

Brothers Divided by Air Line Feud

AVIATION: Surf Air co-founder alleges stake devalued in scheme.

By **GARRETT REIM** Staff Reporter

While Santa Monica's **Surf Air** is flying high with customers and investors, the airline's success has left **David Eyerly**, the company's co-founder and former chief operating officer, out in the cold.

The 31-year-old Eyerly is fighting Surf Air and several of its investors in court, claiming he was the victim of a complex scheme that not only caused his brother and co-founder, **Wade Eyerly**, to force him out of the company, but also diluted his ownership by 94 percent, taking him from a 12.5 percent equity position all the way down to 0.75 percent.

"It was his baby. He was stripped of his stock and he didn't even know (the investors) were

doing this," said David Eyerly's lawyer, **Skip Miller** of Century City's **Miller Barondess**. "They did it in the dark without his knowledge, consent or participation."

Meanwhile, the subscription airline founded by the Eyerly brothers and several others in 2011 has become popular among tech entrepreneurs, who regularly fly its Los Angeles-San Francisco route. It has raised more than \$84 million in investments.

David Eyerly's legal team values Surf Air at \$1 billion and is seeking at least \$125 million in damages.

The company's valuation is built on its appeal to frequent flyers, offering them the ability to avoid long Transportation Security Administration security

\$1 billion
Estimated value
of Surf Air

Please see AVIATION page 36

'If the allegations are true, this is another example of people not treating each other well in the tech industry.'

LUAN TRAN, Lee Tran & Liang

Aviation: Brother's Air Line Fight Lands in Court

Continued from page 1

lines and take advantage of unlimited flights to 11 destinations in California and Las Vegas. The airline, which has about 2,400 subscribers, charges a monthly fee of \$1,950.

However, determining a private company's true value is tricky, especially in the tech industry, said **Andrea Belz**, director of the innovation node at USC's Viterbi School of Engineering.

"Valuation is not a perfect science," she said. "In the end, valuation is people's expectations for the future."

Surf Air and investors **Anthem Venture Partners**, **Velos Partners** and **Base Ventures** are named as defendants in the lawsuit filed in November in Los Angeles Superior Court. The suit claims breach of fiduciary duty, fraudulent concealment and four other allegations.

Surf Air declined to comment for this story. Anthem, Velos and Base did not respond to multiple requests for an interview. Wade Eyerly did not want to comment.

Tough road

No matter how it looks on the surface, proving David Eyerly's case in court might be difficult, said legal experts.

That's because complex financing rounds in the hurried world of technology startups often leave co-founders vulnerable to drastic stock dilution, and that doesn't necessarily mean something nefarious has taken place, said **Bryan Springmeyer**, an attorney for **Springmeyer Law** of San Francisco, who is not involved in the case but reviewed it for the Business Journal.

"It can't just be an unfortunate story," said Springmeyer. "There has to be a transaction you can point to where you can see this is where the illegal act happened."

But if David Eyerly is able to prove that he was the victim of a scheme to steal his stock, it would fit into a larger pattern of legal disputes in the tech industry, said **Luan Tran**, a partner at downtown L.A. law firm **Lee Tran & Liang**, who represented ousted **Snapchat Inc.** co-founder **Reggie Brown** in a similar battle concerning ownership in the Venice mobile app developer, which is now valued at roughly \$12 billion.

"If the allegations are true, this is another example of people not treating each other well in the tech industry," said Tran, who's not involved in the Surf Air case. "We have seen this script way too many times now, unfortunately."

In a twist of fate, one of Velos' co-founders is **Eduardo Saverin**, a co-founder of **Facebook Inc.** who sued **Mark Zuckerberg** as the alleged victim of an illegal dilution scheme, a saga made famous in 2010 film "The Social Network." Saverin and Facebook wound up settling out of court.

Family business

David Eyerly became Surf Air's chief operating officer after its launch, while his brother Wade stepped into the chief executive role. Each had a seat on the board.

As the company grew, David helped guide it through Federal Aviation Administration regulatory approval and even piloted one of the company's planes. Wade, meanwhile, met with investors, raising more than \$11 million by 2013. Surf Air started flying passengers in June 2013.

According to David's lawsuit, that's about the time the airline's lead Series A and B investors started to hold secret board meetings during which they plotted David's removal



Flight Path: Surf Air co-founder Wade Eyerly, above, at Santa Monica Airport in 2012 when the firm was getting off the ground.

RINGO H.W. CHIU/LABJ

from the firm and the dilution of his stock.

"They saw Surf Air's projections and potential. They wanted (David's) equity and upside for themselves," claims the lawsuit. "They viewed David as young, vulnerable and unsophisticated in matters of finance."

Surf Air also needed additional financing in mid-2013 as the purported scheme was taking place. Its investors offered the company a bridge loan that David's lawsuit claims allowed them to convert their debt into stock at an artificially low valuation, which did not reflect the health of the company.

David objected to the loan and wanted to seek alternative financing.

Miller, David's attorney, said he thinks the bridge loan was worth about \$8 million and claimed it was not approved by an independent board director. Critically, the bridge loan would only be granted if David was terminated from Surf Air.

In November 2013, Wade asked David to come to his house. It was there he told David that he had to fire him at the behest of the board, according to the lawsuit. Wade allegedly told his brother not to fight the termination and promised him that he would retain his 12.5 percent equity stake.

David left Surf Air and the bridge loan went through.

David later received a letter from Surf Air, written by Wade, confirming that he would retain 12.5 percent ownership of Surf Air and asking him to return his stock certificate. In exchange, he was promised a new certificate reflecting the stake, according to the lawsuit.

"David did not receive a stock certificate in return," the lawsuit reads. "David asked consistently and repeatedly for his stock certificate. For approximately a year, Surf Air ignored his requests."

A few months later, in February 2014, Wade was ousted from Surf Air and replaced as chief executive by **Jeff Potter**, former chief executive of Denver's **Frontier Airlines**.

"While we went through some growing



Turbulence: Co-founder David Eyerly who has sued over his stake in the business.

pains, as all startups do, the company has never fallen on hard times," Wade said to the Wall Street Journal at the time. "What this is about is the fact that Jeff Potter was available."

When Wade left Surf Air, the airline had been flying for nine months with three planes in operation and 430 subscribers. By that August, Surf Air had 900 members and had obtained a \$65 million secured credit facility from San Francisco's **White Oak Global Advisors** to buy 15 additional aircraft. The company also raised an \$8 million Series C round that same month.

In November 2014, the lawsuit states, David received a stock certificate that reflected only a .75 percent ownership in Surf Air, which David's lawyer said he assumed was the result of the bridge loan converting to equity. Surf Air explained to David in a letter

the dilution was the result of a stock split at the Series C round, according to the lawsuit.

Winning the lawsuit will likely require David to prove that he was fraudulently induced to sign off on terms that ultimately led to his dilution or that the company's Series C down round or bridge loan didn't reflect the company's health, said Springmeyer, the outside attorney.

That might require David to prove the oral agreement and letter detailing the 12.5 percent ownership his brother allegedly gave him on behalf of Surf Air was a contract not kept by the company.

"Most of the time people act consistently with the agreement they made previously, before they decide to screw their partner," said attorney Tran. "There's always a moment where things turn."