

B. Tortious Interference with Contractual Relations: Ro Lucas

1. Did Ro Lucas intentionally cause Fulton County to breach a contract with Team IA?

Yes No

2. Did Ro Lucas with improper purpose or improper motive interfere with a prospective contract with Fulton County?

Yes No

3. Did the Defendant Ro Lucas intentionally cause Fayette County to breach a contract with Team IA?

Yes No

4. Did Ro Lucas with improper purpose or improper motive interfere with a prospective contract with Fayette County?

Yes No

5. Did Defendant Ro Lucas intentionally cause DeKalb County to breach a contract with Team IA?

Yes No

6. Did Ro Lucas with improper purpose or improper motive interfere with a prospective contract with DeKalb County?

Yes No

7. Did Ro Lucas with improper purpose or improper motive interfere with a prospective contract with Richmond County?

Yes No

8. Did Ro Lucas with improper purpose or improper motive interfere with a prospective contract with Palmetto Health?

Yes No

9. What were the damages to Team IA for tortious interference with contract relations with caused by Ro Lucas?

\$ 282,341.30

C. Tortious Interference with Contractual Relations: George Lawson

1. Did the Defendant George Lawson intentionally cause Fulton County to breach a contract with Team IA?

Yes No

2. Did George Lawson with improper purpose or improper motive interfere with a prospective contract with Fulton County?

Yes No

3. Did the Defendant George Lawson intentionally cause Fayette County to breach a contract with Team IA?

Yes No

4. Did George Lawson with improper purpose or improper motive interfere with a prospective contract with Fayette County?

Yes No

5. Did the Defendant George Lawson intentionally cause DeKalb County to breach a contract with Team IA?

Yes No

6. Did George Lawson with improper purpose or improper motive interfere with a prospective contract with DeKalb County?

Yes No

7. Did George Lawson with improper purpose or improper motive interfere with a prospective contract with Richmond County?

Yes No

8. Did George Lawson with improper purpose or improper motive interfere with a prospective contract with Palmetto Health?

Yes No

9. What were the damages suffered by Team IA for tortious interference with contractual relations caused by George Lawson?

\$ 282,341.30

D. Breach of Contract

Did Team IA induce Ro Lucas to enter into his Employment Agreement by making fraudulent representations to Ro Lucas about the terms and conditions of his employment OR fail to perform its obligations under the Employment Agreement or any other oral or written agreement between the parties relating to his employment?

Yes No

If No, answer question regarding Non-solicitation and Non-compete provisions (Sections D1 thru D2). If Yes, then proceed to Section E

1. Non-solicitation Provision

(a) Were Fulton County, Fayette County, Dekalb County, and Richmond County "CUSTOMERS" as defined by the non-solicitation provision of the contract?

Yes No

(b) Was Palmetto Health a "CUSTOMER" as defined by the non-solicitation provision of the contract?

Yes No

If no, skip the remaining subparts and questions 2, 3, and 4 below.
If yes, answer the subparts (c) thru (k).

(c) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to Fulton County's Microfilm Conversion project performed?

Yes No

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to this project?

\$ 220,846.17

- (d) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to Fulton County's Historical Reindexing project?

Yes

No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to Fulton County Historical Reindexing project?

\$ 136,904.92

- (e) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to Fayette County's civil case conversion project?

Yes

No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to Fayette County civil case conversion project?

\$ 9,847.82

- (f) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to DeKalb County's Maintenance contract?

Yes

No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Maintenance contract?

\$ 19,334.70

- (g) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to DeKalb County's Historical Re-indexing project?

Yes

No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Historical Re-indexing project?

\$ 48,686.62

- (h) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to DeKalb County's Microfilm Conversion project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Microfilm Conversion project?

\$ 4728.68

- (i) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to DeKalb County's Image Submission project?

Yes No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Image Submission project?

\$ 20,108.46

- (j) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to Richmond County Microfilm Conversion project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to the Richmond County Microfilm Conversion project?

\$ 3,269.51

(k) Did Ro Lucas violate the terms of the non-solicitation provision as it relates to the Palmetto Health scanning and indexing of medical records project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to the Palmetto Health scanning and indexing of medical records project?

0

2. Non-Compete Provision

(a) Did Ro Lucas violate the terms of the non-competes as it relates to the Fulton County Microfilm Conversion Project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the non-competes as it relates to the Fulton County Microfilm Conversion project?

\$ 220,846.17

(b) Did Ro Lucas breach the terms of the non-competes as it relates to the Fulton County Historical Re-indexing Project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the non-competes as it relates to Fulton County Historical Re-indexing project?

\$ 136,904.92

- (c) Did Ro Lucas violate the terms of the non-compete as it relates to the Fayette County Civil Case Conversion Project?

Yes No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the non-compete as it relates to the Fayette County Microfilm Conversion project?

\$ 9,849.82

- (d) Did Ro Lucas breach the terms of the non-compete as it relates to Palmetto Health's scanning and indexing project?

Yes No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the non-compete as it relates to Palmetto Health?

0

- (e) Did Ro Lucas breach the non-compete as it relates to DeKalb County's Maintenance contract?

Yes No

If yes, answer subpart

What were the lost profits caused by Ro Lucas' breach of the non-compete as it relates to DeKalb County Maintenance contract?

\$ 19,334.70

- (f) Did Ro Lucas breach the non-compete provision as it relates to DeKalb County's Historical Re-indexing project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Historical Re-indexing project?

\$ 48,686.62

- (g) Did Ro Lucas breach the non-compete provision as it relates to DeKalb County's Microfilm Conversion project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Microfilm Conversion project?

\$ 4,728.68

- (h) Did Ro Lucas breach the non-compete provision as it relates to DeKalb County's Image Submission project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to DeKalb County Image Submission project?

\$ 20,108.46

- (i) Did Ro Lucas breach the non-compete provision as it relates to Richmond County's Microfilm Conversion project?

Yes No

If yes, answer subpart.

What were the lost profits caused by Ro Lucas' breach of the contract as it relates to Richmond County Microfilm Conversion project?

\$ 3,269.51

E. **RO LUCAS' CLAIM AGAINST TEAM IA and BRENT YARBOROUGH**

1 Did Brent Yarborough and Team IA fail to pay all the bonus income earned by Ro Lucas based on an enforceable contract while he was employed by Team IA?

Yes _____

No _____


If no, then you are finished.

2. What is the total amount of unpaid bonuses owed to Ro Lucas?

_____ ϕ _____

Now you are finished.

Dated 3/27/15


Signature of Jury Foreperson

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP 32-01078

Team IA, Inc.

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

FILED

DEC-2 11 54

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Plaintiff

JETHA CANNING
CLERK OF COURT
LEXINGTON, SC

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Team IA	Cicero Lucas	\$804,471.86
		\$
		\$

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

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

[Signature]
Circuit Court Judge

2154
Judge Code

11/20/15
Date

COPY

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Dec, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 3rd day of Dec, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert F. Goings
P.O. Box 436
Columbia, SC 29202
ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Andrew Arnold
712 E. Washington St
Greenville, SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

FILED
15 DEC - 2 11:59
EMILY CAMPBELL
CLERK OF COURT
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP 32-01078

Team IA, Inc.

2010 NOV 24 AM 8:21

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

DEBRA CARINGO
 CLERK OF COURT
 LEXINGTON, SC

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Plaintiff	Attorney for : <input checked="" type="checkbox"/> Plaintiff Defendant or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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

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

Circuit Court Judge	2154 Judge Code	11/20/15 Date
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows: RECORDED & INDEXED
SEP 24 2011 8:21 AM

Robert F. Goings
P.O. Box 436
Columbia, SC 29202
ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Andrew Arnold
712 E. Washington St
Greenville, SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Team IA, Inc.,

Plaintiff,

vs.

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

Defendants.

Cicero Lucas and George Lawson, IV,

Third-Party Plaintiffs,

vs.

Brent Yarborough and Team IA, Inc.,

Third Party Defendants.

NOV 24 AM 8:21
BETH A. CASPER
CLERK OF COURT
LEXINGTON

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION №: 2009-CP-32-1078

ORDER ON POST TRIAL MOTIONS

This matter came before the Court on post-trial motions filed by the parties following a jury trial that concluded on March 27, 2015. The following motions were filed: (1) Defendants' Motion for Judgment Notwithstanding the Verdict, New Trial and For Election of Remedies; (2) Plaintiff Team IA's Motion to Alter or Amend Judgment, Motion for Judgment Notwithstanding the Verdict, and Motion for New Trial and/or New Trial *Additur*; and (3) Plaintiff's Motion for Attorney's Fees, Expenses, and Costs against Defendant Cicero Lucas. On May 5, 2015, the Court held a hearing on these post-trial motions. After carefully considering the motions, supporting memoranda and documentation submitted to the Court, and the arguments of counsel, I hereby order as follows:

SCV 1/37

I. DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, NEW TRIAL AND FOR ELECTION OF REMEDIES¹

A. JNOV: Evidence of Lost Profits After the One-Year Restrictive Period

Lucas moved for Judgment Notwithstanding the Verdict (JNOV) on the contract claims for lost profits after the expiration of the one-year non-compete period. Lucas argued that lost profits after the one-year non-compete period were not the natural consequence of his alleged breach of contract, nor were such damages in the contemplation of the parties at time of contract formation. Lucas claimed that damages outside of projects that were obtained within the one-year period can not be recovered. Conversely, Team IA argued that Lucas actively competed and solicited its customers within the prohibited one-year period, and as a result, it has suffered damages because projects that would have been foreseeably awarded to Team IA were assigned to the Defendants. Team IA argued that Lucas' significant attempts of actively soliciting and competing during this one-year period not only resulted in projects awarded to the Defendants during the one-year period, but also for projects that continued to be awarded to Defendants instead of Team IA. For the reasons set forth below, this portion of Defendant Lucas' motion is denied in most part, but granted as to the apparent lost profits awarded by the jury that relate to the Fulton County Historical Reindexing project and the DeKalb County Historical Reindexing project. These were so remote in time that no reasonable juror could conclude these were in the contemplation of the parties nor foreseeable by Plaintiff nor Defendants.

Lost profits may be recovered in a breach of contract action under a three-prong test: First, profits must have been prevented or lost as a natural consequence of the breach of contract.

¹ The Court has addressed the arguments of the parties in as much as a comprehensive fashion as possible. However, the transcript and the record may reflect additional arguments preserved but not expressly dealt with here. In this regard, the Court notes the parties repeatedly pointed out that their intentions and agreement were that arguments made at summary judgment and again at trial were by stipulation preserved. The Court endorsed these attempts to move matters along after the court had repeatedly ruled on a number of issues, all of which had been thoroughly briefed, argued and ruled upon at multiple stages of the litigation.

The second requirement is foreseeability; a breaching party is liable for those damages, including lost profits, which may reasonably have been within the contemplation of the parties at the time the contract was made as a probable result of the breach. The crucial requirement in lost profits determinations is that they be established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative. See *Drews Co. v. Ledwith-Wolfe Assocs.*, 296 S.C. 207, 213, 371 S.E.2d 532, 535-36 (1988) (internal citations omitted). Damages must either flow as a natural consequence of the breach or have been reasonably within the parties' contemplation at the time of the contract. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 595, 493 S.E.2d 875, 880 (Ct. App. 1997); see *S.C. Fin. Corp. of Anderson v. West Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 335-36 (1960) (stating "profits that have been prevented or lost as the natural consequence of a breach of contract are recoverable as an item of damages in an action for such breach").

The Employment Agreement prohibited Lucas from engaging in acts of competition and solicitation in the one-year following his termination. The Agreement does not state that damages recovered are limited to the profits derived or losses sustained in that one year. It is logical to contemplate that the purpose of the restrictive covenants is to protect Team IA's customers and loss of profits during that one year, as well as in the future, that flow as a natural consequence of the breach. A reasonable jury could conclude that the language of the Employment Agreement and the evidence presented supports an award of lost profits that resulted after the one-year restrictive period and such lost profits were reasonably within the parties' contemplation at the time of the contract. The fact that damages in this case naturally flow into years following the one-year restriction is not "rewriting the agreement" or extending the term of the restrictive covenant as Lucas argues. A jury could conclude that the actions of

Lucas during the one-year restriction found to be in violation of the Employment Agreement formed the basis of the work that Defendants eventually performed in the subsequent years. There was evidence from which a reasonable jury could conclude that Lucas violated the agreement through intentionally soliciting and competing with Team IA customers within the one-year period, and Lucas is responsible for the damage and lost profit that he caused to Team IA.

Further, in viewing the evidence and its inferences in the light most favorable to the nonmoving party, Team IA presented testimony and exhibits to support the jury's finding of lost profits based on the three-prong test above. The Employment Agreement prohibits soliciting customers, not specific projects. As it relates to the Fulton County Microfilm Conversion, Fayette County Civil Case Conversion, DeKalb County Maintenance, and Richmond County Microfilm Conversion projects, the evidence demonstrated that 5 Point Solutions actually performed or started to perform these projects with Team IA customers within the one-year period. As it relates to the DeKalb County Microfilm Conversion, DeKalb County Image Submission, and Palmetto Health Scan and Index projects, there was evidence that Lucas actually began soliciting these projects with those Team IA customers during the one-year period; however, Defendants did not receive the contract or begin performing the work until after the restrictive period, although Lucas points out that three witnesses from Fulton and DeKalb Counties testified that Lucas did not solicit their respective projects and that decision makers approached 5 Points after deciding not to go forward with Team IA. Even though the totality of the evidence is in dispute whether these damages were the natural consequence of the breach or foreseeable and whether the jury was properly instructed on lost profits, this Court concludes that the jury verdict in regards to these projects, which found that the projects were the natural

consequence of the breach or were reasonably within the parties' contemplation at the time of the contract, is supported by the weight of the evidence. Therefore, JNOV is denied as to the jury verdict for lost profits related to the following projects: Fulton County Microfilm Conversion, Fayette County Civil Case Conversion, DeKalb County Maintenance, Richmond County Microfilm Conversion, DeKalb County Microfilm Conversion, DeKalb County Image Submission, and Palmetto Health Scan and Index projects.

However, I do grant JNOV as to the lost profits awarded by the jury for the Fulton County Historical Reindexing and the DeKalb County Historical Reindexing projects. I find that there is no evidence in the record that Lucas solicited or competed for these reindexing projects during the one-year restrictive period nor were such part of the natural consequence of any other solicitation or competition. The work for these reindexing projects began in 2012. Team IA asserted that evidence does exist to support an award of lost profits for these reindexing projects. Team IA argued that issues of foreseeability, causation, and damages are questions of fact for the jury, and that if evidence is in dispute, the Court should not invade the province of the jury. Team IA argued the principal of law that "the determination of damages by a jury is entitled to substantial deference." *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 697 S.E.2d 644 (Ct. App. 2010). While this work did not begin in 2012, Team IA contended that Lucas solicited Fulton and DeKalb counties as customers of Five Point Solutions within the one-year period, and, without his efforts to take these customers, Team IA would have been awarded the reindexing work. Team IA argued the damages are supported by the testimony that Team IA was the approved vendor to perform the reindexing work, and prior to Lucas' termination, Team IA had performed prior reindexing projects for both Fulton and DeKalb. Brent Yarborough testified that he believed his company foreseeably would have received this work, but for Lucas

taking Fulton and DeKalb counties as customers of Five Point Solutions. Further, Aviery Mecks, who testified that his boss and the decisionmaker, the Clerk of Court for Fulton County, initiated the original contact with Lucas and 5 Points after deciding not to move forward with Team IA, also testified that if Five Point Solutions had not properly performed the Fulton County Microfilm Conversion job in 2009-2010, then it would not have been considered for future work. Even though the totality of the evidence is in dispute if these damages were the natural consequence of the breach or foreseeable and that the jury was properly instructed on lost profits, I grant JNOV on the jury's finding of lost profits related to the Fulton County Historical Reindexing and the DeKalb County Historical Reindexing projects.

B. JNOV: The Non-Compete Provisions are Enforceable

Lucas moved for JNOV on the enforceability of the non-compete provision. The parties have stipulated that the determination of the enforceability of the non-compete is a matter for the Court. These arguments were presented and denied at summary judgment and on directed verdict. For those reasons, and as further set forth herein, the Court finds as a matter of law that the non-compete provisions of the Employment Agreement are enforceable as a matter of law.

The non-compete provision states that Lucas will not, during a 12-month period, compete against Team IA in South Carolina, North Carolina, Georgia, and Alabama. (Agreement ¶ V.B). Lucas *admitted* in his videotaped deposition that he violated the non-compete provision. The Court of Appeals in *Team IA, Inc. v. Lucas*, 395 S.C. 237, 247, 717 S.E.2d 103, 108 (Ct. App. 2012) reasoned that the four-state geographic restriction was not unenforceable as a matter of law, if the facts supported that Lucas was "able, during the term of his employment, to establish contact with [Team IA's] customers."

⁶ SM - 6/37

South Carolina has adopted a "reasonable test" for the enforceability of a covenant not to compete. Under this test, a non-compete will be enforced if shown to 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.

Rental Uniform Serv. of Florence, Inc. v. Dudley, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983).

The non-compete is necessary for the protection of a legitimate business interest. South Carolina has held that protection of a company's assets, business practices, trade secrets, and customers are a clear legitimate interest. See *Standard Register*, 238 S.C. at 66, 119 S.E.2d at 539. Further, the non-compete is only limited to defined "Competing Services." See *Faces Boutique Ltd. v. Gibbs*, 318 S.C. 39, 455 S.E.2d 707 (Ct. App. 1995) (recognizing a company has a legitimate interest in protecting against direct competition). Lucas testified in his videotaped deposition that the non-compete is for the protection of a legitimate interest of Team IA. Thus, the first element of the reasonableness test is satisfied.

This non-compete provision is limited to only one year. South Carolina has enforced non-compete provisions that are two and three years. See *Dudley*, 278 S.C. 674, 301 S.E.2d 142. Lucas concedes in his videotaped deposition that the one-year non-compete "is not overly oppressive." (Lucas p. 235). Thus, the one-year term has been found as reasonable based on South Carolina precedent.

7 SED 1/31

The non-compete provision is reasonably limited in respect to territory. The non-compete provision states that Lucas will not, during a 12-month period, compete against Team IA in South Carolina, North Carolina, Georgia, and Alabama. (Agreement ¶ V.B).

South Carolina law establishes that a restrictive covenant is enforceable "*in the territory*" in which the former employee has been performing his duties as a sales representative. *Standard Register*, 238 S.C. at 59, 119 S.E.2d at 535. In *Dudley*, the Supreme Court upheld a non-compete that provides "that upon termination of his employment. . . the [respondent] shall not, directly or indirectly, during a period of three years immediately following such termination, engage in the industrial laundry business ... in any capacity whatsoever in the area within said territory hereinabove referred to in which [respondent] worked or to which he was assigned at any time during his employment with the Company...". *Dudley*, 278 S.C. at 675-76, 301 S.E.2d at 143. "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.* In citing to *Dudley*, the Court of Appeals in this case held that "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." *Lucas*, at 248, 717 S.E.2d at 108. The Court of Appeals in *Lucas* reasoned that geographic restrictions to non-compete provisions are enforceable in an "area in which [the employee] worked or to which he was assigned at any time during his employment." *Id.* (citing *Delmar Studios of the Carolinas v. Kinsey*, 233 S.C. 313, 104 S.E.2d 338 (1958) (emphasis added)).

This Court concludes that there was evidence that the restricted territory of South Carolina, North Carolina, Georgia, and Alabama contained in the Agreement is limited to Lucas'

assigned sales territory. This evidence includes Lucas's deposition testimony that territory of South Carolina, North Carolina, Georgia and Alabama "wasn't just arbitrarily put in [the Agreement]." At various times during Lucas tenure, Team IA had customers and employees in these four states, and Lucas (as one of the main salespersons for Team IA) interacted with Team IA customers in these states, although tax returns revealed no income generated in Alabama and South Carolina during Lucas last year of employment or the one year period that followed. Lucas' role was primarily to generate new customers and business for Team IA, in addition to supporting existing customers. Since Lucas had the opportunity and ability to interface with and sell to prospective customers in these states, the protection of prospective customers is a legitimate interest of Team IA. There was evidence that Lucas marketed and attempted to generate new customers and business for Team IA within these four states during his 5 year tenure. The evidence, including the testimony of Lucas, supports the finding that Lucas was able to establish contacts with Team IA's current customers and prospective customers in South Carolina, North Carolina, Georgia and Alabama during the term of employment. I find that Lucas at one time or another worked in and was assigned to these states, and therefore the four-state geographic limitation was not unreasonable on its face in the protection of Team IA's legitimate business interest.

Further, as to Alabama and North Carolina, I would note that Lucas did not perform any work in Alabama or North Carolina for 5 Point Solutions *after* he resigned from Team IA. Lucas never attempted to do any work in these two states after his employment with Team IA. The prohibition of Alabama and North Carolina is not overly-broad as applied to the facts of this case. These states had no impact on Lucas' ability to earn a livelihood. On the other hand, it should be noted here that Defendants argued that during the one year period following Lucas' termination

of employment that the nationwide non-compete was still the operative provision, and that an order of a court finding of over breadth was a condition precedent to the four state non-compete.

One of the overreaching considerations is whether the non-compete provision is "unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood." Here, Lucas admitted in his videotaped deposition presented at trial that the non-compete did not prevent his ability to earn a livelihood. Further, the non-compete did not prevent Lucas from working in these four states or prevent him from engaging sales, business, accounting, or financial services. Nor did the non-compete prevent him from selling other types of technology or services, such as the "Judicial Data Exchange" system that Lucas developed. Rather, the non-compete only applied to "COMPETING SERVICES" as defined in the Employment Agreement.

I further find that public policy favors the enforceability of the non-compete. In *Wolf*, the Court of Appeals, in upholding a restrictive covenant, found that "sound public policy generally requires the enforcement of contracts freely entered into by the parties." *Id.* at 108, 420 S.E.2d at 221. Lucas actively negotiated the terms of his Agreement, and he "freely and voluntarily" signed the Agreement with "the opportunity to edit, revise, or change any of the language of the Agreement." Lucas testified the Agreement was "a product of [him] and Mr. Yarbrough negotiating the terms of [his] employment," and that he had "read and underst[ood] the terms of employment."

Defendants made a variety of arguments regarding the over breadth, lack of enforceability, unclean hands and other legal issues at the summary judgment stage as well as directed verdict and even these post trial motions. Plaintiff made a variety of arguments in contravention of Defendants' positions. To the extent that the above discussion have not been dealt with specifically here, the record will reflect that this Court has considered all such

arguments, and although there are meritorious arguments and evidence to support each sides contention, this Court believes in the end the non-compete is reasonable and enforceable, was breached, and caused damage to the Plaintiff.

C. JNOV: The “step-down” provision of the Non-Compete is Enforceable

Lucas argues that the step-down provision is unenforceable because it was not operative until the nationwide non-compete was declared unenforceable by the court on November 19, 2009. Lucas argues, in effect, that the court’s declaration of the non-enforceability of the nationwide non-compete was a condition precedent, or trigger, to the step-down provision becoming applicable to Lucas. I find that this issue was previously addressed by the Court of Appeals in *Team IA v. Lucas*, and, therefore, is the law of the case. The Court of Appeals held:

We conclude that *alternative territorial restrictions contained in the parties’ original agreement (South Carolina, North Carolina Georgia, and Alabama) would remain valid and enforceable* to the extent it is not overly-broad after further development of the facts.

Lucas, 395 S.C. at 245, 717 S.E.2d 107 (emphasis added). Because this Court has concluded that the four states comprising the restricted territory is not overly broad, the four state fall back provision is valid. Further, to adopt Lucas’ argument would strain the reasonable construction of the plain language of the Employment Agreement. The timing of the Court adjudicating the enforceability of the nationwide restriction has no bearing on the enforceability of the step-down provision. The Employment Agreement contains no language that the timing of this determination has any impact on the enforceability, or contemplates that the scope of the alternative territory only applies prospectively from the date a court issues a ruling. Courts have held that the covenant is “saved” by the step-down provision. See *Compass Bank v. Hartley*, 430 F.Supp.2d 973, 981 (D. Ariz. 2006) (holding that the covenant is saved by the step-down provisions allowing the Court to limit its duration).

D. JNOV: Lucas did Solicit "Customers" of the Plaintiff

Lucas argues that the non-solicitation provision should not apply to county governments due to the definition of "Customer" in the Employment Agreement. The Employment Agreement specifically identified "Customer" as a "person, firm or business entity." (Agreement ¶ V.A.1). Team IA argued the customers that are counties fall within the scope of a "person, firm or business entity" based on the ordinary use of those words and existing law.

Team IA further argued that under federal law in contexts other than contract interpretation, a city, county, or municipality is considered a "person." *See Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690, (1978) (holding that municipalities and local governments are considered "persons" under § 1983). *Black's Law Dictionary* states that "a county is a person in a legal sense." *Black's Law Dictionary*, 4th Ed., p 1300 (citing *Lancaster Co. v. Trimble*, 52 N.W. 711 (Neb. 1903)). For determining trade, business, or occupation, the word "person" includes "corporations and governmental entities." *Lawrence v. U.S.*, 972 F.2d 340 (4th Cir. 1992). Furthermore, under the Georgia Constitution, counties are defined as "a body corporate" and empowered to perform business. (Georgia Const. Art. IX, Sec. I). In any event, Team IA points out that Lucas' argument overlooks section 2 of the Non-Solicitation provision, which states, "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." (Agreement, V.A.2).

However, at trial, the issue before this Court was whether "CUSTOMER" was ambiguous and should therefore be submitted to the jury. "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent

person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, ___ 493 S.E.2d 875, ___ (S.C. App. 1997). "It is a question of law for the court whether the language of a contract is ambiguous." *Id.* "Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact for the jury." *Id.*

In this motion, Lucas argues the definition of "Customer" was unambiguous, did not expressly state "county governments," and must be enforced as written or not at all as a matter of law. However, during trial, Lucas took the opposite position that the definition of "Customer" was ambiguous, and, therefore, the meaning and scope of Customer was a matter for the jury to determine. At trial, I found the definition of "Customer" was ambiguous, and the intent and scope of "Customer" was presented to the jury. Based on the request of Lucas, the jury was charged with instructions regarding ambiguity in contracts and presented with a Special Interrogatory on this issue.

The jury rejected this attempt to avoid the non-solicitation provision. As a Special Interrogatory, the jury answered "Yes" to the following question:

(a) Were Fulton County, Fayette County, DeKalb County, and Richmond County "CUSTOMERS" as defined by the non-solicitation provision of the contract?

There was evidence sufficient for a jury to find that the definition of "CUSTOMER" included the named counties. Thus, JNOV is denied.

E. JNOV: The Non-Solicitation Provision is Enforceable

Lucas moved for JNOV on the enforceability of the non-solicitation provision. Lucas contends the non-solicitation provision is not enforceable under South Carolina law because it was not limited to "existing customers."

The Non-Solicitation provision provides, in part: "Employee agrees. . . for a period of twelve (12) months following 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's products or services." (Agreement ¶ V.A.1). The Agreement narrowly defines "Customer" as one who (a) currently has a system or product which was designed or installed by or is being serviced by Employer; or (b) 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; (c) 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. (Agreement ¶ V. 1).

A non-solicitation provision is "not only valid, but is looked upon more favorably by the courts than traditional covenants not to compete." *Labor and Employment Law for South Carolina Lawyers*, 4th Ed., p. 34 (S.C. Bar. 2011). South Carolina law has long enforced non-solicitation provisions in employment agreements. In *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 66, 119 S.E.2d 533, 538 (1961), the Supreme Court held:

It has been said that the 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. Hence, if the employer can show a need of protection against unfair appropriation of his customers by his

employee, the negative restrictive covenant is reasonable as to the employer.

On the basis of this well-established rule of law, courts in South Carolina have repeatedly upheld and enforced agreements containing restrictions against both soliciting and accepting business from the employer's customers. For example, 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." *Standard Register*, 238 S.C. at 59, 119 S.E.2d at 535 (emphasis added). Similarly, the Court of Appeals has upheld as enforceable a restriction that precluded a 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." *Wolf v. Colonial Life & Accident Ins. Co.*, 309 S.C. 100, 105, 420 S.E.2d 217, 220 (Ct. App. 1992) (emphasis added). Likewise, the United States District Court for the District of South Carolina has upheld an agreement that prohibits 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." *Rockford Mfg., Ltd. v. Bennet*, 296 F. Supp. 2d 681, 690 (D.S.C. 2003).

"A non-solicitation covenant often does not contain a limitation as to place, as it restricts contacts with existing customers rather than competition within a specific geographic area." *Dove Data Prods., Inc. v. DeVeaux*, Opinion No. 2008-UP-202, March 24, 2008 (Ct. App. 2008). "South Carolina law provides that a customer-based restriction can substitute for a limitation as to a 'place' in a non-solicitation covenant." *Wolf*, 309 S.C. at 109, 420 S.E.2d at 222 (stating that prohibitions against contacting customers can be a valid substitute for a geographic limitation). Thus, non-solicitation provisions are less scrutinized in the law than a non-compete clause.

Here, the testimony and exhibits in evidence demonstrated that Lucas solicited Team IA

customers within the first twelve (12) months after leaving his employment with Team IA. Fulton County, Fayette County, DeKalb County, and Richmond County were all existing customers of Team IA.

I reject Lucas' position that the non-solicitation provision is unenforceable because it applies to prospective customers. Lucas admitted in his videotaped deposition that the language of the non-solicitation provision is proper to protect against loss of prospective customers that are being actively marketed. (Lucas p. 236-237). He agreed this protection is a "legitimate interest of an employer" and the non-solicitation provision was reasonable to place in an employment agreement. (Lucas p. 236-237).

The Employment Agreement does not broadly include any "prospective customer," but is limited to only an "Employer prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months." The important consideration is whether protection of prospective customers is reasonable for a legitimate interest of the employer. A restrictive covenant is reasonable if it is designed to protect an employer against the loss of foreseeable customers. Here, the protection related to prospective customers is narrowly tailored to a "prospect who has been contacted and offered business services by Employer or its employees within the last twelve (12) months."

Furthermore, South Carolina has never held that a non-solicitation provision cannot apply to prospective customers. There is no *per se* prohibition against non-solicitation of prospective customers. In fact, other courts have held that non-solicitation provisions are enforceable as to prospective customers. For example, Georgia law holds that non-solicitation provisions are enforceable for both existing and prospective customers. *See Mohr v. Bank of N.Y. Mellon Corp.*, 393 Fed. Appx. 639, 645 (11th Cir. 2010) (applying Georgia law and finding that a non-

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solicitation was reasonable as to “former and *prospective* customers” and that ‘there is no need for a territorial restriction expressed in geographic terms for such clauses’); *see also* *Murphree v. Yancey Bros. Co.*, 716 S.E.2d 824 (Ga. Ct. App. 2011); *Palmer & Cay of Ga., Inc. v. Lockton Cos.*, 629 S.E.2d 800 (Ga. 2006); *Habif, Arogeti & Wynne, P.C. v. Baggett*, 498 S.E.2d 346 (Ga. Ct. App. 1998). Cases from other jurisdictions also agree that non-solicitation provisions are enforceable as to prospective customers. *See e.g. Wade S. Dunbar Ins. Agency, Inc. v. Barber*, 556 S.E.2d 331 (N.C. 2001) (holding a restrictive covenant is enforceable where former employee was restricted from soliciting any customers having an active account with employer at time of employee’s termination or prospective customers during the six months preceding termination); *GPS Indus. LLC v. Lewis*, 691 F. Supp.2d 1327 (M.D. Fla. 2010) (holding that Florida law, Fla. Stat. § 542.335(1)(b), has determined that relationships with prospective or existing customers or clients constitute a legitimate business interest.); *Digitel Corp. v. Deltacom, Inc.*, 953 F.Supp. 1486 (M.D. Ala. 1996) (allowing a non-solicitation to be enforceable as to prospective customers); *Solari Indus., Inc. v. Malady*, 55 N.J. 571 (N.J. 1970) (noting that an employers’ legitimate interests would be adequately protected by restraint against former employee’s dealing with plaintiffs’ actual customers or prospective customers with whom he had dealings); *Henderson v. U.S. Bank, N.A.*, 615 F.Supp.2d 804 (E.D. Wis. 2009) (holding that restrictions related to prospective customers are not *per se* unenforceable).

For these reasons, the Court concludes the non-solicitation provision is enforceable and Lucas’s motion for JNOV on this ground is denied.

F. JNOV: There was sufficient evidence presented for a reasonable jury to conclude that Defendants Tortiously Interfered with Contractual Relations or Prospective Contractual Relations

Defendants argued that Team IA failed to produce sufficient evidence that Defendants tortiously interfered with present or prospective contractual relations. To state a cause of action for interference with a contractual relationship, the plaintiff must prove: (1) the existence of a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages resulting therefrom. *Love v. Gamble*, 316 S.C. 203, 213-14, 448 S.E.2d 876, 882 (Ct. App. 1994).

"Under the common law, a trial court should submit to the jury the issue of existence of a contract when its existence is questioned and the evidence is either conflicting or admits of more than one inference." *Allegro, Inc. v. Scully*, 409 S.C. 392, 413, 762 S.E.2d 54, 67 (S.C. App., 2014). "General contract law provides that a 'contract exists when there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act.'" *Id.* (citing *Carolina Amusement Co. v. Conn. Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993)). "A contract may arise from oral or written words or by conduct." *Id.* (citing *Rushing v. McKinney*, 370 S.C. 280, 290, 633 S.E.2d 917, 922 (Ct. App. 2006)).

The elements for the tort of intentional interference with *prospective* contractual relations are: (1) intentional interference with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; and (3) causing injury to the plaintiff. *United Educ. Distributions, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). To support a claim for intentional interference of prospective contractual relations, the existence of a contract is not required; instead, the plaintiff need show only a prospective contractual

relationship that results in “the loss of an identifiable contract or [identifiable] expectation.” *Id.* at 14, 564 S.E.2d at 328. “The plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party. This does not require plaintiff to prove the tort in his initial pleadings; rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts.” *Id.* at 15, 564 S.E.2d at 329.

The evidence was sufficient for a reasonable jury to find that a contract existed between Team IA and Fulton County, Fayette County, DeKalb County, and Richmond County to support the jury’s finding for tortious interference with contractual relations. At the very least, a prospective contractual relationship existed between Team IA and these counties. The evidence established a reasonable probability or expectation that contractual relations between Team IA and these counties may have been realized or expected. Further, the evidence supported the jury’s finding that the actions of the Defendants were taken without proper justification and for improper purposes or improper methods. The methods of interference considered improper the jury could have considered included violating a non-compete or non-solicitation agreement, defamation, misuse of inside or confidential information, or misappropriation of Team IA’s trade secrets.

G. JNOV: The Evidence Did Not Permit Only One Reasonable Conclusion for the Affirmative Defense of Fraudulent Inducement

During trial, Lucas raised and argued the affirmative defense of fraudulent inducement in entering into the Employment Agreement.

To establish fraud, a party must prove with clear and convincing evidence the following: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the

hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (S.C. App. 1996). The failure to prove any element of fraud is fatal. *Id.* Further, a fraudulent representation must relate to a present or preexisting fact and cannot be based on unfulfilled promises or statements about future events. *Woodward v. Todd*, 270 S.C. 82, 240 S.E.2d 641 (1978).

Due to the heavily contested and disputed issues of the facts and circumstances surrounding the execution of the Employment Agreement and parol evidence, this defense was submitted to the jury as a Special Interrogatory to Team IA's breach of contract claims against Lucas. The jury found that Team IA did not fraudulently induce Lucas to enter into the Employment Agreement. This conclusion is well supported by the evidence. In viewing the evidence and its inferences in the light most favorable to the nonmoving party, this motion is denied.

H. JNOV: The Evidence did not Permit Only One Reasonable Conclusion for the Affirmative Defense of Prior Breach

During trial, Lucas raised and argued the affirmative defense that Team IA caused a prior material breach of the Employment Agreement, thereby, rendering the Employment Agreement unenforceable. *See Williams v. Riedman*, 339 S.C. 251, 277-278, 529 S.E.2d 28, 41-42 (Ct. App. 2000); *Associated Spring Corp. v. Roy F. Wilson & Avnet, Inc.*, 410 F. Supp. 967, 976 (D.S.C. 1976). This issue was contested by the parties, and at trial, disputed facts were presented as to whether a prior material breach of the Employment Agreement occurred. As more than one reasonable conclusion could be drawn from the evidence, a Special Interrogatory was presented to the jury on this issue. Once again, the jury ruled against Lucas. In viewing the evidence and

its inferences in the light most favorable to the nonmoving party, evidence supported the jury's verdict and this motion is denied.

I. JNOV: Evidence was Presented for a Reasonable Jury to Conclude that Team IA would have performed the Projects.

Lucas argued that JNOV should be granted because there was no evidence that Team IA would have performed the work on the projects following his resignation. Based on the testimony at trial, Ro Lucas, George Lawson, and Sheila Studdard claim that Team IA would not have gotten this work. However, the testimony of Brent Yarborough, various employees of Team IA, the various exhibits, and the course of dealing between Team IA and these counties clearly created evidence in dispute. Further, the testimony of Aviery Meeks and Tina Robinson of Fulton County supported the jury's finding that work was taken from Team IA directly based upon the conduct of the Defendants. The issue of proximate causation and damages is a question for the jury, not the Court. *See Jensen v. South Carolina Dept. of Social Services*, 297 S.C. 323, 377 S.E.2d 102 (Ct. App. 1988), *affirmed*, 304 S.C. 195, 403 S.E.2d 615 (1991). Accordingly, JNOV on this basis is denied.

J. JNOV: The Evidence Established that Plaintiff Did Not Fail to Mitigate its Damages.

Lucas argued that JNOV should be granted for Plaintiff's failure to mitigate damages. "A party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances to mitigate damages; however, the law does not require unreasonable exertion or substantial expense for this to be accomplished." *Genovese v. Bergeron*, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997). Furthermore, "the law does not require him to unreasonably exert himself or to incur substantial expense to avoid damages." *Tri-Continental Leasing Corp. v. Stevens, Stevens & Thomas, P.A.*, 287 S.C. 338, 342, 338

S.E.2d 343, 346 (Ct. App. 1985). “The party who claims damages should have been minimized has the burden of proving they could reasonably have been avoided or reduced.” *Id.* “Whether the party acted reasonably to mitigate damages is ordinarily a question for the jury.” *Baril v. Aiken Regional Medical Centers*, 352 S.C. 271, 285, 573 S.E.2d 830 (S.C. App. 2002). In viewing the evidence and its inferences in the light most favorable to the nonmoving party, evidence was presented that supported the jury’s verdict and this motion is denied.

K. JNOV: Unclean Hands

Lucas argued that JNOV should be granted based on the doctrine of “unclean hands.” This motion is denied. The defense of “unclean hands” is *only* a defense in non-jury cases of “equity”, and “has no application to an action at law.” *Aaron v. Mahl*, 381 S.C. 585, 674, S.E.2d 482 (2009). To the extent that any relief requested is equitable in nature, Team IA did not act with unclean hands. This conclusion is further supported by the jury’s determination that Team IA did not breach the agreement, commit fraud, or fail to pay Lucas any earned wages or bonuses.

L. JNOV: Defendant Lucas is not Entitled to Recover on his Counterclaims

Lucas requested JNOV on his counterclaim for wages and bonus income. The jury found that Team IA and Brent Yarborough *did* pay Lucas all of the wages earned by him while employed at Team IA. The evidence at trial, including the testimony of Brent Yarborough, supports the jury’s verdict. In viewing the evidence and its inferences in the light most favorable to the nonmoving party, this motion is denied.

M. NEW TRIAL: On All Issues Set Forth Above

Alternatively, Lucas requests a new trial on all of the issues set forth above based on the “thirteenth juror” standard. A trial judge may also set aside a verdict and grant a new trial based

solely on the judge's view of the evidence; this standard is known as the "thirteenth juror" standard. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). Based on the evidence submitted and the jury's verdict, a new trial is not warranted.

N. ELECTION OF REMEDIES

The parties have agreed to resolve the election of remedies by consent order, the terms of which are incorporated herein by reference.

II. TEAM IA'S MOTION TO ALTER OR AMEND JUDGMENT, MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, AND MOTION FOR NEW TRIAL AND/OR NEW TRIAL *ADDITUR*

A. Entry of Pre-Judgment Interest

Team IA requests pre-judgment interest pursuant to S.C. Code § 34-31-20(A). "Prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation..... [t]he fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest." *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006).

"The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty." *Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005). "The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest." *Id.* "The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.*

Team IA argued that its financial damages were capable of being reduced to a sum based on mathematical calculations and the amount awarded was capable of being reduced to a sum. However, while the damages were liquidated, the court finds that prejudgment interest should not be awarded because the amount of damages was not fixed.

B. Amount of Jury Verdict

Team IA requested a new trial *nisi additur*. When the jury's verdict is inadequate, the trial judge has the discretionary power to grant a new trial *nisi*. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995). *See also McCourt by and through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995) (trial judge alone has power to grant new trial *nisi* when he finds amount of verdict to be merely inadequate). When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice or prejudice. *See Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993).

Team IA requested a new trial, or in the alternative, a new trial *nisi additur*, to increase the damages award based on the uncontroverted evidence of lost profits for each project/contract that the jury found was wrongfully taken by the Defendants. *See Plaintiff Trial Ex. 122-128, 140-147 (Lost Profit Summaries)*. Team IA argued the lost profit amounts awarded by the jury have no basis in fact, and that the only competent evidence of the amount of lost profits was the evidence set forth in the Lost Profit Summaries. Team IA is correct that the amounts delineated by the jury for each project were not sums that either party argued to be the correct amount of alleged damages sustained. However, the court is not inclined to grant a new trial based on the jury's determination of damages.

C. Civil Conspiracy

Team IA moved for JNOV and a new trial on the claim for civil conspiracy. Team IA argued that civil conspiracy should have been submitted to the jury.

The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 349, 565 S.E.2d 309, 314 (Ct. App. 2002). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than recalculate other claims within the complaint." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (Ct. App. 1981), *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984), *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

Conspiracy is the act of conspiring or combining together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another." *Id.* Only "lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another." *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988) (emphasis added).

The Court directed the verdict on civil conspiracy due to Team IA's failure to satisfy the "special damages" element. In *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 116, 682 S.E.2d 871, 875 (S.C. App. 2009), the court held that "if damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action," then the damages are not considered "special damages."

Team IA argued that *Hackworth* and other related opinions addressing “special damages” for the civil conspiracy erroneously confuse the actual definition between “general damages” and “special damages.” Team IA contended that special damages means “pecuniary” or economic material loss, as opposed to general damage such as pain and suffering, emotional distress, and other types of non-economic damages. See *Hampton v. Conso Products, Inc.*, 808 F.Supp. 1227 (D.S.C. 1992); see also *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (Ct. App. 1995) (“Special damages...are the pecuniary losses.”); Restatement of the Law, Second, Torts, § 575 (Special damage, or “special harm” is “the loss of something having economic or pecuniary value.”); 22 Am. Jur. 2d Damages § 42 (2003) (“General damages cannot be definitively measured in monetary terms [whereas] [s]pecial damages are usually synonymous with pecuniary loss.”); 16 Am. Jur. 2d Conspiracy §§ 50-53 (2009) (“In the civil conspiracy context, “special damages” means “quantifiable monetary losses such as lost wages, medical expenses, or property damage.”); *James v. Pratt & Whitney*, 126 Fed. Appx. 607 (4th Cir. 2005) (“Special damages are those damages to which an exact dollar amount can be assigned or which can be established with reasonable mathematical certainty.”) (applying South Carolina law). In recognizing the merit of Team IA’s position, this Court believes that our appellate courts are best suited to address the “special damages” element to civil conspiracy. Accordingly, this motion is denied.

D. Failure to Charge Punitive Damages

Team IA requested judgment notwithstanding the verdict and/or a new trial for failure to charge punitive damages.

Punitive damages are recoverable where there is evidence the defendant’s conduct was intentional, reckless, willful, or wanton. See *Cartee v. Lesley*, 290 S.C. 333, 350 S.E.2d 388 (1986). “The issue of punitive damages must be submitted to the jury if more than one

reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton." *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). Team IA claimed that Defendants acted intentionally, willfully, or wantonly in stealing and interfering with Team IA's existing contracts and prospective contractual relations. Team IA argued the first element of both torts of Intentional Interference with Contractual Relations and Intentional Interference with Prospective Contractual Relations is "intentional conduct" which should give rise to a charge of punitive damages. *See Collins Entertainment v. Coats and Coats*, 368 S.C. 410, 629 S.E.2d 635 (2006) ("As its name implies, tortious interference with a contract is a tort, requiring the plaintiff to establish, among other things, intentional procurement of the contract's breach.) Moreover, Team IA argued that South Carolina precedent has recognized that "punitive damages may be justified for aggravated, unjustified interference with the contractual rights of a party." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981) (citing 45 Am.Jur.2d Interference § 61, at 334.).

Over the objection of Team IA, this Court determined not to charge the jury with punitive damages. This Court declines to grant JNOV and/or a new trial for punitive damages.

E. Jury Verdict Form and Interrogatories

Team IA requested JNOV and/or a new trial related to the jury verdict and special interrogatories. Team IA argued the jury verdict form was unduly prejudicial as it was lengthy, confusing, conflated issues of damages for a jury, and omitted the cause of action for violation of S.C. Trade Secrets Act. These objections, except for the issue of the inclusion of a trade secrets cause of action in the jury form, were raised to the court at trial and are again denied.

F. Defense of Fraudulent Inducement

Team IA moved for a new trial for failure to direct verdict on Lucas' affirmative defense for fraudulent inducement. Team IA argued that this affirmative defense polluted the trial with improper parole evidence and other incompetent evidence that would have otherwise been inadmissible. Ultimately, the jury rejected this affirmative defense, and this Court denies Team IA's motion for a new trial on this ground.

III. TEAM IA'S MOTION FOR ATTORNEY'S FEES, EXPENSES, AND COSTS AGAINST LUCAS

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). "When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Id.* "When attorney's fees are requested and authorized by contract or statute, the court should make specific findings of fact regarding certain factors including: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar services; and (6) the beneficial results obtained." *Id.* at 494, 427 S.E.2d at 660-61; *see also Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). "A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." *Layman v. State*, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (S.C. 2008).

In the Employment Agreement between Team IA, Inc. and Cicero Lucas, Lucas is responsible for the attorney's fees, costs, and expenses incurred in Team IA, Inc. enforcing the terms of the Employment Agreement. Based on the jury's verdict determining that Cicero Lucas

breached the Employment Agreement, Team IA Inc. is entitled to reimbursement of attorney's fees, expenses, and costs incurred. Paragraph VII, (G) of the Employment Agreement provides:

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.

Based on the language of the fee-shifting provision, I must conclude that Lucas is liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Team IA rights. I find that the attorney's fees, costs, and expenses incurred by Team IA were reasonable and necessary.

(A) Lucas is Not Entitled to a Jury Trial on Attorney' Fees, Costs, and Expenses.

Lucas is not entitled to a jury trial on the recoverability of attorney's fees and expenses that Team IA incurred. Team IA's claim for attorney's fees was not part of the underlying merits of the action, but only became actionable when the jury found the contract enforceable against Lucas.

South Carolina precedent holds that an award of attorney's fees and costs is a function of the trial judge in post-trial motion. *See, e.g., Taylor v. Medenica*, 332 S.C. 324, 326, 504 S.E.2d 590, 591 (1998); *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013). The six factors that the court must consider contemplate counsel's professional standing, beneficial results obtained, and customary legal fees – all issues that are not appropriate for a lay jury. South Carolina has never held that an award of attorney's fee based on a fee-shifting provision in a contract is a matter for the jury. Instead, the balance of case law from other jurisdictions, as cited in Team IA's brief, demonstrates that this matter is reserved for the judge at the conclusion of the trial. Allowing a jury to determine reasonable attorney's fees is fraught

with practical difficulties regarding the presentation of evidence at trial, including how a plaintiff would obtain attorney's fees after the presentation of evidence, in post-trial matters, or on appeal.

Further, Lucas does not have a constitutional right to a jury trial for the recovery of attorney's fees. Since attorney fees were not allowable at common law, there is no constitutional right to a jury trial on the issue of attorney fees. Article I, Section 25 of the South Carolina Constitution provides, "the right of trial by jury shall be preserved inviolate." However, our courts have interpreted the right to a jury trial "only in cases in which that right existed at the time of the adoption of the constitution." *C.W. Matthews Contracting Co., Inc. v. South Carolina Tax Commission*, 230 S.E.2d 223, 267 S.C. 548 (1976). "Whether a party is entitled to a trial by jury depends on whether the right to a jury was secured at the time of the adoption of our state Constitution. *Carolina First Bank v. Badd, L.L.C.*, Opinion No. 27486 (S.C. Jan. 28, 2015) (citing *Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 150, 621 S.E.2d 344, 348 (2005) ("The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.")). The right to recover attorney's fees was not a common law right existing at the time of the adoption of this state's Constitution in 1868. It is well established that in South Carolina, a "successful litigant ha[s] no right at common law to recover attorney's fees from his opponent." *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961).

Additionally, Lucas never once raised the issue that the recovery of attorney's fees and costs must be submitted to the jury until after the trial. Lucas understood that Team IA would seek attorney's fees and costs if successful, and if he believed that a jury should determine this issue, then Lucas should have timely made this argument to the Court, not after the jury was dismissed. As a result, Lucas' right to a jury trial on attorney's fees is waived, or otherwise

untimely. For these reasons, I find it is proper to consider Team IA's request for attorney's fees, costs, and expenses.

(B) The Defense of "Unclean Hands" Does not Bar Relief.

Lucas argued that Team IA's award of attorney's fees is barred by the equitable defense of unclean hands. To the extent this defense could apply, I find that Team IA did not act with unclean hands. To further support this finding, the jury found that Team IA and Brent Yarborough did not make fraudulent inducements or misrepresentations, or breach the agreement. The jury also found that Defendant Lucas was not owed any unpaid wages.

(C) Team IA Has Presented Evidence to Support the Recovery of Attorney's Fees, Costs, and Expenses.

Team IA has presented evidence to support the recovery of attorney's fees, costs, and expenses. In support, Team IA has presented the Affidavit and Supplemental Affidavit of Robert F. Goings, the Affidavit of Professor John P. Freeman, and all billing records, invoices, and documentation related to the fees and costs sought in this motion. I find that Team IA has provided evidentiary support for each of the factors necessary to determine a reasonable attorney's fee award.

1) Nature, Extent, and Difficulty of the Legal Services Rendered

I find that this litigation involved many complex legal and factual issues. This case involved multiple causes of action arising out of violations of the Employment Agreement. Lucas denied these allegations and Lucas raised various affirmative defenses and six counterclaims regarding the Employment Agreement. This case has been difficult, highly contentious and time consuming for the last six (6) years. Prior to a trial on the merits, this case went to the South Carolina Court of Appeals and the South Carolina Supreme Court. The litigation file of Team IA's lead counsel consisted of roughly 16 bankers boxes of documents

and several gigabytes of electronic data. The discovery process was complicated, involving the production of thousands of documents and electronic discovery and data. The parties participated in eleven (11) depositions, including three out of state. The motions filed by the parties were extensive throughout the litigation. I find that the nature, extent, and difficulty of the legal services rendered supports the attorney's fees and expenses sought by Team IA in this case.

2) Time and Labor Devoted to the Case

I find that Team IA has presented overwhelming evidence of the time and labor spent on enforcing the provisions of the Employment Agreement. "Time spent is but one factor to consider in setting a reasonable attorney's fee." *Taylor v. Medenica*, 331 S.C. 575, 581, 503 S.E.2d 458 (1998). Lucas does not argue that the hourly rates proposed and the time spent on this litigation is excessive. Based on a review of the detailed billing records and time summaries, I find that the time and labor invested by Team IA's counsel over the course of this litigation is fair and reasonable.

Defendant Lucas also argues that attorney's fees should not be awarded because the time was not broken down for claims exclusive to enforcing the Employment Agreement. I find that it would be impractical, if not impossible, for Team IA to present the attorney's fees based on how much time was spent on any particular claim. In this case, Team IA's main causes of action were based on enforcement of the Employment Agreement. The tort related causes of action arose from Lucas' employment and were closely related and intertwined with the enforcement of the contract. Lucas' affirmative defenses and counterclaims for unpaid wages were based on the Employment Agreement. The facts to prove the enforcement of the Employment Agreement are based on the same factual circumstances and elements of proof for the other causes of action.

Similarly, the facts giving rise to liability to George Lawson relate to the same set of facts as Lucas. Further, I cannot find work was performed exclusively for the claims as to George Lawson that were wholly unrelated to Lucas. I find that it would be unreasonable and untenable for Team IA to dissect work spent on each cause of action or to carve out fees related to George Lawson since the substantive claims, the discovery, and trial were significantly intertwined together as one.

The South Carolina Supreme Court in *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) has rejected the exact argument advanced by Lucas. In *Austin*, the Supreme Court found the plaintiff was entitled to fees for the entire amount of the litigation regardless of causes of action that did not provide for attorney's fees. The Supreme Court reasoned:

Under the specific facts of this case, we find it would be difficult to dissect Austin's counsel's fee affidavit to ascertain how much time was spent on this particular claim given the violation of the Act was based on the same facts and circumstances underlying his claims for fraud and constructive fraud.

Additionally, in *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1991), the defendant argued that attorney's fees related to non-attorney fee based causes of action should have been excluded from an attorney's fee award. The Supreme Court in *Taylor* rejected this argument, reasoning:

The breach of warranty and strict liability claims were related and intertwined with the statutory claim. The conduct of the breach of warranty was the same conduct which was deemed to be a violation of the statute. We hold when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding. *Accord*,

Heindel v. Southside Chrysler-Plymouth, Inc., 476 So.2d 266 (Fla. App. 1985). This approach requires the party asserting the right to attorney fees to produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated.

Id. Both *Austin* and *Taylor* stand for the proposition that an attorney's fee award in this case is proper for the entire litigation even though it involved multiple causes of action. This case is similar to *Austin* and *Taylor*, and I find that the fee-shifting provision in the Employment Agreement is broad enough to cover the entire litigation based on the facts of this case. Accordingly, I find that Team IA has provided sufficient evidence for the time and labor incurred in connection with the enforcement of Team IA's rights under the Employment Agreement.

3) Professional Standing of Counsel

Lucas does not contest the professional standing of Team IA's counsel related to the fees sought in this litigation. I find that Team IA's legal counsel has an outstanding professional reputation and standing in the legal community. In addition to the Affidavit of Professor Freeman attesting the professional standing of Team IA's legal counsel, I take judicial notice of their professional standing.

During the course of pre-trial matters and trial, I was impressed with Team IA's legal counsels' preparation and understanding of the complex factual and legal issues involved in this case. During the course of trial, the time spent by Team IA's counsel was demonstrated by their ability to present the evidence in a well-organized and efficient manner. I will note that Defendants were also very well represented by outstanding counsel, and despite the contentious nature of this litigation, counsel for both parties acted with the upmost civility towards one another and the Court.

4) Contingency of Compensation

The contingency of compensation is a factor that is not particularly relevant because the Employment Agreement requires that Team IA be paid reasonable attorney's fees from Lucas. Lucas has presented no evidence that he would be unable to pay an award in the amount sought.

5) Fee Customarily Charged in the Locality for Similar Services

I find that the attorney's fees incurred based on the rate and hours submitted are customary for similar services based on the locality. The evidence to support this factor is based on the Affidavits of Professor Freeman and Mr. Goings, and well as my own knowledge in the legal community. Based on my experience, I find the hourly rates charged and the time necessarily devoted to this case is customary in the locality for similar services are fair and reasonable.

6) Beneficial Results Obtained

Counsel was successful in obtaining beneficial results on behalf of Team IA. "The factor 'beneficial results obtained' merely aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result." *Marquez v. Caudill*, 376 S.C. 229, 656 S.E.2d 737, 746 (2008). "There is no requirement that attorney's fees be less than or comparable to a party's monetary judgment." *Taylor v. Medenica*, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998).

Team IA was successful with achieving the legal determination that the Non-Compete and Non-Solicitation provisions of the Employment Agreement were valid and enforceable. The jury found Lucas breached those provisions and awarded damages. Further, Team IA was successful in the jury determining that the Employment Agreement was not induced by fraud and not previously breached by Team IA.

D. Award of Attorney's Fees and Expenses

Based on a review of the above six factors and a lodestar analysis, I find that a reasonable hourly rate for Robert F. Goings, of the Goings Law Firm, LLC, and Christian Boesl, of Collins & Lacy, P.C., is \$400.00 an hour. Robert F. Goings performed 1049.93 hours of legal work, and based on a \$400.00 an hour rate, the attorneys' fees incurred by him total \$419,972.00. Christian Boesl performed 99.20 hours of legal work, and based on a \$400.00 an hour rate, the attorneys' fees incurred by him total \$39,680.00. I find that these amounts were necessary and reasonably incurred in order to enforce Team IA's rights under the Employment Agreement. I decline to reimburse attorney's fees for the work incurred by Ford & Harrison, LLP in this litigation.

I find that Team IA incurred paralegal fees and expenses with Collins & Lacy, P.C. and the Goings Law Firm, LLC in the amount of \$18,241.00. In reviewing the above six factors and a lodestar analysis, I find this amount to be fair and reasonably incurred to enforce Team IA's rights under the Employment Agreement. Further, Team IA incurred litigation expenses and costs as set forth in the Expenses and Costs Detail Summary in the amount of \$48,441.52. I find these expenses and costs to be fair and reasonably incurred to enforce Team IA's rights under the Employment Agreement.

CONCLUSION

Based on the above findings of fact and conclusions of law, I hereby order as follows on the post-trial motions submitted by the parties:

1. Defendants' Motion for Judgment Notwithstanding the Verdict, New Trial and for Election of Remedies is **GRANTED AND DENIED IN PART**. The motion is granted only for JNOV for the damages for the Breach of Contract causes of action awarded by the jury on the

Fulton County Historical Reindexing project and the DeKalb County Historical Reindexing project. Thus, the damages recoverable under the Breach of Contract claims are \$278,137.34.

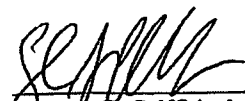
2. Team IA's Motion to Alter or Amend Judgment, Motion for Judgment Notwithstanding the Verdict, and Motion for New Trial and/or New Trial *Additur* is **DENIED**.

3. Team IA's Motion for Attorney's Fees, Expenses, and Costs Against Lucas is **GRANTED** in the amount of \$526,334.52.

4. Based on the Consent Order entered into by the parties and as incorporated by reference herein, Team IA's election of remedy at this stage for breach of contract against Lucas shall not prohibit or prejudice either party from presenting issues regarding the tort-related causes of action on appeal or this Court entering judgment against the Defendants on the tort-related causes of action on remand, should an appeal be taken by either party.

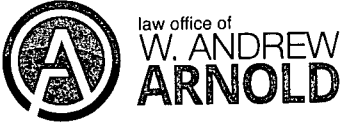
THEREFORE, judgment in favor of Team IA against Lucas shall be entered in the amount of \$804,471.86.

IT IS SO ORDERED.


Eugene G. Griffith, Jr.
S.C. Circuit Court Judge

November 27th, 2015

Newberry, South Carolina



law office of
**W. ANDREW
ARNOLD**

RECEIVED

DEC 29 2015

SC Court of Appeals

December 22, 2015

Joy E. Holston
118 Sandy Beach Drive
Prosperity, SC 29127

**Re: *Team IA, Inc. v. Cicero Lucas, George Lawson, IV and 5 Point Solutions, LLC
and Cicero Lucas and George Lawson, IV vs. Brent Yarborough and Team IA***
C.A. No.: 2009-CP-32-1078

Dear Ms. Holston:

During the week of March 23, 2015 through March 27, 2015, the above case was tried before the Honorable Eugene C. Griffith, Jr., Circuit Court Judge, in Lexington County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,

W. Andrew Arnold
Attorney for Appellant

cc: Robert F. Goings, Esquire
S.C. Court Administration
Clerk, Court of Appeals