



the evidence supporting a party's factual assertions in an organized manner: it is not intended as a forum for factual or legal argument.

*Malec v. Sanford*, 191 F.R.D. 581, 583–85 (N.D. Ill. 2000) (quotation marks and citations omitted) (emphasis in original).

This Court has also held that a single Rule 56.1 paragraph cannot properly contain multiple facts. *See, e.g., Bordelon v. Bd. of Educ. of the City of Chicago*, No. 11 C 08205, 2014 WL 12661306, at \*1 (N.D. Ill. Sept. 13, 2014) (unreported) (Chang, J.) (“And finally, it was Bordelon’s responsibility to identify relevant Rule 56.1 facts in his response to the Board’s motion for summary judgment—**especially where a single Rule 56.1 paragraph improperly contained multiple facts** and Bordelon merely referenced the paragraph generally.”) (emphasis added); *Kuttner v. Zaruba*, No. 10 C 04290, 2013 WL 5433291, at \*1 n.2 (N.D. Ill. Sept. 30, 2013) (unreported) (Chang, J.) (“Kuttner’s Statement of Additional Facts . . . failed to comply with Local Rule 56.1 in many instances. Many paragraphs contained multiple facts (instead of just one at a time) with no citation to the record, or a general citation to one or more exhibits.”).

Accordingly, Defendants respectfully request that the Court deny Plaintiff’s cross-motion for summary judgment for failure to submit a proper 56.1(a) statement. Should the Court deny that request, Defendants’ responses are below.

## **II. RESPONSES**

Subject to the above objection, pursuant to Local Rule 56.1(a)(3), Defendants Spirit Construction Services, Inc. (“Spirit”), Steven Van Den Heuvel (“Steve VDH”), and Sharad Tak (“Tak”), by and through their respective undersigned attorneys, respond below to 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. Defendants assert that any undisputed facts below are admitted for purposes of the parties’ summary judgment motions on statute of

limitations grounds only. *See Chen v. Mayflower Transit, Inc.*, No. 99-C-6261, 2004 WL 2535258, at \*3 (N.D. Ill. Sept. 23, 2004) (unreported) (holding that undisputed facts in a response to a Local Rule 56.1 statement of facts are not deemed admitted beyond the motion for summary judgment). Defendants reserve their right to take issue with any undisputed facts should Defendants' motion for summary judgment be denied and/or Plaintiff's cross motion for summary judgment be granted.

1. Rudy Trebels (IFC's President) and Marc Langs (IFC's CFO) had met with Sharad Tak ("Tak") 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 PCIDI 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 PCIDI would be used as subcontractors under the CPA EPC Contracts;
- 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 EP 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).

**RESPONSE:** Undisputed that Tak met with Rudy Trebels (IFC's President) and Marc Langs (IFC's CFO) in IFC's offices in Morton Grove, Illinois in late March or early April of 2007 and that Tak confirmed that ST Paper entered into four EPC contracts with Spirit and that ST Paper had every intention that it and Spirit would proceed under the EPC Contracts. No dispute that Marc Langs claims that IFC relied on certain statements made by Tak regarding the EPC Contracts to enter into the agreements identified in (a)–(c) of Plaintiff's Additional Statement of Fact No. 1.

Dispute the remaining statements in Plaintiff's Additional Statement of Fact No. 1.

However, this dispute is immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds and does not create a genuine dispute of material fact.

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.

**RESPONSE:** Undisputed.

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).

**RESPONSE:** Undisputed.

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 [sic] 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.

**RESPONSE:** Undisputed.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds. The cited evidence does not support the stated facts beyond Marc Langs’ personal belief about Steve VDH, Spirit, and Tak’s business reputations as he interpreted them.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds. Steve VDH did not discuss any proposal with IFC, and did not remember ever having a conversation with anyone at IFC about the EPC Contracts prior to the execution of Schedules A and B to the Continuing Pledge Agreement. Affidavit of Robert Romashko in Support of Defendants’ Objections and Responses to Plaintiffs’ Additional Statement of Facts (“Romashko Aff. II”), Exhibit 1, 40:12–41:16. Tak testified that he does not remember the subject or specifics of his meeting with Marc Langs in Morton Grove, Illinois, and does not recall dealing with anyone at IFC since that meeting before 2016. Romashko Aff. II, Exhibit 2, 28:2–30:8.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Steve VDH did not discuss any proposal with IFC, and did not remember ever having a conversation with anyone at IFC about the EPC Contracts prior to the execution of Schedules A and B to the Continuing Pledge Agreement. Romashko Aff II, Exhibit 1, 40:12–41:16. Tak testified that he does not remember the subject or specifics of his meeting with Marc Langs in Morton Grove, Illinois, and does not recall dealing with anyone at IFC since that meeting before 2016. Romashko Aff II, Exhibit 2, 28:2–30:8.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Steve VDH did not discuss any proposal with IFC, and did not remember ever having a conversation with anyone at IFC about the EPC Contracts prior to the execution of Schedules A and B to the Continuing Pledge Agreement. Romashko Aff II, Exhibit 1, 40:12–41:16.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Steve VDH did not remember ever having a conversation with anyone at IFC about the EPC Contracts prior to the execution of Schedules A and B to the Continuing Pledge Agreement. Romashko Aff II, Exhibit 1, 40:12–41:16. Further, some EPC contracts had down payments, but some did not. *Id.* at 86:6–13. The statement, “IFC knew that neither Spirit nor Tak were in the business of throwing away money,” is an opinion and not a fact. However, these disputes are immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds and do not create a genuine dispute of material fact.

10. IFC's review of the EPC Contract Steve VDH and Spirit allowed IFC to see and IFCs 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

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Steve VDH did not remember ever having had a



conversation with anyone at IFC about the EPC contracts prior to the execution of Schedules A and B to the Continuing Pledge Agreement. Romashko Aff II, Exhibit 1, 40:12–41:16.

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. [EF 71] at ¶ 13.

**RESPONSE:** Undisputed.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. The cited evidence does not support the proposition that no person at IFC ever reviewed or saw the CPA EPC Contracts, and to the extent that it does, Langs' statements as to what any other person did or did not see lack foundation and are inadmissible hearsay.

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, TPT 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).



**RESPONSE:** Undisputed.

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.

**RESPONSE:** Undisputed that 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. Undisputed that the Court found (b)–(c), but Defendants dispute Plaintiff's characterization of the Court's finding in (a) as finding that the CPA EPC Contracts were “in effect.” *See generally* Affidavit of Robert Romashko in Support of Motion for Summary Judgment (“Romashko Aff. I”) ¶ 11, Ex. 9, Dkt. Nos. 66 and 66-9. However, this dispute is immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds and does not create a genuine dispute of material fact.

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 IF 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 this 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 that 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 or 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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds. Plaintiff’s Additional Statement of Fact 15, and all subparts, is inconsistent with Marc Langs’ deposition testimony in this matter. Langs was asked if he recalled the outcome of the prior litigation, and stated, “I’m not a lawyer, but... The gist of it was that there was no standing on this particular complaint,” and that he had no understanding

about what this meant about IFC's rights against Spirit, or whether it might have some cause of action going forward. Romashko Aff II, Exhibit 3, 106:17–107:16. The claim, after the close of discovery in this matter, that conversations occurred whereby Langs in fact had an understanding of what IFC's rights were, is contradictory to his testimony and should be rejected in its entirety.

Further, as to Plaintiff's Additional Statement of Fact No. 15g.–h., IFC alleged and clearly believed at the time of the Second IFC Lawsuit that the CPA EPC Contracts were fraudulently represented. Defs.' Rule 56.1(a)(1)(3) Statement of Undisputed Material Facts ¶ 39 (hereafter "DSF ¶ \_\_\_\_"), Dkt. No. 65. Further, whether or not Exhibit 3 to Steve VDH's April 8, 2008, deposition was one of the four CPA EPC Contracts, Steve VDH testified that Spirit had not paid any monies to TPTC or PCDI, had not engaged TPTC or PCDI as subcontractors, and had not engaged Ron VDH personally as a consultant or in any capacity pursuant to any of the four CPA EPC Contracts. Romashko Aff I., Exhibit 5, 141:2-16. In its Motion for Summary Judgment in the Second IFC Lawsuit, IFC even argued its belief that Spirit Construction misrepresented the likelihood that TPTC and PCDI would soon be receiving any substantial sums as subcontractors and that Steve VDH testified that neither TPTC nor PCDI were ever seriously considered by Spirit Construction to be likely subcontractors in connection with the CPA EPC Contracts. DSF ¶ 38. This objective evidence directly contradicts RNS's statements of fact in Plaintiff's Additional Statement of Fact No. 15g.–h., which are supported only by a declaration from Marc Langs. Therefore, Mr. Langs' self-serving declaration should be rejected. In any event, these matters are immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Plaintiff does not cite to any supporting evidence for its statement that "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 the projects contemplated by the four CPA EPC Contracts . . . ." That statement is argument rather than a statement of material fact.

17. Shortly after the March 31, 2009 decision by the court in the Second IFC Lawsuit, IFS 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 misrepresentation of Steve VDH, Spirit, and Tak as alleged in the FAC. *See* M. Langs Dec. [ECF 71] at ¶ 17.

**RESPONSE:** Undisputed that shortly after the March 31, 2009, Second IFC Lawsuit, IFC declared bankruptcy, which was primarily due to nonpayment by Ron VDH and his companies of debts owed to IFC, but dispute Plaintiff's characterization that it "now knows" about alleged misrepresentations by Steve VDH, Spirit, and Tak to the extent that Plaintiff means it did not know about these alleged misrepresentations until recently. IFC suspected that the CPA EPC Contracts were fraudulent or fraudulently misrepresented during the Second IFC Lawsuit in 2008. DSF ¶¶ 37–39. This objective evidence directly contradicts Plaintiff's position that it "now knows" about alleged misrepresentations. Further, the cited evidence does not support any conclusion that there was, in fact, any misrepresentation. Plaintiff's statement of

additional fact related to this is only supported by Marc Langs' self-serving declaration, which does not create a genuine issue of material fact when contradicted by objective evidence.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds. The legal claim that Rebecca Elli and Steve Csar had no “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”—is not a statement of fact. However, this does not change the fact that IFC had notice via its agents Marc Langs and Rudy Trebels of the potential claims. *See* DSF ¶¶ 37–39. Whether Rebecca Elli or Steve Csar were personally aware of potential claims against Steve VDH, Spirit, or Tak is immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds and does not create a genuine material dispute.

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. [EF 73] at ¶¶ 18, 20(g), 20(h).

**RESPONSE:** Disputed, but immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds. The legal claim that the IFC Bankruptcy Trustee had no “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”—is not a statement of fact. However, this does not change the fact that IFC had notice via its agents Marc Langs and Rudy Trebels of the potential claims. *See* DSF ¶¶ 37–39. Whether the IFC Bankruptcy Trustee was personally aware of potential claims against Steve VDH, Spirit, or Tak is immaterial

for purposes of the parties' summary judgment motions on statute of limitations grounds and does not create a genuine material dispute.

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.

**RESPONSE:** Disputed as to the use of the phrase "proved fruitless" as argumentative and vague, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Defendants do not dispute the remaining facts in Plaintiff's Additional Statement of Fact No. 23.

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 IFCs 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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Disputed as to the characterization that "IFC had not yet been injured by Spirit and therefore lacked standing for claims against Spirit," as IFC alleged and clearly believed at the time of the Second IFC Lawsuit that the CPA EPC Contracts were fraudulently presented to it. DSF ¶ 39. Undisputed that the Court in the Second IFC Lawsuit granted Spirit's



summary judgment motion as a preliminary injunction was not appropriate, but dispute that this decision banned all potential claims or types of claims against Spirit. *See generally* Romashko Aff. I ¶ 11, Ex. 9. This does not mean IFC could not bring a lawsuit for fraud or misrepresentations against Spirit or Tak in 2008 as to the CPA EPC Contracts, which served as underlying collateral for the agreements IFC entered into with Ron VDH and his companies. DSF ¶¶ 26–28. Marc Langs even stated in a sworn declaration that IFC would not have entered into the agreements with Ron VDH and his companies if it had known the CPA EPC Contracts were misrepresented. DSF ¶ 37. This objective evidence directly contradicts RNS’s statements of fact in Plaintiff’s Additional Statement of Fact No. 25, which are supported only by declarations. Therefore, Plaintiff’s Additional Statement of Fact No. 25 do not create a genuine issue of material fact.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties’ summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** The statement, "At this time, Marc Langs believed that the projects had to have been built during the administration of IFC's lengthy bankruptcy proceedings," is mere opinion and not fact. Plaintiff cites to no objective evidence supporting this belief. Even if this statement was true, IFC alleged and clearly believed at the time of the Second IFC Lawsuit that the CPA EPC Contracts were fraudulently represented. DSF ¶ 39. Therefore, this statement is immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds and does not create a genuine dispute of material fact.

Defendants do not dispute the remaining facts in Plaintiff's Additional Statement of Fact No. 29.

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. [EF 71] at ¶ 24.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** It is unclear who "him" in the first sentence is. Assuming "him" refers to Tak, undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Dispute the statement that Marc Langs “suspected for the first time” that the CPA EPC Contracts were not what they were purported to be. IFC alleged and clearly believed at the time of the Second IFC Lawsuit that the CPA EPC Contracts were fraudulently represented. DSF ¶ 39. Marc Langs even stated in a sworn declaration that IFC would not have entered into the agreements with Ron VDH and his companies if it had known the CPA EPC Contracts were misrepresented. DSF ¶ 37. In 2008, Steve VDH testified that Spirit had not paid any monies to TPTC or PCDI, had not engaged TPTC or PCDI as subcontractors, and had not engaged Ron VDH personally as a consultant or in any capacity pursuant to any of the four CPA EPC Contracts. Romashko Aff I., Exhibit 5, 141:2-16. In its Motion for Summary Judgment in the Second IFC Lawsuit, IFC even argued its belief that Spirit Construction misrepresented the likelihood that TPTC and PCDI would soon be receiving any substantial sums as subcontractors and that Steve VDH testified that neither TPTC nor PCDI were ever seriously considered by Spirit Construction to be likely subcontractors in connection with the CPA EPC Contracts. DSF ¶ 38. This objective evidence directly contradicts RNS’s statements of fact in Plaintiff’s Additional Statement of Fact No. 35, which are supported only by Mr. Langs’ declaration. Therefore, Plaintiff’s Additional Statement of Fact No. 35 does not create a genuine issue of material fact.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

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.

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. Defendants object to Plaintiff's use of the phrase "because of the complex nature of the facts and circumstances occurring over the span of about [a] decade" as stating an argument.

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 16 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.

**RESPONSE:** Disputed, but immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds. The cited evidence does not support the proposition that no person at IFC ever reviewed or saw the CPA EPC Contracts, and to the extent that it does, Langs' statements as to what any other person did or did not see lack foundation and are inadmissible hearsay.

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. [EF 73] at ¶ 27.

**RESPONSE:** When RNS "discovered" the claims is a mixed question of law and fact to which no response is required. To the extent that the statement in Paragraph 39 is considered a pure statement of fact, disputed.

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].

**RESPONSE:** Undisputed and immaterial for purposes of the parties' summary judgment motions on statute of limitations grounds.

Dated: May 31, 2019.

Respectfully submitted,

By: /s/Brian C. Spahn

Brian C. Spahn, SBN 6290809  
Godfrey & Kahn, S.C.  
833 East Michigan Street, Suite 1800  
Milwaukee, WI 53202-5615  
Telephone: 414-273-3500  
Facsimile: 414-273-5198  
bspahn@gklaw.com

***Attorney for Defendant Sharad Tak***

/s/ Robert M. Romashko

Patrick S. Coffey, No. 6188134  
Robert M. Romashko, No. 6293659  
Husch Blackwell, LLP  
120 South Riverside Plaza, Suite 2200  
Chicago, IL 60606

Telephone: (312) 655-1500  
Facsimile: (312) 655-1501  
patrick.coffey@huschblackwell.com  
robert.romashko@huschblackwell.com

*Attorneys for Defendants Spirit Construction  
Services, Inc., and Steven Van Den Heuvel*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 31, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

By: Brian C. Spahn

20698452.1