

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BLIND ACRE, INC.,
Plaintiff,

v.

STASH STORAGE HOLDINGS,
INC.,
Defendant.

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-_____

SUMMONS

2019 JUL 31 PM 3:54
CLERK OF COURT

FILED

TO THE DEFENDANT ABOVE-NAME:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at 613 Long Point Road, Suite 100, Mount Pleasant, SC 29464, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for a judgment by default and the relief demanded in the Complaint.

RIESEN DURANT LLC

BY: 

G. Rutledge DuRant (SC Bar #: 73944)
613 Long Point Road, Suite 100
Mount Pleasant, South Carolina 29464
Phone: 843.800.0809 Fax: 843.767.3282
Email: rutledge@riesendurant.com
Attorneys for the Plaintiff

Mount Pleasant, South Carolina
July 19, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BLIND ACRE, INC.,

Plaintiff,

v.

STASH STORAGE HOLDINGS,
INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-_____

COMPLAINT
(Jury Trial Requested)

2019 JUL 31 PM 3:54
FILED
CLERK OF COURT

The above-named Plaintiff, Blind Acre, Inc., by and through its undersigned counsel, complaining of the above-named Defendant, alleges and shows unto the Court the following:

JURISDICTION AND VENUE

1. Plaintiff, Blind Acre, Inc. (hereinafter "Plaintiff"), is an Ohio company that is registered to conduct business in the state of South Carolina and does conduct business in Charleston County.
2. Upon information and belief, Defendant, Stash Storage Holdings, Inc. (hereinafter "Stash" or "Defendant"), is a company organized and domiciled in the State of South Carolina and its primary place of business is in Charleston County, South Carolina.
3. This suit arises out of the Defendant's breach of contract with Plaintiff, attached hereto and incorporated herein by reference as Exhibit "A" (hereinafter "Agreement"), such contract being formed on or around August 1, 2018 with Defendant's breach occurring on or about October 2018.

4. For the reasons stated above, this Court has personal jurisdiction over the parties hereto, subject matter jurisdiction over the claims asserted herein, and venue is proper in Charleston County.

STATEMENT OF FACTS

5. Upon information and belief, the fully executed Agreement was negotiated by Plaintiff and Defendant and signed by the parties on or about August 1, 2018 in Charleston County, South Carolina.

6. That upon information and belief, Tom Stephenson, was an officer and/or co-owner who signed the Agreement on behalf of Defendant and had the authority and ability to bind Defendant to the Agreement.

7. That upon information and belief, Defendant never intended to fulfill the financial obligations under the Agreement, and instead was willing to induce the Plaintiff in order to incur the benefit of Plaintiff's hard work and services.

8. Under the express terms of the Agreement, and as negotiated by Plaintiff such that these express terms were a material inducement to the agreement, Defendant contracted with Plaintiff for a period of thirty-six (36) months to provide marketing services to Defendant.

9. That among the material terms of the Agreement, in addition to other such compensation as defined in the Agreement, Defendant agreed to pay no less than a monthly agency service fee of \$25,000.00 as consideration for Plaintiff's agreement to provide services.

10. That as a direct result of Plaintiff's reasonable reliance upon the Agreement, Plaintiff restructured to meet the demands of the Agreement, including, but not limited to hiring an additional 6 mid-level employees to support the demands of the Agreement.

11. In consideration of the Defendant meeting the requirement of the Agreement, Plaintiff began work for the Defendant on or around August 1, 2018.

12. Based on the express terms of the contract, Plaintiff reasonably expected to remain engaged per the terms of the contract until at least August 1, 2021.

13. Notwithstanding Plaintiff's best efforts, Defendant has utterly failed to fulfill the terms of the Agreement and has caused Plaintiff to lose the benefit of its bargain, to sustain lost profits, to incur other such damages in having relied to its detriment upon the Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

14. Plaintiff realleges and reincorporates all allegations contained above as if fully set forth herein.

15. On or around August 1, 2018, Plaintiff and Defendant entered into the Agreement.

16. Prior to entering into the Agreement, and as a material inducement for Plaintiff to enter this Agreement, Plaintiff negotiated the terms of compensation including, but not limited to, a term of thirty-six months at a minimum compensation rate of Twenty-Five Thousand (\$25,000.00) Dollars per month.

17. Plaintiff relied on the representations set forth in the Agreement that it would have and did have an Agreement with Defendant for at least three years.

18. Plaintiff performed all promises on Plaintiff's part to be performed in accordance with the Agreement.

19. Upon information and belief, the Defendant breached the Agreement by failing to compensate Plaintiff in contravention of the Agreement.

20. Plaintiff relied on Defendant's representations as set forth in the Agreement and that reliance was reasonable.

21. Plaintiff would not have entered into the Agreement had it known the true facts that Defendant did not intend to keep its promises as set forth in the Agreement.

22. As a result of the Defendant's breach of the Agreement, Plaintiff is entitled to judgment against the Defendant including, but not limited to actual damages, liquidated damages, pre- and post-judgment interest, costs, and attorneys' fees.

FOR A SECOND CAUSE OF ACTION
Promissory Estoppel

23. Plaintiff realleges and reincorporates all allegations contained above as if fully set forth herein.

24. In the alternative to the breach of contract claim, Plaintiff alleges that, as set forth in the Agreement, Defendant made a promise that was intended to be relied on by Plaintiff.

25. Defendant's promise was, in fact, relied on by Plaintiff. The Plaintiff justifiably relied on the Agreement and focused on the Agreement with Defendant instead of other business opportunities.

26. Defendant should have reasonably expected that the three year term negotiated by Plaintiff and written into the Agreement would induce Plaintiff's action to accept the Agreement.

27. The Agreement is unambiguous in its terms.

28. The Plaintiff reasonably relied on Defendant's promise to pay for services under the Agreement for a term of three years.

29. As a result of Defendant's failure to keep its promise to Plaintiff, Plaintiff has sustained injuries, financial and reputational, due to its reliance on Defendant's promise.

30. Defendant's refusal to enforce the same amounts to an actual injustice and would serve to virtually sanction the Defendant's fraud.

FOR A THIRD CAUSE OF ACTION
Negligent Misrepresentations

31. Each and every allegation of this Complaint, which is not inconsistent with this cause of action, is hereby realleged and reincorporated by reference as if set forth verbatim herein.

32. That Defendant made false representations to Plaintiff.

33. That Defendant had a pecuniary interest in making the statements.

34. That Defendant had a duty of care to see that it communicated truthful information to the Plaintiff.

35. That Defendant breached that duty by failing to exercise due care.

36. That Plaintiff justifiably relied on Defendant's representations.

37. That Plaintiff suffered a pecuniary loss as the proximate result of his reliance upon Defendant's representations.

38. That as a result of Defendant's breach of contract, Plaintiff has been damaged in that he has lost the benefit of his bargain with Defendant.

39. That as a result of Defendant's breach of contract, Plaintiff has suffered actual damages, together with punitive damages, together with costs and disbursements of this action.

FOR A FOURTH CAUSE OF ACTION
Fraud

40. Each and every allegation of this Complaint, which is not inconsistent with this cause of action, is hereby realleged and reincorporated by reference as if set forth verbatim herein.

41. That Defendant intended Plaintiff to rely upon its misrepresentations of material fact concerning its promise and/or ability to pay.

42. That as a result of Defendant's fraud, Plaintiff has been damaged in that he has lost the benefit of his bargain with Defendant.

43. That as a result of Defendant's fraud, Plaintiff has suffered actual damages, together with punitive damages, together with prejudgment interest, together with costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
Violation of the Unfair Trade Practices Act "UTPA"

44. Each and every allegation of this Complaint, which is not inconsistent with this cause of action, is hereby realleged and reincorporated by reference as if set forth verbatim herein.

45. That the aforementioned acts and practices of the Defendant were unfair and deceptive.

46. That the aforementioned acts and practices of the Defendant are against the public interest and that these acts and practices are capable of repetition.

47. That Defendant's actions were willful and wanton in that Defendant knew or should have known that its conduct was unfair and deceptive and, therefore, a violation of the State's statutes concerning unfair and deceptive acts and practices.

48. That as a result of Defendant's violation of the Unfair Trade Practices Act, Plaintiff has been damaged in that he has lost the benefit of his bargain with Defendant.

49. That as a result of Defendant's violation of the Unfair Trade Practices Act, Plaintiff is entitled to three (3) times his actual damages, together with attorney's fees, together with the costs and disbursements of this action.

FOR A SIXTH CAUSE OF ACTION
Quantum Meruit / Unjust Enrichment

50. Each and every allegation of this Complaint, which is not inconsistent with this cause of action, is hereby realleged and reincorporated by reference as if set forth verbatim herein.

51. As set forth herein, Plaintiff was tricked and deceived by Defendant into creating a monthly managed digital marketing plan and implementation of that plan that Defendant has continued to financially benefit thereby from.

52. Plaintiff has received no benefit and Defendant has been unjustly enriched.

WHEREFORE, with regard to all paragraphs of all Causes of Action in this Complaint, Plaintiff prays for all damages contained herein, actual, punitive and exemplary damages, plus interest, costs and attorneys fees and such other and further relief as this honorable Court or Jury may deem just and proper.

Signature on Following Page

RIESEN DURANT, LLC

BY: 

G. Rutledge DuRant (SC Bar #: 73944)
613 Long Point Road, Suite 100
Mount Pleasant, South Carolina 29464
Phone: 843.800.0809 Fax: 843.767.3282
Email: rutledge@riesendurant.com
Attorneys for the Plaintiff

Mount Pleasant, South Carolina
July 19, 2019

EXHIBIT A

Master Service Agreement Between Blind Acru, Inc. and Stash Storage Holdings, Inc.

AGREEMENT between Blind Acru, Inc. located at 186 Seven Farms Dr. Ste F365, Charleston, SC 29402 ("Agency"), and Stash Storage Holdings, Inc. located at 4750 Great Diver, Suite F, North Charleston, SC 29405 ("Client").

1. **Appointment.** Client appoints Agency as Client's Agency of Record for marketing, design and development in connection with the products and/or services of Client described in Schedule 1, attached hereto, for a term ("Term") as hereinafter provided.
2. **Scope of Agency Services.** Agency will provide Client with the marketing services provided in Schedule 2, attached hereto. Should Client request Agency to perform additional services beyond what is provided in Schedule 1, Agency and Client will negotiate in good faith with respect to the terms, conditions, and compensation for such additional services. Any agreement for additional services will be set forth in writing (via email correspondence) and considered an addendum to this Agreement.
3. **Ownership.** All campaigns, trademarks, service marks, slogans, artwork, written materials, drawings, photographs, graphic materials, transcriptions or other materials that are subject to copyright, trademark, patent, or similar protection (collectively, the "Work Product") produced by Agency are the property of the Client provided: (1) such Work Product is accepted in writing by the Client within twelve (12) months of being proposed by Agency; and (2) Client pays all fees and costs associated with creating and where applicable, producing such Work Product. Work Product that does not meet the two foregoing conditions shall remain Agency's property. Notwithstanding the foregoing, it is understood that Agency may, on occasion, license materials from third parties for inclusion in Work Product. In such circumstances, ownership of such licensed materials remains with the licensor at the conclusion of the term of the license. In such instances, Client agrees that it remains bound by the terms of such licenses. Agency will keep Client informed of any such limitations.
4. **Term**
 - a. Unless terminated pursuant to subsection (b) or (c) below, the term of this Agreement shall commence on the date provided in Schedule 1 ("Commencement Date") and shall continue until terminated by either party upon thirty (30) days' prior written notice ("Notice Period"), provided that this Agreement may not be terminated effective prior to the expiration of thirty-six (36) months from the Commencement Date. This Agreement will automatically renew between Agency and Client upon execution of engagement term for additional twelve (12) month terms. In the event that this Agreement is terminated prior to the expiration of the twelve (12) month term or any subsequent one (1) year term, the Parties shall not renegotiate the terms of this Agreement or enter into another agreement until the expiration of the applicable one (1) year term.

Notice shall be deemed given on the day of mailing, electronic communication, or, in case of notice by telegram, on the day it is deposited with the telegraph company for transmission. During the Notice Period, Agency's rights, duties, and responsibilities shall continue.

Upon termination, Agency will transfer and/or assign to Client: (1) all Work Product in Agency's possession or control belonging to Client, subject, however, to any rights of third parties; and (2) all contracts with third parties, including marketing media or others, upon being duly released by Client and any such third party from any further obligations.
 - b. Either Party may terminate this Agreement if the other Party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"). The notice from the non-breaching Party shall specify the basis on which the Agreement is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.

- c. Client shall be responsible for any accrued and unpaid Agency Fees for services performed up to the effective date of termination. Client in addition, if Client terminates this Agreement for cause, Client shall have no duty or obligation to thereafter make any other payments to Agency under herein nor shall Client have any liability for failure to make such payments.
5. **Compensation and Billing Procedure.** Agency will be compensated and Client will be billed as provided in Schedule 2, attached hereto.
 6. **Confidentiality and Safeguard of Property.** Client and Agency respectively agree to keep in confidence, and not to disclose or use for its own respective benefit or for the benefit of any third party (except as may be required for the performance of services under this Agreement or as may be required by law), any information, documents, or materials that are reasonably considered confidential regarding each other's products, business, customers, clients, suppliers, or methods of operation, provided, however, that such obligation of confidentiality will not extend to anything in the public domain or that was in the possession of either party prior to disclosure. Agency and Client will take reasonable precautions to safeguard property of the other entrusted to it, but in the absence of negligence or willful disregard, neither Agency nor Client will be responsible for any loss or damage.
 7. **Indemnities.** Agency agrees to indemnify and hold Client harmless with respect to any claims or actions by third parties against Client based upon material prepared by Agency, involving any claim for libel, slander, piracy, plagiarism, invasion of privacy, or infringement of copyright, except where any such claim or action arises out of material supplied by Client to Agency.

Client agrees to indemnify and hold Agency harmless with respect to any claims or actions by third parties against Agency based upon materials furnished by Client or where material created by Agency is substantially changed by Client. Information or data obtained by Agency from Client to substantiate claims made in marketing shall be deemed to be "materials furnished by Client." Client further agrees to indemnify and hold Agency harmless with respect to any death or personal injury claims or actions arising from the use of Client's products or services.
 8. **Commitments to Third Parties.** All purchases of media, production costs, and engagement of talent will be subject to Client's prior approval. Client reserves the right to cancel any such authorization, whereupon Agency will take all appropriate steps to effect such cancellation, provided that Client will hold Agency harmless with respect to any costs incurred by Agency as a result.
 9. **Amendments.** Any amendments to this Agreement must be in writing and signed by Agency and Client.
 10. **Notices.** Any notice shall be deemed given on the day of mailing or, if notice is by telegram or e-mail, on the next day following the day notice is deposited with the telegraph company for transmission or e-mailed.
 11. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of South Carolina without regard to its principles of conflicts of laws. Jurisdiction and venue shall be solely within the State of South Carolina.

IN WITNESS WHEREOF, Agency and Client have executed this Agreement.

Agency: Blind Acce, Inc.

By: 
Name: Scott Hankamp
Title: Founder, Chief Executive Officer

Client: Stash Storage Holdings, Inc.

By: 
Name: Tom Stephenson
Title: Co-Founder

Schedule 1: Services Assigned to Agency

Below is a list of in scope managed services, but not limited to, the following:

MANAGED SERVICES
Strategy
Brand Analysis
Reputation Reviews
Messaging Communication
Go to Market Strategies
Brand Identity
Logo Design
Business Identity Collateral (Business Cards, Letterhead, Envelopes)
Folders and Pockets (Folder Materials & Business Papers)
Graphic Standard Manual
Electronic Templates (Email, Blog, Print Newsletters)
Content Marketing
Website Content
Personal Content
E-books
Content Marketing Strategy
Social Media Creative Content
Customer User Guides & Video Tutorials
Webinar content & marketing
Articles
Press
Offline Marketing
Promoters
Signage
Print
Maildoor
Radio
Television
Digital Inbound & Outbound Marketing
Reputation Management
Search Engine Optimization (SEO)
Directory Listings
Social Media Management
Pay Per Click & Retargeting
Adspend - Social
Email Marketing
Analytics & Tracking Platforms
Digital Creative & UX Support
UX Website Design
Brand Media Design
Email Marketing Design
Digital Signage Content Design
Usability Research
Sales Tools
Data Sheets
Product Brochures
Market Trends
Analyst Reports
Sales Presentation/Pitch Decks

Schedule 2: Commencement Date

1. Commencement Date: August 1, 2018

Schedule 3: Compensation and Billing Procedures

1. Compensation

- a. Client will pay no less than a monthly agency service fee of \$25,000 in consideration of the services performed by Agency, purchasing a total of 500 points per month. Any additional points purchased in a given month will be billed at a rate of \$50/point.
- b. Unused points will rollover to following month, existing for no more than 90 days, at which time remaining points will void.
- c. Client will pay additional fees for all third-party services rendered in advance and fees shall be deemed a non-refundable advance against commissions to be received by Agency as follows:

On all media (broadcast & digital production) purchased by Agency, Agency shall bill the published card rates and agency commission (the "Commission Rate")

i. Paid Placement (Digital, Broadcast, Print Media)

- u. Tier 1: \$1 - \$50,000 Paid Placement per month = 25%
- ii. Tier 2: \$50,001 - \$75,000 Paid Placement per month = 22.5%
- c. Tier 3: \$75,001 - \$100,000 Paid Placement per month = 20%
- d. Tier 4: \$100,001+ Paid Placement per month = 18%

During the Notice Period following notice of termination, Agency will be entitled to commissions on all orders of advertising in print media whose published closing dates fall within the Notice Period and of digital & broadcast media where the order dates fall within the Notice Period regardless of who may place such orders.

- i. With respect to the engagement of talent, Agency shall bill Client the authorized engagement rate, plus any taxes, insurance, pension and health fund contributions, etc. applicable thereto, plus an amount which, after deduction of Agency's cost, will yield Agency the digital media Commission Rate on such amount as Agency commission.

2. Billing and Payment Procedures

a. Invoicing.

- i. Initial Payment of first monthly service fee (August 2018) for month will be paid upon execution of agreement in the amount of \$25,000
- ii. Second Payment due on or before September 1, 2018 in the amount of \$25,000 plus additional points purchased
- iii. Monthly recurring invoices shall be submitted roughly 30 days in advance and paid by Client on or before the last day of said month (August 1 invoice will be submitted upon signing and on August 31, 2018)
- iv. Additional points purchased during any month will be invoiced within purchased month and due prior to beginning of new month.
- v. Third-party media placement invoices will be paid in advance to Agency prior to advertising spend being purchased and placed by Agency.

- b. **Payments.** Said agreement payments will be made in advance of work completed for the following month. A Client Banking Routing and Account Number will be sent on file by Agency and charged 5 days after beginning of month if payment has not been received prior to any outstanding balance due.

- c. **Late Payments.** Any invoice that is more than 15 days overdue from the date on the invoice shall be subject to a late fee in the amount of two (2%) of outstanding balance and the total unpaid balance (including the late fee) shall accrue interest at the rate of 12% per annum until paid in full. Client agrees that the late fee and interest rate are reasonable and do not constitute a penalty. The parties agree that such a remedy for late payments is in addition to any other remedies provided under this Agreement.

- d. **Reimbursement.** Client agrees to reimburse Agency for all actual reasonable and necessary expenditures, which are related to the Agency services incurred during the project. These expenditures include, but are not limited to, expenses related to travel (e.g. airfare, hotel, rental car, temporary housing, meals, parking, taxis, etc.), wire distribution services, delivery charges, printing, photography,



RIESEN | DURANT LLC
ATTORNEYS AT LAW

FRED "TRIP" W. RIESEN, III (SC, CA)
FRED W. RIESEN, JR

G. RUTLEDGE DURANT
RHAME "CHIP" B. CANNON, JR

September 17, 2019

VIA US MAIL

J. Rutledge Young, Esquire
Duffy & Young
96 Broad Street
Charleston, SC 29401

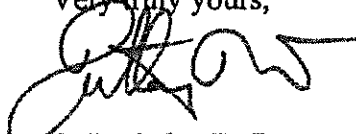
RE: *Blind Acre, Inc. v. Stash Storage Holdings, Inc.*
Case No. 2019-CP-10-4053

Dear Rutledge,

Enclosed, please find the following document(s) for service upon you as counsel for the Defendants: (1) *Summons & Complaint*, (2) *Plaintiff's 1st Interrogatories to Defendants*, (3) *Plaintiff's 1st Request for Production to Defendants*.

With kind regards, I remain,

Very truly yours,



G. Rutledge DuRant

CC: Client

Enclosure(s): as stated.

613 Long Point Road, Suite 100
Mount Pleasant, South Carolina 29464
Office: (843) 800-0809 or (843) 760-2450 / Fax: (843) 767-3282

rutledge@riesendurant.com
www.riesendurant.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BLIND ACRE, INC.,)
)
 Plaintiff(s))
)
 vs.)
)
 STASH STORAGE HOLDINGS, INC.,)
 Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP - 10- 4053

Submitted By: G. Rutledge DuRant
 Address: 613 Long Point Road
Suite 100 Mt. Pleasant, SC 29464

SC Bar #: 73944
 Telephone #: 843-800-0809
 Fax #: 843-767-3282
 Other:
 E-mail: rutledge@riesendurant.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

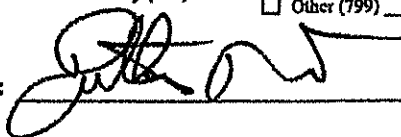
*If Action is Judgment/Settlement do not complete

- X JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
 This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 X This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <p>Contracts</p> <p><input type="checkbox"/> Constructions (100)
 <input type="checkbox"/> Debt Collection (110)
 <input type="checkbox"/> General (130)
 <input checked="" type="checkbox"/> Breach of Contract (140)
 <input type="checkbox"/> Fraud/Bad Faith (150)
 <input type="checkbox"/> Failure to Deliver/Warranty (160)
 <input type="checkbox"/> Employment Discrim (170)
 <input type="checkbox"/> Employment (180)
 <input type="checkbox"/> Other (199) _____</p> <p>Inmate Petitions</p> <p><input type="checkbox"/> PCR (500)
 <input type="checkbox"/> Mandamus (520)
 <input type="checkbox"/> Habeas Corpus (530)
 <input type="checkbox"/> Other (599) _____</p> <p>Special/Complex /Other</p> <p><input type="checkbox"/> Environmental (600)
 <input type="checkbox"/> Automobile Arb. (610)
 <input type="checkbox"/> Medical (620)
 <input type="checkbox"/> Other (699) _____
 <input type="checkbox"/> Sexual Predator (510)
 <input type="checkbox"/> Permanent Restraining Order (680)
 <input type="checkbox"/> Interpleader (690)</p> | <p>Torts - Professional Malpractice</p> <p><input type="checkbox"/> Dental Malpractice (200)
 <input type="checkbox"/> Legal Malpractice (210)
 <input type="checkbox"/> Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 <u>-NI-</u>
 <input type="checkbox"/> Notice/ File Med Mal (230)
 <input type="checkbox"/> Other (299) _____</p> <p>Administrative Law/Relief</p> <p><input type="checkbox"/> Reinstate Drv. License (800)
 <input type="checkbox"/> Judicial Review (810)
 <input type="checkbox"/> Relief (820)
 <input type="checkbox"/> Permanent Injunction (830)
 <input type="checkbox"/> Forfeiture-Petition (840)
 <input type="checkbox"/> Forfeiture-Consent Order (850)
 <input type="checkbox"/> Other (899) _____</p> <p>Pharmaceuticals (630)
 <input type="checkbox"/> Unfair Trade Practices (640)
 <input type="checkbox"/> Out-of State Depositions (650)
 <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
 <input type="checkbox"/> Pre-Suit Discovery (670)
 <input type="checkbox"/> Other (799) _____</p> | <p>Torts - Personal Injury</p> <p><input type="checkbox"/> Conversion (310)
 <input type="checkbox"/> Motor Vehicle Accident (320)
 <input type="checkbox"/> Premises Liability (330)
 <input type="checkbox"/> Products Liability (340)
 <input type="checkbox"/> Personal Injury (350)
 <input type="checkbox"/> Wrongful Death (360)
 <input type="checkbox"/> Assault/Battery (370)
 <input type="checkbox"/> Slander/Libel (380)
 <input type="checkbox"/> Other (399) _____</p> <p>Judgments/Settlements</p> <p><input type="checkbox"/> Death Settlement (700)
 <input type="checkbox"/> Foreign Judgment (710)
 <input type="checkbox"/> Magistrate's Judgment (720)
 <input type="checkbox"/> Minor Settlement (730)
 <input type="checkbox"/> Transcript Judgment (740)
 <input type="checkbox"/> Lis Pendens (750)
 <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
 <input type="checkbox"/> Confession of Judgment (770)
 <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
 <input type="checkbox"/> Incapacitated Adult Settlement (790)
 <input type="checkbox"/> Other (799) _____</p> | <p>Real Property</p> <p><input type="checkbox"/> Claim & Delivery (400)
 <input type="checkbox"/> Condemnation (410)
 <input type="checkbox"/> Foreclosure (420)
 <input type="checkbox"/> Mechanic's Lien (430)
 <input type="checkbox"/> Partition (440)
 <input type="checkbox"/> Possession (450)
 <input type="checkbox"/> Building Code Violation (460)
 <input type="checkbox"/> Other (499) _____</p> <p>Appeals</p> <p><input type="checkbox"/> Arbitration (900)
 <input type="checkbox"/> Magistrate-Civil (910)
 <input type="checkbox"/> Magistrate-Criminal (920)
 <input type="checkbox"/> Municipal (930)
 <input type="checkbox"/> Probate Court (940)
 <input type="checkbox"/> SCDOT (950)
 <input type="checkbox"/> Worker's Comp (960)
 <input type="checkbox"/> Zoning Board (970)
 <input type="checkbox"/> Public Service Comm. (990)
 <input type="checkbox"/> Employment Security Comm (991)
 <input type="checkbox"/> Other (999) _____</p> |
|---|---|--|--|

Submitting Party Signature: _____



Date: 7/19/2019

FILED
 2019 JUL 31 PM 3:00
 CLERK OF COURT
 COMMON PLEAS
 COUNTY OF CHARLESTON

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
BLIND ACRE, INC.,
Plaintiff,
v.
STASH STORAGE HOLDINGS,
INC.,
Defendant.

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-4053

ORDER

Hearing Date: June 2, 2021
Presiding Judge: The Honorable Mikell R. Scarborough
Plaintiff's Attorney: G. Rutledge DuRant
Defendant's Attorney: Benjamin Alexander Crute Traywick

THIS MATTER was heard before me on June 2, 2021, pursuant to the filing by Plaintiff of a Motion for Damages Hearing. The action was commenced by the filing of a Civil Action Coversheet, Summons and Complaint on July 31, 2019. The Defendant was personally served with the lawsuit on September 26, 2019, and failed to answer or otherwise plead to the Complaint and Defendant was adjudged in default by Order of the Charleston County Circuit Court, Judge Roger M. Young, filed March 23, 2021. Thereafter, Plaintiff filed his Motion for Damages Hearing and requested the matter be referred to the Master in Equity for Charleston County. By Order of March 26, 2021, the Charleston County Circuit Court, Judge Roger M. Young, ordered a damages hearing and referred the matter to the Master in Equity for Charleston County. Notice of the Damages Hearing was mailed via Certified Mail to the Defendant on May 5, 2021, as evidenced by the Certificate of Mailing.

With the Defendant having been duly served with all pleadings, this matter was properly before the Court upon Plaintiff's motion to assess and award damages as prayed for in the Complaint. Thereupon, a damages hearing was held. Plaintiff was represented by attorney, G. Rutledge DuRant and Defendant was represented by attorney, Benjamin Alexander Crute Traywick.

Plaintiff presented evidence and the Defendant and his counsel were present and had the opportunity to contest the evidence as permitted by Rule 55, *SCRCP*. Having heard the testimony and taken evidence in this matter, I find by a preponderance of the evidence that the Plaintiff has suffered injuries and damages as a direct and proximate result of Defendant's breach of the contract referred to in the Complaint, and that the sum reasonably required to fairly and justly compensate Plaintiff for these losses is \$937,589.15. On the Plaintiff's cause of action for negligent misrepresentation, I further find, by clear and convincing evidence—specifically, Plaintiff's testimony regarding deliberate misrepresentations by Defendant's agent Thomas Stevenson, on which the Plaintiff relied to its detriment—that an award of \$1,000,000.00 in punitive damages is appropriate.

In accordance with the foregoing, I hereby declare a total damage award to the Plaintiff in the amount of \$1,937,589.15.

IT IS ORDERED, ADJUDGED and DECREED that the Plaintiff be, and is hereby awarded judgment against the Defendant in the total amount of \$1,937,589.15 together with annual interest at the statutory rate beginning from the date of judgment. **IT IS FURTHER**

ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall enter up Judgment in the foregoing amount in the Judgment Rolls of Charleston County, South Carolina.

AND IT IS SO ORDERED.

Mikell R. Scarborough, Master in Equity

This _____ day of _____, 2021
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Blind Acre Inc VS Stash Storage Holdings Inc

Case Number: 2019CP1004053

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-10-4053

Blind Acre, Inc.

Stash Storage Holdings, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: G. Rutledge DuRant

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Blind Acre, Inc.	Stash Storage Holdings, Inc.	\$1,937,589.15
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Charleston Common Pleas

Case Caption: Blind Acre Inc VS Stash Storage Holdings Inc
Case Number: 2019CP1004053
Type: Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

BLIND ACRE, INC.,

CASE NO.: 2019-CP-10-4053

Plaintiff,

**DEFENDANT'S MOTION TO ALTER OR
AMEND ORDER ENTERED JUNE 15TH,
2021**

v.

STASH STORAGE HOLDINGS, INC.,

Defendant.

YOU WILL PLEASE TAKE NOTICE that the Defendant Stash Storage Holdings, Inc. (“Stash”) moves, pursuant to Rule 59(e), *SCRPC*, for reconsideration of the Court’s June 15th, 2021, order entering default judgment in the amount of \$1,937,589.15 (the “Order”, Exhibit #1). A motion to alter or amend is appropriate where a party believes the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue that the party desires the court reconsider. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A motion to reconsider is the proper procedural avenue to “call the court’s attention to a possible misapprehension of an earlier argument.” *Id.* at 22-23, 602 S.E.2d at 779. Rule 59 allows a trial court to amend an earlier order to correct errors of law. *See, e.g. Zinkland v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007). For the reasons set forth below, the Defendant very respectfully asks the Court to reconsider portions of the Order, and to make corresponding alterations in an amended order.

1. Grounds for reconsideration of the Order’s award of contractual damages

On the Plaintiff Blind Acre, Inc.’s (“Blind Acre”) breach of contract claim, the Order awards the Plaintiff \$937,589.15, a sum which ought to be altered or amended as being dramatically in excess of the amount in fact due under the contract, per the evidence and testimony introduced by the Plaintiff. The starting point is that the contractual damages award

(\$937,589.15)¹ exceeds the aggregate amount Plaintiff invoiced Defendant (\$187,589.15) by a factor of five (5), per the Damages Synopsis and Invoices introduced via the testimony of Scott Holtkamp, Plaintiff's sole witness at the May 2nd, 2021, damages hearing ("Hearing").

The contractual damages award should not have exceeded the invoiced sum of \$187,589.15 because, by the terms of the contract, and by Mr. Holtkamp's own testimony, the invoiced sums are coextensive with—indeed they define—Blind Acre's right to payment. Per Paragraph 5 of the contract², "[Blind Acre] will be compensated and Client will be billed as provided in Schedule 3." Schedule 3, in turn, establishes—via Section 2 "Billing and Payment Procedures"—that regular monthly payments owed would be based on a monthly invoicing system, under which all sums due would be submitted by Blind Acre to Stash for advance payment of the next month's services: "Monthly recurring invoices shall be submitted roughly 30 days in advance and paid by [Stash] on or before the last day of said month." Late payments, like regular monthly payments, are also defined by reference to the invoices: "Any invoice that is more than 15 days overdue from the date on the invoice shall be subject to a late fee in the amount of 2% of outstanding balance. (Exhibit #2, Section 2(c).)

Thus, under the plain language of the written agreement, Blind Acre's right to payment of a particular sum is created—and Stash's corresponding payment obligation triggered—by Blind Acre's submission of an invoice to Stash. No provision of the contract entitles Blind Acre to payment for un-invoiced amounts.³ Yet the Order in its current form does precisely that: it awards

¹ Per the Plaintiff's Damages Synopsis, the \$937,589.15 is composed of \$187,589.15 (the total invoiced over the life of the contract) along with \$750,000 (\$25,000 per month x 30 un-invoiced months)

² Introduced at the hearing, attached to the Complaint, and, for convenience, attached hereto as Exhibit #2.

³ With the sole exception of a single payment, due at contract inception, which Stash duly paid, per Blind Acre's submittals.

Blind Acre \$750,000 of payments under the contract for amounts which Blind Acre never invoiced.⁴

The parties' performance validates the written agreement's establishment of the essential link between Blind Acre's submission of an invoice and its right to payment. As reflected in the invoices submitted at the Hearing, Blind Acre submitted an invoice for all amounts it claimed were due: whether fees for monthly services, late payment penalties, interest on outstanding balances, one-time services, or otherwise. On cross-examination at the Hearing, Mr. Holtkamp testified that he himself prepared Blind Acre's invoices, and that in doing so his intention was to invoice for all amounts Blind Acre was owed under the contract. It is critical testimony, because it plainly establishes the contractual intent and understanding of Blind Acre's sole shareholder and CEO: specifically, that Blind Acre's invoices would reflect all sums for which payment by Stash was due. An unavoidable concomitant: that the \$187,589.15 Blind Acre invoiced, expresses Blind Acre's view of the amounts it was owed.

Viewed through the lens of Mr. Holtkamp's clarifying testimony, the invoices reveal the contractual basis to reject—as logic and equity surely do—the profoundly implausible assertion at the heart of Blind Acre's claim: that for six months' service, the contract entitles Blind Acre to three years' payment, transforming a reasonable claim for \$150,000 into an incomprehensible one for \$900,000. Consider the following features of the invoices, for which Mr. Holtkamp had no explanation when confronted with them on the stand:

- a. Blind Acre submitted invoices to Stash from August 2018 through June 2019.⁵

⁴ And for services which were not rendered. According to Mr. Holtkamp's testimony, and the invoices and other documents submitted at the Hearing, Blind Acre provided actual services to Stash for a total of six months: from August 2018 through January 2019.

⁵ The Summons and Complaint were filed in July 2019 and clearly constitute a termination of the contract.

- b. Beginning with the first invoice at contract inception on August 1st, 2018, Blind Acre's monthly invoices—submitted on or about the 1st of each month—routinely included a \$25,000 line item for “Monthly Agency Services,” i.e. the fees for services Blind Acre provided under the contract.
- c. The \$25,000 line item last appears on the invoice submitted in January 2019, the same month which was the last during which Blind Acre actually provided services to Stash.
- d. For the months subsequent to Blind Acre's discontinuation of its services, its monthly invoices—February, March, April, May and June of 2019—included new charges solely for late payment fees of approximately \$3,000 each (and quite logically omitting demand that Stash pay for services Blind Acre would no longer deliver).

In short, for so long as Blind Acre provided services, Blind Acre invoiced for services. Once Blind Acre stopped providing services, it stopped invoicing for services. The unavoidable conclusion is that Blind Acre itself understood that, under the contract, its right to payment for services ended when its delivery of those services ended.

Had Blind Acre, upon discontinuing services, in January 2019, stopped invoicing altogether, that would be on thing: in that scenario, Blind Acre's position (that it was owed \$25,000 every month for three years, whether it provided services or not) might be at least arguably supportable. But Blind Acre continued invoicing for five months after discontinuing delivery of services, and in none of those five months did Blind Acre's invoice include the \$25,000 line item. If, as the Order supposes, Blind Acre believed itself entitled to \$25,000 per month—every month, for three years, regardless of whether or not it delivered services to Stash—why would Blind Acre omit that charge from its final five invoices? Mr. Holtkamp had no answer for this question on the

stand, because there is no answer. That it omitted the line item leaves room for but one conclusion: Blind Acre itself recognized that it was not owed the monthly fee of \$25,000 for those five months.

One telling illustration of the unwarranted extravagance of the contractual damages award arises from careful scrutiny of the \$750,000 that boosted the claim from the invoiced amount (\$187,589.15) to \$937,589.15. Per the Plaintiff's Damages Synopsis, the \$750,000 reflects \$25,000 payments owed in each of the 30 months from March 2019 to August 2021. Within that range, of course, are March, April, May and June of 2019: four months in which Blind Acre did submit monthly invoices, none of which included the \$25,000 Blind Acre now claims was due in those months. Clearly, had Blind Acre believed itself entitled to \$25,000 for each of those months—March through June, 2019—Blind Acre would have included the \$25,000 line item on its real-time invoices for those four months. For Blind Acre to come into Court, two years later, and ask the Court to in effect revise its own invoices, is absurd. But that is what Blind Acre has done, and as a result the Order includes \$100,000 in damages to which Blind Acre's own invoices have clearly indicated it has no entitlement.

A second illustration of the unwarranted nature of the contractual damages award: the Order not only in effect reforms five invoices to include \$25,000 payments not reflected on the actual invoices; and it not only postulates that Blind Acre, having invoiced for five months without demanding payment of the \$25,000 monthly fee, legitimately believed itself entitled to a further 27 months' payment after those no-service-fee invoices; but the Order also necessitates the assumption that the parties' considered the contract in force even after Stash's first breach in October 2018; even after services were discontinued in January 2019; even after Blind Acre had sued Stash in July 2019 and served the Summons and Complaint shortly thereafter; even after the passage of another eighteen months after service; and even up until the date of the Hearing. The

idea that the contract was in full force and effect throughout that time; that Blind Acre reasonably relied on Stash throughout that time; and that Blind Acre took any steps to mitigate its damages during that time, is simply not supported by law or fact.

For these reasons, there is no basis for the Plaintiff to be awarded any sum over and above the amount invoiced: \$187,589.15, to which the contractual damages award should be reduced.

2. The punitive damages award is not supported by the evidence submitted and testimony given.

Blind Acre's very legitimate gripe that its invoices went unpaid, is explained not by a diabolical scheme to lure Blind Acre into providing free services, as alleged, but by the fact that Stash was and is a high-risk business. As Mr. Holtkamp alluded to at several points in his testimony at the Hearing, Stash was a start-up company—carrying the attendant very high risk of failure—at the time it contracted with Blind Acre. The contract's description of services to be afforded by Blind Acre provides further illustration that Blind Acre was to help Stash with the very risky business of getting its operation off the ground and successfully launching it as a productive operating enterprise "Logo Designs"; "Business Identity Collateral (Business Cards, Letterhead, Envelopes)"; "UX Website Design"; "Go to Market Strategies." What the Plaintiff described in his testimony is a startup company which failed to launch and was unable to meet contractual obligations.

As reflected in the Charleston County Clerk of Court Case Records, Blind Acre is not alone: it is one of five plaintiffs in actions which have been filed against Stash during its short time as an operating company, beginning in 2018 and continuing with a recent debt collection filing in March of 2021.

In short, this is a garden variety breach of contract action, in which Stash has exposure for damages under the contract itself. But the idea that clear and convincing evidence has been

submitted to support a \$1,000,000 punitive damages award simply is not supportable on the record. For these reasons, Stash respectfully asks the Court to reconsider its award of punitive damages, and to amend the Order to eliminate the punitive damages award entirely, or at minimum to reduce it to an amount commensurate with the very limited evidence of willful and wanton conduct which was presented at the Hearing.

BEN TRAYWICK LAW FIRM, LLC

s/Benjamin A.C. Traywick

Benjamin A. C. Traywick (SC Bar No. 74027)

Alexandra Scott Williams (SC Bar No. 102862)

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Attorneys for the Defendant

June 25, 2021

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-4053

BLIND ACRE, INC.,
Plaintiff,

v.

**Plaintiff's Memorandum in Opposition
to Defendant's Motion to Alter or
Amend Order Entered June 15, 2021**

STASH STORAGE HOLDINGS,
INC.,
Defendant.

PROCEDURAL HISTORY

An Order of Default was entered in this matter on March 23, 2021. Thereafter, this matter was referred to this Court for a damages hearing which took place on June 2, 2021. At the damages hearing, Plaintiff presented evidence of his damages and Defendant had the opportunity to present evidence and cross-examine Plaintiff's witnesses. Having heard all of the evidence, on June 15, 2021, this Court entered judgment in the amount of \$937,589.15 actual damages and \$1,000,000.00 punitive damages.

Thereafter, on June 25, 2021, Defendant filed "Defendant's Motion to Alter or Amend Order Entered June 15th, 2021."

ARGUMENT

This Court's Damages Order of June 15, 2021 should be affirmed because the Court fully considered all of the evidence presented at the hearing and after doing so, was firmly convinced that the damages ordered was fair and appropriate. Accordingly, the Court's Damages Order of June 15, 2021 should be affirmed.

1. The Contractual Damages Order Should be Affirmed

Plaintiff presented evidence at the hearing of his contractual damages: (1) Twenty-Seven invoices in the amount of \$187,589.15 in unpaid money from the time period of August 1, 2018 through June 15, 2019; and (2) \$750,000.00 representing the contractually obligated amount of \$25,000.00 per month for 30 months including March 1, 2019 through August 1, 2021. These amounts total the amount of the Court's contractual damages award of \$937,589.15.

The Court did not misunderstand the terms of the contract and Scott Holtkamp, Plaintiff's sole witness, testified that the \$25,000.00 per month obligation for 36 months was a material term of the contract, and necessary to obtain his agreement to be contractually bound; ie... he needed assurance that if he was going to reconfigure his business to allocate most of his resources toward the performance of this contract, he would have the assurance that his efforts would be financially worth it. Anything less than a 36 month agreed up rate of \$25,000.00 would not have been sufficient to induce Mr. Holtkamp's signature to be contractually bound.

Not only do the term of the contract itself explicitly state Defendant was contractually obligated to pay Plaintiff \$25,000.00 for 36 months, but paragraph 9 of Plaintiff's Complaint of July 31, 2019 explicitly alleged the following: "That among the material terms of the agreement, in addition to other such compensation as defined in the Agreement, Defendant agreed to pay no less than a monthly agency service fee of \$25,000.00 as consideration for Plaintiff's agreement to provide services." Defendant failed to answer or otherwise respond to this allegation and was thereafter held in Default.

This Court understood very well the evidence presented at the damages hearing. There was no mistake or misapprehension about the damages Plaintiff suffered because of

Defendant's egregious breach of contract. Therefore, the Court's award of \$937,589.15 in actual damages on the breach of contract claim should be affirmed.

2. The Punitive Damages Order Should be Affirmed

The Court's award of \$1,000,000.00 in punitive damages should be affirmed because the Court found by clear and convincing evidence that Defendant's grossly negligent misrepresentations concerning the promise that it would honor its contractual obligations to pay Plaintiff, induced Plaintiff to stay the course, all while being outright lies. Because Defendant continued to lie to Plaintiff in stating that, essentially, the money was one the way, Plaintiff was forced to sell his home, incur debt for paying employees out of his own pocket – his children had to discontinue their private school education, and Plaintiff was brought to the near brink of financial ruin. The egregious misrepresentations of Defendant caused Plaintiff to suffer damages beyond those suffered purely from the breach of contract and Defendant's actions warrant a strong award of punitive damages. The Court's award of \$1,000,000.00 in punitive damages is more than appropriate in this matter.

WHEREFORE, Plaintiff respectfully asks the Court to affirm the June 15, 2021 Order awarding damages to Plaintiff.

RIESEN DURANT LLC

BY: **s./G. Rutledge DuRant**
G. Rutledge DuRant (SC Bar #: 73944)
613 Long Point Road, Suite 100
Mount Pleasant, South Carolina 29464
Phone: 843.800.0809 Fax: 843.767.3282
Email: rutledge@riesendurant.com
Attorneys for the Plaintiff

Mount Pleasant, South Carolina
July 6, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BLIND ACRE, INC.,)
)
Plaintiff,)
)
vs.)
)
STASH STORAGE HOLDINGS, INC.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-4053

ORDER GRANTING RULE 59(e) MOTION

THIS MATTER COMES before the Court on the Defendant’s Rule 59(e) Motion to Alter or Amend, filed June 25, 2021, of the Court’s Order entered June 15, 2021, finding the default damages in the total sum of \$1,937,589.15. While Defendant’s counsel did not provide a copy of the written motion to Judge Scarborough, the Court became aware of the existence of the Rule 59 (e) Motion through email correspondence between counsel.

Upon consideration of the Motion without a hearing, the Court determines that there is no basis in the record to support the \$1,000,000.00 punitive damages award. Accordingly, the Court amends its damages award on the breach of contract claim to the amount of \$937,589.15.

An Amended Form 4 will follow.

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

_____, 2021
at Charleston, South Carolina



Charleston Common Pleas

Case Caption: Blind Acre Inc VS Stash Storage Holdings Inc
Case Number: 2019CP1004053
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1004053

Blind Acre Inc
PLAINTIFF(S)

Stash Storage Holdings Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court on the Defendant's Motion to Alter or Amend, filed June 25, 2021. Upon consideration, the Court has determined that no basis exists for the award of \$1,000,000.00 in punitive damages. As such, the Court issues a damages award in the amount of \$937,589.15.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/16/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Blind Acre Inc VS Stash Storage Holdings Inc

Case Number: 2019CP1004053

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-12-16 15:14:25 page 3 of 3

BLIND ACRE, INC.

STASH STORAGE HOLDINGS, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Blind Acre, Inc.	Stash Storage Holdings, Inc.	\$937,589.15
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062
Judge Code

12/29/2021
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Charleston Common Pleas

Case Caption: Blind Acre Inc VS Stash Storage Holdings Inc

Case Number: 2019CP1004053

Type: Order/Judgment and Form 4

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Blind Acre, Inc.,
Plaintiff,

vs. CASE NO. 2019-CP-10-04053

Stash Storage Holdings, Inc.,
Defendant.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 2:00 p.m. on
June 2, 2021 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
100 Broad Street, Suite 266
Charleston, SC 29401
(843) 367-9596
csmith@adacounty.id.gov

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APPEARANCES OF COUNSEL:

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(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

1
2
3 THE COURT: The matter before the Court this
4 afternoon is the Blind Acre versus Stash Storage
5 Holdings case. The case number is 2019-CP-10-4053.
6 Mr. George Durant is here for the Plaintiff, correct?

7 MR. DURANT: That's correct, Your Honor.

8 THE COURT: We have a damages hearing on a
9 breach of contract and a marketing services contract.

10 MR. TRAYWICK: Correct, Your Honor. Ben
11 Traywick here for the Defendant.

12 THE COURT: And Mr. Traywick. Very good.
13 Thank you, Mr. Traywick?

14 MR. TRAYWICK: How are you, Your Honor? Glad
15 to see everybody.

16 THE COURT: It's good to see you again. All
17 right. Mr. Durant, tell me a little bit about it.
18 You've got witnesses you want to put forward today?

19 MR. DURANT: I do, Your Honor.

20 THE COURT: Default damages, correct?

21 MR. DURANT: Default damages. That's correct.

22 THE COURT: All right. So Mr. Traywick,
23 you're here on behalf of the Defendant. You-all can
24 participate by Cross-Examination, but it's limited to
25 that.

1 MR. TRAYWICK: That is certainly my
2 understanding, Your Honor.

3 THE COURT: Very good. All right. Thank you,
4 Mr. Traywick. Mr. Durant?

5 MR. DURANT: Thank you, Your Honor. I have a
6 book I would like to pass up to the Court. I let
7 Mr. Traywick take a look at this. I think this
8 should be beneficial to Your Honor.

9 THE COURT: Certainly. Thank you, sir.

10 MR. DURANT: What this book encompasses is
11 just a copy of the summons and complaint, the
12 affidavit of service, the pleadings from the
13 Defendant, which was -- a complaint was filed on
14 July 31, 2019, and served in person on September 26,
15 2019.

16 We did not move for default, and default was
17 not entered until March 23, 2021 for circumstances
18 that we may get into. On March 26, 2021, there was
19 an order from Judge Young referring this matter for a
20 damages hearing to Your Honor.

21 We served notice of the damages hearing on May
22 5, 2021 and were informed this morning that
23 Mr. Traywick would be here today.

24 THE COURT: All right.

25 MR. DURANT: So we do intend to present our

1 damages in this matter, and we can call our first
2 witness if you like.

3 THE COURT: All right. Mr. Traywick, any
4 motions or any matters to take up before we start?

5 MR. TRAYWICK: Your Honor, if it suits the
6 Court, I might just have some sort of persuasive
7 comments toward the end if Your Honor is going to
8 permit that. We can just get into it. I think that
9 will help everybody understand what's going on.
10 Thank you, Your Honor.

11 THE COURT: Mr. Durant, you may call your
12 first witness.

13 MR. DURANT: Thank you, Your Honor. I'll
14 point out that Section 6 and Section 7 deal with the
15 damages, synopsis, and the invoices we've provided
16 here. We may get into some more stuff as well.

17 THE COURT: Okay.

18 MR. DURANT: We will call Scott Holtkamp.

19 SCOTT HOLTKAMP,
20 being first duly sworn, testified as follows:

21 THE COURT: Mr. Holtkamp, when you get settled
22 in if you would give us your full name and address
23 for the record, and spell that last name for us.

24 THE WITNESS: Sure. Scott David Holtkamp,
25 H-O-L-T-K-A-M-P.

1 THE COURT: And your address?

2 THE WITNESS: My address is 1589 Aztec Lane,
3 Mt. Pleasant, South Carolina, 29466.

4 THE COURT: Very good. Thank you, sir.
5 Mr. Durant, your witness.

6 MR. DURANT: May it please the Court?

7 THE COURT: Yes, sir.

8 EXAMINATION

9 BY MR. DURANT:

10 Q. Mr. Holtkamp, if you could, I just want a
11 little bit of information about yourself. How old
12 are you?

13 A. I'm 41.

14 Q. Are you married?

15 A. I am.

16 Q. How long have you been married?

17 A. I've been married for almost 16 years.

18 Q. Do you have any children?

19 A. I have three.

20 Q. How old are they?

21 A. They are 14, 12, and 10.

22 Q. And you live in the Charleston area?

23 A. I do.

24 Q. How long have you lived in the Charleston
25 area?

1 A. Going on seven years.

2 Q. Where did you move from?

3 A. Dublin, Ohio.

4 Q. And what's your background in terms of
5 education?

6 A. I went to school at Western Illinois
7 University. I graduated in 2002. I graduated with a
8 communications and business management degree as well
9 as hospitality management.

10 Q. And what kind of things have you done to
11 employ yourself since that time?

12 A. I have been a -- prior to being an
13 entrepreneur for the last 18 years, I actually worked
14 for Disney World. I did PR for the BoardWalk as well
15 as some other jobs in there. Then I actually worked
16 for a company called Simcor which is a multilevel
17 marketing company which is based out of Canada. My
18 office was in Chicago, and I was transferred to
19 Columbus, Ohio where I met my lovely wife.

20 Q. Now, I want to get into Blind Acre. You're
21 familiar with Blind Acre?

22 A. I am.

23 Q. What is Blind Acre?

24 A. Blind Acre was a digital marketing strategy
25 firm. We focused on all things digital. We also did

1 anything traditional marketing wise for companies
2 like Stash.

3 What that means and what that entails is that
4 we would do anything from building website software
5 to websites themselves, do digital marketing lead
6 generation and social media all the way up to search
7 and optimization, brand identity, you name it,
8 anything under the sun -- anything marketing we did.

9 Q. When approximately was Blind Acre started?

10 A. January 4th of 2008.

11 Q. And who started it?

12 A. I did.

13 Q. Did you have any partners?

14 A. I did not.

15 Q. You owned it wholly?

16 A. Yes.

17 MR. DURANT: All right. I'm going to mark
18 this as Plaintiff's No. 1. This is the summons and
19 complaint filed in the matter with the exhibit,
20 including the contract that is at issue in this case.

21 THE COURT: All right, sir.

22 (PLF. EXH. #1, Summons and Complaint, was
23 marked for identification.)

24 Q. (BY MR. DURANT) All right. I'm going to show
25 you what we have marked as Plaintiff's Exhibit 1.

1 I'll ask you to take a look at it, and let me know if
2 you recognize it.

3 A. I recognize it.

4 Q. The contract that's attached there to the
5 summons and complaint, is that a true and accurate
6 copy of the contract in this matter that you signed
7 on behalf of Blind Acre with a representative from
8 Stash Storage Holdings, Co --

9 A. Yes, it is.

10 Q. -- or Stash Storage Holdings, Inc. When was
11 that contract signed?

12 A. August -- roughly August 1st of 2018. Yes,
13 August 1st, 2018.

14 Q. All right. Per the terms of that contract,
15 how long was it contemplated that this contract would
16 be in existence?

17 A. 36 months.

18 Q. And it could be extended?

19 A. Yes. Re-upped.

20 Q. Was there a minimum amount that Blind Acre was
21 owed from Stash Holdings under the terms of this
22 contract per month?

23 A. Yes, \$25,000.

24 Q. And so this was a sum-certain contract?

25 A. Yes.

1 Q. It was unambiguous?

2 A. Yes.

3 Q. Was that a material inducement for Blind Acre
4 to sign this contract with 36 months, guaranteed
5 \$25,000 a month?

6 A. Yes.

7 Q. On that basis did you sign this contract?

8 A. I did.

9 Q. Now, there are other particulars about this
10 contract, correct?

11 A. Yes.

12 Q. And you'll be able to tell Judge Scarborough
13 anything he would like to question you about?

14 A. Yes.

15 Q. So on that basis, when did the contract start?

16 A. The contract started August 1st, 2018.

17 Q. And if you could, tell Judge Scarborough what
18 Blind Acre obligated itself to do for Stash under the
19 terms of this contract.

20 A. So within the agreement you'll see a list of
21 items that were -- we were hired to become the agency
22 of record, and we did everything for Stash from the
23 strategy of implementing visual and marketing efforts
24 to coming up with a strategy of how to go to market
25 with new product lines, brand new strategies into how

1 they should actually facilitate and grow within
2 different markets. We did research development,
3 everything you can think of on a competitive hub, we
4 created everything that was submitted to you. Then
5 we grew into helping within the brand of Envy
6 (phonetic) as well as into the digital market, and
7 implementation for anything social, anything
8 overheaded, paper clipped, anything you can think of
9 within the digital space, we did for them.

10 Q. All right. And I'm sure that Judge
11 Scarborough is wondering what kind of business Stash
12 is; can you tell him?

13 A. Yes. Stash is a storage company that has a
14 warehouse out in North Charleston that was positioned
15 to me as they were going to grow national and
16 international over time with multi locations all
17 over, and we were being hired to help them grow.

18 Stash Storage is not self storage. What they
19 did is actually pick up the product and take it to
20 that warehouse, and then when you want it on demand
21 they'll deliver it back to you.

22 Q. They package it up, take it on their trucks,
23 give it bar codes?

24 A. Yes.

25 Q. Keep individual items individualized?

1 A. Yes. They also have an online portal that we
2 helped build that is for people like me. As a client
3 I can go on -- I can ask for a pickup, I can actually
4 request my items back, I can go through lists, and I
5 can have it all sent back to me if I wanted to.

6 Q. All right. So this was a startup company that
7 you saw possibilities with?

8 A. Major, yes.

9 Q. At the time that you signed this contract and
10 were induced to sign on these terms, how big was your
11 company, Blind Acre, about that time?

12 A. At the time we had roughly 18 employees. We
13 had multiple contractors that worked all over, but
14 that's how big we were at that period of time.

15 Q. All right. And based on the contract you
16 signed with Stash, what, if anything, did you do with
17 your company in terms of the organization of it?

18 A. So when I signed with Stash it was under the
19 understanding that I would have a team dedicated
20 towards Stash Storage. That team was our top
21 individuals within our company. Those individuals --
22 we actually -- some we hired. Some we brought over
23 to facilitate and grow Stash Storage, and then I had
24 to hire others to facilitate that work.

25 Q. Did you tone down Blind Acre projects in other

1 areas in order to accommodate this contract with
2 Stash?

3 A. I did. I did. We slowed our pipeline on or
4 business development side because of what we were
5 growing with Stash. We made sure we were growing,
6 one, with Stash helping them build, due to that and
7 with me.

8 Q. Would you have signed this contract if it
9 would not have been for a length of 36 months
10 guaranteed?

11 A. I would not, no.

12 MR. DURANT: Okay. I'm going to show you what
13 we have -- well, let me mark these. This is the
14 damages synopsis and the invoices that we included in
15 the pack. This is No. 2, Invoices. I'll move in
16 Plaintiff's No. 1, I believe, with no objection?

17 (DFT. EXH. #2, Damages Synopsis, was marked
18 for identification.)

19 (DFT. EXH. #3, Invoices, were marked for
20 identification.)

21 MR. TRAYWICK: I have no objection.

22 MR. DURANT: Any objection to 2 or 3 coming
23 in?

24 MR. TRAYWICK: I don't know what they are.

25 MR. DURANT: The damages synopsis and the

1 invoices?

2 MR. TRAYWICK: I have no objection.

3 MR. DURANT: I'm showing you what's 2 and 3.

4 Move into evidence, Your Honor?

5 THE COURT: Sure.

6 MR. DURANT: With no objection.

7 THE COURT: Without objection, yes.

8 Q. (BY MR. DURANT) So I'm showing you 2 and 3.

9 Can you tell us what No. 3 is?

10 A. No. 3 is all the invoices.

11 Q. Okay.

12 A. That were sent to Stash.

13 Q. Now, these invoices that were sent to Stash,
14 Plaintiff's No. 3, there are, I believe, 27 of them;
15 is that correct?

16 A. That's correct.

17 Q. All right. And these represent invoices
18 generated from Blind Acre to Stash starting on
19 August 1st, 2018 through June 15, 2019; is that
20 correct?

21 A. That is correct.

22 Q. All right. And per the terms of the contract
23 is it your understanding that the contract required a
24 base of \$25,000 per month, and there are provisions
25 that afford you to do more work and invoice for that

1 work?

2 A. Correct.

3 Q. What kind of work would that be?

4 A. So it's anything from third party logistics
5 working with companies like Google, Facebook,
6 delivering papers -- what we call ad spend, and
7 actually delivering campaigns through those
8 platforms. We would get paid on our service outside
9 of anything that was outside of the \$25,000. There
10 was a percentage that was associated with that. What
11 that spend was, we would get a percentage of that
12 spend. On the other side, there were times where I
13 actually paid some of the bills directly to Facebook
14 or Google on our credit card to get reimbursed.

15 Q. Did you --

16 A. Rutledge, I had --

17 Q. Go ahead.

18 A. I also purchased domains. What domains are
19 are URLs that go through GoDaddy that they approved
20 to purchase directly for them, and that is on the
21 invoice as well.

22 Q. All right. So these 27 invoices total have an
23 amount of \$237,589.15 from August 1st through
24 June 15th; is that correct?

25 A. That's correct.

1 Q. Now, you did receive some payment from Stash
2 through the course and the scope of this contract; is
3 that correct?

4 A. Yes.

5 Q. That first payment, I believe, was on
6 August 31st, 2018 on the first invoice; is that
7 correct?

8 A. That's correct.

9 Q. And that was in an amount of \$25,000?

10 A. Yes.

11 Q. But that payment was due on August 1st; is
12 that right?

13 A. That's correct.

14 Q. That one was paid, and they paid another
15 25,000 on January 18th, 2019; is that correct?

16 A. That's correct.

17 Q. Now, at that time that they made that second
18 payment on January 18th, 2019, that didn't bring them
19 up to speed, did it?

20 A. No.

21 Q. Not by a long shot, did it?

22 A. No.

23 Q. So at a base level of \$25,000 a month, they
24 had paid \$50,000 up until January. You still got
25 payments up to \$25,000 for September, October,

1 November, and December; is that correct?

2 A. That's correct.

3 Q. So at least another \$100,000 bare minimum?

4 A. Yes.

5 Q. And did you continue to work and fulfill the
6 terms of your contractual obligations during that
7 time?

8 A. I did.

9 Q. Why?

10 A. Based on multiple reasons: One, we were told
11 multiple times that money was coming in from
12 investors and to not worry about it. There were also
13 other times where we would talk about stopping and at
14 the end of the day he would talk me back into it.

15 Q. When you say he --

16 A. Tom Stevenson.

17 Q. Who is Tom Stevenson?

18 A. Tom Stevenson used to be the owner of or
19 cofounder of Stash Storage.

20 Q. Is Tom Stevenson the one that signed the
21 contract on behalf of Stash?

22 A. He is.

23 Q. And so on their promise that they would pay
24 you and get right with you, you continued to provide
25 them with the contractual services?

1 A. That's correct. Yes.

2 Q. Did you continue to invoice them through June
3 of 2019?

4 A. I did, yes.

5 Q. Did you ever receive another payment after
6 January of 2019?

7 A. No, I did not.

8 Q. Did they pay you a total amount of \$50,000?

9 A. Yes, they did.

10 Q. Okay. Your invoices through June 15, 2018
11 total \$237,589.15, correct?

12 A. Say that number one more time?

13 Q. \$237,589.15.

14 A. Yes, that's correct.

15 Q. Minus the \$50,000 that was paid to you an
16 amount of invoiced damages of \$187,509.15; is that
17 correct?

18 A. That sounds correct, yes.

19 Q. And that's reflected in the invoices that are
20 introduced as Plaintiff's, I believe, 3?

21 A. Yes.

22 Q. Okay. Now, in terms of the expenditures of
23 money over and above the \$25,000, did you spend
24 monies over \$25,000 during that time?

25 A. Yes, I did.

1 Q. And that's reflected in these invoices?

2 A. Yes.

3 Q. And did you come out-of-pocket personally to
4 spend money on Stash Holdings --

5 A. I did, yes.

6 Q. -- to further their business?

7 A. Yes.

8 Q. Did you care about the success of their
9 business?

10 A. 1,000 percent.

11 Q. Were you doing everything you could to fulfill
12 your contractual terms and to help Stash succeed as
13 you believed it could?

14 A. Yes.

15 Q. All right. Ultimately you did file a lawsuit
16 in this matter, correct?

17 A. Yes.

18 MR. DURANT: That was July 31st, 2019. I have
19 got, Your Honor -- I've shown them to Traywick -- an
20 Excel spreadsheet that -- if I print it out in my
21 office -- I don't know how to print an Excel
22 spreadsheet that encompasses this material well --

23 MR. TRAYWICK: I've got a number of printed
24 copies. I'm happy to loan one to the Court or to
25 Mr. Durant or whatever is most convenient for all

1 concerned. If you want to put it up --

2 THE COURT: Was it e-mailed to our office? Is
3 that a document of record already or just e-mailed?

4 MR. DURANT: It's not of record right now.
5 It's just in digital format. It certainly would aid
6 demonstratively.

7 THE COURT: Sure. Sure. Ms. Wilkerson's got
8 it pulled up on her screen. I can follow along I
9 guess.

10 MR. DURANT: All right. Then I will hand
11 up -- I don't know how we're going to mark this, but
12 we'll call it maybe Electronic Exhibit No. 4.

13 THE COURT: He's got a hard copy over there.

14 MR. TRAYWICK: You can confirm that it's the
15 same thing, but I believe it is.

16 MR. DURANT: Take a look at these and tell me
17 if they're reflective of the work.

18 Q. (BY MR. DURANT) My questions to you is: Will
19 that document either on the screen as you're probably
20 more familiar with -- we'll print it out if it
21 matches up in your mind -- will that assist you in
22 your testimony explaining damages as reflected on
23 invoices?

24 A. Yes, it will.

25 Q. Now, let's start with --

1 THE COURT: Let me ask you this question: Is
2 this backup data for the charges in addition to the
3 \$25,000?

4 MR. DURANT: It is. It will show the work
5 product, what they actually did to deliver on the
6 contract. It can get pretty specific.

7 THE COURT: You don't have to go through all
8 of them. Just show me the --

9 MR. DURANT: I might just ask Mr. Traywick if
10 he wants --

11 THE COURT: If you want to show me an example
12 and that way when we're picking at the numbers, I'll
13 be able to understand what's going on.

14 MR. DURANT: That would be good.

15 Q. (BY MR. DURANT) Scott, I believe the first
16 invoice is on the back of these invoices here from
17 August 1st, 2018. It says, Quantity 500. Rate 50.
18 Amount, \$25,000. Can you explain to
19 Judge Scarborough what that means?

20 THE COURT: You're on the invoice now.

21 Q. (BY MR. DURANT) I'm sorry. I'm on the first
22 invoice which is on the back of the invoices, bottom
23 invoice. I believe it should be No. 1.

24 A. I've got it.

25 THE COURT: You're on Exhibit 3 on the bottom

1 invoice because they come up, right? The initial
2 invoice is 8118? Is that where we are?

3 MR. DURANT: That's correct, Your Honor.

4 THE COURT: Okay. I've got it.

5 Q. (BY MR. DURANT) See that, Scott?

6 A. I do.

7 Q. Where it says quantity, 500; rate, 50; and
8 amount \$25,000, can you just explain what we're
9 talking about in terms of quantity; what does that
10 mean?

11 A. So we do everything on a point basis, or we
12 used to. The point basis is based on projects. The
13 easiest way to explain it is that when you do hourly
14 or you do -- and you have multiple individuals within
15 a group working, the easiest way to bill, instead of
16 billing on an hourly basis at a different rate for
17 each person, you take that and you blend it. So what
18 we did was we took a blended rate with everybody,
19 broke it down into points -- this is how we've done
20 it with all our clients for many, many years. We
21 broke it down into points, and those points were then
22 associated with -- when a project came in it was then
23 broken down into a task. Those tasks were then
24 associated points, and those points were then
25 allotted to whatever that task was that needed to get

1 done.

2 Q. Okay. So when we look at this invoice from
3 8/1/2018 and we look at the demonstrative document on
4 the Excel sheet, as they're on a PDF on the computer
5 in front of you, can you tell the Court what it is
6 you did? What work you performed under this invoice?

7 A. On this invoice?

8 Q. Yes.

9 A. So if you take a look you'll see that the rate
10 was \$50. They bought a quantity of 500 total points.

11 Q. And that is standard for the month?

12 A. That is correct. That's \$25,000. So if I go
13 back, all the way back, there's no dates on this.
14 I'm going to have to go in -- I'm having to into here
15 on the internet and make sure. I need the password.

16 (Off-the-record discussion.)

17 MR. DURANT: All right. So if you go to Line
18 Item 250, within the document that you have in front
19 of you, it says August and September of 2018. Within
20 that August/September we were billing, at \$25,000 or
21 500 points. Those two invoices were placed together.
22 Our work was placed together for August and
23 September. It was multiple projects that we were
24 doing over the course of a period of time. That's
25 broken down within this. Then you will see within

1 that, it goes from 252 through 337 are all the
2 projects or tasks that we did.

3 Q. And what would some of those be?

4 A. One of the biggest things we had to overcome
5 and understand when we went to work with Stash was to
6 try to understand exactly who they were. So we had
7 to do discovery. We had our team come in, had
8 meetings with them directly, each individual, and --
9 we had meetings directly with the team as well as
10 each individual on the team to understand who they
11 were, how they worked, what they did, and how they
12 actually overcame.

13 You'll see that on like, for instance, Line
14 Item No. 306, called strategy. We would do
15 interviews with J.J., Tom Stevenson, Fred Friedman,
16 and his name is Courtney, actually -- he's the other
17 owner -- Brandon and a few others. We also go
18 through and we would do secret shopper. We would
19 make phone calls, understand what the competitors
20 were doing, the difference between them, take notes,
21 do the research, put competitive research documents
22 together to be able to provide the next step which
23 is -- if you go up a little further, the next steps
24 were line items like 283 analytics review incentive,
25 understand what's going on there, offline marketing,

1 which is building up brand campaigns for -- I'm just
2 naming off a few, 296 brand campaigns. We would
3 create billboards -- and campaign strategy, stingray
4 (phonetic) campaign strategy, building up our
5 products and everything that needed to go into that,
6 placing the orders, doing everything we needed to do
7 in order to grow the company.

8 Q. And they were satisfied with this work?

9 A. Absolutely. In fact, blown away by their
10 words.

11 THE COURT: I missed that. I'm sorry.

12 THE WITNESS: I said, In fact, blown away.

13 THE COURT: Blown away. Okay.

14 Q. (BY MR. DURANT) And so they paid you \$25,000
15 at the end of August?

16 A. Correct.

17 Q. And you continued to do work that they told
18 you was blowing them away?

19 A. Uh-huh.

20 Q. Is that correct?

21 A. That is correct.

22 Q. I just need a verbal response for the record.

23 A. Yes.

24 Q. So they paid you another \$25,000 in January,
25 correct?

1 A. Yes.

2 Q. And they thanked you for that?

3 A. Wait. In January?

4 Q. In January of 2019 they paid you another
5 \$25,000?

6 A. Yes. They paid me \$25,000.

7 Q. So up until that point and all that work that
8 can be shown and reflected in this demonstrative
9 Excel exhibit -- they were blown away by this work?

10 A. That's correct, yes.

11 Q. Okay. Did there come a time when -- I think
12 there's enough of that document -- I'm going to let
13 counsel question you as much as they want to question
14 you on this.

15 There did come a time when eventually you
16 stopped putting more money into this contractual
17 obligation; is that correct?

18 A. That's correct.

19 Q. And when did that happen? In June? You
20 stopped invoicing in June?

21 A. I stopped invoicing in June.

22 Q. Of 2019?

23 A. Correct.

24 Q. And you stopped putting money into this
25 company approximately in --

1 A. December.

2 Q. In December. Okay. December or February?

3 A. Well, I stopped putting my money into it in
4 December. I stopped working with them, like cutting
5 it off, in February.

6 Q. And that's because?

7 A. That's because of lack of payment. Nothing
8 was coming through based on what they were telling
9 me.

10 Q. So you weren't --

11 THE COURT: What year are we talking about?
12 February of what?

13 MR. DURANT: 2019. We're talking about the
14 contract beginning in August of '18, and we're
15 talking about February of '19.

16 Q. (BY MR. DURANT) At that point you were no
17 longer putting more money in to invoice them above an
18 amount of the \$25,000 monthly obligation; is that
19 correct?

20 A. That's correct.

21 Q. Because if you had, they would owe more at
22 this point right now?

23 A. Yes.

24 Q. Okay. So you mitigated that loss, right?

25 A. Yes.

1 Q. Okay. And now, as it stands, there were 30
2 more months that you didn't invoice for ranging from
3 July of 2019 through August of 2021, correct?

4 A. That's correct.

5 Q. At a minimum amount of \$25,000 a month?

6 A. Yes.

7 Q. And no more money other than the \$50,000
8 that's been paid to you?

9 A. That's correct. Yes.

10 Q. And so that's \$750,000 for 30 months; is that
11 correct?

12 A. Yes.

13 Q. All right. Now, in terms of this
14 inducement -- there's been a default rendered against
15 Stash. We alleged fraud, and we said that they
16 induced you into signing this contract on the promise
17 that they were capitalized, had money to pay, would
18 pay; is that correct?

19 A. Yes.

20 Q. That was not the case, was it?

21 A. Absolutely not the case.

22 Q. They did not pay?

23 A. No.

24 Q. Not the full amount?

25 A. No.

1 Q. If they had not promised you that they would
2 pay you, would you have gotten out of the this thing
3 earlier than you did?

4 A. Yes.

5 Q. Would you have ever gotten into this thing if
6 you knew --

7 A. I wouldn't have signed the agreement with
8 them.

9 Q. All right. As a consequence of this action,
10 at the time that you signed this contract, where did
11 your kids go to school?

12 A. Porter-Gaud.

13 Q. Because of this situation with Stash what, if
14 anything, happened with where the kids go to school?

15 A. They could no longer go to school.

16 Q. Did you pull them out because you couldn't
17 afford it?

18 A. That's correct.

19 Q. The money wasn't coming in?

20 A. Yep.

21 Q. Were you able to pay your employees?

22 A. No.

23 Q. Did you lose your employees?

24 A. I did, yes.

25 Q. Did Blind Acre essentially shut down?

1 A. Yes.

2 Q. Did you have to sell your home?

3 A. Yes. I had to move out of my home.

4 Q. Where were you living at the time?

5 A. Daniel Island.

6 Q. And you moved to Mt. Pleasant?

7 A. Yes.

8 Q. All right. Do you owe creditors now?

9 A. Yes.

10 Q. Do you owe taxes because of this endeavor now?

11 A. Yes.

12 Q. Are you severely in the hole now?

13 A. Very much so, yes.

14 Q. All right. At this point, answer any
15 questions that Mr. Traywick may have for you. Okay?

16 Thank you.

17 EXAMINATION

18 BY MR. TRAYWICK:

19 Q. It's Mr. Holtkamp?

20 A. Yes, it is. And you are?

21 Q. Ben Traywick. I was going to get there.

22 A. Sorry.

23 Q. That's all right. Courtney Friedman tells me
24 you're a good guy. Are you aware, by the way, that
25 Tom Stevenson is no longer with the company? He's

1 actually being sued by the company?

2 A. I am.

3 Q. Very good. Now, just to confirm a few things
4 about the timeline -- you-all worked on the project
5 from August, September, October, November, and
6 December of 2018, and then for January and some part
7 of February of 2019?

8 A. Correct.

9 Q. What was your company's all-in cost to do all
10 of that work? Leaving aside whatever revenue you did
11 or didn't get, what was your all-in cost to get that
12 work done?

13 A. I don't have those numbers at my fingertips.

14 Q. Do you know what your company's revenue
15 was for each of the five preceding years before 2018?

16 A. Before 2018 we were just over or just under a
17 million dollars.

18 Q. All right. And what was you-all's profit on
19 that?

20 A. Roughly 45 percent.

21 Q. So you were making 500 grand plus?

22 A. Well, if you're talking net, then no, we were
23 not. If you're talking net, it was roughly about
24 100.

25 Q. Did anything else befall Blind Acre that

1 caused it to shut down other than the breach of
2 contract by Stash?

3 A. Stash started it all.

4 Q. What else has happened?

5 A. Over the course -- due to me not being able to
6 facilitate -- because I wasn't getting paid I also
7 couldn't facilitate other duties for other clients.

8 Q. Okay. But is it your testimony that your
9 company shut down entirely because of Stash Storage
10 breaching the contract?

11 A. Yes.

12 Q. Okay. When did you shut it down?

13 A. So the company is actually still -- it still
14 has paper there, but we stopped working on just the
15 loose ends in -- I think it was October of 2019 or
16 something like that.

17 Q. Is there anything in this contract that
18 supports the idea that your children changing schools
19 was a foreseeable damage, like a measure of damage in
20 the event of the breach of the contract?

21 A. It's not in the agreement, however, not
22 getting paid a lot of money changes your entire
23 world.

24 Q. Did you lose other clients that you were
25 servicing prior to the Stash Storage matter? Did you

1 have to lay off clients in order to service Stash?

2 A. Actually, in order to service Stash, I
3 actually laid back. I didn't let anyone go. What
4 ended up happening was because Stash and what I
5 believed in Stash and what I believed in Courtney and
6 Tom which again -- what I believed in Courtney --
7 what I was told by Tom was that we were going to be
8 in it for the long haul. He was going to bring Blind
9 Acre in under Stash to be an in-house agency, and due
10 to that I stopped servicing and stopped going after
11 additional work.

12 Q. Did you terminate your relationships with
13 other clients that were causing you to have a million
14 dollars in revenue in the years preceding this deal
15 in order to service this deal? The reason I ask is
16 that -- I think in the complaint it says that you had
17 to hire additional staff service Stash, right?

18 A. Uh-huh.

19 Q. Is that right?

20 A. The correct staff.

21 Q. And then you laid them off when Stash was in
22 nonpayment?

23 A. I laid them off after -- most of them, yes.
24 We still had to service other clients.

25 Q. I understand. You kind of -- as they say, you

1 kind of levered up in order to meet this new account
2 that you had with Stash, and then when they, kind of
3 tanked --

4 A. Sure but here's the difference. I was able to
5 take people from one role and move them into Stash
6 because they were my top employees, and that's what
7 was supposed to be on Stash, and when I moved them
8 over to move them back to the other clients, the
9 clients didn't understand. They didn't understand
10 why. So it became a very jumbled mess.

11 Q. They didn't understand what?

12 A. The shifts so often. We went from hiring
13 other client relations people, hiring strategists,
14 that were taking over clients that were not part of
15 Stash, that were outside of Stash, moving individuals
16 that were working on those clients previously to
17 Stash because they were the best fit for Stash. Then
18 when Stash stopped paying, letting people go -- the
19 hardest part was trying to move them around and
20 getting clients to stay with us because we wanted to
21 keep our team together.

22 Q. Was Stash the biggest contract you had ever
23 signed?

24 A. No.

25 Q. Have you had other clients breach their

1 contract and fail to pay you?

2 A. No.

3 Q. You've never had -- how long have you been
4 doing this work?

5 A. 18 years.

6 Q. You've never had a client breach a contract
7 regarding payment?

8 A. Nope. Not like this one.

9 Q. That wasn't my question. Not whether one like
10 this one breached a contract. Have you had clients
11 breach contracts by not paying?

12 A. They've always paid. I've never not been
13 paid.

14 Q. How many employees do you-all have right now?

15 A. At Blind Acre? Zero.

16 Q. What are you doing for a living now?

17 A. I actually started another company on the side
18 to try to keep the payments coming in and doing other
19 things.

20 Q. Doing the same kind of work?

21 A. Kind of. Not really. I do fractional CMO
22 work for myself. I actually go and work with other
23 companies that are out there that need chief
24 marketing officer work, and I go in and help them. I
25 also have -- I also am working with the real estate

1 and mortgage industry trying to build that up and
2 bring that in like I did with the other industries
3 that I was working.

4 Q. And you're referring all those matters to
5 something in the advertising/marketing/digital space,
6 correct?

7 A. Yes, sure. Yes.

8 Q. Very good. I want to -- did you draft the
9 contract?

10 A. Actually, it is a contract that was drafted
11 previously and then expanded upon based on back and
12 forth with Tom Stevenson.

13 Q. Did you present the bones of this document,
14 the contract, to Stash? Was it your contract that
15 you presented to them?

16 A. Yes. Yes.

17 Q. What are the items within the contract that
18 are modified as a result of negotiations with Stash?

19 A. The items that were modified are really just
20 the compensation part. I don't have it in front of
21 me. I can't --

22 Q. I do. I'm sorry. That's Exhibit 1?
23 Exhibit 2.

24 A. So the compensation on Schedule 3 -- so
25 Schedule 3 was added. Schedule 1 was changed based

1 on their needs and their necessity of what they need
2 from us.

3 Q. And I'm sorry to interrupt, but Schedule 1
4 being just the services that were being performed?

5 A. That's correct.

6 Q. And then Schedule 3 having to do with
7 compensation?

8 A. That's correct.

9 Q. Very good. Carry on. Anything else that was
10 changed in there?

11 A. Let me take a look. I don't recollect
12 anything.

13 Q. You talked earlier about the fact that the
14 contract calls for Blind Acre to be the agent of
15 record or the advertising agent of record for Stash.
16 In the advertising world, what does that mean?

17 A. The advertising world for agency of record
18 means that we are the sole agency, marketing agency,
19 for Stash Storage.

20 Q. And that exclusively means what in practice?

21 A. In practice it means that we are the ones that
22 deliver, build, and do all the digital marketing and
23 traditional work for Stash Storage.

24 Q. And when you say traditional work, what do you
25 mean by that?

1 A. Anything from brand identity to traditional
2 work which would be considered billboards or
3 newspaper ads or --

4 Q. TV, radio?

5 A. Yes. They actually didn't do any of those.

6 Q. I understand but it is kind of an exclusivity
7 deal, we are your ad buyer, we are your ad placement
8 person, et cetera?

9 A. Yes.

10 Q. And if they go out and hire somebody else to
11 do ad placement then they're in breach of a contract?

12 A. Yes.

13 Q. And that exclusivity persists for three years?

14 A. That's correct.

15 Q. Under this contract?

16 A. Yes.

17 Q. Very good. Now I want to ask you a little bit
18 about the payment arrangements that are called for by
19 the contract. If you look at the -- I guess it's
20 Schedule 3? It's the last page of the contract. Let
21 me do a quick little minute of housekeeping if I may.
22 At the bottom of this you have Item 2, billing and
23 payment procedures, and that goes through several
24 subsections, A, B, C, D. It looks like at the very
25 tail end of the reimbursement, Item D at the bottom

1 of that page, it says, These expenditures include but
2 are not limited, and then it goes through a laundry
3 list of items.

4 It looks like it says, Delivery charges,
5 printing, photography, comma -- then there's nothing
6 else there. Is there a page missing from this
7 contract?

8 A. What you have is what's the agreement.

9 Q. Is there a page missing from the contract,
10 though?

11 A. I do not believe so.

12 Q. Is that a comma at the end of photography?

13 A. To be honest with you I can't even read it. I
14 don't know. I can't read if it's a period or if it's
15 a comma.

16 Q. Do you agree with me that it looks like it's
17 an unfinished laundry list of items rolling into the
18 next page?

19 A. It looks like a laundry list of items.

20 MR. TRAYWICK: I have a better copy. Do you
21 mind if I just show him this real quick?

22 MR. DURANT: Not at all. Can I see what
23 you're talking about?

24 Q. (BY MR. TRAYWICK) I don't want to belabor it,
25 but this is slightly better -- do you see what I'm

1 saying? I recognize that the one that was attached
2 to the contract was a little bit --

3 A. It does look like a comma.

4 Q. Do you know what else comes after that or
5 whether there are Items D, E, F, et cetera?

6 A. I don't believe there's anything extra.

7 Q. All right. Now, let's look at Schedule 3,
8 Item A, and it says compensation, correct?

9 A. Yes.

10 Q. All right. Now it says, Client will pay no
11 less than a monthly agency service fee of \$25,000 in
12 consideration of the services performed by the
13 company, right?

14 A. Yes.

15 Q. Purchasing a total of 500 points per month; is
16 that what it says?

17 A. Yes.

18 Q. All right. I want to try to understand how
19 you -- when you presented this contract whether you
20 interpreted this or understood this to be a flat fee
21 of \$25,000 per month?

22 A. A flat fee -- \$25,000 was the minimum.

23 Q. Minimum?

24 A. Correct.

25 Q. And it's purchasing 500 points. A point is

1 basically a unit of work; is that right?

2 A. Yes, a blended unit of work.

3 Q. A blended unit of work. And what that means
4 is that if you have one guy making 20 bucks an hour
5 and then one guy making 80 bucks an hour, you would
6 take the average of that and get 50 bucks an hour,
7 and that's how you do it?

8 A. That's right.

9 Q. So what the \$25,000 does is it purchases a
10 unit of work by Blind Acre for the benefit of Stash
11 Storage?

12 A. Correct.

13 Q. The next item says that -- so it's not a flat
14 rate. It's a fee for services in which \$25,000 just
15 establishes a minimum?

16 A. That's correct.

17 Q. Very good. Now, the next item deals with
18 unused points. How does that work if you could tell
19 us, please?

20 A. Again, I can't read this one.

21 THE COURT: Let me ask this question: Was
22 there any unused work done during the period of time
23 that you-all were working?

24 THE WITNESS: Yes, but it would roll over to
25 the next month.

1 MR. TRAYWICK: If I may, Your Honor, I'll just
2 read this briefly into the record. It's one
3 sentence. It says that unused points will roll over
4 to the following month existing for no more than 60
5 days at which time remaining points will void.

6 THE WITNESS: That's correct.

7 Q. (BY MR. TRAYWICK) What that means is, if they
8 paid \$25,000 -- if Stash pays Blind Acre \$25,000,
9 you-all will only do -- you-all being Blind Acre --
10 45 points worth of work, those extra five points,
11 which I guess is 2,500 bucks worth of work, is going
12 to be a credit to them the next month?

13 A. Correct.

14 Q. Very good.

15 A. When you say credit -- I just want to make
16 sure I'm understanding you -- so when you say credit,
17 that's not like it's coming off the \$25,000 for the
18 following month.

19 Q. Fair enough. I understand. But it becomes a
20 credit for any additional hours that might be
21 incurred, any additional points, even some work that
22 might be purchased?

23 A. That's correct.

24 Q. Great. When you looked through the
25 invoices -- well, let me just ask you -- when the

1 company, the client, Stash, purchases more points
2 than the 500 that they purchase with the \$25,000, how
3 is that dealt with under the contract?

4 A. So if they were to go over an invoice would be
5 sent out at the end of that month for the extra work
6 that was being worked on.

7 Q. Okay. Are there instances -- I think you have
8 all the invoices -- are there instances in which
9 you-all billed on the \$25,000, and billed them for
10 additional hours over and above -- additional points
11 over and above the \$25,000?

12 A. I do not believe so and here's why. I'll go
13 through it one more time just to ensure, but here's
14 why. So based on the relationship that I had with
15 Tom and their team -- I was being nice, which I
16 shouldn't have been so nice -- rolling those numbers
17 into the next month and not doing an additional fee,
18 just using the hours or points towards that work that
19 was from the previous month.

20 Q. Okay. Let's just see -- so again, we look at
21 the exhibit that you have on the internet there?

22 (Off-the-record discussion.)

23 THE COURT: Mr. Traywick, I'm going to give
24 you some leeway because I can, but I had this thing
25 set for half an hour and we're half an hour late.

1 MR. TRAYWICK: I'll try to move on.

2 THE COURT: I have one I have to do on WebEx
3 and I have some other folks coming in.

4 MR. TRAYWICK: Understood, Your Honor.

5 Q. (BY MR. TRAYWICK) Let me just ask you
6 generally -- it appears when I've looked through the
7 document that lists all the services that you-all did
8 for each month, that those numbers sometimes are
9 lower than \$25,000 like in the case of August and
10 September, but you still billed \$25,000.

11 A. Correct.

12 Q. And then there are some times when it's higher
13 and the contract calls for those hours of work or
14 units of work to be billed but they're not billed; is
15 that right?

16 A. That's correct because they would roll over,
17 and what I was doing was, again, being nice and using
18 the points from the next month for the work that was
19 done.

20 Q. Very good. You invoiced through -- Blind Acre
21 invoiced Stash through June of 2019, correct?

22 A. Correct.

23 Q. You stopped doing work in February of 2019,
24 but you invoiced them through June of 2019?

25 A. Yes.

1 Q. Did you invoice them for everything that was
2 due under the contract?

3 A. Let me just make sure of the answer. We
4 invoiced for what was in the contract. That's what
5 we invoiced for. Yes.

6 Q. Okay. It appears to me that --

7 MR. TRAYWICK: And Your Honor, this document
8 that shows sort of the ledger of invoices is at the
9 back of the electronic document, I believe.

10 THE COURT: All right.

11 THE WITNESS: The electronic document actually
12 has tabs, so within that electronic document you'll
13 see tabs all the way down.

14 MR. TRAYWICK: Your Honor, if I can hand this
15 up, I will -- this is where we're going.

16 THE COURT: Okay.

17 Q. (BY MR. TRAYWICK) This is the printed version
18 of what you-all have on the web. I think this will
19 make it easier. That is the -- the final page there
20 is what I understand to be the ledger and invoices.

21 Sir, you just told me you invoiced for
22 everything that was in the contract. I just want to
23 ask you: Is it true that the last invoice that
24 reflected the \$25,000 payment was due on
25 February 1st, 2019?

1 A. The last invoice that was due -- please
2 restate that.

3 Q. Yes, sir. If you look at the amount that was
4 invoiced on this document, it's got -- there's a
5 payment on January 18th, 2019, and then there's an
6 invoice on -- there's an invoice above that dated
7 12/1/18, due date 1/1/19, correct, and it shows
8 \$25,000 as the amount, correct?

9 A. Correct.

10 Q. The next one up again -- due date
11 February 1st, 2019 shows \$25,000, correct?

12 A. Correct.

13 Q. And then the last five invoices that you-all
14 sent, do any of them include the \$25,000?

15 A. They do not.

16 Q. What are the invoices that you sent in
17 February, March, April, May and June?

18 A. Late fees.

19 Q. Do you have late fees invoiced in some of
20 these previous invoices?

21 A. I do not.

22 Q. Why didn't you -- if you believed that you
23 were invoicing for everything owed under the contract
24 and you had already billed late fees, why did you
25 stop -- already invoiced late fees, why did you stop

1 invoicing the \$25,000 in January and February of
2 2019?

3 A. I don't know.

4 Q. Is it because the contract was terminated and
5 you-all --

6 A. No. The contract was not terminated.

7 Q. So you have no explanation?

8 A. Other than just trying to keep the lights on,
9 man.

10 Q. Who did the invoicing for you?

11 A. I did.

12 Q. So you believed when you were sending invoices
13 in February, March, April, May, and June of 2019, you
14 believed that the invoice should reflect \$25,000 but
15 you just didn't put it on there?

16 A. Yes.

17 Q. Is that because you're a nice guy?

18 A. Pretty much.

19 Q. All right. Is it true, sir, that you e-mailed
20 people at Stash Storage in July of 2019 saying that
21 you were owed well over \$100,000?

22 A. If you have an e-mail, I'm sure.

23 MR. DURANT: Objection.

24 MR. TRAYWICK: I'm just asking if that's
25 accurate.

1 THE COURT: Sustained. Sustained. Okay.

2 Let's move on.

3 Q. (BY MR. TRAYWICK) I want to ask you about
4 some of the allegations that you have in your
5 complaint.

6 THE COURT: Those are all deemed admitted, so
7 I'm going to stop that inquiry right now. I'm ready
8 to rule if you are. Anything further that you want
9 to be heard on, Mr. Traywick?

10 MR. TRAYWICK: If can just have five seconds?

11 THE COURT: Sure.

12 Q. (BY MR. TRAYWICK) You said that the
13 three-year term was an inducement to your signing the
14 contract, and you wouldn't have signed it without the
15 three-year term?

16 A. That's correct.

17 Q. So you wouldn't have signed a contract for two
18 years for a \$600,000 face value according to the way
19 you reviewed the contract?

20 A. No. Based on what I needed to do and what he
21 was requiring of us.

22 MR. TRAYWICK: Okay. Thank you. No further
23 questions. Thank you, Your Honor.

24 THE COURT: Yes, sir. Any follow-up at all,
25 Mr. Durant?

1 MR. DURANT: Just very briefly, Your Honor.

2 EXAMINATION

3 BY MR. DURANT:

4 Q. \$25,000 a month was invoiced from August
5 through February, correct? Every month?

6 A. That's correct.

7 Q. You didn't invoice it for March, April, May,
8 and June, but you continued to send invoices that
9 reflected late fees, correct?

10 A. Yes.

11 Q. And you continued to be told we will pay you
12 at that point?

13 A. Yes. Multiple times.

14 MR. DURANT: No more questions, Your Honor.

15 EXAMINATION

16 BY THE COURT:

17 Q. My only question has to do with those late
18 fees. They accrued every month and just built on
19 each other?

20 A. That's correct.

21 Q. What was the term on the late fee; do you
22 recall?

23 A. It's our standard.

24 Q. 18 percent per anum?

25 A. Yes.

1 Q. I didn't do the math on it. I just wanted to
2 make sure.

3 A. I just wanted to confirm it for you.

4 Q. Okay.

5 A. The answer is yes. It's 18 percent.

6 Q. And that figure is included in the \$187,589
7 calculation?

8 A. That's correct.

9 THE COURT: I don't have anything further.
10 Thank you very much, Mr. Holtkamp. You can step
11 down.

12 (Witness excused.)

13 THE COURT: Anything further from the
14 Plaintiff?

15 MR. DURANT: Just in argument, Your Honor, we
16 would ask for respectfully the sum-certain --

17 THE COURT: Whatever the originals are, just
18 leave them there. Bring the man's computer back to
19 him.

20 MR. DURANT: Thank you. Your Honor, the
21 argument is simple. This is a sum-certain contract
22 that was for 36 months. It was a materially induced
23 within the contract. My client would not have
24 entered it had that material term not been in there.
25 There was a \$25,000 baseline per month. The invoiced

1 amounts, we've come to show you and present to the
2 Court that the \$187,589.15 worth of unpaid invoices
3 in addition to \$750,000 in the months that
4 Mr. Holtkamp and Blind Acres was unable to obtain
5 payment under the terms of the contract -- the total
6 contractual damages we have are at \$937,589.15.

7 We have per our summons and complaint and the
8 default in this matter, which we had really wanted to
9 litigate, but -- we ended up here, and we are happy
10 to be here. We suggest that \$1 million would not be
11 excessive under the terms of this contract, treble
12 damages per the Unfair Trade Practice's Act and
13 material inducements that kept stringing my client
14 along to induce him to stay and work to provide
15 services while incurring a tremendous loss to
16 himself -- we believe trebling the contractual
17 damages at \$2,812,767.45 is a reasonable suggestion
18 and a suggested total damage award of \$3,812,767.45
19 is suggested to the Court.

20 THE COURT: All right. Very good.

21 MR. DURANT: Thank you, Your Honor.

22 THE COURT: Mr. Traywick, here's what I'm
23 going to do: I know where you were going with this.
24 Let me tell you how I'm going to rule and
25 understandably in a default damages hearing the

1 allegations of the complaint are deemed to be true.

2 Based upon that, I'm going to give you a
3 ruling. It's not going to be all of what you've
4 asked for, but I'm going to set it out for you so
5 that you're clear. Ultimately, you're going to have
6 multiple remedies.

7 Breach of contract I think is pretty
8 straightforward. That's \$937,589.15. Okay? I
9 believe the breach of contract removes then the
10 promissory estoppel as well as the quantum meruit
11 claim. I think those go away as a result of that.

① Breach of K
② Prom. Est.
③ Quantum M

12 The negligent misrepresentation claim is the
13 one I've been wrestling with. What I'm going to do
14 is I'm going to grant you the punitive damages on top
15 of the \$937,000 so \$1,937,589.15 is what you're going
16 to get there. All right?

17 Now, here's where I'm going to hurt you. I
18 didn't find the nine elements of fraud pled in the
19 fraud allegation, and therefore I'm not going to
20 grant fraud because frankly, I think this is a breach
21 of contract case. Bottom line, it's a breach of
22 contract case. I'm not going to grant you the SCUTPA
23 violation of treble damages and attorney's fees
24 because I see this as a private contract. I don't
25 see where the public is generally affected by this

1 arrangement between these two parties. So I'm
2 denying your relief under causes of actions Nos. 4
3 and 5, which is fraud and SCUTPA. I think the breach
4 of contract takes out promissory estoppel and quantum
5 meruit which were 2 and 6. I'm granting relief under
6 the first cause of action, breach of contract, as
7 well as the third cause of action, the negligent
8 misrepresentation. Okay? That's what I will do.

9 I would ask that you prepare an order along
10 those lines. Run that by Mr. Traywick so he sees it.
11 Mr. Holtkamp, sorry that happened in your business.
12 I'll tell you, it's very interesting, though.

13 THE COURT: Mr. Traywick, good to see you.
14 Good luck to you.

15 * * * * *

16 (The proceedings were concluded at 3:11 p.m.)
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I N D E X

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