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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2023-000155

Richard D. White, ...Appellant,

v.

FT Acquisitions, LLC; Commercial Food Service Repair, Inc.; and Kurt Herwald, ...Respondent.

RECORD ON APPEAL
VOLUME VI

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1 THE WITNESS: As a business owner, I think
2 that nobody believes in themselves more than
3 the owner. And I do think that, yeah, he
4 might, because he believes in himself. And I
5 think that he -- I don't know what's in his
6 mind, but I can certainly understand not
7 wanting something to go wrong and doing
8 everything you can to save it. I can
9 understand that. I've had to do some things
10 before when I had a business.

11 EXAMINATION RESUMED BY MR. SCHANEN:

12 Q. All right. This is a good transition
13 point. So if we want to take a short break. Mr.
14 White, you're the one doing all the work. Are you
15 hungry? Do you want to take 30 minutes? I'll leave
16 it up to you?

17 A. I'd like to get a drink and go to the
18 restroom, but besides that, I'm good.

19 MR. SCHANEN: Okay. Well, let's just take
20 five then, if that's okay with you, Devon.

21 MR. PURIEFOY: Yes, that's fine.

22 (Whereupon, a recess was taken.)

23 EXAMINATION RESUMED BY MR. SCHANEN:

24 Q. Mr. White, how did it come to pass that
25 you resigned your employment with CFR?

1 A. The beginning of November -- well, me and
2 my managers wanted to --

3 THE COURT REPORTER: Hold on. I just lost
4 you. Could you start from "My managers wanted
5 to."

6 THE WITNESS: That's okay. So me and the
7 people who -- my direct reports and the other
8 managers, we all felt that things were looking
9 up and the company was doing better, and that
10 we were starting to get some momentum behind
11 us. And I had been traveling -- and I don't
12 remember exactly -- but I was on the West
13 Coast, I believe. And I don't remember -- it
14 was in a whole bunch of things added up to one.
15 So, first of all, part of it was this e-mail
16 that Clark Mizell sent, that had the
17 spreadsheet, which I had never seen, but it was
18 the first one that we had gotten in a very,
19 very long time, and this one actually had a
20 balance sheet on it. But the other part of it
21 was, you know, how the sales were doing, and I
22 could see finally that the company wasn't doing
23 as well.

24 And when I did see the balance sheet and
25 the other things, I got like very sick to my

1 stomach with it. But it wasn't just that, it
2 was that and the conversation that I had. And
3 I don't remember the dates that I sent the
4 e-mail to Kurt. I think you have it in an
5 exhibit, so I'm sure we will see it.

6 But in any case, there was a conversation.
7 I had talked to somebody. One of my regional
8 directors or whatever had -- the way I remember
9 it, he couldn't find an ad he had placed for a
10 mechanic, and so he reached out to me and said,
11 "Hey, man, can you get with HR? I have these
12 job positions and I don't see them posted on
13 our site." So I'm like, "Yeah, no problem, it
14 just must be a glitch." So I went on and I
15 looked for myself and it wasn't there, but not
16 only was it not there, other ones that I knew
17 that were supposed to be there weren't there.
18 The ones that I knew that we had just put up
19 recently weren't there.

20 So I called -- and I don't remember who it
21 was. I called someone at the home office that
22 was responsible for that, and I don't remember
23 which woman it was there that was responsible
24 for it at the time, but I called them and I
25 asked them, "Hey, can you look into this and,

1 by the way, there are other ones that are
2 missing, too. So I need to go through all my
3 markets and make sure you have the right ads
4 up." And she said, "Well, Rick, we're not
5 posting any ads for anything, we're going to be
6 doing a bunch of layoffs next year, didn't you
7 know that?" And I'm like, "No, I didn't know
8 that." She goes, "Well, it's not like it's
9 supposed to be talked about, obviously, you
10 know. If Kurt hasn't talked to you about it,
11 he's going to be -- we're going to be doing a
12 bunch of layoffs right after the 1st."

13 But every conversation I had with Kurt,
14 and with Corey, and with Gordon in HR, and with
15 anyone else I had spoken to that should know
16 these kinds of things, no one had said a word
17 to me about it, nothing. Evidently, I was the
18 last person to find out, besides the people who
19 were going to be let go. And that, coupled
20 with the report that I got from Clark, it just
21 put me in a bad place, and I had been in such a
22 good one the previous weeks and months.

23 So I was upset, but I slept on it, and
24 then it gnawed at me. And I kept expecting
25 someone like Kurt to call me. I actually

1 reached out to him a couple of times, tried to
2 get him on the phone, he didn't take my calls.
3 I don't know if he was ducking me or if he just
4 didn't take them, but he was not replying to
5 me.

6 And after several attempts, I wrote an
7 e-mail to him explaining how I felt. And I
8 wasn't trying to resign, I was trying to make
9 him understand that he needed to stop listening
10 to everybody -- we needed to have -- we
11 basically needed to be on the same page. That
12 we were all on different pages, and there was a
13 disconnect that needed to be solved. And that
14 this idea of me and Corey Harrison trying to
15 run the company together wasn't working and it
16 needed to be stopped. I hope I answered you.

17 EXAMINATION RESUMED BY MR. SCHANEN:

18 Q. Sure. No, I appreciate that. You
19 mentioned the November 2nd e-mail that you got from
20 Clark Mizell with the financial information. Go
21 ahead and look at that. This is Exhibit 9.

22 Q. Okay. So is that on your screen?

23 A. Yes, sir.

24 Q. Okay. Is this the e-mail that you were
25 talking about?

1 A. Yes.

2 Q. All right. And Mr. Mizell, at that point,
3 was the CFO?

4 A. Right.

5 Q. Do you know why, at this point in time,
6 you were receiving the financials when you hadn't
7 before?

8 A. No.

9 Q. Was this the first time that these types
10 of reports had been sent to you?

11 A. Yes.

12 Q. Do you know how long Clark Mizell had been
13 working for CFR as of November 2nd, 2017?

14 A. A couple months.

15 Q. Is it possible that when he replaced Jean
16 Hodges, that it was Clark -- you know, that was what
17 precipitated you receiving these reports, was Clark
18 replacing Jean?

19 A. I don't -- okay. First of all, I think
20 that Clark did a lot to fix the software and get all
21 the accounting straight so that he could do this.
22 And actually, there had been conversations since the
23 day he was hired, and I had been helping point out
24 -- not fix them, but point out the flaws in the
25 system, you know, things that weren't jiving, right.

1 And he evidently did some investigation
2 himself and realized that it wasn't correct and he
3 had been working on them. I don't know what
4 prompted this other than -- again, I don't know why
5 he sent it to Corey, and me, and Kurt. I think he
6 wasn't supposed to.

7 Q. What did he mean by -- and I'm not asking
8 you to get inside Clark's brain, so let me ask it.
9 How did you interpret his statement, "This may raise
10 more questions than it answers, so please call or
11 e-mail me with questions"?

12 A. Right, and I know what he means. He means
13 that we haven't been able to trust any of the
14 financials before. He feels like these are a lot
15 better and he expects there to be problems with it
16 and he wants us to call him --

17 Q. Okay.

18 A. -- if we see something.

19 Q. Where were you when you -- I didn't mean
20 to interrupt.

21 A. That's all right.

22 Q. You can finish.

23 A. I think you were asking me where I was
24 going.

25 Q. I was just going to say, where were you

1 when you received this e-mail?

2 A. I don't know. Somewhere -- I was probably
3 not at home, because I traveled -- at that time, I
4 was -- like I said, we were -- things were looking
5 good, man. I was traveling around. I wasn't at
6 home, but I don't know where I was.

7 Q. Okay. When you received it, did you
8 review, in detail, these financials?

9 A. I probably didn't open it right away. The
10 way I remember looking at it was I was either in my
11 hotel room or at the airport when I actually opened
12 the Excel sheet and trying to digest it.

13 Q. When you finally did open it where you
14 were, at that point, did you dig into these and
15 review them in detail?

16 A. Well, I can just tell you what I know, how
17 I know I always read these. I skim through the
18 things that were important to me at the time, and
19 what was important to me at the time was what the
20 sales were. And I wanted to see the different tabs
21 and whether he had broken it out to departments and
22 divisions and whether that was fixed or not. And I
23 don't know, without opening the Excel sheet, whether
24 he actually did do that, but I know that's what I
25 did. I know I went down the sales side, and then I

1 went down -- which I was really happy to see, not
2 just the expense side or corporate overhead, we
3 actually had a balance sheet and everything else.
4 And, actually, the balance sheet is what upset me.

5 Q. So you reviewed the balance sheet?

6 A. Yes. I wouldn't say I studied it, but my
7 eyes went right to the part that mattered, which was
8 debt and shareholder's equity, because I had just
9 become a shareholder -- I mean, I was expecting it
10 to be good news, not bad, honestly. I thought we
11 were good.

12 Q. All right. We'll scroll then to the
13 balance sheet, and particularly, the liabilities,
14 which is on page 6 of this attachment. So was this
15 the page that was concerning to you?

16 A. Right. So if I'm reading this, the first
17 time I noticed was my loan wasn't called out on it.
18 So, obviously, when someone owes you, you know, a
19 lot of money, you expect that that note would be put
20 on here, and it's not. But then I see \$27 million
21 and some change just in the long-term liability
22 column, and that upset me. That was the first thing
23 I noticed, and the second thing was the total
24 shareholder equity being in the negative.

25 Q. Let's go to the top part.

1 A. Sorry. Go ahead.

2 Q. If you look at -- so there's notes payable
3 current and there's notes payable as a long-term
4 liability. You don't believe that your note is
5 reflected in either of those?

6 A. I don't know. It's not its own -- it's
7 not called out individually, is what I mean. So it
8 may be hidden in there somewhere, I don't know.

9 Q. Okay. You see the two entries I'm talking
10 about? Under "current liabilities," there's a notes
11 payable?

12 A. Yes.

13 Q. And then under "long-term care liability"
14 --

15 A. Neither one of those amounts is even close
16 to what he owed me, so it's not one of these.

17 Q. Okay. And you don't believe that some
18 combination of those two, between current and
19 long-term?

20 A. It may be, it may be. But you would think
21 it would be a note that they were tracking by
22 itself, I would think, but hey.

23 Q. And then the next thing that you
24 mentioned, I think, was the long-term liabilities?

25 A. Right.

1 Q. What stood out to you there?

2 A. Well, specifically the MCP. I didn't know
3 who that was. I know now it's McLarty, I assume.
4 The Fifth Third seemed about right, but again, I
5 just was shocked at the \$11 million, and I was also
6 shocked at the stock put.

7 Q. Okay. So when you looked at this balance
8 sheet, first of all, you had realized that PNC Bank
9 and Leeds' loans had been paid off, correct?

10 A. If I'm studying it now, yeah, but I wasn't
11 looking. I just looked at the big numbers and
12 wanted to see who they were.

13 Q. Okay. But you can see the Fifth Third
14 Bank term loan is called out there for over \$7
15 million, correct?

16 A. Uh-huh.

17 Q. And that a term loan for MCP for \$11
18 million is listed there, right?

19 A. Yes, sir.

20 Q. Okay. So is it your testimony that you
21 saw those but didn't know who those entities were?

22 A. I didn't know who -- well, no, I knew who
23 Fifth Third is. I assumed that under current
24 operating liabilities, that lock, Fifth Third, was
25 our credit line, that's what I assumed. And it's a

1 little fuzzy. I can't read that. I think it says
2 acquisition payable. I didn't know what acquisition
3 payable was, but I assumed it was something to do
4 with the -- oh, man, I can't remember -- the company
5 that we bought in 2015. The name is escaping me for
6 right now. But I assumed it was something to do
7 with where we probably owed Franke Coffee that money
8 for some reason, but who MCP was, I didn't know who
9 they were, but I didn't necessarily care. I mean,
10 it's debt.

11 Q. Okay. But you knew that you would have
12 recognized that the company had a long-term loan
13 from Fifth Third when you saw this?

14 A. Yes.

15 Q. And that they had a long-term loan from
16 somebody called MCP?

17 A. Yes.

18 Q. Did you ask who MCP was?

19 A. No.

20 Q. Okay. And what -- explain, in the
21 shareholder's equity section, what was concerning to
22 you.

23 A. The total at the bottom, retained earnings
24 of almost a negative \$11 million; net profit of
25 negative three; dividends of almost half a million

1 dollars negative; common stock, which I knew my
2 money had just bought, which didn't really concern
3 me, except that there was preferred stock and who
4 was that, and why wasn't I offered that. I was
5 smart enough to know that I didn't get it. And
6 that's about it, man. Looking at the company I just
7 put a bunch of money into and realizing not only was
8 my \$550,000 not zero, but my net share of that was a
9 huge negative, man, over \$5 million, I think that's
10 what it says, \$5,819,932.07, so that's what I was
11 feeling when I opened it up.

12 And to tell you the truth, man, that's
13 what upset me is I wasn't expecting to see this. I
14 was expecting to see something in the positives,
15 because all I heard up until this point is how good
16 we were doing and how much money we were going to
17 sell the company for in the not-too-far future.

18 Q. And so what did this tell you -- when you
19 saw this balance sheet, what was your impression
20 about the financial condition of CFR?

21 A. That we weren't stable and there was a big
22 problem. That it wasn't just a credit line problem.
23 We weren't making money, and we were losing money,
24 and not just a little bit.

25 Q. When you saw these financials, did you

1 believe that you had been misled about your
2 investment?

3 A. At the time, I felt upset about it. I
4 don't know if I felt misled. I was sick about it
5 though. I mean, I just couldn't believe that I had
6 just put money into this. I don't know how I felt,
7 whether I felt misled or not.

8 Q. After you saw this, did you go to Kurt
9 Herwald or call Kurt Herwald and say, you know,
10 "What in the world? You misled me about my
11 investment and, you know, look at this." Did you
12 have that conversation?

13 A. I'm sorry.

14 Q. Go ahead.

15 MR. PURIEFOY: Go ahead, Rick. You can
16 answer.

17 THE WITNESS: I did try to call him
18 several times. And like I stated before, he
19 didn't answer me. I don't know the date of the
20 e-mail that I sent, when I told him that I had
21 been trying to get ahold of him.

22 EXAMINATION RESUMED BY MR. SCHANEN:

23 Q. What was the purpose of your call to him?

24 A. To talk to him about -- well, I mean this,
25 this, what's going on, how can we possibly be doing

1 this bad. I mean, this picture right here that
2 you're seeing is not what he or anybody who worked
3 for him knew. You know, this is not what Gordon
4 came to work for, this is not what Clark came to
5 work for, none of us, none of us thought the company
6 was that bad. The only person who might know was
7 Clark, because he was the CFO, because it's his job
8 to know, but everybody else, they didn't know this.

9 Q. Would Jean Hodges have known this before
10 she left?

11 A. She should have. I assume she did, yeah.

12 Q. Okay. Was your call -- when you were
13 trying to call Kurt, was your concern about the
14 financial condition of the company that you were
15 working for, or were you calling to talk about your
16 investment specifically?

17 A. It was a little bit of both, but I would
18 -- I didn't think of it so much then as the
19 investment side except -- I don't know. I don't
20 know, man. It's just been too long. I don't know
21 what I was actually -- I mean, my head was spinning
22 with it. Basically, someone just pulled the carpet
23 out from under me, man. I mean, this was the
24 company that I started, my baby, you know. It
25 didn't matter who owned it, I still didn't feel good

1 about it being in bad shape.

2 Q. Okay. So do you feel like on November 2nd
3 when you received these financials, that was the
4 first time that you were fully aware of the
5 company's financial condition?

6 A. Yes. And I don't even know if I read it
7 that day. But when I did read that, that's the
8 first time I knew we were -- that there was a
9 problem. And I will remind you again, it's because
10 of everything that we were told. Plus, we were
11 working with -- you know, with Warburg Pincus to buy
12 a \$250 million service company.

13 Q. You've characterized this in your
14 discovery responses as showing that the company was
15 insolvent. What does that term mean to you?

16 A. It means that it wasn't worth what the
17 shareholders had put into it, that's how I looked at
18 it. You look at what it would be worth and you say
19 how much is its debt, or what can you borrow against
20 this to stay afloat. I mean, I'm not going all that
21 technical on it. It's just you couldn't sell it for
22 what it owed. How is that?

23 Q. Okay. So you tried to call Kurt several
24 times, you didn't get him, so you sent an e-mail to
25 Kurt?

1 A. Yes.

2 Q. And that is what we'll mark as Exhibit 10
3 -- or already has been marked as Exhibit 10. I'm
4 sorry. We'll scroll through that and you can tell
5 me if you recognize this as the e-mail thread that
6 you're referencing.

7 A. It is.

8 Q. Okay. So we'll start at the top. So this
9 is an e-mail from you, Rick White, to Kurt on
10 November 13th, 2017, is that correct?

11 A. Yes.

12 Q. Okay. And what was your purpose in
13 sending this e-mail?

14 A. The main purpose was to get Kurt to
15 realize that I could help him, in that he needed to
16 clarify the roles between me and Corey so that I
17 could help. That was the gist of it.

18 Q. Okay. Was this your first actual
19 communication with Kurt, since you saw the finances
20 that were sent to you -- the financials that were
21 sent to you on November 2nd?

22 A. The best I can remember, I could never get
23 him on the phone. We played a little bit of phone
24 tag, which is why I don't know if he was necessarily
25 dodging me, we were both busy. I don't think that

1 we had a conversation and I don't believe we had an
2 e-mail exchange in between those. We may have had
3 an e-mail, but I'm very sure that we did not talk on
4 the phone, other than maybe a voice mail back and
5 forth or something.

6 Q. So just looking at the first paragraph of
7 this letter, you say, "Hey, Kurt, I was going to
8 just call you and bring this up, but I'm torn
9 between putting you on the spot on the phone and not
10 being professional and writing you what I wanted to
11 discuss ahead of time." Doesn't that suggest that
12 you hadn't tried to call him?

13 A. No, it just -- no, I had tried to call
14 him. And, you know, every day that it went longer
15 and every hour that it went longer, you know, what I
16 would have maybe said just a matter of feelings,
17 just being honest, your feelings change and you get
18 less angry and you get more -- maybe even more
19 articulate, or whatever, and then I realized the
20 conversation might go wrong and I might -- I might
21 say something that I didn't mean.

22 Q. So the -- go ahead.

23 A. No, you asked me to tell you. I was
24 worried that -- you know, yeah, I tried to get ahold
25 of him and he tried to call me back, "I was just

1 sorry I missed your call." I mean, I think when I
2 was getting ready to call them again, I thought, you
3 know, maybe this isn't going to go well, maybe I
4 should put it in writing, so that's what I did.

5 MR. SCHANEN: Hold on a second. Off the
6 record.

7 (Whereupon, a discussion was held off the record.)

8 MR. SCHANEN: Back on the record.

9 EXAMINATION RESUMED BY MR. SCHANEN:

10 Q. So at the time that you sent this e-mail,
11 had you already decided to resign?

12 A. No, I didn't want to resign.

13 Q. And in this e-mail, did you give Kurt
14 Herwald an ultimatum?

15 A. Yeah, I did.

16 Q. And what was that ultimatum?

17 A. That he needed to straighten out the thing
18 with Corey and put me in charge of what --
19 basically, do the job that he had told me I was
20 going to be doing or I couldn't do it anymore. I
21 couldn't work in this structure of where things
22 would happen at the home office behind my back and,
23 you know -- you can read it yourself. I don't know
24 how to explain it other than how I was feeling.
25 That's how I was feeling, man. I couldn't be -- I

1 couldn't do this anymore with him.

2 Q. So you felt like you needed to be the COO
3 of the company for the company to succeed?

4 MR. PURIEFOY: Object to form. You can
5 answer.

6 THE WITNESS: Yes, I did.

7 EXAMINATION RESUMED BY MR. SCHANEN:

8 Q. Okay. And at the time, is it fair to say
9 you were roughly equivalent with Corey? How did you
10 view that?

11 A. It wasn't supposed to be that way. That
12 wasn't how -- that's not how it was told to both of
13 us, but we had -- between Corey and I, we had a good
14 working relationship. I had nothing against him.
15 He had the experience that I had and his experience
16 was only in the C store. And the only thing he knew
17 was what he had known by working there. And I was
18 the guy who started the company from scratch and had
19 built it into a large company, and I knew what I was
20 talking about, and I was tired of pretending like we
21 were equals when we weren't.

22 Q. Okay. So you said it was -- that isn't
23 how it was told to you or how it was supposed to be.
24 Were you supposed to be above Corey?

25 A. I wouldn't say above, but he was supposed

1 to be in sales and marketing and I was supposed to
2 be in ops. And every time I turned around, he was
3 doing something in ops.

4 Q. Okay.

5 A. And again, I don't think -- I mean, I'll
6 tell you the truth. I don't believe that Corey had
7 any bad intent or anything like that. I just think
8 that if you put two people in a position where
9 they're going to make decisions and you don't
10 straighten out what their roles are, these things
11 happen, and it was Kurt's fault, not Corey's.

12 Q. So you've testified and in your discovery
13 responses that after you saw how poor of a condition
14 the company was in after you received the financials
15 that we looked at, you decided to resign. This
16 e-mail never references those financials, does it?

17 A. I didn't tell you that's how I decided to
18 resign.

19 Q. Well, we can look --

20 A. I told you it was part of my -- it was
21 part of how I felt about the company. You know, it
22 was part of it, but I wasn't leaving because of it.
23 Right here in writing is why I left.

24 Q. Okay. So you left because you felt like
25 what was best for the company was for you to be

1 named COO, and Kurt wouldn't agree to name you COO?

2 A. I didn't care about the title. What I
3 cared about was what I wrote in here, about how --
4 what happens to me every single day is that -- I
5 mean, if you scroll down a little bit, I could read
6 it. But, you know, almost on a daily basis, someone
7 from IT would call me and something that we had
8 discussed on how the software was supposed to
9 operate and work wasn't working that way, because
10 after I had finished my discussion with them, Corey
11 had walked in and injected himself in the
12 conversation, without knowing all the details, and
13 without the life experience that I had, and he would
14 change it and it would break something, and then I
15 would have to fix it, and it was over, and over, and
16 over, it happened all the time. And no matter how
17 many nice, polite conversations I had with Corey, it
18 still happened. And I don't know the reason. I
19 don't know whether Kurt put him up to it or not. I
20 don't know. I don't know if he was trying to upset
21 me. Looking back at it, you know, none of it makes
22 any sense why he would pay two people and like this
23 kind of friction, but he seemed to like it. And if
24 you read the words in here, it says exactly what I
25 want to happen, and you can see what my intent was.

1 I was trying to help and he would not allow me to
2 help.

3 Q. Okay.

4 A. And let me finish that thought real quick.
5 So from the minute we did our merger until the time
6 this e-mail was written, almost from day one, people
7 in accounting made mistakes. And almost from day
8 one, we were talking about making changes in
9 software, that was a mistake. Changes in operation
10 structure, that was a mistake. And I went into this
11 with my eyes open trying to say, "You know what,
12 Rick, it's not your company anymore. You don't get
13 to be the guy who says this, you have to roll with
14 it."

15 And so I just felt like you know what?
16 These are smart people. After they make enough
17 mistakes, they'll realize that, you know, that every
18 time they say something and I tell them, "Hey, you
19 know what, I've already tried that, here is how it's
20 going to end up. It's not going to work the way you
21 think, because this industry is different from yours
22 and here is why," and eventually, they start
23 listening to me and stop making mistakes. You know
24 what? They never did, ever. And this e-mail is
25 another one. I tried again and they still wouldn't

1 listen, so there you go.

2 Q. When you laid your thoughts out to Kurt in
3 this e-mail on November 13th, why did you not
4 mention that you had received these financials and
5 feel like you had been misled as to the financial
6 condition of the company?

7 MR. PURIEFOY: Object to the form. Go
8 ahead and answer it, Rick.

9 THE WITNESS: The reason is because I was
10 not trying to make him feel bad. I wasn't
11 trying to -- I wasn't trying to pile on. This
12 is my honest attempt for him to see the company
13 through my eyes. And you'll notice that second
14 paragraph at the bottom there where, you know,
15 it wasn't like he didn't know the company
16 needed a CEO. You know, he knew it and he put a
17 guy in there that sucked at it. And, actually,
18 Kurt had me go to Ohio and investigate why we
19 were having problems, and when I came back and
20 told him, "I don't want to tell you this, but
21 he isn't doing anything," and that's why, you
22 know, he got rid of Keith. And he got rid of
23 Keith and he still didn't put me in the spot,
24 the guy that figured it out. I don't know what
25 was going on in his head, man, but my words are

1 what they are. This is exactly how I was
2 feeling. And I was doing everything I could to
3 say, "If you'll let me help you, I will, but
4 I'm not going to just stand up here and do this
5 anymore." I'm not going to have people calling
6 me upset about the brand going sideways and
7 just smiling and having his back anymore. I
8 couldn't do it.

9 EXAMINATION RESUMED BY MR. SCHANEN:

10 Q. You mention in this e-mail that you need
11 to -- that you believe that the credit hold issue
12 needs to get resolved?

13 A. Yes.

14 Q. What does that mean?

15 A. That means he needs to hurry up and do
16 what he told me he was going to do in September,
17 which he told me a couple weeks or a couple months,
18 and I'm writing this in November and he still hadn't
19 solved it. He knew what it meant. It was because
20 he still had not done whatever it is he needed to do
21 at the bank, so that we had cash again, so that we
22 could get off credit hold.

23 Q. What credit hold are you talking about?

24 A. I'm sorry?

25 Q. What credit hold are you talking about?

1 A. Nothing specifically. In general, credit
2 holds with various manufacturers and vendors.

3 Q. Okay. How long had that been going on?

4 A. On and off that whole year. It would get
5 better and everyone would see the light, so to
6 speak, and then we'd find out, Oh, well, yeah, it
7 got better over here, but these vendors are upset,
8 or all the vendors are okay, but the manufacturers
9 are upset. It was like playing whack-a-mole
10 honestly, to figure out who was upset with us today.

11 Q. Okay. So you sent that e-mail on the
12 13th, and the next day Kurt Herwald responded, and
13 his response is on the next page. And, basically,
14 it said it wasn't the right time, in his view, to
15 consider that move, is that correct?

16 A. That's right.

17 Q. And how did you interpret that -- how did
18 you feel about that response?

19 A. I interpreted it the way -- so what he
20 just said here is what he was verbally saying when I
21 would bring things up verbally with him. And he was
22 just kicking the football down for another couple of
23 months, and then he would deal with it when I got
24 upset again, and I was done begging him to help him.
25 That's probably the best way to say it. You know,

1 you beg and plead with someone, let me help you, and
2 they won't listen. This is just him kicking a
3 football. I didn't believe him.

4 Q. If Kurt had written back and said, Yeah,
5 let's give it a shot, we'll promote you to COO, and
6 we'll take your suggestions and run with them, would
7 you have stayed with the company?

8 A. Yep.

9 Q. Okay. When you saw his actual response on
10 the 14th, was that when you decided that you would
11 resign?

12 A. Yes. It took me what? Look at the time
13 there. It took me two hours and 15 minutes to say
14 that. I had already promised myself if he didn't
15 say yes, that I was going to make myself leave,
16 because I was completely depressed, upset, and I
17 wasn't me. I was so upset about what I had gone
18 through the last three and a half years with him and
19 the company, I just couldn't do it anymore. If he
20 wasn't going to let me -- you beg and your plead --
21 I tried every strategy there was to get these people
22 to listen, and they wouldn't listen.

23 Q. Okay.

24 A. That's why it only took me two hours.

25 Q. And so you informed them -- okay. You're

1 resigning. Let's work on the exit strategy?

2 A. Yep.

3 Q. Okay. And then Kurt responded a couple
4 days later and said that, you know, he would have to
5 work with his lawyer and get board approval, and
6 they would send over the documents relating to a
7 package for you, is that right?

8 A. Yes.

9 Q. Okay. Then we scroll down a bit. On
10 November 29th -- well, let me ask. So what was the
11 last day you actually worked for the company?

12 A. I don't remember, man. I assume it was
13 the day I got the letter from -- I think it was the
14 day that -- well, I know it was. Whatever day it
15 was that Gordon said -- this one here, I guess. Let
16 me see. Pay and vacation. Yes, this was my last
17 day. Because he says what he considered my last day
18 right here, "with the 29th considered your last
19 day." Yeah, I was so important to them that they
20 cut my insurance off that same day. Nice guys.

21 Q. So in an e-mail from Gordon Miller to you
22 dated November 29th, 2017, you were forwarded the
23 severance agreement and release, is that correct?

24 A. Yes.

25 Q. Okay. And that was sent by Gordon Miller.

1 What was Gordon's position?

2 A. I think it was director of HR. I'm pretty
3 sure that's what his name is -- his title.

4 Q. Okay. Other than the communications that
5 we've seen in this thread, did you talk with anyone
6 about your release before it was sent by -- what the
7 terms of the severance agreement and release would
8 be before it was sent to you?

9 A. No, the e-mail -- this e-mail chain is
10 probably it. I might have -- I might have talked to
11 Gordon on the phone, I don't remember, but I didn't
12 talk to anybody else.

13 Q. Okay. And so you received the release on
14 November 29th at 4:56. That same day at 8:27, you
15 wrote back and said that you would get it notarized
16 and back to him, you talked about a few other
17 things, including keeping your laptop, and an issue
18 with your 401(k), is that correct?

19 A. Yes.

20 Q. And then on December 1st, 2017, you sent
21 the release agreement back digitally signed and said
22 that you would get it notarized the first of the
23 week, is that right?

24 A. That's right.

25 Q. Okay. So let's look at the release. This

1 is Exhibit 11. And this exhibit actually has two
2 copies of the release. We'll look -- just scroll
3 down about halfway on this first copy to the
4 signature page. Is this a copy of the release that
5 you signed and had notarized on December 5th, 2017?

6 A. It looks like it, yeah.

7 Q. Okay. And that's a Virginia notary?

8 A. Yes.

9 Q. Okay. And it also was executed
10 electronically, it looks like, by Kurt Herwald as
11 CEO of CFR on November 29th, 2017, correct?

12 A. Right.

13 Q. Okay. And then you initialed each page of
14 the agreement as well?

15 A. Yes.

16 Q. Okay. Now, if we keep scrolling down,
17 we'll see another copy of the release. And on each
18 page where it has initials, it has an electronic
19 initial. Do you see that?

20 A. Yes.

21 Q. And then on the last page, it has your
22 electronic signature?

23 A. Yes.

24 Q. Dated November 30th, 2017?

25 A. Yes.

1 Q. Okay. And so you received it on the 29th.
2 On the 30th, you executed electronically and sent
3 it back on the 1st, is that right?

4 A. Yes.

5 Q. And then you also signed it and had it
6 notarized and sent the wet signature version back in
7 some time on or about the 5th of December 2017, is
8 that right?

9 A. Yes.

10 Q. So going back up to the top of the
11 document, it's called a "General Waiver And Release
12 Agreement," correct?

13 A. Yes.

14 Q. And is that consistent with what we saw in
15 your employment agreement that you had to execute as
16 a condition of receiving severance?

17 A. It is.

18 Q. Okay. Before you signed this agreement,
19 did you have it reviewed by an attorney?

20 A. No.

21 Q. Okay. Did you not think that was
22 important?

23 A. No, because it's the same one that when I
24 would be a manager, the same one we would have them
25 sign.

1 Q. It was a standard agreement that other
2 employees signed?

3 A. Yes.

4 Q. Okay. So if we look at section 1, it
5 deals with severance benefits. In section 1.a, does
6 that reference your employment agreement dated July
7 28, 2014?

8 A. Yes.

9 Q. And that's the agreement that we looked at
10 earlier?

11 A. Yes.

12 Q. Okay. And does it reference here that the
13 severance amount -- the severance payments would be
14 in the amount of \$300,000 payable over a three-year
15 period?

16 A. Yes.

17 Q. Okay. And is that consistent with what we
18 saw in the employment agreement?

19 A. Yes.

20 Q. Okay. Did CFR make the severance payments
21 to you, as promised in this agreement?

22 A. They did.

23 Q. Okay. All \$300,000?

24 A. Yes.

25 Q. Okay. Did they make these payments on

1 time?

2 A. Yes.

3 Q. Okay. Is there anything in this agreement
4 that CFR said it would do that it didn't do?

5 A. I don't know. I'd have to read every word
6 of it, but I don't believe so.

7 Q. Okay. Let's look at section 3, the
8 release. Did you understand that by signing this
9 agreement, you were releasing claims against the
10 company?

11 A. Yes. All the something I knew about, yes.

12 Q. What do you mean by that?

13 A. Yeah. I mean, this was all about
14 employment. They had not done anything to me that I
15 had any kind of employment claim against them at
16 all. I didn't have a complaint with my employment,
17 as far as what this waiver is for.

18 Q. Well, why do you believe that this release
19 only relates to your employment?

20 A. Because that's what it was given to me
21 for. It's a severance agreement.

22 Q. Okay. I understand.

23 A. If you want to go one step further, it's a
24 severance agreement that's related to an employment
25 agreement. It has nothing to do with anything else.

1 Q. Okay. You say that it has nothing to do
2 with anything else. What I'm asking you is what is
3 that based -- what is that statement you just made
4 based on, that it has nothing to do with anything
5 else?

6 A. These aren't given to people unless
7 they're ending their employment with the company.

8 Q. Yes.

9 A. It's about protecting the company for
10 employment-related complaints. That's what it's
11 for.

12 Q. Okay. Well, let's look at the actual
13 language of the agreement. So exhibit -- I mean,
14 section 3, the release, says, "Executive hereby
15 releases, acquits, and forever discharges the
16 company," and other people that are named there that
17 are referred to collectively as "the company," "from
18 any and all actions, causes of actions, claims,
19 demands, losses, claims for attorneys' fees, and all
20 other forms of civil damages, occurrences, and
21 liabilities of any kind whatsoever, both known or
22 unknown, arising out of any matter, happening, or
23 thing, from the beginning of time to the date this
24 agreement is signed by executive." Do you see
25 that?

1 A. I see it.

2 Q. Okay. Where in that language does it say
3 that the claims you are releasing are limited to
4 claims arising out of your employment?

5 A. Look, man, I just know what it's for. And
6 even your own client didn't think it said that
7 either, so...

8 Q. Okay.

9 A. And even Bo Russell, who wrote it. I'm
10 answering your question.

11 Q. No, that wasn't answering my question. My
12 question is: Where in the language that I just read
13 does it say that it's limited to claims arising out
14 of or related to your employment?

15 A. We will just have to disagree, man. I
16 don't agree with you.

17 Q. I'm asking -- no, you don't get to do
18 that. I'm asking you to point to the language that
19 says that or tell me that there isn't any.

20 A. I can't point to one.

21 Q. Okay. It actually says that you're
22 releasing all claims against the company, doesn't
23 it?

24 A. That's what it says.

25 Q. Okay. And, in fact, it says, "All claims,

1 from the beginning of time to the date of this
2 agreement," right?

3 A. Yeah, it says that.

4 Q. Okay. And the beginning of time goes back
5 a long way before you started your employment with
6 CFR, doesn't it?

7 A. It sure does.

8 Q. Okay. It also specifies that what's being
9 released are claims, whether they're known or
10 unknown, doesn't it?

11 A. That's what it says.

12 Q. If this agreement had been intended to
13 only release claims relating to employment, could
14 words to that effect have been added that specified
15 that?

16 A. I'm sure they could be.

17 Q. If you go down to the bottom of this
18 agreement, there's a box that says, "Please read
19 this agreement carefully." Do you see that?

20 A. Yes.

21 Q. Okay. And it says it contains the release
22 of all known and unknown claims. Do you see that?

23 A. Yes.

24 Q. Does that say that the claims that are
25 being released are limited to claims related to your

1 employment?

2 A. It doesn't say that.

3 Q. Okay. It also says that the company
4 advised you in writing to consult an attorney prior
5 to signing this agreement. You didn't consult an
6 attorney?

7 A. No.

8 Q. Okay. If you would have wanted to, could
9 you have?

10 A. Yes.

11 Q. In the next box, it says that you've been
12 provided at least 21 days to consider this agreement
13 and waive and release all claims and rights. Do you
14 see that?

15 A. I see it.

16 Q. And it says that after you signed, you
17 would have seven days to revoke the agreement. Do
18 you see that?

19 A. I do.

20 Q. Okay. Did you understand you had 21 days
21 to consider the agreement and seven days to revoke
22 it once you signed?

23 A. I did.

24 Q. Okay. And after you signed the agreement,
25 did you revoke it?

1 A. No.

2 Q. Okay. I want to make sure I understand
3 the basis for your claim, that this agreement only
4 relates to claims arising out of your employment.
5 And you've told me -- well, let me just ask a
6 question. What statements or representations, if
7 any, were made to you about the intent of this
8 agreement?

9 A. None.

10 Q. Okay. If we look back up at the
11 "Release," section 3, when we look at the parties
12 who are being released, it identifies the company,
13 its parent company, subsidiaries, divisions,
14 affiliates, and controlling persons, if any, their
15 officers, directors, board members, shareholders,
16 members, and lists some other people. Would you
17 agree that that listing of parties who are included
18 within this release includes CFR?

19 A. Yes.

20 Q. Would you agree that it includes FT
21 Acquisition?

22 A. Yes.

23 Q. And would you agree that it includes Kurt
24 Herwald?

25 A. Yes.

1 Q. Okay. If you look at section -- the last
2 section of paragraph 3, it states, "Executive
3 further stipulates, such stipulation being expressly
4 understood by executive as material to the
5 agreement, that he has not engaged in, nor is he
6 aware of, any misconduct or wrongdoing on the part
7 of the company of any kind or any regard.
8 Executive's stipulation in this regard is material
9 to the Company's willingness to enter into this
10 agreement and provide executive the benefits
11 provided thereunder." Do you see that?

12 A. I see it.

13 Q. Okay. And so when you signed this
14 agreement, did you stipulate that the company --
15 that you weren't aware of any misconduct or
16 wrongdoing by the company?

17 A. Yes.

18 Q. Now, at the time you signed this document
19 in November, the electronic version on November 30th
20 and the -- let me make sure I have the dates right.
21 The electronic version on November 29th and the wet
22 signature version on December 5th, any
23 representations that had been made to you about
24 entering into the note, those had long since been
25 made, correct?

1 A. Can you say that again?

2 Q. The statements that Mr. -- any statements
3 that Mr. Herwald had made about entering into the
4 promissory note, those had been made back in 2014,
5 correct?

6 A. Yes, sir.

7 Q. Okay. Which was long before you signed
8 this release?

9 A. Yes.

10 Q. Okay. At the time you signed this
11 release, FT Acquisition, in your view, had already
12 breached the note, had they not?

13 A. Looking back at it, yeah.

14 Q. Okay. And you made your \$550,000
15 investment in CFR on September 11th, 2017, correct?

16 A. Yes.

17 Q. Okay. So you had made the investment
18 before you signed this release?

19 A. Yes.

20 Q. And any statements that Mr. Herwald had
21 made that led you to invest, those statements had
22 been made before you signed this release?

23 A. Yes.

24 Q. And if you believed that Mr. Herwald
25 should have given you additional information to

1 consider in deciding whether to invest, you believe
2 that information should have been provided to you
3 before you invested, correct?

4 A. Yes.

5 Q. By the time you signed this release, were
6 you aware that certain vendors had placed CFR on
7 credit holds?

8 A. Yes.

9 Q. Were you aware that CFR had already missed
10 four payments, due to you under the note?

11 A. Yes.

12 Q. And you had already received those
13 financials on November 2nd that gave you the full
14 picture of the company's financial condition?

15 A. I wouldn't say full picture, but a
16 picture.

17 Q. Okay. I'll rephrase it. By the time you
18 signed this release, had you received the company's
19 balance sheet, that you found extremely alarming?

20 A. Yes.

21 Q. And with knowledge of all these things,
22 you decided to execute this release?

23 A. Yes.

24 Q. Do you believe that by signing this
25 agreement, CFR became obligated to pay you \$300,000

1 in severance?

2 A. Yes.

3 Q. If they hadn't paid that you \$300,000, do
4 you believe they would have complied with the
5 agreement?

6 A. No.

7 Q. So you think CFR should be held to the
8 terms of this document that it signed?

9 A. Yes.

10 Q. Do you think you should be held to the
11 terms of this document you signed?

12 A. Yes.

13 Q. Do you believe that the claims that you're
14 asserting in this lawsuit were released by this
15 agreement?

16 A. No.

17 Q. Why not?

18 A. I just don't -- I don't believe it. You
19 can write -- I believe --

20 Q. What is your answer?

21 A. As things go on, I think more and more,
22 no. Just trying to pretend like it does, upsets me,
23 too.

24 Q. So based on the language of the agreement
25 that we read today, do you think the claims that

1 you're asserting in this lawsuit are released by
2 that language?

3 A. Can you ask that again?

4 Q. Okay. I understand you believe that this
5 release only relates to claims arising out of your
6 employment. You said that, right?

7 A. That's right.

8 Q. Okay. And that's because this was given
9 to you in the context of the severance payment --
10 severance agreement. Is that what your testimony
11 was?

12 A. Yes.

13 Q. Okay. So if we look at the actual
14 language that we've gone through, the actual
15 language of the release, do you believe that claims
16 that you're asserting in this lawsuit are actually
17 covered by that language in the release?

18 A. They are not covered.

19 Q. Why not?

20 A. Well, I just don't believe they are.
21 That's why we're here.

22 Q. Where in this document does it say that
23 the only claims being released are those relating to
24 your employment?

25 A. You can ask me all day long. I'm going to

1 tell you the same thing. Just because you didn't
2 write it doesn't mean it's enforcement. I believe
3 this has everything to do with my employment and
4 nothing else. I also believe that that's what the
5 people who wrote it meant, and what Kurt meant, and
6 what everyone else thought about it, and I'll keep
7 saying the same thing. Ask me again.

8 Q. Put aside what anybody's intent was. What
9 I'm asking about is what's written in this document.

10 A. I don't agree with you, okay. I don't
11 agree with you. I don't believe it's enforceable in
12 this instance, so we'll just not agree.

13 Q. Okay. If the claims that you are
14 asserting in this lawsuit are covered by the release
15 -- I know you disagree with that -- but if the
16 claims that you're asserting in this lawsuit are
17 covered by the release, do you believe that you
18 violated or breached this agreement by filing this
19 lawsuit?

20 MR. PURIEFOY: Object to the form.

21 THE WITNESS: No.

22 EXAMINATION RESUMED BY MR. SCHANEN:

23 Q. Why not?

24 A. I don't believe I can sign my rights away.
25 If someone does something wrong, you can't just make

1 me sign saying I won't sue you. I think that's
2 ridiculous. That's what the court system is for.

3 Q. Okay. Let's look at a couple more
4 provisions. Section 18. Do you see that section 18
5 deals with, "In the event either party is required
6 to initiate legal action to enforce any provision of
7 the agreement, the company and executive hereby
8 mutually agree that the prevailing party shall be
9 entitled to recovery costs in attorneys' fees." Do
10 you see that?

11 A. I see it.

12 Q. Okay. The agreement also has a
13 non-disparagement provision, that's section 10. Do
14 you see that?

15 A. I do.

16 Q. Okay. And did you understand, when you
17 signed this agreement, that you were agreeing not to
18 disparage CFR or Mr. Herwald?

19 A. Yes.

20 Q. Okay. Do you believe you've complied with
21 that?

22 A. I do.

23 Q. Okay. And you also, in section 8, you
24 reaffirmed your restrictive covenants to the company
25 in the employment agreement. Do you see that?

1 A. Yes.

2 Q. And did you understand you were doing that
3 when you signed the agreement?

4 A. Yes.

5 Q. Did you read this agreement before you
6 signed it?

7 A. I'm sure I did.

8 Q. Did you ask anyone any questions about it?

9 A. No.

10 Q. In your lawsuit, are you asserting any
11 claims against Mr. Herwald, or CFR, or FT
12 Acquisition, based on any actions that occurred
13 after you signed this release?

14 MR. PURIEFOY: Object to the form. You
15 can answer, Rick.

16 THE WITNESS: I would say, yeah, probably,
17 because over time after I signed this, Kurt
18 acknowledged several times, and so did his
19 attorney, that they agreed that they owed this
20 and they were going to pay it, just give them a
21 little bit more time, they were working on it.
22 So, yeah, it does. Yeah.

23 EXAMINATION RESUMED BY MR. SCHANEN:

24 Q. Okay. So anything else?

25 A. Let me finish my thought. So if it was

1 over when I signed this, why the hell did he answer,
2 yeah, and why did Bo tell me and my attorneys
3 they're going to take care of it. I mean, it's
4 ridiculous. This whole argument is ridiculous. It
5 pisses me off, and you know that though. That's
6 okay.

7 Q. So we'll talk about that. But is there
8 any other conduct or action that has occurred after
9 you signed this release that you're suing over in
10 this action?

11 MR. PURIEFOY: Object to the form. You
12 can answer, Rick.

13 THE WITNESS: Not right now.

14 EXAMINATION RESUMED BY MR. SCHANEN:

15 Q. So what all discussions have you had with
16 Kurt Herwald or anyone else at CFR that you would
17 get paid on this note after you signed the release?

18 A. Through e-mail several times with Kurt.

19 Q. What did Kurt say in those e-mails?

20 A. I don't have them in front of me. Like he
21 assured me that he meant to pay it and he was going
22 to pay it every single time.

23 Q. How many e-mails are we talking about?

24 A. I don't know. A handful. Less than 10.

25 Q. Have you produced all of those?

1 A. Yes.

2 Q. Okay. Would you believe it's possible
3 that CFR or Kurt Herwald could be willing to pay you
4 under the note, even if they had no legal obligation
5 to do so?

6 A. Is it possible?

7 Q. Yes.

8 A. Sure.

9 Q. We talked briefly earlier about a
10 transaction in 2020 involving CFR and HCI Equity
11 Partners. Do you recall that discussion?

12 A. I guess, yes.

13 Q. Okay. What's your understanding of that
14 transaction?

15 A. My understanding is that Kurt found a
16 company called HCI to sell the company to, that's
17 it.

18 Q. Were you provided an opportunity to
19 participate in that transaction?

20 A. I was.

21 Q. Were you told that if you participated in
22 that transaction, your shares would be converted
23 into a corresponding number of shares in a new
24 entity, CFRI?

25 A. I might have been told that. It's a big

1 document.

2 Q. Did you understand that if you
3 participated in the transaction, you would get
4 shares in a new entity?

5 A. It was my understanding that if I were,
6 that they would be worthless, yeah.

7 Q. Why do you believe that?

8 MR. PURIEFOY: Object to the form. It
9 seeks information that's covered by
10 attorney-client privilege.

11 EXAMINATION RESUMED BY MR. SCHANEN:

12 Q. Yes, I don't want to know what you talked
13 with your attorneys bout, but I can ask why you
14 believe your shares would be worthless.

15 A. Because there's -- I don't remember the
16 number -- over 400 pages in that document. And the
17 amount of money -- the way it read to me -- and I'll
18 stipulate I could be wrong. But the way it read to
19 me, HCI would have to sell for an enormous amount of
20 money in order for there to be a penny that got to
21 the common stock. And then on top of that, it
22 seemed like the entire thing was rigged to give Kurt
23 Herwald the ability to just not -- maybe not even
24 issue the shares. I mean, everything in there was
25 how he's not responsible, and we can't do anything

1 to him, and this, and this, and this, and I didn't
2 think it made any sense.

3 Q. Well, what was going to happen to your
4 shares if you didn't participate?

5 A. In my view, nothing. I don't think what
6 he was trying to do was okay to do, so that's why I
7 didn't sign it.

8 Q. What is your understanding of what
9 interest you have in CFR now?

10 A. My understanding is my stock is still
11 there. I have not been sent anything to the
12 contrary.

13 Q. Okay. Were you told that if you
14 participated in the transaction with HCI Equity
15 Partners, that any amounts owed to you or the
16 balance of the note would be paid in full?

17 MR. PURIEFOY: Object to the form.

18 THE WITNESS: I don't believe that's what
19 I was told.

20 EXAMINATION RESUMED BY MR. SCHANEN:

21 Q. Okay. Did you have an understanding that
22 if you participated in the transaction, that the
23 balance of the note would be paid in full?

24 A. Actually, the way I read it, I was going
25 to get paid in full whether I participated or not.

1 Q. So you thought that even if you didn't
2 participate in the transaction, you were going to
3 get paid on your note?

4 A. That's what it says.

5 Q. That's what it says where? Where does it
6 say that?

7 A. Pull it up on the screen and I'll show
8 you.

9 Q. Pull what up on the screen?

10 A. That agreement. It doesn't say anything
11 in there about me having to sign it. That agreement
12 is written to all the shareholders explaining what's
13 going to happen. It wasn't stipulated anywhere in
14 there that I was required to sign it in order to get
15 my note at closing.

16 Q. The agreement didn't talk about the note
17 at all. What I'm asking you is was an offer made by
18 you to CFR that if you participated in the
19 transaction, you would get -- the balance of the
20 note would be paid in full?

21 MR. PURIEFOY: Object to form.

22 THE WITNESS: No, I'll tell you again.

23 There is nothing in the agreement that I was
24 sent, and the same one that was sent to all the
25 shareholders, that says that Rick White has to

1 sign this in order for him to get this money at
2 closing. It says right in there -- and I don't
3 have it in front of me, but you do. It says in
4 there that I will get paid at closing. It
5 doesn't say that I have to sign it.

6 EXAMINATION RESUMED BY MR. SCHANEN:

7 Q. Okay. Are any of your claims in this
8 lawsuit based on the 2020 HCI transaction?

9 A. Not right now, I guess.

10 Q. Okay. Is that 2020 transaction, do you
11 believe, related to any of your claims in this case?

12 A. Only as it relates to Kurt, again, not
13 doing what he was supposed to do in paying me.

14 Q. Only the note?

15 A. Yes.

16 Q. You identified in your discovery responses
17 several people with having knowledge of the case;
18 specifically, J.C. Viteri, Jean Hodges, Gordon
19 Miller, Abby -- how do you pronounce her last name?

20 A. I don't know.

21 Q. -- Economou, Clark Mizell, and Michelle
22 Urps. Have you talked with any of these people
23 about this lawsuit?

24 A. No.

25 Q. Have you taken any statements from any of

1 these people or are you aware of any statements
2 being taken from any of these people?

3 A. No. I mean, the only person that I know
4 that's aware of it is J.C. Viteri, and that's
5 because he was a party to it at the beginning.

6 Q. Okay. In your discovery responses, we
7 looked earlier at your itemization of the damages
8 you're claiming, and you said for the investment
9 \$550,000 plus. I understand the \$550,000. What's
10 the plus? What are the additional damages that
11 you're seeking relating to your investment?

12 MR. PURIEFOY: Object to the form.

13 THE WITNESS: Well, everything it cost me
14 in order to collect it, for one.

15 EXAMINATION RESUMED BY MR. SCHANEN:

16 Q. Are you talking about attorneys' fees?

17 A. Yes, sir.

18 Q. And how much attorneys' fees have you
19 incurred to date?

20 A. I don't know. I don't know for sure, but
21 I can get that for you.

22 Q. All right. About how much?

23 A. It's over \$100,000. I don't know how much
24 exactly.

25 Q. Okay. You claim in your Amended Complaint

1 that CFR, Kurt Herwald, have engaged in fraudulent
2 acts and made fraudulent statements to you. Are
3 there any statements or acts that you believe are
4 fraudulent that we haven't already discussed today?

5 A. Not that I'm aware of right now.

6 Q. Okay. I have a few more questions about
7 the financial issues the company was facing. Were
8 you aware, prior to your investment in September of
9 2017, that CFR was having trouble paying vendors?

10 A. Yes.

11 Q. Okay. Were you aware, prior to that
12 investment, that sales reps were complaining about
13 CFR's payment failures?

14 A. Sales reps?

15 Q. Yes.

16 A. You would have to elaborate more for me to
17 answer that. I don't know why a sales rep would be.

18 Q. I'll tell you. We'll look at some
19 documents.

20 A. All right.

21 Q. Were you aware, prior to the time you
22 invested, that credit hold had been put in place?

23 A. Yes.

24 Q. About how many credit holds were you aware
25 of?

1 A. I couldn't possibly tell you. I mean, it
2 was a moving target. We would clear them up, and
3 then we would be told about something else. We
4 would clear that one up, we would be told about
5 something else, and it was an ongoing thing. And
6 from time to time, we would get completely off a
7 hold, and then slowly get back on it again, for
8 whatever reason.

9 Q. Were you aware that before you invested,
10 that vendors were refusing to fill orders until past
11 due invoices had been paid?

12 A. Yes.

13 Q. Okay. Let's look at a few exhibits. So
14 if we look at Exhibit 12. Do you recall this
15 situation from July of 2017?

16 A. Yes.

17 Q. What was going on here?

18 A. This was Don Roenigk. He was trying to
19 get through to me, which I already knew, that it
20 wasn't just that we were -- he was trying to say,
21 like as you read there, when you try to tell our
22 employees that everything is fine and it's hard to
23 say that when we're on hold with little things, like
24 a boiler inspector, which is a very inexpensive
25 thing. He was frustrated.

1 Q. So this company was threatening to pick up
2 LP tanks and CO2 tanks?

3 A. Yes.

4 Q. Because you hadn't -- because CFR hadn't
5 paid invoices going back to August of 2016?

6 A. Right.

7 Q. Which was nine months?

8 A. Right.

9 Q. Okay. So there's a statement in here from
10 Don to you where he says, "No matter how many times
11 I tell people we are okay financially as a company,
12 it gets harder for them to believe me." Do you see
13 that?

14 A. Yes.

15 Q. Okay. Did you read that as Don believing
16 that CFR wasn't okay financially as a company?

17 A. No, he believed it, and so did I, and so
18 did all the other executives, because that's what we
19 were told by Kurt. What we were having a hard time
20 doing is explaining that to the employees, who kept
21 trying to do their job, and they couldn't do it well
22 because they were hitting this roadblock with
23 vendors. And like I said, we kept clearing it up.
24 Like this Cassie Walker says, they're taking care of
25 it, right, and they would take care of it. But, you

1 know, a week or so later, it would be someone else,
2 not the same one again, someone else. That's all
3 he's saying. Right there it shows you exactly what
4 was going on is that as a leadership team, we were
5 all told everything was fine.

6 Q. Do you think that -- you were aware that
7 this vendor hadn't been paid in nine months,
8 correct?

9 A. Yeah, it doesn't surprise me.

10 Q. Is that, to you, consistent with a company
11 that's okay financially?

12 A. No, unless you can use the reason why they
13 hadn't been paid in nine months.

14 Q. What was the reason?

15 A. It's not because we didn't have the money
16 to pay her, it was because the invoices weren't even
17 in the system. In other words, it wasn't in the
18 system because Jean's department was just out of --
19 they weren't doing a good job. And they just -- we
20 went through a software change and they weren't
21 paying attention. This happened a lot.

22 Q. Well, Don says he deals with past due
23 invoices daily. Was that a common thing?

24 A. Yeah. And almost all of it -- well,
25 everything we were told was it was all software

1 related. And remember Don Roenigk -- you don't know
2 this -- but Don Roenigk worked SSG. It was one of
3 the companies that we bought. So their financials
4 were worse because supposedly all the stuff they
5 owed was going to be taken from their old system to
6 our new one, and it wasn't, and it was a mess, so
7 that's why this is a mess. You have to have the
8 rest of the context for it.

9 Q. What about if we look at the next exhibit,
10 Exhibit 12 -- I'm sorry 13. Do you recall this
11 situation?

12 A. I can't see any of it. I just see the
13 top. You have to go down for me to see it. I don't
14 remember this. Okay. All right. So in March,
15 2017, she can't get parts, because we owe old
16 invoices, the same sort of thing here. And Globe is
17 a small vendor, so you don't buy much from them. So
18 she probably just bumped into it and couldn't get
19 anything. I don't know what to tell you.

20 Q. And this e-mail in March of 2017 is also
21 talking about invoices going back to August 2016, is
22 that right?

23 A. Yes.

24 Q. And they're putting CFR on a credit hold
25 for not paying the invoices?

1 A. Yes.

2 Q. So were these types of e-mails, these
3 types of situations common in that time frame?

4 A. I don't know how you would say common. It
5 did happen and it happened frequently. It wasn't
6 common, no. It wasn't common to get someone upset
7 in that you didn't pay a bill. But the reason it
8 was such a bad thing is because, again, like I told
9 you, you know, we were forced to go onto software
10 that wasn't ready, and it had big problems, and it
11 wasn't just an AP, it was an AR. We had the same
12 problem on the customer invoice side, too. And it
13 wasn't, at least from the executive's point of view
14 and what we were told fundamentally, it wasn't that
15 the company was in trouble, it was just we had an
16 accounting department that just didn't have their
17 stuff together. How is that?

18 Q. So if we look at the next exhibit, Exhibit
19 Number 14.

20 A. Yes.

21 Q. Is that the same type of situation?

22 A. Yes. So the reason he sent this to me is
23 Monty Pr'Out was my IT subcontractor before the
24 merge, and after the merge, he was still working for
25 us. So since he wasn't getting anything by going

1 directly to the home office for his overdue
2 invoices, he sent it to me and copied Jean Hodges.
3 And all I did, if you look up front, I didn't say
4 anything, I just forwarded it on to -- and you have
5 to go up for me to see -- I sent it up to Jeff
6 Childers, who was the IT director, because Jeff
7 Childers was the one in charge of okaying the
8 invoices from Monty.

9 Q. This is someone who is telling you they're
10 going to not service your account if you don't get
11 caught up on past due invoices?

12 A. Yes, that's what he's saying.

13 Q. Okay. And this was July of 2017?

14 A. Yes, sir.

15 Q. Did you view all these issues with vendors
16 as being related to any problems with the company's
17 overall financial situation?

18 A. No.

19 Q. How come?

20 A. Each one of them in themselves was a minor
21 thing in relation to how much business we were
22 doing. And for the most part, as soon as we would
23 bring it to the right person's attention at the home
24 office, it would get resolved right away. So, no.

25 Q. Shortly before you invested, did you

1 decide to reduce the number of regional operation
2 managers?

3 A. I fired one and I replaced him. And we --
4 I advised Kurt to fire one, and he did, but he
5 wasn't needed, he was just doing one small area. So
6 it wasn't because -- so the only two that I'm aware
7 of was -- I forgot his last name. His first name
8 was James. But he just wasn't able to do his job.
9 As a matter of fact, I wasn't even bucking for him
10 to be fired, I just didn't think he should have been
11 a regional manager anymore over the small area.
12 There was no point of having a regional director
13 over that small area. The other guy deserved to be
14 fired, and that's what I did, and I promoted someone
15 into his space. So, no, I was not reducing the
16 amount of people.

17 Q. Let's look at the next Exhibit, 15. Is
18 this an e-mail that you sent on September 7th, 2017?

19 A. Yeah.

20 Q. And who all did you send that to?

21 A. That went to -- I assume it went to all my
22 managers. And that will actually show you how I was
23 feeling. This is how good I felt. Yes.

24 Q. Now, do you state in here that you've had
25 -- the company has had cash flow issues?

1 A. Yeah. All those people are the ones that
2 feel it, too. Yes.

3 Q. Then you say, "After careful
4 consideration, I have decided to streamline our
5 operation further by reducing the number of regional
6 operation managers. The decision to take these bold
7 actions are very difficult ones, but they are
8 consistent with Tech-24's overall strategy to never
9 settle and to be the best service organization in
10 America today and in the future."

11 A. That's right.

12 Q. Okay.

13 A. That was referring to Dieter being gotten
14 rid of and Chris taking his spot.

15 Q. Well, it says, "Reducing the number of
16 regional operations managers as part of streamlining
17 the operations." Is that not an accurate
18 description of what you were doing?

19 A. Yeah.

20 Q. Well --

21 A. I mean, I can't remember whether Chris was
22 looked at as a regional manager at the time. It's
23 been a while. But at some point, you know -- if I
24 read it long enough -- you have to scroll down some
25 more. Okay. Just what I just said. But, you know,

1 Kurt wanted me to put out something to the team and
2 I did. Terrence wasn't a regional manager. Dieter
3 Kruger was and James Williard were, and I just
4 explained the two. We didn't need James Willard, so
5 that was the reduction. And Dieter Kruger didn't
6 deserve to have his job, and so he was replaced. So
7 you can read into it what you want. That's what
8 happened.

9 Q. Okay. Were you trying to put a certain
10 spin on this when you sent this e-mail?

11 A. Only that I didn't want them to worry that
12 there was something wrong with the company, because
13 James Willard, and Dieter, and Terrence were gone,
14 that's it. If you look back at the first thing,
15 you'll see that I didn't have any problem with the
16 way the company was going. As a matter of fact, I
17 thought it was going great.

18 Q. Okay. Have you ever filed a lawsuit
19 against anyone before this action?

20 A. Only as a person -- personally, no. As a
21 president of a company, one time.

22 Q. Okay. Was that of Tech-24?

23 A. Yes, sir.

24 Q. Okay. Who did you sue then?

25 A. A former employee that had been

1 embezzling.

2 Q. Have you ever been convicted of any crime?

3 A. What do you mean? Any crime?

4 Q. Of any crime, yeah.

5 A. The only thing I can think of --

6 MR. PURIEFOY: I'll object to the form,
7 but, Rick, answer the question.

8 THE WITNESS: Yes, I'm trying to think.
9 That I'm aware of, I had a handgun violation
10 one time. That was a misdemeanor. That's the
11 extent of it.

12 EXAMINATION RESUMED BY MR. SCHANEN:

13 Q. Okay. When was that?

14 A. '13 or '14. I had a concealed to carry
15 permit that expired like two days before and I
16 wasn't aware of it.

17 Q. Okay. Did you have to serve any jail time
18 for that?

19 A. No.

20 Q. Okay. And that's the only -- is that the
21 only crime that you have been convicted of or pled
22 guilty to?

23 A. Except for traffic, yeah.

24 MR. SCHANEN: Sure. Okay. Let's take two
25 minutes real quick.

1 (Whereupon, a recess was taken.)

2 EXAMINATION RESUMED BY MR. SCHANEN:

3 Q. Mr. White, I have just a couple more
4 questions. The release agreement that we looked at,
5 did you sign that voluntarily?

6 A. The separation agreement?

7 Q. Yes, the document that's titled, "General
8 Waiver and Release."

9 A. Yes.

10 Q. Okay. You could have chosen not to sign
11 that document, right?

12 A. Yeah, I wouldn't have got my severance
13 money, but, yeah.

14 Q. Right. But you wanted the \$300,000?

15 A. Right.

16 Q. And so you signed the release agreement?

17 A. Yes.

18 MR. SCHANEN: Okay. That's all the
19 questions that I have. Mr. Puriefoy may have
20 some for you.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. PURIEFOY:

25 Q. Mr. White, I'm going to try to keep this

1 as brief as I can. I know we covered a lot today.
2 The majority of my questions are for Mr. Herwald,
3 but I do have a couple of questions for you. And
4 forgive me for kind of jumping all over the place,
5 but I want to make sure I get the questions asked.

6 So we have been discussing quite a bit
7 your resignation, and so what I'd like to do is if
8 we can go to -- this is Exhibit 11. All right. Mr.
9 White, can you see this Exhibit 11?

10 A. Yes.

11 Q. It's the General Waiver and Release
12 Agreement. And I know we've discussed this quite a
13 bit, but I just want to ask you a few things about
14 this document. Hold on. I'm not sure why it's not
15 pulling up all the pages. Give me one second. So
16 if we look at page 2 of this General Release and
17 Waiver, it goes through the bulk ones here, some of
18 the matters in which you're waiving your right to
19 file suit against CFR, Kurt Herwald, or any other
20 entity. Do you see that?

21 A. Yes.

22 Q. And I'll represent that there are about 19
23 bullet points here. And if you'd look at those, let
24 me know how many of those relate to employment law
25 matters, as you understand it.

1 A. All of them.

2 Q. Okay. And I'd represent that there's 19
3 bullet points there and each one of them -- it's
4 your testimony that each one of them relates in some
5 way to your employment or at least employment law or
6 employment-related matters?

7 A. That's right.

8 Q. And what we'll do is we'll go through each
9 page of this and if you can let me know if you see
10 anything in any of these paragraphs that relates to
11 anything other than your employment with CFR after
12 you sold Tech-24 to Mr. Herwald. Let me know when
13 you're ready to go to the next page.

14 A. I'm sorry. Ready.

15 Q. Okay.

16 A. I'm ready again. I'm done. Okay. All
17 right.

18 Q. Okay. So in looking over that document,
19 was there any mention at all of the note that was
20 executed by you with FT Acquisition on July 28th of
21 2014?

22 A. No.

23 Q. Would you have any reason to believe that
24 this agreement, at the time of its execution, had
25 anything to do with the repayment of your note with

1 FT Acquisition?

2 A. No.

3 Q. Who was the attorney that was representing
4 Mr. Herwald at the time the note was executed?

5 A. Bo Russell.

6 Q. Do you know who drafted this General
7 Waiver and Release?

8 A. I assume it was him.

9 Q. Well, let me see if this will help refresh
10 your memory. If you look at paragraph 15 under
11 "Notice," who does it say?

12 A. Bo Russell.

13 Q. The attorney?

14 A. Bo Russell.

15 Q. It says, "Attention: Bo Russell"?

16 A. Yes.

17 Q. So is it your understanding that Mr.
18 Russell was responsible for the drafting of this
19 document as well?

20 A. Yes.

21 Q. Would Mr. Herwald and Mr. Russell have
22 known, at the time of the drafting of this document,
23 that Mr. Herwald was behind in his note obligations?

24 A. Honestly, I don't know if Bo knew, but
25 Kurt certainly did.

1 Q. And just to reiterate, this was executed,
2 it looks like, December 5th of 2017?

3 A. Yes.

4 Q. And I believe your testimony was that Mr.
5 Herwald missed his first payment under the note in
6 August of 2017?

7 A. Yes.

8 Q. And then he missed it again in October?

9 A. Yes.

10 Q. Again in November?

11 A. Yes.

12 Q. And again in December?

13 A. Yes.

14 Q. So at least Mr. Herwald was aware of that
15 fact at the time this was executed? Mr. White, so
16 at the time of this execution of this document, at
17 least Mr. Herwald was aware that he was behind in
18 his note obligations?

19 A. Yes. I'm sorry.

20 Q. Through our office, you have alleged a
21 fraud claim against Mr. Herwald. Are you aware of
22 that fact?

23 A. Yes.

24 Q. And included in that fraud claim, are you
25 aware that part of the claim relies on the execution

1 of this document itself?

2 A. Yes.

3 Q. And is it your understanding that there
4 has been a claim made that at the time this document
5 was executed, it was for the sole purpose of
6 allowing Mr. Herwald to not pay under the terms of
7 the note?

8 A. Yes.

9 MR. SCHANEN: Object to the form.

10 THE WITNESS: Yes.

11 EXAMINATION RESUMED BY MR. PURIEFOY:

12 Q. Okay. Mr. White, when was the first time
13 that you heard that as a result of the execution of
14 this General Waiver And Release, that you were no
15 longer entitled to payment under your note?

16 A. Some time last year. I don't know the
17 exact date, but it was one of Kurt's attorneys
18 saying it.

19 Q. Let me ask it this way. After December
20 5th of 2017, did you have subsequent conversations
21 with Mr. Herwald about receiving payment under your
22 note?

23 A. Yes.

24 Q. Did he at any time mention that you were
25 not legally entitled to payment under the note?

1 A. Never.

2 Q. Were any promises made to you by Mr.
3 Herwald or Mr. Russell that these payments were
4 going to be received?

5 A. Yes, repeatedly.

6 Q. Do you believe that the execution --
7 excuse me. Strike that.

8 Do you believe that the defense being
9 asserted now by Mr. Herwald that this waived his
10 obligations under the note constituted fraud?

11 MR. SCHANEN: Object to the form.

12 EXAMINATION RESUMED BY MR. PURIEFOY:

13 Q. You can answer.

14 A. Yes, I do.

15 Q. Okay. Let me talk to you a little bit
16 about the financial condition of the company. And,
17 again, forgive me for kind of jumping around, I just
18 want to make sure I touch on everything. I believe
19 we've gone through a number of texts where you have
20 been looped in or e-mail correspondence where notice
21 is being brought to certain individuals' attentions
22 about past due invoices. Do you recall those
23 exhibits?

24 A. Yes.

25 Q. Okay. And I believe in one of those

1 exhibits, you noted that you were aware of cash flow
2 issues?

3 A. Yes.

4 Q. Okay. Are cash flow issues commonplace in
5 this type of industry?

6 A. They can be for various reasons, yeah.

7 Q. And do cash flow issues, are they
8 indicative of a company's financial strength?

9 A. Not always, no.

10 Q. Okay. The cash flow issues that you were
11 aware of as it related to CFR, did you believe that
12 they were indicative of the financial strength of
13 the company?

14 A. No, I didn't.

15 Q. Did you believe that the cash flow issues
16 had anything to do with the management of the
17 company?

18 A. Yes.

19 Q. In what regard?

20 A. Specifically, going against the company,
21 basically Kurt's decision to let his company push
22 forward with software that wasn't ready had a direct
23 effect on cash flow, and the other one was Jean
24 Hodges and the way she ran her accounting
25 department.

1 Q. Was there ever a time, while you were
2 employed with CFR, that anyone came to you and said,
3 "Kurt, we are unable to pay our bills"?

4 A. I'm sorry?

5 Q. Was there ever a time that you were
6 employed with CFR that anybody, whether it was Mr.
7 Herwald, whether it was Jean Hodges, anyone came to
8 you and said that CFR is unable to pay its bills?

9 A. No.

10 Q. One of the exhibits that Mr. -- that the
11 defendants' attorney showed you was an invoice of an
12 outstanding balance of approximately \$25,000. Do
13 you recall that exhibit?

14 A. Yes.

15 Q. Okay. And I believe that exhibit was
16 related to a third-party IT invoice?

17 A. Yes, sir.

18 Q. Okay. And how long did you operate
19 Tech-24 before you sold it to Mr. Herwald?

20 A. Around 1990 until 2014.

21 Q. And in that time frame of running Tech-24,
22 how significant of an invoice is an invoice of
23 \$25,000 in the grand scheme of the business?

24 A. It's not. It's not significant. It's a
25 very small number.

1 Q. Would you consider that to be an
2 insignificant invoice?

3 A. Yes.

4 Q. In all of the invoices that you received
5 as part of the e-mail correspondence, was there ever
6 a representation by anyone at Tech-24 or CFR that
7 the bill could not be paid?

8 A. No.

9 Q. Was there any indication to you from
10 anyone that Tech-24 or CFR was not in a financial
11 position to pay those outstanding invoices?

12 A. No.

13 Q. Let me just talk for just a second about
14 your election to invest in CFR. This is a good
15 segue into that. I believe you testified earlier
16 that you did not conduct a due diligence
17 investigation when you elected to invest?

18 A. No, I did not.

19 Q. Okay. Can you explain it to me, because
20 it seems odd that you wouldn't do a due diligence.
21 Why wouldn't you?

22 A. Well, I have been in the industry long
23 enough to see cash flow things happen. Me, myself
24 to not the same kind, but we had a cash crunch
25 earlier because of software problems. And you add,

1 you know, acquiring a company and blending them in
2 with it, was a perfect recipe for cash flow
3 problems. But I believed in the brand, I believed
4 in Kurt. And, like I said, we were trying to buy
5 Smart Care, I don't remember for how much money, but
6 it was a significant amount of money. And we had
7 brought in a very big player, Warburg Pincus, to
8 help, and I was involved in parts of it, not all of
9 it. So everything I could see is that we were just
10 fine and we were doing what Kurt had said he was
11 going to do, which was keep acquiring companies and
12 keep growing.

13 Q. Did the cash crunch issue that you just
14 referred to concern you?

15 A. It concerned me not long -- it concerned
16 me from reputation, not from whether we were going
17 to have a problem. It was a reputation thing, for
18 me. I was always worried that it might stick to the
19 brand and we might get labeled in some way, you
20 know, that we were slow payers or whatever, but I
21 never thought it was a major problem, no.

22 Q. Did the cash crunch seem to negatively
23 affect or concern Mr. Herwald?

24 A. It seemed to -- it was embarrassing, I
25 think, is the easiest way to say it. I would be

1 embarrassed if I were him, too.

2 Q. Did he ever voice any concern?

3 A. He blew it off like it was nothing. Every
4 -- up until the -- every time I spoke with him, or
5 was in a group of people who spoke with him, or any
6 other time, or Jean Hodges for that matter, the
7 answer was very, very consistent. It was a
8 short-term thing they're working on and we'll have
9 this behind us pretty soon, we're trying to work out
10 a deal with the bank.

11 Q. Did Mr. Herwald ever give you any details
12 about what "working out the issues with the bank"
13 consisted of?

14 A. No, but, you know, I've had to get credit
15 lines renewed before and it can be tiring. And I
16 knew he had probably more -- it was more technical
17 for him, because he had a more complicated business
18 than I had, so I understood it doesn't just happen.
19 You don't go down there and shake your hand and get
20 it, it takes a while.

21 Q. So in this 2017 time frame, did Mr.
22 Herwald ever say anything to you or anybody else,
23 that you're aware of, that the company was anything
24 but financially sound?

25 A. No, it was always fine.

1 Q. And did you believe that the company was
2 financially sound?

3 A. Yeah. I mean, I believed -- I knew we
4 weren't making as much money as we could, but I also
5 thought it was a short-term problem in that once we
6 got the software under our control, that we would be
7 fine.

8 Q. And you said that you believed this was a
9 short-term problem. Did Mr. Herwald give you a
10 timeline on how quickly or how long he thought that
11 process was going to take?

12 A. No. There were a lot of little tiny
13 problems that added up to our software problem. It
14 wasn't one big one, so, no, I don't think -- I don't
15 think there was any timeline other than that the IT
16 and me actually were working really hard to get the
17 problem fixed.

18 Q. Did Mr. Herwald say that it was going to
19 take weeks, months, years, to resolve some of these
20 issues?

21 A. Months.

22 Q. And so you're having these conversations
23 about the strength of the company around the
24 September 2017 time frame, and I believe your
25 testimony is that you invested \$550,000 on September

1 11th?

2 A. Yes.

3 Q. And in advance of investing that \$550,000,
4 you had a conversation with Mr. Herwald where he
5 informed you that he also had invested money in the
6 company, is that right?

7 A. Somehow in the conversation, yeah, it came
8 up, I'm not sure how.

9 Q. But he did relay to you, at some point,
10 that he had invested money in the company and he was
11 willing to allow you to invest at the same price
12 point that he invested at?

13 A. That's what he said.

14 Q. Did that make you feel more comfortable
15 with the idea of investing in the company?

16 A. Yes.

17 Q. Why?

18 A. Because I have been in his shoes before.
19 I've been -- you know, the decimal point over a
20 couple spots probably, but I had the same relative
21 issue where I had to -- I felt like it was in the
22 company's best interest to raise money. And I
23 always felt like if I didn't believe in it and put
24 money in it, how could I ask anyone else to. So him
25 putting money in it told me he believed in it, there

1 weren't any problems.

2 Q. And you ultimately elected to invest in
3 the company?

4 A. Yeah.

5 Q. Did Mr. Herwald ever explain to you how
6 that investment was going to be valued or the
7 correlation in ownership value that you were going
8 to retain?

9 A. He didn't explain it. He just said that
10 he would use the same method that he had just done
11 for himself.

12 Q. Did he explain what that method was?

13 A. No.

14 Q. Have you ever had an explanation as to how
15 that value was arrived at?

16 A. No.

17 Q. Let me show you what was marked by the
18 defendants. This is going to be the subordination
19 agreement. Can you see that document?

20 A. Yes.

21 Q. I believe closer to the beginning of your
22 deposition, you were being asked about your
23 understanding of the junior lender and the senior
24 lender. Do you recall that line of questioning?

25 A. Yes.

1 Q. You were asked whether or not anywhere in
2 this document PNC was prevented or prohibited from
3 refinancing any debt that they may have with CFR.
4 Do you recall that?

5 A. Yes, sir, I remember him asking that.

6 Q. And you also were asked, I believe,
7 whether or not Leeds was prohibited from refinancing
8 its debt. Do you recall that line of questioning?

9 A. Yes.

10 Q. And it was your understanding -- or at
11 least I believe it was your testimony that based on
12 a direct reading of this document, that PNC and
13 Leeds were both authorized to refinance any debt
14 that they had, correct?

15 A. Yes.

16 Q. I want to ask you about a specific
17 provision. If you'd look at paragraph three that
18 begins with "Prior to the receipt."

19 A. Yes.

20 Q. Do you see that? Okay. I believe during
21 the deposition, you testified that it was your
22 understanding that you would be considered the
23 seller noteholder?

24 A. Yes.

25 Q. And this provision, I'm going to read it

1 to you and read along with me. "Prior to the
2 receipt by the seller noteholder of written notice
3 from a superior lender of a superior default," and
4 it defines that as superior default notice. "But
5 subject to the balance of this section 3 and section
6 4 below, borrowers may pay and seller noteholder may
7 accept the following payments," and it goes on. The
8 next sentence says, "Upon the occurrence of a
9 superior default and receipt of a superior default
10 notice." Do you see that language?

11 A. I do.

12 Q. Now, I'm going to have you look at
13 paragraph 16 and this is the -- do you see paragraph
14 16?

15 A. I do.

16 Q. Do you see these notice provisions in
17 paragraph 16?

18 A. Yes, sir.

19 Q. Okay. I'm going to have you look at the
20 seller noteholder, it says, "Richard D. White."
21 That's you?

22 A. That's what it says.

23 Q. And it says address, "2096 Harbor Lane,
24 Virginia Beach, Virginia"?

25 A. Right.

1 Q. That was your address at the time this was
2 executed?

3 A. It was.

4 Q. And it's currently your address?

5 A. It currently is.

6 Q. Okay. I'd like to go back to paragraph
7 three. Based on your reading of paragraph three,
8 let me know if you agree with me when I say that it
9 looks to me as though seller noteholder was required
10 to receive superior default notice. Do you see
11 that?

12 MR. SCHANEN: Object to the form.

13 EXAMINATION RESUMED BY MR. PURIEFOY:

14 Q. Do you see that?

15 A. I do see it.

16 Q. What does that language mean, to you, when
17 you read that?

18 A. Well, when I was answering earlier, I did
19 bring it up, that I never got a notice of any kind
20 and neither did my attorney. And as a matter of
21 fact, "Richard White" was listed down at the bottom,
22 as you showed earlier, neither one of us ever got a
23 notice from anybody.

24 Q. And is this the notice that would have put
25 you on notice?

1 A. Right.

2 Q. That CFR was in default under one of these
3 loan obligations?

4 A. Right, never got one from them, or from
5 Leeds, or from Third, or from McLarty, or from Kurt
6 Herwald, nobody.

7 Q. And I believe the lawsuit in this matter,
8 this lawsuit was filed originally in November of
9 2019, is that right?

10 A. Yes.

11 Q. And then an Amended Complaint was filed in
12 March of 2020, is that right?

13 A. Yes.

14 Q. At the time of the filing of the lawsuit,
15 the Complaint and then the Amended Complaint, had
16 you received notice of superior default?

17 A. No.

18 Q. When is the first time that you learned
19 that CFR was actually in default with the senior
20 lender or the superior lender and the junior lender?

21 A. I don't remember when it was, especially
22 when you asked me for both. I believe there was an
23 e-mail that was sent out by Kurt, I believe, 2018
24 that made reference to default to the shareholders,
25 and it was about whether we wanted to buy more -- if

1 we wanted to buy more shares, because McLarty was
2 buying, but I think that's the first time I saw the
3 word "default."

4 Q. Did you ever receive notice from the
5 superior lender about the default?

6 A. No.

7 Q. Does paragraph three tend to indicate to
8 you that notice from the superior lender was
9 required?

10 A. It does.

11 Q. Have you received notice today -- as we
12 sit here today, have you received notice from the
13 superior lender that CFR is in default under their
14 credit obligation?

15 A. Never.

16 Q. I believe you testified that your title,
17 when you were employed with CFR, was vice president
18 of operations?

19 A. Yes.

20 Q. And I believe that you were asked whether
21 or not you were an officer in the company?

22 A. Yes.

23 Q. And what was your testimony regarding
24 whether or not you believed yourself to be an
25 officer of the company?

1 A. I didn't believe myself to be an officer.

2 Q. Was it your understanding that you were
3 merely an employee of the company?

4 A. Yes, I was a manager of the company, but I
5 don't consider myself an officer.

6 Q. Are you aware of any corporate resolutions
7 that would have been executed naming you an officer
8 of the company?

9 A. No.

10 Q. You have never been provided with any
11 documentation that stated that you were an officer
12 of CFR?

13 A. That's correct. Never.

14 MR. PURIEFOY: All right, Mr. White. I
15 think my remaining questions are probably
16 better suited for Mr. Herwald. I don't have
17 any other questions for you.

18 MR. SCHANEN: I have just a couple
19 follow-ups.

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. SCHANEN:

24 Q. If we could pull up Exhibit 2, the Amended
25 Complaint. So looking at Exhibit 2, which is your

1 Complaint in this action, Mr. White -- the Amended
2 Complaint, I'm sorry -- if I can get it back -- if
3 we look at page 10, do you see where it says, "For a
4 first cause of action"?

5 A. Yes.

6 Q. And that says, "breach of contract"?

7 A. Yes.

8 Q. Do you see that? Okay. And that's the
9 claim related to the alleged failure to pay you on
10 the note. Do you see that?

11 A. Yes.

12 Q. If we go to the second cause of action,
13 that says, "Breach of contract accompanied by
14 fraudulent acts." Do you see that?

15 A. Yes.

16 Q. If we go to the third cause of action, do
17 you see, "Fraud in the inducement"? Do you see
18 that?

19 A. Yes.

20 Q. Do you know if fraud is a tort claim?

21 A. I'm not an attorney, but okay.

22 Q. Okay. Do you have any reason to disagree
23 with that?

24 A. No.

25 Q. Okay. If we go to the fourth cause of

1 action, do you see "Fraud"?

2 A. Yes.

3 Q. Okay. If we go to the fifth cause of
4 action, do you see "Intentional misrepresentation"?

5 A. Yes.

6 Q. Do you know whether that's a tort claim?

7 A. Okay.

8 Q. Do you have any reason to disagree?

9 A. I'll agree with you, sir. I don't know.

10 Q. And then we see the sixth cause of action,
11 "Violation of the South Carolina Uniform Securities
12 Act of 2005." Is that a statute, to your knowledge?

13 A. That's what it appears to be.

14 Q. Okay. So now let's go to Exhibit 11, I
15 believe, the General Labor and Release agreement and
16 go to paragraph three, the Release. So you were
17 asked about those bullet points that deal with
18 employment-related issues, right?

19 A. Okay.

20 Q. And look at paragraph three below that.
21 This release also includes release of any claims for
22 wrongful termination. And then does it say "breach
23 of express or implied contract"?

24 A. Yes.

25 Q. Did we see that you asserted a claim for

1 breach of the contract in your Complaint?

2 A. We did.

3 Q. And this agreement says that claims of
4 breach of contract are released?

5 A. That's what it says.

6 Q. Okay. And then it also says further in
7 that sentence, "As well as any other claims, whether
8 from tort, contract or equity, under federal, or
9 statutory, or common law"?

10 A. Yes, that's what it says.

11 Q. So this agreement also says that tort
12 claims are released?

13 A. That's what it says.

14 Q. Okay. And then it says that claims that
15 are brought under that statutes are released?

16 A. That's what it says.

17 Q. And it doesn't limit that to
18 employment-related claims, does it?

19 A. It doesn't say that.

20 MR. SCHANEN: Okay. I have no further
21 questions. Thank you.

22 THE COURT REPORTER: What about signature?

23 MR. PURIEFOY: We will read and sign it.

24 THE COURT REPORTER: Did you want a copy?

25 MR. PURIEFOY: Electronic.

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- - -
(Witness excused.)
(Deposition was concluded at 5:06 p.m.)

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SIGNATURE OF DEPONENT

I, the undersigned, RICHARD DWAYNE WHITE,
do hereby certify that I have read the foregoing
deposition transcript and find it to be a true
and accurate transcription of my testimony,
with the following corrections, if any:

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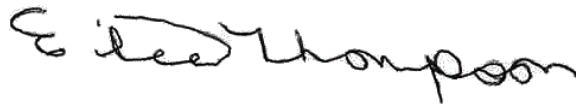
RICHARD DWAYNE WHITE {Date}

1 CERTIFICATE OF REPORTER

2 I, Eileen Thompson, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth, the
9 whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made at
11 the time of the examination were recorded
12 stenographically by me and were thereafter
13 transcribed; that the foregoing deposition as typed
14 is a true, accurate and complete record of the
15 testimony of the deponent and of all objections made
16 at the time of the examination to the best of my
17 ability.

18 I further certify that I am neither
19 related to nor counsel for any party to the cause
20 pending or interested in the events thereof.
21 Witness my hand, I have hereunto affixed my official
22 seal this 18th day of February, 2021 at Liberty,
23 Pickens County, South Carolina.

24 

25 Eileen Thompson,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 17, 2024

Exhibit 18

GENERAL WAIVER AND RELEASE AGREEMENT
PLEASE READ CAREFULLY

This General Waiver and Release Agreement (the "Agreement") is made and entered into this 29th day of November, 2017 (the "Effective Date") by and between Richard D. White (the "Executive") and Commercial Foodservice Repair, Inc., a South Carolina Corporation, together with any and all affiliated or related entities, subsidiaries, or divisions, and the shareholders, members, directors, officers, employees, insurers and agents thereof (collectively referred to herein as the "Company").

THE PARTIES acknowledge the following:

WHEREAS, Executive was employed by the Company until November 29, 2017 when his employment was terminated by mutual agreement between the Company and the Executive (the "Termination Date"); and

WHEREAS, Executive desires to receive severance payments and other consideration provided pursuant to this Agreement, and the Company is willing to provide these benefits to Executive on the condition that Executive enters into this Agreement.

THEREFORE, in consideration of the mutual agreements and promises set forth within this Agreement, the receipt and sufficiency of which are hereby acknowledged, Executive and Employer agree as follows:

1. Severance Benefits to Executive. In consideration for the Executive's promises as set forth herein, the Company shall provide Executive the following severance consideration:

a. Severance/Non-Compete Payments. Pursuant to Section 6(b) of the Executive's July 28, 2014 Employment Agreement (the "Employment Agreement"), the Company shall pay Executive severance pay in the total gross amount of THREE HUNDRED THOUSAND AND NO/100THS (\$300,000) Dollars (the "Severance/Non-Compete Payments"). The Severance/Non-Compete Payments shall be payable in equal installments, less applicable withholdings and deductions, over a three (3) year period (the "Severance/Non-Compete Period") in the form of salary continuation pursuant to the Company's normal established payroll procedures. The Severance/Non-Compete Payments shall commence no later than the first regularly scheduled payroll run occurring after within thirty (30) days of the Termination Date, provided Executive has timely executed and not revoked this Agreement. The Severance/Non-Compete Payments may not be accelerated or deferred in any regard.

2. Prior Wages, Salary, and Expenses. Other than the Severance/Non-Compete Payments set forth in Section 1 of this Agreement, Executive acknowledges receipt of payment for all wages, salary, benefits, and expenses due to Executive.

3. Release. Executive hereby releases, acquits, and forever discharges the Company, its parent companies, subsidiaries, divisions, affiliates and controlling persons (if any), their officers, directors, board members, shareholders, members, employees, representatives, attorneys, personal representatives, affiliated or unaffiliated benefit plans, third-party administrators, any and all of their successors and assigns, and all persons acting by, through, under, or in concert with any of them (collectively the "Company") from any and all actions, causes of action, claims, demands, losses, claims for attorneys' fees, and all other forms

 Executive Init.

of civil damages, occurrences, and liabilities of any kind whatsoever, both known or unknown, arising out of any matter, happening, or thing, from the beginning of time to the date of this Agreement is signed by Executive, specifically including, but not limited to, any and all liability arising from, including amendments to and anti-retaliation provisions deriving from, the following:

- Local, state, or federal common law, statute, regulation, or ordinance;
- Title VII of the Civil Rights Act of 1964;
- Section 1981 of the Civil Rights Act of 1866;
- the Age Discrimination in Employment Act of 1967;
- the Americans with Disabilities Act of 1990;
- the Family and Medical Leave Act;
- the Employee Retirement Income Security Act of 1974;
- the Health Insurance Portability and Accountability Act;
- the Occupational and Safety Health Act;
- the Equal Pay Act;
- the Uniformed Services Employment and Re-employment Act of 1994;
- Executive Orders 11246 and 11141;
- the Worker Adjustment and Retraining Notification Act;
- the Rehabilitation Act of 1973;
- the Medicare, Medicaid and SCHIP Extension Act of 2007;
- state workers' compensation laws;
- state non-discrimination and/or human affairs laws;
- state payment of wages laws, acts or regulations;
- Executive's employment relationship and/or affiliation with Company

This release also includes a release of any claims for wrongful termination, breach of express or implied contract, intentional or negligent infliction of emotional distress, libel slander, as well as any other claims, whether in tort, contract or equity, under federal or state statutory or common law.

Without waiving any prospective or retrospective rights under the Fair Labor Standards Act ("FLSA"), Executive admits that he has received from Company all rights and benefits, if any, potentially due to him pursuant to the FLSA. Executive states that he is aware of no facts (including any injuries or illnesses) which might lead to his filing of a workers' compensation claim against Company. It is the parties' intent to release all claims which can legally be released but no more than that.

Executive further stipulates, such stipulation being expressly understood by Executive as material to this Agreement, that he has not engaged in, nor is he aware of, any misconduct or wrongdoing on the part of the Company of any kind or any regard. Executive's stipulation in this regard is material to the Company's willingness to enter into this Agreement and provide Executive the benefits provided hereunder.

4. Covenant Not to Sue. Executive represents that he has no claims pending or filed with any local, state or federal agency (including the U.S. Equal Employment Opportunity Commission, the U.S. Department of Labor, and any comparable state or local administrative agency) or court against the Company as of the date this Agreement was signed by Executive. Executive further agrees that he will not file or participate in any lawsuit against the Company arising out of or in connection with the employment relationship previously existing between them or the termination of that relationship other than one based upon the Company's alleged violation of this Agreement. The foregoing shall be construed as a covenant not to sue. This Agreement may be introduced as evidence at any legal proceeding as a complete defense to any claims existing as of the date of this Agreement ever asserted by Executive against the Company.

5. **Discrimination Charges; ADEA Challenges to this Agreement.** Nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Executive's otherwise lawful ability to bring an administrative charge with, to participate in an investigation conducted by, or to participate in a proceeding involving the U.S. Equal Employment Opportunity Commission or other comparable state or local administrative agency. However, Executive specifically agrees that the consideration provided to him in this Agreement represents full and complete satisfaction of any monetary relief or award that could be sought or awarded to Executive in any administrative action (including any proceedings before the U.S. Equal Employment Opportunity Commission or any comparable state or local agency) arising from events related to his employment with the Company or the termination thereof. Additionally, nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Executive's ability to challenge this Agreement's compliance with notice and other requirements of the Age Discrimination in Employment Act ("ADEA").

6. **Continued Cooperation; Lines of Communication.** During the Severance Period, Executive agrees to make himself reasonably available to the Company to respond to inquiries regarding any pending business matters in which he may have been involved, or for which his expertise and advice may be deemed beneficial by the Company. Executive agrees he will not be entitled to any additional compensation for this cooperation, other than the Severance Payments provided to him hereunder, which are intended to and shall fully compensate him for any such services. Further, Executive and Company agree that all communication between Executive and Company regarding any requested cooperation or assistance hereunder shall occur solely by and through the Company's CBO or his express designee, unless otherwise notified in writing by the CBO or his express designee.

7. **No Prior Assignment.** Executive further warrants and covenants, recognizing that the truth of this warranty and covenant is material to the above consideration having passed, that he has not assigned, transferred or conveyed at any time to any individual or entity any alleged rights, claims or causes of action against the Company.

8. **Re-Affirmation of Restrictive Covenants.** As a material condition of this Agreement, without which the Company would not enter into this Agreement nor provide the benefits to Executive as set forth herein, Executive hereby re-affirms his commitment to honor the covenants set forth in Sections 8 (Non-Competition), 9 (Non-Solicitation), 9 (Confidentiality), 11 (Ownership of Employee Developments) and 12 (Return of Property) of Executive's July 28, 2014, Employment Agreement (inclusive of any and all subsections). Executive further represents and warrants that he has fully complied with each of the above-specified provisions at all times, and acknowledges the validity and reasonableness of each of his promises set forth therein. Executive further acknowledges and agrees that each of the above restrictive covenants, as well as Section 13 (Injunction and Damages), represent continuing obligations that survive the termination of Executive's employment and are not intended to be, and shall not be, superseded or impaired by this Agreement.

9. **Return of Company Property.** Pursuant to Section 12 of the Employment Agreement, Executive stipulates under oath that on or before the Effective Date, (i) he has returned to the Company all of the Company's property, including, but not limited to, vehicle(s), mobile phone, personal digital assistant (PDA), keys, passcards, credit cards, confidential or proprietary lists (including, but not limited to, customer, supplier, licensor, and client lists), rolodexes, tapes, laptop computer, software, computer files, marketing and sales materials, and any other property, record, document, or piece of equipment belonging to the Company, (ii) that he has not retained any copies of the Company's property, including any copies

existing or stored in any electronic form or format, which reflect any Confidential Information or Protected Information (as such terms are defined in the Employment Agreement), and (iii) that he has not disclosed or transferred any such Company property to any third party at any time.

10. **Non-Disparagement.** Executive agrees and covenants that he will not in any way (directly or indirectly) do or say anything at any time which disparages or derogates the Company, its business interests or reputation, or any of its individual owners, directors, officers, employees, or agents.

11. **Confidentiality of Agreement.** Executive agrees and acknowledges that this Agreement, the fact and amount of the consideration to him provided hereunder, as well as all other terms contained herein, the events leading up to this Agreement, and any conversations or correspondence relating hereto, will be kept confidential at all times; provided that, however, Executive may disclose the terms of this Agreement to his spouse, accountants, tax advisors, and financial consultants as necessary for tax planning, financial planning, or estate planning purposes. Executive further acknowledges that he will be responsible for ensuring that any of the above-specified individuals to whom he discloses information regarding this Agreement likewise fully complies with this obligation of confidentiality.

12. **Performance.** The Company's obligation to perform under this Agreement is conditioned upon Executive's agreements and promises to the Company as set forth herein, including Executive's re-affirmation of and compliance with each of the covenants specified and re-affirmed by Executive in Section 8 above, and Executive's strict compliance with his obligation to maintain confidentiality with regard to this Agreement as detailed in Section 11 above. In the event of an actual or threatened breach by Executive of any such agreement or promise, the Company's obligations to perform under this Agreement, including, without limitation, the Company's obligation to make the Severance/Non-Compete Payments as set forth in Section 1, shall automatically terminate, the Company shall have no further such obligations to Executive and the Severance/Non-Compete Payments thus far made by the Company shall represent full and complete consideration for the Executive's promises as set forth herein. Further, Executive acknowledges and agrees that for purposes of determining whether the Company is entitled to the relief set forth in this Section 12, the controlling issue shall be Executive's breach or threatened breach of the subject provision, with the enforceability of said provision via injunctive relief treated as a separate issue. Executive further acknowledges and agrees that any argument by Executive that any restrictive covenants re-affirmed in Section 8 of this Agreement is invalid or unenforceable due to the scope or duration of said restriction, shall itself constitute a breach of this Agreement excusing the Company from performance as set forth hereinabove.

13. **No Admission of Liability.** Nothing in this Agreement (or the Agreement itself) shall operate or be interpreted as an admission of liability as to any of the claims, charges, actions and lawsuits released hereby. The Company, and each of its individual directors, officers, employees, agents and insurers, and their successors, individually and collectively, expressly deny any such liability.

14. **Final and Binding/Entire Agreement.** This Agreement sets forth the entire agreement between the parties and is intended to be final and binding upon them. Except as set forth herein, it fully supersedes any and all prior agreements or understandings on the subjects addressed herein, including the Employment Agreement, and may only be amended by a written document signed by the parties or their duly authorized representatives which specifically states that it was intended as an amendment.

15. **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and must be given in person or be sent by registered or certified mail to:

a. The Executive at his personal residence, 2096 Harbor Lane, Virginia Beach, Virginia, 23454; and

b. The Company at its principal place of business, 410 East Washington Street, Greenville, SC 29601 (Attn: Gordon Miller), with a copy to Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, 9th Floor, Greenville, SC, 29601 (Attn: Bo Russell).

16. **Controlling Law.** This Agreement will be interpreted and enforced according to the laws of the State of South Carolina and, where applicable, federal law.

17. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall be in no way affected, impaired or invalidated.

18. **Enforcement.** In the event either party is required to initiate legal action to enforce any provision of this Agreement, the Company and Executive hereby mutually agree that the prevailing party in any such action shall be entitled to recover all reasonable costs and attorneys' fees incurred by the party in such action, in addition to any and all other available and appropriate legal and equitable relief.

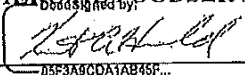
19. **Acknowledgements.** Executive acknowledges that it is the mutual intent of the Parties that the full release contained in this Agreement fully complies with the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA"). Accordingly, this Agreement requires, and Executive acknowledges and agrees that: 1) the consideration provided to Executive under this Agreement exceeds the nature and scope of any consideration to which Executive would otherwise have been legally entitled to receive absent execution of this Agreement; 2) execution of this Agreement and the full release herein, which specifically includes a waiver of any claims of age discrimination under the ADEA, is Executive's knowing and voluntary act; 3) Executive is hereby advised to consult with an attorney prior to executing this Agreement; 4) Executive has reviewed the additional information provided by the Company regarding this offer of severance as set forth on Exhibit A to this Agreement; 5) Executive has twenty-one (21) calendar days within which to consider this Agreement and his signature on this Agreement prior to the expiration of this twenty-one (21) day period (should Executive choose not to take the full period offered) constitutes an irrevocable waiver of said period or its remainder; 6) in the event Executive signs this Agreement, Executive has another seven (7) calendar days to revoke it by delivering a written notice of revocation to the addressee identified in the Notice provision above, and this Agreement does not become effective until the expiration of this seven (7) day period; 7) Executive has read and fully understands the terms of this Agreement; and 8) nothing contained in this Agreement purports to release any of Executive's rights or claims under the ADEA that may arise from acts occurring after the date of the execution of this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. YOU AGREE THAT YOU RECEIVED VALUABLE CONSIDERATION IN EXCHANGE FOR ENTERING INTO THIS AGREEMENT AND THAT THE COMPANY ADVISED YOU IN WRITING TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. YOU PROMISE THAT NO REPRESENTATIONS OR INDUCEMENTS HAVE BEEN MADE TO YOU EXCEPT AS SET FORTH HEREBIN, AND THAT YOU HAVE SIGNED THE SAME KNOWINGLY AND VOLUNTARILY.

YOU HAVE BEEN PROVIDED AT LEAST TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT AND WAIVE AND RELEASE ALL CLAIMS AND RIGHTS INCLUDING BUT NOT LIMITED TO THOSE ARISING UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT. YOU SHALL HAVE SEVEN (7) DAYS WITHIN WHICH TO REVOKE THIS AGREEMENT AND THIS AGREEMENT SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THAT REVOCATION PERIOD HAS EXPIRED. ANY SUCH REVOCATION MUST BE IN WRITING AND RECEIVED BY THE COMPANY, IN ACCORDANCE WITH THE NOTICE PROVISIONS SET FORTH ABOVE, PRIOR TO THE END OF THE REVOCATION PERIOD.

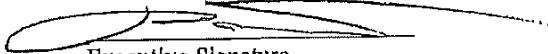
IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth herein below:

COMMERCIAL FOODSERVICE REPAIR, INC.

By: 

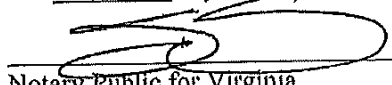
DSF3A8CDA1AB4SF...
CEO
Its: _____
Date: 11/29/2017

RICHARD D. WHITE


Executive Signature

SWORN TO AND subscribed before me

this 5th day of December 2017.



Notary Public for Virginia

My Commission Expires: 6-30-2019

SHELLY K SOWERS
NOTARY PUBLIC 192665
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 06-30-2019


Executive Init.

Exhibit 19

**CERTIFIED
TRANSCRIPT**

DEPOSITION

OF

KURT ARTHUR ALBERT HERWALD

DEFENDANTS.

THE DEPOSITION OF KURT ARTHUR ALBERT HERWALD, TAKEN
BEFORE LISA P. KOPCHO, PROFESSIONAL VERBATIM REPORTER AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA,
COMMENCING AT THE HOUR OF 11:10 A.M., THURSDAY, THE 18TH DAY
OF FEBRUARY, 2021, AT NELSON MULLINS, 2 WEST WASHINGTON
STREET, SUITE 400, GREENVILLE, SOUTH CAROLINA.

Page 2	Page 4
1	1 EXHIBITS (CONTINUED)
2 APPEARANCES	2
3	3 PLAINTIFF'S EXHIBIT NUMBER 5, MARKED,
4 FOR THE PLAINTIFF	4 COMMON STOCK TRANSFER RECORD AND REGISTER, ATTACHED
5 DEVON M. PURIEFOY, ESQUIRE	5
6 TRULUCK THOMASON, LLC	6 PLAINTIFF'S EXHIBIT NUMBER 6, MARKED,
7 3 BOYCE AVENUE	7 GLOBE FOOD EQUIPMENT COMPANY EMAIL - 3/14/17, ATTACHED
8 GREENVILLE, SOUTH CAROLINA 29601	8
9 devon@truluckthomason.com	9 PLAINTIFF'S EXHIBIT NUMBER 7, MARKED,
10	10 SPORTSLINES EMAIL - 5/18/17, ATTACHED
11	11
12 FOR THE DEFENDANTS	12 PLAINTIFF'S EXHIBIT NUMBER 8, MARKED,
13 GILES M. SCHANEN, JR., ESQUIRE	13 VARIMIXER NORTH AMERICA/ASHLAND EMAIL - 11/20/17, ATTACHED
14 NELSON MULLINS RILEY & SCARBOROUGH, LLP	14
15 2 WEST WASHINGTON STREET, SUITE 400 (29601)	15 PLAINTIFF'S EXHIBIT NUMBER 9, MARKED,
16 POST OFFICE BOX 10084	16 TECH24 FEBRUARY FINANCIALS UPDATE/JEAN HODGES EMAIL -
17 GREENVILLE, SOUTH CAROLINA 29603	17 4/3/17, ATTACHED
18 giles.schanen@nelsonmullins.com	18
19	19 PLAINTIFF'S EXHIBIT NUMBER 10, MARKED,
20 ALSO PRESENT	20 JUNE 2017 SHAREHOLDER UPDATE EMAIL - 6/20/17, ATTACHED
21 KIMBERLY T. THOMASON, ESQUIRE	21
22 RICHARD WHITE (VIA ZOOM VIDEOCONFERENCE)	22 PLAINTIFF'S EXHIBIT NUMBER 11, MARKED,
23	23 FIFTH THIRD BANK NEXT STEPS EMAIL - 6/21/17, ATTACHED
24 *DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS	24
25 FROM DATE OF CERTIFICATION.	25
Page 3	Page 5
1	1 EXHIBITS (CONTINUED)
2 INDEX	2
3	3 PLAINTIFF'S EXHIBIT NUMBER 12, MARKED,
4 STIPULATIONS.....6	4 MCLARTY NOTICE OF DEFAULT EMAIL - 7/20/17, ATTACHED
5	5
6 EXAMINATION BY MR. PURIEFOY.....6	6 PLAINTIFF'S EXHIBIT NUMBER 13, MARKED,
7	7 ADD CAP EMAIL - 7/21/17, ATTACHED
8 CERTIFICATE.....175	8
9	9 PLAINTIFF'S EXHIBIT NUMBER 14, MARKED,
10 EXHIBITS	10 INV PRESENTATION EMAIL - 7/21/17, ATTACHED
11	11
12 [ALL EXHIBITS ARE CONFIDENTIAL]	12 PLAINTIFF'S EXHIBIT NUMBER 15, MARKED,
13	13 REQUESTS TO ADMIT, ATTACHED
14 PLAINTIFF'S EXHIBIT NUMBER 1, MARKED,	14
15 FORM OF SUBORDINATED PROMISSORY NOTE, ATTACHED	15 PLAINTIFF'S EXHIBIT NUMBER 16, MARKED,
16	16 GENERAL WAIVER AND RELEASE AGREEMENT, ATTACHED
17 PLAINTIFF'S EXHIBIT NUMBER 2, MARKED,	17
18 SUBORDINATION AGREEMENT, ATTACHED	18 PLAINTIFF'S EXHIBIT NUMBER 17, MARKED,
19	19 SHAREHOLDER NOTICE, ATTACHED
20 PLAINTIFF'S EXHIBIT NUMBER 3, MARKED,	20 [THE ABOVE-REFERENCED EXHIBITS WERE MARKED PRIOR TO THE
21 FIFTH THIRD BAND CREDIT AGREEMENT, ATTACHED	21 COMMENCEMENT OF THE DEPOSITION.]
22	22
23 PLAINTIFF'S EXHIBIT NUMBER 4, MARKED,	23 PLAINTIFF'S EXHIBIT NUMBER 18, MARKED,
24 MCLARTY CAPITAL PARTNERS CREDIT AGREEMENT, ATTACHED	24 LOAN REPAYMENT EMAIL - 2/25/19, ATTACHED.....167
25	25

Page 6 1 STIPULATIONS 2 IT IS STIPULATED BY AND BETWEEN COUNSEL 3 FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS 4 ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT 5 AS TO THE FORM OF THE QUESTION. 6 THIS DEPOSITION IS BEING TAKEN PURSUANT 7 TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE. 8 - - - 9 THE READING AND SIGNING OF THIS DEPOSITION IS 10 RESERVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE 11 PARTIES. 12 WHEREUPON, KURT ARTHUR ALBERT HERWALD, BEING 13 DULY SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE 14 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED 15 AS FOLLOWS: 16 EXAMINATION 17 BY MR. PURIEFOY: 18 Q All right, Mr. Herwald. My name is Devon Puriefoy, and 19 I am the attorney representing Rick White in the 20 lawsuit where he's been named plaintiff and you are the 21 named defendant. Although we're meeting under 22 unfortunate circumstances, it's a pleasure to finally 23 get to meet you. And I normally start my depositions 24 by just asking if you're familiar with this process. 25 Have you ever sat for a deposition before?	Page 8 1 A There -- some of them I was the named party, others I 2 was just representing the company. 3 Q Okay. Do you recall any of the suits where you were a 4 named party? 5 A Yes. 6 Q Okay. Let's start with the cases where you were a 7 named plaintiff. Were there any cases that you sat for 8 a deposition where you were the plaintiff in a lawsuit? 9 And by plaintiff, I mean that you bring the suit. 10 A I know, yeah. I can't -- I don't recall being deposed 11 for something where I was the plaintiff. I'm not 12 saying it didn't happen; I just can't remember it. 13 Q No. That's fine. Do you recall being deposed in any 14 of those cases as a defendant? 15 A Yes. 16 Q Okay. What depositions do you recall sitting as a 17 deponent, as a named defendant? 18 A One where we bought a company, and then they later 19 brought anti-trust charges. I don't remember the name 20 of the company. The company at the time was Stevens 21 Aviation, Inc. And -- 22 Q Stevens Aviation? 23 A Yeah. 24 Q Where you a principal in that company? 25 A Well, I was -- at the time, I was the president of it.
Page 7 1 A Yes. 2 Q Okay. How many times? 3 A I would say, you know, ten, give or take. 4 Q Okay. And were you sitting in your individual capacity 5 or were you sitting as a representative of a company or 6 corporation? 7 A With one exception -- well, it was never about me. You 8 know, not that I can remember. Mostly about companies. 9 One's about a traffic accident that I observed. 10 Q Okay. So, in the matter of the traffic accident, were 11 you merely a witness or were you a named party in that 12 case, either plaintiff or defendant? 13 A No. I was just a witness. 14 Q Okay. The other times that you sat in a deposition 15 with companies, do you recall what those companies -- 16 who those companies were? 17 A Let me see. I -- off the top of my head -- 18 Q Were those companies -- was it Tech24 you were sitting 19 with? Or Commercial Food Service Repair? Was it any 20 company that was involved with lawsuit? Let me ask you 21 that. 22 A No. 23 Q Okay. In what capacity were you being deposed in those 24 cases? Were you sitting merely as a witness or were 25 you a named party in those suits, as well?	Page 9 1 Q And do you recall when, about, that lawsuit would've 2 been? 3 A Probably sometime in the mid '90s, maybe, you know -- 4 Q Well, let me just ask you this. In the last ten years, 5 have you sat for a deposition? 6 A Yes. 7 Q Do you recall who you were working for at the time that 8 deposition happened? 9 A I -- yeah. You know, I wasn't really prepared for 10 these questions asked to get with specificity; so -- 11 Q If you don't know, just say you don't know, you don't 12 recall. 13 A Yeah. I don't recall. 14 Q Okay. All right. So the main purpose in asking that 15 is just to see how familiar you are with this process. 16 So what I'm going to do is I just go over a few what I 17 call housekeeping rules, as we work through the 18 deposition. So, over the course of the next couple 19 hours, obviously I'm going to be asking you questions 20 about a lawsuit that was brought by Mr. White. If at 21 any time you do not understand a question, you can 22 simply ask me to repeat it, rephrase it, or just ask it 23 some other way to better help you understand. Okay? 24 A Uh-huh. 25 Q And if you answer a question, I'm going to assume that

Page 10 1 you understood the question. Is that fair? 2 A That's fair. 3 Q Okay. The court reporter's job is to ensure that we 4 get an accurate transcript of what you and I discuss 5 here today. In order to help make her job a little bit 6 easier, I'm going to ask that you allow me to finish 7 whatever question I'm asking you before you start your 8 answer, and I will allow you to finish answer before I 9 start my next question, and that will just keep us from 10 talking over each other. 11 A That's fine. 12 Q Okay. We can go as fast or as slow as you'd like. We 13 can take as many or as few breaks as you would like to 14 take. The only thing that I ask is that, in the event 15 you do ask to take a break, that you answer whatever 16 question has been presented before we take that break. 17 Okay? 18 A Okay. 19 Q All right. It's just important for me to note -- I'll 20 say it's important for me to note that, in the event we 21 do take a break, you do not discuss any of your 22 deposition testimony with your attorney because, if you 23 do, I have the right to question you about that. Okay? 24 A Okay. 25 Q All right. You may hear your attorney object to the	Page 12 1 A Yes. 2 Q Do you have any other adult relatives, family members 3 living in Greenville County? 4 A My father-in-law. 5 Q And his name? 6 A James Difiore. D-i-f-i-o-r-e. Oh, and I have some -- 7 one of my sisters lives here, as well. 8 Q What is your sister's name? 9 A Pidge. P-i-d-g-e. 10 Q First name? 11 A Yes. 12 Q Last name? 13 A Hold on. New husband. I'll get it for you. 14 Q Okay. Well, when it comes to you, just let me know. 15 And the only reason I ask this question is just in case 16 we're required to be in a trial, I just want to make 17 sure I know who can and can't be on the jury, so that's 18 the reason I ask. 19 Are you under the influence of anything that would 20 inhibit or impair your ability to understand the 21 questions that I'm asking you today? 22 A No. 23 Q Okay. All right. So I'm assuming that you're aware 24 that you're sitting today as a 30(b)(6) deponent, 25 meaning that you're not necessarily sitting in your
Page 11 1 form of a question. That is not an instruction not to 2 answer the question. That's just him preserving it for 3 trial purposes. But if you do hear that objection, you 4 can still respond. The only time that you do not 5 answer a question is if you attorney specifically 6 instructs you not to respond, which I do not anticipate 7 happening today, okay? 8 A Okay. 9 Q All right. Will you state your full name for me. 10 A Kurt Arthur Albert Herwald. 11 Q And you currently reside in Greenville, South Carolina? 12 A Yes. 13 Q What is your address? 14 A 701 East McBee, 29601. 15 Q How long have you resided there? 16 A About five years, I guess. 17 Q Are you married? 18 A Yes. 19 Q What's your wife's name? 20 A Lucille. 21 Q Can you spell that for me. 22 A Pardon me? 23 Q Can you spell that for me, please. 24 A L-u-c-i-l-l-e. 25 Q Herwald?	Page 13 1 individual capacity, but rather as a representative of 2 the entities named in this lawsuit. Are you aware of 3 that fact? 4 A Yes. 5 Q Okay. And you understand that there's a difference 6 between sitting in your individual capacity in a 7 deposition and sitting as a 30(b)(6) deponent? 8 A Yes. 9 Q Okay. So I'm assuming it was explained to you that our 10 office provided your attorney with the list of 11 deposition topics that we were going to be talking 12 about today. Did you have a chance to review that 13 list? 14 A I did. 15 Q Okay. What did you do to prepare for today's 16 deposition against the backdrop of those topics? 17 A Giles and I met a week ago. 18 Q And I don't need to hear anything about what you and 19 Giles discussed. 20 A And -- 21 Q I need to know what you did, as the 30(b)(6) deponent, 22 to prepare for this -- 23 A Yesterday, I spent a couple of hours going through that 24 list and just trying to refresh my memory on the events 25 and such that were referred there.

Page 14 1 Q Did you have any conversations with anybody? Did you 2 talk to anybody, whether current or former employees, 3 about any of the topics contained in that topic list? 4 A No. 5 Q Okay. Did you have any discussion with anybody about 6 today's deposition, other than your attorney? 7 A Yes. 8 Q And who's that? 9 A I'm not sure. I mean, probably quite a few people. 10 You know, if for no other reason than to tell them I 11 won't be reachable on Thursday. So... 12 Q Well, beyond just informing somebody where you were 13 going to be or be out-of-pocket today, did you have any 14 specific conversations regarding this lawsuit and 15 today's deposition? 16 A No. 17 Q Okay. Did you attend high school here in Greenville 18 County? 19 A No. 20 Q Where did you go to high school? 21 A Olympia Fields, Illinois. 22 Q Did you graduate? 23 A No. 24 Q You did not graduate? 25 A (Shakes head from side to side.)	Page 16 1 And you said you obtained an MBA? 2 A I went for -- I did not get the MBA, but I attended for 3 all but one class. 4 Q Okay. Where did you attend those classes? 5 A The University of Pennsylvania. 6 Q At the main campus in Pennsylvania? 7 A Yeah, in Philadelphia. 8 Q All right. So you did not get your MBA? 9 A Correct. 10 Q Okay. Any other formal education beyond the classes 11 that you took for the MBA? 12 Q Yeah. If by formal you mean at a university or school, 13 no. 14 Q Okay. Any other certifications or licenses that you 15 hold? 16 A I have a number of different things that I've qualified 17 for and had for a while, but probably didn't keep up 18 because I probably didn't use them. Mostly related to 19 accounting and matters like that. 20 Q Between 2014 and today, do you still have any what I'll 21 call active licenses or certifications? 22 A Well, I -- you know, a lot of these things are like 23 being baptized. Once you do it, you got it, but you're 24 not allowed to use it to promote yourself if you're not 25 keeping up with, like, CPE. So CPA, CTP, you know, a
Page 15 1 Q Did you ever obtain a GED? 2 A Yes. 3 Q Okay. What year? 4 A '74. Early '74, I'd say. Maybe late '73. 5 Q Okay. Any education after you obtained your GED? 6 A Yes. I have an undergraduate degree in accounting and 7 I went to an MBA program. 8 Q Where did you get your undergraduate degree? 9 A Northern Arizona University. 10 Q And that was a four-year degree? 11 A Yes. 12 Q What year did you graduate? 13 A '79. 14 Q Majoring in accounting, you said? 15 A Uh-huh. 16 Q Is that a "yes"? 17 A Yes. 18 Q So let me -- and I should have said this in the 19 beginning. For the court reporter, we have to have a 20 verbal -- 21 A Verbal. 22 Q -- response, so either a "yes", "no", or some 23 explanation to whatever question I'm asking you -- 24 A Okay. 25 Q -- just for the record. Thank you.	Page 17 1 number of certified internal auditor, you know, a lot 2 of things like that. 3 Q But did you say that you obtained a CPA license? 4 A It -- 5 Q At some point? 6 A It's not really a license, but, yes. 7 Q You were considered -- were you a certified public 8 accountant in a state? 9 A Yes. 10 Q Which state were you certified? 11 A Texas. 12 Q Okay. Did you ever -- were you ever a certified public 13 accountant in South Carolina? 14 A No. 15 Q Okay. Any other certifications, licenses other than 16 what you just named? 17 A Nothing coming to mind right now. 18 Q Okay. Did you work between obtaining your GED and your 19 undergraduate degree? So, between '74 and '79, did you 20 have any full-time jobs? 21 A I was in the Navy. 22 Q Okay. 23 A And after the Navy, I went to college. 24 Q Okay. How long were you in the Navy? 25 A I was active-duty for about two and a half years. I

Page 18 1 was a reservist, technically. 2 Q So between '74 and '76, '77? Is that about right? 3 A '76, yeah. Mid '76. 4 Q All right. So, after you obtained your undergraduate 5 degree in accounting, what was your first full-time 6 position? 7 A I was an accountant at Shell Oil. 8 Q Okay. What were your everyday responsibilities at 9 Shell Oil? 10 A I had a portfolio of joint ventures that operated 11 pipelines that I was responsible for basically doing 12 the books for. 13 Q Okay. How long were you with Shell? 14 A About a year and a half. 15 Q Where did you go after that? 16 A British Petroleum. 17 Q Say that one more time. 18 A British Petroleum. 19 Q British Petroleum, okay. Is that what's commonly 20 referred to as BP? 21 A Yeah. And at that time, it was also referred to as -- 22 pardon me, Standard Oil. 23 Q Okay. What was your job title there? 24 A I was a joint venture accountant, auditor. 25 Q Okay. Were you an executive level auditor or were you	Page 20 1 understanding of your work history. So... 2 A Okay. After that, I went to NTC Group. 3 Q NTC -- 4 A Group. 5 Q Group. Title? 6 A I was the CFO. 7 Q Okay. So is that the first time that you ever worked 8 in an executive position, what I'll call an executive 9 position, C-suite position? 10 A Yes. 11 Q How long were you the acting CFO? 12 A Hold on. Let me think about that for a minute. I was 13 doing that for about three years. 14 Q The three preceding jobs, I know who those companies 15 are. NTC Group, what do they do? 16 A NTC Group, first of all, was a client of mine at 17 Citibank, and mainly they operated The Bibb Company, 18 which was bought through a leverage buyout. 19 Q Okay. Did you deal with securities, at all, while you 20 were operating as CFO? 21 A Yes. 22 Q Okay. What capacity did you deal with securities? 23 A I oversaw two public offerings in debt. And that was 24 really, you know, sort of the extent of my registered 25 securities involvement.
Page 19 1 just an employee? 2 A I was just an employee. 3 Q Okay. And did you -- at Shell, were you executive 4 level or were you just an employee there, as well? 5 A I was just an employee. 6 Q All right. How long were you with BP/Standard Oil? 7 A About two years and a half years. 8 Q Okay. Next position? 9 A Next, I went to graduate school. 10 Q Graduate school? 11 A Yeah. 12 Q After finishing graduate school, what was your next 13 full-time position? 14 A Citibank. 15 Q Okay. What was your job title? 16 A What did they call us? Sorry, I'm trying to remember 17 what they called us. 18 Q You're fine. 19 A I was an associate or something like that. 20 Q Okay. Not executive level? 21 A No. 22 Q How long were you with Citibank? 23 A Two and a half years. 24 Q Next position? And I apologize. I know this is kind 25 of repetitive, but it's important that I have a clear	Page 21 1 Q You weren't licensed in trading securities or -- 2 A I was not, no. 3 Q And how familiar did you become with the process of 4 dealing with securities, from a CFO standpoint? 5 A That's hard to say because I don't know how much 6 knowledge I didn't have. So... 7 Q Okay. Did you at least have a working understanding of 8 how securities were bought, sold, traded? 9 A Yeah. Well, most people who go to an MBA program have 10 a working knowledge of how the markets work. 11 Q Okay. Do you consider yourself to have more than a 12 working knowledge of securities? 13 A No. I mean, I knew plenty of people who knew a heck of 14 a lot more about it than me. 15 Q Okay. After the NTC Group, what was your next 16 position? 17 A I came down here to Greenville to take over the 18 presidency of one of our portfolio companies. 19 Q What was that company? 20 A Stevens Aviation, Inc. 21 Q What was your role at Stevens Aviation? 22 A I was the president. 23 Q Okay. And what were your responsibilities on a day-to- 24 day basis? 25 A Well, like most presidents, it was to plan, to manage,

Page 22 1 to seek ways to grow the business, you know, look for 2 acquisitions; you know, the usual stuff that's involved 3 in, you know, being a frontline manager. 4 Q Sure. What year would that have been, that you came to 5 Greenville? 6 A That would have been '93. 7 Q And how long were you with Stevens Aviation? 8 A I was with Stevens for about five years. 9 Q Is that company still operating today? 10 A Yes. 11 Q Okay. After you left Stevens, where did you go? 12 A I was involved in -- I took a stab at working in 13 turnarounds. And I had a number of clients. My 14 biggest was in Philadelphia, Commercial Foodservice, 15 when -- back then it was a client, and others. 16 Q When you were working turnarounds, was it, you know, 17 like, a sole partnership? Was it just you or were you 18 working for a company, or -- 19 A No. I was a sole oper- -- what we used to call them, I 20 forget. 21 Q Sole proprietor? 22 A Yeah. Though I had a number of people who worked with 23 me on a contract basis. 24 Q Okay. Did you operate that business under a business 25 name entity?	Page 24 1 Q Board fees? 2 A Yeah. 3 Q What are you paying board fees for? 4 A For -- I am paid fees for being on a board. 5 Q So sitting on boards? 6 A Yes. 7 Q Gocha. How many boards do you currently sit on? 8 A Just one. 9 Q What board is that? 10 A New South Construction Supply. 11 Q Where is that based out of? 12 A It's headquartered here in Greenville. 13 Q What do they do? 14 A They're a distributor of building materials. 15 Q Other than sitting on the board, are you a principal of 16 that company? 17 A I am not. 18 Q Okay. You have no ownership interest? 19 A No. 20 Q All right. After Chandelle Solutions, what was your 21 next position? I know you said that Commercial -- CFS, 22 Commercial Foodservice? 23 A Well, most people would call it CFR. 24 Q CFR? 25 A In our industry, foodservice is generally spelled as
Page 23 1 A Yeah. 2 Q What was the name of that? 3 A Chandelle Solutions. 4 Q Chandelle? 5 A Chandelle. 6 Q And was that a South Carolina entity? 7 A Yes. 8 Q Was it an LLC, corporation? 9 A It went through both configurations at various times. 10 Q What did it end up? 11 A Now it's an LLC. 12 Q Okay. Are you still conducting turnaround or still 13 providing turnaround services? 14 A No. 15 Q Okay. Is that company in good standing with the South 16 Carolina Secretary of State or has it been dissolved? 17 A It should still be in good standing. 18 Q Is it still operational? 19 A Well, it's got a bank account. 20 Q Is there somebody running it other than you? 21 A No. No. I use that for -- really, it was a place to 22 just keep books for any other non-CFR related business 23 activities, such as board fees -- 24 Q Such as what? 25 A Board fees.	Page 25 1 one word. 2 Q Okay. You said that was a client of -- 3 A Yes. Back then, it was called Transaction Technology 4 Corporation. But, yes, they became a client and we did 5 an out-of-court restructuring in 2009 -- and, yeah. 6 Q And that was renamed -- 7 A And that became my full-time occupation after that. 8 Q Okay. Let me make sure I'm clear. What did you say 9 the name of CFR was before it became CFR? 10 A Transaction Technologies Corporation, Inc. 11 Q Okay. And what role did you play in Transactions 12 Technologies? 13 A Initially, I was brought in as what is referred to as a 14 CRO, Chief Restructuring Officer. And my -- as is 15 typical in these things, my primary role was to work 16 with the bank to try and, you know, keep them from, you 17 know, blowing up the company. 18 Q So were you providing those services through Chandelle 19 Solutions or were you actually a hired executive of 20 Transaction Technologies? 21 A No. I was an advisor. 22 Q Advisor. So you were never more than an employee? 23 A I was not. 24 Q Okay. And what year would you be in, providing those 25 services?

Page 26

1 A 2004.

2 Q So you moved to Greenville in '93. Is that fair?

3 A (Nods head up and down.)

4 Q Okay. And you were working for Chandelle Solutions --

5 that was the job that you were working at or for in

6 '93?

7 A No. No, I was at Stevens Aviation.

8 Q Stevens Aviation, okay. That's what I wanted to make

9 sure. And you were with Stevens Aviation for five

10 years?

11 A Yes.

12 Q Okay. And then you were with --

13 A Thereabouts.

14 Q About five years. And then you were with Chandelle

15 Solutions for how long?

16 A Well, I got -- technically I'm still with Chandelle

17 Solutions; so...

18 Q Okay. You were providing services with Chandelle

19 Solutions to Transition Technologies, and this was

20 2004, you said?

21 A Yes.

22 Q Okay. You were responsible or you were considered to

23 be the Chief Restructuring Officer?

24 A Correct.

25 Q Okay. What ultimately happened with that company? I

Page 27

1 think you said it became Commercial Foodservice Repair?

2 A Yes.

3 Q Okay. How did that transition happen?

4 A In 2009, at the request of the bank, we did an out-of-

5 court restructuring, which eliminated most of the

6 company's debt, and eliminated the previous ownership.

7 Q Okay. Was that done in lieu of bankruptcy?

8 A Yeah. You could -- yes, definitely.

9 Q Okay. When -- so Commercial Foodservice Repair -- and

10 I'm just going to call it CFR for the rest of this

11 deposition -- that's the surviving entity. What role

12 did you play with CFR, at that time?

13 A I was the president --

14 Q President, okay.

15 A -- and chairman.

16 Q And this is 2009?

17 A Yes.

18 Q And how long did you hold the position of president

19 with CFR?

20 A Until about two months ago.

21 Q Okay. And what was the business that CFR was in?

22 A Well, like Tech24 and like CFR today, we were in the

23 business of working on food service equipment, but we

24 were highly focused on convenience stores and retailers

25 that had cafes in them. So, we did a lot of

Page 28

1 bookstores, Barnes and Nobles, Borders, those types of

2 companies. And we had a huge -- 7-Eleven was an

3 overwhelming customer and, at one time, they were 85

4 percent of the company's business.

5 Q Was CFR -- was it national? Was it a national

6 operation, or was it located in a specific region, or

7 geographic location?

8 A Like most companies in the industry, we couldn't

9 service everywhere, but we used to joke that we're

10 coast-to-coast; we just didn't have anything in

11 between. You know, so we were in California, we were

12 in the eastern seaboard, we were in Florida and Texas.

13 Q Okay. Well, how was business for CFR at that time?

14 Was it a --

15 A Which time?

16 Q When you became the president in 2009.

17 A It was challenging. You know, the -- we were in the

18 Great Recession. But when we eliminated the debt, the

19 company's performance improved dramatically.

20 Q How were you able to eliminate that debt? I don't need

21 a long, drawn-out version, just kind of a brief

22 version.

23 A Like I said, it was an out-of-court restructuring and

24 it involved key creditors to, you know -- or permanent

25 debtors to -- it -- we got the bank to take a big

Page 29

1 haircut. We had some debt to some other entities that

2 they had piled up and we got all those types of

3 organizations to take significant haircuts. And we

4 brought in money from other investors to pay off the

5 rest of the debt.

6 Q Okay. All right. When did you first start looking

7 into or become aware of Tech24?

8 A I -- that's hard to say. I mean, it was a known

9 company in the industry when we started looking to

10 expand out beyond retailers into restaurants. You

11 know, I mean, if you were a member of SFS and attended

12 stuff, you would have known who Tech24 was.

13 Q All right. So did you know Mr. White personally? And

14 when I say Mr. White, I'm referring to Richard White.

15 A I did not.

16 Q Okay. When did you first start considering purchasing

17 Tech24?

18 A I'm not sure, exactly. It would have either been late

19 '13 or early '14, somewhere in that time frame.

20 Q During that time, were there any other entities that

21 you were looking to acquire, or was Tech24 primarily

22 your focus?

23 A We had a business broker whose job was to find us

24 things and I'm sure he showed us -- showed me other

25 stuff, but none of those, you know, ended up being

Page 30 1 something we did. 2 Q Okay. Who is that business broker? 3 A Ron Rosati. R-o-s-a-t-t-i, or a-t-i. 4 Q And where was he based out of? 5 A The Tampa area. 6 Q When did you first start having conversations with anybody about the purchase of Tech24? And more specifically, when did you start speaking with Mr. White? 9 A I would guess it was maybe in the first quarter of '14. 11 Q Okay. I assume -- I'm obviously assuming that Tech24 was an entity that you thought could benefit your current operation with CFR? 14 A Uh-huh. Yes. 15 Q And in what manner did you plan on folding Tech24 services into CFR services? 17 A I -- rephrase that. 18 Q Sure. Why did you believe that Tech24 was a good target for acquisition purposes for CFR? 20 A Well, they had a good reputation with the restaurant community, and one of our key objectives was to leapfrog, in terms of our visibility into the restaurant industry because we were not very well known in the restaurant community. While we were well known with retailers, restaurants really didn't know us	Page 32 1 there. You would have some indication of interest, at a minimum. 3 Q Do you recall any conversations, specifically with Mr. White, regarding what the purchase price was going to be? 6 A We had numerous conversations about what the purchase price would be. 8 Q Sure. 9 A Yeah. I couldn't speak to any single conversation with any accuracy or specificity, at this point. 11 Q Okay. Do you know -- 12 MS. THOMASON: Excuse me. Mr. White's having a little trouble hearing. Could we move the microphone a little closer? 15 MR. PURIEFOY: You can move it out of your way if you -- 17 THE WITNESS: Yeah, it's a little distracting. 18 MR. SCHANEN: Yeah. 19 COURT REPORTER: Sorry. 20 MS. THOMASON: Move it over if you can. 21 BY MR. PURIEFOY: 22 Q All right. Do you know whether a formal -- I'm assuming there was a due diligence phase before you ultimately purchased Tech24? 25 A Correct.
Page 31 1 because we really didn't work for restaurants. 2 Q Okay. And I think you already said that Tech24 had a fairly good reputation in that community -- 4 A Had a good reputation and geographically it was a nice fit for us. 6 Q All right. Tell me -- walk me through that process. How did the ultimate purchase of Tech24 kind of come to be? 9 A It -- you know, through the usual type of things. You know, introduction, you know -- 11 Q Introduction to who? 12 A You know, introduction from -- Ron introduced me to Rick in the business. Rick and I met a number of times to talk about it. Moved to an LOI and I'm sure that -- I don't actually remember, but usually you would have. And then negotiated a, you know, buyout transaction. 17 Q Okay. Do you know whether it was -- did you make an offer to purchase Tech24? Did you choose what the purchase price was going to be or is there -- included in the LOI, was there some understanding as to what the price was going to be? 22 A Again, I don't even know for a fact that we had an LOI -- 24 Q Sure. 25 A -- but I assume we did. Normally, that would be in	Page 33 1 Q Correct, okay. Do you know if a formal valuation of Tech24 was done? 3 A It -- we did not hire an outside firm to come in and place a value on it. That would be, frankly, unusual. 5 Q Sure. 6 A In my experience. 7 Q Yeah, no problem. I just needed to know kind of how this all came to be. So who would have been primarily responsible for valuing the business? 9 A Myself, would have been the most responsible. 11 Q Okay. So I'm assuming at some point you ultimately agreed on a purchase price? 13 A Correct. 14 Q Okay. Was that original purchase price to be -- was it 13 million? 16 A That sounds about right. 17 Q Okay. Do you remember how that deal was structured? Was it a cash deal? Was there -- 19 A Well, as we all know, it was not an all cash deal. 20 Q Okay. 21 A Over the course of negotiation, it became, I think, thirteen in cash and a million on a note. 22 Q And who first floated the idea of this note? How did that note become part of the equation in this purchase? 25 A I'm not sure who first floated that.

Page 34 1 Q Would any of the financing entities have played any 2 role in the creation of that note? 3 A They certainly could have, but I don't know that they 4 did. 5 Q All right. So let's just look at these two. I'm going 6 to show you what we've marked as Plaintiff's 1 and 2. 7 I'm going to give him -- I apologize. It's unusual 8 that I have to walk them over to you. 9 A (Reviewing.) 10 Q All right. So I've handed you what we're marking as 11 Plaintiff's Exhibits 1 and 2, which is a Form of 12 Subordinated Promissory Note and a Subordinated 13 Agreement. Do you see those two documents? 14 A Yes. 15 Q Okay. And I'm assuming that you're familiar with these 16 documents? 17 A It was a long time ago. 18 Q Sure. 19 A But I'm generally -- I'm no more familiar with these 20 than I would be if they walked in here and gave me one 21 right now for an acquisition that they were working on. 22 Q Sure. And we'll talk about some specifics, but you 23 know what these documents are, at least? 24 A Yes. 25 Q Okay. Now, this is a Subordinated Promissory Note,	Page 36 1 Acquisitions? 2 A FT Acquisitions was actually Tech24. They were a DBA. 3 Q Okay. All right. Let's just look at this note. We'll 4 start at paragraph one. I know you said that you -- 5 this was a long time ago, so we'll see if we can 6 refresh your memory just a little bit. 7 The very first paragraph of that note looks like 8 this is a purchase -- excuse me, this is a subordinated 9 note of a million dollars. Do you see that? 10 A Yes. 11 Q Okay. If you come down to paragraph two, do you see 12 that the note bears an interest rate of five percent 13 that's going to -- 14 A Yes. 15 Q That's going to be paid over the course of the term of 16 the note? 17 A Yes. 18 Q Okay. And then there was a seven percent interest rate 19 that was going to be paid in the event that there was a 20 default. Do you see that? 21 A Yes. 22 Q Okay. And come down to paragraph three. This note was 23 to be paid in equal monthly installments of \$18,871.24? 24 A Yes. 25 Q Okay. Before we get too far into that, do you know who
Page 35 1 which is Plaintiff's Exhibit 1, and the Subordination 2 Agreement, which is Plaintiff's Exhibit 2. Does that 3 appear to be dated July 28, 2014? 4 A This one isn't dated (indicating). 5 Q Which one is that? 6 A Subordinated -- Junior Subordinated Promissory Note 7 that you have here as Exhibit A is not dated. 8 Q Okay. The Subordination Agreement, is that dated July 9 28, 2014? 10 A Yes. 11 Q Do you recall if these documents would have been 12 executed contemporaneously with one another? 13 A That would normally be the situation. 14 Q Okay. Do you believe that the Form Subordinated 15 Promissory Note was ever executed by yourself and Mr. 16 White? 17 A Yes. 18 Q Okay. In fact, if you look at page 5 of Plaintiff's 19 Exhibit 1. 20 A (Reviewing) And is that the signature page? 21 Q Yes. Does that look like your signature? 22 A Yeah. 23 Q Okay. All right. So the Subordinated Promissory Note, 24 which is Plaintiff's Exhibit 1, was executed between 25 Mr. White and -- who is FT Acquisitions? Or what is FT	Page 37 1 created these documents? 2 A I don't. I mean, Nelson Mullins was the attorneys on 3 the -- for us. 4 Q Okay. So Nelson Mullins was representing you as the 5 buyer? 6 A Right? Yeah. 7 Q I'm sorry. You can't ask your attorney. 8 A Yes, yes. 9 Q If you don't recall, just say you don't recall. 10 A Yeah. Okay. 11 Q But if you think that that's the case, you can -- 12 A I believe that's the case, yes. 13 Q Okay. Do you recall the attorney's name that would 14 have been assisting you in this particular portion of 15 the transaction? 16 A I cannot. 17 Q Would it have been Bo Russell? 18 A Could have been. 19 Q But you're not sure? 20 A Not about this particular document. 21 Q Okay. Do you recall any other Nelson Mullins attorneys 22 that worked with you? 23 A I don't by name, no. 24 Q Is Bo the only one that you recall by name? 25 A Yes.

Page 38 1 Q Bo Russell? 2 A Yes. 3 Q All right. How was -- at the time that you were 4 purchasing Tech24, how many principals were there? I 5 know there was Rick White, and were there any other 6 shareholders in the company? 7 A Well, my understanding was, when Rick and I were first 8 talking, was that there were four shareholders and then 9 they did some transactions that we weren't really privy 10 to that brought it down to two. 11 Q Okay. And who were the two that you understood? 12 A Rick White and J.C. -- sorry. Not J.C., J.P. It'll 13 pop in my head. 14 Q Sure. There are no other shareholders that you're 15 aware of? 16 A No. 17 Q All right. If we go to page 2 of that subordinated 18 note -- 19 A Excuse me. I'm just going ahead and use this stuff. 20 My hands are so dry -- 21 Q Sure. 22 A -- I can't separate the pages. Okay, page 2? 23 Q Yep. 24 A Okay. 25 Q If you go down to the second full paragraph on page 2,	Page 40 1 A I did not. 2 Q Okay. Leeds Novamark Capital, who are they? 3 A Well, they're a -- they're now called LNC. They're an 4 SBA fund that invests in junior, you know, debt -- 5 Q Were they a mezzanine lender -- 6 A Yes. 7 Q -- in this case? 8 A Yes. 9 Q Okay. Had you ever worked with them before? 10 A No. 11 Q Okay. In the subordination agreement, it calls for PNC 12 to be the superior lender and Leeds Novamark to be the 13 junior lender. Is that your understanding of how this 14 is structured? 15 A Relative to each other? Yes. 16 Q Correct. All right. What did superior and junior 17 lenders mean to you? What was your understanding of 18 those designations? 19 MR. SCHANEN: Object to the form. You can answer. 20 THE WITNESS: In general, in corporate finance, you 21 know, the senior lender has the ability to stop 22 servicing -- to have the company stop servicing the 23 junior debt and, in general, has a right to get out 24 first. 25 BY MR. PURIEFOY:
Page 39 1 and I'll give you a second to read it if you need that. 2 But this appears to me to state that, in the event your 3 interest fell below 51 percent of FT Acquisitions, it 4 would call for the immediate acceleration of this note 5 to be paid. Do you see that? 6 A I do. 7 Q All right. As you understand, is there any provision 8 in this note that you believe, at the time or 9 presently, to be unenforceable? 10 A Not that I'm aware of. 11 Q Okay. All right. And I'm going to have you look at 12 what is marked at Plaintiff's 2, which is the 13 Subordination Agreement. 14 A (Reviewing) Okay. 15 Q All right. The very first paragraph, it looks like the 16 lenders in this case are going to be PNC Bank and Leeds 17 Novamark Capital. Do you see that? 18 A Uh-huh, yes. 19 Q How did those two individuals become lenders for this 20 transaction? 21 A Well, that's what they do. You know, they were, you 22 know, one of, no doubt, you know, quite a few that we 23 probably talked to and -- 24 Q Okay. Did you have a working relationship with either 25 one of those entities before this transaction?	Page 41 1 Q Okay. And when you say "get out first", you mean in 2 terms of repayment, who's going to be paid in order on 3 the loan? 4 A Correct. Yeah, if there was a liquidation of the 5 entity, the senior debt would get paid before the 6 junior debt would get a penny. In theory, anyway. 7 Q And it was your understanding that Mr. White's note was 8 subordinate to both of those lenders? 9 A That's correct. 10 Q All right. I believe the subordination agreement 11 allows for the refinancing of that debt if you deem 12 that appropriate. Are you aware of the fact that this 13 allows for that to occur? 14 A Yes. 15 Q Okay. And was that debt ever refinanced? 16 A Yes. 17 Q Okay. And the two companies, or lenders, were those 18 Fifth Third Bank and McLarty Capital Partners? 19 A Correct. 20 Q Okay. Let me back up for one second. At the time that 21 you acquired Tech24, was Leeds just a lender or were 22 they also an equity owner in -- 23 A They purchased a small amount of equity. 24 Q So, at the conclusion of the transaction, were there 25 two principals, two shareholders of Tech24? Was Tech24

Page 42 1 the surviving entity? 2 A No. I'm -- it was a stock purchase. 3 Q Okay. 4 A We didn't merge Foodservice away until -- I don't know. 5 It was a year or two ago, right? I know, I can't ask 6 you that. It was relatively recently in the history of 7 the company that we finally got around to merging that 8 out. 9 Q Okay. But at the time, it was just a stock purchase of 10 Tech24? 11 A Correct. 12 Q Okay. After the purchase, did you continue doing 13 business as Tech24? 14 A We did. 15 Q Okay. And were the operations of CFR and Tech24 16 separate and distinct from one another? 17 A Initially, yes. Over time, you know, commonality, you 18 know, grew stronger, which is typical -- 19 Q Sure. 20 A -- of, you know, life after an acquisition. 21 Q Sure. So, I mean, at some point, whether it was 22 initially or some point down the road, there was some 23 overlap between those two entities? 24 A I'm not sure what you're asking. 25 Q Were Tech24 and CFR always distinguishable from one	Page 44 1 extension, J.C.? 2 A Yes. 3 Q And I think you just said that it's your understanding 4 that the Seller Noteholder would have Rick White and 5 J.C.? 6 A Correct. 7 Q All right. And I think we've already touched on this, 8 but who was your understanding of the superior lender 9 at the time that this agreement was executed? 10 A PNC. 11 Q All right. And I think we've already said that, at 12 some point, that superior lender became Fifth Third 13 Bank? 14 A Correct. 15 Q All right. So I'm going to read this to you, paragraph 16 three. I'm going to read portions of it to you and 17 then ask you a couple of things. So this sentence 18 reads, (as read) "Prior to the receipt by the Seller 19 Noteholder of written notice from a Superior Lender of 20 a Superior Default" -- and that is defined as "Superior 21 Default Notice" -- "but subject to the balance of this 22 Section 3 and 4, Borrowers may pay and Seller 23 Noteholder may accept the following payments of 24 interest and/or principal under the Seller Unsecured 25 Subordinated Note." Do you see that?
Page 43 1 another as entities? 2 A No. 3 Q Okay. When -- at what point do you believe that they 4 became indistinguishable from one another? 5 A I couldn't say. That's -- 6 Q Just at some point? 7 A Yeah. 8 Q All right. I'm going to have you look at paragraph 9 three of the subordination agreement. 10 A What page would that be on? 11 Q Page 3, I believe. 12 A (Reviewing) The one that begins, "Prior to the 13 receipt"? 14 Q Correct. 15 A Okay. 16 Q So that sentence that you were just starting to read, 17 "Prior to receipt by the Seller Noteholder", who is 18 your understanding of who the Seller Noteholder was 19 under this agreement? 20 A Rick and J.C. Viteri -- 21 Q Were you aware that Mr. White was acting as the 22 attorney-in-fact for J.C.? 23 A I don't know that I was, and I am now. 24 Q So, as you understand it, Mr. White had the authority 25 to execute these documents on behalf of Tech24 and by	Page 45 1 A Yes. 2 Q Okay. So let's just break this up a little bit. So, 3 prior to the receipt by Seller Noteholder of written 4 notice from a superior lender, these monies were to be 5 paid. Do you agree with that? 6 A Generally, yeah. 7 Q The monies that were to be paid under the Plaintiff's 8 Exhibit 1, which is the Subordinated Promissory Note -- 9 A Yes. Okay, yes. 10 Q The next sentence says, (as read) "Upon the occurrence 11 of a Superior Default and the receipt of a Superior 12 Default Notice, until such Superior Default has been 13 cured or waived to Senior Lender's satisfaction with 14 respect to Superior Default under the Senior Agreement, 15 and Junior Lender's satisfaction with respect to a 16 Superior Agreement under the Junior Agreement, in 17 either case, pursuant to written agreement with the 18 Senior Lender or Junior Lender, as applicable, 19 Borrowers shall not pay, including set-offs against the 20 Seller Unsecured Subordinated Note, of amounts owed or 21 under such Seller Unsecured Subordinated Note pursuant 22 to Section 5", and then it continues. 23 As you understand that position -- as I understand 24 that position, that tends to indicate that, in the 25 event of a default, you would be prevented or

Page 46 1 prohibited from paying Mr. White under his Subordinated 2 Promissory Note. Is that your understanding? 3 A Yes. 4 MR. SCHANEN: Object to the form. You can answer. 5 BY MR. PURIEFOY: 6 Q Is that your understanding? 7 A Yes. 8 Q Meaning, if you defaulted on the payment terms to the 9 Superior Lender, you could not pay Mr. White under his 10 subordinated note? 11 A It would really be if the bank notified us of a 12 default. 13 Q Correct. 14 A Invoked a default -- 15 Q Right. 16 A -- which isn't the same thing. 17 Q Sure. So let me ask the question this way, just 18 because I want to make sure that I'm clear. If the 19 bank notified you of a default under their loan, would 20 that prohibit you from paying Mr. White under the terms 21 of his subordinated note? 22 A If they instructed us in that way. 23 Q Okay. And if the Junior Lender had -- defaulted under 24 the terms of the loan agreement with the Junior Lender 25 and they instructed you not to pay Mr. White under his	Page 48 1 the borrower and those parties. 2 Q Absolutely, sure. Okay. Do you also agree with me 3 that paragraph three says that, (as read) "Upon the 4 occurrence of a Superior Default and receipt of a 5 Superior Default Notice"? Does that indicate to you 6 that the bank would have had to inform Mr. White that 7 there was, in fact, a default under the Superior or 8 Junior agreements? 9 MR. SCHANEN: Object to the form. You can answer. 10 THE WITNESS: That would be my reading of it. 11 BY MR. PURIEFOY: 12 Q And based on your reading paragraph three, if the bank 13 did not inform the Seller Noteholder of that default, 14 were those payments to continue to Mr. White? 15 A This gets into a complicated situation because the bank 16 had the right to demand us to stop paying. They were 17 the ones who were supposed to send the notice. You 18 know, and so, there's some conflict in this. 19 Q Sure. Well, let me ask it this way. The Subordinated 20 Agreement, was that agreement between the banks and 21 Rick White or was it an agreement between the acquiring 22 company, FT Acquisitions, and Rick White? 23 MR. SCHANEN: Object to the form. You can answer. 24 THE WITNESS: I honestly don't know right now. I 25 would have to see -- I've seen subordination agreements
Page 47 1 subordinated note, would you have to adhere to that 2 demand? 3 A By the Junior, you're referring to? 4 Q McLarty. Well, at this time, at the time of execution 5 of this document -- 6 A LNC or McLarty, yes. 7 Q Okay. And then, so, that's a good segue. Is it your 8 understanding that the Junior Lender eventually became 9 McLarty? 10 A Yes. 11 Q Okay. So would you agree with me that, at the time of 12 the refinancing of those debts, if Fifth Third Bank 13 instructed you not to pay Mr. White as a result of a 14 Superior Default, would you have to listen to them? 15 A Yes. 16 Q If McLarty instructed you not to pay Mr. White as a 17 result of the default under the loan agreement with 18 McLarty, would you have to listen to them? 19 A Yes. 20 Q Okay. And it's your understanding that that's what 21 this paragraph says? 22 A Correct. 23 Q Okay. 24 A Though I might add, in my understanding, this paragraph 25 defines the rights between those parties, not between	Page 49 1 like this where the borrower was not a party to the 2 subordination agreement, so -- 3 BY MR. PURIEFOY: 4 Q How do you understand this deal to have been 5 structured? 6 A -- I'm not sure if we were on this. 7 Q This subordinated agreement? 8 A As I just said, I'm not sure. 9 Q Okay. So, as you read paragraph -- 10 A I don't think it's a mystery, though. I'm sure it's 11 easily obtained. 12 Q Sure. And I need to know what it is that you 13 understand as we sit here today, so don't mind if it 14 flesh this out a little bit more. So, as you read 15 paragraph three, as you sit here today, whose 16 responsibility was it to notify the Seller Noteholder 17 of a Superior or Junior Default? 18 A The -- whichever one of the two Superior Lenders was 19 invoking it. 20 Okay. So, if Fifth Third bank was invoking the default 21 provisions of their loan agreement, did they have the 22 responsibility to inform Mr. White? 23 A Yes. 24 Q And if McLarty was invoking the default provisions of 25 their loan agreement, did they have the responsibility

Page 50 1 to inform Mr. White? 2 A Yes. 3 Q Okay. As you read paragraph three, does -- did the -- 4 did Commercial Foodservice Repair have a responsibility 5 to pay Mr. White under the terms of his Subordinated 6 Note until such time that he received notice of a 7 Superior or Junior Default, as you read paragraph 8 three? 9 A I don't think it's clear as to how that impacts the 10 borrower. 11 Q So, I'm going to ask you to read paragraph three for me 12 and let me know where you think the ambiguity is. 13 A Well, I think the ambiguity is, is that the Senior 14 Lenders had an obligation to give them a notice, but 15 our agreements with the bank does not require that. 16 Q Does paragraph three incorporate by reference your 17 agreements with Fifth Third Bank or McLarty, or -- 18 excuse me, the Superior Lender or Junior Lender, 19 whoever they were at respective times? 20 A I don't know. 21 Q Do you see in paragraph three where it says that those 22 agreements are incorporated by reference? 23 A I haven't yet, but I'm sure it's in there if you say it 24 is. 25 Q No. My po- -- my -- what I'm representing to you is	Page 52 1 Q So, removing the conflict between the documents and 2 relying solely on the Plaintiff's Exhibit 2, which is 3 the Subordination Agreement, not against the backdrop 4 of your agreements with those institutions, but solely 5 as it relates to this paragraph? 6 A I don't believe that this paragraph extends any 7 obligations to Commercial Foodservice Repair. 8 Q So, I'm going to read paragraph three to you and I'm 9 going to ask you if what you just stated, you believe 10 to be true. (As read) "Prior to the receipt by the 11 Seller Noteholder of written notice from a Superior 12 Lender of a Superior Default, but subject to the 13 balance of this Section 3 and Section 4 below, 14 Borrowers may pay and Seller Noteholder may accept the 15 following payments of interest and principal under the 16 Seller Unsecured Subordinated Note." Okay. 17 A It may. 18 Q Does that say that, unless Mr. White receives, and 19 we've all agreed that Seller Noteholder is Mr. White, 20 correct? 21 A Yes. 22 Q Does that first sentence suggest that Mr. White is to 23 receive payments in accordance with subparts 1 and 2, 24 unless he is in receipt by a Superior Lender of a 25 Notice of Superior Default?
Page 51 1 that it is not in there. 2 A Okay. Well, that's consistent with my understanding, 3 then. 4 Q Okay. So paragraph three of this agreement does not 5 incorporate your agreements with, at the time, PNC and 6 Leeds; correct? 7 A Uh-huh. 8 Q Paragraph three does not incorporate by reference your 9 agreements with Fifth Third Bank and McLarty Capital 10 Partners; correct? 11 A Correct. 12 Q Okay. So the document that was signed by you and Mr. 13 White requires that Fifth Third Bank, PNC, and 14 Leeds/McLarty provide Mr. White with notice of default; 15 correct? 16 A That's what I understand in this paragraph. 17 Q And in the event that notice is not provided, this 18 paragraph requires that payments be made to Mr. White. 19 Is there anything that you see in paragraph three that 20 is contrary to that statement? 21 MR. SCHANEN: Object to the form. You can answer. 22 THE WITNESS: Again, this is -- I don't know how to 23 interpret it because I believe that there's a conflict 24 between the documents. 25 BY MR. PURIEFOY:	Page 53 1 MR. SCHANEN: Object to the form. You can answer. 2 THE WITNESS: I agree. 3 BY MR. PURIEFOY: 4 Q Okay. 5 A He should have gotten a notice. 6 Q Okay. Are you aware if he ever got a notice from 7 either Fifth Third Bank or McLarty of a default? 8 A I am -- I don't -- I do not know the answer to that. 9 Q Okay. And as you understand paragraph three, he never 10 received that notice were those payments to continue or 11 not to continue? 12 A Purely, in isolation on paragraph three -- 13 Q Correct. 14 A -- I would say that that would be correct. 15 Q That they were to continue? 16 A Right. 17 Q Okay. Okay. If you would, look at paragraph five of 18 Plaintiff's Exhibit 2, which is the Subordination 19 Agreement. Could you just read that for me? You don't 20 have to read it out loud; just read it to yourself. 21 A (Reviewing) Okay. 22 Q Okay. What provisions did just you read? Just so I 23 know. 24 A Paragraph five. 25 Q Okay.

Page 54 1 A I -- 2 Q Paragraph five? 3 A Yeah. 4 Q Okay. This appears to me, and let me know if you disagree, to prevent Mr. White from being able to bring a lawsuit under his Subordinated Note in the event of a default under either the Superior Note or the Junior Note. Is that how you read that? 5 A Hold on. 6 Q And it may be helpful if you look at paragraph four, as well. Paragraph four and five are... 7 A (Reviewing.) Okay. 8 Q Okay. So, after reading paragraphs four and five of Plaintiff's Exhibit 2, is it your understanding that Mr. White was not able to bring suit or make any demands under his Subordinated Note in the event of a default under either the Senior or Junior notes or loans? 9 A That would be how I would read it. 10 Q Okay. And that also would've required that Mr. White has notice of those defaults; correct? 11 MR. SCHANEN: Object to the form. 12 THE WITNESS: I suppose so. 13 BY MR. PURIEFOY: 14 Q Okay. Well, Mr. White wouldn't know not to bring suit	Page 56 1 A I believe that would be to his home address. 2 Q Okay. Does this agreement contemplate those notices being sent anywhere else? 3 A To the Ruddy Law Firm and others, you know. 4 Q But as it relates to Mr. White, does it appear to you, based on paragraph 16, to require notice to be sent to either his home address or his attorney's address? 5 A Correct. 6 Q Okay. So, in the event of a default under either the Superior loan or the Junior loan, where was Mr. White to receive that notice? 7 A To either his home or to his law firm. 8 Q And in accordance with this document alone, if those notices of default were not sent to Mr. White at either one of those locations, would he be deemed to have notice of the default? 9 A No. 10 Q Okay. All right. So, at the time you take over Tech24, was your position -- were you the president of Tech24? 11 A CFR, yes. 12 Q CFR? Okay. Were you continuing to conduct business as Tech24? 13 A Yes. 14 Q Okay. Which one would be easier for me to refer to it
Page 55 1 on a default under his note if he didn't have notice of the Superior and Junior defaults; correct? 2 MR. SCHANEN: Object to the form. 3 THE WITNESS: Well, I don't know that that would be the only way he could find out, but, yeah, I understand your point. But I disagree that he could know of the default without them having given him a formal notification. 4 BY MR. PURIEFOY: 5 Q Okay. Let me -- I'm going to have you look at paragraph 16, under Plaintiff's Exhibit 2. 6 A (Reviewing.) Okay. 7 Q Okay. Under paragraph 16, these are the notice provisions that are contained in Plaintiff's Exhibit 2, the Subordination Agreement. 8 A I agree. 9 Q Okay. Where does paragraph 16 require all notice, demands, requests, consents, approvals and other communications under this agreement to be sent as it relates to Seller Noteholder, Richard White? 10 A I'm sorry? Say it -- 11 Q Where does paragraph 16, where does that require that all notices, demands, requests, consents, approvals and other communications be sent to Seller Noteholder, Richard White?	Page 57 1 as? CFR or Tech24? I don't know -- 2 A I think that if you're referring to our legal entity, it would be better to say CFR -- 3 Q Sure. 4 A -- so that, you know... 5 Q All right. So, at the time that you acquired Tech24 from Richard -- Mr. White, how many shareholders were there of CFR? 6 A About ten. 7 Q Okay. And how many shareholders were there of FT Acquisitions at the conclusion of this transaction? 8 A One. 9 Q Okay. And who was that? 10 A CFR. 11 Q Leeds was a shareholder in what entity? 12 A CFR. 13 Q Okay. So, Leeds would have been one of those ten shareholders that you just made reference to? 14 A Yeah. 15 Q Okay. And how would you describe the financial condition of CFR, the acquiring company, after the acquisition of Tech24? 16 A We were in good shape. 17 Q Okay. Had you reviewed the financials of Tech24 before you acquired that business?

Page 58 1 A Yes. 2 Q Okay. Did you have any concerns about the financials or? 3 4 A I had concerns about their accounting system -- 5 Q Okay. 6 A -- but -- 7 Q What were those concerns? 8 A That we had over 100,000 adjusting journal entries in the year preceding the acquisition. That was 9 concerning. 10 11 Q Okay. Any operational concerns? 12 A Not really. I mean, you always have some concerns about any entity that you're getting involved with, but overall we thought it was a well-run company. 13 14 15 Q How many employees were there at Tech24 at the time that you acquired it? 16 17 A (No response.) 18 Q And I'm not -- this isn't a trick question. If you can recall or give me a guestimate, that's fine. 19 20 A I don't remember the number. 21 Q Do you recall how many employees of CFR there were? 22 A We had over 200. We only think about our techs. We only had 165 techs. 23 24 Q Okay. 25 A The rest of us don't count.	Page 60 1 there, and so we then set up a slightly different 2 organization there because of the nature of what the 3 customers that we had there were being serviced in a 4 different way. Yeah, so there was that overlap, but we 5 tried to exploit the reputation of Tech24 to gain an 6 entré into restaurant chains. And so... 7 Q Okay. Was there ever a time where the employees of either CFR and Tech24 were all wearing the same 8 uniforms or were they always wearing different uniforms when they were -- 9 10 11 A No. Over time we adopted the Tech24 as a DBA. Our thinking at the time was that they were known to the restaurants, and the retailers didn't really care what our name was. 12 13 14 15 Q Okay. All right. I'm going to show you what I want to mark as Plaintiff's 3 and 4. Now, I do not expect you to know everything that's contained in these two documents, and I'd represent to you that Plaintiff's 3 and 4 are the Credit Agreements between CFR and Fifth Third Bank, and the Credit Agreements between CFR and McLarty Capital Partners. Before I ask you about those documents, let me ask you -- after the stock purchase of Tech24, did Rick White stay on as an employee with the business? 16 17 18 19 20 21 22 23 24 25 A Yes.
Page 59 1 Q What do you consider the rest of you other than the techs? What were you guys considered? 2 3 A The overhead. It's the management teams -- 4 Q Managers? 5 A -- and the administrative personnel. 6 Q Did the operations of CFR and Tech24 kind of roll together -- roll into the same -- strike that question. 7 Let me ask it this way. Could you distinguish CFR employees from Tech24 employees after the acquisition 8 -- or after the stock purchase? Excuse me. 9 10 11 A Yes. 12 Q Okay. How were they distinguished from one another? 13 A Well, initially they were wearing different uniforms and driving trucks that were logoed differently. 14 15 Q Okay. Did CFR continue to service the areas and, you know, continue to operate kind of in the niche that it was operating initially, and then Tech24 continued in the niche that it was operating? 16 17 18 19 A For a period of time. 20 Q Okay. Was there some overlap that occurred or some kind of rolling into the same entity that occurred at some later day? 21 22 23 A Well, you know, we did have a small amount of overlap in offices notably in Virginia Beach, Tidewater. And you know, so we had legacy employees that were already 24 25	Page 61 1 Q Okay. What was his role? 2 A Initially, his role was to continue to operate the Tech24 marketplace, and to assist in transitioning and working through a transition to integrate the Tech24 and the CFR operations. 3 4 5 6 Q Okay. Did he have an employment agreement? 7 A Yes. 8 Q Okay. Do you know what Mr. White's formal title was? 9 A I don't remember. It would have been something along the lines of a VP -- 10 11 Q VP of Operations? 12 A Yeah, well, VP Ops later, but initially -- I don't remember what his initial title was -- 13 14 Q Okay. 15 A -- but it was some type of operational title, initially. 16 17 Q And was it your understanding Mr. White was just an employee of Tech24? 18 19 20 MR. SCHANEN: Object to the form. 21 22 THE WITNESS: I wouldn't use the term "just". He was a senior manager in the company. You know, he was one of the highest people in the company; so... 23 24 BY MR. PURIEFOY: 25 Q Was Mr. Wright, as you under- -- Mr. White, excuse me, considered an officer of the company?

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1 A He wasn't one of the designated officers, but, yes, we
2 would have considered him an officer.
3 Q When you say "designated officer" he was not named to
4 the corporate resolution as an officer?
5 A Yeah. Our article of incorporation had three officers.
6 Q Okay.
7 A And this -- and COO or something like that was not one
8 of them.
9 Q Okay. And as you sit here today, are you aware of any
10 amendments to those articles that name Mr. White as an
11 officer?
12 A I don't think we would have amended it to name somebody
13 as an officer. We would have amended it to add other
14 titles that would have been considered an officer, but
15 I don't believe we ever did that.
16 Q You don't believe that the articles were ever amended
17 to reflect that the position that Mr. White was holding
18 was to be considered an officer position?
19 A Correct.
20 Q Okay. Did -- was he ever considered an officer? I
21 know his title may have changed, but --
22 A I mean, from a practical point of view, everybody
23 considered Rick to be an officer, which I agreed with.
24 Q Right. From a corporate structuring standpoint,
25 though, was he ever a designated officer?

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1 A No.
2 Q Okay. All right. So I showed you what we marked as
3 Plaintiff's Exhibits 3 and 4. Plaintiff's 3 is a
4 credit agreement between CFR and Fifth Third Bank. Do
5 you see that?
6 A I'm sorry. Which one are you looking for?
7 Q Exhibit 3.
8 A Oh, you're looking at this one. Okay. Yes, I see it.
9 Q Okay. And this appears to be a credit agreement
10 between CFR and Fifth Third Bank?
11 MR. SCHANEN: Object to the form. You can answer.
12 THE WITNESS: Yes.
13 BY MR. PURIEFOY:
14 Q Okay. First page of this agreement shows a \$16 million
15 revolving line of credit. Do you see that?
16 A Yes.
17 Q Can you see a \$8.5 million term loan? Do you see that?
18 A Yes.
19 Q Okay. And this is dated November 2, 2015?
20 A Correct.
21 Q Okay. All right. Have you ever seen this document
22 before?
23 A Yes.
24 Q Okay. What is this?
25 A It's the Credit Agreement with Fifth Third.

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1 Q Okay. Was this -- would you have considered that the
2 refinancing of the original Superior debt?
3 A Yes.
4 Q So the new Superior Debt Holder would have been -- at
5 the conclusion or the execution of this credit
6 agreement would have been Fifth Third Bank?
7 A Correct.
8 Q Okay. And then Plaintiff's Exhibit 4.
9 A I'm sorry?
10 Q Plaintiff's Exhibit 4. So this appears to me to be
11 another credit agreement dated November 2, 2015,
12 between CFR, FT Acquisitions and Foodservice
13 Technologies, Inc., and McLarty Capital Partners. Do
14 you see that?
15 A Yes.
16 Q And is it your understanding that the execution of this
17 credit agreement would have been a refinancing of the
18 Junior Debt that was originally held by Leeds Novamark?
19 A Yes.
20 Q Okay. And at that time, McLarty would have been the
21 new Junior Lender?
22 A Yes.
23 Q Okay. Who is McLarty? How did they become involved?
24 A They're much like Leeds. You know, they're an SBA,
25 mezzanine-oriented fund. I met some of their people at

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1 a finance event and that's how they got involved.
2 Q Okay. Had you ever worked with McLarty before the
3 execution of this credit agreement?
4 A No. And to be sure, at that time, they were a very,
5 very new fund.
6 Q Okay.
7 A We may have been their first or second deal or
8 something like that.
9 Q Okay. When Leeds's loan was refinanced, did they
10 remain or continue to have an equity interest in CFR?
11 A Yes.
12 Q Do they still have an equity interest today?
13 A Yes.
14 Q Okay.
15 MR. SCHANEN: Devon, we've been going for about an
16 hour and a half. Do you mind if we take a short break?
17 MR. PURIEFOY: No, absolutely not.
18 (OFF THE RECORD)
19 BY MR. PURIEFOY:
20 Q All right, Mr. Herwald. We are back on the record. I
21 already know the answer to this question, but I just
22 have to ask. For the record, did you have any
23 conversations with your attorney about your testimony?
24 A No.
25 Q Okay. All right. We were looking at Plaintiff's 3 and

Page 66 1 Plaintiff's 4. We were -- just a little while ago you 2 were testifying regarding the existence of certain 3 requirements, more specifically, the requirement by the 4 Superior Lender and Junior Lender to provide notice to 5 Mr. White in the event of a default. Do you recall 6 that line of questioning? 7 A Yes. 8 Q And I believe your testimony was that it was either the 9 Superior Lender or Junior Lender's responsibility to 10 provide that notice to Mr. White in the event of a 11 default? 12 A Correct. 13 Q Okay. And I think you also testified that there was an 14 agreement between yourself and the Superior and Junior 15 Lender that allowed them to instruct CFR to not 16 continue making payments on Mr. White's subordinated 17 note. Do you recall that? 18 A Correct. 19 Q Okay. So, as it related to the Superior Lender after 20 the refinancing, is it Plaintiff's Exhibit 3 with Fifth 21 Third Bank that imposed that duty or allowed Fifth 22 Third Bank to instruct you not to make payments to Mr. 23 White? 24 A That would be my assumption, though I can't -- 25 Q Sure.	Page 68 1 A That's correct. 2 Q And based on a review of what was marked as Plaintiff's 3 Exhibit 2, you did not see any reference to an 4 incorporation of these two documents, the two credit 5 agreements, in that subordinated agreement? 6 A No. 7 Q Okay. All right. I'm going to show you what we're 8 going to mark as Plaintiff's 5. I'll give you a second 9 to look over that. 10 A (Reviewing.) 11 Q And for right now, we're just going to be focused on 12 the first page of this. All right. I would represent 13 to you that Exhibit 5 -- Plaintiff's Exhibit 5 is a 14 Common Stock Transfer Record and Register. Do you see 15 that? 16 A That would be incorrect, however. 17 Q Okay. What -- how would you correct this? 18 A Wayne Gotto, Howard Einstein, Robert Schwartz, Steven 19 Owings, Rick White -- not Rick White, I'm sorry. Those 20 people were predominantly holders of a preferred 21 security. 22 Q Did any of them hold common stock? 23 A I'm not sure what the date of this is, so it's a little 24 hard for me to say. But the -- let me see. Oh, well. 25 Oh, okay. I stand corrected. These were subsequent
Page 67 1 A -- swear to it. 2 Q Okay. And would the same be true for Plaintiff's 3 Exhibit 4, is it this credit agreement that would have 4 given McLarty the ability to instruct CFR to not make 5 payments to Mr. White under his subordinated note? 6 A And again, I'd have to read the whole document to 7 ascertain that, but I would expect it to be in the 8 main agreement. 9 Q Okay. As far as you can tell, was Mr. White a party to 10 either Plaintiff's Exhibit 3 or Plaintiff's Exhibit 4? 11 A I would not have expected him to be. 12 Q Would Mr. White be bound by the terms and conditions 13 contained in Plaintiff's 3 and Exhibit 4? 14 MR. SCHANEN: Object to the form. You can answer 15 it. 16 THE WITNESS: I would not expect him to be, but... 17 BY MR. PURIEFOY: 18 Q The responsibilities for the parties involved in the 19 execution of Plaintiff's Exhibit 3 and 4, would Mr. 20 White be bound by those same responsibilities and 21 obligations? 22 A I -- I would not think so. 23 Q Okay. And as we sit here today, it is not your belief 24 that Mr. White is a party to either one of these 25 contracts; correct?	Page 69 1 issues, so this could have been preferred st- -- I 2 mean, common stock in addition to the preferred stock. 3 I'd have to -- 4 Q Right. And so you see on Plaintiff's Exhibit 5 where 5 it says "Date Issued"? 6 A Yeah. 7 Q So, although this may not be correct as we sit here 8 today, but at least at the time of creation of this 9 document, this is how shares were held? 10 A Excluding the preferred shares. 11 Q Excluding or in addition to? 12 A Well, if it says that this is common stock, then I 13 would assume that it does not have the preferred, that 14 those people already held that; so... 15 Q Correct. So this only makes reference to common stock 16 that were being held by individuals and entities; 17 correct? 18 A Correct. 19 Q Okay. All right. I see where Leeds Novamark Capital, 20 LP, is still a shareholder with 15,728 shares. Do you 21 see that? 22 A Yes. 23 Q Okay. And those shares remained even after that Junior 24 debt was refinanced? 25 A Correct.

Page 70 1 Q Okay. I also see McLarty Capital Partners became a 2 shareholder on 11/2/2015. Do you see that? 3 A I do. 4 Q Okay. And if you need to look back at Plaintiff's 5 Exhibit 3 or -- excuse me, Plaintiff's Exhibit 4, does 6 it appear to you that the credit agreement was also 7 executed on November 2, 2015, with McLarty? 8 A Yes. 9 Q Okay. 11/2/2015, Kurt Herwald owns 1,250 shares? 10 A (No response.) 11 Q Do you see that? 12 A Yes. 13 Q Okay. All right. Who is Howard Einstein? 14 A He's a businessman who resides in Greenville. 15 Q Okay. Was he related in any way to McLarty Capital 16 Partners? 17 A No. 18 Q Okay. How did he become a shareholder on 11/2/2015? 19 A Howard -- hold on a second. Howard had been -- was a 20 part of -- I believe that he was a part of the original 21 capitalization of the business in 2009 and when we did 22 this transaction, the -- this would all be coincident, 23 or most of this -- all of the 11/2/15s were coincident 24 with the acquisition of SSG. 25 Q Okay. And who's SSG? What is SSG?	Page 72 1 A Yes. 2 Q And would those financials have been provided to him in 3 advance of him incre- -- did he increase the amount of 4 stocks that he held in CFR? 5 A Yes. 6 Q Okay. Would he have been provided financials prior to 7 electing to increase his shares in CFR? 8 A He would have received information. 9 Q Okay. And who is Steven H. Owings? 10 A Steve Owings is a Greenville businessman. 11 Q Okay. Was he a previous shareholder of CFR? 12 A Yes. 13 Q Okay. Did he increase his shares on November 2, 2015? 14 A Yes. 15 Q Okay. Was he provided financials in advance of him 16 increasing his shares in CFR? 17 A Yes. 18 Q Okay. All right. Between the stock purchase on July 19 28, 2014, and let's say, the end of 2016, how would you 20 describe the operations of CFR/Tech24? How was the 21 business? 22 A What was the ending of that date range? 23 Q So, just an impr- -- between the acquisition there, the 24 stock purchase date July 28, 2014, and the end of 2016, 25 how would you say that the business was operating at
Page 71 1 A Service Solutions Group. It was a subsidiary of Franke 2 USA. 3 Q Okay. When was that acquisition completed? 4 A November 2, 2015. 5 Q Did they become shareholders in CFR as a result of that 6 acquisition? Let me -- speaking about Howard Einstein, 7 specifically. 8 A He already was a shareholder, but he increased his 9 shareholdings. 10 Q Okay. He was shareholder with who? 11 A With CFR. 12 Q With CFR, okay. At the time that he increased his 13 shares in CFR -- excuse me -- was he provided with any 14 financial information related to the financials of 15 Tech24? 16 A He would have been receiving financials anyway. 17 Q Okay. As a shareholder of CFR? 18 A Yes, but -- 19 Q Robert Schwartz -- who's that? 20 A He's a doctor and an investor who lives in Greenville. 21 Q Okay. Was he a previous shareholder of CFR before the 22 stock purchase of Tech24? 23 A Yes. 24 Q Okay. Would he have been receiving the financials as 25 well?	Page 73 1 that time? 2 A The business was operating well in the early period. 3 In '16 we -- is when we ran into issues with 4 integrating into a new IT platform, as well as issues 5 with SSG -- 6 Q Okay. 7 A -- mainly on the west coast. 8 Q Okay. Let me back up. In 2014, who were your acting 9 -- I call them C-Suite executives, but your CFO, your 10 COO? Did you have people filling those positions, at 11 that time? 12 A In 2014, I was the president. 13 Q Right. 14 Q Jean Hodges was the ranking financial employee. Corey 15 Harrison is certainly before Tech24, was the ranking 16 operational and marketing person. Sharon McAbee was 17 over HR, but she was not anywhere near an officer level 18 position. And Jeff Metcalf was the director of IT. He 19 similarly was not internally considered to be an 20 officer. 21 Q Okay. So, were the bylaws and the articles of CFR, 22 were they amended -- 23 A No. 24 Q -- at the conclusion of the transaction with Richard 25 White?

Page 74 1 A No. 2 Q Okay. Were the positions of the Chief Financial 3 Officer and then the Head of Operations, were those 4 designated officers? 5 A Let me -- first of all, because I don't want to get 6 caught up in this -- 7 Q Sure. 8 A We didn't use C-suite titles. 9 Q Okay. 10 A Okay? Just as a personal preference -- 11 Q And that's no problem. That's helpful for me. 12 A And so Jean was VP of Finance and Treasurer. As 13 Treasurer, she was in one of the three designated 14 officer spots. The three officer spots were in our 15 articles -- which I didn't write, I inherited those -- 16 was the President, the Treasurer and the Corporate 17 Secretary and they can be filled by one person, if 18 necessary. But Jean was the treasurer, she was the 19 secretary, and I was the president. And that stayed 20 that way for a substantial period of time. 21 Q Okay. So Mr. Harrison didn't occupy any one of the 22 three -- 23 A At one point, he did move over and took over one of 24 those positions. 25 Q Okay.	Page 76 1 Q Okay. 2 A But in my opinion, she wasn't a CFO -- in a CFO role 3 with us, either. 4 Q Okay. All right. So what was her role? 5 A She was over the accounting department, which is 6 generally somewhat different than a CFO's -- 7 Q Okay. 8 A -- responsibilities. 9 Q How would you distinguish the two? 10 A A CFO traditionally deals directly with shareholders 11 and is responsible for raising money and activities 12 like that, as well as overseeing the production of the 13 financials and that type of thing. 14 Q Okay. Who -- in 2014 at the time of the stock 15 purchase, who maintained what you would consider to be 16 more of a CFO role? 17 A I don't think that we had anybody who was a CFO role. 18 I did a lot of the fundraising and that type of 19 activity since I had background in it. 20 Q Okay. All right. Did Ms. Hodges -- was she 21 responsible for the creation and filing of tax returns? 22 A Well, we outsourced our tax returns -- 23 Q Okay. 24 A -- but, yes, she would have been responsible for 25 preparing all of the information that would have gone
Page 75 1 A But again, I'll be honest with you, none of us thought 2 it was important. You know, everybody recognized that 3 Rick and other people were senior -- you know, senior 4 officers of the company, senior managers of the 5 company. 6 Q Really due in part to the fact that he was the one that 7 ran that company for 20 years, is that -- 8 A Who's that? 9 Q Mr. White. 10 A Oh, ran Tech24 you mean? 11 Q Correct. 12 A Yeah. 13 Q Okay. All right. How did you meet Jean Hodges? 14 A I -- she responded to -- I don't remember if it was a 15 headhunter or she responded to something else, that I 16 was looking for somebody for that position. 17 Q Okay. Did you interview Ms. Hodges? 18 A Yes. 19 Q Okay. And what was her background in? 20 A Accounting. 21 Q Okay. Was she a CPA? 22 A No. 23 Q Had she ever -- at that time in 2014, had she ever held 24 a CFO or equivalent role in a company? 25 A Not in my opinion.	Page 77 1 to the CPA firm for preparation of the tax returns. 2 Q All right. I'm assuming you found -- you believed that 3 Ms. Hodges competent to fill the position that she was 4 hired to -- 5 A Certainly, at that stage, yes. 6 Q Okay. And when you say at that stage, you mean the 7 role that she was to fill in 2014? 8 A Yes. 9 Q Okay. Did her -- 10 A She was hired well before '14, by the way, but I don't 11 remember exactly, but it was before 2009 -- 12 Q Okay. 13 A -- as well. 14 Q So she was previously with CFR? 15 A She had been with CFR. I just don't remember -- I 16 would say it was probably somewhere in the late 2000s 17 that she was hired. 18 Q All right. So she just rolled her position over into 19 this -- the VP of Finance after the stock purchase? 20 A At -- well, I'm sorry. You're talking about which 21 stock purchase? 22 Q Of Tech24. 23 A It didn't affect, structurally, her position. 24 Q Okay. Was she acting as the VP of Finance of CFR and 25 what was acquired as Tech24? Was she over both?

Page 78 1 A Yeah, Tech24 didn't have a -- you know, a full-time 2 accounting manager. And so, yes, she -- that fell 3 under her responsibility. 4 Q So did Tech24's finances just roll into CFR so she was 5 responsible for handling all of those finances? 6 A She was responsible for all of them. 7 Q Okay. Did you consider those finances to be separate 8 and distinct from one another? 9 A Well, for a period of time, they certainly were. 10 Q Okay. But at some later date? 11 A Yeah, you know, we combined those functions. 12 Q And I'm referring to 2014 because that's the stock 13 purchase that we've been referring to with Mr. White. 14 Were there any concerns that Ms. Hodges was not able to 15 perform the duties that she was previously performing 16 with CFR? 17 A No. 18 Q Okay. All right. So I know that you said in 2017 19 there were some -- toward the end of 2016 and 2017 that 20 there were some issues that began to arise 21 operationally? 22 A Correct. 23 Q Okay. Let me ask this. How was the working 24 relationship with Mr. White -- let's say between 2014 25 and 2017? Were there any hiccups, any bumps in the	Page 80 1 A Potentially. 2 Q Okay. What would those have been? 3 A Allegations of promiscuity with employees. 4 Q Okay. Did that result in his termination? 5 A No. 6 Q Okay. All right. I'm going to show you what I'm going 7 to mark as Plaintiff's Exhibits 6 through 9. Excuse me 8 -- this is going to be 6 through 8. There is a 9. So 9 this is your 6 through 9. 10 MR. SCHANEN: All right. 11 MR. PURIEFOY: This is going to be Mr. Herwald's 6 12 through 9. 13 MR. SCHANEN: All right. 14 BY MR. PURIEFOY: 15 Q All right. And so before we really get into those, let 16 me ask -- was Mr. White handling operations and 17 operational issues as it related to the Tech24 arm? 18 A You know, certainly at -- what time frame are you 19 talking about? 20 Q (No response.) 21 A As I said earlier, initially he was focused on mainly 22 Tech24. 23 Q Okay. 24 A But at one point, I put him over all of the operational 25 units.
Page 79 1 road, or was it fairly smooth sailing? 2 A With me or with other people? 3 Q Let's start with your first. 4 A I, you know -- I felt like we worked well together. 5 Q Okay. Did you have any complaints from any other 6 employees, anybody else about Mr. White's management 7 style? 8 A At times. 9 Q Okay. Do you recall any of those complaints? 10 A I -- you know, there was concerns that people weren't 11 operating in synchronization and things of that nature. 12 Q Okay. 13 A There was, you know -- it's unusual for a manager not 14 to have somebody take an exception -- 15 Q Sure. 16 A -- to the things that they do. 17 Q So what degree of autonomy did Mr. White have? I mean, 18 did he report directly to you? 19 A Yes. 20 Q Okay. So, when these complaints arose, who was kind of 21 dealing with or remedying those complaints? 22 A Me. 23 Q Okay. Were there any complaints that you can recall as 24 we sit here today that would have warranted Mr. White's 25 removal from the company?	Page 81 1 Q Including CFR operations? 2 A Yes. 3 Q Okay. All right. So what position would he have held 4 in the 2017 time frame? Would that have been over both 5 CFR and the Tech24 arm? Or would that still have just 6 been -- 7 A Yes. It would have been over field operations. 8 Q Of Tech24 and CFR? 9 A Yes. 10 Q Okay. 11 A And SSG, if we're going back to the original names 12 again. 13 Q Okay. All right. And was Mr. White tasked with 14 handling -- well, let me ask you this. Was it your 15 understanding or your belief that Mr. White had fairly 16 strong relationships through Tech24 with some of those 17 larger restaurants? 18 A Yes. 19 Q Okay. And he had been working with them with Tech24 20 for extended periods of time -- a long time? 21 A In some cases. And I honestly -- I don't know the 22 pedigree on, you know, all those. 23 Q Okay. All right -- 24 A You know, in fairness, Mr. Viteri was the head 25 marketing guy up there and I can say that he had a lot

Page 82 1 of those accounts. 2 Q Okay. So would it be fair to say that you leaned on 3 Mr. White and Mr. Viteri both, with handling some of 4 the suppliers and vendors on the Tech24 side of things? 5 A I don't know that if that would be fair or not. 6 Q Okay. All right. You mentioned in 2016, 2017 time 7 frame you were dealing with some IT issues. I think 8 you said that you switched IT systems or softwares? 9 A Correct. 10 Q Okay. Do you recall in that time frame receiving what 11 I would say -- or classify as an increased number of 12 complaints from suppliers/vendors regarding invoicing/ 13 unpaid bills? 14 A Yes. 15 Q Okay. So I'm going to have you look back to 16 Plaintiff's Exhibit 6. 17 A Okay. 18 Q And I'd represent that this is an email communication 19 from Laura Adcock. Do you see that? 20 A I do. 21 Q Okay. Who is Laura? 22 A Honestly, I don't know. 23 Q Okay. Got it. And if you look at the top of 24 Plaintiff's Exhibit 6, do you see that this is an email 25 correspondence from Ms. Adcock to Mr. White?	Page 84 1 Food Equipment Company -- the first page, the first 2 invoice, it looks like it has a sales order date of 3 8/10/2016? 4 A (No response.) 5 Q And an invoice date of 8/11/2016? 6 A (Reviewing) On the first invoice? 7 Q Yes. 8 A Yeah, 8/11 and -- 9 Q And then on the second you see an invoice date of 10 8/10/2016? 11 A Okay. 12 Q Okay. So this was an email that would have been 13 forwarded to Mr. White -- let me ask. Why would Mr. 14 White have been forwarded an email like this? 15 A I would assume that Laura was hoping he would expedite 16 it. 17 Q And by "expedite it", do you mean resolve this unpaid 18 invoice? 19 A Yeah, but you'd really have to ask Laura why she sent 20 it to him. 21 Q Okay. Well, let me ask, not specifically as to why Ms. 22 Adcock would have sent this letter. What is your 23 understanding as to why Mr. White would be receiving 24 correspondence, such as these? Or such as this one, 25 Plaintiff's Exhibit 6?
Page 83 1 A Yeah, correct. 2 Q Excuse me? 3 A I said, yeah, correct. 4 Q Okay. And then in the subject line it says, (as read) 5 "Urgent -- past due August invoices attached." 6 A Yes. 7 Q Okay. And you see it looks like the body of this email 8 says, (as read) "I have an order being held up?" 9 A Yes. 10 Q Okay. Then I would submit to you, do you see under 11 "Attachments" there appears to be two attachments to 12 this email on the first page? 13 A Yeah. 14 Q And there appear to be invoices from Globe Food 15 Equipment Company? 16 A Correct. 17 Q Okay. What are the amounts on these invoices for Globe 18 Food Equipment Company? 19 A Thirty-five and two-seventy-seven. 20 Q Okay. This is an email -- Plaintiff's Exhibit 6 is an 21 email dated March 14, 2017. Do you see that? 22 A Yes. 23 Q And it -- 24 A We're talking about the Laura Adcock email still? 25 Q Yes, correct. Okay. And then if you look at Globe	Page 85 1 A Well, if she works in accounting, which I don't know if 2 she did or not, I don't know -- 3 Q Her title on this says "Purchasing Specialist". 4 A Purchasing Specialist. Yeah, so it probably would have 5 been more structurally accurate for these people to 6 address those concerns to Jean Hodges at those times. 7 Q Okay. 8 A But I assume that they were seeking someone who had -- 9 you would, be willing to put pressure on Jean's 10 organization to get these things done. 11 Q Okay. All right. And, I mean, it appears to me that 12 this, you know, the first one with the invoice date of 13 8/11/2016, and the second with the invoice date of 14 8/10/2016, do you agree that Mr. White would have 15 received these? Do you see where these were forwarded 16 to him on March 14th? 17 A This -- yes. 18 Q Okay. All right. Those are fairly insignificant 19 invoices. Was the seven-month delay in payment a 20 result of liquidity issues in 2017 or would you 21 attribute that to operational issues? 22 A I couldn't opine on an individual invoice. We 23 certainly had problems with payments, there's no 24 question -- 25 Q Okay.

Page 86 1 A -- that we had -- that we had to manage our cash very 2 closely during this period because one of the key 3 attributes of the problems that we were having with IT, 4 was getting out the invoices in a timely fashion. 5 Q Okay. All right. I guess my question is, as you sit 6 here today, in 2017 was CFR or Tech24 not capable of 7 paying a \$34.80 invoice and a \$277.11 invoice? 8 A I disagree with that. 9 Q Do you think that CFR was capable of paying those? 10 A Of course. 11 Q Okay. All right. What would you attribute the seven 12 months delay and \$300 of invoices to? 13 A I don't have information to answer that. 14 Q Okay. Do you think it's a management issue? 15 A I don't know. 16 Q Okay. Do you think it's a transition to a new IT 17 system issue? 18 A I think on a higher level, rather than looking at 19 individual items. There's no question that we had -- 20 that we were constricted on cash because of slowed 21 billing and that we had other things that were related 22 to that that were causing -- bills that were late were 23 being rejected by customers and things like that, so it 24 certainly had an impact on our availability of cash. 25 Q Okay. All right. Well, how about you look at --	Page 88 1 Q Okay. And what's the total outstanding balance on that 2 invoice? 3 A \$81. 4 Q Okay. In May 2017, was CFR/Tech24 in such liquidity -- 5 such a liquidity crunch that they could not pay an 6 \$80.87 invoice? 7 A No. 8 Q Okay. I'm going to have you look at Plaintiff's 9 Exhibit 8. Do you see that this is an email from 10 Randel Bryant? 11 A Yes. 12 Q Okay. Do you know Randel Bryant is? 13 A No. But I think it's because he actually goes by a 14 different moniker and I can't -- not able to figure it 15 out. 16 Q That's no problem. Do you see that this is an invoice 17 dated November 20, 2017? 18 A Well, it's responding to an email of that date. 19 Q Correct. Well, what I'm asking you is do you see that 20 there is a sent on date of November 20, 2017, where the 21 underlying email was forwarded to Mr. White? 22 A Yes. 23 Q Okay. And in the body of the underlying email, it 24 says, (as read) "Just a reminder that you have the 25 attached outstanding invoices with the past due balance
Page 87 1 A But as far as these individual things, you can waste 2 your time all you want, but -- and I don't really care. 3 But I'm not going to be able to opine on any individual 4 one of these. 5 Q Sure. Okay. Well, I'm going to have you look at 6 Plaintiff's Exhibit 7. 7 A Okay. 8 Q This appears to be an email that was sent from Jill 9 Moore. Do you know who Jill Moore is? 10 A I do. 11 Q Okay. And who is Jill? 12 A Jill was over HR at Tech24 and continues in HR to this 13 day. 14 Q Okay. And this is an email dated May 18, 2017? 15 A Yes. 16 Q Okay. And this is an email that's forwarded to Mr. 17 White? 18 A Yes. 19 Q Okay. Do you know why Ms. Moore would be forwarding an 20 email like this to Mr. White? 21 A I do not. 22 Q Okay. All right. I'm going to have you look at the 23 attachment to Plaintiff's Exhibit 7. Do you see an 24 invoice with Sportsline? 25 A Yes.	Page 89 1 of \$953"? 2 A Yes. 3 Q Okay. At this time in 2017, was CFR or Tech24 in such 4 a bad financial condition that you could not pay a \$953 5 bill? 6 A No. 7 Q Okay. In 2017, can you kind of talk me through some of 8 the liquidity issues that Tech24/CFR was having? 9 A I'm sorry. Say that again? 10 Q Can you kind of talk me through -- I know you that you 11 mentioned there was a transition to a new IT system and 12 there was some delays in getting invoicing done. Is 13 that fair? 14 A Yeah. That's fair. 15 Q Okay. Did that result in some liquidity issues for CFR 16 and Tech24? 17 A As I've already stated, yes. 18 Q Okay. Then tell me about the types of liquidity issues 19 you were facing at that time. 20 A Well, we had about -- probably about \$10 million of 21 invoices that were materially delayed, many of which 22 ended up having to be written off, and probably another 23 \$3 million of issues with SSG. So a \$13 million issue; 24 that's a big issue. 25 Q Okay.

Page 90 1 A Okay. 2 Q Okay. At the start of 2017, as far as you're aware, 3 was CFR current on all of its obligations with Fifth 4 Third Bank, McLarty and Mr. White? 5 A Yes. 6 Q Okay. Do you recall if, at the start of 2017, CFR 7 began having issues paying its financial obligations to 8 Fifth Third Bank and McLarty? 9 A We had not had issues paying them, but we had an 10 overall tightness of liquidity. 11 Q Okay. I'm going to show you -- or if you'd look at 12 Plaintiff's Exhibit 9. This appears to be an email 13 that was forwarded or -- excuse me, an email from Jean 14 Hodges to Charlie Arndt. Who is Charlie? 15 A Charlie Arndt is a credit officer with Fifth Third 16 Bank. 17 Q Okay. And the body of this email says, (as read) "But 18 we figured it would be -- industry is down. Bright 19 spot is that we are better than we were last year." Do 20 you know what Ms. Hodges meant by that? 21 A I would assume that she was referring to whatever she 22 sent him, which I believe were financials based on what 23 it says there. So, I'm assuming that she's saying that 24 February of '17 was ahead of February of '16. 25 Q Okay. So --	Page 92 1 invoices? 2 A Well, it's certainly an indicator of liquidity issues. 3 I'm sure he spoke to Jean repeatedly about it and so I 4 believe he was pretty well written into the 5 circumstances. 6 Q Plaintiff's Exhibits 6, 7, and 8, I asked you if CFR or 7 Tech24 was in such a bad financial position that they 8 were not able to pay those bills, and your response was 9 no. Do you recall that? 10 A Yes. 11 Q Okay. So, if CFR was not in such a bad position 12 financially to be able to pay those bills, why would 13 Mr. White think that those unpaid invoices suggested 14 the financial decline of CFR? 15 A Because it was indicative of a -- of slow cash flow. 16 Q Okay. Is cash flow in the industry that you operate 17 in, is cash flow kind of a peaks and valleys? 18 A It can be. 19 MR. SCHANEN: Object to the form. 20 THE WITNESS: I don't think it's unique to the 21 industry, but there's no doubt that, you know, we all 22 live on cash flow. 23 BY MR. PURIEFOY: 24 Q All right. And if there is a decline in cash flow for 25 some period of time, is that directly tied to the
Page 91 1 A And that's my interpretation, but... 2 Q Sure. And I'm just asking what you believe this email 3 to represent and I think you just said, and I just want 4 to be clear, that you believe that Ms. Hodges' email 5 tends to indicate that the February 2017 financials 6 look better than the February 2016 financials? 7 A Correct. 8 Q Okay. All right. Let me ask you this. Not 9 necessarily just with these particular invoices, 10 Exhibits 6 through 8 invoices, but with invoicing 11 overall, do you believe that Mr. White, in receiving 12 those types of invoices, was aware of the financial 13 condition of CFR and Tech24? 14 A Yes. 15 Q Okay. How would he have been aware of those financial 16 issues? 17 A It wasn't a secret; it was common knowledge, certainly 18 among the senior managers, and honestly, I think most 19 of the techs were fairly aware of them, as well. 20 Q Okay. Well, let me ask this. Would Mr. White be aware 21 of the financial condition of the company based solely 22 on past due invoices? 23 A Maybe. 24 Q Okay. And in what regard would he be able to determine 25 the financial condition of CFR based on past due	Page 93 1 overall financial condition of a company? 2 MR. SCHANEN: Object to the form. You can answer. 3 THE WITNESS: Normally. 4 BY MR. PURIEFOY: 5 Q Okay. So, if, in 2017, CFR was having trouble with 6 cash flow, was that something that you believe 7 indicated that CFR was in a really -- was in a bad 8 financial position long-term? 9 A No, not long term. But certainly it indicated that we 10 were dealing with, you know, issues that needed to be 11 resolved. 12 Q Was 2017 the first time, after the stock purchase with 13 Mr. White, that CFR experienced any cash flow issues? 14 A No, I'm sure not. I was brought in in 2004 because the 15 company was in a lot of financial problems. 16 Q And between 2014 and 2017, do you think that you 17 righted the ship, at least in some regards, as it 18 related to the financial condition? 19 A Yes. 20 Q Okay. 21 A And through '16, as I've said, you know, we had a lot 22 of issues with the SSG acquisition and with the -- you 23 know, with the IT transition. 24 Q Okay. So I guess my -- what I want to confirm with you 25 as you sit here today, is it your testimony that cash

Page 94 1 flow issues are not permanent? 2 A Not usually. 3 MR. SCHANEN: Object to the form. 4 BY MR. PURIEFOY: 5 Q Okay. Is it your understanding that cash flow issues 6 are not necessarily indicative of the long-term 7 financial stability of a company? 8 A They're not necessarily indicative of that. 9 Q Okay. I think that you said that it was common 10 knowledge that CFR was in a bad financial position? 11 A Yes. 12 Q Okay. How was that common knowledge? 13 A Well, we weren't keeping it a secret among the 14 managers, among the senior managers. And frankly, a 15 lot of other ones because of these exactly same type of 16 involvements, you know, were aware that there was, you 17 know, definitely issues. 18 Q Okay. So -- 19 A I mean, we didn't put it up on a neon sign in the 20 offices or anything, but you would have had to be 21 fairly asleep to not have known what was going on, 22 especially if you were in management. 23 Q Okay. In order for someone in a management position to 24 know the financial position of the company, would it 25 have required them to make some assumptions or was	Page 96 1 answer. 2 BY MR. PURIEFOY: 3 Q So if Mr. White was to receive -- or if he did receive 4 specific financial information related to CFR, that 5 would have come from Jean Hodges? 6 A Or one of her employees. 7 Q Okay. Do you recall ever providing Mr. White in 8 advance of him becoming a shareholder in the company - 9 A No. 10 Q -- any financials of the company? 11 A No. 12 Q Okay. So -- and this is just important for me to make 13 sure I have my head wrapped around. What information 14 was available to Mr. White that suggested the financial 15 or spoke to the financial condition of CFR? 16 A I am not aware of what he specifically got because it 17 would not have come from me. 18 Q Okay. So, as you sit here today, you're not aware of 19 anything that you provided Mr. White? 20 A No. 21 Q Okay. Was Jean Hodges Mr. White's direct supervisor? 22 A No. 23 Q Okay. Can you tell me why Mr. White wasn't being 24 provided with financials of CFR? 25 MR. SCHANEN: Object to the form.
Page 95 1 there direct information provided to those managers 2 that demonstrated the poor financial condition of CFR? 3 MR. SCHANEN: Object to the form. 4 THE WITNESS: It -- the managers, depending on 5 where they were, got different levels of financial 6 information. I would say that their knowledge, though, 7 was more based on discussion, and you know, than them 8 analyzing the financials. 9 BY MR. PURIEFOY: 10 Q Well, let me ask specifically. What information would 11 Mr. White have been provided in this time in 2017 -- 12 A He -- 13 Q -- that would have demonstrated the long-term financial 14 instability of CFR? 15 A Well, as he stated in his deposition, you know, Clark 16 Mizell had given him a full financial package. 17 Q What I'm asking you is -- that occurred at a later date 18 and we're going to get to that. At the time that Mr. 19 White was just acting as an employee of CFR, what 20 information specifically would he have obtained to 21 inform him about the specific financial condition of 22 CFR? 23 MR. SCHANEN: Object to the form. 24 THE WITNESS: I'm not sure that I can answer that. 25 That would be something that Jean Hodge would have to	Page 97 1 THE WITNESS: I don't know that that's the case. 2 BY MR. PURIEFOY: 3 Q Can you tell me why you didn't provide Mr. White with 4 the financials of CFR? 5 A Because we had an accounting department that would do 6 that, not me. 7 Q Are all managers of CFR privy to the overall financial 8 condition of CFR? 9 A Not all, but the senior ones are. 10 Q How do you distinguish between senior and junior 11 managers? 12 A Today, and probably in '17 as well, we consider anybody 13 who's a regional manager or above as being a senior 14 manager. 15 Q And were senior managers provided with yearly 16 financials of CFR? 17 A I -- I can't speak to what Jean sent out to people. 18 Q Okay. So all those questions would be better suited 19 for Jean Hodges? 20 A Sure. 21 Q Were you her superior? 22 A I was. 23 Q Okay. Did you have any conversations with Ms. Hodges 24 in preparation for today's deposition? 25 A No.

Page 98 1 Q Okay. 2 MR. SCHANEN: Devon, is this a good time for a 3 break? Our food's getting cold. 4 MR. PURIEFOY: Okay. Yeah, that's fine. 5 (OFF THE RECORD) 6 BY MR. PURIEFOY: 7 Q All right, Mr. Herwald. We are back on the record 8 after a brief lunch break. Again, let me ask. Did you 9 discuss your testimony with your attorney? 10 A No. 11 Q Okay. All right. Before we move on to plaintiff's 12 next exhibit, there's a couple of things that I just 13 wanted to clarify. We were discussing Plaintiff's 14 Exhibits 6, 7, and 8, which were some invoices that had 15 been provided to Mr. White by certain individuals at 16 Tech24. Do you recall those exhibits? 17 A Yes. 18 Q Okay. And I asked you, I believe, whether it was your 19 belief as you sit here today, whether Mr. White could 20 ascertain through invoices such as those the long-term 21 financial condition of CRF and Tech24. 22 A Yeah, and my answer was that you really couldn't use 23 them as a long-term indicator, but it certainly 24 indicated -- you know, it was indicative of the state 25 of affairs.	Page 100 1 Q Okay. Beyond those senior people in the accounting 2 department, was there anyone else that would have had 3 the authority to provide Mr. White with that 4 information? 5 A Let me clarify that -- there was no hard and fast 6 dictate that only these people could provide -- unless 7 in Jean's area they put up something like that, but as 8 far as I know, there was not any specific policy about 9 such matters. So you ask who was authorized. I don't 10 know that anybody was not auth- -- you know, was not 11 authorized. 12 Q Well, then, let me ask it this way. Who had access to 13 the full financial information of CFR and Tech24? 14 A Well, certainly, you know -- the numerous people within 15 the finance department and others who received them 16 from the finance department. 17 Q As you sit here today, are you aware of anyone, 18 specifically, that provided Mr. White with the 19 financials of CFR or Tech24? 20 A I can't say with specificity and, I mean, I don't know 21 who would have been sending him those out of the 22 finance department. 23 Q I -- I guess my question to you is, as you sit here as 24 the 30(b)(6) deponent for CFR and Tech24, are you aware 25 of anyone that provided that information to Mr. White
Page 99 1 Q And I think we were discussing that was indicative of 2 cash flow problems? 3 A Correct. 4 Q Okay. In your mind, are cash flow problems of a 5 business considered short-term or long-term issues? 6 A Well, I don't think cash flow issues fit exclusively 7 into long-term or short-term, you know. 8 Q Okay. 9 A I mean, it just depends on what the reason for it is. 10 Q So let me ask you this. If you were evaluating the 11 financial condition of a company, how would you -- or 12 what would you need to review to determine that 13 company's financial position? 14 A Well, normally you would ask for, you know, the 15 financials would make sense. 16 Q Okay. Are you aware of -- did you provide Mr. White, 17 between January of 2017 and September of 2017, did you 18 personally provide Mr. White with any financials of CFR 19 or Tech24? 20 A Not that I recall. 21 Q Who would have been -- who else would have had the 22 authority to provide Mr. White, between January 2017 23 and September 2017, with the financials of CFR and 24 Tech24? 25 A Any of the senior people in the accounting department.	Page 101 1 before September of 2017? 2 A I do not know who would have done that. 3 Q Okay. And I think it's -- is it your testimony that 4 Mr. White was aware of the cash flow issues that Tech24 5 was experiencing? 6 A Yes. 7 Q Okay. All right. I'm going to show you what I've 8 marked as Plaintiff's Exhibit 10. And I'll give you a 9 second to look over this. 10 A (Reviewing) Okay. 11 Q All right. Plaintiff's Exhibit 10 appears to be an 12 email that was sent from you to a number of individuals 13 with the subject line "Investor Update". Do you see 14 that? 15 A Yes. 16 Q Okay. And this is an email dated June 20, 2017? 17 A Uh-huh. 18 Q Was that a "yes"? 19 A Yes. 20 Q Okay. Now the first sentence of this email says, (as 21 read) "As we get our arms around our new IT system we 22 are getting back to normalcy in our operations." I 23 know that you had testified earlier that you believe 24 that at least one of the contributing factors to the 25 cash flow issues that CFR and Tech24 were experiencing

Page 102 1 were the result of the IT system. Do you recall that? 2 A Yes. 3 Q The IT system that you're referencing in this email, is 4 that the IT system that you believe was contributing to 5 some of those cash flow issues? 6 A Yes. 7 Q In the second part of that sentence, it says, (as read) 8 "We are getting back to normalcy in our operations." 9 What did that mean? 10 A Well, it meant that we were starting to get our billing 11 out more punctually -- 12 Q Okay. 13 A -- in particular. 14 Q Okay. 15 A And speeding things up like how long it was taking us 16 to get out financials out and other matters of that 17 nature. 18 Q And in doing so, in getting your arms around the new IT 19 system and getting those invoicing bills out in a more 20 timely fashion, was it your subjective belief, at the 21 time, that that would at least to begin curing some of 22 those cash flow issues? 23 A Yes. 24 Q Okay. Was that what the Tech24 and CFR team was led to 25 believe?, that the IT issues were becoming something	Page 104 1 position to take as it relates to the financial 2 condition of CFR at that time? At the time that you're 3 sending this email, what would be a reasonable position 4 to take regarding CFR and Tech24's financial condition? 5 MR. SCHANEN: Object to the form. You can answer. 6 THE WITNESS: Well, I don't know that there's one 7 answer to that. It -- I can only tell you what I -- 8 what mine was. It was that we had dug ourselves a 9 fairly deep hole. I -- you know, you couldn't get back 10 the 13 million that was lost, but that, you know, we 11 certainly hoped and expected that, as we fixed the 12 things that were the initial cause of our problems, 13 that we would, you know, be heading back. Like I say 14 in that, into more of a normal situation. It wasn't 15 going to be -- and I don't think I indicated there, 16 that it was going to be something that was going to 17 happen in a week or two. And, I would have expected 18 that we'd still have a long row to hoe to get fully out 19 of that situation. 20 BY MR. PURIEFOY: 21 Q Okay. In June of 2017, June 20, 2017, as you're 22 sending this email to the investors, did you 23 subjectively believe, as the president of CFR and 24 Tech24, that those entities were in financial ruin? 25 A No.
Page 103 1 that was getting under control -- getting some of those 2 IT systems under control? 3 A I'm not sure I understand your question. 4 Q Let me ask it this way. That was a poor question. 5 Would Mr. White have known or did you have any 6 discussions with Mr. White about these IT issues? 7 A I'm sure that Mr. White knew about the IT issues. 8 Q So, in June of 2017, would it be fair that Mr. White at 9 least could have known that Tech24/CFR was on its way 10 to getting back to normalcy in operations? 11 A Yes. 12 Q Okay. And in doing so, would Mr. White have any reason 13 to believe that the cash flow issues that you were 14 experiencing at the beginning of the year would not at 15 least begin to subside? 16 A I can't answer that question. 17 Q Okay. Would that be a reasonable assumption to make? 18 A It was certainly an element of trying to get things 19 back to normal. 20 Q Okay. And when you say an element, is it fair to say 21 that, in getting your arms around the IT systems, that 22 that was pushing CFR and Tech24 towards a more positive 23 cash flow position? 24 A I believed so, at the time. 25 Q Okay. In June of 2017, what would be a reasonable	Page 105 1 Q Okay. Is there anybody that could have reasonably 2 taken the position that CFR or Tech24 was in financial 3 ruin at the time? 4 A I couldn't tell you what other people would... 5 Q Did the -- the cash flow issues, I know that you said 6 some of it was attributable to these IT systems. Could 7 you attribute any of those issues to management 8 concerns? 9 A Well, yes. You know, in particular in the execution of 10 the IT project, you know, that we were doing. And 11 certainly, you know, with some of the -- with the SSG 12 operations on the west coast. 13 Q Okay. And how much do you think that those management 14 concerns contributed to the cash flow issues that were 15 -- you were experiencing? 16 A Say that again? 17 Q How much of those management concerns do you think 18 attributed to the cash flow issues that CFR and Tech24 19 were experiencing? 20 A I couldn't quantify that. 21 Q Okay. 22 A I mean, you know, from a philosophical point of view, 23 you know, management's always responsible. I'm 24 responsible, Rick's responsible, Corey's responsible, 25 Jean's responsible. You know, I mean, that's how it

Page 106 1 is, and we were the leadership team. 2 Q Okay. In addition to the IT systems and the management 3 issues, what else do you believe was contributing to 4 the cash flow issues? 5 A Well, as I've alluded to throughout the day, SSG 6 operations on the west coast were a mess. It -- you 7 know, their customer base was fleeting and it -- there 8 was just a lot of dysfunctional things going on in that 9 operation out there that hadn't been closely managed by 10 the prior owner. And, you know, among other things, it 11 had a somewhat horrific employee morale problem and -- 12 Q Say that last part one more time. 13 A I said it -- the operations out there had a horrific 14 employee morale problem. 15 Q Okay. 16 A And it was -- you know, it was a -- you know, it 17 started to appear to be an intractable situation. 18 Q Okay. So that sounds to me, though, that the -- let me 19 ask this first. Was SSG under the same umbrella IT 20 system that CFR and Tech24 were under? 21 A Ultimately. But initially, SSG was on a home-grown 22 system of its former parent company and much of the IT 23 problems, as we tend to refer to them, were problems 24 with trying to integrate the data from SSG which was in 25 a -- I'm not an IT guy. I just know that there was	Page 108 1 A I'm just -- was looking at 11. Generally follow that 2 stream. Okay. 3 Q All right. So let's just focus on three of these to 4 begin with, specifically 11, 13 and 14. 5 A Okay. 6 Q So we were previously looking at Exhibit 10, 7 Plaintiff's Exhibit 10, where you indicated to your 8 investors, (as read) "As we get out of -- as we get our 9 arms around our new IT systems, we're getting back to 10 normalcy in our operations." Do you recall that? 11 A Yes. 12 Q Okay. The very next day, there appears to be a 13 conversation that you are having with Charlie Arndt. 14 And what did you say his position was with Fifth Third 15 Bank? 16 A He was the credit officer. 17 Q Okay. So the day after you informed your investors 18 that you're getting back to normalcy in operations, 19 there's an email that you received from Charlie that 20 says, (as read) "Our analysis of the information 21 submitted reveals the company has introduced several 22 more add backs to the covenant calculations which were 23 not originally approved. The company has materially 24 missed plan, not demonstrated an ability to generate 25 sustainable cash flow and is alarmingly illiquid." Do
Page 107 1 enough uniqueness and inaccuracies in it that much of 2 those inaccuracies in SSG's information caused 3 inaccuracies in billing the customer, which was largely 4 related to the slowdown in billing when we brought them 5 onto the system. 6 Q Okay. All right. So in -- up to, let's just say July 7 of 2017, is it your understanding that CFR and Tech24 8 were up to date in paying the Superior Loan to Fifth 9 Third Bank, the Junior Loan to McLarty and Mr. White's 10 subordinated note? 11 A Well, not on July 5th because the bank froze Junior 12 payments on the preceding Friday. And so, McLarty, at 13 that point, was in a payment default. Well, we were in 14 a payment default with McLarty, I should say. 15 Q All right. I'm going to show you what I'm going to 16 mark as Plaintiff's 11, 12, 13, 14 and 15. So that's 17 going to be Plaintiff's 11 through 15. 18 A Thank you. 19 Q So I'll just give you a moment to kind of glance over 20 these and then we'll talk about them more in depth. 21 And we can -- we'll talk about them more specifically. 22 A (Reviewing.) 23 Q Have you had a chance to look over 11 through 15? 24 A No. 25 Q Okay.	Page 109 1 you see that? 2 A Yes. 3 Q Okay. How can you square "we're getting back to 4 normalcy in our operations" with "alarmingly illiquid"? 5 A Well, operations are operations; you know, how you 6 process your work and things like that. You'll never 7 fix anything financial if your operations are not 8 performing properly. 9 Q Okay. So the operations issues that we've been 10 discussing, would that have been sort of common 11 knowledge amongst the managers of Tech24 and CFR? 12 A Yes. 13 Q Okay. These -- the alarmingly illiquid state of Tech24 14 and CFR that's referenced in this email from Mr. Arndt, 15 that's in a conversation between him, yourself and Jean 16 Hodges; correct? 17 A Yes. 18 Q And it's fair to say that this information was not 19 commonly known by the managers of CFR and Tech24? 20 A I don't know that I agree with that, but -- 21 Q Okay. 22 A I mean, certainly the average manager wasn't, like, 23 getting day-to-day updates on, you know, communications 24 between us and the bank. 25 Q Okay. Well, I guess my question is, Mr. Herwald, this

Page 110 1 is an email correspondence with three people on it. 2 Who else would have been privy to this information? 3 A Subsequently, Christopher Bay, Dan Medlin, probably 4 five other people in the accounting department. 5 Q Was Mr. Wright -- Mr. White privy -- 6 A I don't know. 7 Q -- to this information? 8 A I don't know how much people on this may have shared 9 with him. 10 Q Did you personally share any of this information with 11 Mr. White? 12 A It probably came up in conversation, but not in written 13 format. 14 Q What I'm asking you is do you specifically recall a 15 conversation with Mr. White where you explained to him 16 the alarmingly illiquid state of Tech24 and CFR? 17 A I don't recall. 18 Q Okay. So, as you sit here today, you do not recall 19 having a specific conversation with Mr. White regarding 20 that issue? 21 A No. 22 Q Okay. Now, I believe you stated that the last loan 23 payment that Mr. White received from CFR and Tech24 was 24 a January 1, 2017, loan payment. Is that correct? 25 A I don't believe so, no.	Page 112 1 MR. SCHANEN: He's on that. 2 THE WITNESS: You said page 2, paragraph 3. 3 MR. PURIEFOY: Well, I'm calling it page 2. The 4 first page says "Exhibit A". 5 THE WITNESS: Oh. 6 MR. PURIEFOY: The second page says "Junior -- 7 THE WITNESS: Okay. 8 MR. PURIEFOY: -- Subordinated Promissory Note". 9 THE WITNESS: Okay. 10 BY MR. PURIEFOY: 11 Q The third paragraph reads, (as read) "If and to the 12 extent then permitted under the Subordination Agreement 13 this Junior Subordinated Promissory Note shall be 14 payable in monthly installments of principal and 15 interest equal to \$18,871.24 per month, commencing on 16 September 1, 2014, and continuing on the 1st day of 17 each month thereafter until paid in full." Do you see 18 that? 19 A Yeah. So it -- all right. And I didn't appreciate the 20 nuance of that, but maybe -- I guess that would 21 indicate that he got his July payment. 22 Q So what I'm -- is it -- as you sit here today, is it 23 your belief -- and I'm not trying to trick you here, 24 because we could just do the math on this and I don't 25 think that's that big a deal. I'm just trying to
Page 111 1 Q Okay. Did he receive the last payment in June of 2017? 2 A I believe he received it on July 5th by his own 3 testimony, but we processed it the prior week, towards 4 the end of the week. 5 Q Let me ask it this way. Did Mr. White receive his June 6 2017 loan payment at some time -- 7 A Yes. 8 Q -- in the year of 2017? 9 A I believe so, yes. 10 Q Okay. Did Mr. White receive his July loan payment in 11 the year of 2017? 12 A I'm not sure how you're looking at that, you know, in 13 terms of the beginning of July, the end of June. I 14 can't -- I -- we should not have made a July payment to 15 him, based on the bank telling us not to. 16 Q It may help refresh your memory if I can refer you back 17 to Plaintiff's Exhibit 1. 18 A (Reviewing.) 19 Q Specifically, the page 2, third paragraph. Not third 20 number paragraph, I apologize. The third paragraph on 21 page 2 of the Subordinated Promissory Note. 22 A (As read) "Hereby -- Maker hereby expressly waives 23 presentment demand notice"? 24 Q No, sir. So, under the Subordinated Promissory Note, 25 Exhibit 1 --	Page 113 1 figure out, as you understand it, did Mr. White receive 2 his June payment in July and not his July payment? Or 3 did he receive June and July both? 4 A I'm guessing that he received June and July both. 5 Q Okay. All right. Now, if you'll look at Plaintiff's 6 12. 7 A (Witness views document) Okay. 8 Q Plaintiff's 12 appears to be an email from Szeman Lam 9 -- and I'm probably butchering that name, so forgive 10 me. I will provide the court reporter -- 11 A Doesn't matter. I don't know who that -- 12 Q -- with that spelling. 13 A He's the lawyer for Proskauer. 14 Q Okay. And this appears to be -- Plaintiff's Exhibit 12 15 appears to me to be an email where the attorney is 16 notifying certain individuals, including yourself, of a 17 Notice of Default/Reservation of Rights. Do you see 18 that? 19 A Yes. 20 Q And attached to that email appears to be a letter 21 indicating that CFR and Tech24 are in default under the 22 McLarty loan? 23 A Correct. 24 Q Okay. What did that -- tell me about that. What does 25 this letter mean to you as you sit here today?

Page 114 1 A That they're declaring a default. Well, they're 2 reserving their rights to declare a default and -- 3 Q Do you know the grounds under which they declared that 4 default? 5 A Yes. The -- they didn't receive their payment for the 6 third quarter -- third quarter, second quarter -- the 7 payment that was basically due on June 30th, they did 8 not get it. 9 Q And did this serve as formal notice to CFR and Tech24 10 that they were being declared in default under that 11 Junior Credit Agreement? 12 A I'm not sure about the technicality with the 13 Reservation of Rights issue, but it certainly, from a 14 practical point of view, was -- you know, was. 15 Q Let me ask this. Did CFR or Tech24 take this Notice of 16 Default as an exercise by McLarty of their right to 17 declare that note in default? 18 A Yes. 19 Q Okay. And you acted in accordance with those default 20 provisions? 21 A Yes. 22 Q Okay. And this is dated July 20, 2017? 23 A Yes. 24 Q Okay. Beyond the individuals that were listed on this 25 email correspondence, do you have personal knowledge of	Page 116 1 A Not to my knowledge. 2 Q -- on the Subordination Agreement? 3 A Not that I know of. 4 Q Okay. Do you have personal knowledge as to whether 5 McLarty sent Mr. White a Notice of Default? 6 A I do not. 7 Q Okay. If Mr. White did not receive that Notice of 8 Default from you and he did not receive it from 9 McLarty, who else would have had the authority to send 10 him this Notice of Default? 11 A I -- Fifth Third. 12 Q Okay. As you sit here today, are you aware if Fifth 13 Third sent Mr. White notice of the default to the 14 address listed in the Subordination Agreement? 15 A Not that I'm aware of. 16 Q Okay. All right. What's your understanding as to the 17 effect that this Notice of Default on McLarty had on 18 the Superior Credit Agreement that you had with Fifth 19 Third Bank? Was there a triggering event that resulted 20 from this default notice? 21 A I'm not sure that there was a direct link, but it 22 certainly would have, you know, had a detrimental 23 effect on the relationship there. 24 Q Are you aware that, in sending notification of the 25 default -- the Notice of Default to Tech24 and CFR,
Page 115 1 anyone else that this Notice of Default was sent to? 2 A Well, I certainly can't say who else they sent it to. 3 I would have expected them to have sent it to Fifth 4 Third at a minimum. 5 Q And it looks like on July 24th you actually forwarded a 6 copy of this Notice of Default to Charlie Arndt. Do 7 you see that -- 8 A Yes. 9 Q -- at the top of this? 10 A Yes. 11 Q Okay. Do you have any personal knowledge, as you sit 12 here today and as a 30(b)(6) deponent, as to whether 13 this Notice of Default was forwarded to Mr. White? 14 A I do not know that it was. I would expect not. 15 Q Okay. Did you personally provide notice to Mr. White 16 in accordance with the notice provisions of the 17 Subordinated -- Subordination Agreement? 18 A The Subordination Agreement does not compel me to 19 notify him. I truly thought that the bank and McLarty 20 would have been doing that because that's how that 21 agreement reads. 22 Q And it certainly did not require you to do so. What 23 I'm asking you is do you have any personal knowledge as 24 to whether or not you did, in fact, send notice of this 25 default to Mr. White to the address listed --	Page 117 1 that that triggered an automatic default under the 2 Fifth Third Bank loan? 3 (Cell phone interruption.) 4 THE WITNESS: I think that's you. 5 BY MR. PURIEFOY: 6 Q Okay. All right. I think the question that I asked 7 was are you aware that, in providing Notice of Default 8 under the McLarty loan, that there was an automatic 9 trigger of default under the Fifth Third Bank loan? 10 A They're cross-defaulted, yes. 11 Q Meaning? And when you say cross-defaulted -- 12 A That they -- 13 Q -- meaning if McLarty declares a default under their 14 loan, there's an automatic triggering of default of the 15 Fifth Third Bank loan? 16 A It's an automatic right for them to do so if they want, 17 but they -- from a practical point of view, the bank 18 already had that position. 19 Q Correct. But I guess what my question is, on July 20 20th, was that the formal notice to CFR and Tech24 that 21 they were exercising their ability to deem that note to 22 be in default status? 23 A McLarty was? 24 Q McLarty, correct. 25 A Yes.

Page 118 1 Q Are you aware that, subsequent to that notice by 2 McLarty, that Fifth Third Bank also declared their note 3 to be in default? 4 A Yes. 5 Q Okay. And I think I already asked you, but do you have 6 personal knowledge as to whether you sent this default 7 notice to Mr. White? 8 A I did not. 9 Q Is it -- do you believe that Mr. White, as you sit here 10 today, ever received notice of this default? 11 A I -- I don't -- I just don't know. 12 Q Okay. 13 A I really don't. I know Rick says he didn't and I don't 14 -- yeah. 15 Q Well, do you have any reason to believe that that's 16 inaccurate? 17 A I -- I really don't know. I mean, it's hard from me to 18 believe that McLarty and Fifth Third both would have 19 failed to send it to -- to him, but, you know, stranger 20 things happen. 21 Q In your review of documents in preparation for sitting 22 today as a 30(b)(6) deponent, did you see a document 23 where Fifth Third Bank or McLarty sent a notice to Mr. 24 White? 25 A No.	Page 120 1 believe that Mr. White was privy to these 2 communications? 3 A I would not have expected him to have gotten the email, 4 but I don't know if he was -- again, we -- it was 5 fairly well understood that we had problems with the 6 banks and stuff at this stage, but the specifics of 7 this? No. 8 Q Okay. Let me ask this. Would you equate problems with 9 the bank to being in default under the Superior and 10 Junior Loans? Are those the same thing to you? 11 A (No response.) 12 Q You just testified a second ago that it was common 13 knowledge that you were having problems with the bank. 14 Flesh that out. What was common knowledge? 15 A That -- well, people knew that we had a suspension on 16 payments to the Junior Debt and -- and many people were 17 aware that we were having problems with McLarty and, 18 therefore, as a result, with Fifth Third. 19 Q Okay. Who's "many people"? Who would have known that 20 information -- that you know, specifically, would have 21 known that? 22 A Well, I don't -- you know, we had 500 employees. I 23 don't specifically what everybody was talking about, 24 but I can tell you that the management team in 25 Greenville were mostly well aware of it.
Page 119 1 Q Okay. All right. I'm going to have you look at 2 Plaintiff's 13. This is an email dated August 21, 3 2017. 4 A (Reviewing) Yep. 5 Q And this is an email from you to Charlie Arndt that 6 says, (as read) "They intend to take out the term and 7 put in some additional capital." Are you referring to 8 McLarty? 9 A Yes. 10 Q Okay. What was your -- what did that mean, "They 11 intend to take out the term and put in some additional 12 capital"? 13 A This was referring to -- there was discussions going on 14 between the company, McLarty and Fifth Third about 15 various proposals that they were making to help 16 restructure the financing. 17 Q And would this -- these conversations and negotiations 18 have been common knowledge to the managers of Tech24 19 and CFR? 20 A No. 21 Q Okay. Who would have been privy to these 22 conversations? 23 A Well, obviously, myself, Jean, the usual finance people 24 and analysts. 25 Q As you sit here today, do you have any reason to	Page 121 1 Q Did you have any conversations that you can recall 2 specifically today with Mr. White, regarding the 3 default under McLarty and Fifth Third Bank loans? 4 A We had an earlier conversation in July, where I told 5 him this is going to be the last payment you're going 6 to get for a while because they had frozen the 7 payments, which indicates a default. 8 Q Well, did it indicate a default to you? Or did you 9 inform Mr. White during that conversation that you 10 were, in fact, in default? 11 A We had not gotten a formal Notice of Default. We were 12 just in technical default and that's what I would have 13 conveyed to him, at that time. 14 Q Correct. So that means that you would not have been in 15 default under the McLarty and Fifth Third Bank loan; 16 correct? 17 MR. SCHANEN: Object to the form. 18 THE WITNESS: It -- it's a technical distinction, 19 but I suppose so. 20 BY MR. PURIEFOY: 21 Q Okay. Did you personally provide Mr. White with a 22 notice of the default? 23 A No. 24 Q Okay. So is it your testimony that the only 25 conversation or the only knowledge that Mr. White would

Page 122 1 have had of this default would have been through 2 conversations with you? 3 A No, I'm not saying that. I'm sure he had conversations 4 with Jean Hodges and other people and -- 5 Q Can you specifically speak to those conversations? 6 A No. 7 Q Okay. So is that -- 8 A I -- 9 Q -- just conjecture? 10 A I didn't stand over their shoulder. I don't know when 11 they called each other. That's a ridiculous question, 12 I might add. 13 Q Well -- well, my question to you is do you have 14 specific knowledge of conversations that occurred 15 between Jean Hodges and Rick White regarding the 16 default under the McLarty loan? 17 A No. 18 Q Okay. Do you recall specific conversations between 19 yourself and Rick White about the default under the 20 McLarty loan? 21 A I do not. 22 Q Okay. All right. I'm going to have you look at 23 Plaintiff's 14. 24 A (Reviewing.) 25 Q And specifically the second page of Plaintiff's 14,	Page 124 1 A I believe so. 2 Q Okay. And do you know what was contained in that 3 presentation that you had clearly put together? 4 A I don't recall exactly, but I'm sure it was the usual 5 information about the company. 6 Q Okay. What's the "usual information" about the 7 company? 8 A A description of the business, description of the 9 current situation, things of that nature. 10 Q They had been privy to the financial condition of the 11 company? 12 A Yes. 13 Q Okay. So would they also have been made aware that you 14 were in a default position with your Superior Lender 15 and Junior Lender? 16 A I don't remember. I don't recall. 17 Q Do you think that that would be prudent information for 18 an investor to know? 19 A I think so. 20 Q Okay. So, after receiving Notice of Default, you are, 21 what I would say, soliciting investors and looking for 22 capital investors. Is that fair? 23 A Yes. 24 Q Okay. All right. Talk to me about the conversations 25 that you had with Mr. White regarding CFR and Tech24's
Page 123 1 which is an email dated August 21, 2017, from you to 2 Lauren Steel and Christopher Smith. Do you see that 3 email? 4 A Yes. 5 Q The body of that email reads, (as read) "I literally 6 just finished this. I am sure there are some typos, or 7 the like, but this is the deck as of now. Obviously, I 8 borrowed from some different presentations. Bo Russell 9 is going to share with three local investment groups 10 that have an interest, though I do not know how 11 seriously." Do you see that? 12 A Yes. 13 Q Okay. What did that mean, that "Bo was going to share 14 a presentation with local investors"? 15 A Well, we were trying to raise money and he was -- knew 16 some investors that he thought might be interested. 17 Q Do you know who those three investors were? 18 A I don't. 19 Q Okay. Would Bo Russell know who those three investors 20 were? 21 A You'd have to ask Bo Russell that. 22 Q Was Bo serving as your legal counsel at the time? 23 A Yes. 24 Q Okay. Do you know if Bo presented a presentation to 25 those investors?	Page 125 1 failure to pay under his subordinated note. 2 A There were, as we've discussed -- I told him that, you 3 know, the bank has frozen payments to all Junior 4 debtholders and dividends, and that that would impact 5 their debt. Obviously, we talked more about it, but 6 that was essentially the long and the short of it. 7 Q Did you provide Mr. White with a timeline on how 8 quickly you thought those issues were going to be 9 resolved? 10 A I don't recall that. It -- but I'm sure that we'd 11 talked about what we were trying to do to raise money 12 or other things that would have relieved the situation. 13 Q Okay. Do you recall any specific conversations with 14 Mr. White where you informed him that these issues were 15 in the process of being resolved and would only take a 16 couple of weeks or months to sort out? 17 A I do not. 18 Q Okay. Is there anything else that you recall about 19 conversations specifically with Mr. White regarding the 20 failure to pay his note obligation? 21 A I'm sorry? 22 Q Were there any other conversations specifically that 23 you recall with Mr. White where you were discussing CFR 24 and Tech24's failure to pay under the subordinated 25 agreement?

Page 126 1 A We had a number of conversations, though the topic 2 didn't change a great deal. 3 Q Okay. Was -- did it appear to you that Mr. White was 4 concerned with why those payments were being missed? 5 A He wasn't freaking out or anything. You know, it was, 6 you know, a business conversation. 7 Q As you recall and as you sit here today, do you 8 remember a conversation, did Mr. White ever accuse you 9 of never intending to pay -- 10 A No. 11 Q -- his note? 12 A No. 13 Q Okay. At the time that the note payments were being 14 missed, did Mr. White continue to work for CFR and 15 Tech24? 16 A Yes. 17 Q Was the issue on his missed note payment so severe that 18 it caused him to resign his position? 19 A I don't believe so. 20 Q Okay. Well, as you sit here today, did Mr. White have 21 any conversations with you that tended to indicate that 22 your -- that CFR and Tech24's failure to pay under his 23 subordinated note was the cause of his resignation? 24 A No. 25 Q Okay. So, in the July 2017 time frame, Mr. White is	Page 128 1 me up or we were talking about something else and he 2 asked if he could participate in what I was doing. And 3 -- you know, and I told him what I was doing and he 4 wanted to participate in it, and I let him. 5 Q Okay. When you say participate in what you were doing, 6 what do you mean by that? 7 A After we did the B round of equity, I wanted -- 8 Q Explain the B round of equity. 9 A Well, we had Preferred A, Preferred B. The Preferred B 10 round had been done just shortly before this time and 11 -- and I decided to put 150,000 into the business, in 12 equity. And I don't know how it came up exactly, but 13 it -- but Rick was aware that I was doing that and he 14 asked if he could participate in the same round of 15 funding. 16 Q So it was Mr. White's idea -- 17 A Yes. 18 Q -- to invest in CFR and Tech24? 19 A He raised the subject with me. I did not raise it with 20 him. 21 Q Do you recall an email that you sent to Mr. White where 22 you offered to convert his note to stock in CFR and 23 Tech24? 24 A I'd have to see that email. I know that subject came 25 up, but it was a question that he had asked, is whether
Page 127 1 continuing to work on behalf of Tech24 and CFR; 2 correct? 3 A Correct. 4 Q And what position was he working in at that time? 5 A He was Vice President of Field Operations or Opera- -- 6 I forget exactly the title. 7 Q All right. How would you describe your working 8 relationship with Mr. White at that time? 9 A I thought it was good. 10 Q Okay. Although Mr. White was, of course, expressing 11 concerns about the failure to make the note payments, 12 did you have -- was he making any other complaints that 13 you were aware of regarding the operations of Tech24 14 and CFR? 15 A Yes. 16 Q Okay. What were his complaints? 17 A Rick felt that -- that some of the key departments 18 weren't operating in coordination and -- that's the 19 main thing that I recall. 20 Q Okay. Well, let me ask you this. So it's apparent, 21 based on a review of Exhibits 14 -- 13 and 14 that CFR 22 and Tech24 were looking for investors. When did you 23 first begin having conversations with Mr. White 24 regarding a potential investment in Tech24 and CFR? 25 A It was shortly before he made an investment. He called	Page 129 1 they could convert their note into equity and -- and I 2 didn't think it was a good idea, and I didn't think 3 that the bank and McLarty would go along with it, in 4 any of event. 5 Q Okay. Did the conversation where Mr. White requested 6 to invest in Tech24 occur via email or was that a 7 person-to-person conversation? 8 A It was a phone call. 9 Q Okay. How did the idea of investing in Tech24 come up? 10 A I'm not sure. Like I said, I believe it was because we 11 were in that process and he may have -- and I may have 12 told him that I was putting some money in to help the 13 situation. 14 Q Okay. Well, I need to understand -- was Mr. White 15 privy to the negotiations that were going on between 16 Tech24 and CFR and McLarty around that time in 2017? 17 A Well, there was no negotiation between -- with Tech24. 18 Q CFR. 19 A Yeah. I -- I believe he was aware of that situation. 20 I'm not saying that he was involved in them, but he was 21 aware of them. 22 Q Okay. My question -- 23 A That's my -- that would be my understanding. 24 Q My question is do you have any personal knowledge of 25 Mr. White being aware of the negotiations taking place

Page 130 1 between CFR and McLarty? 2 A I don't have any personal -- no. 3 Q And you did not provide him with that information; 4 correct? 5 A I can't say that. It would have been something that 6 would have come up in conversation, you know, by way of 7 normal interaction of senior officers, you know, 8 managers. But I don't recall a specific conversation 9 to that effect. 10 Q Okay. How would Mr. White have become aware that you, 11 yourself, were investing \$150,000 in CFR? 12 A It probably just came up in conversation. 13 Q Under what scenario would that conversation come up if 14 he was soliciting the investment himself and if you 15 were not soliciting him? 16 A I -- let me be clear. I did not solicit him. I have 17 never, ever asked an employee of any company to invest 18 in the company. Any company. I just think that's a 19 bad, bad idea. 20 Q Why? 21 A Because it's -- it's inter- -- because I don't think 22 it's a good idea. I don't think most employees fully 23 understand it, and I don't -- I just think that it 24 complicates the relationship between the parties. But 25 I -- you know, we had frequent conversations and it was	Page 132 1 could participate in it and I -- he asked me how it was 2 priced and that -- and I told him and he wanted to 3 participate. 4 Q Okay. 5 A And he -- so -- 6 Q Mr. Herwald, what exactly would he have been 7 participating in? 8 A He would have been participating in buying shares in 9 the company at the same price that I did. 10 Q Is it your testimony that there would have been a 11 conversation between yourself and him at some earlier 12 date where you discussed you buying into the company? 13 Or investing money in the company that prompted him to 14 ask to participate in the same way? 15 A I did not say that. 16 Q Okay. Well -- 17 A I said that he was aware of it either because of a 18 casual mention or conversation with me about it where I 19 might have brought it up, or he heard it from Jean or 20 somebody else. 21 Q That you were investing -- do you recall having 22 conversations with Ms. Hodges where you informed her 23 that you were investing \$150,000 in the company? 24 A Yes. 25 Q Okay. When would those conversations have taken place?
Page 131 1 frequently a conversation that involved, "What are we 2 doing about this?" And, you know -- you know, "Well, 3 we're trying to raise money. We're doing this. We're 4 getting money from our existing shareholders. We're, 5 you know, trying to find a path through the -- you 6 know, to get the bank and McLarty out." 7 Q Okay. So is it your testimony today that you had a 8 specific conversation with Mr. White where you informed 9 him that you were trying to raise money? 10 A No. You had asked me how that might have come up and 11 I'm telling you that I don't remember exactly, but he 12 obviously knew about it and he asked me, "Can I 13 participate?" 14 Q My question is how would Mr. White have any knowledge, 15 whatsoever, that you had invested \$150,000 in CFR? 16 A Well, I hadn't yet. But the -- and my answer to you is 17 as speculative as your question, and that is -- you 18 said, "How might he have?" Well, he might have, 19 because we might have discussed it on a phone call. 20 Q Okay. 21 A Could be that Jean told him that. 22 Q So would it be fair to say that you -- you don't know 23 how that conversation between yourself and Mr. White 24 began? 25 A I -- I remember the conversation where he asked if he	Page 133 1 A In that approximate time frame. 2 Q Okay. 3 A It wasn't a long, drawn out thing. 4 Q Were there any other investors, other than the three 5 that were mentioned in Plaintiff's Exhibit 14, that you 6 were soliciting at the time? That you or Tech24/CFR 7 were soliciting at the time? 8 A That was more related to the B round, which preceded 9 this time -- 10 Q Okay. 11 A -- so the answer is no. 12 Q Okay. And did Mr. White ultimately invest money in 13 CFR? 14 A Yes. 15 Q Okay. And how much did Mr. White ultimately invest? 16 A 550,000. 17 Q Okay. What types of stock did Mr. White buy? 18 A Common. 19 Q Okay. If you'd look at Plaintiff's Exhibit 5 -- 20 A Well, back to those, okay. (Reviewing.) All right. 21 Q Okay. So it appears to me that, at this time, or -- 22 CFR had Common Stock Series B Preferred, Series A 23 Preferred and Series A-1 Convertible Preferred. Do you 24 see that? 25 A Yeah, we didn't have A-1 at that time.

Page 134 1 Q You did not have -- you did not have A-1 at what point? 2 A At the same time as this (indicating). 3 Q Okay. So, at the time that you're having discussions 4 with Mr. White, there were common stock and Series B 5 stock? 6 A And Series A. 7 Q And Series? 8 A A. 9 Q And Series A, okay. What kind of stock did Mr. White 10 purchase? 11 A As I just told you, common. 12 Q Okay. When you bought into the company, the 150,000 13 that you put in, was that common stock as well? 14 A That's correct. 15 Q Okay. What is your understanding between the 16 difference or the -- what is your understanding as to 17 the difference between common stock, and Series B and 18 Series A as it related to CFR? 19 (CELL PHONE INTERRUPTION) 20 THE WITNESS: The -- I'm sorry. Repeat the 21 question. 22 BY MR. PURIEFOY: 23 Q Sure. 24 A I apologize for that. 25 Q No problem. What is your understanding as to the	Page 136 1 holders -- 2 Q My question to you is did you have specific 3 conversations with Mr. White about the difference 4 between common stock, Series A and Series B? 5 A No. 6 Q Okay. 7 A Not that I remember. 8 Q Did Mr. White get offered Series A stock? 9 A No. 10 Q Okay. Why? 11 A The Series A stock offer was closed. 12 Q You just testified that Mr. White knew about the 13 existence of Series B and Series A stock? 14 A I said Series A, anyway. 15 Q He knew about the existence -- 16 A Just because he had met the shareholders that had it. 17 Q Say that again. 18 A He had met some of the shareholders who had it. 19 Q Okay. Are you aware of specific conversations that Mr. 20 White had with Series A shareholders? 21 A No. I mean, we all went out to dinner and such. The 22 -- I can't talk to his state of mind. 23 Q Okay. 24 A It was common knowledge to everybody that we had Series 25 A shareholders. They were the guys who came in at
Page 135 1 difference between CFR common stock, Series B and 2 Series A? 3 A At the time, the Series A was the senior-ranking 4 preferred stock. So, in the event of the company 5 selling or liquidating, they would have been entitled 6 to, like, receive their preference amount before 7 anybody else received anything. B would have been next 8 on the waterfall. And then common would have been 9 after both A and B. 10 Q Okay. So, at the time that Mr. White is investing in 11 CFR, he was buying common stock, which would have been 12 paid out last in the event of a liquidation? 13 A Yes. 14 Q Okay. Was he offered Series B? 15 A No. 16 Q Okay. Why not? 17 A It -- he -- because it just didn't come up. He said 18 that he wanted to invest in what I was, you know -- 19 along, you know -- he wanted to invest next to me, if 20 you will. 21 Q Did you have conversations with Mr. White about the 22 existence of Series B and A stock? 23 A He -- he had sat in management meetings and in 24 shareholder meetings where -- well, don't shake your 25 head. It's -- the people who were there were Series A	Page 137 1 front of the deal in 2009. Everyone in the business 2 knew about them. Most of the managers had been 3 introduced to their -- those people. 4 Q Sure. And I understand that, Mr. Herwald. I know 5 you've said quite a few times that a lot of things were 6 common knowledge, and I'm not asking about what you 7 believe to be common knowledge. I'm asking if you have 8 specific knowledge as to whether or not Mr. White knew 9 about the existence of Series A and Series B stock? 10 A I don't. 11 Q Okay. And to be clear, you had received a 12 correspondence from Mr. Arndt in June of 2017, where he 13 described CFR as "alarmingly illiquid"; correct? 14 A It -- we ask -- you asked that and I've answered that. 15 Q Okay. That was a "yes"? 16 A Yes. 17 Q Okay. So was Mr. White investing in an alarmingly 18 illiquid company? 19 A It was illiquid. I don't know if alarmingly would have 20 been the right answer, but -- or the right adjective, 21 but -- 22 Q Is that the adjective that the representative from 23 Fifth Third Bank used? 24 A Yes. You read the email. 25 Q Okay. At the time that Mr. White made his investment,

Page 138 1 and I believe that this was in September 2017, at the 2 time that that investment was made, do you recall a 3 specific conversation with Mr. White where you informed 4 him that CFR was in default under the McLarty and Fifth 5 Third Bank Loan? 6 A I don't remember a specific conversation, but I believe 7 we've -- we discussed that. 8 Q Did you discuss that in conjunction with his investment 9 or was that something that was discussed before his 10 investment? 11 A I'm sure that we had numerous conversations about that 12 and the fact that that was leading us to pursue 13 investors and to seek other liquidity options. 14 Q Do you recall a specific conversation with Mr. White 15 where you discussed -- 16 A I recall many conversations discussing the health of 17 the company. 18 Q And I understand. I guess my question is do you recall 19 a specific conversation where you discussed the default 20 status of CFR? 21 A Yes. 22 Q Okay. When did that conversation take place? 23 A I do not know. 24 Q You just know -- 25 A Sometime in that time frame. Probably in July.	Page 140 1 not send him an email saying, "Oh, by the way, here's 2 the default." 3 Q Okay. 4 A I expected, as you agreed, in this document that the 5 two lenders should have sent him that notice. 6 Q Okay. Did you and Mr. White have a specific 7 conversation against the backdrop of the default, as to 8 what would happen if the company were to go into a sale 9 posture? So, if the company were to sell, did you have 10 any conversations with Mr. White about how and when he 11 would be paid out in the event of a sale or 12 liquidation? 13 A Yes, we talked often about that because we were 14 pursuing those liquidity options. 15 Q You had those conversations with Mr. White? 16 A Yes. 17 Q Okay. Explain how those conversations came up. 18 A As you can see in some of these emails, we were talking 19 to Warburg Pincus and other professional investors 20 about putting money into the company that would have 21 resulted in a liquidation event, you know -- a 22 liquidity opportunity for most of the other 23 shareholders. 24 Q But isn't it true that you were in conversations with 25 Warburg Pincus to acquire another competitor?
Page 139 1 Q You just know it did? 2 A Yeah. It -- as -- I believe it was right at the 3 beginning of July. Rick had it down as July 5th. That 4 sounds about right to me, that we were talking about 5 the fact, as we've already discussed, that I told him 6 this payment's going to be your last one until we get 7 this resolved. 8 Q So is there a difference to you between informing Mr. 9 White that there is a stop payment on his subordinated 10 note and providing him with express information that 11 CFR was in default under the note? 12 A I -- I felt that from -- and again, I wasn't acting as 13 an attorney or a financial advisor, but I think for 14 most people in business, it would have been considered 15 the exact same thing. 16 Q Let's assume for a second that Mr. White is not most 17 people in business. How would he have known that there 18 was a default, a specific default, under the McLarty 19 and the Fifth Third Bank note? 20 A Because they had exercised their rights under a default 21 to freeze his payments. 22 Q And did you provide him with notice -- 23 A And that is how I explained it to him. 24 Q Did you provide him with notice of that default? 25 A I -- I -- again, I spoke to Rick on the phone. I did	Page 141 1 A Yes. It was a -- yes. 2 Q Okay. 3 A It was a two-stage transaction. 4 Q And Mr. White was privy to those conversations? 5 A Yes. 6 Q Okay. So you testified earlier that you do not recall 7 any conversations between yourself and Mr. White, 8 specifically, regarding Series A and Series B stock. 9 That was your testimony. Do you recall that? 10 A Yes. 11 Q Okay. So how did you have conversations with Mr. White 12 about the manner in which he would be paid out in the 13 event of a liquidation if you did not discuss Series A 14 and Series B stock? 15 A Well, I think the time frame is different than what you 16 were asking about previously. I -- I interpreted your 17 prior question to be at the time that Rick was asking 18 about making an investment. Did I say -- did I put 19 forth that the A and B would be a different option? 20 That's not the same question that you're asking me now. 21 The timing is different. 22 Q How do you differentiate the two? 23 A Timing. 24 Q In what regard? 25 A Well, I wasn't talking to Warburg Pincus when we made

Page 142 1 that investment. That wasn't a part of reality for us. 2 So I don't know that I would have brought that up at 3 that time. 4 Q Okay. So let me ask this. The conversations that you 5 were having about Warburg Pincus, would that have been 6 after Mr. White had already invested? 7 A I believe so. 8 Q Okay. So let me ask this. Did you have a conversation 9 with Mr. White before he invested in CFR about what 10 would happen in the event of a liquidation of CFR and 11 how he would be repaid? 12 A I don't recall such a conversation. 13 Q Okay. Mr. White invested \$550,000 in CFR. Is that 14 correct? 15 A Yes. 16 Q Okay. And in exchange for his purchase -- or, excuse 17 me, in exchange for his investment of \$550,000, Mr. 18 White was given 6,875 shares. Is that correct? 19 A Correct. 20 Q Is that right? 21 A Correct. 22 Q Okay. And do you recall the share price that he 23 invested at? 24 A \$80. 25 Q How is that share price determined?	Page 144 1 potential investors. 2 Q So is it fair that the arbitrary number was not tied 3 directly to its actual value under any valuation metric 4 that's traditionally used for private companies? 5 A Oh, I think that what I did was very typical of private 6 companies, but I don't know what you're referring to, 7 you know, what valuation method you -- 8 Q Well -- 9 A -- would have advocated. 10 Q So, there are a number of different valuation methods 11 when you're trying to determine the share price in a 12 private company. I'm asking did you pick any of those 13 valuation methods to determine the Series B value? 14 A We tried to relate the value to what we thought were 15 the prospects of the business and the potential value 16 of the overall company. 17 Q So, does that -- was the valuation method that you were 18 using then, a method where you compared the going rate 19 for similarly situated businesses in the same industry? 20 A I wasn't privy to that type of information for private 21 companies. 22 Q Okay. So, what then -- if you were -- 23 A But I had access to people, like Baird Investment Bank, 24 you know, and others just in the, you know, who do 25 acquisitions about what's the typi- -- you know, I
Page 143 1 A As I mentioned before, we had this B round, which was a 2 preferred stock with a five percent dividend. And that 3 was at \$100 per share. And it was convertible into one 4 common share. And so, I took the five dollar dividend. 5 I discounted it by about a ten percent factor for five 6 years, and then I took another ten points off for the 7 fact that they had a preference. 8 Q Okay. How was the common stock -- what valuation 9 method was used to determine the share price at the 10 time that Mr. White invested? 11 A That -- that was what I just told you. 12 Q It -- say that one more time for me. 13 A Okay. The preferred -- the preferred Bs were bought by 14 third-party investors at \$100. I felt it was extremely 15 important that we have a fair ratio relationship 16 between what they paid for a preferred share that had a 17 five dollar dividend, against a common stock that was 18 not a preferred stock and did not have a guaranteed 19 dividend. So I discounted the value of the dividends 20 using a ten percent present value and then I doubled 21 the discount to account for the fact that we were in a 22 junior position. 23 Q Okay. How did you -- what valuation method did you use 24 to determine the value of the Series B stock? 25 A It was more of a matter of negotiation with the	Page 145 1 appreciate that you referenced modeling. The truth is, 2 is that in most private transactions, it's a multiple 3 of EBITDA. You know, minus debt. 4 Q Do you know what multiple of EBITDA you used? 5 A I assumed we used somewhere around eight because that 6 was pretty common back then. But I don't know that for 7 a fact right now, but that was -- you know, the 8 multiples were higher back then. 9 Q And that was the EBITDA that you were using in the face 10 of a default? 11 A No. We were using a forecast. 12 Q Okay. All right. I know that you've testified that 13 you and Mr. White had conversations about the financial 14 condition of CFR before he invested; correct? 15 A Yes. 16 Q Okay. Did you provide Mr. White with a private 17 placement memoranda, subscription agreement or any 18 other kind of security disclosure before he invested? 19 A No. 20 Q Okay. Are you aware that there were certain Requests 21 to Admit that were sent to you, if you'd refer to 22 Plaintiff's Exhibit 15? 23 A (Reviewing.) 24 Q And if you look at Request to Admit Number 1, which 25 reads, (as read) "Admit Defendants did not present a

Page 146 1 private placement memorandum, subscription agreement, 2 or any similar security disclosures to Plaintiff prior 3 to accepting Plaintiff's \$550,000 investment on 4 September 11, 2017. Response: Denied." 5 A I could just tell you that we did not provide him a 6 memorandum or subscription agreement. 7 Q Okay. What about any other security disclosure? 8 A I don't even don't even know what constitutes a 9 security disclosure. 10 Q Any -- any formal writing where you detailed the risks 11 associated with the potential investment? 12 A No. He would not have -- he was -- this was, again, 13 this round, or whatever, was supposed to just be me. 14 And -- 15 Q This round was supposed to? 16 A It was only going to consist of myself -- 17 Q Okay. 18 A -- and so there was no -- none of that material would 19 have been relevant. 20 Q It wouldn't have been relevant? 21 A Well, if it was just me doing it, no. 22 Q Okay. Well, when Mr. White became a potential 23 investor, did that information become relevant then? 24 MR. SCHANEN: Object to the form. 25 THE WITNESS: I don't know. Apparently, it wasn't.	Page 148 1 MR. PURIEFOY: It's not. I'm asking him -- 2 MR. SCHANEN: I'm instructing him not to answer. 3 BY MR. PURIEFOY: 4 Q I'm asking, Mr. Herwald, about your personal knowledge. 5 You testified at the beginning of this deposition that 6 you had at least a working knowledge of securities; 7 correct? 8 A I did. 9 Q And that was in advance of your hiring of Bo Russell as 10 your attorney? 11 A I -- I don't know. Bo and I have done work together 12 for a long time. 13 Q When you were working for -- as the CFO of NTC Group, 14 did you have a working knowledge of securities at that 15 time? 16 A Yes. 17 Q When you were working for Stevens Aviation, did you 18 have a working knowledge of securities at that time? 19 A Yes. 20 Q Okay. So my question to you is, before your 21 conversations with Mr. Russell, what were your 22 understandings as it related to securities laws, and 23 when you were required and not required to prevent -- 24 to present certain disclosures to potential investors? 25 A It had been my experience being on boards of other
Page 147 1 He didn't ask for it. He didn't ask me for any 2 information. He didn't ask me any questions about it. 3 So I assume, as I still do, that he was fully informed 4 by virtue of his position and -- but, you know, again, 5 it wasn't required by law. We were trying to meet a 6 deadline. It was a last-minute request that I agreed 7 to, and, you know, that's... 8 BY MR. PURIEFOY: 9 Q And what law are you referring to -- 10 A Well -- 11 Q -- when you say it wasn't required by law? 12 MR. SCHANEN: Object to the form. 13 THE WITNESS: I can't tell you that off the top of 14 my head. I just know that -- that it wasn't necessary 15 to do. 16 BY MR. PURIEFOY: 17 Q How -- and how do you know that? 18 A Because I asked Bo. 19 Q Okay. And I don't -- I don't need to discuss any 20 conversations that you had with your attorney, but I 21 need to know what your personal understanding of the 22 law as it relates to securities transactions is? 23 MR. SCHANEN: Object to the form, and that's a -- 24 that's a roundabout way to ask him about attorney- 25 client conversation.	Page 149 1 small, privately-owned companies, that when you were 2 selling to an insider or a qualified investor, that you 3 were not required to give them a subscription 4 agreement. 5 Q Who's considered a qualified investor? 6 A Oh, I think that the requirements is a \$1 million of 7 net worth and some other things, which Rick clearly 8 qualifies as. 9 Q So it was your -- the reason why you didn't present a 10 private placement memorandum subscription agreement is 11 because it was not required by law? 12 MR. SCHANEN: Object to the form. 13 THE WITNESS: I would not say that. I would say 14 that the time did not permit and it was not required. 15 BY MR. PURIEFOY: 16 Q So, if you had more time, would you have provided it? 17 A Possibly. 18 Q Okay. Do you recall J.C., who was Mr. White's former 19 business partner, investing in CFR as well? 20 A He invested later. 21 Q Okay. Do you recall providing J.C. with a subscription 22 agreement? 23 A I believe that he would have gotten one because he was 24 involved in that round when it was being done as a 25 round, and so those materials were present- -- prepared

Page 150 1 for that transaction. 2 Q Was it your understanding that Mr. -- or J.C. was a 3 qualified investor? 4 A He signed that he was. 5 Q So, if he was a qualified investor, why was he also 6 provided with a subscription agreement? 7 A Because it was our -- we considered it better practice 8 to do it so, to have a subscription agreement and such, 9 and when it was for a more broadly subscribed issuance, 10 it -- that would have made more sense. 11 Q So you -- I think you testified earlier, though, that 12 you thought it was a bad idea to -- well, let me ask 13 this. Did you solicit J.C.'s investment? 14 A No. 15 Q Okay. He came to you for that investment? 16 A Yes. 17 Q Okay. And he was an employee at the time that he made 18 that investment? 19 A Yes. 20 Q Okay. So would it be fair to say that it was kind of 21 deviation from standard practices of CFR to not provide 22 an investor with a subscription agreement? 23 MR. SCHANEN: Object to the form. 24 THE WITNESS: I don't know that I would actually go 25 that far. It was something that we did if it was going	Page 152 1 A Corey Harrison, in particular. 2 Q Okay. What were the conflicts that they were having? 3 A They -- coordination is what I would've deemed it. 4 Q Okay. Coordination in what regard? I guess I need you 5 to flesh that out for me a little bit. 6 A Well, again, you're asking me, who only has, you know, 7 hearsay knowledge, if you will. But it -- Rick would 8 make changes to -- and, again, I don't know if this is 9 true or not, but I was told that Rick would make 10 changes to the accounting system or the billing system 11 without telling other people and that would present 12 problems because they weren't taken into account by the 13 IT people, and things of that nature. Rick, on the 14 other hand, would say the same thing, that IT made 15 changes without telling us in the field and that was 16 causing him problems. 17 Q Okay. 18 A And I have no doubt that there was truth in that. 19 Q Okay. Did those concerns ever come to a head? 20 A Well, I would say that Rick's resignation, it -- 21 brought that to a head. 22 Q Sure. So, kind of talk me through how that happened. 23 How did Mr. White's resignation kind of come to 24 fruition? 25 A Rick made a proposal to me to consolidate the
Page 151 1 to involve a number of people. 2 BY MR. PURIEFOY: 3 Q Well, I believe you just testified a second ago that 4 not doing so -- 5 A Yeah, it is a better practice to do it. Not because of 6 the -- for the investor but for us. So... 7 Q Okay. All right. And as we sit here today, is it your 8 testimony that there was no material information that 9 was withheld from Mr. Wright -- Mr. White before his 10 investment in 2017? 11 A Yes. 12 Q Okay. So Mr. White invests in CFR in September of 2017 13 and, at that time, he became both a shareholder and an 14 employee; correct? Or he was a shareholder and an 15 employee? 16 A Yes. 17 Q Okay. How -- in the latter part of 2017, how was your 18 working relationship with Mr. White following his 19 investment? 20 A It was fine. 21 Q Okay. If -- did, at any time, that relationship start 22 to sour for any reason? 23 A There was conflict between him and some of his peer 24 managers. 25 Q And who were those peer managers?	Page 153 1 management tasks, and have Corey, and IT, and HR report 2 to him and I declined his request. 3 Q Okay. 4 A At that point, Rick basically said -- in a way -- I 5 mean, he sent an email basically saying, "Then you 6 should have HR prepare my separation". 7 Q Okay. And so, as I understand, kind of, that 8 conversation, was it that Mr. White didn't want to have 9 to coordinate with Mr. Harrison in order to engage in 10 certain conduct? Or did he -- was he trying to be Mr. 11 Harrison's boss? What was it that you understood him 12 be -- 13 A Well -- 14 Q -- requesting? 15 A It -- explicitly, it would have been that Corey 16 would've worked for him -- 17 Q Okay. 18 A -- so he would have been Corey's boss. 19 Q And you declined that offer? 20 A Correct. 21 Q And why is that? 22 A I didn't think it would be the right thing for the 23 business. 24 Q Okay. All right. Did you have any conversations with 25 Mr. White, outside of the email that you referenced

Page 154 1 where he essentially asked that HR prepare his 2 resignation documentation, did you have any other 3 conversations with him regarding his resignation? 4 A No. 5 Q Okay. All right. I'm going to give you what I've 6 marked as Plaintiff's 16. 7 A (Witness views document.) 8 Q Okay. Have you ever seen this document? 9 A Yes. 10 Q Okay. Is this the General Waiver and Release Agreement 11 that was executed by Mr. White on November 29, 2017? 12 A Yes. 13 Q Okay. What was the intended purpose of this General 14 Waiver and Release? 15 A It was to protect the company. 16 Q In what regard? 17 A Pardon me? 18 Q In what regard was it to protect the company? 19 A To -- it was intended to make sure that there was no 20 future claims being made against the company by Rick. 21 It's very common, and especially when a severance 22 agreement involved \$300,000 in payments, that -- that 23 we would reiterate his obligations under his employment 24 agreement for confidentiality and -- and non- 25 competition.	Page 156 1 matters. 2 BY MR. PURIEFOY: 3 Q Okay. Did you -- 4 A And in his employment agreement, it said that his 5 severance would be tied to execution of such an 6 agreement. 7 Q Correct. And did that employment agreement that tied 8 his severance to the execution of this type of 9 agreement make any mention of the Subordinated 10 Promissory Note? 11 A I don't know off the top of my head. 12 Q Okay. In your head and as you sit here today, do Mr. 13 -- does the termination or resignation of Mr. White's 14 employment tie directly to the Subordinated Promissory 15 Note? 16 MR. SCHANEN: Object to the form. 17 THE WITNESS: No. 18 BY MR. PURIEFOY: 19 Q Okay. Do you believe the note, and his employment 20 agreement, and this waiver to be separate and distinct 21 issues? 22 MR. SCHANEN: Object to the form. 23 THE WITNESS: I -- I'm not sure where you're going 24 with this and I'm not sure what your question means, 25 but also, why don't we cut to the chase here, a little
Page 155 1 Q Okay. In the absence of Mr. White's resignation from 2 his employment, would there be any other reason why 3 this document would have been presented for execution? 4 A Pardon me? 5 Q Is there any other reason outside of Mr. White's 6 resignation from employment -- is there any other 7 reason why this document would have been presented to 8 him for execution? 9 A Not that I can think of. 10 Q Okay. Was it your understanding that this release was 11 related specifically to his employment and the 12 termination of that employment? 13 A It -- no, not exactly. It -- you know, part of it 14 sprung from agreements through the acquisition that he 15 had an employment agreement, and this agreement was 16 crafted to comport with the terms of his employment 17 agreement. 18 Q Correct. But I guess what my question is, is apart 19 from his relation to his employment agreement, did this 20 document serve any other purpose other than to 21 memorialize his resignation? 22 MR. SCHANEN: Object to the form. 23 THE WITNESS: Obviously, it did. His resignation 24 was one matter. His getting paid, his confidentiality, 25 his not having claims against the company are other	Page 157 1 bit. You're going to ask me about his note, and, yes, 2 I think that this put him in a position -- put us in a 3 position where we did not have to pay his note. 4 BY MR. PURIEFOY: 5 Q Okay. Did you have a conversation with Mr. White about 6 -- 7 A I did not. 8 Q -- this, the execution of this document relieving you 9 of your obligations to pay him under his subordinated 10 note? 11 A No. 12 Q Who was the attorney that was drafting this General 13 Waiver and Release Agreement? 14 A Oh, he worked here, but I can't remember which one. 15 Q Was he an attorney with Nelson Mullins? 16 A Yes. 17 Q Okay. Would he have been -- so, let me ask it -- are 18 there any -- are there multiple attorneys here at 19 Nelson and Mullins that you worked with? 20 A Yes. 21 Q Okay. Obviously, Giles being one, Bo Russell being 22 one. Can you name or do you recall the names of any 23 other attorneys that you worked with? 24 A Nikki Lee -- 25 Q And is Nikki Lee Bo Russell's partner?

Page 158 1 A I don't think so. 2 Q Okay. In the -- if you'd look at Plaintiff's Exhibit 3 12. 4 A (Reviewing) Okay. 5 Q In the cc -- excuse me, in the To line of that July 20, 6 2017, email, do you see Bo Russell and his email? 7 A Yes. 8 Q Do you see Brittany McIntosh and her email? 9 A Yes. 10 Q Do you see Nikki Lee and her email? 11 A Yes. 12 Q Were those all Nelson Mullins attorneys? 13 A It would appear. 14 Q Okay. Would it have been one of those three attorneys 15 that drafted this General Waiver and Release Agreement? 16 A I don't believe so. 17 Q Do you know the name of the attorney that would have 18 drafted that agreement? 19 A I've already said that I do not. 20 Q Okay. Do you recall the names of any other attorneys 21 that you worked with here, at Nelson Mullins? 22 A Not off the top of my head. And for instance, I don't 23 even know who Brittany McIntosh is. 24 Q Okay. So do you know whether the attorney drafting 25 this document had knowledge of the default under the	Page 160 1 A Late in the situation. 2 Q But at the time that this was being executed, was that 3 your subjective belief that that was the intended 4 purpose of this document? 5 MR. SCHANEN: Object to the form. 6 THE WITNESS: It was a point that we were aware of. 7 BY MR. PURIEFOY: 8 Q And if you're talking about "we" being your attorneys, 9 then I don't need to hear about those conversations. 10 A Yes. 11 Q Okay. But you didn't discuss that fact with Mr. White? 12 A I didn't discuss anything in that agreement with Mr. 13 White. He never contacted me to discuss it -- 14 Q Okay. 15 A -- to ask anything about it or to negotiated it. 16 Q Okay. After the execution of this agreement, did you 17 have any further conversations with Mr. White regarding 18 his payment under the subordinated note? 19 A Not until this lawsuit was brought. 20 Q Okay. So, between -- your testimony is that, between 21 November 29, 2017, and the filing of this lawsuit, in 22 what I believe was March of 2019, you had no further 23 conversations with Mr. White about the repayment of his 24 subordinated note? 25 MR. SCHANEN: Object to the form.
Page 159 1 McLarty loan? 2 A I don't know the answer to that question. 3 Q Okay. So is it your testimony that at the time this 4 document was being drafted, its intended purpose was to 5 relieve CFR's obligation under the subordinated note? 6 A It was intended to make it that we couldn't be pursued 7 for it. 8 Q So, the goal of this document that was executed 9 following Mr. White's resignation, was intended to 10 relieve CFR of its obligations under the subordinated 11 note? 12 MR. SCHANEN: Object to the form. 13 THE WITNESS: That was not the primary purpose of 14 this document. 15 BY MR. PURIEFOY: 16 Q Okay. Was this an ancillary purpose of that document? 17 A Yes. 18 MR. SCHANEN: Object to the form. 19 BY MR. PURIEFOY: 20 Q Did you have conversations with Mr. White about that 21 fact? 22 A No. 23 Q When was it -- when did it become your opinion that 24 this document served to relieve CFR of its obligations 25 under the note?	Page 161 1 THE WITNESS: Not that I'm aware of. 2 MR. PURIEFOY: Okay. All right. We're going to 3 have to take a break. I'm going to have to print some 4 documents out. I maybe have to hook up to one of your 5 printers; I may be able to get somebody to run some 6 stuff over here. 7 MR. SCHANEN: Whatever you need. Whatever we can 8 speed it up is fine. 9 (OFF THE RECORD) 10 BY MR. PURIEFOY: 11 Q We'll go back on the record. I'll ask about some other 12 -- some other things and then we'll finish up with that 13 when -- I'm supposed to be getting it here, in just a 14 second. 15 A Okay. 16 Q All right. Mr. Herwald, we were talking before we took 17 the break, about the General Waiver and Release 18 Agreement that was signed on November 20, 2017, by Mr. 19 White. And I think the last question I asked you was, 20 do you recall having any conversations with Mr. White 21 after the execution of this agreement relating to the 22 payment of his unsubordinated note, and I think your 23 response was that you did not have any further 24 conversations. Is that correct? 25 A That's correct.

Page 162 1 Q Okay. I'm going to show you what we're going to mark 2 as Plaintiff's Exhibit 17. And I'll give you a second 3 to look at that, Mr. Herwald. 4 A (Reviewing.) 5 Q Okay? This appears to be the January 13, 2018, Notice 6 of Special Meeting to be held on January 23, 2018. Do 7 you see that? 8 A Yes. 9 Q The second full paragraph of this Plaintiff's Exhibit 10 17, which starts with the company and its subsidiaries, 11 do you see that? 12 A Yes. 13 Q Okay. Do you see -- does that paragraph, that second 14 full paragraph, tend to you to demonstrate notice to 15 shareholders that CFR is under -- is in default under 16 the McLarty and the Fifth Third Bank loan? 17 A Yes. 18 Q Okay. And it indicates that CFR is in default under an 19 \$11 million principal loan from McLarty. Do you see 20 that? 21 A Yes. 22 Q And a \$5.5 million outstanding loan -- outstanding term 23 loan and \$16 million revolving line of credit with 24 Fifth Third Bank? 25 A Yes.	Page 164 1 authorized. 2 Q Okay. So this authorized 21,322 shares of A-1 3 Preferred? 4 A Yes. 5 Q Okay. Since the sending of the notice of that special 6 meeting, CFR had undergone an acquisition with HCI -- 7 and forgive me, I can't recall the specific name, but 8 it's HCI -- do you -- 9 A It's -- 10 Q Are you familiar with that? 11 A Yeah, of course. 12 Q Okay. What was the result of that acquisition as it 13 related to all the holders of common stock? 14 A It -- it resulted in all the holders of any kind of 15 stock being converted into units in an LLC -- 16 Q Okay. 17 A -- called CFR Investment. 18 Q What assets are held in CFR Investment? 19 A Options on -- on CFR. 20 Q Okay. What are those options? 21 A They're basically, you know, options that will, you 22 know, hopefully entitle CFRI to have proceeds at the 23 time that HCI exits its investment, and that would 24 then, in turn, be distributed to the holders of CFRI. 25 Q Okay. Is there a time frame of how long CFRI has --
Page 163 1 Q Okay. And a copy of this was, in fact, sent to Mr. 2 White; correct? 3 A That's correct. 4 Q Okay. Is this -- as you sit here today, is this the 5 first time that you're aware of any writing informing 6 Mr. White of the default under the Fifth Third and 7 McLarty loan? 8 A In writing, yes. 9 Q Okay. Did this Notice to Shareholder, where it makes 10 reference to convertible -- Series A convertible stock, 11 was that stock created as a result of the shareholder 12 meeting that this document's referring to? 13 A No. The Series A-1 was created. It -- it was what 14 that was about. 15 Q Okay. And what was the Series A-1 and who was going to 16 be entitled to -- and if you look at page 2 of this 17 agreement, it looks like Designation and Number of 18 Shares of Series A-1 Convertible Preferred Stock -- 19 A Uh-huh. 20 Q Okay. What was that? 21 A The Designation of Number of shares? 22 Q Yes. 23 A Well, the designation is just the name of the series. 24 Q Okay. 25 A Okay? And the number of shares is how many that were	Page 165 1 A No. 2 Q -- to be entitled to payment or? Let me ask it this 3 way. Does the option to be paid ever expire, or the 4 ability to be paid ever expire? 5 A No. 6 Q Okay. Have any payments been made to any common 7 shareholders from C- -- CFR? 8 A No. 9 Q Okay. Have any dividend payments been made to any 10 common shareholders? 11 A No. 12 Q Have any dividend payments been made to any Series B or 13 Series A shareholders? 14 A I assume you're talking since this took place? 15 Q Correct. 16 A No. 17 Q You're not aware of any dividend payments being made in 18 CFRI to any Series A or Series B shareholders? 19 A Or any other holders. 20 Q Are all of the Series A, Series B, and common being 21 held in CFRI? 22 A Yes. 23 Q Okay. Are there any Series A or Series B shareholders 24 that had investments in any other entity that resulted 25 from this acquisition?

Page 166 1 A I'm not sure I understand. 2 Q Are there -- McLarty Capital Partners, are they a 3 shareholder in CFRI? 4 A No. 5 Q Okay. Where do they hold shares or where -- 6 A They do not -- 7 Q What happened to McLarty as a result of this 8 acquisition? 9 A They -- it was complicated, but they -- you know, they 10 held debt at the time and they held the A-1 shares. 11 They took a substantial haircut to get out and, you 12 know; so... 13 Q All right. Let me ask this. Are there any Series A or 14 Series B preferred stock being held in CFRI? 15 A All of it. 16 Q Okay. Do you -- are all of the shareholders that were 17 Series B and Series A shareholders in CFR currently 18 shareholders in CFRI? 19 A Yes. 20 Q Okay. 21 A Technically, unit holders. 22 Q Unit holders? 23 A Yeah. 24 Q Okay. How were those units valued inside of CFRI? 25 A They are not.	Page 168 1 that, after the November 29, 2017, General Release and 2 Waiver, you had no further conversations with Mr. White 3 regarding the payment of his note. Do you recall that? 4 A Yes. 5 Q Okay. As you read these emails, do you still maintain 6 that position? 7 A Well, obviously, I had forgotten about this. 8 Q Okay. So, in February of 2019, you are discussing with 9 Mr. White the repayment of his subordinated note? 10 A Correct. 11 Q And at any time, did you mention to Mr. White in these 12 correspondence that it was your belief that he was not 13 entitled to payment under that note? 14 A No. 15 Q On February 25, 2019, did you write, (as read) "Just 16 noticed the second item on this when cleaning up 17 emails. I wish I could tell with any certainty. 18 McLarty is holding fast on its ability to block. I 19 asked in Q4 if we could reinstate payments and they 20 expressed shock that I would even ask." Do you recall 21 saying that? 22 A Yes. 23 Q Okay. On February 25, 2019, was it your subjective 24 belief that you still were required to pay under Mr. 25 White's subordinated note?
Page 167 1 Q Okay. Do they -- do they have any value, at all, as it 2 sits there today? 3 A Well, they certainly have value. It's just that they 4 wouldn't be able to access it until the liquidity event 5 occurs. 6 Q Okay, then -- 7 A And then, you know -- and so it's a future value. It's 8 difficult to add -- to determine what it will be. 9 Q Is there a target date for that liquidity event? 10 A No. 11 Q Okay. So, is there any guarantee that there's going to 12 be any payment to the unit holders in CFRI? 13 A Well, as -- presumably, sooner or later HCI will sell, 14 as is their operating practice. 15 Q All right. I'm just waiting for -- 16 MR. SCHANEN: Yep. 17 MR. PURIEFOY: We can go off the record. As soon 18 as I get that, I'll be able to talk more. 19 (OFF THE RECORD) 20 (MARKED FOR IDENTIFICATION, PLAINTIFF'S EXHIBIT 21 NUMBER 18, LOAN REPAYMENT EMAIL - 2/25/2019, ATTACHED.) 22 BY MR. PURIEFOY: 23 Q All right, Mr. Herwald. I've showed you what we've 24 marked as Plaintiff's Exhibit 18. Earlier, you 25 testified and then confirmed that it was your belief	Page 169 1 A No, but it was my intention to. 2 Q Okay. So you were doing that out of the goodness of 3 your heart? 4 MR. SCHANEN: Object to the form. 5 THE WITNESS: Yeah, can I give you a shit answer 6 like that, like your question was? The goodness of my 7 heart? No. I never intended not to do so, but it's 8 nice to have the option. 9 BY MR. PURIEFOY: 10 Q To have an option not to do so? 11 A Yeah. To use it as -- as additional negotiating 12 leverage if somebody opts not to comply with the spirit 13 of a severance agree- -- you know, separation 14 agreement. 15 Q So was it your intended purpose that you were only 16 going to use this ability to not pay the subordinated 17 note if Mr. White didn't do what you wanted him to do, 18 in accordance with the terms of the General Release and 19 Waiver? 20 MR. SCHANEN: Object to the form. 21 THE WITNESS: Generally, yes. 22 BY MR. PURIEFOY: 23 Q Okay. 24 A Yeah. 25 Q So was that the purpose of its inclusion in that

Page 170 1 document? 2 MR. SCHANEN: Object to the form. 3 THE WITNESS: It was the reason why I didn't tell 4 him to take it out. 5 BY MR. PURIEFOY: 6 Q Okay. All right. Let me -- let me go talk to my 7 partner and see if there's anything else that I have. 8 A Okay. 9 Q All right. 10 (OFF THE RECORD) 11 BY MR. PURIEFOY: 12 Q All right, Mr. Herwald. At the time that Mr. White 13 entered into the Subordinated Note Agreement with CFR, 14 he was doing so in his capacity as attorney-in-fact for 15 J.C., as well. Do you understand that to be the case? 16 A I do understand that. 17 Q Okay. Has J.C. been paid out his portion of the 18 subordinated note? 19 A Yes. 20 Q Okay. Why was he paid? 21 A Because we would have paid the whole thing if not for 22 this, which we perceive as a violation of our 23 agreement. 24 Q Okay. 25 A And, you know, we didn't want him, you know, to -- you	Page 172 1 A She knew that she was breaking the spirit of the 2 agreement and that she facilitated that, and that's 3 what it was about. 4 Q Did you file suit in that? 5 A Yes. 6 Q Okay. 7 A Well, she filed the suit. We just stopped paying her. 8 Q Okay. So you stopped paying Ms. Hodges under the terms 9 of her general waiver and release? 10 A Uh-huh. 11 Q Okay. And I think that you just testified a second ago 12 and pointed to Plaintiff's Exhibit 17 that hers was not 13 tied to an employment agreement. So is it your 14 testimony that Mr. White's was tied to his employment 15 agreement? 16 MR. SCHANEN: Object to the form. 17 THE WITNESS: Well, I -- I didn't -- it had to 18 match the terms of his employment agreement -- 19 BY MR. PURIEFOY: 20 Q Okay. 21 A -- because there was one. 22 Q Okay. Are you still actively involved in litigation 23 with Ms. Hodges? 24 A No. That was long ago. 25 Q That matter has been resolved?
Page 171 1 know, we wanted to do the right thing. 2 Q Okay. Did you think you had any obligation to pay 3 J.C.? 4 A Well, I did think we had, you know, a -- you know, an 5 ethical obligation to try and pay him. 6 Q Did you think that you had a legal obligation to pay 7 him? 8 A I'm not sure. I'm not sure. 9 Q Okay. 10 A All right. I asked you at the beginning of the 11 deposition any lawsuits that you have been a part of, 12 either individually or representing a company. Do you 13 recall that? 14 A Yes. 15 Q Are you currently or have you ever been involved in a 16 lawsuit with Jean Hodges? 17 A Yes. 18 Q Okay. What was the nature of that lawsuit? 19 A She signed a similar agreement to this. Obviously, it 20 didn't have the same things -- it -- it's different in 21 that it wasn't tied to an employment agreement, you 22 know, so it wasn't mimicking some of the terms of that. 23 And her husband hired three of our employees out of the 24 accounting department and, to me, that -- 25 Q Okay.	Page 173 1 A Yeah. Quite a while ago. 2 Q And when was that suit filed? 3 A I -- I don't even remember off the top of my head. I'm 4 guessing it was '18 or something like that, but I could 5 be wrong. 6 Q Okay. And did -- was that suit the result of your 7 ceasing to pay -- 8 A Yes. 9 Q -- her under the terms of her severance agreement? 10 A Yes. 11 Q Okay. 12 MR. PURIEFOY: All right, Mr. Herwald. I do not 13 think that I have any more questions for you. 14 MR. SCHANEN: I don't have any questions. I did 15 want to note -- I think a lot of the exhibits that you 16 used were things that had been produced in native 17 format but that were confidential under the protective 18 order -- 19 MR. PURIEFOY: Correct, yeah. 20 MR. SCHANEN: -- and so I just want -- I think all 21 of them -- 22 MR. PURIEFOY: They are. 23 MR. SCHANEN: -- probably were. 24 MR. PURIEFOY: It all was. 25 MR. SCHANEN: So I just wanted to make sure that

Page 174 1 they're designated as confidential in the transcript 2 because they're not marked that way. 3 MR. PURIEFOY: Yeah, so, a lot of them, because of 4 the for- -- we work on Madison Arc -- 5 MR. SCHANEN: Yeah. 6 MR. PURIEFOY: -- at our office and so, 7 unfortunately, we have to convert -- 8 MR. SCHANEN: Yeah. 9 MR. PURIEFOY: -- all of those documents into a 10 completely different format for us to be able to open 11 them. 12 MR. SCHANEN: Uh-huh. 13 MR. PURIEFOY: And it just doesn't contain that 14 designation, for whatever reason, at the bottom. So 15 that wasn't intentional, but everything here is going 16 to be considered confidential. 17 MR. SCHANEN: Yeah, can we just note on the 18 transcript that all the exhibits are confidential? 19 COURT REPORTER: Yes. 20 MR. SCHANEN: Okay, thanks. And we'll read and 21 sign. 22 (WHEREUPON, THE DEPOSITION CONCLUDED AT 4:14 P.M.) 23 24 25	Page 176 DEPOSITION ERRATA SHEET 1 2 3 Our Assignment No. 406800 4 Case Caption: RICHARD D. WHITE V. 5 FT ACQUISITIONS, LLC, ET AL. 6 7 DECLARATION UNDER PENALTY OF PERJURY 8 I declare under penalty of perjury 9 that I have read the entire transcript of 10 my Deposition taken in the captioned matter 11 or the same has been read to me, and 12 the same is true and accurate, save and 13 except for changes and/or corrections, if 14 any, as indicated by me on the DEPOSITION 15 ERRATA SHEET hereof, with the understanding 16 that I offer these changes as if still under 17 oath. 18 Signed on the _____ day of 19 _____, 20____. 20 21 _____ 22 KURT HERWALD 23 24 25
Page 175 CERTIFICATE 1 2 This is to certify that the foregoing deposition 3 of KURT ARTHUR ALBERT HERWALD, consisting of 174 pages, 4 is a true and correct transcript of the testimony given 5 by said deponent after first being duly sworn; said 6 deposition was reported by method of Stenomask with 7 digital backup. This transcript may contain quoted 8 material; said material is transcribed as read or quoted 9 by the speaker. 10 11 I further certify that I am neither employed by 12 nor related to any of the parties in this matter nor 13 their counsel; nor do I have any interest, financial or 14 otherwise, in the outcome of the same. 15 16 IN WITNESS WHEREOF I have hereunto set my hand and 17 seal this 2nd day of March, 2021. 18  19 20 Lisa P. Kopcho 21 Professional Verbatim 22 Reporter 23 24 Notary in and for the State of South Carolina 25 My Commission Expires: November 2, 2030	Page 177 DEPOSITION ERRATA SHEET 1 2 Page No. _____ Line No. _____ Change to: _____ 3 4 Reason for change: _____ 5 Page No. _____ Line No. _____ Change to: _____ 6 7 Reason for change: _____ 8 Page No. _____ Line No. _____ Change to: _____ 9 10 Reason for change: _____ 11 Page No. _____ Line No. _____ Change to: _____ 12 13 Reason for change: _____ 14 Page No. _____ Line No. _____ Change to: _____ 15 16 Reason for change: _____ 17 Page No. _____ Line No. _____ Change to: _____ 18 19 Reason for change: _____ 20 Page No. _____ Line No. _____ Change to: _____ 21 22 Reason for change: _____ 23 24 SIGNATURE: _____ DATE: _____ 25 KURT HERWALD

Exhibits		5:23 167:20,21,24	10 101:8,11 108:6,7
Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 1 3:14 35:1,19,24 45:8 111:17,25	Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 9 4:15 90:12	\$	100,000 58:8
Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 2 3:17 35:2 52:2 53:18 54:14 55:11, 14 68:3	Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 10 4:19 101:8,11 108:6,7	\$1 149:6	11 107:16,17,23 108:1,4 146:4
Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 3 3:20 63:7 66:20 67:10,19 70:5	Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 11 4:22	\$10 89:20	11/2/15s 70:23
Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 4 3:23 64:8,10 67:3, 10,13 70:5	Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 12 5:3 113:14 158:2,3	\$100 143:3,14	11/2/2015 70:2,9,18
Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 5 4:3 68:13 69:4 133:19	Herwald, Kurt 02-18-2021 (White) Depo-Exhibit 13 5:6	\$11 162:19	12 107:16 113:6,8, 14 158:3
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Exhibit 20

SECOND AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT

THIS SECOND AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT (this "Agreement") is made as of the 2nd day of November, 2015, by and among **Commercial Foodservice Repair, Inc.**, a South Carolina corporation (the "Corporation"), and the shareholders of the Corporation.

PRELIMINARY STATEMENT

WHEREAS, the Corporation was incorporated as of September 14, 1983, and is authorized to issue 1,000,000 shares of common stock and 50,000 shares of preferred stock;

WHEREAS, in connection with the execution of that certain credit agreement (the "McLarty Credit Agreement") dated as of November 2nd, 2015, by and among the Corporation, FT Acquisition, LLC, McLarty Capital Partners SBIC, L.P. ("McLarty"), as agent, and the lenders from time to time party thereto pursuant to which the lenders will make available to the Corporation term loans in an aggregate principal amount of up to \$20,000,000, the Corporation has issued and sold to McLarty 37,500 Common Shares, which represent 9.9% of the Corporation's Fully Diluted Basis as of the date of this Agreement;

WHEREAS, this Agreement amends and restates in its entirety the Amended and Restated Shareholders' Agreement dated July 28, 2014, by and among the Corporation and the shareholders of the Corporation; and

WHEREAS, the parties to this Agreement believe that it is in the best interests of the Corporation and the shareholders to set forth their agreements on certain matters relating to the rights and obligations of the shareholders and the Corporation.

NOW THEREFORE, in consideration of these premises, the mutual promises herein contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

STATEMENT OF AGREEMENT

ARTICLE I

DEFINITIONS, USAGE AND APPLICATION

Section 1.01 Defined Terms. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) "Affected Shareholder" has the meaning ascribed in Section 4.01.

(b) "Affiliate" means, with respect to any specified Person, (a) any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by", and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies

of such Person, whether through the ownership of voting securities, by agreement or otherwise), and (b) with respect to any natural Person, any Member of the Immediate Family of such natural Person.

(c) “Articles of Incorporation” means the Second Amended and Restated Articles of Incorporation of the Corporation as filed on July 28, 2014 with the Secretary of State of the State of South Carolina, as amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

(d) “Available Shares” has the meaning ascribed in Section 4.01.

(e) “Bankruptcy” means the filing of a voluntary petition, or having filed against it an involuntary petition which is not dismissed within forty-five (45) days, under any federal or state bankruptcy or insolvency laws, or the making of a general assignment for the benefit of its creditors as to any Shareholder.

(f) “Change of Control” has the meaning ascribed to it in the McLarty Credit Agreement.

(g) “Common Shares” means the shares of common stock of the Corporation as described in the Articles of Incorporation and issued by the Corporation from time to time.

(h) “Controlling Shareholder” shall mean Kurt A. Herwald.

(i) “Controlling Shareholder’s Notice” has the meaning ascribed in Section 5.02.

(j) “Disposition” means any direct or indirect assignment, transfer, sale, exchange, pledge, redemption, hypothecation, gift, bequest, inheritance or other passing of title or interest in any Shares, whether voluntary or involuntary, including without limitation any passing of title or interest under judicial order, legal process, execution, attachment, levy, enforcement of a pleading, trust or other lien, or otherwise by operation of law or by a rule pursuant to any of the foregoing; provided however, (i) in the case of an individual Shareholder, for bona fide estate planning purposes to a member of the Transferor’s immediate family (spouse, ancestors, lineal descendants, and/or a trust, partnership, limited liability company or any business entity established for the benefit of any or all of such persons, including the Transferor), as well as any transfer by such trust or business entity to the Transferor, any such persons, or to another trust or business entity established for the benefit of such persons, or, (ii) in the case of any Shareholder which is an entity, to an Affiliate of such Shareholder, (iii) in the case of McLarty, in connection with any transfer of McLarty’s obligations under the McLarty Credit Agreement, or (iv) the vesting of title to Shares in the executor or personal representative of a deceased Shareholder, in each case, shall not be deemed to be a “Disposition” for purposes of this Agreement so long as the requirements of Article XI and Sections 2.01 and 14.02 are satisfied and with respect to items (i), (ii) and (iii) and each recipient of any of the Shares continues to be bound by the terms of this Agreement as to all Shares and, with respect to item (iv) so long as the estate of such Shareholder is bound by the terms of this Agreement.

(k) "Excluded Securities" has the meaning ascribed in Section 7.01(d).

(l) "Excess Compensation" means any cash, securities or other remuneration (excluding Exempt Compensation) during any period subsequent to a Disposition by the Controlling Shareholder, other than cash, securities or other remuneration related to future performance or payable subsequent to the closing of a Disposition by the Controlling Shareholder, payable to the Controlling Shareholder that is reviewed and approved by a majority of disinterested members on the compensation committee of the Board of Directors and McLarty. To the extent such cash, securities or other remuneration (excluding Exempt Compensation) is payable subsequent to the closing of such Disposition by the Controlling Shareholder, the amount of Excess Compensation will be an amount equal to the present value of such excess cash, securities or other remuneration, discounted to the time of the closing of such Disposition by the Controlling Shareholder at the then prevailing prime rate of interest as set forth in the "Money Rates" or similar listing in The Wall Street Journal. To the extent such cash, securities or other remuneration payable subsequent to the closing of the Disposition by Controlling Shareholder is unliquidated or contingent, the amount of such cash, securities or other remuneration, for purposes of computing Excess Compensation, will be equal to the amount that the disinterested members of the compensation committee of the Board of Directors determine is most likely to be payable at such future time. Excess compensation shall not include that portion of any equity based compensation resulting from an increase in the value of the equity underlying such compensation that occurs after the closing of a Disposition by the Controlling Shareholder, provided that the amount of any options or other equity based compensation is reasonable and customary taking into account the position and responsibilities of such Person.

(m) "Exempt Compensation" means, with respect to any Person, the amount of compensation paid to such Person by the Corporation in the form of salary and bonus for services rendered during the 12 month period immediately preceding any Disposition by the Controlling Shareholder plus any increases in compensation consistent with compensation policies and practices for persons with a comparable title, position and responsibilities at (i) the acquiring company or (ii) companies in the Corporation's industry.

(n) "Fair Purchase Value per Share" shall mean the fair market value of each of the Available Shares determined as follows: If the Transferor, or his personal representative (as the case may be), and the Corporation, mutually agree on the value of each such Shares within ten (10) days after a party receives notice of the other party's desire to determine the Fair Purchase Value per Share, such agreed-upon value of each such Shares shall be the Fair Purchase Value per Share. If the Transferor, or his personal representative (as the case may be), and the Corporation are unable to agree upon such a value, the Corporation and the Transferor shall each select an appraiser experienced in the business of evaluating or appraising the market value of equity interests in a corporation such as the Corporation. The appraisers so selected (the "Initial Appraisers") shall appraise the Available Shares. The Initial Appraisers shall not discount the Available Shares for minority ownership or illiquidity. If the difference between the resulting appraisals are not greater than 10% of the higher appraisal, then the average of the appraisals shall be deemed the Fair Purchase Value per Share; otherwise the Initial Appraisers shall select an additional appraiser (the "Additional Appraiser"), who shall be experienced in a manner

similar to the Initial Appraisers. If they fail to select an Additional Appraiser as provided above, then either the Corporation or the Transferor or his personal representative (as the case may be) may apply, after written notice to the other, to any judge of any court of general jurisdiction for the appointment of such Additional Appraiser. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value per share of the Available Shares and such value shall be the Fair Purchase Value per Share. The Additional Appraiser shall forthwith give written notice of his determination to the Corporation and the Transferor. Each party shall pay the expenses and fees of the appraiser selected by him or it, and if an Additional Appraiser is employed, the party who selected the Initial Appraiser whose value determination was rejected by the Additional Appraiser shall pay all the expenses and fees of the Additional Appraiser.

(o) “Fully Diluted Basis” means the number of Shares of stock calculated to include all Shares of stock then outstanding plus all Shares of stock issuable upon any conversion rights of any other securities then outstanding plus all Shares of stock issuable upon exercise of rights, options, and warrants then outstanding, if any.

(p) “Incapacity” means, as to any individual, any one or more of the following circumstances: (i) the individual is legally incompetent as determined by a court of competent jurisdiction; (ii) two physicians licensed to practice medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs; (iii) the individual is absent for a period of at least ninety (90) consecutive days without explanation or is being detained for a period of at least ninety (90) consecutive days against his will under circumstances in which he does not have the capacity to act prudently or effectively in financial affairs; or (iv) the appointment of a conservator, guardian, committee, or similar representative to control the affairs of the individual, including the voting of the individual’s Shares.

(q) “Independent Third Party” means any Person who, immediately prior to the contemplated transaction, (i) does not own, directly or indirectly, in excess of 5% of the Shares on a Fully Diluted Basis (a “5% Owner”), (ii) is not an Affiliate of any such 5% Owner, (iii) is not a Member of the Immediate Family of any such 5% Owner or an Affiliate of any Member of the Immediate Family of such 5% Owner and/or such Persons, and (iv) is neither a portfolio company of any such 5% Owner nor a subsidiary of any portfolio company of any such 5% Owner.

(r) “Initial Appraiser” has the meaning described in Section 1.01(n).

(s) “LNC” means Leeds Novamark Capital I, L.P. and any Affiliate thereof holding a majority of the Shares held by LNC and its Affiliates.

(t) “LNC Credit Agreement” means that Senior Subordinated Credit Agreement, dated as of July 28, 2014, by and among the Corporation, Foodservice Technologies, Inc. and FT Acquisition, LLC, as the Borrowers, Leeds Novamark Capital, L.P., as agent, and the lenders from time to time party thereto.

(u) “LNC Put Fulfillment Date” means the occurrence of the following events: (i) payment in full in cash of all Obligations (as defined in the LNC Credit Agreement) under the LNC Credit Agreement; and (ii) (a) if a Put Notice has been delivered by LNC, payment in full in cash of the Put Purchase Price (including payment in full in cash of any promissory note issued in connection with Section 9.01(f) of this Agreement) regardless of whether or not Legally Available Funds exist at such time or (b) if a Put Notice has not been delivered by LNC within one hundred eighty (180) days of the Maturity Date (as defined in the LNC Credit Agreement), then the occurrence of January 28, 2021.

(v) “Legally Available Funds” means, with respect to any redemption or repurchase of securities of the Corporation pursuant to the terms hereof, the amount of funds of the Corporation legally available for such redemption or repurchase as required under the applicable governing law (including, to the extent applicable, South Carolina Code §33-6-400, as amended).

(w) “Majority” has the meaning ascribed in Section 5.01.

(x) “McLarty” has the meaning set forth in the Preliminary Statement and any Affiliate thereof holding Common Shares and any permitted Transferees of McLarty or any of its Affiliates.

(y) “McLarty Credit Agreement” has the meaning ascribed in the Preliminary Statement.

(z) “McLarty Put Fulfillment Date” means the occurrence of the following events: (i) payment in full in cash of all Obligations (as defined in the McLarty Credit Agreement) under the McLarty Credit Agreement; and (ii) (a) if a Put Notice has been delivered by McLarty, payment in full in cash of the Put Purchase Price (including payment in full in cash of any promissory note issued in connection with Section 9.01(f) of this Agreement) regardless of whether or not Legally Available Funds exist at such time or (b) if a Put Notice has not been delivered by McLarty within one hundred eighty (180) days of the termination of the McLarty Credit Agreement, then the occurrence of January 28, 2021.

(aa) “Member of the Immediate Family” means, with respect to any individual, each spouse, parent, sibling, child or other descendants of such individual (including adoptive relationships and stepchildren), each trust or partnership created for the primary benefit of one or more of the aforementioned Persons, and each custodian or guardian of any property of one or more of the aforementioned Persons, in his, her or its capacity as such custodian or guardian.

(bb) “Minority” has the meaning ascribed in Section 5.01.

(cc) “Notice of Disposition” has the meaning ascribed in Section 3.02.

(dd) “Observer” has the meaning ascribed in Section 8.03.

(ee) “Other Equity Securities” has the meaning ascribed in Section 7.01(a).

(ff) “Preemptive Notice” has t

(gg) “Preemptive Securities” h

(hh) “Preferred Shares” mean:
Stock as set forth in the Articles of Incorporati
time.

(ii) “Put Closing Date” has the

(jj) “Pro Rata Share” shall be,
of such applicable time, which the number of
Shareholder at such time bears to the total num
converted basis with respect to the Preferred Sha

(kk) “Put Notice” has the mean

(ll) “Put Purchase Price” has tl

(mm) “Regulatory Requirements

(nn) “Rights” has the meaning :

(oo) “Shareholder” means any
the Corporation.

(pp) “Shares” means all the sh
now or hereafter authorized) of the Corporation
Shares, now issued to or acquired by, or hereafter
any party except the Corporation.

(qq) “Subject Shares” means all
Article III.

(rr) “Transferee” means any p
acquire, or who receives or is proposed to receive,

(ss) “Transferor” means any
proposes, anticipates or should reasonably expec
respect to whose Shares a Disposition has been or

Section 1.02 Usage. All pronouns and d
to include both the singular and plural, and to r
requires otherwise. The words “hereby”, “herein
import shall refer to this Agreement in its ent
subdivision hereof. The words “Section” or “Ar
this Agreement.

- (ff) "Preemptive Notice" has the meaning ascribed in Section 7.01(b).
- (gg) "Preemptive Securities" has the meaning ascribed in Section 7.01(a).
- (hh) "Preferred Shares" means the shares of Series A Convertible Preferred Stock as set forth in the Articles of Incorporation and issued by the Corporation from time to time.
- (ii) "Put Closing Date" has the meaning ascribed in Section 9.01(b).
- (jj) "Pro Rata Share" shall be, at any given time, that proportion, calculated as of such applicable time, which the number of outstanding Common Shares owned by such Shareholder at such time bears to the total number of Common Shares outstanding (on an as-converted basis with respect to the Preferred Shares) at such time.
- (kk) "Put Notice" has the meaning ascribed in Section 9.01(b).
- (ll) "Put Purchase Price" has the meaning ascribed in Section 9.01(a).
- (mm) "Regulatory Requirements" has the meaning ascribed in Section 14.18.
- (nn) "Rights" has the meaning ascribed in Section 7.01(b).
- (oo) "Shareholder" means any present or future party to this Agreement except the Corporation.
- (pp) "Shares" means all the shares of the capital stock of any class (whether now or hereafter authorized) of the Corporation including the Common Shares and Preferred Shares, now issued to or acquired by, or hereafter issued to or acquired by, directly or indirectly, any party except the Corporation.
- (qq) "Subject Shares" means all the Shares owned by any Transferor subject to Article III.
- (rr) "Transferee" means any person or entity who acquires or is proposed to acquire, or who receives or is proposed to receive, any Shares.
- (ss) "Transferor" means any Shareholder, or his legal representative, who proposes, anticipates or should reasonably expect the Disposition of any of his Shares or with respect to whose Shares a Disposition has been or will be made.

Section 1.02 Usage. All pronouns and defined terms appearing herein shall be deemed to include both the singular and plural, and to refer to all genders, unless the context clearly requires otherwise. The words "hereby", "herein", "hereof", "hereunder" and words of similar import shall refer to this Agreement in its entirety and not to any particular provision or subdivision hereof. The words "Section" or "Article" shall refer to the referenced portions of this Agreement.

ARTICLE II GENERAL TRANSFER RESTRICTIONS

Section 2.01 Dispositions of Shares. No Shareholder shall make any Disposition with respect to any Shares except in accordance with the terms of this Agreement. Any actual, attempted or purported Disposition with respect to any Shares not in accordance with the terms of this Agreement shall be utterly null, void, and of no effect. Provided however, under no circumstances (except under Section 5.01) may a Shareholder make any Disposition with respect to any Shares to a direct competitor of, customer of, vendor to, or supplier to, the Corporation, or an affiliate of any of such persons (an "Adverse Party") without the consent of the Board of Directors. The determination that a Person constitutes an Adverse Party shall be determined by the unanimous consent of the Board of Directors.

ARTICLE III REQUIRED APPROVAL OF DISPOSITION

Section 3.01 Requirement of Notice of Disposition. Notice of Disposition (as defined below) shall be given by the Transferor to the Corporation as provided for by Section 3.02 of this Article not less than twenty (20) days prior to any proposed or contemplated Disposition of any Shares.

Section 3.02 Giving Notice of Disposition. A notice of Disposition (the "Notice of Disposition") shall be given to the Corporation setting forth all material facts and substantive terms and conditions of the Disposition including, without limitation, the following:

- (i) the number and identity of Subject Shares;
- (ii) the price at which the Subject Shares have been or will be disposed of and all terms of payment; and
- (iii) the names and addresses of the Transferor and the Transferee(s).

The Notice of Disposition will include a fully completed Individual Offeree Questionnaire or a fully completed Entity Offeree Questionnaire, as applicable.

Section 3.03 Board Consent. The Board of Directors, in its sole, absolute and arbitrary discretion, shall have consented in writing to the Disposition; provided, however, that the consent of the Board of Directors shall not be required in the case of transfers as described in Article V, Section 6.02 and Article IX.

ARTICLE IV BUY-OUT ON DEATH, INCAPACITY, OR BANKRUPTCY

Section 4.01 Rights to Buy-Out. In the event of the death, Incapacity or Bankruptcy of any Shareholder who is an individual and not an entity (the "Affected Shareholder"), the Corporation, shall have the right to purchase all (and not less than all) of the Shares (the "Available Shares") owned by such Affected Shareholder as hereinafter provided. The Affected

Shareholder or his representative shall timely notify the Corporation in writing of the occurrence of any such triggering event.

Section 4.02 Option Period. Upon being informed of the death, Incapacity or Bankruptcy of the Affected Shareholder, the Corporation may exercise its rights to purchase the Available Shares from such Affected Shareholder within thirty (30) days, of the date on which notice is given to the Corporation; otherwise such rights shall terminate; provided however, that the respective option periods during which such rights may be exercised shall be extended by an amount of time equal to the time during which such triggering event shall have been concealed by the Affected Shareholder or his representatives. The Corporation may exercise its rights of purchase by giving notice to the Affected Shareholder (or the personal representatives, trustee, conservator, guardian, committee, or other similar representative of the Affected Shareholder (at the notice address of the Affected Shareholder as set forth herein)), prior to the expiration of the applicable option period.

Section 4.03 Purchase Price and Terms. The price to be paid for the Available Shares shall be the price of such Shares as established in Section 4.04. In any event of a purchase of Available Shares under this Article, the purchase price shall be paid in cash at closing.

Section 4.04 Determination of Price. For purposes of this Article IV, the purchase price shall be the greater of: (i) the Liquidation Preference as defined in the Corporation's Articles of Incorporation, and (ii) the Fair Purchase Value per Share of the Available Shares.

Section 4.05 Closing. Within seventy-five (75) days after receiving notice of the Corporation's desire to purchase the Available Shares as set forth in Section 4.02, the certificates evidencing the Shares purchased shall be delivered in negotiable form free from liens and encumbrances (which, if any, shall be satisfied from the closing proceeds payable to the Transferor) to the Corporation or other purchasers against payment of the purchase price in cash or on an installment basis as provided above at the principal office of the Corporation.

Section 4.06 Guaranties. In the event the Controlling Shareholder had been required to provide a personal guaranty of any obligation of the Corporation, the Controlling Shareholder shall not be required to sell his Shares under this Article IV unless such guaranty shall have been released, or will be released as a part of the closing.

Section 4.07 Assignment of Corporation's Rights. The Corporation may assign its rights to purchase the Available Shares under this Article IV to the Shareholders on a Pro Rata Share basis upon the consent of a majority of the disinterested members of the Board of Directors of the Corporation.

Section 4.08 Legally Available Funds. Notwithstanding the forgoing, the Corporation ability rights to purchase the Available Shares under this Article IV is subject to having Legally Available Funds at the applicable time.

ARTICLE V TAG-ALONG AND TAKE-ALONG PROVISIONS

Section 5.01 Take-Along Right. Except for transfers of Shares exempted pursuant to Article VI, in the event that the holders of a majority of the Shares entitled to general voting rights (collectively the “Majority”) desire to accept a bona-fide third-party offer from an Independent Third Party for the purchase for value of the Shares, then each other Shareholder (collectively the “Minority”) shall, at the written request of the Majority, agree to sell their Shares for cash to such Independent Third Party for the same consideration per Share and otherwise on the same terms and conditions as the Majority shall sell the Majority’s Shares (with respect to the Preferred Shares on an as-converted basis determined pursuant to the Articles of Incorporation). The Minority shall not be required to sell their Shares pursuant to this Section 5.01 unless: (a) the Majority provides to the Minority evidence reasonably satisfactory to the Minority that the proposed transfer does not violate the registration requirements of applicable federal and state securities laws; (b) the Minority is not required pursuant to the terms of such transaction to incur liability for representations, warranties, indemnities, or similar responsibilities which are more burdensome than those representations, warranties, indemnities, or similar responsibilities undertaken by the Majority in such transaction; (c) no member of the Minority is required to make any representations relating to or on behalf of the Corporation or any of its Subsidiaries; (d) each member of the Minority’s indemnification obligations are limited to the lesser of the proceeds received by such member of the Minority in such transaction and such member of the Minority’s pro rata share of such indemnification obligations; (e) no Shareholder or affiliate of a Shareholder receives in the transaction consideration (such as non-compete payments) which are disproportionate to the Shareholder’s Pro Rata Share of the total proceeds for the transaction; (f) neither LNC nor McLarty shall be required to enter into any non-competition, non-solicitation, restrictive covenant or similar agreement; and (g) such Shares are sold to an Independent Third Party. The Majority shall be entitled to seek specific performance of the Minority’s obligations under this Section 5.01.

The Majority shall exercise their rights pursuant to this Section 5.01 by delivering a written notice to the Corporation and the Minority no later than thirty (30) days prior to the closing date of the sale of the Shares. The written notice shall make reference to the Majority’s rights and obligations hereunder and shall describe in reasonable detail:

- (i) The number of Shares to be sold by the Majority;
- (ii) The identity of the Independent Third Party;
- (iii) The proposed date, time and location of the closing of the sale of the Shares;
- (iv) The per share purchase price and the other material terms and conditions of the sale of the Shares, including a description of any non-cash consideration in sufficient detail to permit the valuation thereof; and

- (v) A copy of any form of agreement proposed to be executed in connection therewith.

Section 5.02 Tag-Along Right. In the event of a proposed Disposition (in one transaction or a series of transactions) of 2.0% or more of the Controlling Shareholder's Shares, the Controlling Shareholder shall, at least thirty (30) days prior to such Disposition, deliver to each other Shareholder written notice (the "Controlling Shareholder's Notice") thereof describing the class or classes of Shares subject to Disposition and the terms and conditions of such Disposition (including without limitation the per share purchase price, the date, time and location of the closing, and a copy of any proposed form of sale agreement for the Shares). Upon receipt of a Controlling Shareholder's Notice, each such other Shareholder, by giving written notice to the Controlling Shareholder of its election to participate not later than twenty (20) days following receipt of the Controlling Shareholder's Notice, may participate in such Disposition by including therein a number of Shares equal to the product of (i) the number of Shares to be sold by the Controlling Shareholder in connection with such Disposition and (ii) a fraction, the numerator of which is the number of Shares then owned by such other Shareholder immediately prior to giving effect to such Disposition and the denominator of which is the aggregate number of Shares then owned by all Shareholders immediately prior to giving effect to such Disposition. Notwithstanding the foregoing, in the event that both Common Shares and Preferred Shares will be sold, the number of Shares will be calculated on an as-converted to Common Shares basis with respect to the Preferred Shares. Such Disposition shall be made on the same terms and conditions of the Disposition described in the Controlling Shareholder's Notice, provided, however that (x) LNC and McLarty shall not be required to enter into any non-competition, non-solicitation, restrictive covenant or similar agreement, (y) LNC and McLarty shall not be required to make any representations relating to or on behalf of the Corporation or any of its Subsidiaries and (z) LNC's and McLarty's indemnification obligations shall be limited to the lesser of the proceeds received by LNC and McLarty in such transaction and LNC's and McLarty's pro rata share of such indemnification obligations. The number of Shares to be sold by the Controlling Shareholder in connection with such Disposition shall be reduced by the number of Shares sold by the other Shareholders pursuant to this Section 5.02.

(a) The closing of any transaction pursuant to this Section 5.02 shall be held at such time and place as the Controlling Shareholder shall reasonably specify. At such closing, the Shareholders participating in such Disposition shall deliver certificates representing the Shares to be sold, duly endorsed for transfer and accompanied by all requisite transfer taxes, if any, and the Shares to be transferred shall be free and clear of any liens, claims or encumbrances (other than restrictions imposed pursuant to applicable Federal and state securities laws and this Agreement) and each Shareholder participating in such Disposition shall so represent and warrant. Each Shareholder participating in such Disposition shall further represent and warrant that he, she or it is the record and beneficial owner of such Shares and make such additional representations and warranties as shall be customary in transactions of a similar nature. The selling price of any Shares to be sold by each Shareholder participating in a Disposition pursuant to this Section 5.02 shall be the same price per share as received by the Controlling Shareholder.

(b) Notwithstanding the foregoing, the tag-along rights of this Section 5.02 shall not arise upon, and the notice and other requirements of this Section 5.02 shall not be

applicable to, the following Dispositions (where otherwise permitted) by the Controlling Shareholder: (i) (A) any pledge of Shares made pursuant to a bona fide loan transaction with a lender who is an Independent Third Party that creates a mere security interest; (B) any transfer to the ancestors, descendants, or spouse of a holder of Shares or to trusts or partnerships for the benefit of such persons including such holder; (C) any repurchase by the Corporation pursuant to Article IV of this Agreement approved by the disinterested members of the Board of Directors and McLarty; or (D) any bona fide gift; provided; however, that, in any such case (x) the Transferor shall inform the Corporation of such pledge, transfer or gift prior to effecting it; and (y) the pledgee, transferee, or donee shall furnish the Corporation and the Shareholders with a written agreement to be bound by and comply with all provisions of this Agreement, as well as the terms of any other restrictions in agreements or the Corporation's Articles of Incorporation to which such Shares are subject; and such transferred Shares shall remain "Shares" hereunder, and such pledgee, transferee or donee shall be treated as a "Shareholder" for purposes of this Agreement; or (ii) the sale of any Shares in a public offering pursuant to registration under the Securities Act of 1933.

Section 5.03 Guaranties. In the event that a Shareholder or any of its equity owners has been required to provide a personal guaranty of any obligations of the Corporation, such Shareholder shall not be required to sell its Shares under this Article V unless, as part of the subject transaction, such guaranty shall be released.

ARTICLE VI EXEMPTIONS FROM TRANSFER RIGHTS AND RESTRICTIONS

Section 6.01 Exemptions. A Disposition may be exempted from the application of Articles II, III, IV and V of this Agreement only with the consent of disinterested members of the Corporation's Board of Directors and McLarty, but in no event shall a Shareholder be exempted from the requirements of Article XI and Section 14.02 hereof and in no event shall the Controlling Shareholder be exempted from the requirements of Articles II, III, IV and V without the prior written consent of LNC and McLarty. In addition, exemption of a Disposition hereunder shall not exempt the Transferee of any Shares from its obligations under this Agreement.

Section 6.02 Intra-Family Transfers; Transfers to Affiliates. Notwithstanding any provision herein to the contrary, except for the restrictions of Article XI, the Disposition, (i) in the case of an individual Shareholder, for bona fide estate planning purposes to a member of the Transferor's immediate family (spouse, ancestors, lineal descendants, and/or a trust, partnership, limited liability company or any business entity established for the benefit of any or all of such persons, including the Transferor), as well as any transfer by such trust or business entity to the Transferor, any such persons, or to another trust or business entity established for the benefit of such persons, or, (ii) in the case of any Shareholder which is an entity, to an Affiliate of such Shareholder, or (iii) in the case of McLarty, in connection with any transfer of McLarty's obligations under the McLarty Credit Agreement, in each case, shall not be deemed to be a "Disposition" for purposes of this Agreement so long as the requirements of Article XI and Sections 2.01 and 14.02 are satisfied and each recipient of any of the Shares continues to be bound by the terms of this Agreement as to all Shares. Notwithstanding any provision herein to

the contrary and subject to the prior written consent of the Controlling Shareholder not to be unreasonably withheld, conditioned or delayed, a pledge or grant of a security interest by LNC or McLarty in its Common Shares to a bank or other funding source in support of borrowings made by LNC or McLarty from such Person shall not constitute a "Disposition" for purposes of this Agreement.

ARTICLE VII PREEMPTIVE RIGHTS

Section 7.01 Preemptive Rights.

(a) All Shareholders shall have the right to purchase their Preemptive Right Pro Rata Share (as defined below) of any newly issued (i) Common Shares, (ii) options or warrants to purchase Common Shares ("Rights"), or (iii) preferred stock, notes, debt or other securities convertible into, or exchangeable for, Common Shares (collectively, "Convertible Securities"), or (iv) any other equity securities ("Other Equity Securities" along with Common Shares, Rights and Convertible Securities are collectively referred to as "Preemptive Securities") but specifically excluding the Excluded Securities (as defined below). "Preemptive Right Pro Rata Share" shall be, at any given time, that proportion, calculated prior to any proposed new issuance, which the number of outstanding Common Shares owned by such Shareholder at such time bears to the total number of Common Shares outstanding (on an as-converted basis with respect to the Preferred Shares) at such time. Notwithstanding anything to the contrary, any issuance of equity securities of any Subsidiary of the Corporation shall be deemed Preemptive Securities for all purposes under this Article VII.

(b) In the event the Corporation proposes to undertake an issuance or sale of Preemptive Securities to any Person, it shall give the Shareholders prior written notice (the "Preemptive Notice") of its intention to issue or sell Preemptive Securities, the price, the identity of the purchaser and the principal terms upon which the Corporation proposes to issue the same. Each Shareholder will have ten (10) business days from the delivery date of any Preemptive Notice (the "Decision Date") to agree to purchase such number of Preemptive Securities up to its Preemptive Right Pro Rata Share of Preemptive Securities (in each case calculated prior to the issuance) for the price and upon the terms specified in the Preemptive Notice by giving written notice to the Corporation and stating therein the number of Preemptive Securities to be purchased (provided that none of the Shareholders will be required to close on the purchase of such Preemptive Securities on a date earlier than ten (10) business days after the date of the Decision Date). Each Shareholder who has not so accepted the offer contained in the Preemptive Notice will be deemed to have waived all of his, her or its rights with respect to the issuance of Preemptive Securities, and the Corporation will thereafter be free to issue Preemptive Securities to the prospective purchaser and any participating Shareholders, at a price not less than the minimum price set forth in the Preemptive Notice and on other principal terms not substantially more favorable to the prospective purchaser than those set forth in the Preemptive Notice, without any further obligation to such non-accepting Shareholders. Additionally, if any Shareholder does not accept the offer contained in the Preemptive Notice, in whole or in part, the Corporation will re-offer, on a pro rata basis, to the participating Shareholders the Preemptive Securities previously offered and not subscribed for, which offer may be accepted by each of the

participating Shareholders in whole or in part by sending a written commitment to the Corporation within ten (10) business days after the effectiveness of such re-offer. If, prior to consummation, the terms of such proposed issuance change, with the result that the price is less than the minimum price set forth in the Preemptive Notice or the other principal terms are substantially more favorable to the prospective purchaser than those set forth in the Preemptive Notice, a separate participation notice must be furnished to the Shareholders.

(c) In the event that any of the Shareholders fail to purchase all of their respective Preemptive Right Pro Rata Share pursuant to this Section 7.01, the Corporation shall have one hundred fifty (150) days after the Decision Date to consummate the sale of the Preemptive Securities with respect to which such preemptive right was not exercised, at or above the price and upon terms not more favorable to the purchasers of such Preemptive Securities than the terms specified in the initial Preemptive Notice given in connection with such sale.

(d) The parties hereby agree that the preemptive rights described in this Section 7.01 shall not be exercisable with respect to any issuance by the Corporation of the following securities (the "Excluded Securities"):

(i) Any securities offered to officers, employees, directors or consultants in connection with such person's employment, consulting or director arrangements with the Corporation, including, without limitation, any securities issued pursuant to the Commercial Foodservice Repair, Inc. 2013 Omnibus Equity Incentive Plan, provided that no securities shall be offered to the Controlling Shareholder, his Affiliates or any Members of his Immediate Family;

(ii) Any securities issued in connection with any business combination or acquisition transaction involving the Corporation and an Independent Third Party, including any issuance as consideration for such transaction or to equity holders or management of the entity or business that is an Independent Third Party that is the subject of such business combination or acquisition transaction;

(iii) Any securities issued by the Corporation pursuant to a public offering registered with the SEC; and

(iv) Any securities issued upon the exercise or conversion of Rights or other outstanding securities of the Corporation.

ARTICLE VIII

INFORMATION RIGHTS; OBSERVER RIGHTS; CONSENT RIGHTS

Section 8.01 Financial Statements. In addition to, and without limiting any rights that a Shareholder may have with respect to inspection of the books and records of the Corporation under the laws of the jurisdiction in which the Corporation is incorporated, the Corporation shall furnish to LNC and McLarty (so long as it owns any Shares), the following information:

(a) As soon as available, and in any event with one hundred twenty (120) days after the end of each Fiscal Year, the audited balance sheet of the Corporation as at the end of each such Fiscal Year and the audited statements of income, cash flows and changes in shareholders' equity for such year, accompanied by the certificate of independent certified public accountants of recognized national standing selected by the Board of Directors, to the effect that, except as set forth therein, such financial statements have been prepared in accordance with GAAP, applied on a basis consistent with prior years and fairly present in all material respects the financial condition of the Corporation as of the dates thereof and the results of its operations and changes in its cash flows and shareholders' equity for the periods covered thereby;

(b) As soon as available, and in any event within forty-five (45) days after the end of each fiscal quarter, the balance sheet of the Corporation at the end of such quarter and the statements of income, cash flows and changes in shareholders' equity for such quarter, all in reasonable detail and all prepared in accordance with GAAP, consistently applied, and certified by the chief financial officer of the Corporation; and

(c) To the extent the Corporation is required by applicable law or pursuant to the terms of any outstanding indebtedness of the Corporation to prepare such reports, any annual reports, quarterly reports and other periodic reports (without exhibits) actually prepared by the Corporation as soon as possible.

Section 8.02 Inspection Rights; SBA Requirements.

(a) The Corporation shall, and shall cause its officers, directors and employees to, (i) afford LNC and McLarty (so long as it owns any Shares) and the representatives of LNC and McLarty and each such Shareholder, during normal business hours and upon reasonable notice, reasonable access at all reasonable times to its officers, employees, auditors, properties, offices, plants and other facilities and to all books and records, and (ii) afford LNC, McLarty and each Shareholder the opportunity to consult with its officers from time to time regarding the Corporation's affairs, finances and accounts as each such Shareholder may reasonably request upon reasonable notice.

(b) The rights set forth in Section 8.02(a) above shall not and is not intended to limit any rights which any Shareholders may have with respect to the books and records of the Corporation, or to inspect its properties or discuss its affairs, finances and accounts under the laws of the jurisdiction in which the Corporation is incorporated.

(c) The Corporation agrees to provide information, reports and such other data as requested from LNC and McLarty by the U.S. Small Business Administration.

Section 8.03 Observer Rights. So long as LNC or McLarty own any Common Shares, LNC and McLarty shall each have the right to designate an observer to the Corporation's Board of Directors. The Corporation shall notify LNC and McLarty of all regular and special meetings of the Board of Directors (and any committees thereof) at least five (5) business days in advance of such meetings, and afford the representatives designated by LNC and McLarty (each such representative, an "Observer") the right to attend any such meetings in a non-voting observer

capacity. Each Observer shall be entitled to receive all written materials and other information given to or prepared for the directors of the Corporation in connection with any such meeting at such time such materials or information are given to such directors; provided that the Corporation may exclude an Observer from a meeting or receipt of materials or information if the Board of Directors determines (a) in good faith that the Corporation and LNC or McLarty, as applicable, have an actual or potential conflict of interest relating to the matter to be discussed at the meeting or contained in such materials or information or (b) based on the advice of counsel, the exclusion of the Observer from such meeting or determination not to provide such materials or information to the Observer is necessary to preserve attorney-client privilege. The Corporation shall reimburse the Observers for such individual's reasonable out-of-pocket travel and other expenses to attend such meetings. Neither Observer nor any affiliate of LNC or McLarty shall be deemed to owe any fiduciary or other duties to the Corporation or any of the Shareholders by reason of such rights.

Section 8.04 Consent Rights. From the date hereof until the occurrence of, with respect to McLarty, the McLarty Put Fulfillment Date and, with respect to LNC, the LNC Put Fulfillment Date, without the prior written consent of McLarty to the actions included in Section 8.04(a), (b), (c) and (d) and without the prior written consent of LNC to the actions listed in Section 8.04(a), (b), and (d) the Corporation shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

(a) amend, modify or change any provision of its articles or certificate of incorporation, bylaws, or the terms of any class or series of its capital stock to the extent such amendment, modification or change would have an adverse effect (economically or otherwise) on McLarty or LNC in its capacity as a holder of Common Shares in a disproportionate manner than the effect of such change on the Controlling Shareholder in his capacity as a holder of Common Shares;

(b) with respect to the Corporation, issue or sell any Common Shares, Rights, or Preferred Shares having (i) with respect to LNC's consent right, a per share price below \$63.5808749 (as adjusted to take into account stock splits, dividends or other adjustments after the date hereof) and (ii) with respect to McLarty's consent right, a per share price below \$80.00 (as adjusted to take into account stock splits, dividends or other adjustments after the date hereof); provided, however, such prior written consent is not required with respect to this Section 8.04(b) if the Corporation complies with Section 7.01 of this Agreement; or

(c) (i) other than the agreements listed on Schedule 6.7 of the McLarty Credit Agreement (including any extensions, amendments or modifications thereto) enter into, or be a party to, any transaction or agreement with any of its Affiliates, including without limitation, the Controlling Shareholder and any of its Affiliates or Members of his Immediate Family);

(ii) in connection with any transaction with any of its Affiliates, amend, modify or change the terms of such transaction, except in each case pursuant to the reasonable requirements of its business and upon fair and reasonable terms that are fully disclosed to LNC and McLarty and on terms that are no less favorable to it than it

would obtain in a comparable arm's length transaction with a Person who is not an Affiliate;

(iii) enter into, amend or modify, any agreement for services or compensation between the Corporation and/or any of its Subsidiaries and Kurt A. Herwald to increase the compensation, remuneration, fees or reimbursement of expenses payable thereunder not approved by a majority of disinterested members on the compensation committee of the Board of Directors.

(d) consummate any Disposition by the Controlling Shareholder if the Controlling Shareholder will receive any Excess Compensation in connection with such Disposition by the Controlling Shareholder unless, in connection with and as a condition to such Disposition by the Controlling Shareholder, proper provisions are made such that the buyer or acquirer in such Disposition agrees to pay to each Shareholder an amount equal to the amount of such Excess Compensation multiplied by each such Shareholder's Pro Rata Share.

ARTICLE IX PUT RIGHT

Section 9.01 Put Rights.

(a) Upon (each, a "McLarty Put Event") (i) the occurrence of an Event of Default under Section 7.1(a) of the McLarty Credit Agreement, (ii) the occurrence of a Change of Control, or (iii) November __, 2020, McLarty shall have the right to require the Corporation to repurchase 100% of the Common Shares held by McLarty (the "McLarty Put Right") at a purchase price equal to the Put Purchase Price (as defined below).

(b) Upon (a "LNC Put Event" and together with the McLarty Put Events, the "Put Events") January 28, 2020, LNC shall have the right to require the Corporation to repurchase 100% of the Common Shares held by LNC (the "LNC Put Right" and together with the McLarty Put Right, the "Put Rights") at the Put Purchase Price. The "Put Purchase Price" shall mean the product of (x) the Put Fair Market Value of each Common Share multiplied by (y) the number of Common Shares held by either McLarty or LNC, as the case may be, as of the date of the exercise of the Put Right (the "Put Purchase Price").

(c) McLarty or LNC, as applicable (the "Put Transferor"), may exercise its Put Right, by providing a written notice (the "Put Notice") to the Corporation within one hundred eighty (180) days after the occurrence of any one or more applicable Put Events, provided that such period may be extended as described in this Section 9.01. The Put Notice shall state that the Put Transferor is requiring the Corporation to repurchase all (but not less than all) of the Common Shares held by the Put Transferor. The date of closing of such repurchase shall be as determined by the Corporation but in no event shall such closing date be later than one hundred fifty (150) days following the date of final determination of the Put Fair Market Value (as described below) (the "Put Closing Date"). On the Put Closing Date, the Put Transferor shall deliver to the Corporation an executed assignment of the Common Shares reasonably satisfactory in form to counsel to the Corporation and the Put Transferor, and the

Corporation shall deliver the Put Purchase Price in cash or same day funds. The Common Shares so purchased shall be free and clear of all liens, claims and encumbrances.

(d) As used herein, the term "Put Fair Market Value" means (a) the aggregate amount that would be distributed in respect of the Common Shares based upon an arm's length sale of the Corporation on such date (including its ownership interest in all Persons) as an entirety, such sale being between a willing buyer and a willing seller and determined without reference to any discount for minority interest, restrictions on transfer, disparate voting rights among classes of capital stock or lack of marketability with respect to capital stock divided by (b) the aggregate number of shares of outstanding Common Shares. The Put Fair Market Value shall be determined by the disinterested members of the Board of Directors of the Corporation in good faith within ten (10) days of a Put Event for which such determination is required and such determination (including the basis therefor) shall be promptly provided to the Put Transferor. Such determination shall be binding on the Put Transferor unless the Put Transferor objects thereto in writing within thirty (30) days of receipt. In the event the Put Transferor objects to the determination of "Put Fair Market Value" by the board of directors of the Corporation (such objection to be made within thirty (30) days of the Put Transferor's receipt of written notice of such determination), then the Put Fair Market Value shall be determined by a disinterested appraiser (which shall be a national investment bank or national accounting firm) mutually selected by the Corporation and the Put Transferor, the fees and expenses of which shall be paid 50% by the Corporation and 50% by the Put Transferor unless such determination results in a Put Fair Market Value more than 110% of the Put Fair Market Value initially determined by the board of directors of the Corporation in which case such fees and expenses shall be borne by the Corporation or results in a Put Fair Market Value less than 90% of the Put Fair Market Value initially determined by the Corporation in which case such fees and expenses shall be paid by the Put Transferor. Any selection of a disinterested appraiser shall be made in good faith within three (3) business days after the Put Transferor provides written notice to the Corporation of its objection to the determination of Put Fair Market Value and any determination of Put Fair Market Value by a disinterested appraiser shall be made within ten (10) business days of the date of selection.

(e) Payment of the Put Purchase Price shall only be out of Legally Available Funds and paid after the establishment of the Put Fair Market Value as provided for in Section 9.01(c). Upon establishment of the Put Fair Market Value, if the Corporation believes that at the time of payment of the Put Purchase Price, the Corporation would not have sufficient Legally Available Funds to perform its obligations, then the Corporation shall promptly use its best efforts to cause such Legally Available Funds to become available in any manner permitted or contemplated by applicable governing law. If, notwithstanding the Corporation's best efforts pursuant hereto, the Corporation is unable to fulfill its obligations under this Article IX because of insufficient Legally Available Funds, the Company shall give prompt written notice thereof to the Put Transferor specifying in reasonable detail the nature thereof and the extent, if any, to which the Corporation would be able to fulfill its obligations under this Article IX. The Put Transferor may thereafter elect pursuant to written notice to the Corporation: (A) the exercise of the put rights pursuant to this Article IX shall be rescinded in whole or in part at the option of the Put Transferor (with the result that the Put Transferor may require the Corporation to redeem the

Common Shares subject to the Put Right at any time Legally Available Funds exist thereafter at the Put Purchase Price); or (B) to have the Corporation pay the Put Purchase Price by delivery of a promissory note payable to the Put Transferor dated the date of the establishment of the Put Fair Market Value: (1) having a term of one year from the date of establishment of the Put Fair Market Value, (2) providing for a single payment of principal at the end of its term, (3) bearing interest at a rate per annum equal to 12.0% (computed for the actual number of days elapsed on the basis of a 360 day year), (4) payable with monthly cash interest payments and (5) allowing for prepayment at any time without premium or penalty.

(f) The Corporation covenants and agrees that, after the date hereof, it shall not, without the prior written consent of McLarty and LNC (such consent not to be unreasonably withheld, conditioned or delayed), enter into or agree to become subject to specific or direct contractual term, condition, provision or agreement that would specifically prohibit the performance of the Corporation's obligations to redeem the Common Shares under Article IX.

ARTICLE X REGISTRATION RIGHTS

Section 10.01 Registration Rights. If the Corporation decides to register any of its Shares, either for its own account or the account of any Shareholder, other than a registration relating solely to employee benefit plans, for the purposes of an acquisition, or a registration on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the sale of Common Shares, the Corporation will:

(a) promptly give to each Shareholder whose Common Shares are not already proposed to be registered, written notice thereof (which shall include the number of Common Shares the Corporation or Shareholder proposes to register and, if known, the name of the proposed underwriter); and

(b) use its commercially reasonable efforts to include in such registration all the Common Shares specified in a written request or requests, made by a Shareholder within thirty (30) days after the date of delivery of the written notice from the Corporation described in clause (a) immediately above. If the underwriter advises the Corporation that marketing considerations require a limitation on the number of shares offered pursuant to any registration statement, then the Corporation may offer all of the securities it proposes to register for its own account, if any, and such limitation on any remaining securities that may, in the opinion of the underwriter, be sold will be imposed pro-rata among the Shareholders who requested inclusion of their Common Shares in such registration (including any Shareholder initiating such registration) pursuant to this Agreement according to the number of Common Shares then held by such Shareholders.

ARTICLE XI COMPLIANCE WITH SECURITIES LAWS; CAPITALIZATION

Section 11.01 Representations. Each Shareholder represents to all other Shareholders and to the Corporation that: (a) all Shares have been, or will be, acquired for investment and not with a view to the sale or distribution thereof within the meaning of the Securities Act of 1933, as amended (the “Act”); (b) he or she has no present intention of selling or otherwise disposing of any of the Shares for his or her own account and no one else has or will have a beneficial ownership in any of his Shares; and (c) he or she has been advised that the Shares have not been registered with the Securities and Exchange Commission or any state securities regulatory authority and may not be offered, sold or otherwise transferred except in compliance with the Act and any applicable state securities laws.

Section 11.02 Covenant to Comply with Restriction. Each Shareholder agrees that at no time shall any of the Shares be transferred in the absence of (i) an effective registration statement under the Act and applicable state securities laws, or (ii) unless waived by the Corporation’s Board of Directors or in connection with a Transfer by McLarty, an opinion of counsel satisfactory to the Corporation and its counsel, to the effect that such transfer at such time will not violate the Act or applicable state securities laws.

Section 11.03 Access to Information. Each Shareholder acknowledges that he/she has had access to all documents and instruments related to the business of the Corporation that were requested by such Shareholder. In addition, all Shareholders have been given the opportunity to ask questions of the Corporation and its officers and all other Shareholders with respect to the terms and conditions of the investment in the Corporation and request additional information necessary to verify the information provided. Certain information provided in connection with the Shares might be “forward-looking” information, such as projections, estimates, pro formas, or statements of expectations or plans. All forward-looking information is subject to known and unknown risks and uncertainties, many of which are outside of the control of the Corporation. Consequently, actual results may, and probably will, differ materially from the results contemplated in such forward-looking information.

Section 11.04 Sophistication. Each Shareholder also represents to the Corporation and to all other Shareholders that he/she is experienced in business and financial matters of the type in which the Corporation will be engaged and can evaluate the relative risks and merits of his/her participation in the Corporation. Furthermore, each Shareholder acknowledges that the investment in the Corporation involves a high degree of risk and each Shareholder is able to bear the loss of his/her entire financial participation in the Corporation.

Section 11.05 Capitalization. As of November 2nd, 2015, the Corporation represents and warrants to each of the Shareholders that all of the outstanding equity securities (including all preferred stock, common stock, options, warrants and any other securities) of the Corporation (i) have been validly issued, (ii) are fully paid and nonassessable and (iii) are owned (nominally and beneficially) by the Persons in the respective amounts and in the specific equity securities specified on Schedule 11.05 attached hereto.

ARTICLE XII ADDITIONAL SHAREHOLDER COVENANTS

Section 12.01 Confidentiality. Each Shareholder (other than (i) McLarty who shall be subject to the confidentiality provisions set forth in Section 2nd of the McLarty Credit Agreement and (ii) LNC who shall be subject to the confidentiality provisions set forth in Section 9.11 of the LNC Credit Agreement) agrees that all know-how, trade secrets, bid procedures, estimation methods, marketing methods, pricing procedures, customer lists, prospect lists, sales figures, budgets, forecasts, accounting, tax, and other financial records, data processing systems and related software and other information concerning the business and affairs of the Corporation or any customer of the Corporation shall be secret and confidential. Such confidential information shall not be divulged to anyone except on authorization the Corporation. Further, upon the Disposition of all of the Shares of any Shareholder, such Shareholder agrees that he will not release any such information to anyone except upon written authority of the Corporation, he will surrender any confidential information he may have to the Corporation and that he will not retain copies of said information. Such confidential information shall exclude such information as is generally known in the public domain in the same accumulated form possessed by the Corporation and information which such Shareholder is required to disclose pursuant to court order.

ARTICLE XIII NOMINATION AND ELECTION OF DIRECTORS

Section 13.01 Number of Directors. The number of directors shall be as set forth in the Amended and Restated Bylaws of the Corporation and as set from time to time by the board of directors. To the extent it is in the discretion of the Shareholders, the Board shall always be comprised of an odd number of directors and the Shareholders shall take such action to cause this to be so. The Amended and Restated Bylaws currently provide that the number of directors shall be between three and seven. On the date hereof, there are three directors.

Section 13.02 Directors Appointed by Shareholders Owning Common Stock. The Shareholders owning common stock shall have the right to nominate two directors if there are three director positions, three directors if there are five director positions and five directors if there are seven director positions. Each Shareholder agrees to vote all of his, her, or its shares having voting power in favor of the directors nominated by the Shareholders owning Common Shares of the stock of the Corporation.

Section 13.03 Director Election by Preferred Share Shareholders. The Shareholders owning Preferred Shares shall have the right to nominate one director if there are three director positions and two directors if there are five or more director positions. Each Shareholder agrees to vote all of his or her shares having voting power in favor of the directors nominated by the Shareholders owning Preferred Shares pursuant to this Section 13.03.

Section 13.04 Nominations. For the purposes of Section 13.02, the Shareholders owning Common Shares shall vote as a class to nominate the directors for the director positions they are entitled to nominate hereunder. For the purposes of Section 13.03, the Shareholders owning

Preferred Shares shall vote as a class to nominate the directors for the director positions they are entitled to nominate hereunder.

Section 13.05 Limitations on Election or Directors by Shareholders Owning Preferred Shares. The rights of Shareholders of Preferred Shares set forth in Section 13.03 shall exist so long as at least 2,500 Preferred Shares remain outstanding. In the event the number of Preferred Shares outstanding falls below 2,500 shares, the rights of the Shareholders owning Preferred Shares to nominate directors under Sections 13.03 and 13.04 shall terminate.

Section 13.06 Removal and Vacancies. Each Shareholder agrees to vote all of his, her, or its shares having voting power for the removal of any director upon the request of the Shareholders then entitled to nominate such director as set forth in Section 13.02 or 13.03 above, and for the election to the board of directors of the substitute designated by such class of shares in accordance with the provisions of this Article XIII. Each Shareholder further agrees to vote all of his, her, or its shares having voting power in such manner as shall be necessary and appropriate to insure that any vacancy on the board of directors occurring for any reason shall be filled only in accordance with the provisions of this Article XIII.

ARTICLE XIV MISCELLANEOUS

Section 14.01 File Copy. A copy of this Agreement shall be kept by the Secretary of the Corporation and shall be made available to any third party upon the written request of any Shareholder.

Section 14.02 Legends on Certificates. Each certificate evidencing Shares subject to this Agreement, whether now or hereafter issued, shall have prominently inscribed upon the face or reverse thereof the following legends along with any legends required by the Articles of Incorporation, Bylaws or applicable law:

IMPORTANT NOTICE

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, PLEDGED, TRANSFERRED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT IN ACCORDANCE WITH SUCH ACT AND THE RULES AND REGULATIONS THEREUNDER AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

THE SHARES EVIDENCED BY THIS CERTIFICATE MAY BE TRANSFERRED OR DISPOSED OF ONLY IN ACCORDANCE WITH THAT CERTAIN SECOND AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT ("AGREEMENT") AMONG THE CORPORATION AND ITS SHAREHOLDERS, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION. ANY PURPORTED TRANSFER OR

DISPOSITION OF SUCH SHARES IN VIOLATION OF THE AGREEMENT SHALL BE COMPLETELY NULL AND VOID.

BY ACCEPTANCE OF THIS CERTIFICATE, THE HOLDER HEREOF COVENANTS THAT HE WILL COMPLY IN ALL RESPECTS WITH THE FOREGOING RESTRICTIONS ON TRANSFER.

Section 14.03 Term of Agreement. This Agreement shall continue in full force and effect until terminated by the written consent of the Corporation, the Controlling Shareholder, LNC, McLarty and Shareholders holding a majority of the then outstanding Preferred Shares.

Section 14.04 Sufficiency of Notices. All notices required to be made under this Agreement shall be in writing (including by electronic mail) and shall be deemed sufficiently given upon actual receipt, or upon the post mark date if mailed by registered or certified mail, return receipt requested, to the person to be noticed at his notice address appearing beneath his signature hereunder. Any party hereto may change his notice address by the giving of notice to all other parties as provided in this Section.

Section 14.05 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties and their beneficiaries, legatees, distributees, legal representatives, successors and assigns.

Section 14.06 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The parties hereto consent to jurisdiction and venue, subject to proper service of process, in the state and federal courts for Greenville County, South Carolina, regarding any disputes arising hereunder.

Section 14.07 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any party hereto may execute this Agreement by signing any such counterpart. Also, Shareholders may become parties hereto by execution of counterpart Joinder Agreements of Additional Shareholder.

Section 14.08 Issuance of Additional Shares. It shall be a condition precedent to the issuance of any additional Shares of voting common stock or non-voting common stock (or shares of any other class which is convertible into Shares of voting common stock or non-voting common stock) by the Corporation that the proposed recipient thereof join in this Agreement as a Shareholder and agree to be bound by all terms and conditions hereof, except to the extent otherwise approved by the Corporation's Board of Directors.

Section 14.09 Amendments; Modifications; Waivers. This Agreement shall not be amended, restated, supplemented, waived, consented or otherwise modified without the written consent of the Corporation, the Controlling Shareholder, LNC, McLarty and Shareholders holding a majority of the then outstanding Preferred Shares; provided however, that, subject to the limitations set forth in Section 6.01 with respect to the Controlling Shareholder, certain provisions of this Agreement may be waived from time to time as provided in Sections 6.01 and 6.02 by a majority of the disinterested members of the Corporation's Board of Directors.

Section 14.10 Headings. All references to designated "Articles" or "Sections" are to the Articles and Sections of this Agreement as originally executed. All headings are provided for convenience only and are not intended to limit, expand or otherwise modify any provision hereof.

Section 14.11 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the other provisions contained herein shall not in any way be affected or impaired thereby.

Section 14.12 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto respecting the subject matter hereof, except as otherwise provided in the Corporation's Articles of Incorporation.

Section 14.13 Action of Board of Directors. The direction, consent, approval, waiver, or other action of the Corporation's Board of Directors permitted or required in this Agreement shall be effective for purposes of this Agreement when taken, given, or confirmed by a majority (or by such greater percentage as is expressly required by any provision of this Agreement) of the directors then serving on the Board of Directors, which may be accomplished by affirmative vote, written consent, or otherwise as provided in the Corporation's Bylaws.

Section 14.14 No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.

Section 14.15 No Assignment. Except as otherwise provided herein, the right and obligations arising under this Agreement are not assignable by any party without the prior written consent of the Corporation, the Controlling Shareholder, LNC, McLarty and the Shareholders holding a majority of the then outstanding Preferred Shares. For the avoidance of doubt, (i) any rights under this Agreement specific to LNC are not transferable to a third party in connection with a Disposition of any of the Shares held by LNC (other than a Disposition to an Affiliate pursuant to Section 6.02 of this Agreement) and (ii) any rights under this Agreement specific to McLarty are not transferable to a third party in connection with a Disposition of any of the Shares held by McLarty (other than a Disposition permitted by Section 6.02).

Section 14.16 Enforcement. Each party agrees that a failure of such party to perform his or its obligations under this Agreement would cause immediate and irreparable injury to the other parties, for which monetary damages alone would be an inadequate remedy. Therefore, each party agrees that the other parties shall have the right, in addition to all other rights and remedies at law or in equity, to obtain specific performance of, or injunctive relief respecting, this Agreement, and hereby consents and agrees that such party shall not, in any proceeding to obtain specific performance or injunctive relief, raise as a defense thereto that there is an adequate remedy at law.

Section 14.17 Conversion of Shares. Upon conversion of Preferred Shares into Common Shares, the Shareholders and Shares held thereby (whether Preferred Shares, Common Shares or both) shall continue to be subject to the provisions hereof.

Section 14.18 Regulatory Requirements. Notwithstanding anything else set forth herein to the contrary, in the event of any reasonable determination in good faith by LNC or McLarty that, by reason of any existing or future Federal or state rule, regulation, guideline, order, request or directive (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) (collectively, a "Regulatory Requirement"), LNC or McLarty is effectively restricted or prohibited from holding any of the equity securities then held by LNC or McLarty, the Corporation and the Shareholders shall use reasonable good faith efforts to take such action as they may determine is reasonably necessary and appropriate to permit LNC or McLarty to transfer the Units to comply with such Regulatory Requirement. All such actions shall be taken at the expense of LNC or McLarty, as applicable. LNC and McLarty shall give written notice to the Corporation and the other Shareholders of any reasonable determination by it hereunder and the transfer it believes may be necessary or appropriate to permit it to comply with such Regulatory Requirement.

Section 14.19 No Effect Upon Lending Relationship. Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of McLarty (or any of its Affiliates or permitted transferees) in their respective capacities as a lender to the Corporation or any of its subsidiaries pursuant to any debt agreement under which the Company or any of its Subsidiaries has borrowed money from such lenders. Without limiting the generality of the foregoing, McLarty, in exercising its rights as a lender, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect equity holder of the Corporation, (ii) the equity of the Company or (iii) any duty it may have to any Shareholder or any other direct or indirect equity holder of the Corporation, except as may be required under the applicable loan documents or by commercial law applicable to creditors generally.

Section 14.20 Acknowledgment by the Holders of Preferred Shares. By signing this Agreement, each holder of Preferred Shares hereby waives any and all consent rights or notice rights such holder may have in respect of the issuance of the McLarty Shares to McLarty and acknowledges and agrees that no adjustment is required to the conversion price of the Preferred Shares as a result of the issuance of the McLarty Shares to McLarty.

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Second Amended and Restated Shareholders' Agreement to be legally binding and effective as of the date first above written.

COMMERCIAL FOODSERVICE REPAIR, INC.

Kurt Herwald, President

[SHAREHOLDERS SIGNATURES ATTACHED]

JOINDER AGREEMENT OF SHAREHOLDER

FOR VALUE RECEIVED AND ACKNOWLEDGED, each of the undersigned hereby agrees that, upon execution hereof he/she will be bound by and become in all respects a party to the Second Amended and Restated Shareholders' Agreement dated November____, 2015, among Commercial Foodservice Repair, Inc. and its shareholders, a copy of which has been furnished to him/her and is on file with the Secretary of the Corporation.

MCLARTY CAPITAL PARTNERS SBIC, L.P.

By: _____

Name: Christopher D. Smith

Title: President and Managing Partner

Notice Address:

McLarty Capital Partners SBIC, L.P.

1345 Avenue of the Americas, 27th Floor

New York, NY 10105

Attn: Christopher D. Smith, President and
Managing Partner

Fax: (212) 956-1066

with a copy to:

Proskauer Rose LLP

One International Place

Boston, MA 02111

Attention: Sabrina Rusnak-Carlson, Esq.

Telecopy: (617) 526-9899

Each of the undersigned hereby agrees that, upon execution hereof, the undersigned will be bound by the Second Amended and Restated Shareholders' Agreement dated November __, 2015, among Commercial Foodservice Repair, Inc. and its shareholders, a copy of which has been furnished to the undersigned and is on file with the Secretary of the Corporation, and the undersigned has waived any preemptive rights the undersigned may otherwise have had in connection with the execution of this Second Amended and Restated Shareholders' Agreement.

LEEDS NOVAMARK CAPITAL I, L.P.,

By: Leeds Novamark Associates I, LLC,
a Delaware limited liability company,
General Partner

By: _____
Matthew D. Kelty

Notice Address:

Plaza America Tower II
11710 Plaza America Drive, Suite 160
Reston, VA 20190
Date:

Each of the undersigned hereby agrees that, upon execution hereof, the undersigned will be bound by the Second Amended and Restated Shareholders' Agreement dated November ___, 2015, among Commercial Foodservice Repair, Inc. and its shareholders, a copy of which has been furnished to the undersigned and is on file with the Secretary of the Corporation, and the undersigned has waived any preemptive rights the undersigned may otherwise have had in connection with the execution of this Second Amended and Restated Shareholders' Agreement.

Kurt A. Herwald

Notice Address:

410 E. Washington St.
Greenville, SC 29601
Date:

Howard Einstein

Notice Address:

515 McDaniel Avenue,
Greenville, SC 29405
Date:

Wayne Gotto

Notice Address:

Date: as of _____, 2015

Faird A Naib

Notice Address:

Date: as of _____, 2015

Steven Owings

Notice Address:

116 Tuscany Way
Greenville, S.C. 29650
Date:

Robert Schwartz

Notice Address:

Date: _____, 2015

Robert Dobson

Notice Address:

Date: _____, 2015

Capitalization Table of Corporation
Schedule 11.05

COMMERCIAL FOODSERVICE REPAIR, INC.

Shareholder Name	Common Stock	Common Stock Options*	Preferred Stock**	Percentage Interest on Fully- Diluted Basis
Kurt Herwald	201,250	0	0	53.1%
Leeds Novamark Capital I, L.P.	15,728	0	0	4.2%
McLarty Capital Partners SBIC, L.P.	37,500	0	0	9.9%
Wayne Gotto	1,250	0	500	1.7%
Howard Einstein	1,875	0	250	1.2%
Robert Dobson	0	0	1,428	3.8%
Farid A. Naib	0	0	500	1.3%
Robert Schwartz	12,500	0	5,000	16.5%
Steven H. Owings	1,875	0	1,000	3.1%
Options	0	20,000	0	5.3%
Total	271,978	20,000	8,678	100.0%

*12,050 options have been issued and vest over five year period with 40% vested at November 2015. The strike price for each option is \$32.00 per share of common stock.

**Each share of Preferred Stock is convertible into ten shares of common stock.

EXHIBIT A
FORM OF
JOINDER AGREEMENT OF SHAREHOLDER

FOR VALUE RECEIVED AND ACKNOWLEDGED, each of the undersigned hereby agrees that, upon execution hereof he/she will be bound by and become in all respects a party to the Second Amended and Restated Shareholders' Agreement dated November __, 2015, among Commercial Foodservice Repair, Inc. and its shareholders, a copy of which has been furnished to him/her and is on file with the Secretary of the Corporation.

_____(SEAL)
Print Name: _____

Notice Address:

Date: _____

Exhibit 21

SUBORDINATION AGREEMENT

(Seller Subordinated Noteholder)

Dated: July 28, 2014

To: PNC Bank, National Association (together with its designated agent, successors and assigns from time to time party to the Senior Agreement (as defined below), the "Senior Lender"), and Leeds Novamark Capital I, L.P., (together with its designated agent, successors and assigns from time to time party to the Junior Agreement (as defined below), the "Junior Lender")

To induce Senior Lender and Junior Lender at the request of Commercial Foodservice Repair, Inc., a South Carolina corporation ("CFR"), to (i) enter into various credit facilities for the making of loans and extensions of credit to and/or for the benefit of CFR and each of the subsidiaries of CFR from time to time party to the Senior Agreement or the Junior Agreement (each as defined below and as may hereafter be amended, supplemented or replaced from time to time, collectively, "Superior Loan Agreements") (together with CFR and their respective successors and permitted assigns, collectively referred to as the "Borrowers" and each individually referred to as a "Borrower"), and (ii) approve the issuance by Borrowers of the Seller Subordinated Debt and as a condition to such action has required the execution and delivery of this Subordination Agreement. For good and valuable consideration the parties hereto agree as follows:

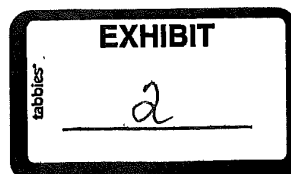
1. Definitions. For purposes of this Subordination Agreement (this "Subordination Agreement"), the following capitalized terms shall have the following respective meanings:

"Junior Agreement" means that certain Senior Subordinated Credit Agreement dated as of date hereof, by and among the Borrowers and Junior Lender, as the same may from time to time be amended, restated, modified or otherwise supplemented from time to time, and including the unsecured subordinated promissory notes issued pursuant thereto, as the same may from time to time be amended, restated, modified or otherwise supplemented from time to time.

"Junior Debt" means (i) indebtedness and Obligations (as defined in the Junior Agreement) under the Loan Documents (as defined in the Junior Agreement), including, without limitation, principal, premium, interest and other liabilities payable from time to time and similar obligations, interest accruing before and after any bankruptcy or insolvency proceeding at the rate provided in the documentation with respect thereto (irrespective of whether such principal, premium, interest or other liabilities are allowed as a claim in any such proceeding), premiums, penalties, fees, indemnities or expenses, and regardless of whether direct or indirect, now existing or hereafter arising, absolute or contingent, secured or unsecured, or long or short term, (ii) obligations arising under any guarantees executed by the Borrowers or any of their subsidiaries of items described in (i) above, (iii) renewals, extensions, refundings, refinancings, deferrals, restructurings, amendments and modifications of the items described in (i) and/or (ii) above, and (iv) any other obligation or liability owing by Borrowers, or any of them, to Junior Lenders.

"Junior Lender" means the lenders or their designated agent, from time to time party to the Junior Agreement, and includes their respective successors and assigns.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.



"Seller Noteholder" means the holder of the Seller Unsecured Subordinated Note, in its capacity as a holder of the Seller Unsecured Subordinated Note.

"Seller Subordinated Debt" means (i) indebtedness under the Seller Unsecured Subordinated Note, including, without limitation, principal, interest and other liabilities payable from time to time and similar obligations, premiums, penalties, fees, indemnities or expenses, and regardless of whether direct or indirect, now existing or hereafter arising, absolute or contingent, secured or unsecured, or long or short term, (ii) obligations arising under guarantees executed by the Borrowers or any of their Subsidiaries of items described in (i) above, and (iii) renewals, extensions, refundings, refinancings, deferrals, restructurings, amendments and modifications of the items described in (i) and/or (ii) above.

"Seller Unsecured Subordinated Note" means that certain note of even date herewith from FT Acquisition, LLC to Richard D. White, as Seller Representative, in the aggregate principal amount of \$1,000,000.

"Senior Agreement" means that certain Amended and Restated Loan Agreement dated as of [], 2014, by and among the Borrowers and Senior Lender, as the same may from time to time be amended, restated, modified or otherwise supplemented from time to time, and including the senior secured promissory notes issued pursuant thereto, as the same may from time to time be amended, restated, modified or otherwise supplemented from time to time.

"Senior Debt" means (i) indebtedness and Obligations (as defined in the Senior Agreement) under the Loan Documents (as defined in the Senior Agreement), including, without limitation, principal, premium, interest and other liabilities payable from time to time and similar obligations, interest accruing before and after any bankruptcy or insolvency proceeding at the rate provided in the documentation with respect thereto (irrespective of whether such principal, premium, interest or other liabilities are allowed as a claim in any such proceeding), premiums, penalties, fees, indemnities or expenses, and regardless of whether direct or indirect, now existing or hereafter arising, absolute or contingent, secured or unsecured, or long or short term, (ii) obligations arising under guarantees executed by the Borrowers or any of their Subsidiaries of items described in (i) above, (iii) renewals, extensions, refundings, refinancings, amendments (including deferrals, restructurings, amendments (including amendments which increase the principal amount thereof and interest and fees thereon) and modifications of the items described in (i) and/or (ii) above, and (iv) any other obligation or liability owing by the Borrowers, or any of them, to Senior Lender.

"Senior Lender" means the lenders or their designated agent from time to time party to the Senior Agreement, and includes their respective successors and assigns.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

"Superior Debt" means (i) all Senior Debt; and (ii) all Junior Debt.

"Superior Default" means a default or an event of default under the Senior Debt or the Junior Debt.

"Superior Lenders" means until the Senior Debt is paid and satisfied in full, Senior Lender and thereafter, Junior Lender, and in each case their respective successors and assigns.

"Superior Loan Agreements" has the meaning set forth in the Preamble above.

2. The payment of any and all Seller Subordinated Debt is expressly subordinated to the Superior Debt to the extent and in the manner set forth in this Subordination Agreement. Neither the Seller Noteholder nor the Borrowers shall amend or modify the Seller Unsecured Subordinated Note in any manner whatsoever without the prior written consent of Senior Lender and Junior Lender.

3. Prior to the receipt by the Seller Noteholder of written notice from a Superior Lender of a Superior Default (**"Superior Default Notice"**), but subject to the balance of this Section 3 and Section 4 below, Borrowers may pay and Seller Noteholder may accept the following payments of interest and/or principal under the Seller Unsecured Subordinated Note: (i) accrued interest at a rate not to exceed five percent (5.0%) per annum, and (ii) annual principal payments not to exceed \$200,000. Upon the occurrence of a Superior Default and receipt of a Superior Default Notice, until such Superior Default has been cured or waived to Senior Lenders' satisfaction, with respect to a Superior Default under the Senior Agreement, and Junior Lenders' satisfaction, with respect to a Superior Default under the Junior Agreement, in either case pursuant to written agreement with Senior Lender or Junior Lender, as applicable, Borrowers shall not pay, including set-offs against the Seller Unsecured Subordinated Note of amounts owed under such Seller Unsecured Subordinated Note pursuant to Section 5 thereof, and Seller Noteholder shall not accept (subject to Section 4 below), any payments of any kind associated with Seller Subordinated Debt. To the extent any amounts owing on the Seller Subordinated Debt are not paid as a result of the provisions of this Section 3 (the **"Deferred Amount"**), at such time as Borrowers are permitted to resume payments on the Seller Subordinated Debt, the Deferred Amount plus any interest owing as a result of the non-payment at the rate specified in the Seller Unsecured Subordinated Note shall be due and payable.

4. Until such Superior Default has been cured to Senior Lenders' and Junior Lenders' satisfaction, as applicable, or waived by Senior Lender or Junior Lender, as applicable, in either case pursuant to written agreement with Senior Lender or Junior Lender, as applicable, any payments (whether in cash, securities or other property) on the Seller Subordinated Debt received by Seller Noteholder (including, without limitation, prepayments on the Seller Subordinated Debt), other than as expressly permitted in Section 3 above, shall be held in trust for Senior Lender and Junior Lender and such Seller Noteholder will forthwith turn over any such payments in the form received, properly endorsed or assigned, to (i) Senior Lender to be applied to the Senior Debt as determined by Senior Lender until such time as the Senior Debt shall have been paid and satisfied in full and (ii) then to the holders of the Junior Debt until such time as the Junior Debt shall have been paid and satisfied in full. In the event of the failure of any holder of Seller Subordinated Debt to endorse or assign any such payment, distribution or security, Superior Lenders are hereby irrevocably authorized to endorse or assign the same.

5. Until all of the Superior Debt is indefeasibly paid and satisfied in full, Seller Noteholder will not ask, demand, accept, receive or retain any guarantee of the Seller Subordinated Debt, or any collateral security for the payment of the Seller Subordinated Debt, or any other form of payment assurance as to the Seller Subordinated Debt, from the Borrowers or any Subsidiary of the Borrowers, except only the

obligation of the Borrowers evidenced by the Seller Subordinated Debt, and will not initiate or prosecute, or encourage any other person to initiate or prosecute any claim or other proceeding.

6. Until all of the Superior Debt is indefeasibly paid and satisfied in full, no Borrower shall grant to Seller Noteholder and Seller Noteholder shall not take any lien on or security interest in any of Borrowers' Property (as defined in the Junior Agreement) now owned or hereafter acquired or created, without Senior Lenders' and Junior Lenders' prior written consent. The Superior Lenders may release all liens, if any, of Seller Noteholder, and Seller Noteholder, promptly shall execute and deliver to the Superior Lenders such termination statements, releases and other documents as the Superior Lenders may request to effectively confirm such release. Until all of the Superior Debt is indefeasibly paid and satisfied in full, Seller Noteholder hereby irrevocably constitutes and appoints Senior Lender until such time as the Senior Debt is paid in full, and thereafter, Junior Lender on behalf of itself and the other holders of Junior Debt, and any officer or agent of Senior Lender or Junior Lender, as the case may be, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority, for the limited purpose of carrying out the terms of this Section 6 and Section 10 below, to take any and all reasonable and appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 6 and Section 10 below, including any endorsements or other instruments of transfer or release. This authorization is coupled with an interest and is irrevocable until such time as this Subordination Agreement is terminated in accordance with its terms.

7. This Subordination Agreement shall be effective until the Superior Debt, including without limitation, all loans and all fees, costs, expenses and other charges arising in connection with the Superior Loan Agreements, whether due or to become due, now existing or hereafter arising are indefeasibly paid and satisfied in full.

8. Seller Noteholder agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to Senior Lender under and in connection with the Senior Agreement, or any amendment, extension, replacement thereof or related agreement, instrument or document by or among Senior Lender or Junior Lender and Borrowers.

9. Seller Noteholder will not commence any action or proceeding at law or equity against Borrowers, or any of them, to recover all or any part of the Seller Subordinated Debt not paid when due and shall at no time join with any creditor, in bringing any proceeding against Borrowers, or any of them, under any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency law now or hereafter existing, unless and until the Superior Debt shall be indefeasibly paid and satisfied in full in cash, and Senior Lender has no further obligation to make revolving loans and advances under the Senior Agreement. Subject to the foregoing, Seller Noteholder may accelerate the Seller Subordinated Debt upon the occurrence of (a) the acceleration of the Superior Debt; and (b) the filing of a petition under the Bankruptcy Code by Borrowers, or any of them; provided that such Seller Noteholder shall reverse such acceleration in the event that (i) the acceleration of the Superior Debt, or any portion thereof, is reversed or (ii) such petition is withdrawn.

10. In the event of any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency proceeding of Borrowers, or any of them, Seller Noteholder will at Superior Lenders' request file any claims, proofs of claim, or other instruments of similar character necessary to enforce the obligations of Borrowers in respect of the Seller Subordinated Debt and will hold in trust for Senior Lender and the Junior Lenders and pay over to Superior Lenders in the same form received, to be applied on the Superior Debt as determined by Superior Lenders, any and all money, dividends or other assets received in any such proceedings on account of the Seller Subordinated Debt, unless and until the Superior Debt shall be paid in full, including, without limitation, interest owing to Senior Lender and the Junior Lenders after

the commencement of a bankruptcy proceeding at the rate specified in the Superior Loan Agreements, whether or not such interest is an allowable claim in any such proceeding. Superior Lenders may, as attorney-in-fact for Seller Noteholder, take such action on behalf of Seller Noteholder, and Seller Noteholder hereby appoints Superior Lenders as attorney-in-fact for Seller Noteholder to demand, sue for, collect, and receive any and all such money, dividends or other assets and give acquittance therefore and to file any claim, proof of claim or other instrument of similar character and to take such other proceedings in Senior Lenders' or the Junior Lenders' name or in the name of Seller Noteholder, as Superior Lenders may deem necessary or advisable for the enforcement of this Subordination Agreement. Seller Noteholder will execute and deliver to Superior Lenders such other and further powers of attorney or other instruments as either reasonably may request in order to accomplish the foregoing. Seller Noteholder agrees not to initiate or prosecute or encourage any other Person to initiate or prosecute any claim, action or other proceeding challenging the enforceability of the Superior Debt or any liens and security interests securing the Superior Debt. The Superior Debt shall continue to be treated as Superior Debt and the provisions of this Subordination Agreement shall continue to govern the relative rights and priorities of the holders of the Superior Debt and the holders of Seller Subordinated Debt even if all or part of the Superior Debt or the security interest securing the Superior Debt are subordinated, set aside, avoided or disallowed in connection with any such proceeding and this Subordination Agreement shall be reinstated if at any time any payment of any of the Superior Debt is rescinded or must otherwise be returned by any holder of Superior Debt or any representative of such holder. Upon indefeasible payment and satisfaction in full of all Superior Debt and termination of Senior Lenders' obligation to make revolving loans under the Senior Agreement, Seller Noteholder shall be subrogated to the rights of Senior Lender and the Junior Lenders, in accordance with applicable equitable principles, to receive distributions with respect to the Superior Debt until Seller Subordinated Debt is paid in full.

11. Senior Lender and the Junior Lenders may at any time and from time to time, without the consent of or notice to Seller Noteholder, without incurring responsibility to Seller Noteholder and without impairing or releasing any of such Person's rights, or any of the obligations of the Seller Noteholder hereunder:

- (a) Change the amount, manner, place or terms of payment or change or extend the time of payment of or renew or alter the Superior Debt, or any part thereof, or amend, supplement or replace the Superior Loan Agreements and/or any notes executed in connection therewith in any manner or enter into or amend, supplement or replace in any manner any other agreement relating to the Superior Debt;
- (b) Sell, exchange, release or otherwise deal with all or any part of any property at any time pledged or mortgaged by any party to secure or securing the Superior Debt or any part thereof;
- (c) Release anyone liable in any manner for the payment or collection of the Superior Debt (including, without limitation, Borrowers);
- (d) Exercise or refrain from exercising any rights against Borrowers or others (including the Seller Noteholder); and
- (e) Apply sums paid by any party to the Superior Debt in any order or manner as determined by Superior Lenders.

12. Seller Noteholder will advise each future holder of all or any part of the Seller Subordinated Debt that the Seller Subordinated Debt is subordinated to the Superior Debt in the manner and to the extent provided herein. Seller Noteholder represents that no part of the Seller Subordinated Debt or any instrument evidencing the same has been transferred or assigned and such Seller Noteholder will not

transfer or assign, except to Superior Lenders, any part of the Seller Subordinated Debt while any Superior Debt remains outstanding, unless such transfer or assignment is made expressly subject to this Subordination Agreement. Upon Superior Lenders' request, Seller Noteholder will in the case of any Seller Subordinated Debt which is not evidenced by any instrument cause the same to be evidenced by an appropriate instrument or instruments, and place thereon and on any and all instruments evidencing the Seller Subordinated Debt a legend in such form as Superior Lenders may determine to the effect that the indebtedness evidenced thereby is subordinated and subject to the prior payment in full of all Superior Debt pursuant to this Subordination Agreement, as well as deliver all such instruments to Superior Lenders.

13. This is a continuing agreement and will remain in full force and effect to each of the Superior Lenders until all of their respective Superior Debt and all of Seller Noteholder's obligations and undertakings to each of Senior Lender and the Junior Lenders have been fully performed and indefeasibly satisfied and until the respective Superior Loan Agreements have been terminated. This Subordination Agreement will continue to be effective or will be automatically reinstated, as the case may be, if at any time payment of all or any part of the Superior Debt is rescinded or must otherwise be returned by the Borrowers, or any of them, upon insolvency, bankruptcy, or reorganization of the Borrowers, or any of them, or otherwise, all as though such payment had not been made.

14. Nothing in this Subordination Agreement is intended to compel Senior Lender or the Junior Lenders or the Seller Noteholder at any time to declare the Borrowers in default or compel Senior Lender or the Junior Lenders to proceed against or refrain from proceeding against any of Borrowers' Property in any order or manner. All rights and remedies of Senior Lender and the Junior Lenders, with respect to Borrowers' Property, the Borrowers, and any other obligors concerning the Superior Debt are cumulative and not alternative. No present or future holder of Superior Debt shall be prejudiced in its right to enforce the provisions in this Subordination Agreement by any act or failure to act.

15. In the event of a bankruptcy, reorganization, other insolvency or court proceeding for the Borrowers, or any of them, commences, the Superior Lenders shall have the option (in their sole and absolute discretion) to continue to provide financing (on terms acceptable to Superior Lenders) to the trustee, other fiduciary, or to the Borrowers as a debtor-in-possession, if Superior Lenders deem such financing to be in their best interests. The subordination and lien priority provisions of this Subordination Agreement shall continue to apply to all advances made during the pendency of such court proceedings, so that the Senior Lender shall have a prior lien on all of Borrowers' Property, created before or during such court proceeding, to secure all Senior Debt, whether created before or during such court proceeding. Seller Noteholder hereby waives any right it may have to object to financing by the Superior Lenders during the pendency of such court proceeding and such Seller Noteholder's consent to such financing shall not be required regardless of whether the court supervising such proceeding approves, grants or allows adequate protection to the Seller Noteholder.

16. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand delivered, sent by facsimile transmission with confirmation of delivery with a copy sent by first class mail, or sent by nationally recognized overnight courier service, to a party's address set forth below or to such other address as any party may give to the other in writing for such purpose:

To Senior Lender:

PNC Bank, National Association
531 S. Main Street
Greenville, South Carolina 29601
Attention: Calvin Hurst
Telephone: 864.282.1667

Email: calvin.hurst@pnc.com

with a copy to: Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Attention: Todd Haynie
Telephone: 803.255.8000
Email: toddhaynie@parkerpoe.com

To Junior Lender: Leeds Novamark Capital I, L.P.
11710 Plaza America Drive
Suite 160
Reston, VA 20190
Attention: Matthew Kelty
Telephone: 703.651.2147
Email: kelty@leedsnovamark.com

with a copy to: Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202-4003
Attention: John Chinuntdet
Facsimile: 704.378.1950
Email: johnchinuntdet@mvalaw.com

If to the Seller Noteholder: Richard D. White
2096 Harbor Lane
Virginia Beach, Virginia 23454
Telephone: 571-435-3491
Rick@mytech24.com

with a copy to: The Ruddy Law Firm
10427 North Street, Suite 200
Fairfax, VA 22030
Attention: Richard Ruddy
Telephone: 703.383.9000
E-mail: rruddy@ruddylawfirm.com

If to the Borrowers: Commercial Foodservice Repair, Inc.
410 East Washington Street
Greenville, South Carolina 29601
Attention: Kurt A. Herwald
Facsimile: 864.271.3736
Email: kurt@cfrltd.com

with a copy to:

Nelson Mullins Riley & Scarborough, LLP
104 South Main Street, Suite 900
Greenville, South Carolina 29601
Attention: Hamilton E. Russell
Telephone: 864.250.2313
Email: bo.russell@nelsonmullins.com

17. This Subordination Agreement contains the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements between or among the parties hereto. This Subordination Agreement may be amended, supplemented or modified only by written instrument executed by Senior Lender, Junior Lender, Borrowers and the Seller Noteholder.

18. In case any one or more of the provisions contained in this Subordination Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

19. This Subordination Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Subordination Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Subordination Agreement by facsimile or electronic transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

20. Seller Noteholder represents and warrants that neither the execution or delivery of this Subordination Agreement nor fulfillment of nor compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions, or provisions of or constitute a default under any agreement or instrument to which such Seller Noteholder or any of such Seller Noteholder's assets is now subject.

21. Any notice of acceptance of this Subordination Agreement is hereby waived.

22. This Subordination Agreement shall be binding upon the parties hereto, and each of the parties' successors, representatives and assigns. This Subordination Agreement may be assigned by Senior Lender and/or Junior Lender, or any of them, in whole or in part in connection with any assignment, transfer or refinancing of any portion of the Superior Debt.

23. Except as provided in Sections 3 and 4 above, Borrowers agree that they will not make any payment on any of the Seller Subordinated Debt, or take any other action in contravention of the provisions of this Subordination Agreement.

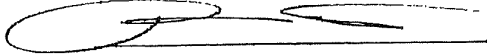
24. THIS SUBORDINATION AGREEMENT SHALL IN ALL RESPECTS BE INTERPRETED, CONSTRUED AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF SOUTH CAROLINA. SELLER NOTEHOLDER (I) SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURTS LOCATED IN SOUTH CAROLINA AND OF ANY STATE COURT IN GREENVILLE COUNTY, SOUTH CAROLINA FOR THE PURPOSES OF RESOLVING ANY CONTROVERSY RELATING THERETO AND (II) WAIVES THE RIGHT TO A JURY TRIAL FOR THE PURPOSE OF RESOLVING ANY CONTROVERSY HEREUNDER OR ENFORCING OR DEFENDING ANY RIGHTS OR CLAIM HEREUNDER OR IN CONNECTION HEREWITH, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

25. Wherever appropriate in the context, the term "Borrower" and "Borrowers" shall, as the context may require, each be deemed to refer to, and construed as, "the Borrowers and/or any of them".

* * *

IN WITNESS WHEREOF, Seller Noteholder has executed this Subordination Agreement as of
the date first written above.

SELLER NOTEHOLDER:

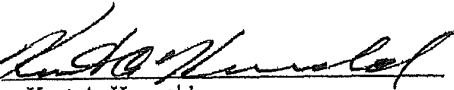


Richard D. White, as Seller Representative

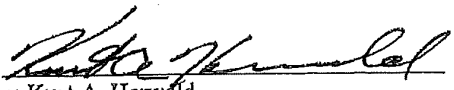
SELLER NOTE SUBORDINATION AGREEMENT

Intending to be legally bound, the undersigned consents and agrees to the terms of the Subordination Agreement as of the date first above written:

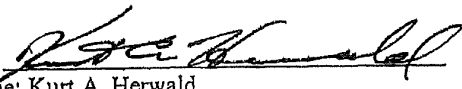
COMMERCIAL FOODSERVICE REPAIR, INC.,
a South Carolina corporation

By: 
Name: Kurt A. Herwald
Title: President

FT ACQUISITION, LLC,
a South Carolina limited liability company

By: 
Name: Kurt A. Herwald
Title: Manager

FOODSERVICE TECHNOLOGIES, INC.,
a Virginia corporation

By: 
Name: Kurt A. Herwald
Title: President

SELLER NOTE SUBORDINATION AGREEMENT

Agreed to and Acknowledged:

SENIOR LENDER:

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

JUNIOR LENDER:

LEEDS NOVAMARK CAPITAL I, L.P.,
in its capacity as Agent and as a Lender

By: Leeds Novamark Associates I, LLC,
A Delaware limited liability company,
General Partner

By: _____
Matthew Kelty

Exhibit 22

From: Herwald, Kurt
Sent: Thursday, November 16, 2017 4:10 PM
To: White, Rick <Rick@MyTech24.com>
Cc: Miller, Gordon <Gordon.Miller@MyTech24.com>
Subject: Re: Sorry I missed your call

Rick: Sorry to be hard to reach, but like everyone, I am slammed the next couple of weeks. I also thought it would be better to summarize my thoughts in writing. Sure you understand.

I guess I was not surprised at your decision to resign. Your expressions of frustration and getting worn out have certainly made their way to me. Combining that with the natural difficulty of being involved in management after a sale makes it all the more understandable. I truly appreciate that you were able to make it as long as you have and some of the great work you have done during that time.

While this is a resignation and not a termination, I will agree to a package that is consistent with our understanding reflected in your employment agreement. It will take a little time for me to get the documents completed and to work through the details. First, this is a board matter, and I have to run this by the directors. Not that I would expect them to object to anything I recommend, but it is protocol. Second, I need our attorney to help on this, and he is out right now.

Any agreement will have a strict reaffirmation of the non-compete and non-disclosure requirements that were included as part of our acquisition documents. There will also be a provision for support services as needed during a transition, though this will not be overly burdensome.

While we work on this, I require you to keep this matter strictly confidential. Of course, you are welcome to discuss with your family or attorney, provided you trust their confidentiality. It may make sense for you to take off until after Thanksgiving so as to not have the awkwardness of being in the office while we work to get this done.

Kurt Herwald | President

On Nov 22, 2017, at 1:14 PM, Herwald, Kurt <Kurt@MyTech24.com> wrote:
Gordon: I did not realize this when I forwarded, but there was a relevant and important change between the draft I sent you on Rick and this final version. While I do not recall the negotiation on this, we traded off a declining schedule with much higher early severance for one that had a flat \$100K per year for three years. I am actually OK with this change, not that I could do anything about it now, because it hits our cash much less now and gives us another year of being able to really hold his feet to the fire on confidentiality and non-compete.

Were you ever able to have a conversation with him yesterday?

Kurt Herwald | President

ELECTRONICALLY FILED 2017 NOV 22 PM 3:56 IN MIDDLEBURY, VT
ELECTRONICALLY FILED 2017 NOV 22 PM 3:56 IN MIDDLEBURY, VT
COMMON PLEAS - CASE#2019CP2306915

please. I've had it for 20+ years. I promise to forward any messages that are Tech-24 related to Corey and I'll sign something if needed. I would like to keep my laptop also but it is technically owned by the company so just let me know what Kurt decides on those two things. I turned in an expense report to Michele Urps today for Airfare that I didn't realize was charged to my personal credit card through my American Airlines App that I would like to get paid for soon. The Accruals for time off are way off so I should have 4 weeks of vacation left. The company took too much out of my check for 401k this year so that needs to be corrected and returned to me when possible, Byron should have the details.

I'm glad Tech-24 has you in your position.

Take care,

Rick White

From: Miller, Gordon [mailto:Gordon.Miller@MyTech24.com]

Sent: Thursday, November 30, 2017 10:08 AM

To: Rick White <rwdiver@msn.com>

Subject: RE: Tech-24 Documents

Thanks Rick. I have responses to your points below---call me if needed.

- 1) I'll get this notarized and back to you asap. *Thanks*
- 2) I'll return my work stuff next week and take them to Betty in Norfolk. *Thanks*
- 3) I would like to keep my phone and number please. I've had it for 20+ years. I promise to forward any messages that are Tech-24 related to Corey and I'll sign something if needed. *You can do this if you wish—I'd only remind you that you will be swamped with calls for a lot longer than you may think. It might be easier to change the number and walk away from the nuisance. You make the call, we are fine either way. In either case, you need to contact a cell provider and switch the billing to your personal account. You can keep the phone either way.*
- 4) I would like to keep my laptop also but it is technically owned by the company so just let me know what Kurt decides on those two things. *You may keep it if you wish.*
- 5) I turned in an expense report to Michele Urps today for Airfare that I didn't realize was charged to my personal credit card through my American Airlines App that I would like to get paid for soon. *I will discuss this with her as soon as all have been notified of your decision to leave the company. Should be able to do this later today.*
- 6) The Accruals for time off are way off so I should have 4 weeks of vacation left. *You will receive 4 weeks' pay on the 12/15/17 payroll.*
- 7) The company took too much out of my check for 401k this year so that needs to be corrected and returned to me when possible, Byron should have the details. *This was actually corrected on payroll dated 11/17/17. You were over withheld by \$1,553 and this was given back as a credit on 11/17. I have attached the pay stubs from 11/3 and 11/17 to illustrate. You will notice that your net pay on 11/17 was inflated due to this credit.*

J.T. will be in Norfolk on Monday and can bring the equipment back. Your email and accesses will be turned off by IT either today or tomorrow. Old email will probably still show, but will not continue to load.

From: Rick White [mailto:rwdiver@msn.com]
Sent: Friday, December 1, 2017 12:10 PM
To: Miller, Gordon <Gordon.Miller@MyTech24.com>
Subject: RE: Tech-24 Documents

Here it is digitally signed. I'll get one notarized if you need that first of the week.
Rick White

ELECTRONICALLY FILED 2022-02-22 04:25:53 PM GREENVILLE, SC
ELECTRONICALLY FILED 2022-02-22 04:25:53 PM GREENVILLE, SC
CASE#2019CB330915

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Richard D. White,	)	Civil Action No. 2019-CP-23-06915
	)	
Plaintiff,	)	
	)	<u>MEMORANDUM IN OPPOSITION TO</u>
vs.	)	<u>PLAINTIFF'S MOTION TO ALTER AND</u>
	)	<u>AMEND</u>
FT Acquisitions, LLC; Commercial	)	
Food Service Repair, Inc.; and Kurt	)	
Herwald,	)	
Defendants.	)	
	)	
	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendants/Counterclaimants FT Acquisitions, LLC (“FTA”), Commercial Foodservice Repair, Inc. (“CFR”), and Kurt Herwald (“Herwald”) (collectively, “Defendants”), hereby submit this Memorandum in Opposition to Plaintiff/Counterdefendant Richard D. White’s (“White”) Motion to Alter and Amend. For the reasons set forth below, the Court should deny White’s Motion.

I. INTRODUCTION

White’s Motion to Alter and Amend (the “Motion”) asks the Court to completely reverse its September 14, 2022 Order (the “Order”) granting Defendants’ Motion for Summary Judgment. However, in his desperate attempt to undo the Order, White relies entirely on arguments that are either raised for the first time, have already been considered and rejected by the Court, or are based on misstatements of law or fact. The Court’s Order granting Defendants’ April 6, 2022 Motion for Summary Judgment was correct in all respects, and White’s Motion to Alter and Amend should be denied.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

The factual background of this case has been briefed extensively by the parties. Accordingly, for purposes of brevity, Defendants incorporate herein the factual history detailed in their April 29, 2022 Memorandum in Support of their Motion for Summary Judgment.

Defendants' Motion for Summary Judgment was filed on April 6, 2022. In their Motion for Summary Judgment, Defendants requested that the Court enter summary judgment in favor of Defendants on all of White's claims, and against White on all of Defendants' counterclaims. Defendants submitted a Memorandum in Support of their Motion for Summary Judgment on April 29, 2022. White did not submit a memorandum in opposition to Defendants' Motion for Summary Judgment, and relied on previous briefing submitted to the Court. A hearing was held before Judge Cole on May 9, 2022. On August 22, 2022, the Court issued a Form 4 Order granting Defendants' Motion for Summary Judgment, and instructing Defendants to submit a proposed order. A formal written order was entered by the Court on September 14, 2022. White filed his Motion to Alter and Amend and Memorandum in Support of his Motion to Alter and Amend on September 24, 2022. For the reasons set forth herein, the Court's September 14, 2022 Order is correct in all respects, there has been no change in intervening law, no new evidence has been presented which was not available prior to the Court's ruling, and White's Motion should be denied in its entirety.

III. STANDARD OF REVIEW

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A party may file a motion to reconsider "when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or

rule on it.” *Id.* at 24, 602 S.E.2d at 780. However, a party cannot use a motion to reconsider to present an issue that could have been raised prior to the judgment but was not. *Poch v. Bayshore Concrete Prods./South Carolina, Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009).

Summary judgment is appropriate if the pleadings and evidence demonstrate “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” R. 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

IV. **ARGUMENT**

A. Defendants Were Permitted to File a Renewed Motion for Summary Judgment.

White argues that the Court erred in considering Defendants’ motion for summary judgment because Defendants previously filed two (2) motions for summary judgment. White contends that Defendants’ April 6, 2022 Motion for Summary Judgment “amounts to a thinly veiled attempt to judge shop in an effort to have the previous Order of this Court altered and amended,” and further submits that Defendants are attempting “to pit one Greenville County judge . . . against another.” (Mem. Supp. White’s Mot. at 4 and 8.) White’s argument fails because he blatantly misrepresents Defendants’ actions and misstates the applicable law.

Under South Carolina law, it is well settled that a trial judge has the discretionary authority to hear a renewed motion for summary judgment. *Dorrell v. S.C. Dep’t of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004). The fact that a different trial judge previously denied

the motion does not preclude a party from renewing a motion for summary judgment. *Id.* “[I]f the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.” *Croswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992); *see also Blyth v. Marcus*, 335 S.C. 363, 366-67, 517 S.E.2d 433, 434 (1999) (“A defendant can bring a subsequent summary judgment motion after his first motion had been denied. . . . The rationale behind these cases is that the denial of a motion for summary judgment is an interlocutory decision which the trial judge can reconsider until the end of trial.”).

In this case, Defendants filed two earlier motions for summary judgment at much different stages in the litigation. As explained above, South Carolina law plainly permitted the Court to consider Defendants’ April 6, 2022 Motion for Summary Judgment, which was raised prior to trial. Therefore, the substance of those earlier motions is immaterial. However, for purposes of clarity, and to correct White’s misrepresentations regarding the two earlier motions, Defendants explain below the circumstances surrounding their prior motions.

1. Defendants’ June 5, 2020 Motion for Summary Judgment

White filed the original Summons and Complaint on November 26, 2019, and filed an Amended Complaint on March 9, 2020. Defendants subsequently filed their Answer to White’s Amended Complaint and Counterclaims. White did not timely respond to Defendants’ Counterclaims and, therefore, Defendants filed a motion for entry of default, which was granted by the Court. “Entry of an order of default is an admission by the defaulting party of the well-pleaded allegations of the complaint[.]” *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334 S.E.2d 528, 530 (Ct. App. 1985). Based on White’s admissions as a result of the entry of default, Defendants filed a motion for summary judgment on June 5, 2020. However, at a

motions hearing on July 24, 2020, the Court granted White's motion to set aside the entry of default. The Court also ruled that "[s]ince the Defendants' Motion for Summary Judgment and Damages were based on the default, these Motions are denied." (July 24, 2020 Form 4 Order.) At the hearing, the Court did not hear any argument on Defendants' Motion for Summary Judgment and did not make a decision based on the merits of Defendants' arguments.

Now, White contends that Defendants raised the issue of the "tender back rule" (which was addressed in Defendants' April 6, 2022 Motion for Summary Judgment) in Defendants' June 5, 2020 Motion for Summary Judgment. (Mem. Supp. White's Mot. at 3-4.) As noted above, it is immaterial whether Defendants previously raised that issue, as it would not preclude the Court from hearing a renewed motion for summary judgment prior to trial. Still, White's argument is patently false. In support of their June 5, 2020 Motion for Summary Judgment, Defendants filed a memorandum outlining their claimed damages so that, if the Court granted that motion, the information regarding Defendants' claimed damages would be available to the Court without the need to schedule a later damages hearing. In Defendants' Counterclaims, Defendants contended that White breached the General Waiver and Release Agreement (the "General Release"), and sought as a category of damages the "damages resulting from the breach." (July 21, 2020 Damages Mem. at 2.) Defendants argued that the severance payments made by Defendants to White under the terms of the General Release constituted damages suffered as a result of White's breach of the same. (*Id.*) Defendants did not argue at that time that White was obligated to return the severance payments in order to proceed with his lawsuit, which is the crux of the tender back rule. Thus, White's argument that "Defendants' prayer that Plaintiff be order to return the alleged consideration was in response to Plaintiff's claim for fraud related to the

General Release,” and “represented the first time Defendants argued the ‘tender back doctrine,’” is false, and is an attempt by White to mislead this Court. (See Mem. Supp. White’s Mot. at 3-4.)

2. Defendants’ March 10, 2021 Motion for Summary Judgment

After White’s motion to set aside entry of default was granted, the parties began discovery. After conducting approximately seven (7) months of discovery, White filed a motion for summary judgment on March 1, 2021 seeking summary judgment only on Defendants’ counterclaims. Defendants filed a competing motion for summary judgment on March 10, 2021, and sought summary judgment on all claims raised in White’s Amended Complaint and all counterclaims raised by Defendants. The Court held a hearing on both motions for summary judgment on May 17, 2021. Judge Sprouse denied both parties’ motions for summary judgment on May 28, 2021 (electronically filed on June 1, 2021) via Form 4 Order that stated there was “a genuine issue of material fact” precluding summary judgment. The Form 4 Order did not identify the specific genuine issue of material fact that existed.

3. Subsequent Discovery

At the time the Court denied the parties’ March 2021 motions for summary judgment, White’s motion for leave to amend his Complaint, filed on May 14, 2021, was pending. A hearing on White’s motion to amend was scheduled for July 21, 2021, but following the denial of the cross-motions for summary judgment, Defendants consented to White’s motion for leave to amend his Complaint. White’s Second Amended Complaint was filed on July 19, 2021, and Defendants subsequently filed their Answer to the Second Amended Complaint and Counterclaims. Notably, White’s Second Amended Complaint raised a new claim for fraud in the inducement in connection with the General Release.

After the Court denied the parties' motions for summary judgment on May 28, 2021, the parties engaged in extensive additional discovery, including the following:

- a. June 6, 2021: White produced expert report of R. Wayne Klein, a purported securities law expert.
- b. June 24, 2021: White produced his Second Supplemental Responses to Defendants' First Interrogatories.
- c. July 12, 2021: Defendants served Second Set of Interrogatories and Requests for Production to White.
- d. July 12, 2021: Defendants sent subpoena *duces tecum* to White's expert R. Wayne Klein.
- e. July 26, 2021: Response to Defendants' subpoena *duces tecum* provided by White's expert R. Wayne Klein
- f. September 21, 2021: Deposition of CFR's former Chief Financial Officer, Jean Hodges held.
- g. September 29, 2021: White provided responses to Defendants' Second Set of Interrogatories and Requests for Production.
- h. October 4, 2021: White served his Third Set of Discovery Requests to Defendants.
- i. January 28, 2022: Defendants provided their Second Supplement Responses to White's First Requests for Production.
- j. February 4, 2022: Defendants provided their Second Supplemental Responses to Plaintiff's First Interrogatories; Defendants' First Supplemental Responses to Plaintiff's Third Interrogatories; and Defendants' Third Supplemental Responses to Plaintiff's First Requests for Production.
- k. February 10, 2022: White served subpoena *duces tecum* to Defendants' securities law expert, Professor Martin McWilliams.
- l. March 30, 2022: Deposition of White's expert R. Wayne Klein held.
- m. April 14, 2022: Defendants provided their Third Supplemental and Amended Responses to Plaintiff's First Interrogatories.
- n. April 26, 2022: Deposition of Defendants' expert Professor Martin McWilliams held.

Thus, White's repeated assertion in his Motion that "no new factual allegations, claims, or evidentiary submissions," occurred since the May 28, 2021 Form 4 Order was issued is simply

incorrect. Rather, the record shows that the parties engaged in extensive additional fact and expert discovery after the entry of the Form 4 Order.

4. Defendants' April 6, 2022 Motion for Summary Judgment

After an additional ten (10) months of discovery, after the filing of White's Second Amended Complaint, and prior to the scheduled trial of this case, Defendants filed their Third Motion for Summary Judgment on April 6, 2022. Throughout White's Memorandum in Support of his Motion to Alter and Amend, White draws comparisons between Defendants' April 6, 2022 Motion for Summary Judgment and previous submissions by Defendants to the Court. White argues that there were insufficient new grounds for Defendants' April 26, 2022 Motion for Summary Judgment, and therefore, the Court should not have heard Defendants' Motion for Summary Judgment. However, White's arguments are inapposite.¹

Between the Court's May 28, 2021 Order denying the parties' motions for summary judgment and the filing of Defendants' April 6, 2022 Motion for Summary Judgment, White filed his Second Amended Complaint, and the parties conducted an additional ten (10) months of discovery. The additional discovery further confirmed that there was no genuine issue of material fact in this case. Furthermore, by April 6, the scheduled trial date was approaching, and White still had not sought to return the consideration that he received for signing the General Release, which confirmed that the tender back rule conclusively barred his attacks on the enforceability of the General Release. Therefore, based on White's failure to produce information creating a genuine issue of material fact, his addition of a cause of action for fraud in the inducement in the Second Amended Complaint, and White's failure to tender back the

¹ Further, at the hearing on Defendants' April 6, 2022 Motion for Summary Judgment, White argued that the issues presented by Defendants were previously raised and ruled on by the Court, but did not argue that Defendants were not permitted to file the Motion for Summary Judgment. Therefore, White is unable to raise this argument now for the first time.

consideration he received for signing the General Release, Defendants filed their April 6, 2022 Motion for Summary Judgment. The Court conducted a lengthy hearing on Defendants' Motion for Summary Judgment on May 9, 2022. On August 22, 2022, the Court issued a Form 4 Order granting Defendants' Motion for Summary Judgment, and instructing Defendants to submit a proposed order. A formal written order was entered by the Court on September 14, 2022.

White erroneously relies on *Staubes v. City of Folly Beach*, 336 S.C. 406, 529 S.E.2d 543 (2000), to argue that White's fraud in the inducement claim was properly before the Court during the May 17, 2021 hearing on the parties' March 2021 cross-motions for summary judgment. (Mem. Supp. White's Mot. at 6.) Initially, *Staubes* has no bearing on the issues presently before the Court, as it did not involve the question of whether a defendant could renew a motion for summary judgment prior to trial. In *Staubes*, the Supreme Court of South Carolina found that the defendant "was given the full opportunity to argue" a claim that did not appear in the pleadings, and therefore, issues related to the claim were preserved for appellate review. *Staubes*, 336 S.C. at 413. Here, White filed his motion to amend on Friday, May 14, 2021 at 3:45 p.m., one business day before the hearing on the parties' motions for summary judgment was held on Monday, May 17, 2021 at 9:30 a.m. Although Defendants' counsel mentioned in oral argument the similarity between a claim for fraud and fraud in the inducement, Defendants did not have the opportunity to research, brief, and argue issues related to a claim for fraud in the inducement, including the tender back rule, prior to the May 17, 2021 hearing. Accordingly, the additional issues raised in Defendants' April 6, 2022 Motion for Summary Judgment were not ripe for review during the May 17, 2021 hearing, and were not properly before the Court at that time. More importantly, under the well-established South Carolina case law cited above, even if White's fraud in the inducement claim had been argued at the earlier hearing and ruled upon by

the Court—which it was not—that would not have prevented Defendants from filing a renewed motion for summary judgment prior to trial. *Dorrell v. S.C. Dep’t of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004); *Croswell Enter., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992); *Blyth v. Marcus*, 335 S.C. 363, 366-67, 517 S.E.2d 433, 434 (1999).

Additionally, White relies on *Wachovia Bank of S.C. v Player*, 341 S.C. 424, 535 S.E.2d 128 (2000), for the proposition that there is a “general rule prohibiting one circuit court judge from overruling another.” (Mem. Supp. White’s Mot. at 8.) However, the quotation which White attributes to the *Wachovia Bank* case simply does not appear in that case, and thus White’s argument appears to be yet another attempt to mislead this Court. White also relies on *Ex Parte State*, 263 S.C. 363, 210 S.E.2d 600 (S.C. 1974), for the proposition that there is a rule which “forbids a circuit court judge to grant an order after the first judge has refused it, and further provides that if upon such subsequent application any order be made, it shall be revoked.” (Mem. Supp. White’s Motion at 8.) However, *Ex Parte State* was expressly interpreting Rule 60 of the Circuit Courts, which was in effect prior to South Carolina’s enactment of the South Carolina Rules of Civil Procedure. *Id.* at 367 (“[I]t is interesting to note that Rule No. 60 of the Circuit Courts deals with a similar problem. This rule forbids a circuit court judge to grant an order after the first judge has refused it, and further provides that if upon such subsequent application any order be made, it shall be revoked.”). Specifically, Rule 60 of the Circuit Courts stated:

If any application for an order be made to any Judge and such order be refused in whole or in part or be granted conditionally or on terms, no subsequent application upon the same state of facts shall be made to any other Judge, and if upon such subsequent application any order be made, it shall be revoked; and in the affidavit for such order the party or his attorney shall state whether any previous application for such order has been made.

See *Robert Harmon & Bore, Inc. v. Jenkins*, 282 S.C. 189, 195 n.2, 318 S.E.2d 371, 375 n.2 (1984) (quoting Rule 60 of the Circuit Courts). Rule 60 of the Circuit Courts is no longer in effect, and there is no such equivalent in the South Carolina Rules of Civil Procedure.² Accordingly, the case law cited by White is entirely inapplicable, interprets a rule no longer in effect, and is no longer good law. Rather, the South Carolina decisions cited by Defendants above, which plainly permit the Court to consider a renewed motion for summary judgment, are the controlling law in this case.

To the extent that White attempts to argue that Judge Sprouse's order established the law of the case, White is also incorrect. It is well-established that "[a] denial of summary judgment does not establish the law of the case[.]" *In re Rabens*, 386 S.C. 469, 473, 688 S.E.2d 602, 604 (Ct. App. 2010); *Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (noting that "[l]ike the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings.") (quoting *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994)); *Brown v. Pearson*, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997) ("A denial of a motion for summary judgment does not establish the law of the case[.]"). Therefore, the Court's orders on Defendants' earlier motions did not establish the law of the case and did not preclude Defendants' later April 6, 2022 Motion for Summary Judgment.

In *Brown v. Pearson*, the South Carolina Court of Appeals considered whether the trial court abused its discretion in considering a party's second motion for summary judgment. 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997). There, the defendant filed a motion for

² A similar rule was incorporated into the South Carolina Criminal Rules at Rule 4, but was not incorporated into the South Carolina Rules of Civil Procedure.

summary judgment that was denied by one judge. *Id.* Then, additional discovery took place, and the defendant filed another motion for summary judgment. *Id.* The second motion for summary judgment was considered and granted by a different judge than the judge who heard the first motion for summary judgment. *Id.* The Court of Appeals found that the trial court did not abuse its discretion in considering the renewed motion for summary judgment. *Id.*

Here, not only was an additional ten (10) months of discovery conducted between Defendants' March 5, 2021 and April 6, 2022 Motions for Summary Judgment, but each motion also addressed different versions of White's Complaint, and the different claims raised therein. For all these reasons, the Court properly considered Defendants' April 6, 2022 Motion for Summary Judgment.

B. The Court Correctly Determined that the General Release Bars White's Claims.

1. Defendants Are Not Estopped From Arguing that the General Release Bars White's Claims.

In his Motion to Alter or Amend, White also argues that Defendants are equitably estopped from raising the argument that the General Release bars White's claims. (Mem. Supp. White's Mot. at 10-11.) In making this argument, White raises incorrect legal arguments and misrepresents facts. White's estoppel arguments fail because (1) he failed to previously raise these arguments prior to the Court's September 14, 2022 Order, and (2) White's analysis is legally and factually incorrect.

White raises his estoppel argument for the first time in his Motion to Alter and Amend. White had the opportunity to raise this argument to the Court previously and failed to do so, which is fatal to his argument. It is well-established that "[a] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." *Poch v. Bayshore Concrete Prods./South Carolina, Inc.*, 386 S.C. 13,

31, 686 S.E.2d 689, 699 (Ct. App. 2009); *see also Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (affirming circuit court's decision refusing to rule on certain arguments raised for the first time in a Rule 59(e) motion); *Kiawah Prop. Owners Grp. v. Public Serv. Com'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (noting that an issue raised for the first time in a petition for rehearing is not preserved); *Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (refusing to consider a document that was included for the first time as an attachment to Rule 59(e) motion because such document was not before the lower court prior to judgment). Accordingly, because White failed to previously raise any arguments concerning estoppel prior to his Motion to Alter and Amend, this argument fails and may not be considered by the Court at this stage.

Even if the Court were to consider the substance of White's estoppel argument, such argument cannot serve as a basis to alter or amend the judgment because it is incorrect. "The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007); *see also Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 403-404, 826 S.E.2d 874, 880 (Ct. App. 2019).

Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.

Regions Bank v. Schmauch, 354 S.C. 648, 674-75, 582 S.E.2d 432, 446 (Ct. App. 2003) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001)).

White argues that various statements allegedly made by CFR's former president, Kurt Herwald, to White prevent Defendants from arguing that White released the claims raised in this

case through his execution of the General Release. (Mem. Supp. White's Mot. at 11-12.) Although White identifies certain statements he alleges were false, he does not address (or even identify) any of the remaining elements of equitable estoppel. He does not allege or provide any evidence of his "lack of knowledge and of means of knowledge of truth as to facts in question," or his "reliance upon conduct of the party estopped," or a "prejudicial change in position." See *Regions Bank*, 354 S.C. at 674-75. Further, none of the alleged statements identified by White concern the effect of the General Release. In addition, even if Defendants were willing to pay White the remaining amounts on the Note at a later date (if and when they were permitted to do so by their senior lenders), their willingness to do so does not negate the fact that White, in return for payments of \$300,000, released his ability to bring claims for breach of the Note.

White also mentions for the first time in his Motion to Alter or Amend the doctrine of estoppel by silence. (Mem. Supp. White's Mot. at 12.) "Estoppel by silence arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts." *S. Dev. Land & Golf Co., Ltd. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 751 (1993). White fails to identify whether any of Defendants owed a "duty to speak" to White, what such duty was, or what Defendants were obligated to speak about. Accordingly, even if the Court could consider these arguments, they are wholly insufficient and fail as a matter of law.

For the first time, White also argues that Defendants are estopped from arguing that White's securities law claim was released through his execution of the General Release. (Mem. Supp. White's Mot. at 13.) White fails to address any of the elements of equitable estoppel or estoppel by silence in connection with this argument, and thus, it fails. Further, White completely misconstrues Defendants' position, and relies on statements that are simply untrue.

The crux of White's argument is that Defendants' statements during litigation that White still possessed his shares in CFR estop Defendants from arguing that White's securities fraud claim was covered by the General Release. Specifically, White states: "It seems unconscionable to Plaintiff that Defendant can argue to one circuit court judge that the General Release did not dispossess Plaintiff of his shares, and by extension their value, then in the next breath argue to a different circuit court judge that the release did just that." (*Id.* at 14.)

However, Defendants have **never** argued that by executing the General Release, White relinquished possession of his shares in CFR. Defendants have always argued that by executing the General Release, White released any securities fraud claim that may have existed at the time he executed the General Release. There is an enormous difference between releasing the ability to bring a legal claim based on alleged fraud, and relinquishing ownership of shares in a company. By executing the General Release, White released his ability to bring any legal claims that had accrued as of the date he signed the General Release. White retained possession of his shares in CFR, as explained by Defendants' counsel in the May 17, 2021 hearing before Judge Sprouse, and as cited by White in his Memorandum. (Mem. Supp. White's Mot. at 13-14.)³

Defendants have never argued that the General Release dispossessed White of his shares in CFR, and White's argument to the contrary is simply false. Further, White's securities fraud claim in this lawsuit is not about whether White still possesses his shares in CFR, but is based on alleged misrepresentations made to White in or around September of 2017. Thus, even if White had timely raised his arguments concerning estoppel, which he did not, his arguments are factually and legally incorrect and could not serve as a basis to alter or amend the Court's judgment.

³ Subsequent corporate transactions during the pendency of this lawsuit gave White the ability to roll his shares into a new company, which he refused to do.

2. The Court Correctly Determined that the Tender Back Rule Applies.

White further argues that the tender back rule does not apply in this case because White was entitled to receive certain amounts regardless of whether he executed the General Release. (Mem. Supp. White's Mot. at 15.) White's argument is flawed and without merit.

White relies on *Taylor v. Palmetto State Life Ins. Co.*, 196 S.C. 195 (1940), for the following proposition: "Where a party seeking rescission of release would be entitled in any event to retain the money or property received and admittedly due, he need not return or tender back such money or property as a condition precedent to relief." White then discusses values related to (1) amounts due under the Junior Subordinated Promissory Note (the "Note") between White and CFR, and (2) the value of the shares he purchased in CFR. (Mem. Supp. White's Mot. at 16.)

However, the basis of the tender back rule is that in order to pursue claims that were contractually released, "releasers seeking to avoid the bar of a release must first tender back the consideration they received for signing the release." *Brewer v. EnerSys, Inc.*, C.A. No. 3:04-1335-MJP, 2006 WL 8446422, at *7 (D.S.C. June 29, 2006). White received \$300,000.00 in Severance Payments as consideration for executing the General Release. (General Release at 1, attached as **Exhibit A**.) It is undisputed that White would not have been entitled to receive these severance payments if he did not execute the General Release, which is confirmed by the recitals on the first page of the General Release: "WHEREAS, [White] desires to receive severance payments and other consideration provided pursuant to this Agreement, and the Company is willing to provide these benefits to [White] on the condition that Executive enters into this Agreement." (*Id.*) White expressly acknowledged in his deposition that (1) he received the full \$300,000 of severance payments, and (2) he would not have received the severance payments had he not signed the General Release. (Deposition of Richard White at 172:20-173:2, 205:3-17,

excerpts attached as **Exhibit B.**) As set forth in Defendants' April 6, 2022 Motion for Summary Judgment, because White failed to return or offer to return the severance payments (which he does not deny), he affirmed the General Release and is bound by its terms. *Taylor v. Palmetto St. Life Ins. Co.*, 196 S.C. 195, 12 S.E.2d 708, 710 (1940) (noting that a party that fails to return the consideration received for a release is bound to the terms of the contract).

White's discussion of amounts he alleges were due under the Note and in relation to his investment in CFR is inapposite, as those payments have nothing to do with the consideration accompanying the General Release. The consideration paid by CFR in exchange for the General Release was the \$300,000.00 of Severance Payments, to which White admits he was not entitled absent execution of the General Release. Therefore, the Court correctly applied the tender back rule, and the Court should deny White's Motion.

3. The General Release Was Supported by Adequate Consideration.

White incorrectly argues that the General Release could not have released claims related to the Note or White's investment in CFR because "[p]ayment of a sum less than the whole of an undisputed or indisputable liquidated indebtedness affords no legal consideration for creditor's agreement to release debtor from liability for the residue." (Mem. Supp. White's Mot. at 18 (citing *Taylor v. Palmetto State Life Ins. Co.*, 196 S.C. 195, 12 S.E.2d 708, 709 (1940).) White's argument fails because (1) White raises this argument for the first time in his Motion to Alter and Amend, (2) this principle is inapplicable with respect to White's release of claims in the General Release, and (3) release of the securities law claim is not in connection with a liquidated indebtedness.

White raises the arguments regarding adequate consideration for the first time in his Motion to Alter and Amend. White had the opportunity to raise this argument to the Court

previously and failed to do so, which is fatal to his argument. As explained previously, it is well-established that “[a] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not.” *Poch v. Bayshore Concrete Prods./South Carolina, Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009). Therefore, this argument fails and should not be considered by the Court.

Even if the Court were to consider White’s arguments, his arguments are inapposite. White argues that because a sum certain was owed on the Note at the time the General Release was executed, payment of an amount less than the total owed on the Note cannot serve as adequate consideration for the Release Provision in the General Release. (Mem. Supp. White’s Mot. at 18.) Specifically, White contends that \$534,000, inclusive of interest, was owed on the Note, and the \$300,000.00 of severance payments cannot serve as consideration for the release of a breach of contract claim related to amounts owed on the Note. (*Id.*) This legal principle originates in cases published in the 1800s and early-1900s, and it is unclear whether such principles remain good law. Moreover, this principle does not apply in the context of a general release of claims, but instead applies in the context of whether parties intend to reach an accord and satisfaction.

In addition, courts in South Carolina have recognized exceptions to the principle cited by White, including: payment before maturity, payment by promissory note, payment by check, and payment in pursuance of an agreement with other creditors. *Ex parte Zeigler*, 83 S.C. 78, 64 S.E. 513, 514 (1909). “If anything is accepted by the creditor as payment in full which might by possibility be more beneficial to him than his debt, the court will not inquire into the adequacy of the consideration, but will hold the debt satisfied.” *Id.* At the time CFR stopped making payments under the Note, it did so because it had defaulted on its obligations to its senior

creditors, who had issued a payment blockage preventing CFR from making further payments to its junior creditors, including White. In other words, CFR could not make any Note payments to White until the payment blockage was lifted. Although the payments on the Note were originally scheduled to run through August of 2019, there was no guarantee as to whether or when the senior lenders would lift the payment blockage and allow CFR to resume making Note payments to White. However, White was able to begin receiving severance payments immediately after executing the General Release. Therefore, the severance payments received under the General Release were made before any additional Note payments could have been made by CFR to White, and White's argument fails. (See also Transcript of May 9, 2022 Hearing at 45:4-16, excerpts attached as **Exhibit C** (Cole, J. recognizing, in connection with White's argument that it would not make sense for White to release claims in exchange for \$300,000.00, that "a bird in the hand is worth two in a bush.")).⁴

Finally, White's fourth cause of action is a claim for violation of the South Carolina Uniform Securities Act. White alleged that certain information was not provided to him or was misrepresented to him in connection with his \$550,000.00 investment in CFR in September of 2017. (Second Am. Compl. at ¶¶ 72-82.) Defendants argued, and the Court correctly held, that to the extent such a claim existed, it accrued prior to White's execution of the General Release, was covered by the scope of the General Release, and was therefore released upon execution of the General Release. (Sept. 14, 2022 Order at 9-14.) As set forth previously, the issue of

⁴ In any event, White fails to note that he was only entitled to receive fifty-five percent (55%) of the payments on the Note, while his former business partner, J.C. Viteri, was entitled to the other forty-five percent (45%) of payments under the Note. (Deposition of Richard White at 63:17-64:9, Ex. B.) Using the amounts listed by White in his Motion, White would only have been owed \$293,000.00 on the Note at the time the General Release was executed, which is less than the \$300,000.00 made in severance payments under the General Release. Therefore, although Defendants dispute the applicability of White's analysis, the basic premise of White's argument is flawed.

White's ownership or possession of his shares in CFR has never been at issue in this case, and Defendants have never argued that the execution of the General Release dispossessed White of his shares in CFR. Accordingly, White's fourth claim under the South Carolina Uniform Securities Act does not involve a "liquidated indebtedness," and White's arguments to the contrary fail (even if they had been timely raised and were properly before the Court on this Motion, which they are not). The Court correctly concluded that White released his South Carolina Uniform Securities Act claim, to the extent one existed, and the Court should deny White's Motion.

C. The Court Correctly Determined that White's Claims Fall Within the Scope of the General Release.

In a one sentence argument, White contends that the Release Provision in the General Release was not intended to cover claims related to the Note and to his investment in CFR. (Mem. Supp. White's Mot. at 15.) Later in his Memorandum, White also argues, as he has previously, that the Release Provision in the General Release was "a release of employment related claims stemming from Plaintiff's Employment Agreement." (Mem. Supp. White's Motion at 20.) White is incorrect because the General Release unambiguously releases all claims White had against the Defendants at the time of execution and was not limited to "employment-related claims."

White has repeatedly argued throughout this case that the Release Provision in the General Release should be construed as limited to only "employment-related claims." White has never defined what qualifies as an "employment-related claim" or why the claims he raised in this lawsuit could not be considered "employment-related claims." In any event, the Release Provision in the General Release is not limited to "employment-related claims." Instead, the Release Provision expressly states, in pertinent part, that White releases Defendants

from any and all actions, causes of action, claims, demands, losses, claims for attorneys' fees, and all other forms of civil damages, occurrences, and liabilities of any kind whatsoever, both known or unknown, arising out of any matter, happening, or things, from the beginning of time to the date of this Agreement is signed by Executive, specifically including, but not limited to, any and all liability arising from . . . [l]ocal, state, or federal common law, statute, regulation, or ordinance[.]

(General Release at ¶ 3.) The Release Provision further states: "This release also includes a release of any claims for wrongful termination, breach of express or implied contract, intentional or negligent infliction of emotional distress, libel[,] slander, as well as any other claims, whether in tort, contract or equity, under federal or state statutory or common law." (*Id.*)

White raised the following claims in his Second Amended Complaint: (1) breach of contract, (2) breach of contract accompanied by a fraudulent act, (3) fraud in the inducement, and (4) violation of the South Carolina Uniform Securities Act of 2005. Each of these claims falls within the scope of the Release Provision as claims arising under "[l]ocal, state, or federal common law, statute, regulation, or ordinance," as well as "claims . . . in tort, contract, or equity, under federal or state statutory or common law." (See General Release at ¶ 3.) Notably, White has never disputed that his causes of action accrued prior to his execution of the General Release.

Instead, White urges the Court to find that the language in the Release Provision is ambiguous. White does not identify any ambiguous language within the General Release, but relies on circumstances outside of the language of the contract to attempt to create an ambiguity. As noted by White, it is true that "[i]n construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). However, "[t]o discover the intention of a contract, the court must first look to its language – if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect." *Ecclesiastes Prod. Ministries v. Outparcel Assoc.*, 347 S.C. 483, 498, 649 S.E.2d 43, 47 (1985). "Parties are

governed by their outward expressions and the court is not at liberty to consider their secret intentions.” *Id.* In other words, the purported ambiguity must exist on the face of the contract before the Court is able to consider any extrinsic evidence when interpreting a contract.

Here, White attempts to create an ambiguity with extrinsic evidence, which is not permitted:

The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument. . . . Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties.

McGill v. Moore, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009). “[I]f a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms. . . . This court’s duty is to enforce the contract made by the parties regardless of the parties’ failure to carefully guard their rights.” *First S. Bank v. Rosenberg*, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016).

White has not identified any portion of the General Release which he contends is ambiguous based on the express language of the contract. White only uses extrinsic evidence to attempt to create an ambiguity, which is prohibited by the parol evidence rule. Accordingly, his argument that the General Release is ambiguous fails, and the Court correctly determined that White’s claims in this action fall within the scope of the Release Provision in the General Release and were thereby released.

D. The Court Correctly Granted Summary Judgment on Defendants’ Counterclaims for Breach of the General Release and Breach of the Subordination Agreement.

Finally, White contends the Court erred in granting summary judgment on Defendants counterclaims. White raises the same arguments that he has raised before in previous briefing

and argument, and offers nothing new to the Court. For purposes of brevity, Defendants will not repeat their same arguments in response, and instead rely on the arguments presented in previous briefing. (Defendants' April 29, 2022 Mem. Supp. Mot. Summ. J. at 24-26.) White's arguments do nothing to overcome his breach of the General Release and the Subordination Agreement, the Court correctly granted summary judgment in favor of Defendants on their counterclaims, and the Court should deny White's Motion.

CONCLUSION

Based on the foregoing, the Court correctly found that there are no genuine issues of material fact as to any of the claims or counterclaims raised in this action. Defendants respectfully request that this Court deny White's Motion to Alter and Amend and proceed with the damages hearing scheduled in this matter.

Respectfully Submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Greenville, SC 29601

Telephone: (864) 250-2300

*Attorneys for Defendants FT Acquisitions, LLC, Commercial
Foodservice Repair, Inc., and Kurt Herwald*

Greenville, South Carolina
November 11, 2022

Exhibit A

**GENERAL WAIVER AND RELEASE AGREEMENT
PLEASE READ CAREFULLY**

This General Waiver and Release Agreement (the "Agreement") is made and entered into this 29th day of November, 2017 (the "Effective Date") by and between Richard D. White (the "Executive") and Commercial Foodservice Repair, Inc., a South Carolina Corporation, together with any and all affiliated or related entities, subsidiaries, or divisions, and the shareholders, members, directors, officers, employees, insurers and agents thereof (collectively referred to herein as the "Company").

THE PARTIES acknowledge the following:

WHEREAS, Executive was employed by the Company until November 29, 2017 when his employment was terminated by mutual agreement between the Company and the Executive (the "Termination Date"); and

WHEREAS, Executive desires to receive severance payments and other consideration provided pursuant to this Agreement, and the Company is willing to provide these benefits to Executive on the condition that Executive enters into this Agreement.

THEREFORE, in consideration of the mutual agreements and promises set forth within this Agreement, the receipt and sufficiency of which are hereby acknowledged, Executive and Employer agree as follows:

1. **Severance Benefits to Executive.** In consideration for the Executive's promises as set forth herein, the Company shall provide Executive the following severance consideration:

a. **Severance/Non-Compete Payments.** Pursuant to Section 6(b) of the Executive's July 28, 2014 Employment Agreement (the "Employment Agreement"), the Company shall pay Executive severance pay in the total gross amount of THREE HUNDRED THOUSAND AND NO/100THS (\$300,000) Dollars (the "Severance/Non-Compete Payments"). The Severance/Non-Compete Payments shall be payable in equal installments, less applicable withholdings and deductions, over a three (3) year period (the "Severance/Non-Compete Period") in the form of salary continuation pursuant to the Company's normal established payroll procedures. The Severance/Non-Compete Payments shall commence no later than the first regularly scheduled payroll run occurring after within thirty (30) days of the Termination Date, provided Executive has timely executed and not revoked this Agreement. The Severance/Non-Compete Payments may not be accelerated or deferred in any regard.

2. **Prior Wages, Salary, and Expenses.** Other than the Severance/Non-Compete Payments set forth in Section 1 of this Agreement, Executive acknowledges receipt of payment for all wages, salary, benefits, and expenses due to Executive.

3. **Release.** Executive hereby releases, acquits, and forever discharges the Company, its parent companies, subsidiaries, divisions, affiliates and controlling persons (if any), their officers, directors, board members, shareholders, members, employees, representatives, attorneys, personal representatives, affiliated or unaffiliated benefit plans, third-party administrators, any and all of their successors and assigns, and all persons acting by, through, under, or in concert with any of them (collectively the "Company") from any and all actions, causes of action, claims, demands, losses, claims for attorneys' fees, and all other forms

 Executive Init.

of civil damages, occurrences, and liabilities of any kind whatsoever, both known or unknown, arising out of any matter, happening, or thing, from the beginning of time to the date of this Agreement is signed by Executive, specifically including, but not limited to, any and all liability arising from, including amendments to and anti-retaliation provisions deriving from, the following:

- Local, state, or federal common law, statute, regulation, or ordinance;
- Title VII of the Civil Rights Act of 1964;
- Section 1981 of the Civil Rights Act of 1866;
- the Age Discrimination in Employment Act of 1967;
- the Americans with Disabilities Act of 1990;
- the Family and Medical Leave Act;
- the Employee Retirement Income Security Act of 1974;
- the Health Insurance Portability and Accountability Act;
- the Occupational and Safety Health Act;
- the Equal Pay Act;
- the Uniformed Services Employment and Re-employment Act of 1994;
- Executive Orders 11246 and 11141;
- the Worker Adjustment and Retraining Notification Act;
- the Rehabilitation Act of 1973;
- the Medicare, Medicaid and SCHIP Extension Act of 2007;
- state workers' compensation laws;
- state non-discrimination and/or human affairs laws;
- state payment of wages laws, acts or regulations;
- Executive's employment relationship and/or affiliation with Company

This release also includes a release of any claims for wrongful termination, breach of express or implied contract, intentional or negligent infliction of emotional distress, libel slander, as well as any other claims, whether in tort, contract or equity, under federal or state statutory or common law.

Without waiving any prospective or retrospective rights under the Fair Labor Standards Act ("FLSA"), Executive admits that he has received from Company all rights and benefits, if any, potentially due to him pursuant to the FLSA. Executive states that he is aware of no facts (including any injuries or illnesses) which might lead to his filing of a workers' compensation claim against Company. It is the parties' intent to release all claims which can legally be released but no more than that.

Executive further stipulates, such stipulation being expressly understood by Executive as material to this Agreement, that he has not engaged in, nor is he aware of, any misconduct or wrongdoing on the part of the Company of any kind or any regard. Executive's stipulation in this regard is material to the Company's willingness to enter into this Agreement and provide Executive the benefits provided hereunder.

4. **Covenant Not to Sue.** Executive represents that he has no claims pending or filed with any local, state or federal agency (including the U.S. Equal Employment Opportunity Commission, the U.S. Department of Labor, and any comparable state or local administrative agency) or court against the Company as of the date this Agreement was signed by Executive. Executive further agrees that he will not file or participate in any lawsuit against the Company arising out of or in connection with the employment relationship previously existing between them or the termination of that relationship other than one based upon the Company's alleged violation of this Agreement. The foregoing shall be construed as a covenant not to sue. This Agreement may be introduced as evidence at any legal proceeding as a complete defense to any claims existing as of the date of this Agreement ever asserted by Executive against the Company.

5. **Discrimination Charges; ADEA Challenges to this Agreement.** Nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Executive's otherwise lawful ability to bring an administrative charge with, to participate in an investigation conducted by, or to participate in a proceeding involving the U.S. Equal Employment Opportunity Commission or other comparable state or local administrative agency. However, Executive specifically agrees that the consideration provided to him in this Agreement represents full and complete satisfaction of any monetary relief or award that could be sought or awarded to Executive in any administrative action (including any proceedings before the U.S. Equal Employment Opportunity Commission or any comparable state or local agency) arising from events related to his employment with the Company or the termination thereof. Additionally, nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Executive's ability to challenge this Agreement's compliance with notice and other requirements of the Age Discrimination in Employment Act ("ADEA").

6. **Continued Cooperation; Lines of Communication.** During the Severance Period, Executive agrees to make himself reasonably available to the Company to respond to inquiries regarding any pending business matters in which he may have been involved, or for which his expertise and advice may be deemed beneficial by the Company. Executive agrees he will not be entitled to any additional compensation for this cooperation, other than the Severance Payments provided to him hereunder, which are intended to and shall fully compensate him for any such services. Further, Executive and Company agree that all communication between Executive and Company regarding any requested cooperation or assistance hereunder shall occur solely by and through the Company's CEO or his express designee, unless otherwise notified in writing by the CEO or his express designee.

7. **No Prior Assignment.** Executive further warrants and covenants, recognizing that the truth of this warranty and covenant is material to the above consideration having passed, that he has not assigned, transferred or conveyed at any time to any individual or entity any alleged rights, claims or causes of action against the Company.

8. **Re-Affirmation of Restrictive Covenants.** As a material condition of this Agreement, without which the Company would not enter into this Agreement nor provide the benefits to Executive as set forth herein, Executive hereby re-affirms his commitment to honor the covenants set forth in Sections 8 (Non-Competition), 9 (Non-Solicitation), 9 (Confidentiality), 11 (Ownership of Employee Developments) and 12 (Return of Property) of Executive's July 28, 2014, Employment Agreement (inclusive of any and all subsections). Executive further represents and warrants that he has fully complied with each of the above-specified provisions at all times, and acknowledges the validity and reasonableness of each of his promises set forth therein. Executive further acknowledges and agrees that each of the above restrictive covenants, as well as Section 13 (Injunction and Damages), represent continuing obligations that survive the termination of Executive's employment and are not intended to be, and shall not be, superseded or impaired by this Agreement.

9. **Return of Company Property.** Pursuant to Section 12 of the Employment Agreement, Executive stipulates under oath that on or before the Effective Date, (i) he has returned to the Company all of the Company's property, including, but not limited to, vehicle(s), mobile phone, personal digital assistant (PDA), keys, passcards, credit cards, confidential or proprietary lists (including, but not limited to, customer, supplier, licensor, and client lists), rolodexes, tapes, laptop computer, software, computer files, marketing and sales materials, and any other property, record, document, or piece of equipment belonging to the Company, (ii) that he has not retained any copies of the Company's property, including any copies

existing or stored in any electronic form or format, which reflect any Confidential Information or Protected Information (as such terms are defined in the Employment Agreement), and (iii) that he has not disclosed or transferred any such Company property to any third party at any time.

10. **Non-Disparagement.** Executive agrees and covenants that he will not in any way (directly or indirectly) do or say anything at any time which disparages or derogates the Company, its business interests or reputation, or any of its individual owners, directors, officers, employees, or agents.

11. **Confidentiality of Agreement.** Executive agrees and acknowledges that this Agreement, the fact and amount of the consideration to him provided hereunder, as well as all other terms contained herein, the events leading up to this Agreement, and any conversations or correspondence relating hereto, will be kept confidential at all times; provided that, however, Executive may disclose the terms of this Agreement to his spouse, accountants, tax advisors, and financial consultants as necessary for tax planning, financial planning, or estate planning purposes. Executive further acknowledges that he will be responsible for ensuring that any of the above-specified individuals to whom he discloses information regarding this Agreement likewise fully complies with this obligation of confidentiality.

12. **Performance.** The Company's obligation to perform under this Agreement is conditioned upon Executive's agreements and promises to the Company as set forth herein, including Executive's re-affirmation of and compliance with each of the covenants specified and re-affirmed by Executive in Section 8 above, and Executive's strict compliance with his obligation to maintain confidentiality with regard to this Agreement as detailed in Section 11 above. In the event of an actual or threatened breach by Executive of any such agreement or promise, the Company's obligations to perform under this Agreement, including, without limitation, the Company's obligation to make the Severance/Non-Compete Payments as set forth in Section 1, shall automatically terminate, the Company shall have no further such obligations to Executive and the Severance/Non-Compete Payments thus far made by the Company shall represent full and complete consideration for the Executive's promises as set forth herein. Further, Executive acknowledges and agrees that for purposes of determining whether the Company is entitled to the relief set forth in this Section 12, the controlling issue shall be Executive's breach or threatened breach of the subject provision, with the enforceability of said provision via injunctive relief treated as a separate issue. Executive further acknowledges and agrees that any argument by Executive that any restrictive covenants re-affirmed in Section 8 of this Agreement is invalid or unenforceable due to the scope or duration of said restriction, shall itself constitute a breach of this Agreement excusing the Company from performance as set forth hereinabove.

13. **No Admission of Liability.** Nothing in this Agreement (or the Agreement itself) shall operate or be interpreted as an admission of liability as to any of the claims, charges, actions and lawsuits released hereby. The Company, and each of its individual directors, officers, employees, agents and insurers, and their successors, individually and collectively, expressly deny any such liability.

14. **Final and Binding/Entire Agreement.** This Agreement sets forth the entire agreement between the parties and is intended to be final and binding upon them. Except as set forth herein, it fully supersedes any and all prior agreements or understandings on the subjects addressed herein, including the Employment Agreement, and may only be amended by a written document signed by the parties or their duly authorized representatives which specifically states that it was intended as an amendment.



Executive Init.

15. **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and must be given in person or be sent by registered or certified mail to:

a. The Executive at his personal residence, 2096 Harbor Lane, Virginia Beach, Virginia, 23454; and

b. The Company at its principal place of business, 410 East Washington Street, Greenville, SC 29601 (Attn: Gordon Miller), with a copy to Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, 9th Floor, Greenville, SC, 29601 (Attn: Bo Russell).

16. **Controlling Law.** This Agreement will be interpreted and enforced according to the laws of the State of South Carolina and, where applicable, federal law.

17. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall be in no way affected, impaired or invalidated.

18. **Enforcement.** In the event either party is required to In the event either party is required to initiate legal action to enforce any provision of this Agreement, the Company and Executive hereby mutually agree that the prevailing party in any such action shall be entitled to recover all reasonable costs and attorneys' fees incurred by the party in such action, in addition to any and all other available and appropriate legal and equitable relief.

19. **Acknowledgements.** Executive acknowledges that it is the mutual intent of the Parties that the full release contained in this Agreement fully complies with the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA"). Accordingly, this Agreement requires, and Executive acknowledges and agrees that: 1) the consideration provided to Executive under this Agreement exceeds the nature and scope of any consideration to which Executive would otherwise have been legally entitled to receive absent execution of this Agreement; 2) execution of this Agreement and the full release herein, which specifically includes a waiver of any claims of age discrimination under the ADEA, is Executive's knowing and voluntary act; 3) Executive is hereby advised to consult with an attorney prior to executing this Agreement; 4) Executive has reviewed the additional information provided by the Company regarding this offer of severance as set forth on Exhibit A to this Agreement; 5) Executive has twenty-one (21) calendar days within which to consider this Agreement and his signature on this Agreement prior to the expiration of this twenty-one (21) day period (should Executive choose not to take the full period offered) constitutes an irrevocable waiver of said period or its remainder; 6) in the event Executive signs this Agreement, Executive has another seven (7) calendar days to revoke it by delivering a written notice of revocation to the addressee identified in the Notice provision above, and this Agreement does not become effective until the expiration of this seven (7) day period; 7) Executive has read and fully understands the terms of this Agreement; and 8) nothing contained in this Agreement purports to release any of Executive's rights or claims under the ADEA that may arise from acts occurring after the date of the execution of this Agreement.

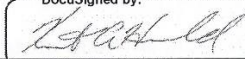


PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. YOU AGREE THAT YOU RECEIVED VALUABLE CONSIDERATION IN EXCHANGE FOR ENTERING INTO THIS AGREEMENT AND THAT THE COMPANY ADVISED YOU IN WRITING TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT. YOU PROMISE THAT NO REPRESENTATIONS OR INDUCEMENTS HAVE BEEN MADE TO YOU EXCEPT AS SET FORTH HEREIN, AND THAT YOU HAVE SIGNED THE SAME KNOWINGLY AND VOLUNTARILY.

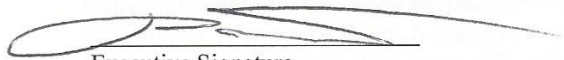
YOU HAVE BEEN PROVIDED AT LEAST TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT AND WAIVE AND RELEASE ALL CLAIMS AND RIGHTS INCLUDING BUT NOT LIMITED TO THOSE ARISING UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT. YOU SHALL HAVE SEVEN (7) DAYS WITHIN WHICH TO REVOKE THIS AGREEMENT AND THIS AGREEMENT SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THAT REVOCATION PERIOD HAS EXPIRED. ANY SUCH REVOCATION MUST BE IN WRITING AND RECEIVED BY THE COMPANY, IN ACCORDANCE WITH THE NOTICE PROVISIONS SET FORTH ABOVE, PRIOR TO THE END OF THE REVOCATION PERIOD.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth herein below:

COMMERCIAL FOODSERVICE REPAIR, INC.

By: 
85F3A9CDA1AB45F...
CEO
Its: _____
Date: 11/29/2017

RICHARD D. WHITE


Executive Signature

SWORN TO AND subscribed before me

this 5th day of December 2017.


Notary Public for Virginia

My Commission Expires: 6-30-2019

SHELLY K SOWERS
NOTARY PUBLIC 192665
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 06-30-2019

 Executive Init.

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS OF THE
THIRTEENTH JUDICIAL CIRCUIT

RICHARD D. WHITE,
Plaintiff,
vs.
FT ACQUISITIONS, LLC,
COMMERCIAL FOOD SERVICE
REPAIR, INC., and KURT
HERWALD,
Defendants.

CIVIL ACTION NO.
2019-CP-23-06915

DEPOSITION OF RICHARD DWAYNE WHITE

DATE TAKEN: February 10, 2021
TIME BEGAN: 11:03 p.m.
TIME ENDED: 5:06 p.m.
LOCATION: (Via videoconference)

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 interest due as of August the 1st, 2019?

2 A. That's right.

3 Q. Okay. Did you receive the first payment
4 on the note around September 1st of 2014?

5 A. To the best of my knowledge, we did, yes.

6 Q. Okay. And was that payment in the correct
7 amount?

8 A. Yes.

9 Q. Okay. Did you receive payment in early
10 October of 2014?

11 A. I think so.

12 Q. Okay. In the correct amount?

13 A. Yeah. Again, I assume I did, yeah.

14 Q. Okay. So FT Acquisition began paying you
15 under the terms of the note?

16 A. They did.

17 Q. Okay. Is it accurate that you received a
18 total of 34 monthly payments under the note before
19 any payment was missed?

20 A. I think that's the right number.

21 Q. Okay. And is it accurate that before any
22 payment was missed, you received \$641,622.16 under
23 the note?

24 A. Again, I don't have it in front of me, but
25 if that's what you say the principal and interest

1 added up to, then yeah.

2 Q. But just to confirm it, if we go back to
3 Exhibit 2 and look at paragraph 23.

4 A. Okay.

5 Q. This is your Amended Complaint that you
6 filed. It states, 34 on-time payments, in
7 accordance with the terms of the note, totaling
8 \$641,622.16, is that correct?

9 A. Yes.

10 Q. Okay. And were those payments made
11 between September 2014 and July 2017?

12 A. Yes.

13 Q. Okay. And was the last payment that was
14 made on the note made on or around July 5th of 2017?

15 A. Yes.

16 Q. Okay. At some point, did FT Acquisition
17 fail to make a payment that was due to you under the
18 note?

19 A. Yes.

20 Q. And when did FTA first miss a payment --
21 and I say "FTA," FT Acquisition, first miss a
22 payment that was due under the note?

23 A. I think that was in August of 2017.

24 Q. August of 2017?

25 A. Yes.

1 Q. It was a standard agreement that other
2 employees signed?

3 A. Yes.

4 Q. Okay. So if we look at section 1, it
5 deals with severance benefits. In section 1.a, does
6 that reference your employment agreement dated July
7 28, 2014?

8 A. Yes.

9 Q. And that's the agreement that we looked at
10 earlier?

11 A. Yes.

12 Q. Okay. And does it reference here that the
13 severance amount -- the severance payments would be
14 in the amount of \$300,000 payable over a three-year
15 period?

16 A. Yes.

17 Q. Okay. And is that consistent with what we
18 saw in the employment agreement?

19 A. Yes.

20 Q. Okay. Did CFR make the severance payments
21 to you, as promised in this agreement?

22 A. They did.

23 Q. Okay. All \$300,000?

24 A. Yes.

25 Q. Okay. Did they make these payments on

1 time?

2 A. Yes.

3 Q. Okay. Is there anything in this agreement
4 that CFR said it would do that it didn't do?

5 A. I don't know. I'd have to read every word
6 of it, but I don't believe so.

7 Q. Okay. Let's look at section 3, the
8 release. Did you understand that by signing this
9 agreement, you were releasing claims against the
10 company?

11 A. Yes. All the something I knew about, yes.

12 Q. What do you mean by that?

13 A. Yeah. I mean, this was all about
14 employment. They had not done anything to me that I
15 had any kind of employment claim against them at
16 all. I didn't have a complaint with my employment,
17 as far as what this waiver is for.

18 Q. Well, why do you believe that this release
19 only relates to your employment?

20 A. Because that's what it was given to me
21 for. It's a severance agreement.

22 Q. Okay. I understand.

23 A. If you want to go one step further, it's a
24 severance agreement that's related to an employment
25 agreement. It has nothing to do with anything else.

1 (Whereupon, a recess was taken.)

2 EXAMINATION RESUMED BY MR. SCHANEN:

3 Q. Mr. White, I have just a couple more
4 questions. The release agreement that we looked at,
5 did you sign that voluntarily?

6 A. The separation agreement?

7 Q. Yes, the document that's titled, "General
8 Waiver and Release."

9 A. Yes.

10 Q. Okay. You could have chosen not to sign
11 that document, right?

12 A. Yeah, I wouldn't have got my severance
13 money, but, yeah.

14 Q. Right. But you wanted the \$300,000?

15 A. Right.

16 Q. And so you signed the release agreement?

17 A. Yes.

18 MR. SCHANEN: Okay. That's all the
19 questions that I have. Mr. Puriefoy may have
20 some for you.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. PURIEFOY:

25 Q. Mr. White, I'm going to try to keep this

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

RICHARD D. WHITE,)
)
 PLAINTIFF,)
)
 -VS-)
)
 FT ACQUISITIONS, LLC,)
 COMMERCIAL FOODSERVICE)
 REPAIR, INC., AND)
 KURT HERWALD,)
)
 DEFENDANTS.)
 _____)

2019-CP-23-06915

TRANSCRIPT OF RECORD

MAY 9, 2022
GREENVILLE, SOUTH CAROLINA
VIA WEBEX

B E F O R E:

THE HONORABLE J. DERHAM COLE

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

DEVON M. PURIEFOY, ESQ.

ATTORNEYS FOR DEFENDANTS:

GILES M. SCHANEN, JR., ESQ.
ELIZABETH C. EDMONDSON, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 This notion that the three hundred thousand dollars
2 (\$300,000.00) wasn't for consideration for the release is -- I
3 don't have any words for it, Your Honor. But, Your Honor, ---

4 **THE COURT:** Well, no, you think it's ludicrous. I get
5 it. All right. Anything else y'all need to tell me?

6 **MR. SCHANEN:** One other thing. Just this notion that Mr.
7 Puriefoy brought up that, you know, why would Mr. White have
8 signed a release releasing eight hundred thousand dollars
9 (\$800,000.00) of claims in return for three hundred thousand
10 dollars (\$300,000.00) ---

11 **THE COURT:** Well, you don't even need to argue about
12 that. That's what we call -- that's another Proverb, a bird
13 in a hand is worth two in a bush.

14 **MR. SCHANEN:** Absolutely, Your Honor. And ---

15 **THE COURT:** I mean, people can see money -- if they, you
16 know, the known is better than the unknown, as they say.

17 **MR. SCHANEN:** Yes, sir, Your Honor. I agree with that.

18 And I think, Your Honor, that in our brief we, you know,
19 we cite the case that's most on point, which ---

20 **THE COURT:** I'm going to read everything.

21 **MR. SCHANEN:** Okay. Thank you, Your Honor.

22 **THE COURT:** Yeah, I'm going to read it all for sure.

23 Let me ask you this. This case is scheduled for what
24 week?

25 **MR. SCHANEN:** June ---

1 STATE OF SOUTH CAROLINA) IN THE COURT
) OF COMMON PLEAS
 2) OF THE THIRTEENTH
) JUDICIAL CIRCUIT
 3 COUNTY OF GREENVILLE)
)
 4)
)
 5 RICHARD D. WHITE,)
)
 6 Plaintiff,) TRANSCRIPT OF RECORD
) 2020-DR-10-01624
 7 vs.)
)
 8 FT ACQUISITIONS, LLC;)
 COMMERCIAL FOOD SERVICE)
 9 REPAIR, INC.; AND)
 KURT HERWALD,)
 10 Defendants.)
 11)

12 -----

13 May 21, 2021
 Greenville, South Carolina

15 B E F O R E:

16 HONORABLE R. SCOTT SPROUSE, Judge.

18 A P P E A R A N C E S

19 DEVON MARC PURIEFOY, ESQUIRE
 For Plaintiff

20 GILES M. SCHANEN, JR., ESQUIRE
 21 For Defendant

24 Julie A. Cendroski,
 Circuit Court Reporter III
 25 Seventh Judicial Circuit

I N D E X

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 RICHARD D. WHITE VS. FT ACQUISITIONS, LLC, ET AL.

2 THE COURT: All right. Madame Clerk, call the
3 first case.

4 THE CLERK: The first case is 2019-CP-23-06915,
5 Richard D. White versus FT Acquisitions, LLC, et al.

6 THE COURT: All right. This is listed as cross
7 motions for summary judgment. The plaintiff's motion is
8 listed first on the docket, so we'll begin with Mr.
9 Puriefoy.

10 MR. SCHANEN: Your Honor, could I? I'm Giles
11 Schanen with Nelson Mullins and the defendant. I just
12 wanted to make a suggestion about that.

13 THE COURT: Okay.

14 MR. SCHANEN: We've moved for summary judgment on
15 all of the plaintiffs claims. It'll involve a complete
16 discussion of the facts. They have moved for summary
17 judgment on two of our counterclaims. I would suggest
18 that this will make more sense in proceeding in a more
19 orderly and efficient fashion if we can deal with our
20 claims first.

21 Also, this deals with a relief, and the Court's
22 ruling on our Motion for Summary Judgment could be
23 dispositive as to their motion. So we just would
24 suggest that we proceed in that fashion, if the Court's
25 amenable to it.

1 THE COURT: Do you agree with that?

2 MR. PURIEFOY: I have no objection.

3 THE COURT: Okay. All right. Well, we'll do it
4 that way. So let me hear from the defense first.

5 MR. SCHANEN: Thank you, Your Honor. Again,
6 Giles Schanen. I represent in this case the defendant,
7 Commercial Food Service Repair, FT Acquisitions, and
8 Kurt Herwald. Mr. Herwald, I asked to go get a bottle
9 of water since we don't have water here, so he'll be
10 coming in, in a moment. He's the president of the
11 defendant CFR.

12 The plaintiff in this case, Your Honor, is a
13 sophisticated business man, whom in 2014 sold his
14 business to our client, Commercial Food Service Repair,
15 for \$14 million. And then came to work for Commercial
16 Food Service Repair, which I'll call CFR, as a vice
17 president.

18 For the last year-and-a-half, Your Honor, my
19 client has been defending against claims that have been
20 brought in this case by Mr. White, the plaintiff, which
21 he clearly and unequivocally released on November 30th,
22 2017, in return for payment of \$300,000, which you see.

23 I'd like to start, Your Honor, with the release
24 itself to set the context of everything else that I'm
25 gonna say. But I would start with the release and then

1 go into more detail about the undisputed facts and the
2 claims and why those claims are subject to the release.

3 The release, Your Honor, is attached to our memo
4 in support of summary judgment as exhibit G. It was
5 executed by Mr. White twice. Once electronically on
6 November 30th, 2017, and again in wet ink on December
7 5th, 2017. Mr. White returned the electronically signed
8 copy to CFR on December 1st, 2017.

9 This release was prepared by the employment group
10 at our law firm and it's solid as a rock. Your Honor, I
11 would direct the Court to a few key provisions in the
12 release. First, entitled General Waiver and Release
13 Agreement. It's up there at the top in all bold, all
14 caps. It's not a limited release of claims, it's a
15 general release.

16 Section one in the release, title seven, Benefits
17 of Executive, describes what Mr. White received for
18 signing the release. He received \$300,000 in severance
19 payment. It's undisputed the company paid this amount
20 and that it was paid timely.

21 Mr. White has admitted that the release is
22 enforceable. In his deposition, he's admitted that he
23 should be bound by its terms. That is in dispute.

24 Section three of the release is the release
25 provision itself. The key language starts from here at

1 the bottom of page one and it says: In the release of,
2 quote, any and all actions, causes of action, claims,
3 demands, losses, claims for attorneys' fees, and all
4 other forms of civil damages, occurrences, and
5 liabilities of any kind whatsoever, both known or
6 unknown, arising out of any matter, happening from the
7 beginning of time to the date this Agreement is signed
8 by Executive. So it's a general release of all claims,
9 known or unknown.

10 And then it does list several bullet points of
11 employment related claims, which is only natural,
12 because this was given to someone in a severance
13 agreement at the end of his employment, but it expressly
14 says that these are, you know, including but not limited
15 to these claims. So in no way is the list of employment
16 related claims exhaustive.

17 In fact, that was confirmed in the very next
18 paragraph after the bullet point on page two where it
19 says: This release also includes the release of any
20 claims for wrongful termination, breach of expressed or
21 implied contract, intentional or negligent infliction of
22 emotional stress, libel slander, as well as any other
23 claims, whether in tort, contract or equity, under
24 federal or state statutory or common law. It's as
25 general as a release can be, Your Honor. It's not

1 limited to employment related claims, it's a general
2 release.

3 So that language is clear and unequivocal. It's
4 a release of all the claims that existed as of the date
5 that Mr. White signed it on November 30th, 2017. And
6 not only claims he knew about, but claims that were
7 unknown as well.

8 After the, the -- there's a couple of other key
9 provisions in the release that I wanted to point out.
10 One, page five, section 19, has an acknowledgment. It's
11 acknowledgment that he read the release and understands
12 it. He was given 21 days to consider the release, and
13 seven days after he signed it to revoke it, and was
14 advised in writing to consult with an attorney. Mr.
15 White acknowledged all of those things and acknowledged
16 that he signed the release without consulting an
17 attorney.

18 South Carolina law is clear, Your Honor, that a
19 release is a contract. It's the Court's role to give
20 effect to the clear language of the contract, clear,
21 unambiguous language in the contract. And this contract
22 is clear and unambiguous. It's capable of only one
23 interpretation, Your Honor. So in this case, if Mr.
24 White's claims are proved, before November 30th, 2017,
25 then all of the bids, those claims are required as a

1 matter of law to be dismissed with prejudice.

2 Before I discuss those claims, Your Honor, there
3 has been raised a suggestion in this case that the
4 release was procured by fraud, and so I wanted to
5 address that. That would be Mr. White's burden to show.
6 Of course, I've already tried to set aside the release
7 bears the burden of showing that it was procured by
8 fraud. He would have to, at a minimum, create a genuine
9 issue of material fact as to fraudulent inducement, he
10 had a fraudulent inducement claim in this case. But
11 there's no evidence whatsoever in the record to suggest
12 that this release was procured by fraud.

13 First, the release was sent to Mr. White by CFR
14 Human Resources Director, Gordon Miller, via email.
15 That email is in the record. It's attached to our brief
16 as Exhibit H. And as Your Honor can see, there's no
17 statement whatsoever in that email concerning substance
18 of the release, scope of the release. Mr. Miller was
19 simply forwarding the release to Mr. White for review.

20 I deposed Mr. White back in February. At the
21 deposition I asked Mr. White, aside from the email we
22 just looked at, the Gordon Miller email, if he had any
23 other communications regarding the terms of the release.
24 His answer was: No, the email, this email chain is
25 probably it. I might have talked to Gordon on the

1 phone. I don't remember, but I didn't talk to anybody
2 else.

3 Then I asked him: What statements or
4 representation, if any, were made to you about the
5 intent of this agreement? And his answer was, quote,
6 none.

7 So Mr. White has admitted, Your Honor, that no
8 statements were made to him by anyone at CFR about the
9 release. And there's nothing in the record that
10 indicates that he relied on these statements about the
11 release. His testimony was simply, he was sent the
12 release, he reviewed it, and he signed it.

13 He said he thought it applied only to employment
14 related claims, which clearly is contrary to the plain
15 language of the release. It does not show in the record
16 that he relied on any statement by anyone in deciding
17 whether to sign the release.

18 It's also important to point out that, as I
19 mentioned, multiple places in the release, it advised
20 him to consult with an attorney. He had 21 days to
21 consider it, seven days to revoke his signature. And he
22 admitted that he was aware of those, and still signed
23 the release, did not revoke it.

24 At his deposition, Mr. White also admitted he
25 wasn't coerced into signing the release and didn't sign

1 it under any duress. In his deposition I asked him this
2 question:

3 You could have chosen not to sign
4 that document, right?

5 ANSWER: Yeah. I wouldn't have got
6 my severance money, but yeah.

7 Right. But you wanted the \$300,000?

8 ANSWER: Right.

9 And so you signed the release agreement?

10 ANSWER: Yes.

11 And, Your Honor, it's important to note also, CFR
12 wasn't obligated to pay Mr. White this \$300,000. Mr.
13 White had an employment agreement with CFR back when he
14 joined the company in 2014. And in that employment
15 agreement it provided that if Mr. White was terminated
16 by the company, that he would be entitled to \$300,000
17 severance if he signed the general release. They
18 actually said a general release.

19 But Mr. White, by his own admission, wasn't
20 terminated. He resigned his employment voluntarily.
21 That's not in dispute. And so, Mr. Herwald, in 2017,
22 upon Mr. White's resignation, made sure that he was
23 still given the \$300,000 severance package. The only
24 condition was he had to sign this agreement while it was
25 determined. So he signed the release knowingly and

1 voluntarily by his own admission to receive \$300,000
2 that he otherwise had no entitlement to receive.

3 At his deposition I finally asked him this
4 question about the general release:

5 QUESTION: Do you think you that should
6 be held to the terms of the document you
7 signed?

8 His answer at page 182 of his deposition was:
9 Yes.

10 So even Mr. White admitted in his deposition that
11 he should be bound by the terms of this release.
12 Basically his only position, his only argument was I
13 don't think it applies to employment -- I think it only
14 applies to employment claims. I don't think it's a
15 general release, which is plainly contradicted by the
16 clear language of the agreement.

17 So, Your Honor, on this fraud and the inducement
18 of the release claim, under South Carolina law, to show
19 that the release should be set aside because it was
20 procured by fraud, it's Mr. White's burden to not only
21 show all nine elements of fraud, but also three
22 additional elements. That the tort fees are a false
23 representation relating to a present or pre-existing
24 fact with the intent to deceive. And that Mr. White
25 relied and had a right to rely on that representation.

1 The fact, the statement if you give rise to this claim
2 for fraud inducement, can't be a statement to accuse or
3 amend, it has to be a statement of a pre-existing fact.

4 And also, it has to be something that Mr. White
5 relied on in signing the release. And there's
6 absolutely no evidence of either of those. As I said,
7 the testimony that I cited earlier makes clear there was
8 no statement made to him about the release and there's
9 absolutely nothing in the evidence -- there's no
10 evidence in the record that suggests that he relied upon
11 any such statement. It's just not there.

12 So, Your Honor, this fraud and the notion that
13 the release was prepared by fraud, simply falls flat on
14 its face. You'll hear Mr. Puriefoy, I think, make some
15 lawyer arguments about that, but I would ask Your Honor
16 to look for where is the evidence in the record of this
17 fraud in particular with anything that Mr. White relied
18 on and it's just simply not there.

19 So, Your Honor, the record is clear that Mr.
20 White was bound by his release, general release of
21 claim; that he executed on November 30th, 2017, and that
22 any claims that accrue prior to that date are barred.

23 So at this point, Your Honor, I'll discuss the
24 undisputed facts and the specific claims that he's
25 raised and demonstrate why all of them are legal.

1 To help with that, Your Honor, we've provided the
2 Court with a timeline. It's attached to our brief as
3 Exhibit J. It may be helpful to reference that
4 timeline. The first relevant date, Your Honor, is 2014.
5 In 2014, Mr. White and his partner, JC Viteri, sold all
6 of their shares in their food service equipment repair
7 company. It was called Tech-24 and then in this case,
8 Commercial Food Service Repair. For that, Mr. White and
9 his partner received \$14 million. \$13 million was paid
10 at closing. And the last million was paid in monthly
11 payments over a five-year period of time or was to be
12 paid, pursuant to a promissory note. That's another
13 issue in this case.

14 Also, as part of that deal, Mr. White came to
15 work for CFR as its vice president of operations. He
16 was the second most senior person in the company behind
17 only the company's CEO and president, Mr. Herwald.

18 The next important day on the timeline is June of
19 2017, so we're fast forwarding three years. At that
20 time, Mr. White was still vice president of operations.
21 He and his partner had received every monthly payment
22 under the note that was due at that point in time. They
23 received 34 straight payments out of 59 total. But the
24 company was having financial trouble and it went into
25 default on its senior debt to Fifth Third Bank. As a

1 result, Fifth Third issued a payment blockage, informing
2 CFR that CFR could not make payments to any other
3 creditors until an issue with Fifth Third was cured.

4 So CFR wasn't allowed to make payments to Mr.
5 White under the note at that time at the direction of
6 its senior lender. That was late June of 2017.

7 Now, the next two dates are very important dates.
8 July 5th, 2017. So two things happened on that date.
9 First, that was the date that CFR made its final payment
10 to Mr. White under the note. It made its monthly
11 payment in July. It was unable because of the payment
12 blockage that its senior lender issued to make any
13 payments after that date. Never did make any other
14 payments.

15 The other thing that happened on that date was
16 that Mr. White was informed by Mr. Herwald that CFR
17 couldn't make payments on the note due to the actions of
18 its senior lender. We've included Mr. White's discovery
19 responses in this case. There's an F to our brief, and
20 twice Mr. White admitted in his discovery responses that
21 he was informed on July 5th by Mr. Herwald of the
22 payment blockage and of the company's installment
23 payments at that point in time.

24 So I'll quote directly from his responses. In
25 his interrogatory 14 where we asked plaintiff to

1 identify when and how he learned of the payment blockage
2 issued by Fifth Third Bank, and this is his answer:

3 Quote, plaintiff learned of the blocked payment
4 on/or about July 5th, 2017. The person who informed
5 plaintiff of the blocked payment was Kurt Herwald.
6 During the conversation between plaintiff and Herwald,
7 Herwald stated that the bank, as a senior lender, was
8 not allowing CFR to pay plaintiff under the terms of his
9 subordinated note.

10 He went on to say he wasn't aware who the senior
11 lender was and he wasn't informed of the default, but he
12 admitted that Mr. Herwald told him that the bank would
13 not allow him to make further payments under the note.
14 Then in interrogatory 28, we asked Mr. White to describe
15 any communications that he had with CFR about CFR's
16 non-payment under the note. And in that response he
17 stated: Plaintiff learned of the blocked payment on
18 July 5th, 2017, during the conversation between
19 plaintiff and Herwald, Herwald stated that the senior
20 lender was preventing CFR from making any further
21 payments to plaintiff due to CFR's installment fee and
22 inability to pay under the terms of the senior note. So
23 he admits in his discovery responses, Your Honor, that
24 Mr. Herwald told him on July 5th, 2017, that the senior
25 lender was not allowing CFR to make further payments to

1 him on the note because of the company's solvency and
2 the company's inability to pay its senior debt. So he
3 knew that.

4 Now, he tried in his deposition, he said, maybe
5 that date July 5th should have been September 5th. July
6 5th might have been wrong when he had that conversation
7 with Kurt Herwald. A couple of comments to that. One,
8 these discovery responses that I quoted have never been
9 amended. They're binding on Mr. White. They're out
10 there.

11 And second of all, even if it was September 5th,
12 that was still over two months before he signed the
13 release in this case. But, Your Honor, because of the
14 payment blockage, CFR didn't make payments under the
15 note in August when due or September when due, 2017.

16 So that brings us to the next important day on
17 the timeline. That's September 11th, 2017. On that
18 day, Mr. White made an investment in CFR. He bought
19 common stock for \$550,000, valued at \$80 a share. Mr.
20 White admitted that he made that investment with full
21 knowledge of the note payment under the note. And the
22 discovery responses make clear that he was aware of the
23 reasons for those note payments.

24 Now keep in mind, Your Honor, Mr. White was a
25 senior manager of the company. He had built up part of

1 the company and sold it to CFR. And then for the last
2 three years has been a vice president of the company.
3 He was a sophisticated investor, an accredited investor.
4 He admits he was worth \$7 million when he invested. He
5 admits he is invested in other companies, real estate
6 companies -- I mean, real estate investments. Invested
7 in other companies. On every occasion he's done due
8 diligence and asked to see the company's finances.

9 He admits here he asked no questions, asked for
10 no documents, just simply take the money and invest it
11 without doing any due diligence whatsoever, which makes
12 sense given his familiarity with the company and the
13 position that he was in.

14 He said that what was important to him in knowing
15 whether to invest with Mr. Herwald, who also got it at
16 the same time, and he did. Mr. Herwald put in money to
17 the company at the same time as Mr. White at the same
18 share price, Your Honor.

19 So that investment was September 11th, 2017. The
20 next important date is November 2nd, 2017, and it may be
21 the most important of all. On that date, Mr. White
22 received a complete set of CFR's financial report from
23 its CFO, Clark Mizell. Mr. White admitted in his
24 deposition that he reviewed them, and what he saw made
25 him sick and contributed to his resignation from the

1 company. It wasn't the sole reason, but it contributed.

2 His deposition on this testimony here is
3 dispositive, Your Honor, and it shows exactly what he
4 knew after he reviewed that packet that he received on
5 November 2nd. He testified that when he saw the report,
6 and in particular the balance sheet that was sent, he
7 learned that the shares he had purchased for \$550,000
8 were worth nothing because there was a negative
9 shareholder equity of around \$5 million.

10 He testified that when he invested it, he thought
11 his shares had value, but when he saw the negative
12 shareholder equity, he knew they were worth nothing and
13 he knew that Mr. Herwald had, quote -- well, that Mr.
14 Herwald had pulled the \$80 valuation, quote, out of his
15 butt. That's what he said about that, he knew about the
16 stock that he had previously purchased when he saw these
17 reports on November 2nd.

18 Mr. White testified that when he saw the reports
19 he knew for the first time that CFR had a long-term loan
20 from Fifth Third Bank, which he wasn't aware of before.
21 And he also had a long-term -- it had also had a
22 long-term loan from another company, MCP, which is
23 McLarty Capital Partners. And he wasn't aware of that
24 loan either until he saw these reports on November 2nd.

25 He testified of the existence of that long-term

1 debt was shocking and upsetting to him when he saw it in
2 the report on November 2nd.

3 Mr. White testified that when he saw the report,
4 he knew that it wasn't just a cash flow problem. He
5 cited in this case that Mr. Herwald always told him this
6 was just a short-term cash flow problem, we'll get past
7 it. But he said when he saw these reports on November
8 2nd, he knew that wasn't the case. He knew the company
9 was not safe and it was losing lots of money.

10 Mr. White admitted that when he saw the report,
11 it was the first time he was fully aware of the
12 company's financial condition, and he realized the
13 company was insolvent. That was news to him. And
14 finally, Mr. White admitted that had he seen these
15 reports before he invested on September 11th, 2017, he
16 would never have invested.

17 So, Your Honor, by his own testimony, when he
18 receives these reports and reviews them on November 2nd,
19 Mr. White was fully aware of the company's financial
20 condition, he was aware the company was insolvent, was
21 aware his shares had a negative value, was aware of the
22 company's long-term debt to Fifth Third and MCP, which
23 he wasn't aware of before.

24 He testified that he reviewed the reports, he
25 realized the company's financial situation was not as he

1 had been led to believe by Mr. Herwald, much worse. And
2 he realized that the price he paid for his shares had
3 been pulled out of thin air. Mr. White testified he
4 knew all those things as of the time he reviewed the
5 report on November 2nd, 2017.

6 So then the next date is November 9th, 2017.
7 That's the date, Your Honor, that Mr. White resigns his
8 employment with CFR. He testified he was disturbed by
9 the company's finances. He didn't agree with the way
10 the company was run, so he asked Mr. Herwald to change
11 things and make him the COO. Mr. Herwald said it wasn't
12 the right time to make that kind of a change, and Mr.
13 White immediately submitted his resignation to Mr.
14 Herwald.

15 The last two dates is November 30th, 2017.
16 That's the date that Mr. White signed the general
17 release of claims of CFR in which he released each and
18 every claim known or unknown that he might have had
19 against CFR that had arisen at the time of its
20 execution. He forwarded that release to CFR on December
21 1st. And then he signed it again in wet ink on December
22 5th.

23 And as I mentioned previously, Your Honor, in
24 return for signing the release, he received \$300,000
25 that he wasn't otherwise entitled to receive, in which

1 he undisputedly did receive on a timely basis. Money
2 that Mr. Herwald offered him generously that he didn't
3 have to offer, but in return for signing the release in
4 complying with the terms.

5 So on November 30th he signed the release, all
6 claims known or unknown that existed as of that date
7 against all the defendants in this action. It didn't
8 just apply to CFR, it applies to affiliate officers,
9 directors, everyone else, such is always the case in
10 these types of releases. And Mr. White did admit in his
11 deposition that the relief applied to all the defendants
12 in this case.

13 So how do you address Mr. White's claim that the
14 release was procured by fraud? By his own admission
15 that claim failed. That is one of the claims in this
16 case, but there's simply no evidence in the record to
17 support it.

18 And then all the other claims are released, Your
19 Honor. So I'll explain why each and every claim alleged
20 in the amended complaint, which was filed on March 9th,
21 2020, was as to the release. The first two claims
22 related to breach of the note by nonpayment. The first
23 claim is for breach of the note, simple breach of
24 contract claim. And the second is for breach of company
25 by fraudulent act based on the breaching.

1 To the extent the note was breached, Your Honor,
2 it was breached when the first payment was missed in
3 August of 2017. The last payment was made in July. The
4 August payment was missed. At that point there would
5 have been a breach. Your Honor, Mr. White testified
6 that he was aware of the non-payment and he was aware
7 of that because the breach wasn't cured within 30 days
8 from the terms of the note, he was entitled to
9 immediately accelerate all principal and interest that
10 was due on the note. He admitted that.

11 It's undisputed that Mr. White could have sued
12 for breach of the note no later than September 2017,
13 when the damage was being all principal and interest
14 owed under the note. If there was a breach, that cause
15 of action had accrued in full by then. There's no
16 question. Therefore, the breach of contract claim
17 accrued long before November 30th, 2017, when Mr. White
18 executed the release.

19 Your Honor, another point I want to make
20 regarding the breach of the note, because I think you'll
21 hear that. Even after Mr. White signed this release in
22 November, Mr. Herwald and CFR were willing to make
23 payments under the note to Mr. White. They -- after he
24 signed a release, going forward for months, there were
25 communications about whether those payments would be

1 able to resume if they got out of default, if they were
2 allowed to resume those payments by the senior lender.
3 And the company was willing to do that. We're not --
4 you know, we certainly were.

5 In fact, in 2020 there was another investment
6 into the company. And as part of the closing of that
7 deal, we wanted to pay Mr. White out on the note. He
8 would have had to have released all these other claims
9 to receive that and he wasn't willing to do that, so he
10 didn't get paid out of the note. But we were always
11 willing to pay him on the note. But that's a very
12 different issue than whether the legal claim for breach
13 of the note that accrued no later than August, September
14 of 2017, was released, which it very clearly was.

15 Your Honor, the second claim Mr. White asserts
16 the breach of the company by fraudulent act. Again, it
17 relates to the breach of the note, which had accrued
18 long before he signed the release. And the fraudulent
19 act that he alleges in paragraph 53 of his amended
20 complaint, the fraudulent act relates to inducing him
21 to enter into the note to begin with. So that's
22 something that happened back in 2014.

23 Mr. White admitted in his deposition there were
24 never even any statements made to him about entering
25 into the note back in 2014. There's no evidence of any

1 fraudulent acts back then. But regardless, this was all
2 stuff that happened long before he signed the release in
3 November of 2017.

4 The fraudulent act claim also failed for other
5 reasons, Your Honor. In South Carolina, to have a claim
6 for breach accompanied by fraudulent act, the plaintiff
7 has to prove, one, a breach of contract. Two,
8 fraudulent intent relating to the breaching of the
9 contract, not merely to its making. And, three, a
10 fraudulent act accompanying the breach.

11 Here the only -- and it's clear in the complaint,
12 the only fraudulent act that was alleged related to the
13 making of the contract. There's nothing alleged related
14 to the breach of the contract itself. And beyond that,
15 there's no record of any -- there's no record of any
16 statement whatsoever that would even make making this
17 contract, so that claim simply fails. But the bigger
18 point is it was a release.

19 Mr. White's third claim is for fraud in the
20 inducement of the note in 2014. And his fifth claim is
21 for intentional misrepresentation related to entering
22 into the note in 2014. Those were imposed by the
23 plaintiff in their summary judgment brief in their brief
24 in opposition. And I spoke with Mr. Puriefoy prior to
25 the hearing, and he indicated they're not pursuing those

1 claims. I don't want to speak for him, but I understand
2 that the third and fifth claims won't be pursued by the
3 plaintiff. If they would be, they'd be released anyway,
4 and I'm happy to address that, if necessary. Again,
5 they relate to fraud and the inducement of the note back
6 in 2014.

7 And then finally, Your Honor, Mr. White's sixth
8 claim is for violation of South Carolina Uniform
9 Securities Act. His allegations there are that CFR
10 failed to provide a prospective to Mr. White when he
11 sought his investment. Mr. Herwald made false
12 statements about the financial health of the company
13 when he said it was experiencing short-term cash flow
14 problems. And Mr. Herwald failed to disclose the full
15 financial condition of the company and it was insolvent
16 at the time that the investment was allegedly listed.

17 Your Honor, the investment occurred on November
18 -- on September 11th, 2017. Mr. White admitted that all
19 the statements that Mr. Herwald allegedly made regarding
20 the investment had been made before that date, long
21 before the release was signed.

22 Further, his own testimony establishes beyond any
23 doubt to when he received those full financial reports
24 on November 2nd, 2017, about a month before he signed
25 the release. He knew that the company was insolvent.

1 He knew his shares were not worth anything. He knew
2 that the valuation of the shares was pulled out of thin
3 air. He knew that the company had long-term debt to
4 Fifth Third and McLarty, which he wasn't previously
5 aware of.

6 And he testified that when he saw those reports,
7 he knew the company was in serious financial trouble,
8 not just dealing with cash flow problems. And if he had
9 seen those reports before he invested, he would have
10 never invested. And with all of that knowledge, Your
11 Honor, on November 30th, 2017, a month later he signed
12 the release.

13 We don't agree with his characterization of all
14 those things. We dispute those, but that's his own
15 testimony. That's what he said he was aware of a month
16 before he signed the release in this case.

17 So from the beginning, Your Honor, we're simply
18 asking the Court to enforce a plain and unambiguous
19 contract that the parties entered into. There's no
20 question CFR lived up to its obligations under this
21 release agreement. It paid Mr. White \$300,000 in
22 severance that he otherwise would not have received.
23 We're simply asking that Mr. White be held accountable
24 to the contract and to the release, the plain and
25 unambiguous release that he signed.

1 That's all, Your Honor. So we ask that the Court
2 enter summary judgment for the reasons that I've
3 discussed and the reasons in our brief on all the
4 plaintiff's claims.

5 THE COURT: Thank you, Mr. Schanen.

6 Mr. Puriefey?

7 MR. PURIEFOY: Your Honor, I think it's important
8 that we give a little bit more background and flush out
9 a couple of the points that were made by Mr. Schanen
10 during his argument.

11 In July of 2014 when Mr. White sold his business
12 to CFR, there was an employment agreement that was
13 executed between the parties. Contained in that
14 employment agreement was a severance/non-compete
15 provision. As part of that provision, it was required
16 that a general release be executed, again, all falling
17 under the non-compete language of the employment
18 agreement. An execution of general release to the
19 satisfaction of CFR.

20 And so at the time that Mr. White began his
21 employment, it was always known and anticipated that a
22 general release was going to have to be executed at the
23 termination of his employment, whether it be through
24 recognition or otherwise.

25 On November 29th, Your Honor, and this is, this

1 is extremely important. At the very same time that Mr.
2 White is resigning his position with CFR and on the day
3 that this document was executed, November 29th, 2017,
4 there were email communications that were attached to
5 our brief as exhibits 11 and 12. And in those email
6 communications, Mr. White is having direct
7 communications with Mr. Herwald regarding his note.

8 At this time the note payments had already been
9 missed, Your Honor, by November of 2017. The last
10 payment was made in July of 2017. So Mr. White, of
11 course, was fully aware of the fact that they were in
12 default under the terms of that note and the payments.

13 However, what Mr. Herwald is telling Mr. White
14 throughout those conversations is that he acknowledges
15 that the payments have been missed; that he is doing
16 everything within his power to ensure that those
17 payments resume in the immediate future. And this is
18 all -- these conversations are occurring the same day
19 that they're constructing the execution of this general
20 release. There's no question, Your Honor, that it was
21 always intended that Mr. White be paid under the terms
22 of his note regardless of whether he executed this
23 general release or not.

24 And so, this brings us to two important legal
25 principles, Your Honor. Two independent reasons as to

1 why the general release itself in the Motion for Summary
2 Judgment as to our claims should be denied.

3 In 1926, Your Honor, almost 100 years ago, the
4 South Carolina Supreme Court in the case of
5 Jewelry vs. Kerhulas, held that if a litigant argued
6 that an opposing party got them to sign or execute a
7 contract through fraudulent means, that that contract
8 itself is void. More importantly, what it says is that
9 you need not show fraud through direct evidence, but
10 rather it can be demonstrated through a litany of
11 circumstantial evidence.

12 That is extremely important, because what we have
13 here, Your Honor, is numerous occurrences of what we
14 believe to be fraudulent acts. And perhaps more
15 importantly, the second holding from that case, You
16 Honor, indicated -- and this is a quote: The only thing
17 that can defeat this right to a trial by a jury is
18 movant's failure to offer some evidence to substantiate
19 the claims interposed to mean.

20 All Mr. White has to demonstrate for purposes of
21 his fraud claim on the general rule is that they are so
22 immense and the weight of that evidence is left to the
23 jury. The question is whether he has presented some
24 evidence at all that could give rise to fraudulent
25 conduct.

1 What we have alleged is that Mr. Herwald, on the
2 very day the general release was being executed and
3 informed Mr. White I'm going to pay you on your note.
4 The general release sets, and this is the second point
5 of law, Your Honor. What Mr. Schanen has failed to
6 realize is that this is a contract and it's subject to
7 all contract principles. Meaning, offered acceptance
8 consideration and there has to be some meeting of the
9 minds between the parties.

10 Your Honor, in the case -- in Valor v. Department
11 of Transportation, Your Honor, it stands for basic legal
12 principles. And that release agreements specifically
13 are still governed by contract law through principles.

14 In Southern Atlantic Financial Services v.
15 Middleton, they've held that when construing a contract,
16 the primary objective was to ascertain and give effect.

17 (Phone rings.)

18 THE COURT: Go ahead.

19 MR. PURIEFOY: Your Honor, in Southern Atlantic
20 Financial Services v. Middleton, it states again that in
21 construing a contract, the primary objective is to
22 ascertain and give effect to the intention of the
23 parties. So the intent of the parties in entering into
24 any contract is extremely important.

25 In Thomas McCain v. Siter, the Court held that

1 parties intentions must be gathered from the contents of
2 the entire agreement and not from a particular clause
3 thereof. Meaning, you don't get to look at one single
4 setting and the entire contract define the intent of the
5 party based on, based on that. What you have to do is
6 look at the entirety of the agreement.

7 The general release, Your Honor, executed by Mr.
8 White, in section two of that release, it relates
9 specifically to payment of wages and releasing payments
10 associated with his payment wages. Section three, that
11 contains the very first whereas makes direct reference
12 to the employment agreement itself. These two were tied
13 to one another. The terms and conditions contained in
14 Mr. White's employment agreement was directly tied to
15 this release.

16 And so when we're looking at the overall intent
17 of the document itself and the intent of the parties who
18 are executing it, one, we make note of the fact that
19 it's done referencing the employment agreement itself.
20 The very first section releases claims related to the
21 payment of wages that was spelled out in the employment
22 agreement. Section three is the release itself.

23 Your Honor, section three goes through 19
24 employment related claims that Mr. White was releasing
25 against all of these defendants. The agreement goes on

1 to our release claims related to any matter that would
2 be governed by the Department of Labor, any matter
3 governed by the EEOC and Title Seven, as well as the
4 ADA. It releases claims related to -- or it speaks
5 about returning property that was given to Mr. White
6 during the course of his employment.

7 And it goes through all of these instances,
8 waivers as it relates to employment specific issues.
9 There's not one -- not one mention, Your Honor, of the
10 subordinated note that Mr. White was entitled to.
11 There's certainly not a mention of his waiving his
12 rights. And I believe, Your Honor, this, this also is,
13 is fraudulent and really speaks to the -- the really
14 nefarious activities that took place in this case.

15 Mr. Schanen, he noted that on September 11th, Mr.
16 White invested \$550,000 into CFR. What Mr. Schanen
17 noted, and it was shining a bright light on, was
18 November 2nd was the day that he was first provided with
19 the full financial condition of the company. This was a
20 month after he had already invested a fortune and was
21 sick when he realized that at the time of his investment
22 of \$550,000 the company had a negative \$6 million in
23 shareholder equity. His shares were absolutely
24 worthless.

25 So when he goes into executing this general

1 release, Your Honor, the entire thing relates to his
2 employment and all waivers and claims associated with
3 that. And, quote, that is what the general release
4 speaks to. The -- it is absurd to think that either
5 party at the time that they entered into the general
6 release, Your Honor, contemplating, one, that Mr. White
7 was waiving his rights to be paid under the terms of his
8 promissory note, which has never once been alleged to be
9 unenforceable or void for any reason. There's no way
10 that either party contemplates that. And far more
11 importantly, a month after -- well, two months after he
12 invested \$550,000, it certainly wasn't contemplated by
13 the parties or the parties' intent.

14 For Mr. White to waive his right to the shares
15 that he purchased in that company -- because under the
16 defendant's argument -- and, again, Your Honor, this is
17 important -- the same attorneys that drafted these
18 transaction documents in July of 2014, were the
19 attorneys that drafted the November of 2017 general
20 release. How the defendants knew that defendants were
21 in breach of contract under the terms of the
22 subordinated note, dating back to July of 2017.

23 They then drafted the agreement that Mr. White
24 had to execute per the terms and conditions of his
25 employment agreement, he had to execute the general

1 release. And what they did was they built in a single
2 sentence, it's 12 words where there's a -- that Mr.
3 White releases all claims, known or unknown, in contract
4 toward equity. They relied on the single provision,
5 Your Honor, to justify an argument that at the time that
6 Mr. White signed this release, he walked away from over
7 a half a million dollars that would go to him under his
8 note, and he was walking away entirely from a \$550,000
9 investment. It absolutely could never have been
10 contemplated or the intention of the parties that that
11 be the case.

12 Your Honor, if we look no further than the
13 general release itself, the general release and the
14 safest thing for breach of that general release
15 specifically encompassed the note, as well as the
16 \$550,000 that he invested. Your Honor, I could convince
17 two independent legal principles. One being, all we
18 have to show is some evidence of fraud, and I certainly
19 believe that we have done that. As soon as there is
20 some evidence presented to this Court as the
21 demonstration of fraud with some fraudulent conduct,
22 that becomes an issue that has to go through a jury for
23 determination. It couldn't wait when the credulity of
24 the evidence presented is a jury question.

25 We certainly believe that we have set forth some,

1 and not even all the fraudulent conduct in this case,
2 Your Honor. It's too plentiful to name the absolutely
3 atrocious lengths that the defendants went to, to rob
4 Mr. White of nearly a million dollars. So for those
5 reasons, Your Honor, the general release itself, we
6 believe that the Motion for Summary Judgment on that
7 claim should be denied.

8 There, there's also a Motion for Summary
9 Judgement, Your Honor, related to a breach of contract
10 on the subordination agreement. And this is extremely
11 important as well. The defendants in this case have
12 filed a counterclaim against Mr. White, alleging that in
13 violation of the subordination agreement he brought the
14 present action.

15 And if Your Honor would refer to Exhibit 3 -- oh,
16 excuse me. It's Exhibit 9, I believe, Your Honor, of
17 the plaintiff's memorandum. This is a subordinated
18 agreement that in section nine, I believe Your Honor
19 states that Mr. White was precluded from bringing this
20 lawsuit on the note itself. One of our causes of action
21 is a breach of contract on the promissory note.

22 The defendants take the position that a strict
23 reading of section 9 precludes Mr. White from bringing a
24 suit against CFR in the event that there is a default
25 under either one of the two superior notes; i.e., the

1 note with Fifth Third Bank and McLarty Capital Partners.
2 There is admittedly a provision in this breach of -- or,
3 excuse me, in the subordination agreement that does make
4 specific reference to that fact.

5 However, what the defendants are failing to
6 recognize is that in section three of that same
7 subordination agreement, it goes through very explicit
8 terms regarding notice that must be provided to
9 Mr. White before section nine becomes applicable.
10 Meaning, under section, section three, Your Honor, it
11 states that Mr. White has to be provided written notice
12 at either his home or his attorney's office of a
13 superior default. And that notice had to have come from
14 one of the superior lenders. Meaning, before Mr. White
15 could be precluded or was precluded from bringing suit
16 on the breach of the note, Fifth Third Bank and McLarty
17 had to send Mr. White written notice that he -- or that
18 CFR had defaulted on their two present agreements. That
19 was defined as a superior -- a notice of superior
20 default within that agreement.

21 On page seven of our brief, Your Honor, I go
22 through a number of questions with Mr. Herwald regarding
23 this issue. And to just summarize what this testimony
24 states, Mr. White admits during the deposition that the
25 only two places that Mr. White was allowed to be served

1 with the subordination agreement would be to his home
2 and to his attorney's office.

3 And when asked whether he had any personal
4 knowledge of whether he had sent that information to Mr.
5 White, he indicated he had not. And when asked whether
6 or not either of the superior lenders had sent that
7 information to Mr. White, he indicated they have not.
8 Meaning, as of today, and we're now May 17th of 2021,
9 Mr. White still has not ever received the written notice
10 in accordance with the subordination agreement
11 indicating that the defendants were in default under
12 this superior loan.

13 And, Your Honor, it's important to note, Mr.
14 White invested in CFR in September of 2017. On July
15 24th of 2017, Mr. Herwald received notice, only him and
16 the CFO, received notice that CFR was in default to a
17 party and omit their name. Admittedly, only those two
18 individuals knew about default of nearly \$20 million.

19 It was not \$20 million of loans that they had
20 taken out, they were actively and abrasively held in
21 default on \$20 million of debt. None of this
22 information, Your Honor, admitted. Throughout Mr.
23 Herwald's deposition, it was his testimony that it was
24 common knowledge that the business was in poor financial
25 condition. But when asked specifically whether he has

1 personal knowledge about where the notice of default was
2 ever sent to Mr. White, he said it had not been.

3 Your Honor, \$20 million of default debt in July
4 of 2017. That information was never disclosed to Mr.
5 White prior to his investment. In fact, conversations
6 that Mr. White's having with Mr. Herwald was simply they
7 are short-term cash flow problems. I addressed in my
8 brief, Your Honor, a lot of testimony, a lot of
9 questions during the course of the deposition where I
10 specifically asked Mr. Herwald, are short-term cash flow
11 problems indicative of the overall financial haul of the
12 company? The answer was a resounding no. Of course
13 it's not. There are peaks and valleys when you deal
14 with an industry such as this.

15 In another deposition, Your Honor, J.C. Viteri,
16 who is another upper level executive, I asked him the
17 very same question. Were there ever concerns on an
18 upper level executive that the company was in poor
19 financial health? And his answer was a resounding no.
20 He, too, invested \$100,000 as a result of Mr. Herwald's
21 representation.

22 Your Honor, Mr. White sold this company to Mr.
23 Herwald in 2017. He was afraid that Mr. Herwald -- they
24 had numerous discussions about the health and the
25 condition of the company and every representation as to

1 Mr. White was that the business was simply experiencing
2 cash flow problems and nothing more.

3 Your Honor, this simply wasn't the case. And,
4 again, this is also speaking to the general release
5 issue as it relates to fraud. But the conduct of the
6 defendants in this case is atrocious. And in July of
7 2017, following the default of the \$20 million that they
8 owed to McLarty and Fifth Third Bank, the CFO -- CFR did
9 a 13-week forecast, a cash flow forecast. And it is
10 obvious it was to stave off Fifth Third Bank and McLarty
11 for seizing all of the assets of CFR. They were hoping
12 to be able to cut the cash flow through some sort of
13 refinancing the debt.

14 In these projections, Your Honor, this is the
15 third demonstration of the fraud and at least some
16 evidence of it. In this 13-week forecast, Your Honor,
17 they carried on their quote and anticipated a credit of
18 \$500,000 in tax refunds. We have not been able to
19 locate any document that was suggestive to a tax refund
20 was coming in July of 2017, but they continued to carry
21 it on the books. And in its presentation to the
22 creditors, the two creditors, it didn't look like money
23 that was coming in and it balanced out exactly what they
24 needed for purposes of the cash flow. In order for them
25 to remain in a positive cash flow position, they had to

1 show this \$500,000.

2 On September 15th, four days after Mr. White
3 invested, after being solicited investment by Mr.
4 Herwald, they change how this was on their forecast from
5 a tax credit to an equity contribution. Your Honor, Mr.
6 Herwald knew when he was soliciting Mr. White, that they
7 were in default. And that was a fact undisputedly,
8 unknown to Mr. White. He knew why he needed the money.
9 Mr. White did not know why Mr. Herwald needed the
10 \$550,000, but a review of the evidence in this case made
11 clear why he needed that money, Your Honor.

12 So I believe, first and foremost, the motion to
13 -- the Motion for Summary Judgment as it relates to the
14 subordination agreement, that must be denied. In fact,
15 under the red note summary judgment claims, it says the
16 only question for the Court is whether or not Mr. White
17 received notice in accordance with that subordination
18 agreement on that superior default. And Mr. Herwald and
19 Mr. White, they both indicated that even as of today's
20 date, we have never received notice of that fault.

21 And so, Your Honor, those two are really the
22 reasons we believe that both of the motions for summary
23 judgment should be denied.

24 THE COURT: All right. Mr. Schanen, do you want
25 to respond to the --

1 MR. SCHANEN: Yeah, absolutely.

2 THE COURT: -- summary motion?

3 MR. SCHANEN: Absolutely. And the last part of
4 that had to do with our Motion for Summary Judgment, but
5 there's a few things, you know, back up. I mean, on our
6 counterclaim, but there are a few things that I'd like
7 to address with respect to our Motion for Summary
8 Judgment on Mr. White's claim.

9 What you didn't hear in any of that, Your Honor,
10 was any causes of action hadn't accrued at the time of
11 the general release was done. That wasn't disputed. So
12 everything rises or falls on whether the release is
13 valid, whether it covers claims, any and all claims.
14 Not just employment related claims or -- and whether it
15 was, you know, procured by fraud or not.

16 Now, Your Honor, what you also need to hear, not
17 a single piece of record evidence where Mr. White, you
18 know, where Mr. White said that the agreement itself,
19 the release agreement was procured by fraud. You don't
20 just get to talk about everything else that might have
21 happened with the investment or with everything else and
22 say that's the fraud.

23 To set aside the release agreement, the fraud has
24 to relate to the agreement itself. And in this case,
25 the inducement of entering into the agreement. That's

1 what fraud and the inducement is. That's what they have
2 to show and they have to establish a genuine issue of
3 material fact on that issue. And, Your Honor, there's
4 not a single getting here or there is not an agreement.
5 There's not a single piece of evidence that suggests
6 that there would be a factual misstatement about the
7 release. The misstatement that could give rise to the
8 fraud as to inducement into the release.

9 And Mr. White's own testimony was he didn't rely
10 on such statements. There's nothing in the record about
11 that at all. Your Honor, Mr. White thought by reading
12 the release that he read, he thought by reading the
13 release it only applied to employment claims. And so,
14 therefore, by his own admission he didn't consider
15 anything related to whether the note was going to be
16 paid or what he knew about the investment, he just ---

17 THE COURT: Well, let me stop you. How do you
18 respond? Mr. Puriefoy alleges that the parties were
19 having communications about the note, it looked
20 simultaneously with the communications about terminating
21 his employment. How do you respond to that?

22 MR. SCHANEN: First of all, I have looked at 11
23 and 12 that he referenced and there's no, no such
24 communication in there, so I don't know what he was
25 referencing. But second of all, if there -- as I said

1 in the beginning, we always intended to reinstate the
2 payments under the note if we were allowed to, so that's
3 not in dispute. The senior lender never would allow us
4 to reinstate those payments under the note.

5 Mr. White -- what would matter, Your Honor,
6 potentially is if Mr. White said, look, I relied on
7 these statements about -- which I still haven't seen,
8 but I relied on these statements about, you know, the
9 note being paid in deciding whether I was gonna enter
10 into that release. That was a material fact that I
11 considered in deciding whether to enter into the
12 release.

13 That evidence simply doesn't exist. He said he
14 didn't consider anything. He just said he got the
15 release. He thought it only related only to employment
16 claims because it was given to him in the context of
17 ending his employment, and says he signed it.

18 Your Honor, that would only come into play if he
19 relied on those statements in deciding whether to enter
20 into the release. And there has to be record evidence
21 of that, and there just simply isn't. The record
22 contradicts that.

23 There's no evidence for this Court to satisfy the
24 release on the basis of fraud when there's no fraudulent
25 statement. Now, also, if that same email that you asked

1 about exists, if it's a statement as to future events,
2 the law is very clear in South Carolina that can't
3 support fraud. It has to be of a present fact, not a
4 future event. And so that couldn't support fraud
5 anyway, even if he had relied on it.

6 So, again, the key thing is, he would have to
7 present evidence to this court that he relied on that
8 statement in entering into the release. And I would
9 challenge Mr. Puriefoy to show us where in the record
10 that is, because it doesn't exist.

11 Your Honor, I think this is also real important
12 because there's a lot of accusations against Mr. Herwald
13 and CFR here that are unfounded. And I don't really
14 want to get into a lot of it, because that falls to
15 lawyer arguments and statement of fact. But I think one
16 thing that is very important for the Court to do is to
17 consider the employment agreement itself, which is
18 Exhibit I.

19 And, you know, where this severance and release
20 comes in is section six. It deals with termination of
21 employment. And, Your Honor, section C says,
22 termination other for death or disability. Company may
23 terminate employee's employment during the employment
24 period for any reason or no reason upon 30-days notice.

25 Then section D is the one where it says severance

1 non-compete payment. And it says: Following
2 termination of employment, pursuant to 6(c) for any
3 reason other than death or disability. So where this
4 provision applies is to when the company terminates.
5 That's what section 6(c) is.

6 Then: Upon execution of a general release -- not
7 a limited release, not a release relating on his
8 employment, but the general release, employee will be
9 paid the \$300,000 of severance.

10 So then if you look, Your Honor, at section F,
11 that's termination by the employee. That's resignation.
12 No mention of severance there. So this agreement is
13 very clear, Your Honor. The severance obligation only
14 comes into play if the company terminates him, right?
15 So there was no obligation of CFR to even pay this
16 \$300,000. But they were gonna pay it. They were
17 entitled to a, quote, general release, and that is the
18 norm. If you're gonna pay somebody \$300,000 from the
19 company's perspective, you want a clean slate. He
20 doesn't have to sign it. If he thought he had claims
21 that were worth more than that that he wanted to pursue,
22 he had every right in the world not to sign this
23 agreement and to pursue those claims. But he also had
24 the right to sign, take the \$300,000 and release the
25 claims, and that's what he did. But it's very

1 interesting that all this nefarious conduct would be
2 suggested as to Mr. Herwald in trying to deceive when
3 here in November what he was doing was giving Mr. White
4 \$300,000 that he wasn't entitled to receive under this
5 agreement because he resigned and the severance
6 provision only applies if you're terminated by the
7 company. It contradicts this notion that, you know,
8 like our company is evil. And then this suggestion that
9 Nelson Mullins added this language in to, to try to
10 deceive him, Your Honor, I'd ask you to read the
11 agreement. It says in multiple places it applies to any
12 and all claims. Of course it lists employment claims
13 because it's given to somebody who's ending their
14 employment and you have to list those things. I use
15 this very same agreement for every company that I give a
16 release to hundreds of times. And I can absolutely
17 assure you as an officer of the court this language
18 isn't added in to try to deceive Mr. White. It is the
19 general release of clients. The employment agreement
20 says it would be a general release claim. The company
21 is entitled to wipe the slate clean if it's gonna pay
22 the man \$300,000. And that's exactly what happened. He
23 got the money. He should be bound by the agreement he
24 signed. All the causes of action had accrued. There's
25 no question about that. And when, you know, if we

1 litigated this for a year-and-a-half, spent hundreds of
2 thousands of dollars on it at this point, and it
3 shouldn't go any further, Your Honor. This should end
4 where a party signs a release, they should be bound by
5 it.

6 THE COURT: Then what happened to these shares?

7 MR. SCHANEN: The shares ---

8 THE COURT: Did he kill all of the ---

9 MR. SCHANEN: His shares existed. So, what
10 happened with his shares, Your Honor, was he didn't give
11 up his shares by signing the release. He kept his
12 shares. Now, what happened was then in May of 2020,
13 another company came in and invested in CFR. And as
14 part of that -- the share is a complicated structure, so
15 I'm not the corporate lawyer that handled it. But the
16 shares in CFR were rolled over into the shares called
17 CFRI, I think. In the new company that was formed.

18 And so, his shares would have been fold into that
19 and continued to exist. However, in order to do that,
20 like any other person who is investing, it is required
21 that they sign a release of all claims against the
22 company. And he wouldn't sign it. He wouldn't sign the
23 release. And so, therefore, he wasn't allowed to roll
24 his shares into the new company.

25 That was when I mentioned we were perfectly

1 willing to pay him out under the note. In connection
2 with that transaction, he would have been able to roll
3 his shares into the new company and receive full payment
4 under the note, but he would have had to have signed his
5 release of these other security claims and he wouldn't
6 do it, so none of those things happened.

7 And as to that point, when that investment
8 occurred in 2020, they never were able to make payments
9 to them under the note. They were never cleared by the
10 senior lender, so to do that, the opportunity for that
11 to happen was at the closing, but he wouldn't sign the
12 release.

13 THE COURT: Well, if the shares didn't roll over,
14 what happened to them, are they gone?

15 MR. SCHANEN: So at that point, his shares are
16 gone at that point.

17 THE COURT: Okay.

18 MR. SCHANEN: By his own choice.

19 THE COURT: All right, thank you.

20 Mr. Puriefoy, I'll give you the last word.

21 MR. PURIEFOY: Your Honor, very quickly. Again,
22 what I think we need to keep our focus on is that
23 although Mr., you know, Schanen is saying that this
24 general release would include all claims forever and
25 ever, known or unknown, in 1926, this was nearly 100

1 years ago, the court made it very clear if you're able
2 to demonstrate through some evidence, not extensive
3 direct evidence, but from circumstantial evidence, some
4 evidence of fraud, and I certainly believe we've done
5 that.

6 And further to that, Your Honor, as more of the
7 evidence in Mr. Herwald's deposition, this is from Bruce
8 Spicer's representations on November 29th, 2017, which
9 was the representation for Mr. Herwald, assuring Mr.
10 White that his note payments are in place, that he will
11 resume them as quickly as he possibly can.

12 Herwald maintained a very different position
13 during his deposition. And in an effort to justify the
14 breach in the note, he stated that it was nice to have
15 the option to use the general release as additional
16 negotiating leverage if someone opts not to comply with
17 the severance agreement.

18 I then asked him when asked about this new
19 accountability to not have to pay under the terms of the
20 note, I said: Essentially, was that term included so
21 that if someone didn't do what you wanted them to do,
22 you could withhold payment of the note? He said, yes.
23 And I then followed up with: Did you ever discuss that
24 with Mr. White? And his answer was no.

25 Where our courts have held time and again that

1 secret intent of the parties cannot be considered for
2 purposes of establishing what the party's intent to that
3 agreement was. But that line of questioning was clear
4 that at the time that Mr. Herwald was presenting the
5 general release to Mr. White, it was either never
6 contemplated by the parties or it was his secret intent
7 that in producing this document, that was causing it to
8 originally violate the employment agreement.

9 And Mr. Schanen said it best. It was in
10 connection with his employment agreement. That's it.
11 Every single sentence contained in that release relates
12 to employment except for the one sentence that Mr.
13 Schanen relies on, refers to it on his Motion for
14 Summary Judgment.

15 I think that we've certainly demonstrated that
16 there exists some evidence of fraud. Certainly an issue
17 that needs to be flushed out in front of a jury. Where
18 our courts have held timely again, that upon
19 demonstration of that, that sub-evidence standard, it
20 must be submitted to a jury. And, again, to quote that
21 case, the court held that the only thing that can cure
22 this right to a trial by jury is movant's failure to
23 offer some evidence.

24 If this Court determines, Your Honor, today that
25 there is at least some evidence that needs to be

1 committed to a jury, the Motion for Summary Judgment
2 must be denied.

3 MR. SCHANEN: Your Honor, I just have to address
4 that. I asked, you know, where is the evidence that
5 this release agreement was procured by fraud? Where is
6 the statement that was relied on by Mr. White in signing
7 this agreement? And we can't -- I can't get it. It
8 doesn't exist. There's nothing in the record, not a
9 single shred of evidence that says he relied on anything
10 signing this agreement. You can't just say there's some
11 fraud. Fraud has to be pled and proven with great
12 particularity and we just don't have it. It just
13 doesn't exist.

14 And, Your Honor, the statement about Mr. Herwald
15 and the secret intent, all Mr. Herwald is saying is I
16 wanted to pay him under the note. That was always my
17 hope. I would hope that we would continue to pay, but I
18 also recognize that he signed the release. And,
19 therefore, if he breaches the agreement or is out of
20 line that way, then we would have the ability to assert
21 that. That's all that was discussed. That's not evil
22 or malicious. That's Mr. Herwald talking to his lawyers
23 about what a release means where Mr. White didn't.

24 THE COURT: All right.

25 MR. SCHANEN: And that's all there is to it.

1 THE COURT: I'm gonna go through and I'm gonna
2 read what the two of you have submitted. And there's
3 been a significant amount of documentation that has been
4 submitted from each side. So I'm gonna take this under
5 advisement. I want to thank counsel. You've presented
6 very detailed and well prepared arguments. And I'm
7 gonna go through it very carefully, and I will have my
8 law clerk email you when I've reached a decision. But
9 thank you, gentlemen.

10 MR. PURIEFOY: Thank you, Your Honor.

11 MR. SCHANEN: Your Honor, I referenced some
12 deposition testimony that wasn't attached to my brief.
13 The whole deposition is in the record, but I did have a
14 handout.

15 THE COURT: If you have a hard copy, I'd be happy
16 to take that.

17 MR. SCHANEN: This is just additional to what was
18 already in there. Thank you.

19 THE COURT: Thank you.

20 MR. PURIEFOY: Thank you, Your Honor.

21 THE COURT: You all have a good day.

22 MR. SCHANEN: Thank you, Your Honor.

23 (Hearing concluded at 10:41 a.m.)

24

25 --- THIS ENDS REQUESTED TRANSCRIPT ---

COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of May, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Julie A. Cendroski

Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

RICHARD D. WHITE,)
)
 PLAINTIFF,)
)
 -VS-)
)
 FT ACQUISITIONS, LLC,)
 COMMERCIAL FOODSERVICE)
 REPAIR, INC., AND)
 KURT HERWALD,)
)
 DEFENDANTS.)
 _____)

2019-CP-23-06915

TRANSCRIPT OF RECORD

MAY 9, 2022
GREENVILLE, SOUTH CAROLINA
VIA WEBEX

B E F O R E:

THE HONORABLE J. DERHAM COLE

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

DEVON M. PURIEFOY, ESQ.

ATTORNEYS FOR DEFENDANTS:

GILES M. SCHANEN, JR., ESQ.
ELIZABETH C. EDMONDSON, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** Next is White v. FT Acquisitions.

2 **MR. SCHANEN:** Thank you, Your Honor. This is Giles
3 Schanen for the Defendants.

4 **THE COURT:** All right.

5 **MR. SCHANEN:** Your Honor, I think the first motion is our
6 motion for summary judgment. With me today is Elizabeth
7 Edmondson, who's an associate in our office.

8 And we're here today, Your Honor, to ask the Court to
9 enforce a full release of claims that the Plaintiff, Rick
10 White, voluntarily executed in return for a payment of three
11 hundred thousand dollars (\$300,000.00). Mr. White signed the
12 release, Your Honor, he took the three hundred thousand
13 dollars (\$300,000.00), he's kept every penny and yet he still
14 sued our clients on claims that fully accrued prior to the
15 date he signed the release.

16 Our clients lived up to their side of the bargain, Your
17 Honor. They paid Mr. White the three hundred thousand
18 (300,000) in severance that they promised him, but Mr. White
19 doesn't want to live up to his side of the deal. He wants to
20 keep the three hundred thousand dollars (\$300,000.00) but
21 disregard the release he signed.

22 And there's an expression for that, Your Honor,
23 apologize, but he wants to have his cake and eat it, too.
24 And, fortunately, Your Honor, that isn't how the law works.
25 The contracts that parties sign have consequences. And that's

1 particularly true for highly sophisticated parties like Rick
2 White.

3 In this case the consequence of Mr. White signing the
4 release and keeping the three hundred thousand dollars
5 (\$300,000.00) that he was paid for doing so is that he doesn't
6 have the right to go to trial on the claims that he released
7 and that he's brought in this case. Discovery's complete,
8 Your Honor. We're approaching trial.

9 And to allow Mr. White to go to trial on these released
10 claims would deny my clients the benefits of the bargain that
11 they struck and that they've lived up to. And, respectfully,
12 Your Honor, that can't be permitted to happen.

13 I'll be very brief in talking about the facts of this
14 case. Most of these are just background facts because the
15 enforceability of this release doesn't involve the
16 determination of many facts.

17 Mr. White's a highly successful businessman from
18 Virginia. He built up a company in the food service repair
19 industry. And he was the majority partner in that business.

20 In 2014 he and his minority partner sold the company to
21 our client, CFR, for fourteen million dollars
22 (\$14,000,000.00). Thirteen million (13,000,000) of that
23 fourteen million (14,000,000) was paid at closing. Mr. White
24 and his partner received it. And the last million was to be
25 paid over time pursuant to a note that was split between Mr.

1 White and his partner.

2 After the sale back in 2014 Mr. White also came to work
3 for CFR. He was the second highest person in the company,
4 second only to the CEO. And he was over all of the company's
5 operations.

6 So fast-forward from that sale in 2014 to July 2017,
7 three years later, Mr. White's still working for CFR. The
8 company's struggling financially. It can't make payments to
9 its suppliers. The suppliers stop extending credit to the
10 company. It can't make payments to its lenders. So the
11 lenders order CFR to stop making payments to Mr. White on that
12 note.

13 Now at that point in time, Mr. White was still owed about
14 two hundred and fifty thousand dollars (\$250,000.00) on the
15 note. So keep in mind, Your Honor, thirteen million
16 (13,000,000) paid at closing, a million (1,000,000) on the
17 note and now that obligation to Mr. White's been reduced down
18 to about two hundred and fifty thousand dollars (\$250,000.00).

19 So the last payment to Mr. White was made in early July
20 of 2017. He was told around July 5th, 2017 that no more
21 payments would be made until the situation with the lender was
22 resolved. Those monthly payments weren't made and they never
23 resumed. The company wasn't allowed by the lender to make
24 those payments. They never were.

25 A couple of months later and the situation hadn't

1 improved. The company still wasn't being permitted by its
2 lenders to make those last few payments to Mr. White under the
3 note. And the company still wasn't able to pay its suppliers.
4 It dramatically needed a cash infusion.

5 So on September 11th, 2017 both the CEO, Kurt Herwald,
6 who's a Defendant in this case, and Mr. White, the number two
7 man in the company, put in some of their own money. Mr. White
8 put in five hundred and fifty thousand dollars (\$550,000.00)
9 to help the problem. It was a simple, private investment, two
10 leaders of the company, and in return they received common
11 stock.

12 So two months later in November of 2017 things have just
13 gotten worse. Mr. White decided he wanted out. He asked the
14 CEO if he could have a change in title and increased
15 responsibility. And when he didn't get those things, he
16 submitted his written resignation and quit.

17 Under Mr. White's employment agreement he wasn't owed any
18 severance. The severance obligation only kicked in if he was
19 terminated without cause. And, of course here, he quit. So
20 he would not have received severance under that agreement.

21 But despite that, CFR decided to offer him three hundred
22 thousand dollars (\$300,000.00) in severance. And in return
23 they received a full release of claims. Standard severance
24 agreement, you receive your severance payment, you give a full
25 release of claims, you wipe the slate clean.

1 Now it's undisputed that to receive the three hundred
2 thousand dollars (\$300,000.00) in severance Mr. White was
3 required to sign the severance agreement, which is titled
4 General Labor and Release. We attached that to our brief as
5 exhibit G. And I'll share the relevant provisions here
6 shortly.

7 Mr. White was instructed in writing to review the release
8 with his lawyer. And the release states on its face that he
9 had 21 days to consider it. And if he signed it, he still had
10 seven days to revoke the release. Mr. White actually signed
11 the release twice. He first signed it on November 30th with
12 an e-signature. And then he signs again in wet ink on
13 December 5th, 2017.

14 Now after he signed the release, the severance payments
15 started. There's no dispute in this case that he signed the
16 release and then he received all three hundred thousand
17 dollars (\$300,000.00) in severance that's called for in the
18 release.

19 Then over two years after signing that release Mr. White
20 filed this suit against our clients in this case. And his
21 claims relate to two things. First, he claims that the
22 Defendants breached his note by failing to make that last two
23 hundred and fifty thousand dollars (\$250,000.00) of payments.

24 Second, he claims that CFR, my client, didn't provide him
25 with enough information about the company's financial

1 situation before he put that five hundred thousand dollars
2 (\$500,000.00) in on September 11th, 2017, that private
3 investment. He makes that claim even though he was an insider
4 in the company and he put the money in to help the operations
5 out knowing full well the company was in poor financial
6 conditions to the point that his payments had been blocked.
7 But still, we don't have to get into that factual issue.

8 With respect to the release what's important is Mr. White
9 does not dispute and cannot dispute that all of the claims in
10 this case had fully accrued by the time he signed that general
11 release in December of 2017. He can't contest that.

12 He also doesn't dispute that CFR fully lived up to its
13 side of the bargain under the release. CFR's only obligation
14 was to pay Mr. White the three hundred thousand (300,000) in
15 severance. And it paid that amount. And we're a few weeks
16 from trial, Mr. White has kept every penny.

17 He only raises two arguments as to why the release
18 doesn't bar his claims in this case. First, Your Honor, he
19 claims the release only bars employment related claims and
20 doesn't cover the types of claims that he's making in this
21 case. And we'll come back to that when we look at the
22 release.

23 And, second, he claims that CFR made false statements to
24 him in order to get him to sign the release and because the
25 release was shared by fraud, it can't be enforced. And that

1 second argument can be disposed of easily, Your Honor, as a
2 matter of South Carolina law.

3 First of all, and the Court doesn't have to determine
4 this, but he admitted at his deposition that there were no
5 representations made to him about the release. It was emailed
6 to him with no explanation. He read it. He reviewed it. He
7 knew he had time to consider it. He didn't ask any questions,
8 he just signed it. So there can't be any fraud in the
9 procurement of that release.

10 But what's even more fundamental is the Court doesn't
11 have to get to that question because South Carolina law is
12 very clear that a party to a release agreement cannot keep the
13 consideration that he received for signing the release and
14 then claim that the release isn't valid. That's been the law
15 in South Carolina since 1900, Your Honor.

16 It's called the Tender-Back Rule. If a party wants to
17 claim the release agreement is invalid, he can do that, but
18 he's first got to give back the money he received for signing
19 the release, then he can challenge it.

20 We cited a number of cases in our brief. The most recent
21 one, I think, is the Brewer case. In there the court
22 summarized the law. And I'll quote, in South Carolina it is
23 well settled that one who seeks to avoid the effects of a
24 release must first return or tender consideration paid
25 therefore. And it's cited, the Court of Appeals case in State

1 Farm Mutual Insurance Company versus Turner from 1990.

2 And then the court continued, a release induced by fraud
3 is not void but voidable. Thus, where a releasor after
4 discovering the fraud does not repay or offer to repay the
5 consideration he received from the releasee, he will thereby
6 be held to have waived the tort and affirmed the contract.
7 And that is the law in South Carolina since 1900s. It is as
8 black letter as it gets.

9 A party to a settlement agreement and released, he can't
10 keep the settlement payment and then claim you're getting
11 bound by the release. And a party to a severance agreement,
12 like we have here, can't keep all the severance payments and
13 then claim, well, the release was procured by fraud, so I'm
14 not bound by that.

15 And the policy behind that law is obvious, Your Honor.
16 It prevents a party from keeping the benefit of his bargain by
17 depriving the other party the benefit of theirs. In other
18 words, it prevents a party from doing exactly what Mr. White
19 is doing here, which is trying to have his cake, the three
20 hundred thousand dollars (\$300,000.00), and eat it, too, by
21 not being bound by the release that he entered into.

22 Now, Mr. White was required to sign that release to
23 receive the three hundred thousand (300,000) in severance. He
24 signed it, he received those payments, and he's kept every
25 penny. And under South Carolina law he simply cannot claim

1 that the release isn't valid. He's affirmed that release, and
2 he has to live by its terms.

3 And so, Your Honor, the only question remaining for the
4 Court to consider on this summary judgment motion is whether
5 the claims that Mr. White raised are within the scope of the
6 release so that those claims are barred? And, Your Honor, the
7 plain and unambiguous language of this general release shows
8 that that is absolutely the case.

9 Elizabeth is going to share on the screen, if she can do
10 that, so that the Court can see the highlighted text, but it's
11 also attached to our brief as exhibit G.

12 **MS. EDMONDSON:** There is a button to share my screen, and
13 now I can click it. Okay.

14 (Pause)

15 **MR. SCHANEN:** Your Honor, can you see that?

16 **THE COURT:** I can see that, yes.

17 **MR. SCHANEN:** Okay. So I'll start with the title, Your
18 Honor, there in bold and all caps, General Labor and Release
19 Agreement. Please read carefully. That's not a limited
20 release, it's a general release.

21 And then if we'll scroll down, an actual release
22 provision is in section 3, titled Release. And what it says,
23 Your Honor, is that it's the release of all claims. And then
24 it says after the words collectively the company, from any and
25 all actions, causes of actions, claims, demands, losses,

1 claims for attorney's fees and all other forms of civil
2 damages, occurrences and liabilities of any kind whatsoever,
3 both known or unknown, both known or unknown arising out of
4 any matter, happening or thing from the beginning of time of
5 the date of this agreement is signed by executive,
6 specifically including, but not limited to, and then it lists
7 a number of specific claims, one of which is local -- plans
8 arising under local state or federal common law, statute,
9 regulation or ordinance.

10 And then if we scroll down we see this release also
11 includes a release of any claims for wrongful termination,
12 breach of express or implied contract, intentional or
13 negligent infliction of emotional distress, libel, slander as
14 well as any other claims whether in tort, contract or equity
15 under federal, or state statutory or common law.

16 Then the next paragraph it says in the highlighted text,
17 it is the party's intent to release all claims which can be
18 legally released, but no more than that.

19 And then if we keep going down near the bottom of the
20 agreement we put this, you know, there in section 19 it said
21 execution of this agreement in the full release herein.

22 And then I think even most important, we go down, if all
23 that isn't enough, in this highlighted bold text box at the
24 bottom of the agreement it says, please read this agreement
25 carefully. It contains the release of all known and unknown

1 claims. You agree that you receive valuable consideration in
2 exchange for entering into this agreement and that the company
3 advised you in writing to consult an attorney prior to signing
4 this agreement.

5 Then it says in the next, you've been provided at least
6 21 days within which to consider this agreement and waive and
7 release all claims and rights.

8 Your Honor, the language we looked at -- this is a
9 general release. It applies to all claims. There's nothing
10 in what we saw that limits the operation of this release only
11 to employment related claims, it's a general release of all
12 claims.

13 Now I asked Mr. White about this at his deposition. I
14 asked him if he could point to any language in this release
15 that stated that it was limited to employment claims as
16 opposed to a release of all claims. And he admitted he
17 couldn't.

18 Here is -- here's his testimony. And I say, my question
19 is where in the language that I just read does it say that
20 it's limited to claims arising out of or related to your
21 employment? And he says, we'll just have to disagree, man. I
22 don't agree with you.

23 And I said, I'm asking. You don't get to do that. I'm
24 asking you to point to the language that says that or tell me
25 that there isn't any. And he says, I can't point to one.

1 And I say, okay. It actually says that you're releasing
2 all claims against the company, doesn't it? And he says,
3 that's what it says.

4 And I say, and, in fact, it says all claims from the
5 beginning of time to the date of this agreement, right? Yeah,
6 it says that.

7 And scroll down. And he says -- he admits here that
8 agreement had been intended to release only employment claims.
9 It could have said that.

10 And then he talks about the box at the bottom. Please
11 read this carefully. And he says he sees that. And he
12 acknowledges that.

13 You can scroll down, Elizabeth. It contains the release
14 of all known and unknown claims. And he said, yeah.

15 Now, remarkably, Your Honor, Mr. White testified that the
16 reason he doesn't think his claims are released by this
17 agreement are just because a person can't release their
18 claims. He said, yeah, a person can't just sign away their
19 claims. That's what the court system's for. So he believes
20 he can receive the three hundred thousand dollars
21 (\$300,000.00), but he's just not bound by the release.

22 Here's the language where he testified to that in
23 deposition. Can you scroll down, Elizabeth? Keep scrolling,
24 please.

25 MS. EDMONDSON: Oh, okay.

1 **MR. SCHANEN:** I don't believe I can sign my rights away.
2 If somebody does something wrong, you can't just make -- sign
3 and say I don't want to sue you. I think that's ridiculous.
4 That's what the court system is for.

5 So Mr. White acknowledges that the release is a release
6 of all claims. He acknowledges he signed it and he received
7 the three hundred thousand dollars (\$300,000.00). He just
8 doesn't think anybody can waive their rights by signing a
9 release.

10 And, Your Honor, that's just not the case. We know
11 that's not the case. Contracts people sign do have
12 consequences. He signed a release and he received three
13 hundred thousand dollars (\$300,000.00). And he can't avoid it
14 just because he doesn't think it should apply.

15 Your Honor, and Mr. White has excellent counsel in this
16 case. But Mr. Puriefoy also isn't going to be able to point
17 to a single sentence in that release that states it applies
18 only to employment claims. He just can't because there's not
19 one there.

20 I expect he will point to the fact that there's a list of
21 long employment claims that are released. And, of course,
22 those are in there because this is a document that was created
23 to be given to someone who was a former employee. So, yes,
24 it's going to list some employment claims, but right above
25 that it says including, but not limited to.

1 And then it talks about a whole other plethora of claims
2 that are released and makes clear in numerous instances that
3 this is a general release of all claims. It could not be
4 anymore clear in advising Mr. White of that.

5 This is -- this contract, Your Honor, is as plain and
6 unambiguous as it gets. It's not open to multiple
7 interpretations. It's not capable of an interpretation that
8 this is just a release of employment claims. It's only
9 capable of one interpretation, which is that it's a general
10 release of all claims.

11 And, Your Honor, there's no question that in return for
12 paying Mr. White three hundred thousand dollars (\$300,000.00)
13 that it had no obligation to pay, my client bargained for and
14 received a general release of claims, a release that wiped the
15 slate clean and that prevented Mr. White from suing on the
16 claims that arose in the past.

17 South Carolina law is very clear, Your Honor, that a
18 release is a contract. And the court's role is to give effect
19 to the intentions of the parties as expressed to the clear and
20 unambiguous language of the contract itself. We don't have to
21 get into secret intentions of the parties. When you have a
22 clear contract, you enforce that contract.

23 And, Your Honor, there's nothing here for a jury to
24 determine. It's simply a matter of the Court giving effect to
25 the plain language in the release, the language that Mr. White

1 agreed to and accepted payment for.

2 Your Honor, releases are critical documents in the legal
3 world and the business world because they provide certainty
4 and predictability. As Your Honor knows, releases are entered
5 into all the time as part of settlements, litigations. In
6 return for a payment to the plaintiff, the defendant gets a
7 release. And then he has certainty, hey, I'm not going to get
8 sued anymore by that plaintiff.

9 And like here, releases are entered into all the time in
10 connection with severance agreements. The company says, look,
11 if I'm going to pay you this money, I'm going to have an
12 obligation to pay you after you leave, then we're going to
13 wipe the slate clean. I'm going to get a release so that you
14 can't then come back and sue me.

15 And what makes those agreements work is the certainty
16 that goes along with it. Parties are willing to pay to settle
17 cases and willing to pay severance to employees because they
18 get the benefit of a release. They know that if they're sued
19 on something that happened in the past, the release will be
20 enforced and the claims will be summarily dismissed. They
21 won't have to go through a trial of those claims.

22 If parties pay in return for a release and then the
23 releases aren't enforced in court, that certainty goes out the
24 window. That's bad for business. It's bad for judicial
25 economy and the court system. And it's bad for employees

1 since without that certainty of release parties won't be
2 likely to pay severance. The whole system works that way and
3 depends on that certainty.

4 Why should they if the only thing they're getting in
5 return for the release, for the payment, the release won't be
6 enforced, why should parties pay severance if they're not
7 getting anything for it? If Mr. White's view of the world is
8 correct, that a person can't sign away legal rights, where
9 would that leave us?

10 So, Your Honor, I fully expect that Mr. White's counsel's
11 about to give the Court his spin on a lot of disputed facts
12 about the merits of the claims in this case. And I suspect
13 he's going to throw a lot of accusations against the wall to
14 make the Court believe that my client took advantage of Mr.
15 White. And if this case went to trial, of course we would
16 have to be in the position of disputing those things.

17 But they don't have any bearing on this case. They don't
18 have any bearing on -- the only two issues that the Court has
19 to determine in ruling on this motion, which is, one, did Mr.
20 White keep the three hundred thousand dollars (\$300,000.00) so
21 that he can't as a matter of law say that this release is
22 invalid? And, two, are the claims that he brings in this case
23 within the scope of the release? And if the Court finds that
24 those two things are true, then the only proper result is
25 summary judgment on all of Mr. White's claims.

1 Your Honor, I'm about to close. Mr. White is a
2 sophisticated businessman. And he's received the benefit of
3 his bargain in this case. My client paid nearly fourteen
4 million dollars (\$14,000,000.00) for Mr. White's company. It
5 paid him a generous salary to run the company's operations for
6 three years until he decided to resign.

7 And then without any obligation to do so, it paid him
8 three hundred thousand dollars (\$300,000.00) in return for a
9 full release of claims to wipe the slate clean. And he has
10 kept every last cent of that three hundred thousand dollars
11 (\$300,000.00).

12 Mr. White's received the benefit of his bargain. And all
13 we're asking is that we get the benefit of our bargain, too,
14 that Mr. White be held to the release he voluntarily entered
15 into and that he was paid for. We simply ask that the Court
16 enforce the release and enter summary judgment so that my
17 clients can get what they paid for, that they can get the
18 benefit of their bargain just as Mr. White has.

19 And one last point, Your Honor, under South Carolina
20 Rules, when a summary judgment motion is made, lawyer argument
21 isn't enough to refute the motion. The rules and the case law
22 is clear that the non-movant has to provide to the Court by
23 affidavit or other evidence specific facts showing that
24 there's a genuine issue for trial and that if a party doesn't
25 do that, summary judgment's required.

1 We filed our brief 10 days ago per Judge Maddox's
2 instructions. Mr. White hasn't filed a brief in this case,
3 hasn't submitted an affidavit, hasn't submitted any evidence.
4 And so for that additional reason, Your Honor, we believe that
5 summary judgment is appropriate. Thank you.

6 **THE COURT:** Mr. Puriefoy, have you been convinced?

7 (Whereupon Mr. Puriefoy's microphone was muted)

8 **MR. PURIEFOY:** --- to the issue of judicial economy.
9 Your Honor, I think it's extremely important to note that Mr.
10 Schanen submitted these exact same arguments in front of Judge
11 Sprouse almost exactly one year ago. It was this month that
12 we were on a summary judgment on these exact same issues.

13 At that time Judge Sprouse reviewed over 50 pages of
14 briefing and heard arguments for nearly an hour from counsel
15 on these very issues. He took the summary judgment under
16 advisement and determined that based on everything that had
17 been presented to him there existed a genuine issue of
18 material fact.

19 Your Honor, the only new argument that is being presented
20 by counsel in this case is this Tender-Back doctrine, which
21 there's a fundamental misunderstanding of the application of
22 that theory to the present case. As a preliminary matter,
23 Your Honor, the Tender-Back doctrine requires that the
24 consideration paid for the release to be tendered back.

25 And what Mr. Schanen failed to inform the Court of during

1 his arguments was that in July of 2014, Your Honor, Mr. White,
2 at the time that he sold his business, executed an employment
3 agreement. And inside of this employment agreement, Your
4 Honor, which was submitted as an exhibit to our prior summary
5 judgment, Mr. White was bound by certain restrictive
6 covenants. And this was a separate contract that was executed
7 at the time that he sold his business.

8 The non-compete, Your Honor, that was contained in the
9 employment agreement specifically said that in exchange for
10 non-compete/severance payments of three hundred thousand
11 dollars (\$300,000.00) you are subject to the restrictive
12 covenants contained herein of not competing and not soliciting
13 for a period of three years.

14 Your Honor, that agreement was -- there were certain
15 promises that were made by Mr. White, there were certain
16 promises that were made by the Defendant. And those promises
17 constituted a single agreement. And in exchange for Mr.
18 White's promise not to compete, he was to be paid three
19 hundred thousand dollars (\$300,000.00).

20 Now, Your Honor, this is important because the general
21 release that Mr. Schanen referenced related to the three
22 hundred thousand dollars (\$300,000.00). It is the Defendants'
23 position that the consideration of three hundred thousand
24 dollars (\$300,000.00) was paid for the general release.
25 However, using the Defendants' own words, the plain reading of

1 the general release specifically says that the severance/non-
2 compete payments pursuant to section 6(b) of the executive's
3 employment agreement required the payment of three hundred
4 thousand dollars (\$300,000.00) to Mr. White.

5 Your Honor, Rule 56 -- a motion for summary judgment
6 requires that there be no genuine issue of material fact.
7 There is a glaring issue of material fact here that only a
8 jury should be able to determine. And that is, Your Honor,
9 was the general release that was executed nearly three years
10 after the employment agreement, did it have consideration?
11 Was there consideration paid for those new promises?

12 And this is an extremely important fact, Your Honor, in
13 the employment agreement and the non-competition agreement,
14 Mr. White says and promises not to compete and not to solicit.
15 In exchange for that promise CFR, the Defendant in this case,
16 said we will pay you three hundred thousand dollars
17 (\$300,000.00) over the course of three years not to compete
18 with us. And those were the promises that were made at the
19 time the employment agreement was executed.

20 Three years after the execution of the employment
21 agreement Mr. White was presented with a general release and
22 there were more promises that he had to make. He had to
23 promise not to file suit, not to bring a lawsuit against CFR
24 arising under what he believed to be employment issues, but
25 accepting as true that it covered all claims, there was an

1 additional promise that he made.

2 The problem, Your Honor, is that three years later the
3 Defendants rely on the very consideration from the non-compete
4 to act as consideration on the new general release. The
5 question for the jury, Your Honor, is what consideration was
6 paid for which contract?

7 Because in this situation we have -- one of two scenarios
8 have to be true. Either the non-compete agreement was not
9 supported by adequate consideration or the general release was
10 not supported by consideration. And I -- it's not the
11 adequacy, Your Honor, it's whether there was any consideration
12 paid at all for the general release.

13 These are arguments that have already been presented to
14 the court. The court has already ruled on these issues and
15 determined that there certainly exists a genuine issue of
16 material fact.

17 Your Honor, beyond that, the Defendants have also argued
18 that under the Tender-Back Rule Mr. White is required to give
19 back the money. As I've already indicated, there's a question
20 as to what the consideration was paid for because a plain
21 reading of the employment agreement makes clear that the three
22 hundred thousand dollars (\$300,000.00) was paid in exchange
23 for a non-compete, which, Your Honor, Mr. White performed
24 under.

25 He did not compete or solicit customers of CFR for a

1 three year period. In fact, that claim was brought and it was
2 ultimately dismissed voluntarily by the Defendants because
3 they knew that he did not violate the terms of that non-
4 compete agreement. And so, Your Honor, that's the first part.

5 The second part -- and Mr. Schanen harped on the fact
6 that Mr. White retained the benefit of the payments. Again,
7 that argument is premature, Your Honor, because the Defendants
8 in this case are unilaterally electing the remedy for the
9 Plaintiff.

10 As Your Honor knows, it's well settled that when you have
11 a fraud in the inducement claim, there's two avenues of
12 relief. You can either return the consideration and rescind
13 the contract or you can keep the consideration and sue on
14 damages. That question, Your Honor, is not answered until
15 after the return of a verdict by a jury. It is at that time
16 that, in this particular case, the Plaintiff, would have to
17 choose his remedy.

18 The Defendants in this case have argued and just
19 unilaterally assumed that the Plaintiff is looking for a
20 rescission of the contract, which is not necessarily the case.
21 We can have it determined that there is a valid general
22 release, which, of course, requires a determination that there
23 was consideration paid. That's step one.

24 And in the event it is determined that consideration was
25 paid, the next step is were you fraudulently induced into

1 executing that document? If we are successful in arguing that
2 position, Your Honor, we then have the ability to elect our
3 remedy. Either we return the consideration and rescind the
4 contract, which makes no sense in the present case, or we keep
5 the consideration and sue on damages.

6 Your Honor, that proposition has been law in South
7 Carolina. Mr. Schanen pointed to a 1900 case. Bank of
8 Johnson v. Jones is 1927. And to quote, it says, the frauded
9 party to a contract may tender-back consideration and sue for
10 rescission or retain consideration and sue for damages. That is
11 an election of remedies question.

12 Your Honor, there exists a plethora of issues in this
13 case. On the fraud in the inducement, Your Honor, what was
14 previously submitted to the Court and, quite frankly, Your
15 Honor, the reason why we did not brief this again is because
16 under the Dorrell v. South Carolina Department of
17 Transportation case renewed motions for summary judgment are
18 predicated on the discovery of new evidence.

19 What Mr. Schanen is asking is that you step on the toes
20 of Judge Sprouse, who's already ruled in this case. There has
21 been no new evidence that has been discovered. The only fact
22 witness that Mr. Schanen relies on in support of his motion
23 for summary judgment, that deposition was taken nearly three
24 months before the filing of his first motion for summary
25 judgment.

1 Your Honor, there's nothing different about the case as
2 it exists today than as it existed nearly one year ago. Your
3 Honor, it's the exact same facts, the exact same evidence and
4 the exact same arguments are being presented once again.

5 But, regardless, even if the Court were inclined to look
6 at this anew, there still exists these genuine issues of
7 material fact. And although the Defendant in this case
8 continues to argue that a general release is a general release
9 is a general release, there are claims and defenses that have
10 been brought that makes that question much more complicated.
11 And the facts of this case require that.

12 Again, Your Honor, I believe under Rule 56 all that is --
13 all that's required is that we demonstrate that there is an
14 issue for the jury to determine. And if the Court were to
15 look at the evidence that has been submitted in this case and
16 what have been provided to the Court in this case, I think
17 that it has to find that there exists a genuine issue of
18 material fact.

19 Not to beat a dead horse, but the issue of consideration
20 is an extremely important question that has to be answered.
21 If a jury determines that Mr. White executed an employment
22 agreement, was promised three hundred thousand dollars
23 (\$300,000.00) to -- in exchange for his non-compete, that he
24 actually did not compete, which that is undisputed that he did
25 not compete with CFR for those three years, and that's what he

1 was paid on, Your Honor. That is well within the province of
2 the jury to make that determination. And if they do that,
3 then the terms of the general release and waiver are of no
4 consequence, Your Honor.

5 I can certainly point to additional instances where there
6 are questions, genuine issues of material fact, but the
7 reality is, Your Honor, Mr. White was entitled to a million
8 dollars (\$1,000,000.00) on a subordinated note. Nearly three
9 hundred thousand dollars (\$300,000.00) of that was outstanding
10 at the time that he executed this release. He had also
11 invested five hundred and fifty thousand dollars (\$550,000.00)
12 in the company in September of 2017 about two months before he
13 resigned his position.

14 Your Honor, the position that the Defendants are taking
15 at this juncture is that he was walking away from eight
16 hundred thousand dollars (\$800,000.00) in exchange for three
17 hundred thousand dollars (\$300,000.00) to be paid on the
18 severance. The testimony in this case, Mr. White's testimony
19 in this case certainly refutes that position, Your Honor.

20 And I don't think that there could be a bigger question
21 of fact for the jury to have to answer than what was the
22 understanding of the parties? What were their beliefs? Does
23 the general release contemplate the release of securities
24 claims when you've just invested two months before that over
25 five hundred thousand dollars (\$500,000.00)?

1 Your Honor, there are tons of questions in this case that
2 only a jury can answer. Judge Sprouse was presented with all
3 of these arguments. He had time to contemplate, review the
4 briefs, and review the evidence, and he came back on June --
5 on June 1st of 2021 and ordered, after reviewing the
6 pleadings, the parties' memoranda, exhibits, arguments of
7 counsel and the applicable law the court finds that there
8 exists a genuine issue of material fact in this case and that
9 -- and Defendants' motions are denied.

10 Your Honor, we are positioned exactly the same today as
11 we were one year ago. Mr. Schanen may have argued new
12 arguments today, but it was on facts and evidence that existed
13 over a year ago. So, Your Honor, for those reasons we believe
14 -- this trial is slated to begin in three weeks. And we
15 believe that there exists a genuine issue of material fact
16 that these issues need to be submitted to a jury, Your Honor.

17 **THE COURT:** Just a minute. Let me ask Mr. Puriefoy this.
18 Is it -- is it your client's position -- has he provided sworn
19 testimony by way of deposition or otherwise that he has not
20 received three hundred thousand dollars (\$300,000.00) in
21 return for this release?

22 **MR. PURIEFOY:** I want to make sure I understand your
23 question, Your Honor.

24 **THE COURT:** Well, here's the question. As I understand
25 it, the consideration for the release was three hundred

1 thousand dollars (\$300,000.00). And Mr. Schanen said that's
2 been paid.

3 So my question is is your client's position he never
4 received three hundred thousand dollars (\$300,000.00) for
5 signing that release?

6 **MR. PURIEFOY:** Not for signing that release, Your Honor.
7 And that's the question for the jury. Mr. White signed ---

8 **THE COURT:** No, forget about the jury. My question to
9 you is did your client -- has he taken the position by way of
10 affidavit, answer, testimony, deposition, whatever, has he
11 said I've never received three hundred thousand dollars
12 (\$300,000.00) in return for signing that release?

13 **MR. PURIEFOY:** Absolutely, Your Honor. Absolutely.

14 **THE COURT:** Okay.

15 **MR. PURIEFOY:** Absolutely.

16 **THE COURT:** All right.

17 **MR. SCHANEN:** That's not true, Your Honor.

18 **THE COURT:** That's all I needed. Mr. Schanen's next.

19 **MR. SCHANEN:** Yes, Your Honor. Your Honor, that is
20 absolutely and unequivocally false. That is a total
21 falsehood.

22 Mr. White has admitted on multiple occasions that he
23 received that three hundred thousand dollars (\$300,000.00).
24 What Mr. Puriefoy is trying to tell you is that the three
25 hundred thousand (300,000), I mean, he received the three

1 hundred thousand dollars (\$300,000.00) that's called for in
2 this document. Mr. Puriefoy will admit that.

3 But ---

4 **THE COURT:** Well, he just denied it. That's why I'm
5 asking the question.

6 **MR. SCHANEN:** He's trying ---

7 **MR. PURIEFOY:** Well, Your Honor, I need to -- I need to
8 clarify, Your Honor, because -- because the question I believe
9 that Your Honor asked was has Mr. White said that he did not
10 receive the three hundred thousand (300,000) for the general
11 release? He has said he did not receive three hundred
12 thousand (300,000) for the general release.

13 His testimony in his deposition was I received three
14 hundred thousand dollars (\$300,000.00) because I was not
15 competing. My non-compete stated that I can't compete for
16 three years and in exchange for me not competing, I did
17 receive my three hundred thousand dollars (\$300,000.00) not in
18 exchange ---

19 **MR. SCHANEN:** Your Honor, this is ---

20 **THE COURT:** Well, wait a minute. Whoa. Hey, hey, stop.

21 **MR. SCHANEN:** I'm sorry.

22 **THE COURT:** We have a court reporter here trying to take
23 this down. So we're going to all take turns or I'm shutting
24 this down, okay?

25 **MR. SCHANEN:** Your Honor, I'm sorry. I had a lag. And

1 I'm -- it was hard to tell that he wasn't finished. I
2 apologize.

3 **THE COURT:** Well, you can apologize to the court
4 reporter. She's the one trying to take this down for y'all's
5 benefit, by the way.

6 **MR. SCHANEN:** Yes, sir.

7 **THE COURT:** All right. So my question -- well, I guess I
8 need to know, and I'd have to review it, I guess. But there
9 was a non-compete agreement signed -- when was that signed?

10 **MR. PURIEFOY:** Your Honor, that was signed three years
11 before the general release. That was signed on July 28th of
12 2014.

13 **THE COURT:** All right. And when was the general release
14 signed?

15 **MR. PURIEFOY:** November 29th of 2017.

16 **THE COURT:** All right. And when was three hundred
17 thousand dollars (\$300,000.00) paid to your client?

18 **MR. PURIEFOY:** Following -- so when my client resigned
19 his position, which it's defined in his employment agreement
20 that if he resigns his position, it's called a voluntary
21 termination of employment. But after his voluntary
22 termination of employment, that's when he began to receive the
23 non-compete payments, what he calls the non-compete payments.
24 And I believe the documents are clear that that's what it was
25 for.

1 **THE COURT:** All right. Mr. Schanen.

2 **MR. SCHANEN:** Your Honor, this is so indicative of the
3 problem here because what happened, and it's very
4 straightforward, in 2014 when Mr. White sold his company for
5 all this money and came on to work, he signed an employment
6 agreement. And as you would expect, it had non-compete
7 provisions in it.

8 Now it also had a severance provision in it. And what it
9 said was in the severance provision that if you're let go
10 without cause, then you get three hundred thousand dollars
11 (\$300,000.00), right? Well, that didn't happen. But,
12 regardless, the company gave him the three hundred thousand
13 dollars (\$300,000.00) through this severance agreement.

14 Now that is referenced in the severance agreement. I
15 mean, in this agreement it's as clear as day that he's getting
16 three hundred thousand dollars (\$300,000.00). It's at the
17 very beginning of the agreement.

18 He's getting the three hundred thousand dollars
19 (\$300,000.00), we're getting a release, there's some other
20 provisions in there. It says mutual consideration. It's your
21 standard severance agreement. And there's absolutely no
22 dispute in this case that after he signed that agreement, Mr.
23 White received that three hundred thousand dollars
24 (\$300,000.00).

25 And, Your Honor, you don't have to take my word for it.

1 I have his testimony. If Elizabeth could share it.

2 THE COURT: Well, I assume that was filed with the
3 motion, wasn't it?

4 MR. SCHANEN: It is, but I have it ready. It's right
5 here. And ---

6 THE COURT: Okay. Well, ---

7 MR. SCHANEN: --- it ---

8 THE COURT: --- I've got to look at it anyway.

9 MR. SCHANEN: You could have chosen not to sign that
10 document, right? Yeah. I wouldn't have gotten my severance
11 money. But, yeah, right. But you wanted the three hundred
12 thousand dollars (\$300,000.00)? Right. And so you signed the
13 release agreement? Yes.

14 And Mr. Puriefoy will not deny and cannot deny that that
15 three hundred thousand dollars (\$300,000.00) was paid to Mr.
16 White. He got it. What Mr. Puriefoy's trying to say is,
17 well, that three hundred thousand dollars (\$300,000.00) was
18 for something other than the release. And that -- it just --
19 it's just a way to try to circumvent the release and get out
20 of it. And it's something that doesn't exist.

21 And he's talked about these non-compete obligations.
22 Your Honor, he was bound by those non-compete obligations when
23 he signed the employment agreement back in 2014. And if we go
24 to the provision -- there's a provision in the severance
25 agreement. It says all I'm doing is reaffirming -- I'm

1 reaffirming my obligations not to compete under the employment
2 agreement. Those were obligations that existed regardless of
3 whether he ever signed this severance agreement or not.

4 On the other hand, the three hundred thousand dollars
5 (\$300,000.00) if he wanted that, he had to sign the release.
6 And that's what he did. And that's consideration. His
7 argument that somehow the release isn't supported by
8 consideration or the three hundred thousand dollars
9 (\$300,000.00) wasn't for the release is just something that's
10 made up to avoid it. And there's no -- there's no basis in
11 the record for it.

12 And so that's the problem here. The severance agreement
13 on its face was signed in return for the three hundred
14 thousand dollars (\$300,000.00). We got the three hundred
15 thousand (300,000) -- we paid the three hundred thousand
16 dollars (\$300,000.00), we got the release. It's as plain as
17 day.

18 He doesn't deny that we paid the money to him. He wants
19 to keep the money, but not be bound by the release, which
20 plainly applies to all claims. And there's no -- there's no
21 ...

22 (Pause)

23 **MR. SCHANEN:** Hello? Can y'all hear me?

24 **THE COURT:** I can.

25 **MR. SCHANEN:** Oh, for some reason the video dropped. But

1 -- okay.

2 Your Honor, a party shouldn't be able to not present any
3 evidence and just make a bunch of lawyer arguments and avoid
4 the consequences of a release by just throwing a bunch of
5 stuff against the wall. And that's what we have here.

6 He didn't -- he didn't -- this notion that somehow
7 there's no consideration for the release when he got the three
8 hundred thousand dollars (\$300,000.00) that's called for in
9 the release, that doesn't make any sense. He admits that if
10 he wanted the three hundred thousand dollars (\$300,000.00), he
11 had to sign the release.

12 And he also admits, and we've cited it in our brief, that
13 he was paid the three hundred thousand dollars (\$300,000.00).
14 It's all there.

15 Your Honor, we just are asking for the, you know, this
16 isn't the man who hadn't gotten what he bargained for. He got
17 almost fourteen million dollars (\$14,000,000.00) for his
18 company, was paid to work there for three years and then he
19 got three hundred thousand dollars (\$300,000.00) for a
20 release. And he shouldn't be able to bring these claims.

21 You didn't hear Mr. Puriefoy say that the claims didn't
22 arise prior to him signing the release. There's no question.
23 He shouldn't be allowed to have his cake and eat it, too. And
24 we shouldn't have to go through a jury trial for that to be
25 determined.

1 **MR. PURIEFOY:** Your Honor, just ---

2 **THE COURT:** Well, if you -- if you had a cake, why
3 wouldn't you be able to eat it?

4 **MR. SCHANEN:** I've never understood ---

5 **THE COURT:** I've never understood that thing. Who would
6 want a cake if you couldn't eat it? There's no point in that.
7 All right, Mr. Puriefoy. Now, Mr. Schanen, you
8 understand, is going to get the last argument because it's his
9 motion? So -- but you can tell me what you want to.

10 **MR. PURIEFOY:** Yes, Your Honor. And I'll try to be very
11 brief.

12 Your Honor, the record is riddled with supporting
13 documents for the position that I've taken. I think Your
14 Honor asked the right question, when was the employment
15 agreement executed that contained the non-compete language?
16 Your Honor, that was a bargained-for document.

17 Mr. White executed an employment agreement that
18 specifically said you are bound for a period of three years to
19 not compete with CFR. And in exchange for your commitment to
20 not compete you get three hundred thousand dollars
21 (\$300,000.00). There was a promise not to compete and a
22 promise to pay. That was the bargained-for exchange between
23 the parties. I promise not to compete, and I promise to pay.

24 Three years later, Your Honor, a new document was
25 presented to Mr. White, which was the general relief -- the

1 general release that's been attached as an exhibit to the
2 Defendants' motion where there were new promises, a separate
3 contract. It doesn't not say as a continuation of.

4 The employment agreement doesn't say that there's an
5 adoption by reference to. These are two independent
6 contracts, each of which have to be supported by their own
7 valuable consideration.

8 We know for a fact that three years prior to presenting
9 the general release there was a promise not to compete and a
10 promise to pay for that non-compete. Three years later, Your
11 Honor, a new contract was presented to Mr. White saying do not
12 sue us. This general relief -- this general release is
13 telling you you cannot sue us.

14 And so now Mr. White has taken on another affirmative
15 obligation to not file a lawsuit. That's what -- that's what
16 the argument is being made by the Defendants for this general
17 release.

18 The inherent problem, Your Honor, is that there is no new
19 consideration paid for the general release. The general
20 release says pursuant to your employment agreement here's your
21 three hundred thousand dollars (\$300,000.00). And in the
22 employment agreement it says for non-compete you get three
23 hundred thousand dollars (\$300,000.00).

24 Your Honor, either the employment agreement did not --
25 was not supported by consideration and Mr. White did not

1 compete for a period of three years and did not receive the
2 bargained for consideration that he thought he was entitled to
3 or the general release was not supported by any separate and
4 independent consideration, which it has to -- that is a
5 question for the jury to determine. It is not as
6 straightforward as Mr. Schanen's making it seem.

7 And if we want to talk about common sense, Your Honor,
8 the common sense, no one would execute a general release. Mr.
9 Schanen has already admitted that Mr. White was entitled to
10 almost three hundred thousand dollars (\$300,000.00) that was
11 still due to him under the terms of a promissory note which
12 finalized the transaction where he sold his business. Almost
13 three hundred thousand dollars (\$300,000.00) he was entitled
14 to just under that note alone at the time. He had also
15 invested five hundred and fifty thousand dollars (\$550,000.00)
16 just two months prior.

17 Under Mr. Schanen's rationale in the arguments that's
18 being presented, Mr. White waived his rights to recover money
19 under the promissory note and he waived his investment of five
20 hundred and fifty thousand dollars. The common sense
21 argument, if that's the route that we're going to go, Your
22 Honor, there would be no set of circumstances, no situation
23 where Mr. White would say, I am paying you eight hundred and
24 fifty thousand dollars (\$850,000.00) in exchange for three
25 hundred thousand dollars (\$300,000.00), and I walk away from

1 everything else.

2 That's the position that's being -- that's being argued
3 by the Defendant, that Mr. White was owed eight hundred and
4 fifty thousand dollars (\$850,000.00) by this company, which no
5 one can dispute. There is no testimony. There's no evidence
6 that Mr. White was not entitled to the three hundred thousand
7 dollars (\$300,000.00) on his note and there's absolutely no
8 testimony that Mr. White invested five hundred and fifty
9 thousand dollars (\$550,000.00) in this case.

10 Your Honor, I think the wrinkle in this is there's been a
11 claim for a securities fraud violation. Your Honor, what
12 we've not discussed is that at the time that Mr. White
13 invested his five hundred and fifty thousand dollars
14 (\$550,000.00) into CFR, CFR had received in July of 2017, so
15 about two or three months before Mr. White's investment, they
16 received notice from their mezzanine and senior lenders that
17 they were being called on a twenty million dollar
18 (\$20,000,000.00) default. They had credit agreements with a
19 senior and mezzanine lender. Those lenders called those notes
20 and held them in false -- false default for twenty million
21 dollars (\$20,000,000.00).

22 Mr. White was never informed of this. And he invested
23 company -- he invested over a half a million dollars in a
24 completely defunct company. The company was completely upside
25 down and has, in fact, since been sold, Your Honor. And so to

1 give more context to this investment and how we got to where
2 we are, I think that's important to note.

3 That the Defendants are taking the position that through
4 this general release and despite having no knowledge of a
5 twenty million dollar (\$20,000,000.00) default, Mr. White
6 walked away from a five hundred and fifty thousand dollar
7 (\$550,000.00) investment in exchange for three hundred
8 thousand dollars (\$300,000.00). Your Honor, that's simply not
9 the case.

10 The question that has to go to the jury, I believe, Your
11 Honor, respectfully, I believe, goes to the jury is the
12 question of consideration, what was the consideration paid
13 for? Because there is evidence in the record that Mr. White
14 did not compete for a period of three years. He did not work
15 in the industry that he had been working in for over three
16 decades because of this non-compete agreement. And he was
17 paid.

18 Your Honor, the benefit that the Defendant received in
19 this case was the result of the employment agreement where Mr.
20 White said I will not compete, I will not solicit, I will not
21 go after customers that were mine for 30 years and in exchange
22 for that I get three hundred thousand dollars (\$300,000.00).
23 The jury has to determine what that consideration was paid
24 for, Your Honor.

25 And the court's already considered this. The court has

1 heard these arguments. The court has heard all of these
2 positions. There's no new facts, there's no new evidence,
3 there's been nothing submitted today that did not either exist
4 at the time that Mr. Schanen filed his original summary
5 judgment or was actually presented to the court because the
6 lion's share of what's been presented to Your Honor was also
7 presented to Judge Sprouse.

8 Your Honor, this case is ripe for trial. There are so
9 many questions and so many unknowns in this case, Your Honor,
10 that I believe it has to proceed to a jury trial.

11 **THE COURT:** All right. I'm going to let you finish, Mr.
12 Schanen, but let me ask you this. What's this company
13 producing or doing? What's this company about?

14 **MR. SCHANEN:** CFR is a company that goes onsite to
15 convenience stores, restaurants, anywhere that has kitchen
16 equipment, you know, or commercial food service equipment and
17 services their facilities and their equipment. And it's ---

18 **THE COURT:** They sell the equipment and then service it
19 or they just ---

20 **MR. SCHANEN:** No, they just service it. It's ---

21 **THE COURT:** Okay.

22 **MR. SCHANEN:** It's just ---

23 **THE COURT:** I'm just curious. All right, Mr. Schanen.

24 **MR. SCHANEN:** So, Your Honor, it's very difficult when
25 the other side doesn't submit a brief. Mr. Puriefoy hasn't

1 submitted this employment agreement so the Court can actually
2 see it. And the statements that have been made about it, it
3 is not an exaggeration to say that those are just blatant
4 misrepresentations. It's just not true. What he's saying is
5 just not true.

6 The employment agreement is just as you would imagine.
7 He's coming to work, he has a job, he gets a salary, he's the
8 second highest paid person in the company, and in return for
9 that he signs non-compete obligations. He has restrictive
10 covenants.

11 There's nothing about him being paid three hundred
12 thousand dollars (\$300,000.00) in order for those restrictive
13 covenants to be binding. There's another provision that deals
14 with severance.

15 And it says, first of all, it only applies if Mr. White
16 is terminated without cause. Of course that's a very common
17 thing in severance agreements. If someone quits, they don't
18 get severance. But if they're terminated by the company
19 without cause, you know, the agreement would say they get
20 severance.

21 And that's what this agreement says, if he's terminated
22 without cause, which never happened here, that never happened
23 here, then he gets three hundred thousand dollars
24 (\$300,000.00) in severance conditioned upon -- and it says
25 this in the employment agreement, conditioned upon him signing

1 a general release of claims. It says he gets the three
2 hundred thousand dollars (\$300,000.00) conditioned upon him
3 signing a general release of claims.

4 And then in that severance provision it does go on to
5 link his continued receipt of that payment to his continued
6 compliance with the non-compete obligations so that if he
7 doesn't comply, we can stop the payments. Again, that's very
8 common.

9 But there is absolutely no interpretation of that
10 employment agreement where you can say, oh, in order for those
11 non-compete provisions to be binding, he had to receive three
12 hundred thousand dollars (\$300,000.00). That's absolutely not
13 the case. It's severance payments. And it says in the
14 employment agreement that the only way he's entitled to get
15 those severance payments is if he signs a general release.

16 And so that provision was never triggered because he
17 quit. That provision never came into play because he quit.
18 But, regardless, we gave him severance. We drew up a
19 severance agreement for him.

20 And it says in the agreement consideration is, you know,
21 you get three hundred thousand dollars (\$300,000.00) in
22 severance payments. You get three hundred thousand (300,000)
23 in severance payments in return for the promise as given
24 herein. And the promises given herein are a total release of
25 claims.

1 This notion that the three hundred thousand dollars
2 (\$300,000.00) wasn't for consideration for the release is -- I
3 don't have any words for it, Your Honor. But, Your Honor, ---

4 **THE COURT:** Well, no, you think it's ludicrous. I get
5 it. All right. Anything else y'all need to tell me?

6 **MR. SCHANEN:** One other thing. Just this notion that Mr.
7 Puriefey brought up that, you know, why would Mr. White have
8 signed a release releasing eight hundred thousand dollars
9 (\$800,000.00) of claims in return for three hundred thousand
10 dollars (\$300,000.00) ---

11 **THE COURT:** Well, you don't even need to argue about
12 that. That's what we call -- that's another Proverb, a bird
13 in a hand is worth two in a bush.

14 **MR. SCHANEN:** Absolutely, Your Honor. And ---

15 **THE COURT:** I mean, people can see money -- if they, you
16 know, the known is better than the unknown, as they say.

17 **MR. SCHANEN:** Yes, sir, Your Honor. I agree with that.

18 And I think, Your Honor, that in our brief we, you know,
19 we cite the case that's most on point, which ---

20 **THE COURT:** I'm going to read everything.

21 **MR. SCHANEN:** Okay. Thank you, Your Honor.

22 **THE COURT:** Yeah, I'm going to read it all for sure.

23 Let me ask you this. This case is scheduled for what
24 week?

25 **MR. SCHANEN:** June ---

1 **THE COURT:** What?

2 **MR. SCHANEN:** June 1st.

3 **THE COURT:** June 1st? Okay. I'm going to try to have it
4 resolved this week, but I'll have to review it. And I'm
5 supposed to be over there trying a case, so we'll see how it
6 works out. But I'll do it as quick as I can anyway.

7 **MR. SCHANEN:** Thank you, Your Honor. I apologize again
8 to you and the court reporter. That was a technology error,
9 and that's my fault.

10 **THE COURT:** You need to talk to Ms. Hudgins about that.
11 I'm fine with it.

12 **MR. PURIEFOY:** And, Your Honor, just to make sure I'm
13 clear on something. Would Your Honor like me to resubmit the
14 brief that I had previously submitted that has these exhibits
15 that I've -- the only reason I didn't resubmit these briefs,
16 Your Honor, is because it's already part of the record. We
17 submitted all of our exhibits previously, and I didn't want to
18 burden the Court with an additional 200 pages of documents.

19 **THE COURT:** No. I don't believe it's required that you
20 resubmit a brief in response to the same argument that's being
21 made again. So, no. Whatever's in the record is in the
22 record, and I'll consider that, too.

23 **MR. PURIEFOY:** Thank you, Your Honor.

24 **THE COURT:** Okay. Thank y'all.

25 **MR. SCHANEN:** Your Honor, there's one more motion on this

1 case.

2 **THE COURT:** Oh, all right.

3 **MR. PURIEFOY:** There is, Your Honor.

4 **MS. EDMONDSON:** And that is my cue. Your Honor, again,
5 my name is Elizabeth Edmondson.

6 And today you've heard argument on Defendants' motion for
7 summary judgment. But the Defendants have also filed a motion
8 to exclude Plaintiff Richard White's expert named Mr. R. Wayne
9 Klein. And that is what I'm here to argue today.

10 You previously heard information from Mr. Schanen and Mr.
11 Puriefoy regarding the factual background of this case. I
12 won't re-explore all of that information in detail, but just
13 go over very briefly the key points relevant to this motion.

14 Very briefly, as you heard the crux of this action is
15 that Plaintiff Richard White is a former employee of CFR. He
16 founded the predecessor company and it was called Tech-24. He
17 sold his business to CFR in 2014.

18 Now in September of 2017 Mr. White invested five hundred
19 and fifty thousand dollars (\$550,000.00) in CFR in exchange
20 for common stock. One of his claims in this action is related
21 to what information was or was not disclosed to him in
22 connection with that investment.

23 In November of 2017, as you heard previously, Mr. White
24 resigned his employment from CFR and in connection with that
25 resignation was given severance payments in exchange for his

1 execution of that general release.

2 Now on July 19th of 2021 Mr. White filed his second
3 amended summons and complaint wherein he raised four causes of
4 action; First, for breach of contract, second, breach of
5 contract accompanied by a fraudulent act, third, fraud in the
6 inducement, and, fourth, violation of the South Carolina
7 Uniform Securities Act of 2005.

8 Now, this Securities Act claim specifically arises under
9 the fraud provision in the Act found at South Carolina Code
10 Section 35-1-501. This provision makes it unlawful for a
11 person, in connection with the offer, sale, or purchase of a
12 security, to either directly or indirectly employ a device,
13 scheme, or artifice to defraud, to make an untrue statement of
14 material fact or to omit to state a material fact necessary in
15 order to make the statements made, in light of the
16 circumstances under which they were made, not misleading or to
17 engage in an act, practice, or course of business that
18 operates or would operate as a fraud or deceit upon another
19 person. Now that's a direct quotation from the Act.

20 So what is at issue in connection with this securities
21 cause of action is what information was or was not disclosed
22 or available to Mr. White prior to his investment in CFR. It
23 really is not more complicated than that. And these are
24 factual questions for the jury.

25 Now, Mr. White retained an expert. His name is Mr. R.

1 Wayne Klein to testify regarding securities laws in connection
2 with this fourth cause of action under the South Carolina
3 Uniform Securities Act. Mr. Klein is an attorney from Salt
4 Lake City, Utah.

5 Now on June 8th of 2021 Mr. Klein issued an expert
6 report. And that's attached to Defendants' motion as exhibit
7 A for the Court's reference. And Mr. Klein's opinions set
8 forth in his expert report and further explored in his
9 deposition simply are improper and inadmissible under South
10 Carolina law. And portions of those deposition excerpts are
11 also attached to Defendants' memorandum as exhibit B for the
12 Court's reference.

13 Now throughout his expert report, Mr. Klein opines as to
14 what the law is according to him. That improperly invades the
15 role of the judge. Mr. Klein further offers opinions as to
16 what ultimate conclusions should be -- should be reached by
17 the finder of fact. And that improperly invades the role of
18 the jury.

19 And, finally, Mr. Klein's opinions are frequently based
20 on inapplicable or incorrect law, which is irrelevant
21 testimony under Rule 402 of the South Carolina Rules of
22 Evidence. And Rule 702 of the South Carolina Rules of
23 Evidence sets forth the applicable standard for admissibility
24 of expert testimony. That Rule states that, quote, if
25 scientific, technical or other specialized knowledge will

1 assist the trier of fact to understand the evidence or
2 determine a fact in issue, a witness qualified as an expert by
3 knowledge, skill, experience, training or education may
4 testify thereto in the form of an opinion or otherwise.

5 And there are three factors a court must consider when
6 determining whether expert testimony is admissible. These
7 three factors are well established under South Carolina law.

8 First, whether the subject matter is beyond the ordinary
9 knowledge of the jury. Second, whether the expert acquired
10 the requisite knowledge and skill to qualify as an expert in
11 the subject matter. And, third, whether the substance of the
12 testimony is reliable. And you have to have all three. Those
13 factors are set forth by the South Carolina Supreme Court in
14 the Graves versus CAS Medical Systems case. Now, in this case
15 Mr. Klein's opinions and testimony cannot meet that standard.

16 Now, Mr. Klein offered six opinions in his June 8th, 2021
17 expert report. And I'll briefly go through each of those
18 opinions.

19 The first opinion is on page 3 of the report. And it
20 reads, "state and federal securities laws impose significant
21 obligations on persons offering and selling securities to
22 others. Sellers owe duties to fully disclose all material
23 facts to purchasers of securities. These disclosure
24 obligations exist regardless of whether the securities are
25 registered, exempt from registration or unregistered. Full

1 disclosure is required for all persons and do not otherwise
2 have all the information that would be contained in a
3 prospectus. The burden is on sellers to disclose information,
4 not on purchasers to seek information. The purchaser's status
5 as an accredited investor does not excuse the seller's
6 obligation to provide full disclosure." So that is Mr.
7 Klein's first offered opinion.

8 Skipping ahead to his fifth opinion, I'm going to kind of
9 group these together. His fifth opinion states, certain types
10 of statements made before and after the sale of securities can
11 be deemed "in connection with the sale of securities."

12 Now, both of these opinions do nothing more than attempt
13 to explain Mr. Klein's interpretation of the law to the jury.
14 It's not the expert's law [sic] to explain the law to the jury
15 or to the court. It's the judge's role to explain the law to
16 the jury. And that's well established under South Carolina
17 law.

18 In the O'Quinn versus Beach Associates case, that's found
19 at 272 S.C. 95. The South Carolina Supreme Court examined a
20 similar issue. In that case a legal expert's testimony was
21 being offered to explain whether a particular offering
22 constituted an investment contract under federal law.

23 The trial court excluded that testimony on this point.
24 And in so doing provided the following explanation which is
25 pertinent here. So I'll just read it into the record.

1 Quote, I know of no precedent that would permit an expert
2 witness to testify from this witness stand and by said
3 testifying to give his interpretation of the law that would
4 appertain in this case. That's what you are asking the expert
5 to do. You are asking him to relate to this court his
6 understandings and his interpretation of the law that would be
7 applicable to the facts and issues here. And I know of no
8 authority in this state, nor statute or by the case law which
9 permits that to be done. This court has a responsibility to
10 determine the law involved in this case. And in my judgment,
11 that responsibility would be diminished if this court would
12 permit evidence into the record of this case by an expert
13 witness as to what the law is in this case. Now the Supreme
14 Court upheld that rationale and upheld that ruling.

15 In Mr. Klein's first and fifth opinions presented in his
16 expert report just do that, do exactly what the South Carolina
17 Supreme Court has said is not -- is not appropriate. He
18 states what he thinks the law is according to him, which is
19 not the role of a testifying expert.

20 This testimony does not help the jury understand the
21 facts at issue. And these two opinions are analogous to those
22 offered in the O'Quinn case, and the result here should be the
23 same. Mr. Klein's opinions should be excluded.

24 Now he also offers additional opinions in his second,
25 third and fourth opinions that suffer from similar

1 deficiencies as the first and fifth opinions. In the process
2 of explaining what he thinks the law is, Mr. Klein also
3 explains what conclusions he believes the jury should reach as
4 to the ultimate issues in this case.

5 And I'll ...

6 (Pause)

7 **MS. EDMONDSON:** Sorry. I heard -- I didn't know if I was
8 being interrupted.

9 Mr. Klein's second, third, and fourth opinions, like I
10 mentioned, suffer from similar deficiencies. And I'll read
11 those into the record.

12 Mr. Klein's second opinion states, statements made by
13 Defendant Herwald to Plaintiff White listed in part five of
14 the expert report, in proving to have been made and to have
15 them inaccurate were material. Mr. Klein then moves on to
16 list certain statements without any citations to the record
17 for all but one of those statements that he opines constitute,
18 quote, material misrepresentations.

19 In his third opinion Mr. Klein states "information that
20 should have been provided by Defendants to Plaintiff in
21 connection with White's purchase of CFR securities is
22 described in part five of the expert report. The identified
23 information would be important for an investor to know and is
24 material." Mr. Klein further explains the basis for this
25 opinion later on in the report.

1 And then, finally, his fourth opinion states, quote, the
2 practice enlisted in part five of the report, if proven to
3 have occurred, were acts, practices in a course of business
4 that would operate as a fraud. And he then goes on to explain
5 the basis for that opinion later on in the report.

6 Now, these opinions are not designed to assist the jury
7 in understanding certain facts. Neither is their legal
8 arguments about why certain legal conclusions should be
9 reached by the jury in this case about what statements qualify
10 as material, about what practices will constitute fraud. And
11 it's not the place of a testifying expert to provide testimony
12 about these ultimate conclusions. The South Carolina Supreme
13 Court has examined analogous situations in other cases,
14 primarily in the Green versus State case, in the Dawkins
15 versus Field case.

16 In Green versus State the South Carolina Supreme Court
17 examined the issue of whether expert testimony from a criminal
18 defense attorney on whether trial counsel was deficient could
19 be admitted at a PCR hearing. Now the court held that the
20 testifying legal expert's testimony fell outside of Rule 702
21 and was not admissible.

22 There the court specifically held "the expert offered no
23 factual evidence. He proffered his opinion assuming certain
24 facts. The trial counsel's actions fell below the acceptable
25 legal standards of competence. The testimony was not designed

1 to assist the PCR court to understand certain facts, but
2 rather with legal argument as to why the PCR court should rule
3 as a matter of law that trial counsel's actions fell below an
4 acceptable standard of competence."

5 Now, likewise, in the Dawkins versus Field case, kind of
6 the leading case on this kind of issue, shareholders in the
7 company sued the company's directors and officers alleging a
8 breach of fiduciary duty and a number of other violations.
9 And at summary judgment the shareholders presented an
10 affidavit from their expert, a law professor.

11 A trial court refused to rely on that affidavit because
12 it improperly attempted to explain the law to the trial court.
13 The South Carolina Supreme Court affirmed that decision and
14 concluded that because the expert's affidavit, quote,
15 primarily contained legal arguments and conclusions, a trial
16 court properly refused to consider it.

17 And, importantly, the court noted in that case that while
18 an expert is permitted to offer testimony that embraces an
19 ultimate issue, that ultimate issue is to be decided by the
20 trier of fact. And a testifying expert is not permitted to
21 usurp the trial court's role in determining the ultimate
22 issues.

23 So in reviewing the applicable case law set forth in
24 these cases I've discussed in O'Quinn, in Green, and in
25 Dawkins, it's clear that courts have uniformly excluded these

1 types of opinions that are offered by Mr. Klein in his report
2 when those types of opinions are only trying to explain the
3 law to the court and attempting to assume certain facts and
4 instruct the jury what ultimate conclusion should be reached.

5 And when you review Mr. Klein's report, that's what it
6 appears to be. It reads like a legal brief. It's not
7 explaining concepts that would be difficult for a jury to
8 understand. It's not offering independent facts. It's
9 offering legal analysis. And that's totally inappropriate.

10 And, finally, Mr. Klein offers his sixth opinion, which
11 relies on inaccurate case law, it misstates the law and should
12 not be admitted in this proceeding because it was only
13 designed to confuse the jury. That opinion's also found on
14 page 3 of the report.

15 And it states "agreements that purport to have investors
16 waive their rights to assert that securities laws were
17 violated are void as against public policy and unenforceable."
18 And then Mr. Klein goes on to apply that statement of law to a
19 legal conclusion that he would advise the jury to reach and
20 concludes that these anti-labor provisions and federal
21 securities laws render the release provision in the general
22 waiver and release void as against public policy.

23 Now, as you've heard earlier in the summary judgment
24 portion of argument, Defendants have taken the position that
25 Mr. White did, in fact, release this cause of action to the

1 extent it existed by signing the general release.

2 Now, Mr. Klein has, on his own and for the first time in
3 this action, concluded that federal law renders the general
4 release void. And in so concluding he relies on a case from
5 the Second Circuit Court of Appeals called Pasternack versus
6 Shrader. That's found at 863 F.3d 162.

7 And Pasternack prohibits parties from entering into labor
8 agreements, entering into simultaneously or in conjunction
9 with a sale of securities. And in relying on this case, the
10 Pasternack case, Mr. Klein ignores applicable law from the
11 Fourth Circuit, from the District in South Carolina and also
12 ignores the plain language of the federal provisions that he
13 cites.

14 So, again, this opinion suffers from the similar
15 deficiencies that I've discussed in connection with his first
16 and fifth opinions. He not only attempts to explain his view
17 of the law to the jury, but then he also tells the jury how to
18 apply that law. And that's plainly inappropriate.

19 In addition, as I mentioned case law from the District of
20 South Carolina, in the Fourth Circuit expressly states that a
21 securities claim can properly be released by a general release
22 agreement. And those cases are Moseman versus Van Leer at 263
23 F.3d 129, and House versus Aiken County National Bank at 956
24 F. Supp. 1284.

25 And both of those cases allow parties to enter into a

1 release agreement and release securities claims. And Mr.
2 Klein does not discuss those cases in his report. He did not
3 discuss those cases in his deposition testimony. He stated
4 that he relied on the Pasternack case simply because it was
5 from the Second Circuit out of New York and thought that might
6 be more influential. Those were his words.

7 In addition, the general release that we've been
8 discussing was executed in conjunction with White's
9 resignation from employment. That occurred on November 29th,
10 2017 not in conjunction with his investment with the company
11 that happened over two months prior on September 11th, 2017.

12 And an additional point, the federal anti-labor statutes
13 only apply to blanket releases that accompany the sale of
14 securities. And here we have that, that time gap between the
15 investment and when the release was entered into. So it's
16 undisputed that the general release did not accompany the sale
17 of these securities.

18 In addition, the federal anti-labor provisions, rather
19 expressed terms, only apply to avoid certain waivers of
20 federal securities claims. We have no federal securities
21 claims in this action. We have a claim of South Carolina
22 Uniform Securities Act.

23 And the two provisions that Mr. Klein cites are found at
24 15 U.S.C. section 78 CC subsection (a) and 15 U.S.C. section
25 77 N. And both of these provisions specifically state that

1 they apply to any condition, stipulation or provision binding
2 any person to waive compliance with any provision of this
3 chapter or of any rule or regulation thereunder. Now, both
4 provisions use that same language and plainly apply to federal
5 securities claims, not state securities claims.

6 Now, even in Mr. Klein's deposition testimony he conceded
7 that this opinion, quote, went too far. And that section of
8 deposition testimony is attached as an exhibit to our brief.
9 But specifically he said that, quote, I state that the labor
10 is voided by the anti-labor provisions of federal securities
11 laws. And what I should have said that a court or jury would
12 be justified in finding that. So I went further than I should
13 have in that instance.

14 So while we contend that any testimony concerning this
15 point is improper, Mr. Klein also concedes that what he wrote
16 in that report went too far. It's not admissible expert
17 deposition testimony.

18 And I think it helps to consider the bigger picture in
19 this case. As I've explained, there are numerous legal
20 reasons under the applicable rules of evidence under Rule 702,
21 under Rule 402 and under South Carolina case law that has been
22 well established for many years.

23 Why Mr. Klein should not be allowed to testify at the
24 trial of this matter? And that boils down to three common
25 things. First, the testifying expert, it's not his role to

1 explain the law. That's the role of the judge.

2 Second, the testifying expert doesn't testify about what
3 legal conclusions the jury should reach. That's the role of
4 the jury.

5 And, third, the testifying expert should not be permitted
6 to explain incorrect law to the jury only to confuse them.

7 Beyond these legal reasons, just looking at the big
8 picture, effect of what Mr. Klein's testimony would have on
9 this trial illustrate the rationale opining the Rules of
10 Evidence in South Carolina case law. It demonstrates why the
11 Court should grant Defendants' motion to exclude Mr. Klein's
12 testimony.

13 In the event Mr. Klein is allowed to testify at trial,
14 Defendants have also retained an expert. His name is
15 Professor Martin McWilliams from the University of South
16 Carolina School of Law.

17 And Defendants had to retain him. They retained him in
18 response to the opinions presented by Mr. Klein. So Mr.
19 McWilliams' opinions directly respond to the opinions
20 presented by Mr. Klein.

21 If both of these experts are permitted to testify at
22 trial, we're going to have a big problem. We're going to have
23 a circus. The court will be presented with a situation in
24 which Mr. Klein is telling the jury one version of the law and
25 Mr. or Professor McWilliams will necessarily be responding

1 with another version of the law. And then the court will be
2 charged with instructing the jury on yet another version of
3 the law.

4 And that is only going to serve to create confusion.
5 It's going to confuse the issues. It's going to lead to
6 objections back and forth. It's going to distract the jury.
7 It's not going to assist them in determining any fact issue in
8 this case, which is the standard under Rule 702.

9 And during Professor McWilliams' deposition Plaintiff's
10 counsel spent much time asking him to admit that it was
11 improper to explain the law to the jury or to suggest how the
12 jury should view the facts. And that's -- we are essentially
13 on the same page with Mr. White's counsel. It is not the role
14 of the experts to explain what the law is or what conclusions
15 the jury should reach.

16 And, you know, these are issues the jury will be able to
17 understand, what information was presented to Mr. White, what
18 information was not presented to Mr. White. And we don't need
19 experts to confuse these issues and, you know, over-complicate
20 the trial for what should be fairly straightforward issues.

21 Now, the courts in the cases I've mentioned previously
22 recognized the danger that these kind of experts, you know,
23 pose to trials and recognize the impropriety of such expert's
24 testimony and properly excluded it. So Defendants would
25 respectfully request that this Court follow precedent in this

1 case, follow the O'Quinn, Green and Dawkins cases and exclude
2 all of the opinions of Mr. Klein at the trial of this matter.

3 And one -- one last point. If the Court does grant
4 Defendants' motion to exclude Plaintiff's expert, then
5 Defendants will have no need to present Professor McWilliams
6 as an expert witness. Thank you.

7 **MR. PURIEFOY:** Your Honor, I guess to begin, I am rather
8 confused by Ms. Edmondson's motion to exclude. The cases that
9 were cited by Ms. Edmondson highlight that this is more
10 appropriate as a trial objection to the scope of expert
11 testimony.

12 Rule 702 ---

13 **THE COURT:** Mr. Puriefoy, you don't have to go any
14 further with that. I agree. The trial judge is in a better
15 position than the pre-trial judge to decide whatever is sought
16 to be admitted because it depends on the context of the case.
17 Some things can be determined ahead of time, sometimes things
18 cannot. Might be some portion of the witness' testimony
19 that's improper, other portions would be proper.

20 Excluding the witness from testifying completely has got
21 to be inappropriate unless everything he's testified to is
22 simply a legal conclusion. Is that what you're telling me?

23 **MS. EDMONDSON:** Yes, Your Honor, that's our position. If
24 you read his expert report, it reads as a legal brief only as
25 to, you know, what the law is and what conclusions should be

1 reached.

2 **THE COURT:** All right. So there's nothing in his
3 testimony that would be helpful to the jury? It's all just a
4 legal conclusion?

5 **MS. EDMONDSON:** That is our argument, Your Honor. Yes.

6 **MR. PURIEFOY:** Your Honor, that's simply untrue. As by
7 way of example, very few attorneys know what a security is,
8 let alone 12 members of a juror -- of a jury. To explain what
9 a security is to a jury to better help them understand how
10 this fits in the context of a ---

11 **THE COURT:** I don't -- I don't need to -- I don't
12 disagree with that. I don't disagree. There are a lot of
13 things that the trial judge is going to have to determine.
14 Who is the trial judge in this case?

15 **MS. EDMONDSON:** Judge Gravely.

16 **THE COURT:** All right. Here's what y'all need to do.
17 Y'all need to be getting in touch with Judge Gravely. And, I
18 mean, I've got to decide the summary judgment motion first.

19 But in the meantime or certainly shortly thereafter,
20 y'all need to get in touch with Judge Gravely since he's the
21 trial judge and see if you can't address this motion ahead of
22 the trial. But he's the one that's going to be stuck with a
23 ruling assuming he accepts my ruling.

24 You know, if I -- if I granted the motion to exclude the
25 witness, you can still present it to Judge Gravely and he can

1 say, what was Derham Cole thinking about that? I'm going to
2 let that witness testify. And so we would have just wasted
3 all of this time.

4 So -- or if he says, well, Judge Cole heard it. I'm
5 going to adopt it or accept it. Well, then if that's an
6 error, he's stuck with it, not me. So, you know, it doesn't
7 make sense to have these types of evidentiary issues addressed
8 by some judge who ain't going to try the case.

9 So I don't need to hear anymore about that. Y'all need
10 to talk to Judge Gravely about addressing this motion in the
11 event I do not grant the motion for summary judgment. And I'm
12 hoping I'll have that resolved by the end of this week if at
13 all possible. So that'll give you plenty of time to address
14 that should you need to. All right?

15 **MR. PURIEFOY:** I appreciate it. Thank you.

16 **MS. EDMONDSON:** Thank you, Your Honor.

17 **THE COURT:** Okay. Anything else?

18 **MR. PURIEFOY:** No, sir. Thank you, Your Honor.

19 **MS. EDMONDSON:** Thank you, Your Honor.

20 **MR. SCHANEN:** No, sir. Thank you, Your Honor.

21 **THE COURT:** Okay. Thank you. Y'all have a good
22 afternoon.

23 **MR. SCHANEN:** Thank you. You, too.

24 (Hearing Ended at 3:27 pm)

25 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record to the best of my ability as being held via webex of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 9th day of May 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2022

s/Susan W. Hudgins

Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COMMON PLEAS COURT
3
4 Richard D. White,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2019-CP-23-06915
7 FT Acquisitions, LLC,)
8 Commercial Food Service)
9 Repair, Inc., and Kurt)
10 Herwald, as owner and)
11 individually,)
12 Defendant.) December 1, 2022
13) Spartanburg, South Carolina

13 B E F O R E :

14 HONORABLE J. DERHAM COLE, JUDGE

16 A P P E A R A N C E S :

17 DEVIN MARC PURIEFOY, ESQUIRE
18 Attorney for the Plaintiff

19 GILES M. SCHANEN, JR., ESQUIRE
20 ELIZABETH CAMERON EDMONDSON, ESQUIRE
21 Attorneys for the Defendants

23 Linda D. Moffitt
24 Circuit Court Reporter
25

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Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 (Proceedings December 1, 2022)

2 THE COURT: All right. Good afternoon.

3 Plaintiff's motion for reconsideration?

4 MR. PURIEFOY: Yes, Your Honor.

5 THE COURT: All right. Mr. Puriefoy.

6 MR. PURIEFOY: May it please the Court, Your Honor.

7 My name is Devon Puriefoy. I am the attorney representing
8 the plaintiff in this case, Richard White.

9 Just very quickly, Your Honor, by the way of
10 background, this is a lawsuit that stems from the sell of a
11 business back in 2014.

12 The plaintiff in this case owned a company called
13 Tech24 that was sold in July of 2014. The terms of that
14 sale were very simple. At the closing table there was to
15 be \$13 million paid in cash for this business with a
16 million-dollar subordinated promissory note to be paid over
17 the course of five years between July of 2014 and August of
18 2019.

19 At the time that the business was being sold and these
20 closing documents were being executed the plaintiff in this
21 case was also going to stay on with Tech24 and serve as an
22 employee. At the time of these transactions documents were
23 being executed. So too was an employment agreement, which
24 of course detailed the scope of Mr. White's employment.
25 Included in that employment agreement, Your Honor, was a

1 very important provision.

2 The employment agreement required that at either the
3 termination or resignation of his employment with Tech24
4 that he's to execute a general release document. That was
5 contemplated back in 2014. And so he understood that at
6 all times per the contract that he signed he was required
7 to sign a general release following his termination or
8 resignation.

9 Fast forward, Your Honor, to 2017. By July of 2017
10 the defendants had missed their first promissory-note
11 payment.

12 what the testimony in this case has been is that what
13 was relayed to Mr. White was that there was a liquidity
14 crunch and a cash flow issue that led to these missed
15 payments, but there was effort being made to get back on
16 track to continue making those promissory-note payments.

17 Fast forward another two months, Your Honor, to
18 September of 2017. Mr. White invested \$550,000 into the
19 defendant, and of course that earned him an equity position
20 in the company. Although a very small equity position, an
21 equity position nonetheless.

22 By November, Your Honor, of 2017 the working
23 relationship between Mr. White and the buyer, Kurt Herwald,
24 had disintegrated to the point to where it was no longer
25 fruitful for either one of them to continue on with their

1 working relationship, and so that working relationship came
2 to an end on November 27th of 2017 when Mr. White resigned
3 his position as the B.P. of operations.

4 On the day of his resignation he executed a general
5 release document that was contemplated by the employment
6 agreement.

7 It's also important to note, Your Honor, that at the
8 time the transactions were being concluded in 2014 there
9 was also a -- restricted covenants that were executed, a
10 covenant not to compete and covenants to not solicit.

11 So those restricted covenants, Your Honor, was a
12 separate non-compete agreement that was executed by Mr.
13 White, and contained in that non-compete agreement was
14 non-compete payments upon his termination or resignation in
15 the amount of \$300,000 payable over the course of three
16 years at \$100,000 per year at the time he resigned or he
17 was terminated.

18 So, again, fast forward to November of 2017 when Mr.
19 White resigned his position, executed the general release
20 that was contemplated by his employment agreement and went
21 about his business.

22 It was sometime thereafter, Your Honor, that Mr. White
23 had realized that at the time that he made this \$550,000
24 investment Tech24 was an insolvent entity, which he did not
25 know about.

1 The company was carrying on its books negative
2 \$6 million in shareholder equity following the \$20 million
3 default on some senior and mezzanine loans. This lawsuit
4 is what ensued as a result of him learning of that
5 information, Your Honor.

6 Of course at the time of the filing of the lawsuit he
7 also brought claims for breach of contract and promissory
8 note because the last payment that he received on that note
9 that was supposed to reach maturity in August of 2019, the
10 last payment was in July of 2017. And the incident lawsuit
11 followed, Your Honor.

12 As it relates to the substance of plaintiff's Rule 59
13 motion to reconsider today, while the issues have been
14 fully briefed, all issues that were raised in the motions,
15 the cross motions for summary judgment that were before
16 Judge Sprouse, those issues were briefed at that time.

17 They were later briefed in the third motion for
18 summary judgment, and they've been fully briefed for
19 purposes of today's hearing. However, there were only a
20 couple of issues, I think, with an eye towards efficiency
21 that the Court's ruling is considered for today's purposes
22 on the motion to reconsider.

23 So if Your Honor recalls, back in May of this year
24 myself and Mr. Schanen argued the defendant's third motion
25 for summary judgment before Your Honor.

1 In the memoranda in support of that motion for summary
2 judgment what the defendants represented to this Court was
3 that the basis of that motion, the reason why they were
4 filing a renewed motion for summary judgment after having
5 already had a ruling on their second motion for summary
6 judgment, was based on the fact that because the plaintiff
7 in this case filed a second amended complaint after the
8 second motion for summary judgment that that issue was not
9 right to be heard before Judge Sprouse at the second motion
10 for summary judgment.

11 That's contained in the footnote, Your Honor, of the
12 memo in support of -- their memo in opposition to our --
13 excuse me -- that is in their memoranda in support of their
14 motion for summary judgment, their third renewed motion for
15 summary judgment.

16 So, again, Your Honor, the basis of that renewed
17 motion was that the second amended complaint which
18 contained a claim for fraud in the inducement, that that
19 was not filed before Judge Sprouse heard them on their
20 second motion for summary judgment. And because that issue
21 was not raised to Judge Sprouse, that this Court needed to
22 determine that issue.

23 And that's what was represented to Your Honor, and I
24 believe, Your Honor, at that last hearing, you asked on
25 probably half a dozen occasions, you know, have these

1 arguments been presented to Judge Sprouse. And the
2 defendants emphatically emphasized these have not been
3 presented to Judge Sprouse.

4 And so, Your Honor, if I may approach, I have a couple
5 of documents that I think are important for purposes of
6 today's hearing.

7 So, Your Honor, you'll see that the first document
8 that you're looking at is a memoranda in opposition to
9 plaintiff's motion for summary judgment. And so just for
10 clarification, at the time that the defendant filed their
11 motion for summary judgment in front of Judge Sprouse there
12 was also a cross summary judgment motion that was filed by
13 the plaintiff.

14 Your Honor, if you look at page seven of this
15 memoranda in opposition to plaintiff's motion for summary
16 judgment under heading A, it says the general release is a
17 valid and enforceable contract.

18 But if you read from there, Your Honor, all the way
19 through the midway point of page ten, you'll see that what
20 the defendants argued to Judge Sprouse was that white
21 attempts to avoid the release provision in the general
22 release by arguing its execution of the general release was
23 a product of fraud.

24 white's fourth cause of action in this amended
25 complaint's a claim for fraud regarding the general

1 release.

2 So, Your Honor, this was the first time that the
3 defendants made an argument to the Court before Judge
4 Sprouse that the claim for fraud in the inducement should
5 not move forward on a motion for summary judgment. And
6 they briefed that entirely.

7 Your Honor, again this is against the backdrop if you
8 question the defendants as to whether or not they had
9 raised the issues related to the fraud in the inducement
10 claim with the Court previously in which they indicated
11 they had not.

12 This was submitted, Your Honor, on May 14th, which was
13 the Friday before the Monday hearing. So this was the
14 first instance where the defendants argued fraud in the
15 inducement and why the plaintiffs should not prevail on a
16 motion for summary judgment.

17 Your Honor, the next document which is dated May
18 14th at 1:05 p.m., which is an email correspondence from
19 Mr. Schanen to myself, Your Honor, would this -- this is
20 against the backdrop of a second amended complaint that was
21 submitted to Mr. Schanen where we requested that the
22 summary judgment hearing that was scheduled to be heard on
23 Monday --

24 THE COURT: Emailed -- oh, I see. Excuse me. May
25 14th. Okay.

1 MR. PURIEFOY: Yes, Your Honor.

2 And so this was used as a backdrop of a request from
3 plaintiff's counsel to defense counsel that the Monday
4 summary judgment motion be continued to allow us to file
5 our second amended complaint, which of course contained the
6 allegations for fraud in the inducement.

7 If you go down to the second to last paragraph, Your
8 Honor, what Mr. Schanen represents in this email is that
9 our proposed amendment, quote, "merely seeks to add factual
10 allegations and to characterize your existing fraud claim
11 as a fraud in the inducement claim and does not assert any
12 legal claim that is not raised in your current complaint."

13 And so what Mr. Schanen is representing in that email,
14 Your Honor, is that the fraud in the inducement claim that
15 we were attempting to bring by way of a second amended
16 complaint, all of the facts that have already been alleged
17 are subsumed in our fraud claim, his point being there's no
18 need to bring a fraud in the inducement claim because it's
19 already been brought by way of fraud.

20 We moved forward, Your Honor, on that Monday at the
21 summary judgment hearing.

22 And so if you would go next -- the next document, Your
23 Honor, which is the transcript from that hearing. And,
24 Your Honor, if you go down to line two on the first page of
25 that transcript you'll -- and we don't have to read this

1 entire thing, but I think this will -- this will drive a
2 point home.

3 Line two, it starts, "Before I discuss those claims,
4 Your Honor, there's been raised a suggestion in this case
5 that the release was procured by fraud, and so I wanted to
6 address that. That would be Mr. White's burden to show.
7 Of course I've already tried to set aside the release bears
8 the burden of showing that it was procured by fraud. He
9 would have to at a minimum create a genuine issue, a
10 material fact, as to fraudulent inducement. He had a
11 fraudulent inducement claim in this case, but there's no
12 evidence whatsoever in the record to suggest that this
13 release was procured from fraud."

14 And over the next two pages, Your Honor, he argues as
15 to why fraud in the inducement cannot be established in
16 this case. And so now this is the second time that the
17 defendants have made arguments, presented arguments, to the
18 Court related to plaintiff's fraud in the inducement claim.

19 Of course this was all heard by Judge Sprouse.

20 And then to cap it off, Your Honor, the very last
21 document is another email correspondence dated May the
22 18th of 2021.

23 This is an email from Mr. Schanen to our office, and
24 it included Judge Sprouse's office, Your Honor. And what
25 this email is is a supplemental argument that was submitted

1 following the hearing. So this was on May the 18th, which
2 was the day after the summary judgment motion was heard.

3 Mr. Schanen submitted additional arguments related
4 specifically to the fraud in the inducement claim where he
5 sets forth all of the elements of fraud in the inducement
6 and speaks to the facts as he believes them to be as to why
7 we can't demonstrate a fraud in the inducement claim. So
8 now for the third time he has made his argument to Judge
9 Sprouse as it relates to the fraud in the inducement claim.

10 In -- in his motion, Your Honor, in opposition to our
11 Rule 59 motion what the defendants argued is, quote --
12 excuse me, Your Honor. What they argued, Your Honor -- and
13 this is in response to our Rule 59 motion -- is that
14 defendants did not have an opportunity to research, brief
15 and argue issues related to a claim of fraud in the
16 inducement.

17 Your Honor, they briefed the issue on the Friday
18 before the hearing. They argued the issue in front of
19 Judge Sprouse, and then they submitted supplemental
20 arguments the day after the hearing, again to Judge
21 Sprouse, and now represent to this Court and represented to
22 you back in May of 2022 that Judge Sprouse did not have an
23 opportunity to hear him on the issue of fraud in the
24 inducement.

25 Your Honor, that's simply not the case. And so the

1 primary position that's being taken in this case, Your
2 Honor, is a very longstanding rule in our courts, which is
3 one circuit court judge cannot overrule a second circuit
4 court judge. And that's exactly what we have in this case.

5 Judge Sprouse heard every single argument that was
6 presented, that's currently being presented to you, back in
7 May of 2021.

8 A year later a renewed and third motion for summary
9 judgment was filed asserting the exact same claims and
10 making the exact same factual arguments that was made
11 before Judge Sprouse a year -- a year before in hopes that
12 you, Your Honor, would overturn what Judge Sprouse has
13 done, or his rulings originally. And that's the situation
14 we find ourselves in now, Your Honor.

15 The case law is very clear that in Steele -- this is
16 Steele vs. Charlotte C & A R Company. This is 14 S.C. 324,
17 330.

18 "A motion once heard and decided fully may only be
19 reviewed upon a new state of facts arising after the
20 decision. The new stated facts must be such as to make a
21 new case as conduct in the judge granting an order for
22 newly discovered evidence."

23 Your Honor, if you do a side-by-side comparison of the
24 factual allegations contained in the second motion for
25 summary judgment and the third motion for summary judgment,

1 they are the exact same with the only difference being the
2 filing dates in certain -- in certain instances.

3 The facts as they relate to the case were the exact
4 same. The facts that were known at the second summary
5 judgment motion were known at the third summary judgment
6 motion, and there's been no demonstration that there's been
7 any newly discovered evidence as it relates to the fraud in
8 the inducement claim that would warrant the refiling of a
9 motion for summary judgment.

10 Now, the defendants in this case have taken the
11 position that it is -- it's black-letter law that you have
12 the ability to refile a motion for summary judgment. And
13 we take no issue with that proposition, Your Honor. You
14 certainly have the ability to refile a renewed motion for
15 summary judgment.

16 But what the Steele case does is limit your ability to
17 do so.

18 You don't simply get to refile a motion for summary
19 judgment because you want another crack at the apple. What
20 this case says is that you have to be able to demonstrate
21 that there's a new state of facts that arose after the
22 original decision on the motion. And, more specifically
23 and probably even a higher burden, those facts have to be
24 such that they make a new case or there's a discovery of
25 new evidence.

1 I scoured the brief of the defendants in this case,
2 Your Honor, both the second and the third, and there's no
3 mention anywhere that there's been discovery of any new
4 evidence as it relates to the fraud in the inducement claim
5 at all.

6 There was discovery that was conducted, Your Honor.
7 There's no question discovery had been conducted. Not one
8 single shred of evidence that resulted from that discovery
9 had the first thing to do with the fraud in the inducement
10 claim.

11 Your Honor, these arguments had previously been made
12 to Judge Sprouse. Judge Sprouse heard every single one of
13 them.

14 The defendants are now coming back to Your Honor and
15 asking you to hear the exact same arguments and overturn
16 what Judge Sprouse has done, and in accordance with our --
17 in our view of the way the law reads, Your Honor, that
18 certainly is not permissible.

19 I don't believe that the defendants would be able to
20 get up and say that any fact had changed from the time that
21 he filed his summary judgment in 2021 versus his renewed
22 summary judgment in 2022.

23 All facts remain the same, Your Honor; all claims
24 remain the same; all allegations remain the same. The only
25 difference -- the only difference, Your Honor, is that

1 following producing the defendants' expert report there was
2 this mention for the first time of this doctrine called the
3 tender-back doctrine.

4 This is a legal theory that the defendants have now
5 relied on to argue that the fraud in the inducement claim
6 cannot stand because the consideration that was paid for
7 the release was not tendered back.

8 That is truly the reason why they needed a second bite
9 at the apple, was to reassert a legal theory that their
10 expert had discussed in the expert opinion. But the case
11 law does not say that every time you discover a new legal
12 theory that may be applicable to your case that you get to
13 refile your motion for summary judgment.

14 There are no facts that would warrant the resubmission
15 of a summary judgment, Your Honor, and the discovery of a
16 new legal theory is not grounds under the Steele case to
17 renew a motion for summary judgment.

18 And so as a preliminary matter, Your Honor, we believe
19 that the Court should vacate its prior judgment and deny
20 the defendant's motion for summary judgment, because this
21 court has already heard these exact issues and ruled on the
22 same.

23 The next -- the next issue, Your Honor, that I think
24 we're going raise is the consideration portion itself. And
25 so if you recall, Your Honor, at the previous motion for

1 summary judgment the defendants argued that there was a
2 \$300,000 severance payment that resulted from the execution
3 of the general release.

4 what was argued in front of Judge Sprouse was that
5 that \$300,000 as I noted in my opening -- our position was
6 that \$300,000 was contemplated specifically by the
7 non-compete agreement, which specifically said if you
8 resign or your position is terminated you're entitled to
9 three years worth of payments at a hundred thousand dollars
10 per year for a total of \$300,000.

11 Our position throughout the entirety of this case,
12 Your Honor, is that the consideration that was paid, the
13 \$300,000 that was paid, was not paid as consideration on
14 the general release but rather was paid as a consideration
15 on the non-compete agreement.

16 There was something that stood out to me, Your Honor,
17 at the conclusion of the last hearing that was before you,
18 and I believe -- I believe you said to me that one in the
19 hand is two in the bush. And it made me think back about
20 maybe the way that this matter was presented to the Court
21 previously by myself and by the defendants.

22 And I think it's important to note that the general
23 release that we're talking about, again, was contemplated
24 back when the employment agreement was executed in 2014.
25 But it was not the result of some negotiated settlement

1 agreement. There was no threatened or pending litigation
2 between my client and the defendant that resulted in the
3 creation of this general release where my client says I
4 have these claims but I'm releasing them against you in
5 exchange for \$300,000.

6 That is not what we have in this case. What we have
7 in this case is an employment agreement that requires the
8 execution of a general release upon determination or
9 resignation of employment and then a non-compete agreement
10 that specifically states that upon your termination or
11 resignation for your promise not to compete and not to
12 solicit you will receive \$300,000.

13 So in this case what we argued and have continued to
14 argue to the Court is that the genuine issue of material
15 fact was whether or not that \$300,000 was truly paid on the
16 non-compete as we -- as we contend that it was or whether
17 it was paid for the general release as the defendants
18 contend.

19 To me, Your Honor, that is by its very definition a
20 genuine issue of material fact, what was the consideration
21 paid for in this case, and I believe that that's a question
22 for the jury to consider.

23 Again, Your Honor, there's also an abundance of case
24 law that speaks to this tender-back-doctrine issue to the
25 extent that the Court says that Judge Sprouse didn't hear

1 all of these arguments already and didn't rule on all of
2 these and his denial did not encompass the fraud in the
3 inducement claim.

4 To the extent we do look to the tender-back doctrine,
5 there's also, again, an abundance of case law that says
6 that if you otherwise would be entitled to retain the
7 consideration that was paid to you under the general
8 release you do not have to tender it back, which, again, is
9 the exact position we're taking.

10 Our position in this case, Your Honor, is that the
11 money that we are not tendering back was not paid as
12 consideration on the general release. Rather, we're saying
13 we have an independent right to this \$300,000 because we
14 did not compete against the defendants for a period of
15 three years in accordance with the non-compete.

16 There is no contract for us to rescind in this case
17 that would require us to tender that money back. Your
18 Honor, there's nothing to rescind because we've already
19 performed under the terms of the non-compete agreement.

20 we're saying that the general release that is now
21 being used as a defense in this case was fraudulently
22 procured and therefore we should be able to bring our
23 claims. That, Your Honor, is a factual question that we
24 believe the jury should be entitled to hear.

25 And then finally the -- there's an estoppel argument,

1 Your Honor, that was made. It was raised as an affirmative
2 defense in the plaintiff's response to the defendants'
3 counterclaims. Of course we argued equitable estoppel.

4 There, again, submitted to Judge Sprouse were a number
5 of email correspondence and deposition testimony where it
6 was represented to my client that despite being in default
7 under the terms of the promissory note that they were going
8 to make those payments, that he was entitled to his
9 promissory note payments. These were conversations that
10 were had, that were being had, leading up to his
11 resignation.

12 He executed the general release. We are now taking
13 the position, Your Honor, that they are equitably estopped
14 from arguing that despite their position taken back in 2017
15 that Mr. White was, in fact, entitled to the monies that he
16 was -- that he was owed under the promissory note.

17 They don't now get to argue as a new theory in the
18 case that he walked away from those funds when we have an
19 abundance of evidence that suggests that they had promised
20 him he was going to get it, they acknowledged that he was
21 entitled to it and he relied on those promises.

22 And so that the third part of this, Your Honor, is the
23 estoppel claim. We believe that that also serves as a
24 basis for this Court to vacate its previous judgment and to
25 allow this case to proceed on the merits. Thank you, Your

1 Honor.

2 THE COURT: All right. Mr. Schanen.

3 MR. SCHANEN: Your Honor, I mean, I have to start out
4 this way because I just take great offense to something
5 that was said over here, and it was at the beginning of
6 what Mr. Puriefoy said. He said that during the hearing
7 that we had in May you asked repeatedly whether things had
8 been argued to Judge Sprouse a year before. And then I
9 said no and that I misled you in that respect.

10 And, Your Honor, that is not absolutely false.
11 There's nothing in the transcript like that. And I don't
12 know why, you know, a lawyer would say that to try to
13 mislead someone like that, but that did not happen. So I
14 just wanted to make that very clear.

15 I'm not attempting to mislead this Court about what
16 was argued before Judge Sprouse at any point in time, and I
17 just have to say that.

18 Your Honor, I guess the first issue is whether Your
19 Honor had the authority to hear our motion for summary
20 judgment, and of course Your Honor did. Your Honor did
21 hear that motion.

22 I think that if Mr. Puriefoy had wanted to object to
23 Your Honor hearing that motion in May he had the
24 opportunity to do that at that time, and he could have
25 raised these arguments that he's raising now. And those

1 arguments weren't raised.

2 He mentioned in the hearing about Judge Sprouse having
3 heard a previous motion for summary judgment, but he didn't
4 object to you hearing the motion and say that somehow a
5 prior denial of a motion for summary judgment is the law of
6 the case that you're bound by, which is the argument that
7 he's making now. And of course it's not.

8 The law in South Carolina is very clear that a motion
9 for summary judgment can be renewed and it isn't the law of
10 the case, that, you know, the Brown vs. Pearson case is the
11 one that does that. And that was a case where Judge
12 McKellar -- the Court -- the circuit court held that it was
13 proper for Judge McKellar to grant a motion for summary
14 judgment that Judge Simmons had earlier denied.

15 And in doing that the Court quoted a lot of other
16 authority. It said, quote, "We see no merit in the
17 contentions that summary judgment was improper because an
18 earlier motion for summary judgment which raised the same
19 issues had been denied."

20 And the Court also cited a treatise. "A grant of
21 summary judgment is not precluded by prior denial of a
22 motion for summary judgment."

23 Your Honor, a motion for summary judgment can be
24 renewed or a new motion for summary judgment can be made at
25 any time, and the Court can consider that motion if it

1 wants to do that. And that happens all of the time.

2 I suspect Your Honor has seen that often. And it
3 happens often when a motion is made early in the case and
4 it's denied and more discovery is conducted and a party
5 renews it before trial. That happens all of the time.

6 And a motion for summary judgment denied does not form
7 the law of the case, doesn't have anything to do with what
8 happens later. And because -- because certain arguments
9 are raised and presented in one motion that's denied
10 doesn't bar a party from raising those arguments again, for
11 the Court considering those.

12 I mean, the truth is we could have raised the
13 identical motion that was raised before Judge Sprouse a
14 year earlier and Your Honor could have considered that.
15 But of course that's not what happened. I think we were --
16 we described this pretty exhaustively in our brief.

17 what had happened a year before was Mr. Puriefoy first
18 filed the motion for summary judgment. And it was earlier
19 than we would have wanted to file our motion, but we at
20 that point felt like we had to file a cross motion for
21 summary judgment, so we did.

22 He's moving for summary judgment in our claims. We're
23 moving on his. We argued it all before Judge Sprouse, and
24 he issued a Form Four that said I find there's a question
25 of fact. He didn't say what the question of fact was. It

1 was -- it was just a question of fact. And so discovery
2 continued after that point in time.

3 we highlighted in our brief the extensive discovery
4 that continued after that point in time. There was fact
5 discovery. Our C.F.O. was deposed, or former C.F.O., which
6 was an important deposition in the case.

7 There was a lot of expert discovery conducted
8 including the discovery of Mr. Puriefoy's expert who had
9 this theory that you couldn't release a securities claim.
10 So all of that was fleshed out. And all of that discovery
11 revealed there was no question of fact, and so we filed
12 another summary judgment motion before trial approached.

13 And there was something else that was important to
14 that, which was now it had been four years or almost five
15 years since Mr. White had signed the release and started to
16 get the \$300,000 payments.

17 we're approaching trial. He's claiming that the
18 release is invalid because of fraud, and yet he hasn't
19 tendered back the consideration that he received for the
20 release.

21 So at that point in time he thought it was right to
22 raise the tender-back doctrine as an absolute defense to
23 his claims of fraud to set aside the relief. That was
24 something that indisputably had never been raised before.
25 But it was appropriate to raise it at that point in time as

1 we approached trial, and so we raised a new legal argument
2 there. And so there's not some bar to Your Honor having
3 heard the summary judgment motion before Judge Sprouse a
4 year earlier.

5 It didn't matter that all of that discovery was
6 conducted in the meantime or that we raised the arguments.
7 Your Honor could have heard the same motion again. But of
8 course that's not what happened.

9 The plaintiff after the -- after the hearing with
10 Judge Sprouse did amend the complaint. They did add a new
11 claim for fraud in the inducement that wasn't in their
12 prior complaint.

13 Mr. Puriefoy showed you an email where I said I
14 thought it was the same thing and objected to it, but he
15 thought it was important enough to amend his complaint to
16 assert a fraud in the inducement claim, and he did that.

17 So it's hard to understand how a plaintiff can file --
18 fight to file, and file, an amended complaint and then
19 complain the defendant can't move for summary judgment on
20 that amended complaint, which is exactly what happened
21 here.

22 So, Your Honor, we think there's no merit to the
23 argument that somehow Your Honor shouldn't have considered
24 our motion. Your Honor did consider our motion and ruled
25 on it. We think that was perfectly appropriate at that

1 time.

2 The next argument that was raised, the consideration
3 issue. So as I understand what Mr. Puriefoy is saying is
4 that the \$300,000 that was paid to Mr. White wasn't
5 consideration for the release agreement, that it was
6 consideration for non-compete evidence.

7 In trying to -- in trying to convince Your Honor of
8 that Mr. Puriefoy again said something that's not accurate.
9 He said that the employment agreement that Mr. White signed
10 years before said that if Mr. White resigned or was
11 terminated he would get \$300,000 in return for signing the
12 release, and that's not what it said.

13 The employment agreement -- and we went over this at
14 length in the last hearing, and in the briefing. It's
15 actually addressed extensively in your order. But what the
16 employment agreement said was that if Mr. White was
17 terminated by C.F.R. he would get \$300,000 if he signed the
18 full release of claims, standard provision in the
19 employment agreement.

20 Now, he was bound by those restrictive covenants in
21 the agreement regardless of what happened.

22 The restrictive covenants are separate provisions of
23 the agreement. There's a non-compete provision; there's a
24 non-solicitation provision. And of course the
25 consideration for those restrictive covenants is just that

1 he's becoming a salaried employee receiving a substantial,
2 you know, six-figure salary so he is bound by restrictive
3 covenants.

4 The agreement then had a severance provision which
5 says, okay, if we terminate you, then you get \$300,000 and
6 you have to sign a release. That's all very standard
7 stuff.

8 And here it's not disputed at all that Mr. White
9 wasn't terminated. It's that he resigned. And so at that
10 point in time C.F.R. didn't owe Mr. White the \$300,000
11 severance at all.

12 Mr. White was bound by the non-compete agreement which
13 didn't have -- wasn't tied to the receipt of that money at
14 all. But C.F.R. elected to give Mr. White \$300,000 in
15 severance anyway.

16 And, you know, Your Honor, it's -- in considering the
17 issue of what the \$300,000 payment was for, you don't have
18 to look any further than the severance agreement, which is
19 what describes that. So we can -- we can put that up.

20 This is the general waiver and release agreement,
21 severance agreement, and it says, whereas -- this is the
22 second whereas clause. "Whereas, executive desires to
23 receive severance payments and other consideration provided
24 pursuant to this agreement, and the company is willing to
25 provide these benefits to the executive on the condition

1 the executive enters into this agreement. Therefore, in
2 consideration of the mutual agreements and the promises set
3 forth within this agreement, the receipts sufficiency which
4 are hereby acknowledged, executive employer agrees as
5 follows."

6 So there is the payment for \$300,000. He gets that.
7 He gets that before signing this agreement. And this
8 agreement contains the release. So if you scroll down,
9 contains the release.

10 It contains several other provisions, and then if you
11 scroll down it includes the reaffirmation of his
12 restrictive covenants. And so all he's saying there, Your
13 Honor, is I'm reaffirming the restrictive covenants that
14 I've already agreed to.

15 So, I mean, this is -- it's as plain as day what the
16 \$300,000 was for was his execution of this agreement and
17 his promises to abide by the terms of this agreement.
18 That's what the contract says. There's no evidence to the
19 contrary. There's no question of fact about that.

20 We weren't paying him \$300,000 solely for non-compete
21 obligations that already existed independent of this
22 agreement. It's very clear. We're paying him to sign this
23 agreement.

24 And you don't have to take my word for it, Your Honor.
25 His deposition testimony on that is crystal clear.

1 If we can, look at that, Elizabeth.

2 So this is Mr. White's testimony.

3 "Q The release agreement that we looked
4 at, did you sign that voluntarily? The
5 separation agreement.

6 "A Yes.

7 "Q The document is titled general labor
8 release.

9 "A Yes.

10 "Q Okay. You could have chosen not to
11 sign that document, right?

12 "A Yeah. I wouldn't have gotten my
13 severance money, but, yeah.

14 "Q Right. But you wanted the \$300,000.

15 "A Right.

16 "Q And so you signed the release
17 agreement.

18 "A Yes.

19 That's Mr. White's testimony. He acknowledged that
20 the only reason he got the \$300,000 was because he signed
21 the release agreement. If he hadn't signed that agreement,
22 he wouldn't have gotten the money.

23 There's no argument about that. And how, you know, we
24 can now be debating that, it doesn't make any sense. But
25 that was argued at the last hearing. Your Honor clearly

1 addressed that point in the order where you found that the
2 \$300,000 did support the release. And I don't think
3 there's any reason to go on about that.

4 The -- the issue of equitable estoppel. First of all,
5 I did scour the summary judgment briefing in the transcript
6 from the hearing, and equitable estoppel was never raised
7 in either of those. So those weren't arguments that were
8 ever made to this Court before and that the Court could
9 have considered in issuing its order, and so this isn't a
10 proper argument for a motion to reconsider under Rule 59.
11 It's raised for the first time now.

12 But, Your Honor, beyond that what -- as I understand
13 it, what Mr. Puriefoy is saying is that because
14 Mr. Herwald -- I am trying to understand it -- but because
15 Mr. Herwald told Mr. White that the company hoped it could
16 resume payments on the note at some point when the lender
17 lifted the payment blockage and they were allowed to that
18 that somehow prevents us from now arguing that the release
19 is effective. And none of that makes any sense.

20 I mean, the statements weren't about the release.
21 They didn't have anything to do with the release, but it's
22 really trying to muddy two issues here.

23 The issue of whether if the company had -- if the
24 payment blockage had been lifted and if the company had
25 been able, had been permitted by its lenders to resume

1 payments under the note in the future, which never
2 happened, by the way, that they remained in default. That
3 payment blockage was never lifted. But the issue of, you
4 know, whether the company would have voluntarily made
5 payments to Mr. White if that had happened is completely
6 different than the effect of the release that Mr. White
7 entered into.

8 The effect of the release was that claims that had
9 accrued before he entered into the release were now barred.
10 No question about that. And there's no question that if
11 the note was breached, it had already been breached months
12 before Mr. White entered into the release. So those claims
13 are barred.

14 There's a huge difference between releasing a claim
15 that had already accrued and what might have voluntarily
16 happened in the future.

17 But I think, you know, even just looking at the
18 elements of equitable estoppel, which aren't really
19 addressed at all in the plaintiff's brief, it requires
20 either a false statement of fact -- false statement of
21 fact -- or something a mis -- or a silence about something
22 that he owed a duty to tell.

23 And here the statement that Mr. Puriefoy talked about
24 isn't a statement of fact at all. It was Mr. Herwald
25 expressing intent in the future that if they could resume

1 payments on the note, they would.

2 And I think that we didn't see the specific email, but
3 Mr. Herwald was very candid with Mr. White in that
4 communication. And here's what he said. I mean, I'll read
5 it.

6 "Mr. White" -- this was on November 29th of 2017.
7 Mr. Herwald says, "That is fine, but I cannot make interest
8 payments until we clear the whole with M.C.P. That is the
9 terms of their notes and yours. For me to pay interest
10 before then would be fraud, and they would demand it back
11 from you in any event. Believe me. If I could do
12 otherwise, I would."

13 And that's a true statement. All Mr. Herwald is
14 telling Mr. White is, hey, if in the future we can do this,
15 I will, but I can't do it right now. It would be fraud for
16 me to do it.

17 And that's -- you know, that's a statement as to what
18 Mr. Herwald hoped would happen or what might happen. It
19 absolutely is not actionable as fraud, which has to be a
20 statement as to a preexisting fact. And it doesn't even
21 have anything to do with the release.

22 And, beyond that, another thing is that another
23 element of estoppel is that the plaintiff would have to
24 show that Mr. White relied on those statements in entering
25 into the release. And there's no evidence of that. Your

1 Honor recognized that.

2 There's no evidence whatsoever in the order, Your
3 Honor, recognize it in the context of fraud, but there's no
4 evidence that Mr. White relied on that statement at all for
5 any reason, much less for entering into the release. And
6 we have that testimony as well.

7 You know, here I want to make sure I understand the
8 basis for your claim and disagreement on the relations
9 claims arising out of employment.

10 "What statements or representations, if any, were made
11 to you about the intent of this agreement?"

12 "None."

13 And then the other page, "Other than communications
14 that we've seen in this thread" -- and that's talking about
15 the thread where our H.R. guy forwarded the release to him
16 -- "did you talk with anyone about your release before it
17 was sent, what the terms of the severance agreement and
18 release would be before it was sent to you?"

19 "No."

20 This email chain is probably a monotypic order as to
21 the H.R. guy on the phone. I don't remember, but I didn't
22 talk to him last.

23 There's not a single shred of evidence in this case
24 that Mr. White relied on anything that Mr. Herwald said in
25 deciding to sign the release here. If there had been that

1 evidence, the time for Mr. Puriefoy to have presented it
2 was before -- before Your Honor ruled on summary judgment.
3 But he didn't produce it then and he hasn't produced it
4 now.

5 So, Your Honor, and in the tender-back doctrine it
6 sounded from -- the argument that Mr. Puriefoy raised just
7 now is a little different than what he briefed, but he tied
8 it back to the consideration. He said, well, Mr. White
9 wasn't required to tender back any of the \$300,000 because
10 that wasn't the consideration for the release. That was
11 consideration for the non-compete.

12 I've already addressed that, Your Honor. It wasn't
13 consideration for the non-compete. The \$300,000 was the
14 consideration for signing the document itself and agreeing
15 to all of the terms in that document that can't be seen any
16 other way.

17 So, Your Honor, there's no question of fact here. You
18 know, I would just harp back to, you know, what I've said.
19 I would put it this way just in conclusion.

20 Mr. White had a recitation of the facts. I mean, Mr.
21 Puriefoy had a recitation of the facts that I didn't
22 necessarily agree with, but I think this is undisputed.

23 Mr. White was this sophisticated businessman. He
24 received a benefit in the bargain in this case. He was
25 paid near \$14 million for his company. Then the company

1 paid him a generous salary to run the company's operations,
2 the second most powerful guy in the company for three years
3 until he decided to resign without any obligation to do so.

4 The company then paid him \$300,000 in that agreement
5 in return for a full release of claims to wipe the slate
6 clean. He kept every last cent of that \$300,000. There's
7 no dispute about that. And he received the benefit of his
8 bargain.

9 And in the order Your Honor found that our client
10 should also receive the benefit of its bargain, that the
11 release should be enforced and that Mr. White shouldn't be
12 allowed to bring claims that were released.

13 And we would -- there's been nothing that would
14 suggest that order was wrong and it should be overturned,
15 and we would ask that the motion to reconsider be denied.
16 Thank you, Your Honor.

17 MR. PURIEFOY: Your Honor, just briefly.

18 I think what Mr. Schanen has done is a fantastic job
19 of highlighting why the general rule in this state is that
20 you cannot overrule another -- another judge's rulings.

21 Mr. Schanen pointed to a case where they were
22 addressing the same issues, but what we didn't from the
23 defendants in this case, Your Honor, is that there was a --
24 there is a factual distinction between the renewed motion
25 for summary judgment in that case.

1 Here there was not a single argument presented that
2 there is a factual distinction or a new fact that was
3 discovered that otherwise could not have been known at the
4 time that the second motion for summary judgment was filed,
5 from that time until the time the third motion for summary
6 judgment was filed.

7 All of these arguments that were presented to you just
8 now were arguments that were presented to Judge Sprouse,
9 and at the time the plaintiff had the benefit of having a
10 plethora of evidence that we used to rebut every single one
11 of the arguments that were just made and presented to you.

12 The exact same demonstration that you just saw was
13 seen by Judge Sprouse.

14 We then rebutted those arguments, Your Honor, at the
15 summary judgment hearing using our own evidence, using our
16 own deposition transcripts. And Judge Sprouse considered
17 every single bit of it and ultimately decided based on his
18 review of everything in the record, including supplemental
19 production by -- or supplemental arguments at the
20 conclusion of that hearing that we've seen where
21 Mr. Schanen argues additional points of law. After
22 considering all of those issues, Your Honor, Judge Sprouse
23 still came back and said there exists a genuine issue of
24 material fact.

25 There was not one single fact that has been argued

1 today that was not argued in front of Judge Sprouse. And
2 what you didn't hear from the defendants is that there is a
3 new fact that was being argued.

4 Rather, they piggybacked off of this new legal theory
5 that was contemplated by their expert and used that legal
6 theory as an opportunity to rehash every single issue they
7 had in front of Judge Sprouse in hopes of getting a more
8 favorable ruling.

9 what the case law does not permit, Your Honor, is for
10 a litigant to refile summary judgment after summary
11 judgment after summary judgment for the -- on the sole
12 basis of -- or solely because they discovered the existence
13 of some new legal theory. And that's what this is, Your
14 Honor.

15 At the hearing that was before you, what was argued
16 was the existence of this tender-back doctrine. That was
17 the focal point of the argument that was presented to you.

18 There existed this fraud claim that was not otherwise
19 presented to Judge Sprouse at the second motion for summary
20 judgment. And based on that claim we have a defense in
21 this case of tender back. That's what was argued to Your
22 Honor.

23 what I've demonstrated, Your Honor, through the
24 defendants' memoranda in opposition to plaintiff's motion
25 for summary judgment and multiple email correspondence is

1 that the defendants were well aware of the existence of
2 this fraud in the inducement claim. They breached it; they
3 argued it; and then they supplemented their argument to
4 Judge Sprouse, and Judge Sprouse considered every single
5 bit of it.

6 The same deposition testimony that was presented just
7 now and highlighted to you was presented and highlighted to
8 Judge Sprouse.

9 The same general release provisions that were
10 highlighted and represented to you just now were
11 highlighted and argued to Judge Sprouse. Every single
12 point of law and every single fact had previously been
13 argued.

14 The plaintiff in this case does not contest or argue
15 the fact that the defendants are allowed to renew motions
16 for summary judgment. They are not procedurally barred
17 from doing so.

18 But what the case law makes abundantly clear, Your
19 Honor, in the cases that I've cited is that one -- one
20 sitting circuit court judge cannot simply overrule another
21 circuit court judge's rulings without showing something
22 more.

23 You have to be able to demonstrate, Your Honor, the
24 case that I cited, which is the Steele case, is that once a
25 motion is heard, i.e. the motion that was heard by Judge

1 Sprouse, the second motion for summary judgment, and it's
2 decided fully. Judge Sprouse denied both plaintiff's
3 motion for summary judgment and defendants' motion for
4 summary judgment. It will only be reviewed upon a new
5 state of facts arising after the decision.

6 The defendants in this case have piggybacked a legal
7 theory and used that as a springboard to make a new
8 motion-for-summary-judgment argument to this Court.

9 I would challenge the defendants to present a single
10 fact that was different at the time of the second motion
11 for summary judgment and the third motion for summary
12 judgment. There was not a single factual distinction that
13 existed between those two, and there still isn't.

14 Again, this was an attempt, Your Honor, to use a new
15 legal theory that I presume defendants' counsel was unaware
16 of before his expert made a reference to it in his expert
17 report because prior to production of the expert report
18 we'd never heard of the tender-back doctrine.

19 The defendants were well aware of the existence of the
20 fraud in the inducement claim, which is what caused them to
21 assert the tender-back-doctrine argument a year before that
22 argument was ever presented.

23 Mr. Schanen argued in front of Judge Sprouse the
24 issues and the problems with the fraud in the inducement.
25 He briefed it before that hearing, and then he sent Judge

1 Sprouse an additional brief at the conclusion of that
2 hearing as to all of the elements of fraud in the
3 inducement and why the facts when applied to those elements
4 simply don't survive or that summary judgment simply is not
5 appropriate.

6 Your Honor, we -- what the defendants have failed to
7 do is overcome the initial burden of demonstrating that the
8 reason why they are allowed to argue to Your Honor this new
9 renewed motion for summary judgment is the existence of
10 some new fact.

11 I did an apples-to-apples comparison of the fact
12 section of the second motion for summary judgment and the
13 third motion for summary judgment.

14 And, Your Honor, we're talking about a 2-sentence
15 distinction between the two. And so to suggest that two
16 sentences that deal entirely with the dates in which
17 certain -- certain documents were filed with this Court
18 somehow satisfy the burden of creating a new fact that's
19 akin to a new case is farfetched, Your Honor. And so while
20 the arguments that were presented surely look good on paper
21 and on the screen, those arguments were argued already
22 previously.

23 Judge Sprouse was not persuaded by those arguments.
24 He reviewed the arguments that were made to the contrary,
25 the deposition transcripts that were submitted to the

1 contrary, the evidence that was submitted to the contrary
2 and ultimately told the defendants you're moving forward to
3 a merits hearing.

4 The defendants don't need to come back time after time
5 after time to request this Court to hear the same issues on
6 the same facts.

7 Again, the case that was cited, Your Honor, same
8 issues, no problem. But you have to demonstrate new facts
9 in accordance with the Steele case.

10 The issues can be the same. The facts have to be
11 different. Your Honor, the facts in this case are exactly
12 the same in Judge Sprouse's ruling, and for those reasons,
13 Your Honor, we believe that that motion should be vacated
14 or, excuse me, that order should be vacated and we should
15 be able to move forward on the trial of this case.

16 MR. SCHANEN: Your Honor, just a couple of things.

17 Mr. Puriefoy is trying to create a standard that
18 doesn't exist. There's no standard in South Carolina that
19 you can file a later motion for summary judgment. It has
20 to be based on new facts. That just -- that isn't out
21 there.

22 The case that Mr. Puriefoy referred to, Steele vs.
23 Charlotte, that was a case from 1880.

24 A case was -- that case was tried before a judge. The
25 judge denied a posttrial motion for a new trial, and then

1 that was appealed.

2 So while that motion for a new trial was being
3 appealed the party then filed another motion for a new
4 trial with a different circuit judge and tried to have it
5 heard there.

6 And the Court said, well, wait a minute, that's not
7 proper for that circuit judge to hear a motion for a new
8 trial when that motion for new trial by the judge who tried
9 the case had already been ruled on and was now on appeal.

10 And the Court said there's no appeal from one circuit
11 judge to another. It was talking about it in the context
12 of that motion for a new trial that was on appeal. They
13 went and tried to get another circuit judge to hear it.

14 That's not what we're talking about here. Here
15 there's an abundance of law that we cited in our brief that
16 says a summary judgment motion doesn't form the law of the
17 case.

18 It doesn't matter what arguments were made to or
19 weren't made to Judge Sprouse. We're not asking Your Honor
20 to overrule Judge Sprouse. We're not -- we're not -- this
21 isn't a motion to reconsider his ruling. This is a motion
22 that was made a year later on a different operative
23 complaint after a year of discovery had been conducted.

24 And I will tell you, in fact, that it changed. You
25 know, a new fact was now we're a few weeks from trial and

1 Mr. white had still not tendered back the money. He had
2 kept the whole \$300,000. That's what prompted us to at
3 that point say these claims are barred.

4 He can't -- you know, if during the case he had tried
5 to tender that back, it would have created a problem. But
6 at that point in time as trial was approaching he still
7 hadn't.

8 We felt it was the appropriate time to rely on that
9 doctrine and say you can't question this release based on
10 fraud now because he's kept every penny.

11 And that's the right result. Your Honor recognized it
12 was the right result in hearing our motion and in granting
13 summary judgment. Thank you, Your Honor. That's all I
14 have.

15 MR. PURIEFOY: Just as a last point, Your Honor, and I
16 have no more additional arguments to make except for taking
17 issue with the fact that Mr. Schanen suggests that I'm
18 creating the standard.

19 If I may approach, Your Honor, I have three separate
20 cases from 2022, 2008 and 2006, all of which stand for the
21 same proposition that one circuit court judge cannot
22 overrule another.

23 This is not a standard that I've created. This is a
24 standard that has been created by our courts, Your Honor.

25 MR. SCHANEN: I don't know what cases those are, Your

1 Honor.

2 THE COURT: Have you got copies for Mr. Schanen?

3 MR. PURIEFOY: I don't have copies of those cases. I
4 apologize.

5 MR. SCHANEN: If they're the ones cited in --

6 MR. PURIEFOY: They're not.

7 MR. SCHANEN: Okay. Well, I don't. Uh-uh. I can't
8 read these cases now, Your Honor. It doesn't look like --

9 THE COURT: You don't have to. Just take the cites.
10 And if you need to provide additional cites, you can; or if
11 you need to comment on them, you can. I'm guessing y'all
12 both covered everything.

13 MR. SCHANEN: I think my response to all of that would
14 just be, Your Honor, we're not asking you to overrule Judge
15 Sprouse. That isn't what this is.

16 THE COURT: All right. Anything else y'all need to
17 tell me?

18 MR. PURIEFOY: Nothing from the plaintiff, Your Honor.

19 MR. SCHANEN: No, Your Honor.

20 THE COURT: All right. Mr. Schanen, I have
21 Mr. Puriefoy's hard copy of his motion and memo.

22 Do you have a hard copy of your memo?

23 MR. SCHANEN: I have.

24 MR. PURIEFOY: I have an extra one.

25 MR. SCHANEN: Sure. I have it, Your Honor. I'll just

1 give you mine.

2 THE COURT: Do you need it?

3 MR. SCHANEN: I won't.

4 THE COURT: Have you got an extra copy, Mr. Puriefoy?

5 MR. PURIEFOY: I do, Your Honor.

6 THE COURT: Have you got an extra copy of his motion?

7 MR. SCHANEN: I just want to make sure it has all of
8 the exhibits and everything.

9 MR. PURIEFOY: Yeah. This doesn't have the exhibits.
10 This is just the memoranda.

11 MS. EDMONSON: I think I do.

12 THE COURT: Well, if you don't have it, you can send
13 it to me. I want a hard copy.

14 MR. SCHANEN: It has three exhibits, correct?

15 MS. EDMONSON: Yes.

16 MR. SCHANEN: Just it hand up. That's fine.

17 THE COURT: Okay. I'll review it and issue an order.

18 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Greenville County, South Carolina, on the 1st day of December 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 2, 2023

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter