



A 501 (C) (3) Corporation

March 20, 2015

Mr. Robert M. Kuczewski

<Address Redacted>

<Address Redacted>

Dear Mr. Kuczewski,

On March 14, 2015, the Board of Directors of the United States Hang Gliding and Paragliding Association (USHPA) determined that you should be expelled from the association pursuant to the USHPA bylaws which provide for the expulsion of a member based upon a good faith determination by the board that the member has failed in a material and serious degree to observe the rules of conduct governing USHPA or has engaged in conduct materially and seriously prejudicial to the purpose and interests of USHPA.

This letter is notice to you pursuant to the Procedure for Expulsion set forth in USHPA's bylaws that you will be expelled from USHPA effective April 29, 2015. This notice is being sent to you more than 15 days before the proposed effective date of your expulsion as required by the bylaws.

In addition, pursuant to the USHPA bylaws, you are being given an opportunity to be heard both orally and in writing at a hearing which will be held more than 5 days before the effective date of the proposed expulsion.

The hearing will be conducted before the USHPA Board of Directors in a special meeting of the Board of Directors to be held April 22, 2015 starting at 6:00 PM PDT. The hearing will take place by conference call. You will be provided with the conference call number and password via email on April 21, 2015. The email address we have on file for you is bobkuczewski@gmail.com. If this email address is incorrect, please notify the USHPA office immediately.

You may present written materials in opposition to your expulsion. Any evidence that you wish to present in opposition to the proposed expulsion (such as witness statements and documents) must be submitted as written materials. Such evidence may include your statement of facts known personally to you, statements by witness of facts known personally by those witnesses, and documents that you wish the board to consider in making its final determination on the proposed expulsion. Any witness statements must be made under penalty of perjury under the laws of the states of California and Colorado and must affirmatively demonstrate that the witness has personal knowledge of the facts set out in the statement. Written materials may also consist of argument.

Your written materials must be received at the USHPA headquarters - USHPA 1685 W. Uintah St., Colorado Springs, CO 80904 - no later than 5:00 PM local time on April 17, 2015. Any written materials received after that date and time will not be considered. The written materials will be the only evidence to be considered by the Board of Directors in opposition to the proposed expulsion. The hearing is your chance to orally present your arguments to the Board of Directors in opposition to the proposed expulsion. In your argument, you may refer to any timely received written materials. No additional evidence, not submitted in writing as set forth in the previous paragraph, will be considered. You must represent yourself at the hearing - you may not have anyone else speak for you - and no one else may speak on your behalf.

Whether the hearing is open or closed is entirely up to you. Unless, by April 17, 2015, you request that the hearing be closed, listen-only attendance at the hearing will be open to any USHPA member. At your request, the hearing will take place in closed session and attendance will be limited to directors, committee chairs and USHPA staff.

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Following the hearing, the Board of Directors will meet in closed session and determine whether or not the proposed expulsion should take place, and you will be promptly notified of their decision before the proposed expulsion date.

The behavior upon which the board has determined that you should be expelled from the association falls into the following categories:

1. Creation of at least two national hang gliding organizations with the stated purpose of competing with USHPA, one of which you currently control;
2. Endangering safety of paragliding and hang gliding operations involving members of USHPA, USHPA Certified Instructors, and USHPA Tandem Instructors at the Torrey Pines Gliderport (TPGP) by, among other things:
 - a. Disrupting training of students at TPGP;
 - b. Continuing to disrupt training of students at TPGP, after being asked to stop by TPGP personnel;
 - c. Being in the active airfield restricted area of TPGP for purposes unrelated to flying;
 - d. Remaining in, and refusing to leave the active airfield restricted area of TPGP after being asked by TPGP personnel to leave;
3. Endangering the existence of an historic and important hang gliding and paragliding site, namely the Torrey Pines Gliderport;
4. Misstatements and misrepresentations made by you to the San Diego City Council over the course of more than 2 years regarding hang gliding and paragliding taking place at the Torrey Pines Gliderport.
5. Misstatements and misrepresentations made by you to the San Diego City council, to the effect that your actions in connection with the Torrey Pines Gliderport are in some way sanctioned, authorized, approved by, or somehow of assistance to USHPA;
6. Misrepresenting to the San Diego City Council, on March 10, 2015, that: "Those pictures resulted in a change in the United States Hang Gliding and Paragliding Association's SOPs that basically say you have to wear a helmet when you're hooked into a glider, that's for safety, he was violating that. If I can't go there and take those pictures that change wouldn't have happened";
7. Repeated publication of false and misleading statements concerning USHPA, its officers and its directors;
8. Misrepresentation as to your qualifications to serve as an expert witness in a court case, including, but not limited to:
 - a. Misrepresentation of paragliding experience;
 - b. Misrepresentation of hang gliding experience;
 - c. Misrepresentation of duties performed in your limited time as a USHPA regional director;
9. Factual misrepresentations made in connection with your service as an expert witness in a court case, including, but not limited to:
 - a. Representation that you had personally witnessed "a number of collisions by students who were under radio instruction of Air California Adventures' instructors", when in truth, you have only personally observed one such incident where students collided;
 - b. Representation that the Torrey Pines Gliderport landing zone is a small restricted landing field when in truth there are two landing areas (the top landing area and the beach), the top landing area is at least 10 times larger than a restricted landing field as that term is defined in the USHPA SOPs, and the beach is thousands of times larger than a restricted landing field;
 - c. Representation that landing at the Torrey Pines Gliderport is technically difficult, when in truth landing there is a relatively easy task;
 - d. Representation that setting and enforcing minimum flight hour requirements for pilots flying at facilities is standard practice in the paragliding sport, when in truth, there is no such standard practice;

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- e. Representation that setting and enforcing minimum rating requirements for pilots flying at facilities is a standard practice in the paragliding sport, when in truth, most of the paragliding flying sites in the country have no minimum pilot rating requirement;
- f. Representation that "[w]hen a student pilot who does not yet hold at least a P-2 rating is learning to fly at a particular facility, but does not yet have the minimum rating required by the facility, it is standard practice in the paragliding sport to only allow the student to fly while under the direct visual supervision of the student's instructor and while maintaining radio contact between instructor and student", when in truth this is not the standard practice - instead, the standard practice is to allow the student's USHPA certified instructor to evaluate the student's knowledge, skills, experience, aptitude and judgment and for that instructor to determine whether the student should fly at the particular site, and under what conditions such flights should take place (such as whether to require direct visual supervision or to require radio contact), irrespective of any minimum rating requirement that may have been generally set for the site;
- g. Representing that the Torrey Pines Gliderport was "crowded" on the day of the collision between Shannon Hamby and David Fischbach when in truth you did not even know how many gliders were in the air at the time of the collision, much less how many gliders were in the vicinity of the top landing zone at the time of the collision;
- h. Representing that "allowing student pilots, who hold no paragliding rating whatsoever, to fly at a site as difficult and as crowded as the Gliderport was at the time of the collision without visual instructor supervision and without maintaining radio contact constitutes an extreme departure from the ordinary standard of care in the paragliding industry", when in truth this is not a departure from the ordinary standard of care at all - instead, the standard practice is to allow the student's USHPA certified instructor to evaluate the student's knowledge, skills, experience, aptitude and judgment and for that instructor to determine whether the student should fly at the particular site, and under what conditions such flights should take place, irrespective of any rating having been previously awarded to the pilot;
- i. Representing that "safe practices demand that paragliding pilots who do not hold at least a P-3 rating, should only fly at the Gliderport in uncrowded conditions and when under the direct, visual supervision of their instructor, and while being in radio contact with their instructor. The failure to do so constitutes an extreme departure from the ordinary standard of care in the paragliding industry", when in truth this is not a departure from the ordinary standard of care in the sport of paragliding - instead, the standard practice is to allow the student's USHPA certified instructor to evaluate the student's knowledge, skills, experience, aptitude and judgment and for that instructor to determine whether the student should fly at the particular site, and under what conditions such flights should take place, irrespective of any rating having been previously awarded to the pilot;
- j. Representing that "Given the increased complexity of having student pilots fly in proximity to other aircraft, it is standard practice in the paragliding industry to physically separate a student pilot from other aircraft", when in truth this is not the standard practice in the sport of paragliding - instead, the standard practice is to allow the student's USHPA certified instructor to evaluate the student's knowledge, skills, experience, aptitude and judgment and for that instructor to determine whether the student should fly at the particular site, and under what conditions such flights should take place, including the amount of other air traffic to which the student should be exposed;
- k. Representing that "[e]ven where only experienced pilots are concerned, the standard practice in the paragliding industry is to enforce safety rules that limit the number of pilots that are landing at a given time in a restricted field", when in truth there is no standard practice to limit the number of pilots that are landing at a given time in any landing area, much less any rules setting any such limits,

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whether the landing field is restricted or not - instead, the standard practice is for pilots landing at any size landing zone to exercise their obligations under Part 103 to see and avoid each other, recognizing that sometimes more than one glider may be attempting to land at the same time;

- l. Implying by your representations that multiple gliders cannot safely land at the same time at the Torrey Pines Gliderport's top landing area, when in truth there is enough room in the top landing area of the Torrey Pines Gliderport for more than two paragliders to safely land at the same time;
- m. Representing that "[for] an instructor, who is on the ground, to guide a student paragliding pilot who is in the air, the instructor must exercise extreme vigilance and concentration. When the student is the only pilot in the air, the instructor is responsible for issuing commands to their student to ensure that the student's paraglider remains in the air and does not collide with other objects. When the student is in the air with other aircraft (paragliders hang gliders, remote control planes, etc.) the instructor's responsibilities and the difficulty inherent in his or her job increase exponentially. The instructor must not only ensure that the student is staying aloft, the instructor must also control (through verbal instruction) the flight path of the student, project where that student is going, see other aircraft in proximity to the student, and predict the flight path of those other aircraft so that collisions between the student and the other aircraft are avoided", when in truth this is not the case - it is not the instructor's responsibility to control the flight path of the student or ensure that there is no possibility of the student colliding with other aircraft. Instead, it is the student's responsibility - mandated by Part 103 - to see and avoid other aircraft, to control his own paraglider, to anticipate where he is going, to anticipate where other aircraft will go, and to avoid collisions with other aircraft.
- n. Representing that "In the paragliding industry, instructors who are not feeling well enough to fly are in no condition to be on the ground instructing students who are in the air. Allowing ill instructors to guide student pilots who are in the air is an unsafe practice because the instructor lacks the requisite focus and concentration for safely guiding his or her student pilot. Such practice constitutes an extreme departure from the ordinary standard of care in the paragliding industry", when in truth allowing an ill instructor to instruct is not a departure from the standard of care and the level at which an illness might interfere with an instructor's ability to concentrate or perform his duties as an instructor depends upon the nature and extent of any illness as well as the knowledge, skills, competence, experience and judgment of the student being trained at the time.
- o. Representing that a flying site acts improperly in allowing a master rated pilot who has flown hang gliders at the Gliderport since 1978, performing over 13,000 flights at the Gliderport in hang gliders and who has performed over 130 flights in paragliders at the Gliderport and logged over 40 hours of paraglider flight at the Gliderport and has demonstrated to the satisfaction of his instructors that he has all of the knowledge, skills and judgment to possess a P-1 and P-2 rating and almost all of the skill necessary to possess a P-3 rating, to fly a paraglider without being under direct visual supervision and being directed by radio. When in truth allowing such a pilot to go and fly a paraglider after checking in with his instructor and establishing an agreed plan for the flights he would take would be the normal, standard and accepted way to handle such a student with his level of experience in both hang gliders and paragliders.

The evidentiary materials which may be considered by the USHPA Board of Directors in support of the proposed expulsion of Robert M. Kuczewski from the membership of USHPA are the following:

- All materials posted at <http://ushawks.org>, which content is available to you as you are in control of that web site;
- All correspondence sent by Robert M. Kuczewski to USHPA and any USHPA board member, copies of which are in the possession of Robert M. Kuczewski;

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- All correspondence sent by Robert M. Kuczewski to the San Diego City Council, copies of which are in the possession of Robert M. Kuczewski;
- All videos of Robert M. Kuczewski's Non-Agenda Comments to San Diego City Council, each of which videos are available on the San Diego City's web site;
- The deposition transcript of the deposition of Robert M. Kuczewski given on September 10, 2014;
- The San Diego Superior Court's entire file in Case Number 37-2013-00052120-CU-PO-CTL, copies of which are available at the court's web site;
- The San Diego Superior Court's entire file in Case Number 37-2014-00038828-CU-PT-CTL, copies of which are available at the court's web site;
- The transcript of the trial proceedings in San Diego Superior Court, Case Number 37-2014-00038828-CU-PT-CTL, copies of which are available for purchase by Robert M. Kuczewski from the court reporter(s) that reported the proceedings;
- Posts made by Robert M. Kuczewski to various public paragliding and hang gliding forums, the content of which is known to Robert M. Kuczewski as they were posted by him; <http://www.torreyhawksforum.org>
- Any other evidentiary materials identified by USHPA and disclosed to Robert M. Kuczewski at least 15 days before the hearing date.

You are encouraged to review Article 4, Section 4 of the USHPA bylaws. The bylaws are available for download on the members-only page at www.ushpa.aero. They are included in a document titled, USHPA SOP Book.

Respectfully Yours,

Martin Palmaz
Executive Director
US Hang Gliding & Paragliding Association

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