No. _____

In the Supreme Court of the United States

UNITED STATES OF AMERICA AND THE STATE OF FLORIDA EX REL. ROBERT V. SMITH,
Petitioner,

v.

JAY A. ODOM AND OKALOOSA COUNTY, BOARD OF COUNTY COMMISSIONERS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX

W. Kelly Puls
Counsel of Record
PULS LAW, PLLC
3101 W 6th St., #472056
Fort Worth, TX 76147
(817) 338-1717
kelly@pulslaw.com

Elizabeth Billhimer
MATTHEWS & MATTHEWS LLP
4475 Legendary Dr
Destin, FL 32541
(850) 837-3662
ebillhimer@destinlaw.com

Attorneys for Petitioner

JANUARY MMXXVI

United States Commercial Printing Company • www.uscpc.us • (202) 866-8558

APPENDIX

TABLE OF CONTENTS

Appendix A
[Filed: Aug. 22, 2025]

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13670

UNITED STATES OF AMERICA,
ex rel Robert V. Smith, et al.,

Plaintiffs,

ROBERT V. SMITH,

Plaintiff-Appellant,

versus

JAY ODOM,
OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:20-cv-03678-MCR-ZCB

Before NEWSOM, GRANT, and ABUDU, Circuit Judges.

GRANT, Circuit Judge:

The owner of an airport (known in this context as an airport sponsor) can either provide aeronautical services—like fueling and aircraft maintenance—itself or farm them out to third-party companies, known as fixed-base operators. If a sponsor chooses the latter, guardrails are in place to ensure adequate competition. Federal law requires airport sponsors seeking federal funding to certify that they will not give any fixed-base operator an exclusive right to offer services at their airport. In 2014, multiple news outlets published articles revealing that an airport sponsor had likely done just that: the owner of one fixed-base operator at the Destin Airport had quietly bought the other, even while the airport's sponsor still certified to the Federal Aviation Administration that it was not giving any service provider an exclusive right to operate at the airport.

About five years later, after those two operators had officially merged, Robert Smith asked the airport sponsor to let him in on the game—he wanted to run a second fixed-base operator at the airport. When his request was declined, Smith sued—but not for the right to bring his company in at the airport. Instead, he alleged that both the airport sponsor and the former owner of the two airport service companies that had merged had violated the False Claims Act by falsely certifying to the government that they were complying with the grant assurances for fixed-base operators. The district court dismissed Smith's complaint with prejudice after finding the Act's public disclosure bar foreclosed his claims; the same allega-

tions, after all, had been featured in news articles years before. We agree, and affirm the district court.

I.

The Destin Executive Airport is sponsored by Okaloosa County, which has received millions of dollars in federal and state grants for airport improvements. An airport sponsor receiving financial assistance through federal grants must make various written "assurances" to the government to be eligible for funding. 49 U.S.C. § 47107(a). In other words, the sponsor must certify to the government that it will do or not do certain things. One such assurance is that the sponsor will not grant an "exclusive right to use the airport" to any single "fixed-base operator." *Id.* § 47107(a)(4). Fixed-base operators are commercial entities "providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc. to the public." Airport Compliance Manual, FAA Order 5190.6B § 8.9 n.25 (Sept. 30, 2009).

Until 2009, Miracle Strip Aviation was the sole fixed-base operator at the airport. That year, the airport added a second, Destin Jet, owned by Jay Odom. According to the operative complaint, which we credit at this stage, plaintiff Robert Smith received flight training from Miracle Strip Aviation in 1985 and worked as a commercial pilot. His work allowed him to interact regularly with both fixed-base operators and their employees.

In 2012, Miracle Strip was acquired by Regal Capital. On paper, Phillip Ward and Jack Simmons owned Regal Capital. But according to Smith, the purchase of Miracle Strip was actually funded by

Odom, the owner of Destin Jet—Ward and Simmons were merely "strawmen." The County learned about the acquisition, but not the alleged strawman scheme, in early 2013. It approved an assignment of Miracle Strip's lease to Regal Capital, and Miracle Strip was renamed Regal Air. Less than a year later, Sterling Diversified—owned by Odom and two others—acquired Regal Capital (and Regal Air). The County learned that Odom owned Regal Air in March 2014.

At least two news outlets reported these events. On March 29, 2014, an article in the Northwest Florida Daily News reported that "a company associated with Destin Jet owner Jay Odom bought out the competition at Destin Airport." The article quoted the airport director as declaring that Odom's actions "violated two Federal Aviation Administration grant assurances." It also alleged that Odom told airport administrators that two fixed-base operators "could not co-exist at Destin Airport in the current environment of declining general aviation activity." Apparently that argument did not fall on deaf ears. Okaloosa County Airports Director Sunil Harman acknowledged that a "declining market since 2008" made him "fairly confident" that the case was "compelling enough to point to a single fixed base operator at the airport."

Aviation International News chronicled the story a little more than a month later, reporting that airport officials and owners of Destin Jet were working to resolve a dispute involving "county anti-trust safeguards and FAA grant assurance violations that resulted when the owners of Destin Jet allegedly purchased rival provider Regal Air Destin at the end of

last year." The article also said that Harman agreed that fuel sales data suggested the airport could not support two fixed-base operators.

Smith alleges that in September 2014, the County reported Regal Air's ownership change to the FAA and asked whether the acquisition would result in a violation of its exclusive-rights grant assurances. In response, he says, the FAA cautioned the County on "issues related to exclusive rights" and suggested obtaining a legal opinion from the FAA's Office of General Counsel.

But that never happened. Instead, the County moved forward with authorizing Destin Jet and Regal Air to "operate under common ownership and brand." The County, Smith says, was concerned that sustaining two operators was not viable due to declining fuel sales, a downturn in aviation activity, loss of airport revenues, and lease compliance issues. And in the County's view, it had raised its concerns "regarding compliance with the grant assurances" with the FAA. The FAA, in turn, had responded that "the acquisition of a competing [fixed-base operator], even if it results in a single [fixed-base operator] provider," is a "prevalent practice" that "does not in itself constitute" a violation of grant assurances.

Odom sold Destin Jet (which had merged with Regal Air) in 2016. About three years later, Smith approached the County about establishing a competing fixed-base operator at the airport. He proposed leasing one of the two existing fixed-base operator locations that were being run by a single operator or leasing space on the airport to build a third location. The County denied his request, citing both the preex-

isting leases and a lack of available land. After his request was denied, Smith brought a qui tam action as a relator under the False Claims Act against Odom and the County.[1] Smith alleged that Odom's acquisition of Regal Air, together with his ownership of Miracle Strip, had created an exclusive right for a single fixed-base operator, which meant the County had made false certifications to the government in its funding requests. Smith added that the County had maintained that exclusive right by (1) approving the merger between Destin Jet and Regal Air and (2) denying his request to establish a competing fixed-base operator. Smith identified over forty times between 2012 and 2019 in which the County allegedly made false statements in grant applications, resulting in over $30 million in funding.

After Smith amended his complaint, both Odom and the County moved to dismiss. The district court dismissed the amended complaint with prejudice for two reasons. *First*, the court determined that the False Claims Act's public disclosure provision barred Smith's suit because the allegations in the complaint were publicly disclosed in the two 2014 news articles. *Second*, the court concluded that the complaint failed to satisfy the heightened pleading standard required for fraud claims. The court later denied Smith's re-

---

[1] Smith also sued under Florida's False Claims Act. *See* Fla. Stat. § 68.082 (2024). Because the Florida statute is modeled after the federal False Claims Act, the "same standard is applied to the evaluation of the claims under both statutes." *United States ex rel. Heater v. Holy Cross Hosp., Inc.*, 510 F. Supp. 2d 1027, 1033–34 n.5 (S.D. Fla. 2007). We therefore consider them together.

quest for leave to amend and to amend the judgment. This is his appeal.

II.

"We review a dismissal with prejudice for failure to state a claim under the False Claims Act de novo." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015). "In doing so, we accept the allegations in the complaint as true and construe them" in the relator's favor. *Id.* We review the denial of a motion for leave to amend a complaint for abuse of discretion, but we review a decision that a particular amendment to the complaint would be futile de novo. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007).

III.

"The False Claims Act targets just that—false claims." *Hickman v. Spirit of Athens, Ala., Inc.*, 985 F.3d 1284, 1285 (11th Cir. 2021). Among other things, the Act prohibits (1) knowingly presenting a false or fraudulent claim for approval or payment to the government and (2) knowingly making or causing a false record or statement to be made that was material to a false or fraudulent claim. *See* 31 U.S.C. § 3729(a)(1)(A)–(B).

To ferret out false claims, the Act relies on private individuals, who often have a front-row seat to fraud against the government—and are sometimes in an even better position than the government to identify that fraud. So one of the Act's "primary purposes" is to incentivize those people to help the government get its money back. *United States ex rel. Jacobs v. JP Morgan Chase Bank, N.A.*, 113 F.4th 1294, 1299

(11th Cir. 2024) (quotation omitted). To that end, private individuals who know about false claims against the government—called relators in this context—can file civil lawsuits known as qui tam actions to bring the fraud to light. *See* 31 U.S.C. § 3730; *Jacobs*, 113 F.4th 1294 at 1299–1300. A successful qui tam suit results in money damages for both the relator and the government. *See* 31 U.S.C. § 3730(d).

But if the fraud and false claims allegations have already been publicized, only the original source of that information can sue. *See id.* § 3730(e)(4)(A)–(B). Otherwise, copycat lawsuits would flood the system, generating less helpful relators at best and exploitative vultures at worst—in neither case making it any more likely that the government would recover for fraudulent claims. *See United States ex rel. Bibby v. Mortg. Invs. Corp.*, 987 F.3d 1340, 1353 (11th Cir. 2021). That's why a qui tam suit must be dismissed if "substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed" unless "the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A).

Public disclosure can occur in a variety of ways according to the statute. News coverage is the most obvious. *Id.* § 3730(e)(4)(A)(iii). A court case is another, as is a congressional hearing. *Id.* § 3730(e)(4)(A)(i)–(ii). The public disclosure provision does not strip relators of valid claims if a media source scoops the allegations, however. A relator can still bring suit if he is an original source—someone who had already voluntarily disclosed the information to the government before the public disclosure or someone who has

"knowledge that is independent of and materially adds to the publicly disclosed allegations." *Id.* § 3730(e)(4)(A)–(B).

Three questions determine whether the public disclosure bar applies. The first is whether the same general allegations in the plaintiff's complaint have already been publicly disclosed. *See Jacobs*, 113 F.4th at 1300. If yes, we consider whether those two sets of allegations are "substantially the same." *Id.* (quotation omitted). If that too is a yes, we ask whether the plaintiff is an original source of the information. *Id.*

Neither party disputes that news articles "clearly qualify as news media." *United States ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 813 (11th Cir. 2015). Here, the district court took judicial notice of the two 2014 news articles, both of which discuss the consolidation of the two fixed-base operators and the resulting grant assurance violations.

But Smith argues that these articles do not contain any "allegations" because the "limited facts" in the public domain "do not allow the conclusion that a fraud has occurred." That's not so. To allege fraud, one need only present a claim or statement submitted to the government and "the true set of facts" showing that the claim or statement is not true. *Bibby*, 987 F.3d at 1353 (quotation omitted). The articles here described the County's grant assurances related to federal funding, noted that federal money "comes with strings attached," and explained that when Destin Jet acquired the only other fixed-base operator at the airport the County violated two of these assur-

ances. These statements are more than enough to meet the standard for public disclosure.

That brings us to whether the allegations in the complaint are substantially the same as those in the public disclosures. Smith insists that they are not. He says that the complaint, unlike the articles, discusses the strawman scheme and the County's actions after Odom gained control of both fixed-base operators. But substantially the same "does not mean identical." *Jacobs*, 113 F.4th at 1302 (emphasis deleted). "Significant overlap between the plaintiff's allegations and the public disclosures is sufficient to show that the disclosed information forms the basis of the lawsuit and is substantially similar to the allegations in the complaint." *Id.* (alterations adopted and quotation omitted). It is not open season, in other words, for would-be relators who have one piece of a puzzle that is already largely complete.

The articles here outlined the same scheme that Smith raises in his complaint. Both examined the conflict created by Odom's acquisition of Regal Air. In fact, one opened: "Late last year, a company associated with Destin Jet owner Jay Odom bought out the competition at Destin Airport." As for the grant assurances, one article explained that Odom's acquisition of the competing fixed-base operator "violated two Federal Aviation Administration grant assurances," and the other said that airport officials were "working to resolve a dispute involving county antitrust safeguards and FAA grant assurance violations that resulted when the owners of Destin Jet allegedly purchased rival provider Regal Air Destin at the end of last year." Both reported Harman's belief (echoed

in Smith's complaint) that the airport could not support multiple fixed-base operators.

Smith argues that these allegations are not substantially the same as his own because the articles discuss only violations due to *Odom's* actions, whereas he alleges that the *County's* conduct led to additional violations. He highlights two actions that postdated the articles: (1) the County's failure to get approval from the FAA before merging the two fixed-base operators in late 2014; and (2) its denial of his request to open a competing fixed-base operator in 2019.

The articles, it's true, do not discuss any of the County's actions after their publication in the first half of 2014. But neither of the County's actions changed or expanded the scheme. Smith's complaint and the news articles center on the same issue: the lack of competition between the fixed-base operators. And they both allege the same violation of the Act: that Destin Jet's acquisition of Regal Air caused the County to violate its assurance to the FAA that a single fixed-base operator would "not be given an exclusive right to use the airport." 49 U.S.C. § 47107(a)(4). Because there is "significant overlap" between the allegations in the complaint and the allegations in the news articles, this prong of the public disclosure bar is satisfied. *Jacobs*, 113 F.4th at 1302 (quotation omitted).

The final inquiry is whether Smith is an original source of the information, either because he already told the government about it or because his knowledge is "independent of and materially adds to the publicly disclosed allegations." 31 U.S.C. §

3730(e)(4)(B). For that latter point, if "the public disclosures are already sufficient to give rise to an inference of fraud, cumulative allegations do not materially add to the public disclosures." *Jacobs*, 113 F.4th at 1303 (quotation omitted). The same goes for "[b]ackground information and details that help one understand or contextualize a public disclosure"—those too are "insufficient to grant original source status." *Id.* (alterations adopted and quotation omitted).

Smith does not claim that he disclosed any information to the government before the news articles were published, but he argues that he still qualifies as an original source because several of his allegations materially add to the public disclosures. To start, he says he revealed that Odom engaged in a strawman scheme to "covertly" gain control of Regal Air before Sterling Diversified officially acquired it. He adds that "actual economic conditions at [the airport] did not justify a merger" of Regal Air and Destin Jet and says he was "denied an opportunity to lease or develop a new" operation at the airport, "which is a separate violation of grant assurances."

These are details, not material additions. The articles established that one entity controlled both fixed-base operators at the airport and that this was a violation of the County's FAA grant assurances. Smith's new filings provide background information and additional details—but that's it. Allegations like the ones here are not material additions because they "merely supplement and contextualize the core fraud hypothesis" already disclosed. *Id.* The heart of Smith's complaint and the articles is the same: the

consolidation of Destin Jet and Regal Air gave the merged entity an "exclusive right to use the airport" in violation of the County's grant assurances. 49 U.S.C. § 47107(a)(4).

Because the allegations disclosed in the articles significantly overlap with Smith's allegations and he is not an original source of the information, we conclude that his claims cannot clear the False Claims Act's public disclosure bar. We affirm the district court's order dismissing the amended complaint.[2]

IV.

Smith also challenges the district court's denial of his request for leave to amend his complaint. Leave to amend is freely given "when justice so requires," but a court may deny leave "if amendment would be futile." Fed. R. Civ. P. 15(a)(2); *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1332 (11th Cir. 2020). "A district court may find futility if a prerequisite to relief is belied by the facts alleged in the complaint." *Hernandez*, 982 F.3d at 1332 (alteration adopted and quotation omitted).

Smith argues that, if given leave to amend, he can allege "additional facts that demonstrate he is an original source" including "additional detail regarding how he learned of the allegations." That is not enough. An original source, as we have said, has "knowledge that is independent of *and* materially adds to the publicly disclosed allegations or transac-

---

[2] The district court also dismissed the suit for failure to satisfy Federal Rule of Civil Procedure 9(b). But because we affirm the dismissal on public disclosure grounds, we need not consider the 9(b) question.

tions." 31 U.S.C. § 3730(e)(4)(B) (emphasis added). While Smith's proposed amendment may help establish that his knowledge is independent of the public disclosures, even he does not suggest that it would also show that his knowledge "materially adds" to what is already publicly available. And because this requirement is essential, Smith's proposed amendment is futile.

* * *

We **AFFIRM** the district court's order.

Appendix B
[Filed: Oct. 31, 2025]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13670

UNITED STATES OF AMERICA,
ex rel Robert V. Smith, et al.,

Plaintiffs,

ROBERT V. SMITH,

Plaintiff-Appellant,

versus

JAY ODOM,
OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:20-cv-03678-MCR-ZCB

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: August 22, 2025
For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: October 31, 2025

Appendix C
[Filed: Oct. 21, 2025]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13670

UNITED STATES OF AMERICA,
ex rel Robert V. Smith, et al.,

Plaintiffs,

ROBERT V. SMITH,

Plaintiff-Appellant,

versus

JAY ODOM,
OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:20-cv-03678-MCR-ZCB

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before NEWSOM, GRANT, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Appendix D

U.S. Department of Transportation **Federal Aviation Administration**

Office of Airport Compliance and Management Analysis

800 Independence Ave., SW Washington, DC 20591

March 20, 2025

Elizabeth Billhimer
Mathews & Mathews, LLP
4475 Legendary Drive
Destin, Florida 32541
ebillhimer@destinlaw.com

W. Eric Pilsk
Adam Gerchick
Kaplan Kirsch & Rockwell LLP
1634 I Street, NW, Suite 300
Washington, DC 20006

Re: *Robert V. Smith* v. *Okaloosa County, Florida* – FAA Docket 16-24-01

Dear Ms. Billhimer and Messrs. Pilsk and Gerchick:

Enclosed is the Federal Aviation Administration (FAA) Director's Determination with respect to the above-captioned formal complaint under 14 CFR part 16.

We find Okaloosa County Florida is in violation of its federal obligations regarding Grant Assurance 23, *Exclusive Rights*, Grant Assurance 22, *Economic Nondiscrimination,* and Grant Assurance 5, *Preserv-*

ing Rights and Powers. The reasons for the finding are set forth in the enclosed Director's Determination.

The Director's Determination does not constitute a Final Agency Decision and order subject to judicial review [14 CFR § 16.247(b)(2)]. A party adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports under 14 CFR § 16.33(c) within 30 days of the Director's Determination being issued.

Sincerely,

/s/ Michael Helvey
Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ROBERT V. SMITH COMPLAINANT, v. OKALOOSA COUNTY, FLORIDA RESPONDENT.

FAA Docket No. 16-24-01

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Admiistration (FAA) based on the formal Complaint filed by Robert V. Smith (Complainant or Mr. Smith), against Okaloosa County, Florida (Respondent or County) in accordance with the *FAA Rules of Practice for Federally-Assisted Airport Enforcement Proceedings,* 14 CFR part 16 (Part 16). Okaloosa County is the owner and sponsor of Destin Executive Airport (DTS or Airport).

Mr. Smith alleges that the County violated Grant Assurance 23, *Exclusive Rights*, as a result of its decisions to allow one fixed-base operator (FBO) to occupy and control two separate FBO locations at the Airport. Mr. Smith alleges the FBO locations consume all the available land on the Airport (FAA Exhibit 1, Item 2, p. 2). Mr. Smith states "Since 2012 to the present, effectively only one aeronautical service provider has operated the two FBO locations at DTS

with a monopoly on the ability to sell fuel, perform maintenance, and provide other aeronautical services to the detriment of public users and competition." (FAA Exhibit 1, Item 2, p. 3).

Mr. Smith alleges that in addition to a violation of Grant Assurance 23, the County has also violated Grant Assurance 1, *General Federal Requirements*, Grant Assurance 5, *Preserving Rights and Powers*, and Grant Assurance 22, *Economic Nondiscrimination* (FAA Exhibit 1, Item 2, p. 14-18).

Okaloosa County denies these allegations and requests the matter be dismissed. The County states "Complainant Smith asserts that the County violated the prohibition against exclusive rights by approving the change in control in 2015. His claim rests on the simple assertion that the presence of only one FBO and the lack of other available land at the Airport violates the prohibition against exclusive rights." (FAA Exhibit 1, Item 6, p. 1).

The County also requests the Director dismiss the Complaint because Mr. Smith lacks standing to bring the Complaint claiming he is not directly and substantially affected by the County's alleged grant noncompliance. The County also states, "by waiting 10 years to bring his Complaint, Smith's claims are barred by the statute of limitations and the doctrine of laches." (FAA Exhibit 1, Item 6, p. 16).

Because allegations made in this Complaint are primarily addressed under Grant Assurance 23, *Exclusive Rights*, and that is the gravamen of the Complaint, the Director used this Grant Assurance as the umbrella under which the Complaint was investigat-

ed. The Director has also provided an analysis of Grant Assurance 5, *Preserving Rights and Powers*, and Grant Assurance 22, *Economic Nondiscrimination.*

Based on the evidence of record in this proceeding, the Director, FAA Office of Airport Compliance and Management Analysis (Director), finds that Okaloosa County, Florida, is in violation of Grant Assurance 23, *Exclusive Rights,* Grant Assurance 22*, Economic Nondiscrimination* and Grant Assurance *5, Preserving Rights and Powers.*

II. PARTIES

A. Complainant

Robert V. Smith is a resident of Okaloosa County; a real estate developer and investor; a general contractor; and a commercial pilot (FAA Exhibit 1, Item 2, p. 18). Mr. Smith states that he "was at all times and still is a commercial pilot and aeronautical user of DTS." (FAA Exhibit 1, Item 8, p. 2).

B. Respondent

Okaloosa County, Florida, is the owner and sponsor of Destin Executive Airport (DTS). DTS is a general aviation airport located on approximately 395 acres (FAA Exhibit 1, Item 18) within the City of Destin, Florida. DTS has two FBO facilities, both leased to Atlantic Aviation FBO, Inc. (Atlantic) with "two separate FBO buildings, two ramps, two fuel farms; and two maintenance hangars" (FAA Exhibit 1, Item 2, p. 9). Further, "the County owns three blocks of hangars (a total of 18 total box and T-hangars) which are leased to aircraft owners for aircraft storage. In addi-

tion, there are eight rows or blocks of privately-owned hangars on land leased from the County." (FAA Exhibit 1, Item 6, p. 4).

The Airport had over 83,000 aircraft operations for the twelve months ending December 31, 2023 (FAA Exhibit 1, Item 17).

The development of the Airport was financed in part with FAA Airport and Improvement Program (AIP) funding, authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, et seq. Between 1982 and 2021, the Airport received approximately $8,558,130 in AIP funding including grants for land acquisition (FAA Exhibit 1, Item 16). Thus, the County is obligated to comply with the FAA sponsor grant assurances and related federal statutory law, 49 U.S.C. § 47107.

III. PROCEDURAL HISTORY

1. On January 11, 2024, Robert V. Smith submitted his Complaint (FAA Exhibit 1, Item 2).
2. On March 22, 2024, Okaloosa County submitted its Motion to Dismiss the Complaint or, in the Alternative, Answer to the Complaint (FAA Exhibit 1, Item 6).
3. On April 11, 2024, Robert V. Smith filed a Response to Respondent's Motion to Dismiss and Reply to Respondent's Answer to the Complaint (FAA Exhibit 1, Item 8).
4. On May 2, 2024, Okaloosa County filed its Rebuttal in Support of its Motion to Dismiss the Complaint, or, in the Alternative, Answer to the Complaint (Corrected) (FAA Exhibit 1, Item 11).

5. On July 22, 2024, Robert V. Smith filed a Motion to Supplement the Record (FAA Exhibit 1, Item 12).

6. On July 31, 2024, Respondent Okaloosa County Florida's Opposition to Complainant's Motion to Supplement the Record (FAA Exhibit 1, Item 13).

Additional documents supporting the complaint and response can be found in FAA Exhibit 1, Index of Administrative Record (attached).

IV. BACKGROUND

February 26, 2004	Destin Jet, LLC executed a lease with the County for what became the Destin Jet FBO (Destin Jet) after a public request for proposal (RFP). After five years it began providing FBO services to the public (FAA Exhibit 1, Item 6, p. 5).
March 19, 2013	The County executed an Amended and Restated Lease and Operating Agreement with Miracle Strip Aviation (Miracle Strip/MSA), executed by its president John Simmons. A repayment plan was attached to the Amended Lease and Operating Agreement, under which the operator agreed to repay $485,382.00 in overdue rent to the County for its lease on the Airport (FAA Exhibit 1, Item 2, Exhibit 18).

April 2013	Jay Odom (Odom) proposed to the County that Destin Jet enter into a management agreement to operate Miracle Strip (FAA Exhibit 1, Item 2, Exhibit 3).
April 8, 2013	In an email response to the County, the FAA Orlando Airports District Office (ADO) warned, By allowing this management agreement, the sponsor may be ceding their Rights and Powers, a violation of Grant Assurance 5. Further, they are opening themselves up to a future complaint of allowing an exclusive right, a violation of Grant Assurance 23. (FAA Exhibit 1, Item 2, Exhibit 12).
June 6, 2013	The Board of County Commissioners (BOCC) and John Simmons, the sole member of Regal Capital, LLC (Regal Capital) signed a lease assignment transferring the Miracle Strip Lease to Regal Air Destin, LLC (RAD), a company owned by Regal Capital (FAA Exhibit 1, Item 2, Exhibit 4).

Early 2014	The County's Airports Director (Harman), demanded that Destin Jet and Regal Air disclose their respective ownership and controlling interests in each FBO (FAA Exhibit 1, Item 6, p. 7).
February 25, 2014	"Odom informed the County for the first time, verbally, that (Odom) and two partners, had acquired a complete controlling interest in Regal Air at the end of 2013." (FAA Exhibit 1, Item 6, p. 7).
February 27, 2014	The County issued a notice of default to RAD stating that it had breached its lease by selling to Sterling Diversified Group, LLC on December 31, 2013, without the County's prior permission and without payment of a $1,000 lease-assignment fee[1] (FAA Exhibit 1, Item 6, Exhibit 7).
February 28, 2014	"Harman and Mike Stenson, the County's Deputy Airports Director, met with Odom to discuss a plan for disclosing the acquisition to the FAA and allowing Destin Jet and Regal Air to op-

[1] Simmons sold his interest in Regal Capital LLC to Sterling, the owner of Destin Jet (FAA Exhibit 1, Item 6, p. 7).

erate lawfully under a single brand" (FAA Exhibit 1, Item 6, p. 8).

August 26, 2014 — Harman sent a letter to Odom stating in part,

> This acknowledges receipt of your letter and the accompanying legal opinion and serves notice that I am terminating our negotiations for a mutually acceptable single lease. A document that I had agreed to support before the Board and FAA to enable you to operate Regal Air as Destin Jet for a period of 10 years, in exchange for increased fuel-flowage, land-rent, and concession revenues to the County…
>
> I informed you at our first meeting on February 7, 2014, that of the two conditions, any term exceeding 10 years would be objectionable to the FAA and that even the 10 years may pose a problem for the FAA, given their earlier determination of April 8, 2013, in response to your proposal to take-over the management of Miracle Strip Aviation…

	Because you have rejected both conditions, there is no basis for any further negotiations. Your proposal to continue both leases as is with a slight increase in flowage fee is not acceptable. (FAA Exhibit 1, Item 6, Exhibit 9).
August 26, 2014	Stenson emailed the ADO requesting guidance on whether allowing Destin Jet to operate both FBO locations at the Airport would be a violation of its grant assurances. Stenson attached letters from Odom and Simmons, and Odom's legal memorandum for the FAA's consideration (FAA Exhibit 1, Item 2, Exhibit 3).
September 10, 2014	Stenson spoke by phone with staff from the FAA Southern Region and the ADO regarding the issue (FAA Exhibit 1, Item 6, pp. 9-10).
September 11, 2014	Stenson emailed several questions to the FAA to clarify the FAA's view on the Regal Lease Assignment and if the County would potentially be violating Grant Assurances 5 or 23 (FAA Exhibit 1, Item 2, Exhibit 11).

	The County states that the Regional Office replied on September 11, 2014. However, the email indicated that staff had not reviewed the proposed agreement and only provided general guidance on Grant Assurances 5 and 23. The email also states, "During our conversation, I recommended that you review the lease agreement with your attorney to determine if the lessee's actions constituted a breach under the terms of the lease." The email also stated, "If Okaloosa County requires a legal opinion, I recommend you contact our Office of General Counsel." A telephone number was provided (FAA Exhibit 1, Item 2, Exhibit 11).
October 21, 2014	The Airport Director prepared a memo to the BOCC proposing the Regal Lease Assignment and providing justification including fuel sales information and the failure of the second FBO (FAA Exhibit 1, Item 2, Exhibit 10).
September 22, 2016	The County signed an Assignment, Consent, and Assumption of the Lease L79-0101-AP between Regal Air Destin and

	Triumph FBO Destin, LLC [2] (FAA Exhibit 1, Item 2, Exhibit 18).
April 2019	Mr. Smith contacted the County about leasing space on the Airport for a competing FBO. Smith proposed leasing one of the two existing FBO locations being operated by a single operator or leasing space to build a third FBO (FAA Exhibit 1, Item 2, Exhibit 17).
May 3, 2019	Tracy Stage, Okaloosa County Airport Director responded to Smith's inquiry stating, For your first suggestion to lease one of the two existing FBOs, I do not see this as viable based on legal agreements with the existing FBO owner and lease space holder. Regarding your suggestion to develop a third FBO location on the airport, this option is not feasible based on available land left to develop on DTS and all aircraft aprons are under lease by both FBOs. (FAA Exhibit 1, Item 2, Exhibit 17).

[2] Triumph operated the two FBO locations as one under the Lynx brand (FAA Exhibit 1, Item 2, p. 6).

November 2021	Atlantic acquired Lynx FBO Destin, LLC in November through its acquisition of Lynx FBO Holdings, LLC (FAA Exhibit 1, Item 8A, Exhibit 8, and Item 6, p. 53).
January 16, 2024	The County executed the Ratification of Subleases and Acquisition for Lynx FBO Destin at Destin Executive Airport[3]; Atlantic's acquisition occurred over two years earlier and the County waived a claim to a fee (FAA Exhibit 1, Item 8A, Exhibit 8).

V. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable federal law and policy:

Issue 1 - Whether the County is in violation of Grant Assurance 23, *Exclusive Rights*, by allowing one owner to control two fixed base operations on the Destin Executive Airport and

[3] The Lease requires the Operator to obtain written consent of the County to assign or sublease all or any portion of the Lease Premises. The County also must ratify any change in control with respect to the Lessee. See for example, Articles XXXIV and XXXV of the 2013 *Amended and Restated Lease and Operating Agreement*. (FAA Exhibit 1, Item 8A, Exhibit 8).

thereby denying Mr. Smith access to lease space and provide FBO services.

Issue 2 - Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination,* by allowing an exclusive right to have occurred at the Airport and effectively denying access to Mr. Smith to lease space and to provide FBO services.

Issue 3 - Whether the County is in violation of Grant Assurance 5*, Preserving Rights and Powers,* by failing to maintain control over lease transactions from 2015 to the present.

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. §47107 (a) sets forth certain sponsorship requirements to which an airport sponsor receiving federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. *See* FAA Exhibit 1, Item 1 in the Index for a list of all the grant assurances.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed

by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation, and maintenance, as well as ensuring reasonable public access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport owners comply with their federal grant assurances.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

Preliminary Issues

Standing to File a Part 16 Complaint

The County claims Mr. Smith does not have standing and has not demonstrated how he was substantially impacted by the allegations. The County, argues that the Complainant,

> has not been a tenant or based user at Destin Executive Airport since the early 2000s, prior to any of the events in question. He is not an active aeronautical user of the Airport and has no contract with the County regarding the Airport. He also has no prior experience owning and operating an FBO. Accordingly, he cannot show that he is adversely affected by the County's actions in 2015 as required by 14 CFR § 16.23(a), and his preliminary request to open an FBO in 2019 cannot confer standing because the inquiry was not at all the sort of substantive proposal that could establish standing under Part 16. (FAA Exhibit 1, Item 6, p. 3).

To support this claim, the County cites a previous Director's Determination,

> [t]o show that a complainant meets those requirements, the complainant must show that they are an airport tenant or user. For example, a complainant lost standing to maintain its complaint because it had previously sold its airport lease and other assets to a third party. [*Venice Jet Ctr., LLC* v. *City of Venice*, FAA Docket. No. 16-09-05, Order of Dismissal, at 18 (Dec. 17, 2007)] (FAA Exhibit 1, Item 6, p.16).

The case cited above is not on point for this matter. In the *Venice Jet Center* case, the Complainant was unable to maintain standing when he sold his airport assets to another company, but that is not the case here. Mr. Smith has not divested himself of airport assets, rather he continues to seek access to the Airport to provide aeronautical services.

The County also argues that Smith's 2019 queries about establishing an FBO did not confer standing. Namely, the County relying on *Mansfield Heliflight, Inc.* v. *City of Burlington*, FAA Docket. No. 16-14-06, Director's Determination (Sept. 5, 2017), argues it never denied Smith's request because Smith "at most only initiated preliminary discussions about becoming an FBO but never started, pursued, or completed the application process." (FAA Exhibit 1, Item 6, p. 17). The County claims that Smith's preliminary discussions did not create a sufficiently concrete proposal that could confer standing (*Id.*, p. 18).

Mr. Smith asserts he is a commercial pilot and user of DTS, who has used or attempted to use FBO services at the Airport. Mr. Smith contends that in 2019, he approached Okaloosa County about establishing a competing FBO at DTS (FAA Exhibit 1, Item 2, p. 7). Mr. Smith argues "[t]he FAA has long held that a potential aeronautical service provider has standing whether or not they have a current contract with the airport." (FAA Exhibit 1, Item 8, p. 3).

Mr. Smith claims that he attempted to negotiate to lease space from the County to operate an FBO at DTS stating,

> During a meeting on June 30, 2023, with Okaloosa County Commissioner, Mel Ponder, in person, and Deputy County Administrator, Craig Coffey, via conference call, Mr. Coffey stated that he was aware that [Smith] wanted to lease one of the two FBOs at DTS and that [Smith] could bid on the RFP for one of the FBO's in about 10 years, when one of the FBO's leases expires. (FAA Exhibit 1, Item 2, p. 12).

Mr. Smith also claims at the meeting on September 8, 2023, with County officials, he was again told that the County "would not issue an RFP until one of the two existing leases, both held by Atlantic, expired in about 10 years." (FAA Exhibit 1, Item 2, p. 12).

The Director agrees with Mr. Smith that as a user of the aeronautical services at the Airport, he is substantially affected by the allegations if proven true. Further, Mr. Smith has shown that he approached the County about establishing a business at the Airport. The Director notes that the County does not dispute that Mr. Smith made inquiries about establishing a business and claims only that his inquiries were insufficient to demonstrate standing.

The Director agrees that Mr. Smith does not need to have submitted a "substantive proposal" to the County to demonstrate standing; notably, the County did not request that Mr. Smith submit an application to provide FBO services. The County's repeated response to Mr. Smith's inquiries was that there was no space available, and that Mr. Smith could respond to an RFP in ten years when the lease was up (FAA

Exhibit 1, Item 2, Exhibit 17). The Director finds that Mr. Smith has standing to file the complaint.

Delay in Filing Part 16

The County also argues that the Complaint should be dismissed because Mr. Smith's claims are barred by the statute of limitations and the doctrine of laches stating,

> …although Smith admits that he voiced exclusive-rights concerns about the two FBOs since at least 2014, he waited 10 years to file his Complaint, even though [Smith] filed a now-dismissed qui tam against the County based on the same facts and theory in 2020. The Director should dismiss the Complaint as beyond the statute of limitations and barred by the doctrine of laches. (FAA Exhibit 1, Item 6, p. 3).

The County argues that Mr. Smith lacks justification for waiting five years to challenge the County's alleged "denial" of his initial FBO inquiry in 2019. It cites a previous Director's Determination that states, "[t]he FAA has indicated that the doctrine of laches, whereby a party is estopped from bringing a claim after it unreasonably delays doing so, applies to Part 16 cases." [*Consol. Servs. Eng'rs & Constructors, Inc.* v. *City of Palm Springs*, FAA Docket. No. 16-03-05, Director's Determination, p. 25 (June 10, 2004)] (FAA Exhibit 1, Item 6, p. 22).

Mr. Smith responded to the County's argument for the application of a six-year statute of limitations to this action by noting,

> This position ignores the fact that the creation of a prohibited exclusive right results in a continuing violation. Indeed, the FAA Advisory Circular makes clear that the prohibition on exclusive rights remains in effect as long as the airport is operated. There is no magical date by which the County can claim that a claim for an exclusive right violation has somehow become stale. Rather, if an improper exclusive right is created, then it must be dismantled, no matter how long it existed.
>
> Moreover, the letter from Mr. Stage denying Mr. Smith the opportunity to operate the second FBO at DTS was sent in May 2019, less than six years prior to the filing of this action. Moreover, as set forth in Mr. Smith's affidavit, he had additional communications and meetings with County officials seeking to operate an FBO, but each time was denied because of the prohibited exclusive right provided by the County to one entity allowing it to operate the only two FBO leases at DTS. (FAA Exhibit 1, Item 8, p. 9).

Mr. Smith states, "The County's attempt to feign surprise at the filing of this Part 16 Complaint is disingenuous. The County has known of the allegations since at least 2021…the County had an obligation to put Atlantic on notice." (FAA Exhibit 1, Item 8, p. 10).

As noted in the *Consolidated* case cited by the County, the Director's focus is on a recipient's current compliance with its grant assurance obligations and the delay, if any, in asserting claims against an airport sponsor was not unreasonable and the complaint

was not barred by the doctrine of laches (*Consolidated,* p. 25). This rationale is applicable here. The record reflects that Mr. Smith, as recently as September 8, 2023, met with the County to advise of his interest in operating an FBO (FAA Exhibit 1, Item 8, p. 13) and filed this Part 16 Complaint in January 2024.

The Director finds that Mr. Smith has standing to file a Part 16 Complaint and the perceived delay in filing a Complaint does not impede his ability to do so and is not barred by the doctrine of laches or a general statute of limitations.

Issue 1 - Whether the County is in violation of Grant Assurance 23, *Exclusive Rights*, by allowing one owner to control two fixed base operations on the Destin Executive Airport thereby denying Mr. Smith access to lease space at the Airport and to provide FBO services.

It is FAA policy that the sponsor of a federally obligated airport will not grant an exclusive right for the use of the airport to any person providing, or intending to provide, aeronautical services or commodities to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct aeronautical activities. [*See*, Advisory Circular 150/5190-6, Exclusive Rights at Federally Obligated Airports].

The intent of the prohibition on exclusive rights is to promote fair competition at federally obligated, public use airports for the benefit of aeronautical users. The exclusive rights prohibition remains in effect as long as the airport is operated as an airport, even if

the original period for which an airport sponsor was obligated has expired.

At issue here is whether the County violated Grant Assurance 23, *Exclusive Rights,*[4] by allowing the consolidation of two fixed base operations under the control of one entity in 2015 and by allowing the lease assumptions that continue this business practice[5] until 2033 (or 2043 if the lessee exercises its option) and 2049, with the effect of denying Mr. Smith access to provide FBO services.

Mr. Smith's Position

Mr. Smith contends it is "undisputed that the County took affirmative action to allow one entity exclusive control over those two separate FBO leases even where there was a lack of demonstrable need for one FBO to expand to use more space on the airport. The County's actions in this regard have foreclosed any opportunity for others who meet reasonable qualifications and relevant standards to engage in any FBO

---

[4] While the Director retains jurisdiction, he need not consider the Complainant's specific arguments regarding exclusive rights violations under the CARES Act, the American Rescue Plan Act, and the Airport Coronavirus Response Grant Program under the Coronavirus Response and Relief Supplemental Appropriation Act. All other allegations are considered to be fully addressed under the issues identified for Grant Assurance 23, *Exclusive Rights*, Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 5, *Preserving Rights and Powers*.

[5] On January 16, 2024, the County acknowledged Atlantic's acquisition of Lynx FBO Destin, LLC through its acquisition of Lynx FBO Holdings, in November 2021, and ratified the acquisition and subleases.

aeronautical activity at DTS until after 2033 or later." (FAA Exhibit 1, Item 8, p. 1).

Mr. Smith claims, "the County did not substantiate that Destin Jet actually needed all of the space under the second FBO lease held by Regal Air…In fact, neither Destin Jet nor Regal Air made a showing of need of additional space. Rather, the County's argument is to the contrary." (FAA Exhibit 1, Item 8, p. 20).

Mr. Smith further claims, "the record reflects, the County learned early on that there was common ownership between the two FBO[s] at DTS, and the County elected to perpetuate the exclusive rights by allowing, without justification, one company to control all FBO operations at DTS, a situation that continues to exist at DTS. Mr. Smith asserts that the current situation at DTS is the very essence of anti-competitive conduct that must be terminated." (FAA Exhibit 1, Item 8, pp. 32-33).

Finally, Mr. Smith provided copies of the County's response to his inquiry to lease space and provide FBO services at DTS. Mr. Smith claims that he met with the County to discuss this issue as well as seek opportunities to lease or purchase land adjacent to the Airport property for a through-the-fence arrangement. Mr. Smith claims that the County did not invite him to submit an application and did not deny him access based on his experience. He claims he was denied the ability to lease space since the County asserted there was no unleased space available and the current FBO leases were active (FAA Exhibit 1, Item 2, p. 7, Exhibit 17).

County's Position

The County argues,

> The FAA has been equally clear that the mere presence of one FBO is not an exclusive right, even if it occupies all available space, and a sponsor does not confer an exclusive right by allowing a single FBO to expand and make use of all available land. That is what happened here. Destin Jet acquired Regal Air through market-driven, private transactions. After approval of the assignment, Destin Jet expanded to use both leases for its FBO operations, which today are operated by Atlantic Aviation. Smith does not provide any evidence of exclusionary intent by the County, and the FAA's longstanding rule allowing an FBO to expand to occupy all available space that it intends to use makes clear that the County has not violated its federal obligation not to confer exclusive rights. (FAA Exhibit 1, Item 6, p. 2).

The County denies granting an exclusive right to operate the FBOs and argues that the FAA did not object to the consolidation, stating in 2013,

> Regal Air was failing and owed the County almost $500,000 in rent and other fees, and market conditions showed that the Airport could not support two FBOs. Because of Regal Air's failure and those market conditions, the County reached an agreement with Destin Jet to approve the change in control in exchange for Destin Jet's accelerated payment of Regal

> Air's arrearage and for other concessions. (FAA Exhibit 1, Item 6, p. 1).

The County additionally claims that in 2014,

> before approving that agreement, the County asked the Orlando ADO to review the proposed transaction. The County specifically asked the ADO to advise whether the agreement would comply with the County's grant obligations with respect to exclusive rights…The ADO did not voice any objections or concerns, and the County approved the assignment in 2015. As a result of transactions in 2016 and 2021, control of the two FBO leases changed twice, from Destin Jet to Lynx and then from Lynx to Atlantic Aviation, which now operates an FBO on two FBO leaseholds. (FAA Exhibit 1, Item 6, p. 1).

The County further claims "Even if Smith had standing and were timely, his Complaint does not establish a grant-assurance violation. Though lengthy and circuitous, Smith's claims turn on a simple question: Whether the County reasonably determined that one FBO could expand and made immediate use of a second, failing FBO's leasehold and thus reasonably allowed the second FBO to assign its lease to the first. The County reasonably did both." (FAA Exhibit 1, Item 11, p. 2). Finally, the County claims that the leasehold would have been vacant if not for Destin Jet taking over Regal Air's lease and paying its remaining debt (FAA Exhibit 1, Item 11, p. 14).

County further claims that at the meeting Mr. Smith only complained about the granting of an exclusive

right but did not provide any specifics on his proposal (FAA Exhibit 1, Item 6, p. 18).

The County argues,

> Even assuming, *arguendo*, that the County impermissibly approved the Regal Lease Assignment, 49 U.S.C. §40103(e) permits Atlantic to retain it now. Section 40103(e) states that 'providing services at an airport by only one fixed-base operator is not an exclusive right' if (1) it would be 'unreasonably costly, burdensome, or impractical for more than one fixed-base operator to do so and (2) such an arrangement would require a reduction in space leased under' an existing agreement. As the County reasonably determined in 2015, it would be unreasonably costly, burdensome, and impractical for multiple FBOs to compete at the Airport. (FAA Exhibit 1, Item 11, p.16).

Director's Determination

The Director agrees with the County in noting that the existence of a single FBO at an airport does not necessarily mean the airport sponsor has granted exclusive rights or that an illegal monopoly exists. The FAA recognizes there are many reasons why there might only be a single FBO at an airport, including space limitations and the realities of market demand. While FBO acquisitions or mergers may trigger anti-competitive concerns, the FAA has no role to play in these matters except in limited circumstances when the acquisition conflicts with the airport sponsor's federal obligations. The question here is whether actions taken by the County from 2013 to 2015 allowed

an exclusive right as a result of a lease acquisition between Regal Air and Destin Air, and if further lease assumptions, including one in 2021, and subsequently ratified by the County on January 16, 2024, are continuing an exclusive right to Atlantic FBO, Inc, the current operator.

The County claims that 1) the Airport could not sustain two FBOs since the fuel sales were declining and 2) an FBO growing to use all the space available is not necessarily a granting of an exclusive right. Mr. Smith claims that these positions are in conflict and posits that Destin Jet did not demonstrate a need to expand due to market demand as implied by the County.

The pleadings do not provide enough evidence for the Director to opine whether or not the Airport could sustain two FBOs at the time. The Director, however, agrees with Mr. Smith that it does not appear that Destin Jet's business grew into needing all of the space available at the Airport. By allowing the acquisition of the second FBO without the County's prior knowledge or agreement, the County sanctioned this arrangement after the fact. The County admitted that it negotiated the lease amendments as a settlement with Destin Jet to resolve ongoing lease compliance issues and declining airport revenues. The County gained by allowing for the assumption of the lease and avoiding substantial unpaid debt from Miracle Strip and receiving an increase in the fuel flowage fee to boost airport revenue. It is inexplicable that accepting repayment of a prior debt by the new leaseholder continues to be used as a reason to allow

a single business to have an exclusive right to operate for more than 25 years.

The County argues that 49 U.S.C. § 40103(e) allows a single FBO to provide services at an airport without creating a prohibited exclusive right. However, the County's interpretation of the facts in this case is flawed. Where the sponsor has not entered into an express agreement, commitment, understanding, or apparent intent to exclude other reasonably qualified enterprises, the FAA does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition.[6]

Based on a review of the pleadings and an examination of the leases in this case, it becomes clear that the County did not seek other qualified enterprises before granting a monopoly to Destin Jet, for the extended term from 2015 until 2049 per the latest lease expiration date (FAA Exhibit 1, Item 2, Exhibit 14). Nor did the County seek other interested parties before continuing that exclusive right to operate both FBOs by agreeing to lease assumptions for Lynx in 2016 and Atlantic in 2024 when it acknowledged and ratified Atlantic's acquisition. Notably, the ratification action was on January 16, 2024, only five days after this Complaint was submitted to the FAA.

In its defense, the County claims that it coordinated its decision to consolidate the FBOs under one operator with the FAA. It references a discussion within an email from the FAA's Southern Region staff that

---

[6] FAA Order 5190.6C - 8.6. Airports Having a Single Aeronautical Service Provider.

provided general guidance on Grant Assurances 5 and 23 (FAA Exhibit 1, Item 6, p. 10). That email, however, states that the Southern Region staff did not review the agreement and that if the County required a legal opinion, it could request it from the Office of General Counsel. The record does not show that the County pursued a legal opinion but accepted the Southern Region staff's general response as consent to move forward with the agreement. The Director finds that the County ignored previous guidance provided by the FAA's Airport District Office (ADO) regarding the ability of Destin Jet to manage both FBO locations. The ADO's email stated,

> It also should be noted it appears Destin Airport does not have enough land to allow for another FBO to come onto the field. If the sponsor allows Destin Jet to manage both locations, it does appear they may be allowing an exclusive right to Destin Jet. In summary, if the new owners of MSA indeed wanted to have a viable business and compete with Destin Jet, why would they ask Destin Jet to manage their facility, as it does appear to allow for an FBO monopoly at Destin Airport. (FAA Exhibit 1, Item 2, Exhibit 12).

Although the ADO's email was in response to an inquiry related to Destin Jet managing the other FBO and not acquiring it, the ADO's response is relevant to the current issue at hand and was ignored by the County. Based on the ADO's response, the County denied Destin Jet's request to manage the other FBO. Nonetheless, in that same year (2013), Odom circumvented the County's denial by purchasing the

equity in Regal Air under the Sterling Diversified Group, LLC, which was also the upstream owner of Destin Jet (FAA Exhibit 1, Item 6, p. 7). Although the County was unaware of the acquisition initially and reached out to the FAA, it ignored past guidance provided by the ADO that clearly flagged concern for granting an exclusive right by having one entity manage both FBOs. The County's reliance on the general guidance provided by the Southern Region staff to justify allowing ownership of the two FBOs as opposed to just a management agreement is contrary to the sponsor's federal obligations.

In addition, the County Airports Director, in 2014 notified Odom that the County would only entertain a lease length of no more than 10 years and expressed some doubt that the FAA would agree to that term. Harman's letter cites back to guidance from the ADO that the lease assumption could allow for exclusive use. The letter terminated lease negotiations with Odom (FAA Exhibit 1, Item 6). While it is unclear what persuaded the Board of County Commissioners to agree to the lease consolidation, the County clearly wanted to settle more than $485,000.00 in past due debt, and the consolidation demonstrated it would do this.[7]

---

[7] On March 3, 2015, a lease was signed allowing Destin Jet to operate both FBO locations. The terms identified an accelerated payoff of the Miracle Strip Aviation's (MSA) debt. Regal Air agreed in June 2013 to assume MSA's lease payment debt to the County totaling $485,382.00. The agreement noted that as of December 2, 2014, the current principal balance due on this debt is $172,452.19. Regal Air additionally agreed to make a $50,000 principal reduction to the remaining debt within 10

The record confirms that the County was concerned about violating its airport grant assurances by granting a lease to the new FBO owners based on the County's outreach to the ADO for guidance. It appears that the County then disregarded the guidance provided by the ADO and Regional staff and did not seek a legal opinion. To be clear, the County was not obligated to seek legal opinions from the FAA. However, by failing to scrutinize the potential for granting an exclusive right in order to move forward with a lease assumption that it had been cautioned about, it created the conditions for an exclusive right to be granted and sustained.

The County claims that Mr. Smith's request to lease space to provide FBO services was insufficient to show that the right was withheld from him. The Director has already determined in the preliminary issues that Mr. Smith was substantially affected for the purposes of filing a complaint, and the evidence supports that an exclusive right was impermissibly granted. Further, Mr. Smith's request was in 2019, prior to the ratification of the subleases and Atlantic's acquisition that perpetuated the exclusive right.

Notably, the ratification of the Atlantic lease was just five days after the filing of the Complaint in this matter. This timing demonstrates that the County knew there was interest from another provider and yet it chose to continue the exclusive right by ratifying Atlantic's acquisition of Lynx and continuing to permit one entity to control the two FBO operations

---

days of the Effective Date of the Agreement (FAA Exhibit 1, Item 2, Exhibit 18, Item 6, Exhibit 6).

on the Airport. Moreover, the Ratification of Subleases and Acquisition document explains that "in the interest of maintaining and furthering the positive business relationship between the County and Lessee, the County waives any claim to the $1,000 fee." (FAA Exhibit 1, Item 8A, Exhibit 8).

This latest request for approval from the County raised an opportunity for the County to take some action to undo the impermissible exclusive right since the County elected to waive a potential claim. The County had the right at that time to deny approval of the Atlantic's acquisition of the FBO and allow one of the leaseholds to be open to a competitive bid. Instead, the County chose to perpetuate the exclusive right.

The County told Mr. Smith that there was no available space on the Airport to lease to provide FBO services and that the two FBO locations were under lease until 2033 and 2049. A review of the 2018 Airport Layout Plan (FAA Exhibit 1, Item 6, Exhibit 4) illustrates four proposed hangars and one proposed building for an aeronautical facility as well as an apron expansion project. It is unclear from the pleadings if the proposed development area is part of an existing FBO leasehold. However, it does suggest that there may be room for additional aeronautical facilities at the Airport. The Director has recognized that reasonable accommodation to a potential provider of aeronautical services does not require an airport to provide a specific location or specific facilities. There may be developable space at the Airport that the County could have offered to Mr. Smith when he requested to lease space to provide FBO

services. Although the space may not be ideal for Mr. Smith, the County may have avoided the granting of an exclusive right by offering him some space and considering his proposal or alternatively at a minimum requesting a proposal from Mr. Smith, but it did not.

Mr. Stage's written response to Mr. Smith regarding his inquiry stated,

> Regarding your suggestion to develop a third FBO location on the airport, this option is not feasible based on available land left to develop on DTS and all aircraft aprons are under lease by both FBOs… Despite no available/conducive land to develop or redevelop, current activity and fuel flowage numbers would be difficult to support a third location on the field. (FAA Exhibit 1, Item 2, Exhibit 17).

The County referenced FAA Docket 16-14-06, *Mansfield Heliflight, Inc.* v. City *of Burlington*, Final Agency Decision, to suggest a formal proposal is required (FAA Exhibit 1, Item 6, p. 17). In the *Mansfield* case, there was developable land, and the Associate Administrator found that the City was not required to lease the land without a proposal or a plan on how the land was to be used. In this case, the County claimed there was no space available due to both FBO locations being leased, and a proposal was not viable from the onset. Although Mr. Stage offered to meet with Mr. Smith stating "[t]here are a number of factors that would make this request not viable at this time, but I would be happy to host you to further discuss the below items" (FAA Exhibit 1, Item 2, Exhibit 17), it is fairly clear the County did not believe

it could entertain a proposal from Mr. Smith nor did it request one. Thus, the County's attempt to suggest that Mr. Smith was required to submit a formal application to the Board of County Commissioners in order to substantiate that he was in fact denied access is not reasonable.

The County seems to recognize that an impermissible exclusive right may be found here, arguing that:

> Even if the Director were to find that the Regal Lease Assignment violated the grant assurances, it would be appropriate for the Director to order the County to issue an RFP for the Regal Air leasehold once Atlantic's lease rights expire. As the Director has held, 'FAA has broad latitude in its discretion in bringing an airport sponsor into compliance with its federal obligations.' (FAA Exhibit 1, Item 11, pp. 20-21).

The County further adds

> The reality is that forcing the County to terminate Atlantic's lease suddenly, halfway into the current lease term, would prove a hugely disruptive burden to the County, and Atlantic, its employees, and its customers, for only speculative benefit. In the event of a grant assurance violation, the Director should exercise his discretion to avoid such disruptions. (FAA Exhibit 1, Item 11, pp. 20-21).

The Director appreciates the County's recognition of the FAA's authority, but the fundamental point here is the County's obligation to act consistent with its grant assurances. If there is no available land at the

Airport that could be utilized by an airport services operator, it will be incumbent upon the County to engage in negotiations with Atlantic to make space available at an earlier point in time. The latest approval in January 2024, arguably provided an opening for this discussion, or alternatively consistent with Grant Assurance 23 to terminate the exclusive right. As an airport becomes more developed and available land for development scarcer, the County needs to carefully scrutinize agreements to prevent the granting of an exclusive right.

The Director finds that Okaloosa County has violated Grant Assurance 23, *Exclusive Rights*, by allowing lease assumptions, consolidations, assignments, and ratifications that allowed for the two FBO locations to be held by one company. The County acted contrary to Grant Assurance 23 by allowing one owner to control two fixed base operations on the Airport, thereby denying Mr. Smith access to lease space at the Airport and to provide FBO services.

Issue 2 - Whether the County is in violation of Grant Assurance 22, *Economic Nondiscrimination,* by allowing an exclusive right to have occurred at the Airport and effectively denying access to Mr. Smith to lease space and to provide FBO services.

Grant Assurance 22, *Economic Nondiscrimination,* requires that the sponsor to make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

At issue here is whether the County violated Grant Assurance 22, *Economic Nondiscrimination,* by allowing an exclusive right through the consolidation of two fixed base operations under the control of one entity and permitting this practice to continue with the effect of denying Mr. Smith access to provide FBO services.

Smith's Position

Mr. Smith states, "Whereas the leasing of both FBOs at DTS to a single tenant/operator violates 49 U.S.C. § 40103(e) and Grant Assurance 23 as discussed herein, the County is obligated to take action to correct the violations and cannot refuse to make available suitable areas or space on reasonable terms to those willing and qualified to offer aeronautical services to the public." (FAA Exhibit 1, Item 2, p. 53).

Mr. Smith claims he,

> made his initial request to begin discussions with the County to lease space on the airport in April 2019. The Airports Director issued a denial letter in May of 2019 and despite further meetings and discussion between Smith and Okaloosa County, as recently as August of 2023, the County has refused to offer Smith a pathway towards providing services at DTS. Rather, Okaloosa County continues to maintain the improper monopoly it created at DTS…The County's delay, inaction, and omission for more than four years is a violation of Grant Assurance 22. (FAA Exhibit 1, Item 2, pp. 53-54).

Mr. Smith argues,

> Okaloosa County's application process or lack thereof is unreasonable and burdensome. Okaloosa County itself describes the application process under its Minimum Standards as containing 'lengthy requirements' effectively admitting that the requirements are unreasonable and burdensome. In support, the Complainant submits that Okaloosa County has not once required an applicant who has been granted access to the airport, to comply with all the requirements of Section 15, New Applicants of the 1997 unpublished Minimum Standards for Full-Service Fixed Base Operations and Specialty Service Operations. (FAA Exhibit 1, Item 2, p. 62).

Mr. Smith claims that Okaloosa County violated Grant Assurance 22(h) by setting terms and conditions of tenancy that are unreasonable and burdensome, and by placing different requirements on him than on previous applicants. Moreover, Mr. Smith asserts that the County's delay, inaction, and omission for more than four years is a violation of Grant Assurance 22 (FAA Exhibit 1, Item 2, p. 54). Per Mr. Smith, the County is acting in an unjustly discriminatory manner by requiring him to strictly adhere to "amorphous and unwritten application process." (FAA Exhibit 1, Item 8, p. 8).

County's Position

The County dismisses Mr. Smith's arguments and asserts that Mr. Smith fails to establish that he has faced unjust discrimination.

The County states,

> the lease assignments in 2015, 2016, and 2023 did not trigger a new application process because they were lease assignments and/or corporate changes in control of existing FBOs, not applications to establish a new FBO. The underlying FBOs remained the same and continued to be subject to the requirements of their previously approved leases. In contrast, Smith sought to open a new FBO in his own name, which triggered the application process. (FAA Exhibit 1, Item 6, pp. 47-48).

The County argues that it "has not required Smith's 'strict adherence' with any application process; the County believes that Smith had to do more than informal, initial outreach to establish that he was a bona fide prospective FBO operator." The County claims that "the act of acquiring an existing FBO and otherwise continuing to operate it as such is fundamentally dissimilar to applying to construct a new FBO in the first place." (FAA Exhibit 1, Item 11, p. 20).

Director's Determination

The question of whether or not a formal application to lease the land was completed by Mr. Smith to County standards is not at issue here. Mr. Smith made requests and inquiries as to whether space at the Airport could be made available. The County did not identify any space that might be utilized.

Grant Assurance 22 obligates the airport sponsor to provide airport access to aviation businesses that meet reasonable airport standards. The lease assumptions, ratification, and assignments approved

by the County had the effect of locking up valuable airport space and denying access to other potential aviation service providers. The County by leasing both FBO facility locations to one owner, and not offering Mr. Smith any other area on the Airport to develop acted contrary to its obligations under Grant Assurance 22. It is clear that in approving lease assumptions, ratification, and assignments multiple times in 2015, 2016, 2023, and 2024, the County limited opportunities for other interested parties.

The County could have requested bid proposals when confronted with the proposed lease assumption and the ratification rather than simply agreeing to continue the status quo. Alternatively, the County could have worked with Mr. Smith on other potential areas that may have been available but were not considered by the County.

The Director has recognized that reasonable accommodation to a potential provider of aeronautical services does not require an airport to provide a specific location or specific facilities. Smaller and less desirable spaces, which require an investment from the potential provider if available, could provide reasonable accommodation and avoid the granting of an exclusive right.

As discussed above, the current ALP includes proposed development, and in fact, the County states,

> In addition, as part of the proposed Minimum Standards, the County intends to reduce the area needed for an FBO and to reduce a number of other requirements for FBOs and other commercial aeronautical operators in order to

> facilitate ease of entry and competition. Among other changes, the County proposes to allow non-based operators to provide maintenance and other services at the Airport and at [Bob Sikes Airport, CEW], again to facilitate competition and provide aircraft operators with a wider choice of service providers. (FAA Exhibit 1, Item 6, pp.11-12).

The County failed to fully examine whether control by one FBO under two leases created an exclusive right that resulted in economic discrimination against other aviation service providers. Guidance from the FAA was not considered, and the assumption appears to have been made by the County that in spite of cautions and even suggestions to request a legal opinion, it was acceptable to move forward on the 2015 lease and to continue the practice with the 2016 lease assumption and 2024 ratification of acquisition and subleases. This has resulted in locking up the Airport for the benefit of one operator, without consideration that other interested parties would be excluded for more than 25 years.

The Director finds that the County violated Grant Assurance 22, *Economic Nondiscrimination,* by approving lease assumptions, assignments, and ratifications of leased areas for FBOs to be controlled by one entity and unjustly denying access. The County also violated Grant Assurance 22 by failing to offer alternative spaces at the Airport that could potentially allow access.

Issue 3 - Whether the County, is in violation of Grant Assurance 5, *Preserving Rights and Pow-*

***ers,* by failing to maintain control over lease transactions from 2015 to the present.**

Grant Assurance 5, *Preserving Rights and Powers*, requires, in pertinent part, that the sponsor of a federally obligated airport,

> will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.

Simply put, an airport sponsor is prohibited from taking any action that could preclude it from complying with its grant obligations. Airport sponsors may not enter into a lease agreement which results in exclusive use, discrimination at the airport, or deprive the sponsor of its rights and powers. Airport sponsors are strongly encouraged to use strong subordination clauses to ensure their ability to comply with Grant Assurance 5.

Smith's Position

Mr. Smith states, "By leasing both FBOs and all available ramp space and all available land to one operator and allowing Atlantic to take over the lease the County has violated Grant Assurance 5 - because the County, in granting an exclusive right to Odom and his successors in the form of a long term lease of both FBOs, no longer has control to eliminate the ex-

clusive right granted by the County." (FAA Exhibit 1, Item 2, pp. 71-72).

In support of his Grant Assurance 5 claim, Mr. Smith relies on the Airports Director's letter to him denying him access. The Airports Director wrote "For your first suggestion to lease one of the two existing FBOs, I do not see this as viable based on legal agreements with the existing FBO owner and lease space holder." (FAA Exhibit 1, Item 2, Exhibit 17).

Mr. Smith contends the County has ceded its powers to regulate the existence of an exclusive right contrary to Grant Assurance 5.

County's Position

The County claims that Smith's argument is baseless,

> First, the argument is yet another bootstrap argument that depends entirely on his assertion that the Regal Lease Assignment created an impermissible exclusive right. Because it did not, for all of the reasons discussed above, Smith's Assurance 5 argument also fails.
>
> Second, both the Destin Jet lease and the Regal Lease contain strong subordination clauses that allow the County to take appropriate action to assure grant compliance. The FAA generally regards a subordination clause as sufficient to meet a sponsor's Assurance 5 obligations. Because both FBO leases contain strong subordination clauses as the Orlando ADO recognized in 2013, the County has met its Assurance 5 obligations. (FAA Exhibit 1, Item 6, p. 51).

Director's Determination

The Director appreciates the County's recognition of the need for strong subordination clauses that permit airport sponsors to take appropriate action to ensure grant compliance. However, it is not enough to merely have the subordination clause; the key is for a sponsor to exercise its rights under the clause.

Subordination clauses generally state that an airport will subordinate the lease to the sponsor's Grant Assurances. The inclusion of the clause puts all signatories on notice that in the event of a violation of the grant assurances, the airport sponsor will take responsibility for rectifying the situation that led to the violation.

Even if an agreement entered into by the sponsor does not contain subordination language, the FAA still expects the sponsor "to take adequate action to correct the situation and comply with its Federal obligations." [*Platinum Aviation and Platinum Jet Center BMI* v. *Bloomington-Normal Airport Authority, Illinois*, FAA Docket No. 16-06-09, Directors Determination, p. 40, (June 4, 2007)].

The Amended and Restated Lease between Okaloosa County and Miracle Strip includes a subordination clause that states in part that, "This agreement shall also be subject to and subordinate to agreements between the County and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the County, the City, and the United States…." (FAA Exhibit 1, Item 2, Exhibit 18, 2013 lease, p. 30). This language, which is retained via the assignments, assumptions, ratifica-

tions, and other actions, requires the County to act as needed to maintain compliance with the requirements of the Airport Grant Assurances that the County has agreed to.

It appears that communication with the Southern Region staff seems to have interpreted as consent for the County to proceed with the lease assumption. The Director agrees with the Southern Region's general assertion that by itself a lease assumption may not result in a Grant Assurance 5 violation. However, this is general guidance on when one FBO moves to acquire the assets of another FBO. In this case, the consolidation was done without the knowledge or agreement of the County. When the County became aware of the situation, it could have taken action to preserve its rights and powers and disallowed the FBO consolidation which created an exclusive right.

Ill-advisedly, the County acted to perpetuate the exclusive right when the FBO was purchased twice and automatically reassigned the lease under the same terms, and most recently when it knowingly ratified the arrangement after the Part 16 Complaint was filed. Each of these actions presented an opportunity for the County to object and correct, especially in the later years when it had knowledge that an aeronautical user had expressed interest in acting as a service provider.

Compliance with Grant Assurance 5, as discussed in FAA's Airport Compliance Manual, (FAA Order 5190.6C), means that a sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. This is what has hap-

pened here. The County granted long-term leases to a single entity by allowing lease assumptions, assignments, consolidations and ratifications to be made without considering that an impermissible exclusive right was perpetuated. By simply agreeing to each new lease transaction and acquisition, the County ceded its responsibility to make the Airport available to other potential service providers. In doing so, it relinquished its powers to direct and control activity on the Airport.

Under the subordination clause that all parties agreed to, the County was obligated to determine whether the lease assumptions diluted its rights and powers and allowed an impermissible exclusive right to stand. The County entered into agreements and argued it cannot take any action before the leases expire under the existing timeframe, stating, "Although both FBO leases have subordination clauses, the County would likely have to litigate that, and given the extreme relief Smith requests, the County cannot discount the possibility of a substantial damages award to Atlantic." (FAA Exhibit 1, Item 6, p. 53). This is contrary to what is required of an airport sponsor and what the subordination clause permits.

A subordination clause should assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. Relatedly, the County was negotiating with the lessee as recently as January 2024, and this would have provided an opportunity to invoke the subordination clause.

The Director finds that the County has violated Grant Assurance 5, *Preserving Rights and Powers,* by

accepting the lease consolidation between Destin Jet and Regal Air and approving subsequent long-term leases, assignments, assumptions, consolidations, and ratifications after it became aware of the circumstances. This was contrary to its obligations under Grant Assurance 5 since the County took action that deprived it of its rights and powers to direct and control Airport development and comply with the grant assurances.

VIII. CONCLUSION AND FINDINGS

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes that:

> **Issue 1**. Okaloosa County has violated Grant Assurance 23, *Exclusive Rights*, by allowing lease assumptions, consolidations, assignments, and ratifications from 2015, 2016, 2023, and 2024 that prevented other interested applicants from seeking space on the Airport. The County acted contrary to Grant Assurance 23 by allowing one owner to control two fixed base operations on the Airport thereby denying access to lease space at the Airport and to provide FBO services.
>
> **Issue 2**. Okaloosa County has violated Grant Assurance 22, *Economic Nondiscrimination* by allowing lease consolidations and assumptions of all available space for fixed based operators to be controlled by one entity from 2015 until 2049

thereby denying access to other potential providers.

Issue 3. Okaloosa County has violated Grant Assurance 5, *Preserving Rights and Powers* by accepting lease consolidations and approving subsequent long-term leases, assignments, assumptions, consolidations, and ratifications after it became aware of the circumstances. The County acted contrary to Grant Assurance 5 when it took action that deprived it of its rights and powers to direct and control airport development and comply with the grant assurances.

ORDER

ACCORDINGLY, it is ordered that:

1. Okaloosa County shall present a corrective action plan to this office within 30 days of this Order. The plan shall explain how the County intends to return the Airport to compliance with its federal obligations and address the violations described in Issues 1, 2, and 3 discussed above.

   Pending the FAA's approval of a corrective action plan and implementation by the County, this office will recommend to the Director, the Office of Airport Planning and Programming, to withhold approval of any applications submitted by Okaloosa County for funding for projects authorized under 49 U.S.C. § 47114 (d) and authorized under 49 U.S.C. § 47115.

2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-24-01 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

/s/ Michael Helvey
Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

Robert V. Smith
v.
Okaloosa County, Florida
Docket No.16-24-01

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding.

FAA Exhibit 1

Item 1	**Airport Sponsor Assurances**, **Airport Improvement Program Grant Assurances for Airport Sponsors, May 2022 (faa.gov)**
Item 2	**Part 16 Complaint against Okaloosa County, Florida, dated January 11, 2024**
Exhibit A	Affidavit of Robert V. Smith, dated January 10, 2024
Exhibit 1	Petition for Writ of Certiorari between Okaloosa County and Destin Jet, LLC., and the City of Destin, FL., dated November 28, 2022
Exhibit 2	Photograph of a sign stating that Miracle Strip is Closed, undated
Exhibit 3	Email from Mike Stenson to Sunil Harman, dated August 26, 2014, and 2 emails from Rebecca Henry, FAA, to Mike Stenson, dated April 8, 2013
Exhibit 4	Assignment of Lease to Regal Air Destin, LLC, by and between Miracle Strip Aviation, Inc., dated June 6, 2013

Exhibit 5	Photograph of a door with Regal Air Airport Business Office depicted, undated
Exhibit 6	Application for Low-THC Cannabis Dispensing Organization Approval, by Robert D. Wallace, dated July 7, 2015. This Exhibit also includes heavily redacted Destin Jet General Ledger Balance Sheet Reports (unreadable), dated February 16, 2015, and April 28, 2015
Exhibit 7	Letter from John E. Simmons to Sunil Harman, Okaloosa County Director of Airports, regarding a Notice of Default for Miracle Strip Aviation, dated March 25, 2014
Exhibit 8	Article entitled FBO Market Analysis and Trends, dated February 12, 2016
Exhibit 9	Letter to Sunil Harman from managing members of Sterling Diversified LLC, as managing member of Regal Capital LLS, as an owner of Regal Air Destin, LLC, regarding possible lease default, dated April 8, 2014
Exhibit 10	Memorandum from Kaplan Kirsch & Rockwell to Jay Odom, subject line: Exclusive Rights Issues Regarding Destin Jet and Regal Air Destin's Leases, dated July 9, 2014
Exhibit 11	Email from Deandra Brooks, to Mike Stenson, regarding questions to the FAA on DTS FBO issues, dated Sep-

tember 11, 2014; Email from Mike Stenson to Bill Farris, FAA, and Deandra Brooks, FAA, dated September 11, 2014; and a letter to "Bill" regarding a follow up to telephone conference with Deandra Brooks, FAA, letter is unsigned and undated

Exhibit 12 Email messages from Rob Smith to Okaloosa County Airport requesting public records for communication from the FAA on the consolidation of Destin Jet and Regal Air, dated between November 25, 2019, and November 27, 2019; Okaloosa County's responses dated between December 2, 2019, and December 27, 2019; and attachments emails between FAA and Okaloosa County, dated between April 11, 2013, and August 26, 2014

Exhibit 13 Article entitled 'Destin Airport deal appears near,' dated October 24, 2014

Exhibit 14 Board of County Commissioners Agenda Request – subject: Proposed Settlement Agreement with mitigation terms for Destin Jet to operate both FBO locations, with attachments, dated March 3, 2015, with attachments

Exhibit 15 Article entitled, Atlantic Aviation Boosts FBO Network with Lynx Buy, dated February 28, 2022

Exhibit 16 Email discussion between airport customer and Lynx FBO on cost of fuel,

dated between May 11, 2019, and June 30, 2019

Exhibit 17 Letter from Tracy Stage, Okaloosa Airport Director, to Robert Smith, responding to his letter of April 5, 2019 (attached), requesting a lease to an existing FBO or develop a new FBO at Destin Executive Airport, dated May 3, 2019

Exhibit 18 Assignment, Consent and Assumption of the Lease L79-0101-AP, between Regal Air Destin and Triumph FBO Destin, LLC, and Okaloosa County, and attachments, including the 2013 Amended and Restated Lease and Operating Agreement between the County and Miracle Strip, dated September 22, 2016

Exhibit 19 Timberview Helicopters vs. Okaloosa County, FL, Circuit Court Case No. 2021- CA-002947F, excerpts of deposition of Allyson Oury, dated July 20, 2022; Timberview Helicopters Inc., v. Okaloosa County, FL, excerpts from video deposition of Tracy Stage, dated April 6, 2022; Timberview Helicopters Inc., v. Okaloosa County, FL, FAA Docket No.16-21-14, Declaration of Robert Chad Rogers in Support of Respondent Okaloosa County, Florida's Memorandum of Law in Support of its Answer to Complaint, dated November 30, 2021, and Timberview Helicopters vs. Okaloosa County, FL, Circuit Court Case No.

	2021-CA-002947F, excerpts of video deposition of Carolyn Ketchel, dated October 19, 2022
Item 3	**Notice of Docketing (15-24-01), dated January 30, 2024**
Item 4	**Respondent Okaloosa County, Florida's Unopposed Motion for Extension of Time to File its Answer to the Complaint, dated February 1, 2024**
Item 5	**Notice of Extension of Time, dated February 7, 2024**
Item 6	**Respondent Okaloosa County, Florida's Motion to Dismiss the Complaint or, in the Alternative, Answer to the Complaint, dated March 22, 2024**
Exhibit 1	Declaration of Tracy Stage in Support of Respondent Okaloosa County, Florida's Answer to the Complaint, dated March 20, 2024
Exhibit 2	Declaration of Craig Coffey in Support of Respondent Okaloosa County, Florida's Answer to the Complaint, dated March 21, 2024
Exhibit 3	Declaration of Michelle Hartman, with DTS Plan, dated March 21, 2024
Exhibit 4	Destin Executive Airport ALP Update, dated February 2019

Exhibit 5	Letter from Jay Odom to Sunil Harman, with Exhibit, dated August 25, 2014
Exhibit 6	Email from Sunil Harman to Ernie Padgett, dated March 12, 2014
Exhibit 7	Letter from Sunil Harman to John Simmons, regarding Notice of Default, unsigned and undated
Exhibit 8	Email from Sunil Harman to Jay Odom regarding historic fuel sale data, dated May 15, 2024
Exhibit 9	Letter from Sunil Harman to Jay Odom, dated August 26, 2014, responding to a letter dated August 25, 2014 (Exhibit identification shows Aug. 2, 2014)
Exhibit 10	Sunil Harman, Proposal for FBOs (Destin Jet and Regal Air) to Operate at the Destin Airport Within the Constraints of Market Financial Conditions (Oct. 21, 2014)
Exhibit 11	BOCC Regular Meeting Minutes, dated March 3, 2015
Exhibit 12	Consent to Assignment of Lease for Triumph FBO Destin, LLC L04-0233-AP, with Exhibits, including March 2015 Amended and Restated Lease Agreement between County and Regal Air, dated March 22, 2017
Exhibit 13	Order *United States ex rel. Smith* v. *Odom*. *(*Case was filed by Robert Smith

alleging violations of the False Claims Act), dated December 2, 2020

Exhibit 14 Slip Opinion – *United States ex rel. Smith* v. *Odom*, dated June 22, 2023

Exhibit 15 2007 Memorandum to Board of County Commissioners, subject line: First Amendment to Destin Jet Lease/Destin-Ft. Walton Beach Airport, dated December 4, 2007

Exhibit 16 Government's Notice of Election to Decline Intervention *United States ex rel. Smith* v. *Odom,* dated March 5, 2021

Exhibit 17 Order Unsealing Government's Notice of Election to Decline Intervention *United States ex rel. Smith* v. *Odom,* dated March 16, 2021

Exhibit 18 Okaloosa County Board of Commissioners, Agenda Packet, undated

Item 7 Complainant, Robert V. Smith's Unopposed Motion for Extension of Time to File its Reply to Respondent's Answer, dated March 28, 2024

Item 7b Notice of Extension of Time, dated March 29, 2024

Item 8 Complainant Robert V. Smith's Response to Respondent's Motion to Dismiss and Reply to Respondent's Answer to the Complaint, with Appendix, dated April 11, 2024

Item 8a	**Complainant's Supplemental Appendix in Support of Reply, dated April 11, 2024**
Exhibit 1	Supplemental Declaration of Robert V. Smith in Support of Part 16 Complaint, Response to Motion to Dismiss and Reply, dated April 11, 2024, with attachments
Exhibit 2	Timberview Helicopters vs. Okaloosa County, FL, Circuit Court Case No. 2021- CA-002947F, excerpts of deposition of Robert Chad Rogers, dated February 27, 2024, with attachments
Exhibit 3	In the Circuit Court in and for Okaloosa County, Fl., Bay Loop Land Company v. Jay Odom, excerpts of the videotaped deposition of Phillip Ward, dated August 16, 2021, and excerpts of the videotaped deposition of Timothy Edwards, August 19, 2021
Exhibit 4	Letter, to Sunil Harman from Jay Odom, regarding fuel prices, dated August 25, 2014, and, Exhibit A, Memorandum from Kaplan Kirsch & Rockwell to Jay Odom, subject line: Exclusive Rights issues Regarding Destin Jet and Regal Air Destin's Leases, dated July 9, 2014
Exhibit 5	Public Records Request SR 2049 from Robert V. Smith, with responses, dated between April 2, 2019, and March 25, 2019

Exhibit 6	DTS Fuel Sales in Gallons, 2001-2018, as Reported to Okaloosa County, undated
Exhibit 7	Board of County Commissioners Agenda Requests, with attachments, dated May 12, 2020, and April 20, 2021
Exhibit 8	Ratification of Subleases and Acquisition, Lynx FBO Destin, LLC and Okaloosa County, FL., dated January 16, 2024 - Includes 2021 Amended and Restated Hangar Sub-Lease Agreement, both signed and unsigned, 2021 Sublease Acknowledgement, 2019 Sublease Consent with attachments, 2017 Sublease Consent with attachments, 2016 Assignment, Consent and Assumption of Lease Agreement with attachments, 2015 Amended and Restated Lease and Operating Agreement with attachments and 2013 Amendment Number 1 of the Amended and Restated Lease and Operating Agreement with attachments. Includes Property Plat/Description for Hangar Three (3) – North Ramp, dated January 14, 2019, and Hangar Two (2)-North Ramp
Exhibit 9	Timberview Helicopters vs. Okaloosa County, FL, Circuit Court Case No. 2021- CA-002947F, excerpts of deposition of Tracy A. Stage, dated February 28, 2024

Item 9	**Notice of Change of Attorney Firm and Address and E-Mail Address Designations, dated April 12, 2024**
Item 10	**Respondent Okaloosa County, Florida's Notice of Corrected Filing, dated May 2, 2024**
Item 11	**Respondent Okaloosa County, Florida's Rebuttal in Support of its Motion to Dismiss the Complaint or, in the Alternative, Answer to the Complaint (Corrected), dated May 2, 2024**
Item 12	**Complainant Robert V. Smith's Motion to Supplement the Record, dated July 22, 2024**
Item 13	**Respondent Okaloosa County, Florida's Opposition to Complainant's Motion to Supplement the Record, dated July 31, 2024**
Item 14	**Notice of Extension of Time until November 1, 2024, dated September 9, 2024**
Item 15	**Notice of Extension of Time until December 31, 2024, dated November 1, 2024**
Item 16	**DTS Grant History, dated December 5, 2024**
Item 17	**DTS Opsnet operations report for the 12-month period ending December 31, 2023**

Item 18	**DTS Airport Master Record, Form 5010, dated January 24, 2025**
Item 19	**Notice of Extension of Time until February 28, 2025, dated December 31, 2024**
Item 20	**Notice of Extension of Time until March 31, 2025, dated February 28, 2025**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 20, 2025, I caused to be emailed a true copy of the foregoing Director's Determination for FAA Docket No. 16-24-01 addressed to:

FOR THE COMPLAINANT

Elizabeth Billhimer
Mathews & Mathews, LLP
4475 Legendary Drive
Destin, Florida 32541
ebillhimer@destinlaw.com

FOR THE RESPONDENT

W. Eric Pilsk
Adam Gerchick
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street NW, Suite 300
Washington, DC 20006
epilsk@kaplankirsch.com
agerchick@kaplankirsch.com

Copy to:

FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Airport Compliance and Management Analysis (ACO-100)
FAA Southern Region Airports Division (ASO-620)

/s/ Danielle Hinnant
Danielle Hinnant
Office of Airport Compliance
and Management Analysis

Appendix E
[Filed: Oct. 5, 2023]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA
ex rel. ROBERT V SMITH,
Plaintiff,
v.

JAY A ODOM, OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS,
Defendants.
_____/

CASE NO. 3:20cv3678-MCR-ZCB

ORDER

Plaintiff/Relator Robert V. Smith filed a *qui tam* suit, alleging that Defendant Jay A. Odom orchestrated a scheme to cause the Defendant Okaloosa County Board of County Commissioners ("County") to make and present false statements to the federal and state governments to induce grant payments for airport improvement projects, in violation of the False Claims Act ("FCA"), 31 U.S.C. §§ 3729–3730, and the Florida False Claims Act ("Florida FCA"), Fla. Stat. § 68.081, *et seq.*[1] The grant applications required the County as an airport sponsor to make

[1] The United States and the State of Florida declined to intervene. ECF Nos. 8, 46.

an assurance that no fixed base operator ("FBO") would receive an "exclusive right." Smith claimed in this suit that the County and Odom made or caused false grant assurances to the government that no exclusive rights were permitted at the Destin Airport in order to obtain the grants, when in fact, Odom—as owner of one FBO—had covertly also gained control of the competing FBO. According to Smith's Compliant, this effectively created an exclusive right, contrary to the grant assurances that the County continued to make. Defendants moved to dismiss the Complaint, and in response, Smith filed an Amended Complaint, elaborating on the facts but mirroring the original allegations. Again, the Defendants moved to dismiss, and Smith responded in opposition but did not request leave to amend. The Court granted the motion with prejudice, concluding that the claims were barred due to a prior public disclosure and rejecting Smith's claim that he was the original source of that disclosure. The Court concluded alternatively that the Amended Complaint failed to state a claim or plead fraud with sufficient particularity.

Smith has now filed a timely Motion to Amend the Judgment, ECF No. 77, arguing that the Court made manifest errors of fact and law, *see* Fed. R. Civ. P. 59(e), 60(b)(1), 60(b)(6), and requesting leave to amend the pleading. Odom and the County oppose the motion. ECF Nos. 78, 79. Having fully reviewed the matter, the Court denies the relief requested.

Rule 59(e) allows the Court to alter or amend a judgment within 28 days after judgment is entered, but only on grounds of "newly-discovered evidence or manifest errors of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kel-*

logg, 197 F.3d 1116, 1119 (11th Cir. 1999)). This rule may not be used to "relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Id.* (quoting *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005)); *see also MacPhee v. MiMedx Grp., Inc.*, 73 F.4th 1220, 1250 (11th Cir. 2023).

Rule 60(b)(1) similarly allows a party to seek relief from a final judgment based on a mistake by the parties or the judge in the application of either fact or law. Fed. R. Civ. P. 60(b)(1); *see also Kemp v. United States*, 596 U.S. ___, 142 S. Ct. 1856, 1862–63 (2022); *MacPhee*, 73 F.4th at 1251. Also, a court may grant relief under Rule 60(b)(6) for "any other reason that justifies relief," but this catchall provision provides an "extraordinary remedy" for "extraordinary circumstances." *Arthur*, 739 F.3d at 628 (internal marks omitted). The Eleventh Circuit has explained that Rule 60(b)(1) and (b)(6) "are mutually exclusive," so "a court cannot grant relief under (b)(6) for any reason which the court could consider under (b)(1)." *MacPhee*, 73 F.4th at 1251 (quoting *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993)).

The decision of whether to grant relief under Rule 59(e) or Rule 60(b) is within the "substantial discretion" of the district court. *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002); *see also MacPhee*, 73 F.4th at 1251 (reviewing for abuse of discretion). In either context, "facts or law of a strongly convincing nature" are required to convince a court to reconsider a prior decision, *Burger King*, 181 F. Supp. 2d at 1369, and

courts have described only three grounds that suffice: "(1) an intervening change in the controlling law; (2) the discovery of new evidence that was not available when the original motion was decided; or (3) the need to correct clear error or prevent manifest injustice." *Fla. Coll. of Osteopathic Med., Inc. v. Dean Witter Reynolds, Inc.*, 12 F. Supp. 2d 1306, 1308 (M.D. Fla. 1998).

Smith's motion is based on his disagreement with the Court's conclusion that the covert takeover schemes he alleged in the Amended Complaint were subject to the public disclosure bar, which precludes this FCA suit. He argues that the public disclosure bar does not apply because the news articles did not contain all of the facts he alleged about a covert takeover and because of his status as an original source.[2] These arguments were previously made and rejected, and the Court finds no error of fact or law that would justify revisiting them.[3]

---

[2] Smith also takes issue with a statement in the Order characterizing his allegations of knowledge as an original source as based on "gossip." He argues that all allegations must be construed as true. This characterization, however, was not a credibility assessment or a failure to construe the Amended Complaint as true. Instead, the Court concluded based on Smith's allegations *taken as true* that he had only "behind the gate access" and conversations with unnamed "employees," which Court found insufficient (amounting to no more than gossip) to allege a reliable basis for his asserted prior knowledge of false statements and covert dealings.

[3] Smith also attached to the motion a February 2023 FAA ruling finding a grant assurance violation, ECF No. 77–1, and he cites a "recently issued" Eleventh Circuit opinion, *Palm Beach Cnty. v. Fed. Aviation Adm'r*, 53 F.4th 1318 (11th Cir. 2022). Each was published before this Court's decision was entered,

Smith also contends the Court erred in concluding that the Amended Complaint failed to state a claim and lacked sufficient particularity. Specifically, he challenges the Court's conclusion that evidence of a single FBO is not itself evidence of an exclusive right. According to Smith, a generally applicable statute, 49 U.S.C. § 40103, includes an exclusive rights exception but that exception applies only if the relevant lease existed on September 3, 1982; so Smith contends that on the facts he alleged, the FAA did not have discretion to allow a single FBO at the Destin Airport. The Court finds no manifest error of law. There is no dispute that a statutory exception exists and is articulated in two different provisions. The Court concluded based on a more specific airport improvement grant statute, 49 U.S.C. § 47107, as well as the compliance manual and the facts alleged, that alleging the operation of a single or merged FBO is not sufficient to allege an exclusive right violation. In

---

and a "motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." *Burger King*, 181 F. Supp. 2d at 1369 (quoting *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)). Also, neither the FAA ruling nor the *Palm Beach Cnty.* case would have altered the Court's decision. Smith cites the FAA ruling to demonstrate that grant assurances are material to the government's decision to provide grant funds, but the Court's order of dismissal did not question the materiality of the grant assurances. Moreover, the ruling demonstrates that the *FAA* is the entity that decides in the first instance whether a grant assurance violation has occurred. Smith also argues that the *Palm Beach Cnty.* case indicates the public disclosure bar should not apply here, but that case was a petition for review of an FAA final decision and did not arise under the False Claims Act or involve any discussion of the public disclosure bar.

any event, even assuming error in this conclusion or in the determination that the Amended Complaint lacked sufficient particularity under Rule 9(b), the pleading deficiencies were noted in the alternative to the decision on the public disclosure bar—a conclusion that required dismissal with prejudice and which the Court declines to reconsider. Consequently, there is no basis to revisit the Court's alternative rationale. The Court also declines to grant Smith's request for leave to amend in order to supplement his original source allegations with more specific detail or to demonstrate more particularly how the County allegedly failed to make full disclosures to the FAA. Smith did not include any proposed amended pleading or make any showing of diligence to explain why the allegations could not have been included earlier.[4]

In sum, no mistake of fact or law, let alone a mistake of a "strongly convincing nature," justifies reconsideration under Rule 59(e) or Rule 60(b)(1). *Burger King*, 181 F. Supp. 2d at 1369. The Court will not reopen the case to allow Smith to relitigate arguments that were raised and rejected before the entry of judgment, *see Michael Linet*, 408 F.3d at 763, or to raise new matters that could have been presented in the first instance before the entry of judgment, *see Arthur,* 500 F.3d at 1343. Additionally, Smith has not shown any "extraordinary circumstances" that would justify relief under Rule 60(b)(6). *See MacPhee*, 73 F.4th at 1251.

---

[4] The Court notes also that Smith, who was represented by counsel, did amend his complaint once after it was filed, and he did not request leave to amend when responding to the motion to dismiss the Amended Complaint.

Accordingly, Plaintiff Robert V. Smith's Motion to Amend the Judgment, ECF No. 77, is **DENIED**.

DONE AND ORDERED this 5th day of October 2023.

/s/ M. Casey Rodgers
M. CASEY RODGERS
UNITED STATES
DISTRICT JUDGE

Appendix F
[Filed: Jun. 22, 2023]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA
ex rel. ROBERT V SMITH,
Plaintiff,
v.

JAY A ODOM, OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS,
Defendants.
_____/

CASE NO. 3:20cv3678-MCR-ZCB

ORDER

Plaintiff/Relator Robert V. Smith filed a *qui tam* Amended Complaint pursuant to the False Claims Act ("FCA"), 31 U.S.C. §§ 3729–3730, and the Florida False Claims Act ("Florida FCA"), Fla. Stat. § 68.081, *et seq.*, alleging that Defendant Jay A. Odom orchestrated a scheme to cause the Defendant Okaloosa County Board of County Commissioners ("County") to make and present false statements to the federal and state governments to induce grant payments for airport improvement projects. The United States and the State of Florida declined to intervene. ECF Nos. 8, 46. Now before the Court is Odom's Motion to

Dismiss the False Claims Act Amended Complaint,[1] ECF No. 55, joined by the County, ECF No. 59. Having fully reviewed the matter, the motion to dismiss will be granted.

I. Background[2]

---

[1] Smith previously amended the complaint in response to a motion to dismiss the original complaint. Odom argues that the Amended Complaint includes many of the same defects, and he requested to leave to file a reply, which Smith opposed. The Court finds a reply unnecessary to resolve the motion and therefore the motion is denied as moot.

[2] For purposes of the motion to dismiss, the Court recites the facts as set out in the Amended Complaint, accepts them as true, and construes the allegations and reasonable inferences in the light most favorable to Smith. *See Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015) (stating courts accept the factual allegations of the complaint as true and construe them in the light most favorable to the relator when considering a Rule 12(b)(6) motion to dismiss under the False Claims Act). Additionally, the Court may consider judicially noticed documents, *United States ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 811 (11th Cir. 2015), and "may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff's claim, and (2) undisputed," such that its authenticity is not challenged, *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Here, each side submitted a number of exhibits to be considered with the motion to dismiss and response. The Court has considered exhibits to which there is no objection, as they are central to the claims and not disputed. *See Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1214 n.1 (11th Cir. 2020) (considering an affidavit attached to a motion to dismiss that had been quoted in the complaint); *Long v. Slaton*, 508 F.3d 576, 577 n.3 (11th Cir. 2007) (considering an investigative report because its "authenticity and veracity are unchallenged"). There is no objection to Smith's exhibits, ECF No. 71, and Smith does not object to Odom's Exhibit A (March 29, 2014

The Destin Executive Airport ("DTS") and two other local airports are sponsored[3] by the County, which obtains millions of dollars in grants from both federal and state government for airport improvements. Federal law requires, among other things, that an airport sponsor receiving financial assistance through federal grants must agree and assure the government that it will not permit an "exclusive right" for the use of the airport by any person who provides aeronautical services to the public—that is, a fixed-base operator ("FBO"). *See* 49 U.S.C. § 47107(a)(4).[4] The gravamen of the Amended Complaint is that Odom engaged in a scheme to fraudulently obtain an exclusive right of use at DTS by "covertly" securing ownership of both of the only two FBOs providing services at DTS, which in turn caused the County to make and present material false assurances to the state and federal government regarding exclusive rights in applications for state and federal airport improvement grants, which re-

---

news article), Exhibit B (FAA compliance manual—made complete by Smith's exhibits), Exhibit C (FAA policy and practice), and Exhibit J (May 8, 2014 news article), *see* ECF No. 57–1, 2, 3, 10. The Court has not considered Odom's remaining exhibits; consequently, Smith's remaining objections are moot.

[3] An airport "sponsor" is any public agency or private owner of a public use airport. *See* 49 U.S.C. § 47102(26).

[4] The statute also states that a right given to only one FBO is not deemed an "exclusive right" if it would be "unreasonably costly, burdensome, or impractical" for more than one FBO to provide the services, and if allowing more than one would require reducing the space leased under an existing agreement between the one FBO and the airport operator. *See* 49 U.S.C. § 47107(a)(4).

sulted in the approval of those grants over a period of several years.

The lengthy Amended Complaint recounts the relevant history of FBOs at DTS and their ownership to demonstrate how Odom obtained control. Initially, Miracle Strip Aviation ("Miracle Strip") was the only FBO providing aeronautical services at DTS. A second FBO, Destin Jet, owned by Odom was added in 2009.

In 2012, an entity named Regal Capital, LLC ("Regal Capital") acquired the stock of Miracle Strip. Smith alleges that Regal Capital was owned by Phillip D. Ward and Jack Simmons but that they were strawmen, "covertly controlled" by Odom who allegedly funded the purchase. Smith contends this gave Odom an improper exclusive right to provide aeronautical services to the public at DTS[5] and that the stock purchase was not disclosed to the County as required by Miracle Strip's lease. Smith, who was a pilot at the time, asserts he learned of this alleged fraud through his "behind the gate" access to Miracle Strip's employees and communications with those employees about operations and activities at DTS.[6]

---

[5] Smith alleges that Ward was "[Odom's] man," ECF No. 33 at ¶53, and that Odom and Ward put Simmons in charge of the FBO, despite his lack of aviation knowledge.

[6] Smith was trained as a pilot through Miracle Strip at DTS in 1985. He worked as a pilot with a contractor for the Navy from 2011 through 2013, and in this position, he frequently flew out of DTS, where he had regular interactions with employees of Miracle Strip and knew its owners. Smith alleges that he learned "from employees at DTS" that this transaction was a "scam from the beginning" because it was all Odom's money. ECF No. 33 ¶107. Smith alleges Odom has a history of using

Smith alleges that he also began to notice that the two FBOs were essentially operating as one. *See* ECF No. 33 at ¶¶60–61 (alleging, for instance, that Miracle Strip allowed Destin Jet planes to park on its ramp and that certain renovations "made Miracle Strip Aviation look like it was part of Destin Jet,").

The County allegedly learned of Regal Capital's stock purchase in early 2013, when Miracle Strip defaulted on its lease, entered into a new lease with the County, and disclosed that its corporate stock had been purchased by Regal Capital. In April 2013, Odom, as owner of Destin Jet—the competing FBO, contacted the County seeking to enter into a management agreement to run Miracle Strip in addition to Destin Jet. Smith alleges that an email dated April 8, 2013, from the Federal Aviation Administration ("FAA") warned the County against allowing the management agreement because it would create an FBO monopoly and open the County "to a future complaint of allowing an exclusive right, a violation of Grant Assurance 23;" also, that it also could violate the lease agreement, which would be grounds to terminate the lease. ECF No. 33 at ¶¶64, 65. Notwithstanding, in June 2013, the County approved an assignment of Miracle Strip's lease to Regal Capital (then owned by Ward and Simmons, but allegedly "covertly" controlled by Odom), and Miracle Strip was renamed Regal Air Destin ("Regal Air"). Smith alleges on "information and belief" that the County did not inform the FAA of the lease assignment.

---

strawmen to engage in illicit activities and contends that Ward and Simmons were not actual purchasers but were used to conceal Odom's involvement in obtaining Miracle Strip.

In January 2014, Sterling Diversified, LLC ("Sterling Diversified")—which was owned by partners Odom, Chester Kroeger, and Timothy Edwards—acquired Regal Capital (and thus also the FBO Regal Air).[7] Smith alleges that because Odom then controlled both FBOs, Regal Air and Destin Jet, he had an improper "exclusive right," in violation of federal law. ECF No. 33 at ¶68. By March 2014, the County had notice of this change of ownership from Simmons, who wrote to the airport director, Sunil Harman, and explained that he was no longer associated with Regal and had transferred his interest to Sterling Diversified. And according to Simmons, the total aviation fuel purchased at DTS was not sufficient to support two FBO operations, something Smith disputes.[8]

On March 29, 2014, an article in the Northwest Florida Daily News reported on the state of affairs at DTS: "Last year, a company associated with Destin Jet owner Jay Odom bought out the competition at

---

[7] When formed in 2010, Sterling Diversified, LLC listed as partners Odom, Chester Kroeger, and Timothy Edwards; and Odom was listed in the 2013 Annual Report as a manager and registered agent. ECF No. 33 at ¶112, 113. Although it is alleged that Odom was not listed as a manager of Sterling Diversified in the 2014 Annual Report, Smith's allegations acknowledge that Odom publicly admitted that he still held a one-third ownership in Sterling Diversified. *Id.* ¶¶104, 113. Nonetheless, according to Smith's allegations, Kroeger and Edwards were not actual purchasers or investors but were used as "straw buyers engaged by Odom to conceal his involvement." *Id.* at ¶115.

[8] Smith alleged, by contrast, that DTS was ranked in the top 15% of national FBOs in terms of total fuel sales, which he asserts was more than sufficient volume to support two FBOs. ECF No. 33 at ¶73.

Destin Airport."[9] ECF No. 57–1, at 1. The article noted that the acquisition had "quickly caught the attention of the flying public who noticed signs of no competition" and quoted Harman, the airport director, as saying this "seemed to be collusion between two supposedly competing businesses." *Id.* After recounting the history of Odom's ownership interests—he owned the FBO Destin Jet and was a one-third equity partner in Sterling Diversified (also known as Sterling Group), which on December 31, 2013, had acquired Regal Capital (owner of FBO Regal Air)—the article confirmed that Odom together with his partners now owned Destin Jet and the competing FBO, Regal Air.[10] The article reported also that Odom felt that the airport could not sustain two FBOs given the declining aviation activity, and it reported that Harman agreed with this assessment. ECF No. 57–1 at 5 (Harman acknowledged, "[t]here has been a declining market since 2008"). The article closed by stating that Harman had given Odom a path forward as a single FBO at DTS if Odom provided proof "showing why it makes sense to have a

[9] The Court considers the March 29, 2014 article and also a May 8, 2014 news article as attached to the motion to dismiss, central to the complaint, and undisputed. *See Day*, 400 F.3d at 1276; *see also supra* Note 2.

[10] The news report stated that Odom initially denied any ownership interest in Regal Air. Nonetheless, it is clear from this publicly disclosed news article that in February 2014, Harman confronted Odom about the arrangement, and during a meeting with the County, Odom acknowledged his part ownership interest in Regal Air through Sterling Diversified. Purportedly, Odom was of the opinion that Regal Air had not been required to notify the County of the transaction because his ownership equity was less than 40%.

single FBO" and if Odom also obtained retroactive permission from the Board of Commissioners. *Id.* at 4–5.

Another local news article dated May 8, 2014, reported again on the story, repeating much of the same but adding that DTS and the owners of Destin Jet were working to resolve a dispute involving "county anti-trust safeguards and FAA grant assurance violations that resulted when the owners of Destin Jet allegedly purchased rival provider Regal Air Destin at the end of last year." ECF No. 57–10.

The Amended Complaint further alleges that in September 2014, the County reported the change of Regal Air's ownership to the FAA and inquired as to whether the acquisition would result in a violation of its "exclusive rights" grant assurances. The FAA cautioned the County on "issues related to exclusive rights" and "suggested" obtaining a legal opinion from the FAA Office of General Counsel. ECF No. 33 at ¶79. It is alleged that the County never obtained a legal opinion from the FAA but forged ahead to negotiate a lease settlement with Regal Air and authorized the two FBOs to operate under common ownership. An Okaloosa County Board of Commissioners Agenda Request dated March 3, 2015, included a document titled "Background Summary—Destin Executive Airport (DTS) FBO issues"[11] (quoted in the Amended Complaint), which stated the County had concerns over the viability of sustaining two FBOs at DTS due to declining fuel sales, a downturn in aviation activity, loss of airport revenues, and lease com-

[11] Smith alleges that the document is not dated and its author is not known.

pliance issues. *Id.* ¶83. The document further stated that the County had raised issues of perceived exclusivity to the FAA, which considered this a lease administration issue, and the FAA purportedly responded that "the acquisition of a competing FBO, even if the acquisition results in a single FBO provider—a prevalent practice, does not in itself constitute as a violation of grant assurances." *Id.* at ¶85. And a news article on October 24, 2014, is alleged to have reported that airport director Harman said "the negotiations to consolidate the airport fixed based operators were made possible after the FAA 'washed its hands' of lease negotiations at Destin Airport." *Id.* ¶81.

Smith disputes the contents of the agenda document (which is quoted in but not attached to the Amended Complaint), and he disputes the statement that the FAA "washed its hands" of this. He alleges that in actuality, the County ignored the FAA's warnings and "created an exclusive right" for Odom by approving the merger between Destin Jet and Regal Air, contrary to law. Smith also alleges that the County "discriminated against other service providers," naming himself as an example. By letter dated May 3, 2019, the County denied his request to either lease an FBO or develop a new FBO at DTS, citing the pre-existing leases and the lack of available land. *See* ECF No. 71–3. Smith alleges only "on information and belief" that the County did not notify the FAA of all relevant facts about either Odom's control or the County's denial of Smith's request to be a service provider.

Odom sold Destin Jet (merged with Regal Air) in 2016, but the County remains the airport sponsor.

Smith alleges the County is allowing Odom's successor to operate both FBOs under a single brand. Smith further alleges that that based on these facts, the County has unknowingly (between 2012 and 2014) and knowingly (from 2014 on) submitted false exclusive rights assurances in grant applications and consistently received Federal Airport Improvement Program Grants totaling over $10 million and numerous Florida Department of Transportation Grants totaling over $20 million, based on those allegedly false assurances. *See* ECF No. 33 at ¶130.

In a five-count Amended Complaint, Smith asserts FCA claims against Odom and the County, in violation of § 3729(a)(1)(A)–(B) (Counts I, II); an FCA conspiracy by Odom, Simmons, Ward, Miracle Strip, Kroeger, Edwards, and Sterling Diversified, in violation of § 3729(a)(1)(C) (Count III); and Florida FCA claims against Odom and the County, in violation of Fla. Stat. § 68.082 (Counts IV and V). Odom and the County move to dismiss with prejudice for the failure to state a claim and lack of particularity, *see* Fed. R. Civ. P. 12(b)(6), 9(b), and request an award of attorney's fees.[12]

II. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a complaint. Rule 8 requires a pleading to contain a "short and plain statement of the claim showing that the pleader is entitled to relief," not detailed allegations. Fed. R. Civ. P. 8(a)(2).

---

[12] Pursuant to 31 U.S.C. § 3730(d)(4), a prevailing defendant is entitled to attorney's fees if the claim was "clearly frivolous, clearly vexatious, [and] brought primarily for purposes of harassment."

The Court accepts the factual allegations of the complaint as true and construes them in the light most favorable to the plaintiff, or relator in an FCA case. *See Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015). The "complaint must include 'enough facts to state a claim to relief that is plausible on its face.'" *Hunt v. Amico Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Facial plausibility is found where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Iqbal*, 556 U.S. at 679 (noting the plausibility inquiry presents a "context-specific task," requiring the court to draw on "judicial experience and common sense"). Mere legal conclusions lacking "adequate factual support" are not entitled to an assumption of truth. *Mamani v. Berzain*, 654 F.3d 1148, 1153 (11th Cir. 2011); *see also Twombly*, 550 U.S. at 555 (noting "a formulaic recitation of the elements of a cause of action will not do").

In addition to the ordinary pleading rules, an FCA claim is based on fraud and therefore is subject to the heightened pleading standard of Rule 9(b), which requires a party to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b); *see also Urquilla–Diaz*, 780 F.3d at 1052. To satisfy Rule 9(b), the allegations must "contain sufficient indicia of reliability," *United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1358 (11th Cir. 2006), and must include "particular facts about 'the who, what, where, when, and how of fraudulent submissions to the government," *Urquilla–Diaz*, 780

F.3d at 1052 (quoting *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005) and other internal marks omitted); *see also Cooper v. Blue Cross & Blue Shield of Fla., Inc.*, 19 F.3d 562, 567 (11th Cir. 1994) (requiring FCA pleading to include facts as to time, place, and substance of the alleged fraud). Failing to meet Rule 9(b)'s pleading standards is grounds for dismissal under Rule 12(b)(6). *See Clausen v. Lab. Corp. of Am., Inc.,* 290 F.3d 1301, 1310 (11th Cir. 2002).

III. Discussion

A. Legal and Regulatory Framework

A private person may bring a federal or state civil *qui tam* action on behalf of the federal government for civil penalties and damages arising from false claims submitted to the government. *See* 31 U.S.C. § 3730; *see also* Fla. Stat. § 68.083.[13] The FCA prohibits (A) knowingly presenting a false or fraudulent claim for approval or payment to the government and (B) knowingly making or causing a false record or statement to be made that was material to a false or fraudulent claim. *See* 31 U.S.C. § 3729(a)(1)(A)–(B); *see also* § 3729(a)(1)(C) (prohibiting a conspiracy to commit a violation of subsection (A) or (B)). While the FCA does not base liability on "the disregard of government regulations or failure to maintain proper

[13] Because Florida's False Claims Act, *see* Fla. Stat. § 68.082, "is modeled after and tracks the language of the federal False Claims Act," *United States ex rel. Heater v. Holy Cross Hosp., Inc.*, 510 F. Supp. 2d 1027, 1033 n.5 (S.D. Fla. 2007), the Court's discussion of the claims and arguments for dismissal under the federal FCA apply equally to the Florida FCA, and the Florida FCA will not be separately addressed.

internal policies," *Corsello*, 428 F.3d at 1012 (citing *Clausen,* 290 F.3d at 1311), liability can attach when a false claim is submitted and the defendant "knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement" that is material to the government's payment decision, *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 181 (2016). The focus of the statute is "on those who present or directly induce the submission of false or fraudulent claims." *Id.* at 181. In sum, an FCA claim requires: "(1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due." *United States ex rel. v. Mortg. Invs. Corp.*, 987 F.3d 1340, 1346–47 (11th Cir. 2021) (citing *Urquilla-Diaz*, 780 F.3d at 1045). However, a case must be dismissed where the claim is based on "substantially the same" allegations or transactions that were previously publicly disclosed in a federal hearing to which the government was a party, in a federal report or investigation, or in news media, unless the plaintiff was "an original source of the information," as defined in the statute. 31 U.S.C. § 3730(e)(4)(A)–(B); *see also* Fla. Stat. 68.087(3) (same).

Federal law prohibits an airport sponsor from granting an exclusive right to provide aeronautical services at an airport and requires the airport sponsor to provide assurances to that effect when it applies for Airport Improvement Program grants.[14] *See*

---

[14] The FAA Compliance Manual states, "[a]n exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege

49 U.S.C. § 47107(a)(4) (project grant application approval is conditioned, in part, on assurances that no exclusive rights will be given to one provider). The FAA will not award such a grant "until [an] exclusive right is removed from the sponsor's airport." ECF Nos. 71–4 at 38 (FAA Airport Compliance Manual, effective 2009); 71–5 at 57–58 (FAA Airport Compliance Manual, effective 2021). The FAA's Compliance Manual provides that the presence of only one FBO does not violate the exclusive rights provision as long as "the sponsor has not entered into an express agreement, commitment, understanding, or apparent intent to exclude other reasonably qualified enterprises," ECF Nos. 71–4 at 39; 71–5 at 58, and thus "[t]he fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation," ECF Nos. 71–4 at 43; 71–5 at 63. Instead, "[t]he FAA will consider the airport's willingness to make the airport available to additional reasonably qualified providers" and will find an exclusive rights violation if the airport sponsor denies "other qualified parties an opportunity to be an on-airport aeronautical service provider." ECF Nos. 71–4 at 39, 43; 71–5 at 58, 63. Additionally, federal statutes and the FAA Compliance Manual provide that a single FBO is permitted to operate where it would be "unreasonably costly, burdensome, or impractical for more than one FBO to provide services, and allowing more than one FBO to provide services would reduce

---

or right," and it "may be conferred either by express agreement, by imposition of unreasonable minimum standards or requirements or by another means" ECF Nos. 71–4 at 34; 71–5 at 54.

the space leased under an existing agreement between the airport and single FBO."[15] ECF Nos. 71–4 at 44; 71–5 at 64; *see also* 49 U.S.C. § 47107(a)(4)(A)–(B).

B. Public Disclosure Bar

Odom argues that the Amended Complaint must be dismissed for a number of reasons, and on careful review, the Court agrees. Foremost, Odom argues that the relevant facts were publicly disclosed in news reports in the Spring of 2014, and the public disclosure in news media of "substantially the same allegations" as in the complaint requires dismissal. *See* 31 U.S.C. § 3730(e)(4)(A). Smith disagrees. He argues dismissal is not justified because he disclosed different facts, namely, a strawman purchaser scheme, and he was the original source.

The public disclosure bar applies if (1) the allegations of the complaint have been "publicly disclosed" as described by statute; and (2) the allegations are "substantially the same" as allegations or transactions contained in the public disclosures; unless (3) the relator is an original source of that information, as defined in § 3730(e)(4)(B). *See United States ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 812 (11th Cir. 2015). First, there is no dispute that the newspaper articles qualify as a "public disclosure."[16] §

---

[15] An exclusive rights violation also can occur through a lease if all available airport land is leased to a single FBO "who cannot put it into productive use within a reasonable period of time." ECF Nos. 71–4 at 44; 71–5 at 64. No such allegations are made in this case.

[16] A qualifying public disclosure is one that occurs in (i) a federal hearing in which the Government is a party; (ii) a congres-

3730(e)(4)(A)(iii); *see Osheroff*, 776 F.3d at 814 ("Newspaper articles clearly qualify as news media."). The second requirement—that the public disclosure included "substantially the same allegations or transactions" as the complaint—is also met. Smith argues that there was no allegation of fraud in the news reports, but the Court disagrees. "An allegation of fraud is an explicit accusation of wrongdoing," and an inference of fraud may be warranted by a transaction where the "misrepresented state of facts plus the actual state of facts" are shown. *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 303 (3d Cir. 2016). The news articles from March and May 2014 plainly disclosed that Odom had gained control of both FBOs through corporate purchases; the articles expressly referenced "collusion" between the two FBOs and that two FBOs operated as one without notifying the County; and they indicated the parties were working to resolve resulting disputes involving "FAA grant assurance violations" by the County. *See* ECF Nos. 57–1, 57–10. Contrary to Smith's argument, these are substantially the same as his allegations that Odom fraudulently obtained ownership or control of both FBOs, which caused the County to make false assurances on grant applications.

---

sional report or federal report, hearing, or investigation; or (iii) the news media. *See* 31 U.S.C. § 3730(e)(4)(A). In addition to the 2014 news articles, Odom argues that the Amended Complaint is also based information publicly disclosed through a 2019 public records request to the County. The Court need not address the content of those records because, as Smith correctly argues, a public records request is not a "public disclosure" that requires dismissal within the meaning of the statute.

Smith also argues dismissal is not warranted because he meets the "original source" exception, which applies if the relator either (i) voluntarily disclosed the claim or transaction to the government before the public disclosure or (ii) has "knowledge independent of" the public disclosure that "materially adds to the publicly disclosed allegations" and volunteered that information to the government before filing the *qui tam* action. 31 U.S.C. § 3730(e)(4)(B). The allegations do not meet either prong. Smith alleges he provided information to the airport director, Harman, before the news disclosure—not *to the government*, as required by the statute. *See* § 3730(e)(4)(B)(i). Smith argues he qualifies as an original source under the second prong because his allegations are based on independent knowledge of additional information (a strawman purchase scheme) that materially adds to the public disclosure. *See* § 3730(e)(4)(B)(ii). Odom argues, and the Court agrees, that the allegations do not establish either independent knowledge or information that materially added to the allegations. Smith has not alleged a reliable basis for his asserted "independent knowledge." He is a corporate outsider and alleges only that he had "behind the gate access" and conversations with unnamed "employees" of the FBOs, who told him Odom was in control. But this amounts to nothing more than gossip. Smith also draws an inference that Odom used strawmen purchases because he knew that Odom had used "strawmen donors" in a past situation, but that inference is more akin to speculation than "independent knowledge."[17] Taking as true that the strawmen

[17] Smith also argues that Odom incorrectly based his argument

scheme he asserts was not referenced in the news articles, the information nonetheless does not "materially add" to the publicly disclosed allegations. News reports disclosed Odom's 2013 takeover of the competition by "collusion" to gain control of both FBOs. The additional information of the alleged strawmen scheme beginning in 2012 provides nothing more than additional background information regarding that takeover.[18] "A relator is not an original source if

---

on an earlier version of the statute, which required "direct knowledge." Undoubtedly, the 2010 amendments "changed the scope of the public disclosure defense available," *United States ex rel. Saldivar v. Fresenius Med. Care Holdings, Inc.*, 841 F.3d 927, 932 n.1 (11th Cir. 2016), and have been said to have "radically changed the 'hurdle' for relators" in several respects, including the definition of original source." *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 298 (3d Cir. 2016). The definition no longer requires "direct knowledge" of the information on which the allegations are based to fit the original source exception, so the Court has disregarded the arguments that Smith did not have "direct knowledge." However, absent direct or firsthand knowledge of the fraud, the allegations still must demonstrate some basis of reliability to support pleading "independent knowledge" with sufficient particularity, and this is lacking.

[18] Smith contends that only some facts were made public, not *allegations* that are necessary to fraud. He relies on *United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 655 (D.C. Cir. 1994), which instructs that "where only one element of the fraudulent transaction is in the public domain (*e.g.*, X), the *qui tam* plaintiff may mount a case by coming forward with either the additional elements necessary to state a case of fraud (*e.g.*, Y) or allegations of fraud itself (*e.g.*, Z)." But Smith does not describe how the alleged strawmen control and purchases in 2012 or 2013 added a missing element to the FCA claim that was not already disclosed—the point of this information is to show how Odom obtained the competing FBO. The

[his] knowledge was mere 'background information which enable[d] him to understand the significance of a more general public disclosure.'" *United States ex rel. Wallace v. Exactech, Inc.*, No. 2:18-cv-01010-LSC, 2022 WL 4110894, at *1 (N.D. Ala. Sept. 8, 2022) (quoting *Osheroff*, 776 F.3d at 815). Thus, Smith does not qualify as an original source, so the public disclosure bar applies, requiring dismissal of claims against Odom and the County based on Odom's alleged acquisition of an "exclusive right" by obtaining ownership of the competing FBO.

C. Failure to State a Claim and Lack of Particularity

Odom and the County also argue that the Amended Complaint fails to state a claim with sufficient particularity. The Court agrees. An FCA claim requires (1) a false statement, (2) knowingly made, (3) that was material, and (4) caused the government to pay out money. *Mortg. Invs. Corp.*, 987 F.3d at 1346–47. Odom argues that no regulatory or statutory violation is adequately alleged because a single FBO is not itself evidence of an exclusive right in violation of a grant assurance. This is borne out by the Compliance Manual, which states that a single FBO does not by itself indicate an exclusive right and that a violation occurs only when the airport sponsor denies a qualified applicant the opportunity to be an FBO. *See* ECF Nos. 71–4 at 43; 71–5 at 63. In a single provider situation, where, as here, there was no express-

---

fact that he obtained ownership of it, which was publicly disclosed in 2014, was sufficient to allege an exclusive right for purposes of the FCA claim without the additional background.

ly documented exclusive right (instead, two providers were allowed to operate under common ownership), the FAA considers the airport sponsor's willingness to make the airport available to additional reasonably qualified providers, and thus, the FAA makes a discretionary decision in consideration of the circumstances in determining whether an exclusive right was created in violation of federal law. It is not alleged that this determination was ever made. Smith argues that an improper exclusive right is shown by the County's denial of his request to be a new provider, but there is no allegation to show he was a reasonably qualified applicant based on the minimum standards,[19] and no allegation identifies any other would-be provider who was denied.

Smith also contends that an exclusive right was improperly created because the actual conditions did not justify the County's merger of the two FBOs under the statute. A single provider is allowed only if a second FBO would be "unreasonably costly, burdensome, or impractical" *and* if allowing another FBO "would reduce the space leased under an existing agreement."[20] Smith alleged that the volume of fuel sales was "more than sufficient" to support two FBOs,

---

[19] Smith argues that the County did not deny his application based on his qualifications but summarily rejected his proposal by letter, citing the existing lease agreements and unavailability of additional land. ECF No. 71–3. While it is true that the letter did not address Smith's qualifications, it denied the request for "a number of factors," and one stated reason referenced the minimum operating standards, which apparently the drafter found to be a barrier. *Id.*

[20] ECF Nos. 71–4 at 44; 71–5 at 64; *see also* 49 U.S.C. § 47107(a)(4)(A)–(B).

so the unreasonably costly or burdensome requirement was not met. ECF No. 33 at ¶73. This conclusory statement, however, is insufficient to meet Rule 9(b)'s particularity requirement and also fails to demonstrate the basis of his knowledge. Moreover, contrary allegations within the Amended Complaint allege with particularity the existence of an economic downturn and inability of DTS to sustain two FBOs.[21] Further, when Smith applied in 2019, the space was already fully leased. An exclusive rights violation therefore is not adequately alleged, which undermines the basis for the FCA claims of false grant assurances.

Odom and the County also argue that the Amended Complaint fails to adequately plead fraud because the FAA had been informed of the circumstances and thus could not have been misled. The Court agrees. Several allegations indicate that public disclosures about Odom's ownership interests were made in the news and that the County disclosed the situation and exclusivity concerns to the FAA and sought its advice on this issue. While the FAA advised against a joint management agreement and suggested the County obtain a legal opinion from the FAA Office of General

---

[21] Specifically, in a letter dated March 25, 2014, Simmons (former owner of the FBO Regal Air) advised Harman (airport director) that the total gallons of aviation fuel purchased at DTS was not sufficient to support two FBOs; newspaper articles in March and May 2014 reported that Odom (operator of the FBO Destin Jet) said the same and Harman agreed; and a County Board Agenda Request on March 3, 2015, stated the County voiced concerns as to the viability of sustaining two FBOs due to declining fuel sales, a loss of airport revenues, a downturn in general aviation activity, and lease compliance issues with the second FBO. *See* ECF No. 33 at ¶¶72, 83; ECF Nos. 57–1, 57–10.

Counsel, the County Agenda document from March of 2015, is quoted as stating that all issues were disclosed to the FAA and that the FAA considered this a lease administration issue. Smith disputes that the County fully informed the FAA of the circumstances but only in a conclusory manner not based on personal knowledge. He alleges on "information and belief" that the County failed to notify the FAA of all relevant facts and alleges on "information and belief" that the County never disclosed to the FAA that it had denied a request by another service provider. ECF No. 33 at ¶¶66, 90, 94. Allegations based "on information and belief" lack the necessary "indicia of reliability" because they fail to provide an underlying basis for the assertions. *Corsello*, 428 F.3d at 1013–14; *see also United States v. HPC Healthcare, Inc.*, 723 F. App'x 783, 790 (11th Cir. 2018) (stating the "complaint lacked the 'indicia of reliability' required by this Court's precedent because it did not include the underlying factual bases for her assertions").

Also, a defendant may rely on evidence of the government's knowledge to negate both the knowledge and materiality requirements for an FCA claim, showing in effect that the government was not misled. *See United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1093 n.10 (11th Cir. 2018) (noting that the government's knowledge may disprove materiality because if a claim is paid despite the government's knowledge that a requirement was violated, it is strong evidence that the requirement was not material), *aff'd,* 139 S. Ct. 1507 (2019). Given the government's consistent decisions over the years to approve the County's grant applications despite the public disclosures and the County's disclo-

sures to the FAA, an FCA claim based on false grant assurances is not adequately stated or alleged with the requisite particularity.

The same conclusion applies to the conspiracy claim.[22] The False Claims Act imposes liability on anyone who conspires to submit a false or fraudulent claim for payment to the government. 31 U.S.C. § 3729(a)(1)(C). The heightened pleading standard of Rule 9(b) also applies to claims brought under the conspiracy provision, and a bare legal conclusion unsupported by specific allegations of an agreement or overt act will not state a claim. *Corsello*, 428 F.3d at 1014; *see also HPC Healthcare,* 723 F. App'x at 791. Smith allegesthat Odom conspired with Simmons, Ward, Miracle Strip, Kroeger, Edwards, and Sterling Diversified, to defraud the government through the strawman scheme by which they allegedly obtained an "exclusive right" as the sole FBO, causing the County to submit false grant assurances. Smith does not allege an agreement to defraud the government with any degree of particularity, and his assertions that Odom acted covertly with these individuals is based on gossip and conversations with employees. Because Smith alleges the same scheme as previously discussed, these allegations of strawmen purchases between 2012 and 2014 likewise fall short due to

---

[22] A conspiracy claim under the FSA requires: "(1) that the defendant conspired with one or more persons to get a false or fraudulent claim paid by the United States; (2) that one or more of the conspirators performed any act to effect the object of the conspiracy; and (3) that the United States suffered damages as a result of the false or fraudulent claim." *Corsello,* 428 F.3d at 1014.

the public disclosure bar and the failure to satisfy the requirements of Rule 9(b).

The Court finds it unnecessary to reach Odom's remaining arguments based on the statute of limitations or disclosure of the Florida FCA allegations in a federal proceeding because dismissal is warranted for reasons already stated, which apply equally under the Florida FCA.

Odom requests dismissal with prejudice on grounds that there is no realistic prospect that amendment will cure the deficiencies. The Court agrees. Leave to amend is ordinarily freely given under Fed. R. Civ. P. 15(a)(2), but the Court "may deny leave, *sua sponte* or on motion, if amendment would be futile." *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1332 (11th Cir. 2020) ("A district court may find futility if a prerequisite to relief is belied by the facts alleged in the complaint."); *see also Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1255 (11th Cir. 2008) (noting "justice does not require district courts to waste their time on hopeless cases"). Smith has already amended the complaint once. He opposes dismissal with prejudice but did not request leave to amend and presented no grounds for amending that could cure the deficiencies that require dismissal—the public disclosures and the notice previously given to the government as alleged in the Amended Complaint warrant dismissal and cannot be cured.

Odom also requests an award of attorney's fees pursuant to 31 U.S.C. § 3730(d)(4). arguing the suit is clearly frivolous, clearly vexatious, and was brought for purposes of harassment. Despite Odom's success on the motion to dismiss, the suit was based on factual allegations that the Court cannot find

completely groundless. On this record, the Court also cannot find that the claims are clearly vexatious or harassing, which require finding that the claims were "instituted maliciously or without good cause." *United States v. Health First, Inc.*, No. 6:19- CV-2237-RBD-LRH, 2021 WL 8201493, at *4 (M.D. Fla. Sept. 14, 2021), *report and recommendation adopted*, No. 6:19-CV-2237-RBD-LRH, 2022 WL 1238541 (M.D. Fla. Jan. 12, 2022). An award of attorney's fees under the FCA is "reserved for rare and special circumstances," which are not present here. *Id.* at *4 (internal quotation and citation omitted).

Accordingly:

1. Defendant Odom and the County's Motion to Dismiss the First Amended Complaint, ECF No. 55, is **GRANTED**, but no attorney's fees are awarded. The Amended Complaint is dismissed with prejudice.
2. Defendant Odom's Motion for Leave to File a Reply, ECF No. 74, is **DENIED**.
3. Defendant Odom's Motion to Disqualify Plaintiff's Counsel, ECF No. 58, is **DENIED as MOOT**.
4. The Clerk is directed to close the file.

DONE AND ORDERED this 22nd day of June 2023.

/s/ M. Casey Rodgers
M. CASEY RODGERS
UNITED STATES
DISTRICT JUDGE

Appendix G

§ 3730. Civil actions for false claims

(e) Certain actions barred.

*** * * * ***

(4)

(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) [(ii)] who has knowledge that is independent of and materially adds to the publicly disclosed allegations or

transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

---

49 U.S.C. § 40103

§ 40103. Sovereignty and use of airspace

* * * * *

(e) No exclusive rights at certain facilities. A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

---

49 U.S.C. § 47107

§ 47107. Project grant application approval conditioned on assurances about airport operations

(a) General written assurances. The Secretary of Transportation may approve a project grant application under this subchapter [*49 USCS §§ 47101* et seq.] for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

* * * * *

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;