DISPUTE PREVENTION AND RESOLUTION, INC.

IN THE MATTER OF ARBITRATION BETWEEN

STREAMLINE CONSULTING GROUP LLC, Claimant, v. LEGACY CARBON LLC, dba HAWAIIAN LEGACY CARBON; HAWAIIAN LEGACY REFORESTATION INITIATIVE dba HAWAIIAN LEGACY HARDWOODS dba HAWAIIAN LEGACY FORESTS dba LEGACY FORESTS dba LEGACY TREES; HLH LLC aka HAWAIIAN LEGACY HARDWOODS LLC; LEGACY HARDWOODS, INC. aka HAWAIIAN LEGACY HARDWOODS, INC.; LEGACY HOLDINGS LLC aka HAWAIIAN LEGACY HOLDINGS, LLC; JEFFREY DUNSTER; JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE GOVERNMENT AGENCIES 1-10, AND DOE CORPORATIONS 1-10, Respondents. LEGACY CARBON LLC, Counterclaimant, v. STREAMLINE CONSULTING GROUP LLC, Counterclaim Respondent.	Arbitration No. 17-0515-A (formerly No. 14-0460-A) **FINAL AWARD OF ARBITRATOR** HEARING: Date: October 8-12, 2018 Arbitrator: Jerry M. Hiatt

FINAL AWARD OF ARBITRATOR

I. PARTIES AND COUNSEL

This matter came on for a hearing on the merits in the conference room of Dispute Prevention and Resolution Inc. ("DPR") from October 8 through October 12, 2018. J. Andrew Baxter, Esq. (with Hailey B. Render, Esq. on the briefs) appeared for Claimant, STREAMLINE CONSULTING GROUP LLC. ("Streamline or Claimant"). Also present throughout the hearing

as a representative of Streamline was Ms. Tiffany M. Potter, ("Potter"), its principal. At earlier points in the arbitration Streamline had been represented at various times by the firms of Deeley King Pang & Van Etten, Carlsmith Ball LLP, Bernabei & Kabat PLLC, Erika Amatore and Andersen Meyer and the firm of Alston Hunt Floyd & Ing, Peter DeVries of the DeVries & Associates firm and finally Mr. Baxter and his firm, General Counsel, P.C. who appeared for Streamline shortly before the arbitration and throughout the arbitration and post hearing period through the date of this Award.

Christopher J. Muzzi of Tsugawa Lau Muzzi LLLC (with Steven L. Rinesmith of Rinesmith & Sekiguchi on the briefs) appeared for all Respondents, LEGACY CARBON LLC dba HAWAIIAN LEGACY CARBON; HAWAIIAN LEGACY REFORESTATION INITIATIVE dba HAWAIIAN LEGACY HARDWOODS dba HAWAIIAN LEGACY FORESTS dba LEGACY FORESTS dba LEGACY TREES; HLH LLC aka HAWAIIAN LEGACY HARDWOODS LLC; LEGACY HARDWOODS, INC.; LEGACY HOLDINGS LLC aka HAWAIIAN LEGACY HOLDINGS, LLC.; and JEFFREY DUNSTER (together, "Respondents)". Also present throughout the hearing were Mr. Jeffrey Dunster ("Dunster") the CEO of certain of the Respondents and Mr. Darrel Fox ("Fox") the COO of certain of the Respondents.

II. LIMITED PROCEDURAL HISTORY, INITIAL ORDERS AND AGREEMENTS REGARDING ARBITRATION

This matter has a long and complex procedural history beginning in 2014, most of which will not be repeated here, because it is already a matter of record. However, the Arbitrator does note the following points which are directly relevant to this arbitration:

A. The matter was commenced by a complaint filed in the US District Court for the District of Hawaii ("USDCHI") where it was assigned to the Honorable Susan Oki Mollway ("Judge Mollway"). Matters prior to this arbitration were then heard in the USDCHI.

B. An order was issued by Judge Mollway dated January 27, 2016 which ordered the parties to arbitration ("Order 1") with a reservation of only "...the issue of which parties are subject to the arbitration agreement."

C. Thereafter the Respondents sought re-consideration of Order 1. Reconsideration was denied for multiple reasons in an order dated, March 16, 2016 (See Ex. 662, "Order 2").

D. Thereafter, the parties signed a "Stipulation to Stay The Proceedings And Refer all Issues to Arbitration", dated September 1, 2016 ("Agreement 1"). A copy was marked and admitted in this proceeding as Arbitrator's Ex. 3 ("A3"). In Agreement 1, the parties agreed to the arbitration of all claims, counterclaims and defenses between all parties in the caption noted above, thus resolving the sole issue on the merits which had been left undecided by Orders 1 and 2. In Order 2 the Court reserved jurisdiction, solely to address post arbitration issues, including the confirmation of any arbitration award.

E. Thereafter, the parties and the Arbitrator signed an "Agreement To Participate in Binding Arbitration" dated February 6, 2018 ("Agreement 2"), which provided for the arbitration of all claims and counter claims through Dispute Prevention and Resolution (DPR"). A copy of Agreement 2 was marked and admitted as Arbitrator's Ex. 2 ("A2"). Agreement 2 specifically incorporated DPR's rules for this proceeding.

Based on the totality of Orders 1 and 2 and Agreements 1 and 2 the Arbitrator finds that this matter is now properly before the Arbitrator for a final and binding resolution between all of the parties hereto of all of the claims and all of the defenses thereto and all of the counterclaims and all of the defenses thereto.

III. FURTHER STIPULATIONS

In the course of the proceedings before the Arbitrator, the parties entered into multiple stipulations which created agreements covering various items, as shown by the record. These included, but were not limited to, each of the following matters:

A. The hearing on the merits would be held from October 8-12, 2018; that DPR rules applied and that the parties had no objections to the service of the Arbitrator based on disclosures made to that date, (*see*, Pre-hearing Order No 1, dated January 17, 2018).

B. A further oral stipulation was made concerning the waiver of any conflicts on the part of the Arbitrator based on further disclosures made to, and made by, the Arbitrator on October 8, 2018 at the beginning of the hearings, (see hearing transcript ('Tr."), Volume I ("V1") p. 14-23). The Arbitrator's additional disclosures were made in response to the disclosure by Claimant's counsel of a pending dispute over DPR's earlier administration of this matter when it was before the Honorable Justice James E. Duffy (Ret.) an earlier DPR arbitrator, which dispute apparently led to some settlement discussions between Streamline and DPR based on claims made against

DPR by Streamline. That dispute had arisen prior to the appointment of the current Arbitrator, who was completely unaware of it until the morning of October 8, 2018, the first day of the hearing on the merits. That dispute is summarized in a September 20, 2018 email from Keith Hunter of DPR to Ms. Potter and in the portion of the transcript cited above. After it was provided to the Arbitrator by Mr. Baxter a copy of the email was marked and admitted as Arbitrator's Ex. 1 ("A1") to the proceedings for record purposes.

Following disclosure of the email and the dispute by Mr. Baxter to the Arbitrator, opposing counsel and the Respondents, the nature of the dispute was then discussed and further disclosures were made by the Arbitrator about his extensive history of relationships with DPR and its employees, Mr. Hunter, Ms. Bryant and Ms. Tasaka and its panel. A recess was then allowed for the parties and counsel to consider whether to proceed with the hearing on the merits before the Arbitrator, or to end the proceedings and select another arbitrator. When the parties and counsel returned, it was agreed by all parties and both counsel that there were no objections to the continued service of the Arbitrator and that no effort would be made by either side to seek to vacate any award in this matter based on the existence of the dispute between Streamline and DPR, or the related disclosures made by the Arbitrator of his relationships with DPR and its personnel. Based on these comprehensive mutual waivers the matter was then heard on the merits.

C. That the proceeding was governed by the Federal Arbitration Act (See, Pre-Hearing Stipulation and Order No 2, dated February 20, 2018).

D. That neither side would seek to vacate any award issued in this matter based on the fact that the Claimant's counsel was not licensed to practice law in the State of Hawai'i and had not been admitted *pro hac vice* (See, Arbitration Order No 4, dated August 29, 2018 and Tr. V1, p. 6.

E. That the Arbitrator was free to provide a summary decision as to the merits in the Final Award, rather than a more detailed reasoned award, in order to save both sides the costs of a more detailed decision, Tr. V1, p 94-96.

F. That the matter had commenced in federal court as a diversity action and that the substantive of Hawai'i applied to the merits at issue in the arbitration, Tr. V5 p. 1088-89.

G. That both sides had made claims, or counterclaims under contract theories and that both sides were seeking their respective attorneys' fees based on those claims and that the prevailing party, or parties, on each contract claim, or counterclaim would be entitled to receive

reasonable attorneys' fees under Hawai'i law and would also be subject to an award of attorneys' fees against them if they failed to prevail on a contract claim, that they had made, Tr. V2 p. .447-450.

H. That Ex. 17 (hereafter the "Services Agreement" or "SA", Ex. 33, (hereafter the "Non Contravention Agreement" or "NCA) and Ex. 35 (hereafter the "Independent Contractor Agreement" or "ICA") constituted the only three written agreements upon which the contract claims and defenses were being made between the relevant parties in the case, Tr. Tr. V3 p. 661-2.

I. That the sale of Legacy trees and Investment trees is not covered under the SA, Tr. V4 p. 833-34.

J. That the references in the SA to "Hawaii Legacy Carbon" actually meant "Legacy Carbon LLC", Tr. V 3 p. 679-68, and *see also* Exhibit 124, the exhibit requested during that interchange.

K. That submission of post hearing briefs, requests for attorneys' fees and costs and responses thereto would all be made on an agreed schedule, (which 1\ ~1234schedule has now been met by both parties), Tr. V3 pp. 516-517 and V5 p. 1150.

This Final Award is made in reliance upon the entire record herein, including each of the above stipulations.

IV. NATURE OF THE CASE

In summary, this dispute involves contract, tort and statutory claims by Streamline for damages and attorneys' fees and related equitable relief for moneys allegedly owed to Streamline by one or more of the Respondents for consulting and other services rendered by Streamline under the SA, NCA and/or ICA related to various forestry projects of the Respondents located in Hawaii and other claimed wrongdoing.

The Respondents' counterclaims involve contract and tort claims for damages and attorneys' fees for moneys allegedly owed to Respondents by Streamline, because Streamline's services were allegedly deficient under the relevant agreements and the Respondents allegedly suffered damages as a result.

V. EXHIBITS

The Respondents were allocated Exhibits starting with number 1 and offered Exhibits 1-124. The Claimants were allocated Exhibits numbers starting with number 501 and offered Exhibits 501 through 662.

Except for Ex. 662, all exhibits offered by both Claimants and Respondents were stipulated into evidence on October 8, 2018 and thereafter, subject only to consideration as to their weight, Tr. V1, p. 12.

Exhibit 662 was offered near the end of the hearing and received over the objection of the Respondents because it provided a useful record of part of the background noted in Section II above and because it was clearly relevant to the Arbitrator's jurisdiction as to this dispute. The Arbitrator exhibits admitted were Ex. 1-3, as noted above, Tr. V2 p. 450-451.

VI. WITNESSES

The Claimants called Ms. Potter and Mr. Dunster, and submitted portions of the deposition testimony of Ms. Rosen (Ex. 83) and Mr. Callister (Ex. 74).

The Respondents called Mr. Dunster, Mr. Fox and Ms. Betsy Maler, as well as submitting portions of the deposition testimony of Ms. Rosen and Mr. Callister. All witnesses who sought to testify were examined and cross examined by counsel and were heard by the Arbitrator. All requested deposition excerpts were read by the Arbitrator. Neither side named, or called, any expert witnesses.

At the conclusion of the testimony for the hearing on the afternoon of October 11, 2018, the Arbitrator specifically inquired of Ms. Potter and Mr. Dunster as to whether they, on behalf of the Claimants and Respondents respectively, had presented all the evidence which they respectively desired to put before the Arbitrator and also as to whether they each believed that they had been fully and fairly represented by their respective counsel and had been fully heard by the Arbitrator. Both responded in the affirmative. R. V4, p. 1055-56.

VII. CLAIMS

Claimant's Statement of Claim is summarized as follows:

A. Count 1- Breach of contract by all Respondents as to the SA for alleged 1) failure of payment by Respondents of invoices due Streamline and alleged; 2) failure to pay a 3.5% "Achievement Fee" for certification of certain carbon credits by the Gold Standard ("GS").

B. Count 2--Breach of contract as to all Respondents as to the NCA for alleged failure to pay a 20% non-contravention fee alleged to be due because carbon credits were obtained from the GS.

C. Count 3--Breach of the duty of good faith and fair dealing as to all Respondents by allegedly failing to pay for the services referred to above; allegedly requiring Streamline to continue to work without pay; alleged disparagement of Streamline and alleged interference with Streamline's contractual relationships.

D. Count 4—Alleged breach of the SA and alleged unfair competition and deceptive trade practices by HLH LLC ("HLH") by alleged unauthorized use of Streamline and its managements' names and biography, etc. in SEC filings following termination of the SA in August 2014 and alleged false representations about Ms. Potter's role with the Respondents.

E. Count 5—Alleged unfair trade practices by HLH in violation of HRS 481A by the actions in No 4 above.

F. Count 6—Alleged tortious interference with the business relationship between Streamline and the GS by all Respondents.

G. Count 7—Alleged unjust enrichment of all Respondents by Streamline's work for them between January and August 2014.

VIII. COUNTERCLAIMS

Respondents' First Amended Counterclaim is summarized as follows:

A. Count 1— Legacy Carbon LLC ("LC") alleges breach by Streamline of the SA contract between LC and Streamline by allegedly 1) failing to provide deliverables; 2) performing required services inadequately, 3); providing incorrect carbon credit calculations and 4) failing to perform with the alleged approved budget.

B. Count 2—Alleged negligence in performance by Streamline of the services it rendered under the SA.

C. Count 3—Alleged breach of the duty of good faith and fair dealing by Streamline under the SA in its negotiations and other dealings with LC and by its use of LC and HKLH materials on Streamline's website.

D. Count 4—Alleged negligent/intentional misrepresentation by Streamline related to its qualifications and experience to perform under the SA.

E. Count 5—Alleged negligence by Streamline in allegedly grossly over-estimating the carbon credits certifications that could be obtained.

IX. ATTORNEYS' FEES AND COSTS

This topic will be discussed here because it relates to several of the subsequent findings made below.

As to the claims for attorneys' fees, the Arbitrator has reviewed both side's post hearing briefs and counsels' respective declarations which each request an award of fees and costs. Each side has objected to the other's declaration as claiming excessive fees.

Claimants seek a total award of $280,061.94 for fees and costs for the services of 5 separate law firms involving 18 separate billing entities on this matter. Except for DPR fees the amounts for claimed costs were not separately tallied and set out in the declaration of Mr. Baxter dated October 22, 2018 as requested by the Arbitrator and as would be normal in Hawaii practice.

Respondents seek an award of $263,702.80, including GET, for the services of two separate law firms on this matter. Respondents also seek costs of $10,930.14 and DPR fees of an additional $21,000.

The Arbitrator has reviewed the time descriptions and made appropriate equitable adjustments for reasonableness and the Arbitrator finds that $263,000 is the total reasonable attorneys' fees for each side -- taking into account factors which include, but are not limited to, the fact that the Claimant chose to employ 5 firms with 18 billing entities and that two of those firms were not admitted in Hawaii and that there was inevitably some duplication of work by the Claimant's Counsel and that the hourly rates of some of the Claimant's counsel do appear to be excessive for this jurisdiction in relation to the work performed

The Arbitrator finds that the Respondents did incur $10,930.14 in recoverable costs apart from DPR fees. In the interests of equity and based on the whole record in this matter the Arbitrator

finds that the Claimants incurred at least an equal amount of recoverable costs. DPR costs will be considered separately below for both sides.

All fees and costs must be allocated by the number of parties on each side. There is only one Claimant, Streamline, but there were 6 separate Respondents which are distinct legal entities (see caption and Exhibit 124), as follows:

A. LC;

B. HLH;

C. Dunster;

D. Hawaiian Legacy Reforestation Initiative, a 501 (c) Nonprofit Corporation, ("HLFI"),

E. Legacy Hardwoods Inc. ("LHI"); and

F. Legacy Holdings LLC ("LHL").

Thus, where appropriate, both the relevant costs and fees have been allocated equally among the parties affected by each finding. For example, allocation of total costs between parties on the same side represented by the same counsel is usually always appropriate, as they are a fixed total amount. However, the naming of multiple parties obviously may entitle each prevailing party to their own fee recovery, subject to the amount of the statutory limit as well as the amount of total fees reasonably incurred.

In addition, although the total fees on each side have been established, those amounts are controlled further by the 25% limitation on the amount in dispute provided by the assumpsit statute and, of course, the 25% limitation does not create a floor, if the actual allowed fees do not reach that level.

Finally, the Respondents have objected to the Claimant's request for Mr. Baxter's fees on the grounds that he is not admitted to practice in Hawaii and is allegedly thus not entitled to be awarded his portion of the fees requested. Respondents have also objected that he does not have the capacity to affirm the validity of the fees sought for work by the other firms whose fees are sought.

The Arbitrator did advise the parties that he understood that Hawaii law was unsettled for work by out of state counsel on arbitrations in Hawaii. In the interest of avoiding delays and

achieving a durable award, the parties reached a mutual stipulation that the fact that Mr. Baxter was not yet admitted in Hawaii would not affect the validity of any award. A further discussion on that occurred on the record and was cited in the Further Stipulation section above. During these discussions Mr. Baxter did represent on the record that he was seeking admission *pro hac vice*. However, his successful admission was not a condition of the stipulation.

Following this discussion, the Arbitrator was left with the understanding that Mr. Baxter would obtain admission *pro hac vice* and that neither side would make objections on any issue in the case based upon the lack of admission of Mr. Baxter's firm in Hawaii. However, the affect on any fee claims if he failed to do so were not expressly discussed on the record, or in the stipulation.

Regardless of that, again for equitable purposes in this matter and solely for the purposes of this Award, Mr. Baxter is found to have the ability to claim fees and to have properly affirmed the billings of the other law firms involved to which the Arbitrator has given the appropriate weight.

X. RELEVANT CONTRACT TERMS

A. General Terms

The SA (Ex. 17, dated January 1, 2014) contains an integration clause (*see*, par. c. on p. 2). However, that clause does not reference either the NCA (Ex. 33, dated December 17, 2013) or the ICA (Ex. 35, which was also dated January, 2014. If the SA was meant to incorporate the NCA or the ICA it would have been a simple matter to include a sentence stating that the NCA and/or the ICA were incorporated by this reference.

In addition, the NCA contains its own separate, robust integration clause at par III. c. at p. 4. That integration clause does not reference either the SA or the ICA. If the NCA was meant to incorporate the SA or the ICA it would again have been a simple matter to include a sentence stating that the SA and/or the ICA were incorporated by this reference.

In addition, the ICA also contains a simple and separate integration clause at the 11th par. on p 1. That integration clauses does not reference either the SA or the NCA. If the ICA was meant to incorporate the SA or the NCA it again would have been a simple matter to include a sentence stating that the SA and/or the NCA were incorporated by this reference.

In sum, based on the entire record and the testimony of both Dunster and Potter at the hearing the Arbitrator considers all parties to this matter to be sophisticated parties who either had,

or could have had, ready access to competent counsel during the period when the 3 contracts were drafted and signed. Had they wished to do so, these sophisticated parties had three clear opportunities to reflect their intent to incorporate these documents so that they could be read together as a whole—but they consistently failed to do so.

The parties to the three contracts also differ. The SA is solely between Streamline and LC (see p. 3) though it references "HLH" in its text, "HLH" is not defined and is not a signatory to it and the references thus have no binding effect. However, both the NCA and the ICA are between Streamline and HLC. These 3 contracts are thus between two different and distinct legal entities. See also Ex. 124, which reiterates that fact.

The Arbitrator thus finds that the three contracts are independent and do not incorporate each other.

B. Factual Findings And Awards As To Claimant's Claims Under The 3 Contracts At Issue.

1. The SA

The SA provides at p.1 for 4 categories of consulting work by Streamline at hourly rates of $160 plus a possible achievement fee, as follows:

> 1) Coordinating and creating a retail program or plan to create and sell carbon offset and water quality and trading credits.
>
> 2) Making strategic introductions for HLC affiliates for the purposes of raising capital or selling products (e.g. carbon offsets since RFID tags, etc.
>
> 3) Assisting with other retail strategies, grant submissions, and other matters as requested
>
> 4) Use of as SCG President's bio on HLH and HLC marketing documentation and website.

None of the 4 categories above refer to selling Legacy or investment trees directly to others, a task that is expressly covered by the ICA. This is reflected in the stipulation of the parties referred to previously.

The relevant portion of the compensation provisions of the SA for its hourly fees are also at p. 1 and are as follows:

> ... SCG shall prepare a detailed statement with applicable hours incurred on behalf of SCG at the end of each month. Payment for services is due within 30 days. ***For payments received 31 days or later, a fee for nonpayment of 1.5% per month of the unpaid invoice will be added to the next invoice.*** If HLC does not make a payment within 45 days of receipt of the invoice, SCG has the right to stop work. HLH & HLC is responsible for company sanctioned travel expenses. (emphasis supplied)

The relevant portion of the compensation provisions of the SA for its 3.5% incentive fee is as follows:

> **Achievement Fee (Grant awards, investment, brokerage, management fees, and product development)** In consideration of the services contained herein should HLH &/or HLC be successfully awarded **project funding** via a strategic introduction or referral that leads to an investment or carbon or nitrogen or phosphorus credits HLH &/or HLC agrees to pays SCG a minimum achievement fee **of 3.5% (three and half percent) of the gross total order awarded** (the "Achievement Fee" e.g. award value of $1,000,000, then $35,000 is due to SCG post transaction of funds from HLH &/or HLC).... **Consulting fees per project or effort will be deducted against achievement fees for the same project or effort. Achievement fees will be paid within 30 days of award** or held in escrow in interest-bearing account payment is delayed beyond 30 days then all interest is also payable to SCG. If the consulting agreement is terminated achievement fees will still be awarded. (emphasis supplied).

The termination provision of the SA are at p. 2 and provide as follows:

> Either party may terminate this agreement with 45 days advanced written notice. If the agreement is terminated SCG will present HLH and HLC with a statement of account showing all work completed to that time, itemizing work performed, and HLH and HLC shall be obligated to pay all associated Achievement Fees earned and **closed to date and for a period extending three months beyond the termination notice date in order to conclude any pending business.** This agreement is renewable annually upon written consent of both parties.(emphasis supplied)

The Arbitrator finds that there are no provisions in the SA which restrict Streamline from charging air travel for their work at hourly rates. The testimony was that this was done for a time and then ceased when payment disputes arose-- but that concession does not operate to vary or amend the integrated document in light of the requirement for signed amendments in the integration clause.

The Arbitrator also finds that there are no provisions which dictate different hourly rates for simpler vs. more complex work. The Arbitrator notes that there were no complaints raised about this by the Respondents at the time the work was performed and that the Respondents had direct knowledge that Ms. Potter was on island and was working for them.

The Arbitrator also finds that the interest rate provided of 1.5% is unambiguous and is due for the amount of the unpaid invoices for hourly work.

The Arbitrator also finds that the SA, does not contain an express budget and that Streamline's earlier invoices were eventually paid without objection as to the amounts claimed by the Respondents.

The Arbitrator also finds that no Achievement Fee is due Streamline under the SA for all the reasons evident in the record, which include, but are not limited to, the following:

1. The introduction to the GS occurred prior to the date of the SA contract and thus is not covered by it.

2. Even assuming, arguendo, that GS had been introduced under the SA contract, the introduction to GS did not lead to the required "project funding".

3. The carbon credits eventually obtained were only obtained through the work of Treehouse Consulting and Mr. Callister, which replaced Streamline. Whether and in what amount Streamline would have ever obtained those credits is speculative, given its failure to do so while it was involved in the work, and its refusal, despite requests, to provide a budget for completing that work. While the request by LC for a budget from Streamline was perfectly reasonable from a business perspective, as noted above, the Arbitrator has found that providing a budget was not a term of the SA contract, thus refusal by Streamline to do so was not a breach of the SA. If this was material and intended it would have been easy to insert such a requirement in the agreement between these highly sophisticated parties at the outset.

4. The credits were not "**closed**" within 90 days of the termination notice.

5. Streamline did not meet the contractual requirement to "present HLH and HLC with a statement of account" that sought payment for the carbon credits. It was the parties' expressed intent that this procedure would "**conclude any pending business.**" between them. LC was certainly entitled to rely on this clause in the SA.

6. The SA contract required "**Consulting fees per project or effort will be deducted against achievement fees for the same project or effort.**" After deducting the consulting fees here, no achievement fee would have been earned in any case.

7. Also on December 18, 2013, Streamline advised LC in an email that "I am not getting a percentage of ALL the credits only if I sell some or bring in an investor to the business." See Ex. 4.

a. Award On The Invoice Claim Under The SA

Streamline's claims under Count 1 for breaches of the SA by LC for LC's failure to pay invoices and interest due under the invoices are a total of $47,387.43. (see p. 2 of Claimant's post hearing brief "CPHB"). **The Arbitrator hereby awards Streamline this sum for this claim solely against, LC—because LC is the only Respondent which signed the SA.** 25% assumpsit attorneys' fees are also awarded against LC and in favor of Streamline as to this claim in the amount of $11,846.86. Costs are also awarded against LC and in favor of Streamline as to this claim in the amount of $10,930.14.

The total awarded from LC to Streamline on this claim is therefore. $70,164.43.

However, Streamline also brought these same claims for breach of contract against the five other Respondents- besides LC -even though no other Respondent parties were signatory to the SA and it did not concern them. As prevailing responding parties in that action on this contract claim they are therefor each entitled to their reasonable fees and costs, both by statue and pursuant to the stipulation of the parties referred to above.

The Arbitrator finds that the reasonable fees they have each incurred are also $11,846.86. The total costs for all the Respondents was $10,930.14. 1/6 of that is $1,821.69. **Thus the following parties are each awarded $13,668.55 as prevailing parties as to this contract claim:**

1. HLH

2. Dunster,

3. HLFI

4. LHI and

5. LHL

The total awarded from Streamline to these parties on this claim is therefore $68,342.75.

b. Award On The Achievement Fee Claim Under The SA

The amount of this claim was for $53,227.49 (see p. 4 of the CPHB). For the reasons previously noted above the Arbitrator denies the Achievement Fee Claim under the SA.

The Respondents are thus the prevailing party on this contract claim. The attorney's fees due the prevailing party which are attributable to that claim are 25% of the amount claimed, i.e. $13,306.87. This amount is awarded to each of the 6 Respondents as follows:

1. LC

2. HLH

3. Dunster,

4. HLFI

5. LHI and

6. LHL

The Respondents already recover 5/6 of their total recoverable costs on the previous claim. The remaining respondent, LC, did not achieve a cost recovery on the preceding claim but did prevail on this claim and is therefore awarded its 1/6 share of the costs on this claim in the amount of $1,821.69.

The total awarded from Streamline to these parties on this claim is therefore $81,662.91

2. The ICA And The Award On The ICA Commission Claim.

The ICA is a short, 2 page, agreement that provides for a 2.25-9% commission for locating customers for sale of Investment Trees and Legacy trees. The first paragraph of the ICA states in relevant part that:

The Firm is desirous of engaging the services of the Independent Contractor **for the sole purpose of acting as a finder (a) accredited purchasers of investment koa trees; and (b) sponsors for Legacy Trees...**"

The Arbitrator finds that this language clearly limits this contract to the sale of trees and no other purpose.

The eighth paragraph of the ICA states in relevant part that:

> **The firm will pay a Finders Fee of 2.25% to 9%** to the Independent Contractor **for each successful sale which results from the introduction**."

This language again clearly refers to the sale of the trees referenced in the first quoted passage above---and not to any of the other services provided by Streamline under the SA.

Ms. Potter had an earlier history with the Respondents where she sought to have Streamline be a party to similar contracts. In Ex 20, she sent an email to Ms. Maler dated December 19, 2011 stating:

> I am looking for the forms ***to sell Timber trees and Legacy trees*** as an agent of HLH. Jeff told me to email you about forms that would link me to compensation. These look like general forms to buy timber or Legacy trees?
>
> Thanks in advance for your help!
>
> TIF.

In Ex 21, she followed up again, referencing only sales of "timber and Legacy trees".

The forms provided her at that time are part of the record. Testimony and exhibits also confirmed that they were not completed at that time. However, the forms which ultimately were provided again, and which were executed by both sides as the ICA and NCA, were essentially similar in the clauses at issue here.

Through the testimony of Ms. Potter, Streamline sought to link the ICA, the SA and the NCA. However, Ms. Potter was unable to explain Exhibit 36—which demonstrated a very robust history of multiple other paired ICA and NCA contracts between the Respondents and other third parties who were all only selling "Legacy Trees" and "Investment Trees" for the Respondents.

The NCA in these paired agreements generally contained the exact same relevant language as the NCA contract with Streamline as to the 20% non-contravention fee. The ICA agreements were also practically identical to the one with Streamline. Both Ms. Maler and Dunster testified

credibly that all of these contract pairs dealt with the sale of Legacy trees and Investment trees and solely with that effort. Thus, it is far more likely than not that they would deal solely with that in the case of Ms. Potter as well. The Arbitrator finds that, read as a whole, these provisions clearly do refer only to the sale of trees—not to the much broader work which was done by Streamline under the SA for consulting for forestry projects. The presence of these specific terms, when combined with the absence of any cross reference to, or integration of the SA, prevents the ICA and the SA from being read together. As a corollary, the denial of this by Ms. Potter was somewhat damaging to her credibility on this issue.

It was essentially undisputed by Respondents that Streamline obtained two sales to Mr. Michael Jones for $21,744, on 2/26/15 and for $28,368.00 on 1/2/18. The total value of these sales was $50,112. Though Streamline was the procuring cause of these sales it was not paid for them. Although the Claimant did not repeat a separate claim for this in its CPHB the Arbitrator finds that the claim was established by the testimony of Potter and Dunster at the hearing and that this was a breach of the ICA and that, in equity, the full 9% commission should be paid to Streamline.

The amount awarded from HLH to Streamline for this claim is therefore $4,510.08. The ICA does not provide for interest and none is awarded on this claim. However, the failure to pay this claim subjects HLH to payments under the NCA which will be discussed below. The Claimant is the prevailing party on this contract claim. The attorney's fees due the prevailing party which are attributable to this claim are 25% of the amount claimed, i.e. $1,127.50. The Claimant has already been awarded all of its recoverable costs on earlier claims. **The total due from HLH to Streamline on this claim is therefore $5,637.58.**

It was unclear to the Arbitrator whether this claim was pursued by the Claimant as to any Respondents other than HLH. Therefore, the Arbitrator makes no award of attorneys' fees to the other Respondents as to this claim under the assumpsit statute as prevailing parties.

3. The NCA

Streamline argues that the 20% non-contravention fee ("NC Fee") provided under par. II. b of the NCA. should be applied both to the Jones tree sale transaction discussed immediately above and also to the carbon credits eventually certified by the GS related to Streamline's work under the SA. These will be discussed in turn below:

1. The Award Under The NCA On The Jones Transaction

The Arbitrator finds that the NCA was paired with and applies to the ICA, based on the admissions of Ms. Maher and Dunster. The Arbitrator has already found that the Jones commission claim was improperly not paid to Streamline. That failure triggers payment of the NC Fee which is expressly due "...in addition to any other legal or equitable remedies that may be available" (see Par II. B. on age 3 of the NCA)

The amount claimed for the NC Fee is at p. 8 of the CPHB and is $10,022.40, i.e. 20% of $50,112.00. **The amount awarded to Streamline from HLH on this claim is therefore $10,022.40.** The Claimant is the prevailing party on this contract claim as to HLH. The attorney's fees due the prevailing party which are attributable to this claim are 25% of the amount claimed, i.e. $2,505.60. The Claimant has already been awarded all of its recoverable costs on earlier claims. **The total due from HLH to Streamline on this claim is therefore $12,528.00.**

This breach of contract claim was clearly made against all of the "Dunster Entities" which are all of the Respondents (see e.g. paragraphs 8-11 and 60 of the Claimant's "Statement of Claim", ("SC")) filed with DPR and dated February18, 2018. The Arbitrator noted par. 11 which states: "The Dunster Entities *are jointly and severally liable to Streamline for the wrongdoing alleged in this Statement of Claim on the basis that they were and are joint participants in a common enterprise.*) As HLH was the only party found liable the prevailing Respondent parties on this claim are all of the Respondents other than HLH, i.e.:

1. LC
2. Dunster,
3. HLFI
4. LHI and
5. LHL

The Respondents have already been awarded all of their recoverable costs. **Each of these entities is therefore awarded their assumpsit attorney's fees from Streamline of 25% of the amount claimed, i.e. $2,505.60 each for a total of $12,528.00.**

2. The Award Under The NCA On The Claim For A NC Fee On the Carbon Credits Certified by the GS

The Arbitrator finds first, based on evidence that was un-contradicted, that Streamline had already introduced GS to LC before the NCA was signed and prior to any obligations arising thereunder, thus that introduction does not come under the NCA.

Second, the NCA is between the same parties as the ICA. This fact makes it easier to read these two agreements together. Moreover, the NCA was habitually paired with the ICA, as was noted above. Based on this the Arbitrator finds that the "Collaboration" referred to in the NCA is only the "Collaboration" for selling trees--not the work which was being done under the SA. For that same reason the Arbitrator further finds there has been no breach of confidentiality and non-disclosure provision in the NCA which would trigger the 20% penalty provided under the NCA.

Third, however even assuming, *arguendo*, that the NCA did apply to the work under the SA then the first step on the path to prove Streamline's entitlement to the 20% NC Fee would be for Streamline to demonstrate that the prerequisite events have occurred, or been performed, so as to generate that fee. What is required by the language of the NCA is as follows:

> **If any monies, capital, financings, credit facilities, loans, products, materials, services, mergers and/or any other form of consideration are invested, contributed, loaned or arranged,** directly or indirectly by or on behalf of an Introduced Party to or for the benefit of the Recipient Party, or vice versa, in violation of the non-circumvention provisions in this Agreement during a period of ten (10) calendar years after the Effective Date, **then**, in each and every such occurrence, in addition to any other legal or equitable remedies that may be available to the Disclosing Party under this Agreement or otherwise, **the Recipient Party shall pay to the Disclosing Party a fee ("*Fee*") in an amount equal to twenty per cent (20%) of the total value of all such monies, capital, financings, credit facilities, loans, products, materials, services, mergers, and/or other form of consideration.** In each and every such occurrence, **the fee shall be due** and payable within seven (7) calendar days **after the consummation, transfer, delivery, payment and/or receipt of benefit of any of the aforementioned monies, capital, financings, credit facilities, loans, products, materials, services, mergers and/or other consideration.** (emphasis supplied)

What Streamline accomplished under the SA simply did not meet the language quoted above so as to warrant a 20% fee under the NCA agreement for several reasons, including but not limited to the following:

a) The Arbitrator finds that The GS did not in fact provide LC with any of the following, with the possible exception of "services": "monies, capital, financings, credit facilities, loans, products, materials, services, mergers and/or any other form of consideration (which) are invested, contributed, loaned or arranged."

b) To the extent "services" were provided by GS, the Arbitrator finds that those "services" do not fairly meet the further part of the definition of having been, "invested, contributed, loaned or arranged" –i.e. they were clearly not "sweat equity" type services which were contributed to aid the project without having to use capital to pay for them. It was un-contradicted here that the GS simply certified carbon credits. Most importantly it did so for its normal fees—they were not contributed by the GS and certainly not by Streamline—who was also paid, or is owed, for all of the time it spent under the SA to assist in this process.

c) The Arbitrator further finds that there was never any "**consummation, transfer, delivery, payment and/or receipt of benefit**" as contemplated to have occurred by the quoted language, because, though the carbon credits have been certified, the evidence was also un-contradicted that none had been sold as of the completion of the hearing in this matter. Thus, Streamline seeks 20% of something as to which they admit no funds have yet been received. This fact has forced Streamline to name an assumed average $13.00 value for the carbon credits and then compute its claimed damages based on that assumed value. Thus, the Arbitrator further expressly finds that such damages are speculative under Hawaii law which requires that all damages, other than punitive damages, be proven to a "reasonably probable" standard. (See, Standard First Circuit jury instruction Nos 8.9 and 8.11).

In short, this language, when read as a whole, more readily smacks of someone earning a fee by being the party who first introduces and *then closes,* either a loan or contribution in kind from an investor for a project. That simply did not happen through Streamline's work here.

d) Even if the above problems did not exist the Arbitrator finds that the NC fee is independently still not due because it is *only* generated if there has been "a violation of the non-circumvention provisions in this agreement" (see line 4 of the cited paragraph). A violation consists of the disclosure of "*confidential information*" under par. I .a. of the NCA which also requires that the disclosed information is information "*...relating in any way to the Collaboration*". Based on this language the Arbitrator further finds that the name and contact information for GS is simply not protected "confidential information" under the NCA, because

that is not the subject of the Collaboration referred to in the NCA and independently, because the GS is a well-recognized organization, one whose contact information is readily available. Its existence is thus public knowledge which could not be "logically considered confidential" as would also be required to give it protection by paragraph I. a. of the NCA.

There are other independent reasons for the Arbitrator's finding that Streamline is not due a recovery of the NC Fee on this claim. Those are as follows:

1. LC chose to terminate the SA in or about August 2014. All work thereunder by Streamline had ceased for non-payment—which it had a complete right to do—but the result of that choice was that it did not complete the work needed to obtain carbon certification through the GS.

2. A separate consultant, Mr. Callister of Treehouse Consulting, was eventually successful in completing the work Streamline had started and in obtaining some carbon certification credits from GS, though far less than those projected by Streamline while Streamline was involved. Mr. Callister found deficiencies in Streamline's work which had to be re-done at a cost of over $6,700 and he also found errors in the amount of carbon credits projected during her tenure. This topic is discussed more fully below in the discussion of the counterclaims

3. The Arbitrator therefore finds that Streamline's work was so incomplete at the time of termination that it was not the legal cause of the certification of carbon credits by GS which was ultimately obtained through the work of others.

The amount claimed by Streamline for the NC Fee for the Carbon Credits certified by the GS is at p. 6 of the CPHB and is $186,599.40, i.e. 20% of $932,997.00. **This claim is denied in its entirety and Streamline is awarded no damages for it.** The Respondents are thus the prevailing parties on this contract claim as to Streamline. This breach of contract claim was clearly made against all of the Respondents. The attorney's fees due each prevailing party which are attributable to this claim are 25% of the amount claimed, i.e. $46,649.85. The prevailing Respondents parties on this claim are:

1. LC
2. HLH
3. Dunster,

4. HLFI

5. LHI and

6. LHL.

The Respondents have already been awarded all of their recoverable costs. **Each of these entities is therefore entitled to an award of their assumpsit attorney's fees from Streamline of 25% of the amount claimed, i.e. $ $46,649.85 each, for a total of $279,899.10.** However, the award of these sums together with previous awards from earlier claims exceeds the total attorneys' fees that may be awarded to the Respondents because it exceeds their approved fees of $263,000. Therefore the total amounts awarded will be re-adjusted with appropriate deductions to comply with the applicable limits when all other awards are completed below.

XI. DISCUSSION OF LAW APPLICABLE TO STREAMLINES 'S CLAIMS UNDER COUNTS 1 AND 2

The Claimant's position that it was entitled to receive a 3.5% "achievement fee" for its work under the SA was summarized in their post hearing brief ("CPHB") as follows:

> The contract ***clearly and unambiguously states*** that Streamline is entitled to an achievement fee ***for the value of product development in the form of carbon credits.*** See State Farm Fire & Cas. Co. v. Pac. Rent-All, Inc., 90 Haw. 315, 324, 978 P.2d 753, 762 (1999) (hereafter the "SF Case") ("the parties' disagreement as to the meaning of a contract or its terms does not render clear language ambiguous"). Streamline's principal, Tiffany Potter, testified extensively at the arbitration hearing as to the work it conducted on behalf of HLH, LLC ***to obtain the carbon credit certification and the strategic introduction to the Gold Standard that led directly to carbon credits being certified,*** and subsequently transferred to the possession of Legacy Carbon, LLC. The carbon credits were certified on April 6, 2015. The parties agree that in no event did the actual certification of the carbon credits occur later than February of 2016. Ex.'s 560, 602, 604, and 652.

CPHB at 4 (emphasis added).

The same case was cited in support of the claim for the NC Fee.

The Arbitrator has closely reviewed the SF Case relied upon by Claimant, together with Order 2, in which the case is noted by Judge Mollway. The discussion relevant to the holding for

which the case was cited by Claimant is found at pages 323 through 325 of the opinion, and is as follows:

> We acknowledge the well-settled rule ***that the law favors the resolution of controversies through compromise or settlement rather than by litigation.*** Dowsett v. Cashman, 2 Haw. App. 77, 82-83, 625 P.2d 1064, 1068 (1981). ***Such alternative to court litigation not only brings finality to the uncertainties of the parties, but is consistent with this court's policy to foster amicable, efficient, and inexpensive resolutions of disputes. In turn, it is advantageous to judicial administration and thus to government and its citizens as a whole.*** We agree with the policy and law of settlements which the Supreme Court of Arkansas succinctly sets forth in Ragland v. Davis, 301 Ark. 102, 106-107, 782 S.W.2d 560, 562 (1990) (citation omitted, emphasis added): ***Courts should, and do, so far as they can do so legally and properly, support agreements which have for their object the amicable settlement of doubtful rights by parties; the consideration for such agreements is not only valuable, but highly meritorious. Because they promote peace, voluntary settlements . . . must stand and be enforced if intended by the parties to be final,*** notwithstanding the settlement made might not be that which the court would have decreed if the controversy had been brought before it for decision. Such agreements are binding without regard to which party gets the best of the bargain or whether all the gain is in fact on one side and all the sacrifice on the other.
>
> * * *
>
> ***The instant case appears to present a properly executed settlement agreement. Marn argues, however, that he did not intend to settle his property damage claim and that a genuine issue of fact precludes summary judgment, even though the Agreement repeatedly provides for the settlement of his property damage claim.***

It is well settled that courts should not draw inferences from a contract regarding the parties' intent ***when the contract is definite and unambiguous***. See Hanagami v. China Airlines, Ltd., 67 Haw. 357, 364, 688 P.2d 1139, 1144 (1984) (citation omitted). In fact, contractual terms should be interpreted according to their plain, ordinary meaning and accepted use in common speech. See Amfac, Inc. v. Waikiki Beachcomber Inv. Corp., 74 Haw. 85, 108, 839 P.2d 10, 24, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992). ***The court should look no further than the four corners of the document to determine whether an ambiguity exists.*** See KL Group v. Case, Kay Lynch, 829 F.2d 909, 916 (9th Cir. 1987) (applying Hawaii law). Consequently, the parties' disagreement as to the meaning of a contract or its terms does not render ***clear language*** ambiguous. See State Farm Mut. Auto. Ins. Co. v. Fermahin, 73 Haw. 552, 556, 836 P.2d 1074, 1077 (1992); Hawaiian Ins. Guar. Co. v. Chief Clerk of the First Circuit Court, 68 Haw. 336, 342, 713 P.2d 427, 431 (1986).

It is equally well settled that [t]he parol evidence rule is invoked to bar the testimony of prior contemporaneous negotiations and agreements that vary or alter the terms of a written instrument. The rule is one of substantive law setting forth the well settled principle that an agreement reduced to writing serves to integrate all prior agreements and negotiations concerning the transaction into the written instrument which then represents the final and complete agreement of the parties. The rule then bars evidence of collateral agreements that would vary or alter the written terms and is called into play where the issue involves the rights and duties created by the instrument. As a rule of substantive law, it determines the parties' legally enforceable contractual obligations and precludes consideration of extrinsic evidence to the contrary. Akamine Sons v. American Security Bank, 50 Haw. 304, 440 P.2d 262 (1968); Midkiff v. Castle Cooke, Inc., 45 Haw. 409, 368 P.2d 887 (1962).

Historically, in an action to determine the parties' contractual rights under an agreement, the court's only inquiry ***would center around whether the written agreement was a total integration of the parties' intent.*** If so, absent evidence of mistake or fraud, the rule barred introduction of any extrinsic evidence that varied or altered the terms. See 4 Williston Contracts § 633 (1961). Cosmopolitan Fin. Corp. v. Runnels, 2 Haw. App. 33, 37-38, 625 P.2d 390, 395 (1981) (emphases added). ***Therefore, absent*** fraud, duress, ***mistake or ambiguity, extrinsic evidence is excluded once it is determined that a contract is fully integrated.*** See Industrial Indem. Co. v. Aetna Cas. Sur. Co., 465 F.2d 934, 937 (9th Cir. 1972); Akamine Sons, Ltd. v. American Sec. Bank, 50 Haw. 304, 310, 440 P.2d 262, 266 (1968).

The Agreement, in the instant case, also appears to be fully integrated. Paragraph 11 provides that "[t]his Settlement Agreement contains the entire agreement between the parties[,]" and, further, paragraph 8 provides that "no representation of fact, opinion or promise has been made to induce the Settlement Agreement, apart from this writing and Settlement Agreement, and, MARN expressly acknowledges he has not relied upon any statement, representation, opinion or promise by anyone or any entity in executing this Settlement Agreement other than as is set forth in this Settlement." Turning to the contract terms, the plain and ordinary language contained within the Agreement repeatedly provides for the settlement of Marn's property damage claim. As the Agreement is an integrated document, the parol evidence rule bars consideration of Marn's belated assertions that he did not intend to settle his property damage claim.

Without expressly stating so, Marn, however, implies that he was mistaken about the contents of the Agreement and/or that he was without knowledge of the Agreement's many references to settling his property damage claim arising from the January 19, 1992 accident. Marn states in his affidavit that he asked his attorney to preserve his property damage claim, basically because he was aware of State Farm Fire's subrogation rights through the renter's insurance policy.

> This court, in AIG Hawaii Ins. Co. v. Bateman, 82 Haw. 453, 457-58, 923 P.2d 395, 399-400, amended in part, 83 Haw. 203, 925 P.2d 373 (1996), addressed a request for rescission and cancellation of a settlement agreement on the basis of mistake. In Bateman, this court stated that a contract is voidable where one party is mistaken as to a basic assumption supporting the contract at the time of its making — if the mistake is material and has an adverse effect to the agreed exchange of performances — so long as (1) the mistaken party has not borne the risk of the mistake and (2) enforcement of the contract would not be unconscionable, or the other party had reason to know of the mistake or caused the mistake. Id. (citing Restatement (Second) of Contracts § 153, at 394, and § 154, at 402-03 (1979)). Furthermore, where the party seeking relief was not mistaken but consciously ignored the fact that he or she had limited knowledge of the facts, he or she effectively bears the risk of that mistake. Id. at 457-58, 923 P.2d at 399-400 (citing Restatement (Second) of Contracts § 154 cmt. c).
>
> Applying the above principles, we are led ineluctably to one conclusion — that the circuit court did not err in dismissing Marn's property damage claim. First, Marn has not requested the rescission or cancellation of the Agreement. Second, he has barely implied that he was mistaken about its contents. ***Third, a simple reading of the Agreement reveals the more than ten times that Marn's property damage claim was incorporated therein***. Moreover, the Agreement also repeatedly incorporates, within the scope of settlement, future claims, known and unknown. Thus, Marn has effectively borne the risk of his mistake.
>
> Marn's belated attempt to sever his property damage claim from the Agreement on the basis of his ignorance of its contents is simply insufficient to establish a genuine issue of material fact regarding the viability of his property damage claim. ***Therefore, considering the policy recognizing the finality and enforceability of valid and binding settlement agreements, we hold that the circuit court correctly dismissed Marn's claims in Counts One, Three, and Four of the January 14, 1994 complaint***.

Id. at 323-325 (italics in original omitted, bold italics and underline added).

It is clear from a review of the points highlighted above from the text of the SF Case that there are several significant differences between the facts upon which the SF Case was decided and the three contracts and evidence in this matter. The main differences are as follows:

1. The SF Case involved efforts to repudiate a settlement agreement achieved after litigation had commenced. It recites the settled law under which courts have consistently recognized that settlement agreements are strongly deserving of enhanced support--because they promote judicial economy and for other sound policy reasons. However, the claims here do *not* involve enforcement of a settlement agreement.

2. The SF Case involved a *single* contract found to be "definite and unambiguous". One of many reasons for that was that the release of the property damage claims was referenced ten separate times. However, the claims here concern *three* separate contracts--the SA, the NCA and the ICA –and unfortunately, each contain ambiguities which are in turn surrounded by conflicting testimony as to their respective intent.

3. The SF Case involved a single contract with a thorough integration clause, such that the court's only inquiry could ***"center around whether the written agreement was a total integration of the parties' intent."*** That is simply not possible here--where the three contract *each* have integration clauses and *none* refer to the others.

4. This existence of *two sets of contracting parties* is also quite dissimilar to the SF Case and is an additional barrier to the argument that they should all integrated into one agreement.

For all these reasons, the Arbitrator finds that the 3 separate contracts here, between two separate Respondents do not contain the "***clear language",*** nor do the facts here support, a finding that they constitute a ***"written agreement"*** which ***"was a total integration of the parties' intent."*** As a result the Arbitrator further finds that he may look ***"further than the four corners of the document",*** to decide the relevant issues--as the Arbitrator has done in the discussion supporting his findings and awards above.

The findings and awards made by the Arbitrator in this case were based upon both the extensive testimony heard and the many exhibits introduced during the five days of hearings and arguments in this matter. The testimony revealed very direct disagreements between Potter on the one hand, and Dunster, Maler, Fox, Rosen and Callister on the other hand, about the disputed issues. The Arbitrator was thus required to weigh the parties' respective credibility on those issues. The Arbitrator did so and found that Potter was particularly incredible on the issue of whether the NC Fee could be applied to her work under the SA. Her credibility was directly undermined by her own communications, including Exhibit 21 and the history of her dealings with the Respondents.

XII. COUNTS III-VII

The remaining claims of Streamline are Counts, 3-7. The Arbitrator finds that these claims are denied based on the entire record herein and that the Claimant has failed to meet its

burden of proof as to liability and damages on each such claim for reasons that include, but are not limited to the following:

1. As to Count 3 the Arbitrator finds that the facts underlying the claims of alleged breach of the duty of good faith and fair dealing by allegedly failing to pay for the services referred to Streamline; allegedly requiring Streamline to continue to work without pay; alleged disparagement of Streamline and alleged interference with Streamline's contractual relationships are subject to the terms of the express contracts where the parties' rights and liabilities have already been delineated above.

In addition, the Arbitrator finds that the Claimant did not meet its burden to present evidence of a requirement imposed by the Respondents that Streamline must work without being paid, or evidence of unlawful disparagement of Streamline, or evidence of intentional interference with Streamline's prospective advantage.

To the contrary, the testimony, and exhibits clearly showed that Streamline consented to and facilitated the contacts with GS and Mr. Callister following the termination of the SA. It apparently did so as a good business practice and to preserve valuable business relationships.

The termination started with Ex. 68, dated August 14, 2014 which was LC's written notice of termination of the SA to Streamline. The Arbitrator finds that this commenced a requirement under the terms of the SA that Streamline prepare and present a final "statement of account" for any moneys allegedly owed to it by LC for services or any other fees.

Ms. Potter responded with Exhibit 45, which was an email from Ms. Potter to Lew Rothstein dated August 14, 2014 in which she stated:

> **I will be notifying parties that I brought to our project that the project has been terminated.** That includes Gold Standard, Andrew Callister, and MASCD. Thanks,
>
> Tiff Potter (emphasis supplied)

Termination of the project was, of course, *not* Ms. Potter's decision to make. The statement that she was going to notify others to that effect was highly inappropriate and reasonably led to Dunster's letter, (Ex 70) which is dated September 9, 2014 and is from Dunster to Ms. Rosen of GS. It states LC's decision not to go forward with the GS, citing concerns with LC's relationship with Ms. Potter. The credible testimony and Ex. 45 provided ample support

that the concerns expressed by Dunster in Ex. 70 were stated in good faith and with a sufficient basis in fact.

Ms. Rosen (for GS) responded to Ex 70 in her email of September 10, 2014, (Ex. 71) encouraging the Respondents to go forward with the project with the GS and stating that:

> I want to be clear that ***you are free to move forward in our process without assistance from Tiffany***. If you would like to do so, I am happy to further discuss what documents are still required for your application. (emphasis supplied)

Thereafter, on September 17, 2014, Potter sent Ms. Rosen an email (Ex. 73) introducing and praising Mr. Callister and Treehouse Consulting, and urging the GS to work with them to complete the project. The email stated in relevant part:

> ***This project means the world to me as a forester and a conservationist.*** Because I have a conflict of interest that I cannot discuss (due to my confidentiality agreement), ***it would be a great accomplishment if the project continued with you to supporting.*** I have a lot of faith in Andrew and happy to assist with questions. Lisa and Gold Standard has put some time into this too and ***I want to honor that commitment and generosity by doing what I can to make sure the project continues. It's not easy for me but with the long-term perspective in mind, I am honored to do it.*** Andrew is very well suited for the two last pieces anyway – quantification and leakage. ***I encourage you two to connect.*** I know you will be better assured and supported if you do. Lou,
>
> Thanks,
>
> Tiff (emphasis supplied)

Ex. 73 made good business sense and helped to preserve the relationships and reputations of all concerned. The Arbitrator finds that Ex. 73 also operates independently as a waiver and consent for Respondents to proceed with the GS, Mr. Callister and MASCD. The cited deposition testimony of Ms. Rosen and Mr. Callister and the testimony of Dunster supported these points. Importantly Potter made no reference in this letter, or otherwise in this time frame, to a claim for an NC Fee.

The Respondents are therefore the prevailing party on these claims. However, these claims sound in tort and no attorney's fees are due. Costs would be available, but the full costs have previously been awarded on other counts.

2. As to Count 4, the Arbitrator finds that Streamline has failed to meet its burden to show that there was unfair competition or deceptive trade practices by the unauthorized use of Streamline and its managements' names and biography in SEC filings following termination of the SA in August 2014, or false representations about Ms. Potter's role with the Respondents.

The Arbitrator notes that the SA specifically allowed permission to use Streamline's information as follows

> Use of as SCG President's bio on HLH and HLC marketing documentation and website.

There is no provision in the SA stating that this right terminates when the SA contract terminates. Moreover, it is highly unrealistic to expect that historically valid information can be removed from a public record, such as the files of the SEC. The Arbitrator also finds that the Respondents made reasonable efforts and offers in this regard when they received Streamline's complaints following the termination. The Arbitrator also finds that none of the Respondents are "competitors with" Streamline which is an independent bar to these claims.

The Respondents are therefore the prevailing party on these claims, however these claims mainly sound in tort and no attorney's fees are due. Costs would be available, but the full costs have previously been awarded on other counts.

5. As to Count 5, it alleged unfair trade practices by HLH in violation of HRS 481A as a result of essentially the same conduct detailed in Count 4 above. Count 5 is denied for the same reasons as Count 4.

The Respondents are therefore the prevailing party on these claims. These are statutory claims which can allow recovery of attorney's fees upon a finding that Streamline "...knew their claim to be groundless." (See HRS 481A-4 (b). The Arbitrator finds that there is insufficient evidence before him to make that finding. Costs would be available to the Respondents, but the full costs have previously been awarded on other counts.

6. As to Count 6, it alleged tortious interference with the business relationship between Streamline and the GS by all Respondents. Count 6 is denied for the same reasons as Count 3.

The Respondents are therefore the prevailing party on these claims, however these claims mainly sound in tort and thus no prevailing party attorney's fees are due. Costs would be available, but the full costs have previously been awarded on other counts.

7. As to Count 7, it alleged unjust enrichment of the Respondents by Streamline's work for them between January and August 2014. Count 7 is denied for the same reasons as Count 3. The Arbitrator also notes that he has already awarded the damages due under the applicable contracts and that a theory of unjust enrichment is not available if the contracts at issue provide an adequate remedy.

The Arbitrator also notes, as to each of Counts 3-7 that very little, if any, evidence was presented at the hearing to support any of these claims. The Claimant's counsel also sought to formally withdraw the counts during the hearing. The Respondents declined to consent, apparently because they had been required to defend the claims made up through the commencement of the hearing.

The Respondents are therefore the prevailing party on these claims, however these claims mainly sound in tort and no attorney's fees are due. Costs would be available, but the full costs have been awarded on other counts.

XIII. COUNTERCLAIMS

The counterclaims of LC are in Counts, 1-5. The Arbitrator finds that these each of these claims are denied based on the entire record herein and that the Claimant has failed to meet its burden of proof as to liability and damages on each such count for reasons that include, but are not limited to the following:

1. As to Count 1, LC alleges breach by Streamline of the SA contract between LC and Streamline by allegedly 1) failing to provide deliverables; 2) performing required services inadequately, 3); providing incorrect carbon credit calculations and 4) failing to perform within the alleged "approved budget".

On a business level, the record in this case did demonstrate an unreasonable failure by Streamline to provide a budget--despite repeated requests, and it also demonstrated a substantially incorrect carbon credit calculation. The Arbitrator attributes the latter both to Streamline's consultants and to Streamline itself, due to the assurances of Potter that this would not occur on her watch in Ex. 91, where she stated in relevant part that:

> **The #1 issue in carbon project development, however, on every single project I have worked on is, the emission reduction potential is always**

overestimated...Regardless, I am absolutely determined to make sure it's not going to happen to HLH. (emphasis supplied).

Exhibit 91

However, the Arbitrator finds that the SA contract did not clearly provide any requirement that Streamline provide the deliverables sought, or that it perform the services to a particular standard, or that it correctly estimate the carbon credits available, or that it operate under a particular budget. The parties here were sophisticated and could easily have included such terms, which are common, if they wished. Having failed to do so the Arbitrator will not imply what the parties failed to consider, or require, or both.

The amount claimed in damages for this count is $42,754.77 (See p. 16 of LC's Post hearing brief, "LPHB"). The Claimant is therefore the prevailing party on this claim. This claim is in contract and so assumpsit attorney's fees are due to the Claimant. Costs would be available, but the full costs of Claimant have been previously awarded on other counts.

The Claimant is therefore entitled to an award of their assumpsit attorney's fees from LC of 25% of the amount claimed, i.e. $10,688.69.

2. As to Count 2, LC alleges negligence in performance by Streamline of the services it rendered under the SA based on essentially the same facts set out in Count 1. The Arbitrator finds no duty in tort to perform tasks covered by a relevant contract between the same parties which does not establish those duties. The reasoning is similar to that for Count 1 above.

The Claimant is therefore the prevailing party on this claim. This claim is in tort and so no attorney's fees are due to the Claimant. Costs would be available, but the full costs of Claimant have been previously awarded on other counts.

3. As to Count 3, LC alleges breach of the duty of good faith and fair dealing by Streamline under the SA in its negotiations and other dealings with LC and by its use of LC and HKLH materials on Streamline's website. Again, the Arbitrator finds no duty in tort to perform tasks covered by a relevant contract between the same parties which does not establish those duties. The reasoning is similar to that for Counts 1 and 2 above.

The Claimant is therefore the prevailing party on this claim. This claim is in tort and so no attorney's fees are due to the Claimant. Costs would be available, but the full costs of Claimant have been previously awarded on other counts.

4. As to Count 4, LC alleges negligent/intentional misrepresentation by Streamline related to its qualifications and experience to perform under the SA. Again, the Arbitrator finds no duty in tort to perform tasks covered by a relevant contract between the same parties which does not establish those duties. Here there was no evidence of an actual representation by Streamline that it could get the job done. LC had every opportunity to investigate Streamline's qualifications and had worked with it before the SA contract—yet chose to proceed with the SA and other agreements despite a rocky history. The reasoning is similar to that for Counts 1 and 2 above.

The Claimant is therefore the prevailing party on this claim. This claim is in tort and so no attorney's fees are due to the Claimant. Costs would be available, but the full costs of Claimant have been awarded on other counts

5. As to Count 5, LC alleges negligence by Streamline in allegedly grossly over-estimating the carbon credits certifications that could be obtained. Streamline's work on this aspect was certainly questionable for the reasons previously discussed. However, again, the Arbitrator finds no duty in tort to perform tasks covered by a relevant contract between the same parties which does not establish those duties. The reasoning is similar to that for Counts 1 and 2 above.

The Claimant is therefore the prevailing party on this claim. This claim is in tort and so no attorney's fees are due to the Claimant. Costs would be available, but the full costs of Claimant have been previously awarded on other counts.

XIV. SUMMARY OF ALL AMOUNTS AWARDED

The monetary amounts awarded at various points above are summarized as follows for ese of reference. In the event of any conflict, or calculation errors, the amounts in the body of the award above shall control.

A. Total of all awards from Streamline to all Respondents: **$68,342.75 + $81,662.91 + $12,528.00 + $279,899.10 = $442,432.76**

B. Total awards from LC to Claimant: **$70,164.43 + $10,688.69 = $80,853.12**

C. Total awards from HLH to Claimant: **$5,637.58 + $12,528.00 = $18,165.58**

D. Total of all awards to Claimant from both HLH and LC: **$99,018.70**

E. Net gross award in favor of Respondents: **$442,432.76 - $99,018.70 = $343,414.06.**

F. **The Net Gross award in favor of Respondents exceeds their actual and reasonable attorney's fees maximum of $263,000 as determined by the Arbitrator, plus their allowed costs of $10,930.14 = $273,930.14, not including DPR's allocations of arbitration costs and fees.**

G. **Net award in favor of Respondents and against Claimant is therefore $273,930.14 not including DPR's allocations of arbitration costs and fees.**

XV. PREJUDGMENT INTEREST

The net monetary Award in favor of Respondents made above of **$273,930.14** shall be due and payable immediately. The Arbitrator finds that prejudgment interest from the date of this Award is appropriate and is consistent with the intent and purpose of the prejudgment interest statute. All unpaid amounts of the Award shall bear interest at the statutory pre-judgment interest rate of 10% until paid in full.

XVI. DPR FEES AND COSTS OF ARBITRATION

The Arbitrator finds that all fees and costs for the administration of the arbitration should be allocated and borne equally between the Claimant and the Respondent sides (i.e. 50% for each side) and the Arbitrator hereby orders that these be paid as determined by DPR. That allocation and payment requirement is specifically incorporated herein as a part of this Award. Should one party pay amounts owing by another party then, the amount of that payment shall act as either an addition, or offset as the case may be, as to any other amounts due pursuant to this Award.

XVII. CONCLUSION

The parties here are to be complimented because they are all engaged in a great and compelling endeavor to assist in managing severe climate threat issues. Counsel and the parties were attentive and cooperative during the arbitration and the Arbitrator thanks each of them for their participation in a lengthy and complex matter.

This Final Award is final and binding and is intended to resolve any and all claims and defenses thereto and any and all counterclaims and defenses thereto which were submitted to the

Arbitrator by the parties in this matter. Any claim, counterclaim or defense not specifically addressed above is hereby denied with prejudice.

This will conclude the Arbitrator's service in this matter unless further proceedings are properly and timely pursued pursuant to applicable law.

SO ORDERED:

ARBITRATOR, JERRY M. HIATT

November 28, 2018
DATE