

Arkansas  
State Claims Commission

OCT 24 2018

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BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

RECEIVED

- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

RA outdoors, LLC D/B/A ASPIRA, Claimant

vs.

State of Arkansas, Respondent

## Do Not Write in These Spaces

Claim No. \_\_\_\_\_

Date Filed \_\_\_\_\_  
(Month) (Day) (Year)

Amount of Claim \$ \_\_\_\_\_

Fund \_\_\_\_\_

## COMPLAINT

RA OUTDOORS, LLC D/B/A ASPIRA, the above named Claimant, of 717 N. HARWOOD ST DALLAS  
 (Name) (Street or R.F.D. & No.) (City)  
 TEXAS 75201 518-577-4482 County of DALLAS represented by \_\_\_\_\_  
 (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of \_\_\_\_\_, says:  
 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: ARKANSAS DEPT. PARKS AND TOURISM Amount sought: \$558,910

Month, day, year and place of incident or service: MARCH 2017 to JULY 2018

Explanation: RA OUTDOORS, LLC D/B/A ASPIRA, successor-in-interest to The Active Network, Inc. ("Aspira") is owed payment processing costs associated with servicing contract # 4600030524 ("Contract") with Arkansas Department of Parks and Tourism, State Parks Division ("ASP") dated September 30<sup>th</sup>, 2013

Within the attachment V "Cost Data" page of the contract (Exhibit A), the contract clearly states that "Payment Processing Costs" are 2.2%.

Between the months of March 2017 and July of 2018, over 25 million in fees were processed via credit card for Arkansas State Parks under this contract, resulting in \$558,910 in payment processing fees at the 2.2% rate (Exhibit B) due to Aspira.

Aspira respectfully requests prompt payment of these fees and any statutory interest that has accrued therefrom.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

Yes \_\_\_\_\_; when? 12 7 2017; to whom? Arkansas Department of Parks and Tourism  
 (Yes or No) (Month) (Day) (Year) (Department)  
 : and that the following action was taken thereon: None yet - forwarding of claim form

and that \$ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

and that the nature thereof is as follows: \_\_\_\_\_  
 (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

: and was acquired on \_\_\_\_\_, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

GARY EVANS

(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Saratoga Springs, NY

on this 23 day of October 2018  
 (Date) (Month) (Year)

Monique R Cassidy-Whelan  
 Notary Public - State of New York  
 Qualified in Saratoga County  
 No. 01CA6302813  
 My Commission Expires May 5, 2018

SF1-R7/99

June 28, 2022

My Commission Expires: June 28, 2022  
 (Month) (Day) (Year)

Arkansas  
State Claims Commission  
JAN 31 2019

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BEFORE THE STATE CLAIMS COMMISSION  
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- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

RA Outdoors, LLC d/b/a Aspira

Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. \_\_\_\_\_

Date Filed \_\_\_\_\_

(Month) (Day) (Year)

Amount of Claim \$ \_\_\_\_\_

Fund \_\_\_\_\_

COMPLAINT

RA Outdoors, LLC d/b/a Aspira, the above named Claimant, of 717 N. Harwood Street, Suite 2400, Dallas, Texas 75201 (214) 996-7224, County of Dallas, represented by Rick Donovan and Bourgon Reynolds, Rose Law Firm, P.A., Little Rock, AR 72201 (501) 375-9131 (501) 375-1309, says:

(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Parks & Tourism Amount sought: \$558,910, plus interest and fees

Month, day, year and place of incident or service: March 1, 2017 - July 31, 2018

Explanation: Please see the Amended Complaint and supporting exhibits, attached hereto.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

No; when? to whom? (Department)

and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows:

and was acquired on, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true.

Richard Donovan  
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock, Arkansas

(SEAL)

on this 31st day of January, 2019

(Date) (Month) (Year)

Shannon Martin  
(Notary Public)

My Commission Expires: 4-1-2020 (Month) (Day) (Year)

SHANNON MARTIN  
NOTARY PUBLIC - STATE OF ARKANSAS  
PULASKI COUNTY  
My Commission Expires 4-1-2020  
Commission # 12375960

**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**RA OUTDOORS, LLC d/b/a ASPIRA**

**CLAIMANT**

**v.**

**CLAIM NO. 19-0518-CC**

**ARKANSAS DEPARTMENT OF PARKS AND TOURISM**

**RESPONDENT**

**AMENDED COMPLAINT**

COMES NOW RA Outdoors, LLC d/b/a Aspira (Claimant), and for its Amended Complaint against the Arkansas Department of Parks and Tourism (ADPT),<sup>1</sup> states and alleges as follows:

**INTRODUCTION**

1. Claimant provides reservation licensing technology (software, hardware, and services) to support public and private parks and conservation agencies. These services include providing a platform for ADPT park patrons to make campsite reservations and to buy tickets.

2. Claimant is the successor-in-interest to The Active Network, Inc.'s (Active Network)<sup>2</sup> Contract No. 4600030524 (Contract), with ADPT to furnish ticketing sales and reservation services to ADPT. The reservation services include the ability for ADPT park patrons to reserve ADPT facilities such as campsites, lodge rooms, cabins, meeting rooms, and pavilions.

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<sup>1</sup> In the disputed contract, ADPT is referred to as Arkansas State Parks (ASP). For simplicity's sake, Claimant refers to the agency in the manner in which it has entered its appearance in this matter: ADPT.

<sup>2</sup> The disputed contract was entered between ADPT and The Active Network, Inc., on September 30, 2013. On April 30, 2014, The Active Network, Inc., contributed its assets, including the disputed contract, to Active Network, LLC. On August 31, 2017, Active Network, LLC, contributed its assets, including the disputed contract, to Claimant.

3. ADPT patrons can use a credit card to reserve campgrounds and other outdoor amenities, or purchase tour tickets, utilizing Claimant's services.

4. Under the Contract, Claimant is required to accept credit cards for reservations and ticketing.<sup>3</sup>

5. For each completed credit card transaction, credit card processing companies charge fees to credit card merchants like Claimant. The credit card fees are charged regardless of nature of the transaction (i.e., whether the sale is for reservations or ticketing).

6. To offset these credit card fees, the Contract provided for 2.2% for "Payment Processing Costs",<sup>4</sup> payable to Claimant, as compensation for the credit card processing services it provided.

7. The "Payment Processing Costs" was intended to compensate Claimant for fees incurred for credit card processing of both reservations and ticketing sales. But ADPT claims that the "Payment Processing Costs" was intended to compensate Claimant for credit card fees incurred from ticketing sales only.

8. Whether ADPT is responsible for the 2.2% "Payment Processing Costs" for both park reservations and ticket sales is the central issue before this Commission.

9. As evidenced by the Contract, and the negotiations between the parties, Claimant is entitled to the 2.2% "Payment Processing Costs" as compensation for the credit card processing services it provided with respect to both park reservations and ticket sales made with a credit card.<sup>5</sup>

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<sup>3</sup> See Exhibit 1 at p. 47. Here, the "Financials" section of Attachment VIII (System Functional Requirements) states that Claimant (1) "must allow all [ADPT] locations to accept cash, credit cards (Visa, MasterCard, American Express and Discover), checks, traveler's checks and gift certificates issued by [ADPT]", (2) that Claimant's system "be capable of handling credit card payments (Visa, MasterCard, American Express and Discover) over the internet", and that (3) "Credit card payments must be 'real-time' processing".

<sup>4</sup> See Exhibit 1 at p. 37, Attachment V (Cost Data).

<sup>5</sup> *Id.*

10. As such, Claimant seeks to recover \$558,910 in Payment Processing Costs, plus any interest due, as compensation for the credit card processing services it provided to ADPT for park reservations made between March 1, 2017, and July 31, 2018. There were no ticket sales made through Claimant during this time, and thus there are no Payment Processing Costs due to Claimant attributable to ticket sales.

### **PARTIES**

11. Claimant is a limited liability company organized, existing, and in good standing under the laws of the State of Delaware, with its principal place of business located in Dallas, Texas.

12. ADPT is an agency of the State of Arkansas.

13. The Arkansas State Claims Commission has jurisdiction over this proceeding pursuant to Ark. Code Ann. § 19-10-204 (Supp. 2007).

### **FACTS**

14. On December 21, 2010, Claimant's predecessor-in-interest Active Network submitted a proposal to create and operate a centralized camping reservation and ticketing system for ADPT.<sup>6</sup>

15. The proposal included a fee schedule outlining the amounts payable to Active Network for park reservations made, and tickets sold through, its services.<sup>7</sup>

16. The proposal explicitly stated that ADPT would pay credit card fees for both reservations and ticketing.<sup>8</sup> See Figure 1. As seen below, Footnote 1 applies to "Park Reservations," "Ticketing Option 1," and "Ticketing Option 2."

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<sup>6</sup> See Exhibit 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 61.



**PRICING**

<b>PARK RESERVATIONS <sup>1</sup></b>	
Per Internet Reservation	\$6.50
Internet Change	\$6.00
Internet Cancellation	\$6.00
Per Call Center Reservation	\$6.50
Call Center Change	\$6.00
Call Center Cancellation	\$6.00
Per Field Reservation	\$6.50
Field Change	\$6.00
Field Cancellation	\$6.00

<b>TICKETING</b>	
ONE TIME FEE to establish the ASP ticketing website. <sup>2</sup> (for either Option 1 or Option 2)	\$10,000.00
Option 1: Per Ticket <sup>3</sup>	\$1.75
Option 2: Per Transaction <sup>3</sup> (single fee for any number of ticket purchases in one transaction)	\$4.45

<sup>1</sup> Assumes ASP pays all credit card fees.

<sup>2</sup> Additional venues can be added to this platform. See [www.recreation.gov](http://www.recreation.gov) and select the "Tours" tab for an example of a multi-facility ticket page.

The Active Network reserves the right to increase per activity fees to a maximum of 5% annually to adjust for inflation.

17. After Active Network was awarded the bid, the parties began negotiation of the contract terms.

18. Upon information and belief, the preliminary draft of the proposed contract was delivered to Active Network on or before June 8, 2012. It was silent as to who was to be responsible for the credit card fees for reservations or ticketing.

19. On July 30, 2012, Greg Butts, Director of ADPT, emailed representatives at Active Network with questions about the draft contract.<sup>9</sup> In the email, Mr. Butts posed several questions about Active Network's position on credit card fees.<sup>10</sup> In his email, Mr. Butts made no differentiation between credit card fees applicable to reservations and credit card fees applicable to ticketing.<sup>11</sup>

<sup>9</sup> See Exhibit 3.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

20. In response to Mr. Butts' questions, Active Network contemporaneously drafted notes for its internal use concerning credit card fees, which included the below.<sup>12</sup> None of the internal notes differentiated between credit card fees applicable to reservations and credit card fees applicable to ticketing.<sup>13</sup>

<b>ADPT Question:</b>	<b>What are the credit card transaction fees charged by Active Networks?</b>
<b>Active Network Internal Notes:</b>	<b>I believe we charge 2.2%<sup>14</sup></b>

21. Active Network responded to Mr. Butts' July 30 questions about credit card fees by stating that the parties would discuss the fees further on an upcoming telephone call.<sup>15</sup>

22. Upon information and belief, ADPT and Active Network discussed the contract terms via a telephone call on August 17, 2012. Among other things, credit card fees were discussed.

23. On September 5, 2012, Active Network sent ADPT a revised draft contract "with the changes per our call,"<sup>16</sup> which included a 2.2% "Payment Processing Costs" line item below the fee schedules for reservations and ticketing.<sup>17</sup> See Figure 2:

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<sup>12</sup> See Exhibit 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Exhibit 6.

<sup>16</sup> See Exhibit 7, and its attachment, Exhibit 8.

<sup>17</sup> See Exhibit 8.

**ATTACHMENT V  
COST DATA**

1.0

<b>PARK RESERVATIONS</b>			
Item	Year 1	Year 3	Year 5
Per Internet Reservation	\$6.75	\$7.00	\$7.25
Internet Change	\$6.00	\$6.00	\$6.00
Internet Cancellation	\$6.00	\$6.00	\$6.00
Per Call Center Reservation	\$6.75	\$7.00	\$7.25
Call Center Change	\$6.00	\$6.00	\$6.00
Call Center Cancellation	\$6.00	\$6.00	\$6.00
Per Field Reservation	\$6.75	\$7.00	\$7.25
Field Change	\$6.00	\$6.00	\$6.00
Field Cancellation	\$6.00	\$6.00	\$6.00
<b>TICKETING</b>			
Option 1: Per Ticket	\$1.75	\$2.00	\$2.25
Option 2: Per Transaction (single fee for any number of ticket purchases in one transaction)	\$4.45	\$5.00	\$5.50
Payment Processing Costs	2.2%	2.2%	2.2%

Notes to cost data:

- Costs associated with the modification of third party products are not included.
- Hardware costs are not included.

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24. On September 30, 2013, the parties executed the Contract.<sup>18</sup> The Contract contained the "Payment Processing Costs" line item.<sup>19</sup> As it had been in every preceding draft since September 5, 2012, the 2.2% "Payment Processing Costs" fee remained listed below the fee schedules for both reservations and ticketing.<sup>20</sup> See Figure 3:

<sup>18</sup> See Exhibit 1.

<sup>19</sup> Exhibit 1 at p. 37.

<sup>20</sup> *Id.*



ATTACHMENT V  
COST DATA

1.9

PARK RESERVATIONS			
Item	Year 1	Year 3	Year 5
Per Internet Reservation	\$6.75	\$7.00	\$7.25
Internet Change	\$6.00	\$6.00	\$6.00
Internet Cancellation	\$6.00	\$6.00	\$6.00
Per Call Center Reservation	\$6.75	\$7.00	\$7.25
Call Center Charge	\$6.00	\$6.00	\$6.00
Call Center Cancellation	\$6.00	\$6.00	\$6.00
Per Field Reservation	\$6.75	\$7.00	\$7.25
Field Change	\$6.00	\$6.00	\$6.00
Field Cancellation	\$6.00	\$6.00	\$6.00
TICKETING			
Option 1: Per Ticket	\$1.75	\$2.00	\$2.25
Option 2: Per Transaction (single fee for any number of ticket purchases in one transaction)	\$4.45	\$5.00	\$5.50
Payment Processing Costs	2.2%	2.2%	2.2%

Notes to cost data:

1. Costs associated with the modification of third party products are not included.
2. Hardware costs are not included.
3. For group facilities reservations using the Events feature: All Event transactions will incur a single reservation fee for the group. No additional change fees will be charged for subsequent changes (i.e. Dates, Individual parties reserving a room, etc) done by Arkansas State Parks Group Sales staff.

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25. Between March 1, 2017, and July 31, 2018, Claimant processed credit cards pursuant to the Contract's terms.

26. During that time, ADPT accrued \$558,910 in "Payment Processing Costs" for park reservations made with credit cards. There were no ticketing sales made through Claimant's services during this period, and thus there were no "Payment Processing Costs" for ticketing sales.

27. ADPT denies that it is responsible for the "Payment Processing Costs" fees incurred from park reservations made with credit cards. ADPT claims that the 2.2% "Payment Processing Costs" applies only to ticketing sales, and not to park reservations.<sup>21</sup> ADPT relies only on the physical layout of the fee schedule as evidence.

28. This position is untenable. Neither the negotiations between the parties nor a fair reading of the Contract supports this position.

<sup>21</sup> *Id.*

29. Moreover, ADPT's interpretation would lead to burdensome and illogical results. Under ADPT's logic, if a patron of ADPT used a credit card to make a reservation and purchase a tour ticket on the same transaction, Claimant would be required to split the transaction, and apply the 2.2% fee to the ticket sale only. Such a result would be burdensome and illogical.

30. ADPT's decision to deny its responsibility for the Payment Processing Costs in connection with park reservations is a willful breach of the Contract and entitles Claimant to damages.

31. In order to prevail on a claim for breach of contract, an injured party need only prove the existence of a valid agreement between the contracting parties, breach of the agreement by the other party, and resulting damages.

32. In this case, there is a valid agreement between Claimant's predecessor-in-interest Active Network and ADPT. Pursuant to the Contract, ADPT was responsible for 2.2% in "Payment Processing Costs" as compensation for the credit card processing services provided by Claimant for both reservations services and ticket sales made with a credit card. Between March 1, 2017, and July 31, 2018, Claimant accrued \$558,910 in such fees.

33. As a direct and proximate result of ADPT's breach, Claimant has suffered damages in the amount of \$558,910, plus interest. Furthermore, Claimant is entitled to an award of attorneys' fees incurred in connection with this claim if it is the prevailing party pursuant to Ark. Code Ann. § 16-22-308 (Repl. 1999), and for any other relief to which it is entitled.

#### **REQUEST FOR RELIEF**

Based upon the foregoing, RA Outdoors, LLC d/b/a Aspira, prays for the following:

(a) that the Arkansas State Claims Commission issue an award against the Arkansas Department of Parks and Tourism in the amount of \$558,910, plus any interest to which it is entitled;

(b) that it be awarded its attorneys' fees incurred in connection with this claim pursuant to Ark. Code Ann. § 16-22-308 (Repl. 1999);

(c) that it be awarded the costs incurred in connection with this claim; and

(d) that it be awarded any and all additional relief to which it may be entitled under the allegations hereof and that the Arkansas State Claims Commission deems just and proper.

**Dated** this 31st day of January, 2019.

**BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS**

**RA OUTDOORS, LLC  
d/b/a ASPIRA**

**CLAIMANT**

**v.**

**NO. 19-0518-CC**

**ARKANSAS DEPARTMENT  
OF PARKS AND TOURISM**

**RESPONDENT**

**SETTLEMENT AGREEMENT AND RELEASE**

WHEREAS, an action is pending in the Arkansas State Claims Commission styled ***RA Outdoors, LLC d/b/a Aspira v. Arkansas Department of Parks and Tourism, Claim No. 190518***, (hereinafter referred to as the “Action”) pursuant to which the Claimant in this action, RA Outdoors, LLC, d/b/a Aspira (referred to as “Claimant” unless the context requires otherwise) has brought a claim against the Respondent in this Action, Arkansas Department of Parks and Tourism (referred to as “Respondent” unless the context requires otherwise), for the payment of \$558,910.00 in payment processing costs for credit card processing services between on or about March 1, 2017, and on or about July 31, 2018, and

WHEREAS, the Respondent denies that it, or any officer, employee, or agent, has engaged in any wrongful, tortious or unlawful conduct of any kind, and

WHEREAS, the Claimant and the Respondent desire to compromise and settle the Action to avoid the costs and uncertainties of continued litigation;

NOW, THEREFORE, the Claimant and the Respondent agree to the following terms as full and final satisfaction of any and all claims, including any and all claims for costs and attorneys’

fees, which were raised by Claimant in the Action, or could have been raised by Claimant in the Action or in any other forum.

1. **ACTION TO BE TAKEN BY RESPONDENT.** Following entry of an Order dismissing the Action with prejudice, the Respondent will provide Claimant the total and final sum of Two Hundred Seventy-Nine Thousand Four Hundred Fifty Dollars and No Cents (\$279,450.00), which amount includes any and all costs, expenses and attorneys' fees of Claimant.

2. **ACTION TO BE TAKEN BY CLAIMANT.** Claimant agrees to file a Motion to Dismiss with Prejudice with the Claims Commission, and further, that ***RA Outdoors, LLC d/b/a Aspira v. Arkansas Department of Parks and Tourism, Claim No. 190518***, be dismissed with prejudice. Claimant agrees to file the Motion to Dismiss with Prejudice with the Claims Commission as soon as possible. In the event that the above-referenced cause of action is not dismissed with prejudice by the Claims Commission, this entire agreement shall be null and void, and all consideration shall be returned.

3. **COMPLETE RELEASE AND WAIVER.** In exchange for the above consideration of \$279,450.00, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby expressly acknowledged, each party hereto (the "Releasing Party") does hereby irrevocably and unconditionally release, acquit, remise, and forever discharge the other party hereto (the "Released Party") from any and all rights, promises, obligations, liens, claims, demands, liabilities, actions and causes of actions of whatever kind and character including appeals, in law or equity, in contract, tort or other, both known and unknown, disclosed and undisclosed, actual and consequential, specific and general, however denominated, including but not limited to those arising out of or in any way connected with the events and

incidents of Claimant's claim that is the subject of, has been the subject of, or could have been the subject of ***RA Outdoors, LLC d/b/a Aspira v. Arkansas Department of Parks and Tourism, Claim No. 190518***, for any past, present, or future claim, relief or cause of action, no matter how denominated, income from any source, declaratory or injunctive relief, compensatory, liquidated or punitive damages, wages, money, remuneration, or thing of value whatsoever, by the Releasing Party against the Released Party, including, without limitation, any allegations, causes of action, claims and/or matters caused by, arising out of, related to or in any way connected with the employment, association, affiliation, agency, contract, or contact of whatever character or nature of Claimant with Respondent, and/or arising under, relating to or covered by any federal, state or local ordinance, law, statute, act, custom, usage, rule or regulation and including, without limitation, any claim or cause of action which was, or could have been stated in ***RA Outdoors, LLC d/b/a Aspira v. Arkansas Department of Parks and Tourism, Claim No. 190518***. It is understood, agreed and stipulated between the parties hereto that the consideration described herein is in complete and full accord, satisfaction and discharge of any and all doubtful or disputed claims, whatsoever, of which all said claims are expressly denied by Released Party.

4. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties. The Claimant and Respondent have not relied upon any promise or statement, oral or written, that is not set forth in this Agreement.

5. **MODIFICATION.** The Claimant and Respondent agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all parties.

6. **VOLUNTARY AGREEMENT.** The Claimant and Respondent acknowledge that each has read this Agreement, that each has had the opportunity to consult with legal counsel of



their choosing concerning the advisability, meaning and effect of this Agreement, and that each has signed this Agreement voluntarily and without duress.

7. **NO RESCISSION FOR MISTAKE.** The Claimant and Respondent acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the Action and any additionally waived and released claims to the extent each deems necessary and appropriate. The Claimant and Respondent assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

8. **ACKNOWLEDGEMENT.** Claimant and Respondent acknowledge that this document was agreed upon by both sides; the terms of which will not be construed against either side as the drafter.

9. **NO ADMISSION OF LIABILITY.** The Claimant and Respondent acknowledge that this Agreement is a compromise and is not an admission of liability or wrongdoing on the part of the Respondent, or any officer, employee or official of the Respondent. Claimant agrees not to suggest or construe this Agreement as an admission or implication of wrongdoing on the part of the Respondent, or any officer, employee or official of the Respondent and that the Agreement is not admissible in any court or administrative body except as necessary to enforce its terms or as otherwise required by law.

10. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arkansas.

11. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Claimant and Respondent, and each of their respective heirs, descendants, successors and assigns.

12. **EFFECTIVE DATE.** This Agreement shall not become effective until approved by the Arkansas State Claims Commission, the Claims Review Subcommittee of the Arkansas Legislative Council, and the Arkansas General Assembly; the settlement monies are appropriated by the General Assembly; and the appropriation is funded.

13. **COUNTERPARTS.** This Agreement may be executed in counterparts and the counterparts taken together shall have binding effect.

CLAIMANT

By: Mark Smith

Title: CEO

Date: 11/21/19

RESPONDENT

By: Stacy Hunt

Title: Secretary, ADPIT

Date: 11-26-19

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**RA OUTDOORS, LLC d/b/a ASPIRA**

**CLAIMANTS**

**V.**

**CLAIM NO. 190518**

**ARKANSAS DEPARTMENT OF  
PARKS AND TOURISM**

**RESPONDENT**

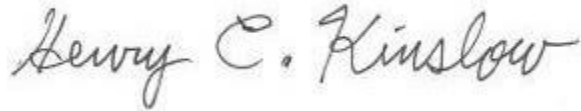
**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the Settlement Agreement and Release signed by authorized representatives of RA Outdoors, LLC d/b/a Aspira and the Arkansas Department of Parks and Tourism.

Based upon a review of the pleadings and the Settlement Agreement, the Claims Commission hereby APPROVES the Settlement Agreement and Release.

As such, the Claims Commission refers the award of \$279,450.00 to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.



---

ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird  
Dexter Booth  
Henry Kinslow, Co-Chair  
Paul Morris, Co-Chair  
Sylvester Smith

DATE: December 5, 2019

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).