

BEFORE

THE ILLINOIS COMMERCE COMMISSION

Niatel, LLC)	
)	
Application for a certificate of Local and)	Docket No. 09-0509
Interexchange authority to operate as a)	
Reseller of telecommunications services)	
Throughout the state of Illinois)	

**INTERVENORS' MOTION FOR LEAVE TO AMEND ITS
PETITION TO INTERVENE IN OPPOSITION TO NIATEL, LLC'S
APPLICATION FOR AUTHORITIES TO SUPPLEMENT THE EVIDENTIARY RECORD**

Pursuant to Section 200.140 of the Illinois Administrative Code, Transcend Multimedia, LLC ("Transcend"), Patrick Hafner and Jesse Alejos (collectively "Intervenors"), by and through its undersigned attorneys, hereby file this "Motion for Leave to Amend its Petition to Intervene and Opposition to Niatel, LLC's Application for Authorities to Supplement the Evidentiary Record" ("Motion to Supplement the Record") and in support states the following.

Since filing its Petition to Intervene on December 9, 2009 ("Petition"), Intervenors have discovered additional information that bears significantly on the potential managerial and financial inabilities of Niatel, LLC ("Niatel") to operate as a reseller of telecommunications services in Illinois. The evidence relating to Niatel's lack of managerial qualifications necessarily involves some inquiry into the character of Niatel's principals. However, as seen in Illinois Bell Telephone Company's ("AT&T Illinois") intervention into the application of MyBell, Inc. ("MyBell"), character evidence of an applicant's management is an essential element of whether or not an applicant has the managerial qualifications to provide service in

Illinois. See AT&T Illinois' Request for Reconsideration of Ruling on Petition for Leave to Intervene and Motion to Reopen Record to Hear Additional Evidence, March 7, 2007 (07-0063).

In MyBell, AT&T Illinois moved the ALJ to reconsider his earlier decision denying intervention and to reopen the record for additional hearings. In support of its motion, AT&T Illinois presented evidence about MyBell's principals and management that is strikingly similar to Niatel, albeit to a somewhat a lesser scale. In particular, AT&T Illinois argued that MyBell's purported officers, directors and management personnel were all employees of Global NAPs' and that MyBell was likely part of the "Global NAPs organization's continuing corporate shell game, a continuing scheme to transfer revenues and assets away from certificated service companies to non-certificated affiliates, all to shield those revenues and assets from creditors while the certificated service entities refuse to pay for the services they purchase from legitimate local exchange carriers." *Id.* at 6. AT&T Illinois presented evidence showing the corporate dishonesty of, and fraudulent acts by, Global NAPs' owner and Global NAPs. AT&T Illinois further claimed that MyBell's management were Global NAPs "insiders" and were unworthy of ICC authority. *Id.* at 7. The ICC staff supported the requested relief and agreed that AT&T Illinois' Petition for Leave to Intervene should be granted, and that the record should be reopened to hear additional evidence on MyBell's qualifications to operate in Illinois. The ALJ also agreed and reopened the record. MyBell then withdrew its Application.

As in MyBell, the recently discovered information calls into question the character of Niatel's management, but it also bears significantly on the potential financial and managerial resources and abilities of Niatel to provide services in Illinois. And, as in MyBell, allowing Intervenors to supplement the evidentiary record is a critical prerequisite to any informed

decision regarding the appropriateness of Niatel's Application. Therefore, there is more than good cause to grant Intervenor's Motion to Supplement the Record.

THE CURRENT EVIDENTIARY RECORD BEFORE THE ICC.

Intervenors seek to supplement the evidentiary record in this proceeding in order to offer the ICC evidence pertaining to Niatel's lack of qualifications to provide telecommunications service in Illinois. As background, the following highlights facts in the record that support this Motion to Supplement the Record.

1. Niatel appears to be the alter ego of Airdis, LLC d/b/a Airdis Telecom ("Airdis"), an existing, licensed CLEC and IXC carrier in the state of Illinois. *See* Petition at 1.

2. Scott Sinclair is Airdis' CEO and Managing Member and Niatel's CEO. *See* Niatel's Application for a Certificate of Local and Interexchange Authority to Operate as a Reseller of Telecommunications Services Throughout the state of Illinois ("Application") at Exhibit C.

3. The Intervenors, Airdis, Mr. Sinclair and Mr. Danis are currently involved in litigation in Cook County court. *See* Petition at 4 ("Cook County Litigation").

4. In support of its Application, Niatel submitted the biographical resume of its President, Michael Danis and described Danis' managerial qualifications. The biographical resume provides:

Mr. Danis has over twenty (20) years of financial management experience running numerous companies over a wide spectrum of businesses. From collection companies to computer software development ventures, Michael has ground floor experience with building profitable companies. These companies were conceived at the "angel investor" level and have grown to maturity and profitability through conservative financial prowess. Mr. Danis has always maintained a hands-on approach to the companies he has helped grow. It is this

hands-on approach that has helped guide these companies to success. *See* Application at Exhibit C.

5. Danis testified before ALJ Kimbrel in support of Niatel's Application. *See* Danis Testimony taken on December 2, 2009 at p. 6.

6. Danis testified that, as the President of Niatel, his responsibilities "are the day-to-day operation, the financials, the sales, the marketing, and ultimately the signatory authority for the LLC." *Id.* at p. 5.

7. When questioned about his "telecom experience," Danis testified, "I have been a third-party independent consultant for the last four years for various telecom industries in and around the Chicago area." *Id.* at p. 6.

8. Danis further testified that as an independent consultant he has "worked with principals and corporate officers in regard to finance, regulation, marketing, and day-to-day operations concerning the business from a personnel standpoint as well as a safety standpoint." *Id.*

9. During cross-examination Danis testified that Niatel's CEO, Mr. Sinclair, will no longer "function" at Airdis after certification of Niatel. *Id.* at pp. 8-9.

10. Danis' testimony shows that he is the sole investor in Niatel and that he will "take money out of personal savings accounts and fund this venture to insure its success." *Id.* at pp. 11-12.

PROPOSED EVIDENCE TO SUPPLEMENT THE RECORD.

The ICC may approve Niatel's Application only upon a showing that Niatel possesses sufficient technical, financial and managerial resources and abilities to provide

telecommunications service in Illinois. *See* 220 ILCS 5/13-403-404. The Petition to Intervene presents more than compelling evidence to warrant a denial of Niatel's Application. Notwithstanding this, Intervenors have additional evidence that discredits the purported managerial qualifications of Niatel's management and may negatively impact Niatel's financial ability to provide service in Illinois.

In the past several weeks, Niatel's President's dual objective of securing licensing from the ICC and minimizing his personal liability in the Cook County Litigation collided and exposed material misrepresentations and inconsistent statements about Danis' managerial qualifications. The facts summarized below highlight the distasteful ends that Niatel and its principals will take to accomplish their apparent scheme to transfer revenues and assets away from Airdis to Niatel, all to shield those revenues and assets from creditors such as Intervenors. If this Motion to Supplement the Record is granted the following evidence will be offered into the record:

1. For years Danis has held himself out as the President of Airdis via self-maintained, business professional networking websites. *See* true copies of web pages printed from the www.linkedin.com and www.jigsaw.com websites attached as Exhibit A.

2. Danis' representations on these web pages are consistent with official filings made by, or on behalf of, Airdis in support of state license applications, including at least those filed with the Ohio Public Utilities Commission and the New York Public Service Commission, as well as the required tax public information sheet filed with the Texas Comptroller. *See* Exhibit B, attaching the relevant pages of Airdis' application for authority to operate as a telecommunications provider filed with the Ohio Public Utilities Commission and New York

Public Service Commission as well as, the Texas Franchise Tax Public Information Report filed with the Texas Comptroller, all listing Danis as Airdis' President. Note, in the Texas report Sinclair expressly declares that the document identifying Danis as Airdis' President was mailed to Danis on or about February 25, 2009.

3. Until recently, Airdis' company website featured Danis and his involvement in the management of the company maintaining: "Michael has over twenty (20) years of financial management experience running numerous companies over a wide spectrum of businesses. From collection companies to computer software development ventures, Michael has ground floor experience with building profitable companies. These companies were conceived at the "angel investor" level and have grown to maturity and profitability through conservative financial prowess. Mr. Danis has always maintained a hands-on approach to the companies he has helped grow. It is this hands-on approach that has helped guide these companies to success. **At AIRDIS, Michael provides guidance at all levels of management.**" See true copies of Airdis' web site as of November 2009, at Exhibit C (emphasis added) (compare also to Danis' Biographical Resume attached Niatel Application in support of Niatel's managerial qualifications); see Application at Exhibit C.

4. In response to the allegations lodged against him personally in the Cook County Litigation, Danis filed a Motion to Strike supported by an Affidavit executed pursuant to the Illinois Code of Civil Procedure ("Affidavit"). See Exhibit D.

5. In his Affidavit Mr. Danis attested:

"4. I am not currently, and have never been, the president of Airdis, LLC, an Illinois limited liability company ("Airdis").

5. I am not currently, and have never been, a member, manager, officer, or employee of Airdis.
6. I have never been in charge of the operations of or controlled Airdis.”

Id.

6. Danis’ argues in his Motion to Strike that the Affidavit refuted any contentions that Danis “oversaw, operated, supervised and controlled Airdis” *Id.* at p. 12.

7. At or around the time of his filing the Motion to Strike, Danis’ business networking web pages were altered to reflect that Danis was now Airdis’ “Independent Consultant” rather than its “President.” See Exhibit E, attaching web pages reflecting the sudden change in Danis’ position at Airdis.

8. At or around the time of Danis’ filing of the Motion to Strike, Airdis’ website removed all references to Danis as part of the company’s management team. See true copies of Airdis’ web pages featuring Airdis’ management as of early January 2010, at Exhibit F.

9. The sudden change in Danis’ self-proclaimed role in Airdis, along with his incredible claim that he never supervised nor managed any aspect of Airdis, prompted a series of discovery requests in the Cook County Litigation.

10. Danis responded to Interrogatories on the scope of his new role as Airdis’ “Independent Consultant” by claiming his involvement was limited and one where he merely “provided strategic business advice to Airdis in order to protect his investment in Airdis. [he] also provided the use of his credit cards to provide short term payment of Airdis’ expenses until Airdis’ accounts receivables were paid.” See Exhibit G, Danis’ Response to First Set of Interrogatories at No. 9.

Danis' cryptic explanation of his role as an Independent Consultant in the Cook County Litigation is both disingenuous and at odds with his testimony before the ICC, filings made by Airdis with other state utility commissions and his own, self-maintained, networking web pages. *See* Danis Testimony at p. 6; Exhibits A, B.

Danis' recent attempt to rewrite history and mischaracterize his role at Airdis highlights the need for further examination into Niatel's qualifications. Danis' misguided motivation underlying his strategy before the ICC and in Cook County is obvious. Danis' personal liability in the Cook County Litigation diminishes greatly if he can convince the Cook County Court that his managerial and/or supervisory role in Airdis was non-existent. If, however, Danis appears to have been the active consultant that he portrays before the ICC, he is likely personally liable to Intervenors for damages of up to \$1 million. Such a personal liability could severely impact Niatel's financial qualifications given the fact Danis is solely and personally responsible for Niatel's funding and financial viability. *See* Danis Testimony at pp. 11-12.

On the other hand, before Airdis can successfully transfer its assets to Niatel, it must be duly licensed by the ICC. Such licensure requires convincing the ICC that Danis is an experienced telecom principal and financially qualified to operate Niatel's business. This is where Danis' two worlds collided. Danis' competing interests before the ICC and in the Cook County Litigation caused him to deliberately modify the portrayal of his telecom experience and his participation in the management of Airdis. In short, Danis changes his story depending on the forum before which he appears and depending on his (Niatel's) ultimate objective. As a result, the record before the ICC contains statements that are misleading and inconsistent with those made in the Cook County Litigation.

As the facts summarized above demonstrate, the ICC should more fully investigate the true managerial abilities and financial resources of Niatel to provide service in Illinois. Accordingly, Intervenor's respectfully seek leave to supplement the evidentiary record and provide the ICC with additional proof that Niatel lacks the appropriate qualifications and that its application for a certificate of authority should be denied.

WHEREFORE, for the foregoing reasons, Intervenor seek Leave to Supplement the Evidentiary Record.

Respectfully submitted,

Helein & Marashlian, LLC
The CommLaw Group
1420 Spring Hill Road
Suite 205
McLean, VA 22101

Attorneys for Transcend Multimedia, LLC,
Patrick Hafner, and Jesse Alejos

By: /s/ Jonathan S. Marashlian
Jonathan S. Marashlian
Member of Maryland State Bar
e-mail: jsm@commlawgroup.com

John P. Madden
O'Malley & Madden, P.C.
542 S. Dearborn St., Ste. 660
Chicago, Illinois 60605

CERTIFICATE OF SERVICE

On this 5th day of February 2010, the undersigned caused "Intervenors' Motion for Leave to Amend its Petition to Intervene and Opposition to Niatel, LLC's Application for Authorities to Supplement the Evidentiary Record," in Docket No. 09-0509, to be electronically served on the parties listed below:

Karen Chang, Case Manager
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, Illinois 62701
Email: kchang@icc.illinois.gov

Richard J. Nogal
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Nemec and Hoff, Ltd.
835 McClintock Drive, Second Floor
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Michael Danis
Niatel, LLC
247 Lakeland Drive
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Douglas E. Kimbrel, Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle Street, Suite C-800
Chicago, Illinois 60601
Email: ekimbrel@icc.illinois.gov

Judith A. Riley, Attorney for Niatel, LLC
Telecom Professionals
5905 NW Expressway, Suite 101
Oklahoma City, Oklahoma 73132
Email: jriley@telecompliance.net

/s/ Jonathan S. Marashlian

Jonathan S. Marashlian

EXHIBIT A


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Michael Danis

President at Airdis Telecom, Westchester, IL

Michael Danis
President

Airdis Telecom
Address ([Join to View](#))
Westchester, IL

Phone ([Join to View](#))
Email ([Join to View](#))

Sign up for Jigsaw and you'll get instant access to this contact information. Registration takes just seconds and is fast, easy and free!



Are you Michael Danis?

Get Michael Danis at Airdis Telecom information and more.

- Jigsaw offers free selling and marketing tools such as Company research, Company Wiki and more.
- Jigsaw gives you access to decision maker in the Airdis Telecom and more companies
- This record include Michael's full name, title, postal address, hard-to-find email address and telephone number
- Find companies by Geography and Industry as Westchester, IL

Michael Danis's Co-workers at Airdis Telecom

[Scott Sinclair](#) - Chairman, Chief Executive Officer

Contacts with Similar Titles as Michael Danis

[David Deitch](#) - Cablevision

[Walter Prada](#) - RF Micro Devices, Inc.

[Brad Kolmyer](#) - Black Rock Cable

[Kaoru Yano](#) - NEC Corporation

[Kent Bombard](#) - YOU BET! NET

Recently Added Contacts at Airdis Telecom

[Jim McCann](#)

[Frank Napolitano](#)

[Hank Godziewski](#)

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Michael Danis

Independent Telecommunications Professional

Greater Chicago Area

Current • **President at Airdis Telecom**

Past • **CFO at Healthware Systems**

Education • **Fairleigh Dickinson University**

Connections **2 connections**

Industry Telecommunications

Websites • **My Company**
• **My Blog**

Michael Danis's Experience

President

Airdis Telecom

(Privately Held; 11-50 employees; Telecommunications industry)

March 2008 — Present (1 year 10 months)

CFO

Healthware Systems

(Privately Held; 11-50 employees; Computer Software industry)

January 2002 — February 2008 (6 years 2 months)

Michael Danis's Education

Fairleigh Dickinson University

B.A , Finance

Additional Information

Michael Danis's Websites:

My Company
My Blog

Michael Danis's Groups:

Airdis Telecom Professionals
ACT Consulting Services
Telecom Business Daily

EXHIBIT B

EXHIBIT E

Key Personnel Resumes

Biographical Description

Scott Sinclair, Chairman and CEO

Airdis Telecom

Contact Information:

Principal Business Address

2215 Enterprise Drive, Suite 1512

Chicago, IL 60154

Phone: (630) 925-4455 Voice

(877) 724-7347 Toll Free

(630) 925-4445 Fax

Statement of Abilities:

Scott Sinclair, Chairman and CEO of Airdis, LLC d/b/a Airdis Telecom, has over ten years of entrepreneurial experience beginning with his first company, Cable Max Solutions, Inc. in 1998.

With this venture, Mr. Sinclair developed and offered the perfect recipe of bundled telecom products combined with exceptional customer service, which built his reputation for developing solutions to today's telecom issues.

Mr. Sinclair's extensive knowledge phone systems, structured cabling design and network services has given him the solid base needed to develop the Airdis Telecom offering to match the need of customers.

Biographical Description

Michael Danis, President

Airdis Telecom

Contact Information:

Principal Business Address

2215 Enterprise Drive, Suite 1512

Chicago, IL 60154

Phone: (630) 925-4455 Voice

(877) 724-7347 Toll Free

(630) 925-4445 Fax

Statement of Abilities:

Mr. Michael Danis has over twenty years of financial management experience involving a wide spectrum of businesses. This experience runs from collection companies to computer software development ventures. Starting with ground floor starts, Mr. Danis has maintained a conservative hands on approach which allowed these companies to grow to profitable maturity.

Biographical Description

Jim McMann, Director of Operations

Airdis Telecom

Contact Information:

Principal Business Address

2215 Enterprise Drive, Suite 1512

Chicago, IL 60154

Phone: (630) 925-4455 Voice

(877) 724-7347 Toll Free

(630) 925-4445 Fax

Statement of Abilities:

Mr. Jim McMann, brings years of experience in management, sales and technical areas to Airdis Telecom. Previously in positions with American Express, SBC, CMSI Consulting, Cable Max Solutions and now Airdis Telecom, Mr. McMann has worked with Scott Sinclair, which has allowed him to work as the operational foundation in conjunction with Mr. Sinclair's customer service strategies. Mr. McMann has a reputation of working well with past and current customers and technical staff so that projects are completed on time and under budget.

NEW YORK STATE PUBLIC SERVICE COMMISSION

Electrically Submitted Telecommunications Company Critical Information Form (TCCI)

This company is certified by the New York Public Service Commission but has not submitted a TCCI form.

Link to Company Information -->

5K65 Airdis, LLC d/b/a Airdis Telecom

Follow Up Required

Notes:

* Company's Corporate Name: Airdis, LLC

Doing Business As, if applicable: Airdis Telecom
Formerly Known As, if applicable: NA

If Providing Cable Service:

Region where providing service: NA
System: NA

State in which Certificate of Incorporation filed: Illinois

* Company Website: <http://www.airdis.com/>

Company Corporate Address: 2215 Enterprise Drive Suite 1512

City: Westchester State: IL Zip: 60514

* Company President: First Name: Michael Last Name: Danis

Telephone Number: (630) 925-4455

Fax Number: (630) 925-4445

E-mail address: wecare@airdis.com

* Mailing address: 2215 Enterprise Drive Suite 1512

City: State: Zip:

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PUBLIC SERVICE COMMISSION
EXECUTIVE OFFICE
EMRY

Westchester IL 60154

Regulatory Contact: **First Name:** **Last Name:**
Chris Collier
Title: Director of Regulatory Compliance
Telephone Number: (405) 755-8177

Fax Number: (405) 470-4191

E-mail address: ccolier@telecompliance.net

* **Mailing address:** 5909 Northwest Expresswy
Suite 101

City: Oklahoma City **State:** OK **Zip:** 73132

Regulatory Consumer Complaint Contact: **First Name:** **Last Name:**
Jim McCann

Telephone Number: 630-925-4455

Fax Number: 630-925-4445

E-mail address: wecare@airdis.com

* **Mailing address:** 2215 Enterprise Drive
Suite 1512

City: Suite 1512 **State:** IL **Zip:** 60154

Customer Contact Number:

* **Telephone Number:** 877-724-7347

Business Office Contact, Representative or Agent (for billing/assessment purposes): **First Name:** **Last Name:**
Judith Riley

Telephone Number: 405-755-8177

Fax Number: 405-755-8377

E-mail address: jriley@telecompliance.net

* **Mailing address:** 5909 Northwest Expressway

Suite 101

City
Oklahoma City

State:
OK

Zip:
73132

In compliance with the requirement of the Order Concerning Stray Voltage Requirements (dated July 3, 2006), by checking the box below, I hereby attest that our company's installation, operation and maintenance of facilities are in accordance with the National Electrical Safety Code and the National Electrical Code.

- I agree with the above statement
 I am a non-facilities based company
 I am filing a separate letter attesting to the above with the Director of the Office of Telecommunications.

Company Officer's Name: First Name: Scott Last Name: Sinclair

Title: Chairman / CEO

Form Preparer's Name: First Name: Chris Last Name: Collier

Telephone Number: 405-755-8177

E-mail address: ccollier@telecompliance.net



05-102
(Rev. 1-08/28)
Tcode 13196

00004812336
TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

(To be filed by Corporations and Limited Liability Companies (LLCS))
This report **MUST** be filed to satisfy franchise tax requirements

Taxpayer number Report year
 20-2196321 ✓ 2009

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name: **AIRDIS, LLC**
 Mailing address: **5909 NW EXPRESSWAY, STE 101**
 City: **OKLAHOMA CITY** State: **OKLAHOMA** ZIP Code: **73132** Plus 4: **800902433**
 Secretary of State file number or Comptroller file number: **800902433**

Blacken circle if there are currently no changes or additions to the information displayed in Section A of this report. Then complete Sections B and C.

Entity's principal office: **2215 ENTERPRISE DRIVE, STE 1512 WESTCHESTER, IL 60154**
 Principal place of business: **SAME AS ABOVE**



3203421103009

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration
SCOTT SINCLAIR	CEO	<input checked="" type="radio"/> YES	m m d d y y
Mailing address: 2215 ENTERPRISE DRIVE, STE 1512	City: WESTCHESTER	State: ILLINOIS	ZIP code: 60154
MICHAEL DANIS	PRESIDENT	<input type="radio"/> YES	m m d d y y
Mailing address: 2215 ENTERPRISE DRIVE, STE 1512	City: WESTCHESTER	State: ILLINOIS	ZIP code: 60154
HANK GODZISZEWSKI	VP OF SALE	<input type="radio"/> YES	m m d d y y
Mailing address: 2215 ENTERPRISE DRIVE, STE 1512	City: WESTCHESTER	State: ILLINOIS	ZIP code: 60154
		<input type="radio"/> YES	m m d d y y
Mailing address:	City:	State:	ZIP code:

SECTION B Enter the information required for each corporation or LLC, if any, in which this reporting entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this reporting entity or limited liability company.

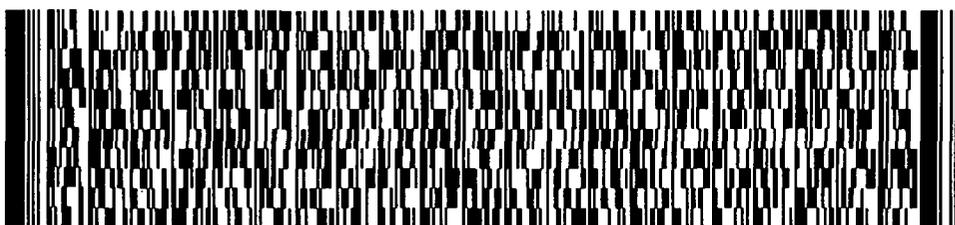
Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

Registered agent and registered office currently on file. (See instructions if you need to make changes)
 Agent: **CT CORPORATION SYSTEM** Blacken circle if you need forms to change the registered agent or registered office information.
 Office: **350 NORTH ST PAUL ST** City: **DALLAS** State: **TEXAS** ZIP Code: **75201**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.
 Sign here: Title: **CEO** Date: **02/25/2009** Area code and phone number: **(630) 925 - 4455**

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EXHIBIT C

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CONTACT US



7 Reasons to Trust AIRDIS with the *LIFELINE* of Your Business:



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Scott Sinclair
Chairman / CEO



With over ten (10) years of entrepreneurial experience starting his first company, Cable Max Solutions, Inc. in 1998, Scott has developed the perfect recipe of bundled telecom products and exceptional customer service. Scott's experience, reputation and contacts in the Chicagoland communications market inspired him to develop a solution for today's telecom troubles. The solution is the Inside-Out Engineering philosophy. Scott's extensive knowledge of phone systems, structured cabling design and network services gave him the insight he needed to develop an offering to match the exact needs of the customers in AIRDIS' target market.

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Michael Danis
President



Michael has over twenty (20) years of financial management experience running numerous companies over a wide spectrum of businesses. From collection companies to computer software development ventures, Michael has ground floor experience with building profitable companies. These companies were conceived at the "angel investor" level and have grown to maturity and profitability through conservative financial prowess. Mr. Danis has always maintained a hands-on approach to the companies he has helped grow. It is this hands-on approach that has helped guide these companies to success. At AIRDIS, Michael provides guidance at all levels of management.

J

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Hank Godziszewski
Vice President of Sales



Hank has over twenty-nine (29) years in the telecommunications industry with extensive experience in sales and marketing and has been with AIRDIS since June of 2005. His extensive sales experience covers the breadth of telecommunications services, systems, and systems maintenance along with data communications. He

has sold network services along with a myriad of the Lucent/Avaya systems all the way up to the large Definity PBX and VoIP systems. No one cares more about customer satisfaction than he does. Hank has won numerous sales awards as a top producing sales executive, including holding the distinction for making the first sale of the Merlin Legend System in Illinois. Hank also sold the largest Definity PBX in the state of Illinois, \$1.5 million dollars in 1998.

Jim McCann

Director of Operations



Jim has functioned as Scott Sinclair's "right hand man" since the Cable Max days back in 1999. Jim has management, sales and technical experience from his roles at American Express, SBC, Cable Max Solutions, CMSI Consulting and AIRDIS. Jim is the operational foundation that Scott's customer service strategy has been built on and it is his relationships with the AIRDIS technical staff that enables jobs to be completed on time and under budget. Jim has developed good relations with Scott's original customer base and this one-two punch has allowed the Company to retain nearly 100% of its customers.

Bill Griffith

Senior Project Engineer



Bill is a telephony engineer that has enabled AIRDIS reach higher levels of technical knowledge and expertise. Bill is certified in Avaya Communications Systems and OEM product enhancements, Voice Mail Systems, Unified Messaging, VoIP, structured cabling installations and telephony hardware design and implementation installations.

Kristina Botten

Network Operations Coordinator



Kristina is a critical component to the success of the AIRDIS customer service philosophy. With her years of telecom experience with companies such as McLeod USA combined with her desire to deliver exceptional, proactive service to customers Kristina has helped AIRDIS stand apart from their competition.

Jon Hood

Senior Systems Engineer

Jon's system expertise and work ethic are a key component to AIRDIS' customer satisfaction and retention. Jon's vast knowledge of communications systems fueled by his 15-years in the industry has helped AIRDIS provide more solutions to our customer's.

<< Click Here to get Three More Reasons Why YOU Should Trust AIRDIS >>

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EXHIBIT D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

No. 09 L 5080

v.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

NOTICE OF FILING

To: Robert F. Tweedle
Law Offices of Robert F. Tweedle
500 S. Federal Street
Highland Park, IL 60605

Harry E. Bartosiak
Tressler Soderstrom Maloney & Pries, LLP
233 S. Wacker Dr., 22nd Floor
Chicago, IL 60606

Robert F. Tweedle
Law Offices of Robert F. Tweedle
2842 - 45th Street, Suite A
Highland, IN 46322

09 NOV 23 PM 1:57
CIRCUIT COURT OF COOK COUNTY ILLINOIS
LAW DIVISION
DOROTHY BRONKHORST
CLERK

PLEASE TAKE NOTICE that on the 23rd day of November, 2009, there will be filed with the Clerk of the Circuit Court of Cook County, Illinois, the following enclosed document:

APPEARANCE

Certificate of Service

I, Christopher J. Novak, an attorney, certify that I served a copy of this Notice and the document referenced herein by mailing a copy to the above named parties, by depositing the same into postage prepaid sealed envelopes at the United States Postal Service Letterbox at Burr Ridge, Illinois 60527 at 4:50 p.m. on November 23, 2009.

Richard J. Nogal
Christopher J. Novak
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
Attorneys for Counter-Defendant Michael Danis
835 McClintock Drive, Second Floor
Burr Ridge, IL 60527
630-655-6000
Attorney No. 00404

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AIRDIS, LLC, an Illinois limited liability company,
Plaintiff

v.

TRANSCEND MULTIMEDIA, LLC., et al.,
Defendant

No. 09 L 5080

Calendar: _____

APPEARANCE

- GENERAL APPEARANCE 0900 - APPEARANCE - FEE PAID; 0909 - APPEARANCE - NO FEE;
0904 - APPEARANCE FILED - FEE WAIVED
- SPECIAL AND LIMITED APPEARANCE 0905 - SPECIAL APPEARANCE - FEE PAID
0906 - SPECIAL APPEARANCE - NO FEE
- JURY DEMAND 1900 - APPEARANCE & JURY DEMAND FEE PAID; 1909 APPEARANCE & JURY DEMAND NO FEE

DOROTHY BROWN, CLERK
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
09 NOV 23 PM 1:51

The undersigned enters the appearance of: Plaintiff Defendant

Michael Danis

(INSERT LITIGANT'S NAME)

Richard J. Nagel
SIGNATURE

- INITIAL COUNSEL OF RECORD PRO SE
- ADDITIONAL APPEARANCE SUBSTITUTE APPEARANCE

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

ATTORNEY

PRO SE

NAME: Goldstine, Skrodzki, Russian, Nemecek and Hoff
 ATTORNEY FOR: Counter-Defendant Michael Danis
 ADDRESS: 835 McClintock Drive, Second Floor
 CITY/STATE/ZIP: Burr Ridge, IL 60527
 TELEPHONE: 630-655-6000
 INSURANCE COMPANY: _____
 ATTORNEY NUMBER: 00404

NAME: _____
 ADDRESS: _____
 CITY/STATE/ZIP: _____
 TELEPHONE: _____
 INSURANCE COMPANY: _____
 ATTORNEY NUMBER 99500

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

No. 09 L 5080

v.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

FILED-1
09 NOV 23 PM 1:57
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION
DOROTHY BROWN
OLEM

NOTICE OF MOTION

To: Robert F. Tweedle
Law Offices of Robert F. Tweedle
500 S. Federal Street
Highland Park, IL 60605

Harry E. Bartosiak
Tressler Soderstrom Maloney & Priess, LLP
233 S. Wacker Dr., 22nd Floor
Chicago, IL 60606

Robert F. Tweedle
Law Offices of Robert F. Tweedle
2842 - 45th Street, Suite A
Highland, IN 46322

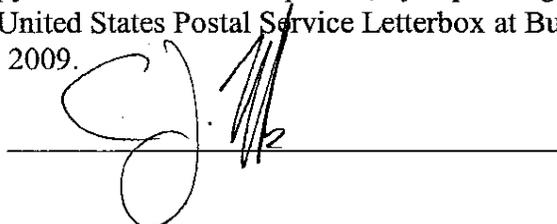
YOU ARE HEREBY NOTIFIED that on the 9th day of December, 2009, at 9:00 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Allen S. Goldberg, or any judge sitting in his stead, in the courtroom usually occupied by him in Room 2303, in the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois, and then and there present the attached

COUNTER-DEFENDANT'S MOTION TO STRIKE AND DISMISS COUNTERCLAIM

COUNTER-DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION TO STRIKE AND DISMISS COUNTERCLAIM

Certificate of Service

I, Christopher J. Novak, an attorney, certify that I served a copy of this Notice and the documents referenced herein by mailing a copy to the above named parties, by depositing the same into postage prepaid sealed envelopes at the United States Postal Service Letterbox at Burr Ridge, Illinois 60527 at 4:50 p.m. on November 23, 2009.



Richard J. Nogal
Christopher J. Novak
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
Attorneys for Counter-Defendant Michael Danis
835 McClintock Drive, Second Floor
Burr Ridge, IL 60527
630-655-6000
Attorney No. 00404

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

v.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company,)

Counter-Plaintiff,)

v.)

AIRDIS, LLC, an Illinois limited liability company,)
SCOTT J. SINCLAIR, and MICHAEL DANIS,)

Counter-Defendants.)

Case No. 09 L 5080

FILED-1
09 NOV 23 PM 1:57
CIRCUIT COURT OF COOK
COUNTY ILLINOIS
LAW DIVISION
DOROTHY DROWN
CLERK

COUNTER-DEFENDANT'S MOTION TO STRIKE AND DISMISS COUNTERCLAIM

NOW COMES Counter-Defendant Michael Danis ("Danis"), by and through his attorneys, Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd., and for his Motion to Strike and Dismiss Counterclaim pursuant to 735 ILCS 5/2-619.1, states as follows:

1. Counter-Plaintiff Transcend Multimedia, LLC, an Illinois limited liability company ("Transcend") has misjoined Danis as a counter-defendant in the above-captioned matter. Danis is not a party to the underlying complaint against Transcend therefore Danis should be dismissed from the Counterclaim pursuant to 735 ILCS 5/2-615.

2. Transcend's allegations in the Counterclaim against Danis, including Count IV and Count V, should be stricken and dismissed pursuant to 735 ILCS 5/2-615.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

v.)

Case No. 09 L 5080

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company,)

Counter-Plaintiff,)

v.)

AIDIS, LLC, an Illinois limited liability company,)
SCOTT J. SINCLAIR, and MICHAEL DANIS,)

Counter-Defendants.)

09 NOV 23 PM 1:58
CIRCUIT COURT OF COOK
COUNTY ILLINOIS
LAW DIVISION
DOROTHY BROWN
CLERK

**COUNTER-DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS
MOTION TO STRIKE AND DISMISS COUNTERCLAIM**

NOW COMES Counter-Defendant Michael Danis ("Danis"), by and through his attorneys, Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd., and for his Memorandum of Law in Support of his Motion to Strike and Dismiss Counterclaim pursuant to 735 ILCS 5/2-619.1, states as follows:

I. BACKGROUND

A. The Pleadings

On April 29, 2009, Plaintiff/Counter-Defendant, Airdis, LLC ("Airdis"), filed its Complaint in the above-captioned matter regarding an Asset Purchase Agreement and

Management Agreement between Airdis and Defendant/Counter-Plaintiff Transcend Multimedia, LLC (“Transcend”). (Exhibit A). Patrick Hafner (“Hafner”) and Jesse Alejos (“Alejos”) are also named as defendants. Airdis alleges claims for breach of the Asset Purchase Agreement, breach of the Management Agreement, and unjust enrichment.

On August 10, 2009, Transcend filed its Answer, Affirmative Defenses, and Counterclaim against Airdis, Scott Sinclair (“Sinclair”), and Danis. (Exhibit B). Transcend alleges the following against Danis in the Counterclaim:

- Danis “serves as Airdis’ President angel [sic] investor ...” *Id.* at para. 6.
- Danis and Sinclair were introduced to Transcend as prospective buyers of Transcend’s business. *Id.* at para. 10.
- The purpose of the Management Agreement was to enable Airdis, through the oversight of Sinclair and Danis, to operate the day-to-day business of Transcend. *Id.* at para. 15, 17, 89, 113.
- Under the terms of the Asset Purchase Agreement, the parties agreed that Airdis, under the supervision and control of Sinclair and Danis, was responsible to obtain certain regulatory approvals. *Id.* at para. 18, 88, 114.
- In the spring of 2008, Hafner, Alejos, Sinclair, and Danis met at Airdis’ office to discuss transitioning of the business relationship. *Id.* at 49.
- Danis and Sinclair indicated that they were working with another bank to secure financing for the Asset Purchase Agreement. *Id.* at 64.
- Airdis, under the supervision and control of Sinclair and Danis, was responsible for paying the appropriate taxing authorities the taxes it billed and collected from Transcend’s customers. *Id.* at 90.
- Prior to executing the Asset Purchase Agreement, Sinclair and Danis represented to Transcend that they would make good faith efforts to obtain certain regulatory approvals. *Id.* at 165.
- As a result of the representations made by Sinclair and Danis, Transcend entered into the Management Agreement, which permitted Airdis, under the supervision of Sinclair and Danis, to manage the day-to-day operations of the business. *Id.* at 166.

- Following the execution of the Management Agreement, Sinclair and Danis provided assurances to Transcend regarding Counter-Defendants' efforts to close on the Asset Purchase Agreement. *Id.* at 168.
- In the spring of 2008, Sinclair and Danis, as representatives of Airdis, and Transcend negotiated a purchase by Airdis of Transcend for \$200,000.00. *Id.* at 183.
- Sinclair and Danis unambiguously promised Transcend that Airdis had secured the necessary financing to purchase Transcend. *Id.* at 184.
- Transcend reasonably and justifiably relied on the promises made by Sinclair and Danis. *Id.* at 185.
- Transcend's reliance on the promises made by Sinclair and Danis, on Airdis' behalf, was expected and foreseeable. *Id.* at 186.
- Transcend relied on the promises made by Sinclair and Danis that they would purchase Transcend's business to Transcend's detriment. *Id.* at 189.

Transcend also includes generic allegations against "Counter-Defendants" (a term that includes Airdis, Sinclair, and Danis). *Id.* at para. 20, 25, 38, 49, 52, 71, 73-77, 79-82, 86, 91, 92, 95-106, 110, 111, 113, 116, 126, 150, 152-56, 160, 161, 167-81, and 186-88. In the 190 paragraphs of Transcend's Counterclaim, Danis' name is mentioned only 19 times.

Transcend alleges that Sinclair made assurances to Transcend that Counter-Defendants were taking action to obtain regulatory approvals necessary for the Asset Purchase Agreement and to maintain Transcend's telecommunications licenses, permits, and authorizations in good standing. *Id.* at 18-19. Subsequently, Transcend contends Sinclair and Airdis failed to obtain regulatory approvals for Transcend. *Id.* at 19-23. This failure was discovered through e-mails to Transcend's attorney, Jonathan Marshlian, in November 2007 and February 2008. (Counterclaim, Exhibits C and D). On February 29, 2008, Transcend's attorney sent a compliance demand letter to Airdis, Sinclair, and Airdis' attorney, with a carbon copy to Alejos

and Hafner. (Counterclaim, Exhibit E). In May 2008, Sinclair, Alejos, Hafner, and Marashalian engaged in ongoing e-mail messages regarding the regulatory filings. (Counterclaim, Exhibit F).

Transcend alleges that Sinclair and Airdis continued to violate the Management Agreement. (Ex. B., para. 28-71). On March 11, 2009, Transcend's attorney sent a notice of default and final demand letter to Airdis, Sinclair, and Airdis' attorney, with a carbon copy to Alejos and Hafner. (Counterclaim, Exhibit G). On March 11, 2009, Airdis' attorney responded to Transcend's demand letter. (Counterclaim, Exhibit H).

Only Count IV (fraud in the inducement) and Count V (promissory estoppel) of the Counterclaim request relief against Danis. Count IV and Count V incorporate and reallege Transcend's allegations in its facts section of the Counterclaim.

B. The Affidavit Of Michael Danis

Danis submits an affidavit in support of his Motion to Dismiss pursuant to Section 2-619 ("Affidavit"). The Affidavit states as follows:

- Danis is not, and never has been, the president of Airdis;
- Danis has never been a member, manager, officer, or employee of Airdis;
- Danis never was in charge of and never controlled Airdis;
- Danis never executed or entered into any agreement on behalf of Airdis;
- Danis did not sign the Asset Purchase Agreement or Management Agreement;
- Danis is an outside investor in Airdis and has never had an ownership interest in Airdis;
- Based on Airdis' Operating Agreement dated May 17, 2005, only Sinclair and Lawrence Oskielunas have an ownership interest in, and are members of, Airdis;
- Based on Section 5.1.1 of the Operating Agreement, Airdis is managed by a Manager;
- The Operating Agreement does not provide for a position of president;

- Based on Section 5.1.1 of the Operating Agreement, Sinclair was appointed the initial Manager of Airdis;
- Based on Section 5.1.2 of the Operating Agreement, the Manager of Airdis “shall have full, exclusive, and complete discretion, power, and authority ... to manage, control, administer, and operate the business of [Airdis] ..., and to make all decisions affecting such business and affairs ...”;
- Based on Section 5.1.2.4 of the Operating Agreement, the Manager of Airdis has the express power to “enter into agreements and contracts ...”; and
- Based on the records of the Illinois Secretary of State, Sinclair is currently the Manager of Airdis.

(Exhibit C, Affidavit of Michael Danis).

II. ARGUMENT

A. Motion To Dismiss Counterclaim Pursuant To 735 ILCS 5/2-615 Based On Misjoinder

Transcend has filed a pleading entitled “Counterclaim” against Danis. The Illinois Code of Civil Procedure defines a counterclaim as “[a]ny claim by one or more defendants against one or more plaintiffs, or against one or more codefendants ...” 735 ILCS 5/2-608(a). Danis is not a party to the underlying claims brought by Airdis against Transcend, Hafner, and Alejos.

Transcend improperly alleges new causes of action in the Counterclaim against a new party, Danis. In order to bring a new party into the case, Transcend is required by the Code of Civil Procedure to file a third party complaint. 735 ILCS 5/2-406. The proper vehicle for Transcend’s claims against Danis is a third party complaint or a separate complaint. Section 2-615(a) provides for dismissal of misjoined parties. Therefore, Danis must be dismissed from the Counterclaim based on misjoinder by Transcend.

B. Motion To Dismiss Counterclaim Pursuant To 735 ILCS 5/2-615 For Failure To State A Cause Of Action

“Section 2-615 motions addressed to the legal sufficiency of a complaint raise but a single issue: whether, when taken as true, the facts alleged in the complaint set forth a good and sufficient cause of action.” *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 480(1st Dist. 1995). “Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted.” *Turner v. Memorial Medical Center*, 233 Ill.2d 494, 499 (2009).

1. Transcend fails to state a cause of action in Count IV against Danis

a. Count IV fails to specify any fraud by Danis

Transcend alleges a claim for fraud in the inducement against Danis in Count IV of the Counterclaim. The facts alleged by Transcend involve actions by Sinclair, not Danis. In the few paragraphs of the Counterclaim that do address Danis, Transcend fails to specify any fraudulent acts attributable to Danis. Transcend alleges only that Danis was present at a meeting in spring 2008 with Sinclair, Hafner, and Alejos. Transcend’s remaining allegations against Danis consist of cut and paste boilerplate statements that Danis and Sinclair directed, supervised, and controlled Airdis. Further, Transcend improperly combines vague allegations against “Counter-Defendants” (a catch-all term that includes Danis) in over five dozen paragraphs.

“Fraudulent inducement is a form of common-law fraud.” *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 17 (2d Dist. 1995). “It is well-established in Illinois that for a complaint to state a cause of action for fraud, the essential elements of fraud must be pled with specificity, particularity and certainty.” *Trautman v. Knights of Columbus*, 121 Ill. App. 3d 911, 914 (1st Dist. 1984). “The elements which must be alleged include: (1) a false representation of material facts as opposed to opinion; (2) made by one who knew or believed the representation to be

untrue; (3) made to a party who had a right to rely on the representation and, in fact, did so; (4) made for the purpose of inducing the other party to act, or to refrain from acting; and (5) that led to injury to the person who relied upon it.” *Id.*

There are no allegations regarding specific, particular, and certain acts of fraud by Danis as required under Illinois law. Transcend fails to allege that Danis personally committed any fraud that induced Transcend to continue the parties’ relationship and delay its determination that Airdis had breached the Asset Purchase Agreement and Management Agreement. Rather, Transcend’s allegations regarding fraudulent conduct are directed towards Sinclair, the managing member of Airdis. In addition, Transcend’s allegations concerning the actions of “Counter-Defendants” are impermissibly vague, violate Illinois’ fact pleading requirements, and cannot be a basis of any liability against Danis. Accordingly, Transcend’s vague and conclusory allegations must be stricken by the Court.

b. Transcend’s allegations contradict the Counterclaim exhibits

Transcend alleges that the Management Agreement imposes duties on Danis and that Danis’ actions related to the Management Agreement have caused damage to Transcend. However, a review of the Management Agreement, which is Exhibit B to the Counterclaim, reveals that there are only two parties to the Management Agreement: Transcend and Airdis. Danis’ name is not mentioned anywhere in the eight page document. Section 5.10 of the Management Agreement states that: “This Agreement and the APA [Asset Purchase Agreement] (including the Exhibits) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior written agreements and understandings among the parties with respect thereto.” (Counterclaim, Ex. B) (emphasis added). The Management

Agreement was signed by Hafner and Alejos on behalf of Transcend and by Sinclair as the manager of Airdis.

Transcend also alleges that Danis had obligations under the Asset Purchase Agreement. The Asset Purchase Agreement is between Transcend, Hafner, and Alejos, on the one hand, and Airdis, on the other hand. (Counterclaim, Ex. A). Danis' name does not appear anywhere in the twelve page document. Section Fifteen of the Asset Purchase Agreement states that: "This Agreement, including the Exhibits attached hereto, contains the entire understanding of the parties and supersedes all previous verbal and written agreements. There are no other agreements, representations, or warranties that are not set forth or referred to herein." (Counterclaim, Ex. A) (emphasis added). The Asset Purchase Agreement was signed by Hafner and Alejos on behalf of Transcend and by Sinclair as the Managing Member of Airdis.

Transcend refers in detail to the demand letters sent by its attorney and Airdis' failure to respond to those letters. Danis is not mentioned anywhere in the letter of February 29, 2008, the e-mails of November 2007, February 2008, and May 2008, or the letters of March 11, 2009. (Counterclaim, Ex. C, D, E, F, G, and H). Rather, the correspondence attached to the Counterclaim is solely between Sinclair, Airdis' attorney, Transcend's attorney, Hafner, and Alejos.

Transcend's allegations that Danis had obligations under the Management Agreement or Asset Purchase Agreement or that Danis somehow did not properly respond to Transcend's demand letters are contradicted by the documents themselves. "[T]he exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606. "Where exhibits are relied upon for recovery and there is a discrepancy between the allegations of the complaint and the exhibits, the exhibits are controlling and the language of the exhibits will be taken as the factual basis upon

which the complaint is predicated.” *Divco-Wayne Sales Finan. Corp. v. Martin Vehicle Sales, Inc.*, 45 Ill. App. 2d 192, 195 (1st Dist. 1963) (finding that a counterclaim failed to state a cause of action for breach of contract against the counter-defendant where the attached exhibit indicated that the counter-defendant was not a party to the contract at issue). “[T]he factual matters contained in the exhibits which are inconsistent with averments of the complaint serve to negate such averments.” *Sharkey v. Snow*, 13 Ill. App. 3d 448, 451 (1 Dist. 1973). “A motion to dismiss ... is not deemed to have admitted any averments of the complaint which are in conflict with the controlling facts set forth in the exhibits attached to the complaint.” *Id.*

The portions of the Counterclaim that are contrary to the exhibits attached thereto must be stricken and disregarded by the Court. Specifically, Danis requests that the following contradictory paragraphs of the Counterclaim be stricken: 15, 16, 17, 18, 49, 64, 88, 89, 90, 113, 114, 122, 124, 165, 166, 167, and 168. Furthermore, to the extent that any of the allegations in the Counterclaim regarding “Counter-Defendants” relate to Danis and are contradictory to the attached exhibits, such allegations must also be stricken.

2. Transcend fails to state a cause of action in Count V against Danis

Transcend asserts a claim of promissory estoppel in Count V against Danis. Transcend alleges that it relied upon certain representations of Sinclair and Danis made during negotiation of an agreement for Airdis to purchase Transcend’s business in a direct buy-out. (Ex. B, para. 183-84). As a result of these representations, Transcend delayed in terminating the Management Agreement and Asset Purchase Agreement for almost one year and suffered damages. *Id.* at para. 187, 190. The elements of a claim for promissory estoppel are that: “(1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff’s reliance was

expected and foreseeable by defendants, and (4) plaintiff relied on the promise to its detriment.” *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill.2d 46, 51 (2009).

Transcend incorporates and realleges its allegations from the preceding portions of the Counterclaim, including the recitation of background facts and Count IV. As noted above, Transcend’s allegations do not provide any specific details, as required under Illinois law, regarding Danis’ alleged actions. Rather, Transcend alleges that Sinclair and Danis, as representatives of Airdis, negotiated the buy-out agreement and stated that “Airdis had secured the necessary financing to purchase the Business.” (Ex. B, para. 183-84) (emphasis added).

Transcend’s allegations fall short of the “unambiguous promise” required to substantiate a promissory estoppel claim. “The doctrine of promissory estoppel may only be applied against a party who makes an unambiguous promise.” *People ex rel. Nelson v. Village of Long Grove*, 169 Ill. App. 3d 866, 875 (2d Dist. 1988). The Counterclaim allegations establish merely that a business negotiation was taking place regarding the sale of the Transcend’s entire business to Airdis in the context of the Asset Purchase Agreement and Management Agreement. Danis is not a party to the Asset Purchase Agreement or Management Agreement and was not involved in the correspondence between the parties to those agreements. The exhibits to the Counterclaim indicate that Danis did not have any authority to bind Airdis and could not have made an unambiguous promise on Airdis’ behalf.

Transcend’s reliance on the alleged promises made by Danis is not reasonable. A plaintiff’s reliance on a promise under promissory estoppel “must be reasonable and justifiable.” *Quake Constr. Co. v. American Airlines, Inc.*, 141 Ill.2d 281, 310 (1990). The Counterclaim and its attached exhibits indicate that Transcend and its representatives dealt exclusively with Sinclair regarding the Asset Purchase Agreement and Management Agreement. Thus, it is

unreasonable for Transcend to rely on a statement made by Danis regarding Airdis' purchase of Transcend or Airdis' financing.

Transcend's allegations in Count V do not specify any actions by Danis and therefore fail to state a cause of action against Danis for promissory estoppel. The promises allegedly made by Danis and relied upon by Transcend are not unambiguous and Transcend's reliance on Danis' alleged promises was not reasonable or justifiable. Count V should be dismissed pursuant to Section 2-615.

C. Motion To Dismiss Pursuant To 735 ILCS 5/2-619

Under Section 2-619(a)(9), dismissal is warranted where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). "[S]ection 2-619 allows a court to dismiss a complaint where the claim asserted is barred by some affirmative matter that refutes crucial conclusions of law." *Coady v. Harpo, Inc.*, 308 Ill. App. 3d 153, 158 (1st Dist. 1999). "Affirmative matter is something in the nature of a defense that completely negates the alleged cause of action or refutes crucial conclusions of law or conclusions of material fact that are unsupported by allegations of specific fact, but [an] affirmative matter must do more than merely refute well-pleaded facts in the complaint." *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 907 (1st Dist. 1996).

1. The allegations of Count IV are refuted by affirmative matters

Transcend alleges that Danis was president of Airdis and oversaw, operated, supervised, and controlled Airdis. (Ex. B, para. 6, 15, 16, 17, 18, 49, 64, 88, 89, 90, 113, 114, 122, 124, 165, 166, 167, and 168). The basis of Transcend's allegations against Danis in Count IV is that Danis was an officer of Airdis, had obligations under the Asset Purchase Agreement and Management Agreement, and was involved in Airdis' daily operations.

Danis has submitted an affidavit in support of his Section 2-619 Motion to Dismiss, which establishes that: 1) Danis is not, and never has been, the president of Airdis; 2) Danis has never been a member, manager, officer, or employee of Airdis; 3) Danis never was in charge of and never controlled Airdis; 4) Danis never executed or entered into any agreement on behalf of Airdis; 5) Danis was not a party to the Asset Purchase Agreement or Management Agreement; 6) Danis did not sign the Asset Purchase Agreement or Management Agreement; and 7) Danis was an outside investor in Airdis and has never had an ownership interest in Airdis. (Ex. C). The Affidavit refutes and negates Transcend's allegations that Danis was an officer of Airdis, that Danis oversaw, operated, supervised, and controlled Airdis, or that Danis had any obligations under the Asset Purchase Agreement and Management Agreement.

Airdis' Operating Agreement, dated May 17, 2005, is attached as Exhibit 1 to the Affidavit and provides as follows:

- Exhibit A to the Operating Agreement states that only Sinclair and Lawrence Oskielunas have an ownership interest in, and are members of, Airdis;
- Section 5.1.1 provides that Airdis is to be managed and controlled by a Manager, and the initial Manager was Sinclair;
- There is no section creating the position of president;
- Section 5.1.2 states that the Manager of Airdis "shall have full, exclusive, and complete discretion, power, and authority ... to manage, control, administer, and operate the business of [Airdis] ..., and to make all decisions affecting such business and affairs ...";
- Section 5.1.2.4 states that the Manager of Airdis has the express power to "enter into agreements and contracts ..."

Attached to the Affidavit as Exhibit 2 is the current filing information of Airdis from the Illinois Secretary of State, which indicates that Sinclair is the Manager of Airdis.

Under Illinois law, a member or manager of a limited liability company “is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.” 805 ILCS 180/10-10. Therefore, Danis, a third party outside investor, cannot have any liability for claims alleged in the Counterclaim regarding the Asset Purchase Agreement and Management Agreement entered into by Sinclair on behalf of Airdis. Danis’ non-involvement is confirmed by the exhibits attached by Transcend to the Counterclaim. (Counterclaim, Exhibits A, B, C, D, E, F, G, and H).

The Affidavit and its attachments establish that Danis was not a member, manager, officer, or employee of Airdis and that Danis was not in charge of and did not control Airdis. These facts defeat Transcend’s allegations that Danis is liable for the acts of Airdis or Airdis’ employees, officers, managers, or members under the Asset Purchase Agreement and/or Management Agreement. Count IV against Danis must be dismissed pursuant to Section 2-619(a)(9).

2. The allegations of Count V are refuted by affirmative matters

Transcend incorporates and realleges its allegations against Danis in the Counterclaim in support of Count V for promissory estoppel. Based on the Affidavit and its attachments, discussed *supra*, there is no basis for Transcend’s allegations that Danis was an officer of Airdis, that Danis oversaw, operated, supervised, and controlled Airdis, or that Danis had any obligations under the Asset Purchase Agreement and Management Agreement. Transcend’s allegations in Count V regarding these matters are refuted and negated by the Affidavit.

A claim for promissory estoppel requires an “unambiguous promise” made by a defendant to a plaintiff. *Nelson*, 169 Ill. App. 3d at 875. Transcend’s allegations in Count V relate to Sinclair and Danis, as representatives of Airdis, negotiating a buy-out agreement of

Transcend by Airdis. (Ex. B., para. 183). Further, Sinclair and Danis allegedly “promised Counter-Plaintiff that Airdis had secured the necessary financing to purchase the Business.” *Id.* at para. 184 (emphasis added). Danis is not an officer, employee, owner, manager, or member of Airdis. (Ex. C). Thus, Danis could not make unambiguous promises regarding actions to be taken by Airdis, which is an independent entity controlled by Sinclair.

Transcend’s reliance on Danis’ alleged promises must be reasonable and justifiable under the doctrine of promissory estoppel. *Quake Constr. Co.*, 141 Ill.2d at 310. Again, Danis is not, and never has been, an officer, employee, owner, manager, or member of Airdis. (Ex. C). It was therefore unreasonable for Transcend to rely on any statements or promises made by Danis concerning the affairs of Airdis.

The Affidavit and its attachments demonstrate that Danis had no authority to make representations or promises on behalf of Airdis. These facts defeat Transcend’s allegations that it reasonably relied on an unambiguous promise made by Danis on behalf of Airdis. Count V against Danis must be dismissed pursuant to Section 2-619(a)(9).

III. CONCLUSION

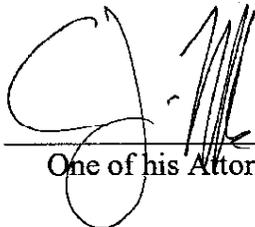
Transcend improperly names Danis, a third party not named in the underlying Complaint, as a Counter-Defendant in the Counterclaim. Therefore, pursuant to Section 2-615, Danis must be dismissed based on misjoinder. Additionally, Transcend fails to state a cause of action against Danis and Count IV and Count V of the Counterclaim must be dismissed under Section 2-615. Finally, the Affidavit of Michael Danis and its attachments establish that Transcend’s claims in Count IV and Count V are barred by affirmative matters pursuant to Section 2-619(a)(9).

WHEREFORE, Counter-Defendant, Michael Danis, respectfully requests that the Court: 1) dismiss Danis from the Counterclaim for misjoinder pursuant to 735 ILCS 5/2-615; 2) strike and dismiss Transcend's claims in the Counterclaim against Danis, including the contradictory factual allegations and Count IV and Count V, pursuant to 735 ILCS 5/2-615; 3) dismiss Count IV and Count V of the Counterclaim against Danis pursuant to 735 ILCS 5/2-619(a)(9); 4) award Danis his costs, expenses, and attorney's fees incurred in this matter; and 5) award any other and further relief this Court deems just and equitable.

Dated: November 23, 2009

Respectfully submitted,

Michael Danis,

By:  _____
One of his Attorneys

Richard J. Nogal
Christopher J. Novak
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
835 McClintock Drive
Second Floor
Burr Ridge, IL 60527
Attorney No. 00404
Attorneys for Counter-Defendant Michael Danis

433652.1

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

v.)

Case No. 09 L 5080

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company,)

Counter-Plaintiff,)

v.)

AIRDIS, LLC, an Illinois limited liability company,)
SCOTT J. SINCLAIR, and MICHAEL DANIS,)

Counter-Defendants.)

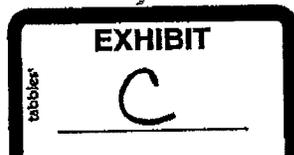
AFFIDAVIT OF MICHAEL DANIS

MICHAEL DANIS submits this Affidavit under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure and certifies that the statements set forth in this Affidavit are true and correct.

1. I am over the age of eighteen (18) years old and competent to testify to the matters set forth herein.

2. The statements contained herein are true and correct and known to me based upon my own personal knowledge.

3. I submit this Affidavit in support of Counter-Defendant's Section 2-619 Motion to Dismiss.



4. I am not currently, and have never been, the president of Airdis, LLC, an Illinois limited liability company ("Airdis").

5. I am not currently, and have never been, a member, manager, officer, or employee of Airdis.

6. I have never been in charge of the operations of or controlled Airdis.

7. I have never executed or entered into any agreements on behalf of Airdis.

8. I did not sign the Asset Purchase Agreement between Transcend Multimedia, LLC, an Illinois limited company ("Transcend"), Patrick Hafner, Jesse Alejos, and Airdis dated August 6, 2007.

9. I did not sign the Management Agreement between Transcend and Airdis dated August 14, 2007.

10. On or about April 17, 2006, I loaned the sum of \$100,000.00 to Airdis, which was secured by a Promissory Installment Note, Security Agreement, and Guaranty.

11. I am an outside investor and have never possessed an ownership interest in Airdis.

12. Scott Sinclair provided to me a copy of Airdis' Operating Agreement dated May 17, 2005 ("Operating Agreement"). A true and correct copy of the Operating Agreement is attached hereto as Exhibit 1.

13. Exhibit A to the Operating Agreement indicates that Scott Sinclair and Lawrence Oskielunas are the only members and owners of Airdis.

14. Section 5.1.1 of the Operating Agreement indicates that Airdis is managed by a Manager.

15. The Operating Agreement does not provide for a position of president.

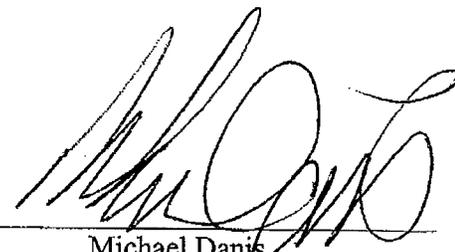
16. Section 5.1.1 of the Operating Agreement indicates that Scott Sinclair was appointed the initial Manager of Airdis.

17. Section 5.1.2 of the Operating Agreement indicates that the Manager of Airdis “shall have full, exclusive, and complete discretion, power, and authority ... to manage, control, administer, and operate the business of [Airdis] ..., and to make all decisions affecting such business and affairs ...”

18. Section 5.1.2.4 of the Operating Agreement indicates that the Manager of Airdis has the express power to “enter into agreements and contracts ...”

19. Attached hereto as Exhibit 2 is a true and correct copy of the filing information for Airdis from the Illinois Secretary of State. Exhibit 3 indicates that as of November 20, 2009, Scott Sinclair is the Manager of Airdis.

Further affiant sayeth naught.



Michael Danis

EXHIBIT E

Michael Danis

Angel Investor

Greater Chicago Area

- Past**
- Independent Consultant at Airdis Telecom
 - CFO at Healthware Systems

Education • Fairleigh Dickinson University

Connections 2 connections

Industry Telecommunications

Michael Danis's Experience

Independent Consultant

Airdis Telecom

(Privately Held; Telecommunications industry)

March 2008 — August 2009 (1 year 6 months)

CFO

Healthware Systems

(Privately Held; 11-50 employees; Computer Software industry)

January 2002 — February 2008 (6 years 2 months)

Michael Danis's Education

Fairleigh Dickinson University

B.A , Finance

EXHIBIT F

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[HOME](#)

[PRODUCTS](#)

[SUPPORT](#)

[NEWS](#)

[AGENTS](#)

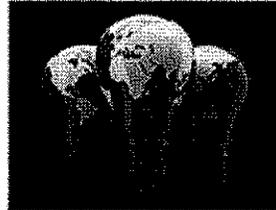
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[CONTACT US](#)



6 Reasons to Trust AIRDIS with the *LIFELINE* of Your Business:



Scott Sinclair

Chairman / CEO



With over ten (10) years of entrepreneurial experience starting his first company, Cable Max Solutions, Inc. in 1998, Scott has developed the perfect recipe of bundled telecom products and exceptional customer service. Scott's experience, reputation and contacts in the Chicagoland communications market inspired him to develop a solution for today's telecom troubles. The solution is the Inside-Out Engineering philosophy. Scott's extensive knowledge of phone systems, structured cabling design and network services gave him the insight he needed to develop an offering to match the exact needs of the customers in AIRDIS' target market.

Hank Godziszewski

Vice President of Sales



Hank has over twenty-nine (29) years in the telecommunications industry with extensive experience in sales and marketing and has been with AIRDIS since June of 2005. His extensive sales experience covers the breadth of telecommunications services, systems, and systems maintenance along with data communications. He has sold network services along with a myriad of the Lucent/Avaya systems all the way up to the large Definity PBX and VoIP systems. No one cares more about customer satisfaction than he does. Hank has won numerous sales awards as a top producing sales executive, including holding the distinction for making the first sale of the Merlin Legend System in Illinois. Hank also sold the largest Definity PBX in the state of Illinois, \$1.5 million dollars in 1998.

Jim McCann

Director of Operations



Jim has functioned as Scott Sinclair's "right hand man" since the Cable Max days back in 1999. Jim has management, sales and technical experience from his roles at American Express, SBC, Cable Max Solutions, CMSI Consulting and AIRDIS. Jim is the operational foundation that Scott's customer service strategy has been built on and it is his relationships with the AIRDIS technical staff that enables jobs to be completed on time and under budget. Jim has developed good relations with Scott's original customer base and this one-two punch has allowed the Company to retain nearly 100% of its customers.

Bill Griffith

Senior Project Engineer



Vision Statement:

To offer business owner's the service and solutions they have been searching for by revolutionizing the image of the telecom industry

Find out how we can improve **YOUR** communications:

Join the Discussion :



Get 3 more reasons why you should trust AIRDIS by:

Bill is a telephony engineer that has enabled AIRDIS reach higher levels of technical knowledge and expertise. Bill is certified in Avaya Communications Systems and OEM product enhancements, Voice Mail Systems, Unified Messaging, VoIP, structured cabling installations and telephony hardware design and implementation installations.

Kristina Botten

Network Operations Coordinator



Kristina is a critical component to the success of the AIRDIS customer service philosophy. With her years of telecom experience with companies such as McLeod USA combined with her desire to deliver exceptional, proactive service to customers Kristina has helped AIRDIS stand apart from their competition.

Jon Hood

Senior Systems Engineer

Jon's system expertise and work ethic are a key component to AIRDIS' customer satisfaction and retention. Jon's vast knowledge of communications systems fueled by his 15-years in the industry has helped AIRDIS provide more solutions to our customer's.

<< [Click Here to get Three More Reasons Why YOU Should Trust AIRDIS](#) >>

Who do you Trust with the *LIFELINE* to your Business? TM

TELEPHONE SYSTEMS

AIRDIS is an AVAYA Partner, offering a full range of PBX, VoIP and SIP enabled phone systems and solutions. AIRDIS also provides maintenance service.

[Learn More »](#)

NETWORK ACCESS

AIRDIS is a phone company, providing a variety of local, local toll, long distance, toll-free and internet connectivity solutions for your business including SIP.

[Learn More »](#)

STRUCTURED CABLING

AIRDIS is a structured cabling provider. Providing Category 5E - 6 LAN cabling, Fiber Optic & Video wiring, demarc extensions, cabling certifications & more

[Learn More »](#)

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Find: Michael Danis	
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EXHIBIT G

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

v.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

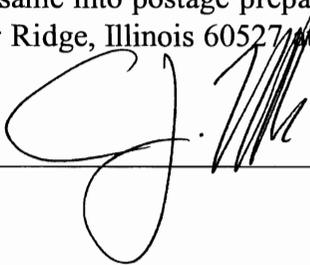
No. 09 L 5080

CERTIFICATE OF SERVICE

To: John P. Madden
O'Malley & Madden, P.C.
542 S. Dearborn St., Suite 660
Chicago, IL 60605

Harry E. Bartosiak
Tressler Soderstrom Maloney & Priess, LLP
233 S. Wacker Dr., 22nd Floor
Chicago, IL 60606

I, Christopher J. Novak, an attorney, certify that I served a copy of this Notice and Counter-Defendant Michael Danis' Answers to Counter-Plaintiff Transcend Multimedia, LLC's First Set of Interrogatories and Counter-Defendant Michael Danis' Responses to Counter-Plaintiff Transcend Multimedia, LLC's First Request for the Production of Documents and Things by mailing a copy to the above named parties, by depositing the same into postage prepaid sealed envelopes at the United States Postal Service Letterbox at Burr Ridge, Illinois 60527 at 4:50 p.m. on January 14, 2010.



Richard J. Nogal
Christopher J. Novak
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
Attorneys for Counter-Defendant Michael Danis
835 McClintock Drive, Second Floor
Burr Ridge, IL 60527
630-655-6000
Attorney No. 00404

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

AIRDIS, LLC, an Illinois limited liability company,)

Plaintiff,)

v.)

Case No. 09 L 5080

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company, PATRICK B. HAFNER,)
Individually, and JESSE ALEJOS, Individually,)

Defendants.)

TRANSCEND MULTIMEDIA, LLC, an Illinois)
limited liability company,)

Counter-Plaintiff,)

v.)

AIDIS, LLC, an Illinois limited liability company,)
SCOTT J. SINCLAIR, and MICHAEL DANIS,)

Counter-Defendants.)

**COUNTER-DEFENDANT MICHAEL DANIS' ANSWERS TO COUNTER-PLAINTIFF
TRANSCEND MULTIMEDIA, LLC'S FIRST SET OF INTERROGATORIES**

NOW COMES Counter-Defendant Michael Danis ("Danis"), by and through his attorneys, Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd., and for his answers to Counter-Plaintiff Transcend Multimedia, LLC's First Set of Interrogatories, states as follows:

1. Identify each person with knowledge of facts relating to Your introduction to Patrick Hafner and Jesse Alejos.

ANSWER: Michael Danis, Scott Sinclair, Patrick Hafner, Jesse Alejos, Nick Convey

2. Explain the circumstances underlying Your first meeting with Patrick Hafner and Jesse Alejos. Include in Your answer: (a) the substance of the topics discussed during this meeting, (b) the identity of all participants at this meeting, (c) the date, and (d) the location of such meeting.

ANSWER: The meeting took place in approximately Spring 2008 in Scott Sinclair's office. Present at the meeting were Michael Danis, Scott Sinclair, Patrick Hafner, and Jesse Alejos. The sale of Transcend to Airdis was discussed at the meeting.

3. Explain the facts and circumstances surrounding Your \$100,000.00 investment in Airdis.

ANSWER: Danis was told about Airdis by Eric Felgenhauser of Candos Insurance Agency in Palos Park, Illinois. Mr. Felgenhauser passed Danis' contact information to Scott Sinclair. In or about February 2006, Danis and Mr. Sinclair met. In or about March 2006, Danis conducted a due diligence investigation of Airdis and decided to invest in Airdis. In or about April 2006, Danis arranged to loan the sum of \$100,000.00 to Airdis. A Promissory Installment Note, Guaranty, and Security Agreement were entered into between Danis and Airdis on or about April 17, 2006.

4. Explain Your role as an "outside investor" in Airdis as asserted in paragraph 11 of Your Affidavit submitted in support of Your Motion to Strike ("Affidavit").

ANSWER: See Danis' answer to No. 3 above. Danis has provided strategic business advice to Airdis.

Danis provided an equity investment in Airdis of \$15,000.00 on April 21, 2006.

Danis has paid McLeod USA Telecom on behalf of Airdis via credit card:

Chase Visa (5880):

4/13/09	\$20,531.76
5/19/09	\$21,000.00
7/7/09	\$15,769.18
7/7/09	\$1,665.11
8/4/09	\$586.92
8/4/09	\$24,413.08
9/9/09	\$373.60
9/9//09	\$16,920.70

Citibank Master Card (3350)

10/6/09	\$18,144.98
11/16/09	\$336.24
11/16/09	\$17,307.37
12/22/09	\$22,000.00

See credit card statements attached to Danis' Response to Request for Documents No. 3.

Danis was repaid for the above credit card charges via wire transfer payments from Airdis:

7/2/09	\$21,000.00
7/30/09	\$17,434.29
9/3/09	\$25,000.00
10/2/09	\$17,000.00
11/12/09	\$18,545.00

See bank statements attached to Danis' Response to Request for Documents No. 4.

5. Explain whose idea it was to use the name "Airdis" and the inspiration and reasoning behind such a name.

ANSWER: Danis is unaware of the origin of the name "Airdis."

6. Explain why Airdis, in an official filing made with Ohio Public Utilities Commission on August 4, 2008, identifies You as "President" of Airdis, if, as You assert in paragraph 4 of Your Affidavit, You "have never been the president of Airdis." See a true copy of Exhibit E to August 4, 2008 filing attached hereto as Exhibit A.

ANSWER: The designation of Danis as president of Airdis was contingent upon: 1) the agreement of Lawrence Oskielunas to sell his membership interest in Airdis to Danis; 2) obtaining financing to pay for Mr. Oskielunas' interest; and 3) the amendment of Airdis' Operating Agreement to reflect Danis as a member. None of these events occurred. However, the filing in Ohio was done by Airdis personnel in anticipation of these events occurring without Danis' knowledge.

7. Explain why You have held and continue to hold Yourself out to the public as the "President" of Airdis despite Your assertions in Your Affidavit that You "have never been the president of Airdis." Compare Affidavit with true and accurate copies of the professional network page for Michael Danis posted on the LinkedIn.com web site, attached hereto as Exhibit B.

ANSWER: Danis has never served as the president of Airdis. See Danis' answer to No. 6 above.

Danis denies that he has held himself out to the public as president of Airdis. Danis denies that his network page on the LinkedIn.com website constitutes a public domain.

8. Explain why, sometime after December 8, 2009, You changed your professional description on your professional network page at LinkedIn from “President” of Airdis to an “Independent Consultant” at Airdis Telecom. See a true copy of Your LinkedIn Page as of December 8, 2009 compared to a copy of Your LinkedIn page as of December 14, 2009, attached hereto as Exhibit B.

ANSWER: Danis changed his profile to reflect the fact that the conditions precedent to his becoming president and a member of Airdis specified in Danis’ answer to No. 6 above did not occur.

9. Explain what Your role is as an “Independent Consultant” at Airdis Telecom.

ANSWER: Danis provided strategic business advice to Airdis in order to protect his investment in Airdis. Danis also provided the use of his credit cards to provide short term payment of Airdis’ expenses until Airdis’ accounts receivables were paid. See Danis’ answer to No. 3 and No. 4 above.

10. Identify every business dealing, arrangement and/or partnership You have had with Mr. Scott Sinclair.

ANSWER: Objection, said interrogatory is irrelevant and/or seeks information that is not likely to lead to the discovery of relevant facts. Subject to, and without waiving said objection, Danis states that he has had dealings with Mr. Sinclair regarding Danis’ investment in Airdis, business advice provided by Danis to Airdis, and Danis’ short term payment of Airdis’ ongoing bills.

11. Identify every monetary investment You have made to, with, or on behalf of Mr. Scott Sinclair. Include in Your response: (a) the amount, (b) purpose, and (c) date of each investment.

ANSWER: None.

12. Identify every company or business venture where You are an “outside investor” such as You describe in paragraph 11 of Your Affidavit.

ANSWER: Objection, said interrogatory is irrelevant and/or seeks information that is not likely to lead to the discovery of relevant facts and is unreasonably burdensome and overbroad.

13. Identify each person with knowledge of the facts concerning the loan You extended to Airdis as asserted in paragraph 10 of Your Affidavit.

ANSWER: Michael Danis, Scott Sinclair, and Lawrence Oskielunas

14. Explain the terms of the Promissory Installment Note, Security Agreement, and Guaranty identified in paragraph 10 of Your Affidavit.

ANSWER: Objection, said interrogatory calls for a legal conclusion and is overbroad and unduly burdensome. Subject to, and without waiving said objection, Danis states: see documents attached to Danis' response to Transcend's Request for Production No. 1.

15. Explain Lawrence Oskielunas' role in the operation and/or management of Airdis.

ANSWER: Lawrence Oskielunas is a member of Airdis and was employed by Airdis as its Chief Operating Officer. Upon information and belief, Mr. Oskielunas was terminated as Chief Operating Officer in or about May 2007.

16. Identify each individual or entity that is an investor in Airdis. Include in Your response the amount of each identified investor's investment in Airdis.

ANSWER: Danis is not aware of all investments made in Airdis. However, Danis is aware of the following investments in Airdis:

Michael Danis invested \$115,000.00 in Airdis and has provided short term payment of Airdis' expenses via credit cards.

Upon information and belief, Scott Sinclair has, according to Airdis' Operating Agreement dated May 17, 2005, made investments of approximately \$360,500.00 in Airdis. Further, upon information and belief, Mr. Sinclair has provided equipment for use by Airdis.

Upon information and belief, Lawrence Oskielunas has, according to Airdis' Operating Agreement dated May 17, 2005, made investments of approximately \$302,100.00 in Airdis.

Upon information and belief, Don Wittmer has invested approximately \$30,000.00 in Airdis.

17. Explain Your association and/or role in Niatel, LLC.

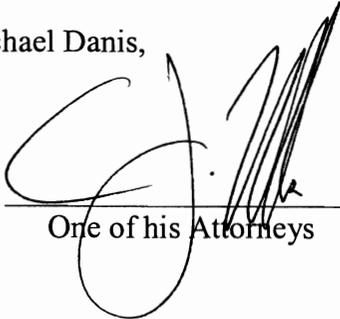
ANSWER: Objection, said interrogatory is irrelevant and/or seeks information that is not likely to lead to the discovery of relevant facts.

18. Identify each person with knowledge relating to the facts concerning Your association with Niatel, LLC.

ANSWER: Objection, said interrogatory is irrelevant and/or seeks information that is not likely to lead to the discovery of relevant facts.

Respectfully submitted,

Michael Danis,

By: 
One of his Attorneys

Richard J. Nogal
Christopher J. Novak
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
835 McClintock Drive, Second Floor
Burr Ridge, IL 60527
Attorney No. 00404
Attorneys for Counter-Defendant Michael Danis

439520.1

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, Michael Danis, certifies that the statements set forth in the foregoing Answers to Interrogatories are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

A handwritten signature in black ink, appearing to read 'Michael Danis', written in a cursive style. The signature is positioned above a horizontal line.

Michael Danis