

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Opinion No. 4889 (S.C. Ct. App. filed October 20, 2011)

Team IA, Inc.

Respondent,

v.

Cicero Lucas, George Lawson, IV, and
5 Point Solutions, LLC,

Defendants,

Of whom Cicero Lucas is

Petitioner,

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

v.

Brent Yarborough and Team IA, Inc.,

Third-Party Defendants.

APPENDIX
VOLUME I

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PETITION FOR A WRIT OF CERTIORARI

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Certificate of Counsel

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeal on October 20, 2011.

Questions for Review

- I. Did the Court of Appeals err by not looking to the place of performance in determining the validity of a non-solicitation provision in an employment agreement?
- II. Did the Court of Appeals err in finding a genuine issue of material fact existed regarding whether a former employee interacted with an employer's customers sufficiently to support a covenant not to compete when the Record contains no evidence of any interaction between the former employee and customers?

Statement of the Case

Petitioner Cicero Lucas (hereinafter "Lucas") worked for Respondent Team IA for approximately eight years. (App. at 77, at ¶¶ 185-193). During that time, Lucas alleges Team IA agreed to provide him specific compensation based upon his performance and stock ownership options. *Id.* Lucas claims Team IA failed to live up to those agreements. As a result

of Team IA's breaches of the agreements, Team IA came to owe Lucas a significant amount of unpaid compensation. Team IA's failure to pay promised compensation, combined with other unendurable working conditions at Team IA, forced Lucas to leave employment at Team IA.

Upon Lucas leaving Team IA, the corporation sued him. (App. at 23). Specifically, Team IA has sought to enforce a covenant not to compete that would prevent Lucas from accepting unsolicited work from former Team IA customers and impose a nationwide ban on him working in the industry. The covenant also set forth a "fall-back" geographic restriction of South Carolina, Georgia, North Carolina, and Alabama if the nationwide ban was found too broad. (App. at 110).

As discussed in detail below, in order for the fall-back provision in the covenant not to compete to be enforceable, the burden was on Team IA to show that Lucas interacted with Team IA customers in those four states. Lucas served discovery on Team IA seeking the identity of Team IA customers and the geographic locations of those customers Team IA believed to be covered by the covenant. (App. at 400-02). Team IA provided no customers or geographic areas in response.

After Team IA produced no materials to support the covenant not to compete, Lucas filed for partial summary judgment with respect to the covenant. (App. at 89). At the hearing, Lucas produced an affidavit stating he only worked with Team IA customers in Georgia and Pennsylvania. (App. at 114). Team IA produced an affidavit identifying two customers in Georgia, both governmental entities. (App. at 170, at ¶¶ 12-13). The evidence, taken in a light most favorable to Team IA, supported the conclusion that Lucas only interacted with actual customers of Team IA in Georgia and therefore the fall-back provision covering Alabama, South

Carolina, and North Carolina in addition to Georgia was too broad and the covenant unenforceable.

Several weeks after the summary judgment hearing, but before the trial court ruling, Team IA submitted an untimely affidavit from its owner Brent Yarborough. (App. at 329). The untimely affidavit also does not identify a single actual Team IA customer that Lucas ever had any interaction with in the fall-back states. The trial court granted Lucas' motion for partial summary judgment with respect to the covenant not to compete.

In granting partial summary judgment, the trial court also found the non-solicitation provision of the covenant was void. The non-solicitation provision of the covenant provided that Lucas could not accept unsolicited business from former Team IA customers who were no longer Team IA customers. The only evidence before the trial court with respect to former customers of Team IA involved the two Georgia governmental agencies. Even when the untimely Yarborough affidavit is considered, Team IA did not identify any actual Team IA customers with whom Lucas worked except for those two Georgia governmental entities.

The employment agreement contained a provision specifying South Carolina law would apply to interpret the agreement. (App. at 63). In applying South Carolina law, the trial court looked to the place where the covenant was to be performed to determine if the provision was valid under the law of that State. The only Team IA customers before the trial court were the two Georgia governmental entities. Since even Team IA agreed the non-solicitation provision is void on its face as repugnant to public policy in Georgia, the trial court in applying South Carolina law, struck down the provision.

Argument

I. Did the Court of Appeals err by not looking to the place of performance in determining the validity of a non-solicitation provision in an employment agreement?

The Court of Appeals erroneously concluded that the trial court failed to apply South Carolina law to the non-solicitation provision. The trial court followed the choice of law provision in the contract and applied South Carolina law. In applying South Carolina law, the court is directed to look to the place of performance of the non-solicitation provision to determine its validity. Since the place of performance in this matter was Georgia, the trial court (in applying South Carolina law) properly analyzed Georgia law to determine the validity of the non-solicitation provision.

The only evidence before the trial court was that the non-solicitation provision would apply to two Georgia governmental entities and thus could only be performed in Georgia. Georgia is also one of the four states that Team IA argues should be covered by the covenant not to compete. In *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961), the Court addressed an employment agreement that contained a choice of law provision. That choice of law provision specified the law of Ohio was to govern the interpretation of the agreement, but the covenant was to be performed in South Carolina. The Court held:

The contract with which we are here concerned provides that it shall be construed according to the law of the State of Ohio, ***but if it is invalid under the law of the State where it is to be performed*** and contrary to our public policy, we will not enforce it.

Id. at 541 (emphasis added). There is no dispute that the covenant is invalid on its face under Georgia law.

The *Standard Register* case is in line with the Restatement (Second) of Conflicts § 187(2)(b) (1971). The Restatement (Second) of Conflicts provides:

(2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless:

(b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

(emphasis added). The Restatement (Second) establishes the basic principle under contemporary choice-of-law doctrine that parties cannot by contract override public policy limitations on contractual power applicable in a state with materially greater interests in the transaction than the state whose law is specified in the contract.

Georgia explicitly prohibits non-solicitation agreements such as the one in this case because they overprotect the employer's interests and unreasonably limit the public in their choices. *See, e.g., Waldeck v. Curtis*, 583 S.E.2d 266, 268 (Ga. App. 2003); *Pregler v. C & Z, Inc.*, 575 S.E.2d 915, 916 (Ga. App. 2003). Team IA's former customers in Georgia are neither party to, nor are they contractually bound by, any agreement between Team IA and Lucas. Should Team IA's customers in Georgia choose to leave Team IA, they have every right to do so. This Court should not effectively enjoin those Georgia entities from seeking to hire whomever they want to perform work in Georgia.¹

The Court of Appeals erred by failing to recognize that the trial court *did in fact* apply South Carolina law to the non-solicitation provision. Following the agreement's choice of law

¹ Additionally, while no court in South Carolina has directly addressed the reach of a non-solicitation covenant to obstruct the public's ability to choose the business professional they prefer, the weight of the authority agrees with Georgia on this issue. *See, e.g., Palmer & Cay, Inc. v. Meathe*, 303 F.3d 1297 (11th Cir. 2005); *1st Am. Sys. v. Rezatto*, 311 N.W.2d 51, 59 (S.D. 1981); *Evans Laboratories, Inc. v. Melder*, 562 S.W.2d 62 (Ark. 1978); *Wachovia Ins. Servs. v. Paddison*, 406CV083, 2006 U.S. Dist. LEXIS 66463 (S.D. Ga. July 18, 2006).

provision and applying South Carolina law to the non-solicitation provision directs the court to look to the place of performance. Since the place of performance for the non-solicitation provision was Georgia, the trial court properly looked to see if the provision was “invalid under the law of the State where it is to be performed.” *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 70, 119 S.E.2d 533, 541 (1961). There is no dispute that under Georgia law, the non-solicitation provision is repugnant to public policy and unenforceable.

II. Did the Court of Appeals err in finding a genuine issue of material fact existed regarding whether a former employee interacted with an employer’s customers sufficiently to support a covenant not to compete when the Record contains no evidence of any interaction between the former employee and customers?

The Court of Appeals erred in reversing the trial court and remanding this matter because there was no question of material fact in dispute. The opinion states:

Our decision is based on a genuine issue of material fact in dispute as to whether or not Lucas interacted with Team IA customers in South Carolina, North Carolina, Georgia, and Alabama during the term of his employment.

This question has already been answered. Whether or not Lucas serviced actual Team IA customers in any other state was the critical question at the prior summary judgment hearing. This question was before the trial court because Team IA cannot enforce the “fall-back” geographical restriction unless Lucas performed *actual* work with *actual* customers of Team IA in the four listed states. See *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983). Without customer interaction, an employer has no “legitimate interest” to protect with a covenant and the agreement fails as a matter of law.

Historically, all covenants not to compete were simply void as against public policy. *Standard Register Company v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961). Although some restrictive covenants are sometimes enforceable today, such covenants not to compete remain strongly disfavored and will always be strictly construed against the employer. See *Rental*

Uniform Service of Florence, Inc. v. Dudley, 278 S.C. 674, 675, 301 S.E.2d 142, 143 (1983).

Any doubts about the scope or enforceability of Team IA's Non-Solicitation Covenant must be resolved against Team IA. *Dudley*, 278 S.C. at 675, 301 S.E.2d at 143.

The covenants in this matter failed at summary judgment because the geographic restrictions are far too broad to protect any legitimate business interest of Team IA. It has long been the law of South Carolina that:

A geographic restriction is generally reasonable "if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish **contact with his employer's customers.**"

Standard Register Company v. Kerrigan, 238 S.C. 54, 66, 119 S.E.2d 533, 539 (1961) (emphasis added). Without actual customers along with employee interaction with those customers, there is no "legitimate interest" for a covenant to protect. Team IA did not identify any actual customers with whom Lucas had any contact in each and every state to justify a nationwide ban on Lucas working in them. Furthermore, Team IA failed to show that Lucas serviced any Team IA customers in Alabama, South Carolina, or North Carolina covered by the covenant's fall back provision.

Lucas knows the location of Team IA customers he interacted with while employed. Team IA also knows the location of customers Lucas interacted with while employed. Lucas served discovery on Team IA to establish he did not service Team IA customers in all the states covered by the fall-back provision. (App. at 400-02). Team IA responded with no evidence. Lucas filed for summary judgment stating he only had customers in Georgia and Pennsylvania. Team IA filed an affidavit identifying only two customers in Georgia. The trial court properly granted summary judgment because there was no factual dispute about where Lucas serviced actual Team IA customers.

The Court of Appeals erred in concluding that the evidence of business travel by Lucas to trade shows in the covered states conflicts with Lucas' affidavit that he serviced no actual Team IA customers in those states. There is no conflict. The Court of Appeals stated its concern as:

Specifically, whether the "sales activity" Lucas conducted as documented in the expense report included contact with Team IA customers in South Carolina, North Carolina, Georgia, and Alabama is unclear.

The Court of Appeals' belief that more discovery is necessary to answer this question is erroneous. Lucas already served that discovery. If Team IA had evidence of Lucas having contact with actual Team IA customers that evidence should have been produced. None was. Such evidence also should have been presented at summary judgment. None was.

A defendant need not "prove a negative" when it moves for summary judgment on an issue that the plaintiff must prove at trial. It need only point to an absence of proof on plaintiff's part, and, at that point, plaintiff must "designate specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Team IA submitted a summary of business travel expenses, not any evidence of customer interaction. Team IA submitted evidence of business travel because that is all that exists. If there were customer contracts or communications between Lucas and actual Team IA customers: (1) Team IA would be in possession of those materials; (2) those materials should have been produced in response to discovery; and (3) those materials should have been submitted to the trial court on summary judgment.

Summary judgment "is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Schacht v. Wisconsin Dep't of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999). Team IA provided no evidence at the hearing of any Team IA customers Lucas interacted with except two entities in

Georgia. The untimely affidavit also fails to provide the identity of any actual Team IA customers with whom Lucas had a relationship that could support a covenant not to compete.² Summary judgment is the appropriate mechanism to eliminate claims made against a defendant where the plaintiff fails to produce any evidence to support the claim given **multiple** opportunities.

The Court of Appeals' decision puts Lucas in the exact position summary judgment is intended to prevent. "The manifest purpose of a summary judgment is to obviate delay where there is no real material issue of fact." *Hammond v. Scott*, 268 S.C. 137, 143, 232 S.E.2d 336, 339 (1977). Team IA sued Lucas claiming that he had relationships with actual Team IA clients that would support the covenant. Lucas, aware such material does not exist, sent discovery asking Team IA to support its suit against him. Team IA could provide no materials. Lucas then filed summary judgment to as to require Team IA to "put up or shut up" with respect to evidence that would support the covenant. Team IA failed to put up any evidence of actual customer relationships beyond two governmental entities in Georgia.

² Taken in a light most favorable to Team IA, the supplemental affidavit:

1. Fails to state whether the identified entities were ever **actual** customers of Team IA or merely "prospective" customers;
2. Fails to state whether the identified entities were current or former customers with whom Team IA no longer has a protectable relationship;
3. Fails to state the service, if any, actually performed by Lucas for the entity that would establish Lucas had **actual contact** with the entity that could justify upholding a ban.

The vague and ambiguous language of the affidavit fails the requirement of Rule 56(e), SCRCP, that to deny summary judgment the respondent "***must set forth specific facts*** showing that there is a genuine issue for trial." (emphasis added).

Conclusion

There is no conflict between Team IA's evidence that Lucas traveled to trade shows in the four fall-back states and Lucas's assertion that he had no interaction with any actual Team IA customers in those states. If Team IA had evidence of such contacts, that material should have been provided in discovery and *prior* to summary judgment. Likewise, the trial court correctly applied South Carolina law and looked to the place of performance of the non-solicitation provision.

The decision of the Court of Appeals contradicts established precedent, particularly *Standard Register Company v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) with respect to the choice of law issue and *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), *Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977), and Rule 56, SCRPC, regarding the lack of a question of material fact.

Respectfully submitted,



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November __, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Opinion No. 4889 (S.C. Ct. App. filed October 20, 2011)

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v.

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5 Point Solutions, LLC,

Defendants,

Of whom Cicero Lucas is

Petitioner,

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

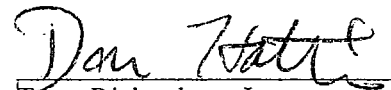
v.

Brent Yarborough and Team IA, Inc.,

Third-Party Defendants.

PROOF OF SERVICE

I certify that I have re-served the petition for writ of certiorari, after amending the caption, on Robert Goings, Esquire, at 914 Richland Street, Suite A-101, Columbia, South Carolina 29201 as well as the Clerk of the S.C. Court of Appeals at P.O. Box 11629, Columbia, South Carolina 29211 by depositing copies of each in the United States Mail, postage prepaid, on November 22, 2011. I have today filed the same, with two copies of the Appendix, with the South Carolina Supreme Court.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2009-CP-32-01078

Team IA, Inc.

Appellant,

v.

Cicero Lucas, George Lawson, IV, and
5 Point Solutions, LLC,

Defendants,

Of whom Cicero Lucas is

Respondent,

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

v.

Brent Yarborough and Team IA, Inc.,

Third-Party Defendants.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2009-CP-32-01078

Team IA, Inc.

Appellant,

v.

Cicero Lucas, George Lawson, IV, and
5 Point Solutions, LLC,

Defendants,

Of whom Cicero Lucas is

Respondent,

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

v.

Brent Yarborough and Team IA, Inc.,

Third-Party Defendants.

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COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Team IA, Inc.,

Plaintiff,

v.

Cicero Lucas, George Lawson, IV and 5
Point Solutions, LLC,

Defendants,

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

v.

Brent Yarborough and Team IA, Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-32-1078

ORDER

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2010 JAN 22 A 11:14

FILED

This matter is before the Court on Plaintiff's motion under Rule 59(c), SCRCP to alter or amend the Court's Order of November 2009, which granted partial summary judgment to Defendant/Third-Party Plaintiff Lucas. Plaintiff initiated this action by filing a complaint against Lucas, George Lawson, and 5 Point Solutions, LLC. Plaintiff's First Cause of Action in the complaint asserts "Breach of Contract" alleging, *inter alia*, the breach of an Employment Agreement by Lucas with respect to a non-solicitation/non-compete provision.¹ On August 27, 2009 Lucas filed for partial summary judgment on Plaintiff's First Cause of Action only with respect to the covenant not-to-compete portions of that cause of action. The matter was heard on September 21, 2008. On

¹ Defendant Lawson signed no employment agreements with Team IA.

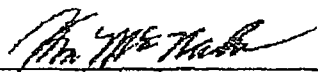
November 19, 2009 the Court signed an Order granting Lucas' Motion for Partial Summary Judgment. On December 3, 2009, Plaintiff submitted its motion under Rule 59(e), SCRPC.

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Pye v. Estate of Fox, 369 S.C. 555, 565-566, 633 S.E.2d 505, 510 (2006) (citing Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). "It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments. A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778-779 (2004).

This Court has considered the issues, reviewed the arguments, documents, and pleadings submitted by all Parties and reviewed the Court's file extensively. This Court has also reviewed the Motion to Reconsider in this case. The Court reaffirms the findings in its November 2009 Order.

IT IS THEREFORE ORDERED that Defendant/Third-Party Plaintiff Lucas's Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED.


R. K. Fox McMahon
Presiding Judge,
Eleventh Judicial Circuit

Lexington, South Carolina
January 2010 2010

FILED
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
NOV 19 2 02

TEAM IA, INC.,

Plaintiff,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No. 2009-CP-32-01078

v.

CICERO LUCAS,
GEORGE LAWSON, IV,
AND 5 POINT SOLUTIONS, LLC,

Defendants,

CICERO LUCAS,
GEORGE LAWSON, IV,

Third-Party Plaintiffs

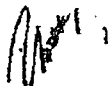
v.

BRENT YARBOROUGH
TEAM IA

Third-Party
Defendants

Order

This matter is before the Court by motion of the Defendant and Third-Party Plaintiff Cicero Lucas (hereinafter "Lucas"), pursuant to Rule 56, SCRPC for partial summary judgment. Lucas has moved for summary judgment on Plaintiff Team IA's First Cause of Action alleging Breach of Contract with respect to alleged violations of Section 5 of the employment agreement entitled "Non-Solicitation and Non-Competition". For the reasons set forth below, the Court grants the motion for partial summary judgment.



PROCEDURAL BACKGROUND

FILED

On March 17, 2009 Plaintiff Team IA filed a complaint against Lucas, Lawson, and 5 Point Solutions, LLC. Lucas answered and counterclaimed on April 17, 2009. Team IA's First Cause of Action in the complaint asserts "Breach of Contract" alleging, among other allegations, the breach of an Employment Agreement by Lucas with respect to a non-solicitation/non-compete provision.¹ On August 27, 2009 Lucas filed for partial summary judgment on Team IA's First Cause of Action only with respect to the covenant not to compete portions of that cause of action. The matter was heard on September 21, 2008.

STATEMENT OF FACTS

Lucas submitted an affidavit setting forth the following information:

1. Lucas worked for Team IA from approximately March 2001 until February 3, 2009.
2. During Lucas' employment at Team IA he only performed work for customers in the states of Georgia and Pennsylvania.
3. Lucas performed no work for customers in Alabama, South Carolina, or North Carolina.
4. At the time he left Team IA, the company itself only had clients in South Carolina, Georgia, one customer in Pennsylvania, and one customer in North Carolina.

Brent Yarborough, owner of Team IA, also submitted an affidavit. In his affidavit, Yarborough identifies two Team IA customers serviced by Lucas. Both customers identified by Yarborough are Georgia governmental entities.

¹ Defendant Lawson signed no employment agreements with Team IA.

M. #2 2

Record on Appeal 005

APP0007

Lucas's Partial Summary Judgment Motion challenges a provision from the 2001

FILED

Employment Agreement. Lucas disputes the enforceability of the following "Non-2001 NOV 19 P 12:02

Solicitation and Non-Competition" provision:

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

A) Non-Solicitation Agreement

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

...

B) Covenant Not to Compete

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit, attempt to solicit, sell, or attempt to sell, provide, or attempt to provide COMPETITING SERVICES as defined below.

Recognizing that Team IA competes on a nationwide basis, the Parties to this agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court of other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

Lucas argues the "Covenant Not to Compete" provision is unenforceable because it bans

Lucas from working anywhere in the continental United States. Furthermore, Lucas

argues that even if the "RESTRICTED TERRITORY" is redefined to cover only South

Carolina, North Carolina, Georgia, and Alabama, as set forth in the Agreement, the

covenant still fails because Lucas never had clients in 3 of the 4 states listed.

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Additionally, Lucas argues the "Non-Solicitation" provision is unenforceable on its face because it would prohibit Lucas from accepting business from unsolicited customers. Team IA, especially governmental entities.

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The Court agrees with Lucas and grants his motion for partial summary judgment with respect to the non-solicitation/non-competition provision.

ANALYSIS

A. Standard for Summary Judgment

The standard for the granting of summary judgment pursuant to Rule 56 of the S.C. Rules of Civil Procedure is set forth in *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007):

The circuit court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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"

RWE NUKEM, at 195, 644 S.E.2d at 733 (citing Rule 56(c), SCRCP). Thus the plaintiff, as the party with the burden of proof at trial, must present affirmative evidence that places a material fact in dispute in order to resist a defendant's motion for summary judgment. *Estate of Cantrell v. Green*, 302 S.C. 557, 560, 397 S.E.2d 777, 779 (Ct. App. 1990).

B. The non-compete provisions of the Employment Agreement are unenforceable

Under well established South Carolina precedent, the non-compete provision of the Employment Agreement is unenforceable because it is overly broad. Non-compete restrictive covenants are disfavored and are to be strictly construed against the employer. *Sermons v. Caine & Estes Ins. Agency, Inc.*, 275 S.C. 506, 508, 273 S.E.2d 338, 339

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(1980); *Almers v. S.C. Nat'l Bank of Charleston*, 265 S.C. 48, 51, 217 S.E.2d 135, 136

(1975). South Carolina courts will strike the entire non-compete clause when no part

part is found unenforceable. See *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 42 (Ct. App. 1975)

(citing *Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 434 (1972))

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According to South Carolina precedent, a covenant not to compete must pass over five separate hurdles in order to be valid. The covenant must be:

- (1) necessary for the protection of the legitimate interest of the employer;
- (2) reasonably limited in its operation with respect to time and place;
- (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood;
- (4) reasonable from the standpoint of sound public policy; and
- (5) supported by valuable consideration.

Stringer v. Herron, 309 S.C. 529, 531, 424 S.E.2d 547, 548 (Ct. App. 1992); *Rental*

Uniform Service of Florence v. Dudley, 278 S.C. 674, 675-676, 301 S.E.2d 142, 143

(1983). The non-compete restrictive covenant in this case has significant flaws which render it unenforceable under our precedent.

- (1) The geographic scope of the Covenant Not to Compete is not reasonably limited in its operation with respect to time and place

The contract's covenant not to compete places a nationwide geographical restriction on competition. This provision is overbroad and unenforceable because it fails to meet the requirements that any restriction in a covenant not to compete must be "reasonably limited in its operation with respect to time and place" and must not be "unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood." See *Stringer*, 309 S.C. at 531, 424 S.E.2d at 548. As our Supreme Court stated in *Standard Register Co. v. Kerrigan*:

The general rule is that the restraint as to territory, in order to be reasonable, must not be unduly harsh and oppressive on the employee....

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The most important single factor entering into the determination of the reasonableness as to the employee of the territorial extent of the restraint, is its economic consequences to the employee. The limitation as to the territory, in a restrictive covenant not to compete, is unreasonable in the sense that it is unduly harsh and oppressive when the contract tends to deprive the employee the opportunity of supporting himself and his family.

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238 S.C. 54, 67, 119 S.E.2d 533, 540 (1961). The Court went on to establish that the "necessity that employee change his calling or residence" is one element the court should focus upon in determining reasonableness. *Id.* A nationwide ban that would require Lucas to leave the country to continue his line of work is *per se* unreasonable, because it is unduly harsh and oppressive in curtailing his legitimate efforts to earn a living.

The nationwide geographical restriction also offends the second hurdle of the analysis because it is unduly harsh and oppressive in curtailing Lucas' legitimate efforts to earn a livelihood.

(2) The geographic scope of the Covenant Not to Compete covers an area broader than is necessary to protect Team IA's legitimate business interest, because it is greater than the geographic area in which Lucas actually worked.

The non-compete agreement is glaringly deficient in that the geographic restriction is more broad than necessary for the protection of Team IA's legitimate business interests. South Carolina law is clear that a territorial restriction must not cover an area any broader than is necessary to protect the employer's legitimate business interests. *Stringer*, 309 S.C. at 531, 424 S.E.2d at 548 (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961)).

South Carolina courts have held that non-compete restrictive covenants that impose a geographic restriction greater than the geographic area in which the employee actually worked are unenforceable because they are unnecessary to protect the

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employer's legitimate interests. See *Rental Uniform Service of Florence, Inc. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983) (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961)); see also, *Sermons*, 275 S.C. 506, 273 S.E.2d 388 (holding that a non-compete provision that covered all of South Carolina was too broad because the employee only worked within a 50-mile radius of Greenville, S.C.); *Delmar Studios v. Kinsey*, 233 S.C. 313, 104 S.E.2d 344 (1958) (holding that restricting an employee from competing in any location where the employer operates, including South Carolina and parts of North Carolina and Georgia, was too broad because the employee only worked in several South Carolina and Georgia counties bordering the Savannah River).

Applying the rule that "[a] geographic restriction is generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers," the South Carolina Supreme Court specifically upheld a covenant which only restricted competition to locations where the employee worked for the employer. *Dudley*, 278 S.C. at 676, 301 S.E.2d at 143 (emphasis added). In that case, the covenant not to compete was limited in scope to a six-county area in which employee worked. *Id.* The court pointed to the narrow scope of the covenant as the reason for finding that it was enforceable. *Id.* (stating that "[t]he area limitation of the agreement falls within the guidelines of the *Standard Register* case since respondent is restricted only in the area 'in which [respondent] worked or to which he was assigned at any time during his employment'").

In this case, the nationwide geographical restriction in the covenant not to compete is unenforceable because it is undisputed by Team IA that Lucas only performed

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work for customers in Georgia and Pennsylvania. Team IA failed to provide any

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evidence that it had customers or performed work for customers in every single state in

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the nation.² Additionally, the nationwide geographical restriction far exceeds any

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legitimate business interest of Team IA because it covers states in which Lucas had

performed any customer work for Team IA. *See Rental Uniform Service of Florence,*

Inc. v. Dudley, 278 S.C. 674, 301 S.E.2d 142 (1983). This covenant not to compete is

unenforceable as a matter of law because it is more broad than necessary for the

protection of the legitimate interest of Team IA.

(3) Even if the Employment Agreement is re-written, pursuant to the Employment Agreement's "RESTRICTED TERRITORY" provision, the resulting geographical restriction is still unenforceable.

The Employment Agreement's covenant provision provides the following:

Recognizing that Team IA competes on a nationwide basis, the Parties to this agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court of other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

As set forth above, the only evidence before the Court is that Lucas had customers in Georgia and Pennsylvania. Even if the Court were to rewrite the scope for the benefit of Team IA as set forth in the "RESTRICTED TERRITORY" provision, the resulting geographical restriction is unenforceable because Lucas only performed work for customers in Georgia and Pennsylvania. A re-written contract would provide for a geographical restriction on Lucas working in South Carolina, North Carolina, Georgia,

² Team IA makes much of the fact that Lucas attended trade shows throughout the country and was the "face of Team IA." Taking these facts as true and in the light most favorable to the non-moving party, these circumstances do not give rise to a genuine issue of material fact sufficient to withstand summary judgment.

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and Alabama. Lucas has serviced no Team IA customers in South Carolina, North

Carolina, or Alabama. "A geographic restriction is generally reasonable if the area

covered by the restraint is limited to the territory in which the employee was able, during

the term of his employment, to establish contact with his employer's customers."

278 S.C. at 676, 301 S.E.2d at 143. The restriction is unenforceable and Plaintiff's claim

fails as a matter of law, because Lucas had no customers in three of the four states that

would be listed in a re-written geographical restriction.

Additionally, Team IA has identified by affidavit only two counties in which Lucas serviced Team IA customers. Prohibiting Lucas from working in counties in Georgia where Lucas had no Team IA customers would still be too broad of a restriction.

(4) The Severability Provision Cannot be Used to Redefine the Geographic Limitations.

The Employment Agreement contains a severability provision. However, the Court cannot redefine the geographic limitations of the Agreement even if the agreement provides for severability. See e.g., *Ascension Hospice, Inc. v. Sikes*, C/A No. 2006-CP-32-4055 (Court of Common Pleas, Lexington County, S.C. Apr. 10, 2008) (order of the Hon. R. Knox McMahon granting summary judgment). At most, the provision allows the Court to redefine the restricted territory to the four states discussed above. Lucas had no customers in three of those four states so the geographic restriction would still be too broad to survive.

The restricted geographic territory is too broad for the provision to survive because it includes territory in which Team IA has no customers and states in which Team IA may have had customers but that Lucas never worked.

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C. The non-solicitation provision of the Employment Agreement is unenforceable

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(1) Under South Carolina law, the enforceability of the non-solicitation provision for Georgia customers is governed by Georgia law.

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The Employment Agreement contains a "choice of law" provision that provides

the contract is to be "governed by, and construed and interpreted in accordance with the domestic laws of the State of South Carolina." The contract is in harmony with South Carolina's common law choice of law principles and Defendants have not disputed that South Carolina law governs the validity of this contract. Under South Carolina law, when a contract's interpretation is at issue courts are to apply "the substantive law of the place where the contract . . . was formed." *Witt v. American Trucking Ass'n*, 860 F. Supp. 295, 300 (D.S.C. 1994). "However, where performance is at issue . . . the law of the place of performance governs." *Id.*; see also *Livingston v. Atl. Coast Line R.R. Co.*, 176 S.C. 385, 391, 180 S.E. 343, 345 (1935); *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 144-45, 494 S.E.2d 449, 455-56 (Ct. App. 1997).

The only evidence before the Court is that Lucas serviced customers for Team IA in Georgia. Whether or not Lucas breached his employment agreement by an alleged breach of the non-solicitation provision would be a question of performance, or lack thereof, under the Agreement. As such, the law of the place of performance governs the interpretation of the non-solicitation clause.

(2) The non-solicitation provision is unenforceable on its face because it prohibits Lucas's acceptance of business from *unsolicited* customers.

Team IA's breach of contract claim based upon the non-solicitation provision fails as a matter of law because the provision on its face attempts to prohibit Lucas's

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acceptance of business from *unsolicited* customers in Georgia. In Georgia, a covenant

not to solicit that prohibits a former employee from accepting business from unsolicited

customers is *per se* unenforceable as a matter of law. See e.g., *Waldeck v. Curtis*, 583

S.E.2d 266, 268 (Ga. App. 2003); *Pregler v. C & Z, Inc.*, 575 S.E.2d 915, 916 (Ga. App. 2003).

In this case, the customer non-solicitation agreement provides that Lucas cannot

"solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER..."

On its face, the provision prohibiting Lucas from accepting orders from former Team IA customers is unreasonable. While a prohibition involving some affirmative act on the part of the former employee, such as solicitation or diversion may be reasonable, a covenant prohibiting a former employee from merely accepting business, without any solicitation, is not reasonable. See *American Gen. Life & Ins. Co. v. Fisher*, 430 S.E.2d 166 (Ga. App. 1993).³

The non-solicitation covenant in this case prohibits not only solicitation of Lucas's former clients, but also the acceptance of business from unsolicited former clients of Team IA, regardless of who initiated the contact. Such a provision is an unreasonable restraint on trade. In addition to overprotecting Team IA's interests, it has an unreasonable impact on Lucas and most importantly on the public's ability to choose the business it prefers.

(3) The Non-Solicitation provision offends public policy because the former customers identified by Team IA are Government Agencies

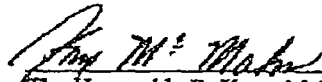
By affidavit, Team IA identified the Fulton County Clerk of Court and the Fayette County Clerk of Court, both of Georgia, as customers. A court reviewing a covenant

³ See also, 2 Callmann on Unfair Competition, Trademarks, & Monopolies, § 16:31 (4th Ed. 2009) (stating that: "A postemployment covenant which prevents a salesperson from accepting any business from customers of the employer, even though the business is not solicited by the salesperson, is unreasonable because it limits the public's ability to select the goods or services it prefers").

provision must ensure the agreement is "reasonable from the standpoint of public policy. FILED
Rental Uniform Service of Florence v. Dudley, 278 S.C. 674, 675-676, 301 S.E.2d 142, 143 (1983). This Court finds it would be unreasonable from the standpoint of public policy for a South Carolina court to prohibit Lucas from accepting unsolicited business from a governmental entity in Georgia to perform work in Georgia. A state has little to no interest in enforcing a restriction on who another sovereign state may contract with because denying the government its contractor of choice is by definition against the public interest.

CONCLUSION

Based on the foregoing, the Defendant Lucas' motion for partial summary judgment as to Plaintiff's First Cause of Action is GRANTED.


The Honorable R. Knox McMahon
Eleventh Judicial Circuit Court

November 19~~th~~, 2009

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
TEAM IA, INC.,)
Plaintiff,)
v.)
CICERO LUCAS,)
GEORGE LAWSON, IV,)
AND 5 POINT SOLUTIONS, LLC,)
Defendants,)
CICERO LUCAS,)
GEORGE LAWSON, IV,)
Third-Party Plaintiffs)
v.)
BRENT YARBOROUGH)
TEAM IA)
Third-Party)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-32-01078

BETH A. CARRIGGS
CLERK OF COURT
LEXINGTON SC

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ORDER

This matter is before the Court on Plaintiff/Counterclaim Defendants Team IA and Brent Yarborough's (collectively "Team IA") Rule 12(b)(6) Motion to Dismiss and Rule 12(f) Motion to Strike. The Court heard oral argument on this matter on July 9, 2009, in Lexington County. Team IA seeks to have the Court strike the First Cause of Action of Defendants/Counterclaim/Third Party Plaintiffs Cicero Lucas and George Lawson for failure to state a claim. Additionally, should the Court deny Team IA's Rule 12(b)(6) motion, Team IA seeks to strike a number of paragraphs from the Complaint it

1 *[Signature]*

contents are immaterial under Rule 12(f). The Court denies Team IA's Rule 12(b)(6) motion to dismiss but grants Team IA's motion to strike and directs Counterclaim Plaintiffs Cicero Lucas and George Lawson to amend their filings to remove that material.

RULE 12(B) STANDARD OF REVIEW

A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the complaint. The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *See Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995). The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in their behalf, the complaint states a valid claim for relief. A cause of action should not be struck merely because the court may have doubts if the plaintiffs will prevail in the action. *Id.* at 68, 463 S.E.2d at 99; *see also McCormick v. England*, 328 S.C. 627, 632-633, 494 S.E.2d 431, 433-434 (Ct. App. 1997).

TERMINATION IN VIOLATION OF PUBLIC POLICY

Lucas and Lawson have alleged that they were constructively terminated by Team IA because, among other objectively intolerable conditions, they were asked to break state and federal law. Specifically, Lucas and Lawson assert that Yarborough directed Team IA and its employees to: (1) engage in violations of S.C. Code Ann. § 8-13-705; and (2) violate Federal Piracy Laws.

The following paragraphs from the Counterclaim address this claim:

197. The resignation by Lucas and Lawson was the result of unendurable working conditions which had become so intolerable that a reasonable person in their position would have felt compelled to resign. In addition to the actions set

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forth above, the following are examples of actions taken by Yarborough and Team IA which made employment unbearable:

a. Yarborough has engaged in actions in violation of S.C. Code Ann. § 8-13-705 and placed Team IA as well as Lucas and Lawson in jeopardy...

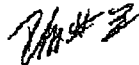
...

b. For years Yarborough and Team IA have failed to pay required royalties and license fees for several third party vendors, including Microsoft, Kodak, and LeadTools that Lawson and Lucas used to service their customers. Team IA falsely lists on its website that it is a Microsoft Partner. As a result of Yarborough's refusal to pay the required fees and licenses, the customers Lucas and Lawson serviced were also in violation of Federal Piracy laws.

As recently set forth by the Court of Appeals in *Barron v. Labor Finders of South Carolina*, 2009 WL 1520820, at *3 (S.C. Ct. App. May 28, 2009), "[b]ecause Appellant was not asked to violate the law and her termination itself was not a violation of criminal law, summary judgment was proper...." To the extent Lucas and Lawson must allege that they were requested to "violate the law" to survive a Rule 12(b) motion, they have sufficiently pled that requirement.

Team IA also argues that South Carolina has yet to recognize that a claim of "constructive discharge" is sufficient to sustain a termination in violation of public policy claim. Team IA argues that an actual termination done in retaliation for refusing to violate a law is required and that allegations of a constructive discharge are not sufficient. Lucas and Lawson agree that this question is a novel question in this area of law.

South Carolina courts have long recognized that a novel issue such as this one is best decided in light of the testimony to be adduced at trial. *Tyler v. Macks Stores of S.C., Inc.*, 275 S.C. 456, 272 S.E.2d 633 (1980) ("A novel issue such as here presented is best decided in light of the testimony to be adduced at trial."). Our Supreme Court has specifically applied this principle to public policy exceptions to the employment-at-will


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doctrine. See e.g., *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 456 S.E.2d 907

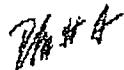
(1995). In *Garner*, the Court held:

Whether the exception applies when an employee is terminated in retaliation for reporting and testifying about radioactive contamination and unsafe working conditions at a nuclear facility is a novel issue, and such issues should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss.

(emphasis added).

The United States Supreme Court has held that constructive discharge is functionally the same as an actual termination. See *Pennsylvania State Police v. Suders*, 542 U.S. 129, 148, 124 S. Ct. 2342, 2335 (2004) ("To be sure, a constructive discharge is functionally the same as an actual termination...."). A constructive discharge claim consists of two elements: (1) deliberateness of the employer's action and (2) intolerability of the working conditions. See *Amirmakri v. Baltimore Gas & Elec. Co.*, 60 F.3d 1126, 1132 (4th Cir. 1995). As set forth above, Lucas and Lawson allege in their Counterclaim that Team IA created "uncendurable working conditions which had become so intolerable that a reasonable person in their position would have felt compelled to resign" and that the company's repeated and ongoing violations of S.C. Code Ann. § 8-13-705 and Federal Piracy laws were a significant part of those alleged "working conditions".

This litigation was initiated by Team IA and Lucas and Lawson have other counterclaims that are not challenged at this stage by Team IA. The granting of this motion to dismiss would not terminate the litigation and a record for trial will still be generated. Under the precedent of *Tyler* and *Garner* dismissing this claim by Lucas and Lawson at the Rule 12(b) stage would be improper and the record should be made through discovery before addressing the claim at summary judgment.

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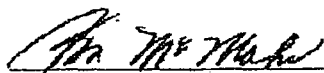
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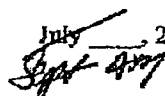
MOTION TO STRIKE

Team IA has also filed a Rule 12(f), SCRCP, Motion to Strike many of the individual allegations contained in the First Cause of Action in the counterclaim by Lucas and Lawson. At the hearing, counsel for Lucas and Lawson agreed to remove the allegations challenged by Team IA. As a result, this Court will also grant Team IA's Motion to Strike.

CONCLUSION

Based on the foregoing, Defendants Team IA's Rule 12(b)(6) Motion to Dismiss is DENIED and Team IA's Rule 12(f) Motion to Strike is GRANTED.


The Honorable R. Knox McMahon
Eleventh Judicial Circuit Court

July 2009


STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS

SEP 17 2 3 46

TEAM IA, INC.,

Plaintiff,

v.

CICERO LUCAS,
GEORGE LAWSON, IV,
AND 5 POINT SOLUTIONS, LLC,

Defendants.

Case No. _____

2009CP3201078

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiff, Team IA, Inc. ("Team IA"), by and through its undersigned counsel, files this Complaint for Injunctive Relief and Damages against Defendants, Cicero Lucas, George Lawson, IV, and 5 Point Solutions, LLC, and would show as follows:

I. PARTIES AND JURISDICTION

1. Team IA is a South Carolina corporation with its principal place of business in Lexington County, South Carolina.

2. Defendant Cicero Lucas ("Lucas") is a citizen and resident of Lexington County, South Carolina. Lucas resigned from Team IA on February 3, 2009, and started a business competitive with Team IA's business. On information and belief, Lucas is a current employee and part-owner of 5 Point Solutions.

3. Defendant George Lawson, IV., ("Lawson") is a citizen and resident of Lexington County, South Carolina. Lawson resigned from Team IA on February 3, 2009, to assist a business competitive with Team IA's business. On information and belief, Lawson is a current employee and part-owner of 5 Point Solutions.

4. Defendant 5 Point Solutions, LLC, ("5 Point") is a South Carolina Limited Liability Company conducting business in Lexington, South Carolina. On information and belief, 5 Point Solutions is partially-owned and operated by Lucas and Lawson. Lucas is listed on the South Carolina Secretary of State's records as 5 Point's registered agent.

5. Pursuant to S.C. Code Ann. § 15-7-30, venue for this case properly lies in Lexington County.

6. This Court has jurisdiction over Defendants because Defendants are located in, conduct business in, and engaged in tortious conduct in Lexington County, South Carolina.

II. INTRODUCTION

7. Team IA brings this action to protect its business interests from the improper competitive actions of Defendants. Team IA refused to allow itself to be "hijacked" by Lucas over compensation Lucas claimed Team IA should pay him. In accordance with his Employment Agreement with Team IA, Lucas was paid a salary and discretionary bonus. As long as this arrangement worked to Lucas' benefit, he was fine.

8. In November 2008, Lucas sold a large project on behalf of Team IA and thereafter decided that he should be entitled to his salary being doubled and more. Lucas

requested that his salary be doubled, despite Team IA neither having completed the necessary services nor receiving payment from the customer.

9. When Team IA refused to give in to Lucas' demands, Lucas resigned, and in direct violation of his Employment Agreement and State law, along with Lawson and 5 Point, has sought to take Team IA's business opportunities without justification.

III. FACTUAL BACKGROUND

10. Team IA conducts business in the software and related services industry. Team IA markets its business on a nationwide basis through electronic and print media, including the internet, attending tradeshow, submitting bids, direct sales, and other means.

A. Lucas' Employment Agreement With Team IA

11. On or about April 2, 2001, Team IA hired Lucas with his primary responsibility to be sales representative and to provide limited assistance in accounting, while training to be a sales representative..

12. Prior to his hiring, Lucas knew that his employment with Team IA would be contingent upon his entering into an employment agreement which contained restrictive covenants. Lucas' offer letter from Team IA dated February 28, 2001, stated:

Requirements-In addition to those already mentioned, an employment agreement with non-competition, non-disclosure, ownership of work, and other clauses as identified attached must be executed. In other words, acceptance of this offer is contingent on agreement of an employment agreement being executed.

(See Exhibit A).

13. On March 2, 2001, Lucas signed the offer letter thereby accepting Team IA's offer of employment.

14. Lucas reviewed the Employment Agreement offered by Team IA well in advance of his employment with Team IA. Lucas negotiated the terms of the Employment Agreement.

15. On March 2, 2001, Lucas executed the Employment Agreement (See Exhibit B), thereby agreeing to be bound by the terms and conditions contained therein. In Paragraph VII.H. of the Employment Agreement and the unnumbered paragraph appearing immediately thereafter, Lucas acknowledged that he had full opportunity to obtain independent legal advice and stated that "he is fully aware of and in agreement with the terms set forth and does contract to be bound by the Agreement."

16. Paragraph III. of the Employment Agreement restricts Lucas' use of Team IA's confidential and proprietary information, and trade secrets. (See Exhibit B).

17. Paragraph V.A. of the Employment Agreement restricts Lucas' competitive activities with respect to Team IA's customers, prospects, and employees for twelve (12) months following his separation from employment with Team IA. (See Exhibit B).

18. Paragraph V.B. of the Employment Agreement contains a non-competition provision which restricts Lucas' competitive activities for twelve (12) months following his separation from employment with Team IA. (See Exhibit B).

19. Paragraph VII.B. of the Employment Agreement entitles Team IA to injunctive relief in the event Lucas breaches the Employment Agreement. (See Exhibit B).

B. Lucas' Employment Activities And Access to Team IA Resources

20. On or about April 2, 2001, Lucas began his employment with Team IA. Prior to joining Team IA, Lucas did not have experience or knowledge of the software and related services industry and did not have any sales experience.

21. Team IA provided Lucas with extensive equipment and resources, including but not limited to, a cell phone, a truck, a laptop, a blackberry, and product/systems training and certifications (including Dale Carnegie, CDIA Certification, Accountancy Renewal Fees, and others).

22. Because of the important function he was to serve, Team IA provided Lucas with access to, among other things, financial data, customer lists, prospect lists, training materials, and Lucas was introduced to most of Team IA's customers and to many prospects..

23. Team IA provided Lucas with this critical information because it knew that, in order to be productive for the Company, Lucas needed such information, and Team IA knew that it had protection in the Employment Agreement to prevent Lucas from improperly using its information.

24. One of Lucas' duties was to develop sales opportunities for Team IA. Team IA sales data shows that Lucas solicited business in a number of states across the United States and also had a prospect in Canada. Team IA did not attempt to limit Lucas' ability to sell its products and services in any geographic location.

25. As Lucas' employment continued, Team IA provided Lucas greater opportunities to assist the Company with its goals, while also allowing Lucas to benefit personally. Lucas' expanded opportunities included, but were not limited to, sales leads, sales assistance, and coaching. As a result of these opportunities, Lucas enjoyed significant growth in his compensation.

26. Throughout his employment, Lucas was compensated on a salaried basis plus a discretionary bonus. Lucas was not on any commissioned-based pay. Despite not selling any products or services for three years, Lucas continued to receive a salary and a discretionary bonus consistent with the Employment Agreement. This pay arrangement yielded Lucas in excess of \$1,100,000 during his tenure with Team IA.

C. Team IA's Business Plan and Investment

27. Since approximately 1998, Team IA has pursued business opportunities in Georgia; especially with the various Clerk of Superior Court Offices in Georgia. Team IA has invested significant time and resources, prior to Lucas' employment with Team IA and thereafter, to develop this business.

28. After hiring and training Lucas, consistent with Team IA's business plan to further expand its business, Team IA assigned the task of further developing the Georgia market. Lucas was charged with, among other duties, the responsibility of developing business with the Clerk of Superior Court Offices in the various Counties in the State of Georgia.

29. In an effort to enhance its business, Team IA invested considerable resources in Georgia in an effort to attract business from Counties located in Georgia. Team IA committed

35. On information and belief, during Lucas' employment with Team IA, Lucas discussed his plans to start a competitive business with Team IA customers and/or prospects.

36. On information and belief, during Lucas' employment with Team IA, Lucas solicited a Team IA employee to start a competitive business.

37. On January 29, 2009, Lucas met with Brent Yarborough, Team IA's President, and Lorri Yarborough, Team IA's minority owner and account executive, to discuss his compensation. Lucas requested that his salary be doubled and explained that he did not understand why doubling his salary was such a big deal because he had sold a big microfilm project to a Clerk of Superior Court Office in Georgia.

38. Lucas asked Lorri Yarborough why Team IA could not go ahead and pay him for the microfilm project which had been sold, but Team IA had yet to perform the services necessary to receive payment and had not received payment.

39. On or about January 31, 2009, Lorri Yarborough had a meeting with Lucas. During this meeting, Lucas voiced his displeasure with his compensation from Team IA, and he said Team IA may not be big enough to pay him what he needed to make.

40. Lucas complained to Lorri Yarborough that his pay was about \$50,000.00 less in 2008 than it should have been. Lucas' 2008 compensation totaled \$151,237.06.

41. Just prior to Lucas' resignation from Team IA, Brent Yarborough suspected Lucas would attempt to establish a competitive business, so he asked Lucas what his plans were. Lucas refused to tell Brent Yarborough what his plans were.

42. Prior to his departure from Team IA, Lucas intentionally deleted information from his Company Outlook account containing contact information for key Team IA customers, prospects, and vendors and also deleted emails from key Team IA customers and/or prospects.

43. Lucas resigned from employment with Team IA on February 3, 2009.

44. Prior to and after Lucas' resignation, Brent Yarborough reminded Lucas that he was subject to the Employment Agreement, and that Team IA expected Lucas to observe his obligations under the Employment Agreement.

45. Subsequent to his departure from Team IA, Lucas, in violation of the Employment Agreement, solicited business from Team IA customers and/or prospects.

46. On information and belief, Lucas made defamatory statements to existing Team IA customers and or prospects which caused the customers and/or prospects to be concerned about conducting business with Team IA and, in some instances, caused the customers and/or prospects to cease their relationships or planned relationships with Team IA.

47. On information and belief, during Lucas' employment with Team IA, he made false statements to Team IA officials regarding his activities in taking steps to start a competitive business.

48. Subsequent to his departure from Team IA, Lucas refused to return Team IA's plasma television despite Team IA's demand for the return of the property. Upon information and belief, Team IA's plasma television is still in Lucas' possession.

9.0027

49. 5 Point became a South Carolina LLC on February 9, 2009; just six days after Lucas' resignation.

50. Upon information and belief, 5 Point has obtained business and/or is in the process of obtaining business from Team IA customers and/or prospective customers that 5 Point would not have otherwise obtained business from had Lucas not violated the Employment Agreement and engaged in the misconduct described above.

E. Lawson's Employment History With Team IA

51. On or about July 25, 1995, Team IA hired Lawson as a software engineer.

52. During the course of his employment with Team IA, Lawson performed software development, installation, support, pre-sale support, analysis, and project management.

53. During the course of his employment, Team IA provided Lawson with access to confidential and proprietary information to assist Lawson in the performance of his duties and to advance Team IA's business.

54. During the course of his employment with Team IA, Team IA provided Lawson with access to its customers and prospects.

55. During the course of his employment with Team IA, Lawson met with and provided services to Counties in Georgia which are Team IA customers and/or prospects.

56. During the course of his employment with Team IA, Lawson met with and offered services to Team IA prospects on behalf of Team IA.

57. On information and belief, Lucas discussed forming a competitive business with Lawson prior to their resignations from Team IA.

58. Prior to his departure when asked by a Team IA employee about his future plans, Lawson indicated that he was starting a business which might be healthcare-related, but he would not be competing with Team IA. In response, Brent Yarborough offered to assist Lawson, and Lawson stated maybe when we get further down the road I will show you what we are doing.

59. On February 3, 2009, Lawson gave notice of his resignation from employment with Team IA. Lawson indicated that he would work through February 13, 2009, but did not do so.

60. On information and belief, Lawson is assisting Lucas and 5 Point with activities competitive with Team IA's business.

F. Team IA's Relationship With Customer No. 1 (A County Clerk Of Superior Court Office in the State of Georgia)

61. During 2007, Team IA was authorized to do historical re-indexing services for Georgia Superior Court Clerks' Cooperative Authority ("GSCCCA") and performed historical re-indexing services for numerous Georgia Clerk of Superior Court Offices.

62. On or about April 14, 2008, Team IA was again designated as an authorized vendor for the GSCCCA and as such could provide historical re-indexing services to any Georgia County Superior Court Clerk that designated Team IA as its vendor for specified services.

63. In 2008, Team IA initially began working with Customer No. 1 on a historical re-indexing project.

64. In or about November 2008, Team IA sold a microfilm services project to Customer No. 1. Lucas was the sales representative on the microfilm services project, and Lawson was the technical sales assistant on the project.

65. David Williams, the GSCCCA's Executive Director, and a Customer No. 1 official contacted Team IA and acknowledged that Team IA had been designated as Customer No. 1's microfilm vendor.

G. Team IA's Relationship With Customer No. 2 (A County Clerk of Superior Court Office in the State of Georgia)

66. During 2007 and 2008, Team IA performed re-indexing services for Customer No. 2.

67. Team IA also sold and installed an IA Folder Scan system for Customer No. 2. Lucas was the sales representative on Customer No. 2, and Lawson provided technical support.

68. Customer No. 2's Clerk of Superior Court verbally committed to purchase Team IA's CDIMS system with eFiling. She also verbally committed to an outsourcing scanning project for civil and criminal case files. Team IA and Customer No. 2's Clerk of Superior Court were negotiating the final language of the Statement of Work that would govern the services.

69. On information and belief, prior to his departure from Team IA, Lucas intentionally delayed a project for Customer No. 2.

70. Team IA had discussed working on a potential Jury Pool system for Customer No. 2's Clerk of Superior Court.

71. Subsequent to Lucas' departure from Team IA, Lucas continued to engage in improper interference with Team IA's relationship with Customer No. 2.

72. As a direct result of Lucas' improper interference with Team IA's relationship with Customer No. 2, Team IA has been unable to secure the business which Customer No. 2's Clerk of Superior Court had previously agreed to conduct with Team IA.

H. Team IA's Relationship With Prospect No. 1 (A County Clerk of Superior Court Office in the State of Georgia)

73. Team IA directed sales activities toward the Clerk of Superior Court's Office at Prospect No. 1. Lucas was the sales representative on the Prospect No. 1 account. Lucas was attempting to get a re-indexing services contract for Team IA.

74. On February 10, 2009, Prospect No. 1's Clerk of Superior Court indicated that she had spoken with Lucas that morning and, as a result, she expressed concern about Team IA and questioned why she should even do business with Team IA.

IV. FIRST CAUSE OF ACTION
(Breuch of Contract against Lucas)

75. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

76. On March 2, 2001, Lucas entered into a binding contractual relationship with Team IA by signing the Employment Agreement.

77. The terms of the Employment Agreement are necessary for the protection of the legitimate interests of Team IA in protecting its confidential, proprietary, and trade secret information, and its relationships and good will with its employees, customers, and prospective customers.

78. The terms of the Employment Agreement are reasonably limited in their operation with respect to time and territory.

79. The terms are not unduly harsh and oppressive in curtailing the legitimate efforts of Lucas to earn a livelihood.

80. The terms are reasonable from the standpoint of sound public policy.

81. Lucas received valuable consideration for signing the Employment Agreement in the form of initial employment and the compensation outlined in the Employment Agreement.

82. Lucas, through his conduct outlined above, has breached and is continuing to breach his contractual obligations to Team IA contained in his Employment Agreement.

83. Lucas has breached the terms outlined in Paragraph III. C. of his Employment Agreement.

84. Lucas has breached the terms outlined in Paragraph IV. of his Employment Agreement.

85. Lucas has breached the terms outlined in Paragraph V.A.1. of his Employment Agreement.

14.027

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86. Lucas has breached the terms outlined in Paragraph V.A.2. of his Employment Agreement.

87. Lucas has breached the terms outlined in Paragraph V.A.3. of his Employment Agreement.

88. Lucas has breached the terms outlined in Paragraph V.A.4. of his Employment Agreement.

89. Lucas has breached the terms outlined in Paragraph V.B.1. of his Employment Agreement.

90. Lucas has breached the terms outlined in Paragraph V.B.2. of his Employment Agreement.

91. Lucas has breached the terms outlined in Paragraph V.B.3. of his Employment Agreement.

92. Lucas has breached the terms outlined in Paragraph VI.B. of his Employment Agreement.

93. Lucas has breached the terms outlined in Paragraph VI.C. of his Employment Agreement.

94. Lucas' actions have caused and will continue to cause damage to Team IA.

95. In Paragraph VII.B of the Employment Agreement, the parties expressly agreed that any material breach of the Agreement shall entitle Team IA to immediate injunctive relief in addition to all other equitable remedies available under prevailing law.

96. As a direct and proximate result of Lucas' actions and breaches of his contractual obligations to Team IA outlined in the Employment Agreement, Team IA has been injured irreparably and otherwise in its relationships with customers, prospective customers, and/or employees, and with respect to the disclosure of its confidential, proprietary and trade secret information to a direct competitor which cannot be adequately or wholly remedied by monetary damages. There is, therefore, no adequate remedy at law.

97. Team IA hereby seeks to have Lucas enjoined from all actions in violation of his Employment Agreement.

98. Team IA further seeks to have 5 Point enjoined from employing Lucas in a position in violation of his Employment Agreement and from using Team IA's confidential, proprietary and trade secret information.

99. Team IA also further seeks and is entitled to all appropriate monetary damages and equitable remedies, including lost profits and future lost profits.

100. As a result of Lucas' breach of contract, Team IA has been damaged, and will continue to be damaged, and seeks actual, compensatory, consequential, and incidental damages in an amount to be determined by the jury.

101. Team IA is entitled to recover its attorney's fees, costs, and expenses pursuant to Paragraph VII.G. of the Employment Agreement.

V. SECOND CAUSE OF ACTION
(Breach of Duty of Loyalty against Lucas)

102. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

103. The conduct of Lucas during his employment with Team IA was for the benefit of himself and a competitive business and to the detriment of Team IA. These actions constitute a breach of Lucas' duty of loyalty to Team IA.

104. As a result of Lucas' breach of his duty of loyalty, Team IA has been damaged, and will continue to be damaged, and seeks actual, compensatory, consequential, and incidental damages in an amount to be determined by the jury.

105. Team IA is also entitled to recover all wages paid to Lucas during the period of his disloyal conduct.

VI. THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relations against All Defendants)

106. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

107. Defendants have tortiously interfered with Team IA's contractual relationships with its customers.

108. Team IA had and has contractual relationships with its customers.

109. Defendants were aware of the contractual relationships between Team IA and its customers.

110. Defendants intentionally procured the breach of these contractual relationships without justification.

111. Defendants' conduct has resulted in and will continue to result in damages to Team IA.

112. Team IA seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the jury.

113. Team IA has been injured irreparably and otherwise in its relationships with customers. There is, therefore, no adequate remedy at law.

114. Team IA hereby seeks to have Defendants enjoined from any further interference with its contractual relations.

VII. FOURTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations against All Defendants)

115. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

116. Defendants have tortiously interfered with Team IA's prospective contractual relationships with customers and potential customers.

117. Defendants were aware of Team IA's prospective contractual relationships with customers and potential customers.

118. Defendants intentionally interfered with Team IA's prospective contractual relations with its customers and prospective customers.

119. Defendants' actions were for an improper purpose.

120. Defendants' actions were by improper methods.

121. Defendants' conduct has resulted in and will continue to result in injury and damages to Team IA.

122. Team IA seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the jury.

123. Team IA has been injured irreparably and otherwise in its relationships with customers and prospective customers. There is, therefore, no adequate remedy at law.

124. Team IA hereby seeks to have Defendants enjoined from any further interference with prospective contractual relations.

VIII. FIFTH CAUSE OF ACTION
(Tortious Interference with Contractual Relations against Lucas)

125. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

126. Lucas has tortiously interfered with Team IA's relationship with its employee Lawson while Lawson was employed by Team IA.

127. Lucas was aware of Team IA's employment relationship with Lawson and intentionally procured and encouraged Lawson to terminate his employment relationship with Team IA.

128. Lucas' conduct has resulted in and will continue to result in damages to Team IA.

129. Team IA seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the jury.

IX. SIXTH CAUSE OF ACTION

(Violation of South Carolina Trade Secrets Act against All Defendants)

130. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

131. Team IA's customer and contact information and its confidential and proprietary information as described above constitutes trade secrets under the South Carolina Trade Secrets Act, S.C. Code Ann. §§ 39-8-10, *et seq.* ("SCTSA").

132. Defendants' actions in wrongfully misappropriating and using Team IA's trade secrets violated and continue to violate the SCTSA.

133. Defendants' actions in wrongfully misappropriating and using Team IA's trade secrets have caused damage to Team IA's business relationships and unjustly enriched Defendants.

134. Defendants' actions in wrongfully misappropriating and using Team IA's trade secrets entitles Team IA to recover actual damages sustained pursuant to S.C. Code Ann. § 39-8-40(A) and damages for unjust enrichment pursuant to S.C. Code Ann. § 39-8-40(B).

135. Defendants' actions in wrongfully misappropriating and using Team IA's trade secrets were and continue to be willful, entitling Team IA to recover exemplary damages pursuant to S.C. Code Ann. § 39-8-40(C) and reasonable attorney's fees pursuant to S.C. Code Ann. § 39-3-80.

136. The SCTSA provides that "actual or threatened" misappropriation may be enjoined. S.C. Code Ann. § 39-8-50. Team IA seeks and is entitled to an injunction against Defendants related to their actual and threatened misappropriation of Team IA's confidential and trade secret information.

137. The conduct at issue constitutes a violation of SCTSA and will continue unless enjoined by this Court, as Team IA is without adequate remedy at law and is threatened with irreparable loss, injury, and damage unless the Court grants the equitable relief requested.

X. SEVENTH CAUSE OF ACTION
(Civil Conspiracy against All Defendants)

138. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

139. Defendants conspired to act for the purpose of damaging Team IA's business.

140. The overt acts done pursuant to the conspiratorial combination of the Defendants have damaged Team IA by, but not limited to, the loss of confidential trade secret information, the improper use of confidential trade secret information, the loss of customers, the loss of potential customers, and the loss of employees.

141. As a result of Defendants' conduct, Team IA has suffered actual, compensatory, consequential, incidental and special damages.

142. Team IA's special damages include, but are not limited to, the loss of specific customers and promised business; the loss and misuse of specific information which has allowed 5 Point to compete with Team IA for specific business; the specific damages to Team IA's

business; lost investment in employees; lost investment of marketing and sales costs; and damages to Team IA's ability to operate caused by Defendants' combined efforts to harm Team IA's business.

143. Defendants' conduct has been without privilege and done with such willful, malicious, and conscience indifference so as to justify an award of punitive damages.

XI. EIGHTH CAUSE OF ACTION
(Conversion against Lucas)

144. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

145. Lucas' wrongful taking and retention of Team IA property constitutes conversion of Team IA property.

146. The actions of Lucas were taken illegally, without Team IA's permission, and with the intent of permanently depriving Team IA of the use, custody, ownership, and control of its property.

147. Team IA is entitled to injunctive relief requiring that Lucas disgorge and return and restore to Team IA its property.

148. Team IA is entitled to its actual, compensatory, and consequential damages caused by Lucas' conversion of its property.

149. Lucas' conduct has been without privilege and done with such willful, malicious, and conscious indifference so as to justify an award of punitive damages.

XII. NINTH CAUSE OF ACTION
(Unjust Enrichment against All Defendants)

150. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

151. Defendants' improper conduct as alleged above has and will continue to enable Defendants to compete unfairly with Team IA.

152. Defendants' conduct was wrongful and performed in a malicious manner to harm Team IA and to unjustly enrich Defendants at Team IA's expense.

153. As a direct and proximate cause of Defendants' improper conduct, Defendants have been unjustly enriched in an amount to be determined by the trier of fact, and Team IA is entitled to the recovery and disgorgement of any and all profits, earnings and commissions attributable to Defendants' wrongful actions.

XIII. TENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)

154. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

155. Defendants have derived and/or will derive profits from its wrongful conduct as alleged above.

156. Team IA is entitled to have a constructive trust imposed on any profits Defendants have derived, or will derive, from its wrongful activities pending the outcome of this litigation.

XIV. ELEVENTH CAUSE OF ACTION
(Defamation against Lucas and 5 Point)

157. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

158. Lucas has made false statements regarding Team IA's business and its ability to engage in business activities and service its customers to Team IA's customers and prospective customers in an effort to damage Team IA's business and unfairly compete with Team IA.

159. Lucas' statements to Team IA's customers and potential customers were false and were made for the purpose of unfairly competing with Team IA and damaging Team IA's business.

160. Lucas' statements were on behalf of himself and for the benefit of and as an agent of 5 Point.

161. Lucas' statements were made with the knowledge of and in the course and scope of his employment with 5 Point and, therefore, 5 Point is vicariously liable for Lucas' actions.

162. Lucas' statements are actionable per se.

163. As a proximate and foreseeable result of Lucas' deliberate and intentional conduct, Team IA has suffered both compensable and irreparable harm, including the potential loss of customer(s) and harm to its reputation.

164. Lucas' conduct has been without privilege and done with such willful, malicious, and conscience indifference so as to justify an award of punitive damages.

XV. TWELVTH CAUSE OF ACTION
(Fraud against Lawson)

165. Team IA re-alleges and incorporates all of its allegations contained above as if fully set forth herein.

166. Lawson made false statements to Team IA while still employed by Team IA, including, but not limited to, statements that he was not going to work for a competitor.

167. Team IA relied on Lawson's statements and had a right to rely on these statements.

168. As a result of Team IA's reliance on the truth of Lawson's statements, it did not limit Lawson's access to confidential, proprietary, and trade secret information; it did not limit or monitor Lawson's contact with customers, potential customers, and employees; it did not closely monitor Lawson's activity; and it did not take steps to protect itself from unfair competition.

169. Team IA allowed Lawson to continue working based on his representations, not knowing that Defendants were attempting to and taking steps to steal Team IA's business and anticipated business.

170. Team IA suffered damages as a result of Lawson's conduct.

171. Team IA is entitled to its actual, compensatory, and consequential damages caused by Lawson's fraudulent conduct.

172. Lawson's conduct has been without privilege and done with such willful, malicious, and conscience indifference so as to justify an award of punitive damages.

PRAYER FOR RELIEF

173. WHEREFORE, Team IA, having set forth its Complaint against Defendants herein, prays that the Court will:

(a) Issue a temporary restraining order, preliminary injunction, and permanent injunction directing Lucas to comply with the terms of the Employment Agreement;

(b) Extend the time restrictions in the Employment Agreement by the period of time Lucas has failed to comply with its terms.

(c) Issue a temporary restraining order, preliminary injunction, and permanent injunction directing Defendants to cease all interference with Team IA's contractual and prospective contractual relations;

(d) Issue the temporary restraining order, preliminary injunction, and permanent injunction prayed for without bond;

(e) Award Team IA actual, compensatory, consequential, incidental, special, and punitive damages;

(f) Award Team IA pre-judgment interest in the maximum amount allowable by law;

(g) Award Team IA actual damages, damages for unjust enrichment, and exemplary damages pursuant to S.C. Code Ann. § 39-8-40;

(h) Award Team IA its reasonable attorney's fees pursuant to S.C. Code Ann. § 39-8-80 and the Employment Agreement;

(i) Grant Team IA such other relief, whether at law or in equity, as the nature of its claims may require or the Court or jury deems appropriate; and

(j) Grant Team IA a trial by jury on all claims that can be so tried.

Dated this the 17th day of March, 2009.

Respectfully submitted,

By: S. Clay Keim
S. Clay Keim
Jeffrey A. Lehrer

FORD & HARRISON LLP
100 Dunbar Street, Suite 300 (29306)
P. O. Box 5398
Spartanburg, South Carolina 29304-5398
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Attorneys for Plaintiff

Spartanburg: 79367.1

27 of 27

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

)
) IN THE COURT OF COMMON PLEAS
)

MARCH 17 2009

TEAM IA, INC,

Plaintiff,

v.

Civil Action No. _____

CICERO LUCAS,
GEORGE LAWSON, IV,
AND 5 POINT SOLUTIONS, LLC

JURY TRIAL DEMANDED

Defendants.

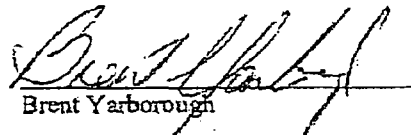
2009CP3201078

VERIFICATION

PERSONALLY APPEARED BEFORE ME, Brent Yarborough, the President of Team IA, Inc., who upon oath duly sworn, deposes, and states as follows:

I have reviewed the Verified Complaint for Injunctive Relief and Damages in the above-captioned action. The statements therein are true and correct to the best of my knowledge and belief.

Dated this the 17th day of March, 2009.


Brent Yarborough

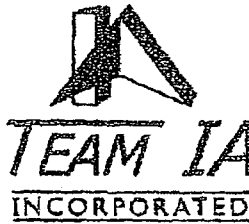
SWORN to and subscribed before me
This 17 day of March, 2009.


NOTARY PUBLIC
My Commission Expires: 06-23-2013

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APP0049

Exhibit A



February 28, 2001

Mr. Roy Lucas
421 Greentree Lane
Lexington, South Carolina, 29072

Dear Roy,

It gives me great pleasure to formally extend an offer of employment with Team IA, Inc. Your primary responsibility will be sales and accounting. Although this will be your primary role, it will not be your only responsibility. Due to the nature of Team IA's business, it is expected for you to participate wherever necessary to ensure the company's success. This offer is valid until March 10, 2001 and is based upon the following terms and conditions:

Start Date: April 2, 2001

Benefits

Health Insurance – IA offers a health insurance plan for its employees and their immediate family members provided they meet the qualifications of the carrier. IA will pay up to \$ 6,000.00 annually towards your coverage.

Deferred Savings Plan – IA provides a SIMPLE IRA through Smith Barney. IA pays for the annual administrative fees. The employee is responsible for all contributions and additional fees for additional activity. An employer contribution may or may not be made each year.

Expenses – You will be reimbursed for all approved business related expenses. This would include travel and cell phone expenses.

Requirements – In addition to those already mentioned, an employment agreement with non-competition, non-disclosure, ownership of work, and other clauses as identified attached must be executed. In other words, acceptance of this offer is contingent on agreement of an employment agreement being executed.

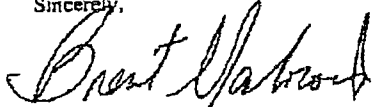
Post Office Box 1643 • Lexington, SC 29071 • (803) 356-7676 • Fax (803) 356-4942

Record on Appeal 049

APP0051

I hope you find this offer acceptable. If you accept this offer, please indicate by signing and dating it below. Please return to my attention.

Sincerely,



Brent Yarborough
President

Offer Accepted: Cicero Lucas 3/2/01
Date

Exhibit B

Record on Appeal 051

APP0053

**TEAM IA, INC.
EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT, effective _____, is entered into by and between TEAM IA, INC. (hereinafter "Employer") and CICERO LUCAS (hereinafter "Employee").

NOW THEREFORE, for valuable consideration including, but not limited to, the Employer's employment of Employee in an at-will status, and other good and valuable consideration afforded Employee in his position, the receipt and sufficiency of which are hereby acknowledged by Employee, the Parties hereby agree to abide by the terms and restrictions set forth in this Agreement as follows:

I.

SCOPE OF DUTIES

A) **Employment by Employer as Sole Occupation.** Subject only to the exceptions provided in this Agreement, Employee agrees to devote his full business time, attention, skill, and effort exclusively to the performance of the duties that Employer may assign him from time to time. Employee may not engage in any business activities or render any services of a business, commercial, or professional nature, whether or not for compensation, for the benefit of anyone other than Employer, unless Employer has given its consent in writing in advance. It is the policy of Employer never to allow its personnel to work for any competitive enterprise during their employment, including after hours, on weekends, or during vacation time, even if only organizational assistance or limited consultation is involved.

B) **Compensation Package.** Employee shall receive a base salary of \$108,000.00 annually to be paid in semi-monthly installments. Employee may receive bonuses from time-to-time to be determined in the sole discretion of Brent Yarborough.

C) **Compensation in the event of a Change of Control.** "CHANGE OF CONTROL" is defined in this Agreement as the sale of all or substantially all of the assets of Employer or the transfer of all or substantially all of the management control or ownership of Employer. In the event that Team IA experiences a Change of Control within the first twelve (12) months of Employee's employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control (for example, if Employer receives cash, Employee would receive cash; if Employer receives stock, Employee would receive stock) up to but not exceeding \$150,000.00 in value. This \$150,000.00 value is based on an estimated value of \$3.42 per share. The per share value is not to be construed in any manner as the Employee owning shares. It serves only as a means for calculating Employee's Change of Control compensation. In the event a Change of Control results in Employer receiving less than \$3.42 per share, Employee's Change of Control value would be proportionately less. For example, if Employer sells for \$3.00 per share, Employee's Change of Control value would be \$131,550.00. However, in no event shall Employee's Change of Control value exceed \$150,000.00, regardless of the selling price per share.

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In the event Team IA experiences a Change of Control after Employee's first twelve (12) months of employment but less than Employee's first eighteen (18) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$100,000.00. This \$100,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share during the twelve to eighteen month time period, Employee's Change of Control value would be proportionately reduced as described above.

In the event Team IA experiences a Change of Control after Employee's first eighteen (18) months of employment but less than or equal to the first twenty-four (24) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$50,000.00 in value. This \$50,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share after eighteen months but before twenty-four months, Employee's Change of Control value would be proportionately reduced as described above. After the Employee's first twenty-four (24) months of employment, Employee shall not be entitled to any Change of Control compensation in any form.

Employee must be employed and actively working for Employer at the time of the Change of Control to be eligible for the referenced compensation. Employee hereby acknowledges and agrees to accept any and all tax liability, federal, state, or otherwise, for said compensation.

D) **Equity.** Team IA is currently analyzing an ISO Plan. Employee may be allowed to participate in the ISO Plan upon its implementation or thereafter. Brent Yarbrough shall have the sole discretion to determine if Employee is allowed to participate in the ISO Plan and, if so, at what level of participation. If allowed to participate in the ISO Plan, Employee will be subject to all terms and conditions of this plan, which may include an eligibility clause as a condition precedent to participation.

E) **Health Insurance.** Employer shall obtain a health benefits package, for Employee and his dependents, with cost not to exceed \$6,000.00 annually. Any health benefits desired by Employee for himself or his family which exceed this sum shall be deducted from salary or incentives, if any, or reimbursed on a monthly basis to Employer by Employee.

F) **Noninterference With Third-Party Rights.** Employer is employing Employee with the understanding that (1) he is free to enter into employment with Employer and (2) only Employer is entitled to the benefit of his work. Employer has no interest in using any other person's or entity's patents, copyrights, trade secrets, or trademarks in an unlawful manner. Employee should be careful not to misapply proprietary rights that Employer has no right to use. Employee affirms that he has fully disclosed the full extent of his past relationship with his previous employers, and all agreements related thereto. *See Addendum attached hereto.

G) **Continuance of Employment.** The faithful observance of this Agreement by Employee is, and shall remain, a condition to his employment. Employee's employment is terminable at-will by either Employee or Employer at any time.

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APP0055

II.

OWNERSHIP OF EMPLOYEE DEVELOPMENTS

Employer shall own all Work Product. All Work Product shall be considered work made for hire by Employee and owned by Employer. For purposes hereof, "Work Product" shall mean all intellectual property rights, including all Trade Secrets, U.S. and international copyrights, patentable inventions, discoveries and improvements, and other intellectual property rights, in any programming, documentation, technology, or other Work Product that relates to the business and interests of Employer and that Employee conceives, develops, or delivers to Employer at any time during the term of his employment. Work Product shall also include all intellectual property rights in any programming, documentation, technology, or other Work Product that is now contained in any of the products or systems, including development and support systems, of Employer to the extent Employee conceived, developed, or delivered such Work Product to Employer prior to the date of this Agreement while Employee was engaged as an independent contractor or an Employee of Employer. Employee hereby irrevocably relinquishes for the benefit of Employer and its assigns any moral rights in the Work Product recognized by applicable law.

Employer, its successors, and assigns, shall have the right to obtain and hold in its or their own name copyrights, registrations, and any other protection available in the foregoing.

Employee agrees to perform, upon the reasonable request of Employer, such further acts as may be necessary or desirable to transfer, perfect, and defend Employer's ownership of the Work Product.

III.

CONFIDENTIALITY

A) **Consequences of Entrustment With Sensitive Information.** Employee should recognize that his position with Employer requires considerable responsibility and trust. Relying on Employee's ethical responsibility and undivided loyalty, Employer expects to entrust him with highly sensitive confidential, restricted, and proprietary information involving Trade Secrets. Employee should recognize that it could prove very difficult to isolate these Trade Secrets from business activities that he might consider pursuing after termination of his employment, and in some instances, Employee may not be able to compete with Employer in certain ways because of the risk that Employer's Trade Secrets might be compromised. Employee is legally and ethically responsible for protecting and preserving Employer's proprietary rights for use only for Employer's benefit, and these responsibilities may impose unavoidable limitations on Employee's ability to pursue some kinds of business opportunities that might interest Employee during or after his employment.

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B) **Trade Secrets Defined.** For purposes of this Agreement, a "Trade Secret" is any information pertaining to imaging and work flow systems which include technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or lists of actual or potential customers or suppliers that: (1) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic

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value from their disclosure or use; and (2) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

C) **Restrictions on Use and Disclosure of Trade Secrets.** Employee will not disclose, or allow or cause to be disclosed, in anyway or under any circumstances, any such confidential information, Trade Secrets, proprietary processes, software development information, or customer lists to any business or firm in competition with Team IA, or to any agent, person, firm, corporate associate, or subsidiary or affiliate however described, with those competitive business firms. Employee understands and agrees that the purpose in these regards is to prevent him from placing, or causing or allowing to be placed any of Employer's confidential information, Trade Secrets, or proprietary processes and customer lists into the hands of such firms. Without anyway limiting the generality of the foregoing, and in an attempt to supplement the "Trade Secrets" and Work Products as heretofore described, Employee agrees not to disclose production processes, software designs, suppliers, vendors, licensees, production of pricing statistics, sales results, research or other investigations in production, sales marketing, designs in the like, and the results thereof, sales data and information not otherwise available to the trade, prices charged to customers, the credit terms and allowances granted to each customer, or any other advertising or promotional programs. The term customer as used herein includes licensees, distributors, and final consumers of goods and services provided by Team IA. Additionally, Employee shall not reveal any future plans or projections of Team IA for expansions, acquisitions, mergers, promotions or the earnings of any employees, officers, or directors of Team IA.

This Agreement shall be supplemental to and shall not supersede, invalidate, or replace any obligation Employee may have to Employer under State law, including but not limited to the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10, et seq

The Parties hereby acknowledge the foregoing restriction does not prohibit Employee from using the general skills and knowledge he acquired prior to and during his employment with Employer. The Parties hereby acknowledge that Employee shall be entitled to use the general skills and knowledge as well as information readily available in the industry should his employment with Employer be terminated for any reason.

IV.

RETURN OF MATERIALS

Upon the request of Employer and, in any event, upon the termination of Employee's employment, Employee must return to Employer and leave at its disposal all memoranda, notes, records, drawings, manuals, computer programs, documentation, diskettes, computer tapes, and other documents or media pertaining to the business of Employer or Employee's specific duties for Employer, including all copies, regardless of form, of such materials. Employee must also return to Employer and leave at its disposal all materials involving any Trade Secrets of Employer. This Section IV is intended to apply to all materials made or compiled by Employee, as well as to all materials furnished to Employee by anyone else in connection with his employment. Employee may retain documentation, materials, books and the like brought with Employee at the inception of employment. In addition, Employee may retain copies of seminar or workshop notes specifically in areas of re-engineering, business process redesign, and health care business practices. Copies of such documents should be left with Employer.

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V.

NON-SOLICITATION AND NON-COMPETITION

A) Non-Solicitation Agreement.

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

For the purposes of this Agreement, the term "CUSTOMER" shall mean any person, firm, or business entity who currently has a system or product which was designed or installed by or is being serviced by Employer, or who has purchased goods or services or who has contracted to purchase goods or services from Employer during the twelve (12) months prior to Employee's separation from employment; or who is an Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months.

2) Employee agrees not to induce or attempt to influence any person or entity which has a business relationship with the Employer to terminate or otherwise alter that relationship with the Employer.

3) Employee agrees that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, employ, attempt to employ, solicit, or attempt to solicit the employment of any individual who is, or who has been an employee of Employer at any time in the twelve (12) complete calendar months immediately preceding Employee's separation from employment.

4) Employee agrees that for a period of twelve (12) months following the end of his employment by the Employer, whether or not this contract is otherwise in force, and regardless of the reasons for terminating the employee/employer relationship, the Employee will not, directly or indirectly, hire, attempt to hire, or encourage agents and/or independent contractors of Employer to cease their relationships with Employer.

B) Covenant Not to Compete.

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit,

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attempt to solicit, sell, or attempt to sell, provide, or attempt to provide **COMPETING SERVICES** as defined below.

Recognizing that Team IA competes on a nationwide basis, the Parties to this Agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

For the purposes of this Agreement, "COMPETING SERVICES" shall mean any service, product, or process of any person, firm, or corporation in existence, which competes with a service, product or process upon which the Employee worked or which he sold or serviced during his employment by Employer or concerning matters which he has acquired confidential information through his work with Employer.

2) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not, directly or indirectly, participate (on Employee's own behalf or on behalf of any other corporation, venture or enterprise) in any matters which were the subject of Employer's bids submitted or in preparation during or prior to the Employee's employment.

3) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not enter into a relationship (employee/employer, independent contractor, or otherwise) to provide a CUSTOMER or "STRATEGIC PARTNER" with the same or substantially similar services which Employee was performing for Employer. For the purposes of this agreement, "STRATEGIC PARTNER" shall mean a third party that Employer formed a business relationship with, formerly or informally, to jointly accomplish a task for a fee. For example, Employer engages ABC Company to assist it with the implementation of software for a customer.

VI.

PROHIBITION AGAINST UNFAIR BUSINESS PRACTICES

A) **Recruiting.** It would be unfair for a former Employee or contractor of Employer to recruit personnel directly from the ranks of Employer's own employees by using connections and inside information previously acquired from Employer. Employer puts great emphasis on selecting, training, and promoting talented individuals for positions of significant responsibility. The time, effort, and capital invested by Employer in its work force should not be diverted by someone operating on an inside track. In addition, it would be unfair for individuals still employed by Employer to form and pursue a competitive business while receiving wages and other benefits from Employer.

B) **Refraining from Harmful Actions.** During Employee's employment with Employer, he is required to refrain from engaging in any action that might be harmful to Employer or its business, unless Employer consents in advance. Employee's responsibility to promote and support Employer's business by its very nature requires him to prevent Employer from suffering injury or hardship, if it can be avoided. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should

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resolve all doubts by consulting Employer on how best to proceed. By way of example, during Employee's employment with Employer he may not solicit or recruit any other Employee to form or join another business. Employer cannot prohibit Employee from terminating his employment and pursuing other kinds of

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work, but if Employee should decide to form or join another business Employee is required to advise Employer promptly, so that projects in progress and under consideration are not needlessly disrupted and so that even the possibility that Trade Secrets or other confidential information may be compromised can be avoided.

C) **Reporting Instances of Unfair Business Practices.** During Employee's employment with Employer, if Employee learns or even suspects that any unfair or questionable business practice may be occurring, Employee is required to advise Employer promptly. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should resolve all doubts by reporting to Employer the information that has come to his attention. By way of example, Employee should report the incident immediately if anyone who is, or within the most recent two years has been, an employee or contractor of Employer contacts Employee or any other employee of Employer with an offer to form or join another business. This type of contact includes any meeting or communication not initiated by Employee or by the employee receiving the offer, where it becomes known that a position of employment or an opportunity to participate in a business enterprise might be available. The requirement also applies to instances where a third party, such as a placement agent or a business associate, contacts Employee or any other employee of Employer at the instruction or suggestion of an employee or contractor of Employer.

VII.

IMPLEMENTATION

A) **Severability.** The covenants in this Agreement shall be construed as covenants independent of one another and as obligations distinct from any other contract between Employee and Employer. Any claim that Employee may have against Employer shall not constitute a defense to enforcement by Employer of this Agreement. The Parties to this Agreement expressly acknowledge that the provisions, or portions thereof, of this Agreement shall be deemed severable and the invalidity of or unenforceability of any provision, or portion thereof, shall not affect the validity or enforceability of the other provisions hereof. If any provision, or portion thereof, of this Agreement is unenforceable for any reason, it is the express intent of the Parties that such provision, or portion thereof, shall be appropriately limited and given effect to the extent that it may be enforceable in the discretion of the court or, in the alternative, such provision shall be severed in its entirety, if a court of competent jurisdiction determines a lesser limitation than what is stated is not appropriate.

B) **Injunctive Relief.** Employee's breach of the terms of this Agreement shall be a material breach and shall entitle Employer to immediate injunctive relief in addition to all other equitable remedies available under prevailing law. Employee agrees that any court of competent jurisdiction should immediately enjoin any breach of this Agreement upon the request of Employer, and Employee specifically releases Employer from the requirement of posting any bond in connection with temporary or interlocutory injunctive relief, to the extent permitted by law. Employee hereby acknowledges and agrees that Employer's entitlement to injunctive relief shall in no way prevent Employer from recovering monetary damages for Employee's breach of this Agreement.

C) **Notices.** All notices required under this Agreement shall be made in writing and shall be deemed given when (1) delivered in person, (2) deposited in the U.S. mail, first class, with

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proper postage prepaid and properly addressed, or (3) sent through the interoffice delivery service

of Employer, if Employee is still employed by Employer at the time.

D) **Related Parties.** This Agreement shall inure to the benefit of, and be binding upon, Employer and its subsidiaries and its affiliates, together with their successors and assigns.

E) **Choice of Law.** This Agreement shall be governed by, and construed and interpreted in accordance with the domestic laws of the State of South Carolina. Any dispute concerning or arising under this Agreement must be submitted to a court of competent jurisdiction, either state or federal, within the State of South Carolina, and the Parties hereby voluntarily submit to the jurisdiction of such court.

F) **Reasonableness of Limitations.** The Parties hereby acknowledge and agree that the limitations set forth herein are reasonable with respect to scope and duration, and are properly required for the protection of the legitimate business interests of Employer. The Parties further agree that the limitations set forth herein are subject to annual review in order to allow the restrictions to be reviewed and amended accordingly in light of any changes in the Employee's assigned responsibilities.

G) **Fees, Costs, and Expenses.** In the event Employer must enforce any of the rights herein granted to it through an attorney, Employee shall be liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Employer's rights hereunder.

H) **Legal Advice.** Employee affirms that he has been afforded the full opportunity to obtain independent legal advice prior to executing this Employment Agreement.

Upon a thorough reading and review of this Agreement and after having had an opportunity to allow his attorney to review same, Employee states that he is fully aware of and in agreement with the terms set forth and does contract to be bound by the Agreement.

Further, Employer having had an opportunity to read and review this Agreement is fully aware of and in agreement with all the terms set forth and does contract to be bound by said Agreement.

IN WITNESS WHEREOF, you, as an Employee of Employer, have entered and executed this Agreement under seal, and Employer has accepted your undertaking.

EMPLOYEE:

CICERO LUCAS

252351135

Social Security Number

9/2/01

Date of Hire

Date:

3/02/01

CICERO G. LUCAS

Name Typed or Printed

421 GREENTREE LANE

Address

LEXINGTON, SC 29072

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APP0063

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,)
Plaintiff,)

Case No. 2009CP3201078

v.)

CICERO LUCAS,)
GEORGE LAWSON, IV,)
AND 5 POINT SOLUTIONS, LLC,)

Defendants,)

CICERO LUCAS,)
GEORGE LAWSON, IV,)

Third-Party Plaintiffs)

v.)

JURY TRIAL DEMANDED

BRENT YARBOROUGH)
TEAM IA)

Third-Party)
Defendants)

ANSWER OF CICERO LUCAS, GEORGE LAWSON, IV, AND 5 POINT
SOLUTIONS TO PLAINTIFF'S COMPLAINT AND THIRD PARTY COMPLAINT
AGAINST BRENT YARBOROUGH AND TEAM IA

Defendants Cicero Lucas ("Lucas"), George Lawson, IV ("Lawson"), and 5 Point
Solutions, LLC answer Plaintiff's Complaint as follows, in paragraphs numbered to
correspond to the paragraph numbers in the Complaint.

1. Admitted.

2. Lucas admits that he is a citizen and resident of Lexington County, South Carolina. Lucas admits that he resigned February 3, 2009 but denies the remaining allegations in paragraph 2.
3. Lucas admits that Defendant George Lawson IV is a current employee and part-owner of 5 Point Solutions. Lucas lacks knowledge or information as to truth of the remaining allegations in paragraph 3 and therefore denies them.
4. Admitted.
5. Admitted.
6. Lucas admits that jurisdiction is proper in this County, however allegations of tortious conduct by the defendants is denied.
7. Lucas denies the allegations of paragraph 7.
8. Lucas admits that he sold a large product in November 2008, the remaining allegations of paragraph 8 are denied.
9. Lucas denies the allegations of paragraph 9.
10. Lucas admits that Team IA conducts business in the software and related services industry. Lucas denies the remaining allegations of paragraph 10.
11. Lucas admits that he began work with Team IA on or about April 2, 2001. The remaining allegations of paragraph 11 are denied.
12. Lucas denies the allegations of paragraph 12.
13. Lucas admits that he signed the offer letter, the remaining allegations of paragraph 13 are denied.
14. Lucas denies the allegations of paragraph 14.

15. Lucas admits that he signed the offer letter, the remaining allegations of paragraph 15 are denied.
16. Paragraph 16 sets forth a legal conclusion as to which no responsive pleading is required. To the extent that paragraph 16 is deemed an allegation of fact, Lucas denies the allegations of paragraph 16.
17. Paragraph 17 sets forth a legal conclusion as to which no responsive pleading is required. To the extent that paragraph 17 is deemed an allegation of fact, Lucas denies the allegations of paragraph 17.
18. Paragraph 18 sets forth a legal conclusion as to which no responsive pleading is required. To the extent that paragraph 18 is deemed an allegation of fact, Lucas denies the allegations of paragraph 18.
19. Paragraph 19 sets forth a legal conclusion as to which no responsive pleading is required. To the extent that paragraph 19 is deemed an allegation of fact, Lucas denies the allegations of paragraph 19.
20. Lucas denies the allegations of paragraph 20.
21. Lucas admits that he was provided some equipment by Team IA and that he was reimbursed by Team IA for several courses he took on his own time. Lucas denies the remaining allegations of paragraph 21.
22. Lucas denies that Team IA provided any training materials. Additionally, Lucas introduced Team IA to many customers and prospects, not the other way around. Furthermore, Lucas's contacts and prospects were government elected officials and staff whose contact information is publically available. Lucas denies that he

had access to the financial statements of Team IA for over the past 6 years. Lucas denies the remaining allegations of paragraph 22.

23. To the extent Lucas was provided no information that was not available to other employees who did not have any employee agreements, Lucas denies the allegations of paragraph 23.
24. To the extent Team IA restricted Lucas from soliciting healthcare related clients as well as South Carolina state government agencies, the allegations of paragraph 24 are denied. Lucas denies the remaining allegations of paragraph 24.
25. Lucas denies the allegations of paragraph 25.
26. Lucas admits that he was paid on a salary plus bonus basis. Lucas denies the allegations of paragraph 26.
27. Lucas denies the allegations of paragraph 27.
28. Lucas denies the allegations of paragraph 28.
29. Lucas denies the allegations of paragraph 29.
30. Lucas denies the allegations of paragraph 30.
31. Lucas admits the allegations of paragraph 31.
32. Lucas admits the allegations of paragraph 32.
33. Lucas admits that Team IA submitted a total of approximately 5 bids over an 8 year period to Superior Clerk of Court Offices in Georgia.
34. Lucas denies the allegations of paragraph 34.
35. Lucas denies the allegations of paragraph 35.
36. Lucas denies the allegations of paragraph 36.

37. Lucas admits that he met with Brent and Lorri Yarborough on January 29, 2009, the remaining allegations of the paragraph are denied.
38. Lucas denies the allegations of paragraph 38.
39. Lucas admits that he met with Lorri Yarborough on January 31, 2009, and admits that he was disappointed that Team IA had failed on its promises to him with regard to compensation, the remaining allegations of paragraph 39 are denied.
40. Lucas admits that his pay was less in 2008 than it should have been, but denies the remaining allegations of paragraph 40.
41. Lucas denies the allegations of paragraph 41.
42. Lucas admits that he deleted personal information in his cell phone and lap top such as addresses and personal banking information. No Team IA customer contact information was deleted and to any extent information was deleted, that information is contained on servers backed up by Team IA. The remaining allegations of paragraph 42 are denied.
43. Lucas admits the allegations of paragraph 43.
44. Mr. Lucas asked for a copy of the Employment Agreement on Feb 3rd, 2009. Mr. Yarborough refused to produce the Employment Agreement upon Mr. Lucas's departure from Team IA. Mr. Yarborough's attorney did not provide a copy of the Employment Agreement to Mr. Lucas's attorney until Feb 10th or 11th of 2009. The remaining allegations of paragraph 44 are denied.
45. The allegations of paragraph 45 are denied.
46. The allegations of paragraph 46 are denied.
47. The allegations of paragraph 47 are denied.

48. To the extent Mr. Yarborough gave Mr. Lucas a plasma T.V. as a gift, the paragraph is admitted, the remaining allegations including that the T.V. is Team IA property, the paragraph is denied.
49. The allegations of paragraph 49 are admitted.
50. As set forth in further detail below, Lucas denies that the employment agreement or its restrictions are valid, to the extent that there have been any contacts with current or former customers of Team IA, the customers have initiated those contacts with Lucas. The remaining allegations of paragraph 50 are denied.
51. Lawson admits the allegations of paragraph 51.
52. Lawson admits the allegations of paragraph 52.
53. Lawson admits the allegations of paragraph 53.
54. Lawson admits the allegations of paragraph 54.
55. Lawson admits the allegations of paragraph 55.
56. Lawson admits the allegations of paragraph 56.
57. The allegations of paragraph 57 are denied.
58. Lawson admits that he discussed his future plans with a Team IA employee including his plans to pursue many possible opportunities wholly unrelated to the business of Team IA. The remaining allegations of paragraph 58 are denied.
59. Lawson admits that he gave his notice of resignation on February 3, 2009, and that he planned to work for Team IA through February 13, 2009. Team IA asked Mr. Lawson not to continue work until February 13. The remaining allegations of paragraph 59 are denied.
60. The allegations of paragraph 60 are denied.

61. Defendants admit that Team IA has performed work for 5 out of 159 counties in the State of Georgia, all of which were generated by Mr. Lucas. The remaining allegations of paragraph 61 are denied.
62. The allegations of paragraph 62 are admitted.
63. The allegations of paragraph 63 are admitted.
64. The allegations of paragraph 64 are denied.
65. The allegations of paragraph 65 are admitted.
66. The allegations of paragraph 66 are admitted.
67. The allegations of paragraph 67 are admitted.
68. The allegations of paragraph 68 are denied.
69. The allegations of paragraph 69 are denied.
70. The allegations of paragraph 70 are denied.
71. The allegations of paragraph 71 are denied.
72. The allegations of paragraph 72 are denied.
73. The allegations of paragraph 73 are denied.
74. The allegations of paragraph 74 are denied.
75. Paragraph 75 requires no responsive pleading.
76. The allegations of paragraph 76 are denied.
77. The allegations of paragraph 77 are denied.
78. The allegations of paragraph 78 are denied.
79. The allegations of paragraph 79 are denied.
80. The allegations of paragraph 80 are denied.
81. The allegations of paragraph 81 are denied.

82. The allegations of paragraph 82 are denied.
83. The allegations of paragraph 83 are denied.
84. The allegations of paragraph 84 are denied.
85. The allegations of paragraph 85 are denied.
86. The allegations of paragraph 86 are denied.
87. The allegations of paragraph 87 are denied.
88. The allegations of paragraph 88 are denied.
89. The allegations of paragraph 89 are denied.
90. The allegations of paragraph 90 are denied.
91. The allegations of paragraph 91 are denied.
92. The allegations of paragraph 92 are denied.
93. The allegations of paragraph 93 are denied.
94. The allegations of paragraph 94 are denied.
95. Paragraph 95 requires no responsive pleading.
96. The allegations of paragraph 96 are denied.
97. Paragraph 97 requires no responsive pleading, to the extent plaintiff alleges he is entitled to an injunction, the paragraph is denied.
98. Paragraph 98 requires no responsive pleading, to the extent plaintiff alleges he is entitled to an injunction, the paragraph is denied.
99. Paragraph 98 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
100. The allegations of paragraph 100 are denied.
101. The allegations of paragraph 101 are denied.

102. Paragraph 102 requires no responsive pleading.
103. The allegations of paragraph 103 are denied.
104. The allegations of paragraph 104 are denied.
105. The allegations of paragraph 105 are denied.
106. Paragraph 106 requires no responsive pleading.
107. The allegations of paragraph 107 are denied.
108. The allegations of paragraph 108 are denied.
109. The allegations of paragraph 109 are denied.
110. The allegations of paragraph 110 are denied.
111. The allegations of paragraph 111 are denied.
112. Paragraph 112 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
113. The allegations of paragraph 113 are denied.
114. Paragraph 114 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
115. Paragraph 106 requires no responsive pleading.
116. The allegations of paragraph 116 are denied.
117. The allegations of paragraph 117 are denied.
118. The allegations of paragraph 118 are denied.
119. The allegations of paragraph 119 are denied.
120. The allegations of paragraph 120 are denied.
121. The allegations of paragraph 121 are denied.

122. Paragraph 122 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
123. Paragraph 123 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
124. Paragraph 124 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
125. Paragraph 125 requires no responsive pleading.
126. The allegations of paragraph 126 are denied.
127. The allegations of paragraph 127 are denied.
128. The allegations of paragraph 128 are denied.
129. Paragraph 129 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
130. Paragraph 130 requires no responsive pleading.
131. The allegations of paragraph 131 are denied, Team IA's government contact information is Public knowledge and is easily accessible by anyone.
132. The allegations of paragraph 132 are denied.
133. The allegations of paragraph 133 are denied.
134. The allegations of paragraph 134 are denied.
135. The allegations of paragraph 135 are denied.
136. Paragraph 136 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
137. The allegations of paragraph 137 are denied.
138. Paragraph 138 requires no responsive pleading.

139. The allegations of paragraph 139 are denied.
140. The allegations of paragraph 140 are denied.
141. The allegations of paragraph 141 are denied.
142. The allegations of paragraph 142 are denied.
143. The allegations of paragraph 143 are denied.
144. Paragraph 144 requires no responsive pleading.
145. The allegations of paragraph 145 are denied.
146. The allegations of paragraph 146 are denied.
147. Paragraph 147 requires no responsive pleading, to the extent plaintiff alleges he is entitled to any relief, the paragraph is denied.
148. The allegations of paragraph 148 are denied.
149. The allegations of paragraph 149 are denied.
150. Paragraph 150 requires no responsive pleading.
151. The allegations of paragraph 151 are denied.
152. The allegations of paragraph 152 are denied.
153. The allegations of paragraph 153 are denied.
154. Paragraph 154 requires no responsive pleading.
155. The allegations of paragraph 155 are denied.
156. The allegations of paragraph 156 are denied.
157. Paragraph 157 requires no responsive pleading.
158. The allegations of paragraph 158 are denied.
159. The allegations of paragraph 159 are denied.
160. The allegations of paragraph 160 are denied.

161. The allegations of paragraph 161 are denied.
162. The allegations of paragraph 162 are denied.
163. The allegations of paragraph 163 are denied.
164. The allegations of paragraph 164 are denied.
165. Paragraph 165 requires no responsive pleading.
166. The allegations of paragraph 166 are denied.
167. The allegations of paragraph 167 are denied.
168. The allegations of paragraph 168 are denied.
169. The allegations of paragraph 169 are denied.
170. The allegations of paragraph 170 are denied.
171. The allegations of paragraph 171 are denied.
172. The allegations of paragraph 172 are denied.
173. Defendants deny that Plaintiff is entitled to any of the relief requested in paragraph 173.
174. Defendants deny any factual allegations contained in any paragraph of the complaint except as expressly admitted above.

Affirmative Defenses

First. The complaint and each and every claim contained therein fails to state a claim upon which relief can be granted.

Second. The complaint, including the 12th cause of action fails to plead fraud with the particularity required by Rule 9(b) of the South Carolina Rules of Civil Procedure.

Third. Plaintiff's claims are barred by the by the doctrines of laches, waiver, estoppel, and/or unclean hands.

Fourth. Any equitable relief is barred because Plaintiff has an adequate remedy at law.

Fifth. Plaintiff's claims are barred because any losses or damages allegedly suffered by the Plaintiff were caused in whole or in part by the culpable conduct of Plaintiff.

Sixth. Any contracts between the parties are void due to the failure of consideration.

Seventh. Any contracts between the parties are void due to the fraudulent inducement to enter the contracts by Team IA.

Eighth. Any contractual limitations upon Lucas are void as against public policy.

Ninth. The Plaintiff's actions constituted the constructive discharge of defendants.

Ninth. Defendants have not knowingly or intentionally waived any applicable affirmative defenses and reserve the right to assert and rely on such other applicable affirmative defenses as may become available by law, or pursuant to statute, or appear during the proceedings of this action. Defendants reserve the right to amend their answer and affirmative defenses accordingly and assert any such defense.

Counterclaims and Third Party Claims

175. Third Party Plaintiff Ro Lucas is a citizen of Lexington County, South Carolina.

176. Third Party Plaintiff George Lawson IV is a citizen of Lexington County, South Carolina.

177. Plaintiff and Counterclaim Defendant Team IA is a South Carolina Corporation with its principal place of business in Lexington, South Carolina.

178. Third Party Defendant Brent Yarborough ("Yarborough") is a citizen and resident of Lexington County, South Carolina. Yarborough is a current employee and part owner of Counterclaim Defendant Team IA.
179. Venue and jurisdiction for claims against Yarborough and Team IA are proper in Lexington County.
180. Defendants Lucas and Lawson bring these counterclaims and cross-claims claims to recover money and stock owed to them by Yarborough and Team IA.
181. In 1995, Yarborough induced Lawson to leave employment with United Parcel Service to join Team IA's predecessor company Information Advantage.
182. As consideration for leaving UPS to join Yarborough and Information Advantage, Yarborough represented to Lawson that Lawson would be provided a stock ownership interest in the company as well as a company car.
183. Throughout Lawson's employment at Information Advantage and Team IA, Yarborough made repeated representations and promises that Lawson was going to receive Team IA stock and a company car in return for his work for the company.
184. Throughout Lawson's employment at Team IA, Yarborough promised significant financial bonuses would be paid to Lawson in addition to his salary and the company stock that he would receive.
185. In 2001, Yarborough and Team IA induced Lucas to leave his employment with Palmetto Health to join the Team IA.
186. Lucas agreed to join Team IA and receive a salary \$14,000.00 less than he received at Palmetto Health in exchange for stock in Team IA.

187. Upon joining Team IA in 2001, Yarborough assigned Lucas the task of drafting a Stock Option Plan for Team IA so that the company could meet its stock obligations to Lucas, Lawson, and other employees of Team IA.
188. In 2001, Lucas presented to Yarborough and Team IA a Stock Option Plan that would fulfill company's obligations to Lucas and Lawson. A copy of Team IA's Stock Option Plan is attached as exhibit 1.
189. Throughout Lucas' employment at Team IA, Yarborough made repeated representations and promises that Lucas was going to receive Team IA stock in return for his work for the company.
190. Throughout Lucas' employment at Team IA, Yarborough promised significant financial bonuses would be paid to Lucas in addition to his salary and the company stock that he would receive.
191. In March 2008, Yarborough represented to Lucas that Lucas would have an income for that year between \$400,000 and \$500,000. Mr. Lucas was paid \$145,237 in 2008.
192. Yarborough represented to Lawson that he would be paid more in 2008 than 2007 when in fact he was paid \$127,232 in 2007 but only \$94,115 in 2008.
193. As of February 2009, Yarborough and Team IA had failed to meet their obligations with regard to issuing stock and paying bonuses to Lucas and Lawson.
194. The representations regarding stock ownership and financial bonuses were material, false, and made with the intention that Lucas and Lawson rely upon them so as to continue employment with Yarborough and Team IA.

For A First Cause Of Action

(Constructive Termination in Violation of Public Policy)

195. The above allegations are all re-alleged as if fully set forth herein.
196. In February 2009, Lucas and Lawson both resigned from Team IA.
197. The resignation by Lucas and Lawson was the result of unendurable working conditions which had become so intolerable that a reasonable person in their position would have felt compelled to resign. In addition to the actions set forth above, the following are examples of actions taken by Yarborough and Team IA which made employment unbearable:
 - a. Yarborough has engaged in actions in violation of S.C. Code Ann. § 8-13-705, and placed Team IA as well as Lucas and Lawson in jeopardy. Examples of a few such violations include:
 - i. Taking public officials in charge of assigning State business on deep sea fishing trips;
 - ii. Taking public officials in charge of assigning State business on vacation trips to Canada;
 - iii. Paying for public officials in charge of assigning State business to vacation at 5 star resorts such as The Lodge at Sea Island in St. Simons Island, Georgia;
 - iv. Paying for dinners and strip club visits for public officials in charge of selecting vendors for State business;
 - v. Providing tickets to numerous sporting events to public officials in charge of selecting vendors for State business;

- vi. The sponsorship of numerous youth recreational sports teams on which play the children of public officials in charge of selecting State vendors;
 - vii. The above actions were all taken by Yarborough and Team IA with the intent to influence the discharge of that individual's official responsibilities.
- b. For years Yarborough and Team IA have failed to pay required royalties and license fees for several third party vendors, including Microsoft, Kodak, and LeadTools that Lawson and Lucas used to service their customers. Team IA falsely lists on its website that it is a Microsoft Partner. As a result of Yarborough's refusal to pay the required fees and licenses, the customers Lucas and Lawson serviced were also in violation of Federal Piracy laws.
- c. Yarborough has taken actions for his personal benefit and to the extreme financial detriment of Team IA and then in turn attempted to justify the failure to pay Lucas and Lawson promised compensation on the financial position of Team IA. Examples of such actions by Yarborough include, but are not limited to:
- i. The purchase by Team IA of a Provost motor coach for over \$500,000 for the personal use of Yarborough, including personal trips to the Super Bowl, Outback Bowl, other football weekend vacations, high school prom trips of his children, and family vacations to Montana;
 - ii. The paying off Yarborough's personal mortgage on a \$550,000 home;

- iii. Team IA purchased a Chevy 3500 diesel truck for Yarborough's wife to pull her horses.
 - iv. Mr. Yarborough purchased a Chevy Z71 Avalanche for Team IA and then subsequently transferred the vehicle to his daughter for her 16th birthday.
 - v. Yarborough would spend Team IA money on lavish tailgates at University of South Carolina football games, purchasing such items as 2 large screen plasma TVs, a large party tent, and large quantities of food and alcoholic beverages while also paying for bartenders, entertainment and body guards for these tailgates. These tailgates served no legitimate business purpose.
- d. On a daily basis, Yarborough would take actions to make the workplace unbearable for Lucas and Lawson. Yarborough would regularly lose his temper at the office and yell at the employees, including Lucas and Lawson. Yarborough has thrown and broken objects, such as his glasses and a coffee cup, in the presence of Lawson.
- e. Yarborough also required professional salaried employees to sign in/out to go to the bathroom. On numerous occasions, after failing to sign out to the bathroom, Yarborough would call Lawson and Lucas into Yarborough's office and reprimand them.
- f. On one occasion, out of anger, Yarborough punched a hole in the whiteboard of a programmer at Team IA's cubicle.

- g. In January 2009, Yarborough physically relocated approximately 7 employees working outside of Lucas's office. He accused Lucas of talking to them, which was not allowed in the office.
- h. On numerous occasions, Yarborough would get intoxicated in front of clients or prospective clients and make off-color jokes or statements. One example was at an IACREOT tradeshow in Kansas City where Yarborough got so drunk that he vomited in the hallway of the hotel and had to be carried to his room by a Team IA customer.
- i. At a customer's house Yarborough became so intoxicated that he physically picked up a client and called her a "High Maintenance Bitch" in front of a crowd of people.
- j. In the Fall of 2008, during a conference call with the IT Director of DeKalb, one of Team IA's largest clients, Yarborough was combative, rude, and hung up on the customer prematurely. This action greatly upset Lucas who became concerned about his reputation as a result of Yarborough's actions. Mr. Lucas told Yarborough after that call that Mr. Lucas doubted very seriously that Team IA would get any future business from that customer.
- k. Yarborough would refuse to hire qualified persons for employment at Team IA recommended by Lawson based upon the qualified applicant's membership in the military reserves.
- l. On 1/29/2009 Yarborough agreed to meet Mr. Lucas at Yarborough's house to discuss Mr. Lucas's concerns. Yarborough proceeded to say that Mr. Lucas would make between \$400,000 and \$500,000 in 2009. Mr. Lucas asked for it

in writing, because Mr. Lucas was told the same thing in March of 2008. As with all promises of compensation made by Yarborough during the employment of Lucas and Lawson, Yarborough refused to put his promises of compensation in writing.

198. Yarborough often said that "behind every successful business is an Asshole", and that is how he operated in creating a work atmosphere of unendurable working conditions which had become so intolerable that a reasonable person in their position would have felt compelled to resign.
199. That the constructive termination of Lucas and Lawson was in violation of a clear mandate of public policy and in violation of South Carolina law.
200. That as a direct and proximate cause of the Defendant's wrongful termination of the Lucas and Lawson they:
 - a. Suffered the loss of their job;
 - b. Suffered lost wages and the loss of salary;
 - c. Suffered the loss of benefits associated with her job;
 - d. Suffered consequential economic damages as a result of the loss of her job;
 - e. Incurred attorney's fees and costs as a result of having to bring this action.
201. That Lucas and Lawson are entitled to an award of damages against Yarborough and Team IA for actual damages, consequential damages, punitive damages, attorney's fees, costs of this action and other damages, such the Court deems appropriate and just.

For A Second Cause Of Action

(Fraud)

202. The above allegations are all re-alleged as if fully set forth herein.
203. As set forth in detail above, Yarborough and Team IA represented that they would:
- a. Provide stock ownership to Lucas and Lawson;
 - b. Provide significant financial bonuses to Lucas and Lawson; and
 - c. Provide a company car to Lawson.
204. The foregoing representations and promises by Yarborough, individually and on behalf of Team IA, were false, material, known by Yarborough and Team IA to be false or made with reckless disregard for their truth or falsity, intended by Yarborough to be acted upon by Lucas and Lawson.
205. Lucas and Lawson were ignorant of the falsity of the foregoing representations and promises.
206. Lucas and Lawson rightfully relied upon the truth of foregoing representations and was thereby proximately injured.
207. In reliance upon the foregoing representations by Yarborough, Lucas and Lawson accepted and continued employment at Team IA.
208. Had Lucas and Lawson known the false nature of the representations they would not have accepted or continued employment with Yarborough and Team IA conferring significant financial benefit upon Yarborough.
209. Yarborough and Team IA's fraud was willful, malicious, and otherwise reckless. Such conduct warrants an award of punitive damages to punish and deter Yarborough and Team IA from engaging in such conduct. Lucas and Lawson are therefore entitled to an additional award of punitive damages.

For A Third Cause Of Action

(Misrepresentation)

- 210. The above allegations are all re-alleged as if fully set forth herein.
- 211. Yarborough and Team IA made false representations to Lucas and Lawson by representing to Lucas and Lawson that Team IA would provide significant bonuses and stock ownership to them.
- 212. Yarborough and Team IA had a pecuniary interest in making these false representations to Lucas and Lawson in that they received significant profits from the work of Lucas and Lawson performed in reliance upon the false representations.
- 213. Yarborough and Team IA owed a duty to see that information regarding bonuses and stock ownership were conveyed in a truthful and timely manner.
- 214. Yarborough and Team IA breached that duty by failing to provide Lucas and Lawson with significant bonuses and stock ownership.
- 215. As a result, Lucas and Lawson justifiably relied upon the false representations and have suffered significant pecuniary loss as a proximate result of their reliance on the representations.

For A Fourth Cause Of Action

(S.C. Payment of Wages Act § 41-10-10 et seq.)

- 216. The above allegations are all re-alleged as if fully set forth herein.
- 217. Yarborough and Team IA failed to pay all wages and compensation owed to Lucas and Lawson.

218. Pursuant to S.C. Code Ann. § 41-10-80(c), Lucas and Lawson are entitled to an award up to three (3) times the amount of unpaid wages, plus such costs and reasonable attorneys fees as the Court may allow.

For A Fifth Cause Of Action

(Promissory Estoppel)

219. The above allegations are all re-alleged as if fully set forth herein.
220. As set forth above, Yarborough and Team IA made unambiguous promises and representations to Lucas and Lawson with regards to compensation and stock ownership.
221. Lucas and Lawson reasonably relied upon these promises in accepting and continuing employment with Team IA.
222. The reliance by Lucas and Lawson on these promises was foreseeable and expected by Yarborough and Team IA.
223. Lucas and Lawson have sustained injuries in reliance upon the promises made by Yarborough and Team IA.

For A Sixth Cause Of Action

(Quantum Meruit/Unjust Enrichment)

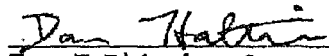
224. The above allegations are all re-alleged as if fully set forth herein.
225. The actions by Lucas and Lawson in accepting employment and continuing employment with Team IA conferred an actual benefit upon Yarborough and Team IA.

226. Yarborough and Team IA realized significant financial benefits as the result of the work done by Lucas and Lawson in reliance upon the representations of bonus compensation and stock ownership.
227. Retention of the benefits conferred upon Yarborough and Team IA as described above would be unjust without Lucas and Lawson being paid the value of the benefits conferred.
228. Yarborough and Team IA have not paid the bonuses or provided the stock ownership to compensate Lucas and Lawson.

Wherefore, Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice, that on the Plaintiff's Complaint judgment be entered in Defendants' favor and that Defendants be awarded their attorneys' fees, costs, and expenses of this Action and such other and further relief that the Court deems just and proper. Furthermore, Third Party Plaintiffs pray for a jury trial and relief from this court including,

- a. Judgment for their constructive termination in violation of public policy including actual, consequential, incidental, and punitive damages;
- b. Judgment for fraud including actual, consequential, incidental, and punitive damages;
- c. Judgment for misrepresentation including actual, consequential, incidental, and punitive damages;
- d. Judgment for violation of S.C. Code Ann. § 41-10-10 et seq. including three (3) times the amount of unpaid wages, plus such costs and reasonable attorneys fees as the Court may allow;

- e. Injunctive relief instructing Team IA and Yarborough to complete the stock ownership issuance promised to Lucas and Lawson on which they detrimentally relied;
- f. For equitable judgment awarding them the monetary value of their stock ownership and bonuses Yarborough and Team IA failed to pay Lucas and Lawson.
- g. Costs of this action; and
- h. Any such other and further this Court deems just, equitable and proper.


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April 13, 2009

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
	)	
TEAM IA, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No. 2009-CP-3201078
	)	
v.	)	
	)	
CICERO LUCAS,	)	
GEORGE LAWSON, IV,	)	
AND 5 POINT SOLUTIONS, LLC,	)	
	)	
Defendants,	)	
	)	
CICERO LUCAS,	)	
GEORGE LAWSON, IV,	)	
	)	
Third-Party Plaintiffs	)	
	)	
v.	)	
	)	
BRENT YARBOROUGH	)	
TEAM IA	)	
	)	
Third-Party	)	
Defendants	)	

Motion for Partial Summary Judgment

COME NOW Defendant and Third Party Plaintiff Cicero Lucas (hereinafter "Lucas") by and through his undersigned counsel, pursuant to Rule 56, SCRPC file this motion for partial summary. Lucas moves for summary judgment on Plaintiff Team IA's First Cause of Action alleging Breach of Contract. This motion is based on the following grounds:

1. The nationwide geographical restriction in the contract's "Covenant Not to Compete" provision is unenforceable on its face.

2. The nationwide geographical restriction in the covenant not to compete is also unenforceable because Lucas only performed work for customers in Georgia and Pennsylvania.

3. The contract's attempt to "blue pencil" the geographic restrictions of the covenant also fail as a matter of law. "South Carolina courts will not modify or 'blue pencil' a non-competition clause so as to restate its terms in a way to make the agreement enforceable. If any provision fails to satisfy the standard set forth above, then the entire non-competition clause is void as a matter of law, although the clause may be severable from unrelated parts of a broader contract." *Lampman v. DeWolff Boberg & Associates, Inc.*, 319 Fed. Appx. 293, 2009 WL 757368 (4th Cir. 2009).

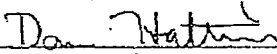
4. Even if the Court could rewrite the contract for the benefit of Team IA, the resulting "RESTRICTED TERRITORY" geographical restriction in the covenant not to compete is unenforceable because Lucas only performed work for customers in Georgia and Pennsylvania.

5. Team IA's "Breach of Contract" claims with regards to the non-solicitation provision also fail as a matter of law because the provision on its face attempts to prohibit Lucas's acceptance of business from *unsolicited* customers. The non-solicitation covenant in this case prohibits not only solicitation of Lucas's former clients, but also the acceptance of business from unsolicited former clients, regardless of who initiated the contact. This provision is an unreasonable restraint on trade because, in

addition to overprotecting Team IA's interests, it has an unreasonable impact on Lucas and most importantly on the public's ability to choose the business provider it prefers.¹

6. This motion will be supported by exhibits, an affidavit, and Lucas' Memorandum in Support of Motion for Summary Judgment to be filed at a later date.

Wherefore, Defendant Lucas respectfully requests that this Court grant his Motion for Partial Summary Judgment as the First Cause of Action alleging a Breach of Contract and any other relief that the Court deems just and proper.


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August 19, 2009

¹ The public interest is especially impacted because many of Lucas' former customers are governmental agencies. A state has no interest in restricting who the government itself may contract with as denying its contractor of choice would be by definition against "the public interest."

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,)
Plaintiff,)

Case No. 2009-CP-3201078

v.)

CICERO LUCAS,)
GEORGE LAWSON, IV,)
AND 5 POINT SOLUTIONS, LLC,)

Defendants,)

CICERO LUCAS,)
GEORGE LAWSON, IV,)

Third-Party Plaintiffs)

v.)

BRENT YARBOROUGH)
TEAM IA)

Third-Party)
Defendants)

Memorandum in Support of Partial Summary Judgment

COME NOW Defendant and Third Party Plaintiff Cicero Lucas (hereinafter "Lucas") by and through his undersigned counsel, pursuant to Rule 56, SCRCP file this motion for partial summary. Lucas moves for summary judgment on Plaintiff Team IA's First Cause of Action alleging Breach of Contract.

I. PROCEDURAL BACKGROUND

This matter began with a complaint filed March 17, 2009 by Team IA against Lucas, George Lawson, and 5 Point Solutions, LLC. Lucas answered and counterclaimed

on April 17, 2009. Team IA's First Cause of Action in the complaint asserts "Breach of Contract" alleging, among other allegations, the breach of an Employment Agreement by Lucas (Lawson signed no employment agreements with Team IA) with respect to non-solicitation and non-compete provisions. The Employment Agreement is attached as Exhibit 1 to this memorandum. On August 27, 2009 Lucas filed for partial summary judgment on Team IA's First Cause of Action only with respect to the covenant not to compete portions of that cause of action.

II. STATEMENT OF FACTS

Cicero Lucas worked for Team IA from approximately March 2001 until February 3, 2009. See Exhibit 2, Affidavit of Cicero Lucas. During Lucas' employment at Team IA he only performed work for customers in the states of Georgia and Pennsylvania. *Id.* Lucas performed no work for customers in Alabama, South Carolina, or North Carolina. *Id.* At the time he left Team IA, the company itself only had clients in South Carolina, Georgia, one customer in Pennsylvania, and one customer in North Carolina. *Id.*

The current Partial Summary Judgment Motion challenges two provisions from the 2001 Employment Agreement. Lucas disputes the enforceability of the following "Non-Solicitation" and "Covenant Not to Compete" provisions:

A) Non-Solicitation Agreement

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

...

B) Covenant Not to Compete

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit, attempt to solicit, sell, or attempt to sell, provide, or attempt to provide COMPETITING SERVICES as defined below.

Recognizing that Team IA competes on a nationwide basis, the Parties to this agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court of other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

As set forth below, the "Covenant Not to Compete" provision is unenforceable because it bans Lucas from working anywhere in the continental United States. Even if the covenant is "blue penciled" to cover only South Carolina, North Carolina, Georgia, and Alabama, the covenant still fails because Lucas never had clients in 3 of the 4 states listed. Additionally, the "Non-Solicitation" provision is unenforceable on its face because it would prohibit Lucas from accepting business from unsolicited customers of Team IA.

III. ARGUMENTS

A. Standard for Summary Judgment

The standard for the granting of summary judgment pursuant to Rule 56 of the S.C. Rules of Civil Procedure is set forth in *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007):

The circuit court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that 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"

RWE NUKEM, at 195, 644 S.E.2d at 733 (citing Rule 56(c), SCRCF. Thus the plaintiff, as the party with the burden of proof at trial, must present affirmative evidence that places a material fact in dispute in order to resist a defendant's motion for summary judgment. *Estate of Cantrell v. Green*, 302 S.C. 557, 560, 397 S.E.2d 777, 779 (Ct. App. 1990).

B. The non-compete provisions of the Employment Agreement are unenforceable

Under well established South Carolina precedent, the non-compete provisions of the Employment Agreement are unenforceable because they are overly broad. Non-compete restrictive covenants are disfavored and are to be strictly construed against the employer. *Sermons v. Caine & Estes Ins. Agency, Inc.*, 275 S.C. 506, 508, 273 S.E.2d 338, 339 (1980); *Almers v. S.C. Nat'l Bank of Charleston*, 265 S.C. 48, 51, 217 S.E.2d 135, 136 (1975). South Carolina courts will strike the entire non-compete clause where just one part is found unenforceable. See *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 42 (Ct. App. 1995) (citing *Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 434 (1972)).

According to South Carolina precedent, a covenant not to compete must pass over five separate hurdles in order to be valid. The covenant must be:

- (1) necessary for the protection of the legitimate interest of the employer;
- (2) reasonably limited in its operation with respect to time and place;
- (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood;
- (4) reasonable from the standpoint of sound public policy; and
- (5) supported by valuable consideration.

Stringer v. Herron, 309 S.C. 529, 531, 424 S.E.2d 547, 548 (Ct. App. 1992); *Rental Uniform Service of Florence v. Dudley*, 278 S.C. 674, 675-676, 301 S.E.2d 142, 143 (1983). The non-compete restrictive covenant in this case has significant flaws which render it unenforceable under this standard.

- (1) The geographic scope of the Covenant Not to Compete is not reasonably limited in its operation with respect to time and place

The contract's "Covenant Not to Compete" places a nationwide geographical restriction on competition. See Exhibit 1, pages 6-7 (providing that "the 'RESTRICTED TERRITORY' shall consist of the entire continental United States."). This provision is patently overbroad on its face and unenforceable because it fails to meet the requirements that any restriction in a covenant not to compete must be "reasonably limited in its operation with respect to time and place" and must not be "unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood." See *Stringer* at 531, 424 S.E.2d at 548. As our Supreme Court stated in *Standard Register Co. v. Kerrigan*:

The general rule is that the restraint as to territory, in order to be reasonable, must not be unduly harsh and oppressive on the employee.... The most important single factor entering into the determination of the reasonableness as to the employee of the territorial extent of the restraint, is its economic consequences to the employee. The limitation as to the territory, in a restrictive covenant not to compete, is unreasonable in the sense that it is unduly harsh and oppressive when the contract tends to deprive the employee the opportunity of supporting himself and his family.

238 S.C. 54, 67, 119 S.E.2d 533, 540 (1961). The Court went on to establish that the "necessity that employee change his calling or residence" is one element the court should focus upon in determining reasonableness. *Id.* A nationwide ban that would require

Lucas to leave the country to continue his line of work is *per se* unreasonable, because it is unduly harsh and oppressive in curtailing his legitimate efforts to earn a living.

The nationwide geographical restriction also offends the second hurdle of analysis because it is unduly harsh and oppressive in curtailing Lucas' legitimate efforts to earn a livelihood.

(2) The geographic scope of the Covenant Not to Compete covers an area broader than is necessary to protect Team IA's legitimate business interest, because it is greater than the geographic area in which Lucas actually worked.

The non-compete agreement is glaringly deficient in that the geographic restriction is more broad than necessary for the protection of Team IA's legitimate interest. South Carolina law is clear that a territorial restriction must not cover an area any broader than is necessary to protect the employer's legitimate business interest. *Stringer*, 424 S.E.2d 548 (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961)).

South Carolina courts have held that non-compete restrictive covenants that impose a geographic restriction greater than the geographic area in which the employee actually worked are unenforceable because they are unnecessary to protect the employer's legitimate interest. See *Rental Uniform Service of Florence, Inc. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (S.C. 1983) (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961)). See also, *Sermans*, 273 S.E.2d 388 (holding that a non-compete provision that covered all of South Carolina was too broad because the employee only worked within a 50-mile radius of Greenville, S.C.); *Delmar Studios v. Kinsey*, 233 S.C. 313, 104 S.E.2d 344 (1958) (holding that restricting an employee from competing in any location where the employer operates, including South Carolina and

parts of North Carolina and Georgia, was too broad because the employee only worked in several South Carolina and Georgia counties bordering the Savannah River).

Applying the rule that "[a] geographic restriction is generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers," the South Carolina Supreme Court specifically upheld a covenant which restricted competition only the locations where the employee worked for the employer. *Dudley*, at 676, 301 S.E.2d at 143. In that case, the covenant not to compete was limited in scope to a six-county area in which employee worked. *Id.* The court pointed to the narrow scope of the covenant as the reason for finding that it was enforceable. *Id.* (stating that "[t]he area limitation of the agreement falls within the guidelines of the *Standard Register* case since respondent is restricted only in the area 'in which [respondent] worked or to which he was assigned at any time during his employment....'").

In this case, the nationwide geographical restriction in the covenant not to compete is unenforceable because Lucas only performed work for customers in Georgia and Pennsylvania. *See* Exhibit 2, Affidavit of Cicero Lucas. Team IA can provide no evidence that it had customers or performed work for customers in every single state in the nation. Mr. Lucas only serviced Team IA customers in Georgia and one customer years ago in Pennsylvania. Because the nationwide geographical restriction covers states in which Lucas has never performed any customer work for Team IA, the geographic restriction far exceeds any legitimate business interest of Team IA. This covenant not to compete is unenforceable as a matter of law because it is more broad than necessary for the protection of the legitimate interest of the employer.

(3) The Court is unable to "blue pencil" Team IA's broad Covenant Not to Compete.

The Employment Agreement's attempt to "blue pencil" the geographic restrictions of the covenant also fail as a matter of law. In tacit recognition that a nationwide ban is *per se* unreasonable, the "RESTRICTED TERRITORY" provision states:

In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

See Exhibit 1. "South Carolina courts will not modify or 'blue pencil' a non-competition clause so as to restate its terms in a way to make the agreement enforceable." *Lampman v. DeWolff Boberg & Associates, Inc.*, 319 Fed. Appx. 293, 2009 WL 757368 (4th Cir. 2009). If any provision is unenforceable because it does not satisfy the requirements of a covenant not to compete (set forth above) "then the entire non-competition clause is void as a matter of law, although the clause may be severable from unrelated parts of a broader contract." *Id.* Under well established principles, South Carolina courts do not rewrite the contract to benefit the employer at the employee's detriment. The Court must hold the entire covenant provision unenforceable.

(4) Even if the Employment Agreement was re-written, pursuant to the "RESTRICTED TERRITORY" provision, the resulting geographical restriction is unenforceable.

Even if the Court could rewrite the contract for the benefit of Team IA, the resulting "RESTRICTED TERRITORY" geographical restriction in the covenant not to compete is unenforceable because Lucas only performed work for customers in Georgia and Pennsylvania. See Exhibit 2, Affidavit of Cicero Lucas. As set forth above, a re-

written contract would provide for a geographical restriction on Lucas working in South Carolina, North Carolina, Georgia, and Alabama. Mr. Lucas has serviced no Team IA customers in South Carolina, North Carolina, or Alabama. *Id.* "A geographic restriction is generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers." *Dudley*, at 676, 301 S.E.2d at 143. The restriction is unenforceable and Plaintiff's claim fails as a matter of law, because Lucas had no customers in three of the four states that would be listed in a re-written geographical restriction.

Additionally, a four state prohibition would again require Lucas to relocate himself and his family in order to continue in his profession.

C. The non-solicitation provisions of the Employment Agreement are unenforceable

(1) Under conflicts of law, the enforceability of the non-solicitation provision for Georgia customers should be governed by Georgia law.

In disputes involving a contractual formation, interpretation, or validity, South Carolina courts generally apply the substantive law of the place of contract formation. *Witt v. American Trucking Associations, Inc.*, 860 F. Supp. 295 (D.S.C. 1994) (citations omitted). However, "[m]atters connected with its performance are regulated by the law prevailing at the place of performance. See *Livingston v. Atlantic Coast Line R.R. Co.*, 176 S.C. 385, 180 S.E. 343, 345 (1935)(quoting *Scudder v. Union National Bank*, 91 U.S. 406, 412 (1875)).

In this case, the place of performance of the non-solicitation portion of the Employment Agreement must be Georgia because it is the only state where Lucas would

arguably have any customers covered by the provision. It is also worth noting the customers at issue are governmental agencies of Georgia. The public interest is especially impacted because many of Lucas' former customers are governmental agencies. A state has no interest in restricting who the government itself may contract with as denying its contractor of choice would be by definition against "the public interest."

(2) The non-solicitation provision is unenforceable on its face because it prohibits Lucas's acceptance of business from *unsolicited* customers.

Team IA's breach of contract claim based upon the non-solicitation provision also fails as a matter of law because the provision on its face attempts to prohibit Lucas's acceptance of business from *unsolicited* customers. A covenant not to solicit customers that prohibits a former employee from accepting business from unsolicited customers is *per se* unenforceable as a matter of law. See e.g., *Waldeck v. Curtis*, 583 S.E.2d 266, 268 (Ga. App. 2003); *Pregler v. C & Z, Inc.*, 575 S.E.2d 915, 916 (Ga. App. 2003). In this case, the customer non-solicitation agreement provides that Lucas cannot "solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER..." See Exhibit 1, page (emphasis added). On its face, the provision prohibiting Lucas from accepting orders from former Team IA customers is unreasonable. While a prohibition involving some affirmative act on the part of the former employee, such as solicitation, diversion, or contact of clients, may be reasonable, a covenant prohibiting a former employee from merely accepting business, without any solicitation, is not reasonable. See *American Gen. Life & Co. Ins. Co. v. Fisher*, 430 S.E.2d 166 (Ga. App. 1993).¹

¹ See also, 2 Callmann on Unfair Competition, Trademarks, & Monopolies, § 16:31 (4th Ed. 2009)(stating that: "A postemployment covenant which prevents a salesperson from accepting any business from customers of the employer, even though the business is not solicited by the salesperson, is unreasonable because it limits the public's ability to select the goods or services it prefers").

The non-solicitation covenant in this case prohibits not only solicitation of Lucas's former clients, but also the acceptance of business from unsolicited former clients of Team IA, regardless of who initiated the contact. This provision is an unreasonable restraint on trade. In addition to overprotecting Team IA's interests, it has an unreasonable impact on Lucas and most importantly on the public's ability to choose the business it prefers.

D. The Severability Provision Cannot be Used to Redefine the Geographic Limitations.

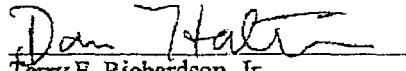
The Employment Agreement contains a severability provision. See Exhibit 1, p. 9. However, "the Court cannot redefine the geographic limitations of the Agreement even if the agreement provides for severability." *Ascension Hospice, Inc. v. Sites*, C/A No. 2006-CP-32-4055 (Court of Common Pleas, Lexington County, S.C. Apr. 10, 2008) (order granting summary judgment). At most, the provision allows the Court to redefine the restricted territory to the four states discussed above. Lucas had no customers in three of those four states so the geographic restriction would still be too broad to survive.

As in the *Ascension Hospice* case, the restricted geographic territory is too broad for the provision to survive because it includes territory in which Team IA has no customers and states in which Team IA may have had customers but that Lucas never worked.

IV. CONCLUSION

The non-compete provisions of the Employment Agreement are unenforceable as written and would remain unenforceable if re-written pursuant to the "blue pencil" clause. Additionally, the non-solicitation provision of the Employment Agreement is unenforceable because it prohibits Lucas's acceptance of business from unsolicited

customers. Therefore, there remains no genuine issue of material fact with regard to Team IA's breach of contract claims based upon the Employment Agreement with regards to the non-solicitation and covenant not to compete provisions.


Terry E. Richardson, Jr.
Daniel S. Haltiwanger
RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC
1730 Jackson Street
Post Office Box 1368
Barnwell, South Carolina 29812
Telephone: (803) 541-7850
Fax: (803) 541-9625

September 18, 2009

**TEAM IA, INC.
EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT, effective _____, is entered into by and between TEAM IA, INC. (hereinafter "Employer") and CICERO LUCAS (hereinafter "Employee").

NOW THEREFORE, for valuable consideration including, but not limited to, the Employer's employment of Employee in an at-will status, and other good and valuable consideration afforded Employee in his position, the receipt and sufficiency of which are hereby acknowledged by Employee, the Parties hereby agree to abide by the terms and restrictions set forth in this Agreement as follows:

I.

SCOPE OF DUTIES

A) **Employment by Employer as Sole Occupation.** Subject only to the exceptions provided in this Agreement, Employee agrees to devote his full business time, attention, skill, and effort exclusively to the performance of the duties that Employer may assign him from time to time. Employee may not engage in any business activities or render any services of a business, commercial, or professional nature, whether or not for compensation, for the benefit of anyone other than Employer, unless Employer has given its consent in writing in advance. It is the policy of Employer never to allow its personnel to work for any competitive enterprise during their employment, including after hours, on weekends, or during vacation time, even if only organizational assistance or limited consultation is involved.

B) **Compensation Package.** Employee shall receive a base salary of \$108,000.00 annually to be paid in semi-monthly installments. Employee may receive bonuses from time-to-time to be determined in the sole discretion of Brent Yarborough.

C) **Compensation in the event of a Change of Control.** "CHANGE OF CONTROL" is defined in this Agreement as the sale of all or substantially all of the assets of Employer or the transfer of all or substantially all of the management control or ownership of Employer. In the event that Team IA experiences a Change of Control within the first twelve (12) months of Employee's employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control (for example, if Employer receives cash, Employee would receive cash; if Employer receives stock, Employee would receive stock) up to but not exceeding \$150,000.00 in value. This \$150,000.00 value is based on an estimated value of \$3.42 per share. The per share value is not to be construed in any manner as the Employee owning shares. It serves only as a means for calculating Employee's Change of Control compensation. In the event a Change of Control results in Employer receiving less than \$3.42 per share, Employee's Change of Control value would be proportionately less. For example, if Employer sells for \$3.00 per share, Employee's Change of Control value would be \$131,550.00. However, in no event shall Employee's Change of Control value exceed \$150,000.00, regardless of the selling price per share.

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In the event Team IA experiences a Change of Control after Employee's first twelve (12) months of employment but less than Employee's first eighteen (18) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$100,000.00. This \$100,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share during the twelve to eighteen month time period, Employee's Change of Control value would be proportionately reduced as described above.

In the event Team IA experiences a Change of Control after Employee's first eighteen (18) months of employment but less than or equal to the first twenty-four (24) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$50,000.00 in value. This \$50,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share after eighteen months but before twenty-four months, Employee's Change of Control value would be proportionately reduced as described above. After the Employee's first twenty-four (24) months of employment, Employee shall not be entitled to any Change of Control compensation in any form.

Employee must be employed and actively working for Employer at the time of the Change of Control to be eligible for the referenced compensation. Employee hereby acknowledges and agrees to accept any and all tax liability, federal, state, or otherwise, for said compensation.

D) Equity. Team IA is currently analyzing an ISO Plan. Employee may be allowed to participate in the ISO Plan upon its implementation or thereafter. Brent Yarborough shall have the sole discretion to determine if Employee is allowed to participate in the ISO Plan and, if so, at what level of participation. If allowed to participate in the ISO Plan, Employee will be subject to all terms and conditions of this plan, which may include an eligibility clause as a condition precedent to participation.

E) Health Insurance. Employer shall obtain a health benefits package, for Employee and his dependents, with cost not to exceed \$6,000.00 annually. Any health benefits desired by Employee for himself or his family which exceed this sum shall be deducted from salary or incentives, if any, or reimbursed on a monthly basis to Employer by Employee.

F) Noninterference With Third-Party Rights. Employer is employing Employee with the understanding that (1) he is free to enter into employment with Employer and (2) only Employer is entitled to the benefit of his work. Employer has no interest in using any other person's or entity's patents, copyrights, trade secrets, or trademarks in an unlawful manner. Employee should be careful not to misapply proprietary rights that Employer has no right to use. Employee affirms that he has fully disclosed the full extent of his past relationship with his previous employers, and all agreements related thereto. *See Addendum attached hereto.

G) Continuance of Employment. The faithful observance of this Agreement by Employee is, and shall remain, a condition to his employment. Employee's employment is terminable at-will by either Employee or Employer at any time.

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II.

OWNERSHIP OF EMPLOYEE DEVELOPMENTS

Employer shall own all Work Product. All Work Product shall be considered work made for hire by Employee and owned by Employer. For purposes hereof, "Work Product" shall mean all intellectual property rights, including all Trade Secrets, U.S. and International copyrights, patentable inventions, discoveries and improvements, and other intellectual property rights, in any programming, documentation, technology, or other Work Product that relates to the business and interests of Employer and that Employee conceives, develops, or delivers to Employer at any time during the term of his employment. Work Product shall also include all intellectual property rights in any programming, documentation, technology, or other Work Product that is now contained in any of the products or systems, including development and support systems, of Employer to the extent Employee conceived, developed, or delivered such Work Product to Employer prior to the date of this Agreement while Employee was engaged as an independent contractor or an Employee of Employer. Employee hereby irrevocably relinquishes for the benefit of Employer and its assigns any moral rights in the Work Product recognized by applicable law.

Employer, its successors, and assigns, shall have the right to obtain and hold in its or their own name copyrights, registrations, and any other protection available in the foregoing.

Employee agrees to perform, upon the reasonable request of Employer, such further acts as may be necessary or desirable to transfer, perfect, and defend Employer's ownership of the Work Product.

III.

CONFIDENTIALITY

A) **Consequences of Entrustment With Sensitive Information.** Employee should recognize that his position with Employer requires considerable responsibility and trust. Relying on Employee's ethical responsibility and undivided loyalty, Employer expects to entrust him with highly sensitive confidential, restricted, and proprietary information involving Trade Secrets. Employee should recognize that it could prove very difficult to isolate these Trade Secrets from business activities that he might consider pursuing after termination of his employment, and in some instances, Employee may not be able to compete with Employer in certain ways because of the risk that Employer's Trade Secrets might be compromised. Employee is legally and ethically responsible for protecting and preserving Employer's proprietary rights for use only for Employer's benefit, and these responsibilities may impose unavoidable limitations on Employee's ability to pursue some kinds of business opportunities that might interest Employee during or after his employment.

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B) **Trade Secrets Defined.** For purposes of this Agreement, a "Trade Secret" is any information pertaining to imaging and work flow systems which include technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or lists of actual or potential customers or suppliers that: (1) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic

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value from their disclosure or use; and (2) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

C) Restrictions on Use and Disclosure of Trade Secrets. Employee will not disclose, or allow or cause to be disclosed, in anyway or under any circumstances, any such confidential information, Trade Secrets, proprietary processes, software development information, or customer lists to any business or firm in competition with Team IA, or to any agent, person, firm, corporate associate, or subsidiary or affiliate however described, with those competitive business firms. Employee understands and agrees that the purpose in these regards is to prevent him from placing, or causing or allowing to be placed any of Employer's confidential information, Trade Secrets, or proprietary processes and customer lists into the hands of such firms. Without anyway limiting the generality of the foregoing, and in an attempt to supplement the "Trade Secrets" and Work Products as heretofore described, Employee agrees not to disclose production processes, software designs, suppliers, vendors, licensees, production of pricing statistics, sales results, research or other investigations in production, sales marketing, designs in the like, and the results thereof, sales data and information not otherwise available to the trade, prices charged to customers, the credit terms and allowances granted to each customer, or any other advertising or promotional programs. The term customer as used herein includes licensees, distributors, and final consumers of goods and services provided by Team IA. Additionally, Employee shall not reveal any future plans or projections of Team IA for expansions, acquisitions, mergers, promotions or the earnings of any employees, officers, or directors of Team IA.

This Agreement shall be supplemental to and shall not supersede, invalidate, or replace any obligation Employee may have to Employer under State law, including but not limited to the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10, et seq

The Parties hereby acknowledge the foregoing restriction does not prohibit Employee from using the general skills and knowledge he acquired prior to and during his employment with Employer. The Parties hereby acknowledge that Employee shall be entitled to use the general skills and knowledge as well as information readily available in the industry should his employment with Employer be terminated for any reason.

IV.

RETURN OF MATERIALS

Upon the request of Employer and, in any event, upon the termination of Employee's employment, Employee must return to Employer and leave at its disposal all memoranda, notes, records, drawings, manuals, computer programs, documentation, diskettes, computer tapes, and other documents or media pertaining to the business of Employer or Employee's specific duties for Employer, including all copies, regardless of form, of such materials. Employee must also return to Employer and leave at its disposal all materials involving any Trade Secrets of Employer. This Section IV is intended to apply to all materials made or compiled by Employee, as well as to all materials furnished to Employee by anyone else in connection with his employment. Employee may retain documentation, materials, books and the like brought with Employee at the inception of employment. In addition, Employee may retain copies of seminar or workshop notes specifically in areas of re-engineering, business process redesign, and health care business practices. Copies of such documents should be left with Employer.

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V.

NON-SOLICITATION AND NON-COMPETITION

A) Non-Solicitation Agreement.

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

For the purposes of this Agreement, the term "CUSTOMER" shall mean any person, firm, or business entity who currently has a system or product which was designed or installed by or is being serviced by Employer; or who has purchased goods or services or who has contracted to purchase goods or services from Employer during the twelve (12) months prior to Employee's separation from employment; or who is an Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months.

2) Employee agrees not to induce or attempt to influence any person or entity which has a business relationship with the Employer to terminate or otherwise alter that relationship with the Employer.

3) Employee agrees that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, employ, attempt to employ, solicit, or attempt to solicit the employment of any individual who is, or who has been an employee of Employer at any time in the twelve (12) complete calendar months immediately preceding Employee's separation from employment.

4) Employee agrees that for a period of twelve (12) months following the end of his employment by the Employer, whether or not this contract is otherwise in force, and regardless of the reasons for terminating the employee/employer relationship, the Employee will not, directly or indirectly, hire, attempt to hire, or encourage agents and/or independent contractors of Employer to cease their relationships with Employer.

B) Covenant Not to Compete.

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit,

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attempt to solicit, sell, or attempt to sell, provide, or attempt to provide **COMPETING SERVICES** as defined below.

Recognizing that Team IA competes on a nationwide basis, the Parties to this Agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

For the purposes of this Agreement, "COMPETING SERVICES" shall mean any service, product, or process of any person, firm, or corporation in existence, which competes with a service, product or process upon which the Employee worked or which he sold or serviced during his employment by Employer or concerning matters which he has acquired confidential information through his work with Employer.

2) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not, directly or indirectly, participate (on Employee's own behalf or on behalf of any other corporation, venture or enterprise) in any matters which were the subject of Employer's bids submitted or in preparation during or prior to the Employee's employment.

3) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not enter into a relationship (employee/employer, independent contractor, or otherwise) to provide a CUSTOMER or "STRATEGIC PARTNER" with the same or substantially similar services which Employee was performing for Employer. For the purposes of this agreement, "STRATEGIC PARTNER" shall mean a third party that Employer formed a business relationship with, formerly or informally, to jointly accomplish a task for a fee. For example, Employer engages ABC Company to assist it with the implementation of software for a customer.

VI.

PROHIBITION AGAINST UNFAIR BUSINESS PRACTICES

A) **Recruiting.** It would be unfair for a former Employee or contractor of Employer to recruit personnel directly from the ranks of Employer's own employees by using connections and inside information previously acquired from Employer. Employer puts great emphasis on selecting, training, and promoting talented individuals for positions of significant responsibility. The time, effort, and capital invested by Employer in its work force should not be diverted by someone operating on an inside track. In addition, it would be unfair for individuals still employed by Employer to form and pursue a competitive business while receiving wages and other benefits from Employer.

B) **Refraining from Harmful Actions.** During Employee's employment with Employer, he is required to refrain from engaging in any action that might be harmful to Employer or its business, unless Employer consents in advance. Employee's responsibility to promote and support Employer's business by its very nature requires him to prevent Employer from suffering injury or hardship, if it can be avoided. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should

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resolve all doubts by consulting Employer on how best to proceed. By way of example, during Employee's employment with Employer he may not solicit or recruit any other Employee to form or join another business. Employer cannot prohibit Employee from terminating his employment and pursuing other kinds of

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work, but if Employee should decide to form or join another business Employee is required to advise Employer promptly, so that projects in progress and under consideration are not needlessly disrupted and so that even the possibility that Trade Secrets or other confidential information may be compromised can be avoided.

C) Reporting Instances of Unfair Business Practices. During Employee's employment with Employer, if Employee learns or even suspects that any unfair or questionable business practice may be occurring, Employee is required to advise Employer promptly. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should resolve all doubts by reporting to Employer the information that has come to his attention. By way of example, Employee should report the incident immediately if anyone who is, or within the most recent two years has been, an employee or contractor of Employer contacts Employee or any other employee of Employer with an offer to form or join another business. This type of contact includes any meeting or communication not initiated by Employee or by the employee receiving the offer, where it becomes known that a position of employment or an opportunity to participate in a business enterprise might be available. The requirement also applies to instances where a third party, such as a placement agent or a business associate, contacts Employee or any other employee of Employer at the instruction or suggestion of an employee or contractor of Employer.

VII.

IMPLEMENTATION

A) Severability. The covenants in this Agreement shall be construed as covenants independent of one another and as obligations distinct from any other contract between Employee and Employer. Any claim that Employee may have against Employer shall not constitute a defense to enforcement by Employer of this Agreement. The Parties to this Agreement expressly acknowledge that the provisions, or portions thereof, of this Agreement shall be deemed severable and the invalidity of or unenforceability of any provision, or portion thereof, shall not affect the validity or enforceability of the other provisions hereof. If any provision, or portion thereof, of this Agreement is unenforceable for any reason, it is the express intent of the Parties that such provision, or portion thereof, shall be appropriately limited and given effect to the extent that it may be enforceable in the discretion of the court or, in the alternative, such provision shall be severed in its entirety, if a court of competent jurisdiction determines a lesser limitation than what is stated is not appropriate.

B) Injunctive Relief. Employee's breach of the terms of this Agreement shall be a material breach and shall entitle Employer to immediate injunctive relief in addition to all other equitable remedies available under prevailing law. Employee agrees that any court of competent jurisdiction should immediately enjoin any breach of this Agreement upon the request of Employer, and Employee specifically releases Employer from the requirement of posting any bond in connection with temporary or interlocutory injunctive relief, to the extent permitted by law. Employee hereby acknowledges and agrees that Employer's entitlement to injunctive relief shall in no way prevent Employer from recovering monetary damages for Employee's breach of this Agreement.

C) Notices. All notices required under this Agreement shall be made in writing and shall be deemed given when (1) delivered in person, (2) deposited in the U.S. mail, first class, with

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proper postage prepaid and properly addressed, or (3) sent through the interoffice delivery service

of Employer, if Employee is still employed by Employer at the time.

D) **Related Parties.** This Agreement shall inure to the benefit of, and be binding upon, Employer and its subsidiaries and its affiliates, together with their successors and assigns.

E) **Choice of Law.** This Agreement shall be governed by, and construed and interpreted in accordance with the domestic laws of the State of South Carolina. Any dispute concerning or arising under this Agreement must be submitted to a court of competent jurisdiction, either state or federal, within the State of South Carolina, and the Parties hereby voluntarily submit to the jurisdiction of such court.

F) **Reasonableness of Limitations.** The Parties hereby acknowledge and agree that the limitations set forth herein are reasonable with respect to scope and duration, and are properly required for the protection of the legitimate business interests of Employer. The Parties further agree that the limitations set forth herein are subject to annual review in order to allow the restrictions to be reviewed and amended accordingly in light of any changes in the Employee's assigned responsibilities.

G) **Fees, Costs, and Expenses.** In the event Employer must enforce any of the rights herein granted to it through an attorney, Employee shall be liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Employer's rights hereunder.

H) **Legal Advice.** Employee affirms that he has been afforded the full opportunity to obtain independent legal advice prior to executing this Employment Agreement.

Upon a thorough reading and review of this Agreement and after having had an opportunity to allow his attorney to review same, Employee states that he is fully aware of and in agreement with the terms set forth and does contract to be bound by the Agreement.

Further, Employer having had an opportunity to read and review this Agreement is fully aware of and in agreement with all the terms set forth and does contract to be bound by said Agreement.

IN WITNESS WHEREOF, you, as an Employee of Employer, have entered and executed this Agreement under seal, and Employer has accepted your undertaking.

EMPLOYEE:

CICERO LUCAS
252351135
Social Security Number

9/2/01
Date of Hire

Date: 3/02/01

CICERO G. LUCAS
Name Typed or Printed
421 GREENTREE LANE

LEXINGTON, SC 29072
Address

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PERSONALLY appeared before me Cicero Lucas who, being duly sworn, states:

1. My name is Cicero Lucas and I am over 18 years of age and legally competent to make this affidavit. The following testimony is based upon personal knowledge unless expressly stated otherwise.
2. I worked for Team IA from Approximately March 2001 until February 3, 2009.
3. During my employment at Team IA I only performed work for customers in the states of Georgia and Pennsylvania.
4. I performed no work for customers in Alabama, South Carolina, or North Carolina.
5. At the time of my leaving Team IA, the company only had clients in South Carolina, Georgia, 1 customer in Pennsylvania, and 1 customer in North Carolina.

Cicero Lucas
Cicero Lucas

Sworn before me this
21st Day of August 2009

Sharon M. Reynolds
Notary Public of South Carolina
My Commission Expires: 2/21/2018

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED
2008 APR 10 P 2:06

ASCENSION HOSPICE, INC.)
BETH A. CARRON)
CLERK OF COURT)
LEXINGTON SC)

Plaintiff,

v.

ALLISON SIKES,

Defendant.

ORDER GRANTING SUMMARY
JUDGMENT

This matter first came before the Court on February 4, 2008 pursuant to Defendant's Motion for Summary Judgment on all four (4) causes of action in this proceeding: declaratory relief, injunctive relief, tortious interference with contract, and breach of contract. At the hearing Plaintiff, Ascension Hospice, Inc., withdrew its claim for injunctive relief as moot, because the one-year term of the covenant not to compete had expired. Plaintiff also withdrew its claim for tortious interference of contract; therefore, only Plaintiff's claims for breach of contract and declaratory relief remain¹. At the hearing Attorneys Stephanie Weissenstein and Dessa Ballard represented the Plaintiff and Attorney Ted T. Speth represented the Defendants.

I. STATEMENT OF FACTS

Ascension Hospice, Inc. (hereinafter "Ascension") is engaged in the business of hospice care throughout South Carolina, with a large percentage of its business conducted in Lexington, Richland and Orangeburg Counties. Defendant Sikes was hired by Plaintiff on December 5, 2005 as a Marketing Representative. The company requires

¹ Defendant also has counterclaims which are not before the Court on this Motion.

non-compete agreements be signed by all new employees to protect its investment and costs incurred in training new employees in the field of hospice care.

As consideration for the employment, on December 1, 2005, Defendant entered into an employment agreement by signing an Ascension Hospice Terms of Employment for Marketing Agreement (hereinafter the "Agreement"). The Agreement specifically restricted Defendant's post-Ascension employment for one year. The Agreement also placed upon Defendant Sikes a duty to maintain the confidentiality of certain of Ascension's policies and practices.

Prior to her employment at Ascension, Defendant was a salesperson for the Kirby vacuum cleaner company. She had no previous marketing experience and no experience in the medical or hospice field prior to joining Ascension. Ms. Sikes was provided with job training in the areas of general hospice care and marketing and was introduced to contacts and business venues of Ascension.

As a member of the marketing team at Ascension, Defendant Sikes was made privy to business practices, patient information and contact information for Ascension's business partners and potential business partners, including but not limited to referring physicians, hospitals, nursing homes and assisted living facilities in the surrounding area. She was provided with introductions to referring physicians and businesses and was provided with the necessary tools to successfully market for Ascension. She was given specific contact information for all marketing prospects and referral sources established by Ascension's marketing manager over his approximate five year tenure.

Martin Martin, Ms. Sikes' supervisor, had essentially created the "blueprint" for Ascension's marketing and had compiled a large booklet of contact information,

including unique information about many of the marketing contacts, such as birthdays, children's names, sports team preferences, and other information which assisted him in relationship-building. Mr. Martin gave this entire booklet of information to Ms. Sikes. He never got it back, and assumes that Ms. Sikes retained that information.

Defendant was terminated from Ascension in August of 2006 and she was told her termination was based on her failure to comply with certain rules and regulations of Ascension. In or around September of 2006, Defendant accepted a position in the marketing department of Regency Hospice, a competitor of Ascension. Defendant Sikes began marketing Regency's business to Ascension's existing contacts.

II. STANDARD FOR SUMMARY JUDGMENT

The standard for the granting of summary judgment pursuant to Rule 56 of the S.C. Rules of Civil Procedure is set forth in RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 644 S.E.2d 730 (2007):

The circuit court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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."

RWE NUKEM, 644 S.E.2d at 733 (citing Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)). Moreover, the party opposing a motion for summary judgment may not rest on the mere allegations or denials of its pleading, but must set forth specific facts showing that there is a genuine issue of material fact; the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Thus the plaintiff, as the party with the burden of proof at trial, must present affirmative evidence that places

a material fact in dispute in order to resist a defendant's motion for summary judgment. Estate of Cantrell v. Green, 302 S.C. 557, 560, 397 S.E.2d 777, 779 (Ct. App. 1990).

III. ARGUMENT

Before considering Defendant's Motion for Summary Judgment with regard to the causes of action for breach of contract and declaratory judgment, the Court must first determine the validity of the non-compete clause entered into by Defendant Sikes at the outset of her employment with Defendant. Plaintiff is seeking declaratory judgment that Ms. Sikes violated her non-compete obligation in her Agreement when she accepted a job with a competitor working within the 22-county restrictive area.

Under South Carolina law, non-compete restrictive covenants are generally disfavored and are to be strictly construed against the employer. Sermans v. Caine & Estes Ins. Agency, Inc., 275 S.C. 506, 508, 273 S.E.2d 338, 339 (1980); Almers v. S.C. Nat'l Bank of Charleston, 265 S.C. 48, 51, 217 S.E.2d 135, 136 (1975). To be valid, a non-compete covenant must: (1) be necessary to protect an employer's legitimate business interest; (2) be reasonably limited in time and geographic scope; (3) not be unduly harsh or oppressive in restricting an employee's legitimate efforts to earn a livelihood; (4) be supported by sound public policy; and (5) be supported by valuable consideration. Stringer v. Herron, 309 S.C. 529, 531, 424 S.E.2d 547, 548 (Ct. App. 1992); Rental Uniform Service of Florence v. Dudley, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983).

After reviewing the Agreement, pleadings, and other documents submitted to the court as well as considering the oral arguments, this Court finds the non-compete

covenant is unreasonably broad as to time and geographical scope and therefore invalid.

The South Carolina Supreme Court and Court of Appeals have held that non-compete clauses imposing a geographic restriction greater than the geographic area in which the employee actually worked are unreasonable and unnecessary to protect the employer's interests. See Sermons, 275 S.C. 506, 273 S.E.2d 338 (a non-compete provision that covered the entire state of South Carolina where the employee worked primarily within a 50-mile radius of Greenville is too broad); Delmar Studios v. Kinsey, 233 S.C. 313, 104 S.E.2d 338 (1958) (restricting an employee from competing in any location where the employer operates, including South Carolina and parts of North Carolina and Georgia, is too broad since the employee only worked in several South Carolina and Georgia Counties bordering on the Savannah River); Somerset v. Reyner, 233 S.C. 324, 104 S.E.2d 344 (1958) (restricting employee from competing in locations such as Charleston, Spartanburg, Greenville, or numerous other cities in South Carolina, was too broad since the employee only worked for the employer in Columbia, West Columbia, Cayce, and Fort Jackson).

The South Carolina Supreme Court has specifically upheld a covenant which was limited only to the locations where the employee worked for the employer. Rental Uniform Service of Florence v. Dudley, 273 S.C. 674, 301 S.E.2d 142. In Rental Uniform Service of Florence, the employer seeking to enforce a covenant not to compete operated in 14 counties throughout South Carolina. Rather than drafting its covenant to restrict employees from that entire area, the employer limited its non-compete provisions to only those locations where the employee worked or was

assigned while employed. Id. at 675-76, 301 S.E.2d at 143. This narrowed scope was the reason the South Carolina Supreme Court upheld the covenant and stated "[a] geographic restriction is generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers." Id.

Ms. Sikes worked primarily in two counties (Richland and Lexington) while employed by Plaintiff. The Agreement which she was required to sign by Plaintiff prohibits her from working for a competitor in 22 counties in South Carolina. Based on the facts presented to this Court and the current case law in South Carolina on non-compete agreements, the non-compete provisions of Plaintiff's Agreement with Ms. Sikes is unenforceable due to the geographic scope of the restrictive covenant.

Plaintiff, in the alternative, argues this Court may sever those counties from the Agreement which would otherwise make the Agreement unenforceable under South Carolina law. Two hurdles must be overcome before a court can sever provisions from an agreement that is otherwise unenforceable. First, the agreement must have independent clauses which can be severed and, second, it must be apparent from the agreement itself that the parties intended the agreement to be severable. Rockford Manufacturing, Ltd. v. Bennet, 296 F. Supp. 2d 681 (D.S.C. 2003). Failure of a party to overcome either of these obstacles prevents blue penciling.

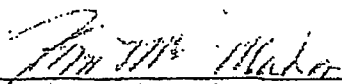
Where a provision in an agreement is determined to be unenforceable, the Court may only take out the offending provisions while leaving the remainder of the agreement if the parties manifest their intent to create severability within the four corners of the agreement. "The severability of the contract must be determined from its language and

subject matter." Eastern Business Forms, Inc. v. Kistler, 258 S.C. 429, 434, 189 S.E.2d 22, 24 (1972). Further, the Court cannot take any action that would "create a new agreement for the parties." Id.; Mailsource, LLC v. M.A. Bailly & Assocs., 356 S.C. 370, 588 S.E.2d 639 (Ct. App. 2003). Finally, severance is allowed only where a covenant "is in effect a combination of several distinct covenants." Somerset, 104 S.E.2d at 348.

A review of Ms. Sikes' employment agreement establishes that it contains no provision which would allow or provide for severability. Further, the Court cannot redefine the geographic limitations of the Agreement even if the Agreement provided for severability. Plaintiff's Agreement with Ms. Sikes fails to meet the requirements that would allow a court to blue pencil otherwise unenforceable provisions. Accordingly, the Agreement is invalid in its totality, and summary judgment is appropriate.

Because The Agreement is unenforceable as constructed there remains no genuine issue of material fact with regard to Plaintiff's Declaratory Judgment and Breach of Contract causes of action upon which this Court may consider.

THEREFORE IT IS ORDERED that the non-compete agreement is invalid due to its overly broad geographical scope and does not meet the requirements for blue penciling, thus there is no genuine issue of material fact and Defendant's Motion for Summary Judgment is GRANTED.


The Honorable R. Knox McMahon
Presiding Judge,
Eleventh Judicial Circuit

Lexington, South Carolina
April 6/11, 2008

C

Briefs and Other Related Documents

Court of Appeals of Georgia.

WALDECK et al.

v.

CURTIS 1000, INC.

No. A03A0014.

June 11, 2003.

Employer brought action alleging that former employee violated non-solicitation clause of employment agreement, and sought interlocutory injunction. The Superior Court, Fulton County, Arrington, J., granted interlocutory injunction. Former employee and his current employer appealed. The Court of Appeals, Johnson, P.J., held that non-solicitation clause in employment contract was unreasonable, and therefore, unenforceable.

Reversed.

West Headnotes

[1] Injunction 212 ⇨138.3**212 Injunction****212IV Preliminary and Interlocutory Injunctions****212IV(A) Grounds and Proceedings to Procure****212IV(A)2 Grounds and Objections****212k138.3 k. Preservation of Power to Effectuate Remedy; Status Quo. Most Cited Cases****Injunction 212 ⇨138.15****212 Injunction****212IV Preliminary and Interlocutory Injunctions****212IV(A) Grounds and Proceedings to Procure****212IV(A)2 Grounds and Objections****212k138.15 k. Balancing Hardships or Equities. Most Cited Cases**

The purpose of an interlocutory injunction is to pre-

serve the status quo pending a final adjudication of the case, and in determining whether to preserve the status quo, a trial court must balance the conveniences of the parties pending the final adjudication, with consideration being given to whether greater harm might come from granting the injunction or denying it.

[2] Injunction 212 ⇨135**212 Injunction****212IV Preliminary and Interlocutory Injunctions****212IV(A) Grounds and Proceedings to Procure****212IV(A)1 In General****212k135 k. Discretion of Court. Most****Cited Cases**

Although a trial court has broad discretion in deciding whether to grant or deny an interlocutory injunction, the trial court's discretion can be ultimately circumscribed by the applicable rules of law.

[3] Contracts 95 ⇨116(1)**95 Contracts****95I Requisites and Validity****95I(F) Legality of Object and of Consideration****95k115 Restraint of Trade or Competition in Trade****95k116 In General****95k116(1) k. In General. Most****Cited Cases**

A restrictive covenant in an employment agreement is in partial restraint of trade and will be enforced only if the restraint imposed is reasonable, is founded on a valuable consideration, is reasonably necessary to protect the interest of the party in whose favor it is imposed, and does not unduly prejudice the interests of the public.

[4] Contracts 95 ⇨117(1)**95 Contracts**

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k117 General or Partial Restraint

95k117(1) k. Nature of Business to Which Contract Relates. Most Cited Cases

Contracts 95 ⇨ 117(2)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k117 General or Partial Restraint

95k117(2) k. Limitations as to Time and Place in General. Most Cited Cases

Contracts 95 ⇨ 142

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k142 k. Questions for Jury. Most Cited Cases

The reasonableness of a restraint of trade imposed by a restrictive covenant in an employment contract is a question of law for determination by the court, which considers the nature and extent of the trade or business, the situation of the parties, and a three-element test of duration, territorial coverage, and scope of activity.

[5] Contracts 95 ⇨ 117(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k117 General or Partial Restraint

95k117(1) k. Nature of Business to

Which Contract Relates. Most Cited Cases

Non-solicitation clause in employment agreement preventing former employee from not only soliciting former clients, but also accepting business from unsolicited former clients for a period of two years after leaving employment, regardless of who initiated the contact, was unreasonable and unenforceable; in addition to overprotecting former employer's interest, it unreasonably impacted former employee and public's ability to choose professional services it prefers.

[6] Contracts 95 ⇨ 116(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k116 In General

95k116(1) k. In General. Most

Cited Cases

While a prohibition in an employment contract involving some affirmative act on the part of the former employee, such as solicitation, diversion, or contact of clients, may be reasonable, a covenant prohibiting a former employee from merely accepting business, without any solicitation, is not reasonable.

[7] Contracts 95 ⇨ 116(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k116 In General

95k116(1) k. In General. Most

Cited Cases

Solicitation of business from a former employee's clients requires some type of affirmative action; therefore, a non-solicitation provision in an em-

employment contract may not contain a bar on the acceptance of business from unsolicited clients.

[8] Contracts 95 ⇨ 137(4)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k135 Effect of Illegality

95k137 Partial Illegality

95k137(4) k. In Restraint of Trade.

Most Cited Cases

Determination that non-solicitation clause in employment agreement preventing former employee from accepting business from unsolicited former clients of employer was unenforceable made all other non-solicitation clauses included in agreement likewise unenforceable; Georgia did not employ the "blue pencil" doctrine of severability.

**267 *593 Raley & Sandifer, G. Brian Raley, John W. Sandifer, Atlanta, for appellants.

Ellis, Funk, Goldberg, Labovitz & Dokson, Atlanta, Robert N. Dokson, for appellee.

*590 JOHNSON, Presiding Judge.

This appeal involves the enforceability of a restrictive covenant contained in an employment agreement. Kevin Waldeck and his current employer, Data Systems Inc. ("DSI"), appeal from the grant of interlocutory relief to Waldeck's former employer, Curtis 1000, Inc.

Waldeck worked as a sales representative for Curtis 1000, a business stationery and office supplies distributor. Waldeck was assigned a sales territory in the Columbus, Georgia area. During his employment at Curtis 1000, Waldeck signed an agreement which contained several restrictions on his post-employment activities. Under the terms of the contract, Waldeck agreed not to work in certain capacities in the Columbus, Georgia area for two years after leaving his employment with Curtis 1000. The nonsolicitation covenant provides in pertinent part:

C. The Sales Representative agrees that he will *not*, in the territory and with respect to the Accounts assigned to him, during the Relevant Time Period ... (ii) actually effect the sale to any Customer Account of, or accept any offer from any Customer Account for, any product that is one of the Company's Products or that is substantially similar to or competitive with any of the Company's Products.

(Emphasis supplied).

The term "territory" is defined in the agreement as "COLUMBUS, GEORGIA TERRITORY # 315 AS DESCRIBED IN EXHIBIT 'A.' " Exhibit A lists 26 Georgia counties and two Alabama counties. "Customer Account" is defined as "any person, partnership, corporation or other entity who purchased the Company's Products through or from the Sales Representative within the two year period preceding the Relevant Time Period." "Relevant Time Period" means "the period of time beginning on the day on which the Sales Representative's *591 employment with the Company terminated and running through the 730th day thereafter."

After seventeen years at Curtis 1000, Waldeck resigned his position and immediately went to work for DSI, one of Curtis 1000's competitors. Since DSI was in one of the proscribed counties, Curtis 1000 sued Waldeck and DSI for damages and injunctive relief, claiming breach of contract, unfair competition, tortious interference with contract, and misappropriation of trade secrets. Waldeck and DSI challenged, among other things, the enforceability of the restrictive covenant.

The trial court granted Curtis 1000's motion for interlocutory injunction, enjoining Waldeck

from soliciting, calling upon, communicating with, or assisting others in doing so, any of his former Customer Accounts with Curtis 1000, meaning any customer who purchased Curtis 1000 products through or from Waldeck during the two years preceding Waldeck's separation from em-

ployment at Curtis 1000 ... except those Curtis 1000 clients who have indicated that they are no longer interested in doing business with Curtis 1000.

Waldeck and DSI (collectively Waldeck) contend that the trial court erred in granting the interlocutory injunction. We agree and reverse.

[1][2] The purpose of an interlocutory injunction is to preserve the status quo pending a final adjudication of the case, and in determining whether to preserve the status quo, a trial court must balance the conveniences of the parties pending the final adjudication, with consideration being given to whether greater harm might come from **268 granting the injunction or denying it.^{FN1} Although a trial court has broad discretion in deciding whether to grant or deny an interlocutory injunction, the trial court's discretion can be ultimately circumscribed by the applicable rules of law.^{FN2} The question presented here is one of law, so the principle that the grant of the injunction rests in the sound legal discretion of the trial court has no application, and we owe no deference to the trial court's conclusions of law.^{FN3}

FN1. *Univ. Health Svcs. v. Long*, 274 Ga. 829, 561 S.E.2d 77 (2002).

FN2. *Id.* at 829-830, 561 S.E.2d 77.

FN3. *City of McDonough v. Tusk Partners*, 268 Ga. 693, 697, 492 S.E.2d 206 (1997).

[3][4] A restrictive covenant in an employment agreement is in partial restraint of trade and will be enforced only if the restraint imposed is reasonable, is founded on a valuable consideration, is reasonably necessary to protect the interest of the party in whose favor it is *592 imposed, and does not unduly prejudice the interests of the public.^{FN4} The reasonableness of a restraint is a question of law for determination by the court, which considers the nature and extent of the trade or business, the situation of the parties, and a three-element test of dur-

ation, territorial coverage, and scope of activity.^{FN5}

FN4. *W.R. Grace & Co. v. Mouyal*, 262 Ga. 464, 465(1), 422 S.E.2d 529 (1992).

FN5. *Habif, Arogeti & Wynne, P.C. v. Baggett*, 231 Ga.App. 289, 498 S.E.2d 346 (1998); *Pregler v. C&Z, Inc.*, 259 Ga.App. 149, 150(1), 575 S.E.2d 915 (2003).

[5] Waldeck contends, among other things, that the prohibition against his "accept[ing] any order from any Customer Account" is unenforceable because it prohibits more than active solicitation or diversion of clients, and constitutes an unreasonable restraint of trade. We agree.

[6] In this case, the provision prohibiting Waldeck from *accepting* orders from his former Curtis 1000 customers is unreasonable. While a prohibition involving some *affirmative* act on the part of the former employee, such as solicitation, diversion, or contact of clients, may be reasonable,^{FN6} a covenant prohibiting a former employee from merely *accepting* business, without any solicitation, is not reasonable.^{FN7} The nonsolicitation covenant in this case prohibits not only solicitation of Waldeck's former clients, but also the acceptance of business from unsolicited former clients, regardless of who initiated the contact. This is an unreasonable restraint because, in addition to overprotecting Curtis 1000's interests, it unreasonably impacts on Waldeck and on the public's ability to choose the business it prefers.^{FN8}

FN6. *Habif, Arogeti & Wynne*, *supra* at 298(3)(c), 498 S.E.2d 346.

FN7. *American Gen. Life & Co. Ins. Co. v. Fisher*, 208 Ga.App. 282, 283-284(1), 430 S.E.2d 166 (1993) (physical precedent only).

FN8. See *Pregler*, *supra* at 150(1), 575 S.E.2d 915; see also *W.R. Grace & Co.*, *supra*; *Singer v. Habif, Arogeti & Wynne*,

261 Ga.App. 590, 583 S.E.2d 266, 21 IER Cases 860, 03 FCDR 1839
(Cite as: 261 Ga.App. 590, 583 S.E.2d 266)

P.C., 250 Ga. 376, 377(1), 297 S.E.2d 473
(1982); *Orkin Exterminating Co. v. Walker*, 251 Ga. 536, 539(2)(b), 307 S.E.2d 914
(1983).

We are not persuaded by Curtis 1000's arguments that *Bennett v. Ga. Indus. Catering Co.*,^{FN9} *Coffee System of Atlanta v. Fox*,^{FN10} and *Marcoin, Inc. v. Waldron*^{FN11} require a contrary result. In *Bennett*, the issue was not whether accepting business from former customers amounted to solicitation, as prohibited by the nonsolicitation clause; it was whether the clause prohibiting, inter alia, soliciting or receiving continued patronage from former clients was void due to indefiniteness and vagueness.^{FN12} In *Coffee System of Atlanta*, the question addressed appears to have been whether the nonsolicitation covenant was unreasonable because it could effectively prevent the former employee from accepting employment with a competitor, not whether accepting business from former clients was a reasonable prohibition.^{FN13}

FN9. 222 Ga. 127, 129-130, 149 S.E.2d 81 (1966).

FN10. 226 Ga. 593, 596-597, 176 S.E.2d 71 (1970).

FN11. 244 Ga. 169, 259 S.E.2d 433 (1979).

FN12. *Bennett*, supra.

FN13. *Coffee System of Atlanta*, supra.

**269 Furthermore, the covenant in *Marcoin* did not include a prohibition against accepting business from former customers. Indeed, the Supreme Court held that the employee did not violate the nonsolicitation agreement by accepting business of former clients when there was no such prohibition specified in the agreement; solicitation, the Court held, requires affirmative actions on the employee's part. It was in dicta that the Supreme Court added that if an employer desires to prevent acceptance of business from former clients, it can include such lan-

guage in the agreement.^{FN14}

FN14. *Marcoin*, supra at 171(1), 259 S.E.2d 433.

[7] Moreover, the cases upon which Curtis 1000 relies were decided prior to those we rely upon here. In recent years, the law has become quite clear: solicitation requires some type of affirmative action; therefore, a nonsolicitation provision may not contain a bar on the acceptance of business from unsolicited clients.^{FN15} Contrary to Curtis 1000's contention, this rule applies even where the no-acceptance covenant is purportedly limited to the former employee's customers.^{FN16}

FN15. See, e.g., *Pregler*, supra; *Habif, Arogeti & Wynne*, supra, 231 Ga.App. at 295-296(2)(c), 498 S.E.2d 346; *Akron Pest Control v. Radar Exterminating Co.*, 216 Ga.App. 495, 497, 455 S.E.2d 601 (1995); *Dougherty, McKinnon & Luby, P.C. v. Greenwald, Denzik & Davis, P.C.*, 213 Ga.App. 891, 894(2)(b), 447 S.E.2d 94 (1994).

FN16. See *Pregler*, supra; *Habif, Arogeti & Wynne*, supra, 231 Ga.App. at 295-296(2)(c), 498 S.E.2d 346.

[8] Because the above-quoted nonsolicitation clause is unenforceable, any other nonsolicitation covenant included in the agreement is likewise unenforceable. In restrictive covenant cases strictly scrutinized as employment contracts, Georgia does not employ the "blue pencil" doctrine of severability.^{FN17} The trial court erred in granting the injunction based on the unenforceable nonsolicitation paragraph of the agreement.

FN17. *Pregler*, supra; see *Riddle v. Geo-Hydro Engineers*, 254 Ga.App. 119, 121, 551 S.E.2d 456 (2002).

Judgment reversed.

ELDRIDGE and MIKELL, JJ., concur.

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Briefs and Other Related Documents (Back to top)

- 2002 WL 34459477 (Appellate Brief) Reply Brief of Appellants (Oct. 17, 2002) Original Image of this Document with Appendix (PDF)
- A03A0014 (Docket) (Aug. 19, 2002)

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Court of Appeals of Georgia.
AMERICAN GENERAL LIFE & ACCIDENT IN-
SURANCE COMPANY

v.

FISHER.

FISHER

v.

AMERICAN GENERAL LIFE & ACCIDENT IN-
SURANCE COMPANY.

Nos. A92A1786, A92A1787.

March 18, 1993.

Reconsideration Denied March 31, 1993.

Certiorari Granted Sept. 21, 1993.

Insurance company brought suit to enforce restrictive covenants in field representative employment agreement. The Superior Court, Peach County, Johnson, J., held that covenant not to solicit was overbroad and not enforceable. Cross appeals were taken. The Court of Appeals, Birdsong, P.J., held that: (1) prohibiting acceptance of application policyholder submitted without solicitation and which restricted representative from working for competitor in any capacity was unenforceable, and (2) entire agreement failed.

Affirmed in part and reversed in part.

Beasley, P.J., concurred specially and filed opinion.

West Headnotes

[1] Contracts 95 ⇨ 116(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k116 In General

95k116(1) k. In General. Most

Cited Cases

Contracts 95 ⇨ 116(2)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k116 In General

95k116(2) k. Restriction Necessary

for Protection. Most Cited Cases

Restrictive covenants in employment contracts are deemed only in partial restraint of trade and will be upheld if reasonable, founded on valuable consideration, and reasonably necessary to protected interest, but do not unduly prejudice public interest. O.C.G.A. § 13-8-2; Const. Art. 3, § 6, Par. 5(c).

[2] Contracts 95 ⇨ 142

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k142 k. Questions for Jury. Most Cited Cases

Determination of whether restrictive covenants in employment contracts are enforceable is question of law which must be resolved based on consideration of nature and extent of trade or business, situation of parties, and other relevant circumstances.

[3] Contracts 95 ⇨ 116(2)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k116 In General

95k116(2) k. Restriction Necessary for Protection. Most Cited Cases

208 Ga.App. 282, 430 S.E.2d 166, 1993-1 Trade Cases P 70,278
(Cite as: 208 Ga.App. 282, 430 S.E.2d 166)

Duration, territorial coverage, and scope of activity are used to examine reasonableness of restrictive covenants in employment contracts.

[4] Contracts 95 ⇨ 117(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k117 General or Partial Restraint

95k117(1) k. Nature of Business to

Which Contract Relates, Most Cited Cases

Provision of covenant not to solicit insurance company's field representative employment agreement, which prohibited former field representative from accepting applications for insurance submitted without any solicitation on representatives part was overly broad; public's ability to select insurance services it preferred was unreasonably affected.

[5] Contracts 95 ⇨ 117(1)

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k115 Restraint of Trade or Competition in Trade

95k117 General or Partial Restraint

95k117(1) k. Nature of Business to

Which Contract Relates, Most Cited Cases

Covenant contained in life insurance company's field representative employment agreement, which prohibited former representative from assisting others in soliciting application for insurance, was overbroad in that representative was prohibited from working in any capacity for competitor including positions unrelated to solicitation and sales.

[6] Contracts 95 ⇨ 136

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k135 Effect of Illegality

95k136 k. In General. Most Cited

Cases

If any one of noncompetition clauses in employment contracts are unenforceable because of indefiniteness, overbreadth, or unreasonableness, then whole agreement must fail.

**167 *285 Freeman & Hawkins, Lawrence J. Myers, Kevin J. Bahr, Atlanta, for appellant.

Adams & Adams, Charles R. Adams III, Fort Valley, for appellee.

*282 BIRDSONG, Presiding Judge.

These appeals arise from the attempted enforcement of restrictive covenants in American General's field representative employment agreement that Fisher executed. This agreement provides:

"*COVENANT NOT TO SOLICIT*. The field representative agrees that upon termination for any reason including resignation or retirement he/she shall not in any county or counties in which he/she was engaged in any way as a field representative of the company, directly or indirectly:

"(a) within twenty-four (24) months after termination, solicit or accept or assist, aid or abet others in soliciting any application for insurance or annuities as a replacement of any insurance or annuity contracts at the time being provided by the company which was sold or serviced by the company at any time or times during his/her employment by the company through any effort whatever on his/her part, or on which he/she received any compensation; or

"(b) within twelve (12) months after termination, solicit or accept or assist, aid or abet others in soliciting any application for insurance or annuities from a policyholder of the company who was sold a policy of insurance or annuity contract at any time or times during the field representative's employ-

ment by the company through any effort whatsoever on his/her part, or on which he/she has received any compensation.

"COVENANT NOT TO INDUCE. The field representative *283 agrees that for a period of twenty-four (24) months from the date of termination of his/her employment with the company, he/she will not directly or indirectly induce or attempt to induce:

"(a) any field representative of the company or employee of the company's clerical force to terminate employment with the company, or to solicit or sell life, health, fire or accident insurance for another company, nor shall the field representative aid or abet others in such activity;

"(b) any company policyowner or insured to cancel, lapse or fail to renew an insurance policy or contract with the company."

Because the parties conceded the duration and territorial scope of the covenants were reasonable, the trial court's analysis centered upon whether the restrictions on Fisher's post-employment activities also were reasonable. The trial court found that although the covenant not to induce satisfied the requirements of Georgia law, the covenant not to solicit was overbroad in restricting Fisher's post-employment activities, and, thus, was unenforceable.

Both parties appeal. In the main appeal American General contends the restrictions in the covenant not to solicit were authorized by Georgia law, and in the cross-appeal Fisher asserts that the trial court's ruling that the covenant not to induce was enforceable violates this state's "blue pencil" rule of severability. Although first filed with our Supreme Court, these appeals were transferred to this court since the appeals primarily concern the validity of the covenants not to compete. *Held:*

****168 Case No. A92A1786**

[1][2][3] 1. Even though contracts generally restraining trade or tending to lessen competition are against public policy and void under Ga. Const.1983, Art. III, Sec. VI, Par. V(c), and OCGA § 13-8-2, restrictive covenants in employment contracts are deemed only in partial restraint of trade and will be upheld if they are reasonable, founded on a valuable consideration, and reasonably necessary to the protected interest, but do not unduly prejudice the public interest. Further, this determination is a question of law for the court, which must consider the nature and extent of the trade or business, the situation of the parties, and any other relevant circumstances. A three-element test of duration, territorial coverage, and scope of activity is used in examining the reasonableness of the restrictions. *W.R. Grace & Co. v. Moryal*, 262 Ga. 464, 465, 422 S.E.2d 529.

[4][5] Considered in that manner, we find that the trial court did not err in concluding the covenant not to solicit was unenforceable. This covenant prohibits Fisher from accepting applications for insurance from American General policyholders who wish to transfer to his new *284 company without any solicitation on his part. This provision overprotects American General's interest by unreasonably affecting the public's ability to select the insurance services it prefers. See *Singer v. Hafif, Arogeti & Wymne*, 250 Ga. 376, 377, 297 S.E.2d 473. Additionally, the covenant provision which prohibits Fisher from assisting, aiding or abetting others in soliciting any application for insurance within the meaning of the covenant is also overbroad because a covenant that will not permit Fisher to "assist, aid or abet" others, in effect, prohibits Fisher from working as a supervisor or in other capacities in the insurance business in which he could not unduly influence policyholders directly because of any special trust and confidence he may have built up through his prior employment with American General. "[L]anguage which restricts employees from activities in a much more limited fashion than is necessary for the protection of the employer will not withstand the reasonableness test so as to uphold

the covenant." *Puritan/Charchill Chem. Co. v. Eubank*, 245 Ga. 334, 335, 265 S.E.2d 16. Under this clause the employee is in effect prohibited from working in any capacity for a competitor, even in positions unrelated to solicitation and sales. This restriction is larger than is necessary to protect the employer and is therefore unreasonable. *Jarrett v. Hamilton*, 179 Ga.App. 422, 424, 346 S.E.2d 875.

Accordingly, the trial court did not err by finding the covenant not to solicit unenforceable, and, therefore, the judgment in Case No. A92A1786 is affirmed.

Case No. A92A1787

[6] 2. In this appeal Fisher contends the trial court erred by finding the covenant not to induce enforceable because such a finding violates the Georgia rule against the "blue-pencil" theory of severability. We agree. If any one of the non-competition clauses is unenforceable because of indefiniteness, overbreadth, or unreasonableness, then the whole agreement must fail. *Jarrett v. Hamilton*, supra. "If any covenant not to compete within a given employment contract is unreasonable either in time, territory, or prohibited business activity, then all covenants not to compete within the same employment contract are unenforceable." (Citation and punctuation omitted.) *Ward v. Process Control Corp.*, 247 Ga. 583, 584, 277 S.E.2d 671. Thus, the trial court erred by finding the covenant not to induce enforceable. Additionally, we note that this covenant also includes the same "aid or abet" provision found deficient in Division 1.

Accordingly, the trial court's judgment in this appeal must be reversed.

Judgment in Case No. A92A1786 is affirmed; judgment in Case No. A92A1787 is reversed.

ANDREWS, J., concurs.

BRASILEY, P.J., concurs specially.**169 BEASLEY, Presiding Judge, concurring specially.

In *Singer v. Habif, Arogeti & Wynne*, 250 Ga. 376,

377(1), 297 S.E.2d 473 (1982), only a plurality of the Court held that the covenant in the employment agreement, prohibiting the employee from accepting employment from clients of the employer without having solicited them, was unreasonable and unenforceable. That holding was, however, adopted by a majority of the Court in *Orkin Exterminating Co. v. Walker*, 251 Ga. 536, 539(2b), 307 S.E.2d 914 (1983). It would also appear to have been adopted by a majority in *W.R. Grace & Co. v. Mowry*, 262 Ga. 464, 422 S.E.2d 529 (1992), although it was also held in that case that the three-element test of duration, territorial coverage, and scope of activity is not a rigid test; instead, it is to be used as a helpful tool in examining the reasonableness of the particular factual setting to which it is applied.

In any event, this holding is in direct conflict with *Bennett v. Ga. Indus. Catering Co.*, 222 Ga. 127(1), 149 S.E.2d 81 (1966); *Coffee System of Atlanta v. Fox*, 226 Ga. 593, 596(4), 176 S.E.2d 71 (1970); *Marcoin, Inc. v. Waldron*, 244 Ga. 169, 171(1), 259 S.E.2d 433 (1979); and *Hancock v. Fickling & Walker Ins. Agency*, 248 Ga. 608, 610(1), 284 S.E.2d 414 (1981), none of which was cited in the later decisions. The better rule in my view is the one applied in the earlier decisions, where the covenant against "acceptance" as well as "solicitation" is not unreasonable. It is no doubt difficult in practice to distinguish between the two, or to draw a line. If the former employee is not prohibited from "accepting" but can only be prohibited from "soliciting," the determination of whether the employee merely accepted or instead solicited the former employer's customer will require resolution of a factual dispute. In addition, would it be "accepting" the business of a customer of the former employer who responds to a general newspaper advertisement?

Ga.App., 1993.

American General Life & Acc. Ins. Co. v. Fisher
208 Ga.App. 282, 430 S.E.2d 166, 1993-1 Trade
Cases P 70,278

430 S.E.2d 166

Page 5

208 Ga.App. 282, 430 S.E.2d 166, 1993-1 Trade Cases P 70,278
(Cite as: 208 Ga.App. 282, 430 S.E.2d 166)

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APP0132

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,

Plaintiff,

v.

C.A. No. 2009-CP-32-01078

CICERO LUCAS, GEORGE
LAWSON, IV, AND 5 POINT
SOLUTIONS, LLC,

Defendants;

CICERO LUCAS, GEORGE
LAWSON, IV,

Third-Party
Plaintiffs,

v.

BRENT YARBOROUGH
TEAM IA,

Third-Party
Defendants.

FILED
2009 SEP 21 A 9:55
BETH A. CARROLL
CLERK OF COURT
LEXINGTON SC

**MEMORANDUM IN OPPOSITION TO DEFENDANT AND THIRD-PARTY
PLAINTIFF LUCAS'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW Plaintiff Team IA, Inc. ("Team IA"), by and through its undersigned counsel, and files this Memorandum in Opposition to Defendant and Third-Party Plaintiff Lucas's Motion for Partial Summary Judgment.

I. INTRODUCTION

Defendant and Third-Party Plaintiff Lucas's ("Defendant Lucas") Motion for Partial Summary Judgment must be denied because, first and foremost, the covenants contained in

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APP0133

Defendant Lucas's Employment Agreement with Team IA are both reasonable and valid, requiring enforcement of the same as a matter of law. Additionally, all evidence in this case—particularly when viewed in a light most favorable to Team IA—demonstrates Defendant Lucas's clear and unequivocal breach of the covenants contained in his Employment Agreement. Furthermore, Defendant Lucas's Motion for Partial Summary Judgment is premature as a matter of procedure, as Team IA has not yet been afforded a full and fair opportunity to engage in discovery with respect to its allegations. For each of these reasons, Defendant Lucas's Motion for Partial Summary Judgment must be denied.

II. STATEMENT OF THE CASE RELEVANT TO THIS MOTION

Team IA initiated this action on March 17, 2009, by filing claims against Defendants that stemmed from the improper and illegal actions that Defendants have taken after their resignation from Team IA. On April 17, 2009, Defendants/Third-Party Plaintiffs (hereinafter referred to collectively as "Defendants") filed their Answer and Third Party Complaint. On August 27, 2009, Defendant Lucas filed a Motion for Partial Summary Judgment with respect to Team IA's breach of contract claims against Defendant Lucas.

The parties have thus far engaged in extremely limited discovery in this matter. While both Team IA and Defendants have submitted and responded to written discovery requests—the completeness of said responses remaining an area of contention—neither party has conducted a single deposition with regard to the facts of this case.

III. STATEMENT OF THE FACTS RELEVANT TO THIS MOTION

A. Background Information.

Team IA conducts business in the microfilm, data entry, software, hardware, consulting and related services industry. (Compl. at ¶ 10;¹ Yarborough Aff. at ¶ 3.²) Team IA markets its business on a nationwide basis through electronic and print media, including the internet, attendance at tradeshow, submission of bids, direct sales, and other means. (*Id.*) Team IA operates in a competitive industry with many competitors offering the same or substantially similar services. (*Id.*)

B. Events Leading Up To Defendant Lucas's Employment With Team IA.

In early-2001, Team IA and Defendant Lucas engaged in discussions regarding Defendant Lucas possibly becoming employed at Team IA. During these discussions, Defendant Lucas negotiated many specific terms of his eventual employment relationship with Team IA, as evidenced by a letter that Defendant Lucas provided to Brent Yarborough—the majority owner and President of Team IA—in late-February 2001. (Compl. at ¶ 14; Yarborough Aff. at ¶ 6 & Attach. 3.) Team IA consented to a number of Defendant Lucas's negotiated items—salary, discretionary bonus, change-of-control payment, confidentiality, health coverage, etc.—and incorporated the same into the Employment Agreement. (Yarborough Aff. at ¶ 6; Lucas Empl. Agmt.³)

¹ This Memorandum will cite all references to Team IA's verified Complaint as "Compl.," followed by the applicable paragraph number(s), exhibit(s), or both.

² This Memorandum will cite all references to the Affidavit of Brent Yarborough as "Yarborough Aff.," followed by the applicable paragraph number(s), attachment number(s), or both. A copy of Mr. Yarborough's Affidavit—along with the Attachments thereto—are attached hereto as Exhibit A.

³ This Memorandum will cite all references to Defendant Lucas's Employment Agreement with Team IA as "Lucas Empl. Agmt.," followed by the applicable paragraph number(s). A copy of Defendant Lucas's Employment Agreement is attached to Team IA's verified Complaint as Exhibit B and is attached to Brent Yarborough's Affidavit as Attachment 2.

On March 2, 2001, Defendant Lucas executed a letter offer from Team IA. (Compl. at ¶¶ 12-13 & Ex. A; Yarborough Aff. at ¶ 4 & Attach. 1.) This letter offer made the following clear with respect to requirements associated with the offer of employment that Team IA was extending to Defendant Lucas: "In addition to those already mentioned, an employment agreement with non-competition, non-disclosure, ownership of work, and other clauses as identified attached must be executed. In other words, acceptance of this offer is contingent on agreement of an employment agreement being executed." (*Id.*)

Also on March 2, 2001, Defendant Lucas executed the Employment Agreement referenced in the letter offer discussed above. (Lucas Empl. Agmt.) In accordance with the requirements listed in the letter offer, Defendant Lucas's Employment Agreement contained a Non-Solicitation Agreement that provided as follows:

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

For the purposes of this Agreement, the term "CUSTOMER" shall mean any person, firm, or business entity who currently has a system or product which was designed or installed by or is being serviced by Employer; or who has purchased goods or services or who has contracted to purchase goods or services from Employer during the twelve (12) months prior to Employee's separation from employment; or who is an Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months.

2) Employee agrees not to induce or attempt to influence any person or entity which has a business relationship

with the Employer to terminate or otherwise alter that relationship with the Employer.

3) Employee agrees that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, employ, attempt to employ, solicit, or attempt to solicit the employment of any individual who is, or who has been an employee of Employer at any time in the twelve (12) complete calendar months immediately preceding Employee's separation from employment.

4) Employee agrees that for a period of twelve (12) months following the end of his employment by the Employer, whether or not this contract is otherwise in force, and regardless of the reasons for terminating the employee/employer relationship, the Employee will not, directly or indirectly, hire, attempt to hire, or encourage agents and/or independent contractors of Employer to cease their relationships with Employer.

(*Id.* at ¶ V.A. (emphasis in original)) Also in keeping with the requirements of the letter offer, Defendant Lucas's Employment Agreement contained a Covenant Not to Compete in which Defendant Lucas agreed as follows:

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit, attempt to solicit, sell, or attempt to sell, provide, or attempt to provide COMPETING SERVICES as defined below.

Recognizing that Team IA competes on a nationwide basis, the Parties to this Agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist

of the entire continental United States. In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

For the purposes of this Agreement, "COMPETING SERVICES" shall mean any service, product, or process of any person, firm, or corporation in existence, which competes with a service, product or process upon which the Employee worked or which he sold or serviced during his employment by Employer or concerning matters which he has acquired confidential information through his work with Employer.

2) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not, directly or indirectly, participate (on Employee's own behalf or on behalf of any other corporation, venture or enterprise) in any matters which were the subject of Employer's bids submitted or in preparation during or prior to the Employee's employment.

3) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not enter into a relationship (employee/employer, independent contractor, or otherwise) to provide a CUSTOMER or "STRATEGIC PARTNER" with the same or substantially similar services which Employee was performing for Employer. For the purposes of this agreement, "STRATEGIC PARTNER" shall mean a third party that Employer formed a business relationship with, formally or informally, to jointly accomplish a task for a fee. For example, Employer engages ABC Company to assist it with the implementation of software for a customer.

(*Id.* at ¶ V.B. (emphasis in original)) Both Team IA and Defendant Lucas agreed that the limitations contained in Defendant Lucas's Employment Agreement were "reasonable with respect to scope and duration, and [were] properly required for the protection of the legitimate business interests of [Team IA]." (*Id.* at ¶ VI.F.) Additionally, both Team IA and Defendant Lucas expressly intended that each of the provisions contained in the Employment Agreement, as well as the portions of each provision, be covenants independent of one another. Team IA and

Defendant Lucas incorporated an expression of these intentions in the Severability clause of the Employment Agreement, which states the following:

A) **Severability.** The covenants in this Agreement shall be construed as covenants independent of one another and as obligations distinct from any other contract between Employee and Employer. Any claim that Employee may have against Employer shall not constitute a defense to enforcement by Employer of this Agreement. The Parties to this Agreement expressly acknowledge that the provisions, or portions thereof, of this Agreement shall be deemed severable and the invalidity of or unenforceability of any provision, or portion thereof, shall not affect the validity or enforceability of the other provisions hereof. If any provision, or portion thereof, of this Agreement is unenforceable for any reason, it is the express intent of the Parties that such provision, or portion thereof, shall be appropriately limited and given effect to the extent that it may be enforceable in the discretion of the court or, in the alternative, such provision shall be severed in its entirety, if a court of competent jurisdiction determines a lesser limitation than what is stated is not appropriate.

(*Id.* at ¶ VII.A.)

C. **Defendant Lucas's Employment With Team IA.**

Defendant Lucas began his employment with Team IA on April 2, 2001. (Compl. at ¶¶ 11, 43; Yarborough Aff. at ¶ 7.) Defendant Lucas acted as a sales representative for Team IA for the duration of his employment. (Compl. at ¶¶ 20-25; Yarborough Aff. at ¶ 7.) Through his employment with Team IA, Defendant Lucas was aware of and involved with Team IA's customers, prospective customers, and trade secret information, including, but not limited to, details regarding Team IA's pricing and product information as well as contact and relationship information related to Team IA's customers and prospective customers. (*Id.*) Defendant Lucas served as the "face of Team IA" with respect to many of the customers and prospective customers that he serviced and developed relationships with on behalf of Team IA. (*Id.*)

At the time he was hired, Defendant Lucas did not have experience or knowledge of the microfilm, data entry, software, hardware, consulting, and related services industry, and did not

have any formal sales training or experience. (Compl. at ¶ 20; Yarborough Aff. at ¶ 8.) Accordingly, Team IA spent a substantial amount of money training and developing Defendant Lucas as a sales representative. (Compl. at ¶¶ 20-25; Yarborough Aff. at ¶ 8.) Team IA also compensated Defendant Lucas considerable sums related to his actions in developing customers and prospects on behalf of Team IA. (Yarborough Aff. at ¶ 8.)

Team IA both allowed and expected Defendant Lucas to solicit new business for Team IA on a nationwide scale. (Compl. at ¶ 24; Yarborough Aff. at ¶ 9.) A review of a sample of Defendant Lucas's sales activities—based on expense reports he submitted to Team IA for reimbursement—demonstrates Defendant Lucas's nationwide sales activities on behalf of Team IA. (Compl. at ¶¶ 24; Yarborough Aff. at ¶ 9 & Attach. 4.) Defendant Lucas also attended and participated in tradeshows, on behalf of Team IA, which took place across the country and included attendees representing a nationwide prospective customer base. (Yarborough Aff. at ¶ 9 & Attach. 4.) During Defendant Lucas's employment and through the date of his resignation, Team IA serviced and solicited customers from across the United States (and had at least one prospect in Canada). (Compl. at ¶ 24; Yarborough Aff. at ¶¶ 9-10 & Attach. 4.)

Team IA has performed extensive services for and aggressively solicited further business opportunities with the offices of various Clerks of Superior Court in Georgia. (Compl. at ¶ 27.) As part of its business plan, Team IA assigned Defendant Lucas the task of further developing business with the various Counties in the State of Georgia and with the Georgia Superior Court Clerks' Cooperative Authority ("GSCCCA"). (Compl. at ¶ 28.) Through this assignment, Defendant Lucas developed extensive contacts and relationships with key employees in the offices of the various Clerks of Superior Court.

During the months leading up to Defendant Lucas's resignation, Defendant Lucas was actively involved on behalf of Team IA in soliciting business from the Fulton County Clerk of Superior Court ("Fulton County"), including a large microfilm creation project. (Compl. at ¶¶ 63–65; Yarborough Aff. at ¶ 11.) In November 2008, Team IA and Fulton County reached an agreement for Team IA to perform the project in question. (Compl. at ¶¶ 64–65; Yarborough Aff. at ¶ 12.)

Also during the months leading up to Defendant Lucas's resignation, Defendant Lucas was similarly involved on behalf of Team IA securing business from the Fayette County Clerk of Superior Court ("Fayette County") with regard to a scanning project. (Compl. at ¶¶ 68–69; Yarborough Aff. at ¶ 11.) Prior to Defendant Lucas's resignation, a representative for Fayette County verbally committed to allow Team IA to perform the scanning project, and the parties were finalizing the language of the Statement of Work that would govern the services. (Compl. at ¶ 68; Yarborough Aff. at ¶ 13.)

D. Defendant Lucas's Resignation From Team IA And Improper Activities Thereafter.

On February 3, 2009, Defendant Lucas resigned his employment with Team IA. (Compl. at ¶ 43.) Both prior to and after Defendant Lucas's resignation, Mr. Yarborough reminded Defendant Lucas that Team IA expected Defendant Lucas to honor his obligations under the Employment Agreement. (Compl. at ¶ 44.)

During the two weeks immediately following Defendant Lucas's resignation, phone records show that Defendant Lucas contacted representatives of no fewer than eight Team IA customers with whom he had worked extensively while employed with Team IA, with Defendant Lucas making seven of these eight contacts within six days of his resignation. (Lucas Phone

Records.⁴) Defendant Lucas admits as much in his supplemental responses to Team IA's First Set of Interrogatories, stating as follows: "In the two weeks following his departure from Team IA, Lucas believes he contacted all of his personal customers with the exception of Grace Ruane and informed them that he had left Team IA." (Defs.' Supplemental Answers to Pl.'s First Set of Interrogs. to Defs. at ¶ 14, 2d Supplemental Resp.⁵) Defendant Lucas himself identifies eleven specific customers that he "contacted by telephone to inform of his departure." (*Id.*)

The following example of Defendant Lucas's post-resignation customer contact highlights Defendant Lucas's brazen violation of the non-solicitation covenants contained in his Employment Agreement: During the two weeks following Defendant Lucas's resignation from Team IA, Defendant Lucas spoke on the phone with Sheila Studdard—Clerk of Superior Court for Fayette County and a long-time customer of Team IA who was then in negotiations with Team IA regarding a new project—no fewer than fifty-one times.⁶ (Lucas Phone Records.) Defendant Lucas initiated twenty-seven of these fifty-one calls. (*Id.*) In total, Defendant Lucas spent at least twelve hours and thirty-three minutes on the phone with Ms. Studdard during these two weeks.⁷ (*Id.*)

⁴ Defendant Lucas provided portions of his Verizon Wireless cell phone records to Team IA in response to Team IA's written discovery requests. This Memorandum will cite all references to the Verizon Wireless cell phone records of Defendant Lucas as "Lucas Phone Records," followed by the applicable page number(s). A copy of the relevant portion of Defendant Lucas's Verizon Wireless cell phone records is attached hereto as Exhibit B.

⁵ This Memorandum will cite all references to Defendants' Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendants as "Defs.' Supplemental Answers to Pl.'s First Set of Interrogs. to Defs.," followed by the applicable paragraph number(s). A copy of Defendants' Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendants is attached hereto as Exhibit C.

⁶ The phone numbers listed in Defendant Lucas's phone records associated with Ms. Studdard include (770) 490-7474 and (770) 716-4286.

⁷ This is simply one example of Defendant Lucas's improper post-resignation customer contact. During the two weeks following Defendant Lucas's resignation, he also engaged in each of the following acts, among others: (1) had at least thirteen phone calls with representatives of Fulton County, with Defendant Lucas placing twelve of those thirteen calls; (2) had at least four calls with representatives at the GSCCCA, with Defendant Lucas placing three of those four calls; and (3) had at least eighteen calls with representatives at DeKalb County, with Defendant Lucas placing sixteen of those eighteen calls. (Lucas Phone Records.)

By February 9, 2009, less than one week after Defendant Lucas's resignation, Defendant Lucas—together with Defendant Lawson—had established and was an owner and operator of Defendant 5 Point Solutions, LLC ("5 Point"). (*Id.* at ¶¶ 4, 49.) Defendant 5 Point offers and performs services identical to—or, at the very least, substantially similar to—the services that Team IA offers and performs.

On February 10, 2009, only one day after Defendant Lucas formed Defendant 5 Point—and on the same day that Defendant Lucas's phone records place him in Atlanta, Georgia (Lucas Phone Records)—Fulton County designated Defendant 5 Point as Fulton County's designated microfilm vendor. (Fulton Vendor Designation Form.⁸) This designation resulted in Defendant 5 Point obtaining the same microfilm creation project that Defendant Lucas worked extensively to procure on behalf of Team IA prior to his resignation—the same project on which Team IA and Fulton County had reached an agreement, prior to Defendant Lucas's resignation, for Team IA to perform. As of the date of this Motion, Team IA is aware of at least \$612,969.75 in invoices that Defendant 5 Point has submitted to the GSCCCA with respect to the microfilm creation project in question. (Fulton County Invoices.⁹)

On March 2, 2009, less than one month after Defendant Lucas resigned from Team IA and formed Defendant 5 Point, Defendant Lucas submitted a Statement of Work to Fayette County with regard to a scanning project valued at over \$200,000. (Fayette Statement of

⁸ Defendant Lucas provided the Fulton County vendor designation form to Team IA in response to Team IA's written discovery requests. This Memorandum will cite all references to the Fulton County vendor designation form as "Fulton Vendor Designation Form." A copy of the Fulton County vendor designation form is attached hereto as Exhibit D.

⁹ Defendant Lucas provided the Fulton County invoices to Team IA in response to Team IA's written discovery requests. This Memorandum will cite all references to the Fulton County invoices as "Fulton County Invoices." A copy of the Fulton County invoices are attached hereto as Exhibit E.

Work.¹⁰) This Statement of Work was related to the same scanning project that Defendant Lucas worked extensively in procuring on behalf of Team IA prior to his resignation—the same project that Fayette County had orally agreed, prior to Defendant Lucas's resignation, to allow Team IA to perform. On March 12, 2009, Ms. Studdard executed this Statement of Work, officially contracting with Defendant 5 Point to perform the scanning project in question. (*Id.*) As of the date of this Motion, Team IA is aware of at least \$119,804 in invoices that Defendant 5 Point has submitted to Fayette County with respect to the scanning project in question. (Fayette County Invoices.¹¹)

IV. LEGAL ARGUMENTS AND AUTHORITIES

A. Standard For Granting A Motion For Summary Judgment.

Rule 56(c) of the South Carolina Rules of Civil Procedure allows a trial court to grant a motion for summary judgment only where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. The South Carolina Supreme Court has recently held “that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to

¹⁰ Defendant Lucas provided the Fayette County Statement of Work in response to Team IA's written discovery requests. This Memorandum will cite all references to the Fayette County Statement of Work as “Fayette Statement of Work.” A copy of the Fayette County Statement of Work is attached hereto as Exhibit F.

¹¹ Defendant Lucas provided the Fayette County invoices to Team IA in response to Team IA's written discovery requests. This Memorandum will cite all references to the Fayette County invoices as “Fayette County Invoices.” A copy of the Fayette County invoices are attached hereto as Exhibit G.

the nonmoving party." *Id.* at 329–30, 673 S.E.2d at 802 (citing *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)). "Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. S. Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975)).

B. Team 1A's Breach Of Contract Claim Must Not Be Dismissed Because Defendant Lucas's Employment Agreement—As Well As Each Independent Covenant Contained Therein¹²—Is Reasonable, Valid, And Enforceable.

While it is true that restrictive covenants are "are generally disfavored and [are] strictly construed against the employer," *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675, 301 S.E.2d 142, 143 (1983), it is equally true that "[s]ound public policy requires enforcement of deliberately made contracts not clearly contravening positive law or rule of public morals," *Oxman v. Proffitt*, 241 S.C. 28, 33, 126 S.E.2d 852, 854 (1962) (citations omitted); see also *Alderman v. Alderman*, 178 S.C. 9, 27–28, 181 S.E. 897, 904 (1935) ("If there is one thing which, more than another, public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by courts of justice." (citation and quotation marks omitted); *Barton v. Travelers Ins. Co.*, 84 S.C. 209, 66 S.E. 118 (1909) (holding that a court must enforce a forfeiture clause where the clause is clear

¹² The structure and mechanics of the Employment Agreement—listing each covenant separately and distinctly within the Agreement—coupled with the parties' express intention that all covenants contained therein be independent and severable pursuant to the Severability clause, (Lucas Empl. Agmt. at ¶ VII.A.), makes clear that each covenant contained in the Employment Agreement is independent. See *Phil., Wilmington, and Baltimore R.R. Co. v. Howard*, 54 U.S. 307, 339 (1852) ("[W]e hold the general principle to be clear, that covenants are to be considered dependent, or independent, according to the intention of the parties, which is to be deduced from the whole instrument . . .").

and is violated); *S.C. Dept. of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 657, 667 S.E.2d 7, 13–14 (Ct. App. 2008) (“[T]he terms of any contract[] are construed to achieve the intent of the parties at the time the [contract] was entered into. The courts must construe and enforce contracts as written, in order to preserve the fundamental right of freedom of contract.” (quoting *Lexington Ins. Co. v. Tires Into Recycled Energy & Supplies, Inc.*, 522 S.E.2d 798, 800 (N.C. Ct. App. 1999))). Neither the Employment Agreement—which Defendant Lucas negotiated and entered into voluntarily and deliberately—nor any of the independent covenants contained therein contravenes any “positive law or rule of public morals;” therefore, “sound public policy requires enforcement of” the Employment Agreement. *Oxman*, 241 S.C. at 33, 126 S.E.2d at 854.

A court must uphold and enforce the terms of a restrictive covenant as long as the covenant: (1) “is necessary for the protection of the legitimate interests of the employer,” (2) “is reasonably limited in its operation with respect to time and place,” (3) “is not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood,” (4) is reasonable from the standpoint of sound public policy,” and (5) “is supported by a valuable consideration.” *Dudley*, 278 S.C. at 675–76; 301 S.E.2d at 143 (citing *Sermos v. Caine & Estes Ins. Agency, Inc.*, 275 S.C. 506, 273 S.E.2d 338 (1980)). Considering the pleadings and evidence in a light most favorable to Team IA, each of these five elements is undoubtedly present with respect to all of the independent non-competition and non-solicitation covenants contained in Defendant Lucas’s Employment Agreement. Accordingly, Defendant Lucas’s Motion for Partial Summary Judgment must be denied.

1. Each of the non-competition covenants contained in Defendant Lucas's Employment Agreement is valid and enforceable.

There are three primary non-competition covenants contained in Defendant Lucas's Employment Agreement: (1) a covenant requiring Defendant Lucas to refrain, while employed with Team IA and for a period of twelve months after his resignation, from soliciting, selling, or providing "Competing Services"¹³ within the "Restricted Territory"¹⁴; (2) a covenant requiring Defendant Lucas to refrain, for a period of twelve months after his resignation, from participating in any matters that were the subject of Team IA's bids submitted or prepared during or prior to Defendant Lucas's employment; and (3) a covenant requiring Defendant Lucas to refrain, for a period of twelve months after his resignation, from providing a "Customer"¹⁵ or "Strategic Partner"¹⁶ with the same or substantially similar services that Defendant Lucas was performing for Team IA. (Lucas Empl. Agmt. at ¶ V.B.) Each of these independent covenants will be addressed in turn.

a. First independent non-competition covenant ("Non-Compete 1").

The first non-competition covenant contained in Defendant Lucas's Employment Agreement ("Non-Compete 1")—requiring Defendant Lucas to refrain, while employed with

¹³ Defendant Lucas's Employment Agreement defines "Competing Services" as follows: "[A]ny service, product, or process of any person, firm, or corporation in existence, which competes with a service, product or process upon which the Employee worked or which he sold or serviced during his employment by Employer or concerning matters which he has acquired confidential information through his work with Employer." (Lucas Empl. Agmt. at ¶ V.B.1.)

¹⁴ Defendant Lucas's Employment Agreement defines "Restricted Territory" as follows: "[T]he entire continental United States. In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama." (*Id.*)

¹⁵ Defendant Lucas's Employment Agreement defines "Customer" as follows: "[A]ny person, firm, or business entity who currently has a system or product which was designed or installed by or is being serviced by Employer, or who has purchased goods or services or who has contracted to purchase goods or services from Employer during the twelve (12) months prior to Employee's separation from employment; or who is an Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months." (*Id.* at ¶ V.A.1.)

¹⁶ Defendant Lucas's Employment Agreement defines "Strategic Partner" as follows: "[A] third party that Employer formed a business relationship with, formerly or informally, to jointly accomplish a task for a fee. For example, Employer engages ABC Company to assist it with the implementation of software for a customer." (*Id.* at ¶ V.B.3.)

Team IA and for a period of twelve months after his resignation, from soliciting, selling, or providing "Competing Services" within the "Restricted Territory"—meets each of the five elements required for enforcement discussed above. *See Dudley*, 278 S.C. at 675–76; 301 S.E.2d at 143 (citing *Sermons*, 275 S.C. 506, 273 S.E.2d 338). First, Non-Compete 1 is necessary to protect the legitimate interests of Team IA. Through Non-Compete 1, Team IA seeks only to preclude Defendant Lucas from improperly utilizing, to the detriment of Team IA, the investment that Team IA made in Defendant Lucas and the confidential and proprietary information of Team IA that Defendant Lucas was exposed to as a result of his employment. Stated differently, Non-Compete 1 simply seeks to prevent Defendant Lucas from benefiting improperly from the vast wealth of specialized information that Defendant Lucas could acquire only through his employment with Team IA. This is unquestionably a legitimate interest that Team IA must be allowed to protect. *See, e.g., Wolf v. Colonial Life & Accident Ins. Co.*, 309 S.C. 100, 109, 420 S.E.2d 217, 222 (Ct. App. 1992) ("Nothing indicates [Defendant Lucas] has any special talents or knowledge not otherwise available to the public in general or [Team IA's] customers in particular, except his knowledge of [Team IA's] products and operations. It is this knowledge that the prohibitions legitimately seek to protect.").

Non-Compete 1 is also reasonably limited with respect to both time and geographic scope. Regarding the duration of the covenant, South Carolina courts have uniformly held that restrictive covenants with two-year durations are reasonable as a matter of law. *See Rockford Mfg., Ltd. v. Bennet*, 296 F. Supp. 2d 681, 689 (D.S.C. 2003) ("The covenants at issue in this case are for a two year duration. Covenants of comparable duration have regularly been upheld [in South Carolina] as reasonable." (citing *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) (two-year covenant); *Dudley*, 278 S.C. 674, 301 S.E.2d at 143 (three-year

covenant)). Thus, the twelve-month duration contained in Non-Compete 1 is reasonable as a matter of law.

Similarly, Non-Compete 1 is reasonably limited as to geographic scope. South Carolina courts hold that "[t]he propriety of a territorial restriction must be considered in connection with the circumstances of the parties and the activities of the employee. . . . [I]n the case of the employee, the restrictive covenant must bear some relation to the activities of the employee." *Delmar Studios of Carolinas v. Kinsey*, 233 S.C. 313, 320, 104 S.E.2d 338, 342 (1958). In other words, the geographic restriction contained in Non-Compete 1 must be enforced if it restricts Defendant Lucas from competing "only in the area in which [Defendant Lucas] worked or to which he was assigned at any time during his employment." *Dudley*, 278 S.C. at 676, 301 S.E.2d at 143 (internal quotation marks omitted); *see also Kinsey*, 233 S.C. at 322, 104 S.E.2d at 343 ("It is generally proper for the employer, by such a contract, to exact a covenant not to compete in such territory as may constitute the field of the employee's activities, but the covenant can go no further than this." (citation and internal quotation marks omitted)).

Throughout his employment, Team IA both allowed and expected Defendant Lucas to solicit new business for Team IA on a nationwide scale. (Compl. at ¶ 24; Yarborough Aff. at ¶ 9.) To this end, Team IA paid for Defendant Lucas to travel around the country to visit customers and prospects, attend tradeshow, and sell Team IA's products and services. (*Id.*) Thus, the primary geographic restriction contained in Non-Compete 1—a nationwide restriction—is reasonably limited in that Non-Compete 1 is directly related to Defendant Lucas's activities at Team IA and only limits Defendant Lucas's activities "in the area in which [Defendant Lucas] worked or to which he was assigned at any time during his employment." *Dudley*, 278 S.C. at 676, 301 S.E.2d at 143 (internal quotation marks omitted). Additionally,

Team IA's inclusion of a nationwide restriction is reasonable because the computer industry in which both Team IA and Defendants are involved allows both parties to easily offer their products and services across State lines and without geographic restriction. Defendant Lucas solicited new customers for Team IA on a nationwide basis and unquestionably has the ability to perform the same activities on a nationwide basis with his new company.

While Defendant Lucas's Motion for Partial Summary Judgment contends that a nationwide non-competition covenant is unenforceable on its face, Defendant Lucas's argument simply misstates the law of South Carolina and its sister States. In fact, no appellate court in South Carolina has ruled specifically on the propriety of a nationwide geographic restriction. However, numerous cases in other jurisdictions analyzing nationwide non-compete provisions have noted that such restrictions are enforceable under the right circumstances. *See, e.g., Zambelli Fireworks Mfg. Co. v. Wood*, No. 2:08-cv-415, 2009 U.S. Dist. LEXIS 3974, at *42 (W.D. Pa. Jan. 21, 2009) ("Courts have upheld covenants not-to-compete with a national scope, where appropriate");¹⁷ *Markovits v. Venture Info Capital, Inc.*, 129 F. Supp. 2d 647, 659 (S.D.N.Y. 2001) ("Enforcing nationwide noncompete provisions is appropriate if there is a relationship between that scope and the business of the company sought to be protected. . . . [E]njoining [the defendant here] from competing with [his former employer] in the 48 contiguous states is appropriate and in keeping with the scope of [the former employer's] business."); *Malice v. Coloplast Corp.*, 629 S.E.2d 95, 100 (Ga. Ct. App. 2006) (upholding an arbitrator's decision to enforce a nationwide restriction under Georgia law, because "[a]lthough the 'territory' described [was] broad — the entire United States — the restrictions were tailored and narrowed appropriately to protect [the employer's] legitimate interests"); *Marshall v. Core*,

¹⁷ For the Court's convenience, a copy of all unpublished decisions, as well as published decisions from regional reporters not covering the State of South Carolina, are attached hereto as composite Exhibit H.

506 So. 2d 91, 92 (Fla. Dist. Ct. App. 1987) (ordering that the defendant former employee not “engage in any business or be employed by any person, firm or corporation in the United States that competes with [the former employer] in the development and marketing of computer software for management and programming of dairy feeding programs.”). The nationwide restriction in Non-Compete 1 is appropriate due to the nationwide scope of the business that Team IA reasonably seeks to protect; therefore, Non-Compete 1 is reasonable with respect to its geographic scope and fulfills the second *Dudley* element.

Even assuming that the nationwide geographic restriction contained in Non-Compete 1 is not reasonable, Team IA and Defendant Lucas expressed their intention that the “Restricted Territory” shall instead “be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.”¹⁸ (Lucas Empl. Agmt. at ¶ V.B.1.) This internal revision is something that Team IA and Defendant Lucas—after both parties first had an opportunity to consider and negotiate the Agreement—voluntarily decided to include in Non-Compete 1. Moreover, the Severability clause of the Employment Agreement, (*id.* at ¶ VII.A.), makes clear that the parties intended for a court to enforce this alternative geographic restriction if the nationwide restriction is deemed unreasonable.¹⁹ Such express intentions to enforce what is a severable and reasonable covenant

¹⁸ The parties settled on this alternative geographic restriction because these four states unquestionably include areas in which Defendant Lucas was “able, during the term of his employment, to establish contact with [Team IA’s] customers.” *Dudley*, 278 S.C. at 676, 301 S.E.2d at 143 (citing *Kerrigan*, 238 S.C. 54, 119 S.E.2d 533). A review of Defendant Lucas’s sales activities—based on expense reports that Defendant Lucas submitted to Team IA for reimbursement—shows direct activities in each of the states listed in the alternative geographic restriction. (Yarborough Aff. at ¶ 9 & Attach. 4.)

¹⁹ In fact, considering the language of the Severability clause in conjunction with established case law, this Court clearly has the ability to eliminate any provision of the non-competition covenants, or portions thereof, that the Court deems necessary in order to render the covenants reasonable. See *Bennet*, 296 F. Supp. 2d at 687 (“Both [*Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 189 S.E.2d 22 (1972), and *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958)] can be reasonably read to conclude that although an indivisible covenant may not be enforced even to a reasonable extent, a severable and reasonable covenant may be enforced independent of any unreasonable provisions.” (emphasis in original)); see also *Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 155, 161, 621 S.E.2d 352, 354 (2005) (noting that South Carolina law disallows reformation of contracts where the court would be required to add “a term not negotiated and agreed upon by the parties”). For example, if the

must be enforced. See *Bennet*, 296 F. Supp. 2d at 687 (“[A]lthough an *indivisible* covenant may not be enforced even to a reasonable extent, a *severable* and reasonable covenant may be enforced independent of any unreasonable provisions.” (emphasis in original)).

Finally, Non-Compete 1 “is not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood, is reasonable from the standpoint of sound public policy, and is supported by a valuable consideration.” *Dudley*, 278 S.C. at 675–76; 301 S.E.2d at 143 (citing *Sermos*, 275 S.C. 506, 273 S.E.2d 338). First, Defendant Lucas has in no way alleged that any of the restrictive covenants contained in his Employment Agreement in any way curtail his legitimate efforts to earn a living. Second, with regard to public policy, the undisputed facts show that the services Team IA is seeking to preclude Defendant Lucas from performing involve a competitive industry with many competitors offering the same or substantially similar services. (Yarborough Aff. at ¶ 3.) Precluding Defendant Lucas from adding one additional competitor to such an industry for only twelve months cannot be unreasonable on public policy grounds. See, e.g., *Wolf*, 309 S.C. at 109, 420 S.E.2d at 222 (“Nothing indicates [Defendant Lucas] has any special talents or knowledge not otherwise available to the public in general or [Team IA’s] customers in particular, except his knowledge of [Team IA’s] products and operations. It is this knowledge that the prohibitions legitimately seek to protect.”); see also *Rice v. Multimedia, Inc.*, 318 S.C. 95, 100, 456 S.E.2d 381, 384 (1995) (“‘Courts should not annul contracts on doubtful grounds of public policy.’”) (quoting *Warren v. Pilgrim Health & Life Ins. Co.*, 217 S.C. 453, 456, 60 S.E.2d 891, 893 (1950))). Third, the South Carolina Supreme Court “has clearly held ‘a covenant not to compete may be

Court were to determine that Non-Solicit 1 should be limited to only the States of South Carolina, Georgia, and North Carolina—or any other combination of the four States expressly listed in Non-Solicit 1—the Severability clause empowers the Court to take such action. See *id.*

enforced where the consideration is based solely upon the at-will employment itself.” *Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001) (quoting *Riedman Corp. v. Jarosh*, 290 S.C. 252, 252, 349 S.E.2d 404, 404 (1986)). Defendant Lucas entered into his Employment Agreement prior to the commencement of his employment relationship with Team IA. Therefore, consideration is clearly present. Because Non-Compete 1 meets each of the five *Dudley* standards, Non-Compete 1 must be enforced.

b. Second independent non-competition covenant (“Non-Compete 2”).

The second non-competition covenant contained in Defendant Lucas’s Employment Agreement (“Non-Compete 2”)—requiring Defendant Lucas to refrain, for a period of twelve months after his resignation, from participating in any matters that were the subject of Team IA’s bids submitted or prepared during or prior to Defendant Lucas’s employment—meets the first, third, fourth, and fifth *Dudley* standards for the same reasons as those discussed above with respect to Non-Compete 1. Where Non-Compete 2 differs is that it contains no geographic restriction, but instead precludes Defendant Lucas from working on any projects that were the subject of bids that Team IA presented or prepared during or prior to Defendant Lucas’s employment. In essence, Non-Compete 2 replaces a geographic limitation with one that only limits Defendant Lucas’s ability to work on projects that Team IA was attempting to work on itself during Defendant Lucas’s employment—a restriction against working with Team IA’s customers and targeted prospective customers. “In [*Wolf*], the South Carolina Court of Appeals expressly concluded that such restrictions are reasonable and enforceable.” *Bennet*, 296 F. Supp. 2d at 689 (citing *Wolf*, 309 S.C. at 109–10, 420 S.E.2d at 222); see also *Milliken & Co. v. Morin*, No. 4610, 2009 S.C. App. LEXIS 443, at *17 (Ct. App. Aug. 20, 2009) (“Furthermore, [w]hile the general test is that contractual prohibitions must be geographically limited to what is reasonably necessary to protect the employer’s business . . . [p]rohibitions against contacting

existing customers can be a valid substitute for a geographic limitation.” (quoting *Bennet*, 296 F. Supp. 2d at 689) (alterations in original)). Accordingly, Non-Compete 2 meets the requirements necessary for enforcement under South Carolina.

Moreover, a failure to enforce a covenant such as Non-Compete 2 would allow an employee to enter into an agreement with his employer, obtain confidential information from his employer regarding a specific project in which the employer had invested time and monetary resources, resign from the employer, and go out and undercut the employer on the very same project that the employer was working on during the employee’s tenure. Such a result would be injurious to the public policy of this State and cannot be allowed. Therefore, Non-Compete 2 must be enforced.

c. Third independent non-competition covenant (“Non-Compete 3”).

The third and final non-competition covenant contained in Defendant Lucas’s Employment Agreement (“Non-Compete 3”)—requiring Defendant Lucas to refrain, for a period of twelve months after his resignation, from providing a “Customer” or “Strategic Partner” with the same or substantially similar services that Defendant Lucas performed for Team IA—complies with the *Dudley* standards for the same reason as Non-Compete 2. Like Non-Compete 2, Non-Compete 3 eliminates a geographic limitation in favor of a restriction against Defendant Lucas providing a “Customer” or “Strategic Partner” of Team IA with the same or substantially similar services to those that Defendant Lucas performed for Team IA. Thus, Non-Compete 3 simply limits Defendant Lucas from taking the wealth of knowledge and training that Team IA provided to him, going to work for Team IA’s customers or business partners, and, in doing so, potentially eliminating the customer’s or business partner’s need for Team IA’s services. Such a limitation is both reasonable and rational, and must be enforced accordingly.

Based on the foregoing, the Covenant Not to Compete contained in Defendant Lucas's Employment Agreement—together with each of the independent covenants contained therein—is valid and enforceable as a matter of law. Therefore, Defendant Lucas's Motion for Partial Summary Judgment must be denied.

2. Each of the non-solicitation covenants contained in Defendant Lucas's Employment Agreement is valid and enforceable.

There are four primary non-solicitation covenants contained in Defendant Lucas's Employment Agreement: (1) a covenant precluding Defendant Lucas, during his employment with Team IA and for a period of twelve months after his resignation, from soliciting, attempting to solicit, selling to, or attempting to sell to any Team IA "Customer" any products or services that compete with Team IA's products or services; (2) a covenant requiring Defendant Lucas "not to induce or attempt to influence any person or entity which has a business relationship with [Team IA] to terminate or otherwise alter that relationship with" Team IA; (3) a covenant in which Defendant Lucas agrees to refrain, while employed by Team IA and for a period of twelve months following his resignation, from employing, attempting to employ, soliciting, or attempting to solicit the employment of any individual who was a Team IA employee during the twelve months immediately preceding Defendant Lucas's resignation; and (4) a covenant precluding Defendant Lucas, for a period of twelve months after his resignation, from hiring, attempting to hire, or encouraging Team IA's agents or independent contractors to cease their relationships with Team IA. (Lucas Empl. Agmt. at ¶ V.A.) As with the independent non-competition covenants, this Memorandum will now address each of the independent non-solicitation covenants in turn.

a. First independent non-solicitation covenant ("Non-Solicit 1").

The first independent non-solicitation covenant contained in Defendant Lucas's Employment Agreement ("Non-Solicit 1") embodies the classic non-solicitation protection—a protection against an employee soliciting or accepting business from the employer's customers for a set amount of time after the employee's separation from employment with the employer. The legitimate interests of Team IA that necessitate the protections contained in Non-Solicit 1 are the same as those related to each of the non-competition covenants discussed above, with the addition of Team IA's interest in protecting its stock of customers. The South Carolina Supreme Court has noted the following with respect to covenants such as Non-Solicit 1: "[T]he most important single asset of most businesses is their stock of customers. Protection of this asset against appropriation by an employee is recognized as a legitimate interest of the employer. A restrictive covenant, therefore, is reasonable if it is designed to protect the employer against loss of his customers." *Kerrigan*, 238 S.C. at 66, 119 S.E.2d at 539. Thus, there can be no doubt that Non-Solicit 1 meets the first *Dudley* standard.

Non-Solicit 1 also complies with the second *Dudley* standard in that Non-Solicit 1 is reasonably limited with regard to time and geographic scope. As discussed above in relation to the non-competition covenants, a one-year duration is undoubtedly reasonable as a matter of law. See *Bennet*, 296 F. Supp. 2d at 689 ("The covenants at issue in this case are for a two year duration. Covenants of comparable duration have regularly been upheld [in South Carolina] as reasonable."). Furthermore, Non-Solicit 1 is likewise reasonable in its geographic limitation in that it has replaced a geographic scope with a customer-based restriction only. South Carolina courts hold that such a restriction is enforceable. See, e.g., *Morin*, 2009 S.C. App. LEXIS 443, at *17 ("Prohibitions against contacting existing customers can be a valid substitute for a geographic limitation." (quoting *Bennet*, 296 F. Supp. 2d at 689)); *Wolf*, 309 S.C. at 109–10,

420 S.E.2d at 222 (upholding a customer-based restriction as a proper substitute for a geographic restriction); *Collins Music Co. v. Parent*, 288 S.C. 91, 94, 340 S.E.2d 794, 796 (Ct. App. 1986) (“A restriction which allows the former employee to sell anywhere else, subject only to the employer’s protection of his own clients, is valid.”). Therefore, Non-Solicit 1 also meets the second *Dudley* standard.

Non-Solicit 1 meets the third, fourth, and fifth *Dudley* standards for the same reasons as those discussed above with respect to the non-competition covenants. As to an undue burden on Defendant Lucas to generate a livelihood, there is simply no evidence in the record to support such a conclusion. With regard to public policy, “The fact that [Defendant Lucas’s] skill and ability, as a sales representative, for the duration of [twelve months] cannot be utilized for selling to [Team IA’s customers], does not violate the interest of the general public, since . . . there is no shortage of [Defendant Lucas’s] type of service, or the products which he sells.” *Kerrigan*, 238 S.C. at 69, 119 S.E.2d at 541. Finally, there is no doubt that Team IA’s initial provision to Defendant Lucas of at-will employment is sufficient consideration for the restrictive covenants contained in the Employment Agreement entered into at the commencement of the employment relationship. See *Poule*, 345 S.C. at 382, 548 S.E.2d at 209 (quoting *Jarosh*, 290 S.C. at 252, 349 S.E.2d at 404). Thus, Non-Solicit 1 is compliant with each of the five *Dudley* factors and must be enforced.

b. Second independent non-solicitation covenant (“Non-Solicit 2”).

The second independent non-solicitation covenant contained in Defendant Lucas’s Employment Agreement (“Non-Solicit 2”)—requiring Defendant Lucas “not to induce or attempt to influence any person or entity which has a business relationship with [Team IA] to terminate or otherwise after that relationship with” Team IA—is in accordance with the *Dudley* parameters for the same reasons as those set forth above with regard to Non-Solicit 1. While

Non-Solicit 2 does suffer from a lack of temporal scope, the restriction is still reasonably tailored to protect the legitimate interests of Team IA—Non-Solicit 2 seeks only to preclude Defendant Lucas from improperly interfering with Team IA's business relationships (i.e. customers, employees, vendors, suppliers, etc.). As the South Carolina Supreme Court has noted:

'It is clear that if the nature of the employment is such as will bring the employee in personal contact with the patrons or customers of the employer, or enable him to acquire valuable information as to the nature and character of the business and the names and requirements of the patrons or customers, enabling him, by engaging in a competing business in his own behalf, or for another, to take advantage of such knowledge of or acquaintance with the patrons or customers of his former employer, and thereby gain an unfair advantage, equity will interfere in behalf of the employer . . .

Kerrigan, 238 S.C. at 67, 119 S.E.2d at 540 (quoting *Fed. Sanitation Co. v. Frankel*, 171 N.E. 339, 340 (Ohio Ct. App. 1929)). Here, Defendant Lucas was in personal contact with many of the patrons, customers, and other individuals and entities with whom Team IA has a business relationship. Defendant Lucas also had access to an abundance of valuable information related to Team IA's business relationships. As such, Defendant Lucas is in a position in which he can improperly take advantage of that knowledge. Consistent with *Kerrigan*, equity must interfere on behalf of Team IA with respect to Defendant Lucas's potential improper and unfair activities. Thus, Non-Solicit 2 must be enforced.

c. Third independent non-solicitation covenant ("Non-Solicit 3").

The third non-solicitation covenant contained in Defendant Lucas's Employment Agreement ("Non-Solicit 3") restricts Defendant Lucas, while employed by Team IA and for a period of twelve months following his resignation, from employing, attempting to employ, soliciting, or attempting to solicit the employment of any individual who was a Team IA employee during the twelve months immediately preceding Defendant Lucas's resignation.

Non-Solicit 3 thus qualifies for enforcement under reasoning nearly identical to that with regard to Non-Solicit 1.

While Non-Solicit 1 precludes Defendant Lucas from soliciting Team IA's customers, Non-Solicit 3 requires Defendant Lucas not to solicit Team IA's employees. These covenants are distinct, but the rationale that leads to required enforcement of both is analogous. Assuming an employer's stock of customers is in fact the employer's "most important asset," *Kerrigan*, 238 S.C. at 66, 119 S.E.2d at 539, it would be difficult to argue that the employer's stock of employees is not its second-most important asset. An employer must have employees to properly service its customers. If the employer wishes to maintain a high level of employer-specific knowledge—in order to most efficiently service its customers—the employer must maintain continuity within its workforce and retain its employees. Turnover in the workforce can be just as costly as—if not more costly than—the loss of a customer. Thus, for each of the reasons that courts uniformly hold reasonable employers' actions in protecting their customers, courts must also hold reasonable employers' similar actions in preventing the pirating of their employees. Non-Solicit 3 must therefore be enforced.

d. Fourth independent non-solicitation covenant ("Non-Solicit 4").

The fourth non-solicitation covenant contained in Defendant Lucas's Employment Agreement ("Non-Solicit 4")—precluding Defendant Lucas, for a period of twelve months after his resignation, from hiring, attempting to hire, or encouraging Team IA's agents or independent contractors to cease their relationships with Team IA—meets the *Dudley* criteria for the same reasons as discussed above with respect to Non-Solicit 1 and Non-Solicit 3.

Non-Solicit 4 essentially goes one step beyond Non-Solicit 3 and, instead of protecting solely employees, protects against the raiding of Team IA's agents and independent contractors. Employers in the computer industry depend heavily on the services of independent contractors

rather than solely on traditional employees. Thus, Non-Solicit 4 simply guarantees that Team IA will be protected from Defendant Lucas improperly interfering with Team IA's relationships with those individuals to whom Team IA assigns work on a contractual basis rather than on a full-time or part-time basis. Notwithstanding this distinction, Non-Solicit 4 qualifies under the *Dudley* standards for the same reasons set forth above with regard to Non-Solicit 1 and Non-Solicit 3.

As the foregoing discussion demonstrates, each of the independent non-solicitation covenants contained in Defendant Lucas's Employment Agreement are valid and enforceable under the *Dudley* test. While Defendant Lucas's Motion for Partial Summary Judgment contends that the non-solicitation covenants are unreasonable restraints on trade because they prohibit Defendant Lucas from accepting unsolicited business from Team IA's customers, this argument fails to consider the cases in which courts in South Carolina have upheld and enforced agreements containing restrictions against both soliciting and accepting business from the employer's customers. For example, in *Wolf* the South Carolina Court of Appeals upheld as enforceable a restriction that precluded the former employee from "[s]olicit[ing] or accept[ing] sales of competing services in any account in which" the employer had already established payroll deduction procedures. *See Wolf*, 309 S.C. at 105, 420 S.E.2d at 220 (emphasis added). Similarly, the South Carolina Supreme Court has enforced an agreement precluding a former employee from "selling to the accounts or in the territory in which he ha[d] been performing his duties as [a] sales representative." *See Kerrigan*, 238 S.C. at 59, 119 S.E.2d at 535. Likewise, the United States District Court for the District of South Carolina has upheld an agreement that prohibited the former employee from "soliciting or accepting business from any of [the employer's] dealers, vendors, clients, or customers whose identity was obtained through use of

[the employer's] confidential information." See *Bennet*, 296 F. Supp. 2d at 690. Thus, each of these cases involved a court in South Carolina that enforced provisions nearly identical to those that Defendant Lucas now argues are unreasonable restraints on trade. Such an argument is simply without basis under South Carolina law.

Furthermore, Defendant Lucas's argument does not take into account the fact that Defendant Lucas has admitted that he "contacted all of his personal customers with the exception of Grace Ruane and informed them that he had left Team IA." (Defs.' Supplemental Answers to Pl.'s First Set of Interrogs. to Defs. at ¶ 14, 2d Supplemental Resp.) South Carolina courts have not yet addressed the issue of whether a former employee's initiation of contact with a customer of the employer after the former employee's separation from employment constitutes a "solicitation." However, numerous courts that have considered this issue have answered the question in the affirmative by holding that such contact is an improper solicitation. See, e.g., *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Schultz*, No. 01-0402, 2001 U.S. Dist. LEXIS 26194, at *7-8 (D.D.C. Feb. 27, 2001) ("The Court is unpersuaded by the subtle distinction the defendant attempts to draw in this case between his action, which he labels an announcement, and solicitation, which is prohibited by his contract with [the employer]. It is a distinction without a difference in this case. . . . Despite the 'announcement' label the defendant places on it, such initiated, targeted contact is tantamount to solicitation because there is no reason to believe that a customer on the receiving end of such a phone call does not assume that the [defendant] wishes for [the customer] to transfer his [business]."); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cross*, No. 98 C 1435, 1998 U.S. Dist. LEXIS 3188, at *4 (N.D. Ill. Mar. 12, 1998) ("[Defendant] claims that he merely advised these customers that he had resigned from [the employer] in order to work for [a competitor]. Although there is a significant distinction

between mere contact and solicitation, courts have found conduct similar to [defendant's] conduct in this case to be solicitation."); see also *Henry v. O'Keefe*, No. 01 C 8698, 2002 U.S. Dist. LEXIS 20028, at *12-13 (E.D. Ill. Oct. 18, 2002) ("[I]f a so-called contact was part of an effort to solicit the recipient for business, then it is prohibited A solicitation that occurs during a period covered by a non-solicitation agreement violates that agreement even if the person is only soliciting the recipient to give him business after the non-solicitation period expires."). Therefore, Defendant Lucas's actions in contacting Team IA customers is no different than a formal solicitation for business.

For each of the above reasons, the independent restrictive covenants contained in Defendant Lucas's Employment Agreement must be enforced. Defendant Lucas's Motion for Partial Summary Judgment must be denied accordingly.

C. Defendant Lucas's Post-Resignation Actions Place Him In Direct Violation Of The Restrictive Covenants Contained In His Employment Agreement.

The pleadings and evidence demonstrate Defendant Lucas's clear violation of many of the independent non-competition and non-solicitation covenants. Based solely on the documentation that Defendant Lucas has turned over to Team IA thus far through the discovery process—which Team IA continues to assert is not fully responsive to its discovery requests—Team IA can point to violations of at least five of the seven independent restrictive covenants.

Defendant Lucas admits that he is conducting business with Fayette County and with Fulton County, is pursuing business opportunities with DeKalb County, and has contacted all of the customers with whom he worked while at Team IA. (Def. Cicero Lucas Answers to Pl.'s First Set of Interrogs. to Def. Lucas at ¶¶ 3-4.²⁰) Moreover, Defendant Lucas's business

²⁰ This Memorandum will cite all references to Defendant Cicero Lucas Answers to Plaintiff's First Set of Interrogatories to Defendant Lucas as "Def. Cicero Lucas Answers to Pl.'s First Set of Interrogs. to Def. Lucas."

relationships with Fayette County and Fulton County are demonstrated by the invoices, vendor designation form, and signed statement of work that Defendant Lucas provided to Team IA in response to discovery requests. (Fayette County Invoices; Fulton County Invoices; Fulton Vendor Designation Form; Fayette Statement of Work.)

Specific examples of ways in which the above-described actions place Defendant Lucas in violation of his Employment Agreement include the following: (1) Defendant Lucas has violated Non-Solicit 1 through all of his initial contacts to Team IA customers, through the establishment of his newfound business relationship with Fayette County and Fulton County, and through his discussions with DeKalb County related to potential business; (2) Defendant Lucas has violated Non-Solicit 2 by taking actions that led both Fayette County and Fulton County to pull projects from Team IA and award them instead to Defendant Lucas's new company; (3) Defendant Lucas has violated Non-Solicit 3 by improperly inducing Defendant Lawson to resign his employment with Team IA in order to join Defendant Lucas's new company; (4) Defendant Lucas has violated Non-Compete 1 by providing services to Fayette County and Fulton County that are identical to those that he sold to these same customers while employed at Team IA; and (5) Defendant Lucas has violated Non-Compete 2 by performing the Fayette County and Fulton County projects, both of which were the subject of bids that Team IA had submitted or were preparing during Defendant Lucas's employment.

Defendant Lucas has never contended that the services he is providing and offering to these Team IA customers are in any way different—let alone substantially different—from those provided by Team IA. Neither has Defendant Lucas ever contended that the customers with

followed by the applicable paragraph number(s). A copy of Defendant Cicero Lucas Answers to Plaintiff's First Set of Interrogatories to Defendant Lucas is included as Attachment 6 to the Affidavit of Brent Yarbrough, which is attached hereto as Exhibit A.

whom he is now engaged in business relationships were not customers of Team IA during his employment there. Therefore, Defendant Lucas has not argued in any way that his actions do not violate the provisions of the Employment Agreement. Because the restrictive covenants contained in the Employment Agreement are reasonable, valid, and enforceable, and because Defendant Lucas is in clear violation of those same covenants, Defendant Lucas's Motion for Partial Summary Judgment must be denied.

D. Summary Judgment Is Improper At This Point In The Litigation Due To Team IA Having Not Yet Been Provided An Opportunity To Complete Discovery.

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543 (quoting *Watson*, 420 F. Supp. at 486). As discussed above, the parties in this matter have not yet scratched the surface of what could likely be fairly extensive discovery into many disputed factual issues. For example, no party in this litigation has conducted a single deposition to date. This failure does not stem from a lack of initiative, as both Team IA and Defendants have noticed numerous depositions. However, due to several disputes related to written discovery, neither party has had in its possession—until very recently—the documents that it would need to properly prepare for many of the depositions in question. Accordingly, "summary judgment must not be granted until [Team IA] has had a full and fair opportunity to complete discovery."

Id.

Furthermore, many aspects of this matter require "further inquiry into the facts of the case . . . to clarify the application of the law," rendering summary judgment inappropriate at this time for this reason as well. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356,

363, 563 S.E.2d 331, 334 (2002) (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). Because summary judgment is premature at this point in this litigation, Defendant Lucas's Motion for Partial Summary Judgment must be denied.

V. CONCLUSION

Based on the foregoing facts and authorities, Defendant Lucas's Motion for Partial Summary Judgment must be denied. The restrictive covenants contained in Defendant Lucas's Employment Agreement are reasonable, valid, and enforceable, and Defendant Lucas has violated and continues to violate the same. Team IA prays that the Court award them their costs and attorneys' fees incurred in defending this motion and any further relief this Court deems appropriate.

Dated this the 21st day of September, 2009.

Respectfully submitted,

FORD & HARRISON LLP

BY: S. Clay Keim
S. Clay Keim
S.C. Bar No. 8854
Jeffrey A. Lehrer
S.C. Bar No. 16687
Lucas J. Asper
S.C. Bar No. 77902

Attorneys for Plaintiff and Third-Party
Defendants

Post Office Box 5398
Spartanburg, SC 29304-5398
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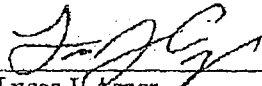
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Defendant and Third-Party Plaintiff Lucas's Motion for Partial Summary Judgment has been served upon Defendants/Third-Party Plaintiffs by hand-delivery to:

Daniel S. Haliwanger
Richardson, Patrick, Westbrook & Brickman, LLC

Dated this the 21st day of September, 2009.

FORD & HARRISON LLP

BY: 
Lucas J. Asper

Post Office Box 5398
Spartanburg SC 29304
Telephone: (864) 699-1100
Facsimile: (864) 699-1101

Spartanburg:82006.1

EXHIBIT A

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APP0167

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,

Plaintiff,

v.

C.A. No. 2009-CP-32-01078

CICERO LUCAS, GEORGE
LAWSON, IV, AND 5 POINT
SOLUTIONS, LLC,

Defendants;

CICERO LUCAS, GEORGE
LAWSON, IV,

Third-Party
Plaintiffs,

v.

BRENT YARBOROUGH
TEAM IA,

Third-Party
Defendants.

AFFIDAVIT OF BRENT YARBOROUGH

COMES NOW Brent Yarborough, who upon being duly sworn, states as follows:

1. My name is Brent Yarborough. I am over the age of eighteen, and I state the following based upon my own personal knowledge.
2. I am the majority owner and President of Team IA, Inc. ("Team IA").
3. Team IA conducts business in the microfilm, data entry, software, hardware, consulting and related services industry. Team IA markets its business on a nationwide basis through electronic and print media, including the internet, attendance at tradeshow, submission of bids, direct sales, and other means. Team IA operates in a competitive industry with many competitors offering the same or substantially similar services.

4. On March 2, 2001, Cicero Lucas executed a letter offer from Team IA. (See Attachment 1 Attached Hereto.) This letter offer made clear that Team IA's offer of employment was contingent on Mr. Lucas executing an employment agreement containing "non-competition, non-disclosure, ownership of work, and other clauses."

5. Also on March 2, 2001, Mr. Lucas executed the Employment Agreement referenced in the letter offer discussed above. (See Attachment 2 Attached Hereto.) Mr. Lucas's Employment Agreement contained a Non-Solicitation Agreement (which, in turn, contained several independent non-solicitation covenants) and a Covenant Not to Compete (which similarly contained several independent non-competition covenants).

6. Prior to executing the above-described letter offer and Employment Agreement, Mr. Lucas negotiated the specific terms of his Employment Agreement, as evidenced by a letter that he provided to me in late-February 2001. (See Attachment 3 Attached Hereto.) Team IA consented to many of Mr. Lucas's negotiated items—salary, discretionary bonus, change-of-control payment, confidentiality, health coverage, etc.—and incorporated the same into the Employment Agreement.

7. Mr. Lucas began his employment with Team IA on April 2, 2001. Mr. Lucas acted as a sales representative for Team IA for the duration of his employment. Through his employment with Team IA, Mr. Lucas was aware of and involved with Team IA's marketing efforts, customers, prospective customers, and trade secret information, including, but not limited to, details regarding Team IA's customer contact and relationship information as well Team IA's pricing and product information. Mr. Lucas often served as the "face of Team IA" with respect to the customers and prospective customers that he serviced and developed relationships with on behalf of Team IA.

8. At the time he was hired, Mr. Lucas did not have experience or knowledge of the microfilm, data entry, software, hardware, consulting and related services industry and did not have any formal sales training or experience. Accordingly, Team IA spent a substantial amount of time and money training and developing Mr. Lucas as a sales representative, and also compensated Mr. Lucas considerable sums related to his actions in developing customers and prospects on behalf of Team IA.

9. Team IA both allowed and expected Mr. Lucas to solicit new business for Team IA on a nationwide scale. A review of a sample of Mr. Lucas's sales activities—based on expense reports he submitted to Team IA for reimbursement—demonstrates Mr. Lucas's nationwide sales activities on behalf of Team IA. (See Attachment 4 Attached Hereto.) This summary also shows examples of Mr. Lucas's attendance at and participation in tradeshow, on behalf of Team IA, which took place across the country and included attendees representing a nationwide prospective customer base.

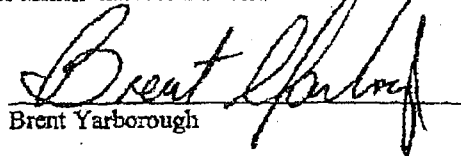
10. During Mr. Lucas's employment and through the date of his resignation, Team IA serviced and solicited customers from across the United States (and had at least one prospect in Canada).

11. I have never—before or after Mr. Lucas's resignation—requested or directed Mr. Lucas to contact all Team IA customers with whom Mr. Lucas had a relationship to inform them that he had resigned from or was no longer employed with Team IA.

12. During the months leading up to Mr. Lucas's resignation, Mr. Lucas was actively involved on behalf of Team IA in soliciting business from Fulton County Clerk of Superior Court, including a large microfilm creation project. In November 2008, Team IA, Fulton County, and the Georgia Superior Court Clerks' Cooperative Authority reached an agreement for Team IA to perform the microfilm creation project in question. (See Attachment 5 Attached Hereto.) After Mr. Lucas resigned, Fulton County pulled the project from Team IA and awarded the same project to the company that Mr. Lucas formed after resigning from Team IA—5 Point Solutions, LLC. (See Attachment 6 Attached Hereto.)

13. Also during the months leading up to Mr. Lucas's resignation, Mr. Lucas was similarly involved on behalf of Team IA in securing business from the Fayette County Clerk of Superior Court with regard to a scanning project. (See Attachment 7 Attached Hereto.) Prior to Mr. Lucas's resignation, a representative for Fayette County verbally committed to allowing Team IA perform the scanning project, and the parties were finalizing the language of the Statement of Work that would govern the services. (See Attachment 8 Attached Hereto.) Shortly after Mr. Lucas resigned, the Fayette County Clerk of Superior Court informed Team IA that she was putting the project on hold, but she subsequently awarded the same project to the company that Mr. Lucas formed after resigning from Team IA—5 Point Solutions, LLC. (See Attachment 9 Attached Hereto.)

I have read the Affidavit and swear or affirm that it is true and correct.


Brent Yarborough

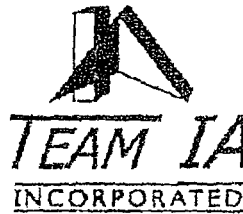
SWORN to and subscribed before me
this 17 day of September, 2009.

 (SEAL)

Notary Public for State of South Carolina
My commission expires: 6-23-2013

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Attachment 1



February 28, 2001

Mr. Rog Lutz
421 Greentree Lane
Lexington, South Carolina, 29072

Dear Rog,

It gives me great pleasure to formally extend an offer of employment with Team IA, Inc. Your primary responsibility will be sales and accounting. Although this will be your primary role, it will not be your only responsibility. Due to the nature of Team IA's business, it is expected for you to participate wherever necessary to ensure the company's success. This offer is valid until March 10, 2001 and is based upon the following terms and conditions:

Start Date: April 2, 2001

Benefits

Health Insurance - IA offers a health insurance plan for its employees and their immediate family members provided they meet the qualifications of the carrier. IA will pay up to \$ 6,000.00 annually towards your coverage.

Deferred Savings Plan - IA provides a SIMPLE IRA through Smith Barney. IA pays for the annual administrative fees. The employee is responsible for all contributions and additional fees for additional activity. An employer contribution may or may not be made each year.

Expenses - You will be reimbursed for all approved business related expenses. This would include travel and cell phone expenses.

Requirements - In addition to those already mentioned, an employment agreement with non-competition, non-disclosure, ownership of work, and other clauses as identified attached must be executed. In other words, acceptance of this offer is contingent on agreement of an employment agreement being executed.

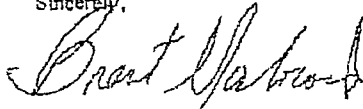
Post Office Box 1643 • Lexington, SC 29071 • (803) 356-7676 • Fax (803) 356-4942

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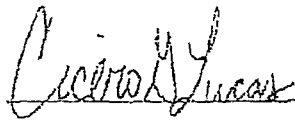
I hope you find this offer acceptable. If you accept this offer, please indicate by signing and dating it below. Please return to my attention.

Sincerely,



Brent Yarborough
President

Offer Accepted:


Date 3/2/01

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Attachment 2

**TEAM IA, INC.
EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT, effective _____, is entered into by and between TEAM IA, INC. (hereinafter "Employer") and CICERO LUCAS (hereinafter "Employee").

NOW THEREFORE, for valuable consideration including, but not limited to, the Employer's employment of Employee in an at-will status, and other good and valuable consideration afforded Employee in his position, the receipt and sufficiency of which are hereby acknowledged by Employee, the Parties hereby agree to abide by the terms and restrictions set forth in this Agreement as follows:

1.

SCOPE OF DUTIES

A) **Employment by Employer as Sole Occupation.** Subject only to the exceptions provided in this Agreement, Employee agrees to devote his full business time, attention, skill, and effort exclusively to the performance of the duties that Employer may assign him from time to time. Employee may not engage in any business activities or render any services of a business, commercial, or professional nature, whether or not for compensation, for the benefit of anyone other than Employer, unless Employer has given its consent in writing in advance. It is the policy of Employer never to allow its personnel to work for any competitive enterprise during their employment, including after hours, on weekends, or during vacation time, even if only organizational assistance or limited consultation is involved.

B) **Compensation Package.** Employee shall receive a base salary of \$108,000.00 annually to be paid in semi-monthly installments. Employee may receive bonuses from time-to-time to be determined in the sole discretion of Brent Yarborough.

C) **Compensation in the event of a Change of Control.** "CHANGE OF CONTROL" is defined in this Agreement as the sale of all or substantially all of the assets of Employer or the transfer of all or substantially all of the management control or ownership of Employer. In the event that Team IA experiences a Change of Control within the first twelve (12) months of Employee's employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control (for example, if Employer receives cash, Employee would receive cash; if Employer receives stock, Employee would receive stock) up to but not exceeding \$150,000.00 in value. This \$150,000.00 value is based on an estimated value of \$3.42 per share. The per share value is not to be construed in any manner as the Employee owning shares. It serves only as a means for calculating Employee's Change of Control compensation. In the event a Change of Control results in Employer receiving less than \$3.42 per share, Employee's Change of Control value would be proportionately less. For example, if Employer sells for \$3.00 per share, Employee's Change of Control value would be \$131,560.00. However, in no event shall Employee's Change of Control value exceed \$150,000.00, regardless of the selling price per share.

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In the event Team IA experiences a Change of Control after Employee's first twelve (12) months of employment but less than Employee's first eighteen (18) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$100,000.00. This \$100,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share during the twelve to eighteen month time period, Employee's Change of Control value would be proportionately reduced as described above.

In the event Team IA experiences a Change of Control after Employee's first eighteen (18) months of employment but less than or equal to the first twenty-four (24) months of employment, Employee shall be compensated in a form consistent with the form of compensation Employer receives for the Change of Control up to but not exceeding \$50,000.00 in value. This \$50,000.00 value is based on an estimated value of \$3.42 per share. If Employer sells for less than \$3.42 per share after eighteen months but before twenty-four months, Employee's Change of Control value would be proportionately reduced as described above. After the Employee's first twenty-four (24) months of employment, Employee shall not be entitled to any Change of Control compensation in any form.

Employee must be employed and actively working for Employer at the time of the Change of Control to be eligible for the referenced compensation. Employee hereby acknowledges and agrees to accept any and all tax liability, federal, state, or otherwise, for said compensation.

D) **Equity.** Team IA is currently analyzing an ISO Plan. Employee may be allowed to participate in the ISO Plan upon its implementation or thereafter. Brent Yarbrough shall have the sole discretion to determine if Employee is allowed to participate in the ISO Plan and, if so, at what level of participation. If allowed to participate in the ISO Plan, Employee will be subject to all terms and conditions of this plan, which may include an eligibility clause as a condition precedent to participation.

E) **Health Insurance.** Employer shall obtain a health benefits package, for Employee and his dependents, with cost not to exceed \$6,000.00 annually. Any health benefits desired by Employee for himself or his family which exceed this sum shall be deducted from salary or incentives, if any, or reimbursed on a monthly basis to Employer by Employee.

F) **Noninterference With Third-Party Rights.** Employer is employing Employee with the understanding that (1) he is free to enter into employment with Employer and (2) only Employer is entitled to the benefit of his work. Employer has no interest in using any other person's or entity's patents, copyrights, trade secrets, or trademarks in an unlawful manner. Employee should be careful not to misapply proprietary rights that Employer has no right to use. Employee affirms that he has fully disclosed the full extent of his past relationship with his previous employers, and all agreements related thereto. *See Addendum attached hereto.

G) **Continuance of Employment.** The faithful observance of this Agreement by Employee is, and shall remain, a condition to his employment. Employee's employment is terminable at-will by either Employee or Employer at any time.

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II.

OWNERSHIP OF EMPLOYEE DEVELOPMENTS

Employer shall own all Work Product. All Work Product shall be considered work made for hire by Employee and owned by Employer. For purposes hereof, "Work Product" shall mean all intellectual property rights, including all Trade Secrets, U.S. and International copyrights, patentable inventions, discoveries and improvements, and other intellectual property rights, in any programming, documentation, technology, or other Work Product that relates to the business and interests of Employer and that Employee conceives, develops, or delivers to Employer at any time during the term of his employment. Work Product shall also include all intellectual property rights in any programming, documentation, technology, or other Work Product that is now contained in any of the products or systems, including development and support systems, of Employer to the extent Employee conceived, developed, or delivered such Work Product to Employer prior to the date of this Agreement while Employee was engaged as an independent contractor or an Employee of Employer. Employee hereby irrevocably relinquishes for the benefit of Employer and its assigns any moral rights in the Work Product recognized by applicable law.

Employer, its successors, and assigns, shall have the right to obtain and hold in its or their own name copyrights, registrations, and any other protection available in the foregoing.

Employee agrees to perform, upon the reasonable request of Employer, such further acts as may be necessary or desirable to transfer, perfect, and defend Employer's ownership of the Work Product.

III.

CONFIDENTIALITY

A) **Consequences of Entrustment With Sensitive Information.** Employee should recognize that his position with Employer requires considerable responsibility and trust. Relying on Employee's ethical responsibility and undivided loyalty, Employer expects to entrust him with highly sensitive confidential, restricted, and proprietary information involving Trade Secrets. Employee should recognize that it could prove very difficult to isolate these Trade Secrets from business activities that he might consider pursuing after termination of his employment, and in some instances, Employee may not be able to compete with Employer in certain ways because of the risk that Employer's Trade Secrets might be compromised. Employee is legally and ethically responsible for protecting and preserving Employer's proprietary rights for use only for Employer's benefit, and these responsibilities may impose unavoidable limitations on Employee's ability to pursue some kinds of business opportunities that might interest Employee during or after his employment.

B) **Trade Secrets Defined.** For purposes of this Agreement, a "Trade Secret" is any information pertaining to imaging and work flow systems which include technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, or lists of actual or potential customers or suppliers that: (1) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic

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value from their disclosure or use; and (2) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

C) **Restrictions on Use and Disclosure of Trade Secrets.** Employee will not disclose, or allow or cause to be disclosed, in anyway or under any circumstances, any such confidential information, Trade Secrets, proprietary processes, software development information, or customer lists to any business or firm in competition with Team IA, or to any agent, person, firm, corporate associate, or subsidiary or affiliate however described, with those competitive business firms. Employee understands and agrees that the purpose in these regards is to prevent him from placing, or causing or allowing to be placed any of Employer's confidential information, Trade Secrets, or proprietary processes and customer lists into the hands of such firms. Without anyway limiting the generality of the foregoing, and in an attempt to supplement the "Trade Secrets" and Work Products as heretofore described, Employee agrees not to disclose production processes, software designs, suppliers, vendors, licensees, production of pricing statistics, sales results, research or other investigations in production, sales marketing, designs in the like, and the results thereof, sales data and information not otherwise available to the trade, prices charged to customers, the credit terms and allowances granted to each customer, or any other advertising or promotional programs. The term customer as used herein includes licensees, distributors, and final consumers of goods and services provided by Team IA. Additionally, Employee shall not reveal any future plans or projections of Team IA for expansions, acquisitions, mergers, promotions or the earnings of any employees, officers, or directors of Team IA.

This Agreement shall be supplemental to and shall not supersede, invalidate, or replace any obligation Employee may have to Employer under State law, including but not limited to the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10, et seq

The Parties hereby acknowledge the foregoing restriction does not prohibit Employee from using the general skills and knowledge he acquired prior to and during his employment with Employer. The Parties hereby acknowledge that Employee shall be entitled to use the general skills and knowledge as well as information readily available in the industry should his employment with Employer be terminated for any reason.

IV.

RETURN OF MATERIALS

Upon the request of Employer and, in any event, upon the termination of Employee's employment, Employee must return to Employer and leave at its disposal all memoranda, notes, records, drawings, manuals, computer programs, documentation, diskettes, computer tapes, and other documents or media pertaining to the business of Employer or Employee's specific duties for Employer, including all copies, regardless of form, of such materials. Employee must also return to Employer and leave at its disposal all materials involving any Trade Secrets of Employer. This Section IV is intended to apply to all materials made or compiled by Employee, as well as to all materials furnished to Employee by anyone else in connection with his employment. Employee may retain documentation, materials, books and the like brought with Employee at the inception of employment. In addition, Employee may retain copies of seminar or workshop notes specifically in areas of re-engineering, business process redesign and health care business practices. Copies of such documents should be left with Employer.

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V.

NON-SOLICITATION AND NON-COMPETITION

A) Non-Solicitation Agreement.

1) Employee agrees and acknowledges by signing below, that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, solicit, attempt to solicit, sell to, or attempt to sell to any Employer CUSTOMER any products or services that are competitive with Employer products or services.

For the purposes of this Agreement, the term "CUSTOMER" shall mean any person, firm, or business entity who currently has a system or product which was designed or installed by or is being serviced by Employer, or who has purchased goods or services or who has contracted to purchase goods or services from Employer during the twelve (12) months prior to Employee's separation from employment; or who is an Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months.

2) Employee agrees not to induce or attempt to influence any person or entity which has a business relationship with the Employer to terminate or otherwise alter that relationship with the Employer.

3) Employee agrees that while employed by Employer and for a period of twelve (12) months following termination of Employee's employment with Employer, regardless of who initiates said termination, that he will neither directly or indirectly, for himself or on behalf of any other person, firm, or business entity, employ, attempt to employ, solicit, or attempt to solicit the employment of any individual who is, or who has been an employee of Employer at any time in the twelve (12) complete calendar months immediately preceding Employee's separation from employment.

4) Employee agrees that for a period of twelve (12) months following the end of his employment by the Employer, whether or not this contract is otherwise in force, and regardless of the reasons for terminating the employee/employer relationship, the Employee will not, directly or indirectly, hire, attempt to hire, or encourage agents and/or independent contractors of Employer to cease their relationships with Employer.

B) Covenant Not to Compete.

1) In order to prevent the improper disclosure or use of confidential and proprietary information and other trade secrets, and to protect the Employer from unfair competition, Employee agrees that, absent the prior express written consent of the Employer, while employed by Employer and for twelve (12) months immediately following the resignation or termination of his employment with the Employer, regardless of who initiates separation from employment, Employee shall not, directly or indirectly, by himself, or through or on behalf of any other person, firm, partnership, company, corporation, representative or agent, within the geographical territory (hereinafter, the "RESTRICTED TERRITORY") set forth below, solicit,

7-11-1992 12:00

attempt to solicit, sell, or attempt to sell, provide, or attempt to provide COMPETING SERVICES as defined below.

Recognizing that Team 1A competes on a nationwide basis, the Parties to this Agreement hereby agree that for the purposes of this Agreement, the "RESTRICTED TERRITORY" shall consist of the entire continental United States. In the alternative, and only if such territory is deemed by a court or other proceeding to be unreasonable or otherwise invalid or unenforceable, then such territory shall be defined as the states of South Carolina, North Carolina, Georgia, and Alabama.

For the purposes of this Agreement, "COMPETING SERVICES" shall mean any service, product, or process of any person, firm, or corporation in existence, which competes with a service, product or process upon which the Employee worked or which he sold or serviced during his employment by Employer or concerning matters which he has acquired confidential information through his work with Employer.

2) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not, directly or indirectly, participate (on Employee's own behalf or on behalf of any other corporation, venture or enterprise) in any matters which were the subject of Employer's bids submitted or in preparation during or prior to the Employee's employment.

3) Employee agrees that during a period of twelve (12) months following the end of Employee's employment, whether or not this contract is otherwise in force, Employee will not enter into a relationship (employee/employer, independent contractor, or otherwise) to provide a CUSTOMER or "STRATEGIC PARTNER" with the same or substantially similar services which Employee was performing for Employer. For the purposes of this agreement, "STRATEGIC PARTNER" shall mean a third party that Employer formed a business relationship with, formally or informally, to jointly accomplish a task for a fee. For example, Employer engages ABC Company to assist it with the implementation of software for a customer.

VI.

PROHIBITION AGAINST UNFAIR BUSINESS PRACTICES

A) Recruiting. It would be unfair for a former Employee or contractor of Employer to recruit personnel directly from the ranks of Employer's own employees by using connections and inside information previously acquired from Employer. Employer puts great emphasis on selecting, training, and promoting talented individuals for positions of significant responsibility. The time, effort, and capital invested by Employer in its work force should not be diverted by someone operating on an inside track. In addition, it would be unfair for individuals still employed by Employer to form and pursue a competitive business while receiving wages and other benefits from Employer.

B) Refraining from Harmful Actions. During Employee's employment with Employer, he is required to refrain from engaging in any action that might be harmful to Employer or its business, unless Employer consents in advance. Employee's responsibility to promote and support Employer's business by its very nature requires him to prevent Employer from suffering injury or hardship, if it can be avoided. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should

C:\JAF\MSJ\510.doc

resolve all doubts by consulting Employer on how best to proceed. By way of example, during Employee's employment with Employer he may not solicit or recruit any other Employee to form or join another business. Employer cannot prohibit Employee from terminating his employment and pursuing other kinds of

C:\My Documents\1617.doc

work, but if Employee should decide to form or join another business Employee is required to advise Employer promptly, so that projects in progress and under consideration are not needlessly disrupted and so that even the possibility that Trade Secrets or other confidential information may be compromised can be avoided.

C) **Reporting Instances of Unfair Business Practices.** During Employee's employment with Employer, if Employee learns or even suspects that any unfair or questionable business practice may be occurring, Employee is required to advise Employer promptly. This obligation is intentionally broad and general because it is difficult to anticipate all possible circumstances, and Employee should resolve all doubts by reporting to Employer the information that has come to his attention. By way of example, Employee should report the incident immediately if anyone who is, or within the most recent two years has been, an employee or contractor of Employer contacts Employee or any other employee of Employer with an offer to form or join another business. This type of contact includes any meeting or communication not initiated by Employee or by the employee receiving the offer, where it becomes known that a position of employment or an opportunity to participate in a business enterprise might be available. The requirement also applies to instances where a third party, such as a placement agent or a business associate, contacts Employee or any other employee of Employer at the instruction or suggestion of an employee or contractor of Employer.

Vii.

IMPLEMENTATION

A) **Severability.** The covenants in this Agreement shall be construed as covenants independent of one another and as obligations distinct from any other contract between Employee and Employer. Any claim that Employee may have against Employer shall not constitute a defense to enforcement by Employer of this Agreement. The Parties to this Agreement expressly acknowledge that the provisions, or portions thereof, of this Agreement shall be deemed severable and the invalidity of or unenforceability of any provision, or portion thereof, shall not affect the validity or enforceability of the other provisions hereof. If any provision, or portion thereof, of this Agreement is unenforceable for any reason, it is the express intent of the Parties that such provision, or portion thereof, shall be appropriately limited and given effect to the extent that it may be enforceable in the discretion of the court or, in the alternative, such provision shall be severed in its entirety, if a court of competent jurisdiction determines a lesser limitation than what is stated is not appropriate.

B) **Injunctive Relief.** Employee's breach of the terms of this Agreement shall be a material breach and shall entitle Employer to immediate injunctive relief in addition to all other equitable remedies available under prevailing law. Employee agrees that any court of competent jurisdiction should immediately enjoin any breach of this Agreement upon the request of Employer, and Employee specifically releases Employer from the requirement of posting any bond in connection with temporary or interlocutory injunctive relief, to the extent permitted by law. Employee hereby acknowledges and agrees that Employer's entitlement to injunctive relief shall in no way prevent Employer from recovering monetary damages for Employee's breach of this Agreement.

C) **Notices.** All notices required under this Agreement shall be made in writing and shall be deemed given when (1) delivered in person, (2) deposited in the U.S. mail, first class, with

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proper postage prepaid and properly addressed, or (3) sent through the interoffice delivery service of Employer, if Employee is still employed by Employer at the time.

D) **Related Parties.** This Agreement shall inure to the benefit of, and be binding upon, Employer and its subsidiaries and its affiliates, together with their successors and assigns.

E) **Choice of Law.** This Agreement shall be governed by, and construed and interpreted in accordance with the domestic laws of the State of South Carolina. Any dispute concerning or arising under this Agreement must be submitted to a court of competent jurisdiction, either state or federal, within the State of South Carolina, and the Parties hereby voluntarily submit to the jurisdiction of such court.

F) **Reasonableness of Limitations.** The Parties hereby acknowledge and agree that the limitations set forth herein are reasonable with respect to scope and duration, and are properly required for the protection of the legitimate business interests of Employer. The Parties further agree that the limitations set forth herein are subject to annual review in order to allow the restrictions to be reviewed and amended accordingly in light of any changes in the Employee's assigned responsibilities.

G) **Fees, Costs, and Expenses.** In the event Employer must enforce any of the rights herein granted to it through an attorney, Employee shall be liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Employer's rights hereunder.

H) **Legal Advice.** Employee affirms that he has been afforded the full opportunity to obtain independent legal advice prior to executing this Employment Agreement.

Upon a thorough reading and review of this Agreement and after having had an opportunity to allow his attorney to review same, Employee states that he is fully aware of and in agreement with the terms set forth and does contract to be bound by the Agreement.

Further, Employer having had an opportunity to read and review this Agreement is fully aware of and in agreement with all the terms set forth and does contract to be bound by said Agreement.

IN WITNESS WHEREOF, you, as an Employee of Employer, have entered and executed this Agreement under seal, and Employer has accepted your undertaking.

EMPLOYEE:

CICERO LUCAS

252351135
Social Security Number

9/2/01
Date of Hire

Date: 3/02/01

CICERO G. LUCAS

Name Typed or Printed

421 GREENTREE LANE

LEXINGTON, SC 29072
Address

C 22, Form 1-7510-100

Attachment 3

Record on Appeal 183

APP0185

Brent,

Listed below are a few of the major points that I would like to negotiate with you as part of my Employment Agreement with Information Advantage.

- Approximate start date September 18th.
- Annual salary \$108,000, (This amount is \$11,784 less than I will make in 2000) I know you trust me, but I would not be offended if you wanted to see my last pay stub showing YTD earnings etc.
- Bonus opportunity based on company profit (at owners discretion)
- Payment of \$200,000 if company sells. With the opportunity of more if you believe I added significant value to the purchase price over the term of my employment.
- Reimbursement of "out of pocket" expenses for the following:
To include business related lodging, automobile fuel expenses, commercial related transportation, meals (excluding alcoholic beverages)
- I would expect the normal tools that are needed to carry out my daily responsibilities, such as a computer, phone, and possibly a pager. (I already have a cell phone, and a automobile and feel the company should not pay for those items)
- I understand the nature of keeping all aspects of the business confidential, and will not disclose any confidential or proprietary information I have learned or will learn in the future with any outside party without your authorization.
- I am not concerned with vacation or holidays. My view is that if we need to get a job done, the day doesn't matter.
- I am interested in family health coverage and some short-term disability. I have already purchased a long-term disability policy.

Brent, I look forward to discussing these points with you. I wanted to reiterate the confidentially nature of our discussions. I am very sensitive about that at this time.

If you want to reduce this to writing, I am prepared to review and discuss it with Julie. I am prepared to make a decision within one week of receipt of you employment agreement.

12 mo's \$150K
18 mo's 100K

- Language w/ Chris Storer
- Detailed job description
- ~~Modify~~
Correct Agreement

Record on Appeal 186

[illegible]

REDUCTIONS	
CREDIT UNION	15000
125 HEALTH INSURA	5000
TERM LIFE INSURAN	1800
DENTAL 125	1200
VALLIC * M	57960

PALESTINE HEALTH

Attachment 4

Record on Appeal 187

APP0189

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Ro's activity based on his Expense Reports

1. Trenton Hospital
 - a. 10/03
2. Mercy Hospital
 - a. 5/03
 - b. 6/03
3. Georgetown Hospital
 - a. 12/04
4. Palmetto Health
 - a. 3/05
 - b. 6/05
 - c. 7/05
 - d. 1/06
 - e. 3/06
 - f. 2/07
5. Francis Marion University
 - a. 3/05
6. SCHFMA
 - a. 5/01
 - b. 6/01
 - c. 6/02
7. HFMA
 - a. 6/01 – San Antonio
8. HIMMS
 - a. 5/04 – Myrtle Beach
 - b. 1/02 – Atlanta
9. Power 1 FCU - Florida
 - a. 4/04
10. Listerhill CU - Alabama
 - a. 6/04
 - b. 7/04
 - c. 8/04
11. TN Clerks Conf
 - a. 10/08
12. NCROD
 - a. 9/08
13. Arkansas Clerks Show
 - a. 11/07
14. Florida Clerks Conference
 - a. 6/05
15. PRODA
 - a. 6/03
 - b. 6/04
 - c. 6/05 – Pittsburgh
 - d. 3/06 – DC

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- e. 6/06
- 16. PRIA
 - a. 3/07
 - b. 7/07
 - c. 2/08
- 17. IACREOT
 - a. 6/02 – Kansas City
 - b. 7/03
 - c. 7/04
 - d. 7/05
 - e. 7/06 – San Francisco
 - f. 7/07 – Charlotte
- 18. NACM Conference
 - a. 7/07 – Chicago
 - b. 3/08
- 19. BFBPOC
 - a. 4/06
- 20. GFOA
 - a. 11/01
 - b. 10/03
 - c. 10/04
 - d. 10/05
 - e. 10/06
 - f. 10/07
- 21. PRISM
 - a. 4/02 – Key West
- 22. SCITDA
 - a. 9/01
 - b. 9/02
 - c. 9/03
 - d. 9/04
 - e. 9/05
 - f. 9/08
- 23. Rheinnor Conference
 - a. 9/06 – Florida
- 24. Football Tickets for Client Entertainment
 - a. 9/08
- 25. AIM
 - a. 5/01
- 26. Pennsylvania Sales Trip
 - a. 7/01
 - b. 9/03
 - c. 3/04
 - d. 12/05
 - e. 3/06
 - f. 12/06

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- g. 3/07
- h. 12/07
- i. 4/08
- j. 5/08
- k. 9/08
- 27. CDIA Certification Fee
 - a. 1/05
- 28. CPA Renewal
 - a. 6/03
- 29. Dale Carnegie Training
 - a. 11/05

Attachment 5

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Lucas, Ro

From: Lucas, Ro
Sent: Thursday, October 30, 2008 5:05 PM
To: 'Robinson, Tina'; 'Wells, Cindy'
Subject: Letter outline services and responsibilities for Microfilm of real estate documents
Attachments: Tina Robinson Letter.doc

The Honorable
Ms. Cathelene "Tina" Robinson
Fulton County
Clerk of Superior Court
136 Pryor Street, SW, Room C155
Atlanta, Ga. 30303

Ms. Robinson,

Team IA, Inc. is pleased to be selected as your vendor for the Historical Deed Microfilm creation project, contracted and funded through the GSCCCA. As your Microfilm liaison, we are charged with the preparation and delivery of microfilm pursuant to the standards and directions as mandated by the Georgia Department of Archives and History. Team IA has also agreed to create two original rolls of Microfilm for Liens recorded during the period noted below, at no additional cost to the County.

The project includes:

- Time period covered: 1/1/99 thru 10/5/08.
- Creation of 2 original silver rolls of microfilm for Deeds and Liens recorded.
- One copy will be delivered to the Georgia Department of Archives and History
- One copy will be delivered to the Clerk of Superior Court for Fulton County, or her designee. Delivery will include a copy of the confirmation receipt of delivery to the Georgia Department of Archives and History.
- As long as the Georgia Superior Court Clerks Authority continues this project under the current guidelines, there will be no charges incurred by the Superior Court Clerks office to provide the services described herein.

Tina, I truly appreciate your confidence and trust in my company to work with you to ensure that your office is the best it can possibly be, now and into the future.

Sincerely,

Ro Lucas
Team IA, inc

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The Honorable
Ms. Cathelene "Tina" Robinson
Fulton County
Clerk of Superior Court
136 Pryor Street, SW, Room C155
Atlanta, Ga. 30303

Ms. Robinson,

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- Time period covered: 1/1/99 thru 10/5/08.
- Creation of 2 original silver rolls of microfilm for Deeds and Liens recorded.
- One copy will be delivered to the Georgia Department of Archives and History
- One copy will be delivered to the Clerk of Superior Court for Fulton County, or her designee. Delivery will include a copy of the confirmation receipt of delivery to the Georgia Department of Archives and History.
- As long as the Georgia Superior Court Clerks Authority continues this project under the current guidelines, there will be no charges incurred by the Superior Court Clerks office to provide the services described herein.

Tina, I truly appreciate your confidence and trust in my company to work with you to ensure that your office is the best it can possibly be, now and into the future.

Sincerely,

Ro Lucas
Team IA, inc

Record on Appeal 193

APP0195

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Lucas, Ro

From: Lucas, Ro
Sent: Wednesday, October 29, 2008 1:43 PM
To: 'Wells, Cindy'
Subject: FW: Microfilm appointment forms (With correct spelling)
Attachments: STATE OF GEORGIA MICROFILM (2).docx; STATEMENT OF AUTHENTICITY.docx

NEW VERSION WITH CORRECT SPELLING

Cindy,

Attached are the 2 forms that need Ms. Robinson's signature for this project.

(1) Appointment Form

Signed and mailed to (I would also fax a copy to GSCCCA):

David Williams, Exec. Director
Georgia Superior Court Clerks' Cooperative Authority
1875 Century Boulevard, Suite 100, Atlanta, GA 30345
Telephone: (404) 327-9058 -- Facsimile: (404) 327-7877

(2) Statement of Authenticity

This form is included as the first image on every roll of film on file with Georgia Archives, please sign and mail to Ro Lucas at Team IA (address on Appointment form).

Cindy,

In addition, per Ms. Robinson's request, we will provide the Clerks office with a second silver original. We will also Microfilm the lien data as requested.

When these forms are executed, please give me a call (or email) and fax a copy to my attention at 803-356-4942.

Thanks and I look forward to working with you,

Ro Lucas
Team IA, Inc.
803-356-7676
888-4TEAMIA

Fax: 803-356-4942

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STATE OF GEORGIA
MICROFILM LIAISON APPOINTMENT FORM

COUNTY: Fulton

Please find listed below the contact information for the vendor we have designated as our Microfilm Liaison, charged with the preparation and delivery of security microfilm pursuant to the standards and directions as mandated by the Georgia Department of Archives and History.

Cathelene "Tina" Robinson

Clerk of Superior Court

Date

Designated Microfilm Liaison

Team IA, Inc.
Mr. Ro Lucas
714 South Lake Drive
Suite 100
Lexington, SC 29072

RLucas@teamia.com
803-356-7676 (tel)
803-356-4942 (fax)

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STATEMENT OF AUTHENTICITY

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I CERTIFY THAT I AM THE OFFICIAL CUSTODIAN OF THE RECORDS PHOTOGRAPHED ON THIS ROLL OF MICROFILM. THE MICROPHOTOGRAPHS APPEARING ON THIS ROLL OF FILM ARE TRUE AND ACCURATE REPRODUCTIONS OF THE ORIGINAL RECORDS, PRODUCED IN THE REGULAR COURSE OF BUSINESS IN CONFORMITY WITH THE GEORGIA MICROGRAPHIC STANDARDS, AND THAT THE MICROPHOTOGRAPHIC PROCESSES USED CREATE A DURABLE MEDIUM FOR REPRODUCING THE ORIGINAL, IF NECESSARY.

Signature

Please Print Name

Cathelene "Tina" Robinson
CLERK OF SUPERIOR COURT

For the County of Fulton, Georgia

Lucas, Ro

From: Meeks, Arivey [Arivey.Meeks@fultoncountyga.gov]
Sent: Wednesday, January 07, 2009 11:14 AM
To: Lucas, Ro; Lawson, George
Co: Randolph, Dana
Subject: Re: Mainline access

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I am sure we will be able to begin next week

From: Lucas, Ro
To: Lawson, George ; Meeks, Arivey
Sent: Wed Jan 07 11:11:44 2009
Subject: RE: Mainline access
Arivey,

What do you see as the next step? I remember your Attorney wanting us to put a time frame on accomplishing this task. I currently have (holding) a resource ready get this done efficiently when we get the green light. I assure you read only access will not disturb anything in your system.
Sincerely, Ro

From: Lawson, George
Sent: Monday, January 05, 2009 9:56 AM
To: Meeks, Arivey
Cc: Lucas, Ro
Subject: RE: Mainline access

Hey Arivey,

Hope your meeting on Friday went well. As you know, we are ready to begin the microfilm project but are awaiting access from Fulton to the Mainline images and data. What is our next step to make this happen?

Thanks,
George

From: Meeks, Arivey [mailto:Arivey.Meeks@fultoncountyga.gov]
Sent: Friday, January 02, 2009 9:27 AM
To: Lawson, George
Cc: Lucas, Ro
Subject: Re: Mainline access

Good Morning and Happy New Year,

I have a meeting scheduled this morning with LIT to discuss this two project and the design again as well as sign off on the implementations for your company and ACS.

From: Lawson, George
To: Meeks, Arivey
Cc: Lucas, Ro
Sent: Fri Jan 02 09:20:13 2009
Subject: Mainline access

Hey Arivey,

I hope that you had a safe New Years and that '09 is off to a great start.

I am following up to see when the access to the Mainline data and images will be ready. We are looking forward to getting this project started for you guys and we need access to the data and images to get the project rolling.

Thanks,

George Lawson

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Team IA, Inc.
714 South Lake Drive, Suite 100
Lexington, SC 29072

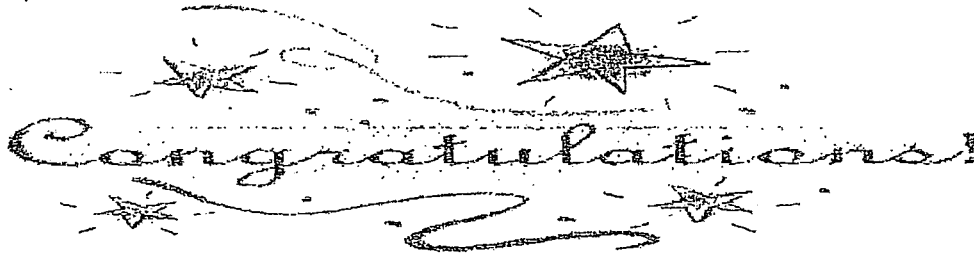
(803) 356-7676

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Lucas, Ro

From: Clark, Dedra
Sent: Wednesday, November 05, 2008 8:35 AM
To: Lucas, Ro
Subject: WOW

WOW!!!!!! Ro, I got the news from Brent about your BIG contract. Awesome Job! Keep it up.



We at TEAM IA are truly blessed to have someone like you on board.
Thanks for all your hard work!!!!

Dedra Clark

Lucas, Ro

From: cicerolucas@yahoo.com
Sent: Friday, December 12, 2008 9:01 PM
To: Arivey Meeks; Lucas, Ro
Cc: Tina Robinson
Subject: Re: Message from Ro regarding Image capture

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Thanks Arivey

Sent from my Verizon Wireless BlackBerry

From: "Meeks, Arivey"
Date: Fri, 12 Dec 2008 19:52:32 -0500
To: Lucas, Ro<rlucas@teamia.com>
Subject: RE: Message from Ro regarding Image capture
I have a meeting scheduled for Thursday Dec. 18th @ 11:00am.to discuss your project as well as another vendor project with current maintenance vendor (Lewis Info Tech)

From: Lucas, Ro [mailto:rlucas@teamia.com]
Sent: Thu 12/11/2008 11:14 AM
To: Meeks, Arivey
Subject: RE: Message from Ro regarding Image capture

I hope you had fun in Vegas, interesting place huh.

From: Meeks, Arivey [mailto:Arivey.Meeks@fultoncountyga.gov]
Sent: Thursday, December 11, 2008 10:53 AM
To: Lucas, Ro
Subject: Re: Message from Ro regarding Image capture

Good Morning Ro,

I was in Las Vegas for the past couple of days. I saw the vendor while I was there and told him that we need to seat down and discuss the project that you have with our office.

I will try to schedule it for the middle of next week.

From: Lucas, Ro
To: Meeks, Arivey
Sent: Thu Dec 11 09:46:18 2008
Subject: RE: Message from Ro regarding Image capture
Arivey,

Hope all is well with you. When do you think you can notify your current vendor? We would like to get started as soon as possible.

Ro

From: Meeks, Arivey [mailto:Arivey.Meeks@fultoncountyga.gov]
Sent: Friday, December 05, 2008 3:15 PM
To: Lucas, Ro
Subject: Re: Message from Ro

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I have good news from the attorney so now I have to contact the current vendor

From: Lucas, Ro
To: Meeks, Arivey
Sent: Fri Dec 05 15:12:39 2008
Subject: Message from Ro
Do you have any good news regarding getting access to images?

If I don't hear from you, I hope you have a great weekend.

Ro

From: Meeks, Arivey [mailto:Arivey.Meeks@fultoncountyga.gov]
Sent: Tuesday, November 25, 2008 2:24 PM
To: Lucas, Ro
Subject: RE: Question from Ro (Regarding historical Microfilm project)

Thank you sir, I will forward this to the County Attorney

From: Lucas, Ro [mailto:rlucas@teantia.com]
Sent: Tuesday, November 25, 2008 2:01 PM
To: Meeks, Arivey
Subject: RE: Question from Ro (Regarding historical Microfilm project)

Arivey,

Team IA anticipates all work necessary on site at Fulton County to be completed within 45 days, for the Historical Microfilm project.

Thanks, Ro

From: Meeks, Arivey [mailto:Arivey.Meeks@fultoncountyga.gov]
Sent: Tuesday, November 25, 2008 11:12 AM
To: Lucas, Ro
Subject: RE: Question from Ro (Regarding historical Microfilm project)

Ro,

I think it will be better to ask for the extended period of time (30-45 days) because after approval I have to also speak with the current support vendor to make sure there are no problems.

Arivey

CONFIDENTIAL

From: Lucas, Ro [mailto:rlucas@teamia.com]
Sent: Tuesday, November 25, 2008 11:08 AM
To: Meeks, Arivey
Subject: Question from Ro (Regarding historical Microfilm project)

Arivey,

I left you a detailed voice mail regarding this topic. Basically, Team IA's time on site best case is 8 days. However, I would like to know your thoughts about asking the County Attorney for 30 - 45 days to take into account any unforeseen delays such as holidays etc.

Let me know your thoughts and I will get it right back to you.

Thanks Ro

Lucas, Ro

From: cicerolucas@yahoo.com
Sent: Thursday, January 15, 2009 8:09 AM
To: Yarborough, Brent; Lawson, George; Lucas, Ro
Subject: Re: MEET TO DISCUSS DEKALB AND FULTON

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Yes

Sent from my Verizon Wireless BlackBerry

From: "Yarborough, Brent"
Date: Thu, 15 Jan 2009 07:43:06 -0500
To: Lawson, George<glawson@TEAMIA.COM>; Lucas, Ro<rlucas@teamia.com>
Subject: RE: MEET TO DISCUSS DEKALB AND FULTON
Will 11:00am today work for you guys?

From: Lawson, George
Sent: Wednesday, January 14, 2009 4:16 PM
To: Yarborough, Brent; Lucas, Ro
Subject: MEET TO DISCUSS DEKALB AND FULTON

Brent,

Per Ro, we need to meet tomorrow to discuss the following:

- 1) DeKalb Superior Court- project completion
- 2) DeKalb Recorders Court- SAS interface
- 3) Fulton County- Mainline Access for microfilm project

I am available any time tomorrow. What time are you available?

George Lawson

Team IA, Inc.
714 South Lake Drive, Suite 100
Lexington, SC 29072

(803) 356-7676

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From: Alexander, Che [mailto:Che.Alexander@fultoncountygga.gov]
Sent: Wednesday, October 29, 2008 3:28 PM
To: Lucas, Ro
Subject: RE: Microfilm with Team IA for real Estate

OK

Che' Alexander
Chief Deputy Clerk
Clerk of Superior Court, Fulton County
404.730.5240
404.224.2017 efax

From: Lucas, Ro [mailto:rlucas@teamlia.com]
Sent: Wednesday, October 29, 2008 9:08 AM
To: Alexander, Che
Subject: Microfilm with Team IA for real Estate

FYI, just got off the phone with Cindy Wells.

Cindy and I reviewed everything that GA Archives provided us in regards to Microfilm. Cindy now understands the missing information, and is sending Tina an email recommending that Team IA get started with the project.

Che" thanks for your involvement facilitating this project. Let me know if I need to do anything else for you.

Ro

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From: Yarborough, Brent
Sent: Wednesday, November 05, 2008 10:47 AM
To: Yarborough, Lorri
Cc: lorri@pmsimage.com
Subject: FW: FW: Happy Election Day JULIE LIKED YOUR EMAIL

Thought you might want to see this.

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

From: Lucas, Ro
Sent: Wednesday, November 05, 2008 10:43 AM
To: Yarborough, Brent
Subject: FW: FW: Happy Election Day JULIE LIKED YOUR EMAIL

I forwarded your email to Julie, looks like she appreciated the gesture, I do too. Ro

From: J L [mailto:jblex55@yahoo.com]
Sent: Wednesday, November 05, 2008 10:16 AM
To: Lucas, Ro
Subject: Re: FW: Happy Election Day

I'm soooo proud of all your hard work!!!! I know it was nail biting at times...but what an awesome achievement!!
love you

Julie

Record on Appeal 205

APP0207

CONFIDENTIAL

-- On Tue, 11/4/08, Lucas, Ro <rlucas@teamia.com> wrote:
From: Lucas, Ro <rlucas@teamia.com>
Subject: FW: Happy Election Day
To: jbllex65@yahoo.com
Date: Tuesday, November 4, 2008, 9:43 AM

FYI this is a email Brent sent out

From: Yarborough, Brent
Sent: Tuesday, November 04, 2008 10:36 AM
To: ALL IA
Cc: loml@pmsimage.com
Subject: Happy Election Day

I just wanted to let everyone know that Ro Lucas just delivered to me a new contract for our Team. Of note is that this contract has an estimated total value of 1.5 million dollars. Wow!!!! This contract will be to convert over 13 million pages to digital microfilm. It looks like we may need to get Di and Karen some new running shoes, Ha!!! I hope each of you will take the time to congratulate Ro on such a big win for our team and wish Karen and Di best wishes on a big job to deliver. I would also add that in light of such of a difficult economy, that each of us find in our own way, a way to express our thanks for such a significant blessing.

In closing, I would just like to say thanks to each of the team members for your respective contributions to the success of our team.

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

CONFIDENTIAL

From: Yarborough, Brent
Sent: Friday, January 23, 2009 3:22 PM
To: Lucas, Ro
Subject: RE: Fulton microfilm

thanks

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

From: Lucas, Ro
Sent: Friday, January 23, 2009 2:59 PM
To: Yarborough, Brent
Subject: RE: Fulton microfilm

Your subject said only Vendor Designation. Regarding Historical Re Indexing, Team IA (as of today) is still indicated as Fulton's vendor on the Authority Website.

From: Yarborough, Brent
Sent: Friday, January 23, 2009 2:54 PM
To: Lucas, Ro
Subject: RE: Fulton microfilm

Are you referring to the request regarding vendor designation? If so, I'm asking regarding Historical Reindexing images and indexes.

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

From: Lucas, Ro

Record on Appeal 207

APP0209

CONFIDENTIAL

Sent: Friday, January 23, 2009 2:53 PM
To: Yarborough, Brent
Subject: RE: Fulton microfilm

I have a email from David Williams acknowledging the receipt of a letter from Fulton County designating us for Microfilm. "That good enough at this time"

From: Yarborough, Brent
Sent: Friday, January 23, 2009 2:51 PM
To: Lucas, Ro
Subject: RE: Fulton microfilm

Ro, good enough with regards to what at this time? Help me understand even if this may sound like a stupid question as I have a lot going on right now.

On another note, just learned some more real shit on Stesienko, I really feel like just beating the crap out of him right now. Let me know if you would like to help or watch. Pretty sure you may find some interesting info if you ever talk to Listerhill Credit Union.

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

From: Lucas, Ro
Sent: Friday, January 23, 2009 2:25 PM
To: Yarborough, Brent
Subject: PW: Fulton microfilm

SEE David Williams Note below, that's good enough for me at this time.

Note: I don't believe we will be transmitting any microfilm, but I think I know what you meant.

From: Williams, David [mailto:David.Williams@gsccca.org]
Sent: Wednesday, November 05, 2008 4:04 PM
To: Lucas, Ro
Subject: RE: Fulton microfilm

thanks

David R. Williams
Executive Director
GSCCCA
1875 Century Blvd, Suite 100
Atlanta, GA 30345
(404) 327-9058
Fax (404) 327-6346

From: Lucas, Ro [mailto:rlucas@teamia.com]
Sent: Wednesday, November 05, 2008 3:53 PM
To: Williams, David
Subject: RE: Fulton microfilm

We will start with Fulton book 25,936. We plan to begin very soon.

Ro

CONFIDENTIAL

From: Williams, David [mailto:David.Williams@gsecca.org]

Sent: Wednesday, November 05, 2008 3:15 PM

To: Lucas, Ro

Subject: Fulton microfilm

I just got the note from Fulton about Team 1A being their microfilm vendor. Can you tell me when ya'll will start and with what book?

Thanks

David R. Williams

Executive Director

GSECCA

1275 Century Blvd., Suite 100

Atlanta, GA 30345

(404) 327-9058

Fax (404) 327-6346

Attachment 6

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,)
Plaintiff,)

Case No. 2009CP3201078

v.)
CICERO LUCAS,)
GEORGE LAWSON, IV,)
AND 5 POINT SOLUTIONS, LLC,)

DEFENDANT CICERO LUCAS
ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES
TO DEFENDANT LUCAS

Defendants,)

CICERO LUCAS,)
GEORGE LAWSON, IV,)
Third-Party Plaintiffs)

v.)
BRENT YARBOROUGH)
TEAM IA)
Third-Party)
Defendants)

TO: S. CLAY KEIM, ESQUIRE ATTORNEY FOR PLAINTIFF AND THIRD-PARTY
DEFENDANT TEAM IA:

Defendant Cicero Lucas hereby answers Plaintiff's First Set of Interrogatories to
Defendant Lucas as follows:

1. Give the names, complete addresses, telephone numbers, place of employment,
and relationship to Defendant of persons known to Defendant or counsel to be witnesses
concerning the facts of this case and/or any allegations from the Complaint.

ANSWER: 1. Brent Yarbrough
2. Lorri Yarbrough
3. John Lester

Record on Appeal 211

APP0213

Current employee of Team IA.
Phone# 803-960-3860

4. Leslie Kamphouse
Current employee of Team IA.
Phone# 803-403-3014
5. Randy Byars
Current employee of SC CIO's office.
Phone# 803-622-2071
6. Mike Nivens
Former director of IT for SC Retirement Systems
On contract to Tom Lucke, the SC State Chief Information Officer.
7. Deidra Clark
Former Team IA employee.
Home: 803-520-3145 Cell: 803-705-9240
8. Tina Robinson
Fulton County (GA) Clerk of Superior Court
Office: 404-613-5512 Cell: 770-572-3908
9. Debra DeBerry
Chief Deputy Clerk of DeKalb County (GA) Clerk of Superior Court
Phone# 404-371-2025
10. Sheila Studdard
Fayette County (GA) Clerk of Superior Court
Described as Customer #2 in complaint.
Phone# 770-716-486
11. Diane Merrill
Was the long-time Team IA bookkeeper.
Resigned approx 2/10/2009.
Phone# 803-996-9237
12. Chandler Coggeshall
Former employee.
Phone# 803-546-2132
13. Glenn Vose
Former Team IA Employee
Phone# 803-261-2162

14. Mike Sayles
Former Team IA Employee, who also information in regards to
stock plan
Phone# 803-429-2153
15. Tommy Crutchfield
Current employee of Team IA.
Phone# 803-467-1975
16. John McCall
Former Team IA Employee
Phone# 912-282-6531
17. Kyle Johnstone
Former Team IA Employee
Mobile# 214-727-9100
18. Kempton Smith
Former Team IA Employee
Phone# 850-776-5200
19. Wayne Green
Former Team IA Employee
Phone# 404-317-8134
20. Cicero Lucas III
Defendant Lucas's Father
Phone# 678-753-0554

2. For each person known to Defendant or his counsel to be a witness concerning the facts of the case, state:

a. the factual matters pertinent to the claims or defenses about which that person has knowledge;

b. whether Defendant has obtained a written statement from the person and, if so, who has possession of that statement; and

c. whether Defendant will call that person as a witness at trial and, if so, the substance of that person's anticipated testimony.

ANSWER: 1. Brent Yarborough
2. Lorri Yarborough

Mrs. Yarborough has knowledge of promises made by Brent Yarborough to Defendants in regards to compensation and Stock ownership

Mrs. Yarborough also has knowledge of the business practices of Team IA and Brent Yarborough relevant to this lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial

3. John Lester

John Lester is a current employee of Team IA and Mr. Lawson's floor mate in college. He has knowledge of Company business matter relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

4. Leslie Kamphouse

Ms. Kamphouse is a current employee of Team IA who has knowledge of Company business matter relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

5. Randy Byars

Mr. Byars has knowledge of business dealing between Team IA, Brent Yarborough, and the various state agencies he has worked for, such as S.C. Retirement System, Employee Insurance Program, and the S.C. CIO's office He also will provide testimony regarding his personal relationship with Team IA and Brent Yarborough.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

6. Mike Nivens

Mr. Nivens has knowledge of business dealing between Team IA, Brent Yarborough, and the various state agencies he has worked for, such as S.C. Retirement System, Employee Insurance Program, and the S.C. CIO's office He also will provide testimony regarding his personal relationship with Team IA and Brent Yarborough.

Mr. Nivens is the former director of IT for S.C. Retirement Systems. He is on contract to Tom Lucke, the S.C. State Chief Information Officer.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

7. Deidra Clark

Ms. Clark is a former Team IA employee. She was the project manager for the Re-indexing division. She was fired on 11/14/08 under very hostile circumstances. She is a witness regarding Mr. Yarborough's management style and behavior and has knowledge of Company business matter relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

8. Tina Robinson

Ms. Robinson is the Fulton County (GA) Clerk of Superior Court. She is described as Customer#1 in Complaint. Ms. Robinson will support Mr. Lucas' claim that he had no contact before Mr. Lucas resigned. She did not know of Mr. Lucas's departure until informed by Mr. Yarborough. Ms. Robinson will also provide testimony regarding the formation of Fulton County's business with 5 Point Solutions, and will further testify that she was not solicited by Mr. Lucas, Mr. Lawson, or anyone representing 5 Point Solutions.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

9. Debra DeBerry

Ms. DeBerry is the Chief Deputy Clerk of DeKalb County (GA) Clerk of Superior Court. She will provide testimony concerning Team IA relationship and business dealings with DeKalb County.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

10. Sheila Studdard

Ms. Studdard is the Fayette County (GA) Clerk of Superior Court. She is described as Customer#2 in Complaint. She will provide testimony concerning Team IA.

relationship and business dealings with Fayette County and will be able to explain the nature of the microfilm projects and that there is no contract (Admit #5).

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

11. Diane Merrill

Ms. Merrill was the long-time Team IA bookkeeper with knowledge about Brent Yarborough, Team IA, and business practices of the Company.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

12. Chandler Coggeshall

Chandler Coggeshall is a former employee with knowledge of Company business matters relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

13. Glenn Vose

Mr. Vose is a former employee with knowledge of Company business matters relevant to the lawsuit. He will also provide testimony regarding Mr. Yarborough's management style, living out of the company and the stock option plan that was often promised but never delivered.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

14. Mike Sayles

Mr. Sayles is a former employee that has knowledge of Company business matters relevant to the lawsuit. He was presented the Stock plan for review and has a copy in his possession.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

15. Tommy Crutchfield

Mr. Crutchfield is a current employee of Team IA. He has knowledge of Company business matters relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

16. John McCall

John McCall is a former employee that has knowledge of Company business matters relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

17. Kyle Johnstone

Kyle Johnstone is a former employee with knowledge of Company business matters relevant to the lawsuit. He is currently working for Perot Systems in Dallas, TX..

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

18. Kempton Smith

Kempton Smith is a former employee that has knowledge of Company business matters relevant to the lawsuit. He was promised Stock in Team IA throughout his employment.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

19. Wayne Green

Wayne Green is a former employee with knowledge of Company business matters relevant to the lawsuit.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

20. Cicero Lucas III

Cicero Lucas, III, is the father of Defendant Lucas. Will discuss his influence getting Team IA business in Georgia and his conversations with Mr. Yarborough regarding how valuable his son is and how he is going to "take care" of his son.

Defendant is not aware of any written statements taken of this witness.

This person will be called as a witness at trial.

3. Identify all customers, prospective customers, or vendors of Plaintiff with which you conducted any business on behalf of yourself or someone other than Plaintiff. For each, state the dates you did business with these customers, prospective customers, or vendors; the type of business; whether you are continuing to conduct business with these individuals or companies; and how Defendant 5 Point obtained this business.

ANSWER: Defendant is conducting business with Fayette County (scanning Job) and Fulton County (GSCCCA) microfilm creation job

4. Identify all customers, prospective customers, or vendors of Plaintiff with whom you have solicited any business other than on behalf of Plaintiff. For each, state the dates you solicited the business, the specific business solicited, the method of solicitation, and the response from the customer, prospective customer, or vendor.

ANSWER: Defendant is discussing potential business with Fulton, DeKalb, and Fayette Counties, all other business activities of 5 Point solutions are with organizations that are neither customers, prospective customers, nor vendors of Team IA. All contact has been by either telephone or in person.

5. Identify all former employees of Plaintiff that you hired, encouraged to leave Plaintiff or solicited to work for Defendant 5 Point. For each, state how such solicitation, encouragement or employment was initiated, who initiated it, when it was first initiated, if the individual became an employee of Defendant 5 Point, and, if so, when the individual became an employee of Defendant 5 Point.

ANSWER: George Lawson and Cicero Lucas. George Lawson initiated conversations one week before Mr. Lawson's and Mr. Lucas' resignation. Mr. Lawson initiated conversations with Mr. Lucas after Mr. Yarborough informed Mr. Lawson on Friday January 23, 2009 that Mr. Yarborough and Mr. Lucas had a heated conversation. Both are employees of 5 Point Solutions. Neither encouraged nor solicited the other to leave Team IA. 5 Point Solutions was incorporated on February 9th, and both Lucas and Lawson have worked for that entity exclusively since that date. No other current or former Team IA employees have been solicited to join 5 Point Solutions.

6. Identify all documents that you used or referred to in answering any question listed in these Interrogatories, or which refer or relate to the subject matter of such Interrogatories, which are not being produced in response to Plaintiffs First Request for Production of Documents to Defendant Lucas.

ANSWER: None.

7. State whether you sought financing for the formation of, establishment of, and/or operation of Defendant 5 Point, if so:

- a) Identify the financial institutions and their representatives with whom you had discussions at the financial institutions, and the dates of those discussions;
- b) State whether a general or specific business plan was discussed or provided to the financial institution; and
- c) Identify the name and type of service provided by the financial institution.

ANSWER: a) None of the Defendants named above sought financing from a financial institution.

b) No business plan has been created.

c) See Defendants' Answer to 7a) above.

8. Identify all email addresses used by you since August 2008, and the service provider for those email addresses.

ANSWER: Rlucas@my5pointsolutions.com

This email addresses were created on or about February 10th. Cicero Lucas also has a Yahoo email address.

9. Identify all telephone numbers used by you since August 2008, including cell and office telephone numbers. For each, state the name on the account, the service provider for the particular numbers, and the dates of service.

ANSWER: 5 Point Solutions' phone number is 803-951-2094, provided by Windstream. Both defendants have cell phones with Verizon established after resignation. Defendants object to providing any current usage information as it contains attorney client communications as well as proprietary and confidential business related information. Mr. Lucas's phone was not activated until after the afternoon of February 3rd. Cicero Lucas' cell is 803-807-1879. To the extent this Interrogatory seeks personal records from Defendant Lucas, Defendant objection is made as to confidentiality, and proprietary information being contained therein.

10. State whether you maintain or maintained a diary or collection of notes regarding your personal and/or business affairs or dealings.

ANSWER: To the extent this Interrogatory seeks personal records from Defendant Lucas, Defendant objection is made as to confidentiality, and proprietary information being contained therein.

11. Identify the members, owners and/or investors of Defendant 5 Point. Indicate the monetary investment of each in Defendant 5 Point and the applicable ownership percentages. State whether Defendant 5 Point has an operating agreement.

ANSWER: There are no investors in 5 Points other than the Defendants named above. No operating agreement exists.

12. State whether Defendant 5 Point has a business plan, regardless of whether formal or informal. Identify any Team IA customers or prospective customers identified in the plan as target customers for Defendant 5 Point.

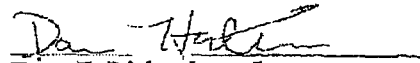
ANSWER: Defendant 5 Point Solutions, LLC has no such business plan.

13. Identify any and all Team IA customers or prospective customers which you contacted and told that any of Plaintiff's employees were leaving Plaintiff prior to your departure from Team IA. For each Team IA customer or prospective customer, state the date of the applicable contact described herein, the method of contact (e.g., via telephone, email, in person), and the representative of the customer or prospective customer with whom Defendant 5 Point spoke or otherwise communicated.

ANSWER: Mr. Lucas contacted Sheila Studdard, a personal friend and customer of Team IA, the morning of February 3, 2009 and told Ms. Studdard that he was resigning from Team IA that day. No other information was given to Ms. Studdard.

14. Identify any and all Team IA customers or prospective customers which you contacted and told that an employee of Team IA had left Team IA subsequent to his or her departure from Team IA. For each Team IA customer or prospective customer, state the date of the applicable contact described herein, the method of contact (e.g., via telephone, email, in person), and the representative of the customer or prospective customer with whom Defendant 5 Point spoke or otherwise communicated.

ANSWER: Mr. Lucas has contacted all of his personal customers that he worked with while at Team IA with the exception of Grace Ruane. Mr. Lucas has not contacted any Team IA customers that were not his accounts. All contacts were made via phone calls subsequent to Mr. Lucas' resignation but Mr. Lucas cannot recall the dates.


Terry E. Richardson, Jr.
Daniel S. Haliwanger
RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC

1730 Jackson Street
Post Office Box 1368
Barnwell, South Carolina 29812
Telephone: (803) 541-7850
Fax: (803) 541-9625

ATTORNEYS FOR DEFENDANT'S
AND THIRD-PARTY PLAINTIFFS
CICERO LUCAS AND GEORGE LAWSON, IV

Barnwell, SC

April 21, 2009

CERTIFICATE OF SERVICE

Undersigned certifies that this pleading or paper to which this certificate is attached was served upon party(s) to this action by hand delivery or by sending a copy of same, enclosed in a first class, pre-paid wrapper properly addressed to the attorney(s) or for such other party(s), in a post office or other depository under the exclusive care and custody of the United States Postal Service, on this 21st day

April, 20 09, Barnwell, S.C.
Peggy Raven

Record on Appeal 221

APP0223

Attachment 7

CONFIDENTIAL

**Fayette County
Clerk of Superior Court**

Electronic Document Management System (EDMS)

**CIVIL CASES CONVERSION
STATEMENT OF WORK**

December 15, 2008

Submitted By

TEAM *ia*

*714 South Lake Drive, Suite 100
Lexington, SC 29072*

*Contact: Brent Yarborough
Telephone: (803) 356-7676
Fax: 803-356-4942
Email: byarborough@teamia.com*

Record on Appeal 223

APP0225

CONFIDENTIAL

Statement of Work
Prepared by Team IA, Inc.

Fayette County Clerk of Superior Court

OBJECTIVE

The objective of this Statement of Work (SOW) is to conduct a conversion of Fayette County Clerk of Court's civil case files. The files will be imaged, indexed and outputted onto 16mm microfilm rolls. The Index value will consist of the Case Number on each case file. The vault at the Fayette County Clerk's office contains approximately 803,000 Civil Case files.

OVERVIEW OF SERVICES FOR FAYETTE COUNTY CLERK OF COURT

Services to be Provided by Team IA

- Team IA will transfer images to 16mm x 215' microfilm rolls and CDs.
- Each 16mm 215' roll will be silver original.
- Team IA will transfer images to microfilm rolls taking care to not split case files.
- Team IA will provide 2 copies of each roll of microfilm produced.
- Team IA will provide 1 copy of each CD produced.
- Pricing includes materials, all labor charges, images acceptance, and delivery and handling of film.
- Any and all data stored or temporarily resident on Team IA's servers or data storage facilities representing the materials maintained in Fayette County Clerk of Court's files is the exclusive property of the Fayette County Clerk of Court and is only in the possession of Team IA for the purpose of these microfilm services. There shall be no dissemination of said data to any third parties without the express, written permission of the Fayette County Clerk of Court.
- This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, U.S.A. All claims, disputes and other matters in question between Licensee and Team IA arising out of, or relating to, this Agreement, or the breach thereof, shall be decided in the Court of Jurisdiction of the Fayette County Clerk of Court.

DELIVERABLE: Team IA will convert files within the Civil Cases onto microfilm and CD.

CONFIDENTIAL

Statement of Work
Prepared by Team IA, Inc.

Fayette County Clerk of Superior Court

ESTIMATED PRICE

OPTION 1 – WORK CONDUCTED AT TEAM IA

Estimated Total Images 803,000 (Total Price will vary based on the actual number of images.)

Description	Quantity	Price	Total
Scanning, Indexing, and Microfilm	803,000 Images	\$.19 per image	\$150,170
Document Preparation	1,608 Hours *	\$20/hr	\$32,160
Courier Costs	20 Trips *	\$350/per trip	\$7,000
Total			\$189,330 *

Optional Services

Description	Quantity	Price	Total
Enhanced Q/A of Images	803,000 Images	\$.03 per image	\$24,090 *

OPTION 2 – WORK CONDUCTED AT FAYETTE COUNTY

Estimated Total Images 803,000 (Total Price will vary based on the actual number of images.)

Description	Quantity	Price	Total
Scanning, Indexing, and Microfilm	803,000 Images	\$.24 per image	\$192,995
Document Preparation	1,608 Hours *	\$25/hr	\$40,200
Per Diem for Supervisor	70 days *	\$150/day	\$10,500
Total			\$243,695 *

Optional Services

Description	Quantity	Price	Total
Enhanced Q/A of Images	803,000 Images	\$.03 per image	\$24,090 *

*Note: These are estimates only.

CONFIDENTIAL

Statement of Work
Prepared by Team IA, Inc.

Fayette County Clerk of Superior Court

BENEFITS AND DISADVANTAGES

Work Performed at Fayette County	Work Performed at Team IA
<u>Benefits and Disadvantages</u> <u>Benefits:</u> • Documents do not leave the facility • No possibility of Courier issues <u>Disadvantages:</u> • Unknown Experience of Temporary Staff • Overall Cost is more • Potential of Quality Issues • Working environment and space disrupted • Duration of project longer (due to managing turnover, system downtime, and retraining)	<u>Benefits and Disadvantages</u> <u>Benefits:</u> • Known Resources/Staff • Higher Quality • Overall Cost is less • Working environment and space not disrupted • Duration of Project is Shorter (due to minimized turnover, system uptime, and minimized retraining) <u>Disadvantages:</u> • Documents are leaving the facility • Possibility of Courier issues <u>Availability And Security of Documents</u> Documents will be stored in a secure building where an access code is required in order to access the building. Team IA can send the documents via fax, e-mail, or Fed Ex if requested. If e-mail is requested then, e-mails can be encrypted.

Statement of Work

CONFIDENTIAL

PAYMENT TERMS

Time and Materials. Team IA will only bill for the actual time expended and rolls processed. Team IA will not proceed beyond the range of these amounts: \$189,330 to \$257,785 (depending on option chosen) without first receiving written authorization from client to proceed further.

Service charges will be invoiced monthly.

The undersigned hereby represent that the signatories indicated below are fully authorized to bind the respective parties to this Agreement. Further, the parties acknowledge and represent that no other action, consent or approval by the respective parties, council, employee, agent or officer is necessary to enter this Agreement as a binding and valid agreement

Authorized Signature: _____ Authorized Signature: _____

Print Name: _____ Print Name: _____

Client: FAYETTE COUNTY CLERK OF COURT Company: TEAM IA, INC.

Date: _____ Date: _____

CONFIDENTIAL

Fayette County Superior Court

Electronic Document Management System (EDMS)

CIVIL CASES OPTION 1-CONVERSION ONSITE STATEMENT OF WORK

October 24, 2008

Submitted By

TEAM *ia*

714 South Lake Drive, Suite 100

Lexington, SC 29072

Contact: Brent Yarborough

Telephone: (803) 356-7676

Fax: 803-356-4942

Email: byarborough@teamia.com

CONFIDENTIAL

OBJECTIVE

The objective of this Statement of Work (SOW) is to conduct a comprehensive conversion of Fayette County Clerk of Court's civil case files. The files will be captured on film and imaged. The vault at the Fayette County Clerk's office contains approximately 803,000 Civil Case files. Conversion of Civil Case files is to be performed on-site at Fayette County Clerk Court located in Fayetteville, Georgia.

Pricing

Services for Fayette County Clerk of Court

Services to be Provided by Team IA

- Team IA will transfer images to a 16mm x 215' microfilm rolls and CDs.
- Each 16mm 215' roll will be silver original.
- Team IA will put at a maximum of 2500 images on each roll taking care to not split case files.
- Team IA will provide 2 copies of each roll of microfilm produced.
- Pricing includes materials, all labor charges, images acceptance, and delivery and handling of film.
- No image enhancement of any type will be performed on the images prior to converting them to microfilm.
- Any and all data stored or temporarily resident on Team IA's servers or data storage facilities representing the materials maintained in Fayette County Clerk of Court's files is the exclusive property of the Fayette County Clerk of Court and is only in the possession of Team IA for the purpose of these microfilm services. There shall be no dissemination of said data to any third parties without the express, written permission of the Fayette County Clerk of Court.
- This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, U.S.A. All claims, disputes and other matters in question between Licensee and Team IA arising out of, or relating to, this Agreement, or the breach thereof, shall be decided in the Court of Jurisdiction of the Fayette County Clerk of Court.

DELIVERABLE: Team IA will convert files within the Civil Cases onto microfilm and CD.

TOTAL SERVICES (Estimated)

\$

- Fixed pricing for above work \$.17 per image \$ \$140,000
- Conversion of additional microfilm images beyond the 803,000 images noted above will be charged at \$.04 per image-\$32,120
- Q/A images at \$.03 per image- \$24,060
- System Configuration Charges- \$124,730

Record on Appeal 229

APP0231

CONFIDENTIAL

TEAM IA RESPONSIBILITIES

- PROVIDE THE ABOVE REFERENCED DELIVERABLES
- PROVIDE WEEKLY REPORTS OF ACTUAL TIME EXPENDED.

FAYETTE COUNTY SUPERIOR COURT RESPONSIBILITIES

- Provide Point of Contact for this project
- Provide necessary staff for scheduled meetings (any delays not caused by Team IA may result in billable charges for affected Team IA staff members)

PAYMENT TERMS

Time and Materials. Team IA will only bill for the actual time expended. Team IA will not proceed beyond \$ 185,000 without first receiving written authorization from client to proceed further.

Service charges will be invoiced monthly.

Invoices are due and payable per the payment terms of Team IA's State Term Contract 06-S7183.

The undersigned hereby represent that the signatories indicated below are fully authorized to bind the respective parties to this Agreement. Further, the parties acknowledge and represent that no other action, consent or approval by the respective parties, council, employee, agent or officer is necessary to enter this Agreement as a binding and valid agreement

Authorized Signature: _____ Authorized Signature: _____

Print Name: _____ Print Name: _____

Client: FAYETTE COUNTY CLERK OF COURT Company: TEAM IA, INC.

Date: _____ Date: _____

Attachment 8

Record on Appeal 231

APP0233

CONFIDENTIAL

OBJECTIVE

The objective of this Statement of Work (SOW) is to conduct a conversion of Fayette County Clerk of Court's civil case files. The files will be imaged, indexed and outputted onto 16mm microfilm rolls. The Index value will consist of the Case Number on each case file. The vault at the Fayette County Clerk's office contains approximately 803,000 Civil Case files.

OVERVIEW OF SERVICES FOR FAYETTE COUNTY CLERK OF COURT

Services to be Provided by Team IA

- Team IA will transfer images to 16mm x 215' microfilm rolls and CDs.
- Each 16mm 215' roll will be silver original.
- Team IA will transfer images to microfilm rolls taking care to not split case files.
- Team IA will provide 2 copies of each roll of microfilm produced.
- Team IA will provide 1 copy of each CD produced.
- Pricing includes materials, all labor charges, images acceptance, and delivery and handling of film.
- Any and all data stored or temporarily resident on Team IA's servers or data storage facilities representing the materials maintained in Fayette County Clerk of Court's files is the exclusive property of the Fayette County Clerk of Court and is only in the possession of Team IA for the purpose of these microfilm services. There shall be no dissemination of said data to any third parties without the express, written permission of the Fayette County Clerk of Court.
- This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, U.S.A. All claims, disputes and other matters in question between Licensee and Team IA arising out of, or relating to, this Agreement, or the breach thereof, shall be decided in the Court of Jurisdiction of the Fayette County Clerk of Court.

DELIVERABLE: Team IA will convert files within the Civil Cases onto microfilm and CD.

* Records are to be stored in a safe that is Rated for a 2 hour burn protection while in the possession of Team IA.

CONFIDENTIAL

- * Records will be transported to and from Team 1A main office in Lexington, SC only by an insured employee of the Team 1A staff.
- * Team 1A shall carry errors and omission insurance.
- * While Records are enroute either to or from the Fayette County Clerk's Office, said Records will remain in the immediate presence of transport staff. and shall be secured from theft.
- * If the need should arise for a record that is in the possession of Team 1A to be returned to Fayette County Superior Court Clerk, Team 1A will guarantee delivery of said record within 24 hours of notification. ~~the~~ record can be returned either via fax or email. ~~the~~ If ~~the~~ overnight delivery is required, ~~the~~ charges will be ~~the~~ responsibility of customer.

Loe's
10758

CONFIDENTIAL

From: Lucas, Ro
Sent: Monday, January 26, 2009 9:27 AM
To: Yarborough, Brent
Cc: Yarborough, Lorri
Subject: Fayette

FYI,

- Shella is ok adding 2 cents (covers about 16k)
- She wants us to factor in sending a copy to Ga archives.

Plan to meet with Lorri this PM to factor in.

Do you want to see SHEILA's proposed Language before we meet this afternoon?

CONFIDENTIAL

From: Lucas, Ro
Sent: Monday, January 26, 2009 3:57 PM
To: Yarborough, Brent
Cc: Yarborough, Lorri
Subject: RE: Are you available at 4:40 to review Fayette Scope and Pricing.???

I think both but not sure, Lorri and Alife are working on it now. Lorri can you answer??

From: Yarborough, Brent
Sent: Monday, January 26, 2009 3:56 PM
To: Lucas, Ro
Cc: Yarborough, Lorri
Subject: RE: Are you available at 4:40 to review Fayette Scope and Pricing.???

you revising the proposal or creating a signable SOW?

Brent Yarborough
Team IA, Inc.
803-356-7676
fax 803-356-4942

From: Lucas, Ro
Sent: Monday, January 26, 2009 3:52 PM
To: Yarborough, Brent
Cc: Yarborough, Lorri
Subject: Are you available at 4:40 to review Fayette Scope and Pricing.???

Let us know

Record on Appeal 235

APP0237

CONFIDENTIAL

From: Lester, John
Sent: Friday, January 30, 2009 10:09 AM
To: Lucas, Ro; Yarborough, Lorri; Ward, Doug
Subject: RE: QUESTIONS for Sheila

I made some changes below:

Team 1A

John Lester
714 South Lake Drive, Suite 100
Lexington, SC 29072
803-356-7676
fax 803-356-4942

From: Lucas, Ro
Sent: Thursday, January 29, 2009 5:01 PM
To: Yarborough, Lorri; Lester, John; Ward, Doug
Subject: QUESTIONS for Sheila

- What format is needed for Icon (Image and Index)
- What is the case # format (No Sheila's index for these cases in PAPER INDEX)
- Do we need to put doc's back in folder with prong's Rubber Band. What are you expectations?
- Do we to scan the front of the sealed files
- Do we need to scan photos? In color?
- How often does she need to be notified of missing case files?
- Do we send the film to Archives or Fayette?

CONFIDENTIAL

From: Lucas, Ro
Sent: Friday, January 30, 2009 11:34 AM
To: Yarborough, Lorri
Subject: RE: QUESTIONS for Sheila

10/4

From: Yarborough, Lorri
Sent: Friday, January 30, 2009 11:29 AM
To: Lucas, Ro; Lester, John; Ward, Doug
Subject: RE: QUESTIONS for Sheila

It looks good. Please send it.

From: Lucas, Ro
Sent: Friday, January 30, 2009 10:52 AM
To: Lester, John; Yarborough, Lorri; Ward, Doug
Subject: RE: QUESTIONS for Sheila

Lorri,

Do you approve sending John's version below???

From: Lester, John
Sent: Friday, January 30, 2009 10:09 AM
To: Lucas, Ro; Yarborough, Lorri; Ward, Doug
Subject: RE: QUESTIONS for Sheila

I made some changes below:

Team 1A

John Lester
714 South Lake Drive, Suite 100
Lexington, SC 29072
803-356-7676
f 103-356-4942

From: Lucas, Ro

Record on Appeal 237

APP0239

Sent: Thursday, January 29, 2009 5:01 PM
To: Yarborough, Lorril; Lester, John; Ward, Doug
Subject: QUESTIONS for Sheila

CONFIDENTIAL

- What format is needed for Icon (Image and Index)
- What is the case # format (No Sheila's index for these cases in PAPER INDEX)
- Do we need to put doc's back in folder with prong's Rubber Band. What are you expectations?
- Do we to scan the front of the sealed files
- Do we need to scan photos? In color?
- How often does she need to be notified of missing case files?
- Do we send the film to Archives or Fayette?

Attachment 9

(See Attachment 6)

EXHIBIT B

verizon wireless

Invoice Number Account Number Date Due Page

1516302848 521887386 00001 10/17/2009

Detail for Cicero Lucas: 803-807-1879

Voice

Date	Time	Number	Rate	Usage Type	Origin	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
2/03	1:07P	803-413-8082	Peak	PlanAflow	Lexington SC	Columbia SC	14	---	---	---
2/03	3:09P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	2	---	---	---
2/03	2:11P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	7	---	---	---
2/03	2:16P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/03	3:17P	803-413-3660	Peak	PlanAflow,CallWait	Lexington SC	Lexington CL	4	---	---	---
2/03	4:22P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	3:40P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	7	---	---	---
2/03	3:56P	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	52	---	---	---
2/03	4:28P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	2	---	---	---
2/03	5:01P	000-000-0055	Peak	PlanAflow,CallWait	Lexington SC	Voice Mail CL	1	---	---	---
2/03	5:02P	000-000-0055	Peak	PlanAflow,CallWait	Lexington SC	Voice Mail CL	1	---	---	---
2/03	5:03P	000-000-0055	Peak	PlanAflow,CallWait	Lexington SC	Voice Mail CL	3	---	---	---
2/03	5:16P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	3	---	---	---
2/03	6:16P	803-413-3000	Peak	PlanAflow	Lexington SC	Columbia SC	24	---	---	---
2/03	6:42P	404-272-7035	Peak	N Allow	Lexington SC	Atlanta GA	5	---	---	---
2/03	6:47P	803-238-8044	Peak	N Allow	Lexington SC	Columbia SC	12	---	---	---
2/03	6:08P	404-272-7035	Peak	N Allow	Lexington SC	Lexington CL	16	---	---	---
2/03	7:11P	803-380-2114	Peak	PlanAflow	Irmo SC	Lexington SC	2	---	---	---
2/03	7:55P	803-238-8044	Peak	N Allow	Irmo SC	Columbia SC	4	---	---	---
2/03	8:08P	000-000-0055	Peak	PlanAflow,CallWait	Irmo SC	Voice Mail CL	1	---	---	---
2/03	8:23P	803-238-8044	Peak	N Allow	Irmo SC	Columbia SC	6	---	---	---
2/03	9:14P	000-000-0055	Off-Peak	N Allow,CallWait	Chapin SC	Voice Mail CL	1	---	---	---
2/04	8:28A	803-238-8044	Peak	N Allow	Lexington SC	Lexington CL	16	---	---	---
2/04	8:45A	404-272-7035	Peak	PlanAflow	Lexington SC	Atlanta GA	21	---	---	---
2/04	8:06A	803-785-4747	Peak	PlanAflow,CallWait	Lexington SC	Lexington CL	4	---	---	---
2/04	8:15A	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	15	---	---	---
2/04	10:33A	803-413-3660	Peak	PlanAflow	Lexington SC	Lexington CL	11	---	---	---
2/04	10:49A	803-413-3660	Peak	PlanAflow	Lexington SC	Columbia SC	1	---	---	---
2/04	10:49A	803-413-3660	Peak	PlanAflow	Lexington SC	Columbia SC	5	---	---	---
2/04	11:23A	404-272-7035	Peak	PlanAflow	Lexington SC	Atlanta GA	1	---	---	---
2/04	12:05P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	5	---	---	---
2/04	12:10P	404-272-7035	Peak	N Allow	Lexington SC	Lexington CL	10	---	---	---
2/04	1:10P	803-413-3660	Peak	PlanAflow	Lexington SC	Columbia SC	3	---	---	---
2/04	1:11P	803-413-3660	Peak	PlanAflow,CallWait	Lexington SC	Lexington CL	2	---	---	---
2/04	2:00P	404-272-7035	Peak	PlanAflow	Lexington SC	Atlanta GA	2	---	---	---
2/04	2:02P	803-238-8044	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/04	2:03P	803-238-8044	Peak	PlanAflow	Lexington SC	Lexington SC	1	---	---	---
2/04	2:04P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/04	2:07P	803-622-5958	Peak	N Allow,CallWait	Lexington SC	Lexington CL	21	---	---	---
2/04	2:31P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	9	---	---	---
2/04	2:56P	404-272-7035	Peak	PlanAflow	Lexington SC	Atlanta GA	27	---	---	---
2/04	3:25P	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	31	---	---	---
2/04	3:57P	803-622-5958	Peak	N Allow,CallWait	Lexington SC	Lexington CL	12	---	---	---
2/04	4:12P	803-807-1879	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/04	4:16P	803-413-3660	Peak	PlanAflow	Lexington SC	Columbia SC	1	---	---	---

Record on Appeal 241

APP0243

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
2/04	4:18P	803-258-7724	Peak	Plan/Allow	Lexington SC	Lexington CL	0	---	---	---
2/04	4:24P	770-716-4255	Peak	Plan/Allow	Lexington SC	Atlanta SC GA	1	---	---	---
2/04	4:24P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	3	---	---	---
2/04	4:25P	770-490-7474	Peak	N Allow,CallWait	Lexington SC	Lexington CL	5	---	---	---
2/04	4:43P	803-785-4747	Peak	Plan/Allow	Lexington SC	Lexington CL	2	---	---	---
2/04	4:51P	404-272-7035	Peak	N Allow	Lexington SC	Lexington CL	4	---	---	---
2/04	5:01P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	19	---	---	---
2/04	5:12P	803-730-7121	Peak	N Allow,CallWait	Lexington SC	Lexington CL	1	---	---	---
2/04	5:32P	803-987-3582	Peak	Plan/Allow	Lexington SC	Lexington CL	1	---	---	---
2/04	5:33P	803-727-2647	Peak	N Allow	Lexington SC	Lexington CL	1	---	---	---
2/04	5:51P	803-413-3680	Peak	Plan/Allow	Charlottesville SC	Columbia SC	3	---	---	---
2/04	6:03P	803-622-6988	Peak	N Allow	Little Rock SC	Columbia SC	4	---	---	---
2/04	6:02P	404-537-1243	Peak	Plan/Allow	Prosperity SC	Lexington CL	4	---	---	---
2/04	6:12P	803-727-5548	Peak	N Allow	Kyriatis SC	Lexington CL	2	---	---	---
2/04	6:15P	803-727-5548	Off-Peak	N Allow	Charlottesville SC	Columbia SC	2	---	---	---
2/04	6:58P	803-730-7121	Off-Peak	N Allow	Charlottesville SC	Lexington CL	2	---	---	---
2/04	6:58P	803-353-7553	Off-Peak	New	Irmo SC	Lexington SC	2	---	---	---
2/04	10:35P	803-622-6965	Off-Peak	N Allow	Lexington SC	Columbia SC	5	---	---	---
2/05	6:08A	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	26	---	---	---
2/05	6:32A	803-413-3680	Peak	Plan/Allow,CallWait	Lexington SC	Lexington CL	4	---	---	---
2/05	6:37A	803-622-6965	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/05	6:44A	803-250-3304	Peak	Plan/Allow	Lexington SC	Columbia SC	3	---	---	---
2/05	12:16P	803-413-3680	Peak	Plan/Allow	Lexington SC	Columbia SC	7	---	---	---
2/05	12:47P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	12	---	---	---
2/05	12:58P	803-658-7574	Peak	N Allow	Lexington SC	Columbia SC	7	---	---	---
2/05	1:22P	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	23	---	---	---
2/05	1:32P	803-578-3724	Peak	Plan/Allow	Lexington SC	Columbia SC	12	---	---	---
2/05	2:24P	770-490-3455	Peak	Plan/Allow	Lexington SC	Atlanta NE GA	1	---	---	---
2/05	2:25P	404-454-7759	Peak	Plan/Allow	Lexington SC	Atlanta GA	1	---	---	---
2/05	2:25P	404-613-8312	Peak	Plan/Allow	Lexington SC	Atlanta GA	2	---	---	---
2/05	7:29P	404-613-8312	Peak	Plan/Allow	Lexington SC	Atlanta GA	2	---	---	---
2/05	2:30P	404-730-6253	Peak	Plan/Allow	Lexington SC	Atlanta GA	0	---	---	---
2/05	2:58P	803-280-3384	Peak	Plan/Allow	Lexington SC	Lexington CL	11	---	---	---
2/05	3:50P	706-741-5872	Peak	N Allow	Lexington SC	Thomaston GA	1	---	---	---
2/05	2:58P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	4	---	---	---
2/05	3:18P	404-371-2025	Peak	Plan/Allow	Lexington SC	Atlanta GA	1	---	---	---
2/05	3:18P	770-985-2337	Peak	Plan/Allow	Lexington SC	Atlanta NE GA	1	---	---	---
2/05	3:19P	706-741-5872	Peak	N Allow	Lexington SC	Lexington CL	15	---	---	---
2/05	3:33P	803-727-5548	Peak	N Allow,CallWait	Lexington SC	Lexington CL	4	---	---	---
2/05	2:39P	404-272-7035	Peak	N Allow	Lexington SC	Atlanta GA	1	---	---	---
2/05	3:40P	404-613-8312	Peak	Plan/Allow	Lexington SC	Atlanta GA	1	---	---	---
2/05	3:41P	770-622-3905	Peak	Plan/Allow	Lexington SC	Fortyfort GA	8	---	---	---
2/05	3:52P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/05	3:54P	404-371-2025	Peak	Plan/Allow	Lexington SC	Atlanta GA	23	---	---	---
2/05	4:28P	803-356-0356	Peak	Plan/Allow	Lexington SC	Lexington SC	1	---	---	---

1508302844 1508302844 00001 03/04/08 637185 1

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Area	Usage Type	Origin	Destination	Eds.	Airtime Charged	Long Dist/ Other Chgs	Total
2/05	4:22P	803-796-0438	Peak	PlanVNet	Lexington SC	Columbia SC	2	---	---	---
2/05	4:33P	803-771-8943	Peak	PlanVNet	Lexington SC	Columbia SC	1	---	---	---
2/05	4:34P	803-238-0435	Peak	N Allow	Lexington SC	Columbia SC	11	---	---	---
2/05	4:46P	803-545-2551	Peak	PlanVNet	Lexington SC	Columbia SC	2	---	---	---
2/05	4:52P	404-484-7758	Peak	PlanVNet	Lexington SC	Atlanta GA	1	---	---	---
2/05	4:54P	706-707-5187	Peak	N Allow	Lexington SC	Madison GA	38	---	---	---
2/05	5:32P	803-622-8958	Peak	N Allow	Lexington SC	Columbia SC	8	---	---	---
2/05	5:55P	627-000-0058	Peak	PlanVNet,CallM	Lexington SC	Udell Hall CL	2	---	---	---
2/05	5:42P	803-603-6761	Peak	N Allow	Lexington SC	Incarnating CL	5	---	---	---
2/05	5:02P	404-371-2391	Peak	PlanVNet	Lexington SC	Atlanta GA	1	---	---	---
2/05	6:03P	404-871-5573	Peak	PlanVNet	Lexington SC	Atlanta GA	4	---	---	---
2/05	6:07P	404-831-7573	Peak	PlanVNet	Lexington SC	Atlanta GA	1	---	---	---
2/05	6:07P	404-831-2673	Peak	PlanVNet	Lexington SC	Atlanta GA	1	---	---	---
2/05	6:07P	404-831-2373	Peak	PlanVNet	Lexington SC	Atlanta GA	2	---	---	---
2/05	6:08P	404-454-7758	Peak	PlanVNet,CallM	Lexington SC	Incarnating CL	12	---	---	---
2/05	6:27P	336-260-8857	Peak	N Allow	Lexington SC	Incarnating CL	1	---	---	---
2/05	6:28P	803-730-7121	Peak	N Allow	Lexington SC	Incarnating CL	6	---	---	---
2/05	6:28P	Unreachable	Peak	PlanVNet	Lexington SC	Incarnating CL	12	---	---	---
2/05	6:07P	803-350-4404	Peak	PlanVNet	Lexington SC	Incarnating CL	22	---	---	---
2/05	6:34P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/05	6:00P	434-272-7035	Peak	N Allow	Lexington SC	Incarnating CL	2	---	---	---
2/05	8:11P	770-882-6510	Off-Peak	N Allow	Lexington SC	Atlanta NE GA	28	---	---	---
2/05	8:15A	803-790-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/05	8:23A	803-413-3500	Peak	PlanVNet	Lexington SC	Incarnating CL	7	---	---	---
2/05	8:35A	770-493-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	28	---	---	---
2/05	8:38A	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	8	---	---	---
2/05	10:29A	803-775-2300	Peak	PlanVNet	Lexington SC	Incarnating CL	15	---	---	---
2/05	10:44A	803-771-6943	Peak	PlanVNet	Lexington SC	Columbia SC	2	---	---	---
2/05	11:23A	803-822-8958	Peak	N Allow	Lexington SC	Incarnating CL	17	---	---	---
2/05	11:25A	803-327-4918	Peak	PlanVNet	Lexington SC	Columbia SC	1	---	---	---
2/05	11:40A	404-441-7279	Peak	PlanVNet	Lexington SC	Atlanta GA	2	---	---	---
2/05	11:43A	678-483-6500	Peak	PlanVNet	Lexington SC	Clinton GA	1	---	---	---
2/05	11:44A	404-815-1127	Peak	PlanVNet	Lexington SC	Atlanta GA	3	---	---	---
2/05	11:55A	404-272-7025	Peak	N Allow	Lexington SC	Incarnating CL	13	---	---	---
2/05	12:18P	803-263-3506	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/05	12:20P	803-203-1158	Peak	N Allow	Lexington SC	Elizabeth NJ	1	---	---	---
2/05	12:21P	732-562-2414	Peak	PlanVNet	Lexington SC	Edgewater NJ	24	---	---	---
2/05	12:26P	803-358-7804	Peak	PlanVNet,CallM	Lexington SC	Incarnating CL	1	---	---	---
2/05	12:45P	803-817-0581	Peak	N Allow	Lexington SC	Columbia SC	3	---	---	---
2/05	12:52P	770-493-7474	Peak	N Allow	Lexington SC	Incarnating CL	4	---	---	---
2/05	1:07P	404-815-1027	Peak	PlanVNet	Lexington SC	Incarnating CL	8	---	---	---
2/05	1:42P	678-763-0554	Peak	PlanVNet	Lexington SC	Georgetown GA	9	---	---	---
2/05	2:15P	770-442-7770	Peak	N Allow	Lexington SC	Atlanta NE GA	1	---	---	---
2/05	2:16P	678-714-6344	Peak	PlanVNet	Lexington SC	Burrill GA	2	---	---	---
2/05	2:18P	803-312-6377	Peak	PlanVNet	Lexington SC	Columbia SC	2	---	---	---

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Mins.	Airtime Charge	Long Dist/ Other Chgs	Total
2/26	2:24P	404-227-0068	Peak	PlanAflow	Lexington SC	Atlanta GA	8	---	---	---
2/26	2:50P	404-312-0535	Peak	PlanAflow	Lexington SC	Atlanta GA	2	---	---	---
2/26	2:55P	803-978-9339	Peak	PlanAflow	Lexington SC	Columbia SC	2	---	---	---
2/26	2:59P	803-678-3938	Peak	PlanAflow	Lexington SC	Essex Jct VT	2	---	---	---
2/26	2:40P	803-293-0627	Peak	N Allow	Lexington SC	Burlington VT	15	---	---	---
2/26	2:54P	803-256-9509	Peak	PlanAflow	Lexington SC	Dorchester SC	38	---	---	---
2/26	3:21P	803-453-3338	Peak	PlanAflow	Lexington SC	Columbia SC	16	---	---	---
2/26	3:56P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/26	3:50P	803-730-7121	Peak	N Allow	Lexington SC	Incoming CL	2	---	---	---
2/26	4:01P	678-466-9928	Peak	PlanAflow	Lexington SC	Atlanta GA	9	---	---	---
2/26	4:12P	803-412-3820	Peak	PlanAflow	Lexington SC	Incoming CL	16	---	---	---
2/26	4:28P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	3	---	---	---
2/26	4:22P	803-259-3311	Peak	PlanAflow	Lexington SC	Lexington SC	2	---	---	---
2/26	4:34P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/26	4:37P	770-590-7474	Peak	N Allow	Lexington SC	Incoming CL	43	---	---	---
2/26	5:00P	803-622-8958	Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/26	5:38P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/26	8:25P	770-450-7474	Peak	N Allow	Lexington SC	Incoming CL	7	---	---	---
2/26	8:57P	803-412-3820	Peak	PlanAflow	Lexington SC	Columbia SC	5	---	---	---
2/26	7:18P	803-867-5392	Peak	PlanAflow	Lexington SC	Lexington SC	2	---	---	---
2/26	7:23P	803-730-7121	Peak	N Allow	Lexington SC	Incoming CL	1	---	---	---
2/26	7:28P	803-730-7121	Peak	N Allow	Lexington SC	Incoming CL	1	---	---	---
2/26	7:59P	000-000-0086	Peak	PlanAflow,CallVM	Lexington SC	Voice Mail CL	1	---	---	---
2/26	8:00P	000-000-0086	Peak	PlanAflow,CallVM	Lexington SC	Voice Mail CL	1	---	---	---
2/26	8:01P	000-000-0086	Peak	PlanAflow,CallVM	Lexington SC	Voice Mail CL	2	---	---	---
2/26	8:02P	000-000-0086	Peak	PlanAflow,CallVM	Lexington SC	Voice Mail CL	2	---	---	---
2/26	8:23P	803-622-8958	Off-Peak	N Allow	Lexington SC	Columbia SC	6	---	---	---
2/27	10:03A	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/27	11:18A	803-360-0108	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/27	11:28A	803-867-5392	Off-Peak	N Allow	Lexington SC	Columbia SC	10	---	---	---
2/27	11:48A	803-730-7121	Off-Peak	N Allow,CallVM	Lexington SC	Incoming CL	6	---	---	---
2/27	12:27P	803-622-8958	Off-Peak	N Allow	Lexington SC	Incoming CL	2	---	---	---
2/27	12:30P	803-727-5540	Off-Peak	N Allow	Lexington SC	Incoming CL	3	---	---	---
2/27	2:23P	803-857-6352	Off-Peak	N Allow	Lexington SC	Incoming CL	2	---	---	---
2/27	3:21P	803-601-1754	Off-Peak	N Allow	Lexington SC	Toll-Free CL	18	---	---	---
2/27	3:53P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/27	4:48P	803-730-7121	Off-Peak	N Allow	Lexington SC	Incoming CL	4	---	---	---
2/27	8:17P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/27	8:22P	803-280-3084	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/27	8:20P	803-727-0547	Off-Peak	N Allow	Lexington SC	Incoming CL	1	---	---	---
2/27	8:18P	803-022-0368	Off-Peak	N Allow	Lexington SC	Columbia SC	14	---	---	---
2/28	9:33A	404-272-7025	Off-Peak	N Allow	Lexington SC	Incoming CL	9	---	---	---
2/28	10:01A	803-412-3820	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/28	10:24A	803-412-3820	Off-Peak	N Allow	Lexington SC	Incoming CL	3	---	---	---
2/28	11:24A	000-000-0086	Off-Peak	N Allow,CallVM	Lexington SC	Voice Mail CL	1	---	---	---

16183026482 803-807-1879 06/26/2007 06/26/2007 06/26/2007 06/26/2007

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Sec.	Airtime Charges	Long Dist./ Other Chgs	Total
2/02	11:40A	803-622-6959	Off-Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/02	12:09P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/03	12:13P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/03	12:0P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	3	---	---	---
2/03	2:00P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/03	2:58P	803-413-3650	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	2:20P	803-786-0490	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	3:21P	803-308-0356	Off-Peak	N Allow	Lexington SC	Lexington SC	1	---	---	---
2/03	3:22P	803-803-6751	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	4:31P	803-730-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/03	4:48P	803-413-3650	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	4:48P	803-622-8968	Off-Peak	N Allow	Lexington SC	Columbia SC	10	---	---	---
2/03	4:57P	803-727-6548	Off-Peak	N Allow, Columbia	Lexington SC	Lexington SC	2	---	---	---
2/03	5:33P	770-572-3908	Off-Peak	N Allow	Lexington SC	Flower Branch GA	6	---	---	---
2/03	6:42P	404-441-7278	Off-Peak	N Allow	Lexington SC	Atlanta GA	1	---	---	---
2/03	6:45P	803-622-8968	Off-Peak	N Allow	Lexington SC	Columbia SC	5	---	---	---
2/03	6:53P	404-630-7678	Off-Peak	N Allow	Lexington SC	Atlanta GA	3	---	---	---
2/03	5:58P	803-622-8968	Off-Peak	N Allow	Lexington SC	Columbia SC	3	---	---	---
2/03	6:03P	404-441-7278	Off-Peak	N Allow	Lexington SC	Atlanta GA	3	---	---	---
2/03	6:16P	803-730-7121	Off-Peak	N Allow	Lexington SC	Lexington SC	1	---	---	---
2/03	6:30P	803-622-8968	Off-Peak	N Allow	Lexington SC	Lexington SC	10	---	---	---
2/03	6:58P	803-622-8968	Off-Peak	N Allow	Lexington SC	Columbia SC	3	---	---	---
2/03	8:12A	404-273-1254	Peak	N Allow	Lexington SC	Atlanta GA	1	---	---	---
2/03	8:14A	706-265-2049	Peak	Plan Allow	Lexington SC	Tyngs BA	7	---	---	---
2/03	8:26A	770-630-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	16	---	---	---
2/03	8:33A	803-622-8968	Peak	N Allow	Lexington SC	Lexington SC	4	---	---	---
2/03	8:43A	770-630-7474	Peak	N Allow	Lexington SC	Lexington SC	1	---	---	---
2/03	9:50A	803-095-4980	Peak	Plan Allow	Lexington SC	Lexington SC	2	---	---	---
2/03	9:50A	803-413-3650	Peak	Plan Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	10:03A	803-740-8020	Peak	Plan Allow	Lexington SC	Lexington SC	1	---	---	---
2/03	10:13A	803-740-8020	Peak	Plan Allow	Lexington SC	Lexington SC	1	---	---	---
2/03	10:22A	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	10:23A	803-622-8968	Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/03	10:27A	803-726-7121	Peak	N Allow, Columbia	Lexington SC	Lexington SC	1	---	---	---
2/03	10:28A	803-413-3650	Peak	Plan Allow, Columbia	Lexington SC	Lexington SC	4	---	---	---
2/03	10:27A	803-269-8202	Peak	Plan Allow	Lexington SC	Lexington SC	8	---	---	---
2/03	10:44A	803-095-4980	Peak	Plan Allow, Columbia	Lexington SC	Lexington SC	9	---	---	---
2/03	10:53A	803-259-5363	Peak	Plan Allow	Lexington SC	Lexington SC	5	---	---	---
2/03	10:58A	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/03	11:07A	803-622-8968	Peak	N Allow	Lexington SC	Columbia SC	7	---	---	---
2/03	11:12A	803-622-8968	Peak	N Allow	Lexington SC	Columbia SC	7	---	---	---
2/03	11:21A	803-740-8020	Peak	Plan Allow	Lexington SC	Columbia SC	2	---	---	---
2/03	11:23A	404-610-7678	Peak	Plan Allow	Lexington SC	Atlanta GA	3	---	---	---
2/03	11:25A	404-321-4000	Peak	Plan Allow, Columbia	Lexington SC	Lexington SC	10	---	---	---
2/03	11:43A	803-770-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origin	Destination	Min.	Active Charge	Long Dist/Other Chg	Total
2/09	11:54A	803-722-2871	Peak	PlanFlow	Lexington SC	Lexington CL	2	---	---	---
2/09	11:58A	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	2	---	---	---
2/09	12:08P	803-740-9020	Peak	PlanFlow	Lexington SC	Columbia SC	1	---	---	---
2/09	12:12P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	4	---	---	---
2/09	12:20P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---
2/09	12:25P	803-622-6068	Peak	N Allow	Lexington SC	Columbia SC	9	---	---	---
2/09	12:42P	803-740-9020	Peak	PlanFlow	Lexington SC	Lexington CL	1	---	---	---
2/09	12:52P	803-622-6945	Peak	N Allow	Lexington SC	Columbia SC	2	---	---	---
2/09	12:54P	803-740-9020	Peak	PlanFlow	Lexington SC	Columbia SC	1	---	---	---
2/09	12:56P	803-740-9020	Peak	PlanFlow	Lexington SC	Columbia SC	1	---	---	---
2/09	12:58P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE RA	2	---	---	---
2/09	12:59P	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	8	---	---	---
2/09	1:07P	412-401-8453	Peak	PlanFlow	Lexington SC	Lexington CL	1	---	---	---
2/09	1:15P	803-740-9020	Peak	PlanFlow	Lexington SC	Lexington CL	8	---	---	---
2/09	1:18P	803-363-8383	Peak	PlanFlow,CallWait	Lexington SC	Lexington CL	11	---	---	---
2/09	1:30P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE RA	4	---	---	---
2/09	1:38P	803-983-4850	Peak	PlanFlow,CallWait	Lexington SC	Lexington CL	12	---	---	---
2/09	1:40P	803-995-4353	Peak	PlanFlow	Lexington SC	Lexington SC	1	---	---	---
2/09	1:53P	803-730-7121	Peak	N Allow	Lexington SC	Columbia SC	4	---	---	---
2/09	1:57P	803-413-3807	Peak	N Allow	Lexington SC	Columbia SC	5	---	---	---
2/09	2:01P	803-786-6880	Peak	PlanFlow	Lexington SC	Columbia SC	6	---	---	---
2/09	2:04P	803-632-2871	Peak	PlanFlow,CallWait	Lexington SC	Lexington CL	40	---	---	---
2/09	2:44P	803-740-9020	Peak	PlanFlow	Lexington SC	Columbia SC	3	---	---	---
2/09	3:38P	000-000-0088	Peak	PlanFlow,CallWait	Lexington SC	Voice Mail CL	2	---	---	---
2/09	3:56P	803-622-6068	Peak	N Allow	Lexington SC	Columbia SC	5	---	---	---
2/09	3:56P	803-727-8547	Peak	N Allow,CallWait	Lexington SC	Lexington CL	1	---	---	---
2/09	3:58P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	1	---	---	---
2/09	4:11P	803-730-7121	Peak	N Allow	Lexington SC	Lexington CL	1	---	---	---
2/09	4:25P	706-242-3808	Peak	PlanFlow	Lexington SC	Madison RA	4	---	---	---
2/09	4:30P	770-923-4000	Peak	PlanFlow	Lexington SC	Conyers GA	1	---	---	---
2/09	4:30P	770-490-4744	Peak	N Allow	Lexington SC	Atlanta NE GA	1	---	---	---
2/09	4:32P	803-779-2700	Peak	PlanFlow	Lexington SC	Lexington CL	15	---	---	---
2/09	4:50P	000-000-0088	Peak	PlanFlow,CallWait	Lexington SC	Voice Mail CL	2	---	---	---
2/09	4:52P	803-609-6751	Peak	N Allow	Lexington SC	Columbia SC	6	---	---	---
2/09	5:14P	803-413-0000	Peak	PlanFlow	Lexington SC	Lexington CL	3	---	---	---
2/09	5:18P	770-490-7474	Peak	N Allow	Lexington SC	Lexington CL	5	---	---	---
2/09	5:24P	006-200-1188	Peak	N Allow	Lexington SC	Elizabeth NJ	2	---	---	---
2/09	5:54P	404-441-7279	Peak	PlanFlow	Lexington SC	Lexington CL	13	---	---	---
2/09	6:16P	803-279-1168	Peak	N Allow	Lexington SC	Elizabeth NJ	17	---	---	---
2/09	6:42P	803-740-9020	Peak	PlanFlow	Lexington SC	Lexington CL	5	---	---	---
2/09	7:24P	770-490-7474	Peak	N Allow	Lexington SC	Atlanta NE GA	13	---	---	---
2/09	7:46P	803-740-9020	Peak	PlanFlow	Lexington SC	Lexington CL	3	---	---	---
2/09	7:52P	404-931-2373	Peak	PlanFlow	Lexington SC	Atlanta GA	2	---	---	---
2/09	8:03P	803-720-7121	Off-Peak	N Allow	Lexington SC	Columbia SC	1	---	---	---

verl onwireless

Invoice Number	Account Number	Date Due	Page

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Note	Usage Type	Origin	Destination	M/A	Airline Charge	Log/Gst/Other Chgs	Total
2/09	8:04P	678-733-0354	DN - Peak	NAT	Ledington SC	Bogardown GA	16	---	---	---
2/09	8:24P	603-822-8938	DN - Peak	N Attnr	Ledington SC	Columbia SC	5	---	---	---
2/09	8:27P	603-727-5546	DN - Peak	N Attnr	Ledington SC	Incroying CA	1	---	---	---

Record on Appeal 247

APP0249

Voice

Bids	Year	Bombert	Route	Usage Type	Origin/ation	Destination	Mile	Action Charges	Long Dist/ Other Chgs	Total
2710	6-03A	603-730-7121	Peak	W2M/Allow	Batesburg SC	Incarnating CL	3	---	---	---
2710	6-26A	678-763-0554	Peak	Plan/Allow	North Angel SC	Beggs/Adrian GA	11	---	---	---
2710	6-44A	404-628-6015	Peak	Plan/Allow	Grovetown GA	Atlanta GA	4	---	---	---
2710	6-50A	404-688-6016	Peak	Plan/Allow	Farmers GA	Incarnating CL	2	---	---	---
2710	6-53A	770-419-6505	Peak	Plan/Allow	Thomas GA	Atlanta NW GA	1	---	---	---
2710	6-54A	678-763-0554	Peak	Plan/Allow	Appling GA	Beggs/Adrian GA	8	---	---	---
2710	7-14A	803-730-7121	Peak	W2M/Allow	Oxley/Adrian GA	Incarnating CL	3	---	---	---
2710	7-22A	803-622-8968	Peak	W2M/Allow	White Plains GA	Incarnating CL	7	---	---	---
2710	8-33A	803-419-3860	Peak	Plan/Allow	Madison GA	Incarnating CL	1	---	---	---
2710	8-45A	484-201-2084	Peak	Plan/Allow	Madison GA	Incarnating CL	2	---	---	---
2710	8-00A	770-419-6505	Peak	Plan/Allow	Madison GA	Atlanta NW GA	4	---	---	---
2710	8-07A	770-419-6505	Peak	Plan/Allow	Madison GA	Atlanta NW GA	2	---	---	---
2710	8-08A	770-490-7474	Peak	W2M/Allow	Madison GA	Atlanta NE GA	2	---	---	---
2710	8-10A	770-929-4060	Peak	Plan/Allow	Madison GA	Coryville GA	6	---	---	---
2710	8-14A	770-493-7474	Peak	W2M/Allow	Madison GA	Atlanta NE GA	13	---	---	---
2710	8-27A	404-287-9058	Peak	Plan/Allow	Corryville GA	Atlanta GA	2	---	---	---
2710	8-29A	770-419-6505	Peak	Plan/Allow	Coryville GA	Atlanta NW GA	2	---	---	---
2710	8-32A	803-419-3860	Peak	Plan/Allow	Coryville GA	Columbia SC	3	---	---	---
2710	1-021A	706-741-6872	Peak	W2M/Allow	Atlanta GA	Thomaston GA	2	---	---	---
2710	11-00A	770-490-7474	Peak	W2M/Allow	Atlanta GA	Incarnating CL	1	---	---	---
2710	1E-42P	770-490-7474	Peak	MEM/Allow	Atlanta GA	Atlanta ME GA	4	---	---	---
2710	1-14P	803-730-7121	Peak	W2M/Allow	Atlanta GA	Columbia SC	2	---	---	---
2710	2-46P	404-273-1294	Peak	W2M/Allow	Atlanta GA	Atlanta GA	1	---	---	---
2710	2-46P	678-763-0554	Peak	Plan/Allow	Atlanta GA	Beggs/Adrian GA	4	---	---	---
2710	2-50P	770-490-7474	Peak	W2M/Allow	Atlanta GA	Atlanta NE GA	2	---	---	---
2710	2-57P	770-490-7474	Peak	W2M/Allow	Atlanta GA	Atlanta NE GA	11	---	---	---
2710	2-13P	000-000-0086	Peak	Plan/Allow, Call Wall	Atlanta GA	Volco Mall CL	3	---	---	---
2710	3-16P	803-622-8968	Peak	W2M/Allow	Atlanta GA	Columbia SC	1	---	---	---
2710	3-18P	770-672-9908	Peak	Plan/Allow	Atlanta GA	Incarnating CL	4	---	---	---
2710	3-23P	770-672-9908	Peak	Plan/Allow	Atlanta GA	Highway/Adrian GA	1	---	---	---
2710	3-24P	803-730-7121	Peak	W2M/Allow	Atlanta GA	Columbia SC	2	---	---	---
2710	3-26P	803-730-7121	Peak	W2M/Allow	Atlanta GA	Columbia SC	3	---	---	---
2710	3-30P	770-490-7474	Peak	W2M/Allow	Atlanta GA	Atlanta NE GA	1	---	---	---
2710	3-39P	603-622-8968	Peak	W2M/Allow	Atlanta GA	Columbia SC	1	---	---	---
2710	3-40P	000-000-0086	Peak	Plan/Allow, Call Wall	Atlanta GA	Volco Mall CL	2	---	---	---
2710	3-42P	484-201-2084	MEAX	Plan/Allow	Atlanta GA	Atlanta GA	2	---	---	---
2710	3-43P	603-622-8968	Peak	W2M/Allow	Atlanta GA	Columbia SC	6	---	---	---
2710	4-54P	803-479-2157	Peak	W2M/Allow	Atlanta GA	Columbia SC	1	---	---	---
2710	4-58P	803-622-8968	Peak	W2M/Allow	Atlanta GA	Columbia SC	7	---	---	---
2710	5-04P	803-479-2157	Peak	W2M/Allow, Call Wall	Atlanta GA	Incarnating CL	12	---	---	---
2710	5-24P	803-419-3860	Peak	Plan/Allow	Atlanta GA	Incarnating CL	9	---	---	---
2710	8-38P	803-479-2157	Peak	W2M/Allow	Atlanta GA	Columbia SC	28	---	---	---
2710	7-04P	803-730-7121	Peak	W2M/Allow, Call Wall	Atlanta GA	Incarnating CL	9	---	---	---
2710	7-10P	803-419-3860	Peak	Plan/Allow, Call Wall	Coryville GA	Incarnating CL	1	---	---	---
2710	7-11P	770-490-7474	Peak	MEM/Allow, Call Wall	Coryville GA	Incarnating CL	8	---	---	---

15233682	803-807-1879	02/28/95	20

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Plan	Usage Type	Origin Location	Destination	Rate	Air-Gen Charges	Long Dist/ Other Chgs	Total
2/10	7:16P	770-490-7474	Peak	N2MAYow	Covington GA	Atlanta NE GA	37	---	---	---
2/10	7:58P	803-413-1660	Peak	PlanAflow	White Plai GA	Columbia SC	1	---	---	---
2/10	7:59P	803-622-8089	Peak	N2MAYow	White Plai GA	Columbia SC	39	---	---	---
2/10	8:37P	803-413-5880	Peak	PlanAflow,CallWait	Apopka GA	Lawrence IL	15	---	---	---
2/10	8:52P	803-730-7121	Peak	N2MAYow	Augusta GA	Columbia SC	9	---	---	---
2/10	9:01P	803-730-7121	Off-Peak	N2MAYow	North Augu SC	Columbia SC	11	---	---	---
2/11	7:45A	404-272-7095	Peak	N2MAYow	Lexington SC	Atlanta GA	1	---	---	---
2/11	7:50A	404-272-7095	Peak	N2MAYow	Lexington SC	Lawrence IL	5	---	---	---
2/11	8:23A	803-380-0183	Peak	N2MAYow	Lexington SC	Columbia SC	3	---	---	---
2/11	8:44A	404-272-7254	Peak	N2MAYow	Lexington SC	Lawrence IL	2	---	---	---
2/11	9:18A	800-667-7345	Peak	PlanAflow	Lexington SC	Toll-Free CL	2	---	---	---
2/11	9:22A	800-967-8345	Peak	PlanAflow	Lexington SC	Toll-Free CL	11	---	---	---
2/11	9:38A	803-413-3880	Peak	PlanAflow	Lexington SC	Lawrence IL	1	---	---	---
2/11	9:36A	803-413-3880	Peak	PlanAflow	Lexington SC	Columbia SC	3	---	---	---
2/11	10:04A	803-622-8958	Peak	N2MAYow	Lexington SC	Columbia SC	1	---	---	---
2/11	12:06A	803-622-8958	Peak	N2MAYow	Lexington SC	Columbia SC	3	---	---	---
2/11	12:08A	803-730-7121	Peak	N2MAYow,CallWait	Lexington SC	Lawrence IL	2	---	---	---
2/11	10:10A	803-622-8958	Peak	N2MAYow	Lexington SC	Columbia SC	3	---	---	---
2/11	11:37A	803-730-7121	Peak	N2MAYow	Lexington SC	Lawrence IL	4	---	---	---
2/11	12:05P	770-490-7474	Peak	N2MAYow	Lexington SC	Atlanta NE GA	1	---	---	---
2/11	12:23P	803-730-7121	Peak	N2MAYow	Lexington SC	Columbia SC	5	---	---	---
2/11	1:44P	803-730-7121	Peak	N2MAYow	Lexington SC	Columbia SC	9	---	---	---
2/11	1:53P	803-771-8943	Peak	PlanAflow	Lexington SC	Columbia SC	8	---	---	---
2/11	2:04P	803-730-7121	Peak	N2MAYow	Lexington SC	Lawrence IL	1	---	---	---
2/11	2:07P	803-957-5592	Peak	PlanAflow	Lexington SC	Lexington SC	5	---	---	---
2/11	2:43P	770-715-4285	Peak	PlanAflow	Lexington SC	Atlanta Ga GA	52	---	---	---
2/11	2:50P	803-922-8958	Peak	N2MAYow	Lexington SC	Columbia SC	1	---	---	---
2/11	3:36P	803-951-9157	Peak	PlanAflow	Lexington SC	Lexington SC	8	---	---	---
2/11	3:44P	803-622-8958	Peak	N2MAYow,CallWait	Lexington SC	Lawrence IL	5	---	---	---
2/11	3:48P	803-730-7121	Peak	N2MAYow	Lexington SC	Columbia SC	7	---	---	---
2/11	4:04P	803-380-0183	Peak	N2MAYow	Lexington SC	Lawrence IL	2	---	---	---
2/11	4:03P	770-715-4285	Peak	PlanAflow	Lexington SC	Lawrence IL	13	---	---	---
2/11	4:08P	803-479-2707	Peak	N2MAYow	Lexington SC	Lawrence IL	12	---	---	---
2/11	5:09P	803-622-8958	Peak	N2MAYow	Lexington SC	Columbia SC	15	---	---	---
2/11	5:23P	803-479-2707	Peak	N2MAYow	Lexington SC	Columbia SC	2	---	---	---
2/11	5:26P	803-622-8958	Peak	N2MAYow	Lexington SC	Lawrence IL	4	---	---	---
2/11	5:38P	803-730-7121	Peak	N2MAYow	Lexington SC	Columbia SC	8	---	---	---
2/11	5:42P	803-413-3880	Peak	PlanAflow	Lexington SC	Columbia SC	1	---	---	---
2/11	5:42P	770-715-4285	Peak	PlanAflow	Lexington SC	Lawrence IL	40	---	---	---
2/11	7:25P	803-957-5592	Peak	PlanAflow	Lexington SC	Lexington SC	1	---	---	---
2/11	7:47P	803-959-4404	Peak	PlanAflow	Lexington SC	Lawrence IL	16	---	---	---
2/11	8:43P	803-877-8858	Peak	N2MAYow	Lexington SC	Columbia SC	7	---	---	---
2/11	9:19P	770-490-7474	Off-Peak	N2MAYow	Lexington SC	Lawrence IL	15	---	---	---
2/11	9:21P	803-413-3880	Off-Peak	N2MAYow	Lexington SC	Columbia SC	1	---	---	---
2/11	9:28P	803-972-8958	Off-Peak	N2MAYow	Lexington SC	Columbia SC	1	---	---	---

Volce, continued

Date	Time	Number	Facs	Usage Type	Origin/From	Destination	Mile	Airtime Charges	Long Dist/ Other Chgs	Total
2/11	8:23P	803-851-1357	Out-Peak	W2W	Lexington SC	Lexington SC	2	---	---	---
2/11	8:24P	803-413-3660	Out-Peak	W2W/CatWalk	Lexington SC	incoming CL	13	---	---	---
2/11	9:47P	803-622-8966	Out-Peak	W2W/Allow	Lexington SC	Columbia SC	39	---	---	---
2/12	8:16A	770-490-7474	Peak	W2W/Allow	Lexington SC	Atlanta NE GA	2	---	---	---
2/12	8:17A	770-490-7474	Peak	W2W/Allow/CatWalk	Lexington SC	incoming CL	6	---	---	---
2/12	8:20A	803-730-7121	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	3:48A	803-622-8960	Peak	W2W/Allow	Lexington SC	Columbia SC	12	---	---	---
2/12	10:01A	803-730-7121	Peak	W2W/Allow	Lexington SC	Columbia SC	3	---	---	---
2/12	10:07A	803-622-8966	Peak	W2W/Allow	Lexington SC	Columbia SC	8	---	---	---
2/12	10:16A	000-000-0000	Peak	Plan/Allow/CatWalk	Lexington SC	Voice Mail CL	3	---	---	---
2/12	10:29A	770-490-7474	Peak	W2W/Allow	Lexington SC	incoming CL	28	---	---	---
2/12	11:16A	686-232-2371	Peak	Plan/Allow	Lexington SC	incoming CL	9	---	---	---
2/12	11:26A	686-200-2971	Peak	Plan/Allow	Lexington SC	Toll-Free CL	2	---	---	---
2/12	11:26A	903-622-8960	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	11:24A	803-622-8966	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	11:35A	404-272-7066	Peak	W2W/Allow	Lexington SC	incoming CL	18	---	---	---
2/12	11:58A	803-622-8966	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	11:58A	803-667-3157	Peak	Plan/Allow	Lexington SC	Lexington SC	11	---	---	---
2/12	12:03P	404-272-7066	Peak	W2W/Allow/CatWalk	Lexington SC	incoming CL	2	---	---	---
2/12	12:12P	803-730-7121	Peak	W2W/Allow	Lexington SC	incoming CL	3	---	---	---
2/12	12:21P	803-730-7121	Peak	W2W/Allow	Lexington SC	incoming CL	1	---	---	---
2/12	12:26P	706-647-7236	Peak	Plan/Allow	Lexington SC	Thomaston GA	1	---	---	---
2/12	12:20P	706-711-6676	Peak	W2W/Allow	Lexington SC	Thomaston GA	28	---	---	---
2/12	12:56P	800-647-2461	Peak	Plan/Allow	Lexington SC	incoming CL	1	---	---	---
2/12	1:42P	803-622-8966	Peak	W2W/Allow	Lexington SC	Columbia SC	5	---	---	---
2/12	2:01P	803-567-6692	Peak	Plan/Allow	Lexington SC	incoming CL	3	---	---	---
2/12	2:19P	803-413-3660	Peak	Plan/Allow	Lexington SC	incoming CL	4	---	---	---
2/12	2:28P	803-413-3660	Peak	Plan/Allow	Lexington SC	Columbia SC	2	---	---	---
2/12	2:38P	803-730-7121	Peak	W2W/Allow	Lexington SC	Columbia SC	2	---	---	---
2/12	3:52P	803-622-8966	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	4:02P	770-490-7474	Peak	W2W/Allow	Lexington SC	Atlanta NE GA	1	---	---	---
2/12	4:14P	803-803-7030	Peak	Plan/Allow	Lexington SC	Lexington SC	1	---	---	---
2/12	4:30P	803-422-6143	Peak	W2W/Allow	Lexington SC	incoming CL	1	---	---	---
2/12	5:04P	770-490-7474	Peak	W2W/Allow	Lexington SC	incoming CL	6	---	---	---
2/12	5:07P	803-730-7121	Peak	W2W/Allow/CatWalk	Lexington SC	incoming CL	1	---	---	---
2/12	8:08P	770-490-7474	Peak	W2W/Allow	Lexington SC	incoming CL	27	---	---	---
2/12	8:34P	803-730-7121	Peak	W2W/Allow	Lexington SC	incoming CL	2	---	---	---
2/12	8:09P	803-603-6761	Peak	W2W/Allow	Lexington SC	Columbia SC	3	---	---	---
2/12	8:52P	803-987-6592	Peak	Plan/Allow	Lexington SC	Lexington SC	4	---	---	---
2/12	7:03P	603-622-8966	Peak	W2W/Allow	Lexington SC	incoming CL	8	---	---	---
2/12	8:21P	800-852-8843	Peak	Plan/Allow	Lexington SC	Toll-Free CL	18	---	---	---
2/12	8:05A	803-000-6761	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	8:15A	000-000-0000	Peak	Plan/Allow/CatWalk	Lexington SC	Voice Mail CL	1	---	---	---
2/12	8:17A	803-727-6648	Peak	W2W/Allow	Lexington SC	Columbia SC	1	---	---	---
2/12	8:21A	803-290-3384	Peak	Plan/Allow	Lexington SC	incoming CL	4	---	---	---

15771600 2168978 08/01 147472

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origin	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
2/13	10:15A	803-730-7121	Peak	N2MAllow	Lexington SC	Columbia SC	4	---	---	---
2/13	10:43A	404-201-2804	Peak	PlanAllow	Lexington SC	Incoring CL	5	---	---	---
2/13	12:35P	803-730-7121	Peak	N2MAllow	Lexington SC	Columbia SC	3	---	---	---
2/13	12:42P	803-413-2860	Peak	PlanAllow	Lexington SC	Columbia SC	0	---	---	---
2/13	12:57P	803-622-6968	Peak	N2MAllow	Lexington SC	Columbia SC	2	---	---	---
2/13	12:58P	803-957-8082	Peak	PlanAllow	Lexington SC	Lexington SC	4	---	---	---
2/13	1:01P	803-622-6968	Peak	N2MAllow,CallWait	Lexington SC	Incoring CL	8	---	---	---
2/13	1:03P	803-957-6682	Peak	PlanAllow	Lexington SC	Lexington SC	5	---	---	---
2/13	1:11P	803-730-7121	Peak	N2MAllow	Lexington SC	Columbia SC	1	---	---	---
2/13	1:12P	803-957-6582	Peak	PlanAllow	Lexington SC	Incoring CL	2	---	---	---
2/13	1:17P	770-480-7474	Peak	N2MAllow	Lexington SC	Atlanta NE GA	27	---	---	---
2/13	1:53P	803-957-6582	Peak	PlanAllow	Lexington SC	Lexington SC	1	---	---	---
2/13	1:53P	803-730-7121	Peak	N2MAllow	Lexington SC	Columbia SC	3	---	---	---
2/13	2:04P	678-427-6968	Peak	PlanAllow	Lexington SC	Atlanta GA	1	---	---	---
2/13	2:08P	404-454-7768	Peak	PlanAllow	Lexington SC	Atlanta GA	2	---	---	---
2/13	2:07P	000-000-0000	Peak	PlanAllow,CallWait	Lexington SC	Voice Mail CL	1	---	---	---
2/13	2:08P	803-645-6561	Peak	PlanAllow	Lexington SC	Columbia SC	2	---	---	---
2/13	2:10P	803-622-6968	Peak	N2MAllow	Lexington SC	Columbia SC	4	---	---	---
2/13	2:13P	404-454-7768	Peak	PlanAllow,CallWait	Lexington SC	Incoring CL	15	---	---	---
2/13	2:23P	803-422-6968	Peak	N2MAllow	Columbia SC	Columbia SC	2	---	---	---
2/13	2:23P	678-427-6968	Peak	PlanAllow,CallWait	Columbia SC	Incoring CL	12	---	---	---
2/13	2:41P	803-730-7121	Peak	N2MAllow	Columbia SC	Columbia SC	2	---	---	---
2/13	3:21P	770-480-7474	Peak	N2MAllow	Columbia SC	Atlanta NE GA	25	---	---	---
2/13	3:35P	803-730-7121	Peak	N2MAllow	Lexington SC	Columbia SC	9	---	---	---
2/13	3:50P	404-655-3720	Peak	PlanAllow	Lexington SC	Atlanta GA	1	---	---	---
2/13	4:17P	706-741-6878	Peak	N2MAllow	Lexington SC	Thomaston GA	2	---	---	---
2/13	4:21P	803-957-6582	Peak	PlanAllow	Lexington SC	Lexington SC	2	---	---	---
2/13	4:28P	706-741-6878	Peak	N2MAllow	Lexington SC	Thomaston GA	1	---	---	---
2/13	4:30P	706-647-7859	Peak	PlanAllow	Lexington SC	Thomaston GA	3	---	---	---
2/13	4:37P	404-272-7083	Peak	N2MAllow	Lexington SC	Atlanta GA	12	---	---	---
2/13	4:28P	803-413-0860	Peak	PlanAllow	Lexington SC	Columbia SC	2	---	---	---
2/13	4:38P	803-413-3860	Peak	PlanAllow	Lexington SC	Incoring CL	5	---	---	---
2/14	6:30A	803-957-6563	Off-Peak	NSW	Lexington SC	Lexington SC	5	---	---	---
2/14	8:42A	803-251-4195	Off-Peak	N2MAllow	Lexington SC	Columbia SC	1	---	---	---
2/14	9:22A	417-690-5790	Off-Peak	NSW	Lexington SC	Winterpark FL	2	---	---	---
2/14	9:29A	803-957-7760	Off-Peak	NSW	Lexington SC	Lexington SC	5	---	---	---
2/14	10:02A	477-620-6730	Off-Peak	NSW	Lexington SC	Incoring CL	38	---	---	---
2/14	10:57A	000-000-0000	Off-Peak	NSW,CallWait	Lexington SC	Voice Mail CL	1	---	---	---
2/14	12:32P	803-730-7121	Off-Peak	N2MAllow	Lexington SC	Incoring CL	3	---	---	---
2/14	1:55P	803-730-7121	Off-Peak	N2MAllow	Lexington SC	Incoring CL	4	---	---	---
2/14	1:13P	803-730-7121	Off-Peak	N2MAllow	Lexington SC	Incoring CL	2	---	---	---
2/14	1:42P	803-730-7121	Off-Peak	N2MAllow	Lexington SC	Columbia SC	3	---	---	---
2/14	1:54P	770-480-7474	Off-Peak	N2MAllow	Lexington SC	Incoring CL	14	---	---	---
2/14	2:55P	803-622-6968	Off-Peak	N2MAllow	Lexington SC	Columbia SC	7	---	---	---
2/14	6:23P	803-622-6968	Off-Peak	N2MAllow	Lexington SC	Columbia SC	1	---	---	---

207115	803-807-1879	2/15/09	8/12/09	3

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Originating	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
2/14	6:02P	803-822-8955	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	8	---	---	---
2/15	10:51A	803-857-5532	Off-Peak	N2MAYLOW	Lexington SC	Lexington SC	2	---	---	---
2/15	11:11A	803-834-1856	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	1	---	---	---
2/15	11:12A	803-857-5532	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	3	---	---	---
2/15	11:53A	404-272-7035	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	7	---	---	---
2/15	12:05P	321-255-1515	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	1	---	---	---
2/15	12:11P	803-803-8761	Off-Peak	N2MAYLOW	Lexington SC	Columbia SC	2	---	---	---
2/15	12:23P	803-857-5532	Off-Peak	N2MAYLOW	Lexington SC	Lexington SC	2	---	---	---
2/15	12:27P	803-413-9560	Off-Peak	N2MAYLOW	Lexington SC	Columbia SC	1	---	---	---
2/15	2:18P	803-413-9560	Off-Peak	N2MAYLOW	Lexington SC	Columbia SC	15	---	---	---
2/15	8:00P	803-822-8955	Off-Peak	N2MAYLOW	Lexington SC	Columbia SC	5	---	---	---
2/15	9:06P	000-000-0086	Off-Peak	N2MAYLOW	Lexington SC	Verizon CL	1	---	---	---
2/15	9:10P	803-822-8955	Off-Peak	N2MAYLOW	Lexington SC	Lexington CL	4	---	---	---
2/15	7:57A	803-822-8955	Peak	N2MAYLOW	Lexington SC	Lexington CL	4	---	---	---
2/15	8:07A	803-803-8761	Peak	N2MAYLOW	Lexington SC	Columbia SC	2	---	---	---
2/15	8:23A	803-858-8038	Peak	PlanFlow	Lexington SC	Lexington CL	4	---	---	---
2/15	9:14A	803-785-7387	Peak	PlanFlow	Lexington SC	Lexington CL	5	---	---	---
2/15	9:47A	770-490-7474	Peak	N2MAYLOW	Lexington SC	Lexington CL	6	---	---	---
2/15	8:59A	803-787-2647	Peak	N2MAYLOW	West Columbia SC	Lexington CL	1	---	---	---
2/15	12:00P	803-730-7121	Peak	N2MAYLOW	Lexington SC	Columbia SC	2	---	---	---
2/15	12:11P	803-413-9560	Peak	PlanFlow, CallWait	Lexington SC	Lexington CL	3	---	---	---
2/15	12:27P	803-730-7121	Peak	N2MAYLOW	Lexington SC	Columbia SC	4	---	---	---
2/15	1:00P	803-822-8955	Peak	N2MAYLOW	Lexington SC	Columbia SC	1	---	---	---
2/15	1:00P	803-822-8955	Peak	N2MAYLOW	Lexington SC	Lexington CL	2	---	---	---
2/15	1:23P	803-822-8955	Peak	N2MAYLOW	Lexington SC	Lexington CL	2	---	---	---
2/15	1:33P	803-822-8955	Peak	N2MAYLOW	Lexington SC	Lexington CL	3	---	---	---
2/15	1:43P	803-470-2307	Peak	N2MAYLOW	Lexington SC	Lexington CL	12	---	---	---
2/15	2:00P	770-490-7474	Peak	N2MAYLOW	Lexington SC	Atlanta NE GA	1	---	---	---
2/15	2:23P	770-490-7474	Peak	N2MAYLOW	Lexington SC	Lexington CL	13	---	---	---
2/15	2:50P	770-490-7474	Peak	N2MAYLOW	Lexington SC	Atlanta NE GA	32	---	---	---
2/15	3:27P	803-957-7750	Peak	PlanFlow, CallWait	Lexington SC	Lexington CL	1	---	---	---
2/15	3:28P	803-803-8761	Peak	N2MAYLOW	Lexington SC	Columbia SC	2	---	---	---
2/15	6:10P	803-858-8038	Peak	PlanFlow	Lexington SC	Lexington SC	1	---	---	---
2/15	6:13P	803-857-5532	Peak	PlanFlow	Lexington SC	Lexington SC	3	---	---	---
2/15	6:10P	803-785-7387	Peak	PlanFlow	Lexington SC	Lexington CL	2	---	---	---
2/15	6:22P	803-730-7121	Peak	N2MAYLOW	Lexington SC	Columbia SC	2	---	---	---
2/15	7:40P	770-490-7474	Peak	N2MAYLOW	Lexington SC	Lexington CL	23	---	---	---
2/15	8:20P	803-730-7121	Peak	N2MAYLOW	Lexington SC	Lexington CL	2	---	---	---
2/15	8:26P	678-753-0554	Peak	PlanFlow	Lexington SC	Bogertown GA	8	---	---	---
2/15	8:34P	706-288-2348	Peak	PlanFlow	Lexington SC	Tyrone GA	5	---	---	---
2/17	6:51A	803-803-8201	Peak	N2MAYLOW	Lexington SC	Columbia SC	20	---	---	---
2/17	8:23A	803-730-7121	Peak	N2MAYLOW	Lexington SC	Lexington CL	1	---	---	---
2/17	10:01A	803-779-2300	Peak	PlanFlow	Lexington SC	Lexington CL	66	---	---	---
2/17	11:29A	803-730-7121	Peak	N2MAYLOW	Lexington SC	Columbia SC	1	---	---	---
2/17	11:30A	803-730-7121	Peak	N2MAYLOW	Lexington SC	Lexington CL	3	---	---	---

11/11/2011 11:44A 803-778-2300 Peak PlanView Lexington SC Incoming CL 8 --- --- ---

Detail for Cicero Lucas: 803-807-1879

Voice, continued

Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
2/17	11:44A	803-778-2300	Peak	PlanView	Lexington SC	Incoming CL	8	---	---	---
2/17	12:03P	803-730-7121	Peak	PlanView	Lexington SC	Incoming CL	9	---	---	---
2/17	12:17P	000-000-0000	Peak	PlanView,Delaware	Lexington SC	Voice Mail CL	5	---	---	---
2/17	12:48P	000-413-0660	Peak	PlanView	Lexington SC	Incoming CL	16	---	---	---
2/17	1:13P	803-730-7121	Peak	PlanView	Lexington SC	Incoming CL	2	---	---	---
2/17	1:14P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	1	---	---	---
2/17	1:46P	803-596-8400	Peak	PlanView	Lexington SC	Lexington SC	3	---	---	---
2/17	1:51P	803-730-7121	Peak	PlanView	Lexington SC	Incoming CL	1	---	---	---
2/17	1:52P	803-895-8400	Peak	PlanView	Lexington SC	Lexington SC	1	---	---	---
2/17	2:10P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/17	2:16P	803-595-8400	Peak	PlanView	Lexington SC	Lexington SC	5	---	---	---
2/17	2:24P	803-413-0660	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/17	3:05P	770-490-7474	Peak	PlanView	Lexington SC	Atlanta NE GA	32	---	---	---
2/17	3:28P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	4	---	---	---
2/17	3:45P	803-479-2307	Peak	PlanView	Lexington SC	Incoming CL	15	---	---	---
2/17	4:11P	803-413-0660	Peak	PlanView	Lexington SC	Incoming CL	4	---	---	---
2/17	4:14P	803-895-8400	Peak	PlanView	Lexington SC	Lexington SC	3	---	---	---
2/17	4:46P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/17	5:07P	705-285-2048	Peak	PlanView	Lexington SC	Tyngs GA	7	---	---	---
2/17	6:18P	803-822-5568	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/17	6:18P	803-895-8400	Peak	PlanView	Lexington SC	Lexington SC	1	---	---	---
2/17	6:31P	803-413-0660	Off-Peak	PlanView	Lexington SC	Columbia SC	7	---	---	---
2/18	7:31A	705-285-2048	Peak	PlanView	Lexington SC	Tyngs GA	2	---	---	---
2/18	7:58A	803-730-7121	Peak	PlanView	Lexington SC	Incoming CL	2	---	---	---
2/18	7:57A	404-272-7058	Peak	PlanView	Lexington SC	Atlanta GA	3	---	---	---
2/18	8:00A	770-490-7474	Peak	PlanView	Lexington SC	Atlanta NE GA	22	---	---	---
2/18	8:32A	803-413-0660	Peak	PlanView	Lexington SC	Columbia SC	8	---	---	---
2/18	9:01A	770-490-7474	Peak	PlanView	Lexington SC	Incoming CL	2	---	---	---
2/18	11:33A	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	12:04P	770-716-4258	Peak	PlanView	Lexington SC	Incoming CL	3	---	---	---
2/18	12:18P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	12:25P	803-998-8400	Peak	PlanView	Lexington SC	Lexington SC	2	---	---	---
2/18	1:04P	803-822-5568	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	1:54P	770-490-7474	Peak	PlanView	Lexington SC	Incoming CL	2	---	---	---
2/18	2:40P	803-730-7121	Peak	PlanView	Lexington SC	Incoming CL	2	---	---	---
2/18	3:04P	404-687-6548	Peak	PlanView	Lexington SC	Incoming CL	17	---	---	---
2/18	6:17P	889-624-2323	Peak	PlanView	Lexington SC	Toll-Free CL	2	---	---	---
2/18	6:43P	803-479-2307	Peak	PlanView	Lexington SC	Incoming CL	16	---	---	---
2/18	6:54P	803-730-7121	Peak	PlanView	Lexington SC	Columbia SC	1	---	---	---
2/18	6:59P	404-272-7058	Peak	PlanView	Lexington SC	Atlanta GA	3	---	---	---
2/18	8:04P	803-522-5568	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	8:40P	803-822-5568	Peak	PlanView	Lexington SC	Incoming CL	1	---	---	---
2/18	8:11P	803-822-5568	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	8:18P	803-822-5568	Peak	PlanView	Lexington SC	Columbia SC	2	---	---	---
2/18	8:31A	803-822-5568	Peak	PlanView	Lexington SC	Incoming CL	3	---	---	---

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

TEAM IA, INC.,)
Plaintiff,)

Case No. 2009-CP-32-01078

v.)
CICERO LUCAS,)
GEORGE LAWSON, IV,)
AND 5 POINT SOLUTIONS, LLC,)
Defendants.)

**DEFENDANTS' SUPPLEMENTAL
ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES
TO DEFENDANTS**

TO: S. CLAY KEIM, ESQUIRE ATTORNEY FOR PLAINTIFF AND THIRD-
PARTY DEFENDANT TEAM IA:

Defendants hereby supplement their answers to Plaintiff's First Set of
Interrogatories to Defendants as follows:

Interrogatory #4

4. Identify all customers, prospective customers, or vendors of Plaintiff with whom you have solicited any business other than on behalf of Plaintiff. For each, state the dates you solicited the business, the specific business solicited, the method of solicitation, and the response from the customer, prospective customer, or vendor.

ANSWER: Defendant is discussing potential business with Fulton, DeKalb, and Fayette Counties, all other business activities of 5 Point solutions are with organizations that are neither customers, prospective customers, nor vendors of Team IA. All contact has been by either telephone or in person.

SUPPLEMENTAL ANSWER: Brent Yarborough asked Ro Lucas to contact all of his customers and let them know he was leaving Team IA. Over the two weeks period following his departure, Ro Lucas believes he contacted every Team IA customer he had any relationship with, both personally and professionally, and informed them of his departure. No business was solicited by Lucas during these phone calls. Subsequent to those calls, Lucas and 5 Point Solutions was contacted by DeKalb Records Court to take over a Team IA Maintenance agreement, in which the DeKalb Records Court was told that they should make every effort

to renew their agreement with Team IA. 5 Point Solutions was also asked to write interfaces from Team IA to other systems in the department. 5 Point Solutions has declined to perform that business as well.

On or around April 21, 2009, Elaine Johnson Clerk of Superior Court for Augusta Richmond County contacted Ro Lucas. None of the Defendants have been contracted to do any work for her.

Defendants are working with the following vendors of Team IA: Rob Motley at Insurance Office of America, Hal Gurrard at State Farm and ADP.

SECOND SUPPLEMENTAL ANSWER: None

Interrogatory #13

13. Identify any and all Team IA customers or prospective customers which you contacted and told that any of Plaintiff's employees were leaving Plaintiff prior to your departure from Team IA. For each Team IA customer or prospective customer, state the date of the applicable contact described herein, the method of contact (e.g., via telephone, email, in person), and the representative of the customer or prospective customer with whom Defendant 5 Point spoke or otherwise communicated.

ANSWER: Mr. Lucas contacted Shelia Studdard, a personal friend and customer of Team IA, the morning of February 3, 2009 and told Ms. Studdard he was resigning from Team IA that day. No other information was given to Ms. Studdard.

SUPPLEMENTAL RESPONSE: None.

Interrogatory #14

14. Identify any and all Team IA customers or prospective customers which you contacted and told that an employee of Team IA had left Team IA subsequent to his or her departure from Team IA. For each Team A customer or prospective customer, state the date of the applicable contact described herein, the method of contact (e.g., via telephone, email, in person), and the representative of the customer or prospective customer with whom Defendant 5 Point spoke or otherwise communicated.

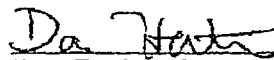
ANSWER: Mr. Lucas has contacted all of his personal customers that he worked with while at Team IA with the exception of Grace Ruane. Mr. Lucas has not contacted any Team IA customers that were not his accounts. All contacts were made via phone calls subsequent to Mr. Lucas' resignation but Mr. Lucas cannot recall the dates.

SUPPLEMENTAL RESPONSE: Per Brent Yarborough's request, following his departure from Team IA Ro Lucas believes he contacted

every Team IA customer that he had ongoing business with at the time of his departure from Team IA. Lucas does not recall which customers were contacted in what order and on which particular day, but Lucas believes that all of his customers had been contacted and informed of his departure within the first two weeks following his departure from Team IA. These contacts were all made by telephone.

SECOND SUPPLEMENTAL RESPONSE: In the two weeks following his departure from Team IA, Lucas believes he contacted all of his personal customers with the exception of Grace Ruane and informed them he had left Team IA. Team IA had requested Lucas make this contact and Team IA is certainly aware of the identity of Lucas' personal customers. All persons Lucas contacted by telephone to inform of his departure were: Debra Deberry, Rick Setser, Joy Walker, Jody Moss, Kathy Trost, Cindy Mason, Cathelene Robinson, Sheila Studdard, Patty Baker, Frank Smith, and Rob Motley.

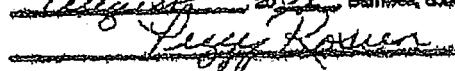
Additionally, at an April 21, 2009 conference Mr. Lucas ran into Elaine Johnson and told her in person he had left Team IA.


Terry B. Richardson, Jr.
Daniel S. Haliwanger
RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC
1730 Jackson Street
Post Office Box 1368
Barnwell, South Carolina 29812
Telephone: (803) 541-7850
Fax: (803) 541-9625

ATTORNEYS FOR DEFENDANTS

Barnwell, SC
August 28, 2009

CERTIFICATE OF SERVICE
undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on the 28th day of August, 2009. Barnwell, S.C.



Record on Appeal 257

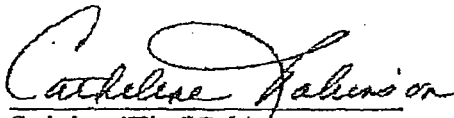
APP0259

EXHIBIT D

STATE OF GEORGIA
MICROFILM LIAISON APPOINTMENT FORM

COUNTY: Fulton

Please find listed below the contact information for the vendor we have designated as our Microfilm Liaison, charged with the preparation and delivery of security microfilm pursuant to the standards and directions as mandated by the Georgia Department of Archives and History.


Cathelene "Tina" Robinson

2/10/2009

Clerk of Superior Court

Date

Designated Microfilm Liaison

5 Point Solutions, LLC.
Mr. Ro Lucas
P.O. Box 498
Lexington, SC 29071-0498

rlucas@my5pointsolutions.com
803-399-2065 (tel)
803-399-2065 (fax)

Record on Appeal 259

APP0261

EXHIBIT E

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3112
Invoice Date: 5/13/2009
Due Date: 6/12/2009
Project:
P.O. Number:

Bill To:
GSCCCA

Date	Description	Amount
5/11/2009	5 Point Solutions Fee Out-of-state sale, exempt from sales tax	296,453.25 0.00
		Total \$296,453.25
		Payments/Credits \$-296,453.25
		Balance Due \$0.00

Record on Appeal 261

APP0263

Invoice

Invoice #: 3116
Invoice Date: 6/26/2009
Due Date: 7/26/2009
Project:
P.O. Number:

Date	Description	Amount
6/28/2009	5 Point Solutions Fee Out-of-state sale, exempt from sales tax	168,213.15 0.00
Total		\$168,213.15
Payments/Credits		\$-168,213.15
Balance Due		\$0.00

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3118
Invoice Date: 7/18/2009
Due Date: 8/17/2009
Project:
P.O. Number:

Bill To:
GSCCA

Date	Description	Amount
7/18/2009	5 Point Solutions Fee Out-of-state sale, exempt from sales tax	148,303.35 0.00
Total		\$148,303.35
Payments/Credits		\$-148,303.35
Balance Due		\$0.00

Record on Appeal 263

APP0265

EXHIBIT F

5 Point Solutions

STATEMENT OF WORK FOR

Sheila Studdard
Fayette County
Clerk of Superior Court

NOTE Hardcopy Records/Document Conversion
Services

WRITTEN BY: Cicero Lucas

DATE: March 2, 2009

Record on Appeal 265

APP0267

FORWARD and DISCLOSURE

5 Point Solutions is very proud to present this Statement of Work for Scanning Services and Microfilm Creation for Civil case files. Approximately 800,000 case files will be imaged, Indexed and QC'd. The case files will then be put on 16mm microfilm and DVD's.

The following statement of work and service specifications are based on information provided by the county as well as a review of documents in person. Assumptions by 5 Point Solutions have been included within the specification requirements.

5 Point Solutions is a private, employee-owned company. Its Imaging Systems, Services and Products solutions are focused toward government agencies – federal, state, county and municipalities.

EXECUTIVE SUMMARY

Fayette County is contracting with 5 Point Solutions to perform conversion/indexing of hardcopy case filings to TIFF, Group 4 digital image files. The digital image files will be burnt onto DVD-R media. They will then be archived onto 16mm microfilm for disaster-recovery purposes.

5 Point Solutions will design the file structure under a TIFF file hierarchy model for the indexing solution (herein referred to as indexing). Each DVD platter will contain at approximately 90,000 digital image files, indexed by case number (No partial files, only complete case folder pages will be included on DVD and microfilm).

Trained personnel will perform the conversion service on-site exceeding expectations for Fayette County. Conversion services personnel will closely interface with Fayette County's designated manager throughout this project. Close communications will improve the quality of the results as well as keeping key issues always prevalent for these types of conversion projects at hand.

5 Point Solutions personnel will inventory the documents. An activity log will maintain the status of every case folder.

Document scans will be at 200dpi, which is the ideal resolution level. Lower levels of resolution capture impacts the quality results of disaster recovery microfilm media.

The conversion process requires documents to be prepared prior to conversion. It is typical for civil and criminal court folders to contain staples, clips, rubber bands etc, 5 Point Solutions personnel will make sure that all staples, clips, rubber bands are removed prior to scanning.

The conversion process for court-related documents entails managing diverse document paper widths and lengths – typically letter and legal-size. The paper stock will also be somewhat varied by standard weight and onion-skin media. 5 Point Solutions will manage all of the types of documents and further enhance the quality of the resulting images, by insuring proper alignment, highest contrast, and sharpest detail, without unwanted marks/lines.

Once converted, the resulting digital image files will be identified (indexed) by the case number. Additionally, the DVD-R platter will be labeled by the range of case folder numbers (sequential order).

Finally, 5 Point Solutions will be providing 2 Silver original copies of 16mm microfilm. One original roll will be sent to Georgia Archives, and one will be provided to Fayette County.

PROJECT SPECIFICATIONS—DOCUMENT CONVERSION

CONVERSION PROJECT

There will be one scanner operator and four preparatory staff that will manage the case folders. A project Manager will also be assigned to the project throughout the entire process.

DOCUMENT CONVERSION SYSTEM

5 Point Solutions and its records conversion system will perform the document conversion using the following configuration of systems, applications and services as prescribed in the following sections of the report. The 5 Point Solutions Document Conversion System will consist of:

- 1 Kodak 800 series high speed scanner for legal/letter-sized documents
- Client Workstation, Microsoft Windows Professional XP.

1

BACKFILE DOCUMENT SPECIFICATIONS

Document preparation is one of the most labor-intensive functions of the imaging conversion process. We have also reviewed the documents and the following are the estimates that were used to complete this Report:

- 100% B/W paper-based documents
- Letter & Legal Sized Documents, up to 8.5"x 14"
- Indexing schemas labeled on folder – case number

DOCUMENT PREPARATIONS

Preparation labor will be required for this project

- RECEIVE DOCUMENTS IN DESIGNATED MANNER BY FAYETTE COUNTY FOR CONVERSION PROCESS, ALL ITEMS ARE LOGGED.
- VERIFY DELIVERABLES WITH FAYETTE COUNTY STAFF OF THE BACKFILE DOCUMENTS TO BE CONVERTED TO DIGITAL FORMAT.
- REPAIR TORN PAGES AND REMOVE STAPLES.
- SEPARATE PAGES FOR PROPER SCANNER FEED.
- CONDITION OF DOCUMENTS SHOULD BE GOOD, SOME FOLDS. FOLDED DOCUMENTS WILL BE INSERTED INTO THE SCANNER'S AUTO FEED SECTION BY HAND.

DOCUMENT SCANNING/CONVERSION

Once prepared, the documents are loaded onto the automatic document feeder (ADF) device of the scanner. The scanner will then robotically manage the process, checking for potential double-feed documents and skewed images.

- LEGAL/LETTER-SIZED DOCUMENT SCANNING WILL BE UP TO 200dpi – RESOLUTION. GENERATING APPROXIMATELY 50KB-TIFF, GROUP IV IMAGE FILES.
- SCANNING PROCESS AND SYSTEMS CONFORMS TO ANSI/AIIM MS44-1988.
- SCANNERS WILL APPLY THE FOLLOWING ENHANCEMENT SPECIFICATIONS:
 - White Point Setting – maximum density aim point (255),
 - Black Point Setting – minimum density aim point (1),
 - Noise Level Setting – .01 High x .01 Wide at 100%, and
 - Scanners will scan for maximum document-size capture and notations.
- SCANNING DEVICES AND EQUIPMENT WILL BE MONITORED FOR QUALITY CONTROL PURPOSES, INSURING CONSISTENT SCAN-TO-SCAN IMAGES. SCANNER WILL BE CHECKED FOR CONSISTENCY EVERY FOUR HOURS DURING OPERATIONAL TIMES. 5 Point Solutions UTILIZES AIIM STANDARD RESOLUTION TARGET AIIM X441
- 100% VERIFICATION OF EACH IMAGE CONVERTED BY 5 POINT SOLUTIONS PERSONNEL.
- AFTER SCANNING, DOCUMENTS ARE RE-ORGANIZED AND PLACED BACK INTO ORIGINAL FOLDER.

INDEXING

The electronic files generated from scanning will be tagged with the case number that will allow a User to search the record by first access the Indexing Files by the folder's case number.

- RECORDS -- MANUAL INDEXING SCHEMA USING NUMERIC CHARACTERS KEYSTROKED:
 - FOLDER IDENTIFIER NUMBER (CASE NUMBER) – UP TO 12 CHARACTERS
- 1 FIELD INDEXING SCHEMA.
- INDEXING VERIFIED.

FILE STORAGE AND INSTALLATION

Once the electronic files are indexed, the records are transferred onto DVD-R media for permanent storage.

SECURITY ASSURANCE

- MAINTENANCE LOG AND USER-ENTRY LOGS WILL BE KEPT FOR AUDITING PURPOSES FOR FAYETTE COUNTY.
- THE HARD DRIVE MEMORY, CD WORMS AND BACK UP TAPE WILL BE ERASED OR DESTROYED OF ALL INFORMATION UPON COMPLETION OF THE BACKFILE CONVERSION FOR FAYETTE COUNTY.
- ANY AND ALL DATA STORED OR TEMPORALY RESIDENT ON 5 POINT SOLUTIONS SERVERS OR DATA STORAGE FACILITIES REPRESENTING THE MATERIALS MAINTAINED IN FAYETTE COUNTY CLERK OF SUPERIOR COURT FILES IS THE EXCLUSIVE PROPERTY OF THE FAYETTE COUNTY CLERK OF SUPERIOR COURT AND IS ONLY IN THE POSSESSION OF 5 POINT SOLUTIONS FOR THE PURPOSES OF THESE MICROFILM SERVICES. THERE SHALL BE NO DISSEMINATION OF SAID DATA TO ANY THIRD PARTIES WITHOUT THE EXPRESS, WRITTEN PERMISSION OF THE FAYETTE COULTY CLERK OF SUPERIOR COURT.
- THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA, U.S.A. ALL CLAIMS, DISPUTES AND OTHER MATTERS IN QUESTION BETWEEN FAYETTE COUNTY AND 5 POINT SOLUTIONS ARISING OUT OF, OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE DECIDED IN THE COURT OF JURISDICTION OF THE FAYETTE COUNTY CLERK OF SUPERIOR COURT.

QUALITY ASSURANCE AND QUALITY CONTROL PROCESS

- 5 POINT SOLUTIONS WILL PROVIDE 100% VERIFICATION OF IMAGE CONVERSION DURING THE SCANNING PROCESS.
- 5 POINT SOLUTIONS WILL CHECK FOR SCAN-TO-SCAN CONSISTENCY EVERY FOUR HOURS OF OPERATION.
- TEMPORARY STORAGE WILL HAVE REDUNDACY & BATTERY BACK-UP TO INSURE DATA INTEGRITY AND THE HIGHEST QUALITY RESULTS IN DATA CONVERSION
- DOCUMENT CONVERSION IS PROCESSED AT 200dpi.
- EVERY SCANNED IMAGE IS EVALUATED AND CONVERTED TO THE MAXIMUM BLACK AND WHITE POINTS, WITH REGARDS TO DENSITY AIMPOINTS.

- EXCESSIVE NOISE LEVEL REMOVED FROM EACH IMAGE AT 100% SCANNED AREA.
- DVD-R PLATTERS – LONG TERM ARCHIVING MEDIA (15 + YEARS) WITH JEWEL CASE
- 5 Point Solutions GROUP CERTIFICATION OF PROCESSING SYSTEMS ADHERES TO:
 - ANSI/AIIMS MS44-1988 NATIONAL STANDARD FOR INFORMATION AND IMAGE MANAGEMENT SYSTEMS

Timeline

Start of Project	Day 1
Conduct Audit on Inventory of Documents	Day 2
Remove folders from holding area for daily conversion	Day 3
Prep work Commences	Day 3
Scanning Begins	Day 5
QC Review of images begins	Day 5
Process continues for approximately 35 business days	Day 40
16mm Microfilm Creation Begins	Day 41
16mm Microfilm Creation Ends (Approx. 800K images)	Day 45

* Digital images will be provided to the county on an ongoing basis

PROJECT COST PLAN

PRICING SCHEDULE

The following price plan schedule is:

Estimated volumes have been utilized to achieve the "Actual Charge Per Image" Rate. The stated rate per image will remain fixed, albeit any various to the estimated volume. An image is equivalent to one side of the page.

	<u>UNIT COST</u>	<u>QUANTITY</u>	<u>TOTAL</u>
CONVERSION OF DOCUMENTS TO 200dpi DIGITAL FORMAT	\$ 0.228	800,000	\$182,400
INDEXING OF CIVIL FILES - UP TO 12 CHARACTERS	\$ N/C	40,000	\$ N/C
IMAGES BURNT ONTO DVD	\$ N/C	80	\$ N/C
Microfilm Creation	\$ 0.03	800,000	\$24,000
ESTIMATED PROJECT COSTS @ 800,000 IMAGES:			\$206,400
ACTUAL CHARGE PER IMAGE:			\$.258

5 Point Solutions will not proceed beyond \$150,000 (Approximately 625,000 images) without first receiving written authorization from the Fayette County Clerk of Superior Court to proceed. If the Clerk decides to delay the project until additional funds are available, the final billing will be adjusted to reflect the actual work completed.

QUOTATION VALID FOR 90 DAYS

TOTAL IMAGE COUNT WILL BE PROVIDED EACH WEEK, INVOICE BASED ON "ACTUAL CHARGE PER IMAGE" RATE TIMES THE TOTAL IMAGE COUNT

ONE-YEAR WARRANTY FOR ALL SERVICES RENDERED

Payment Terms:

Due upon execution of this document, \$75,000

*Services will be billed monthly at the rate of .13 cents per image, (\$104,000). Net 30 days from invoice.

Balance of \$27,400 will be due upon project completion and final delivery of microfilm

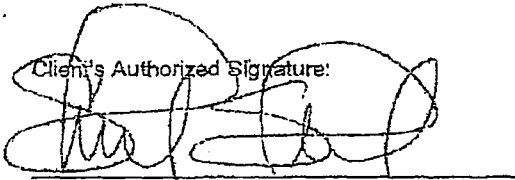
* Digital images will be provided to the county on an ongoing basis. As the work is being completed.

The undersigned hereby agree that the signatures below are fully authorized to bind the respective parties to this Agreement. Further, the parties acknowledge that no other action, consent or approval by the respective parties is necessary to enter this Agreement as a binding and valid agreement.

Client:

Fayette County Clerk of Superior Court

Client's Authorized Signature:



Print Name:

Sheila Studdard

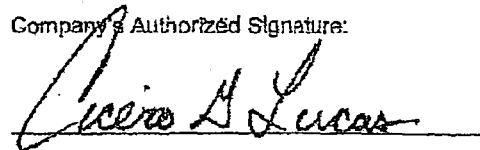
Date:

3/12/2009

Company:

5 Point Solutions

Company's Authorized Signature:



Print Name:

CICERO LUCAS

Date:

3/12/09

Addendum to Statement of Work agreed to by 5 Point Solutions

Additional Fayette Requirements agreed to by 5 point solutions:

- It is not industry standard practice to do page count verification. It can be done but would be costly. If Fayette County wishes, existing staff could count pages and then have the do a random sample audit check of the DVDs and/or microfilm to verify that all of the pages have been scanned. The Fayette County Clerk agreed to consider this approach.
- The 100% QA is a 100% check of all the images that were scanned. The QA operator will check to make sure all pages scanned are not skewed, cropped, crumpled, too dark/light, blank pages are deleted, pages marked as blank are actually blank.
- 5 Point Solutions will be using special archival tape to "repair" torn documents. This tape is expensive tape specially designed for archival purposes. It is not "scotch tape". If Fayette wishes, we can photocopy torn pages using Fayette's photocopier instead of repairing. But, the photocopier must be easily accessible (located in room with doc prep), and the count of torn pages must not be excessive (< 5%).
- The One Year Warranty covers all services for this contract but any request must be reasonable. We don't want the Clerk to expect us to pack up equipment and come on-site to re-scan 10 pages. We will fix any issues. Fayette County Clerk agreed to scan and email pages to be fixed.

EXHIBIT G

Record on Appeal 275

APP0277

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3109
Invoice Date: 3/10/2009
Due Date: 3/10/2009
Project:
P.O. Number:

Bill To:
Fayette County Clerk of Superior Court
Shelia Studdard
PO Box 130
Fayetteville, Ga 3000214

Date	Description	Amount
3/10/2009	Initial Deposit Due Upon Execution of the Statement of Work for Document Conversion Services - Civil Case Files	75,000.00
Total		\$75,000.00
Payments/Credits		\$-75,000.00
Balance Due		\$0.00

Record on Appeal 276

APP0278

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3113
Invoice Date: 8/1/2009
Due Date: 6/1/2009
Project:
P.O. Number:

Bill To:
Fayette County Clerk of Superior Court
Sheila Studdard
PO Box 130
Fayetteville, Ga 3000214

Date	Description	Amount
8/1/2009	Fayette County Clerk of Superior Court - Civil Case Files Scanning Project - Progress Billing	2,500.00
Total		\$2,500.00
Payments/Credits		\$0.00
Balance Due		\$2,500.00

Record on Appeal 277

APP0279

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3114
Invoice Date: 6/15/2009
Due Date: 6/30/2009
Project:
P.O. Number:

Bill To:
Fayette County Clerk of Superior Court
Shelia Studdard
PO Box 130
Fayetteville, Ga 3000214

Date	Description	Amount
6/15/2009	Fayette County Civil case files Microfilm Creation - Progress Billing through June 9, 2009	2,500.00
Total		\$2,500.00
Payments/Credits		\$0.00
Balance Due		\$2,500.00

Record on Appeal 278

APP0280

5 POINT SOLUTIONS
PO Box 498
Lexington, SC 29071

Invoice

Invoice #: 3115
Invoice Date: 6/22/2009
Due Date: 7/7/2009
Project:
P.O. Number:

Bill To:
Fayette County Clerk of Superior Court
Sheila Studdard
PO Box 130
Fayetteville, Ga 3000214

Date	Description	Amount
6/22/2009	Fayette County Clerk of Superior Court - Civil Case Files - Microfilm creation project - Progress Billing through June 15, 2009	2,500.00
Total		\$2,500.00
Payments/Credits		\$0.00
Balance Due		\$2,500.00

Record on Appeal 279

APP0281

5 POINT SOLUTIONS

PO Box 498
Lexington, SC 29071

Invoice

Date	Invoice #
6/30/2009	3117

Bill To Fayette County Clerk of Superior Court Sheila Shaddad PO Box 130 Fayetteville, Ga 3000214

PAID

					P.O. No.	Terms	Project		
						Net 15			
Item	Description	Est Amt	Prior Amt	Prior %	Qty	Rate	Curr %	Total %	Amount
800020	Payette County Clerk of Superior Court - Civil Case File Scanning Project - Progress billing through 6-30-09					4,500.00			4,500.00
						Subtotal		\$4,500.00	
						Sales Tax (0.0%)		\$0.00	
						Total		\$4,500.00	
						Payments/Credits		\$-4,500.00	
						Balance Due		\$0.00	

Record on Appeal 280

APP0282

5 POINT SOLUTIONS

PO Box 498
Lexington, SC 29071

Invoice

Date	Invoice #
7/29/2009	3119

Bill To
Fayette County Clerk of Superior Court Sheila Studdard PO Box 130 Fayetteville, Ga 3000214

					P.O. No.	Terms	Project		
						Net 15			
Item	Description	Est Amt	Prior Amt	Prior %	Qty	Rate	Curr %	Total %	Amount
800000	Fayette County Clerk of Superior Court Civil Case File Scanning and Microfilm Project Documents Prepped, Indexed and Scanned 596,499 through July 23rd 2009. Documents Microfilmed through July 23rd, 2009 93,770 Total earned to date \$119,804.00 Amounts previously paid by Fayette County \$87,000 Amount owed \$32,804	189230.00				32,804.00	17.34%	17.34%	32,804.00
						Subtotal	\$32,804.00		
						Sales Tax (0.0%)	\$0.00		
						Total	\$32,804.00		
						Payments/Credits	\$0.00		
						Balance Due	\$32,804.00		

Record on Appeal 281

APP0283

EXHIBIT H



LEXSEE 2009 U.S. DIST. LEXIS 3974



Analysis
As of: Sep 19, 2009

**ZAMBELLI FIREWORKS MANUFACTURING CO., INC. doing business as
ZAMBELLI FIREWORKS INTERNATIONALE, Plaintiff, v. MATTHEW WOOD
and PYROTECNICO E/X, LLC., Defendants.**

2:08-cv-415

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA**

2009 U.S. Dist. LEXIS 3974; 157 Lab. Cas. (CCH) P60,740; 29 I.L.R. Cas. (RNA) 114

January 21, 2009, Filed

PRIOR HISTORY: *Zambelli Fireworks Mfg. Co. v. Woods*, 2008 U.S. Dist. LEXIS 67609 (W.D. Pa., Aug. 11, 2008)

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff former employer filed a motion for preliminary injunction against defendants, former employer and a competitor, to enforce the restrictive covenants in an employment agreement executed between the employer and the employee.

OVERVIEW: Upon being hired by the employer in 2001, the employee signed an employment agreement which contained a twenty-four month non-competition provision (the 2001 Agreement). The 2001 Agreement was superseded by another employment agreement that the employee signed on June 2, 2005 (the 2005 Agreement). The court found that the employee's raise (from \$ 1,571.81 per pay period to \$ 2,115.39 per pay period) contemporaneous with the signing of the 2005 Employment Agreement, was sufficient consideration to render the agreement valid. Next, the court found that the

changes in the stock ownership, management and character of the employer did not render the restrictive covenants in the 2005 Agreement entirely unenforceable. Finally, the court found that a complete bar on the ability of the employee to participate in any activity in the pyrotechnic industry in the entire continental United States, would literally prevent him from engaging in his chosen profession, was not necessary for the protection of the employer's legitimate business interests, and therefore, was overbroad.

OUTCOME: The employer's motion was granted in part. The 2005 employment agreement between the employer and the employee was enforceable, however the restrictive covenants were modified.

LexisNexis(R) Headnotes

Civil Procedure > Remedies > Injunctions > Elements > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

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[HN1] A party which seeks a preliminary injunction must demonstrate the following four factors: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting a preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. An irreparable injury is one that is not remote or speculative, but actual and imminent and for which monetary damages cannot adequately compensate.

Civil Procedure > Remedies > Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

[HN2] The grant of injunctive relief is an extraordinary remedy which should be granted only in limited circumstances. The injunction should issue only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief.

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN3] An employer has a right to protect trade secrets, confidential information, goodwill, customer relationships and unique or extraordinary skills through the use of non-competition and non-solicitation agreements. In addition, a restrictive covenant may be used to prevent a competitor from profiting from the specialized training and skills of a former employee. Because the injury resulting from the violation of a noncompetition agreement is difficult to quantify, the great weight of modern authority is to the effect that one who has been or will be injured by violation of a covenant not to compete is ordinarily entitled to the equitable remedy of injunction.

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN4] Restrictive covenants have historically been viewed with disfavor as a trade restraint that prevents an individual from earning a living. Nevertheless, restrictive covenants are enforceable under Pennsylvania law if they are: (1) related to the employment or ancillary to the taking of employment; (2) supported by adequate

consideration; (3) reasonably limited in time and geographic scope; and (4) reasonably designed to safeguard a legitimate interest of the former employer.

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN5] An individual's right to pursue a career and to earn a livelihood is a unique and substantial interest. Thus, the enforcement of restrictive employment covenants is a matter of equity, rather than a pure legal exercise in contractual interpretation. In determining whether to enforce a post-employment restrictive covenant, the court must balance the interest the employer seeks to protect against the important interest of the employee in being able to earn a living in his chosen profession. Thus, a more stringent balancing test is applied when the restrictive covenants are ancillary to employment, as opposed to the sale of a business.

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN6] "Blue penciling," or reasonable alteration of the terms of an employment agreement, is permissible if the court deems a restrictive covenant to be broader than necessary to protect the interests of the former employer. Pennsylvania courts have long held that where a restrictive covenant is found to be overbroad and yet the employer is clearly entitled to some measure of protection from the acts of his former employee, the court may grant such protection by reforming the restrictive covenant and enforcing it as reformed.

Evidence > Procedural Considerations > Burdens of Proof > Allocation

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN7] In the context of restrictive employment covenants, the law is clear that the burden is on him who sets up unreasonableness as the basis of contractual illegality to show how and why it is unlawful.

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN8] Pennsylvania law provides that when a restrictive covenant is executed after the commencement of employment, the covenant will not be enforced unless it is supported by new consideration provided at the time of the covenant. A corresponding benefit to the employee or a change in status or employment responsibilities is sufficient consideration to support a restrictive covenant. If a covenant is signed after employment has commenced a beneficial change in an employee's status is sufficient consideration to support a restrictive covenant agreed to after the taking of employment.

*Contracts Law > Consideration > Adequate
Consideration*

[HN9] The Pennsylvania courts have long held that the adequacy of consideration is not a factor to be considered in determining the validity and enforceability of a contract.

*Business & Corporate Law > Mergers & Acquisitions >
General Overview*

[HN10] After a merger or acquisition through the sale of stock, the surviving entity obtains both the assets and liabilities of the former entity because the corporation continues its independent legal existence. An acquisition of stock "vests" contractual rights in the acquiring company as a matter of law and does not require a transfer or assignment to be effective. 15 Pa. Cons. Stat. § 1929(b).

*Business & Corporate Law > Mergers & Acquisitions >
General Overview*

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN11] Restrictive covenants need not be assigned when there is a sale of the corporate employer's stock.

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN12] To be valid and enforceable, the length of time and scope of a restrictive covenant should be no greater than is reasonably necessary to protect the employer's legitimate business interest. The reasonableness of the temporal and geographic aspects of a restrictive covenant must be determined in light of the nature of the employer's interest sought to be protected.

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN13] Courts have upheld covenants not-to-compete with a national scope, where appropriate.

*Civil Procedure > Remedies > Injunctions > Elements >
Irreparable Harm*

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN14] Pennsylvania Courts have uniformly recognized that a violation of a noncompetition agreement results in harm which is not compensable by money damages. It is not the initial breach of a covenant which necessarily established the existence of irreparable harm but rather the threat of the unbridled continuation of the violation and the resultant incalculable damage to the former employer's business that constitutes the justification for equitable intervention.

*Civil Procedure > Remedies > Injunctions > Elements >
Irreparable Harm*

*Labor & Employment Law > Employment Relationships
> Employment Contracts > Conditions & Terms >
Trade Secrets & Unfair Competition > Noncompetition
& Nondisclosure Agreements*

[HN15] Harm is irreparable when it cannot be adequately compensated in damages, either because of the nature of the right that is injured, or because there exists no certain pecuniary standards for the measurement of damages. In recognizing that an injury which results from the violation of a noncompetition agreement is difficult to quantify, the Pennsylvania Superior Court has stated that the great weight of modern authority is to the effect that one who has been or will be injured by violation of a covenant not to compete is ordinarily entitled to the equitable remedy of injunction.

Civil Procedure > Remedies > Injunctions > Elements > General Overview

Labor & Employment Law > Employment Relationships > Employment Contracts > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

[HN16] Under appropriate circumstances, the public interest is best served by upholding the restrictive covenants freely entered into by the employee. Granting a permanent injunction to the former employer will discourage unfair competition, the misappropriation and wrongful use of confidential information and trade secrets and the disavowal of freely contracted obligations.

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For MATTHEW WOODS, Defendant: David G. Oberdick, LEAD ATTORNEY, Jane Lewis Volk, Mary C. McGinley, Meyer, Unkovic & Scott LLP, Pittsburgh, PA.

For PYROTECNICO F/X LLC, Defendant: Manning J. O'Connor, II, LEAD ATTORNEY, Patrick Sorek, Leech Tishman Fuscaldo & Lampl, LLC, Pittsburgh, PA.

JUDGES: Terrence F. McVerry, United States District Court Judge.

OPINION BY: Terrence F. McVerry

OPINION

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF COURT

Now pending before the Court is a MOTION FOR PRELIMINARY INJUNCTION (Document No. 4) filed by Plaintiff Zambelli Fireworks Manufacturing Co., Inc. ("Zambelli") against a former employee, Matthew Wood, and a competitor, Pyrotecnico F/X, LLC ("Pyrotecnico") to enforce the restrictive covenants in an Employment Agreement executed between Zambelli and Wood.

On August 25-27, 2008, the Court conducted an evidentiary hearing on Plaintiff's motion. Zambelli

presented as witnesses Dr. George Zambelli, Jr., current chairman of the Board of Directors and owner of 50% of the [*2] stock of Zambelli; Ernest Simmons, a long-time Zambelli pyrotechnician in its Florida office; and Douglas Taylor, current chief executive officer ("CEO") of Zambelli. Pyrotecnico called as a witness Stephen Vitale, president and managing member of the Pyrotecnico group of companies. Wood testified on his own behalf. The testimony of two witnesses, Marcia Ann Zambelli Furnagali, and Danabeth Zambelli Trasatti,¹ was submitted by deposition. The parties have submitted post-hearing Proposed Findings of Fact and Conclusions of Law (Document Nos. 49, 50) and responses thereto, all of which filings were complete as of November 12, 2008. The request for injunctive relief is therefore ripe for disposition.

1 For the sake of convenience, and consistent with the witnesses' own usage, the Court will generally refer to members of the Zambelli family by their first names. The Court notes that Marcia Ann Zambelli is typically referred to as Marcy. The close relationship between the sisters with regard to their business activities led witnesses to refer almost universally to both sisters at the same time, i.e., "Marcy and Danabeth."

The Court issues the following Findings of Fact and Conclusions of [*3] Law in accordance with Fed. R. Civ. P. 52 and 65.

I. FINDINGS OF FACT

A. The Companies and Industry

1. Zambelli is in the business of selling, staging and performing fireworks displays and is one of the oldest and largest fireworks companies in the United States. Zambelli currently does business in approximately 40 states, but regards its market as nationwide, if not international. Until his death in 2003, George Zambelli, Sr. was the majority shareholder, CEO, and essentially ran the company. After his death, his daughters Marcy and Danabeth assumed primary responsibility for day-to-day operations. Although corporate titles were not relegated much importance within the organization, Marcy was named the Chief Executive Officer and Danabeth became the President. George Zambelli, Jr., was and is primarily employed as an ophthalmologist, but he is also active in the fireworks business with special projects, documentaries, and during the July 4th busy

season.

2. Defendant Pyrotecnico has also been in the fireworks display business for decades. Defendant Pyrotecnico is comprised of several related companies, all of which are managed by Stephen Vitale. While Matthew Wood is employed by Pyrotecnico [*4] F/X, LLC, he has performed work for several of the Pyrotecnico entities.

3. The fireworks industry in the United States is quite competitive. The industry has at least five "large" entities, including Zambelli and Pyrotecnico, defined as those with annual revenues in excess of \$5 million.

4. Both Zambelli and Pyrotecnico have their main offices in New Castle, Pennsylvania. Employees of both companies regularly see one another, socialize together, and many are friends. Pyrotecnico has lost employees to Zambelli, and has had employees come to it from Zambelli. Indeed, a member of the Zambelli family, Lou Zambelli, an uncle to George Zambelli, Jr., went from Zambelli to Pyrotecnico, and back to Zambelli over the years. Pyrotecnico has never pursued Zambelli employees while they were actively employed there.

5. Each company has offices in other states. Matthew Wood worked in Zambelli's Florida office. Both Zambelli and Pyrotecnico have lured customers from one another in the course of competition, and both have lost customers to other competitors.

6. The fireworks or pyrotechnics industry operates by obtaining materials, that is, the fireworks shells, almost exclusively from China; finding [*5] customers and selling shows; and successfully executing the shows.

7. To carry out their business, both companies use persons in specific categories of jobs relevant to this dispute. A show designer, also known as a choreographer, performs the artistic act of combining the fireworks display with music. A "shooter," or pyrotechnician, is a field person who executes the fireworks display on-site.

8. Choreography is typically accomplished through the use of computer software programs which are available in the public domain. The program used by Zambelli is called Fire One. Pyrotecnico uses a program called Pyrodigital. These programs are purchased and used off-the-shelf, and are available to the general public.

They are not owned by the customer, and cannot be modified for a particular purchaser. When choreographing a fireworks display, the actual geographic location of the show is virtually immaterial, because the show is designed on a personal computer.

B. Matthew Wood's Education and Work History

9. Matthew Wood is a thirty-one year-old pyrotechnics designer/choreographer.

10. Wood's father, a pyrotechnic hobbyist and technician, introduced him to pyrotechnics at a young age.

11. Knowing [*6] that he wanted to pursue a career in the pyrotechnics industry, Wood obtained an associate's degree in technical theatre from Vincennes University and a bachelor's degree in theater from Indiana State University.

12. In his employment positions prior to working for Zambelli, Wood gained experience in various aspects of the pyrotechnics field including: sales, agreements, design work, effects, and pyrodigital software. Wood had experience with stage pyrotechnics and had made some home fireworks, but had little experience in serial fireworks displays on the scale of Zambelli's major shows.

13. Wood was personally interviewed for employment by George Zambelli, Sr. in 2001.

14. In preparation for his interview with Mr. Zambelli, Wood downloaded a demonstration copy of the Fire One software program and began to familiarize himself with that program.

15. George Zambelli, Sr. hired Wood specifically to assist Marcy and Danabeth, who run the Florida office. Wood's initial duties involved work on new and existing accounts (outdoor and indoor displays), calling on customers, applying for permits, reviewing the fireworks sites, attending trade conferences, and whatever else was asked of him. Wood's [*7] responsibilities expanded over time.

16. Zambelli provided Wood with valuable training throughout his employment. In particular, Ernie Simmons taught Wood how to efficiently lay out and choreograph shows and provided instruction on the Zambelli setup and systems. Wood also gained hands-on experience as a

helper in actually shooting aerial fireworks displays. In 2007, Zambelli paid for Wood to become a certified trainer for the Pyrotechnic Guild International ("PGI"). During his employment at Zambelli, Wood also became licensed in Colorado and New York.

17. Wood worked very closely "hand in hand" with Marcy and Danaboth in various aspects of the business and would do virtually anything that the sisters asked him to do.

18. As Wood became more experienced, he became responsible for preparing business proposals which involved pricing information and contracts, site evaluation, choreography, obtaining permits, and calling on Zambelli's customers.

19. During his employment by Zambelli, Wood acquired and developed unique skills that are very specific to the pyrotechnic industry. Zambelli promoted Wood as one of its premier choreographers and Wood designed some of Zambelli's highest-profile shows, [*8] including the New York City Times Square New Year's Eve show, the Aquatennial show in Minneapolis, Sky Blast in Pittsburgh, and Gasparilla in Florida.

20. While he was employed with Zambelli, Wood conducted sales but was not assigned a specific territory. Wood had extensive communications with clients and he would interact with them in preparation for their shows and follow-up afterwards.

21. Wood had interaction with the following clients during the course of his employment with Zambelli: Colorado Rockies (Tucson, AZ and Denver, CO); Exquisite Event Planning, Trabuco, CA; Soboba Casino, San Jacinto, CA; City of Alhambra, CA; Knott's Berry Farm, Buena Vista, CA; City of Huntington Beach, CA; County of Los Angeles, Marina Del Rey, CA; Channel Island Harbor Foundation, Oxnard, CA; United States Marine Corps, Twenty-Nine Palms, CA; MTV My Sweet 16 Party, Long Beach, CA; The Monte Ford Show, Aptos, CA; The Queen Mary, Long Beach, CA; Presidential Inauguration, Washington, D.C.; Gasparilla Festival, Tampa, FL; Hard Rock Hotel and Casino, Hollywood, FL; SunFest of Palm Beach County, West Palm Beach, FL; Orange Bowl, Miami, FL; Turner Field, Atlanta, GA; Inner Harbor, Baltimore, MD; Macy's, [*9] Southfield, MI; Aquatennial Festival, Minneapolis, MN; Avi Hotel & Casino, Laughlin, NV; Nellis Air Force Base, North Las Vegas, NV; Seneca Casino, Salamanca

and Niagara, NY; Times Square, New York, NY; Kiowa Casino, Devol, OK; Wildhorse Resort and Casino, Pendleton, OR; Sunoco Sweet Sounds of Liberty Concert and Fireworks/Welcome America, Philadelphia, PA; Mt. Rushmore, S.D.; Minor League Baseball Trade Show, TN.

C. The Employment Agreements

22. Upon being hired by George Zambelli, Sr. in 2001, Wood signed an employment agreement which contained a twenty-four month non-competition provision (the "2001 Agreement").

23. The 2001 Agreement contained an arbitration provision which required that any action to enforce the agreement be conducted through private arbitration.

24. As the employment relationship between Wood and the Zambelli family continued and developed, the family considered Wood to be the "next generation" and "future of the company." However, Wood was never offered an opportunity to own stock in Zambelli.

25. The 2001 Agreement was "superseded" by another employment agreement that Wood signed on June 2, 2005 (the "2005 Agreement").

26. George Zambelli, Jr. testified that a primary [*10] reason why Wood was requested to sign the 2005 Agreement was to bind Wood to the company through the next generation.

27. The 2005 Agreement contained, *inter alia*, the following additional restrictions:

(a) A provision purporting to prohibit Wood from engaging "in any manner" in the pyrotechnic business within the Continental United States or taking a position of employment with a company engaged in the pyrotechnic business for two years after leaving the company.

(b) A two-year non-solicitation provision.

(c) A confidentiality provision preventing disclosure of trade secrets and materials.

(d) A provision that Wood provide

Zambelli with three-months notice of resignation.

(c) A provision stating that consideration consisted "of the mutual covenants and agreements set forth following and intending to be legally bound..."

(f) A provision specifically stating that if a Court should determine that the terms of the non-compete agreement are unreasonable, the remedy shall be modification of the Agreement to less restrictive terms rather than voiding the Agreement.

(g) A provision requiring Wood to pay all legal fees, court costs and expenses incurred by Zambelli if Zambelli prevails in legal proceedings [*11] to enforce the Agreement. (Pyrotechnico has agreed to reimburse Wood for any such legal expenses.)

(h) A provision stating that Pennsylvania law shall apply. There is no arbitration provision.

D. Consideration

28. The 2005 Agreement was entitled "Employment Agreement for New Employee" and stated that the consideration for the Agreement was the offer of employment, even though Wood had been employed there for several years by that time in 2005. Wood specifically spoke to Danabeth and raised the fact that the Agreement reflected "New Employee" but she downplayed it and told Wood not to worry and that everything was fine.

29. This exchange between Wood and Danabeth illustrates the lack of business formalities with which the Zambelli daughters operated the corporation and the close working relationship and trust that existed between the Zambelli daughters and Wood.

30. Wood's compensation increased every year while he was employed at Zambelli.

31. As alleged consideration for signing the new

employment agreement, Wood's base salary increased from \$ 1,571.81 to \$ 2,115.39 per pay period, an increase of 34.5%.

32. When Wood signed the 2005 Agreement, there was a potentiality that he would earn less [*12] in "shooter fees" than he had earned in prior years by going to shows and actually shooting the fireworks. Marcy and Danabeth told Wood that he would be spending more time in the office and that he would have less time to actually shoot shows, and that he would have to request permission to engage in shooting. The increase in salary which Wood received contemporaneous with the 2005 employment agreement was the figure requested by Wood based on his calculation of what he would need to earn without the availability of shooter fees. The shooter fees that Wood earned for the 2005 July 4th shows were already planned and were not part of the June 2005 arrangement.

33. The difference between what Wood was guaranteed to make in 2005 (\$ 55,000) and what he actually earned in 2004 (\$ 52,997) was \$ 2,003. With "shooting" income included, Wood actually earned \$ 62,307 in 2005, an increase of approximately \$ 9,300 over his 2004 income.

34. No Zambelli witness with first-hand knowledge could identify any new duties or responsibilities or authority assigned to Wood after entering into the 2005 Agreement; rather, he continued to perform his same duties and functions and was expected to "continue to [*13] progress" in them. In actuality, new duties and increased access to Zambelli's pricing information by Wood did not come with the 2005 Agreement, but instead occurred in 2007 following a corporate restructuring.

35. Marcy and Danabeth were the persons involved on behalf of Zambelli in having Wood sign the 2005 Agreement. Both sisters testified that the 2005 Agreement was presented to Wood because he wanted and/or was getting a raise in base pay to offset a potential decrease in income which Wood earned as a shooter.

E. The Corporate Restructuring

36. Zambelli had historically been a family business with 100% of the corporate stock owned by Zambelli family members at the time Wood was hired.

37. During the initial interview process, George

Zambelli, Sr. stressed to Wood that the company was a family owned and operated organization.

38. The long-standing family nature and identity of Zambelli was what attracted Wood to the company, and was a "touchstone" in his acceptance of the offer of employment from George Zambelli, Sr. in 2001. George Zambelli, Sr., died in December 2003.

39. In May 2007, a major sale of Zambelli stock took place. The transaction was structured as a stock sale, as opposed [*14] to an asset purchase, for several reasons, including the retention of various state and federal permits, licenses and contractual relationships.

40. The stock sale resulted in a number of significant changes in the company:

(a) George Zambelli, Jr. became the sole Zambelli family member retaining stock ownership in the company. His stock ownership interest increased from 20% to 50% and he acquired a right of first refusal to purchase all outstanding stock in the corporation from the other shareholders.

(b) The following members of the Zambelli family relinquished their shareholder status in the corporation and resigned their respective positions as officers and directors: Marcy as CEO; Danabeth as President; another sister Ana Lynn, as secretary; and their mother, Constance, as treasurer. As part of the transaction, Marcy and Danabeth entered into employment and non-competition agreements which provided that they would serve as executive vice presidents until May 2008, although they were not obligated to work more than 30 hours per week after September 30, 2007, 20 hours per week after October 31, 2007 and 10 hours per week after December 31, 2007.

(c) Six Zambelli family members had previously [*15] comprised the Board of Directors; only George Zambelli, Jr. remains on the Board. George Zambelli, Jr. is primarily employed as an ophthalmologist and has never been actively involved in day-to-day operations

-- neither before nor after the corporate restructuring.

(d) A new investor group, consisting of Richard McDonald, Gary McKnight, Ed Myers, and Douglas Taylor acquired the remaining 50% stock ownership interest. They comprise the Board of Directors, along with George Zambelli, Jr. These gentlemen are the first non-Zambelli family shareholders in the history of the corporation.

(e) Douglas Taylor was selected to replace both Marcy and Danabeth as CEO and President. Taylor had no prior experience in the fireworks business.

(f) Taylor works from the New Castle headquarters.

41. Following the stock transaction, Marcy and Danabeth were phased out of their operational duties, and were completely removed from the business by the end of 2007.

42. In late 2007, Taylor met with Wood, Simmons, Marcy and Danabeth to discuss the transitioning of responsibility for various customers. Wood was assigned primary responsibility for customers in fourteen states: Alabama, Colorado, Delaware, Florida, Georgia, [*16] Massachusetts, Michigan, Minnesota, New York, Indiana, Pennsylvania, South Dakota, Tennessee and West Virginia. Marcy and Danabeth did not undertake extensive efforts to formally transfer responsibility or to introduce Wood to customers as the new primary contact.

43. Until the May 2007 sale of Zambelli stock to non-family members, Wood intended to remain working for the Zambelli family for a long time and had no intention of leaving.

44. Following the May 2007 Zambelli stock sale, Wood began to lose trust in the security of his position and the future of the company for a number of reasons including:

(a) His belief that the Zambelli sisters were being pushed out of the business involuntarily because he observed them

becoming less active and more distraught.

(b) Marcy and Danabeth told Wood that the new CEO Douglas Taylor was not to be trusted and that he had lied to the family several times.

(c) George Zambelli, Jr. told Wood that he should watch his back because Taylor was a back stabber and couldn't be trusted.

(d) Long-time Zambelli employee Ernest Simmons related to Wood his experiences with other corporate takeovers which had resulted in failures of the targeted companies after total [*17] depletion of their funds.

(e) Simmons observed that there was increasing concern among employees in the Florida office about the future of the company which uncertainty had never existed when the company was family-owned.

(f) Wood became increasingly stressed as he was being assigned more and more duties.

45. As the Zambelli sisters approached the time of their anticipated departure from the company, Wood's responsibilities increased. As a consequence, Wood felt that he would not be designing and shooting as many fireworks shows as he had in the past. Instead, he would be in the office more and involved in taking on the responsibilities previously handled by Marcy and Danabeth. As a result of the added responsibilities, he was getting further and further behind in his choreography work.

46. Toward the end of 2007 or early 2008, Ernie Simmons voiced concerns to Doug Taylor that Matt was overwhelmed and "getting more and more stressed every day."

47. Wood requested information from Taylor so that the "transition would be effortless," to get a clearer understanding of his responsibilities, and to understand his role in the company.

48. Wood expressed his concerns to Taylor both verbally and [*18] in several detailed e-mails. He specifically expressed concerns about the lack of communication to clients about the departure of Marcy and Danabeth and pressed Taylor to hire additional staff support.

49. Taylor communicated to Wood that he was a key employee and approved a pay raise of \$ 3000 per year soon after he took over. In December 2007, Taylor met with Wood to give him a favorable performance evaluation and another salary increase to \$ 81,000 per year.

50. In response to Wood's request for support necessitated by the phasing out of Marcy and Danabeth, Taylor solicited his input on job descriptions and eventually hired Tom Buchser to assist in the Florida office. Due to the fact that Buchser had no knowledge of the fireworks business, however, his hiring actually created more work and more stress for Wood in the short-term. Wood continued to emphasize to Taylor that he needed to hire additional support for the office, but Taylor did not make this a priority.

51. Wood believed that with the lack of planning and support from the new management and ownership, the situation was "setting up for failure."

52. In January 2008, Taylor presented Wood with an "Employment Proposal" which [*19] outlined terms for a new employment agreement that essentially would have required Wood to assume the roles of both Marcy and Danabeth.

53. Although Wood trusted the Zambelli family when presented with the 2001 and 2005 Agreements, he did not trust the new owner-operator, Taylor, and therefore never signed the proposal.

F. Wood's Departure from Zambelli and Employment with Pyrotecnico

54. Wood had met Stephen Vitale, President of Pyrotecnico, several years earlier at a baseball winter meeting.

55. The corporate changes (stock ownership and personnel) and uncertainty prompted Wood to contact Vitale by e-mail in October 2007 to discuss potential employment opportunities.

56. Vitale was interested in Wood because of his enthusiasm and willingness to improve his skills. Vitale was never interested in obtaining information from Wood about Zambelli.

57. During discussions, Wood made it clear to Pyrotecnico that he wanted to follow through with show commitments that he had on behalf of Zambelli and to make sure that he "had [his] complete focus on New Years' Eve."

58. Although Wood and Pyrotecnico agreed on terms of employment in the weeks prior, Wood did not begin working with Pyrotecnico until [*20] March 3, 2008, and he did not perform any services for Pyrotecnico before his start date.

59. Vitale and Wood executed an employment agreement when Vitale agreed to hire Wood. This employment agreement contains non-compete and confidentiality provisions.

60. Pyrotecnico's employment proposal to Wood prohibited him from taking or using any Zambelli information after he left Zambelli. It was a condition of Wood's employment with Pyrotecnico that he not bring any trade secrets or proprietary information from Zambelli.

61. Pyrotecnico, and its attorneys, reviewed a copy of Wood's 2005 Employment Agreement with Zambelli during their negotiations. Thus, Defendants proceeded with knowledge that Zambelli might attempt to enforce the restrictive covenants in the 2005 Agreement. Indeed, Pyrotecnico agreed to pay Wood his salary for two years, should he be enjoined from working for Pyrotecnico, and to indemnify Wood for his litigation expenses.

62. On February 11, 2008 Wood provided Zambelli with notice that he would be leaving, and that his resignation was effective February 22, 2008. Taylor immediately traveled to Florida to try to induce Wood to remain with Zambelli. At that meeting, Wood did [*21] not inform Taylor that he was going to work for Pyrotecnico.

63. After Wood's departure, Zambelli was nevertheless able to perform all shows then under contract including those through July 4th, the busiest season of the year. However, there are apparently few choreographers with Wood's abilities in the aerial

fireworks industry and as of August 2008 Zambelli was still searching for an adequate replacement for him.

64. Since his employment with Pyrotecnico, Wood does only internal work and does not have client/customer contact. Wood's duties at Pyrotecnico to date have consisted of:

- (a) editing music;
- (b) serving as a technician or shooter on shows;
- (c) assisting in the design of three shows for existing Pyrotecnico customers; and
- (d) training.

It is apparent that Pyrotecnico and Wood have actively attempted to minimize his conduct which may constitute breaches of Wood's employment agreement with Zambelli.

G. Wood's Exposure to Zambelli's Information

65. During the course of his employment with Zambelli, Wood was exposed to the following aspects of Zambelli's business:

- (a) Proposals that Zambelli sent to clients to obtain engagements for firework displays;
- (b) Meetings with numerous customers;
- (c) [*22] An Excel spreadsheet that contained the formula that Zambelli used to price shows. Marcy and Danabeth provided this information to Wood in approximately 2006; and
- (d) Prices that Zambelli paid for shells. This information was provided to Wood in the fall of 2007.

66. Upon his departure from Zambelli, with respect to proposals, customer lists, pricing formulas or pricing lists of Zambelli, Wood did not: