSON COUNTY)
11/16/16	3210421	E-FILE P	E-File Proof of Service	0.00	10.00
11/16/16	3210421	SA1	Service Attempts @ 1st Address	0.00	45.00 (BAD ADDRESS, SERVICE COMPLETED AT DIFFERENT ADDRESS SAME COUNTY)

321-0431---WOOD \$213.00

Available Date	Order No.	Charge Code	Description	Tax Amount	Total Charge
11/16/16	3210431	DELIVERY	Delivery Charge	0.00	99.50
11/16/16	3210431	OCS	Out of County Surcharge	0.00	40.00 (NORTHWEST TARRANT COUNTY)

11/16/16	3210431	E-FILE P	E-File Proof of Service	0.00	10.00	
11/16/16	3210431	PRT75	Print Docs -1 to 15-.75 a Page	0.00	7.50	
11/16/16	3210431	WF	Witness fee	0.00	11.00	
11/16/16	3210431	SA1	Service Attempts @ 1st Address	0.00	45.00	(BAD ADDRESS, SERVICE COMPLETED AT DIFFERENT ADDRESS SAME COUNTY)

b. What is “Disco monthly hosting \$258.50?”

THIS IS THE SYSTEM WE USE TO HOST YOUR DOCS.

c. What did you courier to the 153<sup>rd</sup> on 11/22 for \$83.72, and why was a courier necessary?

Courtesy copies of MSJ filings sent to the judge per his requirements.

**VFM**

1. 9/19 – same as before, you billed me for this meeting, and my recollection is you said it was not billed. SAME ANSWER AS ABOVE
2. 10/24 – MC billed 4.1 hours to review and organize files from prior counsel. May I learn the status of the file organization there, e.g. is this referring to electronic files, or paper files, too? How are they arranged? THIS IS INGESTING AND ORGANIZING THE DOCS, WHICH MUST BE DONE ANYTIME WE RECEIVE DOCS. THE FILES WE RECEIVED FROM PRIOR COUNSEL WERE ON DISKS AND WERE ARRANGED IN A MANNER THAT, WHILE IT MAY MAKE SENSE TO PRIOR COUNSEL, DID NOT ALLOW FOR CONVENIENT SEARCHING AND LOCATING PARTICULAR DOCUMENTS OR ITEMS. THE TIME MARIELA SPENDS ORGANIZING THESE FILES WILL BE SAVED OVER AND OVER AGAIN AS WE GO BACK TO FILES FOR USE IN THE FUTURE. These files are all organized and stored electronically so we can search when we need them for pleadings, motions, depositions, etc.
3. October additional charges - what is your copying charge rate per page? I THINK 10 CENTS A PAGE FOR BLACK AND WHITE.
4. 11/3 – I see MTB drafted the response to Monk’s MSJ. The hours below for MTB alone add up to 28.9 hours, are \$9,681, and with KDK about \$11,000. This before final reviews. Is this a normal efficient rate? Perhaps it is low, I just don’t know.
  - a. 11/3 – 3.1
  - b. 11/6 = 5.1
  - c. 11/7 = 7.7
  - d. 11/14 – 0.8
  - e. 11/16 – 1.2 – incl. phone call with court coordinator
  - f. 11/20 – 1.0
  - g. 11/21 – 5.4 – incl. email oc, revise declaration.
  - h. 11/22 – 4.2 – KDK reviews both 4.2 total, maybe 2.1 here
  - i. 11/25 – 0.4 to review my proposed addendum.

AN ASSOCIATE ALWAYS DRAFTS FIRST DRAFT AND THEN THE PARTNER REVIEWS, REVISES, ETC. AS YOU KNOW, YOU ASKED FOR A LOT OF EDITS ON MULTIPLE OCCASIONS. ALL OF THIS TAKES TIME. THIS IS TOWARD THE LOWER TO MEDIUM END OF WHAT WE TYPICALLY SPEND ON AN MSJ RESPONSE (UNDERSTANDING THAT EVERY MOTION IS DIFFERENT, DEPENDING ON WHAT IS BEING CHALLENGED).

5. 11/8 – I see SMC began working on response to no-evidence MSJ, and billed 44.7 hours, for \$15,198, plus your time reviewing this, about \$16,000, this before final reviews. Is this a normal ok time and cost?
- a. 11/8 – 4.2
  - b. 11/9 – 4.0
  - c. 11/10 – 2.5
  - d. 11/11 – 0.2
  - e. 11/14 – 5.6
  - f. 11/15 – 6.4
  - g. 11/16 – 6.9
  - h. 11/17 – 4.4, KDK, too, for 1.5
  - i. 11/20 – 5.9 – reviewing my responses and revising.
  - j. 11/21 – 3.4 – continue to revise, and declaration
  - k. 11/22 – KDK reviews both 4.2 total, maybe 2.1 here
  - l. 11/25 – 1.2 – review amended declaration

AN ASSOCIATE ALWAYS DRAFTS FIRST DRAFT AND THEN THE PARTNER REVIEWS, REVISES, ETC. THE NO-EVIDENCE MOTION INCLUDED 5 SEPARATE DEFENDANTS CHALLENGING EVERY SINGLE CLAIM (5 CAUSES OF ACTION, PLUS 3 VICARIOUS THEORIES OF LIABILITY), AND EVERY OR NEARLY ELEMENT OF EACH CLAIM. SO, THIS RESPONSE INVOLVED SUBSTANTIALLY MORE WORK THAN THE MONK RESPONSE. FOR A CASE OF THIS COMPLEXITY, WITH THIS MANY DIFFERENT PARTIES, THIS IS NOT AN UNUSUAL AMOUNT TO BILL FOR AN MSJ RESPONSE.

6. 11/21 – MC notes creating a CD to send an audio file to the court. What was on this? Just wondering if my songs were produced. THE AUDIO FILE WAS ONE OF DANA'S 911 CALLS TO THE POLICE, WHICH WAS ONE OF OUR EXHIBITS TO THE NO-EVIDENCE MOTION. TO MY KNOWLEDGE, YOUR SONGS HAVE NOT BEEN PRODUCED.
7. 11/22 – MC – who is Ms. Sweeney, and why is her time not billed? MY SECRETARY. WE DO NOT CHARGE FOR SECRETARY TIME.
8. 11/27 – SMC – what is the Rule 11 issue with Wood? WOOD'S COUNSEL (BURGESS) RAISED AN ISSUE ABOUT HER DEPOSITION AND PROVIDING US HER ADDRESS (SHE DID NOT WANT HER ADDRESS DISCLOSED TO YOU). THE "RULE 11" REFERS TO WOOD'S COUNSEL'S PROPOSED AGREEMENT (WHICH WE HAVE NOT AGREED TO) ON THIS ISSUE.
9. 11/28 to 11/30 – preparing for hearing was \$10,871 more, meaning the \$11k and \$16 costs are more like \$16k and \$22k, maybe \$38k just preparing these two responses. Is this high or low? FOR TWO MOTIONS, ONE OF WHICH INCLUDES 5 DEFENDANTS CHALLENGING VIRTUALLY EVERY ELEMENT OF OUR MANY CLAIMS, THIS IS NOT HIGH. REMEMBER ALSO THAT PREPARING FOR THESE HEARINGS, PARTICULARLY THE NO-EVIDENCE HEARING, REQUIRED US TO LAY OUT WHAT IS ESSENTIALLY THE ROADMAP FOR HOW WE WILL PROVE OUR CLAIMS AT TRIAL. WE NOW KNOW WHAT OUR BEST EVIDENCE IS ON OUR CLAIMS, AND WHERE SOME OF OUR WEAKNESSES ARE. SO, THE WORK THAT WENT INTO THESE RESPONSES WILL CONTINUE TO YIELD SUBSTANTIAL VALUE AS WE PROSECUTE THE CASE GOING FORWARD. THESE ARE MAJOR MSJ'S. IT TAKES TIME TO PREPARE FOR HEARINGS, DRAFT POWERPOINTS, ETC.

In the future I will try to review these right away, so you don't have to think back as far.

Thank you.

Seth

Exhibit 113: Monk's Brief in Support of MSJ 1-23-17

**CAUSE NO. 153-275478-14**

**SETH WASHBURNE**

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**IN THE DISTRICT COURT**

**v.**

**TARRANT COUNTY, TEXAS**

**VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST “D,”  
CHARLYN HOSPERS, HAL MONK  
BILL GORIN AND DANA WOOD**

**153<sup>RD</sup> JUDICIAL DISTRICT**

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**HAL MONK’S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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**Attorney Immunity Does Not Require Underlying Litigation.**

Plaintiff claims that the Texas Supreme Court recently held that an attorney asserting attorney immunity must prove conclusively that the actions complained of were “taken in connection with representing a client *in litigation*.”<sup>1</sup> (Emphasis Plaintiff’s) Plaintiff cites *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477 (Tex. 2015) as authority for this proposition. However, the *Cantey Hanger* court did not so hold; in fact, the Court expressly recognized that although “[t]he majority of Texas cases addressing attorney immunity arise in the litigation context...that is not universally the case.” 467 S.W.3d at 482, fn 6. The Court noted that in *Campbell v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL 1839357, at \*6 (Tex.App.–Austin 2012, pet. denied) the court of appeals held that attorneys hired to assist a mortgage beneficiary in the non-judicial foreclosure of real property were immune from the borrowers’ suit for wrongful foreclosure. The Court also cited *Reagan Nat’l Advertising of Austin, Inc. v. Hazen*, 2008 WL

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<sup>1</sup> Plaintiff’s Amended Response to Defendant hal Monk’s Motion for Summary Judgment, p.8.

2938823, at \*8 (Tex.App.–Austin 2008, no pet.)(noting that “neither the case law, nor the [attorney-immunity] doctrine’s underlying policy rationales, are limited to [the litigation] setting”).

In fact, it was the *dissenting opinion* in *Cantey Hanger* that insisted that attorney immunity “require[s] that the defendant attorney’s conduct to have occurred in litigation” and castigated the majority opinion for suggesting otherwise. 467 S.W.3d at 488. The dissent also correctly pointed out that the divorce litigation had terminated with a final decree signed more than a year prior to the complained-of conduct, so there was no “underlying litigation” to support the attorneys’ claimed immunity. 467 S.W.3d at 490-491. Yet the majority held that attorney immunity applied to the transaction even there was no underlying litigation. 467 S.W.3d at 485.

What the majority and the dissent did agree upon in *Cantey Hanger* were the public policy considerations supporting the doctrine of attorney immunity. The attorney-immunity defense is intended to ensure “loyal, faithful, and aggressive representation by attorneys employed as advocates.” *Id.* at 481. Discussing the nature and purpose of this defense, the Supreme Court held: “An attorney is given latitude to 'pursue legal rights that he deems necessary and proper' precisely to avoid the inevitable conflict that would arise if he were 'forced constantly to balance his own potential exposure against his client's best interest.” *Id.* at 483. The dissent also recognized that “attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages.” *Id.* at 487, citing *Kruegel v. Murphy*, 126 S.W. 343, 345 (Tex.Civ.App.–Dallas 1910, writ ref'd). These public policies support application of attorney immunity to Monk's actions in this case.

The existence of active litigation has never been required by the Texas Supreme Court for attorney immunity to apply. The first Texas case to mention the doctrine was *Poole v. Houston &*



*T.C. Ry. Co.*, 58 Tex. 134 (1882). There was no underlying litigation in that case, and the Court did not state or imply that it was required. Rather, the Court held that the attorney’s *conduct*—intercepting a shipment of goods, erasing the name and address of the intended recipient from the boxes, inserting the name of a fictitious company and forging a bill of lading to that company—consisted of acts “entirely foreign to the duties of an attorney,” and denied immunity on that basis. 58 Tex. at 137. There is no mention of a litigation requirement in the Court’s opinion, although the focus on whether the attorney’s conduct is or is not “entirely foreign to the duties of an attorney” persists to this day.

In 2008 the Austin Court of Appeals was squarely presented with the contention that attorney immunity could only arise in the litigation context, and flatly rejected it. *Reagan Nat’l Advertising of Austin, Inc. v. Hazen*, 2008 WL 2938823 at \*8. The court stated “while it is true that many of the cases addressing the attorney-immunity doctrine arise in the context of pending litigation, neither the case law, nor the doctrine’s underlying policy rationales, are limited to that setting.” *Id.*

The Austin Court quite recently reaffirmed this position in *Farkas v. Wells Fargo Bank, N.A.*, 2016 WL 7187476, at \*8 (Tex. App.—Austin Dec. 8, 2016, no. pet. h.), noting the Supreme Court’s citation of two of its previous opinions so holding in the *Cantey Hanger* opinion. The court held the attorney was entitled to immunity outside the litigation context because his conduct in representing the lender in a non-judicial foreclosure “falls squarely within the scope of [the attorney’s] representation of [the lender] in the foreclosure proceedings.” *Id.* at \*7, citing *Cantey Hanger* at 485.

Also instructive is the opinion in *Highland Capital Mgmt., LP v. Looper Reed & McGraw, P.C.*, 2016 WL 164528, at \*6 (Tex. App.—Dallas Jan. 14, 2016, pet. denied). Highland also argued

that *Byrd* was limited to an attorney's conduct occurring "in litigation," and so the attorney's "pre-litigation" conduct was not protected. Analyzing *Cantey Hanger v. Byrd*, the court held that the Supreme Court's reasoning in *that case* focused on whether the conduct was "outside the scope of an attorney's representation of his client." *Id.* "Even though Highland had not yet filed suit, negotiations and legal advice regarding Daugherty's departure from Highland were within the scope of Looper Reed's representation of Daugherty. We also note that the conduct at issue in *Byrd* took place after the divorce decree had been entered, arguably 'post-litigation.'" *Id. citing Cantey Hanger v. Byrd at 479.*

Likewise in this case, negotiations and legal advice regarding Plaintiff's departure with his airplane from the VFM property-and informing Plaintiff accurately of the boundary of the property-were within the scope of Monk's representation of VFM and Hospers, especially where litigation was almost certain to follow. Monk is therefore entitled to attorney immunity.

Other cases applying attorney immunity without underlying litigation are listed in the following footnote.<sup>2</sup> Note that in the *Campbell*, *Santiago* and *Cunningham* cases the Texas Supreme Court denied Petitions for Review.

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<sup>2</sup> Other cases where the courts of appeals have applied attorney immunity outside the litigation context include: *Campbell v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL 1839357, at \*6 (Tex.App.—Austin 2012, pet. denied)(attorney representing lender in non-judicial foreclosure); *John Kleas Co. Inc. v. Prokop*, 2015 WL 1544797 (Tex. App.—Corpus Christi Apr. 2, 2015, no pet.)(same); *U.S. Bank Nat'l Ass'n v. Sheena*, 479 S.W.3d 475 (Tex. App.—Houston [14th Dist.] 2015, no pet.)(attorney for debtor/ insured disbursed insurance proceeds to debtor despite notice of pending foreclosure against debtor); *Santiago v. Mackie Wolf Zientz & Mann, P.C.*, 2014 WL 4072131 (Tex. App.—Dallas Aug. 19, 2014, pet. denied)(attorney immunity would apply to attorney for lender in non-judicial foreclosure, but debtor raised fact issue on fraud exception); *Cunningham v. Tarski*, 365 S.W.3d 179 (Tex. App.—Dallas 2012, pet. denied) (minority shareholder sued attorney for majority shareholder for alleged misrepresentation and conspiracy to commit shareholder oppression).

**All of Monk’s Complained-of Conduct Was in Furtherance of His Duties as Attorney for VFM and Hospers.**

In his Amended Response to Hal Monk’s Motion for Summary Judgment, Plaintiff lists the following acts of Hal Monk—and only the following acts (or omissions)—in support of his claims against Monk:

- Monk participated in a vote to terminate Plaintiff’s space lease at VFM [Response p.3, ¶ A].
- Monk received but did not respond to an April 13, 2013 email from Plaintiff inquiring if Plaintiff’s understanding of the boundary of the VFM property was correct [Response p.4, ¶ D].
- Because of this April 13, 2013 email from Plaintiff, Monk was “aware...of the risk of Plaintiff being arrested if anyone associated with VFM asserted a different property line.” [Response p.4, ¶ D].
- Plaintiff “understood” that he was dealing with Monk in his capacity as a director of VFM as opposed to in the capacity of VFM’s attorney [Response p.4-5, ¶ D].
- Plaintiff sent an email to Monk on April 26, 2014, “demanding that representatives of the VFM stop lying to the police that the Trust or VFM owns NW 38th Street and Von Avenue.” [Response p.6, ¶ F]
- Monk phoned Plaintiff on April 27, 2014, in response to Plaintiff’s email to clarify that Plaintiff could park anywhere on NW 38<sup>th</sup> St. and not be trespassing [Response p.7, ¶ F].

It is important to note what Plaintiff’s Response does not contain. There is no evidence that Monk ever once communicated with the Fort Worth Police about the Plaintiff or the boundaries of the VFM property. There is no evidence that Monk or VFM controlled Wood (who allegedly did speak with the police), who worked for another tenant. There are no facts alleged which would give rise to any legal duty allegedly owed by Monk to Plaintiff, and certainly no duty to intervene

in a dispute between Plaintiff, Wood and one or more Fort Worth police officers concerning the boundary.

An attorney's duties that arise from the attorney-client relationship are owed only to the client, not to third persons, such as adverse parties. They have not retained the attorney and the attorney has not rendered them any services. No privity of contract exists between them and the attorney. They have no right of action against the attorney for any injuries they suffer because of the attorney's fault in performing duties owed only to the client. *Renfro v. Jones & Associates*, 947 S.W.2d 285, 287 (Tex. App.—Fort Worth 1997, writ denied). Monk thus owed no duty to Plaintiff, and is shielded from Plaintiff's claims by attorney immunity.

The Response does not attempt to even list the elements of a single cause of action against Monk which would defeat attorney immunity, much less assert any evidence to support them. Thus the Response is insufficient to overcome Monk's claim of immunity. *Cunningham v. Tarski*, 365 S.W.3d at 191-192 (record contained no evidence of first element of fraud—a misrepresentation—so plaintiff's "fraudulent activity" claim failed to defeat attorney immunity).

Plaintiff claims Monk was part of a conspiracy with Hospers, Gorin and Wood to have Plaintiff arrested for criminal trespass. Or, stated another way, Monk failed to keep Wood from misrepresenting the boundary of the VFM property to police officers. However, Monk's Supplemental Affidavit makes clear that Plaintiff was well aware that Wood had no connection with VFM before and at the time of the events complained of. [Monk Supplemental Affidavit, ¶¶ 11-13] There is no summary judgment evidence that Monk had any authority or control over Wood in her conversations with the police.

Plaintiff's subjective "understanding" of the role in which Monk was acting in the events listed above is irrelevant. A statement of subjective belief, which is not supported by other

summary judgment proof, is not sufficient to raise a fact issue. *Huff v. Hirsch*, 2010 WL 3294232, at \*4 (Tex. App.—Houston [1st Dist.] Aug. 19, 2010, no pet.), citing *Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (“An affiant’s belief about the facts is legally insufficient.”).

Monk’s relationship with his clients, VFM and Hospers, is determined by Monk, VFM and Hospers, and does not require the approval or the awareness of Plaintiff. However, as detailed by Monk in his Supplemental affidavit filed herein, Plaintiff was well aware that Monk was acting as VFM’s attorney in dealing with Plaintiff. [Monk Supplemental Affidavit, ¶¶ 8-10] Monk sent Plaintiff the lease termination letter on his “Hal Monk, Attorney at Law” letterhead, and met with Plaintiff in Monk’s law office to discuss the situation thereafter. *Id.* And who better than VFM’s attorney with whom to thereafter discuss the boundaries of the VFM property—accurately, by Plaintiff’s own admission. Plaintiff points to no evidence that Monk instructed Wood to misrepresent the boundary to police officers, or that either Monk or VFM had any control over Wood.

Instead, Monk was performing the same functions as the attorney/defendant in *Reagan Nat’l Adver. of Austin, Inc. v. Hazen*, *supra*, 2008 WL 2938823—handling the termination of a leasehold estate and its aftermath. See *Hazen* at \*1, and at \*8, where the Court states:

Based on the evidence submitted with Hazen’s motion for summary judgment, we find that Hazen met his burden of establishing as a matter of law that his allegedly actionable conduct was undertaken in the legal representation of his clients.... and involved the office, professional training, skill and authority of an attorney....Hazen’s conduct involved providing legal advice regarding the billboard dispute, drafting an indemnity agreement, advocating his clients’ interests to the opposing party and its counsel, attempting to negotiate an amicable resolution to the dispute, and ultimately representing his clients in the lawsuit Reagan later filed—acts that are quintessentially the types that are protected by attorney immunity.

Here, Monk consulted with VFM about terminating Plaintiff’s lease, drafted and sent the lease termination letter on his attorney letterhead, dealt (on behalf of VFM) with Plaintiff’s demands to

remain on or return to VFM's property, represented VFM in a mediation with Plaintiff and ultimately represented VFM in the ensuing litigation. As in *Hazen*, all of Monk's actions in connection with Plaintiff were taken in his role as attorney for VFM and Hospers, involved the office, professional training, skill and authority of an attorney, and none of them are "foreign to the duties of an attorney." In fact, Monk's acts "are quintessentially the types that are protected by attorney immunity." Monk is therefore entitled to attorney immunity against all of Plaintiff's claims.

Respectfully submitted,

/s/ Randall E. Turner

Texas State Bar No.: 20328310

**LAW OFFICES OF RANDALL E. TURNER, PLLC**

4255 Bryant Irvin Rd., Suite 210

Fort Worth, TX 76109

Direct line: (817) 420-9690

Fax: (817) 887-5717

Email: [randy@randyturner.com](mailto:randy@randyturner.com)

**ATTORNEY FOR DEFENDANTS HAL MONK,  
VINTAGE FLYING MUSEUM, INC., HOSPERS  
FAMILY TRUST "D," CHARLYN HOSPERS  
AND BILL GORIN.**

### **CERTIFICATE OF SERVICE**

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing document has been served electronically through the electronic filing manager to the email addresses of all attorneys of record and pro se parties whose email addresses are on file with the electronic filing manager.

/s/ Randall E. Turner

Exhibit 114: 2017 03 29 - Dana offer from Ivy Sweeney

## Seth Washburne

---

**From:** Ivy Sweeney [isweeney@lynnllp.com]  
**Sent:** Wednesday, March 29, 2017 3:32 PM  
**To:** 'sethpw1@gmail.com'  
**Cc:** Kent Krabill; Stephen Cole  
**Subject:** Washburne v. Vintage Flying Museum  
**Attachments:** 4821-9337-5302.PDF

Seth, see attached correspondence from opposing counsel.

Ivy

### **IVY SWEENEY**

Assistant to Jason Dennis, Kent Krabill and Russell Herman

**LynnPinkerCoxHurst**

Direct 214 292 3646

Fax 214 981 3839

[isweeney@lynnllp.com](mailto:isweeney@lynnllp.com)

2100 Ross Avenue, Suite 2700

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Charlie Burgess  
cburgess72@yahoo.com

**Charlie Burgess**  
ATTORNEYS AND COUNSELORS AT LAW  
521 N. Riverside Dr.

Telephone (817) 808-4731  
Facsimile (817) 451-4869

Fort Worth, Texas 76111

March 22, 2017

Stephen M. Cole  
LynnPinkerCoxHurst  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201

*certified mail # 7012 1010 0000 2056 3361*

Re: Cause No. 153-275478-14; SETH WASHBURNE and Vintage Flying Museum, Inc., Hospers Family Trust "D", Charlyn Hospers, Hal Monk Bill Gorin, and Dana Wood.

Dear Mr. Cole:

As you know, I represent Dana Wood, defendants in the captioned lawsuit, in which you represent the plaintiffs.

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my clients, Dana Wood. My client hereby offers to pay Plaintiff the total sum of \$750.00 in full and complete settlement of any and all claims the Plaintiff has asserted or could assert against Dana Wood. In exchange for the payment of \$750.00, your client, Seth Washburne is to dismiss with prejudice any and all claims which have been asserted or could be asserted against Dana Wood in the captioned lawsuit.

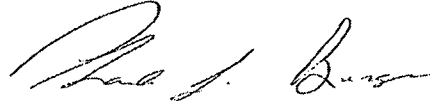
The sum of \$750.00 will be paid to the Plaintiff on or before the expiration of the fifth day following the signature of the judge on the Order Dismissing Plaintiff's Claims against Dana Wood with Prejudice.

This offer is subject to the execution of reasonable and appropriate releases, indemnities and other documents necessary to give full effect to a complete release of liability of Dana Wood to Plaintiffs.

Finally, this offer will expire on the later of 14 days from your receipt of this letter.

I have filed on behalf of Dana Wood a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration. I attach a copy of that declaration to this letter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charlie Burgess".

---

CHARLIE BURGESS

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Monday, April 03, 2017 1:15 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** FW: Washburne v. Vintage Flying Museum  
**Attachments:** 4821-9337-5302.PDF

Seth, let us know how, if at all, you want to respond to this. I assume you do not want to accept.

### STEPHEN COLE | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** Ivy Sweeney  
**Sent:** Wednesday, March 29, 2017 3:32 PM  
**To:** 'sethgw1@gmail.com' <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)>  
**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>; Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>  
**Subject:** Washburne v. Vintage Flying Museum

Seth, see attached correspondence from opposing counsel.

Ivy

### IVY SWEENEY

Assistant to Jason Dennis, Kent Krabill and Russell Herman

**LynnPinkerCoxHurst**

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Exhibit 115: 2017 02 09 - Cole email re 167 fr Museum for 22k and  
reply2

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Friday, February 10, 2017 6:11 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Re: Museum Settlement Offer - and Defendants MSJ on our Declaratory Judgment Action

Seth, see my responses below.

### STEPHEN M. COLE | Associate

LynnPinkerCoxHurst

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** "[sethpw1@gmail.com](mailto:sethpw1@gmail.com)" <[sethpw1@gmail.com](mailto:sethpw1@gmail.com)>

**Date:** Thursday, February 9, 2017 at 6:01 PM

**To:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>

**Cc:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>

**Subject:** RE: Museum Settlement Offer - and Defendants MSJ on our Declaratory Judgment Action

Stephen,

1. Thanks for letting me know the amount. Please forward to me whatever document they sent that in, I have not seen that.
2. If you had to speculate, do you think it is possible I will get more than this, so it should be rejected? It seems it definitely should be. **It's impossible to guess what the jury might award. As we've discussed in the past, our biggest hurdle in this case will be proving a significant damages figure for you. That said, we will do everything we can to put on a strong case to the jury and hope that they are inclined to either (1) award you significant amounts for the emotional distress this caused you, and/or (2) provide us a significant exemplary damages award. So, is it possible you will get more than this? Yes, that's possible. It's also possible you would get less (or nothing at all).**
3. Regarding their MSJ on the Dec Ac, do you feel we have good arguments to keep that in? **Kent and I are discussing this. They have admitted in their MSJ that you were not standing on Trust/VFM property when you were given a trespass warning and then arrested. So that does remove the principal dispute that the dec action was designed to resolve. But we will brainstorm on other ways to keep this in, including some of the things you discuss below.**

4. In our response to the Dec Ac MSJ please note to the judge:
  - a. That the letter from the FW airport manager reflects that they want to put a fence across Von Avenue, and maybe the intersection with NW 38<sup>th</sup> Street, too, to block public access, which may lead to another problem.
  - b. They currently have a fence across Von Avenue at 37<sup>th</sup> Street, unfairly blocking access to the majority of Von Avenue.
  - c. Gorin specifically told me “If you come back here again I will get you arrested again.”

I desperately need something formal, from a court, to show that I have the right to travel on the public road in that area.

5. Regarding the eFile system, can we get Kevin Vice, Scott Dilbeck, Jennifer Gjesvold, and Anika Simmons (whoever she is) removed from that, or do they have a right to keep getting these flings?  
**Yes, we can get them removed.**

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Thursday, February 09, 2017 4:42 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Museum Settlement Offer

Seth,

Attached is the settlement offer. They are offering \$22,000.

Let us know how, if at all, you'd like to respond.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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RANDALL E. TURNER, PLLC**

**Randall E. Turner**  
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Personal Injury Trial Law and  
Civil Trial Law by the  
Texas Board of Legal Specialization

Direct: 817-420-9690  
Fax: 817-887-5717  
randy@randyturner.com  
www.randyturner.com

February 9, 2017

Mr. Kent D. Krabill  
Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201  
*Via fax to 214-981-3839*

Re: Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, Bill Gorin, and Dana Wood*

Dear Mr. Krabill:

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my clients, Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin.

My clients hereby offer to pay to the plaintiff, Seth Washburne, the sum of Twenty Two Thousand Dollars (\$22,000.00) in full and complete settlement of any and all claims the plaintiff has asserted or could assert against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin. In exchange for the payment of \$22,000.00 your client, Seth Washburne, is to dismiss with prejudice any and all claims which have been asserted or could be asserted against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, or Bill Gorin in the above-referenced lawsuit.

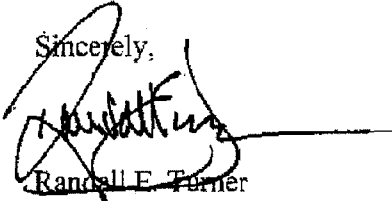
The sum of \$22,000.00 will be paid to the plaintiff on or before the expiration of the 14th day following the signature of the judge on an order dismissing with prejudice the plaintiff's claims against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin.

This offer is subject to the execution of reasonable and appropriate releases and other documents necessary to give full effect to a complete release of liability of Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin to the plaintiff.

This offer will expire on the later of February 24, 2017 or 14 days after your receipt of this letter.

I have filed on behalf of Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall E. Turner", is written over a horizontal line. The signature is stylized and cursive.

Randall E. Turner

cc: Charlie Burgess



Exhibit 116: 2017 02 14 - 3.19 from Ivy Sweeney - VFM Rule 167  
offer

## Seth Washburne

---

**From:** Ivy Sweeney [isweeney@lynnllp.com]  
**Sent:** Tuesday, February 14, 2017 3:19 PM  
**To:** 'sethpw1@gmail.com'  
**Cc:** Kent Krabill  
**Subject:** Washburne v. Vintage Flying Museum  
**Attachments:** 4822-7462-1762.PDF

See attached correspondence from opposing counsel.

Ivy

### **IVY SWEENEY**

Assistant to Jason Dennis, Kent Krabill and Russell Herman

**LynnPinkerCoxHurst**

Direct 214 292 3646

Fax 214 981 3839

[isweeney@lynnllp.com](mailto:isweeney@lynnllp.com)

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February 9, 2017

Mr. Kent D. Krabill  
Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201  
*Via fax to 214-981-3839*

Re: Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, Bill Gorin, and Dana Wood*

Dear Mr. Krabill:

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my clients, Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin.

My clients hereby offer to pay to the plaintiff, Seth Washburne, the sum of Twenty Two Thousand Dollars (\$22,000.00) in full and complete settlement of any and all claims the plaintiff has asserted or could assert against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin. In exchange for the payment of \$22,000.00 your client, Seth Washburne, is to dismiss with prejudice any and all claims which have been asserted or could be asserted against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, or Bill Gorin in the above-referenced lawsuit.

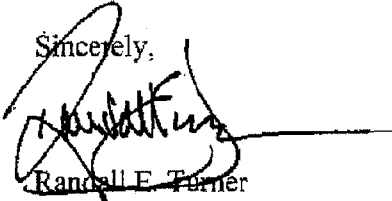
The sum of \$22,000.00 will be paid to the plaintiff on or before the expiration of the 14th day following the signature of the judge on an order dismissing with prejudice the plaintiff's claims against Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin.

This offer is subject to the execution of reasonable and appropriate releases and other documents necessary to give full effect to a complete release of liability of Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin to the plaintiff.

This offer will expire on the later of February 24, 2017 or 14 days after your receipt of this letter.

I have filed on behalf of Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Hal Monk, and Bill Gorin a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall E. Turner", is written over a horizontal line. The signature is stylized and cursive.

Randall E. Turner

cc: Charlie Burgess

**FAX COVER SHEET**

---

**TO**

---

**COMPANY**

---

**FAXNUMBER** 12149813839

---

**FROM** Randy Turner

---

**DATE** 2017-02-09 21:59:19 GMT

---

**RE** Washburne v. VFM Ltr re TRCP 167

---

**COVER MESSAGE**

---

**Chloe Parker, Paralegal**  
Law Offices of Randall E. Turner, PLLC  
5017 El Campo Avenue  
Fort Worth, Texas 76107  
Ph: (817) 521-5816  
Fax: (817) 887-5717

Exhibit 117: 2017 04 07 - Cole email re stipulation

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Friday, April 07, 2017 1:01 PM  
**To:** Seth Washburne  
**Subject:** RE: Museum Case - Call

Seth, I will call you at 1:30.

### STEPHEN COLE | Associate

LynnPinkerCoxHurst

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]

**Sent:** Friday, April 07, 2017 10:55 AM

**To:** Stephen Cole <[SCole@lynnllp.com](mailto:SCole@lynnllp.com)>

**Subject:** RE: Museum Case - Call

Sure, anytime is fine, I am working at my desk on Thirsty 13<sup>th</sup> items all day, but email me about 30 minutes beforehand in case I am walking to the store to get something for lunch.

At some point I would also like to learn about:

1. The impact of Monk being dismissed, and whether we should file an appeal.
2. Whether we should produce info about my family heritage, being in the country since 1620, and maybe even at Jamestown, and Seth Pomeroy, who I am named for, being in the Continental Army under George Washington, my great, great grandfather being the best friend of Lincoln, etc. and much more, which was a factor in making me especially "Proud to be an American" and resistant to anyone saying I cannot stand on public property. Whether that would play ok with the jury, and lead to larger damages. I think it is relevant.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]

**Sent:** Friday, April 07, 2017 10:43 AM

**To:** Seth Washburne

**Subject:** Museum Case - Call

Seth,

Do you have a few minutes this afternoon for a short call regarding the MSJ in the Museum case on our declaratory judgment claim?

If so, let me know a good time and I'll give you a ring.

Thanks.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

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[scole@lynnllp.com](mailto:scole@lynnllp.com)

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Exhibit 118: 2017 05 28 - Museum Settlement offer 27k with conf  
DOC009

**LAW OFFICES OF  
RANDALL E. TURNER, PLLC**

**Randall E. Turner**  
Board Certified  
Personal Injury Trial Law and  
Civil Trial Law by the  
Texas Board of Legal Specialization

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May 28, 2017

Mr. Kent D. Krabill  
Lynn Pinker Cox & Hurst, LLP  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201  
*Via email to [kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)*

Re: Cause No. 153-275478-14; *Seth Washburne v. Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, Bill Gorin, and Dana Wood*

Dear Mr. Krabill:

My clients have authorized me to make the following settlement proposal:

1. Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, and Bill Gorin will pay Seth Washburne the sum of \$27,000.00;
2. Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, and Bill Gorin will make the following apology to Mr. Washburne:

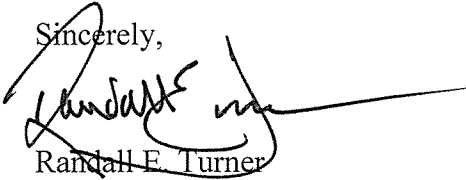
"We are genuinely sorry that you were given a trespass warning and put in the back of a patrol car on April 26, 2017 and that you were arrested on April 27, 2017 while on public property that was not owned by the Vintage Flying Museum, Inc., Hospers Family Trust "D," Charlyn Hospers, or Bill Gorin. The areas where you were detained and arrested were indeed public property. We are genuinely sorry that you had to spend a night in jail, that the trespass charge was not dropped sooner than it was, and that you had to incur expenses to get the trespass charge dropped. All of us hope you will get the arrest record expunged and will gladly do whatever we can to assist in that effort."

3. The parties will execute a mutual non-disparagement agreement in which it is agreed that neither party will disparage, criticize, or make negative statements, orally, in writing, or on the internet, about the other party. A party who breaches the non-disparagement clause shall be liable for liquidated damages in the amount of \$250,000.
4. The parties will execute a mutual confidentiality agreement in which it is agreed that the terms of the settlement agreement, the apology discussed above, and all documents and things that were produced in discovery, including depositions, shall remain confidential. A party who breaches the confidentiality clause shall be liable for liquidated damages in the amount of \$250,000.

5. Seth Washburne shall execute a full and final release of any and all claims made the basis of this suit.
6. Court costs and attorney's fees shall be paid by the party incurring same.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall E. Turner", with a long horizontal flourish extending to the right.

Randall E. Turner

Exhibit 119: 2017 05 29 - 11.42 am Krabill to me

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynllp.com]  
**Sent:** Monday, May 29, 2017 11:42 AM  
**To:** Seth Washburne  
**Cc:** Jonathan Kelley; Kent Krabill  
**Subject:** Museum settlement issues

Seth,

As I wrote yesterday, the email you sent last evening related to the defendants' settlement offer is not only misdirected (I have repeatedly asked you to direct all such emails, questions, concerns to me, not to associates), it is inaccurate and a complete re-writing of history.

Turner asked me some time ago about settlement. I then called you with Stephen to discuss the potential elements of a settlement. I told you on that call that there would be no settlement unless it included confidentiality and non-disparagement provisions. You stated, quite clearly, that you would agree to such provisions only if compensated separately for that, and said you wanted \$50k for those provisions. We proceeded with this understanding.

If you are going to continue to mispresent reality and make blatantly false accusations, we are not going to be able to continue to represent you.

You are all over the place right now. You are throwing around wild accusations regarding settlement, you are sending us docs from another case at the very last moment, you are asking people to be deposed at the very last moment (when I told you weeks ago to talk to Jonathan about it and you never did), and you still are not clear on what you want out of this case.

You need to clear your mind and figure out what you want out of this case. You will never get the type of public apology you want. That isn't going to happen.

As we have discussed repeatedly, your damages are low on this matter because you chose not to get any medical care. As a result, you have very small actual damages. In addition, the defendants who are closest to you getting arrested, Wood and Gorin, likely don't have much money to pay a damage award even if you are awarded damages. We have some fairly good evidence tying Hospers, the Museum, and Trust to Wood and Gorin, but as you know, this isn't a slam dunk. And at the end of the day, as I have told you repeatedly, juries are good, but oftentimes unpredictable.

I have never said you have to settle. But I always think it is prudent to evaluate settlement offers. Here, you have an offer that is larger than your actual damages. It isn't enough, but it is something. You have an apology. Again, it isn't perfect, but it is something. There is

absolutely nothing in this settlement offer to be offended by. It is a good faith offer. If you want to reject it, that is fine. But to get upset and make false accusations against me and my firm is not fine. I won't have it.

If you want to discuss, call me. But no more false accusations. If you choose to continue on this route, you will have to do it with another attorney.

Regards,

Kent D. Krabill

---

**From:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Date:** Sunday, May 28, 2017 at 8:10 PM  
**To:** Seth Washburne <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)>  
**Cc:** Jonathan Kelley <[jkelly@lynnllp.com](mailto:jkelly@lynnllp.com)>  
**Subject:** Re: Washburne v. VFM, et al

This email is inaccurate Seth. If you want to discuss this, you discuss it with me only. And please stop with the false allegations against Stephen. It is offensive.

Kent

Sent from my iPhone

On May 28, 2017, at 7:51 PM, Seth Washburne <[sethgw1@gmail.com](mailto:sethgw1@gmail.com)> wrote:

Jonathan,

I made it very clear to Stephen that I would never agree to a non-disparage. He either failed to communicate this to the other side, or they just want to insult me, which they do with this, asking for \$250,000 liquidating damages.

Stephen was discussing the stipulation with Randy, then launched into a settlement discussions without my permission or knowledge. I would have told him on day 1 I will never agree to non-disparage. They wanted this in 2012 when I went to mediation with them about the lease termination and I said I would never agree to this.

I will not pay for anyone at LPCH to communicate with them beyond a simple sentence that I will never agree to any non-disparage or confidentiality, and to tell them to stop wasting my time.

Seth

---

**From:** Jonathan Kelley [<mailto:jkelly@lynnllp.com>]  
**Sent:** Sunday, May 28, 2017 4:09 PM  
**To:** [sethgw1@gmail.com](mailto:sethgw1@gmail.com)  
**Cc:** Kent Krabill  
**Subject:** Fwd: Washburne v. VFM, et al

Seth,

Please see the attached settlement offer from the Vintage Flying Museum. Let us know if you would like to discuss.

Thanks,  
Jon

Begin forwarded message:

**From:** Randy Turner <[Randy@RandyTurner.com](mailto:Randy@RandyTurner.com)>  
**Date:** May 28, 2017 at 3:33:35 PM CDT  
**To:** Kent Krabill <[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)>  
**Cc:** Chloe Parker <[chloe@RandyTurner.com](mailto:chloe@RandyTurner.com)>, Jonathan Kelley <[jkelley@lynnllp.com](mailto:jkelley@lynnllp.com)>  
**Subject:** Washburne v. VFM, et al

Kent, attached is a settlement offer.

Randy

Law Offices of Randall E. Turner, PLLC  
5017 El Campo Ave.  
Fort Worth, Texas 76107  
Direct Tel: (817) 420-9690  
Fax: (817) 887-5717  
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Exhibit 120: 2017 04 12 - Cole to Seth re Museum Settlement Term  
Sheet - SMC revisions to Seth changes



***Seth Washburne v. Vintage Flying Museum, et al.***  
**Cause No. 153-275478-14**  
**Settlement Term Sheet**

The parties agree, in principal, to settle this matter on the terms set forth below. The parties also agree to formalize this settlement by drafting and executing formal settlement documents. The parties agree as follows:

1. Defendants will pay Mr. Washburne \$200,000.
2. Defendants will execute a stipulation that provides that (1) neither the Trust, the VFM, nor any other Defendant owns NW 38<sup>th</sup> Street or Von Avenue, (2) NW 38<sup>th</sup> Street and Von Avenue down to where NW 36<sup>th</sup> Street would intersect it and 100 feet south of this are public property, (3) none of the Defendants have a right to or will attempt to exclude Mr. Washburne from being present on NW 38<sup>th</sup> Street or Von Avenue down to 100 feet south of where NW 36<sup>th</sup> Street would intersect it, (4) **Hospers will not allow any other person in any way associated with the museum or the trust, e.g. tenants, volunteers, workers, or visitors, to complain of, or attempt to exclude, Mr. Washburne being present on NW 38<sup>th</sup> Street or Von Avenue, and will defend Mr. Washburne's right to be there—no matter what his capacity, and (5)** before any Defendant makes any effort to annex, acquire, or otherwise change the status of NW 38<sup>th</sup> Street or Von Avenue, or any portions thereof, as public property, Defendants will provide Mr. Washburne with notice of their intent to make such efforts at least 30 days prior to filing or executing any application, request, or other transaction related to such efforts.
3. Each Defendant will provide a written apology to Mr. Washburne in substantially the following forms.

a. Hospers

I, Charlyn Hospers, apologize to Mr. Washburne that I:

- i. ~~Around May 2012 announced to a meeting of VFM volunteers that Mr. Washburne had fired Pat Mahaffey, and acknowledge that this was not true, because Mr. Mahaffey quit,~~
- ii. Around July 2012 announced to a meeting of VFM volunteers that Mr. Washburne “cornered” Dana Wood, and acknowledge that this was not true, that Dana herself has said she was never cornered, and that such a statement was inflammatory, with the potential to greatly hurt Mr. Washburne’s reputation around VFM.
- iii. In October 2012 refused to investigate his allegations of theft at VFM, ~~violating the Through the Fence agreement then existing with the City of Fort Worth, which required I not allow any illegal activity to go on at the hangar, and in the~~

**Comment [SC1]:** Seth, I have specific comments/edits below, but I have a general comment that you are going much too far in what you are asking for. You are asking that the Defendants acknowledge that the facts surrounding your entire history with the VFM, Jim Terry, etc. are exactly as you believe them to be. And, you are seeking acknowledgements/stipulations that are irrelevant to this lawsuit and that you would never recover (and, indeed are not even seeking—because you couldn’t) in this lawsuit. This is not even close to a reasonable settlement.

**Comment [SC2]:** Seth, we need to keep the apologies limited to the matters at issue in the lawsuit—your wrongful trespass warnings and arrest. None of these other matters are at issue in the lawsuit, and it is not reasonable to ask them to apologize for extraneous issues. Although I think we need to remove all of the non-arrest related ones, I have specific comments on these below, as well.

**Comment [SC3]:** Seth, on April 30, 2012, you emailed Bill Gorin, Jim Terry, Jim Reynolds, Chuckie Hospers, Jimmy Hocker, and others and said that you “essentially **fired** Patrick Tuesday night.” (emphasis added) So Chuckie had a basis—from your own words—of saying this. You need to remove this from your list of “lies” the Defendants have said about you, and we should remove it from this.

**Comment [SC4]:** There is no chance that they agree to stipulate they violated their agreement with the City, particularly since the theft allegations are, at this point, contested and unproven.

~~event of discovering such terminate the wrongdoer; instead I terminated Mr. Washburne, the victim.~~

- iv. On March 2, 2013, allowed Dana Wood to hire an outside security firm, and request a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne's away from a parts auction held at VFM which ~~included at least one part stolen from Mr. Washburne~~, which action: a) illegally blocked his access to the public street Von Avenue, and b) resulted in his being treated in a disrespectful manner.
- v. On April 26, 2014, allowed Dana Wood to again restrict access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: a) an unpleasant interchange with John Ragland, b) Dana Wood calling the police creating a police report about Mr. Washburne, c) police manhandling Mr. Washburne, d) police reinjuring Mr. Washburne's right shoulder ~~which caused him immense pain~~, e) Mr. Washburne being detained in the back of a police cruiser while many museum event visitors and volunteers passed by, and f) general shame upon Mr. Washburne.
- vi. On April 26, 2014, ~~tweeted or with some other application~~ shared ~~next to a photo of me smiling~~ a photo of Mr. Washburne and wrote that he: a) "tried to run Dana down," b) "resisted arrest," and c) was handcuffed, when factually none of these things ever occurred on that day.
- vii. On April 27, 2014, wrongfully caused him to be arrested for trespassing, ~~resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him~~. I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.

Furthermore, I, Charlyn Hospers, do hereby assert that Mr. Washburne:

- viii. In October 2009 was ~~exceedingly~~ generous to visit VFM and offer to purchase the C-47 nicknamed "Billie" and donate it to VFM, a value worth more than \$75,000, which ~~would have been the largest gift ever given to the museum~~.
- ix. ~~Was introduced to our tenant Jim Terry by a museum volunteer, despite the museum knowing Mr. Terry was a bad person, bad enough that the both Mr. Monk and John Frasier told Washburne the museum wanted to get rid of Terry, and our action in introducing the public to Terry resulted in an enormous loss for Mr. Washburne.~~
- x. From February 1, 2010, until November 2, 2012, was one of the museum's most valuable tenants, due to: a) displaying the two largest aircraft in the hangar, and the only two with WWII battle history, ~~and~~ b) paying workers to be at the museum Monday to Friday when it might otherwise be closed or have little activity, providing excitement for mid-week visitors, ~~c) supporting the local economy by paying three to six full time workers at high rates of \$20 to \$35 an~~

**Comment [SC5]:** Likewise, there is no chance that Chuckie will agree to stipulate that your parts were stolen by Jim Terry. That allegation is contested by Terry and is the subject of another lawsuit.

**Comment [SC6]:** Again, not something they will ever agree to (because how does Chuckie know what pain you felt?). Okay with leaving in, just giving you an FYI.

**Comment [SC7]:** This entire section should be removed. This is connected to my comment above, which is that you are asking for stipulations/declarations in this settlement that you would never get in the lawsuit. It is unreasonable to ask for such extensive stipulations that the facts are exactly as you see them. Although I think they should all be removed, I have provided comments on the specific assertions below

**Comment [SC8]:** Do you know this?

**Comment [SC9]:** It's ridiculous to ask Hospers to state what two other people told you. Was she present for those conversations with Monk and Frasier?

~~hour, and paying tens of thousands of dollars for many local services and supplies.~~

- xi. From November 4, 2011, until mid-2012, during which time he ~~himself~~ was present at the hangar, made many positive contributions to the hangar, including all those shown in attachment 1. ~~[that he: a) cleaned up his area, especially clearing a path along the south wall which had been blocked, b) rearranged the wash room shelves in a way that made the room seem larger, c) sorted a large can of miscellaneous nuts, bolts, screws, and other items into distinct plastic bins, filling 5 such containers, d) purchased at his own expense brushes to close gaps in the doors to reduce the flow of cold air and dust through the hangar—and had these installed in his area and was willing to buy these for the entire building, e) offered to purchase a large refrigerator for the washroom, and negotiated the purchase of one, but backed out when he went to pick it up and the seller increased the price; f) frequently emptied the trash cans, picked up raccoon poop others left out, and closed a hole where the raccoon got in, g) kept his area swept clean, and well roped off on the weekends during peak visitor times, h) created an attractive 4 page summary of his plane JR for a display stand, one of only a few tenants to do so, and i) enthusiastically gave tours of his plane JR to school children on more than one occasion.]~~
- xii. ~~Reacted to the apparent theft of his aircraft's \$25,000 elevator, and of more than 100 other parts, with remarkable restraint, calmness, and respect for other tenants and volunteers.~~

b. Wood:

I, Dana Wood, apologize to Mr. Washburne that I:

- i. In June 2012 made statements to Hospers which led her conclude that he “cornered me” when nothing of this sort ever occurred.
- ii. On June 19, 2012, filed police report 12-60107 with the Fort Worth Police which includes many false statements, including that:
  - a) ~~“suspect came into the general open hangar area— factually he was already in the hangar;~~
  - b) ~~“and began to shout and curse at the victim” — factually he never shouted, and never cursed at me; he was about 30 feet away, so raised his voice slight for me to hear, but was not shouting at me;~~
  - e) ~~“Victim told the suspect that he was not going to speak to her that way and that he should just leave,” — factually I never said that, but instead simply said “We can’t talk to you,” twice, and nothing more.~~

**Comment [SC10]:** This statement doesn't matter. You should drop this.

**Comment [SC11]:** She testified that you were shouting and called Terry a Mfer, so she will not agree to this.

**Comment [SC12]:** She testified exactly the opposite of what you want here. She will not agree to this.

~~Ⓢ~~c) “She went into a room and shut the door in suspects face,” ~~factually~~— I was already in the room, and he had already turned and walked back to his area when I closed the sliding door.

~~Ⓢ~~d) “This isn’t the first time they have had problems with suspect around the hangar” – this is not true, as I can think of no other problems the suspect ever cause around the hangar.

~~Ⓢ~~e) These ~~five-four~~ misstatements reflect badly on Plaintiff, and I would like this police report to be expunged.

iii. On March 2, 2013, hired an outside security firm, and requested a police cruiser park at the corner of NW 38<sup>th</sup> Street and Von Avenue for the express purpose of keeping Mr. Washburne’s away from a parts auction held at VFM ~~which included at least one part stolen from Mr. Washburne,~~ which a) action illegally blocked his access to the public street of Von Avenue, and b) resulted in his being treated in a disrespectful manner.

iv. On April 26, 2014, again restricted his access to the public streets NW 38<sup>th</sup> Street and Von Avenue, leading to: i. ~~an unpleasant interchange with John \_\_\_\_\_,~~ ii. my calling the police creating a police report about Mr. Washburne, ~~and~~ iii.- Police manhandling Mr. Washburne, ~~iv. Police reinjuring Mr. Washburne’s shoulder,~~ v. ~~Mr. Washburne being detained in the back of a police cruiser while many museum event visitors passed by,~~ vi. ~~general shame upon Mr. Washburne.~~

v. On April 26, 2014, alleged to the police that Mr. Washburne tried to run me down, when ~~factually~~ this never occurred; rather, I ran in front of his car

vi. After April 26, 2014, encouraged Byron to visit Fort Worth Police Internal Affairs and ~~tell outright lies~~ ~~misrepresent~~ to the police, ~~such as~~ that Mr. Washburne drove his car straight at me causing me to tumble over the hood, and off the back of the car, which never ever happened.

vii. On April 26, 2014, filed police report 14-38667 with the Fort Worth Police which includes many false statements, ~~including~~ that

a) ~~“Suspect was on scene being loud and cursing” — factually he only raised his voice and perhaps cursed when speaking with John Ragland, who came down in his van, and was extremely insulting to Mr. Washburne, telling him he had already been arrested there once, which was not true, such that Mr. Washburne had every right to be upset at Mr. Ragland.~~

~~b~~a) “Suspect refused to leave the property” — ~~factually~~ he never was on any private property.

~~e~~b) “The male hit the complainant with his car” — ~~factually~~ I ran into the path of his car, and ran into his side mirror.

**Comment [SC13]:** She testified to other “issues.” (the book selling with you taking money out of the donation box)

**Comment [SC14]:** Again, they aren’t going to admit that Terry stole from you.

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Ⓣ)c) “Now they are holding him down on the ground waiting for police” – i.e. that Mr. Washburne was being pinned to the ground by several men, which never ever happened —~~Mr. Washburne stood talking in a friendly way with one of the workers, and this misrepresentation is 100% false and extremely damaging to him.~~

Ⓣ)d) “Subject entered the property” —~~factually~~ neither Mr. Washburne nor his car ever entered any trust property.

Ⓣ)e) “She told Suspect that he had to leave the property and he refused,” — ~~but no, he happily~~Mr. Washburne agreed to drive and park outside of the entrance they had set up, and wait for someone who I said would come to clear up the confusion about the property line.

Ⓣ)f) “Suspect tried hitting the gate attendants” — this never happened, and instead he drove well clear of us, but I ran into the path of his car and, after he stopped, ran into his mirror.

Ⓣ)g) “Rep 1 stepped in front of the car, and he gave it gas trying to hit her” Again, this never happened,~~and I acknowledge that this is a very detrimental statement.~~

Ⓣ)h) “Rep 1 said that she was able to get out of the way and was hit by the side mirror on the left arm,” — no, I ran into his way, and after he stopped ran into the mirror.

Ⓣ)i) ~~“There is a two year history with suspect and the museum,” — no, factually Mr. Washburne had nothing to do with the museum for the 1.5 years since his lease was terminated, other than two emails to Monk and Hospers in April 2013; there were no other communications at all, and so no history.~~

Ⓣ)j) “He was evicted from the property” — Mr. Washburne was never evicted, rather the museum simply chose to terminate the lease.

Ⓣ)k) ~~“He has a lawsuit pending” — this true was not true, as Mr. Washburne had no lawsuit with the museum.~~

Ⓣ)l) “Every time they have an event, Suspect tries to come on the property and harass the staff.” ~~Factually I have not one single example of~~To my knowledge, Mr. Washburne ~~ever making even a single~~never attempt to ever come on the Trust/VFM property after his lease was terminated, and the museum has had dozens of events. I have never heard of him ~~even once~~ harassing any staff. ~~This statement was a defamatory lie intended to harm his reputation.~~

Ⓣ)m) I described myself as a “Manager” of the museum, when in fact I had ~~absolutely~~ no role with the museum—~~whatsoever~~.

**Comment [SC15]:** You did make an attempt to come on the property. You attempted to attend the parts auction in March 2013.

It is my ~~strong~~ desire that the Fort Worth Police expunge this police report.

viii. Also on April 26, 2014, I ~~lied repeatedly~~ misrepresented to the Fort Worth Police that:

- a) I was a representative of VFM – I was not.
- b) I knew where the property line was – I did not
- c) Mr. Washburne was trespassing – he was not.

ix. On April 27, 2014, I again ~~lied repeatedly~~ misrepresented to the Fort Worth Police in report 14-39030, including that Mr. Washburne:

- a) Was trespassing – he was not.
- b) Refused to leave – no one ever talked to him or asked him to leave.
- c) “Was in an ongoing legal battle with the museum” when nothing of the sort ever existed. Washburne had nothing to do with the museum since his lease was terminated.
- d) “Was evicted” – ~~again~~ not true.
- e) I believe this report, too, ~~is entirely false and full of falsehoods, and is very injurious to Mr. Washburne’s reputation, and~~ should be expunged.

x. On April 27, 2014, wrongfully caused him to be arrested for trespassing, ~~resulting in what he has described as a terrifying ordeal, which he has stated will forever haunt him.~~ I acknowledge and admit that Mr. Washburne never trespassed on the property of the VFM, the Trust, or any other Defendant and that Defendants had no justification for calling the police and causing Mr. Washburne to be arrested.

Furthermore, I, Dana Wood, do hereby assert that Mr. Washburne:

~~xi. Has always treated me with complete respect.~~

~~xii. After the “baby bottle incident” called out to me with sort of an apology, saying this was just about Jim Terry, and that he still liked me.~~

~~xiii. After a talk at the hangar around November 2, 2012, in which I was hostile toward him, sticking my phone in his face to record him, he spoke politely and friendly to me during my video of him, and as I walked to get on Jim’s plane he called out to me that he had nothing against me and still liked me.~~

~~xiv. On April 26, 2014, when I first saw him, his first words were to compliment my prowess with organizing events, and suggest I go out on my own, to which I~~

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~~responded I had thought of just such a thing myself. He was very considerate, friendly, and respectful, and I replied that I prayed for him and asked whether I could shake his hand.~~

c. ~~Monk (even though not a defendant):~~

I, Hal Monk, apologize to Mr. Washburne that I:

- i. On April 27, 2014, after being alerted by phone call that police had been called, failed to contact anyone to put a stop to this, and this after telling Mr. Washburne less 3 hours before that he could legally park there and the police would not be called.

d. Gorin:

I, Bill Gorin, apologize to Mr. Washburne that I:

ii. ~~On or after March 2, 2013, alleged that Mr. Washburne was handing out a piece of paper containing negative comments about VFM to cars on NW 38<sup>th</sup> Street when nothing of this sort ever happened.~~

iii. ~~Shared with Hospers posting on WarbirdsXchange, and referred to Washburne as a "nut case."~~

~~iv-iii.~~ On April 27, 2014, told the police: a) that the drainage ditch was the property line, and b) that the entire area of Von Avenue was under the jurisdiction of VFM due to the "Through the fence agreement," both of which statements are not true.

~~v-iv.~~ Made a video of the ~~humiliating~~ experience of Mr. Washburne being handcuffed.

~~vi-v.~~ Laughed while I made the video.

~~Furthermore, I, Bill Gorin, do hereby acknowledge that:~~

i. ~~I have shared this video with..., and I have now destroyed all copies of it, and have assurances from others that they have done the same.~~

4. ~~Hospers will hold a meeting on a Saturday morning at which at least 10 volunteers and five rent paying tenants are there, and move such meeting out in front of the hangar, such that Washburne can be present, and each defendant will read the above confessions aloud. Mr. Washburne will have the right to post a link to each of such confessions the Defendants' statements on his Thirsty 13<sup>th</sup> website.~~

5. ~~Defendants agree to cooperate with Mr. Washburne and the Fort Worth Police to have All the Fort Worth Police Reports against Mr. Washburne will have been expunged.~~

**Comment [SC16]:** You're not going to get Monk to agree to this. He has been dismissed from the case. He has no motivation to do this.

**Comment [SC17]:** You have the document. You don't need it again in this.

**Comment [SC18]:** We aren't going to demand that non-parties attend a meeting. They have no authority to make this commitment.

**Comment [SC19]:** A virtual certainty that you will not get this.

6. Mr. Washburne will fully release Defendants from any and all claims or causes of action he has, or may have, against them.

7. The parties agree to mutual confidentiality and nondisparagement, except ~~to the extent that these written statements will remain public~~ as provided above.

**Comment [SC20]:** Again, you won't get this.

AGREED:

\_\_\_\_\_  
Kent D. Krabill  
Authorized Representative of  
Plaintiff Seth Washburne

\_\_\_\_\_  
Randy Turner  
Authorized Representative of  
Defendants Vintage Flying  
Museum, Inc., Hospers Family  
Trust "D", Charlyn Hospers, and  
Bill Gorin

\_\_\_\_\_  
Charlie Burgess  
Authorized Representative of  
Dana Wood



Exhibit 121: 2019 04 19 - 2.37 p.m. Krabill to Seth

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Wednesday, April 19, 2017 2:36 PM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Subject:** Jonathan's bio

Here is the link to Jonathan's bio:

<http://www.lynnllp.com/attorneys/jonathan-kelley>

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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Exhibit 122: 2-17 04 18 - Defendants Stipulation

**CAUSE NO. 153-275478-14**

**SETH WASHBURNE,  
Plaintiff,**

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§

**IN THE DISTRICT COURT OF**

vs.

**VINTAGE FLYING MUSEUM, INC.,  
HOSPERS FAMILY TRUST “D”,  
CHARLYN HOSPERS, HAL MONK,  
BILL GORIN and DANA WOOD,  
Defendants.**

**TARRANT COUNTY, TEXAS**

**153<sup>RD</sup> JUDICIAL DISTRICT**

**DEFENDANTS’ STIPULATION**

TO: Seth Washburne, by and through his attorney of record, Kent Krabill and Stephen Cole, Lynn Pinker Cox & Hurst LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201.

Defendants, Vintage Flying Museum, Hospers Family Trust “D”, Charlyn Hospers and Bill Gorin, hereby agree and stipulate that all of Von Avenue and Northwest 38<sup>th</sup> Street and the intersection of those two streets have never been owned by and are not currently owned by any defendant in this case and that at all times material to this case they were, and are currently, owned by the City of Fort Worth.

Respectfully submitted,

**LAW OFFICES OF RANDALL E. TURNER, PLLC**  
5017 El Campo Avenue  
Fort Worth, TX 76107  
Direct line: (817) 420-9690  
Fax: (817) 887-5717  
Email: [randy@randyturner.com](mailto:randy@randyturner.com)

\_\_\_\_\_  
**RANDALL E. TURNER**  
Texas State Bar No.: 20328310

**ATTORNEY FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing document has been served upon all known counsel and parties.

---

**RANDALL E. TURNER**

Exhibit 123: 2017 05 22 - MTC 4850-2407-5337

## CAUSE NO. 153-275478-14

<p><b>SETH WASHBURNE,</b></p> <p><b>Plaintiff,</b></p> <p>v.</p> <p><b>VINTAGE FLYING MUSEUM, INC.,</b>  <b>HOSPERS FAMILY TRUST "D",</b>  <b>CHARLYN HOSPERS, BILL GORIN, and</b>  <b>DANA WOOD,</b></p> <p><b>Defendants.</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>IN THE DISTRICT COURT OF</b></p> <p><b>TARRANT COUNTY, TEXAS</b></p> <p><b>153RD JUDICIAL DISTRICT</b></p>
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**PLAINTIFF'S MOTION TO COMPEL**

Plaintiff Seth Washburne files this Motion to Compel the depositions of Charlyn Hospers ("Hospers") and Hal Monk ("Monk"), and the production of documents held by Hospers and Hospers Family Trust "D" (the "Trust"). In support of this Motion, Plaintiff would show the Court as follows:

**I. INTRODUCTION**

This case concerns the malicious prosecution and false imprisonment of Plaintiff, orchestrated by a number of individuals associated with the Vintage Flying Museum, Inc. ("VFM," and together with Hospers, the Trust, Bill Gorin and Dana Wood, "Defendants"), including Hospers, Monk, and the Trust. This Motion, however, seeks to compel the production of documents and deposition testimony which Plaintiff was

coerced into dropping based on false promises made by Defendants and Defendants counsel. While in one breath Defendants promised not to contest the one of the central issues of Plaintiff's case in exchange for Plaintiff dropping its declaratory judgment claim, valuable discovery and deposition testimony, in the next breath Defendants completely reversed their position, but only after Plaintiff had followed through with his end of the deal. Defendants' sleight of hand has forced Plaintiff to seek this information and testimony – which Plaintiff was assured he would not need, based on the promises and stipulation of Defendants – on the eve of trial, notwithstanding Plaintiff's unilateral attempts to resolve these issues and mitigate the damage caused by Defendants' stunning eleventh-hour reversal. Defendants' thinly veiled bait-and-switch not only has cost Plaintiff a valuable claim, but also strategically valuable discovery and deposition testimony that it now must ask this Court to compel.

Plaintiff asks this Court to order the production of documents related to a survey commissioned by Hospers and the Trust regarding the Trust property boundaries around the time that Plaintiff was wrongfully arrested for allegedly trespassing on Trust property, and to compel the depositions of Defendant Hospers and third-party witness Hal Monk. The depositions of Hospers and Monk are relevant to what is now – once again – one of the central issues of this case, namely, Plaintiff's right as a member of the public to be present on the property upon which he was arrested. Further, the circumstances surrounding the commission of the survey are clearly relevant to Plaintiff's



claims in this action, as they will bear directly on Defendants' state of mind when they committed the acts and omissions complained of. Accordingly, Plaintiff requests that the Court compel Hospers and the Trust to produce documents concerning the survey and the circumstances surrounding its commission and compel the depositions of Hospers and Monk.

## II. BACKGROUND

While the average factual issue in a civil proceeding may be unclear, nuanced, or difficult to resolve with any kind of certainty, the central factual issue of this case may be determined with *absolute certainty*, based on land surveys detailing property boundaries at the time Plaintiff was arrested. Given the centrality of this issue, Plaintiff requested surveys of the property at issue in its Requests for Production. During Hospers' deposition on February 13, 2017, she testified that she and the Trust were in the process of having a survey completed concerning the Trust property line around the same time that Plaintiff was wrongfully arrested. See Ex. 1, Hospers Depo., at 128:22-129:12. However, Hospers' attorney would not let her answer questions about the reasons for conducting this survey, citing confidentiality concerns. *Id.* at 129:20-130:21. At the time, Randy Turner, counsel for Defendants, stated that due to confidentiality agreements in another transaction, Hospers could not testify about or produce documents related to the survey without a court order, and thus suggested that we file a motion to compel that he would not resist. In response to Plaintiff's Request for Production, Defendants produced

a survey to Plaintiff's counsel that Defendants' counsel, Randy Turner, represented as having been completed on February 16, 2016. See Ex. 2, email from Randy Turner to Stephen Cole, dated March 31, 2017 at 12:19 pm. CST. Stephen Cole, one of Plaintiff's counsel, replied to Mr. Turner's email, noting that Defendants' production did not contain documents and communications related to the survey, and asking Defendants to "produce the remaining communications related to the commission of this survey, including communications with the other surveyors." Ex. 3, email from Stephen Cole to Randy Turner, dated March 31, 2017 at 1:46pm CST. Despite this request, Defendants refused to produce documents related to the survey, presumably because of the confidentiality concerns addressed during Hospers' deposition. See Ex. 4, Defendant, Hospers Family Trust "D", Responses to Plaintiff Seth Washburne's First Request for Production, at RFP No. 41; Ex. 5, Defendant, Charlyn Hospers, Responses to Plaintiff Seth Washburne's First Request for Production, at RFP No. 41. Given the centrality and importance of this issue – and notwithstanding the fact that Plaintiff is clearly entitled to this relevant discovery – Plaintiff drafted a motion to compel the discovery of these documents and to compel the related deposition testimony of Hospers.

At the time counsel for the parties were discussing this issue, Plaintiff's petition included a declaratory judgment claim, which requested that this Court:

declare that Plaintiff was within his rights to be present on those portions of NW 38th Street and Von Avenue, in Tarrant County, Texas, where Plaintiff was present when he received a trespass warning and was subsequently arrested for

trespass. Plaintiff further seeks a declaration from the Court that, consistent with the Tarrant County property records, neither the Trust, the VFM, nor any other Defendant has a right to preclude Plaintiff from being present on any portion of NW 38th Street, including the intersection with Von Avenue, nor any portion of Von Avenue, to the full length a public right of way exists.

Ex. 6, Plaintiff's Fourth Amended Petition, dated January 1, 2017. Plaintiff also finished drafting and planned to file its motion to compel the discovery of survey-related documents and related deposition testimony of Hospers.

As discussions between counsel for Plaintiff and counsel for Defendant continued, both parties agreed that the property Plaintiff was arrested on was public property, owned by the City of Fort Worth. *See* Ex. 7, Declaration of Kent Krabill, counsel for Plaintiff; Ex. 8, Declaration of Stephen Cole, former counsel for Plaintiff; Ex. 9, email from Stephen Cole to Randy Turner, dated April 18, 2017 at 7:43am CST (noting that counsel for Defendants agreed that a revised stipulation would acknowledge "*that the full length of NW 38<sup>th</sup> Street and Von Avenue are public property*"). This sentiment was affirmed numerous times by counsel for Defendants in conversations between counsel for Plaintiff and counsel for Defendants that took place both over the phone and in person. *See* Ex. 7; Ex. 8. Given that the issue was uncontested, counsel for Defendants agreed to eliminate the issue by stipulating to the fact that the Northwest corner of 38<sup>th</sup> Street and Von Avenue was publicly owned, and that Plaintiff was on public property when he received trespass warnings and was arrested. *See* Ex. 7; Ex. 8; Ex. 10, email from Stephen Cole to

Randy Turner, dated April 13, 2017 at 2:10pm CST. Counsel for Defendants, however, conditioned this stipulation on 1) Plaintiff dismissing its declaratory action claim; 2) Plaintiff not filing its motion to compel; and 3) Plaintiff not re-deposing Hospers on survey-related issues. See Ex. 7; Ex. 8. Given that the *sine qua non* of the stipulation was an agreement by Defendants that Plaintiff was on public property when he was arrested, and given that each of Defendants' conditions related to an issue that – as represented by Defendants' counsel – was no longer in dispute, Plaintiff agreed to these terms. Defendants filed their Amended Stipulation with this Court on April 19, 2017 (the "Stipulation"), and Plaintiff – in satisfaction of its obligations under the deal – amended its petition to remove the declaratory judgment on April 21, 2017, did not file its motion to compel, and did not re-depose Hospers. See Ex. 7; Ex. 8; Ex. 11, Defendants' Amended Stipulation, dated April 19, 2017; Ex. 12, Plaintiff's Fifth Amended Petition, dated April 21, 2017.

On May 18, 2017, Plaintiff was scheduled to depose third-party Hal Monk. As the Court may recall, Monk serves both on the VFM's board of directors, as well as counsel for the VFM, the Hospers Family Trust "D", and Hospers. Only moments after the deposition began, counsel for Plaintiff – Kent Krabill – presented Monk with his first substantive question, which involved agreeing to the Stipulation that the parties had negotiated and Defendants had filed a month earlier. After reviewing the Stipulation, Monk noted that he had never seen a copy of the Stipulation before being presented with

it at the deposition. Ex. 13, Deposition of Hal Monk, May 18, 2017, at 15:19-21 (Q: “Have you seen the document I’ve placed before you before? A: This is the first time I’ve seen this.”). Mr. Monk then agreed that the City of Forth Worth owns the Northwest corner of 38<sup>th</sup> Street and Von Avenue, but then – in a dizzying feat of mental and moral gymnastics – claimed that the corner was *not* public property. See Ex. 13, Deposition of Hal Monk, May 18, 2017, at 20:10-14 (“I don’t think I – first, yes, it’s obviously owned by the City of Fort Worth. *I do not agree that it’s a public street all the way.*”) (emphasis added). Based on Monk’s surprising answer, Mr. Krabill explained that he wanted to stop the deposition:

24 Q. You know what, I'm going to stop this  
25 deposition. We're going to have to reschedule it  
1 because this is entirely inconsistent with agreements  
2 that I've had with Mr. Turner to settle the deal so I  
3 did not have to depose Ms. Hospers again, and I was  
4 going to depose you after her so that we could get  
5 this settled because this is not supposed to be an  
6 issue in the case any longer.  
7 And so your version is different than my  
8 understanding of what our agreement was, and I am not  
9 prepared to spend a ton of time on the deposition on

10 this issue, so let's go off the record.

Ex. 13, Deposition of Hal Monk, May 18, 2017, at 20:24-21:10. Mr. Krabill further explained about the discussions between counsel leading up to the Stipulation:

7 No, no. We talked about

8 the public parts of the roads. We talked on the

9 phone. We had multiple phone calls. We had a phone

10 call -- we had discussions in person at Mrs. Hospers'

11 depo.

12 We decided to set it aside because we

13 both agreed this should not be an issue. We talked

14 about that being public road. We talked about Von

15 being public road and accessible to the public.

16 We then put together the stipulation and

17 now the story is changing, so --

*Id.* at 23:7-17.

Once off the record, Mr. Krabill conferred with Defendants' counsel, Mr. Turner, privately. During these discussions, Messrs. Krabill and Turner discussed the Stipulation, and the fact that Mr. Turner had agreed that the Stipulation would reflect Defendants' belief that the Northwest corner of 38<sup>th</sup> Street and Von Avenue was public property, and that Plaintiff had the right to be present at that location when he was given

his trespass warnings and when he was arrested. Mr. Turner agreed that this was his understanding when the parties entered into the Stipulation, so the parties discussed amending the Stipulation to add language consistent with the following: “the Northwest corner of 38<sup>th</sup> Street and Von Avenue is public property, and is open to and used by the public.” Mr. Turner returned after speaking with Monk, and said that Monk would not agree to such an amendment to the Stipulation. Turner also explained that, though Monk was no longer a Defendant, Hospers (who was also present at the deposition) was aligned with Monk in his opposition to amending the Stipulation. As it became clear that Plaintiff had given up its motion to compel, its declaratory judgment claim, and its deposition of Hospers based on a Stipulation that Defendants would not honor, Mr. Krabill sought an immediate hearing with the Court. After calling the Court, Mr. Krabill was instructed by the Court Coordinator to file a motion to compel and set a hearing, at which time the foregoing issues would be discussed and resolved.

At this time, Mr. Turner suggested that Mr. Krabill should continue taking Monk’s deposition and cover the issues not related to property lines and the public or private nature of the relevant roads. However, Mr. Krabill explained that nearly every issue that warranted discussion in the Monk deposition was in some way related to or intertwined with the very issue now suddenly in dispute – indeed, the very issue that Defendants had stipulated to purportedly so it would *not* be in dispute. Mr. Krabill further explained that, if Defendants’ position was that the relevant roads were owned by Forth Worth but

were somehow not public, Plaintiff would need to compel documents related to the survey and would need to depose Hospers before Monk, because Plaintiff had noticed Hospers first and have the right to take a party deposition before a third party deposition. Then, once Plaintiff had possession of relevant documents, and after Plaintiff had taken the deposition of Hospers to determine Defendants' position with respect to rights of the public to travel on the property at issue, Monk's third party deposition would proceed.

While waiting for the Court to return his call, Mr. Krabill then proposed another solution – namely, that the parties revise the Stipulation to include added language that Plaintiff had the right to be on the Northwest corner of 38<sup>th</sup> Street and Von Avenue when he was given his trespass warning and when he was arrested. After agreeing that such a compromise should work, based on the fact that this was clearly the parties' intent with respect to the Stipulation – and that Defendants actual argument was not that the road was not accessible to the public, but that Defendants did not know the area where Mr. Washburne was warned and arrested was public property – Mr. Turner returned from discussions with Monk and Hospers and explained that his clients would not agree to the suggested language.

Defendants' refusal to honor or acknowledge the intent of the Stipulation requires that Plaintiff file this Motion and ask that the Court 1) compel Hospers and Trust to produce the documents related to the February 16, 2016 survey; 2) compel Hospers to appear for a deposition on matters related to the survey and to the rights of the public to



the property at issue; and 3) compel the deposition of Hal Monk for the remaining 5 ½ hours of deposition time unused by Plaintiff.

### III. ARGUMENT

#### 1. **Legal Standards.**

A party is entitled to discovery that is relevant to the action's claims or defenses or which appears reasonably calculated to lead to the discovery of admissible evidence. Tex. R. Civ. P. 192.3(a). Because the "ultimate purpose of discovery is to seek the truth, so that lawsuits are decided by what the true facts reveal, and not what facts are concealed," *In re Nolle*, 265 S.W.3d 487, 491 (Tex. App.—Houston [1st Dist.] 2008, no pet.), "discovery is favored, and the rules governing discovery are to be liberally construed." *Levinthal v. Kelsey-Seybold Clinic, P.A.*, 902 S.W.2d 508, 512 (Tex. App.—Houston [1st Dist.] 1994, no writ). Where appropriate, Texas courts may compel a litigant to respond to relevant discovery. *See* Tex. R. Civ. P. 215.1. Unless opposition to a motion to compel is substantially justified, a court granting a motion to compel shall also require the party whose conduct necessitated the motion to pay the moving party's reasonable expenses, including attorneys' fees, incurred in obtaining the order, unless other circumstances would make such an award unjust. *See* Tex. R. Civ. P. 215.1(d).

#### 2. **Information regarding the survey and property ownership is relevant and discoverable.**

Two of the primary matters in this case are Hospers' and the Trust's state of mind - as well as the ownership of the property at issue - when Hospers and Trust caused

Plaintiff to be arrested for trespass. For example, Plaintiff's malicious prosecution claim requires that Plaintiff show that Plaintiff was innocent of the charges against him, and that Hospers and the Trust lacked "probable cause" to initiate Plaintiff's arrest. See Ex. 12, at ¶¶ 43, 45. Likewise, Plaintiff's intentional infliction of emotional distress and civil conspiracy claims require certain culpable mental states by Hospers and the Trust, and Plaintiff's false imprisonment claim implicates the "legal justification" of Hospers' and the Trust's actions. *Id.* at ¶¶ 49, 51, 60, 64. Accordingly, evidence related to the ownership of and the public's right to use the property at issue, and of Hospers' and the Trust's mental state at the time of Plaintiff's arrest, are relevant to Plaintiff's claims.

Hospers's reasons for commissioning this survey, and the matters surrounding its commission, are relevant to Hospers' and the Trusts' state of mind. Plaintiff was first told he was allegedly trespassing in March 2013. See Ex. 12, at ¶¶ 16-18. After spending time researching the property records, Plaintiff informed Hospers (and prior-Defendant Hal Monk) in April 2013 that he had been standing on public property when he was given a warning, not on Trust property as had been represented to the police. *Id.* at ¶¶ 20-21. Hospers testified that she commissioned a survey in April or May 2014 for an undisclosed, unrelated reason. Ex. 1, at 128:22-129:9. Accordingly, when Hospers ordered the survey, she was aware that allegations of trespass had been made against Plaintiff, and that he disputed the purported extent of the Trust property lines and their ability to restrict access. Thus, the reasons that Hospers commissioned this survey, and

the circumstances surrounding its commission, are directly relevant to Hospers's and the Trust's state of mind at the time of Plaintiff's arrest.

Plaintiff was denied the right to investigate these reasons and circumstances when Hospers's attorney instructed her not to answer questions regarding the survey at her deposition, and when Hospers failed to produce responsive documents in response to requests for such information. See Ex. 1, at 129:20-130:12; Ex. 2, at RFP No. 41; Ex. 3, at RFP No. 41.<sup>1</sup>

Plaintiff is entitled to this discovery. Tex. R. Civ. P. 192.3(a) (a party is entitled to any discovery that is "relevant to the subject matter of the pending action"). Further, because Plaintiff, based on the assurances of Defendants' counsel, believed the issue of property rights to have been decided, Plaintiff is entitled to depose Hospers with respect to any issues related to rights to the property at issue, and to depose Monk for his remaining unused deposition time. Accordingly, this Court should (1) compel Hospers and/or the Trust to produce all documents related to any surveys commissioned concerning the Trust property that is at issue in this matter, (2) compel Hospers, individually and as trustee for the Trust, to sit for additional deposition testimony wherein she is required to answer questions regarding the survey and the circumstances surrounding its commission, as well as any issues related to ownership and rights of the

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<sup>1</sup> To the extent Hospers and the Trust claim they are limited from disclosing such information because of confidentiality obligations, Plaintiff is willing to enter into a mutually agreeable protective order to protect the confidentiality of such information.

property at issue, and (3) compel Monk to sit for the remaining 5 ½ hours of his deposition testimony.

**3. Plaintiff is entitled to his attorneys' fees.**

Upon granting a motion to compel, the Court must award the moving party its reasonable expenses, including attorneys' fees, unless: (1) opposition to the motion was substantially justified, or (2) other circumstances make such an award unjust. Tex. R. Civ. P. 215.1(d). Neither of these exceptions is present in this case.

*First*, Hospers and the Trust cannot assert a "substantially justified" opposition to this motion. There is no question that the survey, the circumstances surrounding its commission, and the ownership of the property are relevant to Plaintiff's claims, as shown above. Furthermore, to the extent Hospers and the Trust have any confidentiality concerns, Plaintiff has expressed that he is willing to agree to an appropriate protective order to protect such confidentiality concerns. Accordingly, there is no justifiable opposition to this Motion.

*Second*, there are no "other circumstances" that would make an award of attorneys' fees unjust. Hospers and the Trust have substantial assets and will not be burdened by an award of attorneys' fees, nor would such an award be unfair in the face of their refusal to produce such relevant discovery.

For these reasons, Plaintiff requests that the Court award Plaintiff his reasonable expenses, including attorneys' fees, incurred in obtaining the order to compel.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff Seth Washburne respectfully requests that the Court compel Defendants Charlyn Hospers and Hospers Family Trust "D" to produce documents related to any surveys commissioned concerning the Trust property that is at issue in this matter. Plaintiff further requests that Hospers, individually and as trustee of the Trust, be compelled to sit for further deposition to allow Plaintiff's counsel an opportunity to question her concerning this survey, the circumstances surrounding its commission, and the rights of the public, and Plaintiff in particular, to travel on the property at issue. Plaintiff otherwise must live in fear of being falsely arrested again and Defendants claiming another misunderstanding. Plaintiff requests that Monk, individually and as a third-party, be compelled to sit for the remaining 5 ½ hours of his deposition testimony. Plaintiff also requests that the Court award Plaintiff his reasonable expenses, including attorneys' fees, incurred in obtaining this order. Plaintiff requests such other and further relief to which he may be justly entitled.

DATED: May 19, 2017

Respectfully submitted,

/s/ Kent D. Krabill

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Jonathan D. Kelley  
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Telephone: (214) 981-3800  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-service* on May 19, 2017.

Randall E. Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
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Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

/s/ Kent D. Krabill

Kent D. Krabill

Exhibit 124: 2017 05 17 - Krabill email bring JK to deposition

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Wednesday, May 17, 2017 3:19 PM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Jonathan Kelley  
**Subject:** Monk depo

Seth,

With your permission, I would like to bring Jonathan with me to Monk's depo. I WILL NOT bill you for his time. However, I think it will be helpful for Jonathan to see the depo, hear some of the facts first hand, see Monk and Hospers, and meet you. Let me know if this is ok with you.

**KENT D. KRABILL | Partner**

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## Seth Washburne

---

**From:** Seth Washburne [sethpw1@gmail.com]  
**Sent:** Thursday, April 27, 2017 1:51 PM  
**To:** 'Stephen Cole'  
**Cc:** 'Kent Krabill'; 'Jonathan Kelley'  
**Subject:** RE: Museum Settlement

Stephen,

Regarding my terms being “shocking,” other than the amount requested, yes, those statements are all shocking, because the things they did are really bad. But they are all true, and I had to endure all of those.

As explained on the phone, one of the purposes for the suit was to get them to admit that almost everything they said publicly about me was a lie, and so their admissions have to also be public, or such admissions are of no value. For example Chuckie told all the volunteers I cornered Dana, and Dana has now said that is not true. With confidentiality I cannot tell anyone that is not true, so their statement remains out there. So non-disparagement and confidentiality are simply impossible, and always have been.

These settlement discussions started without my approval. You were trying to get the admission from them on the streets (and I am glad we got that before the settlement discussions, not as part of a settlement, which now will not occur), and you segued that into negotiating a settlement. I would have told you on day 1 that the “full non-disparagement and confidentiality” they demand are impossible, and saved all of the time spent on this. I reluctantly put a price on non-disparagement because you and Kent seemed to want me to, but never wanted to agree to that, and still don't want to agree to that, and will not.

Have you been able to look over the depositions for lines that contradict the police reports? You said your last day might be May 1, which is Monday, and as indicated before I would greatly appreciate it you would do that step before departing.

I hope these last days as a trial lawyer are good ones for you.

Thank you.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynllp.com>]  
**Sent:** Wednesday, April 26, 2017 4:56 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Jonathan Kelley  
**Subject:** Museum Settlement

Seth,

Randy Turner called me regarding the settlement term sheet. As we predicted, he and his clients were shocked to see the terms we offered. Randy informed me that, unless the parties can agree up front that any settlement will include full nondisparagement and confidentiality, then his clients are not going to give us a counter-offer.

Let us know if you are agreeable to nondisparagement and confidentiality. Otherwise, it looks like settlement discussions are over.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

Direct 214 981 3804

Cell 601 260 9052

Fax 214 981 3839

[scole@lynnllp.com](mailto:scole@lynnllp.com)

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Exhibit 125: Monk, Hal - Vol. 2 (condensed)

## Hal Monk - Vol. 2 - June 9, 2017

1 NO. 153-275478-14  
2 SETH WASHBURNE, § IN THE DISTRICT COURT  
§  
3 Plaintiff, §  
§  
4 V. §  
§ TARRANT COUNTY, TEXAS  
5 VINTAGE FLYING MUSEUM, INC., §  
HOSPERS FAMILY TRUST "D", §  
6 CHARLYN HOSPERS, HAL MONK, §  
BILL GORIN, DANA WOOD, §  
7 §  
Defendants. § 153RD JUDICIAL DISTRICT

8  
9  
10 ORAL AND VIDEOTAPED DEPOSITION OF  
11 HAL MONK  
12 JUNE 9, 2017  
13 VOLUME 2  
14

15 ORAL AND VIDEOTAPED DEPOSITION of  
16 HAL MONK, produced as a witness at the instance of the  
17 Plaintiff, and duly sworn, was taken in the  
18 above-styled and numbered cause on the 9th of June,  
19 2017, from 9:37 a.m. to 5:15 p.m., before Jennifer  
20 Quick Davenport, CSR in and for the State of Texas,  
21 reported by machine shorthand, at the offices of  
22 Veritext Legal Solutions, 300 Throckmorton Street, in  
23 the City of Fort Worth, County of Tarrant, State of  
24 Texas, pursuant to Notice and the Texas Rules of Civil  
25 Procedure.

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HAL MONK; BILL GORIN:

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## ALSO PRESENT:

Mr. Seth Washburne  
Ms. Charlyn Hospers  
Ms. Kathy Bentley, Videographer

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36	<p>1 PROCEEDINGS</p> <p>2 (Media 1.)</p> <p>3 <b>THE VIDEOGRAPHER:</b> We're now going on the</p> <p>4 record. The time is now 9:37 a.m. This begins</p> <p>5 media 1, volume 2 in the deposition of Hal Monk.</p> <p>6 Today is Friday, June 9th, 2017.</p> <p>7 If the attorneys present would please</p> <p>8 state their appearances for the record, as well as any</p> <p>9 agreements, after which the court reporter would</p> <p>10 please swear in the witness?</p> <p>11 <b>MR. TURNER:</b> I'm Randy Turner for Vintage</p> <p>12 Flying Museum, Hospers Family Trust, Charlyn Hospers,</p> <p>13 and Bill Gorin.</p> <p>14 <b>MR. KELLEY:</b> Jonathan Kelley for</p> <p>15 Plaintiff Seth Washburne.</p> <p>16 HAL MONK,</p> <p>17 having been first duly sworn, testified as follows:</p> <p>18 EXAMINATION</p> <p>19 <b>BY MR. KELLEY:</b></p> <p>20 <b>Q.</b> Good morning, Mr. Monk. How are you?</p> <p>21 <b>A.</b> Fine.</p> <p>22 <b>Q.</b> Good. Thanks for making some time to talk</p> <p>23 with me today.</p> <p>24 <b>This -- we've met before; isn't that</b></p> <p>25 <b>right?</b></p>	38	<p>1 <b>Q.</b> -- deposition?</p> <p>2 <b>A.</b> Sir?</p> <p>3 <b>Q.</b> Yes.</p> <p>4 <b>A.</b> I'm sorry, what did you --</p> <p>5 <b>Q.</b> Did you review any documents in preparation</p> <p>6 for this deposition?</p> <p>7 <b>A.</b> Not for the deposition, no.</p> <p>8 <b>Q.</b> All right. Mr. Monk, you've been an attorney</p> <p>9 for quite some time; is that right?</p> <p>10 <b>A.</b> 40 years.</p> <p>11 <b>Q.</b> You are more than familiar with the rules of</p> <p>12 depositions, then, and how depositions usually go; is</p> <p>13 that right?</p> <p>14 <b>A.</b> Yes, sir.</p> <p>15 <b>Q.</b> All right. So I don't have to tell you the</p> <p>16 ground rules.</p> <p>17 <b>But in any case, if I speak too quickly</b></p> <p>18 <b>or if I ask a question that you do not understand,</b></p> <p>19 <b>please feel free to ask me to reask the question or to</b></p> <p>20 <b>slow down as the case may be.</b></p> <p>21 <b>If you need to take a break for any</b></p> <p>22 <b>reason at all, obviously we can do that as long as</b></p> <p>23 <b>we're not in the middle of a question.</b></p> <p>24 <b>Does that sound fair?</b></p> <p>25 <b>A.</b> Fine.</p>
37	<p>1 <b>A.</b> Yes, sir.</p> <p>2 <b>Q.</b> And do you recall when that was?</p> <p>3 <b>A.</b> Three or four weeks ago.</p> <p>4 <b>Q.</b> That's right. May 18th, 2017.</p> <p>5 <b>A.</b> Right.</p> <p>6 <b>Q.</b> When we had previously started your</p> <p>7 deposition and didn't make it very far.</p> <p>8 <b>A.</b> That's correct.</p> <p>9 <b>Q.</b> That's correct, yeah.</p> <p>10 <b>I'm going to go ahead and hand you I</b></p> <p>11 <b>guess what we'll mark as Exhibit 60, I think. This is</b></p> <p>12 <b>your --</b></p> <p>13 <b>(Exhibit No. 60 marked.)</b></p> <p>14 <b>Q.</b> (By Mr. Kelley) This is a First Amended --</p> <p>15 <b>First Amended Notice of Intent to Take the Oral</b></p> <p>16 <b>Deposition of Hal Monk. That's you, right?</b></p> <p>17 <b>A.</b> Yeah.</p> <p>18 <b>Q.</b> Have you seen this document before?</p> <p>19 <b>A.</b> I probably have.</p> <p>20 <b>Q.</b> And in preparation for this deposition today,</p> <p>21 <b>did you spend any time preparing?</b></p> <p>22 <b>A.</b> No.</p> <p>23 <b>Q.</b> Did you review any documents in anticipation</p> <p>24 <b>of this --</b></p> <p>25 <b>A.</b> Sir?</p>	39	<p>1 <b>Q.</b> All right, excellent.</p> <p>2 <b>So, Mr. Monk, you served in the Army Air</b></p> <p>3 <b>Corps for a period of time; is that correct?</b></p> <p>4 <b>A.</b> Yes, sir.</p> <p>5 <b>Q.</b> And what were the years that you served in</p> <p>6 the Army Air Corps?</p> <p>7 <b>A.</b> From 1947 to 1950.</p> <p>8 <b>Q.</b> Do you recall what your serial number was?</p> <p>9 <b>A.</b> Yes. Well, when I first went in, it was RA</p> <p>10 for Regular Army, 18314511, but later when the Air</p> <p>11 Force became a separate branch of the armed services,</p> <p>12 it was AF 18314511.</p> <p>13 <b>Q.</b> Understood. How old were you when you</p> <p>14 enlisted?</p> <p>15 <b>A.</b> 15 years old.</p> <p>16 <b>Q.</b> Is that right?</p> <p>17 <b>A.</b> And three months.</p> <p>18 <b>Q.</b> Did you disclose your age at the time you</p> <p>19 enlisted?</p> <p>20 <b>A.</b> No, sir, I did not properly disclose my age</p> <p>21 when I enlisted. It never came up as an issue until I</p> <p>22 was at the end of my enlistment.</p> <p>23 <b>Q.</b> So did you tell them that you were a</p> <p>24 different age, 18, perhaps, or --</p> <p>25 <b>A.</b> Yes, sir.</p>

40	<p>1 Q. Understood. What made you want to join the</p> <p>2 Army Air Corps at 15 and a half, did you say, 15 or</p> <p>3 so?</p> <p>4 A. Well, I was a line boy at the local airport</p> <p>5 and liked airplanes a lot, and so I dropped out of</p> <p>6 ninth grade and went in.</p> <p>7 Q. Got it. So because you were 15, you had to</p> <p>8 lie about your age; is that right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did you serve overseas?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And where did you serve?</p> <p>13 A. For a little while on Guam in the Mariana</p> <p>14 Islands, and then later in Japan during the</p> <p>15 occupation.</p> <p>16 Q. And what were the dates during which you</p> <p>17 served overseas, if you can recall?</p> <p>18 A. Roughly from about August of 1948 to December</p> <p>19 of 1949.</p> <p>20 Q. And then after that period of time you were</p> <p>21 back in the States; is that right?</p> <p>22 A. Well, at the end of my enlistment, I was</p> <p>23 moved from -- transferred from Tachikawa, Japan to a</p> <p>24 base in San Antonio.</p> <p>25 Q. Got it, okay.</p>	42	<p>1 A. Sir?</p> <p>2 Q. Do you recall what your hourly rate was?</p> <p>3 A. I reduced it drastically, \$90 an hour.</p> <p>4 Q. All right. When did you first hear about</p> <p>5 Seth Washburne?</p> <p>6 A. It would have been in the spring of 2012.</p> <p>7 Q. Do you remember who it was that told you</p> <p>8 about Mr. Washburne or who you were talking to?</p> <p>9 A. Oh, I think I probably had heard something</p> <p>10 about -- well, I know I'd heard about it because I was</p> <p>11 very interested in the C-47 airplanes that were</p> <p>12 acquired since I had been a crew member on a C-47, and</p> <p>13 so I knew that.</p> <p>14 But outside of that, it was -- it was in</p> <p>15 the late spring I started hearing more about it.</p> <p>16 Q. Was Mr. Washburne a tenant at that time?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. What were you told when you first</p> <p>19 learned about Seth Washburne?</p> <p>20 A. That he was creating problems in the VFM</p> <p>21 community.</p> <p>22 Q. What problems were you told about?</p> <p>23 A. Bizarre conduct, not getting along with</p> <p>24 hangar tenants, rudeness.</p> <p>25 Q. Do you recall who told you?</p>
41	<p>1 So when we met last time, Mr. Krabill</p> <p>2 asked you some questions about some general background</p> <p>3 questions with respect to your involvement with the</p> <p>4 Vintage Flying Museum and the Hospers Family Trust</p> <p>5 "D", and I'm not sure if we addressed this, but I'd</p> <p>6 like to ask it again if it was already asked.</p> <p>7 But from 2009 to 2012, how often would</p> <p>8 you physically visit the hangar on the VFM?</p> <p>9 A. 2009 to 2012, not very often. Maybe -- well,</p> <p>10 except, except when we had, you know, litigation or</p> <p>11 some legal issues that I was working on, it was --</p> <p>12 outside of that, it was maybe once every month or two.</p> <p>13 Q. Is that true for each year between 2009 to</p> <p>14 2012? For instance, did you visit more frequently in</p> <p>15 2009 as opposed to 2012, or was it about the same,</p> <p>16 once a month or so?</p> <p>17 A. Well, let's see. In 2010, I was out there</p> <p>18 quite a bit because we had some -- well, I was out</p> <p>19 there quite a bit on taking care of necessary meetings</p> <p>20 with the clients for legal matters. I would say from</p> <p>21 2009 to 2012, actually.</p> <p>22 Q. Okay. And did you bill for your services</p> <p>23 during that time?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Do you recall what your hourly rate was?</p>	43	<p>1 A. Well, most of it came from Jimmy Hocker, who</p> <p>2 was VFM's business manager. Most of it flowed through</p> <p>3 Jimmy.</p> <p>4 But the -- and by the summertime, it got</p> <p>5 progressively -- the information I was getting got</p> <p>6 progressively of more concern.</p> <p>7 Q. Around what time was that that it became of</p> <p>8 more concern?</p> <p>9 A. By -- by May and June.</p> <p>10 Q. Of 2012?</p> <p>11 A. 2012, yes, sir.</p> <p>12 Q. Okay. Did Jimmy Hocker personally witness</p> <p>13 any of the events he was relating to you or was he</p> <p>14 explaining things that had happened secondhand?</p> <p>15 A. Some of them, yes. Others he was getting</p> <p>16 from complaints and general buzz, hangar buzz, or</p> <p>17 hangar talk.</p> <p>18 Q. How many tenants were in the hangar at the</p> <p>19 time, in 2012?</p> <p>20 A. Oh, I don't -- I don't recall a total.</p> <p>21 The -- there were probably -- probably about a half a</p> <p>22 dozen.</p> <p>23 Q. So maybe six, okay.</p> <p>24 And was there a policy in place at the</p> <p>25 time at the Vintage Flying Museum or the VFM -- I may</p>

44	<p>1 refer to either.</p> <p>2 A. Yes, sir.</p> <p>3 Q. Was there a policy that the VFM had in place</p> <p>4 at the time for reporting complaints or issues that</p> <p>5 came up? Was there a formal policy in place?</p> <p>6 A. There was not any formal policy that I knew</p> <p>7 anything about. I mean, basically, Jimmy Hocker was</p> <p>8 the business manager, and Chuckie Hospers was the</p> <p>9 managing director, so I think it went -- and they were</p> <p>10 accessible. I mean, I think it went -- I think most</p> <p>11 complaints went through them.</p> <p>12 Q. After learning of some of these complaints</p> <p>13 against Mr. Washburne, did you vet any of them to --</p> <p>14 for authenticity, did you verify any of the complaints</p> <p>15 that had -- that you had heard about?</p> <p>16 A. Well, they all originated from very credible</p> <p>17 sources. I do not remember what I did specifically to</p> <p>18 verify. I mean, there -- for example, one of the</p> <p>19 major, major reports of misconduct came from Joe</p> <p>20 Tooley.</p> <p>21 Q. Who is Joe Tooley?</p> <p>22 A. Joe Tooley was a mechanic that had worked for</p> <p>23 Mr. Washburne. Joe Tooley, Mark Reams.</p> <p>24 Q. Sorry, who is Mark Reams?</p> <p>25 A. Mark Reams had been a mechanic in the hangar</p>	46	<p>1 Q. -- is that correct? Okay.</p> <p>2 And can you describe that initial</p> <p>3 interaction you had with him? You said he came to</p> <p>4 your office; is that right?</p> <p>5 A. Well, yes, he came. He was insistent on</p> <p>6 several things. He described all of VFM's actions as</p> <p>7 because VFM was retaliating against him because</p> <p>8 Mr. Washburne had made complaints to the Fort Worth</p> <p>9 Police Department that Mr. Terry had stolen parts from</p> <p>10 him. I did do -- try to do some verification of that</p> <p>11 and found out the police department investigation</p> <p>12 found no basis for it.</p> <p>13 But, anyway, he kept on that with</p> <p>14 numerous voluminous communications to me, Ms. Hospers,</p> <p>15 and to the third director Mike Coup, making irrational</p> <p>16 demands, threats.</p> <p>17 Q. Let's talk about before -- just so I'm clear.</p> <p>18 Before his lease was terminated, you had</p> <p>19 no contact with Mr. Washburne whatsoever; is that</p> <p>20 correct?</p> <p>21 A. No direct contact, that's correct, sir.</p> <p>22 Q. Did you have any indirect contact with</p> <p>23 Mr. Washburne?</p> <p>24 A. Well, only what I've related about the things</p> <p>25 I heard and saw some -- received copies of some</p>
45	<p>1 there, and --</p> <p>2 Q. So when these complaints came in, you -- did</p> <p>3 you accept them verbatim? Did you just assume that</p> <p>4 they were telling the truth?</p> <p>5 A. Well, they were very credible sources, and</p> <p>6 they -- they -- they all, each one, corroborated the</p> <p>7 others.</p> <p>8 Q. Okay. When was the first time that you</p> <p>9 communicated with Mr. Washburne?</p> <p>10 A. It would have been in September of 2012, I</p> <p>11 believe.</p> <p>12 Q. And what was the context? Was it at the</p> <p>13 hangar or --</p> <p>14 A. That was --</p> <p>15 Q. -- somewhere else?</p> <p>16 A. No. That was when I -- that was after I had</p> <p>17 sent him a letter giving notice that VFM was</p> <p>18 exercising its contractual right to terminate the</p> <p>19 lease between him and VFM within 30 days. It was</p> <p>20 shortly after that when he came to my office, and I</p> <p>21 believe that was in October.</p> <p>22 Q. So the first time you met Mr. Washburne, you</p> <p>23 had already written a letter on behalf of the VFM</p> <p>24 terminating Mr. Washburne's lease at the hangar --</p> <p>25 A. Yes, sir.</p>	47	<p>1 statements that were very scary.</p> <p>2 Q. Are you aware that Mr. Washburne had written</p> <p>3 a book about his father and the Thirsty 13th?</p> <p>4 A. Oh, yes.</p> <p>5 Q. Had Mr. Washburne given a copy of that book</p> <p>6 to you?</p> <p>7 A. I bought a book. I bought a copy of it from</p> <p>8 him.</p> <p>9 Q. Around what time would you have purchased</p> <p>10 that copy?</p> <p>11 A. I believe that was the first time he came to</p> <p>12 the office.</p> <p>13 Q. So this is after the VFM has terminated his</p> <p>14 lease that you purchased a copy of his book; is that</p> <p>15 right?</p> <p>16 A. That's my best recollection, yes, sir.</p> <p>17 Q. Why did you purchase a copy of his book? I</p> <p>18 guess I'm trying to figure out if the relations were</p> <p>19 bad at the time and you had just terminated his lease,</p> <p>20 why, then, purchase a copy of his book and --</p> <p>21 A. Well, the book was very impressive, and most</p> <p>22 all my military service was in a troop carrier</p> <p>23 squadron, cargo aircraft, and that was what his book</p> <p>24 was all about.</p> <p>25 And the military deal, I thought fighter</p>

48	<p>1 pilots got all the glory, bomber crews got all the 2 praise, but we people in cargo didn't get much 3 recognition. The book -- the book gave us a lot of 4 recognition. You know, my attitude was, those 5 fighters and bombers, nothing good happens until we 6 haul some stuff to them. So, yes, it was a very 7 impressive book.</p> <p>8 Q. Did you express that to Mr. Washburne? 9 A. I did verbally and in writing, a letter, and 10 gave him permission to use my glowing report on his 11 book for it, yes, sir.</p> <p>12 Q. So did that influence your impression of 13 Mr. Washburne at all? Did that -- were your in-person 14 interactions with him consistent with what you had 15 heard up until that time? 16 A. Well, it was -- I guess my impressions were 17 bipolar. He had produced an impressive book. He was 18 brilliant. He was articulate. But his behavior was 19 irrational, unreasonable.</p> <p>20 Q. From what you had heard? 21 A. Sir? 22 Q. From what you had heard? 23 A. From what I heard and what I observed in my 24 interactions with him, yes. 25 Q. Okay. Did you contact Mr. Washburne at any</p>	50	<p>1 Mr. Washburne and Mr. Terry had, whereby Mr. Terry 2 would work on restoring Mr. Washburne's airplane? 3 Were you aware of that? 4 A. Oh, I wasn't aware of the specifics of the 5 arrangement, but I knew that Jim Terry had undertaken 6 the restoration project, and people employed by Jim 7 Terry were the ones that were working on it until 8 Mr. Washburne and Mr. Terry came to a parting of the 9 ways.</p> <p>10 Q. Had Mr. Terry undertaken similar projects in 11 the past? 12 A. Well, yeah, I know he was doing some of that. 13 I don't know how much you would call it a similar 14 project. He -- he had a flying C-47 or what was 15 referred to as a C-47. I think it was actually more 16 technically a C-49 because they were -- those 17 airplanes were very close together except for types of 18 engines and a few other things.</p> <p>19 But, anyway, recognized a C-47, Jim Terry 20 had one, and that he kept it maintained. 21 Q. So have you known Jim Terry for a long time, 22 then? 23 A. Well, I guess I knew who he was. The first 24 time I remember meeting him was in about it might have 25 been late 2009, probably in early 2010, when I was</p>
49	<p>1 point prior to the lease termination to verify 2 anything that had been said about him? 3 A. No, I did not. I didn't need to.</p> <p>4 Q. Did you contact Mr. Washburne after the lease 5 termination to verify anything that had been said 6 about him? 7 A. No. It was a -- it was obvious. I mean, I 8 had some written -- I had some written statements that 9 I did not share with him until after he filed suit.</p> <p>10 Q. Okay. Let's move on to Jim Terry. Who is 11 Jim Terry? 12 A. Jim Terry has been a tenant of the VFM for 13 several years, and he -- he undertook to restore a 14 C-47 airplane that Mr. Washburne bought in Puerto 15 Rico, which was reported to have been an airplane in 16 the troop carrier squadron that his father served in 17 in the South Pacific during World War II. There was 18 some indication that it was not that airplane, but 19 that a manufacturer's identification plate had been 20 attached to some airplane, but that was beside the 21 point.</p> <p>22 Anyway, he bought that airplane, and Jim 23 Terry undertook the restoration of it. And then they 24 came to a parting of the ways. 25 Q. Were you aware of the arrangement that</p>	51	<p>1 admiring his airplane sitting out there, and 2 Dr. William Hospers called -- or hollered at Jim, I 3 believe, who was walking around there somewhere, and 4 opened the door, and let me go inside it. I think 5 that's the first time I ever met Jim Terry, but I had 6 very few contacts with him until later, more in 2012.</p> <p>7 Q. How long has Jim Terry been at the hangar? 8 A. I don't know. Probably, I'm pretty -- I 9 think he was there in 2009, and he may have been there 10 before that.</p> <p>11 Q. And is he still there in the hangar? 12 A. Yes, sir.</p> <p>13 Q. Do you like Jim Terry? 14 A. Oh, well, I like him all right. He's never 15 done anything to aggravate me.</p> <p>16 Q. Does he seem like an honest person? 17 A. I don't know. I've never had any business 18 dealings with him.</p> <p>19 Q. Understood. Have you heard anything that 20 might indicate that he's not an honest individual? 21 A. Not from anyone except Mr. Washburne.</p> <p>22 Q. So that -- that segues nicely into my next -- 23 my next question. 24 So you're aware that Mr. Washburne and 25 Mr. Terry had a falling-out, so to speak and --</p>

52	<p>1 A. Yes, sir.</p> <p>2 Q. -- that Mr. Washburne had alleged that</p> <p>3 Mr. Terry had stolen some parts?</p> <p>4 A. Yes, sir.</p> <p>5 Q. When did you first learn of Mr. Washburne's</p> <p>6 allegations against Mr. Terry?</p> <p>7 A. I don't know. It was sometime in early to</p> <p>8 mid-2012. Well, actually, I think it was -- I don't</p> <p>9 know. As I recall, I saw an email that he had written</p> <p>10 complaining about it.</p> <p>11 Q. And when would that have been? Any</p> <p>12 recollection?</p> <p>13 A. I don't know exactly the month, but it was in</p> <p>14 2012.</p> <p>15 Q. So you recall receiving an email about</p> <p>16 Mr. Washburne's allegations against Mr. Terry with</p> <p>17 respect to his potentially having stolen parts.</p> <p>18 What did you do when you received an</p> <p>19 email about that?</p> <p>20 A. I waited until I ascertained that the Fort</p> <p>21 Worth Police Department had investigated at</p> <p>22 Mr. Washburne's instance and had found no basis to</p> <p>23 support it.</p> <p>24 Q. So did you yourself call the police</p> <p>25 department to inquire?</p>	54	<p>1 reading it, please.</p> <p>2 Q. Please do.</p> <p>3 A. All right, sir.</p> <p>4 Q. Okay?</p> <p>5 A. Yes.</p> <p>6 Q. So in the second paragraph -- or the second</p> <p>7 sentence, rather, you say, please be advised that</p> <p>8 while we try to work out some reasonable accommodation</p> <p>9 to your immediate problem of a short fuse on your</p> <p>10 vacate deadline, we are not at all concerned about</p> <p>11 your past or current problems with Pat Mahaffey, Jim</p> <p>12 Terry, Rogers or any other persons or parties.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. So you mentioned a vacate deadline.</p> <p>16 Am I correct in assuming that that was the deadline by</p> <p>17 which Mr. Washburne --</p> <p>18 A. Yes.</p> <p>19 Q. -- his lease was going to expire or had</p> <p>20 been --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- been terminated?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Do you recall what date that was, exactly?</p> <p>25 A. Well, it looks like it was October the 5th.</p>
53	<p>1 A. I believe I had -- I believe I had my</p> <p>2 investigator do that. I'm not sure.</p> <p>3 Q. Okay. I am going to hand you what has</p> <p>4 previously been marked as, let's see, Exhibit 32.</p> <p>5 Hang on just a second while I get it.</p> <p>6 MR. TURNER: Thank you.</p> <p>7 Q. (By Mr. Kelley) This is an email you sent on</p> <p>8 October 5th, 2012, at 2:53 p.m. to Mr. Washburne. It</p> <p>9 looks like you've copied</p> <p>10 Chuckie@vintageflyingmuseum.org. Is that Charlyn</p> <p>11 Hospers, Ms. Hospers?</p> <p>12 A. What is the question, sir?</p> <p>13 Q. I'm asking who you copied on the email here.</p> <p>14 It looks like on your email on October 5th, it looks</p> <p>15 like you copied Chuckie@vintageflyingmuseum.org?</p> <p>16 A. Uh-huh. And --</p> <p>17 Q. Is that Ms. Hospers?</p> <p>18 A. And Jimmy Hocker, the business manager.</p> <p>19 Actually, his email was in his wife's name.</p> <p>20 Q. Oh, that's Pat -- Patsy Hocker.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. As well as Michael Coup.</p> <p>23 Do you recall sending this email?</p> <p>24 A. Oh, I don't recall the specifics of it, but</p> <p>25 I -- I'm sure I did, yes, uh-huh. Let me finish</p>	55	<p>1 Q. Well, the vacate deadline I think was later</p> <p>2 in October.</p> <p>3 A. Oh, yeah, it was -- I don't recall the exact</p> <p>4 date, no, sir.</p> <p>5 Q. Okay. Toward the end of October?</p> <p>6 A. Yes.</p> <p>7 Q. So that's what you're referring to.</p> <p>8 And you go on to say that you are not at</p> <p>9 all -- we are not at all concerned about your past or</p> <p>10 current problems.</p> <p>11 Who is the we that you're referring to</p> <p>12 there?</p> <p>13 A. We?</p> <p>14 Q. Yeah.</p> <p>15 A. Being my clients.</p> <p>16 Q. And your clients being who?</p> <p>17 A. Vintage Flying Museum, the Hospers Family</p> <p>18 Trust, Chuckie Hospers, to the extent that it applied</p> <p>19 to this, Jimmy Hocker, Bill Gorin.</p> <p>20 Q. Michael Coup?</p> <p>21 A. Yeah, Mike Coup, too.</p> <p>22 Q. And I guess maybe Jimmy Hocker as well?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. So you mentioned you're not at all</p> <p>25 concerned about your past or current problems with Pat</p>

56	<p>1 Mahaffey, Jim Terry, Rogers or any other persons or 2 parties. 3 What past or current problems were you 4 referring to? 5 A. Let's see. He was -- well, let's see. We'll 6 start with Pat Mahaffey. He had sent -- bombarded 7 emails to the hangar community calling Pat a fat-ass 8 incompetent mechanic. I'm not quite sure about the 9 date, whether this was before or after he had had an 10 encounter with Pat after a tornado had hit there. 11 Jim Terry, he had railed to everybody 12 that he could catch about Jim Terry. 13 Terry Rogers was a guy that we heard that 14 he had differences with who had done some work on his 15 airplanes up in Northeast Texas. 16 And he was accusing all of them of either 17 criminal activity or torts against him, and my 18 position was that that was a matter for the law 19 enforcement agencies or the courts to decide; that we 20 refused to be mediators or judges or adjudicate any of 21 those things. That was out of our role. 22 Q. So this is sent on October 5th, 2012, so this 23 is after you have met Seth in person; is that right? 24 You said you may have met him around September or am I 25 remembering incorrectly?</p>	58	<p>1 his side of the issue at all? 2 A. No. 3 Q. Okay. With respect to Jim Terry, one of the 4 past or current problems that you may have been 5 referring to would have been Mr. Washburne's 6 allegation of stolen parts; is that right? 7 A. Inter alia, yes, sir. 8 Q. So here you're saying that you're not at all 9 concerned about -- about those problems; is that 10 right? 11 A. It was not ours to adjudicate, no. That's 12 why I said we were not concerned about it. We were 13 not a judge. We were not a law enforcement agency. 14 It was that simple. 15 Q. So your approach is more laissez-faire, then, 16 just -- 17 A. Sir? 18 Q. Your approach would be more laissez-faire, 19 hands off, just let things play out? 20 A. Take it to the court, take it to law 21 enforcement agencies, which he had done; they found no 22 basis for it. 23 Q. Okay. So when you first met Seth, I believe 24 in September of 2012 Seth recalls you saying -- 25 mentioning Jim Terry and saying something along the</p>
57	<p>1 A. Yes, this was -- yes. This was after we had 2 talked about the -- 3 Q. So when you spoke with Seth, I guess when you 4 communicated with him in any way, did you ever seek to 5 verify any of these past or current problems with Pat 6 Mahaffey, Jim Terry or Rogers or anyone else? Did you 7 ask any questions to Mr. Washburne about those 8 problems, seek his input or -- 9 A. No. His accusations were irrational. They 10 didn't make any sense. He -- by this time, he was 11 accusing Chuckie and me of lying to him about an 12 affidavit that he insisted that Dana Wood had written 13 about him, and since the filing of these lawsuits, 14 he's wasted pages and pages of paper complaining about 15 that affidavit, a whole lot of ink. Made demands, 16 accusing the world and its contents of lying to him, 17 and the affidavit never existed. 18 MR. KELLEY: Objection; nonresponsive. 19 Q. (By Mr. Kelley) With respect -- 20 A. You asked me why, sir. 21 Q. Well, I wasn't asking for your opinion with 22 respect to various issues that you just spoke about. 23 I'm wondering, with respect to the past 24 or current problems, whether you sought to validate 25 those things, whether you sought to get his opinion or</p>	59	<p>1 lines of between you and me, the museum would like to 2 get rid of Jim Terry. 3 Do you recall saying that? 4 A. I did not say that. I think I probably said 5 something along the line of -- well, I was getting 6 reports on a little bit of problems with Jim, about he 7 wouldn't have his people clean up the oil up off the 8 floors and things like that. 9 And I probably flippantly said something 10 along the line of Jim Terry is not our favorite 11 tenant, but at least we got rid of his partner. 12 That's closer to what I said to Mr. Washburne then. 13 Q. Who are you referring to when you say his 14 partner? 15 A. Former tenant Brett Hobson. And then 16 Mr. Washburne told me that -- I think he said Brett 17 was a friend of his or I think he said maybe he had 18 had dinner with Brett or something, Brett. 19 Q. Okay. So I'm going to refer to an incident 20 that took place in the hangar and I'm going to call it 21 the baby bottle incident. Are you familiar with 22 something that might colloquially be called the baby 23 bottle incident? 24 A. Had my -- had my ears worn out about the baby 25 bottle incident.</p>

60	<p>1 Q. So you're familiar.</p> <p>2 How did you first --</p> <p>3 A. That's an understatement.</p> <p>4 Q. -- hear about the baby bottle incident?</p> <p>5 A. I believe the first I heard of it was a</p> <p>6 report from Jim Terry that -- about it.</p> <p>7 Q. And what did Jim Terry say?</p> <p>8 A. I'm sorry if I said Jim Terry. I meant Jimmy</p> <p>9 Hocker. I'm sorry.</p> <p>10 Q. That's okay. What did Jimmy Hocker say?</p> <p>11 A. Okay. I go -- the best I recall, Jimmy</p> <p>12 called me and said something along the line of Seth</p> <p>13 has really gone nuts this time, and then he related</p> <p>14 what he had heard about the incident.</p> <p>15 Q. And what had he heard about the incident?</p> <p>16 A. That Seth had come to work one morning and</p> <p>17 found a baby bottle sitting on his desk at the --</p> <p>18 under the wing of his airplane, and that Seth had</p> <p>19 immediately concluded that Jim Terry had put that baby</p> <p>20 bottle on his desk for -- I never did understand what</p> <p>21 he concluded the purpose was, and that Seth went wild,</p> <p>22 started screaming, hollering, cursing, screaming</p> <p>23 motherfucker and other words -- other obscene words,</p> <p>24 and that Dana Wood came out away from the ice chest on</p> <p>25 the other side of the hangar and he started chasing</p>	62	<p>1 A. Yeah, that I had received, yes, sir.</p> <p>2 Q. The individual that -- in the story you just</p> <p>3 related was, quote, chased or whatever you said, was</p> <p>4 that -- was her name Dana; is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. What's her last name again?</p> <p>7 A. Wood.</p> <p>8 Q. Dana Wood, right. Did you speak at all with</p> <p>9 Dana Wood, with Ms. Wood?</p> <p>10 A. Not at that time. Not until a few months</p> <p>11 ago, I never had any direct contact with her. But the</p> <p>12 report I got was there was no physical contact between</p> <p>13 Mr. Washburne and her, but she was backing up from him</p> <p>14 and stumbled over an ice chest.</p> <p>15 Q. Is that what she told you or did she tell</p> <p>16 that to someone else?</p> <p>17 A. I don't remember whether Joe Tooley mentioned</p> <p>18 that or not, but that's essentially what Dana said,</p> <p>19 but that was just two months ago. I had not talked to</p> <p>20 her about the incident until sometime after her</p> <p>21 deposition in the other case.</p> <p>22 Q. Is it your understanding that that has</p> <p>23 been -- that has been her consistent story the whole</p> <p>24 time, that she -- she had fallen over a chest or</p> <p>25 something? Is that -- has her story remained the same</p>
61	<p>1 her and screaming at her, threatening -- screaming at</p> <p>2 her.</p> <p>3 She went in an office, and he threw the</p> <p>4 baby bottle somewhere at the door, and I believe also</p> <p>5 that the stories I got was that Mr. Washburne in his</p> <p>6 rage had kicked a big huge metal rolling tool cabinet</p> <p>7 and broke a toe, pounded on the door. That's the best</p> <p>8 I recall of what I heard.</p> <p>9 Q. And what would the date have been that you --</p> <p>10 that you found out?</p> <p>11 A. That would have been June -- I think probably</p> <p>12 June the 12th of 2012.</p> <p>13 Q. So this is before VFM had made the</p> <p>14 determination that Mr. Washburne's lease should be</p> <p>15 terminated; is that right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. So this sounds pretty serious. Did you --</p> <p>18 did you do anything to investigate or to look into</p> <p>19 these allegations that Jimmy Hocker had told you</p> <p>20 about?</p> <p>21 A. Shortly I received a copy of a written</p> <p>22 statement from Joe Tooley, who had been an employee of</p> <p>23 Seth's that witnessed it.</p> <p>24 Q. Is that the only corroborating evidence that</p> <p>25 you received or that you sought?</p>	63	<p>1 since the incident?</p> <p>2 A. Well, he was coming after her trying to</p> <p>3 get -- banging on the door, trying to get in the</p> <p>4 office door, something along that line, yes, sir.</p> <p>5 Q. So she never alleged that he pushed her or</p> <p>6 touched her in any way?</p> <p>7 A. No, no. I never heard that, no, sir.</p> <p>8 Q. So this occurred on VFM property, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. In the hangar, I think?</p> <p>11 A. Yes, sir.</p> <p>12 Q. So as lawyer for the VFM, did you feel it was</p> <p>13 incumbent upon yourself to investigate or to do</p> <p>14 anything at that point when you first learned of this?</p> <p>15 A. Well, sir, what I did feel was -- also, we</p> <p>16 had a report that Mr. Washburne had said that he</p> <p>17 wanted -- had a -- I believe this was in Joe Tooley's</p> <p>18 statement and maybe somebody else related it, too;</p> <p>19 that Mr. Washburne had said that he wanted to kill Jim</p> <p>20 Terry so bad he couldn't stand it.</p> <p>21 Another report we had was that he</p> <p>22 expressed a wish to drive his car when Jim Terry --</p> <p>23 catch Jim Terry coming out of a metal storage</p> <p>24 container outside and crash his car into Jim Terry.</p> <p>25 That, coupled with a written statement</p>

64	<p>1 that I saw from a woman who said she had had breakfast 2 with Seth where he said he wanted to kill himself 3 because his employees were not doing restoration work 4 on his airplane to his satisfaction.</p> <p>5 When -- from those things, I formed a 6 conclusion that my clients, since they had -- since 7 they had knowledge and awareness of this, needed to 8 get Mr. Washburne off of the premises in the interest 9 of safety to hangar tenants and visitors and also to 10 avoid liability that might come from any lawsuits.</p> <p>11 And that was when -- that was when Mike 12 Coup and I finally convinced Chuckie to go ahead and 13 terminate the lease.</p> <p>14 Q. Okay. Well, we'll come to that, the lease 15 termination, in just a minute.</p> <p>16 But, Mr. Monk, are you familiar with the 17 term informational asymmetry? Do you know what an 18 informational asymmetry is?</p> <p>19 A. Well, I don't say I'm familiar with the term. 20 I mean, I understand the two words.</p> <p>21 Q. Sure. Can you describe your understanding? 22 How would you explain what an informational asymmetry 23 is?</p> <p>24 A. I don't know. I don't know. I never 25 thought -- I never thought much about it.</p>	66	<p>1 A. Well, as I mentioned before, the information 2 that I was getting came from very credible sources, 3 people that I had confidence in their integrity, their 4 truthfulness. And from Mr. Washburne's reactions, 5 behavior, threats and irrationality, I wouldn't have 6 believed much of anything he told me anyway, so I 7 didn't bother to check with him.</p> <p>8 Q. Okay. So you're saying you were aware that 9 there was imperfect information in the sense that 10 there was at least one side of the story that was not 11 being heard or sought, and that you were okay with 12 that because you had such a low opinion of 13 Mr. Washburne that you didn't think it was worth 14 investigating; is that fair?</p> <p>15 MR. TURNER: Objection; form.</p> <p>16 A. I wouldn't say I had -- I would not say I had 17 a low opinion of him. I concluded that he had some 18 serious mental illness.</p> <p>19 Q. (By Mr. Kelley) But that's without actually 20 having spoken with him; is that right?</p> <p>21 A. Huh?</p> <p>22 Q. That's without having spoken with him, at 23 that time, anyway?</p> <p>24 A. Well, his conduct, and his actions, his 25 emails, his threats, his wishes, his threatens -- his</p>
65	<p>1 Q. Is it safe to say or can we agree that a fair 2 definition might be when -- when all information is 3 not known to both parties or, in other words, when one 4 party holds information that another party does not? 5 Is that a fair definition?</p> <p>6 A. I'm not --</p> <p>7 MR. TURNER: Excuse me, Jon. Are you 8 asking him if you just gave the proper definition of 9 that phrase?</p> <p>10 MR. KELLEY: I'm asking if we could agree 11 on a definition. That's all. I'm not saying it's the 12 Merriam-Webster hallmark definition of the phrase.</p> <p>13 Q. (By Mr. Kelley) If it's consistent with your 14 understanding.</p> <p>15 A. I don't understand what you're after.</p> <p>16 Q. Okay.</p> <p>17 A. Can you put it in English, Texas terms?</p> <p>18 Q. Let me just -- let me just move to the next 19 step, which is did it occur to you that in this 20 instance there may be some informational asymmetries 21 when not -- if you're only receiving information from 22 one side and not another, perhaps there is information 23 that is wholly unknown and undiscovered? Did that 24 occur to you after this, after this event or any of 25 the number of events that you've described?</p>	67	<p>1 threats like to -- at the annual hangar dance at 2 Vintage Flying Museum, which is the annual big 3 fundraising affair, he said in writing and in numerous 4 statements that he wanted to chop up his airplane to 5 disrupt the -- while the band played, to disrupt the 6 2012 hangar dance.</p> <p>7 Q. Were you copied on those emails?</p> <p>8 A. Well, I was copied on a Jimmy Hocker email 9 who -- who wrote an email -- who wrote a memo, email 10 to Chuckie after their first -- after my first visit 11 with Mr. Washburne, and Jimmy Hocker's email, of which 12 you have a copy in your file, pointed out some of 13 that, which it was perfectly on target with my 14 recollection of the discussion with Mr. Washburne that 15 day.</p> <p>16 Q. Okay. I'm going to hand you what has 17 previously been marked as Exhibit Number 27.</p> <p>18 A. Okay.</p> <p>19 Q. Are you familiar with this document?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And where have you seen it before?</p> <p>22 A. Oh, I have seen it a bunch of times, or --</p> <p>23 Q. When did you first see it?</p> <p>24 A. -- or maybe a similar version.</p> <p>25 Q. Who -- who drafted this document?</p>



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<p>1 A. I think that maybe Chuckie Hoppers drafted 2 the bulk of it and then Bill Gorin made some 3 additions, is my recollection.</p> <p>4 Q. And what was the purpose of this document 5 being drafted?</p> <p>6 A. I think it -- I think it came about when Seth 7 was first trying to sue VFM for terminating his lease, 8 and I felt that we needed to get about documenting, 9 although we did not have to have any reasons, the 10 terms of the lease was that either party, either 11 Mr. -- either the -- Mr. Washburne or the VFM had a 12 right to terminate it with a 30 days' notice for good 13 reason, bad reason or no reason at all.</p> <p>14 However, since Mr. Washburne had 15 contacted Doug Hudman to try to persuade him to sue 16 VFM about it, and we had other indications that 17 Mr. Washburne was sue happy, that he had said he liked 18 to sue people, liked to watch them squirm, so I was 19 trying -- I think that I had requested Chuckie to give 20 me a list of things that would maybe be supportive of 21 our basis if we had -- of our basis for termination if 22 it came to having to.</p> <p>23 Q. But you said that you were allowed under the 24 lease to terminate for no cause, right, for 25 anything -- for any reason, rather; is that correct?</p>	<p>1 A. Well, why? Because we knew that 2 Mr. Washburne was sue happy. We knew that he had 3 unlimited money. We knew that he was filled with hate 4 and rage, and whether or not he had any basis for it 5 or not, he was in a position to file a lawsuit against 6 us for harassment.</p> <p>7 Q. (By Mr. Kelley) How would this help those 8 claims?</p> <p>9 A. To justify, if necessary, the termination of 10 his lease.</p> <p>11 Q. Despite the fact that the lease itself does 12 not require justification?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. Let's turn to page 2 of that document 15 while you have it in front of you there. Number 18, 16 you'll see it says, Hal consulted another attorney due 17 to his continued slanderous remarks to see if there 18 was a way we could get him to stop.</p> <p>19 I assume that refers to you, Mr. Monk?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And did you consult with another attorney?</p> <p>22 A. I surely did.</p> <p>23 Q. And why did you do that?</p> <p>24 A. Because that attorney had just got a 25 \$5 million verdict in a defamation case in which the</p>
69	71
<p>1 A. Yeah. Well, either party had an absolute 2 right under the terms of the lease agreement, of which 3 you have copies in the file.</p> <p>4 Q. To terminate for any reason?</p> <p>5 A. Huh?</p> <p>6 Q. To terminate for any reason given notice?</p> <p>7 A. Or no reason.</p> <p>8 Q. Or no reason?</p> <p>9 A. Just if we wanted to.</p> <p>10 Q. So why develop this list if you didn't need 11 it?</p> <p>12 A. Sir?</p> <p>13 Q. Well, you just testified that you had 14 instructed someone to draft this --</p> <p>15 A. I think I requested Chuckie do this.</p> <p>16 Q. That you requested that Chuckie draft this. 17 But then -- but then you noted that -- well, first you 18 said you had instructed her to draft this because you 19 thought perhaps you would need it to justify 20 terminating the lease. But the lease itself doesn't 21 require any justification --</p> <p>22 A. That's correct.</p> <p>23 Q. -- for termination, right? So why draft the 24 list?</p> <p>25 MR. TURNER: Objection; form.</p>	<p>1 defendant in that case was using the Internet to trash 2 out the plaintiff, just like Mr. Washburne was using 3 the Internet and his website and everything else to 4 trash out VFM and everybody connected with it. He was 5 calling us liars over and over again, Chuckie lied to 6 him, I lied to him. Everybody involved in VFM lied to 7 him was his bit. He did a post.</p> <p>8 When you came up Vintage Flying Museum 9 search on the Internet, it also had a picture of VFM 10 but its name was changed to Villian Flying Museum, so 11 that's why we consulted a lawyer who had experience in 12 that area.</p> <p>13 Q. And did you hire a lawyer to help out, 14 whoever you spoke with?</p> <p>15 A. We didn't hire him for that then, because we 16 realized -- I mean, what we wanted to do was not get 17 any damages. We wanted to shut him up. And so the 18 lawyer and I discussed about how hard it is to get --</p> <p>19 MR. TURNER: Well, hold on a second. I'm 20 going to object to any communications between me and 21 Mr. Monk --</p> <p>22 A. He was the lawyer.</p> <p>23 MR. TURNER: -- concerning that.</p> <p>24 Q. (By Mr. Kelley) Of course, yes. And I'm not 25 at all asking you to divulge any privileged</p>

72	<p>1 communications.</p> <p>2 A. Okay.</p> <p>3 Q. Okay. All right. Let's go to another</p> <p>4 document here.</p> <p>5 I'm handing you what will be marked as</p> <p>6 Exhibit 61.</p> <p>7 (Exhibit No. 61 marked.)</p> <p>8 Q. (By Mr. Kelley) Mr. Monk, this is an email</p> <p>9 from you; is that right?</p> <p>10 A. Yes, it is.</p> <p>11 Q. It looks like it was sent on October 18th,</p> <p>12 2012, at 2:28 p.m. to --</p> <p>13 A. Yes.</p> <p>14 Q. -- Chuckie@vintageflyingmuseum.org. That's</p> <p>15 Chuckie Hospers, right?</p> <p>16 A. Yeah, and to Jimmy Hocker, and a copy to</p> <p>17 Frank Elliott and Kay Elliott.</p> <p>18 Q. Right. Mike Coup is on there as well as --</p> <p>19 A. Yes, sir.</p> <p>20 Q. -- Jimmy Hocker?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So if you turn to the second page of that</p> <p>23 document, toward the bottom of your email here.</p> <p>24 A. Okay. What part of it?</p> <p>25 Q. The part that begins -- I'll just read it --</p>	74	<p>1 Q. Okay. And you note that unfortunately --</p> <p>2 quote, unfortunately, we are stuck with such</p> <p>3 obligations. The illiterate, awkward signed</p> <p>4 statements from Joe Tooley give us practically zero</p> <p>5 basis for seeking a temporary restraining order.</p> <p>6 What were you referring to there?</p> <p>7 A. I probably should have said the unreadable</p> <p>8 rather than illiterate; no, it's not illiterate. What</p> <p>9 I was referring to was, I mean as I mentioned before,</p> <p>10 until I start getting into attorney-client</p> <p>11 communication, but anyhow, we didn't -- all we wanted</p> <p>12 was to stop Seth from his defamation, so we -- we just</p> <p>13 knew that it was very difficult to get a temporary</p> <p>14 restraining order because of the constitutional deal.</p> <p>15 Okay.</p> <p>16 Q. So did Joe Tooley give -- provide some kind</p> <p>17 of a written statement that -- in support of --</p> <p>18 A. Yes.</p> <p>19 Q. -- what you hoped would be a temporary</p> <p>20 restraining order?</p> <p>21 A. Yes. There were -- you have copies in the</p> <p>22 file, your file. They have been provided to you.</p> <p>23 Q. Okay. So you then go on to say, with a</p> <p>24 private investigator with video camera in hand and</p> <p>25 off-duty Fort Worth police officer in attendance, I</p>
73	<p>1 it is pathetic to find that a person with so much</p> <p>2 education, intellect and talent as Seth seems to be</p> <p>3 suffering from such mental/personality disorders.</p> <p>4 Do you recall writing that?</p> <p>5 A. Probably so. Yeah, obviously, I did.</p> <p>6 Q. Do you still believe that is true?</p> <p>7 A. Huh?</p> <p>8 Q. Do you still believe that it's pathetic to</p> <p>9 find a person with so much education suffering from</p> <p>10 such mental/personality disorders?</p> <p>11 A. Yes, sir.</p> <p>12 Q. So you believe that Mr. Washburne suffers</p> <p>13 from a mental or a personality disorder of some kind?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Let's read farther down. You note</p> <p>16 that we must rely on contract rights. This is the --</p> <p>17 I guess the third paragraph here -- to terminate lease</p> <p>18 agreement for good reason, bad reason or no reason at</p> <p>19 all. We have to recognize all other contract rights -</p> <p>20 like Seth's access rights, which remain in effect</p> <p>21 until 10-27?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So that's October 27. Is that the date that</p> <p>24 his lease was set to terminate?</p> <p>25 A. Yes, sir.</p>	75	<p>1 believe we can keep things well in hand at the hangar</p> <p>2 dance.</p> <p>3 Did you arrange to have this private</p> <p>4 investigator and on-duty police officer in attendance</p> <p>5 at the hangar dance?</p> <p>6 A. Yes, sir, I did.</p> <p>7 Q. And whose idea was that?</p> <p>8 A. It was mostly mine because Seth was</p> <p>9 threatening to create a disturbance in the hangar,</p> <p>10 chopping up an airplane. One time he threatened to</p> <p>11 burn it.</p> <p>12 Q. Had he communicated that directly to you?</p> <p>13 A. Yes.</p> <p>14 Q. How did he communicate that to you?</p> <p>15 A. One time in my office. Another time in</p> <p>16 talking to him at the hangar.</p> <p>17 Q. Do you recall what those dates might have</p> <p>18 been, around what time?</p> <p>19 A. No, sir. I've slept since then.</p> <p>20 Q. And he specifically said to you that he was</p> <p>21 threatening to do those things that you mentioned?</p> <p>22 A. Yeah, while the band played. And --</p> <p>23 Q. You go on to note, you say, I am more</p> <p>24 concerned about the ensuing week until lease</p> <p>25 termination.</p>

76	<p>1 What were you worried about</p> <p>2 specifically?</p> <p>3 A. Mr. Washburne carrying out his threat to do</p> <p>4 damage to his airplane, assaulting more people in the</p> <p>5 hangar.</p> <p>6 Q. I'm sorry, when you say more people, who are</p> <p>7 you referring to that he had --</p> <p>8 A. Joe Tooley.</p> <p>9 Q. He had assaulted Joe Tooley?</p> <p>10 A. Yes. Dana Wood.</p> <p>11 Q. Hold on. He had assaulted Dana Wood and Joe</p> <p>12 Tooley. When did that happen?</p> <p>13 A. Before this.</p> <p>14 Q. Do you recall what the date was that that --</p> <p>15 or dates?</p> <p>16 A. No.</p> <p>17 Q. Were you there for those incidents or --</p> <p>18 A. No.</p> <p>19 Q. And how were they assaulted?</p> <p>20 A. Read Joe Tooley's statement, which you have,</p> <p>21 we provided a copy in the file, and you have Dana</p> <p>22 Wood's deposition. I don't remember the details.</p> <p>23 Q. Did Seth ever return to the hangar after --</p> <p>24 A. I'm sorry, where are you?</p> <p>25 Q. Well, I'm asking -- I'm just asking a</p>	78	<p>1 A. Not inside the hangar, no.</p> <p>2 Q. So he did not enter the hangar after his</p> <p>3 lease was terminated?</p> <p>4 A. Not that we know of. He tried to a bunch of</p> <p>5 times.</p> <p>6 Q. When did he try to?</p> <p>7 A. Tried to on March 2nd of 2013.</p> <p>8 Q. What did he do? Did he run at the hangar and</p> <p>9 try to get inside?</p> <p>10 A. He stated his intention of going into the</p> <p>11 hangar. That's what he wanted to do and argued with</p> <p>12 the police officer about whether he could or not.</p> <p>13 Q. Okay. But Seth never returned -- he never</p> <p>14 entered the hangar after the time his lease was</p> <p>15 terminated in 2012?</p> <p>16 A. I don't know.</p> <p>17 Q. You just said he never did.</p> <p>18 A. I said I don't know whether he did or not.</p> <p>19 Q. I believe you said that he did not enter the</p> <p>20 hangar after his lease was terminated?</p> <p>21 MR. TURNER: Objection; form.</p> <p>22 A. Not that we know of.</p> <p>23 Q. (By Mr. Kelley) Okay. Fair enough. Okay.</p> <p>24 You then -- the last point of this email, you say, as</p> <p>25 of Sunday, 10-28, I believe -- sorry. I'll let you</p>
77	<p>1 question. I'm not reading off the document.</p> <p>2 A. Okay. Okay.</p> <p>3 Q. Did Seth ever return to the hangar after his</p> <p>4 lease was terminated?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And when was that?</p> <p>7 A. I don't know the date.</p> <p>8 Q. Generally, roughly?</p> <p>9 A. It was in 2014.</p> <p>10 Q. Okay. Do you --</p> <p>11 A. He attempted --</p> <p>12 Q. -- have a month in mind?</p> <p>13 A. He attempted to several other times, but the</p> <p>14 only time we're sure that he did was then.</p> <p>15 Q. Okay. So sometime in 2014.</p> <p>16 Do you recall what the season would have</p> <p>17 been? Was it fall, spring, summer that he tried to</p> <p>18 come back, or that he -- you are saying he did come</p> <p>19 back to the hangar.</p> <p>20 A. No.</p> <p>21 Q. And did he enter the hangar? What did he do?</p> <p>22 A. He came running up to it and took a</p> <p>23 photograph.</p> <p>24 Q. He took a photograph. Was he actually in the</p> <p>25 hangar itself, then?</p>	79	<p>1 get that, second page -- I believe we'll be on pretty</p> <p>2 safe ground of giving him written notice of no entry</p> <p>3 to VFM premises --</p> <p>4 A. Wait a minute. Wait a minute. Just a</p> <p>5 minute.</p> <p>6 Q. Oh, sorry. Right toward the bottom there.</p> <p>7 A. Okay. The last deal, I see it now.</p> <p>8 Q. The last paragraph. You say, we'll be on</p> <p>9 safe ground giving him written notice of no entry to</p> <p>10 VFM premises, with threat of criminal trespass charges</p> <p>11 if he violates that.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Did you provide him with written notice,</p> <p>14 Mr. Washburne, with written notice, as you indicate</p> <p>15 here, that he was not to enter the VFM premises?</p> <p>16 A. No.</p> <p>17 Q. And after --</p> <p>18 A. I told him verbally, but I did not give him</p> <p>19 written notice, no.</p> <p>20 Q. And after the date of this email -- or,</p> <p>21 rather, after the date of the lease termination,</p> <p>22 October 27th, did Mr. Washburne enter VFM property?</p> <p>23 A. VFM never owned a square foot of real estate.</p> <p>24 Q. Let me rephrase. Hopers Family Trust "D"</p> <p>25 owns the property; is that correct?</p>

80	<p>1 A. Yes.</p> <p>2 Q. And VFM leases the property from the Trust?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So let me ask that in a -- let me ask</p> <p>5 that question in a different way.</p> <p>6 After the termination of Mr. Washburne's</p> <p>7 lease, did Mr. Washburne ever enter upon any property</p> <p>8 owned by the Hospers Family Trust "D"?</p> <p>9 A. I don't know.</p> <p>10 Q. Why not?</p> <p>11 A. I was not there 24/7 for three years.</p> <p>12 Q. Okay. But you cannot -- you cannot verify</p> <p>13 that Mr. Washburne ever entered any property owned by</p> <p>14 the trust after the date of his lease termination,</p> <p>15 correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay.</p> <p>18 A. I don't have -- I have no proof of it.</p> <p>19 Q. Okay. Let's move on to the lease</p> <p>20 termination. We've kind of talked a little bit about</p> <p>21 this.</p> <p>22 But who was it that decided to terminate</p> <p>23 Mr. Washburne's lease at the hangar?</p> <p>24 A. Based on the information that was coming to</p> <p>25 me, I was worried about liability. I was worried</p>	82	<p>1 terminate a tenant's lease at the hangar or is that</p> <p>2 less -- is it less formal than I'm suggesting?</p> <p>3 A. Traditionally, it's not -- it's not been that</p> <p>4 formal. The board, as such, has functioned pretty pro</p> <p>5 forma, meet once a year, sometimes twice a year.</p> <p>6 Essentially, during Dr. Hospers' lifetime</p> <p>7 as well as -- since his -- Dr. Hospers then and</p> <p>8 Mrs. Hospers since, they were managing directors, and</p> <p>9 they pretty well run everything. The board as such</p> <p>10 does not get involved in operational decisions or this</p> <p>11 sort of thing although she -- Doc did. She does</p> <p>12 better about keeping Mr. Coup and I sort of informed</p> <p>13 about what's going on in VFM.</p> <p>14 Q. So had the board terminated a tenant's lease</p> <p>15 before? I mean, had this ever happened before?</p> <p>16 A. No, not to my knowledge. Not -- I don't</p> <p>17 recall it ever happening when I was -- well, yeah, we</p> <p>18 had -- I guess, yes, we have terminated some leases.</p> <p>19 I just really don't remember.</p> <p>20 I know that we found it necessary to file</p> <p>21 liens and evict people and this sort of thing, but I</p> <p>22 don't know whether we...</p> <p>23 Q. That's okay. It's not a memory test,</p> <p>24 obviously, so I understand.</p> <p>25 A. I'm not sure.</p>
81	<p>1 about people getting hurt. I talked to Mike Coup</p> <p>2 about it, and we gave him some information about the</p> <p>3 complaints we were getting. Mike and I suggested it</p> <p>4 then.</p> <p>5 Mrs. Hospers hoped to work it out so she</p> <p>6 resisted at that time.</p> <p>7 Q. And when you say that time, what is the time</p> <p>8 frame?</p> <p>9 A. This was -- this was probably -- probably</p> <p>10 April, May of 2012.</p> <p>11 Q. Okay.</p> <p>12 A. But after the -- after some other problems</p> <p>13 came up in June, she agreed that it -- she agreed that</p> <p>14 it had to be done. And since it was a legal -- had</p> <p>15 legal aspects to it, I drew the black bean on giving</p> <p>16 the notice and handling the termination.</p> <p>17 Q. So there was a board -- the VFM has a board</p> <p>18 of directors, right?</p> <p>19 A. Yes.</p> <p>20 Q. And who are the members of that board -- or</p> <p>21 who were they when the lease was terminated?</p> <p>22 A. Mrs. Hospers is the managing director, and</p> <p>23 Mike Coup and I are sort of side judges. We're also</p> <p>24 directors.</p> <p>25 Q. And does it take a certain number of votes to</p>	83	<p>1 Q. Okay. I am going to pass you what has</p> <p>2 already been marked Exhibit Number 17.</p> <p>3 A. Okay.</p> <p>4 Q. This is another email from you. Do you</p> <p>5 recall sending this email, Mr. Monk?</p> <p>6 A. Yes, sir.</p> <p>7 Q. It's dated October 1st, 2012, 4:10 p.m.,</p> <p>8 subject is dispute resolution. It looks like you sent</p> <p>9 this to Mr. Washburne as well as Chuckie, Jimmy Hocker</p> <p>10 and Mike Coup?</p> <p>11 A. Yes, sir.</p> <p>12 Q. All right. So I'll read from the second</p> <p>13 sentence here. You say, Mike Coup may be in town for</p> <p>14 the VFM hangar dance October 20th, but if so, I have</p> <p>15 no idea what his schedule may be. I'm amenable to</p> <p>16 meeting with you if you wish.</p> <p>17 Had Mr. Washburne requested a meeting</p> <p>18 with you? Is that what you're referring to or --</p> <p>19 A. Oh, yeah, after his -- I believe this was,</p> <p>20 oh, about in the middle of his 10 voluminous</p> <p>21 communications to the directors, then he was demanding</p> <p>22 a face-to-face meeting, and -- when I wrote this.</p> <p>23 Q. And you had met him previously, right? At</p> <p>24 this point I think you said you met him in September</p> <p>25 face to face, so you had already met him once?</p>

84	<p>1 A. Yes, yes -- well, I don't know whether it 2 was -- yes, it was late September when I first met 3 him. 4 Q. Okay. So this is not long after. 5 Did you meet with Mr. Washburne after 6 writing this email? You mentioned that you would be 7 amenable to meeting with him? 8 A. Oh, I met with him several times. 9 Q. You go on to say, you incorrectly assumed 10 that Chuckie called all the shots in this decision. 11 I assume you're referring to the decision 12 to terminate Mr. Washburne's lease; is that right? 13 That's the next paragraph down. 14 A. That's correct. 15 Q. Okay. You go on to say, in May or June, Mike 16 and I were of the opinion that the lease should be 17 terminated but Chuckie declined then. 18 So this goes to what you were saying 19 earlier; is that right, about how -- 20 A. Yeah. 21 Q. -- in May or June Mike Coup, right? 22 A. Yeah. 23 Q. And yourself had gone to Chuckie, and you 24 explained you thought it was time to terminate 25 Mr. Washburne's lease?</p>	86	<p>1 disruption in the hangar, complaints of Mr. Washburne 2 jerking out people -- hangar workers' radios because 3 he said music bothered him. 4 All of those things together was what 5 persuaded her to go ahead and take the steps to 6 terminate the lease. 7 Q. So was this Chuckie's decision, then, or was 8 it a board decision? Did all three of you make it? 9 A. Oh, actually all three of us agreed that it 10 needed to be done. 11 Q. Was there a vote taken? 12 A. Oh, I don't -- I don't know whether there was 13 any formal vote or not. I know we had a telephone 14 conversation with Mike Coup about it, and it didn't 15 need a vote. The managing director had authority to 16 do it. 17 Q. Okay. I'm going to hand you a document that 18 will be marked as Exhibit 62. 19 (Exhibit No. 62 marked.) 20 Q. (By Mr. Kelley) This is another email from 21 you. This is dated Tuesday, October 23rd, 2012, so 22 this is a few days before Mr. Washburne's lease was 23 set to be terminated, right? 24 A. Uh-huh. 25 Q. Okay. And you sent it to Mr. Washburne,</p>
85	<p>1 A. Yes. And this is -- this is probably more 2 accurate than anything I might have mumbled based on 3 five years of memory, so, yes. 4 Q. Understood. How long had you been of the 5 opinion that Mr. Washburne's lease should be 6 terminated? 7 A. When I wrote this? 8 Q. Yeah. Yes, so -- 9 A. When I wrote this? Well, from -- you can 10 count the time from May or June until October the 1st. 11 Q. I see. So May or June would have been the 12 time frame that you first -- 13 A. When I first thought that in the interest of 14 safety and -- it was preferable to terminate his 15 lease, yes. 16 Q. And did Mike Coup agree with your assessment 17 in May or June of 2012? 18 A. Yes, sir. 19 Q. So what -- what changed such that in 20 September of 2012, Chuckie agreed, I assume, to 21 terminate the lease, and the lease was terminated? 22 A. It was the trashing out of Pat Mahaffey, and 23 bomb -- bombastic emails trashing out Pat Mahaffey who 24 was a very well-respected member of the VFM community. 25 It was the baby bottle incident. Another incident of</p>	87	<p>1 Jimmy Hocker, Jim Reynolds and Bill Gorin? 2 A. Uh-huh. 3 Q. In the first sentence -- well, first, let me 4 ask you, do you recall writing this email? 5 A. Yes. 6 Q. Okay. So in the first sentence you say -- 7 A. I don't recall -- I don't recall the details 8 of it. I have to read it. 9 Q. Sure. Understandably. 10 You say, sorry to intrude on your 11 instruction to not burden you with anything else this 12 week and apologize -- apologies, I assume that is 13 supposed to say -- for using the word tirade. Yes, it 14 was much too strong. 15 What were you referring to in that 16 sentence specifically with regard to the word tirade? 17 A. I was referring to -- I don't know. I was 18 trying to pour a little oil on troubled water with 19 Seth by apologizing. I don't know whether it's more 20 accurate to call it a tirade or a hissy fit or 21 whatever, but anyway -- 22 Q. When did you use the word tirade? What are 23 you referring to there? 24 A. I had -- I had used it in an email before, 25 and Seth took exception to it. In fact, I believe he</p>

88	<p>1 gave me Webster's dictionary's definition of a tirade 2 in an email from him.</p> <p>3 Q. That's two references so far today to 4 Merriam-Webster's dictionary, all right. We're doing 5 pretty well.</p> <p>6 Later on, in the last paragraph of your 7 email, second sentence, you note, you say, although 8 numerous factors (many of which I'm not at liberty 9 to --</p> <p>10 A. Where?</p> <p>11 Q. Oh, sorry. This is the last paragraph, 12 second sentence, begins with although.</p> <p>13 A. Oh, okay.</p> <p>14 Q. You say, although numerous factors (many of 15 which I'm not at liberty to disclose due to 16 confidentiality concerns) preclude the feasibility of 17 doing so at our facility. Such does not diminish in 18 any respect the admiration which we have for you -- or 19 for what you have done, and it goes on.</p> <p>20 What factors, what numerous factors, were 21 you referring to there?</p> <p>22 A. Well, the things that we've already 23 discussed, his conduct in the hangar and his attitude, 24 and I'm still not -- not at liberty to disclose one of 25 the big concerns.</p>	90	<p>1 Q. That was my next question.</p> <p>2 Do you have any reason to dispute the 3 accuracy of the various statements you make in this 4 document?</p> <p>5 A. All right, sir. I have had a chance to look 6 it over. I didn't spot anything there that I think 7 needs changing.</p> <p>8 Q. Okay. Great. So in paragraph 1 on the first 9 page, you say, quote, I have personal knowledge of the 10 facts stated in this affidavit and each are true and 11 correct.</p> <p>12 Any reason to dispute the accuracy of 13 that statement?</p> <p>14 A. I don't think so.</p> <p>15 Q. Okay. Great. Let's go to the next page.</p> <p>16 Number paragraph 6, you note, quote, in 17 mid-2012, Mr. Washburne's extreme episodes of 18 misconduct committed at Vintage Flying Museum (VFM) 19 necessitated termination of his space leases there.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yeah, I think so.</p> <p>22 Q. Okay. What extreme episodes of misconduct 23 were you referring to? I think we've talked about a 24 couple of them. But if you wouldn't mind just 25 mentioning what -- what you were referring to in that</p>
89	<p>1 Q. So in your interactions with Mr. Washburne, 2 whether they were via email or in person, do you feel 3 from time to time that you -- do you regret at all the 4 tone that you may have used or the words you may have 5 said in those communications?</p> <p>6 A. Maybe a few, yes. I can't think 7 specifically, but some of his expressions of rage and 8 threats caused me to be less circumspect than I 9 normally would have been.</p> <p>10 Q. Okay. I'm now going to hand you what has 11 already been marked as Exhibit Number 1, all the way 12 back to Number 1.</p> <p>13 A. Okay.</p> <p>14 Q. This is titled the -- a document titled the 15 Affidavit of Hal Monk. This is your affidavit, right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you recall whether you helped construct 18 this affidavit, whether you helped to draft it or had 19 input on the affidavit itself?</p> <p>20 A. Yeah.</p> <p>21 Q. Do you have any reason to dispute the 22 authenticity of this document?</p> <p>23 A. Well, I've not read it now, so I don't know. 24 I'd have to read it before I -- I might have changed 25 my mind about something, but --</p>	91	<p>1 statement.</p> <p>2 A. Oh, I think the ones that we've already 3 talked about.</p> <p>4 Q. Can you list a couple of those off the top of 5 your head?</p> <p>6 A. Threats to disrupt the hangar dance, chop up 7 his airplane, threatened to burn -- burn his airplane, 8 and his statements of the written reports I had seen.</p> <p>9 Q. So the incidents that you're referring to you 10 did not witness firsthand; is that safe to say?</p> <p>11 A. No, that's not right. I did -- I did --</p> <p>12 Q. Which incidents did you witness firsthand?</p> <p>13 A. Well, I actually -- I think -- okay. You -- 14 you have a point. I did not personally -- I did not 15 personally see this. I did not see some of these 16 episodes, but I -- but those extreme episodes 17 committed at the VFM hangar did necessitate 18 termination of his space lease there.</p> <p>19 Q. Okay. So your statement that extreme 20 episodes of misconduct committed at the VFM 21 necessitated termination is not based on firsthand 22 knowledge?</p> <p>23 A. I did not witness -- I had not witnessed any 24 of them before the lease termination, that is correct.</p> <p>25 Q. But you're comfortable attesting to the fact</p>

92	<p>1 that --</p> <p>2 A. They happened.</p> <p>3 Q. -- you have personal knowledge of the facts?</p> <p>4 A. Yeah.</p> <p>5 Q. Okay. Let's move to paragraph 8. You say,</p> <p>6 quote, my clients and I wished him no harm; just</p> <p>7 wanted to see him cease his Internet cyberterrorism</p> <p>8 against us and to stay away. Because his actions,</p> <p>9 threats, demands and accusations were so irrational,</p> <p>10 we concluded that he suffered from some severe mental</p> <p>11 illness.</p> <p>12 I'll stop there for now.</p> <p>13 You mentioned cyberterrorism. How do you</p> <p>14 define cyberterrorism? What do you mean by</p> <p>15 cyberterrorism, I should say?</p> <p>16 A. I have a little problem with that. My</p> <p>17 paralegal, I keep asking my paralegal why do we need</p> <p>18 these blasted computers in the office when we have</p> <p>19 three perfectly good IBM Selectrics.</p> <p>20 So I -- my definition of it is the</p> <p>21 horrendous emails that he was writing, posts on his</p> <p>22 website that he was writing, trying to tell the world</p> <p>23 in his contents that VFM was a corrupt place; that</p> <p>24 Chuckie and I had lied to him; that we had condoned</p> <p>25 the theft of parts of his -- theft of his parts;</p>	94	<p>1 A. Yes, it was.</p> <p>2 Q. Yes, it is?</p> <p>3 A. Oh, I -- I don't know about his -- I have not</p> <p>4 had any contact with him in recent years, but --</p> <p>5 Q. Do you have any evidence of or any proof that</p> <p>6 Mr. Washburne suffers or suffered from some kind of a</p> <p>7 mental illness?</p> <p>8 A. Only what we talked about already, his</p> <p>9 conduct.</p> <p>10 Q. The conduct that you had not witnessed</p> <p>11 firsthand?</p> <p>12 A. His actions, his threats, but, you know.</p> <p>13 Q. Okay. Let's move on to subsection (a). So</p> <p>14 8 (a), I think this is what we had referred to earlier</p> <p>15 as the baby bottle incident, right? You say, upon</p> <p>16 finding a baby bottle on his desk in the VFM hangar,</p> <p>17 he went into a rage, chased a female employee of</p> <p>18 another tenant across the hangar floor screaming</p> <p>19 motherfucker and other obscenities, until she fell</p> <p>20 backwards while trying to get away from him. He was</p> <p>21 so out of control that he broke a toe when he kicked a</p> <p>22 huge metal toolbox.</p> <p>23 Did I read that correctly?</p> <p>24 A. You read it correctly, yes.</p> <p>25 Q. All right. Do you stand by that statement</p>
93	<p>1 that -- things along that line. That's what I define</p> <p>2 as cyberterrorism.</p> <p>3 Q. Had you seen any examples -- any of the</p> <p>4 examples that you just mentioned, did you see them</p> <p>5 personally?</p> <p>6 A. Did I see them?</p> <p>7 Q. Yes.</p> <p>8 A. Oodles of them, yes, I think most all of</p> <p>9 which are -- have been produced for your file.</p> <p>10 Q. That's correct. So you conclude that -- you</p> <p>11 state that we concluded that he suffered, he being</p> <p>12 Mr. Washburne, from some severe mental illness. I</p> <p>13 think we referenced this earlier.</p> <p>14 At the time am I correct in saying that</p> <p>15 you believe that he suffered from mental illness of</p> <p>16 some kind?</p> <p>17 A. I'm sorry, was there a question pending?</p> <p>18 Q. I wondered if maybe it had been lost.</p> <p>19 Yes, my question was, your conclusion,</p> <p>20 according to paragraph 8 here, is that Mr. Washburne</p> <p>21 suffered from some severe mental illness, end quote.</p> <p>22 Is that -- was that your opinion at the</p> <p>23 time, that you --</p> <p>24 A. Yes, it was.</p> <p>25 Q. And is it your opinion now?</p>	95	<p>1 there? Is that still accurate?</p> <p>2 A. Yes, in the context, it is.</p> <p>3 Q. Is this statement made based on your</p> <p>4 firsthand knowledge of what happened?</p> <p>5 A. No, no. As the paragraph says, such</p> <p>6 conclusions were drawn from reports of events such as</p> <p>7 subparagraph (a).</p> <p>8 Q. Okay. And when you say reports of events,</p> <p>9 what was the report that you received? Who did you</p> <p>10 receive it from with respect to the baby bottle</p> <p>11 incident?</p> <p>12 A. I received initially from Jimmy Hocker. I</p> <p>13 mean, it was a statement from Joe Tooley. Also, a</p> <p>14 verbal -- verbal verifications from other people, Mark</p> <p>15 Reams.</p> <p>16 Q. Did you talk to Dana Wood about this event?</p> <p>17 A. No, not -- not -- I did not talk to her until</p> <p>18 a few months ago.</p> <p>19 Q. So it didn't seem important to verify with</p> <p>20 Dana the -- the events that you're alleging took place</p> <p>21 here? I guess I'm confused because she seems like</p> <p>22 the -- kind of the central character when it comes to</p> <p>23 this event, but you didn't -- you didn't speak with</p> <p>24 her until a couple of months ago; is that right?</p> <p>25 A. Oh, I had met her one time that I remember.</p>

96	<p>1 I was in the car with Mrs. Hospers, and Dana was 2 parked nearby, and we just sort of said hello. 3 And then I think I also talked to her one 4 time at a hangar dance before -- before March of 2014. 5 I think I -- 6 Q. But you never sought to verify what happened 7 with her, right, with respect to the baby bottle 8 incident? 9 A. No. 10 Q. Are you aware that Dana has -- that Dana no 11 longer claims that she was chased across the hangar 12 floor by Mr. Washburne while he screamed obscenities? 13 MR. TURNER: Objection; form. 14 A. I'm not seeing where you're reading that, 15 sir. 16 Q. (By Mr. Kelley) I'm not reading. I'm just 17 asking a -- that's a question. 18 I'm asking if you're aware that Dana 19 Wood, in her deposition, has stated that she was not 20 chased by Mr. Washburne across the floor while he was 21 shouting obscenities? 22 A. I heard it chased. Maybe followed was 23 better. I don't -- a closer term. I don't know. But 24 my information was that she was walking fast to get 25 away from Seth.</p>	98	<p>1 A. I have no reason to doubt that it was 2 accurate. 3 Q. Okay. So what -- what is this signed 4 statement that you refer to from Mr. Washburne where 5 he -- 6 A. Oh, the statement from a lady named Sandy 7 somebody, a Mid Eastern name. And the statement 8 related that she had had breakfast with Mr. Washburne 9 at a Waffle House or IHOP, some sort of waffle place, 10 had breakfast with him, and he expressed that he said 11 he wanted to kill himself because nothing was going 12 right in the hangar, his employees were not working on 13 his airplane to his satisfaction, something along that 14 line. 15 Q. And who is this that gave you the report? 16 A. Sandy somebody. Oh, she didn't give me the 17 report. The report came to me I think through Jimmy 18 Hocker. 19 Q. Or, sorry, the signed statement, I guess? 20 A. It was -- yeah. 21 Q. So Jimmy Hocker gave you a signed statement? 22 A. I'm pretty sure it was Jimmy. I can't be 23 absolutely positive, but I got a copy of it. 24 Q. So this was a signed statement from Jimmy 25 Hocker saying that he had heard from someone named</p>
97	<p>1 Q. Okay. But your -- you're attesting to the 2 fact that you have personal knowledge of the facts, 3 and I know it -- you're saying it's drawn from a 4 report, but you didn't seek to verify the accuracy of 5 that report before making this affidavit; is that 6 right? 7 A. I didn't think it was necessary. 8 Q. Okay. Because if you had, you would have 9 known that this statement that she was chased across 10 the floor while he was screaming obscenities was not 11 true? 12 MR. TURNER: Objection; form. 13 A. There's no dispute that Mr. Washburne was 14 screaming obscenities as I recall. I don't know, 15 chased, followed, walked fast, that may -- chased was 16 what I heard. I don't know how accurate it was, but 17 that was the report I had. 18 Q. (By Mr. Kelley) Okay. Let's move to 19 subsection (b) here. You say, I received a signed 20 statement that he -- I'm assuming you mean 21 Mr. Washburne -- expressed a wish to commit suicide 22 because his employees weren't doing work on his 23 airplane to his satisfaction. 24 Do you still believe that statement to be 25 accurate?</p>	99	<p>1 Sandy? 2 A. No. 3 Q. Sorry. Correct me. 4 A. This was -- I received a copy of a signed 5 statement by Sandy -- I can't pronounce her last 6 name -- attesting to those facts that I've just 7 related. And I received that statement I believe from 8 Jimmy Hocker, but I can't be absolutely sure -- 9 Q. Okay. 10 A. -- he gave it to me. 11 Q. Okay. Let's -- let's go to subsection (c). 12 A VFM volunteer reported him saying that he wanted to 13 kill another hangar tenant so bad, I can't stand it. 14 A. Yes, sir. 15 Q. Who is the volunteer that reported that 16 Mr. Washburne said that? 17 A. Joe Tooley, and there were others. There was 18 another one or two who I don't remember, but I 19 remember specifically it was a statement from Joe 20 Tooley. 21 Q. So was it a signed statement, or did Joe 22 Tooley just tell you? 23 A. It was a handwritten statement. That's 24 why -- that's why I referred to it on something you 25 asked me about a while ago, as illegible. It should</p>



100	<p>1 have been illegible. It came out illiterate.</p> <p>2 Q. Right. So when did he give you that</p> <p>3 statement?</p> <p>4 A. I don't recall when I got it.</p> <p>5 Q. And did you follow up with others who may</p> <p>6 have heard this alleged statement on behalf of -- that</p> <p>7 Mr. Washburne may have made?</p> <p>8 A. I believe Mark Reams verified it.</p> <p>9 Q. Mark Reams verified it. What do you mean</p> <p>10 verified?</p> <p>11 A. That it happened.</p> <p>12 Q. It was consistent with his recollection?</p> <p>13 A. Yeah. Might have been Jason Schultz told me</p> <p>14 that. I can't be sure. This was conversations I had</p> <p>15 had back in -- long ago.</p> <p>16 Q. Okay. But at no point did you seek to verify</p> <p>17 the accuracy of that information with Mr. Washburne;</p> <p>18 is that right?</p> <p>19 A. Yes. I verified it with the people I just</p> <p>20 told you about.</p> <p>21 Q. With Mr. Washburne himself, I mean?</p> <p>22 A. Well, no.</p> <p>23 Q. Okay. So you took their word for it?</p> <p>24 A. I didn't want to send him in to another one</p> <p>25 of his rages.</p>	102	<p>1 Q. On each of those three occasions, at least?</p> <p>2 A. According to my -- according to information I</p> <p>3 had, as well as the emails from him and the records</p> <p>4 and this sort of thing.</p> <p>5 Q. And did he enter VFM, or property occupied by</p> <p>6 VFM?</p> <p>7 A. Yes, sir.</p> <p>8 Q. On what occasions?</p> <p>9 A. Well, on one occasion, when he ran up and</p> <p>10 took a photograph of the front door. And on Sunday,</p> <p>11 April the 27th.</p> <p>12 Q. And where was he in that instance?</p> <p>13 A. Huh?</p> <p>14 Q. Where was he on VFM -- or property occupied</p> <p>15 by VFM on the 27th?</p> <p>16 A. Where he was arrested.</p> <p>17 Q. And where was that?</p> <p>18 A. That was on Sunday.</p> <p>19 Q. I mean physically speaking. What was the</p> <p>20 location?</p> <p>21 A. Huh?</p> <p>22 Q. What was the location that he was arrested</p> <p>23 on?</p> <p>24 A. Where he was arrested.</p> <p>25 Q. Which location?</p>
101	<p>1 Q. Okay. Last paragraph I'll ask you about in</p> <p>2 this -- in this document, paragraph 9, you say, after</p> <p>3 the lease was terminated, Mr. Washburne demanded to go</p> <p>4 onto the property occupied by VFM.</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. What are you referring to there? When</p> <p>8 was this demand, the alleged demand made, by</p> <p>9 Mr. Washburne?</p> <p>10 A. Through emails, of which you have copies.</p> <p>11 Demands were made to me. Demands were made to Dana</p> <p>12 Wood. By the way here, you said the -- they were made</p> <p>13 to police officers on March 2nd, 2013; on April the</p> <p>14 26th, 2014; April the 28th of 2014.</p> <p>15 Q. The 27th, maybe. Does that sound right?</p> <p>16 A. I'm -- yeah, 27th maybe, yeah.</p> <p>17 Q. Those statements --</p> <p>18 A. We're talking about the Saturday and Sunday.</p> <p>19 Q. Correct, right. Those statements you're</p> <p>20 saying Mr. Washburne made were related to his desire</p> <p>21 to enter onto property occupied by the VFM, correct?</p> <p>22 A. It was not a desire. It was an intent and</p> <p>23 a -- it was intent and demands.</p> <p>24 Q. He demanded to enter VFM property?</p> <p>25 A. Yes, sir.</p>	103	<p>1 A. On Von Street.</p> <p>2 Q. Von Street, okay.</p> <p>3 A. What sometimes is called Von Street.</p> <p>4 Q. So Von Street is property occupied by the</p> <p>5 VFM?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is it owned by the VFM, Von Street?</p> <p>8 A. No. As I told you, VFM never owned a square</p> <p>9 foot of real estate. It was property that was</p> <p>10 occupied by VFM.</p> <p>11 Q. I don't want to get into this too much now,</p> <p>12 but let me ask one more question about this.</p> <p>13 How do you define occupied; that the</p> <p>14 building itself was on or --</p> <p>15 A. No.</p> <p>16 Q. Okay. How do you define occupied, then?</p> <p>17 A. The use that was made of the property.</p> <p>18 Q. Okay. So you're saying that the VFM made use</p> <p>19 of the property that Mr. Washburne then entered upon</p> <p>20 on those three dates you gave?</p> <p>21 A. Had been ever since the creation of Vintage</p> <p>22 Flying Museum in 1990, and prior to that time, it had</p> <p>23 been for 40 years by prior owners and occupants of the</p> <p>24 hangars.</p> <p>25 Q. Okay. Okay. We'll move to that topic in a</p>

104	<p>1 little bit so I'll leave it there.</p> <p>2 But you go on here, and you say,</p> <p>3 paragraph 9, you say, in response, as VFM's attorney,</p> <p>4 I instructed him several times to stay away from the</p> <p>5 property.</p> <p>6 Can you recall when you did instruct him</p> <p>7 as you indicate, and how was it, by email, was it --</p> <p>8 did you call him?</p> <p>9 A. No. It was face to face, and in emails, upon</p> <p>10 his departure.</p> <p>11 Q. How many times?</p> <p>12 A. And I think after that -- I don't know,</p> <p>13 several times. He -- you have a lot of his pleadings</p> <p>14 which tell me -- or which -- in which he says when I</p> <p>15 told him to stay the hell away, that exact quote.</p> <p>16 Q. Okay. You go on to say, quote, I never asked</p> <p>17 or encouraged any police officer or law enforcement</p> <p>18 agency to issue a criminal trespass warning to</p> <p>19 Mr. Washburne or to arrest him and never asked or</p> <p>20 suggested that anyone else do so.</p> <p>21 Is that an accurate statement?</p> <p>22 A. Yes.</p> <p>23 Q. You're referring -- when you say criminal</p> <p>24 trespass, you're referring to the events of April 26,</p> <p>25 2014; is that right?</p>	106	<p>1 you said that you may have had a conversation wherein</p> <p>2 you said if Mr. Washburne comes around, let the police</p> <p>3 handle it; is that right?</p> <p>4 MR. TURNER: You know, at this point, I'm</p> <p>5 going to instruct the witness not to answer. We're</p> <p>6 getting into attorney-client privileged</p> <p>7 communications, and so I'm not going to let him answer</p> <p>8 questions about what he told his clients to do if</p> <p>9 Washburne came around.</p> <p>10 MR. KELLEY: Because he was acting in his</p> <p>11 capacity at the time as attorney for --</p> <p>12 MR. TURNER: Yes.</p> <p>13 Q. (By Mr. Kelley) So, Mr. Monk, you intend not</p> <p>14 to answer the questions?</p> <p>15 A. I decline to answer that question because of</p> <p>16 his -- yeah.</p> <p>17 MR. KELLEY: Let's go off the record if</p> <p>18 you're okay with that.</p> <p>19 MR. TURNER: Sure.</p> <p>20 THE VIDEOGRAPHER: We're now going off</p> <p>21 the record. The time is now 11:23.</p> <p>22 (Recess 11:23-11:39.)</p> <p>23 THE VIDEOGRAPHER: We're now going back</p> <p>24 on the record. The time is now 11:39.</p> <p>25 MR. KELLEY: All right. Back on the</p>
105	<p>1 A. April 26, April 27.</p> <p>2 Q. Okay.</p> <p>3 A. March 2nd, 2013. I never --</p> <p>4 Q. And then the arrest being April 27th?</p> <p>5 A. Huh?</p> <p>6 Q. April 27, 2014 is the arrest you're referring</p> <p>7 to?</p> <p>8 A. Okay. That was -- no, I never -- I never had</p> <p>9 any contact with any police officers that day.</p> <p>10 Q. And you never suggested that anyone call or</p> <p>11 contact the police to have Mr. Washburne arrested?</p> <p>12 A. No. As close as I got to that was saying if</p> <p>13 you have any more problems, let the police handle it.</p> <p>14 Q. Okay. We'll get into that.</p> <p>15 A. I may have said something along that line.</p> <p>16 But, no, this is accurate the way it's written.</p> <p>17 Q. Okay. One sentence down from there, skip a</p> <p>18 sentence, you say, I never discussed with any person</p> <p>19 the idea or possibility of Mr. Washburne being</p> <p>20 arrested.</p> <p>21 Is that an accurate statement?</p> <p>22 A. Yes, I think it is.</p> <p>23 Q. Okay. So based on what you said just a</p> <p>24 minute ago, that the closest you may have come to</p> <p>25 telling someone over the phone to involve the police,</p>	107	<p>1 record.</p> <p>2 Q. (By Mr. Kelley) So, Mr. Monk, you yourself</p> <p>3 drafted and sent a lease termination letter; is that</p> <p>4 correct, the one that you sent to Mr. Washburne?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you remember when roughly you sent</p> <p>7 that letter?</p> <p>8 A. September 2012. I think maybe the 19th, but</p> <p>9 I'm not sure.</p> <p>10 Q. I think you're right about that, September</p> <p>11 19th, 2012.</p> <p>12 Did Mr. Washburne contact you after</p> <p>13 receiving your lease termination letter?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And how did he contact you? Was it by phone</p> <p>16 or email?</p> <p>17 A. I think initially he -- the best I recall is</p> <p>18 that he contacted Jimmy Hocker and Jimmy arranged for</p> <p>19 him to come meet in my office.</p> <p>20 THE VIDEOGRAPHER: Excuse me just a</p> <p>21 second. Can I help him with his microphone? It's</p> <p>22 underneath your collar. Get it back out here. Thank</p> <p>23 you.</p> <p>24 THE WITNESS: Okay. Is this more gooder</p> <p>25 now?</p>

108	<p>1 THE VIDEOGRAPHER: Yes, sir.</p> <p>2 THE WITNESS: Good.</p> <p>3 A. The best I recall, he had talked to Jimmy</p> <p>4 Hocker and set up a time to come to my office.</p> <p>5 Q. (By Mr. Kelley) And was that the first time</p> <p>6 that you had met Mr. Washburne in person?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When he came to your office?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And what was the substance of your</p> <p>11 interaction when he visited you in your office?</p> <p>12 A. Oh, he was talking about unreasonable, needed</p> <p>13 a lot more time than that, and --</p> <p>14 Q. How much time was he -- was he given?</p> <p>15 A. Huh?</p> <p>16 Q. How much time was he given to vacate the</p> <p>17 space?</p> <p>18 A. Well, initially, we gave him the requisite 30</p> <p>19 days' notice. Then we talked about extensions after</p> <p>20 that. But we're talking about that time.</p> <p>21 Q. Okay. So he had 30 days, I take it upon</p> <p>22 receipt of the letter or the date of the letter,</p> <p>23 September 19th, to vacate, and then he came and he</p> <p>24 spoke to you shortly thereafter, after he received the</p> <p>25 letter?</p>	110	<p>1 him more time.</p> <p>2 Q. Okay. Explain that. So I guess tell me --</p> <p>3 tell me what you spoke about in that meeting as it</p> <p>4 relates to a potential extension to the time he was</p> <p>5 allowed to remain.</p> <p>6 A. Okay. If we didn't agree to extend his</p> <p>7 lease, he was going to chop up his airplane during the</p> <p>8 hangar dance.</p> <p>9 Q. And he told you that --</p> <p>10 A. Yes, sir.</p> <p>11 Q. -- in person?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you said that -- that there was another</p> <p>14 person there in the meeting with you. What was his</p> <p>15 name again?</p> <p>16 A. Jim Hocker.</p> <p>17 Q. Jim Hocker. So Jim Hocker also heard?</p> <p>18 A. And then Jim Hocker also described that in a</p> <p>19 memo to Chuckie, which has been provided to you, which</p> <p>20 has been produced.</p> <p>21 Q. So did you propose a plan to let</p> <p>22 Mr. Washburne stay beyond the October 27, 2012</p> <p>23 termination date?</p> <p>24 A. We talked about some possibilities of that,</p> <p>25 yes.</p>
109	<p>1 A. Yes.</p> <p>2 Q. Is that right? Okay.</p> <p>3 And during that conversation, you spoke</p> <p>4 about -- you're saying he -- he indicated that he</p> <p>5 needed longer than 30 days; is that right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What else did you talk about?</p> <p>8 A. Talked about his book. Talked about --</p> <p>9 talked a little bit about some question about the</p> <p>10 amount of space he was occupying, the lease, this sort</p> <p>11 of thing, and mostly he and Jimmy Hocker discussed</p> <p>12 that.</p> <p>13 Q. So Jimmy Hocker was there as well?</p> <p>14 A. Oh, yes.</p> <p>15 Q. The three of you were there?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Were any decisions made with respect</p> <p>18 to the length of time that Mr. Washburne would</p> <p>19 still -- would remain in the hangar at that meeting?</p> <p>20 A. Oh, I think that we may have touched on some</p> <p>21 of it at that meeting. I'm not sure.</p> <p>22 Q. But you did discuss -- you did discuss</p> <p>23 Mr. Washburne's desire to stay longer than the 30 days</p> <p>24 provided for in the letter?</p> <p>25 A. And what he was going to do if we didn't give</p>	111	<p>1 Q. But did you propose something?</p> <p>2 A. We talked about it, the possibility. We went</p> <p>3 to mediation about it.</p> <p>4 Q. And what was the proposal? What was on the</p> <p>5 table?</p> <p>6 A. What was on the table. We wanted -- we</p> <p>7 wanted him -- we proposed reciprocal nondisparagement</p> <p>8 agreement, and we would -- and him in effect staying</p> <p>9 outside of the hangar and staying at other -- moving</p> <p>10 his airplanes outside.</p> <p>11 Q. Was that a proposal that you had made as</p> <p>12 attorney for the Trust and for VFM?</p> <p>13 A. Yes, sir. Actually, the Trust was not</p> <p>14 involved.</p> <p>15 Q. The VFM?</p> <p>16 A. I mean, you know his agreement -- his lease</p> <p>17 was with VFM, the sublease.</p> <p>18 Q. So what -- what exactly were the terms -- I</p> <p>19 think you've touched on them, but what were the terms</p> <p>20 of that proposal that you submitted for consideration?</p> <p>21 A. Him agreeing to stay out of the hangar and</p> <p>22 keep his airplanes outside where most of them were --</p> <p>23 or some of them or parts thereof already were, and not</p> <p>24 create any more disturbances in the hangar.</p> <p>25 Q. Are those all the terms that you can</p>

112	<p>1 remember?</p> <p>2 A. That was generally it, yes.</p> <p>3 Q. Okay. Would you dispute Seth's recollection,</p> <p>4 Mr. Washburne's recollection, that the terms also</p> <p>5 included -- well, in total, they included the fact</p> <p>6 that he would move all of his parts into one</p> <p>7 contiguous area outside on the south lawn? Does that</p> <p>8 sound right?</p> <p>9 A. And as I recall, we also agreed to make a</p> <p>10 trailer available or suggested we could make a trailer</p> <p>11 available for that.</p> <p>12 Q. And is another term of the proposal -- do you</p> <p>13 dispute Seth's recollection that another term was that</p> <p>14 you would have one power outlet but absolutely no</p> <p>15 access to the washroom or to enter the buildings for</p> <p>16 any reason?</p> <p>17 A. I believe that was -- I believe that was part</p> <p>18 of the proposal.</p> <p>19 Q. And as a third part of the proposal, do you</p> <p>20 dispute Mr. Washburne's recollection that -- I think</p> <p>21 you mentioned this already -- there was a nondisparage</p> <p>22 that would require what nondisparages typically</p> <p>23 require; that nothing -- nothing negative or bad or</p> <p>24 disparaging is said about the other party?</p> <p>25 A. That would be reciprocal, yes.</p>	114	<p>1 A. No.</p> <p>2 Q. Okay. You were aware at the time that</p> <p>3 Mr. Washburne's fuselage and three wings had been</p> <p>4 mostly destroyed by a windstorm in August; is that</p> <p>5 right?</p> <p>6 A. Yes, sir, I was aware of that. His -- his</p> <p>7 fuselage and other components of the airplane were</p> <p>8 stored on the south lot, actually, on Von Street.</p> <p>9 Q. And they had been destroyed by a storm?</p> <p>10 A. Yes, uh-huh.</p> <p>11 Q. Was that typical procedure, to move parts out</p> <p>12 onto Von Street like that and leave them exposed to</p> <p>13 the elements?</p> <p>14 A. Well, he -- he decided to do that because of</p> <p>15 the lesser cost.</p> <p>16 Q. Who decided to do that?</p> <p>17 A. Okay. The price for storage space was based</p> <p>18 on the square footage of the airplane, the length</p> <p>19 times wingspan, and best I recall, it was 20 cents a</p> <p>20 square foot inside the hangar, but only a dime per</p> <p>21 square foot when it was parked out in the open area.</p> <p>22 Q. Okay. So you were aware that the fuselage</p> <p>23 and three wings had been destroyed more or less while</p> <p>24 sitting out on Von Street that year, I guess in August</p> <p>25 of that year?</p>
113	<p>1 Q. Reciprocal, nondisparage. Okay.</p> <p>2 Can you describe how -- how those terms</p> <p>3 were developed? Were they developed by you alone or</p> <p>4 you in concert with the other members of the board?</p> <p>5 A. Well, I think that first, what we were --</p> <p>6 what our objective was, to keep him away from the</p> <p>7 other hangar tenants. That was our --</p> <p>8 Q. That was the primary concern?</p> <p>9 A. That was the primary concern.</p> <p>10 Q. And how were the -- how were the terms</p> <p>11 developed? Did you come up with them or was it --</p> <p>12 A. I believe -- I believe that -- well, I'm not</p> <p>13 going to get into attorney-client communication on</p> <p>14 that, but -- I don't think I can go any further on</p> <p>15 that because it would involve attorney-client</p> <p>16 communication as well as attorney work product.</p> <p>17 Q. Okay. Fair enough.</p> <p>18 Can you tell me whether Jim Terry was a</p> <p>19 part of the conversation? You don't have to disclose</p> <p>20 what was said.</p> <p>21 A. Absolutely not.</p> <p>22 Q. Okay. Did Jim Terry have any input</p> <p>23 whatsoever into the termination of Mr. Washburne's</p> <p>24 lease or any of the events that had occurred</p> <p>25 thereafter?</p>	115	<p>1 A. Yeah.</p> <p>2 Q. Were you concerned that one of the terms of</p> <p>3 the deal requiring Mr. Washburne to move his parts</p> <p>4 outside, were you concerned that that might happen</p> <p>5 again?</p> <p>6 A. Well, with Mr. Washburne being a longtime</p> <p>7 pilot and worked in aeronautical engineering, I would</p> <p>8 just assume that he knew he should have tied down the</p> <p>9 airplanes and the components when he put them out</p> <p>10 there, and if he didn't think about it then, after the</p> <p>11 storm, I certainly knew he was painfully aware of it</p> <p>12 then.</p> <p>13 Q. So you assumed that Mr. Washburne could</p> <p>14 mitigate any potential storm damage by tying his parts</p> <p>15 down outside; is that your assumption?</p> <p>16 A. Obviously not.</p> <p>17 Q. Well, but based on the offer that was made,</p> <p>18 it seems like knowing that Mr. Washburne's parts had</p> <p>19 previously been destroyed in a storm, that there might</p> <p>20 be a risk of the same thing happening again if you</p> <p>21 were to accept those terms and move all of his parts</p> <p>22 outside; isn't that right?</p> <p>23 A. Well, he could have obviously tied -- tied</p> <p>24 them down out there.</p> <p>25 Q. And that would have mitigated any potential</p>

116	<p>1 damage?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. As part of the offer or the proposal</p> <p>4 that you and others had developed for Mr. Washburne to</p> <p>5 move his parts outside, this would have involved --</p> <p>6 this would have involved him, Mr. Washburne, being</p> <p>7 outside, or the parts and Mr. Washburne being outside</p> <p>8 during the coldest parts of the year, November to --</p> <p>9 through February; isn't that right?</p> <p>10 A. Yeah, Texas weather does get cold.</p> <p>11 Q. That's right.</p> <p>12 A. Sometime, not near as bad as other parts of</p> <p>13 the country, but --</p> <p>14 Q. And the proposed extension of the lease would</p> <p>15 have been through February of 2013; is that right?</p> <p>16 A. I think that was what I -- I think that was</p> <p>17 what I was talking about when we went to mediation as</p> <p>18 best I recall.</p> <p>19 Q. Did you think it was a reasonable -- a</p> <p>20 reasonable offer to make when it would involve</p> <p>21 Mr. Washburne being outside during the coldest months</p> <p>22 of the year without access to a restroom or any</p> <p>23 ability to go indoors?</p> <p>24 A. He could have had a porta potty out there if</p> <p>25 he had wanted to take that up for him and his</p>	118	<p>1 Q. (By Mr. Kelley) So, in other words, the</p> <p>2 museum would effectively have control and possession</p> <p>3 of Mr. Washburne's property if he were to leave those</p> <p>4 behind?</p> <p>5 MR. TURNER: Objection; form.</p> <p>6 A. If he -- if he left them there after the</p> <p>7 extension of his -- if he left them there after the</p> <p>8 termination of his lease or any extension of the</p> <p>9 lease, yes, we would consider them abandoned property.</p> <p>10 We didn't want him to have an excuse to come back once</p> <p>11 he was gone.</p> <p>12 Q. (By Mr. Kelley) Had you made any similar</p> <p>13 offers to other tenants who had -- who had terminated</p> <p>14 their leases?</p> <p>15 A. We had never had any problem -- I say we. So</p> <p>16 far as I know, VFM had never had any problems with any</p> <p>17 other tenants like were presented in 2012.</p> <p>18 Q. So when a tenant would terminate his or her</p> <p>19 lease with the VFM, would any parts left over be</p> <p>20 considered abandoned or would they be allowed to come</p> <p>21 back and collect those parts?</p> <p>22 A. If they -- if they left stuff there after the</p> <p>23 extension, the termination of the lease, yes, I would</p> <p>24 have considered them abandoned. I would have probably</p> <p>25 done a little legal research on it before I took any</p>
117	<p>1 employees to use. It was -- it was something that we</p> <p>2 were not obliged -- it was something that my clients</p> <p>3 were not obliged to do and had reservation about doing</p> <p>4 it, but in the interest of trying to accommodate the</p> <p>5 urgent need, she agreed to it.</p> <p>6 Q. When you say she agreed to it, who are you</p> <p>7 referring to?</p> <p>8 A. Ms. Hospers.</p> <p>9 Q. Ms. Hospers, okay.</p> <p>10 Would you dispute Mr. Washburne's</p> <p>11 recollection that another term or part of the proposal</p> <p>12 would be that all -- any part -- any of the parts left</p> <p>13 behind would be considered, quote, abandoned property?</p> <p>14 Do you dispute the accuracy of that?</p> <p>15 A. I -- I wanted his parts the heck out of</p> <p>16 there. We wanted to do everything we could to keep</p> <p>17 him out of the hangar community that was reasonable.</p> <p>18 But on the other hand, we offered him more time if he</p> <p>19 was in a bind as long as he would come to that but we</p> <p>20 could no longer tolerate him inside the hangar.</p> <p>21 Q. So, yes, part of the agreement would be that</p> <p>22 any parts left behind would be considered abandoned;</p> <p>23 is that right?</p> <p>24 MR. TURNER: Objection; form.</p> <p>25 A. I think I said that.</p>	119	<p>1 action there, but I would have concluded they were</p> <p>2 abandoned after the term of the lease.</p> <p>3 Q. Did you do any legal research before making</p> <p>4 the proposal with respect to the extension of --</p> <p>5 A. No.</p> <p>6 Q. Okay. There was a hangar dance in October</p> <p>7 2012; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you attend the hangar dance?</p> <p>10 A. Sir?</p> <p>11 Q. Did you attend the dance?</p> <p>12 A. I did.</p> <p>13 Q. How often does VFM host such dances like</p> <p>14 this?</p> <p>15 A. How long what?</p> <p>16 Q. How often does the VFM host a hangar dance</p> <p>17 like that?</p> <p>18 A. You mean how many hours does it --</p> <p>19 Q. Like once a year, twice a year?</p> <p>20 A. Oh, once a year, in October.</p> <p>21 Q. Okay. And so the timing of this hangar dance</p> <p>22 coincided with the termination of Mr. Washburne's</p> <p>23 lease, right?</p> <p>24 A. Yes, sir, it did.</p> <p>25 Q. Do you recall the exact date of the hangar</p>

120	<p>1 dance?</p> <p>2 A. It was either October the 20th or the 22nd.</p> <p>3 I'm not sure.</p> <p>4 Q. So it was before Mr. Washburne's lease was</p> <p>5 officially terminated, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Were you concerned that Mr. Washburne would</p> <p>8 attend the hangar dance?</p> <p>9 A. Yes.</p> <p>10 Q. Was Mr. Washburne invited to the hangar</p> <p>11 dance?</p> <p>12 A. I guess -- I guess through broadband</p> <p>13 invitations, I guess he was.</p> <p>14 Q. Did Mr. Washburne attend the hangar dance?</p> <p>15 A. He did.</p> <p>16 Q. What do you recall about his attending?</p> <p>17 A. I recall that he -- at the hangar dance he</p> <p>18 behaved himself much better than he had threatened to</p> <p>19 do there. He didn't chop up an airplane. He didn't</p> <p>20 create any disturbance. I sort of attributed that to</p> <p>21 a police officer we had there.</p> <p>22 Q. Had you decided to hire a police officer for</p> <p>23 the event?</p> <p>24 A. I did. Mr. Washburne has made oodles and</p> <p>25 oodles of complaints in his pleadings that we had an</p>	122	<p>1 you -- turning around and seeing you watching him at</p> <p>2 the gate of the hangar.</p> <p>3 Does that sound familiar to you? Do you</p> <p>4 recall this?</p> <p>5 A. I recall what he's talking about. I agree</p> <p>6 with his facts, but not his conclusion.</p> <p>7 Q. How so?</p> <p>8 A. May we go off the record for me to respond to</p> <p>9 this?</p> <p>10 Q. I'm happy to go off the record, but I'd still</p> <p>11 like an answer to my question on the record.</p> <p>12 A. I will -- I'm not inclined to tell you the</p> <p>13 why. No, I did not follow him.</p> <p>14 Q. But you do recall the fact that he turned</p> <p>15 around and saw you watching him at the gate of the</p> <p>16 hangar; is that accurate?</p> <p>17 A. I was not watching him, no.</p> <p>18 Q. Did you walk toward him?</p> <p>19 A. Oh, I -- we may have walked toward each</p> <p>20 other. I don't recall.</p> <p>21 Q. Did you speak with Mr. Washburne at the</p> <p>22 hangar dance?</p> <p>23 A. Yes, sir. Yes, sir, we did.</p> <p>24 Q. What did you speak about?</p> <p>25 A. I don't recall.</p>
121	<p>1 undercover police officer there to follow him. That</p> <p>2 was not the case.</p> <p>3 We had an officer in uniform there that</p> <p>4 did not do any following of him at all. The police</p> <p>5 officer was only there in case Mr. Washburne started</p> <p>6 pulling any of the things he had threatened to do.</p> <p>7 That was -- that was what -- that was what the police</p> <p>8 officer was there for.</p> <p>9 Q. So there was no undercover police officer</p> <p>10 there at the time?</p> <p>11 A. Absolutely not. Despite all of</p> <p>12 Mr. Washburne's sworn pleadings, there was not.</p> <p>13 Q. And you never requested that an undercover</p> <p>14 officer be present?</p> <p>15 A. No, sir.</p> <p>16 Q. Was the police officer who was at the hangar</p> <p>17 dance ever required to do anything other than simply</p> <p>18 be there?</p> <p>19 A. Except to be there, and had a police car</p> <p>20 there. He was there in a police cruiser. Just there.</p> <p>21 He enjoyed it. He did what everybody else was doing,</p> <p>22 except he didn't drink any beer.</p> <p>23 Q. That doesn't sound like much fun.</p> <p>24 At the hangar dance Mr. Washburne recalls</p> <p>25 carrying some parts to the north hangar and seeing</p>	123	<p>1 Q. Was it a pleasant interaction?</p> <p>2 A. Oh, it was very pleasant. I was very</p> <p>3 relieved that he did not do any of the things that he</p> <p>4 had threatened to do.</p> <p>5 Q. And what are you referring to there? When</p> <p>6 did he threaten to do something and what did he</p> <p>7 threaten to do?</p> <p>8 A. He threatened to do it the first time I met</p> <p>9 him.</p> <p>10 Q. Which was September 2012?</p> <p>11 A. Yeah. He did it other times before the</p> <p>12 hangar dance. So it was --</p> <p>13 Q. And what did he threaten to do?</p> <p>14 A. Chop up his hangar during the hangar dance,</p> <p>15 burn his airplane to the ground, something along that</p> <p>16 line.</p> <p>17 Q. And in each instance were these</p> <p>18 representations made by Mr. Washburne to you?</p> <p>19 A. Any what?</p> <p>20 Q. In each of those instances, did he make those</p> <p>21 representations to you personally, that he would do</p> <p>22 what you just said?</p> <p>23 A. Verbally and in writing.</p> <p>24 Q. So via email as well?</p> <p>25 A. I don't know.</p>

124	<p>1 Q. Okay. Can you describe all the times --</p> <p>2 every time that you banned Mr. Washburne from V --</p> <p>3 property that the VFM occupied?</p> <p>4 A. No, except there were numerous times, as</p> <p>5 he -- as he relates in his pleadings.</p> <p>6 Q. When was the first time that you banned</p> <p>7 Mr. Washburne?</p> <p>8 A. I don't recall.</p> <p>9 Q. Was it before or after Mr. Washburne's lease</p> <p>10 was terminated?</p> <p>11 A. Mostly it was during the termination process.</p> <p>12 Q. So after the letter was sent but before the</p> <p>13 lease had been terminated?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So September to October 2012? And did</p> <p>16 you tell him face to face that he was banned from the</p> <p>17 property? Was it verbal or did you communicate this</p> <p>18 in writing?</p> <p>19 A. I told him to stay the hell away.</p> <p>20 Q. Face to face?</p> <p>21 A. Face to face, and maybe in writing, also.</p> <p>22 I'm not sure.</p> <p>23 Q. So would that have been, again, the first</p> <p>24 time you met Mr. Washburne face to face in September?</p> <p>25 A. I don't think I mentioned it then.</p>	126	<p>1 needed to do to get some things he wanted us to do.</p> <p>2 Q. I see. So you didn't ban him, but did you</p> <p>3 tell him to stay away during the time that his lease</p> <p>4 was still in effect?</p> <p>5 A. If he wanted us to -- if he wanted us to give</p> <p>6 him any more consideration, that was a way to get it.</p> <p>7 Q. But if his lease was still in effect, didn't</p> <p>8 he have a legal right to be there?</p> <p>9 A. Yes.</p> <p>10 Q. And you told him to stay away anyway?</p> <p>11 A. No. I didn't ban him. I told him if he</p> <p>12 wanted us to do anything for him, that's what he</p> <p>13 needed to do for VFM.</p> <p>14 Q. So a quid pro quo, so to speak?</p> <p>15 A. Yeah.</p> <p>16 Q. If he stays away, then --</p> <p>17 A. We'll try to work something out, yes.</p> <p>18 Q. So the VFM would have been more likely to</p> <p>19 agree to an extension of his lease if he would stay</p> <p>20 away?</p> <p>21 A. Quit stirring up trouble.</p> <p>22 Q. If he would stay away prior to the</p> <p>23 termination date, October 27th?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. Did you ask Mr. Washburne to stay</p>
125	<p>1 Q. So maybe after that, then?</p> <p>2 A. Mostly, mostly my recollection of mentioning</p> <p>3 that is when we were trying to work out some agreement</p> <p>4 to where he could have some more time to move his --</p> <p>5 move his equipment, move his equipment, the parts,</p> <p>6 airplanes, and components away. That was --</p> <p>7 Q. So you banned Mr. Washburne from VFM property</p> <p>8 during the time that Mr. Washburne's lease was still</p> <p>9 in effect?</p> <p>10 A. I did not bind -- I did not ban him during</p> <p>11 that time, as I set out in one of the exhibits that</p> <p>12 you handed to me. Certainly, I had told the -- I told</p> <p>13 Ms. Hospers in one of these emails here that we were</p> <p>14 stuck with him until October the 27th, but I had -- I</p> <p>15 did tell him things like stay the hell away. In fact,</p> <p>16 if he wanted -- if he wanted me -- the best way he</p> <p>17 could get more time was stay away and not create any</p> <p>18 further disturbances.</p> <p>19 Q. So prior to October 27th, 2014, did you ban</p> <p>20 Mr. Washburne from the --</p> <p>21 A. No.</p> <p>22 Q. -- VFM property?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. I did not ban him. I told him that's what he</p>	127	<p>1 beyond the October 27th, 2012 date for another five</p> <p>2 days so that Bill Gorin could help him move his plane</p> <p>3 out of the hangar?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall if that was --</p> <p>6 A. Yes. I was on a call talking to him about</p> <p>7 that.</p> <p>8 Q. Do you recall making -- making that request</p> <p>9 or asking Seth to stay five additional days?</p> <p>10 A. If he wanted any -- yeah, that was obvious.</p> <p>11 I mean, we didn't have -- on whatever the exact</p> <p>12 deadline was, we didn't have any -- we didn't have any</p> <p>13 volunteers there to help do the hangar shuffle, and we</p> <p>14 certainly didn't want to leave it up to Seth, even if</p> <p>15 he had had the help to do it, to moving other people's</p> <p>16 airplanes around, so since he did not -- okay.</p> <p>17 Well, to paint the correct picture of</p> <p>18 what was existing then, from the time he received the</p> <p>19 letter noticing termination of the lease within 30</p> <p>20 days, he spent what I recall is the next three weeks</p> <p>21 demanding and threatening us and made no effort at all</p> <p>22 to start vacating until just about the last time --</p> <p>23 the last of the 30 days, so it was necessary to give</p> <p>24 him a little bit more time before --</p> <p>25 Q. You mentioned that he was -- you mentioned</p>

128	<p>1 that he was making threats and after he received that</p> <p>2 notice to vacate, that he became -- that he was</p> <p>3 communicating with you and presumably others in a way</p> <p>4 that was -- that made -- that made it seem as though</p> <p>5 he was not intent upon moving everything out by the --</p> <p>6 by the October 27th date; is that right?</p> <p>7 I guess what I'm trying to get at is,</p> <p>8 what did Seth -- Mr. Washburne communicate to you or</p> <p>9 others that indicated that he was unwilling or unable</p> <p>10 to move his possessions out of the hangar by October</p> <p>11 27th, 2014 -- 2012?</p> <p>12 A. Well, he had done -- he had done nothing at</p> <p>13 all to arrange any moving until just about the -- just</p> <p>14 about the -- for the -- about the first three weeks</p> <p>15 after the -- after the notice of termination. In</p> <p>16 fact, by the time we went to mediation, he had done</p> <p>17 absolutely nothing in the way of moving his --</p> <p>18 vacating the premises.</p> <p>19 Q. At the time you went to mediation, you were</p> <p>20 still negotiating potentially extending --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- the lease, right?</p> <p>23 Through February of 2013, right?</p> <p>24 A. Sir?</p> <p>25 Q. You were negotiating a potential extension of</p>	130	<p>1 owned by the Trust that you know of since his lease</p> <p>2 was terminated?</p> <p>3 A. Yes. I know of one time.</p> <p>4 Q. Okay. What was that? When was that?</p> <p>5 A. When he -- it was in 2014 -- well, first, in</p> <p>6 March 2013, he was insistent on going there to -- I</p> <p>7 believe that was the time that he said he wanted to go</p> <p>8 there because in the -- in Mr. Washburne's other</p> <p>9 lawsuit, Jim Terry had said he was out of the country,</p> <p>10 going to be out of the country on a date they wanted</p> <p>11 to take a deposition, and Mr. Washburne wanted to go</p> <p>12 to -- stated that he wanted to go to the hangar to see</p> <p>13 whether or not Jim Terry was really in The Bahamas</p> <p>14 then. I believe that that was the March -- I'm not</p> <p>15 sure, but I believe that that was the March 2nd, 2013 time</p> <p>16 that he had wanted -- that he wanted to go.</p> <p>17 Q. And how did you learn of that event?</p> <p>18 A. Mr. -- some of Mr. Washburne's pleadings or</p> <p>19 petitions, I believe.</p> <p>20 Q. So you were not there yourself to see</p> <p>21 Mr. Washburne?</p> <p>22 A. No, no. I heard about it, and I believe he</p> <p>23 talked about it in his petitions.</p> <p>24 Q. Did he actually -- one more question on the</p> <p>25 March 2013 date.</p>
129	<p>1 the lease through February of 2013; is that right?</p> <p>2 A. I don't remember the date, but that may have</p> <p>3 been a date that we mentioned.</p> <p>4 Q. So if those negotiations were ongoing, it's</p> <p>5 not unreasonable that Mr. Washburne wouldn't have been</p> <p>6 quickly making the steps to move his property out of</p> <p>7 the hangar; is that right?</p> <p>8 A. Well, that are -- I do not recall the</p> <p>9 specific terms. They went back -- you know, they</p> <p>10 changed some, but so I don't remember. I can't answer</p> <p>11 that question.</p> <p>12 Q. Okay. After the October 27th, 2012 lease</p> <p>13 termination date, did Mr. Washburne attempt to access</p> <p>14 property owned by the Hospers Family Trust "D", from</p> <p>15 the period that his lease was terminated to present,</p> <p>16 if you will?</p> <p>17 A. That question has been asked, and I answered</p> <p>18 it several times here today. But we don't know. I</p> <p>19 mean, I don't know.</p> <p>20 Q. You mentioned that Mr. Washburne has</p> <p>21 attempted numerous times, you had said, to enter</p> <p>22 property owned by the Hospers Family Trust "D", right?</p> <p>23 A. I don't think I -- I don't know that I said</p> <p>24 that.</p> <p>25 Q. Has Mr. Washburne attempted to enter property</p>	131	<p>1 Did he actually enter upon property owned</p> <p>2 by the Trust?</p> <p>3 A. No. Your question was did he attempt to.</p> <p>4 Q. That's right. So my follow-up is did he, in</p> <p>5 March of 2013?</p> <p>6 A. Okay. He attempted to again on April the</p> <p>7 26th, 2014.</p> <p>8 Q. Well, back to March 2013, you say he</p> <p>9 attempted to enter upon Trust property, but did he</p> <p>10 actually enter upon Trust property in March 2013?</p> <p>11 A. Not that date.</p> <p>12 Q. Okay.</p> <p>13 A. From my information.</p> <p>14 Q. I cede the floor back to you. You were</p> <p>15 talking about another date in 2014.</p> <p>16 You mentioned in 2014 there was another</p> <p>17 time that Mr. Washburne attempted to enter Trust</p> <p>18 property; is that right?</p> <p>19 A. Yeah. This time he wanted to go in and look</p> <p>20 at the B-29 and see if Jim Terry was there -- no, I'm</p> <p>21 sorry, I'm mistaken.</p> <p>22 The other time I talked about was he</p> <p>23 wanted to -- I may have this mixed up. One time he</p> <p>24 wanted to go look for a navigator's dome that he said</p> <p>25 had been stolen, then another -- but I believe that</p>



132	<p>1 was March 2nd, 2013.</p> <p>2 Then on April 26, 2014, I believe that</p> <p>3 that was when he wanted to go in and look at the</p> <p>4 B-29.</p> <p>5 Q. Were you there on April 6, 2014 at the --</p> <p>6 A. No.</p> <p>7 Q. -- VFM hangar?</p> <p>8 A. No.</p> <p>9 Q. So you heard about this from who?</p> <p>10 A. Oh, let's see. I learned about that from</p> <p>11 Seth's writings, his complaints to Fort Worth chief of</p> <p>12 police, and from some of his things filed in this</p> <p>13 lawsuit.</p> <p>14 Q. So did he state that he was trying to enter</p> <p>15 Trust property at the time?</p> <p>16 A. It was obvious that he was trying to get in</p> <p>17 the hangar, yes, sir.</p> <p>18 Q. Did he state that that was his intention?</p> <p>19 A. Huh?</p> <p>20 Q. Did he state that that was his intention in</p> <p>21 the documents?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did he set foot on Trust property on</p> <p>24 April 6, 2014?</p> <p>25 A. April 26?</p>
133	<p>1 Q. Oh, 26, I'm sorry, you referred to the 26th,</p> <p>2 right.</p> <p>3 A. Not that we know of.</p> <p>4 Q. Okay.</p> <p>5 A. I have not heard anybody say they had</p> <p>6 evidence that he did.</p> <p>7 Q. Okay.</p> <p>8 MR. KELLEY: How are we doing on time?</p> <p>9 MR. TURNER: Well, it's 12:20.</p> <p>10 MR. KELLEY: This may be a good place to</p> <p>11 stop for me if you're willing to take a lunch break</p> <p>12 now.</p> <p>13 MR. TURNER: Sure.</p> <p>14 MR. KELLEY: What do you think?</p> <p>15 THE WITNESS: Oh, you got any</p> <p>16 anticipation of how long these services are going to</p> <p>17 continue?</p> <p>18 MR. KELLEY: I think we'll go the full</p> <p>19 five and a half, is my guess, so I'm not sure how long</p> <p>20 we've gone so far, but we'll finish it out.</p> <p>21 THE WITNESS: I want to claim credit for</p> <p>22 the two hours I already spent.</p> <p>23 MR. KELLEY: Oh, sure.</p> <p>24 THE VIDEOGRAPHER: Let me sign off.</p> <p>25 We're now going off the record. The time is now</p>
134	<p>1 12:18.</p> <p>2 (Lunch 12:18-1:30.)</p> <p>3 THE VIDEOGRAPHER: We're now going back</p> <p>4 on the record. The time is now 1:30.</p> <p>5 Q. (By Mr. Kelley) Mr. Monk, welcome back.</p> <p>6 A. Yes, sir.</p> <p>7 Q. I'm going to hand you what was previously</p> <p>8 marked as Exhibit Number 59. Regretfully, I only have</p> <p>9 that one copy so I apologize. It is the stipulation</p> <p>10 that I think my --</p> <p>11 A. All right, sir.</p> <p>12 Q. You've got a copy?</p> <p>13 A. Yes.</p> <p>14 Q. Okay, perfect. You've seen this document</p> <p>15 before, Mr. Monk; am I right?</p> <p>16 A. Yes, sir. Yes, sir.</p> <p>17 Q. When did you first see this document?</p> <p>18 A. I think the first time I saw this document</p> <p>19 was here on May the 18th, I believe it was.</p> <p>20 Q. That sounds right to me. That was the first</p> <p>21 time you saw it.</p> <p>22 Okay. Let me read through it one more</p> <p>23 time just to verify that you agree with the contents</p> <p>24 of this document.</p> <p>25 The paragraph 1 here says, defendants</p>
135	<p>1 hereby stipulate that those portions of Northwest 38th</p> <p>2 Street and Von Avenue, in Tarrant County, Texas, where</p> <p>3 plaintiff was present when he received a trespass</p> <p>4 warning and was subsequently arrested for trespass,</p> <p>5 have never been owned by, and are not currently owned</p> <p>6 by, any defendant in this case and that at all times</p> <p>7 material to this case they were, and are currently,</p> <p>8 owned by the City of Fort Worth.</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Do you agree with that statement?</p> <p>12 A. Completely.</p> <p>13 Q. All right. The next paragraph says</p> <p>14 Defendants, Vintage Flying Museum, Hospers Family</p> <p>15 Trust "D", Charlyn Hospers and Bill Gorin, hereby</p> <p>16 further agree and stipulate that all of Von Avenue and</p> <p>17 Northwest 38th Street and the intersection of those</p> <p>18 two streets have never been owned by and are not</p> <p>19 currently owned by any defendant in this case and that</p> <p>20 at all times material to this case they were, and are</p> <p>21 currently, owned by the City of Fort Worth.</p> <p>22 Do you agree with that statement,</p> <p>23 Mr. Monk?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. Finally, it says, the property</p>

136	<p>1 boundaries surrounding the area of the Vintage Flying 2 Museum are consistent with the survey attached hereto 3 as Exhibit A.</p> <p>4 Let's turn to Exhibit A, if you don't 5 mind. Go back there.</p> <p>6 Now, the lots represented here -- strike 7 that. Let me start again.</p> <p>8 Am I correct in saying that the lots 9 represented here on Exhibit A are representative of 10 all of the property owned by the Hospers Family Trust 11 "D"?</p> <p>12 A. Just a minute here. Yes, that -- yeah, 13 that's -- there are not -- well, it's hard to tell 14 which. I mean, Exhibit A contains a lot of lots that 15 are not owned by the family -- by the Hospers Family 16 Trust.</p> <p>17 Q. That's correct. That's correct. But all of 18 the Family Trust property is displayed in this 19 exhibit?</p> <p>20 A. All the Family Trust -- all the Hospers 21 Family Trust property in Washington Heights Addition 22 to the City of Fort Worth are reflected on Exhibit A.</p> <p>23 Q. Perfect. Now, if we look at the northwest 24 corner of Von and 38th Street, I guess the 25 intersection of those two streets, you can see there's</p>	138	<p>1 side of those lots, you have Von Avenue, and is the -- 2 A. Oh, sometime -- it's mixed up. Some things 3 says it's Von Avenue -- some say it was Von Avenue, 4 some said it was Von Street. I just refer to it as 5 Old Von, is the way I refer to it.</p> <p>6 Q. Sure. We can refer to it as Old Von. I 7 think that's fair.</p> <p>8 So Old Von is currently owned by the City 9 of Fort Worth; is that correct?</p> <p>10 A. Yes, sir, that land is.</p> <p>11 Q. And as far as you know, since the time that 12 the Hospers Family Trust has owned this property, the 13 City of Fort Worth has owned Von, Old Von; is that 14 right?</p> <p>15 A. Yes, sir, long before.</p> <p>16 Q. Long before. Got it.</p> <p>17 Do you agree that the entire length of 18 38th Street constitutes a public street?</p> <p>19 A. No, sir.</p> <p>20 Q. And why don't you agree with that statement?</p> <p>21 A. Well, because it -- it has not been used as a 22 public street anywhere west of Ross Avenue in many, 23 many years.</p> <p>24 Q. So, in your mind, to be a public street, the 25 street itself has to be used consistently by the</p>
137	<p>1 Lot 1, Lot 2, Lot 3, all the way down to I guess Lot 2 10. Now, are those lots -- and, also, I guess Lot 15, 3 14, 13, 12.</p> <p>4 Are those lots there the hangars that 5 currently are owned by the Trust? Is that the 6 location of the hangars?</p> <p>7 A. That's where the two -- the north hangar -- 8 what we call the north hangar and the main hangar is 9 marked with a little bit bolder mark.</p> <p>10 Q. I see that.</p> <p>11 A. More bold than the other.</p> <p>12 Q. Okay. And we can see --</p> <p>13 A. Except -- except on -- the bolder marks where 14 the hangars are, yes, uh-huh.</p> <p>15 Q. Okay. Great. On the north side of Lots 1 16 and Lot 20A, you've got 38th Street; is that right?</p> <p>17 A. Yes, sir, that's what it says.</p> <p>18 Q. Now, from what we can see of 38th Street 19 here, on Exhibit A, is the entire length of that 20 street owned by the City of Fort Worth?</p> <p>21 A. Well, yeah, and past that, the City of Fort 22 Worth owns everything from North Main Street west on 23 into what is Meacham Field, the prolongation of it, 24 yes, the City owns all that.</p> <p>25 Q. Okay. And then on what is I guess the west</p>	139	<p>1 public; is that right?</p> <p>2 A. Used, maintained, uh-huh. Publicly used and 3 publicly maintained, yes, uh-huh.</p> <p>4 Q. So are you saying that the portion of 38th 5 Street west of Ross Avenue is not a public street?</p> <p>6 A. I -- yes.</p> <p>7 Q. And you're saying that because the public 8 does not travel on that portion of the street; is that 9 right?</p> <p>10 A. Well, that's one thing. The street goes 11 nowhere except to people with business or at Vintage 12 Flying Museum or Hospers Family Trust or other 13 tenants.</p> <p>14 Q. Okay. Let's talk about Von, Old Von, or Von 15 Avenue.</p> <p>16 A. Okay, sir.</p> <p>17 Q. Is the entire length of Von Avenue a public 18 street?</p> <p>19 A. None of it is.</p> <p>20 Q. None of it is. And why do you say that?</p> <p>21 A. Oh, I say it for several reasons.</p> <p>22 Number one, it has not been used as a 23 public street for over -- well over 50 years. The 24 City of Fort Worth, city manager's office, Fort Worth 25 city council, agreed that Von had not been used as a</p>

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1 public -- in 1990 and 1991 stated that Von had not  
 2 been used as a street.  
 3 Q. And what are the implications of that? If  
 4 it's not a public street, if 38th west of Ross Avenue  
 5 is not a public street and all of Von, Von Avenue, is  
 6 not public, what are the implications of that?  
 7 A. Implications of it, that since at least 1953,  
 8 those tracts of real estate have been permissively  
 9 occupied, maintained and controlled by owners and  
 10 tenants of the two hangars.  
 11 Q. Does it affect the legal status of --  
 12 A. Sir?  
 13 Q. Does it affect the legal status of those  
 14 streets?  
 15 MR. TURNER: Objection; form.  
 16 A. I think, yes, to some extent, it does.  
 17 Q. (By Mr. Kelley) And how is that?  
 18 A. Well, the -- talking about Von Avenue here,  
 19 the street -- that tract of realty for 65 years has  
 20 been used, maintained, occupied and controlled by  
 21 owners or tenants of the hangars which have used it  
 22 for -- to service, park, maintain, tie down airplanes.  
 23 Q. And how does that affect the legal status of  
 24 that street?  
 25 A. Because it --

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1 MR. TURNER: Objection; form.  
 2 A. -- means it's been abandoned, long ago  
 3 abandoned as a street.  
 4 Q. (By Mr. Kelley) So you're an attorney and  
 5 you have been for much longer than I have, admittedly.  
 6 What is the legal basis for -- what is  
 7 your legal basis for claiming that those -- that the  
 8 legal status of those streets is affected by the fact  
 9 that the City -- that the public does not enter upon  
 10 those streets?  
 11 A. Well, there is no evidence that I can find  
 12 that -- okay. Von was a strip of land that ran from  
 13 Northwest 35th Street -- well, Von is in effect  
 14 bounded by Meacham Field perimeter fences on three  
 15 sides.  
 16 Q. The south side, the north side and the --  
 17 A. West side.  
 18 Q. -- west side?  
 19 A. It is bounded on the east by property owned  
 20 by the Hospers Family Trust.  
 21 Q. So are you saying that Von Avenue, the legal  
 22 status of Von Avenue, is affected because of adverse  
 23 possession?  
 24 A. No, sir. The doctrine of adverse possession  
 25 in Texas does not apply to realty owned by any

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1 governmental entity.  
 2 Q. So how can the legal status of this street be  
 3 affected by the fact that it's bordered on three sides  
 4 by a fence and hasn't been used by the public in a  
 5 while?  
 6 A. Because of the fact that the City -- because  
 7 of the fact that it is not used as a street. The City  
 8 doesn't maintain it, and the City has authorized,  
 9 permitted the owners and occupants of these hangars  
 10 and the other property to use it, maintain it, and  
 11 control it. And, also, to carry out the  
 12 responsibilities imposed upon these people by the  
 13 access agreements to Meacham Field as required by  
 14 federal aviation requirements.  
 15 Q. Can you point me to any statute that would  
 16 indicate that the legal rights of this Von Avenue are  
 17 somehow affected by what you've just described?  
 18 MR. TURNER: Objection; form.  
 19 A. I'm not here as a legal expert, but the --  
 20 the Texas statutes and case law governing  
 21 hereditaments generally would give the -- would permit  
 22 the titled owner to give permissive use and authority  
 23 to control the property. No, the Hospers Family Trust  
 24 does not own it, never has.  
 25 Example, Veritext Solutions court

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1 reporters do not own this room, but they are either  
 2 lessees or maybe tenants at sufferance and they have  
 3 every right to control who comes and goes here.  
 4 Q. (By Mr. Kelley) That's right. They have a  
 5 lease agreement or something, we assume, that they  
 6 have signed with the owner of the building that  
 7 would --  
 8 A. Either a lease agreement or permissive  
 9 occupancy or like that.  
 10 Q. So are you saying that the Trust has some  
 11 kind of an agreement with the City of Fort Worth for  
 12 the entire length of Von Street?  
 13 A. No, sir. The Family Trust does not. The  
 14 Family Trust is not an occupant. Vintage Flying  
 15 Museum, since its creation, has had exclusive  
 16 occupancy use, responsibility for maintaining what you  
 17 refer to as Old Von.  
 18 Q. I'm familiar with the through-the-fence  
 19 agreement that I think you referenced earlier, but  
 20 that's only relevant to a portion of Von Avenue; is  
 21 that right, not the entire length?  
 22 A. Well, the -- the access agreement is based  
 23 only on a -- the open floor of the main hangar from  
 24 there to the Meacham perimeter fence.  
 25 However, the land here and the

144	<p>1 permissive -- the permissiveness to get through there</p> <p>2 impose rights on the occupants of these places to meet</p> <p>3 certain requirements for airport security.</p> <p>4 Q. Does it give --</p> <p>5 A. That extends to the -- that extends to the</p> <p>6 whole area.</p> <p>7 Q. Okay. So the through-the-fence agreement</p> <p>8 that the Vintage Flying Museum has entered into a</p> <p>9 couple of times with the City of Fort Worth gives the</p> <p>10 Vintage Flying Museum -- or allows them, rather, to</p> <p>11 exclude members of the public from the entire length</p> <p>12 of Von Avenue; is that right?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. Let me ask you a couple of questions,</p> <p>15 then, to clarify based on the map that you have in</p> <p>16 front of you, Exhibit A, to the stipulation.</p> <p>17 In this action, did defendants in this</p> <p>18 action have the right to exclude members of the public</p> <p>19 from Von Avenue?</p> <p>20 MR. TURNER: Objection; form.</p> <p>21 A. Yes.</p> <p>22 Q. (By Mr. Kelley) Which portions of Von</p> <p>23 Avenue?</p> <p>24 A. The entire portion of Von Avenue, guts,</p> <p>25 feathers and all, from the fence on the south to the</p>	146	<p>1 On March the -- I mean, on April the 26th</p> <p>2 of 2014 another police officer told him that he could</p> <p>3 not go west of the drainage ditch, which is right</p> <p>4 here.</p> <p>5 Q. Does the police officer -- did the police</p> <p>6 officer in each of those instances speak for the City</p> <p>7 of Fort Worth?</p> <p>8 MR. TURNER: Objection; form.</p> <p>9 A. I suppose they did. They've got Fort Worth</p> <p>10 plastered all over their uniforms and their cars, and</p> <p>11 I guess they're on the Fort Worth payroll.</p> <p>12 Q. (By Mr. Kelley) What I mean is --</p> <p>13 A. I guess they're agents of the City of Fort</p> <p>14 Worth. They look like it to me.</p> <p>15 Q. What I mean is, when the police officer</p> <p>16 indicated that anything -- that Mr. Washburne could</p> <p>17 not enter upon any -- enter upon 38th Street west of</p> <p>18 Ross Avenue --</p> <p>19 A. They did farther than indicating. They told</p> <p>20 him he'd be arrested if he did.</p> <p>21 Q. That's right. And why did they think that?</p> <p>22 Why did they tell him that?</p> <p>23 MR. TURNER: Objection; form.</p> <p>24 A. I don't know.</p> <p>25 Q. (By Mr. Kelley) Was it based on any</p>
145	<p>1 fence on the north.</p> <p>2 Q. And that would have been the case on April</p> <p>3 26, 2014?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And that would have been the case on April</p> <p>6 27, 2014?</p> <p>7 A. Has been the case since the airport fences</p> <p>8 were erected.</p> <p>9 Q. And that's the case today; am I right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Northwest 38th Street, did defendants</p> <p>12 in this action have the right to exclude members of</p> <p>13 the public from Northwest 38th Street?</p> <p>14 MR. TURNER: Objection; form.</p> <p>15 A. It's my position that they do -- well, I</p> <p>16 don't know. There's various indications I've got</p> <p>17 here, and I -- okay. May I point --</p> <p>18 Q. (By Mr. Kelley) Of course.</p> <p>19 A. I will not mark on this. Okay. I'm just</p> <p>20 telling you some evidence I've gathered here, okay?</p> <p>21 Q. Okay.</p> <p>22 A. Okay. March 2nd, 2013, a Fort Worth police</p> <p>23 officer issued a criminal trespass warning and told</p> <p>24 Mr. Washburne that he could not go west of Ross</p> <p>25 Avenue, which is right here at this point.</p>	147	<p>1 representations made by the Vintage Flying Museum?</p> <p>2 A. No, sir.</p> <p>3 Q. Was it based on any representations made by</p> <p>4 you?</p> <p>5 A. No.</p> <p>6 Q. What about by Dana Wood?</p> <p>7 A. I don't know about what Dana Wood told them.</p> <p>8 Q. Let's get back to my original question.</p> <p>9 My original question, I'd just like a yes</p> <p>10 or a no, do defendants in this action have the right</p> <p>11 to exclude the public from any portion of Northwest</p> <p>12 38th Street?</p> <p>13 MR. TURNER: Objection; form.</p> <p>14 A. At least -- at least anything that is part of</p> <p>15 Von Avenue, yes.</p> <p>16 Q. (By Mr. Kelley) How can 38th Street be a</p> <p>17 part of Von Avenue?</p> <p>18 A. 38th and Von, the intersection may be both,</p> <p>19 but the entirety of Von Avenue runs from one fence to</p> <p>20 the other, and so if you are -- you know, if -- so I</p> <p>21 would say the drainage ditch, anything west of the</p> <p>22 drainage ditch, yes. Vintage Flying Museum would have</p> <p>23 had the right to exclude people from there.</p> <p>24 However, I find absolutely no evidence</p> <p>25 that any agent or representative of VFM exercised any</p>

148	<p>1 modicum of control over that portion, but they would</p> <p>2 have had the right to, but they didn't exercise that</p> <p>3 right. That was strictly up to the police officers.</p> <p>4 Q. So your contention that the Vintage Flying</p> <p>5 Museum -- or, rather, the defendants have the right,</p> <p>6 whether or not that was exercised, to exclude members</p> <p>7 of the public from entering upon 38th Street west of</p> <p>8 the drainage ditch?</p> <p>9 A. If you say --</p> <p>10 MR. TURNER: Objection; form.</p> <p>11 A. If you say that 38th Street runs west of the</p> <p>12 drainage ditch, yes. I don't think it does. I</p> <p>13 think -- I think Von is -- what was called Von is the</p> <p>14 street, the north/south street having precedence over</p> <p>15 the east/west street.</p> <p>16 Q. (By Mr. Kelley) And the drainage ditch is</p> <p>17 this -- this line in between the lots; is that right</p> <p>18 there?</p> <p>19 A. Which is?</p> <p>20 Q. Is that what you're referring to as the</p> <p>21 drainage ditch or is that --</p> <p>22 A. No. The drainage ditch is right here.</p> <p>23 Q. Right there. I see what you're saying.</p> <p>24 A. Right close -- you have numerous photographs</p> <p>25 of the big Vintage Flying Museum sign.</p>	150	<p>1 A. Well, Von, what was called Von and 38th do</p> <p>2 intersect there.</p> <p>3 Q. And is that owned by the Trust?</p> <p>4 A. No, sir.</p> <p>5 Q. Who is it owned by?</p> <p>6 A. It's owned by the City.</p> <p>7 Q. Okay. All right. So let's talk about the</p> <p>8 intersection of Von and 38th.</p> <p>9 Do defendants in this action have the</p> <p>10 right to exclude the public from entering upon the</p> <p>11 intersection of Von and 38th Street?</p> <p>12 MR. TURNER: Objection; form.</p> <p>13 A. I believe it does.</p> <p>14 Q. (By Mr. Kelley) And did defendants have the</p> <p>15 right to exclude members of the public from entering</p> <p>16 upon Von and 38th Street on April 26, 2014?</p> <p>17 MR. TURNER: Objection; form.</p> <p>18 A. I think they did because they had been doing</p> <p>19 it for years, in the instance of special events and</p> <p>20 this sort of thing.</p> <p>21 Q. (By Mr. Kelley) They had been excluding</p> <p>22 members of the public from that intersection for</p> <p>23 years?</p> <p>24 A. Yeah.</p> <p>25 Q. How had they been doing that?</p>
149	<p>1 Q. That's right.</p> <p>2 A. It is right here. It is just east of the</p> <p>3 drainage ditch, just a few feet east of the drainage</p> <p>4 ditch is where the big VFM sign with the photograph of</p> <p>5 the Flying Fortress is.</p> <p>6 Q. Okay. So anything west of the drainage ditch</p> <p>7 is VFM property such that they could exclude a member</p> <p>8 of the public?</p> <p>9 A. No, sir. It is not VFM property. As I</p> <p>10 mentioned before, VFM has never owned a square foot of</p> <p>11 real estate.</p> <p>12 Q. Then the Trust property?</p> <p>13 A. No. It is -- okay. Ask it again with the</p> <p>14 deal about the property owned by the Trust. I</p> <p>15 misunderstood, I think.</p> <p>16 Q. Is the property -- is 38th Street west of the</p> <p>17 drainage ditch owned by the Trust?</p> <p>18 A. I don't think 38th Street runs west of the</p> <p>19 drainage ditch.</p> <p>20 Q. Is the inter --</p> <p>21 A. If it does, it is not owned by the Trust, no.</p> <p>22 Q. Is the intersection of Von and 38th Street</p> <p>23 owned by the Trust?</p> <p>24 A. Okay.</p> <p>25 Q. Is that a yes?</p>	151	<p>1 A. Stopping traffic here.</p> <p>2 Q. How often was traffic stopped there?</p> <p>3 A. Huh? Oh, for various special events that</p> <p>4 required admission, AOPA convention I think had an</p> <p>5 entrance location there. But maybe AOP didn't.</p> <p>6 Auctions and some other events stopped there.</p> <p>7 Q. Okay. Did defendants have the right to</p> <p>8 exclude members of the public from entering upon the</p> <p>9 intersection of Von and Northwest 38th Street on the</p> <p>10 date that Mr. Washburne was arrested?</p> <p>11 MR. TURNER: Objection; form.</p> <p>12 A. I think they had -- I think they had -- I</p> <p>13 think VFM had a right to do that, yes, sir. I find no</p> <p>14 evidence that VFM did, but I think they would have had</p> <p>15 a right to do it.</p> <p>16 Q. (By Mr. Kelley) Did the defendants in this</p> <p>17 action have the right to exclude?</p> <p>18 MR. TURNER: Objection; form.</p> <p>19 Q. (By Mr. Kelley) VFM is one, I understand</p> <p>20 that, but the others?</p> <p>21 A. The defendants, VFM, Hospers Family Trust,</p> <p>22 Ms. Hospers, Bill Gorin, yes, I think they had a right</p> <p>23 to, but they didn't.</p> <p>24 Q. Did any employee of the Vintage -- not</p> <p>25 employee, pardon me.</p>

152	<p>1 I guess I'm wondering how -- how</p> <p>2 expansive that -- that is. Is it anyone who could</p> <p>3 have worked with the Vintage Flying Museum that could</p> <p>4 potentially exclude someone from that intersection?</p> <p>5 A. Oh, I think it would be, you know, oodles of</p> <p>6 people have different relationships with VFM, but I</p> <p>7 think it would need to be a -- either direct or</p> <p>8 delegation by the managing director of VFM.</p> <p>9 Q. Have you always believed that members of the</p> <p>10 public can be excluded from the intersection and all</p> <p>11 of Von Street? Has that always been your</p> <p>12 understanding, your belief?</p> <p>13 A. That's what it's appeared to be since 1953.</p> <p>14 Q. Did you do any legal research into that to</p> <p>15 verify the accuracy of that opinion?</p> <p>16 A. No. I was a mechanic at Meacham Field then.</p> <p>17 Q. Well, I mean since then.</p> <p>18 A. Well, yes, I've kept in touch there, since</p> <p>19 the whole area is covered with -- off and on covered</p> <p>20 with airplanes, parking for people at VFM.</p> <p>21 Q. Right. But did you do any legal research</p> <p>22 into the question? Have you done any legal research</p> <p>23 into it?</p> <p>24 A. Well, I've researched R.L. Polk's city</p> <p>25 directories, Cole's crisscross directories, and found</p>	154	<p>1 A. It is not a street.</p> <p>2 Q. -- a street. Okay.</p> <p>3 So let me ask this question, then. I</p> <p>4 think I know the answer, but let me ask it anyway.</p> <p>5 Does a member of the public have the</p> <p>6 right to drive, walk or park on Von Avenue at any</p> <p>7 time?</p> <p>8 A. Member of the general public? Not unless</p> <p>9 they have a legitimate reason to be there.</p> <p>10 Q. What does a legitimate reason to be there</p> <p>11 have to do with it?</p> <p>12 A. Doing business with VFM, working at VFM,</p> <p>13 being a museum visitor.</p> <p>14 Q. So it's up to VFM you're saying?</p> <p>15 A. Not the troublemakers that are trying to</p> <p>16 harass.</p> <p>17 Q. But I mean from a legal standpoint, does a</p> <p>18 member of the public have the right to drive or walk</p> <p>19 or park on the street?</p> <p>20 A. Not all members of the general public.</p> <p>21 Q. Not all members. Which members are excluded</p> <p>22 from that?</p> <p>23 MR. TURNER: Objection; form.</p> <p>24 A. Troublemakers and people there to harass and</p> <p>25 annoy do not have a right to be there.</p>
153	<p>1 out that the things like -- okay. Let me see if I</p> <p>2 can -- okay. Back in the '50s, there were a few</p> <p>3 houses on what is called Von here, three or four.</p> <p>4 There's --</p> <p>5 Q. On the west side of Von; is that right?</p> <p>6 A. What would have been on the west side of the</p> <p>7 Von strip.</p> <p>8 The -- but there's been nothing on Von --</p> <p>9 there's been -- since 1965, there has been no taxable</p> <p>10 improvements on the Von strip except the property</p> <p>11 owned now by the Hospers Family Trust. There never</p> <p>12 has been anything other than these hangars as</p> <p>13 improvements anywhere north of the middle of the block</p> <p>14 between 35th and 36th.</p> <p>15 Q. Are taxable improvements a necessary</p> <p>16 prerequisite for a street to be considered public?</p> <p>17 A. No, they are not. They are indicative about</p> <p>18 whether or not the property in front of them was used</p> <p>19 as -- whether or not it was used as a street.</p> <p>20 Q. And so you're saying that whether or not</p> <p>21 something is used as a street somehow is indicative of</p> <p>22 its legal status as a public street?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And if something is not used as a</p> <p>25 street, then it is not -- then it is not --</p>	155	<p>1 Q. (By Mr. Kelley) Is that your opinion or is</p> <p>2 that a legal conclusion?</p> <p>3 A. Sir?</p> <p>4 Q. Is that your opinion or is that a legal</p> <p>5 conclusion?</p> <p>6 MR. TURNER: Objection; form.</p> <p>7 A. You have not paid me a fee to be an expert</p> <p>8 witness. That's my lay opinion.</p> <p>9 Q. (By Mr. Kelley) All right. Fair enough.</p> <p>10 How about this, does a member of the</p> <p>11 public have a right to drive, walk or park on</p> <p>12 Northwest 38th Street?</p> <p>13 MR. TURNER: Objection; form.</p> <p>14 A. Part of it.</p> <p>15 Q. (By Mr. Kelley) Which part?</p> <p>16 A. I'm not quite sure what part. One police</p> <p>17 officer said it was here. Another police officer said</p> <p>18 it was here.</p> <p>19 Q. Have you looked into the issue yourself?</p> <p>20 A. Huh?</p> <p>21 Q. What's your opinion? I understand what the</p> <p>22 police have said, but what's your opinion?</p> <p>23 MR. TURNER: Objection; form.</p> <p>24 A. I don't know. I do know -- I do know that</p> <p>25 some of the area -- okay. I do know that -- this</p>

156	<p>1 being Ross Avenue here, I do know that when the City 2 widened Northwest 38th from Main Street west, they 3 stopped the widening here at Ross, and the -- there is 4 a gate to enter Meacham Field right here, and that the 5 City did not widen it, and has not maintained it since 6 then.</p> <p>7 I have always assumed not that -- I've 8 always agreed more with the police officer's 9 conclusion on April the 26th, that the drainage ditch 10 is the eastern limit of where VFM or the other hangar 11 tenants had a right to control.</p> <p>12 Q. (By Mr. Kelley) Okay. That's helpful. 13 So the same would be true on the date 14 Mr. Washburne was given his criminal trespass warning, 15 on the date he was arrested, and today?</p> <p>16 A. On the date he was given all three trespass 17 warnings, had been for many years before, and today, 18 yes, sir.</p> <p>19 Q. Okay. Great. Well, that's a nice segue into 20 my next -- my next set of questions here that concern 21 the property owned by the Trust and the origin of 22 that -- of that property.</p> <p>23 Were you involved in the purchasing of 24 the property that is now owned by the Trust? 25 A. Yes, sir.</p>	158	<p>1 Q. And you weren't aware of that at the time? 2 A. Huh? 3 Q. You were not aware of that at the time? 4 A. I very possibly was at that time. It didn't 5 dawn on me then the incongruity of it. 6 Q. Sure. Let me ask one more question. 7 When the property was initially 8 purchased, you were heavily involved in that 9 transaction; is that right? 10 A. Yes. When it was purchased from the Taylor 11 family that had owned it for many years. 12 Q. And so you were aware of the boundaries of 13 the property itself; is that right? 14 A. No. I don't think I was. 15 Q. Were you Doc's attorney? 16 A. Yeah. And then I did draw the deeds when the 17 property was conveyed to the Trust. 18 Q. Okay. So at that point you were aware of the 19 property boundaries? 20 A. We described the parcels in what is typical 21 in real estate transactions, and we copied the 22 property descriptions as they've been described for, 23 you know, in several generations of the property 24 before. We just -- I'm sure that that's the way the 25 property descriptions got there, that they were --</p>
157	<p>1 Q. And what was your involvement? 2 A. I represented Dr. Hospers in the -- some of 3 the negotiations to purchase that property from the 4 Taylor family, and during the transaction I'm not sure 5 whether I drew the deeds or not. I may have drawn the 6 deeds at that point.</p> <p>7 Q. So if you were involved in that process -- 8 A. Yes, sir. 9 Q. -- and you possibly helped -- 10 A. And then when the property -- okay. First, 11 let me tell you.</p> <p>12 I refer to being when Dr. Hospers 13 purchased it. After his death, we found there were 14 some problems. Number one, the titled owner of the 15 property was William D. Hospers, DO, PA, which shocked 16 me, and I thought I would have one hell of a hard time 17 trying to convince a court that all of this property 18 here was ancillary to his medical practice, so we got 19 that cleared up. Then --</p> <p>20 Q. So when you -- I'm sorry, I don't mean to 21 interrupt. 22 So when you initially helped Doc purchase 23 the property -- 24 A. He purchased it in the name of a professional 25 association.</p>	159	<p>1 just copied what had been done on previous deeds. 2 Q. Okay. So in -- at the date of the original 3 transaction, you were aware that the property did not 4 include Northwest 38th Street and Von Avenue; is that 5 right? 6 A. I was not aware of -- of Von at that -- no, I 7 was not aware of what turned out to be Von Avenue 8 having been Von Avenue. 9 I thought that what was Von Avenue -- I 10 wish we had aerial photographs here available and I 11 would pull it out. 12 Q. We'll get to those in a few minutes. 13 A. Okay. My recollection generally was that 14 what was Von Avenue back in the early to mid-'50s was 15 actually laid on the west side of the perimeter fence. 16 That -- I mean, I didn't -- I didn't pay any 17 particular attention, but that was my -- that was my 18 recollection. 19 Q. And why did you think that it was on the west 20 side of the fence? 21 A. Well, because in more recent times, from 22 aerial photographs and visual observance, what was one 23 time called Von just did not seem to look like it had 24 ever been fit to be used as a street, but -- 25 Q. But didn't the documents --</p>

160	<p>1 A. -- of course, when I -- well, let me tell 2 you, I was basing that on my memory from long before. 3 But, of course, one of the things that 4 contributed to the confusion, back in the '50s there 5 was no perimeter fence there. 6 Q. Right. 7 A. So it was just, you know, looked -- just 8 everything was in front of the hangars. 9 Q. So what was your understanding as to where 10 the property ended? Did it end at the lot line, the 11 edge of the lot, so to speak? 12 MR. TURNER: Objection; form. 13 A. I really didn't -- I really didn't know. I 14 had not really given it any thought then. 15 Q. (By Mr. Kelley) How were you able to advise 16 Doc as to the transaction if you didn't know where the 17 property was? 18 A. Doc didn't tolerate much advice from lawyers. 19 I mean, the work I did at that time was pretty 20 perfunctory. 21 Q. Okay. 22 A. No, I didn't look at a survey. 23 Q. So sitting here today, are you able to tell 24 me if -- if that property line -- with respect to the 25 Hospers Trust, does that property line end at the lot</p>	162	<p>1 Q. That sounds dangerous. 2 Okay. So in the stipulation where you 3 just said you agreed with, you say all of Von Avenue 4 and Northwest 38th Street and the intersection of 5 those two streets have never been owned by and are not 6 currently owned by any defendant in this case. 7 So how is that compatible with -- with 8 the property line coming out into Von Avenue five or 9 six feet? 10 A. No, no, no. The thing is, the strip that was 11 Von, the property, what I -- maybe I misspoke here. 12 The best I can tell, the property line 13 between what was City owned and what is owned by the 14 Trust is five or six feet west of the front doors of 15 the hangars. 16 Q. And how far does the gift shop stick out into 17 the -- 18 A. Oh, it actually sticks out into City-owned 19 property. 20 Q. Oh, so it does. More than five or six feet? 21 A. Oh, yes. In fact, according to my 22 recollection, this little curve here, it is rounded, 23 the west side is rounded, and that's -- that's pretty 24 accurate. It -- it sticks out and takes nearly, oh, 25 probably a third of the width of the City-owned</p>
161	<p>1 line? I mean, is it right at the edge of the hangar 2 or does it extend a few inches or feet, or what is 3 your understanding? 4 A. Probably the -- okay. The front of the 5 hangar, you see this little curved protrusion here? 6 Q. Yes. 7 A. That's what we call the gift shop. 8 Q. Okay. 9 A. Excluding the gift shop, the front of the 10 hangars, in front of both hangars, there's a drainage 11 ditch, and I think that the property owned by the 12 Trust extends about five or six feet west of the front 13 hangar, of the front hangar doors. 14 Q. Five or six feet west of the front hangar 15 doors. Is that true the whole length of the -- 16 A. Where the hangars are? 17 Q. Yeah. 18 A. Yes, sir. 19 Q. Got it. 20 A. And I presume that it would also be 21 prolonged all the way down to the fence on the south 22 side. 23 Q. Okay. Five or six feet of that -- 24 A. I'm not -- I've not really done any 25 measurement down there. Too many snakes.</p>	163	<p>1 property there. 2 Q. So are you basing your contention that -- 3 that the Trust property extends five or six feet west 4 of the lot line, so to speak, are you basing that 5 contention on a document you have seen, the hangar 6 property? 7 A. No. On the hangar doors. 8 Q. Yes, on the hangar doors. 9 A. Yes. 10 Q. And you said that that extended the whole way 11 down Von Avenue? 12 A. Yes, sir. 13 Q. Are you basing that opinion on documents that 14 you've seen, on what? 15 A. Well, mostly I'm basing it on the survey 16 here, which it -- and, by the way, this is -- this is 17 generally consonant with the survey that Mr. Washburne 18 had done. In fact, I think the only difference I 19 remember is the survey he had done did not indicate 20 some closed alleyways here. 21 But essentially I'm -- I base that that 22 the survey indicates a straight line here. 23 Q. So more or less down the middle of Von Avenue 24 or so? 25 A. Sir? I'm sorry?</p>



164	<p>1 Q. Oh, I -- I'm sorry. I'm just trying to</p> <p>2 conceptualize this.</p> <p>3 A. Okay.</p> <p>4 Q. So if you were to draw a line kind of down</p> <p>5 the middle of Von, that anything on this side would</p> <p>6 be -- would be owned by the Trust. Is that what</p> <p>7 you're saying? Is it about an even split?</p> <p>8 A. No, sir. I'm saying that this bold line here</p> <p>9 is -- is what -- is the borderline between the</p> <p>10 property owned by the Trust and the property owned by</p> <p>11 the City.</p> <p>12 Q. Okay.</p> <p>13 A. And I'm also saying that the front doors of</p> <p>14 the both hangars are about five feet east of that</p> <p>15 property line.</p> <p>16 Q. I see what you're saying. Okay.</p> <p>17 So this line is accurate in that it</p> <p>18 depicts the dividing line between what's owned by the</p> <p>19 City and what's owned by the Trust?</p> <p>20 A. Yes, sir.</p> <p>21 Q. You're saying that the hangar doors are</p> <p>22 actually about five or six feet I guess east of that</p> <p>23 line?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. I'm with you. Got it.</p>	166	<p>1 acres or so many square feet. I'm not sure which.</p> <p>2 So I wanted to know how much dollars and</p> <p>3 my client wanted to know how much cash train riding</p> <p>4 dollars they were going to get if they sold it.</p> <p>5 So anyhow, that's when we started trying</p> <p>6 to get a survey. And I hoped it would be a whole</p> <p>7 bunch of feet or acres to increase the sale price.</p> <p>8 Q. Increase the price, right.</p> <p>9 A. Okay. So anyhow that's the first time I</p> <p>10 really paid any attention to where it was.</p> <p>11 Q. 2013?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Okay. So when the property was originally</p> <p>14 purchased, and you helped Doc purchase the property,</p> <p>15 what was the role of Mrs. Hospers in that? Did she</p> <p>16 have a role?</p> <p>17 A. No. Let me explain. Dr. Hospers did not --</p> <p>18 okay.</p> <p>19 Mrs. Hospers was a busy schoolteacher</p> <p>20 raising three children, and Doc Hospers didn't share</p> <p>21 much about the family business with the family. I</p> <p>22 remember asking his son Bob one time about what his</p> <p>23 father had told him, and Bob remembered, he said,</p> <p>24 well, I was asking Dad about -- I don't remember what</p> <p>25 it was, but I was asking Dad about something about</p>
165	<p>1 But at the time -- at the time you helped</p> <p>2 Doc purchase the property, you didn't know that; is</p> <p>3 that right?</p> <p>4 A. No, sir, I did not. I frankly, I assumed</p> <p>5 that the property line probably went to where the</p> <p>6 fence is now.</p> <p>7 Q. When did you learn that it did not extend to</p> <p>8 the fence?</p> <p>9 A. When we were -- started trying to get a</p> <p>10 survey done about the -- somewhere close to the tail</p> <p>11 end of 2013, because we -- well, okay.</p> <p>12 Number one, we had a prospective</p> <p>13 purchaser that we were negotiating with.</p> <p>14 Q. And when was this?</p> <p>15 A. Huh?</p> <p>16 Q. When was this?</p> <p>17 A. This -- I'm talking about late 2013.</p> <p>18 Q. Okay.</p> <p>19 A. Or -- yeah, about late, our negotiations had</p> <p>20 progressed to the point that it looked like that the</p> <p>21 sale was imminent. We had agreed on most of the</p> <p>22 things.</p> <p>23 But the thing is, our purchase/sale</p> <p>24 agreement set a sale price, but it also had the</p> <p>25 provision that's based on an assumption of so many</p>	167	<p>1 some of the details about having property, and I said,</p> <p>2 well, Dad, well, where is that located, and</p> <p>3 Dr. Hospers said right here (indicating), and --</p> <p>4 Q. He's not telling anyone?</p> <p>5 A. -- that was the way he was. He didn't -- he</p> <p>6 didn't share much about business matters with his</p> <p>7 family or with his lawyer either.</p> <p>8 Q. Okay. Well, let's -- let's turn to a</p> <p>9 different document. I'm going to hand you what we</p> <p>10 will mark as Exhibit 63.</p> <p>11 (Exhibit No. 63 marked.)</p> <p>12 Q. (By Mr. Kelley) This is a City of Fort</p> <p>13 Worth, Texas Mayor and Council Communication dated</p> <p>14 December 18, 1990. Have you seen this document</p> <p>15 before, Mr. Monk?</p> <p>16 A. Yes, sir.</p> <p>17 Q. When did you first see it?</p> <p>18 A. Let's see. Don't see the cover letter email.</p> <p>19 I would know, but I'm not quite sure when I got it.</p> <p>20 Q. But it looks familiar. You have seen it</p> <p>21 before?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. So its subject is ROW Encroachment in</p> <p>24 Von Street. What does ROW stand for?</p> <p>25 A. Sir?</p>

168	<p>1 Q. The subject up at the top there is ROW</p> <p>2 Encroachment in Von Street.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you see it? We're back to the document I</p> <p>5 just handed you, Exhibit 63.</p> <p>6 A. Okay, sir. This -- let me show you the</p> <p>7 encroachment that they were talking about. Well,</p> <p>8 that's -- that is the encroachment, the --</p> <p>9 Q. Gift shop?</p> <p>10 A. -- gift shop right here, was the encroachment</p> <p>11 that they were talking about, okay?</p> <p>12 Q. Okay. And what does ROW stand for?</p> <p>13 A. Right-of-way.</p> <p>14 Q. Okay. Got it.</p> <p>15 So if you look at the background heading,</p> <p>16 that paragraph starts, it reads, Dr. Bill and Chuckie</p> <p>17 Hospers, owner of the BC Vintage Flying Machines</p> <p>18 adjacent to Meacham Airport.</p> <p>19 First of all, BC Vintage Flying Machines,</p> <p>20 I assume that's the Vintage Flying Museum; is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Have made application to the City of</p> <p>24 Fort Worth to continue the existence of a longstanding</p> <p>25 encroachment in the public right-of-way.</p>	170	<p>1 Q. But you were not involved in obtaining --</p> <p>2 A. In this application.</p> <p>3 Q. This application?</p> <p>4 A. No.</p> <p>5 Q. Were you aware that they had submitted an</p> <p>6 application?</p> <p>7 A. Not until a long time after.</p> <p>8 Q. Okay. So it says they made an application to</p> <p>9 the City of Fort Worth to continue the existence of a</p> <p>10 longstanding encroachment in the public right-of-way.</p> <p>11 I want to focus on those words, public right-of-way.</p> <p>12 To you, what does that mean?</p> <p>13 A. It means that the -- it probably means that</p> <p>14 someone in the street department had referred to it as</p> <p>15 a public right-of-way.</p> <p>16 Q. If it's an encroachment in the public</p> <p>17 right-of-way, would you agree that for some reason or</p> <p>18 another Dr. Bill and Chuckie Hospers thought they</p> <p>19 should get -- they should apply to continue the</p> <p>20 existence of this encroachment?</p> <p>21 MR. TURNER: Objection; form.</p> <p>22 A. The information I have is that shortly after</p> <p>23 Dr. Hospers acquired the property, there may have been</p> <p>24 a City inspection -- there was probably a City</p> <p>25 inspection done -- I don't know for what purpose --</p>
169	<p>1 Did I read that correctly?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Were you involved at all in making --</p> <p>4 A. Well, let -- let -- let's go ahead and read</p> <p>5 the rest of it too, please, sir.</p> <p>6 Q. Sure. The encroachment consists of a</p> <p>7 building addition to a hangar situated on the east</p> <p>8 side of Von Street, between 37th and 38th streets.</p> <p>9 Although the right-of-way is dedicated as a street, it</p> <p>10 has not historically been used as a street. Von</p> <p>11 Street is adjacent to Meacham Airport. The building</p> <p>12 addition and hangar building have been in place for</p> <p>13 approximately 50 and 60 years.</p> <p>14 A. All right, sir. Yes, that's correct.</p> <p>15 Q. So you were involved in making this</p> <p>16 application --</p> <p>17 A. No.</p> <p>18 Q. -- to the City of Fort Worth?</p> <p>19 A. No.</p> <p>20 Q. Oh, you were not?</p> <p>21 A. No.</p> <p>22 Q. Were you Dr. Bill and Chuckie Hospers' lawyer</p> <p>23 at the time?</p> <p>24 A. Whew, let's see. Oh, I had -- I had done</p> <p>25 a -- some legal work for them, for him, yeah.</p>	171	<p>1 but it came up that -- attention was called to the</p> <p>2 fact that it was an encroachment and that Dr. Hospers</p> <p>3 had filed this application that this refers to.</p> <p>4 That's what little bit I knew about it, that's what</p> <p>5 had happened.</p> <p>6 Q. (By Mr. Kelley) So if it's an encroachment</p> <p>7 on Von Avenue, that means that at the time Dr. Bill</p> <p>8 and Chuckie Hospers did not own that -- did not own</p> <p>9 Von Avenue, right?</p> <p>10 A. They did not own Von Avenue.</p> <p>11 Q. Right. But they needed to make an</p> <p>12 application so that they could have -- they could</p> <p>13 continue the gift shop being where it was, correct?</p> <p>14 MR. TURNER: Objection; form.</p> <p>15 A. Uh-huh.</p> <p>16 Q. (By Mr. Kelley) So when it says it's an</p> <p>17 encroachment in the public right-of-way, that means</p> <p>18 it's encroaching the public's right to go down that</p> <p>19 street, right?</p> <p>20 MR. TURNER: Objection; form.</p> <p>21 A. I don't know.</p> <p>22 Q. (By Mr. Kelley) Public right-of-way means</p> <p>23 the right of the public to go down that, Von Street,</p> <p>24 right?</p> <p>25 MR. TURNER: Objection; form.</p>

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<p>1 A. I don't think it's conclusive, no. I notice 2 the next sentence, though. It says, although the 3 right-of-way is dedicated to the street, it has not 4 historically been used as a street. 5 Q. (By Mr. Kelley) That's right. Do you think 6 that that fact alters the legal status of that street? 7 MR. TURNER: Objection; form. 8 A. Oh, I guess it's still a right-of-way. 9 Although it -- you can call it an abandoned street -- 10 Q. (By Mr. Kelley) Sure. 11 A. -- but it was not used as a street. 12 Q. So there's no way that someone could exclude 13 the public from that street based on the fact that no 14 one had walked down it in a while, right? 15 MR. TURNER: Objection; form. 16 A. It depends on whether or not the owner, the 17 City, had permitted some permissive user to maintain 18 it, charge rent on -- charge rent for it, maintain it, 19 use it, control it, fence it off. 20 Q. (By Mr. Kelley) Okay. 21 A. I think that would all enter into it. 22 Q. Okay. The next paragraph says a member of 23 the encroachment committee has made an on-site 24 inspection of the building and surrounding area. It 25 appears that the continuance of the encroachment will</p>	<p>1 Q. Why else would it be called a public 2 right-of-way if it wasn't for use by the public? 3 MR. TURNER: Objection; form. 4 A. Sloppiness. 5 Q. (By Mr. Kelley) All right. Okay. 6 So this -- so the goal of Dr. Bill and 7 Chuckie Hospers was to maintain an easement on Von 8 Street; is that right? 9 MR. TURNER: Objection; form. 10 A. Sir? 11 Q. (By Mr. Kelley) The goal was to maintain an 12 easement on Von Street for the gift shop; is that 13 right? 14 MR. TURNER: Objection; form. 15 A. That was the application and what the first 16 city council meeting, December the 18th, 1990, took 17 up. They changed their mind the next month, of 18 course, as you can see by the second page. 19 Q. (By Mr. Kelley) Right. Okay. So when was 20 the first time you saw this document, roughly, if you 21 can recall? 22 A. Ooh, probably -- probably sometime in 2014. 23 I don't know exactly what time. 24 Q. But you were aware of the easement that the 25 Trust had with respect to the gift shop on Von Avenue,</p>
173	175
<p>1 have no adverse effect on the street right-of-way. 2 Doesn't that indicate that the public was 3 traveling down that street, and that the continued 4 access of the public to that street is of primary 5 concern? 6 MR. TURNER: Objection; form. 7 A. No, it does not because it had a fence at the 8 south end and a gate in the middle of it. 9 Q. (By Mr. Kelley) In the middle of Von Street? 10 A. Yes. 11 Q. Okay. So when it says the encroachment will 12 have no adverse effect on the street right-of-way, 13 what do you think that is referring to? 14 MR. TURNER: Objection; form. 15 A. It wouldn't cause any problem. It's been 16 there for a long time, hadn't caused any problem. It 17 won't have any problem now, is what it says to me. 18 Q. (By Mr. Kelley) But the concern here is that 19 the encroachment would impede the public's use of the 20 right-of-way; isn't that right? 21 MR. TURNER: Objection; form. 22 A. I don't agree. 23 Q. (By Mr. Kelley) Why else would it be called 24 a public right-of-way? 25 A. Sir?</p>	<p>1 right? 2 A. No, it was not an easement. This -- this, in 3 effect, was approved at the January meeting, but it 4 was rejected the next month when the city staff was 5 instructed to include the proposed -- the proposed 6 vacation of Von in the current application, is being 7 processed in vacating all the streets around Meacham 8 Airport that are not being used, utilized currently. 9 Q. Yeah, I have seen this before. 10 But the Von Avenue, the portion of Von 11 Avenue that was not being utilized currently was never 12 vacated by the City of Fort Worth; is that right? 13 A. City council instructed the staff to do it, 14 but the staff never did get around to it. 15 Q. So today it's still owned by the City of Fort 16 Worth? 17 A. Yes. 18 Q. Okay. Okay. What -- what evidence exists 19 that -- what proof do you have that the City was 20 instructed to do that, to at any point vacate? 21 A. Minutes of the mayor and council meeting 22 December of 1991 -- well, actually, this is -- this is 23 it right here -- by the way, that motion was passed 24 anonymously by the city council, that the city staff 25 is instructed to do that.</p>

176	<p>1 Q. But the passage was to put it in an 2 application, was it not?</p> <p>3 A. What?</p> <p>4 Q. The unanimous passage wasn't -- wasn't saying 5 that the -- that the street should be vacated, was it? 6 It was approving it to be put into an application that 7 would later be voted on?</p> <p>8 A. It -- well, the staff was instructed to 9 include the proposed vacation of Von in the current 10 application as being processed, but they didn't.</p> <p>11 Q. Right. So it was -- they were instructed to 12 include it, the vacation of Von Street in the current 13 application that was being processed. They weren't 14 instructed to vacate the street itself?</p> <p>15 A. Well, the application had already been -- the 16 application to close those streets, the staff was 17 instructed to include Von in the apparently pending 18 application.</p> <p>19 Q. Right. But the application wasn't approved; 20 is that right?</p> <p>21 A. The city staff never did do what they were 22 instructed to do.</p> <p>23 Q. Okay. So the application was never approved?</p> <p>24 MR. TURNER: Objection; form.</p> <p>25 Q. (By Mr. Kelley) So let's move on.</p>	178	<p>1 Q. (By Mr. Kelley) Okay. All right. So let's 2 go back, one last question on this.</p> <p>3 It says Dr. Bill and Chuckie Hospers had 4 made this application in the first paragraph -- or the 5 second paragraph of this communication -- or the -- 6 these notes; is that right.</p> <p>7 A. Sir?</p> <p>8 Q. It says that Dr. Bill and Chuckie Hospers had 9 made the application to the City of Fort Worth?</p> <p>10 A. They had made the application for approval of 11 the existing encroachment. But that was -- that was 12 approved in December, but revoked in January.</p> <p>13 Q. Okay. But my point is that Dr. Bill and 14 Chuckie Hospers would have been aware of the fact that 15 Von Avenue was a right -- a public right-of-way at the 16 time, and what they were doing was requesting --</p> <p>17 A. I don't think --</p> <p>18 MR. TURNER: Objection; form.</p> <p>19 A. I don't think Chuckie would have been aware 20 of it.</p> <p>21 Q. (By Mr. Kelley) Do you know if she was aware 22 of it?</p> <p>23 A. I don't know. I doubt it.</p> <p>24 Q. Okay. Let me move to another document. What 25 we're going to -- oh, it's already been marked as</p>
177	<p>1 Okay. So let me -- let me be a hundred 2 percent clear. Let me read this. I'm reading the 3 second page. The motion was to deny the M&amp;C and 4 instruct the staff to include the proposed vacation of 5 Von Street in the current application that is being 6 processed in vacating all the streets around Meacham 7 Airport that are not being utilized currently.</p> <p>8 So the staff was instructed to include 9 the proposed vacation of Von Street in the 10 application, right?</p> <p>11 MR. TURNER: Objection; form.</p> <p>12 Q. (By Mr. Kelley) That's what this is saying. 13 This is not saying that the council somehow approved 14 Von Street to be vacated?</p> <p>15 MR. TURNER: Objection; form.</p> <p>16 Q. (By Mr. Kelley) Is that correct? Yes or no?</p> <p>17 A. Possibly. Possibly correct. I'm not quite 18 sure what the procedure was. I believe that I saw 19 something that the city street department had been the 20 one that had requested the application, so they didn't 21 have to maintain those streets anymore, so the City 22 could start collecting taxes, ad valorem taxes, on it.</p> <p>23 But I believe the application had been 24 made by the city street department, but I'm a little 25 fuzzy on what I found on that.</p>	179	<p>1 Exhibit 15. There you are. I think you might have 2 been referring to this earlier.</p> <p>3 Does this document look familiar to you, 4 Mr. Monk?</p> <p>5 A. It's a copy of what I have seen before, yes, 6 sir.</p> <p>7 Q. And what is it a copy of?</p> <p>8 A. Sir?</p> <p>9 Q. What is it a copy of?</p> <p>10 A. Oh, it's a copy of minutes of Fort Worth 11 mayor and council meeting on January the 10th, 1991.</p> <p>12 Q. Okay. So let's go down to the fourth 13 paragraph from the bottom that starts assistant city 14 manager Ramon.</p> <p>15 Do you see that, fourth from the bottom?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Assistant city manager Ramon, I won't 18 try to pronounce his last name, appeared before the 19 city council regarding the issue of the closing of Von 20 Street and advised the city council of the appropriate 21 motion should it wish to demand Mayor and Council 22 Communication Number C-12662.</p> <p>23 When the motion, that Mayor and Council 24 Communication Number C-12662 be denied and that city 25 staff be instructed to include the possible vacation</p>

180	<p>1 of Von Street in the current application being</p> <p>2 processed for streets to be vacated around Meacham</p> <p>3 Airport not currently being utilized, was put to a</p> <p>4 vote by the mayor, it prevailed unanimously.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So this is saying that the staff were</p> <p>8 instructed to include the possible vacation of Von</p> <p>9 Street in an application for various streets to be</p> <p>10 vacated around Meacham Airport; is that right?</p> <p>11 MR. TURNER: Objection; form.</p> <p>12 A. That's what it says.</p> <p>13 Q. (By Mr. Kelley) Okay. But that application</p> <p>14 was never approved; is that right, to vacate Von</p> <p>15 Street?</p> <p>16 A. Apparently, city staff did not include Von in</p> <p>17 the pending application.</p> <p>18 Q. Okay.</p> <p>19 A. Or what's referred to here as a current</p> <p>20 application.</p> <p>21 Q. So Von Street was never vacated and</p> <p>22 remained --</p> <p>23 A. No.</p> <p>24 Q. -- property of Fort Worth?</p> <p>25 A. No, not been vacated.</p>	182	<p>1 Q. Okay. Why was the Hospers Family Trust "D"</p> <p>2 created and when?</p> <p>3 A. Pursuant to the terms of an estate plan that</p> <p>4 had been developed by Dr. Hospers and Mrs. Hospers</p> <p>5 that upon the death of one, that the Trust would be</p> <p>6 created.</p> <p>7 Q. And when was the Trust created, do you</p> <p>8 recall?</p> <p>9 A. Executed or created?</p> <p>10 Q. Created. When was the Trust --</p> <p>11 A. Okay. It actually became operational a few</p> <p>12 months after Dr. Hospers' death in March of 2010.</p> <p>13 Q. Okay. Did the Trust contain any assets prior</p> <p>14 to this distribution?</p> <p>15 A. No. The Trust had no assets prior to</p> <p>16 Dr. Hospers' death.</p> <p>17 Q. Well, but it says here that Doc Hospers</p> <p>18 passed away on March 23rd, 2010, and this document is</p> <p>19 signed on October 24th, 2012.</p> <p>20 A. I'm sorry, I think I said March 10th.</p> <p>21 Actually, the date of death was correct here, March</p> <p>22 23rd.</p> <p>23 Q. Okay. So there were no assets in the Trust</p> <p>24 from March 23rd, 2010, the date of his passing, until</p> <p>25 October 24th, 2012?</p>
181	<p>1 Q. Okay. Are you aware whether or not the rest</p> <p>2 of the application was approved?</p> <p>3 A. No.</p> <p>4 Q. When was the first time you saw this</p> <p>5 document, Exhibit 15?</p> <p>6 A. 2000 -- sometime 2014.</p> <p>7 Q. Okay.</p> <p>8 A. Probably in -- probably in May of 2014.</p> <p>9 Q. Okay. Let's move to a different document.</p> <p>10 This document has been previously marked</p> <p>11 as Exhibit 37. It is a Distribution Deed. Have you</p> <p>12 seen this before, Mr. Monk?</p> <p>13 A. Oh, yeah, I'm sure this is a copy, yep.</p> <p>14 Q. Can you describe what the Distribution Deed</p> <p>15 was meant to accomplish?</p> <p>16 A. This was conveying the -- one of the tracts</p> <p>17 in the Washington Heights Addition from the -- from</p> <p>18 Mrs. Hospers' individual portion of ownership and the</p> <p>19 independent executor of the Estate of William D.</p> <p>20 Hospers, conveying one of those tracts of land to the</p> <p>21 Hospers Family Trust.</p> <p>22 Q. Okay. And if you look at the second page, it</p> <p>23 looks like this document was signed October 24th, 2012</p> <p>24 by Charlyn R. Hospers; is that correct?</p> <p>25 A. Yes, sir.</p>	183	<p>1 A. I don't recall whether there were any other</p> <p>2 assets in the Trust or not. I think that -- I think</p> <p>3 that some asset -- maybe there were some other assets</p> <p>4 that flowed into the Trust immediately upon his</p> <p>5 passing.</p> <p>6 Q. And why was this Distribution Deed executed</p> <p>7 when it was?</p> <p>8 MR. TURNER: Objection; form.</p> <p>9 A. It was executed to fulfill the terms of the</p> <p>10 estate plan that Dr. and Mrs. Hospers had established.</p> <p>11 Q. (By Mr. Kelley) So it just took two years to</p> <p>12 effectuate that plan, to transfer the assets into the</p> <p>13 Trust?</p> <p>14 A. Yes, sir. There were -- the inheritance --</p> <p>15 or the estate taxes were in a state of confusion for</p> <p>16 deaths that occurred in 2010. There were big</p> <p>17 disparities about the step-up basis on assets, a part</p> <p>18 of Governor George W. Bush's welfare plan for the</p> <p>19 wealthy, and the --</p> <p>20 Q. Can I ask you --</p> <p>21 A. -- Congress and IRS went through a couple of</p> <p>22 years there of kicking back and forth about how that</p> <p>23 was going to be handled. That caused a great deal to</p> <p>24 be late.</p> <p>25 Q. So were you involved in drafting this</p>

184	<p>1 Distribution Deed?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Did you draft the entire thing?</p> <p>4 A. Sir?</p> <p>5 Q. Did you draft the entire document yourself?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. This document describes in detail all</p> <p>8 of the lots owned by, formerly, by William D. Hospers</p> <p>9 and that are being distributed, given to the Trust;</p> <p>10 isn't that right?</p> <p>11 A. Correct.</p> <p>12 Q. Did these descriptions include all of the</p> <p>13 property currently owned by the Trust?</p> <p>14 A. I -- you mean owned by the Trust now?</p> <p>15 Q. Currently, yeah.</p> <p>16 A. No.</p> <p>17 Q. So the Trust has acquired other -- additional</p> <p>18 property since then that --</p> <p>19 A. No.</p> <p>20 Q. -- is not reflected here?</p> <p>21 A. The Trust acquired -- the Trust had other</p> <p>22 assets beside this.</p> <p>23 Q. Okay, okay. That's fair.</p> <p>24 But are these the lots upon which the</p> <p>25 Vintage Flying Museum now sits?</p>	186	<p>1 Von Avenue?</p> <p>2 A. No, not the entire. They never had anything</p> <p>3 for the entire. But for various places on Von Avenue,</p> <p>4 including Mr. Washburne paid rent for his aircraft</p> <p>5 components on Von Avenue.</p> <p>6 Q. So when you drafted this Distribution Deed,</p> <p>7 you were aware that none of the lots or the land</p> <p>8 mentioned here that were being given to the Trust</p> <p>9 included Von Avenue or any portion of 38th Street?</p> <p>10 A. No. I don't remember what I knew when I</p> <p>11 drafted the deed. I didn't know. I mean, I -- I</p> <p>12 guess I assumed that the Trust ownership went to the</p> <p>13 perimeter fence then.</p> <p>14 Q. The perimeter fence, meaning the fence</p> <p>15 dividing Meacham Airport from the Von Avenue?</p> <p>16 A. Yes.</p> <p>17 Q. So when you were drafting this, at no point</p> <p>18 did you -- did you realize or notice that the streets</p> <p>19 were not contained within these descriptions? I mean,</p> <p>20 these are very specific descriptions of lots, and you</p> <p>21 didn't notice that Von Avenue was not included in this</p> <p>22 description?</p> <p>23 A. At that time I had no idea that anything on</p> <p>24 the east side of the Meacham Field perimeter fence was</p> <p>25 what had been Von Avenue. I was -- you know, it was</p>
185	<p>1 A. Yes, sir.</p> <p>2 Q. Okay. So these lots include all of the</p> <p>3 property that the Vintage Flying Museum currently</p> <p>4 occupies?</p> <p>5 A. Well, it's -- no. No, it's not. It's --</p> <p>6 this does include -- this includes -- this deed</p> <p>7 includes all of the property that Dr. Hospers owned or</p> <p>8 that the Trust owns now in the Washington Heights</p> <p>9 Addition to the City of Fort Worth.</p> <p>10 Q. Okay. Let me ask it a different way.</p> <p>11 All of the property upon which the</p> <p>12 Vintage Flying Museum now sits is mentioned here in</p> <p>13 this Distribution Deed; is that right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay.</p> <p>16 A. No, no, I beg your pardon. No. The Vintage</p> <p>17 Flying Museum occupies other property as we've</p> <p>18 discussed. They have occupied the entirety of Von</p> <p>19 ever since the creation.</p> <p>20 Q. What do you mean, occupied?</p> <p>21 A. Occupied, maintained, controlled, charged</p> <p>22 rent for storage on it.</p> <p>23 Q. For the entirety of Von Avenue?</p> <p>24 A. Yes, sir.</p> <p>25 Q. They were charging rent for the entirety of</p>	187	<p>1 really not anything that I had paid any attention to,</p> <p>2 but I still assumed that what had once been Von was on</p> <p>3 the west side of the perimeter fence. I did not know</p> <p>4 the boundaries.</p> <p>5 Q. Did Mrs. Hospers review this document before</p> <p>6 she signed it?</p> <p>7 A. Sir?</p> <p>8 Q. Did Mrs. Hospers review this document before</p> <p>9 she signed it?</p> <p>10 A. I have no idea of what extent she reviewed</p> <p>11 it.</p> <p>12 Q. Did she sign it in your presence?</p> <p>13 A. I don't have any idea.</p> <p>14 Q. Were you involved in filing this document?</p> <p>15 A. Oh, it looked like my -- looked like my</p> <p>16 office did, I imagine.</p> <p>17 Q. The last page here you're listed as</p> <p>18 submitter.</p> <p>19 A. It looks like I paid the filing fee, so my</p> <p>20 office did.</p> <p>21 Q. So you drafted this document, but you never</p> <p>22 walked through it with Mrs. Hospers?</p> <p>23 A. I don't recall the extent of that.</p> <p>24 Q. You never reviewed with her --</p> <p>25 A. Besides that, that's none of your legitimate</p>

188	<p>1 concern. That's privileged about what Mrs. Hospers 2 and I did.</p> <p>3 Q. I'm not trying to gain access to any 4 privileged communications, I assure you. I'm just 5 trying to understand.</p> <p>6 Okay. Let's move to another document 7 here.</p> <p>8 MR. KELLEY: Let's mark this as 9 Exhibit 64.</p> <p>10 Q. (By Mr. Kelley) This is an agreement between 11 the City of Fort Worth and the Vintage Flying Museum. 12 Mr. Monk, does this look familiar to you?</p> <p>13 THE REPORTER: Can I mark it, please?</p> <p>14 MR. TURNER: Hal.</p> <p>15 THE WITNESS: Sir?</p> <p>16 THE REPORTER: Let me -- can I mark it?</p> <p>17 THE WITNESS: Oh, I'm sorry. 18 (Exhibit No. 64 marked.)</p> <p>19 Q. (By Mr. Kelley) Have you seen this document 20 before, Mr. Monk?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And is it what we've referred to previously 23 as a through-the-fence agreement?</p> <p>24 A. Access agreement, through-the-fence 25 agreement, yes, sir.</p>	190	<p>1 A. All right, sir.</p> <p>2 Q. Let's go to Exhibit A. So before we discuss 3 Exhibit A, can you describe to me why there was a need 4 for this through-the-fence agreement -- for this 5 Airport Access Agreement?</p> <p>6 A. Well, there are several purposes. But what 7 brought this one about was that a grant program, and 8 the FAA required that these off-airport -- these 9 off-airport airplane situations, to have access, has 10 to pay a reasonable fee to the airport to cover the 11 costs of their aeronautical operations on the airport.</p> <p>12 The other thing, another thing that was 13 new there that necessitated the revision, as I recall, 14 was that the people on the outside of the fence had to 15 undertake and be governed by some more stringent 16 requirements than they had been obliged to do before, 17 and I think that was brought about by some airport 18 security improvements resulting from 9-11 intrusions.</p> <p>19 Q. Okay. So Exhibit A here shows -- if you 20 don't mind flipping there. There were a couple 21 photographs each marked Exhibit A, and it looks like 22 this photograph is showing evidence of the access that 23 this agreement is granting from the airport property 24 across Von Avenue to the Vintage Flying Museum? 25 A. Yes, sir.</p>
189	<p>1 Q. Same thing? Okay.</p> <p>2 So on the first page here it says, the 3 fifth whereas, grantee has requested and grantor has 4 agreed to execute a new Airport Access Agreement. So 5 who requested this Airport Access Agreement?</p> <p>6 A. I believe -- where did you read that, sir?</p> <p>7 Q. That is the fifth whereas, the last whereas.</p> <p>8 A. I believe that actually the airport -- the 9 previous access agreement had passed the term that was 10 agreed to, but it was just continued indefinitely, so 11 I think it was the City that said that -- best I 12 recall there was some FAA grant program requirement 13 that required a -- required a new agreement, and 14 that's where -- so anyhow --</p> <p>15 Q. But it sounds like the grantee requested it, 16 right?</p> <p>17 A. This says the grantee requested it. And if 18 the -- if the city manager's office -- the airport 19 manager's office told us that they weren't going to 20 keep the old one in effect, I'm sure we requested it.</p> <p>21 Q. Okay. So section 1.1, Points of Access, at 22 the bottom of the first page, it says, grantor grants 23 grantee access to and from the airport through airport 24 gate 37 (gate) identified on Exhibit A attached 25 hereto?</p>	191	<p>1 Q. Okay. Do you see on -- the photograph on the 2 right, the right-hand side, I think it's that one, the 3 Vintage Flying Museum is labeled there, is it not?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And it says private property?</p> <p>6 A. Yes, sir.</p> <p>7 Q. But nowhere does it make any mention of Von 8 Avenue being private property; is that right?</p> <p>9 A. How many times do we have to agree that Von 10 Avenue or what's called Von Avenue is not private 11 property? It's City owned and has been ever since it 12 became in the City limits.</p> <p>13 Q. Okay. So this -- tell me if I'm right -- 14 seems to indicate that the right-of-way extends from 15 the airport property across Von into -- into that 16 building labeled Vintage Flying Museum, that hangar, 17 right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And only to that hangar.</p> <p>20 Let's flip back briefly to section 3 of 21 this agreement titled Access Fee. It's the second 22 page. It says, grantee shall pay to grantor an annual 23 access fee of 32 cents per square foot of space. It 24 goes on to say -- it's identified on Exhibit B, from 25 which direct access to the airport is granted.</p>

192	<p>1 So we go back to Exhibit B, sorry to keep</p> <p>2 you flipping, but there are a few pages, and one of</p> <p>3 those is a map here. It says, map of survey showing</p> <p>4 the Vintage Flying Museum, and it looks like this is</p> <p>5 that hangar that was in the photograph, right, where</p> <p>6 the airplanes could move from Meacham across Von</p> <p>7 into -- into this hangar; is that your understanding?</p> <p>8 A. Let me -- let me get myself orientated here a</p> <p>9 bit.</p> <p>10 Q. Sure.</p> <p>11 A. Okay, sir. Yes, this is the area of the main</p> <p>12 hangar that is used by flyable aircraft.</p> <p>13 Q. Okay. And if you see on the left side of the</p> <p>14 survey, there is -- it shows Von Avenue because Von</p> <p>15 Avenue is labeled.</p> <p>16 A. Yes, sir.</p> <p>17 Q. And in parentheses it says 55.0 ROW,</p> <p>18 right-of-way, per plat?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So this is indicating that Von Avenue is a</p> <p>21 public right-of-way; is that correct?</p> <p>22 A. No, sir. It doesn't say the word public</p> <p>23 anywhere.</p> <p>24 Q. What is your understanding of what --</p> <p>25 A. ROW stands for right-of-way; that's agreed.</p>	194	<p>1 somehow denotes the conveying of property interest? I</p> <p>2 just want to be clear because I think throughout this</p> <p>3 deposition we've mentioned a few times that -- you've</p> <p>4 mentioned a few times that there were agreements that</p> <p>5 VFM entered into with the City of Fort Worth that gave</p> <p>6 VFM some rights with respect to Von Avenue.</p> <p>7 A. Yes, sir.</p> <p>8 Q. And this is one of those agreements, as far</p> <p>9 as you're concerned, right?</p> <p>10 A. This is one of the agreements. If you want</p> <p>11 to use up 20 minutes of your time for me to -- for me</p> <p>12 to carefully look through it, I'll --</p> <p>13 Q. I'd rather not.</p> <p>14 A. -- respond to that.</p> <p>15 Q. I'd rather not.</p> <p>16 I think it suffices to say that it's your</p> <p>17 contention that this document conveys certain property</p> <p>18 rights in Von Avenue to VFM?</p> <p>19 A. It does convey some certain property rights,</p> <p>20 yes.</p> <p>21 Q. And with respect to all of Von Avenue or only</p> <p>22 that section?</p> <p>23 A. This portion covered by this agreement plus</p> <p>24 anything that would enter this area, in the bold</p> <p>25 marks, from any -- anywhere adjacent.</p>
193	<p>1 Q. Does this document, this Airport Access</p> <p>2 Agreement, grant any property rights to the Trust?</p> <p>3 A. Well, it does to VFM. It grants these</p> <p>4 property rights right here, with the bold.</p> <p>5 Q. When you say property rights, what do you</p> <p>6 mean?</p> <p>7 A. From here to here.</p> <p>8 Q. Right. Are those exclusive rights granted --</p> <p>9 let me ask a different way. Strike that.</p> <p>10 Are the property rights granted to VFM</p> <p>11 the right to exclusively occupy that space?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And they include the right to exclude any</p> <p>14 members of the public from that space?</p> <p>15 A. VFM would have.</p> <p>16 Q. They would have the right to do that. Where</p> <p>17 do you find that in the agreement, VFM's ability to</p> <p>18 solely occupy that space and exclude members of the</p> <p>19 public?</p> <p>20 A. Oh, let's see. This agreement is a number of</p> <p>21 pages.</p> <p>22 Q. The title of the agreement is Airport Access</p> <p>23 Agreement, is it not?</p> <p>24 A. Right.</p> <p>25 Q. Is it your contention that the word access</p>	195	<p>1 Q. Okay. So potentially the entire length of</p> <p>2 Von Avenue, then?</p> <p>3 A. Well, I don't know whether I'd go that far or</p> <p>4 not. But anything that would be adjacent to this, it</p> <p>5 could use it. In other words, no -- to control, keep</p> <p>6 from doing any piggybacking through the gate.</p> <p>7 Q. Okay. One more thing with respect to</p> <p>8 Exhibit B, I'm sorry, if you wouldn't mind turning</p> <p>9 back there.</p> <p>10 The page just before the survey, it says,</p> <p>11 at the top, Exhibit B, Fort Worth.</p> <p>12 A. Yes, sir.</p> <p>13 Q. The fourth line down says, surveyed on the</p> <p>14 ground in December of 2013 and January of 2014.</p> <p>15 Were you aware of those surveys being</p> <p>16 completed?</p> <p>17 A. Yes. I have never seen the surveys, but I</p> <p>18 knew that the city department did want to do a survey</p> <p>19 there to get the measurements all correct.</p> <p>20 Q. So you reviewed this document before it was</p> <p>21 executed; is that right?</p> <p>22 A. Sir?</p> <p>23 Q. You reviewed this document before it was</p> <p>24 executed, right?</p> <p>25 A. I'm not quite sure that I -- yes, I did.</p>



196	<p>1 Q. I see, on the -- toward the end there, it</p> <p>2 looks like that's your signature; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And the signature of Charlyn R. Hospers?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So is it safe to say that Mrs. Hospers also</p> <p>7 reviewed this agreement before signing it?</p> <p>8 A. I'm sure she did, relatively sure.</p> <p>9 Q. And that both of you were aware of the</p> <p>10 property boundaries as established in the survey here</p> <p>11 and as discussed in the agreement itself?</p> <p>12 MR. TURNER: Objection; form.</p> <p>13 A. That was the -- that was the property -- that</p> <p>14 was the property boundaries of the access agreement,</p> <p>15 yes. This is -- this designates the property</p> <p>16 boundaries about where VFM had -- from which VFM had a</p> <p>17 right to use --</p> <p>18 Q. (By Mr. Kelley) Okay. So --</p> <p>19 A. -- Meacham Field for aeronautical operations.</p> <p>20 Q. -- it looks like this agreement was signed on</p> <p>21 March 4th, 2014, which puts it about six weeks before</p> <p>22 Mr. Washburne was arrested; is that right?</p> <p>23 A. Somewhere in there.</p> <p>24 Q. Okay. So at that time that you signed this</p> <p>25 you were aware of the property boundaries with respect</p>	198	<p>1 Flying Museum?</p> <p>2 A. It certainly does to -- from -- everything</p> <p>3 from the front of the hangar to Meacham Airport.</p> <p>4 Q. For the whole length of Von Street?</p> <p>5 A. Let me say it again.</p> <p>6 Q. You're talking east/west, and I'm talking</p> <p>7 north/south, so --</p> <p>8 A. It grants property rights to VFM from the</p> <p>9 things marked in bold lines here all the way onto</p> <p>10 Meacham Airport.</p> <p>11 Q. But with respect to Von Avenue itself, what</p> <p>12 property rights does it convey?</p> <p>13 A. It reinforces the property rights VM -- VFM</p> <p>14 and recognizes the property rights that VFM had always</p> <p>15 had on this strip of Von Avenue right here.</p> <p>16 Q. And by this strip, you mean the strip of land</p> <p>17 directly across from the hangar?</p> <p>18 A. Directly in front of the -- in front of the</p> <p>19 main hangar.</p> <p>20 Q. And nothing else? It didn't convey any</p> <p>21 additional property rights for any -- any of the rest</p> <p>22 of Von Avenue?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. This did not, no.</p>
197	<p>1 to the Trust?</p> <p>2 MR. TURNER: Objection; form. You've</p> <p>3 asked this three times now. So I'm going to instruct</p> <p>4 him not to answer. He said no, he wasn't aware of the</p> <p>5 property boundary. He's answered that question. You</p> <p>6 don't need to keep asking it.</p> <p>7 MR. KELLEY: Well, then he said he was</p> <p>8 aware of the property boundaries.</p> <p>9 MR. TURNER: Of the through-the-fence</p> <p>10 agreement, that portion of the fence that they could</p> <p>11 take airplanes through. That's the only thing that</p> <p>12 was surveyed, is that fence.</p> <p>13 MR. KELLEY: Right. But he's effectively</p> <p>14 saying that there -- that there's property -- that</p> <p>15 there are property rights in all of Von Avenue, and</p> <p>16 I'm trying to establish whether that's really what he</p> <p>17 thinks or --</p> <p>18 MR. TURNER: Well, I don't think he's</p> <p>19 saying that's the punt of VFM by this agreement, but</p> <p>20 go ahead.</p> <p>21 A. The --</p> <p>22 Q. (By Mr. Kelley) Let --</p> <p>23 A. This only addresses the space occupied by</p> <p>24 flyable airplanes, period, nothing else.</p> <p>25 Q. Does it grant property rights to the Vintage</p>	199	<p>1 MR. KELLEY: Should we take a break?</p> <p>2 MR. TURNER: Sure.</p> <p>3 MR. KELLEY: Okay. Let's go off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: We're now going off</p> <p>6 the record. The time is now 3:10.</p> <p>7 (Recess 3:10-3:29.)</p> <p>8 THE VIDEOGRAPHER: We're going back on</p> <p>9 the record. The time is now 3:29.</p> <p>10 Q. (By Mr. Kelley) Okay, Mr. Monk, a few</p> <p>11 additional questions. Some of these relate to some of</p> <p>12 the topics we've covered previously.</p> <p>13 So let me first ask, did you ever give</p> <p>14 Mr. Washburne a book about a field goal kicker? Does</p> <p>15 that sound familiar to you?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. And what was the title of the book, do you</p> <p>18 recall?</p> <p>19 A. The Man Who Ruined Football.</p> <p>20 Q. And when did you -- when did you give it to</p> <p>21 Seth?</p> <p>22 A. Oh, I don't remember. Sometime in 2012.</p> <p>23 Q. And why did you give it to Seth?</p> <p>24 A. I thought he'd enjoy reading it. Good</p> <p>25 writers like to read.</p>

200	<p>1 Q. So this is after you had read his book, huh?</p> <p>2 A. Well, yeah, I -- well, I don't know. About</p> <p>3 the same time.</p> <p>4 Q. So you said that in the spring of 2012,</p> <p>5 Mr. Washburne was creating problems by not getting</p> <p>6 along with various tenants in the hangar; is that</p> <p>7 right?</p> <p>8 A. That's correct.</p> <p>9 Q. Can you name the tenants that he,</p> <p>10 Mr. Washburne, did not get along with?</p> <p>11 A. Of course, we've already spent enough time</p> <p>12 talking about Jim Terry.</p> <p>13 Q. That's right.</p> <p>14 A. But Jim Reynolds, and I don't recall other</p> <p>15 owners, but workers are several, Mark Reams, Jason</p> <p>16 Schultz.</p> <p>17 Q. Was he ever rude to any volunteers at the</p> <p>18 flying museum?</p> <p>19 A. Oh, yeah, they --</p> <p>20 MR. TURNER: Can I stop? Were you</p> <p>21 finished giving him a list of people that didn't get</p> <p>22 along with --</p> <p>23 A. I kept -- and I don't know, I guess the best</p> <p>24 example I can give you on this, the best response I</p> <p>25 can give you on that, is that was Mr. Washburne's</p>	202	<p>1 plane, that you had -- you had checked -- you had</p> <p>2 informed or someone who checked with the police and</p> <p>3 found no basis for the theft charges; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. Can you describe who that -- who that</p> <p>6 individual was who went and checked with the police</p> <p>7 department?</p> <p>8 A. I think it was a fellow named Doug Gann.</p> <p>9 Q. How do you spell his last name?</p> <p>10 A. G-A-N-N. But I'm not sure. I may have made</p> <p>11 a phone call and found out.</p> <p>12 Q. Okay. You also mentioned that Seth had sent</p> <p>13 numerous emails to the hangar community calling</p> <p>14 Mahaffey, quote, a fat-ass bad mechanic; is that</p> <p>15 right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Have you seen the email that you're</p> <p>18 referring to?</p> <p>19 A. Sir?</p> <p>20 Q. Have you seen the email?</p> <p>21 A. Yeah, I did. I don't remember when or where,</p> <p>22 but I thought that was very untoward.</p> <p>23 Q. Do you know if that email has been produced</p> <p>24 in this litigation?</p> <p>25 A. I don't know.</p>
201	<p>1 Responses to Defendants' Request for Disclosures and</p> <p>2 his deposition testimony and other things, he</p> <p>3 identified 39, I believe it was 39 people, that had</p> <p>4 relevant knowledge of the facts or that he said he got</p> <p>5 along with nearly all of them.</p> <p>6 We have talked to about 30 of them, and</p> <p>7 we -- and some of them didn't remember much of</p> <p>8 anything. Some of them remembered things and talked</p> <p>9 about turning off their radios and things like that,</p> <p>10 and various other things. Only three or four of them</p> <p>11 had anything good to remember about him or how he got</p> <p>12 along in the hangar.</p> <p>13 Q. Okay. Was he ever rude to any volunteers at</p> <p>14 the flying museum?</p> <p>15 A. Sir?</p> <p>16 Q. Was he rude to any volunteers at the flying</p> <p>17 museum, or did he create problems with any of them?</p> <p>18 A. Well, I mentioned about fussing at them about</p> <p>19 playing their radios while they worked, and sometimes</p> <p>20 turning their radios off.</p> <p>21 Q. Do you know which volunteers?</p> <p>22 A. Mark Reams, Bill Gorin. There were some</p> <p>23 others I don't remember.</p> <p>24 Q. Okay. You said that when Mr. Washburne had</p> <p>25 accused Mr. Terry of stealing various parts from his</p>	203	<p>1 Q. Were there multiple emails that were sent?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. And you don't know if any of them have</p> <p>4 been produced?</p> <p>5 A. Sir?</p> <p>6 Q. You don't know if any of them have been</p> <p>7 produced?</p> <p>8 A. Well, yeah, multiple emails. There are</p> <p>9 dozens. You've got stacks of them down there.</p> <p>10 Q. Well, none that I have seen where he calls</p> <p>11 Mahaffey a fat-ass, but --</p> <p>12 A. No, I was talking about the total emails.</p> <p>13 Q. You also mentioned that Mr. Washburne railed</p> <p>14 against Jim Terry. Did he -- was it with respect to</p> <p>15 other -- other tenants or who was he railing against</p> <p>16 Jim Terry to?</p> <p>17 A. Who he was railing to?</p> <p>18 Q. Yeah, who he was saying those things to.</p> <p>19 A. Employees, Dana Wood.</p> <p>20 Q. Do you have proof of that?</p> <p>21 A. Well, I don't have any -- I --</p> <p>22 Q. Sorry.</p> <p>23 A. -- I don't know. I can't remember about</p> <p>24 where it might be documented or anything, but I</p> <p>25 remember --</p>

204	206
<p>1 Q. Can you think of additional names that -- of 2 individuals that Mr. Washburne might have spoken to 3 about Jim Terry in a negative way? 4 A. Mark Reams, Jason Schultz, Joe Tooley. 5 Q. Is that all? 6 A. That's all that come to mind now, yes, sir. 7 Q. Okay. You mentioned that on March 2nd, 2013, 8 Mr. Washburne told the police officer that he wanted 9 to enter the hangar; is that correct? 10 A. I don't remember which time it was that he 11 said he wanted to go -- I believe that was the time 12 that he said he wanted to go look for a navigator's 13 dome he said was stolen. 14 Q. So that was the time you said he wanted to 15 enter the hangar, he told the police officer that? 16 A. Yes. 17 Q. And how did you hear about that? 18 A. I don't know how I first heard about it, but 19 I -- I think it's pretty well set out on some of 20 Mr. Washburne's descriptions about what he was doing 21 there that day. 22 Q. Okay. But you don't have any firsthand 23 knowledge? 24 A. No. I was not there. 25 Q. We spoke about a proposal to extend the lease</p>	<p>1 officer was able to identify or not or whether she -- 2 whether she made any attempt. I think she may have 3 been just trying to keep the peace. 4 Q. So were you there on March 2nd, 2013? And by 5 there, I mean -- 6 A. No. 7 Q. -- the Vintage Flying Museum property. 8 A. No. 9 Q. So how did you learn of the incident? 10 A. Well, I learned about it a few days after 11 that. The best I recall, it was on a Saturday. I 12 heard about it, hangar talk. And then my memory was 13 certainly refreshed by Mr. Washburne's description of 14 the incident in his various petitions and his 15 deposition. 16 Q. Okay. I'm going to place before you a 17 document that has previously been marked as 18 Exhibit 24. Have you seen this document before, 19 Mr. Monk? 20 A. I'm sure I have. It's got my name on it. 21 Q. That's right. It's an email from 22 Mr. Washburne to you, subject was VFM property. It's 23 dated April 13, 2013, at 8:18 p.m. And the first 24 sentence Mr. Washburne writes, on March 2nd, 2014, a 25 Fort Worth police officer told me that VFM would have</p>
205	207
<p>1 that Mr. Washburne had in the hangar from October 27th 2 through perhaps February 2013. 3 Do you have a written copy of that 4 proposal anywhere? 5 A. I don't -- I would not know how to identify 6 the proposal. There was some discussions back and 7 some what-ifs, and he was -- we were trying to handle 8 it as best we could. He kept demanding, trying to 9 hire Doug Hudman to sue us, this sort of thing, so my 10 willingness to try to help him did somewhat wax and 11 wane; there's no doubt about that. 12 Q. So you may or may not have a Word copy or a 13 PDF or something at your office with that proposal? 14 A. No. No. I'm sure if I had one, it would 15 have been produced. 16 Q. Okay. Let's move on to March 2nd, 2013. 17 Does that date sound familiar to you? 18 A. Yes. 19 Q. Let me give you a hint. On March 2nd, 2013, 20 there was a Fort Worth police officer who gave 21 Mr. Washburne a warning that he would be arrested for 22 trespassing, but that police officer was unable to 23 identify the property boundaries at issue; is that 24 correct? 25 A. I don't -- I don't know what the police</p>	<p>1 me arrested for trespassing if I set foot on their 2 property, but could not tell me where their property 3 was. He goes on to say -- 4 A. I doubt if a police officer told him that. 5 Q. Okay. Well, he goes on to say, from this it 6 appears that -- he did some research online, and he's 7 attached a table and a map from the Tarrant Appraisal 8 District website. It says, from this it appears that 9 38th Street all the way to the west -- all the way 10 west to the fence and Von Avenue all the way to the 11 south hangar are public property. 12 Do you recall reading that? 13 A. Yes, I do. 14 Q. And what was your reaction when you read that 15 first paragraph? 16 A. To ignore it. 17 Q. Why is that? 18 A. I had no obligation to. I didn't want to get 19 in any more arguments with him. He was just trying 20 his best to start trouble, as usual, and I had no 21 obligation to tell him anything or do anything he 22 demanded. 23 Q. Did you look at the attachments to the email? 24 A. I probably glanced at them and saw that they 25 were nothing in the world except TAD records of deeds</p>

208	<p>1 that we had filed.</p> <p>2 Q. Okay. Let's -- let's flip briefly to the</p> <p>3 next page here, which is the attachments here, Tarrant</p> <p>4 Appraisal District Real Estate as of April 1st, 2013,</p> <p>5 Hospers Family Trust "D".</p> <p>6 Do you see that?</p> <p>7 A. I don't see where it says --</p> <p>8 Q. I think it may be on the second page. I</p> <p>9 think you're looking on the third.</p> <p>10 So that's -- that's the right page, that</p> <p>11 one there.</p> <p>12 A. All right.</p> <p>13 Q. You got it.</p> <p>14 A. So what is the point or what is the question?</p> <p>15 Q. Okay. So the question is, does this -- does</p> <p>16 this appear to be a document from the Tarrant</p> <p>17 Appraisal District: Yes or no?</p> <p>18 A. It appears to be.</p> <p>19 Q. Okay. Does it appear to list the real estate</p> <p>20 owned by the Hospers Family Trust "D"?</p> <p>21 A. I don't remember all the documents numbers,</p> <p>22 all the addresses that are involved there. I can't</p> <p>23 answer that question.</p> <p>24 Q. Let's look at the next page, then. There's</p> <p>25 the map --</p>	210
209	<p>1 A. The map, typically.</p> <p>2 Q. -- that's right.</p> <p>3 A. I see that this is from the Tarrant Appraisal</p> <p>4 District. It doesn't -- it doesn't reflect some</p> <p>5 closures, but generally I think that's what the Trust</p> <p>6 owns in Blocks 4 and 5 and --</p> <p>7 Q. So in the legend here on the top left, it</p> <p>8 looks like the bold kind of circle -- the bold line is</p> <p>9 an indicator that that's City-owned property, right?</p> <p>10 A. I don't know whether this is accurate or not.</p> <p>11 I can't tell from there. But so far as I can tell,</p> <p>12 it's -- it shows the property that is owned by the</p> <p>13 Trust.</p> <p>14 Q. Okay. And it -- it indicates here, in the</p> <p>15 bold outline, that Von Avenue, it looks like that's</p> <p>16 owned by the City. We've already agreed to that,</p> <p>17 right?</p> <p>18 A. We have gone -- how many times have we made</p> <p>19 that agreement today?</p> <p>20 Q. I'm just verifying that this is accurate.</p> <p>21 A. For about the twentieth time --</p> <p>22 Q. All right.</p> <p>23 A. -- that strip of dirt there is owned by the</p> <p>24 City of Fort Worth and has been ever since --</p> <p>25 Q. Understood. I understand. Let's go back to</p>	211
210	<p>1 the email.</p> <p>2 So the second paragraph says, would you</p> <p>3 please confirm this understanding. Mr. Washburne is</p> <p>4 asking you to confirm that 38th Street all the way to</p> <p>5 the fence and Von Avenue all the way to the south</p> <p>6 hangar is public property.</p> <p>7 Did you ever confirm for him whether or</p> <p>8 not that was the case?</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 A. Because he was so irrational, that trying to</p> <p>12 do anything with him was futile. Besides that, he</p> <p>13 didn't do anything except send copies of what was in</p> <p>14 the appraisal district.</p> <p>15 Q. Okay. So he then goes on to ask, he says,</p> <p>16 tell me where I may find -- he says, if this is not</p> <p>17 correct, please send me an official document showing</p> <p>18 me that VFM owns Von Avenue, or west 38th Street, and</p> <p>19 tell me where I may also find this myself in the</p> <p>20 public records to confirm it is a valid document.</p> <p>21 And he goes on to say, because you are</p> <p>22 one of three members of the board, the board</p> <p>23 representative, and the one who did the paperwork for</p> <p>24 the initial purchase, you are the appropriate person</p> <p>25 to ask this question.</p>	211
211	<p>1 Do you dispute that you would be the</p> <p>2 appropriate person to ask this question to?</p> <p>3 A. Oh, I think a land surveyor or the Tarrant</p> <p>4 County deed records might have been a better place to</p> <p>5 get the answer to the questions.</p> <p>6 Q. But is it fair to assume that as the lawyer</p> <p>7 of the Trust, the Trust that owns the land, and as the</p> <p>8 attorney responsible for the initial transaction and</p> <p>9 as a board member of the Vintage Flying Museum, is it</p> <p>10 reasonable to assume that you would have knowledge of</p> <p>11 where the property lines were?</p> <p>12 A. I understand that he thought it was</p> <p>13 reasonable that I would have knowledge, but I don't</p> <p>14 think it was reasonable for him to demand of me that I</p> <p>15 do anything.</p> <p>16 Q. But I'm not asking that.</p> <p>17 I'm asking is it reasonable -- is it</p> <p>18 reasonable to assume that you would be the person to</p> <p>19 ask a question like this?</p> <p>20 A. I don't know what he would find reasonable.</p> <p>21 Q. Well, I'm asking you --</p> <p>22 A. Sometimes --</p> <p>23 Q. -- if you find it reasonable.</p> <p>24 A. -- sometimes not very much.</p> <p>25 Q. Would you find it reasonable, if someone else</p>	211

212	<p>1 were asking you where the property boundaries were?</p> <p>2 A. If they wanted to pay me a fee to have a</p> <p>3 title company do a research on it, I'd probably</p> <p>4 respond.</p> <p>5 Q. Okay. So you dispute that you were an</p> <p>6 appropriate person to ask this question?</p> <p>7 A. I didn't say that.</p> <p>8 Q. I'm asking. Do you dispute that you were the</p> <p>9 appropriate person to ask this question?</p> <p>10 A. I owed him no obligation to respond after all</p> <p>11 we had put up with before that from him.</p> <p>12 Q. Were you an appropriate person to ask this</p> <p>13 question?</p> <p>14 A. I don't know.</p> <p>15 Q. If not you, who else?</p> <p>16 A. A title company or a surveyor.</p> <p>17 Q. So you're saying if someone has a question</p> <p>18 about the parcel of property, instead of asking the</p> <p>19 attorney who helped purchase that property, they</p> <p>20 should go to a title surveyor and ask someone?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay.</p> <p>23 A. Not expect -- not expect an opposing counsel</p> <p>24 to do any research work and reply.</p> <p>25 Q. Okay. I'm going to hand you a new document</p>	214	<p>1 verify --</p> <p>2 A. My understanding and my thought about it was,</p> <p>3 oh, my God, Seth is off his meds again.</p> <p>4 Q. Okay. But my question was, did you seek to</p> <p>5 verify what he was saying in that sentence --</p> <p>6 A. No.</p> <p>7 Q. -- in any way?</p> <p>8 He then goes on to say, as previously</p> <p>9 requested, if VFM has any legal claim to Von Avenue,</p> <p>10 please let me know at your earliest convenience.</p> <p>11 Did you let him know?</p> <p>12 A. No.</p> <p>13 Q. Why?</p> <p>14 A. Because I didn't want anything else to do</p> <p>15 with him.</p> <p>16 Q. Okay. But he's asking if VFM has claim to</p> <p>17 Von Avenue, and as we've discussed, you think that VFM</p> <p>18 does?</p> <p>19 A. It was none of his business whether VFM had</p> <p>20 any claim to Von Avenue.</p> <p>21 Q. Okay. Did you forward this document, this</p> <p>22 email, to anyone after you received it?</p> <p>23 A. Sir?</p> <p>24 Q. Did you forward this email to anyone after</p> <p>25 you received it?</p>
213	<p>1 here. It's previously been marked as Exhibit 5. This</p> <p>2 is an email from Mr. Washburne to you on April 5th,</p> <p>3 2013, subject October conveyance.</p> <p>4 A. Oh, yeah, he was still --</p> <p>5 Q. Do you remember this email?</p> <p>6 A. He was still wanting -- wanting to stir up</p> <p>7 some trouble. Yes, sir, I remember seeing it. I</p> <p>8 didn't pay much attention to it.</p> <p>9 Q. Okay. So he says, today I went to Room 30,</p> <p>10 Public Records at the Fort Worth courthouse, and found</p> <p>11 the attached document, which you executed last</p> <p>12 October, that, similar to the information in my email</p> <p>13 Saturday night -- the email we just looked at --</p> <p>14 defines the Hospers' family property as only the lots</p> <p>15 off the street, and the portion of 37th Street that</p> <p>16 would run up through the building -- run through the</p> <p>17 building. This confirms that as of last October, VFM</p> <p>18 property does not include any of 38th Street or Von</p> <p>19 Avenue.</p> <p>20 Did you read that sentence when you</p> <p>21 received this email?</p> <p>22 A. I may have.</p> <p>23 Q. And what was your -- what was your</p> <p>24 understanding after you read that sentence? Did it</p> <p>25 make -- did you look into it further or seek to</p>	215	<p>1 MR. TURNER: Hold on.</p> <p>2 A. This last email?</p> <p>3 MR. TURNER: If you're asking if he</p> <p>4 forwarded the emails to his clients, I'm going to</p> <p>5 instruct him not to answer.</p> <p>6 MR. KELLEY: Oh, sure.</p> <p>7 MR. TURNER: But if it's somebody else,</p> <p>8 then I'm fine with that.</p> <p>9 Q. (By Mr. Kelley) Did you forward this email</p> <p>10 to anyone not a client at the time?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Okay. I'm now handing you a document that we</p> <p>13 need to mark first as Exhibit 65.</p> <p>14 (Exhibit No. 65 marked.)</p> <p>15 Q. (By Mr. Kelley) The top of this document</p> <p>16 here, it looks like an email from you to</p> <p>17 Mr. Washburne, copying Chuckie. I think we're safe to</p> <p>18 say that that's Mrs. Hospers.</p> <p>19 It reads, Chuckie, if we thought</p> <p>20 nonresponsive to the earlier message -- if we thought</p> <p>21 nonresponse to the earlier message would end this</p> <p>22 stuff, looks like such was ill-founded. Don't know</p> <p>23 what to do next, except to await your direction.</p> <p>24 Please consider same and let us discuss.</p> <p>25 A. I apparently -- I don't know whether I -- it</p>

216	<p>1 looked like I -- oh, so it looks like I had forwarded 2 that previous email to her.</p> <p>3 Q. Why did you send this email to Mr. Washburne? 4 A. Huh?</p> <p>5 Q. Why did you send this email to Mr. Washburne? 6 A. I think I pushed the -- pushed the wrong 7 button. It was inadvertent.</p> <p>8 Q. Okay. By replying to this email and to 9 Mr. Washburne and sending it also to Chuckie you are 10 in effect acknowledging receipt of the email, that you 11 read it, right, of Mr. Washburne's original email; is 12 that correct?</p> <p>13 A. Well, obviously, I received it, yes.</p> <p>14 Q. Okay. Did you ever -- have you represented 15 to Seth, to Mr. Washburne, that you did not receive 16 this email, the email he sent to you on April 15th, 17 2013?</p> <p>18 A. I'm sorry, what?</p> <p>19 Q. Have you represented to Mr. Washburne before 20 that you did not receive this email on April 15th, 21 2013?</p> <p>22 A. I don't -- not that I recall.</p> <p>23 Q. Would it be reasonable for Mr. Washburne to 24 believe that you and Chuckie were in agreement with 25 respect to an understanding of the ownership of the</p>	218	<p>1 said invited him did not indicate he had received it 2 from them because it didn't have any email folio on 3 it. It was just apparently something that he had got 4 off of Greater Generation Aircraft's website posting 5 notice of events that he thought constituted an 6 invitation.</p> <p>7 Q. But you are aware that he had received email 8 invitations at some point to VFM events, right? 9 A. Yes. He had -- he had received some -- 10 obviously, he had been on an email list from Greatest 11 Generation Aircraft of some of its events, yes.</p> <p>12 Q. Okay.</p> <p>13 MR. TURNER: Can I clarify? Did you ask 14 him if he was aware at that time that he had received 15 invitations or is he aware today that he had received 16 invitations?</p> <p>17 Q. (By Mr. Kelley) My question was are you 18 aware today?</p> <p>19 MR. TURNER: Okay.</p> <p>20 Q. (By Mr. Kelley) But my follow-up would be 21 were you aware at the time that Mr. Washburne was 22 receiving these invitations?</p> <p>23 A. No, I was not aware at the time.</p> <p>24 Q. When did you become aware? 25 A. Probably after some of them were produced in</p>
217	<p>1 roads based on your acknowledging his email and 2 replying?</p> <p>3 MR. TURNER: Objection; form.</p> <p>4 A. That asks me to speculate what he would deem 5 reasonable, which I cannot do.</p> <p>6 Q. (By Mr. Kelley) I'm not asking you what he 7 would deem reasonable. I'm asking if it would be 8 reasonable for Seth to believe.</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. April 25th, 2014, were you aware that 11 Mr. Washburne was invited to an event at the Vintage 12 Flying Museum on that date?</p> <p>13 A. No. VFM certainly didn't invite him.</p> <p>14 Q. Were you aware that he received an 15 invitation?</p> <p>16 A. Huh?</p> <p>17 Q. Were you aware that he received an 18 invitation?</p> <p>19 A. Not from VFM.</p> <p>20 Q. He did receive an invitation. 21 Did you know that Mr. Washburne was 22 continually being invited to events at the VFM? 23 A. Well, you say invited. Some of the things 24 that I have seen that were produced indicated that he 25 was on -- he was on an email list. Other things he</p>	219	<p>1 response to defendants' request for production in this 2 lawsuit or maybe -- maybe one of his other lawsuits.</p> <p>3 Q. Okay. So on April 26, 2014, Mr. Washburne 4 returned to the public road -- to a road owned by the 5 City of Fort Worth -- can we agree on that -- to 6 view -- to view an aircraft?</p> <p>7 MR. TURNER: Objection; form.</p> <p>8 A. Would you say -- ask that again, please, sir, 9 so I'll be sure I've got it right?</p> <p>10 Q. (By Mr. Kelley) Sure. On April 26, 2014, 11 Mr. Washburne returned to a road that was owned by the 12 City of Fort Worth to view an aircraft; is that right?</p> <p>13 MR. TURNER: Form.</p> <p>14 A. I believe that was the time he wanted to go 15 in and look at the B-29.</p> <p>16 Q. (By Mr. Kelley) Okay. Prior to that, had -- 17 had there been any discussions about what to do if 18 Mr. Washburne were to return to the VFM area? 19 MR. TURNER: Well, if you're asking about 20 discussions he had with Hoppers or VFM or -- I'm going 21 to instruct him not to answer because it's privileged. 22 MR. KELLEY: I'm not asking about the 23 content of the conversations. I'm just asking if 24 there had been conversations. 25 MR. TURNER: I don't think you're</p>

220	<p>1 entitled to know if he had conversations. Whether or 2 not he had conversations I think is privileged. 3 <b>MR. KELLEY:</b> Okay. 4 <b>Q. (By Mr. Kelley)</b> Were you there on April 26, 5 2014, when Mr. Washburne returned? 6 <b>A.</b> No, sir. 7 <b>Q.</b> Where were you, do you recall? 8 <b>A.</b> Probably -- on that Saturday, I was probably 9 hanging around my office some that day and running 10 errands the rest of it. I don't know for sure. I 11 don't have any memory of it. 12 <b>Q.</b> How did you hear about the fact that 13 Mr. Washburne had returned on the 26th? 14 <b>A.</b> I believe I got a -- I believe I got a call 15 from Mrs. Hospers. 16 <b>Q.</b> Okay. And what did she tell you? 17 <b>MR. TURNER:</b> I'm going to -- 18 <b>MR. KELLEY:</b> Okay. 19 <b>MR. TURNER:</b> -- instruct him not to 20 answer, assert privilege. 21 <b>Q. (By Mr. Kelley)</b> So you know Dana Wood; is 22 that right? 23 <b>A.</b> Yes, I know her. 24 <b>Q.</b> And what is her position with the Vintage 25 Flying Museum? Does she have one?</p>	222	<p>1 <b>A.</b> Of course not. 2 <b>Q.</b> Why do you think Ms. Wood held herself out as 3 a representative of the Vintage Flying Museum? 4 <b>MR. TURNER:</b> Objection; form. 5 <b>A.</b> For the same reasons that Mr. Washburne set 6 out in his emails to me, his complaints to Fort Worth 7 police chief, as Mr. Washburne's emails to me that 8 says he's complaining that Dana told the police 9 officer she was a representative of VFM, and he says 10 we know -- Hal, we know well that's not correct, and 11 then he complained about the fact that she was not a 12 whole bunch of times because he knew that she was not, 13 and I agree with him on those conclusions. She was 14 not an -- now, as to whether or not she told the 15 police officer that she was a representative of VFM, I 16 have no idea. 17 <b>Q. (By Mr. Kelley)</b> Okay. But according to this 18 document, Ms. Wood was listed as a representative of 19 the Vintage Flying Museum, right? 20 <b>A.</b> That's what the police officer wrote there. 21 <b>Q.</b> Did you speak with Ms. Wood after this 22 incident? 23 <b>A.</b> Well after. 24 <b>Q.</b> Okay. So after you heard about the incident 25 taking place, you didn't follow up with Ms. Wood to</p>
221	<p>1 <b>A.</b> She was either an employee or a contract 2 worker for one of Jim Terry's entities. 3 <b>Q.</b> Was she a representative of the Vintage 4 Flying Museum? 5 <b>A.</b> Of course not. 6 <b>Q.</b> She never was? 7 <b>A.</b> No. 8 <b>Q.</b> Okay. I'm going to hand you a document that 9 has previously been marked as Exhibit 39. Have you 10 seen this document before, Mr. Monk? 11 <b>A.</b> Oh, yes. 12 <b>Q.</b> It's the Fort Worth Police Department 13 trespass warning for Mr. Washburne, and the date is 14 April 26, 2014, correct? 15 <b>A.</b> Yes, sir. 16 <b>Q.</b> And can you tell me whose name -- who is 17 listed as the reporting person on this trespass 18 warning? 19 <b>A.</b> Yes. 20 <b>Q.</b> Can you tell me who that is? 21 <b>A.</b> Wood, Dana, is what it says. 22 <b>Q.</b> Okay. And it goes on to say a representative 23 of Vintage Flying Museum? 24 <b>A.</b> That's what it says. 25 <b>Q.</b> Do you agree with that statement?</p>	223	<p>1 determine what had happened? 2 <b>A.</b> No. I didn't have any authority over her. 3 She was an employee of a tenant, and I didn't think it 4 was appropriate for me to try to give her any 5 instructions. 6 <b>Q.</b> When did you first see this trespass warning? 7 <b>A.</b> I don't know. It was sometime probably 8 between April the 26th and April the 28th sometime. 9 <b>Q.</b> And when you saw that she was listed as a 10 representative of the Vintage Flying Museum, did that 11 bother you? 12 <b>A.</b> It sure did. 13 <b>Q.</b> And what did you do as a result? 14 <b>A.</b> I sent email. 15 <b>Q.</b> To who? 16 <b>A.</b> To my client. 17 <b>Q.</b> Okay. Did you seek to contact the police 18 department to make clear that she's not a 19 representative of the Vintage Flying Museum? 20 <b>A.</b> No. 21 <b>Q.</b> Why not? 22 <b>A.</b> It wasn't any of my business between what her 23 and the police department. 24 <b>Q.</b> Well, this is your client, right, Vintage 25 Flying Museum?</p>

224	226
<p>1 A. I was not acquainted with Dana Wood at that 2 time, so that would have been inappropriate, and I 3 didn't want to have anything to do with it.</p> <p>4 Q. So the Vintage Flying Museum is your client 5 at that time, and someone is holding themselves out as 6 a representative to the police of your client, but you 7 didn't think it was appropriate to let the police know 8 that this person was not a representative?</p> <p>9 MR. TURNER: Objection; form.</p> <p>10 A. I didn't know whether she had represented 11 herself or told the police officer she was a 12 representative or whether the police officer had just 13 concluded that because she was complaining.</p> <p>14 Q. (By Mr. Kelley) Were you concerned after the 15 events of April 26, 2014, that Mr. Washburne would 16 return to VFM?</p> <p>17 A. Goodness, no. I thought -- it would take a 18 tomfool idiot to return after -- after two trespass 19 warnings.</p> <p>20 Q. But were you concerned that he would return?</p> <p>21 A. Not really.</p> <p>22 Q. Okay. This is another document I'm going to 23 hand you previously marked as Exhibit 52. This is an 24 email from Mr. Washburne dated April 26th, 2014.</p> <p>25 A. Yep.</p>	<p>1 the property at the corner of Von and 38th, right?</p> <p>2 MR. TURNER: Objection; form.</p> <p>3 A. The VFM or the Trust never claimed any 4 ownership of that property, for about the twentieth 5 time today.</p> <p>6 Q. (By Mr. Kelley) But they -- but you're 7 saying that they did have the right to have -- to 8 represent that that was VFM -- or Trust property, 9 right?</p> <p>10 A. That what?</p> <p>11 Q. That the corner of Von and 38th Street was -- 12 that they were within their rights to represent that 13 that was -- that was property that Mr. Washburne could 14 not trespass on?</p> <p>15 MR. TURNER: Objection; form.</p> <p>16 A. If I understand your question, that was my -- 17 that was my opinion.</p> <p>18 Q. (By Mr. Kelley) Okay. Let me rewind. 19 Where was Mr. Washburne when he was given 20 the warning on April 26, 2014, physically?</p> <p>21 A. If we can get down to the deal here. First, 22 I misunderstood the information when I first got it 23 about that. Where is that -- what is that Exhibit A 24 to that we have an outline --</p> <p>25 Q. Can we just use the exhibit that's attached</p>
225	227
<p>1 Q. Do you recall receiving this email?</p> <p>2 A. Oh, I don't identify that particular one, but 3 it's just one, one of many there.</p> <p>4 Q. Okay. All I want to ask you about this email 5 is whether you reviewed the information in the back.</p> <p>6 A. With the --</p> <p>7 Q. Where --</p> <p>8 A. Here in the big red letters or somewhere 9 else?</p> <p>10 Q. Keep going back. Keep flipping pages. 11 There's a Tarrant Appraisal District real estate page 12 and then there is a map, a survey looking map.</p> <p>13 A. All right.</p> <p>14 Q. Did you read -- did you read these 15 attachments here?</p> <p>16 A. This was the same crud he had sent the month 17 before.</p> <p>18 Q. So after the events of April 26, 2014, you 19 had no desire to examine these documents, to verify 20 whether or not what he was saying was true?</p> <p>21 A. I knew -- I knew what these documents were. 22 I knew they were out of the Tarrant Appraisal 23 District, and --</p> <p>24 Q. And you knew that they also showed that the 25 VFM and that the Trust had no claim to ownership of</p>	<p>1 to the document I just handed you, or the map there?</p> <p>2 A. Okay. Well, give me a -- I think this one 3 will do. Okay. Where was Mr. Washburne on April the 4 26th?</p> <p>5 Q. That's correct.</p> <p>6 A. Okay. I misunderstood. I thought, when I 7 first heard about this deal, I was alarmed because I 8 thought that Dana Wood was impeding traffic back down 9 here, back down here somewhere east of Ross. I found 10 out later that it was in -- if we had an aerial 11 photograph, I could show it better, but actually 12 apparently she was stopping traffic right about here, 13 where they had a tent or a shelter set up.</p> <p>14 Q. So on 38th Street, but it would be east of 15 the drainage ditch, right?</p> <p>16 A. Each of the drainage ditch.</p> <p>17 Q. Just east of it?</p> <p>18 A. East of the drainage ditch, yes, sir. 19 So anyhow, so -- now, I digressed a 20 moment there. And, again, your specific question was?</p> <p>21 Q. Let me ask a new question or a similar one. 22 Well, actually, let me verify, where was 23 Mr. Washburne when he was given his criminal trespass 24 warning on the 26th?</p> <p>25 A. I think he was right about here.</p>



228	230
<p>1 Q. So that's the intersection of Von and 38th 2 Street? 3 A. Yeah. 4 Q. Okay. And when you learned of this incident, 5 were you concerned because you knew the Trust did not 6 own that property? 7 A. No. I did not know. My concern was when 8 I -- my concern was when I assumed that Ms. Wood had 9 been impeding traffic down here east of Ross Street -- 10 Q. Okay. 11 A. -- as she had once before. 12 Q. Why were you not concerned that Mr. Washburne 13 was given a criminal trespass warning on property that 14 didn't belong to the Trust? 15 A. That was -- it was later I learned that it 16 was up here. 17 But anyway -- 18 Q. Let me ask the question a different way. 19 Was it -- given the fact that you know 20 that the corner of Northwest 38th Street and Von -- 21 the intersection, rather, of those two streets is not 22 owned by the Trust, is it a problem if any member of 23 the public is given a criminal trespass warning at 24 that intersection? 25 MR. TURNER: Objection; form.</p>	<p>1 MR. TURNER: Objection; form. 2 A. That's not a problem for the Trust. 3 Q. (By Mr. Kelley) It is if representatives of 4 the Trust or of the Vintage Flying Museum are the ones 5 who are calling the police, right? 6 MR. TURNER: Objection; form. 7 A. No, that is not correct. 8 Q. (By Mr. Kelley) Why not? 9 A. Bill Gorin never called the police. Chuckie 10 Hoppers never called the police. I never called the 11 police. No one that had any authority at all from VFM 12 called the police. 13 Q. Did you -- without revealing any privileged 14 communications that you may have had with your 15 clients, did you communicate with anyone after this 16 event to make clear that no representative of VFM 17 should be contacting the police with respect to Seth 18 or anyone, for that matter, being on public property? 19 Were you concerned about that happening again in the 20 future and did you warn them not to do that? 21 MR. TURNER: To the extent you're asking 22 about warnings that he gave to his client or any 23 communications, I'll instruct him not to answer. As 24 to anyone else, I have no problem. 25 MR. KELLEY: That's fine.</p>
229	231
<p>1 A. That was -- that was what he -- that was -- 2 here. That -- that's -- again, because actually the 3 April the 26th was more like -- was -- turned out to 4 be more like it was right here. 5 Q. (By Mr. Kelley) Okay. And you're pointing 6 to 38th Street? 7 A. Yeah, just north of the north hangar. 8 Q. Okay. So is that a problem, then, given that 9 that is owned by the City of Fort Worth? 10 MR. TURNER: Objection; form. 11 A. We're talking about April 26. Was it a 12 problem for who? 13 Q. (By Mr. Kelley) Well, for everyone. I mean, 14 isn't it -- because that is not Trust property, the 15 fact that Mr. Washburne was given a criminal trespass 16 warning on -- on that property, based on -- he wasn't 17 even on VFM property, I mean, isn't that problematic 18 for the Trust? 19 A. VFM never owned a square foot of real estate. 20 Q. Trust property, pardon me. Isn't that a 21 problem for the Trust? 22 A. Huh? 23 Q. Isn't that a problem for the Trust, if 24 members of the public standing outside on public 25 property are being given criminal trespass warnings?</p>	<p>1 A. No. 2 Q. (By Mr. Kelley) Okay. Let's -- let's go to 3 April 27th, 2014, the next day after Mr. Washburne was 4 given his criminal trespass warning. You and 5 Mr. Washburne spoke over the telephone; is that right? 6 A. (Witness nods.) 7 Q. Around what time was that, do you recall? 8 A. Afternoon. 9 Q. And did he call you or did you call him? 10 A. Oh, I don't remember who initiated that 11 particular call where we talked. 12 Q. I believe it was you. Does that sound right, 13 you called him? 14 A. I think maybe -- I think I maybe did. Trying 15 to calm him down a bit, and it didn't work. 16 Q. So why did you call him, then? What -- 17 A. In response to his bombastic screaming, 18 emails, threats, and all this. 19 Q. And what did you tell Mr. Washburne when you 20 spoke to him on the phone on the 27th? 21 A. Well, I -- I remember I told him one thing 22 that was not correct, and that was because my memory 23 was wrong. I did tell him -- I don't know whether I 24 told him as a fact or whether it was my belief, but 25 anyhow, it was my belief at the time, that what once</p>

232	<p>1 was Von lied on the west side of the airport perimeter 2 fence. That was mistaken. That was not the fact. 3 Q. So on the phone call you told Mr. Washburne 4 that Von Avenue was on the west side of the fence? 5 A. That was what I thought at the time, yes. 6 Q. And why did you think that after having seen 7 all the information that Mr. Washburne had sent and 8 all the additional information we discussed today? 9 A. The information didn't show where the airport 10 fence was. 11 Q. But it showed where Von Avenue was? 12 A. Well -- 13 MR. TURNER: Well, I'm going to -- 14 objection; form. 15 A. What was labeled Von, Von Street or Von 16 Avenue, was not a street, so I didn't pay much 17 attention to it anyway. 18 Q. (By Mr. Kelley) Okay. What else did you say 19 to Mr. Washburne on that phone call? 20 A. Oh, I don't remember. I was trying to calm 21 him down. I know -- I know I told him that Dana was 22 exceeding her authority, and I still -- I still was 23 under the impression that she was stopping traffic 24 down here where she had on the previous March the 2nd 25 of 2013. I don't remember why I thought that, but I</p>	234	<p>1 A. Well, I can't record -- I can't recall the 2 specifics. Just sort of the high points and the 3 summaries of the -- 4 Q. Did you tell Mr. Washburne he could park 5 anywhere on Northwest 38th Street, including along the 6 fence at the west end of the street, and not be 7 trespassing? 8 A. No, I would not have told him that. 9 Q. Did you tell Mr. Washburne he could drive, 10 park, walk, anywhere on Northwest 38th Street? 11 A. No. 12 Q. Did you confirm with Mr. Washburne that you 13 had provided Dana Wood and Ms. Hospers with the 14 property line information that he had sent? 15 A. No, I did not do that. The main thing was he 16 demanded that I -- if I'd told Dana and Chuckie about 17 they did wrong in giving him orders, which he's sworn 18 that I told him I did. It did not happen. I did not 19 tell Dana. I had no contact with Dana Wood that 20 weekend. I didn't have any contact with her until 21 much later. 22 Q. Did you explain to Mr. Washburne the 23 ownership of the property at issue and the fact that 24 the VFM leases space from the Trust during that phone 25 call?</p>
233	<p>1 thought she was trying to stop traffic down here. 2 Q. So when you say you thought she -- you 3 communicated to Mr. Washburne that Dana had been 4 exceeding her authority, what are you referring to? 5 A. That she had no right to stop traffic or 6 block traffic. 7 Q. Are you referring at all to her holding 8 herself out as a representative of VFM? 9 A. Oh, no. He had already told me in no 10 uncertain terms that -- reminded me that she was not a 11 representative of VFM. 12 Q. And did you admit that to Mr. Washburne? 13 A. Oh, yes. We concluded that. 14 Q. Okay. 15 A. We agreed on that. 16 Q. Did you -- did Mr. Washburne communicate to 17 you that he wanted to drive back to the airport? 18 A. Yeah. 19 Q. And what did you say when he expressed that? 20 A. He was in such a rage, and it's been so long 21 ago, I cannot remember all the specifics. 22 Q. You can't recall anything as to what you told 23 him? 24 A. Huh? 25 Q. You can't recall what you told him at all?</p>	235	<p>1 A. Oh, I think I probably mentioned that VFM 2 leased space from the Trust. That's -- that's very 3 possible. 4 Q. So when Mr. -- when you called Mr. Washburne, 5 the day after he was issued a criminal trespass 6 warning and Mr. Washburne says he's coming right back 7 to the airport, to the airport, you don't remember 8 anything that you told him on the phone? 9 A. Well, I just related what I recalled. 10 Q. And you specifically don't recall whether or 11 not you told him he could drive anywhere on 38th 12 Street or Von? 13 A. No. 14 Q. Okay. I'm now handing you, after we mark it, 15 what will be marked as Exhibit 66. These are Hal 16 Monk's Responses to Plaintiff Seth Washburne's First 17 Set of Interrogatories. 18 (Exhibit No. 66 marked.) 19 Q. (By Mr. Kelley) Mr. Monk, are you familiar 20 with this document? 21 A. Yes, sir. 22 Q. So you've seen it before? 23 A. I'm sure I have. I signed it. 24 Q. Okay. Any reason to dispute the accuracy of 25 anything contained in this document? You don't have</p>

236	<p>1 to read the whole thing. You can just say generally.</p> <p>2 Let me ask you a more pointed question.</p> <p>3 Can you turn to interrogatory number 18?</p> <p>4 It's on page 7. These are your responses to</p> <p>5 plaintiff's first set of interrogatories, right?</p> <p>6 A. Yes, sir, I see 18.</p> <p>7 Q. Okay. Interrogatory number 18, quote, did</p> <p>8 you call and speak to plaintiff on April 27, 2014. If</p> <p>9 so, state the reason for your call and describe in</p> <p>10 detail the content of the conversation. Your answer</p> <p>11 is, yes, my reasons were to, one, tell him he was</p> <p>12 correct about Northwest 38th Street and that Dana Wood</p> <p>13 had no authority to impede traffic there.</p> <p>14 Let me stop there. When you say he was</p> <p>15 correct about Northwest 38th Street, what do you</p> <p>16 mean?</p> <p>17 A. I was still under the impression that Dana</p> <p>18 Wood had been stopping traffic down where she had been</p> <p>19 back in April of 2013, which is east of Ross Avenue.</p> <p>20 Q. So when you say he was correct about north --</p> <p>21 that doesn't make sense.</p> <p>22 He was correct about Northwest 38th</p> <p>23 Street. What you're referring to there is his</p> <p>24 question to you -- his statement that Northwest 38th</p> <p>25 Street is a public street, right?</p>	238	<p>1 A. Yes, sir.</p> <p>2 Q. -- on the west side of the fence?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Which was an inaccurate statement, right?</p> <p>5 A. It was not. I was mistaken there.</p> <p>6 Q. Okay. So at no -- at no point in your</p> <p>7 conversation did you indicate to Mr. Washburne that he</p> <p>8 was allowed to travel on Northwest 38th Street and</p> <p>9 park there without receiving a trespass warning or</p> <p>10 being arrested?</p> <p>11 A. No, certainly not west of the drainage ditch.</p> <p>12 Q. Did you communicate with Mr. Washburne about</p> <p>13 anything with respect to a potential police presence</p> <p>14 if he went back?</p> <p>15 A. Oh, I think he -- I think he was demanding</p> <p>16 that I order Dana Wood and Chuckie Hoppers to do this</p> <p>17 and do that.</p> <p>18 Q. What do you mean? Ordering them to do what?</p> <p>19 A. Ordering me to give them instructions.</p> <p>20 Q. Instructions like what?</p> <p>21 A. Oh, that he had done no wrong and all that,</p> <p>22 and was entitled to go all the way down the south lot</p> <p>23 to Von Avenue and all that.</p> <p>24 Q. And did you agree to do that?</p> <p>25 A. No, sir.</p>
237	<p>1 A. I'm sorry, what now?</p> <p>2 Q. So in number one you say your reasons were to</p> <p>3 tell him he was correct about Northwest 38th Street,</p> <p>4 Northwest 38th. What you're referring there -- to</p> <p>5 there is the fact that Mr. Washburne had sent you</p> <p>6 numerous emails and documents and had asked you over</p> <p>7 the phone even that Northwest 38th Street was publicly</p> <p>8 owned or was owned by the City of Fort Worth the whole</p> <p>9 way, and you're saying here that you told him he was</p> <p>10 correct about that, right?</p> <p>11 A. I was under the impression that Dana had been</p> <p>12 stopping traffic down either at or a little east of</p> <p>13 Ross Avenue.</p> <p>14 Q. Okay. So what are you saying you confirmed</p> <p>15 he was correct about Northwest 38th about?</p> <p>16 A. That's Northwest 38th Street.</p> <p>17 Q. But what was he correct about?</p> <p>18 A. He was correct about the fact that Dana</p> <p>19 didn't have any authority to impede traffic there.</p> <p>20 Q. Okay. Number two, you say, another reason</p> <p>21 was to tell him what I then thought was the location</p> <p>22 of what had been -- of what had used to be Von Avenue.</p> <p>23 What you're referring to there is, is</p> <p>24 this when you mentioned that you thought Von was on</p> <p>25 the other side --</p>	239	<p>1 Q. What did you tell him with respect to it?</p> <p>2 A. Oh, I think -- I don't know. I may have -- I</p> <p>3 may have told him that -- I don't remember. I may</p> <p>4 have told him that I'd told Chuckie about the same</p> <p>5 thing I had told him, about Dana not having authority</p> <p>6 because I thought she was down east of Ross.</p> <p>7 Q. Okay. I'm going to pass you what's</p> <p>8 previously been marked as Exhibit 11. This is an</p> <p>9 email from Mr. Washburne to you, Mr. Monk, Chuckie,</p> <p>10 and the subject is Did You Call Dana Yet.</p> <p>11 Do you recall receiving this email,</p> <p>12 Mr. Monk?</p> <p>13 A. Yes, sir. And this -- this is what I</p> <p>14 responded to an earlier question. He was complaining</p> <p>15 about Dana holding herself out to police as a</p> <p>16 representative of Vintage Flying Museum who knows very</p> <p>17 well where the property line is. He says, you know</p> <p>18 full well, Hal, that this is not true. Mr. Washburne</p> <p>19 and I agreed on that, Dana was not a representative of</p> <p>20 VFM.</p> <p>21 Q. Okay. So he also says that he has to</p> <p>22 drive -- this is the first sentence, I have to drive</p> <p>23 over to Fort Worth today - to file a complaint with</p> <p>24 the police department - and would like to exercise my</p> <p>25 legal right to drive to the end of Northwest 38th</p>

240	<p>1 Street and look out at the airport. Please try to</p> <p>2 talk to Dana, or have Chuckie call Dana, before then.</p> <p>3 Stopping there, so you were aware that he</p> <p>4 intended to drive back to exercise his right to be on</p> <p>5 Northwest 38th Street, right?</p> <p>6 A. I didn't know whether he intended to or not.</p> <p>7 I thought he had enough sense to stay away after being</p> <p>8 given a trespass warning just the day before.</p> <p>9 Q. But he's telling you he's going to, right?</p> <p>10 A. He's telling me he's going to, but that</p> <p>11 didn't mean much.</p> <p>12 Q. Okay. So you're aware of the fact that he</p> <p>13 was given a trespass warning in a similar location the</p> <p>14 day before. You're also aware of the fact that that's</p> <p>15 not owned by the Trust, that property is not owned by</p> <p>16 the Trust. And then you're aware of the fact that</p> <p>17 he's going to drive to a similar location that day,</p> <p>18 and you didn't call anyone or do anything?</p> <p>19 A. You're right. I was a little preoccupied</p> <p>20 that day.</p> <p>21 Q. What were you doing?</p> <p>22 A. Trying to figure a way to get my wife to the</p> <p>23 emergency room of a hospital, so I was -- that was on</p> <p>24 a Sunday, and I was having some problems there. I</p> <p>25 didn't have much patience with Seth.</p>	242	<p>1 A. I don't know what it is. No, I had not.</p> <p>2 Q. And you never spoke with Dana on April 27th?</p> <p>3 Did you reach out and speak at all with Ms. Hospers?</p> <p>4 MR. TURNER: Again, I'm going to have to</p> <p>5 assert attorney-client privilege.</p> <p>6 Q. (By Mr. Kelley) Okay. Again, with respect</p> <p>7 to the phone call you had with Mr. Washburne and he</p> <p>8 tells you he's going to drive back out to this</p> <p>9 location, Northwest 38th Street, you know he's on his</p> <p>10 way where he was just given a criminal trespass</p> <p>11 warning the day before, so -- so you told -- you told</p> <p>12 Mr. Washburne on that call that Von was on the other</p> <p>13 side of the fence; is that right, that you thought Von</p> <p>14 was on the other side of the fence?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So as we've -- as we've shown -- or</p> <p>17 we've discussed, you were involved with the original</p> <p>18 purchase of the property and you knew where the</p> <p>19 building -- the buildings were, you know, on the</p> <p>20 property line and we just discussed that. You were</p> <p>21 aware of the gift shop and the encroachment onto Von</p> <p>22 Avenue, which was a right-of-way.</p> <p>23 A. I -- no, I don't think I knew about the</p> <p>24 encroachment deals, those documents, that we -- no, I</p> <p>25 did not know about that at the time of April --</p>
241	<p>1 Q. So did you, without disclosing any privileged</p> <p>2 communications, reach out to Dana or have Chuckie call</p> <p>3 Dana, knowing that Mr. Washburne was going to drive</p> <p>4 that --</p> <p>5 A. I did not. I didn't. I did not reach out to</p> <p>6 Dana, no. I didn't have any authority over Dana. She</p> <p>7 was an employee of Jim Terry.</p> <p>8 Q. On the phone call that you had with</p> <p>9 Mr. Washburne, Mr. Washburne recalls asking you if you</p> <p>10 had spoken with Dana Wood, and you replied, yes, I</p> <p>11 spoke to Chuckie and to Dana 30 minutes ago.</p> <p>12 Do you recall saying this?</p> <p>13 A. That I said I had?</p> <p>14 Q. You had spoken with Chuckie and Dana 30</p> <p>15 minutes prior to your call with Mr. Washburne.</p> <p>16 A. What is the source of that?</p> <p>17 Q. These are my notes. I'm just saying this is</p> <p>18 something that Mr. Washburne recalls.</p> <p>19 A. I -- I -- I -- yes, I had spoken to Chuckie,</p> <p>20 but I had not spoken to Dana and didn't make any</p> <p>21 representation that I had spoken to Dana or any</p> <p>22 promise that I would.</p> <p>23 Q. The subject of this email is Did You Call</p> <p>24 Dana Yet. This seems to indicate that the two of you</p> <p>25 had had a conversation about talking to Dana, right?</p>	243	<p>1 Q. Okay. On October 20 -- in October of 2012</p> <p>2 you worked on the deed transfer that we've</p> <p>3 discussed --</p> <p>4 A. Yeah.</p> <p>5 Q. -- which listed the property lot by lot. On</p> <p>6 April 13th you received an email from Seth attaching</p> <p>7 all of the information showing property and asking you</p> <p>8 about --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- about that.</p> <p>11 On March 4, 2014, you signed a new</p> <p>12 through-the-fence agreement that had a diagram clearly</p> <p>13 showing Von Avenue as in the right-of-way.</p> <p>14 And then on April 13th Mr. Washburne</p> <p>15 resent the Tarrant District Appraisal information to</p> <p>16 you again.</p> <p>17 So despite having all of this</p> <p>18 information, you were unaware that Von Avenue was on</p> <p>19 the east side of the fence, and --</p> <p>20 A. That was correct.</p> <p>21 MR. TURNER: I'm going to object to form.</p> <p>22 Q. (By Mr. Kelley) And you believed that the</p> <p>23 defendants at that point had the right to exclude</p> <p>24 members of the public from the intersection of Von and</p> <p>25 38th Street?</p>

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<p>1 A. As they had been doing for over 50 years, as 2 the -- as the occupants of those hangars had been 3 doing for over 50 years. 4 Q. Are there any gates or no trespassing signs 5 at the intersection of Von and 38th? 6 A. No. We had -- 7 MR. KELLEY: Let's take a quick break. 8 We'll go off the record. All right? 9 THE VIDEOGRAPHER: We're now going off 10 the record. The time is now 4:33. 11 (Recess 4:33-4:47.) 12 THE VIDEOGRAPHER: We're now going back 13 on the record. The time is now 4:47. 14 Q. (By Mr. Kelley) Mr. Monk, only a few more 15 questions. 16 After Mr. Washburne's lease was 17 terminated at VFM, you note that after that time, 18 Mr. Washburne demanded to go onto the property 19 occupied by the Vintage Flying Museum and that you 20 instructed him numerous times to stay away from the 21 property; is that correct? 22 A. Uh-huh. 23 Q. This is after the termination of his lease. 24 Can you recall when those times were that you would 25 have told him or you instructed him to stay away from</p>	<p>1 Q. Okay. You -- 2 A. That's the only one I know for sure. 3 Q. You refer -- okay. 4 So there were no other times that you had 5 warned him to stay away in addition to -- other than 6 the one that you mentioned on the 27th? 7 A. I'm not sure. 8 Q. But to the best of your recollection, you did 9 not, at any other time -- 10 A. No. I just don't know. I think that I did, 11 but I -- I can't remember the specifics of it. 12 Q. Okay. And the prior stay away, if you will, 13 notices that you had given to Mr. Washburne were only 14 for a few days, right? Was that the idea, that he 15 would only stay away for a few days? 16 A. Well, it certainly conveyed the fact that we 17 wanted him gone and we wanted him to stay gone. There 18 could be no doubt about that. 19 Q. Well, but you would only ask him to stay gone 20 for a few days, is what I was asking; is that right? 21 A. It might have been in that context. 22 Q. So it wasn't indefinite; it was just a few 23 days. Okay. 24 So you referred earlier to 25 cyberterrorism, and we discussed that a little bit.</p>
245	247
<p>1 the property after his lease was terminated? 2 A. After his lease is terminated, but not before 3 he vacated, I told him several times during that 4 period when we were having some disputes. 5 Q. But after -- after he vacated, did you 6 instruct him several times to stay away from the 7 property? 8 A. I think I did, but he says I did not. 9 Q. Who says you did not? 10 A. Mr. Washburne says I did not until April the 11 27th. 12 Q. But to the best of your recollection, did you 13 warn him to stay away from the property after he 14 vacated the property? 15 A. He says that after he vacated, that nobody 16 told him to stay away from the property. 17 Q. But I'm not asking what he says. I'm asking 18 what you -- what you say. 19 A. Well, I -- I think I -- after he vacated, the 20 first time I can be real sure about is on April the 21 27th, when I put it in writing -- April 27th, 2014, 22 when I put it in writing. I think I did earlier 23 times. Outside of that, the only people I know that 24 told him to stay away was the police officer on March 25 2nd, 2013.</p>	<p>1 Did any of that, what you referred to as 2 cyberterrorism on behalf of Mr. Washburne, occur 3 before his lease was terminated, as far as you know? 4 A. I can't recall any. 5 Q. So that means all -- all of what you referred 6 to as cyberterrorism began after the date of his lease 7 termination? 8 A. No, it does not mean that. It means that I 9 cannot recall whether there were any instances of that 10 or not. I know he did some -- said some nasty things 11 about some VFM people before he left. 12 Q. Okay. Last question related to what we've 13 already discussed, but you mentioned that -- we were 14 talking about the Von vacation, this idea that the 15 City wanted to vacate Von Street at some point, and 16 included that in an application for the City to 17 approve or not approve; is that right? 18 A. I'm not quite clear about what your question 19 is. 20 Q. Well, you had referred earlier to the fact 21 that the Von vacation -- to vacate Von Street was not 22 included in the application to the City. Is that your 23 understanding? 24 A. That's correct, yes, sir. 25 Q. And therefore it wasn't voted on; is that</p>

248	<p>1 what you're saying, or it was never approved?</p> <p>2 A. As far as I could find, it never went before</p> <p>3 council again.</p> <p>4 Q. How do you know that it was not included</p> <p>5 within the application?</p> <p>6 A. I couldn't find any -- I couldn't find any</p> <p>7 record that it had been.</p> <p>8 Q. So you looked and you couldn't find anything</p> <p>9 indicating that it had been included in the</p> <p>10 application?</p> <p>11 A. No, I did not find anything --</p> <p>12 Q. Okay.</p> <p>13 A. -- indicating the staff had done what they</p> <p>14 were instructed to do.</p> <p>15 Q. Were you able to find the application for the</p> <p>16 other vacation?</p> <p>17 A. I didn't look.</p> <p>18 Q. Okay. All right. Let's go back to the</p> <p>19 events of the 27th.</p> <p>20 Who called the police on April 27th,</p> <p>21 2014?</p> <p>22 A. Who called the police?</p> <p>23 Q. Yeah.</p> <p>24 A. Dana Wood did, I think, yeah.</p> <p>25 Q. And how did you learn about Dana Wood calling</p>	250	<p>1 A. Yes.</p> <p>2 Q. And what did he say to you?</p> <p>3 A. I don't --</p> <p>4 Q. Did he relate to you that the police had been</p> <p>5 called at that point?</p> <p>6 A. Did he what?</p> <p>7 Q. Did he relate to you that the police had been</p> <p>8 called?</p> <p>9 A. Oh, well, I think he related the police was</p> <p>10 there -- were there.</p> <p>11 Q. Okay. And did you respond?</p> <p>12 A. I talked to him briefly until -- I had an</p> <p>13 incoming call and said just a minute. I went on -- I</p> <p>14 thought the incoming call hopefully was from a doctor</p> <p>15 calling.</p> <p>16 But anyway, when I got back on the line,</p> <p>17 I believe he was -- I believe he was no longer there,</p> <p>18 and then he called again, I believe -- I believe that</p> <p>19 he called a second time. I'm not sure.</p> <p>20 And, anyway, he was pretty upset and he</p> <p>21 was wanting me to talk to the police, and then I heard</p> <p>22 obviously a police sergeant saying we don't talk to</p> <p>23 lawyers, and -- or maybe that's when I -- maybe that's</p> <p>24 when I interrupted the call. I don't know. The</p> <p>25 details are pretty fuzzy, but that's what I remember</p>
249	<p>1 the police?</p> <p>2 A. Oh, I just -- I believe that -- I believe</p> <p>3 that has been addressed in some -- I believe that was</p> <p>4 in her deposition.</p> <p>5 Q. But I'm asking you, do you recall how you</p> <p>6 learned of this because you weren't there at the time,</p> <p>7 right?</p> <p>8 A. No, I was not there on the 27th.</p> <p>9 Q. Well, how did you learn about Dana Wood</p> <p>10 calling the police?</p> <p>11 A. Oh, learned that she had called?</p> <p>12 Q. That's right, that's right.</p> <p>13 A. Learned she had called the police? Well, I</p> <p>14 guess I heard about it later that day.</p> <p>15 Q. Okay.</p> <p>16 A. That day was pretty hectic for me.</p> <p>17 Q. Okay. It was Dana Wood and Bill Gorin that</p> <p>18 went out to the police where Seth was parked on the</p> <p>19 27th; is that right?</p> <p>20 A. That's my understanding, yes, uh-huh.</p> <p>21 Q. And Seth called you when he was in his car</p> <p>22 that day, right?</p> <p>23 A. I don't know that he was in his car. I don't</p> <p>24 know where he was.</p> <p>25 Q. Well, he called you, though, didn't he?</p>	251	<p>1 about talking to him on the phone on the 27th of</p> <p>2 April.</p> <p>3 Q. So when he called you, you were aware that he</p> <p>4 was parked on Northwest 38th Street or the</p> <p>5 intersection?</p> <p>6 A. I didn't know where he was.</p> <p>7 Q. He didn't tell you where he was? He didn't</p> <p>8 tell you where he was?</p> <p>9 A. No, I don't think so.</p> <p>10 Q. Okay. And you -- so you spoke with him</p> <p>11 briefly. You hung up, and you were aware --</p> <p>12 A. No, I didn't hang up. I got another call --</p> <p>13 Q. You took another call.</p> <p>14 A. -- and when I went back to that one, it was</p> <p>15 gone.</p> <p>16 Q. Okay. But you knew he was interacting with</p> <p>17 the police, and given the events of the day before,</p> <p>18 I'm sure you assumed that he was either going to be</p> <p>19 given another warning or perhaps arrested, right?</p> <p>20 MR. TURNER: Objection; form.</p> <p>21 A. I didn't know what the police -- I don't know</p> <p>22 what -- I didn't know what was going to happen. I</p> <p>23 just heard obviously a police officer saying we don't</p> <p>24 talk to lawyers.</p> <p>25 Q. (By Mr. Kelley) Okay. So after that call,</p>

252	<p>1 did you call Ms. Hospers and discuss with her these 2 events? 3 <b>MR. TURNER:</b> We're not going to -- I'm 4 not going to let him answer questions about whether he 5 talked to his client because it's privileged. 6 <b>Q. (By Mr. Kelley) Okay. Let me ask a 7 different question. 8 Why didn't you call Ms. Hospers? 9 A. Why didn't I call who? 10 Q. Ms. Hospers. 11 MR. TURNER:</b> Well, hold on a second. 12 That's like when did you stop beating your wife. He 13 didn't say that he didn't call her. So it's 14 privileged why he didn't call or why he did call her 15 or if he called her. 16 <b>Q. (By Mr. Kelley) Did you call Bill Gorin? 17 MR. TURNER:</b> Once again -- 18 <b>MR. KELLEY:</b> Is he a client? 19 <b>MR. TURNER:</b> He's a -- he's a -- Gorin -- 20 he's a volunteer with VFM, and we think he qualifies 21 as -- 22 <b>MR. KELLEY:</b> So any volunteers qualify as 23 a client of Mr. Monk? That's a pretty broad 24 interpretation of attorney-client privilege, wouldn't 25 you say?</p>	254	<p>1 would do that, right? 2 <b>MR. TURNER:</b> Objection; form. 3 <b>A. I didn't make any conclusion about whether or 4 not having him arrested, but I figured the police 5 would get rid of him like the one did the day before. 6 I mean, it really came as a shock to me that after 7 giving the trespass warning on Saturday, he went back 8 out there. 9 Q. (By Mr. Kelley) So I'm now going to -- so 10 when you were on the phone with Mr. Washburne, why 11 would you not indicate to him that he should -- he 12 should not be there or that he should perhaps leave 13 the -- 14 A. He was in a screaming rage -- 15 Q. Okay. 16 A. -- beyond any reason. 17 Q. Okay. Got it. And earlier in the day when 18 he indicated to you that he was going to drive out 19 there, why didn't you warn him then or tell him then? 20 A. It wouldn't have done any good. He had his 21 mind made up. Couldn't confuse him with facts. 22 Q. I'm going to hand you what's previously been 23 marked as Exhibit 40. These are Defendant Charlyn 24 Hospers' Response to Plaintiff Seth Washburne's First 25 Set of Interrogatories. If you'll please turn to rog</b></p>
253	<p>1 <b>MR. TURNER:</b> No. You can take it up with 2 the judge, but I don't think his conversations -- 3 <b>THE WITNESS:</b> I'm not saying -- I would 4 not contend that any volunteers there, but a person 5 like Bill Gorin, who was pretty much the number two 6 operations guy, director of maintenance there, he 7 was -- he was -- and this whole thing was clearly 8 because of his connections with VFM, so that's my 9 thought. 10 <b>MR. KELLEY:</b> Okay. 11 <b>THE WITNESS:</b> You lawyers didn't ask me 12 what I thought. 13 <b>MR. TURNER:</b> Well, that's the other 14 thing, Jon. He was the director of maintenance, so I 15 think he falls under attorney-client privilege. 16 <b>THE WITNESS:</b> I'll let you school-trained 17 lawyers work that one out. 18 <b>Q. (By Mr. Kelley) Okay. So -- so you're aware 19 of what is going on. The police are with 20 Mr. Washburne. This is a familiar scenario in that it 21 happened just the day before. Why didn't you seek to 22 step in and stop what was going on or do something? 23 A. Because I had absolutely no obligation to and 24 because we desperately needed him to go away. 25 Q. And you thought that having him arrested</b></p>	255	<p>1 number 10. It's on page 4. 2 <b>Interrogatory number 10 asks, describe in 3 detail any communications you had with any other 4 defendant on April 27, 2014, and Ms. Hospers' answer 5 is, other than telephone conversations with my 6 attorney Hal Monk, I discussed our fears about 7 plaintiff's harassment several times with Bill Gorin. 8 So you did speak with Ms. Hospers on the 9 27th; is that right? 10 A. I don't know. 11 Q. Isn't that what this interrogatory answer 12 states? 13 A. No. It just -- it just says in effect other 14 than telephone conversations, comma, if any, with my 15 attorney. I don't remember. 16 Q. You don't remember whether or not you spoke 17 with Ms. Hospers? 18 A. I don't remember whether or not I talked with 19 Ms. Hospers on that day. 20 Q. Look at the interrogatory just before it, 21 describe in -- interrogatory number 9, describe in 22 detail -- 23 A. Which one? 24 Q. Number 9. 25 A. Number 9.</b></p>

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<p>1 Q. Describe in detail any communications you had 2 with any other named defendant on April 26, 2014. 3 Answer: Other than telephone 4 conversations with my attorney, I discussed our fears 5 about plaintiff's harassment several times with Bill 6 Gorin. 7 Doesn't that indicate that she spoke with 8 you on April 26th as well? 9 MR. TURNER: Objection; form. 10 A. It -- no. It just indicates to me she may or 11 may not have. 12 Q. (By Mr. Kelley) All right. I'm going to 13 pass you what's been marked as Exhibit 21. As you'll 14 see, on April 28, 2014 -- well, yeah, let's start with 15 that email, April 28, 2014. It's the second email on 16 the first page there. You sent this to Chuckie 17 Hopers and Bill Gorin. So this would be the day 18 after Mr. Washburne was arrested, right? 19 A. Uh-huh. 20 Q. And you state, I told him I didn't know the 21 appropriate property line, but such was up to police 22 officers. Sorta good to hear he spent about 18 hours 23 in jail. 24 Do you recall writing that? 25 A. I don't recall that. I obviously did.</p>	<p>1 had made it clear then that she must be reminded that 2 she was certainly not, let alone a representative of 3 property owner, the Trust. Therefore, I was chagrined 4 to find that on Sunday (apparently with your 5 acquiescence), she had inserted herself right back 6 into the big middle -- into the big middle of this 7 hassle. 8 What were you referring to there with 9 respect to her inserting herself back in? 10 A. She apparently was the one that was talking 11 to the police officer on April the 27th as well as the 12 26th, and I was -- 13 Q. You didn't want her doing that, right? 14 A. I did not. 15 Q. Okay. 16 A. I was not comfortable with that. 17 Q. All right. Let me hand you a document that 18 has been previously marked as Exhibit 23. This is an 19 email you sent on Thursday, May 29th, 2014, 8:19 p.m. 20 to Chuckie and Bill Gorin. 21 You write, skipping down a sentence, yes, 22 it is obvious that Seth showed up on Saturday and 23 Sunday with an intention to harass and annoy everyone 24 connected with VFM and Jim Terry. However, such 25 despicable intent does not in any way preclude his</p>
257	259
<p>1 Q. Well, you say here that you didn't -- you 2 told him that you didn't know the appropriate property 3 line; is that right? 4 A. On what? 5 Q. Well, the second sentence of your email. I 6 told him I didn't know the appropriate property line. 7 A. Well, I did not. We were waiting on a 8 survey, and that was up to the police officers. 9 Q. Okay. So notwithstanding the fact that you 10 had helped to purchase this property and you had been 11 the attorney for years and years, you did not -- you 12 told him you didn't know what the property line was? 13 A. You're talking about the real estate owned by 14 the Hopers Family Trust. I'm talking about the 15 property occupied by Vintage Flying Museum, which 16 is -- they're not coterminous. 17 Q. There's a difference you're saying. So when 18 you say property line, you're referring to property 19 occupied by VFM? 20 A. Yes, sir. 21 Q. Okay. Then you go on, in the second 22 paragraph, and you say, in reviewing all facts, I was 23 much concerned about Dana's erroneous representation 24 to the police officer on Saturday that she was a 25 representative of Vintage Flying Museum. I thought I</p>	<p>1 right to travel as he darn well pleased up and down 2 Northwest 38th Street, or which now, uncomfortably, 3 seems to still be Von Street. 4 Do you see that? 5 A. Yes. 6 Q. So you're saying here that his intent does 7 not matter, but he has a right to travel as he darn 8 well pleased up and down 38th Street; isn't that 9 right? 10 A. Yeah. I said that was what I -- that was 11 what I had just learned I think the day before, that 12 that was still -- I think that -- I think it was just 13 a -- no, not the day before, but it was just a little 14 bit that I had discovered that those records, some of 15 which we reviewed today from the City secretary's 16 office, that it still was designated as Von. 17 Q. But you're saying he had a right to travel as 18 he darn well pleased on 38th Street, right? Do you 19 agree with that here today? 20 A. No. 21 Q. You disagree with that statement? 22 A. I was trying to scare my client into jerking 23 Dana's chain and trying to minimize any exposure we 24 might have or that VFM or the Trust might have after 25 the happenings of a few days before.</p>



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<p>1 Q. You then go on to say, this is a couple of 2 lines down in the same email, contrary to her 3 assertions below, I find no indication that Seth ever 4 set foot on any of VFM's leasehold or Hospers Trust 5 property, or expressed any intention of doing so. 6 A. Okay. 7 Q. Do you still agree with that statement? 8 A. Technically, yes. Leasehold, we're not 9 talking about VFM's leasehold. I was thinking in 10 terms of just what's covered under the access 11 agreement, not necessarily the property -- the 12 premises that it occupied. 13 Q. Okay. You go on to state that the fact -- 14 well, let me go down. It's the second paragraph from 15 the bottom. 16 The fact that the Trust and/or VFM 17 allowed Jim Terry to erect a tent on 38th Street is 18 very scary. 19 Do you still agree with that statement? 20 A. Yes, because I was still under the impression 21 that it had been done down by Ross, where the previous 22 encounter had occurred. 23 Q. Okay. I am now going to hand you a document 24 that we're going to mark as Exhibit 67. 25 (Exhibit No. 67 marked.)</p>	<p>1 A. Yeah. 2 Q. I just have one question for you -- 3 A. Ask me. 4 Q. -- on the next page. Would you mind turning 5 it? Okay. There you go. 6 You ask -- you say -- you ask Mike, 7 please do whatever you can to: One, find anything 8 that will give the Trust any claim to what is or ever 9 was Von. 10 So here you're conceding that you have no 11 information indicating that the Trust has any claim to 12 Von, right? 13 MR. TURNER: Objection; form. 14 A. That's right. That's number 43 that we've 15 answered that one today. 16 Q. (By Mr. Kelley) Why are you asking him for 17 anything that would give the Trust a claim to what is 18 Von? 19 A. I'm just thinking maybe there might be 20 something in the deed records or the survey record 21 that would give us -- give us a claim. 22 Q. But there wasn't, was there? 23 A. I was searching. Never found one. 24 Q. All right. Last document if we can squeeze 25 that one in. We'll mark this as Exhibit 68.</p>
261	263
<p>1 MR. TURNER: May I inquire of the court 2 reporter. My watch shows that we've done six hours of 3 deposition. Can I ask the court reporter where we're 4 at on that? 5 THE REPORTER: Can you guys -- just 6 nobody talk. 7 MR. TURNER: Right. 8 MR. KELLEY: I just have two documents 9 left. 10 MR. TURNER: How much more time? 11 THE REPORTER: Just one second. 12 MR. TURNER: I'm just in a hurry. 13 THE REPORTER: One minute. 14 MR. TURNER: One minute, okay. 15 MR. KELLEY: Ready to go. 16 Q. (By Mr. Kelley) Mr. Monk, this is a 17 document, a series of emails, let's examine the email, 18 the second one down, June 23rd, 2014. This is an 19 email from you to Mike Davis? 20 A. Yes, sir. 21 Q. In this email you note -- actually, turn to 22 the next page, if you don't mind. Can you turn to the 23 next page? 24 Mr. Monk, we're short on time. Would you 25 mind turning to the next page?</p>	<p>1 (Exhibit No. 68 marked.) 2 Q. (By Mr. Kelley) And this is a document, 3 another set of emails between you and Mike Davis. On 4 the very last page, if you wouldn't mind turning to 5 it, flipping that document over, we're on the back. 6 MR. TURNER: We're -- I'm concluding the 7 deposition. We're going to leave. 8 THE WITNESS: Give me a minute. 9 MR. TURNER: Okay. 10 THE WITNESS: I've got one in front of 11 me. 12 MR. TURNER: All right. 13 Q. (By Mr. Kelley) This is a July 18, 2014 14 email you've sent to Mike Davis and you say, today we 15 received the old documents from the city secretary, 16 and it doesn't give the Hospers a prayer of a claim to 17 Von Street. Please don't rock any boats with the city 18 survey department unless you already have. 19 A. I wrote that. 20 Q. That's right. And what did you mean when you 21 said, it doesn't give the Hospers a prayer of a claim 22 to Von Street? 23 A. It did not give the -- there was nothing that 24 gave the Hospers Trust any title to what turned out to 25 be Von Avenue.</p>

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1 Q. And they had no right to exclude anyone from  
 2 Von Avenue as a result, right?  
 3 MR. TURNER: Objection; form.  
 4 A. Hospers Trust did not have any right. VFM  
 5 did.  
 6 MR. KELLEY: Okay. That's all the  
 7 questions I've got.  
 8 THE VIDEOGRAPHER: Are we done?  
 9 MR. TURNER: Yes, ma'am.  
 10 THE WITNESS: That's enough.  
 11 MR. TURNER: No questions at this time.  
 12 THE VIDEOGRAPHER: This concludes today's  
 13 deposition. The time is now 5:15.  
 14 (Deposition concluded at 5:15 p.m.)  
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1 I, HAL MONK, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
 4  
 5 \_\_\_\_\_  
 6 HAL MONK  
 7  
 8  
 9 THE STATE OF \_\_\_\_\_ )  
 10 COUNTY OF \_\_\_\_\_ )  
 11 Before me, \_\_\_\_\_, on  
 12 this day personally appeared HAL MONK, known to me (or  
 13 proved to me under oath or through \_\_\_\_\_ )  
 14 (description of identity card or other document) to be  
 15 the person whose name is subscribed to the foregoing  
 16 instrument and acknowledged to me that they executed  
 17 the same for the purposes and consideration therein  
 18 expressed.  
 19 Given under my hand and seal of office  
 20 this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
 21  
 22  
 23 \_\_\_\_\_  
 24 NOTARY PUBLIC IN AND FOR  
 25 THE STATE OF \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

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1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: HAL MONK JUNE 9, 2017  
 3 PAGE LINE CHANGE REASON  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
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1 NO. 153-275478-14  
 2 SETH WASHBURNE, § IN THE DISTRICT COURT  
 3 Plaintiff, §  
 4 V. §  
 5 § TARRANT COUNTY, TEXAS  
 6 VINTAGE FLYING MUSEUM, INC., §  
 7 HOSPERS FAMILY TRUST "D", §  
 8 CHARLYN HOSPERS, HAL MONK, §  
 9 BILL GORIN, DANA WOOD, §  
 10 Defendants. § 153RD JUDICIAL DISTRICT  
 11  
 12 REPORTER'S CERTIFICATION  
 13 DEPOSITION OF HAL MONK  
 14 JUNE 9, 2017  
 15 VOLUME 2  
 16 I, Jennifer Quick Davenport, Certified  
 17 Shorthand Reporter in and for the State of Texas,  
 18 hereby certify to the following:  
 19 That the witness, HAL MONK, was duly sworn  
 20 by the officer and that the transcript of oral  
 21 deposition is a true record of the testimony given by  
 22 the witness;  
 23 That the deposition transcript was submitted  
 24 on June 15, 2017, to the witness or to the attorney  
 25 for the witness for examination, signature and return  
 to me by July 5, 2017;  
 That the amount of time used by each party  
 at the deposition is as follows:  
 Mr. Jonathan Kelley - 5:35  
 Mr. Randall E. Turner - 0:00

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1 That pursuant to information given to the  
 2 deposition officer at the time said testimony was  
 3 taken, the following includes counsel for all parties  
 4 of record:  
 5 Mr. Jonathan Kelley, Attorney for Plaintiff  
 6 Mr. Randall E. Turner, Attorney for Defendants Vintage  
 Flying Museum, Inc.; Hospers Family Trust "D"; Charlyn  
 Hospers; Hal Monk; Bill Gorin  
 7 Mr. Charles Burgess, Attorney for Defendant Dana Wood

8 I further certify that I am neither counsel  
 9 for, related to, nor employed by any of the parties or  
 10 attorneys in the action in which this proceeding was  
 11 taken, and further that I am not financially or  
 12 otherwise interested in the outcome of the action.

13 Further certification requirements pursuant  
 14 to Rule 203 of TRCP will be certified to after they  
 15 have occurred.

16 Certified to by me this 15th day of June  
 17 2017.



18 \_\_\_\_\_  
 Jennifer Quick Davenport, Certified  
 19 Shorthand Reporter No. 1683  
 Dickman Davenport, Inc.  
 20 Firm Registration #312  
 Suite 101  
 21 4228 North Central Expressway  
 Dallas, Texas 75204  
 22 214.855.5100 800.445.9548  
 email: jqd@dickmandavenport.com  
 23 My commission expires 12-31-18  
 24  
 25

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned  
 3 to the deposition officer on \_\_\_\_\_;

4 If returned, the attached Changes and  
 5 Signature page contains any changes and the reasons  
 6 therefor;

7 If returned, the original deposition was  
 8 delivered to Mr. Kelley, Custodial Attorney;

9 That \$\_\_\_\_\_ is the deposition  
 10 officer's charges to the Plaintiffs for preparing the  
 11 original deposition transcript and any copies of  
 12 exhibits;

13 That the deposition was delivered in  
 14 accordance with Rule 203.3, and that a copy of this  
 15 certificate was served on all parties shown herein on  
 16 \_\_\_\_\_ and filed with the Clerk.

17 Certified to by me this \_\_\_\_\_ day of  
 18 \_\_\_\_\_, 2017.

19 \_\_\_\_\_  
 20 Jennifer Quick Davenport, Certified  
 21 Shorthand Reporter No. 1683  
 Dickman Davenport, Inc.  
 22 Firm Registration #312  
 Suite 101  
 23 4228 North Central Expressway  
 Dallas, Texas 75204  
 24 214.855.5100 800.445.9548  
 email: jqd@dickmandavenport.com  
 25 My commission expires 12-31-18

Exhibit 126: Plaintiff's Motion to Compel Documents Evidencing  
Defendants' Net Worth



financial statements, including income statements, balance sheets, profit & loss statements and 1099s and bank statements or other documents reflecting income received for the years 2010-2016. *See Exhibit 1 (Plaintiff's Second and Third Requests for Production to Defendants)*. On April 7, 2017, the Museum Defendants served their responses objecting to the production of these documents on the grounds that such production was an invasion of privacy, not reasonable calculated to lead to the discovery of admissible evidence, overly broad, and did not sufficiently identify the particular documents being requested. *See Exhibit 2 (Defendants' Objections to Plaintiff's Request for Production)*.

On April 10, 2017, Plaintiff's counsel contacted the Museum Defendants' counsel, Randy Turner, asking him to withdraw his objections and produce the requested documents. On that same day, Mr. Turner responded that he would be willing to produce the Defendants' tax returns for an *in camera* inspection by the court. Further, he stated that he would be willing to produce financial statements for VFM (and further asserted that no other Defendant had any financial statements or other documentation to show net worth), but refused to produce bank statements or other documents showing income or net worth for any Defendant. *See Exhibit 3 (April 10, 2017 email)*.

On April 17, 2017, the Museum Defendants served their First Amended Objections to Plaintiff's Second and Third Request for Production. Defendants Trust, Hospers and Gorin stood by their original objections and agreed to produce only their most recent tax returns for an *in camera* inspection by the Court. However, these same Defendants refused to produce copies of the requested bank statements or other documents reflecting income received for the requested time period or net worth. VFM agreed to produce its most recent tax return for an *in camera* inspection by the Court and further agreed to produced its most recent financial statement upon the entry of an agreed confidentiality order. VFM continued to refuse to produce any bank

statements or other documents showing income for the requested time period. *See* Exhibit 4 (Defendants’ Amended Objections to Plaintiff’s Second and Third Request for Production).

On June 21, 2017, the parties entered into an Agreed Protective Order covering tax returns and “any other financial documents pertaining to any party’s finances.” *See* Exhibit 5 (Agreed Protective Order). Pursuant to the Agreed Protective Order, Mr. Turner agreed with Plaintiff’s counsel to produce the VFM net worth documents and the Museum Defendants’ tax returns for an *in camera* inspection. On June 23, 2017, on a telephone call between Mr. Turner and Plaintiff’s counsel, Jonathan Kelley, Mr. Turner reiterated that he would produce the Museum Defendants’ tax returns – documents he acknowledged were *insufficient* to determine net worth – but would *not* produce any other document that might evidence the Museum Defendants’ net worth. On June 27, 2016, counsel for Plaintiff, Kent D. Krabill, emailed Mr. Turner and asked him once again to provide net worth statements for each of the Museum Defendants. Mr. Turner replied that “We literally do not have any financial statements or other documents that show net worth of any defendants other than the VFM statements I sent you.” Exhibit 7 (June 27 email). Because Mr. Turner has refused to produce any document evidencing net worth of any Defendant except VFM (and other than tax returns submitted *in camera*, which typically do not include net worth), Plaintiff’s only alternative to assess the other Defendants’ net worth is to obtain copies of their bank statements or other documents showing income received for the requested time period.

### **ARGUMENT AND AUTHORITIES**

In his Fifth Amended Petition (the “Petition”), Plaintiff asserts claims for exemplary damages, and net worth information is relevant to those claims. *See* Plaintiff’s Fifth Amended Petition, attached as Exhibit 6. Accordingly, under Texas law, the requested documents concerning the Museum Defendants’ net worth are discoverable. *See Lunsford v. Morris*, 746

S.W.2d 471, 473 (Tex. 1988) (“In a suit in which exemplary damages may be recovered, we hold the defendant’s net worth is “relevant” and therefore discoverable under Tex. R. Civ. P. 166b(2)(a).4”). Furthermore, Plaintiff is not required to satisfy any particular evidentiary burden before being entitled to such discovery. *See In re Michelin N. Am. Inc.*, 2016 WL 890970, at \*8 (Tex. App.—Dallas Mar. 9, 2016, orig. proceeding) (“Under Texas law, a party seeking discovery of net-worth information need not satisfy any evidentiary prerequisite, such as making a prima facie showing of entitlement to punitive damages, before discovery of net worth is permitted.”). Importantly, Section 41.0115 of the Texas Civil Practice and Remedies Code does not apply to this case, because this case was filed prior to September 1, 2015. *See id.*; Acts of June 19, 2015, 84<sup>th</sup> Leg., R.S., ch. 1159, § 3, 2015 Tex. Sess. Law Serv. 3923, 3923 (West 2015).

Accordingly, based on Plaintiff’s claim for exemplary damages as asserted in the Petition, Plaintiff is entitled to – and this Court should compel the production of – documents sufficient to show the Museum Defendants’ net worth.

#### **ATTORNEY’S FEES**

Plaintiff should be awarded his attorney’s fees and expenses in bringing this Motion. Upon granting of this Motion, Plaintiff will, upon the Court’s request, provide affidavit evidence and detailed invoices confirming the fees he has incurred in preparing this Motion and obtaining sanction/an order compelling the Museum Defendants’ document production and compliance with the Texas Rules of Civil Procedure.

#### **RELIEF REQUESTED**

For the reasons stated above, Plaintiff requests an order from the Court:

1. Compelling the Museum Defendants to produce the documents requested in his Second and Third Set of Request for Production;



3. Award Plaintiff attorney's fees incurred in bringing this Motion; and
4. Any and all such other relief to which Plaintiff is entitled.

DATED: June 29, 2017

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill  
State Bar No. 24060115  
kkrabill@lynlllp.com  
Jonathan D. Kelley  
Texas Bar No. 24090202  
jkelley@lynlllp.com  
LYNN PINKER COX & HURST, L.L.P.  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
Telephone: 214.981.3800  
Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF CONFERENCE**

A conference was held on June 23, 2017 with counsel for the Museum Defendants on the merits of this Motion. A reasonable effort has been made to resolve the dispute without the necessity of court intervention and the effort failed. Therefore, it is presented to the Court for determination.

/s/ Jonathan D. Kelley

Jonathan D. Kelley

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing document was served upon counsel of record herein *via e-service* and e-mail June 29, 2017:

Randall E Turner  
[randy@randyturner.com](mailto:randy@randyturner.com)  
Law Offices of Randall E. Turner, PLLC  
4255 Bryant Irvin Rd., Ste. 210  
Fort Worth, TX 76109

Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

*/s/ Jonathan D. Kelley*  
\_\_\_\_\_  
Jonathan D. Kelley

Exhibit 127: Court Transaction Log - 48th Case

**Cause Number: 048-268735-13 Date Filed: 10/14/2013**  
**SETH WASHBURNE, ET AL v JAMES TERRY, ET AL**  
**Cause of Action: CONTRACT, FRAUD/MISREPRESENTATION**  
**Case Status .... : DISMISSED OR NON-SUITED**

Date	Type	Filed By	Subject
9/22/2016	·".ORD GRNTNG SUB COUNSEL-K D KRABILL, S COLE**"	w/d	Sub
9/27/2016	DEFN'S DECLARATION INVOKING TRCP RULE 167-PATRICK	Def	a
10/31/2016	PLTFS' 3RD AMD PET	Plntf	Amended Petition
11/4/2016	DEFN'S AMD ANS,SPEC/EXC & VERIFIED DENIAL-PATRICK	Def	Denial
11/21/2016	DEFN'S 4TH AMD ANS,SPEC/EXC & VERIFIED DENIALSDEFN'S	Def	Denial
11/21/2016	> <b><u>NO/EVID MSJ &amp; MTN/TRAD SJ-PATRICK MAHAFFEY</u></b>	Def	No Ev MSJ-Mahaffey
11/21/2016	NOT/DEPO SUBPOENA DUCES TECUM-GARY WORTHY	Plntf	Subpoena
11/22/2016	PROOF OF SVC SUBPOENA-CHARLES BURGESS	Plntf	Subpoena
11/23/2016	NOT/DEPO SUBPOENA DUCES TECUM-STEPHEN D SWIFT	Plntf	Subpoena
11/24/2016	***ADDITIONAL FILE # 3***	?	?
11/28/2016	RET OF SVC-NOT DEPO SUBPOENA-SCOTT PERDUE	Plntf	Subpoena
11/29/2016	NOT/DEPO SUBPOENA-CHARLES MONTGOMERY	Plntf	Subpoena
12/2/2016	(PROP)ORD SET HRG ON DEFN'S NO/EVID MSJ & MTN/TRAD	Def	No Ev MSJ-Mahaffey
12/5/2016	***ORD SET HRG (1-12-17/10:00) DEFN'S NO/EVID MSJ	Def	No Ev MSJ-Mahaffey
12/9/2016	RET OF SVC SUBPOENA-OSCAR CARDENAS	Plntf	Subpoena
12/13/2016	1ST SUPPL TO DEFN'S NO/EVID MSJ & MTN/TRAD SJDEFN'S	Def	No Ev MSJ-Mahaffey
12/14/2016	> 5TH AMD ANS,SPEC/EXC & VERIFIED DENIALDEPO	Def	5th Amend Ans
12/16/2016	SUBPOENA-STEPHEN KYLE NELSON	Plntf	Subpoena
12/21/2016	> <b><u>DEFN'S NO/EVID MSJ &amp; MTN/TRAD SJ-JAMES TERRY</u></b>	Def	No Ev MSJ-James Terry
"	APPNDX TO MSJ (ATTACHED TO MSJ)	"	"
"	*****ADD'L FILE #4-DEFN' S 1ST AMD NO/EVID MSJ &	"	"
"	APPNDX TO MSJ (ATTACHED TO MSJ)	"	"
"	*ADDITIONAL FILE #5	"	"
12/22/2016	> <b><u>DEFN'S NO/EVID MSJ &amp; MTN/TRAD SJ-PACIFIC PROWLER</u></b>	Def	No Ev MSJ-Pacific Prowler
"	APPNDX TO MSJ (ATTACHED TO MSJ)	"	"
"	(PROP) FIAT-DEFNS , NO/EVID MSJ & MTN/TRAD SJ***	"	"
"	ADD'L FILE #6-DEFNS' NO/EVID MSJ & MTN/TRAD SJAPPNDX	"	"
"	TO MS (ATTACHED TO MSJ)	"	"
"	(PROP) FIAT-DEFNS , NO/EVID MSJ & MTN/TRAD SJ	"	"
"	***ADDL' FILE #7-DEFN'S NO/EVID MSJ & MTN/TRAD SJAPPNDX	"	"
"	TO PLTF'S RESP (ATTACHED TO PLTF'S RESP)	"	"
"	(PROP) FIAT-DEFNS , NO/EVID MSJ & MTN/TRAD SJ***	"	"
"	ADD'L FILE #8***FIAT (1-12-17/10: 00) MSJ***	"	"
"	***FIAT (1-12-17/10:00) MSJ***	"	"
"	***FIAT (1-12-17/10: 00) MSJ***	"	"
"	> ***AGRD SCHED ORD (JURY TRIAL WK OF 3-20-17)***	Both	Sched Ord
12/27/2016	DEPO SUBPOENA-RICHARD MICHAEL BRADLEY	Plntf	Subpoena
1/5/2017	> <b><u>PLTFS' COMBINED RESP TO DEFNS TRAD &amp; NO/EVID MSJ</u></b>	Plntf	No Ev MSJ Response
"	(PROP)ORD DENYING DEFN'S NO/EVID & TRAD MSJ(	"	"
"	PROP)ORD DENYING DEFN'S NO/EVID & TRAD MSJ(	"	"
"	PROP)ORD DENYING DEFN'S NO/EVID & TRAD MSJ(	"	"
"	PROP)ORD DENYING NO/EVID & TRAD MSJ-JAMES TERRY	"	"

Date	Type	Filed By	Subject
1/5/2017	> <b><u>PLTF'S RESP TO DEFNS' TRAD &amp; NO/EVID MSJ &amp; 1ST</u></b>	"	"
"	(PROP)ORD DENYING DEFNS' NO/EVID & TRAD MSJ	"	"
1/9/2017	*""ADD'L FILE #9-DEFN' S REPLY TO PL TFS' RESP TO	Def	Reply to Plnt Resp
1/10/2017	DEFN'S DECLARATION INVOKING TRCP RULE 167-PATRICK	Def	Rule 167-Mahaffey
1/12/2017	> <b><u>PLTFS' MTNRECONSIDERATION &amp;/OR CLARIFICATION OF</u></b>	Plntf	MTReconsider
1/12/2017	DEPUTY REPORTER STATEMENT-CHERYL A DIXON	Plntf	Reporter
1/13/2017	(PROP)AMD ORD DENYING IN PART & GRNTNG IN PART	Plntf	Amend order
1/18/2017	***FIAT (2-8-17/11:30) PLTF'S MTN/RECONSIDER***	"	"
1/23/2017	1ST AMD NOT/DE PO SUBPOENA-RICHARD M BRADLEY	Plntf	Subpoena
1/23/2017	NOT/ADDITION OF CO-COUNSEL FOR DEFN-E L ATKINS	Def	Add Atkins
1/23/2017	CERT/DEPO-SCOTT PERDUE 12-19-16 (\$823.35-PLTF)	Plntf	Depo
1/23/2017	CERT/DEPO-DANA WOOD 12-5-16 (\$611.05-PLTF)	Plntf	Depo
1/25/2017	NOT/RELATING TO SELF-AUTHENTICATION OF DOCS	Def	Authentication
1/30/2017	VACATION LTR FROM ATTY DOWDY, JR	Def	Vacation
2/3/2017	DEFN'S 6TH AMD ANS, SPEC/EXC & VERIFIED DENIAL GRD	Def	6th Amended Ans
2/3/2017	> MTN TRANSFER	Both	Transfer
"	(PROP)ORD/TRANSFER	Both	Transfer
2/7/2017	DEFNS ROGERS & WARBIRDS NOT RELATE SELF AUTHEN	Def	Rogers Self Authen
2/9/2017	LTR/ATTY KRABILL PAYING JURY FEE	Plntf	Jury Fee
2/9/2017	""*ORD/TRANSFER TO 48TH*""	Both	Transfer
2/13/2017	(PROP)ORD ON MSJ	?	MSJ
2/16/2017	NOT/RELATING TO SELF-AUTHENTICATION OF DOCS	Def	Rogers Self Authen
2/16/2017	MTN/CONSOLIDATE	Def	MT Consol
"	COVER LTR TO MTN/CONSOLIDATE (ATTACHED TO MTN)	"	"
"	(PROP)ORD/CONSOLIDATE	"	"
"	(PROP)ORD SETTING HRG	"	"
2/21/2017	CERT/DEPO-STEVEN K NELSON 1-13-17 (\$757.20-PLTF)	Plntf	Depo
2/22/2017	> <b><u>PLTF'S RESP TO DEFN'S MTN/CONSOLIDATE</u></b>	Plntf	MT Consol
"	(PROP)ORD DENYING DEFN'S MTN/CONSOLIDATE	"	"
2/23/2017	*""ORD DENYING IN PART /GRNTNG IN PART DEFN' S MTNS	"	"
2/23/2017	DEFN'S 6TH AMD ANS, SPEC/EXC & VERIFIED DENIALS	Def	6th Amended Ans
2/24/2017	DEFN'S MTN/CONT - TERRY ROGERS & PERRIN WARBIRDS	Def	MT Consol
2/24/2017	AFFDT OF BUZZ DEITCHMAN (ATTACHED TO MTN/CONT)	"	"
2/24/2017	(PROP)ORD GRNTNG DEFN'S MTN/CONT	"	"
2/27/2017	CONFIRM LTR (3-8-17/1:30) DEFN'S MTN/CONT	"	"
2/28/2017	NOT/HRG (3-8-17/1:30) DEFNS' MTN/CONSOLIDATION &	"	"
2/28/2017	CONFIRM LTR (3-8-17/1:30) DEFNS' MTN/CONSOLIDATION	"	"
3/2/2017	> PLTF'S OBJ TO DEFN'S SPEC/EXC HRG DATE	Plntf	Hrg Notice
3/2/2017	VACATION LTR FROM ATTY KRABILL	Plntf	Vacation
3/6/2017	NOT/HRG (3-8-17/1:30) PLTF'S OBJS TO DEFN'S SPEC	Plntf	Hrg Notice
3/6/2017	> <b><u>PLTF'S RESP TO DEFN MAHAFFEY'S SPEC/EXC</u></b>	Plntf	resp to Mahaffey Spec Ex
3/6/2017	> <b><u>PLTF'S RESP TO TERRY DEFN'S SPEC/EXC</u></b>	Plntf	Resp to Terry Spec Exc
3/6/2017	*""ADDITIONAL FILE #10	"	"
3/6/2017	VACATION LTR FROM ATTY DEITCHMAN	Def	Vacation
3/7/2017	DEFN'S REPLY TO PLTF'S RESP TO DEFN'S MTN/CONSOL	Def	MT Consol
"	COVER LTR TO EXH 1 OF DEFN'S REPLY TO PLTF'S RESP	"	"

Date	Type	Filed By	Subject
"	EXH 1 (ATTACHED TO COVER LTR)	"	"
"	COVER LTR TO EXH 2 OF DEFN'S REPLY TO PLTF'S RESP	"	"
"	EXH 2 (ATTACHED TO COVER LTR)	"	"
"	COVER LTR TO EXHS 3-8 OF DEFN'S REPLY TO PLTF'S	"	"
"	EXH'S 3-8 (ATTACHED TO COVER LTR)	"	"
3/10/2017	(PROP)ORD ON MTN/CONT	"	"
3/10/2017	LTR/ATTY COLE RE DEFN'S SPEC/EXC	Plntf	Resp to Terry Spec Exc
3/15/2017	**ORD DENYING DEFNS' MTN/CONSOLIDATE	"	"
3/15/2017	***ORD GRNTNG MTN/CONT***	"	"
3/27/2017	VACATION LTR FROM ATTY DEITCHMAN	Def	Vacation
3/29/2017	(PROP)AGRD 3RD AMD UNIFORM LEVEL 3 SCHED ORO	Both	Sched Ord
4/3/2017	***AGRD 3RD AMD SCHED ORD(JURY TRL WK 1-22-18)	"	"
7/11/2017	VACATION LTR FROM ATTY ATKINS		
7/12/2017	MTN WiD FOR PLTF'S		
7/12/2017	(PROP)ORD GRNTNG MTN WiD		
7/12/2017	(PROP) FIAT		
7/13/2017	***FIAT (8-3-17/9:00) MTN TO W/D***		
7/31/2017	PLTF'S REPLY TO ATTYS' MTN WiD		
8/1/2017	LTR/PLTF WASHBURNE RE CERT/SVC ON PLTF'S REPLY TO		
8/3/2017	(PROP)ORD GRNTNG MTN W/D-KENT D KRABILL		
8/4/2017	***ORD GRNTNG MTN W/D-KEND O KRABILL***		
8/4/2017	***ORD ABATING CASE TO RETAIN COUNSEL *,,*		

Exhibit 128: 2016 10 04 - email from Sweeney w Mahaffey 167 offer

## Seth Washburne

---

**From:** Ivy Sweeney [isweeney@lynnllp.com]  
**Sent:** Tuesday, October 04, 2016 4:17 PM  
**To:** sethpw1@gmail.com  
**Cc:** Kent Krabill  
**Subject:** Washburne v. Terry  
**Attachments:** 4845-9980-4474.PDF

Seth, attached is a settlement offer received from Patrick Mahaffey's counsel.  
Ivy

### **IVY SWEENEY**

Assistant to Jason Dennis, Kent Krabill and Russell Herman

**LynnPinkerCoxHurst**

Direct 214 292 3646

Fax 214 981 3839

[isweeney@lynnllp.com](mailto:isweeney@lynnllp.com)

2100 Ross Avenue, Suite 2700

Dallas, Texas 75201

[www.lynnllp.com](http://www.lynnllp.com)

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Lynn Pinker Cox & Hurst, LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.



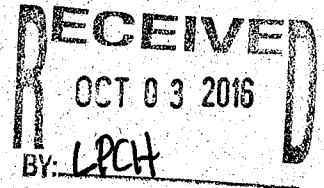
(817) 265-9000 PHONE

**JOHN V. DOWDY, JR.**  
**Attorney at Law**  
**Attorney-Mediator-Arbitrator**

(817) 460-8366 FAX  
E-mail: john@dowdylawfirm.com

2401 Garden Park Ct., Suite A  
Arlington, Texas 76013-1340

September 28, 2016



Stephen M. Cole  
LynnPinkerCoxHurst  
2100 Ross Avenue, Suite 2700  
Dallas, TX 75201

certified mail #7015 0640 0001 8481 9927

Re: Cause No. 352-268735-13; Seth Washburne & Thirsty 13<sup>th</sup>, LLC vs. James Terry, Pacific Prowler, LLC, Pacific Prowler, Nonprofit, Greatest Generation Aircraft, Patrick Mahaffey, Terry Rogers & Perrin Warbirds, Inc.

Dear Mr. Cole:

As you know, my client is Patrick Mahaffey, one of defendants in the captioned lawsuit, in which you represent the plaintiffs.

The purpose of this letter is to communicate a settlement offer under Rule 167 of the Texas Rules of Civil Procedure and Chapter 42 of the Texas Civil Practice and Remedies Code. The offer is being made on behalf of my client, Patrick Mahaffey.

My client hereby offers to pay to the Plaintiffs the total sum of \$15,100.00 in full and complete settlement of any and all claims the Plaintiffs have asserted or could assert against Patrick Mahaffey.

In exchange for the payment of \$15,100.00, your clients, Seth Washburne and Thirsty 13<sup>th</sup> are to dismiss with prejudice any and all claims which have been asserted or could be asserted against Patrick Mahaffey in the captioned lawsuit.

The sum of \$15,100.00 will be paid to the Plaintiffs on or before the expiration of the fifth day following the signature of the judge on the Order Dismissing Plaintiffs' Claims Against Patrick Mahaffey With Prejudice.

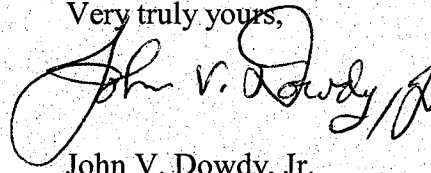
This offer is subject to the execution of reasonable and appropriate releases, indemnities and other documents necessary to give full effect to a complete release of liability of Patrick Mahaffey to Plaintiffs.

Finally, this offer will expire on the later of 14 days from your receipt of this letter or October 14, 2016.

September 28, 2016 - page 2

I have filed on behalf of Patrick Mahaffey a declaration invoking this rule under Texas Rule of Civil Procedure 167.2(a). This letter follows the filing of that declaration.

Very truly yours,

A handwritten signature in cursive script that reads "John V. Dowdy, Jr." with a stylized flourish at the end.

John V. Dowdy, Jr.

JVD:rc

cc: Charles Burgess  
Buzz Deitchman  
Patrick Mahaffey

Exhibit 129: Deposition time - all

JAMES TERRY, VOLUME 1  
April 25, 2016

1 the deposition is as follows,  
2 K. VICE.....08 HOURS:02 MINUTES  
3 S. DILBECK.....00 HOURS:00 MINUTES  
4 C. BURGESS.....00 HOURS:00 MINUTES  
5 J. DOWDY.....00 HOURS:00 MINUTES

6

7 That pursuant to information given to the  
8 deposition officer at the time said testimony was taken,  
9 the following includes counsel for all parties of record:

10 FOR THE PLAINTIFF:  
11 MR. KEVIN VICE  
12 MR. SCOTT DILBECK  
13 VICE & HENLEY PLLC  
14 5368 S.H. 276  
15 ROYSE CITY, TEXAS 75189  
16 T: 469.402.0450  
17 F: 469.402.0461

18 FOR THE DEFENDANT JAMES TERRY and TERRY ROGERS:  
19 MR. CHARLES BURGESS  
20 ATTORNEY AT LAW  
21 521 N. RIVERSIDE DRIVE  
22 FORT WORTH, TEXAS 76111  
23 T: 817.808.4731  
24 F: 817.451.4869  
25 cburgess72@yahoo.com

FOR THE DEFENDANT PATRICK MAHAFFEY:  
MR. JOHN V. DOWDY, JR.  
ATTORNEY AT LAW  
2401 GARDEN PARK COURT  
SUITE A  
ARLINGTON, TEXAS 76013  
T: 817.265.9000  
F: 817.460.8366  
john@dowdylawfirm.com

25

JAMES TERRY, VOLUME 2  
April 26, 2016

1 the deposition is as follows,

2

3 K. VICE.....05 HOURS:39 MINUTES

4 S. DILBECK.....00 HOURS:00 MINUTES

5 C. BURGESS.....00 HOURS:00 MINUTES

6 J. DOWDY.....00 HOURS:00 MINUTES

7

8 That pursuant to information given to the  
9 deposition officer at the time said testimony was taken,  
10 the following includes counsel for all parties of record:

11 FOR THE PLAINTIFF:

12 MR. KEVIN VICE  
13 MR. SCOTT DILBECK  
VICE & HENLEY PLLC  
14 5368 S.H. 276  
ROYSE CITY, TEXAS 75189  
T: 469.402.0450  
F: 469.402.0461

15

16 FOR THE DEFENDANT JAMES TERRY and TERRY ROGERS:

17 MR. CHARLES BURGESS  
ATTORNEY AT LAW  
521 N. RIVERSIDE DRIVE  
18 FORT WORTH, TEXAS 76111  
T: 817.808.4731  
19 F: 817.451.4869  
cburgess72@yahoo.com

20

21 FOR THE DEFENDANT PATRICK MAHAFFEY:

22 MR. JOHN V. DOWDY, JR.  
ATTORNEY AT LAW  
2401 GARDEN PARK COURT  
23 SUITE A  
ARLINGTON, TEXAS 76013  
24 T: 817.265.9000  
F: 817.460.8366  
25 john@dowdylawfirm.com

1 the deposition is as follows:

2

3 K. VICE.....06 HOURS:06 MINUTES

4 S. DILBECK.....00 HOURS:00 MINUTES

5 C. BURGESS.....00 HOURS:00 MINUTES

6 J. DOWDY.....00 HOURS:00 MINUTES

7 B. DEICHTMAN....00 HOURS:00 MINUTES

8

9 That pursuant to information given to the  
10 deposition officer at the time said testimony was taken,  
11 the following includes counsel for all parties of record:

12 FOR THE PLAINTIFF:

13 MR. KEVIN VICE  
14 MR. SCOTT DILBECK  
VICE & HENLEY PLLC  
5368 S.H. 276  
ROYSE CITY, TEXAS 75189  
15 T: 469.402.0450  
F: 469.402.0461

16

17 FOR THE DEFENDANT JAMES TERRY and TERRY ROGERS:

18 MR. CHARLES BURGESS  
ATTORNEY AT LAW  
521 N. RIVERSIDE DRIVE  
19 FORT WORTH, TEXAS 76111  
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20 F: 817.451.4869  
cburgess72@yahoo.com

21

22 FOR THE DEFENDANT PATRICK MAHAFFEY:

23 MR. JOHN V. DOWDY, JR.  
ATTORNEY AT LAW  
2401 GARDEN PARK COURT  
24 SUITE A  
ARLINGTON, TEXAS 76013  
25 T: 817.265.9000

1 the deposition is as follows:

2

3 K. VICE.....00 HOURS:00 MINUTES

4 S. DILBECK.....04 HOURS:22 MINUTES

5 C. BURGESS.....00 HOURS:00 MINUTES

6 J. DOWDY.....00 HOURS:00 MINUTES

7 B. DEICHTMAN....00 HOURS:00 MINUTES

8

9 That pursuant to information given to the  
10 deposition officer at the time said testimony was taken,  
11 the following includes counsel for all parties of record:

12 FOR THE PLAINTIFF:

13 MR. KEVIN VICE  
14 MR. SCOTT DILBECK  
VICE & HENLEY PLLC  
15 5368 S.H. 276  
ROYSE CITY, TEXAS 75189  
T: 469.402.0450  
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17 FOR THE DEFENDANT JAMES TERRY and TERRY ROGERS:

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T: 817.808.4731  
20 F: 817.451.4869  
cburgess72@yahoo.com

21

22 FOR THE DEFENDANT PATRICK MAHAFFEY:

23 MR. JOHN V. DOWDY, JR.  
ATTORNEY AT LAW  
2401 GARDEN PARK COURT  
24 SUITE A  
ARLINGTON, TEXAS 76013  
T: 817.265.9000  
25 F: 817.460.8366

1 the deposition is as follows:

2

3 K. VICE.....00 HOURS:00 MINUTES

4 C. BURGESS.....02 HOURS:14 MINUTES

5 J. DOWDY.....01 HOUR:37 MINUTES

6 B. DEICHTMAN....00 HOURS:25 MINUTES

7

8 That pursuant to information given to the  
9 deposition officer at the time said testimony was taken,  
10 the following includes counsel for all parties of record:

11 FOR THE PLAINTIFF:

12 MR. KEVIN VICE  
13 VICE & HENLEY PLLC  
14 5368 S.H. 276  
15 ROYSE CITY, TEXAS 75189  
T: 469.402.0450  
F: 469.402.0461  
kvice@mmvllp.com

16 FOR THE DEFENDANT JAMES TERRY and TERRY ROGERS:

17 MR. CHARLES BURGESS  
18 ATTORNEY AT LAW  
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T: 817.808.4731  
F: 817.451.4869  
cburgess72@yahoo.com

20 FOR THE DEFENDANT PATRICK MAHAFFEY:

21 MR. JOHN V. DOWDY, JR.  
22 ATTORNEY AT LAW  
23 2401 GARDEN PARK COURT  
SUITE A  
24 ARLINGTON, TEXAS 76013  
T: 817.265.9000  
F: 817.460.8366  
john@dowdylawfirm.com

25



Exhibit 130: Petition-2nd amended.final



## **II. PARTIES/NOMENCLATURE**

2.1 Plaintiff, SETH WASHBURNE ("Washburne"), is an individual residing in Dallas County, Texas. His driver's license number is 35388776, and his social security number is xxx-xx-x393.

2.2 Plaintiff, Thirsty 13th LLC, is a Delaware limited liability company which conducts business in Texas. Washburne created Thirsty 13th LLC for the purpose of taking ownership of a historic C-47 aircraft known as "Billie," and promoting efforts to publicize the contributions and heroic efforts of the men who served in the unsung World War II troop carrier squadron known as "The Thirsty 13th."

2.3 Defendant, James Terry ("Terry"), is a resident of Johnson County, Texas, who has been served and filed an answer herein, and is properly before the Court.

2.4 Defendant, Pacific Prowler, LLC ("Pacific Prowler"), is a Texas limited liability company, which has been served and filed an answer herein, and is properly before the Court.

2.5 Defendant, Pacific Prowler Nonprofit ("Pacific Prowler NP") during the time of the events described herein was a Texas nonprofit corporation, which has been served and filed an answer herein, and is properly before the Court.

2.6 Defendant, Greatest Generation Aircraft ("GGA"), is represented to be registered as a 501(c)(3) charitable organization, however, is not registered with the Texas Secretary of State. Thus, for purposes of this suit, GGA will be treated as an assumed name of Terry, Pacific Prowler or Pacific Prowler NP.

2.7 Defendant, Patrick Mahaffey ("Mahaffey"), is a resident of Tarrant County, Texas, who has been served and filed an answer herein, and is properly before the Court.

2.8 Defendant, Terry Rogers ("Rogers"), is a resident of Grayson County, Texas, who has been served and filed an answer herein, and is properly before the Court.

2.9 Defendant, Perrin Warbirds, Inc. ("Perrin Warbirds"), is a Texas corporation, whose principal place of business is in Grayson County, Texas, which has been served and filed an answer herein, and is properly before the Court.

2.10 douglasN87745, LLC ("douglasN87745") is a Texas limited liability company, which can be served by serving its registered agent, United States Corporation Agents, Inc., at 9900 Spectrum Dr., Austin, TX 78717, or through James Terry's attorney, Charles Burgess, if he will accept service.

2.11 In this Petition, Defendants Terry, Pacific Prowler, Pacific Prowler NP, GGA, and Mahaffey will be referred to individually by name (as identified in the preceding paragraphs) or collectively as the "Terry Defendants." Defendants Rogers and Perrin Warbirds will be referred to individually by name (as identified in the preceding paragraphs) or collectively as the "Rogers Defendants." Defendant douglasN87745 will be referred to herein by name. All Defendants will be collectively referred to as "Defendants."

### **III. VENUE AND JURISDICTION**

3.1 Venue is proper in Tarrant County, Texas, pursuant to §15.002(a)(1), of the Texas Civil Practice & Remedies Code, because that is where all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred. This Court has proper subject matter jurisdiction over this matter, and personal jurisdiction over Defendants.

#### **IV. FACTUAL BACKGROUND**

4.1 This case involves a series of misrepresentations, fraudulent acts, negligence, deceptive trade practices and theft by Defendants, which resulted in the essential destruction of a historic World War II aircraft, and in significant personal and monetary losses and damages to Plaintiffs.

4.2 Plaintiff Washburne tragically lost his father when he was just seven years old. Years later, in 2008, Washburne set out to learn about his father's participation in World War II. In a box of his father's mementoes, Washburne found a large round patch, from a flyer's jacket, depicting a beer bottle with wings, and the name "Thirsty 13th." Through diligence and research, Washburne discovered a Thirsty 13th squadron yearbook from 1946, with the names of many members, including his father, who was listed with the Distinguished Flying Cross and two Air Medals.

4.3 Since there was limited information on the Thirsty 13th squadron, Washburne decided to write a book to memorialize and preserve the history of the squadron in which his father proudly served. In 2009, Washburne took a sabbatical from work so he could devote all of his time and energy into completing his book. For more than two years, Washburne traveled around the country visiting members of the squadron and their families, the Air Force Historical Research Agency in Montgomery, Alabama, and the National Archives, gathering stories, data, and World War II photographs to preserve and memorialize an accurate portrayal of the Thirsty 13th squadron.

4.4 In November 2011, after three years of research, traveling, interviews and investigation, Washburne completed his book, which is 800 pages long, with more than 2000 photographs, and countless stories from members of the Thirsty 13th squadron and their families.

The book has been described as the most detailed unit history ever written, and is now preserved in the National Archives, the Air Force Academy library, and hundreds of other locations.

4.5 While writing his book, Washburne discovered that one, and only one, of the very first 13 planes flown by the Thirsty 13th was still flying, as a cargo plane in Puerto Rico. The plane originally was a model C-47, the military version of the popular DC-3. In the Thirsty 13th squadron, the plane's nickname was "Billie."

4.6 Billie was quite special for other reasons, too. It was one of four lead planes in the squadron marked with a special white tail stripe; it was flown overseas by the most senior pilot who became the next commanding officer; and it was the first sign of help for 25 men stranded on a remote coral reef for 8 days until food was dropped from Billie to aid them. Billie was particularly important to Washburne, because he has a photo of Billie in New Hebrides, and standing beside it is his father.

4.7 Because Washburne expected that his father actually flew on Billie as part of its crew, Washburne wanted to personally see, touch and photograph Billie. Thus, in the summer of 2009, Washburne began efforts to try to locate the current owner of Billie. When Washburne finally made contact with Billie's owner, he learned that Billie was for sale for the price of \$75,000.00. While Washburne was not interested in personally owning Billie, he was very interested in preserving the history behind this plane on which his father flew during World War II, and thus, considered purchasing Billie and donating it to a museum.

4.8 During an interview with the family of one of the Thirsty 13th squadron members who resided in Texas, Washburne learned of the Vintage Flying Museum located at Meacham

Airport in Fort Worth, which purportedly had similar goals of preserving the historic value of World War II aircraft.

4.9 Washburne traveled to Meacham Airport and was introduced to Defendant Terry. During the meeting, Terry convinced Washburne to change his plan of donating the plane to a museum, and instead to keep it for himself as a flying airplane. Through a series of representations, Terry convinced Washburne that Terry could restore Billie to resemble its original condition, and thereafter, due to the revenue the plane would generate, Washburne could personally own Billie for little or no continuing upkeep and maintenance costs. Terry represented that after he restored Billie, he would store and maintain Billie for Washburne, and that he would take Billie to air shows, where it would be viewed by people all over the country.

4.10 Based on Terry's representations, Washburne, through his company, Thirsty 13th LLC, purchased Billie in January of 2010. Washburne, Terry and two men hired by Terry traveled to Puerto Rico where Billie was located, and flew Billie to Fort Worth, Texas, to begin the restoration process. At this time, Billie was a beautiful, fully-functioning, DC-3.

4.11 The Terry Defendants began restoring Billie on February 1, 2010, with the instructions to use as much of Billie's original parts as possible. The Terry Defendants promised on multiple occasions to have Billie fully restored and in an airworthy condition by July of 2010, so Washburne could show the restored aircraft at a Thirsty 13th reunion, which Washburne scheduled for the end of that month.

4.12 As a part of the restoration of Billie, the Terry Defendants, without the Plaintiffs' permission and in fact in direct contradiction to Plaintiffs' express instructions, retained the Rogers defendants to work on Billie's center section. However, the Rogers Defendants never completed the

agreed-upon work and forced Plaintiff to agree to additional work which was also never completed. Much of the work Rogers did do was performed below industry standard and must be redone.

4.13 However, after two and one half years of deceit, misrepresentations, outright lies, theft and faulty advice by the Defendants, Billie was a thoroughly dismantled wreck: its wings had been removed and had new holes punched in them; its center section was improperly stripped of its nacelles, tubing, and other parts, but little work was performed to repair corrosion which had been identified. Billie's fuselage, which is the heart of Billie, was stripped of parts with no record of what went where, and was thoroughly destroyed, being broken in half, with almost every rib broken and the skin torn to shreds.

4.14 During this time, the Terry Defendants directed the expenditure of almost \$900,000.00 of Washburne's money, which included, at the Terry Defendants' insistence, the purchase of two "donor planes." After the purchase of the first donor plane, that was nicknamed "JR," the Terry Defendants insisted that it be restored as well because of its purported historical and monetary value. The second donor plane, called "Missouri," was then purchased, purportedly because it had almost perfect engines and came with a mountain of parts that could be used to restore Billie.

4.15 During the period Billie and the two donor planes were in the Terry Defendants' possession, Defendant douglasN87745 stole, used and benefitted from the use of Plaintiffs' parts, without Plaintiff's knowledge and permission. Thereafter, the Terry Defendants and douglas87745 lied to Plaintiffs about the unauthorized and improper theft and use of Plaintiffs' parts.

4.16 The extent of Defendants' corruption is almost beyond comprehension in its breadth and depth against Washburne, Thirsty 13th, and all of the citizens of America, whose history



Defendants destroyed. Washburne set out to spend \$75,000.00 on a simple gesture to honor his father and his father's WWII squadron, and instead, was led down the primrose path to ultimately be taken for almost \$900,000.00, had his plane destroyed, had parts stolen, and was subject to unending lies and humiliations. This resulted entirely from Defendants acting in concert together to deceive Washburne, and Washburne's reliance upon the agreements and representations by the Defendants to restore Billie so that the story and spirit of the men of the Thirsty 13th and those like them could live on for generations to come.

4.16 The collective utter and complete disregard by Defendants for two venerable WWII aircraft entrusted to them is even more astounding considering that they hold themselves out as being committed to honoring WWII veterans. As opposed to upholding the traits espoused by the men of Thirsty 13th and their generation, the Defendants did all they could to dishonor that generation with their actions, omissions and misrepresentations, for which they should be held accountable.

**V.**  
**BREACH OF CONTRACT**  
**(Terry Defendants)**

5.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

5.2 Plaintiffs would show that Plaintiffs had oral, written and implied contracts with the Terry Defendants regarding the restoration of Billie, the two donor aircraft which were purchased by Plaintiffs at the insistence of the Terry Defendants, and the other parts purchased by Plaintiffs or on Plaintiffs' behalf.

5.3 Plaintiffs would further show that the Terry Defendants breached said contracts by failing to fulfill their obligations under the contracts.

5.4 As a result of these breaches, Plaintiffs have suffered significant damages as described herein.

**VI.**  
**BREACH OF CONTRACT**  
**(Rogers Defendants)**

6.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

6.2 Plaintiffs would show that a valid and binding contract existed by and between Plaintiffs and the Rogers Defendants in connection with certain repairs to be made to Billie's center section. In the alternative, and to the extent necessary, Plaintiffs would show that they are third-party beneficiaries of any and all contracts between the Terry Defendants and the Rogers Defendants related to the repair and restoration of Billie.

6.3 Plaintiffs would show that the Rogers Defendants breached said the contracts by failing to fulfill their obligations under the contracts.

6.4 Plaintiffs have suffered damages as a result of the Rogers Defendants' breach as described herein.

**VII.**  
**BREACH OF EXPRESS WARRANTY FOR SERVICE**  
**(All Defendants)**

7.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

7.2 The Terry Defendants and the Rogers Defendants sold services to Plaintiffs directly and by and through Plaintiffs' agents.

7.3 These Defendants made representations to Plaintiffs about the quality or characteristics of those services by (1) affirmation of fact, (2) promise, or (3) description.

7.4 These representations became part of the basis for the bargain.

7.5 The Terry Defendants and the Rogers Defendants breached the express warranties of services they gave Plaintiffs as part of the transactions at issue.

7.6 Plaintiffs notified the Terry Defendants and the Rogers Defendants of their breach.

7.7 As a result of the breach of warranty by the Terry Defendants and the Rogers Defendants, Plaintiffs suffered significant damages as described herein.

**VIII.**  
**BREACH OF WARRANTY**  
**OF GOOD AND WORKMANLIKE MANNER**  
**(All Defendants)**

8.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

8.2 The Terry Defendants and the Rogers Defendants sold services to Plaintiffs. The services consisted of the repair or modification of Plaintiffs' existing tangible goods or property.

8.3 These Defendants did not perform the services in a good and workmanlike manner.

8.4 As a result of the breach of warranty and faulty workmanship by the Terry Defendants and the Rogers Defendants, Plaintiffs suffered significant damages as described herein.

**IX.**  
**FRAUD**  
**(Terry Defendants and Defendant douglasN87745)**

9.1 Plaintiff incorporates by reference the preceding factual events described above.

9.2 Before and during the purchase and restoration of Billie and the two donor aircraft, the Terry Defendants made material representations to Plaintiffs, which were false. The

representations are numerous and over a three year period. They include, but are not limited to, the following representations (all of which were false):

- a. Terry had the requisite personnel, expertise, ability and capacity to competently restore Billie, since he had done so successfully on other vintage World War II era airplanes, including his own DC-3 and B-25;
- b. Terry had a "shop rate" lower than almost anyone else, of \$45 per hour, and that he had an established shop full of qualified people, ready, willing and able to competently work on Billie;
- c. Terry would bring in volunteer vintage-aviation enthusiasts who would make up about 40% of the total labor to work directly on the airplane, reducing the cost even further; noting that he received numerous applications from people to be volunteers, and many of them had substantial aircraft mechanic experience;
- d. Billie could be purchased, restored and ready to fly for the initial cost of \$200,000, and later for a total cost of \$300,000;
- e. Billie could be completely restored and would be airworthy by July 1, 2010, in time for the Thirsty 13th reunion Washburne scheduled for that month;
- f. After the restoration of Billie was complete, Terry would keep Billie at the Vintage Flying Museum, continue to perform maintenance on it, and have volunteers take Billie to air shows all over the country to spread the story of the Thirsty 13th, at almost no net cost to Washburne;
- g. Donor planes were necessary to complete the restoration process of Billie;

- h. The donor plane nicknamed "JR" was in very good condition and worth the \$75,000 asking price;
- i. "JR" could be quickly restored and sold for, or if retained be worth, three times the purchase price;
- j. The donor plane nicknamed "Missouri" had two mid-time engines with perfect cores identical to the original engines on Billie, which could be used at a substantially lower cost than purchasing rebuilt engines;
- k. The "Missouri" plane had quality parts, such as propellers and engines control accessories, that, if not used on Billie, could be sold to recoup expenses;
- l. The "Missouri" plane came with a "mountain" of extra parts that could be used on Billie or sold to recoup expenses;
- m. The total cost of the "Missouri" plane would be \$40,000.00, failing to disclose the cost of the Terry Defendants' time and transportation expenses;
- n. The Terry Defendants had installed various parts on Plaintiffs' aircraft, such as rudders, elevators and ailerons, that belonged to the Terry Defendants, and that Plaintiffs were required to pay the Terry Defendants for same;
- o. They had negotiated with the Rogers Defendants to get them to perform the same required work another reputable vendor proposed for half of the price (when the Rogers Defendants were instead far more expensive than the other vendor);
- p. Other vendors used and retained by the Terry Defendants, such as the Rogers Defendants, were reputable and performed quality work;

q. The Rogers Defendants completed certain tasks and had performed quality repairs, in order to induce Washburne to make progress payments (Mahaffey only); and

r. All work would be properly documented and written up pursuant to FAA regulations.

9.3 When these representations were made, the Terry Defendants knew that the representations were false or made the representations recklessly, as positive assertions, without knowledge of their truth. The Terry Defendants made these representations with the intent that Plaintiffs act upon them, and Plaintiffs relied upon these representations.

9.4 These representations proximately resulted in injury and actual damages to Plaintiffs, for which Plaintiffs hereby sue the Terry Defendants, jointly and severally.

9.5 Additionally, the Terry Defendants and Defendant douglasN87745 defrauded Plaintiffs by stealing and using Plaintiffs' parts on a plane owned and operated by Defendant douglasN87745, from which the Terry Defendants and Defendant douglasN87745 benefitted. The Terry Defendants, Defendant douglasN87745 and Defendant Mahaffey lied and conspired to hide the fact that Defendant douglasN87745 had stolen and used Plaintiffs' parts on Defendant douglasN87745's plane for the Terry Defendants' and dogulasN87745's benefit.

9.6 Plaintiffs sustained damages as a result of the Terry Defendants and Defendant N87745's deceptive and fraudulent conduct.

**X.**  
**CAUSE OF ACTION - FRAUD**  
**(Rogers Defendants)**

10.1 Plaintiff incorporates by reference the preceding factual events described above.

10.2 Before and during the Rogers Defendants work on Plaintiffs' aircraft, the Rogers Defendants made material representations to Plaintiffs, which were false. The representations are

numerous and over an extended period. They include, but are not limited to, the following representations (all of which were false):

- a. The work performed by the Rogers Defendants could and would be done in a timely and professional manner;
- b. Plaintiffs only had to make two payments for the Rogers Defendants' work on Plaintiffs' aircraft in the form of a payment of one-half of the contract price as a down payment and the balance upon completion of the work;
- c. The costs of certain parts related to the repairs to be made by the Rogers Defendants were included in the original bid/contract price;
- d. The costs of certain parts related to the repairs to be made by the Rogers Defendants cost \$15,000 and were not included in the original bid/contract price;
- e. Certain work had been performed in order to induce Plaintiffs to make "progress" payments;
- f. Billie's nacelles were not the original nacelles in order to induce Plaintiffs to pay for additional, unauthorized work;
- g. The Rogers Defendants had the requisite skill, experience, knowledge and tools to remove, refurbish, repair and remount nacelles at the correct angle and in the correct manner;
- h. The Rogers Defendants would expedite work in exchange for additional and unscheduled payments by Plaintiffs;
- i. The Rogers Defendants had completed the work required under the contract between the Rogers Defendants and Plaintiffs;

- j. Work had been performed by the Rogers Defendants on Plaintiffs' aircraft that was not under the contract and that such work was necessary and complete;
- k. The Rogers Defendants were going out of business, to avoid completing work under the contract after collecting well in excess of the original bid/contract price; and
- l. All work would be properly documented and written up pursuant to FAA regulations.

10.3 When these representations were made, the Rogers Defendants knew that the representations were false or made the representations recklessly, as positive assertions, without knowledge of their truth. The Rogers Defendants made these representations with the intent that Plaintiffs act upon them, and Plaintiffs relied upon these representations.

10.4 These representations proximately resulted in injury and actual damages to Plaintiffs, for which Plaintiffs hereby sue the Rogers Defendants, jointly and severally.

**XI.**  
**DECEPTIVE TRADE PRACTICES ACT VIOLATION**  
**(Terry Defendants)**

11.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs, including the misrepresentations made by the Terry Defendants outlined above.

11.2 Plaintiffs are consumers under the Texas Deceptive Trade Practices Act ("DTPA") because they sought or acquired goods and/or services by purchase from the Terry Defendants, who may be sued under the DTPA.

11.3 The Terry Defendants have breached the provisions of the DTPA, including the prohibition against (1) false, misleading, and deceptive acts and practices as enumerated in § 17.46(b) of the DTPA; (b) against unconscionable actions or courses of action; and (c) against



breaches of express and implied warranties as enumerated in § 17.50(a)(2), as set forth above.

Specifically and without being limited to the same, the Terry Defendants:

- a. Engaged in false, misleading, or deceptive acts or practices on which Plaintiffs relied to Plaintiffs' detriment, TEX. BUS. & COM. CODE § 17.46(b);
- b. Breached an express warranty that they would properly restore and renovate Billie to flyable and air-show condition within 5 months, TEX. BUS. & COM. CODE § 17.50(a)(2);
- c. Breached an express warranty that they would properly restore and renovate JR to flyable and air-show condition within 2 months, TEX. BUS. & COM. CODE § 17.50(a)(2);
- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, experience or ability to a grossly unfair degree TEX. BUS. & COM. CODE § 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services, TEX. BUS. & COM. CODE § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or quantities that they did not have. TEX. BUS. & COM. CODE § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, TEX. BUS. & COM. CODE § 17.46(b)(7);

- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for parts, replacement, or repair services, TEX. BUS. & COM. CODE § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that work or services had been performed on parts or on Billie, JR and Missouri when no such work had been performed, TEX. BUS. & COM. CODE § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about Billie, JR, Missouri and the airplane parts that are the subject of this lawsuit and services performed on same that was known to them at the time of the transactions in order to induce Plaintiffs to enter into such transactions when Plaintiffs would not have entered into the transactions had such information been disclosed, TEX. BUS. & COM. CODE § 17.46(b)(24).

11.4 The above-described wrongful conduct of the Terry Defendants was a producing cause of Plaintiffs' economic damages, which includes out-of-pocket damages in excess of \$800,000.00. Further, the Terry Defendants acted knowingly, and intentionally, which entitles Plaintiffs to recover treble damages against all such parties. TEX. BUS. & COM. CODE § 7.50(b)(1).

11.5 Further, Plaintiffs are entitled to recover reasonable and necessary attorneys' fees for prosecuting these DTPA claims. TEX. BUS. & COM. CODE § 17.50(d). The actions of the Terry Defendants were a producing cause of Plaintiffs' damages for mental anguish.

11.6 Plaintiffs provided proper notice to the Terry Defendants of their DTPA cause of action via service of Plaintiff's Original Petition in this cause.

**XII.**  
**DECEPTIVE TRADE PRACTICES ACT VIOLATION**  
**(Rogers Defendants)**

12.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs, including the misrepresentations made by the Rogers Defendants as outlined above.

12.2 Plaintiffs are consumers under the Texas Deceptive Trade Practices Act ("DTPA") because they sought or acquired goods and/or services by purchase from the Rogers Defendants, who may be sued under the DTPA.

12.3 The Rogers Defendants have breached the provisions of the DTPA, including the prohibition against (1) false, misleading, and deceptive acts and practices as enumerated in § 17.46(b) of the DTPA; (b) against unconscionable actions or courses of action; and (c) against breaches of express and implied warranties as enumerated in § 17.50(a)(2), as set forth above.

Specifically and without being limited to the same, the Rogers Defendants:

- a. Engaged in false, misleading, or deceptive acts or practices on which Plaintiffs relied to Plaintiffs' detriment, TEX. BUS. & COM. CODE § 17.46(b);
- b. Breached an express warranty that they would properly repair the center section of Billie in a timely and professional manner, TEX. BUS. & COM. CODE § 17.50(a)(2);
- c. Breached an express warranty that they had the requisite skill, experience, knowledge and tools to remove, refurbish, repair and remount nacelles at the correct angle and in the correct manner, TEX. BUS. & COM. CODE §17.50(a)(2);

- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, experience or ability to a grossly unfair degree TEX. BUS. & COM. CODE § 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services, TEX. BUS. & COM. CODE § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or quantities that they did not have. TEX. BUS. & COM. CODE § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, TEX. BUS. & COM. CODE § 17.46(b)(7);
- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for work that was purportedly necessary, and about parts, replacement, or repair services, TEX. BUS. & COM. CODE § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that work or services had been performed on Billie's center section and nacelles and nacelles of the donor airplane when no such work had been performed, TEX. BUS. & COM. CODE § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about Billie and the donor planes, and the airplane parts that are the subject of this lawsuit, and services performed on same, that was known to them at the time of the transactions in order to induce Plaintiffs to enter into such transactions when Plaintiffs would not have entered into the transactions had such information been disclosed, TEX. BUS. & COM. CODE § 17.46(b)(24).

12.4 The above-described wrongful conduct of the Rogers Defendants was a producing cause of Plaintiffs' economic damages, which includes out-of-pocket damages in excess of \$50,000.00. Further, the Rogers Defendants acted knowingly, and intentionally, which entitles Plaintiffs to recover treble damages against all such parties. TEX. BUS. & COM. CODE § 7.50(b)(1).

12.5 Further, Plaintiffs are entitled to recover reasonable and necessary attorneys' fees for prosecuting these DTPA claims. TEX. BUS. & COM. CODE § 17.50(d). The actions of Rogers Defendants were a producing cause of Plaintiffs' damages for mental anguish.

12.6 Plaintiffs provided proper notice to the Rogers Defendants of their DTPA cause of action via service of Plaintiff's Original Petition in this cause.

**XIII.**  
**THEFT LIABILITY ACT**  
**(Terry Defendants and Defendant douglas87745)**

13.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

13.2 Plaintiffs had a possessory right to the personal property consisting of the aircraft known as Billie, JR and Missouri, their component parts and all additional spare and/or replacement parts purchased by and for Plaintiffs.

13.3 The Terry Defendants and Defendant douglas87745 unlawfully appropriated, secured or stole Plaintiffs' personal property. TEX. PEN. CODE § 31.03. In addition to many other parts, the Terry Defendants misappropriated and stole,

- a. A nitrogen baffle purchased by Plaintiff and one or two such baffles provided by the seller in Puerto Rico;

- b. A radio operator's chair;
- c. Six rare parapacks;
- d. a navigator's dome;
- e. overhead instrument panels;
- f. jump lights; and
- g. cans of aircraft paint.

13.4 Upon return of Plaintiffs' property, Plaintiffs have discovered that more than 70 parts are still missing. These parts include, but are not limited to:

- a. Spare parts Plaintiffs received with the purchase of Billie in Puerto Rico: a new main landing gear tire with a label, a complete tire-wheel-brake-axle assembly, a tail wheel tire only, an Emergency Locator Transponder (ELT), five cylinder change tools;
- b. Major parts of Billie: its rudder, both elevators, and the left aileron, its floor, five cockpit instruments, and brakes for at least one wheel;
- c. Parts purchased with Plaintiffs' money in March 2010: a radio operator's chair and WWII-style compass;
- d. Parts purchased with Plaintiffs' money in April 2010: Army radios, four pitot tubes and two masts, a football-shaped antenna;
- e. Parts from the Missouri plane: its two ailerons, six cockpit instruments; and
- f. JR's floor, prop dome plug, prop hub and spoke.
- g. Navigator and radio room parts purchased in Colorado and paid for by Plaintiff.

13.5 Additionally, the Terry Defendants and Defendant douglas87745 conspired to wrongfully misappropriate and steal the left elevator from JR, which Plaintiffs had already paid to

have painted and installed on JR. The Terry Defendants removed the elevator and repainted it to match the aircraft owned by Defendant douglas87745, over the protestations of one mechanic. The Terry Defendants and Defendant douglas87745 hid and concealed this conduct from Plaintiffs by refusing to ever disclose it to Plaintiffs, despite being directly questioned by Plaintiffs. When questioned, the Terry Defendants and Defendant douglas87745 intentionally mislead Plaintiffs that one of the elevators on JR was not in good condition; outright lied to Plaintiffs that they were not aware of the location of the purportedly missing elevator, and advised Plaintiffs that the elevator must have been stolen.

13.6 The unlawful misappropriation and taking of Plaintiffs' property was made with the intent to deprive Plaintiffs of their personal property.

13.7 As a result of the Terry Defendants' misappropriation and theft of Plaintiffs' parts as described above, Plaintiffs have sustained significant damages in the form of the loss of value of said parts. Additionally, the Terry Defendants and douglas87745 profited as a result of the misappropriation and theft of JR's elevator as described above. The Terry Defendants and douglas87745 used the elevator on a DC-3 owned by the and douglas87745, for over a year. During this time, the Terry Defendants and/or and douglas87745 charged individuals for flights at various events, and showed and displayed Defendant douglas87745's DC-3 for monetary gain. Plaintiffs were required, through their own effort, to secure the return of JR's elevator, and were never compensated for the Terry Defendants or Defendant douglas87745 use of the elevator.

13.8 In addition to their actual damages and any additional damages they are entitled to by law to recover, Plaintiffs are entitled to recover their reasonable and necessary attorney fees. TEX. CIV. PRAC. & REM. CODE § 134.005(b).

**XIV.**  
**CONVERSION**  
**(Terry Defendants and douglas87745)**

14.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

14.2 Plaintiffs owned, possessed, or had the right to immediate possession of the property consisting of the aircraft known as Billie, JR and Missouri, their component parts and all additional spare and/or replacement parts purchased by, or on behalf of, Plaintiffs. Such property was personal property.

14.3 The Terry Defendants and douglas87745 wrongfully exercised-and continue to wrongfully exercise-dominion or control over the property or components thereof, including but not limited to the items set forth in the preceding paragraphs.

14.4 As a result of this conduct by the Terry Defendants and douglas87745, Plaintiffs have suffered injury.

**XV.**  
**BAILMENT**  
**(Terry Defendants)**

15.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

15.2 Plaintiffs delivered personal property, including but not limited to the aircraft known as Billie and JR to the Terry Defendants in trust for the purpose of restoring Billie and JR to their original World War II configuration.

15.3 The Terry Defendants accepted delivery of same.



15.4 There was an express or implied contract that the trust would be carried out by the Terry Defendants and said personal property would be returned to Plaintiffs, and would be returned intact.

15.5 The Terry Defendants failed to honor that trust by failing to return a significant of Plaintiffs' property, and returning other parts in a severely damaged condition.

15.6 As a result of the Terry Defendants' conduct, Plaintiffs have suffered significant damages as described herein.

**XVI.**  
**NEGLIGENCE**  
**(Terry Defendants)**

16.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

16.2 The Terry Defendants affirmatively represented that they had the expertise, experience and resources to competently repair and restore the vintage aircraft entrusted to them by Plaintiffs and contractually assumed a duty to do so. Defendants also had a duty to store, preserve and protect Plaintiffs' aircraft and parts entrusted to Defendants.

16.3 Defendants failed to exercise due care in repair and restoring the vintage aircraft entrusted to them by Plaintiffs by mishandling and subjecting the aircraft and the component parts thereof to hazardous conditions, thereby breaching that duty. Defendants also failed to properly place, secure and/or tie down certain parts of Plaintiff's aircraft which were entrusted to them which resulted in damage to said parts. Defendants also failed to properly protect, secure and preserve Plaintiffs' aircraft and aircraft parts, and allowed same to be misappropriated or stolen.

16.4 These breaches of the Terry Defendants duties were a proximate cause of Plaintiffs' injuries and damages as described herein.

**XVII.**  
**CIVIL CONSPIRACY**  
**(All Defendants)**

17.1 Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

17.2 Defendants were members of a combination of two or more persons.

17.3 The object of the combination was to accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means.

17.4 The members had a meeting of the minds on the object or course of action.

17.5 One or more of the members committed an unlawful, overt act to further the object or course of action. In addition to the conduct described above, the Terry Defendants and the Rogers Defendants together engaged in a serious of deceptive and fraudulent acts to deprive and take from Plaintiffs significant money for the purported restoration of Billie and JR.

17.6 As a result of Defendants' conduct described in this paragraph, Plaintiffs have suffered significant damages as described herein.

**XVIII.**  
**AGENCY RELATIONSHIP BETWEEN DEFENDANTS**

18.1 At all relevant times, Defendants were acting as agents and/or representatives for the other Defendants, and Defendants were acting in concert in connection with their conduct toward Plaintiffs. Thus, the Defendants are all jointly and severally liable for the damages sustained by Plaintiffs as a result of said conduct.

#### **XIV. DAMAGES**

19.1 As a result of Defendants' conduct, Plaintiffs have sustained damages in the form of diminished value of their property and business. Because of Defendants' conduct, the value of Billie and JR have been significantly diminished.

19.2 Additionally, Plaintiffs have sustained, or will sustain, damages in the form of cost of additional repairs to complete the work Defendants were required to complete under the contracts referenced herein, the cost of replacing missing or stolen parts, and the cost of repairing the faulty and defective work that was performed by one or more of the Defendants. In this regard, Plaintiffs have suffered damages in the form of out-of pocket expenses, cost of repair, cost of replacement parts, transportation costs and other ancillary costs associated with and caused by Defendants' conduct.

19.3 More specifically, Plaintiffs purchased Billie with the intent of having Billie restored and to be in an air-show and airworthy condition. After spending hundreds of thousands of unexpected dollars during the fraudulent restoration and repair process, Plaintiffs now are proud owners of a pile of scrap metal, and some unidentifiable and unusable parts.

19.4 Additionally, Plaintiffs spent approximately \$252,000 on JR. JR needs significant repair work performed due to the left wing being extensively damaged by the Terry Defendants failure to properly secure and tie down the wing during adverse weather conditions, and because there are many open items that were not completed pursuant to contractual obligations that still have to be completed, and because an inspection plan still has to be filed and approved, and JR still has to be inspected under the approved plan.

19.5 Plaintiffs were also damaged as they paid the Defendants almost \$900,000.00 for the cost of services, parts and donor planes, which was well in excess of the amount originally agreed upon by the parties, and never received the benefit of the bargain. Despite the excessive costs incurred, the goals of the various contracts and agreements between the parties to have Billie and JR fully restored were never accomplished. In fact, when Plaintiffs finally retrieved Billie and JR from Defendants, both aircraft were in much worse condition than when delivered to the Defendants. Billie is now a pile of scrap with some unidentifiable and unusable parts. Many parts are identifiable because Defendants did not properly document the removal of the parts, nor did they properly document any of their work as required by the FAA. Thus, Plaintiffs seek recovery of all or a part of the funds paid to Defendants for their purported services.

19.6 Plaintiffs seek recovery of these damages, and all damages allowed under Texas law.

## **XX. MULTIPLE/PUNITIVE DAMAGES**

20.1 Plaintiffs would show that the acts and practices in violation of the Texas Deceptive Trade Practices Act, as set forth above, were committed "knowingly" by the Terry Defendants and the Rogers Defendants, as that term is defined in the Texas Deceptive Trade Practices Act. The Terry Defendants and the Rogers Defendants were aware of the falsity of their representations, yet nevertheless made them to Plaintiffs in order to induce Plaintiffs to enter into business transactions with the Terry Defendants and the Rogers Defendants, and to convince Plaintiffs to allow said Defendants to continue work on Plaintiffs' aircraft. Accordingly, Plaintiffs seek recovery of multiple damages as determined by the trier of fact upon trial of this cause.

20.2 Additionally, Plaintiffs seek recovery of punitive damages against all Defendants as a result of Defendants' intentional and fraudulent conduct as described herein. Such damages are

sought to punish Defendants for their egregious conduct and the deter them from harming other citizens in this State.

**XXI.  
ATTORNEY'S FEES**

21.1 As a result of Defendant's wrongful conduct as set forth above, Plaintiffs have been required to retain counsel to enforce their rights and are, therefore, entitled to recover the reasonable and necessary cost of such legal services for preparation, investigation, trial and all appeals, pursuant to TEX. CIV. PRAC. & REM. CODE §§ 38.001 and 134.005(b) and TEX. BUS. & COM. CODE § 17.50(d).

**XXII.  
JURY TRIAL**

22.1 Plaintiffs respectfully request a trial by jury in this cause.

**XXIII.  
PRAYER**

23.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that the Court, after final trial of this cause, enter judgment in favor of Plaintiffs against the Defendants, jointly and severally, for Plaintiffs' actual damages, and additional damages and punitive damages as may be justified by the facts of this case, and also for attorneys' fees, costs of court, and pre and post judgment interest. Plaintiffs also pray for such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,

**MAYO MENDOLIA & VICE, L.L.P.**

By: /s/ Kevin W. Vice

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record, **on this \_\_\_\_\_ day of May, 2016:**

B. Buzz Deitchman

*Via E-service*

B. Buzz Deitchman, P.C.

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/s/ Kevin W. Vice

KEVIN W. VICE

Exhibit 131: 2016 10 31 - Third Amended Petition Filed





## **I. DISCOVERY CONTROL LEVEL**

2. Discovery is being conducted under a Level 3 discovery control plan, pursuant to Rule 190.3.

## **II. CLAIM FOR RELIEF**

3. Plaintiffs seek monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

## **III. PARTIES**

4. Plaintiff Seth Washburne (“Washburne”) is an individual residing in Dallas County, Texas.

5. Plaintiff Thirsty 13th LLC (“Thirsty”) (collectively with Washburne, “Plaintiffs”) is a Delaware limited liability company which conducts business in Texas.

6. Defendant James Terry (“Terry”) is or was a resident of Johnson County, Texas and has appeared for all purposes in this suit.

7. Defendant Pacific Prowler, LLC (“Pacific Prowler”) is a Texas limited liability company and has appeared for all purposes in this suit.

8. Defendant Pacific Prowler, Nonprofit (“Pacific Prowler NP”) is or was a Texas nonprofit corporation and has appeared for all purposes in this suit.

9. Defendant Greatest Generation Aircraft (“GGA”) is represented to be registered as a 501(c)(3) charitable organization and has appeared for all purposes in this suit.

10. Defendant Douglas87745 LLC (“Douglas”) is a Texas limited liability company, which can be served by serving its registered agent, United States Corporation Agents, at 9900 Spectrum Dr., Austin, TX 78717, or through the attorney for James Terry, Charlie Burgess.

11. Defendant Patrick Mahaffey (“Mahaffey”) is a resident of Tarrant County, Texas and has appeared for all purposes in this suit.

12. Defendant Terry Rogers (“Rogers”) is a resident of Grayson County, Texas and has appeared for all purposes in this suit.

13. Defendant Perrin Warbirds, Inc. (“Perrin”) is or was a Texas corporation with its principal place of business in Grayson County, Texas and has appeared for all purposes in this suit.

14. Defendants Terry, Pacific Prowler, Pacific Prowler NP, GGA, and Douglas will be collectively referred to as the “Terry Defendants.” Defendants Rogers and Perrin will be collectively referred to as the “Rogers Defendants.”

#### **IV. JURISDICTION AND VENUE**

15. This Court has subject matter over this dispute because the amount in controversy is within the jurisdictional limits of this court.

16. This Court has personal jurisdiction over all defendants because they are all residents of Texas and/or are doing business in Texas.

17. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this county.

#### **V. FACTS**

##### **1. Washburne learns of, and writes a book about, the “Thirsty 13th” Squadron.**

18. Plaintiff Washburne tragically lost his father when he was just seven years old. Years later, in 2008, Washburne set out to learn about his father’s participation in World War II. In a box of his father’s mementoes, Washburne found a large round patch, from a flyer’s jacket, depicting a beer bottle with wings, and the name “Thirsty 13th.” Through diligence and research, Washburne discovered a Thirsty 13th squadron yearbook from 1946, with the names of

many members, including his father, who was listed with the Distinguished Flying Cross and two Air Medals.

19. Since there was limited information on the Thirsty 13th squadron, Washburne decided to write a book to memorialize and preserve the history of the squadron in which his father proudly served. In 2009, Washburne took a sabbatical from work so he could devote all his time and energy into completing his book. For more than two years, Washburne traveled around the country visiting members of the squadron and their families, the Air Force Historical Research Agency in Montgomery, Alabama, and the National Archives, gathering stories, data, and World War II photographs to preserve and memorialize an accurate portrayal of the Thirsty 13th squadron.

20. In November 2011, after three years of research, traveling, interviews and investigation, Washburne completed his book, which is 800 pages long, with more than 2000 photographs, and countless stories from members of the Thirsty 13th squadron and their families. The book has been described as the most detailed unit history ever written, and is now preserved in the National Archives, the Air Force Academy library, and hundreds of other locations.

## **2. Washburne discovers “Billie,” the plane his father flew on in WWII.**

21. While writing his book, Washburne discovered that one, and only one, of the very first 13 planes flown by the Thirsty 13th was still flying, now operating as a cargo plane in Puerto Rico. The plane originally was a model C-47, the military version of the popular DC-3. In the Thirsty 13th squadron, the plane’s nickname was “Billie.”

22. Billie was quite special for other reasons, too. It was one of four lead planes in the squadron marked with a special white tail stripe, it was flown overseas by the most senior pilot who became the next commanding officer, and it was the first sign of help for 25 men

stranded on a remote coral reef for 8 days until food was dropped from Billie to aid them. Billie was particularly important to Washburne, because he has a photo of Billie in New Hebrides, and standing beside it is his father.

23. Because Washburne expected that his father actually flew on Billie as part of its crew, Washburne wanted to personally see, touch and photograph Billie. Thus, in the summer of 2009, Washburne began efforts to try to locate the current owner of Billie. When Washburne finally made contact with Billie's owner, he learned that Billie was for sale for the price of \$75,000.00. While Washburne was not interested in personally owning Billie, he was very interested in preserving the history behind this plane on which his father flew during World War II, and thus, considered purchasing Billie and donating it to a museum.

24. During an interview with the family of one of the Thirsty 13th squadron members who resided in Texas, Washburne learned of the Vintage Flying Museum located at Meacham Airport in Fort Worth, which purportedly had similar goals of preserving the historic value of World War II aircraft.

### **3. Washburne meets Terry, who leads Washburne down the primrose path.**

25. Washburne traveled to Meacham Airport and was introduced to Defendant Terry. During the meeting, Terry convinced Washburne to change his plan of donating the plane to a museum, and instead to keep it for himself as a flying airplane. Through a series of representations, Terry convinced Washburne that Terry could restore Billie to resemble its original condition, and thereafter, due to the revenue the plane would generate, Washburne could personally own Billie for little or no continuing upkeep and maintenance costs. Terry represented that after he restored Billie, he would store and maintain Billie for Washburne, and that he would take Billie to air shows, where it would be viewed by people all over the country.

26. Based on Terry's representations, Washburne, through his company, Thirsty, purchased Billie in January of 2010. Washburne, Terry, and two men hired by Terry traveled to Puerto Rico where Billie was located, and flew Billie to Fort Worth, Texas, to begin the restoration process. At this time, Billie was a beautiful, fully-functioning, DC-3:



27. The Terry Defendants represented to Plaintiffs that they could fully restore Billie for no more than \$300,000. Indeed, this was Plaintiffs' agreement with the Terry Defendants.

28. The Terry Defendants began restoring Billie on February 1, 2010, with the instructions to use as much of Billie's original parts as possible. The Terry Defendants promised on multiple occasions to have Billie fully restored and airworthy by July of 2010, so Washburne could show the restored aircraft at a Thirsty 13th reunion, which Washburne scheduled for the end of that month.

**4. Terry Defendants fail to honor their promises.**

29. During the ensuing two plus years, the Terry Defendants wholly failed to deliver on their promises and induced the Plaintiffs to spend nearly three times their original budget.

30. After Plaintiffs had engaged the Terry Defendants, based on their promises that Billie could be restored for \$300,000 and would be ready in time for the Thirsty 13th reunion, the Terry Defendants then insisted on the purchase of two “donor planes.” The Terry Defendants insisted that this purchase was necessary to quickly and efficiently restore Billie, as the Terry Defendants would be able to use parts from the “donor planes” for Billie, which, the Terry Defendants said, would save time and money that they would otherwise have to spend looking for replacement parts.

31. However, after the purchase of the first donor plane—“JR”—the Terry Defendants insisted that it be restored as well because of its purported historical and monetary value. The second donor plane, called “Missouri,” was then purchased, purportedly because it had almost perfect engines and came with a mountain of parts that could be used to restore Billie.

32. Despite the purchase of these two “donor planes,” July 2010 came and went with no significant progress being made on the restoration of Billie. Plaintiffs pressed forward with the Terry Defendants in the hopes that Billie would eventually be restored, and could be exhibited at airshows around the country, as the Terry Defendants had promised.

**5. Terry hires the Rogers Defendants, who—like the Terry Defendants—fail to provide the services for which they were hired.**

33. In late 2010, Terry, without Plaintiffs’ permission and in direct contradiction to Plaintiffs’ express instructions, retained the Rogers Defendants to work on Billie’s center section. However, the Rogers Defendants never completed the agreed-upon work and forced Plaintiffs to agree to additional work which was also never completed. Much of the work Rogers

did do was performed below industry standard and must be redone. In exchange for the Rogers Defendants' defective and incomplete work, Plaintiffs paid the Rogers Defendants nearly \$60,000, with an additional \$8,000 in related costs.

**6. Terry Defendants steal Plaintiffs' parts.**

34. Plaintiffs directed and/or approved the purchase of a number of various parts to be used in Billie's restoration. The Terry Defendants' obligation, while Plaintiffs' aircraft were in their possession, was to safeguard Plaintiffs' aircraft and associated parts. Yet, in shocking violation of their obligation, the Terry Defendants stole and/or misappropriated several of Plaintiffs' parts, including but not limited to Plaintiffs' radio operator's chair, a navigator's dome, instrument panels, and jump lights. Additionally, when Plaintiffs eventually sought to reclaim their property from the Terry Defendants, more than 100 parts were discovered missing.

35. In the course of this litigation, the Terry Defendants have admitted their theft of Plaintiffs' parts. Terry admitted to misappropriating Plaintiffs' left elevator—after newly mounted on JR—and using such elevator, without Plaintiffs' permission, on Terry's own plane for nearly a year. Although the Terry Defendants eventually returned this elevator—only after being confronted by Plaintiffs—the Terry Defendants admittedly deprived Plaintiffs of the use of this elevator for nearly a year.

**7. Mahaffey takes over, but also breaches his obligations.**

36. After a year, Plaintiffs were fed up with the Terry Defendants and decided to change project managers. So, in February 2011, Plaintiffs hired Mahaffey—who had previously worked on Plaintiffs' projects under Terry's supervision—to serve as project manager and complete the restoration of Billie. Mahaffey represented that he could complete the restoration

of Billie and do so in a timely and efficient manner. As it turned out, Mahaffey proved to be no better suited for the job than Terry.

37. Mahaffey, like the Terry Defendants, made very little progress on Billie over the next year, completing work in a defective fashion or via methods that took much longer than other available methods. Also, Mahaffey failed to employ methods that would preserve as much of Billie's original parts as possible—a key component of Plaintiffs' project that Mahaffey understood, but failed to honor. Finally, Mahaffey was a key conspirator in the Terry Defendants' theft of Plaintiffs' property, admittedly allowing Terry to take Plaintiffs' elevator and, without Plaintiffs' permission, use it on Terry's own plane.

38. After more than a year, and after Mahaffey breached key provisions of his contract, Mahaffey abruptly quit working on the project.

**8. Defendants failed to secure Plaintiffs' airplanes, leading to severe wind damage in 2012.**

39. In addition to the Defendants' wholesale failure to provide the service they promised to Plaintiffs—the restoration of Billie—Defendants failed to exercise even the slightest degree of care over Plaintiffs' aircraft and parts. While Defendants' theft of Plaintiffs' property is the clearest example of this failure, Defendants' negligence is also exemplified by their placement of Plaintiffs' aircraft and parts in a risky area that was exposed to the elements, without such parts or aircraft being tied down in any fashion, leading to extensive damage to Plaintiffs' property.

40. From the start of the project in February 2010, the Terry Defendants and, later, Mahaffey, oversaw and approved the placement of Plaintiffs' parts and aircraft outside. They knew, or should have known, that the parts and aircraft, if left outside on a long-term basis, should be tied down or otherwise secured. They also knew, or should have known, that the parts



and aircraft should be placed in an area that would be best protected from microbursts or other weather elements.

41. Yet, in breach of the duty of care they owed to Plaintiffs, the Terry Defendants and Mahaffey placed Plaintiffs' property in an exposed area outside the hangar and failed to tie down the aircraft or otherwise secure it and Plaintiffs' associated parts.

42. In August 2012, a windstorm blew through the Meacham Airport and severely damaged Plaintiffs' property. Had Defendants properly secured Plaintiffs' property and/or placed it in a protected area, Plaintiffs' property would not have suffered such damage.

**9. Plaintiffs' property—and Washburne's dream of restoring his father's WWII plane—have been destroyed.**

43. Through more than two years of unfulfilled promises, defective work, and theft, Plaintiffs have expended nearly three times what they originally planned, and are no further to restoring Billie than when they first hired the Defendants. Although the Terry Defendants promised to fully restore Billie for \$300,000, Plaintiffs paid Defendants *nearly \$900,000*. And what do Plaintiffs have to show for it:



44. Thanks to Defendants' "work," Billie is now a thoroughly dismantled wreck: its wings have been removed and had new holes punched in them; its center section has been improperly stripped of its nacelles, tubing, and other parts, but little work was performed to repair corrosion which had been identified. Billie's fuselage, which is the heart of Billie, was stripped of parts with no record of what went where, and was thoroughly destroyed, being broken in half, with almost every rib broken and the skin torn to shreds.

45. The extent of Defendants' corruption is almost beyond comprehension in its breadth and depth against Plaintiffs. Plaintiffs set out to spend \$75,000.00 on a simple gesture to honor Washburne's father and his WWII squadron, and instead, were led down the primrose path to ultimately be taken for almost \$900,000.00, had their plane destroyed, had parts stolen, and were subject to unending lies and humiliations. This resulted entirely from Defendants acting in concert together to deceive Plaintiffs, and Plaintiffs' reliance upon the agreements and representations by the Defendants to restore Billie so that the story and spirit of the men of the Thirsty 13th and those like them could live on for generations to come.

**10. The Defendants acted in concert for one another, were each other's alter ego, and/or participated in a single enterprise with one another.**

46. At all relevant times, the Terry Defendants and Mahaffey were acting as agents and/or representatives for each other, and they were acting in concert in connection with their conduct toward Plaintiffs. Accordingly, the Terry Defendants and Mahaffey are all jointly and severally liable for the damages sustained by Plaintiffs as a result of their conduct.

47. The Terry Defendants acted as the alter ego for each of the other Terry Defendants, such that unity developed and existed between the respective Terry Defendants and, accordingly, each are jointly and severally liable to the Plaintiffs.

48. The Rogers Defendants acted as the alter ego for each of the other Rogers Defendants, such that unity developed and existed between the respective Rogers Defendants and, accordingly, each are jointly and severally liable to the Plaintiffs.

49. Upon information and belief, the individual Terry Defendants were not operated as separate business entities or persons during the relevant time period. Rather, the Terry Defendants integrated their resources to achieve a common business purpose, which included depriving Plaintiffs of monies owed to them and property belonging to them. As a result, the Terry Defendants are liable to Plaintiff jointly and severally.

50. Upon information and belief, the individual Rogers Defendants were not operated as separate business entities or persons during the relevant time period. Rather, the Rogers Defendants integrated their resources to achieve a common business purpose, which included depriving Plaintiffs of monies owed to them and property belonging to them. As a result, the Rogers Defendants are liable to Plaintiff jointly and severally.

## VI. CAUSES OF ACTION

### 1. **Count One: Breach of Contract Against Terry Defendants**

51. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

52. Plaintiffs had valid, enforceable contract with the Terry Defendants.

53. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

54. Terry Defendants breached the contract.

55. Terry Defendants' breach caused Plaintiffs injury.

**2. Count Two: Breach of Contract Against Rogers Defendants**

56. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

57. Plaintiffs had valid, enforceable contract with the Rogers Defendants.

58. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

59. Rogers Defendants breached the contract.

60. Rogers Defendants' breach caused Plaintiffs injury.

**3. Count Three: Breach of Contract Against Mahaffey**

61. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

62. Plaintiffs had valid, enforceable contract with Mahaffey.

63. Plaintiffs performed, tendered performance of, or were excused from performing their contractual obligations under the contract.

64. Mahaffey breached the contract.

65. Mahaffey's breach caused Plaintiffs injury.

**4. Count Four: Breach of Express Warranty for Service Against All Defendants**

66. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

67. Defendants sold services to Plaintiffs.

68. Defendants made representations to Plaintiffs about the quality or characteristics of their services by affirmation of fact, by promise, and/or by description.

69. Defendants' representations became part of the basis of the bargains Plaintiffs made with Defendants.

70. Defendants breached their warranties.

71. Although not required, Plaintiffs notified Defendants of their breaches.

72. Plaintiffs suffered injury as a result of Defendants' breaches.

**5. Count Five: Breach of Warranty of Good and Workmanlike Manner Against All Defendants**

73. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

74. Defendants sold services to Plaintiffs.

75. Defendants' services consisted of the repair or modification of Plaintiffs' existing tangible property.

76. Defendants did not perform the services in a good and workmanlike manner.

77. Plaintiffs suffered injury as a result of Defendants' actions.

**6. Count Six: Fraud Against Terry Defendants**

78. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

79. The Terry Defendants made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. Terry Defendants had the requisite personnel, expertise, ability, and capacity to competently restore Billie;
- b. Terry Defendants had a "shop rate" lower than almost anyone else—\$45 per hour—and they had an established shop full of qualified people who were ready, willing, and able to competently work on Billie;
- c. Terry Defendants would bring in volunteer vintage-aviation enthusiasts who would make up about 40% of the total labor to work directly on the airplane, reducing the cost even further;

- d. Billie could be purchased, restored and ready to fly for no more than \$300,000;
- e. Billie could be completely restored and would be airworthy by July 1, 2010, in time for the Thirsty 13th reunion Washburne scheduled for that month;
- f. Terry Defendants would exhibit the restored Billie at airshows around the country, spreading the story of the Thirsty 13th and offsetting the costs to Plaintiffs;
- g. Donor planes were necessary to complete the restoration process of Billie;
- h. The donor plane nicknamed “JR” was in very good condition and worth the \$75,000 asking price;
- i. JR could be quickly restored and sold for, or if retained be worth, three times the purchase price;
- j. The donor plane nicknamed “Missouri” had two mid-time engines with perfect cores identical to the original engines on Billie, which could be used at a substantially lower cost than purchasing rebuilt engines;
- k. The Missouri plane had quality parts, such as propellers and engines control accessories, that, if not used on Billie, could be sold to recoup expenses;
- l. The Missouri plane came with a “mountain” of extra parts that could be used on Billie or sold to recoup expenses;
- m. The total cost of purchasing the “Missouri” plane would be \$40,000.00;
- n. The Terry Defendants had installed various parts on Plaintiffs' aircraft, such as rudders, elevators and ailerons, that belonged to the Terry Defendants, and that Plaintiffs were required to pay the Terry Defendants for same;
- o. They had negotiated with the Rogers Defendants to get them to perform the same required work another reputable vendor proposed for half of the price;
- p. Other vendors used and retained by the Terry Defendants, such as the Rogers Defendants, were reputable and performed quality work; and
- q. All work would be properly documented and written up pursuant to FAA regulations.

80. Each of the above representations, and those referenced elsewhere in this Petition, were false.

81. When the Terry Defendants made these representations, they knew the representations were false, or made the representations recklessly without knowledge of their truth.

82. Terry Defendants made these representations with the intent that Plaintiffs rely on the representations by hiring Terry Defendants and/or continuing to pay them significant sums.

83. Plaintiffs relied on these representations in hiring the Terry Defendants (and, later, the Rogers Defendants), paying the Terry Defendants substantial sums, and entrusting the Billie project to the Terry Defendants for more than a year.

84. Terry Defendants' representations caused Plaintiffs injury.

**7. Count Seven: Fraud Against Mahaffey**

85. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

86. Mahaffey made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. Mahaffey had the requisite personnel, expertise, ability, and capacity to competently restore Billie;
- b. Mahaffey would move Plaintiffs' project along as quickly as possible;
- c. Mahaffey would use as much of Billie's original parts as possible;
- d. The Rogers Defendants completed certain tasks and had performed quality repairs; and
- e. All work would be properly documented and written up pursuant to FAA regulations.

87. Each of the above representations, and those referenced elsewhere in this Petition, were false.

88. When Mahaffey made these representations, he knew the representations were false, or made the representations recklessly without knowledge of their truth.

89. Mahaffey made these representations with the intent that Plaintiffs rely on the representations by hiring Mahaffey and/or continuing to pay him significant sums.

90. Plaintiffs relied on these representations in hiring Mahaffey, paying Mahaffey and the Rogers Defendants substantial sums, and entrusting the Billie project to Mahaffey for more than a year.

91. Mahaffey's representations caused Plaintiffs injury.

**8. Count Eight: Fraud Against Rogers Defendants**

92. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

93. The Rogers Defendants made a number of representations to the Plaintiffs, as described above and as set forth herein:

- a. The work performed by the Rogers Defendants would be done in a timely and professional manner;
- b. Plaintiffs only had to make two payments for the Rogers Defendants' work—one half at the contract's inception and the rest upon completion;
- c. The Rogers Defendants' work, including all parts and labor, could be completed for \$40,000;
- d. The Rogers Defendants had performed certain work, such that Plaintiffs should make a "progress" payment;
- e. Billie's nacelles were not the original nacelles;
- f. Rogers Defendants had the requisite personnel, expertise, ability, and capacity to perform the necessary work on Plaintiffs' center section;



- g. During the contract term, the Rogers Defendants represented that additional work needed to be performed, and that this work was necessary;
- h. Rogers Defendants were going out of business and, thus, could not complete the project; and
- i. All work would be properly documented and written up pursuant to FAA regulations.

94. Each of the above representations, and those referenced elsewhere in this Petition, were false.

95. When the Rogers Defendants made these representations, they knew the representations were false, or made the representations recklessly without knowledge of their truth.

96. Rogers Defendants made these representations with the intent that Plaintiffs rely on the representations by hiring Rogers Defendants and/or continuing to pay them significant sums.

97. Plaintiffs relied on these representations in hiring the Rogers Defendants, paying the Rogers Defendants substantial sums, and entrusting the work on Billie's center section to the Rogers Defendants.

98. Rogers Defendants' representations caused Plaintiffs injury.

**9. Count Nine: Violations of the DTPA Against All Defendants**

99. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

100. Plaintiffs are consumers under the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41, *et al*, because they sought or acquired goods and/or services by purchase from the Defendants, who may be sued under the DTPA.

101. Defendants committed one or more of the following wrongful acts: (1) committed false, misleading, or deceptive acts or practices, as set forth in section 17.46 of the DTPA; (2) committed unconscionable actions or courses of action; (3) breached express and implied warranties as set forth in section 17.50 of the DTPA, as described above. Defendants actions include, but are not limited to:

- a. Engaged in false, misleading, or deceptive acts or practices on which Plaintiffs relied to Plaintiffs' detriment, § 17.46(b);
- b. Breached an express warranty that they would properly restore and renovate Billie to flyable and air-show condition, § 17.50(a)(2);
- c. Breached an express warranty that they would properly restore and renovate JR to flyable and air-show condition, § 17.50(a)(2);
- d. Engaged in unconscionable actions or courses of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, experience or ability to a grossly unfair degree, 17.50(a)(3);
- e. Misrepresented to Plaintiffs the source, sponsorship, approval or certification of goods and services, § 17.46(b)(2);
- f. Represented to Plaintiffs that goods or services had characteristics, parts, uses or quantities that they did not have, § 17.46(b)(5);
- g. Represented to Plaintiffs that goods or services being provided by them were of a particular standard, quality, grade, or that goods are of a particular style or model, when they, in fact, were not, § 17.46(b)(7);
- h. Knowingly made false or misleading statements of fact to Plaintiffs about the need for parts, replacement, or repair services, § 17.46(b)(13);
- i. Falsely represented to Plaintiffs that work or services had been performed on parts or on Billie, JR and Missouri when no such work had been performed, § 17.46(b)(22); and
- j. Failed to disclose information to Plaintiffs about Billie, JR, Missouri and the airplane parts that are the subject of this lawsuit and services performed on same that was known to them at the time of the transactions in order to induce Plaintiffs to enter into such transactions when Plaintiffs would not have entered into the transactions had such information been disclosed, § 17.46(b)(24).

102. Defendants' actions were a producing cause of Plaintiffs' damages.

103. Defendants' acts were committed knowingly and/or intentionally, entitling Plaintiffs to recovery of additional damages. § 17.50(b)(1).

**10. Count Ten: Conversion Against Terry Defendants and Mahaffey**

104. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

105. Plaintiffs owned, possessed, or had the right to immediate possession of their aircraft and associated parts, which was Plaintiffs' personal property.

106. Defendants wrongfully exercised dominion or control over the property.

107. Plaintiffs suffered injury as a result of Defendants' actions.

108. Defendants acted with malice, entitling Plaintiffs to exemplary damages.

**11. Count Eleven: Violation of the Texas Theft Liability Act Against Terry Defendants**

109. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

110. Plaintiffs had a possessory right to Billie's left elevator.

111. Terry Defendants unlawfully appropriated, secured, or stole Billie's left elevator, in violation of Texas Penal Code § 31.03, without Plaintiffs' effective consent.

112. Terry Defendants' unlawful taking was made with the intent to deprive Plaintiffs of Billie's left elevator.

113. Plaintiffs sustained damages as a result of Terry Defendants' theft.

114. In addition to their actual damages, Plaintiffs seek additional damages, pursuant to Tex. Civ. Prac. & Rem. Code § 134.005, and exemplary damages.

**12. Count Twelve: Negligence Against All Defendants**

115. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

116. Defendants owed a duty of care to Plaintiffs to protect Plaintiffs' property, which was entrusted to Defendants, from harm. Defendants also owed a duty to Plaintiffs to properly supervise those working for Defendants. Defendants also owed a duty to Plaintiffs to competently repair and restore the vintage aircraft entrusted to them by Plaintiffs, which Defendants affirmatively represented that they had the expertise, experience, and resources to do and which they contractually assumed a duty to do.

117. Defendants also owed a bailment duty to Plaintiffs because Plaintiffs delivered personal property to Defendants for a specific purpose, Defendants accepted such delivery, and Plaintiffs and Defendants had an agreement that a specific purpose would be fulfilled and an understanding that property would be returned to Plaintiffs.

118. Defendants breached their duties.

119. Defendants' breaches proximately caused Plaintiffs' damages.

120. Defendants acted maliciously and/or with conscious indifference, entitling Plaintiffs to exemplary damages for Defendants' negligence.

**13. Count Thirteen: Conspiracy Against All Defendants**

121. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

122. Defendants were members of a combination of two or more persons.

123. The object of the combination was to accomplish (a) an unlawful purpose, or (b) a lawful purpose by unlawful means.

124. The members had a meeting of the minds on the object or course of action.

125. One or more of the members committed an unlawful, overt act to further the object or course of action.

126. Plaintiffs suffered injury as a proximate result of the wrongful conduct.

**14. Count Fourteen: Aiding and Abetting Against Mahaffey**

127. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

128. Terry Defendants committed theft and conversion against Plaintiffs.

129. Mahaffey had knowledge that the Terry Defendants' actions constituted theft and conversion against Plaintiffs.

130. Mahaffey intended to and did assist and/or encourage the Terry Defendants in committing their theft and conversion.

131. Mahaffey's assistance or encouragement was a substantial factor in causing the theft and conversion.

**VII. EXEMPLARY AND/OR ADDITIONAL DAMAGES**

132. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

133. Defendants acted fraudulently, maliciously, and/or with gross negligence, entitling Plaintiffs to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code § 41.003.

134. Defendants also committed knowing and/or intentional violations of the DTPA, entitling Plaintiffs to additional damages pursuant to the Tex. Bus. & Com. Code § 17.50(b)(1).

135. Defendants also committed theft, entitling Plaintiffs to exemplary damages pursuant to Tex. Civ. Prac. & Rem. Code § 41.008(c).

**VIII. ATTORNEYS' FEES**

136. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

137. Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees, pursuant to Tex. Civ. Prac. & Rem. Code §§ 38.0001 and 134.005, and Tex. Bus. & Com. Code § 17.50(d).

**IX. JURY TRIAL**

138. Plaintiff requests trial by jury and has paid the jury fee.

**PRAYER**

139. For these reasons, Plaintiffs Seth Washburne and Thirsty 13th LLC ask that the Court award Plaintiffs a judgment against Defendants for the following

- a. Actual damages;
- b. Additional damages;
- c. Exemplary damages;
- d. Attorneys' fees;
- e. Court costs;
- f. Prejudgment and postjudgment interest as provided by law; and
- g. All other relief to which Plaintiffs are entitled.

DATED: October 31, 2016

Respectfully submitted,

/s/ Kent D. Krabill

Kent D. Krabill  
State Bar No. 24060115  
[kkrabill@lynnllp.com](mailto:kkrabill@lynnllp.com)

Stephen Cole  
State Bar No. 24078358  
[scole@lynnllp.com](mailto:scole@lynnllp.com)

**LYNN PINKER COX & HURST, L.L.P.**  
2100 Ross Avenue, Suite 2700  
Dallas, Texas 75201  
Telephone: 214.981.3800  
Facsimile: 214.981.3839

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on this 31st day of October, 2016.

Charles Burgess  
[cburgess72@yahoo.com](mailto:cburgess72@yahoo.com)  
Attorney at Law  
521 N. Riverside Dr.  
Fort Worth, TX 76111

Buzz Deitchman  
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Attorney at Law  
2401 Garden Park Ct., Ste. A  
Arlington, TX 76013

/s/ Kent D. Krabill

Kent D. Krabill

Exhibit 132: 2016 11 17 - 10.16 a.m. Krabill to Seth



## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, November 17, 2016 10:16 AM  
**To:** Seth Washburne; Stephen Cole  
**Cc:** Mallory Biblo; Kent Krabill  
**Subject:** RE: Expert Visit

Seth,

We are meeting Paul at the hangar at 8 a.m. tomorrow.

The purpose for the visit is for Paul to review the aircraft and parts and make any lists he may need to form his opinions. Stephen and I will be there to follow him along and assist in any way we can and hopefully learn more about the damages in the case. From what I understand, you will open up the hangar for us and be around to answer any questions Paul might have.

We will need to be done tomorrow no later than 4 p.m., as Stephen and I both have appointments to get to. However, starting at 8 a.m. should give us plenty of time.

As for you spending any additional time with Paul, that is up to the two of you. But please note that he will be billing any time he spends with any of us.

Paul will be opining on the items listed in his disclosure in the case. Part of the reason for this visit is to narrow down his opinions, as a jury can only digest so much material. However, we will have an outline with us tomorrow to keep us all focused. Stephen will email that outline later today.

Thanks,

**KENT D. KRABILL | Partner**

**LynnPinkerCoxHurst**

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---

**From:** Seth Washburne [mailto:sethpw1@gmail.com]

**Sent:** Thursday, November 17, 2016 7:47 AM

**To:** Stephen Cole <SCole@lynnllp.com>  
**Cc:** Kent Krabill <kkrabill@lynnllp.com>; Mallory Biblo <MBiblo@lynnllp.com>  
**Subject:** RE: Expert Visit

Hi Stephen,

8 a.m. tomorrow is fine. I have the only key, and so will have to be there.

That sounds quite early for him personally. Few people like to get up so early, but maybe he normally does anyway at his current job.

For his last visit I met him at Love Field, drove him to Waxahachie to visit Airborne Imaging, then to LNC, then to Addison, where we had a nice meal, and I put him up at the La Quinta Inn – about \$100 a night for a beautiful hotel in a nice area, walk to restaurants. He liked it. This is also very close to my house. The next morning I picked him up and took him to the Cavanaugh Flight Museum, then back to Love Field. I think he enjoyed his visit.

I would enjoy picking him up driving him around again, and having him stay near me in Addison. I could also drop him off there for a meeting with you, and would sit out if you wanted to meet with him alone. Let me know if this works. If he prefers to have his own car and be on his own, that is fine, too.

May I get a list of exactly what you want him to opine on, or what handouts you have given to him, to be sure you are covering everything?

Separately, I received a call last night from someone named Steve Swift, whose voice was not the same as the person I added to the list to subpoena, and said he was not the correct person. He said he works for AT&T. I apologized. He said “At least my kids learned what a processer server is, because he knocked on the door during dinner.” So this was not too great. He said he would contact you directly. He knew of the VFM museum and said he had even been there, and I told him Steve was someone who was a good person, who we hoped to have on our side, so was not a wrong-doer, so he could tell his kids this. He can also be found by someone going to the hangar and asking around about his whereabouts, and used to be there on Saturdays.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Thursday, November 17, 2016 7:30 AM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Mallory Biblo  
**Subject:** RE: Expert Visit

Seth, I am still trying to confirm the details but I anticipate that Paul will begin his inspection tomorrow at 8 a.m. Please let me know if there's any issue with that timing.

Thanks.

**STEPHEN COLE** | Associate  
**LynnPinkerCoxHurst**  
Direct 214 981 3804  
Cell 601 260 9052  
Fax 214 981 3839

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---

**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]  
**Sent:** Thursday, November 17, 2016 1:49 AM  
**To:** Stephen Cole  
**Cc:** Kent Krabill; Mallory Biblo  
**Subject:** RE: Expert Visit

Stephen,

You emailed me last Wednesday, below, that you would let me know specific times when you have more details, but I have not received these yet.

I am back in Dallas, and available anytime, and so, when you know the schedule, please let me know.

Thank you.

Seth

---

**From:** Stephen Cole [<mailto:SCole@lynnllp.com>]  
**Sent:** Wednesday, November 09, 2016 3:26 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill; Mallory Biblo  
**Subject:** RE: Expert Visit

Seth,

Yes. Paul is going to visit the hangar on November 17-18. I will let you know specific times when I have more details.

Thank you.

**STEPHEN COLE** | Associate

**LynnPinkerCoxHurst**

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**From:** Seth Washburne [<mailto:sethpw1@gmail.com>]

**Sent:** Wednesday, November 09, 2016 3:24 PM

**To:** Stephen Cole

**Cc:** Kent Krabill; Mallory Biblo

**Subject:** Expert Visit

Stephen,

May I please learn if a date has been set for our expert, Paul Bazeley, to visit Dallas, and, if so, what that date may be?

I have a ticket to fly back to Dallas this Monday, but if no date has been set yet then I might stay a little longer here, e.g. maybe another week. But it is also no problem coming back if a date has already been set.

Thank you.

Seth

Exhibit 133: 2016 11 17 - 11.29 am Krabill to me with Bazely outline

## Seth Washburne

---

**From:** Kent Krabill [kkrabill@lynnllp.com]  
**Sent:** Thursday, November 17, 2016 11:29 AM  
**To:** Seth Washburne (sethpw1@gmail.com)  
**Cc:** Stephen Cole  
**Subject:** Bazeley Opinions  
**Attachments:** Bazeley Opinions.docx

Seth,

I have attached the outline that we will work with tomorrow. Please note that all communications with experts are discoverable, so we will not be providing this copy to Bazeley. However, we will have this document with us and will take notes on it throughout the day.

If you have anything you would like to add, please let me know.

Thanks,

**KENT D. KRABILL** | Partner

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Bazeley Opinions:

1. The general standards of care and applicable regulations in the aircraft maintenance and restoration industry, and the Defendants' adherence to those standards and regulations
  - a. Need 3-5 examples of discrete work Defendants' did and why it did not measure up to applicable standards/regulations
    - i.
    - ii.
    - iii.
    - iv.
    - v.
  - b. Should also include a discussion about the standards and regulations concerning the creating and maintaining of records of repair, restoration, part removal, etc.
2. The current airworthiness of Washburne's planes.
3. The current fair market value of Washburne's planes and parts, in the state that they exist today.
4. The amount and type of work required to make Washburne's planes airworthy, and the costs associated with such work.
5. The reasonableness of Defendants' purchase of JR and the Missouri as a "donor plane" for Billie's restoration.
6. The reasonableness of Defendants' representation that they could "restore" Billie for \$300,000.
7. A reasonable estimation for the length of time it would have taken to restore Billie from the time it was purchased.
8. The reasonableness of Defendants' decision to place Washburne's planes and parts outside in an area exposed to the wind and without tying down any of the planes or parts.
9. The fair market value of the parts that Defendants stole from Washburne.
10. The fair market value, if any, of the services Defendants provided to Washburne.

Exhibit 134: LNC Hangar Points of Interest - April 18, 2016



Tasks Performed on Billie by Month

Task	Performed by hours	Jan	February-11	March-11	April-11	May-11	June-11
<b>Various Areas (by highest to lowest)</b>							
Cargo Door	PM (14%) W1 (80%) W2 (2%) W3 (3%) W4						
General - Billie	PM (50%) W1 (13%) W2 (11%) W3 (7%)						
Windshield frame	PM (3%) W1 (35%) W2 (6%) W4 (46%) W5 (11%)						
Horizontal	PM (28%) W2 (55%) W3 (6%) W4 (11%)						
Repairs - Other	PM (26%) W2 (26%) W3 (4%) W4 (39%)						
Stringers	PM (1%) W2 (29%) W3 (35%) W4 (34%)						
Emergency Exit	PM (9%) W3 (91%)						
Window frames	PM (5%) W1 (31%) W2 (30%) W3 (19%)						
Elevator and Rudder	PM (12%) W1 (6%) W2 (25%) W3 (18%)						
<b>Rib Repairs (by Station)</b>							
Rib 273.5	PM (4%) W3 (58%) W5 (38%)						
Rib 312	PM (11%) W2 (71%) W3 (17%) W4 (1%)						
Rib 333	PM (14%) W2 (38%) W3 (48%)						
Rib 337.5	W3 (100%)						
Rib 351.5	PM (12%) W3 (87%) W4 (1%)						
Rib 362.5	PM (7%) W2 (14%) W3 (72%) W4 (6%)						
Rib 370-372.5	PM (12%) W2 (46%) W3 (40%) W4 (3%)						
Rib 390.5	PM (18%) W2 (82%)						
Rib 411.5	PM (6%) W2 (16%) W4 (78%)						
Rib 429.5	PM (11%) W2 (22%) W3 (21%) W4 (45%)						
Rib 450.5	PM (8%) W2 (8%) W3 (23%) W4 (42%) W5 (19%)						
Rib 492.5	W3 (40%) W4 (60%)						
Rib 506	PM (5%) W4 (95%)						
Rib 514	W4 (100%)						
Rib 520	PM (5%) W4 (95%)						
Rib 538	PM (7%) W4 (93%)						

Tasks Performed on Billie by Month - Continued

Task	July-11	August-11	September-11	October-11	November-11	December-11	Cost
<b>Various Areas (by highest to lowest)</b>							
Cargo Door							30,413
General - Billie							11,548
Windshield frame							5,093
Horizontal							7,625
Repairs - Other							4,357
Stringers							4,344
Emergency Exit							1,916
Window frames							1,795
Elevator and Rudder							1,104
<b>Rib Repairs (by Station)</b>							
Rib 273.5							361
Rib 312							3,849
Rib 333							6,420
Rib 337.5							104
Rib 351.5							3,474
Rib 362.5							2,356
Rib 370-372.5							3,143
Rib 390.5							1,193
Rib 411.5							2,387
Rib 429.5							2,046
Rib 450.5							1,330
Rib 492.5							144
Rib 506							355
Rib 514							256
Rib 520							355
Rib 538							259

Tasks Performed on Billie, July 2011 to June 2012 - Continued

Task	Performed by hours	July-11	August-11	September-11	October-11	November-11	December-11
<b>Various Other Areas (by highest to lowest)</b>							
Center Section (no	W5 (50%) W6 (50%)						
Billie - Cockpit oth	PM (17%) W1 (1%) W2 (3%) W4 (25%) W						
Vertical - Billie	PM (1%) W1 (3%) W2 (83%) W4 (11%) W						
Wiring Billie	PM (84%) W2 (4%) W4 (7%) W5 (5%)						
Billie's Nacelles	W5 (49%) W6 (51%)						
Nose area	PM (4%) W1 (5%) W2 (1%) W4 (58%) W						
Cargo door - door i	PM (2%) W2 (7%) W5 (91%)						
Cockpit (Seat fram	W5 (45%) W6 (55%)						
Center Section	PM (100%)						
Nacelle (not comp							
Eyebrow panel	W1 (87%) W5 (13%)						
Research	PM (31%) W2 (69%)						
Logbooks	PM (100%)						
Hamburger Door	PM (100%)						
Wingtip	W2 (100%)						
<b>Other Rib Repairs (by Station)</b>							
Rib 020	PM (8%) W3 (57%) W4 (31%) W5 (4%)						
Rib 156	W5 (100%)						
Rib 173.5	W2 (47%) W5 (53%)						
Rib 195	W2 (100%)						
Rib 216.5-234.5:	PM (4%) W2 (13%) W3 (21%) W4 (11%)						
Rib 234.5	PM (11%) W2 (17%) W5 (72%)						
Rib 280	W5 (100%)						
Rib 294	W2 (100%)						
Rib 690	W2 (76%) W5 (24%)						

Tasks Performed on Billie, July 2011 to June 2012 - Continued

Task	January-12	February-12	March-12	April-12	May-12	June-12	Cost
<b>Various Other Areas (by highest to lowest)</b>							
Center Section (no							8,710
Billie - Cockpit oth							7,250
Vertical - Billie							6,931
Wiring Billie							6,254
Billie's Nacelles							6,220
Nose area							4,089
Cargo door - door i							1,934
Cockpit (Seat fram							1,900
Center Section							1,348
Nacelle Top Firewa							1,002
Eyebrow panel							911
Research							815
Logbooks							312
Hamburger Door							245
Wingtip							150
<b>Other Rib Repairs (by Station)</b>							
Rib 020							1,744
Rib 156							296
Rib 173.5							344
Rib 195							188
Rib 216.5-234.5:							674
Rib 234.5							1,212
Rib 280							296
Rib 294							200
Rib 690							240
<b>Total</b>							<b>149,485</b>

Exhibit 135: Wood, Dana

Exhibit 136: 2017 01 07 - Cole emails Bazeley report 4.09 pm Saturday

## Seth Washburne

---

**From:** Stephen Cole [SCole@lynnllp.com]  
**Sent:** Saturday, January 07, 2017 4:09 PM  
**To:** Seth Washburne  
**Cc:** Kent Krabill  
**Subject:** Bazeley report  
**Attachments:** Bazeley report - DRAFT - 1-7.docx

Seth,

Attached is the current draft of Paul's report that outlines the opinions he will be offering in the case. As you'll see, Paul has a couple of items he wants to discuss with you to get clarification (he said he may discuss those with you tonight).

Please review and let us know your thoughts/comments. We can work to get this finalized tomorrow with Paul.

Thanks.

**STEPHEN M. COLE** | Associate

**LynnPinkerCoxHurst**

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DRAFT OPINIONS:

AIRCRAFT:

N86553 - S/N 4715 DOUGLAS DC-3 C202A (BILLIE)

N141JR - S/N 19366 DOUGLAS DC-3C - S1C3G- (JR)

N19721 - S/N 19721 Douglas DC-3C - S1C3G -(MO)

JAMES TERRY ("JT"):

1. PRE-PURCHASE INSPECTION

- JT's pre purchase inspection was inadequate to give a full and accurate picture of the condition of the aircraft prior to purchase. An accurate picture of the condition of the aircraft may have influenced the customer's decision to move forward with the project, and it would (or should) also have affected the financial and schedule estimates for work scope completion supplied by JT. It would also have provided the customer with a better negotiating position regarding the asking price at least. I feel strongly that the verbal cost schedule estimates supplied by JT at the time of pre-purchase "inspection" were grossly inaccurate. I believe that even a basic condition inspection undertaken in SJU would have revealed sufficient findings to indicate that a total acquisition and restoration budget of \$300,000 would have been grossly insufficient. I believe that the specification provided by the customer when coupled with the obvious condition of the aircraft should have driven JT to explain that the final budget would need to be much more than double that. I believe that the customer should have been better informed at the time of purchase negotiations.

- DAMAGES:

2. R-1820 / R1830

- JT's advice to the Customer that he should change out the R-1820 engines installed on S/N 4715 for R1830 examples for the benefit of the airshow crowds was without merit. This modification would make little ~~of~~ no difference to the vast majority of the airshow crowd members or airshow organizers. Note that JT's own aircraft (Southern Cross) is operating with R-1820's installed and purports to be a C-47.

- DAMAGES:

- Core R-1830-92 engine purchase (\$12,000)
- Overhaul of R-1830-92 engines (\$140,000)
- Removal and replacement of firewall / nacelle structure (0)
- Labor to remove and reinstall engines, engine accessories, oil coolers, oil tanks and nacelle systems. Remove and reinstall landing gear. 1040 hrs / \$75/hr = (\$78,000)
- Total -

3. PURCHASE OF S/N 19366 (JR) and S/N 19721 (MO):

- JT's advice to the customer that he should consider obtaining a second or a third aircraft as a source of spare parts to aid in the restoration of S/N 4715 was inappropriate. In my experience the cost and logistical implications of obtaining and particularly moving multiple examples of the DC-3 type aircraft is complex and cost prohibitive, especially when coupled with the very real likelihood that many of the parts or pieces recovered from any such donor aircraft are likely to need just as much work in restoration themselves as the parts they are intended to replace. A donor aircraft is seldom an attractive solution when compared to making or purchasing the required components new / surplus. The construction and assembly techniques used in the manufacture of the Douglas DC-3/C-47 means that a component removed from one aircraft will not "fit" another. Except for a small numbers of holes drilled (or usually punched) for the purpose of installing assembly jig locating pins, the vast majority of holes were drilled by hand upon assembly. These holes were not in exactly the same locations from one aircraft to the next. This guarantees that a particular component from one aircraft can-not be installed in

**Comment [SC1]:** Discuss adding section for how much Seth overpaid Terry for the work actually performed

**Comment [P2]:** Lets discuss this one

**Comment [P3]:** do you want my \$ estimate for this or what Seth was actually charged? My approach would not be to change out nacelles

another without encountering mismatched fastener hole locations. Often the misalignment between one set of fastener holes and another can be so significant as to produce significant structural issues if attempts are made to “blend” these holes together. It is simply impossible to produce an airworthy repair when “reclaiming” structural components in many cases.

• DAMAGES:

- Purchase price for aircraft S/N 19721 (\$)
- Labor and transport costs associated with relocating S/N 19721 (\$)
- Total (\$)

- The post purchase decision to also restore and return to service S/N 19366 also seems like misguided advice to offer. The restoration of this additional aircraft simply diluted the budget for the primary mission (that of completing the restoration to airworthy condition of S/N 4715.) The customer is of the opinion that the decision to restore S/N 19366 was justified by JT with a suggestion that the aircraft could be used to generate funds and promote the restoration project and story behind S/N 4715 itself. This was inaccurate advice of JT to offer. The costs to restore and operate S/N 19366 would far exceed any income likely to be generated by the aircraft in a 5 year period. I feel sure that JT (having owned an example of the type for several years himself) would have been aware of this.

**Comment [SC4]:** Paul to discuss figures with Seth

**Comment [SC5]:** Still discussing whether to leave this in

4. FERRY FLIGHT FROM SAN JUAN? MAINTENANCE RELEASE

- Note Seth - I thought you had suggested to me that Billie was moved from SJU on a ferry permit? - I can find no such reference within the records supplied about a ferry permit of the maintenance release required for such a permit? Ref 14 CFR part 23, 43, 61, 91 and 125. Was a ferry permit obtained? - we should discuss this - this could lead to far reaching FAA consequences.

**Comment [P6]:** Need confirmation from Seth.

5. TO SEPARATE THE CENTRE SECTION

- There was no technical need or reason to separate the centre section of the main wing from the fuselage of the aircraft. The work required to prepare both of these sections for separation alone is extensive. This action requires the removal and separation of a multitude of the ships systems in preparation. Having worked with numerous examples of the Douglas DC-3 type over the last 12 years and undertaken very extensive restoration projects associated with them: we have never found it necessary to separate these two structural elements. This decision was professionally irresponsible. Having had an opportunity to inspect both the fuselage and the centre section recently I can confirm that all repairs undertaken could have been completed without separation. The separation of the two major components was unnecessarily complex and costly and placed the future of the project in jeopardy.

• DAMAGES:

- Actual Costs associated with the separation and reinstallation of the aircraft centre section(\$)
- Removal (240 hrs x 75/hr = \$18,000)
- Reinstallation of centre section (400hrs x \$75/hr = \$30,000)
- Total = (\$48,000)

[Paul: we need an opinion as to how much this decision cost Seth. Should include at least the amounts paid to separate the center section and fuselage. Are there other amounts that this decision caused Seth to incur that he otherwise would not have in the repair of the center section?]

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**Comment [P7]:** PB estimate for physical work.

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6. TAGGING AND IDENTIFICATION OF PARTS

- There appears to have been widespread disassembly of both major components and systems during the work accomplished to date without any form of tagging or identification of parts employed. Without at least the minimum standard of identification and segregation of parts, there may well exist a situation where parts unique to one aircraft maybe confused with another. We have seen that there were at times between 2 and 4 different examples of the DC-3 type at the JT facility in various stages or work and disassembly. There exists clearly understood risk when the ability to determine the origin of parts is lost. It is essential that the modification and compliance status of each aircraft be maintained. To give an

**Comment [SC8]:** I don't understand this sentence.

example; there is a recurring FAA Airworthiness Directive (AD [68-07-05](#)) affecting all Douglas DC-3 elevators. The AD addresses the risk of structural failure of the elevator trip tab hinge points. The AD requires the inspection of the affected area every 250 hours. There is, however a “terminating” action within the AD that provides for the modification (or replacement) of the elevator to remove the need for this inspection. If an elevator from an aircraft with the terminating action modification accomplished is confused with an example that has not been so modified it will be not only possible, but likely that the required inspections of this area will never be accomplished. This situation could potentially lead to the in flight failure of the trim tab bearing and departure of the tab which will potentially render the aircraft uncontrollable. There are numerous examples of similar situations within the DC-3 aircraft and its systems. Other examples include major internal differences with Rudder flight controls, propellers, oil tank fire wall shut off valves, landing gear components along with numerous smaller electrical components and avionics. All of these items seem to have been mixed up, misplaced or their origins at least confused. I believe that this situation leads to a clear regulatory compliance issues associated with [14 CFR Part 43.13, 39.7 and 39.9](#)

- **DAMAGES:** [\[Paul: we need an opinion as to how much this has cost Seth. Perhaps an opinion on what it will likely cost to have someone identify and catalogue the various parts? Any other ideas?\]](#)

**Comment [P9]:** This is going to be difficult or impossible to predict until the aircraft is ready for reassembly. We don't know what is missing or lost. We could predict that the lack of identification would increase costs by a %?

PATRICK MAHAFFEY

1. REPAIR OF S/N DOOR FRAME USING RECLAIMED MATERIALS

- a. The [suggestion is that the](#) decision to recover material from Aircraft S/N 19721 lead to inefficiencies in completing the work and quality concerns as a result of misalignment of original fastener hole locations.

2. REPAIR OF WINDSHIELD SUPPORT STRUCTURE USING RECLAIMED MATERIALS

- a. ~~The~~ [suggestion is that the](#) decision to recover material from aircraft S/N 19721 lead to inefficiencies in completing the work and quality concerns as a result of misalignment of original fastener hole locations. There are extensive examples of misaligned fastener holes being plugged using the “double flush” technique. This technique is not supported in the Douglas DC-3 SRM and can lead to inadequate edge distance (ED) on fasteners leading to structural weakness. I could find no evidence of independent DER evaluation or FSDO field approval of this technique. Leading me to suggest that this situation may constitute a regulatory compliance issues associated with 14 CFR part [43.13](#)

3. REPAIR OF STATION 0 - 20 BULKHEAD USING RECLAIMED MATERIALS

- a. The [suggestion is that the](#) decision to recover material from Aircraft S/N 19721 lead to inefficiencies in completing the work and quality concerns as a result of misalignment of original fastener hole locations. There are extensive examples of misaligned fastener holes being plugged with using the “double flush” technique. This technique is not supported in the Douglas DC-3 SRM and can lead to inadequate edge distance (ED) on fasteners leading to structural weakness. I could find no evidence of independent DER evaluation or FSDO field approval of this technique. Leading me to suggest that this situation may constitute a regulatory compliance issues associated with 14 CFR part [43.13](#)

4. STORAGE OF UNSECURED AIRFRAMES:

- a. PM’s choice to leave the major components of aircraft S/N 4715 and S/N 19366 in outside storage unsecured and unprotected lead to their destruction in a wind storm. Despite the fact that the customer was aware of the decision to place the major components in outside storage, these component were still in PM’s “care custody and control” Placing these item’s in outside storage without taking any precautions to secure them, shelter them or to provide a means to move them back under cover lead to the substantial damage to this historic aircraft.
- b. DAMAGES - substantial damage of aircraft S/N 4715:
  1. Replacement costs - project condition aircraft to replace S/N 4715 (\$85,000)
  2. Restoration investment - fuselage structural work to date on aircraft S/N 4715 - labor hours - 2050 hrs / \$75 / hr. = \$153,750



3. Repair work to right outboard wing of aircraft S/N 19366 - 320 hours / 475 / hr = \$48,000
4. Replacement costs for both outboard main wings from aircraft S/N 19721 - qty 2 at \$25,000 each = \$50,000
5. **Total damages = \$336,000**

c. DAMAGES - repainting of control pedestal:

1. Cleaning and preparation - 12 hours
2. masking for paint strip - 6 hours
3. paint strip - 6 hours
4. wash and decontamination - 4 hours
5. masking for paint - 3 hours
6. application of primer to customer specification - 2.5 hours
7. demasking and clean up - 2.5 hours
  1. total labor - 36 @ \$75/hr = \$2700
8. Third party services - hazmat disposal fee - \$650
9. Materials - masking materials, prep and paint materials - \$670
10. Provision of records of work performed - No charge.
  1. Total parts, materials and services - \$1320
11. **Estimate total - \$4020.00**

TERRY ROGERS / PERRIN WARBIRDS

1. INSTALLATION OF DOUBLERS AD

- Notes: poor quality of holes - hole tolerances appear to be excessively board in many locations for the high lock fasteners used. Fastener substitution: FAA AD [92-06-15](#) nor Douglas S/B [229](#) allow the use of Highlocks in all horizontal locations. No evidence of approved fastener substitution found. Potential regulatory non-compliance 14 CFR part 43.13

2. SPAR REPAIRS CONTRIBUTING TO MISALIGNMENT OF WING ATTACH ANGLE

- The repair of centre section, left outboard wing attach angle structure and rear upper spar have produced significant out of tolerance issues between spar "butt plates" and upper surface compression angles. The level of reassembly suggest that this repair has been completed yet a significant "out of tolerance" issue exists. Douglas S/B [262](#) gives clearly established "fits" and clearance limits for the location of these critical wing load path components. Gross dimensional errors were observed. Extensive reworking will be required to prevent a safety or flight / Airworthiness issue.
- AN 470 rivets used in repairs that intersect wing attach angles. DD rivets have been removed from attach angle flanges and replaced with AN470 rivets. No approval for fastener substitution.

• DAMAGES:

- Labor required to correct attach angle issues (320 hrs @ \$75/hr = \$24,000)
- Materials required to correct attach angle issues ( \$2450)
- Total - (\$26,450)

3. PAINT

• DAMAGES:

- Paint strip, repaint centre section labor (240 hours @ \$75/hr = \$6160)
- Materials and hazmat disposal fees (\$4400)
- Total - \$10,560)

4. NACELLE R & R AS A MEANS OF FACILITATING THE R-1830-92 INSTALLATION

- Note - misguided decision to remove and replace Nacelles as a solution to engine type change. Regardless: the nacelle change techniques employed are poor and ultimately un-successful. No evidence of DER or FSDO Field approval for INTERNAL Nacelle structure doublers fabricated and used in an attempt to mate replacement nacelle assembly to center section of S/N 4715.
- Damages: - see paragraph 2

Exhibit 137: BAZELEY REPORT - JAN 9TH

## DRAFT OPINIONS:

### AIRCRAFT:

N86553 - S/N 4715 DOUGLAS DC-3 C202A (BILLIE)

N141JR - S/N 19366 DOUGLAS DC-3C - S1C3G- (JR)

N19721 - S/N 19721 Douglas DC-3C - S1C3G -(MO)

### JAMES TERRY ("JT"):

#### 1. PRE-PURCHASE INSPECTION

- JT's pre purchase inspection was inadequate to give a full and accurate picture of the condition of the aircraft prior to purchase. An accurate picture of the condition of the aircraft would (or should) have affected the financial and schedule estimates for work scope completion supplied by JT. It would also have provided the customer with a better negotiating position regarding the asking price at least. The verbal cost schedule estimates supplied by JT at the time of pre-purchase "inspection" were grossly inaccurate. Even a basic condition inspection undertaken in SJU would have revealed sufficient findings to indicate that a total acquisition and restoration budget of \$300,000 would have been grossly insufficient. The specification provided by the customer when coupled with the obvious condition of the aircraft should have driven JT to explain that the final budget would need to be much more than double that. The customer should have been better informed at the time of purchase negotiations.

#### 2. R-1820 / R1830

- JT's advice to the Customer that he should change out the R-1820 engines installed on S/N 4715 for R1830 examples for the benefit of the airshow crowds was without merit. This modification would make little or no difference to the vast majority of the airshow crowd members or airshow organizers. Note that JT's own aircraft (Southern Cross) is operating with R-1820's installed and purports to be a C-47.
- DAMAGES:
  - S/N 19721 Aircraft purchase, transport, and purchase of associated engine parts - \$88,094
  - R-1830-92s O/H - \$92,362
  - Rogers nacelle work \$23,790
  - Reinstallation of R-1820 nacelles and engines 480 Hr's @ \$75/Hr = \$36,000
  - Total - \$240,246.00

#### 3. PURCHASE OF S/N 19366 (JR)and S/N 19721 (MO):

- JT's advice to the customer that he should consider obtaining a second or a third aircraft as a source of spare parts to aid in the restoration of S/N 4715 was inappropriate. In my experience the cost and logistical implications of obtaining and particularly moving multiple examples of the DC-3 type aircraft is complex and cost prohibitive, especially when coupled with the very real likelihood that many of the parts or pieces recovered from any such donor aircraft are likely to need just as much work in restoration themselves as the parts they are intended to replace. A donor aircraft is seldom an attractive solution when compared to making or purchasing the required components new / surplus. The construction and assembly techniques used in the manufacture of the Douglas DC-3/C-47 means that a component removed from one aircraft will not "fit" another. Except for a small numbers of holes drilled (or usually punched) for the purpose of installing assembly jig locating pins, the vast majority of holes were drilled by hand upon assembly. These holes were not in exactly the same locations from one aircraft to the next. This guarantees that a particular component from one aircraft cannot be installed in another without encountering mismatched fastener hole locations. Often the misalignment between one set of fastener holes and another can be so significant as to produce significant structural issues if

attempts are made to “blend” these holes together. It is often impossible to produce an airworthy repair when “reclaiming” structural components in many cases.

- DAMAGES:
  - Purchase price and transport for aircraft S/N 19721 \$65,707.00
  - Purchase price for S/N19366 \$75,000.00
  - Total \$140,707.00
  
- The post purchase decision to also restore and return to service S/N 19366 was also misguided advice to offer. The restoration of this additional aircraft simply diluted the budget for the primary mission (that of completing the restoration to airworthy condition of S/N 4715.) The customer is of the opinion that the decision to restore S/N 19366 was justified by JT with a suggestion that the aircraft could be used to generate funds and promote the restoration project and story behind S/N 4715 itself. This was inaccurate advice of JT to offer. The costs to restore and operate S/N 19366 would far exceed any income likely to be generated by the aircraft in a 5 year period. JT (having owned an example of the type for several years himself) should have been aware of this.

#### 4. TO SEPARATE THE CENTRE SECTION

- There was no technical need or reason to separate the centre section of the main wing from the fuselage of the aircraft. The work required to prepare both of these sections for separation alone is extensive. This action requires the removal and separation of a multitude of the ships systems in preparation. Having worked with numerous examples of the Douglas DC-3 type over the last 12 years and undertaken very extensive restoration projects associated with them: we have never found it necessary to separate these two structural elements. This decision was professionally irresponsible. Having had an opportunity to inspect both the fuselage and the centre section recently I can confirm that all repairs undertaken could have been completed without separation. The separation of the two major components was unnecessarily complex and costly and placed the future of the project in jeopardy.
- DAMAGES:
  - Actual Costs associated with the separation and reinstallation of the aircraft centre section - to be determined (Estimated: 240 hrs x \$45/hr - \$10,000)
  - Reinstallation of centre section (400hrs x \$75/hr = \$30,000)
  - Total = \$40,000

#### 5. TAGGING AND IDENTIFICATION OF PARTS

- There appears to have been widespread disassembly of both major components and systems during the work accomplished to date without any form of tagging or identification of parts employed. Without at least the minimum standard of identification and segregation of parts, there may well exist a situation where parts unique to one aircraft maybe confused with another. We have seen that there were at times between 2 and 4 different examples of the DC-3 type at the JT facility in various stages of work and disassembly. There exists clearly understood risk when the ability to determine the origin of parts is lost. It is essential that the modification and compliance status of each aircraft be maintained. To give an example; there is a recurring FAA Airworthiness Directive (AD 68-07-05) affecting all Douglas DC-3 elevators. The AD addresses the risk of structural failure of the elevator trip tab hinge points. The AD requires the inspection of the affected area every 250 hours. There is, however a “terminating” action within the AD that provides for the modification (or replacement) of the elevator to remove the need for this inspection. If an elevator from an aircraft with the terminating action modification accomplished is confused with an example that has not been so modified it will be not only possible, but likely that the required inspections of this area will never be accomplished. This situation could potentially lead to the in flight failure of the trim tab bearing and departure of the tab which will potentially render the aircraft uncontrollable. There are numerous examples of similar situations within the DC-3 aircraft and its systems. Other examples include major internal differences with Rudder flight controls, propellers, oil tank fire wall shut off valves, landing gear components along with numerous smaller electrical components and avionics. All of these items seem to have been mixed up, misplaced or their origins at

least confused. I believe that this situation leads to a clear regulatory compliance issues associated with 14 CFR Part 43.13, 39.7 and 39.9

- DAMAGES:
  - The lack of tagging / identification will certainly have an impact on the future cost to complete the reassembly of the aircraft. It is impossible to determine to what extent the financial impact will be at this time. The dollar amount may only become known at the very close of the project. The damages will be inflicted in the form of additional labor required to inspect and conform all components prior to installation.

PATRICK MAHAFFEY (PM)

#### 1. REPAIR OF WINDSHIELD SUPPORT STRUCTURE USING RECLAIMED MATERIALS

- The decision to recover material from aircraft S/N 19721 lead to inefficiencies in completing the work and quality concerns as a result of misalignment of original fastener hole locations. There are extensive examples of misaligned fastener holes being plugged using the “double flush” technique. This technique is not supported in the Douglas DC-3 SRM and can lead to inadequate edge distance (ED) on fasteners leading to structural weakness. I could find no evidence of independent DER evaluation or FSDO field approval of this technique, leading me to suggest that this situation may constitute a regulatory compliance issues associated with 14 CFR part 43.13
- DAMAGES:
  - Costs to date associated with the installation of reclaimed windshield structure
  - Cost to remove and replace reclaimed windshield surround:
    - Removal - 48 Hr’s @\$75/Hr = \$3600.00
    - Reinstallation of surplus or remanufactured windshield support structure 64Hr’s @ \$75/Hr = \$4800.00
    - Provision of surplus or remanufactured windshield support structure - \$8,500
  - Total = \$16,900.00 + costs to date

#### 2. REPAIR OF STATION 0 - 20 BULKHEAD USING RECLAIMED MATERIALS -

- The decision to recover material from Aircraft S/N 19721 lead to inefficiencies in completing the work and quality concerns as a result of misalignment of original fastener hole locations. There are extensive examples of misaligned fastener holes being plugged with using the “double flush” technique. This technique is not supported in the Douglas DC-3 SRM and can lead to inadequate edge distance (ED) on fasteners leading to structural weakness. I could find no evidence of independent DER evaluation or FSDO field approval of this technique. Leading me to suggest that this situation may constitute a regulatory compliance issues associated with 14 CFR part 43.13
- DAMAGES:
  - Total Costs to date associated with installation of reclaimed 0-20 Bulkhead
  - Cost to remove and replace reclaimed 0-20 bulkhead:
    - Removal - 24 Hr’s @\$75/Hr = \$1800.00
    - Reinstallation of surplus or remanufactured 0-20 bulkhead 56Hr’s @ \$75/Hr = \$4200.00
    - Provision of surplus or remanufactured 0-20 bulkhead - \$6500
  - Total = \$ 12,500.00 + costs to date.

#### 3. STORAGE OF UNSECURED AIRFRAMES:

- PM’s choice to leave the major components of aircraft S/N 4715 and S/N 19366 in outside storage unsecured and unprotected lead to their destruction in a wind storm. Despite the fact that the customer was aware of the decision to place the major components in outside storage, these component were still in PM’s “care custody and control” Placing these item’s in outside storage without taking any

precautions to secure them, shelter them or to provide a means to move them back under cover lead to the substantial damage to this historic aircraft.

- DAMAGES - substantial damage of aircraft S/N 4715:
  - To prepare fuselage for installation on existing centre section from A/C S/N 4715 - labor hours - 2050Hr's @ \$75 / hr. = \$153,750
  - Repair work to right outboard wing of aircraft S/N 19366 - 320 hours @ \$75 / hr = \$48,000
  - Replacement costs for both outboard main wings from aircraft S/N 19721 - qty 2 at \$25,000 each = \$50,000
  - Replacement costs - project condition aircraft to replace S/N 4715 (\$85,000)
  - Total = \$336,000

5. Repainting of control pedestal:

- Cleaning and preparation - 12 hours
- Masking for paint strip - 6 hours
- Paint strip - 6 hours
- Wash and decontamination - 4 hours
- Masking for paint - 3 hours
- Application of primer to customer specification - 2.5 hours
- Demasking and clean up - 2.5 hours
- total labor - 36 @ \$75/hr = \$2700
- Third party services - hazmat disposal fee - \$650
- Materials - masking materials, prep and paint materials - \$670
- Provision of records of work performed - No charge.
- Total parts, materials and services - \$1320
- Total - \$4020.00

TERRY ROGERS / PERRIN WARBIRDS (TR)

1. INSTALLATION OF DOUBLERS AD

- Notes: poor quality of holes - hole tolerances appear to be excessively board in many locations for the high lock fasteners used. Fastener substitution: Neither FAA AD 92-06-15 nor Douglas S/B 229 allow the use of Highlocks in all horizontal locations. No evidence of approved fastener substitution found. Potential regulatory non-compliance 14 CFR part 43.13
- DAMAGES:
  - Total Costs to date associated with installation of preventative doublers
  - Cost to remove and replace existing doubler installation (partially complete):
    1. Removal - 24 Hr's @\$75/Hr = \$1800.00
    2. Fabricate and install doublers per Douglas Service Bulletin #263 - 160Hr's @ \$75/Hr = \$12,000.00
    3. parts and materials - \$2850
  - Total = \$ 16650.00 + costs to date.

2. SPAR REPAIRS CONTRIBUTING TO MISALIGNMENT OF WING ATTACH ANGLE

- The repair of centre section, left outboard wing attach angle structure and rear upper spar have produced significant out of tolerance issues between spar "butt plates" and upper surface compression angles. The level of reassembly suggest that this repair has been completed yet a significant "out of tolerance" issue exists. Douglas S/B 262 gives clearly established "fits" and clearance limits for the location of these critical wing load path components. Gross dimensional errors were observed. Extensive reworking will be required to prevent a safety or flight / Airworthiness issue.

- AN 470 rivets used in repairs that intersect wing attach angles. DD rivets have been removed from attach angle flanges and replaced with AN470 rivets. No approval for fastener substitution.
  - DAMAGES:
    - Cost to complete work to date
    - Labor required to correct attach angle issues (320 hrs @ \$75/hr = \$24,000)
    - Materials required to correct attach angle issues ( \$2450)
    - Total - (\$26,450)
3. INCOMPLETE PAINT STRIP AND RE-PAINT OF WING CENTER SECTION:  
To complete the paint stripping and repainting of the original center section from A/C S/N 4715
- DAMAGES:
    - Paint strip, repaint centre section labor (240 hours @ \$75/hr = \$6160)
    - Materials and hazmat disposal fees (\$4400)
    - Total -= \$10,560)
4. NACELLE R & R AS A MEANS OF FACILITATING THE R-1830-92 INSTALLATION
- Note - misguided decision to remove and replace Nacelles as a solution to engine type change. Regardless: the nacelle change techniques employed are poor and ultimately un-successful. No evidence of DER or FSDO Field approval for INTERNAL Nacelle structure doublers fabricated and used in an attempt to mate replacement nacelle assembly to center section of S/N 4715.
  - DAMAGES:
    - Total Costs to date associated with removing original nacelles: \$23,790 (Rogers' work on nacelles) plus costs associated with separation of the center section from fuselage.
    - Cost to prepare and reinstall the original Nacelles -and adapt them to accept the R-1830 installation:
      - Cleaning and preparation - 32 Hr's @\$75/Hr = \$2400.00
      - Reinstallation of original nacelle structures 80Hr's @ \$75/Hr = \$6000.00
      - Adaptation of existing firewalls to accept R-1830 installations 120 Hr's @ \$75/Hr = \$9000
      - Hardware, materials and engine / Propeller control components - \$2850
    - Total = \$ 20,250.00 + costs to date.

ADDITIONAL OPINIONS:

- COST OF WORK ACCOMPLISHED - I have observed the results of the work performed on both aircraft S/N 4715 and S/N 19366 by the defendants. It is my opinion that based on the work performed, the defendants substantially overcharged the Plaintiffs. Although it is difficult to place an exact figure on the amount by which the Defendants overcharged the Plaintiffs, it is my opinion that the total of all work performed by the Plaintiffs should have cost no more than \$350,000. I base this opinion on my own knowledge and experience in providing restoration services for private clients on historic aircraft.
- WORK REMAINING IN CONNECTION WITH A/C S/N 19366 - Based on my observations of the current condition of aircraft S/N 19366, it is my opinion that substantial work remains before this aircraft could be considered airworthy. For example, both outboard main wing assemblies require major structural repair, both outboard main wings require installation. All primary flight controls require installation and rigging. The vertical fin requires installation, both propellers need to be reassembled and installed and propeller controls rigged. The aircraft will also require a full inspection be accomplished in accordance with an approved inspection program, the aircraft AD compliance history will require review and updating. This work would represent approximately 1550 man hours of labor (which equates to \$112,500.)
- STOLEN ELEVATOR CONTROL SURFACE - It is my understanding that, for a period of approximately 11 months JT took without Plaintiffs permission, one of the airworthy elevators installed on aircraft S/N



19366 for use on his own aircraft. An airworthy Elevator is valued at approximately \$12,000, and they have a lifespan of approximately 15 years. Accordingly it is my opinion that the value of Plaintiffs loss of the use of that elevator for 11 months is approximately \$800.

- INSTRUMENTS - it is my understanding that multiple instruments form A/C S/N 4715 were dispatched for overhaul to an agency not appropriately certificated to accomplish repair to instruments. 14 CFR Part 43 Appendix A identifies any repair or calibration of any instrument as a major repair. Major repairs are subject to additional requirements and 14 CFR Part 65.81 precludes a certified mechanic from performing any repair or calibration to an instrument. It is my opinion that all the affected instruments will need dispatched to an appropriately rated repair station (certified under 14 CFR part 145)for overhaul, repair and calibration at a likely cost of between \$5000 and \$9000. The costs incurred to date should also be considered when calculating damages.
- STOLEN AND MISSING PARTS - It is my understanding that a number of airframe components (including 2 airworthy elevators and 2 airworthy ailerons), landing gear components (including a ship set of expander tube brakes and Bendix brake drums), instruments as well as several rare and historic examples of original military equipment have been stolen from Plaintiff. It is my opinion that these components and accessories would be valued between \$110,000 and \$130,000

END

**Exhibit 138: Texas Business and Commerce Code Chapter 17, DTPA**

## Exhibit 90: Texas Business and Commerce Code Chapter 17, DTPA

BUSINESS AND COMMERCE CODE

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.01. DEFINITIONS. In this chapter, unless the context requires a different definition,

(1) "container" includes bale, barrel, bottle, box, cask, keg, and package; and

(2) "proprietary mark" includes word, name, symbol, device, and any combination of them in any form or arrangement, used by a person to identify his tangible personal property and distinguish it from the tangible personal property of another.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

SUBCHAPTER B. DECEPTIVE ADVERTISING, PACKING, SELLING, AND EXPORTING

Sec. 17.08. PRIVATE USE OF STATE SEAL. (a) In this section:

(1) "Commercial purpose" means a purpose that is intended to result in a profit or other tangible benefit but does not include:

(A) official use of the state seal or a representation of the state seal in a state function;

(B) use of the state seal or a representation of the state seal for a political purpose by an elected official of this state;

(g) Nothing in this subchapter shall apply to a cause of action arising from a transaction, a project, or a set of transactions relating to the same project, involving total consideration by the consumer of more than \$500,000, other than a cause of action involving a consumer's residence.

Exhibit 139: Agreed Motion to Transfer 2-3-17



of cases within a county is that the case must be transferred to a court that has jurisdiction over the case.” *In re Siemens Corp.*, 153 S.W.3d 694, 697 (Tex. App.–Dallas 2005, no pet.). In accordance with that statute, Tarrant County Local Rule 1.03(f) provides that cases “may be transferred between District Courts . . . subject to the jurisdictional limitations of the court to which they are transferred.” Rule 1.03(f) also requires that motions to transfer be filed in the “earliest filed case.”

On January 6, 2017, Governor Greg Abbott appointed the Hon. Mark Pittman, then presiding over this Court, to the Second Court of Appeals. At this time, no judge has been appointed to replace Judge Pittman in this Court. The case is currently set for trial on March 20, 2017.

Currently pending before the Hon. Susan McCoy in the 153rd Judicial District Court is the lawsuit *Seth Washburne v. Vintage Flying Museum, Inc.*, et al., Cause No. 153-275478-14, in which Washburne is also a plaintiff. Although that suit does not include any of the named defendants in this matter, certain issues and background facts in that suit relate to certain issues and background facts in this suit. Importantly, 153rd Judicial District Court has jurisdiction over the case that the Plaintiffs and Defendants agree to transfer.

Due to the uncertainty surrounding the appointment of Judge Pittman’s replacement, and because of Judge McCoy’s familiarity with the background of this dispute and her expressed willingness to try this case, Plaintiffs and Defendants jointly request that the Court transfer this matter to the 153rd Judicial District Court, and request that the case be set for a two-week trial by Judge McCoy to be completed anytime April 1-30, 2017 or May 1-23, 2017. Judge McCoy is aware of the request for transfer and has indicated that she is amenable to the request for transfer.

The parties request for this transfer is not for the purpose of delay, but so that justice may be done.

DATED: February 3, 2017

Respectfully submitted,

/s/ Kent D. Krabill

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**ATTORNEYS FOR PLAINTIFF**

/s/ John V. Dowdy, Jr. (with permission)

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**ATTORNEY FOR DEFENDANTS  
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INC**

4822-8549-8433, v. 2





SIGNED on February \_\_\_\_\_, 2017.

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PRESIDING JUDGE

4839-1170-9761, v. 2

Exhibit 140: Plfs' Mtn for Reconsideration & Clarification of MSJ  
Ruling 1-12-17



granted except as to the elevator that the parties each discussed.” See Ex. 1 (emphasis added). If the Court’s intent was to limit this ruling solely to Defendant Patrick Mahaffey’s Motion (which would make sense, as Plaintiffs’ “aiding and abetting” claim has only been alleged against Mahaffey, and this was exactly what was discussed at the hearing), Plaintiffs ask solely that such ruling be clarified to explicitly provide as much.

However, if the Court’s intent was to grant the Terry Defendants’ motions as to Plaintiffs’ theft and conversion claims with respect to **all** of Plaintiff’s allegations of theft, except for the elevator, then Plaintiffs respectfully request that the Court reconsider this ruling.

Plaintiffs’ theft and conversion claims against Defendant Mahaffey are, indeed, limited to the elevator incident discussed at length at the hearing. However, Plaintiffs’ theft and conversion claims against the Terry Defendants concern substantially more of Plaintiffs’ property, items which were not discussed at length at the hearing, but which are discussed at length in Plaintiffs’ Combined Response to the Terry Defendants’ Traditional and No-Evidence Motions for Summary Judgment (the “Response”), and for which Plaintiffs attached substantial evidence in support.

### **1. Parts purchased in Puerto Rico**

For example, Plaintiffs’ Response and supporting declaration provide that, when Plaintiffs purchased the airplane “Billie” in Puerto Rico, Billie had a rudder, two elevators, and two ailerons.<sup>1</sup> The purchase of Billie also included a spare elevator.<sup>2</sup> Although Plaintiffs eventually recovered their stolen elevator, Terry (and, by extension, the Terry Defendants) refused to return to Plaintiffs their rudder from Billie, Billie’s two elevators, and one of Billie’s ailerons.<sup>3</sup>

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<sup>1</sup> See Response Ex. 1, at ¶ 26.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

Plaintiffs' evidence also demonstrates that, in January 2010, Plaintiffs purchased a hydraulic accumulator rubber diaphragm for approximately \$450, because the one on Billie was bad.<sup>4</sup> This was shipped to Puerto Rico and was eventually in Terry's possession while he worked on Billie.<sup>5</sup> There were two additional rubber diaphragms that were included in Plaintiffs' purchase of Billie. Plaintiffs demanded that Terry return to them the two of these parts that were not installed on the airplanes, but Terry has refused to turn them over.<sup>6</sup> Likewise, Plaintiffs demanded that Terry return to them the two new spare tires, a tire and wheel assembly, and five cylinder change tools that were included in the Billie purchase, but Terry failed to return these.<sup>7</sup>

## **2. Parts purchased in San Antonio**

Plaintiffs' evidence, including third-party deposition testimony, also reveals that Terry stole parts that were purchased on Plaintiffs behalf in San Antonio. As discussed in the Response, in April 2010, Terry and several of his associates visited the Tradewinds Aircraft store in San Antonio, Texas.<sup>8</sup> Terry emailed Plaintiffs about the purchase they made at Tradewinds, which included a "complete" cargo floor, 2 overhead sub panels, 2 new jump lights, 2 C47 radios, 1 used paddle prop, and 4 original masts and Pitot tubes.<sup>9</sup> Terry informed Plaintiffs that the entire purchase was \$4,300, and that they spent approximately \$475 for hotel rooms, food, and fuel for the trip.<sup>10</sup> Terry charged the full cost of the parts and all of the travel costs to Plaintiffs, which Plaintiffs paid.<sup>11</sup>

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<sup>4</sup> *Id.* at ¶ 27; Response Ex. 23 (1/20/10 invoice from Tradewinds).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Response Ex. 1 at ¶ 28; Ex. 24 (Terry 4/7/10 email); Ex. 25 (Terry 4/12/10 letter)

<sup>9</sup> Response Ex. 25 (Terry 4/12/10 letter)

<sup>10</sup> *Id.*

<sup>11</sup> Response Ex. 1 at ¶ 28; Ex. 26 (check for \$4,300).

Despite representing to Plaintiffs that these items were purchased on Plaintiffs' behalf, and despite Plaintiffs actually paying for these, Terry never turned over to Plaintiffs the two C47 radios, paddle prop, and original masts and pitot tubes.<sup>12</sup>

Later, Plaintiffs discovered that this purchase also included six very rare parapacks and a navigator's dome.<sup>13</sup> Scott Perdue, Terry's associate, was present for the trip, was responsible for negotiating the purchase, and confirmed that he negotiated a single price for everything that was purchased at Tradewinds in April 2010, and that the "lot" that he purchased included the parapacks and the navigator's dome.<sup>14</sup> Accordingly, the parapacks and dome belong to Plaintiffs, but Terry refuses to turn them over, claiming that he purchased these for himself.<sup>15</sup>

### **3. Other Parts**

Terry has refused to turn over to Plaintiffs multiple other parts, including Missouri's two ailerons, cockpit instruments from Billie and Missouri, Billie's and JR's original floor, and spare paint used on JR.<sup>16</sup> Plaintiffs paid for each of these items while Terry was in charge of Plaintiffs' projects, but Terry has refused to provide these to Plaintiffs.<sup>17</sup>

### **4. Plaintiffs' claims must survive summary judgment**

This evidence provides far more than a scintilla of evidence<sup>18</sup> supporting the elements of Plaintiffs' theft and conversion claims, *which the Terry Defendants challenged only on a "no-*

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<sup>12</sup> Response Ex. 1 at ¶ 28.

<sup>13</sup> *Id.*

<sup>14</sup> Response Ex. 4 (Perdue depo) at 76:23-79:3; 79:20-22; 82:23-83:21; Ex. 27 (Perdue 9/28/12 email)

<sup>15</sup> Response Ex. 1 at ¶ 28; Ex. 21 (Terry depo) at 706:10-23; 708:4-11.

<sup>16</sup> Response Ex. 1 at ¶ 29.

<sup>17</sup> *Id.*

<sup>18</sup> Once a movant specifically states the element for which he claims there is no evidence, the burden shifts to the non-movant to bring forth merely "more than a scintilla of probative evidence" that raises a genuine issue of fact. *Fieldtech Avionics & Instruments, Inc. v. Component Control.Com, Inc.*, 262 S.W.3d 813, 824 (Tex. App.—Fort Worth 2008, no pet.). In reviewing a no-evidence motion for summary judgment, courts examine the entire record in the light most

*evidence basis.*” The evidence demonstrates that (1) Plaintiffs owned, possessed, or had the right to immediate possession of the parts discussed above; (2) the Terry Defendants unlawfully and without authorization assumed and exercised dominion and control over these parts to the exclusion of, or inconsistent with, Plaintiffs’ rights; and (3) Plaintiffs suffered injury. *Lopez v. Lopez*, 271 S.W.3d 780, 784 (Tex. App.—Waco 2008, no pet.) (setting forth the elements of conversion). Plaintiffs demanded the return of the parts discussed above, since Plaintiffs paid for them, but Terry refused to do so and, in fact, now claims that certain parts that Plaintiffs paid for are now his.<sup>19</sup>

This evidence also supports Plaintiffs’ Theft Liability Act claim against the Terry Defendants.<sup>20</sup> The evidence discussed above—all of which is included in Plaintiffs’ Response to the Terry Defendants’ Motion—demonstrates that (1) Plaintiffs had a possessory right to the parts discussed above; (2) the Terry Defendants unlawfully appropriated, secured, or stole Plaintiffs’ parts without Plaintiffs’ consent; (3) the unlawful taking was made with the intent to deprive Plaintiffs of the property; and (4) Plaintiffs sustained damages as a result of the theft. Tex. Civ. Prac. & Rem. Code § 134.002-005 (setting for the elements of a Theft Liability Act claim).

As shown above, and set forth more fully in the evidence supporting Plaintiffs’ Response, Plaintiffs’ theft and conversion claims against the Terry Defendants concern far more than just the elevator, which the Defendants chose to focus on at the hearing. For these reasons, Plaintiffs

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favorable to the non-movant, and indulge every reasonable inference and resolve any doubts against the movant. *Id.*; *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006).

<sup>19</sup> Response Ex. 1 at ¶ 28; Ex. 21 (Terry depo) at 706:10-23; 708:4-11.

<sup>20</sup> In their Motion, the Terry Defendants made only a general challenge to Plaintiffs’ Theft Liability Act claim by simply claiming that there was no evidence showing that “any defendant was guilty of one or more essential elements of theft.” This kind of “general” challenge to a claim is insufficient to support summary judgment. *See Fieldteck*, 262 S.W.3d at 824 (“A no-evidence challenge that only *generally* challenges the sufficiency of the nonmovant’s case and *fails to state specific elements* is fundamentally defective and insufficient to support summary judgment as a matter of law.”).



respectfully request that the Court either (1) clarify that its ruling on the theft and conversion claims is limited to Defendant Mahaffey, or (2) reconsider its ruling and deny the Terry Defendants' Motions, in full, as to Plaintiffs' theft and conversion claims. Plaintiffs further request all other and further relief to which they may be justly entitled.

DATED: January 12, 2017

Respectfully submitted,

*/s/ Kent D. Krabill*

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I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on January 12, 2017.

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*/s/ Kent D. Krabill*  
\_\_\_\_\_

Kent D. Krabill

4812-5991-8144, v. 2

JUDGE FRED W. DAVIS, SENIOR JUDGE

FAX RULING BY JUDGE FRED W. DAVIS

DATE: JAN 12 2017

RE: B52 268 735-13

Washburne

VS.

JAMES Terry et al

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TO: John Dowdy Jr

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TO: \_\_\_\_\_

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TO: \_\_\_\_\_

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Gentlemen,

Patrick MAHAFFEY Motion for Sum Jdnt  
on Agency is granted.

ALL the motions for Summary Jdnt Regarding  
theft, conversion, Aiding and Abetting, Conspiracy  
are granted except as to the Elevator that  
the parties each discussed.

ALL other motions for Sum Jdnt are  
denied.

*Fred Davis*  
1/12/17



Exhibit 141: Plfs' Response to Motion to Consolidate 2-22-17



These two suits have rightly proceeded separately for more than two years. Now, on the verge of trial, Defendants bring a bare-bones Motion to Consolidate the two cases (the “Motion”) in an apparent effort to further delay proceedings and prevent Plaintiffs from obtaining the justice they have long sought.

Notwithstanding Defendants’ entirely conclusory statements to the contrary, these suits contain *no* common questions of law or fact. Accordingly, as more fully discussed below, this Court should deny Defendants’ Motion.

### **LEGAL STANDARD**

Courts have discretion to consolidate actions that involve “a common question of law or fact.” Tex. R. Civ. P. 174(a). The purpose of this rule is “to further convenience and avoid prejudice, and thus promote the ends of justice.” *In re Gulf Coast Bus. Dev. Corp.*, 247 S.W.3d 787, 794 (Tex. App.—Dallas 2008, orig. proceeding) (quoting *Womack v. Berry*, 291 S.W.2d 677, 683 (Tex. 1956)). Courts may consolidate actions that “relate to substantially the same transaction, occurrence, subject matter, or question.” *In re Gulf Coast*, 247 S.W.3d at 794. “The actions must be so related that the evidence presented will be material, relevant, and admissible in each case.” *Id.* In exercising its discretion, a court must balance judicial economy and convenience, if any, that may be gained from consolidation against the risk of an unfair outcome because of prejudice or jury confusion. *See id.* Even where cases share common questions of law and fact, a court still abuses its discretion when consolidation results in prejudice to the complaining party. *See id.* at 794-95.

### **ARGUMENT**

This case and the Museum Case share no common questions of law or fact, and are not related to the same transaction, occurrence, subject matter, or question.

Defendants barely attempt to establish the requirements for consolidation. Defendants state in conclusory fashion that the cases “share[] common questions of law and fact.” *See* Motion, at p. 2. The Motion also states, without any support, that “there are designated fact witnesses common to both cases” and that “facts stated to support various legal theories are common to both cases.” However, Defendants wholly fail to support these conclusory allegations. In fact, the cases share *no* common questions of law or fact.

**A. The two cases do not involve any of the same defendants.**

*First*, the cases do not involve any of the same defendants. Defendants wrongfully assert that the “claims asserted by Plaintiff in [the Museum Case] include claims against Jim Terry, one of the other Defendants in this case.” While Mr. Washburne mentions his dispute with Mr. Terry in the Museum Case, Mr. Terry is not a defendant in the Museum Case, as Mr. Washburne, in fact, is *not* asserting any claims (i.e., causes of action) against Mr. Terry. *See* Ex. A, Plaintiff’s Fourth Amended Petition in the Museum Case.

**B. The acts and omissions complained of in the two cases occurred years apart.**

*Second*, the acts and omissions complained of in the two actions occurred years apart from one another. Plaintiffs’ allegations in this case principally concern Defendants’ actions related to Defendants’ breaches of contract, theft, and poor work on Plaintiffs’ vintage aircraft, which occurred between 2010 and mid-2012. In contrast, Mr. Washburne’s wrongful arrest, which forms the basis for all of his claims in the Museum Case, occurred in April 2014, long after Plaintiffs severed their relationship with any of the Defendants in this matter.

**C. The two cases concern different subject matters and claims.**

*Third*, the suits concern entirely different subject matters and claims. This case concerns Defendants’ actions related to the restoration of Plaintiffs’ historic World War II aircraft, including



the theft of certain of Plaintiffs' aircraft parts. In contrast, the Museum Case concerns other defendants' malicious prosecution and false imprisonment of Mr. Washburne after they misrepresented to the police that Mr. Washburne was trespassing. There are no common questions of law between Plaintiffs' claims of breach of contract, breach of warranties, and fraud, in this case, and Plaintiffs' claims of malicious prosecution, false imprisonment, and intentional infliction of emotional distress (among other claims) in the Museum Case. Likewise, the evidence supporting Mr. Washburne's claims in the Museum Case has no bearing on Plaintiffs' causes of action in this case. Simply put, there is no material evidence common to the two cases.

At most, the cases share some basic, non-material common background information (for example, that Mr. Washburne was, at one time, a tenant at the Vintage Flying Museum).<sup>1</sup> However, this common background information is insufficient to overcome the substantially different operative facts and law and establish the "relatedness" requirement necessary to consolidate the cases. *See In re Gulf Coast*, 247 S.W.3d at 796 ("The existence of some common evidence or background information which may be developed in each case does not alter the fact that the two cases stem from materially different operative facts and law applicable to each case. On this record, the two lawsuits do not meet the 'relatedness' requirement.").

**D. The two cases have different witnesses.**

*Fourth*, the two cases have no overlapping witnesses other than Mr. Washburne. Defendants claim—without support—that “there are designated fact witnesses common to both

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<sup>1</sup> Because of this basic, non-material common background information, and because of Judge McCoy's expressed willingness to try this case, Plaintiffs and all Defendants previously filed an Agreed Motion to Transfer this action to Judge McCoy's Court (the 153rd Judicial District Court) following the appointment of Judge Pittman to the Second Court of Appeals. *See Ex. B*, Agreed Motion to Transfer. In the Agreed Motion, the parties requested that the case be set for trial in April or early May in Judge McCoy's Court. Notably, the parties did not request and did not intend to seek a consolidation of the cases when they filed the Agreed Motion to Transfer. Plaintiffs do not have a preference as to which court tries the case. However, as argued in this response, Plaintiffs oppose consolidation.

cases.” Plaintiffs previously designated Dana Wood, a defendant in the Museum Case, as a person potentially with relevant knowledge in this case. However, after deposing Ms. Wood, it is clear that she has no relevant knowledge to the claims in this case, and thus is not included on Plaintiffs’ witness list. Likewise, it is possible that Mr. Mahaffey, a defendant in this case, has some limited relevant knowledge regarding the Museum Case, but Plaintiffs will not know the extent of Mr. Mahaffey’s relevant knowledge until he is deposed in that case. Even in such a case, Mr. Mahaffey’s testimony related to the Museum Case would be unrelated to Plaintiffs’ claims against him in this case.

**E. Any convenience that might be obtained by consolidation would be substantially outweighed by the substantial difference in each case and the risk of prejudice or jury confusion.**

*Fifth*, any convenience that might be obtained by consolidation would be substantially outweighed by the substantial difference in each case and the risk of prejudice or jury confusion. This case, by itself, includes a complicated 2+ year timeline, three groups of defendants, multiple experts, complex restoration work on historic aircraft, competing contract interpretations, and considerable disagreement over the scope and price of work agreed to and performed. Sorting through the voluminous evidence and testimony related to this case alone will be a substantial task for a juror. Consolidating this case with the Museum Case will only complicate that task by including wholly separate defendants, claims, and events separated in time by two years from the events of this case. Combining these cases would result in a high likelihood of jury confusion, which would prejudice Plaintiffs. This likelihood of prejudice is reason alone to refrain from consolidating these cases. *See In re Gulf Coast*, 247 S.W.3d at 794-95 (“Even if the cases share

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I hereby certify that a true and correct copy of this document has been served on the following counsel of record *via e-mail* on February 22, 2017.

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*/s/ Kent D. Krabill*  
\_\_\_\_\_

Kent D. Krabill

4850-6719-6992, v. 4

common questions of law and fact, an abuse of discretion may be found if the consolidation results in prejudice to the complaining party.”).

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’ Motion and refuse to consolidate this case with the Museum Case. Plaintiffs request all other and further relief to which they may be justly entitled.

DATED: February 22, 2017

Respectfully submitted,

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