

SERVED: July 3, 2025

NTSB Order No. EA-6008

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of June, 2025

_____)	
)	
CHRIS ROCHELEAU, ¹)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
)	Docket SE-31110, SE-31111, and
)	CP-30031
v.)	
)	
LUKE T. AIKINS, and)	
ANDREW J. FARRINGTON,)	
)	
Respondents.)	
)	
_____)	

OPINION AND ORDER

Respondents appealed the Oral Initial Decision of Administrative Law Judge Alfonso J. Montano, issued on December 19, 2022.² By that decision, the law judge determined that the Administrator proved respondents violated 14 C.F.R. § 91.105(a), § 91.113(b), and § 91.13(a)³

¹ The original caption for this matter was *Billy Nolen, Acting Administrator, Federal Aviation Administrator v. Aikins and Farrington*.

² A copy of the law judge’s initial decision is attached.

³ 14 C.F.R. § 91.105(a) states in relevant part, “while en route, each required flight crewmember

arising from their conduct during a plane swap aerial exhibition event, and therefore, affirmed the revocation of respondents' pilot certificates and the civil penalty assessed against respondent Aikins. For the reasons set forth below, we deny respondents' appeal, affirm the Administrator's revocation of both respondents' pilot certificates, but reduce the civil penalty against respondent Aikins.

1. Background

A. Facts

Respondent Aikins holds a Commercial Pilot Certificate, Remote Pilot Certificate, Private Pilot Certificate and an airman medical certificate,⁴ while respondent Farrington holds a Commercial Pilot Certificate, Master Parachute Rigger Certificate, and an airman medical certificate.⁵ Respondents planned to participate in a plane swap aerial exhibition event that Red Bull and Hulu sponsored, which they describe as follows:

The plan was for Mr. Aikins and Mr. Farrington to each take off in the respective experimental aircraft from a remote area of the Arizona desert as the sole occupants ... Once over the event area, they would engage the dive brake and attitude hold device and cut power to the engine, rendering the aircraft non-flying objects free falling straight down at approximately 120 miles per hour. ... They would then exit the falling objects to perform the swap, and once complete, would retract the dive brake, manually disengage the attitude hold device, restart the engines, thereby reconfiguring them into flying aircraft.⁶

shall (1) Be at the crewmember station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and (2) Keep the safety belt fastened while at the crewmember station”

14 C.F.R. § 91.113(b) states in relevant part, “vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft.”

14 C.F.R. § 91.13(a) provides that “no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

⁴ Compl. (Aikins) at ¶ 1; Answer (Aikins) at ¶ 1.

⁵ Compl. (Farrington) at ¶ 1; Answer (Farrington) at ¶ 1.

⁶ Appeal Br. at 3 (internal citations omitted).

On February 28, 2022, respondent Aikins petitioned the FAA for an exemption from the requirements of 14 C.F.R. § 91.105(a)(1) for the plane swap event.⁷ In a letter dated April 22, 2022 to respondent Aikins, the FAA stated that it denied the exemption petition.⁸ On April 24, 2022, both respondents participated in the plane swap in the vicinity of Elry, Arizona.⁹ At the start of the event, respondent Aikins was the pilot in command of N3694U, while respondent Farrington was the pilot in command of N3185Q.¹⁰ During the event, respondents placed their aircraft in a vertical dive, departed the aircraft and attempted to exchange or “swap” aircraft.¹¹ The aircraft that respondent Aikins departed (N3694U) crashed to the ground, prohibiting respondent Farrington from entering the aircraft; respondent Farrington parachuted to the ground.¹² Respondent Aikins entered the aircraft that respondent Farrington departed (N3185Q), ceased the vertical dive, and flew the aircraft.¹³

B. Procedural Background and Witness Testimony

On May 10, 2022, the Administrator issued Orders of Revocation against both respondents and on May 19, 2022, issued an Order of Assessment against respondent Aikins, which became the complaints in this case. Respondents timely appealed the complaints. The law judge conducted a five-day hearing from September 12-16, 2022, in Phoenix, Arizona, and issued an oral initial decision on December 19, 2022. Respondents timely appealed the law

⁷ Compl. (Aikins) at ¶ 2; Answer (Aikins) at ¶ 2; Exh. A-10.

⁸ Compl. (Aikins) at ¶ 5; Exh. A-14.

⁹ Compl. (Aikins) at ¶ 7; Compl. (Farrington) at ¶ 3; *see* Tr. 554-55, 615, 631, 767-70. (respondents’ testimony regarding events during plane swap).

¹⁰ Compl. (Aikins) at ¶ 7; Compl. (Farrington) at ¶ 3.

¹¹ Compl. (Aikins) at ¶¶ 9, 13-15; Compl. (Farrington) at ¶¶ 5, 9-11; Tr. 767-70.

¹² Compl. (Aikins) at ¶¶ 9, 13; Compl. (Farrington) at ¶¶ 5, 9; Tr. 767-70.

¹³ Tr. 770-71.

judge's decision on December 23, 2022, and filed a supporting brief on February 22, 2023.¹⁴ The Administrator filed a reply brief on March 22, 2023.¹⁵

At the hearing before the law judge, the following witnesses testified on the Administrator's behalf: Daniel Gredlein, FAA Aviation Safety Inspector; Daniel Ngo, Manager of the FAA's Petition Division; and Preston Farley, FAA forensic investigator. FAA Aviation Safety Inspector Cheryl Villa testified for the Administrator as an expert witness in Part 91 aviation safety and aircraft operations. Respondents testified on their own behalf and called as witnesses: Aaron Fitzgerald, aerial coordinator for the plane swap; Paulo Iscold Oliveria, Aeronautical Engineer Professor at California Polytechnic University; and Stanley Grey, owner of RV Aviation Services, an aviation consulting business.

1. FAA Witnesses: Testimony of Daniel Gredlein

Inspector Gredlein testified that he has served as an Aviation Safety Inspector (ASI) in the Scottsdale Flight Standards District Office (FSDO) since 2018.¹⁶ Prior to his position at FAA, ASI Gredlein stated that he worked at a flight school for 10 years.¹⁷ He holds a commercial single-engine, multi-engine, land and instrument airplane certificate, as well as a certified flight instructor, instrument instructor, and multi-engine instructor's rating.¹⁸ ASI Gredlein testified that he worked with ASI Cheryl Villa to investigate respondents' actions and draft the Enforcement Investigative Report (EIR).¹⁹ ASI Gredlein testified that he met "digitally" with respondent

¹⁴ On February 2, 2023, the General Counsel extended the time for respondents to file an appeal brief to February 22, 2023.

¹⁵ On February 2, 2023, the General Counsel extended the Administrator's deadline to file a reply brief to March 24, 2023.

¹⁶ Tr. 35.

¹⁷ *Id.*

¹⁸ *Id.* at 36.

¹⁹ *Id.*

Aikens and Aaron Fitzgerald on February 3, 2022, during which he viewed a Power Point presentation on the planned event.²⁰ ASI Gredlein stated that he sent both men an email following the meeting summarizing the discussion and stated that he would get back to them regarding their questions.²¹ According to ASI Gredlein, he referenced an exemption in his email in case respondent Aikins and Mr. Fitzgerald could not obtain waivers for their event.²² The email also contained a list of applicable regulations in 14 C.F.R. Part 91, which were discussed during the meeting, and noted that sections 91.107, 91.111 and 91.303 could be waived.²³ ASI Gredlein testified that he did not intend the list of regulations in his email to be exhaustive, mentioning that his email includes in parentheses, “which may not be all regulations needed.”²⁴ The inspector explained that in his email, he noted that 14 C.F.R. Sections 91.3, 91.13, 91.105, 91.151, 91.205 and 91.319(e) could not be waived.²⁵ Further, he explained that he attached an exemption guide to his email to assist the recipients in applying for an exemption.²⁶ ASI Gredlein testified that because respondent Aikins and Mr. Fitzgerald asked him whether an aircraft could be converted into an object midflight, he stated in his email, “I will work on getting you a definition of object versus aircraft and let you know when I have something in solid.”²⁷ ASI Gredlein testified that on February 28, 2022, he sent respondent Aikins and Mr. Fitzgerald another email with the results of his research into the question they posed to him, which stated,

As promised, I have requested an interpretation of aircraft versus object per the information provided in your email dated February 3rd, 2022 that highlights aircraft and airplane. After review of 14 C.F.R. Part 1, Part 105 and previously established legal

²⁰ *Id.* at 38-39.

²¹ *Id.* at 39; *see also* Exh. A-6.

²² Tr. 40.

²³ *Id.* at 40-42.

²⁴ *Id.* at 41.

²⁵ *Id.* at 45.

²⁶ *Id.*

²⁷ *Id.* at 45-46; *see also* Exh. A-6.

interpretations, it has been determined that a [sic] aircraft cannot convert into an object. The aircraft remains an aircraft despite the drag device being deployed and the airplane being in a vertical dive position with the engine off. It is still moving through the air by use of wings, to not spin out of control, which meets the definition of flight.²⁸

ASI Gredlein testified that he reviewed 14 C.F.R. Parts 1 and 105²⁹ and previous legal interpretations, including an interpretation from FAA attorneys on the definition of flight, to assist him in answering respondent Aikins and Mr. Fitzgerald's questions.³⁰ ASI Gredlein further testified that his email to Mr. Aikins and Mr. Fitzgerald stated, "The aircraft remains an aircraft despite the drag device being deployed and the airplane being in a vertical dive condition with the engine off. It is still moving through the air by use of wings."³¹ The inspector explained that based on his research and with help from legal counsel the FAA waiver process was not available for respondents' planned event, and thus, he concluded his email with, "With the above determination made, Red Bull will need to apply for an exemption via the process previously discussed. I have reattached the information and copied the previous email to ensure we're all on the same page."³² He explained that respondent Aikins and Mr. Fitzgerald sent him an email dated March 14, 2022, providing an update on the plane swap, noting that they had applied for an exemption and stating, in part:

As we work through the exemption process, we continue to test, rehearse and plan for our event.

Despite the fact that some questions remain unresolved, our television production and media teams for the event have deadlines that need to be met, so they are proceeding with their scheduled release of promotional materials. The promotional media that appears on

²⁸ Tr. 46-47; Exh. A-7.

²⁹ Tr. 48-49.

³⁰ *Id.* at 51-52; Exh. A-4.

³¹ Tr. 55-56; Exh. A-7.

³² Tr. 57; Exh. A-7. ASI Gredlein explained that the previous email referenced was the one dated February 3, 2022.

the internet and broadcast television has no bearing on our proceedings. They are just doing their job, and we don't plan to interfere.³³

On cross-examination by respondent Aikins' counsel, ASI Gredlein testified that he does not have aerobatic flight or skydiving experience, but as an aviation safety inspector, has experience in aviation exhibitions, including parachute and airshow-like exhibitions.³⁴ He also testified that at the time respondent Aikins contacted the Scottsdale FSDO, ASI Gredlein was unaware that the Seattle Manufacturing Inspection District Office (MIDO) had issued a special airworthiness certificate for the aircraft that were the subject of the plane swap event.³⁵ ASI Gredlein agreed that airmen are responsible for determining which regulations apply to the event and whether they need relief from the regulations.³⁶ In response to whether ASI Gredlein formed an opinion as to whether an aircraft could convert into a freefalling object during his February 3, 2022 meeting with respondent Aikins and Mr. Fitzgerald, he replied, "No. There wasn't a solid conclusion on that, so that's why I told him I would, I'd owe you. I said I preferred to research the things before I gave an actual thought process on it."³⁷ ASI Gredlein stated that he sought assistance from FAA legal counsel in connection with respondent Aikins and Mr. Fitzgerald's question.³⁸

ASI Gredlein testified that he relied on a PowerPoint presentation that respondent Aikins and Mr. Fitzgerald provided him to understand their planned event.³⁹ He explained that he did not consider the special airworthiness certificate issued for the participating aircraft because

³³ Tr. 60-63; Exh. A-8.

³⁴ *Id.* at 64-65.

³⁵ *Id.* at 65.

³⁶ *Id.* at 66-67.

³⁷ *Id.* at 75-76.

³⁸ *Id.* at 76.

³⁹ *Id.* at 82; Exh. R-23.

another inspector on the airworthiness team who also attended the meeting with respondent Aikins and Mr. Fitzgerald focused on airworthiness.⁴⁰ ASI Gredlein stated that he was very familiar with the location of the plane swap event, explaining that it is farmland and desert, but also that the airspace is “heavily” used for flight training.⁴¹ He recalled that he raised his concern about the use of the area for flight training with respondent Aikins or someone associated with the event, although he acknowledged that he did not do so in his emails, noting that at that time, the event was still in the pre-planning stage.⁴² Moreover, ASI Gredlein admitted that in his February 28, 2022 email to respondent Aikins and Mr. Fitzgerald, he did not inform them that he sought assistance from FAA legal counsel, however, he testified that during his conversation with them, ASI Gredlein stated that he would obtain clarification from counsel.⁴³ He also stated that when he reviewed legal interpretations as part of his research, he did not find any that he deemed applicable, explaining that the legal interpretation on which he relied in crafting his February 28, 2022 email concerned Part 121, and he was not aware of any instances in which the interpretation was applied to Part 91.⁴⁴ Further, ASI Gredlein testified that his conclusion in his February 28, 2022 email that an aircraft is still moving through the air by use of its wings was based on his experience and discussion with counsel, the content of which counsel asserted is privileged, and therefore, ASI Gredlein did not reveal to respondent Aikins.⁴⁵ ASI Gredlein acknowledged that although his email includes the phrase, “which meets the definition of flight” when referring to the aircraft, he did not include the definition of “flight” or any citation to the

⁴⁰ Tr. 84-85.

⁴¹ *Id.* at 86.

⁴² *Id.* at 86-87.

⁴³ *Id.* at 92, 99; *see also* Exh. A-7.

⁴⁴ Tr. 92-93 (referencing Exh. A-4).

⁴⁵ Tr. 103-04.

definition.⁴⁶ ASI Gredlein also stated that he did not view the aircraft being used in the plane swap, but relied on respondent Aikins and Mr. Fitzgerald's presentation.⁴⁷ Moreover, ASI Gredlein stated that he went on vacation two days before the event and at that time, did not know whether an exemption had been granted or whether anyone from the FAA would attend the event.⁴⁸

On cross-examination by respondent Farrington's counsel, ASI Gredlein testified that he did not meet, exchange emails, or communicate with Mr. Farrington prior to the event.⁴⁹ He stated that he was aware that respondent Farrington was involved in the plane swap event based on the PowerPoint presentation listing Mr. Farrington's name.⁵⁰ ASI Gredlein reiterated his prior testimony that he reviewed the definition of "object" under Part 105, on which he partly relied in making his statements in his February 28, 2022 email, noting that the definition under Part 105 was inapplicable because it refers to a parachute operation, rather than the planned event.⁵¹ ASI Gredlein testified that he sent Mr. Farrington the Letter of Investigation and received an email from his counsel stating that they will respond to the letter.⁵² ASI Gredlein stated that he replied by asking counsel whether respondent Farrington would like to comment on his Instagram post regarding the event, but did not recall whether he received an answer.⁵³ Further, ASI Gredlein testified that before the hearing, he did not speak with or meet respondent Farrington.⁵⁴

On re-direct, ASI Gredlein testified that respondent Aikins and Mr. Fitzgerald were not

⁴⁶ *Id.* at 106-08.

⁴⁷ *Id.* at 110.

⁴⁸ *Id.* at 117-19.

⁴⁹ *Id.* at 120-21.

⁵⁰ *Id.* at 121.

⁵¹ *Id.* at 126-29.

⁵² *Id.* at 132-33 (discussing Exh. R-45).

⁵³ *Id.* at 137-38 (discussing Exh. R-45).

⁵⁴ Tr. 140.

required to comply with his February 28, 2022 email instruction to obtain an exemption and could have expressed an objection to the recommendation.⁵⁵ Instead, the inspector stated that he received an email informing him that respondent Aikins and Mr. Fitzgerald applied for an exemption.⁵⁶

Upon questioning from the law judge, ASI Gredlein explained that he understood from respondent Aikins and Mr. Fitzgerald's March 14, 2022 email that they were planning to request an exemption but it was not clear whether they were moving forward with the event.⁵⁷ Further, he testified that he received a copy of the plan of activities submitted to the Scottsdale FSDO.⁵⁸ ASI Gredlein testified that when he met with respondent Aikins and Mr. Fitzgerald, they described the planned event as a promotional event to test the flight envelope, although he could not recall the exact words they used.⁵⁹ According to ASI Gredlein, respondent Aikins and Mr. Fitzgerald were wearing Red Bull attire when he met them in person, but they did not specify whether they were representing Red Bull and or who was paying for the event.⁶⁰

On further re-direct, ASI Gredlein stated that he understood from a subsequent email from respondent Aikins and Mr. Fitzgerald that they planned to move forward with the event "with contingencies in place, whatever those would be" if the exemption was denied.⁶¹

2. *FAA Witnesses: Testimony of Dan Ngo*

Dan Ngo testified that he is the Part 11 Petitions Branch Manager for the FAA Office of

⁵⁵ *Id.* at 143.

⁵⁶ *Id.* at 144.

⁵⁷ *Id.* at 151-52 (discussing Exh. A-8).

⁵⁸ *Id.* at 152.

⁵⁹ *Id.* at 153.

⁶⁰ *Id.* at 153-55.

⁶¹ *Id.* at 156.

Rulemaking and in that role, oversees the exemptions program.⁶² Mr. Ngo stated that he received an exemption petition from respondent Aikins on February 28, 2022, for relief under 14 C.F.R. 91.105(a)(1).⁶³ Mr. Ngo testified that he sent a letter dated March 24, 2022, to respondent Aikins requesting additional information on why granting the exemption would be in the public interest, and respondent Aikins responded by email on April 11, 2022, attaching a revised petition for exemption.⁶⁴ Mr. Ngo further testified that on or about April 22, 2022, the FAA sent respondent Aikins a letter denying his request for an exemption.⁶⁵ According to Mr. Ngo, the FAA denied the petition because:

the FAA found that Mr. Aikins first failed to address compliance with the other applicable regulations of 14 C.F.R., such as maintaining vigilance to see and avoid other aircraft. Additionally, the FAA has since denied a similar request for relief from the same regulation. And finally, the FAA determined that because the petitioner stated that the operation can be conducted with an additional pilot on board, that it would not be in the public interest.⁶⁶

Mr. Ngo explained that the exemption denial meant that the petitioner was required to follow the applicable regulations.⁶⁷ Moreover, Mr. Ngo testified that after a petition for exemption is denied, the petitioner may submit a petition for reconsideration within 60 days but, to his knowledge, respondent Aikins did not do so.⁶⁸

Upon cross-examination from respondent Aikins' attorney, Mr. Ngo testified that he did not personally speak with respondent Aikins during the petition process.⁶⁹ Mr. Ngo acknowledged that the exemption denial letter did not address respondent Aikins' position that

⁶² *Id.* at 160-61.

⁶³ *Id.* at 161,164. *See also* Exh. A-10.

⁶⁴ Tr. 165-68. *See also* Exhs. A-11, A-12, A-13.

⁶⁵ Tr. 169. *See also* Exh. A-14.

⁶⁶ Tr. 172.

⁶⁷ *Id.* at 175.

⁶⁸ *Id.* at 176-77.

⁶⁹ *Id.* at 178.

the aircraft could convert into falling objects during the proposed airplane swap.⁷⁰ When respondent Aikins' counsel asked whether § 91.105 applied if the aircraft "changed character into a free-falling object," Mr. Ngo replied that he could not answer, noting that respondent Aikins sought an exemption from § 91.105(a)(1), and that was the information before the FAA.⁷¹ Mr. Ngo also stated that the FAA did not consider whether an aircraft could turn into a free-falling object when issuing the denial.⁷² He testified that his office did not consider whether respondent Aikins required the exemption, but rather, responded to the petition before them.⁷³ Mr. Ngo also stated that his office considered any safety measures that were contemplated as part of the project and addressed those measures in the denial letter by concluding that the petition failed to address compliance with other regulations.⁷⁴ Moreover, Mr. Ngo noted that once a petitioner receives the exemption, it is up to that petitioner to decide how to proceed, and the FAA does not follow up with the petitioner following a denial.⁷⁵

3. FAA Witnesses: Testimony of Preston Farley

Preston Farley testified that he is a computer forensic investigator with the FAA, his duties include conducting internal and external misconduct investigations, and in this case, FAA Aviation Safety and the legal office requested social media archiving for an Instagram post related to the Red Bull plane swap and three Red Bull URLs.⁷⁶ Mr. Farley testified regarding his examination of the metadata for an April 29, 2022 Instagram post with the user name

⁷⁰ *Id.* at 180.

⁷¹ *Id.* at 183.

⁷² *Id.* at 184.

⁷³ *Id.* at 187.

⁷⁴ *Id.* at 189-90.

⁷⁵ *Id.* at 196.

⁷⁶ *Id.* at 208-10.

“lukeaikins.”⁷⁷ On cross-examination from respondent Aikins’ counsel, Mr. Farley acknowledged that he could not “place a user at a keyboard,” and therefore, could not determine that respondent Akins authored the post.⁷⁸

4. *FAA Witnesses: Testimony of Cheryl Villa*

Over both respondents’ objections, Cheryl Villa was designated as an expert of Part 91 aviation safety and aircraft operation. Inspector Villa testified that she has been an aviation safety inspector (ASI) for operations at the FAA Scottsdale Flight Standards District Office (FSDO) since October 2019.⁷⁹ She also stated that she holds multiple pilot and instructor certificates.⁸⁰ Further, ASI Villa testified that she has about 28 years of flight instruction experience, amounting to 8,000 hours of dual instruction and has a Bachelor’s of Science degree in aeronautical engineering from California Polytechnic State University, San Luis Obispo.⁸¹ Prior to working for the FAA, ASI Villa stated that she was employed by Lufthansa Aviation Training for 18 and a half years, where she was a flight instructor, class coordinator, and worked in the flight standards department.⁸² ASI Villa stated that she has 1,400 hours in single-engine Cessna aircraft time, including 152s, 172s, 182s, and 210s.⁸³ ASI Villa further testified that she has 20 years of experience operating in the Sawtooth Airport vicinity and has 28 years of experience in the

⁷⁷ *Id.* at 209-10, 220. *See also* Exh. A-16 (Instagram post stating, “As Project Lead and Chief Pilot, it was entirely my responsibility to operate within the regulatory framework to ensure a successful outcome. I received email notice April 22, 2022 from the FAA that a specific exemption was not granted and I made the personal decision to move forward with the plane swap. I regret not sharing this information with my team and those who supported me. I am now turning my attention to cooperatively working transparently with the regulatory authorities as we review the planning and execution.”).

⁷⁸ Tr. 221.

⁷⁹ *Id.* at 244.

⁸⁰ *Id.* at 246.

⁸¹ *Id.*

⁸² *Id.* at 246-47.

⁸³ *Id.* at 248.

aviation field.⁸⁴ With respect to Part 91, ASI Villa testified that as a flight standards pilot at Lufthansa, she wrote operations manuals, ensuring that they were consistent with the Federal Aviation Regulation.⁸⁵ She also testified that all of her flight time, flight instruction time, and compliance training occurred under Part 91, and that she is familiar with parts 91.105 and 91.113(b).⁸⁶ *On vior dire*, ASI Villa testified that she has spent 28 years in the area of compliance with Part 91.⁸⁷ She acknowledged that “everyone in the flying system” must comply with Part 91, unless they are also compelled to comply with more restrictive regulations under other parts.⁸⁸ ASI Villa also admitted that she has no experience flying or overseeing experimental aircraft, and is not familiar with section 91.319, “Aircraft Having Experimental Certificates Operating Limitations.”⁸⁹

According to ASI Villa, on April 25, 2022, she began her investigation into respondents’ plane swap and in particular, their roles as pilots in command and their actions when they left their crewmember stations and the aircraft.⁹⁰ As part of her investigation into respondent Aikins, ASI Villa stated that spoke with him on the telephone and met him at the Sawtooth Airport to view the crash site of N3694U and to interview him.⁹¹ According to ASI Villa, respondent Aikins informed her that he took off in N3694U, and respondent Farrington took off in N3185Q, and “that during the plane swap event, they both departed their crewmember – took off their seatbelts, departed their flight crewmember station and exited the aircraft, leaving the aircraft

⁸⁴ *Id.* at 250.

⁸⁵ *Id.* at 266-67.

⁸⁶ *Id.* at 270-71, 273.

⁸⁷ *Id.* at 275.

⁸⁸ *Id.* at 277-78.

⁸⁹ *See, e.g., id.* at 278-79.

⁹⁰ *Id.* at 281-82.

⁹¹ *Id.* at 283.

unpiloted, in an aerobatic dive and then they attempted the plane swap.”⁹² ASI Villa further testified that respondent Aikins told her,

that when they lowered the speed brake, the first action was to engage the autopilot, lower the speed brake, put the aircraft in a dive, in formation flight, and cut off the power, and the mixture, and that the autopilot’s goal, or job was to keep the aircraft in a stabilized, desired-air-speed descent, in formation flight with the other aircraft.⁹³

ASI Villa also stated that respondent Aikins explained to her why N3694U went out of control, surmising that the test flights had a safety pilot on board, but during the event, they compensated for the missing pilot’s weight by placing an extra 200 pounds of fuel in the fuel tank. However, when respondent Aikins placed the aircraft into a dive, the extra weight was vertically higher, above the center of gravity, causing the aircraft to continue its trajectory.⁹⁴

ASI Villa viewed a video of respondents Aikins and Farrington from the event. She stated that she recognized respondent Aikins from the video because she had met him in person, and while she had not met respondent Farrington in person, she testified that respondent Aikins informed her that respondent Farrington also participated in the plane swap.⁹⁵ According to ASI Villa, respondent Aikins notified her that he was the sole occupant of N3694U, and initially, the pilot-in-command.⁹⁶ Further, ASI Villa testified that respondent Aikins informed her that respondent Farrington was the sole occupant and pilot-in-command of N3185Q.⁹⁷ ASI Villa also explained that respondent Aikins told her that he was able to exit the crewmember station of N3694U and enter aircraft N3185Q, however, respondent Farrington successfully exited

⁹² *Id.* at 284-85.

⁹³ *Id.* at 285.

⁹⁴ *Id.* at 285-86.

⁹⁵ *Id.* at 295-96.

⁹⁶ *Id.* at 306, 309.

⁹⁷ *Id.* at 309-11.

N3185Q, but was unable to enter the crewmember station for N3694U because it crashed.⁹⁸ Moreover, she testified that both respondents exited their respective aircraft and crewmember stations, and left both aircraft in a nosedive without pilots.⁹⁹ ASI Villa stated that both respondents removed their seatbelts while in their crewmember stations.¹⁰⁰ She also surmised that neither respondent's absence from their crewmember stations was necessary to operate the aircraft or for physiological needs and that neither respondent maintained vigilance so as to see and avoid other aircraft.¹⁰¹ She stated that there were no NOTAMs, or notices to air missions, or temporary flight restrictions (TFRs) in effect during the plane swap event.¹⁰² ASI Villa opined that the respondents' actions had the potential to endanger the life or property of another.¹⁰³ She also posited that respondents' conduct was careless and reckless as defined under FAA Order 2150.3C and supported the revocation sanction.¹⁰⁴ Additionally, ASI Villa testified that the civil penalty against respondent Aikins was warranted because he conducted the plane swap despite FAA's denial of his exemption request.¹⁰⁵

On cross-examination by respondent Aikins' counsel, ASI Villa testified that neither she, nor anyone from her office, attended the plane swap event.¹⁰⁶ She agreed that the area around the Sawtooth Airport looked like desert and during her inspection of the crash, she observed no private property damage or injuries.¹⁰⁷ She also admitted that respondent Aikins was cooperative

⁹⁸ *Id.* at 311-12.

⁹⁹ *Id.* at 314-15.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 316-19.

¹⁰² *Id.* at 319-23.

¹⁰³ *Id.* at 324-25.

¹⁰⁴ *Id.* at 331-35.

¹⁰⁵ *Id.* at 338.

¹⁰⁶ *Id.* at 344-45.

¹⁰⁷ *Id.* at 345-46.

during her investigation.¹⁰⁸ ASI Villa explained that her investigation focused on the pilots' actions, and not the airworthiness of the aircraft; airworthiness inspectors who viewed the crash scene with her focused on those aspects of the investigation.¹⁰⁹ ASI Villa stated that she met with respondent Aikins during her visit to the crash site, but did not speak with respondent Farrington at any time.¹¹⁰ The inspector clarified that once the respondents left their crewmember stations, "they were unable to maintain vigilance as to see and avoid other aircraft."¹¹¹ She stated that she was unaware of information the respondents would receive from the ground, but was aware that respondents had a plan to communicate on common frequencies during the swap and on the video of the event, heard respondent Aikins comment, "Ground looks good."¹¹² ASI Villa explained that she believed respondent Aikins' actions were egregious as defined under FAA's sanctions guidance because:

the [r]espondents exited the flight crewmember stations of the aircraft, left them in an aerobatic dive, without a pilot on board, in an airspace depicted as intensive flight training, within 4 nautical miles of a Victor airway, without a NOTAM being issued, or a TFR being issued, without contacting ATC, in violation of 91.105.¹¹³

On cross-examination from respondent Farrington's counsel, ASI Villa testified that her involvement in the case began on April 25, 2022, and she was not consulted prior to the event.¹¹⁴ ASI Villa clarified that she attempted to call respondent Farrington from her office and emailed him the Pilot's Bill of Rights twice. Respondent Farrington did not return her telephone call but acknowledged his receipt of the Pilot's Bill of Rights.¹¹⁵ ASI Villa stated that to her knowledge,

¹⁰⁸ *Id.* at 346.

¹⁰⁹ *Id.* at 346-47.

¹¹⁰ *Id.* at 347-48.

¹¹¹ *Id.* at 351.

¹¹² *Id.* at 351-52.

¹¹³ *Id.* at 356.

¹¹⁴ *Id.* at 361.

¹¹⁵ *Id.* at 363-64.

ASI Gredlein also attempted to call respondent Farrington but was unable to reach him.¹¹⁶

Referring to a written summary of her conversation with respondent Aikins, ASI Villa testified that she wrote that respondent Aikins told her that respondent Farrington went back to Washington, and “added that he didn’t know if Mr. Farrington would ever speak to him again.”¹¹⁷ ASI Villa stated that she did not ask respondent Aikins what he meant by that statement because their conversation was over.¹¹⁸

Further, ASI Villa considered whether respondent Aikins’ actions were intentional in assessing the case; she was unable to determine respondent Farrington’s intent because she was unable to speak with him.¹¹⁹ ASI Villa stated that she discussed with ASI Gredlein whether any applicable waivers were issued for the event and determined none were issued, but ASI Gredlein provided her with the motion picture manual, which was included as an item of proof in the enforcement investigation report.¹²⁰

On re-direct, ASI Villa reiterated that 14 C.F.R. §§ 91.105 and 91.113 are not waivable regulations.¹²¹ Further, she stated that respondents did not produce an exemption to § 91.105.¹²² Moreover, ASI Villa testified that she did not uncover any communications respondent Aikins had with anyone outside of his group, including any pilots, or with air traffic control during the event.¹²³ ASI Villa stated that while she did not know the exact visibility at the time of the event, she knew they required use of visual flight rules (VFR).¹²⁴ In response to a hypothetical

¹¹⁶ *Id.* at 365.

¹¹⁷ *Id.* at 370 (discussing Exh. R-36).

¹¹⁸ *Id.* at 370-71.

¹¹⁹ *Id.* at 375-76.

¹²⁰ *Id.* at 383-84.

¹²¹ *Id.* at 390.

¹²² *Id.* at 390.

¹²³ *Id.* at 392-93.

¹²⁴ *Id.* at 397-98.

involving a one-minute event with 10 miles of visibility, an aircraft would need to be travelling faster than 600 miles per hours to collide into the event aircraft, ASI Villa stated, “just because you don’t see one within 10 miles doesn’t mean there isn’t one,” explaining that an aircraft could appear in 10 seconds and “see and avoid” means continuously being aware of the airspace scanning.¹²⁵

5. *Respondents’ Witnesses: Testimony of Respondent Aikins*

Respondent Aikins testified that he is self-employed as a skydiving instructor, aerial coordinator for motion pictures, stuntman, and conducts special aviation events, and designs innovative aeronautical devices when a project calls for a new design.¹²⁶ Respondent Akins also stated that he is an airplane and helicopter pilot.¹²⁷ For the plane swap in question, he testified that Red Bull and Hulu sponsored the event.¹²⁸ According to respondent Aikins, he planned the event for a year and a half and every day for six months, tested, and prepared for the event.¹²⁹ When asked whether any special paperwork or waivers were required for the event, respondent Aikins replied in the negative, stating that under § 91.15 of the Federal Aviation Regulations, he was an object dropping from the airplane and was only required to notify the FSDO of the planned activity.¹³⁰ Respondent Aikins stated that under his understanding of the regulation, an object may be dropped so long as reasonable precautions are taken to ensure the safety of persons and property on the ground.¹³¹

Respondent Aikins also testified that anytime he drops an object, he obtains a NOTAM

¹²⁵ *Id.* at 400-01.

¹²⁶ *Id.* at 411-13.

¹²⁷ *Id.* at 412.

¹²⁸ *Id.* at 413.

¹²⁹ *Id.*

¹³⁰ *Id.* at 413-14.

¹³¹ *Id.* at 417.

for parachute activity.¹³² For the plane swap event, respondent Aikins stated that there was a standard parachuting NOTAM for the area near the Sawtooth Airport covering 17,999 feet to the surface for 10 miles that is filed year-round.¹³³ Respondent Aikins explained that he chose the Sawtooth Airport for the plane swap because he had organized other events there, there are no public roads, the land is flat, and there was private security to secure the airport during the event, along with crash/fire rescue and dune buggy security outside of the airport.¹³⁴ Further, respondent Aikins stated that he personally leased the airport property for the event.¹³⁵

To prepare for the plane swap, respondent Aikins testified he purchased a Cessna 182, N3185Q, changed it to an experimental aircraft and modified it to fall at the rate of a skydiver, which is 120 miles an hour; he stated that if a standard aircraft reached that speed, its wings would be ripped off.¹³⁶ According to respondent Aikins, he worked with a designated airworthiness representative (DAR) to obtain an airworthiness certificate for the modified aircraft.¹³⁷ Respondent Aikins stated that he assisted in drafting a program letter dated January 16, 2022, to the FAA.¹³⁸ When applying for the certificate, respondent Aikins asserted that he would notify the FAA of the “modifications to be done to the aircraft, meaning a large stabilization drag device on the belly, attitude hold lock on the plane, and to be able to skydive from the aircraft.”¹³⁹ Respondent Aikins testified that he hired the DAR to inspect the aircraft for airworthiness and assist him in submitting a program letter to the FSDO addressing phase 1

¹³² *Id.* at 423.

¹³³ *Id.*

¹³⁴ *Id.* at 424-25.

¹³⁵ *Id.* at 425.

¹³⁶ *Id.* at 432-33.

¹³⁷ *Id.* at 433-34.

¹³⁸ *Id.* at 435, 437.

¹³⁹ *Id.* at 443-44.

testing of the devices installed on the aircraft.¹⁴⁰ Respondent Aikins further testified that his intent in submitting the program letter was to inform the FSDO that he was conducting a flight test program and obtain the airworthiness certificate once the testing was completed.¹⁴¹

Respondent Aikins stated that he obtained airworthiness certificates for both aircraft used during the plane swap and kept them in the aircraft during the event.¹⁴²

On re-direct, respondent Aikins testified that he received the special airworthiness certificate for the aircraft that were used during the plane swap directly from the DAR.¹⁴³ After receiving the certificate, respondent Aikins stated that he began testing the aircraft during 200 hours of flight and over 70 dives to ensure the planned aircraft was safe.¹⁴⁴ According to respondent Aikins, when he took off in his aircraft on the day of the plane swap, he was “was in 100 percent compliance with the special airworthiness certificate and limitations.”¹⁴⁵ Respondent Aikins stated that during Phase 1 of the testing, he was required to fly the aircraft for 10 hours in the approved geographical area, which was “over the water out over the bay at San Luis Obispo,” and demonstrate that the aircraft was controllable at the speeds and angles employed.¹⁴⁶ Further, respondent Aikins explained that during testing, his goal was to prove that he could safely transform the aircraft into a falling object that fell at the rate and stability of a skydiver, with no control over the aircraft, and then recover the aircraft back to normal flight.¹⁴⁷ Respondent Aikins stated that he moved on to Phase 2 of testing once he was able to stabilize the aircraft while it

¹⁴⁰ *Id.* at 445.

¹⁴¹ *Id.* at 446-47, 467. *See also* Exhs. R-23, R-37, R-38.

¹⁴² Tr. 450-51.

¹⁴³ *Id.* at 496-97.

¹⁴⁴ *Id.* at 505, 507.

¹⁴⁵ *Id.* at 506.

¹⁴⁶ *Id.* at 507-08.

¹⁴⁷ *Id.* at 508-09.

was falling, noting that Phase 2 does not end.¹⁴⁸ Respondent Aikins explained that he selected the desert area near the Sawtooth Mountains in Arizona for the plane swap because he had prior success dropping cars and skydiving over the area.¹⁴⁹ He also testified that nearby Sawtooth Airport is designated as both a skydiving area and private airport that was developed as a military training facility and that he had leased it out in the past.¹⁵⁰ According to respondent Aikins, there is a standing NOTAM for skydiving over Sawtooth from 17,999 feet, with a 10 miles radius, which was in effect during his project.¹⁵¹

Respondent Aikins testified that once he selected the location for his event, he reached out to the Scottsdale FSDO to schedule a meeting.¹⁵² Respondent Aikins stated that he participated in a Zoom meeting with the FSDO and Aaron Fitzgerald, a friend who assisted on several projects, to discuss the plans for the plane swap and provide a pilot briefing on the event, including a slideshow.¹⁵³ Respondent Aikins stated that in attendance at the February 3, 2022, meeting were Barney Miller, FAA airworthiness office, ASI Gredlein, and “Tomkins,” and that after his presentation, he was not directed to take any action.¹⁵⁴ Respondent Aikins testified that he provided the FAA with a copy of his special airworthiness certificates and both logbooks and received no further inquiries regarding the certificate.¹⁵⁵

Moreover, respondent Aikins mentioned that following the meeting with FAA, he received an email from ASI Gredlein citing the regulations that may apply to whether an aircraft

¹⁴⁸ *Id.* at 510.

¹⁴⁹ *Id.* at 510-11.

¹⁵⁰ *Id.* at 511-12.

¹⁵¹ *Id.* at 513.

¹⁵² *Id.* at 513-14.

¹⁵³ *Id.* at 514-15. *See also* Exhs. A-10, R-39.

¹⁵⁴ Tr. 523.

¹⁵⁵ *Id.* at 524.

can transform into an object although respondent Aikins did not request such a list of regulations.¹⁵⁶ Respondent Aikins testified that he viewed the list of regulations from ASI Gredlein as those that one must follow when flying an aircraft.¹⁵⁷ Respondent Aikins stated that he did not believe that he was violating § 91.105 when he went forward with the plane swap and would not knowingly violate the regulations.¹⁵⁸ Respondent Aikins testified that he received a second email from ASI Gredlein, which he also did not request, claiming that he believed that ASI Gredlein did not understand the plane swap project because the statements in the email were not applicable. Further, respondent Aikins stated that ASI Gredlein wrote that an aircraft cannot convert into an object but did not explain who made that determination.¹⁵⁹ Moreover, the email stated that Red Bull would need to apply for an exemption, although according to respondent Aikins, “Red Bull has nothing to do with this at this point.”¹⁶⁰ After receiving the email, respondent Aikins spoke with ASI Gridelin by telephone, and respondent Aikins understood that he had 120-days to apply for an exemption.¹⁶¹ Although respondent Aikins stated that he did not need an exemption, he applied for one given ASI Gridelin’s instruction.¹⁶² Respondent Aikins testified that he planned to move forward whether he received the exemption or not because he complied with the applicable regulations.¹⁶³ Respondent Aikins testified that the FAA did not advise him to seek a legal interpretation concerning his event.¹⁶⁴

He also stated that the FAA notified him that he needed to add information regarding the

¹⁵⁶ *Id.* at 525-26. *See also* Exh. A-6.

¹⁵⁷ Tr. 528.

¹⁵⁸ *Id.* at 529-30.

¹⁵⁹ *Id.* at 531. *See also* Exh. A-7.

¹⁶⁰ Tr. 532.

¹⁶¹ *Id.* at 534-35.

¹⁶² *Id.* at 536. *See also* Exh. A-10.

¹⁶³ Tr. 537.

¹⁶⁴ *Id.* at 539.

public interest in his exemption application, which respondent Aikins added, and he resubmitted his application on April 4, 2022; he testified that the FAA did not request additional information about the safety aspects of his event or the operation of any equipment.¹⁶⁵ Respondent Aikins testified that between April 4, 2022, and April 22, 2022, he heard nothing from the FAA.¹⁶⁶ Respondent Aikins also explained that he was the point of contact for the exemption and Mr. Fitzgerald was aware that respondent Akins submitted it.¹⁶⁷ Respondent Aikins stated that he received the exemption denial letter by email on April 22, 2022, two days before the event.¹⁶⁸ Respondent Aikins pointed out that the denial letter did not address safety measures or maintaining vigilance.¹⁶⁹ Respondent Aikins testified that during the plane swap event, to avoid other aircraft, he had four aircraft securing the airspace, had staff on the ground, and all had direct communication with air traffic control.¹⁷⁰ Further, respondent Aikins opined that 49 C.F.R. § 91.15, which states that no object may be dropped unless reasonable precautions are taken, applied to his event.¹⁷¹ According to respondent Aikins, he complied with all applicable regulations, stating that he “far exceeded what I considered reasonable precaution.”¹⁷²

In explaining his decision to move forward with the plane swap after receiving the FAA’s exemption denial letter, respondent Aikins stated:

This is a dream of mine, it was something I worked on. I talked about it with my wife, she read it, and we decided at that moment – I decided – I looked back at all of the emails and all of the correspondence and, you know, I never think I needed this exemption anyway. This isn’t an aircraft. This denial is not saying I can’t do the event, that you can’t do the thing. It’s saying that I do not have an exemption from 105. That’s what this denial

¹⁶⁵ *Id.* at 540-41.

¹⁶⁶ *Id.* at 542.

¹⁶⁷ Tr. 543.

¹⁶⁸ *Id.* at 544. *See also* Exh. A-14.

¹⁶⁹ Tr. 547.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 552.

¹⁷² *Id.*

says.

It's a bunch of words, but at the end it says, your request from exemption from [section] 105 has been denied. So that's what I look at, and I am not in violation of 105. I've transformed it by every way I can. At that moment I decide that no one can get hurt, all the safety precautions, all these things are in place. I'm not breaking any regulations, I'm following the rules. Is there a gray area? Yes, but that's not – I didn't write the book, I didn't write the rules. I'm fitting in there and I'm going to go ahead and continue on.¹⁷³

Respondent Aikins also testified that he did not inform respondent Farrington, or anyone else working on the plane swap, of his decision to go forward with the event after the exemption denial, citing that as his “biggest regret of the whole project.”¹⁷⁴ Respondent Aikins stated that he did not attempt to communicate with the FAA after receiving the denial letter.¹⁷⁵ When addressing the failure to swap planes during the event, respondent Aikins testified that the aircraft had ballistic parachutes that were set on a barometric pressure sensor and an established five-mile safety circle, which is where the crashed aircraft landed.¹⁷⁶

After the event, respondent Aikins stated that he met with ASI Villa at the crash site and that she provided him with the Pilot's Bill of Rights and respondent Aikins acknowledged receipt in writing, but noted that he had not read them.¹⁷⁷ Respondent Aikins stated that he was cooperative with the investigation.¹⁷⁸ Respondent Aikins testified that he released an Instagram post after the event to state that he, and not his team, was responsible for the decision to proceed with the event, but testified that he did not admit to violating any regulations.¹⁷⁹

On direct examination from respondent Farrington's counsel, respondent Aikins testified

¹⁷³ *Id.* at 554-55.

¹⁷⁴ *Id.* at 555.

¹⁷⁵ *Id.* at 556.

¹⁷⁶ *Id.* at 557-58.

¹⁷⁷ *Id.* at 559-60.

¹⁷⁸ *Id.* at 560.

¹⁷⁹ *T Id.* at 566-67. *See also* Exh. A-16.

that respondent Farrington is his cousin with whom he skydives, flies aircraft, and works on projects.¹⁸⁰ Respondent Aikins asserted that complying with FAA regulations is important to both men so that they can keep their certificates.¹⁸¹ Moreover, respondent Aikins testified that the FAA never told him he could not conduct the plane swap.¹⁸² While reviewing a depiction of the area of the plane swap, respondent Aikins testified that the Sawtooth Airport was about five miles from the safety circle identifying the swap area, and 15 nautical miles from the Stanfield VORTAC, used for intensive student training.¹⁸³ Respondent Aikins posited that 49 C.F.R. § 91.15 was applicable to his plane swap event because he planned to change an aircraft to an object and drop it.¹⁸⁴ Respondent Aikins testified that he worked closely with the FAA on his various projects, had a “great relationship” with FAA before the plane swap event, and previously, the local FSDO asked him follow-up questions.¹⁸⁵ He stated that when dropping objects on previous projects, he complied with § 91.15 and was not required to contact the FAA regarding the project.¹⁸⁶ Respondent Aikins stated that there were two NOTAMs for parachuting activity in the area of the plane swap, acknowledging that one had expired the day before the event, but testifying that the expired NOTAM was redundant.¹⁸⁷

Respondent Aikins explained that respondent Farrington was not involved in the phase 1 testing for the plane swap project or in conversations with the FAA, but became involved when it was time to skydive with the aircraft in March.¹⁸⁸ While testing the plane swap with both aircraft,

¹⁸⁰ Tr. 569-70.

¹⁸¹ *Id.* at 570-71.

¹⁸² *Id.* at 572.

¹⁸³ *Id.* at 574-75. *See also* Exh. R-39 at 18.

¹⁸⁴ *Id.* at 578. *See also* Exh. R-5 (a copy of the regulation).

¹⁸⁵ Tr. 579-80.

¹⁸⁶ *Id.* at 580.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 585.

respondent Aikins stated that respondent Farrington assisted him to make any necessary tweaks, such as those that impacted the aircraft speed.¹⁸⁹ Respondent Aikins stated that he and respondent Farrington had no formal conversations about complying with the regulations but he, respondent Farrington, and the DER, Larrie Ricca, consulted on whether relief was needed from a limitation related to skydiving on the special airworthiness certificate for the aircraft; according to respondent Aikins, the FAA determined that no relief was required because the limitation did not apply to the event, as the pilots did not plan to skydive to the surface.¹⁹⁰

Respondent Aikins described the safety precautions taken for the event, noting that he and respondent Farrington wore a two-parachute system and helmets, and “crash fire rescue EMTs” were on site.¹⁹¹ Finally, respondent Aikins testified that he did not think he was violating any regulations on April 24, 2022, and would not have continued with the event if he thought he was violating a regulation or there was a safety issue.¹⁹²

On cross-examination, respondent Aikins testified that in his petition for an exemption, he referred to ASI Gredlein’s February 28, 2022 email, informing him that it had been determined that an aircraft cannot convert into an object.¹⁹³ Respondent Aikins once again testified that he did not believe he required an exemption but applied for one because ASI Gredlein told him it would be easier if he received an exemption.¹⁹⁴ Respondent Aikins clarified that he believed he did not need an exemption because he determined based on his skydiving experience that the aircraft would convert into an object.¹⁹⁵ Respondent Aikins testified that he

¹⁸⁹ *Id.* at 586-87.

¹⁹⁰ *Id.* at 587-88.

¹⁹¹ *Id.* at 590-91.

¹⁹² *Id.* at 591-92.

¹⁹³ *Id.* at 599 (discussing Exh. A-7).

¹⁹⁴ *Id.* at 601.

¹⁹⁵ *Id.* at 602.

used safety pilots during the practice flights for the plane swap and was able to perform the operation successfully during rehearsal, but the goal was to execute the event without safety pilots.¹⁹⁶

Furthermore, respondent Aikins testified that he worked hard throughout his career to generate sponsors and Red Bull, Hulu, and Honda sponsored the plane swap event.¹⁹⁷ Respondent Aikins admitted that there were external pressures associated with the event, and he entered into a contract to receive a payment for designing the event.¹⁹⁸ Respondent Aikins testified that his slideshow to the FAA regarding the event identified three switches on the system: speed brake; autopilot heading lock/clutch; and autopilot pitch lock and stated, “[a]ll switches are manually triggered by the pilot. This guarantees that once engaged they can only be disengaged by the pilot making it impossible for the aircraft to do anything but go straight down and remain in our safety area.”¹⁹⁹ However, respondent Aikins explained that an autopilot was not engaged during the event, but rather there was a heading and latitude lock, stating, “[t]here is no lock autopilot, so it’s contradicting.”²⁰⁰ Respondent Aikins testified that after receiving the FAA’s exemption denial, he moved forward with the event because after discussing the denial with his wife, he concluded that ASI Gredlein did not understand the project and in converting an aircraft into an object, he was not violating any regulations.²⁰¹ Respondent Aikins stated that he did not file a petition for reconsideration with the FAA because he did not have time.²⁰² He further testified that during the event, he disconnected his COMS so that he could not

¹⁹⁶ *Id.* at 603-04.

¹⁹⁷ *Id.* at 604.

¹⁹⁸ *Id.* at 604-05.

¹⁹⁹ *Id.* at 609; Exh. A-13 at 13.

²⁰⁰ Tr. 609-10; Exh. A-13 at 13.

²⁰¹ Tr. 615.

²⁰² *Id.* at 617.

communicate with other pilots in the area, but he could still hear them and could communicate with respondent Farrington.²⁰³

Respondent Aikins also denied that he removed his safety belt while in a crewmember station of an aircraft because at that point in the swap, the aircraft was an object, and he testified that his departure of the crewmember station was necessary to convert the aircraft. Moreover, respondent Aikins asserted that there was no physiological need for him to depart the crewmember station but again claimed that he was no longer in an aircraft.²⁰⁴ Respondent Aikins testified that he did not inform respondent Farrington that he submitted a petition for an exemption to the FAA.²⁰⁵

On re-direct, respondent Aikins clarified that he did not weigh the exemption denial when considering whether to move forward with the event because he was already in compliance with the regulations and he did not need the exemption for the event.²⁰⁶ Further, respondent Aikins testified that there is no NOTAM abbreviation for a plane swap but a parachute jump activity NOTAM is sufficient as “everyone knows to stay away from parachuting when you’re in an airplane.”²⁰⁷ Respondent Aikins testified that once he turned off his COMS, his one-way communication with his team except for respondent Farrington was adequate, because he only needed to hear the signal they established for aborting the project.²⁰⁸ For the plane swap project, he stated that Paulo Iscold assisted him in designing and building the specialized aircraft.²⁰⁹

Upon questioning from the law judge, respondent Aikins explained that when the FAA

²⁰³ *Id.* at 617-18.

²⁰⁴ *Id.* at 625-26.

²⁰⁵ *Id.* at 628.

²⁰⁶ *Id.* at 631.

²⁰⁷ *Id.* at 632.

²⁰⁸ *Id.* at 633.

²⁰⁹ *Id.* at 638.

requested information in his petition for an exemption regarding the public interest in the event, the public interest was to “inspire imagination,” and in particular, encourage kids to learn math, science, and engineering.²¹⁰ According to respondent Aikins, the FAA denied his exemption petition because they did not understand the project or the safety precautions in place.²¹¹ Further, respondent Aikins testified that he believed that ASI Gredlein initially understood the project, but then the inspector did not accept the invitation to visit respondent Aikins to learn more and claimed that the decision was “out of their hands.”²¹² Moreover, respondent Aikins testified that Red Bull paid for the event, including the airplanes used and the helicopters that circled around.²¹³ Further, respondent Aikins explained the testing of his experimental aircraft, stating that once he had the special airworthiness certificate, during Phase 1 testing, he was limited to a certain geographic area while he tested his brake and stabilization device.²¹⁴ Respondent Aikins stated that the FSDO accepted his plane swap plan and he was only required to prove he conducted Phase 1 testing.²¹⁵ According to respondent Aikins, the DER was responsible for communicating the testing and event plan with the FAA.²¹⁶

According to respondent Aikins, the aircraft became an object,

[o]nce the power comes off, the plane starts to fall. There’s no stopping it. When we kill the engine, it’s – gravity takes over and it’s no longer flying. At full power with the brake down, we can’t maintain altitude. It’s descending but at a pretty flat deck angle. It’s coming down. And as soon as you pull the power it just falls and it changes completely and starts to drop, and that’s when it transforms. As soon as the power comes off.²¹⁷

²¹⁰ *Id.* at 641-42.

²¹¹ *Id.* at 642-44.

²¹² *Id.*

²¹³ *Id.* at 645-46.

²¹⁴ *Id.* at 646-47.

²¹⁵ *Id.* at 647.

²¹⁶ *Id.* at 648.

²¹⁷ *Id.* at 650.

Further, he stated that the object became an aircraft again when he pulled up the brake and restarted the engine and disengaged the lock.²¹⁸ Respondent Aikins explained that on the day of the event, respondent Farrington's aircraft had a parachute to slow it down, but the parachute was not fully open when the aircraft hit the ground.²¹⁹ He also testified that when he made the decision to continue with the event after the exemption denial, he did not consider the sponsors' costs at that point, noting that Red Bull and Honda have "a lot of money."²²⁰ Respondent Aikins acknowledged that if there was a call to abort the operation after he left the aircraft, there is nothing he can do but open his parachute.²²¹ Moreover, he stated that he was operating in Class E airspace in which there is no requirement for aircraft to be in contact with air traffic control or each other.²²²

On re-direct, respondent Aikins clarified that he converted an aircraft into a stable falling object.²²³ Further, he stated that for the day of the event, he is not aware of any flight training activity within 15-18 miles of the drop zone and the ADS-B track that FAA submitted only showed their aircraft.²²⁴ Respondent Aikins stated that he cleared the area before he converted the aircraft into an object by examining it visually and by not hearing from his ground crew, meaning the airspace was clear.²²⁵ During the event, respondent Aikins posited that both aircraft converted into falling objects, but only one converted back to an aircraft; the other remained a falling object as it fell and was not in flight.²²⁶

²¹⁸ *Id.* at 651-52.

²¹⁹ *Id.* at 653.

²²⁰ *Id.* at 657-58.

²²¹ *Id.* at 658.

²²² *Id.* at 659.

²²³ *Id.* at 661.

²²⁴ *Id.* at 662.

²²⁵ *Id.* at 662-63.

²²⁶ *Id.* at 665-66.

When he was asked on re-cross whether there was any way for him to avoid other aircraft once he departed the airplane, respondent Aikins responded, “[t]here was a 60-second window with no aircraft and no possible way for aircraft to reach it. Like how many times I can say that? I can’t – if it’s not a flyable object then it’s unable to steer way [sic] from anything. It’s going straight down.”²²⁷

6. Respondents’ Witnesses: Testimony of Larrie Ricca

Larrie Ricca, FAA Designated Airworthiness Representative (DER), testified that he issues airworthiness certificates and conducts aircraft inspections on the FAA’s behalf.²²⁸ He stated that respondent Aikins contacted him in early 2021 for assistance with a project for which respondent Aikins planned to modify an aircraft to convert it into a falling object and that the event would be filmed for television.²²⁹ Mr. Ricca testified that he issued the special airworthiness certificate for both aircraft used in the plane swap.²³⁰ Further, Mr. Ricca testified that as a DER, he is required to comply with FAA orders and regulations, including those for special airworthiness certificates.²³¹ Mr. Ricca explained that special airworthiness certificates are required to ensure the aircraft is in a condition for safe operation and that it meets the purpose intended.²³² According to Mr. Ricca, if an aircraft is not in a safe condition for operation or would violate FAA rules, he would deny the airworthiness certificate application.²³³

On cross-examination by respondent Farrington’s attorney, Mr. Ricca testified that he met respondent Farrington when he inspected the aircraft with respondent Aikins and that respondent

²²⁷ *Id.* at 671-72.

²²⁸ *Id.* at 483.

²²⁹ *Id.* at 483.

²³⁰ *Id.* at 487.

²³¹ *Id.* at 490.

²³² *Id.* at 491.

²³³ *Id.*

Farrington did not provide any information regarding their planned project that respondent Aikins had not already offered.²³⁴

On cross-examination from FAA's counsel, Mr. Ricci agreed that when operating an aircraft under a special airworthiness certificate, the operator is still required to comply with FAA regulations.

7. Respondents' Witnesses: Testimony of Aaron Fitzgerald

Aaron Fitzgerald testified that he is an ATP helicopter pilot and works as Red Bull's airshow demonstration pilot.²³⁵ Mr. Fitzgerald stated that he provides aerial filming, primarily focusing on film and television work.²³⁶ For the plane swap, he stated that he served as a helicopter pilot and the aerial coordinator, meaning he was responsible for all of the aerial filming, coordinated the six aircraft involved, and conducted safety briefings for the ground crew, pilots and camera operators.²³⁷ Mr. Fitzgerald further explained that he was involved in ensuring the plane swap aircraft avoided other aircraft, citing two individuals on the ground watching the area visually and on Automatic Dependent Surveillance-Broadcast (ADS-B) and four aircraft with pilots looking for other aircraft, communicating on a specific VHS frequency.²³⁸ Mr. Fitzgerald also stated that he was able to communicate with the pilots during the event until they left their aircraft.²³⁹ Mr. Fitzgerald testified that the area for the plane swap was chosen because it is remote and unpopulated, and the airspace is "very well south of the training area."²⁴⁰ The witness testified that other safety precautions in place during the event

²³⁴ *Id.* at 492.

²³⁵ *Id.* at 674.

²³⁶ *Id.*

²³⁷ *Id.* at 657-76.

²³⁸ *Id.* at 676-77.

²³⁹ *Id.* at 677.

²⁴⁰ *Id.* at 678.

were a permanent NOTAM for skydiving operations year-round at the Sawtooth airport, and a secondary NOTAM “just for redundancy and to make it a little fresher on all the feeds to increase the likelihood that anybody conducting a preflight would have noticed it.”²⁴¹ However, Mr. Fitzgerald stated that he erred in filing the secondary NOTAM and it expired earlier than expected.²⁴²

Mr. Fitzgerald testified that he sent an email to ASI Gredlein on February 3, 2022, asserting the belief that the two aircraft would become objects and asking ASI Gredlein whether he agreed with that interpretation.²⁴³ Further, Mr. Fitzgerald stated that he sent another email to the FSDO on March 14, 2022, to inform them that, despite not receiving a decision on the petition for an exemption, they were proceeding with the event and expected to file a plan of activities within 15 days.²⁴⁴ Mr. Fitzgerald also confirmed that he emailed ASI Gredlein on March 28, 2022, to inform the inspector that he and his team were proceeding with the plan and that they needed the plan of activities to be processed.²⁴⁵ Mr. Fitzgerald explained that he had a waiver for a movie manual, which is a document on file with the FSDO that waived certain parts of §§ 91.119 and 91.515 and a few paragraphs in § 91.303.²⁴⁶ Mr. Fitzgerald elaborated that he frequently filed a plan of activities with the FSDO, citing the movie manual for many events, including the plane swap.²⁴⁷ According to Mr. Fitzgerald, his obligation ends once the FSDO receives his plan of activities notifying the office of an event.²⁴⁸

²⁴¹ *Id.* at 682.

²⁴² *Id.*

²⁴³ *Id.* at 683; *see also* Exh. A-5.

²⁴⁴ Tr. 683-84; *see also* Exh. A-8.

²⁴⁵ Tr. 686-87; *see also* Exh. A-9 at 2.

²⁴⁶ Tr. 688-89. 14 C.F.R. § 91.119 addresses minimum safe altitudes; 14 C.F.R. § 91.515 provides flight altitude rules; and 14 C.F.R. § 91.303 limits aerobatic flight.

²⁴⁷ *Id.* at 691.

²⁴⁸ *Id.*

On cross-examination, Mr. Fitzgerald testified that he was aware of the exemption petition, but there were no discussions about the petition during safety briefings.²⁴⁹ He also testified that during the plane swap event, the team did not monitor the training frequency because it was too far away, but the team relied on the NOTAMs to prevent training in the event area.²⁵⁰ Mr. Fitzgerald admitted that the NOTAM he created was expired at the time of the event and the other NOTAM covered parachute jump activities and did not mention a plane swap.²⁵¹

Mr. Fitzgerald testified that during the briefing with ASI Gredlein, he and respondent Aikins requested the inspector's assistance in determining the definition of an aircraft versus an object, and he understood that ASI Gredlein would seek help within the FAA with the question.²⁵² Further, Mr. Fitzgerald explained that when he received a response from ASI Gredlein stating that an aircraft cannot become an object, Mr. Fitzgerald did not express any objections to ASI Gredlein but rather, "[t]his is his opinion what it reads to me as, so we took this as the direction from him that we will need to apply for an exemption and that's when that petition process started."²⁵³ Moreover, Mr. Fitzgerald testified that he planned to proceed with the plane swap event even if the exemption petition was denied.²⁵⁴ Mr. Fitzgerald also testified regarding his March 28, 2022 email to ASI Gredlein in which he stated that "we have contingencies in place for the method of executing the stunt if we are unable to get relief from 91.105(a)(1)."²⁵⁵ When asked to list those contingencies, Mr. Fitzgerald stated that he did not recall what those contingencies were, but noted that the intent of the email was to signal to ASI

²⁴⁹ *Id.* at 698-99.

²⁵⁰ *Id.* at 699-700.

²⁵¹ *Id.* at 701-02.

²⁵² *Id.* at 702-03.

²⁵³ *Id.* at 703; *see also* Exh. A-7.

²⁵⁴ Tr. 704.

²⁵⁵ Exh. A-9 at 2.

Gredlein that they were continuing to plan and execute the stunt.²⁵⁶ Mr. Fitzgerald testified that he did not inquire about the status of the exemption petition prior to the event because it did not impact the filming portion of the event or his role as aerial coordinator because it was not relevant to the crew's activities.²⁵⁷

8. *Respondents' Witnesses: Testimony of Paulo Iscold*

Paulo Iscold testified as a fact witness after the law judge rejected respondents' request to designate him as a non-retained expert in aeronautical engineering because respondents did not submit Mr. Iscold's curriculum vitae as the law judge's pre-hearing order required.²⁵⁸ Mr. Iscold testified that he is an aerospace engineer professor for the California Polytechnic University in San Luis Obispo and holds a Ph.D. in mechanical engineering with emphasis in aeronautical engineering on flight dynamics.²⁵⁹ Mr. Iscold stated that he teaches airplane design, flight test, aircraft performance and introduction to aerospace engineering at Cal Polytech and has designed four manned aircraft.²⁶⁰ He also stated that he has experience with FAA's certification process for the aircraft he built, as well as for other projects and has worked with Red Bull on consultant projects.²⁶¹ Mr. Iscold explained that he worked on the Red Bull airplane swap with respondent Aikins and another engineer to design and implement the modifications to the aircraft, including modifications to the speed brake and holding device.²⁶² He explained that the speed brake is responsible for the total drag on the aircraft, providing approximately nine times the drag of the original airplane, and the "purpose of the speed brake is to guarantee that when it's deployed the

²⁵⁶ Tr. 705-06.

²⁵⁷ *Id.* at 707.

²⁵⁸ *Id.* at 722-730.

²⁵⁹ *Id.* at 719.

²⁶⁰ *Id.* at 719-20.

²⁶¹ *Id.* at 720-21.

²⁶² *Id.* at 722, 731.

trajectory of that airplane is no longer ... vertically going straight down towards the ground.”²⁶³ Further, Mr. Iscold testified that he was involved in testing the speed brake, stating that the brake achieved what was expected, responding that the pilot had only “marginal” control over the aircraft when the speed brake was deployed.²⁶⁴ Mr. Iscold further explained that with the speed brake deployed, neither plane swap aircraft could hold altitude, and the trajectory would be “vertical going down.”²⁶⁵ Finally, Mr. Iscold testified that based on his experience in experimental aircraft projects, DARs work on the FAA’s behalf to check the documentation to ensure the aircraft is in the experimental category, ensure that the aircraft is airworthy, and clarify the operational limitations and designated areas for testing.²⁶⁶

On direct examination from respondent Farrington’s counsel, Mr. Iscold testified that during the testing phase for the plane swap, respondent Farrington weighed in on whether the aircraft had characteristics that allowed respondent Farrington to approach the aircraft during his freefall.²⁶⁷

On cross-examination, Mr. Iscold testified that the altitude holding device could be referred to as autopilot.²⁶⁸ Mr. Iscold explained that the autopilot was created to prevent the plane’s altitude, not the trajectory, from changing, but emphasized that with the engine off, the speed brake deployed, and no one holding the yoke of the aircraft, the airplane’s only trajectory was straight down.²⁶⁹

Upon questioning from the law judge, Mr. Iscold testified that respondent Aikins

²⁶³ *Id.*

²⁶⁴ *Id.* at 732-33.

²⁶⁵ *Id.* at 733-34.

²⁶⁶ *Id.* at 735-36.

²⁶⁷ *Id.* at 736-37.

²⁶⁸ *Id.* at 737.

²⁶⁹ *Id.* at 738-39.

described the plane swap event as a project that had a television show portion and an interesting engineering development component.²⁷⁰ Mr. Iscold further stated that respondent Aikins paid him for his work on the event.²⁷¹ Moreover, Mr. Iscold explained that the plane swap event was part of the test flight program given the engineering data monitoring and precautions on the ground, and that the only difference between the event and prior test flights was the filming.²⁷² On re-direct from respondent Farrington's counsel, Mr. Iscold acknowledged that unlike the test flights, the event flight also lacked safety pilots.²⁷³

9. Respondents' Witnesses: Testimony of Respondent Farrington

Respondent Farrington testified that he is a third-generation skydiver, has performed over 27,000 skydives and over 5,000 hours of flight, and works for his family business.²⁷⁴ He stated that he possesses private pilot and commercial pilot certificates.²⁷⁵ In addition to working for his family skydiving business, respondent Farrington stated that he is a stuntman and a member of the Screen Actors Guild.²⁷⁶ Respondent Farrington stated that respondent Aikins is his cousin, and that they go on family vacations and work together.²⁷⁷ Respondent Farrington further stated that when he works on a project with respondent Aikins, respondent Farrington is under the aerial coordinator as a stuntman.²⁷⁸ For the plane swap event, respondent Farrington testified that he was the second pilot and was brought into the project during Phase 2 testing.²⁷⁹

²⁷⁰ *Id.* at 739-40.

²⁷¹ *Id.* at 740.

²⁷² *Id.* at 740-42.

²⁷³ *Id.* at 742-43.

²⁷⁴ *Id.* at 746-47.

²⁷⁵ *Id.* at 747.

²⁷⁶ *Id.* at 748.

²⁷⁷ *Id.* at 750.

²⁷⁸ *Id.* at 751.

²⁷⁹ *Id.* at 752-53.

Respondent Farrington stated that for experimental aircraft, a special airworthiness certificate was required and must be carried on board the aircraft, and he complied with this requirement on the aircraft used in the plane swap.²⁸⁰ Respondent Farrington described respondent Aikins' role in the plane swap as the "head pilot, chief pilot, the project lead and I guess the boss."²⁸¹ Respondent Farrington explained that he flew the aircraft during training from October 2021 to April 2022, for about 60 hours.²⁸² During testing, respondent Farrington stated that once he flew to a safe altitude, he would deploy the speed brake, pull the throttle and then the mixture out, hit the attitude lock switch, and the aircraft would fall toward the ground and according to respondent Farrington, it would feel like skydiving.²⁸³ At around 3,000 feet, respondent Farrington explained that he would begin recovering the aircraft by lifting the speed brake, turn the attitude lock off, engage the mixture and throttle to restart the engine.²⁸⁴ Respondent Farrington also explained that he provided feedback to Mr. Iscold on the speed at which the aircraft fell or on the skydiving portion of the operation.²⁸⁵ Respondent Farrington further testified that Mr. Fitzgerald was one of the event's aerial coordinators and was responsible for ensuring compliance with "airspace requirements."²⁸⁶

Respondent Farrington explained that the intent of the testing and event was to convert a standard Cessna 182 into an experimental aircraft that would transform into a freefalling object that the pilots would leave, opining that when he was skydiving next to the aircraft, it was a

²⁸⁰ *Id.* at 754-55.

²⁸¹ *Id.* at 755.

²⁸² *Id.*

²⁸³ *Id.* at 757.

²⁸⁴ *Id.* at 758.

²⁸⁵ *Id.* at 758-59.

²⁸⁶ *Id.* at 759.

freefalling object that could not fly.²⁸⁷ He stated that in the days leading to the event, they were getting acclimated to the area, testifying that he was familiar with the Sawtooth area as he did a lot of skydiving nearby, noting that there was a lot of parachuting in that area.²⁸⁸ Respondent Farrington pointed to the intensive student flight training on a sectional chart of the Sawtooth Airport area, but testified that in the week before the event, he did not notice student training in the vicinity of their testing, stating that there was light traffic in the area.²⁸⁹

On the day of the event, he stated that he attended a briefing for the ground crew and another for the pilots.²⁹⁰ Respondent Farrington testified that during the swap, he was able to communicate with the ground and other aircraft.²⁹¹ He explained that after he received the green light to proceed, while at the controls of his aircraft, he took steps to convert the aircraft into an object, including moving the speed brake down and turning the heading lock on, “[t]hen the power, mixture and then the attitude lock and then that was where we left the objects to then switch.”²⁹² Respondent Farrington stated that after he departed the aircraft, the other aircraft “flipped over and spun,” and he opened his parachute.²⁹³ According to respondent Farrington, respondent Aikins entered respondent Farrington’s aircraft and landed it, while the aircraft that respondent Aikins departed had a ballistic parachute that deployed and the airplane landed in the Sawtooth Airport area.²⁹⁴

Respondent Farrington testified that the FAA contacted him during its investigation, and

²⁸⁷ *Id.* at 760.

²⁸⁸ *Id.* at 760-61.

²⁸⁹ *Id.* at 762-65.

²⁹⁰ *Id.* at 765-66.

²⁹¹ *Id.* at 767-68.

²⁹² *Id.* at 769-70.

²⁹³ *Id.* at 770.

²⁹⁴ *Id.* at 771-72.

he responded to their communications and provided the requested documentation.²⁹⁵ However, he explained that he did not respond to ASI Gredlein's April 27, 2022 letter because the emergency revocation was issued quickly, and he did not have a chance to respond.²⁹⁶

On cross-examination, respondent Farrington testified that he had a good understanding of 14 C.F.R. Part 91.²⁹⁷ He stated that, in consultation with Mr. Iscold, he determined that during the swap, the aircraft would become objects, and he did not have any concerns that the event would violate the regulations given that objects are not subject to the regulations.²⁹⁸ Respondent Farrington acknowledged that if the aircraft did not become an object, then Part 91 would apply.²⁹⁹ He testified that he did not review 49 C.F.R. Part 1, which defines aircraft and airplane, prior to determining that the two aircraft could convert to objects.³⁰⁰ He also stated that he was not compensated for participating in the plane swap and faced no external pressures to conduct the event on April 24, 2022.³⁰¹ Respondent Farrington testified that at the time of the swap, a standing NOTAM for parachuting was in place but none that mentioned aircraft or an aircraft swap, and there were no TFRs for the event.³⁰²

Respondent Farrington further responded that during the swap, he took off his seatbelt but did not exit the crewmember station because the aircraft was an object at that point and there was no crewmember station; however, he admitted there was no physiological need to leave the object and when he left it, it became unoccupied.³⁰³ When asked how he could see and avoid

²⁹⁵ *Id.* at 776-79.

²⁹⁶ *Id.* at 782.

²⁹⁷ *Id.* at 788.

²⁹⁸ *Id.* at 790-91.

²⁹⁹ *Id.* at 792.

³⁰⁰ *Id.* at 795.

³⁰¹ *Id.* at 796.

³⁰² *Id.* at 798.

³⁰³ *Id.* at 799-800.

other aircraft while skydiving, respondent Farrington replied that he did not need to because the aircraft was now an object and the ground and airspace were sterile.³⁰⁴ He also acknowledged that he was unable to speak with ground control while he was skydiving.³⁰⁵ Respondent Farrington stated that he was unaware that respondent Aikins filed a petition for an exemption with the FAA and that he did not believe an exemption or waiver was required because both aircraft were becoming objects during the swap.³⁰⁶ Finally, he testified that he did not believe that anyone was monitoring the training frequency during the swap because the training area was 18 miles away, but that the parachute symbol on the chart would indicate that it was “a pretty bad ... spot” for flight training.³⁰⁷

On re-direct, respondent Farrington testified that if at any time he felt that the swap could not be conducted safely, he would have “knocked-it-off.”³⁰⁸

On examination by respondent Aikins’ counsel, respondent Farrington stated that while the safety briefings did not explicitly mention Part 91, they addressed topics covered by the regulation, such as see and avoid, the sterile area, and communications.³⁰⁹ He also testified that the aircraft was transformed into a falling object and as long as safety precautions are taken, they were not in violation of Part 1, stating “you can drop objects all you want.”³¹⁰

In response to the law judge’s questioning, respondent Farrington explained that while the event aircraft were falling, the levers were in different positions and the engines were turned off, the throttle pulled back, and the mixture was pulled out to cut off the fuel, so there was no

³⁰⁴ *Id.* at 800-01.

³⁰⁵ *Id.* at 801.

³⁰⁶ *Id.* at 802.

³⁰⁷ *Id.* at 803-04.

³⁰⁸ *Id.* at 805.

³⁰⁹ *Id.* at 807.

³¹⁰ *Id.* at 810-12.

need to turn off the key, but the crewmember station looked the same.³¹¹ He explained that during practice, when he entered the other aircraft, he turned on these functions to restart the engine.³¹² According to respondent Farrington, when the aircraft turned into an object, the wings were still present, but unable to create lift.³¹³ He further stated that during the event, the aircraft that crashed into the ground was a falling object and was investigated, but when asked whether he had heard of an “object investigation,” he replied, “[n]ot necessarily.”³¹⁴ He also explained that the ballistic parachute was supposed to start opening at 1,000 feet, but did not fully open until it was landing.³¹⁵ Respondent Farrington testified that had the ballistic parachute worked, the object would convert back to an aircraft if the speed brake is lifted, stating that as long as the speed brake was down, it was an object.³¹⁶ However, on re-examination by respondent Aikin’s counsel, respondent Farrington testified that if an aircraft is on the ground and the speed brake is retracted, it is still an object and not an aircraft under the regulations.³¹⁷

10. Respondents’ Witnesses: Testimony of Stanley Grey

Stanley Grey, Jr. testified that he owns an aviation consulting company.³¹⁸ He stated that respondent Aikins hired him to serve as the ground safety coordinator for the plane swap event.³¹⁹ He described his duties at the event as ensuring safety involving the movement of all aircraft and the runway environment.³²⁰ Mr. Grey stated that he used two-way radios to

³¹¹ *Id.* at 820-21.

³¹² *Id.* at 821-23.

³¹³ *Id.* at 823-24.

³¹⁴ *Id.* at 824.

³¹⁵ *Id.* at 826.

³¹⁶ *Id.* at 826-27.

³¹⁷ *Id.* at 840.

³¹⁸ *Id.* at 856.

³¹⁹ *Id.* at 857.

³²⁰ *Id.* at 858-59.

communicate with aircraft and to determine whether other aircraft were in the areas, he viewed the sky listened to common frequencies, and ADS-B data.³²¹ He testified that no other aircraft came into the area during the event or during practice for the event.³²² Mr. Grey stated that if he observed other aircraft in the area during the event, he would have informed the event aircraft to cease operations or “knock it off.”³²³ He explained that he attended the safety briefings prior to the event and asserted that there was no discussion of waivers or exemptions.³²⁴ Mr. Grey stated that when one of the aircraft fell to the ground, his responsibility was to ensure a helicopter had visual contact with respondent Farrington and to recover the crashed aircraft, although he did not personally view the wreckage.³²⁵

Upon questioning from respondent Farrington’s counsel, Mr. Grey testified that prior to the plane swap, he spoke with respondent Farrington about the event and safety plan and that respondent Farrington attended the pilot safety briefings.³²⁶ Mr. Gary stated that there have been numerous other events that were called off.³²⁷ He also testified that he was familiar with the area around the plane swap and had not observed intensive flight training activity in the area.³²⁸ Moreover, Mr. Grey stated that during the event, he saw the aircraft falling prior to hitting the ground, noting that it was spinning and falling straight down and he observed the parachute deploy.³²⁹

On cross-examination, Mr. Grey testified that he is a commercial pilot and that he was

³²¹ *Id.* at 860.

³²² *Id.* at 861-62.

³²³ *Id.* at 864.

³²⁴ *Id.* at 865.

³²⁵ *Id.* at 867-68.

³²⁶ *Id.* at 870.

³²⁷ *Id.* at 872.

³²⁸ *Id.* at 872-73.

³²⁹ *Id.* at 873.

aware that NOTAMs were in place during the plane swap, but did not recall which ones.³³⁰ Mr. Grey stated that while both respondents were outside of their aircraft, Mr. Grey could not cease operation, or “knock it off.”³³¹ Mr. Grey agreed that the operation took place in Class E airspace, in which airmen are not required to use ADS-B transponders.³³²

C. Law Judge’s Oral Initial Decision

In the December 19, 2022 Oral Initial Decision, the law judge determined that the Administrator proved by a preponderance of the evidence that respondents violated 14 C.F.R. §§ 91.105 and 91.13(a) by conducting the attempted airplane swap. Further, the law judge determined that the Administrator proved both a residual and standalone violation of § 91.13(a).³³³

In making this determination, the law judge cited the regulatory violations alleged in the complaints, noted respondents’ admissions and denials in their answers, listed the admitted exhibits, summarized the witness testimony, made credibility determinations, and addressed respondents’ affirmative defenses.

The law judge found the Administrator’s witnesses to be credible.³³⁴ He found the Administrator’s expert witness, ASI Villa, also credible, stating that her testimony was “objective, persuasive, based on in-depth understanding of the evidence and the regulations, and I find her, again, her opinion to be persuasive.”³³⁵ The law judge found two of respondents’

³³⁰ *Id.* at 878-79.

³³¹ *Id.* at 877.

³³² *Id.* at 878-79.

³³³ Oral Initial Decision at 1144.

³³⁴ *Id.* at 1163.

³³⁵ *Id.* at 1144.

witnesses, Mr. Ricca³³⁶ and Mr. Grey³³⁷, to be generally credible; however, he determined that Mr. Fitzgerald was not credible, noting he downplayed his involvement in the exemption petition.³³⁸

The law judge found respondent Aikins to be not credible, noting his testimony was non-responsive and evasive and he refused to admit the obvious fact that the ballistic parachute on the crashed airplane failed to deploy properly, which was inconsistent with respondent Farrington's testimony.³³⁹ Likewise, the law judge found respondent Farrington's testimony not credible, explaining that it was non-responsive, evasive, contradictory, not straight-forward, and at times, hostile and flippant.³⁴⁰

The law judge rejected respondents' attempt to present Mr. Iscold as an expert witness in aeronautical engineering because he failed to produce an expert report or curriculum vitae, overruling respondents' argument that an expert report was not required under Federal Rule of Civil Procedure 26(a)(2).³⁴¹ The law judge permitted Mr. Iscold to testify as a fact witness but found his testimony unpersuasive and gave it minimum weight.³⁴² Respondents also offered Richard Lee as an expert in flight test program, demonstrations, exhibitions, and aviation regulations, who produced an expert report.³⁴³ The law judge declined to designate Mr. Lee an expert because: (1) Mr. Lee did not review the evidence relative to one of the aircraft at issue; (2) he had not testified or had been qualified as an expert in any of the cases he listed on his

³³⁶ *Id.* at 1095.

³³⁷ *Id.* at 1122.

³³⁸ *Id.* at 1094-95.

³³⁹ *Id.* at 1151.

³⁴⁰ *Id.* at 1152.

³⁴¹ *Id.* at 1097-99.

³⁴² *Id.* at 1099, 1101.

³⁴³ *Id.* at 1123-24.

curriculum vitae; (3) his representations that he wrote regulations were “of great concern” to the law judge because Mr. Lee offered conflicting responses to the law judge’s questions seeking details; (4) he lacked the expertise to interpret the regulations; and (5) his expert report did not make clear his area of expertise.³⁴⁴

The law judge made several findings of fact and conclusions of law. He determined respondents failed to show that their aircraft converted into objects or that the regulations they were charged with violating did not apply.³⁴⁵ Given that the regulations applied to respondents, the law judge found that an exemption was required and that the evidence established respondent Aikins was aware that an exemption was required, one was denied, and he intentionally violated the regulations.³⁴⁶

The law judge rejected respondents’ affirmative defense that during the airplane swap, the aircraft became falling objects incapable of flight, and therefore, the regulations covering aircraft were not applicable. The law judge found that respondents failed to provide competent and qualified expert testimony to support their theory that they were able to convert the aircraft into falling objects and back into aircraft.³⁴⁷ The only evidence before the law judge supporting the affirmative defense was respondent Aikins’ self-serving testimony, which the law judge found not credible.³⁴⁸ Further, the law judge determined that the regulations cited in the Administrator’s complaints apply, and thus, respondents required an exemption to conduct the airplane swap.³⁴⁹ The law judge concluded that respondents knew an exemption was required,

³⁴⁴ *Id.* at 1129-30.

³⁴⁵ *Id.* at 1152.

³⁴⁶ *Id.* at 1153-54.

³⁴⁷ *Id.* at 1148-49.

³⁴⁸ *Id.* at 1150-51.

³⁴⁹ *Id.* at 1153.

that it was denied, and “proceeded to intentionally violate the regulations.”³⁵⁰

The law judge also dismissed respondents’ remaining affirmative defenses that: (1) the Administrator failed to make a claim warranting the requested relief because the cited regulations are inapplicable; (2) the Administrator failed to make a claim supported by facts necessary to establish a violation of the cited regulations; and (3) both respondents reasonably relied on others in believing that their conduct was consistent with the regulations.³⁵¹ In particular, the law judge doubted that respondent Aikins did not inform respondent Farrington about the petition for an exemption and its denial.³⁵² For the first two affirmative defenses, the law judge found that the Administrator proved the allegations by preponderance of the evidence.³⁵³ Regarding respondents’ third affirmative defense, the law judge determined that their claims lacked credibility, noting inconsistencies in the testimonies and the lack of evidence of reliance.³⁵⁴ The law judge found that the Administrator proved all of the allegations in the complaints against respondents by a preponderance of reliable, probative, and credible evidence.³⁵⁵

The law judge examined the Administrator’s sanction of revocation for both respondents and a civil penalty of \$4,932 against respondent Aikins, applying the deference set forth in the Supreme Court decision, *Martin v. Occupational Safety and Health Review Commission*.³⁵⁶ In upholding the Administrator’s sanctions, the law judge reiterated his credibility determinations, noting that while he found the Administrator’s witnesses credible, he found the respondents’ to

³⁵⁰ *Id.* at 1154.

³⁵¹ *Id.* at 1154-58.

³⁵² *Id.* at 1156-57.

³⁵³ *Id.* at 1155, 1157.

³⁵⁴ *Id.* at 1155-58.

³⁵⁵ *Id.* at 1160.

³⁵⁶ 499 U.S. 144 (1991); Oral Initial Decision at 1160-61.

be not credible, especially their assertion that respondent Farrington was unaware that the FAA denied the exemption application.³⁵⁷ The law judge also noted that even if respondent Farrington lacked knowledge of the exemption denial, his conduct still supported a revocation.³⁵⁸ Regarding respondent Aikins, the law judge determined that he deliberately and intentionally proceeded with the plane swap with knowledge that doing so violated the regulations, citing respondent Aikins' Instagram post in which he admitted he knew the exemption had been denied but continued with the swap.³⁵⁹ The law judge concluded that the sanctions were appropriate, explaining, "I do not find Mr. Aikins or Mr. Farrington to be trustworthy and both [r]espondents lack the qualifications and judgements [sic] necessary to hold their respected Airmen Certificates based on this case."³⁶⁰ In affirming the civil penalty against respondent Aikins, the law judge stated that it was "appropriate and warranted in the public interest in air commerce and in the interest of air safety."³⁶¹

D. Issues on Appeal

On appeal, respondents argue that: (1) the Administrator failed to prove that the alleged regulations apply; (2) the law judge improperly shifted the burden of proof to respondents; (3) the law judge made several errors that prejudiced respondents, including: excluding respondents' retained expert; qualifying ASI Cheryl Villa as an expert; excluding respondents' non-retained expert; excluding a self-authenticating document based on lack of authentication; failing to admit program letters; and refusing to issue subpoenas for depositions of FAA witnesses; (4) the law judge's credibility determinations were arbitrary and capricious; (5) the

³⁵⁷ Oral Initial Decision at 1162-63.

³⁵⁸ *Id.* at 1163.

³⁵⁹ *Id.* at 1161-62.

³⁶⁰ *Id.* at 1163.

³⁶¹ *Id.* at 1164.

Administrator failed to prove the regulatory violations; (6) the law judge failed to fully and appropriately analyze respondent Mr. Farrington's defense of reasonable reliance; and (7) the law judge erred in affirming the Administrator's sanction.

2. *Decision*

While the Board gives deference to the law judge's rulings on certain issues, such as credibility determinations,³⁶² the Board reviews the case under *de novo* review.³⁶³

A. *The Administrator proved that the charged regulations applied to respondents.*

The Board affirms the law judge's ruling that Part 91 applied to respondents' actions related to the plane swap. The regulations apply to the "operation" of aircraft,³⁶⁴ and respondents acknowledge that they were flying their aircraft before placing them into a descent and intended to continue flying them after switching planes.³⁶⁵ The regulations define "operate" as to "use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)."³⁶⁶ Further, the regulations state that "aircraft" "means a device that is used or intended to be used for flight in the air."³⁶⁷

³⁶² *Administrator v. Porco*, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, *Porco v. Huerta*, 472 Fed. App'x 2 (D.C. Cir. 2012) (per curiam).

³⁶³ *Administrator v. Smith*, NTSB Order No. EA-5646 at 8 (2013); *Administrator v. Frohmuth and Dworak*, NTSB Order No. EA-3816 at 2 n.5 (1993); *Administrator v. Wolf*, NTSB Order No. EA-3450 (1991); *Administrator v. Schneider*, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

³⁶⁴ 14 C.F.R. § 91.1(a) ("[T]his part prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.").

³⁶⁵ *See, e.g.*, Tr. 508-09, 826-27.

³⁶⁶ 14 C.F.R. § 1.1.

³⁶⁷ *Id.*

Respondents argue that Part 91 applies only to aircraft in “flight” but do not adequately explain why they interpret the regulations as such.³⁶⁸ Yet, pilots are expected to comply with Part 91 when not in flight, such as when taxiing on a runway.³⁶⁹ The Board has construed the operation of an aircraft broadly, encompassing not only flying, but actions taken in preparation for flight.³⁷⁰ Using a common sense approach consistent with the regulations and case law, the Administrator demonstrated that respondents were operating aircraft during the plane swap. The aircraft were in flight and then respondents manipulated the controls to send the aircraft into a vertical dive after which they intended to skydive, switch aircraft, and resume flying them. Respondents were using the aircraft or causing them to be used for the purpose of air navigation, and the aircraft were in flight or intended to be used for flight during the plane swap. The Board agrees with the law judge that respondents were operating the aircraft within the meaning of Part 91 during the event. Further, as also discussed below, the Board entirely rejects respondents’ assertion that, in the context of one flight, an aircraft can be converted into an object and then switched back to an aircraft. Respondents’ contention is unsupported and nonsensical.

³⁶⁸ Appeal Br. at 7.

³⁶⁹ See, e.g., 14 C.F.R. § 91.13(b) (addressing the operation of aircraft on airport surfaces used by aircraft for air commerce).

³⁷⁰ See, e.g., *Administrator v. Kimsey*, NTSB Order No. EA-4537 (1997) (“It is clear that the Respondent did use the aircraft. He was manipulating the controls. This definition [of operate] is extremely broad and has been interpreted to include a person as an operator who may authorize the use of an aircraft and then remain on the ground and be 500 or 1,000 miles away when something happens with that aircraft. If he has authorized its use, he can also be charged as the operator.”); *Administrator v. Fostrey*, NTSB Order No. EA-743 (1975) (finding respondent operated the aircraft during the entire takeoff roll, regardless of when he intended to take off). Further, we have interpreted “aircraft” broadly to include unmanned aircraft in finding a violation of 14 C.F.R. § 91.13(a). See *Administrator v. Pirker*, NTSB Order No. EA-5730 (2014).

B. The Administrator proved respondents violated 14 C.F.R. §§ 91.105(a), 91.113(b), and 91.13(a).

The Board affirms the law judge's determination that the Administrator proved by a preponderance of evidence that respondents violated the regulations as charged. Respondents violated 14 C.F.R. § 91.105(a), which provides "while en route, each required flight crewmember shall: (1) Be at the crewmember station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and (2) Keep the safety belt fastened while at the crewmember station" Both respondents admitted to leaving the aircraft during the event and unfastening their seatbelts. As the law judge noted, ASI Villa credibly testified that respondents were the only occupants in their respective aircraft, and therefore, were crewmembers.³⁷¹ There is no dispute that respondents left their crewmember stations when they departed the aircraft, and to do so, removed their seatbelts. They did not leave their stations to perform duties in connection with the operation of the aircraft or for physiological needs. Citing their disagreement with ASI Villa's testimony, respondents argue that § 91.105(a) was not applicable to their actions when they left their crewmember stations because they did not intend to operate an aircraft and were leaving freefalling objects.³⁷² The Board already rejected this argument; thus, we find that respondents violated § 91.105(a).

Section 91.113(b) states in part, "vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft." The law judge determined that respondents violated this section when they departed their aircraft and could not maintain vigilance. The Board agrees. As respondents admitted, when they departed their aircraft and left them unattended, they were no longer controlling the aircraft and were unable to communicate with

³⁷¹ See Oral Initial Decision at 1138.

³⁷² Appeal Br. at 33-34.

the ground crew.³⁷³ Relying on ASI Villa’s expert testimony that when respondents left their aircraft, they were unable to access the controls, could not avoid other aircraft, and could not communicate with the other aircraft involved in the swap, the law judge found that respondents violated the regulation.³⁷⁴ He again rejected respondents’ argument that the regulation did not apply to the event and that there were safety precautions in place allowing the crew on the ground and in the air to observe other aircraft, finding that the requirement to maintain vigilance cannot be delegated.³⁷⁵ On appeal, respondents make similar arguments, claiming that vigilance was maintained by respondents as they climbed in altitude and by other individuals during the event, and that a NOTAM was in place to notify other aircraft of possible skydiving.³⁷⁶ The law judge correctly determined that respondents failed to maintain vigilance in violation of § 91.113(b). They could not see and avoid other aircraft once they departed their aircraft, leaving no one in control, and they lacked the ability to communicate. Moreover, the evidence shows that a NOTAM regarding the plane swap was not in place.³⁷⁷ In fact, to further support the lack of vigilance, the law judge accurately noted that respondent Aikins’ aircraft crashed.³⁷⁸

The Administrator charged respondents with both residual and independent violations of 14 C.F.R. § 91.13(a), which provides that “no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” “Our jurisprudence makes clear a residual violation of § 91.13(a) can stand without additional proof when an operational violation is found even in ... cases where proof of an unacceptably high likelihood of potential

³⁷³ See Tr. 633, 658, 671-72, 801.

³⁷⁴ Oral Initial Decision at 1139-40.

³⁷⁵ *Id.* at 1140.

³⁷⁶ Appeal Br. at 30.

³⁷⁷ *E.g.*, Tr. 622-23, 682, 701-02, 798.

³⁷⁸ Oral Initial Decision at 1139.

harm or clearly deficient judgment would be necessary to establish an independent violation of the regulation.”³⁷⁹ Because the Board affirms the law judge’s finding of the violations of §§ 91.105(a) and 91.113(b), no additional proof is necessary to sustain the residual violation of § 91.13(a).

The Board also agrees with the law judge’s decision to affirm the independent violation of § 91.13(a). Respondents’ conduct can clearly be described as careless or reckless and endangered the life and property of others. Respondents intentionally placed their aircraft into a vertical dive, departed them, leaving no one in control, and therefore, no way to prevent an accident with another aircraft or harming those on the ground. As stated, one of the aircraft crashed. Further, there were no active NOTAMs or TFRs warning others of the plane swap event, which evidence demonstrates was in an area with intensive flight training activity. Additionally, respondent Akins sought a waiver from the FAA and despite receiving a denial, he chose to proceed with the event.

C. The law judge did not improperly shift the burden of proof to respondents.

Respondents claim that the law judge shifted the burden to respondents to demonstrate that the aircraft were converted into objects, and therefore, the regulations did not apply to the plane swap.³⁸⁰ However, as discussed above, the Board agrees with the law judge that the cited regulations applied to the event. Respondents assert that the conversion of the aircraft into objects creates an exception to the rule that Part 91 covers the operation of aircraft. Such an

³⁷⁹ *Administrator v. Morrison*, NTSB Order No. 5619 at 9 (2012) (citing *Administrator v. Tur*, NTSB Order No. EA-3490 at n.12 (1992); *Administrator v. Frost*, NTSB Order No. EA-3856 at 8 (1993)). See also *Administrator v. Wright*, NTSB Order No. EA-5873 at 27 (2020).

³⁸⁰ Appeal Br. at 10-11.

argument is an affirmative defense that respondents must prove. Regarding the burden of proof for an affirmative defense, the Board has held:

If proven, an affirmative defense can excuse a respondent's admitted violation. In asserting such a defense, the burden shifts to the respondent to prove it by a preponderance of evidence. We have held a respondent must fulfill the burden of proving the factual basis for the affirmative defense, as well as the legal justification.³⁸¹

Here, respondents argue that while they were operating aircraft, those aircraft became falling objects, and therefore, not required to follow the regulatory requirements under Part 91. Their claim is an affirmative defense, and the law judge properly treated it as such. Moreover, the law judge correctly determined that respondents failed to prove their affirmative defense because they did not establish that the aircraft were converted into objects. The Board agrees with the law judge that respondents' uncorroborated testimony was the sole evidence for their theory, and such testimony was deemed not credible and contradicted by other witnesses. Respondents provided no documentary evidence or other testimony sufficient to support their novel argument that the aircraft became objects for a time during the flight, and the law judge's finding is consistent with the record, the plain language of the applicable regulations, and common sense. There is no preponderant evidence that the aircraft ceased being aircraft when intentionally placed in a vertical descent.

D. The law judge did not make the alleged evidentiary errors.

Respondents allege that the law judge made several errors that prejudiced them, including: (1) excluding respondents' retained expert; (2) qualifying ASI Villa as an expert;

³⁸¹ *Administrator v. Leyner*, NTSB Order EA-5732 (2014) (citing *Administrator v. Hermance*, NTSB Order No. EA-5706 (2014); *Administrator v. Tsegave*, NTSB Order No. EA-4205 at 5-6 (1994) (once the Administrator establishes a *prima facie* case, the burden shifts to the respondent, who has the opportunity to prove an affirmative defense excuses his conduct); *Administrator v. Donohue, et al.*, NTSB Order No. EA-5314 at 9 (2007). *See also Administrator v. Pham*, NTSB Order No. EA-5889 at 21-22 (2021) (rev'd on other grounds).

(3) excluding respondents' non-retained expert; (4) excluding a self-authenticating document based on lack of authentication; (5) failing to admit program letters; and (6) refusing to issue subpoenas for depositions of FAA witnesses. NTSB law judges have significant discretion in making evidentiary rulings. In this regard, the Board will only overturn a law judge's evidentiary ruling when the appealing party can show the law judge's ruling amounted to an abuse of discretion, after a party can show such a ruling prejudiced him or her.³⁸² Respondents have not demonstrated that the law judge's evidentiary decisions caused them prejudice or that the law judge abused his discretion.

1. Respondents' retained expert, Richard Lee.

The Board finds that the law judge properly excluded respondents' proffered expert, Richard Lee. Respondents attempted to designate Mr. Lee as an expert in "[f]light test programs, demonstrations, exhibition . . . aircraft operations, flight tests and aircraft – aviation regulations."³⁸³ However, the law judge determined that Mr. Lee was not an expert in the areas based on his *voir dire* testimony, noting that Mr. Lee lacked expertise in the areas on which he was proffered to testify, citing his inconsistent testimony on whether he drafted regulations and, while he provided respondents with an independent assessment of the planned event, he did so over the telephone and did not review the evidence pertaining to one of the two involved

³⁸² See, e.g., *Administrator v. Kolodziejczyk*, NTSB Order No. EA-5909 at 49 (2021) (citing *Administrator v. Wright*, NTSB Order No. EA-5872 (2020)); *Administrator v. Tarola*, NTSB Order No. EA-5858 (2019); *Administrator v. Leyner*, NTSB Order No. EA-5732 at 4 n.19 (2014) (citing *Administrator v. Walker*, NTSB Order No. EA-5656 at 15 n.39 (2013)); *Administrator v. Giffin*, NTSB Order No. EA-5390 at 12 (2008) (citing *Administrator v. Bennett*, NTSB Order No. EA-5258 (2006)); *Administrator v. Martz*, NTSB Order No. EA-5352 (2008); *Administrator v. Zink*, NTSB Order No. EA-5262 (2006); *Administrator v. Van Dyke*, NTSB Order No. EA-4883 (2001).

³⁸³ Tr. 904.

aircraft.³⁸⁴ The law judge also expressed concern about Mr. Lee's representations about his prior testimony experience and the content of his report, which was mostly his interpretation of the applicable regulations.³⁸⁵ Finally, the law judge held that respondents did not properly disclose Mr. Lee's areas of expertise prior to the hearing and that, given Mr. Lee's "ever-changing" testimony, he could not rely on Mr. Lee's expert opinion.³⁸⁶

As he clearly expressed, the law judge would not have given Mr. Lee's testimony much weight, and, therefore, respondents were not prejudiced by the decision not to designate Mr. Lee an expert. Moreover, the law judge did not abuse his discretion by excluding Mr. Lee's testimony for the reasons stated. The law judge's decision was based on the facts before him, including Mr. Lee's *voir dire* testimony and expert report and, as the law judge highlighted, allowing Mr. Lee to testify as an expert would have prejudiced the Administrator because the subject of his testimony was not disclosed before the hearing, as required. The law judge acted within his purview in declining to designate Mr. Lee as an expert witness.

2. *The Administrator's expert, ASI Villa.*

After disallowing ASI Villa to testify as an expert in the broad areas of aviation safety and aircraft operations, the law judge designated her an expert in the narrowed areas of "Part 91 operations and aircraft safety within the specific scope of Part 91."³⁸⁷ The law judge determined that ASI Villa's experience in Part 91 flight training and flying, drafting operating manuals that must be in compliance with Part 91, and her experience as an aviation safety inspector qualify her to provide expertise on Part 91.³⁸⁸ The law judge's decision to designate ASI Villa an expert

³⁸⁴ Oral Initial Decision at 1127-28.

³⁸⁵ *Id.* at 1129-30.

³⁸⁶ *Id.* at 1130-31.

³⁸⁷ *Id.* at 1043.

³⁸⁸ *Id.*

did not prejudice respondents, as he narrowed the scope of her expert testimony and such testimony provided insight into the Administrator's Part 91 operations, which is directly at issue in this case. Moreover, while ASI Villa gave her opinion on whether respondents violated Part 91, it was the law judge who made the determination that the violations occurred. In fact, the law judge stated, "just viewing it from my perspective, even without expert testimony I find that the Respondents have violated the sections of the Federal Aviation Regulations that they have been charged"³⁸⁹ Further, the law judge did not abuse his discretion in designating ASI Villa as an expert witness because his decision was based on her prior relevant experience, which is supported by the record. Therefore, the Board has no basis to overturn the law judge's decision to designate ASI Villa as an expert.

3. *Respondents' non-retained expert, Paulo Iscold.*

Likewise, the law judge did not err when he excluded respondents' non-retained expert from testifying as an expert. Prior to the hearing, the law judge ordered respondents to file a curriculum vitae (CV) and expert report in order for Mr. Iscold to testify as an expert. Respondents failed to do so, and the law judge held that they violated the law judge's order and Federal Rule of Civil Procedure 26(a)(2).³⁹⁰ Respondents argue that the law judge improperly

³⁸⁹ *Id.* at 1158.

³⁹⁰ Federal Rule of Civil Procedure 26(a)(2) states in relevant part,

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee

ordered them to submit a report for a non-retained expert and that their pre-hearing submission adequately disclosed Mr. Iscold's expected testimony.³⁹¹ Respondents were not prejudiced by the law judge's exclusion of Mr. Iscold's expert testimony because the law judge permitted him to testify as a fact witness regarding the topics cited in the pre-hearing submission, including the modifications made to the aircraft, such as the design of the speed brake and attitude hold mechanism. Further, the law judge acted properly and did not abuse his discretion in refusing to allow Mr. Iscold to testify as an expert. The law judge correctly determined that respondents did not comply with his order when they failed to provide Mr. Iscold's CV and expert report or fully describe his expected testimony in their pre-hearing submission. The law judge is in the best position to interpret his orders, and the Board has no reason to doubt that respondents failed to comply with the law judge's instructions.

4. Respondents' self-authenticating document and program letters.

Respondents allege that the law judge's decision not to admit Exhibit R-37, a Special Airworthiness Certificate issued to respondents, was contrary to Federal Rule of Evidence 902, which states that documents containing the seal of a United States agency is self-authenticating,

regularly involve giving expert testimony.

...

(C) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

³⁹¹ Appeal Br. at 16-17.

and caused respondents prejudice.³⁹² Respondents have not established that the law judge's decision caused them prejudice because the admission of the exhibit would not have impacted the outcome of the case. The Special Airworthiness Certificate did not exempt respondents from complying with all applicable regulations,³⁹³ and therefore, whether or not they were issued the certificate does not change the finding that respondents violated the charged regulations. Further, the law judge did not abuse his discretion in declining to admit the exhibit, as it does not contain a government seal and is not self-authenticating. Instead, there appears to be a watermark within the photocopied document, and we have no reason to overturn the law judge's determination that the document lacks an official seal.³⁹⁴

Similarly, respondents were not prejudiced when the law judge declined to admit program letters that respondent Aikins authored. As counsel acknowledged during their attempt to admit the exhibits, respondent Aikins testified regarding the program letters.³⁹⁵ Therefore, information pertaining to the program letters was already part of the record. Further, the law judge did not abuse his discretion in refusing to admit the program letters. Respondents proffered the letters for admission after their last witness testified and the Administrator objected based on a lack of foundation and authentication.³⁹⁶ Respondents argue that the Administrator failed to object to the exhibits prior to the hearing, as required by the law judge's pre-hearing order.³⁹⁷ However, the Administrator could not have known prior to the hearing that respondents would

³⁹² *Id.* at 18-19.

³⁹³ *See* Exh. R-37 at 3, ¶ 2.

³⁹⁴ The Board also rejects respondents' claim that the law judge "excluded" the exhibit, amounting to a sanction. Based on the law judge's language in which he explained that he is not admitting exhibit R-37 into evidence, we find that the law judge declined to admit exhibit R-37 but did not otherwise sanction respondents. *See* Tr. 735.

³⁹⁵ *Id.* at 990.

³⁹⁶ *Id.* at 986-87.

³⁹⁷ Appeal Br. at 19-20.

introduce the program letters after their witnesses testified, and therefore, could not have objected earlier. The law judge appropriately determined that respondents failed to introduce the exhibits until after their last witness testified, denying themselves the opportunity to authenticate the letters and lay a foundation, and we will not overturn his decision.

5. Subpoenas for depositions of FAA witnesses.

The law judge rejected respondents' request for subpoenas for two FAA employees, attorney Julia Phillips and Robert Carty, the manager who denied respondent Aikins' exemption request. Respondents were not prejudiced by the law judge's decision. In their appeal, they state that they sought the FAA employees' testimony because Ms. Phillips provided legal guidance to ASI Gredlein on whether the aircraft could be converted into objects, and Mr. Carty signed the denial.³⁹⁸ Yet, ASI Gredlein testified regarding the denial, and the denial letter was admitted into evidence. Respondents have offered no additional information that Ms. Phillips or Mr. Carty would have provided in a deposition. Further, the law judge's decision was not an abuse of discretion. The law judge has the discretion to decline a subpoena for redundant testimony and adequately determined that the witnesses' testimony would have been protected by the attorney-client and deliberative process privileges. Even if there were portions of their testimonies not protected by a privilege, the law judge reasonably exercised his discretion to refuse unnecessary depositions.

E. The law judge's credibility determinations were not arbitrary and capricious.

The Board must defer to the law judge's explicit credibility findings unless they are arbitrary and capricious, because as the trier of fact, the law judge is best positioned to evaluate the witnesses' demeanor and conduct during the testimony. The arbitrary and capricious standard

³⁹⁸ *Id.* at 22.

is a high one to meet³⁹⁹ and one that, only “on occasion,”⁴⁰⁰ the Board has found to have been met to overturn a law judge’s credibility determination. A credibility determination is arbitrary and capricious if it is not based on the facts before the law judge.⁴⁰¹

Respondents claim that the law judge did not explain his credibility determinations and instead merely issued conclusory statements that he did not find respondents to be credible, but found all of the Administrator’s witnesses to be credible.⁴⁰² Yet, such an allegation ignores the law judge’s other statements regarding credibility in which he explained his reasoning. Throughout the oral initial decision, the law judge provided support for his credibility assessments, citing each witness individually. For example, he explained that he found ASI Villa’s testimony to be credible and persuasive based on her in-depth understanding of the regulation and evidence.⁴⁰³ The law judge also provided detailed reasons for finding respondents not to be credible, noting both the content of their responses and the way they comported themselves during the hearing. For instance, he noted that he found it “difficult to sometimes get a straight answer from Mr. Aikins” and that respondent Aikins’ testimony conflicted with respondent Farrington’s.⁴⁰⁴ Further, the law judge noted why he found respondent Farrington’s testimony to lack credibility, explaining, “[t]he majority of his answers on cross-examination were evasive, non-responsive, he contradicted his own prior testimony at hearing, he would not provide a straight answer to simple questions, at time he appeared to be hostile and flippant.”⁴⁰⁵

³⁹⁹ *Porco, supra* n. 362 at 17, 20-21.

⁴⁰⁰ *See Administrator v. Rojas*, NTSB Order No. EA-5496 at 12 (2009).

⁴⁰¹ *See, e.g., Porco, supra* n. 362 at 29.

⁴⁰² Appeal Br. at 22-23.

⁴⁰³ Oral Initial Decision at 1144.

⁴⁰⁴ *Id.* at 1151.

⁴⁰⁵ *Id.* at 1152.

The law judge did not, as respondents suggest, make unsupported and conclusory statements concerning credibility.

Respondents also claim that the law judge exhibited bias, but we find that the law judge's credibility findings were based on the testimony and evidence before him. The law judge found two of respondents' witnesses, Mr. Ricca and Mr. Grey to be credible, but noted that their testimonies did not add much probative value. Respondents' argument that the law judge's comment regarding the value of their testimonies indicates he found them irrelevant is not supported by the record; as stated, the law judge found both witnesses to be credible and reasonably relayed his impressions of the information they offered. The law judge's credibility determinations were based on the record, and the Board has no reason to overturn them.

F. Respondent Farrington's reasonable reliance defense.

Respondents argue that the law judge's rejection of respondent Farrington's defense that he reasonable relied on others, including respondent Aikins, was based on misstatements, irrelevant factors, and speculation.⁴⁰⁶ We disagree. The Board has held that "reasonable reliance is a narrow doctrine applicable in cases 'involving specialized, technical expertise where a flight crew member could not be expected to have the necessary knowledge.'"⁴⁰⁷ In addition, the D.C. Circuit has limited the doctrine to reliance on other crew members, stating, "[a]n element of the reasonable reliance defense is that the duty being relied upon must be one that has been assigned to the co-pilot or other crew member."⁴⁰⁸

⁴⁰⁶ Appeal Br. at 34.

⁴⁰⁷ *Administrator v. Haddock*, NTSB Order No. EA-5596 (2011) (quoting *Administrator v. Fay & Takacs*, NTSB Order No. EA-3 501 at 10 (1992)).

⁴⁰⁸ *Id.* (quoting *Nutsch v. National Transportation Safety Board*, 55 F.3d 684, 1 (D.C. Cir. 1995) (unpublished)). See also *Administrator v. Jolly*, NTSB Order No. EA-5307 (2007) (rejecting reasonable reliance defense, noting, in part, that Federal Aviation Regulations have established that the Pilot in Command (PIC) of an aircraft is ultimately responsible for the operation of the

First, respondent Farrington did not reasonably rely on those who were not crew members to ensure safety given the narrow application of the reasonable reliance defense. Thus, his claim that he reasonably relied on those involved in the event to perform their delegated roles, including Mr. Iscold and Mr. Fitzgerald, lacks merit. Further, respondent Farrington did not reasonably rely on respondent Aikins as the team lead to ensure that the event complied with the regulations. As the law judge observed, respondent Farrington is an experienced pilot and was familiar with the regulations; his obligation to comply with all applicable regulations was not assigned to another crew member. Moreover, as the sole pilot for N3185Q during the plane swap until he departed the aircraft, respondent Farrington could not rely on anyone else to ensure compliance. The Board finds that the law judge properly rejected respondent Farrington's reasonable reliance claim.

G. Sanction.

Respondents argue that the law judge erred in affirming the Administrator's choice of sanction. We disagree. As discussed, *supra*, the law judge assessed the Administrator's choice of sanction using the standard set forth in *Martin v. Occupational Safety and Health Review Commission*, and based on the facts and circumstances in the case, upheld the certificate revocation for both respondents and civil penalty issued against respondent Aikins. However, since the law judge's decision, the United States Court of Appeals for the District of Columbia Circuit has clarified the deference the Board must afford the Administrator's sanction selection. In *Pham v. Nat'l Transp. Safety Bd.*, et al., the Circuit Court held that the Board should only overturn the Administrator's sanction if it is "unwarranted in law or without justification in

aircraft, 14 C.F.R. § 91.3."). *But see Administrator v. Kirst*, NTSB Order No. EA-5955 (2023) (denying reasonable reliance argument, but noting that it could extend to the advice of counsel).

fact.”⁴⁰⁹ Specifically, in that case, the Circuit Court determined that the Administrator had justification for its selection of the remedy, citing the applicable regulations and statute.⁴¹⁰

Here, respondents have provided no convincing mitigating factors demonstrating the Administrator’s choice of revocation was unjustified in fact or unwarranted in law. Rather, the Administrator’s sanction is supported by its sanction guidance, FAA Order 2150.3C, which provides for a sanction of revocation where “an airman’s deliberate conduct during one event (*e.g.*, a single act, multiple acts during a single flight, or multiple flights in succession) [is] so egregious that it demonstrates that the respondent lacks the care, judgment, or responsibility required of a certificate holder.”⁴¹¹ Given the disregard for the applicable regulations during the plane swap, the Administrator reasonably determined that revocation was the appropriate sanction for both respondents. Respondents have not shown that the sanction is unwarranted in law or without justification in fact. Here, respondents engaged in a dangerous stunt without regard for safety or compliance with the required regulations, resulting in one of the event airplanes crashing to the ground. Their actions clearly demonstrate a lack of care, judgment, or responsibility required of a certificate holder. Not only is revocation consistent with the FAA’s policy, but under Board precedent, we have supported revocation on that basis.⁴¹² The Board affirms the Administrator’s revocation of respondents’ certificates.

The Board also agrees with the law judge that the Administrator’s had the authority to issue a civil penalty against respondent Aikins. Under 49 U.S.C. § 46301(a)(1) and FAA Order 2150.3C, the Administrator may impose a civil penalty as a punitive action when warranted.

⁴⁰⁹ *Pham v. Nat’l Transp. Safety Bd.*, et al., 33 F.4th 576, 583 (D.C. Cir. 2022) (citing *Amer. Power & Light Co. v. SEC*, 329 U.S. 90, 112-13 (1946)).

⁴¹⁰ *Pham*, *supra* note 409 at 583.

⁴¹¹ Exh. A-23 at 25.

⁴¹² *See, e.g., Administrator v. Steel*, NTSB Order No. EA-5958 (2023).

Respondent Aikins was informed that he needed to comply with Part 91 when conducting the planned event, and when he sought an exemption, the FAA denied it. Respondent Aikins decided to conduct the plane swap anyway, deliberately disregarding the regulations. We find that the Administrator's civil penalty assessed for respondent Aikins' regulatory violations was justified in fact. However, we reduce the amount of the civil penalty from \$4,932 to \$4,503. In the written closing statement, the Administrator explained that a civil penalty was assessed in the amount of \$1,644 for each of respondent Aikins' three regulatory violations, totaling \$4,932. Yet, the Sanctions Ranges Table in FAA Order 2150.3C provides for a maximum penalty of \$1,501 for an individual under 49 U.S.C. § 46301(a)(1).⁴¹³ The Administrator has not clarified how the \$1,644 for each regulatory violation was calculated. Therefore, the Board reduces the penalty to the maximum amount allowed under FAA's policy in effect at the time of the enforcement action, which totals \$4,503 for three regulatory violations.

H. Request for Oral Argument

Respondents also request oral argument under 49 C.F.R. 821.48(e). Because the Board is able to decide the appeal based on the existing record, we deny respondents' request for an oral argument.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeal is denied;
2. The Administrator's revocation of respondents' pilot certificate is affirmed;
3. The Administrator's civil penalty against respondent Aikins is reduced to \$4,503; and

⁴¹³ Exh. A-23 at 16 (Table 9-2).

4. Respondents' request for oral argument is denied.

HOMENDY, Chairman; GRAHAM, CHAPMAN, and INMAN, Members of the Board,
concurring in the above opinion and order.

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of:

BILLY NOLEN,
ACTING ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

LUKE T. AIKINS &
ANDREW J. FARRINGTON,

Respondents.

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* Docket Nos.: SE-31110,
* SE-31111, &
* CP-30031
* JUDGE MONTAÑO

via Zoom videoconference

Monday,
December 19, 2022

The above-entitled matter came on for hearing,
pursuant to notice at 1:00 p.m.

BEFORE: ALFONSO J. MONTANO
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION

(1:03 p.m.)

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3 JUDGE MONTAÑO: Good afternoon, everyone. This -- we're
4 convening this afternoon in the case of Administrator v. Andrew J.
5 Farrington and Luke T. Aikins. The Complainant, of course, is
6 Billy Nolen, the Acting Administrator, Federal Aviation
7 Administration. The docket numbers are SE-311110, SE-31111 and
8 CP-30031.

9 I will -- we are convening today so that I can issue the oral
10 initial decision in this case. The record is closed. So
11 essentially what I will be doing is reading my decision into the
12 record.

13 So at this point I would like all the parties to identify
14 themselves, where they're located, and who is with them, just so
15 that we'll know that for the record. And before I do that, again,
16 I remind everyone that -- well, go -- let me go ahead and do that.

17 Let me ask the Administrator first. Please identify
18 yourself, your geographic location, and then if there's anyone
19 with you in your office?

20 MS. STOKLEY: Fatimah Stokley. I'm with the Federal Aviation
21 Administration. I'm in Long Beach, California and I'm by myself.

22 JUDGE MONTAÑO: All right. And one other counsel for the
23 Administrator? Acting Administrator?

24 MR. WADE: Yes, Your Honor. Benjamin Wade, also on behalf of
25 the Acting Administrator, currently located in Fort Worth, Texas

1 and also by myself.

2 JUDGE MONTAÑO: All right, thank you.

3 And for the Respondent? For Mr. Farrington first?

4 MS. YODICE: Yes, Your Honor. Kathleen Yodice, and I'm in
5 the Washington, DC area, Potomac, Maryland, just north of DC. And
6 I am in my office by myself.

7 JUDGE MONTAÑO: Thank you. And we also have your client with
8 us as well?

9 If you could identify yourself for the record again, Mr.
10 Farrington, and where you're located?

11 MR. FARRINGTON: Andrew Farrington. Shelton, Washington.
12 Also by myself.

13 JUDGE MONTAÑO: Thank you.

14 And counsel for Mr. Aikins?

15 MR. ROSS: Kenneth Ross. I'm in the Chicagoland area and I'm
16 by myself.

17 JUDGE MONTAÑO: Thank you. And your client?

18 If you can identify yourself, Mr. Aikins, for the record?

19 MR. AIKINS: Yeah, Luke Aikins. I'm in Washington state and
20 I'm by myself.

21 JUDGE MONTAÑO: Thank you. Thank you very much.

22 Once again, I remind the parties that these -- the official
23 transcript of these proceedings and my oral initial decision is a
24 written transcript that will be provided to the parties once this
25 oral initial decision is issued. There can be no recording, audio

1 or visual recording, of this session where I'm issuing my oral
2 initial decision.

3 The record is closed in this case and this will essentially
4 by my decision based on all of the evidence that's been submitted
5 in this case.

6 The -- I know that Ms. Szustak, my paralegal, and hearing
7 assistant has just sent the appeal rights to the parties, to
8 counsel for the Respondents, and to the Administrator as well. So
9 I will ensure at the end of this decision to make sure that you've
10 received those appeal rights, and I will speak about them briefly.
11 I will -- again, those appeal rights were sent both to the
12 Administrator and to the Respondents in this case.

13 I note for the record also that there is -- that one of the
14 attorneys for Mr. Aikins wasn't able to join us, and that is Mr.
15 Christopher T. Leach. He was unavailable but he was co-counsel to
16 Mr. Ross with -- here during this proceeding.

17 All right. So what I will do at this point is just to let
18 you know that this is going to be a long hearing, a long session,
19 because it's a long decision. We sat through a -- almost a full
20 week of testimony with direct, cross-examination, redirect,
21 recross, from essentially three, four attorneys in this case. So
22 that in and of itself makes the record a substantial record and a
23 very long record, so we will take breaks during the course of the
24 proceedings. I have asked Ms. Szustak to inform everyone that we
25 will be likely going late into the evening so I can get this

1 decision on the record so the parties can decide where -- how they
2 want to proceed.

3 So please bear with me. I will take breaks, as I said, and
4 hopefully it will not be as long as I anticipate. However, since
5 it is a long decision, you are welcome to turn off your cameras
6 and sit back and essentially listen to what I'm going to say.
7 There'll be no testimony. I will be asking no questions of any of
8 the parties or their attorneys, so certainly you're welcome to
9 turn off your cameras and just listen. At the end of the decision
10 I will ask that everybody come back on the record, turn your
11 cameras on so that I can discuss the appeal rights with both the
12 Administrator and the Respondents.

13 All right. So with that, I will begin my oral initial
14 decision in this case.

15 This is a proceeding under the provisions of 49 U.S.C. 44709,
16 formerly section 609 in the Federal Aviation Act, and the
17 provisions of the Rules of Practice and Air Safety Proceedings of
18 the National Transportation Safety Board.

19 This matter has been heard before me as the Administrative
20 Law Judge assigned his case. And as allowed by the Board's rules
21 of practice, I am issuing an oral initial decision.

22 Pursuant to notice, this matter came on for trial on
23 September the 12th, 2022 through September the 16th, 2022. The
24 hearing took place in Phoenix, Arizona. The Administrator was
25 represented by Ms. Fatimah Stokley, Esq., and Mr. Benjamin Wade,

1 Esq., both from the Western Enforcement Team, Federal Aviation
2 Administration. Respondent Luke T. Aikins was represented by Mr.
3 Kenneth Ross, Esq., and Mr. Christopher Leach, Esq. Respondent
4 Andrew J. Farrington was represented by Ms. Kathleen Yodice, Esq.

5 Parties were afforded a full opportunity to offer evidence,
6 to call and cross-examine witnesses and make arguments to support
7 their respective position. I will not discuss all of the evidence
8 in detail. I have, however, considered all of the evidence, both
9 oral and documentary. That which I do not specifically mention is
10 viewed by me as being corroborative or is not materially affecting
11 the outcome of this decision.

12 The Administrator brought three separate actions against the
13 Respondents in this case. The Administrator filed an Emergency
14 Order of Revocation against Mr. Luke T. Aikins on May 10th, 2022,
15 and also brought a civil penalty assessment of \$4932 against Mr.
16 Aikins on May 19th, 2022.

17 The Administrator filed an Emergency Revocation against Mr.
18 Andrew Farrington on May 20th, 2022.

19 The three enforcement actions arose from the events referred
20 to as the April 24, 2022 Red Bull Plane Swap.

21 The Administrator alleges that as a result of the conduct of
22 both Respondents during the Plan Swap that the Respondents were
23 both charged with violating 14 CFR 91.105(a), 14 CFR 91.113(b),
24 and 14 CFR 91.13(a).

25 The Order of Assessment from Mr. Aikins cites the same

1 violations as the basis of the imposition of the money penalty.

2 Both Respondents appeals the Administrator's Emergency Order
3 of Revocation and Mr. Aikins appealed the civil penalty assessment
4 case as well.

5 Mr. Farrington filed an answer to the Emergency Order of
6 Revocation in which he admitted the allegations in paragraph 1 and
7 then denied the reminder of the 12 remaining allegations in the
8 complaint. He denied the violations cited in the Administrator's
9 -- strike that.

10 Respondent also included the following affirmative defenses,
11 which again, I will discuss later on in this decision.

12 First, he argued that the FAA Administrator has failed to
13 make a claim in fact or law to warrant the relief requested,
14 including that the regulations cited by the FAA as being violated
15 are not applicable to the facts and circumstances alleged.

16 Two, the FAA has failed to state a claim upon which relief
17 may be granted, in that some or all of the allegations are not
18 supported by facts and the facts to establish a violation by law
19 of some or all of the cited regulations.

20 Three, Mr. Farrington reasonably acted and reasonable relied
21 on persons with knowledge and the circumstances and whose duty it
22 was to advise Mr. Farrington about compliance with the FAA
23 applicable regulations.

24 Four, of course, Mr. Farrington and his counsel reserve the
25 right to raise additional affirmative defenses.

1 Mr. Aikins also filed an answer to the Emergency Order of
2 Revocation that was sent to him, which was subsequently filed as a
3 complaint as well. He admitted the allegations in paragraphs 1, 2
4 and 6. As to the other allegations in the complaint, Mr. Aikins
5 specifically denied allegations or asserted he had not -- he had
6 insufficient knowledge to either admit or deny the allegations. I
7 consider that type of an answer as a denial for the purposes of
8 this hearing.

9 Mr. Aikins also denied the same allegations relative to this
10 civil penalty assessment case.

11 In both cases, Mr. Aikins' legal counsel raised the following
12 affirmative defenses:

13 One, that the Administrator fails to state a claim in fact or
14 law to warrant the relief requested.

15 Two, the FAA has failed to state a claim upon which relief
16 may be granted. The FAA's allegations are not supported by facts
17 and the facts do not establish a violation by law of the cited
18 regulations.

19 Three, Mr. Aikins reasonably relied on persons with knowledge
20 of the circumstances and whose duty it was to advise Mr. Aikins
21 about compliance with the FAA applicable regulations.

22 Number four, an exemption from the requirements of 14 CFR
23 Section 91.105(a)(1) was not required for the flight activities
24 which are the subject of the FAA's complaint.

25 Number five, the FAA denial of the requested exemption does

1 not preclude the flight activities which are the subject of the
2 FAA complaint.

3 And six, Mr. Aikins did not violate a law, regulation or
4 established authority.

5 Seven, violations alleged by the FAA's complaint are barred
6 or otherwise fail because of the doctrine of waiver and estoppel.

7 Eight, the alleged aircraft that is the subject of the
8 violation alleged in the FAA's complaint was in fact, and as a
9 matter of law, not an "aircraft" at the time of the alleged
10 violations, as defied pursuant to 14 CFR 1.1, or any other
11 applicable law or regulations.

12 As a matter of law, 14 -- number nine, as a matter of law, 14
13 CFR 91.105(a)(1) is inapplicable to Mr. Aikins' departure from the
14 alleged aircraft that is the subject of the FAA's allegations.

15 And number ten, the FAA's complaint fails because Mr. Aikins
16 was not operating or piloting an aircraft at the time the FAA
17 alleges these violations took place.

18 This case was assigned to me as a conference call for
19 February 27th to discuss a hearing date and possible consolidation
20 of the cases and waiver of the emergency timeframes, this case --
21 although the case is -- the two enforcement cases were filed as
22 Emergency Orders of Revocation. In that prehearing conference,
23 the parties agreed to consolidate all three cases and subsequently
24 informed my office that the Respondents, both Respondents, have
25 agreed to waive the emergency nature of the proceedings in this

1 case. As noted, the hearing in these consolidated cases were
2 scheduled for the aforementioned September dates in Phoenix,
3 Arizona.

4 As to any agreements between the party prior -- agreements to
5 the parties prior to the hearing, the Respondent, as I mentioned,
6 filed an answer to the Administrator's complaint in which he
7 admitted -- well admitted -- the Respondents filed an answer to
8 the Administrator's complaints in which admitted some of the
9 allegations and denied others.

10 Respondent Farrington admitted the allegations in paragraph 1
11 of the Administrator's complaint and denied the remaining 11
12 allegations in the complaint. As Respondent Farrington admitted
13 the allegation of paragraph 1 of the complaint it is deemed
14 established for the purpose of this case and this hearing, this
15 decision.

16 Respondent Aikins admitted the allegations in paragraph 1, 2
17 and 6 of the complaint, the emergency revocation, that was issued
18 in this case. As Respondent Aikins has admitted those
19 allegations, they are considered to be established for this case
20 and this decision. Respondent Aikins denied the remaining
21 allegation made in the Acting Administrator's complaint.

22 During the course of the hearing there was exhibits that were
23 offered into evidence. Some were admitted and some were rejected.
24 As far as the Administrator's case is concerned, the Administrator
25 moved for the admission of Exhibit A-1, A-2, A-3, A-4, A-6, A-7,

1 A-8, A-10, A-11, A-12, A-13, A-14, A-16, A-22, A-21, A-23, A-5 and
2 A-9. These exhibits were admitted into evidence. Any objections
3 to those exhibits is reflected in the transcript and my ruling
4 based on those objections.

5 Respondent -- both Respondents moved for the admission of
6 Exhibits R-8, R-23, R-45, R-52, R-11, R-46, R-36, R-39, R-5 and R-
7 3. Also offered but not admitted into evidence were R-37, R-38,
8 R-47 and R-40. The other exhibits that I had mentioned, but they
9 moved into exhibit -- moved into evidence were admitted. And any
10 objections to them are reflected in the transcript of this
11 hearing.

12 What I will first do is discuss the testimony that was
13 presented in this case before I start my discussions as to how
14 that testimony will affect my decision in this case. And again,
15 this is a lengthy portion of my decision as there were so many
16 questions that were asked of the parties -- excuse me, of all of
17 the witnesses, and appropriately so.

18 The Acting Administrator has the burden of proof in this
19 matter and he therefore presented his case first. The Acting
20 Administrator presented the testimony of Mr. Daniel Gredlein, Dan
21 Ngo, and Preston Farley. The Administrator also presented the
22 expert testimony of Ms. Cheryl M. Villa, who is an aviation safety
23 inspector.

24 The first witness was Mr. Daniel Gredlein. Mr. Gredlein was
25 the first witness to testify. As I noted, he testified that he is

1 an aviation safety inspector with the FAA and has worked at the
2 Scottsdale, Arizona FSDO, which stands for flight standards
3 district office. He has been employed by the FAA since January of
4 2018.

5 He testified that his duties are those that he is assigned
6 and described in section 8910.1. He testified that his duties
7 include ensuring the safety of the airspace and ensuring the
8 safety of airmen as well. Prior to working for the FAA, Aviation
9 Safety Inspector Gredlein testified he worked for a flight school
10 for approximately ten years.

11 Inspector Gredlein testified he has a number of aviation
12 ratings. He is a -- he has a single engine and a multiengine land
13 rating. He is a certified flight instructor and a certified
14 flight instructor for instrument rating. He has a Bachelor of
15 Science degree in aeronautical management and professional flight.

16 Inspector Gredlein testified he became involved in this case
17 when the case was assigned to him by his manager. He also
18 testified he was involved in the investigation of this case, along
19 with Aviation Safety Inspector Cheryl M. Villa.

20 Inspector Gredlein testified that on February 3rd, 2022, he
21 had a meeting with Mr. -- Respondent Aikins and Mr. Aaron
22 Fitzgerald during which Mr. Aikins and Mr. Fitzgerald described
23 the airplane swap event that they had planned to conduct. Mr.
24 Aikins indicated that he was one of the pilots who would fly one
25 of the airplanes and Mr. Fitzgerald informed him, him being Mr.

1 Gredlein, that he was also involved in filming the plane swap.
2 Inspector Gredlein testified that Mr. Aikins and Mr. Fitzgerald
3 summarized what they planned to do in this event.

4 Inspector Gredlein testified he told them that he would
5 research their plan and would get back to them. There was some
6 indication that he was concerned as far as whether or not an
7 aircraft could be converted to a falling object, which is why he
8 informed them that he was going to do some research and get back
9 to them. That is his testimony.

10 On February 3rd, Inspector Gredlein sent an email to Mr.
11 Fitzgerald and Mr. Aikins outlining the regulations he had
12 researched and found that there were a number of regulations that
13 were required to be addressed. He testified the regulations
14 highlighted in yellow were regulations that could be waived.
15 Those sections that could be waived were 91.107, 91.111, and
16 91.303. The email is marked as Exhibit A-3. He also informed Mr.
17 Aikins and -- Respondent Aikins and Mr. Fitzgerald that 14 CFR
18 91.3, 91.13, 91.105, 91.151 and 91.205 and 91.319(e) were not
19 among the sections highlighted in yellow, as that -- those
20 sections required the application for an exemption and a waiver
21 could not be applied to those sections.

22 He testified that he attached a form to fill out to obtain an
23 objection in that email. He further noted that he would be
24 working on getting a definition of an object versus an aircraft
25 and would let them know when he had something solid. He testified

1 that he was researching this matter as Mr. Aikins has brought up
2 -- he was researching this matter because Mr. Aikins has brought
3 up his interpretation that the aircraft that were being used for
4 the plane swap could be converted into falling objects while
5 pilots were not in the aircraft.

6 Inspector Gredlein also testified he sent the email to make
7 sure that he, Mr. Fitzgerald and Mr. Aikins were all on the same
8 page as he. When asked if he sent the email -- as to why he sent
9 the email, Inspector Gredlein testified that during their meeting
10 they had the discussion of possible legal stumbling blocks to the
11 plane swap plan. Inspector Gredlein identified A-6 as the email
12 that he sent to Mr. Aikins and Mr. Fitzgerald on February 3rd. He
13 testified that he subsequently provided his analysis of the
14 regulations as to whether an aircraft could convert or be
15 converted to an object to Mr. Aikins and Mr. Fitzgerald.

16 Inspector Gredlein testified that he sent a follow-up email
17 addressing the question as to again, whether the aircraft could be
18 converted to an object. He identified Exhibit A-7 as that email
19 that he prepared and sent. He testified that the email states
20 that after review of Title 14 CFR Part 1, Part 105 and previously
21 established legal interpretation, it has been determined that an
22 aircraft cannot convert into an object. The aircraft remains an
23 aircraft despite the drag device deployed and the airplane being
24 in a vertical dive condition with the engine off as it is still
25 moving through the air by use of wings and was not spinning out of

1 control, which means in turn -- as noted in Inspector Gredlein's
2 email which means the definition of flight.

3 Inspector Gredlein testified that based on the determination
4 his email indicated that Red Bull will need to apply for an
5 exemption via the process previously discussed. Inspector
6 Gredlein testified that he indicated that in his email as Mr.
7 Aikins and Mr. Fitzgerald both presented their plan when they were
8 dressed in Red Bull clothing.

9 Inspector Gredlein testified he researched regulations at
10 Section 105.3 which he identified as Exhibit A-2. He testified
11 that the regulations at Part 105 are applicable to parachute
12 operation and does not define the term object. He further
13 testified that the term object is not defined in any other part of
14 the regulations he researched.

15 Inspector Gredlein testified that as part of his research he
16 reviewed the legal interpretations to help him address the issue
17 of an aircraft converting into an object. He testified he
18 reviewed the definitions in Exhibit A-1, which is 14 CFR 1.1.
19 General definitions. He testified that the exhibits provided him
20 with the definition of an aircraft and also a definition of an
21 airplane.

22 Inspector Gredlein testified that the statements provided in
23 his email to Respondents Aikins and Mr. Fitzgerald were based on
24 his own research and he testified he also relied upon information
25 provided by FAA legal counsel.

1 Inspector Gredlein testified that he provided all of the
2 information relative to his research to the Respondents -- to the
3 Respondent, Respondent Aikins. He testified his email indicated
4 that Red Bull, again, will have to apply for an exemption. He
5 testified that an exemption would have to be sought because a
6 waiver was not applicable to the regulations governed -- that
7 governed the aircraft swap of the airplane swap. Inspector
8 Gredlein testified he provided Mr. Aikins with information upon,
9 again, how to apply for the exemption. Inspector Gredlein
10 testified that Respondent Aikins could have sought legal
11 interpretation by following the procedures of -- for requesting a
12 legal interpretation.

13 Inspector Gredlein testified that after he sent the email
14 indicating an application for exemption would be required, there
15 was no question or complaints from either Mr. Aikins or Mr.
16 Fitzgerald.

17 Inspector Gredlein testified that in the email he had sent on
18 February 28th, and Exhibit 7, he indicated "the aircraft remains
19 an aircraft despite the drag device being deployed and the
20 airplane being in the vertical dive condition with the engine off.
21 It is still moving through the air by use of wings. He testified
22 he obtained this information through his, again, through his own
23 research. The definitions found in Section 1.1 and the -- and
24 what he termed the Pallato legal interpretation. Pallato was
25 spelled P-a-l-l-a-t-o. He testified he also worked with General

1 Counsel's office, again, to draft the email that he was sending to
2 Respondent Aikins and to Mr. Fitzgerald. The conclusion of the
3 email was that Red Bull would have to apply for the exemption.

4 Inspector Gredlein testified that it is his job to respond to
5 inquiries from airmen as to how to comply with the Federal
6 Aviation Regulations and it is not unusual for him to provide his
7 analysis and information when he receives such an inquiry.

8 Inspector Gredlein identified Exhibit A-8 as an email from
9 Mr. Aaron Fitzgerald addressed to him and others at the FAA
10 indicating that they, meaning he and Respondent Aikins, were
11 working through the exemption process and were continuing to test,
12 rehearse and plan for the event. The email is dated March 14th,
13 2022.

14 On cross-examination by Mr. Leach, Inspector Gredlein
15 testified he has no aerobatic flight experience, nor does he have
16 skydiving experience. He testified in his present position he has
17 dealt with aviation exhibits and airshow exhibit exhibitions. He
18 was asked if he was aware that Mr. Aikins had obtained a Special
19 Airworthiness Certificate from the Seattle MIDO. Inspector
20 Gredlein testified that the purpose of the February 23rd, 2022
21 meeting with Mr. Aikins and Mr. Fitzgerald was to discuss with Mr.
22 Aikins that a waiver or an exemption may be required for the
23 planned flight, the planned airplane swap.

24 He testified that he told Mr. Aikins, said it was up to him
25 to decide if he would seek the exemption or waiver. He told Mr.

1 Aikins and Mr. Fitzgerald on February 3rd, 2022 that he would
2 research, again, conduct some research as to the viability or the
3 legality of a conversion of an aircraft into an object. He was
4 asked if he had already made up his mind at the time of the
5 conversation with Mr. -- Respondent Aikins and Mr. Fitzgerald said
6 in fact an airplane could not be converted into an object and the
7 flight swap would not be allowed to go forward. Mr. Gredlein --
8 Inspector Gredlein testified -- responded to that question by
9 indicating no. He was directed to R-52 and testified that he had
10 seen it before and it was a true and accurate copy of his
11 deposition on page 18.

12 Inspector Gredlein testified that during the February 3rd
13 meeting, the purpose was to discuss Respondent Aikins and Mr.
14 Fitzgerald's plans. He testified that Mr. Fitzgerald had
15 expressed his opinion that an aircraft, again, could be converted
16 into an object. Mr. Gredlein testified that the concept was not a
17 solid conclusion and it required additional research. Inspector
18 Gredlein agreed that he was not an attorney and is not an
19 attorney.

20 Inspector Gredlein testified that Mr. Aikins and Mr.
21 Fitzgerald provided a presentation or a PowerPoint during the
22 meeting, and that PowerPoint has been admitted into evidence as R-
23 23.

24 Inspector Gredlein was asked on cross-examination if he
25 understood that a plan was the -- a flight test program. He

1 testified that a flight test -- testing had already been
2 accomplished on the aircraft. He testified he was not working on
3 that aspect of the case and that the Airworthiness Team was
4 addressing that aspect of the case, as well as the Special
5 Airworthiness Certificate. He testified that the aviation safety
6 inspector handling that part of the matter was Mr. Barry Miller.

7 Inspector Gredlein testified further under cross that he did
8 not take into consideration the Airworthiness Certificate issued
9 in this case, certificates issued in this case, because he was not
10 involved in that process. He was asked about a program letter
11 issued relative to one of the aircraft, and Mr. Gredlein testified
12 he did not know anything about that.

13 Inspector Gredlein testified that he was very familiar with
14 the area where the plane swap was going to take place, and he
15 testified that flight training takes place in the area and it is
16 essentially desert and farmland. He testified he told Mr. Aikins
17 and Mr. Fitzgerald about the area that is also used for flight
18 training. Inspector Gredlein testified that he had flown with
19 flight students in the area where the plane swap was to take
20 place. Again, he testified on cross-examination that his -- that
21 he discussed the exemption process with Mr. Aikins and Mr.
22 Fitzgerald and provided them with copies of the guide to obtaining
23 an exemption. He testified that he is not personally familiar
24 with that process.

25 Inspector Gredlein testified he had come to the results of

1 his research partially on the research he had completed and
2 partially with feedback he received again from discussions with
3 FAA legal counsel. He agreed he did not tell Mr. Aikins that
4 legal counsel was informed -- was involved in the process.

5 Inspector Gredlein testified that he -- on cross-examination
6 testified that he reviewed legal interpretations as part of his
7 research but did not see any which actually applied to the plane
8 swap facts. He did not -- he did find ore legal counsel
9 interpretation at Exhibit A-4. He referred to that legal
10 interpretation as again, the Pallato interpretation. That
11 interpretation states that Section 121.705 does not specifically
12 define flights and therefore, the FAA has the discretion to
13 provide a definition. The interpretation indicates that the
14 Webster's Ninth College Dictionary defines flight as an act or an
15 instance of passing through the air by the use of wings.

16 Inspector Gredlein agreed that part 121 applies to airlines.
17 Reference was made to another legal interpretation at R-8,
18 however, that interpretation was not admitted into evidence. I
19 was asked to take judicial notice of that legal interpretation.
20 That legal interpretation refers to the Pallato interpretation
21 relative to the definition of flight. And I have, as requested,
22 taken judicial notice of that interpretation, which is at R-8.
23 While R-8 was not admitted into evidence, it is part of the
24 record.

25 Again, Inspector Gredlein was asked and he testified on

1 cross-examination that he did not inform Respondent Aikins or Mr.
2 Fitzgerald that his research had partially come from contact with
3 FAA legal counsel. He agreed that the information he provided
4 could not be considered a legal interpretation. However, he
5 testified that the description set forth by Respondent Aikins and
6 Mr. Fitzgerald describe an aircraft moving through the air by the
7 use of wings.

8 Again, he was asked if the legal counsel was involved in the
9 final research result and Inspector Gredlein again conveyed that
10 it was. He was asked to speculate as to what Mr. Aikins would
11 have thought about the process; would he have known that part of
12 the results of the research had come from legal counsel? Mr.
13 Gredlein testified that he was not able to speculate as to what
14 Mr. Aikins would be thinking.

15 He testified he provided the definition of flight in his
16 email to Respondent Aikins but did not cite again the legal
17 interpretation from the general counsel in the email that he sent
18 at Exhibit A-7.

19 Inspector Gredlein testified he never saw or inspected the
20 aircraft in this case. When asked why he indicated Red Bull would
21 have to obtain an exemption, Inspector Gredlein testified that
22 both Respondent Aikins and Mr. Fitzgerald again came to the office
23 dressed in Red Bull attire and they told him that they had just
24 come from Red Bull headquarters.

25 It was then asked on cross-examination if Mr. Aikins or

1 anyone else applied for an exemption, and I believe he testified
2 that he knew that Mr. Aikins had applied for an exemption, and
3 that was the only knowledge he had as to the filing of an
4 exemption or a petition for exemption.

5 Inspector Gredlein testified that the meeting with Respondent
6 Aikins and Mr. Fitzgerald took place when their plan was
7 essentially more in a concept phase. He provided no guidance at
8 that time to Respondent or anyone else.

9 Inspector Gredlein testified that he did receive an email
10 from Mr. Fitzgerald on March 14th indicating that they wanted to
11 update Inspector Gredlein and other of the progress. Again, that
12 email indicates that they were working through the exemption
13 process. The email indicated that they were still proceeding as
14 planned.

15 He was asked if he attended the plane swap event and
16 Inspector Gredlein testified that he did not. He acknowledged
17 that he was on vacation during the plane swap event. He was asked
18 if he attended other air events such as airshows and he responded
19 that he did, but the plane swap was not an airshow. Inspector
20 Gredlein testified that he did not know if anyone else from the
21 FAA attended the plane swap event.

22 Inspector Gredlein testified he is not informed when an
23 exemption is denied or approved. He testified he is out of the
24 loop relative to the notice. He testified that management at his
25 office will make arrangements for the FAA representative to be at

1 an event if an exemption had been approved.

2 There was cross-examination of Mr. Gredlein by Ms. Yodice.
3 Inspector Gredlein testified on cross that Mr. Farrington was not
4 involved in his conversations with Mr. Aikins and Mr. Fitzgerald.
5 He testified that Mr. Farrington was not included in any of the
6 emails sent to Mr. Aikins or Mr. Fitzgerald. He agreed that Mr.
7 Farrington was never emailed about the matters discussed with Mr.
8 Aikins and Mr. Fitzgerald. Inspector Gredlein testified he never
9 communicated directly with Mr. Farrington.

10 Inspector Gredlein testified that he did see Respondent
11 Farrington's name included in the PowerPoint presentation provided
12 by Mr. Aikins and Mr. Fitzgerald. Mr. Farrington was identified
13 as one of the personnel who would be involved in the event.

14 Inspector Gredlein was then asked about the regulations. He
15 testified that certain regulations did not apply. However other
16 regulations had to be addressed to determine that they applied to
17 the situation in this case. He testified all the regulations he
18 referenced were Part 91 regulations.

19 Inspector Gredlein testified that based on his research and
20 discussion with legal counsel, the aircraft that were used in the
21 event were aircraft throughout the event and were not -- that
22 remained aircraft throughout the event. He agreed that he relied
23 again upon the chief counsel's interpretation and opinion. He
24 agreed it was a one sentence interpretation that did not describe
25 the questions that had been posed to initiate the interpretation

1 and the opinion.

2 He agreed never -- he reviewed Part 105, the regulations
3 pertaining to parachute jumping and the definition of an object.
4 He testified that the regulations relative to aircraft operation
5 was a different part of the regulations. He was asked to refer to
6 Exhibit A-2 and was asked why he went to that part of the
7 regulations that applied to parachute jumping and not part of the
8 regulations that dealt with aircraft.

9 Inspector Gredlein testified that he was referred to that
10 section by Respondent Aikins and Mr. Fitzgerald because they felt
11 that it was applicable. He testified that it was part of his
12 analysis because he wanted to ensure he addressed all of the
13 questions that were asked and he did not want to miss anything.
14 Mr. Aikins and Mr. Fitzgerald brought it to his attention and felt
15 that it was applicable and therefore he researched it.

16 Inspector Gredlein testified that while he researched Part
17 105 to prepare his email and the opinion he provided, he did not
18 feel that it specifically applied to the situation because this
19 case in his view is not about a parachute operation based on the
20 presentation provided by Mr. Aikins and Mr. Fitzgerald.

21 Inspector Gredlein was then asked about the Pallato
22 interpretation. He was then asked about the interpretation
23 prepared by a person named Bob Larian, L-A-R-I-A-N, at Exhibit R-
24 8, in which he replied that he did not review that interpretation
25 as part of his research. He has previously provided the same

1 answers on cross-examination. On previous cross-examination I was
2 asked to take judicial notice of the interpretation at A-8 and I
3 indicated I would do so.

4 Inspector Gredlein testified on cross-examination that he
5 sent a letter of investigation to Mr. Farrington. He testified he
6 recognized R-45 as the email Mr. Farrington's counsel, Ms. Yodice,
7 sent him. He agreed that the email from Mr. Farrington's legal
8 counsel, Ms. Yodice, indicated she was representing Mr.
9 Farrington. Inspector Gredlein agreed that subsequent to
10 receiving that email he sent a different email to Mr. Farrington
11 asking him if he wished to comment on a screenshot of an Instagram
12 post that had been made in this case, which will be discussed
13 later. He testified that he did not receive a response from Mr.
14 Farrington when he sent that email.

15 On redirect, Inspector Gredlein testified that he provided
16 direction and guidance to Mr. Fitzgerald and Respondent Aikins but
17 he did not take part in the planning or execution of the Red Bull
18 airplane swap event.

19 He was asked to review Exhibit A-7, which is the email in
20 which he informed Mr. Aikins and Mr. Fitzgerald that the Red Bull
21 would need to apply for the exemption being the previously
22 discussed process and he testified that neither Mr. Aikins nor Mr.
23 Fitzgerald had expressed any objection to the fact that an
24 exemption would have to be obtained. He testified that his
25 understanding of the email and Exhibit A-8 was that Mr. Aikins and

1 Mr. Fitzgerald were proceeding with obtaining the exemption.

2 Inspector Gredlein testified that he had informed Mr. Aikins
3 and Mr. Fitzgerald of the process by which he could obtain a legal
4 interpretation. He testified that he informed them that an
5 exemption would have to be obtained. He did not mean it was a
6 requirement. Again, he testified that he told Respondent Aikins
7 that it was entirely up to him to file a petition. He also
8 informed Respondent Aikins and Mr. Fitzgerald that they had the
9 option of course of seeking a legal interpretation as to the
10 airplane swap event.

11 There was recross by Mr. Leech. On recross by Mr. Leech,
12 Inspector Gredlein agreed that if Mr. Aikins and Mr. Fitzgerald
13 went to proceed with the event, they would have to obtain an
14 exemption. He testified that he had no other communication with
15 the two gentlemen other than the last email sent to him indicating
16 that they were proceeding with obtaining an exemption and
17 preparing to go through with the plane swap event. Inspector
18 Gredlein testified that they could obtain an exemption, not obtain
19 an exemption or change the event.

20 As to recross by Ms. Yodice, again, he testified that Mr.
21 Fitzgerald and Mr. Aikins had the option of obtaining an
22 exemption, of changing the day of the event or not conducting the
23 event.

24 To my questions, as I am allowed under the regulations to ask
25 questions for clarification. In response to my question he

1 testified that Mr. Fitzgerald and Mr. Aikins described the event
2 as pushing or testing the flight envelope and making reference to
3 the event as a flight test. In response to my question, he
4 testified that he viewed the event as a promotion and not a flight
5 test. He believed the flight testing had already been completed
6 well before the event.

7 As instances wherever I ask questions, I allow counsel to
8 follow up. Mr. Leech followed up to my question by asking
9 Inspector Gredlein follow up questions. Inspector Gredlein
10 testified that he had no other knowledge relative to the reference
11 of pushing the flight envelope relative to flight testing. The
12 only information he had about the event was what Respondent Aikins
13 and Mr. Fitzgerald had told him. There was no follow up by Ms.
14 Yodice.

15 The next witness for the Administrator was Mr. Dan Ngo.
16 Daniel Ngo. Mr. Ngo is the manager of the Part 11 Petitions
17 Branch, FAA National Headquarters in Washington DC. Mr. Ngo
18 testified that he oversees the exemption program for the FAA. He
19 has been employed by the FAA for seven-and-a-half years.

20 He testified that he received a petition for exemption from
21 Mr. Luke Aikins. Mr. Ngo testified that a petition for exemption
22 is required for relief from certain sections from 14 CFR Code of
23 Federal Regulations. At that point, Ms. Yodice objected that his
24 testimony was not related to Respondent Farrington and asserted
25 that response from the Administrator was that in fact, it was

1 relevant and that Mr. Farrington's affirmative defense is that he
2 relied upon Mr. Aikins. After hearing discussion about that, I
3 sustained the objection that the testimony did not relate to Mr.
4 Farrington.

5 Mr. Ngo was shown Exhibit A-10, which was identified as the
6 petition for exemption submitted by Mr. Aikins on February 28th,
7 2022. He testified that Part 11 of 14 CFR are the rules governing
8 the petition for exemption. Mr. Ngo testified that the regulation
9 requires petitioners to submit their request for exemption at
10 least 120 days before they need relief identified in that request.

11 He testified that Mr. Aikins submitted the application on the
12 public docket called Regulations.gov. A-10 was admitted into
13 evidence. Mr. Ngo was then shown A-11, which was identified as a
14 letter that the FAA sent to Mr. Aikins notifying him that in order
15 to proceed with his request, Mr. Aikins was required to provide
16 additional information as to why granting his requested exemption
17 would be in the public interest. A-11 was admitted into evidence.

18 Mr. Ngo was asked to identify Exhibit A-12, which he
19 identified as an email chain between Mr. Aikins and Mr. William
20 Andrews of his office. He testified the email included an
21 attachment of a 26-page document, which was identified as Exhibit
22 A-13. Exhibit A-13 was admitted into evidence as the revised
23 application for an exemption that was submitted by Mr. Aikins on
24 April 11th, 2022.

25 Mr. Ngo then identified Exhibit A-14, which is identified as

1 a denial of the revised application submitted by Mr. Aikins. The
2 denial is dated April 22nd, 2022. Mr. Ngo then testified that he
3 was familiar with the document and that he reviews his staff's
4 work on the document, and he reviewed those documents before they
5 were sent out of his office. In the course of business, he
6 discussed the application with legal counsel, as he did with all
7 applications. He discusses the application with legal counsel,
8 the program office, and together they develop the denial of the
9 exemption if the denial is the appropriate course of action.

10 When asked why the FAA denied Mr. Aikins' petition, Mr. Ngo
11 testified that the FAA found that Mr. Aikins failed to address
12 compliance with other applicable regulations at 14 CFR, such as
13 maintaining vigilance to see and avoid aircraft. Further, it was
14 determined that because the operation could be conducted with a
15 safety pilot remaining onboard, it would not be in public interest
16 to have the event with a safety pilot.

17 Mr. Ngo testified that the effect of the denial of the
18 exemption was that the Petitioner would have to comply with the
19 existing regulations. He testified that once a petition for an
20 exemption is denied, the Petitioner can request a reconsideration
21 within 60 days of the denial. He testified that to his knowledge,
22 Mr. Aikins did not file a request for reconsideration. A-12 was
23 admitted into evidence.

24 There was cross-examination by Mr. Ross. On cross-
25 examination, Mr. Ngo testified that Mr. Aikins was seeking an

1 exemption so that he could be relieved in complying with 14 CFR
2 91.105(a)(1). He agreed that the application for exemption --
3 that the application for exemption. Mr. Aikins was clear as to
4 his description, the changing of the aircraft or converting the
5 aircraft into falling objects.

6 Mr. Ngo testified that there was no analysis of the position
7 that an aircraft could or could not be changed into a falling
8 object. It was never discussed with Respondent Aikins and it was
9 never analyzed. Mr. Ngo was then asked to provide a timeframe as
10 to the initial application, denial of the application and the
11 submission of the amended application, which he did. He again
12 testified that the office did not ask for further information or
13 clarification as to the conversion or transformation of an
14 aircraft into a falling object. Mr. Ngo testified that his office
15 only addressed the petition that was submitted.

16 Mr. Ngo testified on cross-examination that his office did
17 consider whether all relevant regulations were considered and the
18 petition failed to address compliance with other regulations.
19 However, Mr. Aikins did not provide a sufficient public interest
20 justification and did not demonstrate he could comply with the
21 other applicable regulations. Mr. Ngo on cross-examination agreed
22 that once a petition for exemption is denied, then it was up to
23 the Petitioner to decide how to proceed. He testified that his
24 office does not follow up if in fact the petition is complied with
25 the regulations or proceeded with his plans without an exemption.

1 On redirect, Mr. Ngo was asked to read from Exhibit A-13,
2 which is the supplemental petition filed by Mr. Aikins. Mr. Ngo
3 read the passage into the record which states, and I quote, we
4 just received notice today, February 28th, 2022 at 6:13 that the
5 FAA legal had determined an aircraft cannot switch categories in
6 flight and become an object when it enters a vertical dive.

7 The quotation continues. He testified that his office had
8 been directed to request a one-time exemption since the
9 pilot/skydiver would be unable to remain at their stations during
10 the swap. Mr. Aikins further asserted that the swap was executed
11 50 times with a safety pilot just sitting in the airplane taking
12 notice.

13 That information I read into the record and that was read
14 into the record by Mr. Ngo was part of the supplemental petition
15 that was submitted by Mr. Aikins in which he made the statement
16 that I just read. Mr. Ngo testified this information was
17 considered by his office in denying the petition for exemption.
18 There was no substantive questions on recross.

19 The next witness was Mr. Preston Farley. He testified that
20 he is an investigation specialist with the Cyber Investigations
21 Branch, FAA Southern Regional Office. He testified he is a
22 computer forensics investigator and he has been employed in that
23 position for two-and-a-half years. He holds a Bachelor's degree
24 in digital forensics and he also holds a Master's degree in
25 digital forensics. He was previously with the Army Criminal

1 Investigations Division and was an instructor at the Federal Law
2 Enforcement Training Center teaching digital forensics. He did
3 that for a period of 15 years.

4 Mr. Farley testified he investigates allegations of internal
5 employee misconduct at the FAA. He also supports in the external
6 investigations conducted by the agency. Mr. Farley testified in
7 these types of investigation he is contacted by aviation safety to
8 conduct the investigation.

9 In this case, his office received a request for assistance.
10 He testified that he was asked to find the information related to
11 a plane swap that was sponsored by Red Bull. He testified he was
12 provided a handle or an identification for an Instagram social
13 media post to attempt to archive the post that had allegedly been
14 posted by the Respondent Aikins to Instagram. He was provided
15 three URLs to track and try to find supporting information about
16 the plane swap event as well.

17 Mr. Farley testified that Instagram is a social media
18 website. It is commercial in nature, designed to allow people to
19 communicate across the internet in a social manner using pictures
20 and videos. He testified that a handle, as he mentioned earlier,
21 was a name that can be used that is not your actual name but a
22 name to identify yourself on the application.

23 Mr. Farley was asked to identify A-16. He identified it as a
24 printed representation of the Instagram message on the Instagram
25 cite that he was asked to archive and provide. He testified the

1 date of the Instagram was May 25th, 2022.

2 He testified that he archived the actual URL and HTML
3 language from the internet. He testified that the information at
4 the top of the page of the exhibit was the metadata, which
5 indicates when the user would have posted the Instagram. A-16 was
6 admitted into evidence.

7 Mr. Farley testified that the metadata on the Instagram post
8 at A-16 indicated that it was posted by LukeAikins. He was asked
9 to read the post into the record, which he did. It read, as
10 project lead and chief pilot, it was entirely my responsibility to
11 operate within the regulatory framework to ensure a successful
12 outcome. I received email notice on April 22nd, 2022 from the FAA
13 that a specific exemption was not granted, and I made a personal
14 decision to move forward with the plane swap. I regret not
15 sharing this information with my team and those who supported me.
16 I am now turning my attention to cooperatively working
17 transparently with the regulatory authorities as we review the
18 planning and the execution.

19 Mr. Farley testified that he provided a written report along
20 with a copy of the URL or post to the requestor.

21 On cross by Mr. Leech, Mr. Farley was asked what he did to
22 authenticate that the exhibit was authored by Mr. Aikins. He
23 testified that like anything he does in digital forensics, he
24 could not place Respondent Aikins as the user of the keyboard at
25 the time the post was made to Instagram. He agreed he could not

1 personally place Mr. Aikins again at the keyboard at that time.
2 At the time the Instagram was posted, Mr. Farley was then directed
3 to a section of the post arrayed to the left which included
4 pictures and texts from other individuals such as a person with
5 the handle Sketchy Andy Lewis. Mr. Farley agreed that the
6 Respondent had no control as to what individuals posted on the
7 Instagram, such as the post that was made by Sketchy Andy Lewis.
8 He agreed that the account user has no control over what other
9 people can post in response to the account user's posting of an
10 Instagram message. I did not consider any of the other comments
11 on the Instagram post. Those are not relevant and can certainly
12 not be attributed to something that Mr. Aikins could control.

13 There was cross by Ms. Yodice. Mr. Farley testified on
14 cross-examination the accuracy of the time of the posting on
15 Instagram depended upon the time zone in which it was posted.

16 There was no redirect.

17 The next witness presented by the Administrator was Aviation
18 Safety Inspector Cheryl Villa. Ms. Villa testified that she is
19 currently employed with the FAA at the Scottsdale Flight Standards
20 District Office. She is an aviation safety inspector for
21 operations. She has worked for the Flight Standards District
22 Office since October of 2019. Her duties as an aviation safety
23 inspector included conducting inspections, surveying events,
24 documenting reviews, conducting check rides. She also approves
25 all waivers and authorization requests that are submitted to the

1 Flight Standard District Office. She also oversees several
2 designated pilot examiners, she testified.

3 Inspector Villa identified A-17 as her resume. She testified
4 she holds a Commercial Pilot Certificate with airplane, single
5 engine and airplane, multi-engine land and instrument airplane
6 rating. She testified she is a flight instructor and holds an
7 Advanced Ground Instructor Certificate. She has been a flight
8 instructor for 28 years and has over 8,000 hours of dual flight
9 and instruction given time.

10 Inspector Villa testified she holds a Bachelor's degree of
11 science in aeronautical engineering. Prior to employment with the
12 FAA, she worked for Lufthansa Aviation in the area of training and
13 did so for 18-and-a-half years. She was a flight instructor with
14 Lufthansa, she testified. She then worked for the Flight
15 Standards Department. She testified that all of those moves were
16 the result of an advancement within the company. She continued to
17 perform checkrides and train new hired instructors at the same
18 time that she was with the Flight Standards Department at
19 Lufthansa.

20 Inspector Villa testified that she has 1,400 hours of
21 experience in flying Cessna aircraft, including 152s, 172s, 182s
22 and 210s. Inspector Villa testified she is familiar with the area
23 near the Sawtooth Airport where the plane swap was scheduled to
24 take place. She testified she has had over 20 years' experience
25 in operating aircraft and providing flight instruction in that

1 area. She testified that she performed pilot training for
2 Lufthansa in that area where there is a victor airway which would
3 be used in this training that she provided.

4 At that point in her testimony, the Administrator asked that
5 Inspector Villa be called as an expert in Aviation Safety and
6 Aircraft Operations. On Voir Dire she was asked to define and
7 explain aviation safety as an area of expertise. She essentially
8 testified that in her experience, it relates to determinations as
9 to whether someone is in compliance with the regulations. As to
10 aircraft operation, she was asked if that involved certification
11 of aircraft, to which she replied that was part of aviation
12 safety.

13 The Respondent objected to Inspector Villa being qualified in
14 either area of expertise that she was offered. Specifically they
15 made the argument that the area of aviation safety was too broad
16 and general and could contemplate almost anything.

17 Ms. Yodice also conducted Voir Dire and on that voir dire,
18 Inspector Villa agreed that she had been with the FAA and attended
19 general aviation inspector training. She agreed that she had not
20 been designated as a special subject matter expert and had not
21 flown an experimental aircraft.

22 In response to counsel's questions about her flight
23 experience, she testified that prior to Lufthansa she flew with a
24 part 135 charter flights, including private jets.

25 Counsel for Mr. Farrington objected as well as to qualifying

1 Aviation Safety Inspector Villa as an expert in the area she was
2 offered. Mr. Ross voir dired and objected to qualifying Inspector
3 Villa as an expert for the same reasons.

4 Based on the testimony before me at that time, I ruled that
5 Inspector Villa could not be qualified as an expert in the
6 overbroad area termed aviation safety and aircraft operations.

7 The Acting Administrator then asked to allow to ask
8 additional questions. Inspector Villa was asked about her
9 experience with Part 91 of the Federal Aviation Regulations. She
10 testified it was her job within Lufthansa to write manuals that
11 were in accordance not only with Federal Aviation Regulations but
12 also the European Aviation Regulations. She testified she was
13 also tasked with making sure that the entire training force was
14 upholding the standards set out in their operational manuals. She
15 testified she wrote new manuals when new aircraft were purchased
16 for training, all of which have to comply with Federal Aviation
17 Regulations, including Part 91. There was an objection as to the
18 line of questioning from Respondent however, I allowed questioning
19 to continue.

20 The Acting Administrator indicated that he wished to narrow
21 the scope to designate inspector Villa as an expert in Part 91
22 aviation safety and aircraft operations. I allowed further
23 questioning. Inspector Villa testified that all of her flight
24 time was operating under Part 91. She testified all of her 8,180
25 hours of flight training was also exclusively operating under Part

1 91.

2 Inspector Villa testified as to her familiarity with 14 CFR
3 Parts 91.105, 91.113(b). She testified that 91.113 is an
4 important part of all of the pilot training she has performed.
5 That requirement requires all pilots to be vigilant and perform
6 continuous visual scanning. The Acting Administrator then moved
7 to have her qualified as an expert in Part 91 operations and
8 aircraft safety with the specific scope of Part 91.

9 On voir dire, Mr. Ross asked questions of Inspector Villa to
10 challenge that she is an expert in the area she was offered. Ms.
11 Yodice was provided the opportunity at voir dire as well, and she
12 also objected to Ms. Villa being qualified as an expert in the
13 area she was now being offered.

14 I found that based on Aviation Safety Inspector Villa's
15 experience in flight training and flying and instructing students
16 under Part 91 as well as her experience in pilot training,
17 drafting operating manuals that must be in compliance with Part 91
18 certainly qualify her relative to her expertise as to Part 91,
19 further her training as an aviation safety inspector all involve
20 Part 91 training. A significant part of it involved Part 91
21 training. I therefore overruled the objection of the Respondent
22 of the Respondent and qualified Aviation Safety Inspector Villa as
23 an expert in Part 91 operations and aircraft safety within the
24 specific scope of Part 91. The discussions relative to her
25 qualifications and discussions about objections is in the record

1 at page 242 to page 281.

2 As to her testimony, having been qualified as an expert
3 witness, Inspector Villa testified she began the investigation
4 into Mr. Aikins conduct during the plane swap event. In
5 particular, he was a pilot in command of aircraft N3694U and she
6 also was addressing her investigation relative to his departing
7 the flight as a crew member station and departing the aircraft
8 entirely. She testified she began an identical investigation of
9 Mr. Farrington.

10 Inspector Villa testified she was assigned the case on April
11 25th, 2022. She made a telephone call to Mr. Aikins to ask for
12 his email address so that she can email him a copy of the Pilot's
13 Bill of Rights. She identified herself and explained what she was
14 doing. She also asked him for the telephone number of Mr.
15 Farrington. She informed Mr. Aikins that she and a couple of
16 airworthiness inspectors were coming out to see him at the
17 Sawtooth Airport. Mr. Aikins agreed to see them. When she
18 arrived at the airport, she met with Mr. Aikins and they drove
19 separately out to the crash site. She took photos of the flight
20 deck, of the crash site, took photos of the flight deck.

21 Inspector Villa asked Respondent to describe the event and
22 she testified that Respondent Aikins explained that he was in
23 aircraft N3694U, the plane he took off in. Mr. Farrington was in
24 aircraft N3185Q, the airplane he took off in. And during the
25 plane swap they took off their seatbelts in their respective

1 airplanes, departed their flight crew member stations and exited
2 the aircraft, leaving the aircraft unpiloted in an aerobatic dive.
3 They then attempted to complete a plane swap.

4 Inspector Villa then testified that Mr. Aikins explained that
5 he thought N3694U didn't remain in the coordinated formation-
6 flying dive that they had planned, and he also provided his
7 understanding of why that aircraft went into an inverted dive.
8 She testified that Respondent Aikins told her that the first
9 action that they took to begin the plane swap was to engage the
10 autopilot, lower the speed brake, put the aircraft into dive, cut
11 off power and mixture and then engage the autopilot. And she
12 testified that he told her that the autopilot was to keep the
13 aircraft in a stabilized, desired airspeed decent in formation
14 flight with the other aircraft.

15 Inspector Villa testified that Mr. Aikins explained why
16 N3694U went into a spin. She testified Mr. Aikins told her that
17 in all of the previous tests, 70 plus tests she indicated she told
18 him, those prior plane swap tests all involved a pilot onboard.
19 She testified he told her that even though the safety pilot was
20 not touching the controls that they were using in the event, they
21 were using the autopilot to hold the aircraft in a controlled
22 formation dive. And in doing that they have to account for the
23 weight of the aviation pilot who was not onboard during the plane
24 swap.

25 She testified that Mr. Aikins told her that to compensate for

1 the weight of the safety pilot that was not involved or no longer
2 in the aircraft in the final plane swap event, they had added an
3 extra 200 pounds of fuel to the tanks, which are on the wings of
4 the aircraft. The difference was that the weight was essentially
5 not placed in the right place. According to Inspector Villa, Mr.
6 Aikins told her that when the speed brake was engaged, the
7 aircraft was put into a dive and they cut the engine the moment,
8 which is the term used for balancing the aircraft, that was
9 created by the extra weight was vertically higher above the center
10 of gravity, which caused the aircraft to go past vertical five and
11 continued into an inverted flight and then a spin.

12 Inspector Villa then testified she called Mr. Farrington and
13 left a message on his telephone. Inspector Villa was asked about
14 the video of the plane swap event, which is Exhibit A-22, and that
15 exhibit was moved into evidence, despite numerous and different
16 objections from each attorney for the Respondents in an effort to
17 keep the video out of evidence. The exhibit was admitted into
18 evidence and the video was viewed during the proceeding. I did
19 not find any of the Respondents numerous objections to keeping out
20 the video to be meritorious, or supported by the rules of
21 evidence.

22 Inspector Villa testified that when she interviewed Mr.
23 Aikins he told her that he was the pilot in command of aircraft
24 N3694U. She testified that Andrew Farrington was also the sole
25 pilot in aircraft N3185Q. She also testified that Mr. Aikins told

1 her that Mr. Farrington was also a sole pilot in N3185Q.

2 Inspector Villa testified that Mr. Aikins told her that he
3 was able to successfully swap airplanes. Mr. Farrington was able
4 to successfully exit but was unsuccessful when getting into the
5 flight crew member station of N3694U. She testified that N3694U
6 then went into an inverted flight and then a spin and eventually
7 it crashed to the ground. Inspector Villa testified that those
8 aircraft were registered with the FAA as airplanes on April 24th,
9 2022.

10 Inspector Villa testified that from viewing the video of the
11 plane swap event she could testify that both aircraft were
12 unoccupied. This occurred after Respondents Farrington and Aikins
13 left their crew member stations in their respective aircraft and
14 left the aircraft in a nose dive without a pilot. She defined
15 crew member station as an area in the aircraft where the pilot in
16 command would occupy to be able to have access to all of the
17 flight controls and engine controls.

18 Inspector Villa testified that the video of the plane swap
19 showed both Mr. Aikins and Mr. Farrington unbuckling their
20 seatbelts and depicted them leaving the crew member stations of
21 their respective aircraft. She testified that Respondent Aikins
22 and Farrington's absence from the crew member stations were not
23 necessary to perform duties in connection with the operation of
24 each respective aircraft. She further testified from the video
25 she reviewed, and from her interview with Mr. Aikins, that his

1 absence from the crew member station was not necessary because of
2 a physiological need. She further testified that from viewing the
3 video, Mr. Farrington's absence from the crew member's station was
4 not necessary because of any physiological needs.

5 Inspector Villa testified that Section 91.113(b) states
6 vigilance shall be maintained by a person operating an aircraft so
7 as to see and avoid other aircraft. She testified there was no
8 definition for vigilance in the Federal Aviation Regulations.

9 She testified that drawing from her own experience as an
10 aviation safety inspector and as a pilot and as a flight
11 instructor she would describe vigilance as continuously being
12 aware of airspace and visually scanning for other aircraft and
13 maneuvering your aircraft, if necessary, away from other aircraft.

14 Inspector Villa was asked if based on her interview of Mr.
15 Aikins then viewing the video of the plane swap she believed that
16 Respondent Aikins maintained vigilance when operating aircraft
17 N3694U so as to see and avoid other aircraft. She testified she
18 believed that he did not maintain vigilance and was not able to
19 see and avoid other aircraft when he exited the flight crew member
20 station of his respective aircraft. She testified that based on a
21 review of the video of the plane swap, Respondent Farrington did
22 not maintain vigilance when he exited the flight crew member
23 station of his aircraft, nor was he able to see and avoid other
24 aircraft.

25 Inspector Villa testified that her investigation revealed

1 that there were no NOTAMs for the plane swap event and there was
2 no TFR for the event, TFR of course being a temporary flight
3 restriction. Inspector Villa identified Exhibit R-11, which is a
4 NOTAM which had been obtained for the plane swap but in fact the
5 NOTAM had expired the day before the event. It was admitted into
6 evidence. She testified that even if the NOTAM had been active
7 during the plane swap, it would not specifically have warned of
8 the plane swap, but only alert pilots that there would be a
9 parachute jumping exercise going on.

10 Inspector Villa was asked if based on all of the information
11 she gathered during her investigation, her interview with Mr.
12 Aikins, and the review of the evidence entered during the hearing,
13 she believed that Mr. Aikins actions on the day of the plane swap
14 had a potential to endanger the life and property of another. She
15 responded, yes, that was her opinion.

16 Inspector Villa was asked if based on all of the information
17 she gathered during the investigation, the review of the evidence
18 entered during the hearing, she believed that Mr. Farrington's
19 actions on the day of the plane swap had the potential to endanger
20 the life and property of another, and she responded yes, that that
21 was her opinion.

22 She explained her answer by stating that both Mr. Farrington
23 and Mr. Aikins exited the flight crew member station, leaving
24 their respective aircraft in an aerobatic dive in an area that is
25 depicted on an aeronautical chart that also includes an intensive

1 flight training area and which was also within 4 nautical miles of
2 Victor airway. There was no NOTAM published, there was no TFR
3 published, and there was no communication by either pilot or
4 anyone else in the plane swap. Aviation Safety Inspector
5 testified that Victor airway is a connection between two very high
6 frequency omnidirectional range stations, VOR stations. Aircraft
7 are equipped to be able to pick up those frequencies and display
8 it as a course or a track. She testified that there is an airway
9 that goes between Stanfield VOR, which is 15 miles north of the
10 plane swap event area, and it goes to Tucson. Inspector Villa
11 testified that it is a very busy airway. That is the airway that
12 she used to train with tons of pilots.

13 Inspector Villa then talked about the application for the
14 exemption in this case. She was referred to Exhibit A-13, which
15 is the application for the exemption. She indicated the document
16 indicated that Mr. Aikins holds a Commercial Pilot Certificate
17 with airplane single-engine and helicopter ratings, and single-
18 engine land rating as well. She testified that the event was
19 broadcast live on Hulu. She testified that based on the
20 information she discovered during the course of the investigation,
21 the evidence presented at the hearing, that she believed Mr.
22 Aikins' conduct was careless and reckless. She explained that as
23 defined by Federal Aviation Order 2150.3C, reckless is defined as
24 a violator's conduct demonstrating a gross disregard for, or
25 delivered indifference to safety or safety standards. She

1 testified that she believed that when Mr. Aikins exited the flight
2 crew member station of his aircraft and left it in an aerobatic
3 dive in an airspace depicted as an intensive flight training area,
4 and within 4 nautical miles of a Victor airway without a NOTAM,
5 without a TFR and without contact with ATC that, in her opinion,
6 demonstrated reckless conduct.

7 Inspector Villa reiterated the same facts and the same
8 circumstances to reach her opinion that Mr. Farrington's conduct
9 also demonstrated reckless conduct. Inspector Villa was asked if
10 her opinion was based on the information she reviewed during the
11 course of her investigation, the evidence presented at hearing,
12 her interview with Mr. Aikins; that based on all of these things
13 that she reviewed, her opinion as an expert was that revocation of
14 Respondent Aikins' Airmen Certificate is the appropriate sanction.
15 When she was asked that question, she answered yes, that was her
16 opinion.

17 She further opined that based on the information she reviewed
18 during the course of her investigation, the evidence presented at
19 hearing, whether she believed that the revocation of Respondent
20 Farrington's Airmen Certificate is the appropriate sanction, and
21 she answered yes. Inspector Villa agreed that when asked if the
22 conduct of Respondent Aikins and Respondent Farrington
23 demonstrated a lack of care, judgement and responsibility required
24 of a certificate holder. She testified that based on the fact
25 that both Respondents exited the flight crew member stations of

1 their respective aircraft, left them in an aerobatic dive in an
2 airspace depicted as including an intensive flight training area
3 within 4 nautical miles of Victor airway without a NOTAM, without
4 a TFR and without contact with ATC, she believed Respondent Aikins
5 and Respondent Farrington's conduct demonstrated a lack of care,
6 judgement and responsibility and therefore, revocation again is
7 warranted for both Respondents.

8 As to the civil money penalty that was filed in this case,
9 Inspector Villa read from Exhibit A-16, Mr. Aikins' Instagram
10 post, which he states, as project leader and chief pilot, it was
11 entirely my responsibility to operate within the regulatory
12 framework to ensure a successful outcome. I received email notice
13 on April 22nd, 2022 from the FAA that a specific exemption was not
14 granted and I made the personal decision to move forward with the
15 plane swap. I regret not sharing this information with my team
16 and those who supported me. I am now turning my attention to
17 cooperatively working transparently with the regulatory
18 authorities as we review the planning and execution.

19 When asked if Inspector Villa felt the FAA's assessment of
20 the civil penalty against Respondent Aikins was warranted she
21 responded yes. She testified that Mr. Aikins had queried the FAA
22 months ago and was informed an aircraft cannot change its
23 certificate and would remain an aircraft during the whole time of
24 the airplane swap event. Respondent Aikins was informed that he
25 could file a petition for exemption to 91.105 if he wanted to

1 proceed with his plane swap event as he described it to the FAA.
2 He did that; he filed his petition for exemption and that
3 exemption had been denied. Mr. Aikins chose to conduct the plane
4 swap event as he described it to the FAA anyway. She testified
5 Mr. Aikins received the email notice of the denial on April 22nd,
6 2022. She testified deliberately and recklessly proceeding with
7 the event, despite knowledge that his petition for exemption had
8 been denied, justifies an additional civil money penalty in this
9 case.

10 On cross-examination that was conducted by Mr. Leech,
11 Inspector Villa testified she did not attend the plane swap event.
12 She testified that she had went to the site of the crash of
13 N3694U. She agreed that the area looked like desert and the only
14 buildings she could see were the buildings at Sawtooth Airport.
15 She agreed she saw no damage to any private property other than
16 the aircraft, and she testified that she did not see any injury to
17 anyone on the ground. She did not know who owned the property
18 where the crash occurred.

19 Inspector Villa agreed that Mr. Aikins was cooperative once
20 she interviewed him. She testified that she did not inspect any
21 modifications on the aircraft at the crash site, as her focus was
22 the aircraft crash site to ensure no one on the aircraft had been
23 injured. Again, her focus was also and primarily on the conduct
24 of the two pilots that were involved in the airplane swap. She
25 testified she spoke to Mr. Aikins that day and left a phone

1 message for Mr. Farrington and did not speak to anyone else.

2 When asked if she spoke to the chase plane pilots, the
3 helicopter pilots involved in the plane swap, she testified that
4 she did not that day. She testified that Inspector Gredlein spoke
5 to those individuals. When asked if precautions were taken to
6 avoid damage to persons or property, she responded those
7 precautions were not the type expected by the FAA. When asked if
8 she could identify anyone who was actually flying in the area that
9 was not involved in the plane swap, she testified that radar
10 information from the actual event indicated there was six aircraft
11 in the air. She again testified that Respondents were unable to
12 maintain vigilance to see and avoid other aircraft when they
13 exited the aircraft. She testified she was not aware of
14 communications the Respondents could receive from the ground, the
15 chase planes or the helicopters. She agreed that she did not
16 contact the Seattle MIDO or review any Special Airworthiness
17 Certificates or program letters.

18 She testified that Mr. Aikins told her that the autopilot
19 controlled the trim tab on the elevator. She also read the
20 information on the Red Bull website relating to the autopilot.

21 When questioned by Respondent's counsel she agreed that it
22 was the determination of the FAA that both Respondents' conducts
23 were egregious. When asked why the conduct was egregious she
24 repeated her testimony that based on the fact that both
25 Respondents exited the flight crew member stations of their

1 respected aircraft and left them in an aerobatic dive in an
2 airspace depicted as including an intensive flight training area
3 within 4 miles of a Victor airway without a NOTAM, without a TFR
4 and without contact with ACT, constitute a violation of 91.105.

5 When asked if there were any waivers in the case relative to
6 aerobatics within 4 miles of Victor airway, Inspector Villa
7 testified that she did not receive any waivers for this event and
8 that she knew that Inspector Gredlein did not receive any waivers
9 either.

10 On cross by Ms. Yodice Inspector Villa testified that she
11 sent the emails, including the Pilot's Bill of Rights to
12 Respondent Farrington twice. Respondent Farrington responded that
13 afternoon by email indicating that he has indeed received the
14 Pilot's Bill of Rights she had sent him. She testified that
15 Inspector Gredlein had tried to contact Mr. Farrington as well and
16 did not have any success in reaching him. She agreed that she did
17 not try to contact Mr. Farrington after that one attempt when she
18 left the message on his telephone.

19 Inspector Villa identified an email that she sent to
20 Respondent Farrington and it related to her sending him the
21 Pilot's Bill of Rights information which has been admitted into
22 evidence as R-46.

23 Inspector Villa identified R-36 as the record she created of
24 her conversation with Mr. Aikins. She read a sentence from the
25 record in which she indicated that Mr. Farrington was not

1 available as he had returned to Washington State. She testified
2 that Mr. Farrington may have been upset with Mr. Aikins from a
3 statement that Mr. Aikins made to her when she interviewed him.
4 Mr. Aikins told her that Farrington had returned to Washington
5 state and he would probably never hear from Mr. Farrington again.

6 Inspector Villa agreed that she testified that Mr. Farrington
7 and Mr. Aikins had intentionally departed the crew member stations
8 and that fact was used to determine that appropriate sanction with
9 the use of 2150.3c. She agreed she did not talk to Mr. Farrington
10 to find out what his intent was.

11 Inspector Villa testified that from the video and when she
12 talked to Mr. Aikins that they both deliberately exited the crew
13 member stations which was intentional, not an accident. They both
14 planned to do this. This was part of the plane swap event.

15 Inspector Villa agreed that the intensive flight training depicted
16 on the aviation chart was approximately 15 miles north of the
17 airplane swap site.

18 Inspector Villa testified that she was limiting her opinion
19 as to see and avoid to when Mr. Farrington and Mr. Aikins left
20 their crew stations. She agreed that there was communication
21 between the Respondents and they communicated with the ground and
22 other aircraft in the area, and that they had communicated that
23 they did not see anyone in the area before they departed their
24 respective aircraft. Inspector Villa testified that she did not
25 know if the other participants were communicating with the

1 Respondents.

2 On redirect she was asked if Respondents had a waiver
3 relative to 14 CFR 91.13, she responded that she spoke to Mr.
4 Gredlein about that and to her knowledge there was no waiver for
5 the section of the regulations and there was no exemption that was
6 issued or approved in the case. She agreed 91.105 and 91.113 were
7 not waivable regulations. She testified Respondents never
8 produced an exemption relative to those specific section of the
9 regulations. She testified she spoke to Inspector Gredlein and no
10 waiver of 91.113 or exemption was ever granted.

11 She testified she was aware of the communications between the
12 Respondents and the group of participants in the event. She
13 testified that there was no communication with ATC, Air Traffic
14 Control, by the Respondent or anyone on the ground or in the air
15 participating in the plane swap event.

16 Inspector Villa was asked if there was any communication or
17 notice to other airmen operating in the vicinity of the Sawtooth
18 Airport while the Respondents were conducting the plane swap. She
19 responded that there was no notum, no evidence that the
20 Respondents or any other participant in the event communicated
21 with any other pilots on what would normally be air to air
22 frequency in the training area.

23 On recross by Mr. Leech Inspector Villa agreed that the event
24 took place in Class E airspace and did not require positive ATC
25 communication, but she also testified that when aerobatic activity

1 is conducted within 4 miles of a Victor airway, ATC requests that
2 there be communication with ATC.

3 She was asked about the visibility that day of the events and
4 she responded the visibility was VFR conditions.

5 There was no recross from Ms. Yodice.

6 Based on Inspector Villa's testimony, which will be further
7 discussed later, the Administrator rested.

8 The Respondents then presented their case. Respondents
9 presented the evidence of Respondent Luke Aikins, Mr. Aaron
10 Fitzgerald, Mr. Paulo Iscold Oliveria, Respondent Andrew
11 Farrington, Stanley Grey and Mr. Richard Lee.

12 Mr. Luke Aikins testified first. Mr. Aikins testified that
13 he is an aerial coordinator, skydiver, stuntman, skydiving
14 instructor and an aerial specialist. He provides skydiving
15 instructions for civilians and the military. He is an aerial
16 coordinator for motion pictures. He's done special aviation
17 events not just for Red Bull. He added he is a specialist again
18 in aspects of arial activities.

19 He testified when a project calls for a new design he will
20 help design it and help the engineers on the project. He has been
21 a skydiver for 32 years with 20,000 skydives. He also is a pilot
22 who files helicopters and airplanes as well.

23 Mr. Aikins described some of the types of special events he
24 has been involved in in the past, such as dropping aircraft out of
25 a C-130 for movies, organizing a wingsuit event at Sawtooth

1 Airport, which was two of the events he described.

2 He is self-employed he testified and has sponsors to finance
3 the events he participates in. He convinced Red Bull to sponsor
4 the plane swap after seven years of trying to get them to agree.

5 He's described another event, which was called the No
6 Parachute Skydiving Event, where he jumped from 25,000 feet and
7 landed in a net on the ground. He testified he did not need
8 permission to do that because he was dropping something out of an
9 airplane. What he dropped is himself. He testified dropping
10 objects from airplanes is controlled by the regulations under
11 91.15.

12 He was then asked to testify as to his understanding of
13 Section 91.15. He testified about the safety precautions he takes
14 when he drops items from an aircraft. He testified that
15 reasonable precautions as to the safety of persons or property on
16 the ground is the only requirement in the regulation.

17 Mr. Aikins testified that there was a standing parachute
18 NOTAM in the area at Sawtooth Airport. He testified Sawtooth is a
19 private airport that he leased for the plane swap event. In order
20 to land in the private airport you are required to get permission
21 or obtain permission from the owner.

22 Mr. Aikins was then asked about what measures were taken by
23 him to prevent the intrusion by the public prior to and during the
24 plane swap event. He testified it was secured by private security
25 and he added he did not know that beforehand. He testified that

1 he had security at the airport to keep everybody out that did not
2 belong at the airport that was participating in the plane swap
3 event. He testified he had security in dune buggies outside of
4 the airport to keep people out. He did not get a lease for the
5 land surrounding the airport, only the airport, he testified.

6 Mr. Aikins testified that he conducts training to the
7 military relative to skydiving and dropping objects from
8 airplanes. He said he provides training for the military 8 to 12
9 weeks out of the year. He testified he is also hired to provide
10 speaking engagements to talk about risk management, planning and
11 preparation. He testified his last presentation was entitled
12 Planning Preparation is no Stunt. He testified he gave a talk to
13 the Society of Experimental Test Pilots as well.

14 Mr. Aikins testified that he came up with the idea about the
15 plane swap from something he had seen in a magazine cover when he
16 was younger in the 1990s. He testified he wanted to do what was
17 depicted in that picture and as he got older he did engineering
18 and testing and he decided that he actually could do something
19 like that. When asked about his engineering background he
20 testified that he went to high school but did not continue on. He
21 testified he did not do so great in college.

22 Mr. Aikins then went on to testify that he went on to help
23 design Felix Baumgartner's jumpsuit in which he jumped from
24 128,000 feet from space. He testified he does not have an
25 educational background in engineering but since 2009 he has been

1 doing nothing but engineering projects. He testified he also
2 consults with Alan Eustace, the founder of Google, in that project
3 involved a successful attempt to beat the record set by Mr. Felix
4 Baumgartner.

5 Mr. Aikins testified he always asks himself, what is the
6 worst that can possibly happen, whenever he starts a project. If
7 he addresses it that way, he ensures that safety is addressed.

8 As to the plane swap, Mr. Aikins testified he started the
9 plane swap project when he sought the assistance of Paulo Iscold,
10 who is an engineer and professor at Cal Poly. Mr. Aikins bought a
11 Cessna 182 and went through the process of changing it from an
12 aircraft into an experimental aircraft. He testified he wanted to
13 do something really cool that had never been done before. He
14 wanted to change an airplane into something else, a falling
15 object. He testified he wanted to jump out of one falling object
16 and he wanted his cousin and his best friend to jump out of the
17 other one. They wanted to switch objects and then turn them back
18 into airplanes.

19 Mr. Aikins explained the process of getting a Special
20 Airworthiness Certificate. He contacted several designated
21 airworthiness representatives and found one who was willing to
22 take on the project. He testified he applied for the Special
23 Airworthiness Certificate and obtained it.

24 Mr. Aikins then testified about the description of what he
25 had to do to submit his application for a Special Airworthiness

1 Certificate. He testified he included a description of the
2 modifications of the aircraft. Mr. Aikins testified that the
3 modifications included the stabilizing device on the aircraft and
4 an attitude hold lock on the plane to essentially transform the
5 aircraft into a virtual badminton birdie pointed to the earth that
6 would fall at the same rate as a skydiver.

7 Mr. Aikins was shown R-23, which is identified as the
8 document he submitted to the Flight Standards District Office. He
9 testified the document he submitted to the FSDO included the
10 statement that this was essentially a true flight test program.
11 He testified he submitted it to the Scottsdale FSDO so someone
12 could understand what he was doing.

13 He testified that a Special Airworthiness Certificate comes
14 with limitations and conditions. He testified R-37 is the flight
15 log for N3185Q as an experimental aircraft. He testified that he
16 provided the FSDO with the flight logbook so they knew that he was
17 in the area and that he was going to be flying the experimental
18 aircraft.

19 Mr. Aikins was shown a Special Airworthiness Certificate that
20 is part of R-37 and Respondents attempted to have it admitted into
21 evidence. After lengthy argument that extended through the record
22 from transcript page 448 to transcript page 504. The document was
23 not admitted into evidence as Respondents could not authenticate
24 the exhibit.

25 Mr. Ricca testified, the individual who created the document,

1 was called as a witness for the Respondents after it was
2 determined that the exhibit could not be admitted into evidence.
3 But while on the witness stand he was not asked to authenticate
4 the document, therefore the document remained inadmissible in this
5 case.

6 Mr. Aikins testified that after receiving the Special
7 Airworthiness Certificate he began flight testing. He testified
8 he conducted 200 hours of flight time and over 70, as he put it,
9 dives. He responded he employed Mr. Paulo Iscold to help design
10 the modifications of the aircraft.

11 Mr. Aikins testified his goal was to prove that with 100
12 percent safety that he could transform the aircraft into a falling
13 object that fell at the rate and stability of a skydiver. He
14 testified we were able to fall with the object and then be able to
15 be at a designated altitude, start to transform the aircraft back
16 into an aircraft, and recover back to normal flight. He testified
17 it was his understanding that the aircraft was not in flight, as
18 it was falling to the ground, but it was instead a falling object.

19 Mr. Aikins then described phase two of testing the aircraft,
20 which took place in Arizona. He testified Sawtooth Airport was
21 chosen for the site. He testified he took a lot of time to do a
22 lot of work there, so he moved the show to Arizona, and that's in
23 transcript page 511.

24 He agreed with his counsel that the area had a designated
25 skydiving area associated on the aviation chart. Mr. Aikins

1 testified when asked that he was not aware of any student training
2 activity in the area. He testified the permanent NOTAM for
3 parachute activity was in effect during the time of the plane swap
4 in this case.

5 Mr. Aikins testified once a location was selected for the
6 plane swap, he and Mr. Aaron Fitzgerald reached out to the
7 Scottsdale FSDO to inform them that they were going to be in the
8 neighborhood.

9 He testified Mr. Fitzgerald was his friend and was also
10 sponsored by Red Bull. Mr. Aikins also testified he hires Mr.
11 Fitzgerald as an aerial coordinator for his projects. He
12 testified that the meeting took place on February 3rd, 2022 and it
13 was conducted using Zoom. Mr. Aikins testified that he forwarded
14 his briefing documents beforehand the meeting via Zoom took place
15 with Mr. Gredlein, Mr. Barry Miller, and also another aviation
16 safety inspector named Mr. Tompkins.

17 Respondent Aikins testified essentially that he just wanted
18 to inform the FSDO that they were in the area, they were going to
19 do something that was going to be highly publicized and highly
20 visible so he just wanted to let them know so that they would be
21 aware of it.

22 Mr. Aikins testified that he went through the presentation at
23 A-10 and described his plan to take an airplane, turn it into a
24 falling object and then turn it back into an airplane. He
25 testified he voiced his opinion that turning aircraft into objects

1 that were no longer aircraft and therefore they did not fit into
2 any category or regulations that existed. He testified at the
3 conclusion of the meeting he was not instructed to do anything.

4 Mr. Aikins then testified that he received an email from
5 Aviation Safety Inspector Gredlein indicating that he had looked
6 into whether an aircraft can be transformed into an object or not.
7 Respondent Aikins testified that he had not asked Inspector
8 Gredlein to look into it. Gredlein provided the information that
9 essentially Mr. Aikins testified he did not ask for.

10 Mr. Aikins reviewed the email from Inspector Gredlein at A-6
11 and testified that he did not know why the email and the list of
12 regulations was sent to him or why the email asked him to review
13 certain other sections, including 91.303. He testified he did not
14 know why other sections of the regulations, 91.205 and 91.3, were
15 brought to his attention. Again he testified that at conclusion
16 of the meeting he was not instructed to do anything.

17 He testified that when he received that information that he
18 and Mr. Fitzgerald looked up the section. Mr. Aikins testified
19 that the email mentioned an exemption but he did not know what
20 that was or why he needed one. He took the information to mean if
21 you cannot comply with the listed regulation, here is a document
22 exemption you can apply for. He testified he always planned to
23 comply with the regulations. Mr. Aikins testified that at no time
24 did he feel he was violating Section 91.105, leaving your crew
25 member station during flight.

1 Mr. Aikins reviewed A-7, an email from Inspector Gredlein to
2 him and Mr. Fitzgerald. He testified he was confused by the email
3 because it seemed Gredlein was trying to help regarding something
4 he didn't ask Gredlein to do. He testified he was confused by the
5 determination that an aircraft cannot be converted into an object.
6 He testified, and I quote, "I was like, who determined it? Nobody
7 talked to me. Nobody has seen my object."

8 As to Inspector Gredlein's statement in the email that an
9 aircraft remains an aircraft because it is moving through the air
10 by the use of wings to not spin out of control, Mr. Aikins
11 testified that the whole point of his work was to make the wings
12 ineffective and not efficient and not spin out of control.

13 Mr. Aikins could not remember if he called the FAA about the
14 exemption or if the FAA called him. He testified that there was a
15 follow-up call with Inspector Gredlein. He came away from the
16 call understanding that he was directed to file an exemption by
17 Aviation Safety Inspector Gredlein.

18 Mr. Aikins testified he did not have time to argue so he
19 applied for the exemption. Mr. Aikins testified he did believe he
20 needed an exemption, but it was the easiest way forward. He
21 testified that he submitted the exemption out of an abundance of
22 caution. He testified, I don't think I needed an exemption. Mr.
23 Aikins testified that it did matter to him whether an exemption
24 was approved because the way that he viewed it, it would be an
25 easy way to convince the Acting Administrator that he could change

1 and aircraft into a falling object, as it was not something that
2 had been done before and as he testified before, not something
3 that essentially the FAA didn't understand.

4 He testified that after looking at the regulations, he felt
5 he was complying with the regulations and he was moving forward
6 even if the exemption was denied. Mr. Aikins testified he
7 believed the equipment he designed and installed in the aircraft
8 would render them falling objects and not aircraft.

9 Mr. Aikins testified he followed up with Inspector Gredlein
10 three or four times, and Inspector Gredlein indicated that he
11 would email Mr. Aikins back once he found out anything as to
12 whether or not the exemption that Mr. Aikins had filed had been
13 approved. He testified he never heard back from Inspector
14 Gredlein.

15 Mr. Aikins testified he received an email from Mr. Ngo that
16 stated his petition could not be processed because it lacked
17 information relative to public interest. He testified he
18 submitted information to address that concern immediately, and he
19 indicated that there should be great public interest contributed
20 to his plane swap project. Mr. Aikins testified he subsequently
21 received a denial of his petition on April 22nd, 2022. The event
22 was scheduled for April 24th. He received the denial at about
23 4:30 p.m. west coast time. Mr. Aikins testified A-14 is the
24 denial of the exemption. He testified he did not understand the
25 logic of the denial and was disappointed.

1 He testified he had to weigh carefully what he needed to do
2 next. Mr. Aikins testified that the FAA did not evaluate
3 regulatory deficiencies in detail in his denial, but only stated
4 that there was not sufficient public interest justification. He
5 testified what it meant to him was he did not show enough public
6 interest to do something cool.

7 Mr. Aikins then asked how he maintained vigilance, seeing
8 and avoiding other aircraft during the event. He testified he had
9 six aircraft in the air, including airplanes and helicopters. He
10 also said that there was Stan Grey involved in ground safety, and
11 Paulo Iscold was monitoring ADSB on the ground and everyone had
12 communication on a common traffic frequency. So essentially he
13 testified that everyone involved in the plane swap project were
14 maintaining vigilance in seeing and avoiding other aircraft in the
15 event; that's how I took his testimony.

16 Mr. Aikins testified that approaching the time of the actual
17 event, all safety measures were in place and he heard the report
18 green, green, green, which essentially meant that everything was
19 all clear and they could proceed with the plane swap event.

20 He noted that when they were skydiving on other occasions,
21 they have to do go arounds all the time because an airplane would
22 fly into an area where it didn't belong and therefore they have to
23 go around and then conduct the parachute drop after that hazard
24 was clear. He testified that because of this, all of the
25 individuals on the ground and in the air and Mr. Aikins and Mr.

1 Farrington could knock it off, which essentially meant stop the
2 event. Mr. Aikins testified that once he left the aircraft, he
3 does not have to see and avoid other aircraft. I took it to mean
4 that he believed that everyone else was being vigilant in trying
5 to see and avoid other aircraft.

6 Mr. Aikins also testified that it was his opinion that other
7 regulations applied to his plane swap. He testified 91.15 applied
8 to the event, and that section again is dealing with dropping
9 objects from the aircraft.

10 I must go back and note also that Mr. Aikins argued that he
11 did not have to see and avoid aircraft because there was such a
12 short timeframe between when he had left one object to the other
13 falling object, and the same for Mr. Farrington. It's a matter of
14 seconds, he testified.

15 Mr. Aikins was asked if he believed his conduct was careless
16 or reckless. He testified he was not careless and reckless and
17 his whole career was built on planning and preparation and making
18 sure anyone gets hurt in any of his projects. Mr. Aikins
19 testified he holds his team members to high standards and he
20 respects them as family and friends. Mr. Aikins testified that
21 when he received the denial of the exemption he talked to his wife
22 and he thought about it and contemplated what he needed to do
23 next, but then he decided that he would proceed and in fact, he
24 never needed the exemption anyway. He testified he did not view
25 the denial as telling him he could not do the event, it just told

1 him he did not have the exemption from the regulation it cited.

2 Mr. Aikins testified that as the team lead, it felt to him to
3 let teammates know, and he regretted not telling his teammates,
4 including Mr. Farrington, and he should have let Mr. Farrington
5 know so that he could make his own determination as to whether or
6 not to proceed with the event.

7 Mr. Aikins testified he did not try to reach anyone at the
8 FAA after receiving the denial of the exemption. He testified he
9 decided he was not breaking the rules, he didn't need the
10 exemption anyway. Mr. Aikins also testified that there was an
11 extra safety measure that both aircraft were fitted with ballistic
12 parachutes as an added safety measure, which would ensure that no
13 one on the ground would be injured.

14 He testified he was contacted by Inspector Villa the morning
15 after the event. He testified that he had received the Pilot's
16 Bill or Rights information that she had sent but he had not read
17 it. He testified he was cooperative with Inspector Villa.

18 As to the Instagram he sent, Mr. Aikins testified that he
19 made that statement on Instagram he posted at Exhibit A-16. He
20 testified the reason he did so was because the buck stops with
21 him. He made the decision. Mr. Aikins testified that the post he
22 made on Instagram is 100 percent accurate and he testified it did
23 not say he was admitting to violating any regulation, but he was
24 working with regulatory authorities.

25 On direct examination by Ms. Yodice, Mr. Aikins testified as

1 to his relationship with Mr. Farrington. He testified that they
2 are cousins but actually they are more like brothers who have
3 known each other essentially their whole entire lives. Mr.
4 Farrington is his neighbor and friend. Mr. Aikins testified that
5 he and Mr. Farrington skydive every day, the fly airplanes. He
6 testified that he has included Mr. Farrington in every project
7 that he could that he was involved in.

8 As to Mr. Farrington's aviation experience and talent, Mr.
9 Aikins testified he trusts him implicitly and he counts on him to
10 make things happen. Their lives are in each other's hands
11 whenever they skydive or complete one of their projects. He
12 testified that both he and Mr. Farrington follow the rules and
13 regulations. He never questioned anything Farrington did in any
14 of his aviation projects.

15 Mr. Aikins testified to his knowledge, he was never told by
16 the FAA that he would not do the plane swap. When asked about the
17 sectional aeronautical chart, he testified that the chart
18 identified an area for parachute operations. It's a private
19 airport and it's outside of Class Bravo so you can do anything you
20 want essentially.

21 When asked how far the parachute activity area was from the
22 safety circle for the plane swap, he testified it was just under 5
23 miles. Mr. Aikins was pointed to the student training area he had
24 previously testified that he knew nothing about, and he estimated
25 that that training area was 15 miles north of the site of the

1 plane swap. He was asked if during his presentation for the plane
2 swap if he observed students flying activities in the area. He
3 testified he could not tell who was flying an aircraft, whether
4 they were a student pilot or not, but he testified he had not seen
5 much aircraft activity in the area.

6 When asked by counsel if he believed he was relying on and
7 operating under a different section of the regulations of 91.15,
8 he responded, yes, he was changing an aircraft into an object and
9 was dropping it, therefore, 91.15 was the appropriate regulation.
10 When asked if there were any NOTAMs on file for the event, he
11 responded yes, there were two, but one had expired at the time of
12 the plane swap, which he said was redundant anyway. When asked
13 what the language in the NOTAM specifically notified airmen, he
14 testified incorrectly as to what the NOTAM in place stated. When
15 asked the question again, he testified he did not know what the
16 NOTAM said.

17 When asked if he was familiar with 91.103, he responded that
18 is the see and avoid, and he was told that was not the regulation
19 that referred to see and avoid. He made another guess, he asked
20 careless and reckless? His counsel then told him it related to
21 preflight activity and asked if it did sound familiar to him and
22 he replied, and I quote, "yes, but I would have to look it up."

23 He testified Mr. Farrington was not involved in stage one
24 testing of aircraft 3185Q. When Mr. Aikins was asked when Mr.
25 Farrington became involved in the project, Mr. Aikins did not give

1 a clear answer. He testified that Farrington was a hired gun and
2 did all the rest of it. He then testified it may have been March,
3 but he came in when they were all ready to skydive. So it's very
4 unclear from Mr. Aikins' testimony as to when Mr. Farrington
5 became involved in the project. He said a lot of things, but he
6 did not answer the question that was asked.

7 When asked if there was ever a discussion with Mr. Farrington
8 as to how the plane swap could be conducted in accordance with the
9 regulations, he responded by stating there was no formal
10 conversations between the two of them. The remainder of his
11 testimony was non-responsive to questions. He then began
12 testifying as to matters that were not subject of the hearing.

13 Mr. Aikins testified that there were briefings with fellow
14 team members about the design of this project. He testified that
15 there would be briefings after every flight. He testified Mr.
16 Farrington and he would discuss safety measures after every
17 practice flight.

18 In response to leading questions, he testified he would not
19 have proceeded with the event if he felt that it was a safety
20 risk. He testified he did not believe at any time during the
21 plane swap on April 24th that anyone would be put into a position
22 of violating the regulations.

23 On cross-examination Mr. Aikins was shown a supplemental
24 petition for exemption submitted in April of 2022. He testified
25 he recognized it and agreed that it said on page 1, we just

1 received notice today, February 28th, from the Scottsdale FSDO
2 that the FAA legal has determined that the aircraft cannot switch
3 categories in flight and become an object when it enters vertical
4 dive. He indicated that he did recall the notice. He was
5 directed to A-7 and was reminded that he testified on direct that
6 he did not request, and no one requested, Inspector Gredlein make
7 an analysis on the issue of whether an aircraft could become an
8 object.

9 He was shown then A-5, which was admitted into evidence. Mr.
10 Aikins read the contents of the email into the record. As far as
11 the definition of what an aircraft versus what an object is, it
12 looks like FAR 1.1 indicates once our system is deployed, these
13 vehicles do not meet the definition of an aircraft or airplane.
14 Hopefully, this will help confirm our opinion that they become
15 objects when they freefall. If we can all decide these things are
16 objects, it gets a lot easier for everyone involved.

17 This section was written by Mr. Aikins as part of his A-5.
18 Mr. Aikins agreed that this email that he just read was an email
19 that he read was an email that he sent in response to an email
20 sent by Inspector Gredlein in which he, the Inspector, said I will
21 work on getting you a definition of an object versus aircraft and
22 let you know when I have something solid.

23 He was then asked if it was still his testimony that no one
24 requested Inspector Gredlein to perform an analysis of the issue
25 of whether an aircraft could become an object. He responded he

1 was 100 percent sure that he did not ask Inspector Gredlein to
2 perform any type of analysis.

3 When he was asked if he understood that the email at A-7 was
4 from Inspector Gredlein and from the FSDO and FAA legal, his
5 answer was non-responsive. When asked the question a second time,
6 he in fact stated in his petition that he understood that the
7 February 28 email he had received to be a determination from FAA
8 legal, he responded, no.

9 When it was pointed out that he specifically said that very
10 thing in the petition, he responded by stating, yes, I used the
11 word legal. I did not find his testimony to be responsive.
12 Clearly, he included specific language which was read into the
13 record about the determination that an airplane could not be
14 converted into an object.

15 He was then asked if he ever expressed concern about the
16 determination set forth in the email on February 28th at A-7. At
17 first, Respondent Aikins responded, yes. He stated he looked like
18 he did so in his February 3rd email. He then changed his
19 testimony to a no answer.

20 So when asked again, so you never expressed concern to
21 Inspector Gredlein about the determination he made in his February
22 28th email, Mr. Aikins provided a new answer. His response
23 essentially was he did not respond by email or telephone. When
24 asked if he ever informed Inspector Gredlein that he did not
25 believe the extension was necessary, he testified he had by

1 telephone. Then he went on to mischaracterize his earlier
2 testimony as to not being allowed to testify to certain telephone
3 calls. I'm not sure what he was referring to.

4 When asked if he did not think he needed an exemption, why
5 did he apply for one, he replied that he was told to by Inspector
6 Gredlein and he felt it was the easiest route to go. When asked
7 if he made the choice to apply for an exemption, he replied, yes,
8 he did, but then stated, once I was directed to do so, I submitted
9 the exemption.

10 When asked to explain why he did not need an exemption, he
11 testified because he had transformed the aircraft into something
12 else that could not be an aircraft anymore, therefore the aircraft
13 and the regulations applying to aircraft were no longer
14 applicable. He testified, it's a falling object, the rules for
15 pilot in command in aircraft no longer apply. When asked who made
16 that determination, that an aircraft transformed or converted into
17 an object, he testified, myself.

18 When asked if he was a lawyer, he replied, no. When asked if
19 he had a college degree, he agreed he did not. When asked if he
20 was an engineer, an aeronautical engineer, he responded that he
21 was an aeronautical engineer but he did not have an engineering
22 degree. When asked if he had any experience in performing
23 regulatory interpretation, he answered he did not.

24 I believe he was asked if he was an engineer, to which he
25 testified he was but he did not have a college degree which

1 indicated that he was an engineer. When asked how he made the
2 determination that an aircraft converted to an object and that the
3 regulations do not apply, he responded he did not need to go to
4 college to know if something was flying through the air or
5 falling. He testified his education had nothing to do with his
6 determination. He asserted it was his area of expertise and based
7 on his work for the last 32 years. He agreed that it was he who
8 made the determination that Federal Aviation Regulations did not
9 apply. He responded, yes, when he was asked if in fact, the
10 regulations in his view did not apply.

11 He was referred to page 6 of his petition for exemption and
12 he was asked to read the portion of what he had written in which
13 he had stated that delaying action on the petition would severely
14 affect us all. A lot of money, research and testing has gone into
15 this with a goal of an April 24th live TV show showcasing
16 aviation, STEM, and inspiring youth. I don't believe sponsors can
17 afford to push the date, and everyone will lose much more than
18 others. He testified Red Bull and Hulu are the sponsors for the
19 event. He agreed that there was a lot of external pressure to
20 conduct the plane swap event on the date scheduled.

21 When asked if he received payment for the event, he testified
22 he had not received payment, but he testified, I get paid, yes,
23 for the development of the program. Mr. Aikins agreed he had a
24 Commercial Pilot Certificate and he had to take a private pilot's
25 exam, which included testing of Part 91. He agreed that he was

1 tested and examined on Part 91. He agreed that as a commercial
2 pilot, he is obligated to understand Part 91.

3 He was directed to page 13 of his application for an
4 exemption and he was directed to the top of page 13 that indicated
5 that there are three manual switches in our system: speed brake,
6 one; autopilot heading lock/clutch and autopilot pitch lock; which
7 Mr. Aikins, when he was read that description, he agreed that
8 that's what the presentation indicated.

9 When asked if the autopilot was engaged when each aircraft
10 was in a downward dive, Mr. Aikins disputed that the switches were
11 autopilots. When told that the slide indicated that they were
12 autopilot switches, he responded, I know what the slide says, but
13 he refused to acknowledge that the switches were autopilot
14 switches, despite the fact that he authored the slide and the
15 wording on the slide indicated that they were autopilot,
16 antilock/clutch autopilot pitch lock. Maybe it was a bad choice
17 to use autopilot, however he still refused to acknowledge that the
18 switches included the word autopilot and was not in fact an
19 autopilot.

20 As to the Instagram post, Mr. Aikins admitted he made the
21 post. He agreed he received an FAA denial of his exemption before
22 the plane swap. He then asked why he went forward with the event
23 even though his exemption was denied. He testified he talked to
24 his wife about it, reviewed all the emails and decided he had as
25 much as a right to an opinion as Inspector Gredlein, who believed

1 that an aircraft could not be converted into an object. He
2 testified that Inspector Gredlein did not understand what he, Mr.
3 Aikins, was doing. He testified he was fundamentally changing,
4 physically changing an object. He testified all of the science
5 and the physics back him up and so he was not violating any
6 Federal Aviation Regulation and he made a decision to move ahead
7 with the project.

8 When asked if he was a scientist, he responded that yes, he
9 is a scientist. When asked again if he had a degree, any degree
10 in science, he responded he did not have a degree, and then
11 appeared to be somewhat irritated, and he had a discussion about
12 how you guys are hung up and stuck on this degree thing and
13 education. He then went on to say he to tout his 32 years of
14 experience of doing this stuff.

15 He agreed that he testified on direct that he intended to
16 comply with the regulations with or without the exemption. When
17 asked to explain his answer, he responded, and I quote, "I was
18 complying with the regulations with or without the exemption
19 because the exemption ends up being, as you guys said all day,
20 stuff is irrelevant to what I was doing." He went on to
21 essentially testify that since the exemption was denied he decided
22 to do it his way without the exemption.

23 Mr. Aikins was asked about the video of the event. He was
24 asked if there was a point at which he disconnected from ground
25 control and he testified that that was correct. He replied that's

1 that occurred when he unplugged the headset from the aircraft.
2 After stating counsel for the Administrator was confused when she
3 asked a question, he finally agreed that when he disconnected the
4 headset from the aircraft he could no longer communicate with
5 anyone on the ground, and neither could Mr. Farrington once he
6 disconnected his headset from the aircraft. He testified that
7 based on communication he could hear what was being said on the
8 frequency, but he and Mr. Farrington could not communicate with
9 anyone other than each other.

10 Mr. Aikins agreed and testified that he a specialist in
11 aerial activity When he was asked if he had applied for FAA
12 waivers in the past, he responded, yes, many times. When asked to
13 describe the circumstances, he responded the waiver was wrong.
14 That's not the right word. The right word that should be used is
15 letter of authorizations.

16 When asked so he was saying he had not applied for waivers,
17 he responded by saying, that's correct. He then went on to a very
18 authoritative explanation as to waivers and letters of
19 authorizations are the same thing, but he did not waive anything,
20 he testified.

21 His answers convinced me he did not understand the question
22 and I asked him if he understood the question. He said, I think
23 so. When I indicated I did not appear we're speaking in the same
24 realm, the Administrator's counsel asked him the same question the
25 third time, have you ever applied for a waiver with the FAA, to

1 which he responded, I have not applied for a waiver.

2 Mr. Aikins was asked about his testimony on direct that a
3 civilian cannot apply for a TFR. He responded by stating that he
4 was told by Inspector Gredlein and Tompkins that a TFR could not
5 be applied for this plane swap. When asked the question again, he
6 testified he stated TFR could not be obtained by civilians; if he
7 said that then he misspoke. He testified he had never applied for
8 a TFR in this event. When asked if the event had an aviation
9 event organizer to do that, he testified that would be him. When
10 asked if he was aware that an event organizer can apply for a TFR,
11 his answer was non-responsive. The last sentence of that response
12 was, they told me on this phone call you can't talk about that, it
13 wasn't. That was essentially a sentence.

14 When asked about if the NOTAM in place applied to parachute
15 activities, he testified that it did. He agreed nothing in the
16 NOTAM referred to aircraft or aircraft swap.

17 Mr. Aikins was asked about the Sawtooth Airport. He agreed
18 that he had testified it was a private airport and the pilot would
19 have to obtain permission from the owner to land there. He agreed
20 that the airspace above the airport was not private. When asked
21 if an airman needed permission to operate within the vicinity of
22 Sawtooth Airport or over Sawtooth Airport, he responded, no. When
23 asked if the airplane swap was conducted over private land, he
24 replied, no. He agreed that part of the air swap event did occur
25 over public land.

1 Mr. Aikins was asked if it was true that during the plane
2 swap operation you removed your safety belt and departed the crew
3 member station of that aircraft, he responded no. He then agreed
4 that he removed his safety belt while at the crew member station.
5 When asked if his departure from the crew member station was
6 necessary to perform duties in the aircraft, he replied, yes.
7 When asked what duties, he responded that the aircraft was
8 designed to switch into an object so he had to leave the plane in
9 order for that to occur. When asked if the duty he was performing
10 was to switch planes, he responded, no, it wasn't to switch
11 planes, it was so switch objects. When asked if his departure
12 from the crew member station was for physiological needs, he
13 replied it was not to go to the bathroom. It was not an airplane
14 anymore. Again, he testified it was an object and not an
15 airplane. He agreed that his answer to that question was no.

16 He was asked if he informed Mr. Farrington of the application
17 for the exemption and he replied he did not discuss it with Mr.
18 Farrington. Mr. Aikins agreed that at all times both aircraft
19 were registered as aircraft with the FAA. He agreed that at no
20 time did the designation of the aircraft change with the FAA.

21 He agreed that he was the sole occupant of N2694U aircraft.
22 When asked if when he exited the aircraft there was no controlling
23 it. He responded, it was not an aircraft, it's an object. When
24 asked if there was anyone inside to control it, he responded
25 again, there was no one in the object when it was empty. When

1 asked who made the determination it was an object, he responded,
2 physics made the determination it was an object. When he was
3 asked by counsel for the Administrator, are you referring to your
4 physics? And he stated, yes.

5 On redirect Mr. Aikins testified he did not see the exemption
6 in this case as a permission slip. He was asked questions about
7 his experience as an aeronautical engineer. He was asked if a
8 parachute NOTAM was more than sufficient to notify any aircraft,
9 including training aircraft, that there were objects falling from
10 the sky, and his answer was non-responsive. In response to
11 leading questions Mr. Aikins agreed that when he testified he
12 designed a system that was used to modify the aircraft, what he
13 actually meant was that he did design the system with assistance
14 of Mr. Iscold, a person with an engineering degree.

15 On recross, when asked if in fact that no NOTAM was
16 specifically indicated for the plane swap event, specifically for
17 that event, he testified there did not need to be a specific NOTAM
18 for the air swap event.

19 I asked Mr. Aikins a number of questions. He essentially
20 testified that the reason for his current situation was that
21 everyone in the FAA that he dealt with in this case did not
22 understand what he was doing. He testified his exemption was
23 denied because the FAA did not understand, but when the FAA denied
24 his petition based on 91.105(a), they did not understand that
25 91.105(a) did not apply because it was not an airplane anymore, it

1 was an object.

2 When asked if anyone at the FSDO approved the plane swap and
3 his concept of turning an airplane onto an object, he responded,
4 no one approves it at the FAA, they simply accept it. When asked
5 if he informed anyone at the FAA he was going to transform an
6 airplane into an object, he testified that Larrie Ricca informed
7 the FAA of that. When I indicated that Mr. Ricca had testified
8 that he was told that the airplane was going to be used for the
9 airplane swap, he did not testify that he told the FAA what the
10 plane was going to be used for. He didn't say that on direct
11 examination or cross-examination. When I informed him of that,
12 Mr. Aikins, who was present for Mr. Ricca's testimony, responded,
13 yes, I heard him tell you that that is what he said this morning,
14 essentially that he told the FAA that there would be a changing of
15 an airplane to an object.

16 He explained the process he used to transform the aircraft
17 into falling objects that would go straight into the ground until
18 it was transformed back into an airplane. I asked when the
19 aircraft when into a spin was it the same falling object? He
20 responded yes, it's the same object, it was just not a stable
21 falling object. I was somewhat confused by this because he had
22 previously measured that he had made wings incapable of flight so
23 it would not go into a spin, was my understanding.

24 Mr. Aikins had testified on direct that he did not know there
25 was an area marked on the aviation chart near Sawtooth which

1 indicated it was an area of intense flight training. On redirect
2 by Ms. Yodice, he was essentially told where the area was of
3 intense flight training. When he began to testify about the
4 training area in response to one of my questions, I indicated, I
5 thought you testified that you were not aware of the training area
6 and I asked him if I misunderstood his testimony, and he said yes,
7 you misunderstood me, I'm aware of that for certain. That was his
8 statement as to whether I had misunderstood him. The record will
9 establish I did not misunderstand Respondent Aikins' testimony at
10 that point. I asked him if I understood his testimony to be that
11 he was an engineer and a scientist, he responded that he was a
12 scientist and he was an engineer.

13 There was follow-up by Mr. Ross which essentially reiterated
14 the Respondent's testimony under direct and did not really address
15 any of the concerns I raised.

16 As to the follow-up by the Acting Administrator, Mr. Aikins
17 was asked about his comment to my question when he replied that
18 the train had left the station. He was asked if in fact when he
19 exited N3694U there was no way to avoid aircraft if they came his
20 way. Mr. Aikins' answer was evasive and non-responsive.

21 That completed the testimony of Mr. Aikins. Mr. Ricca was
22 the next to testify. There was direct examination by Mr. Leech.

23 Mr. Ricca testified he's employed as a FAA Designated
24 Airworthiness Representative. He testified he acts on behalf of
25 the FAA to issue Airworthiness Certificates and to perform

1 aircraft inspections. Mr. Ricca testified that Mr. Aikins reached
2 out to him in early 2021 and asked for help on a project that he
3 was working on. He did not know where Mr. Aikins got his number.
4 He testified Mr. Aikins told him he wanted to modify a standard
5 category aircraft and turn it into a falling object for a TV or
6 filmed event.

7 Mr. Ricca testified that they discussed an airbrake system
8 Aikins wanted to install on the plane, and Ricca indicated that
9 that would have to be done in experimental research and
10 development, which we refer to as R&D. If the aircraft was to be
11 involved in filming, then it would have to be involved in an
12 exhibition. He testified that he had worked on both aircraft at
13 one time. One had an R&D and the second aircraft did not. He
14 testified once an airbrake was developed, a second aircraft did
15 not require an R&D Certificate.

16 Ricca testified that the aircraft were for exhibition
17 purposes. When asked if he understood the exhibition purpose of
18 the aircraft, he testified that he did understand to a certain
19 extent. He testified that he discussed the viability of
20 developing an Experimental Airworthiness Certificate with two
21 proposed R&D Certificates and an Exhibition Certificate and Mr.
22 Ricca testified he understood that the two aircrafts would be
23 turned into falling objects. The airbrakes were developed to
24 maintain their descent and the skydivers were going to swap the
25 planes. Mr. Ricca testified that he issued an Airworthiness

1 Certificate.

2 Mr. Ricca testified he has guidance from the FAA. He has to
3 follow FAA orders and regulations. He testified there is a
4 special order for issuing Airworthiness Certificates. He
5 testified that it is required to make sure that the aircraft is in
6 a condition for safe operation and that it meets the proposed
7 intended meaning of the R&D and Exhibition Certificates.

8 On direct by Ms. Yodice, Mr. Ricca testified he had met with
9 Mr. Farrington at the aircraft inspection. He testified he did
10 not describe or discuss anything more with Mr. Farrington that he
11 had already discussed with Mr. Aikins. He testified that Mr.
12 Farrington did not add anything to aid in his understanding
13 relative to the project.

14 On cross-examination Mr. Ricca agreed that the aircraft
15 N3694U was registered as an aircraft by the FAA. He agreed that
16 aircraft N3185Q was registered as an aircraft with the FAA. Mr.
17 Ricca was asked if at any time he became aware that the
18 registration status of the aircraft had changed. He responded by
19 saying no.

20 He testified that he was familiar with the operating
21 limitations of the Special Airworthiness Certificates he issued.
22 He agreed that one of the operating limitations was that the
23 aircraft must comply with all applicable laws and regulations.
24 When asked if when operating an experimental aircraft, the
25 operator is still required to comply with Federal Aviation

1 Regulations, Mr. Ricca testified, yes.

2 There was no redirect or recross.

3 In response to my questions, he testified that he is a
4 designated airworthiness representative full time and he does
5 nothing else for employment. He testified as part of the issuance
6 of the Airworthiness Certificate he's tasked to ensure the
7 aircraft is safe to fly and meets the intended purpose. Again, in
8 hearing Mr. Ricca's testimony, I do not see where he testified
9 that he told the FAA that it was legal or that it met the
10 requirements that two aircraft would be turned into objects. He
11 was told by Mr. Aikins that that that's what they intended to do
12 in the circumstance.

13 The next witness was Mr. Aaron Fitzgerald. He testified he's
14 a helicopter pilot who focuses on film and television work. He
15 does helicopter support for movies and television shows. He also
16 works as an airshow demonstration pilot. He is an ATP helicopter
17 pilot and has flown for 28 years. Mr. Fitzgerald testified he has
18 been involved in unique aerial events, such as the plane swap, the
19 Red Bull races, and he previously worked with Mr. Aikins on other
20 projects, one of them which was called heaven sent.

21 Mr. Fitzgerald testified that he was one of the helicopters
22 as the aerial coordinator for the plane swap event. He testified
23 that he coordinated the activates of all six aircraft that were
24 there to ensure that everyone was safe and to ensure that they
25 were conducting a safe operation. Mr. Fitzgerald testified he

1 conducted a safety briefing every day, including the day of the
2 plane swap. He conducted two briefings a day: one, a general
3 safety briefing for the entire staff on the ground; and a safety
4 briefing for the pilots specifically, as well as the camera
5 operators and photographers.

6 He was asked if there was a portion of his role in dealing
7 with seeing and avoiding other aircraft. He testified there were
8 two individuals on the ground watching the area visually and on
9 ADSB. In the air there were six pilots looking out and four of
10 the aircraft had more than one person looking out for traffic.
11 Everyone on location could call "knock it off", which meant that
12 the airplane swap would stop. Mr. Fitzgerald testified that all
13 participants used a sterile and specific VHF frequency to
14 communicate. Mr. Fitzgerald testified that there was no
15 communication with air traffic control specific to the area.

16 He testified he was fairly familiar with the area. It had
17 permanent aerobatic waiver because it's an unpopulated area. He
18 testified that was so because there was nothing on the ground and
19 no people in the area. Mr. Fitzgerald testified the area was
20 perfect to perform the activities such as the plane swap because
21 it is unpopulated. It is just south of the aircraft training
22 area. He ask asked about his observations about air traffic in
23 the area in the past and he responded by saying that aircraft
24 activity in the area varied from day to day prior to the event.

25 Mr. Fitzgerald testified that there was a permanent NOTAM

1 warning that there was skydiving in the area. He testified that
2 there was an additional NOTAM but it had been filed incorrectly
3 and was not in effect at the time of the plane swap. Mr.
4 Fitzgerald testified that he had been involved in the plane swap
5 project before the day of the event.

6 He was shown A-4, which he identified as an email that he had
7 sent. He testified that he and Mr. Aikins met with the Flight
8 Standard District Office to present the entire plan to them so
9 that they could understand what they had in mind. He testified
10 they informed the personnel at the FSDO that they have explained
11 their belief that an aircraft could become an object once they
12 were rendered unflyable. He testified that he and Mr. Aikins
13 wanted to know if the FSDO personnel agreed with their viewpoint.

14 Mr. Fitzgerald was shown A-8. He testified it was an email
15 he sent to the FSDO to Inspector Gredlein informing him that they
16 were continuing to test and rehearse for the plane swap project
17 event. He testified he did this to keep the FSDO informed that
18 they were proceeding and that they would expect to see a filed
19 plan activity within 15 days. They referred to the FSDO.

20 Mr. Fitzgerald was asked about the sentence that despite the
21 fact that some questions remained unresolved, the production and
22 the media team for the event have deadlines to meet. He said,
23 yes. When asked what questions remained, Mr. Fitzgerald testified
24 that they had filed a petition for an exemption and have not heard
25 back. He said that the purpose of that part of the email was to

1 inform the FSDO that they were proceeding with the project while
2 they waited for the response.

3 As to the petition for the exemption, Mr. Fitzgerald he
4 understood that Inspector Gredlein had disagreed that airplanes
5 could be converted into objects once they were rendered unflyable.
6 Gredlein sent them an email indicating that Red Bull would have to
7 obtain an exemption. Mr. Fitzgerald testified he did not
8 participate in obtaining the exemption and he did not know if it
9 was granted or denied.

10 He was then shown Exhibit A-9 and identified it as an email
11 exchange between he and Inspector Gredlein. The purpose of the
12 email, he indicated, was to inform Inspector Gredlein that they
13 were continuing to prepare for the event and needed a plan of
14 activity to be processed, and they were continuing with that
15 process. Mr. Fitzgerald testified the plan of activity was to
16 invoke the waiver from his motion picture manual.

17 Mr. Fitzgerald testified that his email indicated that he
18 informed Inspector Gredlein that he had mentioned on the phone
19 that there were contingencies in place for methods of executing
20 the stunt if they were unable to obtain relief from 91.105(a)(1).
21 That is to say if the exemption was not granted, he testified that
22 one of the contingencies was to make an internal determination
23 whether or not they did not require relief from 91.105.

24 He further testified that at that point they believed they
25 could stop the plane swap from going forward if they received a

1 denial of their exemption, so that was another option.

2 Questions were then asked of Mr. Fitzgerald relative to a
3 movie manual plan of action, which he indicated that he had to
4 produce this movie manual to the FSDO in order for him to film the
5 plan swap. There was an objection to the question over relevance
6 of Exhibit R-30, which is the movie manual. The movie manual was
7 not admitted into evidence, as it was not relevant to the case
8 before me.

9 There was no direct from Ms. Yodice.

10 Mr. Fitzgerald stayed on cross-examination. Mr. Fitzgerald
11 stated that he knew Mr. Aikins had filed a request for an
12 exemption. He testified the fact that the pending application for
13 the exemption was not mentioned in any safety briefings. Mr.
14 Fitzgerald testified that in all practice sessions of the aircraft
15 exchange there was a safety pilot onboard, and it was only on the
16 day of the event that there would be a single pilot in each
17 aircraft.

18 He testified that while individuals involved in the event
19 communicated on specific VHF frequencies, they did not monitor the
20 frequencies for the training area. He testified it was too far
21 away, it was 10 miles away.

22 When asked if there were any restrictions preventing flight
23 training in the area of the event to which he responded there were
24 two NOTAMS place, which does not address whether there was any
25 restrictions. One of the permanent NOTAMS relative was for

1 parachute activity and the other NOTAM had expired before the
2 plane swap. I understood him to testify that he had made an error
3 in setting the time for the period the NOTAM would apply to the
4 plane swap. He agreed that the permanent NOTAM only referred to
5 parachute activity and not the airplane swap.

6 Mr. Aikins has testified that no one associated with the
7 event asked Inspector Gredlein to conduct an analysis or asked him
8 if an aircraft could become an object. Mr. Fitzgerald was
9 informed Mr. Aikins had testified that no one associated with the
10 event asked Inspector Gredlein to conduct an analysis, nor did
11 they ask him for his opinion as to whether an aircraft could
12 become an object. Mr. Fitzgerald indicated in his email that in
13 fact, Inspector Gredlein had been asked and had indicated he would
14 provide an answer as to whether or not an aircraft could become an
15 object. After is research, Mr. Fitzgerald responded, yes.

16 Mr. Fitzgerald was shown Exhibit A-7 that included Inspector
17 Gredlein regarding the definition of an object versus an aircraft.
18 He agreed that he did not object nor disagree with the decision or
19 determination. He testified that neither nor he nor Mr. Aikins
20 objected to what they were told by Inspector Gredlein.

21 Mr. Fitzgerald testified that he could not 100 percent say
22 that he did not tell Inspector Gredlein that he did not believe
23 obtaining exemption was necessary. Mr. Fitzgerald testified that
24 he, as the aerial coordinator, intended to go ahead with his
25 portion of the airplane swap, even if the FAA denied the petition

1 for exemption.

2 He was shown Exhibit A-9, in which he informed Inspector
3 Gredlein that quote, we will need to proceed with the planning of
4 the show regardless of the outcome of the petition. As I
5 mentioned on the phone, we have contingencies in place for the
6 method of executing the stunt if we are unable to get relief from
7 91.105(a)(1). When he was asked by counsel for the Administrator
8 what contingencies were in place, Mr. Fitzgerald testified that
9 there were no specific contingencies written down, but they
10 planned to either proceed because they did not need an exemption.
11 They would perhaps call off the plane swap or they would execute
12 it another way.

13 On further examination he admitted that he did not remember
14 any of the conditions he was referring to. He did not remember
15 any of the contingencies he referred to in his email.

16 He testified a TFR was not in place the date of the event.
17 He did not inquire about the application for the petition because
18 it did not affect the filming operation of the plane swap. He did
19 not mention the pending application in any safety briefings, which
20 both Respondents attended. He testified he received payments for
21 his services from Red Bull North America.

22 There was no redirect.

23 I did not find Mr. Fitzgerald to be a credible witness. He
24 was involved in the exemption application process but he
25 downplayed that involvement on direct. Only on cross did he

1 discuss the emails and his involvement in the application process.
2 He contradicted the testimony of Mr. Aikins that in fact they did
3 ask Inspector Gredlein for an opinion or analysis as to whether or
4 not an aircraft could become an object.

5 At this point, I would like to take a 10-minute break. It is
6 4:00, we will come back at 4:10 Eastern Time, and we will go back
7 on the record at that time. Thank you.

8 (Off the record at 4:00 p.m.)

9 (On the record at 4:12 p.m.)

10 JM: All right. We are back on the record. I completed
11 discussing the testimony of Mr. Fitzgerald. I did want to go
12 back. I did not make specific findings as to the credibility of
13 Mr. Ricca.

14 I was surprised at the short testimony provided by Mr. Ricca.
15 He was generally credible. The information he provided was very
16 limited. He did not really help clarify any of the arguments that
17 were made by the Respondent. He provided information that was
18 essentially neutral, so therefore I find him generally credible,
19 but again, I don't believe he's really provided any information
20 that was of real significance to this case.

21 I will now address the testimony of Mr. Paulo Iscold. There
22 was direct examination by Mr. Leech. He testified he is
23 originally from Brazil. He testified that English is not his
24 first language. I had offered to provide, if necessary, an
25 interpreter or translator if he thought that would make his

1 testimony easier, he declined.

2 He testified he is an aerospace engineer professor at
3 California Polytechnic University in San Luis Obispo. He
4 testified he was educated in Brazil and earned a degree in
5 mechanical engineering with an emphasis on aeronautical
6 engineering. He earned a master's degree in mechanical
7 engineering as well. Mr. Iscold testified that he teaches
8 airplane design, flight tests, aircraft performance, and
9 introduction to aerospace engineering.

10 He testified he has designed four aircraft in the past and he
11 has done so with his students at the university. He testified
12 that the first aircraft he built in Brazil broke four world speed
13 records. Mr. Iscold testified that he also built a glider that
14 set six national records for gliding.

15 Mr. Iscold testified he is familiar with the FAA
16 certification process, as he had to apply for a certification for
17 his experimental aircraft that he created or designed and
18 developed. He testified he also participated in many other
19 projects that are related to experimental aircraft, either
20 relative to research as far as experimental aircraft, or the
21 development or exhibition of those experimental aircraft.

22 Mr. Iscold testified he worked for NASA in developing a wing
23 structure for the NASA X57 program. He testified he worked with
24 Red Bull for the Red Bull race for the South African team and he
25 also did so with the British team. Mr. Iscold testified that his

1 association with Red Bull is that of being a consultant. He does
2 not have a job specifically with Red Bull.

3 Mr. Iscold testified that he has experience with experimental
4 aircraft. He has experience in building and modifying
5 experimental aircraft as well. He testified that he was involved
6 in the Red Bull plane swap. His role was to work together with
7 Mr. Aikins and another engineer that worked with him to design the
8 modifications and implement those modifications onto aircraft.
9 When asked if Mr. Aikins had a role in the design, he testified
10 that it was a small team and everyone had a voice and Mr. Aikins'
11 voice was a very important voice.

12 Mr. Iscold was offered as an expert in the field of
13 aeronautical engineering. The Administrator objected, arguing
14 that Mr. Iscold was not properly disclosed as an expert under Rule
15 26. The Administrator argued that they had not been provided with
16 a summary of his opinion or a report of his opinion or testimony,
17 or specifically identified what he was going to specifically
18 testify about at hearing.

19 Respondent maintained that Mr. Iscold is a non-retained
20 expert and not required to file a report under the Federal Rules
21 of Procedure 26(a)(2). Rule 26(a)(2) clearly states that an
22 expert must file a report expect as stipulated or ordered by the
23 Court. Clearly, the Administrator did not stipulate to allow Mr.
24 Iscold to testify as an expert without submitting an expert
25 report.

1 Furthermore, I did not issue an order of holding that Mr.
2 Iscold did not have to file an expert report. In fact, I had
3 asked if the Respondent intended to file an expert report for Mr.
4 Iscold in a conference call before the hearing. I indicated that
5 Mr. Iscold would not be able to testify as an expert unless he
6 filed an expert report and a curriculum vitae. Respondent's
7 counsel, Mr. Leech, argued that a report was not required. I
8 indicated that if that was the argument that he intended to rely
9 upon, then that argument would have to be made on the record at
10 the hearing. I ruled the Respondent was required to file a
11 curriculum vitae and an expert report in compliance with my
12 prehearing order and also the Federal Rules of Civil Procedure
13 Rule 26(a)(2).

14 Thus, the argument that he was not required to file an expert
15 report under 26(a)(2) does not absolve him in this instance, in
16 this case, of the requirement of providing an expert report and a
17 curriculum vitae. Again, there was no stipulation by the parties
18 that he did not have to file a report and there was no order by
19 me, the Court, that he could testify without providing a report
20 and a curriculum vitae.

21 Respondent's counsel then maintained that the one paragraph
22 statement in his prehearing submission as to what Mr. Iscold was
23 going to generally testify about was in fact compliance with my
24 prehearing order, which required disclosure of expert witnesses, a
25 CV and an expert report. Ms. Yodice for Mr. Farrington also

1 concurred in that argument that that argument should have been
2 enough to let the Administrator know that he was going to testify
3 as an expert, field of expertise, and what his testimony was going
4 to be about. I found the argument by Respondents' counsels to be
5 unpersuasive and supported by the Federal Rules of Civil Procedure
6 or the facts.

7 I reviewed that one sentence paragraph and it does not really
8 inform me as the gatekeeper and has to make a determination as to
9 whether or not an expert can be qualified as an expert to testify
10 in the hearings before me, did not inform me of what type of an
11 expert he was going to be and what he was going to testify about.

12 I ruled Mr. Iscold could not be qualified as an expert in
13 this case, however, I testified that he could testify as a fact
14 witness. The discussion and arguments relative to the
15 Respondent's attempt to qualify Mr. Iscold are at transcript pages
16 722 to 730.

17 Mr. Iscold then testified as a fact witness. He testified
18 that the team designed two modifications on the aircraft. The
19 first was a speed brake and the second was a holding device. He
20 testified as to the speed brake as intending to point the aircraft
21 straight down and at a speed that was compatible with a skydiver
22 in freefall to allow the skydiver to get close to the airplane.
23 He testified he did not observe the actual functioning of the
24 speed brake, but he observed it on the videos and collected data
25 for the test flights.

1 He testified that the speed brake essentially worked as it
2 was designed to perform. Mr. Iscold testified that once the speed
3 brake was deployed, the ability for a pilot to control the
4 airplane would be marginal. Mr. Iscold testified that once the
5 speed brake was deployed, the aircraft would be in a straight
6 downward trajectory.

7 Mr. Iscold was then asked about his experience in working
8 with designated airworthiness representatives. He was asked if he
9 had personal experience on whose behalf the designated
10 airworthiness representatives were working or acted upon, and Mr.
11 Iscold replied, on behalf of the FAA.

12 Ms. Yodice then asked questions on direct of Mr. Iscold. Ms.
13 Yodice asked how Mr. Farrington was involved in the testing
14 process of the aircraft in this case. Mr. Iscold testified that
15 Mr. Farrington had a voice in the testing process and was involved
16 in the testing of the aircraft, on how the aircraft was behaving
17 on the vertical falling. Mr. Farrington was also involved in
18 testing the aircraft characteristics that allowed him to approach
19 the airplane during the freefall.

20 On cross-examination Mr. Iscold testified that he had
21 referenced to an attitude hold device. When asked if that holding
22 device is an autopilot, he responded, yes, it could be called an
23 autopilot. When asked if the autopilot controlled the aircraft
24 when they were travelling in a downward trajectory, Mr. Iscold
25 answered to that question by asking a question. He asked for a

1 definition of control. He testified essentially that the attitude
2 hold essentially did not control anything.

3 I asked questions of Mr. Iscold and I found his answers to my
4 questions to be non-responsive. It was difficult to ask him
5 questions as his answers only further clouded and confused his
6 testimony. I found his testimony, that the plane swap which was
7 broadcasted live on Hulu, was part of a test flight to be
8 unconvincing.

9 In following up to my questions, Ms. Yodice elicited
10 testimony that the fact that the flight test was before the plane
11 swap included test pilots or safety pilots and the actual plane
12 swap event did not use a safety pilot rendered the televised Hulu
13 event a test program. He answered in the affirmative. Again, I
14 did not find that convincing.

15 I did not find Mr. Iscold's testimony to be persuasive. His
16 answers to the Acting Administrator's questions were evasive and
17 non-responsive. He agreed that the attitude control was in
18 autopilot but then testified the autopilot did not control
19 anything. The term attitude control, or lock, is self-defining.
20 If it controls that attitude of the aircraft or locks the attitude
21 of the aircraft, that is what it is performing.

22 I give Mr. Iscold's testimony minimum weight. His testimony
23 established that both Mr. Aikins and Mr. Farrington were involved
24 in the testing of the aircraft.

25 Next to testify was Mr. Andrew Farrington, the Respondent in

1 this case. Mr. Farrington testified that he is a third generation
2 skydiver. He began flight training at 13 years of age. He made
3 his first skydive jump at the age of 16 and began flying by
4 himself at that time. He has 5,000 hours of flight time and has
5 made over 27,000 parachute jumps. He testified he holds a
6 Commercial Pilot Certificate. Mr. Farrington testified that he is
7 the owner and operator of a family owned business. He teaches
8 skydiving.

9 He also works on featured films. He is a screen actor guild
10 stuntman. He travels around the country doing different types of
11 shows for Red Bull. He has received four tourist stunt awards,
12 which are the awards that are bestowed upon those stuntmen who do
13 the best stunts during the year.

14 Mr. Farrington testified that he has never been accused with
15 failure to comply with the regulations. He was shown Exhibit R-
16 39, which is the petition for exemption which lists Mr.
17 Farrington's qualifications. He indicated that he had more
18 skydives since that document was submitted and therefore the
19 numbers were higher, but it was pretty close to being accurate.

20 He testified that he has had many dealings with the FAA in
21 the past relative to his skydiving operation. He testified that
22 in that regard, he has a great working relationship with the FAA.

23 Mr. Farrington testified that Mr. Aikins is his cousin but he
24 views him more as his brother. They worked together, play
25 together, their families go on vacation together.

1 As far as their business relationship, he testified that when
2 Mr. Aikins secures coordinating roles on jobs, he, Mr. Farrington,
3 usually ends up getting the part of being the stuntman on the job,
4 or the job filming with a camera on his head during a parachute
5 jump. He has discussed FAA regulations on the jobs together. On
6 their jobs he has worked together and he had flown with Mr. Aikins
7 in the past.

8 Mr. Farrington testified that he became involved in the
9 project when Mr. Aikins asked him to be involved as the pilot in
10 the second airplane for the plane swap. He became essentially
11 involved in the project in October of 2021. At that time, he had
12 gone to the San Luis Obispo to begin practicing skydiving with the
13 aircraft. He testified it was phase two of the project.

14 Mr. Farrington described Mr. Aikins' role as the head pilot,
15 chief pilot, project lead and boss. He testified Mr. Iscold was
16 also involved in the project at that time. He testified that Mr.
17 Iscold developed the experimental aircraft. He flew one of the
18 aircraft a total number of approximately 60 hours. He described
19 how the plane swap was practiced and performed.

20 Mr. Farrington testified that working with Mr. Iscold was
21 great. He testified he provided feedback to Mr. Iscold when Mr.
22 Farrington thought it should be provided. He testified that Aaron
23 Fitzgerald and Mr. Stan Grey were involved in the project on the
24 day of the event and before the day of the event.

25 Mr. Farrington testified that Mr. Fitzgerald was one of the

1 aerial coordinators who was involved in some of the airspace
2 requirements. He testified that the training progressed to the
3 point that they could switch from one object to another and then
4 turn the aircraft back into a standard Cessna 182. Mr. Farrington
5 testified that he believed once the aircraft was a freefalling
6 object, he did not believe that it was flying.

7 He testified leading up to the day of the plane swap, they
8 just practiced the swap with safety pilots onboard. They were
9 just making sure that everything went as planned, he testified.

10 He testified he was familiar with the Sawtooth Airport area.
11 He had skydived there before and had been involved in competitions
12 in the area. When asked if in his view, a lot of parachuting was
13 going on in the area, he testified, yes, there's a lot of military
14 training as well as civilian training.

15 He was shown the section of chart at R-29, page 18. He
16 testified that one of the parachuting areas was right next to
17 Sawtooth Airport. Another was northeast of Sawtooth Airport at
18 the Ely Municipal Airport. And then he pointed out another area
19 where parachute activity could be engaged in in an area called
20 Coolidge.

21 Mr. Farrington was pointed to the section of the charts that
22 indicated intensive student training. He testified the training
23 area was 18 miles north of the Sawtooth Airport.

24 When asked if in the weeks leading up to the plane swap he
25 had seen student training in the vicinity where they were

1 practicing the plane swap, he reported that there was very little
2 amount of aircraft flying or training in the area.

3 He testified on the day of the plane swap there were two
4 safety briefings; one on the ground for the ground crew and the
5 other specifically for the pilots and the photographers and those
6 individuals who would be doing the filming. He testified that he
7 attended both of these briefings. They conducted one final
8 practice that day, the day of the event, at 1 p.m.

9 Mr. Farrington testified that once he and Mr. Aikins were I
10 the airplane, he could communicate with Mr. Aikins and they could
11 communicate on the aviation frequency. He could communicate with
12 Mr. Aikins, with Mr. Stan Grey on the ground, and be believed that
13 they could communicate with all of the other aircraft that were in
14 the area. He agreed that Mr. Fitzgerald, who was in one of the
15 helicopters.

16 Mr. Aikins testified that the point of communication was to
17 inform each other that if they did not like something and they
18 felt that it was a danger, they could make sure that they could
19 inform one another. They wanted to make sure, as he testified,
20 that there was a sterile environment.

21 Mr. Farrington testified that there was a procedure in which
22 3 minutes before the swap, Mr. Fitzgerald would receive work from
23 Mr. Grey on the ground stating that he was monitoring the ADSB and
24 using his eyes to search for traffic. He testified Fitzgerald was
25 also communicating with others in the air as to any approaching

1 traffic. And then once there was coordination between all of
2 these individuals, then Mr. Fitzgerald would call green, green,
3 green, which meant that they had a go to proceed with the plane
4 swap.

5 Mr. Farrington testified that he was also scanning and
6 looking out for traffic. He testified that the pilots in the air
7 around the event were also scanning and paying attention.

8 Mr. Farrington then testified about the actual swap. He
9 testified that he took off and when he was flying at 12,000 feet
10 they received the green, green, green order. They lowered the
11 speed brakes and he turned on the heading lock, turned off the
12 power mixture, engaged the attitude lock, and then departed the
13 aircraft. He testified he went to skydive to the other aircraft
14 but it had flipped over and had begun to spin. He then had no
15 choice but to open his parachute.

16 Mr. Farrington testified he viewed the view of the event
17 played in Court and he testified it depicted what had actually
18 occurred. He testified the objects he was trying to get into, or
19 climb into, went down. The ballistic parachute opened and then it
20 landed. He testified it landed in an area that they had planned
21 it should land if something went wrong. He testified that he felt
22 happy no one was hurt, but he was bummed by the fact that the
23 entire swap did not go as planned.

24 He was asked throughout the process if he wondered if the
25 plane swap was something safe to do. He testified that he did

1 wonder, maybe. He was asked if he was worried about the safety of
2 the event. He did not respond. He only testified that that they
3 had conducted the event safely.

4 He was asked about the rules that applied to him as a pilot
5 and he responded that the rules are Part 91. As to when he is
6 parachuting, he testified that the rules that applied to him are
7 under Part 105.

8 Mr. Farrington was asked if he believed the plane swap could
9 have been conducted under Part 105. He was non-responsive, he
10 just testified that they had taken every precaution for the
11 airplane swap to make sure that no one got hurt or that anyone's
12 property was damaged.

13 He was asked why he did not think he violated 91.105 in
14 leaving the crew station. Mr. Farrington testified basically, I
15 don't think, you know, that affected the Federal Aviation
16 Regulations due to the fact that we converted the aircraft into an
17 object and then we left the object and not an aircraft.

18 Mr. Farrington was asked why he felt he did not violate
19 91.113, which is the see and avoid regulation. He responded,
20 well, due to the fact that the whole entire time climbing up the
21 altitude and getting set up before the event and everything, we
22 had more than enough parts in place, enough individuals in place
23 scanning -- one moment, please.

24 Excuse me. I'm going to restate that paragraph. I apologize
25 for the interference. I'm having some interference on my phone,

1 which does not appear to be related to the Zoom. I apologize.
2 I'm going to restate that statement.

3 Mr. Farrington was asked why he thought he did not violate
4 91.113, which is the see and avoid regulation. He responded, I
5 quote, "due to the fact that the whole entire time, climbing up to
6 altitude and getting set up before the event and everything, we
7 had more than enough parts in place, scanning ourselves flying,
8 had people on ground support and everything, communication with us
9 for the 50, 60 seconds of time. Obviously it was an object. So
10 when we took more than enough precautions to make sure that the
11 area below that we were dropping this object was safe and making
12 it so it could, if anything went wrong or in this situation where
13 it didn't go correctly, then nobody else could, you know, get hurt
14 or damage anybody's personal property or whatnot where obviously,
15 the object landed pretty close to exactly where we wanted it to."
16 That was his end quote.

17 He testified that the next day after the event, he went back
18 to Sawtooth Airport for a while and headed back to Seattle. He
19 received an email from the FAA with the Pilot's Bill of Rights
20 that day. The email was from Inspector Villa. Mr. Farrington
21 testified he responded to the email by sending back the receipt
22 indicating that he received it. He testified he was not 100
23 percent sure he received a phone message from Inspector Villa but
24 if he had, he would have replied. Mr. Farrington testified he did
25 not communicate with anyone from the FAA until he received an

1 email regarding Mr. Aikins' Instagram post.

2 He testified that there was also requests for records from
3 him, which he complied with. Mr. Farrington testified that his
4 counsel, Ms. Yodice, provided the records that were requested by
5 the FAA and she responded to the letter of investigation. He
6 testified that he did not personally respond to the letter of
7 investigation because he received the emergency revocation before
8 he had a chance to respond to the letter of investigation.

9 There was direct examination by Mr. Ross.

10 Mr. Farrington agreed on cross-examination that Exhibit 39
11 page 6 indicated that he had over a decade of experience as a
12 pilot. He agreed he is a Commercial Pilot Certificate holder. He
13 agreed that he passed the written and oral exams for his private
14 pilot's license. Mr. Farrington agreed that as part of the
15 examination he was tested on 14 CFR Part 91. He agreed that he
16 passed the Commercial Pilot Certificate examination and he agreed
17 that he was again tested relative to the requirements of 14 CFR
18 91. He was asked if he had an understanding of the Part 91
19 regulations and he responded he had a general understanding of it.

20 Mr. Farrington testified he considered himself an experienced
21 pilot. Mr. Farrington testified that he was familiar with the
22 requirements of 14 CRF 91.105, which pertained to pilots being at
23 the flight crew member station.

24 He testified he's familiar with the requirements of 14 CFR
25 91.113(b), which states each person operating an aircraft should

1 maintain vigilance so as to see and avoid other aircraft. Mr.
2 Farrington testified he was familiar with the requirements of
3 91.13(a), which states no person may operate an aircraft in a
4 careless or reckless manner.

5 Mr. Farrington was asked how he determined that the aircraft
6 converted to an object in this case as he described. He responded
7 that in communications with Mr. Paulo Iscold and in the
8 discussions with him about the science and the aerodynamics behind
9 it and talking to him and since he is an engineer and a scientist
10 that that's how he came to his determination.

11 When asked on cross if Mr. Aikins influenced his decision, he
12 testified, not as much as Paulo Iscold. He testified Mr. Iscold
13 had a Private Pilot's License and on cross-examination he agreed
14 that in fact, he was more experienced than Pablo Iscold relative
15 to flight.

16 When asked if based on his familiarity with regulations he
17 had been charged as violating, did he have some concerns that the
18 plane swap operation would violate the Federal Aviation
19 Regulations, he responded he did not because he believed they had
20 met all of the requirements to operate the plane swap operation in
21 a safe and legal manner. He testified that during the 50 to 60
22 seconds of the plane swap, the aircraft was an object.

23 Mr. Farrington was asked if the aircraft was transformed into
24 an object would Part 91 apply. He responded that yes, Part 91
25 would apply. He was asked if he knew if Mr. Iscold had a

1 background in regulatory interpretation. He responded he did not
2 know. When asked if Mr. Iscold received confirmation from the FAA
3 that an aircraft could be converted to an object, he responded,
4 I'm not sure.

5 Mr. Farrington confirmed that he began working on the project
6 in October of 2021. He was then asked if he was aware of an email
7 from Inspector Gredlein to Mr. Aikins and Mr. Fitzgerald. He
8 testified that he was not aware of that email. When asked if he
9 reviewed 14 CFR Part 1 which defines an aircraft, prior to making
10 his determination that an aircraft in this case could be converted
11 to an object. Mr. Farrington responded by stating what he
12 believed an airplane actually was and how it was changed so that
13 it could be turned into an object. When asked, what about
14 aircraft? He responded, I'm not sure, and then admitted he did
15 not review the definition of aircraft prior to making his
16 determination.

17 He testified he was not paid or compensated in any way for
18 his participation in the plane swap by Red Bull, Honda, or by Mr.
19 Aikins. He testified that he had no contractual obligation to
20 fill regarding the airplane swap. He testified his participation
21 in the event was free of charge. When asked again if he was paid
22 for his participation, he indicated he had not been paid at that
23 point. He then testified that he participated in the plane event
24 for fun and profit.

25 When asked about safety precautions for the event, Mr.

1 Farrington testified there were two different NOTAMs that were up.
2 The rest of his answer was speculation and he did not make, in my
3 view, sense. He testified, and I quote, "parachute symbol on the
4 chart would obviously notify, you know, I would say any pilot out
5 there and see the parachute on the chart is not going to be flying
6 through that space or whatnot." That was essentially his answer.

7 He agreed that one of those NOTAMs was not in effect at the
8 time of the plane swap. He responded, yes, and appeared to blame
9 the agency that issued the NOTAM because they calculated the wrong
10 time. He agreed that there was only one NOTAM in place for the
11 event and there was nothing in the NOTAM that mentioned aircraft
12 or aircraft swaps.

13 When asked if there was a TFR in place for the event, he
14 testified that as far as he knew, a TFR would not apply to the
15 plane swap situation. When asked, so there was no TFR? He
16 responded, no. When asked if he removed his safety belt and
17 departed the crew member station of N3185Q, he responded, and I
18 quote, "with the Special Airworthiness Certificates and whatnot
19 and those aircrafts designed for the specific event, it was
20 designed to leave the object, so at that point it was one of the
21 duties of the aircraft."

22 Mr. Farrington maintained he did not leave an aircraft again,
23 but exited an object. He did not leave the crew member station
24 because it was no longer a crew member station, it was an object.
25 It essentially ceased to exist as a crew member station.

1 He did agree in his response that there was no need that
2 required him to leave the object. He testified that he was the
3 sole occupant.

4 Before he left the object, he testified the object remained
5 unoccupied. When he exited the object -- let me state that he
6 also testified that there was no physiological need to exit the
7 object, as he referred to, the aircraft.

8 He agreed that he was skydiving when he exited N3185Q. When
9 asked while he was skydiving if he was able to see and avoid other
10 aircraft, he responded he did not need to with all of the other
11 precautions they had taken in the ground and in the airspace.
12 When asked if in fact he could communicate with anyone on the
13 ground after he disconnected his headphones from the crew member
14 station, he testified, if someone called knock it off, he could
15 just plug the headphone jack back into the aircraft and talk as
16 much as he needed.

17 After providing evasive and non-responsive answers to a
18 number of questions, he testified he would not be able to
19 communicate a knock off after he had left the aircraft and had
20 disconnected his headphones. When that question was asked of him,
21 he responded by saying that was correct.

22 He testified he was not aware of the petition for exemption
23 in this case. As a commercial pilot he had never inquired about
24 an exemption, because again, aircraft in this case were not
25 aircraft anymore, they were objects and regulations did not apply.

1 He was asked if the training area frequency was monitored
2 during the airplane swap and he responded that he did not believe
3 so, but that was 18 miles away. When asked if there was anything
4 that prohibited an airman from performing training from entering
5 the airspace where the airplane swap was conducted, Mr.
6 Farrington's answer was unresponsive and evasive.

7 On redirect by Ms. Yodice, Mr. Farrington was asked if he
8 believed 91.105, 91.113, and 91.13 applied to this event. He
9 responded that they did not. He testified that he applied for a
10 NOTAM in the past and an application for a NOTAM can take place an
11 hour before the time it was to take effect.

12 He was asked of the things that were discussed in the safety
13 briefings related to Part 91. He responded, I'd probably say all
14 of them were related, just in all the safety manner and safety
15 precautions and safety steps that were taken to conduct the
16 flight." That's a quote. When asked again if the words Part 91
17 were ever used in the safety briefing, he responded, no, I'm not
18 sure.

19 On redirect by Mr. Ross the redirect consisted of leading
20 questions designed to essentially suggest every answer. When Mr.
21 Farrington was allowed to answer a question with more than one
22 word, the answer confused Mr. Ross. I found this questioning and
23 one word answers provided by Mr. Farrington to be unhelpful and
24 not persuasive. If they were intending to rehabilitate this
25 witness, they did not accomplish their task. The fact that a

1 witness essentially had to be spoon fed the answers being sought
2 in no way rehabilitated the witness. Rather, it detracts from his
3 credibility.

4 On recross, Mr. Farrington was asked if the autopilot was
5 controlling the aircraft as it was headed downward. Mr.
6 Farrington insisted that switches titled autopilot heading
7 lock/clutch and the autopilot pitch lock were not in autopilot.
8 However, he later testified that he did not know the exact
9 definition of an autopilot.

10 He agreed that Mr. Iscold, who had designed the system,
11 testified that it was in autopilot when he testified. He agreed
12 that Mr. Iscold had testified that the heading lock was in
13 autopilot.

14 On redirect by Mr. Ross, Mr. Farrington was asked if an
15 autolock and an autopilot served the same purpose in this event.
16 Mr. Farrington testified that he did not believe their system was
17 not an autopilot.

18 Mr. Farrington was asked to describe the system as it was
19 installed. He did not describe the system. He testified it was
20 just basically take the trim wheel and move it to the specific
21 location to assist with locking it in a vertical dive.

22 In response to my questions Mr. Farrington testified that he
23 had dropped items out of an airplane 20 or 30 times. None of the
24 objects he dropped had a speed brake. None of the items he
25 dropped out of an airplane had an autopilot pitch lock. None of

1 them had an attitude lock.

2 When I asked if any of the items had free spinning
3 propellers, he responded that he had dropped boats from airplanes.
4 And I asked if a boat propeller is used for flight. He responded
5 by stating that the propeller on the boat was used for flights
6 across water.

7 He testified that the crew member station did not change into
8 something else when he left the object. He testified the crew
9 member station he had skydived into during practice session looked
10 the same as the one he left. He said that there was no physical
11 change.

12 I asked Mr. Farrington, and I quote, "I mean, clearly it was
13 an airplane prior to becoming an object in this case. So the
14 wings were functional on the aircraft, correct, until it reached
15 altitude?" He responded, as the wings were creating lift, yes. I
16 asked if when he lowered the speed brake, locked the autopilot
17 heading and the autopilot pitch lock did that disengage the
18 functionality of the wings. He responded it would not allow the
19 wings to create lift. He agreed with my statement that it was an
20 object moving through the air in a downward motion with wings. He
21 responded, it was falling from the sky.

22 He testified that the aircraft remained an object even after
23 it crashed into the desert. I asked him if he was investigated as
24 an object crash as opposed to an airplane crash. He responded he
25 did not know. I asked him if he ever heard of an investigation of

1 an object crash. He responded by saying, not necessarily. I
2 tried to clarify my understanding of his testimony that one of the
3 NOTAMs intended for the use of the event was not in effect because
4 I understood him to say the issuing agency miscalculated the time
5 it was to be in effect.

6 He first answered my question by stating that that was not
7 his testimony. But then when I repeated what my understanding of
8 his testimony was, he testified that my recollection was correct.
9 I asked him if he heard Mr. Fitzgerald also testified that the
10 agency had been in error and therefore there was only one NOTAM in
11 effect at the time of the airplane swap event. He responded that
12 Mr. Fitzgerald had in fact testified to the same thing in the same
13 way that he had just testified. In fact, Mr. Fitzgerald testified
14 that it was his error that led to the expiration of the second
15 NOTAM before the plane swap. Mr. Farrington was in the courtroom
16 when Mr. Fitzgerald testified to that effect, that's why I found
17 it somewhat confusing.

18 The follow-up questions by Ms. Yodice. Ms. Yodice asked if
19 he had filed a request for the expired NOTAM and he testified he
20 did not. He testified Mr. Fitzgerald had applied for the NOTAM.

21 And there was follow-ups to my questions by Mr. Ross and
22 answers to leading questions as to whether or not he ever heard of
23 the term functional wings. Mr. Farrington replied, no. I find
24 this bewildering as he had just testified to my questions about
25 functional wings on the flight altitude before the airplane

1 supposedly became an object. Apparently Mr. Farrington forgets
2 his prior testimony when asked a leading question. Again, I found
3 the use of leading questions in follow-up to my questions to be of
4 no use to me in assessing the credibility of this witness through
5 the use of multiple yes or no answers elicited by Mr. Farrington.

6 As to follow-up by the FAA to my question, Mr. Farrington was
7 asked if the NTSB was called to investigate the crash of the
8 airplane in this case, he testified he was not 100 percent sure.
9 When asked if he was aware if the NTSB performed object
10 investigations, he responded, I'm not. When asked to identify
11 some of the investigation he believed the NTSB investigated, he
12 responded by stating all sorts of traffic ones, all sorts of
13 different ones, but he did not mention object investigation.

14 After the Acting Administrator completed his follow-up, I
15 asked him if during pre-flight inspection of an aircraft he
16 discovered damage to a wing, is it a functional wing? He
17 responded, it probably could be. It still could create list. I
18 asked him when his airplane in a hangar is an airplane or an
19 object. He testified it's an object. I asked him, then if that
20 was the case, then in fact the airplane hangar was in fact no
21 longer an airplane hangar but an object hangar if I applied his
22 definition. He replied, yeah, it could be both.

23 I asked Mr. Farrington if all of the aircraft sitting on
24 airport aprons or ramps in airports are actually objects, he
25 responded, they could be. I asked then should where they work be

1 called an object-port rather than an airport? And he responded,
2 and I quote, "probably, not necessarily."

3 That completed Mr. Farrington's testimony. As to his
4 credibility and the credibility of Mr. Aikins, I will discuss
5 those later in connection with my discussion of this case.

6 Next witness was Mr. Stanley Grey. He testified that he owns
7 an aviation consulting business called RV Aviation Services. He
8 has known Luke Aikins for a number of years. They have skydived
9 together. He testified he has worked with Mr. Aikins a number of
10 times at parachute drops and other aviation events.

11 As to the plane swap, he testified that Respondent Aikins
12 hired him as the ground safety officer and as the ground safety
13 coordinator. He testified that he was paid by Mr. Aikins. He
14 could not remember the day Mr. Aikins hired him. He did not know
15 if Mr. Aikins had been reimbursed by Red Bull.

16 Mr. Grey testified his responsibility was the hot ramp area,
17 which is the area near the hangars where the aircraft in this case
18 were stored, and he was also responsible for the ground safety of
19 the runway area. Mr. Grey testified he was charged with
20 identifying and permitting crew members to enter the hot ramp area
21 to assist the project and keeping those individuals that were not
22 part of the crew out of the area.

23 Mr. Grey testified that there was another company called
24 Frost that was involved in ground security. He testified that he
25 was in communication with the members of Frost and was in

1 communication with other pilots and helicopters and aircraft used
2 for the event. He testified that he communicated with those
3 individuals through the use of a hand-held two way radio. He
4 testified he had also been in contact with other crew members,
5 such as Mr. Iscold.

6 Mr. Grey testified that once the aircraft for the plane swap
7 were in the air, his duties were to look and listen for other
8 aircraft in the area. He testified that the crew was listening on
9 a common advisory frequency and monitoring ADBS. He testified he
10 saw no other aircraft in the air the day of the event.

11 He was asked whether it was six days before the event he had
12 seen any other aircraft in the area, to which he responded that he
13 had not been there six days before the event, but during the time
14 he was there he did not see any other aircraft in the air in the
15 vicinity of the plane swap event.

16 Mr. Grey testified that there were two briefings conducted
17 each day and there were two briefings conducted on the day of the
18 event. One was the security briefing and the other was a pilot
19 briefing. He testified he attended both briefings but did not
20 really have anything to say during the pilot briefing. He
21 testified that there was no mention of waiver or exemptions in the
22 briefings he attended and he did not remember if specific
23 regulations were discussed.

24 Mr. Grey testified that he was never contacted by the FAA
25 during the investigation of the Respondents.

1 On direct by Ms. Yodice, Mr. Grey testified that he has known
2 Mr. Farrington for quite a while. He testified that they had been
3 friends for over 20 years and have been involved in a number of
4 work projects together. Mr. Grey testified that in most of the
5 events in which he worked, Mr. Farrington was also a member of
6 that event or involved in that event.

7 He testified that Mr. Farrington did not attend the daily
8 ground briefings. Mr. Grey testified he did not remember speaking
9 to Mr. Farrington by radio on the day of the event. Mr. Grey
10 testified that any member of the ground crew and members flying
11 helicopters and aircraft could call off the event by simply
12 stating over the radio, knock it off. He testified the same thing
13 applied to previous parachute operations where the event would be
14 knocked off due to a wind change. He could not recall if Mr.
15 Farrington had ever called knock it off on any of those past
16 events.

17 Mr. Grey testified he is familiar with the geographic area
18 where the plane swap event took place. He testified that other
19 times he had been at the plane swap area, he could not remember if
20 he had seen any training aircraft in the area. He testified he
21 saw the aircraft that went into the spin descent. He did not see
22 it actually crash or impact with the ground.

23 On cross-examination Mr. Grey testified he could not recall
24 if there were NOTAMS in place during the plane swap. He testified
25 he could not recall if the TFR had been in place for the event.

1 He testified that the Respondent would not be able to call knock
2 it off when they left the aircraft to skydive to the other
3 aircraft.

4 He was sked about his direct testimony that radio frequencies
5 were monitored during the event. He was asked if the flight
6 training frequency was monitored and he responded he did not know.
7 He testified that a common traffic frequency advisory was
8 monitored but he could not remember what that frequency was. He
9 had testified that the ADBS had been monitored during the event
10 but on cross he agreed that in CT airspace ADBS transponders are
11 not required.

12 Mr. Grey testified that he had no knowledge of any waivers or
13 exemptions in this case and he would not know if there were any
14 waivers or exemptions in other events, only what he worked on with
15 the Respondents.

16 On redirect he testified as to the time the Respondents left
17 the aircraft and were in the air was about 40 seconds to a minute.
18 Again, he testified he did not know if there was a different radio
19 frequency used to monitor flight training. He testified he did
20 not know the common traffic advisory frequency. Again, he
21 testified that his focus was on the ground security and on the hot
22 ramp.

23 I found this witness to be credible generally, but there was
24 not much that he provided. He could not remember much, I mean, he
25 freely admitted that fact. He did testify that the Respondents

1 could not call knock it off after they left their respected
2 aircraft. Essentially that's the gist of his testimony.

3 The next witness called was Mr. Richard Lee. Mr. Lee was
4 called as an expert witness for the Respondents. Prior to taking
5 any testimony, the Administrator objected to the testimony of Mr.
6 Lee, arguing that he was not properly disclosed to the FAA in the
7 initial disclosures and doing discovery. Further, the Acting
8 Administrator argued that Mr. Lee's area of expertise had not been
9 disclosed as of the date up to this point in time when he was
10 sworn to testify.

11 Respondent's counsel, Mr. Ross, argued that full disclosure
12 had in fact been made in prehearing submissions and a 36-page
13 report had been provided. The Administrator again objected
14 stating no area of expertise is exposed in that 36-page report.
15 The Respondent's counsel offered that Mr. Lee was an expert in
16 flight test programs, demonstrations, exhibitions and aviation
17 regulations. He argued that it was clear from Mr. Lee's report
18 indicating that that was indicated and that his area of expertise
19 should have been clear. It was not clear.

20 Ms. Yodice also argued that it was proper disclosure. She
21 argued that the prehearing submissions required by my prehearing
22 order was a form of supplemental disclosure, and the Administrator
23 could have filed a motion to compel if they were not satisfied
24 with the expert disclosures that were provided by the Respondents.

25 The Acting Administrator continued that objection that the

1 Administrator was prejudice by the late filing of the
2 identification of the expert, and again, there was no previous
3 identification as to his area of expertise, and it is testimony by
4 surprise. I reserve my ruling on the matter and allowed
5 examination of the witness to determine if he could be qualified
6 as a witness.

7 Mr. Lee testified at length about his military service, his
8 flying experience and experience working with various aviation-
9 related companies. He currently owns his own consulting company
10 and agreed to testify in this case on August 12th, 2022. His
11 testimony as to his background and experience are included. He
12 testified in his CV, which is a part of the record that was filed
13 in this case.

14 After completing the questioning of Mr. Lee regarding his
15 experience, the Respondent moved to have him qualified as an
16 expert in the field of flight operations, flight test and flight
17 regulations. Respondents proffer of this witness as an expert in
18 these areas did not appear to be consistent with what counsel had
19 argued just previously as to the areas he was qualified as an
20 expert. It should have been clear from his report. Mr. Ross has
21 indicated that it was clear from Mr. Lee's report that he was
22 qualified as an expert in test programs, demonstrations, exhibits,
23 aviation regulations.

24 So at this point, they were arguing that Mr. Lee should be
25 testified as an expert in flight test programs, demonstrations,

1 exhibitions and aviation regulations. So it does appear that it
2 is consistent. I withdraw that.

3 The Acting Administrator objected to qualifying Mr. Lee as an
4 expert. In addition to the objection, the Respondent did not
5 properly disclose this expert. They further argued that Mr. Lee
6 had reviewed no information regarding one of the aircraft in that
7 airplane swap. He should not be qualified as an expert in
8 aircraft operations because Mr. Lee does not have current relevant
9 experience in a Cessna 182 aircraft, the aircraft in issue in this
10 case. The Administrator argues that Mr. Lee last flew a Cessna
11 182 50 years ago.

12 The Acting Administrator objected to Mr. Lee being qualified
13 as an expert in aircraft regulations because he does not have the
14 requisite experience or educational background relative to
15 interpreting or analyzing the Federal Aviation Regulations. Ms.
16 Yodice made similar arguments on behalf of Mr. Farrington, that
17 they essentially argued that Mr. Lee had more experience than the
18 Acting Administrator's expert who was in fact qualified as an
19 expert.

20 On voir dire, Mr. Lee agreed that he only reviewed the
21 records from only one of the two aircraft that participated in the
22 event. He agreed that he did not have legal training. He
23 testified he knows the Federal Aviation Regulations, but stated
24 that all pilots should be able to read and interpret the
25 regulations relative to flying.

1 The Administrator again objected to Mr. Lee's being qualified
2 as an expert. I allowed Respondents to ask addition questions in
3 their effort to establish the qualifications of this witness. Ms.
4 Yodice asked questions about various aircraft he had piloted in
5 his career. He testified that he is a designated pilot examiner
6 and a flight instructor. Ms. Yodice affirmed that Mr. Lee was
7 being offered as an expert for both Mr. Aikins and Mr. Farrington.

8 I asked Mr. Lee questions to fully understand his experience
9 noted on his CV and in his testimony he had provided. Mr. Lee
10 stated in his report he had testified before State and Federal
11 Courts, to include Administrative Courts by report, by deposition
12 and in trial as an accident reconstruction expert, as a pilot, as
13 an instructor pilot, as a pilot in matters of flight operation,
14 flight tests, and again, accident reconstruction.

15 I directed him to page 36 of his report, which is at R-1, in
16 which he listed his previous testimony and reports and
17 depositions. Mr. Lee could not tell me with any certainty which
18 one of these cases were in Federal Court. He testified that none
19 of the cases he listed were in an administrative forum, as he had
20 previously asserted. He could not provide a clear answer as to in
21 which one of the listed items he testified as a witness in court.
22 He agreed that when he stated he testified as an expert in one of
23 the accident investigations he essentially just provided a
24 deposition and was not qualified as an expert witness at trial.
25 He finally testified that he did not testify in court in any of

1 the cases or matters that he listed on page 36 of R-21.

2 When I asked if he had ever been qualified as an expert in
3 air operation, flight tests, aircraft regulations and Part 91
4 operations he testified he had, but those cases or case were not
5 included on the list he provided.

6 Respondent's counsel, Mr. Ross, then interjected saying they
7 only provided four years of history, as required by my prehearing
8 order. However, I note that one of the cases that were included
9 in the information that had been provided by Mr. Lee was a case
10 which had actually occurred over five years ago.

11 Further, Respondent's counsel indicated that they were trying
12 to comply with my order. I indicated that in all of my time as an
13 administrative law judge in any capacity for any of the agencies
14 that I've ever acted as an administrative law judge, that experts
15 always touted the number of times they testified in court and that
16 they always overreported rather than underreported. If indeed
17 that was a requirement, that only the last four years be reported,
18 certainly no one has ever complied with that order, until my
19 questioning of Mr. Lee. I did not find Respondent counsels
20 arguments to be persuasive.

21 I asked additional questions of Mr. Lee. He testified that
22 he stated in his report that he had written proposed regulations.
23 When I asked him what proposed regulations he had written, he then
24 testified he didn't actually write regulations relative to
25 aerobatic operations of training, as he had claimed. Upon further

1 questioning it was clear that Mr. Lee had not authored any
2 regulations. He then testified he did not actually write
3 regulations, what he wrote were more like policies. When I tried
4 to get a clearer answer from him he testified he wrote policy used
5 to enforce regulations.

6 He agreed that all pilots have to be familiar with Part 91
7 regulations.

8 He testified that he had worked with Mr. Aikins and Mr.
9 Farrington on the plane swap event, this event that's the issue of
10 this case. They had asked him to provide an independent safety
11 assessment of the planned event and he testified he accomplished
12 the assessment primarily by phone and through telephone
13 conversations.

14 Mr. Lee had also testified that one of the cases in Alaska
15 that he had listed, he remembered that it did involve federal
16 regulations. When I asked him to identify what regulations had
17 applied in the Alaska Superior Court, which is a State Court, he
18 stated there were far too many federal regulations applied in that
19 case to remember.

20 Finally, his report indicated he believed that there was
21 disconnect between the FAA and the Respondents. He seemed to
22 indicate that the Respondents were confused by the regulations.
23 When I asked if he was going to provide an expert opinion as to
24 whether or not the Respondents were confused, he was non-
25 responsive. He agreed he is not a psychologist or a psychiatrist

1 and he's not a lawyer. He testified he would provide his opinion
2 as to the regulations, how the regulations should be interpreted.
3 When I asked if he should defer to the Respondent's lawyers and
4 the Acting Administrator's lawyers as to the interpretation of
5 law, he testified he would not. He testified he knew more about
6 aviation law from his experience than anyone in the room.

7 After further argument I ruled that I could not qualify Mr.
8 Lee as an expert in any of the areas offered by Respondent. He
9 did not review the evidence relative to one of the aircraft in
10 issue. There are two aircraft used in the plane swap, not one. I
11 also was very concerned relative to his representations under oath
12 as to his testimony as an expert in previous federal, state and
13 administrative tribunals. In the final analysis he had not
14 testified or had been qualified as an expert in any of the cases
15 he listed. His assertion that he has testified in numerous cases
16 beyond those he listed, that evidence was not before me or
17 provided by the Respondent's counsel.

18 Further, I found his testimony on representations that he
19 wrote regulations also the be of great concern. He first
20 answered, yes, I wrote proposed regulations, and then he asserted
21 he did not write proposed regulations, it was more like I wrote
22 policy. However, then again it was policy to enforce regulations.
23 Of course, there was no corroboration to support this ever-
24 changing assertion relative to his authorship of regulations.

25 Finally, I found he is not qualified to interpret the

1 regulations that apply in this case, or opine about the
2 regulations in this case. His report, a large portion of it, was
3 a specific interpretation of the regulations that applied to this
4 case. Again, if I needed any type of argument, I would get that
5 argument and I would give the greater weight to the arguments of
6 the parties lawyers rather than Mr. Lee. Despite the fact that he
7 testified that he knew more about the law than anyone in the room.

8 Finally, I found the Acting Administrator's argument that the
9 Respondent did not properly disclose Mr. Lee as an expert witness
10 to be persuasive and supported by the facts. After reading Mr.
11 Lee's report a number of times, I could not determine what area of
12 testimony he was going to provide where he would be offered as an
13 expert, it was only at the hearing that the areas of Mr. Lee's
14 expertise were disclosed. Respondent's argument that Mr. Lee's
15 areas of expertise were clear from his report is unconvincing.
16 Thus, I found that there was no proper disclosure to the
17 Administrator relative to Mr. Lee's proposed expert testimony.
18 Allowing him to testify in this case would be prejudicial, would
19 be a surprise to the Administrator.

20 Again, Mr. Lee testified he provided a safety assessment of
21 the planned event for the Respondents, and he had indicated in his
22 report that he had never seen such a well-planned and safe event.
23 I found it of some concern that he made that determination via
24 phone calls. Again, I cannot find Mr. Lee could provide an
25 objective expert opinion in this case from his ever-changing

1 responses to questions he provided to which I asked. I am
2 concerned that I could not rely on his testimony, that when he
3 testified as to a matter that actually it was true.

4 Mr. Lee was excused as a witness. The Respondent rested.

5 Now I will move onto the discussion of how I will use this
6 luminous evidence to make a decision in this case.

7 I will first address whether the Acting Administrator has
8 carried his burden and has proven his *prima facie* case by a
9 preponderance of the evidence.

10 The Respondents in this case moved for their separate appeals
11 to be consolidated on all of the issues addressed in one hearing.
12 The Acting Administrator's counsel concurred with that motion.

13 The Acting Administrator presented the testimony of Aviation
14 Safety Inspector Daniel Gredlein, Preston Farley and Mr. Dan Ngo.
15 The Acting Administrator also presented the expert testimony of
16 Aviation Safety Inspector Cheryl Villa.

17 Inspector Gredlein testified that Aikins and Fitzgerald met
18 with him at the Scottsdale FSDO to provide a briefing as to the
19 planned airplane swap event. Both were dressed in clothing that
20 bore the logo for Red Bull.

21 Inspector Gredlein testified that he informed Mr. Aikins and
22 Mr. Fitzgerald that he did not believe that the plane swap as
23 described would comply with several of the Part 91 regulations
24 that would apply to the event. He indicated that he would conduct
25 additional research relative to whether the aircraft could be

1 transformed into an object. He also testified he informed Mr.
2 Aikins and Mr. Fitzgerald that an exemption was necessary to
3 conduct the plane swap as planned. That's the transcript at page
4 39 to 41.

5 Inspector Gredlein emailed Mr. Aikins and Mr. Fitzgerald
6 informing them of the results of his research, which indicated
7 that the aircraft could not be converted into objects. Inspector
8 Gredlein again informed Mr. Aikins and Mr. Fitzgerald that they
9 would not conform with the applicable regulations and again
10 informed them of an exemption that could be requested, and that's
11 at Exhibit 7 and transcript pages 46 through 48. Inspector
12 Gredlein testified that Mr. Aikins submitted the application for
13 the exemption on February 28th, 2022. Inspector Gredlein
14 testified that neither Mr. Aikins or Mr. Fitzgerald voiced any
15 objection to filing an objection.

16 I found the testimony of Inspector Gredlein to be credible.
17 He answered all questions without hesitation, both on direct and
18 on cross-examination. He was not evasive or non-responsive to any
19 questions that he was asked.

20 Mr. Dan Ngo then testified. He is the manager of the Federal
21 Aviation Administration Part 11 Petitions Branch. He testified
22 generally as to the 14 CFR Part 11 exemption process. He
23 testified that a person files a petition for exemption when that
24 person or airman wants to deviate from the Federal Aviation
25 Regulations that cannot be waived. A denial of the petition meant

1 that the person cannot deviate from the regulations.

2 Mr. Ngo testified that his section of the petition branch
3 received Respondent Aikins' petition for an exemption under 14 CFR
4 91.105(a)(1) on February 28th, 2022. That's at Exhibit 10.

5 He testified that Part 11 of 14 CFR are the rules governing a
6 petition for exemption. Mr. Ngo testified that the regulations
7 direct the petitioner to submit the request for exemption at least
8 120 days before they need relief identified in the request. The
9 date scheduled for the plane swap was April 24th. The petition
10 was filed approximately 60 days before the plane swap event.

11 Mr. Ngo testified that Mr. Aikins was notified that
12 additional information was required as to why granting of his
13 request for an exemption would be of public interest. That's at
14 A-11. Mr. Aikins filed the revised application on April 11th, and
15 that is included in A-13.

16 Mr. Ngo testified that Mr. Aikins' revised application was
17 denied and then Mr. Aikins was informed by letter dated April
18 22nd, 2022.

19 Mr. Ngo testified in the course of business he discussed the
20 application with legal counsel, the program office, and together
21 they develop the denial of the exemption if it is appropriate.
22 Mr. Ngo testified that the FAA found that Mr. Aikins failed to
23 address compliance with other applicable regulations of 14 CFR,
24 such as maintaining vigilance to see and avoid other aircraft.
25 Further, it was determined that because the operation could be

1 conducted with a safety pilot remaining onboard, it would not be
2 in public interest to conduct the proposed event without a safety
3 pilot. That is at A-12.

4 He testified that a petitioner can request a reconsideration
5 within 60 days of the denial. He testified that Mr. Aikins did
6 not file a request for reconsideration.

7 I found Mr. Ngo's testimony to be factual, credible and
8 convincing. He answered all questions asked of him without
9 hesitation or evasion.

10 Mr. Preston Farley testified next. He testified that he is
11 an investigative specialist with the Cyber Investigations Branch,
12 FAA Southern Regional Office. He was called to testify as to how
13 he obtained the evidence has been admitted as Exhibit 16. That
14 evidence is an Instagram post which was posted by Mr. Aikins
15 following the unsuccessful plane swap. The post reads as follows,
16 again, "as project lead and chief pilot, it was entirely my
17 responsibility to operate within the regulatory framework to
18 ensure a successful outcome. I received email notice on April
19 22nd, 2022 that a specific exemption was not granted and I made
20 the personal decision to move forward with the plane swap. I
21 regret not sharing this information with my team and those who
22 support me. I am now turning my attention to cooperatively
23 working transparently with the regulatory authorities as we review
24 the planning and execution."

25 Mr. Farley testified that he provided a written report along

1 with a copy of the URL or post to the Requestor.

2 I found Mr. Farley's testimony to be credible. He answered
3 all questions on direct, cross-examination directly and was not
4 evasive or non-responsive.

5 The next witness for the Administrator, of course, was the
6 expert testimony of Ms. Cheryl Villa. As noted in the record and
7 this decision, Aviation Safety Inspector Villa is qualified as an
8 expert in Part 91 operations and aircraft safety within the
9 specific scope of Part 91.

10 Inspector Villa testified as to her investigation into the
11 conduct of Mr. Aikins and Mr. Farrington during the plane swap
12 event. As is noted in the evidence, Mr. Aikins was piloting
13 aircraft N3694U during the plane swap event and Mr. Farrington was
14 piloting the second aircraft, which was N3185Q.

15 Inspector Villa testified as to her investigation and her
16 interview of Mr. Aikins. She testified that based on her
17 investigation and the evidence obtained in this case, she opined
18 that both Mr. Aikins and Mr. Farrington violated 14 CFR 91.105,
19 91.113(b) and 91.13(a) residually and independently.

20 As to the violation of 14 CFR 91.105(a), Inspector Villa
21 opined in her expert opinion that both Mr. Aikins and Mr.
22 Farrington violated 91.105(a). That section provides that during
23 takeoff and landing, while in route, each required crew member
24 shall be at crew member station unless the absence is necessary to
25 perform duties in connection with the operation of the aircraft or

1 in connection with a physiological need; and two, they must keep
2 their safety belts fastened while at crew member station.

3 Inspector Villa testified that the crew member station is an
4 area of the aircraft that the pilot in command occupies to access
5 the flight and engine controls. That in transcript page 314.

6 The facts are not in dispute that Mr. Aikins and Mr.
7 Farrington participated in event that had been referenced as a
8 plane swap. The Administrator argues that during the flight, Mr.
9 Aikins and Mr. Farrington attempted to switch aircraft at
10 midflight. Mr. Aikins and Mr. Farrington argued that they did not
11 attempt to switch aircraft but were in fact switching falling
12 objects. Therefore, the charge violations did not apply to their
13 conduct and they cannot be held responsible for their conduct
14 under the regulations. Respondent's arguments relative to this
15 defense, as well as the other affirmative defenses will be more
16 fully discussed when I discuss the Respondent's case later on in
17 this decision.

18 Mr. Aikins admitted that he was the pilot in command and sole
19 occupant in Cessna aircraft N3694U. Mr. Farrington admitted that
20 he was the pilot in command of Cessna aircraft N3185Q.

21 Mr. Aikins admitted that during the plane swap operation he
22 unfastened and removed his safety belt while at the crew member
23 station and exited the aircraft. That's at transcript page 625.
24 Mr. Farrington then admitted that during the plane swap operation
25 that he removed his safety belt while at the crew member station

1 and exited the aircraft. That is at transcript page 798. I must
2 note, again, that both Mr. Aikins and Mr. Farrington maintained,
3 while they made these admissions, that they took these actions
4 based on their belief that they were not flying aircraft at that
5 time, but that the two aircraft at that time had been transformed
6 or converted into falling objects.

7 The parties agreed to play the video of the plane swap as
8 part of the hearing in this case. I viewed the video along with
9 Respondents and the lawyers. There is no dispute as to the
10 authenticity of the video played at hearing or what was displayed
11 on the video. The video shows that both Mr. Farrington and Mr.
12 Aikins unfastened their safety belts while at the crew member
13 station of their respected aircraft and exited their aircraft
14 while the flight was enroute.

15 On cross-examination, both Mr. Farrington and Mr. Aikins
16 admitted their absence from their respected crew member stations
17 in their respected aircraft were not in connection with or
18 necessary to perform the duties in connection with the operation
19 of their respected aircraft or physiological needs. That's from
20 Mr. Aikins at transcript 625 through page 626, and for Mr.
21 Farrington that's at transcript pages 799 through 800.

22 Again, the Respondents maintained their absence was not from
23 an aircraft but rather a falling object. They argued that the
24 crew stations on the two aircraft essentially ceased to exist when
25 the aircraft were converted to falling objects.

1 Based on the evidence, Inspector Villa testified that it was
2 her expert opinion based on the review of evidence in this case
3 that the preponderance of the evidence established that Mr. Aikins
4 and Mr. Farrington violated 14 CFR 91.105(a) and that they both
5 unfastened their safety belts and exited their respected aircraft
6 while their respected flights were enroute. Further, she opined
7 that both Mr. Aikins and Mr. Farrington were pilots in command of
8 their respected aircraft and were required crew members of their
9 respective flights.

10 As to the violations of 14 CFR 91.113(b), that section states
11 in pertinent part that each person operating an aircraft shall
12 maintain vigilance so as to see and avoid other aircraft. There
13 is no definition of vigilance in the federal regulations. The
14 Acting Administrator maintained that the common definition in the
15 dictionary for vigilance is, and I quote, "the action or state of
16 keeping careful watch for possible danger or difficulties." The
17 Acting Administrator asserts that this definition is further
18 supported by the expert testimony of Inspector Villa.

19 Inspector Villa testified that based on her experience as an
20 inspector and a flight instructor, she defined vigilance in this
21 context as continuously being aware of the airspace and visually
22 scanning and maneuvering, if necessary, away from other aircraft.
23 Inspector Villa testified that both Mr. Aikins and Mr. Farrington
24 failed to maintain vigilance to see and avoid other aircraft as
25 they both departed their respective aircraft and left their

1 respected aircraft unattended while the aircraft was in flight.

2 Mr. Farrington and Mr. Aikins were the pilots in command and
3 the sole occupants of their respective aircraft and when they
4 departed their respective aircraft there was no one piloting or
5 operating the aircraft. In the case of Mr. Aikins, his aircraft,
6 N3684U crashed near Sawtooth Airport.

7 Inspector Villa testified that when Mr. Aikins and Mr.
8 Farrington intentionally departed their respective aircraft they
9 could no longer maintain vigilance because they could no longer
10 access their respective aircraft controls to avoid other aircraft.
11 They were both in freefall and were essentially powerless to
12 comply with the regulations to see and avoid other aircraft. If
13 they indeed saw another aircraft that posed a risk or a danger
14 there was nothing they could do to avoid any of the other aircraft
15 or communicate with any of the other aircraft involved in the
16 plane swap event.

17 Thus, Inspector Villa opined that based on her investigation
18 and the evidence in this case, she concluded that the
19 preponderance of the evidence established that both Mr. Aikins and
20 Mr. Farrington violated 14 CFR 91.113(b). Respondent maintains
21 that Inspector Villa's testimony and opinion are essentially
22 irrelevant as the regulations did not apply as the Respondents had
23 converted the two aircraft they were flying into falling objects.
24 They maintained if any regulations applied to their conduct, the
25 applicable regulations are those which applied to dropping objects

1 from aircraft found at 14 CFR 91.115.

2 Furthermore, they argued that the safety precautions they set
3 in place provided observations from the ground and in the airspace
4 to monitor and see traffic. The Respondents however cite no case
5 law or other authority to establish that the requirements of 14
6 CFR 91.113(b), that each person operating an aircraft shall
7 maintain vigilance so as to see and avoid other aircraft, can be
8 delegated to other individuals.

9 As to the violations of 14 CFR 91.13(a), the Administrator
10 maintains that Mr. Aikins and Mr. Farrington violated 91.13(a)
11 based on their conduct in this case. 14 CFR Section 91.13(a)
12 prohibits any person from operating an aircraft in a careless and
13 reckless manner so as to endanger the life or property of another.
14 The Administrator argues that this case can be proven as a
15 residual violation and can also be proved independently by
16 independent evidence.

17 The Acting Administrator maintains and argues that case law
18 supports the conclusion that if the Acting Administrator has
19 proved the operational violations charged in this case by a
20 preponderance of the evidence, no additional evidence is required
21 to establish the residual violation of 91.13(a). Here the Acting
22 Administrator argues that the preponderance of the evidence
23 establishes that both Mr. Aikins and Mr. Farrington violated 14
24 CFR Sections 91.105 and 91.113(b). Thus, in accordance with the
25 case law, the residual violation of 14 CFR 91.13(a) has been

1 established.

2 The Acting Administrator further searched that in this case,
3 a violation of 91.13(a) by both Mr. Aikins and Mr. Farrington can
4 be proved independently. The Acting Administrator maintains that
5 the evidence establishes that Mr. Aikins and Mr. Farrington
6 attempted to perform an inflight airplane swap. The video of the
7 event clearly shows that both Respondents exited their aircraft
8 and attempted to swap aircraft.

9 The Acting Administrator asserts that they intentionally left
10 their respective aircraft unoccupied and unpiloted in a dive, both
11 Mr. Farrington and Mr. Aikins displayed a gross disregard for
12 safety. Mr. Aikins' aircraft crashed after the unsuccessful plane
13 swap. The conduct of both Mr. Aikins and Mr. Farrington both,
14 according to the Administrator, endangered the lives and property
15 of others. The Administrator further argues that the evidence
16 establishes that both Mr. Aikins and Mr. Farrington, both
17 certificated experienced pilots, failed to take the necessary
18 precautions to safeguard the airspace during the airplane swap.
19 Both neglected to request a NOTAM for the plane swap event,
20 neither made any attempt to obtain a temporary flight restriction
21 for the plane swap event. Thus, there was no notification to
22 pilots relative to the event that were taking place during the
23 plane swap. Furthermore, if a TFR had been in place, a pilot
24 would stay away from the area where the airplane swap was taking
25 place.

1 The testimony from Mr. Aikins and Mr. Farrington relative to
2 their attempts to safeguard the airspace was contradictory,
3 confusing and not credible. For example, at one point, Mr. Aikins
4 admitted that he though civilians could not obtain a temporary
5 flight restriction and when he was informed that civilians could
6 in fact request a TFR, he then suddenly testified as though he
7 were an expert in the area of obtaining TFRs.

8 Mr. Farrington essentially blamed the expired NOTAM that was
9 to specifically address the airplane swap. He blamed the
10 expiration on that to the issuing agency when in fact he was in
11 the courtroom when Mr. Fitzgerald testified that he was at fault
12 for the expired NOTAM; he made the mistake.

13 Both Mr. Aikins and Mr. Farrington are experienced commercial
14 pilots and should have ensured the safety of the airspace during
15 their plane swap. Further, while Mr. Aikins and Mr. Farrington
16 touted the safety precautions they had taken, the fact and
17 evidence establishes that once they disconnected themselves from
18 communication with those on the ground and in the air, they were
19 essentially powerless to avoid other aircraft they saw, nor could
20 they communicate with anyone except each other if they saw or
21 perceived an indication of danger. When the Respondents exited
22 their aircraft, the command knock it off was rendered meaningless.

23 In her testimony, Inspector Villa also testified that when
24 Mr. Aikins and Mr. Farrington left their respective aircraft and
25 left the aircraft in an aerobatic dive, they did so within 4 miles

1 of Victor airway without a NOTAM or a TFR and without any contact
2 with air traffic control.

3 As established by the evidence, the plane swap was in an area
4 that was considered an intensive flight training airspace. She
5 testified it is a common area for student pilots to receive flight
6 training. She testified she had trained with tons of pilots in
7 the area. Mr. Aikins himself testified he trained the military in
8 that area.

9 Respondents argue that the training area is miles away and
10 not much flight activity had been seen in the days prior to the
11 plane swap event. However, Respondents admit they did not monitor
12 the student pilot common frequency the day of the plane swap.
13 Further, there's no evidence that the student pilots, or any
14 pilot, would confine themselves to the training area in the
15 airspace, nor where they in anyway prohibited of flying into the
16 area where the plane swap was taking place.

17 Inspector Villa testified that based on her investigation,
18 the evidence and the totality of the circumstances it was her
19 expert opinion that the conduct of both Mr. Farrington and Mr.
20 Aikins were reckless and endangered the lives or property of
21 another. She opined that preponderance of the evidence proves and
22 establishes an independent basis to find that Mr. Aikins and Mr.
23 Farrington violated 14 CFR 91.13(a).

24 Respondents maintain that this regulation does not apply to
25 their conduct because they were not operating an aircraft, again,

1 the aircraft had been transformed into falling objects which
2 neither Mr. Aikins or Mr. Farrington could operate.

3 Inspector Villa provided additional testimony as to the
4 sanction in this case, however her testimony will be discussed
5 later in this decision relative to the sanctions.

6 I find the expert testimony of Inspector Villa to be
7 objective, persuasive, based on in-depth understanding of the
8 evidence and the regulations, and I find her, again, her opinion
9 to be persuasive.

10 While it is my determination as to whether or not there has
11 been a violation as to these regulations in this case, that is the
12 ultimate decision that I make. The purpose of an expert testimony
13 is to provide information that will be of assistance to me in
14 determining whether or not those violations occurred. Based on
15 all of the testimony and evidence before me, I find that the
16 Acting Administrator has proven by preponderance of the evidence
17 that the Respondents, Mr. Aikins and Mr. Farrington, violated
18 14 CFR 91.105 and 14 CFR 91.13(a). I further find that the Acting
19 Administrator has proven by a preponderance of evidence that the
20 Respondents Aikins and Farrington violated 14 CFR 91.13(a) as a
21 residual violation and they have proven by a preponderance of
22 evidence that Mr. Aikins and Mr. Farrington violated 91.13(a) as a
23 standalone violation.

24 Now I will discuss the Respondents arguments and evidence to
25 determine if they have established their affirmative defenses by a

1 preponderance of the evidence and thereby defeating the Acting
2 Administrators prima facie case.

3 Respondents argued that Mr. Aikins is an innovator who
4 through curiosity, perceptiveness, critical thinking, and
5 engineering designed and presented a project that converted a
6 flying object into a falling object. Respondents maintained that
7 this innovation is not a violation of the FAA regulations cited by
8 the Administrator. Respondents lawyers argued that with the
9 assistance of an aeronautical engineer and drawing on his own
10 extensive aeronautical engineering knowledge and experience, Mr.
11 Aikins designed and modified two Cessna 182 aircraft that once
12 configured, rendered them both incapable of flight. They argued
13 that in this configuration, the regulations pertaining to
14 operating an aircraft would no longer apply.

15 According to the Respondents, in this configuration the
16 aircraft were nothing more than non-flying objects like a rock, a
17 leaf, a tire, or anything else that is incapable of flight.
18 Further, the Respondents attorney asserted that the FAA
19 incorrectly asserted, concluded that Mr. Aikins ignore the denial
20 of the petition for exemption in this case and proceeded
21 intentionally to violate the regulation.

22 Mr. Aikins believed, according to the Respondents counsel,
23 that an exemption was unnecessary and only applied for one at the
24 direction of the FAA inspector, that inspector being of course Mr.
25 Gredlein. Respondent maintains an exemption was not necessary or

1 required because something that cannot fly and is not intended to
2 be used for flight and not operated for the purpose of air
3 navigation cannot be an aircraft by definition of the statute and
4 regulations.

5 The Respondents argued that the Acting Administrator failed
6 to address the critical component of their allegations that they
7 were aircraft in flight at the time of the plane swap.
8 Respondents argued that this is a key element to the definition of
9 an aircraft. Respondents maintain that as the aircraft in this
10 case were converted or transformed into falling objects they were
11 not in flight, nor could they be operated as aircraft. Thus,
12 neither Mr. Aikins or Mr. Farrington can be found to have failed
13 to have maintained vigilance to see and avoid by leaving their
14 crew stations or by operating an aircraft in a careless or
15 reckless manner because of the simple fact that the two aircraft
16 in this case were converted and transformed by Mr. Aikins and Mr.
17 Farrington into falling objects that were not in flight.

18 Further, the Respondents maintain that the correct
19 regulations that apply are the section of the regulations that
20 apply to dropping objects to aircraft at 14 CFR 91.15.

21 The Respondents arguments all rest on the determination that
22 the Respondents have indeed transformed the two aircraft in this
23 case to falling objects. Further, to establish, as Respondent
24 argues, that the regulations pertaining to dropping objects apply
25 to this case rests completely on whether Respondents converted two

1 Cessna 182 aircraft into objects that according to the
2 Respondents, can be dropped. If Respondent cannot prove by a
3 preponderance of the evidence that the Respondents converted the
4 aircraft in this case into falling objects, then all of the
5 Respondents other arguments essentially fail as well.

6 Thus, the question before me is how Respondents Aikins and
7 Respondent Farrington prove by a preponderance of the evidence
8 that they during the plane swap transformed two Cessna 182
9 aircraft into falling objects and then changed them back again
10 into aircraft.

11 Respondent Aikins testified that he envisioned and formulated
12 what he termed his hypothesis that he could in fact transform
13 aircraft into falling objects. Mr. Aikins testified that from his
14 hypothesis, he devised a plan for the airplane swap event. He
15 testified that making certain changes to the existing aircraft, he
16 could render that aircraft of these two aircraft in this case
17 incapable of flight and therefore converting them into falling
18 objects. He testified that it took a number of years to convince
19 Red Bull and Honda so sponsor the event and to have it televised
20 on Hulu.

21 Respondent maintained that Mr. Aikins was able to maintain a
22 Special Airworthiness Certificate from Mr. Larry Rica as a
23 designated airworthiness representative. Respondents appear to
24 maintain that by obtaining a Special Airworthiness Certificate,
25 that fact somehow establishes that an aircraft can be converted

1 into a falling object.

2 While Respondent elicited testimony from Mr. Rica at hearing
3 that he would not issue a Special Airworthiness Certificate if it
4 would violate the regulations, he also testified that Special
5 Airworthiness Certificate requires that the holder of the
6 certificate comply with all Federal Aviation Regulations. There
7 is no evidence that Mr. Rica informed Mr. Aikins and Mr.
8 Farrington that it would not be a violation of the regulations to
9 conduct the plane swap or that the aircraft could be converted
10 into falling objects.

11 Respondent also asserted that Mr. Aikins was assisted in
12 bringing his vision to fruition with the assistance of Mr. Paulo
13 Iscold, an aeronautical engineer. As noted, Mr. Iscold could not
14 be qualified as an expert witness for the hearing and thus
15 testified as a fact witness. Mr. Iscold did not testify that the
16 aircraft in this case could be converted into falling objects
17 during his testimony. Further, Mr. Iscold would not be competent
18 to advise Mr. Aikins or Mr. Farrington as to whether the plane
19 swap could be conducted without violating or would result in
20 violating Federal Aviation Regulations. He's not a lawyer.
21 Further, there was no evidence that Mr. Iscold advised Respondents
22 that the planned airplane swap would not violate the regulations
23 cited in this case.

24 Respondents did not provide competent and qualified expert
25 testimony to address whether the two aircraft in this case could

1 be converted into falling objects and then be converted back into
2 aircraft.

3 Mr. Richard Lee was offered as an expert witness, however he
4 was not qualified as an expert and could not testify for the
5 reasons specifically noted in the summary of the testimony section
6 in this decision. The basis for the rejection of both Respondents
7 purported experts is detailed in the transcript of these
8 proceedings.

9 Thus, the only evidence presented at hearing and before me as
10 to whether an aircraft can be converted into a falling object and
11 then back again into an aircraft is the testimony of Mr. Aikins.
12 Respondents lawyers argue that drawing on his own extensive
13 aeronautical engineering knowledge and experience, Mr. Aikins
14 configured, rendered them incapable of flight and converted them
15 into falling objects.

16 Mr. Aikins testified that the concept of transforming an
17 aircraft into a falling object was his and his alone. He
18 testified he designed the modifications to the aircraft and
19 admitted that he had some assistance from Mr. Iscold.

20 Mr. Aikins testified more than once that the various
21 individuals and offices of the FAA just did not understand what he
22 was doing. He testified he offered to have the FAA come out and
23 look at the project so that he could explain it to them, help them
24 understand, but no one took him up on the offer.

25 Mr. Aikins does not suffer from a lack of confidence.

1 However, during the cross-examination, he asserted that he was an
2 aeronautical engineer, or an engineer. At another point in his
3 testimony he testified that he was a scientist. He also testified
4 that in his opinion, he was a physicist, however when asked if he
5 had a college degree or an advanced degree in any of those
6 disciplines, he responded he did not. He testified he is a high
7 school graduate. He was visibly irritated when these questions
8 were asked and at one point testified something to the effect that
9 you guys put too much emphasis on college degrees. At the end of
10 his cross-examination, he maintained that the physics supported
11 his hypothesis. When asked if he meant his physics, he replied,
12 yes.

13 I must also note that the claim that he possesses vast
14 aeronautical knowledge and experience is not corroborated in any
15 way by any other form of evidence. Simply claiming that one is an
16 expert does not make it so.

17 While I have the highest regard for practical experience and
18 some individuals with significant practical experience under
19 certain circumstances can be qualified as a witness. Again, I
20 place the highest regard on practical experience and I do not
21 discount it by any means. There are times, however when an expert
22 opinion from an individual with substantive and demonstrable
23 academic credentials and experience is necessary. This is one of
24 those times.

25 While I cannot dispute and I do not dispute that certainly,

1 from their testimony, both Mr. Farrington and Mr. Aikins appear to
2 have extensive experience, again, I have their testimony about
3 that. I do not have any other corroborating evidence.

4 In addition to his lack of identifiable expertise, I find
5 that Mr. Aikins is not credible. I found his responses to cross-
6 examination questions to be non-responsive and evasive. Many
7 times he produced a number of sentences in response to questions
8 but simply did not address the questions in any way. I found it
9 was difficult to sometimes get a straight answer from Mr. Aikins.

10 It is clear from the evidence that the ballistic parachute on
11 the crashed aircraft did not deploy properly. Mr. Aikins would
12 not admit to that obvious fact. He testified that the safety
13 measure had worked.

14 Mr. Farrington on the other hand, did not labor under the
15 same view of things. He testified that the ballistic parachute
16 did not deploy properly and it should have deployed at a higher
17 altitude. He admitted that the ballistic parachute did not deploy
18 at the correct altitude. This is just one example of situations
19 of issues I had with Mr. Aikins' testimony.

20 In final analysis, I must agree with the Acting
21 Administrators argument that the only evidence presented at
22 hearing that supports Respondents position that an aircraft can be
23 converted into a falling object is Respondent's own self-serving
24 testimony. Testimony which I specifically do not find credible or
25 persuasive.

1 For the record, I must also make a specific finding that I
2 find the testimony of Andrew Farrington not to be credible either.
3 The majority of his answers on cross-examination were evasive,
4 non-responsive, he contradicted his own prior testimony at
5 hearing, he would not provide a straight answer to simple
6 questions, at time he appeared to be hostile and flippant. In his
7 answers he provided on cross-examination, he at times provided
8 answers that simply did not make sense. I do not by saying this
9 suggest that he is not an intelligent person. That's not my point
10 at all. I just find that his testimony in this case cannot be
11 believed.

12 Based on all of the evidence before me, I find that
13 Respondents Mr. Aikins and Mr. Farrington have not established by
14 a preponderance of the evidence that the aircraft in this case
15 were converted to objects and therefore they fail in their
16 assertion that the charge regulatory violations do not apply. I
17 find that Mr. Aikins and Mr. Farrington are subject to the charged
18 violations of the Federal Aviation Regulations cited in their
19 respective Emergency Orders of Revocation.

20 Having made this finding, it is unnecessary for me to address
21 the issues as to whether or not the definition of a falling object
22 is in flight or whether Respondent could be found to be operating
23 a falling object, as contemplated by the regulation. I further
24 find that I have found Respondent did not prove by converting the
25 aircraft in this case into falling objects that 14 CFR 91.15 is

1 the applicable regulation that should be applied to this case.
2 Thus, the other arguments that the Respondents make as to what the
3 definition of flight and what the operation of an aircraft is are
4 moot and simply fall away based on the failure of the Respondents
5 to prove that they could convert or transform an aircraft into a
6 falling object.

7 I will now address the petition for exemption filed in this
8 case. Respondent Aikins asserted that the Acting Administrator
9 was in error in his arguments that Respondent Aikins ignored the
10 denial of his exemption and proceeded to intentionally violate the
11 regulations. Respondent rests his argument that the exemption was
12 unnecessary as the regulations did not apply to him again, because
13 he converted the aircraft into falling objects. I have found that
14 Mr. Aikins and Mr. Farrington had not established that they
15 converted the aircraft in this case into falling objects, and
16 therefore the cited regulations in fact do apply. As they do
17 apply, an exemption was required.

18 Respondents argued that the only reason Mr. Aikins applied
19 for an exemption is that he was directed to do so by Aviation
20 Inspector Gredlein. I find this assertion to be without merit and
21 unproven by the Respondent. Aviation Safety Inspector Gredlein
22 testified credibly that he conveyed to the Respondent that it was
23 his decision to proceed as he wished.

24 As to whether Respondent Aikins had established he did not
25 require the exemption, I must find that he did not, proved by a

1 preponderance of evidence again, that an exemption was not
2 required in this case.

3 If in fact Respondent Aikins believed an exemption was not
4 required, then why did he not object to the supposed direction to
5 file an exemption that he essentially blames on Aviation Inspector
6 Gredlein? If he didn't think that an exemption was unnecessary,
7 why did he apply for an exemption? Why did he apply if he
8 believed it was not required? Why, if he did not believe the
9 exemption was necessary, did he make numerous calls to determine
10 the status of the exemption? If indeed Mr. Aikins believed an
11 exemption was not required, why then did he provide a supplemental
12 petition with additional justification? If he did not believe an
13 exemption was required, why did he make an Instagram post
14 admitting that he applied for an exemption and it was denied and
15 then he proceeded with the airplane swap knowing his exemption had
16 been denied? Why say this on Instagram if he didn't need one?

17 The evidence establishes by a preponderance of the evidence
18 that the Respondent knew that an exemption was required in order
19 to be in compliance with the regulations and to proceed with the
20 airplane swap. The evidence establishes that he knew the
21 exemption had been denied and proceeded to intentionally violate
22 the regulations.

23 Respondent Aikins and Mr. Farrington raised additional
24 affirmative defenses, which I will also discuss. Mr. Farrington
25 raised the following affirmative defenses in his answers to the

1 complaint:

2 He argues that the FAA Administrators fail to make a claim in
3 fact or law to warrant the relief requested, including the
4 regulations cited by the FAA as being violated are not applicable
5 to the facts and circumstances alleged.

6 The second affirmative defense is the FAA has failed to state
7 a claim upon which relief maybe granted, that some or all of the
8 allegations were not supported by facts and the facts necessary to
9 establish a violation by law by some or all of the cited
10 regulations.

11 I have found the Acting Administrator has proven the
12 allegations against Mr. Farrington by a preponderance of the
13 evidence. Therefore, this affirmative defense has not been proved
14 by Mr. Farrington by a preponderance of the evidence.

15 Additionally affirmative defense is that Mr. Farrington
16 reasonably acted and reasonably relied on persons with knowledge
17 of the circumstances and whose duty it was to advise Mr.
18 Farrington about compliance with the FAA's applicable regulations.
19 I find that Mr. Farrington has not established this affirmative
20 defense by preponderance of the evidence.

21 His legal counsel argued that Mr. Farrington relied on Mr.
22 Fitzgerald, Mr. Aikins, Mr. Iscold to form his belief that his
23 conduct was in compliance with the regulations. At hearing Mr.
24 Farrington testified he relied on Mr. Iscold informing his belief
25 that aircraft could be converted into object, yet Mr. Iscold said

1 nothing of the sort during his testimony under oath. In fact, Mr.
2 Iscold, a private pilot, testified he respected the opinion of Mr.
3 Farrington during the time that they worked together.

4 Mr. Farrington is a commercial pilot with more experience
5 than Mr. Iscold. I do not find Mr. Farrington's claim that he
6 relied on Mr. Iscold to be credible. Mr. Farrington never
7 testified as to his reliance on the representation by Mr.
8 Fitzgerald, thus I find that Mr. Fitzgerald has not proven that
9 assertion.

10 As to the claim that relied on the representations of Mr.
11 Aikins, I find no credibility in this claim. Mr. Aikins testified
12 that they are cousins but more like brothers. They are best
13 friends and have been best friends since childhood. They live on
14 the same piece of property, work together on most work projects.

15 At hearing it is clear that each is trying to protect the
16 other. Mr. Aikins maintained that Mr. Farrington knew nothing of
17 the application for exemption. Mr. Farrington at hearing
18 testified he relied on the representations of Mr. Iscold and only
19 reluctantly testified he relied, as he stated to a much lesser
20 degree, on Mr. Aikins in making his determination that an aircraft
21 could be transformed into a falling object. I find that the claim
22 that Mr. Farrington knew nothing of the petition for exemption
23 because Mr. Aikins did not tell him to be devoid of credibility.
24 It is unfathomable that these two cousins, lifelong friends,
25 business associates did not discuss the petition for exemption and

1 the fact that the petition was denied. A denial of the petition
2 affected both of them.

3 Mr. Farrington has failed to prove his affirmative defense as
4 to this, or any of his other affirmative defenses by a
5 preponderance of the evidence.

6 Respondent Aikins raised the following affirmative defenses:

7 The FAA Administrator fails to state a claim in fact or law
8 to warrant the relief requested. This affirmative defense has not
9 been proven. I found otherwise during this decision.

10 Secondly, he argues that the FAA has failed to state a claim
11 upon which relief may be granted. The FAAs allegations are not
12 supported by facts and the facts did not establish a violation by
13 law of the cited regulations. He has not proven this affirmative
14 defense by a preponderance of the evidence. Clearly, my decision
15 in this case, I have found otherwise, that the Administrator has
16 proven their case by a preponderance of the evidence.

17 The third affirmative defense is that Mr. Aikins reasonably
18 relied on persons with knowledge of the circumstance and whose
19 duty it was to advise Mr. Aikins about compliance with the FAA's
20 applicable regulation. Based on the testimony of the Respondent,
21 I cannot find that he reasonably relied upon any other person
22 relative to any matter pertaining to this case. I specifically
23 find that he has not established he relied upon the direction of
24 Aviation Safety Inspector Gredlein.

25 Respondent Aikins testified that no one understood what he

1 was doing; no one in the FAA, no one who reviewed his request for
2 an exemption. Again, he offered, according to Mr. Aikins, he
3 offered to educate FAA officials so that they could understand
4 what he was doing, but again, he testified that no one took him up
5 on his offer.

6 Mr. Aikins was the team lead and he had worked with Mr.
7 Fitzgerald in this case. Mr. Aikins provided no testimony or
8 proof that he relied on any information provided by Mr. Fitzgerald
9 or anyone else involved in this case. As to his claim that he
10 relied upon representation of any FAA employee, it is noted there
11 is no evidence to establish that claim. The only person Luke T.
12 Aikins relied upon in this matter was Luke T. Aikins.

13 Respondent Aikins has not proven his affirmative defense
14 listed in numbers 4 through 10, which I have cited previously. My
15 decision in this case establishes the affirmative defenses are
16 without merit. Those affirmative defenses are listed at the
17 beginning of this decision.

18 Based on all of the evidence and testimony before me, I find
19 that Mr. Aikins and Mr. Farrington have not proven any of their
20 affirmative defenses by a preponderance of the evidence.

21 I must note that based on all of the evidence before me, and
22 just viewing it from my perspective, even without expert testimony
23 I find that the Respondents have violated the sections of the
24 Federal Aviation Regulations that they have been charged with,
25 that the Administrator has proven their allegations in the

1 Emergency Order of Revocations against Mr. Aikins and Mr.
2 Farrington by a preponderance of the evidence.

3 Having found the Administrator has proven all of the alleged
4 violations of the Federal Aviation Regulations in his Emergency
5 Order of Revocation by a preponderance of the evidence, I will now
6 make specific findings of facts and conclusions of law. In doing
7 so, I will specifically use the complaints in this case that were
8 issued, the Emergency Order of Revocations.

9 As to Mr. Aikins' Emergency Order of Revocation, I find that
10 as to the allegations of paragraph one and two, he has admitted
11 those allegations. I find the Administrator has proven the
12 allegations in paragraph 4, the allegations in paragraph 5, and
13 the allegations in paragraph 6, paragraphs 7, 8, 9, 10, 11, 12,
14 13, 14, 15 and 16. Those allegations are specifically set forth
15 in the Emergency Order of Revocation. I specifically make
16 findings of facts and conclusions of law that the Administrator
17 has proven each and every one of those violations by a
18 preponderance of the evidence.

19 As to Mr. Farrington, he had admitted one of the allegations
20 and denied all of the remaining allegations. I find that the
21 Administrator has proven all of the allegations in paragraphs 2
22 through 4, 5, 6, 7, 8, 9, 10, 11 and 12 by a preponderance of the
23 evidence. All of those specific allegations I find that the
24 Administrator have proven by a preponderance of the evidence those
25 allegations in the complaint. I make those findings of fact and

1 findings of law relative to the Emergency Order of Revocation
2 against Mr. Aikins and Mr. Farrington.

3 In conclusion, based on all of the evidence before me, I find
4 that the Administrator has proven all of the alleged violations in
5 the Federal Aviation Regulations, in the Acting Administrator's
6 emergency orders of revocation in this case by a preponderance of
7 reliable, probative and credible evidence.

8 I now turn to the sanction imposed by the Administrator in
9 this case. On August 3rd, 2011, Public Law 112-153, known as the
10 Pilot's Bill of Rights, was signed into law by the President of
11 the United States. The Pilot's Bill of Rights strikes from 49 USC
12 Section 44709 and 44710, language that in cases involving
13 amendments, modifications, suspensions or revocations of Airmen
14 Certificates, the Board "is bound by all validly adopted
15 interpretations of law and regulations the Administrator carries
16 out and of written agency policy guidance available to the public
17 relating to sanctions to be imposed under this section, unless the
18 Board finds the interpretation is arbitrary, capricious and not in
19 accordance with the law."

20 While I'm no longer bound to give deference to the Federal
21 Aviation Administration by statute, that agency is entitled to the
22 judicial deference due all other Federal Administrative Agencies
23 under the Supreme Court decision of *Martin v. Occupational Safety*
24 *and Health Review Commission et al*, that's at 499 US 144 and 111
25 Supreme Court page 1171. The Acting Administrator cites other

1 cases which refer to deference, which is included in their closing
2 arguments that they have submitted.

3 In applying the principle of judicial deference, to the
4 interpretation of laws, regulations and policies that the Acting
5 Administrator carries out, I must analyze and weigh the facts and
6 circumstances in each case to determine if the sanction selected
7 by the Acting Administrator is appropriate.

8 In the case before me, the Acting Administrator has proposed
9 the sanction of revocation of Commercial Pilot Certificate and the
10 Master Parachute Rigging Certificate of Respondent Aikins. The
11 Acting Administrator has also imposed a civil penalty of \$4,932.
12 As to Respondent Farrington, the Acting Administrator has proposed
13 the sanction of revocation of his Commercial Pilot Certificate.

14 The Acting Administrator argues that the conduct of Mr.
15 Aikins in this case was intentional, egregious, and demonstrated
16 the lack of care, judgement and responsibility required of any
17 certificate holder. The Acting Administrator argues that Mr.
18 Aikins was advised prior to the plane swap that he could not
19 comply with the regulations. He filed the petition for exemption
20 from the requirements of 14 CFR 91.105. The petition for
21 exemption was denied.

22 The evidence and testimony in this case established that Mr.
23 Aikins deliberately and intentionally proceeded with the plane
24 swap with knowledge that the conduct was violative of the Federal
25 Aviation Regulations. He subsequently issued an Instagram post in

1 which he basically admitted that he knew that the exemption had
2 been denied, and then he decided to proceed with the event anyway.
3 I note that I find that the argument that he did not share the
4 denial of the exemption with Mr. Farrington to lack all
5 credibility.

6 The Acting Administrator argues that Respondent Aikins'
7 intentional conduct in this case warrants the additional
8 imposition of the civil penalty for punitive and remedial
9 purposes, as provided by the Federal Aviation Administration Order
10 2150.3C. The Acting Administrator maintains that Mr. Aikins
11 understood the regulatory requirements, was informed that the
12 plane swap did not comply with the regulatory requirements; he
13 sought an exemption and was denied. He ignored that denial and
14 all other warnings and deliberately and carelessly proceeded with
15 the plane swap event. Such deliberate and reckless conduct as
16 displayed by Mr. Aikins requires the imposition of a civil
17 penalty.

18 As to Respondent Farrington, the Administrator argues that
19 his conduct in this case was egregious and demonstrates the lack
20 of care, judgement and responsibility that is required of any
21 certificate holder. Mr. Farrington testified he was familiar with
22 the requirements of the regulations and the obligations to comply
23 with them, yet he proceeded with the plane swap event. As noted,
24 I do not believe Mr. Farrington's claim that he was not aware of
25 the fact that the petition of the exemption was denied before he

1 proceeded in participating in the plane swap. His egregious
2 conduct endangered the life and property of others and it's
3 demonstrated a lack of care, judgement and responsibility required
4 of a certificate holder. Even if I found that in fact Mr.
5 Farrington had no knowledge that the exemption had been denied,
6 revocation would still be applicable in this case relative to his
7 conduct.

8 Respondent's arguments as to the sanction is essentially an
9 attempt to relitigate the facts and issues of the case.
10 Respondent argues that Mr. Aikins and Mr. Farrington reasonably
11 believed that the plane swap could be conducted in compliance with
12 the regulation. Respondents argued that the testimony of Mr.
13 Aikins and Mr. Farrington was credible, and that the testimony of
14 all of the FAA witnesses were not. Finally, Respondents simply
15 state revocation is not warranted.

16 I do not find the Respondents arguments and cases cited to be
17 compelling or persuasive. I do, on the other hand, find the
18 Administrators arguments compelling, persuasive and fully
19 supported by the facts. Based on all of the testimony I heard in
20 this case, I do not find that Mr. Aikins and Mr. Farrington were
21 credible witnesses. I found all of the Administrators witnesses
22 to be credible. I do not find Mr. Aikins or Mr. Farrington to be
23 trustworthy and both Respondents lack the qualifications and
24 judgements necessary to hold their respected Airmen Certificates
25 based on this case.

1 I therefore find that the sanctions sought by the
2 Administrator are appropriate, warranted in the public interest in
3 air commerce and in the interest of air safety. Therefore, I find
4 that the emergency orders of revocation issued to Mr. Aikins and
5 Mr. Farrington, the complaints herein, must be and shall be
6 affirmed as issued.

7 I further find that the civil penalty issued to Respondent
8 Aikins to be appropriate and warranted in the public interest in
9 air commerce and in the interest of air safety.

10 I'll ask the Court Reporter to start a new page and to title
11 that page as the Order.

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ORDER

IT IS HEREBY ORDERED AS TO RESPONDENT LUKE T. AIKINS:

1. The Emergency Order of Revocation issued to Respondent Luke T. Aikins and the complaint herein, be and is hereby affirmed as issued.

2. The order of assessment in the amount of \$4,932 issued to Luke T. Aikins is hereby affirmed as issued.

3. The Commercial Pilot Certificate number 3200763 and the Remote Pilot Certificate number 4335378, and any other certificates issued to him, excluding his Airmen Certificate, are revoked.

Entered this 19th day of December 2022 in Washington, DC.

ALFONSO J. MONTANO
Chief Administrative Law Judge

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ORDER

IT IS HEREBY ORDERED AS TO RESPONDENT ANDREW J. FARRINGTON:

1. The Emergency Order of Revocation issued to Respondent Andrew J. Farrington, the complaint herein, must be and is hereby affirmed as issued.

2. The Commercial Pilot Certificate for Respondent Farrington, which has been identified in the complaint as XXXXXX2976, also any other Airmen Certificates, excluding his Airmen Medical Certificates, issued to Andrew J. Farrington are revoked.

Entered this 19th day of December 2022 in Washington, DC.

ALFONSO J. MONTANO
Chief Administrative Law Judge

1 APPEAL

2 JUDGE MONTAÑO: And that ends my oral initial decision in
3 this case. I have had Ms. Szustak send the appeal rights to the
4 attorneys.

5 Let me ask, Ms. Yodice, did you receive those appeal rights?

6 MS. YODICE: Yes, Your Honor.

7 JUDGE MONTAÑO: Thank you.

8 Mr. Ross, did you receive the appeal rights?

9 MR. ROSS: Yes, Your Honor.

10 JUDGE MONTAÑO: Thank you.

11 Mr. Farrington and Mr. Aikins, this decision certainly can be
12 appealed. It's not the final decision. It's called an oral
13 initial decision. This is an initial decision I make. You can
14 appeal, as your lawyers will tell you, you can appeal my decision
15 to the full Board and that appeal will not be another trial.
16 Essentially it would be arguments on briefs that my decision
17 should be either reversed or remanded for further proceedings.
18 Now, the Board can do that, they can even reverse my decision,
19 they can remand it to me to take additional evidence, or they can
20 affirm my decision. From there, you still have a right to appeal
21 under the Pilot's Bill of Rights, even to the Federal District
22 Court or to the Circuit Court of Appeals for the District of
23 Columbia.

24 So certainly this decision is in no way the final decision or
25 the end of the road, so to speak. So certainly if you appeal, you

1 feel I've made, or your attorneys feel, that I have made errors in
2 law or have been otherwise not been cored in any of what I have
3 found in this decision, certainly they can appeal and argue that I
4 was arbitrary, capricious and my decision is not in accordance
5 with the law. And certainly you have that opportunity and
6 certainly I would not dissuade anyway from doing that. That's the
7 beauty of the system, you can appeal. My decision is not the
8 final word but it is the final decision today.

9 In any event, there is a timeframe which the attorneys have
10 been provided the time in which to file an appeal. And again, as
11 I'm sure the attorneys are aware, that they have to file those
12 appeals within a certain timeline. And the Board's not very
13 flexible with filing those appeals so please file those appeals on
14 time. The Administrator can file an appeal as well, and they may
15 very well in this case.

16 In any event, that is my decision. I appreciate all the time
17 that you have sat patiently through this proceeding. I thank you
18 all very much and I will end this Zoom --

19 MR. ROSS: Judge?

20 JUDGE MONTAÑO: Yes, Mr. Ross?

21 MR. ROSS: Quick question not related to your decision. Is
22 there a person of contact to get the transcript in a timely manner
23 if my client should decide to appeal?

24 JUDGE MONTAÑO: Yes. Certainly contact my office and they
25 will provide that. Ms. Szustak will provide you information about

1 that. Certainly Ms. Yodice also has experience in that.

2 Thank you all very much, I appreciate your time, and I'll end
3 the Zoom call at this point. Thank you and goodbye.

4 (Whereupon, at 6:37 p.m., the above-entitled matter was
5 concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTERS OF: Luke Aikins & Andrew Farrington
DOCKET NUMBER: SE-31110, SE-31111 & CP-30031
PLACE: via Zoom videoconference
DATE: December 19, 2022

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.



Angela Allen
Official Reporter