

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )  
 )  
Paul David Hess, APRN-BC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Morphis Pediatric Group of Lancaster, )  
P.A.; Elizabeth J. Morphis, M.D.; )  
Gregory M. Alexander, CPA; and )  
Moore Beauston & Woodham LLP, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2018-CP-29-01127

**ORDER GRANTING PLAINTIFF’S  
PETITION FOR TREBLE DAMAGES,  
ATTORNEY’S FEES AND COSTS,  
AND PRE-JUDGMENT INTEREST**



This matter is presently before the Court on Plaintiff’s Petition for Treble Damages, Attorney’s Fees and Costs, and Pre-Judgment Interest. The Court held a hearing on this motion in person by agreement of the parties at the Richland County Courthouse on Thursday, May 19, 2022. Present at the hearing were attorneys David E. Rothstein for Plaintiff; Charles F. Thompson, Jr. and Ryan L. Beasley for Defendants Morphis Pediatric Group of Lancaster, P.A. (hereinafter “Defendant MPG”) and Elizabeth J. Morphis, M.D. (hereinafter “Defendant Morphis” and collectively referred to as the “Morphis Defendants”); and Skyler C. Wilson for Defendants Gregory M. Alexander, CPA and Moore Beauston & Woodham LLP (hereinafter collectively “Accounting Defendants”).<sup>1</sup>

<sup>1</sup> The Accounting Defendants reached a settlement with Plaintiff after the trial of this case and appeared at the hearing solely to ensure the confidentiality of the terms of the settlement agreement. The Accounting Defendants were never “employers” of Plaintiff’s under the South Carolina Payment of Wages Act and, therefore, have no interest in the substance of Plaintiff’s post-trial petition under that statute.

The undersigned judge presided over a jury trial in this case in Lancaster County from January 25 to February 3, 2022. On February 2, 2022, the jury returned a verdict in favor of Plaintiff against Defendants MPG and Morphis in the total amount of \$548,290.42 in actual damages on Plaintiff's claims against them for breach of contract, breach of contract accompanied by a fraudulent act, violation of the South Carolina Payment of Wages Act, fraud, and negligent misrepresentation, relating to bonuses for years 2010 through 2015. On February 3, 2022, following the bifurcated, punitive damages phase of the trial, as requested by the Accounting Defendants pursuant to S.C. Code Ann. § 15-32-520(A), the jury awarded also Plaintiff \$475,000 in punitive damages against Defendants MPG and Morphis.<sup>2</sup>

On February 3, 2022, Plaintiff filed an Election of Remedies as to Defendants MPG and Morphis, electing to pursue his remedies under the South Carolina Payment of Wages Act and to forego the jury's verdict of punitive damages against the Morphis Defendants. On February 14, 2022, Plaintiff filed a Petition for Treble Damages, Attorney's Fees and Costs, and Pre-Judgment Interest, seeking the following remedies from the Court against Defendants MPG and Morphis: (1) three times the jury's award of actual back-pay damages of \$548,290.42, for a total of \$1,644,871.26; (2) attorney's fees in the amount of \$215,475.00, and costs in the amount of \$9,472.54; and (3) pre-judgment interest in the total amount of \$380,950.95.<sup>3</sup>

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<sup>2</sup> The jury also awarded Plaintiff actual damages for the 2015 bonus against the Accounting Defendants and \$10,000 in punitive damages on Plaintiff's claim for negligent misrepresentation relating to that bonus year.

<sup>3</sup> The attorney's fees and costs were through February 14, 2022, and Plaintiff's request for pre-judgment interest was calculated through February 14, 2022, the date of Plaintiff's Petition based on the jury's verdict.

### **A. Treble Damages Under S.C. Payment of Wages Act**

The civil remedy section of the South Carolina Payment of Wages Act provides, in relevant part: “In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney’s fees as the court may allow.” S.C. Code Ann. 41-10-80(C). In Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), the South Carolina Supreme Court recognized that “[t]he award of treble damages and attorney’s fees is discretionary with the trial court. We do not believe the legislature intended to deter the litigation of reasonable good faith wage disputes; we do believe the legislature intended to punish the employer who forces the employee to resort to the court in an unreasonable or bad faith wage dispute.” Id. at 99, 456 S.E.2d at 383 (quoting Apache East, Inc. v. Wiegand, 119 Ariz. 308, 312313, 580 P.2d 769, 773-774 (Ct. App.1978)). The South Carolina Supreme Court has found that it is “for the trial court to determine, in the first instance, whether there existed a bona fide dispute [regarding the payment of an employee’s wages] such that treble damages were not warranted.” Temple v. Tec-Fab, Inc., 381 S.C. 597, 600–601, 675 S.E.2d 414, 416 (2009).

At issue during the trial of this case was whether Plaintiff was entitled to additional bonus amounts for years 2010 through 2015. Plaintiff’s Employment Agreement with Defendant MPG provides, in relevant part, as follows, under Paragraph 4, “Compensation”:

Employer shall pay to the employee for full-time services an annual base salary [of] \$100,000, payable in regular periodic salary amounts determined by Employer’s Board of Directors. All or any bonuses shall be at the discretion of the Board or as determined in any appendix that is hereby signed and agreed upon by both parties. (See Appendix A).

(Plaintiff’s Ex. 1). The contract contained an Appendix A, entitled “Bonus Compensation,” which provides the following:

Provided that the employee meets criteria as decided upon by the Board, the employee will be eligible for an annual bonus paid by the company based on the following formulation.

All end of the year profits generated by this above mentioned business shall be divided and the employee is granted 50% (fifty percent) of the said monies after all debts, expenses, royalties and expenditures have been allowed. These monies will be determined by the Company Accountant after the close of the year on December 31<sup>st</sup> of each calendar year and payable by the 15<sup>th</sup> of February.

(Plaintiff's Ex. 1, Appendix A) (emphasis in original).

The Court hereby finds that Defendants MPG and Morphis did not have a good-faith, bona fide basis for disputing the amount of bonus owed to Plaintiff under the express terms of the 2010 Employment Agreement. This determination must be made by looking at the circumstances that existed at the time the compensation decisions were made. See Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 316, 698 S.E.2d 773, 782 (2010) (“[T]he relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld, i.e., when the employer allegedly violated the Act.”).

The best evidence of Defendant Morphis's understanding and interpretation of the contract is found in her own contemporaneous, hand-written notes where she performed the preliminary, rough calculations for the bonuses for years 2010, 2012, 2013, and 2014. (Plaintiff's Ex. 7). According to these calculations, using 2010 as an example, profit for the Lancaster practice was roughly calculated as total income minus total expenses, including staff bonuses and retirement; the resulting figure was divided by 2 to calculate “mgmt bonus,” which should have been split equally between Plaintiff and Defendant Morphis.

Furthermore, Defendant Morphis's email of December 20, 2010 to MBW accountant Will Woodham (who passed away in mid-2011) stated, “I do want to look at numbers w/ you at some point but for now can we make [David Hess's] bonus \$75000.” (Plaintiff's Ex. 6). Defendant Morphis testified at trial that when her husband and sister found out that Plaintiff's preliminary

bonus calculation for 2010 was \$75,000, they told her that she was crazy to pay a nurse practitioner that much, on top of his base salary of \$100,000. Defendant Morphis further testified that she was “more than fair” to Plaintiff in terms of his compensation and that he was probably the highest paid nurse practitioner in the State of South Carolina. Defendant Morphis did not pay Plaintiff his bonus according to Appendix A of his Employment Agreement nor did she share the details of the financial records for the company or how the annual bonus was calculated each year.

Other compelling evidence regarding Defendant Morphis’s original interpretation of the Employment Agreement is found in her email of May 27, 2015 to Defendant Alexander in preparation for a meeting with Plaintiff the next day, May 28, 2015, in which she and Mr. Alexander first proposed switching Plaintiff to a new bonus formula based on 5% of gross revenues, rather than 50% of net profits of the Lancaster practice. In that email, which was introduced at trial as Plaintiff’s Exhibit 2, Defendant Morphis states, “At our annual meeting we would sit down in Dec[ember] and discuss finances which I never pretended to completely understand. When we would get to the bottom line, it was divided by 2 to figure his bonus. . . . Also, at one point, Will [Woodham] had built in a Royalty Fee to MPG so I could get compensated for my time there. These things were realized after I had split the profits with David but really hadn’t gotten paid myself. I think some of these fees were created to help me but I never wanted to get paid because I feared that David would question me.” (Plaintiff’s Ex. 2).

Counsel for Defendants MPG and Morphis raised numerous arguments during this litigation, on summary judgment, at trial, and on motion for directed verdict, defending against Plaintiff’s allegations, including that Plaintiff’s claims were barred by the statute of limitations, that the Employment Agreement made the bonuses completely discretionary with Defendant Morphis, that the language in the Employment Agreement was so ambiguous with numerous

undefined terms so as to render the bonus provisions unenforceable, and that the bonus provision was a gratuitous promise rather than an enforceable contract. The Court will address all of these issues in detail in the order on Defendants MPG and Morphis's motion for JNOV; however, for purposes of Plaintiff's motion, these issues do not demonstrate that Defendant Morphis had a good-faith, bona fide basis for disputing the amount of compensation due to Plaintiff under the express terms of the contract. Instead, those are all arguments raised by Defendants' counsel in litigation and are not relevant to Defendant Morphis's actual mindset at the relevant time the compensation decisions were made.

The mere fact that Defendant Morphis never provided Plaintiff access to the complete financial records of the Lancaster practice is compelling evidence that she did not disclose to Plaintiff the true amount of profits that were being generated each year from the Lancaster practice, as well as some of the expenses that she ran through the Lancaster practice. Significantly, in the email of May 28, 2015 that Defendant Alexander sent only to Defendant Morphis, Defendant Alexander stated, "Attached is the spreadsheet you requested. I thought it may be helpful for you to see what kind of profits you are receiving from the practice in Lancaster. This is for your benefit only. I won't share this with David [Hess]." (Plaintiff's Ex. 3) (emphasis added). The spreadsheet that Defendant Alexander attached to the email he sent only to Defendant Morphis and deliberately withheld from Plaintiff contained three additional lines of data showing "Net Income," "Doctor Bonuses," and "Net Income Before Doctor Bonuses." (Plaintiff's Ex. 3, attached spreadsheet). Defendant Morphis testified at trial that she knew that David Hess is smart and has an MBA and that if he had seen Defendant Alexander's spreadsheet, Mr. Hess would have known immediately that he had never actually received 50% of the profits of the Lancaster practice as his annual bonus, as required by Appendix A to his Employment Agreement. It was only after Plaintiff and a co-

worker decided to submit a bid to purchase the Lancaster practice in the summer of 2018 that he was able to get some complete, detailed financial statements about the practice.

At oral argument on Plaintiff's Petition, Defendants' counsel suggested that the jury's verdict of less than the full amount of back-pay damages Plaintiff requested is evidence of a good-faith dispute over the wages. The damages number Plaintiff requested at trial were higher than the ultimate jury verdict, primarily because of lease expenses on Defendant Morphis's BMW that she ran through the Lancaster practice and salaries that she paid to herself in certain years after the company switched from a C-Corporation to an S-Corporation. This Court notes that it is well settled under the South Carolina Payment of Wages Act that "a jury's partial award of damages does not, by itself, create the existence of a bona fide dispute." Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 100, 757 S.E.2d 560, 564 (Ct. App. 2014).

The Court also recognizes the general rule that it must exercise its discretion on treble damages and attorney's fees irrespective of the jury's verdict on the underlying liability for back pay under the Act. See Temple, 381 S.C. at 600, 675 S.E.2d at 415. Nonetheless, the jury's verdicts in Plaintiff's favor and against the Morphis Defendants on Plaintiff's claims for breach of contract accompanied by a fraudulent act, fraud, and negligent misrepresentation, as well as its corresponding award of punitive damages against the Morphis Defendants, weigh heavily against any argument by the Morphis Defendants that there was a bona fide dispute about the wages due or any good-faith basis for not paying the bonus money due to Plaintiff in a timely manner.

This case is very different from cases in which appellate courts of this state have found an award of treble damages inappropriate under the Payment of Wages Act because of the employer's demonstrated good-faith dispute of the amount or circumstances of the alleged unpaid wages. See, e.g., Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 581 S.E.2d 591 (1999)

(employee's disloyalty to company during his employment provided good-faith basis for employer to dispute wages due); Morin v. Innegrity, LLC, 424 S.C. 559, 819 S.E.2d 131 (Ct. App. 2018) (CEO's bonus contingent on company's obtaining \$2 million in funding, which never occurred; although court of appeals affirmed trebling of vacation pay and 2-months' salary, which were not affected by the bonus condition); Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 757 S.E.2d 560 (Ct. App. 2014) (hiring letter stated that employee's compensation was entirely commission based, not salary, and majority of sales were never collected); O'Neal v. Intermedical Hosp., 355 S.C. 499, 585 S.E.2d 526 (Ct. App. 2003) (bona fide dispute about whether employee was terminated for misconduct and, therefore, forfeited payment for accrued but unused vacation).

The Court does not agree with Defendants' assertion that "[a]wards of fees and trebling have, essentially, always been reversed on appeal. (Defs.' Br., at 3). In Ross v. Ligand Pharma., Inc., 371 S.C. 464, 639 S.E.2d 460 (Ct. App. 2006), the South Carolina Court of Appeals affirmed an award of treble damages and attorney's fees following a bench trial. In addition, as noted previously, in Morrin, the Court of Appeals affirmed the award of treble damages under the Act for unpaid vacation pay and two month's salary, which were not affected by the conditions required for payment of the bonus. 424 S.C. at 139, 819 S.E.2d at 575. In Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414 (2009), the Supreme Court remanded the case to the trial court to make a determination, in the first instance, of whether there existed a bona fide dispute about wages due such that a treble damages award would not be warranted under the Payment of Wages Act. Similarly, in Zinn v. CFI Sales & Marketing, Ltd., 415 S.C. 93, 780 S.E.2d 611 (Ct. App. 2015), the Court of Appeals remanded the case to the trial court to determine whether treble damages were appropriate as to one of twenty-five original plaintiffs who prevailed at trial. Finally, in Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), the Supreme Court determined that the

trial judge properly exercised his discretion not to award treble damages under the Payment of Wages Act for commissions due to departing ad salesman who was not paid, per company policy, because he left before the ads were actually broadcast, which policy is common in the broadcast advertising business to ensure that the salesperson gives continuing service to client after sale.

In considering the statutory award of treble damages and attorneys fees and costs, the Court is mindful of the underlying purpose of the South Carolina Payment of Wages Act, which is to protect employees from unjustified retention of wages by employers. South Carolina courts have repeatedly and unequivocally recognized that the Act is “remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld.” Dumas v. InfoSafe Corp., 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995); see also Mathis, 389 S.C. at 317, 698, S.E.2d at 782 (recognizing that the underlying purpose of the SC Payment of Wages Act is “to protect employees from the unjustified and willful retention of wages by the employer.”) (quoting Rice v. Multimedia, Inc., 381 S.C. 95, 98, 456 S.E.2d 381, 383 (1995)) (internal citations omitted). It is well settled in South Carolina that remedial statutes are to be liberally construed in order to effectuate the purposes of the statute. South Carolina Dep’t of Mental Health v. Hanna, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978).

Accordingly, the Court hereby grants to Plaintiff an award of three times the jury’s verdict of \$548,290.42 for back pay on Plaintiff’s first cause of action under the South Carolina Payment of Wages Act, for a total award of \$1,644,871.26 against Defendants MPG and Morphis. This amount will be reduced by the amount of the settlement Plaintiff received from the Accounting Defendants for the 2015 bonus year as discussed under seal during the May 19, 2022 hearing.

## **B. Attorney's Fees and Costs Under S.C. Payment of Wages Act**

Plaintiff also seeks an award of attorney's fees and costs against the Morphis Defendants under Section 41-10-80(C) of the South Carolina Payment of Wages Act. As with the award of treble damages under the statute, where there is no good-faith or bona fide dispute about the wages due to the employee, the Court, in its discretion, may award attorney's fees and costs to the prevailing plaintiff employee.

The award of reasonable attorney's fees is governed by the familiar, six-factor test set forth in the landmark case of Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997): "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." Id. at 308, 486 S.E.2d at 760. These factors, which are fully addressed in the Affidavits attached to Plaintiff's Petition, are discussed in order below.

### **1. Nature, extent, and difficulty of case**

The Complaint in this case involved six substantive, legal causes of action, in addition to causes of action for declaratory judgment and an equitable accounting. All four Defendants vigorously defended the case, filing two separate motions for summary judgment, as well as numerous grounds for directed verdict and JNOV. Plaintiff was successfully able to convince the jury to go back to 2010 under the discovery rule and equitable tolling of the statute of limitations based on fraudulent concealment. As discussed below in connection with factor number 2, the case involved extensive discovery and review of complicated accounting and financial records. Plaintiff's counsel is a solo practitioner, who had limited support staff to assist him with this matter.

Employment law is a dynamic area of the law, requiring counsel to stay abreast of developments in both state and federal law. Moreover, as with any litigation in state or federal

court, attorneys in employment cases must be thoroughly familiar with developments and changes in the Rules of Civil Procedure and the Rules of Evidence.

## **2. Time necessarily devoted to case**

As set forth in the Affidavit of David E. Rothstein, which is attached as Exhibit A to Plaintiff's Petition, Plaintiff's counsel's law firm expended a total of 506.6 hours of time in connection with this matter, which includes 470.9 hours of attorney time and 35.70 hours of paralegal time, through February 14, 2022, the date of the Petition. The case involved review of voluminous discovery, including production of over 8,000 pages of financial records from the Accounting Defendants, six depositions, and two sets of summary judgment motions. The trial in this case lasted more than one full week, with two jury qualification processes, numerous evidentiary issues and other challenging legal matters, including extensive pre-trial motions, motions for directed verdict and JNOV, cross examination of two expert witnesses, complicated jury instructions and verdict forms, and bifurcation of punitive damages. Since the filing of the Petition, Plaintiff's counsel has incurred an additional 42.6 hours of attorney time on this matter, not including any time relating solely to the Accounting Defendants and the settlement with them.

The Court finds that the amount of time and labor expended in this case is reasonable. This finding is supported by the Affidavits of not only Plaintiff's counsel, David E. Rothstein, but also of attorney M. Malissa Burnette, Esq., who is a certified specialist in employment and labor law and a seasoned litigator in South Carolina.

## **3. Professional standing of counsel**

Mr. Rothstein's Affidavit sets forth his experience and qualifications, which support Plaintiff's request for attorney's fees. Mr. Rothstein has been a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court Commission on CLE and Specialization

continuously since February 15, 2006. In her Affidavit, Ms. Burnette has offered a favorable opinion about Mr. Rothstein's abilities and reputation among the employment and labor law community.

#### **4. Contingency of compensation**

Plaintiff's counsel testified in his Affidavit that his attorney fee agreement with Plaintiff is a hybrid contingency agreement, with an hourly portion at a reduced rate of \$125.00 per hour, plus a reduced contingency percentage of 25% of the amount of any recovery. The Court finds that an award of a higher rate above this reduced rate of \$125.00 per hour is appropriate to compensate for the additional risk involved in taking such a case on a partial contingency basis. Accordingly, the Court approves a rate of \$300.00 per hour to Plaintiff's counsel.

#### **5. Beneficial results obtained**

Plaintiff obtained significant success at the trial of this matter. The jury awarded Plaintiff verdicts in excess of \$548,000.00 on all of the causes of action asserted against the Morphis Defendants and a punitive damages award of \$475,000.00 against the Morphis Defendants. The jury verdicts represented a substantial portion of the actual damages number Plaintiff submitted to the jury. The Court finds that this factor supports Plaintiff's request for attorney's fees and costs.

#### **6. Customary legal fees for similar service**

Plaintiff's counsel, Mr. David Rothstein, testified in his Affidavit that he has received fee awards of at least \$350.00 per hour in numerous employment cases in South Carolina within the past ten years. See, e.g., Mullinax v. Parker Sewer & Fire Subdistrict, C/A No. 6:12-cv-01504-TMC (Dkt. No. 57) (D.S.C. Mar. 11, 2014) (FLSA collective action approving lodestar cross-check at \$350 per hour); DeWitt v. Darlington County, SC, C/A No. 4:11-cv-740-RBH, 2013 WL 6408371; (D.S.C. Dec. 6, 2013) (FLSA collective action settlement approving \$350.00 per hour

lode-star cross-check); Faile v. Lancaster County, SC, C/A No. 0:10-cv-2809-CMC (Dkt. No. 102) (D.S.C. Mar. 8, 2012) (FLSA collective action settlement approving \$350.00 per hour lode-star cross-check); George v. ProMed Ambulance Service, LLC, 2:10-cv-0087-RMG (Dkt. No. 50) (D.S.C. Oct. 20, 2011) (awarding fees in FLSA individual claim at \$350.00 per hour). An increase from the rate contracted for within the hybrid contingency agreement of \$125.00 per hour to \$300.00 per hour will be awarded.

In summary, the Court grants attorney's fees in the amount of \$143,947.50 to be paid by the Morphis Defendants. In addition, the Court finds that Plaintiff is entitled to an additional 42.6 hours of attorney time spent by Plaintiff's counsel after February 14, 2022, which does not include any time spent in connection with negotiating and finalizing the settlement with the Accounting Defendants. At a rate of \$300.00 per hour, that is an additional \$12,780.00. This brings the total fee award to \$156,727.50.

Plaintiff also seeks an award of costs pursuant to S.C. Code Ann. § 41-10-80(C). According to the Affidavit of Plaintiff's counsel, Plaintiff has incurred total, out-of-pocket costs in the amount of \$9,472.54. Plaintiff's counsel has made the itemized reports of time and expenses available to the Court for review in camera, which the Court finds were necessarily incurred in connection with the prosecution of this case.

Since the date of Plaintiff's original position, Plaintiff incurred an additional \$124.35 in expenses for mileage and parking to attend the hearing on May 19, 2022, which brings the total expenses sought to \$9,596.89.

### **C. Pre-Judgment Interest**

Finally, Plaintiff's Petition seeks an award of pre-judgment interest in the total amount of

\$380,950.95 against the Morphis Defendants. In Babb v. Rothrock, 310 S.C. 350, 426 S.E.2d 789 (1993), the South Carolina Supreme Court articulated the standard for pre-judgment interest:

The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.

Id. at 353, 426 S.E.2d at 791 (internal citations omitted).

Here, pre-judgment interest is appropriate because the measure of recovery for Plaintiff's annual bonus was fixed by the 2010 Employment Agreement as 50% of the annual net profits of the Lancaster practice, which is plainly an amount that could have been reduced to a sum certain at the time such bonuses were payable.

Section 34-31-20(A) of the South Carolina Code sets the pre-judgment interest rate at 8.75% per annum. Pre-judgment interest under statute is simple interest, rather than compounded. See Edwards v. Campbell, 369 S.C. 572, 577–78, 633 S.E.2d 514, 517 (2006). Plaintiff's counsel calculated the pre-judgment interest on each bonus payment from February 15 in the year after the close of the bonus year through the date of Plaintiff's Petition, February 14, 2022, using a pro-rated amount of the jury verdict for each year from 2010 to 2014, and the full amount of the jury's verdict for 2015. The calculations were detailed in a spreadsheet attached to Plaintiff's Petition as Exhibit C. The total amount of pre-judgment interest initially sought by Plaintiff is \$380,950.95 through the date of the Petition, February 14, 2022.

The Court's heavy docket required some delay in scheduling the hearing on the post-trial motions in this case, which was conducted in person on May 19, 2022, and for which the Court requested proposed orders by June 1, 2022. Furthermore, between the date of Plaintiff's Petition

and the date of entry of this Order, an additional 261 days have elapsed, which would increase the pre-judgment interest for the awards for 2010-2014.

With regard to the 2015 year, as noted previously, Plaintiff reached a settlement with the Accounting Defendants after the jury's verdicts were rendered. The stipulation of dismissal was entered on March 21, 2022, which was 35 days after Plaintiff's Petition was filed. Because the settlement with the Accounting Defendants would set-off the entire amount of the verdict Plaintiff received for the 2015 bonus year, the Morphis Defendants' obligation for pre-judgment interest on that portion of the verdict stopped accruing on March 21, 2022.

In other words, pre-judgment interest is awarded to Plaintiff through November 2, 2022, which accounts for the additional days since the trial and the settlement with the Accounting Defendants. Plaintiff's counsel is to provide the Court an updated final total amount of pre-judgment interest through the above date as to the Morphis Defendants.

### **Conclusion**

In summary, Plaintiff is hereby awarded treble damages in the amount of \$1,644,871.26 against the Morphis Defendants under the South Carolina Payment of Wages Act, less the set-off for the settlement with the Accounting Defendants for the 2015 bonus year. In addition, Plaintiff is hereby awarded \$156,727.50 in attorney's fees and \$9,596.89 in costs against the Morphis Defendants, and pre-judgment interest through the date of November 2, 2022 against the Morphis Defendants.

Post-judgment interest in this case will begin to accrue as of the date of this order on the total award of treble damages under the South Carolina Payment of Wages Act, and attorney's fees and costs, as required by S.C. Code Ann. § 34-31-20(B). For 2022, the South Carolina Supreme

Court has set the post-judgment interest rate at 7.25%, compounded annually. Order No. 2022-01-06-01 (S.C. Jan. 6, 2022).

\* \* \*

IT IS SO ORDERED.

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DeAndrea G. Benjamin  
Circuit Court Judge

November \_\_\_\_\_, 2022

Columbia, SC.



Lancaster Common Pleas

**Case Caption:** Paul David Hess VS Morphis Pediatric Group Of Lancaster Pa ,  
defendant, et al  
**Case Number:** 2018CP2901127  
**Type:** Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161