

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RNS SERVICING, LLC, and Illinois Limited  
Liability Company,

Plaintiff,

v.

SPIRIT CONSTRUCTION SERVICES, INC.,  
a Delaware Corporation, STEVEN VAN DEN  
HEUVEL, a citizen of the State of Wisconsin,  
and SHARAD TAK, a Citizen of the State of  
Florida,

Defendants.

Case No. 17-cv-108

Judge Edmond E. Chang

**PLAINTIFF RNS SERVICING, LLC'S RESPONSE  
TO DEFENDANTS' RULE 56.1(a)(3) STATEMENT OF FACTS**

**AND**

**PLAINTIFF RNS SERVICING, LLC'S RULE 56.1(b)(3)(C) STATEMENT OF  
ADDITIONAL UNDISPUTED FACTS THAT REQUIRE DENIAL OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

**PLAINTIFF RNS SERVICING, LLC'S RESPONSE  
TO DEFENDANTS' RULE 56.1(a)(3) STATEMENT OF FACTS**

Plaintiff RNS Servicing, LLC ("RNS Servicing"), by and through its undersigned attorneys, and pursuant to Local Rule 56.1(b)(3), submit the following Response to Defendants' Rule 56.1 Statement of Facts in opposition to Defendants' Joint Motion for Summary Judgment:

**I. THE PARTIES**

1. Spirit is a large scale construction contractor servicing the paper industry, with experience in, inter alia, construction of tissue paper plants. (First Amended Complaint (ECF No. 31), filed September 25, 2017 ("Exhibit 1")<sup>1</sup> ¶ 7).

**RESPONSE:** Admitted.

2. Steve VDH was, in 2007, President of Spirit. (Transcript of December 18, 2018 Deposition of Steve Van Den Heuvel ("Exhibit 2"), 7:19-8:2).

**RESPONSE:** Admitted.

3. Sharad Tak is an individually-named defendant in this matter. In 2007, he was the Manager of ST Paper Holdings, LLC which is the Manager of ST Paper, LLC ("ST Paper"). See Declaration of Sharad K. Tak (ECF No. 41), filed November 27, 2017) ("Exhibit 3"), ¶ 3.

**RESPONSE:** Admitted.

4. RNS Servicing, Inc., is an LLC located in Illinois, with two members: Stephen Csar and Rebecca Elli. (Exhibit 1, ¶ 4).

**RESPONSE:** Admitted.

5. ST Paper is a Delaware limited liability company with its principal place of business in the State of Wisconsin. See Exhibit 3, ¶ 3.

**RESPONSE:** RNS Servicing admits that ST Paper is a Delaware limited liability company with its principal place of business in the State of Wisconsin. However, RNS Servicing denies that ST Paper is a party to this matter. *See* Exhibit 1 at ¶ 53.

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<sup>1</sup> All references to numbered Exhibits 1-12 herein are references to exhibits to the Affidavit of Robert M. Romashko in Support of Defendants' Motion for Summary Judgment [ECF 66].

## II. IMPORTANT NON-PARTIES

6. IFC was an Illinois corporation which provided, among other services, equipment lease financing to commercial and industrial entities throughout the United States. IFC filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on or about July 27, 2009. (Exhibit 1, ¶ 20).

**RESPONSE:** Admitted.

7. Marc Langs began working for IFC in 2003, in corporate development. By 2006, he became CFO, and he remained in that role until 2009. (Transcript of December 18, 2018 Deposition of Marc Langs (“Exhibit 4”), 10:15-18, 11:4-5). Langs now works as a consultant for RNS in relation to various contracts of IFC’s acquired by RNS. (Exhibit 4, 6:6-9).

**RESPONSE:** RNS Servicing admits that Marc Langs began working for IFC in 2003, in corporate development and by 2006, he became CFO. However, RNS Servicing denies that remained that in that role until 2009. More specifically, Marc Langs resigned as CFO, Executive Vice President, and any other offices he may have held at IFC on June 25, 2009. *See* M. Langs Dec. [ECF 71] at ¶ 3; 6/25/2006 M. Langs Resignation, attached as Exhibit GG to B. Langs Dec. [ECF 74]

8. RNS’s members are Steve Csar and Rebecca Elli, both of whom were formerly affiliated with IFC. Csar worked on nonrecourse and middle market credit transactions, and was part of IFC’s credit committee. Rebecca Elli served as general counsel for IFC. (Exhibit 4, 25:4-19).

**RESPONSE:** RNS Servicing admits only that Csar worked on nonrecourse and middle market credit transactions.

RNS Servicing denies that Csar was part of IFC’s credit committee during his entire tenure as an employee there. Rather, since the IFC Credit Committee had revolving members, Csar served on IFC’s credit committee on different occasions throughout his employment at IFC. *See* S. Csar Dec. [ECF 72] at ¶ 4.

RNS Servicing denies that Elli served as IFC's general counsel the entire time she was employed by IFC. While Elli was worked for IFC from March 2004 through July 7, 2009, Rebecca Elli was an independent contractor for IFC providing legal services for IFC with respect to transactional matters on a contract basis. On July 8, 2009, Ms. Elli was hired as IFC's general counsel and remained IFC's general counsel for less than three weeks until July 27, 2009—*i.e.*, the date IFC filed for Chapter 7 bankruptcy relief. Further, from September 2005 through July 27, 2009 (either as an independent contractor or as general counsel), Ms. Elli worked remotely from Vancouver, British Colombia, Canada while IFC was located in Morton Grove, Illinois. Moreover, from March 2004 through July 7, 2009, IFC had other legal counsel (both in-house counsel and outside counsel) that handled IFC's various other litigation and corporate matters, including *IFC v. TPTC, et al.*, Case No. 07 C 4351 in the Northern District of Illinois (the "Second IFC Lawsuit"). *See* R. Elli Dec. [ECF 73] at ¶¶ 3-7.

9. Ron Van Den Heuvel is Steve VDH's brother. He ran several businesses in the paper manufacturing industry, not affiliated with Spirit Construction, including Tissue Products Technology Corp. ("TPTC"), Partners Concepts Development, Inc., ("PCDI"), and Eco-Fibre, Inc. ("Eco-Fibre"). (Exhibit 2, 31:14-32:24).

**RESPONSE:** RNS Servicing admits that Ron Van Den Heuvel ("Ron VDH") is Steve VDH's brother and that he ran several businesses in the paper manufacturing industry including, but not limited to, Ron VDH, TPTC, PCDI, and Eco-Fibre.<sup>2</sup>

RNS Servicing denies that Ron VDH, TPTC, PCDI, and Eco-Fibre are unaffiliated with Steve VDH and/or Spirit. To wit:

(a) Ron VDH founded Spirit, as well as another affiliated company called Vos Electric, Inc. ("Vos Electric"). At least as of April 10, 2008, Ron VDH held some licenses for

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<sup>2</sup> All capitalized terms in this Response to Defendants' Rule 56.1 statement of facts shall have the meaning ascribed to them in the First Amended Complaint ("FAC") [ECF 31] unless otherwise noted in this document.

both Spirit and Vos Electric. *See* 4/10/2008 Ron VDH Dep Trans., attached as Exhibit W<sup>3</sup> to B. Langs Dec. [ECF 74], at 9:24-10:14; 11:15-18.

(b) Spirit and Vos Electric are both 100% owned by a holding company called VHC, Inc. (“VHC”). Steve VDH and Ron VDH each hold an 8.93% ownership stake in VHC, Inc. *See* Exhibit W at 11:8-14; 4/8/2008 Steve VDH Dep. Trans., attached as Exhibit X to B. Langs Dec. [ECF 74], at 10:2-13, 17:13-16; List of VHC Common Stock Holders, attached as Exhibit Y to B. Langs Dec. [ECF 74]

(c) In at least tax year 2007, Ron VDH was employed by, and received W-2’s from (1) Spirit, (2) Vos Electric, (3) TPTC, and (4) PCDI. *See* Exhibit W at 5:20-23.

(d) Steve VDH held ownership interest in PCDI at least from the late 1990s through 2002. *See* Exhibit X at 11:8-12:6.

(e) As at least as of April 8, 2008, PCDI was a holding company which owned both TPTC and Eco-Fibre, and both TPTC and PCDI were located at 1555 Glory Road, Green Bay Wisconsin, 54304. Eco-Fibre operated a paper pulping facility located at 500 Fortune Avenue, De Pere, Wisconsin, which took waste paper and turned it into market grade de-inked pulp. *See* Exhibit W at 7:1-9:19.

(f) Sometime before 2010, while Steve VDH was president of Spirit, Spirit executed either lump sum contract or a time and materials contract with Eco-Fibre to perform construction upgrades to the Eco-Fibre paper pulping facility PCDI was running through Eco-Fibre. Spirit completed that construction project. *See* Exhibit X at 20:5-22:3.

(g) Prior to the March 27, 2008 Settlement Agreement in the First IFC Lawsuit, TPTC owned Oconto Falls Tissue, Inc. (“Oconto Inc.”)<sup>4</sup> and its assets, including the Oconto

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<sup>3</sup> All references to lettered Exhibits W-JJ herein are references to exhibits to the Declaration of Brian Langs.

Falls Tissue Plant in Oconto Falls Wisconsin. As part of the March 27, 2008 Settlement Agreement in the First IFC Lawsuit, the assets of Oconto Inc. (including the Oconto Falls Tissue Plant) were sold by TPTC to ST Paper I, LLC (“ST Paper I”), a company whose ownership and voting interests were ultimately controlled by Tak, either directly or through parent/holding entities. *See* Exhibit W at 6:1-21; Exhibit D;<sup>5</sup> 9/21/2017 Dep. Trans. of Sharad Tak, attached as Exhibit HH to B. Langa Dec. [ECF 74], at 8:10-12. However, after the Settlement Agreement was executed and the closing occurred on the sale of the Oconto Falls Tissue Plant from TPTC to St Paper I, TPTC remained the owner of Oconto Inc.’s stock. Further, as of at least April 8, 2008, TPTC still remained the owner of Oconto Inc. *See* Exhibit W at 6:1-21.

### III. THE FORTRESS TRANSACTION

10. On June 10, 2005, IFC, as lessor, entered into Master Equipment Lease Agreement No. 801056 (“Master Lease No. 801056”) with TPTC, PCDI, and Oconto Falls, jointly and severally, as co-lessees, for the lease of certain equipment and attachments used for tissue paper manufacturing at the Oconto Falls tissue paper plant in Oconto Falls, Wisconsin. (Exhibit 1, ¶ 23; Exhibit 1, at Exh. C, ¶ A.)

**RESPONSE:** Admitted.

11. IFC thereafter sold, assigned, and transferred to Fortress rights to certain specified lease payments related to Master Lease No. 801056 pursuant to a “Lease Agreement Rights Purchase Agreement” between IFC and Fortress. (Exhibit 1, ¶ 24; Exhibit 1, at Exh. C, ¶ A.)

**RESPONSE:** Admitted.

12. On September 30, 2005, IFC, as lessor, entered into Master Lease Agreement No. 801070 (“Master Lease No. 801070”) with TPTC and Eco-Fibre, jointly and severally, as co-lessees, for the lease of sixteen industrial after-dryers (the “After-Dryers”), along with related equipment and attachments (the “After-Dryer Equipment”). (Exhibit 1, ¶ 25.)

**RESPONSE:** Admitted.

13. Ron, PCDI, and Oconto Falls each executed an unconditional written guaranty of TPTC’s and Eco-Fibre’s obligations under Master Lease No. 801070 and attached Lease Schedules (the “Master Lease No. 801070 Guaranties”). (Exhibit 1, ¶ 26.)

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<sup>4</sup> Oconto Inc. was a co-defendant in the Second IFC Lawsuit.

<sup>5</sup> All references to lettered Exhibits A-L herein are references to exhibits to the FAC [ECF 31].

**RESPONSE:** Admitted.

14. By October 2005, it had become apparent to IFC, Fortress, and GWS Bank that TPTC, PCDI, Oconto Falls, and Eco-Fibre—all companies owned and operated by Ron—would default on Master Lease No. 801056 and Master Lease No. 801070. (Exhibit 1, ¶ 28.)

**RESPONSE:** Admitted.

15. Ron Van Den Heuvel made various proposals to Fortress and IFC to avoid a foreclosure and possible takeover of the Oconto Falls Tissue plant. (Exhibit 4, 40:9-23; 42:10-20).

**RESPONSE:** RNS Servicing denies that the deposition testimony of Marc Langs Defendants cited to support this statement of fact demonstrates that Ron VDH made “various proposals.” Rather, the testimony cited demonstrates that Ron VDH made one specific proposal. *See* Exhibit 4 at 40:9-23; 42:10-20.

#### **IV. THE FORTRESS WORKOUT**

16. These proposals involved the construction or upgrade of tissue paper plants in Wisconsin, Maryland, and Utah, to be owned or co-owned by Sharad Tak or his companies. Under these proposals, Spirit would be hired to perform construction work, and Ron Van Den Heuvel would be designated as a subcontractor for certain tasks, and would use this revenue to repay his obligations to IFC and Fortress. (Exhibit 4, 43:17-47:1; Transcript of the Deposition of Steven Van Den Heuvel, IFC Credit Corp. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., April 8, 2008) (“Exhibit 5”), 107:16-24).

**RESPONSE:** RNS Servicing denies that the deposition testimony of from Steve VDH’s April 8, 2008 deposition which Defendants cite to support this statement of fact establishes, let alone has even any remote relation to the statement. *See* Exhibit 5 at 107:16-24.

RNS Servicing further denies that the deposition testimony of Marc Langs which Defendants cite to support these statements of fact is accurately summarized by the statements. Rather, this deposition testimony cited summarizes one proposal, which Defendants characterize as the “Fortress Workout,” which was comprised of (a) the Settlement Agreement (b) the Master Lease No. 801109, (c) Master Amendment Agreement, (d) the Continuing Pledge Agreement,

and (e) Schedules A and B to the Continuing Pledge Agreement. *See* Exhibit 4 at 43:17-47:1; Exhibits D, E, F, and G. As such, to the extent it was Defendants' intention to summarize the "Fortress Workout," RNS Servicing denies that Defendants' Statement of Fact No. 16 completely or accurately summarizes the "Fortress Workout." *See* Exhibits D, E, F, and G.

## **V. RON VDH'S DEFAULT AND IFC LAWSUIT I**

17. In 2006, TPTC, PCDI, Oconto Falls, and Eco-Fibre defaulted under the terms of Master Lease No. 801056 and Master Lease No. 801070. TPTC, PCDI, Oconto Falls, and Eco-Fibre failed to cure their defaults. (Exhibit 1, ¶ 36.)

**RESPONSE:** Admitted.

18. On August 25, 2006, IFC filed a lawsuit in the United States District Court for the Northern District of Illinois, Eastern Division, against TPTC and Eco-Fibre (as lessees) and Ron, PCDI, and Oconto Falls (as guarantors) (collectively, the "Ron Defendants"), Case No. 06 CV 4618 (the "IFC Lawsuit I"), asserting claims for breach of Master Lease No. 801070 and the related Lease Schedules; for breach of the Master Lease No. 801070 Guaranties; and for injunctive relief for return of the After-Dryer Equipment. (Exhibit 1, ¶ 37).

**RESPONSE:** Admitted.

## **VI. IFC LAWSUIT I SETTLEMENT DISCUSSIONS**

19. On November 14, 2006, Spirit and ST Paper I executed four EPC Contracts. These four EPC Contracts were all executed by Steve VDH, on behalf of Spirit, as Contractor, and Sharad Tak, on behalf of ST Paper I, as Owner. (Tak Decl, ¶ 6; Exhibit 4, 178:11-179:7).

**RESPONSE:** RNS Servicing admits that on November 14, 2006, Spirit and ST Paper I executed four EPC Contracts and that these four EPC Contracts were all executed by Steve VDH, on behalf of Spirit, as Contractor, and Sharad Tak, on behalf of ST Paper I, as Owner. However, RNS Servicing denies that the testimony cited by Defendants establishes these facts because the testimony cited does not include the date of the particular EPC Contracts referenced, which are the four EPC Contracts referenced in Continuing Pledge Agreement and its attached Schedules A and B (the "CPA EPC Contracts")—*i.e.*, November 14, 2006. *Compare* Tak Dec. [ECF 41] at ¶ 6 and Exhibit 4 at 178:11-179:7 with Statement of Fact No. 19.



RNS Servicing therefore asserts that these statements of fact are established by the Continuing Pledge Agreement and attached Schedules A and B which are at issue in this matter and the four CPA EPC contracts referenced therein. *See* Exhibit F; 11/14/2006 Oconto Falls/DePere Upgrades EPC Contract, attached as Exhibit AA to B. Langs Dec. [ECF 74]; 11/14/2006 DePere EPC Contract attached as Exhibit BB to B. Langs Dec. [ECF 74]; 11/14/2006 St. George, Utah EPC Contract attached as Exhibit CC to B. Langs Dec. [ECF 74]; 11/14/2006 Pennsylvania Site EPC Contract attached as Exhibit DD to B. Langs Dec. [ECF 74]

20. On December 22, 2006, in furtherance of a possible settlement agreement, IFC and the Ron defendants executed a “Memorandum of Understanding for Equipment Purchase Agreement and Lease Pay-Off” (the “MOU”). *See* Exhibit 1, ¶ 49; Exhibit 1, at Exh. C.

**RESPONSE:** Admitted.

21. In addition to a full payoff to Fortress and GWS Bank and a partial payoff to IFC, the December 22, 2006 MOU contemplated the execution of a new Master Lease whereby IFC would lease the sixteen After-Dryers to the Ron entities in exchange for \$3.4 million dollars, to be paid back to IFC in installments. *See* Exhibit 1, at Exh. C, Sec. 2.B.

**RESPONSE:** Admitted.

22. The MOU also contemplated assignment of the Ron Defendants’ “rights to receive payments under the Fixed Price Engineering, Procurement and Construction Agreement dated as of August 4, 2006 between ST Paper, LLC and Spirit Construction Services, Inc. up to \$340,000 per month and in an aggregate amount of \$3,400,000.” *See* Exhibit 1, at Exh. C, Sec. 2.B.iv.

**RESPONSE:** Admitted.

23. On April 13, 2007, IFC and the Ron Defendants entered into a Settlement Agreement, effective March 28, 2007, resolving all claims then pending by and among IFC and the Ron Defendants in the IFC Lawsuit I as well as any potential claims IFC and Fortress may have had against the Ron Defendants with respect to the default on Master Lease No. 801056 (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the Ron Defendants agreed to pay a Total Settlement Amount of approximately \$23,400,000 (the “Total Settlement Amount”). (Exhibit 1, ¶ 51; Exhibit 1, at Exh. D).

**RESPONSE:** Admitted.

24. As part of the Settlement Agreement, IFC agreed that the remaining \$3.4 million of the Total Settlement Amount could be paid by PCDI and TPTC to IFC in ten consecutive monthly installments pursuant to a new Master Lease Agreement (“Master Lease No. 801109”), PCDI and TPTC, as described in attached Lease Schedules, with amendments. (Exhibit 1 ¶ 53; Exhibit 1 at Exh. E.)

**RESPONSE:** RNS denies these statements of fact only because it believes these statements of fact were cut and pasted from the FAC and mistakenly left out phrase. Paragraph 53 of the FAC actually reads:

As part of the Settlement Agreement, IFC agreed that the remaining \$3.4 million of the Total Settlement Amount could be paid by PCDI and TPTC to IFC in ten consecutive monthly installments pursuant to a new Master Lease Agreement (“Master Lease No. 801109”), **whereby IFC leased ten of the After-Dryers previously leased under Master Lease No. 801070** to PCDI and TPTC, as described in attached Lease Schedules, with amendments. *See* Master Lease 801070 w/ Lease Schedules and Amendments, attached as Exhibit E.

*See* Exhibit 1 at ¶ 53; Exhibit E (emphasis added to reflect missing text).

25. Ron [VDH] also executed an unconditional written guaranty of PCDI’s and TPTC’s obligations under the new Master Lease No. 801109 and attached Lease Schedules, with amendments (the “Master Lease No. 801109 Guaranty”). (Exhibit 1, ¶ 54.)

**RESPONSE:** Admitted.

26. As a condition for IFC entering into the Settlement Agreement and new master Lease No. 801109, TPTC and PCDI executed a Continuing Pledge Agreement dated March 28, 2007 (the “Continuing Pledge Agreement”). Pursuant to the Continuing Pledge Agreement, TPTC and PCDI pledged and assigned to IFC their right to receive \$3,400,000 in subcontractor payments that the two companies were to receive from Spirit in connection with the four, fully executed EPC Contracts related to the four separate tissue paper plant construction projects as collateral for their indebtedness and lease obligations under the Settlement Agreement and new Master Lease No. 801109. (Exhibit 1, ¶ 55; Exhibit 1, at Exh. F.)

**RESPONSE:** Admitted.

27. On April 18, 2007, in connection with the Settlement Agreement, new Master Lease No. 801109, and Continuing Pledge Agreement, PCDI and TPTC also borrowed an additional \$440,000 from IFC pursuant to a Master Amendment Agreement. (the “Master Amendment Agreement”). The Master Amendment Agreement made explicit reference to and amended the Continuing Pledge Agreement by increasing the amount of subcontractor payments

pledged to IFC as collateral from \$3,400,000 to \$3,902,220. (Exhibit 1, ¶ 56; Exhibit 1, at Exh. G.)

**RESPONSE:** Admitted.

28. Pursuant to the Continuing Pledge Agreement (as amended by the Master Amendment Agreement), TPTC and PCDI pledged and assigned any and all rights to payment of up to \$390,222 per month and payments in the aggregate of \$3,902,220. The Continuing Pledge Agreement further stated that “IFC shall have the first and paramount rights to receive payment under those contracts.” (Exhibit 1 ¶ 57; Exhibit 1 at Exh. F, Sec. 1).

**RESPONSE:** Admitted.

#### **VII. SPIRIT’S ALLEGED REPRESENTATIONS AS PART OF IFC LAWSUIT I SETTLEMENT**

29. On or about March 28, 2007, Steve VDH and Spirit executed two copies of Schedule B to the Continuing Pledge Agreement entitled “Acknowledgment and Consent to Assignment” (“Acknowledgment and Consent”) which stated that TPTC and PCDI “are subcontractors in connection with the [EPC Contracts] and that substantial sums of money in excess of \$3,902,220 will become owing to them pursuant to said contracts.” See Exhibit 1, at Exh. F, Sch. B

**RESPONSE:** Admitted.

30. The Acknowledgment and Consent stated as follows: We confirm that after the date hereof and until receipt by us of written notice to the contrary from you, we will pay all amounts due or to become due by us to TPTC or PCDI, up to \$390,222 per month and in the aggregate amount of \$3,900,222 under the EPC Contracts to you by making payments to you at 8700 N. Waukegan Road, Suite 100, Morton Grove, IL 60053, or pursuant to such wire transfer instructions as you may from time to time provide to us. We confirm that the terms of the EPC Contracts remain in full force and effect and that Tissue Products Technology Corporation and Partners Concepts Development, Inc. are subcontractors there under and that neither we nor TPTC or PCDI are presently in breach of the terms of the EPC Contracts. See Exhibit 1, ¶ 59; Exhibit 1, at Exh. F, Sch. B (emphasis added).

**RESPONSE:** Admitted.

#### **VIII. TAK’S ALLEGED REPRESENTATIONS AS PART OF IFC LAWSUIT I SETTLEMENT**

31. Plaintiff alleges that Tak met with Ron [VDH] and IFC’s CEO, Rudolph Trebels, and CFO, Marc Langs, at IFC’s offices in Morton Grove, Illinois in late March or early April of 2007. (Exhibit 1, ¶ 60).

**RESPONSE:** Admitted.

32. At that meeting, Tak is alleged to have made the following representations to IFC which IFC relied on in order to enter into the Settlement Agreement, Master Lease No. 801109, and Master Amendment Agreement. To wit:

- a. Tak confirmed that the EPC Contracts had been executed by Steve VDH, on behalf of Spirit, as Contractor, and by Sharad [Tak], as Owner;
- b. Tak confirmed that Ron's TPTC and PCDI (Ron's companies) would be used as subcontractors under the EPC Contracts;
- c. Tak confirmed that he fully intended to build the four projects contemplated by the EPC Contracts;
- d. Tak told IFC that due to confidentiality concerns, Spirit and Sharad could not allow IFC to review the four EPC Contracts; and
- e. Tak confirmed that the four EPC Contracts were sufficient to secure financing for the projects contemplated.

(Exhibit 1, ¶ 61).

**RESPONSE:** RNS Servicing denies this statement only because the statements reference "EPC Contracts" rather than the CPA EPC Contracts—*i.e.*, the particular four CPA EPC Contracts referenced in the Continuing Pledge Agreement and attached Schedules A and B—as Paragraph 61 of the FAC references. *See* Exhibit 1 at ¶ 61.

#### **IX. PCDI AND TPTC DEFAULT AND IFC FILES IFC LAWSUIT II**

33. PCDI and TPTC never made any payments under the terms of the Settlement Agreement, and accordingly, defaulted almost immediately on their obligations under the Settlement Agreement. PCDI and TPTC failed to cure their defaults. (Exhibit 1, ¶ 63; Exhibit 4, 87:11-19).

**RESPONSE:** RNS Servicing admits only that PCDI and TPTC eventually defaulted under the terms Settlement Agreement by failing to make all of the required payments and that PCDI and TPTC failed to cure their defaults.

RNS Servicing denies that PCDI and TPTC never made any payments under the terms of the Settlement Agreement and denies Defendants' characterization that PCDI and TPTC defaulted "almost immediately." To wit:

(a) The documents cited by Defendants do not state or demonstrate that PCDI and TPTC defaulted “almost immediately.” Rather, Paragraphs 63 and 64 of the FAC alleges the PCDI and TPTC “subsequently defaulted” and that IFC filed suit for breach of the Settlement Agreement on September 6, 2007, *see* Exhibit 1 at ¶¶ 63-64, and Marc Langs testified that Ron VDH defaulted “very quickly,” but that “[Ron VDH] may have made one payment,” and that at some point IFC gave the required notice to Ron VDH regarding the default. *See* Exhibit 4 at 87:11-22;

(b) On or about April 16, 2007, PCDI and TPTC made initial payments in the amount of \$20 million of the Total Settlement Amount due under the Settlement Agreement—*i.e.*, PCDI and TPTC paid \$17.3 million to Fortress and \$2.7 million to George Washington State Bank. *See* Defs.’ Ans. to the Second IFC Lawsuit Compl., attached as Exhibit EE to the B. Langs Dec. [ECF 74], at ¶ 17;

(c) IFC and Ron VDH/PCDI/TPTC also entered into the Master Amendment Agreement on April 18, 2007 whereby the parties amended the Settlement Agreement and IFC loaned TPTC an additional \$400,000. *See* Exhibit D. Moreover, under the terms of the Settlement Agreement, even if PCDI and TPTC never made a payment, they could not have defaulted and lost their opportunity to cure such default before May 8, 2007. *See* Exhibit G.

34. On September 6, 2007, IFC filed a second lawsuit against the Ron Defendants and also against Spirit, alleging: (1) breach of the Settlement Agreement by all of the Ron Defendants; (2) breach of Master Lease No. 801109 by PCDI and TPTC; (3) breach of the Master Lease No. 801109 Guaranty by Ron, and requesting (4) a preliminary injunction prohibiting Spirit from transferring any money to PCDI or TPTC until the Ron Defendants’ obligations under the Settlement Agreement, Master Lease No. 801109, and Master Amendment Agreement, and Continuing Pledge Agreement were paid to IFC in full. (Exhibit 1, ¶ 64.)

**RESPONSE:** Admitted.

35. On April 8, 2008, as part of discovery in the IFC Lawsuit II, counsel for IFC took the deposition of Steve VDH. During the deposition, counsel for IFC showed Steve VDH some

or all of the EPC contracts, and questioned him on specific terms. (See, e.g., Exhibit 5, 51:1-21; 107:16-24).

**RESPONSE:** RNS Servicing admits only that on April 8, 2008, counsel for IFC took the deposition of Steve VDH as part of discovery in the Second IFC Lawsuit.

RNS Servicing denies that during Steve VDH's April 8, 2008 deposition, "counsel for IFC showed Steve VDH some or all of the EPC contracts, and questioned him on specific terms" because this latter statement falsely implies (1) that Spirit produced, specifically, the four EPC Contracts referenced in the Continuing Pledge Agreement and attached Schedules A and B—*i.e.*, the CPA EPC Contracts—to IFC during discovery in the Second IFC Lawsuit and (2) that Steve VDH was shown one or more of the four CPA EPC Contracts at his April 8, 2008 deposition. However, (1) the CPA EPC Contracts were not produced in the Second IFC Lawsuit and, (2) demonstrably, Steve VDH was **not** shown one or more of the four CPA EPC Contracts at his April 8, 2008 deposition. To wit:

(a) Spirit's and Steve VDH's counsel stated during Steve VDH's April 8, 2008 deposition that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit, *see* Exhibit X at 69:7-1; M. Langs Dec. [ECF 71] at 16 (subparagraphs included).

(b) RNS Servicing alleges and Marc Langs testified that he asked both Spirit and Tak to see the four CPA EPC Contracts before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, but at that time he was told by Spirit and Tak he could not review the four CPA EPC Contracts because of their confidential nature. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶¶ 4 (subparagraphs included), 9, 14, 28, 30.

(c) RNS Servicing alleges and Marc Langs testified that IFC never saw any of the four CPA EPC Contracts before June 25, 2009, and Marc Langs testified he never had any opportunity to review any of the four CPA EPC Contracts until they were produced in this present matter. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶¶ 9, 14, 28, 30;

(d) At his April 8, 2008 deposition, Steve VDH corrected his earlier testimony and testified that Exhibit 3 to his April 8, 2008 deposition was **not** one of the four CPA EPC Contracts. *See* Exhibit X at 73:10-74:16; M. Langs Dec. [ECF 71] at ¶ 16(b);

(e) Demonstrably, none of the ten exhibits shown to Steve VDH at his April 8, 2008 deposition were one of the four CPA EPC Contracts. *See* Exhibit X at 19, 24, 50, 80-81, 106, 125-26, 132;

(f) Rather, according to Steve VDH, the exhibits marked nos. 3, 4, 5, and 6 at Steve VDH's December 18, 2018 depositions were are the four CPA EPC Contracts, *see* Exhibit Z at 6:21-7:2 (Steve VDH stated that he reviewed parts of the four CPA EPC Contracts prior to his 12/18/2018 deposition); Exhibit Z at 156:8-11 (stating unequivocally that the four CPA EPC Contracts are Exhibits 3, 4, 5, and 6 to Steve VDH's 12/18/2018 deposition), and according to Tak's sworn testimony, the four CPA EPC Contracts were attached to his September 19, 2017 Declaration as Bates No. SCS\_00001 - SCS\_000056, SCS\_000057-SCS\_000116, SCS\_000117-SCS\_000176, and SCS\_000237-SCS\_000296, *see* 9/19/2017 Tak Dec., attached as Exhibit II to B. Langs Dec. [ECF 74] at ¶ 2; Exhibit HH at 15:5-16:1; *see also* Exhibit F; Exhibit AA (DePere Upgrades CPA EPC Contract, also Exhibit 6 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_00001 - SCS\_000056); Exhibit BB (DePere CPA EPC Contract, also Exhibit 5 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000237-SCS\_000296); Exhibit CC (St. George, Utah CPA EPC Contract, also Exhibit 3 to Steve VDH's 12/18/2018 deposition and

Bates No. SCS\_000057-SCS\_000116; Exhibit DD (Pennsylvania Site CPA EPC Contract, also Exhibit 4 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000117-SCS\_000176).

36. During that [April 8, 2008] deposition, Steven VDH testified to the following:

a. As of that date, Spirit had been paid approximately \$9 to \$10 million under one of the EPC contracts, but neither PCDI or TPTC had served as a subcontractor or been paid any sum by Spirit (Exhibit 5, 52:16-24), nor had PCDI or TPTC been engaged under or paid any money under any of the other EPC contracts (Exhibit 5, 141:2-6).

b. Spirit had self-performed or used other contractors for certain engineering work that IFC claimed was to be done by Ron VDH under the contract. (Exhibit 5, 57:8-13).

c. The list of subcontractors in the EPC contract was a list of subcontractors that could have been used, not a list of those that had to be used by Spirit, or that Spirit necessarily intended to use. (Exhibit 5, 73:1-9)

d. Ron Van Den Heuvel had not been engaged in any work under the one EPC contract where there had been performance, and there was no plan at that point to engage him to perform any such work. (Exhibit 5, 100:10-13).

**RESPONSE TO STATEMENTS OF FACT 36(a) - 36(d):** RNS Servicing admits only that Steve VDH made these statements at his April 8, 2008 deposition, but RNS Servicing (1) denies that Spirit produced any of the four CPA EPC Contracts to IFC during discovery in the Second IFC Lawsuit; (2) denies that Steve VDH was shown one or more of the four CPA EPC Contracts at his April 8, 2008 deposition; and (3) denies that any of the EPC Contracts Steven VDH may have been shown at his April 8, 2008 deposition were one of the four CPA EPC Contracts at issue in this matter. To wit:

(a) Spirit's and Steve VDH's counsel stated during Steve VDH's April 8, 2008 deposition that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit, *see* Exhibit X at 69:7-1; M. Langs Dec. [ECF 71] at 16 (subparagraphs included);

(b) RNS Servicing alleges and Marc Langs testified that he asked both Spirit and Tak to see the four CPA EPC Contracts before IFC entered into (a) the Settlement



Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, but at that time he was told by Spirit and Tak he could not review the four CPA EPC Contracts because of their confidential nature. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶ 4 (subparagraphs included), 9, 14, 28, 30;

(c) RNS Servicing alleges and Marc Langs testified that IFC never saw any of the four CPA EPC Contracts before June 25, 2009, and Marc Langs testified he never had any opportunity to review any of the four CPA EPC Contracts until they were produced in this present matter. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶¶ 9, 14, 28, 30;

(d) At his April 8, 2008 deposition, Steve VDH corrected his earlier testimony and testified that Exhibit 3 to his April 8, 2008 deposition was **not** one of the four CPA EPC Contracts. *See* Exhibit X at 73:10-74:16; M. Langs Dec. [ECF 71] at ¶ 16(b);

(e) Demonstrably, none of the ten exhibits shown to Steve VDH at his April 8, 2008 deposition were one of the four CPA EPC Contracts. *See* Exhibit X at 19, 24, 50, 80-81, 106, 125-26, 132;

(f) Rather, according to Steve VDH, the exhibits marked nos. 3, 4, 5, and 6 at Steve VDH's December 18, 2018 depositions were the four CPA EPC Contracts, *see* Exhibit Z at 6:21-7:2 (Steve VDH stated that he reviewed parts of the four CPA EPC Contracts prior to his 12/18/2018 deposition); Exhibit Z at 156:8-11 (stating unequivocally that the four CPA EPC Contracts are Exhibits 3, 4, 5, and 6 to Steve VDH's 12/18/2018 deposition), and according to Tak's sworn testimony, the four CPA EPC Contracts were attached to his September 19, 2017 Declaration as Bates No. SCS\_00001 - SCS\_000056,

SCS\_000057-SCS\_000116, SCS\_000117-SCS\_000176, and SCS\_000237-SCS\_000296, *see* 9/19/2017 Tak Dec., attached as Exhibit II to B. Langs Dec. [ECF 74] at ¶ 2; Exhibit HH at 15:5-16:1; *see also* Exhibit F; Exhibit AA (DePere Upgrades CPA EPC Contract, also Exhibit 6 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_00001 - SCS\_000056); Exhibit BB (DePere CPA EPC Contract, also Exhibit 5 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000237-SCS\_000296); Exhibit CC (St. George, Utah CPA EPC Contract, also Exhibit 3 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000057-SCS\_000116; Exhibit DD (Pennsylvania Site CPA EPC Contract, also Exhibit 4 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000117-SCS\_000176).

**Defendants' Statement of Fact 36(e).** Steve VDH believed that as of March or April of 2007, IFC understood that the projects relative to the EPC contracts had not yet been funded. (Exhibit 5, 105:3- 16).

**RESPONSE TO STATEMENT 36(e):** RNS admits that Steve VDH stated this speculative "belief" regarding what IFC understood at his April 8, 2008 deposition. However, RNS Servicing denies the veracity of this "belief." While RNS Servicing admits that as of the date when the Settlement Agreement, Master Lease No. 801109, Master Amendment Agreement, Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement were executed—IFC knew that Tak had not yet secured financing for the projects contemplated by the CPA EPC Contracts, but RNS Servicing denies IFC had any such knowledge or "belief" after this execution date. On the contrary, as of this execution date:

(a) IFC was convinced that the projects contemplated by the CPA EPC Contracts would be financed expeditiously for the following reasons:

i. Ron VDH had told IFC that the CPA EPC Contracts would be "funded in a matter of weeks," *see* Exhibit 6 at ¶ 12;

ii. Tak had a very good business reputation, and he had told IFC before August 27, 2007 that CPA EPC Contracts were sufficient to secure financing, *see* M. Langs Dec. [ECF 71] at ¶¶ 4, 7, 9-12, 16(f);

iii. Spirit had a very good business reputation as one of the leading construction companies in this category for paper and paper technology, and IFC therefore trusted Spirit when it made the representations described in Paragraphs 7-12 of the Declaration of Marc Langs, *see* M. Langs Dec. [ECF 71] at ¶¶ 7-12; and

(b) Four months later, on August 2, 2007, IFC filed the Complaint in the Second IFC Lawsuit and alleged in Paragraph 52 of the Complaint that “TPTC and PCDI have begun or will soon begin performing, their work pursuant to the [CPA] EPC Contracts” as follows:

**On information and belief, TPTC and PCDI have begun or will soon begin performing, their work pursuant to the [CPA] EPC Contracts.** This will, in turn, trigger TPTC’s PCDI’s and Spirit’s respective obligations under the Continuing Pledge Agreement, and IFC’s right to receive the payments due to TPTC and PCDI for the work they perform pursuant to the EPC Contracts.

*See* Exhibit EE at ¶ 52 (emphasis added).

37. On June 18, 2008, IFC’s Chief Financial Officer, Marc Langs signed a sworn declaration in IFC Lawsuit II which stated in part: IFC would not have agreed to allow PCDI and TPTC a ten-month payment schedule if we had known that the EPC Contracts were not going to be funded for many months (to our knowledge, the EPC Contracts are still not funded.) Nor would IFC have allowed PCDI and TPTC a ten-month payment schedule if we knew that those companies were not going to receive ‘substantial payments’ under the EPC Contracts. (Affidavit of Marc Langs, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill. June 18, 2008), ECF No. 54-11 (“Exhibit 6”) ¶ 12; RNS7703.)

**RESPONSE:** RNS Servicing admits that on June 18, 2008, IFC’s Chief Financial Officer, Marc Langs signed a sworn declaration in support of IFC’s summary judgment motion in the Second IFC Lawsuit. However, RNS Servicing denies that Defendants’ Statement of Fact No. 37 accurately portrays Marc Langs’s statement in Paragraph 12 of that declaration because it cherry-picks a quotation from Paragraph 12 which intentionally leaves out context demonstrating

that that the entirety of Paragraph 12 was directed at a misrepresentation by Ron VDH, not Steve VDH or Spirit. Paragraph 12 of Mr. Langs's June 18, 2008 declaration states in its entirety as follows:

Furthermore, **IFC was *told in March of 2007 by Ron Van Den Heuvel* that the EPC Contracts described in the Pledge Agreement and Acknowledgement of and Consent to Assignment would definitely be executed and funded within a matter of weeks.** IFC would not have agreed to allow PCDI and TPTC a ten-month payment schedule if we had known that the EPC Contracts were not going to be funded for many months (to our knowledge; the EPC Contracts are still not funded). Nor would IFC have allowed PCDI or TPTC a ten-month payment schedule if we knew that those companies were not going to receive "substantial payments" under the EPC Contracts.

See Exhibit 6 at ¶ 12 (emphasis on missing context added).

38. IFC moved for summary judgment in the IFC Lawsuit II. In its Motion for Summary Judgment, IFC stated: From the deposition testimony of Spirit Construction's President taken in April 2008, Plaintiff discovered that Spirit Construction misrepresented to Plaintiff at the time the Settlement Agreement was executed the likelihood that Defendants TPTC and PCDI would soon be receiving any substantial sums as subcontractors under those construction contracts... According to Spirit Construction's president, neither TPTC nor PCDI were ever seriously considered by Spirit Construction to be likely subcontractors in connection with the construction contracts. In any event, those construction contracts are still not funded. (IFC Credit Corporation's Motion for Summary Judgment, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., June 18, 2008), ECF No. 51 ("Exhibit 7") p. 6, n. 2.)

**RESPONSE:** RNS Servicing admits that on June 18, 2008, IFC moved for summary judgment in the Second IFC Lawsuit. RNS Servicing also admits that Defendants correctly quoted footnote 2 on page 6 of IFC's June 18, 2008 summary judgment motion filed in the Second IFC Lawsuit. However, to the extent that Defendants' Statement of Fact No. 38 intends to imply that that the "construction contracts" referenced in footnote 2 on page 6 of IFC's June 18, 2008 summary judgment motion filed in the Second IFC Lawsuit were referencing the CPA EPC Contracts at issue in this present matter, RNS Servicing denies this statement of fact. To wit:

(a) Spirit's and Steve VDH's counsel stated during Steve VDH's April 8, 2008 deposition that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit, *see* Exhibit X at 69:7-1; M. Langs Dec. [ECF 71] at 16 (subparagraphs included);

(b) RNS Servicing alleges and Marc Langs testified that he asked both Spirit and Tak to see the four CPA EPC Contracts before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, but at that time he was told by Spirit and Tak he could not review the four CPA EPC Contracts because of their confidential nature. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶ 4 (subparagraphs included), 9, 14, 28, 30;

(c) RNS Servicing alleges and Marc Langs testified that IFC never saw any of the four CPA EPC Contracts before June 25, 2009, and Marc Langs testified he never had any opportunity to review any of the four CPA EPC Contracts until they were produced in this present matter. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶¶ 9, 14, 28, 30;

(d) At his April 8, 2008 deposition, Steve VDH corrected his earlier testimony and testified that Exhibit 3 to his April 8, 2008 deposition was **not** one of the four CPA EPC Contracts. *See* Exhibit X at 73:10-74:16; M. Langs Dec. [ECF 71] at ¶ 16(b);

(e) Demonstrably, none of the ten exhibits shown to Steve VDH at his April 8, 2008 deposition were one of the four CPA EPC Contracts. *See* Exhibit X at 19, 24, 50, 80-81, 106, 125-26, 132;

(f) Rather, according to Steve VDH, the exhibits marked nos. 3, 4, 5, and 6 at Steve VDH's December 18, 2018 depositions were the four CPA EPC Contracts, *see* Exhibit Z at 6:21-7:2 (Steve VDH stated that he reviewed parts of the four CPA EPC Contracts prior to his 12/18/2018 deposition); Exhibit Z at 156:8-11 (stating unequivocally that the four CPA EPC Contracts are Exhibits 3, 4, 5, and 6 to Steve VDH's 12/18/2018 deposition), and according to Tak's sworn testimony, the four CPA EPC Contracts were attached to his September 19, 2017 Declaration as Bates No. SCS\_00001 - SCS\_000056, SCS\_000057-SCS\_000116, SCS\_000117-SCS\_000176, and SCS\_000237-SCS\_000296, *see* 9/19/2017 Tak Dec., attached as Exhibit II to B. Langs Dec. [ECF 74] at ¶ 2; Exhibit HH at 15:5-16:1; *see also* Exhibit F; Exhibit AA (DePere Upgrades CPA EPC Contract, also Exhibit 6 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_00001 - SCS\_000056); Exhibit BB (DePere CPA EPC Contract, also Exhibit 5 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000237-SCS\_000296); Exhibit CC (St. George, Utah CPA EPC Contract, also Exhibit 3 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000057-SCS\_000116; Exhibit DD (Pennsylvania Site CPA EPC Contract, also Exhibit 4 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000117-SCS\_000176).

39. On October 10, 2008, IFC filed a Motion to Strike in IFC Lawsuit II. In that motion, IFC stated in reference to representations made by Spirit in the March 28, 2007 Acknowledgment and Consent to Assignment: [T]hey evidence the fraud committed by Spirit Construction to induce IFC to enter into the Settlement Agreement. . . . It is clear that, notwithstanding its statement to IFC, Spirit Construction never intended to engage TPTC or PCDI in connection with the EPC Contracts. . . . Similarly, IFC's statement that Spirit Construction's representations were not true is, by now, obvious. (IFC Credit Corporation's Motion to Strike Certain of the Denials by Defendants to IFC Credit Corporation's Rule 56.1 Statement for Failure to Conform to Rule 56 of the Local Rules of the U.S. District Court for the Northern District of Illinois, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., October 8, 2008), ECF No. 82 ("Exhibit 8"), p. 3).

**RESPONSE:** RNS Servicing admits that on October 10, 2008, IFC filed a Motion to Strike in the Second IFC Lawsuit.

RNS Servicing denies that Defendants' cherry-picked quotation from IFC's October 10, 2008 Motion to Strike filed in the Second IFC Lawsuit was made in reference to representations made by Spirit in the March 28, 2007 Acknowledgment and Consent to Assignment. Rather, the falseness of this statement is evident from the text of IFC's October 10, 2008 Motion to Strike. *See* Exhibit 8 at 3.

Further, Defendants' Statement of Fact No. 39 cherry-picks a quotation from page 3 IFC's October 10, 2008 Motion to Strike which intentionally leaves out context which is pertinent to Defendants' present summary judgment motion. Most notably, Defendants leave out IFC's explanation that **"IFC's statement that Spirit Construction's representations [in Schedule B to the Continuing Pledge Agreement] were not true is, by now, obvious. It is based on the record, including the deposition testimony of Spirit Construction's President, Steve Van Den Heuvel."** *See* Exhibit 8 at 3 (emphasis on missing context added). However, as discussed multiple times above, IFC's assertions here is demonstrably incorrect because IFC makes those assertions on the mistaken basis that Steve VDH had testified about the CPA EPC Contracts at his April 8, 2008 deposition when, in reality, he had not. To wit:

(a) Spirit's and Steve VDH's counsel stated during Steve VDH's April 8, 2008 deposition that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit, *see* Exhibit X at 69:7-1; M. Langs Dec. [ECF 71] at 16 (subparagraphs included);

(b) RNS Servicing alleges and Marc Langs testified that he asked both Spirit and Tak to see the four CPA EPC Contracts before IFC entered into (a) the Settlement

Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, but at that time he was told by Spirit and Tak he could not review the four CPA EPC Contracts because of their confidential nature. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶ 4 (subparagraphs included), 9, 14, 28, 30;

(c) RNS Servicing alleges and Marc Langs testified that IFC never saw any of the four CPA EPC Contracts before June 25, 2009, and Marc Langs testified he never had any opportunity to review any of the four CPA EPC Contracts until they were produced in this present matter. *See, e.g.*, Exhibit 1 at ¶ 61(d), 100(d); M. Langs Dec. [ECF 71] at ¶¶ 9, 14, 28, 30;

(d) At his April 8, 2008 deposition, Steve VDH corrected his earlier testimony and testified that Exhibit 3 to his April 8, 2008 deposition was **not** one of the four CPA EPC Contracts. *See* Exhibit X at 73:10-74:16; M. Langs Dec. [ECF 71] at ¶ 16(b);

(e) Demonstrably, none of the ten exhibits shown to Steve VDH at his April 8, 2008 deposition were one of the four CPA EPC Contracts. *See* Exhibit X at 19, 24, 50, 80-81, 106, 125-26, 132;

(f) Rather, according to Steve VDH, the exhibits marked nos. 3, 4, 5, and 6 at Steve VDH's December 18, 2018 depositions were the four CPA EPC Contracts, *see* Exhibit Z at 6:21-7:2 (Steve VDH stated that he reviewed parts of the four CPA EPC Contracts prior to his 12/18/2018 deposition); Exhibit Z at 156:8-11 (stating unequivocally that the four CPA EPC Contracts are Exhibits 3, 4, 5, and 6 to Steve VDH's 12/18/2018 deposition), and according to Tak's sworn testimony, the four CPA EPC Contracts were attached to his September 19, 2017 Declaration as Bates No. SCS\_00001 - SCS\_000056,



SCS\_000057-SCS\_000116, SCS\_000117-SCS\_000176, and SCS\_000237-SCS\_000296, *see* 9/19/2017 Tak Dec., attached as Exhibit II to B. Langs Dec. [ECF 74] at ¶ 2; Exhibit HH at 15:5-16:1; *see also* Exhibit F; Exhibit AA (DePere Upgrades CPA EPC Contract, also Exhibit 6 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_00001 - SCS\_000056); Exhibit BB (DePere CPA EPC Contract, also Exhibit 5 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000237-SCS\_000296); Exhibit CC (St. George, Utah CPA EPC Contract, also Exhibit 3 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000057-SCS\_000116; Exhibit DD (Pennsylvania Site CPA EPC Contract, also Exhibit 4 to Steve VDH's 12/18/2018 deposition and Bates No. SCS\_000117-SCS\_000176).<sup>6</sup>

40. On March 31, 2009, the court entered its opinion in IFC Lawsuit II. With respect to Ron Van Den Heuvel, IFC obtained a judgment. With respect to Spirit, the case was dismissed for lack of standing because Spirit was not yet obligated to pay any money to Ron Van Den Heuvel, and, therefore, there was no standing to seek injunctive relief, which was the only relief sought by IFC. (Memorandum Opinion and Order, IFC Credit Corp. et al. v. Tissue Products Tech. Corp. et al., No. 07-C-4351 (N.D. Ill., March 31, 2009), ECF No. 101 ("Exhibit 9"), p. 18).

**RESPONSE:** RNS Servicing admits that on March 31, 2009, the court in the Second IFC Lawsuit entered its memorandum and opinion and the parties cross-motions for summary judgment and IFC's motion to strike. *See* Exhibit I; Exhibit 9.

RNS Servicing also admits that the court's March 31, 2009 memorandum and opinion in the Second IFC Lawsuit granted Spirit's summary judgment motion because IFC lacked standing to bring a claim against Spirit at that time.

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<sup>6</sup> It should also be noted that the Court in the Second IFC Lawsuit presumably disregarded IFC's assertions referenced in Defendants' Statement of Fact No 39 because they were not supported by the evidence in the record. *See* 3/31/2009 Order on IFC's Motion to Strike in Second IFC Lawsuit, attached as Exhibit I to FAC [ECF 31-9 in Second IFC Lawsuit], at 2-3 ("The Court need not rule on the particulars of IFC's motion to strike because any statements or responses that ... are not supported by evidence in the record will not be considered by the Court in ruling on the summary judgment motions. Any paragraph or fact that is not supported by record evidence will be disregarded.")

However, RNS Servicing denies that the court's March 31, 2009 memorandum and opinion in the Second IFC Lawsuit was limited to a claim for injunctive relief. Rather, the court's March 31, 2009 memorandum and opinion held that as of March 31, 2009, "[IFC] 'simply does not have standing at this time to bring a claim against Spirit because (a) Spirit could not have yet injured IFC, (b) 'whatever potential future injury IFC may have [based on Spirit's conduct] is too speculative,' and (c) IFC could not yet show that it had suffered an 'injury in fact' that was 'concrete and particularized' as well as 'actual or imminent, not conjectural or hypothetical.'" *See* Exhibit 9, 17-18.

RNS Servicing denies that the March 31, 2009 memorandum and opinion in the Second IFC Lawsuit entered a judgment against Ron VDH or with respect to Ron VDH. Rather, on August 13, 2008, the court in the Second IFC Lawsuit entered a judgment in IFC's favor and against Ron VDH, TPTC, and PCDI in the amount of \$5,343,015.12. *See* Exhibit O.

41. IFC Lawsuit II was, according to the testimony of Marc Langs, the "beginning of a process to look at and go back and find out what happened," with respect to the transactions with Ron Van Den Heuvel. "[T]he first step of this was a case against Ron and Ron familiarly to Spirit . . . Something more may have gone down further from that, but at that point, bankruptcy came in, management changed, the ownership of the company changed before the bankruptcy ... This was one part of the process, a step that got interrupted, I would say, best case." (Exhibit 4, 174:3-14).

**RESPONSE:** RNS Servicing denies that the deposition testimony of Marc Langs Defendants cited in Defendants' Statement of Fact No. 41 was testimony describing the nature or character of the Second IFC Lawsuit or what "IFC Lawsuit II was." Rather, review of the testimony cited and the context around that testimony demonstrates that the testimony quoted in Defendants' Statement of Fact No. 41 was in response to a line of questioning regarding why RNS Servicing sued Spirit in this case before it sued Tak and, tangentially, why in August 2007

RNS Servicing sue Spirit for injunctive relief and did not sue Tak. *See* 12/18/18 M. Langs Dep. Trans., attached as Exhibit FF to B. Langs Dec. [ECF 74], at 165:20-174:17.

Further, Defendants' Statement of Fact No. 41 again cherry-picks a quotation which intentionally leaves out context which is pertinent to Defendants' present summary judgment motion. Mr. Langs's response to the question of why Paragraph 11 of Marc Langs's June 18, 2008 declaration in the Second IFC Lawsuit did not include any reference to Tak, in its entirety, follows:

A. **My response was, I believe,** this was the beginning of a process to look at and go back and find out what happened. **So the first step of this was a case against Ron and Ron familialy to Spirit and Vos and VHC and they came off at a guarantee. They were replaced by a guarantee.** Something more may have gone down further from that, but at that point, bankruptcy came in, management changed, the ownership of the company changed before the bankruptcy. We owed these guys money that they – at that point. So the wheels basically came off the bus. This was one part of the process, a step that got interrupted, I would say, best case.

Q. **Okay. So this, then, reflects the best information you had at the time?**

A. **Correct.**

*See* Exhibit FF at 174:2-14.

#### **X. IFC FILES FOR BANKRUPTCY PROTECTION**

42. On July 27, 2009, IFC filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. (Exhibit 1, ¶ 67.)

**RESPONSE: Admitted.**

43. In the course of the bankruptcy, the bankruptcy trustee analyzed the leases and accounts held by IFC and performed a litigation review of accounts that could bring recovery to the bankruptcy estate. (First Interim Report of David P. Liebowitz, Chapter 7 Trustee, In re: IFC Credit Corporation, No. 09-27094 (Bankr. N.D. Ill., December 29, 2009), ECF No. 471, ("Exhibit 10") pp. 7-8).

**RESPONSE:** RNS Servicing admits these statements, but notes that the characterization of "litigation review of accounts that could bring recovery to the bankruptcy estate" referenced

on pages 7 and 8 of the IFC Bankruptcy Trustee's First Interim Report was specifically limited to IFC existing equipment lease portfolios and did not entail an investigation that would have lead to discovery of the claims asserted in this lawsuit. *See* Exhibit 10 at 7-8.

44. Rebecca Elli and Stephen Csar, RNS's members, were hired by the bankruptcy estate to assist in the liquidation of IFC from 2009 through 2016, and worked to collect on numerous equipment lease accounts. (RNS Servicing, LLC, Rebecca Elli, and Steve Csar's Response to Trustee's Motion for Leave to Conduct a Rule 2004 Exam, Case No. 09-27094 (Bankr. N.D. Ill., November 15, 2017), ECF No. 1776, ("Exhibit 11") p. 2).

**RESPONSE:** RNS Servicing admits that Elli and Csar are RNS Servicing's members and that they were hired by the bankruptcy estate to assist in the liquidation of IFC. However, RNS denies that they worked for the estate through 2016. Rather, they worked for the Bankruptcy estate through April 15, 2015. *See* R. Elli Dec. [ECF 73] at ¶¶ 9-16; Csar Dec at ¶¶ 6-13.

45. On August 7, 2014, the IFC Bankruptcy court authorized the IFC Bankruptcy Trustee to enter into an "Asset Purchase and Transition Services Agreement" with Plaintiff RNS Servicing (the "First RNS Asset Purchase Agreement"). Through the First RNS Asset Purchase Agreement, RNS Servicing purchased certain of IFC's bankruptcy estate's assets, including IFC's rights under the Settlement Agreement, Master Lease No. 801109, Master Amendment Agreement, and Continuing Pledge Agreement and all claims and rights, and benefits arising there from, with or against all persons or entities relating to IFC's rights under those agreements, including the claims against Steve VDH and Spirit made in this Complaint. *See* First RNS Asset Purchase Agreement at Art. 1.1, Art. 2.2, attached as Exhibit J. Further, pursuant to the First Asset Purchase Agreement, RNS Servicing did not assume any of the IFC Bankruptcy estate's liabilities. (Exhibit 1, ¶ 68; Exhibit 1 at Exh. J, Art. 2.6.)

**RESPONSE:** Admitted.

46. The sale of these assets came after the IFC Bankruptcy Trustee concluded (in RNS's characterization) "that the remaining collections were too troublesome and speculative to continue to be worthwhile." (Exhibit 11, p. 2).

**RESPONSE:** RNS Servicing admits only that this quote appears in Elli and Csar's Response to a Motion by the IFC Bankruptcy Trustee for Leave to Conduct a Rule 2004 Exam.

RNS Servicing denies any implication that when the IFC Bankruptcy Trustee came to this conclusion, he had any knowledge or suspicion of the claims asserted against Steve VDH, Spirit, and Tak in the matter. Rather the IFC Bankruptcy Trustee, Elli, and Csar had not discovered the claims asserted in this lawsuit and had no suspicion of them either. *See* R. Elli Dec. [ECF 73] at ¶¶ 17-27; Csar Dec at ¶¶ 14-25.

47. Marc Langs contacted Sharad Tak by email on March 1, 2016, and stated that he was investigating “certain judgments that a company has against Ron personally and many of this companies.” (Exhibit 1, at Exh. L).

**RESPONSE:** Admitted.

#### **XI. MARC LANGS AND SHARAD TAK 2016 EMAIL EXCHANGE**

48. On March 18, 2018, Langs stated in an email to Sharad Tak that, with Tak’s help, “we may have substantial leverage with Spirit Construction against RVDH.” (Exhibit 1 at Exh. L).

**RESPONSE:** Admitted.

49. On March 21, 2016, in an email to Marc Langs, IFC’s former CFO, Sharad Tak referred to the EPC Contracts as “frivolous” contracts. (See Exhibit 1, at Exh. L.)

**RESPONSE:** Admitted with the caveat that Marc Langs understood Tak’s reference to the “EPC Contracts” as frivolous contracts to be a reference to the CPA EPC Contracts. *See* M. Langs Dec. [ECF 71] at ¶ 26.

50. This suit was brought by RNS Servicing against Steve VDH and Spirit on January 1, 2017. (Complaint, Dkt. 1). The Amended Complaint, adding Tak as a Defendant, was filed on September 25, 2017. (Exhibit 1).

**RESPONSE:** Admitted.

51. Tak was deposed in this case on September 21, 2017. At his deposition, Tak testified that he may have attended one meeting with IFC in or around 2006, because IFC had lent money to Ron VDH and never got it back, but that he no longer recalled specifics because the meeting was a long time ago. (Transcript of September 21, 2017 Deposition of Sharad K. Tak (“Exhibit 12”), 28:6-18).

**RESPONSE:** Admitted.

52. In 2018, Marc Langs testified that he had not seen the EPC contracts prior to this suit, but if he had, he would have recommended against IFC entering into the Settlement Agreement. (Exhibit 4, 86:10-87:5).

**RESPONSE:** Admitted.

**PLAINTIFF RNS SERVICING, LLC'S RULE 56.1(b)(3)(C) STATEMENT OF  
ADDITIONAL UNDISPUTED FACTS THAT REQUIRE DENIAL OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff RNS Servicing, LLC ("RNS Servicing"), by and through its undersigned attorneys, and pursuant to Local Rule 56.1(b)(3)(C), submit the following additional facts that require denial of Defendants' Joint Motion for Summary Judgment:

1. Rudy Trebels (IFC's President) and Marc Langs (IFC's CFO) had met with Sharad Tak ("Tak")<sup>7</sup> in at IFC's offices in Morton Grove, Illinois at some time shortly before the March 28, 2007 Settlement Agreement, Master Lease No. 801109, Master Amendment Agreement, Continuing Pledge Agreement, and Schedules A and B to the Continuing Pledge Agreement were executed. At this meeting, Tak made multiple misrepresentations to IFC which IFC relied on at that time (a) to enter into the Settlement Agreement, Master Lease No. 801109, the Master Amendment Agreement, and Continuing Pledge Agreement; (b) to require Ron VDH, TPTC, and PCDI to execute Schedule A to the Continuing Pledge Agreement; and (c) to require Steve VDH and Spirit to execute Schedule B Continuing Pledge Agreement as part of the global settlement transaction. To wit:

- a. Tak confirmed that the CPA EPC Contracts had been executed by Steve, on behalf of Spirit, as Contractor, and by Tak, as Owner;
- b. Tak confirmed that TPTC and PCDI would be used as subcontractors under the CPA EPC Contracts;

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<sup>7</sup> All capitalized terms in these Rule 56.1(b)(3)(C) additional statement of facts shall have the meaning ascribed to them in the FAC unless otherwise noted in this document.

c. Tak confirmed that he fully intended to build the four projects contemplated by the CPA EPC Contracts;

d. Tak told us that due to regulatory concerns, Spirit and Tak could not allow IFC to review the four CPA EPC Contracts at that time; and

e. Tak confirmed that the four CPA EPC Contracts were sufficient to secure financing for the projects contemplated.

*See* M. Langs Dec. [ECF 71] at ¶ 4 (subparagraphs included).

2. Rudy Trebels and Marc Langs were the only people at IFC who were intimately involved with the due diligence, details, and negotiation related to the original Fortress Transaction, which involved Fortress, Ron VDH, TPTC, PCDI, Oconto Inc., and Eco-Fibre as well as David VDH, and VHC as guarantors. The Fortress Transaction did not require approval from the IFC Credit Committee because Fortress funded the transaction, not IFC. Rudy Trebels and Marc Langs used their business judgment to enter into the Fortress Transaction on behalf of IFC because they thought that the transaction was satisfactorily secured and would result in profits for IFC. *See* M. Langs Dec. [ECF 71] at ¶ 5; S. Csar Dec. [ECF 72] at ¶¶ 4-5; R. Elli Dec. [ECF 73] at ¶¶ 3-7.

3. On August 2, 2007, when IFC filed the Complaint in the Second IFC Lawsuit, IFC alleged in Paragraph 7 of the Complaint that “[o]n information and belief, **Spirit has not violated its obligation to IFC under the ‘Acknowledgement and Consent to Assignment,’ [i.e., Schedule B to the Continuing Pledge Agreement] and Spirit is named herein solely in connection with Plaintiffs claim for a Preliminary Injunction based, in part, on the Continuing Pledge Agreement.**” *See* Exhibit EE at ¶ 7 (emphasis added).

4. Rudy Trebels and Marc Langs were the only people at IFC who were intimately involved with the due diligence, details, and negotiation related the litigation and settlements that arose from the Fortress Transaction, which involved the same persons and entities, except that the guaranties of David VDH and VHC were replaced in the resulting Settlement Agreement by the Continuing Pledge Agreement and attached Schedules A and B. Schedule B was a “Consent and Acknowledgement” executed by Steve VDH and Spirit which provided IFC assurance that the collateral described in the Continuing Pledge Agreement was valuable. The Settlement Agreement did not require approval from the IFC Credit Committee because it was a settlement of litigation, not an original credit transaction. Both Rudy and Marc Langs used their business judgment to enter into the Settlement Agreement and related leases and agreements on behalf of IFC because they thought the transactions were satisfactorily secured and would eventually result in profits for IFC. *See* M. Langs Dec. [ECF 71] at ¶ 6; S. Csar Dec. [ECF 72] at ¶ 5; R. Elli Dec. [ECF 73] at ¶¶ 3-7.

5. Steve VDH, Spirit, and Tak had very strong business reputations at the time Rudy Trebels and Marc Langs were conducting due diligence for and negotiating the Settlement Agreement and related leases and agreements—including the Continuing Pledge Agreement—on behalf of IFC. Steve VDH was running Spirit, which was one of the leading U.S. construction companies in the category for paper and paper technology. Tak was wealthy businessman who had become very wealthy by securing various, very lucrative business contracts with the United States government and performing under those agreements. *See* M. Langs Dec. [ECF 71] at ¶ 7.

6. Before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement (which included Schedules A and B to the Continuing Pledge Agreement), Ron VDH, Steve VDH,



Spirit, and Tak had all, on separate occasions, represented to IFC that three of the four proposed CPA EPC Contracts were for new construction of facilities and that each of these three CPA EPC Contracts included a fixed price for the Tak of \$200 million – \$400 million. They each also represented that the fourth CPA EPC Contract was for upgrades to an existing facility for a fixed price of less than \$100 million. *See* M. Langs Dec. [ECF 71] at ¶ 8.

7. Before IFC entered into (a) the Settlement Agreement; (b) the Master Lease No. 801109, (c) Master Amendment Agreement, and (d) the Continuing Pledge Agreement and Schedules A and B to the Continuing Pledge Agreement, IFC asked both Spirit and Tak (on separate occasions) to produce the four CPA EPC Contracts for IFC's review. However, Spirit and Tak informed IFC (on these separate occasions) that they could not produce the CPA EPC Contracts for IFC's review because regulatory concerns required Spirit and Tak to keep them confidential while Tak was seeking financing for the projects. Because of Steve VDH's, Spirit's, and Tak's good business reputations at the time, IFC took them at their word on this point at that time. *See* M. Langs Dec. [ECF 71] at ¶ 9.

8. However, Steve VDH and Spirit did allow IFC to review another EPC Contract Spirit had executed with another owner (other than Tak), which contemplated a project that had already been financed and was either in the process of construction or had been completed. Steve VDH and Spirit explained to IFC that, in general, once financing was secured for a project and it had become public knowledge that work had begun on the project, regulatory concerns no longer required that the EPC Contract associated with the project remain confidential. Again, because of Steve VDH's and Spirit's good business reputations at the time, IFC took them at their word on this point at that time. *See* M. Langs Dec. [ECF 71] at ¶ 10.

9. The EPC Contract Steve VDH and Spirit allowed IFC to review was for a fixed price of somewhere between \$200 million and \$400 million. That EPC Contract demonstrated that Spirit and the owner of that project had each invested significant amounts of money into the project (in the form of down payments, engineering costs, zoning permits, and other upfront costs) before outside financing for the project had been secured. This led IFC to believe that at least three of the four CPA EPC Contracts required the same type of pre-financing investment on the part of Spirit and Tak—*i.e.*, that both Spirit and Tak had already invested a significant amount of pre-financing money into at least the three new construction projects contemplated by the new construction CPA EPC Contracts—and IFC knew that neither Spirit nor Tak were in the business of throwing away money. As such, IFC was under the impression at the time that Spirit and Tak were supremely confident that Tak would not only be able to secure financing for at least the three new construction CPA EPC Contracts, but that he would make it a priority due to the significant amount of money he had already invested into the three new construction projects. *See* M. Langs Dec. [ECF 71] at ¶ 11.

10. IFC's review of the EPC Contract Steve VDH and Spirit allowed IFC to see and IFC's knowledge that (a) Spirit and the owner of that project had invested significant upfront costs into that project before financing had been secured; (b) that financing had been secured for that project; and (c) that construction had begun on that project, gave IFC additional assurance that the collateral defined in the Continuing Pledge Agreement was valuable. *See* M. Langs Dec. [ECF 71] at ¶ 12

11. The four CPA EPC Contracts at issue in this matter are each dated November 14, 2006 and are identified in Steve VDH and Spirit's production of document in this matter as follows:

- a. CPA EPC Agreement between Spirit and ST Paper regarding upgrades at Oconto Falls and De Pere, Wisconsin (Bates No. SCS\_00001 - SCS\_000056);
- b. CPA EPC Agreement between Spirit and ST Paper at St. George, Utah (Bates No. SCS\_000057-SCS\_000116);
- c. CPA EPC Agreement between Spirit and ST Paper at a Pennsylvania Site (Bates No. SCS\_000117-SCS\_000176); and
- d. CPA EPC Agreement between Spirit and ST Paper at De Pere, Wisconsin (Bates No. SCS\_000237-SCS\_000296).

*See* M. Langs Dec. [ECF 71] at ¶ 13.

12. No one at IFC (including myself and Rudy Trebels) ever reviewed, or even saw, any of the four CPA EPC Contracts before Rudy Trebels and Marc Langs resigned from IFC on or about June 27, 2009. *See* M. Langs Dec. [ECF 71] at ¶ 14.

13. On August 2, 2007, IFC filed the Complaint in the Second IFC Lawsuit and alleged in Paragraph 52 of the Complaint that “TPTC and PCDI have begun or will soon begin performing, their work pursuant to the [CPA] EPC Contracts” as follows:

**On information and belief, TPTC and PCDI have begun or will soon begin performing, their work pursuant to the [CPA] EPC Contracts.** This will, in turn, trigger TPTC’s PCDI’s and Spirit’s respective obligations under the Continuing Pledge Agreement, and IFC’s right to receive the payments due to TPTC and PCDI for the work they perform pursuant to the EPC Contracts.

*See* Exhibit EE at ¶ 52 (emphasis added).

14. On March 31, 2009, the court in the Second IFC Lawsuit denied IFC’s motion for summary judgment on its claim for injunctive relief against Spirit and granted Spirit’s motion for summary judgment on that claim. Both IFC’s attorneys at the time and IFC understood this ruling around that time as follows: The court (a) found that CPA EPC Contracts were in effect;

(b) found that Spirit's construction on the projects contemplated by the CPA EPC Contracts had not yet begun and could not therefore have hired or paid monies to TPTC or PCDI as subcontractors; and (c) found that IFC therefore did not have standing for its claim against Spirit at that time because IFC had not yet and might not ever sustain an injury as a result of Spirit's conduct—*i.e.*, IFC would not be injured once Spirit began construction on the projects contemplated by the CPA EPC Contracts and paid IFC the monies owed according to the Continuing Pledge Agreement. *See* Exhibit 9; M. Langs Dec. [ECF 71] at ¶ 15.

15. After the March 31, 2009 ruling in the Second IFC Lawsuit, (a) IFC and its attorneys in the Second IFC Lawsuit discussed the ruling at that time and (b) after rereading Steve VDH's April 8, 2008 deposition transcript, the Continuing Pledge Agreement, and Schedules A and B to the Continuing Pledge Agreement, IFC and its attorneys in the Second IFC Lawsuit came to the following conclusions at that time:

a. During Steve VDH's April 8, 2008 deposition, Spirit's and Steve VDH's counsel stated that Spirit had not produced the CPA EPC Contracts during discovery in the Second IFC Lawsuit;

b. During Steve VDH's April 8, 2008 deposition, Steve VDH had corrected his earlier testimony and by unequivocally testifying that Exhibit 3 to his April 8, 2008 deposition, an EPC contract for upgrades at the Oconto Falls Tissue Mill, was not one of the four CPA EPC Contracts;

c. The CPA EPC Contracts are referenced in the Continuing Pledge Agreement as "four (4) Fixed Price Engineering, Procurement, and Construction Agreements between Spirit Construction Services, Inc. and ST Paper, LLC for 'upgrades' and construction for 'St. George, Utah,' 'De Pere, Wisconsin,' and 'Pennsylvania' facilities"—*i.e.*, that as Steve VDH

testified at his April 8, 2008 deposition, the EPC Contract for upgrades to the Oconto Falls Tissue Mill which he was shown at his April 8, 2008 deposition was not actually one of the CPA EPC Contracts;

d. IFC, Marc Langs, and its attorneys in the Second IFC Lawsuit had been mistaken regarding Steve VDH's testimony at his April 8, 2008 deposition because the EPC Contract for upgrades to the Oconto Falls Tissue Mill which IFC's counsel had shown Steve VDH at his April 8, 2008 deposition (marked as Exhibit 3 at that deposition) was not actually one of the four CPA EPC Contracts;

e. Since Spirit had never produced the CPA EPC Contracts in the Second IFC Lawsuit, as Steve VDH had testified at his April 8, 2008 deposition, none of the EPC Contracts Steve VDH had been shown at his April 8, 2008 deposition was one of the four CPA EPC Contracts;

f. While Ron VDH had told IFC that the CPA EPC Contracts would be "funded in a matter of weeks," IFC had never heard that from Steve VDH, Spirit, or Tak;

g. While IFC knew as of March 31, 2009 that Tak had not yet been able to secure financing for the projects contemplated by the CPA EPC Contracts as quickly as Ron VDH had previously claimed or as quickly as IFC would have obviously preferred, IFC still thought (i) that the CPA EPC Contracts existed, had been executed, and were in full force and effect and (ii) that regulatory concerns required that the CPA EPC Contracts had to be kept confidential while Tak was out trying to secure financing; and

h. The court was correct in its March 31, 2009 ruling that IFC did not have standing to assert any claims against Spirit (for injunctive relief, fraud, or otherwise) because IFC had not been injured by Spirit's conduct and, as a result, at this time, IFC still believed

Steve VDH's and Spirit's representations in Schedule B to the Continuing Pledge Agreement, which are at issue in this case, and Tak's representations that he made to IFC at the March 2009 meeting, which are also at issue in this case. This belief was due in large part to their good business reputations and IFC's continued belief at this time that both Tak and Steve VDH had each made large pre-financing investments of significant amounts of money into the projects contemplated by the CPA EPC Contracts (in the form of down payments, engineering costs, zoning permits, and other upfront costs) and that IFC knew that neither Spirit nor Tak were in the business of throwing away money. Therefore, IFC and its lawyers decided that, at that time, (i) IFC could not in good faith appeal the court's order in the Second IFC Lawsuit and (ii) IFC did not have standing for its claim injunctive relief or to make any claim, including fraud, against Spirit (or for that matter against Steve VDH or Tak).

*See* M. Langs Dec. [ECF 71] at ¶ 16.

16. Without ever having seen or reviews the actual CPA EPC Contract for Oconto Falls and DePere, Wisconsin (Upgrades), *see* Exhibit AA, it was impossible for IFC to know in 2008 that Steve VDH had falsely claimed at his April 8, 2008 deposition in the Second IFC Lawsuit that the EPC Contract for upgrades at the Oconto Falls Tissue Mill he was shown was not one of projects contemplated by the four CPA EPC Contracts because neither the Continuing Pledge Agreement nor Schedules A and B attached to the Continuing Pledge Agreement reference upgrades to the Oconto Falls Tissue Mill even though one of the actual CPA EPC Contracts, *see* Exhibit AA, referenced upgrades to both the Oconto Falls Tissue Mill and the DePere, Wisconsin facility. *Compare* Exhibit AA *with* Exhibit F.

17. Shortly after the March 31, 2009 decision by the court in the Second IFC Lawsuit, IFC was facing an imminent bankruptcy—which was primarily due to nonpayment by Ron VDH and his companies of debts owed to IFC as part of Fortress Transaction and various settlement agreements and judgments against him arising from the nonpayment under the Fortress Transaction and what RNS Servicing now knows to be the misrepresentations of Steve VDH, Spirit, and Tak as alleged in the FAC. *See* M. Langs Dec. [ECF 71] at ¶ 17.

18. Around that time (March 31, 2009), as IFC's bankruptcy was becoming imminent, IFC's Board of Directors began efforts to force Rudy Trebels and Marc Langs to resign as officers of the IFC. Marc Langs submitted his resignation on June 25, 2009 and Rudy Trebels submitted his resignation on June 26, 2009. *See* M. Langs Dec. [ECF 71] at ¶ 18.

19. Tak had never been contacted by the IFC Bankruptcy Trustee or anyone else in relation to the IFC bankruptcy estate. *See* Exhibit HH at 30:20-31:3.

20. On or around July 27, 2009, Rebecca Elli and Steve Csar were hired by the IFC Bankruptcy Trustee as part of his leasing staff (along with other persons) to assist in the liquidation of the IFC Bankruptcy estate. While working on the IFC Bankruptcy Trustee's leasing staff, both of our primary job responsibilities were to assist him, his Counsel, and his Special Counsel with collections on IFC's numerous outstanding equipment lease accounts which existed as of July 27, 2009, the date of IFC's bankruptcy filing. The IFC Bankruptcy Trustee's Counsel and Special Counsel directed both our and the rest of the leasing staff members' priorities in this regard, including which outstanding lease accounts to pursue. *See* S. Csar Dec. [ECF 72] at ¶ 6; R. Elli Dec. [ECF 73] at ¶ 9. Rebecca Elli and Steve Csar continued to be employed by the IFC Bankruptcy estate until the closing of the sale contemplated by Article 3.1 of the First RNS Asset Purchase Agreement occurred on or about August 27, 2014.

*See* S. Csar Dec. [ECF 72] at ¶ 9; R. Elli Dec. [ECF 73] at ¶ 12; Exhibit Q; Exhibit N. After the closing of the sale contemplated by Article 3.1 of the First RNS Asset Purchase Agreement occurred on or about August 27, 2014, Rebecca Elli and Steve Csar continued to provide limited consulting services to the IFC bankruptcy estate until April 15, 2015. *See* S. Csar Dec. [ECF 72] at ¶¶ 9-12; R. Elli Dec. [ECF 73] at ¶¶ 12-16; Exhibit Q; Exhibit R; Exhibit M; Exhibit N.

21. In February 2010, as part of their work for the IFC bankruptcy estate, Rebecca Elli and Steve Csar became aware of August 13, 2008 judgment (the “Ron VDH Judgment”) entered in the Second IFC Lawsuit in favor of IFC and against Ron VDH, TPTC, and PCDI when they received a copy of that judgment (Exhibit S). However, while they performed work for the IFC Bankruptcy estate between July 27, 2009 and April 15, 2015, neither Rebecca Elli and Steve Csar ever became aware of or otherwise had reason to investigate whether IFC had existing claims against Steve VDH, Spirit, or Tak—*i.e.*, whether IFC had the claims asserted against those parties in this lawsuit. *See* S. Csar Dec. [ECF 72] at ¶ 14; R. Elli Dec. [ECF 73] at ¶ 17.

22. While the IFC Bankruptcy Trustee investigated possible avenues to enforce the August 13, 2008 Ron VDH judgment, he never became aware of or otherwise had reason to investigate whether IFC had existing claims against Steve VDH, Spirit, or Tak—*i.e.*, whether IFC had the claims asserted against those parties in this lawsuit. *See* S. Csar Dec. [ECF 72] at ¶¶ 14, 17(g), 18; R. Elli Dec. [ECF 73] at ¶¶ 18, 20(g), 20(h).

23. While the IFC Bankruptcy Trustee’s investigation into possible avenues to enforce the August 13, 2008 Ron VDH judgment proved fruitless, on March 29, 2012, the IFC Bankruptcy Trustee successfully negotiated a settlement of the August 13, 2008 Ron VDH Judgment with Ron VDH, TPTC, and PCDI (the “BK/Ron VDH Settlement Agreement”).



However, Ron VDH, TPTC, and PCDI defaulted on their payment obligations under the BK/Ron VDH Settlement Agreement. *See* S. Csar Dec. [ECF 72] at ¶ 16; R. Elli Dec. [ECF 73] at ¶ 19; Exhibit T; Exhibit P.

24. On June 24, 2015, IFC filed a motion to revive the August 13, 2008 Ron VDH Judgment with the court in the Second IFC Lawsuit, and on July 8, 2015, the court in the Second IFC Lawsuit granted IFC's motion to revive the August 13, 2008 Ron VDH Judgment. *See* S. Csar Dec. [ECF 72] at ¶¶ 20-21; R. Elli Dec. [ECF 73] at ¶¶ 21-22.

25. On or around January 26, 2016, RNS Servicing hired Marc Langs as an independent consultant to assist RNS Servicing with enforcing, settling or selling the August 13, 2008 judgment in favor IFC and against Ron VDH, TPTC, and PCDI, which was entered in the Second IFC Lawsuit long before the March 31, 2009 decision granting Spirit's summary judgment motion because IFC had not yet been injured by Spirit and therefore lacked standing for claims against Spirit. *See* M. Langs Dec. [ECF 71] at ¶ 19; *See* S. Csar Dec. [ECF 72] at ¶ 21; R. Elli Dec. [ECF 73] at ¶ 23.

26. RNS Servicing's members, Rebecca Elli and Steve Csar had previously worked with Marc Langs at IFC, but neither of them was involved in the Fortress Transaction or the litigation and settlements that arose from the Fortress Transaction. *See* M. Langs Dec. [ECF 71] at ¶ 20.

27. At or around January 26, 2016, RNS Servicing provided Marc Langs with a large amount of material to review which RNS Servicing had bought out of the IFC bankruptcy estate. *See* M. Langs Dec. [ECF 71] at ¶ 21.

28. Over the next month or so Marc Langs reviewed the voluminous documentation provided to him by RNS Servicing. After his review, at some time, prior to March 21, 2016, he

informed RNS Servicing of the existence of: (a) the Settlement Agreement; (b) Master Lease No. 801109; (c) Master Amendment Agreement; (d) the Continuing Pledge Agreement and attached Schedules A and B; and (e) Tak's meeting with Rudy Trebels and Marc Langs, which is referenced in Paragraphs 60 and 61 of the FAC. *See* M. Langs Dec. [ECF 71] at ¶ 22; S. Csar Dec. [ECF 72] at ¶ 22; R. Elli Dec. [ECF 73] at ¶ 24.

29. At or around this time, Marc Langs also informed RNS Servicing that he would contact Steve VDH and Tak to inquire whether the projects in the CPA EPC Contracts were ever completed and, if so, inquire whether Steve VDH and Spirit made payments to TPTC and PCDI instead of the IFC bankruptcy estate. At this time, Marc Langs believed that the projects had to have been built during the administration of IFC's lengthy bankruptcy proceedings. *See* M. Langs Dec. [ECF 71] at ¶ 23; S. Csar Dec. [ECF 72] at ¶ 23; R. Elli Dec. [ECF 73] at ¶ 25.

30. Almost immediately after that conversation with RNS Servicing, Marc Langs contacted Tak by email on March 1, 2016 and called Steve VDH around that same time. When Marc Langs spoke to Steve VDH over the phone, he asked him about the projects contemplated by the CPA EPC Contracts, and Steve VDH informed that they had never been built. Marc Langs also asked Steve VDH if Marc Langs could come up to Green Bay, Wisconsin and meet with Steve VDH face to face about the CPA EPC Contracts, Steve VDH agreed, and a meeting was scheduled. *See* M. Langs Dec. [ECF 71] at ¶ 24.

31. On March 7, 2016, Tak responded to Marc Langs's initial email and they set up a phone conversation. They spoke on the phone about the CPA EPC Contracts, as well as the work Spirit had apparently completed on the Oconto Falls Tissue Mill, which Tak now owns through ST Paper. *See* M. Langs Dec. [ECF 71] at ¶ 25; Exhibit L.

32. On March 8, 2016, RNS Servicing filed a Notice of Assignment of Judgment with the court in the Second IFC Lawsuit. *See* S. Csar Dec. [ECF 72] at ¶ 24; R. Elli Dec. [ECF 73] at ¶ 6; Exhibit U; Exhibit P1.

33. On March 18, 2016, Marc Langs sent him a follow up email with more specific information about these contracts. Marc Langs was hoping Tak would be able to tell him that some or all of the projects contemplated by the CPA EPC Contracts had actually been completed. However, on March 21, 2016, Tak emailed Marc Langs back and told me that the CPA EPC Contracts were frivolous. *See* M. Langs Dec. [ECF 71] at ¶ 25; Exhibit L.

34. When Marc Langs received the March 21, 2016 email from Tak which is attached as Exhibit L to the FAC, he understood his statement that “[t]hese were frivolous contracts” to be referencing the CPA EPC Contracts at issue in this case, even though at that time, Marc Langs had still never reviewed or even seen the CPA EPC Contracts. *See* M. Langs Dec. [ECF 71] at ¶ 26.

35. After Marc Langs received the March 21, 2016 email from Tak, which is attached as Exhibit L to the FAC, he suspected for the first time:

- a. that Spirit and Tak possibly had not invested significant amounts of money into the projects contemplated by the CPA EPC Contracts in the form of engineering, zoning, and other upfront costs—*i.e.*, before outside financing for the entire projects was secured;
- b. that there was a possibility that the CPA EPC Contracts had never been sufficient to secure financing for the projects contemplated; and/or
- c. that there was a possibility that neither TPTC nor PCDI were subcontractors under the CPA EPC Contracts.

*See* M. Langs Dec. [ECF 71] at ¶ 27.

36. On some date right before or soon after the March 21, 2016 email from Tak, Marc Langs met with Steve VDH in Green Bay, Wisconsin. At that meeting, Steve VDH reiterated that the projects contemplated by the CPA EPC Contracts had never been funded and were never completed. However, Steve VDH also told Marc Langs that he still wanted the projects to go forward and that if the projects went forward in the future, he would make good on the Spirit's promises in Schedule B to the Continuing Pledge Agreement. At this meeting, Steve VDH showed Marc Langs a contract which Steve VDH purported to be one of the CPA EPC Contracts. However, Marc Langs did not review the contract in detail at that time and asked for copies of all of the CPA EPC Contracts. In response, Steve VDH told Marc Langs that he had to check with other people at Spirit regarding this request and that he would get back to Marc Langs if he could give Marc Langs copies of the CPA EPC Contracts. Marc Langs left the meeting shortly thereafter, and Steve VDH never sent Marc Langs the CPA EPC Contracts. *See* M. Langs Dec. [ECF 71] at ¶ 28.

37. Shortly thereafter, RNS Servicing contacted its current counsel, Johnson & Bell, Ltd. RNS Servicing and its current counsel diligently went through the voluminous documentation related to this lawsuit and decided to file a very detailed complaint because of the complex nature of the facts and circumstances occurring over the span of about decade. From that point on, RNS Servicing diligently worked to draft the original complaint in this lawsuit and get it on file. *See* M. Langs Dec. [ECF 71] at ¶ 29.

38. Although Marc Langs may have seen one of the CPA EPC Contracts at the meeting with Steve VDH in Green Bay, Wisconsin referenced in Paragraph 36 above, RNS Servicing never had any opportunity to review any of the four CPA EPC Contracts in any sort of

detail before they were produced in discovery in this matter by Steve VDH and Spirit. *See* M. Langs Dec. [ECF 71] at ¶ 30.

39. The responses by Spirit, Steve VDH, and Tak to the inquiries by Marc Langs referenced in Paragraphs 29-31 and 33-36 above resulted in RNS Servicing's discovery of the claims made in this lawsuit, and this lawsuit being filed. *See* S. Csar Dec. [ECF 72] at ¶ 24; R. Elli Dec. [ECF 73] at ¶ 27.

40. On March 28, 2016, the IFC Bankruptcy Trustee filed the IFC bankruptcy estate's Amended Trustee's Final Report in IFC's bankruptcy proceedings (Case No. 09-27094 in the U.S. Bankruptcy Court in the Northern District of Illinois). Part 1 of 2 of the Amended Trustee's Final Report is a comprehensive 1,238 page report which lists all of the IFC's bankruptcy estate's assets, and the present claims in this lawsuit are not listed. *See generally* Part 1 of 2 of the Amended Trustee's Final Report, attached as Exhibit JJ to B. Langs Dec. [ECF 74]

Dated: May 6, 2019

Respectfully submitted,

JOHNSON & BELL, LTD.,

By: /s/ Brian C. Langs

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Brian C. Langs