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2 **WILLIAM N. HEBERT, ESQ.**
3 **SARAH L. FABIAN, ESQ.**
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7 Attorneys for Agency
A.B. Won Pat International Airport Authority, Guam

9 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEALS**

12 IN RE THE APPEAL OF DFS GUAM L.P.,

14 Appellant.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: 12/20/13

TIME: 3:54 AM PM BY: C. Roque

FILE NO OPA-PA: 13-006

APPEAL NO.: OPA-PA-13-006

**DECLARATION OF SARAH L. FABIAN
IN SUPPORT OF A.B. WON PAT
INTERNATIONAL AIRPORT
AUTHORITY, GUAM'S OBJECTION
TO THE OFFICE OF PUBLIC
ACCOUNTABILITY HEARING
APPEAL**

1 I, SARAH L. FABIAN, declare:

2 1. I am an associate at Calvo Fisher & Jacob LLP, counsel for the A.B. Won Pat
3 International Airport Authority, Guam ("GIAA" or the "Airport"). I make this declaration on
4 personal knowledge, and if called as a witness, I could and would competently testify thereto.

5 2. On December 18, 2013, my office received a copy of the video recording of the
6 public hearing on Bill 224-32 dated December 13, 2013. I caused my office to transcribe a portion
7 of the said hearing relating to the Public Auditor's statements at that hearing. A true and accurate
8 transcription of the audio recording performed by my office as stated by the Public Auditor Doris
9 Flores Brooks is as follows:

10 If the automatic stay is not placed through the appeals process, it almost renders this
11 office moot. Why bother? Vendor, why bother? If the agency is allowed to go
12 forward, the agency becomes judge and jury. Should they become judge and jury?
13 This is an issue because we never had an issue of automatic stay before, everybody
14 always honored it and resolved it. This year three different agencies ignored it. As
15 John said, they gave the award today, issued the thing the next day. No opportunity
16 for the vendor to protest. The Airport, the Hospital and DOE.

17

18 Like for example, the DFS decision, the DFS. What happened there. The reason it's
19 six days is because DFS filed in Superior Court so it was halted. And then the
20 Superior Court rendered a decision and it's now back before me.

21 3. Attached hereto as **Exhibit 1** is a true and correct copy of an email to Rawlen
22 Mantanona, Eduardo A. Calvo, William N. Hebert, Kathleen V. Fisher and Michael A. Pangelinan
23 from Justin Liu dated June 27, 2013, subject: DFS Proposal.

24 4. Attached hereto as **Exhibit 2** is a true and correct copy of an email to Kathleen V.
25 Fisher and Rawlen Mantanona from Joyce C.H. Tang dated June 30, 2013; subject: RE: *DFS*
26 *Guam L.P. v. AB Won Pat Airport Auth., Guam*; Superior Court Civil Case No. CV0685-13.

27 5. Attached hereto as **Exhibit 3** is a true and correct copy of a letter to Justin Liu from
28 Kathleen V. Fisher dated July 1, 2013 Re: *DFS Guam L.P. v. A.B. Won Pat International Airport*
Auth., Guam, et al., Superior Court Case No. CV0685-13.

EXHIBIT 1

Jamie Peightal

Subject: FW: DFS Proposal

From: Liu, Justin [<mailto:JLiu@gibsondunn.com>]

Sent: Thursday, June 27, 2013 9:56 AM

To: Rawlen Mantanona (rm@cmlaw.us); Eduardo A. Calvo; William N. Hebert; Kathy Fisher; Michael A. Pangelinan

Cc: Suh, Maurice; DFSGuam:Blair, WJ; DFSGuam:Tang, J.; Srinivasan, Jay P.

Subject: DFS Proposal

Dear All,

Per our discussion on yesterday's call, here is DFS' proposal, which both the GIAA and Lotte requested in writing. This proposal is the same one that DFS first made to the GIAA during the parties' June 11 teleconference:

1. DFS files its preliminary injunction by July 19.
2. GIAA and Lotte would file their oppositions by August 16.
3. DFS would file a reply by August 23.
4. The hearing date would be as soon as possible thereafter.
5. DFS agrees to pay monthly rent at the rate of \$15.4 million per year, prorated, beginning on July 21, 2013 for as long as DFS maintains possession of the GIAA duty free retail space during the pendency of the final resolution of all litigation between DFS and the GIAA (judicial and administrative actions) related to the RFP and/or the Airport's failure to implement appropriate bid procedures.

The parties further agree that: DFS will remain in possession of the airport's duty-free concession until the Court rules on the motion for preliminary injunction. If DFS wins its motion for preliminary injunction, it will remain in possession of the airport's duty-free concession until a final resolution of the litigation and all related proceedings, which will determine the rights of the parties. If DFS loses the preliminary injunction motion, it will move out within seven (7) days of the ruling.

Both defendants committed to having a response to DFS' proposal by the parties' teleconference scheduled for the afternoon of July 1, after the Court's hearing. We look forward to discussing this proposal, as well as the commencement of discovery, with you at that time.

Thanks,
Justin

Justin S. Liu

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
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JLiu@gibsondunn.com • www.gibsondunn.com

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EXHIBIT 2

Jamie Peightal

Subject: FW: DFS:Guam LP v. AB Won Pat Airport Authority Guam; Superior Court Civil Case No. CV0685-13

From: Joyce C. H. Tang [<mailto:jtang@guamattorneys.com>]
Sent: Sunday, June 30, 2013 11:30 PM
To: Kathy Fisher; 'Rawlen Mantanona'
Cc: wjblair@kbsjlaw.com; 'Patrick Civile'; Suh, Maurice; William N. Hebert; Liu, Justin
Subject: RE: DFS:Guam LP v. AB Won Pat Airport Authority Guam; Superior Court Civil Case No. CV0685-13

Dear Ms. Fisher and Mr. Mantanona,

We are in receipt of your coordinated letters, which we received within minutes of each other. In both your letters, Defendants GIAA and Lotte have rejected DFS' proposed schedule for a briefing schedule on the preliminary injunction that DFS plans to file, that we sent to you on June 27, 2013. This is the same proposal that DFS offered to the GIAA on June 11 that the GIAA repeatedly claimed it had been considering since that time. It is not clear why it took the GIAA three weeks to respond to DFS' proposal, only to tell DFS that the reason for GIAA's rejection is the GIAA's May 18, 2013 contract with Lotte, which is void and in violation of applicable law in any case. GIAA purports to have executed this void contract more than a month ago, yet another plainly engineered and coordinated attempt between the GIAA and Lotte.

The GIAA's response goes a step further, however, indicating that the GIAA is unwilling to even participate in the conference call that the parties had scheduled for later today to discuss the preliminary hearing briefing schedule and discovery – a call we all agreed to have (almost ten days after DFS requested this discussion). In any event, it is now clear that neither the GIAA nor Lotte is interested in meeting and conferring on a schedule for the preliminary hearing under Local Rule CVR 7.1(j), among others. DFS will proceed accordingly.

It is also evident that neither defendant is interested in meeting and conferring on discovery. This is especially disappointing given Ms. Fisher's explicit commitment that she would be prepared to discuss, on her client's behalf, discovery on the call that was planned for today. As you both know, DFS wished to, and was prepared to, discuss discovery on last week's call but neither defendant was prepared to do so. I note, however, that on last week's call, neither defendant disagreed with DFS' position that the instant lawsuit is not subject to an early meeting requirement under Rule 26. Again, DFS will proceed accordingly.

Your refusal to cooperate in the effective management of this case, even at this very early stage, violates applicable rules, which we will take up the court.

Sincerely yours,

Joyce Tang

From: Doris Cruz [<mailto:dcruz@calvofisher.com>]
Sent: Monday, July 01, 2013 11:28 AM
To: jliu@glbsondunn.com
Cc: wjblair@kbsjlaw.com; jtang@guamattorneys.com; rm@cmlaw.us
Subject: DFS Guam LP v. AB Won Pat Airport Authority Guam; Superior Court Civil Case No. CV0685-13

Mr. Liu,

The attached letter of even date is being sent to you at the request of Attorney Kathleen V. Fisher. If you have any questions, please contact our office. Thank you.

Doris A. Cruz
Legal Assistant

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EXHIBIT 3

July 1, 2013

VIA EMAIL (JLui@gibsondunn.com)
AND US POSTAL SERVICE

Justin Liu, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

Re: DFS Guam L.P. vs. A.B. Won Pat Airport Authority Guam, et. al. Superior Court of Guam Civil Case No. CV0685-13

Dear Justin:

The proposal of DFS Guam L.P. ("DFS") which you sent in your June 27 e-mail is materially different from the proposal outlined by Maurice Suh to my partners Champ Calvo, Mike Pangelinan and me on June 11. We have consulted with our client the A.B. Won Pat International Airport Authority, Guam ("GIAA") regarding your June 27 proposal and respond as follows:

First, your proposal raises issues under various provisions of Guam Procurement Law, including 5 G.C.A. § 5214 (Sole Source Procurement); 5 G.C.A. § 5630(d) (Favors to the Territory); 5 G.C.A. § 5216(e) (Competitive Selection Procedures). GIAA has not yet reached any conclusions about these procurement compliance issues but it cannot respond to or discuss your June 27 proposal without first addressing them.

Second, as we discussed with your team during our recent conference call, agreeing to allow DFS to continue to hold over beyond July 20, would put GIAA in a position of breaching its contractual obligations to Lotte Duty Free Guam, LLC ("Lotte") under the May 18, 2013 Concession Agreement. Accordingly, unless Lotte waives its rights under the May 18 Concession Agreement to take over the concession on July 21, GIAA cannot entertain DFS's proposal.

Third, I want to remind you that your June 11 proposal was in the context of GIAA seeking to confirm DFS's unilateral commitment to paying the Mag Delta on the eve of its trip to meet with rating agencies about its pending bond financing. Your June 27 proposal purports to relate to scheduling matters in the above-referenced Superior Court litigation. However, your

CALVO FISHER & JACOB LLP

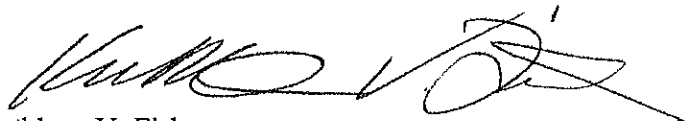
Justin Liu
July 1, 2013
Page 2 of 2

more recent proposal is primarily focused on amending Agreements that are not the subject of the lawsuit, and is only tangentially related to scheduling matters affecting this litigation.

For the reasons set forth above, GIAA does not believe it would be productive to participate in a teleconference following the hearing this afternoon.

Very truly yours,

CALVO FISHER & JACOB LLP

A handwritten signature in black ink, appearing to read 'Kathleen V. Fisher', written in a cursive style.

Kathleen V. Fisher

cc: William J. Blair, Esq. (via email)
Joyce H.C. Tang, Esq. (via email)
Rawlen Mantanona (via email)

EXHIBIT 4

Jamie Peightal

From: Jamie Peightal
Sent: Tuesday, July 02, 2013 2:25 PM
To: jtang@guamattorneys.com
Cc: 'rm@cmlaw.us'; wjblair@kbsjlaw.com; msuh@gibsondunn.com; jliu@gibsondunn.com; Kathy Fisher; Sarah L. Fabian (sfabian@calvofisher.com)
Subject: DFS Guam, L.P. v. A.B. Won Pat Int'l Airport Auth., Guam, et al., CV0685-13
Attachments: Letter from K. Fisher to J. Tang..pdf

Dear Ms. Tang,

The attached letter is being sent at the request of Kathleen V. Fisher. If you have any questions, please contact our office. Thank you.

Regards,

Jamie C. Peightal
Legal Assistant

CALVO FISHER & JACOB LLP

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writer's direct email:
kfisher@calvofisher.com

July 2, 2013

VIA EMAIL jtang@guamattorneys.com

Joyce C.H. Tang, Esq.
CIVILLE & TANG, PLLC
Suite 200, 330 Hernan Cortez Ave.
Hagátña, Guam 96910

**RE: DFS Guam L.P. v. The A.B. Won Pat International Airport Auth., Guam, et al.,
Superior Court Case No. CV0685-13**

Dear Ms. Tang:

This is in reply to your email message to me and Mr. Mantanona dated June 30. My letter, on behalf of GIAA, speaks for itself.

I was on the June 11 call with Mr. Suh, his colleagues and my partners, Champ Calvo and Mike Pangelinan. Neither you nor Mr. Blair nor Mr. Mantanona was on that call.

The proposal conveyed by Mr. Liu on June 27 differed in material respects from Mr. Suh's June 11 proposal. During our call on June 25, it became clear that neither the GIAA attorneys on the call nor Mr. Mantanona, were clear about all of the elements of the DFS proposal. Accordingly, we asked Mr. Liu to put the proposal in writing so that we could convey it to our clients. We promised to get back to your side on July 1.

After receiving Mr. Liu's June 27 e-mail, I discussed this proposal (rather than the superseded June 11 proposal) with GIAA. My July 1 letter conveys GIAA's position. The revisionist history set forth in your e-mail does not change these facts.

Likewise, your attempt to re-characterize my comments on the call as being some kind of a commitment to discuss discovery to which DFS is not entitled is ill-conceived for the reasons set forth in the Rule 11 motion served on your office yesterday.

410107

CALVO FISHER & JACOB LLP

Joyce C.H. Tang, Esq.
July 2, 2013
Page 2 of 2

Finally, GIAA's counsel has no obligation to participate in a pre-textual meet and confer process created by DFS or its counsel for the improper purpose of using its frivolous lawsuit to attempt to circumvent the procurement process and statutes.

Very truly yours,

CALVO FISHER & JACOB LLP

Kathleen V. Fisher
of

Kathleen V. Fisher

cc: Rawlen Mantanona, Esq.
William J. Blair, Esq.
Maurice M. Suh, Esq.
Justin Liu, Esq.

EXHIBIT 5

2013 JUL 17 AM 10: 23

CLERK OF COURT

BY: _____

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KATHLEEN V. FISHER, ESQ.
WILLIAM N. HEBERT, ESQ.
JAY D. TRICKETT, ESQ.
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Attorneys for Defendant
A.B. Won Pat International Airport Authority, Guam

IN THE SUPERIOR COURT OF GUAM

DFS GUAM L.P.,

Plaintiff,

vs.

THE A.B. WON PAT INTERNATIONAL
AIRPORT AUTHORITY, GUAM, and LOTTE
DUTY FREE GUAM LLC, and THE
TERRITORY OF GUAM, and DOES 1-10,
INCLUSIVE,

Defendants.

CASE NO. CV0685-13

**DECLARATION OF CARLOS
BORDALLO IN SUPPORT OF GIAA'S
OPPOSITION TO PLAINTIFF'S EX
PARTE APPLICATION FOR A
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

1 I, Carlos Bordallo, declare:

2 1. I am the Acting Comptroller of the A.B. Won Pat International Airport Authority,
3 Guam ("GIAA" or the "Airport"). I am making this declaration in opposition to the application for
4 a temporary restraining order and order to show cause why a preliminary injunction should not
5 issue, filed by Plaintiff DFS Guam L.P. ("DFS"). I have personal knowledge of the facts set forth
6 below and, if called as a witness, I could and would testify competently thereto.

7 **The Airport's 2013 Bond Offering**

8 2. GIAA is in the process of issuing two sets of general revenue bonds. The first set
9 of general revenue bonds are referred to as the "2013 Refunding Bonds". These bonds are being
10 issued for the purposes of: (i) refunding all or a portion of GIAA's outstanding bonds issued in
11 2003; and (ii) paying expenses incurred in connection with the issuance of the 2013 Refunding
12 Bonds.

13 3. The second set of general revenue bonds are referred to as the "2013 Tax-Exempt
14 Bonds". These bonds are being issued for the purposes of: (i) financing additions, extensions and
15 improvements to the Airport; (ii) refinancing the Airport's Energy Efficiency Loan;¹ and (iii)
16 paying expenses incurred in connection with the issuance of the 2013 Tax-Exempt Bonds.
17 (Collectively the 2013 Refunding Bonds and the 2013 Tax-Exempt Bonds are referred to as the
18 "2013 Bonds").

19 4. The issuance, sale and delivery of the 2013 Bonds are scheduled to be approved by
20 GIAA's Board of Directors and by the Board of Directors of the Guam Economic Development
21 Authority in late July or early August. GIAA is seeking approval by the Legislature of Guam for
22 the issuance, terms and conditions of the 2013 Bonds. GIAA hopes to receive legislative approval
23

24 ¹ Pursuant to a Loan Agreement, dated June 27, 2012 (the "Loan Agreement"), First Hawaiian Bank (the "Bank")
25 loaned GIAA \$11,900,000 (the "Energy Efficiency Loan") to finance certain energy efficiency upgrades to the
26 terminal building undertaken by GIAA pursuant to an Amended Performance Contract, dated May 9, 2012 (the
27 "Energy Performance Contract"), between GIAA, Johnson Controls, Inc. ("JCI") and the Guam Power Authority. The
28 Energy Efficiency Loan bears interest at the rate of 3.75% per annum and matures on July 27, 2017. The repayment of
90% of the principal amount of the Energy Efficiency Loan is guaranteed by the United States Department of
Agriculture pursuant to USDA Community Facilities Direct and Guaranteed Loan Program. GIAA intends to use a
portion of the proceeds of the 2013 Series E Bonds to refinance the Energy Efficiency Loan so that the repayment
schedule over time more closely matches the minimum annual energy savings expected to be achieved under the
Energy Performance Contract.

1 by mid-August.

2 5. The 2013 Bonds are not general obligations of the Government of Guam (the
3 "Government"), but are limited obligations payable solely from and secured by a pledge of
4 specified Airport revenues, consisting primarily of all gross income and revenue received by
5 GIAA from the ownership or operation of the Airport, including such things as rents, fees and
6 charges received by GIAA for the use of the Airport. On June 18 and 19, 2013, representatives of
7 the Government, GIAA, and the Guam Economic Development Authority made presentations to
8 ratings agencies Moody's and Standard & Poor's regarding the credit rating for GIAA's 2013
9 Bond offering. Exhibit A appended hereto is a true and correct copy of the presentation made to
10 the ratings agencies.

11 **Harm to GIAA If Lotte Duty Free LLC ("Lotte") is Prevented from Taking Over**
12 **the Specialty Retail Concession on July 21, 2013**

13 6. If DFS's holdover tenancy terminates on July 20, 2013 and Lotte is prohibited from
14 assuming the specialty retail concession, the lack of any revenue from the specialty retail
15 concession would significantly harm the Airport. The specific negative impacts to the Airport are
16 discussed below.

17 Inability of the Airport to Maintain its Current and Projected Debt Service Ratio

18 7. The 2013 Bonds are being issued pursuant to the terms of an Indenture.² The
19 Indenture contains a covenant that requires that the Airport maintain debt service coverage ratio of
20 no less than 1.25. This means that the Airport's annual net revenues plus other available moneys
21 must be at least 1.25 times the amount of money necessary to service the Airport's debt. Under the
22 Airport's current revenue structure, if the Airport stops receiving rent from DFS (either its current
23 MAG rent of approximately \$4.5 million per year, or its actual rent of approximately \$7.5 million
24 per year) and Lotte were prevented from moving in and paying its MAG rent, the Airport would
25

26 ²The 2013 Bonds are being issued pursuant to an indenture, dated as of September 1, 2003 (the "General Indenture"),
27 by and between the Authority and Bank of Hawaii, as trustee as the predecessor in interest to the Bank of Guam (the
28 "Trustee") and U.S. Bank National Association (the "Co-Trustee"), as amended and supplemented, including by a
supplemental indenture, to be dated as of August 1, 2013 (the "2013 Supplemental Indenture"), by and among the
Authority, the Trustee and the Co-Trustee. The General Indenture, as so amended and supplemented, including by the
2013 Supplemental Indenture, is referred to herein as the "Indenture."

1 not be able to maintain a debt service coverage ratio of 1.25. As a result, the Airport would be in
2 breach of its outstanding bond Indenture.

3 8. In addition, GIAA's included an estimated and forecasted debt service coverage in
4 its presentation to the ratings agencies in the table entitled "Forecast of Debt Service Coverage" in
5 Exhibit A at page 56. According to current forecasts, GIAA is projected to continue to have debt
6 service coverage well above the 1.25 ratio required by the Indenture.

7 9. These projected debt service ratios assume, however, that Lotte Duty Free Guam
8 LLC ("Lotte") takes over the specialty retail concession on July 21, 2013 and begins paying
9 Minimum Annual Guaranteed ("MAG") rent of \$15.4 million. The table entitled "Forecast of
10 Revenues" at page 55 of Exhibit A shows the sources of revenues used to forecast GIAA's debt
11 service coverage. This table at page 55 shows the past actual revenues and estimated and
12 forecasted Airport revenues from 2013 through 2018. Under the heading, "Revenues from Sources
13 Other Than Signatory Rentals and Fees", the forecast includes the line item "Concession
14 Revenue." Estimated Concession Revenue for 2013 is \$10,585,450 and forecasted concession
15 revenue for 2014 is \$18,887,000, an increase of over \$8 million. This increase partly reflects the
16 assumption that Lotte will take over the specialty retail concession and begin paying the higher
17 MAG rent of \$15.4 million.

18 If Lotte is prevented from taking over the specialty retail concession and the Airport does not
19 receive the forecasted \$15.4 million MAG rent, it would have a severe and negative impact on the
20 Airport's projected debt service coverage. For example, according to the table on page 56 setting
21 forth the Forecast of Debt Service Coverage, the Airport's debt service coverage in 2014 is
22 forecasted to be 1.60. This debt service ratio of 1.60 assumes Net Revenues and Other Available
23 Moneys of \$38,951,000, and a Total Annual Debt Service of \$24,347,000. If Net Revenues and
24 Other Available Moneys is reduced by \$15.4 million (that is from \$38,951,000 to \$23,551,000),
25 then the Airport's debt service ratio would fall from 1.60 to less than 1.0. This is because its Net
26 Revenues and Other Available Moneys would be less than its Total Annual Debt Service of
27 \$24,347,000. A debt service ratio of less than 1.0 would prevent the Airport from achieving its
28 projected debt service ratio at 1.25 or above, which in turn would preclude the Airport from going

1 forward with its 2013 Bond offering.

2 Possible Negative Reaction from the Ratings Agencies

3 10. The Airport intends to obtain legislative approval of the 2013 Bond offering, obtain
4 a rating from the ratings agencies (Moody's and Standard and Poor's) sometime in August, and
5 price the 2013 Bonds in mid-August.

6 11. Credit ratings assigned to GIAA and its bonds are independently determined by the
7 ratings agencies and there are no roadmaps or guarantees as to the weight or credence a rating
8 agency will assign to any particular event. GIAA is seeking to obtain the highest possible credit
9 rating, because a high credit rating in turns lowers its costs of funds and, therefore, increases the
10 benefits it will realize from its 2013 Bond offering. GIAA's current credit rating is "investment
11 grade", which benefits the Airport in several ways. First, the higher its credit rating, the lower its
12 perceived risk of default and, therefore, the lower the interest it must pay on its bonds. Second, if
13 GIAA's credit rating falls below "investment grade", then GIAA may be required to maintain its
14 current insurance and/or purchase additional insurance.

15 12. Exhibit B attached to this declaration is a true and correct copy of a presentation by
16 GIAA's bond underwriters at Citigroup, Inc., entitled "Refunding and New Money Financing
17 Update," dated April 5, 2013. This presentation includes a savings computation under then-current
18 market conditions. The savings computation on the second page of this document shows "Gross
19 MBIA Cashflow Savings of \$4,865,560. "MBIA" is the reference to the insurance premiums that
20 GIAA will not be paying as a result of its credit being rated "investment grade." If GIAA's rating
21 falls below "investment grade," it may be required to purchase insurance and it will not realize
22 these savings of \$4.8 million.

23 13. In the event that there is a delay in the realization of Lotte's anticipated payment of
24 \$15.4 million MAG rent to the Airport, or any other uncertainty around Lotte's installation at the
25 Airport as the new specialty retail concessioner, one or more of the ratings agencies might
26 determine that there should be a "negative watch" or downgrade in the rating assigned to the
27 Airport's bonds. A negative watch or downgrade in the rating assigned to the Airport's bonds
28 could adversely affected the economics of the Refunding Bond issue planned for this year (because

1 lower ratings would mean higher interest rates, which would in turn mean less savings than
2 otherwise would have been realized from the Refunding Bond).

3 The Airport might need to seek alternative revenue sources, which are uncertain at this time

4 14. If the Airport is deprived of the \$15.4 million MAG rent from Lotte, the Airport
5 might be forced to seek alternative sources of revenue. One alternative source of revenue to
6 replace the specialty retail concession MAG rent would be to increase the fees and charges the
7 airlines pay to the Airport. Whether the Airport could realize from the airlines these additional
8 fees and charges is speculative, because the Airport does not have any agreement with the airlines
9 to replace the revenue from the specialty retail concession.

10 15. If, however, the airlines agreed to make up the revenue lost from the exclusion of
11 Lotte from the premises, it would likely have negative impacts on the Airport. For example, the
12 airlines would likely increase their ticket prices to cover the additional fees and charges. Increases
13 in airline ticket prices tend to decrease tourism in Guam because some tourists reject the higher
14 ticket prices to Guam and decide to vacation elsewhere.

15 Opportunity costs due to delays in the 2013 Bond offering

16 16. Delays in going to market with the 2013 Refunding Bonds and the 2013 Tax-
17 Exempt Bonds may result in an opportunity cost to GIAA. Interest rates are low now, but may rise
18 in the future. If Lotte is prevented from immediately assuming the specialty retail concession, any
19 delay in the 2013 Bond offering could result in higher interest rates to the Airport.

20 Enplanements are increasing, but sales per passenger

21 at the specialty retail concession are decreasing

22 17. The number one metric used to evaluate airport usage is called enplanement or
23 airport departures. Enplanement refers to the number of individuals that get on a plane in a
24 particular airport. GIAA keeps records of enplanements at the Airport. In the past two fiscal years
25 (October 2011-September 2012 and October 2012 through May 2013) enplanements at the Airport
26 were up. In FY2012, enplanements were up 10.55% over FY2011. So far in FY2013,
27 enplanements are up 11.2% over FY2012.

28 18. DFS is required under its concession agreements to report to GIAA its gross sales

1 from specialty retail operations at the Airport. Exhibit C attached to this declaration is a chart
2 showing GIAA's enplanements over the past several fiscal years, DFS's gross sales from its
3 specialty retail concessions at the Airport, and sales per enplaned passenger. This chart shows that
4 although enplanements are increasing at the Airport, the gross sales per enplaned passenger have
5 decreased every month since June 2012. So far in FY2013, from October through May 2013,
6 gross sales have *decreased* 5.2% over FY2012.

7 I declare under penalty of perjury under the laws of Guam that the aforementioned is true
8 and accurate.

9 Executed this 16th day of July, 2013 at Hagatna, Guam, U.S.A.

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12 CARLOS BORDALLO

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EXHIBIT 6

James S Brooks
 Research Associate at Lujan Aguigui & Perez LLP
 Guam | Legal Services

Join LinkedIn and access James S Brooks's full profile. It's free!

As a LinkedIn member, you'll join 250 million other professionals who are sharing connections, ideas, and opportunities.

- See who you and James S Brooks know in common
- Get introduced to James S Brooks
- Contact James S Brooks directly

[View James S's full profile](#)

James S Brooks's Overview

Current **Researcher at Lujan Aguigui & Perez LLP**

Connections **0 connections**

James S Brooks' Experience

Researcher
Lujan Aguigui & Perez LLP
 2001 – Present (12 years)

Contact James S for:

View James S Brooks' full profile to...

- See who you and James S Brooks know in common
- Get introduced to James S Brooks
- Contact James S Brooks directly

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EXHIBIT 7

December 18, 2013

VIA EMAIL jtang@guamattorneys.com

Joyce C.H. Tang, Esq.
CIVILLE & TANG, PLLC
Suite 200, 330 Hernan Cortez Ave.
Hagåtña, Guam 96910

RE: *In the Appeal of DFS Guam L.P. of the Decision of the Guam International Airport Authority, OPA-PA-13-006*

Dear Ms. Tang:

In the Response to Notice of Appointment of Hearing Officer ("Response") you filed with the Office of Public Accountability ("OPA") on Friday, December 13, 2013 at 3:40 p.m., you disclosed that DFS retained David Lujan and his firm Lujan Aguiqui & Perez LLP ("LAP") to "advise" DFS about issues related to GIAA's selection of Lotte as the most qualified proposer for the specialty retail RFP at issue in the appeal before the OPA. DFS's disclosure that Mr. Lujan and his firm are involved in this matter comes seven months after DFS filed its Notice of Appeal with the OPA and its Complaint in the Superior Court of Guam.

As you are well aware, the Public Auditor, Doris Brooks, is married to James Brooks. You may also be aware that Mr. Brooks has been working with LAP for over 10 years. According to Mr. Brooks's LinkedIn.com profile, which is accessible to anyone with a computer and internet, he has been employed with LAP for 12 years and is currently a research associate. Surely you and your client would have known as early as May 30, 2013, when DFS filed its appeal with the OPA, that the fact that the Public Auditor's husband is employed with a firm that advised DFS on issues related to this appeal would raise questions concerning the Public Auditor's continued participation in this appeal. That you and your client disclosed this at the 11th hour, or more specifically a little over an hour before the deadline to submit objections to the OPA's appointment of Peter C. Perez as the hearing officer in this appeal, is inexcusable.

Just as egregious is your claim that neither Mr. Lujan nor anyone else at LAP has had any role in the judicial or administrative proceedings brought by DFS in connection with the RFP. I simply cannot conceive of a scenario in which the "advice" of Mr. Lujan and his law firm has absolutely no connection with any of the facts or legal arguments that formed the basis of DFS's groundless claims raised before the OPA and the Superior Court.

CALVO FISHER & JACOB LLP

Joyce C.H. Tang, Esq.

December 18, 2013

Page 2 of 2

In light of this belated and incomplete disclosure, GIAA requests full disclosure from you and your client as to the nature and degree of involvement that Mr. Lujan and Mr. Brooks have had in connection with the specialty retail RFP. Particularly, we seek answers to the following questions:

1. When did DFS retain Mr. Lujan and LAP to advise it on issues related to the RFP?
2. At the time DFS filed its appeal with the OPA, were DFS's counsel of record aware that DFS had retained Mr. Lujan and LAP in connection with the RFP?
3. Has James Brooks had any involvement in LAP's counseling to DFS in connection with the RFP? If so, please provide the nature of Mr. Brooks's involvement and the number of hours Mr. Brooks has spent engaged in such work.

While GIAA intends to raise this issue before the OPA, a full and complete understanding of Mr. Brooks's involvement is necessary to determine the scope and impact of your client's failure to disclose.

Sincerely,

CALVO FISHER & JACOB LLP



Kathleen V. Fisher

cc: William J. Blair, Esq.
Maurice M. Suh, Esq.
Cesar Cabot, Esq.
Rawlen Mantanona, Esq.

EXHIBIT 8

CABOT
MANTANONA LLP

Attorneys at Law

Cesar C. Cabot, Esq.
Rawlen M.T. Mantanona, Esq.
David P. Ledger, Esq.
Helkel S. Hemminger, Esq.
David J. Guerrieri, Jr., Esq.
Catrina M. Campana, Esq.

RECEIVED

Time: 2:09

DEC 19 2013

December 19, 2013

CALVO FISHER &
JACOB LLP
By: EA

VIA HAND DELIVERY

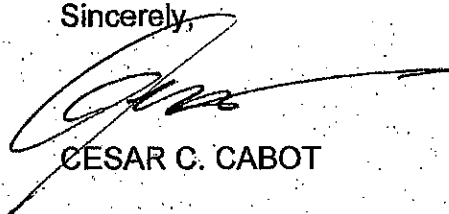
KATHLEEN V. FISHER, ESQ.
CALVO FISHER & JACOB LLP
Attorneys at Law
259 Martyr Street, Suite 100
Hagatna, Guam 96910

Re: Transmittal of Letter Correspondence

Dear Kathy:

I am hereby transmitting for your information and records, copy of a recent communication received from DFS regarding Lotte's construction of the concession area at the GIAA. I also attach Lotte's reply letter for your reference.

Sincerely,



CESAR C. CABOT

JLT/CCC:me
Enclosure

m:\lotte duty free central file\correspondence\12-19-13 transmittal letter to giaa re letter correspondence.docx

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel 213.229.7000
www.gibsondunn.com

Maurice Suh
Direct: +1 213.229.7260
Fax: +1 213.229.6260
MSuh@gibsondunn.com

Client: 23253-00001

December 4, 2013

VIA FIRST CLASS AND ELECTRONIC MAIL

Cesar C. Cabot
Cabot Mantanona LLP
Edge Building, Second Floor
929 South Marine Corps Drive
Tamuning, Guam 96913

Re: In the Appeal of DFS Guam L.P., Appeal No. OPA-PA-13-006
(filed May 30, 2013)

Dear Cesar:

It has come to my client DFS Guam L.P.'s ("DFS") attention that your client, Lotte Duty Free Guam ("Lotte"), is beginning to renovate the duty free concession space and other areas at the A.B. Won Pat International Airport. I write to remind you that any monies or other resources expended by Lotte at the Airport are subject to the possibility, if not the probability, of a determination that Lotte is not entitled to operate at the Airport pursuant to the putative concession contract that you contend is legally binding and operative. This contention, as you are aware, is one that DFS has and will continue to vigorously contest. Accordingly, Lotte should understand that it is assuming the risk that it may not benefit from its Airport renovations. Presumably, Lotte already has been advised of this risk. Whatever the case may be, Lotte should understand that DFS' determination to pursue each of its procurement protests has not waned and DFS remains confident that once the full merits of its protests are adjudicated, DFS will be reinstated at the Airport. The likelihood of DFS succeeding in this endeavor is not insignificant.

As your client knows, the procurement by which Lotte asserts it is entitled to operate at the Airport continues to be the subject of multiple *unresolved* protests brought by DFS and others. The substance of these protests has not yet been finally adjudicated; in fact, only one of them has even received an initial determination by the Guam International Airport Authority (the "GIAA") and none of them has been considered by a reviewing body. In other words, the process to determine whether Lotte is lawfully operating at the Airport barely has begun. The Office of Public Accountability (the "OPA") recently clarified that a procurement protest is not finally adjudicated until all appeals are exhausted. *See In the Appeal of JMI Edison*, OPA-PA-13-010 (Order Granting Motion Re Automatic Stay, September 20, 2013); *In the Appeal of K Cleaning Services*, OPA-PA-13-004 (Decision,

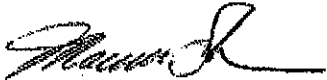
GIBSON DUNN

Cesar C. Cabot
December 4, 2013
Page 2

October 25, 2013). For this procurement, the GIAA's determination of each of the pending protests will be reviewed by the OPA, with possible further reviews by the Superior Court of Guam and the Supreme Court of Guam, before they are deemed finally adjudicated. As your client knows, DFS has been pursuing vigorously each of its three pending RFP protests and has made it abundantly clear that it will continue to do so until each of them is finally adjudicated. Please understand that DFS' position has not changed in this regard—my client will pursue each of its protests until it prevails or until all avenues are exhausted—and your client assumes the financial risk associated with capital and other expenditures that will be shown to be unrecoverable.

Please do not hesitate to contact me if you have any questions or would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Maurice Suh". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Maurice Suh

MMS/jla

**CABOT
MANTANONA LLP**

Attorneys at Law

Cesar C. Cabot, Esq.
Rowlen M.T. Mantanona, Esq.
David P. Ledger, Esq.
Heikel S. Hemminger, Esq.
David J. Guenther, Jr., Esq.
Cathina M. Campana, Esq.

December 13, 2013

VIA MAIL AND E-MAIL

Maurice Suh, Esq. (msuh@gibsondunn.com)
Gibson, Dunn and Crutcher LLP
333 S. Grand Avenue
Los Angeles, CA 90071-3197

Re: Lotta Duty Free Guam, LLC/DFS Guam LP Litigation

Dear Mr. Suh:

I acknowledge and respond to your letter dated December 4, 2013.

Lotte maintains its position that DFS' filings before the GIAA, the Superior Court of Guam, and the OPA are improper and contrary to relevant Guam laws and regulations. Our contention is a matter of record, and I shall not belabor the issue.

DFS never invoked an automatic stay of the procurement proceedings by lodging a timely and appropriate formal protest. Although a dilatory protest of the solicitation was later filed, DFS ignores the exceptions which permit a contract to be awarded despite the filing of the protest under 5 GCA § 5425(g).

More significantly, DFS failed to properly raise and contest the issue as provided under the Guam Code and the Guam Administrative Rules and Regulations. For instance, 2 GARR, Div. 4, § 12501(a), entitled "Review of Award Pending Protest or Appeal," requires that any protestor who disputes the validity of the award of a contract which is made after a protest has been filed must file a separate protest of the award of the contract with the OPA. It states:

Any protestor may protest a determination by the Chief Procurement Officer or the Director of Public Works pursuant to 5 GCA § 5425(g) that award of a contract without delay pending Appeal is necessary to protect the substantial interests of the government of Guam. Said protest must be filed in writing at the Office of the Public Auditor within two (2) days of receipt by protestor of the notice of determination. The Public Auditor shall either confirm or reject the determination.

Maurice Suh, Esq.
December 13, 2013
Page | 2

2 GARR, Div. 4, § 12501(a) (emphasis added).

DFS has never filed a separate protest of GIAA's determination that award of the contract was necessary and in the best interests of the Territory, and let alone within two days of the date that the determination was made by GIAA, as required by law. It is Lotte's position that DFS thereby waived its rights to contest the award of the contract pending its untimely initial protest, and has waived its rights to continue to object to Lotte's actions taken in reliance upon the contract.

In closing, DFS missed not one, but two opportunities to properly lodge its objections to the procurement proceedings, and is now foreclosed from raising those objections in a tardy attempt to halt the implementation of the contract. Lotte reserves any and all legal and equitable rights available to it and shall not hesitate to hold any responsible party accountable for any and all damages suffered. Please understand that Lotte's determination has not wavered and Lotte remains resolved to see this matter to the very end.

Thank you for your attention to this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



CESAR C. CABOT

CCC/JT:me

m:\lotte duty free central file\december 13, 2013 response to maurice suh letter.docx

EXHIBIT 9

December 20, 2013

VIA E-MAIL (cc@cmlaw.us)

Cesar C. Cabot, Esq.
CABOT MANTANONA LLP
Edge Building, Second Floor
929 S. Marine Drive
Tamuning Guam 96913

RE: May 18, 2013 Concession Agreement

Dear Cesar:

Thank you for providing our office with a copy of Maurice Suh's December 4, 2013 letter and your reply. Although Mr. Suh's letter references DFS's appeal before the OPA, to which the A.B. Won Pat International Airport Authority ("GIAA") is a party and our office is counsel of record, and the May 18, 2013 Concession Agreement ("Agreement") between GIAA and Lotte Duty Free Guam LLC ("Lotte"), Mr. Suh did not provide our office with a courtesy copy of his letter.

Unbelievably, Mr. Suh claims that DFS Guam L.P. ("DFS") only recently discovered that Lotte has commenced its renovation of the specialty retail concession premises and surrounding areas. Yet, as you know, DFS is well aware of Lotte's capital improvement obligations, plans and time-table. Moreover, DFS representatives also participated in walk-thrus of the concession spaces while Lotte took measurements necessary for its planned renovations. Thus, DFS has been well aware of Lotte's efforts to improve the concession premises since at least early July 2013, when the transition meetings took place.

Now, DFS, through its counsel, is urging Lotte to breach the Concession Agreement. It is worth reiterating that the Agreement has been effective since May 18, 2013, and Lotte has been in possession of the Main Retail Space as well as the Storage Space since July 20, 2013. Accordingly, Lotte is obligated to pay at least the minimum annual guaranteed rent set forth in Section 6.1.2 of the Agreement. Lotte is also obligated to make capital improvements to the concession spaces and surrounding areas in the amount of at least \$17.6 million as required by Sections 8.5, 8.5.1, and 8.6 of the Agreement. GIAA expects that Lotte will continue to fulfill its obligations under the Agreement and will not be deterred by DFS's efforts to cause Lotte to breach the Agreement.

CALVO FISHER & JACOB LLP

Cesar C. Cabot, Esq.

December 20, 2013

Page 2 of 2

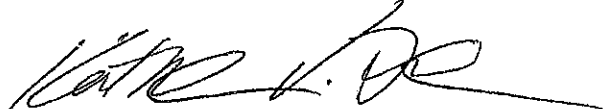
As for Mr. Suh's reminder that the specialty retail concession is the subject of multiple unresolved protests, it appears that DFS has conveniently forgotten that its own actions resulted in the inability of GIAA to address the remaining protests. GIAA is mandated by law to cease review of a protest when the protest is brought before the courts, which is exactly what happened when DFS amended its complaint to include the subject of its protests that were then pending GIAA review. Because both GIAA and Lotte have appealed the decision of the Superior Court, the matter of the protests remains before the court and GIAA is unable to issue a decision on the remaining two DFS protests. DFS also takes the baseless position in its letter to Lotte that "once the full merits of [DFS's] protests are adjudicated, DFS will be reinstated at the Airport". As DFS well knows, its lease on the concession premises has expired and it cannot obtain a lease no matter what the merits of its protests and litigation are. If DFS letter is an attempt to somehow extort or threaten Lotte to abandon its contractual obligations in order to force GIAA to allow DFS back into the Airport, that is not possible either. As GIAA has reminded DFS many times, it cannot violate the procurement regulations to allow DFS to remain in the Airport or to move back in. *See, e.g.* June 27 Email from Liu to Mantanona, et al.; June 30 Email from Tang to Fisher; July 1 Letter from Fisher to Liu; July 2 Letter from Fisher to Tang. Notwithstanding its long tenure at the Airport, DFS was not even the second-ranked bidder and thus, DFS has no further legal basis for reinstatement. Clearly this argument, which DFS made in the Superior Court, was not persuasive enough for the Superior Court to grant a restraining order in DFS's favor.

GIAA looks forward to Lotte's completion of its renovations and commencement of full operations. Please be reminded, however, that Lotte's failure to perform and fulfill its obligations under the Agreement will result in GIAA assessing the remedies available to it under the Agreement, including, without limitation, termination or cancellation of the Agreement as per Section 12.1 of the Agreement, recovery of fees and charges under Section 12.1.3 of the Agreement, or draw down on Lotte's Faithful Performance Guarantee under Section 14.2.4 of the Agreement.

Please let me know if you have any questions or concerns.

Sincerely,

CALVO FISHER & JACOB LLP



Kathleen V. Fisher

KVF:tlr