

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Judge

2014-002246

RECEIVED

FEB 13 2015

SC Court of Appeals

Lewallen Automation, LLC and
ASAG, Energy, LLC,

Respondents,

v.

Michael Lewallen and
Everworks, LLC,

Defendants,

Of Whom Michael Lewallen is the Appellant

Record on Appeal

Volume 2 of 2

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PA

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Attorney for Respondents

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Case No. 2014-CP-23-4895

Lewallen Automation and
ASAG, LLC,

Respondents,

v.

Michael Lewallen

Appellant.

and

Everworks, LLC

RECEIVED

OCT 16 2014

SC Court of Appeals

NOTICE OF APPEAL

Michael Lewallen appeals the order of Special Circuit Judge Charles B. Simmons, Jr.,
dated October 10, 2014. Appellant received written notice of entry of this order on the same
day.

October 10, 2014



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Charles B. Simmons, Jr., Special Circuit Judge

Case No. 2014-CP-23-4895

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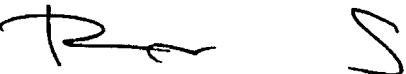
Everworks, LLC

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GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 16 PM 2 34

NOTICE OF APPEAL

Michael Lewallen appeals the order of Special Circuit Judge Charles B. Simmons, Jr., dated October 10, 2014. Appellant received written notice of entry of this order on the same day.

October 10, 2014



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Judge

Case No. 2014-CP-23-4895

Lewallen Automation and
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and

Everworks, LLC

FILED-CLEAN OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 16 PM 2 34

PROOF OF SERVICE

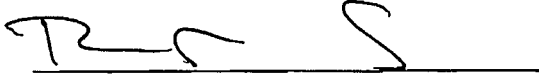
I certify that I have served the Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2014, addressed to its attorneys of record, Chris Gantt-Sorenson and Denny P. Major, Haynsworth, Sinkler & Boyd, P.A., P.O. Box 2048; Greenville, South Carolina 29602.

I certify that I have served the Notice of Appeal on Defendant Everworks by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2014, addressed to its attorney of record, Ralph Gleaton, Gleaton Wyatt; 935 South Main St., Suite 203; Greenville, South Carolina 29601

I further certify that I have served the Notice of Appeal on the Greenville County Clerk of Court by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2012, addressed to the Honorable Paul J. Wickensimer, 305 E. North Street, Greenville County

Courthouse, Greenville, SC 29601

October 10, 2014



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(864) 250-9780

Attorney for Everworks, LLC

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895
Lewallen Automation, LLC and ASAG LLC,	)	
	)	
Plaintiffs,	)	Defendant Lewallen Opposition to
v.	)	Request to Extend Temporary
	)	Injunction
Michael Lewallen and Everworks, LLC,	)	Request for Proceedings to be on the
	)	record
Defendants.	)	

Lewallen Automation, LLC (LALLC), which was the only moving party with regard to the Temporary Injunction, has submitted a letter requesting extension of the Order (Exh. A). Defendant Lewallen now responds and requests that all proceedings where injunctive relief are being considered be held on the record. Not only does LALLC raise its request far too late, it fails to again provide admissible evidence of actionable wrongdoing, and it continues to misrepresent what it is providing.

LALLC's Submission

LALLC submits three new documents purporting to support its argument that the Temporary Injunction should be extended: two new affidavits and an email from an LALLC business partner sent in July 2014 (well over two months before the original temporary injunction). LALLC completely misrepresents the content of the email, and the affidavits also show nothing on the part of Defendant Lewallen that relates to the enjoined issues.

As to the affidavits, Matt Newton claims that he spoke to Defendant Lewallen *after* Lewallen's termination but *before* this case was filed. However, he does not allege, or even suggest, that Defendant Lewallen was using or disclosing trade secrets

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or that he intended to do so. Nor does he claim that Defendant Lewallen threatened to defame LALLC or say anything this Court enjoined him from saying. All the Newton affidavit really shows is a claim that, at the time of his termination (months ago), Defendant Lewallen was angry and he intended to compete.

The Petix affidavit concerns an alleged conversation that took place nearly a year before Lewallen left LALLC. While Petix claims Lewallen inquired about Petix's possible interest in leaving LALLC for a new venture, it is undisputed that Lewallen never undertook any such venture – he remained at LALLC until it fired him in July 2014.¹ More importantly, there is nothing in the Petix affidavit suggesting that Lewallen made any defamatory, disparaging, or false statements about LALLC. The Petix affidavit is completely irrelevant.

The most egregious effort, however, is LALLC's blatant misrepresentation of the Sam Banks email exchange. Mr. Banks works for BoschRexroth – a customer of LALLC. LALLC claims somehow that extended injunctive relief is necessary because, in an e-mail exchange, Mr. Banks used the word "reorganization" in characterizing LALLC's dismissal of Lewallen. (Exh. A at 2 ("Bosch question[ed] LALLC's ability to meet the needs . . . due to LALLC's 'reorganization,' something LALLC had not mentioned to Bosch."))

LALLC itself characterized Defendant Lewallen's departure as a "change in organization" and "restructuring." (Exh. A at p. 10). It is obvious that Mr. Banks was merely following the general language used in LALLC's own announcement. Mr. Banks'

¹ Although the Court denied injunctive relief regarding the solicitation of employees, Petrix never claims that Defendant Lewallen ever offered him a job. Mr.

responses and colloquy nowhere suggests he had even spoken to Defendant Lewallen (even though there was no injunction precluding such). Nor does he question LALLC's ability to meet BoschRexroth's needs, as Plaintiffs claim. (Exh. A at 2). Even the innuendo is based on a false premise.²

But to further illustrate the perils of LALLC's substitution of weak innuendo for actual evidence, no such communication occurred. Mr. Banks confirms that he still has not yet spoken to Defendant Lewallen, that Defendant Lewallen has been nothing but honest and upright in his dealings with BoschRexroth, and that Defendant Lewallen has not even attempted to engage in behavior that was barred by the Temporary Injunction. (Exh. B).³

At the core, LALLC is simply perpetuating its unsuccessful bullying efforts to keep Defendant Lewallen from doing business in the market – an effort this Court already has rejected. Defendant Lewallen has every right to contact people in the industry to do business. LALLC has provided nothing to suggest that Lewallen has

Petrix's purported feelings about what Defendant Lewallen may have meant in mid-2013 are either misplaced, wrong, or simply irrelevant. They certainly are not evidence.

² Even if Defendant Lewallen had told Mr. Banks that LALLC had undertaken a reorganization, that would violate nothing, would disparage nobody, and certainly would not disclose any trade secrets. In fact, such a representation would be wholly consistent with Plaintiffs' own announcement.

³ The Undersigned has redacted portions of Mr. Banks' emails already submitted by Plaintiffs. The redacted portions have nothing to do with the announcement of the change in organization/restructure. Rather, the material deleted has to do with the substance of work being performed by LALLC for BoschRexroth. The Undersigned has redacted this information out of an abundance of caution in the event BoschRexroth considers such information to be confidential. The Undersigned notes, however, that the unredacted version was submitted to this Court by Plaintiffs, which is now a public record.

violated or attempted to violate the injunction or that he has ever engaged in actionable conduct.

LALLC also seeks to change and misinterpret the scope of the injunction even after the matter had been fully heard and ruled upon.⁴ This is improper for several reasons. First, as the Court already has noted, it is not revisiting the merits of further relief. (Exh. C (“The only issue I can and will address is whether the Restraining Order should be continued.”)). Second, issues involving the Order are on appeal and this Court does not have jurisdiction to revisit the subjects addressed in the Order. Rule 205, SCRAP; *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) (“We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.”)⁵

LALLC Misrepresents the Timing of the Issues

LALLC claims that all three pieces of evidence were obtained after the injunction was entered (Exh. A at 1 (“Since the Order, LALLC has gained additional evidence”); *id.* at 2 (“We are also enclosing herewith an email recently received”)) These representations clearly are false. Newton’s purported conversation occurred on July 23 – approximately 2 ½ months before the Order and well over a month before LALLC filed this case. Petix – an employee of the parent company – claims that his conversation occurred on August 5, 2013 – well over a year before the Order and also before the

⁴ See, e.g., Exh. A at 2 (claiming that the injunction bars “defamation” when the express language of the Order disavows providing such broad relief).

⁵ Any argument for other injunctive relief not raised in the prior Motion, especially one grounded in purported “new evidence,” must be submitted by way of a *new* Motion, which should be heard only after appropriate notice to Defendant Lewallen and a full hearing. That would not be a mere matter of extending the current injunction.

case was ever filed. And the "recently received" email from Sam Banks was, in fact, received in mid-July – also before this case was filed and certainly before the Order. Again, the representations LALLC makes to secure injunctive relief are demonstrably false. LALLC should not be rewarded with further injunctive relief based on misrepresentations of evidence and affidavits that themselves reflect no wrongdoing on the part of Defendant Lewallen.

The Temporary Injunction already has expired

This Court cannot simply "extend" what already has expired.⁶ The Order was entered October 9. The Order states that it "shall stay in effect for 45 days." (Order at p. 2 ¶ 7). Plaintiffs never timely requested the anticipated re-convening (Exh. E) that the Court ordered to take place "**prior to its expiration.**" (Order at p. 2 ¶ 7 (emphasis added)). Any Order purporting to extend the expired relief would, in fact, be a new injunction that would not only violate Appellate Rule 205, but that, if valid, would require a new Motion with a right to have at least a 10 day notice and an opportunity to be heard on the part of Defendant Lewallen. Rule 6(d), SCRCP.

Request for all arguments to be on the record

Defendant Lewallen appealed this Court's Order and the appeal is currently in the briefing stage. (Exh. C). Because of the status of the proceedings, it is critical that any discussion with the Court that could possibly lead to another Order extending the relief in the Order should be on the Record.

⁶ Plaintiffs are incorrect in asserting that the Injunction expires November 24, 2014.

Respectfully submitted this 24th day of November, 2014.

A handwritten signature in black ink, appearing to read 'B. Murphy', written over a horizontal line.

Brian P. Murphy, Bar No. 6770
Attorney for Defendant Lewallen

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 240-9292

EXHIBIT A

November 20, 2014

VIA HAND DELIVERY AND E-MAIL

The Honorable Charles B. Simmons, Jr.
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601-2100

Re: *Lewallen Automation, LLC and ASAG, LLC v. Michael Lewallen and Everworks, LLC*
C.A. No. 2014-CP-23-4895

HSB File No.: 36669.0005

Dear Judge Simmons:

The temporary injunction that was issued in the above-referenced matter on October 8, 2014 provides that "[t]his Order shall stay in effect for forty-five (45) days from the date the Court executes and enters it, and the Court shall reconvene the parties prior to its expiration to determine if the Order shall be continued." This 45 day period expires on November 24, 2014. Plaintiff Lewallen Automation, LLC ("LALLC") respectfully requests that the temporary injunction be continued in this matter.

As you may recall, the temporary injunction prevents Lewallen from using or disclosing confidential information or trade secrets of LALLC, as defined by the parties in the Membership Interest Purchase Agreement ("MIPA") and Employee Agreement. It further prevents Lewallen from making statements to LALLC customers that suggest or imply that LALLC officers falsify records, that LALLC is going to cease business operations, or any other statement meant to cause harm to LALLC.

Since the Order, LALLC has gained additional evidence such as an affidavit of Matt Newton, an affidavit of Zach Petix, and an e-mail from a customer representative. We have enclosed those herewith. The Matt Newton affidavit sets forth statements from Defendant Lewallen shortly after he was terminated from LALLC "that these were his clients and that he would make sure that they would do business with him," that "he would do anything necessary to keep his clients," "that he would take all the Michelin business away from Lewallen Automation," "that he would take all of Lewallen Automation's work with Hartness International because they had always been his clients," "that he would talk with Greg Hendricks with Hendricks Fabrication and make sure they wouldn't do any work with Lewallen Automation either," and "that he would take current Lewallen

The Honorable Charles B. Simmons, Jr.
November 20, 2014
Page 2

Automation employees Chad Thomas and Dennis Alexander, as well as others with him, because they were loyal to him."

The Zach Petix affidavit establishes that Mr. Lewallen was already inquiring employees of Plaintiff ASAG, LLC (which owns LALLC) about leaving Plaintiffs and starting a new business at least as of August 2013, well before Mr. Lewallen e-mailed LALLC's customer list to personal e-mail addresses in violation of company policy.

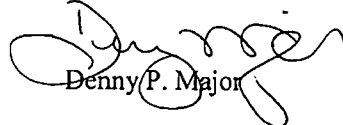
We are also enclosing herewith an e-mail that LALLC recently received from a contact at Bosch questioning LALLC's ability to meet the needs for work in response to a Request for Proposal due to LALLC's "reorganization," something LALLC had not mentioned to Bosch.

Further, while LALLC received Defendant Lewallen's responses to discovery on November 4, 2014, Lewallen refused to provide even the identities of the customers he has contacted since his termination from LALLC. Thus, LALLC has had only a limited opportunity to obtain discovery at this stage. LALLC's efforts to engage in further discovery have also been thwarted by the Codefendants' delay in submitting their signature pages to the Computer Protocol they agreed to, as well as their refusal to agree to a Protective Order for the production of confidential documents. Defendant Lewallen's counsel submitted an executed signature page on October 30, 2014 and Defendant Everworks hand-delivered his signature page on November 19, 2014 during a hearing on Defendant Lewallen's Motion to Compel, and LALLC's Motion for a Protective Order and Motion to file Under Seal the attachment to the Naugle Affidavit submitted to Your Honor at the hearing on September 29, 2014.

Nevertheless, LALLC submits that the above evidence, combined with the evidence that LALLC has already submitted in support of the motion for temporary injunction, warrants the continuation of the temporary injunction. The temporary injunction merely prevents Lewallen from using LALLC's confidential information and trade secrets, as required under his agreements with LALLC and the South Carolina Uniform Trade Secrets Act ("SCUTSA"), and from defaming LALLC to its customers. Such relief continues to be necessary given that Lewallen is willing to "do anything necessary to keep his clients."

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



Denny P. Major

DPM:dlh
Enclosure

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Charles B. Simmons, Jr.
November 20, 2014
Page 3

cc: Brian P. Murphy, Esq. (Via Hand Delivery and E-Mail) ✓
Ralph L. Gleaton, Esq. (Via Hand Delivery and E-Mail)

STATE OF SOUTH CAROLINA
GREENVILLE
COUNTY OF ANDERSON

)
)
)

COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Lewallen Automation, LLC

Plaintiffs,

vs.

Michael Lewallen,

Defendant.

C.A. No.: 2014-CP-23-4895

**AFFIDAVIT OF
MATT NEWTON**

PERSONALLY APPEARED BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

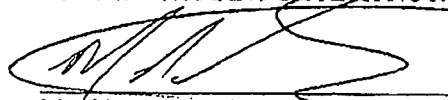
1. I am Matt Newton, Insurance Analyst, ASAG Energy, LLC.
2. I have personal knowledge of the matters attested to herein.
3. On or about July 23, 2014 Mike Lewallen came by my office and told me he was not going to let Gregory Hughes, Robert Merritt and Charles Stewart take his company. He also told me that he was going to make sure customers knew what had happened to him in regards to this situation. He stated that these were his clients and that he would make sure that they would only do business with him. He also stated had he would do anything necessary to keep his clients.
4. On Aug 1st, 2014, Mike came back by my office and gave me a business card that was from Jeremy Steiner with Everworks, Inc. A copy of the business card is attached. Mike said he was thinking about going into business with Mr. Steiner and Everworks and that he would take all the Michelin business away from Lewallen Automation.
5. Mike told me that the relationship with Michelin North America and Robert Powell were built by him and that he would see to it that the business and projects would be taken away as soon as they knew that he would not be involved with Lewallen Automation any longer.

6. Mike also said that he would take all of Lewallen Automation's work with Hartness International because they had always been his clients.

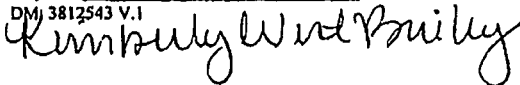
7. Mike also mentioned that he would talk with Greg Hendricks with Hendricks Fabrication and make sure they wouldn't do any work with Lewallen Automation either.

8. Mike also told me that he would take current Lewallen Automation employees Chad Thomas and Dennis Alexander, as well as others with him, because they were loyal to him.

FURTHER AFFIANT SAYETH NOT.


Matt Newton

SWORN TO before me this 4th
day of October, 2014.

DMJ 3812543 V.1


My Commission Expires
January 16, 2018

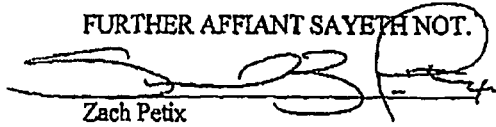
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2014-CP-23-4895
	)	
Lewallen Automation, LLC and ASAG, LLC,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF ZACH PETIX
	)	
v.	)	
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

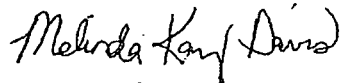
1. I am Zach Petix. I am a GIS Services Manager for ASAG, LLC. I have been with ASAG for 2 years. I have personal knowledge of the matters attested to herein.
2. On or about August 5, 2013, I went with several other employees to Rivals after work. Mike Lewallen was also at the restaurant and Mr. Lewallen and I spoke at this gathering.
3. Mr. Lewallen asked me at this gathering if I was happy with my job and the way that Rob Merritt and Greg Hughes were running the company. Mr. Lewallen described himself to me as an entrepreneur who starts up new businesses. He asked me if I would prefer doing my work in another capacity outside of ASAG with someone other than Rob Merritt and Greg Hughes in charge. He also asked me about my relationships with ASAG clients and whether ASAG clients would follow me to another company if I left ASAG.
4. The overture of my conversation with Mr. Lewallen was that if Lewallen started a new company, whether I would be interested in working with him, and whether I have clients that would follow me to that company. My impression was that Mr. Lewallen was seeking to determine

where my loyalty lied and if I was open to pursuing opportunities outside of ASAG or the leadership of Rob Merritt and Greg Hughes.

FURTHER AFFLIANT SAYETH NOT.


Zach Petix

SWORN TO before me this 17th
day of November, 2014.



Commission expires July 16, 2017

Thursday, October 16, 2014 10:28:52 AM Eastern Daylight Time

Subject: RE: Lewallen Automation's Organizational Announcement

Date: Friday, July 18, 2014 10:56:40 AM Eastern Daylight Time

From: Banks Sam (FnIP/TEF7)

To: Eric Smith

CC: Brian Davenport

That's good to hear because we were really starting to release more business for LeWallen Auto. I've spoken highly to our Central Purchasing Dept. in Charleston and Anderson about the positive results and feedback from Brian, Will and the team. I hope this will remain status quo as we have had larger asset companies that are no longer allowed to bid for Bosch Corp and word travels fast.

Mit freundlichen Grüßen / Best regards,

Sam Banks

Assembly / Test Engineer TL (TEF 7)

Bosch Rexroth Corporation

8 Southchase Court

Pountain Inn, SC 29644 USA

Office: 864-601-2216

Cell: 864-245-4784

Fax: 864-963-5452

www.boschrexroth-us.com

This e-mail and any attachments may be confidential or legally privileged. If you received this message in error or are not the intended recipient, immediately destroy the e-mail message and any attachments or copies. You are prohibited from retaining, distributing, or disclosing any information contained herein.

From: Eric Smith [mailto:eric.smith@lewallenautomation.com]

Sent: Friday, July 18, 2014 10:38 AM

To: Banks Sam (FnIP/TEF7); Gassner Chris (FnIP/TEF7); Odom Mike (FnIP/TEF7); Risher John (FnIP/MOE2); Woodward Bruce (FnIP/MOE1); Snipes Mike (FnIP/FCM)

Cc: Brian Davenport

Subject: Re: Lewallen Automation's Organizational Announcement

Sam,

Rest assured, there will be no negative changes to our operation. The vendor ID will not change since Lewallen Automation has been a wholly owned subsidiary of The Group of Patriots for over a year and half. The delivery of open orders will remain on the same schedules as previously stated.

If you would like to meet and discuss these or any other concerns, please let me know.

Thanks,

Eric F. Smith

Director of Operations and Business Development

Lewallen Automation

223 Pine Road

Easley, SC 29642

Office: 864 269 3038 Ext. 2067

Cell: 864 884 6676

Page 1 of 3

Nancy Brooks
Executive Administrative Assistant:
864-288-9917
Nancy.brooks@lewallenautomation.com



From: "Banks Sam (FnIP/TEF7)" <Sam.Banks@boschrexroth-us.com>
Date: Friday, July 18, 2014 at 9:57 AM
To: "Gassner Chris (FnIP/TEF7)" <Chris.Gassner@boschrexroth-us.com>, "Odom Mike (FnIP/TEF7)" <Mike.Odom@boschrexroth-us.com>, "Risher John (FnIP/MOE2)" <John.Risher@boschrexroth-us.com>, "Woodward Bruce (FnIP/MOE1)" <Bruce.Woodward@boschrexroth-us.com>, "Snipes Mike (FnIP/FCM)" <Mike.Snipes@boschrexroth-us.com>
Cc: Eric Smith <eric.smith@lewallenautomation.com>
Subject: FW: LeWallen Automation's Organizational Announcement

All -

As of right now, I am not sure how this will affect our vendor id with LeWallen Auto. [REDACTED]

Finally, [REDACTED]

Eric -

If you hear of any additional changes within your organization or if you cannot conduct any of the above request then let us know. Understand that Palmetto Eng. and LeWallen Auto were a preferred vendor at BR and our review of their operations and rapport was the reason that we selected them as a preferred vendor prior to the merger.

Mit freundlichen Grüßen / Best regards,

Sam Banks

Assembly / Test Engineer TL (TEF 7)
BoschRexrothCorporation

8 Southchase Court
Fountain Inn, SC 29644 USA
Office: 864-601-2216
Cell: 864-245-4784
Fax: 864-963-5452

www.boschrexroth-us.com

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From: Sales Lewallen Automation [mailto:sales@lewallenautomation.com]
Sent: Friday, July 18, 2014 8:59 AM
Subject: Lewallen Automation's Organizational Announcement



July 18, 2014

To Our Valued Business Partners:

This letter is to inform you that an organizational change has been made within Lewallen Automation. Hopefully you will not experience anything but improved performance and response from our organization.

Mike Lewallen is no longer with the company or responsible for sales of Lewallen Automation as of today. We certainly appreciate his efforts in the past and wish him the very best.

Eric Smith has been named as Director of Operations for Lewallen Automation. He will be reaching out to those of you who are not already familiar with his stellar background and determination to bring the highest level of quality and turnkey solutions to our business partners. He will introduce his sales, technical and operation teams to make sure that you have a seamless experience.

We are also pleased to announce that our long-term veterans are being recognized and will be promoted and continue as leaders within the organization. These include Chad Thomas, Donald Alexander, David Coto, Geoff Storm and Jacqui Satterwhite.

We certainly understand that you may have questions so your individualized concerns will be promptly sent to you. We stand ready to show you how this new restructuring will definitely save you time, effort and money going forward.

With Kind Regards,

Lewallen Automation Ownership

Rob Moritt

Gregg Hughes

Charles Stewart

Robert A. Moritt

Gregg Hughes

Charles Stewart

ASAC ENERGY

LEWALLEN

PATRIOT SOLUTIONS

223 Pitt Road Eastly, SC 29542

1

Tel. (844) 269-3026

EXHIBIT B

Brian Murphy

From: Banks Sam (FniP/TEF7) <Sam.Banks@boschrexroth-us.com>
Sent: Thursday, November 20, 2014 3:49 PM
To: Brian Murphy
Subject: Re: Lewallen Automation v. Lewallen lawsuit

Hello Brian,

I am currently on vacation and will return to the office Monday. I plan on sending this email to my HR dept and Legal. I have not contacted Mike since his termination. He has called me on 2-3 occasions, the earliest being this morning in which I didn't recognize his number because he is not a close acquaintance. We have a good working relationship with GOP. I had a good working relationship with Mike when he owned Lewallen outright, even though we didn't communicate much after the merger. He was not my sales rep at any point. That being said I do not have anything negative to say about either. I do not know why Mike was terminated but in my limited time with him he has been truthful and forthcoming. From the outside looking in everything seemed copacetic until I received the initiating email from Eric Smith. I really do hope for Mike's sake that he can get back on his feet because in my mind the customer comes first with him and that truth will prevail. All further emails will be forwarded to HR without reply. Have a great weekend!

Sent from my iPhone

On Nov 20, 2014, at 2:05 PM, "Brian Murphy" <brian@stephensonmurphy.com> wrote:

Mr Banks:

I represent Michael Lewallen, who has been sued by Lewallen Automation. Lewallen Automation is seeking to enjoin Michael for various things based, in part, on an email exchange that you had with Eric Smith. A copy of the email exchange that you had with Lewallen Automation that was submitted to the Court is attached.

Unfortunately, Lewallen Automation's actions have made you a key witness in this litigation. I would appreciate the opportunity to meet with you to obtain an affidavit to show that Michael has done nothing wrong. My hope is that, by obtaining an affidavit, we can avoid inconveniencing you further by having to issue a subpoena for a deposition (although I cannot guarantee you that Lewallen Automation will not do that). If I could at least get an email from you stating that Michael has not done anything improper in his communications with you and that your emails in the attached chain were a response to Lewallen Automation's announcement regarding its change in organization, perhaps that will suffice for now. I do need to have something to show the court to dispel the argument by Lewallen Automation that Michael has done anything wrong.

If you would prefer to speak by phone, I am happy to do so at your convenience. Again, I am very sorry Lewallen Automation brought you into this. And I hope you understand I have a client to represent. This matter is urgent as we may be before the court with very little notice since they are seeking an injunction.

Thanks again.

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400

(864) 240-9292 (fax)

brian@stephensonmurphy.com

<Sam Banks emails with Lewallen Automation.pdf>

Thursday, October 16, 2014 10:28:52 AM Eastern Daylight Time

Subject: RE: Lewallen Automation's Organizational Announcement

Date: Friday, July 18, 2014 10:56:40 AM Eastern Daylight Time

From: Banks Sam (FnIP/TEF7)

To: Eric Smith

CC: Brian Davenport

That's good to hear because we were really starting to release more business for LeWallen Auto. I've spoken highly to our Central Purchasing Dept in Charleston and Anderson about the positive results and feedback from Brian, Will and the team. I hope this will remain status quo as we have had larger asset companies that are no longer allowed to bid for Bosch Corp and word travels fast.

Mit freundlichen Grüßen / Best regards,

Sam Banks

Assembly / Test Engineer TL (TEF 7)

Bosch Rexroth Corporation

8 Southchase Court

Pountain Inn, SC 29644 USA

Office: 864-601-2216

Cell: 864-245-4784

Fax: 864-963-5452

www.boschrexroth-us.com

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From: Eric Smith [mailto:eric.smith@lewallenautomation.com]

Sent: Friday, July 18, 2014 10:38 AM

To: Banks Sam (FnIP/TEF7); Gassner Chris (FnIP/TEF7); Odom Mike (FnIP/TEF7); Risher John (FnIP/MOE2); Woodward Bruce (FnIP/MOE1); Snipes Mike (FnIP/FCM)

Cc: Brian Davenport

Subject: Re: Lewallen Automation's Organizational Announcement

Sam,

Rest assured, there will be no negative changes to our operation. The vendor ID will not change since Lewallen Automation has been a wholly owned subsidiary of The Group of Patriots for over a year and half. The delivery of open orders will remain on the same schedules as previously stated.

If you would like to meet and discuss these or any other concerns, please let me know.

Thanks,

Eric F. Smith

Director of Operations and Business Development

Lewallen Automation

223 Pine Road

Easley, SC 29642

Office: 864 269 3038 Ext. 2067

Cell: 854 884 6676

Page 1 of 3

Nancy Brooks
Executive Administrative Assistant:
864-238-9917
Nancy.brooks@lewallenautomation.com



From: "Banks Sam (FnIP/TEF7)" <Sam.Banks@boschrexroth-us.com>
Date: Friday, July 18, 2014 at 9:57 AM
To: "Gassner Chris (FnIP/TEF7)" <Chris.Gassner@boschrexroth-us.com>, "Odom Mike (FnIP/TEF7)" <Mike.Odom@boschrexroth-us.com>, "Risher John (FnIP/MOE2)" <John.Risher@boschrexroth-us.com>, "Woodward Bruce (FnIP/MOE1)" <Bruce.Woodward@boschrexroth-us.com>, "Snipes Mike (FnIP/FCM)" <Mike.Snipes@boschrexroth-us.com>
Cc: Eric Smith <eric.smith@lewallenautomation.com>
Subject: FW: Lewallen Automation's Organizational Announcement

All -

As of right now, I am not sure how this will affect our vendor id with LeWallen Auto. [REDACTED]

Finally, [REDACTED]

Eric --

If you hear of any additional changes within your organization or if you cannot conduct any of the above request then let us know. Understand that Palmetto Eng. and LeWallen Auto were a preferred vendor at BR and our review of their operations and rapport was the reason that we selected them as a preferred vendor prior to the merger.

Mit freundlichen Grüßen / Best regards,

Sam Banks

Assembly / Test Engineer TL (TEF 7)
BoschRexrothCorporation

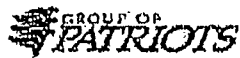
8 Southhase Court
Fountain Inn, SC 29644 USA
Office: 864-601-2216
Cell: 864-245-4784
Fax: 864-963-5452

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Page 2 of 3

From: Sales Lewallen Automation [mailto:sales@lewallenautomation.com]
Sent: Friday, July 18, 2014 8:59 AM
Subject: Lewallen Automation's Organizational Announcement



July 18, 2014

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Eric Smith has been named as Director of Operations for Lewallen Automation. He will be resulting out to those of you who are already familiar with his stellar background and determination to bring the highest level of quality and timely solutions to our business partners. He will introduce his sales, technical and operations teams to make sure that you have a seamless experience.

We are also pleased to announce that our long-term veterans are being recognized and will be promoted and continue as leaders within the organization. These include Chad Thomas, David Alexander, David Cote, Geoff Storm and Jamie Banerjee.

We certainly understand that you may have questions to your individualized contracts will be promptly sent to you. We stand ready to show you how this new restructuring will definitely save you time, effort and money going forward.

With Kind Regards,

Lewallen Automation Ownership

Rob Merrill

Gregg Hughes

Charles Stewart

Robert W. Merrill

[Signature]

Charles Stewart

ASAC ENERGY

323 Pine Road, Rocky, SC 29642

LEWALLEN

1

PATRIOT SOLUTIONS

Tel: (864) 769-3038

EXHIBIT C

Brian Murphy

From: Simmons, Judge Charles <CSimmons@greenvillecounty.org>
Sent: Friday, November 21, 2014 8:42 AM
To: Brian Murphy; Major, Denny (dmajor@hsblawfirm.com); Kimbrell, Karen; Hill, D. Garrison
Cc: Gantt-Sorenson, Chris; Jeff P. Dunlaevy
Subject: RE: Lewallan Automation vs. Lewallen

To All Counsel,
I will have my docket coordinator (who is out today) get with all of you on Monday to see if a conference call may be set Monday or Tuesday morning. The only issue I can and will address is whether the Restraining Order should be continued.
Judge Simmons

Charles B. Simmons, Jr., Judge
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601

Phone: (864) 467-8556
Fax: (864) 467-8401

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Thursday, November 20, 2014 1:25 PM
To: Simmons, Judge Charles; Major, Denny (dmajor@hsblawfirm.com)
Cc: Gantt-Sorenson, Chris; Jeff P. Dunlaevy
Subject: RE: Lewallan Automation vs. Lewallen

I'm sorry, your Honor, I hit "send" too quickly. I neglected to also note that this BoschRexroth email exchange, which has nothing to do with Mike Lewallen, was in mid July of this year. The representation that Plaintiffs just received it clearly is not true.

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

brian@stephensonmurphy.com

From: Brian Murphy
Sent: Thursday, November 20, 2014 1:21 PM
To: Simmons, Judge Charles; Major, Denny (dmajor@hsblawfirm.com)
Cc: 'Gantt-Sorenson, Chris'; jeff@stephensonmurphy.com
Subject: Lewallan Automation vs. Lewallen

I just received Ms. Gantt-Sorenson's letter. Obviously, we oppose any further injunction. Moreover, what she complains about in her letter refers to claims that do not violate the injunction. Nowhere in her letter does she provide even an allegation that my client has done anything with regard to the actions you enjoined. Instead, she continues to complain about matters with which you specifically stated you would issue injunctive relief. The email exchange between Lewallen Automation and BoschRexRoth says nothing about Mike Lewallen. The impetus for the exchange was an announcement that Lewallen Automation sent to Bosch Rexroth and nothing else. It is patently frivolous for Lewallen Automation that its discussion with a customer that has nothing to do with Mike Lewallen should be the basis for its claim that Mike Lewallen should be enjoined.

If Ms. Gantt-Sorenson has a complaint about our discovery responses, she should file a motion to compel. That is a separate issue. We will address those arguments in due course. That matter is not before you at this time.

To the extent the Court is considering an extension of any injunction, Defendant Lewallen should be provided the right to be heard beforehand. Respectfully, I must request a hearing if you are seriously considering her request. If there is a request for further or different injunctive relief, Defendant Lewallen is entitled to 10 days notice of any such motion and the opportunity to be heard.

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

brian@stephensonmurphy.com

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EXHIBIT E

Brian Murphy

From: Lopez, Stephen <SLopez@greenvillecounty.org> on behalf of NJCoord <NJCoord2@greenvillecounty.org>
Sent: Friday, November 14, 2014 12:20 PM
To: Brian Murphy
Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895- Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

Brian,

Thank you for your e-mail. Judge Simmons has left for the day, but I spoke to Karen and she was not aware that anyone has requested an extension of the Temporary Injunction. However, if someone is intending to request such, I'm sure they will contact me or Judge Simmons' office to follow up.

Best,
Steve.

Stephen Lopez
Non-Jury Coordinator
Greenville County Clerk of Court
ph (864) 467-8546
fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

-----Original Message-----

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Friday, November 14, 2014 11:53 AM
To: NJCoord
Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895- Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

In the interest of full disclosure, let me note that Judge Simmons said in the Order granting an injunction he would reconvene in 45 days if the injunction needed to be extended. You will see that in paragraph 7 of the Order on the last page (attached). I do think we had some follow up emails about the hearings in November being that opportunity if need be (although I obviously assumed incorrectly we were speaking of the 19th). I am certainly not requesting such a reconvening and I certainly do not feel that an extension is warranted, but I didn't know if you wanted to share this with the Judge since he may not have remembered the provision. I just don't want to come off as trying to foster a misunderstanding by my silence. Thanks.

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

brian@stephensonmurphy.com

-----Original Message-----

From: Lopez, Stephen [mailto:SLopez@greenvillecounty.org] On Behalf Of NJCoord
Sent: Friday, November 14, 2014 11:49 AM
To: Brian Murphy
Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895-Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

Brian,

I'm not sure what it was. Judge Simmons could not think of anything that still needs any follow-up from the Oct hearing before him. But, Karen had a note to set a hearing in mid-November. So she did. It was probably as "if needed" contingency thing.

I wish I knew more, but I was not in on that hearing.

Steve

Stephen Lopez
Non-Jury Coordinator
Greenville County Clerk of Court
ph (864) 467-8546
fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

-----Original Message-----

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Friday, November 14, 2014 11:41 AM
To: NJCoord
Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895-Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

What hearing was before Judge Simmons on Monday. I may have just dodged a calendaring mistake on my end.

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

brian@stephensonmurphy.com

-----Original Message-----

From: Lopez, Stephen [mailto:SLopez@greenvillecounty.org] On Behalf Of NJCoord
Sent: Friday, November 14, 2014 11:39 AM
To: Brian Murphy
Cc: Major, Denny (dmajor@hsblawfirm.com); ralph@seblawfirm.com; Kimbrell, Karen

Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895-Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

Brian,

Thank you for your e-mail. As far as I know, the 4 motions set before Judge Hill at 11:30 on Nov 19 were not before Judge Simmons in October and were subsequently scheduled for hearing at the next available CPNJ Motions term. I just spoke to Judge Simmons and he confirmed that understanding.

Judge Simmons is also of the opinion that there is no need for two judges to hear different aspects of this case next week and has directed Karen to cancel the hearing scheduled before him on Monday at 10:00 and allow Judge Hill to handle the pending motions. I am copying Karen Kimbrell and all counsel on this reply so we will all be on the same page as to the hearing schedule for next week.

Please feel free to contact me if you have any questions or concerns.

Best regards,
Steve

Stephen Lopez
Non-Jury Coordinator
Greenville County Clerk of Court
ph (864) 467-8546
fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

-----Original Message-----

From: Brian Murphy [mailto:brian@stephensonmurphy.com]

Sent: Friday, November 14, 2014 10:05 AM

To: roster@greenvillecounty.org; NJCoord

Subject: RE: Motion "MCOMPL-Defs Motion/Compel Re Plts Responses/Cert of Service" for Case "2014CP2304895-Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

Are these in front of Judge Simmons?

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)

brian@stephensonmurphy.com

-----Original Message-----

From: roster@greenvillecounty.org [mailto:roster@greenvillecounty.org]

Sent: Tuesday, November 04, 2014 9:22 AM

To: brian.murphy@mindspring.com

Cc: slopez@greenvillecounty.org

Subject: Motion "MCOMPL-Def's Motion/Compel Re Plt's Responses/Cert of Service" for Case "2014CP2304895- Lewallen Automation LLC , plaintiff, et al vs. Michael Lewallen , defendant, et al" was added to a Motions Roster for 11/19/2014 at 11:30 AM

A Hearing in this case is SCHEDULED - DATE and TIME reflected above

Movant is responsible to notify all counsel and/or self represented parties.

CHECK THE ONLINE ROSTER at <http://www.greenvillecounty.org/scjd/courtrosters/>

Please address requests for continuance to the Chief Administrative Judge: send via e-mail to the Non-Jury Coordinator and copy all counsel and/or parties if pro se. If Resolved or Withdrawn please contact Steve Lopez (864)467-8546

njcoord@greenvillecounty.org **MEMO REQUIREMENTS** at

<http://www.greenvillecounty.org/courtsupport/MemPolicies.asp>

(File w Clerk AND Deliver paper copy of Brief or Memo to Presiding Judge 72 Hours Prior to Hearing)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Lewallen Automation, LLC and ASAG, LLC,	)	C.A. No.: 2014-CP-23-04895
	)	
Plaintiffs,	)	
	)	
v.	)	AFFIDAVIT OF OLIVER HAYES
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

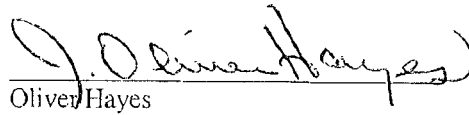
PERSONALLY APPEARED BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

1. I am Oliver Hayes, Buyer in the Purchasing Group Service with Michelin North America ("Michelin").
2. I have personal knowledge of the matters attested to herein.
3. In summer 2014, Mike Lewallen ("Lewallen") told me that he was terminated by Group of Patriots by a text message while he was on vacation and that Group of Patriots cut off his cellular telephone service. Lewallen was upset and very negative.
4. I was informed that Lewallen's father started Lewallen Automation, LLC and I know that Lewallen used to be the President of Lewallen Automation, LLC. I worked with Lewallen while he was employed by Lewallen Automation, LLC both before and after he sold his interest in the business.
5. Lewallen told me that he still had friends who worked for Lewallen Automation, LLC.
6. As a result of my conversation with Lewallen and because I wanted to insure that Michelin would not be harmed as a result of this change, I contacted Jamie Satterwhite and told him I wanted to meet with Greg Hughes ("Hughes"). I also wanted to hear his side of the story.

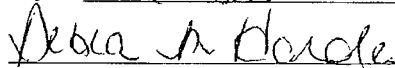
7. Greg Hughes, Jamie Satterwhite and I met in Oklahoma City. Hughes told me that Group of Patriots and Lewallen Automation, LLC would be able to meet Michelin's needs. Hughes also told me that Lewallen wasn't terminated by text message while on vacation.

8. While in Oklahoma City, I checked with the Department Manager for Michelin who was overseeing a mold removal project that was being performed by Group of Patriots to inquire as to how they were performing. The Department Manager assured me that they were doing a fine job.

FURTHER AFFIANT SAYETH NOT.


Oliver Hayes

SWORN TO before me this 9th
day of December, 2014.



Notary Public for South Carolina

My Commission Expires: 4/24/24

State of South Carolina

) IN THE COURT OF COMMON PLEAS

County of Greenville

) 2014-CP-23-4895

Lewallen Automation, LLC and ASAG
LLC,

Plaintiffs,

v.

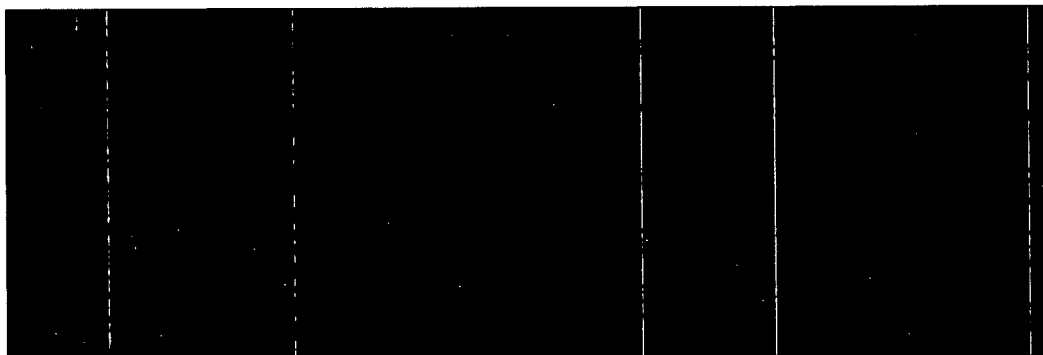
Michael Lewallen and Everworks, LLC,

Defendants.

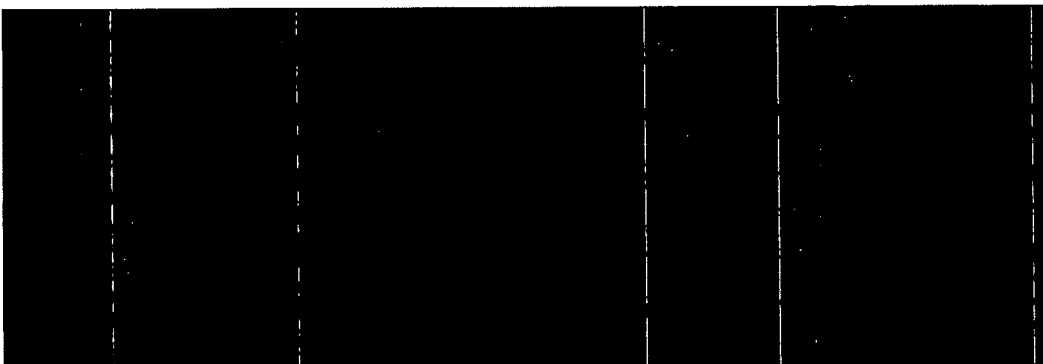
) Affidavit of Rachel Kleinhans

Rachel Kleinhans states that she is an adult over the age of eighteen and that the following matters are within her personal knowledge:

1.



2.



3. I recall an email from early this year with what I recall was an Excel spreadsheet. I work with these as a student at Clemson. I do not remember what the

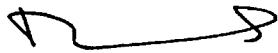
document was about. I recall Mike sending it to me and asking me if I could somehow condense the document so that it was not so many pages when it was printed out. I tried, but was not able to do it. I did not read the document for its content, or even care what it was about. My recollection is that I deleted the document after I was unable to condense it. I never shared the contents with anyone. There was never any discussion that the document would be used for any purpose other than Mike's work at Lewallen Automation.

4. I have given this affidavit freely and voluntarily with no promise of any benefit or remuneration. I understand that the decision to give an affidavit is voluntary, and nobody suggested I was compelled to provide any information, including the information I have provided in this document. I understand this affidavit may be used in court proceedings.

Respectfully submitted this 13th day of October, 2014.


Rachel Kleinhans

Sworn to and subscribed before me this
13th day of October, 2014



Notary Public

My commission expires 9/11/2015