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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Judge

2014-002246

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 1 of 2

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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 Energy, LLC	)	C.A. No.: 2014-CP-23-4895
Plaintiffs,	)	
	)	
v.	)	**ORDER ON MOTION FOR TEMPORARY INJUNCTION**
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

FILED-CLERK OF COURT
2014 OCT 9 PM 4 00
GREENVILLE CO. S.C.
PAUL PRINCE, MASTER

This matter is before the Court on Plaintiff Lewallen Automotive, LLC Motion for a Temporary Injunction. A hearing was held before me on September 29, 2014. The parties were represented by counsel at the hearing. After reviewing Plaintiff's pending motion with exhibits, and additional documents supplied by the parties, and considering the arguments of counsel, the Court finds that Plaintiffs are entitled to a temporary injunction pursuant to Rule 65, SCRCP, as set forth more specifically below.

FINDINGS OF FACTS

From approximately March 28, 2008 to December 31, 2012, Defendant Michael Lewallen ("Lewallen") was a member of Lewallen Automation, LLC ("LALLC), and was an officer and president of LALLC. On December 31, 2012, Lewallen sold all of his equity interest in LALLC to Plaintiff ASAG Energy, LLC, pursuant to a Membership Interest Purchase Agreement. That same day, Lewallen resigned his position as president of LALLC and entered into an "Employment Agreement" with LALLC, pursuant to which he became vice president of LALLC. Lewallen remained employed as vice president of LALLC until his termination by LALLC on June 30, 2014. Defendant Lewallen subsequently entered into a contract relationship

with Defendant Everworks, LLC. Everworks is also in the automation business although the scope of its business, according to Lewallen, may differ from that of LALLC.

The Membership Interest Purchase Agreement states Lewallen "shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent." "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors." The Membership Interest Purchase Agreement provides that "[a]ny remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law."

The Employment Agreement states that Lewallen "is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies." The Employment Agreement also states that "[Lewallen] agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever."

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LALLC has submitted evidence, in the form of affidavits, that Defendant Lewallen, as former president and vice president of LALLC, was privy to and had knowledge of confidential information of LALLC, including, but not limited to, prices for all parts purchased to assemble the panels, hourly rates charged by LALLC to the customers, costs of OEM panels and how long it takes to assemble them, and LALLC's pricing information. There is also evidence that such information was protected by LALLC, including for example, by having employees execute non-disclosure agreements, maintaining a company Confidentiality and Trade Secrets Policy that prohibits the disclosure of information outside the company, and by maintaining a badge lock system at the facility. There is also an allegation that during his employment with LALLC, Lewallen e-mailed to his personal e-mail address, on or about January 20, 2014, a spreadsheet containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. LALLC has also presented evidence that this spreadsheet was e-mailed to a "Rachel Kay," who is not an employee of Plaintiffs. Plaintiffs have also alleged that a number of customers and employees have advised them that Defendant Lewallen is making untrue statements about LALLC's ability to remain in business and its improper business practices. Other affidavits have been submitted by LALLC. Lewallen objects to these affidavits arguing they contain inadmissible hearsay. The Court, being aware of this objection, has not considered any inadmissible hearsay in its ruling. Further, this is a temporary Order and is based upon the limited facts in the record at this time.

CONCLUSIONS OF LAW

Under South Carolina law, a party seeking to obtain injunctive relief generally must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *FOC*

3

Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). There is no additional requirement that a trial judge must "balance the equities" before issuing an injunction. *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15, 17 (2010). When a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824 (1992).

Here, the Court finds that Plaintiffs have made a sufficient showing under these standards that it is entitled to a temporary injunction. The Court finds that Plaintiffs have made a sufficient showing of likely irreparable harm if Lewallen uses certain confidential information of LALLC, including pricing and cost information. As set forth above, there is evidence that Defendant Lewallen, as former president and vice president of LALLC, was privy to such information and has knowledge of such information, and that such information was protected by LALLC. There is also evidence that during his employment with LALLC, Lewallen e-mailed to his personal e-mail and to a "Rachel K," who is not an employee of Plaintiffs, a document containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. The Court finds this constitutes sufficient evidence of disclosure under the South Carolina Trade Secrets Act and pursuant to Lewallen's contractual obligations.

The Court declines to issue an Order relative to LALLC's allegations of slander by Lewallen finding such is typically not a basis for an injunction. However, Lewallen proceeds at his own risk in this lawsuit if the allegations of LALLC are ultimately proven relative to slander.

The Court denies LALLC's request that Defendants be enjoined from encouraging or employing LALLC employees in any manner that violates such employee's non-competition,

non-disclosure, and/or non-solicitation covenant with LALLC. However, and as noted above, Lewallen and Everworks proceed at their own risk in this lawsuit if such allegations are ultimately proven true and actionable.

THEREFORE, IT IS ORDERED, ADJUGED AND DECREED, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, that Plaintiffs are hereby granted a temporary injunction against Defendant Lewallen as follows:

1. Defendant Lewallen shall immediately return and certify in writing to LALLC that he has returned all or its documents, electronic data, and equipment and property. With respect to the January 2014 electronic mail correspondence referenced above, Defendant Lewallen shall not disclose or use it or the information contained therein, and shall protect its confidentiality until such time as the parties resolve how and in what format it shall be delivered. This shall be addressed in a separate Protocol Order.
2. To the extent that the Plaintiffs determine that a forensic audit is the manner in which they seek return of the information attached to the January 2014 electronic mail correspondence referenced above, the parties shall convene and agree as to the capture of any electronic data for that very limited purpose. To the extent that Defendant Lewallen provides his personal laptop computer referred to at the hearing to Plaintiffs or their experts for such capture, Plaintiffs shall not retain Defendant Lewallen's laptop computer for longer than four (4) days. Plaintiffs shall give at least seven (7) days notice to Lewallen in the event they seek such audit.
3. Defendant Lewallen shall not use, directly or indirectly, or disclose any



confidential information or trade secrets of LALLC, as defined by the parties in the Membership Interest Purchase Agreement, §1.01 and §5.04, to mean:

> any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors.

And in the Employee Agreement, paragraph 6, to mean:

> Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

4. Defendant Lewallen shall not make any misrepresentation to LALLC's customers regarding LALLC's ability or capacity to fulfill orders from such customers.

5. Defendant Lewallen shall not make any statement to LALLC's customers, vendors or employees that suggests or implies that any of LALLC's officers falsify financial records, that that LALLC is going to cease business operations, or any other statement meant to cause harm to LALLC.

6. LALLC shall post bond with the Clerk of Court in the amount of $2,500.00 prior to this Order becoming effective. See, Rule 65, SCRCP.

7. I hereby retain jurisdiction to decide all matters properly brought before the Court pursuant to this Order. This 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.

AND IT IS SO ORDERED.

10/8/14
2:00 p.m.

The Honorable Charles B. Simmons, Jr.

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895

2014 DEC 22 PM 2:43

Lewallen Automation, LLC and ASAG LLC,	)	Order Denying Request to Extend the Temporary Injunction
Plaintiffs,	)	
v.	)	
Michael Lewallen and Everworks, LLC,	)	Order Regarding Timing to Produce Defendant Lewallen's Personal Computer for Imaging Per Consent Protocol
Defendants.	)	

On October 9, 2014, this Court entered a Temporary Injunction. By its terms, the injunction "stay[ed] in effect for 45 days from the time the Court executes and enters it." (Temporary Injunction p. 6 ¶ 7). The 45th day was Sunday, November 23, 2014.

On Friday, November 20, 2014, counsel for the moving party, Lewallen Automation, LLC ("LALLC") provided this Court with a letter, requesting that the Temporary Injunction be extended. Defendant Lewallen filed materials in opposition to the request. This Court convened a hearing on December 11, 2014 at which all parties were represented by counsel. Counsel presented strong and zealous arguments of behalf of their respective clients. At the hearing, counsel for LALLC stipulated that it was not seeking an extension of the restrictions set forth in paragraphs 4 and 5 of the Temporary Injunction. Counsel raised an issue about the timing of the production of the computer referred to in paragraph 2 of the Temporary Injunction.[1] The parties agreed that the terms of the Consent Protocol would apply to the handling of the computer.

[1] At the hearing, counsel for Defendant Lewallen clarified that the computer referred to as a "laptop" is an Apple/Mac desktop computer.

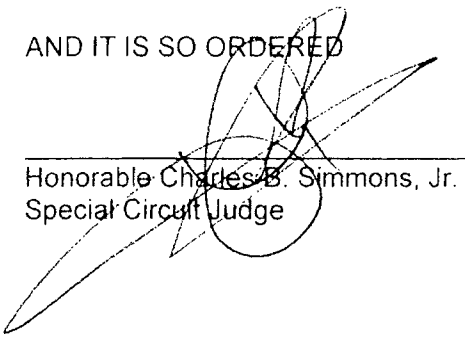
The only remaining issue with regard to the Temporary Injunction is whether paragraph 3 of the Temporary Injunction should be extended. Having reviewed the submissions of the parties and the arguments made at the hearing, the Court denies LALLC's request to extend the injunction. The granting of an injunction is a drastic remedy and meant to maintain the status quo and to prevent irreparable harm. *See Lefurgy v. Long Cove Club Owners,* 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994); *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010). Further, the party seeking the injunction has the burden of proof to establish a basis for the court to grant an injunction. *See Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). While based upon the initial showing prior to the Order filed October 9, the Court felt the injunction was proper, it has now been over 60 days since its issuance, with extensive discovery being done during that time, and the Court finds an insufficient basis at this time for the Injunction to be renewed. The Court purposefully allowed a 45 day period for discovery to be done so that it could revisit the issue.

Based on the foregoing, the Court ORDERS as follows:

1. Defendant Lewallen's personal computer will be made available for imaging within fourteen (14) days of the hearing, or prior to December 25, 2014. The computer may be made available for imaging at the office of Defendant Lewallen. Any imaging or handling of the computer or data is subject to the Consent Protocol.
2. LALLC's request to extend the Temporary Injunction is DENIED.
3. The Clerk of Court shall return the $2,500 bond previously posted by LALLC.



AND IT IS SO ORDERED



Honorable Charles B. Simmons, Jr.
Special Circuit Judge

December 22, 2014

Greenville, South Carolina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 22 PM 3 00

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF GREENVILLE **CASE NO: 2014CP2304895**

IN THE COURT OF COMMON PLEAS

Lewallen Automation LLC *vs.* **Michael Lewallen**

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Denying Request to Extend the Temporary Injunction in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 22nd day of December, 2014.

Court Reporter:

PRESIDING JUDGE -

Brian Patrick Murphy Stephenson & Murphy, LLC 207 Whitsett Street Greenville, SC 29601-3117
Ralph Gleaton Gleaton Wyatt, PA 935 South Main Street, Suite 203 Greenville, SC 29601
ANNE ROSS CULBREATH 872 S. Pleasantburg Avenue Greenville, SC 29607

Denny Parker Major Haynsworth Sinkler Boyd, P.A. P.O. Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2014 SEP 5 AM 10 11

Lewallen Automation, LLC) C.A. No.: **2014-CP-23-04895**

Plaintiffs,

vs.

Michael Lewallen and Everworks, LLC

Defendants.

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber at Post Office Box 2048, Greenville, South Carolina 29602 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff will apply to the Court, and judgment by default will be rendered against you for the relief demanded in the Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By _____

Christine Gantt-Sorenson, S.C. Bar No.63998
Denny P. Major, S.C. Bar No. 74907
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Counsel for Plaintiff

September 4, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
Lewallen Automation, LLC)	C.A. No.: 2014-CP-23- 04895
)	
Plaintiffs,)	**COMPLAINT**
)	**(Jury Trial Demanded)**
vs.)	
)	
Michael Lewallen and Everworks, LLC)	
)	
Defendants.)	
)	

FILED-CLERK OF COURT
GREENVILLE CO. SC
2014 SEP 25 PM 1:11

Plaintiff, Lewallen Automation, LLC ("LALLC" or "Plaintiff") complaining against Defendants Michael Lewallen ("Lewallen") and Everworks, LLC ("Everworks"), hereby alleges and would show unto this Honorable Court as follows:

1. Plaintiff, LALLC is a limited liability company that is organized and existing under the laws of the State of South Carolina with a principal place of business in Anderson County, South Carolina.

2. Upon information and belief, Lewallen is a citizen and resident of Greenville County, South Carolina.

3. Upon information and belief, Everworks is a limited liability company that is organized and existing under the laws of the State of South Carolina with a principal place of business in Greenville County, South Carolina.

4. Jurisdiction and venue before this Court is proper.

FACTUAL ALLEGATIONS

5. LALLC is a turn-key provider of industrial automation, custom electrical/pneumatic panels and high quality control systems. LALLC also builds OEM electrical panels for several customers utilizing lean manufacturing practices. LALLC is also a UL

Certified 508A Panel Shop and provides contract project management, engineering and technical support for its customers.

6. From approximately March 28, 2008 to December 31, 2012, Lewallen was a member of LALLC, holding a forty percent (40%) equity interest, and was an officer and president of LALLC.

7. On or about December 31, 2012, Lewallen executed a Membership Interest Purchase Agreement in which Lewallen sold all of his equity interest in LALLC in exchange for a substantial payment. Among other things, the Membership Interest Purchase Agreement, to which Lewallen is a party provides:

> The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.

8. The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors." The term "Companies" is defined in the Membership Interest Purchase Agreement to include LALLC.

9. On December 31, 2012, the same date as the Membership Interest Purchase Agreement, Lewallen resigned his position as president of Plaintiff and entered into an "Employment Agreement" with LALLC. In the Employment Agreement, Lewallen is referred to as "Employee" and "Companies" is defined as Lewallen Automation, LLC and Lewallen Industrial Services, LLC. The Employment Agreement provides that

> The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

10. The Employment Agreement further provides that:

> Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

11. Paragraph 6 of the Employment Agreement provides:

> Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

12. From December 31, 2012 to June 30, 2014, Lewallen was employed as vice president of LALLC.

13. Since being purchased from Lewallen and his partners, LALLC has developed a body of information associated with the assembly and servicing of its panels. The information it has developed includes customer purchasing history, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, and other confidential information concerning Plaintiff's customers, vendors, and the panels.

14. As president and vice president of LALLC, Lewallen was privy to confidential and trade secret information belonging to LALLC, including, but not limited to, customer

purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, and production processes (hereafter the "Trade Secrets"). The Trade Secrets derive independent economic value by being unknown and not readily ascertainable by others who could obtain economic value from their disclosure or use. The Trade Secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the Trade Secrets. Among other things, LALLC entered into confidentiality agreements with employees and independent contractors that protected this information from disclosure, and entered into non-solicitation and non-competition agreements designed to prevent the use or disclosure of this information. Further, being a former owner of LALLC, Lewallen was uniquely privy to the intricacies of LALLC.

15. While employed as vice president of LALLC, Lewallen failed to carry out his responsibilities and duties as vice president, and failed to devote his working time, attention, and efforts to promote and further the business of LALLC. In fact, Lewallen rarely showed up for work, and, instead, pursued his own personal interests during the time periods that he should have been working on behalf of LALLC.

16. While employed as vice president of LALLC, Lewallen used company resources for his own personal benefit.

17. While employed as vice president of LALLC, Lewallen used his LALLC company credit card for a substantial amount of personal expenses and/or requested that LALLC reimburse Lewallen for expenses that he claimed to have been incurred in furtherance of a

legitimate business interest of LALLC, but which were actually incurred in furtherance of Lewallen's own personal endeavors rather than a business purpose.

18. For example, Lewallen requested that LALLC pay for a meal at Larkin's restaurant in Greenville on May 1, 2014. Lewallen represented to LALLC that he was entertaining a particular customer representative for that meal, and, therefore, LALLC should pay for that meal. LALLC subsequently learned that the customer representative who was allegedly being entertained had never eaten at Larkin's restaurant, and, in fact, was not in the Greenville area on May 1, 2014.

19. As another example, Lewallen requested that LALLC pay for a meal at Nantucket's in Greenville on June 10, 2014. Lewallen represented to LALLC that he was entertaining a particular customer representative for that dinner, and, therefore, LALLC should pay for that dinner. LALLC subsequently learned that the customer representative who was allegedly being entertained had not eaten at Nantucket's on June 10, 2014.

20. As another example, Lewallen requested that LALLC pay for a meal at Los Amigos restaurant in Powdersville, South Carolina on June 26, 2014, with the receipt bearing the time of 12:24 p.m. Lewallen represented to LALLC that he was entertaining a particular customer representative for lunch, and, therefore, was entitled to reimbursement of his lunch payment from LALLC. The customer representative who was allegedly being entertained subsequently informed LALLC that he has never eaten at that restaurant, and, in fact, was on a 14 hour flight to Shanghai on June 26, 2014 at 12:24 p.m.

21. In addition, Lewallen was issued a company car by LALLC, which was a BMW 5 Series Sedan 550i. LALLC's policy is that it will pay for gasoline incurred for company excursions, but Lewallen was required to pay for gas incurred for his personal use. The gas tank

on the BMW 5 Series Sedan 550i has a capacity of 18.492 gallons. On multiple occasions, Lewallen used his company card, and requested that LALLC pay for gas that was clearly in excess of the amount of gas that could have been held by the BMW 5 Series Sedan 550i. For example, on June 8, 2014, he incurred a charge on his company card of $78.77 at the 7-Eleven gas station in Pelzer, South Carolina. He represented to LALLC that LALLC should pay for that charge because the charge was for gas that he was incurring for business use. However, based on the 18.492 gallon tank, the price of the gas would have been at least $4.25 per gallon, assuming the tank was completely empty when Lewallen filled up the tank. The actual price of gas in in Pelzer, South Carolina was far below $4.25 per gallon on June 8, 2014. Upon information and belief, Lewallen misrepresented to LALLC that he had incurred this charge for business purposes.

22. Upon information and belief, Lewallen also used his LALLC issued company credit card to pay for meals and gas associated with a trip to Hickory, North Carolina that was purely for Lewallen's personal benefit.

23. In reliance on Lewallen's false representations as to the business nature of the above-referenced expenses, LALLC paid these expenses that were incurred solely for Lewallen's personal benefit and not for any benefit to LALLC.

24. Plaintiff has since discovered a multitude of personal charges to Lewallen's company credit card that the Plaintiff paid that were not company-expenses.

25. Additionally, Plaintiff learned that Lewallen met secretly with a competitor of Plaintiff's during normal business hours on or about June 2014.

26. On or about June 30, 2012, LALLC terminated Lewallen for good cause pursuant to the Employment Agreement.

27. Following Lewallen's termination from LALLC, Lewallen has gone to work for or become associated with Everworks, Inc. ("Everworks"), which is in the industrial automation business and competes with LALLC.

28. Following Lewallen's termination from LALLC, Lewallen has contacted, on behalf of Everworks, customers and prospective customers of LALLC, and informed such customers and prospective customers that LALLC would be ceasing its business and, therefore, the customers should do business with Everworks, rather than LALLC. Specifically, Lewallen told the customer that LALLC was going to cease business operations and stop providing the product that the customer needed because Lewallen, as the former sole owner of LALLC and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its customers. These statements made by Lewallen are false.

29. For example, on or about August 5, 2014, Plaintiff's representatives met with an existing client of Plaintiff's in Ardmore, Oklahoma, at the request of the client who expressed concerns about Plaintiff's ability to continue to meet the client's needs based upon representations made by Lewallen to the client that Plaintiff would cease business operations because Lewallen was going to procure all of Plaintiff's business and encourage all of its employees to depart employment with LALLC. This was particularly harmful because Lewallen was the Plaintiff's primary point of contact for this client. Lewallen also told the client that two of the three owners of Plaintiff were going to ruin the business and that they falsified financial records.

30. Following Lewallen's termination from LALLC, Lewallen has contacted, on behalf of Everworks, a vendor of LALLC and informed that vendor that Lewallen was going to

end up taking LALLC's business away from LALLC and that he had already received two purchase orders from one of LALLC's current clients. In addition, Lewallen told the vendor that he was encouraging LALLC employees who work in the shop assembling the OEM panels sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen in competition with LALLC. Two days later, one of the shop employees resigned. Lewallen also told this vendor that two of the principals of LALLC had stolen Lewallen's business and defrauded him.

31. After Lewallen's termination, LALLC discovered that Lewallen sent an e-mail on January 20, 2014 to an e-mail address of Rachel K, known to be Lewallen's mistress, in which Lewallen attached a number of confidential documents containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets.

32. Lewallen, individually for himself and on behalf of Everworks, has met with employees of LALLC in an effort to persuade them to leave their employment with LALLC and begin working for or become associated with Everworks in competition with LALLC, and has successfully encouraged two (2) employees to date to depart LALLC's employment in order to work for Everworks. The employees with whom Lewallen has met include employees who have written non-competition, non-solicitation, and non-disclosure agreements with LALLC.

33. Plaintiff has written to Everworks to advise of its Agreements with Lewallen and LALLC's employee(s), and has written to at least one of the two employees encouraged to leave employment with LALLC to work for Everworks reminding the employee of his non-competition, non-solicitation, and non-disclosure agreements with LALLC, but has not received response from either Lewallen or Everworks that they intend to stop engaging in the above-

outlined conduct and, in fact, Defendants have continued to encourage Plaintiff's employees to depart their employment.

FOR A FIRST CAUSE OF ACTION
(Specific Performance Injunctive Relief)

34. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

35. In consideration for, and as a condition of, LALLC agreeing to employ and pay Lewallen a salary to work as vice president of LALLC, Lewallen entered into, and agreed to be bound by, the terms of the Employment Agreement.

36. In consideration for, and as a condition of, a substantial payment of $400,000, Lewallen entered into, and agreed to be bound by, the terms of the Membership Interest Purchase Agreement, as well as the intent of the Agreement, namely to sell the business of LALLC and its good will to Plaintiff in exchange for payment duly received. LALLC is a third party beneficiary of the Membership Interest Purchase Agreement and is entitled to bring an action to enforce the terms and conditions of the sale pursuant to the Membership Interest Purchase Agreement as well as the Confidentiality provision of the Membership Interest Purchase Agreement.

37. The Employment Agreement and Membership Interest Purchase Agreement (collectively, the "Agreements") entered into by Lewallen are written, valid and enforceable, supported by adequate consideration, reasonable as to terms, and are not against public policy.

38. LALLC has a protectable interest in the Agreements, and the confidentiality and trade secret provisions in the Agreements are reasonably related to LALLC's protectable interest.

39. LALLC performed its obligations to Lewallen.

40. Lewallen breached his obligations, which are memorialized in the Agreements.

41. Lewallen was aware that his conduct violated the Agreements, and also knew that LALLC viewed Trade Secrets as confidential and trade secrets, and in spite of his positions president of LALLC's predecessor and vice president, he proceeded to violate the common law duty of loyalty, the South Carolina Trade Secrets Act, and tortiously interfere with LALLC's contracts and prospective contracts by utilizing LALLC's trade secrets to benefit Everworks to the detriment of LALLC, encouraging LALLC employees to terminate their employment and compete with LALLC, encouraging LALLC customers and prospective customers that LALLC not to do business with LALLC because it will be ceasing its business, and informing LALLC customers to do business with Lewallen rather than LALLC because Lewallen is in possession of LALLC's trade secret pricing information which Lewallen will use to undercut LALLC's prices.

42. LALLC has no adequate and complete remedy at law due to the nature of Lewallen's breaches and conduct, and, thus, the Court should: (a) order that Lewallen specifically perform and abide by the confidentially and trade secrets covenants memorialized in the Agreements; and (b) enter a temporary restraining order, and preliminary and permanent injunctions, (i) compelling Lewallen to honor the terms of the Agreements, (ii) enjoining and restraining Lewallen from continuing to use LALLC's confidential information and trade secrets in competition with LALLC; (iii) enjoining and restraining Lewallen from encouraging LALLC's employees to leave their employment with LALLC and work for Everworks in violation of their contracts with LALLC, (iv) enjoining and restraining Lewallen from informing LALLC's customers and prospective customers that LALLC will be ceasing its business.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract as to Lewallen)

43. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

44. The Agreements entered into by Lewallen constitute valid and binding contracts.

45. Lewallen's breached his obligations by failing to perform as required. Lewallen breached his obligations, which are memorialized in the Agreements, by, among other things:

a. Failing to abide by the intent of, and the terms and conditions of the Membership Interest Purchase Agreement in selling the business, to include its product, customers and good will, to Plaintiff and receiving substantial remuneration therefore and then attempting to being a new competing business in violation of the intent of the Membership Interest Purchase Agreement, as well as the implied covenant of good faith and fair dealing implicit in every South Carolina contract.

b. Failing to carry out his responsibilities and duties reasonably accorded to and expected of a vice president;

c. Failing to devote his working time, attention and efforts to promote and further the business of LALLC;

d. Diverting LALLC's resources and equipment wholly to Lewallen's own personal benefit;

e. Submitting false expense reports and falsely representing that wholly personal expenses were legitimate business expenses of LALLC in order to falsely obtain reimbursement for wholly personal expenses; and

f. Using and disclosing LALLC's trade secret and confidential information, including, but not limited to, its pricing information, in competition with LALLC.

46. As a proximate result of the breaches of the Agreements, LALLC has suffered and will continue to suffer damages entitling LALLC to an award of actual damages against Lewallen.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Lewallen)

47. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

48. The Agreements entered into by Lewallen constitute valid and binding contracts.

49. Lewallen breached his Agreements with fraudulent intent by intentionally purloining and/or utilizing LALLC's business assets, good will, customers, products, confidential information and trade secrets to solicit and sell products on behalf of a competitor.

50. The conduct of Lewallen in both attempting to unfairly amass all of the good will and assets he sold to Plaintiff pursuant to the Membership Interest Purchase Agreement and also to use confidential information and trade secrets of LALLC to sell products on behalf of a competitor entity was the fraudulent act accompanying their breaches of the Agreements. In addition, Lewallen's misrepresentations to customers regarding the business status of LALLC and the relationship between LALLC and Lewallen constitute fraudulent acts accompanying the breach.

51. The above-outlined conduct was characterized by dishonesty and unfair dealing on behalf of Lewallen.

52. As a proximate result of the conduct of Lewallen, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty / Duty of Loyalty as to Lewallen)

53. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

54. Lewallen, as president and vice president of LALLC, owed a fiduciary duty and duty of loyalty to LALLC, including the duty not to act adversely to the interests of LALLC, the duty not to do disloyal acts, the duty not to appropriate LALLC's property, and the duty not to use or disclose confidential or proprietary information acquired from LALLC for Lewallen's personal gain, both while employed by UICA and thereafter.

55. As president and vice president, Lewallen knew that LALLC considered its confidential and trade secret information to be confidential and that it was the policy of LALLC that such information be kept confidential and that it not be used by and employee for his or her own benefit to the detriment of LALLC.

56. As vice president and president of LALLC, Lewallen had special knowledge about LALLC's interests in protecting its confidential information and trade secrets, and he was aware of the importance that LALLC places on making sure its employees execute valid agreements designed to protect the confidential information and trade secrets.

57. By spending working hours on personal endeavors and failing to go into the office or spending working hours performing work no behalf of LALLC, Lewallen breached his duty of loyalty owed to LALLC.

58. By diverting and using LALLC's resources and equipment wholly for Lewallen's own personal benefit, Lewallen breached his duty of loyalty owed to LALLC.

59. By submitting false expense reports and falsely representing that wholly personal expenses were legitimate business expenses of LALLC in order to falsely obtain reimbursement

by LALLC for Lewallen's own personal expenses, Lewallen breached his duty of loyalty owed to LALLC.

60. By using and disclosing LALLC's trade secret and confidential information, in competition with LALLC, Lewallen breached his duty of loyalty owed to LALLC.

61. As a proximate result of these breaches of the common law duty of loyalty, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages against Lewallen.

FOR A FIFTH CAUSE OF ACTION
(Misappropriation of Trade Secrets, S.C. Code §§ 39-8-10, et. seq. as to both Defendants)

62. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

63. Various information utilized by LALLC constitutes trade secrets under the South Carolina Trade Secrets Act, in that they constitute information that derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by the public or other persons who can obtain economic value from their disclosure or use, and are and always have been the subject of efforts by LALLC that are reasonable under the circumstances to maintain their secrecy.

64. As president and vice president of LALCC, Lewallen had access to, and knowledge of, the trade secrets belonging to LALLC, including, but not limited to, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, and production processes.

65. The trade secrets derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by the public or other persons who can obtain economic value from their disclosure or use.

66. The trade secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the trade secrets. Among other things, LALLC entered into confidentiality agreements with employees and independent contractors that protected this information from disclosure, and entered into non-solicitation and non-competition agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility, and access to information is restricted by levels of access on a need to know basis. The information is stored behind locked doors and on password protected computer networks. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

67. Lewallen knew or should have known from the circumstances of the existence of LALLC's trade secrets that he had a duty to refrain from using or disclosing the trade secret without LALLC's permission.

68. Upon information and belief, Lewallen and Everworks have wrongfully misappropriated certain trade secret information of LALLC, including, but not limited to, LALLC's pricing and pricing structure for its panels, and its cost information such as labor rates and costs.

69. Upon information and belief, Lewallen has used such misappropriated trade secrets in his work for Everworks and in competition with LALLC, to compete unfairly with LALLC to the detriment of LALLC in violation of the South Carolina Trade Secrets Act.

70. LALLC has suffered actual damages from such misappropriation, and will suffer further and additional damages if Lewallen is not restrained and enjoined from such misappropriation.

71. The misappropriation of trade secrets, as alleged herein, was willful, wanton, or with reckless disregard of LALLC's rights, such that LALLC is entitled to an award of treble and/or exemplary damages pursuant to S.C. Code § 39-8-40.

72. The misappropriation of trade secrets was willful, entitled LALLC to an award of its attorney's fees incurred herein.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Customer Contracts and Relationships as to both Defendants)

73. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

74. LALLC has and had existing contracts and relationships with its customers at the time Lewallen left his employment with LALLC and began his employment or association with Everworks.

75. In fact, Lewallen was the Plaintiff's primary business contact with a number of its customers.

76. Defendants had knowledge of LALLC's contracts and relationships with its customers and the terms thereof.

77. Defendants intentionally procured the breaches and attempted to procure breaches of the contracts and relationships between LALLC and its customers by convincing them to purchase products and services from Everworks rather than LALLC.

78. Defendants procured the breaches and attempted to procure breaches of the contracts and relationships between LALLC and its customers through improper means, including the use of defamatory and false statements regarding LALLC and Lewallen's relationship therewith made by Lewallen to the customers. Such conduct on the part of Lewallen is not privileged and is without justification.

79. As a proximate result of Defendants' tortious interference with LALLC's existing contracts and relationships, LALLC has suffered damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Tortious Interference with Employment Contracts as to both Defendants)

80. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

81. LALLC has and had existing contracts with certain employees of LALLC, including non-competition, non-solicitation, and non-disclosure agreements with LALLC.

82. Defendants have and had knowledge of LALLC's contracts with its employees and the terms thereof.

83. Defendants intentionally procured the breaches and attempted to procure breaches of these contracts between LALLC and its employees by convincing and attempting to convince these employees to leave their employment with LALLC and go to work for or become associated with Everworks in violation of their contracts with LALLC. In fact, to date, two of LALLC's employees have left their employment with LALLC to work with Defendants.

84. Defendants procured the breaches and attempted to procure breaches of the contracts between LALLC and its employees through improper means, including the use of defamatory and false statements regarding LALLC and Lewallen's relationship therewith.

85. Defendants' intentional procurement of these breaches is not privileged and is without justification.

86. As a proximate result of Defendants' tortious interference with LALLC's existing contracts with its employees, LALLC has suffered damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations as to both Defendants)

87. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

88. In utilizing LALLC's information and by making defamatory and false representations to prospective relationships regarding LALLC and Lewallen's relationship therewith, Lewallen intentionally interfered with the prospective contractual relationships LALLC could reasonably expect to enter into with its existing customers.

89. Lewallen was motivated by an improper purpose and/or utilized improper methods in interfering with LALLC's prospective contractual relationships with its customers, including the use of defamatory and false statements.

90. Everworks was aware of, condoned, and/or participated in the above-alleged interferences, and/or is the beneficiary of any monetary outcome associated with the interference.

91. As a proximate cause of all Defendants' tortious interference with LALLC's prospective contractual relationships, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A NINTH CAUSE OF ACTION
(Fraud/Misrepresentation as to Lewallen)

92. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

93. Lewallen made various representations to LALLC that certain expenses incurred by Lewallen were in furtherance of the business of LALLC, when, in fact, the expenses were incurred solely for Lewallen's own personal benefit and gain. These false representations include, among others:

a. that Lewallen was entertaining a customer representative for a meal at Larkin's restaurant in Greenville on May 1, 2014, when, in fact, he was not;

b. that Lewallen was entertaining a customer representative for a meal at Nantucket's in Greenville on June 10, 2014 when, in fact, he was not;

c. that he was entertaining a particular customer representative for lunch at Los Amigos restaurant in Powdersville, South Carolina on June 26, 2014 when, in fact, he was not;

d. that certain meals and gas associated with a trip to Hickory, North Carolina was for business purposes when, in fact, it was not; and

e. that certain gas charges incurred by Lewallen were for business purposes when, in fact, they were not.

94. Upon information and belief, Lewallen made other misrepresentations to LALLC, similar to the above, that certain expenses incurred by Lewallen were in furtherance of the business of LALLC, when, in fact, the expenses were incurred solely for Lewallen's own personal benefit and gain.

95. These representations relate to material facts that were present or preexisting at the time of these representations.

96. These representation as alleged herein were false and Lewallen knew that these representations were false at the time Lewallen made them.

97. Lewallen made these representations with the specific intent that LALLC rely on these false representations, and LALLC did in fact rely on these false representations to LALLC's detriment. Specifically, LALLC paid these expenses based on Lewallen's false representations.

98. LALLC had a right to rely on these representations and was reasonable in doing so, to LALLC's detriment.

99. As a proximate cause of these fraudulent representations by Lewallen, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A TENTH CAUSE OF ACTION
(Unjust Enrichment as to both Defendants)

100. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

101. Defendants have been unjustly enriched by the direct and/or indirect use of LALLC's proprietary and confidential information and trade secrets, unjustly realizing a benefit in the form of improperly gained business profits from that improper use.

102. Lewallen has been unjustly enriched by being reimbursed and having LALLC pay for expenses that Lewallen incurred solely for his own personal benefit.

103. Because the improperly gained benefit was derived at the expense of LALLC, it is inequitable for Lewallen to retain the benefits so derived such that LALLC is entitled to an award of those benefits Lewallen and Everworks knowingly gained at LALLC's expense.

FOR A ELEVENTH CAUSE OF ACTION
(Defamation as to Lewallen)

104. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

105. LALLC would show that beginning on or after June 30, 2014, Lewallen, has made maliciously false statements about LALLC, including telling a customer of LALLC that LALLC was going to cease business operations and stop providing its product that the customer needed. He also informed the customer that LALLC would lose its employees and not be able to support that customer and its business needs, and that all the workers would leave and follow him wherever he went.

106. Lewallen also informed a customer that two officers and/or principals of LALLC are out to ruin the business of LALLC and that they falsify financial records.

107. These statements are false and were made for the purpose of defaming LALLC and damaging the reputation and business of LALLC. Such statements are slanderous per se.

108. As a direct and proximate case of the defamatory statements maliciously made by Lewallen, LALLC has suffered actual and punitive damages, and is entitled to legally presumed damages, and other damages as may be proven at the trial of this case.

FOR A TWELFTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act as to both Defendants)

109. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

110. Based on the conduct described above, Defendants willfully and maliciously engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code § § 39-5-10, *et seq.*

111. The conduct of Defendants impact the public interest in that it seeks to unfairly eliminate a former employer and competitor from the market by improper and deceptive methods, and is immoral, unethical and oppressive.

112. LALLC has suffered loss of money as a result of Defendants' employment of unfair and deceptive acts declared unlawful by S.C. Code Ann. §39-5-20.

113. Defendants' conduct was willful and knowing because Defendants knew or should have known that their conduct was in violation of SCUTPA.

114. As a proximate of Defendants' conduct, LALLC has suffered and will continue to suffer injury entitling it to an award of actual and consequential damages, and treble damages, as well as its legal fees and costs incurred in seeking enforcement of its Agreements with Collins.

FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment)

115. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

116. Pursuant to the South Carolina Uniform Declaratory Judgments Act, LALLC is informed and believes that an actual controversy exists between the parties, and that it is entitled to and hereby requests that the Court issue a declaration as follows:

a. The Agreements between Plaintiff and Lewallen are valid and enforceable Agreements;

b. Defendants are required to pay Plaintiff for any and all lost profits, consequential and other damages, as a result of the above-alleged conduct;

c. Defendants are required to surrender all of Plaintiff's property, to include but not limited to, confidential information and trade secrets.

d. Plaintiff is entitled to a permanent injunction against Lewallen enjoining him from further breach of his Agreements, and against both Defendants from other tortious-conduct as above-described.

FOR A FOURTEENTH CAUSE OF ACTION
(Civil Conspiracy as to both Defendants)

117. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

118. Defendants formed a combination for the improper purpose of surreptitiously obtaining Plaintiff's confidential information and trade secrets, its customers and good will, as well as its employees, in order to unfairly and unethically deprive Plaintiff of substantial business through use of these means.

119. Defendants' conduct has and will cause Plaintiff to suffer special damages to its reputation, which has been damaged, its staff, which is being encouraged to depart or has already departed, and its profits from customers with whom Plaintiff was already in contract with as well as prospective customers, entitled Plaintiff to an award of actual and punitive damages.

FOR A FIFTEENTH CAUSE OF ACTION
(Constructive Trust as to both Defendants)

120. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

121. On information and belief, the Defendants engaged in fraudulent acts in causing customers and employees of Plaintiff to begin doing business with Defendants by using fraudulent, deceitful, dishonest and un-ethical means.

122. Plaintiff is informed and believes that, because of Lewallen's breach of his Agreements and fiduciary duty, as well as the fraudulent and deceitful acts of all Defendants, a constructive trust has arisen by operation of law on all profits, income or other sums received by either Defendant resulting from procurement of any of its existing customers.

123. Plaintiff is informed and believes that a constructive trust should be imposed by the Court upon all profits, income and other sums paid to Defendants as a result of procuring business from Plaintiff's customers.

WHEREFORE, LALLC demands judgment in its favor against Defendants, and respectfully prays that this Court grant the following relief:

A. Enter an Order compelling Lewallen to specifically perform and abide by the terms of the Agreements.

B. Enter preliminary and permanent injunctions compelling Lewallen to abide by the confidentially and trade secrets covenants memorialized in the Agreements; enjoining and restraining Defendants from continuing to use LALLC's confidential information and trade secrets in competition with LALLC; enjoining and restraining Defendants from encouraging LALLC's employees to leave their employment with LALLC and work for Everworks in violation of their contracts with LALLC; enjoining and restraining Defendants from informing LALLC's customers and prospective customers that LALLC will be ceasing its business.

C. Award LALLC damages incurred as a result of Defendants' actions, including both actual, punitive, and exemplary damages;

D. Award LALLC the attorney's fees and costs it has incurred in pursuing this action; and

E. For such other, further and/or different equitable relief as this Court may deem just and fair.

By _____

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Counsel for Plaintiff

September 4, 2014
Greenville, South Carolina

DM: 3799210 V.4

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-23-4895
Plaintiffs,	)	
v.	)	**AMENDED SUMMONS**
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 SEP 19 PM 4:23

TO: THE ABOVE NAMED DEFENDANTS

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint upon the subscriber at Post Office Box 2048, Greenville, South Carolina 29602 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Amended Complaint within that time, the Plaintiff will apply to the Court, and judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

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Counsel for Plaintiff

September 19, 2014
Greenville, South Carolina

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-23-4895
Plaintiffs,	)	
v.	)	**AMENDED COMPLAINT (Jury Trial Demanded)**
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSIMER
2014 SEP 19 PM 4 22

Plaintiffs, Lewallen Automation, LLC ("LALLC") and ASAG, LLC ("ASAG") complaining against Defendants Michael Lewallen ("Lewallen") and Everworks, LLC ("Everworks"), hereby alleges and would show unto this Honorable Court as follows:

1. Plaintiff, LALLC is a limited liability company that is organized and existing under the laws of the State of South Carolina with a principal place of business in Anderson County, South Carolina.

2. Plaintiff ASAG, LLC is a limited liability company that is organized and existing under the laws of the State of Delaware with a principal place of business in Anderson County, South Carolina.

3. Upon information and belief, Lewallen is a citizen and resident of Anderson County, South Carolina.

4. Upon information and belief, Everworks is a limited liability company that is organized and existing under the laws of the State of South Carolina with a principal place of business in Greenville County, South Carolina.

5. Jurisdiction and venue before this Court are proper.

FACTUAL ALLEGATIONS

6. From approximately March 28, 2008 to December 31, 2012, Lewallen was a member of LALLC, holding a forty percent (40%) equity interest, and was an Officer and President of LALLC. Lewallen partnered with Edward P. Holder and Robert H. Stroud who were also members and owners of LALLC. On or about December 31, 2012, Lewallen and his partners entered into a document entitled, "Unanimous Joint Written Consent of the Members and Managers and Resolutions of Lewallen Automation, LLC and Lewallen Industrial Services, LLC," whereby the members and managers of Lewallen Automation, LLC indicated their "desire to consent to the sale by the members of the Companies[1] of their entire membership interest in the Companies, and to execute all documents and take all such actions required...[including executing a Membership Interest Purchase Agreement]," thereby selling their business to ASAG, LLC and Rob Merritt as its owner for a total purchase price of One Million, Three Hundred and Twenty-five Thousand Dollars ($1,325,000). Lewallen also completed an assignment of his membership interest. Neither Plaintiff nor ASAG, LLC had any involvement in the amount of money Lewallen received from the sale of his business as that was something negotiated between he and his partners. Regardless, this sale of the business transferred all of the assets and good will that the business had to ASAG, LLC.

7. Lewallen's execution of the Membership Interest Purchase Agreement transferred "all of the outstanding membership interests in the Companies, which membership interests represent all equity rights and interests of any nature with respect to the Companies." Among other things, the Membership Interest Purchase Agreement, to which Lewallen is a party provides:

[1] The term "Companies" is defined in the Membership Interest Purchase Agreement to include LALLC.

> The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.
>
> The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors."
>
> Membership Interest Purchase Agreement, §§5.04 and 1.01, respectively.

8. Lewallen also agreed that he would not engage in any "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby." Id. at §6.02(c). Lewallen's warranties and representations were to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date. Id. at §7.06(b).

9. On December 31, 2012, the same date as the Membership Interest Purchase Agreement, Lewallen resigned his position as President of LALLC and was hired by Group of Patriots in its Senior Management as Vice President of Sales. In the Employment Agreement, Lewallen is referred to as "Employee" and "Companies" is defined as Lewallen Automation, LLC and Lewallen Industrial Services, LLC.

10. The Employment Agreement provides that:

> The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

The Employment Agreement further provides that:

> Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the

Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

Paragraph 6 of the Employment Agreement provides:

Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

Paragraph 5 of the Employment Agreement provides:

Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the Company or their representatives, vendors or customers which pertain to the business of the Company shall be and remain the property of the Company, and be subject at all times to its discretion and control. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Company that is collected by Employee shall be delivered promptly to the Company without request by it upon termination of Employee's employment. (emphasis added)

11. LALLC is a turn-key provider of industrial automation, custom electrical/pneumatic panels and high quality control systems. LALLC also builds OEM electrical panels for several customers utilizing lean manufacturing practices. LALLC is also a UL Certified 508A Panel Shop and provides contract project management, engineering and technical support for its customers.

12. LALLC has developed a body of information associated with the assembling of these panels. The information it has developed includes its customer list, customer purchasing history, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, employee list, and other confidential information concerning our customers, vendors, and the panels.

13. From December 31, 2012 to June 30, 2014, Lewallen was employed as Vice President of Sales of LALLC, and he was privy to confidential and trade secret information belonging to LALLC, including, but not limited to, LALLC's customer list, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, employee list, and production processes (hereafter the "trade secrets"). The trade secrets derive independent economic value by being unknown and not readily ascertainable by others who could obtain economic value from their disclosure or use. The trade secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the trade secrets.

14. LALLC restricts who can go into the specific area where LALLC employees work in order to protect the confidentiality of its customers. Other employees are not allowed in this area. In fact, the names of the customers for whom LALLC is assembling the panels do not appear anywhere on the panels nor the packaging. Customers have numerous and varied proprietary requirements for their ordered panels which require implementation of and following the security measures. LALLC takes extraordinary measures to ensure that the customers' information and their panel selections/options are kept entirely secret, even from other employees in the plant and/or among those employees who work with LALLC.

15. Additionally, LALLC entered into confidentiality agreements with employees, third-parties and independent contractors that protected this information from disclosure, and entered into Noncompete, Nonsolicitation and Trade Secret Agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility,

and access to information is restricted by levels of access on a need to know basis. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

16. Upon his departure, LALLC has learned that Lewallen sent its proprietary list of financials and customer information to his daughter's personal email address on or about January 20, 2014, as well as to the email address of Rachel Kay and/or Rachel Kleinhains, known to be Lewallen's mistress and who was never an employee of LALLC, attaching a number of confidential documents containing a list of LALLC's customers and prospects, efforts to secure certain business and progress, including existing and potential customer names, contacts, and LALLC's Sales Planning Budget for 2014, actual and forecasted. Lewallen's conduct in doing so was in violation of the Employment Agreement as well as the Membership Interest Purchase Agreement and other closing documents applicable to his sale of LALLC.

17. Lewallen's conduct is also in violation of LALLC's Confidentiality and Trade Secrets Policy which prohibits Lewallen from forwarding this confidential information to his or others' personal email addresses. Specifically, it states that "documents, records and files (paper or electronic) related to finance, human resources, payroll, maintenance, safety or other business activities and meetings are considered the confidential property of [LALLC] and should not be removed from the office premise or discussed outside of [LALLC] without consent from the Chief Executive Officer."

18. While employed as vice president, Lewallen failed to carry out his responsibilities and duties as Vice President of Sales, and failed to devote his working time, attention, and efforts to promote and further the business of the Group of Patriots and LALLC. In fact, Lewallen rarely showed up for work, and, instead, pursued his own personal interests during the time periods that he should have been working on behalf of LALLC.

19. During the last month of Lewallen's employment, LALLC learned that he was meeting with a representative from a competitor, namely Brian Wright of Tennessee Electric Construction and Maintenance.

20. LALLC also learned that Lewallen used company resources for his own personal benefit. Lewallen represented to the company that he was working and meeting with possible clients, but was actually not meeting with clients, instead playing golf or dining with his mistress.

21. On or about June 30, 2014, LALLC terminated Lewallen for good cause pursuant to the Employment Agreement.

22. Following Lewallen's termination from LALLC, LALLC is informed that Lewallen has gone to work for Everworks, Inc., which is in the industrial automation business and competes with LALLC.

23. Following Lewallen's termination from LALLC, Lewallen has contacted, on behalf of Everworks, customers and prospective customers of LALLC, and informed such customers and prospective customers that LALLC would be ceasing its business and, therefore, the customers should do business with Everworks, rather than LALLC. Specifically, Lewallen told the customer that LALLC was going to cease business operations and stop providing the product that the customer needed because Lewallen, as the former sole owner of LALLC and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its customers. These statements made by Lewallen are false.

24. For example, on or about August 5, 2014, Plaintiff's representatives met with an existing client of Plaintiff's in Ardmore, Oklahoma, at the request of the client who expressed

concerns about Plaintiff's business practices and its ability to continue to meet the client's needs based upon intentional false representations made by Lewallen. Specifically, Lewallen told the client:

a. Plaintiff would cease business operations because Lewallen was going to procure all of Plaintiff's business and encourage all of its employees to depart employment with LALLC in violation of the Noncompete, Nonsolicit and Trade Secret Agreements with LALLC that Lewallen knew they signed.

b. Two of the three owners of Plaintiff were going to ruin the business and that they falsified financial records.

c. He received a text message while he was on vacation with his family advising him that he was terminated.

All of the statements are untrue. Lewallen's false misrepresentations were particularly harmful because he had become the Plaintiff's primary point of contact for this client.

25. Following Lewallen's termination from LALLC, Lewallen has contacted, on behalf of Everworks, a vendor of LALLC and informed that vendor that Lewallen was going to end up taking LALLC's business away from LALLC and that he had already received two purchase orders from one of LALLC's current clients. In addition, Lewallen told the vendor that he was encouraging LALLC employees who work in the shop assembling the OEM panels sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen in competition with LALLC. Two days later, one of the shop employees resigned. Lewallen also told this vendor that two of the principals of LALLC had stolen Lewallen's business and defrauded him.

26. Lewallen, individually for himself and on behalf of Everworks, has met with employees of LALLC in an effort to persuade them to leave their employment with LALLC and begin working for or become associated with Everworks in competition with LALLC, and has successfully encouraged two (2) employees to date to depart LALLC's employment in order to work for Everworks. These two employees had Noncompete, Nonsolicitation and Trade Secret Agreements with LALLC and Lewallen knew that those Agreements existed. Upon information and belief, Lewallen has encouraged them to breach those agreements and advised them that they were unenforceable. Other employees Lewallen has met and is meeting with include employees who he also knows have written Noncompete, Nonsolicitation, and Trade Secret Agreements with LALLC.

27. Plaintiff has written to Everworks to advise of its agreements with Lewallen and LALLC's employee(s), and has reminded the two employees encouraged to leave employment with LALLC to work for Everworks of their Noncompete, Nonsolicitation, and Trade Secret Agreements with LALLC, but has not received responses from either Lewallen or Everworks that they intend to stop engaging in the above-outlined conduct and, in fact, Defendants have continued to encourage Plaintiff's employees to depart their employment. Since Lewallen's termination, he has encouraged David Case and Harrison Greer, two employees of LALLC, to leave their employment to work with him and to become associated with Everworks in competition with LALLC despite the fact that these employees have Noncompete, Nonsolicitation and Trade Secret Agreements. Numerous employees have advised LALLC's management that Lewallen has encouraged them to leave employment with LALLC and become employed or associated with Everworks. A number of these employees have Noncompete,

Nonsolicitation and Trade Secret Agreements with LALLC, and they have been reminded of their contractual obligations.

28. LALLC also learned that Lewallen used his company credit card for personal expenses contrary to company policy. When the company asked for justification of some of those expenses, he submitted expense reports claiming they were incurred in furtherance of legitimate business endeavors for the benefit of the company, even identifying clients he took to dinner. However, an audit of those expenses revealed that he misrepresented them as business dinners and that the client representatives he stated he took to dinner actually were not at dinner with him. The company also identified a number of other personal expenses on the company credit card, such as iTunes charges, clothing charges, excessive gas charges, and meals that were clearly not business but which were actually incurred in furtherance of Lewallen's own personal endeavors rather than a business purpose. The company had been paying for all of these expenses that it now began to learn were incurred solely for Lewallen's personal benefit. To date, the audit has revealed these expenses are in excess of Twenty Thousand Dollars ($20,000).

29. For example, Lewallen charged a meal at Larkin's restaurant in Greenville on May 1, 2014 to his company credit card that was then paid by LALLC. On an expense report, Lewallen represented to LALLC that he was entertaining a particular customer representative for that meal justifying that LALLC should pay for that meal. LALLC subsequently learned that the customer representative who was allegedly being entertained had never eaten at Larkin's restaurant, and, in fact, was not in the Greenville area on May 1, 2014.

30. As another example, Lewallen charged a meal at Nantucket's in Greenville on June 10, 2014 to his company credit card that was then paid by LALLC. Lewallen represented to LALLC that he was entertaining a particular customer representative for that dinner, and,

therefore, LALLC should pay for that dinner. LALLC subsequently learned that the customer representative who was allegedly being entertained had not eaten at Nantucket's on June 10, 2014.

31. As another example, Lewallen charged a meal at Los Amigos restaurant in Powdersville, South Carolina on June 26, 2014, with the receipt bearing the time of 12:24 p.m. on his company-issued credit card and LALLC paid for it. On his expense report, Lewallen represented that he was entertaining a particular customer representative for lunch. The customer representative who was allegedly being entertained subsequently informed LALLC that he has never eaten at that restaurant, and, in fact, was on a 14 hour flight to Shanghai on June 26, 2014 at 12:24 p.m.

32. In addition, Lewallen was issued a company car by LALLC, which was a BMW 5 Series Sedan 550i. LALLC's policy is that it will pay for every other tank of gasoline for the company car. The gas tank on the BMW 5 Series Sedan 550i has a capacity of 18.492 gallons. On multiple occasions, Lewallen used his company card to pay for gas that was clearly in excess of the amount of gas that could have been held by the BMW 5 Series Sedan 550i. For example, on June 8, 2014, he incurred a charge on his company card of $78.77 at the 7-Eleven gas station in Pelzer, South Carolina that was paid for by LALLC. However, based on the 18.492 gallon tank, the price of the gas would have been at least $4.25 per gallon, assuming the tank was completely empty when Lewallen filled up the tank. The actual price of gas in Pelzer, South Carolina was far below $4.25 per gallon on June 8, 2014. Upon information and belief, Lewallen charged this gas purchase for a vehicle that was not even his company car on LALLC's credit card, misrepresenting to LALLC that he had incurred this charge for business purposes.

33. Upon information and belief, Lewallen also used his LALLC issued company credit card to pay for meals and gas associated with a trip to Hickory, North Carolina that was purely for Lewallen's personal benefit.

34. LALLC paid these expenses that were incurred solely for Lewallen's personal benefit and not for any benefit to LALLC. LALLC relied on Lewallen's false representations as to the business nature of the above-referenced expenses.

FOR A FIRST CAUSE OF ACTION
(Specific Performance Injunctive Relief)

35. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

36. In consideration for, and as a condition of, LALLC agreeing to employ and pay Lewallen a salary to work as Vice President of Sales of LALLC, Lewallen entered into, and agreed to be bound by, the terms of the Employment Agreement.

37. In consideration for, and as a condition of, a substantial payment, Lewallen entered into, and agreed to be bound by, the terms of the Membership Interest Purchase Agreement, as well as the intent of the Agreement, namely to sell the business of LALLC and its good will to Plaintiff in exchange for payment duly received. LALLC is a third party beneficiary of the Membership Interest Purchase Agreement and is entitled to bring an action to enforce the terms and conditions of the sale pursuant to the Membership Interest Purchase Agreement as well as the Confidentiality provision of the Membership Interest Purchase Agreement.

38. The Employment Agreement and Membership Interest Purchase Agreement (collectively, the "Agreements") entered into by Lewallen are written, valid and enforceable, supported by adequate consideration, reasonable as to terms, and are not against public policy.

39. LALLC has a protectable interest in the Agreements, and the confidentiality and trade secret provisions in the Agreements are reasonably related to LALLC's protectable interest.

40. LALLC performed its obligations to Lewallen.

41. ASAG is a named party to the Membership Interest Purchase Agreement and, therefore, is entitled to bring an action to enforce the terms and conditions of the Membership Interest Purchase Agreement, including the Confidentiality provision of the Membership Interest Purchase Agreement.

42. ASAG has a protectable interest in the Membership Interest Purchase Agreement and the confidentiality provision in the Membership Interest Purchase Agreement is reasonably related to ASAG's protectable interest. ASAG performed its obligations to Lewallen.

43. Lewallen breached his obligations, which are memorialized in the Agreements.

44. Lewallen was aware that his conduct violated the Agreements, and also knew what information and data LALLC and ASAG viewed as confidential and trade secrets, and in spite of his positions, president of LALLC's predecessor and Vice President of Sales, he proceeded to violate the common law duty of loyalty, the South Carolina Trade Secrets Act, and tortiously interfered with LALLC's contracts and prospective contracts by utilizing LALLC's trade secrets to benefit Everworks to the detriment of LALLC, encouraging LALLC employees to terminate their employment and compete with LALLC, encouraging LALLC customers and prospective customers not to do business with LALLC because it will be ceasing its business, and informing LALLC customers to do business with Lewallen rather than LALLC because Lewallen is in possession of LALLC's trade secret pricing information which Lewallen will use to undercut LALLC's prices.

45. LALLC and ASAG have no adequate and complete remedy at law due to the nature of Lewallen's breaches and conduct, and, thus, the Court should: (a) order that Lewallen specifically perform and abide by the confidentially and trade secrets covenants memorialized in the Agreements; and (b) enter preliminary and permanent injunctions, (i) compelling Lewallen to honor the terms of the Agreements, (ii) enjoining and restraining Lewallen from continuing to use LALLC's confidential information and trade secrets in competition with LALLC; (iii) enjoining and restraining Lewallen from encouraging LALLC's employees to leave their employment with LALLC and work for Everworks in violation of their contracts with LALLC, and (iv) enjoining and restraining Lewallen from informing LALLC's customers and prospective customers that LALLC will be ceasing its business and/or making other defamatory comments about LALLC or its owners.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract by LALLC against Lewallen)

46. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

47. The Agreements entered into by Lewallen constitute valid and binding contracts.

48. Lewallen's conduct violates the Membership Interest Purchase Agreement to wit:

a. Failing to abide by the intent of, and the terms and conditions of the Membership Interest Purchase Agreement in selling his membership interest, to include its product, customers and good will, and receiving substantial remuneration therefore, and then attempting to begin a new competing business in violation of the intent of the Membership Interest Purchase Agreement, as well as the implied covenant of good faith and fair dealing implicit in every South Carolina contract.

b. Disclosing Plaintiff's trade secrets and confidential information as prohibited by §5.04.

c. Violating section §6.02(c) by engaging in "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby," said warranties and representations under the Membership Interest Purchase Agreement to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date pursuant to §7.06(b).

49. Lewallen breached his obligations under the Employment Agreement by failing to perform as required. Lewallen breached his obligations, which are memorialized in the Agreements, by, among other things:

a. Failing to carry out his responsibilities and duties reasonably accorded to and expected of a Vice President of Sales;

b. Failing to devote his working time, attention and efforts to promote and further the business of LALLC;

c. Diverting LALLC's resources and property wholly to Lewallen's own personal benefit;

d. Submitting false expense reports and falsely representing that wholly personal expenses were legitimate business expenses of LALLC in order that LALLC would pay for Lewallen's personal expenses charged on his company credit card; and

e. Using and disclosing LALLC's trade secret and confidential information, including, but not limited to, its customer lists, employee lists, sales' strategy, and pricing information, in competition with LALLC.

50. As a proximate result of the breaches of the Agreements, LALLC has suffered and will continue to suffer damages entitling LALLC to an award of actual damages against Lewallen.

51. As a proximate result of the breaches of the Membership Interest Purchase Agreement, ASAG has suffered and will continue to suffer damages entitling ASAG to an award of actual damages against Lewallen.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract by ASAG against Lewallen)

52. ASAG incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

53. ASAG is a named party to the Membership Interest Purchase Agreement and, therefore, is entitled to bring an action to enforce the terms and conditions of the Membership Interest Purchase Agreement, including the Confidentiality provision of the Membership Interest Purchase Agreement.

54. The Membership Interest Purchase Agreement entered into by Lewallen is written, valid and enforceable, supported by adequate consideration, reasonable as to terms, and is not against public policy.

55. ASAG has a protectable interest in the Membership Interest Purchase Agreement and the confidentiality provision in the Membership Interest Purchase Agreement is reasonably related to ASAG's protectable interest. ASAG performed its obligations to Lewallen.

56. Lewallen's conduct violates the Membership Interest Purchase Agreement to wit:

a. Failing to abide by the intent of, and the terms and conditions of the Membership Interest Purchase Agreement in selling his membership interest, to include its product, customers and good will, and receiving substantial remuneration therefore, and then attempting to begin a new competing business in violation of the intent of the Membership Interest Purchase Agreement, as well as the implied covenant of good faith and fair dealing implicit in every South Carolina contract.

b. Disclosing Plaintiff's trade secrets and confidential information as prohibited by §5.04.

c. Violating section §6.02(c) by engaging in "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby," said warranties and representations under the Membership Interest Purchase Agreement to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date pursuant to §7.06(b).

57. As a proximate result of the breaches of the Membership Interest Purchase Agreement, ASAG has suffered and will continue to suffer damages entitling ASAG to an award of actual damages against Lewallen.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act as to Lewallen)

58. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

59. The Agreements entered into by Lewallen constitute valid and binding contracts.

60. Lewallen breached his Agreements with fraudulent intent by intentionally purloining and/or utilizing LALLC's business assets, good will, customers, products, confidential information and trade secrets to solicit and sell products on behalf of a competitor.

61. The conduct of Lewallen in both attempting to unfairly amass all of the good will and assets he sold to Plaintiff pursuant to the Membership Interest Purchase Agreement and also to use confidential information and trade secrets of LALLC to sell products on behalf of a competitor entity was the fraudulent act accompanying Lewallen's breaches of the Agreements. In addition, Lewallen's misrepresentations to customers regarding the business status of LALLC and the relationship between LALLC and Lewallen constitute fraudulent acts accompanying the breach.

62. The above-outlined conduct was characterized by dishonesty and unfair dealing on behalf of Lewallen.

63. As a proximate result of the conduct of Lewallen, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty / Duty of Loyalty as to Lewallen)

64. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

65. Lewallen, as president and Vice President of Sales of LALLC, owed a fiduciary duty and duty of loyalty to LALLC, including the duty not to act adversely to the interests of LALLC, the duty not to do disloyal acts, the duty not to appropriate LALLC's property, and the duty not to use or disclose confidential or proprietary information acquired from LALLC for Lewallen's personal gain, both while employed by LALLC and thereafter.

66. As President and Vice President of Sales, Lewallen knew that LALLC considered its confidential and trade secret information to be confidential and that it was the policy of LALLC that such information be kept confidential and that it not be used by and employee for his or her own benefit to the detriment of LALLC.

67. As Vice President of Sales and President of LALLC, Lewallen had special knowledge about LALLC's interests in protecting its confidential information and trade secrets, and he was aware of the importance that LALLC places on making sure its employees execute valid agreements designed to protect the confidential information and trade secrets.

68. By spending working hours on personal endeavors and failing to go into the office or spending working hours performing work on behalf of LALLC, Lewallen breached his duty of loyalty owed to LALLC.

69. By diverting and using LALLC's resources and property wholly for Lewallen's own personal benefit, Lewallen breached his duty of loyalty owed to LALLC.

70. By improperly charging personal expenses to LALLC's credit card and also by submitting false expense reports upon which he falsely represented that wholly personal expenses were legitimate business expenses of LALLC so that LALLC would pay for those expenses, Lewallen breached his duty of loyalty owed to LALLC.

71. By using and disclosing LALLC's trade secret and confidential information, in competition with LALLC, Lewallen breached his duty of loyalty owed to LALLC.

72. As a proximate result of these breaches of the common law duty of loyalty, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages against Lewallen.

FOR A SIXTH CAUSE OF ACTION
(Misappropriation of Trade Secrets, S.C. Code §§ 39-8-10, et. seq., by LALLC against both Defendants)

73. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

74. Various information utilized by LALLC constitutes trade secrets under the South Carolina Trade Secrets Act, in that they constitute information that derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by the public or other persons who can obtain economic value from their disclosure or use, and are and always have been the subject of efforts by LALLC that are reasonable under the circumstances to maintain their secrecy.

75. As President and Vice President of Sales of LALCC, Lewallen had access to, and knowledge of, the trade secrets belonging to LALLC, including, but not limited to, Plaintiff's customer list, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, employee list, and production processes.

76. The trade secrets derive independent economic value, both actual and potential, from not being generally known to, and not being readily ascertainable by proper means by the public or other persons who can obtain economic value from their disclosure or use.

77. The trade secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the trade secrets. Among other things, LALLC entered into confidentiality agreements with employees and independent

contractors that protected this information from disclosure, and entered into Noncompete, Nonsolicitation and Trade Secret Agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility, and access to information is restricted by levels of access on a need to know basis. The information is stored behind locked doors and on password protected computer networks. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

78. Lewallen knew or should have known from the circumstances of the existence of LALLC's trade secrets that he had a duty to refrain from using or disclosing the trade secrets without LALLC's permission.

79. Upon information and belief, Lewallen and Everworks have wrongfully misappropriated certain trade secret information of LALLC, including, but not limited to, LALLC's pricing and pricing structure for its panels, and its cost information such as labor rates and costs.

80. Upon information and belief, Lewallen has used such misappropriated trade secrets in his work for Everworks and in competition with LALLC, to compete unfairly with LALLC to the detriment of LALLC in violation of the South Carolina Trade Secrets Act.

81. LALLC has suffered actual damages from such misappropriation, and will suffer further and additional damages if Lewallen is not restrained and enjoined from such misappropriation.

82. The misappropriation of trade secrets, as alleged herein, was willful, wanton, or with reckless disregard of LALLC's rights, such that LALLC is entitled to an award of treble and/or exemplary damages pursuant to S.C. Code § 39-8-40.

83. The misappropriation of trade secrets was willful, entitling LALLC to an award of its attorney's fees incurred herein.

FOR A SEVENTH CAUSE OF ACTION
(Tortious Interference with Customer Contracts and Relationships by LALLC against both Defendants)

84. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

85. LALLC has and had existing contracts and relationships with its customers at the time Lewallen left his employment with LALLC and began his employment or association with Everworks.

86. In fact, Lewallen was the Plaintiff's primary business contact with a number of its customers.

87. Defendants had knowledge of LALLC's contracts and relationships with its customers and the terms thereof.

88. Defendants intentionally procured the breaches and attempted to procure breaches of the contracts and relationships between LALLC and its customers by convincing them to purchase products and services from Everworks rather than LALLC.

89. Defendants procured the breaches and attempted to procure breaches of the contracts and relationships between LALLC and its customers through improper means, including the use of defamatory and false statements regarding LALLC and Lewallen's relationship therewith made by Lewallen to the customers. Such conduct on the part of Lewallen is not privileged and is without justification.

90. As a proximate result of Defendants' tortious interference with LALLC's existing contracts and relationships, LALLC has suffered damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
(Tortious Interference with Employment Contracts by LALLC against both Defendants)

91. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

92. LALLC has and had existing contracts with certain employees of LALLC, including Noncompete, Nonsolicitation, and Trade Secret Agreements with LALLC.

93. Defendants have and had knowledge of LALLC's contracts with its employees and the terms thereof.

94. Defendants intentionally procured the breaches and attempted to procure breaches of these contracts between LALLC and its employees by convincing and attempting to convince these employees to leave their employment with LALLC and go to work for or become associated with Everworks in violation of their contracts with LALLC. In fact, to date, two of LALLC's employees have left their employment with LALLC to work with Defendants.

95. Defendants procured the breaches and attempted to procure breaches of the contracts between LALLC and its employees through improper means, including the use of defamatory and false statements regarding LALLC and Lewallen's relationship therewith.

96. Defendants' intentional procurement of these breaches is not privileged and is without justification.

97. As a proximate result of Defendants' tortious interference with LALLC's existing contracts with its employees, LALLC has suffered damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A NINTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations by LALLC against both Defendants)

98. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

99. In utilizing LALLC's information and by making defamatory and false representations to prospective relationships regarding LALLC and Lewallen's relationship therewith, Lewallen intentionally interfered with the prospective contractual relationships LALLC could reasonably expect to enter into with its existing customers.

100. Lewallen was motivated by an improper purpose and/or utilized improper methods in interfering with LALLC's prospective contractual relationships with its customers, including the use of defamatory and false statements.

101. Everworks was aware of, condoned, and/or participated in the above-alleged interferences, and/or is the beneficiary of any monetary outcome associated with the interference.

102. As a proximate cause of all Defendants' tortious interference with LALLC's prospective contractual relationships, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages

FOR A TENTH CAUSE OF ACTION
(Fraud/Misrepresentation by LALLC against Lewallen)

103. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

104. Lewallen made various representations to LALLC that certain expenses incurred by Lewallen were in furtherance of the business of LALLC, when, in fact, the expenses were incurred solely for Lewallen's own personal benefit and gain. These false representations include, among others:

a. that Lewallen was entertaining a customer representative for a meal at Larkin's restaurant in Greenville on May 1, 2014, when, in fact, he was not;

b. that Lewallen was entertaining a customer representative for a meal at Nantucket's in Greenville on June 10, 2014 when, in fact, he was not;

c. that Lewallen was entertaining a particular customer representative for lunch at Los Amigos restaurant in Powdersville, South Carolina on June 26, 2014 when, in fact, he was not;

d. that certain meals and gas associated with a trip to Hickory, North Carolina was for business purposes when, in fact, it was not; and

e. that certain gas charges incurred by Lewallen were for business purposes when, in fact, they were not.

105. Upon information and belief, Lewallen made other misrepresentations to LALLC, similar to the above, that certain expenses incurred by Lewallen were in furtherance of the business of LALLC, when, in fact, the expenses were incurred solely for Lewallen's own personal benefit and gain.

106. These representations relate to material facts that were present or preexisting at the time of these representations.

107. These representation as alleged herein were false and Lewallen knew that these representations were false at the time Lewallen made them.

108. Lewallen made these representations with the specific intent that LALLC rely on these false representations, and LALLC did in fact rely on these false representations to LALLC's detriment. Specifically, LALLC paid these expenses based on Lewallen's false representations.

109. LALLC had a right to rely on these representations and was reasonable in doing so, to LALLC's detriment.

110. As a proximate cause of these fraudulent representations by Lewallen, LALLC has suffered and will continue to suffer damages, entitling LALLC to an award of actual, consequential and punitive damages.

FOR A ELEVENTH CAUSE OF ACTION
(Unjust Enrichment by LALLC against both Defendants)

111. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

112. Defendants have been unjustly enriched by the direct and/or indirect use of LALLC's proprietary and confidential information and trade secrets, unjustly realizing a benefit in the form of improperly gained business profits from that improper use.

113. Lewallen has been unjustly enriched by having LALLC pay for expenses that Lewallen incurred solely for his own personal benefit.

114. Because the improperly gained benefit was derived at the expense of LALLC, it is inequitable for Lewallen to retain the benefits so derived such that LALLC is entitled to an award of those benefits Lewallen and Everworks knowingly gained at LALLC's expense.

FOR A TWELFTH CAUSE OF ACTION
(Defamation by LALLC against Lewallen)

115. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

116. LALLC would show that beginning on or after June 30, 2014, Lewallen, has made maliciously false statements about LALLC, including telling a customer of LALLC that LALLC was going to cease business operations and stop providing its product that the customer

needed. He also informed the customer that LALLC would lose its employees and not be able to support that customer and its business needs, and that all the workers would leave and follow him wherever he went.

117. Lewallen also informed a customer that two officers and/or principals of LALLC are out to ruin the business of LALLC and that they falsified financial records.

118. These statements are false and were made for the purpose of defaming LALLC and damaging the reputation and business of LALLC. Such statements are slanderous per se.

119. As a direct and proximate cause of the defamatory statements maliciously made by Lewallen, LALLC has suffered actual and punitive damages, and is entitled to legally presumed damages, and other damages as may be proven at the trial of this case.

FOR A THIRTEENTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act by LALLC against both Defendants)

120. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

121. Based on the conduct described above, Defendants willfully and maliciously engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code § § 39-5-10, *et seq.*

122. The conduct of Defendants impact the public interest in that it seeks to unfairly eliminate a former employer and competitor from the market by improper and deceptive methods, and is immoral, unethical and oppressive.

123. LALLC has suffered loss of money as a result of Defendants' employment of unfair and deceptive acts declared unlawful by S.C. Code Ann. §39-5-20.

124. Defendants' conduct was willful and knowing because Defendants knew or should have known that their conduct was in violation of SCUTPA.

125. As a proximate cause of Defendants' conduct, LALLC has suffered and will continue to suffer injury entitling it to an award of actual and consequential damages, and treble damages, as well as its legal fees and costs incurred in seeking enforcement of its Agreements with Lewallen.

FOR A FOURTEENTH CAUSE OF ACTION
(Declaratory Judgment)

126. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

127. Pursuant to the South Carolina Uniform Declaratory Judgments Act, LALLC is informed and believes that an actual controversy exists between the parties, and that it is entitled to and hereby requests that the Court issue a declaration as follows:

a. The Agreements between Plaintiff and Lewallen are valid and enforceable Agreements;

b. Defendants are required to pay Plaintiff for any and all lost profits, consequential and other damages, as a result of the above-alleged conduct;

c. Defendants are required to surrender all of Plaintiff's property, to include but not limited to, confidential information and trade secrets.

d. Plaintiff is entitled to a permanent injunction against Lewallen enjoining him from further breach of his Agreements, and against both Defendants from other tortious-conduct as above-described.

FOR A FIFTEENTH CAUSE OF ACTION
(Civil Conspiracy by LALLC against both Defendants)

128. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

129. Defendants formed a combination for the improper purpose of surreptitiously obtaining Plaintiff's confidential information and trade secrets, its customers and good will, as well as its employees, in order to unfairly and unethically deprive Plaintiff of substantial business through use of these means.

130. Defendants' conduct has and will cause Plaintiff to suffer special damages to its reputation, which has been damaged, its staff, which is being encouraged to depart or has already departed, and its profits from customers with whom Plaintiff was already in contract with as well as prospective customers, entitling Plaintiff to an award of actual and punitive damages.

FOR A SIXTEENTH CAUSE OF ACTION
(Constructive Trust by LALLC against both Defendants)

131. LALLC re-alleges and incorporates by reference the preceding paragraphs with the same force and effect as if fully set forth herein.

132. On information and belief, the Defendants engaged in fraudulent acts in causing customers and employees of Plaintiff to begin doing business with Defendants by using fraudulent, deceitful, dishonest and un-ethical means.

133. Plaintiff is informed and believes that, because of Lewallen's breach of his Agreements and fiduciary duty, as well as the fraudulent and deceitful acts of all Defendants, a constructive trust has arisen by operation of law on all profits, income or other sums received by either Defendant resulting from procurement of any of its existing customers.

134. Plaintiff is informed and believes that a constructive trust should be imposed by the Court upon all profits, income and other sums paid to Defendants as a result of procuring business from Plaintiff's customers.

WHEREFORE, LALLC demands judgment in its favor against Defendants, and respectfully prays that this Court grant the following relief:

1. Enter an Order compelling Lewallen to specifically perform and abide by the terms of the Agreements.

2. Enter preliminary and permanent injunctions compelling Lewallen to abide by the confidentially and trade secrets covenants memorialized in the Agreements; enjoining and restraining Defendants from continuing to use LALLC's confidential information and trade secrets in competition with LALLC; enjoining and restraining Defendants from encouraging LALLC's employees to leave their employment with LALLC and work for Everworks in violation of their contracts with LALLC; enjoining and restraining Defendants from informing LALLC's customers and prospective customers that LALLC will be ceasing its business.

3. Award LALLC damages incurred as a result of Defendants' actions, including both actual, punitive, and exemplary damages;

4. Award LALLC the attorney's fees and costs it has incurred in pursuing this action; and

5. For such other, further and/or different equitable relief as this Court may deem just and fair.

By _____

Christine Gantt-Sorenson, S.C. Bar No.63998
Denny P. Major, S.C. Bar No. 74907
HAYNSWORTH SINKLER & BOYD, P.A.
One North Main Street, 2nd Floor (29601)
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Telephone: 864.240.3200
Facsimile: 864.240.3300

Counsel for Plaintiff

September 19, 2014
Greenville, South Carolina

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-23-4895
Plaintiffs,	)	
v.	)	**CERTIFICATE OF SERVICE**
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 SEP 19 PM 1 23

I HEREBY CERTIFY that a true and correct copy of the following document was served in the above-referenced case via electronic mail and first class U.S. mail, on this the 19th day of September, 2014, addressed as follows:

DOCUMENT SERVED:

Plaintiff's Amended Summons and Complaint

PARTIES SERVED:

Brian P. Murphy, Esq.
Stephenson & Murphy
207 Whitsett Street
Greenville, SC 29601

Attorneys for Defendant, Michael Lewallen

Ralph L. Gleaton, Esq.
Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601-3314

Attorneys for Defendant, Everworks, LLC

HAYNSWORTH SINKLER BOYD, P.A.

Angela M. Pack

Angela M. Pack
Secretary to Christine Gantt-Sorenson

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's Answer and
v.	)	Affirmative Defenses to the Amended
	)	Complaint
Michael Lewallen and Everworks, LLC,	)	
	)	Jury Trial Demanded
Defendants.	)	

Defendant Lewallen, through his attorney, denies each and every allegation not specifically admitted herein. Defendant Lewallen responds further to the numbered paragraphs of the Amended Complaint as follows:

1. Admitted upon information and belief.

2. Admitted upon information and belief.

3. Admitted.

4. Admitted upon information and belief.

5. Admitted.

6. Defendant Lewallen admits the averments of the first sentence of paragraph 6. Defendant Lewallen denies averments to partners and partnerships as Lewallen Automation LLC was a limited liability corporation. Defendant Lewallen denies averments regarding and characterizations of written documents, which speak for themselves. Defendant Lewallen admits the occurrence of the purchase agreement and transfer effective December 31, 2012.

7. Defendant Lewallen denies averments regarding and characterizations of written documents, which speak for themselves. Defendant Lewallen admits that he

entered into the referenced agreement effective December 31, 2012.

8. Defendant Lewallen denies averments regarding and characterizations of written documents, which speak for themselves.

9. Defendant Lewallen admits only that he resigned any position as an officer or director of Lewallen Automation, LLC and that he was subsequently given the non-officer title of "vice president of sales." Defendant Lewallen denies averments regarding and characterizations of written documents, which speak for themselves.

10. Defendant Lewallen denies averments regarding and characterizations of written documents, which speak for themselves.

11. Defendant Lewallen denies as stated the characterization of Lewallen Automation's business as it is not clear what Lewallen Automation means by "turn key provider." Defendant Lewallen admits that Lewallen Automation holds itself out as providing "turn-key systems integration and automation solutions for businesses" and that it manufactures control panels.

12. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the specific information to which Plaintiffs aver in their listing of categories of information or the meaning of a "body of information" and therefore denies the averments. Defendant Lewallen admits that Lewallen Automation has information regarding customers and prices, costs, suppliers, and information regarding building panels, etc.

13. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the specific information to which Plaintiffs aver or its characterization of

"confidential and trade secret information," as Plaintiffs merely reference general categories of information and therefore denies the averments. Defendant Lewallen denies the balance of the averments.

14. Denied.

15. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the specific agreements to which Plaintiffs aver and therefore denies the same. Defendant Lewallen denies the balance of the averments.

16. Denied.

17. Denied.

18. Denied.

19. Denied as stated. Defendant Lewallen denies that Brian Wright was acting in a competitive manner when he met with Defendant Lewallen and the principals of Plaintiffs.

20. Denied.

21. Denied.

22. Defendant Lewallen admits only that he has contracted with and performed services for Defendant Everworks, which is in the automation business. Defendant Lewallen denies the balance of the averments.

23. Denied.

24. Denied.

25. Denied.

26. Defendant Lewallen admits only that he has spoken to employees of Lewallen Automation and that more than one has subsequently obtained employment with

Defendant Everworks. Defendant Lewallen denies the balance of the averments.

27. Defendant Lewallen admits only that counsel for Plaintiffs sent a letter, which speaks for itself. Defendant Lewallen denies the balance of the averments.

28. Denied.

29. Denied as stated. Defendant Lewallen recalls eating at Larkins. The balance of the averments are denied.

30. Denied as stated. Defendant Lewallen recalls eating at Nantucket Grill. The balance of the averments are denied.

31. Denied as stated. Defendant Lewallen recalls eating at Los Amigos (on many occasions). The balance of the averments are denied.

32. Denied as stated. Defendant Lewallen admits that he had a company BMW and that he purchased gas for it on occasion. Defendant Lewallen denies the balance of the averments.

33. Denied.

34. Denied.

35. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

36. Denied as stated. Defendant Lewallen admits only that he entered into the Employment Agreement, which speaks for itself. Defendant Lewallen denies the balance of the averments.

37. Denied as stated. Defendant Lewallen admits only that he entered into the Employment Agreement, which speaks for itself. Defendant Lewallen denies the balance of the averments.

38. Denied as stated. Defendant Lewallen admits only that he entered into the Agreements, which speak for themselves. Defendant Lewallen denies the balance of the averments as they consist solely of conclusions of law to which no responsive pleading is required.

39. Denied as stated. Defendant Lewallen is without information or knowledge as to what aspects of the Agreements form the basis of the allegation, which appears to be comprised solely of a legal conclusion to which no responsive pleading is required.

40. Denied.

41. Defendant Lewallen admits that ASAG is party to the Purchase Agreement. Defendant Lewallen denies the balance of the averments as they consist solely of conclusions of law to which no responsive pleading is required.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

47. Paragraph 47 consists solely of conclusions of law to which no responsive pleading is required.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

53. Defendant Lewallen admits that ASAG is party to the Purchase Agreement. Defendant Lewallen denies the balance of the averments as they consist solely of conclusions of law to which no responsive pleading is required.

54. Paragraph 54 consists solely of conclusions of law to which no response is required.

55. Denied.

56. Denied.

57. Denied.

58. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

59. Paragraph 54 consists solely of conclusions of law to which no response is required.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

65. Denied.

66. Denied as stated. Defendant Lewallen is without information or knowledge

sufficient to form a belief as to the information at issue with regard to the averments of paragraph 66 and therefore denies the same.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

74. Denied as stated. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the "various information" at issue with regard to the averments of paragraph 74 and therefore denies the same.

75. Denied as stated. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the information at issue with regard to the averments of paragraph 75 and therefore denies the same.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

85. Denied as stated. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the "contracts" or "relationships" at issue with regard to the averments of paragraph 85 and therefore denies the same.

86. Defendant Lewallen admits that he was a primary contact for multiple customers of Lewallen Automation while employed.

87. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the knowledge of Defendant Everworks. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the particular "contact" or "relationships" at issue with regard to the averments of paragraph 87 and therefore denies the same.

88. Denied.

89. Denied.

90. Denied.

91. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

92. Denied as stated. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the specific "contracts" at issue with regard to the averments of paragraph 92 and therefore denies the same.

93. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the knowledge of Defendant Everworks. Defendant Lewallen is without

information or knowledge sufficient to form a belief as to the particular "contracts" at issue with regard to the averments of paragraph 93 and therefore denies the same.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

104. Defendant Lewallen is without information or knowledge sufficient to form a belief as to the particular expenses at issue with regard to the averments of paragraph 104 and has requested information regarding them, which Plaintiffs have refused to provide.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

111. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

112. Denied.

113. Denied.

114. Denied.

115. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

127. Denied.

128. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

129. Denied.

130. Denied.

131. Defendant Lewallen incorporates by reference the foregoing responses as if set forth here in full.

132. Deneid.

133. Denied.

134. Denied.

Plaintiffs' ad damnum clause consists solely of a prayer for relief to which no responsive pleading is required. To the extent a response is required, Defendant Lewallen denies he engaged in any wrongful conduct or that Plaintiffs are entitled to any relief.

Jury Trial Demand

Defendant Lewallen demands a trial by jury on all claims and defenses in this action.

Affirmative Defenses

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. Plaintiff Lewallen Automation's contractual claims are barred, in part, for lack of privity.

3. Plaintiff Lewallen Automation's contractual claims are barred, in part, for lack of privity.

4. Plaintiffs' claims for equitable relief are barred as there exists adequate

remedies at law if Plaintiffs could prove their claims.

5. Plaintiffs' claims for equitable relief are barred by the clean hands doctrine.

6. Plaintiffs' contractual claims are barred by their predicate breaches.

7. Plaintiffs' trade secret claim is made, in whole or in part, in bad faith.

8. Plaintiffs have failed to allege adequately that specific information it seeks to protect here or how it constitutes trade secrets under the Act.

9. Plaintiffs have failed to allege the existence of a fiduciary relationship between the parties.

10. Plaintiffs have failed to plead conspiracy special damages with specificity.

11. Plaintiffs fail to adequately plead any additional acts in furtherance of a conspiracy.

12. Plaintiffs fail to plead any damages arising solely from the conspiracy.

13. To the extent Plaintiffs' trade secret claims are based on the information identified in the supporting affidavits, Plaintiff have waived arguments regarding the secretive nature of information by filing such information.

14. Plaintiffs' conspiracy claim fails because, to the extent they could prove their allegations, relief is available under other causes of action and damages sought for conspiracy are the same as those sought under another claim based on the same facts.

15. The statements about which Plaintiffs complain were made under circumstances giving rise to a qualified or unconditional privilege.

16. Plaintiffs' claims for defamation fails as matters alleged to be defamatory are true.

17. One or more of Plaintiffs' claims are barred for lack of standing.

18. Plaintiffs have failed to mitigate any damages to the extent they could prove any kind of damage.

19. An award of punitive damages under the circumstances would be unwarranted and violative of the due process clauses of the United States and South Carolina Constitutions.

20. Plaintiffs have failed to allege adequately the contracts or relationships that form the basis of their interference claims.

21. Any damages suffered by Plaintiffs were not proximately caused by Defendant Lewallen.

Respectfully submitted this 29th day of September, 2014.



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

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895
	)	
Lewallen Automation, LLC and ASAG LLC,	)	
	)	
Plaintiffs,	)	Certificate of Service
v.	)	
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

This is to certify that a copy of Defendant Lewallen's Answer and Affirmative Defenses is being hand served on all counsel of record on September 29, 2014, at the hearing on Plaintiff Lewallen Automation's Motion for Preliminary Injunction.



Brian P. Murphy

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Lewallen Automations, LLC and ASAG, LLC, Plaintiffs, v. Michael Lewallen and Everworks, LLC, Defendants,	Case No.: 2014-CP-23-4895 **ANSWER TO AMENDED COMPLAINT BY EVERWORKS, LLC**

NOW COMES THE DEFENDANT, EVERWORKS, LLC, by and through its undersigned lawyers, answering the Plaintiffs' Amended Complaint would show as follows:

FOR A FIRST DEFENSE
General Denial

1. Defendant denies each and every allegation of the Amended Complaint ("Complaint") not specifically admitted herein.
2. Defendant admits the allegations in Paragraph 1 of the Complaint.
3. Defendant admits the allegations in Paragraph 2 of the Complaint.
4. Defendant admits the allegations in Paragraph 3 of the Complaint, upon information and belief.
5. Defendant admits the allegations in Paragraph 4 of the Complaint.
6. Defendant admits the allegations in Paragraph 5 of the Complaint.
7. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 6 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may

actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

8. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 7 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

9. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 8 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

10. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 9 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

11. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 10 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

12. Answering Paragraph 11 of the Complaint, Defendant admits that Lewallen

Automation, LLC ("LALLC") builds OEM electrical panels. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 11 and therefore denies the same and demands strict proof.

13. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 12 of the Complaint and therefore denies the same and demands strict proof.

14. Answering Paragraph 13 of the Complaint, Defendant denies that several of the items listed as trade secrets, including, but not limited to, customer list, customer pricing histories, individual customer specifications and requirements, customer contact information, usage history, vendor costs, supplier information, cost information, raw materials, and/or any other information that may be obtained from customers, vendors, trade publications, because this information is readily available from other sources. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 13 of the Complaint and therefore denies the same and demands strict proof.

15. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 14 of the Complaint and therefore denies the same and demands strict proof.

16. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 15 of the Complaint and therefore denies the same and demands strict proof.

17. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 16 of the Complaint and therefore denies the same and demands strict

proof.

18. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 17 of the Complaint and therefore denies the same and demands strict proof. Defendant further states that the best evidence of any document that may actually exist and be legally enforceable is the document itself and therefore craves reference to any such document for its terms.

19. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 18 of the Complaint and therefore denies the same and demands strict proof.

20. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 19 of the Complaint and therefore denies the same and demands strict proof.

21. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 20 of the Complaint and therefore denies the same and demands strict proof.

22. Answering Paragraph 21 of the Complaint, Defendant admits that LALLC terminated Michael Lewallen ("Lewallen") on or about June 20, 2014. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 121 of the Complaint and therefore denies the same and demands strict proof.

23. Answering Paragraph 22 of the Complaint, Defendant admits that after being terminated from LALLC, Lewallen came to work for Defendant and that Defendant is in the industrial automation business. Defendant denies that

Lewallen and Defendant are direct competitors.

24. Defendant denies the allegations in Paragraph 23 of the Complaint.

25. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 24 of the Complaint and therefore denies the same and demands strict proof.

26. Defendant denies the allegations in Paragraph 25 of the Complaint.

27. Defendant denies the allegations in Paragraph 26 of the Complaint.

28. Answering Paragraph 27 of the Complaint, Defendant admits that Plaintiffs' attorney, Christine Gantt-Sorenson, wrote a vague letter to Everworks stating that Lewallen was under a contract and was violating the contract. Defendant further states that it had its undersigned lawyer contact Ms. Gantt-Sorenson by letter specifically stating that Mr. Lewallen had not disclosed, nor had Defendant solicited Mr. Lewallen to disclose any information that may be a trade secret of LALLC and or ASAG Energy, LLC. The letter further requests a copy of any relevant contract and information that Plaintiffs believed to be trade secrets so that Defendant could be advised. Defendant further states that Plaintiffs refused to provide the requested information and instead brought suit without informing Defendant of specific contract or violation. Defendant denies the remaining allegations of Paragraph 27 of the Complaint.

29. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 28 of the Complaint and therefore denies the same and demands strict proof.

30. Defendant lacks information sufficient to admit or deny the allegations of

Paragraph 29 of the Complaint and therefore denies the same and demands strict proof.

31. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 30 of the Complaint and therefore denies the same and demands strict proof.

32. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 31 of the Complaint and therefore denies the same and demands strict proof.

33. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 32 of the Complaint and therefore denies the same and demands strict proof.

34. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 33 of the Complaint and therefore denies the same and demands strict proof.

35. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 34 of the Complaint and therefore denies the same and demands strict proof.

36. Paragraph 35 of the Complaint requires no answer.

37. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 36 of the Complaint and therefore denies the same and demands strict proof.

38. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 37 of the Complaint and therefore denies the same and demands strict

proof.

39. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 38 of the Complaint and therefore denies the same and demands strict proof.

40. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 39 of the Complaint and therefore denies the same and demands strict proof.

41. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 40 of the Complaint and therefore denies the same and demands strict proof.

42. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 41 of the Complaint and therefore denies the same and demands strict proof.

43. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 42 of the Complaint and therefore denies the same and demands strict proof.

44. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 43 of the Complaint and therefore denies the same and demands strict proof.

45. Defendant denies the allegations in Paragraph 44 of the Complaint.

46. Defendant denies the allegations in Paragraph 45 of the Complaint.

47. Paragraph 46 of the Complaint requires no answer.

48. Defendant lacks information sufficient to admit or deny the allegations of

Paragraph 47 of the Complaint and therefore denies the same and demands strict proof.

49. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 48 of the Complaint and therefore denies the same and demands strict proof.

50. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 49 of the Complaint and therefore denies the same and demands strict proof.

51. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 50 of the Complaint and therefore denies the same and demands strict proof.

52. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 51 of the Complaint and therefore denies the same and demands strict proof.

53. Paragraph 52 of the Complaint requires no answer.

54. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 53 of the Complaint and therefore denies the same and demands strict proof.

55. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 54 of the Complaint and therefore denies the same and demands strict proof.

56. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 55 of the Complaint and therefore denies the same and demands strict

proof.

57. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 56 of the Complaint and therefore denies the same and demands strict proof.

58. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 57 of the Complaint and therefore denies the same and demands strict proof.

59. Paragraph 58 of the Complaint requires no answer.

60. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 59 of the Complaint and therefore denies the same and demands strict proof.

61. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 60 of the Complaint and therefore denies the same and demands strict proof.

62. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 61 of the Complaint and therefore denies the same and demands strict proof.

63. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 62 of the Complaint and therefore denies the same and demands strict proof.

64. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 63 of the Complaint and therefore denies the same and demands strict proof.

65. Paragraph 64 of the Complaint requires no answer.

66. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 65 of the Complaint and therefore denies the same and demands strict proof.

67. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 66 of the Complaint and therefore denies the same and demands strict proof.

68. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 67 of the Complaint and therefore denies the same and demands strict proof.

69. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 68 of the Complaint and therefore denies the same and demands strict proof.

70. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 69 of the Complaint and therefore denies the same and demands strict proof.

71. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 70 of the Complaint and therefore denies the same and demands strict proof.

72. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 71 of the Complaint and therefore denies the same and demands strict proof.

73. Defendant lacks information sufficient to admit or deny the allegations of

Paragraph 72 of the Complaint and therefore denies the same and demands strict proof.

74. Paragraph 73 of the Complaint requires no answer.

75. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 74 of the Complaint and therefore denies the same and demands strict proof.

76. Answering Paragraph 75 of the Complaint, Defendant denies that several of the items listed as trade secrets, including, but not limited to, customer list, customer pricing histories, individual customer specifications and requirements, customer contact information, usage history, vendor costs, supplier information, cost information, raw materials, and/or any other information that may be obtained from customers, vendors, trade publications, because this information is readily available from other sources. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 75 of the Complaint and therefore denies the same and demands strict proof.

77. Answering Paragraph 76 of the Complaint, Defendant denies that several of the items listed as trade secrets, including, but not limited to, customer list, customer pricing histories, individual customer specifications and requirements, customer contact information, usage history, vendor costs, supplier information, cost information, raw materials, and/or any other information that may be obtained from customers, vendors, trade publications, because this information is readily available from other sources. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 76 of the Complaint and therefore

denies the same and demands strict proof.

78. Answering Paragraph 77 of the Complaint, Defendant denies that several of the items listed as trade secrets, including, but not limited to, customer list, customer pricing histories, individual customer specifications and requirements, customer contact information, usage history, vendor costs, supplier information, cost information, raw materials, and/or any other information that may be obtained from customers, vendors, trade publications, because this information is readily available from other sources. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 77 of the Complaint and therefore denies the same and demands strict proof.

79. Answering Paragraph 78 of the Complaint, Defendant denies that several of the items listed as trade secrets, including, but not limited to, customer list, customer pricing histories, individual customer specifications and requirements, customer contact information, usage history, vendor costs, supplier information, cost information, raw materials, and/or any other information that may be obtained from customers, vendors, trade publications, because this information is readily available from other sources. Defendant lacks information sufficient to admit or deny the remaining allegations of Paragraph 78 of the Complaint and therefore denies the same and demands strict proof.

80. Defendant denies the allegations in Paragraph 79 of the Complaint.

81. Defendant denies the allegations in Paragraph 80 of the Complaint.

82. Defendant denies the allegations in Paragraph 81 of the Complaint.

83. Defendant denies the allegations in Paragraph 82 of the Complaint.

84. Defendant denies the allegations in Paragraph 83 of the Complaint.

85. Paragraph 84 of the Complaint requires no answer.

86. Defendant admits the allegations in Paragraph 85 of the Complaint, upon information and belief.

87. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 86 of the Complaint and therefore denies the same and demands strict proof.

88. Defendant denies the allegations in Paragraph 87 of the Complaint.

89. Defendant denies the allegations in Paragraph 88 of the Complaint.

90. Defendant denies the allegations in Paragraph 89 of the Complaint.

91. Defendant denies the allegations in Paragraph 90 of the Complaint.

92. Paragraph 91 of the Complaint requires no answer.

93. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 92 of the Complaint and therefore denies the same and demands strict proof.

94. Defendant denies the allegations in Paragraph 93 of the Complaint.

95. Answering Paragraph 94 of the Complaint, Defendant admits that two at will employees of LALLC have left LALLC and become employed by Defendant. Defendant denies the remaining allegations in Paragraph 94 of the Complaint.

96. Defendant denies the allegations in Paragraph 95 of the Complaint.

97. Defendant denies the allegations in Paragraph 96 of the Complaint.

98. Defendant denies the allegations in Paragraph 97 of the Complaint.

99. Paragraph 98 of the Complaint requires no answer.

100. Defendant denies the allegations in Paragraph 99 of the Complaint.

101. Defendant denies the allegations in Paragraph 100 of the Complaint.

102. Defendant denies the allegations in Paragraph 101 of the Complaint.

103. Defendant denies the allegations in Paragraph 102 of the Complaint.

104. Paragraph 103 of the Complaint requires no answer.

105. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 104 of the Complaint and therefore denies the same and demands strict proof.

106. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 105 of the Complaint and therefore denies the same and demands strict proof.

107. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 106 of the Complaint and therefore denies the same and demands strict proof.

108. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 107 of the Complaint and therefore denies the same and demands strict proof.

109. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 108 of the Complaint and therefore denies the same and demands strict proof.

110. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 109 of the Complaint and therefore denies the same and demands strict proof.

111. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 110 of the Complaint and therefore denies the same and demands strict proof.

112. Paragraph 111 of the Complaint requires no answer.

113. Defendant denies the allegations in Paragraph 112 of the Complaint.

114. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 113 of the Complaint and therefore denies the same and demands strict proof.

115. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 114 of the Complaint and therefore denies the same and demands strict proof.

116. Paragraph 115 of the Complaint requires no answer.

117. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 116 of the Complaint and therefore denies the same and demands strict proof.

118. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 117 of the Complaint and therefore denies the same and demands strict proof.

119. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 118 of the Complaint and therefore denies the same and demands strict proof.

120. Defendant lacks information sufficient to admit or deny the allegations of Paragraph 119 of the Complaint and therefore denies the same and demands strict

proof.

121. Paragraph 120 of the Complaint requires no answer.

122. Defendant denies the allegations in Paragraph 121 of the Complaint.

123. Defendant denies the allegations in Paragraph 122 of the Complaint.

124. Defendant denies the allegations in Paragraph 123 of the Complaint.

125. Defendant denies the allegations in Paragraph 124 of the Complaint.

126. Defendant denies the allegations in Paragraph 125 of the Complaint.

127. Paragraph 126 of the Complaint requires no answer.

128. Defendant denies the allegations in Paragraph 127 of the Complaint.

129. Paragraph 128 of the Complaint requires no answer.

130. Defendant denies the allegations in Paragraph 129 of the Complaint.

131. Defendant denies the allegations in Paragraph 130 of the Complaint.

132. Defendant denies the allegations in Paragraph 131 of the Complaint.

133. Defendant denies the allegations in Paragraph 132 of the Complaint.

134. Defendant denies the allegations in Paragraph 133 of the Complaint.

135. Defendant denies the allegations in Paragraph 134 of the Complaint.

136. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of costs.

FOR A SECOND DEFENSE
Failure to State a Claim SCRCP 12(b)(6)

137. Plaintiffs have failed to state facts sufficient to constitute a cause of a action against Defendant.

138. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A THIRD DEFENSE
No Damages

139. Plaintiffs failed to state any damages.

140. Plaintiff has not been damaged.

141. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A FOURTH DEFENSE
Failure to Mitigate

142. Plaintiffs have failed to mitigate its alleged damages, if any, as required by law.

143. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A FIFTH DEFENSE
Plaintiffs' Conduct

144. Plaintiffs' own conduct is the sole and exclusive cause of any injury alleged in the Complaint.

145. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A SIXTH DEFENSE
Third Party Actions

146. If Plaintiffs have incurred any damages, which is denied, such damages are the result of the acts or omissions of one or more third parties over which the Defendant does not have authority or control.

147. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A SEVENTH DEFENSE
Affirmative Defenses

148. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches, privilege, legal justification and/or unclean hands.

149. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR AN EIGTH DEFENSE
No Malice

150. All actions taken by the Defendant that are relevant to this action were justified; privileged; reasonable; in good faith; without any improper motive, purpose, or means; and without any hatred, ill will, malice or intent to injure.

151. Defendant is entitled to have Plaintiffs case against Defendant dismissed with an award of cost.

FOR A NINTH DEFENSE
Truth

152. If the Defendant, or any agent of the Defendant, published any statements to anyone regarding either or both Plaintiffs, which Defendant denies, those statements were truthful.

FOR A TENTH DEFENSE
Reservation of Defenses

153. Defendant reserves and does not waive any and all other defenses which may be available to it.

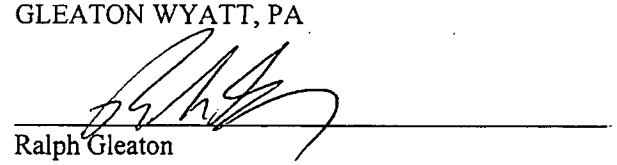
WHEREFORE, having fully answered the Plaintiffs' Complaint, Defendant prays this Court enter the following relief:

1. Dismiss the Plaintiffs' Complaint against Defendant with prejudice; and

2. Award the Defendant costs to defend this action; and

3. For all such other and further relief this Court deems just and proper.

GLEATON WYATT, PA



Ralph Gleaton
S.C. Bar No.: 7308
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Greenville, South Carolina 29601
(864) 250-9780

Attorneys for Defendant, Everworks, LLC

Greenville, South Carolina

October 7, 2014

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Lewallen Automations, LLC and ASAG, LLC, Plaintiffs, v. Michael Lewallen and Everworks, LLC, Defendants,	Case No.: 2014-CP-23-4895 **CERTIFICATE OF SERVICE**

I, the undersigned Paralegal of the law offices of Gleaton Wyatt, PA, do hereby certify that I have served the below counsel and parties with a copy of the pleading hereinbelow specified mailing a copy of the same by United States Mail, postage prepaid, to the address below:

Pleadings: Answer to Amended Complaint by Everworks, LLC

Counsel Served:

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Paula L. Haney
Legal Assistant

October 7, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2014-CP-23-4895

Lewallen Automation, LLC and ASAG, LLC,

Plaintiff,

vs.

Michael Lewallen and Everworks, LLC,

Defendants.

TRANSCRIPT OF TESTIMONY

September 29, 2014
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Denny P. Major, Esquire
Christine Gantt Sorenson, Esquire
Attorneys for the Plaintiffs

Ralph Gleaton, Esquire
Attorney for the Defendant
Everworks, LLC

Brian Patrick Murphy, Esquire
Attorney for the Defendant
Michael Lewallen

Wanda E. Fudge, CCR
Court Reporter

BY THE COURT: All right. Y'all can keep your seat. Anything we need to chat about before we go on record?

MR. MURPHY: Perhaps just the order of the motions, Your Honor?

BY THE COURT: I'm going to deal with all of that stuff because y'all ain't playing too well together thus far. So, we're going to go ahead and go on record.

This is 2014-4895. Let me start on Plaintiff's side, if you could identify yourself and who you're appearing on behalf of.

MS. SORENSON: May it please the Court, Chris Gantt Sorenson. I'm here for the Plaintiff Lewallen Automation, LLC as well as ASAG Energy, LLC. With me is Denny Major also representing the Plaintiff. And we have the owners of the Plaintiff, Your Honor, in the first row behind us: Gregg Hughes, Rob Merritt, Charles Stewart are the owners of both of the Plaintiffs' entities and then we have two other representatives in the second row also from Plaintiff.

May it please the Court, I would like to address the motion for preliminary injunction.

BY THE COURT: Well, I'm going to hear from -- see who the other lawyers are. I have a strong feeling at some point this case will be appealed, and I just want to make sure I do my job in getting the record ready for the folks down in Columbia.

So, if you would state your name and who you're here on behalf of.

MR. MURPHY: Brian Murphy for Michael Lewallen. Mr. Lewallen is here in the, I guess, the louder green shirt of the two, the golf shirt, with me today.

BY THE COURT: All right.

MR. GLEATON: Your Honor, Ralph Gleaton representing Everworks, LLC. Mr. Jeremy Steiner, one of the principals of Everworks, is here with me.

BY THE COURT: All right. Thank you. Let me go through what I understand from my rather voluminous reading -- and I understand there's some more reading that y'all have been kind enough to provide me with. And I hope we can agree on what we can agree on.

Lewallen, from a 31-page Complaint, was a 40 percent owner in Lewallen Automation which is LALLC throughout most of the materials. He was also an officer and president. And then at the end of December 2012 his and the other two partners' interest in LALLC was sold to ASAG for $1.3 million. Then Mr. Lewallen was hired by a Group of Patriots which was, and probably still is, still owned by LALLC and at that point, he signed the agreement for the sale as well as a non-compete agreement.

Later, his employment was terminated -- and let me ask, Mr. Merritt's affidavit indicated he was terminated in 2012. Mr. Hughes' affidavit indicates he was terminated in 2014. Not sure that makes a difference, but which date is correct?

MS. SORENSON: Your Honor, we apologize. That was a

typographical error. He was terminated June 30, 2014.

BY THE COURT: Okay. All right. So, we're here today on Plaintiff's Motion for Temporary Injunction.

Let me ask first, what specific contractual provisions does Plaintiff contend are being violated that lead to the basis for an injunction?

MS. SORENSON: Your Honor, there are two specific contractual provisions. We do not have a non-compete with Mr. Lewallen that we have located at this time, and I'll address that more later, but what we're here about today, Your Honor, is simply this: trade secrets and confidential information. Those contractual provisions are both in the Membership Interest Purchase Agreement whereby he assigned all of his rights to the owners of the company as well as his Employment Agreement. Specifically, in the Membership Interest Purchase Agreement, paragraph 5.04, he indicated that he would "hold in confidence all" of the confidential information of Lewallen Automation "and shall not disclose, publish or use any of the confidential information."

In section 1.01, confidential information is defined as, "Any data or information of the Companies or the Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors."

Section 6.02 of that same agreement, Your Honor, states that he will not engage in "any fraud, willful misconduct or bad

faith"... "in connection with"... the transaction "contemplated" by the sale of the business.

Section 7.06 says that he will honor this warranty to the owners from two years -- for two years from the date of the sale which means that warranty does not expire until December 31 of this year, Your Honor, 2014.

His Employment Agreement, section 6, specifically defines the customers as a trade secret. In the second whereas clause of his Employment Agreement he says he's employed in a confidential relationship; that, "in the course of his employment with the Companies, he has and will continue to become familiar with and aware of the information as to the customers of the Companies, the Companies' specific manner of doing business, including its processes and techniques, and its future plans with respect thereto," and that all of this has been well established and at great expense to the Companies.

Paragraph 6, trade secrets, the "Employee agreed he will not, during or after the terms of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any significant or material trade secret of the Companies."

Paragraph 5 pertains to return of property. Your Honor, his cell phone had all of the contacts in it, and to date he has not returned it.

There's also the provision in the South Carolina Trade Secrets Act---

BY THE COURT: And I apologize for interrupting---

MS. SORENSON: Right. You're just asking me about---

BY THE COURT: I don't want to go there yet.

MS. SORENSON: Okay.

BY THE COURT: I want us to discuss the contractual basis of -- Lewallen says, "I haven't done anything. Y'all won't tell me what I've done." Specifically, what are the allegations?

MS. SORENSON: Your Honor---

BY THE COURT: Well, let me rephrase that. Specifically, what is the evidence of the violation of the contractual provisions?

MS. SORENSON: The evidence of the violation of the contractual provisions is, first and foremost, two of our employees have been hired away by him, and we believe -- although, this is early in the case and we're going to need to engage in discovery -- that he is using our confidential information to undercut us in quotes. I actually got that from their affidavit from Jeremy Steiner.

But, Your Honor, specifically, our employees at Lewallen Automation are trained to do specific jobs for specific customers. There's a lot of energy invested in that and time invested in that. There are two employees that have been hired away who have Non-Compete, Non-Solicit and Trade Secret

Agreements with my client. Mr. Lewallen knows they have those agreements. In fact, Your Honor, when we purchased this business from Mr. Lewallen, he represented to my clients that his employees all had these Non-Compete, Non-Solicit and Trade Secret Agreements.

And attached to Schedule 311(a) of the closing documents and material agreements, he attaches those agreements as representation to my clients during the due diligence for the purchase of this business. Many of those agreements, Your Honor, that were attached to the closing transactions are signed by Mr. Lewallen on behalf of the company.

So, he is now targeting these employees that worked for this business, that know how to do the specific duties for specific customers. He's hiring them away. He's telling them that their Non-Competes and Non-Solicit Agreements are not enforceable.

BY THE COURT: Where is that in the affidavit?

MS. SORENSON: Mr. Merritt's affidavit, Amended Affidavit of Rob Merritt, and as well as his original affidavit, Your Honor. We've been consistent about what we've needed from day one. And that is in paragraph -- I beg the Court's pardon -- paragraph 20 and 21 of Mr. Merritt's Amended Affidavit. And, Your Honor, we've also attached the agreements that we have with David Case and Harrison Greer who are the two employees that have been hired away, and those appear -- both of those documents -- as Exhibit 4 to Mr. Merritt's Amended Affidavit.

BY THE COURT: When was -- I apologize, that is not in the Clerk of Court's file. So, I have not seen that.

MS. SORENSON: I'll hand you up my copy, Your Honor. It was filed on September 19.

BY THE COURT: I don't want to take your copy.

MS. SORENSON: I know the case pretty well, Your Honor. If I need it, I might borrow it back.

BY THE COURT: All right.

MS. SORENSON: So, paragraphs 20 and 21 of that affidavit as well as Exhibit 4. And all of the agreements that we're here about too, Your Honor, are attached to that affidavit, Membership Interest and the Employment Agreement.

BY THE COURT: Yes. Those I have seen.

MS. SORENSON: We also filed, Your Honor, other amended affidavits that, if you don't have, I would like to hand up. Does the Court's record have a copy of our supplemental memorandum as well? I'm just going to hand them all up, Judge.

BY THE COURT: Yes, please do. And I apologize.

MS. SORENSON: They were already---

BY THE COURT: Sometimes it takes -- literally, it takes weeks to go from one side of the courthouse to the other.

MS. SORENSON: I thought about sending you a courtesy copy and I should have. Those are Amended Affidavits of Jamie Satterwhite, Vince Blanton and Gregory Hughes and, Your Honor, as well as Steve Naugle.

Another -- Mr. Naugle's affidavit -- and we need to talk about how we want to handle our customer list -- but it also verifies the authenticity of an electronic mail correspondence that Mr. Lewallen sent to his home email address as well as to a third-party email address, personal email address, attaching a list of all of our customers and it's a spreadsheet, Your Honor, where -- my clients write down everything they're doing to try to get the business of these clients and these customers, and what sort of prospects, and plans, and things that they have in mind. And that was just this past January, in 2014. That's something that is a confidential trade secret -- confidential information that is proprietary and also, Your Honor, my client values that so highly that they have an employment manual policy that says, "You cannot take our confidential information out of the four-walls of this business." So, that's attached -- that policy is attached to the Amended Affidavit of Mr. Merritt.

So, him sending that out into the public to his personal emails, that specific document which has our strategic plans for 2014, is also evidence of trade secrets and violation of his contractual agreement.

BY THE COURT: All right. Mr. Murphy, let me ask you, how can Mr. Lewallen be contacting and pirating away employees of Plaintiff?

MR. MURPHY: Well, they haven't proven he's pirated anything, Your Honor. First of all, in terms of a non-solicit,

there's no non-solicits in this arrangement. In terms of these contracts, they don't allege these employees have breached their non-competes and my colleague has -- actually, the affidavits -- she refers to affidavits of -- I think she meant the contracts are attached to Mr. Merritts' affidavit. The affidavits of those two employees are in the record, and they establish there's no breach of any contract to them. One, there's not an enforceable contract. Two---

BY THE COURT: All right. Now, back up. Which is not enforceable?

MR. MURPHY: The Employment Agreement that they're pointing to that they have with the employees -- Mr. Gleaton can address that. He's entered the affidavits on that. One doesn't have consideration at all, one clearly -- I mean, that 150-mile arbitrary radius wouldn't be. But they're limited in what they can do. She's wrong in saying they can't come to work for us. There's no breach and they don't allege and they haven't tried to enforce those agreements.

So, absent -- in order to establish any hope of success on the merits for that, she would have to show we induced a breach of contract, not that we contacted employees. That is not unlawful in South Carolina, and we gave you case law from the appellate courts in South Carolina that's not irreparable harm to take employees from another business. So, there's nothing wrongful about that. But she hasn't proven what she's said. She

hasn't proven that my guy hired them on. The actual only evidence in the record as to what transpired with respect to those employees going from Lewallen Automation over to Everworks are the affidavits submitted by Mr. Gleaton, and there's absolutely nothing actionable about them; there's nothing for which an injunction can be entered; and there's no irreparable harm.

BY THE COURT: All right. How about the -- and from what I understand, Mr. Lewallen admits that he emailed the customer list to emails outside of the corporate umbrella if you will.

MR. MURPHY: Well, what I can admit to at this point -- because I showed you there's some odd things in these chains of emails including people's names being masked from my guy's email address -- what I can tell you is this, Your Honor, is last week, to preserve all of the evidence, I had the hard drive of his computer imaged so if there were any changes or anything that could all be shown, if you really want to go down that route. I then looked at his hard drive and we ran searches on things like prices, customers and all of that and put all of that in the record. We found that document. I don't know enough about Macs to know whether that was just something automatically goes on the hard drive when you get an email. I don't know how it works, but the documents are on his hard drive.

BY THE COURT: Define "his hard drive."

MR. MURPHY: On the Mac computer that he uses at home.

BY THE COURT: Personal?

MR. MURPHY: Yes, sir. They're on there. What I would like to agree on the record is he can delete them. But we also put in the evidence and the record if they were ever opened at all, they were opened at last on January 20, 2014. He had no plans of leaving this company in January 2014. In June and July his only plan was after he was told there was a conflict in June, he was working with one of the other owners to buy the company. It wasn't his intent to leave. They fired him. So, we don't contest, Your Honor, that while he was employed he had access to pricing information and customer---

BY THE COURT: All right. But did he send that customer list to his daughter's email?

MR. MURPHY: That's his home email. Your Honor, what happens is -- and we put that in the record -- that "alewallen" address -- and I blanked out the rest just so we don't have a personal identifier -- that's his home email address. Actually the "a" stands for his wife's name. It comes up in contacts. I put the contact sheet in there. And you look on his iPhone, when you put that email address in, his daughter's name appears. My understanding is his daughter doesn't actually use an email address.

BY THE COURT: All right. Did he also send it to someone other than his personal email?

MR. MURPHY: We don't believe so, Your Honor. We don't

believe -- we're going to -- we want to investigate that. There would be no reason to do that.

BY THE COURT: Unless somebody was trying to hide what they were doing.

MR. MURPHY: Well, but why on January 20th would somebody hide -- he hasn't given -- there's no dispute on January 20th.

BY THE COURT: I'm just saying what they're raising as an issue.

MR. MURPHY: It's, you know, speculation and conjecture, Your Honor.

BY THE COURT: What proof is it that it was sent to some third person?

MS. SORENSON: Your Honor, first of all, he was disgruntled. There were already big disagreements between the owners and him---

BY THE COURT: Well, I know. I just want to know what the evidence is that it was---

MS. SORENSON: The evidence is that the third person is Rachel Kleinhans. She is a known mistress of Mr. Lewallen. We have information that we're producing soon in the case -- you know, this is the early stages of the case. There's a lot we don't know either -- about---

BY THE COURT: But isn't that one of the bases you're asking for an injunction? "Hey, he sent it to his girlfriend."

MS. SORENSON: No, Your Honor. Let me be clear. I

apologize. I absolutely know that it was sent to her email address, and I'll also say that the -- our database has a number of emails between Mr. Lewallen and this young lady, "rachyk0413" is her email address, and this was yet another document -- yet another email that was sent to her, but in this instance it had our confidential information and trade secrets. So, we have no question about what the relationship is. We have photographs of them when he was supposed to be working out playing golf. We have evidence that he takes her out to dinner on the company card. So---

BY THE COURT: All right. All right. Beyond what I'm dealing with today---

MS. SORENSON: Right. Your Honor, that has no basis in today's -- but that's how much we know that this was---

BY THE COURT: All right. Let's move to the Trade Secrets Act, and I assume you're talking about Title 39.

MS. SORENSON: And, Your Honor, the actual email, the proof is attached to the affidavit of Mr. Naugle. So,---

BY THE COURT: Okay.

MS. SORENSON: Your Honor, if I could just real quickly -- and I want to move to the Trade Secret but I want to---

BY THE COURT: And I want to remind everybody, I've got other court starting in 20 minutes.

MS. SORENSON: Right.

BY THE COURT: So, we need to---

MS. SORENSON: But David Case---

MR. MURPHY: Your Honor, could I -- I haven't gotten a chance to address all of her---

BY THE COURT: If I let y'all go back and forth all day, we will be in here until about 9:00 tonight, and I wouldn't make any headway. So, I'm going to give you your chance to build the record.

MR. MURPHY: Before we have to leave, can we get an agreement on the record that he can delete this information from his computer? I just don't want an allegation being that we're, you know, engaging in exploitation or anything although I pray that mirror will prove what it proves.

BY THE COURT: I mean, ultimately, that's going to be part of my order, whatever was sent needs to -- and I don't want to delete it. I want it turned over to Plaintiff's attorney.

MR. MURPHY: How would I turn that over?

BY THE COURT: Y'all are smart. Y'all can figure that out.

MR. MURPHY: I mean, we can work on a protocol for -- I mean, but---

BY THE COURT: If they need to get a---

MR. MURPHY: On his computer, I would just to get it off so he doesn't have possession.

BY THE COURT: I don't know if they want to get a forensic computer expert to look at that--

MS. SORENSON: All right. We'll deal with that.

BY THE COURT: --to see what's been sent, what's not been sent. Obviously, this is very important to both sides, and I don't want to open up any unnecessary issues because there are plenty of other issues.

MS. SORENSON: Your Honor, David Case is one of the employees that's been hired away. It's been represented to the Court that the work he does for Everworks is different than the work that he does for my client, and that's not true. And now that he's gone, he's the person that did that work for us for this major client. So, literally, David Case has been hired away. He's been handpicked because he knew what his business was and how much income that he was to the company. He's been brought over to Everworks, and he is now working for the same customers that he worked for for my client.

In their affidavit, Mr. Steiner's affidavit, paragraph 5, he says Everworks currently earns $100,000 per year in revenue from Michelin. All right. We just -- David Case in the past year that we worked with him -- that he worked for us earned $176,000 for my client doing the same work.

Mr. Lewallen knows who our employees are, who our customers are and which employees do the specific work for our customers and that's the problem, and that's the trade secret. That is something that is not known to third parties and that's what---

BY THE COURT: All right. Now, you're talking about the customer list or the pricing specifics or both?

MS. SORENSON: Our employees and our pricing specifics, and I will tell you that Mr. Steiner's affidavit also says to me -- and I'm looking forward to more discovery on this -- in paragraph 13 that we're being undercut which is what we suspected. We've been told that. Granted, it's through hearsay, but we're being undercut. Paragraph 13 of Mr. Steiner's affidavit specifically says, "I learned from a manager at Michelin that hiring David Case would not be a problem for Michelin and may be advantageous to Michelin."

Well, Your Honor, I ask: Why is that? Why would it be advantageous? He's doing the same work he did for my clients and now he's doing it for Everworks, the same work for this customer Michelin; same exact work but it's advantageous. Well, I imagine that's because we've been undercut on our price.

This is our trade secret. He's already hired away Case. He's hired away Harrison Greer. Harrison Greer was somebody who did work for us for another client. Both of those affiants, David Case and Harrison Greer, admit they signed these Non-Competes, Non-Solicits and Trade Secret Agreements with us. The fact that they contend they're unenforceable, you're right; we're not here on that today. They've admitted in their affidavits they signed them. That would be sufficient basis today.

Your Honor, the Trade Secret Act says that, "A trade secret is anything that derives independent economic value from not generally being known to the public. It may consist of a simple

fact, an item, or a procedure or series or sequence of items or procedures which individually may be perceived as relatively minor or simple."

Our customers -- excuse me -- our employees and the work that they do for specific customers is a trade secret, and he is poaching our employees and poaching our trade secrets and that is irreparable harm because if this continues -- we've already lost David Case's ability to do this work for the client and we've trained him. We have a lot of time, effort and energy in him outside of -- after we purchased the agreement -- purchased the business. He's already hired Harrison Greer away. If he keeps this up and he keeps handpicking which employees he knows can do this work for the customer and then he goes and explains to the customer why he should -- the customer should now work with him instead of us because he can undercut our price, then by the time we get back here for the full-blown trial, the damage's going to be done and we are just going to be talking about money.

BY THE COURT: All right. Let me ask you this -- and I'm going to get to you in just a minute, Mr. Murphy. Is there any authority that hiring a competitor's employee is violative of the South Carolina Trade Secrets Act?

MS. SORENSON: Your Honor, not to my knowledge but I will say that South Carolina case law says the purpose of a preliminary injunction is to maintain the status quo, and goodwill and reputation -- we haven't even talked about what he's saying to

our customers about us that is pretty damning considering he is the primary face, the contact, with those customers. But goodwill and relationship with customers is a trade secret. Our case law says that. I'm not aware of any direct South Carolina case law, but, Your Honor, I would also say that a lot of the case law that talks about this stuff with even the defamatory comments tends to be with just a true former employer and employee relationship, not somebody who was our fiduciary of the company for us, and prior, who knows all of the information about it, knows how it works and knows our specific clients and goes out and tries to ruin our business that way. We're not telling him he can't work with Michelin. We're not telling him he can't work with our customers. We're telling -- we want him to not use our information.

And I'm going to tell you something else, Your Honor, that's got to be mentioned. There's been a representation to the Court and in this case that we have not been clear about what we wanted. We purposely did not mention our customers. We don't want to drag them into this. That's not what we're about. From our Complaint, to our Amended Complaint, to my discussion with the Court on September 15 and my verbal and written communications with Mr. Murphy I have said, "This is not about our customers. This is not about we don't want him to do business with certain customers. At this point, this is about quit using our employees and that knowledge of what they do for

the specific customers and taking them and pitting them with the customers in violation of all of your agreements with us. Quit doing that."

And I'll tell you, my client was very upset to find out that Mr. Murphy also on his own contacted Michelin directly and represented to Michelin that we have said to them that we're going to keep them -- we're trying to keep them from doing business with Everworks or Mr. Lewallen because that is not true. And I will tell you, Judge, my clients have been trying to be very careful about this, and there's a lot they won't let me use, but they've gotten telephone calls from Michelin saying, "Why are you trying to do this?" That's not what we're trying to do. So, we see this as an additional evidence of interfering with our existing -- our relationships in a tortuous way. We're not trying to enjoin Michelin from doing anything. We're not trying to enjoin Everworks from working with Michelin or Mr. Lewallen from working with Michelin.

And when I saw this email, I actually telephoned Mr. Murphy and told him that. "Please, call them back. That is not what this is about. This isn't about the customers specifically. This is about what he is saying to the customers and how he is handpicking our employees that work for those customers and hiring them away and taking that business." Those are our trade secrets.

BY THE COURT: All right. Let me ask you this -- and I

really am getting to you in just a minute, Mr. Murphy -- and I think this is ultimately the dispositive question. Where does the Court draw the line between appropriate competition and violation of the Trade Secrets Act and the Purchase Agreement?

MS. SORENSON: Your Honor, I took the liberty of drafting a proposed Order for that very reason because if it specifically addressed just to, "Don't hire away our employees that have these agreements that you know about; don't tell our employees that these agreements that you/yourself have signed on their behalf, the company's behalf, are not valid; don't use our pricing information, our labor costs and our vendor information to undercut us on the price of the people you know our customers are," that's -- this is a very narrowly drawn Order and it's specific to that. It has nothing to do with, "You can't talk to Michelin." And since we're---

BY THE COURT: All right. But again, from a practical standpoint -- and I really do understand your client's frustration. I would be frustrated too. But from the Court's standpoint, how do you draw the agreement -- I mean, how do you draw the language that doesn't somehow morph into a non-compete agreement that the Court has judicially created?

MS. SORENSON: Your Honor, the way this Order is written, if I could direct you to paragraph 2 of the proposed Order, page 6---

BY THE COURT: I'm sorry, page 6?

MS. SORENSON: Yes, sir, page 6, paragraph 2, the first paragraph is, "Don't encourage or employ our employees away, the ones that you know that have these agreements that do this work because that's a trade secret." The second one is, "Don't use directly, or indirectly" -- and that just means, obviously, Everworks or whoever else; he's now with another company -- "our trade secrets, specifically sharing knowledge and targeting our employees specifically trained to assemble the products sold by my client and those that he knows works with specific customers. Don't use our specific needs of the customers for electronic or pneumatic panels or our terms and relationships of our customers." That's all we're asking. Okay.

BY THE COURT: All right. But now if I'm a competitor and I have this language placed by the Court against me, what can I do with a potential customer that happens to do business with your client?

MS. SORENSON: Well, he's particularly gifted there, Your Honor. Since this was his business to begin with, I imagine he can set up shop and start doing business, and he knows how to put this together and just roll right with it and start working. Now, I'm not going to represent to Your Honor that we don't sometimes -- everybody else has a non-compete and a non-solicit, every other player in this case but him. So, I'm not saying we won't find that. But today, based upon what's before us now, set up shop, start doing business like you know you can do; start

getting the stuff in and putting it together. You sold this business to us. He wanted us to sell it back, we didn't and now he's trying to steal it.

BY THE COURT: So, is it your client's contention that Mr. Lewallen could not contact a current customer of your client?

MS. SORENSON: Your Honor, we do have issues with the customers on the list because that has our strategic plans about what we're going to do. And while it certainly would be our preference that he not be able to do that, we don't have anything that prohibits him from contacting any of our customers at this point as long as he's not using our employees and what he knows from the years he's handled our business to target them away and pull them away.

BY THE COURT: All right. Mr. Murphy, let me ask you, how could your client contact a customer of Plaintiff and not somehow disclose some of this confidential or information protected under the Trade Secrets Act?

MR. MURPHY: It's very easy, Your Honor. Whatever my client is quoting on -- and let me give you an example of what this is. For example, we don't make this. They don't make this. This is a control panel. This is what they're talking about. Okay. It's simple components that are purchased elsewhere that you can go to Greenville Tech in their Works and it will tell you -- all you're doing is programming this sequencer here to turn switches on and off. There's no secret there.

If a customer has a job that they want a bid on and they need this control panel, they provide that information to Michael Lewallen or to Everworks. He uses that information to bid the project based on whatever their costs are and whatever their model is.

There's absolutely -- she hasn't even begun to show any evidence anybody's misappropriated, used or disclosed any trade secret information. She wants to skip over all of that part and just say since he -- "When he worked for us, he had access to a planning document nine months ago." He couldn't be in this business that he had been in before they were even in the picture without using that one document. Well, he hasn't been using the document. He hasn't accessed the document. That's the only proof you have is that no one's opened that document or looked at that document apparently since January 20th. Seven months later they fire him and he still doesn't open or access that document. The only time it's been looked at was in my office when I opened it up the other day. We've proved that.

So, how can he do it without using their information? The same way he's been doing it. He's been doing it. He has these relationships. The South Carolina cases are full of this. We've cited some of them. You can take your relationships, your knowledge of who the customers are, anybody who manufactures -- has a manufacturing line is a potential customer for one of these.

BY THE COURT: All right. But looking at it from the Plaintiff's standpoint, they paid a lot of money. Part of what they paid a lot of money for was the customers and also the procedures, the practices, the pricing, all of which your client was very much involved in. And then he goes in and calls on one of their customers and there's this Court Order that says, "You can call on them but you can't use any information you learned while in the employment or while one of the owners of the Plaintiffs." How does Plaintiff know -- go in there and disremember 60 percent of your last eight years?

MR. MURPHY: Because we've proven, Your Honor, that he's in the business without using it. What their price was or their plans were nine months ago is irrelevant to what a company is thinking about putting in a line and wants a price on on a different product today. He's been in the business. If that theory was valid, if you could say, "Well, once you have access to confidential information, you can't work in the field," you've just blown away I don't know how many dozens of South Carolina appellate court cases.

BY THE COURT: It becomes a pretty fair reaching Order -- a far reaching Order.

MR. MURPHY: It really -- Your Honor, we have proven -- the only proof you have in this record -- and they've got the burden. They've got the employees. They keep talking about the solicitation of employees. First of all, names of employees are

certainly not a secret. We've got LinkedIn. We've got business built around people saying, I work for such-and-such company, here are my skills. That can't be a secret. You couldn't have LinkedIn or any of these things if the names of employees and what their skills are is a secret owned by the company who they work for. The South Carolina cases aren't clear. The Supreme Court has said, "You're free to take that with you and go and use it."

Undercutting, there is no evidence that we've taken any work from them, that we've undercut them on a single bid.

Information about poaching the clients, she keeps coming back that it's a trade secret. They've got the employees. No employee has backed their story up, not one. They've got one affidavit from Mr. Blanton who you can tell was probably under a lot of pressure. He doesn't even say anything actionable. He says he didn't talk to them. That's as close as they come. They have other employees who they claim are active employees who we've engaged in wrongful conduct, not one of them would sign a sworn affidavit. You have no evidence.

BY THE COURT: Can the Court prohibit Lewallen or Everworks from hiring current employees of Plaintiff?

MR. MURPHY: No, sir.

BY THE COURT: Why?

MR. MURPHY: Not under these facts, not under these facts. There is no legal basis for stopping one employer -- this is

commerce. This is a free enterprise system. Competitors hire other competitors' employees every single day. That's how commerce works. I mean, to draft an Order saying it is per se illegal to hire your competitors' employees -- you would think in the history of jurisprudence in South Carolina if that was a valid order, we would have seen one by now. You don't have a single one. Okay. And we've cited to you the Shakemasters case which says there's no irreparable harm from that denying an injunction when employees move from one to the other.

So, she can't cite a single case to you from this state or any other state saying that in circumstances such as these you can stop your competitor from hiring employees. If the employees, Your Honor, feel they got a better deal with Everworks -- they're not working for my client, by the way. My client doesn't have any ownership in Everworks. But if they feel that Mr. Steiner offers them a better future, better compensation, more respect -- and you've got to figure some of this is going on because not one of their employees is backing them up -- but if they feel Mr. Steiner is a better employer, why would this Court stand in the way of these people going and having a better life?

BY THE COURT: All right. Mr. Gleaton, give me briefly, if you will, Everworks' short version.

MR. GLEATON: Thank you, Your Honor. I fear, based on what you said earlier, you don't have our affidavits either. Your Honor, first of all, with hiring the employees away, any time we

ask somebody to leave, we have to have -- we can't intentionally cure the breach with the absence of justification. Competition is justification for interference with a real contract or one cannot interfere as a matter of malice or spite with an at-will contract. It is altogether legitimate for providers, services for -- to persuade a potential purchaser---

BY THE COURT: All right. Let me ask you, are these at-will employees or do they have non-compete agreements as Plaintiff contends?

MR. GLEATON: Your Honor, we have the affidavits. Mr. Case says in his affidavit that his non-compete is not supported by consideration and is, therefore, not any good. Mr. Greer does have a good---

BY THE COURT: Isn't continuing employment deemed consideration in South Carolina?

MR. GLEATON: Your Honor, it is okay consideration if you sign it when you are employed but continued employment is not consideration. That's black letter law in South Carolina.

Mr. Greer does have a valid and enforceable non-compete but his non-compete says, "You cannot go to work for any customer" and it lists categories of customers. We're not a customer. As a matter of fact, we've hired him -- he didn't work for a specific customer of LALLC. He worked at their machine shop. But we haven't taken him and put him in any customer of LALLC. We've taken him from and put him in BASF working on a project out

there for us, and they were not a customer of these guys.

But more importantly, they're saying that all of these things are trade secrets. The case -- they knew because of working with Lewallen, Mr. Lewallen, what Case was making and Mr. Steiner's affidavit, which I'm sure the Court most likely does not have, says, "I can ask the customer what they're doing. I've been doing this thing for years. We have been a contractor at Michelin for years, since 2012. We're out there working already" -- which is where Mr. Case was -- "We knew Mr. Case, not real well but we knew him. We hired him because of information we got from Michelin." Now if there's somebody that told them -- and it's not in any of the affidavits -- what Mr. Case was making and lowered what he was paid, it was Michelin telling us, "Here's what we're willing to pay you for Mr. Case's services."

And they're right. He is doing the exact same job for us that he was doing for them. He got disgruntled with them. We offered him a raise which is in the affidavits. We hired him. We didn't ask him anything about LALLC. Our affidavit says we neither solicited nor ever got any information from Lewallen, Case or Greer. Greer, Lewallen and Case's affidavits said we never offered nor have Everworks solicited.

But here's the biggest concern, Your Honor. If you sign this Order that they've asked for that says, "Well, they're allowed to compete, we're not saying they can't compete, Your Honor. They just can't use any of our trade secrets," then the

next time we go to bid on a job that is up for grabs at Michelin -- and again the affidavits say that when the customer asks for bids, it tells everybody what the specifics are and then you go bid on it. So, we go bid on it and we win, that they come running in here saying that we used their confidential information. We can easily prove that we didn't, but now we have to come in and fight about it.

They have not mentioned a single customer that we are stealing. They've not mentioned a single thing that they claim to be a trade secret other than this amorphous customer profit margins. Again, our affidavits say that doesn't matter to us. We've been in the business long enough that we know what -- first of all, any customers or anybody -- manufacturers, vendors or anybody -- who sells items that we use in the manufacturing process, we don't need that from them. Profit margins are how much the customer is willing to pay over what we can get from our vendors. We don't need that from them either. We've been doing it. We know what these numbers are. There's nothing out there that is a trade secret.

There's nothing that they can hide from us because we can go to Michelin and ask them what they were paid. If Michelin knows it, then it's not a trade secret. If the vendors who sell the products know what they sell the products for, it's not a trade secret. There is nothing out there that we use that we need from them. They have not treated their employees well, not given them

raises and we offered to. Their employees came to us and we do not need their information. One guy is a $15 an hour tech who is a nice guy that does his job well that doesn't have any secrets that he can tell us. He knows how to do what he does on the job.

BY THE COURT: Wouldn't the Court have the authority on a temporary basis to prohibit any employees that formerly worked for the Plaintiff who has now gone with Everworks to---

MR. GLEATON: I'm sorry, Your Honor---

BY THE COURT: I'm trying to articulate it to where it's understandable. Wouldn't the Court have the inherent authority to prohibit any employees Everworks hires who were formerly in the employment of Plaintiffs from working with former customers of Plaintiffs? And I hope I asked that in a clear enough way to where you can answer that.

MR. GLEATON: And no, Your Honor, is the correct answer. It would be illegal restraint on trade, and you have to maintain the status quo and the status quo is that Mr. Case is doing the same job for the same client. We didn't become a customer of Michelin after hiring Mr. Lewallen. We were a customer of Michelin way before that. If Michelin comes to us and says, "You know what, we're not happy with LALLC. Get your card case and you manage it instead of us" and we do it, the Court would be monkeying with a contract that we have with Michelin, and Michelin is not a party to this action.

You're saying all of a sudden, "Michelin, you can't have the

employee that you specifically contracted for." That would be specific -- that's more specific than what they've asked for, but we need to know specifically what it is we can and cannot do, not an amorphous, "Follow the contract." Any time we do something they don't like, it will assuredly, "We have not followed the contract," and we'll be right back in here.

What we've asked for all along is, "Tell me specifically what information you have, not just pricing information. If there's a price for a specific job, maybe we'll back off. I don't know. We're happy to talk to you about what specific information you think we have because we don't have it and we don't need it."

But if we're going to follow an Order of this Court, we need to know what this Court's telling us we can't do. Now to the point Mr. Case can't work with Michelin, that's specific, but I don't think it's an Order this Court can enter into because it breaches an executory contract that both we and Mr. Case have with Michelin and Michelin's not a party to this action.

BY THE COURT: All right. Anything else from Plaintiff?

MS. SORENSON: Yes, Your Honor. I think they're making our point. "Anything that can be perceived as relatively minor or simple collectively can make a substantial difference in the efficiency of a process or the production of a product which may be the main basis of marketing or commercial strategy," that's from the Trade Secrets Act. The trade secret that we have been

very clear about is the employees, the specific thing they do for us knowing who they work for, that is not only -- that is a trade secret. These employees work separately in the plant and, it says so in the affidavit, from anybody else and access to where they work is restricted. The names of the customers that they work for are not even up on their own panel so that each other -- each of the employees within the business, that particular division, don't know who's doing what unless they're telling it to each other. This is something that is highly specialized, not the ability to do that.

They're making that point for us. He can go out and do that. But when we get an affidavit that said we made $100,000 last year from Everworks from Michelin and now they've hired away our guy who made just recently for us, not in one year, less than a year, $176,000 doing the same job, that's the trade secret that we're trying to deal with.

This is a business that he knew and developed and he knows exactly how it goes, and that's all we're trying to deal with here.

BY THE COURT: All right. Let me ask you, where do things stand -- I know there's been some expedited, preliminary discovery -- where do things stand in the discovery process?

MS. SORENSON: We are really almost ready to provide it. It's not due until October 8th, but we've been working on it and I'm hoping to get it out this week, Your Honor. I think it will

provide a lot -- we didn't touch on this -- can I just hand up the case law that said you can order someone not to make defamatory statements to the customers? These are the cases where it's happened. He's got in his Brief all of the cases where it hasn't. We would say, Your Honor, that while he has attached the opinion from Judge Hill, that was specific to just a former -- a typical employee/employer relationship. This is very different -- this is unique because we're talking about an officer of the company who has access to specific information and these contractual warranties that he's made to our clients and he violated -- he can compete with us without having to make all of the types of comments he's making.

BY THE COURT: You can hand them in.

MR. MURPHY: Your Honor, I need to address the procedures here. This is what I raised -- the concern I raised in our conference call. We have been requesting -- and you know, you were on the conference call. I requested there what the -- the answers to the questions you've been asked today and what is sought. That proposed Order you just got, we've been asking, "What are you seeking?" It's not what the motion seeks. The trade secrets she's now claiming are trade secrets aren't what's in the motion. This thing has been a moving goal post from day one. That is a clear violation of due process to even be considering, Your Honor, enjoining somebody when they don't even have a chance to respond to the allegations. She puts one set of

allegations up. We ask for information. She says, "No, no, no." Just last week, I said, "Can you just tell us what it is you're talking about? Ralph and I can sit down and talk to you and see what it is we can agree to." And then in the last minute here she starts raising defamation.

Your Honor, this really has been, you know -- not that the Court's been unfair, but these proceedings in the way she's presenting it and changing the subject, changing what she's asking for, changing the nature of the allegations, that denies us the time and opportunity to respond that the rules call for. The rules are completely applicable here. They've offered nothing but speculation and hearsay. There is absolutely -- she's had every opportunity today, she's not given you one shred of evidence anybody's misappropriated, used or disclosed any trade secrets. Employee names are not trade secrets. She's given you no law that one competitor can't hire another competitor's employees.

BY THE COURT: All right. Here's what I'm going to do purely on a temporary basis -- and necessarily, it's going to be fairly generic just because there are so many hotly contested issues.

I am going to direct that the expedited discovery continue. Then, if necessary, we can reconvene the hearing in 45 days.

On a purely temporary basis, without any precedential value or impact whatsoever on the later merits, first, Mr. Lewallen needs to return all of the information on his personal computer,

and I'm going to allow Plaintiffs' attorneys to decide whether -- well, strike that. I'm going to allow Plaintiffs' attorneys to decide in what format they want that. Do they want it -- do they want to have someone, a forensic computer expert to look at it, I have no problem with that. It would have to be done on a scheduled time because, you know, I don't know if this is Mr. Lewallen's only laptop. I don't know if he currently works off of it, but I have great confidence the lawyers can agree on that. But whatever's going to happen is going to have to happen within seven days.

Also -- and all I'm doing -- the Order is going to reflect the parties' agreement. Mr. Lewallen cannot use any confidential information -- and I know there is great controversy over what is confidential information but it includes pricing structure and information.

The Court cannot morph this somehow into a non-compete, and the Court clearly is not doing that. All the Court is doing is enforcing the parties' agreement. The confidential information as was defined in the agreement, the 5.04 and 1.01, shall not be used.

I'm not comfortable enjoining hiring of any employees by Everworks. I just don't think the Court has that authority; however, Everworks, if they do hire other employees, do so at their own risk if they hire other employees of Plaintiff; and if at the trial on the merits it proves that this was done in

violation of any of the applicable agreements or statutes, then certainly damages will be awarded against Everworks.

I am going to direct that Mr. Lewallen not make any defamatory statements towards or about Plaintiff, and I fully understand -- I don't want y'all back fussing in three weeks, what's defamatory, what's not defamatory. It's just going to -- the parties are just going to have to agree with the spirit -- not necessarily agree -- they would have to comply with the spirit of this Order.

Also, under Rule 65, Plaintiff will be required to post a $2,500 bond with the Clerk of Court's Office. So, if -- and I'm going to look through all of these affidavits and other materials that have been submitted here this morning, and if you will start working on an Order and hopefully have it to me by the end of the week and then, if necessary, we'll have a conference call over the language used in that Order.

That concludes my ruling. Thank y'all very much.

MS. SORENSON: Thank you, Your Honor.

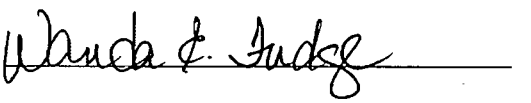
BY THE COURT: All right.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

The undersigned, Wanda E. Fudge, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina, on the 29th of September 2014.

I do further certify that I am neither of kin, counsel, nor interest to any parties hereto.

October 6, 2014



Wanda E. Fudge, CCR

Certified Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Lewallen Automation, LLC and ASAG Energy, LLC,

Plaintiff,

vs.

Michael Lewallen and Everworks, LLC,

Defendant(s),

) Case No.: 14-CP-23-04895
)
) **TRANSCRIPT OF TESTIMONY**
)
) December 11TH, 2014
) Greenville, South Carolina

B E F O R E:

The Honorable Charles B. Simmons, Jr.
Master in Equity for Greenville County

A P P E A R A N C E S:

Denny Parker Major, Esquire
Haynsworth Sinkler Boyd
Attorney for the Plaintiff

Brian Patrick Murphy, Esquire
Jeffrey P. Dunlaevy, Esquire
Stephenson & Murphy
Attorneys for the Defendant

IN ATTENDANCE:

Ralph Gleaton, Esquire
Gleaton Wyatt P.A.

Ann Dickey Campbell, CVR
Court Reporter

GREENVILLE COUNTY COURTHOUSE

BY THE COURT: All right, this is 2014-4895.

Mr. Murphy, let me start with you. What do you understand the issues to be?

MR. MURPHY: Your Honor, I was just informed by Denny that I believe he intends to narrow the issues for this hearing. Would you like me to give you my understanding, or would you like to hear him what . . .

BY THE COURT: Well, instead of you telling me what he means, let me hear from him.

MR. MAJOR: Your Honor, it has to do with paragraphs 4 and 5 of the Temporary Injunction, which I call them the defamatory preventatives for lack of a better term, but ---

BY THE COURT: All right, I want to make sure. There are so many issues, so many motions, so many different hearings. Are you talking about the Order filed October 9, 2014?

MR. MAJOR: Correct, Your Honor.

BY THE COURT: All right, and refer me again.

MR. MAJOR: It's page six, paragraphs 4 and 5, "Defendant shall not make any misrepresentation to LALLC's customers regarding LALLC's ability or capacity to fulfill orders from such customers," and then the next paragraph, "Lewallen shall not make any statement to LALLC's customers, vendors or employees that suggest or imply that any of LALLC's officers falsify financial records, that LALLC is going to cease business operations, or any other statement that could cause

harm to LALLC." Those two paragraphs, we are not going to pursue continuation of those two provisions.

BY THE COURT: All right, so what are you pursuing here today?

MR. MAJOR: Primarily, Your Honor, paragraph 3, which prohibits Mr. Lewallen essentially from using or disclosing trade secrets or confidential information as those terms are defined in the Membership Purchase Agreement and the Employment --- or the Employee Agreement specifically. Also, and I don't want to delve too far into this issue until you're ready, but as to paragraph 1, for various reasons, we haven't had the opportunity to obtain that spreadsheet that's on the computer, and we would, once we are able to do that and have it deleted, have that certification in writing as provided in paragraph 1.

BY THE COURT: All right, well, there has certainly been no lack of energy or effort on discovery from what I can gather from my involvement and Judge Hill's involvement and Judge Verdin's involvement. So where do things stand on getting that?

MR. MAJOR: As to the computer protocol, Your Honor, we had a --- you know, we reached agreement, I believe, October 8th as to the computer protocol, and I think all parties forgot that it had to be by terms of the Order itself, needed signatures of counsel. So we inquired about the entry of the Order, I think, October 16th, and were informed that once we got the signature

pages, it would be entered. We asked for signature pages, I believe, October 25th. We received Mr. Murphy's signature page October 30th, but we did not receive Mr. Gleaton's signature page until November 19th. We asked, you know, by letter ---

BY THE COURT: Is that what slowed it down for almost three weeks?

MR. MAJOR: Yes, Your Honor. We sent letters October 25th, October 30th, November 5th, November 11th, November 14th, and once we got the signature page, we, that same day, dropped it off and, you know, once it was entered, we immediately sent a request under the computer protocol.

BY THE COURT: All right, so, Mr. Murphy, where do things stand on ---

MR. MURPHY: Well, let me address. Paragraph 1, Your Honor, my offer was at the first hearing ---

BY THE COURT: I don't want to know offers. I don't want to know history. I want to know where it stands.

MR. MURPHY: Right now, all that needs to be done is for them to tell me, "Delete the spreadsheet off that computer," and I'll do it.

BY THE COURT: Are you telling him that?

MR. MAJOR: Your Honor, the problem that I have with it, and I understand Mr. Murphy has taken what he referred to as an image, that he had somebody take an image of the computer, back in September. I talked to our computer forensics expert,

and Mr. Murphy graciously provided me the information about who did it and the software that was used to do it. I provided that information to our computer forensics expert who told me that that is not a complete image, that there may be aspects of the computer that were not copied by that, and I am not an expert as to the details of it, but my understanding is that there is unallocated space in any computer where files may be found, and the type of imaging that was done by, you know, under Mr. Murphy's direction did not necessarily capture that data. So at this point, I can't advise my client to allow them to delete anything at this point, because that could corrupt that data.

BY THE COURT: All right, Mr. Murphy, physically, where is the computer that would have that information?

MR. MURPHY: I believe it's at his home.

BY THE COURT: At Mr. Lewallen's home?

MR. MURPHY: Right. I believe --- I don't know that he uses it very much, but it's their home computer. And you may recall, we did a search where we brought all that in. I'm happy to do whatever they want. But if he wants this deleted and me to certify it, I'm happy to delete it and certify it.

BY THE COURT: All right, here's what I'm going to do. Within fourteen (14) days of today, the computer expert of Plaintiff will have access by going to the house of Mr. Lewallen during regular business hours, with at least forty-eight (48) hours notice, to look at that and do whatever investigation

needs to be done, and then it can be deleted.

MR. MURPHY: Your Honor, may I speak to that? We have a computer protocol and what the computer expert may do with any image he makes, and I'd like that to be the standing Order.

BY THE COURT: That's fine. It will be ---

MR. MURPHY: The big sensitivity here is we don't want them just poking around looking and seeing what's on the computer.

BY THE COURT: I understand. It is going to be very narrowly limited to what we're talking about here today.

MR. MURPHY: And we can do the imaging in my office, is fine.

BY THE COURT: I have no problem with that.

MR. MURPHY: Okay. So I'm fine with him doing an image within fourteen (14) days as long as he doesn't do anything with that image except pursuant to the protocol. That's fine. Then, can we delete the ---

BY THE COURT: Unless his expert says there's some reason not to, then absolutely.

MR. MURPHY: Okay.

MR. MAJOR: I agree with that, Your Honor.

BY THE COURT: All right. All right, so, then, the only issue is substantively whether paragraph 3 of the Order filed October 9, 2014 should continue?

MR. MAJOR: Yes, Your Honor. I mean, we've asked for

discovery in addition to the computer protocol, you know, fundamental discovery that would go to non-disclosure and the trade secrets claims such as the customers that he's contacted that were former Lewallen Automation customers. Mr. Lewallen hasn't provided this information, even those identities, except for one, except for Michelin, which was already identified in the initial proceedings. They stated that we would need consent from Everworks, or that he would need consent from Everworks before they could provide that information. I mean, we disagree that that's a valid objection, but nevertheless we've asked the same information and more from Everworks, and we haven't received any responses from Everworks.

BY THE COURT: I understand all discovery has now been referred to a Special Referee, correct?

MR. MAJOR: No, Your Honor.

MR. MURPHY: I'm not aware of that, Your Honor.

BY THE COURT: Well, it is my understanding that Judge Verdin is signing an Order Appointing a Special Referee on Discovery, just based upon the sheer volume and the contentiousness of the litigation.

MR. MURPHY: Okay, we just weren't aware of that.

BY THE COURT: Okay, I apologize if I'm speaking out of school.

MR. MURPHY: And I think that is properly --- first of all, there is no motion on discovery pending at all about our

responses. The issue, Your Honor, is, is there a basis, before we get to the procedural issues, about extending an expired injunction and so forth, there is absolutely nothing that they have submitted that indicates that Michael Lewallen has used or disclosed any trade secrets. There's absolutely nothing. Now, if he wants to complain about discovery and go get discovery and then bring a motion ---

BY THE COURT: I understand. The discovery issues are not before the Court.

MR. MURPHY: --- it's not before you. All that's before you is nothing. And, you know, you have my email this morning we filed in opposition. Much of it goes to the paragraphs he's now dropped.

BY THE COURT: All right, let me ask you this, because I'm trying to shortcut things, and I don't know if a Judge can shortcut, as contentious as this has been, but when I look at paragraph 3, does not paragraph 3 simply say, "Hey, whatever the agreement is, that's what controls"?

MR. MURPHY: I don't know, Your Honor, and really, I want to answer your question. I don't want to appear like I'm re-arguing what you have already ruled upon are the issues. I've given you our appellate brief. I don't mean to re-do that. But, sir, I, you know, respectfully, it's our position, an affidavit has to be specific in terms of what not to use. Those broad characterizations --- and you have our brief and we've cited the

law in there --- lead us to not know what they mean. And when you look at the positions they've taken in this case, they've taken the position, Your Honor, and we filed this in our Supplemental Oppositions last time, they've taken the position names of employees and what they do there is a trade secret, names of customers are a trade secret, all of which we have offered for your review, but all of which we have offered evidence to refute. In fact, that this stuff is all over the internet. Their owners endorse all of their employees' statements on the internet saying, "Here's what we do. Here's who we work for." This thing, there will never be a meeting of the minds between the parties as to what constitutes confidential information when they want to come into this Court and say things like, "Who our customers are is a secret. What goes on in our plant is a secret." All you've got to do is Google their plant and you come up with a video showing you all their operations. All you have to do is go on, like Denny, and you see the names of all their employees. You can contact them. You can see what they do. You can see what their skills are. So we don't have any kind of common ground. I couldn't begin to tell you the scope of what they all are claiming is confidential information, but we've given you the law on that, and again, I don't want to really re-argue that.

The issue, I think, for today, Your Honor, even getting past the fact that there is no injunction as of today, we don't

have any notice of a motion for further injunctive relief. There is absolutely nothing in the record --- and you talk about the record getting voluminous. It has. Because we've been filing motion after motion asking them, "What the heck is this about?" All we know, Your Honor, and all we've put in the record, is that the statements that were made to you that led to this injunction to begin with were false. They made representations repeatedly to the Court that these witnesses said these things attributed to Mike Lewallen. But we finally, after motion after motion on the eve of trial, we get one last night. These witnesses aren't saying that. Okay, all we know is that the representations they made to you that led to that injunction are false. That's the only thing we know. He can't point to you any evidence in this record that Michael Lewallen has used or disclosed any trade secrets. The only thing they ever had on trade secrets was the issue that we didn't fully --- we couldn't fully address at the last hearing, was that in January, seven months before he was fired, he sent that email to Rachel with the spreadsheet on it. Okay? My guy doesn't remember doing that. He still doesn't remember doing that. I sat up here, and I had no idea what this thing was about. There was weird things in the mail that we didn't know. But Rachel explained it. I got a hold of Rachel. She did an affidavit I submitted it to the Court, and all that happened in January is, and if you see that they submitted, I think they submitted under seal, it's a big

spreadsheet. I don't know if you ever tried to print off a big spreadsheet, but it goes on a bunch of pages and you can't match everything up. When they were meeting, I guess in January, doing their planning at the company, they wanted this on a piece of paper where they could see the whole spreadsheet. And they thought Rachel would be able to do it. They emailed it to Rachel. She wasn't able to do it. And she deleted it. But she remembers what happened. That email was deleted back in January. There is nothing to indicate that document, which we've already shown the Court in our supplemental filings last --- actually, it was in our original filings last time --- wasn't accessed since January of 2014. And we have a mirror image to prove that. So the document was never accessed since January. It was sent out --- I understand it was weird. Why would we send this document to this person that doesn't work for the company, but she explained it. It's never been opened or reviewed since January.

There is nothing in this record to show that Mike Lewallen has done anything wrong. And they've got to prove that. That's a high burden to prove to get injunctive relief. Injunctive relief is supposed to be extraordinary. So there's danger, the building's on fire. Oh, my gosh, you better stop this heinous act or irreparable harm is going to come by. There's not even evidence of wrongdoing, let alone irreparable harm. So for the reasons ---

BY THE COURT: All right, let me circle back to my question. When I look at paragraph 3 on page 5 ---

MR. MURPHY: Right.

BY THE COURT: --- and it carries over onto page 6, as I interpret this, and what my intention was when I issued it, was to say, "Hey, these are big boys. They've entered into agreements. This is what the parties' language agreed to says. This is what the Court expects both sides to do." So how is this prejudicial to either side, to have an Order that says, "Here's the language you agreed to. You're going to have disagreements over what it means, but this is what the Court, at the end of the day, is going to uphold."?

MR. MURPHY: Because the law is clear, you don't issue injunctions to say, "Follow your contracts." That's not the standard for issuance of an injunction. It's not even one of the elements.

BY THE COURT: All right, let me ask the Plaintiff, then, what is the evidence that Mr. Lewallen, and now, it's been months into it, a lot of lawyer-ing, what is the evidence to support either a continuation, or as Mr. Murphy argues, now a reinstitution, if you will, of the Restraining Order that by its own language, expired forty-five (45) days after its issuance on October 8th?

MR. MAJOR: Well, Your Honor, the first thing that I would like to point out is the affidavit of Matt Newton, which

we think is significant, specifically the statement he makes --- let me find the exact statement --- I mean, first of all, Mr. Newton is an employee of ASAG, the parent company. He's an insurance analyst there as I understand it.

And on July 23rd, shortly after the termination of Mr. Lewallen, Mr. Lewallen came into Mr. Newton's office and said that these were his clients, that he would make sure that they would only do business with him. He also stated that he would do anything necessary to keep his clients. He also mentions specific customers. He mentioned Michelin. He mentioned Hartness International. He said he would make sure that they did business only with him. The chief statement there is the statement that he would do anything necessary. And this is a guy who's a former owner, a former Vice President, a former President at one point, of the company. He is intimately familiar with the company's information. He knows pricing, pricing structure, costs. He has in his possession on an email that he sent to his personal email address a spreadsheet that's basically the entire sales strategy for the company with specific customer names and notes about how to go about getting those customers.

You know, after --- when you hear him make a statement that he would do anything necessary to keep his clients, there is a legitimate concern. The Trade Secrets Act allows injunctive relief against threatened misappropriation. And we believe that is threatened misappropriation. And we would also refer to the

Fourth Circuit's opinion in Ciena Corp. v. Jarrard. The cite on that is *203 F 3rd 312,* I believe, and it's 4th Cir 2000, which I believe, affirmed an injunction that prevented the Defendants from using, disclosing or otherwise misappropriating any of Ciena's trade secrets or confidential information and specifically rejected the argument that that was insufficiently specific. And that's what we're asking for, is compliance with the agreement.

BY THE COURT: Then, to argue Mr. Murphy's standpoint, so you are asking the Court to make an inference from that statement that he is intending, he being Mr. Lewallen, to violate the parties' agreement?

MR. MAJOR: Expectively, yes. I mean, we think that's a threatened misappropriation. We would also refer to the fact that the one piece of information that we have gotten from Everworks, we got it before the discovery responses perhaps were even sent, but it is a purchase order from Michelin to Everworks for work of one of the engineers, David Case, who used to be an employee at Lewallen Automation, who is now an employee at Everworks. You know, he says an employees list can't be trade secrets. Perhaps the names of employees alone are not, but when you encompass that with the specific customers that they are working with and the knowledge that they have, we submit that is trade secret, and I mean, Mr. Lewallen knew exactly who Everworks should target to hire in order to get that business

from Michelin, which, you know, would lead to other business. And that's, we think, an actual showing of use of information in this case.

BY THE COURT: All right, let me ask one other question and then I will get to you, Mr. Murphy. How do you respond to Mr. Murphy's argument that the Order filed October 9th, 2014, it is no longer in effect by its language, and so we are here, number one, Mr. Murphy says, inappropriately because no motion has been filed by your client; and number two, that we have to start *de novo* in determining whether or not there should be an injunction?

MR. MAJOR: The Order specifically contemplates that the parties are going to meet prior to the expiration. And just to give a little big of background, there was a hearing scheduled before Your Honor on November 17th, and I believe technically it was on a Motion to Strike, but I mean it was our understanding that probably the majority of the portion of that convening of the parties would be spent on the injunction that was set to expire, but that hearing got cancelled, I think the business day prior thereto, and that prompted our writing of the letter requesting it. You know, since there is a contemplation that there's going to be a reconvening, we submit that it stays in effect until that takes place, but I mean even if it doesn't, this is --- we would submit that it's a --- you know, he said he hasn't had notice. We sent out our request, I think, November

20th. It has that information in there, and we had previously submitted all of the affidavits and information in the motion initially, and we would refer to all that. He also makes the statement, I think he cited Appellate Rule 205. I just want to point out to the Court that Rule 241(b)(8), I think he cited Rule 205 for the proposition that the Court wouldn't have jurisdiction to alter this Order, but under Rule 241(b)(8), there's an exception to that general rule, and it basically says an appeal from an Order Granting an Injunction or Temporary Restraining Order is an exception to that jurisdictional limitation so that this Court would still have jurisdiction to alter the Temporary Injunction that was issued.

BY THE COURT: All right, Mr. Murphy, let me hear from you as far as the evidence or lack of evidence for an injunction.

MR. MURPHY: Well, I think he just confirmed my point, Your Honor. You asked him --- the question you asked him, was what evidence is there that Michael Lewallen used or disclosed trade secrets, and he offered you none. He said --- he pointed to an affidavit of something that occurred before the last hearing, before a case was even filed. They represented to you that this is grounds for extending the injunction, because this is newly obtained evidence. It wasn't newly obtained. All of this happened before there was even a lawsuit. And the only statement Mr. Newton attributes to Mr. Lewallen is he's going to

do what's necessary to keep his customers. You already said he's free to compete, and is free to compete in the marketplace. There is no injunction against competing. Mr. Newton never said --- and let me say, this is their employee. They can make this as self-serving an affidavit as possible, and the best they could come up with was he's going to do what's necessary to keep his customers, which isn't even actionable. So nowhere do they attribute a statement to Michael Lewallen that he then tends to use or disclose trade secrets. You then specifically asked him, "Do you just want me to draw an inference," and his answer was, "Yes." Well, Your Honor, you can see, we've argued it before you before and it's in our appellate brief that we submitted to you, injunctions cannot be based on inferences or suppositions. They cannot be. That is the law in South Carolina. But he sat up here and told you exactly that, that what this request for an injunction is based on is an inference. That isn't even a logical inference. But he told you he had nothing but an inference. So he's walked right into the governing law that he's not entitled to an injunction.

In terms of purchase orders, that was addressed in the first hearing, Your Honor, and the purchase orders that Mr. Gleaton made clear, I believe in our first hearing, the purchase orders have all the information relative to this job belongs to Michelin. And there was nothing offered with respect to Michelin at the first hearing that our guys were doing, that Everworks

was doing business with Michelin. It always has done business with Michelin. You knew that at the first hearing. You rejected that argument back then. So that's not even an argument about extending the injunction. What he's trying to do now is bring up new grounds for an injunction that you previously rejected. Well, that's not even really before the Court.

In terms of the procedural issues, Your Honor, I think it speaks for itself. I think I've already, you know, advised the Court when we came up on that and I had the email exchange with Mr. Lopez when he indicated to me that, you know, nobody could remember what that hearing was about or which motion it was on, and I told him about your comment and I pointed him to the record where you said that, you know, the party might --- that the Court may reconvene to hear those arguments. And the response I got back was, "Nobody's requested any extension or further arguments on the injunction," and it's true. They did not timely request, but even if they did, by its terms, that injunction expired, and I'd also like to note, since that injunction expired, nothing's happened. There's no irreparable harm even alleged since that injunction expired. So there's nothing going on. There never was. And I think what the rule he cited was talking about is you can enforce the injunction while it's on appeal, and I don't ever question the Court's right to enforce its Orders while something is on appeal, but as to go and be writing new injunctions and to do all that, I think our

argument is a legal one. We've made it to you. And I don't think he's offered anything to refute that. We're not challenging this Court's right to enforce the injunction. But I must add there's not been one allegation that Michael Lewallen ever violated it.

BY THE COURT: All right, let me ask, I just have one last question. In reviewing all the affidavits, the Affidavit of Rachel Kleinhans?

MR. MURPHY: Yes, sir.

BY THE COURT: Of October 13th, 2014, what is the legal relevance of paragraphs 1 and 2?

MR. MURPHY: That goes to their other claims about what was going on --- or the affidavit was taken in conjunction with another motion. I put the affidavit before you because paragraph 3 discusses directly not only the issues in those other motions, but the issue in this motion. It refutes --- Your Honor may remember, they filed a bunch of stuff on the record about issues with Rachel, and you said you didn't want to hear it, but it's before the Court on other motions. I'm giving it to you today just with respect to paragraph 3.

BY THE COURT: All right, Mr. Major?

MR. MAJOR: I just want to briefly respond to a couple of things. Regarding, first, the idea that Mr. Newton's affidavit is self-serving, you know, whether it's an employee ---

BY THE COURT: Every affidavit, by its nature, is self-

serving. Otherwise, the lawyer wouldn't submit.

MR. MAJOR: Yeah, and I mean, and I guess I just want to point out, employees don't want to be involved in this, nor do we want to get employees involved any more than anybody on the outside. I also want to point out again that the Trade Secrets Act specifically provides that a threatened misappropriation is sufficient, and also, there's plenty of law providing that circumstantial evidence of a misappropriation or use would be sufficient to support an injunction, especially a temporary injunction, of this nature. I think, nevertheless, we've submitted direct evidence that Mr. Lewallen is the one who pointed out to Everworks that David Case available. He works for Michelin. Hire him. You'll get in with Michelin on this. We submit that's not an inference that we're asking you to draw. Also, I just go back to the point, if they're not using and disclosing this information, then what is the harm in having this Temporary Injunction? I mean, it's exactly what the parties have already agreed to. Thank you, Your Honor.

BY THE COURT: All right, I am going to look at a couple of other points of law. I will do my best to either, via email or a conference call, get with both attorneys, or all the attorneys, by Monday afternoon at the latest. I know it's important to everybody, and you've got good lawyers all the way around, and I just want to make sure that I am comfortable with the legal basis of what I anticipate my ruling to be.

Thank you very much, gentlemen.

MR. MAJOR: Thank you, Your Honor.

MR. MURPHY: Thank you, Your Honor.

--------- **END OF TRANSCRIPT** ----------

I, the undersigned Ann D. Campbell, Court Reporter, Office of Master in Equity for Greenville County, South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina, on the 11TH day of December, 2014.

I do further certify that I am neither of kin, counsel, nor any interest to any parties hereto.

December 19TH, 2014

Ann D Campbell CVR

Ann Dickey Campbell, CVR

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL F. KIRKSEIMER
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
2014 SEP 5 AM 10:07
Lewallen Automation, LLC) No.: 2014-CP-23-04895
)
Plaintiffs,)
)
vs.) **PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION**
)
Michael Lewallen and Everworks, LLC)
)
Defendant.)

Plaintiff, Lewallen Automation, LLC ("LALLC" or "Plaintiff"), hereby moves the Court, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, for entry of a temporary injunction ordering the following:

1. that Defendant Michael Lewallen ("Lewallen") specifically perform and abide by the confidentiality and trade secrets covenants memorialized in the Membership Interest Purchase Agreement and Employment Agreement (hereafter the "Agreements") that Lewallen signed;
2. that compels Lewallen to honor the terms of the Agreements;
3. that enjoins and restrains Defendants from using LALLC's confidential information and trade secrets in breach of the Agreements;
4. that enjoins and restrains Defendants from misappropriating LALLC's trade secrets in violation of the South Carolina Trade Secrets Act (SCTSA);
5. that enjoins and restrains Defendants from interfering with LALLC's existing contracts with LALLC's employees by encouraging LALLC employees to leave their employment and become associated with Lewallen and/or Defendant

Everworks, LLC ("Everworks"), in violation of the employees' contracts with LALLC;

6. that enjoins and restrains Defendants from interfering with LALLC's contracts with its existing customers and prospective customers; and
7. that enjoins and restrains Defendants from making false representations to LALLC's customers and prospective customers regarding LALLC and/or its affiliated companies and/or representatives.

This Motion is based on the Verified Complaint filed with the Court in connection with the above-captioned action, the attached Memorandum in Support, and the attached Affidavits, as well as any additional Affidavits that may be filed prior to the hearing on the Motion for Temporary Injunction. LALLC believes it has and will continue to suffer immediate and irreparable injury as a result of Defendants' actions. Because LALLC has no adequate remedy at law, the balancing of the relative equities of the parties favors granting the injunction and enforcement of the Agreements pursuant to the agreed upon terms. Doing so will not cause undue hardship to Defendants because their very conduct is in direct violation of the Agreements that they are duty and law bound to follow.

HAYNSWORTH SINKLER BOYD, P.A.

By _____

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September 4, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA	FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL R. WICKENSIMER	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE		THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC	2014 SEP 5 AM 10 11	C.A. No.: 2014-CP-23-04895
Plaintiffs,		**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**
vs.		
Michael Lewallen and Everworks, LLC		
Defendant.		

Plaintiff, Lewallen Automation, LLC ("LALLC" or "Plaintiff"), submits this Memorandum in Support of its Motion for Temporary Injunction.

I. PROCEDURAL BACKGROUND

LALLC filed its Complaint in this action on September 4, 2014. LALLC alleges causes of action for specific performance, breach of contract, breach of contract accompanied by a fraudulent act, breach of fiduciary duty / duty of loyalty, misappropriation of trade secrets,[1] tortious interference with customer contracts and relationships, tortious interference with employment contracts, tortious interference with prospective contractual relationships, fraud/misrepresentation, unjust enrichment, defamation, and violation of the South Carolina Unfair Trade Practices Act, declaratory judgment, civil conspiracy, and constructive trust. By way of its Complaint, LALLC seeks not only monetary damages, but a permanent injunction, compelling Lewallen to abide by two agreements he entered into, enjoining and restraining Defendants from continuing to misappropriate for his own business use LALLC's trade secrets and other confidential information, and enjoining and restraining Defendants from interfering with LALLC's contracts.

[1] The South Carolina Trade Secrets Act provides aggrieved parties with the right to seek an injunction enjoining a party from further misappropriating and using protected trade secret information. S.C. Code §39-8-30 (2006). Plaintiff is seeking a permanent injunction against Defendants as a remedy for their misappropriation of Plaintiff's trade secrets and other confidential information.

II. FACTS

LALLC is a turn-key provider of industrial automation, custom electrical/pneumatic panels and high quality control systems. (Affidavit of Robert A. Merritt at ¶3, attached hereto as **Exhibit A**) (hereafter "Merritt Aff."). It also builds OEM electrical panels for several customers utilizing lean manufacturing practices. (Id.). LALLC is also a UL Certified 508A Panel Shop and provides contract project management, engineering and technical support for its customers. (Id.). LALLC has developed a body of information associated with the assembly and servicing of its panels. (Id. at ¶4). The information it has developed includes customer purchasing history, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, and other confidential information concerning Plaintiff's customers, vendors, and the panels. (Id.).

From approximately March 28, 2008 to December 31, 2012, Defendant Michael Lewallen ("Lewallen") was a member of LALLC, holding a forty percent (40%) equity interest, and was an officer and president of LALLC. (Merritt Aff. ¶5). On December 31, 2012, Lewallen sold all of his equity interest in LALLC pursuant to a Membership Interest Purchase Agreement. (Id.). Among other things, the Membership Interest Purchase Agreement, to which Lewallen is a party, provides:

> The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.

(Id.).[2] The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors." (Id.). The term "Companies" is defined in the Membership Interest Purchase Agreement to include LALLC. (Id. at ¶6).

On December 31, 2012, the same date as the Membership Interest Purchase Agreement, Lewallen resigned his position as president of LALLC and entered into an "Employment Agreement" with LALLC, pursuant to which he became vice president of LALLC. (Merritt Aff. ¶7). Lewallen remained employed as vice president of LALLC until his termination on June 30, 2014. See id. at ¶8. In the Employment Agreement, Lewallen is referred to as "Employee" and "Companies" is defined to include LALLC. (Id. at ¶7). The Employment Agreement provides that:

> The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

The Employment Agreement further provides that:

> Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

Paragraph 6 of the Employment Agreement provides:

[2] A true and accurate copy of the Membership Interest Purchase Agreement is attached to the Affidavit of Robert Merritt at Tab 1.

> Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

(Id.).[3]

As vice president of LALLC, Lewallen was privy to confidential and trade secret information belonging to LALLC, including, but not limited to, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, and production processes (hereafter the "Trade Secrets"). (Merritt Aff. at ¶8). The Trade Secrets derive independent economic value by being unknown and not readily ascertainable by others who could obtain economic value from their disclosure or use. (Id.). The Trade Secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the Trade Secrets. (Id.). Among other things, LALLC entered into confidentiality agreements with employees and independent contractors that protected this information from disclosure, and entered into non-solicitation and non-competition agreements designed to prevent the use or disclosure of this information. (Id.). It also has in place a badge lock system at its facility, and access to information is restricted by levels of access.

While employed as vice president of LALLC, Lewallen failed to carry out his responsibilities and duties as vice president, and failed to devote his working time, attention, and efforts to promote and further the business of LALLC. (Merritt Aff. at ¶9). In fact, Lewallen

[3] A true and accurate copy of the Employment Agreement is attached to the Affidavit of Robert Merritt at Tab 2.

rarely showed up for work, and, instead, pursued his own personal interests during the time periods that he should have been working on behalf of LALLC. (Id.).

During the last month of Lewallen's employment, LALLC learned that he was meeting with a representative from a competitor, namely Brian Wright of Tennessee Electric Construction and Maintenance. (Id. at ¶10). LALLC also learned that Lewallen used company resources for his own personal benefit. (Id.). Lewallen represented to the company that he was working and meeting with possible clients, but was actually not meeting with clients, instead playing golf or dining with his mistress. (Id.). LALLC learned that Lewallen used his company credit card and requested reimbursement for expenses that he claimed were incurred in furtherance of legitimate business endeavors for the benefit of the company but which were actually incurred in furtherance of Lewallen's own personal endeavors rather than a business purpose. (Id.). An audit has revealed that Lewallen falsified expense reports to coincide with his company provided credit card statements where he claimed to have entertained clients. (Affidavit of Eric Smith at ¶5, attached hereto as **Exhibit B**) (hereafter "E. Smith Aff."). The expense reports list specific names of clients and companies, and the internal audit revealed that a number of the clients or prospects that Lewallen represented he entertained were not actually aware or in attendance at these events. (Id.). The audit has revealed that approximately $10,000 of false reimbursement that Lewallen submitted and was paid reimbursement.

On or about June 30, 2012, LALLC terminated Lewallen for good cause pursuant to the Employment Agreement. (Merritt Aff. at ¶11). Following Lewallen's termination from LALLC, LALLC has learned that Lewallen has gone to work for Everworks, LLC ("Everworks"), which is in the industrial automation business and competes with LALLC. (Id. at ¶12). Lewallen has contacted, on behalf of himself and/or Everworks, customers and prospective customers of

LALLC, and informed such customers and prospective customers that LALLC would be ceasing its business and, therefore, the customers should do business with Everworks, rather than LALLC. (Id. at ¶13). Specifically, a representative of a major LALLC customer requested a meeting with LALLC on or about August 1, 2014 because he was concerned about LALLC being able to meet his company's business needs based on comments made to him by Lewallen. See Affidavit of Jamie Satterwhite at ¶3, attached hereto as **Exhibit C** ("Satterwhite Aff."); Affidavit of Gregory S. Hughes at ¶¶3-4, attached hereto as **Exhibit D** ("Hughes Aff."). Lewallen told this customer that LALLC was going to cease business operations and stop providing the product that the customer needed because Lewallen, as the former sole owner of LALLC and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its customers. (Satterwhite Aff. at ¶4; Hughes Aff. at ¶4). These statements made by Lewallen are false. See Merritt Aff. at ¶13.

Lewallen also informed this customer that two of LALLC's principals, Greg Hughes and Rob Merritt, are out to ruin the business and that they falsify financial records, all of which is false. See Satterwhite Aff. at ¶5; Hughes Aff. at ¶5. In addition, the customer was upset with LALLC for the manner in which it terminated Lewallen, having been told that Lewallen received his termination notice via a text message while he was on vacation with his family. See Satterwhite Aff. at ¶6; Hughes Aff. at ¶6. This representation by Lewallen as to his termination is also false. See Hughes Aff. at ¶7.

Lewallen has also contacted, on behalf himself and/or Everworks, a vendor of LALLC and informed that vendor that Lewallen was going to end up taking LALLC's business away from LALLC and that he had already received two purchase orders from one of LALLC's

current clients. (E. Smith Aff. at ¶3). In addition, Lewallen told the vendor that he was encouraging LALLC employees who work in the shop assembling the OEM panels sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen in competition with LALLC. (Id.). Two days later, one of the shop employees resigned. (Id.). Lewallen also told this vendor that two of the principals of LALLC had stolen Lewallen's business and defrauded him. (Id.).

Lewallen has met with employees of LALLC in an effort to persuade them to leave their employment with LALLC and begin working for EverWorks in competition with LALLC. (Merritt Aff. at ¶14). The employees with whom Lewallen has met include employees who have written non-competition, non-solicitation, and non-disclosure agreements with LALLC. (Merritt Aff. at ¶14). To date, Lewallen has successfully persuaded two (2) employees to date to depart LALLC's employment and go to work for Everworks.

After Lewallen's termination, LALLC discovered that Lewallen sent an e-mail on January 20, 2014 to an e-mail address of Rachel K, known to be Lewallen's mistress, in which Lewallen attached a number of confidential documents containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. (Merritt Aff. at ¶15).

II. ARGUMENT

A. Standard for temporary injunction.

Rule 65, SCRCP, gives the Court, on motion of a party, the power to issue a temporary injunction. The ultimate goal of a preliminary injunction "is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 600-01, 553 S.E.2d 110, 120 (2001). The "quintessential hallmark of an

injunction" is "preservation of the property at issue until the matter has been adjudicated." *Grosshuesch v. Cramer*, 367 S.C. 1, 5, 623 S.E.2d 833, 836 (2005).

In determining whether to grant a preliminary injunction, the Court must consider whether the moving party alleges "facts which appear to be sufficient to constitute a cause of action for injunction; and, second, on the entire showing from both sides it must appear, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation." Columbia Broad. Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 471-72, 189 S.E.2d 305, 308 (1972) (quoting Transcon. Gas Pipeline Corp. v. Porter, 252 S.C. 478, 167 S.E.2d 313 (1969)). The Court should consider three factors in deciding whether to grant a preliminary injunction under Rule 65(a), SCRCP: (1) whether Plaintiff would suffer irreparable harm if the injunction is not granted; (2) whether Plaintiff will likely succeed on the merits of the litigation; and (3) whether there is an adequate remedy at law. Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). When a preliminary injunction is requested, the court may consider the merits of the case in order to determine whether the issuance of the injunction is appropriate. Helsel, 307 S.C. at 33, 413 S.E.2d at 826. However, "[o]nce a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Id.

B. Plaintiff is likely to succeed on the merits.

1. The Agreements are enforceable contracts.

"'An employee's express commitment not to disclose his employer's confidential information, whether or not it comprises trade secrets, unlike the covenant not to compete, cannot be challenged as an unreasonable restraint of trade.'" Milliken & Co. v. Morin, 399 S.C. 23, 31,

731 S.E.2d 288, 292 (2012) (quoting Louis Altman & Malla Pollack, *Callmann on Unfair Competition, Trademarks and Monopolies* § 14:6 (4th ed.2009)). Unlike covenants not to compete, non-disclosure agreements "are not in restraint of trade . . . and thus they are not to be strictly construed in favor of the employee." Id. at 32, 713 S.E.2d at 292.

The Milliken case is similar to the facts in the instant matter. In that case, the former employee resigned from his employer and then started a new venture using confidential information of his employer. In holding that the confidentiality clause in the Milliken Agreement was enforceable, the Court stated, "[i]t is widely recognized that an employer may 'restrain a former employee from disclosing and using confidential information which was developed as a result of the employer's initiative and investment and which the employee learned as a result of the employment relationship.'" Id. at 38, 713 S.E.2d at 295. South Carolina permits an employer to obtain a permanent injunction against any employee for any disclosure of an employer's confidential information. Woods v. Boeing Co., 2013 U.S. Dist. LEXIS 136741 (D.S.C., July 8, 2013).

Here, the Agreements are clearly enforceable. In the Membership Interest Purchase Agreement, Lewallen agreed to "hold in confidence at all times following the [date the Agreement was signed] all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent." Confidential Information is defined as, "any data or information of the Companies or Purchaser that is valuable to the operation of the company and not generally known to the public of competitors." This information includes all information pertaining to constructing the panels, vendor information, customer information, and other information that Lewallen sold to ASAG.

In his Employment Agreement, Lewallen agreed "that he will not, during or after the term of this Agreement, disclose the specific terms of the companies' relationships or agreements with its significant vendors or customers or any other significant or material trade secret of the companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever."

These provisions are clearly enforceable and prevent Lewallen from disclosing LALLC's confidential information and trade secrets. The evidence shows that Lewallen has already used and disclosed confidential information and/or trade secrets by e-mailing such information outside of the company, and by calling the LALLC customer contacts and soliciting business. He has further used LALLC vendor contacts to contact a vendor and told that vendor that he would be taking LALLC's business and had already obtained two purchase orders that would have gone to LALLC. Lewallen used confidential and/or trade secret contact information and his knowledge of LALLC's contract and purchasing history with these customers to take business from LALLC. This constitutes a breach of Lewallen's Agreements with LALLC. Accordingly, LALLC is likely to succeed on its claim for breach of contract.

2. LALLC is also likely to succeed under South Carolina's statutory and common law.

The SCTCA prohibits an employee from using an employer's trade secret absent any prohibition from doing so in a written agreement. The SCTCA contains a specific provision, entitled "Trade secrets; employees' obligation to refrain from disclosing; civil actions and remedies," that reads:

(A) trade secret endures and is protectable and enforceable until it is disclosed or discovered by proper means.

(B) Every employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret without the employer's permission independently of and in addition to any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee.

S.C. Code Ann. §39-8-30 (Law Co-op. 1997).

The same provision permits a Court to issue an Order that enjoins conduct of an employee or former employee which violates the SCTCA: "A person aggrieved by a misappropriation, wrongful disclosure, or wrongful use of his trade secrets may bring a civil action to recover damages incurred as a result of the wrongful acts and **to enjoin its appropriation, disclosure, use, or wrongful acts pertaining to the trade secrets.**" *Id.* at 39-8-30(C).

Here, as president and vice president of LALLC, Lewallen was privy to LALLC's confidential information and trade secrets. LALLC protected this information through agreements with employees not to disclose the information, through instructions to its employees regarding confidentiality and trade secrets, and by keeping the information behind lock and key, including a badge access system that restricted access to information according to levels of access. Lewallen was placed in a position of trust by LALLC as its vice president. Lewallen knew of LALLC's trade secrets, among other things, through the Agreements and contracts that he signed on behalf of LALLC with other employees. Despite this knowledge, Lewallen sent an e-mail on January 20, 2014 to an e-mail address of Rachel K, known to be Lewallen's mistress, in which Lewallen attached a number of confidential documents containing LALLC's Sales

Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets. He should be enjoined from any further use or disclosure of LALLC's trade secrets and confidential information.

Lewallen's conduct also violates South Carolina's common law duty of loyalty that an employee owes to an employer. *Futch v. McAlister Towing of Georgetown, Inc.*, 518 S.E.2d 591 (S.C. 1991); *Lowndes Prod., Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (S.C. 1972). In *Lowndes*, key employees who contacted and met with investors and customers of a current employer to lay plans to start a competing business were guilty of disloyalty and owed damages to their employer. In that case, the South Carolina Supreme Court particularly noted that the destruction by the former employee of its employer's relationships with its customers was an actionable breach of the common law duty of loyalty. The Court also cited principles of Agency, noting

> [a]n agent is duty bound not to act adversely to the interest of his employer by serving or acquiring any private interest of his own in antagonism or opposition thereto, and this is a rule not only of law but of common sense and honesty as well...It is well established that profits made and advantages gained by an agent in the execution of his agency belong to the principal unless the parties themselves have otherwise agreed. In the absence of any agreement to the contrary between himself and his principal, an agent is not entitled to avail himself of any advantage that his position may give him to profit at his employer's expense beyond the agreed compensation for his services. An agent is bound to a high degree of good faith toward his employer, and cannot, without the latter's consent retain profits or earnings received in the course of performance of the employer's business or in an undertaking which constitutes a breach of duty to the employer. . . .

Lowndes, 259 S.C. at 336, 191 S.E.2d at769.

As to inducing other of LALLC employees to leave employment and participate in Everworks, "[i]t is well recognized that a person who without privilege knowingly causes an agent to abandon his duties, or otherwise aids or assists him to violate a duty to his principal, is

subject to tort liability to the principal." *Id.* at 337, 191 S.E.2d at 769; see also Oxman v. Sherman, 239 S.C. 218, 226, 122 S.E.2d 559 (1961) (stating that a covenant against recruiting employees "is merely a recognition of the right of respondents to be immune from malicious interference by a third person with any contractual relations they have with their employees. This is a right which exists independently of contract, for it is well settled that it is unlawful for a third person to maliciously cause or induce another to breach his contract.").

Lewallen was placed in a position of trust by LALLC as its vice president. Lewallen knew of LALLC's confidential information and trade secrets, among other things, through the Agreements and contracts that he signed on behalf of LALLC with other employees.

Finally, a plaintiff may recover on a claim for tortious interference with a contract or prospective contract, by showing that the defendant intentionally interfered with the plaintiff's contract or valid business expectancy for an improper purpose or using an improper method, resulting in damages. See Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990). The South Carolina Court of Appeals has recognized that various methods of improper interference support a claim for tortious interference, including, *inter alia*, misrepresentation or deceit, undue influence, use of inside or confidential information, breach of a fiduciary relationship, or unfair competition. Santoro v. Schulthess, 384 S.C. 250, 266, 681 S.E.2d 897, 905 n. 10 (Ct. App. 2009).

The evidence shows that Lewallen has contacted LALLC's customers and informed them that LALLC was going to cease business operations and stop providing the product that the customer needed because Lewallen, as the former sole owner of LALLC and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its customers. These

statements by Lewallen are false and illustrate the need for the temporary injunction.[4] The evidence also reveals that Lewallen has met with LALLC employees to persuade them to leave their employment with LALLC and go to work for Everworks, including employees with non-competition, non-solicitation, and non-disclosure agreements with LALLC. He has already successfully persuaded at least two such employees to leave LALLC and work for Everworks. This evidence reveals that LALLC is likely to succeed on the merits of its claims.

C. LALLC is likely to suffer irreparable harm if the requested injunction is not granted and there is no adequate remedy at law.

Absent an Order enjoining him from this Court, Lewallen will no doubt continue demeaning LALLC and its partners to LALLC's customers and third parties as he has been doing. The conduct is particularly harmful because Lewallen is having these conversations with people who know him to be the face of LALLC. The Court is in the unique position to help LALLC mitigate its damages by enjoining Lewallen's conduct now so as to thwart his continued conduct that is not only in violation of his contractual and statutory obligations, but also potentially devastating to the business of LALLC. Further, the Agreements Lewallen signed are enforceable contracts aimed at the protection of LALLC's business interests. As acknowledged by Lewallen in the Membership Interest Purchase Agreement, use of LALLC's confidential information amounts to irreparable harm to LALLC. Lewallen has already contacted, on behalf of himself and/or EverWorks, a vendor of LALLC and informed that vendor that Lewallen would take LALLC's business away from LALLC and that he had already received two purchase orders from one of LALLC's current clients. This alone illustrates use of confidential information and trade secrets, specifically, he used his knowledge as to the terms LALLC's relationship with that customer and its agreement therewith to

[4] The court may enjoin a party from interfering with another party's contracts. See Collins Music Co. v. Ingram, 292 S.C. 537, 540-41, 357 S.E.2d 484, 486 (Ct. App. 1987);see also Mary Kay Inc. v. Ayres, 827 F.Supp.2d 584, 597 (D.S.C. 2011).

compete unfairly with LALLC. He has also sent confidential and trade secret information to the e-mail address of his mistress. There is no adequate legal remedy to compensate LALLC for the fact its confidential information and trade secrets, which used to hold great business value to LALLC, have been misappropriated by Lewallen to unfairly compete against LALLC. Moreover, given Lewallen's access to LALLC's confidential information and trade secrets, and his statements with respect to the customers and prospective customers of LALLC, it is likely Lewallen will continue to use and disclose LALLC's information improperly and in competition with LALLC.

Additionally, there is no complete and adequate remedy at law for the damages Lewallen has already caused and will continue to cause to LALLC by making false statements to LALLC's customers and prospective customers and vendors. No amount of money or other remedy can correct the damage done to LALLC's relationships with its customers who have been solicited by Lewallen. Lewallen should be restrained and enjoined from making any further representations regarding LALLC to its customers.

Lewallen also continues to encourage LALLCA's employees to leave their employment with LALLC in exchange for association with Everworks. He has already successfully persuaded at least two such employees to leave LALLC and work for Everworks, including at least one employee who has a non-competition agreement with LALLC. If an injunction is not granted, Lewallens will likely continue to violate their Agreements, interfere with LALLC's contracts and relationships, and misappropriate LALLC's trade secrets and confidential and proprietary information, causing further irreparable harm to LALLC.

If the Agreements and SCTSA are enforced, and the preliminary injunction is granted, Lewallen will be required to do only that which he lawfully agreed to do and is obligated to do. Likewise, a preliminary injunction will advance the public policy of enforcing private contracts that

are lawfully made and agreed upon. Conversely, if the contracts are not enforced, and the injunction is denied, Defendants will be allowed to continue misappropriating confidential business information and trade secrets for their own business use, as well as using same to unfairly compete with LALLC in direct violation of the Agreements Lewallen signed and agreed to abide by. Absolutely no public policy would be advanced by such an unjust, inequitable result.

CONCLUSION

For all of these reasons, Defendant requests that the Court enter a temporary restraining order and temporary injunction ordering the following:

1. that Defendant Lewallen specifically perform and abide by the confidentially and trade secrets covenants memorialized in the Membership Interest Purchase Agreement and Employment Agreement (hereafter the "Agreements") that Lewallen signed;
2. that compels Lewallen to honor the terms of the Agreements;
3. that enjoins and restrains Defendants from using LALLC's confidential information and trade secrets in breach of the Agreements;
4. that enjoins and restrains Defendants from misappropriating LALLC's trade secrets in violation of the SCTSA;
5. that enjoins and restrains Defendants from interfering with LALLC's existing contracts with LALLC's employees by encouraging LALLC employees to leave their employment and become associated with Lewallen and/or Everworks, in violation of their contracts with LALLC;
6. that enjoins and restrains Defendants from interfering with LALLC's contracts with its existing customers and prospective customers; and

7. that enjoins and restrains Defendants from making false representations to LALLC's customers and prospective customers regarding LALLC and/or its affiliated companies and/or representatives.

HAYNSWORTH SINKLER BOYD, P.A.

By _____

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Counsel for Plaintiff

September 4, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
Lewallen Automation, LLC,	)	C.A. No.:_____
Plaintiff,	)	
	)	**AFFIDAVIT OF**
vs.	)	**ROBERT A. MERRITT**
Michael Lewallen,	)	
Defendant.	)	

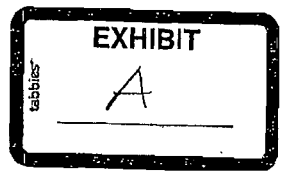
PERSONALLY APPEARD BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

1. I am Robert Merritt, member, officer and part-owner of Group of Patriots, LLC, ASAG, LLC, Lewallen Automation, LLC and Lewallen Industrial Services, LLC. (Lewallen Automation, LLC and Lewallen Industrial Services, LLC designated as LALLC throughout).

2. I have personal knowledge of the matters attested to herein.

3. LALLC is a turn-key provider of industrial automation, custom electrical/pneumatic panels and high quality control systems. LALLC also builds OEM electrical panels for several customers utilizing lean manufacturing practices. LALLC is a UL Certified 508A Panel Shop. In addition, LALLC provides contract project management, engineering and technical support for its customers.

4. LALLC has developed a body of information associated with the assembling of these panels. The information it has developed includes customer purchasing history, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, and other confidential information concerning our customers, vendors, and the panels.



5. From approximately March 28, 2008 to December 31, 2012, Michael Lewallen ("Lewallen") was a member of LALLC, holding a forty percent (40%) equity interest, and was an officer and president of LALLC. On or about December 31, 2012, Lewallen and his partners sold their business to ASAG, LLC and me as its owner for a total purchase price of One Million, Three Hundred Twenty-Five Thousand Dollars, of which Lewallen, a 40% owner, received Four Hundred Thousand ($400,000) Dollars. This sale of the business transferred all of the assets and good will that the business had to ASAG, LLC.

6. Lewallen also executed a Membership Interest Purchase Agreement in conjunction with the sale in which Lewallen sold all of his equity interest in LALLC in exchange for a substantial payment. Among other things, the Membership Interest Purchase Agreement, to which Lewallen is a party provides:

> The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.
>
> The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors."

7. The term "Companies" is defined in the Membership Interest Purchase Agreement to include LALLC. A true and accurate copy of the Membership Interest Purchase Agreement is attached hereto at Tab 1.

8. On December 31, 2012, the same date as the Membership Interest Purchase Agreement, Lewallen resigned his position as president of LALLC and was hired by LALLC's new owner(s) as Vice President. In the Employment Agreement, Lewallen is referred to as

"Employee" and "Companies" is defined as Lewallen Automation, LLC and Lewallen Industrial Services, LLC. The Employment Agreement provides that:

> The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

The Employment Agreement further provides that:

> Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

Paragraph 6 of the Employment Agreement provides:

> Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

A true and accurate copy of the Employment Agreement is attached hereto at Tab 2.

9. From December 31, 2012 to June 30, 2014, Lewallen was employed as vice president and was privy to confidential and trade secret information belonging to LALLC, including, but not limited to, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product formulas and technologies, production limitations, budgets, production schedules, cost information, raw materials, and production processes (hereafter the "Trade Secrets"). The Trade Secrets derive

independent economic value by being unknown and not readily ascertainable by others who could obtain economic value from their disclosure or use. The Trade Secrets are, and at all times relevant hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the Trade Secrets. Among other things, LALLC entered into confidentiality agreements with employees and independent contractors that protected this information from disclosure, and entered into non-solicitation and non-competition agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility, and access to information is restricted by levels of access on a need to know basis. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

10. While employed as vice president, Lewallen failed to carry out his responsibilities and duties as vice president, and failed to devote his working time, attention, and efforts to promote and further the business of the Group of Patriots and LALLC. In fact, Lewallen was often late or did not even show up to work. When he was in the office he would play computer games or pursue his own personal interests during the time periods that he should have been working on behalf of LALLC.

11. During the last month of Lewallen's employment, we learned that he was meeting with a representative from a competitor, namely Brian Wright of Tennessee Electric Construction and Maintenance. We also learned that Lewallen used company resources for his own personal benefit. Lewallen represented to the company that he was working and meeting with possible clients, but was actually not meeting with clients, instead playing golf or dining with his mistress. We also learned that Lewallen used his company credit card for expenses that he claimed were incurred in furtherance of legitimate business endeavors for the benefit of the company but which were actually incurred in furtherance of Lewallen's own personal endeavors

rather than a business purpose. In reliance on Lewallen's false representations as to the business nature of the expenses incurred, the company had been reimbursing Lewallen for those expenses that the company now began to learn were incurred solely for Lewallen's personal benefit. After learning this, the company performed an internal analysis and discovered a magnitude of personal expenses that Lewallen charged to his company credit card and permitted the company to pay on his behalf.

12. On or about June 30, 2012, LALLC terminated Lewallen for good cause pursuant to the Employment Agreement.

13. Following Lewallen's termination from LALLC, LALLC is informed that Lewallen has gone to work for Everworks, Inc. ("Everworks"), which is in the industrial automation business and competes with LALLC.

14. Following Lewallen's termination from LALLC, LALLC was informed that Lewallen contacted, either on behalf of himself and/ or on behalf of Everworks, customers and prospective customers of LALLC and informed them that LALLC would be ceasing its business and, therefore, the customers should do business with him and/or Everworks, rather than LALLC. The statement that LALLC will be ceasing its business is false.

15. Lewallen has met with employees of LALLC in an effort to persuade them to leave their employment with LALLC and begin working for either him or Everworks in competition with LALLC. The employees with whom Lewallen has met include employees who have written non-competition, non-solicitation and non-disclosure agreements with LALLC.

16. We also have electronic mail sent by Lewallen on or about January 20, 2014, to the email address of Rachel K, known to be Lewallen's mistress, attaching a number of

confidential documents containing LALLC's Sales Planning Budget for 2014, including existing and potential customer names, contacts, and actual and forecasted budgets.

17. Since Lewallen's termination, two employees of LALLC have left their employment to work with Lewallen and to become associated with Everworks, and numerous employees have advised us that Lewallen has encouraged them to leave employment with LALLC and become employed or associated with Everworks. A number of these employees have noncompetition, nonsolicitation and nondisclosure agreements with LALLC, and we have reminded them of their contractual obligations.

FURTHER AFFIANT SAYETH NOT.

Robert A. Merritt

SWORN TO before me this 2nd day of September, 2014.

Melinda Kay Sams
Notary Public for South Carolina
My Commission Expires: July 16, 2017

DM: 3800894 V.2

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the 31st day of December, 2012 (the "Effective Date"), by and between **ASAG, LLC**, a Delaware limited liability company ("Purchaser"), and **Michael T. Lewallen, Edward P. Holder, Jr.** and **Robert H. Stroud** (each being a, "Seller", collectively being, "Sellers" and, together with the Purchaser, the "Parties").

Recitals

WHEREAS, Sellers are the members of Lewallen Automation, LLC and Lewallen Industrial Services, LLC (each a "Company" and together, the "Companies") and collectively own all of the outstanding membership interests in the Companies, which membership interests represent all equity rights and interests of any nature with respect to the Companies (the "Purchased Interest"); and

WHEREAS, Sellers desire to sell and Purchaser desires to buy the Purchased Interest pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I.
DEFINITIONS

1.01 Certain Defined Terms. As used in this Agreement, the following capitalized terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Accounts Receivable" means the Completed Accounts Receivable and the Continuing Accounts Receivable, as defined below.

"Agreement" means this Membership Interest Purchase Agreement, including all Schedules and Exhibits hereto.

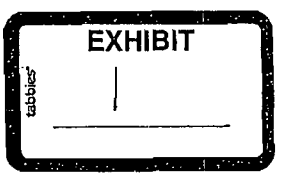
"Cash Proceeds" has the meaning assigned to such term in Section 2.01(a) hereof.

"Closing" has the meaning assigned to such term in Section 2.03(a) hereof.

"Closing Date" has the meaning assigned to such term in Section 2.03(a) hereof.

"Code" means the United States Internal Revenue Code, as amended from time to time.

"Companies" means Lewallen Automation, LLC, a South Carolina limited liability company, and Lewallen Industrial Services, LLC, a South Carolina limited liability company.



"Completed Accounts Receivable" means and refers to accounts receivable that are (i) existing and outstanding on the Closing Date for which no work and no expenditure is required after the Closing Date, and (ii) are listed Schedule 1.01(a) hereto; provided, however, that notwithstanding any other provision of this Agreement or any Transaction Document, to the extent that actual expenses (including Existing Expense, accrued payroll and any other expenses that reasonably should have been accrued prior to the Closing Date) exceed Existing Cash, such excess amount shall not be considered Accounts Receivable payable to Sellers but shall instead be retained by and payable to the Companies until such excess amount has been recouped in full by the Companies from amounts which would otherwise have been payable to Sellers as Completed Accounts Receivable.

"Confidential Information" means any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors.

"Continuing Accounts Receivable" means and refers to the accounts receivable (a) existing on the Closing Date for which any work or expenditure is required after the Closing Date with respect to a purchase order listed on Schedule 1.01(b), or (b) arising after the Closing Date out of services performed or goods provided for which: (i) work commenced or continued by either of the Companies after the Closing Date with respect to a purchase order listed on Schedule 1.01(b); or (ii) work commences, or a purchase order or other contract or agreement for the provision of goods or services by either of the Companies to the extent such purchase order is received or entered into, within fifty (50) days following the Closing Date, with respect to a continuing project set forth on Schedule 1.01(c)

"Employee Benefit Plan" means any "employee benefit plan" (as such term is defined in ERISA §3(3)) and any other material employee benefit plan, program or arrangement of any kind.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA §3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA §3(1).

"Encumbrances" means any lien, option, pledge, hypothecation, security interest, contractual right to purchase, claim, demand, or suit; or significant restriction of any kind or nature.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" has the meaning assigned to such term in Section 2.01(a) hereof.

"Escrow Funds" has the meaning assigned to such term in Section 2.01(c) hereof.

"Excluded Loan" means that certain Retail Installment Sale Contract between Lewallen Automation, LLC and Kevin Whitaker Chevrolet Cadillac, dated October 24, 2012 regarding the

purchase of one 2013 Chevrolet Tahoe, VIN #1GNSCCE09DR159988, together with all related loan documentation.

"Existing Cash" has the meaning given to such term in Section 2.01(d)(ii).

"Existing Expenses" has the meaning given to such term in Section 2.02(b).

"Governmental Entity" means any federal, state or local or foreign government, any political subdivision thereof or any court, administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency, domestic or foreign.

"Holder LOC" shall mean and refer to the $500,000.00 maximum principal amount revolving line of credit made available to Lewallen Automation, LLC, as evidenced by that certain promissory note made by Lewallen Automation, LLC to Holder Electric Supply, Inc. dated January 2, 2012 having a maximum principal amount of not exceeding $500,000.00 and an interest rate of 5.00% per annum, such Holder LOC being more fully identified on Schedule 3.11 hereto.

"Holder and Stroud Noncompetition Agreement" has the meaning assigned to such term in Section 5.01(a) hereof.

"Known," "known," or "to the knowledge of" means the actual, personal knowledge of the individual making the representation, warranty or covenant hereunder together with any information that the individual making the representation, warranty or covenant should have known.

"Law" or "Laws" means all statutes, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, injunctions, writs, awards and decrees of, or issued by, any Governmental Entities.

"Lewallen's Employment Agreement" has the meaning assigned to such term in Section 5.01(b) hereof.

"Losses" means Purchaser Losses or Sellers Losses, as the case may be.

"Material Adverse Effect" means any state of facts, change, event, effect, or occurrence (when taken together with all other states of fact, changes, events, effects or occurrences) that is or may be reasonably likely to be materially adverse to the financial condition, prospects, properties, assets or liabilities (including contingent liabilities) of either of the Companies, or the real or personal property of either of the Companies taken as a whole. A Material Adverse Effect shall also include any state of facts, change, event, effect, or occurrence that shall have occurred or been threatened that (when taken together with all other states of facts, changes, events, effects, or occurrences that have occurred or been threatened) is or would be reasonably likely to prevent or materially delay the performance by a Member of its obligations hereunder or the consummation of the transactions contemplated hereby.

"Material Agreement" has the meaning assigned to such term in Section 3.10 hereof.

"Member Loans" means any loans to any of the three Sellers.

"Net Trailing Profit" means the total Trailing Profit from all Accounts Receivable, after all Accounts Receivable have either been collected or written-off as uncollectible, less all expenses incurred with respect to projects for which the Accounts Receivable have been written-off as uncollectible.

"Operating Agreements" means the operating agreement for each of the Companies, a true and correct copy of which is attached hereto for each Company as Schedule 3.04.

"Permitted Encumbrances" has the meaning assigned to such term in Section 3.11 hereof.

"Purchase Price" has the meaning assigned to such term in Section 2.01 hereof.

"Purchaser Losses" has the meaning assigned to such term in Section 6.01 hereof.

"SCBT Note" means that certain Promissory Note made by Lewallen Automation, LLC to SCBT dated August 31, 2012 in the original principal amount of $200,000.00, such SCBT Note also being identified on Schedule 3.11 hereto.

"Sellers' Losses" has the meaning assigned to such term in Section 6.02 hereof.

"Taxes" means all taxes (whether federal, state, local or foreign) based upon or measured by income and any other tax whatsoever, including gross receipts, profits, sales, use, occupation, value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with any interest, penalties or additions thereto (and any interest in respect of such penalties or additions) imposed with respect thereto, but not including any maintenance or annuity fees on intellectual property rights.

"Trailing Profit" means the revenues of any Completed Accounts Receivable and the revenues of any Continuing Accounts Receivable, net of expenses incurred or paid after Closing in the performance of services or provision of goods giving rise to such Continuing Accounts Receivable, received by the Companies as determined by the Companies upon receipt in full of the Completed Accounts Receivable or Continuing Accounts Receivable.

"Transaction Documents" means this Agreement and the other agreements and documents delivered pursuant hereto.

"Transfer" means any sale, assignment, transfer, pledge, hypothecation, mortgage, creation of an encumbrance, or other disposition by gift, will, operation of law or otherwise.

"Vehicle Loans" means and refers to all those certain loans identified and referred to as Vehicle Loans on Schedule 3.11 hereto.

1.02 Construction. Unless the context of this Agreement otherwise clearly requires, (a) references to the plural include the singular, and references to the singular include the plural, (b) references to any gender include the other genders, (c) the words "include," "includes" and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation", (d) the terms "hereof", "herein", "hereunder", "hereto" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (e) the terms "day" and "days" mean and refer to calendar day(s) and (f) the terms "year" and "years" mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to (i) any document, instrument or agreement (including this Agreement) (A) includes and incorporates all Exhibits, Schedules and other attachments thereto, (B) includes all documents, instruments or agreements issued or executed in replacement thereof and (C) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect at any given time. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified. This Agreement shall not be construed as if prepared by one of the parties hereto, but rather according to its fair meaning as a whole, as if all parties hereto had prepared it.

ARTICLE II.
PURCHASE AND SALE OF PURCHASED INTEREST

2.01 Purchased Interest. Purchaser and Sellers agree to the sale and purchase of the Purchased Interest, conveyed in accordance with Section 2.03 below, for $1,325,000, subject to the adjustments set forth below (the "Purchase Price"), payable as follows:

(a) At Closing, Purchaser shall apply from the Purchase Price the amount necessary to pay off in full the Holder LOC, the SCBT Note, and all of the Vehicle Loans except the Excluded Loan, pursuant to the payoff statements attached hereto at Schedule 2.01(a) (which the Sellers represent is accurate) for each of the loans.

(b) At Closing, One Hundred Thirty-Two Thousand Five Hundred Dollars ($132,500.00) (the "Escrow Funds") will be placed in escrow with Haynsworth Sinkler Boyd, P.A. (the "Escrow Agent") to be held, administered and disbursed in accordance with the Escrow Agreement attached hereto as Schedule 2.01(b).

(c) At Closing, Purchaser shall pay to Sellers the amount of the Purchase Price that remains after application of the payments described in Section 2.01(a) and (b) above have been made, in the form of cash, wire or attorney escrow check (the "Cash Proceeds"), which shall be payable in the following percentages: Michael T. Lewallen: 11.3%, Edward P. Holder, Jr.: 75.5%, Robert H. Stroud: 13.2%.

(d) Following Closing, Purchaser shall pay to Sellers the amounts owed, if any, pursuant to the provisions of Section 2.02 below.

2.02. Post Closing Payments.

(a) After the end of each calendar month, the parties shall calculate the Trailing Profit with respect to the Accounts Receivable that were collected by the Companies within such month, and One Hundred Percent (100%) of the Trailing Profit from the Completed Accounts Receivable and Fifty Percent (50%) of Trailing Profit from the Continuing Accounts Receivable shall be paid to the Sellers in the proportions set forth below in this subsection (a). The Parties shall continue to calculate and, the Companies shall pay to Sellers the Trailing Profit, if any, payable to Sellers after each calendar month until all of the Accounts Receivable have been collected or written off in accordance with generally accepted accounting principles. Write-offs of uncollectible Accounts Receivable in a given month shall not be deducted from the actual Trailing Profits collected in a given month. Cumulative expenses associated with a given Continuing Account Receivable are only applied against the Trailing Profits of that particular Continuing Accounts Receivable when it is actually collected. If the Net Trailing Profit, after all of the Accounts Receivable have been collected or written off as uncollectible, results in a negative balance, such negative balance shall first be reduced by the Existing Cash then on hand, and then Sellers shall reimburse the Companies for up to the next $25,000 of the negative balance and then half of the remaining negative balance after application of the Existing Cash and payment of the $25,000. Purchaser shall be entitled to recover the cost of collection (including reasonable attorneys fees) if collection efforts are required to recover any money owed under the preceding sentence. Payments of amounts owed to Sellers pursuant to this subsection (a) shall be made to the Sellers first in the percentages set forth in Section 2.01(c) above until the amount paid to Sellers collectively under Section 2.01(c) and this subsection (a), together with the Escrow Funds, is equal to $1,325,000.00. Thereafter, all payments of amounts owed to Sellers pursuant to this subsection (a) shall be made to each of the Sellers in percentages which are equal to their respective percentages of the Purchased Interest as set forth on Schedule 3.08 (Edward P. Holder, Jr, 50%; Robert H. Stroud, 40%; and Michael T. Lewallen, 10%). All payments to Purchaser of amounts owed by Sellers pursuant to this subsection (a) shall be made by each of the Sellers in percentages which are equal to their respective percentages of the Purchased Interest as set forth on Schedule 3.08.

(b) After Closing, the Companies shall pay all expenses that accrued prior to the Closing Date (the "Existing Expenses") from the cash and cash equivalent the Companies had on hand as of the Closing Date (the "Existing Cash"). In addition, should any of the payouts described in Section 2.01(a) prove to be inaccurate, if such remaining balance is below the indemnification floor set forth in Section 6.04 then such remaining balance shall be paid from the Existing Cash. The Sellers represent that the Existing Cash and Existing Expenses are as set forth on Schedule 2.02(b). The Existing Cash shall be held until the later of three months after Closing or until all of the Accounts Receivable have been collected or written-off as uncollectible, at which point any Existing Cash not applied to a negative Net Trailing Profit balance as described in Section 2.02(a) shall be distributed to Sellers: (i) first, in the percentages described in Section 2.01(c) above until the amount paid to Sellers collectively under Sections 2.01(c) and 2.02(a) and this subsection (b), together with the Escrow Funds, is equal to $1,325,000.00; and (ii) thereafter in the percentages which are equal to the Sellers' respective

percentages of the Purchased Interest as set forth on Schedule 3.08 (Edward P. Holder, Jr, 50%; Robert H. Stroud, 40%; and Michael T. Lewallen, 10%).

2.03 Sale and Purchase of the Purchased Interest. At the Closing, subject to and in reliance upon the representations and warranties of Purchaser set forth herein, Sellers agree to sell, and, subject to and in reliance upon the representations, warranties, covenants of Sellers and the terms and conditions of this Agreement, Purchaser agrees to purchase the Purchased Interest and pay the Purchase Price to Seller.

2.04 Closing.

(a) Closing Date. The closing of the purchase by Purchaser and sale by Sellers of the Purchased Interest ("Closing" or "Closing Date") shall occur on or before December 31, 2012.

(b) Sellers' Closing Deliveries. At the Closing, Sellers shall have delivered, or caused to be delivered, to Purchaser the following, all in form and content reasonably acceptable to Purchaser:

(i) any resignations, effective as of the Closing Date, of the managers and the officers of the Companies as Purchaser may desire, in its sole discretion, including without limitation, a resignation of Sellers, all in substantially the form attached hereto as Schedule 2.04(b)(i);

(ii) an assignment of the Purchased Interest and the organizational record books, minute books and seal of the Companies, to the extent in Sellers' possession, including, without limitation, an assignment of membership interest in substantially the form attached hereto as Schedule 2.04(b)(ii);

(iii) all consents, waivers or approvals, if any, required in connection with the consummation of the transactions contemplated by this Agreement; and

(iv) all other documents reasonably requested by Purchaser to convey the Purchased Interest to Purchaser or to otherwise consummate the transactions contemplated hereby and which are customary for similar transactions.

(c) Purchaser Closing Delivery. At the Closing, Purchaser shall have delivered, or caused to be delivered, the Purchase Price pursuant to the terms of Section 2.01.

ARTICLE III.
REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE SELLERS

In order to induce Purchaser to enter into this Agreement, the Sellers represent and warrant to Purchaser as follows:

3.01 Organization and Standing of the Companies. The Companies are each a limited liability company duly organized and validly existing under the Laws of the State of South

Carolina, and have all requisite power and authority to own, lease, operate, and transfer their assets, and to carry on their business as now conducted or as now proposed to be conducted.

3.02 Authorization. Sellers have all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which they are a party, and to consummate the transactions contemplated hereby and thereby and the execution and delivery of this Agreement, the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action by Sellers, and, upon due execution by the other parties hereto and thereto, this Agreement and the other Transaction Documents will constitute the legal, valid and binding obligations of Sellers, enforceable against them in accordance with their respective terms subject to the enforcement of remedies to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting the enforcement of creditors' rights generally from time to time in effect. The purchase and sale of the Purchased Interest is not subject to preemptive rights, rights of first refusal or other preferential rights in favor of any person and will not conflict with any provision of any agreement or instrument to which the Companies or Sellers are a party or by which Sellers or the Companies are bound, excepting any rights contained in the Operating Agreements.

3.03 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel, (a) any term or provision of the charter documents of the Companies, (b) any Material Agreement or any other contract, agreement, permit, franchise, license or other instrument held by the Sellers or the Companies or to which the Sellers or the Companies are parties, (c) any judgment, decree or order of any Governmental Entity to which Sellers or the Companies are a party or by which Sellers or the Companies or any of their properties are bound, or (d) any Law or arbitration award applicable to Seller or the Companies. Except as contemplated herein, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or other third party is required in connection with the execution, delivery or performance of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

3.04 Governmental Approvals; Operating Agreement. No authorization, consent, approval, license, exemption of or filing or registration with, any Governmental Entity is or will be necessary for the execution and delivery by Sellers of this Agreement, the sale and delivery of the Purchased Interest, or the performance by the Sellers of their obligations under this Agreement and the other Transaction Documents. The Operating Agreement for each Company has been duly authorized and executed by Sellers and is in full force and effect. Sellers have at all times acted in compliance in all material respects with the terms of the Operating Agreements, and Sellers have not taken any action that would constitute a material violation of the terms of the Operating Agreements.

3.05 Litigation. There is no litigation or governmental proceeding or investigation pending or overtly threatened against Sellers, or any of their properties or assets, nor has there occurred any event or is there any condition on the basis of which any litigation, proceeding or investigation might properly be instituted as it concerns the Purchased Interest or the Companies. Sellers are not in default with respect to any order, writ, injunction, decree, ruling or decision of any Governmental Entity applicable to the Purchased Interest or the Companies. There are no actions or proceedings pending or overtly threatened (or any basis therefore known to Sellers), which will, or would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect or which might call into question the validity of this Agreement, the other Transaction Documents or the Purchased Interests, or the transactions contemplated hereby or by the other Transaction Documents. There is no litigation or governmental proceeding or investigation pending or overtly threatened against the Companies or any of their properties or assets, or against any member, manager, officer, employee, or trustee of either of the Companies as it affects the Companies or the assets of the Companies, nor has there occurred any event or is there any condition on the basis of which any litigation, proceeding or investigation might properly be instituted. The Companies are not in default with respect to any order, writ, injunction, decree, ruling or decision of any Governmental Entity.

3.06 Taxes. The Companies have properly and timely filed all Tax filings required by Law. There are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any Taxes to which the Companies or their affiliates may be subject. There are no written requests for information currently outstanding that could increase the Tax liability of the Companies.

3.07 Transactions with Affiliates. Except for any transactions contemplated by this Agreement and any other Transaction Documents or as set forth on the Companies' financial information referenced in Section 3.17, the Companies are not indebted to Sellers or any of the Companies' members, managers or officers or party to any contract with Sellers or any affiliate of their members, managers or officers, and neither Sellers nor the Companies' members, managers or officers has a claim of any nature against the Companies.

3.08 Capitalization.

(a) Set forth on Schedule 3.08 attached hereto is a true and correct list of the membership interests owned by Sellers. Sellers hold of record and own beneficially the Purchased Interest free and clear of any Encumbrances, except as set forth in the Operating Agreements. Except for transfer rights and restrictions contained in the Operating Agreements, there are no preemptive rights, whether at law or otherwise, to purchase any of the Purchased Interest and there are no outstanding options, warrants, subscriptions, agreements, plans or other commitments pursuant to which the Companies are or may become obligated to sell or issue any membership interests or any other debt or equity security, and there are no outstanding securities convertible or exchangeable into membership interests or any other debt or equity security. Except for the Operating Agreements, there are no voting agreements, partnership agreements or other agreements, instruments or rights of any kind or nature outstanding or in effect with respect to the Purchased Interest.

(b) To the extent permitted by Law, Sellers waives any and all rights with respect to notice, transfer, valuation, redemption, procedure, or otherwise related to the Purchased Interest created by or arising from the Operating Agreements or applicable Law, and acknowledges that the terms of this Agreement are conclusive as to Sellers' rights related to the transactions contemplated hereby.

(c) There are no loans to any of the Sellers by either of the Companies.

3.09 No Foreign Persons. Each of the Sellers is a "United States person" as such term is defined in Section 7701(a)(30) of the Code.

3.10 Brokers or Finders. No person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon the Companies or the Purchaser for any commission, fee or other compensation as a finder or broker because of any act or omission by Sellers or any of their agents.

3.11 Material Agreements. The Companies are not, and, to Seller's knowledge, no other party to any Material Agreement with the Companies is, in default in the performance of any of their respective obligations under any Material Agreement. All Material Agreements are set forth on Schedule 3.11 and are in full force and effect. For purposes of this Agreement, "Material Agreements" means all leases, loan agreements and other agreements to which either of the Companies is a party, by which the Companies' assets are bound that are material to carrying on the Companies' business. Notwithstanding the forgoing, or anything herein to the contrary, Purchaser acknowledges that Sellers have disclosed to Purchaser that the Companies sublease space for business operations generally located at 709 SC Hwy. 17, Piedmont, South Carolina, 29673 under an oral sublease arrangement with a company doing business as, or known to Sellers as, "Palmetto Engineering" (the "Sublease"), and Sellers make no representation or warranty as to the validity or enforceability of such Sublease, and make no representation or warranty as to whether there has been or is continuing a default by any party thereunder, except that Sellers warrant that there is no material obligation to restore such premises upon vacating such premises except to leave such premises broom clean.

3.12 Companies' Title to Assets, etc. Except as may be disclosed in requested items obtained by or reviewed by the Purchaser (the "Requested Items"), the Companies and any subsidiaries own all rights, properties and assets necessary to conduct the operations of the Companies. The Companies and any subsidiaries have good and marketable title to all of their respective assets, free and clear of any Encumbrances, except (a) the liabilities set forth on Schedule 3.12 attached to this Agreement (which Sellers hereby warrant lists, together with the Material Agreements listed in Schedule 3.11, all liabilities of the Companies as of 8:00 AM on the Closing Date) and the related bank loan agreements, (b) liens for taxes not yet due and payable or that have not yet become delinquent and (c) liens imposed by Law and incurred in the ordinary course of business for obligations not yet due and payable or that have not yet become delinquent to landlords, carriers, warehousemen, materialmen and the like (collectively, (a), (b), (c) and (d) shall be "Permitted Encumbrances").

3.13 Real Property. Neither Company owns any real estate.

3.14 Compliance with Law. The Companies are (and have been at all times since the formation of the Companies) in compliance in all material respects with all applicable Laws. The Companies have not been charged with, or have received notice that they are under investigation with respect to, a violation of any applicable Law, which matter has not been resolved. The Companies are not a party to, or bound by, any order, judgment, decree, injunction, rule or award of any Governmental Entity expressly applicable to the Companies. Except as might be disclosed in the Requested Items, the Companies have filed all reports and have all licenses and permits required to be filed with any Governmental Entity on or prior to the date hereof.

3.15 Employees; Labor Matters. The Companies are not delinquent in any material payments to any of their respective employees for any wages, salaries, commissions, bonuses, severance, termination pay or other direct compensation for any services performed for it to the date hereof or amounts required to be reimbursed to such employees. Except as set forth on Schedule 3.15 the Companies have no written policy, practice, plan or program of paying severance pay or any written agreement providing for severance compensation in excess of amounts it would otherwise be required to pay under applicable Laws in connection with the termination of employment. Except as set forth on Schedule 3.15, the Companies have not received any written notification from any current or former employee of any material grievances, complaints or charges that have been filed against the Companies under any dispute resolution procedure (including, but not limited to, any proceedings under any dispute resolution procedure under any collective bargaining agreement) that have not been dismissed. Neither Company is a party to any collective bargaining agreement in respect of its employees. Within the last two (2) years, there has been no threatened, strike, lock-out, slowdown, or work stoppage with respect to the business of either Company. Neither Company has received written notice of pending or threatened changes of employment status with respect to (including, without limitation, resignation of) the senior management or key supervisory personnel of the Companies.

3.16 Employee Benefits.

(a) Schedule 3.15 lists each Employee Benefit Plan that either Company maintains or to which either Company contributes.

(i) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all respects with the applicable requirements of ERISA and the Code.

(ii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made to each such Employee Benefit Plan that is an Employee Pension Benefit Plan. All premiums or other payments that are due have been paid with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan.

(iii) Each such Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Code §401(a) has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Code §401(a).

(iv) Sellers have delivered to Purchaser correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the Internal Revenue Service, the most recent annual report, and all related trust agreements, insurance contracts, and other funding arrangements which implement each such Employee Benefit Plan.

(b) Neither Company maintains, sponsors or contributes to any Employee Pension Benefit Plan that is a "defined benefit plan" (as defined in ERISA §3(35)).

(c) Neither Company maintains, contributes to or has an obligation to contribute to, or has any material liability or potential liability with respect to, any Employee Welfare Benefit Plan or other arrangement providing health or life insurance or other welfare-type benefits for current or future retired or terminated employees (or any spouse or other dependent thereof) of either Company other than as required by COBRA.

(d) The consummation of the transactions contemplated by this Agreement will not accelerate the time of the payment or vesting of, or increase the amount of, or result in the forfeiture of compensation or benefits under, any Employee Benefit Plan.

3.17 Financial Statements; No Material Adverse Effect. The Companies' financial statements presented to Purchaser fairly represent the financial condition of each Company. Since November 9, 2012, there has not occurred (nor have the Sellers become aware of) any Material Adverse Effect or any development likely to result in a Material Adverse Effect.

3.18 Disclosure. Neither this Agreement nor any of the other Transaction Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, and there is no fact or circumstance that has not been disclosed herein which would reasonably be expected to result in a Material Adverse Effect.

3.19 Pre-Closing Covenants. Sellers agree to the following covenants with respect to the time period between the execution of this Agreement and the Closing Date:

(a) General. Sellers will use commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

(b) Notices and Consents. Sellers will cause the Companies to give any notices to third parties, and will cause the Companies to use commercially reasonable efforts to obtain any third party consents, necessary to effect the transactions contemplated by this Agreement.

(c) Operation of Business; Maintenance of Property. Sellers will not cause or permit the Companies or any subsidiaries to engage in any practice, take any action, or enter into any transaction outside the ordinary course of business. Without limiting the generality of the foregoing, Sellers will not cause or permit the Companies or any subsidiaries to (i) accelerate or delay any payments, collection activities, work-in-process other than as would ordinarily be done or otherwise attempt to manipulate any factors considered in the Price Adjustment Calculations, (ii) declare, set aside, or pay any distribution or redeem, purchase, or otherwise acquire any of their outstanding membership interest, (iii) make or agree to make any employee raises that are not in line with previous years or, in any case, are more than 3%, or (iv) otherwise engage in any practice, take any action, or enter into any transaction that will or might cause a Material Adverse Effect. Sellers will cause the Companies to maintain all property owned by the Companies in substantially the same condition as it exists on the date hereof, normal wear and tear excluded.

(d) Full Access. Each Seller will permit, and the Sellers will cause each of the Companies to permit, representatives of Purchaser (including legal counsel and accountants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Companies, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to each of the Companies. Purchaser will treat and hold any information it receives from any of Sellers or the Companies in the course of the reviews as confidential, will not use any of the confidential information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, will return to Sellers and the Companies all tangible embodiments (and all copies) of such confidential information which are in its possession.

(e) Notice of Developments. Sellers shall give Purchaser prompt notice of any development that could cause a Material Adverse Effect.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

In order to induce Sellers to enter into this Agreement, Purchaser represents and warrants to Sellers as follows:

4.01 Organization and Standing of Purchaser. Purchaser is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has all requisite power and authority to own, lease and operate its assets, and to acquire the Purchased Interests, and to carry on its business as now conducted or as is now proposed to be conducted.

4.02 Authorization. Purchaser has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized

by all necessary action by Purchaser, and this Agreement and the other Transaction Documents to which Purchaser is a party constitute the legal, valid and binding obligations of Purchaser, enforceable against it in accordance with their terms, subject to the enforcement of remedies to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting the enforcement of creditors' rights generally from time to time in effect.

4.03 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel, (a) any term or provision of the charter documents of Purchaser, (b) any contract, will, agreement, permit, franchise, license or other instrument applicable to Purchaser, (c) any judgment, decree or order of any Governmental Entity to which Purchaser is a party or by which Purchaser or any of its properties are bound, or (d) any Law or arbitration award applicable to Purchaser. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or other third party is required in connection with the execution, delivery or performance of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

4.04 Governmental Approvals; Permits and Licenses. No authorization, consent, approval, license, exemption of or filing or registration with, any Governmental Entity is or will be necessary for the execution and delivery by Purchaser of this Agreement, or the performance by Purchaser of its obligations under this Agreement and the other Transaction Documents.

ARTICLE V.
POST-CLOSING COVENANTS AND AGREEMENTS

5.01 Employment and Competition. On the Closing Date:

(a) Edward P. Holder, Jr. and Robert H. Stroud shall each execute a Noncompetition Agreement in the form attached hereto at Schedule 5.01(a) (the "Holder and Stroud Noncompetition Agreement").

(b) Michael T. Lewallen shall execute an Employment Agreement in the form attached hereto at Schedule 5.01(b) (the "Lewallen's Employment Agreement").

5.02 Reasonable Efforts; Further Assurances; Cooperation. Subject to the other provisions hereof, the Parties shall use their reasonable, good faith efforts to perform their obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to obtain all consents and perform all filings necessary or required, including, without limitation, the filing by Purchaser of statements of dissociation for the Sellers, and all regulatory approvals and to satisfy all conditions to its obligations hereunder, if any, and to cause the transactions contemplated herein to be effected as soon as practicable, in accordance with the terms hereof and shall cooperate fully with each other

party and its and such other party's officers, directors, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of the obligations hereunder.

5.03 Public Announcements. No Party shall make any announcements regarding this Agreement or the transactions contemplated hereby to the financial community, Governmental Entities, customers or the general public without the prior written consent of the other Parties.

5.04 Confidential Information. The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.

5.05 Taxes. Sellers will cooperate with the Companies and Purchaser in connection with the preparation of Tax returns which are required to be filed for tax periods during which Sellers were members of the Companies. Sellers will provide to Purchaser and the Companies all information, documents, workpapers and other data necessary for the preparation of all Tax returns for the Companies. Sellers and Purchaser agree to allocate tax items of income, gain, profit, loss, deduction and credit among themselves to account for the varying ownership interests in the Companies for any Tax year during which Sellers cease to be members of the Companies.

5.06 Accounts Receivable. Purchaser agrees to make commercially reasonable efforts in good faith to collect all Accounts Receivable and to maximize Trailing Profit.

ARTICLE VI.
INDEMNIFICATION

6.01 Sellers Indemnity. Sellers shall indemnify and hold Purchaser and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (collectively, "Purchaser Losses"), suffered or incurred by Purchaser and its affiliates resulting from:

(a) any breach or inaccuracy of any representation or warranty made by Sellers in this Agreement;

(b) any breach of any covenant, agreement or undertaking made in this Agreement by Sellers;

(c) any fraud, willful misconduct or bad faith of Sellers in connection with this Agreement or the transactions contemplated hereby;

(d) any claims, including for unpaid taxes, fines and penalties, brought against the Companies that arose or accrued prior to the Closing Date, regardless of whether known to Sellers on the Closing Date; or

(e) any warranty claims brought within two (2) years after the Closing Date that relate to or arise out of work performed by the Companies prior to the Closing Date.

In addition to the foregoing Purchaser Losses, each Seller shall also indemnify and hold Purchaser and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (also, "Purchaser Losses"), suffered or incurred by Purchaser and its affiliates resulting from:

(f) any breach or inaccuracy of any representation or warranty made by such Seller in any Transaction Document;

(g) any breach of any covenant, agreement or undertaking made by such Seller in any Transaction Document; or

(h) any fraud, willful misconduct or bad faith of such Seller in connection with any Transaction Document executed and entered into by such Seller and the transactions contemplated thereby.

WITH RESPECT TO SUBSECTIONS (a), (b), (c) and (f) ABOVE, EACH SELLER'S INDEMNIFICATION OBLIGATION SHALL BE LIMITED TO THE FOLLOWING AMOUNTS UNLESS SUCH SELLER HAD KNOWLEDGE OF THE INACCURACY, BREACH, FRAUD, WILLFUL MISCONDUCT OR BAD FAITH OR OTHER FACT OR ACTION GIVING RISE TO THE APPLICABLE PURCHASER LOSSES: EDWARD P. HOLDER, Jr.: $500,000; MICHAEL T. LEWALLEN: $400,000; AND ROBERT H. STROUD: $100,000. FURTHER, IN NO EVENT SHALL ANY SELLER HAVE ANY INDEMNIFACTION OBLIGATION HEREUNDER FOR PURCHASER LOSSES ARISING OUT OF A BREACH OF THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, OR ANY FRAUD, WILLFUL MISCONDUCT OR BAD FAITH ACTION COMMITTED BY ANOTHER SELLER AFTER CLOSING.

THE PARTIES AGREE AND ACKNOWLEDGE THAT THE ESCROW FUND IS NOT INTENDED AS LIQUIDATED DAMAGES BUT IS RATHER A MEANS FOR PROVIDING A SOURCE OF PAYMENT FOR DAMAGES THAT MAY BECOME DUE AND OWING. IN NO WAY SHALL THE AVAILABILITY OR UNAVAILABILITY OF THE ESCROW FUND BE DEEMED A LIMITATION ON THE DAMAGES RECOVERABLE UNDER THIS AGREEMENT.

6.02 Purchaser Indemnity. Purchaser shall indemnify and hold Sellers and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities,

losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (collectively, "Sellers Losses"), suffered or incurred by Sellers resulting from:

(a) any breach or inaccuracy of any representation or warranty made by Purchaser in this Agreement or in any other Transaction Document;

(b) any breach of any covenant, agreement or undertaking made in this Agreement or in any other Transaction Document by Purchaser;

(c) any fraud, willful misconduct or bad faith of Purchaser in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby; or

(d) any claims, including for unpaid taxes, fines and penalties, brought against the Companies that arise or accrue after the Closing Date.

6.03 Time for Notice of Claim. If any party seeking indemnification pursuant to this Article VI (the "Indemnified Party") seeks to be indemnified hereunder, the Indemnified Party shall notify the party or parties obligated to indemnify (the "Indemnifying Party") in writing of any claim for recovery, specifying in reasonable detail the nature of the claim. The Indemnified Party shall provide to the Indemnifying Party as promptly as practicable thereafter all information and documentation reasonably requested by the Indemnifying Party to verify the claim asserted, provided that failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations under this Article VI except to the extent, if at all, that such Indemnifying Party shall have been materially prejudiced thereby.

6.04 Limitations on Indemnification. Notwithstanding the provisions of Article VI, neither Party shall be entitled to obtain any recovery or reimbursement in respect of its claims hereunder for breach by the other Parties of any of their representations and warranties hereunder, except to the extent that the aggregate claims exceed $10,000.

ARTICLE VII.
MISCELLANEOUS

7.01 No Waiver; Cumulative Remedies. No failure or delay on the part of any party to this Agreement in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies of Purchaser herein provided are cumulative and not exclusive of any remedies provided by law or equity.

7.02 Amendments, Waivers and Consents. Notwithstanding anything to the contrary set forth in this Agreement, changes in or additions to this Agreement may be made, and compliance with any covenant or provision set forth herein may be omitted or waived, only by a

written instrument signed by the Sellers and the Purchaser. Any waiver or consent may be given subject to satisfaction of conditions stated therein, and any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7.03 Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing, shall be addressed to the applicable party at the address hereinafter set forth (or at such other address as shall be designated by such party in a written notice to the other party in compliance with this Section 7.04), and shall be either (a) delivered by hand, (b) sent by telecopy or facsimile transmission, or (c) sent by Federal Express, UPS Next Day Air or another recognized next-day business courier.

If to Purchaser:	ASAG, LLC 301 Enterprise Drive Easley, SC 29642 Attn: Rob Merritt
with a copy to:	Haynsworth Sinkler Boyd, P.A. 75 Beattie Place, 11th Floor Greenville, SC 29601 Attn: Frank T. Davis
If to Edward P. Holder, Jr.:	Edward P. Holder, Jr. Holder Electric Supply, Inc. P.O. Box 2368 Greenville, SC 29602
With a copy to:	McNair Law Firm, P.A. 104 South Main Street, Suite 700 Greenville, SC 29601 Attn: Brandon T. Norris
If to Michael T. Lewallen:	Mr. Mike Lewallen 1 River Drive Ext. Williamston, SC 29697
If to Robert H. Stroud:	Mr. Bob Stroud 107 Mount Vernon Circle Greer, SC 29651

All such notices, requests, demands, consents and other communications shall be deemed to have been received (i) if by hand, at the time of the delivery thereof to the receiving party, (ii) if by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, or (iii) if by next-day business courier, on the next business day following the day such notice is delivered to the courier service.

7.04 Fees and Expenses. Except as otherwise provided herein or in the other Transaction Documents, each party shall bear and will be liable for the payment of all fees, costs, and expenses incurred by such party in connection with the transactions contemplated hereby.

7.05 Binding Effect; Assignment. This Agreement shall be binding upon, and inure to the benefit of, Sellers, Purchaser, the indemnified parties and their respective successors and assigns. Neither party shall have the right to delegate any of their obligations hereunder, or to assign any of their rights hereunder or any interest herein, without the prior written consent of the other party, and any such attempted delegation or assignment shall be void ab initio.

7.06 Survival of Representations and Warranties; Claims.

(a) The representations and warranties contained in this Agreement shall survive the Closing and shall remain in full force and effect until the date that is two years from the Closing Date, except with respect to violations or alleged violations of the Code or ERISA, or the regulations and orders promulgated pursuant thereto, which shall survive for so long as claims relating to such violations may be brought under applicable law. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth above shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

(b) Claims brought under or for violation or breach of this Agreement, whether arising out of breach or inaccuracy of representation or warranty or otherwise, shall be barred and prohibited if not asserted within two (2) years following the Closing Date, except with respect to violations or alleged violations of the Code or ERISA, or the regulations and orders promulgated pursuant thereto, which shall survive for so long as claims relating to such violations may be brought under applicable law. Notwithstanding the foregoing or any other provision contained herein, any claims relating to fraud, criminal acts or willful misconduct by any party or its affiliates shall survive the Closing without limitation in time, and any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth above shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

7.07 Prior Agreements. This Agreement and the other Transaction Documents, constitute the entire agreement among the parties hereto, and supersede any prior understandings or agreements concerning the subject matter hereof or thereof.

7.08 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making the determination of invalidity or unenforceability

shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

7.09 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of South Carolina, without regard to conflicts of laws principles.

7.10 Representation. Each party acknowledges that it has been or has had the opportunity to be represented by competent legal counsel in connection with the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed as if all parties jointly prepared it, and no presumption against one party or another shall govern the interpretation or construction of any of the provisions of this Agreement.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7.12 Headings. The section headings of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

7.13 Waiver of Compliance with Transfer Provisions; Waiver of Claims Regarding Allocation of Purchase Price. Sellers hereby waive any requirement or restriction which may operate to restrict or prohibit the transfer of the Purchased Interest described herein, whether existing under the Operating Agreements or otherwise. SELLERS ACKNOWLEDGE THAT THEY HAVE EXPRESSLY REQUESTED THE PURCHASE PRICE BE ALLOCATED AMONG AND PAID TO THE INDIVIDUAL SELLERS AS SET FORTH HEREIN AND EXPRESSLY WAIVE ANY AND ALL CLAIMS AGAINST PURCHASER ARISING OUT OF THE APPORTIONMENT OF THE CONSIDERATION OR THE AMOUNT PAID TO EACH INDIVIDUAL SELLER HEREUNDER.

[*execution page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: Robert A Mitt

Name: Robert A. Mitt

Title: Sole Member

SELLERS:

Michael T. Lewallen

Edward P. Holder, Jr.

Robert H. Stroud

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: _____

Name: _____

Title: _____

SELLERS:

_____
Michael T. Lewallen

_____
Edward P. Holder, Jr.

_____
Robert H. Stroud

Signature Page to Membership Interest Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: _____

Name: _____

Title: _____

SELLERS:

_____
Michael T. Lewallen

_____
Edward P. Holder, Jr.

_____
Robert H. Stroud

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into the 31st day of December, 2012, by and among Lewallen Automation, LLC and Lewallen Industrial Services, LLC, each South Carolina limited liability companies (each a "Company" and together the "Companies"), and Michael T. Lewallen ("Employee"). This Agreement hereby supersedes any other employment agreements or understandings, written or oral, between the Companies and Employee.

WITNESSETH:

WHEREAS, this Agreement is being entered into pursuant to a certain Membership Interest Purchase Agreement by and between ASAG, LLC, Michael T. Lewallen, Edward P. Holder, Jr. and Robert H. Stroud dated December 31, 2012 (the "Membership Interest Purchase Agreement"), and

WHEREAS, Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

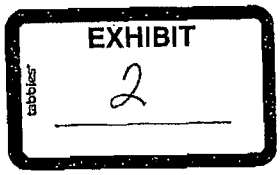
1. Employment and Duties.

(a) The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

(b) Employee shall not, during the term of his employment hereunder, be engaged in any other business activity pursued for gain, profit or other pecuniary advantage except to the extent that such activity does not interfere with Employee's duties and responsibilities hereunder. The foregoing limitations shall not be construed as prohibiting Employee from making personal investments in such form or manner as will not require his services in the operation or affairs of the companies or enterprises in which such investments are made.

2. Compensation. For all services rendered by Employee, the Companies shall compensate Employee as follows:

(a) Base Salary. The base salary payable to Employee shall be One Hundred Sixty Thousand Dollars ($160,000.00) per year, payable on a regular basis in accordance with the Companies' standard payroll procedures but not less than monthly.



(b) Quarterly Bonus. For each calendar quarter for which the Companies' cumulative EBITDA margin (calculated according to generally accepted accounting principles) meets or exceeds twelve percent (12.00%), Employee shall be paid Ten Thousand Dollars ($10,000.00). Such payment, if owed, shall be made within forty-five (45) days after the end of the calendar quarter.

(c) Yearly Equity Interest. At the end of each calendar year for the first four calendar years of this Agreement, Employee shall be given an equity interest in ASAG, LLC (the "Purchaser") equal to one-fourth of the percentage that equals the return on investment made by Purchaser during that calendar year on Purchaser's investment in the Companies divided by $1,325,000 (rounded to the nearest hundredth); provided that if Employee shall gain an equity interest pursuant to this Section and shall thereafter have a negative return on investment during such four years, Employee shall have to return the proportionate equity interest to Purchaser. If Employee's balance goes below zero, such balance shall carry forward against subsequent years. In no case shall Employee be allowed to accumulate more than a twenty percent (20%) interest in Purchaser. Employee agrees to execute the Purchaser's operating agreement, an assignment and assumption agreement and such other agreements as may be reasonably be required to acquire or dispose of an equity interest in such entity. For example: During the first year, Purchaser's return on investment is $250,000. Purchaser would convey to Employee a 4.72% interest in Purchaser ([250,000 / 1,325,000] x .25 = .0472). During the second year, Purchaser's return on investment is negative $500,000. Employee would convey all of his acquired interest back to Purchaser and carry forward a balance of negative 4.72% ([(500,000) / 1,325,000] x .25 = (.0943) + .0472 = (.0472)). During the third year, Purchaser's return on investment is $1,000,000. Purchaser would convey to Employee a 14.05% interest in Purchaser ([1,000,000 / 1,325,000] x .25 = .1887 + (.0472) = .1405). During the fourth year, Purchaser's return on investment is $1,000,000. Purchaser would convey to Employee a 5.95% interest in Purchaser ([1,000,000 / 1,325,000] x .25 = .1887 + .1405 = .3292, but total interest cannot exceed .20)

(d) Other Compensation. Employee shall be entitled to receive additional benefits and compensation from the Companies in such form and to such extent as specified below:

(i) Coverage for Employee under health, hospitalization, disability, dental and other insurance plans that the Companies may have in effect from time to time.

(ii) Reimbursement for all business travel and other out-of-pocket expenses reasonably incurred by Employee in the performance of his services pursuant to this Agreement. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Companies' expense reporting policy.

All compensation shall be a joint and several liability of each Company, with each Company agreeing hereby to pay one half of such compensation.

3. Place of Performance. The Companies shall not require Employee to provide employment services outside the state of South Carolina without the Employees consent.

4. Term; Termination; Rights on Termination. The term of this Agreement shall begin on the date hereof and continue for four (4) years from the date hereof, unless earlier terminated in accordance with this Section (the "Term"). In no case shall Employee be entitled to any severance pay. This Agreement and Employee's employment may be terminated in any one of the following ways:

(a) Death. The death of Employee shall immediately terminate the Agreement with no severance compensation due to Employee's estate.

(b) Disability. The Companies will make efforts to reasonably accommodate Employee as required by applicable state or federal disability laws. However, the parties irrefutably presume that, given Employee's position, it would be an undue hardship to the Companies if Employee is absent for more than three (3) consecutive months. Therefore, if as a result of incapacity due to physical or mental illness or injury, Employee shall have been absent from his full-time duties hereunder for three (3) consecutive months, then thirty (30) days after receiving written notice (which notice may occur before or after the end of such three (3) month period, but which shall not be effective earlier than the last day of such three (3) month period), the Companies may terminate Employee's employment hereunder provided Employee is unable to resume his full-time duties at the conclusion of such notice period.

(c) Good Cause. The Companies may terminate the Agreement after written notice to Employee for good cause, which shall be: (i) Employee's breach of this Agreement; (ii) Employee's negligence in the performance or the nonperformance of any of Employee's duties and responsibilities hereunder; (iii) Employee's dishonesty, fraud or misconduct with respect to the business or affairs of the Companies that adversely affects the operations or reputation of the Companies; (iv) Employee's conviction of a felony crime; (v) chronic alcohol abuse or illegal drug abuse by Employee; or (vi) dissolution of either of the Companies or the failure of either of the Companies to constitute a going concern. Employee may terminate the Agreement after written notice to the Companies for good cause, which shall be the Companies' breach of this Agreement.

5. Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the Companies or their representatives, vendors or customers which pertain to the business of the Companies shall be and remain the property of the Companies, and be subject at all times to its discretion and control. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Companies that is collected by Employee shall be delivered promptly to the Companies without request by it upon termination of Employee's employment.

6. Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

7. Indemnification. In the event Employee is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Companies against Employee), by reason of the fact that he is or was performing services under this Agreement, then the Companies shall indemnify Employee against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, as actually and reasonably incurred by Employee in connection therewith. In the event that both Employee and the Companies are made a party to the same third-party action, complaint, suit or proceeding, the Companies agree to engage competent legal representation, and Employee agrees to use the same representation, provided that if counsel selected by the Companies shall have a conflict of interest that prevents such counsel from representing Employee, Employee may engage separate counsel and the Companies shall pay all attorneys' fees of such separate counsel. Further, while Employee is expected at all times to use his best efforts to faithfully discharge his duties under this Agreement, Employee shall not be held liable to the Companies for errors or omissions made in good faith where Employee has not exhibited negligence or performed criminal and fraudulent acts which damage the business of the Companies.

8. No Prior Agreements. Employee hereby represents and warrants to the Companies that the execution of this Agreement by Employee and his employment by the Companies and the performance of his duties hereunder will not violate or be a breach of any agreement with a former employer, client or any other person or entity. Further, Employee agrees to indemnify the Companies for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Companies based upon or arising out of any non-competition agreement, invention or secrecy agreement between Employee and such third party which was in existence as of the date of this Agreement.

9. Assignment; Binding Effect. Employee understands that he has been selected for employment by the Companies on the basis of his personal qualifications, experience and skills. Employee agrees, therefore, he cannot assign all or any portion of his performance under this Agreement. Subject to the preceding, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, legal representatives, successors and assigns.

10. Complete Agreement. This Agreement is not a promise of future employment. Employee has no oral representations, understandings or agreements with the Companies or any of their officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between the Companies and Employee and of all the terms of this Agreement, and it cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements; provided, however, that if Employee has executed a Noncompetition Agreement pursuant to the Membership Interest Purchase Agreement dated of even date herewith, the parties agree that this Agreement is not meant to supersede or cancel the Noncompetition Agreement. This Agreement may not be later modified except by a further writing signed by a duly authorized officer of the Companies and Employee, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such term.

11. Notice. Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

If to Employee:

Mr. Mike Lewallen
1 River Drive Ext.
Williamston, SC 29697

If to either of the Companies:

Lewallen Automation, LLC and/or Lewallen Industrial Services, LLC
c/o ASAG, LLC
301 Enterprise Drive
Easley, SC 29642
Attn: Rob Merritt

with a copy to:

Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, 11th Floor
Greenville, SC 29601
Attn: Frank T. Davis

Notice shall be deemed given and effective three (3) days after the deposit in the United States mail of a writing addressed as above and sent first class mail, certified, return receipt requested, or when actually received. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph 12.

12. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of the Agreement or of any part hereof.

13. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

14. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANIES

Lewallen Automation, LLC

By: Robert A. Merritt
Name: Robert A. Merritt
Title: President and Manager

Lewallen Industrial Services, LLC

By: Robert A. Merritt
Name: Robert A. Merritt
Title: President and Manager

EMPLOYEE:

Michael T. Lewallen

Solely for the purpose of consenting to Section 2(c) above, ASAG, LLC hereby joins in the execution of this Agreement:

ASAG, LLC

By: Robert A Merritt
Name: Robert A. Merritt
Title: Sole Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANIES

Lewallen Automation, LLC

By: _____
Name: _____
Title: _____

Lewallen Industrial Services, LLC

By: _____
Name: _____
Title: _____

EMPLOYEE:

_____
Michael T. Lewallen

Solely for the purpose of consenting to Section 2(c) above,
ASAG, LLC hereby joins in the execution of this Agreement:

ASAG, LLC

By: _____
Name: _____
Title: _____

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC Plaintiffs, vs. Michael Lewallen, Defendant.	)	C.A. No.: 2014-CP-23-04895 **AFFIDAVIT OF ERIC SMITH**

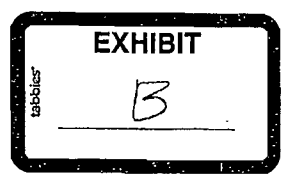
PERSONALLY APPEARD BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

1. I am Eric Smith, Director of Operations with Lewallen Automation, LLC ("LALCC).

2. I have personal knowledge of the matters attested to herein.

3. I received a telephone call from one of LALLC's vendors who was concerned for LALLC after Mike Lewallen ("Lewallen") told him that he was going to end up taking LALLC's business away from it and that he had already received two purchase orders from one of LALLC's current clients. Lewallen said he was encouraging LALLC's employees who work in the shop assembling the OEM panels that are sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen to compete against LALLC. Two days later, one of the employees in the shop resigned. The vendor also reported that Lewallen advised him Gregory S. Hughes and Robert A. Merritt, two of the members of LALLC, stole his business from him and defrauded him.

4. Lewallen had access to LALLC's vendors, prices for all parts purchased to assemble the panels, hourly rates charged by LALLC to the customers, costs of OEM panels and



how long it takes to assemble them, and LALLC's pricing structure, all confidential information protected by LALLC.

5. Under the direction of Gregg Hughes and Robert Merritt, an internal expenditure audit for Mr. Lewallen was conducted. During this audit, it was revealed that Lewallen used company resources for his own personal benefit. Lewallen falsified expense reports to coincide with his company provided credit card statements where he claimed to have entertained clients. The expense reports submitted by Lewallen listed specific names of clients and the companies they represent for each expenditure. This part of the internal audit, referenced that clients were contacted and it was discovered they were not aware of or in attendance at these events.

FURTHER AFFIANT SAYETH NOT.

Eric Smith

SWORN TO before me this 2nd
day of September, 2014.
DM: 3801101 V.1

Shannon B. Freeman
Notary Public for SC
My commission expires 7/30/2023

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
Lewallen Automation, LLC	)	C.A. No.: ~~2014-CP-23-~~04895
	)	
Plaintiffs,	)	
	)	**AFFIDAVIT OF**
vs.	)	**JAMIE SATTERWHITE**
	)	
Michael Lewallen,	)	
	)	
Defendant.	)	
	)	

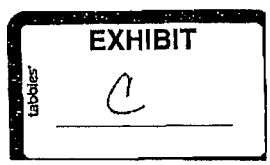
PERSONALLY APPEARD BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

1. I am Jamie Satterwhite, and am employed by Lewallen Automation, LLC ("LALCC) as its Field Service Manager.

2. I have personal knowledge of the matters attested to herein.

3. On or about 8/5, 2014, I, along with Gregg Hughes, met with the purchasing agent of a client in Ardmore, Oklahoma who requested the meeting due to his concerns about LALLC being able to meet the client's business needs based upon comments made to him by Michael Lewallen. Lewallen was the main contact with the client for LALLC. The purchasing agent's role is to provide reliable and competent contractors for the client's projects.

4. Specifically, Lewallen told the purchasing agent that LALLC was going to cease business operations and stop providing the product that the client needed because he, as the former sole owner of Lewallen Automation and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its clients, including the client in question. Lewallen assured him that LALLC we would lose its employees and would not be able to support the particular client and its business needs, and that all of the workers would leave and follow him wherever he went.



5. Lewallen also told him that two of LALLC's principles, Gregory S, Hughes and Robert A. Merritt, are out to ruin the business and that they falsify financial records.

6. The client was also upset with LALLC for the manner in which it terminated Lewallen, having been told that Lewallen received a text message while he was on vacation with his family advising him that he was terminated.

7. During a phone call I received from Lewallen on the evening of July 17, 2014, Lewallen said he "would rot in San Quentin just to see Gregg Hughes, Rob Merritt, and Charles Stewart burn in hell." I took this to be a direct threat toward Gregg, Rob, and Charles as retaliation for them firing him.

FURTHER AFFIANT SAYETH NOT.

Jamie Satterwhite

SWORN TO before me this 2nd day of September, 2014.

DM: 3800796 V.2

My commission expires 7/30/2023

Sharron B. Freeman
Notary Public for SC

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
Lewallen Automation, LLC	)	C.A. No.: 2014-CP-23-04895
	)	
Plaintiffs,	)	
	)	**AFFIDAVIT OF**
vs.	)	**GREGORY S. HUGHES**
	)	
Michael Lewallen,	)	
	)	
Defendant.	)	

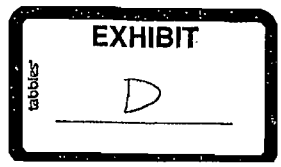
PERSONALLY APPEARD BEFORE ME, DULY SWORN, TESTIFIES AND SAYETH:

1. I am Gregory S. Hughes, officer and member of Lewallen Automation, LLC ("LALCC).

2. I have personal knowledge of the matters attested to herein.

3. The members of LALLC met with Michael Lewallen on June 30, 2014, to advise him that his employment was terminated due to poor performance, and provided him with a termination letter. Thereafter, on or about August 1, 2014, the purchasing agent of a client in Ardmore, Oklahoma requested a meeting due to his concerns about LALLC being able to meet the client's business needs based upon comments made to him by Michael Lewallen after his termination. Lewallen was the main contact with the client for LALLC. The purchasing agent's role is to provide reliable and competent contractors for the client's projects.

4. Jamie Satterwhite and I travelled to Ardmore, Oklahoma to meet with the client personally on August 5, 2014. During this meeting, the client advised that Lewallen told the purchasing agent that LALLC was going to cease business operations and stop providing the product that the client needed because he, as the former sole owner of Lewallen Automation and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a



new business venture and LALLC would, therefore, not be able to fill the orders of its clients, including the client in question. Lewallen assured him that LALLC would lose its employees and would not be able to support the particular client and its business needs, and that all of the workers would leave and follow him wherever he went. This was particularly harmful to our company because Lewallen was the primary point of contact for this client.

5. Lewallen also told him that two of LALLC's principles, Gregory S, Hughes and Robert A. Merritt, are out to ruin the business and that they falsify financial records.

6. The client was also upset with LALLC for the manner in which it terminated Lewallen, having been told that Lewallen received a text message while he was on vacation with his family advising him that he was terminated.

7. We assured the client that we would continue to be able to meet the client's needs and, of course, will hopefully be given a chance to continue to do so. I also advised the client that Lewallen was not the sole owner of the former company, is not an owner of the current company, and was terminated in person and not via text on vacation.

8. Just prior to Lewallen's termination, we discovered that he had been using his company credit card for his own personal benefit. I, therefore, asked Eric Smith to investigate the expenses submitted by Mr. Lewallen. Eric performed an internal analysis of the expenses and discovered that Lewallen had charged approximately $10,000 of unapproved personal charges to company credit cards that had been represented as company related charges. The investigation is ongoing.

FURTHER AFFIANT SAYETH NOT.

Gregory S. Hughes

SWORN TO before me this 2nd
day of Sept., 2014.
DM: 3801125 V.2

Shannon B. Freeman
Notary Public of SC
My commission expires 7/30/2023

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 23 PM 12:09

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-23-4895
Plaintiffs,)	
v.)	**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**
Michael Lewallen and Everworks, LLC,)	
Defendants.)	

Plaintiff Lewallen Automation, LLC ("LALLC") submits this supplemental memorandum in support of its motion for temporary injunction to alert the court to the amended affidavits of Jamie Satterwhite, Rob Merritt, Vince Blanton, Eric Smith, and Gregory S. Hughes that LALLC filed on Friday, September 19, 2014, and to the Affidavit of Steve Naugle LALLC it filed on Monday, September 22, 2014.[1]

Specifically, the Affidavit of Steve Naugle attaches and authenticates e-mails and their attachments that Defendant Michael Lewallen ("Lewallen") sent to his daughter's personal email address on or about January 20, 2014, as well as to the email address of Rachel Kay and/or Rachel Kleinhans, known to be Lewallen's mistress. The e-mails that Lewallen sent each attach a spreadsheet that lists LALLC's customers and prospects and includes specific information regarding LALLC's efforts to secure certain business and the progress of that business, notes regarding information gathered regarding the customers to aid in those efforts, and LALLC's

[1] LALLC previously filed a memorandum in support of the motion for temporary injunction on September 5, 2014. The present memorandum merely supplements that previously filed memorandum.

actual and forecasted sales planning budget.[2] *See also* Amended Aff. of Rob Merritt at ¶12. This information is essentially LALLC's game plan for how it plans to succeed in the coming year. The information contained in these spreadsheets is highly confidential and proprietary and constitutes trade secret information of LALLC, *see id.* at ¶¶11-13, because the lists consist of "information, including a formula, pattern, compilation, program, device, method, technique, or process . . . [not] generally known [and not] readily ascertainable by proper means." S.C. Code Ann. §39-8-20(5)(a); *see also Standard Register Co. v. Kerrigan*, 238 S.C. 54, 66, 119 S.E.2d 533, 539 (1961) (Stating 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.").[3]

Lewallen's conduct in sending this spreadsheet was not only in violation of the Employment Agreement and Membership Interest Purchase Agreements, it was also in violation of LALLC's Confidentiality and Trade Secrets Policy, which prohibits Lewallen from forwarding this confidential information to his or others' personal email addresses. *See* Amended Aff. of Rob Merritt at ¶13. Despite this policy, Lewallen sent the information to personal email accounts to which he had, **and continues to have**, access. Thus, while working for a competitor, Lewallen has had unfettered access to LALLC's most precious trade secret information and has already called on LALLC customers on that list on behalf of a competitor.

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[2] LALLC has filed a motion to file these spreadsheets under seal.

[3] *See also, e.g., Tom James Co. v. Hudgins*, 261 F. Supp. 2d 636 (S.D. Miss. 2003) ("The Court finds that Tom James's customer list, customer requirements, and sales techniques and methods clearly fall within the definition of 'trade secrets'"); *Am. Credit. Indem. Co. v. Sacks*, 213 Cal.App.3d 622, 262 Cal.Reptr. 92, 97 (1989) (holding a customer list of an underwriter of credit insurance company was a trade secret because it facilitated solicitation of business to an "elite . . . percent of those potential customers which already have evinced a predisposition to purchase credit insurance"); *Ed Nowogroski Ins., Inc. v. Rucker*, 944 P.2d 1093, 1097 (1997) (holding "the common law rule prohibiting the solicitation of former employer's customers with memorized confidential information remains intact under the [Uniform Trade Secrets Act]"); *Fireworks Spectacular, Inc. v. Premier Pyrotechnics, Inc.*, 147 F.Supp.2d 1057, 1066 (D. Kan. 2001) (holding customer lists and notes were protectable trade secrets).

Misappropriation includes, among other things, acquisition of a trade secret by improper means. *See* S.C. Code §39-8-20(2). Improper means includes "breach or inducement of a breach of a duty to maintain secrecy" and "duties imposed by the common law, statute, contract . . ." S.C. Code §39-8-20(1). Lewallen acquired the trade secrets through improper means by sending the lists to personal email accounts in violation of company policy and his agreements with LALLC. This conduct clearly constitutes misappropriation of a trade secret, as well as breach of Lewallen's Employment Agreement and Membership Interest Purchase Agreement, which require him not to use or disclose confidential information regarding LALLC and not to disclose the terms of the LALLC's "relationships or agreements with its significant vendors or customers . . ." LALLC is thus likely to succeed on the merits of these claims. In addition, the use and disclosure of this information constitutes actual irreparable harm and a threatened misappropriation that should be enjoined. S.C. Code § 39-8-50 (A) ("threatened misappropriation may be enjoined"); *see also P&G v. Stoneham*, 747 N.E.2d 268, 274 (Ohio Ct. App. 2000) (stating that "a threat of harm warranting injunctive relief can be shown by facts establishing that an employee with detailed and comprehensive knowledge of an employer's trade secrets and confidential information has begun employment with a competitor of the former employer in a position that is substantially similar to the position held during the former employment.").

Consequently, Lewallen should be enjoined from soliciting or servicing the customers or potential customers set forth on the spreadsheets that he sent to his daughter and mistress, and to which he has had access while working for a competitor. *See Uhlig, LLC v. Shirley*, 2008 U.S. Dist. LEXIS 123899, at *16-17 (D.S.C. May 13, 2008) (granting preliminary injunction that prohibited the defendant from soliciting customers of the former employer for which he took

information from the former employer); *Zoecon Indus. v. American Stockman Tag Co.*, 713 F.2d 1174, 1176 (5th Cir. 1983) (affirming injunction prohibiting former employees from calling customers on customer list); *Alexander & Alexander Ben. Services, Inc. v. Benefit Brokers & Consultants, Inc.*, 756 F. Supp. 1408 (D. Ore. 1991) (granting preliminary injunction preventing former employees from soliciting or accepting business of entities who were customers or prospective customers of the former employer based on copying of customer information).

Moreover, the Amended Affidavit of Rob Merritt contains the names of two employees who had non-compete, non-solicitation, and non-disclosure agreements with LALLC and who have left LALLC's employment to go to work for Everworks as a result of Lewallen's encouragement. *See* Amended Aff. of Rob Merritt ¶21. Those agreements are attached to Mr. Merritt's amended affidavit. As set forth in that affidavit, the employees of LALLC are specifically trained to prepare panels for specific customers pursuant to highly proprietary and confidential information that is protected by LALLC in its agreements with customers, such that the list of employees themselves, together with the projects on which the employees are assigned, constitute trade secrets. Through knowledge that Lewallen gained as a trusted officer of LALLC, Lewallen knows precisely which employees of LALLC were assigned to which projects, and thus knows exactly which employees he should target for the customers he is pursuing. This further supports an injunction that prevents Lewallen and Everworks from soliciting employees of LALLC.

HAYNSWORTH SINKLER BOYD, P.A.

By _____

Christine Gantt-Sorenson, S.C. Bar No.63998
Denny P. Major, S.C. Bar No. 74907
Haynsworth Sinkler & Boyd, P.A.
One North Main St,, 2nd Floor (29601)
P.O. Box 2048 (29602-2048)
Greenville, SC
Phone: 864.240.3200
Fax: 864.240.3300
Counsel for Plaintiff

September 23, 2014
Greenville, South Carolina

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-23-4895
Plaintiffs,	)	
v.	)	**CERTIFICATE OF SERVICE**
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 23 PM 12 09

I HEREBY CERTIFY that a true and correct copy of the following document was served in the above-referenced case via electronic mail and first class U.S. mail, on this the 23rd day of September, 2014, addressed as follows:

DOCUMENT SERVED:

Supplemental Memorandum in Support of Motion for Temporary Injunction

PARTIES SERVED:

Brian P. Murphy, Esq.
Stephenson & Murphy
207 Whitsett Street
Greenville, SC 29601

Attorneys for Defendant, Michael Lewallen

Ralph L. Gleaton, Esq.
Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601-3314

Attorneys for Defendant, Everworks, LLC

HAYNSWORTH SINKLER BOYD, P.A.

Angela M. Pack
Secretary to Christine Gantt-Sorenson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC,	)	C.A. No.: 2014-CP-23-4895
	)	
Plaintiff,	)	
	)	
v.	)	**AMENDED AFFIDAVIT OF JAMIE SATTERWHITE**
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 SEP 19 PM 4 20

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

1. I am Jamie Satterwhite, and am employed by Lewallen Automation, LLC ("LALCC") as its Field Service Manager.

2. I have personal knowledge of the matters attested to herein.

3. On or about August 5, 2014, I, along with Gregg Hughes, met with the purchasing agent of a client in Ardmore, Oklahoma who requested the meeting due to his concerns about LALLC being able to meet the client's business needs based upon comments made to him by Michael Lewallen ("Lewallen"). Lewallen was the main contact with the client for LALLC. The purchasing agent's role is to provide reliable and competent contractors for the client's projects.

4. Specifically, Lewallen told the purchasing agent that LALLC was going to cease business operations and stop providing the product that the client needed because he, as the former sole owner of Lewallen Automation and current part-owner of LALLC, was taking all of the current LALLC employees with him to begin a new business venture and LALLC would, therefore, not be able to fill the orders of its clients, including the client in question. Lewallen assured him that LALLC would lose its employees and would not be able to support the particular client and its business needs, and that all of the workers would leave and follow him wherever he went.

5. Lewallen also told him that two of LALLC's principles, Gregory S. Hughes and Robert A. Merritt, are out to ruin the business and that they falsify financial records.

6. The client was also upset with LALLC for the manner in which it terminated Lewallen, having been told that Lewallen received a text message while he was on vacation with his family advising him that he was terminated.

7. During a phone call I received from Lewallen on the evening of July 17, 2014, Lewallen said he "would rot in San Quentin just to see Gregg Hughes, Rob Merritt, and Charles Stewart burn in hell." I took this to be a direct threat toward Gregg, Rob, and Charles as retaliation for them firing him.

FURTHER AFFIANT SAYETH NOT.

Jamie Satterwhite

SWORN TO before me this 19th
day of September, 2014.

Melinda Kay Davis
Notary Public for South Carolina
My Commission Expires: July 16, 2017

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 SEP 19 PM 4 19

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC,)	C.A. No.: 2014-CP-23-4895
Plaintiff,)	
v.)	**AMENDED AFFIDAVIT OF ERIC SMITH**
Michael Lewallen and Everworks, LLC,)	
Defendants.)	

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

1. I am Eric Smith, Director or Operations with Lewallen Automation, LLC ("LALCC").

2. I have personal knowledge of the matters attested to herein.

3. I received a telephone call from one of LALLC's vendors who was concerned for LALLC after Mike Lewallen ("Lewallen") told him that he was going to end up taking LALLC's business away from them and that he had already received two purchase orders from one of LALLC's current clients. Lewallen said he was encouraging LALLC's employees who work in the shop assembling the OEM panels that are sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen to compete against LALLC. Two days later, one of the employees in the shop resigned. The vendor also reported that Lewallen advised him Gregory S. Hughes and Robert A. Merritt, two of the members of LALLC, stole his business from him and defrauded him.

4. Lewallen had access to LALLC's vendors, prices for all parts purchased to assemble the panels, hourly rates charged by LALLC to the customers, costs of OEM panels and

how long it takes to assemble them, and LALLC's pricing structure, all confidential information protected by LALLC.

5. Under the direction of Gregg Hughes and Robert Merritt, an internal credit card expenditure audit for Mr. Lewallen was conducted. During this audit, it was revealed that Lewallen used company resources for his own personal benefits. Lewallen falsified expense reports to coincide with his company provided credit card statements where he claimed to have entertained clients. The expense reports submitted by Lewallen listed specific names of clients and the companies they represent for each expenditure. With the assistance of Bonnie Wilkinson, a Group of Patriots employee, we contacted particular individuals listed on Mike Lewallen's expense reports and discovered they were not aware of or in attendance at these events.

6. For example, Lewallen charged a meal at Larkin's Restaurant in Greenville on May 1, 2014 to his company credit card that was paid by LALLC. On an expense report, Lewallen represented to LALLC that he was entertaining a particular customer representative for that meal justifying that LALLC should pay for this transaction. LALLC subsequently learned that the customer representative who was allegedly being entertained had never eaten at Larkin's restaurant, and, in fact, was not in the Greenville area on May 1, 2014.

7. As another example, Lewallen charged a meal at Nantucket's in Greenville on June 10, 2014 to his company credit card in which LALLC paid. Lewallen represented to LALLC that he was entertaining a particular customer representative for that dinner, and, therefore, LALLC should pay for that dinner. LALLC subsequently learned that the customer representative who was allegedly being entertained had not eaten at Nantucket's on June 10, 2014.

8. As another example, Lewallen charged a meal at Los Amigos restaurant in Powdersville, South Carolina on June 26, 2014, with the receipt bearing the time of 12:24 p.m. on his company-issued credit card and LALLC paid for it. On his expense report, Lewallen represented that he was entertaining a particular customer representative for lunch. The customer representative who was allegedly being entertained subsequently informed LALLC that he has never eaten at that restaurant, and, in fact, was on a 14 hour flight to Shanghai on June 26, 2014 at 12:24 p.m.

9. In addition, Lewallen was issued a company car by LALLC, which was a BMW 5 Series Sedan 550i. As specified by BMW, the gas tank on the 5 Series Sedan 550i has a capacity of 18.492 gallons. On multiple occasions, Lewallen used his company card to pay for gas that was clearly in excess of the amount of gas that could have been held by the BMW 5 Series Sedan 550i. For example, on June 8, 2014, he incurred a charge on his company card of $78.77 at the 7-Eleven gas station in Pelzer, South Carolina that was paid for by LALLC. However, based on the 18.492 gallon tank, the price of the gas would have been at least $4.25 per gallon, assuming the tank was completely empty when Lewallen filled up the tank. The actual price of premium gas in Pelzer, South Carolina was far below $4.25 per gallon on June 8, 2014. This information leads LALLC to conclude that these charges were not for gas put into Lewallen's company car but unapproved purchases on LALLC's credit card, misrepresenting to LALLC that he had incurred this charge for business purposes.

10. On Friday February 21st 2014 Lewallen charged on two separate occasions $61.74 and $71.55 for a total of $133.29. One charge was made in Piedmont, SC and the other in Swansea, SC, a distance of approximately 121 miles. It is believed that these charges were while he was on his way to the 2014 Daytona 500.

11. Upon information and belief, Lewallen also used his LALLC issued company credit card to pay for meals and gas associated with a trip to Hickory, North Carolina that was purely for Lewallen's personal benefit.

12. There are numerous other charges deemed by Gregg Hughes and Robert Merritt to not be business related expenditures. These expenditures total up to approximately $26K.

13. LALLC paid these expenses that were incurred solely for Lewallen's personal benefit and not for any benefit to LALLC. LALLC relied on Lewallen's false representations as to the business nature of the above-referenced expenses.

FURTHER AFFIANT SAYETH NOT.

Eric Smith

SWORN TO before me this 18th
day of September, 2014.

Melinda Kay Davis
Notary Public for South Carolina
My Commission Expires: July 16, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC,	)	C.A. No.: 2014-CP-23-4895
	)	
Plaintiff,	)	
	)	
v.	)	**AMENDED AFFIDAVIT OF GREGORY S. HUGHES**
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 SEP 19 PM 1 19

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

1. I am Gregory S. Hughes, officer and member of Lewallen Automation, LLC ("LALLC").

2. I have personal knowledge of the matters attested to herein.

3. After Michael Lewallen and his two partners sold their company to us and we hired Lewallen as Vice President of Sales of LALLC, he neglected his duties, had an extramarital affair with a subordinate employee, misused company funds for his own personal benefit and is now telling everyone we "stole" the business from him.

4. Further, we also developed products, services, customers and markets exponentially beyond what it was when we purchased the business, and now Lewallen is trying to use information he learned in his role as Vice President of Sales (our customers, employees specifically trained to assemble the products sold by LALLC, strategic plans, sales forecasting, knowledge of our internal pricing and cost structures, budgets, vendor relationships, knowledge of our vendors payment terms, how much we owe, who we owe and other items) to his personal gain.

5. The owners of LALLC met with Lewallen on June 30, 2014, to advise him that his employment was terminated due to poor performance and provided him with a termination letter.

On or about August 1, 2014, the purchasing agent of a client that was developed by the current owners of LALLC and not Defendant Lewallen requested a meeting in Ardmore, Oklahoma due to his concerns about LALLC based upon statements made to him by Michael Lewallen after his termination. Lewallen, after accepting the role of Vice President of Sales, became one of the contacts with the client for LALLC. The purchasing agent's role is to provide reliable and competent contractors for the client's projects.

6. Jamie Satterwhite and I travelled to Ardmore, Oklahoma to meet with the client personally on August 5, 2014. During this meeting, the client advised that Lewallen told the purchasing agent that:

> 1) LALLC was going to cease business operations and stop providing the product that the client needed because Lewallen was going to take all of LALLC's employees with him.
>
> 2) Lewallen represented that he was the former sole owner of Lewallen Automation and current part-owner of LALLC.
>
> 3) Two of LALLC's principals, Gregory S. Hughes and Robert A. Merritt, were out to ruin the business and falsify financial records.
>
> 4) Lewallen received a text message while he was on vacation with his family advising him that he was terminated.

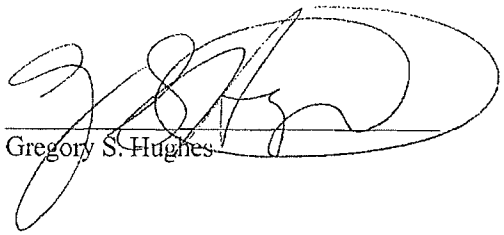
None of these statements are true.

7. Lewallen knew that the LALLC employees had signed Non-compete, Non-solicit and Trade Secret Agreements with LALLC and that he, as Vice President of the LALLC, was intentionally and knowingly encouraging them to breach those Agreements.

8. Just prior to Lewallen's termination, we discovered that he had been using his company credit card for his own personal benefit. I, therefore, asked Eric Smith to investigate the expenses submitted by Mr. Lewallen. Eric performed an internal analysis of the expenses and discovered that Lewallen had charged in excess of $20,000 of unapproved personal charges to

company credit cards that had been represented as company related charges. The investigation is ongoing.

FURTHER AFFIANT SAYETH NOT.



Gregory S. Hughes

SWORN TO before me this 19th day of September, 2014.

Melinda Kay Dias

Notary Public for South Carolina
My Commission Expires: July 16, 2017

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC,	)	C.A. No.: 2014-CP-23-4895
	)	
Plaintiff,	)	
	)	
v.	)	**AMENDED AFFIDAVIT OF ROB MERRITT**
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 SEP 16 PM 4:12

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

1. I am Robert Merritt, member, officer and part-owner of Group of Patriots, LLC, and ASAG, LLC that owns 100% of Lewallen Automation, LLC and Lewallen Industrial Services, LLC ("LALLC").

2. I have personal knowledge of the matters attested to herein.

3. LALLC is a turn-key provider of industrial automation, custom electrical/pneumatic panels and high quality control systems. LALLC also builds OEM electrical panels for several customers utilizing lean manufacturing practices. LALLC is a UL Certified 508A Panel Shop. In addition, LALLC provides contract project management, engineering and technical support for its customers.

4. LALLC has developed a body of information associated with the assembling of these panels. The information it has developed includes customer purchasing history, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, and other confidential information concerning our customers, vendors, and the panels.

5. From approximately March 28, 2008 to December 31, 2012, Michael Lewallen ("Lewallen") was a member of LALLC, holding a forty percent (40%) equity interest, and was an officer and president of LALLC. Lewallen partnered with Edward P. Holder and Robert H. Stroud who were also members and owners of LALLC. On or about December 31, 2012, Lewallen and his partners entered into a document entitled, "Unanimous Joint Written Consent of the Members and Managers and Resolutions of Lewallen Automation LLC and Lewallen Industrial Services, LLC," whereby the members and managers of Lewallen Automation LLC indicated their "desire to consent to the sale by the members of the Companies[1] of their entire membership interest in the Companies, and to execute all documents and take all such actions required...[including executing a Membership Interest Purchase Agreement]," thereby selling their business to ASAG, LLC and me as its owner for a total purchase price of One Million, Three Hundred and Twenty-five Thousand Dollars ($1,325,000). Lewallen also completed an assignment of his membership interest. True and accurate copies of the Unanimous Joint Consent, Membership Interest Purchase Agreement and Assignment of Membership Interest are attached hereto at Tab 1. Neither I nor ASAG, LLC had any involvement in the amount of money Lewallen received from the sale of his business as that was something negotiated between Lewallen and his partners. Regardless, this sale of the business transferred all of the assets and goodwill that the business had to ASAG, LLC.

6. Lewallen's execution of the Membership Interest Purchase Agreement transferred "all of the outstanding membership interests in the Companies, which membership interests represent all equity rights and interests of any nature with respect to the Companies." Among other things, the Membership Interest Purchase Agreement, to which Lewallen is a party provides:

[1] The term "Companies" is defined in the Membership Interest Purchase Agreement to include LALLC.

> The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.
>
> The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors."
>
> Membership Interest Purchase Agreement, §§5.04 and 1.01, respectively.

7. Lewallen also agreed that he would not engage in any "fraud, willful misconduct or bad faith in connection with the [Membership Interest Purchase Agreement, the other Transaction Documents, ***or the transactions contemplated hereby or thereby.***" Id. at §6.02(c)(emphasis added). Lewallen's warranties and representations were to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date. Id. at §7.06(b).

8. On December 31, 2012, the same date as the Membership Interest Purchase Agreement, Lewallen resigned his position as president of LALLC and was hired by LALLC as Vice President. In the Employment Agreement, Lewallen is referred to as "Employee" and "Companies" is defined as Lewallen Automation, LLC and Lewallen Industrial Services, LLC. The Employment Agreement provides that:

> The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

The Employment Agreement further provides that:

> Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the

Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

Paragraph 6 of the Employment Agreement provides:

> Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

Paragraph 5 of the Employment Agreement provides:

> Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the Company or their representatives, vendors or customers which pertain to the business of the Company shall be and remain the property of the Company, and be subject at all times to its discretion and control. **Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Company that is collected by Employee shall be delivered promptly to the Company without request by it upon termination of Employee's employment.** (emphasis added)

A true and accurate copy of the Employment Agreement is attached hereto at Tab 2.

9. From December 31, 2012 to June 30, 2014, Lewallen was employed as Vice President and he was privy to confidential and trade secret information belonging to LALLC, including, but not limited to, customer purchasing histories, pricing, individual customer specifications and requirements, pricing formulas, profit margins, customer contact information, usage history, vendor costs, supplier information, production techniques, product technologies, production limitations, budgets, production schedules, cost information, raw materials, and production processes (hereafter the "Trade Secrets"). The Trade Secrets derive independent economic value by being unknown and not readily ascertainable by others who could obtain economic value from their disclosure or use. The Trade Secrets are, and at all times relevant

hereto, have been, the subject of efforts that are reasonable under the circumstances to protect the Trade Secrets.

10. We restrict who can go into the specific areas where LALLC employees work in order to protect the confidentiality of our customers and their products, designs, raw materials and related assembly. Visitors are not allowed in this area unless accompanied. Customers have numerous and varied proprietary requirements for their ordered panels which require implementation of and following the security measures.

11. Additionally, LALLC entered into confidentiality agreements with employees, third-parties and independent contractors that protected this information from disclosure, and entered into non-solicitation and non-competition agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility, and access to information is restricted. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

12. Upon his departure, we have learned that Lewallen sent our proprietary list of financials and customer information to his daughter's personal email address on or about January 20, 2014, as well as to the email address of Rachel Kay and/or Rachel Kleinhans, known to be Lewallen's mistress, attaching a number of confidential documents containing a list of LALLC's customers and prospects, efforts to secure certain business and progress, including existing and potential customer names, contacts, and LALLC's Sales Planning Budget for 2014, actual and forecasted. Lewallen's conduct in doing so was in violation of the Employment Agreement as well as the Membership Interest Purchase Agreement and other closing documents applicable to the sale of LALLC to ASAG, LLC.

13. Lewallen's conduct is also in violation of LALLC's Confidentiality and Trade Secrets Policy, which prohibits Lewallen from forwarding this confidential information to his or others' personal email addresses. Specifically, it states that "documents, records and files (paper or electronic) related to finance, human resources, payroll, maintenance, safety or other business activities and meetings are considered the confidential property of [LALLC] and should not be removed from the office premise or discussed outside of [LALLC] without consent from the Chief Executive Officer." A true and accurate copy of that Policy, regularly maintained in the course of business, is attached hereto at Tab 3.

14. While employed as Vice President, Lewallen failed to carry out his responsibilities and duties and failed to devote his full working time, attention, and efforts to promote and further the business of the Group of Patriots and LALLC. In fact, Lewallen rarely showed up for work, and, instead, pursued his own personal interests during the time periods that he should have been working on behalf of LALLC.

15. During the last month of Lewallen's employment, we learned that he was meeting with a representative from a competitor, namely Brian Wright of Tennessee Electric Construction and Maintenance.

16. We learned that Lewallen used company resources for his own personal benefit. Lewallen represented to the company that he was working and meeting with possible clients, but was actually not meeting with clients, instead playing golf or dining with his mistress. We also learned that Lewallen used his company credit card for personal expenses contrary to company policy. When the company asked for justification of some of those expenses, he submitted expense reports upon which claiming they were incurred in furtherance of legitimate business endeavors for the benefit of the company, even identifying clients he took to dinner. However,

an internal investigation of those expenses revealed that he misrepresented them as business dinners and that the client representatives he stated he took to dinner actually were not at dinner with him. The company also identified a number of other personal expenses on the company credit card, such as iTunes charges, clothing charges, excessive gas charges, and meals that were clearly not business but which were actually incurred in furtherance of Lewallen's own personal endeavors rather than a business purpose. The company had been paying for all of these expenses that it now began to learn were incurred solely for Lewallen's personal benefit. To date, these expenses are in excess of Ten Thousand Dollars ($10,000).

17. On or about June 30, 2014, Lewallen was terminated for good cause pursuant to the Employment Agreement.

18. Following Lewallen's, LALLC is informed that Lewallen has gone to work or subcontracting for Everworks, Inc. ("Everworks"), which is in the industrial automation business and competes with LALLC.

19. Following Lewallen's termination, LALLC has been informed that Lewallen has contacted, either on behalf of himself and/ or on behalf of Everworks, customers and prospective customers of LALLC trying to engage them to do business with him and/or Everworks, rather than LALLC.

20. Lewallen has met with employees of LALLC in an effort to persuade them to leave their employment with LALLC and begin working for either him or Everworks in competition with LALLC. The employees with whom Lewallen has met include employees who have written non-competition, non-solicitation and non-disclosure agreements with LALLC.

21. Since Lewallen's termination, he has encouraged David Case and Harrison Greer, two employees of LALLC, to leave their employment to work with him and to become

associated with Everworks in competition with LALLC despite the fact that these employees have Non-compete, Non-solicitation and Trade Secret Agreements. True and accurate copies of Case's and Greer's Non-Compete, Non-Solicitation and Trade Secret Agreements are attached hereto at Tab 4. Numerous employees have advised us that Lewallen has encouraged them to leave employment with LALLC. A number of these employees have Noncompete, Nonsolicitation and Trade Secret Agreements with LALLC, and we have reminded them of their contractual obligations.

22. Lewallen has engaged in the following trade secret violations to date:

- Disclosed the terms of our relationships with our significant customers by identifying our customers.
- He knew the assets we used for assembly and our employees we had working on our customers' accounts. He not only disclosed this to a third party, but he went after these company employees and has successfully taken several away from LALLC. Our employees are specifically trained to prepare panels for specific customers pursuant to highly proprietary and confidential information that is protected between LALLC and its agreements with its customers, such that our employees, themselves, are significant and material trade secrets. Other third parties would not know our employee list and which projects each were assigned. Lewallen and Everworks are robbing us of our expertise and specific training that we purchased from Lewallen in 2012, as well as improved and provided in training to current LALLC employees.
- He has discussed the agreements that we have with our significant customers. He has therefore been able to discuss with a third party (Everworks) our agreements

so that they would know what to offer our ex-employees as compensation and how to price our work for specific customers because he discussed the agreements.

- Lewallen also stole our craftsmanship. He knew the tools and machines that we used, the processes that we followed and our quality checks that we developed to keep our customers satisfied. We hold these as crucial trade secrets.

FURTHER AFFIANT SAYETH NOT.

Robert A. Merritt

SWORN TO before me this 19th
day of September, 2014.

Notary Public for South Carolina
My Commission Expires: July 16, 2017

DM: 3819543 V.3

UNANIMOUS JOINT WRITTEN CONSENT OF THE MEMBERS AND MANAGERS
AND RESOLUTIONS
of
LEWALLEN AUTOMATION, LLC
and
LEWALLEN INDUSTRIAL SERVICES, LLC
Each a South Carolina Limited Liability Company

The undersigned, being all of the members and managers of Lewallen Automation, LLC, a South Carolina limited liability company ("**LALLC**") and Lewallen Industrial Services, LLC, a South Carolina limited liability company ("**LISLLC**," and together with LALLC, the "**Companies**"), hereby consent to the following Resolutions adopted by the Companies as of December 31, 2012, which shall have the same force and effect as actions taken at a duly called meeting; certify that such Resolutions are in full force and effect and have not been amended or rescinded; and further certify that such Resolutions are in full conformity with the provisions of the Operating Agreement of LALLC, adopted as of March 26, 2008, and the Operating Agreement of LISLLC, adopted as of December 9, 2011 (each, an "Operating Agreement," and collectively, the "Operating Agreements":

WHEREAS, each of the Companies is a limited liability company organized and existing under the laws of the State of South Carolina; and

WHEREAS, the undersigned are all of the members and managers of the Companies;

WHEREAS, the members and managers of the Companies desire to consent to the sale by the members of the Companies of their entire membership interest in the Companies, and to execute all documents and take all such actions required in connection with the foregoing;

WHEREAS, Edward P. Holder, Michael T. Lewallen, and Robert H. Stroud, all of the members of the Companies (each, a "**Member,**" and collectively, the "**Members**") have been presented with a form of Membership Interest Purchase Agreement (the "**Agreement**") pursuant to which the Members would sell, assign and convey each Member's entire interest (the "**Conveyed Interests**") in the Companies to ASAG, LLC; and

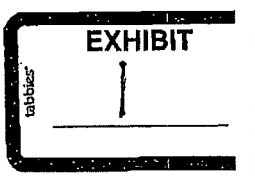
WHEREAS, Article XI of each Operating Agreement conditions the transfer of membership interests on, *inter alia*, the consent of the Members;

NOW, THEREFORE,

BE IT RESOLVED, that the Members and undersigned Managers, for themselves and on behalf of the Companies, do hereby consent to the sale, transfer and assignment of the Conveyed Interests pursuant to the terms and conditions of the Agreement;

BE IT RESOLVED that any Member or manager is hereby authorized and directed to execute any and all documents necessary or required to consummate the transactions set forth in the Agreement, including, without limitation, the execution of any and all assignments, acknowledgments, closing statements, post-closing agreements, affidavits, consents, assignments and other miscellaneous closing documents and enter into like-kind exchanges and associated agreements on behalf of the Company.

BE IT FURTHER RESOLVED, that this Unanimous Joint Written Consent may be executed as originals or by facsimile and/or in counterparts by the Members and managers, and that this Unanimous

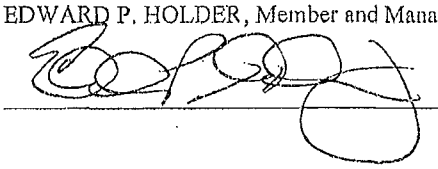


Joint Written Consent be filed with the minutes of the proceedings of the Members and managers of the Companies.

IN WITNESS WHEREOF, the undersigned have affixed their hands and seals as of the 31st day of December, 2012.

LEWALLEN AUTOMATION, LLC

EDWARD P. HOLDER, Member and Manager

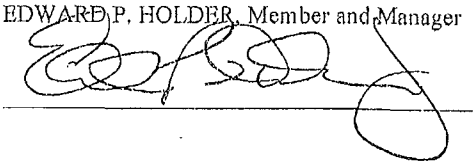


MICHAEL T. LEWALLEN, Member

ROBERT H. STROUD, Member

LEWALLEN INDUSTRIAL SERVICES, LLC

EDWARD P. HOLDER, Member and Manager



MICHAEL T. LEWALLEN, Member

ROBERT H. STROUD, Member

IN WITNESS WHEREOF, the undersigned have affixed their hands and seals as of the 31st day of December, 2012.

LEWALLEN AUTOMATION, LLC	LEWALLEN INDUSTRIAL SERVICES, LLC
EDWARD P. HOLDER, Member and Manager	EDWARD P. HOLDER, Member and Manager
_____	_____
MICHAEL T. LEWALLEN, Member	MICHAEL T. LEWALLEN, Member
_____	_____
ROBERT H. STROUD, Member	ROBERT H. STROUD, Member
_____	_____

IN WITNESS WHEREOF, the undersigned have affixed their hands and seals as of the 31st day of December, 2012.

LEWALLEN AUTOMATION, LLC	LEWALLEN INDUSTRIAL SERVICES, LLC
EDWARD P. HOLDER, Member and Manager	EDWARD P. HOLDER, Member and Manager
_____	_____
MICHAEL T. LEWALLEN, Member	MICHAEL T. LEWALLEN, Member
_____	_____
ROBERT H. STROUD, Member	ROBERT H. STROUD, Member
_____	_____

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement") is made and entered into as of the 31st day of December, 2012 (the "Effective Date"), by and between **ASAG, LLC**, a Delaware limited liability company ("Purchaser"), and **Michael T. Lewallen, Edward P. Holder, Jr. and Robert H. Stroud** (each being a, "Seller", collectively being, "Sellers" and, together with the Purchaser, the "Parties").

Recitals

WHEREAS, Sellers are the members of Lewallen Automation, LLC and Lewallen Industrial Services, LLC (each a "Company" and together, the "Companies") and collectively own all of the outstanding membership interests in the Companies, which membership interests represent all equity rights and interests of any nature with respect to the Companies (the "Purchased Interest"); and

WHEREAS, Sellers desire to sell and Purchaser desires to buy the Purchased Interest pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I.
DEFINITIONS

1.01 Certain Defined Terms. As used in this Agreement, the following capitalized terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Accounts Receivable" means the Completed Accounts Receivable and the Continuing Accounts Receivable, as defined below.

"Agreement" means this Membership Interest Purchase Agreement, including all Schedules and Exhibits hereto.

"Cash Proceeds" has the meaning assigned to such term in Section 2.01(a) hereof.

"Closing" has the meaning assigned to such term in Section 2.03(a) hereof.

"Closing Date" has the meaning assigned to such term in Section 2.03(a) hereof.

"Code" means the United States Internal Revenue Code, as amended from time to time.

"Companies" means Lewallen Automation, LLC, a South Carolina limited liability company, and Lewallen Industrial Services, LLC, a South Carolina limited liability company.

"Completed Accounts Receivable" means and refers to accounts receivable that are (i) existing and outstanding on the Closing Date for which no work and no expenditure is required after the Closing Date, and (ii) are listed Schedule 1.01(a) hereto; provided, however, that notwithstanding any other provision of this Agreement or any Transaction Document, to the extent that actual expenses (including Existing Expense, accrued payroll and any other expenses that reasonably should have been accrued prior to the Closing Date) exceed Existing Cash, such excess amount shall not be considered Accounts Receivable payable to Sellers but shall instead be retained by and payable to the Companies until such excess amount has been recouped in full by the Companies from amounts which would otherwise have been payable to Sellers as Completed Accounts Receivable.

"Confidential Information" means any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors.

"Continuing Accounts Receivable" means and refers to the accounts receivable (a) existing on the Closing Date for which any work or expenditure is required after the Closing Date with respect to a purchase order listed on Schedule 1.01(b), or (b) arising after the Closing Date out of services performed or goods provided for which: (i) work commenced or continued by either of the Companies after the Closing Date with respect to a purchase order listed on Schedule 1.01(b); or (ii) work commences, or a purchase order or other contract or agreement for the provision of goods or services by either of the Companies to the extent such purchase order is received or entered into, within fifty (50) days following the Closing Date, with respect to a continuing project set forth on Schedule 1.01(c)

"Employee Benefit Plan" means any "employee benefit plan" (as such term is defined in ERISA §3(3)) and any other material employee benefit plan, program or arrangement of any kind.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA §3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA §3(1).

"Encumbrances" means any lien, option, pledge, hypothecation, security interest, contractual right to purchase, claim, demand, or suit; or significant restriction of any kind or nature.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" has the meaning assigned to such term in Section 2.01(a) hereof.

"Escrow Funds" has the meaning assigned to such term in Section 2.01(c) hereof.

"Excluded Loan" means that certain Retail Installment Sale Contract between Lewallen Automation, LLC and Kevin Whitaker Chevrolet Cadillac, dated October 24, 2012 regarding the

purchase of one 2013 Chevrolet Tahoe, VIN #1GNSCCE09DR159988, together with all related loan documentation.

"Existing Cash" has the meaning given to such term in Section 2.01(d)(ii).

"Existing Expenses" has the meaning given to such term in Section 2.02(b).

"Governmental Entity" means any federal, state or local or foreign government, any political subdivision thereof or any court, administrative or regulatory agency, department, instrumentality, body or commission or other governmental authority or agency, domestic or foreign.

"Holder LOC" shall mean and refer to the $500,000.00 maximum principal amount revolving line of credit made available to Lewallen Automation, LLC, as evidenced by that certain promissory note made by Lewallen Automation, LLC to Holder Electric Supply, Inc. dated January 2, 2012 having a maximum principal amount of not exceeding $500,000.00 and an interest rate of 5.00% per annum, such Holder LOC being more fully identified on Schedule 3.11 hereto.

"Holder and Stroud Noncompetition Agreement" has the meaning assigned to such term in Section 5.01(a) hereof.

"Known," "known," or "to the knowledge of" means the actual, personal knowledge of the individual making the representation, warranty or covenant hereunder together with any information that the individual making the representation, warranty or covenant should have known.

"Law" or "Laws" means all statutes, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, injunctions, writs, awards and decrees of, or issued by, any Governmental Entities.

"Lewallen's Employment Agreement" has the meaning assigned to such term in Section 5.01(b) hereof.

"Losses" means Purchaser Losses or Sellers Losses, as the case may be.

"Material Adverse Effect" means any state of facts, change, event, effect, or occurrence (when taken together with all other states of fact, changes, events, effects or occurrences) that is or may be reasonably likely to be materially adverse to the financial condition, prospects, properties, assets or liabilities (including contingent liabilities) of either of the Companies, or the real or personal property of either of the Companies taken as a whole. A Material Adverse Effect shall also include any state of facts, change, event, effect, or occurrence that shall have occurred or been threatened that (when taken together with all other states of facts, changes, events, effects, or occurrences that have occurred or been threatened) is or would be reasonably likely to prevent or materially delay the performance by a Member of its obligations hereunder or the consummation of the transactions contemplated hereby.

"Material Agreement" has the meaning assigned to such term in Section 3.10 hereof.

"Member Loans" means any loans to any of the three Sellers.

"Net Trailing Profit" means the total Trailing Profit from all Accounts Receivable, after all Accounts Receivable have either been collected or written-off as uncollectible, less all expenses incurred with respect to projects for which the Accounts Receivable have been written-off as uncollectible.

"Operating Agreements" means the operating agreement for each of the Companies, a true and correct copy of which is attached hereto for each Company as Schedule 3.04.

"Permitted Encumbrances" has the meaning assigned to such term in Section 3.11 hereof.

"Purchase Price" has the meaning assigned to such term in Section 2.01 hereof.

"Purchaser Losses" has the meaning assigned to such term in Section 6.01 hereof.

"SCBT Note" means that certain Promissory Note made by Lewallen Automation, LLC to SCBT dated August 31, 2012 in the original principal amount of $200,000.00, such SCBT Note also being identified on Schedule 3.11 hereto.

"Sellers' Losses" has the meaning assigned to such term in Section 6.02 hereof.

"Taxes" means all taxes (whether federal, state, local or foreign) based upon or measured by income and any other tax whatsoever, including gross receipts, profits, sales, use, occupation, value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with any interest, penalties or additions thereto (and any interest in respect of such penalties or additions) imposed with respect thereto, but not including any maintenance or annuity fees on intellectual property rights.

"Trailing Profit" means the revenues of any Completed Accounts Receivable and the revenues of any Continuing Accounts Receivable, net of expenses incurred or paid after Closing in the performance of services or provision of goods giving rise to such Continuing Accounts Receivable, received by the Companies as determined by the Companies upon receipt in full of the Completed Accounts Receivable or Continuing Accounts Receivable.

"Transaction Documents" means this Agreement and the other agreements and documents delivered pursuant hereto.

"Transfer" means any sale, assignment, transfer, pledge, hypothecation, mortgage, creation of an encumbrance, or other disposition by gift, will, operation of law or otherwise.

"Vehicle Loans" means and refers to all those certain loans identified and referred to as Vehicle Loans on Schedule 3.11 hereto.

1.02 Construction. Unless the context of this Agreement otherwise clearly requires, (a) references to the plural include the singular, and references to the singular include the plural, (b) references to any gender include the other genders, (c) the words "include," "includes" and "including" do not limit the preceding terms or words and shall be deemed to be followed by the words "without limitation", (d) the terms "hereof", "herein", "hereundor", "hereto" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (e) the terms "day" and "days" mean and refer to calendar day(s) and (f) the terms "year" and "years" mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to (i) any document, instrument or agreement (including this Agreement) (A) includes and incorporates all Exhibits, Schedules and other attachments thereto, (B) includes all documents, instruments or agreements issued or executed in replacement thereof and (C) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect at any given time. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified. This Agreement shall not be construed as if prepared by one of the parties hereto, but rather according to its fair meaning as a whole, as if all parties hereto had prepared it.

ARTICLE II.
PURCHASE AND SALE OF PURCHASED INTEREST

2.01 Purchased Interest. Purchaser and Sellers agree to the sale and purchase of the Purchased Interest, conveyed in accordance with Section 2.03 below, for $1,325,000, subject to the adjustments set forth below (the "Purchase Price"), payable as follows:

(a) At Closing, Purchaser shall apply from the Purchase Price the amount necessary to pay off in full the Holder LOC, the SCBT Note, and all of the Vehicle Loans except the Excluded Loan, pursuant to the payoff statements attached hereto at Schedule 2.01(a) (which the Sellers represent is accurate) for each of the loans.

(b) At Closing, One Hundred Thirty-Two Thousand Five Hundred Dollars ($132,500.00) (the "Escrow Funds") will be placed in escrow with Haynsworth Sinkler Boyd, P.A. (the "Escrow Agent") to be held, administered and disbursed in accordance with the Escrow Agreement attached hereto as Schedule 2.01(b).

(c) At Closing, Purchaser shall pay to Sellers the amount of the Purchase Price that remains after application of the payments described in Section 2.01(a) and (b) above have been made, in the form of cash, wire or attorney escrow check (the "Cash Proceeds"), which shall be payable in the following percentages: Michael T. Lewallen: 11.3%, Edward P. Holder, Jr.: 75.5%, Robert H. Stroud: 13.2%.

(d) Following Closing, Purchaser shall pay to Sellers the amounts owed, if any, pursuant to the provisions of Section 2.02 below.

2.02. Post Closing Payments.

(a) After the end of each calendar month, the parties shall calculate the Trailing Profit with respect to the Accounts Receivable that were collected by the Companies within such month, and One Hundred Percent (100%) of the Trailing Profit from the Completed Accounts Receivable and Fifty Percent (50%) of Trailing Profit from the Continuing Accounts Receivable shall be paid to the Sellers in the proportions set forth below in this subsection (a). The Parties shall continue to calculate and, the Companies shall pay to Sellers the Trailing Profit, if any, payable to Sellers after each calendar month until all of the Accounts Receivable have been collected or written off in accordance with generally accepted accounting principles. Write-offs of uncollectible Accounts Receivable in a given month shall not be deducted from the actual Trailing Profits collected in a given month. Cumulative expenses associated with a given Continuing Account Receivable are only applied against the Trailing Profits of that particular Continuing Accounts Receivable when it is actually collected. If the Net Trailing Profit, after all of the Accounts Receivable have been collected or written off as uncollectible, results in a negative balance, such negative balance shall first be reduced by the Existing Cash then on hand, and then Sellers shall reimburse the Companies for up to the next $25,000 of the negative balance and then half of the remaining negative balance after application of the Existing Cash and payment of the $25,000. Purchaser shall be entitled to recover the cost of collection (including reasonable attorneys fees) if collection efforts are required to recover any money owed under the preceding sentence. Payments of amounts owed to Sellers pursuant to this subsection (a) shall be made to the Sellers first in the percentages set forth in Section 2.01(c) above until the amount paid to Sellers collectively under Section 2.01(c) and this subsection (a), together with the Escrow Funds, is equal to $1,325,000.00. Thereafter, all payments of amounts owed to Sellers pursuant to this subsection (a) shall be made to each of the Sellers in percentages which are equal to their respective percentages of the Purchased Interest as set forth on Schedule 3.08 (Edward P. Holder, Jr, 50%; Robert H. Stroud, 40%; and Michael T. Lewallen, 10%). All payments to Purchaser of amounts owed by Sellers pursuant to this subsection (a) shall be made by each of the Sellers in percentages which are equal to their respective percentages of the Purchased Interest as set forth on Schedule 3.08.

(b) After Closing, the Companies shall pay all expenses that accrued prior to the Closing Date (the "Existing Expenses") from the cash and cash equivalent the Companies had on hand as of the Closing Date (the "Existing Cash"). In addition, should any of the payouts described in Section 2.01(a) prove to be inaccurate, if such remaining balance is below the indemnification floor set forth in Section 6.04 then such remaining balance shall be paid from the Existing Cash. The Sellers represent that the Existing Cash and Existing Expenses are as set forth on Schedule 2.02(b). The Existing Cash shall be held until the later of three months after Closing or until all of the Accounts Receivable have been collected or written-off as uncollectible, at which point any Existing Cash not applied to a negative Net Trailing Profit balance as described in Section 2.02(a) shall be distributed to Sellers: (i) first, in the percentages described in Section 2.01(c) above until the amount paid to Sellers collectively under Sections 2.01(c) and 2.02(a) and this subsection (b), together with the Escrow Funds, is equal to $1,325,000.00; and (ii) thereafter in the percentages which are equal to the Sellers' respective

percentages of the Purchased Interest as set forth on Schedule 3.08 (Edward P. Holder, Jr, 50%; Robert H. Stroud, 40%; and Michael T. Lewallen, 10%).

2.03 Sale and Purchase of the Purchased Interest. At the Closing, subject to and in reliance upon the representations and warranties of Purchaser set forth herein, Sellers agree to sell, and, subject to and in reliance upon the representations, warranties, covenants of Sellers and the terms and conditions of this Agreement, Purchaser agrees to purchase the Purchased Interest and pay the Purchase Price to Seller.

2.04 Closing.

(a) Closing Date. The closing of the purchase by Purchaser and sale by Sellers of the Purchased Interest ("Closing" or "Closing Date") shall occur on or before December 31, 2012.

(b) Sellers' Closing Deliveries. At the Closing, Sellers shall have delivered, or caused to be delivered, to Purchaser the following, all in form and content reasonably acceptable to Purchaser:

(i) any resignations, effective as of the Closing Date, of the managers and the officers of the Companies as Purchaser may desire, in its sole discretion, including without limitation, a resignation of Sellers, all in substantially the form attached hereto as Schedule 2.04(b)(i);

(ii) an assignment of the Purchased Interest and the organizational record books, minute books and seal of the Companies, to the extent in Sellers' possession, including, without limitation, an assignment of membership interest in substantially the form attached hereto as Schedule 2.04(b)(ii);

(iii) all consents, waivers or approvals, if any, required in connection with the consummation of the transactions contemplated by this Agreement; and

(iv) all other documents reasonably requested by Purchaser to convey the Purchased Interest to Purchaser or to otherwise consummate the transactions contemplated hereby and which are customary for similar transactions.

(c) Purchaser Closing Delivery. At the Closing, Purchaser shall have delivered, or caused to be delivered, the Purchase Price pursuant to the terms of Section 2.01.

ARTICLE III.
REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE SELLERS

In order to induce Purchaser to enter into this Agreement, the Sellers represent and warrant to Purchaser as follows:

3.01 Organization and Standing of the Companies. The Companies are each a limited liability company duly organized and validly existing under the Laws of the State of South

Carolina, and have all requisite power and authority to own, lease, operate, and transfer their assets, and to carry on their business as now conducted or as now proposed to be conducted.

3.02 Authorization. Sellers have all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which they are a party, and to consummate the transactions contemplated hereby and thereby and the execution and delivery of this Agreement, the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action by Sellers, and, upon due execution by the other parties hereto and thereto, this Agreement and the other Transaction Documents will constitute the legal, valid and binding obligations of Sellers, enforceable against them in accordance with their respective terms subject to the enforcement of remedies to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting the enforcement of creditors' rights generally from time to time in effect. The purchase and sale of the Purchased Interest is not subject to preemptive rights, rights of first refusal or other preferential rights in favor of any person and will not conflict with any provision of any agreement or instrument to which the Companies or Sellers are a party or by which Sellers or the Companies are bound, excepting any rights contained in the Operating Agreements.

3.03 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel, (a) any term or provision of the charter documents of the Companies, (b) any Material Agreement or any other contract, agreement, permit, franchise, license or other instrument held by the Sellers or the Companies or to which the Sellers or the Companies are parties, (c) any judgment, decree or order of any Governmental Entity to which Sellers or the Companies are a party or by which Sellers or the Companies or any of their properties are bound, or (d) any Law or arbitration award applicable to Seller or the Companies. Except as contemplated herein, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or other third party is required in connection with the execution, delivery or performance of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

3.04 Governmental Approvals; Operating Agreement. No authorization, consent, approval, license, exemption of or filing or registration with, any Governmental Entity is or will be necessary for the execution and delivery by Sellers of this Agreement, the sale and delivery of the Purchased Interest, or the performance by the Sellers of their obligations under this Agreement and the other Transaction Documents. The Operating Agreement for each Company has been duly authorized and executed by Sellers and is in full force and effect. Sellers have at all times acted in compliance in all material respects with the terms of the Operating Agreements, and Sellers have not taken any action that would constitute a material violation of the terms of the Operating Agreements.

3.05 Litigation. There is no litigation or governmental proceeding or investigation pending or overtly threatened against Sellers, or any of their properties or assets, nor has there occurred any event or is there any condition on the basis of which any litigation, proceeding or investigation might properly be instituted as it concerns the Purchased Interest or the Companies. Sellers are not in default with respect to any order, writ, injunction, decree, ruling or decision of any Governmental Entity applicable to the Purchased Interest or the Companies. There are no actions or proceedings pending or overtly threatened (or any basis therefore known to Sellers), which will, or would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect or which might call into question the validity of this Agreement, the other Transaction Documents or the Purchased Interests, or the transactions contemplated hereby or by the other Transaction Documents. There is no litigation or governmental proceeding or investigation pending or overtly threatened against the Companies or any of their properties or assets, or against any member, manager, officer, employee, or trustee of either of the Companies as it affects the Companies or the assets of the Companies, nor has there occurred any event or is there any condition on the basis of which any litigation, proceeding or investigation might properly be instituted. The Companies are not in default with respect to any order, writ, injunction, decree, ruling or decision of any Governmental Entity.

3.06 Taxes. The Companies have properly and timely filed all Tax filings required by Law. There are no outstanding waivers or agreements extending the statute of limitations for any period with respect to any Taxes to which the Companies or their affiliates may be subject. There are no written requests for information currently outstanding that could increase the Tax liability of the Companies.

3.07 Transactions with Affiliates. Except for any transactions contemplated by this Agreement and any other Transaction Documents or as set forth on the Companies' financial information referenced in Section 3.17, the Companies are not indebted to Sellers or any of the Companies' members, managers or officers or party to any contract with Sellers or any affiliate of their members, managers or officers, and neither Sellers nor the Companies' members, managers or officers has a claim of any nature against the Companies.

3.08 Capitalization.

(a) Set forth on Schedule 3.08 attached hereto is a true and correct list of the membership interests owned by Sellers. Sellers hold of record and own beneficially the Purchased Interest free and clear of any Encumbrances, except as set forth in the Operating Agreements. Except for transfer rights and restrictions contained in the Operating Agreements, there are no preemptive rights, whether at law or otherwise, to purchase any of the Purchased Interest and there are no outstanding options, warrants, subscriptions, agreements, plans or other commitments pursuant to which the Companies are or may become obligated to sell or issue any membership interests or any other debt or equity security, and there are no outstanding securities convertible or exchangeable into membership interests or any other debt or equity security. Except for the Operating Agreements, there are no voting agreements, partnership agreements or other agreements, instruments or rights of any kind or nature outstanding or in effect with respect to the Purchased Interest.

(b) To the extent permitted by Law, Sellers waives any and all rights with respect to notice, transfer, valuation, redemption, procedure, or otherwise related to the Purchased Interest created by or arising from the Operating Agreements or applicable Law, and acknowledges that the terms of this Agreement are conclusive as to Sellers' rights related to the transactions contemplated hereby.

(c) There are no loans to any of the Sellers by either of the Companies.

3.09 No Foreign Persons. Each of the Sellers is a "United States person" as such term is defined in Section 7701(a)(30) of the Code.

3.10 Brokers or Finders. No person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon the Companies or the Purchaser for any commission, fee or other compensation as a finder or broker because of any act or omission by Sellers or any of their agents.

3.11 Material Agreements. The Companies are not, and, to Seller's knowledge, no other party to any Material Agreement with the Companies is, in default in the performance of any of their respective obligations under any Material Agreement. All Material Agreements are set forth on Schedule 3.11 and are in full force and effect. For purposes of this Agreement, "Material Agreements" means all leases, loan agreements and other agreements to which either of the Companies is a party, by which the Companies' assets are bound that are material to carrying on the Companies' business. Notwithstanding the forgoing, or anything herein to the contrary, Purchaser acknowledges that Sellers have disclosed to Purchaser that the Companies sublease space for business operations generally located at 709 SC Hwy. 17, Piedmont, South Carolina, 29673 under an oral sublease arrangement with a company doing business as, or known to Sellers as, "Palmetto Engineering" (the "Sublease"), and Sellers make no representation or warranty as to the validity or enforceability of such Sublease, and make no representation or warranty as to whether there has been or is continuing a default by any party thereunder, except that Sellers warrant that there is no material obligation to restore such premises upon vacating such premises except to leave such premises broom clean.

3.12 Companies' Title to Assets, etc. Except as may be disclosed in requested items obtained by or reviewed by the Purchaser (the "Requested Items"), the Companies and any subsidiaries own all rights, properties and assets necessary to conduct the operations of the Companies. The Companies and any subsidiaries have good and marketable title to all of their respective assets, free and clear of any Encumbrances, except (a) the liabilities set forth on Schedule 3.12 attached to this Agreement (which Sellers hereby warrant lists, together with the Material Agreements listed in Schedule 3.11, all liabilities of the Companies as of 8:00 AM on the Closing Date) and the related bank loan agreements, (b) liens for taxes not yet due and payable or that have not yet become delinquent and (c) liens imposed by Law and incurred in the ordinary course of business for obligations not yet due and payable or that have not yet become delinquent to landlords, carriers, warehousemen, materialmen and the like (collectively, (a), (b), (c) and (d) shall be "Permitted Encumbrances").

3.13 Real Property. Neither Company owns any real estate.

3.14 Compliance with Law. The Companies are (and have been at all times since the formation of the Companies) in compliance in all material respects with all applicable Laws. The Companies have not been charged with, or have received notice that they are under investigation with respect to, a violation of any applicable Law, which matter has not been resolved. The Companies are not a party to, or bound by, any order, judgment, decree, injunction, rule or award of any Governmental Entity expressly applicable to the Companies. Except as might be disclosed in the Requested Items, the Companies have filed all reports and have all licenses and permits required to be filed with any Governmental Entity on or prior to the date hereof.

3.15 Employees; Labor Matters. The Companies are not delinquent in any material payments to any of their respective employees for any wages, salaries, commissions, bonuses, severance, termination pay or other direct compensation for any services performed for it to the date hereof or amounts required to be reimbursed to such employees. Except as set forth on Schedule 3.15 the Companies have no written policy, practice, plan or program of paying severance pay or any written agreement providing for severance compensation in excess of amounts it would otherwise be required to pay under applicable Laws in connection with the termination of employment. Except as set forth on Schedule 3.15, the Companies have not received any written notification from any current or former employee of any material grievances, complaints or charges that have been filed against the Companies under any dispute resolution procedure (including, but not limited to, any proceedings under any dispute resolution procedure under any collective bargaining agreement) that have not been dismissed. Neither Company is a party to any collective bargaining agreement in respect of its employees. Within the last two (2) years, there has been no threatened, strike, lock-out, slowdown, or work stoppage with respect to the business of either Company. Neither Company has received written notice of pending or threatened changes of employment status with respect to (including, without limitation, resignation of) the senior management or key supervisory personnel of the Companies.

3.16 Employee Benefits.

(a) Schedule 3.15 lists each Employee Benefit Plan that either Company maintains or to which either Company contributes.

(i) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all respects with the applicable requirements of ERISA and the Code.

(ii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made to each such Employee Benefit Plan that is an Employee Pension Benefit Plan. All premiums or other payments that are due have been paid with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan.

(iii) Each such Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Code §401(a) has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Code §401(a).

(iv) Sellers have delivered to Purchaser correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the Internal Revenue Service, the most recent annual report, and all related trust agreements, insurance contracts, and other funding arrangements which implement each such Employee Benefit Plan.

(b) Neither Company maintains, sponsors or contributes to any Employee Pension Benefit Plan that is a "defined benefit plan" (as defined in ERISA §3(35)).

(c) Neither Company maintains, contributes to or has an obligation to contribute to, or has any material liability or potential liability with respect to, any Employee Welfare Benefit Plan or other arrangement providing health or life insurance or other welfare-type benefits for current or future retired or terminated employees (or any spouse or other dependent thereof) of either Company other than as required by COBRA.

(d) The consummation of the transactions contemplated by this Agreement will not accelerate the time of the payment or vesting of, or increase the amount of, or result in the forfeiture of compensation or benefits under, any Employee Benefit Plan.

3.17 Financial Statements; No Material Adverse Effect. The Companies' financial statements presented to Purchaser fairly represent the financial condition of each Company. Since November 9, 2012, there has not occurred (nor have the Sellers become aware of) any Material Adverse Effect or any development likely to result in a Material Adverse Effect.

3.18 Disclosure. Neither this Agreement nor any of the other Transaction Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading, and there is no fact or circumstance that has not been disclosed herein which would reasonably be expected to result in a Material Adverse Effect.

3.19 Pre-Closing Covenants. Sellers agree to the following covenants with respect to the time period between the execution of this Agreement and the Closing Date:

(a) General. Sellers will use commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

(b) Notices and Consents. Sellers will cause the Companies to give any notices to third parties, and will cause the Companies to use commercially reasonable efforts to obtain any third party consents, necessary to effect the transactions contemplated by this Agreement.

(c) Operation of Business; Maintenance of Property. Sellers will not cause or permit the Companies or any subsidiaries to engage in any practice, take any action, or enter into any transaction outside the ordinary course of business. Without limiting the generality of the foregoing, Sellers will not cause or permit the Companies or any subsidiaries to (i) accelerate or delay any payments, collection activities, work-in-process other than as would ordinarily be done or otherwise attempt to manipulate any factors considered in the Price Adjustment Calculations, (ii) declare, set aside, or pay any distribution or redeem, purchase, or otherwise acquire any of their outstanding membership interest, (iii) make or agree to make any employee raises that are not in line with previous years or, in any case, are more than 3%, or (iv) otherwise engage in any practice, take any action, or enter into any transaction that will or might cause a Material Adverse Effect. Sellers will cause the Companies to maintain all property owned by the Companies in substantially the same condition as it exists on the date hereof, normal wear and tear excluded.

(d) Full Access. Each Seller will permit, and the Sellers will cause each of the Companies to permit, representatives of Purchaser (including legal counsel and accountants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Companies, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to each of the Companies. Purchaser will treat and hold any information it receives from any of Sellers or the Companies in the course of the reviews as confidential, will not use any of the confidential information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, will return to Sellers and the Companies all tangible embodiments (and all copies) of such confidential information which are in its possession.

(e) Notice of Developments. Sellers shall give Purchaser prompt notice of any development that could cause a Material Adverse Effect.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

In order to induce Sellers to enter into this Agreement, Purchaser represents and warrants to Sellers as follows:

4.01 Organization and Standing of Purchaser. Purchaser is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has all requisite power and authority to own, lease and operate its assets, and to acquire the Purchased Interests, and to carry on its business as now conducted or as is now proposed to be conducted.

4.02 Authorization. Purchaser has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized

by all necessary action by Purchaser, and this Agreement and the other Transaction Documents to which Purchaser is a party constitute the legal, valid and binding obligations of Purchaser, enforceable against it in accordance with their terms, subject to the enforcement of remedies to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting the enforcement of creditors' rights generally from time to time in effect.

4.03 Absence of Restrictions and Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of and compliance with the terms and conditions hereof and thereof do not or shall not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel, (a) any term or provision of the charter documents of Purchaser, (b) any contract, will, agreement, permit, franchise, license or other instrument applicable to Purchaser, (c) any judgment, decree or order of any Governmental Entity to which Purchaser is a party or by which Purchaser or any of its properties are bound, or (d) any Law or arbitration award applicable to Purchaser. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or other third party is required in connection with the execution, delivery or performance of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

4.04 Governmental Approvals; Permits and Licenses. No authorization, consent, approval, license, exemption of or filing or registration with, any Governmental Entity is or will be necessary for the execution and delivery by Purchaser of this Agreement, or the performance by Purchaser of its obligations under this Agreement and the other Transaction Documents.

ARTICLE V.
POST-CLOSING COVENANTS AND AGREEMENTS

5.01 Employment and Competition. On the Closing Date:

(a) Edward P. Holder, Jr. and Robert H. Stroud shall each execute a Noncompetition Agreement in the form attached hereto at Schedule 5.01(a) (the "Holder and Stroud Noncompetition Agreement").

(b) Michael T. Lewallen shall execute an Employment Agreement in the form attached hereto at Schedule 5.01(b) (the "Lewallen's Employment Agreement").

5.02 Reasonable Efforts; Further Assurances; Cooperation. Subject to the other provisions hereof, the Parties shall use their reasonable, good faith efforts to perform their obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to obtain all consents and perform all filings necessary or required, including, without limitation, the filing by Purchaser of statements of dissociation for the Sellers, and all regulatory approvals and to satisfy all conditions to its obligations hereunder, if any, and to cause the transactions contemplated herein to be effected as soon as practicable, in accordance with the terms hereof and shall cooperate fully with each other

party and its and such other party's officers, directors, employees, agents, counsel, accountants and other designees in connection with any step required to be taken as a part of the obligations hereunder.

5.03 Public Announcements. No Party shall make any announcements regarding this Agreement or the transactions contemplated hereby to the financial community, Governmental Entities, customers or the general public without the prior written consent of the other Parties.

5.04 Confidential Information. The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.

5.05 Taxes. Sellers will cooperate with the Companies and Purchaser in connection with the preparation of Tax returns which are required to be filed for tax periods during which Sellers were members of the Companies. Sellers will provide to Purchaser and the Companies all information, documents, workpapers and other data necessary for the preparation of all Tax returns for the Companies. Sellers and Purchaser agree to allocate tax items of income, gain, profit, loss, deduction and credit among themselves to account for the varying ownership interests in the Companies for any Tax year during which Sellers cease to be members of the Companies.

5.06 Accounts Receivable. Purchaser agrees to make commercially reasonable efforts in good faith to collect all Accounts Receivable and to maximize Trailing Profit.

ARTICLE VI.
INDEMNIFICATION

6.01 Sellers Indemnity. Sellers shall indemnify and hold Purchaser and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (collectively, "Purchaser Losses"), suffered or incurred by Purchaser and its affiliates resulting from:

(a) any breach or inaccuracy of any representation or warranty made by Sellers in this Agreement;

(b) any breach of any covenant, agreement or undertaking made in this Agreement by Sellers;

(c) any fraud, willful misconduct or bad faith of Sellers in connection with this Agreement or the transactions contemplated hereby;

(d) any claims, including for unpaid taxes, fines and penalties, brought against the Companies that arose or accrued prior to the Closing Date, regardless of whether known to Sellers on the Closing Date; or

(e) any warranty claims brought within two (2) years after the Closing Date that relate to or arise out of work performed by the Companies prior to the Closing Date.

In addition to the foregoing Purchaser Losses, each Seller shall also indemnify and hold Purchaser and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (also, "Purchaser Losses"), suffered or incurred by Purchaser and its affiliates resulting from:

(f) any breach or inaccuracy of any representation or warranty made by such Seller in any Transaction Document;

(g) any breach of any covenant, agreement or undertaking made by such Seller in any Transaction Document; or

(h) any fraud, willful misconduct or bad faith of such Seller in connection with any Transaction Document executed and entered into by such Seller and the transactions contemplated thereby.

WITH RESPECT TO SUBSECTIONS (a), (b), (c) and (f) ABOVE, EACH SELLER'S INDEMNIFICATION OBLIGATION SHALL BE LIMITED TO THE FOLLOWING AMOUNTS UNLESS SUCH SELLER HAD KNOWLEDGE OF THE INACCURACY, BREACH, FRAUD, WILLFUL MISCONDUCT OR BAD FAITH OR OTHER FACT OR ACTION GIVING RISE TO THE APPLICABLE PURCHASER LOSSES: EDWARD P. HOLDER, Jr.: $500,000; MICHAEL T. LEWALLEN: $400,000; AND ROBERT H. STROUD: $100,000. FURTHER, IN NO EVENT SHALL ANY SELLER HAVE ANY INDEMNIFACTION OBLIGATION HEREUNDER FOR PURCHASER LOSSES ARISING OUT OF A BREACH OF THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, OR ANY FRAUD, WILLFUL MISCONDUCT OR BAD FAITH ACTION COMMITTED BY ANOTHER SELLER AFTER CLOSING.

THE PARTIES AGREE AND ACKNOWLEDGE THAT THE ESCROW FUND IS NOT INTENDED AS LIQUIDATED DAMAGES BUT IS RATHER A MEANS FOR PROVIDING A SOURCE OF PAYMENT FOR DAMAGES THAT MAY BECOME DUE AND OWING. IN NO WAY SHALL THE AVAILABILITY OR UNAVAILABILITY OF THE ESCROW FUND BE DEEMED A LIMITATION ON THE DAMAGES RECOVERABLE UNDER THIS AGREEMENT.

6.02 Purchaser Indemnity. Purchaser shall indemnify and hold Sellers and its affiliates harmless at all times after the Closing Date from and against any and all claims, liabilities,

losses, damages, costs and expenses (including reasonable legal fees, costs and expenses arising from or in connection with any action, suit, proceeding or claim incident to any of the foregoing) (collectively, "Sellers Losses"), suffered or incurred by Sellers resulting from:

(a) any breach or inaccuracy of any representation or warranty made by Purchaser in this Agreement or in any other Transaction Document;

(b) any breach of any covenant, agreement or undertaking made in this Agreement or in any other Transaction Document by Purchaser;

(c) any fraud, willful misconduct or bad faith of Purchaser in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby; or

(d) any claims, including for unpaid taxes, fines and penalties, brought against the Companies that arise or accrue after the Closing Date.

6.03 Time for Notice of Claim. If any party seeking indemnification pursuant to this Article VI (the "Indemnified Party") seeks to be indemnified hereunder, the Indemnified Party shall notify the party or parties obligated to indemnify (the "Indemnifying Party") in writing of any claim for recovery, specifying in reasonable detail the nature of the claim. The Indemnified Party shall provide to the Indemnifying Party as promptly as practicable thereafter all information and documentation reasonably requested by the Indemnifying Party to verify the claim asserted, provided that failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations under this Article VI except to the extent, if at all, that such Indemnifying Party shall have been materially prejudiced thereby.

6.04 Limitations on Indemnification. Notwithstanding the provisions of Article VI, neither Party shall be entitled to obtain any recovery or reimbursement in respect of its claims hereunder for breach by the other Parties of any of their representations and warranties hereunder, except to the extent that the aggregate claims exceed $10,000.

ARTICLE VII.
MISCELLANEOUS

7.01 No Waiver; Cumulative Remedies. No failure or delay on the part of any party to this Agreement in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies of Purchaser herein provided are cumulative and not exclusive of any remedies provided by law or equity.

7.02 Amendments, Waivers and Consents. Notwithstanding anything to the contrary set forth in this Agreement, changes in or additions to this Agreement may be made, and compliance with any covenant or provision set forth herein may be omitted or waived, only by a

written instrument signed by the Sellers and the Purchaser. Any waiver or consent may be given subject to satisfaction of conditions stated therein, and any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7.03 Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing, shall be addressed to the applicable party at the address hereinafter set forth (or at such other address as shall be designated by such party in a written notice to the other party in compliance with this Section 7.04), and shall be either (a) delivered by hand, (b) sent by telecopy or facsimile transmission, or (c) sent by Federal Express, UPS Next Day Air or another recognized next-day business courier.

If to Purchaser:	ASAG, LLC 301 Enterprise Drive Easley, SC 29642 Attn: Rob Merritt
with a copy to:	Haynsworth Sinkler Boyd, P.A. 75 Beattie Place, 11th Floor Greenville, SC 29601 Attn: Frank T. Davis
If to Edward P. Holder, Jr.:	Edward P. Holder, Jr. Holder Electric Supply, Inc. P.O. Box 2368 Greenville, SC 29602
With a copy to:	McNair Law Firm, P.A. 104 South Main Street, Suite 700 Greenville, SC 29601 Attn: Brandon T. Norris
If to Michael T. Lewallen:	Mr. Mike Lewallen 1 River Drive Ext. Williamston, SC 29697
If to Robert H. Stroud:	Mr. Bob Stroud 107 Mount Vernon Circle Greer, SC 29651

All such notices, requests, demands, consents and other communications shall be deemed to have been received (i) if by hand, at the time of the delivery thereof to the receiving party, (ii) if by facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, or (iii) if by next-day business courier, on the next business day following the day such notice is delivered to the courier service.

7.04 Fees and Expenses. Except as otherwise provided herein or in the other Transaction Documents, each party shall bear and will be liable for the payment of all fees, costs, and expenses incurred by such party in connection with the transactions contemplated hereby.

7.05 Binding Effect; Assignment. This Agreement shall be binding upon, and inure to the benefit of, Sellers, Purchaser, the indemnified parties and their respective successors and assigns. Neither party shall have the right to delegate any of their obligations hereunder, or to assign any of their rights hereundor or any interest herein, without the prior written consent of the other party, and any such attempted delegation or assignment shall be void ab initio.

7.06 Survival of Representations and Warranties; Claims.

(a) The representations and warranties contained in this Agreement shall survive the Closing and shall remain in full force and effect until the date that is two years from the Closing Date, except with respect to violations or alleged violations of the Code or ERISA, or the regulations and orders promulgated pursuant thereto, which shall survive for so long as claims relating to such violations may be brought under applicable law. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth above shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

(b) Claims brought under or for violation or breach of this Agreement, whether arising out of breach or inaccuracy of representation or warranty or otherwise, shall be barred and prohibited if not asserted within two (2) years following the Closing Date, except with respect to violations or alleged violations of the Code or ERISA, or the regulations and orders promulgated pursuant thereto, which shall survive for so long as claims relating to such violations may be brought under applicable law. Notwithstanding the foregoing or any other provision contained herein, any claims relating to fraud, criminal acts or willful misconduct by any party or its affiliates shall survive the Closing without limitation in time, and any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth above shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

7.07 Prior Agreements. This Agreement and the other Transaction Documents, constitute the entire agreement among the parties hereto, and supersede any prior understandings or agreements concerning the subject matter hereof or thereof.

7.08 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making the determination of invalidity or unenforceability

shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

7.09 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of South Carolina, without regard to conflicts of laws principles.

7.10 Representation. Each party acknowledges that it has been or has had the opportunity to be represented by competent legal counsel in connection with the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed as if all parties jointly prepared it, and no presumption against one party or another shall govern the interpretation or construction of any of the provisions of this Agreement.

7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7.12 Headings. The section headings of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

7.13 Waiver of Compliance with Transfer Provisions; Waiver of Claims Regarding Allocation of Purchase Price. Sellers hereby waive any requirement or restriction which may operate to restrict or prohibit the transfer of the Purchased Interest described herein, whether existing under the Operating Agreements or otherwise. SELLERS ACKNOWLEDGE THAT THEY HAVE EXPRESSLY REQUESTED THE PURCHASE PRICE BE ALLOCATED AMONG AND PAID TO THE INDIVIDUAL SELLERS AS SET FORTH HEREIN AND EXPRESSLY WAIVE ANY AND ALL CLAIMS AGAINST PURCHASER ARISING OUT OF THE APPORTIONMENT OF THE CONSIDERATION OR THE AMOUNT PAID TO EACH INDIVIDUAL SELLER HEREUNDER.

[*execution page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: Robert A Mitt

Name: Robert A. Merritt

Title: Sole Member

SELLERS:

Michael T. Lewallen

Edward P. Holder, Jr.

Robert H. Stroud

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: _____

Name: _____

Title: _____

SELLERS:

_____
Michael T. Lewallen

_____
Edward P. Holder, Jr.

_____
Robert H. Stroud

IN WITNESS WHEREOF, the parties hereto have executed this Membership Interest Purchase Agreement as of the date first above written.

PURCHASER:

ASAG Energy, LLC

By: _____

Name: _____

Title: _____

SELLERS:

_____
Michael T. Lewallen

_____
Edward P. Holder, Jr.

_____
Robert H. Stroud

Assignment of Membership Interest

THIS ASSIGNMENT OF MEMBERSHIP INTEREST (the "Assignment") is made and entered into this 31st day of December, 2012 by Michael T. Lewallen ("Assignor") and ASAG, LLC ("Assignee").

WHEREAS, Michael T. Lewallen, Edward P. Holder, Jr. and Robert H. Stroud (collectively, "Sellers") and Assignee have entered into that certain Membership Interest Purchase Agreement dated December 31, 2012 (the "Membership Interest Purchase Agreement"), whereby Sellers agreed to sell, and Assignee agreed to purchase, 100% of the membership interest in Lewallen Automation, LLC and Lewallen Industrial Services, LLC (together, the "Companies"); and

WHEREAS, Assignor holds 40% of the outstanding membership interest in each of the Companies ("Assignor's Membership Interest") and now desires to assign Assignor's Membership Interest to Assignee.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. This Assignment shall not be deemed to merge out of existence or otherwise extinguish any of the rights, covenants, representations, warranties or obligations of the Membership Interest Purchase Agreement.

2. Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts from Assignor, 100% of Assignor's Membership Interest.

[*signature page follows*]

Assignment of Membership Interest

THIS ASSIGNMENT OF MEMBERSHIP INTEREST (the "Assignment") is made and entered into this 31st day of December, 2012 by Michael T. Lewallen ("Assignor") and ASAG, LLC ("Assignee").

WHEREAS, Michael T. Lewallen, Edward P. Holder, Jr. and Robert H. Stroud (collectively, "Sellers") and Assignee have entered into that certain Membership Interest Purchase Agreement dated December 31, 2012 (the "Membership Interest Purchase Agreement"), whereby Sellers agreed to sell, and Assignee agreed to purchase, 100% of the membership interest in Lewallen Automation, LLC and Lewallen Industrial Services, LLC (together, the "Companies"); and

WHEREAS, Assignor holds 40% of the outstanding membership interest in each of the Companies ("Assignor's Membership Interest") and now desires to assign Assignor's Membership Interest to Assignee.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. This Assignment shall not be deemed to merge out of existence or otherwise extinguish any of the rights, covenants, representations, warranties or obligations of the Membership Interest Purchase Agreement.

2. Assignor hereby grants, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby accepts from Assignor, 100% of Assignor's Membership Interest.

[*signature page follows*]

IN WITNESS WHEREOF, the undersigned have executed this Assignment effective as of the day and year first above written.

ASSIGNOR:

_____

Michael T. Lewallen

ASSIGNEE:

ASAG, LLC

By: Robert A Merritt

Name: Robert A. Merritt

Title: Sole Member

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into the 31st day of December, 2012, by and among Lewallen Automation, LLC and Lewallen Industrial Services, LLC, each South Carolina limited liability companies (each a "Company" and together the "Companies"), and Michael T. Lewallen ("Employee"). This Agreement hereby supersedes any other employment agreements or understandings, written or oral, between the Companies and Employee.

WITNESSETH:

WHEREAS, this Agreement is being entered into pursuant to a certain Membership Interest Purchase Agreement by and between ASAG, LLC, Michael T. Lewallen, Edward P. Holder, Jr. and Robert H. Stroud dated December 31, 2012 (the "Membership Interest Purchase Agreement"), and

WHEREAS, Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

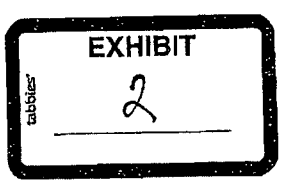
1. Employment and Duties.

(a) The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

(b) Employee shall not, during the term of his employment hereunder, be engaged in any other business activity pursued for gain, profit or other pecuniary advantage except to the extent that such activity does not interfere with Employee's duties and responsibilities hereunder. The foregoing limitations shall not be construed as prohibiting Employee from making personal investments in such form or manner as will not require his services in the operation or affairs of the companies or enterprises in which such investments are made.

2. Compensation. For all services rendered by Employee, the Companies shall compensate Employee as follows:

(a) Base Salary. The base salary payable to Employee shall be One Hundred Sixty Thousand Dollars ($160,000.00) per year, payable on a regular basis in accordance with the Companies' standard payroll procedures but not less than monthly.



(b) Quarterly Bonus. For each calendar quarter for which the Companies' cumulative EBITDA margin (calculated according to generally accepted accounting principles) meets or exceeds twelve percent (12.00%), Employee shall be paid Ten Thousand Dollars ($10,000.00). Such payment, if owed, shall be made within forty-five (45) days after the end of the calendar quarter.

(c) Yearly Equity Interest. At the end of each calendar year for the first four calendar years of this Agreement, Employee shall be given an equity interest in ASAG, LLC (the "Purchaser") equal to one-fourth of the percentage that equals the return on investment made by Purchaser during that calendar year on Purchaser's investment in the Companies divided by $1,325,000 (rounded to the nearest hundredth); provided that if Employee shall gain an equity interest pursuant to this Section and shall thereafter have a negative return on investment during such four years, Employee shall have to return the proportionate equity interest to Purchaser. If Employee's balance goes below zero, such balance shall carry forward against subsequent years. In no case shall Employee be allowed to accumulate more than a twenty percent (20%) interest in Purchaser. Employee agrees to execute the Purchaser's operating agreement, an assignment and assumption agreement and such other agreements as may be reasonably be required to acquire or dispose of an equity interest in such entity. For example: During the first year, Purchaser's return on investment is $250,000. Purchaser would convey to Employee a 4.72% interest in Purchaser ([250,000 / 1,325,000] x .25 = .0472). During the second year, Purchaser's return on investment is negative $500,000. Employee would convey all of his acquired interest back to Purchaser and carry forward a balance of negative 4.72% ([(500,000) / 1,325,000] x .25 = (.0943) + .0472 = (.0472)). During the third year, Purchaser's return on investment is $1,000,000. Purchaser would convey to Employee a 14.05% interest in Purchaser ([1,000,000 / 1,325,000] x .25 = .1887 + (.0472) = .1405). During the fourth year, Purchaser's return on investment is $1,000,000. Purchaser would convey to Employee a 5.95% interest in Purchaser ([1,000,000 / 1,325,000] x .25 = .1887 + .1405 = .3292, but total interest cannot exceed .20)

(d) Other Compensation. Employee shall be entitled to receive additional benefits and compensation from the Companies in such form and to such extent as specified below:

(i) Coverage for Employee under health, hospitalization, disability, dental and other insurance plans that the Companies may have in effect from time to time.

(ii) Reimbursement for all business travel and other out-of-pocket expenses reasonably incurred by Employee in the performance of his services pursuant to this Agreement. All reimbursable expenses shall be appropriately documented in reasonable detail by Employee upon submission of any request for reimbursement, and in a format and manner consistent with the Companies' expense reporting policy.

All compensation shall be a joint and several liability of each Company, with each Company agreeing hereby to pay one half of such compensation.

3. Place of Performance. The Companies shall not require Employee to provide employment services outside the state of South Carolina without the Employees consent.

4. Term; Termination; Rights on Termination. The term of this Agreement shall begin on the date hereof and continue for four (4) years from the date hereof, unless earlier terminated in accordance with this Section (the "Term"). In no case shall Employee be entitled to any severance pay. This Agreement and Employee's employment may be terminated in any one of the following ways:

(a) Death. The death of Employee shall immediately terminate the Agreement with no severance compensation due to Employee's estate.

(b) Disability. The Companies will make efforts to reasonably accommodate Employee as required by applicable state or federal disability laws. However, the parties irrefutably presume that, given Employee's position, it would be an undue hardship to the Companies if Employee is absent for more than three (3) consecutive months. Therefore, if as a result of incapacity due to physical or mental illness or injury, Employee shall have been absent from his full-time duties hereunder for three (3) consecutive months, then thirty (30) days after receiving written notice (which notice may occur before or after the end of such three (3) month period, but which shall not be effective earlier than the last day of such three (3) month period), the Companies may terminate Employee's employment hereunder provided Employee is unable to resume his full-time duties at the conclusion of such notice period.

(c) Good Cause. The Companies may terminate the Agreement after written notice to Employee for good cause, which shall be: (i) Employee's breach of this Agreement; (ii) Employee's negligence in the performance or the nonperformance of any of Employee's duties and responsibilities hereunder; (iii) Employee's dishonesty, fraud or misconduct with respect to the business or affairs of the Companies that adversely affects the operations or reputation of the Companies; (iv) Employee's conviction of a felony crime; (v) chronic alcohol abuse or illegal drug abuse by Employee; or (vi) dissolution of either of the Companies or the failure of either of the Companies to constitute a going concern. Employee may terminate the Agreement after written notice to the Companies for good cause, which shall be the Companies' breach of this Agreement.

5. Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the Companies or their representatives, vendors or customers which pertain to the business of the Companies shall be and remain the property of the Companies, and be subject at all times to its discretion and control. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Companies that is collected by Employee shall be delivered promptly to the Companies without request by it upon termination of Employee's employment.

6. Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

7. Indemnification. In the event Employee is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Companies against Employee), by reason of the fact that he is or was performing services under this Agreement, then the Companies shall indemnify Employee against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, as actually and reasonably incurred by Employee in connection therewith. In the event that both Employee and the Companies are made a party to the same third-party action, complaint, suit or proceeding, the Companies agree to engage competent legal representation, and Employee agrees to use the same representation, provided that if counsel selected by the Companies shall have a conflict of interest that prevents such counsel from representing Employee, Employee may engage separate counsel and the Companies shall pay all attorneys' fees of such separate counsel. Further, while Employee is expected at all times to use his best efforts to faithfully discharge his duties under this Agreement, Employee shall not be held liable to the Companies for errors or omissions made in good faith where Employee has not exhibited negligence or performed criminal and fraudulent acts which damage the business of the Companies.

8. No Prior Agreements. Employee hereby represents and warrants to the Companies that the execution of this Agreement by Employee and his employment by the Companies and the performance of his duties hereunder will not violate or be a breach of any agreement with a former employer, client or any other person or entity. Further, Employee agrees to indemnify the Companies for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Companies based upon or arising out of any non-competition agreement, invention or secrecy agreement between Employee and such third party which was in existence as of the date of this Agreement.

9. Assignment; Binding Effect. Employee understands that he has been selected for employment by the Companies on the basis of his personal qualifications, experience and skills. Employee agrees, therefore, he cannot assign all or any portion of his performance under this Agreement. Subject to the preceding, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, legal representatives, successors and assigns.

10. Complete Agreement. This Agreement is not a promise of future employment. Employee has no oral representations, understandings or agreements with the Companies or any of their officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between the Companies and Employee and of all the terms of this Agreement, and it cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements; provided, however, that if Employee has executed a Noncompetition Agreement pursuant to the Membership Interest Purchase Agreement dated of even date herewith, the parties agree that this Agreement is not meant to supersede or cancel the Noncompetition Agreement. This Agreement may not be later modified except by a further writing signed by a duly authorized officer of the Companies and Employee, and no term of this Agreement may be waived except by writing signed by the party waiving the benefit of such term.

11. Notice. Whenever any notice is required hereunder, it shall be given in writing addressed as follows:

If to Employee:

Mr. Mike Lewallen
1 River Drive Ext.
Williamston, SC 29697

If to either of the Companies:

Lewallen Automation, LLC and/or Lewallen Industrial Services, LLC
c/o ASAG, LLC
301 Enterprise Drive
Easley, SC 29642
Attn: Rob Merritt

with a copy to:

Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, 11th Floor
Greenville, SC 29601
Attn: Frank T. Davis

Notice shall be deemed given and effective three (3) days after the deposit in the United States mail of a writing addressed as above and sent first class mail, certified, return receipt requested, or when actually received. Either party may change the address for notice by notifying the other party of such change in accordance with this paragraph 12.

12. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of the Agreement or of any part hereof.

13. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

14. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANIES

Lewallen Automation, LLC

By: Robert A. Merritt
Name: Robert A. Merritt
Title: President and Manager

Lewallen Industrial Services, LLC

By: Robert A. Merritt
Name: Robert A. Merritt
Title: President and Manager

EMPLOYEE:

Michael T. Lewallen

Solely for the purpose of consenting to Section 2(c) above, ASAG, LLC hereby joins in the execution of this Agreement:

ASAG, LLC

By: Robert A. Merritt
Name: Robert A. Merritt
Title: Sole Member

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANIES

Lewallen Automation, LLC

By: _____
Name: _____
Title: _____

Lewallen Industrial Services, LLC

By: _____
Name: _____
Title: _____

EMPLOYEE:

Michael T. Lewallen

Michael T. Lewallen

Solely for the purpose of consenting to Section 2(c) above, ASAG, LLC hereby joins in the execution of this Agreement:

ASAG, LLC

By: _____
Name: _____
Title: _____

Policy Number	Issued	Revised	Repealed
109	January 1, 2014		

Confidentiality and Trade Secrets

The protection of confidential business information and trade secrets is vital to the interest and the success of Lewallen. Trade secrets are information, including but are not limited to a formula, pattern, compilation, program, device, method, technique, process, design, procedure, product or code. Applicable statutes or other law may define trade secrets with additional specificity.

Employees who improperly use or disclose Lewallen's confidential business information or trade secrets may be subject to disciplinary action, up to and including termination of employment, and legal action, even if they do not actually benefit from the use of disclosed information. Furthermore, Lewallen may require certain employees to sign agreements that, among other things, obligate the employee to maintain the confidentiality of such information. To the extent any such agreement differs in any respect from this policy, the agreement shall control.

All employees also have a duty to protect the confidential information of Lewallen's employees and business associates. Meticulous care should be taken to ensure sensitive information related to an individual's identification, social security number, date of birth, address, etc. remains secure at all times. Similarly, appropriate care should be taken to ensure sensitive information related to contractors', customers', clients', suppliers' and vendors' information related to FEIN, financial credit status and history, contracts and agreements with Lewallen, etc. remains secure at all times.

In addition, information, documents, records and files (paper and electronic) related to finance, human resources, payroll, maintenance, safety and other business activities and meetings are considered the confidential property of Lewallen, and should not be removed from the office premises or discussed outside of Lewallen without consent from the Chief Executive Officer.

Appropriate care may include, but is not limited to, restricting access to information, storing documents in locked filing cabinets, locking offices, shredding, utilizing unique computer application logons and passwords, encrypting data sent electronically, etc. Care should be taken not to discuss confidential matters in the presence or within hearing range of unauthorized persons and when talking on cellular telephones. Employees are encouraged to bring any concerns or suggestions to the attention of their immediate supervisor and/or the Chief Executive Officer.

An employee's obligation to protect confidential business information and trade secrets as outlined above continues after he or she is no longer employed at Lewallen.

EXHIBIT
3

STATE OF SOUTH CAROLINA)
) NON-COMPETE, NON-SOLICITATION,
) AND TRADE SECRET AGREEMENT
COUNTY OF GREENVILLE)

THIS AGREEMENT dated 12/31, 2011 is made BETWEEN LEWALLEN AUTOMATION, INC., a South Carolina corporation ("the Company") and DAVID CASE ("Employee").

WHEREAS Employee is currently employed by the Company as a TECH SOLUTIONS MGR and

WHEREAS the Company will be revealing to Employee certain proprietary, confidential, and trade secret information, including its marketing strategies, existing pricing structures to customers, compensation packages for employees, customer sales summaries, overall pricing and service strategies, and operation strategy, design, and implementation for new and existing customers, and

WHEREAS the Company will be placing or has placed Employee in contact with the Company's existing and prospective customers in order to develop Company goodwill and customer relations so that the Employee can promote the Company's interests and objectives, and

WHEREAS THIS AGREEMENT DOES NOT ALTER EMPLOYEE'S STATUS AS AN AT-WILL EMPLOYEE, WHICH MEANS EITHER EMPLOYEE OR THE COMPANY MAY TERMINATE EMPLOYEE'S EMPLOYMENT AT ANY TIME, FOR ANY OR NO REASON, WITH OR WITHOUT NOTICE, and

WHEREAS the Company is a profit generating business operating in a highly competitive business environment that has a valid interest in protecting its proprietary, confidential, and trade secret information and the goodwill and business relationships with its current and prospective customers,

NOW THEREFORE in consideration of the employment of Employee, the mutual covenants and promises made herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by Employee, the Company and Employee agree with each other as follows:

1. **PURPOSE.** It is the purpose of this Agreement to limit reasonably the Employee's unfair competition following the end of the Employee's employment and to define the corresponding obligations between the Company and Employee concerning (1) any such competition, (2) the solicitation of the Company's customers for or on behalf of the Company's competitors, (3) the solicitation of the Company's other employees to act in competition with the Company, (4) the treatment of the Company's proprietary, confidential, and trade secret

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Initials of Employee

Initials of Company

EXHIBIT 4

information, and (5) the establishment of ownership rights and related obligations with respect to certain of Employee's developments and inventions.

2. DEFINITIONS

a. **"Employer"** shall include Lewallen Automation, Inc. and any and all of its subsidiaries and affiliates.

b. **"Business of the Company"** means the business of providing electrical design and controls products and staffing services with expertise in industrial automation to Customers.

c. **"Competing Business"** means any business organization, regardless of form, that is directly engaged in whole or in relevant part in any business or enterprise which is the same as, or substantially the same as the Business of the Company.

d. **"Confidential Information"** means information and the compilation of information related to the operation of the Company which derives economic value, actual or potential, from not being generally known to or readily available or ascertainable by other persons who can obtain economic value from its disclosure or use. Assuming the foregoing criteria are met, Confidential Information includes, but is not limited to: Compilations of information concerning existing or prospective customers, proposals made to existing or prospective customers or other information contained in bids or offers to such customers, the terms of any arrangements or agreements with customers, including the amounts paid for such services or how pricing was developed by the Company, the identity of vendors and vendor pricing information and subcontractors, the composition or description of future services that are or may be provided by the Company, the Company's financial, marketing, and sales information, and technical expertise, formulas, source codes, and know how developed by the Company, including the unique manner in which the Company conducts its business. Confidential Information shall also include any information disclosed to the Company by a third party which the Company is obliged to treat as confidential. Confidential Information excludes any information or compilation of information that constitutes a Trade Secret under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 (2003), et seq.

e. **"Trade Secret"** shall mean information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

DC
Initials of Employee

Initials of Company

A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.

f. **"Customers"** shall mean those individuals or companies for whom the Company has provided products or services in connection with the Business of the Company or whom the Company has solicited in connection with the Business of the Company.

g. **"Person"** means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or other entity.

3. **Non-Solicitation of Customers, Contractors, and Employees.**

a. Non-Solicitation of Customers. Employee agrees that while under Contract with the Company and for two (2) years following the voluntary or involuntary termination of the contract, Employee will not, either on behalf of Employee or for any Competing Business, directly or indirectly solicit, divert, or appropriate, attempt to solicit, divert or appropriate any Customer with whom Contractor had Material Business Contact in the two (2) year period preceding the termination of the contract between Contractor and the Company, for the purposes of providing products or services that are the same as or substantially similar to the Business of the Company.

b. Non-Solicitation of Contractors and Employees. Employee agrees that while under Contract with the Company and for two (2) years following the voluntary or involuntary termination of the contract for any reason, the Employee will not directly or indirectly solicit, recruit, or encourage current employees of the Company who have terminated their contracts or employment with the Company within six (6) months of the solicitation, recruitment, or encouragement to provide to a Competing Business the same or substantially similar services they provided to the Company.

4. **Non-Disclosure and Non-Use of Confidential Information and Trade Secrets.**

a. Employee hereby expressly covenants and agrees that while employed with the Company and for a period of two (2) years from the voluntary or involuntary termination of Employee's employment with Company, Employee will not without prior written consent of the Company disclose, use, reproduce, distribute, or otherwise disseminate the Company's Confidential Information or take any action causing or fail to take any action necessary in order to prevent any such information to lose its character or cease to qualify as Confidential Information. Employee agrees never to disclose, use, reproduce, distribute, or

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Initials of Employee

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Initials of Company

otherwise disseminate the Company's trade secrets, as that term is defined under the South Carolina Trade Secrets Act or take any action causing or fail to take any action necessary in order to prevent any such information to lose its character or cease to qualify as a trade secret.

(1) Employee will report immediately to the Company any attempts by any other employees or third parties to improperly obtain Confidential Information. Employee will also immediately notify the Company of any subpoenas or other legal process that requests Confidential Information or Trade Secrets, provide the Company with a copy of the legal documents, and consult with the Company's legal department regarding the appropriate response.

(2) Employee also agrees to immediately return to the Company and to the Company's respective Customers all property belonging to the Company and its Customers such as keys, credit cards, telephones, blackberries, computers, pagers, and other portable electronic devices, as well as all originals, copies, or other physical embodiments of the Company's and its Customer's Confidential and Trade Secret Information (regardless of whether it is in paper, electronic, or other form), including any such information in any programs, business forms, manuals, correspondence, files, databases, or on computer disks or any other storage medium, upon termination of Employee's employment with Company or upon any earlier request by the Company, and Employee agrees not to keep or distribute any copies of any of the foregoing.

(3) Employee agrees that should Employee have any questions regarding whether particular information constitutes Confidential Information subject to the restrictions of this Agreement, Employee will ask Mike Lewallen before disclosing, using, reproducing, distributing, or otherwise distributing this information in a manner that violates or could violate this Agreement.

5. **Non-Competition.** Employee hereby expressly covenants and agrees that Employee will not, while employed with Company, without the prior written consent of Company, directly or indirectly, within a 150 mile radius of 3504-356 Highway 153, Greenville, South Carolina 29611 ("geographic area"), provide or attempt to provide (or advise others of the opportunity to provide) any services similar to those provided by the Company to any Customer that: (i) the Company introduced Employee to; (ii) Employee performed services for through the Company; or (iii) Employee received information about through the Company. Employee acknowledges that the geographic area described in this paragraph is the actual geographic area in which he or she has worked and will work for the Company.

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Initials of Employee

Initials of Company

6. **Ownership of Employee Developments and Inventions.** All copyrights, patents, Trade Secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship that are (a) developed or created by Employee during the course of performing work for the Company or its customers, or during normal business hours; or (b) otherwise developed by Employee while employed by the Company if such development relates to or is useful in connection with the Business of the Company (collectively referred to as "Work Product") shall belong exclusively to the Company and shall, to the extent possible, be considered a work made by Employee for hire for the Company within the meaning of Title 17 of the United States Code. To the extent the Work Product may not be considered work for hire by Employee for the Company, Employee agrees to automatically assign without any requirement for further consideration, any right, title or interest Employee may have in such Work Product. Upon request of the Company, Employee shall take such further actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

7. **Representations of Employee.** Employee warrants and represents to the Company that Employee was at no time a party to any oral or written agreement, or any other matter or event, which would restrict Employee's right to work for or represent the Company.

8. **Remedies.** The parties acknowledge that a breach or threatened breach of any of the terms of this Agreement by Employee would result in material and irreparable damage and injury to the Company and that it would be difficult or impossible to establish the full monetary value of such damage. Therefore, the Company will be entitled to injunctive relief by a court of competent jurisdiction in the event of Employee's actual or threatened breach of any of the terms in sections 3, 4, 5, 6, 7, or 8 above. The Company's right to an injunction will not prohibit the Company from pursuing other remedies, including the recovery of monetary damages, and it shall not be a defense to any action hereunder that Employee has a claim against the Company under this Agreement or otherwise.

9. **Tolling.** In the event the enforceability of any of the terms of this Agreement shall be challenged in a court of competent jurisdiction and Employee is not enjoined from breaching any of the restrictive covenants, then if a court of competent jurisdiction finds that the challenged restrictive covenant(s) is enforceable, the time periods set forth herein shall be deemed tolled upon the filing of a lawsuit challenging the enforceability of this Agreement until the dispute is finally resolved and all periods of appeal have expired.

10. **Severability.** It is the desire and intent of the parties that the provisions of the Agreement shall be enforced to the fullest extent permissible. Accordingly, if any particular paragraph(s), subparagraph(s), or portion(s) of this Agreement shall be adjudicated to be invalid or unenforceable as written, such paragraph(s), subparagraph(s), or portion(s) shall be modified to the extent necessary to be valid or enforceable. Such modification shall not affect the remaining provisions of this Agreement. To the extent any paragraph(s), subparagraph(s), or portion(s) of this Agreement found invalid or unenforceable cannot be modified to be made

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Initials of Employee

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Initials of Company

valid or enforceable, then the Agreement shall be construed as if that paragraph(s), subparagraph(s), or portion(s) were deleted, and all remaining terms and provisions shall be enforceable in law or equity in accordance with their terms.

11. **Assignment.** This Agreement and the rights of Employer hereunder may be assigned by Employer or transferred to a successor company and shall inure to the benefit of, shall be binding upon and shall be enforceable by any such assignee or successor. This Agreement and the rights and obligations of Employee hereunder may not be assigned by Employee.

12. **Waiver.** The waiver by Employer of any breach of this Agreement by Employee shall not be effective unless in writing, and no such waiver shall operate or be construed as a waiver of the same type of breach or any other breach on a subsequent occasion.

13. **Employee's Status.** Nothing in this Agreement will be construed as constituting a commitment, guarantee, agreement or understanding of any kind or nature that Employer will continue to employ Employee, nor will this Agreement affect in any way the right of Employer to terminate the employment of Employee at any time and for any reason whatsoever. By Employee's execution of this Agreement Employee acknowledges and agrees that Employee's employment is "at-will." No change of Employee's duties as an employee of Employer will result in, or be deemed to be, a modification of the terms of this Agreement.

14. **Governing Law, Jurisdiction, and Venue.** This Agreement has been entered into under and shall be governed by the laws of the State of South Carolina. The parties agree that the courts of the state of South Carolina, County of Greenville or Federal District Court for the District of South Carolina, Greenville Division shall be the sole and exclusive jurisdiction and venue for all disputes between the parties under this Agreement. Employee hereby irrevocably consents to the jurisdiction and venue of the courts of the state of South Carolina, County of Greenville or Federal District Court for the District of South Carolina, Greenville Division for adjudication of all disputes between the parties under this Agreement. Employee hereby waives any objections or defenses to jurisdiction or venue in any such proceeding before such court.

15. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous understandings between the parties and constitutes the sole and entire Agreement between the parties with respect to all matters contained herein. No provisions hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced.

(Signatures on Following Page)

Signatures To Confirm Agreement

Company Official – President — Date: 1/11/2012

Raymond D. Weatherford
Print Name

David Case — Date: 1/11/2012
Signature of Employee

David Case
Print Name

Witness — Date: 1-11-12
Signature of Witness

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Initials of Employee

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Initials of Company

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF ANDERSON)

NON-COMPETE, NON-SOLICITATION, AND TRADE SECRET AGREEMENT

THIS AGREEMENT dated 7/29, 2013 is made BETWEEN **LEWALLEN AUTOMATION, INC.**, a South Carolina corporation ("the Company") and _____ ("Employee").

WHEREAS Employee is currently employed by the Company as a Panel Tech, and

WHEREAS the Company will be revealing to Employee certain proprietary, confidential, and trade secret information, including its marketing strategies, existing pricing structures to customers, compensation packages for employees, customer sales summaries, overall pricing and service strategies, and operation strategy, design, and implementation for new and existing customers, and

WHEREAS the Company will be placing or has placed Employee in contact with the Company's existing and prospective customers in order to develop Company goodwill and customer relations so that the Employee can promote the Company's interests and objectives, and

WHEREAS THIS AGREEMENT DOES NOT ALTER EMPLOYEE'S STATUS AS AN AT-WILL EMPLOYEE, WHICH MEANS EITHER EMPLOYEE OR THE COMPANY MAY TERMINATE EMPLOYEE'S EMPLOYMENT AT ANY TIME, FOR ANY OR NO REASON, WITH OR WITHOUT NOTICE, and

WHEREAS the Company is a profit generating business operating in a highly competitive business environment that has a valid interest in protecting its proprietary, confidential, and trade secret information and the goodwill and business relationships with its current and prospective customers,

NOW THEREFORE in consideration of the payment of $ -0-, the mutual covenants and promises made herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged by Employee, the Company and Employee agree with each other as follows:

1. **PURPOSE.** It is the purpose of this Agreement to limit reasonably the Employee's unfair competition following the end of the Employee's employment and to define the corresponding obligations between the Company and Employee concerning (1) any such competition, (2) the solicitation of the Company's customers for or on behalf of the Company's competitors, (3) the solicitation of the Company's other employees to act in competition with the Company, (4) the treatment of the Company's proprietary,

Initials of Employee

Initials of Company

confidential, and trade secret information, and (5) the establishment of ownership rights and related obligations with respect to certain of Employee's developments and inventions.

2. DEFINITIONS

a. "**Employer**" shall include Lewallen Automation, Inc. and any and all of its subsidiaries and affiliates.

b. "**Business of the Company**" means the business of providing electrical design and controls products and staffing services with expertise in industrial automation to Customers.

c. "**Competing Business**" means any business organization, regardless of form, that is directly engaged in whole or in relevant part in any business or enterprise which is the same as, or substantially the same as the Business of the Company.

d. "**Confidential Information**" means information and the compilation of information related to the operation of the Company which derives economic value, actual or potential, from not being generally known to or readily available or ascertainable by other persons who can obtain economic value from its disclosure or use. Assuming the foregoing criteria are met, Confidential Information includes, but is not limited to: Compilations of information concerning existing or prospective customers, proposals made to existing or prospective customers or other information contained in bids or offers to such customers, the terms of any arrangements or agreements with customers, including the amounts paid for such services or how pricing was developed by the Company, the identity of vendors and vendor pricing information and subcontractors, the composition or description of future services that are or may be provided by the Company, the Company's financial, marketing, and sales information, and technical expertise, formulas, source codes, and know how developed by the Company, including the unique manner in which the Company conducts its business. Confidential Information shall also include any information disclosed to the Company by a third party which the Company is obliged to treat as confidential. Confidential Information excludes any information or compilation of information that constitutes a Trade Secret under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 (2003), et seq.

e. "**Trade Secret**" shall mean information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be

Initials of Employee

Initials of Company

perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.

f. "Customers" shall mean those individuals or companies for whom the Company has provided products or services in connection with the Business of the Company or whom the Company has solicited in connection with the Business of the Company.

g. "Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or other entity.

3. **Non-Solicitation of Customers, Contractors, and Employees.**

a. Non-Solicitation of Customers. Employee agrees that while under Contract with the Company and for two (2) years following the voluntary or involuntary termination of the contract, Employee will not, either on behalf of Employee or for any Competing Business, directly or indirectly solicit, divert, or appropriate, attempt to solicit, divert or appropriate any Customer with whom Contractor had Material Business Contact in the two (2) year period preceding the termination of the contract between Contractor and the Company, for the purposes of providing products or services that are the same as or substantially similar to the Business of the Company.

b. Non-Solicitation of Contractors and Employees. Employee agrees that while under Contract with the Company and for two (2) years following the voluntary or involuntary termination of the contract for any reason, the Employee will not directly or indirectly solicit, recruit, or encourage current employees of the Company who have terminated their contracts or employment with the Company within six (6) months of the solicitation, recruitment, or encouragement to provide to a Competing Business the same or substantially similar services they provided to the Company.

4. **Non-Disclosure and Non-Use of Confidential Information and Trade Secrets.**

a. Employee hereby expressly covenants and agrees that while employed with the Company and for a period of two (2) years from the voluntary or involuntary termination of Employee's employment with Company, Employee will not without prior written consent of the Company disclose, use, reproduce, distribute, or otherwise disseminate the Company's Confidential Information or take any action causing or fail to take any action necessary in order to prevent any such information to lose its character or cease to qualify as Confidential Information. Employee agrees never to disclose, use, reproduce, distribute, or otherwise disseminate the Company's trade secrets, as that term is defined under the South Carolina Trade Secrets Act or take any action causing or fail to take any action necessary in order to prevent any such information to lose its character or cease to qualify as a trade secret.

Initials of Employee

Initials of Company

(1) Employee will report immediately to the Company any attempts by any other employees or third parties to improperly obtain Confidential Information. Employee will also immediately notify the Company of any subpoenas or other legal process that requests Confidential Information or Trade Secrets, provide the Company with a copy of the legal documents, and consult with the Company's legal department regarding the appropriate response.

(2) Employee also agrees to immediately return to the Company and to the Company's respective Customers all property belonging to the Company and its Customers such as keys, credit cards, telephones, blackberries, computers, pagers, and other portable electronic devices, as well as all originals, copies, or other physical embodiments of the Company's and its Customer's Confidential and Trade Secret Information (regardless of whether it is in paper, electronic, or other form), including any such information in any programs, business forms, manuals, correspondence, files, databases, or on computer disks or any other storage medium, upon termination of Employee's employment with Company or upon any earlier request by the Company, and Employee agrees not to keep or distribute any copies of any of the foregoing.

(3) Employee agrees that should Employee have any questions regarding whether particular information constitutes Confidential Information subject to the restrictions of this Agreement, Employee will ask Jamie Satterwhite before disclosing, using, reproducing, distributing, or otherwise distributing this information in a manner that violates or could violate this Agreement.

5. **Non-Competition.** Employee hereby expressly covenants and agrees that Employee will not, while employed with Company, without the prior written consent of Company, directly or indirectly, within a 150 mile radius of 223 Pine Road, Easley, South Carolina 29642 ("geographic area"), provide or attempt to provide (or advise others of the opportunity to provide) any services similar to those provided by the Company to any Customer that: (i) the Company introduced Employee to; (ii) Employee performed services for through the Company; or (iii) Employee received information about through the Company. Employee acknowledges that the geographic area described in this paragraph is the actual geographic area in which he or she has worked and will work for the Company.

6. **Ownership of Employee Developments and Inventions.** All copyrights, patents, Trade Secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship that are (a) developed or created by Employee during the course of performing work for the Company or its customers, or during normal business hours; or (b) otherwise developed by Employee while employed by the Company if such development relates to or is useful in connection with the Business of the Company (collectively referred to as "Work Product") shall belong exclusively to the Company and shall, to the extent possible, be considered a work made by Employee for hire for the Company within the meaning of Title 17 of the United States Code. To the extent the Work Product may not be considered work for hire by

Initials of Employee

Initials of Company

Employee for the Company, Employee agrees to automatically assign without any requirement for further consideration, any right, title or interest Employee may have in such Work Product. Upon request of the Company, Employee shall take such further actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

7. **Representations of Employee.** Employee warrants and represents to the Company that Employee was at no time a party to any oral or written agreement, or any other matter or event, which would restrict Employee's right to work for or represent the Company.

8. **Remedies.** The parties acknowledge that a breach or threatened breach of any of the terms of this Agreement by Employee would result in material and irreparable damage and injury to the Company and that it would be difficult or impossible to establish the full monetary value of such damage. Therefore, the Company will be entitled to injunctive relief by a court of competent jurisdiction in the event of Employee's actual or threatened breach of any of the terms in sections 3, 4, 5, 6, 7, or 8 above. The Company's right to an injunction will not prohibit the Company from pursuing other remedies, including the recovery of monetary damages, and it shall not be a defense to any action hereunder that Employee has a claim against the Company under this Agreement or otherwise.

9. **Tolling.** In the event the enforceability of any of the terms of this Agreement shall be challenged in a court of competent jurisdiction and Employee is not enjoined from breaching any of the restrictive covenants, then if a court of competent jurisdiction finds that the challenged restrictive covenant(s) is enforceable, the time periods set forth herein shall be deemed tolled upon the filing of a lawsuit challenging the enforceability of this Agreement until the dispute is finally resolved and all periods of appeal have expired.

10. **Severability.** It is the desire and intent of the parties that the provisions of the Agreement shall be enforced to the fullest extent permissible. Accordingly, if any particular paragraph(s), subparagraph(s), or portion(s) of this Agreement shall be adjudicated to be invalid or unenforceable as written, such paragraph(s), subparagraph(s), or portion(s) shall be modified to the extent necessary to be valid or enforceable. Such modification shall not affect the remaining provisions of this Agreement. To the extent any paragraph(s), subparagraph(s), or portion(s) of this Agreement found invalid or unenforceable cannot be modified to be made valid or enforceable, then the Agreement shall be construed as if that paragraph(s), subparagraph(s), or portion(s) were deleted, and all remaining terms and provisions shall be enforceable in law or equity in accordance with their terms.

11. **Assignment.** This Agreement and the rights of Employer hereunder may be assigned by Employer or transferred to a successor company and shall inure to the benefit of, shall be binding upon and shall be enforceable by any such assignee or successor. This Agreement and the rights and obligations of Employee hereunder may not be assigned by Employee.

12. **Waiver.** The waiver by Employer of any breach of this Agreement by Employee shall not be effective unless in writing, and no such waiver shall operate or be construed as a waiver of the same type of breach or any other breach on a subsequent occasion.

13. **Employee's Status.** Nothing in this Agreement will be construed as constituting a commitment, guarantee, agreement or understanding of any kind or nature that Employer will continue to employ Employee, nor will this Agreement affect in any way the right of Employer to terminate the employment of Employee at any time and for any reason

Initials of Employee

Initials of Company

whatsoever. By Employee's execution of this Agreement Employee acknowledges and agrees that Employee's employment is "at-will." No change of Employee's duties as an employee of Employer will result in, or be deemed to be, a modification of the terms of this Agreement.

14. **Governing Law, Jurisdiction, and Venue.** This Agreement has been entered into under and shall be governed by the laws of the State of South Carolina. The parties agree that the courts of the State of South Carolina, County of Greenville or Federal District Court for the District of South Carolina, Greenville Division shall be the sole and exclusive jurisdiction and venue for all disputes between the parties under this Agreement. Employee hereby irrevocably consents to the jurisdiction and venue of the courts of the State of South Carolina, County of Greenville or Federal District Court for the District of South Carolina, Greenville Division for adjudication of all disputes between the parties under this Agreement. Employee hereby waives any objections or defenses to jurisdiction or venue in any such proceeding before such court.

15. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous understandings between the parties and constitutes the sole and entire Agreement between the parties with respect to all matters contained herein. No provisions hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced.

(Signatures on Following Page)

Signatures To Confirm Agreement

Leigh Anna Compton — 7/29/13
Company Official — Date

Leigh Anna Compton
Print Name

[signature] — 7/29/13
Signature of Employee — Date

Print Name

Lisa Evans — 7/29/13
Signature of Witness — Date

South Carolina
County of Anderson

Sworn to and subscribed before me this 29th day of July 2013

SEAL

James A. Summey
Official Signature of Notary

James A. Summey
Notary's Printed Name

My Commission Expires: 6/3/2018

[signature]
Initials of Employee

Initials of Company

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Lewallen Automation, LLC,	)	C.A. No.: 2014-CP-23-4895
	)	
Plaintiff,	)	
	)	
v.	)	**AMENDED AFFIDAVIT OF VINCE BLANTON**
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	
	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMER
2014 SEP 19 PM 1 19

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

1. I am Vince Blanton, _____ (your title) with Lewallen Automation, LLC ("LALLC").

2. I have personal knowledge of the matters attested to herein.

3. After Mike Lewallen ended his employment with LALLC, when I was out with my friends, Mike texted me to ask what I was doing and where I was, and I told him. He arrived at the location with someone from EverWorks that he wanted me to meet, but I did not talk to him or Mike, and continued to visit with my friends.

FURTHER AFFIANT SAYETH NOT.

Vince Blanton

SWORN TO before me this 18th
day of September, 2014.

Melinda Kay Dias
Notary Public for South Carolina
My Commission Expires: July 16, 2017

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Lewallen Automations, LLC and ASAG, LLC, Plaintiffs, v. Michael Lewallen and Everworks, LLC, Defendants,	Case No.: 2014-CP-23-4895 **AFFIDAVIT OF JEREMY STEINER**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 SEP 25 PM 3 56

NOW COMES THE DEPONENT, Jeremy Steiner, and being duly sworn deposes and says:

1. My name is Jeremy Steiner, I am over the age of 18, I am otherwise fully competent to make this affidavit and testify to the matters stated herein. This Affidavit is based on my personal knowledge, information, belief, and experience, and facts stated herein are, to the best of my information and belief, true and correct.

2. I am employed by Everworks, LLC ("Everworks"), I am also the Managing Member. Prior to working with Everworks I was employed by Barry-Wehmiller Design Group and Rockwell Automation. For each of these companies I worked in industrial automation.

3. Everworks is in the business of providing industrial automation. Though this may encompass many functions, it may be easiest to describe it as providing turnkey automation systems and engineering services to manufacturers. This process usually involves making sure that all elements of a production line, such as conveyors, automated machines, or robots, electrical requirements, piping and other support systems work as specified by the manufacturer. A control panel is a part of this process and may be thought of as the 'brains' of the production line, providing instructions to all parts of the line so that they operate in synchronization. Though Everworks could build control panels, it does not typically build them, but instead designs and acquires them through third party vendors as a part of our overall automation process.

4. Everworks has been providing industrial automation services to several customers, including Michelin, since 2012.

5. Everworks is currently earning approximately $100,000.00 per year in revenue from Michelin and has current executor contracts with Michelin that have been in place since before hiring Micheal Lewallen.

6. Lewallen Automation, LLC ("LALLC") is also a supplier to Michelin. It is my understanding that LALLC provides control panels to Michelin.

7. I met Micheal Lewallen ("Lewallen") when he was employed by LALLC because both companies worked at Michelin.

8. In late July 2014 Lewallen informed me that he was no longer employed by LALLC.

9. Everworks agreed to and did hire Lewallen in early August 2014.

10. At no point did Lewallen tell me they had a contract with LALLC. Neither I nor Everworks was aware of any contract(s) between Lewallen and LALLC at the time of the hiring.

11. Neither I nor Everworks, either before or after hiring Lewallen, solicited any information about LALLC, nor did Lewallen offer any information about LALLC. Information about LALLC products and processes are not necessary because each automation solution is unique to the client's requirements that are given by the client during a request for bids on a project and is created with products available on the market from vendors known in the industry. Information about LALLC customers and vendors is not necessary because any manufacturer is a potential customer and any producer of equipment used in the manufacturing process is a potential vendor. LALLC's financial information including pricing, pricing formulas, profit margins and/or vendor costs because customers will often make current pricing available and, because of my years of experience in the industry I am aware of cost tolerances for customers and potential customers, vendor cost information is available from the vendors and pricing formulas and profit margins for Everworks can and has always been calculated based on these numbers and not from any competitor.

12. In late August 2014 I had a lunch meeting with David Case and learned that he was interested in working for Everworks.

13. I learned form a manager at Michelin that hiring David Case would not be a problem for Michelin and may be advantageous to Michelin.

14. I hired David case to work for Everworks and he began employment with Everworks on September 2, 2014.

15. In August 2014 I found that Harrison Greer was interested in an opportunity with

Everworks.

16. I hired Harrison Greer to work for Everworks and he began employment with Everworks on September 2, 2014.

17. Harrison Greer is currently a technician for Everworks on a project at BASF, which is not a customer of LALLC.

18. I hired David Case and Harrison Greer because I wanted to generate additional revenue for Everworks.

19. I have never made any disparaging statements to anyone regarding LALLC or ASAG, LLC. I am not aware of any employee of Everworks, including Micheal Lewallen, making any disparaging statements to anyone regarding LALLC or ASAG, LLC to anyone. Neither I nor Everworks has authorized any of Everworks employees, including Micheal Lewallen to make any statements of any kind to anyone regarding LALLC, ASAG, LLC or any other competitor to anyone nor would Everworks ratify or condone any such action were it to occur.

20. I met with Vince Blanton once when I ran into him and and Micheal Lewallen at Bubba Annie's restaurant on July 31st. When I arrived Micheal Lewallen and Vince Blanton were sitting at the table by themselves and they invited me to sit with them. The three of us shared beers and spoke for nearly 2 hours. Vince Blanton discussed being unhappy with LALLC and wanting to leave LALLC. Additionally, Vince Balnton stated that he and others were fearful of losing their jobs or worse because Lewallen Automation had tracking devices installed on their company cars. Vince Blanton was very eager to get away from the management at Lewallen Automation but didn't have a lot of family or friends to depend on and was in fear of losing his income for his family. Vince Blanton and I exchanged phone numbers. I later texted him but received no response. I have not contacted or attempted to contact Vince Blanton since that text.

Further the Affiant sayeth naught.

Jeremy Steiner

SWORN to before me this 23rd

day of September, 2014.

Martha Tinley (SEAL)
Notary Public for South Carolina
My Commission Expires: 11/1/21

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Lewallen Automations, LLC and ASAG, LLC,

Plaintiffs,

v.

Michael Lewallen and Everworks, LLC,

Defendants,

Case No.: 2014-CP-23-4895

AFFIDAVIT OF DAVID CASE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 SEP 25 PM 3:56

NOW COMES THE DEPONENT, David Case, and being duly sworn deposes and says:

1. My name is David Case, I am over the age of 18, I am otherwise fully competent to make this affidavit and testify to the matters stated herein. This Affidavit is based on my personal knowledge, information, belief, and experience, and facts stated herein are, to the best of my information and belief, true and correct.

2. I am currently employed by Everworks, LLC ("Everworks"), as a Senior controls Engineer.

3. Prior to working with Everworks I was employed by Lewallen Automation, LLC ("LALLC") as a Controls Engineer.

4. In early September 2014 I decided to terminate my employment with LALLC. I had been unhappy with for many reasons but primarily because I felt undervalued and underappreciated by LALLC.

5. In late August or early September 2014 I ran into Michael Lewallen at lunch. While speaking with Mr. Lewallen he told me there might be an opportunity for me at Everworks. I was interested and a lunch meeting with Jeremy Steiner of Everworks was arranged.

6. I was not asked about the salary I was making at LALLC and did not offer that information. I did present Everworks with a salary request.

7. After our lunch meeting Everworks offered me a position meeting my salary request which was $8,300.00 per year more than I made at LALLC.

DC

8. On December 31, 2011, prior to LALLC being sold, LALLC asked me to sign a "Non-Compete, Non-Solicitation, and Trade Secret Agreement." I was already employed by LALLC at the time I was asked to and did sign the "Non-Compete, Non-Solicitation, and Trade Secret Agreement." I received nothing of value in exchange for signing the agreement.

9. I have never shared or offered to share any information regarding LALLC with Everworks or any of its employees. No one with Everworks has ever asked me to share any information regarding LALLC with Everworks.

Further the Affiant sayeth naught.

David Case

SWORN to before me this 23rd

day of September, 2014.

Martha Finley (SEAL)
Notary Public for South Carolina
My Commission Expires: 11/1/21

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Lewallen Automation, LLC	)	C.A. No.:2014-CP-23-04895
	)	
Plaintiffs,	)	
	)	**AFFIDAVIT OF STEVE NAUGLE**
vs.	)	
	)	
Michael Lewallen,	)	
	)	
Defendant.	)	
	)	

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

1. I am Steve Naugle, Information Technology Coordinator, with Group of Patriots, LLC ("GOP").

2. I have personal knowledge of the matters attested to herein.

3. I have access to all electronic mail and edata that is routed through the GOP server, which includes those electronic mails and other edata for employees of Lewallen Automation, LLC.

4. I certify that the attached electronic mails and attachments are true and accurate copies of electronic mail retrieved from GOP's system.

FURTHER AFFIANT SAYETH NOT.

SWORN TO before me this 19th
day of September, 2014.
DM: 3824281 V.1

Melinda Kay Dawes
Commission Expires: July 16, 2017

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MICKENSIMER
2014 SEP 25 AM 9 46

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's Opposition to Plaintiff Lewallen Automation's Motion for Preliminary Injunction**
v.	)	
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

I. Background

According to its Motion, Plaintiff Lewallen Automation[1] seeks injunctive relief with regard to their trade secret claims. The Undersigned has made repeated efforts to determine the basis for any use or disclosure claim, but Lewallen Automation's counsel will not even share purported evidence of a misappropriation. (Exhs. 1-5). The only information Lewallen Automation ultimately (i.e. yesterday) provided is a questionable e-mail trail that proves nothing.[2] The emails are dated mid- to late January – about seven months before Lewallen Automation terminated Defendant Lewallen's employment. (Lewallen Aff. ¶¶ 11-14 (Exh. 6)). They have now been located on

[1] After the commencement of this action, another Plaintiff was named to the action. No motion on its behalf, however, has been filed.

[2] While some cases involve eve-of-resignation downloading of sensitive data to be used for competitive purpose, such a theory would not even make sense here. Here, there is neither temporal proximity or a voluntary departure. In any event, as discussed herein, mere speculation or conjecture cannot support an injunction in South Carolina.

Defendant Lewallen's computer, which shows that they have not been accessed since that time.[3] (Id. ¶ 15). Nor do they relate to the business about which Plaintiff complains and it does not appear there is even any cross over with any business pursued by Everworks and they never were shared (as the file date indicates). (Id. ¶¶ 17-18). In the end, all the documents show is that, long before any real dispute existed, Plaintiff was working on sales plans, which was part of his job.

To the extent Lewallen Automation is theorizing about other types of information, Defendant Lewallen respectfully objects to having to respond to a motion that is based on withheld details and improper efforts to substitute hearsay, conjecture, speculation, and testimony wholly lacking in foundation for actual proof. As previously discussed, Defendant Lewallen immediately served discovery requests on Lewallen Automation, which are due soon and which Defendant Lewallen will promptly seek to enforce. (Exh. 7). Defendant Lewallen respectfully renews his request that disposition of this Motion await a full disclosure of facts by Lewallen Automation.

The only competent evidence currently in the record shows that Defendant Lewallen has not used or disclosed any confidential information belonging to Plaintiffs.

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[3] As noted in Plaintiff's Affidavit, one of the documents was accessed in a meeting to review the computer that occurred in the Undersigned's office. (Lewallen Aff. ¶ 15 (Exh. 6). If, for some reason, Plaintiffs are unwilling to accept this representation, Defendant Lewallen can *prove* that that this document also was not accessed beforehand. Hours prior to the review of the computer in the Undersigned's office, computer technicians created mirror backups of the hard drive so there would be no question as to the state of the system or files or whether anything was altered or deleted before the Undersigned's review. Of course, such forensic investigations would be expensive for Plaintiffs. But it would only prove that the documents about which Lewallen Automation bases its entire theory have not been accessed by anyone since late January, 2014.

(Lewallen Aff. ¶¶ 6, 9-10 (Exh. 6)). It does not even appear that Plaintiffs are losing any business, let alone facing the threat of any kind of irreparable harm. (See id. ¶ 5). Without specifics, it simply is impossible for Defendant Lewallen to respond to alleged statements supposedly made by unnamed individuals or allegations regarding unspecified information. (Id. ¶¶ 6-7, 9-10, 12).

The only other issue about which Defendant Lewallen is aware is his contact with his friend, Brian Wright of Tennessee Electric Construction. Plaintiffs are well aware that such communication has nothing to do with any wrongdoing as they met with Wright as well. (Id. ¶ 22). In any event, Plaintiffs do not actually allege any wrongdoing with regard to this contact, merely that they "met," which is certainly not denied or apparently relevant to anything at issue here.

II. Legal Standard

"The remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected." Lefurgy v. Long Cove Club Owners, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994); Denman v. City of Columbia, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010) ("'An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the [moving party.]'") (quoting Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004)); Rawlinson Rd. Homeowners Ass'n, Inc. v. Jackson, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (Ct. App. 2011).

For such a drastic remedy to be provided, the moving party must establish that

(1) it would suffer irreparable harm if the injunction is not granted;

(2) it will likely succeed on the merits of the litigation; and

(3) there is an inadequate remedy at law.

Compton v. South Carolina Dept. of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); Scratch Golf Co., 361 S.C. at 121, 603 S.E.2d at 907-08 (citations omitted); Compton v. South Carolina Dept. of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010); see id. at 586, 694 S.E.2d at 17 (determining that balancing the equities is no longer a requirement for a preliminary injunction).

"The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing Calcutt v. Calcutt, 282 S.C. 565, 572, 320 S.E.2d 55, 59 (Ct. App.1984)).

To ensure that injunctive relief comports with basic notions of due process, South Carolina rules require that injunctions "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Rule 65(d), SCRCP.

III. Summary of Argument

Lewallen Automation's Motion is a veritable checklist of improper efforts to obtain injunctive relief. Specifically:

- Lewallen Automation relies on affidavits that do not contain competent evidence;
- Lewallen Automation's defamation injunction request is too vague, violates the settled common-law bar against enjoining defamation, and seeks an impermissible prior restraint;
- Lewallen Automation fails to identify the relationships it seeks to protects despite being required to plead them;
- Lewallen Automation's arguments regarding breaches of the duty of loyalty are misplaced as no such duty exists here;
- Lewallen Automation is improperly seeking a judicially-crafted restrictive covenant when the parties never agreed to one;
- Lewallen Automation is seeking to *alter* the status quo, rather than to *preserve* it, which is the only valid purpose of a preliminary injunction;
- Lewallen Automation fails to identify any actual trade secrets at issue;
- Lewallen Automation fails to provide any evidence suggesting misappropriation, use, or disclosure of any trade secrets;
- Lewallen Automation is seeking a judicially-created restrictive covenant when the parties never agreed to one;
- Lewallen Automation's requests are too vague and, if granted, would violate several settled principles encompassed in Rule 65(d);

- Lewallen Automation has failed to even articulate, let alone show, any prospect of irreparable harm; and
- Lewallen Automation has not established the absence of a remedy at law, and settled authority establishes that adequate remedies at law preclude injunctive relief here.

IV. Argument[4]

A. Lewallen Automation bases its request on improper affidavits.

Defendants have filed a Motion to Strike (Exh. 8) significant portions of the affidavits, which serve as the sole bases for the pending Motion and which were delivered late last Friday, September 19. (Exh. 9). As South Carolina and other courts have recognized, affidavits must present competent evidence, not mere hearsay, conjecture, speculation, argument, and conclusory statements. However, to date, that is all Lewallen Automation has offered. Accordingly, for the reasons stated in Defendants' Motion to Strike, this Court need not even reach the merits of Lewallen Automation's injunctive relief requests at this time.

B. Lewallen Automation's oral defamation injunction request is untenable.

During the conference call this Court convened on September 15, when pressed about the purported "trade secrets," counsel for Lewallen Automation stated that it really was just seeking is an injunction against Defendants defaming them or saying things

[4] Defendant Lewallen offers general legal arguments here based on what the Undersigned can surmise from the arguments made to date. As repeatedly stated herein, the Undersigned is at an improper disadvantage as counsel for Plaintiffs refuses to advise him as to the basis for this Motion. Defendant Lewallen will likely need to supplement, revise, or raise additional arguments should he become aware as to what,

that are not true. See Motion at ¶ 7 (referencing false statements). Defendant Lewallen objects to any such request on the grounds that it is not raised properly and sufficiently by the Motion and this entire ordeal has been a continual exercise of Lewallen Automation moving the goalposts and hiding the ball. Nonetheless, as the following establishes, a "defamation injunction" simply is not permissible and, even if it were, there is no basis for one here.

1. **Defamation injunctions are not permitted as both an adequate remedy at law exists and orders against defaming someone constitute an unconstitutional prior restraint.**

It is a basic Hornbook principle that, "[a]bsent extraordinary circumstances, injunctions should not ordinarily issue in defamation cases. Some courts have ruled that equity will not enjoin libel and slander unless a continuing irreparable injury is shown." 42 Am. Jur. 2d Injunctions § 96. Even academics, who advocate for a loosening of the restrictions on the bar against injunctions, recognize how deeply ingrained the rule remains in the common law, even when it pertains to matters of purely private concern:

> The no-injunction rule has been a fixture of Anglo-American law for more than three centuries. Well before the First Amendment was ratified, it was taken as a given by judges and lawyers that injunctions, including permanent injunctions following trial, were not permissible remedies in defamation actions. The rule's lineage can be traced to the backlash that arose from England's infamous Star Chamber, which "served as an unhealthy hybrid of legislature and court," issuing laws and trying those accused of libel or slander while acting "both as Judges and Jurors."

David S. Ardia, Freedom of Speech, Defamation, and Injunctions, 55 Wm. & Mary L. Rev. 1, 18 (2013) (footnotes omitted) (Exh. 10); Alberti v. Cruise, 383 F.2d 268, 272 (4th Cir. 1967) ("Generally an injunction will not issue to restrain torts, such as defamation or harassment, against the person. There is usually an adequate remedy at law which may

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if any, evidence Plaintiffs actually have to support their hyperbolic claims.

be pursued in seeking redress from harassment and defamation.") (citations omitted); Fernandez v. N. Georgia Reg'l Med. Ctr., Inc., 260 Ga. 765, 766, 400 S.E.2d 6, 8 (1991) (reversing injunction to preclude discussion or solicitation of information about corporate business operations as "equity will not enjoin libel and slander"); Pittman v. Cohn Communities, Inc., 240 Ga. 106, 108, 239 S.E.2d 526 (1977) ("[E]quity will not enjoin libel and slander.") (citations omitted); Vrasic v. Leibel, 106 So. 3d 485, 486 (Fla. Dist. Ct. App. 2013) ("Florida's courts have long held that temporary injunctive relief is not available to prohibit the making of defamatory or libelous statements.") (citations omitted); Kyritsis v. Vieron, 53 Tenn. App. 336, 345, 382 S.W.2d 553, 557 (1964); Am. Univ. of Antigua Coll. of Med. v. Woodward, 837 F. Supp. 2d 686, 701 (E.D. Mich. 2011).

The prohibition against defamation injunctions is applied routinely to efforts by former employers to enjoin defamation by departed and competing former employees. E.g. Vartech Sys., Inc. v. Hayden, 951 So. 2d 247, 262 (La. App. 1 Cir. 2006) ("We must reverse the injunction as to [employer's] claim for defamation, because should such activities occur, it would have an adequate remedy at law, i.e., a civil action in tort for damages. Indeed, even if the defendants' words were defamatory, an injunction would not be a proper remedy."); Daugherty v. Allen, 729 N.E.2d 228 (Ind. Ct. App. 2000) (defamation injunction against former employee is improper because there exists an adequate remedy at law); High Country Fashions, Inc. v. Marlenna Fashions, Inc., 257 Ga. 267, 267, 357 S.E.2d 576, 577 (1987) (reversing injunction against making disparaging statements to prospective customers of the appellee regarding the appellee's business, publishing materials which contained untrue misleading statements

and other false information, and giving other false information to prospective customers); Brannon v. Am. Micro Distributors, Inc., 255 Ga. 691, 691, 342 S.E.2d 301, 303 (1986) (reversing injunction issued against former company president for communicating false and misleading information concerning corporation to business customers or potential business customers).

Courts also routinely recognize that injunctions against alleged competitors and former employees constitute improper prior restraints in violation of constitutional rights. Ardia, supra, at 3-4 ("Modern courts most often cite the First Amendment's prior restraint doctrine as a reason to deny injunctive relief . . . ."); e.g. Alberti, 383 F.2d at 272; Marketshare Telecom, L.L.C. v. Ericsson, Inc., 198 S.W.3d 908, 918 (Tex. App. 2006) (noting in an unfair competition case that, "defamation alone is not a sufficient justification for restraining an individual's right to speak freely" and that an order restraining defamation was an unconstitutional prior restraint); Cohen v. Advanced Med. Grp. of Georgia, Inc., 269 Ga. 184, 184, 496 S.E.2d 710, 711 (1998) (reversing injunction against disparaging statements of overcharging, fraud, intimidation of patients, and not paying the plaintiff and noting that, "[c]onsistent with this Court's firm policy to protect the right of free speech, we apply the general rule that "equity will not enjoin libel and slander," on the grounds that it constituted an impermissible prior restraint).

At a practical level, given the specificity requirements of Rule 65(d), how would a court even draft an injunction against specific defamation or the saying of untrue things? Moreover, since Lewallen Automation refuses to offer any witness or evidence of the

initial alleged statements (that are not actually defamatory), what good would an injunction do it even if such an order was permissible and feasible?

2. Lewallen Automation cannot establish any of the elements for a defamation or "speak no untruths" injunction.

Even if a defamation injunction was permitted, warranted, and feasible, Lewallen Automation has offered nothing that would allow this Court to draft the necessary findings to support such relief. Rule 65(d), SCRCP. First, Lewallen Automation has not even alleged anything to indicate they would suffer irreparable harm if an injunction is not granted. In fact, it alleges no harm at all.

Second, Lewallen Automation certainly cannot show any likelihood that they will succeed on the merits of the litigation. It offers no competent or admissible evidence whatsoever that Defendant Lewallen defamed them or said anything that is untrue.

Finally, as noted above, it is well established that injunctive relief is improper as there exists an adequate remedy at law for any defamation that may occur if Lewallen Automation ever obtains evidence of such.

C. Lewallen Automation's request for an injunction against contract breaches is untenable.

Lewallen's specific performance injunction request is flawed for a number of reasons including, of course, the complete absence of any evidence that Defendant Lewallen has breached any contractual obligation. Specific performance injunctive relief may be ordered only where no adequate remedy at law exists. Time Warner Cable v. Condo Servs., Inc., 381 S.C. 275, 284, 672 S.E.2d 816, 820 (Ct. App. 2009). Efforts by a former employer to enforce employment-related contractual obligations is an action at law. Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App.

2009) aff'd as modified, 399 S.C. 23, 731 S.E.2d 288 (2012). Accordingly, injunctive relief to enforce such agreements is inappropriate as remedies at law exist. Id.

Furthermore, as with the other claims for injunctive relief, Lewallen Automation also fails to establish any irreparable harm. In fact, it does not even attempt such a showing with regard to its attempt to obtain a contract injunction.

D. Lewallen Automation's demand that Defendants not interfere in any way with Lewallen Automation's relationships is unsupportable.

Among its scattershot requests is Lewallen Automation's request for an order that Defendants not interfere with actual and prospective customer relations. (Motion at ¶ 6). What relationships? Of course, Plaintiffs will not say, even though pleading the same is absolutely required. United Educational Distributors, LLC v. Educational Testing Service, 350 S.C. 7, 584 S.E.2d 324 (Ct. App. 2002).

Even if the Court ignored that fatal and fundamental flaw, as the following shows, the entire foundation upon which this request appears to be based is nonexistent.

1. There is no duty of loyalty injunction possible post-employment.

Lewallen Automation seemingly bases its arguments for injunctive relief on allegations of violations of the common law duty of loyalty. (Lewallen Automation Br. at 12). The employee's duty of loyalty runs only during the term of employment. Futch v. McAllister Towing, 491 S.E.2d 577, 579 (S.C. Ct. App. 1997), rev'd in part on other grounds, 335 S.C. 598, 518 S.E.2d 591 (1999). Since it is uncontested that there exists no employment relationship, there is no existing duty giving rise to the need for an injunction.

An employee is generally free to compete directly with his former employer. Lowndes Prods. v. Brower, 191 S.E.2d 761, 767 (S.C. 1972); Young v. McElvey, 333 S.E.2d 566 (S.C. 1985); Berry v. Goodyear, 242 S.E.2d 551 (S.C. 1978); Jerry Cohen & Alan S. Gutterman, Trade Secrets Protection & Exploitation at 100 (ABA/BNA Books 1998) ("Employees are generally free to compete with their former employer and may even attempt to solicit the customers of the former employer.") Indeed, after employment, "[t]he right of the employee to compete . . . includes the right to divert business from the former employer, and to solicit the former employer's customers." 30 C.J.S. Employer-Employee § 113 at 183, cited in Futch, 491 S.E.2d at 579.

When an employee leaves a job, he is entitled to take the skills and general knowledge he has either acquired or increased during his employment with him:

> [T]he right of an individual to follow and pursue the particular occupation for which he is best trained is a most fundamental right. Our society is extremely mobile and our free economy is based upon competition. One who has worked in a particular field cannot be compelled to erase from his mind all of the general skills, knowledge and expertise acquired through his experience. These skills are valuable to such employee in the market place for his services. Restraints cannot be lightly placed upon his right to compete in the area of his greatest worth.

Carolina Chem. Equip. Co. v. Muckenfuss, 322 S.C. 289, 294-95, 471 S.E.2d 721, 724 (Ct. App. 1996) (quoting ILG Industries v. Scott, 49 Ill.2d 88, 273 N.E.2d 393, 396 (1971)).

3. Lewallen Automation is seeking non-compete proscriptions from this Court where no restrictive covenants exist and is not aimed at preserving the status quo.

Counsel for Plaintiffs has candidly acknowledged that there exists no contractual impediment to Defendant Lewallen competing directly with Lewallen Automation. However, it nonetheless seeks an injunction to accomplish precisely that objective. See Motion at ¶ 6 (requesting injunction against that "enjoins and restrains Defendants from interfering with LALLC's contracts with its existing customers and prospective customers"). It is well settled that a court cannot re-write a restrictive covenant for parties. Team IA, Inc. v. Lucas, 395 S.C. 237, 246, 717 S.E.2d 103, 107 (Ct. App. 2011) (citing Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 588, 694 S.E.2d 15, 18 (2010)). It follows that the Court cannot write one where none existed in the first place.

Moreover, an injunction is only proper to preserve the status quo. MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003). Requests for injunctive relief to preclude alleged competition are improper where, as here, they "would alter the status quo." Id. at 369, 588 S.E.2d at 638.

E. Customer preference for Defendant Lewallen and anger about his termination are not grounds for an injunction.

The fact that customers may pull their business in light of Plaintiffs' decision to terminate Defendant Lewallen proves nothing actionable. Williams v. Riedman, 339 S.C. 251, 280, 529 S.E.2d 28, 43-44 (Ct. App. 2000) (mere fact that clients transferred to competitor employee's termination is not sufficient to establish that Williams

misappropriated trade secrets, especially since customers were with the employee prior to the employer purchasing the business). There simply is nothing offered by Lewallen that could begin to meet any of the required showings for injunctive relief against Defendant Lewallen for a decision Plaintiffs made.

F. Lewallen Automation's trade secret arguments misstate the law.

Although Lewallen Automation offers no actual evidence or even a theory that Defendant Lewallen has used or disclosed anything, it nonetheless seeks injunctive relief to protect unspecified trade secrets. (Motion at ¶¶ 3-4).

The first issue to address here is what Lewallen Automation seeks to protect and whether it constitutes a trade secret. Lowndes Prods., Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972) ("The threshold issue in any trade secrets case is not whether there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether, there was a trade secret to be misappropriated."); accord Carolina Chem. Equip. Co. v. Muckenfuss, 322 S.C. 289, 295, 471 S.E.2d 721, 724 (Ct. App. 1996). Lewallen Automation cannot accomplish this because it refuses to identify the information at issue other than possibly sales or forecasting information (still undisclosed to the Undersigned) that Defendant Lewallen purportedly had seven months before his involuntary termination. If that is all that is at issue, then relief must be denied because there is no reason to even engage in improper speculation that has used or disclosed it.

1. Customer information provided by the customer is not Lewallen Automation's trade secret.

The Trade Secret Act limits information to that which is secret. S.C. Code Ann. § 39-8-20(5). The statutory definition of "trade secret" explicitly excludes information that can be readily ascertainable by other means. Id. Information belonging to a customer that a customer chooses to share is not a trade secret belonging to Lewallen Automation. Systems Dev. Services, Inc. v. Haarmann, 389 Ill. App. 3d 561, 577, 907 N.E.2d 63, 77 (Ill. Ct. App. 2009); Softchoice Corp. v. MacKenzie, 636 F. Supp.2d 927, 939 (D. Neb. 2009) (rejecting trade secret claim where "the only information that could arguably be categorized as 'secret,' that is, pricing information, [came] from the potential customers themselves, who freely shared the information with him in hopes of obtaining a lower price"). To the extent that Lewallen is really attempting a back door injunction against its own customers disclosing their information, such an effort must be rejected.

2. The identity of a customer is not a trade secret.

It appears that Lewallen Automation may be taking the position that the mere identity of customers is a secret. There is no protectable interest in the mere identity of customers. See, e.g., Atwood Agency v. Black, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007); Jerry Cohen & Alan S. Gutterman, Trade Secrets Protection & Exploitation at 99-100 (ABA/BNA Books 1998) ("Courts are uniform in holding that a business does not have a proprietary interest in its customers; however, trade secret protection may be available for customer lists compiled by the former employer, as well as for lists that extend beyond the names and addresses of the customers to other items with an element of independent economic value.") (footnotes omitted) (Exh. 11); Novacare

Orthotics & Prosthetics East, Inc. v. Speelman, 137 N.C. App. 471, 478, 528 S.E.2d 918, 922 (N.C. Ct. App. 2000) (no trade secret at issue where employee developed a relationship with the customer and "any information used to contact the clients would have been easily accessible to defendant through a local telephone book"); Combs & Associates, Inc. v. Kennedy, 147 N.C. App. 362, 555 S.E.2d 634 (N.C. Ct. App. 2001) (sales representative's customer database was not a trade secret, since database could have easily been compiled through public listings, such as trade show and seminar attendance lists).

In fact, as noted above, Plaintiffs cannot even maintain an action for interference with such relationships without specifically identifying them in the pleadings. United Educational Distributors, LLC v. Educational Testing Service, 350 S.C. 7, 584 S.E.2d 324 (Ct. App. 2002). In any event, Lewallen Automation once again fails to provide anything to even suggest that Defendant Lewallen has improperly disclosed anything.

3. Lewallen Automation cannot show elements for injunctive relief.

a. First element: There is no alleged threat of ongoing harm, let alone irreparable harm.

Although Lewallen Automation complains about its employees leaving to work for the company with which Defendant Lewallen is associated, employees departing one employer for another simply does not constitute irreparable harm. Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc., 360 S.C. 473, 478-79, 602 S.E.2d 83, 86 (Ct. App. 2004).

The only harm Lewallen Automation can claim here is that, if Defendants compete, Lewallen Automation could lose money. Loss of income, no matter how

great, also does not constitute irreparable harm. Sampson v. Murray, 415 U.S. 61 (1974). The arguments that business could be lost or trade secrets may possibly be disclosed simply are not adequate, especially where the argument is does not "identify any specific 'confidential information' or 'trade secret.'" Nichol v. DuPuy Spine, Inc., 2012-cp-23-7146, at 5 (Greenville C.P. February 13, 2013) (Hill, J.) (Exh. 12).

b. Second element: Lewallen Automation cannot show likelihood of success on the merits.

As it now sits, all Lewallen Automation has offered to date is a theory that is demonstrably flawed (the spreadsheet claim), hearsay, and rank speculation and argument offered by individuals with no first-hand knowledge of anything important. Surmising that harm is possible if wrongdoing happened is not a foundation upon which injunctive relief can stand. Injunctions are improper "where the anticipated [harm] is doubtful, contingent, or conjectural." Brading v. County of Georgetown, 327 S.C. 107, 115 n.8, 490 S.E.2d 4, 8 n.8 (1997) (noting that injunctions are clearly erroneous "where the anticipated [harm] is doubtful, contingent, or conjectural.") Indeed, "[h]arm that is highly conjectural cannot be reasonably treated as irreparable for purposes of granting a preliminary injunction." S & S Sales Corp. v. Marvin Lumber & Cedar Co., 457 F. Supp. 2d 903, 908 (E.D. Wis. 2006); Delmar Studios of the Carolinas v. Kinney, 233 S.C. 313, 320, 104 S.E.2d 338, 342 (1958) (noting in context of non-compete case: "We cannot substitute assumption for proof"); Welborn v. Page, 247 S.C. 554, 566, 148 S.E.2d 375, 381 (1966) ("Equity will not interfere by the granting of the extraordinary remedy of injunction where the anticipated nuisance is doubtful, contingent or conjectural."); Continental Grp., Inc. v. Amoco Chems. Corp., 614 F.2d 351, 358–59 (3d

Cir.1980) (under the Uniform Act, injunctions are "not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties. Nor will an injunction be issued to restrain one from doing what he is not attempting and does not intend to do."), quoted in Colorcon, Inc. v. Lewis, 792 F. Supp. 2d 786, 804 (E.D. Pa. 2011); Applied Indus. Materials Corp. v. Brantjes, 891 F. Supp. 432, 437-38 (N.D. Ill. 1994).

Lewallen Automation's entire effort is based on the flawed premise that the mere unproven and unsubstantiated allegation that Defendant Lewallen has solicited business (in an industry he has been in longer than Plaintiffs), which it argues proves he must be using Lewallen Automation's trade secrets. (Lewallen Automation Br. at 10). This unverifiable statement is all Lewallen Automation actually offers. As discussed above, it is premised on the fact that he once had access to information that he did not access for more than half a year prior to his termination and that he has not accessed since. (See supra note 3 & accompanying text)

Such a farfetched proposition is foreclosed by the very authority relied on by Lewallen Automation. In upholding another confidentiality agreement, the Supreme Court has specifically noted that such agreements are valid only if they allow an individual to compete as long as he or she is not using trade secrets. Milliken & Co. v. Morin, 399 S.C. 23, 38-39, 731 S.E.2d 288, 296 (2012). That reasoning would make no sense if somehow one must assume that competing requires the use of trade secrets. As Morin necessarily implies, efforts to use a confidentiality agreement to preclude competition transforms the agreement into an unenforceable restraint on trade. That, however, is precisely what Lewallen Automation advocates for here even though it

cannot show that Plaintiff ever even accessed information that forms the foundation of Lewallen Automation's speculative theory.

c. Third element: An adequate remedy at law exists if Lewallen Automation could prove wrongdoing.

Lewallen Automation merely parrots, in boilerplate fashion, that it will suffer harm for which no adequate remedy exists at law. Why not? Even if Plaintiffs had adequately alleged that Defendants were improperly taking business, allegations of improper theft of business are, in fact, remediable through legal remedies if actually proven. MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003). In Nichol v. DuPuy Spine, Inc., 2012-cp-23-7146 (Greenville C.P. February 13, 2013), Judge Hill denied injunctive relief based on the same arguments as those posed here because "an adequate legal remedy does exist in the form of monetary damages, as shown by Milliken v. Morin, 399 S.C. 23, 731 S.E.2d 288 (2012)." Id. at 5 (Exh. 12).

Lewallen Automation has specifically sought money damages here. There is no authority that permits a finding of a lack of legal remedy from the mere rote recitation that none exists.

G. Lewallen Automation's request is improper because it is too indefinite and any order that adopts it would violate Rule 65(d).

Lewallen Automation's attempt to simply list every type of conceivable trade secret is improper.

> The contractual provision at issue here does not identify any specific trade secrets; rather, it defines trade secrets so broadly that virtually all of the information Muckenfuss acquired during his employment would fall within its definition. See Service Centers of Chicago, Inc. v. Minogue, 180 Ill.App.3d 447, 129 Ill.Dec. 367, 372, 535 N.E.2d 1132, 1137 (1989) ("By

> defining confidential information as essentially all of the information provided ... the confidentiality agreement amounts ... to a post-employment covenant not to compete which is completely unrestricted in duration or geographical scope."); cf. AMP Inc. v. Fleischhacker, 823 F.2d 1199 (7th Cir.1987) (noting the risk plaintiffs run by producing long lists of general areas of information which contain unidentified trade secrets instead of identifying specific trade secrets). Therefore, the contract provision here is unenforceable as a matter of law.

Carolina Chem. Equip. Co., Inc. v. Muckenfuss, 322 S.C. 289, 296, 471 S.E.2d 721, 725 (Ct. App. 1996).

Lewallen Automation's reliance on the Supreme Court's decision in Morin is misplaced for several reasons. (Lewallen Automation Br. at 8-9). First, the Supreme Court certainly did not hold that every confidentiality agreement is valid as a matter of law. And, of course, not all confidentiality agreements are improper restraints on trade. Where, for example, the agreement is specifically limited to information that would constitute trade secrets, they pose no problem. Milliken & Co. v. Morin, 399 S.C. 23, 37-38, 731 S.E.2d 288, 295 (2012). Here, however, Lewallen Automation simply utilizes a boilerplate list of every conceivable term (including "formulas") that encompasses general knowledge in the industry. No such agreement ever has been upheld.

In any event, whether, in the abstract, Lewallen Automation has an enforceable agreement is not dispositive with regard to this Motion. Lewallen Automation simply ignores the Court of Appeals determination in Morin, which was not disturbed by the Supreme Court's limited reversal. The Supreme Court left intact the determination by the Court of Appeals—recognized by Judge Hill—that, as to injunctive relief, a legal remedy precludes injunctive relief under these circumstances. Milliken & Co. v. Morin,

386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009), aff'd as modified, 399 S.C. 23, 731 S.E.2d 288 (2012); Nichol v. DuPuy Spine, Inc., 2012-cp-23-7146 at 5 (Greenville C.P. February 13, 2013) (Exh. 12).

"The threshold issue in any trade secrets case is not whether there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether there was a trade secret to be misappropriated." Id. at 295, 471 S.E.2d at 724 (citing Lowndes Prods., Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972)). Before Lewallen Automation can obtain injunctive relief, it must at least "describe the subject matter of its alleged trade secrets in sufficient detail to establish each element of a trade secret." Trandes Corp. v. Guy F. Atkinson Co., 996 F.2d 655, 661 (4th Cir. 1993) (citations omitted). It simply must "do more than merely allege that it ha[s] a 'secret.'" Id. (citation omitted).

Lewallen Automation's effort to seek a sweeping and vague injunction covering undefined information is improper. Rule 65(d) mandates that any injunction "shall be specific in terms" and that it "shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." Rule 65(d), SCRCP.[5] An injunction must provide "fair and precisely drawn notice of what the

[5] This specificity requirement is a mandatory aspect of due process. United States v. McAndrew, 480 F. Supp. 1189, 1192 (E.D. Va. 1979) (citations omitted). "'The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.'" CPC Int'l, Inc. v. Skippy Inc., 214 F.3d 456, 459 (4th Cir. 2000) (quoting Schmidt v. Lessard, 414 U.S. 473, 476 (1974)). "The drafting standard established by Rule 65(d) is that an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." Fed. Prac. & Proc. Civ., § 2955 Form and Scope of Injunctions or Restraining Orders, 11A Fed. Prac. & Proc. Civ. § 2955 (2d ed.). Defendant Lewallen cites to the parallel federal

injunction actually prohibits." Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 444 (1974). The requirements are mandatory so as to "prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." Schmidt v. Lessard, 414 U.S. 473, 476 (1974).

Generic proscriptions against using such things as "proprietary materials" or "trade secrets" simply are too vague to be enforceable. Sanford v. RDA Consultants, Ltd., 244 Ga. App. 308, 312, 535 S.E.2d 321, 325 (2000) (citations omitted); Union Pac. R. Co. v. Mower, 219 F.3d 1069, 1073, 1077 (9th Cir. 2000) (injunction against disclosure of "information or communication of a confidential nature, including the information and communications described in the accompanying findings of fact and conclusions of law, that he acquired, learned, or helped to generate during his employment by [UP] or while he was a consultant for plaintiff" simply "does not even come close to satisfying Rule 65's specificity requirements; it provides little, if any, guidance to [enjoined party] regarding how he should determine what particular information is confidential or privileged"). Likewise, simply referencing Defendant's policy for a definition is not sufficient. Gibson v. Cline, 28 N.C. App. 657, 659, 222

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rule because, in the absence of state authority, federal cases construing the same verbiage are persuasive. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.") (citing H. Lightsey & J. Flanagan, South Carolina Civil Procedure, (2d ed. 1985)).; Unisun Ins. v. Hawkins, 342 S.C. 537, 542, 537 S.E.2d 559, 562 (Ct. App. 2000) (citing Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct. App.1987)).

S.E.2d 478, 479 (1976) ("Reference to some other document is not sufficient to provide a description of the act or acts enjoined or restrained.") (citations omitted).

The South Carolina rules contain the time-honored prohibition against issuing injunctions by incorporating documents such as boilerplate policies to describe what a party is precluded from doing. Rule 65(d), SCRCP (any order "shall describe in reasonable detail, **and not by reference to the complaint or other document**, the act or acts sought to be restrained") (emphasis added); see Gibson v. Cline, 28 N.C. App. 657, 659, 222 S.E.2d 478, 479 (N.C. Ct. App. 1976) ("Reference to some other document is not sufficient to provide a description of the act or acts enjoined or restrained.") (citations omitted); Millennium Laboratories, Inc. v. Rocky Mountain Tox, LLC, No. 10-CV-2734-MSK-KMT, 2011 WL 843935, at *11 (D. Colo. Mar. 8, 2011) ("The proscription against incorporating by reference documents outside of the four corners of the court's order protects those who are enjoined by informing them of the specific conduct regulated by the injunction and subject to contempt.") At a minimum, an injunction must provide a general description of the materials at issue. Ward v. Process Control Corp., 247 Ga. 583, 277 S.E.2d 671 (1981). Lewallen Automation has provided no specific information in its Motion and, in violation of the most basic notions of due process, Defendant Lewallen has been completely deprived of any ability to prepare arguments to address whatever Lewallen Automation may try to spring on the Court at the last moment. See Rule 6, SCRCP (requiring grounds to be stated in motion and any supporting affidavits to be submitted with the motion and providing further for at least ten days prior notice to prepare and respond before a hearing).

Because it would be wholly improper to simply subject Defendants to inevitable contempt motions resulting from a vague and arguable injunction, Defendant Lewallen certainly is entitled to know precisely what information it is that Lewallen Automation seeks to have him enjoined from using. Until he has been so advised, Defendant Lewallen must continue to respectfully object to the lack of notice as to what may be involved. Likewise, given Lewallen Automation's apparent and untenable position that even contact information is somehow proprietary, Defendant Lewallen cannot agree to defer to Lewallen Automation's overly-broad interpretation of its vague policies, which only serve the purpose of setting a trap for future battles.

H. "No harm – no foul" injunctions are improper.

During the conference call, counsel for Lewallen Automation gave an extremely vague description of what she claims Lewallen Automation seeks, which boils down to an apparent request for an order that would essentially say "do not do bad things." Such a request is nothing more than an attempt to craft an improper "follow the law" or "no harm, no foul" injunction. Courts have rejected such an approach time and again. See, e.g., S.E.C. v. Sky Way Global, LLC, 710 F. Supp. 2d 1274, 1277-78 (M.D. Fla. 2010) ("follow the law" injunctions are too vague to be enforceable and are not compliant with Rule 65(d)); Paoli Peaks, Inc. v. Weeks, 4:11-CV-00078-RLY, 2012 WL 5178183 (S.D. Ind. Oct. 18, 2012) (finding no support for Defendant's "no harm, no foul" argument); In re McClure, 430 B.R. 358, 363 (Bankr. N.D. Tex. 2010) (rejecting "no harm, no foul" injunction rationale); Tenneco Auto. Operating Co. Inc. v. Kingdom Auto Parts, 08-CV-10467, 2008 WL 4388899 (E.D. Mich. Sept. 25, 2008), aff'd sub nom. Tenneco Auto. Operating Co., Inc. v. Kingdom Auto Parts, 410 F. App'x 841 (6th Cir.

2010); Tenneco Auto. Operating Co. Inc. v. Kingdom Auto Parts, 08-CV-10467, 2008 WL 4388899 (E.D. Mich. Sept. 25, 2008) ("[T]his court rejects a 'no harm, no foul' policy of granting injunctive relief), aff'd sub nom. Tenneco Auto. Operating Co., Inc. v. Kingdom Auto Parts, 410 F. App'x 841 (6th Cir. 2010); French v. Providence Everett Med. Ctr., C07-0217RSL, 2008 WL 4186538, at n.9 (W.D. Wash. Sept. 8, 2008); French v. Providence Everett Med. Ctr., C07-0217RSL, 2008 WL 4186538, at n.9 (W.D. Wash. Sept. 8, 2008) (rejecting "no harm, no foul" approach); DePinto v. Bayonne Bd. of Educ., 514 F. Supp. 2d 633, 649 (D.N.J. 2007) ("This Court has already addressed and dismissed [Defendant's] 'no harm, no foul' argument."); HUB Group, Inc. v. Clancy, CIV.A. 05-2046, 2006 WL 208684 (E.D. Pa. Jan. 25, 2006) (rejecting "no harm, no foul" argument in injunction request).

I. Lewallen Automation's request for an injunction against soliciting employees also is unsupported by facts or the law.

Lewallen Automation apparently has not sought to enforce any contracts, and does not allege that any former employees actually are violating any noncompete agreements, so no breach has been induced by anyone. Lewallen Automation also is likely not seeking enforcement because the agreements either lack any consideration or because they contain arbitrary, massive radial territories. Poole v. Incentives Unlimited, 345 S.C. 378, 548 S.E.2d 207 (2002); Stringer v. Herron, 309 S.C. 529, 424 S.E.2d 547, 548 (Ct. App. 1992); Rental Uniform Serv. v. Dudley, 278 S.C. 674, 301 S.E.2d 142 (1983).

Lewallen Automation has not demonstrated any actionable attempts by Defendants to improperly interfere with any enforceable agreement. Even if it had such

evidence, however, it already is settled that there is no irreparable harm as an adequate legal remedy exists under Shapemasters. (See supra Section F(3)(a)).

J. If this Court were to credit Lewallen Automation's allegations, a substantial bond is required.

If Lewallen Automation's cries of irreparable harm and substantial damages are to be believed, it goes to follow that any injunctive relief would require a substantial bond. Rule 65(c), SCRCP ("[N]o restraining order . . . shall issue except upon the giving of security by the applicant"). The failure to require an adequate bond renders invalid the injunction. See Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (invalidating injunction issued where bond was not adequate, was merely nominal, and requiring that moving party make a proper showing).

V. Conclusion

For the foregoing reasons, Lewallen Automation's Motion should be denied in its entirety.

Respectfully submitted this 24th day of September, 2014.

For Defendant Lewallen:



Brian P. Murphy No. 6770

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Exhibit 1

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August 22, 2014

VIA CERTIFIED MAIL

EverWorks LLC
Attn: Jeremy and Amy Steiner
113 Red Rome Court
Simpsonville, South Carolina

Re: Michael T. Lewallen

Dear Mr. and Mrs. Steiner:

Our law firm represents Lewallen Automation, LLC, and ASAG Energy, LLC. We are writing to advise you of our understanding that Michael T. Lewallen is engaging in conduct, either while in your employ or as your agent, in violation of his contractual obligations to our clients and the South Carolina Trade Secrets Act. Each such violation entitles our clients to recover its damages, including without limitation any profits it has lost as a result of these violations.

In his contractual agreements with our clients, Lewallen agreed to "hold in confidence at all times . . all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent" of our clients. That Confidential Information includes any data or information of our clients that is valuable to the operation of the company and not generally known to the public or competitors and all information pertaining to creating the clients' panels and other products, vendor information, customer information, and other information. Lewallen is also contractually obligated not to "disclose the specific terms of the companies' relationships or agreements with its significant vendors or customers or any other significant or material trade secret of the companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever." South Carolina permits an employer to obtain an injunction against any employee for any disclosure of an employer's confidential information. Woods v. Boeing Co., 2013 U.S. Dist. LEXIS 136741 (D.S.C. July 8, 2013).

In addition to his contractual promises, Lewallen has a continuing duty to refrain from using or disclosing the trade secrets under the South Carolina Trade Secrets Act, which provides our client the ability to recover damages incurred and to enjoin appropriation, disclosure, use, or wrongful acts pertaining to the trade secrets. The South Carolina Trade Secrets Act also provides for criminal penalties for a person who, with intent to or reason to believe that it will injure an owner and benefit

a person other than the owner, wrongfully takes or copies trade secrets, or wrongfully solicits another to take or copy trade secrets. *See* S.C. Code § 39-8-90.

It is our understanding that Lewallen is:

1- using and disclosing confidential information in violation of the Agreements;

2- tortiously interfering with our clients' existing and prospective customer contracts by making false representations to such customers about our clients' business and by using confidential information and trade secrets belonging to our clients;

3- improperly sharing our client's Confidential customer information with others; and

4- improperly encouraging and inducing other current employees to leave their employment and violate their Non-compete, Nonsolicit, or Nondisclosure Agreements with our client.

The purpose of this letter is to notify you of Lewallen's contractual duties and obligations under the South Carolina Trade Secrets Act. Be advised that an employer of one who is misappropriating trade secrets may be liable for misappropriation of trade secrets. In addition, an employer that knowingly and without justification interferes with an employee's contractual obligations, including confidentiality covenants, to a former employer, may be liable for tortious interference with a contract.

Our clients take this matter very seriously and are committed to the protection of their business interests. They stand ready and prepared to take any and all action necessary against all responsible parties to protect their interests and will not hesitate to institute legal action seeking all available legal remedies, including, but not limited to, those provided for in both Agreements, as well as under the South Carolina's Trade Secrets Act. Be governed accordingly.

Please forward this letter to your legal counsel if you are represented by counsel.

Sincerely yours,

Christine Gantt-Sorenson, Esq.

Cc: Michael Lewallen

Exhibit 2

Brian Murphy

From: Brian Murphy
Sent: Thursday, August 28, 2014 9:58 AM
To: 'Gantt-Sorenson, Chris'
Subject: Michael Lewallen - Group of Patriots

Importance: High

I represent Michael Lewallen and have a copy of your August 22nd letter. In your letter, you specifically claim to a third-party that my client has engaged in improper conduct. What, specifically, do you claim he has done? I see the list of general accusations, but we need specifics. For example, what specifically has he disclosed or used, or "shared" from a trade secret perspective? Who is the employee he purportedly improperly solicited, and how? Who is the client to which he made a false statement and what is the alleged false statement?

Please either provide this information promptly, or retract your letter, which clearly is aimed at interfering with Mr. Lewallen's right to work in his field.

Also, please cite the specific contract that forms the first allegation regarding "confidential information." I have re-read and term searched the Employment Agreement and do not see this language. Is there another document from which you are quoting?

I am aware of the provision in his employment agreement that is the second basis regarding the "specific terms of the companies' relationship," (i.e. paragraph 6), but do not know what customers you are referring to or even the nature of the "specific terms" you claim were disclosed. Please explain.

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Exhibit 3

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Phone: (864) 250-9780
Fax: (864) 250-9784
www.gwhlawfirm.com

September 2, 14

VIA US MAIL AND E-MAIL

Christine Gantt-Sorenson, Esq.
Haynsworth Sinkler Boyd, P.A.
PO Box 2048
Greenville, SC 29602-2048

Re: Michael T. Lewallen

Dear Ms. Gantt-Sorenson,

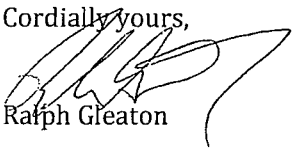
This firm represents Everworks, LLC. Please direct all calls and correspondence to me. Mr. and Mrs. Steiner received your letter of August 22, 2014. I understand that Mr. Lewallen has not disclosed, nor has Everworks, LLC solicited Mr. Lewallen to disclose, any information that may be a trade secret or confidential information of Lewallen Automation, LLC and/or ASAG Energy, LLC. I further understand that Everworks, LLC has neither contacted, nor solicited Mr. Lewallen to solicit any of your clients' employees. If you understand differently, please advise what trade secret or confidential information you believe that Mr. Lewallen has shared with Everworks, LLC and/or which employees my client has communicated with, so that I may advise my clients appropriately.

Further, your letter mentions contractual obligations Mr. Lewallen has to Lewallen Automation, LLC and/or ASAG Energy, LLC. In order to properly advise my clients I ask that you forward a copy of any relevant contract stating how Everworks, LLC is interfering with any such contract.

My client also takes this matter seriously. Once I have specific information about what your clients believe to be their trade secrets, copies of the contract(s) Mr. Lewallen is believed to be violating, and information about any of your clients' employees that Everworks, LLC has contacted, I will be in better position to advise them on the governance of the company accordingly.

I look forward to hearing from you.

Cordially yours,



Ralph Gleaton

Cc: Jeremy Steiner
Brian Murphy

Exhibit 4

Brian Murphy

From: Brian Murphy
Sent: Tuesday, September 09, 2014 9:55 AM
To: 'csimmons@greenvillecounty.org'; 'Kimbrell, Karen'; 'Major, Denny'
Cc: 'ralph@gwhlawfirm.com'; 'Gantt-Sorenson, Chris'
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895

Judge Simmons:

I represent Defendant Lewallen in the above action. Despite our requests for clarity, Plaintiff still will not tell us what supposed trade secrets we allegedly have used, how we used them, or even the customers it claims are at issue. This is not a covenant not to compete case. It's not even a non-solicit case. But the relief Plaintiff is seeking is the same as if there were restrictive covenants at issue. Plaintiff's affidavits do not contain any admissible evidence of wrongdoing. And the relief sought does not even connect up to the issues about which Plaintiff complains (most of which are not issues of injunctive relief, e.g. credit card usage during employment). As Plaintiff's counsel is well aware, after Plaintiff fired Defendant Lewallen, he was free to compete with Plaintiff and even do business with Plaintiff's customers. The only proviso is that he does not use trade secrets belonging to Plaintiff. Plaintiff offers nothing to suggest he has.

I understand you wish to proceed to a hearing, and we are certainly not trying to forestall one. I would like, however, for the Court to, in some manner, require Plaintiff to specify what is at issue in time to allow us to prepare a response. Many of the questions here are so basic:

- What specific information are they claiming Defendants are using that belongs to Plaintiff?
- What customers are they contending we have taken or are taking improperly?
- What is the basis for their claim that we are using Plaintiff's trade secrets?
- What is the basis for saying Defendants have harmed Plaintiff in any wrongful manner?

It will certainly be a much more productive hearing and use of the Court's time if we understood the basis of Plaintiff's claim beforehand.

Accordingly, I am requesting the right to take an expedited special deposition of Plaintiff (we can limit to two hours) for purposes of preparing for the hearing. Plaintiff simply should not be permitted to sand bag Defendants as it appears they intend to hold back evidence until the hearing.

As always, I am available for a conference call at the Court's convenience.

I greatly appreciate any consideration you can give to this request.

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

brian@stephensonmurphy.com

From: Brian Murphy
Sent: Tuesday, September 09, 2014 9:09 AM
To: 'Kimbrell, Karen'; Major, Denny
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895

The 29th or 30th work best for me.

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

brian@stephensonmurphy.com

From: Kimbrell, Karen [mailto:kkimbrell@greenvillecounty.org]
Sent: Tuesday, September 09, 2014 8:52 AM
To: Brian Murphy; Major, Denny
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895
Importance: High

If all parties agree on a conference call, I can set that up, but he Judge also wants this set for a hearing ASAP.

Thank you.

Karen K. Kimbrell
Administrative Docketing Clerk
Judge Charles B. Simmons, Jr.
Master-In-Equity for Greenville County
Direct Dial 864-467-8258 / Fax 467-8401

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Tuesday, September 09, 2014 8:34 AM
To: Kimbrell, Karen; Major, Denny
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895

Ms. Kimbrell:

Can we have a call with the judge first to discuss the issues I raised yesterday? We are headed to a hearing where Plaintiff refuses to say what we have actually done, and with whom.

From: Kimbrell, Karen [mailto:kkimbrell@greenvillecounty.org]
Sent: Tuesday, September 09, 2014 8:28 AM
To: Brian Murphy; Major, Denny
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris

Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895
Importance: High

Good morning,

Judge Simmons has asked that I set this for a hearing the week of September 22, or 29th.

I have September 24th at 10:30, the 25th at 10:00, the 29th at 9:30 or the 30th at 10:30 open.

Please check your calendars and copy each other with your reply.

Thank you.

Karen K. Kimbrell
Administrative Docketing Clerk
Judge Charles B. Simmons, Jr.
Master-In-Equity for Greenville County
Direct Dial 864-467-8258 / Fax 467-8401

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Monday, September 08, 2014 3:25 PM
To: Major, Denny; Kimbrell, Karen; lverdinj@sccourts.org; lverdinlc@sccourts.org; Lopez, Stephen
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895

I do anticipate that I will be representing Defendant Mike Lewallen in the above matter. I believe Mr. Gleaton will be representing Defendant Everworks, LLC.

We oppose expediting the scheduling of a hearing on Plaintiff's Motion for Temporary Injunction. Having reviewed the papers filed late last week, there simply is nothing exigent about the circumstances complained of by Plaintiff. Moreover, we do not have proper notice of what is alleged to be at issue. Plaintiff has not sought a Temporary Restraining Order. Prior to Plaintiff filing this action, Plaintiff's counsel wrote to both defendants. (Attached) As you can see, Plaintiff made a cease and desist demand, but failed to specify what we were to cease and desist from doing -- or even what Plaintiff specifically was claiming we were actually doing that is wrong. I wrote back, seeking an explanation. (Attached). Mr. Gleaton also requested information as to what Plaintiff was talking about. (Attached). Plaintiff refused to respond and, instead, filed a Complaint that simply rehashes boilerplate allegations that "various information" constitutes trade secrets (paragraph 63) and that, "upon information and belief" we are using them (paragraph 68).

The affidavits submitted in support of the motion also fail to provide sufficient information to address the pending motion for an injunction. In most regards, they are conclusory and fail to establish any foundation for the information to which the individuals purportedly swear. Many of the averments in the affidavits appear to based on multiple (3-4 levels) of hearsay (if they even happened). We need more information before we can even address the merits of Plaintiff's claims, which appear to be weak to non existent in terms of its request for injunctive relief and "irreparable harm."

Since Plaintiff continues to refuse to state what is at issue, I am serving discovery on Plaintiff today that requires it to disclose what it should have disclosed pre-suit or, at a minimum, in its Motion and supporting papers. (Attached) I am requesting that the Court defer the scheduling of a hearing for at least 40 days so that we have the information requested and the appropriate 10 days thereafter to prepare for the hearing. If Plaintiff would provide the information

sooner, we will, of course cooperate in agreeing to an earlier hearing. Otherwise, I must respectfully object to the scheduling of a sooner hearing on the grounds that the failure to provide the basis for the extraordinary injunctive relief sought not only would violate the rules, but also due process.

I am available at any time to discuss this matter. Thank you for your attention and consideration to this request.

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

brian@stephensonmurphy.com

From: Major, Denny [mailto:dmajor@hsblawfirm.com]
Sent: Monday, September 08, 2014 3:17 PM
To: kkimbrell@greenvillecounty.org
Cc: ralph@gwhlawfirm.com; Brian Murphy; Gantt-Sorenson, Chris
Subject: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895

Ms. Kimbrell:

We represent Plaintiff Lewallen Automation, LLC in the above-referenced matter and have filed a motion for temporary injunction. We understand from Steve Lopez that the motions roster is full until at least November. Due to the exigent circumstances and nature of the relief we are seeking, we respectfully request that our motion be heard by Judge Simmons at the earliest available date, allowing, of course, for ten days' notice to the two defendants. We anticipate that an hour would be sufficient time for the hearing.

Our complaint was filed this past Friday, September 5th. Though they have not yet made official appearances, my understanding is that Brian Murphy of Stephenson & Murphy, LLC will be representing Defendant Michael Lewallen and Ralph Gleaton of Gleaton Wyatt will be representing Defendant Everworks, LLC. I have copied Mr. Murphy and Mr. Gleaton on this e-mail.

We appreciate your assistance in this matter. Please do not hesitate to contact me if you need any additional information.

Haynsworth Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Denny P. Major | Attorney | Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor (29601) | Post Office Box 2048 (29602) | Greenville, South Carolina
Phone: 864.240.3200 | Fax: 864.240.3300 | Direct: 864.240.3296 | Mobile: 864.325.6663

website | bio | vCard | map | email

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Exhibit 5

Brian Murphy

From: Gantt-Sorenson, Chris <csorenson@hsblawfirm.com>
Sent: Tuesday, September 16, 2014 3:25 PM
To: Brian Murphy
Subject: RE: Lewallen Automation Case

Okay that is not the same question. I answered your question.

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Tuesday, September 16, 2014 3:23 PM
To: Gantt-Sorenson, Chris
Subject: Re: Lewallen Automation Case

How would you prove your case without involving the customers and vendors? Who is going to testify as to what Mike allegedly said?

Sent from my Verizon 4G LTE Smartphone

----- Reply message -----
From: "Gantt-Sorenson, Chris" <csorenson@hsblawfirm.com>
To: "Brian Murphy" <brian@stephensonmurphy.com>
Subject: Lewallen Automation Case
Date: Tue, Sep 16, 2014 3:19 PM

You were correct in your assumption but my clients have no intention of involving them any further than Lewallen already has. The issue isn't the customer or who they choose – the issue is Lewallen's conduct to any third party most especially customers, employees.

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Tuesday, September 16, 2014 3:03 PM
To: Gantt-Sorenson, Chris
Subject: Re: Lewallen Automation Case

That doesn't answer my question. I am simply asking who the customers are

Sent from my Verizon 4G LTE Smartphone

----- Reply message -----
From: "Gantt-Sorenson, Chris" <csorenson@hsblawfirm.com>
To: "Brian Murphy" <brian@stephensonmurphy.com>
Cc: "ralph@gwhlawfirm.com" <ralph@gwhlawfirm.com>
Subject: Lewallen Automation Case
Date: Tue, Sep 16, 2014 2:54 PM

We seek to enjoin Mr. Lewallen from violating his obligations under his Employment Agreement and all of the Closing Documents for the sale of the business, as well as his statutory obligations. Both of those documents have trade secret and confidentiality language, and definitions.

We believe our Motion and the related additional affidavits, including the amended ones we will be filing shortly, clearly set out the reason injunctive relief is appropriate against Mr. Lewallen at this time.

Our draft proposed Order will track the 7 categories of conduct we identified in our Motion for Temporary Injunction. We will send it to you ahead of time to see if we can consent to the relief requested.

Thanks

Chris

Haynsworth Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Christine Gantt-Sorenson | Attorney | Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor (29601) | Post Office Box 2048 (29602) | Greenville, South Carolina
Phone: 864.240.3200 | Fax: 864.240.3300 | Direct: 864.240.3282

website | bio | vCard | map | email

From: Brian Murphy [mailto:brian@stephensonmurphy.com]
Sent: Monday, September 15, 2014 3:12 PM
To: Gantt-Sorenson, Chris
Cc: ralph@gwhlawfirm.com
Subject: Lewallen Automation Case

From the information we have, it appears to us that one customer about which you are complaining is Michelin. In fact, it is the only one we can surmise that is involved. If there are others, please specify who they are.

I have been in touch with Michelin and will be following up with them in our efforts to obtain admissible information to use in opposition to the motion you filed. Michelin, of course, needs to know that Lewallen Automation may obtain an Order, enjoining an existing Michelin contractor (Everworks) from doing business with Michelin, as well as precluding Michelin from doing business with my client, who has a good, long-standing relationship with Michelin. It is, of course, our position that Michelin should decide the contractors and persons with which and with whom it will deal.

Again, if your motion is not seeking injunctive relief regarding Michelin, or if there are other customers at issue, please let me know as soon as possible.

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

brian@stephensonmurphy.com

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Exhibit 6

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2014-CP-23-4895**
Lewallen Automation, LLC and ASAG LLC,	)	
Plaintiffs,	)	**Affidavit of Michael Lewallen**
v.	)	
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

Michael Lewallen states that he is an adult over the age of eighteen and that the following matters are within his personal knowledge:

1. Plaintiffs terminated my employment. I was not expecting the termination or planning to resign at the time I was first informed that I was going to be terminated, which was then put on hold.
2. I have been in the automation industry for eight years.
3. I have a high school education. My trade is electrician.
4. I have acquired personal contacts and developed relationships with customer contacts well before ASAG, LLC purchased Lewallen Automation. This includes relationships I have with individuals at Michelin.
5. I am not aware of any work that Everworks, LLC has taken from Plaintiffs. Lewallen Automation makes reference to a Michelin project in Ardmore, Oklahoma. To the best of my knowledge, Everworks is not doing that work.
6. I have not used any pricing information of Plaintiffs in my work with Everworks, LLC. Nor would I have any reason to do so.

1 MLL

7. From what I have observed, the focus of Lewallen Automation and Everworks is different. Everworks is focused engineering and design, which is only a small portion of what Lewallen Automation does. Lewallen Automation is focused more on manufacture of control panels. Everworks, to the best of my knowledge, has never manufactured control panels.

8. I am not aware of the identity of individuals to whom Plaintiffs claim I disclosed information.

9. I am not aware of what information that I am accused of purportedly using that somehow belongs to Plaintiffs. To the extent Lewallen Automation is accusing me of using the information in spreadsheets attached to the e-mails they have produced, I have not used such information or have any reason to do so as discussed below.

10. Since the termination of my employment, I have not used or disclosed any information that I understand to be a trade secret or information that is confidential to Plaintiffs.

11. While I worked with Plaintiffs, I emailed documents to myself on occasion. I did not email documents to my daughter. Attached is a copy of the contact information for Emma Lewallen (personal identifier information redacted). It shows that the address is actually the email address that my wife and I use on our home computer (and the address I have used to correspond with my counsel). The "alewallen" in the address stands for Amy. We share that address.

2 NTL

12. It is possible I forwarded planning documents in January to my home computer so I could work on them. I simply do not recall doing so, but they are on my computer as stated above. I do recall working with documents earlier this year that concerned me because work I brought in was being credited to others. I also believe that we were working on these planning and budgeting documents at this time. However, my recollection is that I had a printed out copy of the document that, if I wanted to, I could have kept or copied. Emailing them to my home address would be a possible way to allow me to work on them since my home computer was not set up for my work email (i.e. lewallenautomation.com). However, I have no actual recall of sending these home or working from an electronic version. Whatever occurred did not happen in anticipation of leaving Plaintiffs on January 13 or January 20, 2014. Again, Plaintiffs terminated my employment in July, although discussions began in June.

13. I have searched our home computer and found referenced planning documents. I do not have emails from this time period and Lewallen Automation deleted by work account from my phone.

14. Attached are screen shots of the searches showing the files located when searching for "Lewallen Automation," "customer," "contacts," "planning," "price," "sales," and "budget." These searches essentially located the same documents related to Lewallen Automation.

15. As the search results indicate, none of the relevant files had been opened since January 20 with the exception of one document that my attorney and I opened today (at 5:20 p.m.) in his office as we searched the computer and reviewed files.

I will be happy to delete these now that disclosure has been made but prefer to wait until the hearing on Monday to make sure that this is the preference of the Court.

16. The document entitled "Timeline of Events Lewallen Automation" is a document I created for the purpose of meeting with my attorney.

17. The documents found do not contain contact information (although that is easy for me to ascertain). They do show possible upcoming business with certain accounts. However, in reviewing the documents themselves, I am not aware of Everworks pursuing any of this business. While Plaintiffs reference work in Ardmore, Oklahoma, for example, there is no information I could find in these spreadsheets about that business opportunity so any communications Everworks had with its existing customer had nothing to do with these documents.

18. In any event, I never shared these documents with Everworks or anyone outside of Lewallen Automation.

19. The emails produced with the Naugle Affidavit do not make sense to me. For example, the email chain for the sales planning document shows a trail that has Gregg Hughes' name but my email address. (See January 13 email at 4:53pm). So, apparently, somebody wanted it to appear that emails to or from my account actually showed Greg Hughes's name. It would also make no sense that I would be sending company documents to Rachel Kay, who is an acquaintance about whom my wife is aware and there are no problems as Plaintiffs' filings allege. The references to Kay in the filed documents appears to be simply a pre-emptive

attack by Hughes based on admissions he has made to me in text messages that we will share in discovery.

20. To the best of my knowledge, I have not solicited any work from any company that was not already an Everworks customer prior to my association with it.

21. I am not aware of the times or dates of many of the other allegations against me when Plaintiffs claim I was not working. I would need that information in order to be able to respond further.

22. I did meet with Brian Wright of Tennessee Electric Construction and Maintenance. He is a friend of mine. I set up a meeting between him, his boss, and the CFO of Tennessee Electric and Greg Hughes and Rob Merritt for Plaintiffs. It is my understanding that they had a meeting. Rob Merritt told me there was a meeting. My hope was that we could do business with them. Merritt told me he apologized for his conduct in the meeting.

23. I have no idea what Plaintiffs are referring to with regard to their allegations in paragraph 25 of the Amended Complaint regarding a supposed discussion with a vendor.

24. I did not sign any non compete agreement or non solicit agreement (covering customers or employees) with Plaintiffs.

25. I have no recollection of the 2014 Confidentiality and Trade Secrets policy that is Exhibit 3 to the Merritt Affidavit. It appears from the footer that it is part of an employee handbook. It is my understanding that a handbook was issued after I was terminated. I do not recall a 2014 employee handbook. In any event, I do not see any provision in it that I would have violated.

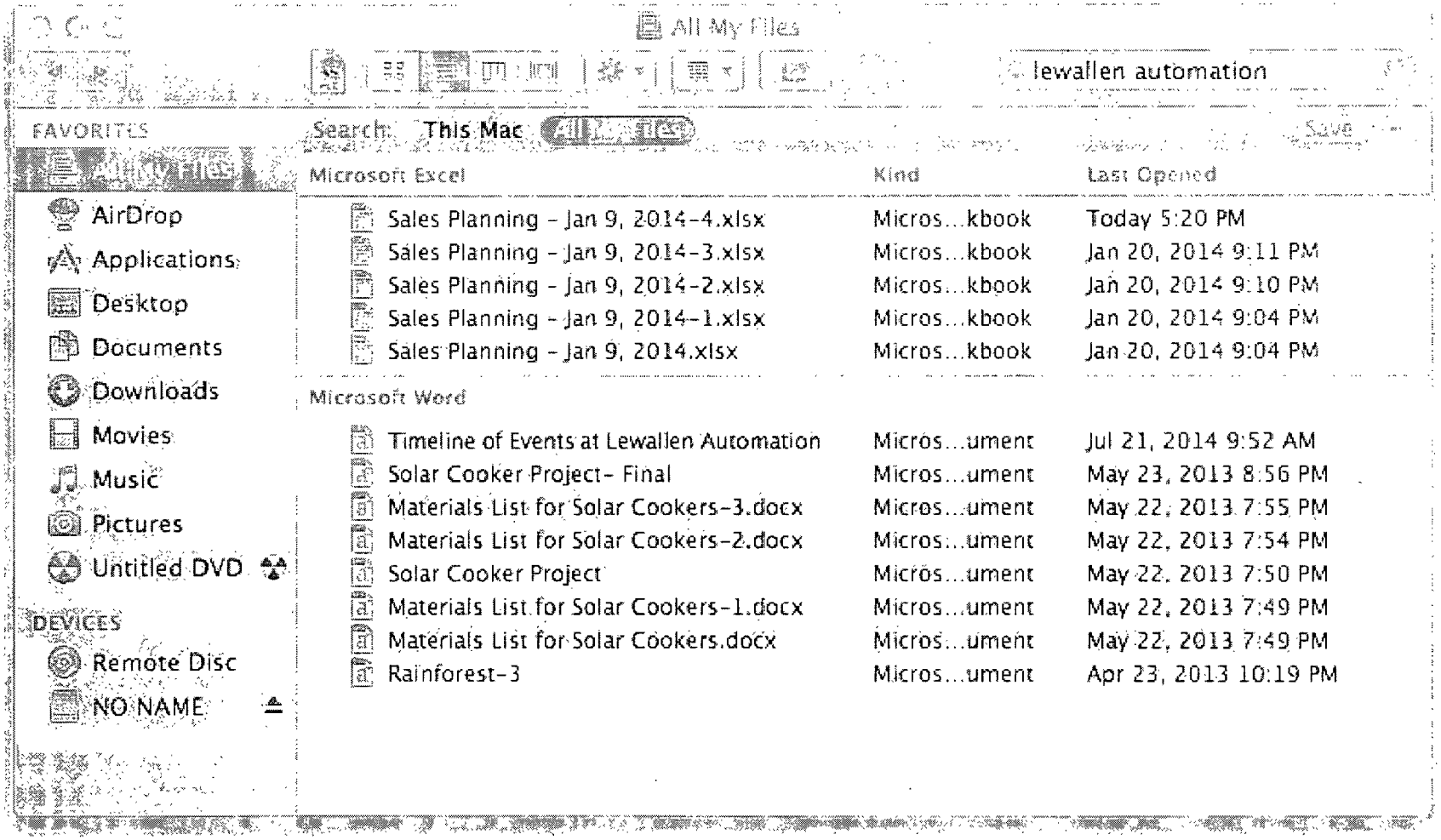
5 MTL

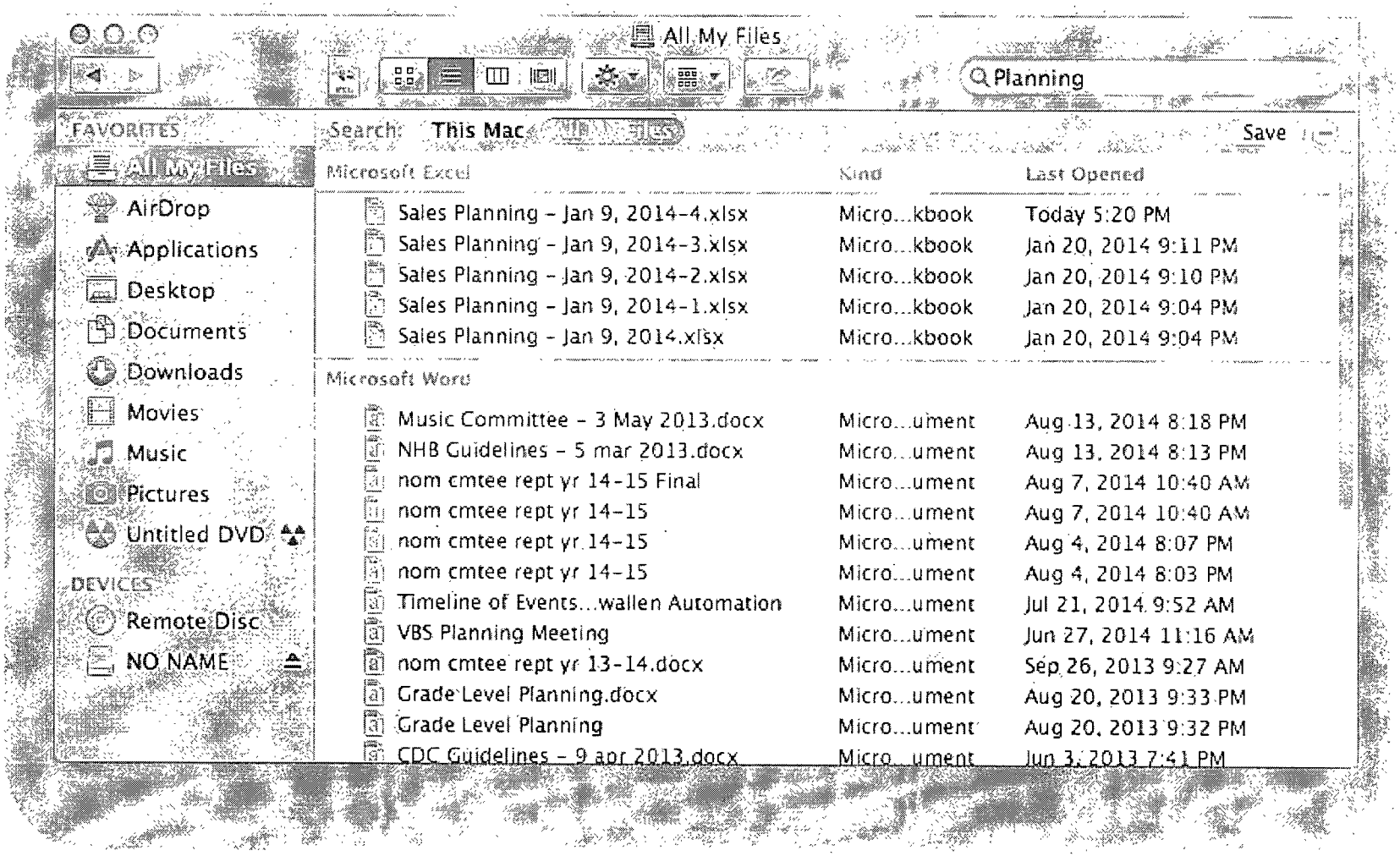
Respectfully submitted this 24th day of September, 2014.

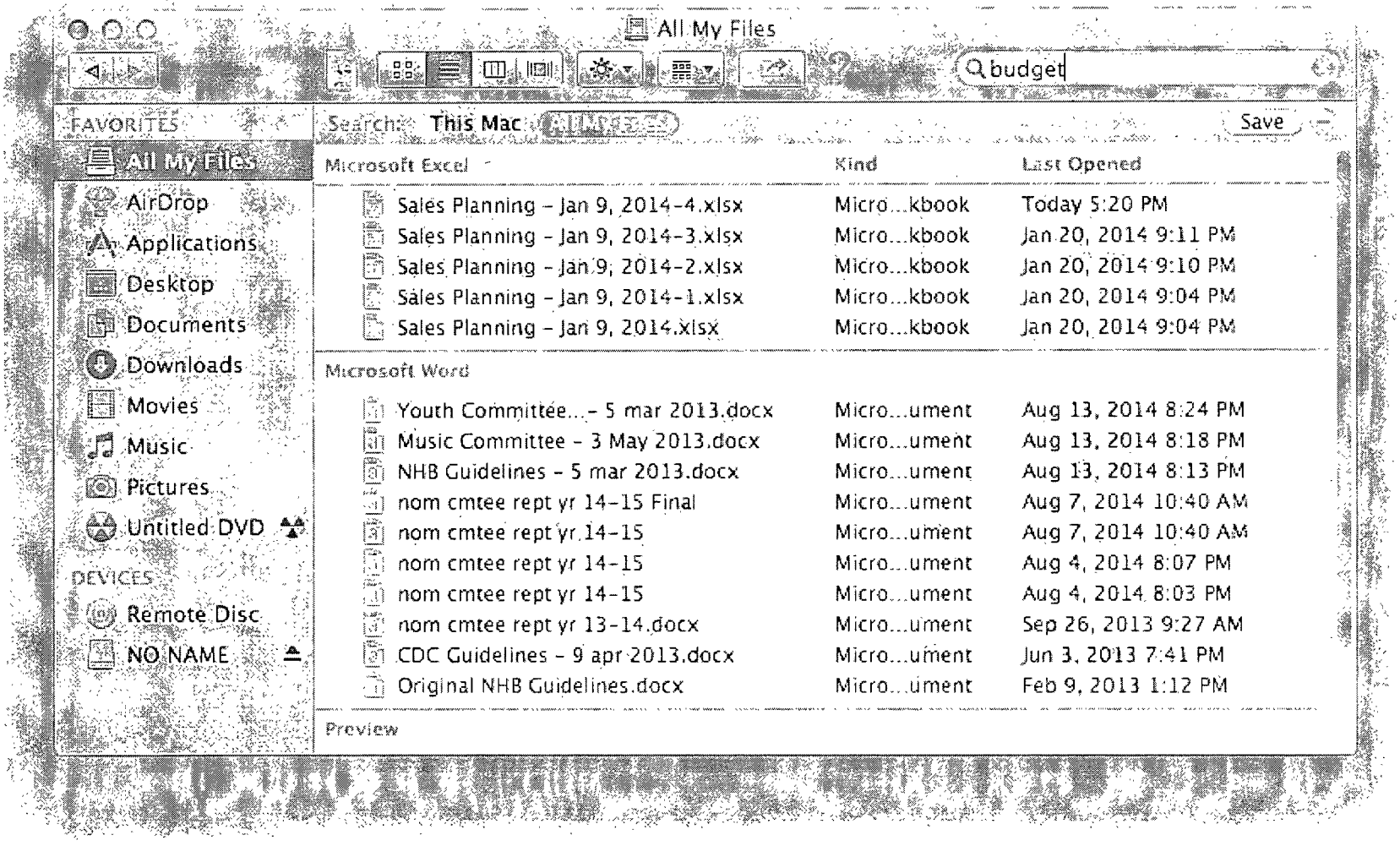
Michael Lewallen

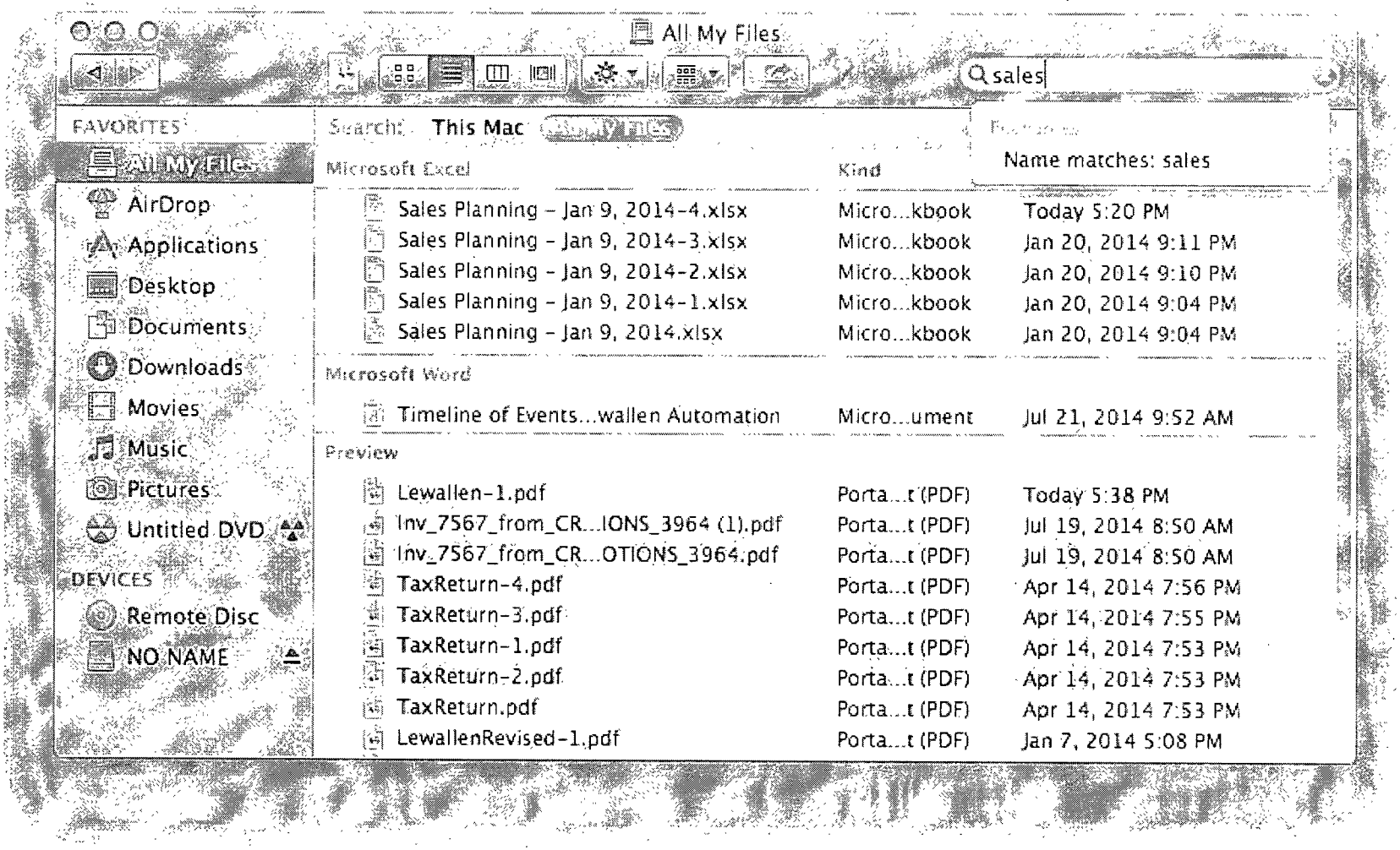
Sworn to and subscribed before me this
24th day of September, 2014

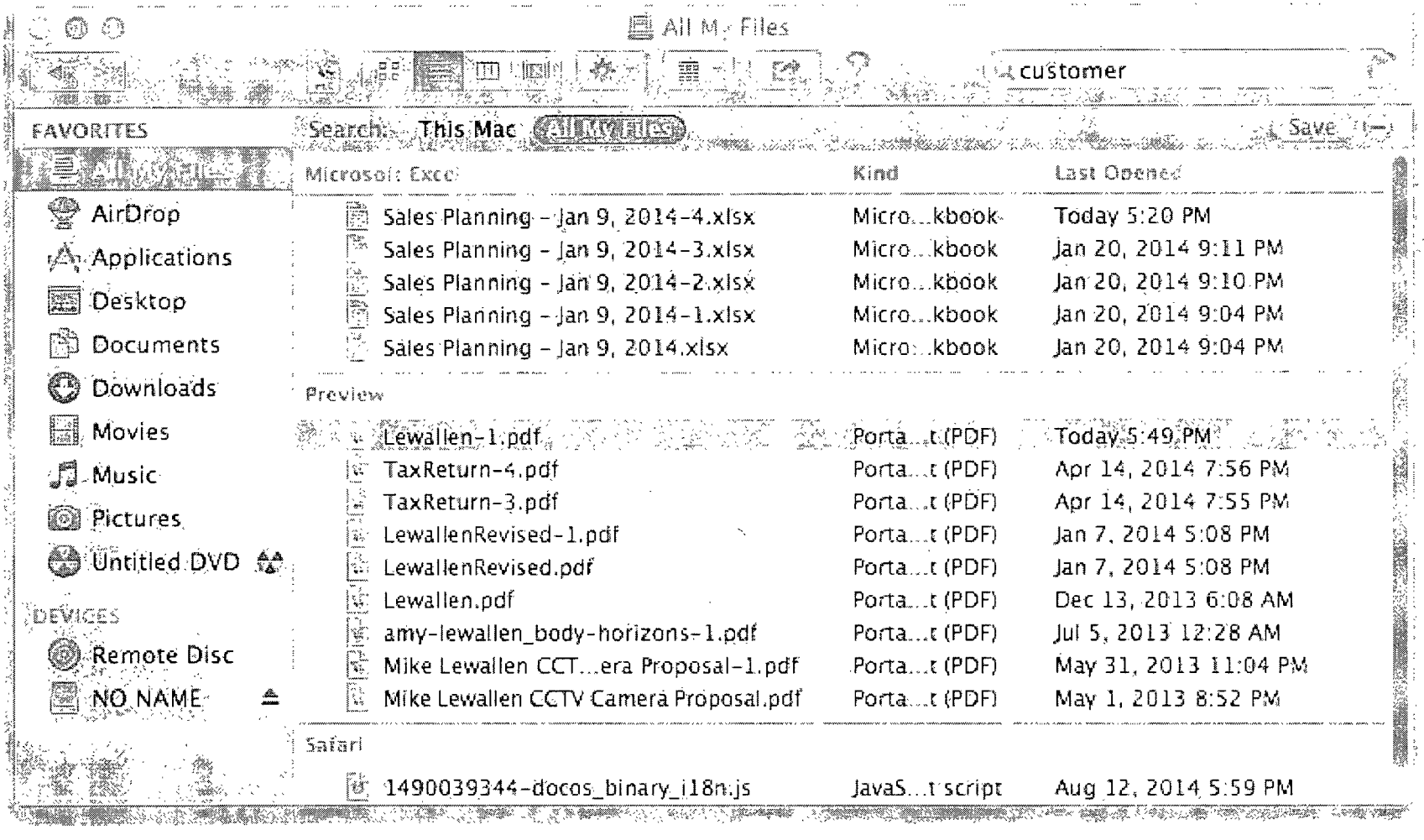
Notary Public
My commission expires 9/11/2015

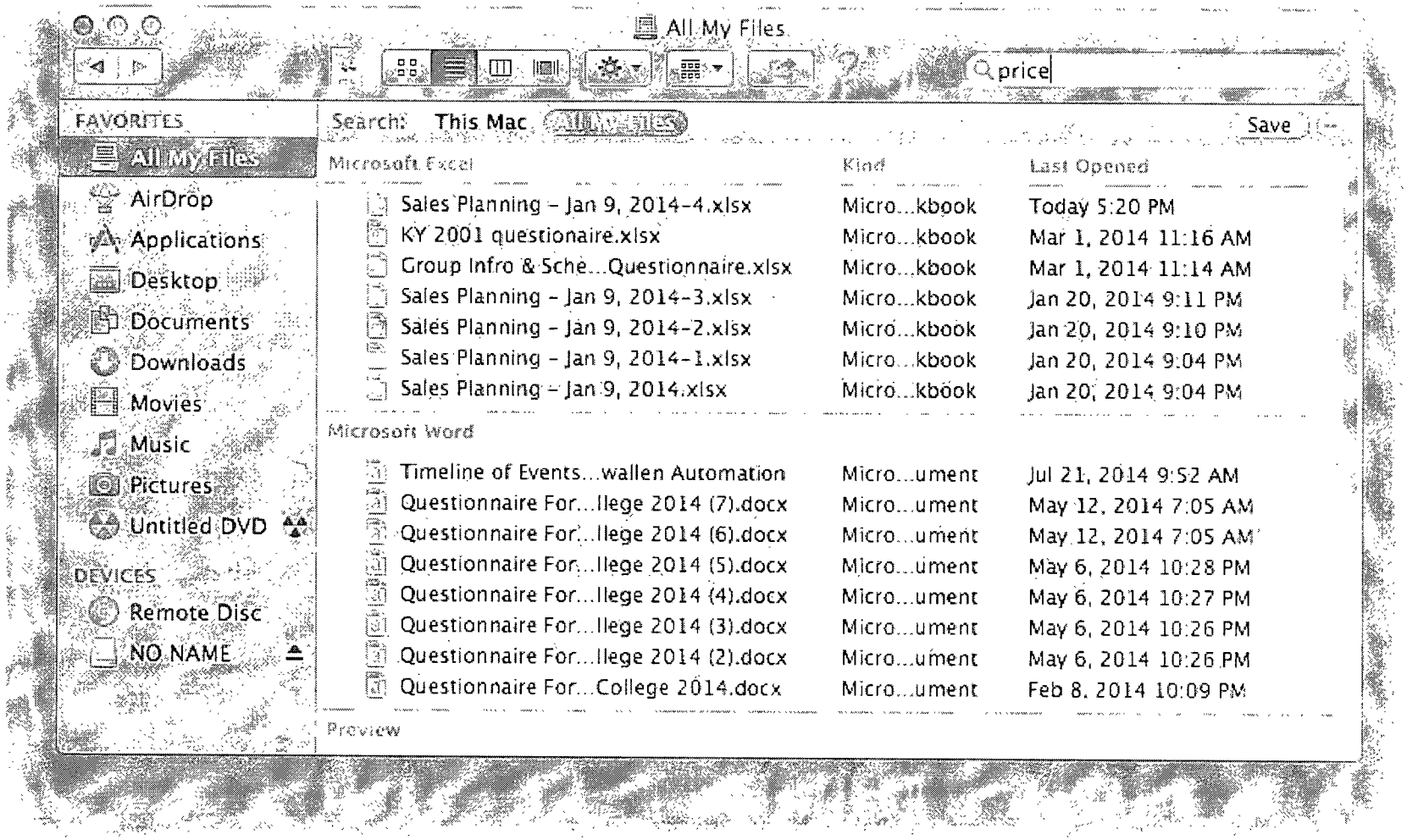

All My Files
lewallen automation
FAVORITES
Search: This Mac
Save
AirDrop
Applications
Desktop
Documents
Downloads
Movies
Music
Pictures
Untitled DVD
DEVICES
Remote Disc
NO NAME
Microsoft Excel
Kind
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Sales Planning - Jan 9, 2014-2.xlsx Micros...kbook Jan 20, 2014 9:10 PM
Sales Planning - Jan 9, 2014-1.xlsx Micros...kbook Jan 20, 2014 9:04 PM
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Microsoft Word
Timeline of Events at Lewallen Automation Micros...ument Jul 21, 2014 9:52 AM
Solar Cooker Project- Final Micros...ument May 23, 2013 8:56 PM
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Materials List for Solar Cookers-2.docx Micros...ument May 22, 2013 7:54 PM
Solar Cooker Project Micros...ument May 22, 2013 7:50 PM
Materials List for Solar Cookers-1.docx Micros...ument May 22, 2013 7:49 PM
Materials List for Solar Cookers.docx Micros...ument May 22, 2013 7:49 PM
Rainforest-3 Micros...ument Apr 23, 2013 10:19 PM


All My Files
Planning
FAVORITES
Search: This Mac
Save
All My Files
AirDrop
Applications
Desktop
Documents
Downloads
Movies
Music
Pictures
Untitled DVD
DEVICES
Remote Disc
NO NAME
Microsoft Excel
Kind
Last Opened
Sales Planning - Jan 9, 2014-4.xlsx Micro...kbook Today 5:20 PM
Sales Planning - Jan 9, 2014-3.xlsx Micro...kbook Jan 20, 2014 9:11 PM
Sales Planning - Jan 9, 2014-2.xlsx Micro...kbook Jan 20, 2014 9:10 PM
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Sales Planning - Jan 9, 2014.xlsx Micro...kbook Jan 20, 2014 9:04 PM
Microsoft Word
Music Committee - 3 May 2013.docx Micro...ument Aug 13, 2014 8:18 PM
NHB Guidelines - 5 mar 2013.docx Micro...ument Aug 13, 2014 8:13 PM
nom cmtee rept yr 14-15 Final Micro...ument Aug 7, 2014 10:40 AM
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All Contacts Edit



Emma Lewallen

Lewallen Automation

home
(864) [redacted]

mobile
(864) [redacted]

FaceTime

home
alewallen[redacted]@[redacted]

home
[redacted]

Favorites Recents Contacts Keypad Voicemail

Exhibit 7

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895
	)	
Lewallen Automation, LLC,	)	
	)	
Plaintiff,	)	
v.	)	Defendant Lewallen's First Discovery to Plaintiff
	)	
Michael Lewallen and Everworks, LLC,	)	
Plaintiffs.	)	
	)	
	)	

Defendant Michael Lewallen hereby propounds and serves the following Requests to Admit, Interrogatories and Requests for Production and requests that Plaintiff serve its written responses thereto within Thirty (30) days after the service hereof or within some other time frame mutually agreed to by counsel and, within the same time, provide responsive documents at the offices Defendant Lewallen's attorney at 207 Whitsett Street, Greenville, South Carolina 29601.

Definitions

As used herein, the term "Complaint" refers to the Complaint filed September 5, 2014 by Plaintiff that commenced this action.

Requests to Admit

1. Plaintiff and Defendant Lewallen are not parties to a non-compete agreement (i.e. a covenant not to compete).

2. Plaintiff and Defendant Lewallen are not parties to a non-solicit agreement.

3. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant from working in any of the same lines of

business in which Plaintiff engages (as described by you in paragraph 5 of the Complaint).

4. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from soliciting work from customers with which he dealt while employed by Plaintiff.

5. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from doing business with customers with which he dealt while employed by Plaintiff.

6. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from soliciting individuals employed by Plaintiff to resign their employment and work with Defendant Lewallen or any other person or entity.

7. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from hiring or otherwise retaining individuals employed by Plaintiff.

8. With respect to the allegations of this lawsuit, Plaintiff does not contend that any of its customers have breached any contracts between that customer and Plaintiff.

9. Nobody has told Plaintiff that Defendant Lewallen has misappropriated any information that Plaintiff contends is a trade secret.

10. Nobody has told Plaintiff that, since his employment with Plaintiff ended, Defendant Lewallen has used any information that Plaintiff contends is a trade secret.

11. Nobody has told Plaintiff that, since his employment with Plaintiff ended, Defendant Lewallen has disclosed any information that Plaintiff contends is a trade secret.

Interrogatories

1. Give the names and addresses of persons known to Plaintiff to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of documents, in paper or electronic form, that relate to the claim or defense in the case.

3. List the names and addresses of any expert witnesses whom Plaintiff proposes to use as a witness at the trial of the case.

4. For each person known to Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendant Lewallen of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

5. If you denied any of the foregoing requests to admit then, for each denied request, set forth each fact upon which you rely in asserting the denial.

6. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Plaintiff regarding the decision to terminate Defendant Lewallen's employment.

7. For each communication identified above, set forth a detailed summary of the communications or, if such communication occurred solely in writing, specify the document(s) that contain the contents of the communication.

8. Identify by name address and phone number each and every person who provided information, was consulted, who participated in, or who was otherwise involved in the decision to terminate Defendant Lewallen's employment. For each person identified, specify:

   a. the specific role such person played in the decision;

   b. the relevant facts known to the person, or that he or she provided in the decision-making process leading to the decision, including other options considered, whether or not you contend they were relied upon in making the decision; and

   c. all documents and communications created, considered by, or otherwise related to his or her role in the decision including, but not limited to, any notes or communications or other documents regarding the decision.

9. If you contend that Defendant Lewallen violated any policy, rule, or standard of conduct that was considered in the decision to terminate his employment, specify each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation.

10. If you contend Defendant Lewallen has violated any term of any agreements between Plaintiff and Defendant Lewallen, specify the specific term upon which you rely, each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation(s).

11. If you contend Defendant Lewallen has misappropriated any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Defendant Lewallen misappropriated the trade secret;

c. each witness that has knowledge of Defendant Lewallen's misappropriation of the trade secret; and

d. each document upon which you rely in support of your contention.

12. If, as alleged in paragraph 45(f) of the Complaint, you contend Defendant Lewallen has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b each fact upon which you rely in contending that Defendant Lewallen used the trade secret;

c. each witness that has knowledge of Defendant Lewallen's use of the trade secret; and

d. each document upon which you rely in support of your contention.

13. If, as alleged in paragraph 45(f) of the Complaint, you contend Defendant Lewallen has disclosed any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Defendant disclosed the trade secret;

c. each witness that has knowledge of Plaintiff's disclosure of the trade secret; and

d. each document upon which you rely in support of your contention.

14. With respect to each "trade secret" you identify in your responses to Interrogatories 11-13 or that you otherwise contend is at issue in this litigation, specify each action taken by Plaintiff to maintain its secrecy including, but not

limited to, each policy regarding the use or handling of such information to the extent such policy was in effect during Defendant Lewallen's employment.

15. Specify (not just by characterization) all information or data to which you refer in paragraph 13 of the Complaint that Plaintiff "has developed" "since Plaintiff was purchased from Defendant Lewallen "and his partners."

16. Specify by date and occurrence each act or omission on the part of Defendant Lewallen on which you rely with regards to your allegations in paragraph 15 of the Complaint.

17. Specify each fact and occurrence upon which you rely with respect to your allegations in paragraphs 16 and 17, and 24 of the Complaint as well as all documents upon which you rely in making the allegations.

18. Specify the "competitor" to which you refer in paragraph 25 of your Complaint and identify all facts and witnesses upon whom you rely with respect to the allegations of that paragraph and all documents related thereto.

19. Specify the vendor and all communications related to the allegations in paragraph 30 of the Complaint including, but not limited to, the mode of communication, the individual(s) to whom the statement allegedly was made, and all documents related thereto.

20. Specify the employees and all communications related to the allegations in paragraph 32 of the Complaint including, but not limited to, the individual(s) who reported such information to Plaintiff and the representative(s) of Plaintiff who purportedly learned this information, and all documents related thereto.

21. Specify each act or omission on the part of Defendant Lewallen that you contend constitutes a "breach" of his obligations as alleged in paragraph 40 and 45 of the Complaint and, for each alleged breach, specify:

    a. The witnesses, communications, and documents (including electronic documents and communications) upon which you rely in support each specific allegation;

    b. the specific provision(s) of the referenced agreements that you contend were breached with regard to each act or omission identified.

22. Specify each "resource" and piece of "equipment" to which you refer in paragraphs 45(d) and 58 of the Complaint and each fact or bases which you rely in contending that Defedant Lewallen "divert[ed]" them.

23. Specify by customer or product/service the particular "pricing information" you contend in paragraph 45(f) that Defendant Lewallen "us[ed]" and disclos[ed]," the source of the information upon which you rely, and all documents that support your allegation.

24. Specify each "customer" to which you contend in paragraph 50 of the Complaint that Defendant Lewallen made "misrepresentations" and, for each such customer, specify each misrepresentation made by Defendant Lewallen and the source of the information upon which you rely.

25. Specify each fact upon which you rely in contending that Defendant Lewallen was a "fiduciary" as alleged in your Fourth Cause of Action.

26. Specify each customer, contract, and "breach" upon which the allegations of paragraph 77 of the Complaint is based.

27. Specify each employee, contract, and breach upon which the allegations of paragraph 83 of the Complaint is based.

28. With respect to your defamation claim, specify:

    a. Each person(s) to whom Defendant Lewallen made a defamatory statement;

    b. The date upon which each such statement was made; and

    c. The specific statement Defendant Lewallen made.

29. Specify each act or omission on the part of Defendants that you contend constitutes an "unfair method[] of competition" or an "unfair or deceptive act or practice[]."

30. Specify by type and amount each element of damage you claim related to any conduct on the part of Defendant Lewallen and specify the manner in which you calculate each element of such damage.

31. Identify each fact upon which you rely in contending that an individual known as Rachel K is "known to be [Defendant] Lewallen's mistress" including each person known to Plaintiff who purports to know this and the basis for their belief that Defendant Lewallen has a "mistress."

Requests to Produce

1. All documents or other things identified in your responses to the foregoing interrogatories.

2. A complete copy of Defendant Lewallen's personnel file.

3. Any other documents maintained by Plaintiff regarding Defendant Lewallen.

4. All communications between Plaintiff and any other person or entity (including employment agency) regarding Defendant Lewallen's termination of employment or the allegations set forth in your Complaint.

5. All employee handbooks or similar publications for employees regarding terms and conditions of employment applicable to Defendant Lewallen's employment.

6. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Plaintiff's personnel management policies and/or practices applicable to Defendant Lewallen's employment.

7. Any statements taken from any witness in this case.

8. All documents and communications related to the investigation or audit Plaintiff claims it conducted regarding Defendant Lewallen

9. All contracts that you allege were breached and the breach of which you contend Defendants induced.

10. All documents related to the allegations in paragraph 31 of the Complaint.

11. All policies or other documents that Plaintiff contends cover the topics of trade secrets, use of trade secrets, or the protections it provides and steps taken to protect trade secrets.

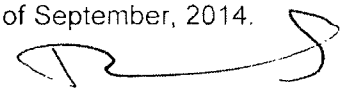
12. All other documents that you contend support your allegations against Defendant Lewallen.

13. All electronic communications, including text messages or e-mail, that discuss or otherwise relate to your substantive claims in this lawsuit or your claims for damages.

14. All other documents that you contend support your claims for damages.

15. A copy of any fee or retention agreement between Plaintiff and its counsel.

Respectfully submitted this 8th day of September, 2014.



Brian P. Murphy
Bar No. 6770

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
phone: 370-9400
fax: 241-1386

Attorney for the Plaintiff

Exhibit 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	_____ JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO.: 2014-CP-23-04895
LEWALLEN AUTOMATION, LLC (Plaintiff)	)	**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.	)	
MICHAEL LEWALLEN AND EVERWORKS, LLC (Defendant)	)	

Plaintiff's Attorney:	Defendant's Attorney:
Christine Gantt-Sorenson, Bar No. 63998 Address: Haynsworth Sinkler Boyd, P.X. P.O. Box 2048, Greenville, SC 29602-2048 Phone: 864-240-3296Fax 864-240-3300 E-mail: dmajor@hsblawfirm.comOther: _____	Brian P. Murphy, Bar No. 6770 Address: Stephenson & Murphy, LLC 207 Whitsett St., Greenville, SC 29601 Phone: 864-370-9400 Fax864-240-9292 E-mail: brian@stephensonmurphy.comOther:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Strike
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — 9/22/14 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

State of South Carolina)	IN THE COURT OF COMMON PLEAS
County of Greenville)	2014-CP-23-4895
Lewallen Automation, LLC and ASAG LLC,)	
Plaintiffs,)	Defendants' Joint Motion to Strike Portions of Affidavits Submitted By Plaintiff Lewallen Automation
v.)	
Michael Lewallen and Everworks, LLC,)	
Defendants.)	

All of Lewallen Automation's[1] five affidavits purport to be based on "personal knowledge." Hughes Aff. ¶ 2; Smith Aff. ¶ 2; Satterwhite Aff. ¶ 2; Merritt Aff. ¶ 2; Blanton Aff. ¶ 2. With the exception of Blanton's, the affidavits themselves show that they are not. They lack even the most basic indicia of foundation for the "facts" to which the individuals attempt to attest, and they are replete with inadmissible hearsay, speculation, conjecture, and conclusory/argumentative statements. They do not contain competent evidence and, in key respects, should be stricken.[2]

For example, affidavits by a litigant to prove the truth regarding statements made by a customer are improper as based on inadmissible hearsay. Englert, Inc. v. Netherlands Ins. Co., 315 S.C. 300, 303, 433 S.E.2d 871, 873 (Ct. App. 1993); see also

[1] After the commencement of this action and the filing of this Motion, another Plaintiff was named to the action. No motion on its behalf, however, has been filed.

[2] Even after repeated discussions and the filing of an Amended Complaint, Lewallen Automation still refuses to disclose the key details of its case. It simply want this Court to skip over any required showing and grant injunctive relief without permitting Defendants even the opportunity to discern and respond to their claims. Lewallen Automation has neither a single witness nor a single document that supports its critical factual allegations. As shown below, the approach to try to seek the extraordinary

Jones v. Doe, 372 S.C. 53, 62, 640 S.E.2d 514, 519 (Ct. App. 2006) (hearsay improper in affidavit and does not satisfy personal knowledge requirement)); Fairfield Resorts, Inc. v. Fairfield Mountains Prop. Owners Ass'n, Inc., CIV. 1:06CV191, 2007 WL 186537 (W.D.N.C. Jan. 22, 2007) ("Plaintiff's injunction is based purely on hearsay and speculation by Duncan which is insufficient to establish Plaintiff's need for an injunction.") (citing Atari Games Corp. v. Nintendo of Am., Inc., 897 F.2d 1572, 1575 (Fed. Cir. 1990) ("[A] district court should be wary of issuing an injunction based solely upon allegations and conclusory affidavits submitted by plaintiff.").

Likewise, Lewallen Automation's repeated conclusions that Defendant Lewallen has breached an obligation to Lewallen Automation is not a sufficient statement based on *facts* or personal knowledge. Zampatti v. Tradebank Int'l Franchising Corp., 235 Ga. App. 333, 336-37, 508 S.E.2d 750, 755 (1998).

Finally, Lewallen Automation includes matters having nothing to do with injunctive relief, such as claims of improper credit card use (for which they are seeking a legal remedy and one clearly exists if the allegations are proven). Lewallen Automation also harps on allegations that, even if true, would violate no legal obligation whatsoever as Defendant Lewallen is not party to any non-compete or non-solicit agreement.

As noted below, Lewallen Automation repeatedly violates even the most basic evidentiary principles in their improper effort to circumvent any actual showing for the extreme remedy they seek. Accordingly, Defendants move to dismiss the following excerpts of Lewallen Automation's Affidavits.

---

remedy of an injunction with mere hearsay, oblique references to unidentified witnesses and mere arguments has been routinely rejected by courts in similar circumstances.

Gregory Hughes

Para.	Statement	Grounds
5	". . . the purchasing agent of a client . . . requested a meeting in Ardmore, Oklahoma due to his concerns about LALLC made upon statements made to him by Michael Lewallen . . . ."	Foundation as to motive for the call Hearsay as to substance of what Lewallen allegedly said
6	Entirety	Hearsay
7	Entirety	Foundation

Eric Smith

Para.	Statement	Grounds
3	"one of LALLC's vendors . . . was concerned for LALLC"	Foundation as to vendor's state of mind
3	"Lewallen . . . told him that he was going to end up taking LALLC's business away from them and that he had already received two purchase orders from one of LALLC's current clients."	Hearsay Relevance – statement does not evidence any wrongdoing as Lewallen is free to compete.
3	"Lewallen said he was encouraging LALLC's employees who work in the hop . . . to leave their employment with LALLC and go to work with Lewallen to compete against LALLC."	Hearsay Relevance – Lewallen has no nonsolicit regarding employees.
5-8	All statements from unidentified third parties (e.g. "we contacted particular individuals . . . and discovered they were not aware . . .," "LALLC subsequently learned that the customer representative . . .had not eaten at Larkins," and "LALLC subsequently learned that the customer . . . had not eaten at Nantucket . . .," "The customer representative . . . informed LALLC that he had not eaten at that restaurant . . . ."	Foundation Hearsay Relevance – while this may relate to an alleged claim for damages it is not an issue related to any cognizable injunctive relief

Para.	Statement	Grounds
9-13	Entirety	Foundation Conclusory and not based on facts known to affiant Not relevant to any claim for injunctive relief

Jamie Satterwhite

Para.	Statement	Grounds
3	"the purchasing agent of a client in Ardmore . . . requested the meeting due to his concerns about LALLC being able to meet the client's business needs."	Same as Hughes ¶ 5 (foundation and hearsay)
4	Entirety	Foundation Hearsay
5	Entirety	Foundation Hearsay
6	"having been told that Lewallen received a text message . . . advising him that he was terminated.	Foundation Hearsay
7	Entirety	Relevance

Robert Merritt

Para.	Statement	Grounds
9	Everything beginning with "he was privy to confidential and trade secret information belonging to LALLC . . . ."	Foundation Conclusory/Argumentative
12	"Lewallen's conduct . . . was in violation of . . . .[through the end]"	Foundation Conlusory/Argumentative
13	Entirety	Foundation Conclusory/Argumentative
14	First sentence	Foundation Conclusory/Argumentative
15	Entirety	Foundation Relevance
16	Entirety	Foundation
17	Entirety	Conclusory/Argumentative
18-19	Entirety	Foundation Hearsay
20	Entirety	Foundation
21	First sentence	Foundation
21	"Numerous employees have advised us that Lewallen has encouraged them to leave employment with LALLC."	Foundation Hearsay
22	Entirety	Foundation Conclusory/Argumentative

Vince Blanton

Para.	Statement	Grounds
3	Entirety	Relevance

Respectfully submitted this 22nd day of September, 2014.

Brian P. Murphy
Attorney for Defendant Lewallen

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Phone: (864) 370-9400
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brian@stephensonmurphy.com

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Attorney for Everworks, LLC

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Greenville, SC 29601
Phone: (864) 250-9780
Fax: (864) 250-9784

ralph@gwhlawfirm.com.com

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895

Lewallen Automation, LLC,	)	
Plaintiff,	)	
v.	)	CERTIFICATE OF SERVICE
Michael Lewallen and Everworks, LLC,	)	
Defendants.	)	

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL [illegible] TICKENRIDER
2014 SEP 22 PM 11 41

This is to certify that a copy of Defendants' Joint Motion to Strike Portions of Affidavits Submitted by Plaintiff was served on all counsel of record via electronic mail and U.S. Mail, on September 22, 2014, at the following addresses:

Christine Gantt-Sorenson
Haynsworth Sinkler & Boyd, P.A.
One North Main Street, 2nd Floor
P.O. Box 2048 (29602-2048)
Greenville, SC 29601
csorenson@hsblawfirm.com

Ralph Gleaton
Gleaton Wyatt, PA
935 South Main St., Suite 203
Greenville, SC 29601
ralph@gwhlawfirm.com

Lisa Romaniello
Legal Assistant

Stephenson & Murphy, LLC
207 Whitsett Street
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Exhibit 9

Brian Murphy

From: Gantt-Sorenson, Chris <csorenson@hsblawfirm.com>
Sent: Friday, September 19, 2014 5:19 PM
To: Brian Murphy; Ralph Gleaton (ralph@gwhlawfirm.com)
Cc: Major, Denny
Subject: LALLC v. Lewallen and Everworks
Attachments: CGS letter to Murphy and Gleaton serving Affidavits.pdf; File-Stamped Amended Affidavit of Jamie Satterwhite.pdf; File-Stamped Amended Affidavit of Rob Merritt.pdf; File-Stamped Amended Affidavit of Vince Blanton.pdf; File-Stamped Amended Affidavit of Eric Smith.pdf; File-Stamped Amended Affidavit of Gregory S. Hughes.pdf; File-Stamped COS for Affidavits.pdf

Brian and Ralph,

We placed these in the mail to you today but I am also sending you a copy by email.

Thanks

Chris

Haynsworth Sinkler Boyd, P.A.
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FREEDOM OF SPEECH, DEFAMATION, AND INJUNCTIONS

DAVID S. ARDIA*

ABSTRACT

It has long been a fixture of Anglo-American law that defamation plaintiffs are not entitled to injunctive relief; their remedies are solely monetary. Indeed, it has been repeated as a truism: "equity will not enjoin a libel." This precept rests on one of the strongest presumptions in First Amendment jurisprudence: that injunctions against libel and other kinds of speech are unconstitutional prior restraints. But it may not be true, at least not anymore.

Over the past decade, the Internet has brought increased attention to the adequacy of the remedies available in defamation cases. Prior to the widespread availability of digital publishing, most defamation lawsuits in the United States involved claims against the mass

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media. These defendants were amenable, at least in theory, to the threat of large damage awards and had professional and financial interests in maintaining their reputations for accurate reporting. Today, the defendants in defamation cases are more likely to be bloggers or users of social media, such as Facebook and Twitter. For this new crop of defendants, the threat of money damages does not appear to serve the same limiting function on their behavior.

Although the Supreme Court has never held that an injunction is a permissible remedy for defamation, the past decade has seen a veritable surge in injunctions directed at defamatory speech, especially speech on the Internet. Despite this surge, courts have not clearly articulated why injunctions are permissible under the First Amendment and consistent with long-standing principles of equity. As a result, many judges—and scholars—remain confused about the availability and proper scope of injunctive relief in defamation cases.

This Article challenges the widely held view that defamation law does not countenance injunctions. In doing so, it presents the first comprehensive analysis of more than two centuries of case law. Reviewing these cases, it draws out the rationales, both constitutional and equitable, for the no-injunction rule. The Article concludes that although courts should be cautious when granting injunctions, a limited form of injunctive relief would be constitutional and consistent with equitable principles if it were limited solely to false statements on matters of private concern that a court has found—after full adjudication—are defamatory. It then describes how such a remedy could be structured so that it would be both effective and compatible with the First Amendment.

FREEDOM OF SPEECH, DEFAMATION, AND INJUNCTIONS

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INTRODUCTION

It has long been a fixture of Anglo-American law that libel plaintiffs are not entitled to injunctive relief; their remedies are solely monetary.[1] Indeed, it has been repeated as a truism: "equity will not enjoin a libel."[2] This precept rests on one of the strongest presumptions in First Amendment jurisprudence: that injunctions against libel and other kinds of speech are unconstitutional prior restraints.[3] But it may not be true, at least not anymore.

Over the past decade, the Internet has brought increased attention to the adequacy of the remedies available in defamation cases.[4] Prior to the widespread availability of digital publishing, most defamation lawsuits in the United States involved claims

1. *See, e.g.*, Konigsberg v Time, Inc., 288 F. Supp. 989, 989 (S.D.N.Y. 1968) ("To enjoin any publication, no matter how libelous, would be repugnant to the First Amendment ... and to historic principles of equity.") (internal citations omitted); Kuhn v. Warner Bros. Pictures, 29 F. Supp. 800, 801 (S.D.N.Y. 1939) ("The decisions in our State and Federal courts have firmly established the legal principle that no injunction may issue to prevent or stop the publication of a libel."); Brandreth v. Lance, 8 Paige Ch. 24, 26 (N.Y. Ch. 1839) (stating that a court cannot issue an injunction "without infringing upon the liberty of the press, and attempting to exercise a power of preventive justice which ... cannot safely be entrusted to any tribunal consistently with the principles of a free government"), Prudential Assurance Co. v. Knott, (1875) 10 Ch.App. 142 at 145 (Eng.) (refusing to grant an injunction and stating, that "not merely is there no authority for this application, but the books afford repeated instances of the refusal to exercise jurisdiction"). Courts in the United Kingdom began departing from this rule in the late nineteenth century. *See* Stephen A. Siegel, *Injunctions for Defamation, Juries, and the Clarifying Lens of 1868*, 56 BUFF. L. REV 655, 708 (2008) (noting that "in 1878 England began cutting back on the traditional no-injunction rule and abandoned it by the end of the century").

2. 2 RODNEY A. SMOLLA, LAW OF DEFAMATION § 9:85 (2d ed. 2012) ("There is a traditional maxim that 'equity will not enjoin a libel.'"); *see also* 2 ROBERT D. SACK, SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS § 10.6.1 (4th ed. 2010) ("One principle long adhered to in defamation cases is that courts will not enjoin libels.... The absoluteness of the rule is crucial."); BRUCE W. SANFORD, LIBEL AND PRIVACY § 13.3.3A (2d ed. Supp. 2006) ("Because of constitutional law's antipathy toward prior restraints, courts are rarely willing to consider such injunctions.").

3. *See infra* Part II.B.

4. Defamation includes both libel, which covers defamatory statements that are written or communicated in such a way that they persist similar to the printed word, and slander, which generally covers defamatory statements published orally or in a manner that is not likely to be preserved in a physical form or broadcast widely. *See* SACK, *supra* note 2, at xliii, §§ 2:4.1-.2. The distinctions between the claims are not germane to the present analysis, so this Article uses the general label of defamation.

Broadcasts simply disappeared into the ether. Although some media sources were physically archived in libraries—or later in proprietary electronic databases—defamatory statements did not persist or remain in the public's view for very long. Today, the lifespan of a defamatory statement is essentially infinite.

Not surprisingly, defamation plaintiffs are frustrated with the remedies available to them. And as Part III of this Article reveals, so are many judges.

II. THE NO-INJUNCTION RULE IN DEFAMATION CASES

The no-injunction rule has been a fixture of Anglo-American law for more than three centuries. Well before the First Amendment was ratified, it was taken as a given by judges and lawyers that injunctions, including permanent injunctions following trial, were not permissible remedies in defamation actions.[66] The rule's lineage can be traced to the backlash that arose from England's infamous Star Chamber, which "served as an unhealthy hybrid of legislature and court," issuing laws and trying those accused of libel or slander while acting "both as *Judges and Jurors*."[67]

Given the indelible mark that English censorship left on the American colonists, it should come as no surprise that the no-injunction rule appears quite forcefully in American cases not long after the nation was founded.[68] The first such published decision

66. *See* THOMAS STARKIE, A TREATISE ON THE LAW OF SLANDER, LIBEL, SCANDALUM MAGNATUM, AND FALSE RUMOURS 3 (London, W. Clarke & Sons 1813) ("[C]ommunications concerning reputation cannot be [] prohibited."); Note, *The Restraint of Libel by Injunction*, 15 HARV. L. REV. 734, 734 (1902) ("For one hundred and fifty years there has existed a tradition having the force of absolute law that equity has no jurisdiction to enjoin a libel.").

67. Michael I. Meyerson, *The Neglected History of the Prior Restraint Doctrine: Rediscovering the Link Between the First Amendment and the Separation of Powers*, 34 IND. L. REV. 295, 299 (2001). In the thirteenth and fourteenth centuries, defamation claims fell exclusively within the purview of ecclesiastical courts. *See* R. C. Donnelly, *History of Defamation*, 1949 WIS. L. REV. 99, 100-03. At some point thereafter, the Star Chamber took over the trial of libel claims and declared that libel was a criminal offense. *See* Brief for Historians Alfred L. Brophy et al. as Amici Curiae Supporting Petitioners, Tory v. Cochran, 544 U.S. 734 (2005) (No. 03-1488), 2004 WL 2582553, at *11 [hereinafter Brief Amici Curiae of Historians].

68. *See, e.g.*, Brandreth v. Lance, 8 Paige Ch. 24, 26 (N.Y. Ch. 1839); STARKIE, *supra* note 66, at 3.

was the 1839 New York case of *Brandreth v. Lance*.[69] In *Brandreth*, Chancellor Reuben Walworth wrote that a court cannot issue an injunction without "attempting to exercise a power of preventive justice which ... cannot safely be entrusted to any tribunal consistently with the principles of a free government."[70] If a court were to enjoin libelous speech, he warned, it would mark a dangerous return to the days of English censorship:

> The court of star chamber in England, once exercised the power of cutting off the ears, branding the foreheads, and slitting the noses of the libellers of important personages. And, as an incident to such a jurisdiction, that court was undoubtedly in the habit of restraining the publication of such libels by injunction.[71]

The following subsections explore the historical antecedents for the no-injunction rule and elucidate the reasons courts initially adopted—and continue to invoke—the rule. An examination of more than 242 decisions addressing injunctive relief in defamation cases reveals that the no-injunction rule is based on both equitable and constitutional concerns about the power of judges to silence speech.[72] In more than three-quarters of these decisions, courts refused to grant injunctive relief, citing one of four reasons for doing so: (1) the court did not have the power to issue an injunction directed at defamatory speech; (2) money was an adequate—and preferred—remedy for the injured plaintiff; (3) an injunction would not be effective in providing relief to the plaintiff; or (4) an injunction directed at defamatory speech would be an unconstitutional

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69. 8 Paige Ch. at 24.

70. *Id.* at 26.

71. *Id.* (internal citations omitted).

72. The author conducted a search on Westlaw and Lexis for decisions in which a court addressed a party's request for an injunction directed at defamatory speech. The following search terms were used: (defamation libel slander) /p (injunction enjoin gag). This list was then supplemented with additional decisions found by examining citing references and news searches. After eliminating irrelevant decisions, the author reviewed a total of 242 decisions through March 15, 2013. It is very likely that a number of decisions, especially in state trial courts, were not identified by these searches. Like other studies attempting to empirically examine case law, the exclusion of some unpublished decisions may bias the results to the extent that there is a systematic difference between available and unavailable decisions. *See* Kimberly D. Krawiec & Kathryn Zeiler, *Common-Law Disclosure Duties and the Sin of Omission: Testing the Meta-Theories*, 91 VA. L. REV. 1795, 1884-87 (2005).

prior restraint.[73] Of course, courts sometimes relied on more than one of these reasons, or offered no justification, when denying injunctive relief.

A. Equitable Limitations on Injunctive Relief

When American courts initially invoked the no-injunction rule, the reason most often cited was the conviction that a court of law did not have the power to issue an injunction. Due to the historical division between courts of law and courts of equity, common law judges originally lacked the authority to grant any equitable relief.[74] When the Crown abolished the Star Chamber in 1641, English common law courts began to hear defamation claims.[75] Because these courts had no power to grant injunctions, and courts of equity lacked the authority to adjudicate claims for defamation, the only remedy available for defamation was money damages at law.[76]

In the United States, this same division of power between courts of law and courts of equity existed until 1938, when enactment of the Federal Rules of Civil Procedure formally merged law and equity jurisdiction in the federal courts.[77] Merger in most states followed shortly thereafter.[78] The no-injunction rule, however, continued to be invoked by both state and federal courts. As several of the nation's leading legal historians noted in an amicus curiae

73. *See id.*

74. "Equity practice arose during the thirteenth century ... when English courts were rigidly attached to the writ system," which left many injured parties no recourse but to "petition the King's chancellor for special relief." Anthony DiSarro, *Freeze Frame: The Supreme Court's Reaffirmation of the Substantive Principles of Preliminary Injunctions*, 47 GONZ. L. REV. 51, 55 (2012).

75. *See* Brief Amici Curiae of Historians, *supra* note 67, at *12.

76. *See* Francis v. Flinn, 118 U.S. 385, 389 (1886) ("If a court of equity could interfere and use its remedy of injunction in [libel] cases, it would draw to itself the greater part of the litigation properly belonging to courts of law."); Brief Amici Curiae of Historians, *supra* note 67, at *12.

77. *See* FED. R. CIV. P. 2 (1938) (amended 2007) ("There shall be one form of action to be known as 'civil action.'").

78. *See* John J. Kircher & Christine M. Wiseman, 2 PUNITIVE DAMAGES: LAW AND PRACTICE § 20:2 (2d ed. 2012) ("The reform that merged the two systems in individual states was inaugurated by New York in 1948 and nearly all of the other jurisdictions have subsequently followed suit."). *But see* Rendleman, *supra* note 47, at 1643 ("Merger of law and equity is incomplete; in most of our state systems, some parts of the field are considered permanently 'equitable jurisdiction.'").

Exhibit 11

Trade Secrets Protection and Exploitation

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Although pricing and credit information has been granted protection by various courts,[182] such information has often presented difficult issues. For example, while one court recognized that such information could, theoretically, be eligible for protection, it found that a manufacturer's pricing information was so specific to the manufacturer that it lacked the independent economic value required for a trade secret.[183] In another case deciding against protection, cost and price information was determined to be readily available through lawful means.[184] Also, because price information often changes on a monthly, weekly, or daily basis, a plaintiff may have trouble countering an argument that the information has become stale and no longer has any independent economic value.[185]

In a Maryland case,[186] business information was not deemed a protectable secret because there was little likelihood of a competitor's using the information. Courts in Illinois,[187] Minnesota,[188] and California[189] found that customer information developed by a salesman was not the employer's secret. However, such information, as developed through responses to company advertising and multiple employees, was held a protectable trade secret in a Wisconsin case.[190]

Throughout the economic recession of the late 1980s and early 1990s, courts were especially solicitous of protecting employee mobility and use of skills.[191]

D. Customer Lists

Information regarding customers, including customer lists, has presented a variety of difficult questions in determining if there is a protectable trade secret. The issues most commonly arise where a former employee begins to compete with the employer. Courts are uniform in finding that a business does not have a proprietary interest in its customers; however, trade secret protection may be available

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[182]Valco Cincinnati, Inc. v. N & D Machining Serv., Inc., 24 Ohio St. 3d 41, 492 N.E.2d 814 (1986) ("pricing information"); Murray v. Bank One, Columbus, 582 N.E.2d 1124 (Oh. Ct. App. 1990) ("credit systems"); Den-Tal-Ez, Inc. v. Siemens Capital Corp., 389 Pa. Super. 219, 566 A.2d 1214 (1989); *Optic Graphics, Inc., supra* note 174, at 586; Abbott-Interfast Corp. v. Harkabus, 619 N.E.2d 1337, 1344 (Ill. App. Ct. 1993); Rugen v. Interactive Business Sys., Inc., 864 S.W.2d 548, 552 (Tex. App. 1993) (pricing information could be protected under Texas common law).

[183]*Optic Graphics, Inc., supra* note 174, at 587.

[184]Cosmos Forms, Ltd. v. American Computer Forms, Inc., 596 N.Y.S.2d 862 (A.D.2 Dep't 1993).

[185]Schlumberger Well Servs. v. Blaker, 623 F. Supp. 1310, 1316 (S.D. Ind. 1985).

[186]*Optic Graphics, Inc., supra* note 174.

[187]Colson Co. v. Wittel, 569 N.E.2d 1082 (Ill. App. Ct. 1991).

[188]Crown Holding Corp. v. Larson, 410 N.W.2d 373 (Minn. Ct. App. 1987).

[189]Moss, Adams & Co. v. Shilling, 179 Cal. App. 3d 124, 224 Cal. Rptr. 456 (1st Dist. 1986).

[190]Minuteman, Inc. v. L.D. Alexander, 147 Wis. 2d 842, 434 N.W.2d 773 (1989).

[191]*See, e.g.*, Brunner v. Hand Indus., Inc., 603 N.E.2d 157 (Ind. Ct. App. 1992); Service Ctr. of Chicago, Inc. v. Minoque, 535 N.E.2d 1132 (Ill. 1989).

for customer lists compiled by the former employer,[192] as well as for lists that extend beyond the names and addresses of the customers to other items with an element of independent economic value.[193]

Employees are generally free to compete with their former employer and may even attempt to solicit the customers of the former employer. However, it is also well recognized that the activities of former employees can, and often are, restricted and limited by valid noncompetition covenants, as well as in situations where the identity of the customers is considered to be a trade secret of the former employer.[194] The lack of a specific agreement not to use customer lists to solicit the customers of a former employer is not necessarily fatal to a plaintiff's claims to prevent former employees from making such solicitations. For example, the Michigan Supreme Court has stated:

> While an employee is entitled to the unrestricted use of general information acquired during the course of his employment or information generally known in the trade or readily ascertainable, confidential information, including information regarding customers, is the property of the employer and may be protected by contract. Even in the absence of a contract an employee has a duty not to use or disclose confidential information acquired in the course of his employment. Such information is often treated as a "trade secret."[195]

Whether a particular customer list is a trade secret is a question of fact,[196] and probably no other fact-specific area has caused so much confusion, particularly since court decisions often appear to conflict.[197] Most courts focus on whether the particular customer list is generally available to the public or is of common knowledge in a particular industry,[198] as well as what measures, if any, were taken to protect

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[192] *See, e.g.* Cincinnati Tool Steel Co. v. Breed, 487 N.E.2d 170, 176 (Ill. App. Ct. 2d Dist. 1985); Bayly, Martin & Fay v. Pickard, 780 P.2d 1168 (Okla. 1989).

[193] Steenhoven v. College Life Ins. Co. of Am., 460 N.E.2d 973 (Ind. Ct. App. 2d Dist. 1984).

[194] *See, e.g.* McCallister Co. v. Kastella, 825 P.2d 980 (Ariz. Ct. App. 1992); Wilmington Trust Co. v. Consistent Asset Mgmt. Co., 13 Del. J. Corp. L. 403 (Del. Ch. 1987); Southeast Consultants, Inc. v. McCrary Eng'g Corp., 273 S.E.2d 112 (Ga. 1980) (citing Taylor Freezer Sales Co. v. Sweden Freezer E. Corp., 160 S.E.2d 356 (Ga. 1968)); Higdon Food Serv. v. Walker, 641 S.W.2d 750 (Ky. 1982).

Follmer, Rudzewicz & Co. v. Kosco, 362 N.W.2d 676 (Mich. 1984). *See also* Unistar Corp. v. Child, 415 So. 2d 733 (Fla. App. 3d Dist. Ct. App. 1982).

[195] Zoecon Indus. v. American Stockman Tag Co., 713 F.2d 1174, 1179 (5th Cir. 1983).

[196] *Id.* at 1179 n.8 ("Because the classification of information as a trade secret depends on the facts of each case, this area of the law is unsettled, resulting in seemingly conflicting opinions. The classification of customers' lists is particularly confused.").

[197] Wildowsky v. Dudek, 310 A.2d 766, 767 (Conn. C.P. 1972) ("There is no evidence whatever that the list of customers involved, or even a single name on the list, could not be obtained by consulting the 'yellow pages' of a telephone directory or by walking down a street to ascertain customers who would be interested in pest control, restaurants, food establishments, apartment houses and the like"). *See also* Robert S. Weiss & Assocs. v. Wiederlight, 546 A.2d 216, 224 (Conn. 1988) (quoting Town & Country House & Homes Serv. v. Evans, 189 A.2d 290, 393 (Conn. 1963)) ("There is no trade secret, however, if the customers' names can be readily ascertained through ordinary business channels or reference resources."); Fleming Sales Co. v. Bailey, 611 F. Supp. 507, 513 (N.D. Ill. 1985).

the confidentiality of the list.[199] Where the information is being used by a former agent (e.g., former employee) of the person claiming trade secret status, the following factors may be relevant:

> (1) the extent to which the particular information is known to those outside the business;
> (2) the extent to which the information is known by employees and others involved in the business;
> (3) the extent of the measures taken by the employer to guard the secrecy of the information;
> (4) the value of the information to the employer and to its competitors;
> (5) the amount of effort or money expended by the employer in developing the information;
> (6) the ease or difficulty with which the information could be properly acquired or duplicated by others;
> (7) the extent to which the principal-agent relationship was a confidential or fiduciary one;
> (8) the method by which the former agent acquired the alleged secret;
> (9) the former agent's personal relationship with the customers; and
> (10) the unfair advantage that would accrue, or has accrued, to the former agent from the use of the alleged secret of the former principal.[200]

Other courts have used some of these factors in customer list cases.[201]

The time and effort expended to develop the information included in the customer list is often cited as a factor in the analysis of trade secret status.[202] For example, one court denied trade secret status for a list of customer names and addresses because the process of compiling the list was "neither sophisticated nor difficult nor particularly time consuming."[203] Trade secret status has also not been granted when the information is generally available through "widespread canvassing of an obvious and highly competitive market."[204] On the other hand, another court granted trade secret status for a customer list

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[199]*See, e.g.*, Surgidev Corp. v. Eye Technology, Inc., 828 F.2d 452 (8th Cir. 1987) (upholding trade secret status for customer list that was not generally known and which was maintained as confidential through limited distribution on a "need-to-know" basis, by requiring employees to sign nondisclosure agreements, by restricting visitor access, and by storing the lists in locked files).

[200]Nationwide Mut. Ins. Co. v. Stenger, 695 F. Supp. 688, 689 (D. Conn. 1988) ((1)–(6) are taken from RESTATEMENT OF TORTS §757 cmt. b).

[201]*See, e.g.*, Ruesch v. Ruesch Int'l Monetary Servs., 479 A.2d 295 (D.C. 1984); *Unistar Corp., supra* note 195; Erik Elec. Co. v. Elliot, 375 So. 2d 1136 (Fla. 3d Dist. Ct. App. 1979); Prudential Ins. Co. of Am. v. Van Matre, 511 N.E.2d 740 (Ill. App. Ct. 5th Dist.), *appeal denied*, 517 N.E.2d 1095 (Ill. 1987).

[202]*See, e.g.*, American Loan Corp. v. California Commercial Corp., 211 Cal. App. 2d 515, 27 Cal. Rptr. 243 (1963); *Unistar Corp., supra* note 195, at 734.

[203]American Paper & Packaging Prods., Inc. v. Kirgan, 183 Cal. App. 3d 1318, 1326, 228 Cal. Rptr. 713, 717 (1986).

[204]*Surgidev Corp., supra* note 199.

when the facts showed that the list had been acquired by "lengthy and expensive" labors.[205]

Other courts focus on the time and effort the third party would need to spend to develop the information in the customer list, noting that "[w]here the customers are not known in the trade or are discoverable only by extraordinary effort courts have not hesitated to protect customer lists and files as trade secrets."[206] There are cases, however, where information was held to be readily available and thus not eligible for trade secret status, even when it was shown that it would be very expensive, difficult, and time consuming for the defendants to acquire the information by alternative lawful means.[207]

Some customer lists are accorded trade secret protection because the list is part of a file containing other valuable information regarding the customers and the other information in the file qualifies as a trade secret.[208] For example, one court held that while some information in the file was part of the public domain, the file, "taken as a whole," could be protected as a trade secret because it contained secret and valuable information as to the particular source for a product; quality-control testing information; and pricing, sales, and purchase data.[209] Similarly, protection was available for a list that included the "identity of the person to be contacted at each customer location, a detailed sales history revealing products purchased, quantities purchased, container size, prices paid, and frequency of purchases."[210] In addition, a customer list may be protected when it includes a record of each customer's sales activity, credit rating, susceptibility to telemarketing, and other personal information.[211]

As with other forms of information for which trade secret protection is sought, customer lists compiled from one or more publicly

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[205]Courtesy Temporary Serv., Inc. v. Camacho, 222 Cal. App. 3d 1278, 272 Cal. Rptr. 352 (1990).

[206]Leo Silfen, Inc. v. Cream, 29 N.Y.2d 387, 392–93, 328 N.Y.S.2d 423, 427–28, 278 N.E.2d 636, 639–40 (1972) (citations omitted).

[207]Laird v. Amoco Prod. Co., 604 N.E.2d 1249 (Ind. Ct. App. 5th Dist. 1992).

[208]*See, e.g.*, Cupid Diaper Serv. v. Adelman, 211 N.Y.S.2d 813 (1961) (customer list for diaper service was compiled at considerable expense and included the names of persons whose appropriateness for inclusion on the list could not have been determined by public records); Peerless Oakland Laundry Co. v. Hickman, 205 Cal. App. 2d 556, 23 Cal. Rptr. 105 (1962) (list includes likes, dislikes, and needs of customers, as well as their names and addresses); Klamath-Orleans Lumber, Inc. v. Miller, 87 Cal. App. 3d 458, 151 Cal. Rptr. 118 (1972) (list of preferred or select customers was a trade secret).

[209]Sigma Chem. Co. v. Harris, 605 F. Supp. 1253 (E.D. Mo. 1985), *aff'd in part, rev'd in part*, 794 F.2d 371 (8th Cir. 1986).

[210]NCH Corp. v. Broyles, 749 F.2d 247, 252 (5th Cir. 1985).

[211]Advanced Magnification Instruments of Oneonta v. Minuteman Optical Corp., 135 A.D.2d 889, 522 N.Y.S.2d 287 (3d Dep't 1987). *See* Southern Cal. Disinfecting Co. v. Lomkin, 7 Cal. Rptr. 43, 52 (Cal. Ct. App. 1960) ("The information which Lomkin and the other defendants took from the plaintiff was not an ordinary list which might be compiled from a telephone book or directory. The cards and records contained information with reference to the course and custom of the customers' dealings, the reputation and credit standing of the customer (to name but a few of the items) which are often more valuable to an entrepreneur than the physical plant").

available sources will typically not be eligible for protection. For example, in one case, trade secret status was denied for a list of magazine advertisers where the advertisers' identities could be learned simply from reviewing the magazine itself.[212] Lists compiled from public sources such as trade shows, product brochures, government records, and professional journals will also not be protected.[213] One court even went so far as to say that a list of customers could not be protected if one could determine the customers' addresses and identities by monitoring the deliveries made by the clearly marked delivery truck of the employer.[214]

Other cases in this area have grappled with the issue of whether an employee may solicit business from customers of the former employer when the customers' names were "remembered" by the employee, rather than learned from a compilation. As a general matter, courts have allowed former employees to act on such information,[215] although some courts have demanded that the employee act in good faith and without misrepresentation.[216] For example, a patient list was found not to be a trade secret where a former employee physician was able to compile the list from memory and by using the phone book.[217] In another case, the use of a company rolodex by professional employees to obtain the addresses for clients for whom they had provided service in order to send them announcements of their new firm, was found not to be misappropriation. The employees already had personal knowledge of the clients and used the rolodex merely to avoid the inconvenience of looking up the addresses in the phone book.[218] On the other hand, misappropriation may occur when an employee makes an intentional effort to memorize the names on the list in lieu of actually taking the list.[219]

E. Computer Software Programs

Computer software programs are routinely held to be entitled to trade secret protection in jurisdictions that follow the *Restatement*.[220]

---

[212] Templeton v. Creative Loafing Tampa, Inc., 552 So. 2d 288 (Fla. 2d Dist. Ct. App. 1989).

[213] Clinipad Corp. v. Applicare, Inc., 1991 WL 27899 (Conn. Super. 1991).

[214] Holiday Food Co. v. Munroe, 426 A.2d 814 (Conn. Super. 1981).

[215] *See, e.g.*, Colteryahn Dairy v. Schneider Dairy, 203 A.2d 469, 471 (Pa. 1964). Renpak, Inc. v. Oppenheimer, 104 So. 2d 642, 645 (Fla. Ct. App. 1958) (knowledge obtained by the employee that becomes part of the employee's "mental equipment" is not protected).

[216] James C. Wilborn & Sons v. Heniff, 237 N.E.2d 781, 785 (Ill. App. Ct. 1968).

Harry G. Blackstone, D.O.P.A. v. Dade City Osteopathic Clinic, 511 So. 2d 1050 (Fla. 2d Dist. Ct. App. 1987).

Moss, Adams & Co. v. Shilling, 179 Cal. App. 3d 124, 224 Cal. Rptr. 456 (1st Dist. 1986). *See also* Pure Foods, Inc. v. Sir Sirloin, Inc., 84 So. 2d 51 (Fla. 1955) (former employee may solicit the business of customers who are personally known to employee).

Colonial Laundries, Inc. v. Henry, 138 A. 47 (R.I. 1927).

[217] *See, e.g.*, Forro Precision, Inc. v. Int'l Bus. Machs. Corp., 673 F.2d 1045 (9th Cir. 1982).

Trade Secrets Protection and Exploitation

2000 Supplement

Jerry Cohen
Perkins, Smith & Cohen, LLP
Boston, Massachusetts

Alan S. Gutterman
Silicon Valley Law Group
San Jose, California



The Bureau of National Affairs, Inc., Washington, D.C.

defendant, an ex-employee of the plaintiff, started a new company after being terminated by the plaintiff and used the plaintiff's supplier. Although the antioxidant could have been ascertained by proper means, the Ohio version of the Uniform Trade Secrets Act has it that the information must be "readily ascertainable." Similarly, the plaintiff's customer lists, including the specific chemical products purchased by each customer, were protected in the injunction. The defendant used such data (from memory, not by taking a list). The plaintiff had taken reasonable measures, including confidentiality agreements, computer passwords, and warnings, to protect its customer and supplier data.

In *Reingold v. Swiftships Inc.*,[14] a mold for a boat hull was held protectable as a trade secret, at least for purposes of defeating summary judgment. There was no evidence of public domain access to the hulls for mold copying purposes.

C. Business Information

In the case of *General Electric Capital Corp. v. DirecTV Inc.*,[15] the trade secret protectability of an audit firm's (DeLoitte Touche's) audit manual and procedures became an issue. Reviewing the prior cases, the district court concluded that, absent a threshold showing of misconduct by the auditor or a particularized need, the documents regarding audit methodology would not be ordered produced.

D. Customer Lists

A preliminary injunction was denied where the plaintiffs offered only a speculative basis for the proposition that the defendants had taken the customer lists in *Archaeology Inc. v. Remnants & Debris Inc.*[16] The court also found conflicting evidence as to whether the plaintiffs took adequate care to protect the list as a trade secret.

The Indiana Court of Appeals affirmed the grant of a preliminary injunction based on a detailed customer list, continuously updated and protected, in *Hydraulic Exchange & Repair Inc. v. KM Specialty Pumps Inc.*[17]

---

[14]126 F.3d 645, 44 USPQ2d 1481 (5th Cir. 1997).

[15]184 F.R.D. 32 (D. Conn. 1998). *See also* Camp Creek Hospitality Inns v. Sheraton Franchise Corp., 130 F.3d 1009 (11th Cir. 1997) (motel occupancy levels, rates, expenses, and marketing data, including plans, protected).

[16]46 USPQ2d 1248 (D. Mass. 1998).

[17]690 N.E.2d 782, 46 USPQ2d 1291 (Ind. Ct. App. 1998).

Exhibit 12

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Joe Nichol	)	Civil Action No.: 2012-CP-23-7146
Plaintiff,	)	
v.	)	
DePuy Spine, Inc.,	)	**ORDER DENYING DEFENDANT'S MOTION FOR TEMPORARY RESTRAING ORDER**
Defendant.	)	

2013 FEB 13 PM 4:02

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Defendant DePuy Spine, Inc., moves for a temporary order enjoining their former employee, Plaintiff Joe Nichol, from engaging in certain activities allegedly in violation of an "Employee Secrecy Agreement." The Court heard oral argument on January 10, 2013. Nichol is represented by W. Andrew Arnold, Esquire. DePuy is represented by William H. Foster, Esquire. Based on the pleadings, numerous affidavits filed, all other evidence of record, and the applicable law, the Court respectfully denies the motion.

Nichol worked as sales representative for Surgical Alternatives Carolinas, Inc., an independent sales organization, from 2003 – 2011.[1] During this time, Surgical Alternatives was the exclusive independent sales representative organization for DePuy Spine products. In 2007, Nichol became an independent contractor with Surgical Alternatives and signed an "Employee Agreement" purporting to be a non-disclosure and non-compete contract. As a sales representative, Nichol sold DePuy Spine products to hospitals in Asheville, Hendersonville, and Waynesville, North Carolina as well as Greenville, Greenwood, Spartanburg, and Florence,

[1] The factual findings in this Order are made solely for the purpose of the preliminary injunction, and shall not be construed as prejudicing any party's rights at the merits hearing.

ENTERED COMPUTER

South Carolina. As part of these sales, Nichol worked closely with surgeons and administrators at the various hospitals and participated in price and contract negotiation. Over the course of his employment, Nichol cultivated business and personal relationships with hospital administrators as well as surgeons. During his tenure with Surgical Alternatives, Nichol was never an employee of DePuy Spine.

In September 2011, DePuy ended their sales relationship with Surgical Alternatives and Nichol was hired as a Senior Sales Representative and Territory Manager, working directly for DePuy Spine. Nichol signed an "Employee Secrecy, Intellectual Property, Noncompetition and Non-Solicitation Agreement" with DePuy prior to beginning his term of employment.

DePuy terminated their relationship with Nichol in October 2012, after approximately 11 months of employment. Nichol attempted to obtain gainful employment consistent with his education, experience and the terms of his Employee Secrecy Agreement following his termination. Based on specific provisions in the Agreement, Nichol made repeated demands to DePuy for payments allegedly due him after he was unable to obtain sufficient employment. DePuy denied Nichol's request for payment under these contract provisions, though he was offered a severance package upon his termination.

In November, 2012, Nichol sued DePuy, seeking a declaratory judgment invalidating the Employee Secrecy Agreement as overbroad, as well as a claim for breach of contract for failing to make payments allegedly due. Ultimately, in November, 2012, Nichol went to work for Choice Spine, a spinal products manufacturer and competitor of DePuy, as a sales representative. DePuy Answered and Counterclaimed for breach of contract, and misappropriation of trade secrets and confidential information.

DePuy also filed this Motion as a result of Nichol's sales activities with Choice Spine, claiming that the confidential information and trade secrets Nichol obtained during this employment are being used to DePuy's detriment and for the benefit of Choice Spine, in violation of the Employee Secrecy Agreement.

II. LAW/ANALYSIS

A. The Standard for a Temporary Injunction

To obtain a Preliminary Injunction, DePuy must demonstrate that it:

(1) will suffer irreparable harm if the injunction is not granted;

(2) will likely succeed on the merits of the litigation; and

(3) has no adequate remedy at law.

Scratch Golf Co. v. Dunes West Residential Golf Props., 361 S.C. 117, 603 S.E.2d 905 (2004); Rule 65, SCRCP. A temporary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam).

1. Irreparable Harm

An injunction is a drastic remedy, typically reserved for urgent situations where irreversible damage will result unless the challenged action is immediately halted. Although a party seeking an injunction "is not required to show that otherwise rigor mortis will set in forthwith," he must nevertheless demonstrate that "unless an injunction is granted, the plaintiff will suffer harm which cannot be repaired." Studebaker Corporation v. Gittlin, 360 F.2d 692, 698 (2d Cir. 1966).

As the United States Supreme Court observed while discussing the concept of irreparable harm in Sampson v. Murray, 415 U.S. 61, 90 (1974):

> The key word in this consideration is irreparable.. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

DePuy alleges they will suffer irreparable harm in the form of lost goodwill and customer relationships. The Court disagrees. If it is proven at trial that Nichol violated the Agreement, any damages DePuy has suffered in the interim can be compensated by money damages.

DePuy further argues they will suffer irreparable harm based the disclosure of confidential information to their competitor, presumably Choice Spine. Notably, DePuy does not identify any specific "confidential information" or "trade secret" Nichol is allegedly disclosing to his current employer beyond general purchasing patterns, pricing information, and surgeon preferences. As with the hospital and administrator/surgeon relationships, it is not clear that this information is confidential or a trade secret unique to DePuy. Nichol contends any competitor could acquire this information by simply inquiring of the hospital or surgeon throughout their sales process, without the assistance of Nichol's familiarity in the field. Additionally, Nichol maintains that any knowledge he may possess regarding pricing, purchasing patterns or surgeon preferences did not result from his eleven months of employment with DePuy but rather, from his long career as an independent medical device sales representative. If, as DePuy alleges, a surgeon or hospital has altered their spinal product choices from DePuy to a competitor through the efforts of Nichol, that change in preference could be a reflection of Nichol's skills as a salesman and not the result of his use of any "confidential information" or "trade secret."

2. Adequacy of the Remedy at Law

The equitable remedy of an injunction is of course unavailable if the party seeking it may resort to an adequate remedy at law. But the legal remedy must be genuinely adequate and complete. See Boyce's Exrs. v. Grundy 28 U.S. 210 (1830) ("it is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and efficient to the ends of justice, and its prompt administrations, as the remedy in equity"); see also 43A C.J.S. Injunctions Section 100 (2010).

Nichol argues that DePuy retains an adequate legal remedy in the form of monetary damages for the breach of contract counterclaim and misappropriation claims. DePuy does not make a specific argument regarding the adequacy of any available legal remedies but instead maintains that the information Nichol is allegedly using to the detriment of DePuy and the benefit of Choice is confidential and once disclosed, cannot be returned to DePuy. The Court finds that an adequate legal remedy does exist in the form of monetary damages, as shown by Milliken v. Morin, 399 S.C. 23, 731 S.E.2d 288 (2012). In *Milliken*, the Court held that a jury award of monetary damages to the Plaintiff on a breach of contract claim involving an inventions assignment and confidentiality provision was an adequate remedy at law and the Defendant was not entitled to any further equitable relief. Unlike the facts in *Milliken* where the breach of contract was not associated by hard and fast numbers, here any damage caused to DePuy as a result of lost profits is easily calculable in dollars. Should a jury determine that Nichol has breached his contract through his employment with Choice, a monetary award of damages would sufficiently compensate DePuy for any such loss.

III. CONCLUSION

DePuy has not met the standard for the entrance of a preliminary injunction. DePuy will suffer no irreparable harm and an adequate remedy at law exists.[2] Accordingly, DePuy's motion for a temporary restraining order and/or preliminary injunction is DENIED.

IT IS HEREBY ORDERED.

D. Garrison Hill
Circuit Judge

February 11, 2013
Greenville, South Carolina

[2] Based on the findings, the Court need not reach the issue of whether DePuy is likely to prevail on the merits.

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895
	)	
Lewallen Automation, LLC and ASAG LLC,	)	
	)	
Plaintiffs,	)	Supplemental Material Submitted by
v.	)	Defendant Lewallen in Opposition to Pending Motion for Preliminary Injunction
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. [illegible]
2014 SEP 30 AM 8 [illegible]

I. Lewallen Automation's Trade Secret Assertions

The following are just two examples of what Lewallen Automation asserted at the September 29 hearing as subject "trade secrets" under the agreements they seek to have this Court adopt as an Order. As shown below, Lewallen Automation is well aware that its representations at the hearing are greatly overstated. Moreover, adopting Lewallen Automation's improper boilerplate documents for purposes of injunctive relief would violate Rule 65(d) on its face. Rule 65(d), SCRCP (requiring that injunctions "shall set forth the reasons for its issuance; shall be **specific in terms**; shall describe in reasonable detail, and **not by reference to the complaint or other document**, the act or acts sought to be restrained.") (emphasis added).

A. Employee names, customer names, roles, experience, and skills of employees customers for which they do work

Lewallen Automation argued that customer names, employee names, employee roles within ASAG and Lewallen Automation and the customers/projects worked on are "trade secrets." Counsel for Plaintiffs adamantly denied the Undersigned's assertion that such information is widely distributed today and available on such public domain

web sites as LinkedIn. Attached as Exhibit A are dozens of LinkedIn profiles of Plaintiffs' (and their affiliates) employees, showing their roles within the company, their skills, experiences, and even specific projects worked on, systems used, and customers for which work was performed, including Michelin. (See, e.g., Exh. A at pp. 5 (listing customers and specific processes and work done for Michelin). Plaintiffs cannot feign knowledge of its employees use of LinkedIn – their owners posts their own profiles. (Id. at 74 (Hughes); id. at 57 (Merritt)). In fact, Mr. Hughes (indicated by his avatar, see id. p. 74) can be seen routinely "endorsing" the skills of his employees that are listed publicly, including ten separate endorsements of the skills for the above-reference employee who lists out the customers and projects in his profile. (Id. at 6). In another instance, Hughes specifically comments on an employee's skills and abilities. (See, e.g., id. at 53). Now they come before the Court and represent that this information is a "secret?" Accepting Plaintiffs' unverified and unsupportable assertions for purposes of entering an Order would simply countenance this overstepping and clear efforts to set a contempt trap.

This is simply another example of why Defendant Lewallen adamantly opposes the "moving goalposts"[1] and ever-changing representations as to the "trade secrets" or

[1] As the Court will recall, the Undersigned's emails and concern expressed during the conference portended the effort here by Lewallen Automation to hide the ball as to what was being requested until the hearing. Sure enough, after Lewallen Automation represented to the Court in the conference call that it was just seeking a defamation injunction, it changed the allegations again at the hearing and only discussed defamation in the final few sentences of argument to which the Undersigned had no opportunity to effectively respond. Rather than responding to requests for information and to discuss the concerns, counsel for Plaintiffs simply waited until the hearing to spring upon the parties a draft order that is not consistent with the Motion or even the representations made earlier to the Court. Equity should not countenance these efforts, putting aside they lack any evidentiary foundation or any basis in the law.

"confidential information" at issue here. Defendant Lewallen has been deprived of adequate notice of Lewallen Automation's ever-changing requests and assertions as to what constitutes a "trade secret." It has been a constant game of "whack a mole," which simply denies Defendant Lewallen due process.

B. Plant Operations

Counsel for Lewallen Automation represented to the effect that operations in the plant are so secretive employees do not see each other at work and that they do not even work together. Lewallen Automation, however, has posted a video on VIMEO[2] showing its plant operations and assembly of products, including the employees working together. A copy of this video is attached as Exhibit B.

Once again, the mere fact that Lewallen Automation makes unverified and unsupportable claims as to what constitutes a "trade secret" is why Defendant Lewallen respectfully excepts to any determination that such mere claims satisfy the strict requirements for the issuance of injunctive relief. And that is all that Plaintiffs offered.

II. Sufficiency of Bond

At the hearing, the Court indicated that it would set the bond at Two Thousand Five Hundred Dollars ($2,500). The Undersigned respectfully submits that such a nominal amount cannot begin to compensate Defendant Lewallen even for the costs he will incur in establishing that injunctive relief is improper. Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (nominal bond premised on notion that the injunction is proper violates Rule 65(c)); AJG Holdings, LLC v. Dunn, 382 S.C. 43, 50 n. 3, 674 S.E.2d 505, 508 n. 3 (Ct. App. 2009) (recognizing that costs in the rule include

"court and other costs"). The totality of this claim cannot be decided until after an appeal. Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 385, 559 S.E.2d 348, 351 (Ct. App. 2001).

Respectfully submitted this 30th day of September, 2014.



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

[2] Vimeo is another publicly-available site the Undersigned found by simply Googling "Lewallen Automation." This video is posted at: http://vimeo.com/80931895

Exhibit A

Home Profile Connections Jobs Interests Business Services



Chad Thomas

3rd

Production Manager at Lewallen Automation

Greenville, South Carolina Area | Electrical/Electronic Manufacturing

Previous: Murray controls, Self employed, Darby Electric

Education: Tri-County Technical College

Contact | Send Chad InMail | 481 connections

www.linkedin.com/pub/chad-thomas/89/753/2 | Contact Info

Background

Experience

Production Manager
Lewallen Automation

Project Manager
Murray controls
September 2006 – January 2008 (1 year 5 months)

Self Employed
Self employed

Servo technician
Darby Electric
June 2000 – April 2002 (1 year 11 months)

Skills

- Electronics
- Electricity
- Automation
- Electrical Controls
- Electricians
- Manufacturing Operations
- Wiring
- Electronics

Education

Tri-County Technical College
Associate of Science (AS), Industrial Electronics Technology/Technician
1999 – 2001

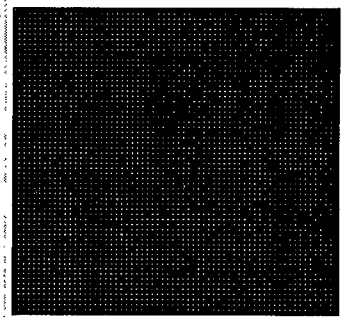
Groups

LinkedIn Docs 000001

People Similar to Chad



Ron Kerber 3rd
Production Project Manager/Service Technician
Connect



Others at Lewallen Automation



Mike L
Owner Lewallen Automation



Will Stafford
Automation Engineer at Lewallen Automation



Chris Frazier
Shop Foreman at Lewallen Automation/Group of Patriots



Geoffrey Storm
Sr. Automation Engineer at Lewallen Automation



Mark R.
Project Manager at Lewallen automation

People Also Viewed



Gregg R.
Principal



Nancy Brocks
Executive Administrator at Pair Solutions, LLC



Mark Roberts
Project Manager at Lewallen automation



Charles Stewart
Patriot Solutions



David Archer
Engineering Technician at Lewallen Automation / GDP



Mike Lewallen
Owner Lewallen Automation



Terri Costill
Estimator at IES

OEM Solutions, Mac
2,921 members
+ Join

Motion Control & Ind
5,751 members
+ Join

Automation Sales En
6,448 members
+ Join

Electronics Manufact
4,958 members
+ Join

Power Electronics, M
1,497 members
+ Join

Industrial Automatio
7,811 members
+ Join

Following

Companies

Schneider Electric
Electrical/Electronic Manufacturing
+ Follow

O'Neal, Inc
Construction
+ Follow

Patriot Solutions, LLC
Construction
+ Follow

Michelin
Automotive
+ Follow

Lewallen Automation
Electrical/Electronic Manufacturing
+ Follow

ASAG Energy
Oil & Energy
+ Follow

Chesapeake Energy
Oil & Energy
+ Follow

See 2 more >

BRIAN DAVENPORT
Purchasing Manager at IES

Bridgett Crocker
Project Manager at Lawrence Fabrication, Inc.

Joe Windsor
Senior Controls Engineer at Le Automation

[redacted]

[redacted]

Home Profile Connections Jobs Interests Business Services

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Chris Frazier

3rd

Shop Foreman at Lewallen Automation Group of Patriots

Easley, South Carolina | Electrical/Electronic Manufacturing

Connect | Send Chris InMail | 40

www.linkedin.com/pub/chris-frazier/7b/6a2/286

Background

Experience

Shop Foreman

Lewallen Automation/Group of Patriots

September 2013 – Present (1 year 1 month)

Skills

Top Skills

- Wiring
- Electrical Controls
- Electronics
- Preventive Maintenance
- Electricians
- Electricity
- Automation
- Electrical...
- Continuous Improvement
- Manufacturing

Chris also knows about...

Forklift Operator | Metal Fabrication | Manufacturing | Lean Manufacturing | Automotive | Materials Management | Microsoft Office | Welding | Management

Groups

Jobs

Automation Jobs

20,000 members

+ Join

People Similar to Chris



David Archer 3rd

Engineering Technician at Lewallen Automat...

Connect

Earn 2x ThankYou Poin... on lunch. Even at your de...



People Also Viewed



Mike L

Owner, Lewallen Automation



BRIAN DAVENPORT

Purchasing Manager at IES



Steve Naugle

DBA/Systems Admin at Group Patriots



David Archer

Engineering Technician at Lew... Automation / GOP



claude booker

Electrical Engineer at Harness Internationa...



Mark Roberts

Project Manager at Lewallen automation



Arthur Gillespie

...



Gregg Hughes

Principal



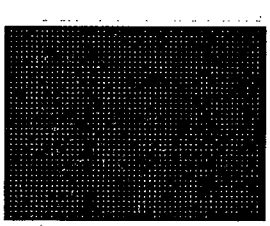
Ron Dunlap

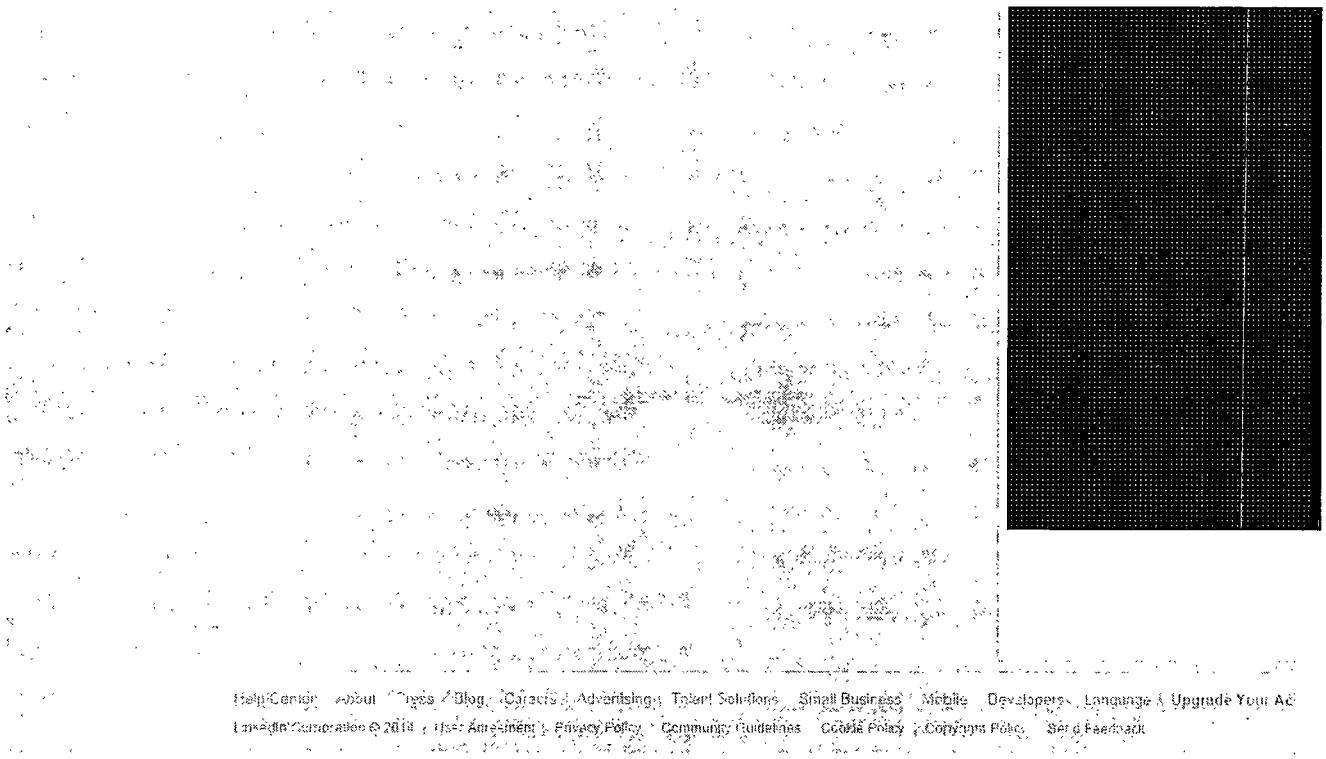
Procurement Specialist II at Du... Energy Corporation



Jim Fountain

Operations Manager at Waste Connections, Inc




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David Archer

3rd

Engineering Technician at Lewallen Automation / GOP

Anderson, South Carolina | Electrical/Electronic Manufacturing

Lewallen Automation, Group of Patriots

Milliken & Company, Hill Electric, Inc.

Crescent High School

Connect | Send David InMail | 87

www.linkedin.com/pub/david-archer/74/420/82b

Background

Summary

9 years Industrial Electrical experience. Capable of providing Electrical troubleshooting support, as well as PLC, and HMI programming support. Experience in automation and process control. Four years Electrical Design experience, and AutoCAD drawing. Experienced with all Rockwell software and Allen Bradley's products. Managed electrical teams of up to 30 employees, as well as installed automated processes such as bottling lines for Coca Cola, Pepsi, Conveyor lines for Michelin, Robotic lines for BMW. Also packaging lines for Freshouse, and Naturally Fresh. I have integrated process, and automated systems as well as provided technical support for companies all over the country.

Experience

Engineering Technician

Lewallen Automation / Group of Patriots

March 20[illegible] - [illegible]

Electrical Design, PLC Programming, Tech support

Maintenance Technician

Milliken & Company

January 20[illegible] - March 20[illegible]

Maintenance Tech, Preventive Maintenance, Electrical integration, PLC support

Control Electrician

Hill Electric, Inc.

[illegible]

Perform Electrical Installs, Perform Troubleshooting when needed

Volunteer Experience & Causes

Causes David cares about:

- Children
- Civil Rights and Social Action
- Economic Empowerment
- Environment
- Health
- Human Rights
- Politics
- Science and Technology

Skills

People Similar to David



William Watkins
Direct Logic PLCs
Connect

[redacted]

People Also Viewed



Mike Lewallen
Owner, Lewallen Automation



Mark Roberts
Project Manager at Lewallen automation



Sam Lawrence
Senior Electrical Designer, Inch Autocad, Microstation and Revit Website Designer



Steve Smith
Edgewater Automation



Daniel Coe
Electrical Design Engineer at H International



Bradley Scott
Milliken & Company



Chad Thomas
Production Manager at Lewa le Automation



Jeff Chandler
Maintenance Planner at BASF



Dan Dietzen
Electrical Engineer at Hartness International



Denise Hester
Manager at Custom Machining Development Inc

[redacted]

Top Skills

- PLC Programming
- Automation
- Electricians
- PLC
- Allen Bradley
- Process Control
- Preventive Maintenance
- Electricity
- Electrical
- Electrical Design

David also knows about...

Electrical Controls · AutoCAD · Electrical Safety · Robotics · Instrumentation · Maintenance & Repair · Power Distribution · Control Systems Design · HMI Programming · Variable Frequency · Allen-Bradley · SCADA · Commissioning · Integration · Electrical Controls · See 10+ >

Education

Crescent High School
HD
[illegible]

Groups

TE Connectivity's En...
1,694 members
+ Join

ELECTRICAL SAFET...
3,695 members
+ Join

Electrical Design En...
18,665 members
+ Join

NHP Electrical Engin...
956 members
+ Join

Following

Influencers


Richard Branson
Founder at Virgin...
+ Follow


Jack Welch
Executive Chairman...
+ Follow


Arianna Huffington
President and...
+ Follow

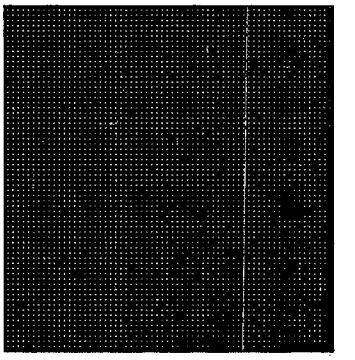

Bill Gates
Co-chair, Bill &...
+ Follow

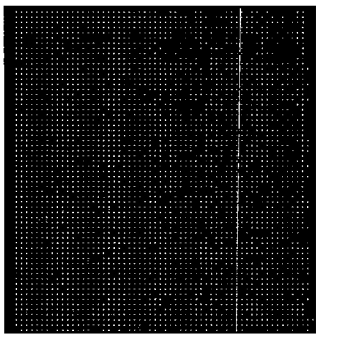

James Caan
Serial Entrepreneur
+ Follow


T. Boone Pickens
Founder, Chairman...
+ Follow


Beth Comstock
CMO at GE
+ Follow

Companies





People Similar to David


William Watkins
Direct Logic PLC's
Connect

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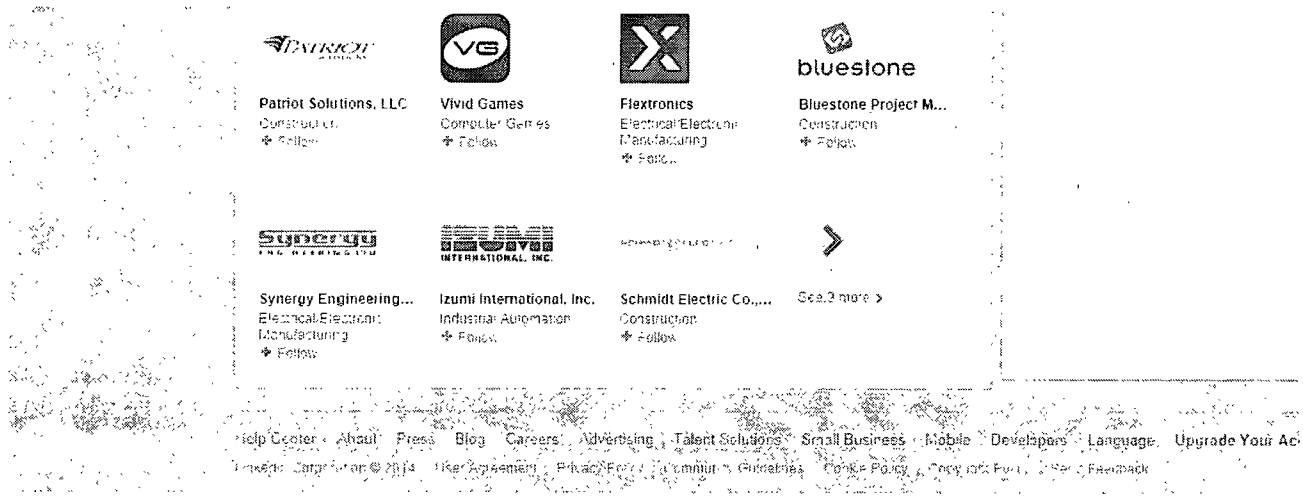
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David Case

Automation Engineer at Everworks

Greenville, South Carolina Area | Electrical/Electronic Manufacturing

Everworks | Lewallen Automation

Lewallen Automation

Greenville Technical College

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www.linkedin.com/pub/david-case/56/902/69a

Background

Experience

Automation Engineer
Everworks

Electrical Engineering / Business Development
Lewallen Automation
December 2013 – Present (10 months)

Technical Solutions Manager
Lewallen Automation
November 2011 – June 2013 (1 year 8 months)

Skills

Top Skills

- Variable Frequency...
- Motor Control
- Electrical Controls
- Electricians
- Electronics
- Electrical Engineering
- Power Electronics
- PLC
- Process Automation
- Power Supplies

David also knows about...

Control Systems Design | Service Management | Power Systems | IT Outsourcing | Automation | Control Panel Design | Custom Control Panel...

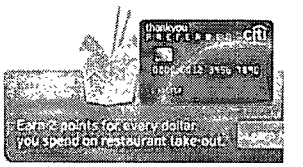
Education

People Similar to David



Geoffrey Stone
Sr. Automation Engineer at Lewallen Autom
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Owner, Lewallen Automation



Mike Lewallen
Owner at Lewallen Automation



Mark Roberts
Project Manager at Lewallen automation



BRIAN DAVENPORT
Purchasing Manager at IES



Joe Windsor
Senior Controls Engineer at Le
Automation



Gunter Wiedemann, PE
Senior Electrical and Controls
Engineer at Project Integration



Jamie Satterwhite
Operations Manager at Lewalle
Automation



Jeff Chandler
Maintenance Planner at BASF



Dan Dietzen
Electrical Engineer at Hartness
International



Harriet Smith
Customer Service Representati
Cryovac

Greenville Technical College

Groups

OEM Solutions, Mac
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Automation
+ Join

PROFIBUS and PRO
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automation & control engineering
Automation & Contro
+ Join

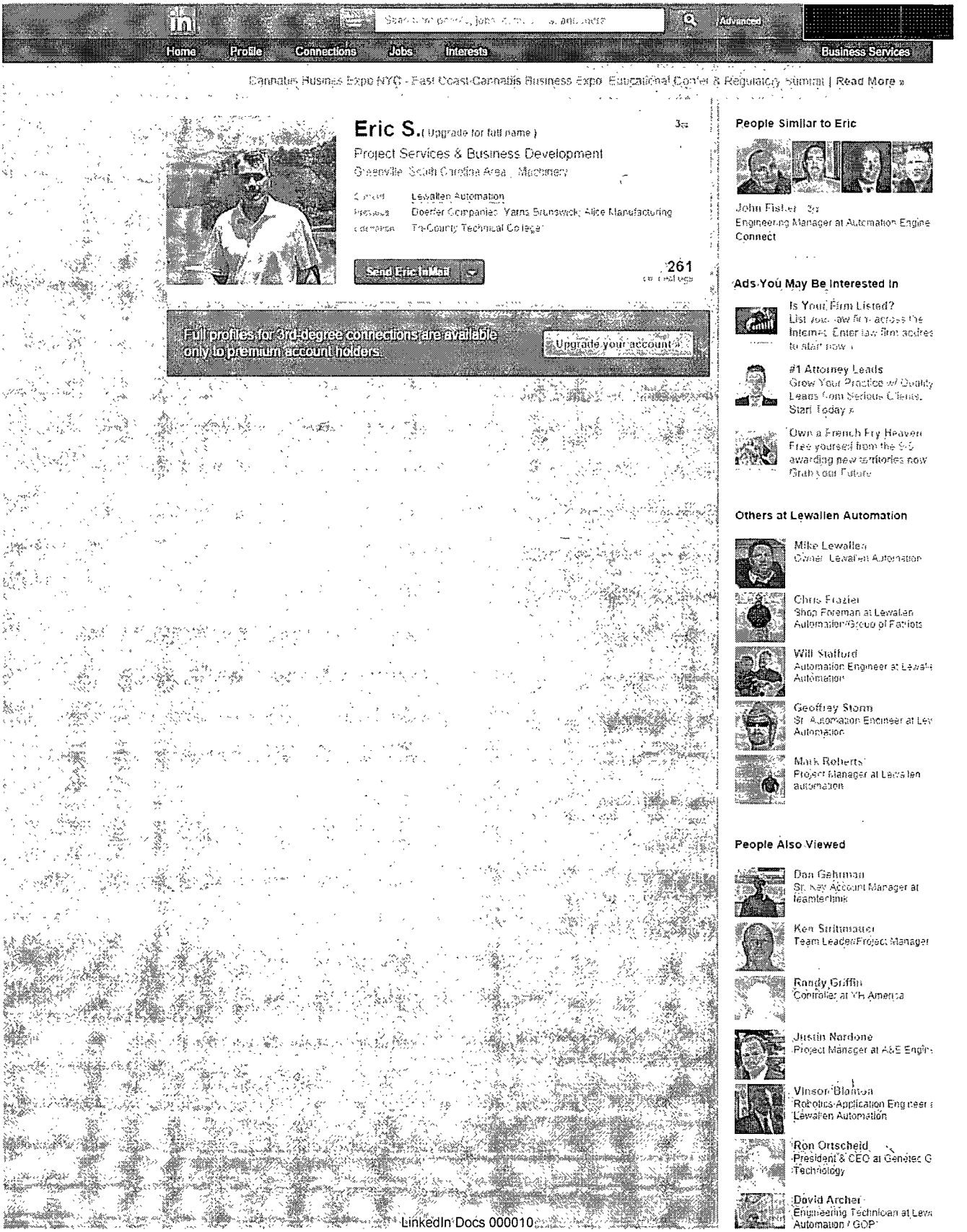
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Lewallen Automation
Electrical/Electronic Manufacturing
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Schools

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Eric S. (Upgrade for full name)
Project Services & Business Development
Greenville, South Carolina Area | Machinery
Current Lewallen Automation
Previous Doerfer Companies, Yarns Brunswick, Alice Manufacturing
Education Tri-County Technical College
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Engineering Manager at Automation Engine Connect
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Others at Lewallen Automation
Mike Lewallen
Owner Lewallen Automation
Chris Frazier
Shop Foreman at Lewallen Automation/Group of Factors
Will Stafford
Automation Engineer at Lewallen Automation
Geoffrey Storm
Sr. Automation Engineer at Lewallen Automation
Mark Roberts
Project Manager at Lewallen automation
People Also Viewed
Don Gehrman
Sr. Key Account Manager at teamtechnik
Ken Srittmatter
Team Leader/Project Manager
Randy Griffin
Controller at Yh America
Justin Nardone
Project Manager at A&E Engine
Vinson Blanton
Robotics Application Engineer at Lewallen Automation
Ron Ortscheid
President & CEO at Genetec Technology
David Archer
Engineering Technician at Lewallen Automation / GDP

Jamie Satterwhite

3rd

Operations Manager at Lewallen Automation

Easley, South Carolina | Electrical/Electronic Manufacturing

Current: Lewallen Automation
Previous: BMW Manufacturing, Monsanto, US Navy
Education: US Navy

Connect | Send Jamie InMail

174 connections

www.linkedin.com/pub/jamie-satterwhite/78/357/811

Background

Experience

Operations Manager
Lewallen Automation
April 20[illegible] – Present ([illegible] 6 months)

LEWALLEN AUTOMATION

Operations Manager
Lewallen Automation
April 20[illegible] – Present ([illegible] 6 months)

Product Process Planning Engineer
BMW Manufacturing
[illegible] – April 20[illegible] ([illegible])

Maintenance Planning Specialist
BMW Manufacturing
January [illegible] – January [illegible] ([illegible])

Maintenance Technician
BMW Manufacturing
October 2001 – January 2008 ([illegible])

Maintenance Technician
Monsanto
January 1997 – October 2001 ([illegible]) – Greenwood, S[illegible]

Fire Control Technician
US Navy
[illegible] – [illegible] ([illegible])

USS Gettysburg CG-64

Skills

Top Skills

People Similar to Jamie



Marios Artemides [illegible]
Operations Manager at Cable Exchange
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Others at Lewallen Automation



Mike Lewallen
Owner, Lewallen Automation



Will Stafford
Automation Engineer at Lewallen Automation



Chris Frazier
Shop Foreman at Lewallen Automation/Group of Patriots



Geoffrey Storm
Sr. Automation Engineer at Lewallen Automation



Mark Roberts
Project Manager at Lewallen automation

People Also Viewed



Mike Lewallen
Owner, Lewallen Automation



Vinson Blanton
Robotics Application Engineer at Lewallen Automation



Mark Roberts
Project Manager at Lewallen automation



Joe Windsor
Senior Controls Engineer at Lewallen Automation



Mike Lewallen
Owner at Lewallen Automation



David Case
Automation Engineer at Everwood



BRIAN DAVENPORT
Purchasing Manager at IES

Lean Manufacturing
Maintenance & Repair
Project Planning
Automation
5S
Continuous Improvement
Project Management
Value Stream Mapping
Lean Operations
Kaizen

Jamie also knows about

Quality Management · Electricians · Six Sigma
Supply Chain Management · Electricity

Educator

US Navy
Fire Control Technician, Electrical and Electronics Engineering, Radar, Weapons Computer Systems
1992

Piedmont Technical College, Greenwood Sc
Associate of Arts (A.A.), Industrial Engineering
1994 – 1997

Following

Companies

Schneider Electric
Electrical/Electronic Manufacturing
+ Follow

Bosch Rexroth
Industrial Automation
+ Follow

Patriot Solutions, LLC
Construction
+ Follow

KUKA Systems Nort...
Industrial Automation
+ Follow

Lewallen Automation
Electrical/Electronic Manufacturing
+ Follow

Festo
Industrial Automation
+ Follow

Siemens Industry USA
Industrial Automation
+ Follow

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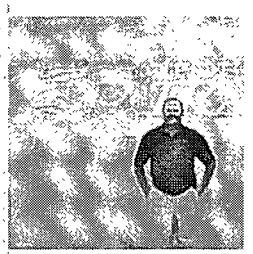
chris cole

Amber Scruggs
Corporate Communications at [illegible] Manufacturing

Joe Robbins
Production Manager at Lanfer Cylinders

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Mark Roberts

3rd

Project Manager at Lewallen automation

Greater South Carolina Area | Industrial Automation

Current Lewallen Automation, Lewallen automation

Previous Pickens High School

Connect Send Mark InMail

63 connections

www.linkedin.com/in/mark-roberts/60/6b2/862

Background

Experience

Project Manager

Lewallen Automation

Jan 2012 – Present (2 years 9 months)

Manage projects, material labor and estimate projects.

Project Manager

Lewallen automation

Jan 2012 – Present (2 years 9 months)

Manage installs, material labor and estimating projects

Skills

Top Skills

- Electricians
- Wiring
- Automation
- Electrical Controls
- Low Voltage
- Electricity
- Building Automation
- Management
- Project Management
- Electronics

Mark also knows about...

Building Management... | Project Estimation | Lighting Control | Power Distribution | Switchgear | HVAC Controls | Control Systems Design | Process Automation | Commissioning | Modbus | SCADA | Industrial Control | HVAC | Cabling | IP Cameras | See 10+

People Similar to Mark



Kevin Marthaler
Program Manager at Schneider Electric Co
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Others at Lewallen Automation



Mike Lewallen
Owner, Lewallen Automation



Geoffrey Storm
Sr. Automation Engineer at Lewallen Automation



Chris Frazier
Shop Foreman at Lewallen Automation/Group of Painuts



Will Stafford
Automation Engineer at Lewallen Automation



Vinson Blanton
Robotics Application Engineer, Lewallen Automation

People Also Viewed



Mike Lewallen
Owner, Lewallen Automation



David Moncini
Phoenix Automation Services



David Archer
Engineering Technician at Lewallen Automation / GOP



Chad Thomas
Production Manager at Lewallen Automation



Mike Lewallen
Owner at Lewallen Automation



Joe Windsor
Senior Controls Engineer at Lewallen Automation



Jamie Satterwhite
Operations Manager at Lewallen Automation

Education

Pickens High School

1984 - 1987

Following

Companies

Association for Proje...
Nonprofit Organization Management
+ Follow

Patriot Solutions, LLC
Construction
+ Follow

General Building Co...
Construction
+ Follow

Lewallen Automation
Electrical/Electronic Manufacturing
+ Follow

Project Manager 360
Human Resources
+ Follow



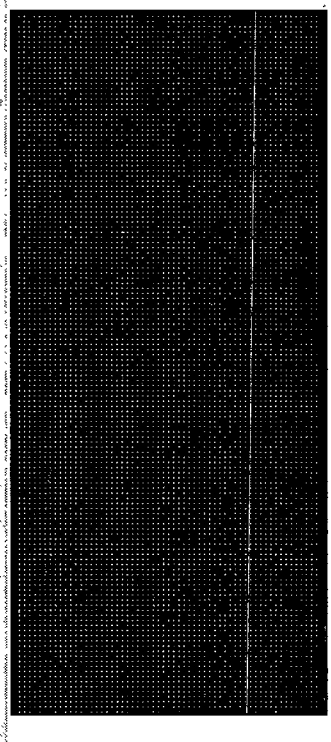
Michael Fortner
Manager of Electrical Engineeri
Barry-Wehmiller Design Group



David Case
Automation Engineer at Evenv



Steve Naugle
DBA/Systems Admin at Group
Patriots



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Vinson Blanton

3rd

Robotics Application Engineer at Lewallen Automation

Greenville, South Carolina Area | Automotive

Current: Lewallen Automation
Previous: BMW Manufacturing, USS Wasp
Education: The University of Texas at Austin

Connect | Send Vinson InMail | 272 connections

www.linkedin.com/pub/vinson-blanton/74/437/647

Background

Experience

Robotics Application Engineer
Lewallen Automation
October 2013 – Present (1 year)

Robotics Application Engineer
Lewallen Automation
October 2013 – Present (1 year)
Application Software, System Designs

Robotics SSB
BMW Manufacturing
2011 – 2013 (2 years)

Data systems tech
USS Wasp
2009 – 2011 (2 years)

Data systems tech
USS Wasp
2009 – 2011 (2 years)

Data systems tech
USS Wasp
2009 – 2011 (2 years)

Data systems tech
USS Wasp
2009 – 2011 (2 years)

Skills

Top Skills

- Robotics
- Manufacturing
- Automation
- FMEA
- Lean Manufacturing
- Manufacturing



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People Similar to Vinson



David Archer 3rd
Engineering Technician at Lewallen Automat
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LinkedIn Groups

Succeed Small Business Netwo
Featured Discussion: What is leadership?

Succeed — Join Grou
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Others at Lewallen Automation



Mike Lewallen
Owner, Lewallen Automation



Geoffrey Storm
Sr. Automation Engineer at Lew Automation



Chris Frazier
Shop Foreman at Lewallen Automation/Group of Patriots



Will Stafford
Automation Engineer at Lewall Automation



Mark Roberts
Project Manager at Lewallen automation

People Also Viewed



Jamie Satterwhite
Operations Manager at Lewalle Automation



Mike Lewallen
Owner, Lewallen Automation



Wade Getsinger
Robot Specialist at BMW Manufacturing



Clay Bodenheimer
Automation Engineer at US Lal



BRIAN DAVENPORT
Purchasing Manager at IES



Sarah Padgett
Electrical Engineer at BMW Manufacturing

Leigh Anne Compton, PHR
HR Manager at Group of Patrio

Root Cause Analysis

Automotive

Continuous Improvement

Kaizen

Vinson also knows about

PPAP · Machine Tools · SPC · Engineering · Industrial Engineering · ISO · Poka Yoke · Manufacturing... · PLC · Electrical Engineering · APQP · Kanban · Toyota Production System · Value Stream Mapping · 5S · See 8+ ›

Education

The University of Texas at Austin
Engineer's degree, Electrical and Electronics Engineering
1990 – 1998

Amy Tomkow
Senior Operations Manager at I One, LLC

Eric Smith
Project Services & Business Development

Mark Roberts
Project Manager at Lewallen automation

[redacted]

Groups

Robotic Industries A...
6,042 members
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KUKA Roboter users
2,55[illegible] members
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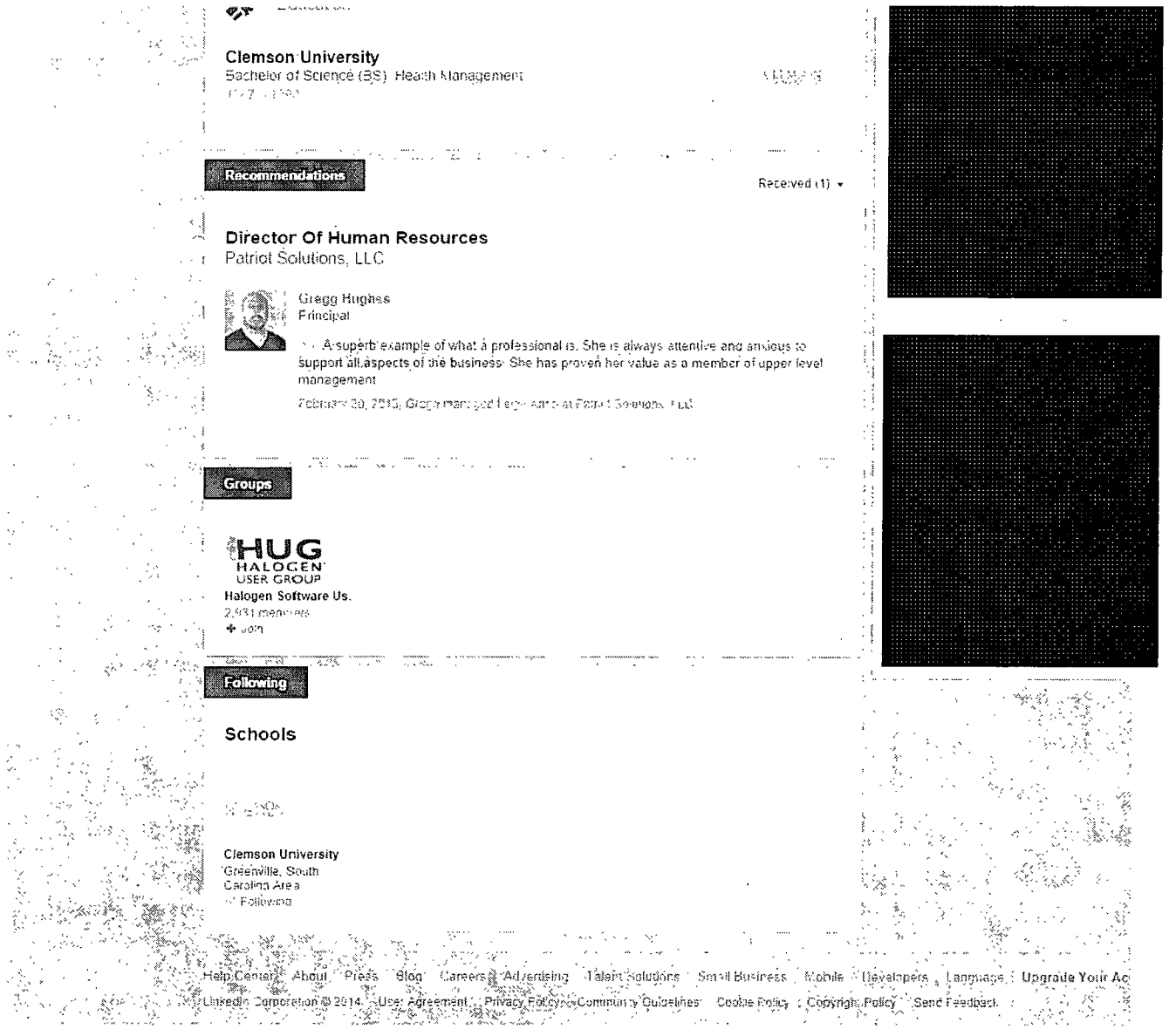
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Electrical/Electronic Manufacturing
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BMW Manufacturing
Automotive
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Schools

The University of Tex...
Austin, Texas Area
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Clemson University
Bachelor of Science (BS), Health Management

Recommendations

Received (1)

Director Of Human Resources
Patriot Solutions, LLC

Gregg Hughes
Principal

"A superb example of what a professional is. She is always attentive and anxious to support all aspects of the business. She has proven her value as a member of upper level management."

February 20, 2013, Gregg managed [illegible] at Patriot Solutions, LLC

Groups

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Halogen Software Us.
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Schools

Clemson University
Greenville, South Carolina Area
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Mike Reese

2nd

Safety Director at Group of Patriots

Greenville, South Carolina Area | Utilities

Previous: Itron Inc., Itron/Schlumberger, Piedmont Fire Protection

Education: Clemson University

Connect | Send Mike InMail | 120 connections

www.linkedin.com/pub/mike-reese/38/a1a/a2b

Background

Summary

30+ years experience in the Occupational Safety, Health and Environmental field. The majority of my experience has involved developing and managing manufacturing HSE programs. Also experienced with facility maintenance and security operations. Current position involves developing and implementing safety and environmental programs for the three companies under the Group of Patriots umbrella.

Specialties
Certified Safety Professional in Management Aspects by Examinations (BCSP)
American Society of Safety Engineers (ASSE) 20+ year Professional Member

Experience

Safety Director
Group of Patriots
[illegible] – Present (1 year 6 months) | Easley, SC

Safety Director responsible for developing and implementing safety, health and environmental programs for the Group of Patriot companies: ASAG Energy, Patriot Solutions and Lewallen Automation.

HSE/Facilities Manager
Itron Inc
[illegible] (10 years 2 months) | West Union, SC

HSE Manager responsible for employee (~800) health & safety, site environmental compliance including waste water treatment and groundwater remediation program, physical site security, and site maintenance/infrastructure improvements. Staff included 14 full-time employees and contract security and janitorial services.

Safety Engineer
Itron/Schlumberger
[illegible] (5 years 7 months) | West Union, SC

First degreed Safety Engineer for large electric meter manufacturing facility. Responsible for developing and implementing all HSE programs. Introduced behavioral based safety initiatives to meet employee accident reduction goals resulting in large workers' compensation expense reductions.

Design Engineer
Piedmont Fire Protection
[illegible] (2 years 7 months) | Traveler's Rest, SC

Responsible for the design and installation of fire protection systems for industrial, commercial and institutional clients.

Safety Engineer/Employee Wellness Program Director
Michelin
[illegible] (7 years 11 months) | Anderson, SC

Safety Engineer for various departments of the U.S. raw materials production facility. Developed and managed the employee health and fitness program, coordinated construction of fitness center, and managed student interns for program assistance.

People Similar to Mike



Fred Bonewell
Director of Safety & Risk at Eolia Energy
Connect

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People Also Viewed



Rob Merritt
Principal



Rita Gaillard
CFO at Patriot Solutions, LLC



Bob Burks, MBA
Vice President Global Operations Itron



Anthony Kluz
Health, Safety, Environment, Sustainability Management



Bonnie Wilkinson
–



Chris Kibler
Director of Sales at The Home



M Banner Bolding
Director, Business Operations



Tim Clegg
Safety Manager at Hensley Ind



Marshall Greene
Corporate Safety Director at Great Plains Manufacturing



Adam Sotirakopoulos
Director, EHS at Enel Green Power North America, Inc.

Safety Engineer
Duke Energy Corporation
[redacted]

Developed and managed a risk control program for coal-fired electrical generating facility consisting of 5 units and 170 employees.

Skills

Top Skills

- Occupational Health
- Ergonomics
- Behavior Based Safety
- Environmental Compliance
- ISO 14001
- Safety Training
- Fall Protection
- Safety Auditing
- Root Cause Analysis
- Energy

Mike also knows about

EHS · Industrial Hygiene · Environmental Awareness · Hazard Recognition · EPA · Incident Investigation · Iso.9000 · Inspection · Manufacturing · Industrial Safety · Facilities Management · Workplace Safety · Hazard Analysis · HAZWOPER · Lock Out Tag Out

See 25+ >

Education

Clemson University
Bachelor of Science (BS) Administrative Management, Occupational Safety & Health
[redacted]

Additional Info

Personal Details

Birthday February 12

[redacted]

Groups

LinkedIn [redacted]

[redacted]

People Similar to Mike

David Owens
HSE Supervisor at Paragon Offshore
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We Need Local Attorneys to T Customers Looking to Talk to Lawyer

Contract Mgmt Solutions
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See how Lex Machina can hel win lawsuits and close deals!


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Greenville, South Carolina Area | Electrical/Electronic Manufacturing
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CEO
Group of Patriots
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At Villanova Law, ABA Accredited. Top School by National Law Journal
People Also Viewed
Gregg H.
Principal
Charles Stewart
Patriot Solutions
Dan Nunnery
VP at BB&T Insurance
Mike Reese
Safety Director at Group of Pat
George Wyatt, Jr., P.E.
President & Chief Executive at Palmetto Engineering & Consul
Bob Morris
President at Community Found Greenville
Matthew Newton
President at Palmetto Risk Sol LLC
Thierry Arnaud
Directeur des Ventes France ch Roechling Automotive
Angeles&Adam&Peques Gutierrez Marquez
Nancy Brooks
Executive Administrator at Pat Solutions, LLC

Attorney Wanted - We need attorneys to help illegal aliens. Free trial to view cases. | Read More »



Steve Naugle

3rd

DBA/Systems Admin at Group of Patriots

Easley, South Carolina | Information Technology and Services

Current: Group of Patriots

Previous: Lewallen Automation/Group of Patriots, Lewallen Automation, XCOM Network Solutions

Education: Ohio University

Connect | Send Steve InMail | 113 connections

www.linkedin.com/in/steve-naugle/7b4/987/86

Background

Summary

1980 was the start of my journey to learning computers. I quickly transitioned into database design and development using Paradox and DB IV. In the next five years I began studying networking and servers while continuing my database development studies. I quickly realized that programming was at the core of both servers and databases. As such, I started studying Visual Studio, C++, C#, and Visual Basic. When I started developing databases using Microsoft Access I realized that with my programming background I could make Access do virtually anything.

In 2006 I ventured out on my own forming a network solutions company called XCOM Network Solutions. For several years I designed, developed and maintained midsized networks for manufacturing companies, law firms, and doctors offices.

Along my IT journey, I have met some interesting and talented individuals but have lost contact with many of those people because we lacked social media until recently. In short, I encourage people to stay in touch with the talented individuals they meet on their career journey.

Experience

Database Administrator/System Administrator

Group of Patriots

[redacted]

Plan, develop, deploy, and maintain database applications and systems using Microsoft SQL Server, Microsoft Access, Visual Studio 2013, Windows Azure, and Windows Expression Web 4

Maintain Windows servers, three Active Directories, and three Office 365 accounts. Support nearly 300 desktop and mobile devices over three domains using site-to-site VPN tunnels and Active Directory trusts

Responsible for all company software purchases
Draft policy directives related to Information Technology
Handle asset management of all computer related equipment and software

I am also the:
BarControl Administrator;
ConnectWise Administrator;
Spiceworks Administrator; and
Logmein Central Administrator

Logistics/IT

Lewallen Automation/Group of Patriots

April 2011 – September 2013 (2 years 6 months)

I was responsible for the Shipping and Receiving department. In this role, I work closely with the inventory control manager to maintain our inventory. As an IT technician, I am responsible for maintaining the servers and all computers at our Easley, SC location

Lead

Lewallen Automation

September 2010 – May 2011 (9 months)

In this position I worked closely with our customer to ensure that they received a quality product in a

People Similar to Steve



Samantha Oke 3rd
Database Administrator at ICF International
Connect

People Also Viewed



Daniel Gore
Senior VP PatriotSolutions



Mark Roberts
Project Manager at Lewallen automation



Chris Frazier
Shop Foreman at Lewallen Automation/Group of Patriots



Rita Gallard
CFO at Patriot Solutions, LLC



David Archer
Engineering Technician at Lew Automation / GOP



Tommy Gore
Director of Operations at Patriot Solutions, LLC



Pam Foster
Administrative Assistant at Pair Engineering and Consulting, LL



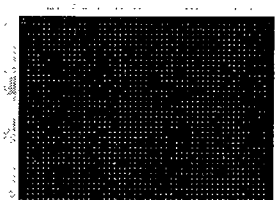
Thomas Lawrence
Technical Support Coordinator Verizon Wireless



Chris Jant
Student at Greenville Technical College



Jeremy Morse
Network Administrator at None



timely manner.

Network Engineer/CEO
XCOM Network Solutions
[redacted]

Worked closely with clients to create or maintain their corporate networks. I would design, document, deploy and maintain these networks with a goal of keeping their systems running 99.999% of the time. These networks included voice and data.

Volunteer Experience & Causes

Evanglism Explosion Instructor
First Baptist Church of Bonifay
[redacted]

Very rewarding experience

Causes Steve cares about:

- Environment
- Health
- Human Rights
- Disaster and Humanitarian Relief
- Science and Technology

Organizations Steve supports:

- Spiceworks

Courses

Independent Coursework

- CCNA
- Microsoft Software Security Advisor
- National Institute of Paralegal Arts and Sciences (Associate's Degree)
- Business Administration Operations
- Computer Support Analyst

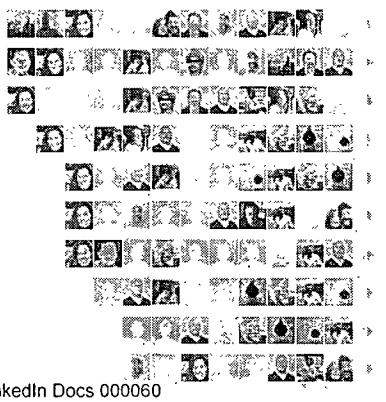
Languages

Sign Languages

Skills

Top Skills

- Servers
- Databases
- Microsoft SQL Server
- Microsoft Technologies
- Microsoft Certified
- Windows Server
- Networking
- System Deployment
- Database Administration
- Active Directory



[redacted]

[redacted]

People Similar to Steve



Samantha Oke
Database Administrator at ICF International
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Database Design · VBScript · Windows · Microsoft Network
Microsoft Exchange · Server Architecture · VMware ESX · Visual Studio
Cloud Computing · Microsoft Server · Data Management · See 17 >

Education

Ohio University
Bachelor's degree, Paralegal Studies

University of Florida
English
1994 – 1995

Groups

Server Administrator
63,321 members
+ Join

Florida Technology
3,974 members
+ Join

Microsoft Business I...
83,472 members
+ Join

Database Developers
70,518 members
+ Join

MCITP Microsoft SQ...
1,131 members
+ Join

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2,019 members
+ Join

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Gregg Hughes

Principal

Greenville, South Carolina Area | Electrical/Electronic Manufacturing

Current Patriot Solutions, LLC
Previous Palmetto Engineering & Consulting, AnQuest, Ryder Integrated Logistics
Education United States Navy

Connect | Send Gregg InMail

Background

Summary

Gregg Hughes

Is an Entrepreneur at heart! The founder of Patriot Solutions is a Service Disabled Veteran who served in the United States Navy during the Persian Gulf war.

Gregg was a founding Principal at Palmetto Engineering and Consulting. Mr. Hughes served as the Principal-in-Charge of Finance, Human Resources, and Information Technology. He also successfully marketed PEC's services to high profile industrial manufacturing clients with a focus on customer confidence and satisfaction.

Gregg was able to help grow Palmetto from a small group of 3 founders to over 100 employees and $10 Million in revenue in a little over 5 years.

Gregg's unique abilities along with proven expertise in program and financial management as well as, numerous years directing and managing complex projects, allows him to provide detail client specific solutions with a strong focus in the areas of people, process and technology.

Gregg served a two year term as Chair of the American Council of Engineering Companies (ACEC) Small Firm Council. This was a post Gregg was greatly passionate about. He was excited to share his company's story and personal growth experience with many other small firms both in SC and Nationally. Gregg continues his dedication to small business development by speaking both locally and nationally on the topics of Entrepreneurism and the Entrepreneur Myth.

Specialties: IT Process Design and Development, IT Systems Integration, Project Magement-Program Direction, ERP, CRM, VMS, MES, TMS applications, PM methodology development, Information Systems Integration, RF/RFID, Q.A Reseach and Design, Strategic Planning, Operations and SCM Analysis, SDLC, Financial Planning and Analysis, Business Modeling, Business Development, Financial Management, Small Business, SDVOB, Veteran Owned Business

Experience

Founder and Principal

Patriot Solutions, LLC

Patriot Solutions is a Service Disabled Veteran Owned Business focusing in providing solutions in the electrical facilities and distribution industry. Patriot also provides services in the industrial Electrical and GIS/GPS mapping industry. With multiple successful projects and numerous high profile clients.

Patriot Solutions serves a wide variety of clientele from cooperative utility providers to privately owned energy producers.

Patriot Solutions offers substation and distribution system design, material purchase, substation and distribution system construction, maintenance / repair services as well as emergency support and

People Similar to Gregg



John Varney
Director, Telecom Operations
Connect

Others at Patriot Solutions, LLC



Alexander Ford
IT at Patriot Solutions



Thomas Monroe
Electrical Preventative Mainten
Foreman at Patriot Solutions, L

Leigh Anna Compton, PHR
HR Manager at Group of Patrio



Charles Stewart
Patriot Solutions



Tracey Lorenz
Purchasing Manager at Patriot Solutions, LLC

People Also Viewed

Patriot Solutions prides itself on its ability to adapt to customer specific needs

▾ 1 project

Mesopotamia Project

Project work for a 30 mile 138kV Transmission Line ... expert Northeast Oklahoma substations. View ›

Principal, Vice President

Palmetto Engineering & Consulting

Jun ... – Dec ... (5 years 7 ... Port Royal, South Carolina

Gregg Hughes ...a founding Principal, served as the Chief Financial Officer for Palmetto Engineering & Consulting. Mr. Hughes served as the Principal-in-Charge of Finance, Human Resources, Operations and Information Technology. He also successfully marketed PEC's services to high profile industrial/manufacturing clients.

Gregg was able to help grow Palmetto from a small group of 3 founders to over 100 employees and $10 Million in revenue in a little over 5 years.

▾ 3 recommendations, including:



Ron Hoffman
President at The Technology Consortium ...

"...over Thirty Years of Engineering and Consulting, I have found few people who rank on the combination of skills and ... [illegible]



Mike Renardo
President, Marketing & Project Developm...

"Gregg has worked with the many times and is one of the very best to work with in the construction industry. His performance is ... [illegible]

1 more recommendation ›

Vice President of Delievery Services

AnQuest

2001 – 2003 (4 years)

Managed all facets of design, development, implementation and support of complex client specific solutions, while maintaining a high level of customer confidence.
Managed the small scale implementation of a $1.6M hardware/software solution for the country's largest privately owned distributor of paper, restaurant and janitorial supplies, utilizing state of the art RF/RFID and barcode hardware/software technology. Interacted with software/hardware/service providers
Responsible for the development and continued success of internal and external business relationships to achieve overall project success
Developed and Utilized Sales and Marketing Strategies that generated in excess of 1 million dollars
Developed Strategic Plans for clients with expertise in people, process, and technology solutions

Contract Senior IT Project Manager

Ryder Integrated Logistics

199... – 200... 2 years

Directed and managed the successful implementation of leading edge technology and processes to meet and exceed client requirements, for multiple clients (Kappa Manufacturing, Nortel Networks, BellSouth, Qwest, PacBell, Xerox, Cisco, etc.)
Successfully prepared and responded to several iterations of RF(x) documentation for multiple clients
Utilized SDLC methodologies to maintain a high level of customer satisfaction during every project
Successfully managed the implementation of multiple manufacturing, inventory control, and transportation projects ranging from $250K to over $10M.
Instrumental in the development of a project management methodology that became ISO certified and accepted enterprise-wide for Ryder Integrated Logistics.

Project Manager

SanControl Systems and Services

199... – 199... (2 years)

Analyzed client specific supply chain, manufacturing, inventory hardware/software needs
Worked with numerous high tech manufacturing clients (i.e. Hewlett Packard, Ariva, Owens-Corning) to solve complex business issues.
Managed/scheduled projects and project personnel, while working closely with clients to resolve process/software/hardware related issues for the delivery of an efficient Warehouse Management, Manufacturing/ Production Management, and Inventory Management system.
Utilized barcode scanning, reporting, EDI and other leading edge technologies, as well as, developed and utilized best practice processes to increase efficiency and utilize client personnel to full potential
Managed the implementation of a multi-million dollar reverse logistics solution for Hewlett Packard in Roseville, CA
Managed the implementation of a multi-million dollar build to order (BTO) inventory management solution for Hewlett Packard in Roseville, CA

Technical Services

BPM Technology

199... – 1997 (... years)

Provided installation, technical training and service for a leading edge three-dimensional modeler that generated physical concept models from office environment CAD workstations and PCs. Maintained clients such as, NASA, John Deere, Ford Motor Company, Maytag, UCLA and others.



Charles Stewart
Patriot Solutions



Rob Merritt
Principal



George Wyatt, Jr., P.E.
President & Chief Executive at Palmetto Engineering & Consul



Daniel Gore
Senior VP, PatriotSolutions



Chad Thomas
Production Manager at Lewallen Automation



Rita Gaillard
CFO at Patriot Solutions, LLC



Nancy Brooks
Executive Administrator at Patri Solutions, LLC

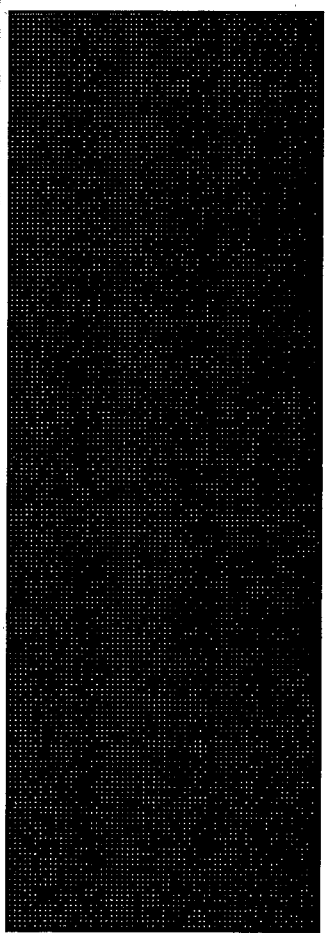


Mike Lewallen
Owner, Lewallen Automation



Mary Hagan
Higher Education Professional

Leigh Anna Compton, PHR
HR Manager at Group of Patrio



Responsible for the manufacturing process and documentation control for high tech modeling device.
Tested and developed designs on three dimensional rapid-prototyping modelers.
Responsible for experimental design and testing of advanced electronic circuits piezo-electric jetting technology (Capacitor theory)
Traveled throughout the country applying mechanical, electrical and PC knowledge for preventive and corrective maintenance of device.

Volunteer Experience & Causes

Causes Gregg cares about:

- Children
- Economic Empowerment
- Politics

Projects

Mesopotamia Project

[illegible] 2012 - January 2013

Procurement for a 56 mile 138Kv Transmission Line project in Northwest Oklahoma including 3 substations.

- 11 team members, including:


Gregg Hughes
Principa


Ehab Arale


Chad Phelps
Purchasing Supervisor at SandRidge En


Wayne Ashcraft, P.E.
Senior Project Manager at Fus on Indust

Courses

United States Navy

- Basic Electricity and Electronics
- Advanced Electricity and Electronics
- Phalanx CIWS
- Fire Controlman (FC) "A" School: Basic and Advanced Electricity/Electronics
- Fire Controlman (FC) "C" School: CIWS PHALANX

Skills

Top Skills

- Business Development
- Project Management
- Integration
- Strategic Planning
- Management
- Operations Management
- New Business Development
- Software Documentation
- Business Process
- CRM

Gregg also knows about...

Strategic Partnerships · Engineering · Small Business · Consulting · Troubleshooting · Analysis · LinkedIn Docs 000076 · ERP

People Similar to Gregg



John Varney
Director, Telecom Operations
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Business Analysis · Business Process · Enterprise Software
Manufacturing · Team Leadership · Supply Chain Management
Program Management See 3+ >

Education

United States Navy
Honorable Discharge, Advanced Electricity and Electronics, Weapons Fire Control Systems

Responsible for the preventative and corrective maintenance of advanced electronic combat systems worth over $15M
Managed and provided inspection, troubleshooting and repair of advanced electronic equipment, as well as advanced radar, hydraulic, and mechanical combat systems
Responsible for advanced weapon systems operations, communications, and personnel assigned to combat systems. Utilized internal documentation to create preventive and corrective maintenance schedules
Maintained 99.9% uptime of electronic/weapons systems assigned to department
Received multiple letters of commendation for outstanding attention to detail and military duty.

Activities and Societies: Honor Recruit. Multiple Letters of Commendation and Appreciation for Jobs Well Done and Attention to Detail

• 5 courses

Clemson University
None, PRTM

Left Clemson early to pursue a career in the United States Navy during the Persian Gulf War.

Activities and Societies: NONE

Organizations

Additional Organizations
American Council of Engineering Companies

Recommendations Received (3) ▾ Given (5)

Principal, Vice President
Palmetto Engineering & Consulting



Ron Hoffman
President at The Technology Consortium, Ltd

" In over Thirty Years of Engineering and Consulting, I have found few people who exhibit the combination skills and personality Gregg consistently demonstrates. Gregg joined my company as a supplying partner many years ago. No matter what the project requirement or schedule, Gregg always approached the challenge with enthusiasm and professionalism. He is extremely client ... more

January 19, 2010, Ron was Gregg's client

Mike Rainado
President Marketing & Project Development at MDR Associates, LLC

" Gregg has work with me many times and is one of the very best we have worked with. He consistently out performs the client's expectations and always makes our company shine to our customers. I was always able to give Gregg a project and walk away knowing it would be done in the most professional and efficient manner.

January 14, 2010, Mike was Gregg's client

Joel Shepard
Legal Recruiter for SRA- have great job openings in Chicago

" Gregg is an excellent worker who gets the job done right the first time, every time. He is smart, industrious, technical, and knows how to get to the core of the problem quickly to stop the pain and start the healing. Best of all, Gregg is honest and loyal and will never equivocate or tell half truths. You can trust Gregg with your business and he will deliver proven ... more

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Groups

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+ Join

Small Firm Council (
34 members
+ Join

UPSTATE ENTREPR
[illegible] members
+ Join

Entrepreneur Forum
[illegible] members
+ Join

CAMEE (Council of A...
[illegible] members
+ Join

ACEC of South Carol...
[illegible] members
+ Join

Supply Chain Manag...
[illegible] members
+ Join

Following

Influencers



T. Boone Pickens
Founder, Chairman ...
+ Follow

Companies

Schlumberger
Oil & Energy
+ Follow

Patriot Solutions, LLC
Construction
+ Follow

Palmetto Engineerin...
Telecommunications
+ Follow

Woodside Energy
Oil & Energy
+ Follow

Chesapeake Energy
Oil & Energy
+ Follow

Applied Engineering,...
Mechanical or Industrial Engineering
+ Follow

SandRidge Energy
Oil & Energy
+ Follow

Schools

Clemson University
Greenville, South Carolina Area
✓ Following

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Exhibit B

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GREENVILLE CO. S.C.
PAUL D. WICKENSIMER
2014 OCT 7 AM 9 24

State of South Carolina)	**IN THE COURT OF COMMON PLEAS**
County of Greenville)	**2014-CP-23-4895**
Lewallen Automation, LLC and ASAG LLC,)	**Second Supplement of Defendant Lewallen in**
Plaintiffs,)	**1. Opposition to Pending Motion for Preliminary Injunction; and**
v.)	
Michael Lewallen and Everworks, LLC,)	**2. In Support of Motion to Strike Portions of Affidavits**
Defendants.)	

This Court indicated at the hearing that it would enjoin Defendant Lewallen as to two things: (1) Defamation; and (2) Trade Secrets. Plaintiffs' own discovery responses now confirm that, with respect to these claims, they have either made allegations not grounded in fact, or that they are engaging in discovery abuses. Either way, Plaintiffs cannot show a likelihood of success on the merits and that the representations made to this Court are suspect, at best.[1]

A. There Was No Defamation.

The Court indicated that it would enjoin Defendant Lewallen from defaming Defendants. But there is no apparent basis for the claim. Defendant Lewallen propounded a simple interrogatory:

[1] There are numerous of examples to which Defendant Lewallen could point to show discovery impropriety here. Based on the Court's statements as to the scope of any injunctive relief under consideration, this filing will be limited to issues regarding defamation and trade secret misappropriation, use, and disclosure. Defendant Lewallen will be filing one or more other motions regarding the responses.

With respect to your defamation claim, specify:

a. Each person(s) to whom Defendant Lewallen made a defamatory statement;

b. The date upon which each such statement was made; and

c. The specific statement Defendant Lewallen made.

(Interrogatory 27 (Exh. B)). In response, Plaintiffs refer to affidavits previously submitted that:

- Do not identify any persons to whom Defendant Lewallen made a defamatory statement;
- Do not identify any dates upon which such statements were made; and
- Do not specify any statements Defendant Lewallen made to any identified person.

(Id.)

The gravaman of Plaintiffs' case, including its defamation claim, is in paragraph 30 of the initial Complaint:

> Following Lewallen's termination from LALLC, Lewallen has contacted, on behalf of Everworks, a vendor of LALLC and **informed that vendor** that Lewallen was going to end up taking LALLC's business away from LALLC and that he had already received two purchase orders from one of LALLC's current clients. In addition, **Lewallen told the vendor** that he was encouraging LALLC employees who work in the shop assembling the OEM panels sold by LALLC to its customers to leave their employment with LALLC and go to work with Lewallen in competition with LALLC. Two days later, one of the shop employees resigned. **Lewallen also told this vendor that two of the principals of LALLC had stolen Lewallen's business and defrauded him.**

Complaint ¶ 30 (emphasis added). If there is such a vendor to whom Lewallen made such statements, Plaintiff refuses to say who it is:

> Interrogatory 19: Specify the employees and all communications related to the allegations in paragraph 30 of the Complaint including, but not limited to, the mode of communication, the individual(s) to whom the statement allegedly was made, and all documents related thereto.
>
> Answer: A vendor communicated this information to Eric Smith at LALLC.

(Exh. B). The statements in paragraph 30 are the statements by Lewallen who allegedly "informed that vendor," "told the vendor" and "also told this vendor" the statements at the heart of Plaintiffs claims. Yet, Plaintiffs simply refuse to name the vendor to whom the defamatory and incriminating statements allegedly were made. (Id.) Simply saying "a vendor" is indefensible, especially when Plaintiffs acknowledged to this Court their awareness that the Undersigned was seeking names of individuals so he can investigate the claims and obtain evidence.[2]

Finally, Plaintiffs fail to identify any witness to whom Defendant Lewallen made any alleged defamatory statements in response to standard interrogatories 1 (identity of persons with knowledge) and 3 (facts known to such persons).

To even consider rewarding Lewallen Automation with an injunction after it refuses to even identify the information upon which it bases its request would condone conduct that either violates Rule 11, or that is sanctionable under Rule 37. (It could be

---

[2] There are many ways in which Plaintiffs' responses relate to the arguments raised earlier. It is not, however, the intention of the Undersigned to re-argue matters already raised to the Court, which are addressed in Defendant Lewallen's Memorandum in Opposition, argued at the hearing, and raised in the post-hearing First Supplemental filing. Plaintiffs' responses simply are a continuation of the practice of making bold

both, but it cannot be neither). Granting extraordinary relief in favor of such a party certainly would render meaningless the clean hands doctrine, which applies to requests for injunctive relief.

B. Nobody Has Told Plaintiffs That Defendant Lewallen Has Misappropriated, Used, or Disclosed any Trade Secrets

The Court also indicated it would enjoin Defendant Lewallen with respect to trade secrets. But Plaintiffs' own responses now establish that there is no evidence that supports any allegation that could result in any relief, let alone the one form of relief deemed by South Carolina appellate courts to be rare and "extraordinary."

Defendant Lewallen's Requests to Admit 9, 10, 11 seek the admission that nobody has ever told Plaintiffs that Defendant Lewallen has engaged in the wrongdoing of which he is accused. (Exh. A at 3). Plaintiffs deny all three. However, such denials are without any foundation.

No witness is identified in response to standard interrogatories 1 and 3 as to providing any such information. (Exh. B). Interrogatory 5 requests all facts relied upon in denying any of the Requests to Admit. As to Requests 9-11, Plaintiffs merely repeat unsubstantiated speculation, but nowhere identify any person informing them that Defendant Lewallen has engaged in wrongdoing. (Id.)

Interrogatories 11 (misappropriation), 12 (use), and 13 (disclosure) also seek information regarding the trade secrets claim. Each interrogatory seeks the identity (not contents) of each trade secret at issue with respect to the three separate claims, all facts relied upon to support the notion that Defendant Lewallen misappropriated, used,

---

assertions to the Court for the purpose of obtaining an injunction while the actual facts show that Plaintiffs can not or will not reveal any bases for such assertions.

or disclosed proprietary information, and the names of any witness with relevant knowledge. Plaintiffs never identify any specific trade secrets (again just quoting statutes and boilerplate recitation of categories of things that could possibly be proprietary). Plaintiffs list absolutely no witnesses with any knowledge, especially customers. Plaintiffs actually object on the specious grounds that interrogatories 12 and 13 are duplicative of 11, which they clearly are not. (Exh. B). And, once again, Plaintiffs list no witnesses in response to standard interrogatories 1 and 3 with any first-hand knowledge of any trade secret violation.

For the foregoing reasons, as well as those raised earlier, the Affidavits submitted by Plaintiffs should be stricken in relevant part and injunctive relief should be denied.

Respectfully submitted this 7th day of October, 2014.

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

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2014-CP-23-4895

Lewallen Automation, LLC, Plaintiff, v. Michael Lewallen and Everworks, LLC, Defendants.	)	CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 OCT 7 AM 9 23

This is to certify that a copy of Second Supplement of Defendant Lewallen in Opposition to Pending Motion for Preliminary Injunction; and In Support of Motion to Strike Portions of Affidavits was served on all counsel of record via electronic mail and U.S. Mail, on October 7, 2014, to the following addresses:

Christine Gantt-Sorenson
Haynsworth Sinkler & Boyd, P.A.
One North Main Street, 2nd Floor
P.O. Box 2048 (29602-2048)
Greenville, SC 29601
csorenson@hsblawfirm.com

Ralph Gleaton
Gleaton Wyatt, PA
935 South Main St., Suite 203
Greenville, SC 29601
ralph@gwhlawfirm.com

Lisa Romaniello
Legal Assistant

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2014-CP-23-4895
Lewallen Automation, LLC,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST REQUESTS TO ADMIT**
v.	)	
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

Plaintiff Lewallen Automation, LLC hereby responds to the Defendants' First Requests to Admit as follows:

1. Plaintiff and Defendant Lewallen are not parties to a non-compete agreement (i.e. a covenant not to compete).

RESPONSE

Plaintiff admits that Plaintiff and Defendant Lewallen are not parties to any agreement or covenant that expressly provides that Lewallen cannot compete with Plaintiff. However, Defendant Lewallen is a party and subject to terms, conditions, and covenants contained in the Membership Interest Purchase Agreement and his Employment Agreement with Plaintiff. The terms and conditions of those agreements speak for themselves.

2. Plaintiff and Defendant Lewallen are not parties to a non-solicit Agreement.

RESPONSE

Plaintiff admits that Plaintiff and Defendant Lewallen are not parties to any Agreement that expressly provides that Lewallen cannot engage in solicitation but Defendant Lewallen is a party and subject to terms, conditions, and covenants contained in

the Membership Interest Purchase Agreement and his Employment Agreement with Plaintiff, and "customers" are defined Trade Secrets in the Employment Agreement. By way of further response, the terms and conditions of those agreements speak for themselves.

3. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant from working in any of the same lines of business in which Plaintiff engages (as described by you in paragraph 5 of the Complaint).

RESPONSE

Deny.

4. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from soliciting work from customers with which he dealt while employed by Plaintiff.

RESPONSE

Deny.

5. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from doing business with customers with which he dealt while employed by Plaintiff.

RESPONSE

Deny.

6. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from soliciting individuals employed by Plaintiff to resign their employment and work with Defendant Lewallen or any other person or entity.

RESPONSE

Deny.

7. Plaintiff and Defendant Lewallen are not parties to any form of restrictive covenant that precludes Defendant Lewallen from hiring or otherwise retaining individuals employed by Plaintiff.

RESPONSE

***See* Response to Request to Admit Number 6.**

8. With respect to the allegations of this lawsuit, Plaintiff does not contend that any of its customers have breached any contracts between that customer and Plaintiff.

RESPONSE

Plaintiff is without sufficient information to admit or deny as of the date of Plaintiff's Responses.

9. Nobody has told Plaintiff that Defendant Lewallen has misappropriated any information that Plaintiff contends is a trade secret.

RESPONSE

Deny.

10. Nobody has told Plaintiff that, since his employment with Plaintiff ended, Defendant Lewallen has used any information that Plaintiff contends is a trade secret.

RESPONSE

Deny.

11. Nobody has told Plaintiff that, since his employment with Plaintiff ended, Defendant Lewallen has disclosed any information that Plaintiff contends is a trade secret.

RESPONSE

Deny.

HAYNSWORTH SINKLER BOYD, P.A.

Christine Gantt-Sorenson, S.C. Bar No.63998
Denny P. Major, S.C. Bar No. 74907
One North Main Street, 2nd Floor (29601)
P.O. Box 2048
Greenville, South Carolina 29602
Telephone: 864.240.3200
Facsimile: 864.240.3300

Attorneys for Plaintiff

October 6, 2014
Greenville, South Carolina

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,	)	**PLAINTIFF LEWALLEN AUTOMATION, LLC'S ANSWERS TO DFENDANTS' FIRST SET OF INTERROGATORIES**
	)	
v.	)	
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

Plaintiff Lewallen Automation, LLC hereby responds to the Defendants' First Set of Interrogatories as follows:

1. Give the names and addresses of persons known to Plaintiff to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Robert Merritt
Gregory Hughes
Eric Smith
Jamie Satterwhite
Vince Blanton
Leigh Anna Compton
Nancy Brooks
Bonnie Wilkinson
Steve Naugle
David Archer
Jeff O'Donnell
John Thomas
Charles Stewart
Mark Roberts
c/o Christine Gantt-Sorenson
Post Office Box 2048
Greenville, S.C. 29602

Brian Davenport
3 Fortson Way
Fountain Inn, SC 29644

David Case
104 Edith Drive
Mauldin, SC 29662

Joseph Harrison Greer
10012 Belton Honea Path Hwy.
Belton, SC 29627

Plaintiff Lewallen Automation, LLC identifies any witnesses identified by Defendants.

2. Set forth a list of documents, in paper or electronic form, that relate to the claim or defense in the case.

ANSWER:

Plaintiff Lewallen Automation, LLC identifies the following:

a) Personnel file of Michael Lewallen, bates stamped LALLC_00001-00136;

b) Noncompete, Nonsolicitation and Trade Secret Agreements of David Case and Harrison Greer, bates stamped LALLC_00806-00819;

c) Employee Handbook effective January 1, 2014, bates stamped LALLC00820-00901;

d) Employee Handbook effective February 11, 2013, bates stamped LALLC_01028-LALLC_01102;

e) Closing package for the 12/31/2012 transaction, bates stamped LALLC_00137-00572;

f) Employment Agreement of Michael Lewallen, bates stamped LALLC_00001-00027;

g) Expense reports and receipts, and credit card statements for Michael Lewallen, bates stamped LALLC_00902-01027;

h) Electronic mail communications, bates stamped LALLC_00573-00774;

i) Anthony Proietta & Associates Investigations, LLC Confidential Investigative Report, bates stamped LALLC_00775-00800;

j) LALLC NDA with TEC, bates stamped LALLC_00801-00805;

k) Payroll records of Defendant Michael Lewallen, bates stamped LALLC_01103-LALLC_01106;

l) Sales/Budgeting Spreadsheet attached to the January 2014 electronic mail correspondences from Defendant Lewallen to personal electronic mail addresses;

m) cellular telephone records showing ownership of Defendant Lewallen's cellular telephones.

Plaintiff Lewallen Automation, LLC also identifies any documents previously identified by Defendants as if incorporated herein. Plaintiff Lewallen Automation, LLC reserves the right to supplement this Interrogatory as discovery continues.

Redactions are to protect account numbers, dates of birth and social security numbers.

3. List the names and addresses of any expert witnesses whom Plaintiff proposes to use as a witness at the trial of the case.

ANSWER: **Plaintiff reserves the right to supplement Interrogatory No. 3 at a later date.**

4. For each person known to Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendant Lewallen of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER: **The following witnesses have given affiant testimony which has been previously produced: Robert Merritt; Gregory Hughes; Eric Smith; Jamie Satterwhite; Vince Blanton. These witnesses will testify as to the matters contained in their Affidavits, as well as matters giving rise to the allegations in the Complaint.**

Charles Stewart, additional owner of Plaintiffs, may testify as to the matters giving rise to the allegations in the Complaint.

Eric Smith and Bonnie Wilkerson may testify as to the audit they performed of Defendant Lewallen's credit card charges and expense reports. Leigh Anna Compton and Nancy Brooks may testify as to the matters giving rise to the allegations in the Complaint. Ms. Compton may additionally testify as to Plaintiff's employment policies, investigations into Defendant Lewallen's activities, and other human resource matters pertinent to the matters alleged in the Complaint. Ms. Brooks may additionally testify as to her dealings with Mr. Lewallen while he was employed with Plaintiff.

Steve Naugle, Plaintiff's IT personnel, may testify as to the investigation into Mr. Lewallen's work habits, preservation of electronic data, and as to the information gleaned from Plaintiff's server and Defendant's company-issued electronic devices.

David Archer, Jeff O'Donnell, John Thomas, and Mark Roberts may testify as to Defendant Lewallen's and/or Defendant Everworks' communications with them about leaving their employment with LALLC and working for them, and about their Noncompetition, Nonsolicitation and Trade Secret Agreements with LALLC.

Brian Davenport may testify as to his communications with LALLC employees on behalf of Defendant Lewallen to encourage them to leave their employment and work for Defendants.

5. If you denied any of the foregoing requests to admit then, for each denied request, set forth each fact upon which you rely in asserting the denial.

ANSWER:

Request to Admit Nos. 1 and 2: Defendant Lewallen and Plaintiff are parties to two agreements that contain restrictive covenants: An Employment Agreement dated 12/31/12 and a Membership Interest Purchase Agreement dated 12/31/12. Section 5.04 of the Membership Interest Purchase Agreement states that Defendant Lewallen "shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish *or make use of Confidential Information at any time following the date hereof without prior written consent.*" (emphasis added). Defendant Lewallen also agreed, as stated in §6.02(c), that he would not engage in any "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby." Section 7.06(b) provides that Defendant Lewallen's warranties and representations were to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date. Defendant Lewallen and his partners sold LALLC to Plaintiff and is restricted from now attempting to usurp what was sold to Plaintiff in December 2012.

Request to Admit No. 3: Defendant Lewallen and Plaintiff are parties to two agreements that contain restrictive covenants: An Employment Agreement dated 12/31/12 and a Membership Interest Purchase Agreement dated 12/31/12. Section 5.04 of the

Membership Interest Purchase Agreement states that Defendant Lewallen "shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish *or make use of Confidential Information at any time following the date hereof without prior written consent.*" (emphasis added). Defendant Lewallen also agreed, as stated in §6.02(c), that he would not engage in any "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby." Section 7.06(b) provides that Defendant Lewallen's warranties and representations were to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date. Defendant Lewallen and his partners sold LALLC to Plaintiff and is restricted from now attempting to usurp what was sold to Plaintiff in December 2012.]

Request to Admit No. 4: Defendant Lewallen and Plaintiff are parties to two agreements that contain restrictive covenants: An Employment Agreement dated 12/31/12 and a Membership Interest Purchase Agreement dated 12/31/12. Paragraph 6 of Defendant Lewallen's Employment Agreement specifically defines "customers" as a trade secret, and Defendant Lewallen agreed "he will not, during or after this Agreement with the Companies, disclose the specific terms of the Companies' relationship or agreement with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any persona, firm, partnership, corporation or business for any reason or purpose whatsoever." Section 5.04 of the Membership Interest Purchase Agreement states that Defendant Lewallen "shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date

hereof without prior written consent." Plaintiff has defined trade secrets to include its customers. Defendant is contractually prohibited from pursing Plaintiff's customers or using any information regarding its customers in any endeavors he pursues after his termination.

Request to Admit No. 5: Defendant Lewallen and Plaintiff are parties to two agreements that contain restrictive covenants: An Employment Agreement dated 12/31/12 and a Membership Interest Purchase Agreement dated 12/31/12. Paragraph 6 of Defendant Lewallen's Employment Agreement specifically defines "customers" as a trade secret, and Defendant Lewallen agreed "he will not, during or after this Agreement with the Companies, disclose the specific terms of the Companies' relationship or agreement with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any persona, firm, partnership, corporation or business for any reason or purpose whatsoever." Section 5.04 of the Membership Interest Purchase Agreement requires Defendant Lewallen to "hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without prior written consent." Defendant is contractually prohibited from pursuing Plaintiff's customers or using any information regarding its customers in any endeavors he pursues after his termination.

Request to Admit No. 6 and 7: Plaintiff, Lewallen Automation, LLC, has entered into a number of NonCompete, NonSolicit and Trade Secret Agreements with the employees of Lewallen Automation, LLC, some entered into by Defendant Lewallen with those employees before the business was sold in December 31, 2012, and some after, and

those Agreements remain in force today. Defendant Lewallen was also a signatory to some of those Agreements on behalf of Plaintiff. Defendant Lewallen was also informed of and even sometimes involved with insuring that the employees of Lewallen Automation, LLC execute the Agreements as the Vice President of Sales.

By way of further response, Defendant Lewallen and Plaintiff are parties to two agreements that contain restrictive covenants: An Employment Agreement dated 12/31/12 and a Membership Interest Purchase Agreement dated 12/31/12. Paragraph 6 of Defendant Lewallen's Employment Agreement specifically states that "Employee agrees that he will not, during or after this Agreement with the Companies, disclose the specific terms of the Companies' relationship or agreement with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any persona, firm, partnership, corporation or business for any reason or purpose whatsoever." Section 5.04 of the Membership Interest Purchase Agreement requires Defendant Lewallen to "hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without prior written consent." Plaintiff's employees are specially trained to prepare panels for specific customers pursuant to highly proprietary and confidential information that is protected between LALLC and its agreements with its customers, such that its employees, themselves, are significant and material trade secrets. Other third parties would not and do not know LALLC's employee list and which projects each were assigned to each employee. Defendant Lewallen is cherry-picking and targeting those employees based upon his knowledge of LALLC's confidential information and trade secrets, on his behalf as well as

on behalf of Everworks, to rob LALLC of its expertise and specific training that it purchased from Lewallen in 2012, as well as improved and provided in training to current LALLC employees.

Request to Admit Nos. 9, 10 and 11: Defendant Lewallen is using his knowledge of LALLC's confidential information and trade secrets to ferret away LALLC's highly skilled workforce and hire them for the purpose of performing the same work LALLC performs for LALLC's existing other customers. Defendant Lewallen appropriated LALLC's customer list and strategic plans regarding its customers, forwarding a highly sensitive document to his home and another personal email address to which he had access on January 9, 2014. Defendant Lewallen has advised LALLC's clients and other third parties that he intends to run LALLC's business by hiring away its employees and performing the work that LALLC for LALLC's existing customers. Defendant Lewallen is also purposefully communicating to LALLC's existing customers that LALLC cannot meet their needs, that it will cease doing business, and that it engages in unsavory financial practices. Upon information and belief, Defendant Lewallen is also using LALLC's strategic plans, sales forecasting, knowledge of our internal pricing and cost structures, budgets, vendor relationships, knowledge of our vendors payment terms, and LALLC's financial information in order to gain an unfair advantage over LALLC and in developing the same or similar business to compete with LALLC with future prospective customers.

6. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Plaintiff regarding the decision to terminate Defendant Lewallen's employment.

ANSWER: **Robert Merritt, Gregory Hughes and Charles Stewart made the decision to terminate Defendant Lewallen. There are written communications contained in his personnel file produced herewith and/ or are produced herewith in response to Request for Production No. 4.**

7. For each communication identified above, set forth a detailed summary of the communications or, if such communication occurred solely in writing, specify the document(s) that contain the contents of the communication.

ANSWER:

***See* Memorandums to Defendant Lewallen's personnel file.**

8. Identify by name address and phone number each and every person who provided information, was consulted, who participated in, or who was otherwise involved in the decision to terminate Defendant Lewallen's employment. For each person identified, specify:

a. the specific role such person played in the decision;

b. the relevant facts known to the person, or that he or she provided in the decision-making process leading to the decision, including other options considered, whether or not you contend they were relied upon in making the decision; and

c. all documents and communications created, considered by, or otherwise related to his or her role in the decision including, but not limited to, any notes or communications or other documents regarding the decision.

ANSWER:

a. **Mr. Merritt, Mr. Hughes and Mr. Stewart are the principals and owners of LALLC.**

b. See response to Interrogatory Nos. 6 and 7.

c. See response to Interrogatory Nos. 6 and 7.

9. If you contend that Defendant Lewallen violated any policy, rule, or standard of conduct that was considered in the decision to terminate his employment, specify each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation.

ANSWER:

On October 8, 2013, Defendant Lewallen emailed Rachel K. a video containing footage of two people having sexual intercourse from his company email. Additionally, see document bates stamped LALLC_00756-00774, which are emails Defendant Lewallen sent to Rachel K. from his company email. Policies violated include Policy No. 405, Technology and Social Media.

On January 20, 2014, Defendant Lewallen sent an email to Rachel K. attaching Lewallen Automation, LLC's confidential Sales Planning Budget for 2014, bates stamped LALLC_00695-00755. The report included all existing and potential customer names, contact, champions, and budgets (actual and forecasted). Ms. Kay is not and has never been an employee of any Group of Patriots, LLC companies. Policies violated include Policy No. 108, Loyalty and Gifts, Policy No. 109, Confidentiality and Trade Secrets, and Policy No. 405, Technology and Social Media.

On January 20, 2014, Defendant Lewallen sent two emails to Emma Lewallen attaching Lewallen Automation, LLC's confidential Sales Planning Budget for 2014, bates stamped LALLC_00573-00694. The report included all existing and potential customer names, contact, champions, and budgets (actual and forecasted). Emma Lewallen is not

and has never been an employee of any Group of Patriots, LLC companies. Policies violated include Policy No. 108, Loyalty and Gifts, Policy No. 109, Confidentiality and Trade Secrets, and Policy No. 405, Technology and Social Media.

Defendant Lewallen misused the Plaintiff's credit cards for personal purchases.

10. If you contend Defendant Lewallen has violated any terms of any agreements between Plaintiff and Defendant Lewallen, specify the specific term upon which you rely, each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation(s).

ANSWER:

The Membership Interest Purchase Agreement provides:

> **The Parties shall hold in confidence at all times following the date hereof all Confidential Information and shall not disclose, publish or make use of Confidential Information at any time following the date hereof without the prior written consent. Any remedy at law for any breach of the provisions contained in this Section shall be inadequate and the non-breaching party shall be entitled to injunctive relief in addition to any other remedy available hereunder or under applicable Law.**
>
> **The term "Confidential Information" is defined in the Membership Interest Purchase Agreement as "any data or information of the Companies or Purchaser that is valuable to the operation of the Companies and not generally known to the public or competitors."**

Membership Interest Purchase Agreement, §§5.04 and 1.01, respectively.

Further, Defendant Lewallen agreed that he would not engage in any "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby." Membership Interest Purchase Agreement, §6.02(c).

Defendant Lewallen's warranties and representations were to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date. Membership Interest Purchase Agreement, §7.06.

Defendant Lewallen further warranted that: "Subject to the other provisions hereof, the Parties shall use their reasonable, good faith efforts to perform their obligations hereunder . . ." Membership Interest Purchase Agreement, §5.03.

Defendant Lewallen's conduct violates the Membership Interest Purchase Agreement to wit:

a. Failing to abide by the intent of, and the terms and conditions of the Membership Interest Purchase Agreement in selling the business to Plaintiff, to include its product, customers and good will, and receiving substantial remuneration therefore, and then attempting to begin a new competing business in violation of the intent of the Membership Interest Purchase Agreement, as well as the implied covenant of good faith and fair dealing implicit in every South Carolina contract.

b. Disclosing Plaintiff's trade secrets and confidential information as prohibited by §5.04.

c. Violating section §6.02(c) by engaging in "fraud, willful misconduct or bad faith in connection with the Membership Interest Purchase Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby," said warranties and representations under the Membership Interest Purchase Agreement to survive and "remain in full force and effect" for two years from the December 31, 2012 closing date pursuant to §7.06.

The Employment Agreement provides that:

The Companies hereby employs Employee as vice president of each Company. As such, Employee shall have responsibilities, duties and authority reasonably accorded to and expected of a vice president. Employee hereby accepts this employment upon the terms and conditions herein contained and, subject to paragraph 1(b), agrees to devote his working time, attention and efforts to promote and further the business of the Companies.

The Employment Agreement further provides that:

Employee is employed hereunder by the Companies in a confidential relationship wherein Employee, in the course of his employment with the Companies, has and will continue to become familiar with and aware of information as to the customers of the Companies and the Companies' specific manner of doing business, including the processes and techniques, and future plans with respect thereto, all of which has been and will be established and maintained at great expense to the Companies.

Paragraph 6 of the Employment Agreement provides:

Trade Secrets. Employee agrees that he will not, during or after the term of this Agreement with the Companies, disclose the specific terms of the Companies' relationships or agreements with its significant vendors or customers or any other significant and material trade secret of the Companies, whether in existence or proposed, to any person, firm, partnership, corporation or business for any reason or purpose whatsoever.

Paragraph 5 of the Employment Agreement provides:

Return of Company Property. All records, designs, patents, business plans, financial statements, manuals, memoranda, lists and other property delivered to or compiled by Employee by or on behalf of the Company or their representatives, vendors or customers which pertain to the business of the Company shall be and remain the property of the Company, and be subject at all times to its discretion and control. Likewise, all correspondence, reports, records, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the Company that is collected by Employee shall be delivered promptly to the Company without request by it upon termination of Employee's employment. (emphasis added)

Defendant Lewallen breached his obligations under the Employment Agreement by failing to perform as required. Defendant Lewallen breached his obligations, which are memorialized in the Agreements, by, among other things:

a. Failing to carry out his responsibilities and duties reasonably accorded to and expected of a Vice President of Sales;

b. Failing to devote his working time, attention and efforts to promote and further the business of LALLC;

c. Diverting LALLC's resources and property wholly to Defendant Lewallen's own personal benefit;

d. Submitting false expense reports and falsely representing that wholly personal expenses were legitimate business expenses of LALLC in order that LALLC would pay for Defendant Lewallen's personal expenses charged on his company credit card bates stamped LALLC_00902-01027; and

e. Using and disclosing LALLC's trade secret and confidential information, including, but not limited to, its customer lists, sales' strategy, and pricing information, in competition with LALLC.

Rob Merritt, Greg Hughes, Eric Smith, Leanna Compton; LALLC_00695-00755 LALLC_137-00572; Employment Agreement, paragraph 6, defines "customers" as trade secrets; Confidentiality and Trade Secret Policy, 2013 and 2014 Employee Handbook.

11. If you contend Defendant Lewallen has misappropriated any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Defendant Lewallen misappropriated the trade secret;

c. each witness that has knowledge of Defendant Lewallen's misappropriation of the trade secret; and

d. each document upon which you rely in support of your contention.

ANSWER:

a. **Interrogatory No. 11 calls for information that is confidential, proprietary and trade secret, and that LALLC will disclose the specific trade secrets only upon entry of a proper Confidentiality Order. LALLC objects to this Interrogatory on the grounds that it calls for information that is confidential, proprietary, and trade secret. LALLC will disclose the specific trade secrets only upon entry of an appropriate Confidentiality Order. Subject to these objections, and without waiving them, LALLC identifies the following categories of trade secret information which comprise the types of trade secret information at issue. Each of these categories constitutes protectable trade secrets pursuant to S.C. Code Ann. § 39-8-20(5) because they consist of "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."**

LALLC's employees and their salary information, training and experience: LALLC's employees are trained to work on projects for specific customers. Through this training and the experience that they gain actually performing the work for those specific customers, the employees become intimately familiar with the methods, techniques, and processes for meeting the needs of LALLC's specific customers. In addition, these methods, techniques, processes, and specifications themselves constitute trade secrets, independently and/or in compilation, of LALLC.

LALLC's customer lists and customer information. LALLC's customer lists are compilations of information collected over time in the process of serving and pursuing the service of customers. LALLC's customer lists compile the identities of the customers, financial/account information for each customer, notes regarding sales strategies for each customer and customer demand, sales projections for specific customers, and the identity of the person(s) at LALLC responsible for each customer. This is critical to LALLC's ability to compete in the industry, predict and increase sales volumes, and ultimately, to maximize profits.

Pricing and Cost information. The pricing and/or pricing formulas that LALLC charges for various products and customers, as well as the costs that LALLC incurs, are critical to LALLC's ability to price customer products, to compete in the industry, and to maximize profits.

In addition, as set forth in the Employment Agreement, the specific terms of the LALLC's relationships and agreements with its significant vendors and customers are trade secrets.

LALLC notes that investigation is continuing and LALLC will supplement this response as more information becomes available.

b. Plaintiffs have been advised by two representatives from one of its customers, and a vendor that Defendant Lewallen represented to them that he would take away LALLC's business by poaching employees who worked for specific LALLC customers to perform the work for him, and ruin LALLC in the industry by defaming them as well as using the confidential information he knew while employed by LALLC to secure work from LALLC customers.

LALLC has learned that Defendant Lewallen has met with numerous employees on since his termination regarding leaving LALLC. LALLC is also aware that Defendant Lewallen persuaded David Case and Harrison Greer to leave LALLC and work for a competitor.

Also, upon his departure, LALLC has learned that Lewallen sent its proprietary list of financials and customer information to his daughter's personal email address on or about January 20, 2014, as well as to the email address of Rachel Kay and/or Rachel Kleinhains, known to be Lewallen's mistress and who was never an employee of LALLC, attaching a number of confidential documents containing a list of LALLC's customers and prospects, efforts to secure certain business and progress, including existing and potential customer names, contacts, and LALLC's Sales Planning Budget for 2014, actual and forecasted. Lewallen's conduct in doing so was in violation of the Employment Agreement as well as the Membership Interest Purchase Agreement and other closing documents applicable to his sale of LALLC.

c. **See b.**

d. **LALLC_00695-00755 LALLC_137-00572; Employment Agreement, paragraph 6, defines "customers" as trade secrets; Confidentiality and Trade Secret Policy, 2013 and 2014 Employee Handbook.**

Plaintiffs' investigation is ongoing.

12. If, as alleged in paragraph 45(f) of the Complaint, you contend Defendant Lewallen has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Defendant Lewallen used the trade secret;

c. each witness that has knowledge of Defendant Lewallen's use of the trade secret; and

d. each document upon which you rely in support of your contention.

ANSWER:

Plaintiffs object to Interrogatory No. 12 on the grounds that it is duplicative of Interrogatory No. 11.

13. If, as alleged in paragraph 45(f) of the Complaint, you contend Defendant Lewallen has disclosed any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Defendant disclosed the trade secret;

c. each witness that has knowledge of Plaintiff's disclosure of the trade secret; and

d. each document upon which you rely in support of your contention.

ANSWER:

Plaintiffs object to Interrogatory No. 13 on the grounds that it is duplicative of Interrogatory Nos. 11 and 12.

14. With respect to each "trade secret" you identify in your responses to Interrogatories 11-13 or that you otherwise contend is at issue in this litigation, specify each action taken by Plaintiff to maintain its secrecy include, but not limited to, each policy regarding

the use or handling of such information to the extent such policy was in effect during Defendant Lewallen's employment.

ANSWER: **Plaintiff restricts who can go into the specific areas where LALLC employees work in order to protect the confidentiality of its customers and their products, designs, raw materials and related assembly. Visitors are not allowed in those areas unless accompanied. Customers have numerous and varied proprietary requirements for their ordered panels which require implementation of and following the security measures that they preserve through their Nondisclosure Agreements with Plaintiff.**

Additionally, LALLC entered into confidentiality agreements with employees, third-parties and independent contractors that protected this information from disclosure, and entered into Noncompete, Nonsolicitation and Trade Secret Agreements designed to prevent the use or disclosure of this information. LALLC also has in place a badge lock system at its facility, and access to information is restricted by levels. LALLC also instructed its employees that the trade secrets are confidential and must be kept as such.

Plaintiff also entered into two contracts with Defendant Lewallen to protect its confidential information and trade secrets, the Membership Interest Purchase Agreement and his 12/31/12 Employment Agreement.

LALLC also maintained a Confidentiality and Trade Secret Policy, 2013 and 2014 Employee Handbook. In addition, it stored information only on a firewalled, password protected network and restricted access to confidential and trade secret information.

15. Specify (not just by characterization) all information or data to which you refer in paragraph 13 of the Complaint that Plaintiff "has developed" since Plaintiff was purchased from Defendant Lewallen "and his partners."

ANSWER: **Customers, employees, sales forecasting and strategies, internal pricing, cost structure, budgets, vendors, strategic plans and strategies.**

16. Specify by date and occurrence each act or omission on the part of Defendant Lewallen on which you rely with regards to your allegations in paragraph 15 of the Complaint.

ANSWER: **Defendant Lewallen neglected his duties almost immediately upon beginning his employment as Vice President of Sales. He was rarely at work, when he was he did not devote his efforts to his duties, he failed to communicate with Mr. Hughes, Mr. Merritt or Mr. Stewart as to his progress despite numerous requests that he do so, and was constantly complaining. By way of further response, See Defendant Lewallen's personnel file.**

17. Specify each fact and occurrence upon which you rely with respect to your allegations in paragraphs 16 and 17, and 24 of the Complaint as well as all documents upon which you rely in making the allegations.

ANSWER:

Defendant Lewallen used his company credit card for personnel purchases, *see* documents bates stamped LALLC_00902-01027.

Defendant Lewallen used company time for personal endeavors, *see* documents bates stamped LALLC_00902-01027.

18. Specify the "competitor" to which you refer in paragraph 25 of your Complaint and identify all facts and witnesses upon whom you rely with respect to the allegations of that paragraph and all documents related thereto.

ANSWER: **Brian Wright with Tennessee Electric Construction.**

19. Specify the employees and all communications related to the allegations in paragraph 30 of the Complaint including, but not limited to, the mode of communication, the individual(s) to whom the statement allegedly was made, and all documents related thereto.

ANSWER: A vendor communicated this information to Eric Smith at LALLC.

20. Specify the employees and all communications related to the allegations in paragraph 32 of the Complaint, including, but not limited to, the individual(s) who reported such information to Plaintiff and the representative(s) of Plaintiff who purportedly learned this information, and all documents related thereto.

ANSWER: This allegation, as well as the others, are based on an audit of the expenses Defendant Lewallen charged to his company credit card, and are supported by an internal audit performed by Eric Smith and Bonnie Wilkinson.

21. Specify each act or omission on the part of Defendant Lewallen that you contend constitutes a "breach" of his obligations as alleged in paragraph 40 and 45 of the Complaint and, for each alleged breach, specify:

a. The witnesses, communications, and documents (including electronic documents and communications) upon which you rely in support each specific allegation;

b. the specific provision(s) of the referenced agreements that you contend were breached with regard to each act or omission identified.

ANSWER:

***See* Plaintiff's Response to Interrogatory No. 10.**

22. Specify each "resource" and piece of "equipment" to which you refer in paragraphs 45(d) and 58 of the Complaint and each fact or bases which you rely in contending that Defendant Lewallen "divert[ed]" them.

ANSWER:

Plaintiff's LALLC's employees, labor costs, pricing, and contracts with customers. Defendant Lewallen has advised numerous sources that he intends to take LALLC's employees who are working for LALLC customers and hire them to work for him for those same customers to take away the work that LALLC is performing for the customers. In addition, Defendant Lewallen used company funds to pay for his own personal endeavors, as set forth above, and, upon information and belief, used company iPhones after he left his employment.

23. Specify by customer or product/service the particular "pricing information" you contend in paragraph 45(f) that Defendant Lewallen "us[ed]" and disclose[d]," the source of the information upon which you rely, and all documents that support your allegation.

ANSWER:

Upon information and belief, Defendant Lewallen has used Plaintiffs' confidential pricing information in quoting work from Hartness International, Hendricks Fabrication, and/or Michelin North American.

24. Specify each "customer" to which you contend in paragraph 50 of the Complaint that Defendant Lewallen made "misrepresentations" and, for each such customer, specify each misrepresentation made by Defendant Lewallen and the source of the information upon which you rely.

ANSWER: Hartness International, Michelin North America, Hendricks Fabrication.

25. Specify each fact upon which you rely in contending that Defendant Lewallen was a "fiduciary" as alleged in your Fourth Cause of Action.

ANSWER: Defendant Lewallen was Vice President of Sales and, as an officer of the Plaintiff, had a fiduciary duty to it. LALLC also refers to the Employment Agreement.

26. Specify each customer, contract, and "breach" upon which the allegations of paragraph 77 of the Complaint is based.

ANSWER: Hartness International, Michelin North America, Hendricks Fabrication.

27. Specify each employee, contract, and breach upon which the allegations of paragraph 83 of the Complaint is based.

ANSWER: David Case, Harrison Greer, David Archer, Jeff O'Donnell, Brian Davenport, all current employees of LALLA .28. With respect to your defamation claim, specify:

a. Each person(s) to whom Defendant Lewallen made a defamatory statement;

b. The date upon which each such statement was made; and

c. The specific statement Defendant Lewallen made.

ANSWER: See Affidavits of Gregroy Hughes, Jamie Satterwhite, Eric Smith and Steve Naugle.

29. Specify each act or omission on the part of Defendants that you contend constitutes an "unfair method[] of competition" or an "unfair or deceptive act or practice[]."

ANSWER: **Defendant Lewallen's representations that Plaintiff is ceasing business operations, falsifies financial records and is ruining the business, stole the business from Defendant Lewallen and that Plaintiff cannot meet a client's needs said to the specific client.**

30. Specify by type and amount each element of damage you claim related to any conduct on the part of Defendant Lewallen and specify the manner in which you calculate each element of such damage.

ANSWER: **Plaintiff seeks profits from loss of customers due to Defendant Lewallen's tortious interference and unfair methods of competition, actual and consequential damages for tortuously encouraging existing personnel to leave their employment with Plaintiff, treble punitive damages and attorney's fees, and any additional actual or consequential damages caused by Defendant Lewallen's conduct. Plaintiff also seeks reimbursement for all improper charges to its credit card by Lewallen, plus applicable legal interest.**

31. Identify each fact upon which you rely in contending that an individual known as Rachel K is "known to be [Defendant] Lewallen's mistress" including each person known to Plaintiff who purports to know this and the basis for their belief that Defendant Lewallen has a "mistress."

ANSWER: **Defendant Lewallen has represented Ms. Kleinhans as his mistress at various company parties and outings that were attended by company employees and has sent her inappropriate electronic mail from his company email address, as well as received electronic communications from Ms. Kleinhans at his company email address. Ms. Kleinhans has also accompanied Defendant Lewallen on dinner outings with other employees of LALLC. An investigation also revealed Defendant Lewallen was spending**

company time with Ms. Kleinhans. Specifically, see electronic mail communications at LALLC_00695-755 and LALLC_00756-774.

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Plaintiff

October 6, 2014
Greenville, South Carolina

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,	)	**PLAINTIFF'S RESPONSES TO DEFENDANT LEWALLEN'S FIRST REQUESTS TO PRODUCE**
	)	
v.	)	
	)	
Michael Lewallen and Everworks, LLC,	)	
	)	
Defendants.	)	

Plaintiff Lewallen Automation, LLC hereby responds to the Defendant Lewallen's First Requests to Produce as follows:

1. All documents or other things identified in your responses to the foregoing interrogatories.

RESPONSE: Attached hereto at bates stamp LALLC_00001-01108.

2. A complete copy of Defendant Lewallen's personnel file.

RESPONSE: Attached hereto at bates stamp LALLC_00001-00136.

3. Any other documents maintained by Plaintiff regarding Defendant Lewallen.

RESPONSE: Attached hereto at bates stamp LALLC_00001-01108.

4. All communications between Plaintiff and any other person or entity (including employment agency) regarding Defendant Lewallen's termination of employment or the allegations set forth in your Complaint.

RESPONSE: Attached hereto at bates stamp LALLC_01107-01108.

5. All employee handbooks or similar publications for employees regarding terms and conditions of employment applicable to Defendant Lewallen's employment.

RESPONSE: Attached hereto at bates stamp LALLC_00820-00901 is the Handbook effective January 1, 2014 and at bates stamp LALLC_01028-01102 is the Handbook effective February 11, 2013.

6. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Plaintiff's personnel management policies and/or practices applicable to Defendant Lewallen's employment.

RESPONSE: See Defendant Lewallen's personnel file.

7. Any statements taken from any witness in this case.

RESPONSE: Other than Affidavits previously produced, none.

8. All documents and communications related to the investigation or audit Plaintiff claims it conducted regarding Defendant Lewallen.

RESPONSE: See Defendant Lewallen's personnel file.

9. All contracts that you allege were breached and the breach of which you contend Defendants induced.

RESPONSE: Attached hereto at bates stamp LALLC_00137-572 and LALLC_00001-00027.

10. All documents related to the allegations contained in paragraph 31 of the Complaint.

RESPONSE: Attached hereto at LALLC_00695-00755.

11. All policies or other documents that Plaintiff contends cover the topics of trade secrets, use of trade secrets, or the protections it provides and steps taken to protect trade secrets.

RESPONSE: See Confidentiality and Trade Secret Policy, 2013 Handbook, p. 14, and 2014 Handbook, p. 15, both being produced herewith.

12. All other documents that you contend support your allegations against Defendant Lewallen.

RESPONSE: Attached hereto at bates stamp LALLC_00001-01108.

13. All electronic communications, including text messages or e-mail, that discuss or otherwise relate to your substantive claims in this lawsuit or your claims for damages.

RESPONSE: Attached.

14. All other documents that you contend support your claims for damages.

RESPONSE: Attached.

15. A copy of any fee or retention agreement between Plaintiff and its counsel.

RESPONSE: Plaintiffs object to production of responsive documents on the grounds that the information requested is protected by the Attorney-Client and Work Produce privilege. Without waiving its objections, when judgment is entered against Defendants, Plaintiffs will produce itemized statements of legal fees and costs as required to obtain reimbursement.

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Attorneys for Plaintiff

October 6, 2014
Greenville, South Carolina

Brian Murphy

From: Brian Murphy
Sent: Monday, September 22, 2014 12:07 PM
To: Simmons, Judge Charles; Kimbrell, Karen; Major, Denny
Cc: ralph@gwhlawfirm.com; Gantt-Sorenson, Chris
Subject: RE: Lewallen Automation, LLC v. Michael Lewallen, et. al., C.A. No. 2014-CP-23-04895
Attachments: File-Stamped Defs Joint Motion to Strike_Cvr Sheet and COS_9.22.14.pdf

Judge Simmons:

After the close of business on Friday, counsel for Plaintiffs sent revised and additional affidavits. Although I have continued, both in writing and in a conversation with Ms. Gantt-Sorenson, to ask for names or information that would allow me to respond to the statements Plaintiffs continue to file, they continue to refuse to disclose sufficient information. I have even offered to address their issues and discuss them and a possible resolution if they can provide information necessary for me to review their claim. Apparently, there is a more compelling strategy of playing "hide the ball" at this time.

We just filed the attached Motion to Strike. I would request that it be heard before addressing merits of the motion for a preliminary injunction. As the attached motion further establishes, this approach by Plaintiff Lewallen Automation simply is not proper.

We also will be filing additional arguments later this week in opposition based on the filings.

I understand that this is fast becoming a burden on your Honor, but it also is unnecessarily resulting in a wasteful expenditure of attorney time (i.e. money) in our efforts to play "blind poker" with Plaintiffs.

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Brian Murphy

From: Brian Murphy
Sent: Monday, October 06, 2014 5:46 PM
To: Simmons, Judge Charles; Kimbrell, Karen
Cc: Gantt-Sorenson, Chris; Major, Denny (dmajor@hsblawfirm.com); ralph@gwhlawfirm.com
Subject: RE: Lewallen Automation et al v. Lewallen et al, 2014-CP-23-4895

Judge:

Ms. Gantt-Sorenson has emailed me her discovery "responses." I intend to file them in further opposition. She continues to refuse to name the witnesses who purportedly provided the information upon which they rely. How can equity intervene to grant an injunction when the party promises, but refuses, to provide basic information at the heart of its own allegations. As another example, while the court indicated it would enjoin defamation, she simply refuses to identify to whom any defamatory statements were made. How can she make a showing of success on the merits while refusing to meet her obligations.

This is about as outrageous discovery abuse as I have seen, especially from a party seeking an injunction. The violations are so basic. She also won't explain what the alleged trade secrets are, other than to simply recite boilerplate categories.

In addition to what I will be filing tomorrow a.m., I will be filing a discovery motion. I don't know if that is referred to you or not.

With apologies, I neglected to mention that we also have my motion to strike pending that will require a ruling. The materials I will submit in the morning also will relate to that Motion.

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From: Brian Murphy
Sent: Monday, October 06, 2014 3:35 PM
To: 'Simmons, Judge Charles'; 'Kimbrell, Karen'
Cc: 'Gantt-Sorenson, Chris'; Major, Denny (dmajor@hsblawfirm.com); ralph@gwhlawfirm.com
Subject: Lewallen Automation et al v. Lewallen et al, 2014-CP-23-4895

Judge Simmons:

I am writing to address three things. We certainly have narrowed issues regarding the proper scope of the draft order, but some serious issues remain.

1. At the hearing in this matter, my recollection is that you directed the parties to work together on the discovery protocol to be worked out within 7 days. I circulated the proposed protocol on 10/1. It is balanced to apply the same rules to each party. Plaintiffs have objected to some of the language in it that makes clear that only searches approved under the protocol are proper. This is, of course, to ensure that no party receives information, such as privileged or personal information, off of the computer of another party. I was surprised there was any objection to the protocol. Ms. Gantt-Sorenson indicates that she would object to me conducting electronic discovery. Of course, any

objection to a future discovery request can be resolved by the court upon proper motion. The protocol does not change that or order any party to turn anything over to the other without the opportunity to object.

2. As to the preliminary injunction, I would ask that, whatever you decide to enter, is entered only after Plaintiffs respond to discovery as they said they would last week. Ms. Gantt-Sorenson has told me it will be tomorrow at the latest so this should not be a problem. There is no real reason to believe my client is doing anything with any of their information right now (I've even been trying to get permission to delete the one file at issue off his computer).

3. As to the preliminary injunction motion, I do not want to re-argue points I have already addressed before, at, and after the hearing in our post-hearing submission unless you request further argument, but if the proposal continues to contain language about the Membership Interest Purchase Agreement, claims that my client emailed the information, or that my client must surrender a computer, which contains privileged and confidential information, for them to review and hold (which is a matter that should be addressed solely in the protocol), then I do need an opportunity to be heard as my recollection differs from Ms. Gantt-Sorenson's. This is especially so with regard to surrendering the computer, which is a very troubling notion. We need a protocol in place that defines the permissible searches and ensures that the Court addresses any objections to the disclosure of information to the requesting party before that party can see it.

Thank you for your continued attention to these issues.

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Brian Murphy

From: Brian Murphy
Sent: Wednesday, October 08, 2014 11:27 AM
To: Simmons, Judge Charles; Kimbrell, Karen
Cc: Gantt-Sorenson, Chris; Major, Denny (dmajor@hsblawfirm.com); ralph@gwhlawfirm.com
Subject: Draft Order re Lewallen Automation v. Lewallen
Attachments: Excerpt with Ruling.pdf; BPM Submitted Order on Motion.doc

Judge Simmons:

On a positive note, it appears that Lewallen Automation and Defendant Lewallen, at least, are in agreement relative to terms of an electronic discovery protocol. Mr. Denny can submit that to you as I have agreed to his latest changes. I don't know Defendant Everworks' position on it, but I am not sure there will even be any electronic discovery relative to Everworks, so the Prototcol could be entered, in my opinion, just as to Plaintiffs and Defendant Lewallen.

Per your instructions yesterday, I am submitting a draft order. I based the rulings on the highlighted portions of the transcript (excerpt attached). I was unclear as to the length you were ordering so I left that blank to be filled in. I assume you have access to the entire transcript, but if you do not and would like it, please let me know. I am sure this may not seem necessary, but I do need to add the disclaimer that, by submitting this proposed order, Defendant Lewallen is not consenting either to the entry of an order or the terms contained in our draft. That may seem obvious, but I don't want to face the argument later that Defendant Lewallen cannot contest terms that he "proposed." Thank you for your understanding in this regard.

If there is anything else we can provide, please let me know.

Thank you.

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