

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000476

Case No. 2012-CP-23-02887

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JUN 22 2016

SC Court of Appeals

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting,
LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third-Party Defendant and Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc. and Fresh Water Systems, Inc. are the
Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants.

RECORD ON APPEAL
VOLUME V

W. Andrew Arnold, Esq.
712 E. Washington Street
Greenville, South Carolina, 29601
Attorney for Respondent David Wilson

Bruce B. Campbell, Esq.
307 Pettigru Street
Greenville, South Carolina 29601
*Attorney for Respondents Steve Norvell,
Neologic Distribution Inc. and Fresh
Water Systems, Inc.*

Burl F. Williams
Nexsen Pruet, LLC
Post Office Drawer 10648
Greenville, SC 29603-0648
*Attorney for Co-Appellant, Carolina
Custom Converting, LLC*

D. Randle Moody
Joseph O. Smith
ROE CASSIDY COATES & PRICE, P.A.
1052 North Church Street
Greenville, South Carolina 29601
*Attorneys for Appellants. John Gandis and
Andrea Comeau-Shirley*

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FILED IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
PAUL B. WICKER
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
2014 JUN 20 | PM 12 20

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOI Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc.,

Counterclaim Defendants.

Civil Action No. 2012-CP-23-02887

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiff David Wilson ("Wilson") has moved this Court to enter an order dissolving Carolina Custom Converting, LLC ("CCC" or the "Company") and appointing a receiver to sell off its assets. Wilson's motion is an outrageous overreach that, respectfully, should be denied.

INITIAL STATEMENT

Before undertaking a background discussion of the case and the absence of merit to Wilson's motions, it is important to underscore a few salient facts. Wilson left CCC on January 18, 2012. At the time he left, CCC had 23 employees; today, the Company has 18 employees. Wilson took with him a list of all of CCC's customers, distributors, its prospective customers, and current pricing information for the same ("confidential property"). Within months of

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leaving, Wilson joined a company named Neologic Distribution Inc. ("Neologic"). At Neologic, Wilson began engaging in exactly the same work that he did at CCC. The Company does not take any issue with Wilson for seeking to earn a livelihood or compete with CCC. It does, however, take issue with his decision to take its confidential property, and use that property to compete. To be clear, Neologic and CCC are in direct competition with one another. It is against the backdrop of those facts that Wilson is asking this Court to shutter his and Neologic's competition.

WILSON'S THREE LEGGED STOOL HAS NO LEGS

Wilson's argument in support of summary judgment rests upon three main premises that he argues lead to the conclusion that this was a squeeze out. They are as follows: (1) Wilson was guaranteed a monthly draw; (2) Gandis was required to capitalize the company forever; and (3) there was an agreed to operating agreement. Each premise is factually disputed; in fact, it is Gandis' sworn testimony that they are incorrect. Once the premises upon which Wilson's memorandum are set aside, the follow-on analysis shows that this is just a dispute between a member that demanded to be treated differently than the other members regarding financial compensation. And when that member was not accorded the special treatment he sought, he left. This was not a squeeze out; this was a case of frustration of one member's failed economic expectations.

The memorandum in opposition to Wilson's motion is supported by affidavit and documentary testimony of John Gandis ("Gandis"), Andrea Comeau-Shirley ("ACS"), John E. Zamer Esq. ("Zamer"), and Kenny McLean ("McLean" the principal at Computer Forensics Lab). Importantly, Wilson did not support his motion with an affidavit. Instead, Wilson decided to pick apart various sentences of e-mails and draw inferences from those snippets in an effort to

manufacture a squeeze out narrative. In addition, he has cited to deposition testimony of witnesses and asks this Court to draw inferences from that testimony in an effort to mold his argumentative narrative. This is not the stuff of summary judgment.

The subject motion for summary judgment should be summarily denied. First, the parties are still in discovery. *Baughman v. AT&T Co.*, 306 S.C. 101,112, 410 S.E.2d 537, 543 (1991) (noting that “summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery”). Second, South Carolina courts view summary judgment as a “drastic remedy” that should be “cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Id.* at 112, 410 S.E.2d at 543. Accordingly, and as the Court is well aware, the question before the Court is whether there is a scintilla of evidence in dispute. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). There is that and plenty more.

BACKGROUND DISCUSSION

I. Formation of the Company and the Parties’ Agreement

For a complete background discussion of the formation of CCC, and the events that gave rise to Wilson’s decision to resign from the Company, the undersigned direct the Court to the Gandis, and ACS Affidavits incorporated herein and filed with the subject memorandum in opposition to partial summary judgment and receivership, and attached as *Exhibits A & B*. Moreover, for a discussion of almost every point raised by Wilson in his selective and misleading analysis of the ACS e-mails, the Court is referred to the detailed ACS Affidavit, *Exhibit B*. A brief discussion of the formation of CCC and Wilson’s decision to leave the Company follows.

A. Formation of CCC

Wilson and Gandis first met a number of years ago while both were doing work for VyTech Industries. VyTech went out of business in the early part of 2006, and Gandis shifted his energies to finding a new way to support his family. Wilson and Gandis first decided to go into the perforation services business—punching holes in film. (Gandis Affidavit, ¶ 6). They made a go at this work with the aid of a small machine company owned by Gandis; that company owned the equipment that could provide the perforation work. (Gandis Affidavit, ¶ 6). Wilson's job was to sell the service. It was not a successful venture and the parties moved on to another one. (Gandis Affidavit, ¶ 6).

The next joint venture was in the film slitting business—cutting film to specific widths. Gandis used the same small machine shop to attempt to provide film slitting services to various film companies and for Eastern Film Solutions, LLC (“EFS”), a company previously owned and operated by Wilson. (Gandis Affidavit, ¶ 7). As the months went by, however, it became clear to Gandis that solely operating as a contract film slitting company was not a money making endeavor. (Gandis Affidavit, ¶ 7).

Not making any money, Gandis told Wilson that they should probably part ways. (Gandis Affidavit, ¶ 7). Wilson, however, had a different idea. What if we roll EFS into CCC, and both slit and sell film. (Gandis Affidavit, ¶ 8). Acting on this new idea, in the first part of 2008, CCC leased and opened an office in Greenville for Wilson to perform the sales and purchasing function of CCC. (Gandis Affidavit, ¶ 9). Wilson was in charge of all of the film sales and purchasing component of the Company. (Gandis Affidavit, ¶ 9). Gandis was in charge of the operations and management side of the Company. (Gandis Affidavit, ¶ 9).

The integration of EFS into CCC was not an overnight event. But by July 1, 2008, the deal was done. July 1, 2008 is the start date because that is the date that Wilson began to receive \$8,000 per month from CCC. (Gandis Affidavit, ¶¶ 14-17). The company was now in full swing, or at least that is what Gandis thought. (*See infra* Part II.A).

In later 2008, ACS was brought into the company to help provide tax preparation services and strategic business advisory services. (ACS Affidavit, ¶6). In return for this work, it was agreed that she would receive a “fixed equity interest.” (ACS Affidavit, ¶6).

B. Agreement of the Parties

a. Monthly Draws

Wilson argues that his monthly draws were guaranteed. (Wilson Memorandum, pp. 5,7,14,16). Wilson’s monthly draws were not guaranteed. (Gandis Affidavit, ¶ 16). They were funded with Gandis’ personal money, and with the understanding that they were temporary. (Gandis Affidavit, ¶ 18). It is important to clarify here that the other members of CCC were not receiving monthly draws.

The whole idea behind the monthly draw was that they would follow from available cash from the “profits on the accounts” that he was bringing to CCC. (Gandis Affidavit, ¶ 16). Moreover, the agreement to provide an initial monthly draw to Wilson was in consideration for his promise to exclusively devote all of his energies in the film business on CCC. In Wilson’s own words: “If I am to focus all my efforts in the film business on CCC, I am foregoing opportunities to earn money on those opportunities outside of CCC.” (Wilson Exhibit Book, Ex. 5); (Gandis Affidavit, ¶17). (As discussed *infra*, Wilson did not comply with his promise.) It is important to understand that Gandis agreed to initially fund monthly draws for Wilson based upon this agreement. (Gandis Affidavit, ¶16-17). Wilson was an owner of the company, not an

employee. As with all companies, in order for the owners to receive compensation, the company must generate sufficient cash above and beyond its operational requirements.

Relevant here is also the substance of what Wilson brought to CCC. The deal was the Wilson would roll EFS into CCC. Accordingly, it is helpful to understand what EFS entailed.

Gandis describes this in his affidavit:

Wilson was EFS; there were no other employees; there were almost no assets beyond office type supplies. In fact, as I later learned, when Wilson rolled EFS into CCC and began receiving a monthly draw, he received a significant boost in his monthly income compared to what he was making operating EFS on his own. Moreover, the customers that he brought to CCC did not stay. In short, Wilson's contribution of EFS to CCC was essentially Wilson, his knowledge of the film industry and contacts in the same.

(Gandis Affidavit, ¶20). At the June 26, 2013 hearing, Counsel for Wilson described the contribution as follows: "prior to the time of forming this business, he had been in the film business for a number of years and had his own business at the time, and brought a book of business, *which he values at about a million dollars to the table.*" (June 26, 2013 Transcript, p.3, incorporated herein and attached as *Exhibit C*). It is safe to say that that valuation is seriously disputed.

b. Gandis' Capital Obligations

Wilson's memorandum makes the argument that Gandis was required to provide capital for the Company's operations for its entire existence. (Wilson Memorandum, pp. 9-10). Gandis disagrees. (Gandis Affidavit, ¶¶18-19, 21-22). Wilson even goes so far as to suggest that it was improper for Gandis to pay down a line of credit and not use it for the Company any longer, as opposed to leaving his line of credit open for the Company and presumably, to pay Wilson's tax liability. (Wilson Memorandum, p.9-10). That argument is not supported by the parties' agreement. (Gandis Affidavit, ¶¶18-19, 21-22). The argument also lacks any foundation in

common sense business practices. As Gandis notes, “the goal was that CCC would become self-sufficient; if it could not become self-sufficient, then like any other business venture, it would ultimately fail.” (Gandis Affidavit, ¶18).

c. The Operating Agreement

Wilson’s memorandum makes the argument there was an agreed upon oral operating agreement. (Wilson Memorandum, pp. 3-4). Gandis disagrees. (Gandis Affidavit, ¶¶10-13). Because Gandis agreed to provide the start-up capital, it was always agreed that he had absolute decision making authority. (Gandis Affidavit, ¶13); *see also* ACS Affidavit ¶ 53 (noting that she only accepted membership “after having both members confirm for me that the voting arrangement was 51% (and not unanimity)). Wilson’s running theme, throughout his memorandum, that certain actions violated a so-called operating agreement, is not correct.

Wilson attempts to make this argument by citing to the deposition testimony of Gandis. Here is what Gandis had to say upon seeing the so-called operating agreement: “When I was confronted with this document during my deposition, my first response was that ‘[t]his looks like Andrea’s – this looks like Namaste’s questionnaire.’” (Gandis Affidavit, ¶10). He further testified that this “was not made for CCC.” (Gandis Affidavit, ¶10). Gandis explained that this “questionnaire would have been made for DecoTex and I think I might have altered the top before I went to go see Potts to get him moving.” (Gandis Affidavit, ¶10).

In short, the document was given to the lawyer so that he could start drafting something for them to work off of. Gandis notes that “on more than one occasion I tried to get Wilson to engage and agree to an operating agreement.” (Gandis Affidavit, ¶12). Wilson, however, would never discuss the issue.

C. What Went Wrong: *Too Much Inventory*

Fast forward to 2011. The Company had just finished a banner year, having generated over \$1 million in net revenue in 2010. (Gandis Affidavit, ¶ 23). The company did not, however, set aside that revenue for the owners. Wilson as vice president of sales and purchasing, poured the vast majority of that cash back into the purchase of film stock. (Gandis Affidavit, ¶ 23). Because Wilson invested the vast majority of the net revenue into film stock, that meant that the Company did not have cash to distribute to its owners in 2011. That fact set the stage for Wilson's frustrated economic expectations, and ultimately, his decision to leave the Company. A brief digression into accounting principles followed by a more complete discussion of this episode is in order.

A limited liability company ("LLC") is taxed as a pass through entity. (ACS Affidavit, ¶12-17). In the accounting world, there is a term known as "phantom income." Phantom income is an accounting term given to taxable income reported to the Internal Revenue Service (by pass-through entities, including LLCs) that hasn't been distributed to the members. It's called "phantom" because it only exists on paper. (ACS Affidavit, ¶12-17). Phantom income arises in cases where the LLC needs operating capital to expand, or to purchase inventory. (ACS Affidavit, ¶12-17).

An example helps illustrate the point. On paper an LLC may have \$80,000 in distributable profit in a given year, but if it uses \$40,000 to purchase inventory, the owner is still taxed on the full \$80,000. Uncle Sam expects the owner to pay taxes on \$80,000.

"Carolina Custom Converting reported phantom income to its owners in 2010 predominantly as a result of a significant investment in inventory." (ACS Affidavit, ¶18).

“Specifically, the company used more than \$850,000 of its profits to acquire inventory as of year-end 2010.” (ACS Affidavit, ¶18). As the vice president of sales and purchasing, it was Wilson alone who bore the responsibility for both the film purchasing activities and sales; he was also responsible for failing to liquidate film stocks required to generate cash. (ACS Affidavit, ¶19).

By the end of 2010, Wilson built up the company’s film stocks “in excess of typical levels (after he had been counseled on appropriate ‘safe harbor’ levels for the various film types).” (ACS Affidavit, ¶19). “In planning for tax obligations, Wilson had been advised that a reduction of approximately 15% in inventory levels should have generated available cash for distribution to cover the tax liability associated with the phantom income.” (ACS Affidavit, ¶20). “As this matter impacted all the owners, the group met numerous times during 2011 to discuss inventory reduction planning.” (ACS Affidavit, ¶20). Unfortunately, “Wilson failed to execute the agreed-upon plan”; this meant that the Company did not have sufficient cash for a tax distribution. That fact caused all members, not just Wilson, to receive a Schedule K-1 with significant phantom taxable income. (ACS Affidavit, ¶20). Gandis had to borrow, in part, from a home equity line of credit to pay his tax bill, (Gandis Affidavit, ¶24).

D. Wilson’s Taxes & Draws

During 2011, and almost two and one-half years after steadily injecting capital into the company for start-up costs and Wilson’s monthly draws, Gandis exercised his right to end steady capital infusions into CCC. (Gandis Affidavit, ¶ 19). At this time, Wilson was not prepared to live off of distributions alone. Accordingly, he asked for the members to allow him to begin receiving company loans that could be off-set against future distributions, and Gandis agreed. They agreed. (Gandis Affidavit, ¶ 19). Nevertheless, the Company was already facing cash flow

problems. (Gandis Affidavit, ¶ 41). It was after agreeing to the loans, that Gandis began to consider whether Wilson would just prefer to be a sales officer with a commission structure.

In the spring of 2011, knowing what his own tax bill looked like, Gandis became concerned that Wilson may also be in a bind. (Gandis Affidavit, ¶ 25-27). Knowing that ACS had significant experience when it came to reducing tax liabilities, he looked to her for help. (Gandis Affidavit, ¶ 28). All three members decided that they would meet to discuss the company's finances and their economic expectations. This was set to occur in late March to early April 2011. (Gandis Affidavit, ¶ 29). As it turned out, Gandis could not make the meeting, but Wilson and ACS went ahead without him. (Gandis Affidavit, ¶ 29).

In leading up to the members' meeting, Gandis and ACS discussed Wilson's failed economic expectations, and whether he wouldn't be happier and financially safer as an employee. In one e-mail, ACS notes the following:

He keeps wishing that cash would fall from the sky . . . but we have to BUILD the business to support additional cash. . . . Upon reflection, your absence may give him the opportunity to share with me his concerns about cash flow results that he hasn't yet been able to express to you. OR rather, that he merely chooses to say to you, why are we not taking the risk of borrowing to fund our lifestyles? I plan to explain to him that the role of an owner (even in an LLC) involves financing his business, mostly through deferred compensation. That an owner's eye is on the upside.

....

I would then propose to him that his actions (e.g. loans from company) seems to indicate that he would really rather be in a structure where he receives good monthly salary and he earns a regular bonus. This alternative structure gives him (a) more cash now and (b) preserves some of his participation [in] the financial results. It also means that he would convert to a situation where his tax obligation matches his cash flow situation.

....

If we are going to talk about what it means to be an owner, I think it is important that he not feel TRAPPED by his LLC and realize that . . . at this point in the game . . . we can talk restructure of his participation in a way that should be a win-win.

(ACS Affidavit, ¶32, for more context and discussion see also ¶¶ 33-34, and Gandis Affidavit ¶¶ 30-32).

During this timeframe, the Company was working to receive a \$500,000 line of credit from Bank of America, and other local banks. All of the members were committed to this goal. (ACS Affidavit, ¶33). The new line of credit was particularly important to Wilson, as he began lobbying ACS to use this line of credit to pay-off his 2010 tax bill. (ACS Affidavit, ¶32). The line of credit never materialized.

By the fall of 2011, and with Wilson's tax bill not going anywhere, Gandis again reached out to ACS for help. (Gandis Affidavit, ¶ 32-33). Gandis did so after having a conversation with Wilson about Wilson's inability to pay his tax bill. (ACS Affidavit, ¶40). ACS offered up the *idea* (simplified here) that if Wilson were to convert from an equity holder to an employee, and allocate various losses to him, the latter loss allocations could flow back into past tax years and eliminate the tax liability. (ACS Affidavit, ¶40). Gandis thought this was a good idea, and that Wilson would appreciate his efforts. (Gandis Affidavit, ¶ 33). In fact, after receiving the broad brushstrokes for the idea, he asked ACS whether it was in a form that he could "forward directly to Dave." (Gandis Affidavit, ¶ 34). She responded in the affirmative and Gandis forwarded the e-mail in mid-October 2011. (Gandis Affidavit, ¶ 34).

After Gandis forwarded the tax reduction proposal, the relationship between Wilson and Gandis turned sour quickly. Apparently, Wilson did not appreciate Gandis' unsolicited efforts to help. (Gandis Affidavit, ¶ 35-37; ACS Affidavit, ¶41)). It also didn't help that Gandis likely forwarded an e-mail that did not have the complete explanation of the deal. (ACS Affidavit, ¶41). It is important to note that in all of this correspondence and planning, the idea was never to

get Wilson out of the company, but to get him in a position that did not cause him financial stress. (ACS Affidavit, ¶40 (noting that if Wilson decided to transition to a commissioned sales manager, “[t]his helps to build the company and keeps Dave’s participation at a broader level (although he now shares in gross income instead of net income”); ACS Affidavit, ¶33 (“you can put him into a deal that compensates him for his time and energy – maybe more like a regional sales manager is paid – so he gets paid on his sales and also on the sales of the team”); ACS Affidavit, ¶34 (noting that “it is clear that you need to decide on a deal that is fair for you and for Dave”).

A few days after Gandis sent the tax reduction proposal to Wilson, on October 17, 2011, Wilson responded in a negative fashion, asserting his belief that it was flawed and unlikely to help. (Gandis Affidavit, ¶ 35). In addition to that response, Wilson made the following three suggestions/threats. First, he suggested that the Company start making regular accruals and distributions to cover tax liabilities. (Gandis Affidavit, ¶ 37). This was a curious request coming from Wilson, who alone, was responsible for the excess inventories that precluded the Company from having tax distributions. (Gandis Affidavit, ¶ 37; *accord* WEB Ex. 37, e-mail dated October 31, 2011 (“As you know, we started saving money this spring so we could make a tax distribution this fall, but our money was spent on film.”)). Second, “he suggested that he would just resign from the company, retain his equity interest, and go work for a film company outside of CCC.” (Gandis Affidavit, ¶ 38). With regard to his second response, Wilson stated that “he did not have any duty to the Company, but would maintain all of the ‘rights and privileges of a member.’” (Gandis Affidavit, ¶ 38). Finally, Wilson suggested that “he would just resign and dissociate; the Company would then have to purchase his interest, and if the other members were

“unable to or unwilling to buy” him out, then he would force a “liquidation.” (Gandis Affidavit, ¶ 39).

While not particularly relevant, it is important to note that once these negotiations began, Wilson was using his mistaken belief that he had the ability to unilaterally force a dissolution/liquidation as a leverage point. (Gandis Affidavit ¶ 50; ACS Affidavit ¶45). Wilson was insisting that the Company pay his tax bill. (Gandis Affidavit ¶ 49). And was telling Gandis that if he did not bend, he would shut down the company. He continuously made these threats through the 2011 Christmas and New Year Holidays. (Gandis Affidavit ¶ 50). At that point in time, the Company had 23 employees. (Gandis Affidavit ¶ 50). Wilson said he would put them all out of work. (Gandis Affidavit ¶ 50; ACS Affidavit ¶45). He’s up to his old antics.

E. Buy-Sell

After Wilson fired off his threatening e-mail, Gandis circled back to come up with a better solution. At this time, Wilson was continuing to ask for loans from the company—they had increased to \$12,000.00 per month. The Company had no obligation to provide him with these loans, but because Wilson was an integral member of the team Gandis reluctantly signed off on the requests. Nevertheless, and as Gandis explained in a letter to Wilson, “[r]ecently we have had to pay several of our vendors late in order to set aside funds to loan to you. It is not in the best interest of our company to pay our vendors late, particularly when we have the funds available to pay them. The current payment of \$12,000 a month is too great a burden to pay monthly while assuring our legal obligations be paid in the order as they are outlined above.” (Gandis Affidavit ¶ 48; see also ACS Affidavit ¶49-51).

Gandis continued his letter. He noted that, “it is not my desire to create an undue burden for you and your family either. I have three options for you to consider.” (Gandis Affidavit ¶

48). Option One: Remain as a member. This option meant simply that Wilson would maintain his current equity position, but he was put on notice that he would no longer receive preferential treatment. It is important to underscore that there was no agreement for Wilson to receive monthly draws. (Gandis Affidavit ¶ 15-17). Option Two: Buy-out and become a salaried officer, with a bonus plan. (Gandis Affidavit ¶ 45). Option Three: ACS's membership modification, to eliminate the tax bill, and become a salaried officer with a bonus plan. Not one of these options ended with Wilson out of the Company. More importantly, Gandis made known to Wilson that he was fine with anyone of them. (Gandis Affidavit ¶ 46). Wilson refused to engage. According to Gandis, "[h]e kept insisting that the company just fund his taxes." (Gandis Affidavit ¶ 49).

Once the discussion of a buy-out began, the whole dynamic of the members' relationship changed. Wilson began to assert that it was his preference to try and buy-out Gandis and ACS. (Gandis Affidavit ¶ 51). Both of them were enthusiastic about that prospect. (Gandis Affidavit ¶ 51; ACS Affidavit ¶57). During the buy-out negotiations, Wilson believed that they were trying to leverage him down to below a fair value. He believed they were altering the numbers to negatively impact him. Accordingly, Wilson stated that he would buy Gandis and ACS out using *their valuation numbers* for his equity. (This would not be the first time Wilson deployed this tactic. See *infra* Part II.D & *Exhibit T*.) Gandis and ACS called his bluff and accepted. (WEB Ex. 52 ("My first preference is that he buys us out at the price we offered him – there is no deadline on that ability"; see also ACS Affidavit ¶57; Gandis Affidavit ¶52). But, Wilson was only bluffing; he did not have a serious purchaser. The buy-sell discussion lasted through the end of December 2011 and into the beginning of January 2012.

When Wilson told Gandis and ACS that he was seeking a purchaser for CCC; they understood that this meant he was discussing a buy-out with his family, specifically his brother-

in-law's family. They later learned that Wilson was also in discussions with other people and companies. At that point, on January 6, 2012, ACS sent an e-mail to Wilson with the general concern of whether he was protecting the Company's confidential information during these discussions. (Attached as **Exhibit D** is a copy of that e-mail). Wilson responded, stating that he "certainly would not divulge information that could be potentially harmful to the company in the hands of a competitor. . . . [And that his] desire is to continue discussions with the interested parties about buying out the company as a whole." (*Id.*)

One of the companies Wilson was referring to was a company out of Tennessee called FilmTech. While it is unclear when Wilson initiated his discussions with FilmTech, it appears crystal clear that he was not trying to sell CCC. On January 13, 2012, Wilson received an e-mail from FilmTech discussing "a possible sales agency agreement." (Attached as **Exhibit E** is a copy of that e-mail). On January 16, 2012, Wilson sent an e-mail to FilmTech discussing their "agreement." (Attached as **Exhibit F** is a copy of that e-mail). The relevant portions are noted below:

Hi Mark,

I look forward to the opportunity to join your organization. . . . Here are the points of discussion for our agreement.

4. Full time employee with draw or salary of \$8k per for month for a period of time until my commission reaches a level that supports my needs. *My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on our qualifying over the past 3 to 6 months.*

Wilson had made up his mind. Consistent with the parties' agreement, the other members were no longer going to treat him different than the rest of them. Consistent with the agreement, the Company would employ standard business practices—e.g., paying vendors and employees

before owners. Wilson had no interest in it. The Company did not mean anything to him; he was going to leave, and he was going to take its customers and prospective business with him.

F. Wilson Announces his Intention to Leave the Company

When Wilson and Gandis did not reach a deal, Gandis assumed that Wilson was going to continue as member. Then, on January 17, 2012, either ACS or Gandis received a phone call from John Zamer, Esq. (“Zamer”). (Gandis Affidavit ¶ 56). Zamer is a partner in the Atlanta office of the Jones Day law firm. (Gandis Affidavit ¶ 56). Zamer provides legal work for CCC because of a long standing relationship with Gandis and Gandis’ father. (Gandis Affidavit ¶ 56). The Company does not have Jones Day as their standby counsel. (Gandis Affidavit ¶ 56). During the January 17, 2012 phone call, Zamer told Gandis or ACS that he had just spoken with Wilson’s lawyer, and that Wilson was going to leave CCC. (Zamer Affidavit, ¶6 incorporated herein by reference and attached as *Exhibit G*). According to Zamer, Wilson’s lawyer stated that Wilson had “reached the point of no return” was “throwing in the towel” and preparing to leave in a “peaceful” manner. He was “walking away” from the Company. (Zamer Affidavit, ¶6). We now know that Wilson believed he was about to go start a job with FilmTech.

When Gandis realized that Wilson was going to leave the Company, he was “shocked,” (Gandis Affidavit ¶ 58). The reason for the shock was the that the whole morning before learning about the Zamer phone call, Gandis had been discussing with Wilson one of the “most significant new prospective deal[s] for 2012” and how he thought they could “bring it to fruition.” (Gandis Affidavit ¶ 58). In his affidavit, Gandis recounted the betrayal of Wilson’s sitting through the meeting “knowing full well that his attorney was going to be making th[at] call, and [he] let me divulge this opportunity even though he planned to become our competitor.” (Gandis Affidavit ¶ 58).

Soon thereafter, Gandis realized that he had a 23 employee company to protect. One of Gandis' initial reactions was that he needed to protect his Company's confidential information. (Gandis Affidavit ¶ 59-61). Accordingly, when on January 18, 2012, he showed up at the Company's Greenville office to accept Wilson's resignation, he brought along a police officer to make sure he would be able to retrieve the Company's property. (Gandis Affidavit ¶ 60). The plan did not work, however, because Wilson took the Company's computers, blackberry, and files with him. (Gandis Affidavit ¶ 61).

G. Wilson Destroys Potential Evidence

Wilson later returned the Company's computers and blackberry. The undersigned retained the services of a company known as Computer Forensics Lab (the "Lab") in Columbia to review the computers and blackberry. (Kenny McLean Affidavit ¶ 4, incorporated herein and attached as *Exhibit H*). The Lab analyzed each device and reported the following: (1) the blackberry "had a default image with no user data present; the cellular device had been wiped"; the mini laptop had "3,043 files [and] show[ed] an accessed date after January 18, 2012. These files appear to have been deleted to the recycle bin between January 18, 2012 through January 31, 2012"; the HP laptop had two separate eraser programs run on it: (1) "SAFEITMAIL.SHREDDER.EXE"; and a program called "Eraser" (McLean Affidavit, ¶¶5-7). The Lab also found evidence that an "external media (such as a USB device or 'thumb drive') had been connected to the laptop." (McLean Affidavit, ¶7.1). Importantly, Wilson had counsel during the buy-sell negotiations that occurred during December and into January. It was clear that the possibility of litigation was on the horizon. Nevertheless, Wilson knowingly destroyed evidence. At the appropriate time, CCC will move for sanctions.

Wilson did not join FilmTech. Instead, he joined ranks with his brother-in-law, and began selling film for Neologic Distribution. FilmTech would not be the recipient of CCC's trade secret and confidential information. Instead, it would be Neologic that received that information.

II. Equitable Defense: *Unclean Hands*

"A shareholders derivative action, as well as an action for stockholder oppression, is one in equity." *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012). Summary judgment is particularly inappropriate in this case because the Company has a potent equitable defense that should serve to preclude all of the equitable claims. The principle defense is that of unclean hands. "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Straight v. Goss*, 383 S.C. 180, 207, 678 S.E.2d 443, 457-48 (Ct. App. 2009). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Straight*, 383 S.C. at 206, 678 S.E.2d at 457.

Wilson seeks the Court's equitable authority to dissolve the Company and place it into receivership. His actions in his affairs of the Company and in this litigation should bar him from any relief.

A. *Usurping Corporate Opportunities: Illegal Side Dealing*

Starting in July 2008, Wilson committed to "focus all [his] efforts in the film business on CCC" in return for a monthly draw that would come from Gandis' personal finances. He promised to "forego[] opportunities to earn money . . . outside of CCC." (Wilson Exhibit Book,

Ex. 5); (Gandis Affidavit, ¶¶ 15-16). As a result of that promise, Gandis provided Wilson with \$8,000 per month of his (Gandis') own money.

\$1.7 Million. Discovery has *so far shown* that Wilson transacted over \$1.7 Million in illegal side deals while being paid with Gandis' personal money. (Gandis Affidavit, ¶63). Gandis did not learn of this egregious conduct until after this litigation began. (Gandis Affidavit, ¶63).

B. Erasing Computers and Blackberry

Wilson has purposefully destroyed evidence in this case. The Company incorporates by reference the discussion in Part I.G, *supra*, and the McLean Affidavit.

C. Probable Violation of the Court's Protective Order

During discovery in this case, Wilson demanded to receive complete copies of the Company's Quickbooks. Defendants resisted on the grounds that the documents contained information about the customers and suppliers of CCC. On November 14, 2012, this Court entered a protective order that provided for the production of this information. (Protective Order, incorporated herein and attached as *Exhibit I*). In order to protect the Company's confidential information, the Order provided that, "Wilson shall not solicit any customer or contact any supplier of CCC who was not known to him on January 17, 2012, which shall be presumed to be any customer and/or supplier who did not transact business with CCC prior to January 17, 2012." (*Exhibit I*, p. 2).

Wilson currently works for Neologic. In recent weeks, Neologic has produced a list of its suppliers to CCC pursuant to discovery requests. One of the suppliers found in the discovery is a company called Futong, LLC. (Neologic Suppliers, incorporated herein by reference and attached as *Exhibit J*). Futong, LLC was a CCC supplier. Futong, LLC did not become a

supplier for CCC until February 10, 2012. (CCC Quickbook Printout, incorporated herein by reference and attached as *Exhibit K*). Another one of Neologic's suppliers is Linan Hongcheng. (CCC Quickbook Printout, incorporated herein by reference and attached as *Exhibit L*). Linan Hongcheng was also a supplier of CCC, and it did not become a supplier until April 8, 2013. Based upon the documents we have reviewed, it appears that Wilson may have violated the Protective Order.

Neologic has also produced its customer list. (Neologic Customers, incorporated herein by reference and attached as *Exhibit M*). Two of its customers are former customers of CCC: Engineered Laminates and Coatings, LLC and Florida Packaging and Graphics Inc. (CCC Customer List, incorporated herein and attached as *Exhibits N & O*). Based upon the documents we have reviewed, it appears that Wilson may have violated the Protective Order.

D. Probable Fabricated Offer to Buy Gandis & ACS Equity

When this litigation began, Wilson's pleadings requested that the Court order dissolution, and shortly thereafter, Defendants' amended pleading sought the same relief. Consistent with those pleadings, Gandis and ACS (the majority owners of CCC) assumed that the Company would be dissolved and acted accordingly. In the December 6, 2012 hearing Wilson instructed his Counsel to argue against dissolution by telling him that a legitimate offer had been made to purchase the equity of Gandis and ACS. His counsel told this Court, "we've made an offer to purchase this business for almost half a million dollars, their interest. That hasn't been – they haven't accepted or rejected that yet. But we think this business has value." (December 6, 2012 Transcript, incorporated herein by reference and attached as *Exhibit P*). This Court did not order dissolution, and since that time all Defendants have put significant time and energy into making CCC a success.

The offer came in the form of an e-mail that Wilson instructed his counsel to send to counsel for the Defendants. (E-mail Offer, incorporated herein by reference and attached as *Exhibit Q*). Upon receipt of that offer, Gandis and ACS provided everything requested and stated they would accept it. (Gandis Affidavit, ¶101; ACS Affidavit, ¶¶73-74).

Sworn testimony has been taken that places the legitimacy of that offer, and Wilson's instruction to his counsel to represent the same to this Court, in serious question. Wilson testified in an abbreviated deposition that the funding source for that offer was his brother-in-law, Steve Norvell. (Wilson Deposition Transcript, incorporated herein by reference and attached as *Exhibit R*). Steve Norvell testified in his deposition as follows:

Q: After thinking about it, you never offered to buy CCC or even considered buying CCC?

A: I would never consider buying CCC.

Q: And sitting here today, you would certainly remember it if you did, especially if it was 2011 or thereafter?

A: Well, actually, now come to think of it, Dave may have approached me thinking that, hey, we're not getting along, maybe do like a Chinese put type of deal, would you be interested to help me finance to buy John [Gandis] out. That might have happened.

Q: But it never got beyond that?

A: No.

Q: You never made an offer or got into the number or even got into a range of what you might pay for it if you did?

A: Not that I recall.

Q: This was more or less a quick conversation between you and Dave?

A: That he initiated, and I really had no interest in it.

(Norvell Deposition Transcript, incorporated herein and attached as *Exhibit S*). Finally, an e-mail recently produced in discovery tangentially pertains to this issue. In the e-mail Wilson is telling his boss, Steve Norvell, about the offer and that “we have drafted our own dissolution order [related to the December 6, 2012, hearing] which will make it nearly impossible for [Gandis] and [ACS] to conduct business once the dissolution order is in place.” (December 3, 2012 E-mail, incorporated herein and attached as *Exhibit T*). Since Norvell is providing the financial support for this litigation (he is paying Wilson’s attorney fees and expert costs), he must have appreciated hearing that some of his money was being used to try and handicap the competition.

E. Probable Interference with CCC’s Business

After Wilson left CCC, Gandis began to hear from customer and vendors that the Company was going to be shutdown. (Gandis Affidavit, ¶¶ 93-94). No one at CCC was telling anyone that. (Gandis Affidavit, ¶ 94). Once this information hit the marketplace, some of CCC’s suppliers that previously allowed the company to operate on credit, required CCC to begin making advance payments on its purchases. (Gandis Affidavit, ¶ 95). In addition, CCC believes that it may have lost future business based upon the actions of Wilson in the marketplace. (Gandis Affidavit, ¶ 95). As of the date of this filing, the Company has pending discovery requests that are designed to prove this issue.

III. This Was Not a Squeeze Out

Wilson has asked this Court to force a judicial dissolution of CCC. He claims that this case presents a classic squeeze out. (Wilson’s Memorandum, pp.24-25). The operative statute is S.C. Code Ann. § 33-44-801. One of the claims is that subsection 33-44-801(4)(e) applies to this case. That subsection states that:

A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events: (4) on application by a

member . . . upon entry of a judicial decree that: (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

Although South Carolina does not have any reported decisions addressing this LLC statute, the language of the “squeeze out” subsection mirrors that of the related incorporation statute: S.C. Code Ann. § 33-14-300(2)(ii). Accordingly, the undersigned believe the cases addressing the incorporation statute serve as very persuasive and proper authority.

The leading case in South Carolina is Greenville’s own *Kiriakides v. Atlas Food Systems & Service, Inc.*, 343 S.C. 587, 541 S.E.2d 257 (2001). *Kiriakides* is particularly instructive to this case because our Supreme Court unflinchingly rejected the idea (adopted in other states) that a court can order “a corporate dissolution **solely** upon the basis that a party’s ‘reasonable expectations’ have been frustrated by majority shareholders.” *Id.* at 599, 541 S.E.2d at 264 (emphasis in the original). Rather, *Kiriakides* teaches that “a case-by-case analysis, supplemented by various factors which may be indicative of oppressive behavior, [is] the proper inquiry.” *Id.* at 266, 541 S.E.2d at 603. To that end, some of the indicative factors are the “termination of a minority shareholder’s employment, the refusal to declare dividends, the removal of a minority shareholder from a position of management, and the siphoning off of corporate earnings through high compensation to the majority shareholder.” *Id.* at 267, 541 S.E.2d at 604-05.

Kiriakides also teaches that if a Court determines that a squeeze out has occurred—that oppression exists—then the proper remedy is a valuation and buyout, *not a forced dissolution*. *Id.* at 607, 541 S.E.2d at 268 (noting buyout is the proper remedy); *Ballard v. Roberson*, 399 S.C. 588, 599, 733 S.E.2d 107, 113 (2012) (same). Although the LLC statute does not have a specific buyout provision, the Reporters Comments note that the Court has such equitable power.

S.C. Code Ann. § 33-44-801 (Reporter Comments: “Even where the burden of proof is met, the court has the discretion to order relief other than the dissolution of the company. Examples include an accounting, a declaratory judgment, a distribution, *the purchase of the distributional interest of the applicant* or another member.”) (emphasis added). Decisions from across the Country concur. “[C]ourts have equitable powers to fashion appropriate remedies where the majority shareholders have engaged in oppressive conduct,” which “may include a ‘buyout’ in appropriate cases.” *Kohannim v. Katoli*, 2013 WL 3943078, at *13 (Tex.App.-El Paso July 24, 2013) (quoting *Davis v. Sheerin*, 754 S.W.2d 375, 380 (Tex.App.-Houston [1st Dist.] 1988, writ denied)); *Kaplan v. First Hartford Corp.*, 484 F. Supp. 2d 131, 153 (D. Me. 2009) (recognizing that a forced buy-out of shares was an available statutory remedy); *Matter of Superior Vending, LLC* (Tal-Plotkin), 71 A.D.3d 1153, 1154, 898 N.Y.S.2d 191 (2010) (recognizing that although the limited liability company law does not expressly authorize a buyout in a dissolution proceeding it was the most equitable method); *Curran v. Curran*, 2014 WL 1814266, at *1 (Conn. Superior Court April 7, 2014) (holding that the statutes allowed for the corporate defendant or other shareholders to purchase all the shares owned by the party seeking dissolution);

A. Case-by-Case Analysis

As it relates to the legal claim that this case presents a section 33-44-801(4)(e) squeeze out, the required case-by-case analysis reveals that this is not that case. As stated above, Wilson’s claim for oppression hinges upon three disputed factual premises. Wilson claims that he was financially squeezed out by the majority based upon the following actions: (1) they decided to stop paying him a monthly draw (that they had no obligation to provide to Wilson and that they were not getting themselves); (2) they decided to quit injecting capital into the

company; and (3) certain of their actions were in violation of the claimed operating agreement. The Company contends that each of the actions they took was based upon an agreement of the parties'. Part I.B is incorporated herein by reference for the basis of showing the presence of disputed factual issues.

The next question is whether the indicative factors of a squeeze out are present.

B. Factors Indicative of Oppression

a. Termination of a Minority Shareholder's Employment

Wilson alleges that he was terminated from his employment. (Wilson Memorandum, p. 19). The Company contends, however, that through counsel, Wilson stated his intention to leave the Company on January 17, 2012. The very next day, Gandis went to the Greenville office to bring that decision to a head more swiftly, and to make sure Wilson did not take with him any of the company's confidential assets and property. In Wilson's Memorandum, at page 19, he argues that Gandis' acceptance of Wilson's decision to leave was a fictional "cover story." That is not true. Wilson's lawyer told Zamer he was preparing to leave. (Zamer Affidavit, ¶6). Moreover, the day before Zamer had that conversation with Wilson's lawyer, Wilson was telling FilmTech how much he was "look[ing] forward to the opportunity to join [thc] organization . . . [and] move as much of the business I manage at CCC to Filmtech . . . , [along with the] prospective business that CCC has been working on our qualifying over the past 3 to 6 months." Wilson was planning to leave the Company of his own accord. He was leaving because Gandis decided to exercise his absolute and agreed to right to begin treating Wilson like an equal member. This is a disputed factual issue that does not favor a finding of oppression.

b. Refusal to Declare Dividends

This is not a relevant factor as the company never issued dividends. To the extent this factor could be compared to the declaration of a distribution, it favors the Company. At the time Wilson left the Company, he was over \$100,000 in debt based upon receiving advances upon future distributions. (ACS Affidavit, ¶ 48). It is likely that one of the reasons he decided to leave was because that preferential treatment was going to stop. *E.g.*, Wilson Exhibit Book Ex. 41 (“First – all distributions will be pro-rata on the same day. Second, no longer will we delay payments to a vendor so that a distribution can be made to any owner on the first of the month. Finally – so as to keep the owners evenly aligned – we will not be making advances to owners but we will take some time to restore the balance.”). This issue does not favor a finding of oppression.

c. Removal from a Position of Management

In this case, this factor involves the same analysis as factor *a*, *supra*. This is a disputed factual issue that does not favor oppression.

d. Siphoning off of Earnings to the Majority Shareholder

This factor is not met. As noted above, Wilson was the one that received the cash, not the other members. Moreover the other members have not been issuing distributions in Wilson’s absence. The last time that Gandis received a distribution was April 19, 2011; the last time that ACS received a distribution was March 15, 2011. (Gandis Affidavit ¶102). Wilson argues at page 20 of his memorandum, that charging rent at CCC was wrongful. It is not. The rent has always been below market rate in an effort to help the company. Wilson has not produced a sliver of evidence to suggest that the rental rates are anything but fair. The following is a brief discussion, from Gandis’ affidavit, of the rent at CCC:

89. Because CCC was a start-up company and I was funding these expenditures, I did not immediately pay myself for the building space and the first rental check was not paid until June 2008. Like the initial start-up capital, while I had to agree to forego immediate payment at market rates, I did not agree to forego rent forever.

90. I have yet to be paid the fair market value for the building space that CCC uses.

91. The 2010 below market rate of \$2,500.00 per month is equivalent to a price per square foot of \$0.0925.

92. The 2012 rate rent of \$6,000.00 per month is about \$0.222. per square foot and still does not appropriately reflect the market value for the manufacturing area.

C. Other Issues Raised in Wilson's Memorandum

Wilson has raised a number of extraneous issues in his memorandum. His arguments in support of these arguments almost universally are based upon anti-contextual quotes or speculation. These will be addressed in summary fashion below and with detailed citations to the affidavits of Gandis and ACS.

a. Counterclaims

The Company has filed a number of counterclaims against Wilson, Norvell, Nelologic, and Fresh Water. Wilson only attempts to challenge one of them: the claim against Wilson for breach of fiduciary duty associated with the over \$1.7 million in illegal side-deals that started in July 2008. His efforts to weaken this claim are intentionally misleading and easily rebuffed.

Wilson makes the argument that the Company knew about the post July 2008 activities. To support that statement, Wilson asserts that "CCC was performing slitting services for Eastern Films through 2008 and 2009." To support that assertion, he cites to WEB Exhibits 7 and 8. These are two invoices. Exhibit 7 is an e-mail that references an invoice sent out on July 9, 2008; accordingly it would have resulted from activity that occurred before July 9, 2008. Exhibit

8 is an invoice from June 30, 2008. Invoices from EFS to CCC from activity before July 2008 fits exactly within the timeline of the Company. Start-up pay for Wilson began in July 2008. Neither of these invoices is from 2009. Wilson's statement to the contrary is not true.

Wilson cites a January 19, 2010 e-mail from ACS for the proposition that she "acknowledged that Dave Wilson continued to transact business on behalf of Eastern Films in 2009 and indicated that part of the 2010 plan was 'completing Dave's transition towards full time CCC.'" ACS responds to this e-mail in her affidavit. First it is important to note that the e-mail does not mention EFS, at all. She writes that, "[m]y reference to transitioning Dave to full-time CCC was a reference to transitioning Dave from doing representative work for Dew-Tex. The latter involved work that all knew about and serves as no part of the Company's claim against Wilson." (ACS Affidavit, ¶ 21).

Wilson cites to a June 29, 2010 e-mail from ACS for the proposition that the Company knew about these illegal side deals. ACS responds to this in her affidavit. She writes that the two job references are to CCC and the DewTex representative work. Further, "[m]y reference to EFS wind down concerns a *single* transaction regarding left over film held by EFS that was sold to CCC in early 2009." (ACS Affidavit, ¶ 22) (emphasis added).

Wilson's inaccurate and incomplete citation of e-mails and document evidence does not support his claim that CCC knew about his faithless activities. In fact, they did not learn of this activity until after Wilson initiated this litigation. (Gandis Affidavit ¶ 63).

b. *DecoTex*.

DecoTex is a company that Wilson and his father own. Wilson makes the argument that DecoTex was illegally subsidized by CCC. Gandis responds to these baseless claims in his affidavit. They are incorporated herein by reference: (Gandis Affidavit ¶¶ 75-88).

ACS also responds to these baseless claims in her affidavit. They are incorporated herein by reference: (ACS Affidavit ¶¶ 23-25).

c. *E-mail Storage: False Claims of Interception*

Wilson makes the stunning accusation that Gandis and ACS violated federal law by intercepting the e-mails of Wilson. He supports this accusation with the bald and unsupported statement that “CCC had no written policy [regarding the privacy of corporate e-mail] and did not advise Wilson that his e-mails would be intercepted and monitored.” (Wilson Memorandum, pp.10-11). That assertion is incorrect. CCC did have an employee handbook that specifically stated there is no right to privacy for corporate e-mails. (Gandis Affidavit ¶ 72). The remaining paragraphs of Gandis’ Affidavit that address this issue are incorporated herein by reference: (Gandis Affidavit ¶ 69-74).

Wilson also directs his unsubstantiated fire at certain statements of ACS regarding the wisdom of using a back-up/storage e-mail system. He also makes the bald assertion, again with no citation, that “Defendants also attempted to intercept text messages and data from Wilson’s blackberry in late 2011.” (Wilson Memorandum, p.11 n.4). Finally, Wilson also alleges that ACS violated federal law by changing the mailing address for a supposedly defunct EFS account. ACS also responds to these baseless claims in her affidavit. They are incorporated herein by reference: (ACS Affidavit ¶¶ 27-30).

In Wilson’s memorandum, he makes a separate point to portray a false narrative regarding the alleged review of his e-mails during the parties’ failed negotiation over Wilson’s equity. He writes that while “Wilson attempted to negotiate a fair price for the sale of his interest, Defendants continued to intercept his e-mails.” (Wilson Memorandum, p. 14). To support that assertion, he cites Exhibits 33-35. None of these citations include contemporaneous

review of the e-mails. These are e-mails that are being forwarded from storage, after the fact after Wilson left. Exhibit 35 is particularly illuminating with respect to the unclean hands defense. Gandis writes:

I have been going through a lot of old "Dave" e-mails on the server. . . . What I am starting to ascertain is that Eastern Films is in his wife's name. They never really shut down their office until sometime in 2011 – they had an office not far from my house at his brother-in-law's building-[i.e., Defendant Steve Norvell].

d. ZoiFilms

Wilson attempt to make the argument that ZoiFilms was corporate deceit of the highest order. This is not a credible position. Both Gandis and ACS have provided responses in their affidavits. But one salient point is relevant. When Wilson filed suit, he asked for dissolution. When Gandis and ACS responded to the first amended complaint, they asked for dissolution. For the entire year of 2012, Gandis and ACS assumed CCC was going to be dissolved. ZoiFilms is properly viewed as company that was designed to be created so that there wouldn't be any mix-up over who owned what at the dissolution and wind-up of CCC. Moreover, all revenues generated by ZoiFilms flowed back through CCC and were used for the benefit of the Company.

ACS responds to ZoiFilms claims in her affidavit. They are incorporated herein by reference: (ACS Affidavit ¶¶ 63-72).

Gandis responds to the ZoiFilms claims in his affidavit. They are incorporated herein by reference: (Gandis Affidavit ¶¶ 93-98).

CONCLUSION

Each factual basis upon which Wilson argues oppression is disputed, and those disputed fact are shown by affidavit testimony. The equitable defense of unclean hands is present. That defense should serve to close the Court's doors to Wilson based upon his conduct, and on that issue discovery is ongoing. Wilson's motion should be summarily denied.

Respectfully submitted,



Thomas L. Stephenson (S.C. Bar No. 5332)
Burl F. Williams (S.C. Bar No. 77901)
NEXSEN PRUET, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
864.370.2211

Counsel for Carolina Custom Converting LLC

June 19, 2014
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,

Civil Action No. 2012-CP-23-02887

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

AFFIDAVIT OF JOHN GANDIS

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

PERSONALLY APPEARED before me John Gandis who, first being duly sworn,
deposes and state as follows:

1. I am a resident of Greenville County, South Carolina.
2. I am over the age of eighteen, and have personal knowledge of the facts stated herein.
3. Carolina Custom Converting, LLC ("CCC" or the "Company") has eighteen (18) W-2 employees, and three (3) commissioned sales officers.
4. The Company opposes dissolution; the Company opposes receivership.
5. The Company is generating cash and is a positive going concern.

Formation of Carolina Custom Converting, LLC

6. Plaintiff David Wilson (hereinafter referred to sometimes as “Dave” or “Wilson”) and I initially came together to provide “perforation” services (punch holes) in films. Wilson estimated that we would make millions on this project together. As such, I bought/owned the equipment through a company I own called M-Tech, Inc., and we agreed to be 51/49% partners in a yet-to-formed venture we were going to call Stewarts Tolling. Wilson’s job was to sell the service. Stewarts Tolling business plan failed.
7. During this period, Dave Wilson’s company Eastern Film Solutions LLC (“EFS”) purchased slitting services from M-Tech, Inc. This business with EFS was sporadic and not profitable, so I notified Dave of my desire to exit the slitting business.
8. To induce me to continue our business activities, Dave told me that I was only seeing a small slice of his business. He told me that he had a large book of loyal customers at EFS and that he would roll these customers into our joint business if I would obtain two more slitters and fund the start up production activities. Dave told me that he had been the inventory/warehouse manager in his prior position and that he could manage inventories and develop/implement a sales plan for a company that would be profitable from the jump. He said this immediate profitability had to do with the fact that he knew the buyers and could obtain film (at discounts) that could be sold at “A” grade prices.
9. CCC was created on November 2, 2007 with the understanding that EFS would finish its existing sales commitments, as this would allow Wilson to satisfy EFS’ vendor obligations and he could retain the profits on those sales orders. I was the president and in charge of operations and management; Wilson was the vice president and in charge of sales and purchasing. We opened an office in Greenville in January 2008.

10. Wilson has introduced, as Exhibit 2 to his Motion for Partial Summary Judgment, a draft “business opportunities meeting” document that he alleges represents the basis of an operating agreement for CCC; Exhibit 2 is no such thing. When I was confronted with this document during my deposition, my first response was that “[t]his looks like Andrea’s – this looks like Namaste’s questionnaire.” (Gandis Deposition, p.29, ln. 22-24). As I further testified in my deposition, Exhibit 2 “was not made for CCC.” (Id. at p.36, ln. 4-5). “This questionnaire would have been made for DecoTex and I think I might have altered the top before I went to go see Potts to get him moving.” (Id. at ln. 7-9).
11. In fact, I was so impressed with the Decotex questionnaire, on November 4, 2007, I asked Namaste to send me a questionnaire for CCC (Questionnaire, incorporated herein and attached as *Exhibit A*). Because the first questionnaire was designed for a father-son partnership, there were numerous modifications in the questionnaire developed for CCC as one would expect if they are partnering with a stranger. I used this revised document as my starting point for my discussion with Wilson and Steve Potts, Esq. in creating an operating agreement for CCC.
12. I disagree with the assertion of counsel for Wilson that “most (if not all) of the items on the list . . . accurately describe the agreement of the parties.” (Wilson Memorandum in Support of Summary Judgment, p.4). I would not have treated a stranger with the same level of generosity and freedom that my father was willing to give me in Decotex. There was no agreement of the parties as to an operating agreement; on more than one occasion I tried to get Wilson to engage and agree to an operating agreement. He never would.

13. I was the President; I held that role because I provided the start-up funding, and aside from the sales and purchasing roles that I delegated to Wilson, I had final authority on all other matters.
14. In the summer of 2008, Wilson began to ask for distributions from the Company. Accordingly, we began the task of determining the value of the EFS business and what a fair monthly income could be.
15. Our discussion on this point came to a head in late June of 2008. Wilson sent me an e-mail wherein he stated that, "the real question is this – are the customers, vendors and margins I am bringing to the table worth the salary we are proposing? If I am to focus all my efforts in the film business on CCC, I am foregoing opportunities to earn money on those opportunities outside of CCC." (Wilson Exhibit Book, Ex. 5).
16. It is critical to understand that Wilson was never guaranteed a monthly payment from CCC; he was not a contract employee; he was an owner. Moreover, the idea behind the beginning monthly pay, consistent with Wilson as an owner, was that he would receive a "priority guarantee' based off the profits on the accounts." (Wilson Attachment Book, Ex. 5). Accordingly, if there were no profits it follows that there would be no monthly pay.
17. Following these e-mail communications and personal discussions, and starting in July of 2008, Wilson began to receive \$8,000.00 per month from CCC. This monthly check was funded with capital I put into the Company, and was provided in consideration for Wilson's promise to "focus all . . . [his] efforts in the film business on CCC." (Wilson Attachment Book, Ex. 5). With Wilson's commitment, the Company got up and running.

(As discussed below, since this litigation began, I have learned that Wilson did not honor his commitment to work solely for CCC.)

Working Capital from Gandis

18. When Wilson agreed to contribute EFS into CCC, I agreed to provide the needed start-up capital in order to purchase film and the initial equipment and, as noted above, later expanded this commitment to provide Wilson with initial monthly income. The agreement never provided that I would serve as the bank for CCC into perpetuity. The goal was that CCC would become self-sufficient quickly; if it could not become self-sufficient, then like any other business venture (like Stewarts Tolling), it would ultimately fail.
19. This fact is further supported by our initial business plan. In 2008 Dave suggested that we needed additional equipment to grow so we began soliciting funding for the \$225,000 equipment purchase. Wilson and I prepared an initial draft of the business plan to be presented to lenders (Business Plan, incorporated herein and attached as *Exhibit B*). As you can see, there was no expectation by Wilson that I would be the party to fund this 2008/2009 monetary requirement; I had fulfilled my financial commitment to our venture. Notwithstanding that I had already provided my capital commitment, I voluntarily provided capital to the company through 2010 in an effort to get it going. I stopped doing this in 2011; under our agreement it was my right to stop funding the company with my money. By exercising my rights, this had the effect that Wilson would have to start borrowing money from the company in order to keep a monthly draw. At this time, it is critical to know that none of us were receiving preferential treatment. Only Wilson received this, and there was no basis in any agreement for it.

20. It is important to clarify what the contribution of EFS into CCC actually looked like.

EFS was Wilson; there were no other employees; there were almost no assets beyond office type supplies. In fact, as I later learned, when Wilson rolled EFS into CCC and began receiving a monthly draw, he received a significant boost in his monthly income compared to what he was making operating EFS on his own. Moreover, the customers that he brought to CCC did not stay and the one customer that had significant revenues was based on a business agreement that was destined for failure. In short, Wilson's contribution of EFS to CCC was essentially Wilson, his knowledge of the film industry and contacts in the same.

21. The position advanced by counsel for Wilson on page 10 of the memorandum in support of partial summary judgment, that almost three years after the creation of CCC, it was my promised obligation to continue to fund the operations of CCC when it needed cash is not correct and is refuted by Wilson's own business plan.

22. CCC was able to close the purchase on the equipment. In order to close, Wilson and I agreed that monthly distributions would not exceed \$6,802.84 until the equipment was fully paid off (which was projected to be in 2014). His distribution was reduced according to this agreement starting September 2009. When Wilson later approached me for increases in draws, he expressly told me such increases were necessary for his taxes.

23. In 2010 CCC had record sales that generated over \$1 Million in net income. Instead of keeping some of that revenue in cash, Wilson, acting as the Vice President of sales and purchasing poured a significant amount of that money back into film purchases. Consequently, when the tax liability for the 2010 net revenue came due, the Company did

not have the cash to cover the tax liabilities of its members—all of the “cash” was sitting in the Company’s warehouse in the form of film.

24. In order to cover my tax liability, I had to borrow money, a portion of that was from my home equity line. Counsel for Wilson apparently finds fault in my decision to use a line of credit to cover my personal tax bill, and for not using this line of credit to cover Wilson’s tax bill. (Wilson Memorandum in Support of Summary Judgment, p.9 (discussing the impact of paying off a line of credit and using it for my personal tax liability, such that the Company no longer had access to cash in order to make a tax distribution). It is important to underscore that my agreement to provide start-up capital, even assuming it was to run into perpetuity, which it was not, was never an agreement to fund the tax liability of Wilson.

Structure/Restructure Wilson

25. In the spring of 2011, it became apparent to me that Wilson had a tax bill of over \$200,000, and he had no ability to pay that bill.
26. It is also important to note that only months earlier, during Christmas 2010, I caught Wilson doing side deals. He assured me this was a one-off and that he just needed more money for Christmas; I told him in no uncertain terms that that conduct was not acceptable in our deal. This episode troubled me, and gave me great concern that Wilson was in over his head.
27. In short, I was concerned about my partner and the future of CCC.
28. As my friend and trusted advisor, I confided this information to ACS, and asked her to think of a way to fix these problems.

29. The first step in this process was a scheduled lunch meeting with Wilson, ACS, and myself in late March/early April 2011. As it turned out, however, I could not make that meeting. In an effort to make sure that we had a plan, and that things were not held up because of me – I asked Andrea to come up from Atlanta to keep the lunch meeting with Dave.

30. In this litigation, Wilson has alleged that he was forced out of the Company. I reject that position. We always wanted him to stay. To that end, we needed to figure out a solution that worked for Wilson. Some of ACS's comments prior her meeting with Dave, excerpted below and found at Exhibit 25 to Wilsons Exhibit Book, confirm that this was not an attempt to squeeze him out.

He keeps wishing that cash would fall from the sky . . . but we have to BUILD the business to support additional cash. . . . Upon reflection, your absence may give him the opportunity to share with me his concerns about cash flow results that he hasn't yet been able to express to you. OR rather, that he merely chooses to say to you, why are we not taking the risk of borrowing to fund our lifestyles? I plan to explain to him that the role of an owner (even in an LLC) involves financing his business, mostly through deferred compensation. That an owner's eye is on the upside.

....

I would then propose to him that his actions (e.g. loans from company) seems to indicate that he would really rather be in a structure where he receives good monthly salary and he earns a regular bonus. This alternative structure gives him (a) more cash now and (b) preserves some of his participation [in] the financial results. It also means that he would convert to a situation where his tax obligation matches his cash flow situation.

....

If we are going to talk about what it means to be an owner, I think it is important that he not feel TRAPPED by his LLC and realize that . . . at this point in the game ... we can talk restructure of his participation in a way that should be a win-win.

31. Following the April meeting, the members began meeting to develop an inventory reduction plan so as to generate cash for the purpose of meeting the tax obligation of all owners. Unfortunately Wilson never implemented the action steps and kept buying film in excess of the company's need. No actions were taken with regards to (re)structure.
32. Nevertheless, the driving concern—Wilson's outstanding tax bill—was not going away.
33. Concerned for this tax bill, I asked ACS to try and create a mechanism that would wipe out his tax bill. Part of these communications can be found at Exhibit 29 of Wilson's Exhibit Book. Exhibit 29, dated October 13, 2011, is an e-mail exchange between ACS and myself. The title of the e-mail is "Restructuring *for* Dave." (emphasis added). This was not an attempt to push Wilson out of the Company; this was an effort to alleviate his tax bill once and for all and for all future years. As the e-mail exchange provides, ACS developed a method whereby Wilson would convert from an equity holder to an employee, and allocate various losses to him in order to wipe out his tax bill.
34. An important point to make about Exhibit 29 is that it shows that my efforts were not put in motion to create a squeeze out but in an effort to help out. After ACS sent me her idea, I asked her whether this was in a form that "I could forward directly to Dave?" She responded, "[n]o problem at all." This was an above board effort.
35. Wilson did not appreciate my effort or my idea. Four days later, after speaking with his accountant, he responded with a belief that the proposal was flawed and would not help. (October 17, 2011 e-mail, incorporated herein and attached as *Exhibit C*).
36. He also set forth three items for me to consider, and none of them sounded like Wilson; it was as if the e-mail had been written for someone else to read.

37. First he suggested that we start making regular accruals and distributions to cover tax liabilities, and that he would set up a payment plan with the IRS. He also commented that he did not know of any business owners that “would continue to participate in a business that d[id] not budget for and disperse funds to cover tax liabilities.”

a. My first thought after reading that was, again, this is not Wilson. We had previously tried to set aside funds for tax liabilities but he insisted on using those funds to purchase film. (See Wilson Exhibit Book, Ex. 26, e-mail dated Sept. 6, 2011 (“Well – the good news is that we have a bunch of money available in our inventory (specifically excess inventory) ..). Moreover, starting in May 2011, Wilson began to receive a larger monthly draw with the express purpose that he would put some of that money away for taxes.

38. Second, he suggested that he would just resign from the company, retain his equity interest, and go work for a film company outside of CCC. He asserted that he did not have any duty to the Company, but would maintain all of the “rights and privileges of a member.”

a. After reading this suggestion, I became concerned that my plan for trying to help Wilson was a bad idea and had done more harm than the good I intended.

39. Third, Wilson suggested that he would just resign and dissociate; the Company would then have to purchase his interest **within 30 days**, and if the other members were “unable to or unwilling to buy” him out, then he would force a liquidation.

a. After reading his final suggestion, I knew that my plan was a bad idea. Our customers don’t always pay us in 30 days. If we had sold all our film yesterday, we likely wouldn’t have the cash to meet this demand in this time period.

- b. Moreover, Wilson's intimation that if we were "unable" to buy him out was a clear reference to our precarious cash position. This was a threat; Wilson was our sales guy, handled all of the purchasing, and we needed him, and he knew it. So, I retreated to try and figure out a better solution.

Three Options & Buy-Out

- 40. During this time period—2011—the Company was experiencing a cash flow crisis. Although the Company had generated good revenue in the past, the vast majority of that revenue had been converted into film stock. And during this time, the film was not being sold. We were missing our expected sales figures by large margins. Wilson knew this but would not acknowledge the economic reality of the situation.
- 41. My concern for the Company's cash flow is documented in Wilson's Exhibit Book. The following are some examples of my contemporaneous concerns:

- a. Exhibit 18, March 7, 2011 e-mail:

What's bothering me Pending tax liability . . . We've issued too many credits . . . I would feel better if we had our credit line set up . . . just worried about cash. Example – We just ordered a boat load of film from 3M for a Demco job. We were 2 days late on an invoice and they were going to hold our order. I am afraid that cash flow challenges will [a]ffect our existing business and growth opportunities.

. . . .

My concern is that our business is off vs what was happening last year – June thru Decmber. Hard to say what is happening. Domestic are going up in price, imports are dropping price . . . and we are much more reluctant to play in the 'scrap' game this year. . . . I just don't want to over extend.

- 42. Turning a blind eye to the economic reality of the Company, Wilson insisted on receiving monthly draws, which the Company could not afford. An e-mail from ACS to me on November 9, 2011 expressed this fact in typical ACS fashion:

I know Dave wants to be a partner – and I support him in that goal – but we really need to come to a consensus on how the business is going to be

managed. Very simply – we are saying to Dave – “we completely agree with you that the cash generated by the company is the owners. Where we disagree is WHEN the cash will be distributed. Going forward we are making three changes that are going to have a negative impact on your monthly cash flow – but I need to you to agree with me on all three of these points if you want to stay as an owner. First – all distributions will be pro-rata on the same day. Second, no longer will we delay payments to a vendor so that a distribution can be made to any owner on the first of the month. Finally – so as to keep the owners evenly aligned – we will not be making advances to owners but we will take some time to restore the balance. (Wilson Exhibit Book, Ex. 41).

43. In that e-mail ACS was identifying the problem occurring in the Company. Wilson was receiving monthly draws while ACS and I were not. Moreover, Wilson was demanding monthly draws that were causing us to late pay our vendors. Wilson was essentially asking us to treat him as an employee, but wanted the future benefits of ownership.
44. In consultation with advisors, I came up with three options for Wilson. The context for these three options flowed from the cash flow issues discussed above, and the need to address Wilson’s outstanding tax bill.
45. The three options were sent to Wilson on October 31, 2011, a copy of which is attached hereto as *Exhibit D*: (1) Remain as a member and begin being treated the same as the rest of the members; (2) Buy-Out and become a salaried officer, with a bonus plan to allow for continued participation in growth; and (3) Membership modification in order to wipe out his tax bill, and become a salaried officer with a bonus plan to allow for continued participation in growth.
46. It is important to state that I did not care which option Wilson chose. We just needed to fix this problem. As I wrote in an e-mail to ACS following a conversation I had with Wilson: “I told him that I was indifferent to what he chooses. Once I knew what he wanted to do we could work on a plan.” (WEB Ex. 38.)

47. The content of this letter shows that this was not a squeeze out. This was economic reality. With regard to option one, I truthfully wrote that, "I have funded the distributions you received through 2010. I borrowed against my family's home so as to put cash into the company that funded your distributions. I stopped funding the distributions this past year."
48. I also attempted to clarify the economic reality that his insistence on being treated differently than the other members created. I truthfully wrote that, "As you know, this cash shortage is primarily a result of the amount of film we have carried on our books." I also truthfully wrote that, "Recently we have had to pay several of our vendors late in order to set aside funds to loan to you. It is not in the best interest of our company to pay our vendors late, particularly when we have the funds available to pay them. The current payment of \$12,000 a month is too great a burden to pay monthly while assuring our legal obligations be paid in the order as they are outlined above. However, it is not my desire to create an undue burden for you and your family either. I have three options for you to consider."
49. Wilson generally wanted the best aspect from each of the three answers – which was impossible to deliver. I always presumed that he would eventually select option two as this option would eliminate his 2010 and 2011 tax bill(s) and still let him participate in the growth of the company. The reason that this did not occur, however, was because Wilson never replied to the letter and our communications were so muddled I could not tell what he wanted the company to actually do. He kept insisting that the company just fund his taxes, but he wouldn't sell the film in a way that would let this happen. When he missed the original November deadline in the letter, we extended it the offer so that we

could hopefully fix his tax liability problem before year end. The conversations from November and December 2011 were generally unsuccessful and eventually he asked me to give him a fixed number for him to consider.

50. Up until the date when Wilson received the "Articles of Incorporation," he believed that he could have the company liquidated at any time that he desired; and he was threatening me to do just that, all the way through the Christmas/New Year's shut down, and to put 23 employees out of work.
51. When the buy-out discussion got going, Wilson told me that his family was considering buying me and ACS out and asked would we sell at that same price. We were more than happy to make that offer.
52. We confirmed that we would sell for the exact same price that we were valuing his interest at, and I offered to include the building where CCC operates at a price discounted from my original cost.
53. We eventually discovered that Wilson was talking outside of his family and asked him to disclose the nature of the conversations. When he said he was speaking to several buyers, he consistently refused to disclose their names or share the information that he was providing to them. When asked, he assured me that he was protecting our confidential and trade secret information.
54. Wilson's potential purchasers never materialized. (As discussed below, it appears pretty clear that Wilson was never serious about buying us out, he was looking for a new job.)
55. Because we never reached an agreement on the buy-out or the employment agreement, by default, I presumed that Wilson would remain as a member and that we could finally refocus our energies on fixing CCC's situation.

Through Counsel, Wilson Tells Me He Wants to Leave

56. On January 17, 2012, the company received a phone call from John Zamer; Zamer is an attorney that practices in the Atlanta office of Jones Day. Zamer and my father go way back. Jones Day has consistently billed CCC at very fair prices and I suspect for only a small portion of the work they do.
57. The phone call. Zamer called after speaking with Wilson's lawyer as it was clear that Wilson was leaving and Zamer was concerned about the company's trade secrets and confidential information
58. I had spent that morning with Wilson discussing our most significant new prospective deal for 2012 explaining to him the company's plan to bring it to fruition. He sat in that meeting with me, knowing full well that his attorney was going to be making this call, and let me divulge this opportunity even though he planned to become our competitor.
59. After getting past the initial shock of this personal betrayal, I began to think about the Company. We had 23 W2 employees at that time, and two commissioned sales people. I also began to think about what else Wilson might take from the Company. I knew he had been in communications with FilmTech and suspected that this was going to be his vehicle for moving forward. I became very concerned that he was going to more than just the information contained in his head.
60. We sought the advice of a South Carolina employment lawyer because Wilson wears two hats in our company – owner and employee. Since I was concerned that he would take company files and also erase the evidence related to this conversation with FilmTech and others, we were advised to have a police officer on hand in the event that assets were

removed. I showed up the next day with a letter to accept Wilson's resignation and with the intention to safeguard valuable company assets.

61. My plan did not work, however, as he took the computers, files, and other company assets.

What I Learned Since Wilson Left and this Litigation Began

62. When I agreed that the company would provide Wilson a monthly draw to get our business up and running, Wilson promised me that he would work exclusively for CCC. Wilson did not fulfill his promise.

63. **Over \$1.7 Million.** Since this case began, and I have received discovery on these issues, I have learned that Wilson continued to operate EFS on a continuous and sustained basis for at least a full year after he began receiving monthly pay with my capital. I say at least because discovery is ongoing and we do not know the full scope of his activities. Moreover, and since this litigation began, I have learned that he engaged in these side deals with his brother-in-law Steven Norvell. Moreover, and since this litigation began, I have learned that Wilson transacted over \$1.7 Million in sales outside of CCC while receiving monthly pay from CCC. That means that while CCC was paying Wilson his monthly income, with my capital, Wilson was also in direct violation of his agreement to "focus all . . . [his] efforts in the film business on CCC;" (Wilson Attachment Book, Ex. 5), not to mention his fiduciary obligations.

64. When Wilson left CCC on January 18, 2012, he took two Company computers and a Company blackberry. He returned the blackberry and one of the computers on January 31, 2012 he returned the other computer on February 2, 2012. Wilson returned both of these devices to the Company's lawyers at Nexsen Pruet. Nexsen Pruet then sent them to

a computer forensics laboratory. The computer forensics laboratory analyzed these devices and determined that Wilson deleted all of the information off of one of the computers and ran erasure programs on the other computer, and that he replaced the sim card on the blackberry. He did all of this between leaving CCC and returning the devices to Nexsen Pruet. During the entire month of January, Wilson had counsel and his counsel was in contact with my counsel over the possibility of litigation.

65. Although Wilson told us that he was looking for a purchaser for the Company. From everything that I have seen, the only serious party involved in this discussion was a company called FilmTech and its owner, Mark McGarel; FilmTech was not looking to buy the Company, Wilson was looking to go and work for FilmTech.

In a January 11 email to McGarel his intentions are laid out clearly:

I spoke with my attorney today about leaving CCC and going to work for you – I would like to hammer out the details of an agreement with you...I am ready to go at any time and will dissociate as soon as you and I have our deal in place.

Later in a a January 16, 2012 e-mail:

Hi Mark,

I look forward to the opportunity to join your organization. . . . Here are the points of discussion for our agreement.

4. Full time employec with draw or salary of \$8k per for month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on our qualifying over the past 3 to 6 months.

66. Wilson did not go and work for McGarel and FilmTech, but he must have believed that he was going to have a job there. This e-mail was sent right around

the time that Wilson's lawyer called Zamer and told him that Wilson was going to leave CCC.

67. I have another observation from this e-mail that is relevant to this case. In the e-mail, Wilson tells McGarel that he will need a draw or salary of \$8k per month until his sales reach a level that will meet his needs. That is essentially what Wilson pitched to me back in 2008 when I agreed to provide him with my capital in order for him to "focus" all his efforts on the Company; again Wilson was never supposed to receive monthly pay forever and it was solely his responsibility to manage inventory levels so that profits would not be reinvested in film any sooner than necessary.

68. Wilson did not go to FilmTech and bring with him "as much of the business" and "prospective business" from CCC as he could; instead, he did that at Neologic/Fresh Water, a new name/venture with his brother-in-law Steve Norvell.

E-mail Storage

69. Like most companies in America, CCC's corporate e-mail accounts are backed up and stored.

70. This is an important tool for CCC because most, if not all, of our sales activity occurs via e-mail communications. Accordingly, it is vital that we have a system in place that stores e-mail traffic.

71. As the manager of CCC, I had access to the backed up and stored e-mail traffic.

72. The Company handbook makes clear that there is no privacy when it comes to corporate e-mail. (CCC Handbook, attached as *Exhibit E*).

73. The suggestion that I or anyone else at CCC, "intercepted" Wilson's e-mails is a fabrication.

74. Wilson's corporate e-mails were backed up and stored in the regular course of business, and Wilson knew that.

DecoTex

75. I am a co-owner of a Company named DecoTex. Counsel for Wilson's suggestion that I was to contribute Decotex to a venture with Wilson is unfounded and preposterous. This company was newly formed in 2007 solely with my father's money. My equity interest in that company was to be earned with my time. The company was not mine to give or to share.

76. DecoTex leases, owns, and the licenses industrial "tooling" that are used to create decorative wall paper for use in recreational vehicles and mobile homes. The "tools" (in the forms of rollers) have designs imbedded in the rollers such that when the wall paper material is fed through the rollers, the material becomes imprinted with designs. By way of example, one of the rollers that DecoTex owns contains a stucco design; when the wall paper is fed into that roller, the resulting wall paper has the appearance of stucco. DecoTex was formed before CCC; it does not compete with CCC; it is not in the same business / market.

77. Before the creation of CCC, DecoTex, as well as M-tech were both administered out of my office in my building where CCC is presently located at (1017 River Heights, Anderson, SC). Because DecoTex's records were previously located there, in the transfer of data / backing up of older computers, some of its information ended up and is still contained on the servers that are now used by CCC. Moreover, because DecoTex was

previously located at the same location, from time to time faxes are erroneously sent to the CCC fax line that has the same number as the previous DecoTex fax line.

78. My wife, Denise Gandis, began handling payroll matters for CCC in May of 2010. On average, she spends 10 hours per week, at \$14 per hour, for this work. Denise is not paid by CCC to do any work for DecoTex.
79. Joy Whitten is an employee of CCC, and she handles what can be generally referred to as "front office/accounting/book keeping" work. Joy does not presently work for DecoTex. Joy used to do work for DecoTex back in 2007-08.
80. Counsel for Wilson has argued that DecoTex conducts business out of CCC's headquarters based upon the fact that it has received a fax there. (Wilson Memorandum in Support of Summary Judgment, p.8). That statement is supported by a citation to the deposition of Joy Whitten. In that deposition, in response to the question of how Joy knew DecoTex was a going concern, Joy testified that "occasionally, I might see a fax come across, an order that's for DecoTex." Joy went on to testify that a fax may come across "maybe once or twice a month." Counsel for Wilson's characterization that receiving an errant fax once or twice a month constitutes doing business out of the location where CCC is located is not correct.
81. During the time Dave was at CCC, I worked for DecoTex handling its administration functions. This role changed long after Wilson left due to the termination of the original royalty arrangement but the nature of the business is unaltered.
82. In the March 2011 timeframe, Joy remained overwhelmed with her work at CCC despite the fact that we had recently brought on temporary help in the accounting office.

83. During that same timeframe Andrea Comeau-Shirley (“ACS”), who provides tax and business consulting services to CCC, began to stress to me the need to hire more employees to help Joy with her accounting duties.
84. As an aside, ACS also provides to me, personally, tax and business consulting services. In that role, ACS has knowledge of the work I do for DecoTex and CCC.
85. In her role as my personal advisor, ACS knew that I was getting behind on organizing my files and accounts related to DecoTex.
86. In an effort to convince me that CCC needed two experienced employees designated to help Joy accounting work, which was needed, Andrea sought to sell me on the idea that Joy could re-start her work for DecoTex—the work she was doing in 2007-08.
87. This was a proposal, the language quoted on page 8 of the memorandum in support of partial summary judgment makes this clear: “*I want to get Joy . . . Decotex (I see this being . . . if she took the weekly . . . reports. (Wilson Memorandum in Support of Summary Judgment, p.8 (block quote) (emphasis added).*
88. CCC does not in any way subsidize DecoTex.

Rent for CCC’s Headquarters and Warehouse

89. Because CCC was a start-up company and I was funding these expenditures, I did not immediately pay myself for the building space and the first rental check was not paid until June 2008. Like the initial start-up capital, while I had to agree to forego immediate payment at market rates, I did not agree to forego rent forever.
90. I have yet to be paid the fair market value for the building space that CCC uses.
91. The 2010 below market rate of \$2,500.00 per month is equivalent to a price per square foot of \$0.0925.

92. The 2012 rate rent of \$6,000.00 per month is about \$0.222. per square foot and still does not appropriately reflect the market value for the manufacturing area.

ZoiFilms

93. ZoiFilms was created months after Wilson left, and in order to operate outside of the cloud of CCC. The film business is a small world. After Wilson left CCC, news that it may one day be shut down or dissolved quickly became commonplace in my conversations with customers, distributors, and film suppliers.

94. No one at CCC ever uttered these words to the marketplace.

95. News of CCC being shut down or dissolved, caused CCC to lose its established credit with its suppliers, and I believe that it has caused the Company to lose business.

96. ZoiFilms was also created with the purpose that it would specialize in the food industry. That goal never materialized.

97. ZoiFilms was also created under the mistaken belief that we would soon reach a settlement with Wilson, and we would begin to carve out a "new" separate entity, with a different business model / plan. Upon consulting with counsel on this issue we were told that it would be unwise to do this prior to resolving matters with Wilson.

98. Every penny of business transacted through ZoiFilms has been put into CCC or expended in growing CCC's business.

Response to Various E-mails Cited in the Memorandum

99. At page 13 of the WM, counsel for Wilson cites to an e-mail from September 21, 2011 (WEB Ex. 28). In that e-mail Wilson is asking us to consider converting from an LLC structure to an S-Corp. structure. I note that this is an interesting request and that "[n]ow maybe the panick is setting in." What I was expressing was that now Wilson maybe

finally understood that the Company's cash flow situation was as dire as we had been telling him, and now maybe the panic of knowing that we really couldn't make a tax distribution unless he sold the film was setting in.

100. At page 14 of the WM, counsel for Wilson cites to an e-mail from November 13, 2011 (Wilson Exhibit Book, Ex. 32). In that e-mail I state that, "[w]hat if he decides to not change anything in our structure - but rather . . . 'do nothing' - but leave to get another job? Or go back to selling film with Eastern Film? Would we have to prove that he was never 'an owner'?" Counsel for Wilson takes this statement out of context, and writes that I was "wonder[ing] aloud if [I] c[ould] prove that he was never an owner." This question unfairly states what is the reality. Wilson had already told me that he had the right to just go home and continue to collect his share of CCC's profits. The proper context of my question is best demonstrated with a cash example. If Wilson had agreed to put \$100,000 into our company in exchange for his equity and only delivered \$20,000, it would not be unreasonable for me to wonder aloud if his equity should be adjusted. When Wilson was inducing me to "try again" with him after Stewarts Tolling had failed, he promised that he would bring a robust pre-existing client base, suppliers of good quality films, and that he came with business experience that would allow him to successfully manage inventory. He also told me that he had the skills to develop a marketing plan and develop a sales force to implement growth. And as discussed above, he later committed that he would make this his full-time obsession. He did not deliver as promised. I believe these representations were false and misleading. I not only fulfilled my financial and time commitments, but I put my family assets at risk by continuing to fund working capital beyond my original agreement and, during 2011 had agreed to

pledge my own assets should Bank of America extend the line in 2012 so that Wilson and I could continue working together


December 2012 Offer to Purchase My Equity

101. I attended the December 6, 2012 hearing wherein Wilson's counsel told the Court that an offer was made to purchase my equity, and that dissolution should not occur. I received that offer on the evening before the hearing. After having a full day to review the offer and speak with ACS, I decided to accept the offer; I sent a term sheet to Wilson by e-mail on December 10, 2012. (December 10, 2012 e-mail attached and incorporated herein as *Exhibit F*).

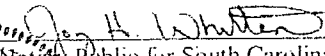
Distributions

102. I have reviewed the applicable company records. The last time that I received a distribution was on April 19, 2011. The last time that ACS received a distribution was on March 15, 2011.

FURTHER AFFIANT SAYETH NAUGHTY.


JOHN GANDIS

SWORN and subscribed to before me
this 19th day of June, 2014.


Joy H. Whitten
Notary Public for South Carolina
My Commission Expires: 3/16/2019
My Commission Expires March 16, 2019

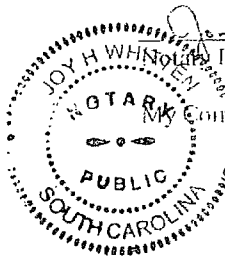


EXHIBIT A
TO AFFIDAVIT OF JOHN GANDIS

**Gandis – Business Opportunities Meeting
October 30, 2007**

Partnership (“LLC”) Structuring Issues

1. Ownership, Income & Distributions:
 - a. What will be contributed as capital by each member to the LLC?
 - i. At Formation?
 - ii. Subsequently?
 - b. What are the ownership percentages?
 - c. Will any member have a preferential distribution of profits or cash flow?
 - i. John – annual payment for services
 - ii. Cliff – return on capital invested
 - d. How and when will cash flow be distributed?
 - i. By majority vote?
 - ii. Mandatory distribution of all profits?
 - iii. Distributions sufficient to pay income taxes on LLC profits allocations (What to do when cash flow does not match taxable income)?
2. Management
 - a. Will managers be designated or will all managers jointly manage?
 - i. Do some have specific powers?
 - ii. If more than one, how to handle joint management?
 - b. How to handle votes in a two-member entity?
 - c. What decisions require special voting (e.g. supermajority or unanimous vote of members/managers)?
 - i. Hiring senior level employees?
 - ii. Terminating employees?
 - iii. Admitting a new member?
 - iv. Purchase or redemption of membership interest except as specifically contemplated by an LLC operating agreement?
 - v. A change in the nature of the LLC’s business?
 - vi. Any requirement obligating (all) members to make additional capital contributions?
 1. Approval of RFPs prior to submission by contributing member?
 2. Notification of bid variances > x% prior to funding?

Gandis – Business Opportunities Meeting
October 30, 2007

- vii. The creation by the LLC of any debt or contract obligations that, taken with all other existing debts and contract obligations (other than anticipated obligations to pay for routine services and supplies) require the LLC to pay more than _____ (specify amount) in any year?
 - viii. Entering into any agreement or arrangement with an affiliate of a member?
 - ix. Liquidation or dissolution of the LLC?
 - x. Taking any action, including but not limited to the sale of any asset, outside the ordinary course of business?
 - xi. The merger or consolidation of the LLC with another entity?
 - xii. Relocation of the LLC's principal place of business, the opening of any new company office, the entrance into a new business by the LLC, or the cessation of the LLC's business?
 - xiii. Increasing, modifying, consolidating, or extending any loan, whether secured or unsecured, affecting the LLC?
 - xiv. Distributing any cash or property of the LLC to any member, other than as provided in the LLC operating agreement?
 - xv. Assigning the rights of the LLC in any of its properties?
 - d. In a two-member deal – recommend that the operating agreement can be amended only by unanimous vote.
3. Employment and Compensation
- a. Will Service partner (John) be “employee” (i.e. receive guaranteed payments) of the LLC? (Note: true employee status is not possible with an LLC). Should Cliff receive compensation for his time or should we increase his percentage to compensate for his efforts?
 - b. Is compensation to be paid as a stated salary or under a formula? (Or is compensation to be left to a vote of the members/managers (see Paragraph 1D)).
 - c. Generally employee benefits (vacation, insurance, etc) should also be described – unless they are provided in a separate entity.
 - d. Termination of employment
 - i. On what notice can employee quit?
 - ii. On what notice can the LLC terminate employment without cause?
 - iii. Need to include a “for cause” provision, will notice be required?
 - e. Is there a noncompete provision?
 - i. During employment?
 - ii. After termination or employment?

Gandis – Business Opportunities Meeting
October 30, 2007

- f. Is there an agreement regarding disclosure of confidential information?
- g. Is there an agreement regarding solicitation of employees?
- 4. Transferability and Issuance of Membership Interest
 - a. In general, membership interests should be NONTRANSFERABLE
 - b. Should transfer to family members or other members or employees be permitted?
 - c. Can the LLC issue new membership interests without giving existing members preemptive rights?
- 5. Buy – Sell Provisions
 - a. How is each membership interest valued?
 - i. Net book value based on financials:
 - 1. Use depreciated value or 50% of cost, whichever is greater?
 - 2. Accrue all expenses?
 - 3. Exclude accounts receivable and pay some percentage as salary continuation?
 - 4. Exclude life insurance proceeds on the death of a member
 - ii. Formula based on some other factor (with Goodwill component)?
 - iii. Outside Appraisal?
 - iv. Is each member guaranteed to receive what he paid (capital) or some stated amount?
 - b. Who should purchase the interest (the LLC or the other members)?
 - c. What happens on the death of a member?
 - i. Mandatory purchase by the LLC? (Time period of at least 18 months)
 - ii. Option to purchase by the LLC? (Or the other member)?
 - iii. "Put" by estate to LLC? (Or other member)?
 - d. What happens on disability of member?
 - i. Same as death?
 - e. What happens with divorce of a member?
 - i. Prohibition on actual transfer of interest to spouse?
 - ii. Prohibition on involvement by spouse?
 - iii. Other?
 - f. What happens on termination of employment of member?
 - i. Voluntarily by the member

**Gandis – Business Opportunities Meeting
October 30, 2007**

1. Immediately off manager board?
 2. No further vote as member?
 3. Mandatory purchase by the LLC?
 4. Option to purchase by the LLC?
 5. No obligation on LLC to purchase?
- ii. Involuntarily by the LLC
1. Same issues as above
 2. What if terminated “for cause”
 - a. Reduction in value?
 - b. Reduction in salary continuation?
- g. How is the purchase price to be paid?
- i. Immediately available funds upon closing?
 - ii. Installments over 36 months (or lesser period)?
 1. Interest rate?
 2. Security interest in LLC assets to secure payment?
 3. Personal guaranty by other members?
 4. Are there extended payments at lower (or no) interest rates for members who quit?
 5. Is there a non-compete that causes forfeiture of payout of membership value or salary continuation?
 6. Is there a vesting schedule on the value or on any salary continuation?
 - iii. Will there be any life insurance on the members?
 - iv. Should there be a “put-call” provision? (What period of time permitted on reciprocal offers?)

**Gandis – Business Opportunities Meeting
October 30, 2007**

Partnership (“LLC”) Structuring Issues

1. Ownership, Income & Distributions:
 - a. What will be contributed as capital by each member to the LLC?
 - i. At Formation?
 - ii. Subsequently?
 - b. What are the ownership percentages?
 - c. Will any member have a preferential distribution of profits or cash flow?
 - i. Partner - annual payment for services
 - ii. John - return on capital (equipment) invested
 - d. How and when will cash flow be distributed?
 - i. By majority vote?
 - ii. Mandatory distribution of all profits?
 - iii. Distributions sufficient to pay income taxes on LLC profits allocations (What to do when cash flow does not match taxable income)?
2. Management
 - a. Will managers be designated or will all managers jointly manage?
 - i. Do some have specific powers?
 - ii. If more than one, how to handle joint management?
 - b. How to handle votes in a two-member entity?
 - c. What decisions require special voting (e.g. supermajority or unanimous vote of members/managers)?
 - i. Hiring senior lever employees?
 - ii. Terminating employees?
 - iii. Admitting a new member?
 - iv. Purchase or redemption of membership interest except as specifically contemplated by an LLC operating agreement?
 - v. A change in the nature of the LLC's business?
 - vi. Any requirement obligating (all) members to make additional capital contributions?
 1. Approval of RFPs prior to submission by contributing member?
 2. Notification of bid variances > x% prior to funding?

**Gandis – Business Opportunities Meeting
October 30, 2007**

- vii. The creation by the LLC of any debt or contract obligations that, taken with all other existing debts and contract obligations (other than anticipated obligations to pay for routine services and supplies) require the LLC to pay more than _____ (specify amount) in any year?
- viii. Entering into any agreement or arrangement with an affiliate of a member?
- ix. Liquidation or dissolution of the LLC?
 - x. Taking any action, including but not limited to the sale of any asset, outside the ordinary course of business?
 - xi. The merger or consolidation of the LLC with another entity?
 - xii. Relocation of the LLC's principal place of business, the opening of any new company office, the entrance into a new business by the LLC, or the cessation of the LLC's business?
 - xiii. Increasing, modifying, consolidating, or extending any loan, whether secured or unsecured, affecting the LLC?
 - xiv. Distributing any cash or property of the LLC to any member, other than as provided in the LLC operating agreement?
 - xv. Assigning the rights of the LLC in any of its properties?
- d. In a two-member deal – recommend that the operating agreement can be amended only by unanimous vote.

3. Employment and Compensation

- a. Will any partner be “employee” (i.e. receive guaranteed payments) of the LLC? (Note: true employee status is not possible with an LLC). Note- a guaranteed payment is different from a profit split in that the guaranteed payment is fixed – even if no money is made (or profit is earned). A guaranteed payment needs to be funded from alternative sources when no profits are there.
- b. Is compensation to be paid as a stated salary or under a formula? (Or is compensation to be left to a vote of the members/managers (see Paragraph 1D)).
- c. Generally employee benefits (vacation, insurance, etc) should also be described – unless they are provided in a separate entity.
- d. Termination of employment
 - i. On what notice can employee quit?
 - ii. On what notice can the LLC terminate employment without cause?
 - iii. Need to include a “for cause” provision, will notice be required?
- e. Is there a noncompete provision?
 - i. During employment?

**Gandis – Business Opportunities Meeting
October 30, 2007**

- ii. After termination or employment?
 - f. Is there an agreement regarding disclosure of confidential information?
 - g. Is there an agreement regarding solicitation of employees?
- 4. Transferability and Issuance of Membership Interest
 - a. In general, membership interests should be NONTRANSFERABLE
 - b. Should transfer to family members or other members or employees be permitted?
 - c. Can the LLC issue new membership interests without giving existing members preemptive rights?
- 5. Buy – Sell Provisions
 - a. How is each membership interest valued?
 - i. Net book value based on financials:
 - 1. Use depreciated value or 50% of cost, whichever is greater?
 - 2. Accrue all expenses?
 - 3. Exclude accounts receivable and pay some percentage as salary continuation?
 - 4. Exclude life insurance proceeds on the death of a member
 - ii. Formula based on some other factor (with Goodwill component)?
 - iii. Outside Appraisal?
 - iv. Is each member guaranteed to receive what he paid (capital) or some stated amount?
 - b. Who should purchase the interest (the LLC or the other members)?
 - c. What happens on the death of a member?
 - i. Mandatory purchase by the LLC? (Time period of at least 18 months)
 - ii. Option to purchase by the LLC? (Or the other member)?
 - iii. “Put” by estate to LLC? (Or other member)?
 - d. What happens on disability of member?
 - i. Same as death?
 - e. What happens with divorce of a member?
 - i. Prohibition on actual transfer of interest to spouse?
 - ii. Prohibition on involvement by spouse?
 - iii. Other?
 - f. What happens on termination of employment of member?

**Gandis – Business Opportunities Meeting
October 30, 2007**

- i. Voluntarily by the member
 - 1. Immediately off manager board?
 - 2. No further vote as member?
 - 3. Mandatory purchase by the LLC?
 - 4. Option to purchase by the LLC?
 - 5. No obligation on LLC to purchase?
- ii. Involuntarily by the LLC
 - 1. Same issues as above
 - 2. What if terminated “for cause”
 - a. Reduction in value?
 - b. Reduction in salary continuation?
- g. How is the purchase price to be paid?
 - i. Immediately available funds upon closing?
 - ii. Installments over 36 months (or lesser period)?
 - 1. Interest rate?
 - 2. Security interest in LLC assets to secure payment?
 - 3. Personal guaranty by other members?
 - 4. Are there extended payments at lower (or no) interest rates for members who quit?
 - 5. Is there a non-compete that causes forfeiture of payout of membership value or salary continuation?
 - 6. Is there a vesting schedule on the value or on any salary continuation?
 - iii. Will there be any life insurance on the members?
 - iv. Should there be a “put-call” provision? (What period of time permitted on reciprocal offers?)
- h. What should happen to assets in the event that the partners agree to voluntarily terminate the LLC?
 - i. Each partner is entitled to receive the identical asset they contributed
 - 1. How is the asset to be valued at distribution?
 - ii. What items would be required to be sold – so cash could be divided?
 - iii. Would either partner be prohibited from continuing to pursue activities with the same customers, in same area, etc.?

**Gandis – Business Opportunities Meeting
October 30, 2007**

EXHIBIT B
TO AFFIDAVIT OF JOHN GANDIS

Introduction & Summary

Carolina Custom Converting, LLC (the "Company") is located in Anderson, SC and is engaged in converting wide film into narrow cuts – primarily polyester film. Formed in November 2007 with the purchase of one slitter machine and additional machines have been added to keep up with customer demands (Let's be more specific – how many more. We have "skipped" the issue of how these were financed ... we may need to visit that issue later). The Company achieved sales in excess of \$1.6 million in its first year of operations.

The company has continued to demonstrate steady sales growth in a number of major markets, including packaging films, flexible duct, print based film, and specialty films. Carolina Custom Converting is seeking financial assistance for the purchase of 7 used machines complete with required tooling for \$225,000

The Business

The Company's business is the conversion of thin plastic films and distribution of a large variety of substrates to manufacturers around the world. Our customers use the film in a wide variety of applications including the mining, flexible duct, and general packaging industries. Other potential applications/markets that will be served with the additional equipment include [DESCRIBE].

The Industry

The polyester film market in itself is an enormous market ({We need a number here – along with a SOURCE to quote revenues for the last several years. We need to be careful not to just blindly grab the film market, but to narrow it down to the revenue that we could participate in} . Domestic manufacturers produce only one third of what the US market requires (Are you referring to the producers of the wide rolls of film?). Polyester film is manufactured world wide. The film is extruded into various gauges and sold into a variety of products and applications. Polyester films are use in a vast variety of applications including – cable wrap, mining packaging, flexible duct, packaging just to name a few.

Some film is modified in a process called metallization where a very thin layer of aluminum is added to the polyester sheet to provide a highly reflective and impervious layer. While metalized film is consumed in a number of the same applications as clear Polyester film, metalized films are also used in applications such as window tint films, vapor barriers, sandwich wrap liners, and balloons.

Most converter/distributors are tied to specific manufacturers, and work with the products that are considered commodities. Other converter/distributors are more likely to work with premium grade films to maximize their throughput and capacity – few work towards product innovation to create product oriented niches and customer relations based on quality and service.

The Company

Carolina Custom Converting operates in a 25,000 square foot facility in Anderson, SC and currently employs seven people and five independent (domestic) sales representatives and one representative in Hamburg, Germany. The company currently services approximately 35 customers, its largest customer represents X% of it initial year revenues. The Anderson location is within an hours of three large polyester film manufacturers. Mitsubishi, Dupont, 3M, and SKC (is this the legal name?). These three manufacturers represent approximately Y% of the US polyester film market and Z% of the global market. (Is there a way to develop an exclusive relationship with these producers or do we only enter the market through our customers? Are we a market "enabler" for these companies in that we create markets for their products by altering their output so that customers can incorporate the converted films in accost effective manner?)

Products, Markets, Customers, Competition.

CCC's business consists of three types of sales

1. Slitting A grade polyester film
2. Slitting B grade polyester film
3. Merchant - brokering sales of various plastic films and laminates that are not processed at the CCC facility

Suppliers

The Company imports polyester film from (name) and metalized polyester from Canada (should we name the supplier) where there is no tariff, and B grade from domestic metalizers – Vacumet, and VDI (is the legal name?)

Nylon, Polypropylene, Polyethylene, Vinyl –

There are many films that may be slit narrow – these are markets that we have made some small orders for, but have not pursued due to capacity issues.

Customers: Add the industry or the product usage for each of these – KILL Eastern Film since you said that was a one-time thing and now the EFS customers are direct customers of CCC

<u>Customers</u>	<u>% Sales</u>
Minova USA Georgetown, Kentucky	57%
Eastern Film Solutions Greenville, SC	10%
Light Source Gambier, Ohio	8%
American Traders International Livingston, NJ	4.5%
Flexible Technologies Abbeville, SC	3.5%
Flexease Houston, TX	2%
Flagship Danbury, CT	2%

Competition:

Interfilm - Powdersville, SC; Interfilm is the largest converter in the US – specializing mainly in A and B grade product purchased from Mitsubishi film; Interfilm is a primary provider for Dupont. Interfilm works primarily with A grade film and has a national contract on styrene film for the “envelope window” film (Is this with an envelope company?) . Styrene is very difficult and technical to run. Styrene requires a clean room environment and machines that cost five hundred thousand to one million dollars. Interfilm has three plants across the country – SC, Colorado, and CA. (Can you add cities?) Gross sales estimated \$70 million What is the source of this estimate? Do we have a way of knowing how to remove the Styrene component from here to see the revenue they make that competes with us?

Pilcher & Hamilton –LOCATION?; Pilcher & Hamilton (“P&H”) is one of the oldest converter / distributors in the country. Pilcher works primarily with Mitsubishi film; the majority of P&H’s conversion sales come from Mitsubishi. What does this mean? How does this compare to how our conversion sales are created. Pilcher’s owner is over 70 years old with no clear exit strategy and no children that are interested in the business (Does this person have a name that is known?) . Pilcher’s annual sales are estimated to be \$24 million with one location in Greenville, SC. With this level of sales ... their exit strategy will be a sale of the business ... Question is ... Do we want to buy it or do we want someone else to buy it? We should really talk about this since buying this business would likely get us all the same equipment that Blake’s company is selling us

Film Quest LOCATION?; Film Quest was started by an Interfilm employee that was left out when Interfilm was bought out/ Film Quest has two plants – one in Greenville, and the other in Chicago. Film Quest specializes mainly in converting products. Film quest owns a laminator, and a metalizer. We do not have an estimate on the size of film quest, but we suspect that they are smaller than Pilcher and Hamilton.

Others – There are a number of other small slitting operations with a hand full of slitters. Other slitters typically run tolling type services to their customers to slit their film.

* What differentiates CCC from other converters is the ability and desire to work with B grade films. Taking the extra time involved in running these films proves to drive raw material prices down and margins up.

Marketing Plan –

Flexible Duct

With increased capacity – we can expand our market share of the flexible duct market by increasing orders with existing flex duct accounts. Many of these accounts purchase containers from over seas to obtain best price. With CCC’s current supply stream and commitments to supply from Torray and Mitsubishi – CCC can beat off shore prices while allowing the buyers the option to shorten lead times and reduce inventories

Mining Packaging –

CCC has secured purchase of a “B Grade” two mil film (200 guage) that is used primarily in the mining industry. CCC currently does business with the largest manufacturer. With increased capacity we could handle the other two manufacturers. Contact has been made with both manufacturers, and both are moving towards film qualification. – Explain how this sales channel works. Does the manufacturer hire us to convert the product for their customers in the mining industry?

Laminates and specialty films –

There are numerous customers that are looking for smaller order quantities on specialized goods. CCC brokers many of these deals, and makes an appreciable mark up for this service. Customers typically are unable to put these things together on their own.

Development:

CCC is currently working on a number of new development projects – in order by priority.

1. 12 mil polyester film to replace steel heddle in looms. What is this? If this is our first priority, we should add more data including projected volumes, target customers, and we should explain if this new equipment is going to help us target this market. Product is currently being supplied out of Germany at a very high price. Sourcing and then slitting the product here will require three different operations and be converted on our equipment. Estimates for the return on this material are over \$1.00 a pound. We should discuss how this return compares to the returns from our existing sales streams?
2. Radiant Barrier – Currently established a relationship with a manufacturer in China. Initial response has been positive in home improvement and metal building insulation markets. Do we have any estimates what this could be like in terms of volumes, etc.?
3. Glass fabrics – Many film buyers purchase glass film and request quotations. One of our sales representative knows the glass scrim market very well. Will import product from China and distribute across the country to big box stores – including Lowes and Home Depot. If this is something that I could buy at Lowes, we should be able to describe this more in retail customer terms – right now I don't know what we would do – who would box it, label it, what would it be used for?
4. Window covering films – importing and distributing products from Brazil and China.

Manufacturing Facility:

The manufacturing facility is in Anderson, SC. Anderson is approximately 120 miles from Charlotte, NC and 120 miles north of Atlanta, Ga. The facility is 25,000 square feet in two buildings and is leased from one of the owners of the company. All electrical in the building has recently (as of 5/1/09) been upgraded for safety and additional service to handle expansion.

Sales History (By Product):

	2007	2008	2009 (thru 4/30)
Toll Manufacturing	\$8533	\$260,998	\$0
Film Sales (Pass Through)	\$0	\$314,919	\$13,941
Slit Film	\$14,514	\$1,097,735	\$875,478
Totals	\$23047	\$1,673,652	\$889,419.73

Sales Outlook: (Annual)

*** I removed our distributions from the fixed cost column ***

	Existing Business (EB)	Growth Very High Probability (GVHP)	Growth Very Good Probability (GVGP)	Future Business Must Have New Equipment (MHNE)
Gross Sales	\$2,200,000	\$3,263,000	\$4,919,280	\$9,901,080
Film Cost + Scrap and Freight	\$1,525,000	\$2,208,000	\$3,237,936	\$6,884,652
Fixed Cost	\$215,440	\$355,476	\$384,000	\$539,716
Variable Cost	\$48,000	\$48,000	\$52,000	\$120,000
Net	\$283,000	\$651,524	\$1,245,344	\$2,356,712
Profit Margin	13%	20%	25%	24%

Do we have detail of where these Revenues would come from. Do you have customers with specific revenue figures in a schedule? Do you have the volumes that are associated with the revenues. Does the additional revenue come from higher volumes, higher prices or a combination of those two? I need to see that detail. I'd like to see the first 24 months of forecast on a month-by-month basis so we can gauge slippage in the sales as we ramp up.

EXHIBIT C
TO AFFIDAVIT OF JOHN GANDIS

John Gandis

From: Dave Wilson [dave@ccc-films.com]
Sent: Monday, October 17, 2011 4:50 PM
To: John Gandis
Cc: Andrea Comeau-Shirley

I have spoken with my accountant regarding Andreas proposal and he believes it is flawed. Surrendering my stock would be a capital loss and not an ordinary loss against the taxes owed so I'm not sure this would help much. I am happy to have Ray talk with Andrea about this.

Frankly, I'm surprised that Andrea would even propose a buyout of my shares for \$123,000. My capital account was worth \$592,000 at the end of 2010 and assuming we have made some profit this year, it's worth even more today. I think the value of my capital account is much more relevant than the loan amount when trying to determine the fair value of my interest in the company.

Here are several other options you need to consider.

1. CCC starts making regular accruals and distributions to its members to cover tax liabilities incurred by their ownership in CCC. I can set up an installment plan with the IRS which would spread the tax payments out over a number of years. I would also insist that we accrue for 2011 taxes so that quarterly distributions can be made to cover a percentage of the projected liability for 2011.
2. Dave resigns from CCC and maintains his 45% ownership. Dave is then free to do whatever he wants to including working for or operating a film company outside of CCC. By law, Dave has no duty to the LLC as a non-managing member but maintains all rights and privileges of a member.
3. Dave resigns and disassociates from the LLC. The LLC then has 30 days to set forth a purchase plan for my shares at fair market value. If the other members are unable to or unwilling to buy my shares, by law, the company is to close, assets liquidated, and funds dispersed to its members net of liabilities.

I don't know too many business owners who would continue to participate in a business that does not budget for and disperse funds to cover tax liabilities incurred by ownership of the business. I realize that each of us is in a different financial position but making decisions based on the needs of two partners without considering the needs of the third puts us in a quandary.

Running the business as we have been with no thought for tax liabilities is not an option. If dispersing funds for taxes means we grow at a slower rate, then so be it. We're kidding ourselves if we think we are successful because of a P&L that does not take into account the tax liabilities of its members.

Andrea's comments about handing over purchasing to someone else in the company demonstrates how out of touch she is with our company. Bill issues PO's and is capable of doing this. Bill nor anyone else is qualified to select vendors, new products, etc. We are not in a position to hire someone to do purchasing even if we found someone who was qualified.

Dave

5/20/2013

EXHIBIT D
TO AFFIDAVIT OF JOHN GANDIS

Jones, Brigid M.

From: John Gandis <john@ccc-films.com>
Sent: Monday, October 31, 2011 5:07 PM
To: 'Dave Wilson'
Attachments: Dave Letter 10-31-11.pdf

Dave,

Did not have the cash in our checking account to write you a check today. We should be in better shape following the mail run on Wednesday. We'll write the check then. I will not hold up your next advance while awaiting your decision on the direction that makes the most sense for you as we are in agreement that these are loans...

In regards to your cash flow analysis...

Couple of observations:

You have only 12k a month in there for payroll – our employee's cost us over \$50k a month.

You do not have anything in there for machine cost or freight – and an estimated \$20k per week in operating cost. We average more like \$120k per month in operating cost... and this is before we buy film. I haven't really concentrated on a plan until I knew definitively which way you wanted to go. I still need to do some catch up in distributions for Andrea and I as well – so... one thing at a time.

Have a safe trip.

John C. Gandis

Cell: 864-553-9338

Fax: 864-225-4317



Plant Address:

1017 River Heights Circle

Anderson, SC 29621



October 31, 2011

Dear Dave,

I am writing you to inform you about the projected cash situation for the company and to finalize your decision as to your preferred business structure with Carolina Custom Converting, LLC. I am leaving this decision in your hands and, just as we discussed, I am trying to ensure that we continue to work together in way that is best structured for everyone.

As you know, for the period through 2010, the company has generated taxable income that exceeds its cash flow. This is a result of the large debt we have incurred to purchase assets as well as our ongoing investment in film. Based upon our discussions in our biweekly sales meetings, I don't see this situation changing for the next year or possibly longer. During this past year Andrea and I agreed to not receive any funds from the company - as we felt that CCC was not in a financial position to afford distributions to all members and the company began to loan funds to you.

As you know, we are working on preparing a note for you to sign related to the various advances that CCC has made to you. Absent a note to change those terms, those funds are legally regarded as advances and the company can make demand for repayment at any time (and you are personally liability for that debt). We are willing to remove the personal liability if you are willing to provide that the sole collateral for your loan is your entire membership interest. That means that if CCC requested repayment, you would have the option of repaying your loan with cash OR turning over the entirety of your membership interest as satisfaction of the obligation.

As we continue to grow this company my business goal is to pay in order of priority – our employees, our film suppliers, all other vendors, and finally the owners. This decision is not being made without careful consideration of the future of Carolina Custom Converting, LLC.

Recently we have had to pay several of our vendors late in order to set aside funds to loan to you. It is not in the best interest of our company to pay our vendors late, particularly when we have the funds available to pay them. The current payment of \$12,000 a month is too great a burden to pay monthly while assuring that our legal obligations be paid in the order as they are outlined above. However it is not my desire to create an undue burden for you and your family either.

I have three options for you to consider. First, we can leave the ownership structure unaltered. Second, the company can buy-out your interest in the LLC under a note. Finally, we could formally modify the limited partnership agreement to reflect that your

total economic interest through December 31st of this year has been capped at the cash you have received (or been advanced). The second and the third options would eliminate your current obligation to CCC. Which of these three options is best for your family is your choice.

As we have been friends for a long time and I want to avoid any confusion about the cash consequences of each alternative, here is how I see the impact of each of these decisions on your cash flow.

Option 1: Continue as Member/Partner

If you continue as a partner with me in CCC, we will have to adjust the cash flows so that you and I are in line. As you know, I have personally funded the distributions you received through 2010. I borrowed against my family's home so as to put the cash into the company that funded your distributions. I stopped funding the distributions during this past year. As a partner if CCC generates taxable income that higher than its net cash flow, then you will need to be able to finance that tax obligation personally. Last year, I was forced to take out a loan on my home equity in order to pay takes on the CCC income and to pay my 2011 estimated tax obligations.

As you know this cash shortage is primarily a result of the amount of film we have carried on our books. CCC needs to continually invest its profits into film purchases, including overseas purchases, in order to meet customer demand. As I look at our company's outlook, I believe this situation is likely to remain the same for the next year or so. Even if we are able to open the line of credit as we have discussed, the line will be used first for film purchases. The bank has asked for a personal guarantee on this line; from a personal risk perspective, the guarantee is almost the same as if I had personally funded the company again. I cannot let the line be used to fund prior year tax distributions, either directly or indirectly.

As a partner you will also have to make personal arrangements to satisfy your taxes when the company has invested its profits in film and equipment. Our duties will be first to our obligations to our employees and then to our vendors. Our company will continue to generate positive cash flow for owners; however this cash may not cover the entire tax obligation as well as living expenses. If you decided to remain as my partner, you must be willing to live by these cash flow priorities for the good of our company. This also means that in months were the company cannot pay all its vendors on time, you will not be able to receive an advance on the 1st and you may even be requested to repay part of your existing loan balance to help pay a film vendor in a timely manner. You will need a personal safety net for your household obligations and cannot presume that the company will make an advance on the 1st of each month.

Option 2 – Buy Out

You have mentioned to me several times the concept of determining your capital account balance with the presumption that you must be bought out. If you want the company to

buy your capital account, please be aware that the amount on your Schedule K-1 does not reflect the value of your interest. If you decide you want to be bought out, the company will determine the value of its assets immediately following the inventory next month and your purchase price would be based upon net asset value. Most importantly, as the company does not have the cash for the buyout, the value will payable to you by a 9 year term note bearing simple interest at the applicable federal rate.

A buyout does not eliminate your tax bill for 2010 or 2011 and might result in a capital loss to you. A buyout will not generate a current cash outflow to satisfy the 2010 or 2011 tax bill.

As part of the buy-out, the company would agree to net current advances to you against the buy-out note. While this netting does not produce any immediate cash for you, it does remove the risk that the company could demand repayment from you prior to the maturity date of your buy-out note.

After the buy-out, you would become an employee of CCC entitled to the same benefits as our other employees that started in 2008. Your time as a member would be applied towards your vacation and other personal benefits. We would also discuss a bonus plan that would allow you to continue to have some upside participation if the company returns to the boom levels of last year.

Option 3 – Membership Modification

As we have discussed with you and your CPA, Ray Harris, so long as you provide us written authorization prior to November 21st, we will modify the membership agreement to provide for the following:

- Retirement of your membership interest
- An agreement that your total economic interest for the period of your membership is capped at the cash you have received (or borrowed)
- An income/loss allocation provision to reflect the new cap on your total economic interest in the company
- An agreement to work with your tax advisor to structure the modification so as to minimize the potential capital loss recognized and to maximize the elimination of prior year "phantom" taxable income.

As discussed Mr. Harris, we cannot tell you will absolute certainty how these numbers will work out prior to the year end close, but we anticipate that the modification would produce a loss allocation from CCC during 2011 to reduce your tax capital account.

We believe this option will reduce, and perhaps eliminate, the unpaid 2010 tax liability although it will require that you file a net operating loss carryback claim for 2011.

Just as under option two above, after the modification, you would no longer be a member in CCC but you would become a salaried officer. If you elect either option two or option

three, we hope to provide to you an employment contract prior to year end to be effective January 1, 2012

Dave, I am looking forward to continuing our work together and am prepared to move forward as you decide. As many of these steps need to be documented and executed prior to January 1st, I will need your decision no later than November 21st so we can get all the documentation completed before the holidays are here. The attached documentation should be signed by you to indicate your preference.

Respectfully,

John Gandis

Carolina Custom Converting, LLC
PO Box 2726
Anderson, SC 29622

RE: Membership interest in Carolina Custom Converting, LLC

Dear John:

Pursuant to your letter of October 31, 2001, I desire to continue our business relationship under the following structure:

_____ Option 1: Remain as partner in Carolina Custom Converting under an arrangement when the company will make distributions to me ONLY when it (a) all payments to vendors are capable of being made in a timely manner and (b) distributions are being made in a pro-rata basis to all members.

_____ Option 2: I desire to retire as a member in Carolina Custom Converting LLC and become a salaried employee effective January 1, 2012 pursuant to a buy-out note. I understand that before the note value can be determined, the company will need to complete the current inventory computations. The terms of the buy-out note will be a 9-year balloon note with interest at the applicable federal rate. The payments will be interest only with the balloon due December 31, 2020. I understand that under this option I will remain currently liable for the tax liabilities that result from the 2010 and 2011 Schedule K-1 allocations to the extent that they exceed prior distributions and advances as of year-end.

_____ Option3: I desire to retire as a member in Carolina Custom Converting LLC and become a salaried employee effective January 1, 2012 pursuant to a membership agreement modification. Under this options, the members will agree to modify the membership agreement to clarify that for purposes of (a) maintaining my capital account, (b) allocating 2011 results, and (c) liquidating my interest in Carolina Custom Converting as of December 31, 2011, my total economic interest in the Carolina Custom Converting, LLC should be capped at an amount equal to the funds I have been previously distributed plus the amount of the amount due from me to the company. I understand that the company is not providing tax advice and that I should consult with my own tax advisor related to the potential loss allocation for 2011 and the extent to which a loss may reduce the tax obligation resulting prior income allocations.

I have initialed the option that I desire.

David B. Wilson, member

Date

EXHIBIT E
TO AFFIDAVIT OF JOHN GANDIS

**Employee
Handbook**

2007

Table of Contents

Introduction

Welcome to Carolina Custom Converting LLC, (CCC), a Company that relies on the skills, innovation, hard work and dedication of all its personnel.

A guiding principle in the success of CCC is the belief that every person's job is important and that all of us working together as a team can do a better job than our competitors. Adherence to this principle enables CCC to provide maximum benefits and rewards for its employees.

The purpose of this handbook is to help you become familiar with your job, your responsibilities and CCC. It presents highlights of employee policies, practices and benefits, and briefly describes the employee facilities at this location. In drafting your employee handbook, we have not used specific gender pronouns for our male and female employees. However, please know that in using the masculine pronoun, our intent is that this should be considered to refer to both male and female employees of our organization.

We produce quality products with quality personnel, safety, efficiently, and with pride.

Thank you for joining our team.

PRESIDENT/CEO

Disclaimer and Acknowledgement

We have prepared this handbook as a guide to the policies, benefits, and general information that should assist you during your employment. However, neither this handbook nor any other company communication or practice constitutes an employment contract. The company reserves the right to make changes in content or application of its policies as it deems appropriate, and these changes may be implemented even if they have not been communicated, reprinted, or substituted in this handbook. It is also understood that nothing in this handbook or any other policy or communication changes the fact that employment is at will for an indefinite period unless terminated at any time by you or the company.

Employment with Caroline Custom Converting LLC is "at will," which means you are free to end your employment with the Company at any time you choose and that the Company has the same right. I understand that no employee, supervisor or other representative of the company, other than the president, has the authority to enter into an employment contract or to make any agreement contrary to the foregoing. The only valid contract for employment between the Company and any employee must be in writing and signed by the President/CEO and witnessed by the Financial Officer. I acknowledge receipt of the employee handbook and understand that my continued employment constitutes acceptance of any changes that may be made in content or application of the handbook.

Employee's Signature _____ (date)_____

Supervisor's Signature _____ (date)_____

EQUAL EMPLOYMENT OPORTUNITY

We believe in people. We need people. It is our objective to employ well-trained and capable people to operate and manage the company productively, safely, and profitably.

It is our intent to provide employees an avenue for utilizing their skills to the fullest and an opportunity for advancement to the highest available position earned through their skills and efforts and then to compensate them fairly in both their wages and protection for them and their families.

It is our pledge to respect the dignity of both employees and perspective employees and to carry out our relationships with them without discrimination because of race, color, religion, sex, age, national origin, citizenship status, physical or mental disability, or past, present, or future status in the uniformed services of the United States.

Harassment

Through reasonable management, Carolina Custom Converting will endeavor to prevent any form of job harassment from occurring in our workplace. Submission to unwelcomed sexual advances, request for sexual favors, and any other unbecoming verbal or physical conduct is not a condition of employment. Neither submission to nor rejection of such conduct will be used as a basis for employment decisions.

Likewise, any annoyances of a racial or ethnic nature will not be tolerated. Such conduct is not only socially unacceptable but also unreasonably interferes with work performance and creates an intimidating, hostile, and offensive working environment.

Should you ever experience any job harassment problem, please exercise the steps in our company complaint procedure. Or, at your option, you may directly contact any member of management in confidence, including the President. You may expect prompt and concerned reaction to your problem.

Orientation

The first ninety (90) days that you work for Carolina Custom Converting we consider as your introductory period. During this period, you will work closely with your supervisor to learn how to do your job, and you will learn about our policies, procedures, benefits and work rules. This period will also allow you the opportunity to find out whether or not you are going to like it here, and it gives us a chance to determine if your work and your general behavior indicate that you are likely to measure up to our standards for a good employee. Company benefits are generally not available to you during this period. After you complete the introductory period, you become a "regular" employee entitled to participate in the benefits offered by the company as you meet the required eligibility date.

Experience is the best teacher in our business. Your supervisor is an experienced employee who will give you full opportunity to learn the best ways of doing your work. Should you have difficulties or have a problem, please talk it over with your supervisor. He or she is always willing to help you.

Employee Referrals and Recruitment Bonuses

If you know someone who is interested in finding a good job, please refer him or her to our personnel office. For each applicant you refer who is hired for a full-time job with our company, you will receive a recruitment bonus of \$25 award at the end of the new employee's first thirty work days and another \$25 at the completion of the employee's first ninety work days of employment with our company.

Training

Employees will be granted time to attend appropriate training programs when related to their jobs. When training programs exist outside the premises and employees are sent at the request of the company, the cost of the training program and all direct travel

expenses (when outside the city) will be paid for by Carolina Custom Converting when approved in advance by management. Please consult your supervisor when pursuing training opportunities.

Wage and Salary

It is our policy to pay wages and salaries comparable to those paid for similar jobs in our surrounding area. We adjust our wage and salary ranges in accordance with the business and general economic conditions of our bank.

Your individual job classification and level of compensation are determined by the requirements of your job in such factors as responsibility, skill, and training.

Wage and Salary Differentials

An employee who reports to work and has not been notified by the company not to do so shall be given not less than four hours of work and pay for not less than four hours of pay at the regular straight-time pay rate, except where work is not available due to the power failure, machine breakdowns, or other conditions beyond the control of the company. Should employees refuse the work assignment or make themselves unavailable for work, they shall not receive reporting pay. Any time an employee is called into work outside his normal schedule, he will be given not less than two hours of work and or pay.

Any employee returning from vacation, leave of absence, suspension, or any other period of time away from scheduled work shall call their direct supervisor no later than 5 p.m. Friday prior to the next scheduled work week to be informed where and when to report to

work the following week. The company shall not be liable for reporting pay should the employee fail to call the plant.

Overtime Pay

Our company makes a concentrated effort to schedule and finish work within a normal work period. However, on occasion, due to an unusual demand, and unexpected equipment breakdown, material flow, or a temporary lack of capacity, it is necessary to schedule work past the regular ten hour (10)-hour day. Should that need arise, the expectation is that every employee will cooperate and cheerfully work the overtime assigned.

The company will distribute overtime work as fairly as possible among employees in a classification where the overtime is required. To be offered overtime work, you must have sufficient skill, ability, and experience to perform the required job. Whenever possible, advance notice will be given when overtime is expected. As a condition of employment, you are expected to work overtime when asked by your supervisor.

Nonexempt employees will be paid time and one-half their regular hourly rate for all work performed over forty (40) hours in any one workweek. Holiday pay, vacation, personal days are not considered time worked when computing overtime pay for the week.

Payroll Deductions

The law requires that the company deduct from your paycheck your federal income tax, state income tax and Social Security tax. The amount of your check is your wages less such tax deductions and any other sums the company is authorized to deduct, such as premiums for

life insurance, medical insurance, savings plan, garnishments, etc. These deductions are remitted to the proper agencies by the company. You should retain your check stub as a record of your earning and deductions.

The Internal Revenue Service prohibits you from claiming more allowances than you are entitled to claim. Carolina Custom Converting may be required to notify the District Director of the Internal Revenue Service or the State of South Carolina should we have reason to believe that the number of withholding exemptions on the Employee Withholding Allowance Certification (Form W04) is excessive (or more than you are entitled to claim. For example, if you are normally entitled to claim four (4) exemptions and you complete a W-4 form increasing the number to ten (10), we may be obligated to notify the IRS or SC. You should always use caution when completing your W-4 form as the IRS considers the filing of a falsified W-4 form a violation of federal tax law.

Bonus Plans

We like to be able to share our success with our employees. In years past, we have been able to provide Christmas bonuses to our employees, and, while this bonus is not guaranteed, we hope that we will be able to continue to reward your dedication and efforts in the future.

All non-exempt employees can earn extra cash for perfect attendance for each full calendar quarter. The purpose of the attendance bonus plan is to encourage you to come to work every scheduled workday, because your regular attendance is necessary for the best operation of our company and our customers' satisfaction.

If you have perfect attendance for a full calendar quarter, you will be paid \$240 in cash at the end of the quarter. This can mean an additional \$20 a week, \$80 a month, and \$960 a year in your pocket. All you have to do is come to work every scheduled workday and stay for your entire shift.

Attendance and Absenteeism

We are counting on each employee to be at his work station five minutes before the start of his shift in order to exchange pertinent information and to remain there until released by his supervisor or replaced by the next shift. No one while on company time is to leave the building without the permission of his supervisor. Any employee leaving the plant during working hours must log/clock in and out.

In the event of illness or family emergency, notify your supervisor or plant manager immediately at least one hour before start of shift – indicating extent of the anticipated absence so that your work may be assigned to others. During prolonged absence, contact your supervisor at least once a week.

Failure to call in will result in a written warning to the employee. After two such written warnings without adequate explanation an employee is subject to immediate termination.

If you find that you cannot return to work as scheduled following an absence, you must notify your supervisor at that time. All employees are important to the smooth running of Customer Carolina Converting, and we encourage you to return with proper notification any day of the week.

If you are absent for two consecutive scheduled work days without notifying your supervisor, we assume that you have voluntarily quit your job.

Repeated tardiness, absence without good reason, or washing up or changing your clothes early will indicate that you do not value your position with Carolina Custom Converting. These behaviors cannot be tolerated and will be cause for disciplinary action up to and including discharge.

No Fault Attendance Policy

Attendance policy

All employees are expected to be at work, on time, every scheduled work day.

The company's reputation is built on this basic principle: We deliver superior quality products and services to our valued customers, on time. To continue to maintain these standards, the regular attendance of ALL employees is extremely important. When an employee is absent or tardy, his or her supervisor must make reassignments among the employees who came to work. This could require placing employees on jobs that they are not fully familiar with, creating a decrease in quality or an unsatisfied customer that day. Because this is unfair to our customer, the company, and your fellow employees, this attendance policy has been developed.

Types of Absence

- a. Authorized absences are classified as any situations such as a death in your immediate family, Uniformed Service obligations,

jury duty obligations, family, or medical leaves of absence, disability accommodation leaves of absence, and any other leave of absence approved by the company. All other absences are classified as unauthorized. “Authorized” means not counted against an employee’s attendance record, and “unauthorized” means the absence will be counted against an employee’s attendance record. If the employee is eligible, authorized absences are covered by the personal-time off remaining in that employee’s bank.

- b. The company does recognize that occasionally an employee may need to be absent because of sickness or a compelling personal matter not included among authorized absences. You must call a supervisor within one hour of your starting so that your supervisor can make arrangements for your replacement.
- c. Signing up for overtime and not reporting constitutes an unauthorized absence.
- d. Although unauthorized absences may be unavoidable, excessive unauthorized absences cannot be tolerated because of the operational impact already explained. Such absences are therefore subject to disciplinary action

Disciplinary action for unauthorized absence in one “rolling” year is as follows:

First Step	3 rd -6 th absence	Verbal commentary
Second step	7 th -9 th absence	Written warning
Third step	10 th – 11 th absence	Salaried-written warning Hourly 1-or 2 day suspension without pay

Fourth step	12 th absence	Employee termination
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This step procedure for discipline will be maintained on a rolling twelve-month basis. That is, absences are counted only for the prior twelve-month period. All absences occurring before that period are dropped; this may result in a reduction of an employee's step level.

An employee who is absent for one day without notifying his or her immediate supervisor will automatically advance one level.

An absence of two consecutive scheduled work days without notice will be considered a voluntary resignation.

Tardiness Policy

Promptness is expected so that production can start in a harmonious manner. The company understands that tardiness is sometime unavoidable because of severe weather conditions and other emergencies. At the discretion of management, we will grant these cases as excused. You should notify your supervisor in advance if at all possible, if you are going to be late.

If an emergency, personal business, or pressing personal circumstances that cannot be attended to outside of working hours requires you to leave your job at any time other than lunch, you may request permission from your supervisor. He or she will consider the urgency of your request at the time when you can be spared.

If you are required to punch a time card, punching out before quitting time is classified as an instance of tardiness, unless you are

excused by your supervisor. You should always punch out when leaving work for personal emergencies and punch in when you return. Leaving company premises at any time without clocking out is prohibited.

Personal Leave of Absence

An unpaid leave of absence of less than thirty days may be granted by your supervisor. A written leave of absence is required for all absences exceeding five working days and may be requested after completion of ninety days continuous service. The request for a personal leave of absence must be submitted in writing to your supervisor at least five working days prior to the day the leave is to begin, except in a case of emergency.

If a leave of absence exceeds thirty days, it must be approved by the manager of your area and the President. A personal leave of absence may not exceed sixty days and is not subject to extension. Approval for a leave is based on the reason for the absence, the length of your employment, your performance record, your attendance and punctuality record, and the work schedule in your area.

The company cannot guarantee to hold a particular job open during any personal leave of absence longer than thirty days. Those returning from longer leaves will be entitled to the first available opening for which they are qualified if their former position has been filled during the leave.

A leave of absence should not be taken lightly, since it may work hardship on the company and your fellow workers who will have to fill in for you.

Your employment is subject to termination if you leave without prior approval or if you fail to return to work on the expiration of the leave of absence. In an emergency situation, you should contact your supervisor as soon as possible to make the necessary arrangements for an extension of leave.

Paid Vacations

If you are like most of us, you look forward to a time of rest and relaxation each year. Vacation with pay is one of the ways we show our appreciation to you for your length of service and good work. Management encourages all employees to take their accrued vacation time.

Employees receive vacation time based on their employee status, the number of hours they work in a week, and the years of service. At Carolina Custom Converting vacation time is accrued, and taken on a calendar year basis. Calendar year is defined as the year beginning each January 1 and ending the following December 31. Vacation eligibility is determined as of July 1st each year. All regular employees who work over 25 hours per week earn vacation pay after six months of employment.

Amount of service Prior to July 1	Full-time Vacation days	Part-Time Vacation days
Less than 6 months	0	0
6 months but less than 1 year	5	3
1 year	5	3
5 years but less than 15 years	10 + extra	8
15 years	20	16

After you have been employed at our company for five years, full-time employees will receive an additional day of vacation for each year of employment that is in excess of five (to be added to the two weeks

of vacation). The maximum number of additional days you will receive in this manner is ten (10) for a total of twenty days (20) vacation per year after you have been employed 15 years.

No less than one-half day of time off may be designated as vacation time. Any employee who is dismissed for misconduct will not receive any accumulated vacation benefits. Employees who leave the company voluntarily (resign) and give two-weeks notice will be paid for accumulated vacation time due them. Employees who leave without giving two weeks notice will not be paid for accumulated vacation.

Our customers employ all of us. Therefore we must be guided by, customer demands when we schedule vacations. Vacations must be scheduled in such a way that we can maintain sufficient man power to serve our customers' needs.

You should make certain to schedule your vacation with your supervisor at least one week in advance of your requested vacation date. In the event of conflicting vacation request within a department, the e Normally employees should schedule their vacation time between July 1 and December 31st of each year. With prior approval of the direct supervisor and department head concerned, however, an employee may elect to schedule all or part of his vacation prior to July 1, even though, in effect, the vacation is not earned until July 1. mployee with the greater seniority will get first choice.

Production employees will have a portion of their vacation during the last week of the year when the plant shuts down.

Paid Holidays & Personal Time off ("PTO")

At Customer Carolina Converting, we observe 7 holiday that will be considered paid holidays as follows:

New Year's Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day
Labor Day	

If one of these holidays falls on a nonworking day, an alternative day will be granted at management's discretion.

To be eligible for holiday pay, employees must have been continuously employed at least ninety calendar days before the holiday, and hourly employees must have worked in full their last schedule work day before and the first schedule work day after the holiday, unless their absence on either of such days has been excused by their direct supervisor.

In addition to paid holidays, Carolina Custom Converting grants Personal time off ("PTO"). All full-time, benefits eligible staff accrue personal time off ratably throughout the year. Personal days may be used for religious observances, doctor's visits, funeral or personal business. No unused accrued personal time will be paid at the time of termination. Once notice of termination is given, the use of personal days is not allowed. The use of personal time requires the employee to submit a Personal-Time-Off request form in the prior week and any requested substantiation upon return (e.g. doctor's note). Failure to adhere to these procedures will result in the absence being charged to vacation.

These holidays will be scheduled as follows for 2012:

Holiday	Date	Day	Salaried	1 st Shift	2 nd Shift	Full Time Weekend
Good Friday	4/4	Friday	-	-	-	10
Easter	4/6	Sunday	-	-	-	10
Memorial Day	5/28	Monday	8	10	10	10
Independence Day	7/4	Wednesday	8	10	10	-
Labor Day	9/3	Monday	8	10	10	10
Thanksgiving	11/22	Thursday	8	10	10	-

Thanksgiving	11/23	Friday	8	-	-	10
Christmas Holiday	12/24	Monday	8	10	10	10
Christmas Holiday	12/25	Tuesday	8	10	10	
Personal Days	Any	Any	24	20	20	20
TOTAL			80	80	80	80

Group Health Insurance

Customer Carolina Converting is pleased to provide regular employees with group insurance. The company pays a significant portion of your group insurance coverage, with your portion being deducted from your paycheck on your written authorization.

Special brochures outlining the insurance plans will be made available to you. Your supervisor will discuss our group insurance program with you during your orientation program and will be available to assist you with enrollment material and determine your costs for your selected coverage.

You will be eligible to participate in the group insurance plans following a full calendar month of continuous employment or your initial ninety day probationary period.

Options for continued health insurance coverage under the COBRA Act are available for up to eighteen month in the event of your resignation, reduction of hours, layoff, or termination (except where termination results from gross misconduct) and for up to thirty-six months for your spouse and or dependent children in the even of your death, divorce, or separation. If coverage is provided under Medicare or a covered child ceases to be a dependent as defined by in the plan, coverage under the pan ends. Should you or any covered dependent be disabled at the time of your termination (or reduction in hours), coverage would be extended to twenty-nine months rather eighteen months. Also, if you or any covered dependent has a preexisting condition that would not be covered by a future plan, continuation coverage will still be available for the eighteen – or thirty-six-month

period as explained earlier, even though coverage under the new plan already exists. The cost of coverage would be the responsibility of the employee/spouse or dependent child. You will be notified of your rights for continued health coverage in the event you leave the company. You must notify us if an event occurs which would enable your spouse and or dependent children to exercise their COBRA rights.

Employee Loans and Advances

We are not in a position to grant cash advances; however, we understand that emergencies do arise. In an emergency situation, an advance equal to 50% of your last paycheck will be available and will be repaid on your next paycheck. No more than one loan/advance in a ninety day period will be permitted. You will be required to sign for any company loans. For your benefit, we have established a relationship with a local bank (South Carolina Bank & Trust) for your greater needs.

E-Mail

Carolina Custom Converting utilizes electronic mail in order to conduct business in a quick and efficient manner. Also, as a benefit, Carolina Custom Converting allows employees to send limited personal Email messages to friends and family. Every employee with access to electronic mail at Carolina Custom Converting is responsible for seeing the E-mail system in used properly and in accordance with the following policy. Questions concerning this policy should be directed to the Human Resources.

1. The Email system is part of the business equipment and technology platform and is to only be used for Company purposes. Personal business is to be limited to lunch or before or after work and must be in compliance with the rest of this policy.
2. Information and messages that are sent or received via E-mail are to be disclosed only to authorized individuals.

3. There is no personal privacy in any matter created, received, or sent from the E-mail system. Carolina Custom Converting, in its discretion, reserves the right to monitor and to access any matter created, received, or sent from the E-mail system.

4. Messages sent during working hours should be sent only with good business reason for doing so. Copies should be forwarded only for good business reasons.

5. Every employee with E-mail has a password to access the account. Every employee is responsible for messages that are sent from his or her accounts. Do not share your E-mail password with anyone. Your account can be accessed by the network administrator at any time for verification that information being created, received, or sent via the E-mail system is being created, received or sent for good business reason and check that personal E-mail is not being sent during work hours and that the information contained within personal messages does not compromise, libel, or slander, Carolina Custom Converting in any way.

6. All E-mail (personal and business) must follow the company policy banning solicitation and distribution. Chain letters, pyramid schemes, and other solicitations are taken very seriously by Carolina Custom Converting. Employees found to be in violation of this policy may be terminated immediately.

7. No E-mail (personal or business) that constitutes intimidating, hostile, or offensive, material on the basis of sex, race, color, religion, national origin; sexual orientation, or disability should be created, sent, or received. Carolina Custom Converting's policy against harassment applies fully to the E-mail system, and any violation of that policy is ground for discipline up to and including immediate dismissal.

8. Information that is considered sensitive, highly confidential, or proprietary is not to be sent over the E-mail system without first being encrypted. The E-mail system is not secure one-way communication tool, and information sent over it may be intercepted and read by

unauthorized individuals. Employees must take every precaution to protect proprietary and confidential information about our company and our customers.

9. Employees who become aware of misuses of the E-mail system should promptly contact Human Resources.

Visitors

Employees are expected to remain in their work area during working hours, and the visiting of other employees, except on company business, is discouraged. Visits to employees by persons outside the company for nonbusiness purposes during working hours, except when absolutely necessary is also discouraged.

Our visitors, no matter how much we like them, do disrupt business. Remind your friends and relatives that unless there is an emergency involved, they should not disturb you while you are working. Former employees, or those employees on leave of absence, are requested not to disrupt operations by disturbing employees while they are working.

Resignation Procedures

You will receive pay for the vacation time due to you when you leave the company if you are released through no fault of your own and have six months' service, or you give at least two weeks' notice and have six months' service. An employee who gives less than two weeks' notice forfeits all vacation money. All other benefits are terminated on the last day of employment.

On the last day of employment, you should report to the Personnel Department to return any company property you may have and to receive an explanation of your status as it relates to company benefits. Final pay arrangements will be discussed at that time.

Complaint Procedures

Your complaints or problems are of concern to us. It is our purpose to provide you an effective and acceptable means of bringing your problems and complaints concerning your well-being while at work to our attention. For your benefit, we have established a Complaint Procedure to be used by all employees.

It will always be our policy to let employees tell their side of the story and to give full consideration to their problem or complaint. There will be no discrimination against anyone for presenting a complaint or discussing a problem with supervisors or anyone in our management. If you follow these steps, you will not be criticized or penalized in any way.

Please remember that the only purpose of our complaint procedure is to give you, our fellow employees, and the company an opportunity to clear up any problems or complaints of any kind. *In order for this open door complaint policy to work, you must want it to work and use it. It's for your benefit.* Our door is always open. When things go wrong, we would like to have the chance to fix them if we can.

Steps to Take:

STEP 1: If you have a complaint to make or if you feel that any action by the company or supervisor is unjust, talk to your supervisor about it. Your supervisor knows more about you and your job than any other member of management and is in the best position to handle your complaint properly and quickly. Be sure to talk with your supervisor within five workdays of when the incident occurred. Your supervisor will make every effort to satisfy your problem or complaint within three working days. If the problem or complaint you have is with your supervisor you may omit Step 1 and go to Step 2.

STEP 2: If you feel your supervisor has not answered your complaint to your satisfaction, you should refer your problem in writing

to your department manager within five days of receiving your supervisor's response. Your department manager will provide you with an answer within five working days of your presentation.

STEP 3: If you feel your department manager has not answered your complaint to your satisfaction, you will have an additional five days to request an appointment for a personal interview with the President, who will discuss the problem with you and review all aspect thoroughly. The President will respond within five days of the personal interview. Because the responsibility for the operation of the association is the President's, any decision rendered in a problem situation by the President will be final and binding.

Alcohol/Drug Policies

No persons in our employ shall work or report to work while under the influence of alcohol, illegal drugs, or drugs that would affect their ability to perform their job in a safe and efficient manner. No employees shall consume or have in their possession alcoholic beverages or illegal drugs on company premises. To do so would create a bad public image and possible safety hazard and is a prime cause for dismissal.

Carolina Custom Converting reserves the right to randomly select a percentage of all employees for a battery of illegal drug testing. Any drug/alcohol testing shall be performed at a medical facility/laboratory designated by the company. The company will not accept test results from any facility other than the one designated by the company. Test results indicating positive use of drugs or alcohol will result in disciplinary action up to and including discharge.

Health and Safety

It is the intention of our company to furnish all employees with a safe and healthy place to work. Yet no matter how safe working conditions may be, carelessness or horseplay on your part can make

you or your coworker a casualty. You should know and follow all commonsense and posted safety and fire regulations and utilize safety equipment properly to protect you and your fellow employees from inconvenience or serious injury. Use of safety glasses and safety shoes, where applicable, is mandatory.

Employees are responsible for following all safety rules for using safety equipment furnished by the company. It is your duty to report any unsafe conditions and defective working tools or equipment to your supervisor. Any and all accidents, no matter how small, should be immediately reported to your supervisor.

Failure to adhere to established safety practices will result in disciplinary action, up to and including dismissal.

Housekeeping and Cleanliness

By keeping our plant clean, we get better quality work and make everyone a little happier. Everyone has to do his or her part. We expect employees to spend any time they have available from production work polishing up their machines and the areas around them. In certain departments and on some machines, daily cleanup is required, and in others a weekly cleanup is sufficient. Ask your supervisor for help regarding a cleanup schedule.

Good housekeeping promotes good workmanship and safety. Keep your equipment in good order, and practice good housekeeping.

Business Ethics

The company's reputation and the trust and confidence of those with whom we deal are among our most vital corporate resources. Our company is committed to conducting its affairs in a uniformly ethical manner and pursuant to a standard of fundamental honesty and fair dealing. This standard requires adherence to all laws, regulations, and normal ethical practices that apply to the company's business activities.

Areas for potential conflict: Employees have a responsibility to work in the best interests of the company and to avoid situations and actions that may be or that create the appearance of being in conflict with the company's objectives and principles. While it is not possible to list every circumstance that may lead to a conflict of interest the following are examples of employee activities that must be avoided:

- ❖ Holding substantial financial interest in any enterprise with which the company has business dealings (e.g. competitors, suppliers, and customers). (Interest of less than \$10,000 or that, regardless of value amount to less than 1 percent of an enterprise, are not considered to be substantial.)

- ❖ Accepting, directly or indirectly, from any vendor or supplier of services, any vacations, cash payment (other than reimbursement of reasonable out of pocket expenses), service, loan (except from banks or other financial institutions), or discount (except those offered to employees of the company) by an employee or any member of an employee's immediate family.

- ❖ Accepting gifts from any vendor or supplier of materials or services.

In addition to these prohibitions, there are borderline situations that give rise to possible conflicts of interest. The following serves as a guide to the types of activities that should be fully reported to the company:

- ❖ Acting as a director, officer, or employee of any business or other institution with which the company has a competitive or significant business relationship. The employee should report to his or her supervisor any situation in which member of the employee's immediate household hold positions that are likely to cause the employee to have a conflict between the interests of the company and another institution.

- ❖ Competing with the company for the purchase or sale of any kind of property (tangible or intangible) or diverting a business opportunity from the company for the employee's personal interest.
- ❖ Using company assets (e.g., funds, facilities, equipment, phones, know-how, or personnel) for the benefit of other business or personal interests.
- ❖ Engaging in outside activities that reduce the employee's impartiality or judgment or that may interfere with or adversely affect the employee's ability to perform company work.

Honoraria: From time to time, employees may be asked to represent the company before an outside group or trade association. In such instances, employees may accept expense reimbursement but should decline any fees offered. If an honorarium cannot be declined, the employee should request that the granting organization contribute the honorarium to a charity or some other nonprofit agency. If the granting organization will not comply with this request the employee must donate the money to a charity or some other nonprofit agency.

Approvals and Advice: Employees are encouraged to discuss issues and concerns pertaining to the company's commitment to ethical business practices with their supervisors. All managers shall be responsible for the enforcement of compliance with this policy. Employees must obtain approval from their supervisor, the appropriate area or functional vice president, and an unauthorized representative from the Legal Department before undertaking any of the activities identified as possible conflicts of interest in this business' ethics policy.

EXHIBIT F
TO AFFIDAVIT OF JOHN GANDIS

Jones, Brigid M.

From: John Gandis <john@ccc-films.com>
Sent: Monday, December 10, 2012 11:45 AM
To: davewilsonsr@charter.net
Subject: FW: Term Sheet
Attachments: ATI_2541536_2_CCC Term Sheet.DOCX

Dave, the attached terms are being sent today to your lawyer. Let us know if you want to proceed on this basis. Your email proposal (from Andy A.) said that you "are prepared to move as quickly as possible", and we are interested in that as well as reflected in our terms. - John

December 9, 2012

1. This is a non-binding term sheet, and not an offer, as the parties will not be contractually bound as to the subject matter hereof unless and until they sign definitive conveyance documentation.
2. John Gandis and Andrea Comeau-Shirley (the "Sellers") will sell all of their interests in and to Carolina Custom Converting, LLC ("CCC"), including all equity and all notes and other sums owed to them or their affiliates (the "Sellers' CCC Interests"), to Dave Wilson (the "Buyer").
3. The purchase price for the Sellers' CCC Interests shall be \$500,000, in cash, payable by Buyer at the closing of the transaction (the "Closing"), which will occur on December 20, 2012.
4. The transfer documentation will contain the following (and no other) representations by the Sellers: representations as to their capacity; no conflict of the transaction with agreements related to the Sellers, or CCC; organization and good standing of CCC and ZOi Films, LLC ("ZOi"); good title and no liens as to Sellers' CCC Interests; accuracy of a list of assets of CCC and ZOi, and good title to such assets; no liens on such assets except for existing, specified 3rd party obligations of CCC; accuracy of a list of debts and liabilities of CCC and ZOi; and sole ownership by CCC of the all of the equity of ZOi. No representations will be made as to the collectibility of accounts receivables, saleability or condition of inventory, condition of equipment, or claims or liabilities that are unknown. The representations shall be made on a several, not joint basis, by the Sellers, and shall survive the Closing for a period of 180 days.
5. CCC will not make any payments to the Sellers during the period ending at Closing.
6. John Gandis will permit CCC to occupy the current premises for a period of 60 days after Closing. Rent will be prepaid at Closing, in the amount of \$12,000.
7. Sellers will agree, for themselves and their affiliates, to not call upon or solicit any customers of CCC or ZOi (who have been customers of CCC or ZOi at any time during 2012), for a period of 60 days subsequent to Closing.
8. Between now and Closing, all activities associated with the current litigation will be suspended.
9. The Closing documents will include general mutual releases between and among the parties (and also with CCC and ZOi), including without limitation, all claims made in the current litigation, which shall be then dismissed with prejudice.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,

Civil Action No. 2012-CP-23-02887

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

**AFFIDAVIT OF ANDREA COMEAU-
SHIRLEY**

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

PERSONALLY APPEARED before me Andrea Comeau-Shirley who, first being duly sworn, deposes and state as follows:

1. I am a resident of Cobb County, Georgia.
2. I am over the age of eighteen, and have personal knowledge of the facts stated herein.
3. This affidavit is offered background purposes and to provide context and explanation to a number of snippets of my e-mails that are cited in Wilson's Memorandum in Support of Motion for Partial Summary Judgment ("WM").
4. I am a minority shareholder/member of Carolina Custom Converting, LLC ("CCC" or the "Company").

5. I first became acquainted with CCC when my client and friend, Cliff Gandis, asked me to help his son, John Gandis, with a business that he had recently started. Of course, that business was CCC.
6. My rôle at CCC was to provide tax preparation services and strategic business advisory services to the Company and its Manager, John Gandis. For that service, I received a fixed equity interest. I was later promised additional equity as the scope of services expanded.
7. In addition to that role, as it pertains to John Gandis, I also work for him and his wife individually. I handle the income tax work for them and for his other businesses and generally advise him on personal and tax matters.
8. Many of the e-mails that Wilson has cited; and taken out of context, address communications between Gandis and me in my rôle as an advisor to him individually.
9. Contrary to the assertion of counsel for Wilson, we did not try to force Wilson out of the Company. Wilson was the person in charge of purchasing and sales, and purchasing and sales is how the Company makes money. I understood that he was critical to the Company's success.
10. My problem with Wilson, and I want to stress the word "my" because it was my personal problem, was that Wilson was not tuned into the cash flow side of the business. We were all equal members but he always demanded to receive monthly income from the Company regardless of whether we could afford it; moreover, during this time the other members were not receiving the same monthly draws. In short, he was unwilling to act like a co-owner of a company; instead he acted like either the sole owner or as an

employee and demanded that the other members treat him with priority as it related to his pay and benefits but expected the benefits of ownership when it suited him.

11. I firmly reject Counsel for Wilson's argument that we tried to squeeze Wilson out. Below are but a few examples of my own words from Wilson's own exhibit book that refute his counsel's argument.

- a. WEB, Ex. 41; November 9, 2011 e-mail from me to Gandis: "I know Dave wants to be a partner – and I support him in that goal. . . . If [Dave] disagrees about the risk to our business and our credit rating if we continue the old path [i.e., buying film without regard to whether we have a corresponding customer need for that film] – then we need to find a way to make Dave an investor/owner that does not have the right to veto how cash is spent."
- b. WEB, Ex. 52; January 5, 2012 e-mail from me to Gandis: "We need to remember that we don't care if he is a partner or not. . . . only he cares, and even then, he really only cares about getting his cash in front of vendors and employees – and we have told him "NO MORE! Never again. We are going to get even with you from a distribution perspective, and then we are going to stay even with you on a go forward basis."

Taxation Issues of an LLC and Taxation Issues of this LLC

12. Wilson and Gandis decided to operate under the LLC structure before I became involved in the Company.

13. I want to address the tax side of the Company that I believe created all of the problems that ultimately led to Wilson leaving. I am going to generally address a concept known

as phantom income and specifically address the phantom income of CCC for the 2010 tax year.

14. Pass through entities are business structures wherein the operating results pass-through to each owner's personal tax return. These entities include the various partnership structures (LP, GP, LLP, etc.), and "S" Corporations and LLCs that elect to be taxed as either a partnership or as an S corporation.
15. Pass through entities often create "phantom income."
16. Phantom income is an accounting term given to taxable income reported to the Internal Revenue Service (by pass-through entities) that hasn't been distributed to the members. It's called "phantom" income because it exists on paper. Its taxable income and you pay tax on it, even though there is no cash that comes to you.
17. Phantom income arises in cases where the LLC needs operating capital to expand, or to purchase inventory. When the LLC uses income to do these things, the owners are still required to pay taxes on that income even though they did not receive the income.
18. Carolina Custom Converting reported phantom income to its owners in 2010 predominantly as a result of a significant investment in inventory. Specifically the company used more than \$850,000 of its profits to acquire inventory as of year-end 2010.
19. Ironically, it was Wilson who was solely responsible for the film purchasing activities. It was also Wilson, and he alone, that failed to liquidate film stocks during the 2010 film shortage. Worse, at the end of the 2010 year, he built up the company's film stocks in excess of typical levels (after he had been counseled on appropriate "safe harbor" levels for the various film types).

20. In planning for tax obligations, Wilson had been advised that a reduction of approximately 15% in inventory levels should have generated available cash for distribution to cover the tax liability associated with the phantom income. As this matter impacted all the owners, the group met numerous times during 2011 to discuss inventory reduction planning. Wilson failed to execute the agreed-upon plan causing all members, not just himself, to receive a Schedule K-1 with significant phantom taxable income.

Response to Various Assertions found in Wilson's Memorandum

21. On page 7 of WM, he cites Exhibit 9 to Wilson's Exhibit Book ("WEB") for the proposition that the Company knew that Wilson continued to transact business through his former company, Eastern Film Solutions ("EFS") in 2009. Specifically, the assertion is that my January 18, 2010 statement that in "2010 . . . [we would be] completing Dave's transition towards full-time CCC" means that the Company knew Wilson had been conducting side deals in 2009 as early as January 18, 2010. That is an incorrect statement. My reference to transitioning Dave to full-time CCC was a reference to transitioning Dave from doing representative work for Dew-Tex. The latter involved work that all knew about and serves as no part of the Company's claim against Wilson.

22. On page 7 of WM, he cites WEB Ex. 9, a June 29, 2010 email from me regarding Wilson's having "had two jobs [one for CCC and the other for Dew-Tex] and . . . some wind down activity from [EFS] that muddies [his] tax world in 2009." This citation is made for the same reasons stated in paragraph 12, above. The import of the statement attributed to this quote is incorrect. My reference to EFS wind down concerns a single transaction regarding left over film held by EFS that was sold to CCC in early 2009.

23. On page 8 of WM, he cites WEB Ex. 12, a proposed job description for a CCC employee.

The WM argues that the job description shows that a CCC employee was providing work for DecoTex. That is an incorrect assertion. The job description was a proposed job description that I generated in an effort to have Gandis hire more accounting related employees. This e-mail was sent in my capacity as both a personal advisor to Gandis, and as a business consultant to the Manager of CCC. At this time, I knew that Gandis was having trouble keeping up with DecoTex accounting functions and proposed that the CCC employee could restart working for DecoTex—she had previously done this type of work a number of years ago. This never happened, and had it happened it was understood that DecoTex would pay her for her work.

24. On Page 8 of WM, he cites WEB 13, a March 15, 2011 e-mail from me where I am providing more detail regarding my proposed accounting hires. The WM argues that this e-mail shows that a CCC employee was working for DecoTex. That is an incorrect statement; again, this was a proposal made in the context of hiring more accounting staff. If you begin reading the block quote found on page 8 of the WM, but begin two sentences earlier, the context is clear: “The accounting department needs the RIGHT SKILL SET and the RIGHT HEAD COUNT. Based on our current level (no growth) – I think it’s a two person department . . . or two people plus Joy 2.5. I want to get Joy back onto M-Tech” Wilson’s selective quotation of this e-mail is very misleading. Moreover, this was a suggestion, as a full reading of the e-mail makes clear.

25. On page 8 of WM, he cites WEB Ex. 16, a March 16, 2011 c-mail from me that addresses more of my proposal to hire experienced accounting staff and to make Joy Whitten a part-time employee of CCC. The selective block quote appears to suggest that there is a

plan to hide Joy's proposed involvement in Decotex if she were continuing as a full time CCC employee. This idea is the complete opposite of my proposal. In WEB Ex. 16 I write, "If we are going to be a one person office then I want that person to be someone that grew up in the accounting area and is proficient in all the new office tools and technology." My proposal reduces or eliminates Joy's involvement in the CCC accounting function and these suggestions address how John can continue to work with Joy if the CCC staffing proposal is adopted. I understand that Gandis and Wilson rejected this staffing proposal due to the anticipated salary needs for the advanced skill set.

26. On pages 9-10 of WM, he cites WEB Ex. 19, an April 15, 2011 e-mail from me to Wilson and Gandis regarding the absence of tax distributions. The quotation is lifted in a manner to suggest something untoward. The full e-mail explains my reaction regarding Wilson's request for a tax distribution. The context is the monthly draws he has been receiving and a future tax bill.

- a. I write that, "[s]tarting in May . . . we are going to increase the monthly distribution from \$6.8K to \$10k each month This new check is about the same that you used to receive and may actually be more if you were properly setting aside 40% of those payments for taxes."
- b. Wilson responded with: "Thanks. Please do not do anything with my tax/distribution payments until I return from Vacation in a week."
- c. I responded: "I want to make certain that there is no confusion – there are NO TAX DISTRIBUTUION PAYMENTS for you or anyone else at this time. We are switching the monthly payments in May .. because we need a better handle on the

cash flows and I don't [want] to continue the situation where we are uneven [in distributions] until we get a better handle on our inventory reduction plan.”

- i. The inventory reduction plan meant turning the excess inventory that Wilson purchased into cash so that the Company would have money. Wilson never had a grasp on the finances of the Company and its lack of cash caused by his constant film purchases.
- ii. My capital letter response indicated my frustration in this regard as it was Mr. Wilson's speculative purchasing activity that drained the company's available cash.

27. On pages 10-11 of WM, he cites WEB Ex. 20-21, e-mails from March 11, 2011 and March 12, 2011. He cites these e-mail exchanges for the proposition that we were seeking to “intercept” Wilson's e-mails. That assertion is wrong and the e-mails he cites confirm this. The Company was creating an archive system. Page two of Ex. 20 lists a number of CCC e-mail address that were being included in the archive system. These are e-mail addresses that deal with the sales and purchasing side of the business. Because Wilson was in charge of that side of the Company, his e-mail address was included in the archive system.

28. It is also important to note that one of the reasons for archiving the e-mail was to protect the business. As I stated in my March 12, 2011 e-mail (WEB Ex. 21): “reviewing all of the emails, even the internet postings . . . [helps to] ensure that our employees are not sharing confidential data, sexually harassing one another or posting negative comments about our competitors on the internet that could lead to the company being sued.”

a. Counsel for Wilson's assertion that Wilson did not know this was going on is incredible; the IT company that did this work travelled to the Greenville office to do this; the Greenville office had two employees: Wilson and Bill Shaw. When the IT company's employee was at the office, he spoke with Wilson, and Wilson refused to allow him to work on one of the company's computers. Moreover, CCC has an employee handbook that provides that there is no privacy when it comes to corporate e-mail.

29. On page 11 of WM, he cites WEB Ex. 22, an e-mail from me to Gandis dated March 10, 2011. Counsel for Wilson takes issue with my statement that, "[t]he same stuff that protects the business ALSO helps protect the other goals." He does not understand that statement. During Christmas of 2010, Wilson was caught doing a side deal. Accordingly, one of the positive benefits of creating the archive system was in addition to its protection of the business regarding liability and sales activity, it also allowed the owners to protect themselves from Wilson cheating the business via side deals: "[t]he same stuff that protects the business ALSO protects the other goals [of making sure we are not ruined by Wilson doing side deals]."

30. On page 11, fn.4, of WM, counsel for Wilson baldly states that Defendants attempted to intercept text messages and data from Wilson's Blackberry in late 2011. He cites no evidence for this proposition because there is none. That statement is a fabrication. In that same footnote, counsel for Wilson alleges that the changing of EFS's address in November 2011 was a violation of federal law but fails to acknowledge that Wilson contributed EFS into CCC three years previously, that CCC had been paying bills issued under the EFS name, and that EFS should not have even existed in 2011. According to

the South Carolina Secretary of State's website, EFS has not been in existence since 2008¹.

31. On pages 11-12 of WM, he cites WEB Ex. 25, this a September 19, 2011 e-mail, owned by CCC, between Wilson and his wife, and subsequent commentary from me and Gandis. This e-mail is cited in an effort to craft a narrative that Wilson was being squeezed out. I reject that conclusion. My general reaction to this e-mail centered on Wilson's large tax liability and the consternation that was causing in his family. For example, I write that, "it is possible that he never mentioned income taxes to [his wife] until just now and this is . . . frustrating [her] because you can look at our balance sheet and clearly tell there is no cash there for an October 15th distribution." I also write that, "he gave himself a raise this year – and most likely didn't send in any additional money for taxes. This gave her a false sense of liquid cash and a false standard of living." I also note, that if "he won't be honest with you [Gandis] that we are suffering the consequences of his prideful arrogance and his unwillingness to team together for planning [this is a reference to his unchecked film buying and his unwillingness to implement the inventory reduction planning to address the Company's cash flow problems] . . . what makes you think he would tell [his wife] that he is anything other than a story in which he is the hapless victim of you and me?"

32. As for the quotations regarding restructuring, some context is in order. Back in the spring of 2011, Gandis came to me with a concern that Wilson may not have remitted his 2010 tax payments to the IRS as Wilson was complaining to John about his ability to fund that tax liability and he had requested that the company obtain a sufficient working capital

¹ It is not logical to assume that the dissolution is a simply a result of consistent "neglect" by Wilson as he filed a Change of Agent form with the Secretary of State for EFS in June 2008.

line so that capacity would be there to fund a tax distribution for him. The company resumed its conversations with various banks, including Bank of America, in the spring. Some of our discussions from the spring 2011 discussions are found at WEB Ex. 23, and set forth below. During those discussions, Gandis expressed concern that Wilson's status as a member, and the phantom income and tax bills associated with membership, were causing Wilson financial problems that could ultimately harm the Company. To that end, as his personal advisor, I was asked to try and figure out a way to fix this problem: hence the structure discussion. Some of my comments regarding these spring 2011 discussions are below. The context for these discussions was a planned April 2011 meeting between me and Wilson to discuss any concerns he had about his status in the Company and his finances.

He keeps wishing that cash would fall from the sky. . . . but we have to BUILD the business to support additional cash. . . . Upon reflection, your absence may give him the opportunity to share with me his concerns about cash flow results that he hasn't yet been able to express to you. OR rather, that he merely chooses to say to you, why are we not taking the risk of borrowing to fund our lifestyles? I plan to explain to him that the role of an owner (even in an LLC) involves financing his business, mostly through deferred compensation. That an owner's eye is on the upside.

I would then propose to him that his actions (e.g. loans from company) seems to indicate that he would really rather be in a structure where he receives good monthly salary and he earns a regular bonus. This alternative structure gives him (a) more cash now and (b) preserves some of his participation [in] the financial results. It also means that he would convert to a situation where his tax obligation matches his cash flow situation.

If we are going to talk about what it means to be an owner, I think it is important that he not feel TRAPPED by his LLC and realize that . . . at this point in the game . . . we can talk restructure of his participation in a way that should be a win-win.

As my words indicate, I was planning to talk to Wilson about whether he would like to become a salaried officer of the Company, with a commission incentive structure. My words also show that I was not thinking of a way to force him to leave. At this point, the company was more than 6 months into discussions related to managing/reducing its inventory levels and the volumes were continuing to rise.

33. After Wilson and I met, nothing ever came of the restructuring issue. But during this lengthy meeting Wilson expressed complaints about everyone at CCC telling me "he had ideas" (but I don't recall any positive suggestions being offered). We discussed inventory at length and went over the detail analysis I had prepared. I tried to let him lead the conversation as I understood that he requested this meeting with me. Dave waited until we were in the car for the three mile ride to the office to bring up the topic of taxes and then only discussed items like reporting the business usage for his auto. John believed that Dave needed our help to implement the inventory reduction plan (thereby alleviating the phantom income). The members met numerous times over the next months (with Bill Shaw and John Higgins) to discuss specific actions steps and strategies related to inventory reduction. At the same time we worked with Bank of America to obtain a significant working capital line of credit. Fast forward to the September 2011 timeframe. At this point, I now know that Wilson does indeed have a significant tax bill that is weighing on him. Hence the following words: "This is probably your opportunity to make a RESTRUCTURING offer to Dave under which you restructure your relationship so that he gives up his equity ownership and converts to a structure where he is only taxed on what he receives!" Again, all of this was tax driven, and it was intended to *KEEP* Wilson at CCC, not force him out. Hence the following words: "you can put

him into a deal that compensates him for his time and energy – maybe more like a regional sales manager is paid – so he gets paid on his sales and also on the sales of the team.”

34. On page 12 of WM, he cites a block quote from WEB Ex. 27, a September 20, 2011 e-mail regarding the idea of getting Wilson into a position that is a win-win for both sides. I stand completely by the block quote, for it is clear that what I am proposing was a way to **KEEP** Wilson in the Company. Because it does not support counsel for Wilson’s position, he omits some of the lead in language to that block quote: “I guess it is nice that we have plenty of time to talk this through . . . (This is still round #1 – and it is clear that you need to decide on a deal that is fair for you and for Dave) . . . I would suggest a letter . . . it also lets him show it to [his wife] who can agree with him on the best approach.”
35. On page 13 of WM, he continues to cite to the same WEB Ex. 27. In this e-mail, as Gandis’s personal advisor, Gandis and I list a host of ideas to think about if he and Wilson agree to this new structure. These ideas make very clear that this was not a squeeze out: “1. CCC will pay Dave quarterly distributions to meet the portion of the tax requirement for 2010 and 2011 . . . 2. Dave will be put on a monthly salary . . . 3. Dave will sign over his shares to me so that he is only taxed on what he receives from CCC monthly . . . 4. Dave would stay on to sell at a salary that would have a base plus bonus structure. Dave would also participate in some of the profit provided by the sales rep’s . . . 5. If the company were ever to sell – Dave would have an opportunity to participate in the profits based solely upon the percentage of the business that he was in charge of at the time of the sale. . . 6. If we ever found that Dave was “cheating” - or selling any type of

film? Laminate? Paper, film, or foil – then his agreement with CCC would cease immediately 7. Dave’s responsibility would be to train, or work with a purchasing person. . . . Last – I know you are going to think I am being petty about this . . . but . . . if Dave agrees not to be an owner, then we need to FORCE him to start acting like a sales manager . . . that means he prepares sales forecast reports, he gives reporting to the company . . . and most importantly, he would need to be willing to work with other departments on cooperative basis and . . . if he needs information from the financial records, he puts in a request and receives a report . . . as an EMPLOYEE would do!”

36. Finally, I note that if Wilson is in this new positions, he:

cannot continue to have access to the financial records – not because he doesn’t need any of the information – but because he needs to be able to ARTICULATE what information is needed and we need . . . as a company . . . to know what information is needed by the sales team on a daily, weekly and monthly basis. You have to have this sharing of understanding in place if you are going to protect the company so that . . . in a bad period . . . if Dave just quit on you . . . your people would be able to produce the daily, weekly and monthly reports for the rest of the sales group and no one would say . . . we don’t know where Dave got that from . . .

37. On page 13 of WM, counsel for Wilson selectively quotes from the above e-mail discussion in an effort to portray the discussion as something that it was not. First, the reference to terminating Wilson if he was found to be cheating was simply the reality of the situation. Gandis caught him cheating in Christmas 2010 and this was fresh in our memory. Secondly, the part about the access to the financial records, viewed in its full context, was merely a reflection of the fact that Wilson’s inability to articulate business information was hampering the company and that sharing of information is critical; I was encouraging a reporting structure typical of small business that would expand their perspectives beyond

the sole entrepreneurial mode of operation. As noted in WEB Ex 26, Bank of America has informed the company that “they would really like to make this loan but they need to see what we do through the end of the year.” At this point the company had missed its sales budget for several consecutive months and we needed to find a way to refocus Dave on growing gross margins and sales.

38. On page 13 of WM, first full paragraph, counsel for Wilson attributes a quote to me but does not provide any citation to support that quote; he then baldly asserts a valuation, again without citation. I know of no one who has asserted that they have valued this company for this litigation.
39. On page 13 of WM, he quotes from WEB Ex. 28, a September 22, 2011 e-mail discussing Wilson’s request regarding taxes. I am irritated with Wilson’s tax request because he is cavalierly suggesting that he needs to hear from us “what the game plan is for cash flow and taxes” despite months of meetings related to reducing our inventory levels so as to free up cash. Counsel for Wilson argues that my discussion of the need to reduce our inventory levels in an effort to free up cash for everyone is somehow an effort to squeeze Wilson out. I completely reject his argument. The fact is that we had excess inventory and because of that excess inventory we didn’t have any money for a distribution. (See Wilson Exhibit Book, Ex. 26, e-mail dated Sept. 6, 2011 (“Well – the good news is that we have a bunch of money available in our inventory (specifically excess inventory); Ex. 37, e-mail dated October 31, 2011 (“As you know, we started saving money this spring so we could make a tax distribution this fall, but our money was spent on film.”)). The fact is also that in more than 12 months of

discussions there had been little forward momentum on managing inventory and execution on the agreed upon action steps for selling the film that everyone in the planning meetings had agreed was excess/questionable.

40. On page 14 of WM, he cites to WEB Ex. 29, an October 13, 2011 e-mail discussion between me and Gandis. Counsel for Wilson asserts that this e-mail was from me and to keep “feeding Gandis ideas about potential restructuring for Dave.” He asserts that this e-mail was more efforts to squeeze out Wilson. I reject as fantasy this assertion. The context behind this e-mail was Gandis called me after a meeting with Wilson that same day and asked me if there was a way to “wipe out” Wilson’s significant tax liability. I explained that I didn’t know whether the full tax liability could be wiped out but that I was aware of a sophisticated and complex tax planning idea that could reduce his tax bill to the lowest level possible. I send him a summary of the necessary steps. Several days later (as the email states) Gandis asked, “Is this something that I could forward directly to Dave?” I responded, “No problem at all.” This was not some covert scheme. We were working together to try and fix a tax problem that our partner incurred, and had no ready means of fixing. In my reply to Gandis, I supplemented the original action step listing so as to create the listing I intend to be delivered to Wilson (October 13, 2011 e-mail, incorporated herein and attached as *Exhibit A*). You will note that the plan did not push Dave out of the company but restructured his participation. “This helps to build the company and keeps Dave participation at a broader level (although he now shares in gross income instead of net income.)”

41. After Gandis forwarded Ex. 29 to Wilson, that act set in motion a sequence of events that we did not expect. Moreover, I have just learned that Wilson did not ask John in their meeting to find out if I could assist him with his personal tax situation. As the assistance was not requested, I believe that Wilson was offended by us trying to help him out with his tax problems; that he took this as an insult to his pride. It also does not help that Gandis forwarded the wrong email to Wilson and therefore the listing that Wilson received failed to include the language about continued participation in-gross income.

42. In WEB Ex. 30, Wilson asked for his capital account balances, but there is no evidence that I reply to this inquiry or exploded. Instead I reply solely to Gandis to ask him whether Wilson received the tax planning idea. Gandis responded that yes, he had gotten the idea but had responded that, "there was no way that it was a 'good deal' for him because his capital account was somewhere around \$500k and this would be the minimum "buy out" that he could accept." I then responded "NO he doesn't understand." I meant that he doesn't understand the case law that would permit the minimization of his tax liability and the next sentences of the email explains how the case law works. It was important to sustaining the tax position that Dave agree that the company has the right to "CALL his loan . . . and then he either comes up with \$123K or he forfeits his membership interest." This fact was to support a tax filing position that a subsequent loss allocation is properly reflecting his economic interest when taking into account all agreements that he has with the company.

43. As to my response: in my mind, I was working for *no* pay to try and explain a complex tax mechanism to erase tax debt from years past, and Wilson was ungrateful. I was frustrated by this and by the fact that the cash deficiency was a result of Wilson's failure to execute the inventory reduction plan. Importantly, he didn't understand that in order to remove the \$200,000 tax liability from his own return, those taxes were not going to evaporate but were to be shifted to Gandis who would end up the financial burden that had been plaguing Wilson. Wilson had been asking us to help him live beyond his and the Company's means by providing him with a monthly draw that none of us were receiving; and he wasn't saving any of that money for taxes despite the fact that the express purpose for increasing his distribution was so he could make tax remittances. Now he had a large tax bill, and he was making it our problem. The comment simply explains how the tax plan was designed to try and meet the IRS' reasonable basis threshold as this tax strategy was both aggressive and sophisticated.

44. As to the content of counsel for Wilson's argument, in the first full paragraph of WM p.14, that my e-mail was a response to Wilson's act of asking "for a precise amount of his capital account," that is a complete fabrication. As discussed above, this was a response to our efforts to fix his tax liability.

45. On page 14 of WM, he cites WEB Ex. 31, an October 21, 2011 e-mail discussion between Gandis and myself shortly after Wilson has, essentially, threatened to quit CCC and/or and form his own competing company after forcing CCC to close. (October 17, 2011 e-mail incorporated herein and attached as *Exhibit B*). This email does not suggest that Wilson is not a member, but wonders how the

company could protect its survival. In the days between October 17th and the 21st, Wilson has bellowed several brutish positions to John in which he uses a forced closing of the company as his negotiating strength. In an attempt to diffuse Wilson's agitation, I spoke with Wilson's tax accountant (Ray Harris) to share with him the specific case law and theory that "wiped out" his tax liability. My notes related to this call include a remark by his CPA to the effect: "I am not certain that his ego is going to understand that you are trying to help him out. He wants his cake and to eat it too. He wants the upside of ownership but all the security of being an employee." When I ask Mr. Harris if he can help with this situation he remarks, "I have worked Dave so far up the flag pole I don't know that I will be able to bring him down."

46. On page 14 of WM, he cites WEB Ex. 36, an October 31, 2011 e-mail addressing Wilson's request for that month's check in which he is trying to recharacterize his loans. The context behind this e-mail is that Wilson and Gandis have engaged in a discussion about Wilson's future status. Specifically, they are discussing whether Wilson will (1) remain as a full member, (2) convert to a salaried officer, or (3) membership modification in order to eliminate Wilson's tax bill. It is important to note that all three of those options would have resulted in Wilson staying with the Company and still participating in the company's growth (modified equity rights). My comment regarding the fact he really needs that cash was in response to Gandis telling me that Wilson told him he needed the cash. My comment regarding him not spending the next three weeks debating the issue was my hope that, as a Company, we could quickly get this episode behind us and

get back to the business. In addition, I had explained that the tax planning idea needed to be fully analyzed by the legal team and that it was important that this work begin sooner than later in the event that the results were not as anticipated. I had estimated that the legal analysis would likely exceed \$15,000 and had convinced John that the company should bear those costs even though this was a planning idea intended to satisfy (what I understood to be) Wilson's request. In addition there is an IRS imposed deadline for executing the tax planning idea and there was very little time left to get all the steps accomplished properly.

47. On page 14 of WM, counsel for Wilson asserts without citation that I stated, later on the same day that Wilson really wanted the status quo and that Wilson had yet to be informed he may not receive a check in January. I do not understand this argument. The e-mail was from October 31.
48. On page 15 of WM, he cites WEB Ex. 37, an October 31, 2011 email from me discussing our current cash position in response to cash forecast prepared by Wilson which omits significant business obligations that require cash. I stand by everything in this e-mail. Counsel for Wilson quotes heavily from it in an effort to portray that something is amiss, but I do not read it the same way. Some context is helpful. At this time, Wilson was ahead of Gandis and me in distributions to the tune of over \$100,000. That is why I write, "I don't believe it is in our best interest not to make the 2011 even up prior to year end." By that I mean, that while it is only fair that we get as much as Wilson *had already received*, the company could not afford to completely fix the situation in the next two months. I go on to note that we should have had more funds available. "As

you know, we started saving money this spring so we could make a tax distribution this fall, but our money was spent on film.” It is important to note that Wilson was in charge of film purchases and he spent the money we had been saving for a tax distribution on film. Finally, I write that “[i]t will be difficult to convince Dave that we don’t have the funds to give him a \$12K loan so long as we are sitting there with a fat balance of money that really is your money (and to a much smaller extent, my money).” To be clear, what I am saying is that it is not fair to continue to prefer Wilson over Gandis and me. If we are all members, why are we continuing to not act that way? I don’t see anything wrong with this line of discussion. I would imagine that all business owners would feel this way. This is certainly not evidence of an attempt to push Wilson out: demanding equal treatment. I am also pointing out that the company has legal obligations to its vendors and employees that need to take precedence over distributions or loans to members.

49. On page 16 of WM, he cites Web Ex. 38, an October 31, 2011 e-mail from me to Gandis. I stand by this e-mail. The block quote succinctly states the problem we were having. Wilson was refusing to act like an equal member. My lead in to that e-mail expresses my frustration: “This Halloween I have seen the scariest creature of all – partner with his head in the sand living in fantasy land ----- MnhwaaaHAHaaah . . .”
50. In that same e-mail, I continue to express the same concerns, this time in more concrete fashion: “If he wants option #1 [i.e., staying on as a full member] that agreement says, starting in 2012, I Dave Wilson will not receive a distribution

check unless we are all getting checks and I also agree that I will not receive an advance from the company unless all our vendor bills are being paid on a timely basis. He needs to understand that we already cannot afford to make a 12K loan to Dave – This week we didn't pay Mitsubishi today because we didn't have enough money for all our vendors ... we really cannot keep on paying our vendors late and yet ...pay Dave – If he wants a guaranteed check then he needs to be an employee!”

51. No one was forcing Wilson out.

52. On page 16 of WM, counsel for Wilson argues that “I lobbied Defendant Gandis not to pay Dave Wilson and prepared cash flow documents painting a dire picture.” That is not true. Wilson relies on WEB Ex. 39 for this argument. Ex. 39 is an e-mail from Nov. 6, 2011 wherein I provide an overview of the finances of the Company on a year by year basis. In this e-mail I describe how the company operated and where its cash went with the stated purpose “before we can decide what we might do differently going forward ..I would suggest that we start by looking at the PAST and seeing what we would have done differently there...so as to generate cash for owners.” I have spent years recommending sound business practices, including paying vendors timely and managing inventory on a just-in-time basis (where possible). In this email I outline five critical steps that should enable the company to generate cash at a level where both taxes are covered and the company would be able to *begin paying salaries to members*. I have consistently lobbied that CCC take care of its employees and its suppliers while serving its customers and that owners should be last in the order

of priority. I believe that when owners take care of these groups of people, they build loyalty and the company prospers (which then takes care of the owners).

53. On page 16 of WM, counsel for Wilson also argues that my e-mails were somehow manipulative. To support that argument, he cites WEB Ex. 40-41. Exhibit 40 is a November 9, 2011 e-mail from me to Gandis. In that e-mail I am acting as Gandis' personal advisor and as a member, and I am essentially arguing against Gandis' abdicating his 51% vote. I explain that I had accepted an equity position only after having both members confirm for me that the voting arrangement was 51% (and not unanimity). It was clear to me that Wilson was essentially saying to John that the only way Wilson was not going to force a dissolution of CCC would be if Gandis agreed to change the voting to give Wilson veto rights. I also advocated for a formal management structure that will allow the Company to grow, with Wilson exclusively focusing on sales. Exhibit 41 is another November 9, 2011 e-mail from me to Gandis. In that e-mail I specifically state that, "I know Dave wants to be a partner – and I support him in that goal – but we really need to come to a consensus on how the business is going to be managed."

54. On page 16-17 of WM, counsel discussed my minority preference that I was to receive at an exit—that is, when the Company was sold. The context for this was that I had been providing services to CCC that was to be paid for at an exit event based on the company's value. When Wilson first² asked for the company to convert from partnership to "S" corporation status, I explained that a

² This initial conversation was either in 2009 or 2010.

deferred/carried interest could not work in an "S" corporation structure and, as such, I was against this structure unless they caught up my distributions prior to the conversion and agreed to additional shares immediately (rather than at exit). When Wilson told us that his family was going to be buying the Company, I discounted my catch up to \$100,000 and inserted the \$100,000 preference as a basis to ensure my extra work was included in the sale.³ Recording this distribution was similar to the catch up distribution that the company had on its books for other distribution payments. This was a placeholder for negotiation, and I placed it on the books because I was owed that money. Wilson's counsel argues that this action was done in "bad faith, blatant self-dealing, and based upon a lie." That statement is a fallacy.

55. On page 18 of WM, he cites WEB Ex. 49-50, these are two January 5, 2012 e-mails that address locking Wilson out of quickbooks. Counsel for Wilson cites these e-mails as if I did something wrong. What he fails to mention is the reason for the lockout. First, the lockout was only from access to sensitive accounting information; he retained the ability to engage in sales functions. Second, the reason for the lockout was because Gandis and I learned that he was in discussions with a competitor. Wilson did not tell us why he was talking to a competitor, and when he refused to disclose the parties that he was talking to or to provide copies of the information that he had shared, we became very concerned about what he might have been sharing. As it turned out, our concern was

³ Given that Wilson had stated that he believed his interest was worth at least \$700,000, this offer reflected a sale of the majority shares (and controlling vote) at much less than this amount. It doesn't appear that Wilson objected to the price so much as that I was receiving this allocation.

justified. The competitor he was talking to was FilmTech and its affiliate(s). The same FilmTech that Wilson negotiated to work for, with the express promise of taking our current customers and all the customers we had been working on over the past six months. (January 16, 2012 e-mail, incorporated herein and attached as Exhibit C).

56. On page 18 of WM, he cites WEB Ex. 51, a January 5, 2012 e-mail from me to Gandis. In the e-mail we are discussing Wilson's conduct in communicating with FilmTech. The context of this e-mail was that we didn't know what to do as this could be a great opportunity for CCC to create a vertical alignment with a supplier or it could be trouble.
57. On page 18 of WM, he cites WEB Ex. 52, this is a January 5, 2012 e-mail from me to Gandis. The basis of the e-mail was that we were waiting for Wilson to respond to the Texas-Draw offer. He had already indicated that he was going to buy us out but he still had the opportunity to force us to buy him out under those terms. This was a tense time and I hoped that Dave was going to close on his offer. Counsel for Wilson points to this e-mail for the proposition that "[s]queeze outs take time." That is an odd statement to make, considering that we were the ones SELLING to Wilson at a price that he had scoffed at. In this e-mail I stated that: "We need to remember that we don't care if he is a partner or not . . . only he cares"; "[m]y first preference is he buys us out *at the price we offered him*"; "[m]y second preference is that we keep him as a partner."
58. In Exhibit 52, counsel for Wilson also highlights the fact that we were waiting to get our answer to our dissociation question. He highlights that text as if there was

something untoward about it, but never explains the question. And for good reason. The explanation is as follows: after Wilson received my idea about eliminating his tax liability by taking a loss on his capital account, he was offended and sent an e-mail response. (Exhibit A). In that e-mail he asserted he had the ability to unilaterally dissociate and dissolve CCC. He consistently had threatened to dissociate which he insisted would force a liquidation of the company. At that time CCC had 23 employees and just prior to Christmas he told John that he would put everyone out of work in time for the holidays. We were shocked, and sought legal counsel as to whether that was an accurate statement.

59. On page 19 of WM, counsel for Wilson cites to a number of e-mails that addressed Wilson's resignation from CCC. He actually states that I offered a "cover story" pursuant to our "final plan to expel Wilson." Counsel for Wilson's spin on these statements is pure fabrication. There was no cover story. That was the story. Clayton Jennings, Esq. did not, however, call William Floyd, Esq., he called John Zamer, Esq., and told him Wilson saw no opportunity for a future together and that he was leaving. We now know that the timing of Wilson's actions, via his lawyer, coincided with the January 16, 2012 e-mail to FilmTech/McGarel wherein it appeared that both Wilson and McGarel had reached an agreement, and where Wilson told McGarel the following:

Hi Mark,

I look forward to the opportunity to join your organization. . . . Here are the points of discussion for our agreement.

4. Full time employee with draw or salary of \$8k per for month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC

to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on our qualifying over the past 3 to 6 months.

60. Counsel for Wilson also appears to take issue with my assertion that our "mission is to get the laptop, his phone and anything else CCC owns." I do not understand how this is anything other than legitimate. It is apparently missed on counsel for Wilson that at this time Wilson *had told us* he was going leave, and we had the justified belief that he may take CCC's hard earned trade secrets. That justified belief has been borne out in this case.
61. It is also important to note that a secondary concern for the computers was that they may reveal whether Wilson had been habitually unfaithful to the Company. Now that he was leaving, this was a very important thing to learn. Exhibit 53, a January 17, 2012 email, makes this exact point. "My guess is that he knows that all of the damaging information to him is on the lap top and maybe some on the phone,...." Wilson was apparently concerned about the same thing.
62. When Wilson left CCC, he took his lap tops and blackberry (CCC property) and ran erasure programs on the lap tops and removed the sim card from the blackberry before returning them to the Company.
63. On pages 20-23 of WM, counsel for Wilson addresses ZoiFilms. Some context for this subsidiary of CCC is in order. John started discussing how to save CCC immediately after Wilson's departure. Candidly, I was not interested in continuing the business model that they had developed. I demanded assurance from John that the company would not sell defective materials into the market place, make substitutions on customers order, or purchasing off-lot/surplus films from

competitors. Most importantly, I asked if him what kind of image he wanted to have in the market place as CCC's reputation had been damaged by these practices and the company had lost several significant customers in the packaging industry. I told him that the company needed to rebrand and needed a strategy to align with this new face in the market place. So we started discussions about ZOi (which means "life"). We considered lots of options, including starting a competitive company.

64. We discovered that Wilson had formed a competitor in late March; therefore, we reached out to Steve Potts on April 2, 2012 to do the same thing (WEB Ex 63). His firm provided a draft operating agreement and the SC formation documents ready for execution. These documents were never executed as we learned that we could only do new and different things in a new company. I understood this to mean new products (not simply new customers) could be sold outside of CCC. I began to develop a strategy that aligned with this understanding that would focus on renewables (including cellulose) sold to a group of prospects. I told Gandis that I would begin working with my contacts from Atlanta to address technology, logistics, supply, and angel investment for a new business model that was intended to serve a small group of customers that are heavy consumers of these products. I also believed that within weeks, the matter with Wilson would be papered and a normal process of dissociation would begin. In all my years of working with start-ups, venture capital, and private companies, it had been my experience that business people want to get back to doing business and their lawyers "work it out." I did not know that Wilson had a previously sued his

business partners and, had I known that this was his history, I would have never agreed to become a member in CCC.

65. When Wilson filed this lawsuit, he specifically asked for dissolution. When we responded to his complaint, we specifically asked for dissolution. For the entirety of 2012, I operated under the assumption that CCC was going to be dissolved. Because CCC was going to be dissolved, and because the film business was a worthwhile investment of my time, we needed to figure out what to do after CCC was dissolved. The "what to do" was originally to be ZoiFilms, but after I was advised that no one would invest in a new company while the suit with Wilson was underway, the plans to do a new company outside of CCC was abandoned. Counsel for Wilson's argument that ZoiFilms was some covert conspiracy to siphon funds from CCC is pure fantasy.
66. ZoiFilms was formed with the purpose of providing a new business entity in which to offer our sales team equity. John had agreed that the team could receive 15% of the new business margins as their compensation. At the time ZOI Films was formed, it was my expectation that the operating agreement would be drafted to include equity for the sales teams as these employees had no commissions. I believed that eventually all the accounts would be moved to ZOI so as to implement a full rebranding. I continued to expect a hasty resolution after Wilson's exit from CCC. This was not underhanded at all.
67. Operating under the assumption that CCC is going to be dissolved, in WEB Ex. 65, a July 20, 2012 e-mail from me, I discuss how I anticipated that the courts were going to handle the split up of CCC among the members: Wilson, Gandis,

and me as part of wrapping up this litigation. I also have asked Cliff to assist in creating a working capital line for the companies so that the company can continue to prosper during this period. These stated action steps align with those that I detailed above:

CCC will be aggressive in reducing its film stock between now and November 30th - with a goal to have all film sold by October 31st at the retail level and then spend November selling the residual in bulk sales to other brokers/scrap dealers. This would allow for collection of the receivables by December 31st.

As there likely won't be new film purchases (there are some open POs still to be fulfilled) - this cash should allow CCC to pay all its vendors and . . . if we do this right, have cash left over - which would be divisible amongst the owners. The first portion of cash goes to John (and Me) to catch us up to the cash that Dave has already received (via loans) from CCC. Any excess would be divided appropriately - - the court, &/or the attorneys will guide us as to how to properly settle matters with Dave so it can all be done.

68. In that same e-mail, I further discuss how we get CCC and the litigation wrapped up so that I can move on to our new, post-litigation venture.

As you may know, we have been taking monthly physical inventory since May. Our next one is scheduled for Friday August 3rd. After this tally - we will deliver that tally to Dave (and continue to do so for each month-end throughout the year). As Dave is also out there selling film again for his new employer, it is [in] CCC's best interest to have his new employer buy film from us and help us to wrap up CCC more quickly. Our people will be working hard to this film vigorously over the next 4 months - and as I noted above, whatever is left after the October 31st inventory will be unloaded at "gotta-go-prices" in November . . . I think even Dave will agree that if we haven't found a retail buyer that a sale at bulk/discount is an appropriate ending for the supply.

69. Upon reflection, it was wishful thinking that this litigation would conclude so easily.

70. It is also important to make clear that the ZoiFilms idea has changed numerous times over 2012 and that most of the ideas have never been implemented, including specializing in new products unique to the food industry. Exhibit 59 of the WEB is a

March 15, 2012 e-mail from me to Gandis. In this e-mail, I discuss this very issue as it related to a future sales representative, specifically Brian Cunningham. "Brian knows a couple of companies that are part of the military MRE program - he also knows the Golden Flake people, pastry people, he is very good friends with the founder of Poore's brothers (SNAK on the stock exchange), and tons of other companies in the Atlanta area. Out of state he knows the Cloverhill people, the Welch's fruit sna[c]k people." The goal of placing new products (i.e. different film types) with these new customers in the food industry never materialized.

71. I will now respond to specific allegations lobbed by counsel for Wilson against me regarding the bank account information and formation documents found on pages 22-23 of WM. Some context is in order. Wilson has sued me as an individual, and accused me of all manner of illegality in the conduct of my chosen profession. These accusations are terribly distressing to me because I know them to be utterly false, but also because the accusations have the potential to harm my business reputation. The only reason that Wilson has been able to level these specious accusations is because I agreed to become a member at CCC in return for my sweat equity work. I remain perplexed how a minority, non-voting member in a limited liability company can become personally responsible for the actions of that company. It is in the context of my being brought into litigation that I decided to move my personal interest in CCC and to form ZOiFilms with corporate members. I also recommended to John Gandis that he interpose a corporate entity between himself and CCC - although I explained to him that this change would not impact whether he would be liable for any actions that he undertook as a manager. This was not an act of deceit but an action of self-preservation.

72. ZoiFilms is a subsidiary of CCC, and every cent of business transacted through it has been put into CCC or spent on CCC business.

December 2012 Offer

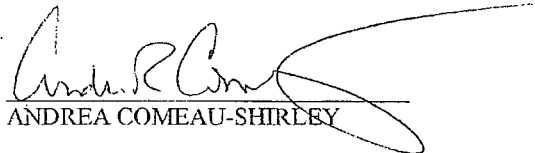
73. I received notice of the offer from my counsel on or about December 6, 2012.

74. I was immediately in favor of the offer. We told Wilson that we would accept the offer; he then provided a number of document requests over the next several weeks as we moved towards an anticipated closing before year end; I worked feverishly to provide all of the information sought by him.

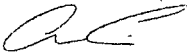
Insolvency

75. At the May 8, 2014 mediation, Mr. Bradshaw provided a preliminary, normalized balance sheet that demonstrated the company is not insolvent, as it has a positive net equity. Furthermore, as of May 31, 2014, the Company's receivables exceed its trade payables by more than \$75,000. Presently the Company's sales are continuing an upward trend for the year as it has added several new and large accounts.

FURTHER AFFIANT SAYETH NAUGHT.


ANDREA COMEAU-SHIRLEY

SWORN and subscribed to before me
this 19 day of June, 2014.



Notary Public for Georgia

Notary Public, Paulding County, Georgia
My Commission Expires August 17, 2015

My Commission Expires: 08/17/2015

EXHIBIT A
TO AFFIDAVIT OF ANDREA
SHIRLEY

Namaste Consulting

From: Namaste Consulting <namasteconsult@bellsouth.net>
Sent: Thursday, October 13, 2011 11:02 AM
To: 'john@ccc-films.com'
Subject: RE: Restructuring for Dave - subtle points about the commission arrangement.... just to remember as you put it to paper

I would suggest that you clarify that in the email you clarify he earns ONE rate on his sales and DIFFERENT rate on the sales where others are also being paid a commission (See my change below) .. the intent is to incent him to transfer customers over since it will then free him to earn higher commissions .

I would NOT put these details into the email... but suggest them for your consideration so he doesn't assume he is just like the other guys

I would also suggest that he have a high rate for 1st year sales, then the rate reduce year after year (so we don't end up with a situation like Mike where someone just sits on their butt waiting on the phone to ring).

LASTLY .. I would also suggest that there is NO COMMISSION or the LOWEST COMMISSION for other brokers - including ESA ... and that he is charged 25% of all finance fees that are UNPAID by a customer. If they pay on time - there is no finance fee, if they pay late but pay their finance fee ... no charge to him, if they pay late and REFUSE to pay the finance fee ...then we have lost money and he should "share" in that cost (otherwise he has no incentive to properly negotiate terms. AGAIN ... he is not dinged by them not paying late - he is only dinged when he agrees to waive their finance fee!).

Andrea

From: John Gandis [mailto:john@ccc-films.com]
Sent: Thursday, October 13, 2011 10:46 AM
To: Namaste Consulting
Subject: Re: Restructuring for Dave

Thanks Andrea.

Is this e-mail something that I could forward directly to Dave ?

- JG

Sent from my Verizon Wireless BlackBerry

From: "Namaste Consulting" <namasteconsult@bellsouth.net>
Date: Wed, 12 Oct 2011 21:33:51 -0400
To: John Gandis<john@ccc-films.com>
Subject: Restructuring for Dave

One potential restructuring for Dave - with a purpose of bringing his reportable taxable income in line with his cash receipts:

- 1) Dave informs the company of his desire to repay his loan* in full (current balance is about \$123K) – which he would repay by turning in his collateral (his membership interest in CCC, LLC).
 - a. This transaction will generate a LOSS for Dave which he would claim in his 2011 tax return.
 - b. If this loss exceeds his total 2011 income, the excess would be carried back – freeing up past taxes and reducing his unpaid 2010 taxes (either by applying the loss or by applying refunds from earlier years that are created when his loss is carried back)
 - c. The LLC records the full redemption of his ownership interest prior to 12/31/2011. The LLC would also be amended so as to reduce Dave's profit allocation for 2011 to zero. (This amendment must be completed on a timely basis to ensure it will be effective).
- 2) Dave is placed on a "regional commission" structure - this is intended to mean he earns one commission rate on his own sales and also earns a different commission on the sales of team members (that he supervises). This is intended to encourage accounts to be turned over as the revenue stream continues even though the work has been greatly reduced or eliminated. This helps to build the company and keeps Dave participating at a broader level (although he now shares in gross income instead of net income). Dave would become an employee of the company – thereby retaining his health insurance benefits. Presumably there would be a modest base salary. \
- 3) As a company, this would adjust our monthly cash outflow as his salary and commissions would become payable as sales are collected.
- 4) I recommend that we also shift most of purchasing to another salaried employee to ensure that he has time to maximize his sales revenues (and therefore commissions).

Let me know if you have any questions about the above,
Andrea

*As a reminder- starting in August 2010, the company began making loans to Dave. The terms were (a) due upon demand, (b) 10% interest, and (c) collateral is his membership interest – but otherwise non-recourse against personal assets. Another term was that the company had the right to decide, based upon its overall cash situation whether to deny his request for a loan in a given month. We have already had discussions about the need to reduce this loan based on the company's cash situation.

EXHIBIT B
TO AFFIDAVIT OF ANDREA
SHIRLEY

John Gandis

From: Dave Wilson [dave@cco-films.com]
Sent: Monday, October 17, 2011 4:50 PM
To: John Gandis
Cc: Andrea Comeau-Shirley

I have spoken with my accountant regarding Andreas proposal and he believes it is flawed. Surrendering my stock would be a capital loss and not an ordinary loss against the taxes owed so I'm not sure this would help much. I am happy to have Ray talk with Andrea about this.

Frankly, I'm surprised that Andrea would even propose a buyout of my shares for \$123,000. My capital account was worth \$592,000 at the end of 2010 and assuming we have made some profit this year, it's worth even more today. I think the value of my capital account is much more relevant than the loan amount when trying to determine the fair value of my interest in the company.

Here are several other options you need to consider.

1. CCC starts making regular accruals and distributions to its members to cover tax liabilities incurred by their ownership in CCC. I can set up an installment plan with the IRS which would spread the tax payments out over a number of years. I would also insist that we accrue for 2011 taxes so that quarterly distributions can be made to cover a percentage of the projected liability for 2011.
2. Dave resigns from CCC and maintains his 45% ownership. Dave is then free to do whatever he wants to including working for or operating a film company outside of CCC. By law, Dave has no duty to the LLC as a non-managing member but maintains all rights and privileges of a member.
3. Dave resigns and disassociates from the LLC. The LLC then has 30 days to set forth a purchase plan for my shares at fair market value. If the other members are unable to or unwilling to buy my shares, by law, the company is to close, assets liquidated, and funds dispersed to its members net of liabilities.

I don't know too many business owners who would continue to participate in a business that does not budget for and disperse funds to cover tax liabilities incurred by ownership of the business. I realize that each of us is in a different financial position but making decisions based on the needs of two partners without considering the needs of the third puts us in a quandary.

Running the business as we have been with no thought for tax liabilities is not an option. If dispersing funds for taxes means we grow at a slower rate, then so be it. We're kidding ourselves if we think we are successful because of a P&L that does not take into account the tax liabilities of its members.

Andrea's comments about handing over purchasing to someone else in the company demonstrates how out of touch she is with our company. Bill issues PO's and is capable of doing this. Bill nor anyone else is qualified to select vendors, new products, etc. We are not in a position to hire someone to do purchasing even if we found someone who was qualified.

Dave

5/20/2013

EXHIBIT C
TO AFFIDAVIT OF ANDREA
SHIRLEY

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Monday, January 16, 2012 12:11 PM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: Filmtech

Hi Mark,

I look forward to the opportunity to join your organization. I'm eager to start with Filmtech as quickly as possible and work to grow Filmtech revenue in new areas. Here are the points of discussion for our agreement.

1. Commission rate – 5% on gross sales for all customers I bring to Filmtech. X% commission (TBD) to manage any existing Filmtech business.
2. More than 5% on sales exceeding normal margins - % TBD by Mark.
3. Territory – domestic and international
4. Full time employee with draw or salary of \$8k per month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about \$500 per month to secure an office, phone and internet service.
5. Start Date – timely based on agreeable terms

I will call you today to discuss these points and the questions you raised on Friday. Thanks again for your interest in me and the opportunity to partner with you in the near future.

Regards,

Dave

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS)
2012-CP-23-02887)

DAVID WILSON, INDIVIDUALLY)
AND DERIVATIVELY ON BEHALF OF)
CAROLINA CUSTOM CONVERTING,)
LLC,)
PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD)

JOHN GANDIS, ANDREA)
COMEAU-SHIRLEY, AND ZOI FILMS,)
LLC,)
DEFENDANTS:)

ORIGINAL

June 26, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

W. ANDREW ARNOLD, ESQ.
Attorney for the Plaintiff

MASON A. GOLDSMITH, ESQ.
ROBERT L. MEBANE, JR., ESQ.
Attorneys for Andrea Comeau-Shirley and John Gandis

L. LEE PLUMBLEE, ESQ.
Attorney for the Defendant Zoi Films

HOLLIE M. JENKINS
Circuit Court Reporter

P R O C E E D I N G S

1
2 THE COURT: This is #2012-CP-23-02887, Wilson v.
3 Gandis, et al. And I understand it's a motion to compel.

4 And what's the other motion?

5 MR. ARNOLD: For judgment on the pleadings.

6 THE COURT: All right. Yes, sir, Mr. Arnold.

7 MR. ARNOLD: May it please the Court:

8 I believe we only have contested motions, maybe some
9 other things we want to address at the end.

10 But, first, the motion for judgment on the pleadings.
11 Again, just briefly, by way of background, my client is
12 Dave Wilson. And he has brought an action against John
13 Gandis and Andrea Comeau-Shirley, who were members of CCC.
14 It's an LLC formed by Mr. Wilson and Mr. Gandis back in
15 2008. And they sell film, essentially, which -- film used
16 in packaging.

17 And Mr. Wilson had -- prior to the time of forming
18 this business, he had been in the film business for a
19 number of years and had his own business at the time, and
20 brought a book of business, which he values at about a
21 million dollars to the table.

22 Mr. Gandis indicated that he had a building and
23 access to capital. And that with Mr. Wilson's business
24 and his building, and capital, they could form CCC. And
25 that's what they did. And so they operated as equal

EXHIBIT D

From: Namaste Consulting <namasteconsult@bellsouth.net>
Sent: Friday, January 06, 2012 4:40 PM
To: 'Dave Wilson'
Cc: 'John Gandis'; 'John Zamer'; 'Clayton L. Jennings'; 'Ray Harrison'
Subject: RE: Offer to Buy
Attachments: image001.jpg

Dave, thanks for your response. We have not reviewed it in detail, but will do so.

But before we go much further, your answer on sharing Company information with any third parties was not in line with our thinking. To be more specific, information about the Company is an asset of the Company, not any of its equity holders, and you will need the express permission of the Company to provide any Company information to any third party - - whether a competitor or not. As a legal matter, that consent can only effectively be given by John, and only after he has provided the name of a proposed recipient of the Company information, as well as a complete description of what information is proposed to be provided. Should John approve the disclosure, before it is effected, we would also need a non-disclosure agreement signed with the recipient, and that agreement would need to be of a form approved by Company counsel.

If any material information has been given to third parties, we should go back and obtain a non-disclosure agreement from those parties, and you should inform us of the names of those parties, and the scope of the information provided, and we can provide a form of non-disclosure agreement to accomplish this.

I have previewed this response with John and he has approved it.

So, please proceed in this regard only consistent with the foregoing.

- Andrea

From: Dave Wilson [mailto:dave@ccc-films.com]
Sent: Friday, January 06, 2012 1:43 PM
To: 'Namaste Consulting'
Cc: 'John Gandis'; 'John Zamer'; Clayton L. Jennings; Ray Harrison
Subject: RE: Offer to Buy

Hi Andrea,

Very good points. I am talking with several potential buyers, none of which are really competitors. If I was speaking with a competitor about the business, I certainly would not divulge information that could be potentially harmful to the company in the hands of a competitor. That really should not be a concern of yours since I have a vested interest in protecting the company I own 45% of, and if I was to leave, I am under no legal obligation to keep the information confidential. While I am extending a counter proposal below for the company to buy me out and offer employment, my desire is to continue discussions with the interested parties about buying out the company as a whole. I have been very clear with all parties that both you and John require cash at closing (no escrows) and that John requires the building to be sold in the transaction. All parties understand that the potential transaction would need to happen quickly without months of due diligence. I hope to have some indication of intent from one or more parties next week.

Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out of the company but to give me some security and incentive to help grow the business. He said he wanted to make a fair buyout offer and a fair, attractive employment offer. Your recent offers

for buyout and employment do not accomplish this. I don't view the buyout offer as fair since it is based solely on my capital account which you have recently devalued with \$300,000 of bonus depreciation and a non-binding, non-legal "preference to minority" of \$100K. While I agree that the bonus depreciation benefits me to the tune of maybe \$30000 to \$45000 in tax relief, the net result is a devaluation of my capital account at \$135000. The "preference to minority" liability reduces my capital account by \$45000 and even if this was legal, it should not be used to determine the value of my interest when the preference would most likely not be paid if I was bought out and you stayed on as a member. Businesses do not typically sell for the value of the total equity unless they are in great distress. Neither do businesses sell for tax value when there is going concern and a history of decent earnings. Because of this, I feel you have incorrectly valued my capital account (even if that were a fair measurement of my interest). I don't see how any reasonable person would believe that your valuation is unbiased since you stand to benefit from the low value you have placed on my interest. Without spending time and money on a proper valuation, there should be some consensus and give and take on how my interest is valued.

Please review the following counter proposal which I feel addresses my desires and meets the stated goals John has offered verbally. This offer is largely performance based, limits the risk to the company in the event we don't perform or shut down, and gives me ample incentive to grow the business and bottom line. I share some risk with compensation in that I have no control over the bottom line once I become an employee. If John wants to have final say on selling pricing and film cost, and he is responsible for operating costs, I could perform well and the company still not be very profitable due to management decisions out of my control (i.e. poor decisions on capital expansion, staffing levels, financing the company, etc) Without spending time and money on a proper valuation, there should be some consensus and give and take on how my interest is valued.

1. Buyout price - \$250,000
2. \$50000 paid at closing
3. Balance paid out over 2 years as follows with interest at 6%.
 - a. \$50000 paid on September 1, 2012
 - b. \$40000 paid on Dec 31, 2012
 - c. \$30000 paid on Mar 31, 2013
 - d. \$30000 paid on June 31, 2013
 - e. \$30,000 paid on Sept 31, 2013
 - f. \$20000 paid on Dec 31, 2013
4. Existing loan is forgiven or absorbed by the company.
5. Dave is allocated \$325,000 of ordinary operating loss from 2011 on his K-1
6. If the allocation of loss is not extended, the buyout price is \$300,000 under a new 30 month schedule similar to the schedule for the 2 year buyout.
7. Employment agreement given to Dave for a period of 3 years.
8. Non-compete given to company for a period of 4 years starting at the time of closing.
9. Salary of \$12000 monthly guaranteed for year one.
10. Salary of not less than \$10000 monthly guaranteed for years 2 and 3
11. Dave keeps the Lexus with the company making payments until the car is paid off.
12. Bonus package based on sales with Dave to receive 1.5% of gross sales quarterly provided gross sales equal or exceed \$1,200,000 for the quarter and the company has positive net income before salaries or compensation to owners of at least \$75,000. Net income and sales may be verified by Dave with full disclosure from the company of all P&L and Balance sheet transactions. If quarterly sales are not achieved but sales in subsequent quarters equal or exceed an average of \$1,200,000 and net income is achieved then Dave is still paid his bonus. Full set of detailed financials provided quarterly to Dave Wilson. If quarterly sales are achieved but net income is not achieved, then Dave is paid .75% of gross sales in bonuses.
13. Personal guarantee from John and Andrea on buyout. If the company is sold or shut down before the end of the buyout, the balance of the buyout is due within 90 days.
14. If the company is sold before the end of the employment agreement, Dave's employment agreement must be intact under the new ownership. If the company is shut down before the end of the employment agreement,

the company is free of its obligation to Dave with the exception that Dave is paid for 2 months after the business closes.

I look forward to your reply.

Sincerely,

Dave

From: Namaste Consulting [<mailto:namasteconsult@bellsouth.net>]
Sent: Friday, January 06, 2012 9:21 AM
To: Dave Wilson
Cc: John Gandis; John Zamer
Subject: Offer to Buy

Dave – I wanted to take a moment and follow-up with you on your proposal to buy-out our interests as we have not seen a letter of intent nor received a confirmation from you about their ability to fully fund at closing. We are not rushing the process, but we want to clarify an important point that should have been explicit in our Initial response to your inquiry. Our willingness to consider an offer to sell our shares was NOT a blanket authorization for you to shop our company around. Rather, you had already indicated to John that your family might be willing to step up; specifically John understood that you were talking to your brother-in-law and other family members about putting together the financing.

We are not comfortable with the idea of you shopping the company to competitors as those companies would likely say “yes, we are interested in seeing what you are about” – but are highly unlikely buyers of the real estate that MUST be included in our offer to sell. Additionally – we provided to you a list of general terms that we expected to see in ANY offer that was proposed and we have not heard from you that your group will be willing to move forward under those terms (especially regarding the escrows). Without giving us that assurance, you should not proceed to discuss the offer with anyone – including your brother-in-law.

I hope that you are working with your attorney to ensure that the confidential nature of our information is protected AND that you first qualify a potential prospect before you share any information. You probably are being careful ... but we didn't want any confusion over the level of authority extended in our initial reply.

On the other hand, if you have already started discussions with anyone outside of your immediate family, John would like to see the list of people as well as the list of any potential “suitsors” that you have considered so he could evaluate the risks involved in sharing information with that company.

Thanks,

Andrea

****To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice included in this written or electronic communication is not intended or written to be used, and it cannot be used by the taxpayer, for the purpose of avoiding any penalties that may be imposed on the taxpayer by any governmental taxing authority or agency****

This message (including any attachments) may contain confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

EXHIBIT E

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Friday, January 13, 2012 9:52 AM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: FW: McGarel- FILMtech
Attachments: _Certification_.txt; _Certification_.htm

Hi Mark,

Thanks for the email. I'll work on my response. Please send all future emails pertaining to our working together to my eastern films email address. I can't be 100% sure that the CCC email is secure. Back to you soon.

Regards,

Dave

From: Dave Wilson [mailto:dave@ccc-films.com]
Sent: Friday, January 13, 2012 9:48 AM
To: 'Dave Wilson'
Subject: FW: McGarel- FILMtech

From: Mark McGarel [mailto:mmcgarel@filmtechinc.com]
Sent: Friday, January 13, 2012 9:34 AM
To: Dave Wilson
Subject: McGarel- FILMtech

Dave; some ideas/Concepts for further discussion about a possible sales agency agreement.

Would you re start Eastern Film Solutions or a new entity? Are there any lingering issues with EFS if you restarted? Conflicts with CCC?
Do you want an exclusivity? By territory? By market?
Would you sell (if you can) the UL listing from Eastern Film Solutions? If you can't sell, we would need to discuss timing and cost to get a UL listing

Can you break out the business sections and the film types needed to service:-

Folding Carton – PET/BOPP
Window Bag – BOPP/PET
Flex Duct – PET
Bakery overwrap – BOPP 2 side sealable
Cable wrap - PET
Plastic cutlery – LDPE/BOPP
Toll Slitting - ???
Others - ???

What is the standard lead time for servicing orders?
What is sales price less raw material costs?
What are standard terms of sale?
What is typical order size by market?
What is typical pallet/packaging configurations?
How much stock do we need to have for what level of sales?

What are your expectations for compensation?
What legal repercussions might result from our collaboration?

I'm sure there is more but this should get us started.....

Regards;

Mark McGarel
FILMtech Inc.
865.767.3533 ext 103
www.filmtechinc.com

--
This message has been scanned for viruses and
dangerous content by MailScanner, and is
believed to be clean.

EXHIBIT F

From: Dave Wilson <davewilson@easternfilms.net>
Sent: Monday, January 16, 2012 12:11 PM
To: Mark McGarel (mmcgarel@filmtechinc.com)
Subject: Filmtech

Hi Mark,

I look forward to the opportunity to join your organization. I'm eager to start with Filmtech as quickly as possible and work to grow Filmtech revenue in new areas. Here are the points of discussion for our agreement.

1. Commission rate – 5% on gross sales for all customers I bring to Filmtech. X% commission (TBD) to manage any existing Filmtech business.
2. More than 5% on sales exceeding normal margins - % TBD by Mark.
3. Territory – domestic and international
4. Full time employee with draw or salary of \$8k per month for a period of time until my commission reaches a level that supports my needs. My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about \$500 per month to secure an office, phone and internet service.
5. Start Date – timely based on agreeable terms

I will call you today to discuss these points and the questions you raised on Friday. Thanks again for your interest in me and the opportunity to partner with you in the near future.

Regards,

Dave

EXHIBIT G

AFFIDAVIT OF JOHN E. ZAMER

STATE OF GEORGIA)
) ss.:
FULTON COUNTY)

I, John E. Zamer, having been duly sworn, state as follows:

1. My name is John E. Zamer. I am over the age of 21, suffer no legal disability, and am competent to give this affidavit. I have personal awareness of the facts herein, including knowledge based on my review of documents referenced in this affidavit.

2. I am a lawyer admitted to practice in Georgia. I practice law at Jones Day, in its Atlanta office.

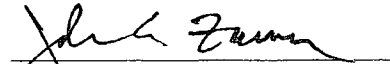
3. For a number of years, Jones Day has performed legal services for Carolina Custom Converting, LLC (“Carolina Custom Converting”), and I have served as Jones Day’s primary contact with Carolina Custom Converting.

4. I have reviewed my files, and billing records, to assist me in preparing this Affidavit. Exhibit A to this Affidavit is a true and correct copy of an invoice sent to Carolina Custom Converting on or about February 16, 2012. Exhibit A contains a description of entries generated from billing information, and my review of Exhibit A refreshes my recollection that on or about January 17, 2012 I spoke by telephone with an attorney for Dave Wilson.

5. Exhibit B to this Affidavit is a true and correct copy of a handwritten note that I made and maintained concerning my telephone call with Clayton Jennings, an attorney for Dave Wilson. The conversation reflected in Exhibit B to this Affidavit is the conversation that I had on or about January 17, 2012, as referenced in Exhibit A to this Affidavit.

6. On that telephone call, Mr. Jennings advised me that Mr. Wilson had reached the "point of no return" with Carolina Custom Converting and that he was "throwing in the towel" and "raising a white flag," and in a "peaceful" manner "walking away" from Carolina Custom Converting, and that Mr. Wilson would sign a document to reflect this peaceful walk-away. Mr. Jennings also stated that Mr. Wilson was willing to sell his equity in Carolina Custom Converting for \$100,000 plus forgiveness of a debt for \$125,000, for a total of \$225,000.

Further affiant sayeth not.



John E. Zamer

SWORN TO AND SUBSCRIBED before
me this 16th day of June, 2014.



Notary Public

My Commission Expires:

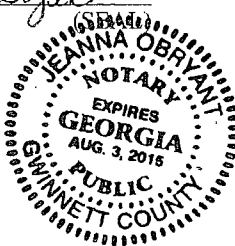


Exhibit A

IN ACCOUNT WITH

JONES DAY

Atlanta Office
1420 Peachtree Street, N.E. - Suite 800
Atlanta, GA 30309-3053
(404) 521-3939
Federal Identification Number: 34-0319085

February 16, 2012

354524-600001

Invoice: 32439738

Carolina Custom Converting, LLC
Post Office Box 2726
Anderson, SC 29622

For legal services rendered for the period through January 31, 2012:

Carolina Custom - Non-Adversarial Corporate
Advice

USD 1,631.25

TOTAL

USD 1,631.25

Exhibit A

JONES DAY

354524-600001

Carolina Custom - Non-Adversarial Corporate

Page 2
February 16, 2012
Invoice: 32439738

SERVICES DETAIL SCHEDULE

<i>Date of Service</i>	<i>Timekeeper Name</i>	<i>Hours</i>
01/06/12	J E ZAMER Attention to emails; call Andrea Comeau-Shirley; draft email response on confidential information, etc.	0.50
01/11/12	J E ZAMER Attention to emails; call Andrea Comeau-Shirley; draft letter; email attorney; additional discussions with Andrea; attention to note precedent for draft note.	0.75
01/12/12	J E ZAMER Draft and revise Note and Security Agreement.	0.50
01/17/12	J E ZAMER Call attorney for Dave Wilson; call Andrea Comeau-Shirley; call Andrea and John Gandis.	0.25
01/23/12	J E ZAMER Review email traffic; telephone call with Andrea Comeau-Shirley.	0.25
TOTAL		2.25

Clyton James

CCC

864 239 0055

B Proj. run co.

Jh Bonds

cell (864) 314 4418

Andr + my debt member

OW Let

Dave to program

point of as return
how unit as warehouse

John - that
my
white flag

Don't question member
explain about
that

Sign document

pleased

Don't
hesitate

\$100K + program debt = 225

walk
away

etc etc (later)

Term - could not force

)))

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,

Civil Action No. 2012-CP-23-02887

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

AFFIDAVIT OF KENNY MCLEAN

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

PERSONALLY APPEARED before me Kenny McLean who, first being duly sworn,
deposes and state as follows:

1. I am a resident of Richland County, South Carolina.
2. I am over the age of eighteen, and have personal knowledge of the facts stated herein.
3. I am the owner of Computer Forensics Lab, located at 1924 Barnwell Street, Columbia,
South Carolina, 29201
4. I have been retained by Nexsen Pruet ("Client") to review and analyze three devices: (1)
Blackberry Bold; (2) Acer Mini Laptop; and (3) HPdv7 Laptop.
5. My analysis of the Blackberry Bold yielded the following information:

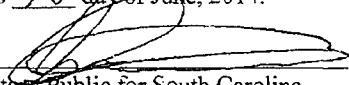
- a. I received the cellular device from Client on or about February 2, 2012.
 - b. The cellular device was turned off.
 - c. I turned the cellular device on, and it contained an alert notifying that it had a new SIM card inserted.
 - d. The cellular device had a default image with no user data present; the cellular device had been wiped.
6. My analysis of the Acer Mini Laptop yielded the following information:
- a. I received the Acer from Client on or about February 2, 2012.
 - b. A forensic image of the hard drive was created from the original hard drive on February 3, 2012.
 - c. The hard drive from the Acer Mini Laptop contained 2 partitions. The second partition is the working partition for the computer.
 - d. The working partition had 3,043 document type files with MAC timestamps that are inclusive and after January 18, 2012 at 0:00 hr.
 - e. Of the 3,043 files these show an accessed date after January 18, 2012. These files appear to have been deleted to the recycle bin between January 18, 2012 through January 31, 2012.
7. My analysis of the HPdv7 yielded the following information:
- a. I received the HP from Client on or about February 3, 2012.
 - b. A forensic image of the hard drive was created from the original hard drive on February 3, 2012.
 - c. I found the BIOS time of the HP DV7 laptop had a zero offset from local time.

- d. The hard drive from the HP DV7 laptop contained 5 partitions. The third (3rd) partition is the working partition for the computer.
- e. The working partition had 1,275 document type files with MAC timestamps that are inclusive and after January 18, 2012 at 0:00 hr.
- f. I found reference to software "File Restore.exe" having a last run date of February 01, 2012 at 9:37 a.m. and a run count of 5.
- g. I found reference to software "SAFEITMAILSHREDDER.EXE" having been last run ("executed") at January 23, 2012 at 4:42 p.m.
- h. I found evidence of a software program called "Eraser" having been installed on or about February 01, 2012 10:01 a.m.
- i. I found a directory where the "eraser.exe" software program was installed and the software manual in file format was located.
- j. I found references to software "Eraser" in the Windows registry file USERS showing a run (execution) count of 16 and a last run date of February 02, 2012 at 10:06 a.m.
- k. I found in the Windows registry where the last system start time of the computer was February 01, 2012 at 9:48 p.m. and a last system shutdown time of February 02, 2012 at 10:25 a.m.
- l. I found evidence that external media (such as a USB device or "thumb drive") had been connected to the laptop.

FURTHER AFFIANT SAYETH NAUGHT.


KENNY McLEAN

SWORN and subscribed to before me
this 18 day of June, 2014.



Notary Public for South Carolina

My Commission Expires: 2/20/20

EXHIBIT I

Recd. 11-30-12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 David Wilson, individually and)
 derivatively on behalf of Carolina)
 Custom Converting, LLC,)
)
 Plaintiff,)
)
 -vs-)
)
 John Gandis, Andrea Comeau-)
 Shirley, ZOi Films, LLC, and)
 DecoTex, LLC,)
)
 Defendants,)
)
 John Gandis and Andrea)
 Comeau-Shirley,)
 Third-Party Plaintiffs,)
)
 -vs-)
)
 Carolina Custom Converting, LLC,)
 Third Party Defendant.)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS
 C.A. NO.: 2012-CP-23-02887

PROTECTIVE ORDER

RECEIVED BY CLERK
 COURT OF COMMON PLEAS
 GREENVILLE, S.C.
 NOV 30 2012

This matter is before on the Court on Plaintiff's Motion to Compel Discovery and upon Third-Party Defendant's Motion to Quash or to Modify Subpoena. The Plaintiff, Defendants, and Third-Party Defendant Carolina Custom Converting, LLC, having consented to on order for the production of certain information requested by Plaintiff, but recognizing the confidential and sensitive nature of the information being produced, and having agreed to conditions governing the disclosure and use of said information,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1
 JH

1. Within 10 days of the date of this order, Third-Party Defendant Carolina Custom Converting, LLC will produce to counsel for Plaintiff all e-mails (including attachments) and correspondence requested in the subpoenas issued by Plaintiff on August 29, 2012 and October 29, 2012, which are not subject to the attorney-client privilege; moreover, should a document be withheld subject to a privilege, CCC shall produce a privilege log identifying each email and/or document withheld by date, sender, recipient and basis for assertion of privilege;

2. Within 5 days of the date of this Order, Third-Party Defendant will produce to Plaintiff the following information in the uncondensed electronic QuickBooks back-up file type (.qbb file extension) and any passwords necessary to access such information:

- a. Complete QuickBooks report of all transactions of owner's equity from inception of the Third-Party Defendant until the present date;
- b. Complete 2011 and 2012 QuickBooks Account Registers for any and all accounts maintained by Third-Party Defendant in QuickBooks.

3. Information produced pursuant to this Order may be viewed by and disclosed only to the parties, their counsel, retained experts, and the staff of counsel for the parties involved in the prosecution of this action. Information produced pursuant to this Order may be used solely for the purpose of prosecuting and defending this action and may not be used or disclosed by any party to any person or entity other than those designated above nor may it be use by any party to gain competitive advantage in the marketplace nor for any other purpose.

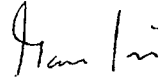
3. Dave Wilson shall not solicit any customer or contact any supplier of CCC who was not known to him ^{as of January 17, 2012} when he was locked out of CCC, which shall be presumed to be any customer and/or supplier who did not transact business with CCC prior to January 17, 2012.

4. ~~John Gandis, as managing member of CCC, shall pay to W. Andrew Arnold~~ J114

2
J114

~~711 \$937.00 as reasonable attorneys fees unnecessarily incurred as a result of its failure to comply with the subpoena.~~

AND IT IS SO ORDERED.



D. Garrison Hill
Judge, Thirteenth Judicial Circuit

November 14, 2012



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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2302887

NOV 26 PM 3:44
COURT OF COMMON PLEAS
GREENVILLE, SC

David Wilson vs. John Gandis

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this 26th day of November, 2012.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 26th day of November, 2012, and a copy mailed first class this 26th day of November, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Arnold 712 E. Washington St.
Greenville, SC 29601

Mason A. Goldsmith PO Box 1887 Greenville, SC 29602
Daniel L. Draisen 207 E. Calhoun St. Anderson, SC 29621
John Robert Devlin Jr. Devlin & Parkinson, P.A.
P.O. Box 10387 Greenville, SC 29603
Larry Lee Plumblee PO Box 10066 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

EXHIBIT J

Vendor

3M Film Manufacturing Operations
A.G. Transportation Systems, Inc.
Abet Packaging
ALL FOILS
Ally Transportation, Inc
Amcorfilm
Atlas Metallizing, Inc.
BL Plastic Slitting & Converting, LLC
BPR Plastics Inc.
Coating Excellence International
Custom Laminating Corporation
Dallas Plastics Corp.
DuPont Teijin Films
FILMtech Inc.
Flagship Converters Inc
Freightquote.com
Futong LLC
GALEX
GLOBALTRANZ
HERITAGE
Heritage Truck Lines Inc.
Heritage Warehousing & Distribution Inc.
Honeywell International
Intoplast AmTopp
JBF RAK, LLC
LAMBRO
Linan Hongcheng Telecom Material Co.
Mitsubishi Polyester
Navis Industries Inc.
Packaging Industries Inc.
Palmetto
Parkside Warehouse, Inc.
PENNPAC
Plastic Connections, Inc.
Plastic Suppliers, Inc.
Polyplex Americas Inc.
ROGERS & BROWN
SHELCO
SKC Inc
SMITH AND WATERS, INC.
T & K Nationwide Trucking, Inc.
TORAY
UNITED WAREHOUSE COMPANY
UPS
UWC Transportation

VACUUM DEPOSITING

EXHIBIT K

11:52 AM

06/11/14

Carolina Custom Converting LLC
Transaction List by Vendor
All Transactions

Type	Date	Num	Memo	Account	Clr	Split	Amount
Futong LLC							
Bill Pmt -Check	2/10/2012	wire	40 % Advanc...	Bank of America (75...	X	Accounts Paya...	-30,400.00
Bill	4/4/2012	CCC-...	40 % Advanc...	Accounts Payable		-SPLIT-	-75,984.80
Bill Pmt -Check	4/16/2012	7509	40 % Advanc...	Bank of America (75...	X	Accounts Paya...	-45,584.80

11:54 AM

06/11/14

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

Type	Date	Num	Name	Account	Class	Amount
FUTONG						
Invoice	10/8/2012	2673	FUTONG	Accounts Receivable		11,132.71
Payment	10/17/2012	1054	FUTONG	Accounts Receivable		-11,132.71
Invoice	10/17/2012	2694	FUTONG	Accounts Receivable		1,855.70
Invoice	11/1/2012	2727	FUTONG	Accounts Receivable		8,152.48
Payment	11/9/2012	1025	FUTONG	Accounts Receivable		-10,008.18
Total FUTONG						<u>0.00</u>
TOTAL						<u><u>0.00</u></u>

11:54 AM

06/11/14

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

<u>Balance</u>
11,132.71
0.00
1,855.70
10,008.18
0.00
<u>0.00</u>
<u>0.00</u>

EXHIBIT L

Carolina Custom Converting LLC
Vendor Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Amount	Balance
Linan Hongcheng							
	Bill	04/08/2013	HC2013032802	Linan Hongcheng	Accounts Payable	18,206.00	18,206.00
	Bill	04/08/2013	HC2013032801	Linan Hongcheng	Accounts Payable	19,664.25	37,870.25
	Bill Pmt -Check	04/08/2013	WIRE	Linan Hongcheng	Accounts Payable	-37,870.25	0.00
	Bill	05/06/2013	HC2013032801	Linan Hongcheng	Accounts Payable	38,614.96	38,614.96
	Bill Pmt -Check	05/06/2013	EFT	Linan Hongcheng	Accounts Payable	-38,614.96	0.00
	Bill	05/23/2013	HC2013032802	Linan Hongcheng	Accounts Payable	40,940.97	40,940.97
	Bill Pmt -Check	05/24/2013	WIRE	Linan Hongcheng	Accounts Payable	-40,962.59	-21.62
	Bill Pmt -Check	07/08/2013	WIRE	Linan Hongcheng	Accounts Payable	-19,000.00	-19,021.62
	Bill	07/08/2013	HC2013070403	Linan Hongcheng	Accounts Payable	19,000.00	-21.62
	Bill	07/24/2013	HC2013070403/1121	Linan Hongcheng	Accounts Payable	0.00	-21.62
	Bill	08/02/2013	HC2013070403	Linan Hongcheng	Accounts Payable	45,552.15	45,530.53
	Bill Pmt -Check	08/05/2013	WIRE	Linan Hongcheng	Accounts Payable	-45,552.15	-21.62
Total Linan Hongcheng						-21.62	-21.62
TOTAL						-21.62	-21.62

2112

EXHIBIT M

Customer

ALL FOILS, INC.
American Color Technology
Amerifilm Corp.
ASG, INC.
Brown Paper Goods
Composites One LLC
Composites USA, Inc.
Elliott Schultz & Associates, Inc.
Engineered Laminates & Coatings, LLC
Filtros y Mallas Industriales, S.A. de CV
Flagship Converters Inc.
FLEXEAZE, INC.
Florida Packaging & Graphics, Inc.
Grafix Inc
Griff Paper and Film
Horizon Energy Systems
Imperial Manufacturing Group Inc
INDUSTRIAS VERMONT S.A DE CV
Lambro Industries
Lithotype
Lithotype Chicago
Navis Industries Inc
Peppertree Air
Plastic Packaging Technologies KS
Prime Packaging, LLC
ROL-VAC
Supply One Rockwell, Inc.
Triton International Enterprises
Valencia Specialty Films

EXHIBIT N

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Class	Amount	Balance
Engineered Laminates & Coatings, LLC								
	Invoice	04/05/2012	2267	Engineered Laminates & Coatings, LLC	Accounts Receivable		8,104.20	8,104.20
	Payment	05/11/2012	9576	Engineered Laminates & Coatings, LLC	Accounts Receivable		-8,104.20	0.00
	Invoice	08/21/2012	2563	Engineered Laminates & Coatings, LLC	Accounts Receivable		1,117.60	1,117.60
	Payment	09/24/2012		Engineered Laminates & Coatings, LLC	Accounts Receivable		-1,117.60	0.00
	Invoice	11/20/2012	2785	Engineered Laminates & Coatings, LLC	Accounts Receivable		847.40	847.40
	Payment	12/24/2012	10155	Engineered Laminates & Coatings, LLC	Accounts Receivable		-847.40	0.00
	Invoice	06/10/2013	3143	Engineered Laminates & Coatings, LLC	Accounts Receivable	55*	0.00	0.00
Total Engineered Laminates & Coatings, LLC							0.00	0.00
TOTAL							0.00	0.00

2116

EXHIBIT O

2:32 PM
06/19/14

Carolina Custom Converting LLC
Customer Balance Detail
All Transactions

	Type	Date	Num	Name	Account	Class	Amount	Balance
Florida Packaging & Graphics Inc								
	Invoice	10/07/2013	3368	Florida Packaging & Graphics Inc	Accounts Receivable	07 5	261.65	261.65
	Payment	10/09/2013	47602481	Florida Packaging & Graphics Inc	Accounts Receivable		-261.65	0.00
Total Florida Packaging & Graphics Inc							0.00	0.00
TOTAL							0.00	0.00

2118

EXHIBIT P

1 disassociated from the entity. And we would --

2 THE COURT: Wait a minute now. Who do you want to be
3 disassociated?

4 MR. ARNOLD: Mr. Gandis and Ms. Shirley.

5 THE COURT: Okay.

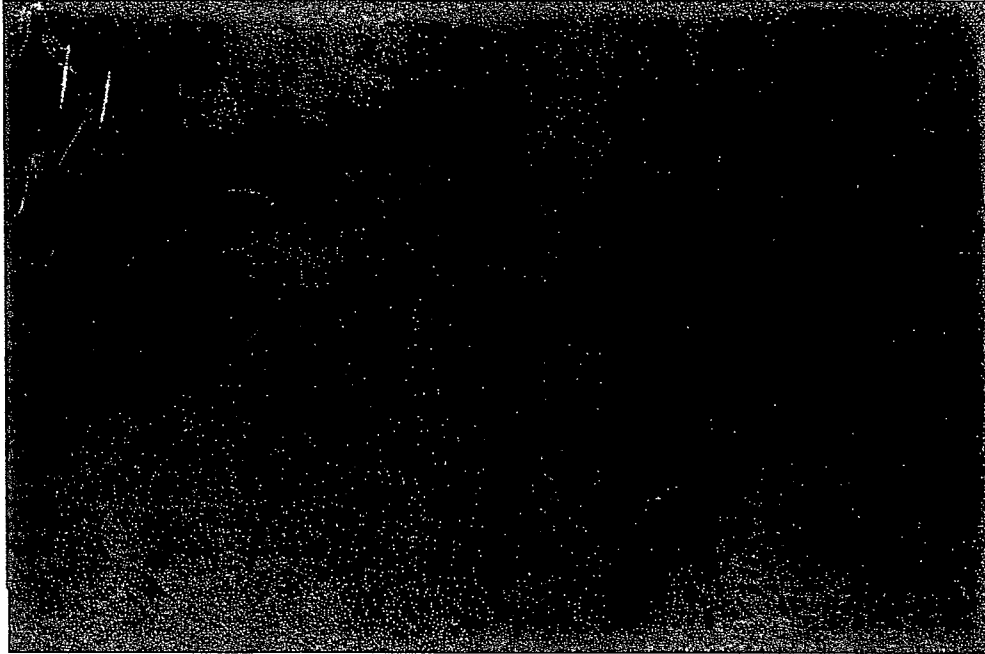
6 MR. ARNOLD: And so we've asked to disassociate them
7 for their wrongful acts.

8 THE COURT: Okay.

9 MR. ARNOLD: We don't want to gut the entity. We
10 think the business has value. Remember, we were here not
11 long ago because they didn't want to give us the customer
12 list because that customer list has such value. Well, we
13 agree it has value. And we want -- well, actually, we've
14 made an offer to purchase this business for almost half a
15 million dollars, their interest. That hasn't been -- they
16 haven't accepted or rejected that yet. But we think this
17 business has value. We don't want to dissolve the entity
18 unless it's absolutely necessary. We want a
19 disassociation.

20 And so we've pled a cause of action for
21 disassociation. Our prayer for relief, clearly, states
22 that we're asking for an order disassociating the
23 Defendants from CCC, or in the alternative dissolving CCC.
24 What they want you to do is say, well, before we litigate
25 the issues, I just -- we're going to do away with your

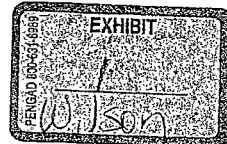
EXHIBIT Q



Subject: Email from Andy Arnold - I can't forward the email from my computer but I have cut and pasted it below

Lee and Andy:

I am a lunch break and will be until 2 pm. 864.230.6531. I am available by email.



My client will agree to buy John and Andrea's interests (55%) for a combined \$442,700--this is based upon the value of company based upon the financials produced and the amount of debt that John says he is personally obligated to repay. Of course, we think the financials contain much false information (much recently added), but your clients claim this business has lost about \$400,000 this year. The balance sheet produced by your clients shows a net asset value of \$314,000. So, 45% of the net asset value is \$141,300. This combined with repayment of the debt plus Andrea's 10% gets you \$442,700.

This offer is contingent on getting updated financials (in electronic format) on ZOi as well as CCC; contingent on ZOi having a positive asset value (even of \$1). Moreover, this would include a 6 month non-compete/non-solicit, although John could continue to operate Deco-Tex. Finally, this is contingent on continued leasing of current premises for some period to be negotiated (short-term). This would include a complete release of all claims of all parties. We are prepared to move as quick as possible.

Moreover, I do believe we may be amenable to purchasing John's interest only and litigating the dissociation claim against Andrea. Moreover, if your client's disagree with their own balance sheet, what do they contend their interests are worth?

As for dissolution order, you are right, the ball is your court. Will await your response and if it does not come in time, we can simply let the judge decide.

Andy Arnold

Law Office of W. Andrew Arnold, P.C.
712 E. Washington St.
Greenville, SC 29601
864.242.4800
864.242.4885 (fax)

Robin G. Smith • Legal Assistant



Elmore Goldsmith, PA
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887 • Greenville, SC 29602
Telephone: 864-255-9500 • Fax: 864-255-9505
rsmith@elmorgoldsmith.com • www.elmorgoldsmith.com • vCard

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EXHIBIT R

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE CASE NO. 2013-CP-23-03474

3
4 Carolina Custom Converting, LLC,
5 Plaintiff,
6 vs.
7 David Wilson and Neologic
8 Distribution, Inc.,
9 Defendants.

10 DEPOSITION OF DAVID WILSON

11
12 DATE TAKEN: December 4, 2013
13 TIME BEGAN: 9:00 a.m.
14 TIME ENDED: 11:58 a.m.
15 LOCATION: Nexsen Pruet, LLC
16 55 East Camperdown Way
17 Suite 400
Greenville, South Carolina
18 REPORTED BY: Traci L. Barr, RPR
19 GALLAGHER COURT REPORTING
20 864-234-5744
21
22
23
24
25

1 You made an offer to buy CCC?

2 A. I believe so.

3 Q. I can show you an e-mail that I received from
4 your counsel if you would like me to.

5 A. I don't need to see it.

6 Q. Okay. The offer was for somewhere south of or
7 very close to \$500,000? I'm asking.

8 A. That sounds about right, yeah.

9 Q. How did you arrive at that number?

10 Scratch that.

11 Who was going to loan you the money to get the
12 500,000?

13 A. I had mentioned to my brother-in-law that --

14 Q. Who is?

15 A. Steve Norvell.

16 Q. Okay.

17 A. -- that it might make sense for us to buy the
18 company, to make an offer, and he said, you
19 know, that's fine.

20 I think I probably told him it would be, you
21 know, half a million dollars or less, our
22 offer, and he said that that was fine. I think
23 at that point we weren't real optimistic about
24 it being accepted, but --

25 Q. Is it your testimony that Steve Norvell was

1 prepared to put that money up?

2 A. I think in general terms he may have been.

3 Q. Yes or no?

4 A. That he was prepared?

5 Q. You made an offer to purchase the company?

6 A. Uh-huh.

7 Q. Did you have the financial backing?

8 A. I think Steve probably would have gone along
9 with that had he seen -- you know, had he done
10 his due diligence. I think at that time, too,
11 we had received some information from John,
12 some updated financials, QuickBooks files, and
13 at that point we had some concerns about the
14 numbers, the validity of the numbers.

15 (Exhibit Number 1 marked for identification.)

16 EXAMINATION RESUMED BY MR. WILLIAMS:

17 Q. Let me show you Exhibit 1, which is an e-mail,
18 I believe, from your counsel that was cut and
19 pasted. For some reason, whoever sent it
20 couldn't forward it. The top, I'll tell you,
21 has been redacted because that's
22 communications.

23 A. Okay.

24 Q. First of all, do you agree that this is the
25 offer?

EXHIBIT S

STEVEN NORVELL

<p style="text-align: right;">Page 1</p> <p>STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF GREENVILLE CASE NO. 2013-CP-23-03474</p> <p>Carolina Custom Converting, LLC, Plaintiff, vs. David Wilson and Neologic Distribution, Inc., Defendants.</p> <hr/> <p style="text-align: center;">DEPOSITION OF STEVEN NORVELL</p> <hr/> <p>DATE TAKEN: October 15, 2013 TIME BEGAN: 9:59 a.m. TIME ENDED: 3:32 p.m. LOCATION: Nexsen Pruet, LLC 55 East Camperdown Way Suite 400 Greenville, South Carolina</p> <p>REPORTED BY: Traci L. Barr, RPR GALLAGHER COURT REPORTING 864-234-5744</p>	<p style="text-align: right;">Page 4</p> <p>1 STEVEN NORVELL, being first duly sworn, testified as 2 follows: 3 EXAMINATION BY MR. STEPHENSON: 4 Q. Mr. Norvell, would you state your full name, 5 please. 6 A. Steven Bruce Norvell. 7 Q. For the record, my name is Tom Stephenson. I'm 8 an attorney for a company called Carolina 9 Custom Converting, and I'm here to ask you some 10 questions that relate to a lawsuit brought by 11 Carolina Custom Converting against Mr. Wilson 12 and Neologic. Do you understand that? 13 A. Yes. 14 Q. Did you receive a subpoena from me to appear 15 today? 16 A. Yes, our office did. 17 Q. Did you get it? 18 A. Me personally? 19 Q. Yes. 20 A. I was not personally served, but our office 21 received the letter. 22 Q. After your office got it, did you get a copy of 23 it? Did they give it to you? 24 A. Yeah, they eventually gave it to me. 25 Q. What's your address?</p>								
<p style="text-align: right;">Page 2</p> <p>APPEARANCES: THOMAS L. STEPHENSON, ESQUIRE BURL F. WILLIAMS, ESQUIRE Nexsen Pruet, LLC 55 East Camperdown Way Fourth Floor Post Office Box 10648 Greenville, SC 29603 On behalf of the Plaintiff</p> <p>W. ANDREW ARNOLD, ESQUIRE Law Office of W. Andrew Arnold 712 E. Washington street Greenville, SC 29601 On behalf of the defendants</p> <p>MASON A. GOLDSMITH, ESQUIRE Elmore Goldsmith 55 Beattie Place suite 1050 Greenville, SC 29601 On behalf of John Gandis and Andrea Comeau shirley</p> <p>ALSO ATTENDING: John Gandis, David Wilson</p> <p>STIPULATIONS: the within deposition was taken pursuant to the South Carolina Rules of Civil Procedure. NON-WAIVER: Examination and reading of the deposition are not hereby waived by the witness and the parties.</p>	<p style="text-align: right;">Page 5</p> <p>1 A. 19 Donatello Court. 2 Q. What is your job? 3 A. I'm president of Fresh Water Systems and 4 Neologic. 5 Q. Are you president of Neologic, too? 6 A. Yes. 7 Q. Do you have any ownership in any other entities 8 other than Fresh Water and Neologic? 9 A. I don't have ownership of Neologic. 10 Q. You're president but -- 11 A. You can be a president without being an owner. 12 Q. Do you have any ownership in any other 13 companies other than Fresh Water? 14 A. Companies? 15 Q. Yes. 16 A. Including LLC's? 17 Q. Yes. 18 A. Norvell Properties, LLC, and Norvell Bauer 19 Rental Real Estate. 20 Q. Who is Bauer? 21 A. Pete Bauer is a long-time friend of mine from 22 California. 23 Q. You all just own some rental properties? 24 A. Yes 25 Q. Is there actually an entity called Norvell</p>								
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <table border="0"> <tr> <td></td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Examination by Mr. Stephenson.....</td> <td style="text-align: right;">14</td> </tr> <tr> <td>Examination by Mr. Arnold.....</td> <td style="text-align: right;">146</td> </tr> <tr> <td>Certificate.....</td> <td style="text-align: right;">155</td> </tr> </table> <p style="text-align: center;">EXHIBITS (No exhibits introduced.)</p>		PAGE	Examination by Mr. Stephenson.....	14	Examination by Mr. Arnold.....	146	Certificate.....	155	<p style="text-align: right;">Page 6</p> <p>1 Bauer? 2 A. No, there's not. It's just a partnership that 3 we refer to it as Norvell Bauer. 4 Q. Norvell Properties, Norvell Bauer, Fresh Water, 5 Any other entities you have ownership in today? 6 A. Oh, yeah. Tucker Insurance Company. 7 Q. What is that? 8 A. We insure property and casualty. 9 Q. Here? 10 A. It's an E31B. 11 Q. Is it here? 12 A. No, it's not. Domesticated in South Carolina, 13 no. 14 Q. Where is it? 15 A. I believe it's Montana. 16 Q. Where is the actual office? 17 A. I believe it's in Montana. 18 Q. Are you represented today? 19 A. Yes, under Neologic. 20 Q. Okay. In our conversations yesterday, you said 21 you did not have an attorney and were going to 22 appear at this deposition unrepresented. I 23 need to know which it is. 24 A. If it's here for Steve Norvell, I'm 25 unrepresented. If it's under Neologic, I'm</p>
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STEVEN NORVELL

<p style="text-align: right;">Page 115</p> <p>1 Q. All right. So the way he writes that, I assume 2 by then you knew who John Gandis was because he 3 didn't say, by the way I got a new partner. He 4 says, I spoke with my partner John Gandis. 5 A. I don't know the intricacies with the 6 relationship, other than they did business 7 together. 8 Q. He calls him his partner. 9 A. Okay. 10 Q. What did you know about John Gandis on March 11 16th, 2009? Had you met him by then? 12 A. That they had started working together, I 13 suppose, based on this e-mail. 14 Q. You knew they started working together and you 15 know that John had a company called CCC and 16 Dave had a company called Eastern Film. Did 17 you know what the deal was between them? 18 A. Sometime in 2009 Dave told me that he teamed up 19 with John Gandis 50/50. 20 Q. He said 50/50? 21 A. Yeah. 22 Q. So they were equal partners, according to him? 23 A. Yeah. 24 Q. Did he tell you what he did to acquire his 50 25 percent he claimed?</p>	<p style="text-align: right;">Page 118</p> <p>1 it, do you agree with me you should have 2 questioned whether or not your brother-in-law 3 could syphon off money from Eastern Film when 4 he's in partnership with somebody called John 5 Gandis? 6 A. Absolutely not. In the year 2013 I collect 7 money from Walgreens and Wal-Mart going back to 8 2008. 9 Q. Steve, did there come a time where you looked 10 at acquiring CCC? 11 A. That I looked into it? I briefly considered 12 it. 13 Q. Did you actually consider it enough to come up 14 with a price? 15 A. Not that I'm aware of. 16 Q. Did you ever even look at any numbers? 17 A. No, not that I'm aware of. 18 Q. How did you consider it? 19 A. Dave approached me and throughout -- was it 20 CCC? No, I'm sorry, I don't remember -- I 21 don't recall that. I think it was PCFI that he 22 wanted me to consider buying. I'll retract 23 that. I think he approached me under PCFI. I 24 retract that. 25 Q. After thinking about it, you never offered to</p>
<p style="text-align: right;">Page 116</p> <p>1 A. No. 2 Q. You never heard? 3 A. No. 4 Q. Would it surprise you if Mr. Gandis said what 5 he did in 2007 was roll Eastern Film into CCC 6 and for that he got 49 percent? Would that 7 surprise you? 8 A. Completely surprise me. 9 Q. Never heard that before? 10 A. Never. 11 Q. You would agree with me that Dave Wilson 12 certainly didn't have any money to buy 49 13 percent. 14 A. I don't know Dave Wilson's financial status -- 15 in 2007, you're saying? 16 Q. No, this is 2009. 17 A. You're asking me if it would surprise me if 18 they formed this thing in 2007 and he had 49 19 percent. I thought that was the content of the 20 question. And if he had money -- 21 Q. You know he went bankrupt, don't you? 22 A. Yes. I don't remember what year it was. 23 Q. You know you had to loan him money to pay his 24 income taxes, don't you? 25 A. I don't know the purpose of the -- I don't</p>	<p style="text-align: right;">Page 119</p> <p>1 buy CCC or even considered buying CCC? 2 A. I would never consider buying CCC. 3 Q. And sitting here today, you would certainly 4 remember it if you did, especially if it was 5 2011 or thereafter? 6 A. Well, actually, now come to think of it, Dave 7 may have approached me thinking that, hey, 8 we're not getting along, maybe do like a 9 Chinese put type of deal, would you be 10 interested to help me finance to buy John out. 11 That might have happened. 12 Q. But it never got beyond that? 13 A. No. 14 Q. You never made an offer or got into the numbers 15 or even got into a range of what you might pay 16 for it if you did? 17 A. Not that I recall. 18 Q. This was just more or less a quick conversation 19 between you and Dave? 20 A. That he initiated, and I really had no interest 21 in it. 22 Q. I'm handing you a stack of e-mails that are in 23 front of you. 181 is an e-mail from Dave 24 Wilson so Mark McGarel. Do you know who Mark 25 McGarel is?</p>
<p style="text-align: right;">Page 117</p> <p>1 remember the purpose of the loan, but I 2 remember I've loaned him money before. 3 Q. And you told me earlier, be fair with me, 4 Steve, you knew he was broke. 5 A. At various times in his life he's been broke, 6 but at other times in his life he made good 7 money, when he was 50/50 partners with John 8 Gandis. Whenever he remodeled his house, he 9 must have been in good times. That was in 10 maybe 2010. 11 Q. You would agree with me on Monday, March -- 12 A. So 2010 he wasn't broke. 13 Q. You would agree with me on Monday, March 16th, 14 2009 you knew he was in partnership with John 15 Gandis and he told you they were 50/50? You 16 knew that? 17 A. At some point I knew he was 50/50 partners, but 18 I didn't know if he was partners in March 2009. 19 I know he had some kind of partnership going 20 with John Gandis, but I don't know the details 21 of it. 22 Q. There is a check written to you by Eastern Film 23 for commissions dated July 20th, '09 of \$5,000, 24 which is months after you knew he was in 25 partnership with John Gandis. Looking back on</p>	<p style="text-align: right;">Page 120</p> <p>1 A. No, I don't. 2 Q. I'm going to tell you Mark McGarel is a fellow 3 that Dave talked about selling CCC to or going 4 to work for, depending on what time it was. 5 A. Okay. 6 Q. Do you know anything about that? 7 A. No. 8 Q. You see this e-mail is dated Friday, January 9 13, 2012 to Mark McGarel from Dave at Eastern 10 Film. Do you see that? We're looking at 181. 11 Thanks for the e-mail. I'll work on my 12 response. Please send all future e-mails 13 pertaining to our working together to my 14 Eastern Film's e-mail address. I can't be a 15 hundred percent sure that the CCC e-mail is 16 secure. Do you see that? 17 A. Yeah. 18 Q. So, obviously, it was something he didn't want 19 CCC to know about, right? 20 A. I can't answer that. I don't know if they've 21 had someone hacked into their system. I can't 22 speculate on that. 23 Q. Okay. Look at 182. 24 A. Okay. 25 Q. 182 is an e-mail from Mark, I guess to him.</p>

EXHIBIT T

From: Dave Wilson <dave@neologicdistribution.com>
Sent: Monday, December 03, 2012 4:21 PM
To: Steve Norvell (snorvell@freshwatersystems.com)
Subject: CCC
Attachments: Balance sheet YTD Nov 2012.xlsx; YTD P&L Nov 2012.xlsx

Hi Steve,

Just a quick update on CCC. We have a hearing this Thursday regarding dissolution of CCC and Zoi. We have drafted our own dissolution order which will make it nearly impossible for John and Andrea to conduct business once the dissolution order is in place. Andy (my attorney) thinks we should make an offer this week to buy John and Andrea's interest based on the values they have given us in their obviously manipulated financials. They won't take the offer but will have a hard time explaining to the judge why our offer against their numbers is not fair. Essentially, we will be offering them a net asset offer based on roughly \$350,000 not including Zoi Films (which we have yet to receive). CCC has a net asset value of close to \$890,000.

Cash - \$77865
AR - \$408,000
Inventory - \$330,000
Fixed Assets - \$650,000 (based on market value given by appraiser)

Total Assets - \$1,465,000

AP - \$176,000 (after deducting Andreas recent postings of AP to her and John at \$261,000)
Current liabilities - \$289,000
Long term liabilities - \$110,000

Total Liabilities - \$575,000

I'd like to discuss this with you. If they actually took our offer, we'd have the whole company super cheap. Again, I doubt that they will take our offer but it would force them to explain their devaluing of the business. Let me know when you have a few minutes to discuss over the next day or so. FYI—sales this year so far with CCC are at \$3,400,000 and I am estimating sales within Zoi to be \$400,000 minimum. See attached actual P&L and balance sheet from the books they gave us.

Regards,

Dave Wilson
Neologic Distribution
864 640 7402

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-23-02887

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum In Opposition to Plaintiffs' Motion for Partial Summary Judgment has been served upon the following counsel of record by electronic mail this 19th day of June, 2014.

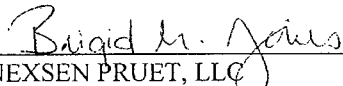
W. Andrew Arnold, Esquire,
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, South Carolina 29601
aarnold@aalawfirm.com

Bruce B. Campbell, Esquire
307 Pettigru Street
Greenville, South Carolina 29601
Bcampbell@hortonlawfirm.net

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, South Carolina 29602
mag@elmoregoldsmith.com

L. Lee Plumblee, Esquire
Eppes & Plumblee, P.A.
P.O. Box 10066
Greenville, South Carolina 29603
lplumblee@eppesandplumblee.com

Steven Farrar, Esquire
Smith Moore Leatherwood, LLP
P.O. Box 87
Greenville, South Carolina 29602
steve.farrar@smithmoorelaw.com



NEXSEN PRUET, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-23-2887

David Wilson, individually and derivatively)
on behalf of Carolina Custom Converting,)
LLC,)

Plaintiff,)

-vs-)

John Gandis, Andrea Comeau-Shirley, ZOi)
Films, LLC and Carolina Custom)
Converting, LLC,)

Defendants.)

Carolina Custom Converting, LLC,)

Counterclaim Plaintiff,)

-vs-)

Dave Wilson, Steven Norvell, Neologic)
Distribution, Inc., and Fresh Water Systems,)
Inc.,)

Counterclaim Defendants.)

**MOTION TO DISQUALIFY
PLAINTIFF'S EXPERT
CATHERINE STODDARD**

Defendant Andrea Comeau-Shirley ("Comeau-Shirley" or "Defendant") moves this Court for an Order disqualifying Plaintiff's expert, Catherine Stoddard, from testifying in this case for multiple grounds as explained below. Her deposition testimony reflects that she is biased and incapable of contributing impartial testimony. She is not proficient in the exercise of her professional obligations. Her prior acts have cost the parties to this case tens of thousands of unnecessary dollars and proven incapable of reliability.

Initially, Plaintiff retained Stoddard, an accountant, to “determine the economic damages” (Stoddard deposition page 54)¹; however her work morphed into offering an opinion as to the appropriateness of financial records based solely upon information from Plaintiff or his counsel. As a Certified Public Accountant, Stoddard was professionally bound to perform an objective review of the accounting records, and offer an objective opinion based on that review. Stoddard utterly failed to do so. Instead, from the outset Stoddard took sides and chose to be an advocate for her client, Plaintiff Dave Wilson, rather than an objective accountant. This admitted conduct severely compromises her ability to serve as an expert witness for Plaintiff. Stoddard should not be allowed to stand before this Court, let alone offer expert testimony in this case. Additionally, Stoddard is unqualified to offer expert testimony on the appropriateness of the subject accounting records, or anything else in this matter. Accordingly, Defendant respectfully requests this Court issue an Order disqualifying Stoddard from this case.

BACKGROUND

The Stoddard Affidavit

In March 2013, Plaintiff engaged Stoddard to “assist him with the financial aspects of the case.” (Stoddard Affidavit ¶ 2).² More specifically, Stoddard was “asked to investigate the extent to which the accounting records [of CCC] have been changed, the impact of these changes, and the timing of these changes as they relate to [this case].” (Stoddard Aff. ¶ 2). Rather than perform a professional and objective review of the CCC accounting records, Stoddard did a hatchet-job on Comeau-Shirley. Stoddard insinuated that Comeau-Shirley somehow “cooked the books.” Stoddard opined that the accounting records were “not reliable,” and contained “significant discrepancies” and “unusual transactions.” (Stoddard Aff. ¶ 7). Worse, Stoddard accused

¹ Referenced pages to her deposition are attached hereto as **Exhibit A**. The pages are in numerical order.

² The Stoddard Affidavit is attached hereto as **Exhibit B**.

Comeau-Shirley of “keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results” (Stoddard Aff. ¶ 7); and opined “that some assets and sales may have been diverted to related entities that are owned or controlled by Andrea Comeau-Shirley or John Gandis” (Stoddard Aff. ¶ 12). Stoddard concluded that the “manipulation of the books beginning in the fall of 2011 is significant to the overall financial picture and valuation of [CCC].” (Stoddard ¶ 12). None of these allegations proved out when Del Bradshaw issued his report and each of those allegations could have been simply answered if Stoddard had merely asked³.

The Stoddard Affidavit Leads to Unnecessary Costs

Stoddard’s biased and unfair affidavit opened the flood gates of expensive and time-consuming discovery by Defendants (but largely Comeau-Shirley), which also included an independent and objective review of the CCC accounting records by a court-appointed accountant, Del Bradshaw of Bradshaw, Gordon & Clinkscales, LLC. In response to the Stoddard Affidavit, this Court (perhaps understandably) denied defense motions to limit overbroad and unreasonable discovery requests from Plaintiff. As a result, Comeau-Shirley incurred great costs, including significant attorney’s fees, to respond to Plaintiff’s discovery demands. This expense would not have occurred had Stoddard faithfully performed forensic accounting services when reviewing the CCC accounting records.

Moreover, this Court would likely not have appointed Bradshaw to perform the same review. In any event, Bradshaw reviewed the CCC accounting records and issued an independent and objective opinion that completely exonerates Comeau-Shirely from any wrongdoing. In the process it also exposes the Stoddard Affidavit for the sham that it is.

³ Stoddard admitted in her deposition that she attended a portion of Ms. Comeau-Shirley’s deposition and could have had any questions answered by providing them to Plaintiff’s counsel but she did not. See, generally, page 118 of Stoddard deposition.

Because the Stoddard Affidavit was the wellspring of the enormous costs associated with this discovery, including the accounting services performed by Bradshaw, Comeau-Shirley will ask this Court at the appropriate time to shift the Defendants' payment of these costs and fees to Plaintiff.

ARGUMENT

It is now clear that the Stoddard Affidavit was just another front to Plaintiff's legal attack⁴. It does not rest on an objective, professional review of the accounting records, and is flatly contradicted by the Bradshaw report. This is unsurprising. Bradshaw exercised his professional judgment based on an independent and objective review of the CCC accounting records. Stoddard did not follow this same path. Rather, she became an advocate for Plaintiff, and did not exercise any objectivity before swearing that the CCC accounting records were improper and implying that Comeau-Shirley acted unprofessionally.

A. Stoddard Should Be Disqualified Because She Failed to Exercise Objectivity

Stoddard failed to formulate an objective plan or approach before performing the review of CCC's accounting records; failed to investigate or ask for any documents other than those that were provided to her by Plaintiff; failed to interview or perform any fact-finding beyond what was told to her by Plaintiff; and failed to keep notes of her review of the accounting records so as to hide her work and findings from Defendants *intentionally*. Stoddard also found Defendants had manipulated the books, but yet found not a single issue with anything Plaintiff did or did not do. Stoddard should be disqualified.

Stoddard Deposition

⁴ "I think your lawyer should bury them with discovery requests (or subpoenas)." --*Advice to Plaintiff Dave Wilson from another of his accountants in September 2012*

Stoddard was deposed on August 18, 2014. Stoddard testified that she was a senior manager at Dixon Hughes, who works for the FLSVS (forensic, litigation support, valuation services) group. (Stoddard Dep. pg. 6). She admitted that it was her job to be an objective finder of fact for the benefit of the court. (Stoddard Dep. pg. 18). She also admitted that the rules of professional conduct for accountants—the rules propagated by the American Institute of Certified Public Accountants (the “AICPA”)—require her to be objective, which in her words “is not to be persuaded by emotions or other people, but to have opinions based on the objective facts and draw those conclusions based on those facts.” (Stoddard Dep. pg. 23). Stoddard further agreed that she is professionally prohibited from acting as an advocate for her client’s position (Stoddard Dep. pgs. 23-24).

Unfortunately, in rendering opinions for Plaintiff, Stoddard did not remain objective—she did not objectively review the CCC accounting documents, and then reach an unbiased conclusion based on that review. Rather, Stoddard asked for no materials other than what was fed her by Plaintiff or his counsel and used that narrow scope to perform a biased-from-the-outset review of the accounting records and then, even worse, issued tainted findings accusing Comeau-Shirley of wrongdoing.

It is clear that from the beginning Stoddard would serve as a surrogate for Plaintiff’s position. She said she was hired to “assist [Plaintiff’s counsel] with this case” (Stoddard Dep. pg. 31) and that, before she even looked at the CCC accounting records, she lacked confidence in the financial statements (Stoddard Dep. pg. 30).

- 1. Stoddard Had No Written Objective Plan in Place Before She Reviewed the CCC Accounting Records**

Stoddard had no written objective plan in place before she began reviewing the CCC accounting documents. She explained that she had a “goal” of getting comfortable with the CCC accounting documents, but did not have a written objective plan to achieve that goal:

Q. In order to do that [achieve the goal], wouldn't you have in your mind's eye a set of steps you have to take to do that?

A. Yes.

Q. But you didn't write those down to leave a trail of what you were doing, did you?

A. No.

(Stoddard Dep. pg. 32). She further explained that she did not document her plan at all:

A. We have to keep adequate documentation, but it doesn't mean I have to document the plan as we go along.

Q. And that's your testimony as an expert witness who's licensed in the State of South Carolina as a certified public accountant?

A. Yes.

(Stoddard Dep. pg. 34) [Contrast this with Bradshaw's testimony on pp 46-47 of his deposition⁵ where he acknowledges that it is his “professional obligation” to leave a trail of his work for others to follow.] Stoddard did not document her work, even though required by the AICPA, which included preparing a written plan to allow her to objectively perform the review of the CCC accounting records.

2. Stoddard Performed No Independent Investigation

Stoddard agreed that part of her responsibility for performing forensic accounting services was to obtain relevant data that is sufficient to provide a reasonable basis for her

⁵ Referenced pages to his deposition are attached hereto as **Exhibit C**. The pages are in numerical order.

conclusions. (Stoddard Dep. pg. 40). And yet Stoddard performed no investigation beyond the information and documents that were spoon-fed to her by Plaintiff.

Stoddard never visited the CCC plant (Stoddard Dep. pg. 42), and, as a result, did not talk to any plant personnel (Stoddard Dep. pg. 77).

Stoddard also did not, or at least does not remember, asking for additional information from Plaintiff (or any other party). (Stoddard Dep. pgs. 40-41; 84). In that regard, Bradshaw testified that merely simple questions would have waved any accountant off the goose chase she created:

Q. Do you agree that Ms. Stoddard's affidavit contained numerous assumptions or erroneous assumptions that she could have dispelled had she done some investigation -- the investigation you did?

A. I think in our report that we stated as such that had she known of the -- the two biggest issues was the inventory waste and the erroneous sale. And had she known of these, I think it would have made a huge difference in any type of projections or annualizations that she made with regards to her affidavit.

(Bradshaw Deposition pgs. 47-48).

She did not know, for example, that a Counterclaim was filed against Plaintiff that alleged Plaintiff was stealing trade secrets. (Stoddard Dep. pgs. 63-64). She admitted this information would have been helpful to her review. (Stoddard Dep. pg. 64). She also did not know about the adverse market forces specific to CCC's business between 2010 and 2011:

Q. Now, if I were to tell you at that point in time that [CCC] had made a lot of money in 2010, but they weren't going to be able to in 2011 because the glut came on the market and they were holding a lot of worthless inventory, would you have written such a rosy statement there?

A. That would be important to know.

(Stoddard Dep. pg. 86). The fact of the matter is Stoddard performed no independent investigation before rendering her opinion of CCC's accounting records. Stoddard apparently did not perform a single task that was not specifically dictated by Plaintiff or his attorney:

Q. What did you do that didn't involve Mr. Wilson or Mr. Arnold asking you to do it? Not how did you do it, but what did you do. Tell me the big broad topics you said as a professional, this is what I'm going to add to this engagement, I'm going to tell them what needs to be done. What did you do?

A. Well, nothing really.

(Stoddard Dep. pg. 38). (emphasis added)

Merely following professional standards, planning and asking questions would have potentially avoided the full blown review performed by Bradshaw:

Q. But you would have recognized that fairly quickly if you had been brought in and given a month-end statement, wouldn't you, and talked to the owners?

A. No doubt about it, yes. One clarification.

Q. Yes.

A. We would have known about it. Had we understood the process, the manufacturing process. And once we had gotten into that part of the analysis we would have understood why inventory would have required more adjustments.

Q. And in your role as doing that if you were in Ms. Stoddard's shoes you would have -- and had Mr. Wilson's ear you would have said to him, this is our plan, this is what we need to do, this is what you need to attack, can you explain these things to us as you learn the process; correct?

A. Yes.

Q. That would be the natural course of a professional accountant; right?

A. If I had access to the information, yes, I would have done some of the things necessary or at least inquired or made a list or made a plan as to things that I needed to review and look at to go further with my analysis.

(Bradshaw Deposition pgs. 49-50).

3. Stoddard Intentionally Left No Paper Trial for Defendants to Follow

Another incredible revelation from Stoddard's deposition was the fact that she intentionally failed to take any written notes memorializing her review of the CCC accounting records for the express purpose of evading discovery by Defendants. Stoddard agreed that to have fair and open discussions about the results of her review, Defendants would need to know how she performed that review and what she found, both positive and negative. (Stoddard Dep. pg. 53). And yet Stoddard, a retained expert who is professionally required to be objective, admitted that she intentionally did not detail her work because it would be disclosed to the opposing party. (Stoddard Dep. pgs. 51-52). She testified, for example, that she did not put any detail in her notes "because it's discoverable." (Stoddard Dep. pg. 52).

Additionally she acknowledged on page 41 of her deposition that "After I get them in the electronic file we destroy them. Or sometimes it's just something I need to do and once I'm done I get rid of it." It is impossible now to recreate what was converted electronically and what was merely "destroyed."⁶

4. Stoddard Found Not a Single Thing Wrong With Anything Plaintiff Did

Finally, in reviewing the accounting documents, Stoddard did not find a single unfavorable thing about Plaintiff:

Q. Do you believe there's anything unfavorable about Mr. Wilson in your affidavit?

A. I don't think so.

(Stoddard Dep. pg. 53).

⁶ Again, contrasting this with Bradshaw's testimony in which he acknowledges that it is professional obligation not to destroy anything is illuminating (Bradshaw Dep. pg. 47).

Stoddard's conduct and opinion, under these circumstances, can only lead to the conclusion that Stoddard is the mouthpiece for Plaintiff. For this reason, she should be disqualified by this Court.

B. Stoddard Should Be Disqualified Because She Is Not Competent to Testify

Even assuming this Court did not disqualify Stoddard for intentionally avoiding information and destroying documents, she should be disqualified because she is not competent to provide an expert opinion on her review of the CCC accounting records.

South Carolina Rule of Evidence 702 governs the admissibility of expert testimony. In exercising its "gate keeping duties" under this rule, the trial court "must evaluate the substance of the testimony and determine whether it is reliable." *Watson v. Ford Motor Co.*, 699 S.E.2d 169, 175 (S.C. 2010). The obligation of the trial court to examine the substance of the testimony to determine if it is reliable applies regardless of whether the expert evidence is scientific, technical, or other specialized knowledge. *Id.* at 177.

Stoddard intends to testify based on her forensic examination of CCC's accounting records. Stoddard's testimony is not reliable. Stoddard is not a certified fraud examiner. (Stoddard Dep. pg. 16). Stoddard has no formal training on QuickBooks. (Stoddard Dep. pg. 8). The vast bulk of her work has been related to family court matters. (Stoddard Dep. pg. 9). Most importantly, Stoddard did not even know what standards applied to her scope of work. Stoddard admits that the engagement is proscribed by the standards of the AICPA (American Institute of Certified Public Accountants) (Stoddard Dep. pg. 18), and also admits that she ought to know the rules of the industry (Stoddard Dep. pg. 19). But Stoddard also admits that she has never read the Litigation Services and Applicable Professional Standards of the AICPA ("Accountant Litigation Standards") (Stoddard Dep. pg. 21). In fact, when shown the Accountant Litigation Standards at

her deposition she admitted that “this is the time first time I’ve read it...” (Stoddard Dep. pg. 21). Stoddard was completely unfamiliar with the standards that dictate how her profession requires her to perform expert services in a litigation setting.

Worse, Defendant was completely unable to confront Stoddard with what she did or did not do in her review because Stoddard intentionally failed to memorialize the steps of her review. She makes bold accusations—such as the statement that CCC (but the implication being Comeau-Shirely) is “keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results” (Stoddard Aff. ¶ 7)—but then could not support the statement because she did not document it:

Q. Did you document your file so I can go back in your file and see where there’s an inconsistency such that it would lead you to believe there’s multiple sets of accounting records?


A. I probably don’t have that documented, or I probably don’t have that documented unless it was one of the multiple PDFs of the QuickBooks that I had printed. You know, you’d just have to compare those two.

(Stoddard Dep. pg. 108).

Therefore, in addition to her absolute failure to maintain an objective stance when performing her professional accounting duties, Stoddard should be disqualified for failing to know, let alone follow, the specific rules governing her work.

CONCLUSION

Comeau-Shirley respectfully requests this Court issue an Order disqualifying Stoddard from testifying in this matter.



Steven E. Farrar (#1960)
Smith Moore Leatherwood LLP

2 West Washington Street, Suite 1100 (29601)
Post Office Box 87
Greenville, SC 29602
(864) 751-7600
(864) 751-7800 (fax)
steve.farrar@smithmoorelaw.com

Attorney for Defendant
Andrea Comeau-Shirley

September 24, 2014

Exhibit A

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE C.A. NO. 2012-CP-23-2887

DAVID WILSON, individually and
derivatively on behalf of
Carolina Custom Converting, LLC,
Plaintiff,

VS

John Gandis, Andrea Comeau-Shirley,
ZOi Films, LLC, and Carolina Custom
Converting, LLC,
Defendants,

Carolina Custom Converting, LLC,
Counterclaim, Plaintiff,

VS

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water
Systems, Inc.,
Counterclaim Defendants.

DEPOSITION OF: CATHERINE STODDARD

DATE: August 18, 2014

TIME: 9:15 a.m.

LOCATION: Smith Moore Leatherwood
 2 West Washington Street, Suite 1100
 Greenville, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: MICHELE E. BECKER,
 Registered Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 A. I'm a senior manager.

2 Q. Is the senior manager the level below
3 partner?

4 A. Yes.

5 Q. How long have you been at Dixon Hughes
6 Goodman?

7 A. About three-and-a-half years.

8 Q. What did you do before that?

9 A. I had my own practice called Stoddard
10 Consulting, and I had some traditional clients and
11 then I also focused on litigation services.

12 Q. How many different big umbrella
13 practice areas does Dixon Hughes have?

14 A. Oh, dear. Big umbrella would probably
15 be like tax, audit, and then we have the FLSVS. And
16 FLSVS is forensic, litigation support, valuation
17 services group.

18 Q. And you're in that group?

19 A. Right.

20 Q. And have you been in that group your
21 entire time at Dixon Hughes?

22 A. Yes.

23 Q. And were you brought in specifically
24 to work in that group?

25 A. Yes.

1 Q. And a senior would be above an in
2 charge?

3 A. They started with what they call
4 staff, which was beginning to two-year. And then

5 senior was anywhere from two, to three, or four,
6 four, maybe five years.

7 Q. And did you work in the audit division
8 there?

9 A. Yes. I was in the audit department.

10 Q. Okay. Now, at any time have you been
11 trained on QuickBooks?

12 A. Not formally. But when I had my own
13 practice I had a number of clients that were
14 QuickBooks clients.

15 Q. Would you -- if somebody came to
16 you -- when you had your own practice did you ever
17 do bookkeeping services for clients?

18 A. A little bit. Some writeup type work.

19 Q. And when you were doing that writeup
20 type work would you use QuickBooks as your program?

21 A. Yes.

22 Q. I asked you earlier you've been
23 deposed before; is that correct?

24 A. Yes.

25 Q. Can you characterize what percentage

1 of your depositions have been related to family
2 court matters?

3 A. Most -- probably all of them,
4 actually. Yeah.

5 Q. Is this one of the rare times you've
6 been deposed in a business dispute as opposed to a
7 family court matter?

8 A. Yes.

9 Q. Have you ever been involved either in
10 terms of consulting or in support of a lawsuit where
11 there is a contentious split in a corporation in an
12 LLC such as this?

13 A. Ever been involved in a lawsuit?

14 Q. Yes.

15 A. Yes.

16 Q. Where there's a contentious split such
17 as this?

18 A. Yes.

19 Q. And would those be in the matrimonial
20 areas?

21 A. No. I've dealt with other businesses.

22 Q. And so in that regard you would have
23 been -- you would not have been testifying about
24 those; is that correct?

25 A. Most of them settled before testimony.

1 A. No.

2 Q. Is there an exam you can sit for to
3 become a forensic accountant?

4 A. Yes.

5 Q. Is there an exam you can sit for to
6 become a certified fraud examiner?

7 A. Yes.

8 Q. Have you taken that test?

9 A. No.

10 (DFT. EXH. 2, Internet Bio for Catherine Stoddard,
11 was marked for identification.)

12 BY MR. FARRAR:

13 Q. I'll show you Exhibit Number 2. And
14 can you tell me what this reflects, please?

15 A. This is a bio from our ISO firm, bio
16 on myself.

17 Q. Instead of making you remember, I
18 thought I'd give you this so we could go through
19 your licenses and certifications, okay?

20 A. Okay.

21 Q. You are a certified public accountant,
22 we've talked about that, correct?

23 A. Right.

24 Q. You're accredited in business
25 valuation by the AICPA?

1 Q. And that affidavit was written to the
2 best of your ability at the time you prepared it; is
3 that correct?

4 A. Yes.

5 Q. And do you believe you violated any
6 ethical provisions of your profession in preparation
7 of that report, that affidavit?

8 A. I don't believe so.

9 Q. Can you tell me what the general
10 requirements of CPAs are involved in litigation
11 engagements?

12 A. It's our job to be objective finders
13 of fact for the benefit of the court.

14 Q. Do you know if the AICPA has issued a
15 set of requirements for CPAs to follow when
16 performing a litigation engagement?

17 A. This kind of work is considered under
18 the consulting standards of the AICPA.

19 Q. Do you know if there's any specific
20 standard that refers to litigation engagements?

21 A. Not that I'm aware of other than the
22 consulting standard.

23 Q. And can you tell me the title of that
24 consulting standard?

25 A. I think it's statement on standards

1 for consulting services.

2 Q. I'm sorry, it's what?

3 A. Statement on standards for consulting
4 services, I believe.

5 Q. Okay. You're not aware of litigation
6 services that are applicable to the professional
7 standards of the AICPA?

8 A. No.

9 Q. If you're not aware of it how do you
10 know that you followed it?

11 A. I -- well, I don't then.

12 Q. Are you aware that the applicable
13 standards for the AICPA litigation service and
14 applicable professional standards require that you
15 follow the general standards of the AICPA?

16 A. I'm sorry, I believe your question is
17 about a document I haven't seen, so...

18 Q. Well, I guess, Ms. Stoddard, the
19 question I'm asking is, do you hold yourself out to
20 be a litigation professional, litigation support
21 professional, and you're testifying in a litigation
22 matter? Would you agree with me that as a
23 professional in your industry you ought to know the
24 rules of your industry?

25 A. Yes.

1 responsibilities that affect litigation services.

2 So, I'm sorry, what was your question
3 about this?

4 Q. My question is, first, have you read
5 it? This is the first time you've read that,
6 correct?

7 A. This is the time first time I've read
8 it, yes.

9 Q. And, secondly, the standards for
10 consulting services is actually a separate
11 standalone document, isn't it?

12 A. It is.

13 Q. Okay. Let me have it back to ask you
14 more questions, please.

15 In fact, this Exhibit 4 recognizes the
16 standalone statement on standards for consulting
17 services because they refer to it in paragraph 7 and
18 say that adherence to that standard must be complied
19 with; is that correct? Paragraph 7.

20 A. Yes.

21 Q. I'm sorry I didn't bring more copies.
22 And then it also says: You must also
23 comply with the general standards of the accounting
24 profession contained in the American Institute of
25 Certified Public Accountants; is that correct?

1 BY MR. FARRAR:

2 Q. All right. You would agree that that
3 appears to be what the rule comprises -- AICPA 201
4 says, correct?

5 A. Yes, that's right.

6 Q. Okay. You're also aware that the
7 AICPA requires that you have to do your job while
8 maintaining integrity and objectivity, correct?

9 A. Yes. That's right.

10 Q. Can you tell me what objectivity is?

11 A. It is an adherence to conclusions
12 based on the facts presented before me.

13 Q. You think that's all objectivity
14 requires?

15 A. Well, I probably didn't say that as
16 gracefully as the standard does, but basically to be
17 objective is not to be persuaded by emotions or
18 other people, but to have opinions based on the
19 objective facts and draw those conclusions based on
20 those facts.

21 Q. Would you agree with me that the rules
22 of professional conduct for the American Institute
23 of Certified Public Accounting provide that the
24 expert does not serve as an advocate for your
25 client's position?

1 A. Yes. I agree with that.

2 Q. Do you believe anytime during the
3 course of this you served as an advocate for your
4 client?

5 A. I do not.

6 Q. When was the first time you met Dave
7 Wilson?

8 A. I am not entirely certain. I believe
9 I became involved in this case in the spring of
10 2013. I talked to him -- I think I met -- I'm
11 pretty sure I met with him at least once before that
12 affidavit in May. So sometime between March and May
13 of 2013.

14 Q. Do you think that you provided me your
15 time records on what you've done in this case?

16 A. I think so.

17 Q. Okay. I'll look again during a break,
18 but I don't think so. But I'll double-check. Where
19 would I look under in those folders?

20 A. They would be on the billing invoices.

21 Q. In what folder on the disk that you
22 provided do you think it would be?

23 A. They should be all in one folder.

24 Q. Okay.

25 A. The bills.

1 Q. And Mr. Woodside is a CPA?

2 A. He is not a CPA.

3 Q. So he doesn't have the same rules
4 applying to him, does he?

5 A. That's true.

6 Q. So if you work with somebody -- if you
7 learn from somebody who doesn't have the same rules,
8 do you believe you're following your profession's
9 rules?

10 A. I believe I am.

11 Q. Okay. So where is the planning in
12 this engagement that you're required to do?

13 A. We don't have planning documents.

14 Q. Well, tell me in your head what the
15 planning was. When you talked to Mr. Arnold and got
16 a sense of what you're supposed to do, what was your
17 plan?

18 A. My plan was to try to understand what
19 was going on in QuickBooks and try to get --
20 eventually to get to a place where we have some
21 confidence in the financial statement numbers that
22 we're looking at.

23 Q. Why were you lacking confidence?

24 A. Why did I lack confidence?

25 Q. Yeah. If you hadn't seen them why did

1 you lack confidence to plan to get confidence? Why
2 wasn't the conversation, I want you to look at these
3 numbers and see if they're right or wrong, but you
4 just told me that your initial plan was to get the
5 documents to where you had confidence in them? What
6 made you not have confidence in them?

7 A. When I -- early on, I don't know if it
8 was our initial meeting, but early on I was given
9 several different financial statements that did not
10 agree. And eventually I got a backup of QuickBooks
11 and they didn't agree either. And so -- and we had
12 trouble getting tax return documents. And so we had
13 different sources of financial information and they
14 didn't agree. And so it became pretty apparent
15 early on that the first step to doing any kind of
16 calculation or analysis of this company is to get
17 something that we feel comfortable with in terms of
18 financial statements.

19 Q. So you were hired to basically reach a
20 valuation of this company?

21 A. Eventually, yes.

22 Q. What were you hired to do?

23 A. To assist Mr. Arnold with this case.

24 Q. I thought you weren't supposed to be
25 an advocate?

1 A. I'm not an advocate.

2 Q. Well, what was the goal to assist
3 Mr. Arnold, so his client would win?

4 A. No. To get to -- the goal initially
5 was to get comfortable with some set of financial
6 statements and to be able then to do some analysis
7 on those financial statements.

8 Q. In order to do that, wouldn't you have
9 in your mind's eye a set of steps you have to take
10 to do that?

11 A. Yes.

12 Q. But you didn't write those down to
13 leave a trail of what you were doing, did you?

14 A. No.

15 Q. In fact, if I look at what you have,
16 you have notes discussing, having discussions with
17 Mr. Arnold as your plan, correct?

18 A. I have notes with Mr. Arnold about
19 what issues -- what the issues were that he needed
20 my assistance with.

21 Q. Okay. I haven't seen any document.
22 If you think it's there, we'll take a break and go
23 look. I haven't seen a single document that shows
24 where you're actually thinking about what you're
25 doing in the case in terms of prospective steps,

1 I can't find that says when you do litigation
2 support you can ignore these general standards of
3 the AICPA?

4 A. We have to keep adequate
5 documentation, but it doesn't mean I have to
6 document the plan as we go along.

7 Q. And that's your testimony as an expert
8 witness who's licensed in the State of South
9 Carolina as a certified public accountant?

10 A. Yes.

11 Q. And you think that you don't have to
12 document your work at all because you don't have to
13 because you're in litigation services?

14 A. Okay. There's a difference between
15 document -- I agree I have to document my work. I
16 have to have support for my conclusions. But to
17 document the plan, I'm not aware that that is a
18 requirement.

19 Q. But you're just picking and choosing
20 what you've got to document, aren't you? You can't
21 show me a single rule that tells you that's
22 appropriate, can you?

23 A. I might if I have an opportunity to
24 look, but I...

25 Q. But you haven't even read the rule,

1 with Mr. Wilson, and he expressed some concern about
2 the integrity of the accounting reports.

3 Q. But at no time did you sit down and
4 come up with that on your own and say, well, this is
5 what we need to do and here's my plan. You
6 basically did whatever Mr. Wilson or Mr. Arnold
7 asked you to do, correct?

8 A. I disagree with that.

9 Q. What did you do that they didn't ask
10 you to do?

11 A. He asked me to take a look at -- he
12 had some concerns about the financial statements and
13 the different reports and asked me to investigate
14 them. So the manner in which I investigated them
15 and what I found was entirely my work.

16 Q. What did you do that didn't involve
17 Mr. Wilson or Mr. Arnold asking you to do it? Not
18 how did you do it, but what did you do. Tell me the
19 big broad topics you said as a professional, this is
20 what I'm going to add to this engagement, I'm going
21 to tell them what needs to be done. What did you
22 do?

23 A. Well, nothing really.

24 Q. Okay. Then wouldn't part of what you
25 want to do is to say this is what I need to look at,

1 A. Yeah.

2 Q. So walking away from there you
3 shouldn't get to say, I don't know why this is
4 missing, because you would have had the opportunity
5 to at least hear what the reason was, right?

6 A. I could have heard her explanation,
7 yes.

8 Q. Okay. All right. Excuse me just a
9 second.

10 Now, part of your responsibility as a
11 CPA doing litigation services is you're required to
12 obtain relevant data that's sufficient to provide a
13 reasonable basis for your conclusions; isn't that
14 right?

15 A. Yes. That's right.

16 Q. Okay. But you didn't ask for
17 anything, you just took whatever Mr. Wilson and
18 Mr. Arnold gave you. You didn't ask them for
19 anything, right? Because we've established that.

20 A. I may have asked for something but not
21 formalized discovery. We had a lot of
22 conversations. We may have had a conversation where
23 I said we need to try to get or obtain this or that
24 or the other, and not have it formalized as a
25 specific discovery request.

1 Q. You didn't document that either?

2 A. I didn't.

3 Q. Because you don't have any
4 documentation requirements.

5 A. Yes.

6 Q. Do you have any desk files?

7 A. Desk files?

8 Q. Yeah. Do you have any written paper
9 in your files as opposed to what you have on the
10 computer?

11 A. I have notes occasionally from, like,
12 if somebody makes a phone call, and then I try to
13 incorporate those into my electronic file.

14 Q. You have them scanned in?

15 A. I try to.

16 Q. Do you type them or scan them?

17 A. Sometimes I type them, sometimes I
18 scan them.

19 Q. What happens to the ones that you
20 handwrite and then you typed in what you wanted to
21 type in?

22 A. After I get them in the electronic
23 file we destroy them. Or sometimes it's just
24 something I need to do and once I'm done I get rid
25 of it.

1 Q. Did anyone at Dixon Hughes Goodman
2 assist you in the evaluation of the work you were
3 doing other than the IT people?

4 A. I probably -- I have an associate and
5 I also have a bookkeeper that helps me from time to
6 time. I would have to look at the billing records
7 to see who worked on the case.

8 Q. Who's the associate?

9 A. Zach Mueller. Although -- yeah. Zach
10 Mueller. And the other one is Katherine Haskell.
11 She is the bookkeeper. And I believe there was
12 somebody in the Charleston office too that helped me
13 with the affidavit. His name -- I don't remember
14 now who worked on that.

15 Q. Have you ever visited the CCC plant?

16 A. No.

17 Q. Have you ever asked to?

18 A. I don't remember if I did or not.

19 Q. If you had written a planning note,
20 you would have had that in your planning notes,
21 correct? But you don't have planning notes.

22 A. I might have had a note of it.

23 Q. But that's if you were keeping your
24 planning notes, correct?

25 A. Right.

1 A. That's correct.

2 Q. And so that's what I call, time
3 detail. I assume you have to gather your time
4 detail and put it in on a daily or weekly basis or
5 something like that, correct?

6 A. Yes, that's right.

7 Q. And then you have the ability to push
8 a button and spit all that out, don't you?

9 A. I have ability to spit out whatever is
10 put in the computer. What Mr. Gilbert did there is
11 enter -- the time allows you to enter notes and he
12 apparently put some notes in his time entries.

13 Q. Do you not put notes in yours?

14 A. I don't on this type of matter.

15 Q. So that's one more way I can't follow
16 your trail, correct?

17 A. I suppose that's accurate, yes.

18 Q. Okay. Do you intentionally do this so
19 you don't have to be pressed about things that you
20 found unfavorable to your clients?

21 A. I don't know about being unfavorable
22 to the clients. But for this type of litigation
23 that's what my partner in charge has told me to do.

24 Q. And who is that?

25 A. Roy Stickland.

1 Q. And he told you specifically, don't
2 put any detail in your time?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes. That's right.

6 Q. And did he tell you why?

7 A. I don't know. Probably because it's
8 discoverable. But in family court I do it all the
9 time, so...

10 Q. But did he tell you why not? Why do
11 you assume?

12 A. I think he said because it's
13 discoverable.

14 Q. And you don't want the other side to
15 see it?

16 A. Probably, yes, that's correct.

17 Q. And that's not being an advocate for
18 your client?

19 A. I don't think so.

20 Q. So if you're trying to hide something
21 from the other side, it's not being an advocate for
22 your client in your mind? You don't think so at
23 all?

24 A. I don't think so. No, I don't agree.

25 Q. Okay. But would you agree with me to

1 have a fair and open discussion about your results
2 I'd need to know what you were doing, how you did it
3 and what issues you found both positive and
4 negative?

5 A. Yes.

6 Q. All right. But there's no way I can
7 look for that, is there?

8 A. Well, my affidavit pretty much
9 summarizes what I did and what I found.

10 Q. Does it say what you found unfavorable
11 to your client in there? And you're welcome to take
12 as much time as you want to read your affidavit.
13 And I challenge you to find something that says
14 anything unfavorable about Mr. Wilson. I've read
15 your affidavit pretty carefully, okay?

16 A. Okay.

17 Q. Do you believe there's anything
18 unfavorable about Mr. Wilson in your affidavit?

19 A. I don't think so.

20 Q. And you did all this work and never
21 found one thing unfavorable about Mr. Wilson?

22 A. Not in -- I'm not saying there isn't
23 anything unfavorable, but in that work, no.

24 Q. But you're -- if you found it and you
25 didn't write it down, I can't find it anywhere,

1 correct? And you didn't put it in your report, and
2 you didn't put it in your time. So anything
3 unfavorable you found is gone, is to ether, I can't
4 find it, correct? It's evaporated.

5 A. I didn't find anything like what
6 you're describing at the time I wrote that
7 affidavit.

8 Q. So you found nothing unfavorable with
9 regard to Mr. Wilson, is your testimony?

10 A. Well, the scope of what I was trying
11 to do was to try to understand or highlight the
12 problems with the financial records so that this
13 case could get to a point where we have some
14 information we can rely on to start doing some
15 analysis. And in that process I didn't find
16 anything unfavorable to Mr. Wilson.

17 Q. Did you initially believe you were
18 being engaged to prepare a valuation report of the
19 company?

20 A. Initially I think I thought I was
21 being engaged in order to determine the economic
22 damages.

23 Q. At any time has your engagement been
24 performed with the anticipation that you would come
25 up with a value of the company?

1 support your conclusions?

2 A. Well, I think really my work was done
3 for the affidavit in order to get to the place where
4 we had access to get the information we need. And I
5 really haven't done a whole lot since the affidavit.

6 Q. But you didn't ask Mr. Arnold at any
7 time what have you got, let me see everything you've
8 got?

9 A. I'd ask him if he had specific
10 information about certain things.

11 Q. Like bank statements?

12 A. Yes. We did have bank statements. I
13 did ask for those and we did get those, yeah.

14 Q. Okay. And what else would you -- I
15 mean, I don't know what to ask you because quite
16 frankly there's no way for me to check what you were
17 doing, okay. I'm having to rely on you to remember
18 these things just like that, okay.

19 A. Yeah. We did have bank statements.
20 We did have those.

21 Q. What else did you have?

22 A. I'm sorry, I don't remember.

23 Q. Did you look at the counterclaim
24 against you -- against Mr. Wilson by these
25 defendants?

1 A. I believe I've seen that.

2 Q. Did you see where he was accused of
3 stealing trade secrets?

4 A. Maybe I haven't seen that. That
5 doesn't sound familiar.

6 Q. Okay. Were you aware he was accused
7 of stealing confidential information?

8 A. I became aware of that recently.

9 Q. No. I mean --

10 A. Maybe at that mediation.

11 Q. Okay. When you were giving your
12 opinion, were you aware of that?

13 A. No.

14 Q. Don't you think it would be good to at
15 least know what both sides are saying?

16 MR. ARNOLD: I'm going to object to
17 the form.

18 BY MR. FARRAR:

19 Q. Okay. You can answer the question.

20 A. I think it's helpful to see all of
21 the, yeah, to see all of that is helpful.

22 Q. But you didn't ask for that from
23 Mr. Arnold or Mr. Wilson, did you?

24 A. I probably asked for the complaint but
25 I didn't realize that there were counterclaims.

1 A. No. The first I heard of Mr. Higgins
2 was Bradshaw's report.

3 Q. If you had gone out and toured the
4 plant, don't you think you would have had the
5 opportunity to meet Mr. Higgins?

6 A. I could have, yes.

7 Q. That might have impacted your
8 analysis, mightn't it?

9 A. It might have, yes.

10 Q. Okay. But sitting here today, under
11 oath, you're telling me that you're not aware of any
12 reasons why the relationships deteriorated between
13 Mr. Wilson on one side and Mr. Gandis and
14 Ms. Shirley on the other?

15 A. I really don't know what the source of
16 the conflict was initially. I know there were
17 accusations about cash, and but I really don't know.
18 That came later. And I understand the deterioration
19 started in the fall and it was later, I think, from
20 my understanding when they started talking about
21 cash flow.

22 Q. You know Mr. Wilson doesn't like
23 Ms. Shirley, don't you?

24 A. I know that this lawsuit has caused
25 some conflict between them. I don't have an idea of

1 printed off at different points in time that
2 couldn't be reconciled back.

3 Q. And that's all materials supplied by
4 these gentlemen, right? (Indicating)

5 A. Either that or through discovery, I'm
6 not sure where the -- I'm not sure where the
7 documents all came from. Some of them came through
8 formal discovery.

9 Q. Did Mr. Arnold ever send you formal
10 discovery and say, you got anything you want to add
11 to this, here's my draft?

12 A. I don't recall that, uh-uh.

13 Q. Did you ever send him something
14 saying, next time you ask for something, ask for
15 this?

16 A. If we did -- if it's not in my file it
17 would have been just a conversation.

18 Q. Do you remember doing that?

19 A. I don't remember that, no. I do
20 remember I think asking for bank statements though.

21 Q. You got those before you did your
22 affidavit, right?

23 A. I don't remember when I got those.

24 Q. We'll see. I don't know either,
25 that's why I'm asking.

1 A. Right.

2 Q. But you didn't do that anywhere else
3 on these numbers, did you? I mean, as far as what
4 Mr. Wilson, Mr. Arnold gave you as numbers, you
5 didn't footnote that saying, I don't have that,
6 you're just saying the tax return on K-1 didn't have
7 that, right? We'll see examples as we go forward,
8 okay?

9 A. Okay.

10 Q. Now, going back to the last line of
11 paragraph section -- number 5: CCC experienced
12 tremendous growth between 2009 and 2010 and was a
13 profitable, successful business.

14 Now, if I were to tell you at that
15 point in time that they had made a lot of money in
16 2010, but they weren't going to be able to in 2011
17 because the glut came on the market and they were
18 holding a lot of worthless inventory, would you have
19 written such a rosy statement there?

20 A. That would be important to know.

21 Q. You might have put in there, but they
22 were facing severe times coming, or something like
23 that, right? Challenging times coming.

24 A. Yes. However, the 2011 wasn't -- this
25 is based on tax return information, and the tax

1 Q. Did you document in your file so I can
2 go back in your file and see where there's an
3 inconsistency such that it would lead you to believe
4 there's multiple sets of accounting records?

5 A. I probably don't have that documented,
6 or I probably don't have that documented unless it
7 was one of the multiple PDFs of the QuickBooks that
8 I had printed. You know, you'd just have to compare
9 those two.

10 Q. But you would have compared it and
11 then say this is the one Ms. Stoddard was saying
12 created that impression?

13 A. Yes.

14 Q. There's nothing in there that says,
15 this gives me the impression that?

16 A. That's right.

17 Q. So there's an audit trail in
18 QuickBooks but there's not an audit trail in
19 Ms. Stoddard's work, correct?

20 A. That's true.

21 Q. And then going down further, paragraph
22 8 you say: There's some dispute about the integrity
23 and legitimacy of accounting entries and business
24 activity of CCC.

25 So what's the integrity issue there?

1 A. Sorry. M-1 totaled \$155,000.

2 Q. That's what I'm saying. If you add up
3 the hundred plus all the \$5,000 entries they match
4 \$155,000 on M-1.

5 A. I see what you're saying, yes.

6 Q. And, in fact, F-2 is the transaction
7 detail, and M-1 is a vendor balance detail and
8 they're not exclusive, are they?

9 A. No, they're not.

10 Q. So you double counted those then,
11 didn't you?

12 A. It appears that, yes, from this
13 report.

14 Q. But you were sitting in the deposition
15 where Ms. Shirley was testifying and you could have
16 asked that question, had Mr. Arnold ask that
17 question, right?

18 A. Well, the deposition was after this
19 was written. Was it?

20 MS. COMEAU-SHIRLEY: (Moves head up
21 and down.)

22 MR. FARRAR: Stop.

23 THE DEPONENT: Yes, I could have asked
24 that question.

25 BY MR. FARRAR:

Exhibit B

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2012-CP-23-02887

David Wilson, individually and derivatively)
on behalf of Carolina Custom Converting,)
LLC,)

Plaintiff,)

AFFIDAVIT OF)

CATHERINE STODDARD, CPA/ABV, CVA)

vs.)

John Gandis, Andrea Comeau-Shirley, Zoi)
Films, LLC,)

Defendants,)

John Gandis and Andrea Comeau-Shirley,)

Third-Party Plaintiffs,)

vs.)

Carolina Custom Converting, LLC,)

Third-Party Defendants.)

PERSONALLY appeared before me **CATHERINE STODDARD, CPA/ABV, CVA,**
who being duly sworn, deposes and says:

1. I am a Certified Public Accountant (since 1989) in Greenville, South Carolina. I am a Senior Manager employed with Dixon Hughes Goodman, LLP, Certified Public Accountants and Advisors. My practice specializes in the area of forensic accounting, litigation support and business valuations. I have experience valuing businesses and hold the designation ABV which is accredited in business valuation from the American Institute of Certified Public Accountants (AICPA). I also hold the designation CVA which is certified valuation analyst from the National

Association of Certified Valuation Analysts. A copy of my current curriculum vitae is attached hereto and made a part hereof.

2. I was engaged by Mr. David Wilson on March 15, 2013 to assist him with the financial aspects of the case referenced above. Primarily, I have been asked to investigate the accounting records of Carolina Custom Converting, LLC ("CCC") to determine the true economic income and financial position of the CCC. I've also been asked to investigate the extent to which the accounting records have been changed, the impact of these changes, and the timing of these changes as they relate to the litigation referenced above.

3. CCC provides custom slit plastic film for a variety of markets, including industrial applications and food packaging¹. The tax returns show that this business started on January 1, 2008. Mr. Wilson informs me that he and John Gandis each own 45% of CCC while Andrea Comeau-Shirley owns 10%.² The Company uses Quickbooks software for its accounting system. Andrea Comeau-Shirley is primarily responsible for the accounting of CCC and maintenance of Quickbooks records.

4. It is my understanding that David Wilson and John Gandis originally started the company, but Andrea Comeau-Shirley was admitted to the partnership early in its formation. The partnership relationships started to deteriorate in the fall of 2011.

5. The tax returns of CCC show gross revenue in 2009 and 2010 of \$1.8 million and \$6.9 million, cost of goods sold of \$1.5 million (77% of Gross Revenue) and \$4.9 million (72% of Gross Revenue), and net income of \$97 thousand and \$1.3 million, respectively. CCC experienced tremendous growth between 2009 and 2010 and was a profitable, successful business.

6. Mr. Wilson provided me with a CCC financial statement which he printed from

¹ CCC website www.ccc-films.com

² We were not provided copies of the K-1's.

Quickbooks on August 1, 2011 (Exhibit A-1) that shows for the seven months ending August 1, 2011 gross revenue was \$3.5 million, Cost of Goods Sold was \$2.9 million (83% of Gross Revenue), and net income was \$654 thousand. Annualizing these results would equate to annual gross revenue of about \$6 million and net income of \$1.1 million. These results would have been consistent with the previous year. This financial statement indicates that CCC continued to be profitable and successful through August 1, 2011.

7. After August 1, 2011, the financial records lack consistency. Discerning CCC's financial results is difficult because the records are not reliable. There are significant discrepancies between different sources of financial information. In addition, unusual transactions were made to Quickbooks after August 1, 2011.

Quickbooks³ reflects gross revenue for 2011 of \$5.8 million, Cost of Goods Sold of \$5.2 million (93% of Gross Revenue) and a net LOSS of \$456 thousand (Exhibit B-1). A financial statement that was provided by CCC in response to a subpoena shows gross revenue for 2011 was \$5.8 million⁴, Cost of Goods Sold of \$5.2 million (90% of Gross Revenue), and a net LOSS of \$425 thousand (Exhibit B-2). A tax transcript for 2011 obtained from the Internal Revenue Service⁵ shows 2011 gross revenue was reported to be \$5.2 million, Cost of Goods Sold were \$4.4 million (84% of Gross Revenue), and net LOSS was reported to be \$163 thousand (Exhibit B-3). Depending upon the source of financial information, Gross Revenue is reported to be \$5.8 million, or \$5.2 million for 2011. Cost of Goods Sold is reported to be \$5.2 million or \$4.4 million. Net income is reported to be a LOSS of \$456 thousand, LOSS of \$425 thousand, or a LOSS of \$163 thousand. While it is not uncommon to make book to tax adjustments for expenses like

³ Electronic back up as of November 19, 2012 provided by CCC

⁴ Operating Revenue appears to be the sum of "Total Income" and "Other Income" from the Quickbooks, Exhibit B-1

⁵ This return was received by the IRS on September 17, 2012 per IRS Transcript

depreciation, meals, and donations or to group accounts differently for different reports, it is unusual for there to be inconsistency in the reported Gross Revenue and Cost of Goods Sold. It is also unusual for the detailed accounting records, like Quickbooks, not to match the company's financial statements. I am not aware of any legitimate reason for these discrepancies in CCC's reported financial results. It appears that CCC is keeping or creating multiple sets of accounting records and reports for the purposes other than accurately reporting its historical results.

8. After August 1, 2011, unusual accounting entries were recorded in Quickbooks that drastically changed the reported results of CCC. Through August 1, 2011, CCC's reported revenue and income were consistent with the previous year, and CCC was on track to make a net PROFIT of about \$1.1 million (see paragraph 6 above). However, CCC ended the year with a loss of between \$163 thousand and \$456 thousand (paragraph 7 above). This represents a deterioration of profits in the range of \$817 thousand to \$1.6 million between August 1, 2011 and December 31, 2011. There is some dispute about the integrity and legitimacy of accounting entries and business activity of CCC after August 1, 2011. However, the decline is at least suspicious. Quickbooks reports indicate that CCC earned \$2.1 million in gross revenue during the last five months of 2011 and incurred Cost of Goods Sold of \$2.3 million. If this were accurate, CCC sold product during the last 5 months of 2011 for \$200 thousand less than CCC's own direct cost. This loss is before considering general and overhead expenses. Cost of Goods Sold as a percentage of Gross Revenue ranged historically from 72% to 83% before August 1, 2011, but changes in Quickbooks reflect Cost of Goods Sold was 111% for the months August through December 2011. The deterioration of CCC's reported financial results continues in 2012 with Quickbooks reporting a Gross Revenue of \$3.2 million and a net LOSS of \$458 thousand

(Exhibit C-1).

9. Although my analysis is not yet complete, I have found the following accounting entries made after August 1, 2011 in Quickbooks that contributed to the deterioration of CCC's reported financial results:

a. On October 24, 2011, sixty-seven invoices were entered with a "WO" following the invoice number of a previously recorded transaction. These transactions were backdated to accounting periods ranging from April to June 2011. (Exhibit D-1) Between October 24, 2011 and January 27, 2012 an additional 5 transactions fitting this same pattern were entered and posted to accounting periods ranging from May 2011 to December 2011. These invoices show inventory being sold at zero sales dollars. (Exhibit D-2) The effect of these transactions was to increase Cost of Goods Sold (material cost) by \$82,421 and remove \$82,421 in inventory value from the books of CCC without any corresponding Gross Revenue or sales. (Exhibit D-3). This accounting treatment of sales, cost of sales, and inventory (including scrap) was unusual and did not begin until after August 1, 2011. This accounting treatment doesn't appear to have continued in any significant way after January 27, 2012.

b. On October 24, 2011, three journal entries were recorded to reduce accounts receivable (an asset). These transactions were backdated to July, August, and September 2011. Unlike previous write-offs, these journal entries were non-specific and included no explanations of specific customers. (Exhibit E-1) On December 15, 2011, an additional non-specific write-off was recorded and back dated to November 30, 2011. (Exhibit E-2) These transactions reduce Accounts Receivable (an asset) and increase bad

debt expense by \$35,683. Although some of the journal entries include a "name" of "Allowance for Doubtful Accounts" and memo explanation of "Bad Debt Reserve," the transactions did not post to a reserve or allowance account. They were posted to accounts receivable (an asset) and bad debt expense.

c. On December 15, 2011, a journal entry was recorded to accrue legal expenses in the amount of \$15,000. (Exhibit F-1) Subsequently, various other legal fees related to the Wilson matter were charged to CCC's books including a forensic investigation of computers. These transactions were entered throughout 2012. On August 12, 2012, an accrual for \$100,000 was recorded to legal expense (Exhibit F-2) and on September 2, 2012, a series of accruals were recorded and backdated for the months January through August 2012. Similar accruals were subsequently made in September and October 2012. These accruals total \$50,000. (Exhibit F-3) Another entry called "Due to LLC Manager - D&O Reimbursement for Legal" was recorded on September 2, 2012 and backdated to May 31, 2012. (Exhibit F-4) The result of these transactions is to increase legal fees expense and either decrease cash (when a legal expense was paid) or increase an accrued liability (when the fees were accrued but not paid). Total legal fees increased from \$10,611 in 2010 to \$118,650 in 2011 and \$120,357 in 2012. (Exhibit F-5) It appears that John Gandis and Andrea Comeau-Shirley have been paying their legal bills related to the dispute with Wilson through CCC and have accrued additional reserves in CCC to cover expected future payments. These legal fees have decreased net income and net worth of CCC.

d. CCC rents its office from an entity called M-Tec, which is owned by John

Gandis, one of the partners involved in this dispute. CCC paid M-Tec \$2,500 per month for a total of \$30,000 per year for 2010 and 2011. However, in 2012, rent to M-Tec increased to \$6,000 a month for a total of \$72,000 for the year. (Exhibit G-1) According to Mr. Wilson, there was no written rent agreement with John Gandis, but this increase was not discussed with or approved by Mr. Wilson.

e. On February 22, 2012, a fixed asset called "Idle Equipment or CWP: B3-86 Black Clawson DR-15" was removed from the balance sheet and expensed as repairs and maintenance (labor). The February transaction was backdated to October 31, 2011. (Exhibit H-1) Expenses for this asset accumulated during the months May to September 2011.

f. Zoi is an entity started and controlled by John Gandis and Andrea Comeau-Shirley. On August 18, 2012 and October 17, 2012, two vendor invoices were entered that related to an entity named "Zoi." (Exhibit I-1) The invoices were charged as a reduction to sales. The invoices were subsequently "paid" from various cash accounts of CCC in Quickbooks during the period August 2012 through November 2012. (Exhibit I-2) The result of these transactions was to decrease sales and decrease cash by about \$190,000. In addition, there were corresponding customer invoices to Zoi. Although we have not yet fully untangled these transactions, it appears that CCC sold inventory to Zoi at reduced prices, often even below cost. These sales invoices to Zoi were paid through a cash clearing account that was offset by these outstanding payable invoices. Sales invoices to Zoi between April 2012 and November 2012 total \$246,269. (Exhibit I-3) We have not fully determined the full financial statement impact of these transactions as

often the sales invoice did not represent the full value of the asset being sold to Zoi. John Gandis and Andrea Comeau-Shirley have indicated that Zoi is a subsidiary of CCC.⁶ However, Quickbooks does not include the banking activity of Zoi and I have been unable to find any record of Zoi's sales or other financial activity in the Quickbooks records of CCC.

g. Certain transactions appear to be running through the payroll account. Some customer payments are deposited directly to the payroll account instead of the operating account. There are corresponding unusual transactions out of the payroll account. In addition, payroll expense has increased significantly and its increase is illogical in light of other financial statement activity. At this time we have insufficient records to test and fully analyze the payroll accounts. However, the increases in payroll are at least suspicious and inconsistent with the historical expenses and with other financial statement accounts. Furthermore, this treatment of customer deposits first started on August 4, 2011. (Exhibit J-1)

k. A customer sales invoice #2035 to BPR Plastics was originally entered December 1, 2011 for \$6,273 (Exhibit K-1, page 18). The invoice was for Trim Waste Sales. The invoice was subsequently voided. After it was voided, additional inventory was added to the sales invoice on December 16, 2011 and January 27, 2012. (Exhibit K-1, pages 12-18). A similar customer sales invoice #2034 was also entered about the same time and voided. Although the invoices were voided, the inventory that was subsequently added to the invoice continues to reduce CCC's inventory and increase Cost of Goods Sold. Total inventory removed from CCC and expensed to Cost of Goods sold through

⁶ Answer of Zoi Films, LLC FIRST DEFENSE (f)

sales to BPR Plastics in 2011 was \$330,798 (Exhibit K-2). However, CCC only invoiced BPR Plastics \$27,845 (Exhibit K-3) for these sales. These invoices represent 352,352 pounds of material. Material was historically sold for \$1-\$3 per pound with scrap being sold at \$0.20 to \$0.50 per pound. The result of these transactions was to decrease inventory and increase Cost of Goods (material) expense by \$330,787 (Exhibit K-2) and record sales of \$27,845 (Exhibit K-3). However, the full financial statement impact could be much larger because the sales value of this inventory is likely higher than its cost. I am still investigating these transactions but the impact could be a reduction in sales of \$70 thousand to over \$500,000.

l. In June 2012, CCC books started including an additional accrual of a liability for John Gandis. One of the invoices has the following description, "Management and Administrative Services." Most of these transactions were entered in September, October, and November of 2012. However, they were backdated throughout the year 2012. At first amounts were accrued as compensation to John. These accruals were later reversed through a series of vendor payables to John. The result of these transactions is to increase liabilities (either accrued payroll or accounts payable) and increase payroll expense by \$95,250. (Exhibit L-1)

m. On October 31, 2012, a series of vendor invoices to Namaste Financial Services were entered and back dated to various months in 2012. Mr. Wilson believes Namaste Financial Services is an entity owned by Andrea Comeau-Shirley. This is the same entity whose name appears as the preparer of the Company's tax returns. These transactions total \$155,000. (Exhibit M-1) We have not yet completed our analysis of

the transactions to Narnaste Financial Services to determine the full financial impact.

12. Our analysis is ongoing and not yet complete. However, based on the work we have done, it appears that certain accounting entries were made beginning in the fall of 2011 that were unusual in light of the historical transactions heretofore. These transactions had the effect of decreasing assets such as inventory, cash, accounts receivable, and fixed assets, increasing liabilities such as accruals, decreasing gross sales, and increasing expenses. My preliminary analysis also indicates that some assets and sales may have been diverted to related entities that are owned or controlled by Andrea Comeau-Shirley or John Gandis. We do not have adequate records to fully analyze these transactions or to determine the full extent of the impact to the financial statements. These unusual transactions that started in the fall of 2011, have a negative impact on the financial statements of CCC and would negatively impact the valuation of CCC if they are taken at face value.

In order to get an accurate accounting of the financial position and financial activity of CCC, these books and records need to be reconstructed. However, the adjustments that were made to the books of CCC beginning in the fall of 2011 have been buried among detailed sales and expense records and within vendor and sales invoices. Consequently, correcting and re-stating the books of CCC will be a very tedious, time-consuming, and expensive process. CCC needs a complete reconstruction of the financial records for the years 2011 and 2012 in order to get an accurate picture of its income and assets for purposes of a valuation. The manipulation of the books beginning in the fall of 2011 is significant to the overall financial picture and valuation of the Company. We have not yet compared the Quickbooks accounting records to the actual banking transactions or compared the inventory and sales invoices to the shipping records, which

are both necessary steps in this forensic investigation.

13. I have incurred fees of approximately \$19,000 to date. I have been paid \$16,073. Reconstruction of the accounting records to determine the extent to which assets have been removed by the shareholders since the fall of 2011 and to determine an accurate financial record from which the business interests can be valued, will be an expensive process. It would not be unrealistic to expect additional fees of \$75,000 to \$100,000 to complete this task.

Catherine Stoddard, CPA/ABV, CVA

SWORN to before me this
_____ day of _____, 2013.

(SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires:

EXHIBIT A

Catherine Stoddard, CPA/ABV, CVA
Dixon Hughes Goodman, LLP
11 Brendan Way (29615)
PO Box 25849, Greenville, SC 29616
864-288-5544 (main), 864-213-5350 (direct), 864-458-8519 (fax)
catherine.stoddard@dhgllp.com

Curriculum Vitae

Professional Licenses and Certifications

Certified Public Accountant (CPA), South Carolina, No. 03222, since March 1989
Certified Valuation Analyst (CVA), NACVA, since May 2001
Accredited in Business Valuation (ABV), AICPA, since June 2006
Certified Family Court Mediator, South Carolina Bar, March 2012

Professional Associations

American Institute of Certified Public Accountants (AICPA)
South Carolina Association of Certified Public Accountants (SCACPA), served as member of
Business Valuation/Litigation Services sub-committee since 2003, Chair 2008 and
2009
National Association of Certified Valuation Analysts (NACVA)
Institute of Business Appraisers (IBA)
International Academy of Collaborative Professionals (IACP)

Education

BA Accounting, Furman University, December 1986, *Cum Laude*

Specialty Seminars/Conferences

SC Bar Family Court Mediation Training, Greenville, SC, March 22-26, 2012
SC Bar Interdisciplinary Family Collaborative Practice, Charleston, SC, November 4-5, 2011
SC Bar Family Law Intensive, Asheville, NC, October 6 – 8, 2011
National Business Institute, Handling Divorce Cases from Start to Finish, October 5, 2011,
faculty speaker
Globalview CPE for Accountants, Buy Sell Agreements, May 27, 2011, speaker
AICPA National Business Valuation Conference, Washington DC, November 7-9, 2010
SCACPA/SC Bar Litigation Conference, Columbia, SC September 16, 2010, speaker
AICPA National Business Valuation Conference, San Francisco, CA November 15 -17, 2009
SCACPA/SC Bar Litigation Conference, Columbia, SC September 17, 2009, speaker
NACVA State Chapter, Columbia, SC December 5, 2008, speaker
SCACPA/SC Bar Litigation Conference, Columbia, SC September 18, 2008, speaker
SCACPA/SC Bar Litigation Conference, Kiawah, SC, September 21-22, 2007, speaker
Institute of Business Appraisers Business Valuation Symposium, Denver CO, June 20-23,
2007
AICPA/ASA National Business Valuation Conference, Las Vegas, NV, November 14 -16,

2005

Current Update in Valuations, Atlanta, GA, September 18, 2004
SCACPA Litigation Conference, Columbia, SC, September 16, 2004
ABV Exam Review, Atlanta, GA, June 14-15, 2004
Critical Issues in Divorce, Telephone Conference, March 23, 2004
SCACPA Litigation Conference, Columbia, SC, September 18, 2003
AICPA/AAML National Conference on Divorce: Property and Complex Financial Issues, Las Vegas, NV, May-16-17, 2002
National Association of Certified Valuation Analysts 2000 Training Seminar, Atlanta, GA, August 21-25, 2000
American Institute of Certified Public Accountants' 2000 National Advanced Divorce Conference; Las Vegas, Nevada, May 20-23, 2000
World Trade Institute seminar; Doing Business in Mexico; Chicago, IL, August 27-29, 1994
American Institute of Certified Public Accountants' National Construction Industry Conference, New Orleans, LA, 1993

Professional Experience

Dixon Hughes Goodman - 2011 to present; Senior Manager Forensic, Litigation Support and Valuation Services.

Stoddard Consulting - 1994 to 2011; Sole Practitioner providing tax, compilation, consulting, litigation support, business valuation, forensic, expert witness, and divorce services.

Suitt Construction Company, Inc. and Suitt International Company, Inc. - 1991 to 1994; Suitt International Company, Inc. was a separate but affiliated company based in the USA with 5 subsidiaries in 3 European Countries and 1 subsidiary in Mexico. Responsibilities included financial reporting including international subsidiaries and job-sites.

Ernst & Young (formerly Ernst & Whinney) - 1987 to 1991; Provided various assurance, tax, and consulting services for public and privately owned companies and retirement plans in the following industries: manufacturing, distribution, healthcare, retail, utilities, and construction.

Testimony Experience

Sauro v Sauro	Family Court, Gaffney, SC	Trial
Maxon v Maxon	Family court, Laurens, SC	Trial
Powell v Powell	Family Court, McCormick, SC	Trial
Holeman v Holeman	Family Court, Greenwood, SC	Trial
Atwell v Atwell	Family Court, Greenville, SC	Trial
Winkler v Winkler	Family Court, Anderson, SC	Trial
Garber v Garber	Family Court, Laurens, SC	Deposition
Dickert v Dickert	Family Court, Greenville, SC	Deposition & Trial
Levato v Levato	Family Court, Greenville, SC	Deposition
Armstrong v Armstrong	Family Court, Greenville, SC	Trial
Johnston v Johnston	Greenville, SC	Arbitration
Scott v Scott	Greenville, SC	Arbitration
Price v Price	Columbia, SC	Deposition and Arbitration
McManus v McManus	Family Court, Greenville, SC	Arbitration
Wilburn v Wilburn	Family Court, Greenville, SC	Trial
Swinford v Swinford	Family Court, Rock Hill, SC	Trial
Duvall v Duvall	Columbia, SC	Arbitration
Conits v Conits	Greenville, SC	Trial
Terry v Terry	Greenville, SC	Deposition and Hearing

Exhibit C

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

DAVID WILSON, INDIVIDUALLY AND
DERIVATIVELY ON BEHALF OF
CAROLINA CUSTOM CONVERTING, LLC,
Plaintiff,

vs. CASE NO. 2012-CP-23-2887

JOHN GANDIS, ANDREA COMEAU-SHIRLEY,
ZOI FILMS, LLC, AND CAROLINA CUSTOM
CONVERTING, LLC,
Defendants.

CAROLINA CUSTOM CONVERTING, LLC,
Counterclaim, Plaintiff,

vs.

DAVE WILSON, STEVEN NORVELL, NEOLOGIC
DISTRIBUTION, INC., AND FRESH WATER
SYSTEMS, INC.,
Counterclaim Defendants.

DEPOSITION OF: DEL L. BRADSHAW AND PETER C. TIFFANY

DATE: September 18, 2014

TIME: 10:04 A.M.

LOCATION: Law Offices of
Smith Moore Leatherwood, LLP
2 West Washington Street, Suite 100
Greenville, SC

TAKEN BY: Counsel for the Defendants John
Gandis, et al.

REPORTED BY: LORI S. MORTGE,
Certified Court Reporter, CCR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly
Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376
Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919

1 invoice did imply that, yes.

2 Q. Talking about practicing accounting,
3 have you ever agreed to provide hack passwords to
4 any of your clients?

5 A. Hack passwords?

6 Q. If your client called and said, I'd like
7 to get into -- I've been fired by this company, I'd
8 like to get into the books and records, would you
9 provide them with passwords of all individual
10 members of the company that they left?

11 A. Well, first, I'm not an IT person and,
12 secondly, no, I would not.

13 Q. Yeah. I'm not suggesting you have;
14 okay? I'm just curious. And as I understand the
15 standards of accounting, since we're talking about
16 those and I've seen you do it, you basically plan
17 what you're going to do; correct?

18 A. Yes.

19 Q. And you document to leave a trail;
20 correct?

21 A. Yes.

22 Q. And you're doing this in a litigation
23 role; correct?

24 A. Yes.

25 Q. In this instance. But you understand

1 it's your professional obligation to leave a trail;

2 correct?

3 A. Correct.

4 Q. And it's your professional obligation

5 not to destroy anything you do; correct?

6 A. Correct.

7 Q. And do you have a different rule as far

8 as keeping your time entries when you're working on

9 a litigation matter versus an audit in terms of what

10 detail you put in there?

11 A. No.

12 Q. You had the opportunity to look at

13 Ms. Stoddard's affidavit; correct?

14 A. Yes.

15 Q. Do you agree that Ms. Stoddard's

16 affidavit contained numerous assumptions or

17 erroneous assumptions that she could have dispelled

18 had she done some investigation -- the investigation

19 you did?

20 A. I think in our report that we stated as

21 such that had she known of the -- the two biggest

22 issues was the inventory waste and the erroneous

23 sale. And had she known of these, I think it would

24 have made a huge difference in any type of

25 projections or annualizations that she made with

1 regards to her affidavit.

2 Q. Correct. I believe you say that it
3 would have been inappropriate to annualize the
4 midyear 2011 on year-end; correct?

5 A. ~~That's correct. And we state in our~~
6 report we found that the interim financial
7 statements were probably not reliable. And the
8 primary reasons for that, we know for a fact, was
9 the uniqueness of this manufacturing which was it
10 had waste. And that was a significant part and we
11 did -- in our interviews we did confirm that --
12 Mr. Wilson seemed to have a fair amount of knowledge
13 with regards to that. He did suggest that it was
14 approximately 12 to 15 percent waste with regards to
15 this manufacturing process. So, yes, that's -- that
16 was a big issue.

17 The current QuickBooks is not equipped,
18 at this moment in time, to account for that without
19 some manual assistance.

20 Q. Without input?

21 A. Without input. And it's large enough
22 that it should have been. That would have made the
23 interim financial statements I think more
24 meaningful, just from that standpoint.

25 Q. It's not unusual for financial

1 statements not to be as honed as a year-end
2 financial statement, is it?

3 A. No, it's not, but we find that most of
4 our small business owners, they want to have
5 reliable information. And, for the most part, we
6 found that the banks were being reconciled and we
7 found that accounts receivable and accounts payable
8 seemed to be relatively matched to their detailed
9 records, although there probably was some
10 adjustments for that. Primarily we found that the
11 inventory, the bad sale --

12 Q. Sale off the dock? Is that what we're
13 calling the bad sale?

14 A. We found adjustments such as
15 depreciation, things like that, were not made. And
16 so you would have had to do more work on a month-end
17 to make it a little bit more reliable.

18 Q. But you would have recognized that
19 fairly quickly if you had been brought in and given
20 a month-end statement, wouldn't you, and talked to
21 the owners?

22 A. No doubt about it, yes. One
23 clarification.

24 Q. Yes.

25 A. We would have known about it. Had we

1 understood the process, the manufacturing process.
2 And once we had gotten into that part of the
3 analysis we would have understood why inventory
4 would have required more adjustments.

5 ~~Q. And in your role as doing that if you~~
6 were in Ms. Stoddard's shoes you would have -- and
7 had Mr. Wilson's ear you would have said to him,
8 this is our plan, this is what we need to do, this
9 is what you need to attack, can you explain these
10 things to us as you learn the process; correct?

11 A. Yes.

12 Q. That would be the natural course of a
13 professional accountant; right?

14 A. If I had access to the information, yes,
15 I would have done some of the things necessary or at
16 least inquired or made a list or made a plan as to
17 things that I needed to review and look at to go
18 further with my analysis.

19 Q. If Ms. Comeau-Shirley had recommended to
20 Mr. Wilson and Mr. Gandis that they hire an in-house
21 accountant and been rejected, would that be some
22 knowledge to you that she had disdained or
23 disclaimed the role of being the in-house accountant
24 if she's telling them to hire one?

25 A. I don't know that I can render an

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively)
on behalf of Carolina Custom Converting,)
LLC,)

Plaintiff,)

vs.)

John Gandis, Andrea Comeau-Shirley, ZOI)
Films, LLC, and Carolina Custom)
Converting, LLC,)

Defendants,)

Carolina Custom Converting, LLC,)

Counterclaim Plaintiff,)

vs.)

Dave Wilson, Steven Norvell, Neologic)
Distribution, Inc., and Fresh Water Systems)
Inc.,)

Counterclaim Defendants.)

CERTIFICATE OF SERVICE

C.A. No. 2012-CP-23-2887

The undersigned certifies that on the 24th day of September, 2014, she caused to be served the **Motion to Disqualify Plaintiff's Expert Catherine Stoddard** upon the attorneys for Plaintiff and Co-Defendants, as indicated below, copies of the same addressed to:

VIA HAND DELIVERY

Mr. W. Andrew Arnold
Law Office of W. Andrew Arnold, P.C.
712 East Washington Street
Greenville, SC 29601
Attorney for Plaintiff

VIA EMAIL

Mr. Mason A. Goldsmith
Mr. K. Jay Anthony
Elmore Goldsmith, PA
Post Office Box 1887
Greenville, SC 29602
Attorney for Defendant
John Gandis

VIA EMAIL

Mr. L. Lee Plumblee
Eppes & Plumblee, P.A.
Post Office Box 10066
Greenville, SC 29603
Attorney for Defendant
ZOi Films, LLC

VIA EMAIL

Mr. Thomas L. Stephenson
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

and

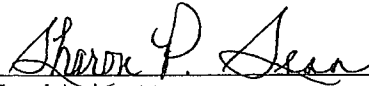
VIA EMAIL

Mr. Buri F. Williams
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Box 10648
Greenville, SC 29603

Attorneys for Defendant
Carolina Custom Converting, LLC

VIA HAND DELIVERY

Mr. Bruce B. Campbell
Horton, Drawdy, Ward, Mullinax & Farry, P.A.
307 Pettigru Street
Greenville, SC 29601
Attorney for Defendants
Steven Norvell, Neologic Distribution, Inc.,
and Fresh Water Systems Inc.



Legal Assistant to:
Steven E. Farrar (#1960)
Smith Moore Leatherwood LLP
2 West Washington Street, Suite 1100 (29601)
Post Office Box 87
Greenville, SC 29602
(864) 751-7600
(864) 751-7800 (fax)
steve.farrar@smithmoorelaw.com

Attorney for Defendant
Andrea Comeau-Shirley

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

DAVID WILSON,)

Plaintiff(s))

vs.)

JOHN GANDIS and ANDREA COMEAU-SHIRLEY,)

Defendant(s))

(Please Print)

Submitted By: W. Andrew Arnold
Address: 712 E. Washington Street
Greenville, SC 29601

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-
2012-CP-23-

SC Bar #: 65311
Telephone #: 864.242.4800
Fax #: 864.242.4885
Other:
E-mail: aarnold@aalawfirm.com

2012 APR 27 A 10:57

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

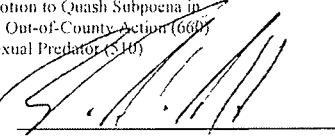
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input checked="" type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-CP-____- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Stander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Remstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SC DOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: 

Date: April 27, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act. S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
DAVID WILSON,)
)
Plaintiff,)
)
v.)
)
JOHN GANDIS and ANDREA)
COMEAU-SHIRLEY,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS

Civil Action No.

2012-CP-23-2887

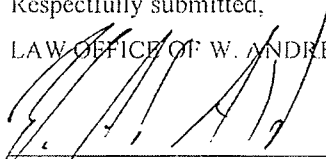
SUMMONS

FILED CLERK OF COURT
GREENVILLE SC
2012 APR 27 A 10:51

TO THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,
LAW OFFICE OF W. ANDREW ARNOLD, P.C.



W. ANDREW ARNOLD
SC Bar No: 65311
712 East Washington Street
Greenville, SC 29601
aarnold@aalawfirm.com
864.242.4800 864.242.4885 fax
ATTORNEY FOR PLAINTIFF

April 27, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 DAVID WILSON,)
)
 Plaintiff,)
)
 v.)
)
 JOHN GANDIS and ANDREA)
 COMEAU-SHIRLEY,)
)
 Defendants.)

COURT OF COMMON PLEAS

Civil Action No.

2012-CP-23-2887

COMPLAINT

FILED-CLERK OF COURT
 GREENVILLE, SC

2012 APR 21 A 10:57

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Complaint, and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter Plaintiff) is a resident and citizen of Greenville County, South Carolina.
2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.
3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the state of Georgia.
4. Plaintiff and Defendants are members of Carolina Custom Converting, LLC (hereinafter CCC), a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.
5. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating Carolina Custom Converting, LLC. Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

1
 to

6. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have never agreed to a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

7. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

8. There was no express agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC.

9. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

10. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and will continue as long as he is the manager of CCC.

11. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

12. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s).

Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

13. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

14. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest taken from Plaintiff was given to Defendant.

15. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

16. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

17. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

18. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties which provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his

membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

19. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

20. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

21. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Defendant indicated he was agreeable to such proposal.

22. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

23. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately \$300,000.

24. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

25. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount \$100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her]

sometime in 2009 or 2010 about higher participation at exit....” Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

26. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

27. Plaintiff made a counter-offer, which valued his own membership interest at approximately \$350,000 and included a four year employment agreement and a five year non-compete.

28. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

29. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for \$325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

30. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

31. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

32. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that “pursuant to the new operating plan” Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan.

33. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

34. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to \$100,000 cash and the value of the outstanding "loan."

35. Approximately, fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

36. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied he had resigned and refused to vacate. Plaintiff did not resign.

37. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

38. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

39. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

40. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees. And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

41. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

42. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

43. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

FOR A FIRST CAUSE OF ACTION

**Dissolution
(S.C. Code § 33-44-801)**

44. Plaintiff realleges and incorporates by reference paragraphs 1 through 43, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in First Cause of Action.

45. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to the Plaintiff. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

- A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;
- B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;
- C. Defendant(s) have unilaterally and without his consent attempt to alter Plaintiff's membership interest and produced false K-1s;
- D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;

- E. Defendant(s) have terminated Plaintiff's family health insurance coverage;
- F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;
- G. Defendants have accounted for expenses, including the automobile expense, in such a way as to decrease Plaintiff's capital account;
- H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;
- I. Based upon information and belief, Defendant(s) have utilize company funds to pay for legal fees incurred as the individuals efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership; and
- J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest.

46. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

47. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

48. Plaintiff is entitled to equitable remedies and/or legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION

**Breach of Fiduciary Duty
(As to Defendant Gandis)**

49. Plaintiff realleges and incorporates by reference paragraphs 1 through 48, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

50. Defendant Gandis breached and continue to breach his statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiffs and to the CCC, LLC. and such breaches include, but are not limited to:

- A. Refusing to provide financial information as requested by Plaintiff;
- B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;
- C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;
- D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;
- E. Filing Article of Organization which were contrary to the agreement of the equal members;
- F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;
- G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get a \$100,000 "a preference to minority"; and
- H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiffs.

51. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

52. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

53. Based upon information and belief, Defendant Gandis has misappropriated corporate opportunities for himself and/or DecoTex.

54. Based upon information and belief, Defendant Gandis has participated in and directed accounting practices that are fraudulent and/or deceitful.

55. Defendant Gandis' breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff' and his membership interest. Accordingly, Plaintiff is entitled to an award of actual and punitive damages for the breach of Defendant's fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC.

56. Defendant Gandis' breach of his fiduciary duties is causing Plaintiff irreparable harm and entitles him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION

Disassociation

(S.C. Code § 33-44-601(6))

57. Plaintiff realleges and incorporates by reference paragraphs 1 through 56, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Third Cause of Action.

58. Plaintiff never consented to CCC being a term limited liability company, and accordingly, CCC is an at will limited liability company.

59. Defendants have engaged in wrongful conduct that adversely and materially affect the company's business.

60. Defendant Gandis has willfully and/or persistently acted in breach of his fiduciary duties. Defendants have engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on business together.

61. Plaintiff is entitled to an judicial decree of dissolution.

FOR A FOURTH CAUSE OF ACTION
Conversion

62. Plaintiff realleges and incorporates by reference paragraphs 1 through 61, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

63. Defendants have converted company funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC. Based upon information and belief, Defendant Gandis has used LLC property in furtherance of his own personal business efforts selling film.

64. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

65. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

66. Moreover, Plaintiff is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing LLC funds for their own personal purposes; requiring Defendants to account to Plaintiff for all profits and property, and to return Plaintiff's personal property.

67. Defendants actions will result in irreparable harm to Plaintiff's membership interest and to his property interests. In the alternative, Plaintiff is entitled to an award of damages.

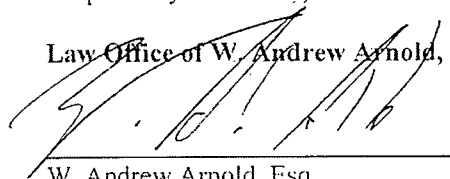
HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff pray this Court award them the following relief:

- (a) an award of Plaintiff's special and compensatory damages;
- (b) an award of punitive damages against Defendants;

- (c) an order enjoining continuing breaches of Defendant's fiduciary duties and Defendants' conversions;
- (d) an order dissociating Defendants from CCC or in the alternative, dissolving CCC; and
- (e) an order requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiffs their share of profits and income, and a judicial order of dissolution;
- (f) alternatively, appointing of a receiver to wind-up the affairs of the entity, to liquidate its assets, to account to Plaintiff for income and profits owed to Plaintiff, and filing Articles of Dissolution;
- (g) prejudgment and post-judgment interest; and
- (h) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.



W. Andrew Arnold, Esq.
S.C. Bar No. 065311
712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiffs

Greenville, SC
April 27, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 DAVID WILSON,)
)
 Plaintiff,)
)
 v.)
)
 JOHN GANDIS and ANDREA)
 COMEAU-SHIRLEY,)
)
 Defendants.)

COURT OF COMMON PLEAS

Civil Action No.

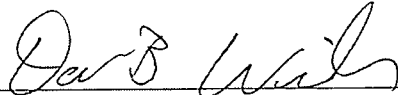
2012-CP-23-2887

VERIFICATION

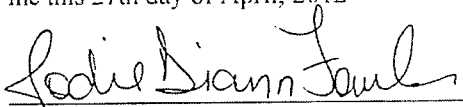
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 2012 APR 27 A 10:57

Personally appeared before me the undersigned, who upon oath duly sworn, states as follows:

I am the Plaintiff in the above-captioned case. I have read the foregoing Complaint and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.


 DAVID WILSON

SWORN to and subscribed before me this 27th day of April, 2012


 Notary Public for South Carolina
 My Commission Expires: 10-18-14

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

David Wilson,)
)
 Plaintiff,) C.A. NO.: 2012-CP-23-02887
)
 John Gandis and Andrea)
 Comeau-Shirley,) ANSWER, BY WAY OF SET-OFF AND
) COUNTERCLAIMS, AND MOTION
) TO DISMISS
) (Jury Trial Demanded)
 Defendants.)

FILED
 CLERK OF COURT
 GREENVILLE CO S.C.
 PAID BY MICHAEL
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Defendants John Gandis (hereinafter “Gandis”) and Andrea Comeau-Shirley (hereinafter “Comeau-Shirley”) answering the allegations of Plaintiff’s Complaint would show unto the Court as follows:

1. Any allegations not specifically admitted herein are denied.
2. On information and belief, Defendants admit the allegations of Paragraph One.
3. Defendants admit the allegations of Paragraph Two.
4. Defendants admit the allegations of Paragraph Three.
5. Defendants admit the allegations of Paragraph Four. Further answering Paragraph Four, Defendants state that Carolina Custom Converting, LLC (hereinafter referred to as “CCC” or “the Company”) was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State in the attached Certificate of Existence (attached hereto as “Exhibit A”).
6. Defendants admit so much of Paragraph Five as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendants deny the remainder of the

allegations. Defendants state that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. The parties engaged attorney Stephen Potts to draft the Operating Agreement and, after meeting with both Plaintiff and Defendant Gandis, Potts – not Defendant Gandis – filed the Articles of Organization with the Office of the South Carolina Secretary of State, naming Defendant Gandis as the manager and designating CCC as a term company. Attorney Potts drafted these terms into the Articles because they were agreed to by Plaintiff and Defendant Gandis. The parties understood that Potts designated the company term as 50-year, per his usual practice, but that the members could set a shorter term in the future.

7. Defendants admit so much of Paragraph Six as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Defendant Gandis agreed, at the inception of CCC, to wind down his individual business – Eastern Film Solutions (hereinafter referred to as “EFS”) – which also related to the slitting and selling of film, and to participate in the slitting of and sale of film for the benefit and profit of CCC. Defendants deny the remainder of the allegations. Defendants state that Plaintiff and Defendant Gandis prepared drafts of an Operating Agreement, which still exist, but the Agreement was never signed. Plaintiff was informed at the inception of CCC and understood that all compensation would be in the form of distributions and that the amount and frequency of the distributions was not assured and would depend entirely on the availability of funds and the success of the Company, and other business factors, as is the case with most all start-up companies. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as “salary,” but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis’s father. At an initial

meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

8. Defendants deny the allegations of Paragraph Seven. Further answering Paragraph Seven, Defendants state that Plaintiff and Defendant Gandis agreed that CCC would be a term corporation and jointly instructed Stephen Potts to file the Articles of Organization designating the corporation as term. The Articles of Organization, as filed, list CCC as a term corporation.

9. Defendants deny the allegations of Paragraph Eight.

10. Defendants admit the allegations of Paragraph Nine.

11. Defendants object to the allegations of Paragraph Ten as the allegations are vague and cannot be answered by the Defendants. Specifically, the allegations do not make clear whether Plaintiff contends that CCC was manager-managed or member-managed and whether Plaintiff contends that Defendant Gandis was a manager within the meaning of S.C. Code Ann. § 33-44-409(h)(2). Subject to this objection, Defendants deny the allegations.

12. Defendants admit so much of Paragraph Eleven as alleges that Plaintiff performed some amount of services for CCC and did not receive compensation. Defendants deny the remainder of the allegations and specifically deny that Plaintiff performed any services beyond the scope of his original commitment. Plaintiff received distributions, but these distributions were due to his interest as a member and not as compensation for services rendered. Despite a lack of measurable success at the time, Plaintiff began receiving distributions from CCC in July 2008 of \$8,000/month. These distributions were largely funded by loans from Defendant Gandis, who did not take distributions at the time. When Defendant Comeau-Shirley began working with CCC in late 2008, she noticed this situation and informed Defendant Gandis and Plaintiff that Defendant Gandis should take an equal distribution given his interest, despite the fact that Defendant Gandis would essentially be paying himself. The parties raised their distributions to \$9,000/month in January 2009 but then, at Defendant Comeau-Shirley's urging, both reduced the distributions to \$6,802.84/month in September 2009 in order to better afford the purchase of certain equipment. Though Defendant Gandis and Plaintiff each contributed \$3,000 for the first purchase of film, to date, Plaintiff has made no further additional contributions to CCC, though he continued to take monthly distributions. Defendant Gandis, on the other hand, provided CCC with numerous loans totaling \$229,332 in 2008, \$849,908.10 in 2009, and \$584,629.84 in 2010. From time to time, Defendant Gandis was repaid portions of these loans.

13. Defendants deny the allegations of Paragraph Twelve. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and Defendants' actions were within the proper scope of their authority and on behalf of the Company. For purposes of this

Answer, unless Defendants specifically admit to some action taken in their individual capacities, all actions were taken by CCC.

14. Defendants deny the allegations of Paragraph Thirteen. Further answering the allegations, Defendants state that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to his bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendants emphasize that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed the Company. Plaintiff was repeatedly reminded that only business expenses should be paid for on the company card.

15. Defendants deny the allegations of Paragraph Fourteen.

16. Defendants deny the allegations of Paragraph Fifteen. Plaintiff promised, at the inception of CCC, that he would wind up the business of EFS, make efforts to transfer the EFS client base to CCC, and thereafter put his efforts entirely toward the new venture. Plaintiff implies in his Complaint that Defendant Gandis had an interest in a business that competed with CCC. This is expressly denied. Defendant Gandis has an interest in Deco Tex, LLC, which does not buy or slit film, does not purchase film, and in no way competes with CCC.

17. Defendants deny the allegations of Paragraph Sixteen. As previously stated, both Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from \$9,000 to \$6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

18. Defendants deny the allegations of Paragraph Seventeen. Both Defendant Gandis and Plaintiff continued to receive monthly distributions until April 2011. At this time, due to the long-standing disparity between Defendant Gandis shouldering all financial risk by continually making loans to CCC, without participation by Plaintiff, as well as the fact that, in 2010, the Company had distributed more than twice the cash flow that had been created by the Company, CCC informed Plaintiff that the Company would cease making monthly distributions. Plaintiff complained that he must receive monthly checks from CCC to meet his personal expenses, so the Company agreed to allow Plaintiff to have monthly loans made to him by CCC. This approach anticipated that, when the Company declared a distribution, Plaintiff's share would be applied to reduce his loan balance with any excess to be paid to Plaintiff. This was explained to Plaintiff, who stated his understanding. Such a distribution occurred in November 2011, at which point a distribution of \$45,000 was applied to Plaintiff's outstanding loan balance of \$131,859.46, thereby reducing the balance to \$86,859.46.

19. Defendants admit so much of Paragraph Eighteen as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendants state that, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but secured by Plaintiff's interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to \$12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff's loan balance and advised

Plaintiff that no further loans would be given after 2011 until cash flow had returned to a positive position. At this point, Plaintiff asked what amount Defendants would pay to purchase his interest, and negotiations ensued.

20. Defendants deny the allegations of Paragraph Nineteen. After Plaintiff asked what amount Defendants would pay to purchase his interest in CCC, Defendants presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered (1) that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years, (2) that the membership agreement be modified to define his interest as a fixed dollar amount, thereby allowing Plaintiff certain tax benefits, or (3) that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth \$770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of \$12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented, but now offered to buy Plaintiff's interest for \$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately \$150,000, for a total offer value of approximately \$350,000. In response, Plaintiff proposed that Defendants accept an offer for their interests at \$200,000 (the cash to be received) if he could secure the funds. Defendant Gandis expressed tentative agreement, with certain general conditions, including that the purchase be in cash and include the purchase of the building, owned by Defendant Gandis, for \$150,000, the original purchase price. Plaintiff stated that he would attempt to obtain the

necessary funds from his family. Contrary to Plaintiff's claim that he was pressured to "forfeit" his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed an intent to purchase Defendants' interests and was given the opportunity to do so. However, Plaintiff never came forward with funds.

21. Defendants deny the allegations of Paragraph Twenty. Plaintiff was notified in writing on November 2, 2011 that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional \$12,000 loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

22. Defendants admit so much of Paragraph Twenty-One as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. There was also a discussion of Plaintiff's acquisition of Defendants' interests. This buyout was one of the three options referenced above. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendants deny that either indicated any agreement to Plaintiff's proposal.

23. Defendants deny the allegations of Paragraph Twenty-Two. As stated above, Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

24. Defendants deny the allegations of Paragraph Twenty-Three. As stated above, Defendants offered Plaintiff three options, including an offer to buy Plaintiff's interest for

\$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately \$150,000, for a value of the offer being \$350,000.

25. Defendants admit so much of Paragraph Twenty-Four as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendants deny the remaining allegations. Defendants specifically deny that the balance sheet provided to Plaintiff contained any deceptive or fraudulent entries.

26. Defendants admit so much of Paragraph Twenty-Five as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendants deny the remaining allegations. Further answering Paragraph Twenty-Five, Defendants state that the amount listed under this entry was to denote the fact that professional accounting and financial services had been rendered by Defendant Corenau-Shirley's accounting practices since the beginning of her involvement with CCC in 2008. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing and, at the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company.

27. Defendants admit as much of Paragraph Twenty-Six as alleges that Plaintiff rejected Defendants' offer of continued at-will employment. Defendants deny the remaining allegations. The basis for Defendants' offer as well as the entries on the balance sheet were thoroughly explained to Plaintiff, in writing, and all questions posed by Plaintiff as to the balance sheets were answered.

28. Defendants deny the allegations of Paragraph Twenty-Seven. Further answering Paragraph Twenty-Seven, Defendants state that Plaintiff provided a counter-offer requesting buyout of his interest for \$250,000 with \$50,000 paid up front and the remainder at 6% interest.

The offer additionally included a three-year employment agreement with a guaranteed salary of \$12,000/month for year one and not less than \$10,000/month for the following years, along with a bonus package, forgiveness of Plaintiff's loan, and a requirement that the buyout be personally guaranteed by Defendants.

29. Defendants admit so much of Paragraph Twenty-Eight as alleges that Defendants rejected Plaintiff's offer in writing. Defendants deny the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

30. Defendants admit so much of Paragraph Twenty-Nine as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendants deny the remaining allegations.

31. Defendants deny the allegations of Paragraph Thirty. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norrell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff. On information and belief, Plaintiff shared sensitive and confidential information with other parties, including competitors of CCC.

32. Defendants admit so much of the allegations of Paragraph Thirty-One as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendants deny the remaining allegations. Defendants state that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-

in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

33. Defendants admit the allegations of Paragraph Thirty-Two. Defendants state that the matter of Plaintiff's day-to-day access to Quickbooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting.

34. Defendants admit the allegations of Paragraph Thirty-Three. Defendants state that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation. Defendant Comeau-Shirley obtained a copy of the Articles of Organization and provided the copy to Plaintiff's attorney, at the time Clayton Jennings.

35. Defendants deny the allegations of Paragraph Thirty-Four.

36. Defendants admit so much of Paragraph Thirty-Five as alleges that the Company terminated Plaintiff's access to the CCC computer network on January 17, 2012. Defendants deny the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by

Jennings, Zamer advised the Company to terminate Plaintiff's access to the CCC computer network.

37. Defendants admit so much of Paragraph Thirty-Six as alleges that on January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendants deny the remaining allegations. The Company interpreted the statements by Plaintiff's attorney as effecting his resignation and therefore drafted a letter acknowledging Plaintiff's resignation and, given Plaintiff's prior actions, took steps to ensure the protection of all company secrets and assets. To this end, The Company hired a locksmith and enlisted the help of a sheriff's deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis "I was not ready yet."

38. Defendants admit so much of Paragraph Thirty-Seven as alleges that the Company had contacted the local sheriff's office to be on hand in the event that Plaintiff was uncooperative. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis's objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase.

39. Defendants admit the allegations of Paragraph Thirty-Eight.

40. Defendants admit so much of Paragraph Thirty-Nine as alleges that the Company terminated Plaintiff's cell phone service. Defendants deny the remaining allegations. Further answering Paragraph Thirty-Nine, Defendants state that, despite the Company's request for

Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

41. Defendants admit so much of Paragraph Forty as alleges that Plaintiff's health insurance was terminated. Defendants deny the remaining allegations. Further answering Paragraph Forty, Defendants state that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendants state that there have been no distributions to any members in 2012.

42. Defendants deny the allegations of Paragraph Forty-One. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him. To date, Plaintiff has not signed the confidentiality agreement. Nonetheless, Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation.

43. Defendants deny the allegations of Paragraph Forty-Two. Further answering Paragraph Forty-Two, Defendants state that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the offices of CCC.

44. Defendants admit so much of Paragraph Forty-Three as alleges that CCC funds were used to pay attorney's fees for attorneys Zamer and Floyd. Defendants deny the remaining allegations. Further answering Paragraph Forty-Three, Defendants state that all matters considered by attorneys Zamer and Floyd related to Company business and were properly paid by the corporation.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Dissolution)

45. Responding to Paragraph Forty-Four, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

46. Defendants deny the allegations of Paragraph Forty-Five. Defendants further answer the allegations as follows:

- a. As stated above, Defendants admit requesting that the local sheriff deputy was requested to be on hand on January 17, 2012, so as to prevent the theft of Company property.
- b. As stated above, the Company has offered to provide Plaintiff access to Company financial information if he will agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.
- c. Defendants deny this allegation.
- d. Defendants deny this allegation.
- e. As stated above, once Plaintiff resigned as an employee of CCC, he was no longer eligible for health insurance through the Company, unless he personally paid the premiums.

- f. As stated above, at all times since the inception of CCC, all members could receive distributions but these ultimately were dependent on the success of the Company. At no point did the parties agree to pay Plaintiff a fixed monthly amount or to make distributions on a monthly basis.
 - g. As stated above, the purchase of Plaintiff's automobile was not a Company expense and therefore was not reported as such on CCC tax filings.
 - h. As stated above, Defendants admit to that Plaintiff's cell phone service was terminated when he continued to utilize his phone after CCC accepted his resignation.
 - i. As stated above, Defendants admit that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.
 - j. Defendants deny this allegation.
47. Defendants deny the allegations of Paragraph Forty-Six.
48. Paragraph Forty-Seven constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendants deny the allegations.
49. Defendants deny the allegations of Paragraph Forty-Eight.

FOR A SECOND DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Rule 12(b)(6), SCRPC)

50. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

51. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for dissolution lies against CCC rather than the named Defendants.

FOR A THIRD DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Term Corporation)

52. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

53. If Plaintiff is allowed to proceed against the named Defendants under this cause of action, which is expressly denied and admitted solely for the purposes of this defense, Defendants state that CCC is a term corporation and may not be dissolved as the requirements of S.C. Code Ann. § 33-44-801 have not been met.

FOR A FOURTH DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Unclean Hands)

54. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

55. On information and belief, Plaintiff continued to transact business as EFS even months after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

56. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors.

57. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

58. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

59. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

60. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief.

FOR A FIRST DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Gandis)

61. Responding to Paragraph Forty-Nine, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

62. Defendants deny the allegations of Paragraph Fifty. Further answering Paragraph Fifty, Defendants state:

- a. As stated above, CCC has offered to provide Plaintiff access to Company financial information if he will agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.
- b. As stated above, Defendants admit that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.
- c. Defendants deny that Plaintiff was terminated.
- d. As stated above, Defendants admit that a local sheriff deputy was requested to be on hand on January 17, 2012, so as to prevent the theft of Company property.

- e. Defendants deny that the Articles of Organization, as filed by the office of attorney Stephen Potts, were contrary to the agreement of the members. To the contrary, attorney Potts drafted the documents only after receiving input from both Plaintiff and Defendant Gandis. Additionally, Defendants deny that Plaintiff and Defendant Gandis are equal members.
 - f. Defendants deny this allegation.
 - g. Defendants deny this allegation. Plaintiff was aware that Defendant Comeau-Shirley would require compensation for the work she performed beginning in 2008.
 - h. Defendants deny this allegation.
63. Defendants deny the allegations of Paragraph Fifty-One.
64. Defendants deny the allegations of Paragraph Fifty-Two.
65. Defendants deny the allegations of Paragraph Fifty-Three.
66. Defendants deny the allegations of Paragraph Fifty-Four.
67. Paragraph Fifty-Five constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.
68. Paragraph Fifty-Six constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations and specifically state that Plaintiff has failed to meet the standard for injunctive relief.

FOR A FIRST DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Disassociation)

69. Responding to Paragraph Fifty-Seven, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

70. Defendants deny the allegations of Paragraph Fifty-Eight. Further answering Paragraph Fifty-Eight, Defendants state that Plaintiff understood and agreed that CCC was to be a term Company.

71. Defendants object to the allegations of Paragraph Fifty-Nine as vague such that it cannot be properly answered. Subject to this objection, Defendants deny the allegations of Paragraph Fifty-Nine.

72. Defendants object to the allegations of Paragraph Sixty as vague such that it cannot be properly answered. Subject to this objection, Defendants deny the allegations of Paragraph Sixty.

73. Paragraph Sixty-One constitutes a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations. Further answering Paragraph Sixty-One, Defendants state that CCC is a term corporation, as reflected in the Articles of Organization, and therefore Plaintiff's disassociation does not trigger dissolution under S.C. Code Ann. § 33-44-601(6).

FOR A SECOND DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Rule 12(b)(6), SCRPC)

74. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

75. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Conversion)

76. Responding to Paragraph Sixty-Two, Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

77. Defendants deny the allegations of Paragraph Sixty-Three.

78. Defendants deny the allegations of Paragraph Sixty-Four.

79. Paragraph Sixty-Five constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

80. Paragraph Sixty-Six constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

81. Paragraph Sixty-Seven constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendants deny the allegations.

FOR A SECOND DEFENSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

82. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

83. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Statute of Limitations)

84. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

85. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

FOR A SECOND DEFENSE TO ALL OF PLAINTIFF'S

ALLEGATIONS AGAINST DEFENDANTS
(Failure to Mitigate)

86. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

87. Defendants allege that Plaintiff has failed to mitigate his damages as required by law.

FOR A THIRD DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Laches, Waiver, Estoppel)

88. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

89. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A FOURTH DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Set Off)

90. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

91. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

92. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

93. Plaintiff is currently indebted to CCC in excess of \$110,000.00.

94. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendants, complaining of Plaintiff, respectfully show as follows:

95. Defendants' counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper.

COUNTERCLAIM
(Breach of Fiduciary Duty)

96. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

97. As a member of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

98. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

99. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

100. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records.

101. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

102. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendants.

103. As a result of Plaintiff's breach, Defendants suffered damages, including but not limited to lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

104. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

105. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

106. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.

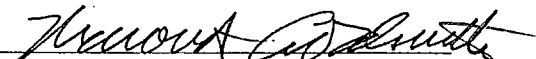
107. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

108. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendants.

109. As a result of Plaintiff's breach, Defendants suffered damages, including but not limited to lost profits.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants pray that Plaintiff's Complaint be dismissed, with costs and attorneys fees, and for such other relief as the Court may grant.

ELMORE GOLDSMITH, PA

By: 

MASON A. GOLDSMITH, S. C. BAR NO. 2182
K. JAY ANTHONY, S.C. BAR NO. 77433
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887
Greenville, SC 29602
Telephone: 864-255-9500
Facsimile No: 864-255-9505

Attorneys for Defendants

June 29, 2012

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CAROLINA CUSTOM CONVERTING, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on November 2nd, 2007, with a duration that is until December 31st, 2057, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 5th day of June, 2012.



Mark Hammond
Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA 2012 JUN 16 PM 4:30 COURT OF COMMON PLEAS
COUNTY OF GREENVILLE FILED JUN 16 2012 Civil Action No. 2012-CP-23-2887
DAVID WILSON, GREENVILLE SC 29615
Plaintiff,) **REPLY TO COUNTERCLAIMS**
v.)
JOHN GANDIS and ANDREA)
COMEAU-SHIRLEY,)
Defendants.)

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Reply to Defendants' Counterclaims as follows:

FOR A FIRST DEFENSE

1. Defendants fail to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE

2. Plaintiff expressly denies any and all allegations of the Defendants Counterclaims not specifically admitted or denied herein.
3. Plaintiff admits so much of Paragraph 95 of the Counterclaim as states that this court has proper jurisdiction.
4. Paragraph 96 of the Counterclaim appears to require no response, but inasmuch as a response is required, the Plaintiff incorporates all allegations of his Complaint as if fully restated herein to the extent such allegations are relevant to this Reply to Counterclaims.
5. Plaintiff denies Paragraphs 97 and 98 of the Defendants' Counterclaim.
6. In response to Paragraph 99 of the Counterclaim, Plaintiff cannot recall who paid for the laptops but believes he purchased the cell phone. Plaintiff took his cell phone and laptops when

he left work on January 17, 2012. Plaintiff denies the remaining allegations contained Paragraph 99 of the Defendants' Counterclaim.

7. In response to Paragraph 100 of the Counterclaim, Plaintiff copied emails, some financial information and various other documents related to his dispute with the Company. Plaintiff denies the remaining allegations contained in Paragraph 100 of the Defendants' Counterclaim.

8. Plaintiff denies Paragraphs 101, 102, and 103 of the Defendants' Counterclaim.

9. Paragraph 104 of the Counterclaim appears to require no response, but inasmuch as a response is required, the Plaintiff incorporates all allegations of his Complaint as if fully restated herein to the extent such allegations are relevant to this Reply to Counterclaims.

10. In response to paragraph 105, Plaintiff is without information and belief as to what CCC discovered. Plaintiff does not recall removing the SIM card. Plaintiff denies the remaining allegations contained in paragraph 105.

11. Plaintiff is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 106 of the Counterclaim as to any forensic analysis, therefore denies those allegations.

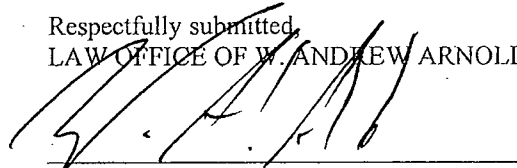
12. Plaintiff denies the allegations of Paragraphs 107, 108, and 109 of the Counterclaim.

FOR A THIRD DEFENSE

13. Defendants' Counterclaims are barred by the defense of unclean hands.

WHEREFORE, Plaintiff respectfully prays this court to dismiss Defendants' Counterclaims and to enter judgment for the Plaintiff and to grant all of the relief sought in Plaintiff's Complaint.

Respectfully submitted,
LAW OFFICE OF W. ANDREW ARNOLD, P.C.



W. ANDREW ARNOLD
SC Bar No. 65311
712 East Washington Street
Greenville, SC 29601
aarnold@aalawfirm.com
864.242.4800 864.242.4885 fax
ATTORNEY FOR PLAINTIFF

July 16, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
DAVID WILSON,)
)
Plaintiff,)
)
v.)
)
JOHN GANDIS and ANDREA)
COMEAU-SHIRLEY,)
)
Defendants.)
_____)

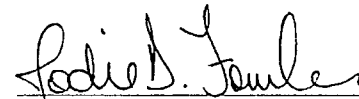
COURT OF COMMON PLEAS
Civil Action No. 2012-CP-23-2887

CERTIFICATE OF SERVICE

2012 JUL 16 PM 4:30
CLERK OF COURT
COURT OF COMMON PLEAS
GREENVILLE, SOUTH CAROLINA

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on July 16, 2012, I served upon the below-named individual REPLY TO COUNTERCLAIM by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, SC 29602



JODIE D. FOWLER
Paralegal to W. Andrew Arnold

Recd 10/12/12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 DAVID WILSON, individually and)
 derivatively on behalf of CAROLINA)
 CUSTOM CONVERTING, LLC,)
)
 Plaintiff,)
)
 v.)
)
 JOHN GANDIS, ANDREA COMEAU-)
 SHIRLEY, ZOI FILMS, LLC, and)
 DECO-TEX, LLC,)
)
 Defendants.)

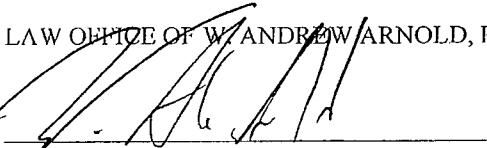
COURT OF COMMON PLEAS
 Civil Action No. 2012-CP-23-2887

SUMMONS

2012 OCT 10 PM 4:32
 SUPERIOR COURT OF
 GREENVILLE, SC

TO THE DEFENDANTS ZOI FILMS, LLC AND DECO-TEX, LLC:

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,
 LAW OFFICE OF W. ANDREW ARNOLD, P.C.

 W. ANDREW ARNOLD
 SC Bar No. 65311
 712 East Washington Street
 Greenville, SC 29601
 aarnold@aalawfirm.com
 864.242.4800 864.242.4885 fax
 ATTORNEY FOR PLAINTIFF

October 10, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 DAVID WILSON, individually and)
 derivatively on behalf of CAROLINA)
 CUSTOM CONVERTING, LLC,)
)
 Plaintiff,)
)
 v.)
)
 JOHN GANDIS, ANDREA COMEAU-)
 SHIRLEY, ZOI FILMS, LLC and)
 DECO-TEX, LLC)
)
 Defendants.)

COURT OF COMMON PLEAS
 Civil Action No. 2012-CP-23-2887

AMENDED COMPLAINT

2012 OCT 10 PM 4:32
 CLERK OF COURT
 GREENVILLE COUNTY
 SOUTH CAROLINA

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Amended Complaint, and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter "Plaintiff") is a resident and citizen of Greenville County, South Carolina.
2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.
3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the State of Georgia.
4. Plaintiff and Defendants Gandis and Defendant Comeau-Shirley are members of Carolina Custom Converting, LLC (hereinafter "CCC"), a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.
5. Defendant Zoi Films, LLC is a Georgia limited liability company doing business in South Carolina and with its principal place of business in Anderson, South Carolina.

6. Defendant DecoTex, LLC is a South Carolina limited liability company doing business in South Carolina and with its principal place of business in South Carolina.

7. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating Carolina Custom Converting, LLC. Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

8. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have never agreed to a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

9. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

10. There was no express agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC.

11. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

12. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and will continue as long as he is the manager of CCC.

13. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

14. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s). Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

15. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

16. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest that was taken from Plaintiff was given to Defendant Gandis.

17. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

18. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve the cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

19. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

20. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties that provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

21. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

22. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

23. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Plaintiff indicated he was agreeable to such proposal.

24. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

25. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately \$300,000.

26. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

27. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount \$100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her] sometime in 2009 or 2010 about higher participation at exit..." Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

28. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

29. Plaintiff made a counter-offer, which valued his own membership interest at approximately \$350,000 and included a four year employment agreement and a five year non-compete.

30. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

31. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for \$325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

32. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

33. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

34. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that "pursuant to the new operating plan" Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan.

35. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

36. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to \$100,000 cash and the value of the outstanding "loan."

37. Approximately fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

38. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied that he had resigned and refused to vacate. Plaintiff did not resign.

39. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

40. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all of the locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

41. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

42. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees. And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

43. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

44. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

45. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

46. After filing this action, Plaintiff discovered that Defendants Gandis and Comcau-Shirley had formed Zoi Films, LLC (hereinafter "Zoi Films"), which engages in activities competitive with CCC.

47. Based upon information and belief, Defendants Gandis and Comeau-Shirley caused Michael Shirley, Defendant Comeau-Shirley's husband, to organize Zoi Films in Georgia in an attempt to conceal its existence from Plaintiff; these Articles of Organization identify Michael Shirley as Zoi Films, LLC's registered agent.

48. The email address listed Defendant Comeau-Shirley's email address as Zoi Films on the transmittal form to the Georgia Secretary of State's office.

49. On or about March 27, 2012, Defendant Gandis engaged John Gurley of Cyber Solutions to secure the internet domain ZoiFilms.com.

50. Defendant Gandis is listed as the registrant of the ZoiFilms.com domain. Defendant Gandis provided his personal email address on the registration, although he provided CCC's phone number as Defendant Zoi Film's phone number and CCC's post office box as Defendant Zoi Films' address.

51. Defendants Gandis and Comeau-Shirley hired a web design company to create Zoi Films web site, which contains photographs of CCC's equipment and listing the identical services and products as CCC.

52. Based upon information and belief, Defendants Gandis and Comeau-Shirley hired employees to work for Defendant Zoi Films for the purpose of competing with CCC.

53. Based upon information and belief, Defendants Gandis and Comeau-Shirley used CCC funds as seed money for Defendant Zoi Films.

54. Based upon information and belief, Defendants Gandis and Comeau-Shirley made attempts to conceal their involvement in Zoi Films, including listing a false physical address for Zoi Films, LLC.

55. Based upon information and belief, Defendants Gandis and Comeau-Shirley are operating Defendant Zoi Films using CCC facilities, resources and employees.

56. Upon being confronted with this duplicity, Defendant Gandis engaged legal counsel, who drafted a document which stated that CCC was the sole member of Zoi Films, LLC; Defendant Gandis executed this document and presented it with documents filed with the Georgia Secretary of State's office 7 weeks earlier. Based upon information and belief, Defendant Gandis' intent was to deceive Plaintiff.

57. Based upon information and belief, Defendant Gandis and Defendant Comeau-Shirley have conspired to convert opportunities, funds, resources belonging to CCC for the benefit of others, including themselves and including Defendant DecoTex, LLC and Defendant Zoi Films, LLC.

58. Defendants have taken steps to conceal their breaches of fiduciary duty, fraud, and conversion and efforts to persuade Defendants to cease their activities and pursue an action against themselves is not likely to succeed.

59. Plaintiff owns a forty-five percent ownership interest in CCC; Plaintiff has been a member at all times alleged herein and fairly and adequately represents the members similarly situated.

60. CCC business and financial interests are being harmed by the actions of Defendants, and a derivative action is necessary to protect those interests and to remedy the harm to the entity.

61. After failing to respond to Plaintiff's requests for financial information for months, Defendants produced some financial information pursuant to a subpoena issued to CCC. Although this information is stored electronically, Defendants did not produce an electronic copy.

62. Defendants downloaded the information into Excel, and based upon information and belief, Defendant Comeau-Shirley altered the financial data from its original form prior to producing it to Plaintiff.

63. Defendants failed to produce emails subpoenaed relating to their activities.

FOR A FIRST CAUSE OF ACTION

Dissolution

(S.C. Code § 33-44-801)

64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this First Cause of Action.

65. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to Plaintiff individually. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

- A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;
- B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;
- C. Defendant(s) have unilaterally and without his consent attempted to alter Plaintiff's membership interest and produced false K-1s;
- D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;
- E. Defendant(s) have terminated Plaintiff's family health insurance coverage;
- F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;
- G. Defendants have accounted for expenses, including the automobile expense, in such a way as to decrease Plaintiff's capital account;
- H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;

- I. Based upon information and belief, Defendant(s) have utilized company funds to pay for legal fees incurred as the individuals' efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership;
- J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest; and
- K. Based upon information and belief, Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

66. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

67. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

68. Plaintiff is entitled to equitable remedies and/or legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendant Gandis)

69. Plaintiff realleges and incorporates by reference paragraphs 1 through 68, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

70. Defendant Gandis breached and continues to breach his statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiff and to CCC, and such breaches include, but are not limited to:

- A. Refusing to provide financial information as requested by Plaintiff;
- B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;

- C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;
- D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;
- E. Filing Article of Organization which were contrary to the agreement of the equal members;
- F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;
- G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get \$100,000 as “a preference to minority”;
- H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff; and
- I. Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

71. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

72. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

73. Based upon information and belief, Defendant Gandis has misappropriated corporate opportunities for himself and/or DecoTex.

74. Based upon information and belief, Defendant Gandis has participated in and directed accounting practices that are fraudulent and/or deceitful.

75. Defendant Gandis’ breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff, his membership interest and to CCC. Accordingly, Plaintiff and CCC are entitled to an award of

actual and punitive damages for the breach of Defendant's fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC.

76. Defendant Gandis' breach of his fiduciary duties is causing Plaintiff and CCC irreparable harm and entitles him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION
Disassociation
(S.C. Code § 33-44-601(6))

77. Plaintiff realleges and incorporates by reference paragraphs 1 through 76, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Third Cause of Action.

78. Plaintiff never consented to CCC being a term limited liability company, and accordingly, CCC is an at will limited liability company.

79. Defendants have engaged in wrongful conduct that adversely and materially affect the company's business.

80. Defendant Gandis has willfully and/or persistently acted in breach of his fiduciary duties. Defendants have engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on business together.

81. Plaintiff is entitled to a judicial decree of dissolution.

FOR A FOURTH CAUSE OF ACTION
Conversion

82. Plaintiff realleges and incorporates by reference paragraphs 1 through 81, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

83. Defendants have converted CCC funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC.

84. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

85. Based upon information and belief, Defendants have used CCC assets in furtherance of their own personal business efforts selling film and/or in furtherance of Defendants Zoi Films and DecoTex.

86. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

87. CCC is entitled to an award of actual and punitive damages for such conversions.

88. Plaintiff is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to Plaintiff for all profits and property, and returning Plaintiff's personal property.

89. CCC is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to CCC for all profits, assets and property and returning CCC profits, assets and property.

90. Defendants' actions will result in irreparable harm to Plaintiff's membership interest, to his property, and to the interest of CCC.

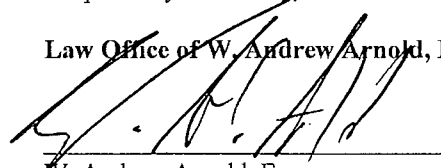
HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff prays this Court award them the following relief:

- (a) an award of Plaintiff's special and compensatory damages;
- (b) an award of punitive damages against Defendants;
- (c) an order enjoining continuing breaches of Defendants' fiduciary duties and Defendants' conversions;
- (d) an order dissociating Defendants from CCC or in the alternative, dissolving CCC;

- (e) an order requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiff his share of profits and income, and a judicial order of dissolution;
- (f) alternatively, appointing of a receiver to wind-up the affairs of the entity, to liquidate its assets, to account to Plaintiff for income and profits owed to Plaintiff, and filing Articles of Dissolution;
- (g) an accounting;
- (h) prejudgment and post-judgment interest; and
- (i) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.



W. Andrew Arnold, Esq.
S.C. Bar No. 065311
712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiff

Greenville, SC
October 10, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 DAVID WILSON, individually and)
 derivatively on behalf of CAROLINA)
 CUSTOM CONVERTING, LLC,)
)
 Plaintiff,)
)
 v.)
)
 JOHN GANDIS, ANDREA COMEAU-)
 SHIRLEY, ZOI FILMS, LLC, and)
 DECO-TEX, LLC,)
)
 Defendants.)

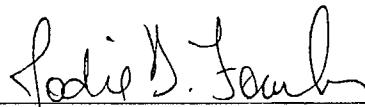
COURT OF COMMON PLEAS
 Civil Action No. 2012-CP-23-2887

CERTIFICATE OF SERVICE

REC'D
 CLERK OF COURT
 GREENVILLE, SC
 2012 OCT 10 PM 4:21

I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on October 10, 2012, I served upon the below-named individual Amended Complaint by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Mason A. Goldsmith, Esquire
 Elmore Goldsmith, P.A.
 P.O. Box 1887
 Greenville, SC 29602



 JODIE D. FOWLER
 Paralegal to W. Andrew Arnold

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 David Wilson, individually and)
 derivatively on behalf of Carolina)
 Custom Converting, LLC,)
)
 Plaintiff,)
)
 -vs-)
)
 John Gandis, Andrea Comeau-)
 Shirley, ZOi Films, LLC, and Carolina)
 Custom Converting, LLC,)
)
 Defendants,)
)
 John Gandis and Andrea)
 Comeau-Shirley,)
)
 Third Party Plaintiff,)
)
 -vs-)
)
 Carolina Custom Converting, LLC,)
)
 Third Party Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2012-CP-23-02887

2013 SEP 20 P 12:31

FILED CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENBUSH

**VERIFIED SECOND
 AMENDED COMPLAINT
 (JURY TRIAL DEMANDED)**

COMES NOW PLAINTIFF, by and through his counsel, W. Andrew Arnold, and files this Amended Complaint, and does hereby allege and complain as follows:

1. Plaintiff David B. Wilson (hereinafter "Plaintiff") is a resident and citizen of Greenville County, South Carolina. As Plaintiff is a member of Carolina Custom Converting, LLC (hereinafter CCC) at all times herein and the actions complained about are those of others members acting as fiduciaries on behalf CCC who were in breach of those fiduciary duties and engaged in self-dealing as describe herein, Plaintiff has brought this action derivatively on behalf of CCC as well as individually.

2. Defendant John Gandis (hereinafter "Defendant Gandis") is a resident and a citizen of the County of Greenville and the State of South Carolina.

3. Defendant Andrea Comeau-Shirley (hereinafter "Defendant Comeau-Shirley") is a resident and citizen of the State of Georgia.

4. Defendant CCC is a South Carolina limited liability company and has been added as a party so that Plaintiff may pursue all the relief he is entitled to individually and derivatively on behalf of CCC.

5. Plaintiff and Defendants Gandis and Defendant Comeau-Shirley are members of CCC, a South Carolina limited liability company with its principal place of business in Anderson, South Carolina and formerly with an office in Greenville, South Carolina. CCC was formed in 2007.

6. Defendant Zoi Films, LLC is a Georgia limited liability company doing business in South Carolina and with its principal place of business in Anderson, South Carolina.

7. Prior to the inception of the entity, Defendant Gandis and Plaintiff agreed to be equal members in a limited liability company, and accordingly Defendant Gandis filed Articles of Organization creating CCC. Defendant Gandis filed Articles of Organization identifying CCC as a term company and identifying himself as the manager.

8. Plaintiff and Defendant never signed and/or agreed to a written operating agreement, and to this day, the parties have executed a written operating agreement. Defendant Gandis and Plaintiff did agree at the inception of their partnership to be equal partners and that certain actions would require both parties consent; to wind down their individual businesses; after such winding down, to operate those activities involving the sell of film for the benefit and profit of CCC; to share income equally; and to receive a monthly distribution and/or compensation.

9. However, there was no agreement by the parties as to whether CCC would be a term limited liability company, and absent such an agreement, CCC is an at-will limited liability company.

10. There was no agreement that Defendant Gandis would be the only managing member; however, Plaintiff did understand that Defendant Gandis would manage the day to day operations of CCC subject to the limitations agreed upon by Plaintiff and Defendant Gandis.

11. In or about 2008, the Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with a ten percent (10%) interest and to reduce each of their respective membership shares to forty-five percent (45%).

12. As a manager, Defendant Gandis had fiduciary obligations under S.C. Code Ann. 33-44-409(h)(2) as well as other statutory provisions, which continue to this day and will continue as long as he is the manager of CCC. As a member with delegated authority of a manager, Defendant Shirley had fiduciary obligations as to such delegated matters.

13. Nonetheless, for a time, Plaintiff participated in the management and operations of CCC and performed services for CCC on a full-time basis. The only compensation he received was in the form of distributions to him as a member, which was agreed upon at the inception of CCC.

14. In or around the beginning of 2010, Defendants began excluding Plaintiff from member meetings and discussions. Plaintiff did not have prior knowledge of these meeting(s). Based upon information and belief, decisions were made during these meetings without Plaintiff's input and consent.

15. In January 2010, the members decided that CCC would purchase a vehicle to be used as a sales vehicle by Plaintiff; however, later, Defendants unilaterally treated this purchase as a charge against Plaintiff's capital account.

16. In 2011, Defendants unilaterally changed Plaintiff's membership interest from 45% to 44.1%. This was done without Plaintiff's knowledge and/or consent and such acts violated the agreement of the parties. The interest that was taken from Plaintiff was given to Defendant Gandis.

17. The parties had agreed that the members would receive equal monthly distributions. This practice continued as agreed until sometime in 2010. Such commitment to pay monthly compensation was material in Plaintiff's decision to wind up the business of Eastern Film Solutions.

18. Sometime in 2010, Defendant Gandis voluntarily decided to take a lesser monthly distribution than Plaintiff to improve the cash flow of CCC. However, Defendant Gandis had outside income from his side film business in addition to CCC income. Plaintiff agreed that any distribution in excess of that taken by Defendant Gandis would be treated as a non-recourse "loan" from the entity to Plaintiff, secured only by his capital account.

19. In April 2011, Defendant Gandis ceased taking distributions, which resulted in a larger disparity between the capital accounts of the members. However, Plaintiff continued to have a positive balance in his capital account at all times, even when deducting the amount of the non-recourse "loan."

20. Sometime after April 2011, Defendant Gandis approached Plaintiff about the imbalance of distributions. Plaintiff reiterated the agreement of the parties that provided for monthly compensation. In response, Defendant Gandis proposed that Plaintiff forfeit his membership interest and become an employee in exchange for a loss allocation to offset member income in 2010.

21. Although Plaintiff rejected this offer, Defendants persisted in pressuring him to forfeit and/or transfer his interest.

22. Pressure turned to coercion at the end of November 2011 when Defendants advised Plaintiff that Plaintiff would not be receiving his agreed upon distribution for December 2011 unless Plaintiff agreed to sell his interest and become an employee.

23. Plaintiff and Defendant Gandis met and discussed a buy-out of Plaintiff's membership interest. As part of one proposal, Plaintiff would be employed as an officer of the company with a guaranteed salary pursuant to a five year employment agreement. Plaintiff indicated he was agreeable to such proposal.

24. After Plaintiff and Defendant discussed this proposal, Defendants relented and paid Plaintiff his December 2011 distribution.

25. Later in December, Defendants presented Plaintiff with a written offer that was significantly different than the proposal discussed at the last meeting; the offer included an at-will employment contract, a five year non-compete and valued Plaintiff's interest at approximately \$300,000.

26. Plaintiff requested a copy of the CCC balance sheet that was used to value Plaintiff's interest in CCC. The balance sheet submitted to Plaintiff contained several deceptive and/or fraudulent entries that devalued CCC and thus devalued Plaintiff's membership interest accordingly.

27. One of the deceptive and/or fraudulent entries included "a preference to minority" to Defendant Comeau-Shirley in the amount \$100,000. When confronted, Defendant Comeau-Shirley indicated this was "based upon a conversation that [Defendant Gandis] had with [her] sometime in 2009 or 2010 about higher participation at exit...." Defendant Gandis had never discussed such proposal with Plaintiff at anytime and such a commitment had not been previously listed on a CCC balance sheet.

28. Plaintiff rejected the offer of at will employment. Plaintiff raised objections and concerns regarding the deceptive and/or fraudulent accounting entries.

29. Plaintiff made a counter-offer, which valued his own membership interest at approximately \$350,000 and included a four year employment agreement and a five year non-compete.

30. Defendants rejected Plaintiff's offer and advised Plaintiff in writing that he would not be receiving his January and February distributions as had been previously agreed upon.

31. Defendant Gandis had indicated that he would accept an offer to purchase his membership interest for \$325,000 as long as the offer included the purchase of the building. Defendant Gandis owns the building in which CCC operates and rents the premises to CCC.

32. In response, Plaintiff had advised Defendant Gandis that Plaintiff would begin to seek qualified buyers. With Defendant Gandis' blessing, Plaintiff approached perspective buyers, all of whom executed non-disclosure agreements.

33. In or about late December 2012, Defendants requested to know the identity of any proposed purchasers Plaintiff had approached and the nature of the information shared. Plaintiff was reluctant to identify prospective buyers, although Plaintiff assured Defendants that he had not disclosed information that was damaging to the company and later advised that all information provided to any prospective buyer was subject to non-disclosure.

34. In or about January 2012, Defendant Comeau-Shirley advised Plaintiff in writing that "pursuant to the new operating plan" Plaintiff's privileges in the accounting system had been changed to sales only. Plaintiff had not consented to and/or voted on any such plan.

35. On January 6, 2012, Defendant Comeau-Shirley advised Plaintiff that Defendant Gandis had identified himself as the sole manager of CCC in the Secretary of State filing.

36. On January 17, 2012, Plaintiff made a new offer to Defendants which reduced the valuation of his membership interest to \$100,000 cash and the value of the outstanding "loan."

37. Approximately fifteen minutes after making such offer, Defendants terminated Plaintiff's access to the CCC computer network.

38. On January 18, 2012, Defendant Gandis approached Plaintiff and advised him that "we have accepted your resignation" and that Plaintiff needed to vacate the office immediately. Plaintiff denied that he had resigned and refused to vacate. Plaintiff did not resign.

39. To enforce his demand to vacate, Defendant Gandis had called law enforcement, and a law enforcement officer was with him when he made such demand. When Plaintiff refused to leave, Defendant Gandis asked the officer to remove Plaintiff from the premises. Plaintiff advised the officer of his membership interest; the officer indicated that he had no jurisdiction, although he remained at the location.

40. Also, Defendant Gandis had called a locksmith, who was present to change the locks of the Greenville office leased by CCC. The locksmith changed all of the locks on CCC's Greenville office. When Plaintiff left the office, he was refused reentry.

41. Immediately, Defendants disconnected Plaintiff's cell phone service without notice; Defendants also disconnected the service for Plaintiff's family. Defendant refuses to release to Plaintiff the cell phone number he has had for over 10 years.

42. Without prior notice, Defendants terminated Plaintiff's health insurance, which is provided to all members and employees. And since, Defendants have refused to pay Plaintiff any distributions, while based upon information and belief, Defendants have continued to receive paid cell phone service, health insurance and/or distributions as members.

43. Since Plaintiff's ejection and involuntary dissociation by Defendants, Plaintiff has requested financial information for CCC, but Defendants have refused to provide Plaintiff with any such information.

44. Defendants have refused to return Plaintiff's personal property and are claiming that such property was contributed to CCC; however, Defendants have never accounted for such personal property as a contribution, have never listed and/or valued such property on the company balance sheet nor have Defendants credited Plaintiff's capital account with the value of such property as of the time of the alleged contribution.

45. Based upon information and belief, Defendants have used CCC funds to pay for their own personal attorneys fees in their power struggle with Plaintiff.

46. After filing this action, Plaintiff discovered that Defendants Gandis and Comeau-Shirley had formed Zoi Films, LLC (hereinafter "Zoi Films"), which engages in activities competitive with CCC.

47. Based upon information and belief, Defendants Gandis and Comeau-Shirley caused Michael Shirley, Defendant Comeau-Shirley's husband, to organize Zoi Films in Georgia in an attempt to conceal its existence from Plaintiff; these Articles of Organization identify Michael Shirley as Zoi Films, LLC's registered agent.

48. The email address listed Defendant Comeau-Shirley's email address as Zoi Films on the transmittal form to the Georgia Secretary of State's office.

49. On or about March 27, 2012, Defendant Gandis engaged John Gurley of Cyber Solutions to secure the internet domain ZoiFilms.com.

50. Defendant Gandis is listed as the registrant of the ZoiFilms.com domain. Defendant Gandis provided his personal email address on the registration, although he provided

CCC's phone number as Defendant Zoi Film's phone number and CCC's post office box as Defendant Zoi Films' address.

51. Defendants Gandis and Comeau-Shirley hired a web design company to create Zoi Films web site, which contains photographs of CCC's equipment and listing the identical services and products as CCC.

52. Based upon information and belief, Defendants Gandis and Comeau-Shirley hired employees to work for Defendant Zoi Films for the purpose of competing with CCC.

53. Based upon information and belief, Defendants Gandis and Comeau-Shirley used CCC funds as seed money for Defendant Zoi Films.

54. Based upon information and belief, Defendants Gandis and Comeau-Shirley made attempts to conceal their involvement in Zoi Films, including listing a false physical address for Zoi Films, LLC.

55. Based upon information and belief, Defendants Gandis and Comeau-Shirley are operating Defendant Zoi Films using CCC facilities, resources and employees.

56. Upon being confronted with this duplicity, Defendant Gandis engaged legal counsel, who drafted a document which stated that CCC was the sole member of Zoi Films, LLC; Defendant Gandis executed this document and presented it with documents filed with the Georgia Secretary of State's office 7 weeks earlier. Based upon information and belief, Defendant Gandis' intent was to deceive Plaintiff.

57. Based upon information and belief, Defendant Gandis and Defendant Comeau-Shirley have conspired to convert opportunities, funds, resources belonging to CCC for the benefit of others, including themselves and including Defendant DecoTex, LLC and Defendant Zoi Films, LLC.

58. Defendants have taken steps to conceal their breaches of fiduciary duty, fraud, and conversion and efforts to persuade Defendants to cease their activities and pursue an action against themselves is not likely to succeed.

59. Plaintiff owns a forty-five percent ownership interest in CCC; Plaintiff has been a member at all times alleged herein and fairly and adequately represents the members similarly situated.

60. CCC business and financial interests are being harmed by the actions of Defendants, and a derivative action is necessary to protect those interests and to remedy the harm to the entity.

61. After failing to respond to Plaintiff's requests for financial information for months, Defendants produced some financial information pursuant to a subpoena issued to CCC. Although this information is stored electronically, Defendants did not produce an electronic copy.

62. Defendants downloaded the information into Excel, and based upon information and belief, Defendant Comeau-Shirley altered the financial data from its original form prior to producing it to Plaintiff.

63. Defendants failed to produce emails subpoenaed relating to their activities.

FOR A FIRST CAUSE OF ACTION
Dissolution under S.C. Code § 33-44-801
(AS TO ALL DEFENDANTS)

64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this First Cause of Action.

65. Defendants have acted in a manner that is unlawful, oppressive, fraudulent, and/or unfairly prejudicial to Plaintiff individually. Such actions constitute grounds for statutory dissolution, including, but not necessarily limited to, the following:

- A. Without cause, Defendant(s) called law enforcement to remove Plaintiff from his office and have since denied Plaintiff entry into his office;
- B. Defendant(s) terminated Plaintiff's access to financial information and have denied his request for financial information to which a member is statutorily entitled;
- C. Defendant(s) have unilaterally and without his consent attempted to alter Plaintiff's membership interest and produced false K-1s;
- D. Defendant(s) have engaged in deceptive and/or fraudulent accounting practices designed to reduce the value of the CCC for their personal benefit;
- E. Defendant(s) have terminated Plaintiff's family health insurance coverage;
- F. Defendant(s) have failed to make agreed upon distributions and unilaterally changed agreements between Defendant Gandis and Plaintiff regarding monthly distributions;
- G. Defendants have accounted for expenses, including the automobile expense, in such a way as to decrease Plaintiff's capital account;
- H. Defendant(s) have terminated Plaintiff's cell phone service while maintaining that of other members;
- I. Based upon information and belief, Defendant(s) have utilized company funds to pay for legal fees incurred as the individuals' efforts to force Plaintiff to forfeit his membership interest, and thereby increasing their individual ownership;
- J. Defendant(s) have threatened to deplete the company bank accounts by funding litigation between individual members and thus devaluing Plaintiff's membership interest; and
- K. Based upon information and belief, Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use;

66. Based upon information and belief, Defendants have conspired together for the purpose of compelling Plaintiff to forfeit his membership interests and/or to transfer his interest for below fair market value.

67. Defendants' conduct relating to the company's business makes it not reasonably practicable to carry on the company's business with those members.

68. Plaintiff engaged in attempts to obtain accurate accounting records, complained about being locked out of CCC's Quickbooks, complained about financial practices engaged in by Defendants, sought to negotiate his dissociation from the company, and complained about Defendant's fraudulent efforts in regards to ZOi Films, all which have proved futile and any additional efforts would have proved futile as the individual Defendants have conspired to act in their own interests and against the interests of Plaintiff and the interests of CCC. Accordingly, Plaintiff is pursuing this action derivatively.

69. Plaintiff is entitled to equitable remedies and/or legal remedies under the South Carolina Uniform Limited Liability Company Act, including the remedy of dissolution.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendants Gandis and Comcau-Shirely)

70. Plaintiff realleges and incorporates by reference paragraphs 1 through 69, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Second Cause of Action.

71. Defendants breached and continues to breached their statutory duty of loyalty, obligation of good faith and fair dealing and/or other fiduciary duties owed to Plaintiff and to CCC, and such breaches include not only those in paragraph 65, but also including but limited to the following:

- A. Refusing to provide financial information as requested by Plaintiff;
- B. Paying for his personal attorney fees out of company funds in pursuit of Plaintiff's membership interest;
- C. Terminating Plaintiff for seeking financial information and making efforts to review financial information to which he was entitled;

- D. Calling law enforcement in an effort to forcibly remove Plaintiff from his office;
- E. Filing Article of Organization which were contrary to the agreement of the equal members;
- F. Conspiring with Defendant Comeau-Shirley to force Plaintiff to forfeit his membership interest and/or transfer such interest for less than fair market value;
- G. Unilaterally and without authority promising Defendant Comeau-Shirley that she would get \$100,000 as "a preference to minority";
- H. Otherwise acting in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff; and
- I. Defendants created a separate limited liability company for the purpose of converting opportunities, assets, and funds to their own use.

72. Defendant Gandis represented that he intended to dissolve DecoTex and conduct all of his business on behalf of CCC, but Defendant Gandis continues to operate such side film business. Based upon information and belief, Defendant Gandis utilizes CCC resources in furtherance of such business efforts.

73. Based upon information and belief, Defendant Gandis receives income from his side business selling film, which exploits opportunities that could have generated profit for CCC.

74. Defendant Gandis delegated certain responsibilities to Defendant Comeau-Shirley, primarily those involving maintaining the accounting records of CCC, and Defendant Comeau-Shirely has engaged in accounting fraud in an effort to cheat Plaintiff out of the value of his share of CCC.

75. Based upon information and belief, both Defendants has participated in and directed accounting practices that are fraudulent and/or deceitful.

76. Defendant Gandis' and Defendant Comeau-Shirley's breach of his fiduciary duties, his obligation of good faith and fair dealing and his duty of loyalty are the proximate cause of damages to Plaintiff, his membership interest and to CCC. Accordingly, Plaintiff and

CCC are entitled to an award of actual and punitive damages for the breach of Defendants' fiduciary duties, including a disgorgement of profits for any sale of film not conducted through CCC and damage to the value of CCC and/or Plaintiff's membership interest.

77. Defendants are using attorneys fees to pursue their own individual interests in forcing Plaintiff to forfeit his membership interest. Defendants have incurred over hundred thousand dollars in legal fees and continue to hire lawyers without regard the financial harm to CCC.

78. Defendant Comcau-Shirely has paid her personal attorney out of CCC's funds and based upon information and belief, plans to continue to pilfer CCC's business accounts for her own personal gain.

79. Defendant John Gandis paid his personal attorney out of CCC's funds and based upon information and belief, plans to continue to pilfer CCC's business accounts for his own personal gain. (Defendant's personal attorney upon being notified that his client engaged in such conduct has returned these funds, but Defendant Gandis has not indicated he will not pay his personal attorney's fees out of such funds."

80. According to financial records produced by the individual Defendants on behalf of CCC and ZOI, CCC has been operating at a loss and Defendants actions of hiring lawyer after lawyer to pursue their individual interests will leave CCC unable to continue in business, will reduce the value of Plaintiff's interest, and will not have personal assets to satisfy judgments in the amount of damages.

81. Accordingly, monetary damages are not sufficient to remedy the continued pilfering of CCC. The damage being done is irreparable.

82. The continued fraudulent accounting practices of Defendants will continue to harm the entity, and because such harm cannot be remedied with monetary damages, such damage is irreparable.

83. The individual Defendants' breaches of their fiduciary duties are causing Plaintiff and CCC irreparable harm and entitle him to temporary and permanent injunctive relief.

FOR A THIRD CAUSE OF ACTION

Conversion

(AGAINST DEFENDANTS GANDIS, COMEAU-SHIRLEY AND ZOI FILMS)

84. Plaintiff realleges and incorporates by reference paragraphs 1 through 83, to the extent not inconsistent herewith, as if each is set forth fully and completely hereunder in this Fourth Cause of Action.

85. Defendants have converted CCC funds to their own use by paying for their personal attorney fees in their efforts to force Plaintiff to dissociate from CCC.

86. Defendants have converted Plaintiff's personal property to their own personal use and refuse to return such equipment.

87. Based upon information and belief, Defendants have used CCC assets in furtherance of their own personal business efforts selling film and/or in furtherance of Defendants Zoi Films, DecoTex and/or other entities owned by the individual Defendants.

88. Plaintiff is entitled to an award of actual and punitive damages for such conversions.

89. CCC is entitled to an award of actual and punitive damages for such conversions.

90. Plaintiff in his derivative capacity is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to Plaintiff for all profits and property, and returning Plaintiff's personal property.

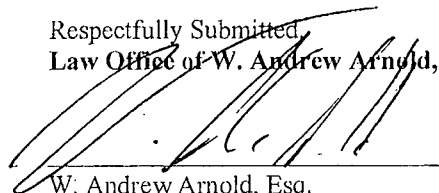
91. CCC is entitled to equitable relief, including, but not limited to, an order enjoining Defendants from utilizing CCC funds for their own personal purposes, requiring Defendants to account to CCC for all profits, assets and property and returning CCC profits, assets and property.

92. Defendants' actions are resulting in irreparable harm to Plaintiff's membership interest, to his property, and to the interest of CCC.

HAVING FULLY SET FORTH HIS COMPLAINT, Plaintiff prays this Court award them the following relief:

- (a) an award of CCC's and Plaintiff's special, compensatory damages and punitive damages;
- (b) an order enjoining continuing breaches of Defendants' fiduciary duties and Defendants' conversions;
- (c) temporary and permanent injunctive relief;
- (d) an order dissolving CCC and ZOi Films;
- (e) an order appointing a receiver, providing for an accounting, requiring a winding up of the affairs of CCC, LLC, ordering its assets liquidated, payment of Plaintiff his share of profits and income, and/or a judicial order of dissolution;
- (f) prejudgment and post-judgment interest; and
- (g) such other and further relief as this Court deems just and equitable.

Respectfully Submitted,
Law Office of W. Andrew Arnold, P.C.



W. Andrew Arnold, Esq.
S.C. Bar No. 065311
712 E. Washington Street
Greenville, South Carolina 29601
(864) 242-4800
Attorney for Plaintiff

Greenville, SC
September 16, 2013

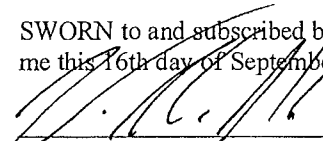
VERIFICATION

I, Dave Wilson, being duly sworn, testify that I have read the Second Amended Complaint and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.



DAVID WILSON

SWORN to and subscribed before
me this 16th day of September 2013



Notary Public for South Carolina
My Commission Expires: 4-19-2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 David Wilson, individually and)
 derivatively on behalf of Carolina)
 Custom Converting, LLC,)
)
 Plaintiff,)
)
 -vs-)
)
 John Gandis, Andrea Comeau-)
 Shirley, ZOi Films, LLC, and)
 Carolina Custom Converting, LLC,)
)
 Defendants,)
)
 John Gandis and Andrea)
 Comeau-Shirley,)
 Third-Party Plaintiffs,)
)
 -vs-)
)
 Carolina Custom Converting, LLC,)
 Third Party Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2012-CP-23-02887

CERTIFICATE OF SERVICE

2013 SEP 20 P 12:32

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER

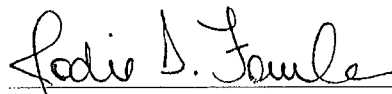
I, Jodie D. Fowler, Paralegal for W. Andrew Arnold, do hereby certify that on September 20, 2013, I served upon the below-named individuals Verified Second Amended Complaint by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in envelopes addressed as shown below:

Mason A. Goldsmith, Esquire
 Elmore Goldsmith, P.A.
 P.O. Box 1887
 Greenville, SC 29602

Burl F. Williams, Esquire
 Nexsen Pruet, LLC
 P.O. Drawer 10648
 Greenville, SC 29603

L. Lee Plumblec, Esquire
 EPPES & PLUMBLEE, P.A.
 P.O. Box 10066
 Greenville, SC 29603

Steven Farrar, Esquire
 Smith, Moore, Leatherwood, LLP
 P.O. Box 87
 Greenville, SC 29602



JODIE D. FOWLER
 Paralegal to W. Andrew Arnold

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,

Civil Action No. 2012-CP-23-02887

Plaintiff,

**CAROLINA CUSTOM CONVERTING,
LLC'S ANSWER TO THE SECOND
AMENDED COMPLAINT AND
COUNTERCLAIMS**

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKHAM, CLERK
2013 NOV 19 AM 9 45

The Defendant, Carolina Custom Converting, LLC ("CCC") responds to the allegations of Plaintiff's Second Amended Complaint as follows:

PRELIMINARY STATEMENT

CCC is not a party to any of the direct claims alleged in the Second Amended Complaint ("the Complaint"). It is a party to this action based upon the purported derivative claims alleged in the Complaint, and the claim for a Dissolution of CCC. For these purported claims, CCC submits this Answer to the Complaint with general denials so as to preserve Plaintiff's obligation to prove all allegations not admitted by the other named Defendants. In addition to these general

denials, CCC submits this preliminary statement for the purpose of notifying the Plaintiff that it is preserving all rights that a nominal defendant retains in derivative litigation. *E.g., Swenson v. Thibaut*, 250 S.E.2d 279, 293-94 (N.C. App. 1978).

FIRST DEFENSE

1. For Paragraph 1 of the Complaint, CCC admits that Dave Wilson, upon information and belief, is a resident of Greenville County, South Carolina, is a member of CCC, and purports to bring an action derivatively on behalf of CCC; as a nominal party to the direct claims CCC generally denies the allegations related to other defendants.

2. For Paragraphs 2-3 of the Complaint, CCC admits the allegations.

3. For Paragraph 4 of the Complaint, CCC admits that it is a Limited Liability Company; CCC responds that the remaining allegations assert legal conclusions for which no response is required; to the extent a response is required, CCC denies the remaining allegations.

4. For Paragraph 5 of the Complaint, CCC admits the allegations.

5. For Paragraphs 6- 11 of the Complaint, CCC generally denies the allegations asserted against other parties.

6. For Paragraph 12 of the Complaint, CCC responds that the allegations contain legal conclusions to which no responsive pleading is required; to the extent a response is required, CCC denies the allegations.

7. For Paragraph 13-63 of the Complaint, CCC generally denies the allegations asserted against other parties.

8. For Paragraphs 64-69 of the Complaint, CCC generally denies the allegations asserted against other parties; CCC further denies that Plaintiff is entitled to dissolution of CCC.

9. For Paragraphs 70 – 92 of the Complaint, CCC generally denies the allegations asserted against other parties.

10. Having responded to all of the Plaintiff's allegations, CCC hereby denies that the Plaintiff is entitled to the relief sought in his Prayer for Relief as it relates to CCC: CCC denies that the Plaintiff is entitled to an order dissolving the company; CCC denies that the Plaintiff is entitled to an order appointing a receiver for CCC and a liquidation of the company's assets.

SECOND DEFENSE

11. Plaintiff's derivative claims are barred in whole because he is an inadequate representative for this action.

THIRD DEFENSE

12. Plaintiff's derivative claims are barred in whole because he failed to comply with the Rule 23, SCRCP requirements for instituting derivative litigation.

FOURTH DEFENSE

13. Plaintiff's derivative claims are equitable, and he is barred from pursuing those equitable claims due to equitable defenses and namely that he has unclean hands.

FIFTH DEFENSE

14. CCC hereby gives notice that it intends to rely upon such other and further defenses and grounds for seeking dismissal of this action as may become available or apparent during pre-trial proceedings in this action and hereby reserves all rights to amend this Answer and to assert all such additional arguments and defenses

PRELIMINARY STATEMENT TO THE COUNTERCLAIMS OF CCC

Plaintiff is and was a member of CCC, and during his time at the company, he worked as the Vice President of Sales and Marketing. As a member, the Plaintiff owed to CCC the obligation of good faith and fair dealing. *See* S.C. Code Ann. § 33-44-409 (2006); *see also* Jean

H. Toal & W. Bratton Riley, *Fiduciary Duties of Partners & Limited Liability Company Members Under S.C. Law: A Perspective From the Bench*, 56 S.C. L. REV. 275 (2004). As a member, the Plaintiff also owed fiduciary duties to CCC. *Id.* As its Vice President of Sales and Marketing, the Plaintiff owed fiduciary duties to CCC, namely the duty of loyalty. *E.g., Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972).

CCC hereby names the following, where applicable, Counterclaim Defendants pursuant to Rule 13(h), SCRCF, and hereby joins these additional parties pursuant to Rules 19 and 20, SCRCF.

Background to the Counterclaims: The Parties

15. The Counterclaim-Plaintiff, Carolina Custom Converting, LLC, (“CCC”) is a domestic South Carolina Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal offices located in the County of Anderson, South Carolina.

16. Counterclaim-Defendant David B. Wilson, (“Wilson”), is upon information and belief, a citizen and resident of the County of Greenville, South Carolina.

17. Counterclaim-Defendant Neologic Distribution, Inc., (“Neologic”) is a domestic South Carolina Corporation organized and existing under and by virtue of the laws of the State of South Carolina with its principal offices located in the County of Greenville, South Carolina.

18. Counterclaim-Defendant Steven Norvell (“Norvell”) is upon information and belief, a citizen and resident of the County of Greenville, South Carolina.

19. Counterclaim-Defendant Freshwater Systems Inc. (“Freshwater”) is a California corporation; it transacts business in South Carolina, and its principal offices are located in the County of Greenville, South Carolina.

20. All parties, matters, and things herein are within the jurisdiction of this Court.

Carolina Custom Converting is Formed

21. Prior to November 2, 2007, Wilson owned a company named Eastern Films Solutions LLC; Eastern Films was in the business of selling converted films; the plastic films referred to throughout the Complaint are the type of plastic films that a person would find in many commercial and industrial uses, including for example, packaging, labels, tapes, flexible ducts.

22. On November 2, 2007, CCC was officially formed, and registered with the South Carolina Secretary of State as a term company set to expire in 2057. CCC is in the business of slitting and selling plastic films.

23. Beginning on November 2, 2007, Wilson agreed to close Eastern Films, and transfer all of its business and corporate opportunities into, and by doing so, help form CCC. Wilson's purported contribution to CCC was his existing business, his film industry know-how, and contacts within the industry.

24. Wilson served in a management and leadership capacity at CCC, with the title of Vice President of Sales and Marketing.

25. Beginning on November 2, 2007, Wilson agreed that all future business transactions would belong to CCC, but that a reasonable wind-down period was required in order to complete existing deals, to notify customers of the existence of his new company, and to completely transfer the business of Eastern Films into CCC.

26. After Wilson joined and helped form CCC, he began working from the Greenville office of CCC, and there worked to carry out the business purpose of the company.

Wilson's Faithless Activities and Usurpation of Corporate Opportunities

27. Following the formation of CCC, Wilson did not honor his agreement that all future business transactions executed after the formation of CCC would belong to CCC. Upon information and belief, Wilson continued for the entirety of his employment with CCC to seek out and enter into new business transactions on the side; Wilson intentionally hid these side transactions from CCC and did not share any of the revenue with CCC. These side transactions were corporate opportunities that belonged to CCC.

28. CCC, at times, believed that Wilson may have usurped corporate opportunities during his work at the company, however, it did not fully learn of the habitual scope of Wilson's faithless activities and the stealing of its corporate opportunities until after Wilson left the company and the files he left behind were reviewed.

29. Wilson did not act alone in his faithless activities. He was aided and abetted by his brother-in-law, Norvell, who helped to oversee and finance these illegal side transactions. Following the formation of CCC, Wilson, aided by Norvell, continued to usurp new corporate opportunities from CCC and direct them toward himself and Norvell.

30. Norvell did not merely finance these new corporate opportunities; he was intimately involved in the accounting and reconciliation of these deals, in paying third parties, and communicating with customers.

31. Norvell affirmatively represented to lenders that he was a member of Eastern Films in order to receive lines of credit for these transactions. Notwithstanding those representations, upon information and belief, they were false as Norvell did not hold an equity position in Eastern Films.

32. Norvell had access to the bank accounts through which the proceeds of the corporate opportunities flowed, had check signing authority for these bank accounts, and in fact did sign numerous checks in order to effectuate these side deals.

33. Wilson and Norvell also transacted a portion of these side deals through, upon information and belief, a fictional entity referred to as Commerce Films.

34. In return for his involvement, Norvell typically received 30%-40% of the gross profits.

35. Upon information and belief, one of the driving factors for Norvell to invest in these new corporate opportunities was that Wilson was indebted to Norvell, and his investments provided a mechanism for Norvell to be paid back.

36. Norvell's involvement in financing and working on these corporate opportunities continued through the entirety of 2008, and at least through July 2009. Upon information and belief, his role in these side deals with Wilson could have continued for years past 2009. Again, CCC was formed on November 2, 2007.

37. Norvell is the brother-in-law of Wilson and lives in the same town as Wilson. The closeness of these two individuals makes it impossible that Norvell did not know that Wilson was an owner and Vice President of CCC, and was legally precluded from engaging in the side transactions with Norvell.

38. CCC did not learn of Norvell's involvement in these corporate opportunities until after its employees began reviewing boxes of files left behind when Wilson exited the company in 2012.

39. Notwithstanding that Eastern Films was supposed to cease at the formation of CCC, following a reasonable wind up period, Wilson continued to use his e-mail address at that company for other purposes, including the faithless usurpation of CCC's corporate opportunities.

40. Throughout Wilson's work at CCC, he also channeled various CCC business transactions through third parties. Upon information and belief, Wilson's decision to channel certain business through these third parties was based upon Wilson's personal reasons and for the repayment of his past debts to persons other than Norvell; the act of channeling business through these third parties was not in the best interest of CCC nor disclosed to CCC.

Wilson Begins Looking For an Exit Strategy Due to Financial Strains

41. During the summer of 2008, while continuing to secretly usurp corporate opportunities from CCC, Wilson began receiving monthly distributions from CCC. These monthly distributions continued in regular order until, in or around late 2010, they no longer become a viable business option for CCC based upon the financial condition of the company. Wilson alleged that he required monthly income to pay for the cost of living; accordingly, Wilson and CCC agreed that he would continue to receive monthly payments, but that the payments would serve as interest bearing loans payable at a later date.

42. Beginning in 2011 and continuing into 2012, Wilson became dissatisfied with the future of CCC, and began looking for an exit strategy.

43. Wilson reported to the other owners of CCC that he had initiated discussions with third parties interested in purchasing CCC; nevertheless, he refused to disclose who he had included in these discussions and what information he provided to these third parties.

44. CCC is aware of three would be purchasers, but has presently received the proposed deal-making information regarding only one of these would be purchasers: Filmtech, Inc.

45. Filmtech is a direct competitor of CCC.

46. Wilson did not look to Filmtech as a future purchaser for CCC, however, the correspondence shows that Wilson secretly looked to Filmtech for employment. In a January 13, 2012 e-mail to an officer or employee of Filmtech, Wilson requested that all "future emails pertaining to our working together [be sent] to my eastern films email address."

47. Wilson had no legitimate purpose for having an Eastern Films e-mail address over four years after that company was supposed to no longer exist; his real purpose for keeping the Eastern Films e-mail address, upon information and belief, was to allow him to engage in covert communications and continue his usurpation of corporate opportunities.

48. In a January 16, 2012 e-mail to an officer or employee of Filmtech, Wilson wrote that "I look forward to the opportunity to join your organization," and that, "I'm eager to start with Filmtech as quickly as possible." In that same e-mail, Wilson also stated that:

My goal will be to move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months. I will also need about \$500 per month to secure an office, phone and internet service.

49. Wilson was not trying to sell CCC to Filmtech; he was seeking employment at Filmtech, and with the specific intent of stealing clients and prospective clients from CCC at the same time. In seeking employment with Filmtech, upon information and belief, Wilson shared CCC's trade secrets with Filmtech.

50. On January 17, 2012, Wilson left CCC.

51. In an effort to “paper over” the fact that Wilson shared trade secrets with Filmtech, on January 26, 2012, he sent an e-mail to an officer or employee of Filmtech. In that e-mail he made the following request: “Can you sign the attached [non-disclosure agreement], date it Jan 3 and email back to me.”

52. Filmtech did not hire Wilson.

***Wilson Leaves CCC Taking Confidential Information
and Trade Secrets and Destroys Evidence***

53. As an officer and owner of CCC, Wilson had access to the confidential and trade secret information of the company. The company did not provide access to this information to everyone in the company, and it took steps to protect the same. In addition, some of the confidential and trade secret information was so complex, that if a passerby were to review the information, they would not know what it meant unless it were thoroughly explained.

54. On the day that Wilson left CCC, he took two CCC owned computers and a Blackberry phone with him. Those devices contained trade secrets and confidential business information.

55. Upon information and belief, Wilson transferred said trade secrets and confidential business information to Neologic, Freshwater, and Norvell.

56. Wilson later returned the two CCC owned computers and the Blackberry phone to CCC’s attorney (not CCC), and the attorney immediately sent those computers to a company named Computer Forensics Lab.

57. That company examined the two CCC owned computers and the Blackberry phone and determined that thousands of documents and e-mails were copied, and that thousands of documents and e-mails were deleted.

58. That company also determined that an eraser program was run on the computers, which means that some of the information could not be restored. An eraser program, successfully executed, seeks to completely erase a computer's hard drive, making it impossible to retrieve any data. However, CCC was able to retrieve some of the information from these computers.

59. The destruction and attempted destruction of documents and e-mails, and the running of an eraser program upon the hard drive of these computers, is particularly troubling in light of Wilson's apparent recognition that litigation surrounding his decision to leave CCC could result. That recognition is inferred from a statement in the January 26, 2012 e-mail when he asked an officer or employee of Filmtech to back-date the non-disclosure agreement.

60. Upon information and belief, at the time Wilson decided to run an eraser program upon the computers he took from CCC, and to attempt to destroy documents relevant to this very litigation, he was in communication with legal counsel and understood that he may pursue litigation against these defendants, or be brought into litigation for his conduct.

Wilson Conspires to Sabotage CCC and Takeover its Customer Base

61. While Wilson was secretly planning to leave CCC, he placed approximately \$750,000 worth of film orders in the name of CCC utilizing its credit and industry name, which required CCC to purchase said film upon receipt. Wilson placed these purchased orders in secret and did not tell anyone at CCC what he had done. The film would not be delivered until well after he left, and Wilson knew that.

62. In the film industry that CCC operates in, the acquisition of film is almost always undertaken with a deal in place to sell that film. No one purchases \$750,000 worth of film without knowing where it will be later sold. Accordingly, Wilson sought to intentionally place

immense financial burden upon CCC by requiring it to purchase \$750,000 worth of film, with no ready or potential outlet for its sale.

63. In the alternative, Wilson placed this film order upon the credit and industry name of CCC with the expectation that it would be unable to pay for the film and return it to the distributors.

64. The vast majority of the film Wilson caused CCC to purchase was manufactured and shipped from East Asia and the Persian Gulf. CCC could not simply send the film back. If CCC had done so, it would have ruined its reputation within the industry and among its distributors.

65. Upon information and belief, the goal of Wilson in placing the purchase order was to bankrupt CCC or ruin its reputation.

66. CCC did not learn of these purchase orders until months after Wilson left the company. It learned of these purchase order when the goods began being delivered to CCC, along with significant bills for payment.

67. Upon information and belief, Wilson approached Norvell before his departure from CCC, and began discussions surrounding the idea of forming Neologic and, upon information and belief, stealing CCC's customer base with the use of its confidential information and trade secrets.

68. Norvell is an owner of Freshwater, and upon information and belief, Neologic is owned by the owners of Freshwater.

69. Freshwater and Neologic utilize the same employees, and operate out of the same location in Greenville County, South Carolina. By way of example, Neologic's Controller is the same individual as Freshwater's Controller.

70. Freshwater and Neologic also utilize the same funds in the operation of their companies. This fact is best demonstrated by an e-mail from the Controller of Neologic/Freshwater. On March 29, 2013, the Controller sent an e-mail to Neologic's employee, Bill Shaw, copy to Wilson:

[I]f you could in the future give me some sort of notice of large cash requirements in advance, that would be great. Neologic has limited cash until some of the receivables generated in Dec/Jan start rolling in more regularly and FWS [*i.e.*, Freshwater Systems] has been very tight on cash due to unexpected year end cash requirements and payments for "year end buys" that are typically due in Feb/March.

Wilson responded to that e-mail, in part by stating: "Thanks for the heads up on cash flow. We'll let you know sooner in the future."

71. Wilson, Norvell, and Freshwater, upon information and belief, started Neologic on March 22, 2012, roughly two month after Wilson left CCC and at about the same time that the \$750,000 worth of film would start to be delivered to CCC.

72. Neologic is a direct competitor of CCC.

73. Upon information and belief, Norvell and/or Freshwater and/or Neologic are advancing attorney's fees and the costs of expert witnesses to fund this litigation against CCC.

74. After leaving CCC, and creating Neologic, Wilson has continued to access CCC's internal company information via a remote log-in. The internal company information accessible through the remote login included confidential information and trade secrets. Attached as **Exhibit A** is a screen shot showing that Wilson accessed the company's internal network on April 11, 2012, at 11:55 am.

75. Upon information and belief, a Neologic employee or contractor has continued to access CCC's internal company information via remote log-in.

FOR A FIRST CAUSE OF ACTION

Violation of the Obligation of Good Faith and Fair Dealing and
Breach of Fiduciary Duties Against David Wilson

76. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

77. Defendant Wilson owed a fiduciary duty to CCC to protect its trade secrets and confidential information, and to protect and work for the best interests of CCC.

78. Despite this duty, Wilson misappropriated assets and trade secrets belonging to CCC and has used those assets and secrets to compete with CCC.

79. In violation of his obligation of good faith and fair dealing and in violation of the fiduciary duties owed to CCC, David Wilson stole corporate opportunities during his time at CCC, and converted those corporate opportunities for his personal gain; Wilson also entered into agreements with third party distributors that were not in the best interest of CCC, but rather benefited Wilson individually.

80. By engaging in the misappropriation of trade secrets and assets, Defendant Wilson has breached his fiduciary duty to CCC, thus causing damage to the Plaintiff.

81. As a direct and proximate result of Defendant David Wilson's breach of his fiduciary duties, CCC has been damaged; CCC has also had to incur the expense of retaining counsel to protect its trade secrets and enforce its rights.

FOR A SECOND CAUSE OF ACTION

Aiding and Abetting Wilson's Breach of Fiduciary Duty Against Norvell

82. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

83. Norvell is the brother-in-law of Wilson, and lives in the same town as Wilson. Based upon this close relationship, upon information and belief, Norvell knew that Wilson had helped form CCC, was a member of CCC, and served as its Vice President of Sales and Marketing.

84. Based upon the close relationship between Norvell and Wilson, Norvell, upon information and belief, knew that Wilson was acting disloyal to CCC when he undertook new corporate opportunities in the film industry, and hid those opportunities from CCC.

85. Norvell participated in Wilson's faithless activities by financing these corporate opportunities, and working to ensure their completion.

86. Norvell benefited by receiving between 30%-40% of the profits generated from these corporate opportunities.

87. CCC has been damaged based upon the loss of revenue and profits, and from the loss of an opportunity to build business relationships with the companies that Wilson and Norvell transacted business with.

88. Norvell is liable to CCC for the damages that he has caused.

FOR A THIRD CAUSE OF ACTION

Conspiracy against Wilson, Neologic, Norvell, and Freshwater

89. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

90. During the final months that Wilson worked at CCC, upon information and belief, he began to secretly plan to leave CCC, take its trade secrets and customer lists that had been developed over the preceding four years, and set up a competing company.

91. Upon information and belief, Wilson approached various other persons and companies with the idea—for example, FilmTec, supra at ¶ 40-43—that he would leave CCC, take its trade secrets and customer lists, and set up a competing company.

92. Upon information and belief, part of Wilson's plan to successfully takeover CCC's customer base was that he would force CCC to go out of business. To that end, Wilson caused CCC to purchase approximately \$750,000 worth of film. The bill for this purchase would come due within months after he left CCC, and Wilson believed that CCC would not be able to afford this financial burden.

93. In the film industry that CCC operates in, the acquisition of film from distributors is almost always undertaken with a deal in place to sell that film. Accordingly, Wilson intentionally placed the immense financial burden upon CCC to purchase \$750,000 worth of film, with no ready or potential outlet for its sale, with the intention that it would bankrupt CCC.

94. Upon information and belief Norvell agreed to work with Wilson in the creation of a competing entity. To that end, Norvell has utilized Freshwater funds to set-up and operate Neologic, and has instructed Freshwater employees to work with Wilson to set-up and operate Neologic. Neologic was formed less than two months after Wilson left CCC.

95. After Wilson left CCC, he initiated litigation against CCC and sought its dissolution.

96. Upon information and belief, Norvell and or Freshwater have funded the litigation against CCC by paying for Wilson's attorney's fees and paying for Wilson's expert witness fees.

97. CCC has been specially damaged by Wilson, Norvell, Freshwater, and Neologic in that these co-conspirators have sought to bankrupt the business and are now seeking to dissolve CCC to remove it as a source of competition in the marketplace.

FOR A FOURTH CAUSE OF ACTION

S.C. Trade Secret Act as to Wilson

98. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

99. While working at CCC, as a vice president and owner Wilson had unique access to and did have knowledge of company trade secrets and other confidential information.

100. Defendant Wilson has disclosed CCC's trade secrets to Defendant Neologic and used said secrets during his employment with Neologic, all to the detriment of CCC.

101. As an employee of CCC, Wilson was informed of or should reasonably have known from the circumstances of the existence of CCC trade secrets that he had a duty to refrain from using or disclosing the trade secrets without CCC permission independently of and in addition to any agreement between CCC and Wilson.

102. Defendant David Wilson has disclosed CCC's trade secrets without the express or implied permission of CCC.

103. CCC has been damaged by Wilson's misappropriation, wrongful disclosure, and wrongful use of its trade secrets.

104. CCC seeks damages in the form of actual losses, unjust enrichment, and/or reasonable royalty for Wilson's unauthorized disclosure and use of CCC's trade secrets.

FOR A FIFTH CAUSE OF ACTION

S.C. Trade Secrets Act as to Neologic and Freshwater

105. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

106. Neologic is in possession of, and is using CCC's trade secrets disclosed to it by Wilson.

107. Neologic is supported by funding from Freshwater, and the use of Freshwater employees. Neologic is also owned by Freshwater.

108. Neologic knows or has reason to know that Wilson, as a former vice president of CCC, had a duty to maintain the secrecy of those trade secrets.

109. Despite this knowledge, Neologic and Freshwater continue to use CCC's trade secrets.

110. CCC has been damaged by Neologic and Freshwater's misappropriation and wrongful use of its trade secrets.

111. CCC seeks damages in the form of actual losses, unjust enrichment, and/or reasonable royalty for Neologic and Freshwater's use of CCC's trade secrets.

FOR A SIXTH CAUSE OF ACTION
Breach of Contract as to Wilson

112. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein

113. Upon joining CCC, Wilson agreed to provide services to the company.

114. Wilson has now left CCC, and is no longer providing the agreed upon services to the company.

115. Furthermore, S.C. Code Ann. § 33-44-402(a) provides that if a member does not make the required contribution of services to the company, "the member is obligated to at the option of the company to contribute money equal to the value of that portion of stated contribution which has not been made."

116. Wilson stands in breach of his agreement to provide services to CCC, and the breach of that agreement has damaged CCC.

117. CCC has been damaged due to the failure of Wilson to contribute his services to the company as was required by Wilson's agreement and statute.

FOR A SEVENTH CAUSE OF ACTION

Breach of Contract Accompanied by Fraudulent Act as to Wilson

118. The Plaintiff incorporates by reference all of the preceding allegations and paragraphs of its Complaint as if fully restated herein.

119. Upon the formation of CCC, David Wilson represented to CCC, and agreed, that he would channel all subsequent business transaction through CCC.

120. Notwithstanding that agreement, Wilson had no intention of channeling all of his subsequent business transactions through CCC, and intentionally continued to engage in side transactions, and hid his said side transactions from CCC.

121. CCC's decision to bring on Wilson as a co-owner was based on the material representation by Wilson that he would channel all future business transactions through CCC. CCC would not have brought Wilson in as an owner but for his representation that he would loyally channel all future business transactions through CCC.

122. When Wilson agreed to channel all future business transactions through CCC, he knew that was a false statement.

123. When Wilson agreed to channel all future business transaction through CCC, he knew that CCC would act upon that statement, and rely on that statement, in deciding to bring Wilson into CCC.

124. In good faith, CCC relied on the statement that Wilson would channel all future business transactions through CCC, and CCC did not know that Wilson's statement was false.

125. In reliance upon Wilson's statement that he would channel all future business transactions through CCC, CCC agreed to bring Wilson in as an owner and officer.

126. Wilson represented himself to CCC as a knowledgeable and trustworthy person in the plastic films slitting industry, and based upon that representation, CCC relied upon Wilson and the statements he made regarding his intent to channel all future business transaction through CCC, and to act in a manner that would bring success to CCC.

127. As a direct and proximate result of Wilson's representations that he would channel all future business transactions through CCC, Wilson was brought in as an officer and owner. Because CCC relied upon Wilson's statements it undertook debt obligations and financed sales in order to prosper. Because Wilson did not channel all future business through CCC, CCC has incurred losses and has been damaged in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION

Conversion as to Defendant Wilson, Neologic, and Freshwater

128. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

129. CCC owned and owns various assets, confidential information and trade secrets that it uses to operate its business.

130. Wilson took CCC's assets, confidential information and trade secrets, and he converted the same for his and for Neologic's and Freshwater's use.

131. Neologic is supported by funding from Freshwater, and the use of Freshwater employees. Neologic is also owned by Freshwater.

132. Wilson, Neologic, and Freshwater are in unlawful possession of CCC's assets, confidential information and trade secrets, and their use of the same is without the express or implied authority or permission of CCC.

133. Because of Wilson, Neologic, and Freshwater's unlawful use of CCC's assets, and conversion of its confidential information and trade secrets, CCC has been damaged in the marketplace, and said damages are a direct and proximate result of the conversion.

FOR A SEVENTH CAUSE OF ACTION AS TO DEFENDANT WILSON

Debt Owed to CCC against Defendant Wilson

134. The Plaintiff incorporates by reference all of the preceding paragraphs and allegations of its Complaint as if fully restated herein.

135. Beginning on August 1, 2010, CCC began making cash loans to Wilson.

136. Throughout his time working at CCC, Wilson also fraudulently charged various expenses to CCC which he owes back to CCC.

137. Wilson is indebted to CCC, based upon the loans he received from the company, and the expenses he charged to CCC, in the approximate amount of \$152,743.28.

138. The loans made to Wilson bore interest at the agreed-upon rate of ten percent (10%) per annum, and were payable upon demand as either a) demand recourse loans or b) loans for which no specified time for repayment was stated (making them payable upon demand).

139. Despite repeated demands for repayment of the loans, Wilson has failed and refused, and continues to fail and refuse, to pay CCC for the amounts loaned to him as set forth above.

140. As a direct and proximate result of the breaches by Wilson, CCC has been damaged in an amount equal to the total amount loaned to the defendant, plus the expenses he

charged to CCC, in the amount of One Hundred and Fifty-Two Thousand, Seven Hundred and Forty-Three and 28/100 Dollars (\$152,743.28), plus prejudgment interest at the rate of ten percent (10%) per annum, post-judgment interest at the maximum rate allowed by law, and the costs of this action, all in an amount to be determined at the trial of this case.

WHEREFORE, CCC prays that, having answered the Complaint, and having set forth its Counterclaims against the named Counterclaim-Defendants, that claims against CCC be dismissed, and that it have judgment against the Counterclaim-Defendants as follows:

1. Judgment against David Wilson in the amount of One Hundred and Fifty-Two Thousand, Seven Hundred and Forty-Three and 28/100 Dollars (\$152,743.28), plus prejudgment interest at the rate of ten percent (10%) per annum, post-judgment interest at the maximum rate allowed by law, the costs of this action;
2. Judgment against Wilson, Norvell, Neologic, and/or Freshwater for the above stated claims, said judgment to be entered following a jury trial wherein the proper amount of damages and punitive damages (where available) may be ascertained and decided by said jury;
3. Judgment against Wilson, Freshwater, and Neologic for the payment of CCC's attorneys fees and costs, pursuant to S.C. Code Ann. § 39-8-80 (Supp. 2012), for the protection of the trade secrets said Defendants willfully misappropriated.
4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,



Thomas L. Stephenson (S.C. Bar No. 5332)
Burl F. Williams (S.C. Bar No. 77901)
NEXSEN PRUET, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
864.370.2211

Attorneys for Carolina Custom Converting LLC

November 15, 2013
Greenville, South Carolina

EXHIBIT A

Manage Users

Back Forward Home

User Tools

- Create New User
- Edit User Information
- Delete User

Details

There are enough licenses for 8 additional active users in this database.

Select a User

Select a user to change passwords, security roles, and other settings.

Contact Name	User Name	Security Role	Log On Status	Last Logon
Bill Shaw	Bill Shaw	Standard	Active	4/6/2012 1:28 PM
Brian Cunningham	Brian Cunningham	Standard	Active - Pending	
David Wilson	David Wilson	Administrator	Active	4/11/2012 11:55 AM
Jim Bucks	Jim Bucks 2	Standard	Active	12/16/2011 9:58 AM
John Gandis	John Gandis	Standard	Active	3/29/2011 10:29 AM
Steve Elving	Steve Elving	Manager	Active	5/30/2012 11:33 AM
Toni Mayfield	Toni Mayfield	Administrator	Active	6/18/2012 11:07 AM

You have enough licenses for 2 additional active users.

Close

START HERE! Leverage Free Self-Service

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,,

Civil Action No. 2012-CP-23-02887

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

Defendants.

CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WOODRUM
2013 NOV 19 PM 9 46

This is to certify that a copy of the foregoing CAROLINA CUSTOM CONVERTING, LLC'S ANSWER TO SECOND AMENDED COMPLAINT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 15th day of November, 2013.

W. Andrew Arnold, Esquire
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, South Carolina 29601
Attorney for Plaintiff

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, South Carolina 29602
Attorney for John Gandis

L. Lee Plumblee, Esquire
Eppes & Plumblee, P.A.
P.O. Box 10066
Greenville, South Carolina 29603
Attorney for ZOi Films, LLC

Steven Farrar, Esquire
Smith Moore Leatherwood, LLP
P.O. Box 87
Greenville, South Carolina 29602
Attorney for Andrea Comeau-Shirley

Bigid M. Jones

NEXSEN PRUET, LLC

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

David Wilson, individually and derivatively on)
 behalf of Carolina Custom Converting, LLC,)
)
 Plaintiff,)

-vs-)

John Gandis, Andrea Comeau-Shirley, Zoi)
 Films, LLC, and Carolina Custom Converting,)
 LLC,)
 Defendants,)

**ANSWER OF DEFENDANT ANDREA
 COMEAU-SHIRLEY TO VERIFIED
 SECOND AMENDED COMPLAINT
 AND RESTATED DEFENSES AND
 COUNTERCLAIMS**

C.A. No. 2012-CP-23-02887

John Gandis and Andrea Comeau-Shirley,)
)
 Third-Party Plaintiffs,)

-vs-)

Carolina Custom Converting, LLC,)
)
 Third-Party Defendant.)

Defendant Andrea Comeau-Shirley (hereinafter "Comeau-Shirley") answering the allegations of Plaintiff's Verified Second Amended Complaint would show unto the Court as follows:

1. Any allegations not specifically admitted herein are denied.
2. On information and belief, Defendant admits that Plaintiff is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 1 are denied, and it is also specifically denied that Plaintiff is a proper person to bring a derivative action on behalf of CCC because his interests are abhorrent to those of CCC.
3. Defendant admits the allegations of Paragraph 2.
4. Defendant admits the allegations of Paragraph 3.

5. Paragraph 4 is admitted to the extent it alleges that CCC is a South Carolina limited liability company. The balance of Paragraph 4 is denied.

6. Defendant admits the allegations of Paragraph 5. Further answering Paragraph 5, Defendant states that Carolina Custom Converting, LLC (hereinafter referred to as "CCC" or "the Company") was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State.

7. Defendant admits the allegations of Paragraph 6 with respect to its formation as a Georgia entity. However, Defendant notes that ZOi Films a wholly-owned subsidiary of CCC.

8. Defendant admits so much of Paragraph 7 as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendant denies the remainder of the allegations. Defendant states that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. Upon information and belief, the parties engaged attorney Stephen Potts to draft the Operating Agreement and, after meeting with both Plaintiff and Defendant Gandis, Potts - not Defendant Gandis - filed the Articles of Organization with the Office of the South Carolina Secretary of State, naming Defendant Gandis as the manager and designating CCC as a "term company." Attorney Potts drafted these terms into the Articles because they were agreed to by Plaintiff and Defendant Gandis. The parties understood that Potts designated the Company term as 50-year, per his usual practice, but that the members could set a shorter term in the future.

9. Upon information and belief, Defendant admits so much of Paragraph 8 as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Plaintiff agreed, at the inception of CCC, to wind down his individual business - - Eastern Film Solutions (hereinafter referred to as "EFS") - which also related to the slitting and selling of film, to contribute all of the assets of EFS to CCC, and to participate in the slitting of and sale of film solely for the benefit and profit of CCC. Defendant denies the remainder of the allegations. Defendant further states, upon information and belief, that Plaintiff and Defendant Gandis prepared drafts of an Operating Agreement, which still exist, but the Agreement was filed with the Secretary of State. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as "salary," but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis' father. At an initial meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee or to restructure his

membership participation. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

10. Defendant denies the allegations of Paragraph 9. Further answering Paragraph 9, Defendant states, upon information and belief, that Plaintiff and Defendant Gandis agreed that CCC would be a term corporation and jointly instructed Stephens Potts to file the Articles of Organization designating the corporation as "term." The Articles of Organization, as filed, list CCC as a term corporation.

11. Defendant denies the allegations of Paragraph 10 but admits that it was agreed that Defendant Gandis would handle the day-to-day operations of CCC. Further answering Paragraph 10, Defendant states that Plaintiff and Defendant Gandis agreed that CCC would be a manager-managed company. While Plaintiff asserts that there was no express agreement related to Defendant Gandis' status as the managing member, at their initial meeting Plaintiff represented to Defendant Comeau-Shirley that Defendant Gandis possessed the final authority in all matters. Defendant Comeau-Shirley did not put forth the option of exchanging services for a membership interest until both members had expressed their understanding that Defendant Gandis could act alone.

12. Defendant admits so much of Paragraph 11 as alleges that Plaintiff and Defendant Gandis agreed to admit Defendant Comeau-Shirley as a member with at least an initial 10% percent interest and to reduce each of their respective shares accordingly. However, Defendant reiterates that the initial division of shares between Plaintiff and Defendant Gandis was 49% for Plaintiff and 51% for Defendant Gandis, and the resulting membership interest, subject to an agreed-upon increase in ownership to Defendant Comeau-Shirley, has been Defendant Gandis 46%, Plaintiff 44%, and Defendant Comeau-Shirley 10%.

13. Defendant denies that portion of Paragraph 12 which alleges that Defendant Comeau-Shirley assumed any fiduciary duties to any other member of CCC. Defendant denies that such duties are delegable under the law and reserves the right to file a motion to dismiss on this point. As to the remaining allegations of Paragraph 12, Defendant admits that as Manager, Defendant Gandis had duties under the law.

14. Defendant denies the allegations of Paragraph 13 to the extent that it alleges that Plaintiff performed services on a full-time basis for the Company. Plaintiff was never promised distributions. Plaintiff served in a role akin to Manager in that he made unilateral purchases of inventory and instructed staff to obey his distribution orders without approval of Defendant Gandis.

15. Defendant denies the allegations of Paragraph 14. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and not this defendant. For purposes of this Answer all actions were taken by CCC.

16. Defendant denies the allegations of Paragraph 15. Further answering the allegations, Defendant states that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to Plaintiff's bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendants emphasize that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Mr. Buck's travel expenses were embedded within his commission structure thereby eliminating most automobile expenses. As a result of this agreement, CCC had no business purpose for a sales vehicle. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed a portion of the amount to the Company. Some remain unreimbursed in Plaintiff's loan balance. Plaintiff was repeatedly reminded that only business expenses should be paid for on the Company card.

17. Defendant denies the allegations of Paragraph 16.

18. Defendant denies the allegations of Paragraph 17 and refers to the history of actual payments made. Plaintiff promised, at the inception of CCC, that he would contribute the ongoing business of EFS to CCC by transferring the EFS client base to CCC and extinguishing all pre-contribution liabilities, and thereafter put his efforts entirely toward the new venture. Plaintiff further provides in his Complaint that Defendant Gandis had an interest in a business that competed with CCC. This is expressly denied. Defendant Gandis has an interest in Deco Tex, LLC, which, upon information and belief, does not buy or slit film, does not purchase film, and in no way competes with CCC.

19. Defendant denies the allegations of Paragraph 18. Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from \$9,000 to \$6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

20. Defendant denies the allegations of Paragraph 19. The disparity in cash received by Plaintiff and Gandis did not impact their capital accounts because the amount disbursed to Plaintiff was a loan to Plaintiff.

21. Defendant admits so much of Paragraph 20 as alleges that Defendant Gandis ceased taking distributions in April 2011. The remaining allegations are denied.

22. Defendant denies the allegations of Paragraph 21. Defendants presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered three general approaches for discussion. The first option provided that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years. As Plaintiff had complained about an outstanding tax obligation related to the prior year income, Defendants offered to consent to an amendment to the membership agreement that would redefine Plaintiff's

“interest-in-the-partnership” as a fixed dollar amount, thereby possibly allowing Plaintiff certain tax benefits. Finally, the offer provided that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth \$770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of \$12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented. Plaintiff insisted that he could not consider the offer to have his equity cashed out based on the year-end amount and without being presented a fixed offer value. As such, Defendants estimated the company’s position at December 31st and presented an offer to buy Plaintiff’s interest for \$200,000 plus forgiveness of Plaintiff’s loans, which at that point stood at approximately \$150,000, for a total offer value of approximately \$350,000. Expressing disbelief that the Defendant’s offer was genuine, Plaintiff asked whether Defendant Gandis would accept the same amount for his interest if he could secure the funds from his family. Defendant Gandis asked Defendant Comeau-Shirley if she would consent to a sale to the Wilson family. Defendant Comeau-Shirley noted that the only viable purchaser for the shares would be Plaintiff’s family members as their investment decision would be based on the representations and commitments made by Plaintiff, including his plan for managing business roles currently provided by Defendants. A third-party investor would likely be hesitant to invest in a start-up company with such a personnel change. Noting that the building could present a business interruption concern, Defendant Gandis agreed that he would sell the building for less than his original 1999 acquisition price, devoid of any mark ups for improvements. Defendant Gandis expressed tentative agreement to sell to Wilson’s family and outlined the general financing conditions, including that the purchase be in cash and include the purchase of the building and land, for an additional \$150,000. Plaintiff stated that he would attempt to obtain the necessary funds from his family. Contrary to Plaintiff’s claim that he was pressured to “forfeit” his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed his intent to purchase Defendants’ interests and was given the opportunity to do so. However, Plaintiff never came forward with funds. as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendant states that prior to this time, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but fully secured by Plaintiff’s interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to \$12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff’s loan balance and advised Plaintiff that no further loans would be given after 2011 until cash flow had returned to a positive position. At this point, Plaintiff asked what options were available to provide a guaranteed cash flow and discussions ensued.

23. Defendant denies the allegations of Paragraph 22. Plaintiff was notified in writing on November 2, 2011, that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional \$12,000

loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

24. Defendant admits so much of Paragraph 23 as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. This buyout was one of the three options referenced above. There was also a discussion of Plaintiff's acquisition of Defendants' interests. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendant denies that either Defendant indicated any agreement to Plaintiff's proposal.

25. Defendant denies the allegations of Paragraph 24. Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

26. Defendant denies the allegations of Paragraph 25. Defendants offered Plaintiff multiple options, including an offer to buy Plaintiff's interest for \$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately \$150,000, for a value of the offer being \$350,000.

27. To the extent that Plaintiff intends to leave the reader of his Second Amended Complaint with the impression that the allegations contained therein are sequential Defendant denies this allegation. Assuming, for this answer, Defendant does not intend to confuse the reader, Defendant admits only so much of Paragraph 26 as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendant denies the remaining allegations. Defendant specifically denies that she could have produced a balance sheet because there was none in existence at that time. A *pro-forma* balance sheet as of December 31, 2011 provided to Plaintiff contained no deceptive or fraudulent entries and, indeed, highlighted many of the assumptions being made.

28. Defendant admits so much of Paragraph 27 as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendant denies the remaining allegations. Further answering Paragraph 27, Defendant states that the amount listed under this entry was to denote the fact that professional accounting, financial, and implementation services had been rendered by Defendant Comeau-Shirley beyond the limited services that were initially exchanged for a 10% membership interest in CCC. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing for these services anticipating a promised increase share of participation in the Company. At the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company however the preference was included to account for Defendant's willingness to take a reduced amount in exchange for quick payment from the Company.

29. Defendant admits as much of Paragraph 28 as alleges that Plaintiff rejected Defendants' offer of continued at-will employment. Defendant denies the remaining allegations. The basis for Defendants' offer as well as the entries on the balance sheet were thoroughly

explained to Plaintiff, in writing, and all questions posed by Plaintiff as to the balance sheets were answered.

30. Defendant denies the allegations of Paragraph 29.

31. Defendant admits so much of Paragraph 30 as alleges that Defendants rejected Plaintiff's offer. Defendant denies the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

32. Defendant admits so much of Paragraph 31 as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendant denies the remaining allegations.

33. Defendant denies the allegations of Paragraph 32. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norvell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff.

34. Defendant admits so much of the allegations of Paragraph 33 as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendant denies the remaining allegations. Defendant states that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

35. Defendant admits the allegations of Paragraph 34. Defendant states that the matter of Plaintiff's day-to-day access to QuickBooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting and had access to the areas of Quickbooks relating to Plaintiff's job tasks.

36. Defendant denies the allegations of Paragraph 35. On January 11th Defendant Gandis wrote Plaintiff reminding him that Defendant Gandis was the sole manager which Gandis believed himself to be. Defendant states that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation.

37. Defendant denies the allegations of Paragraph 36. On January 6th Plaintiff sent an email to Defendants stating, "Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out

of the Company but to give me some security and incentive to help grow the business. He said he wanted to make a fair buyout offer and a fair and attractive, employment offer.” Plaintiff provided a counter-offer requesting buyout of his interest for \$250,000, if the Company allocated to him loss of \$325,000 for 2011 and buyout price of \$300,000 without the arbitrary tax loss allocation. Each offer required the forgiveness of his loan, an upfront payment of \$50,000 paid up front and quarterly payments thereafter (with interest accruing at 6% interest). The offer additionally included a three-year employment agreement with a guaranteed salary of \$12,000/month for year one and not less than \$10,000/month for the following years, along with a bonus package, the Lexus, and personal guarantees from Defendants on the buyout.

38. In response to Paragraph 37, the Company terminated Plaintiff’s access to the CCC computer network on January 17, 2012. Defendant denies the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by Jennings, Zamer advised as a result of conversations with Zamer, the Company to terminate Plaintiff’s access to the CCC computer network. As Plaintiff possessed both member and employee attributes, Zamer recommended that CCC seek the advice of a South Carolina employment law specialist. The Company hired William Floyd of Nexsen Pruet and as a result of conversations with him the Company prepared a letter for Plaintiff and arranged for a Sheriff to be in the parking lot the following morning.

39. In response to Paragraph 38, On January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendant denies the remaining allegations. The Company interpreted the statements by Plaintiff’s attorney as effecting his resignation and therefore drafted a letter acknowledging Plaintiff’s resignation and, given Plaintiff’s prior actions, took steps to ensure the protection of all company secrets and assets. To this end, the Company hired a locksmith and enlisted the help of a sheriff’s deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis “I was not ready yet.”

40. In response to Paragraph 39, the Company had contacted the local sheriff’s office to be on hand in the event that Plaintiff was uncooperative. If Plaintiff had packed his personal belongings and left the premises, he would not have been aware of the Sheriff’s presence. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis’s objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase. The remaining allegations of the Paragraph are denied.

41. Defendant admits the allegations of Paragraph 40 that relate to the locksmith but denies that Plaintiff was denied entry to the office.

42. Defendant admits so much of Paragraph 41 as alleges that the Company terminated Plaintiff's Company cell phone service. Defendant denies the remaining allegations. Further answering Paragraph 41, Defendant states that, despite the Company's request for Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

43. Defendant admits so much of Paragraph 42 as alleges that Plaintiff's health insurance was terminated. Defendant denies the remaining allegations. Further answering Paragraph 42, Defendant states that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendant states that there have been no distributions to any members in 2012.

44. Defendant denies the allegations of Paragraph 43. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him shortly after he resigned. Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation as well as a great deal of additional information since this litigation began. The Company has provided various financial statements, a detailed listing of inventory assets, as well as numerous financial schedules. Defendant and CCC stand ready to assist Del Bradshaw with the Court ordered accounting.

45. Defendant denies the allegations of Paragraph 44. Further answering Paragraph 44, Defendant states that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the newly leased offices of CCC, which Defendants believe effected Plaintiff's fulfillment of this portion of his contribution pledge to the newly formed CCC's.

46. Paragraph 45 is denied.

47. Responding to Paragraph 46, Defendant is without knowledge or information as to when Plaintiff discovered that ZOi Films had been formed. ZOi Films is a wholly-owned subsidiary of CCC. As ZOi Films is a wholly-owned subsidiary of CCC, Defendant denies that ZOi Films engages in activities harmful to CCC but rather that ZOi serves to expand CCC's market opportunities. Defendant denies that CCC has suffered any damage related to ZOi.

48. Defendant denies the allegations of Paragraph 47, except to admit that Michael Shirley is listed as the registered agent for ZOi Films. ZOi Films was created after a number of clients declined to do business with CCC based on their past dealings with Plaintiff.

49. Defendant admits the allegations of Paragraph 48.
50. Responding to Paragraphs 49 through 51, Defendant has no knowledge of the allegations and denies the same and demands strict proof thereof.
51. Defendant denies the allegations of Paragraph 52. ZOi Films is a wholly-owned subsidiary of CCC and therefore does not compete with CCC.
52. Defendant denies the allegations of Paragraph 53.
53. Defendant denies the allegations of Paragraph 54.
54. Defendant admits so much of Paragraph 55 as alleges that some CCC resources and employees assist in the operation of CCC, its parent company. However, CCC, not Defendants, is operating ZOi Films, as it is a wholly-owned subsidiary of CCC. Defendant denies the remainder of the allegations.
55. Defendant denies the allegations of Paragraph 56.
56. Defendant denies the allegations of Paragraph 57.
57. Defendant denies the allegations of Paragraph 58. Plaintiff has been provided with proof that ZOi Films is a wholly-owned subsidiary of CCC.
58. Defendant denies the allegations of Paragraph 59. Specifically, Defendant denies that Plaintiff "fairly and adequately represents the members similarly situated." Plaintiff is engaged in business competitive to CCC. Plaintiff owes more than \$100,000 to CCC and, though CCC has requested that Plaintiff repay the amount he owes, Plaintiff has refused to do so. Plaintiff claims that the cost of a car he has used for personal purposes should be borne by CCC. Additionally, Plaintiff owns only a 44% interest in CCC while Defendants collectively own a 56% interest in CCC. For these and other reasons, Plaintiff is singularly unsuited to act as a representative of CCC and Defendants are better suited as representatives.
59. Defendant denies the allegations of Paragraph 60. Defendant is acting in the interests of CCC. In particular, Defendant Comeau-Shirley has not been paid for her professional services, either in fee or ownership interests as Plaintiff agreed, notwithstanding Plaintiff is currently engaging in competitive activities, while at the same time owing CCC more than \$100,000.
60. Defendant admits so much of Paragraph 61 as alleges that Defendants, through CCC, have provided financial information to Plaintiff. Defendant denies the remaining allegations. Defendants have provided financial information in PDF form, but not in original electronic form as requested by Plaintiff. Defendant understands that attorney John Zamer is coordinating the release of further financial information.

61. Defendant denies Paragraph 62 as written. Defendant admits that financial information was extracted from the financial database through a report writing programs and selected a report style that protects the confidential detail, which has no impact on either net income or equity. Defendant further admits that the financial statements were formatted in a layout typical for a privately held company. The statements were marked DRAFT in large font.

62. Defendant denies the allegations of Paragraph 63. The subpoena referenced in Paragraph 63 was addressed to CCC, not to Defendant. Consequently, counsel for CCC was addressing this request and, on information and belief, is coordinating the response with Plaintiff's counsel.

63. Responding to Paragraph 64, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

64. Defendant denies the allegations of Paragraph 65.

65. Defendant denies the allegations of Paragraph 66.

66. Paragraph 67 constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations.

67. Defendant denies Paragraph 68 and will show that Plaintiff unjustifiably complained about many things. Defendant denies Plaintiff's claims and denies that Plaintiff has CCC's best interest in mind by the filing of this lawsuit. Plaintiff acts for his own purposes only and is unfit to represent CCC derivatively because he has harmed the business of CCC, is liable to CCC for his misdeeds, and owes CCC over \$150,000 which he has refused to pay.

68. In response to Paragraph 69, Defendant denies that Plaintiff is entitled to any relief at this point other than the accounting which the Court has ordered, and which Defendant has repeatedly sought.

69. In response to Paragraph 70, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

70. Defendant denies Paragraph 71.

71. Defendant denies the allegations of Paragraph 72.

72. Paragraph 73 is directed to the Defendant Gandis and Defendant Comeau-Shirley craves reference to his response. Based upon information and belief, Defendant admits so much of Paragraph 72 as alleges that Defendant Gandis receives income from his stake in DecoTex. However, Defendant denies the remaining allegations and denies that DecoTex generates revenue through the sale of film.

73. Defendant denies the allegations of Paragraph 74 and further pleads that Defendant does not believe such fiduciary duties can be delegated and also she did not agree to or accept any delegation of fiduciary duties at any time.

74. Defendant denies the allegations of Paragraph 75.

75. Defendant denies the allegations of Paragraph 76.

76. Defendant denies the allegations of Paragraph 77.

77. Defendant denies the allegations of Paragraph 78.

78. Upon information and belief, Defendant denies Paragraph 79.

79. Defendant denies the allegations of Paragraph 80 and would further show that CCC's financial viability is impacted by actions taken by Plaintiff and therefore there are no assurances either way.

80. Defendant denies Paragraph 81 and that Plaintiff has suffered any monetary damages and denies that CCC has suffered any monetary damages on account of any conduct by Defendant.

81. Defendant denies the allegations contained in Paragraph 82.

82. Defendant denies the allegations contained in Paragraph 83.

83. Responding to Paragraph 84, Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

84. Defendant denies the allegations of paragraph 85.

85. Defendant denies the allegations of Paragraph 86.

86. Defendant denies Paragraph 87 to the extent it alleges any wrong-doing by Defendant.

87. Paragraphs 88 and 89 constitute conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

88. Defendant denies that Plaintiff is a proper derivative representative and denies the allegations of Paragraph 90.

89. Defendant denies the allegations of Paragraph 91 except as they relate to an accounting and Defendant will show that the Court has ordered that there be an accounting, which is an Order for relief that Defendants have urged throughout this litigation.

90. Paragraph 92 constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

FOR A SECOND DEFENSE
(Rule 12(b)(6), SCRCP)

91. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

92. Defendant states that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendant.

FOR A THIRD DEFENSE
(Unclean Hands)

93. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

94. On information and belief, Plaintiff continued to transact business as EFS months and years after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

95. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors of CCC.

96. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

97. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

98. On information and belief, Plaintiff owes over \$100,000.00 to CCC and, despite receiving a demand for payment from the Company, has refused to repay the amount owed.

99. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

100. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief of any kind.

FOR A FOURTH DEFENSE
(Statute of Limitations)

101. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

102. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

FOR A FIFTH DEFENSE
(Failure to Mitigate)

103. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

104. Defendant alleges that Plaintiff has failed to mitigate his damages as required by law.

FOR A SIXTH DEFENSE
(Laches, Waiver, Estoppel)

105. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

106. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A SEVENTH DEFENSE
(Set Off)

107. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

108. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's membership interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

109. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

110. Plaintiff is currently indebted to CCC in excess of \$110,000.00.

111. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendants, which is denied and admitted solely for the purpose of this defense, Defendants contend that they are entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendant, complaining of Plaintiff, respectfully shows as follows:

112. Defendant's counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper.

113. Defendant adopts the Counterclaims concurrently being sought by CCC.

COUNTERCLAIM (Breach of Fiduciary Duty)

114. Defendant incorporates by reference their responses to the foregoing paragraphs as if fully set forth herein.

115. As a member of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

116. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

117. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

118. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records.

119. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

120. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendants.

121. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to her share of lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

122. Defendant incorporates by reference her responses to the foregoing paragraphs as if fully set forth herein.

123. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

124. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.

125. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

126. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendants.

127. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to her share of lost profits.

WHEREFORE, having fully answered the Verified Second Amended Complaint of Plaintiff, this Defendant prays that Plaintiff's Verified Second Amended Complaint be dismissed with prejudice, together with the costs and disbursements of this action, Defendant seeks an award of damages on her counterclaims, including actual and punitive damages, in an amount to be determined by the jury and for such other and further relief as this honorable Court deems proper.



Steven E. Farrar (#1960)
Jason D. Maertens (#73583)
Smith Moore Leatherwood LLP
300 East McBee Avenue, Suite 500 (29601)
Post Office Box 87
Greenville, SC 29602
(864) 242-6440
(864) 240-2498 (fax)
steve.farrar@smithmoorelaw.com

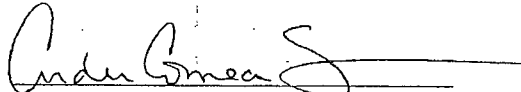
jason.maertens@smithmoorelaw.com

Attorney for Defendant
Andrea Comeau-Shirley

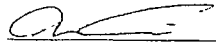
November 15, 2013

VERIFICATION

I, Andrea Comeau-Shirley, being duly sworn, testify that I have read the Answer of Defendant Andrea Comeau-Shirley to Verified Second Amended Complaint and Restated Defenses and Counterclaims and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information and belief I believe to be true.


ANDREA COMEAU-SHIRLEY

SWORN TO BEFORE ME this 15
day of November, 2013.


Notary Public for Georgia

My Commission Expires: August 17, 2015

Notary Public, Paulding County, Georgia
My Commission Expires August 17, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively)
on behalf of Carolina Custom Converting,)
LLC,)

Plaintiff,)

-vs-)

John Gandis, Andrea Comeau-Shirley, ZOi)
Films, LLC and Carolina Custom)
Converting, LLC,)

Defendants.)

CERTIFICATE OF SERVICE

C.A. No. 2012-CP-23-2887

John Gandis and Andrea Comeau-Shirley,)

Third-Party Plaintiffs,)

-vs-)

Carolina Custom Converting, LLC,)

Third-Party Defendant.)

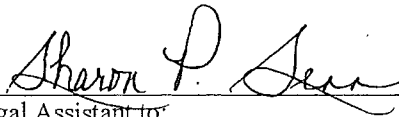
The undersigned certifies that on the 15th day of November, 2013, she caused to be served the **Answer of Defendant Andrea Comeau-Shirley to Verified Second Amended Complaint and Restated Defenses and Counterclaims** upon the attorneys for Plaintiff and Co-Defendants, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

Mr. W. Andrew Arnold
Law Office of W. Andrew Arnold, P.C.
712 East Washington Street
Greenville, SC 29601
Attorney for Plaintiff

Mr. Mason A. Goldsmith
Mr. K. Jay Anthony
Elmore Goldsmith, PA
Post Office Box 1887
Greenville, SC 29602
Attorney for Defendant
John Gandis

Mr. L. Lee Plumblee
Eppes & Plumblee, P.A.
Post Office Box 10066
Greenville, SC 29603
Attorney for Defendant
ZOi Films, LLC

Mr. Thomas L. Stephenson
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Greenville, SC 29601
Attorney for Defendant
Carolina Custom Converting, LLC



Legal Assistant to:
Steven E. Farrar (#1960)
Jason D. Maertens (#73583)
Smith Moore Leatherwood LLP
300 East McBee Avenue, Suite 500 (29601)
Post Office Box 87
Greenville, SC 29602
(864) 242-6440
(864) 240-2498 (fax)
steve.farrar@smithmoorelaw.com
jason.maertens@smithmoorelaw.com

Attorney for Defendant
Andrea Comeau-Shirley

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

David Wilson, individually and derivatively on)
behalf of Carolina Custom Converting, LLC,)
)
Plaintiff,)

C.A. NO: 2012-CP-23-02887

v.)

**ANSWER OF DEFENDANT JOHN
GANDIS TO VERIFIED SECOND
AMENDED COMPLAINT AND
RESTATED DEFENSES AND
COUNTERCLAIMS**

John Gandis, Andrea Comeau-Shirley, Zoi)
Films, LLC, and Carolina Custom Converting,)
LLC,)
)
Defendants,)

John Gandis and Andrea Comeau-Shirley,)
)
Third-Party Plaintiffs,)

v.)

Carolina Custom Converting, LLC,)
)
Third-Party Defendant.)

FILED-CITIZEN OF COURT
GREENVILLE CO. S.C.
FALL 8, 2013
2013 NOV 18 PM 4 03

Defendant John Gandis (hereinafter "Gandis," "Defendant Gandis" or "Defendant") answering the allegations of Plaintiff's Verified Second Amended Complaint would show unto the Court as follows:

Each and every allegation not specifically admitted to herein is denied. Each defense incorporates the allegations and defenses of every other defense to the extent such incorporation is not inconsistent with the defense.

1. On information and belief, Defendant admits that Plaintiff is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 1 are denied, and it is denied that Plaintiff is a proper person to bring a derivative action on behalf of CCC because his interests are not aligned with and are in fact antagonistic to those of CCC.

2. Defendant admits the allegations of Paragraph 2.

3. Defendant admits the allegations of Paragraph 3.

4. Paragraph 4 is admitted to the extent it alleges that CCC is a South Carolina limited liability company. The balance of Paragraph 4 is denied.

5. Defendant admits the allegations of Paragraph 5. Further answering Paragraph 5, Defendant states that Carolina Custom Converting, LLC (hereinafter referred to as "CCC" or "the Company") was formed on November 2, 2007 pursuant to Articles of Organization filed with the Office of the South Carolina Secretary of State, as recognized by the South Carolina Secretary of State in the attached Certificate of Existence (attached hereto as "Exhibit A").

6. Defendant admits the allegations of Paragraph 6 with respect to ZOi's formation as a Georgia entity. However, Defendant notes that ZOi Films is a wholly-owned subsidiary of CCC.

7. Defendant admits so much of Paragraph 7 as alleges that Plaintiff and Defendant Gandis agreed to be members of an LLC. Defendant denies the remainder of the allegations. Defendant states that Plaintiff and Defendant Gandis agreed to form a new entity which was to be owned 51% by Defendant Gandis and 49% by Plaintiff. The parties engaged attorney Stephen Potts who filed the Articles of Organization with the Office of the South Carolina

Secretary of State, naming Defendant Gandis as the manager and designating CCC as a term company.

8. Defendant admits so much of Paragraph 8 as alleges that Plaintiff and Defendants never signed an Operating Agreement and that Plaintiff agreed, at the inception of CCC, to wind down his individual business – Eastern Film Solutions (hereinafter referred to as “EFS”) – which also related to the slitting and selling of film, to contribute all of the assets of EFS to CCC, and to participate in the slitting of and sale of film solely for the benefit and profit of CCC. Defendant denies the remainder of the allegations. Defendant further states that attorney Potts prepared drafts of an Operating Agreement, which still exist, but the Agreement was never signed. Plaintiff was informed at the inception of CCC and agreed that there would be no compensation and that all financial rewards would be in the form of distributions and that the amount and frequency of the distributions was not assured and would depend entirely on the availability of funds and the success of the Company, and other business factors, as is the case with most all start-up companies. On a number of occasions, Plaintiff, in conversation with Defendant Comeau-Shirley, referred to his distributions as “salary,” but each time was corrected by Defendant Comeau-Shirley. Defendant Comeau-Shirley began work for the Company in 2008 after she was recommended by Defendant Gandis’s father. At an initial meeting with Plaintiff and Defendant Gandis, at which the parties discussed the venture, Defendant Comeau-Shirley asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up company or if he would prefer to be a salaried employee. Plaintiff assured Defendant Comeau-Shirley that he understood and was prepared for the uncertainties and risk. Later, on reviewing the books, she noticed a significant disparity in distributions as Plaintiff had received all distributions while

Defendant Gandis had provided all or almost all funds to the business, which had provided funds for the distributions, but received no distributions himself. Consequently, on multiple occasions, Defendant Comeau-Shirley again asked Plaintiff if he was prepared for the rigors and uncertainty of a start-up Company or if he would prefer to be a salaried employee or to restructure his membership participation. Each time, Plaintiff again stated that he accepted the uncertainty and risks.

9. Defendant denies the allegations of Paragraph 9. The Articles of Organization, as filed, list CCC as a term corporation, and Defendant is informed and believes that CCC was and is a term company.

10. Defendant denies the allegations of Paragraph 10 but admits that it was agreed that Defendant Gandis would handle the day-to-day operations of CCC. Further answering Paragraph 10, Defendant states that Plaintiff and Defendant Gandis agreed that CCC would be a manager-managed company. While Plaintiff asserts that there was no express agreement related to Defendant Gandis' status as the managing member, at their initial meeting Plaintiff represented to Defendant Comeau-Shirley that Defendant Gandis possessed the final authority in all matters. Defendant Comeau-Shirley did not put forth the option of exchanging services for a membership interest until both members had expressed their understanding that Defendant Gandis could act alone. CCC, through its course of dealings, had Plaintiff manage the negotiations for and decisions to purchase film and handle the terms and conditions of sales to customers and other customer relations and as a result Plaintiff also was a manager of CCC.

11. Defendant admits so much of Paragraph 11 as alleges that Plaintiff and Defendant agreed to admit Defendant Comeau-Shirley as a member with a 10% percent interest and to

reduce each of their respective shares accordingly. However, Defendant reiterates that the initial division of shares between Plaintiff and Defendant Gandis was 49% for Plaintiff and 51% for Defendant Gandis, and the resulting membership interest was Defendant Gandis 46%, Plaintiff 44%, and Defendant Comeau-Shirley 10%.

12. Defendant admits that he acted as a manager of CCC, as did Plaintiff. Each had such fiduciary duties as the law imposes. The decision to admit Defendant Shirley as a member of CCC and to have her involved with certain accounting functions for CCC was a joint decision by Plaintiff and Defendant.

13. Defendant admits so much of Paragraph 13 as alleges that Plaintiff performed some amount of services for CCC and did not receive compensation. Defendant denies the remainder of the allegations and specifically denies that Plaintiff performed any services beyond the scope of his original commitment. Plaintiff received distributions, but these distributions were due to his interest as a member and not as compensation for services rendered. Despite a lack of measurable success at the time, Plaintiff began receiving distributions from CCC in July 2008 of \$8,000/month. These distributions were largely funded by loans from Defendant Gandis, who did not take distributions at the time. When Defendant Comeau-Shirley began working with CCC in late 2008, she noticed this situation and informed Defendant Gandis and Plaintiff that Defendant Gandis should take his proportionate share of distribution given his interest, despite the fact that Defendant Gandis would essentially be paying himself. Defendant Gandis requested that his current distribution not exceed the amount received by Plaintiff as this simplified the accounting. The parties raised their distributions to \$9,000/month in January 2009 but then, at Defendant Comeau-Shirley's urging, both reduced the distributions to

\$6,802.84/month in September 2009 in order to better afford the purchase of certain equipment. Though Defendant Gandis and Plaintiff each contributed \$3,000 for the first purchase of film, to date, Plaintiff has made no further additional contributions to CCC, though he continued to take monthly distributions. Defendant Gandis, on the other hand, provided CCC with numerous loans totaling \$229,332 in 2008, \$849,908.10 in 2009, and \$584,629.84 in 2010. From time to time, Defendant Gandis was repaid portions of these loans.

14. Defendant denies the allegations of Paragraph 14. It should be noted that, throughout the Complaint, Plaintiff frequently refers to actions of CCC, through its management, as actions taken by the Defendants individually. This is denied. In nearly every instance, what Plaintiff refers to was a business action taken by the Company and Defendants' actions were within the proper scope of their authority and on behalf of the Company, including Defendant Gandis' actions as manager of CCC. For purposes of this Answer, unless Defendant specifically admits to some action taken in his individual capacity, all actions were taken by CCC.

15. Defendant denies the allegations of Paragraph 15. Further answering the allegations, Defendant states that in late 2009, after Plaintiff blamed break-downs with his car as an excuse for his failure to appear for meetings with a number of prospective clients, Defendant Gandis proposed that CCC co-sign on a reliable car. Defendant Gandis believed that Plaintiff was not in a position to obtain such financing on his own due to Plaintiff's bankruptcy. Plaintiff then purchased the car with CCC as a co-signor. Defendant emphasizes that the vehicle was not purchased as a sales vehicle as, just prior to the purchase, CCC had hired an additional salesman, James J. Bucks, who assumed responsibility for those sales accounts requiring travel. Mr. Buck's travel expenses were embedded within his commission structure thereby eliminating

most automobile expenses. As a result of this agreement, CCC had no business purpose for a sales vehicle. Because the vehicle was not purchased as a sales vehicle, CCC did not list it as such for tax purposes. On information and belief, Plaintiff personally paid all automotive expenses associated, though he at times attempted to charge expenses to the Company credit card, but relented when confronted by Defendant Comeau-Shirley and reimbursed the Company. Plaintiff was repeatedly reminded that only business expenses should be paid for on the Company card.

16. Defendant denies the allegations of Paragraph 16.

17. Defendant denies the allegations of Paragraph 17. Plaintiff promised, at the inception of CCC, that he would contribute the ongoing business of EFS to CCC by transferring the EFS client base to CCC and extinguishing all pre-contribution liabilities, and thereafter put his efforts entirely toward the new venture.

18. Defendant denies the allegations of Paragraph 18. As previously stated, both Defendant Gandis and Plaintiff agreed to reduce their monthly distributions from \$9,000 to \$6,802.84 beginning in September 2009 in order to better afford the purchase of certain equipment.

19. Defendant denies the allegations of Paragraph 19. Both Defendant Gandis and Plaintiff continued to receive monthly distributions until April 2011. At this time, due to the long-standing disparity between Defendant Gandis shouldering all financial risk by continually making loans to CCC, without participation by Plaintiff, as well as the fact that, in 2010, the Company had distributed more than twice the cash flow that had been created by the Company, CCC informed Plaintiff that the Company would cease making monthly distributions until the

Company could generate positive cash flow without working capital loans. Plaintiff complained that he must receive monthly checks from CCC to meet his personal expenses, so the Company agreed to allow Plaintiff to have monthly loans made to him by CCC after Plaintiff agreed that the loans would be structured in a manner that was not equivalent to advances upon his future draws. To effect this agreement, the loans were to be secured by his entire membership interest. Plaintiff agreed that should a demand be made against the loans, at his option, he could either repay the loans or relinquish his equity interest in full satisfaction of the amount. The members agreed to monitor the loan balance to avoid the risk that there would be an unexpected call upon the loan. The members also understood that the most efficient means for repayment of Plaintiff's loans would be through subsequent distributions. This approach anticipated that, when the Company declared a distribution, Plaintiff's share would be applied to reduce his loan balance with any excess to be paid to Plaintiff. This was explained to Plaintiff, who stated his understanding. Such a distribution occurred in November 2011, at which point a distribution of \$45,000 was applied to Plaintiff's outstanding loan balance of \$131,859.46, thereby reducing the balance to \$86,859.46.

20. Defendant admits so much of Paragraph 20 as alleges that Defendant Gandis ceased taking distributions in April 2011. Defendant states that prior to this time, beginning in August 2010, Plaintiff began taking monthly loans at an amount set by Plaintiff. These loans were non-recourse but fully secured by Plaintiff's interest in CCC. Plaintiff soon decided to borrow more and increased the monthly amount to \$12,000. By the fall of 2011, due to concerns over profitability and cash flow, the Company became concerned with Plaintiff's loan balance and advised Plaintiff that no further loans would be given after 2011 until cash flow had returned

to a positive position. At this point, Plaintiff asked what options were available to provide a guaranteed cash flow and discussions ensued.

21. Defendant denies the allegations of Paragraph 21. Defendant presented Plaintiff with a letter containing three options, on October 31, 2011. Plaintiff was offered three general approaches for discussion. The first option provided that Plaintiff become a salaried employee with bonus structure and have his capital paid out to him over the next few years. As Plaintiff had complained about an outstanding tax obligation related to the prior year income, Defendants offered to consent to an amendment to the membership agreement that would redefine Plaintiff's "interest-in-the-partnership" as a fixed dollar amount, thereby possibly allowing Plaintiff certain tax benefits. Finally, the offer provided that Plaintiff simply remain as a member. Plaintiff was to respond by November 21, 2011. On December 1, Plaintiff made a counter-proposal. The counter-proposal stated that Plaintiff believed his interest in CCC to be worth \$770,000, that he wished half of this amount to be paid up front and for the remainder to be guaranteed by Defendants and to accrue interest at 8%. Additionally, Plaintiff demanded an employment agreement of not less than five years with a guaranteed monthly salary of \$12,000, along with bonuses, commission, and stock. Defendants declined to consider the proposal and again directed Plaintiff to the three options previously presented. Plaintiff insisted that he could not consider the offer to have his equity cashed out based on the year-end amount and without being presented a fixed offer value. As such, Defendants estimated the company's position at December 31st and presented an offer to buy Plaintiff's interest for \$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately \$150,000, for a total offer value of approximately \$350,000. Expressing disbelief that the Defendant's offer was genuine, Plaintiff

asked whether Defendant Gandis would accept the same amount for his interest if he could secure the funds from his family. Defendant Gandis asked Defendant Comeau-Shirley if she would consent to a sale to the Wilson family. Defendant Comeau-Shirley noted that the only viable purchaser for the shares would be Plaintiff's family members as their investment decision would be based on the representations and commitments made by Plaintiff, including his plan for managing business roles currently provided by Defendants. A third-party investor would likely be hesitant to invest in a start-up company with such a personnel change. Noting that the building could present a business interruption concern, Defendant Gandis agreed that he would sell the building for less than his original 1999 acquisition price, devoid of any mark ups for improvements. Defendant Gandis expressed tentative agreement to sell to Wilson's family and outlined the general financing conditions, including that the purchase be in cash and include the purchase of the building and land, for an additional \$150,000. Plaintiff stated that he would attempt to obtain the necessary funds from his family. Contrary to Plaintiff's claim that he was pressured to "forfeit" his interest, Plaintiff was presented with various options, which he rejected, and Plaintiff expressed his intent to purchase Defendants' interests and was given the opportunity to do so. However, Plaintiff never came forward with funds.

22. Defendant denies the allegations of Paragraph 22. Plaintiff was notified in writing on November 2, 2011 that the Company was not in a position to make distributions and Defendant Gandis was not in a position to make additional loans to CCC to enable it to make loans to Plaintiff at the level of the prior several months until sales volumes return. Nonetheless, Defendant Gandis, though under no obligation to do so, offered to make one additional \$12,000

loan to the Company so that it could loan funds to Plaintiff to enable him to put aside funds for expenses in early 2012.

23. Defendant admits so much of Paragraph 23 as alleges that Plaintiff and Defendant Gandis met and discussed a buyout of Plaintiff's membership interest. There was also a discussion of Plaintiff's acquisition of Defendants' interests. This buyout was one of the three options referenced above. Though Plaintiff later made a counter-offer to Defendants which included a five-year employment agreement, Defendant denies that either Defendant indicated any agreement to Plaintiff's proposal.

24. Defendant denies the allegations of Paragraph 24. As stated above, Defendant Gandis informed Plaintiff in early November that the Company would make Plaintiff one additional loan so as to allow him to set aside funds for future expenses.

25. Defendant denies the allegations of Paragraph 25. As stated above, Defendants offered Plaintiff three options, including an offer to buy Plaintiff's interest for \$200,000 plus forgiveness of Plaintiff's loans, which at that point stood at approximately \$150,000, for a value of the offer being \$350,000.

26. Defendant admits so much of Paragraph 26 as alleges that Plaintiff requested a copy of the CCC balance sheet. Defendant denies the remaining allegations. Defendant specifically denies that the pro-forma balance sheet as of December 31, 2011 provided to Plaintiff contained any deceptive or fraudulent entries.

27. Defendant admits so much of Paragraph 27 as alleges that the balance sheet provided to Plaintiff included an entry for "preference to minority." Defendant denies the remaining allegations. Further answering Paragraph 27, Defendant states that the amount listed

under this entry was to denote the fact that professional accounting, financial, and implementation services had been rendered by Defendant Comeau-Shirley's accounting practices beyond the limited services that were exchanged for a 10% membership interest in CCC. As the Company was unable to pay for her services, Defendant Comeau-Shirley had deferred billing for these services and, at the time the balance sheet was provided to Plaintiff, the parties were in discussions as to whether the obligation might be exchanged for increased equity in the Company.

28. Plaintiff rejected all offers made by CCC.

29. Defendant denies the allegations of Paragraph 29.

30. Defendant admits so much of Paragraph 30 as alleges that Defendants rejected Plaintiff's offer in writing. Defendant denies the remaining allegations. In the written communication, Defendants advised that they would all continue as members of CCC. The communication did not repeat the fact that Plaintiff would not receive future loans, as Plaintiff had been advised of this fact over two months prior, in a letter of November 2, 2011.

31. Defendant admits so much of Paragraph 31 as alleges that, upon inquiry from Plaintiff, Defendants allowed that they would be willing to sell their interests in CCC to Plaintiff and his brother-in-law. Defendant denies the remaining allegations.

32. Defendant denies the allegations of Paragraph 32. Plaintiff did not seek permission nor have permission to seek "qualified buyers" other than his brother-in-law, Steve Norvell, and did not inform Defendants that he intended to seek out buyers other than his brother-in-law. Defendants also deny that all prospective buyers solicited by Plaintiff signed Non-Disclosure agreements before reviewing information provided to them by Plaintiff.

33. Defendant admits so much of the allegations of Paragraph 33 as alleges that Defendants requested to know the identity of any proposed purchasers Plaintiff had approached. Defendant denies the remaining allegations. Defendant states that when the Company became aware that Plaintiff was meeting with potential buyers other than his brother-in-law, including Film-Tech, LLC, a highly-capitalized competitor of CCC, the Company immediately became alarmed. Defendants became aware that a meeting was scheduled during which Film-Tec representatives were to be given access to confidential CCC sales information, including sales forecasts. After consulting with the Company's counsel, Defendants provided Plaintiff with written notice that he did not have permission to speak to buyers other than his brother-in-law.

34. Defendant admits the allegations of Paragraph 34. Defendant states that the matter of Plaintiff's day-to-day access to QuickBooks was not a matter requiring a vote of the members, but was a company decision to make. Plaintiff retained his rights to request an accounting.

35. Defendant denies the allegations of Paragraph 35. On January 11th Defendant Gandis wrote Plaintiff reminding him that Defendant Gandis was the sole manager which Gandis believed himself to be. Defendant states that, in the wake of the Company's letter to Plaintiff restricting his authority to solicit buyers, Plaintiff threatened to dissolve the Company, claiming that because no Operating Agreement had been signed, CCC was an at-will corporation.

36. Defendant denies the allegations of Paragraph 36. On January 6th Plaintiff sent an email to Defendants stating, "Since John and I began discussions regarding CCC buying me out and extending an employment agreement, John has insisted that the goal was not to force me out of the Company but to give me some security and incentive to help grow the business. He

said he wanted to make a fair buyout offer and a fair and attractive, employment offer.” Plaintiff provided a counter-offer requesting buyout of his interest for \$250,000, if the Company allocated to him loss of \$325,000 for 2011 and buyout price of \$300,000 without the arbitrary tax loss allocation. Each offer required the forgiveness of his loan, an upfront payment of \$50,000 paid up front and quarterly payments thereafter (with interest accruing at 6% interest). The offer additionally included a three-year employment agreement with a guaranteed salary of \$12,000/month for year one and not less than \$10,000/month for the following years, along with a bonus package, the Lexus, and personal guarantees from Defendants on the buyout.

37. The Company terminated Plaintiff’s access to the CCC computer network on January 17, 2012. Defendant denies the remaining allegations. Plaintiff met with Defendant Gandis on the day in question. The meeting was cordial but, just minutes after Plaintiff left the meeting, John Zamer, counsel for Defendants, received a call from Clayton Jennings. Jennings informed Zamer that Plaintiff saw no possibility of continuing to work together with the Company. Based on the statements by Jennings, Zamer advised the Company to terminate Plaintiff’s access to the CCC computer network. As Plaintiff possessed both member and employee attributes, Zamer recommended that CCC seek the advice of a South Carolina employment law specialist. The Company hired William Floyd of Nexsen Pruet who advised that the Company prepare a letter for Plaintiff and arrange for a Sheriff to be in the parking lot the following morning.

38. On January 18, 2012, Defendant Gandis advised Plaintiff that CCC had accepted his resignation and that Plaintiff should vacate the office immediately. Defendant denies the remaining allegations. The Company interpreted the statements by Plaintiff’s attorney as

effecting his resignation and therefore drafted a letter acknowledging Plaintiff's resignation and, given Plaintiff's prior actions, took steps to ensure the protection of all company secrets and assets. To this end, the Company hired a locksmith and enlisted the help of a sheriff's deputy, in the event that Plaintiff was uncooperative. When given the letter, Plaintiff informed Defendant Gandis "I was not ready yet."

39. The Company had contacted the local sheriff's office to be on hand in the event that Plaintiff was uncooperative. If Plaintiff had packed his personal belongings and left the premises, he would not have been aware of the Sheriff's presence. Plaintiff was instructed not to remove Company property but, after discussion, it was agreed that Plaintiff could remove his personal items but was to leave Company assets. Plaintiff then proceeded to make three trips to his car, taking with him, among other things, a cell phone and two laptop computers, over Defendant Gandis's objections that these were Company assets. Plaintiff then remained in the office, making phone calls and packing documents into his briefcase.

40. Defendant admits the allegations of Paragraph 40.

41. Defendant admits so much of Paragraph 41 as alleges that the Company terminated Plaintiff's cell phone service. Defendant denies the remaining allegations. Further answering Paragraph 41, Defendant states that, despite the Company's request for Plaintiff to leave the premises, Plaintiff remained in his office making phone calls on his Company cell phone. Defendant Gandis therefore requested that cell service to the phone be disconnected.

42. Plaintiff's health insurance was terminated. Defendant denies the remaining allegations. Further answering Paragraph 42, Defendant states that CCC offers health insurance coverage to its employees, paying 75% of the employee's coverage and 50% of the coverage for

the employee's family. As Plaintiff did not pay the premiums following his resignation, the coverage lapsed on February 1, 2012. With regard to distributions, Defendant states that there have been no distributions to any members in 2012.

43. Defendant denies the allegations of Paragraph 43. Plaintiff has repeatedly stated to Defendants that he intends to compete with CCC and, on information and belief, Plaintiff has taken a position as the Director of Film Sales at Neologic Distributions. Given this, the Company offered to disclose the requested financial information to Plaintiff if he would complete a confidentiality agreement, which was provided to him shortly after he resigned. Plaintiff has been provided with timely updates as to the status of financial information that impacts his personal tax situation as well as a great deal of additional information since this litigation began. The Company has provided various financial statements, a detailed listing of inventory assets, as well as numerous financial schedules. Defendant and CCC stand ready to assist Del Bradshaw with the Court ordered accounting.

44. Defendant denies the allegations of Paragraph 44. Further answering Paragraph 44, Defendant states that CCC returned seven boxes of what was believed to be personal property of the Plaintiff and has offered to return any other property that Plaintiff can document as personal assets. When CCC was formed, Plaintiff agreed to contribute all of the business assets of EFS, which included all office equipment and one fork-truck. Thereafter, Plaintiff moved these assets to the newly leased offices of CCC, which Defendants believe effected Plaintiff's fulfillment of this portion of his contribution pledge to the newly formed CCC's.

45. CCC paid attorney's fees for attorneys Zamer and Floyd. Defendant denies the remaining allegations of Paragraph 45. Further answering Paragraph 45, Defendant states that

all matters considered by attorneys Zamer and Floyd related to Company business and were properly paid by the corporation.

46. Responding to Paragraph 46, Defendant is without knowledge or information as to when Plaintiff discovered that ZOi Films had been formed. ZOi Films is a wholly-owned subsidiary of CCC. As ZOi Films is a wholly-owned subsidiary of CCC, Defendant denies that ZOi Films engages in activities harmful to CCC but rather that ZOi serves to expand CCC's market opportunities. Defendant denies that CCC has suffered any damage related to ZOi.

47. Defendant denies the allegations of Paragraph 47, except to admit that Michael Shirley is listed as the registered agent for ZOi Films. ZOi Films was created after a number of clients declined to do business with CCC based on their past dealings with Plaintiff.

48. Defendant admits the allegations of Paragraph 48.

49. Responding to Paragraph 49, Defendant admits that Defendant Gandis engaged John Gurley to secure the internet domain zoifilms.com.

50. Defendant admits the allegations of Paragraph 50.

51. Responding to Paragraph 51, Defendant Gandis admits that CCC hired a web design company to create the ZOi Films website. Defendant lacks sufficient knowledge or information to either admit or deny the remainder of the allegation and believe the photographs are in the public domain, though some may also be shown on the CCC website.

52. Defendant denies the allegations of Paragraph 52. ZOi Films is a wholly-owned subsidiary of CCC and therefore does not compete with CCC.

53. Defendant denies the allegations of Paragraph 53.

54. Defendant denies the allegations of Paragraph 54.

55. Defendant admits so much of Paragraph 55 as alleges that some CCC resources and employees assist in the operation of CCC, its parent company. However, CCC, not Defendants, is operating ZOi Films, as it is a wholly-owned subsidiary of CCC. Defendant denies the remainder of the allegations.

56. Defendant denies the allegations of Paragraph 56.

57. DecoTex is not a defendant in this lawsuit and Defendant denies the allegations of Paragraph 57.

58. Defendant denies the allegations of Paragraph 58. Plaintiff has been provided with proof that ZOi Films is a wholly-owned subsidiary of CCC.

59. Defendant denies the allegations of Paragraph 59. Specifically, Defendant denies that Plaintiff "fairly and adequately represents the members similarly situated." Plaintiff is engaged in business competitive to CCC. Plaintiff owes more than \$100,000 to CCC and, though CCC has requested that Plaintiff repay the amount he owes, Plaintiff has refused to do so. Plaintiff claims that the cost of a car he has used for personal purposes should be borne by CCC. Additionally, Plaintiff owns only a 44% interest in CCC while Defendants collectively own a 56% interest in CCC. For these and other reasons, Plaintiff is singularly unsuited to act as a representative of CCC and Defendants are better suited as representatives.

60. Defendant denies the allegations of Paragraph 60. Defendant is acting in the interests of CCC. In particular, Defendant Gandis has made numerous loans to finance the operations of CCC and, for a period of time, provided the Company with rent-free space in

which to operate. Plaintiff, meanwhile, is currently engaging in competitive activities, while at the same time owing CCC more than \$100,000.

61. Defendant admits so much of Paragraph 61 as alleges that Defendants, through CCC, have provided financial information to Plaintiff. Defendant denies the remaining allegations.

62. Information was downloaded into Excel. Defendant denies any suggestion of any wrongful alteration of financial data. The financial information was extracted from the financial database through a report writing programs and selected a report style that protects the confidential detail, which has no impact on either net income or equity.

63. Defendant denies the allegations of Paragraph 63. The subpoena referenced in Paragraph 63 was addressed to CCC, not to Defendant. Consequently, counsel for CCC is addressing this request and, on information and belief, is coordinating the response with Plaintiff's counsel.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
Dissolution under S.C. Code § 33-44-801
(AS TO ALL DEFENDANTS)

64. Responding to Paragraph 64, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

65. Defendant further answers the allegations as follows:

a. As stated above, Defendant admits requesting that the local sheriff deputy was requested to be on hand on January 18, 2012, so as to prevent the theft of Company property.

b. As stated above, the Company repeatedly offered to provide Plaintiff access to Company financial information if he would agree to sign a confidentiality agreement. This is, in part, due to Plaintiff's stated intention to compete with CCC even prior his new position as Director of Film Sales at Neologic Distributions.

c. Defendant denies this allegation.

d. Defendant denies this allegation.

e. As stated above, once Plaintiff resigned as an employee of CCC, he was no longer eligible for health insurance through the Company, unless he personally paid the premiums.

f. As stated above, at all times since the inception of CCC, all members could receive distributions but these ultimately were dependent on the success of the Company. At no point did the parties agree to pay Plaintiff a fixed monthly amount or to make distributions on a monthly basis.

g. As stated above, the purchase of Plaintiff's automobile was not a Company expense and therefore was not reported as such on CCC tax filings.

h. As stated above, Defendant admits to that Plaintiff's cell phone service was terminated when he continued to utilize his phone after CCC accepted his resignation.

i. As stated above, Defendant admits that CCC used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising

CCC on Company business, including, but not limited to, Plaintiff's resignation.

j. Defendant denies this allegation.

k. Defendant denies this allegation.

66. Defendant denies the allegations of Paragraph 66.

67. Paragraph 67 constitutes a statement of opinion and conclusion of law by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations.

68. Defendant will show that Plaintiff unjustifiably complained about many things. Defendant denies Plaintiff's claims and denies that Plaintiff has CCC's best interest in mind by the filing of this lawsuit. Plaintiff acts for his own purposes only and is unfit to represent CCC derivatively because he has harmed the business of CCC, is liable to CCC for his misdeeds, and owes CCC over \$150,000 which he has refused to pay.

69. Defendant denies that Plaintiff is entitled to any relief at this point other than the accounting which the Court has ordered, and which Defendant has repeatedly sought.

FOR A SECOND DEFENSE AS TO THE FIRST CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

70. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

71. Defendant states that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for dissolution lies against CCC rather than the named Defendants.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

**Breach of Fiduciary Duty
(As to Defendants Gandis)**

72. Responding to Paragraph 70, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

73. Defendant denies the allegations of Paragraph 71. Further answering Paragraph 71, Defendant states:

a. As stated above, CCC offered to provide Plaintiff access to Company financial information if he would agree to sign a confidentiality agreement. This was, in part, due to Plaintiff's stated intention to compete with CCC and his new position as Director of Film Sales at Neologic Distributions.

b. CCC properly used its funds to pay attorney's fees for attorneys Zamer and Floyd for their services in advising CCC on Company business, including, but not limited to, Plaintiff's resignation.

c. Defendant denies that Plaintiff was terminated.

d. As stated above, Defendant admits that a local sheriff deputy was requested to be on hand on January 18, 2012, so as to prevent the theft of Company property.

e. Defendant denies that the Articles of Organization, as filed by the office of attorney Stephen Potts, were contrary to the agreement of the members. Additionally, Defendant denies that Plaintiff and Defendant Gandis are equal members.

f. Defendant denies this allegation and refer to Plaintiff's January 6 correspondence in which he articulates Defendant Gandis' goal was not to force him from company nor to provide an unfair buyout offer.

g. Defendant denies this allegation. Plaintiff was aware that Defendant Comeau-Shirley would require compensation for the work she performed beginning in 2008 and before she was a member of CCC.

h. Defendant denies this allegation.

i. Defendant denies this allegation.

74. Defendant denies the allegations of Paragraph 72.

75. Defendant denies the allegations of Paragraph 73.

76. Defendant denies the allegations of Paragraph 74.

77. Defendant denies the allegations of Paragraph 75.

78. Defendant denies the allegations of Paragraph 76.

79. Defendant denies the allegations of Paragraph 77.

80. Upon information, Defendant denies the allegations of Paragraph 78.

81. Defendant denies any improper payment of attorneys fees.

82. Defendant denies the allegations of Paragraph 80.

83. Defendant denies the allegations of Paragraph 81.

84. Defendant denies the allegations contained in Paragraph 82.

85. Defendant denies the allegations contained in Paragraph 83.

FOR A FIRST DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
Conversion
(AGAINST DEFENDANTS GANDIS, COMEAU-SHIRLEY AND ZOi Films)

86. Responding to Paragraph 84, Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

87. Defendants deny the allegations of Paragraph 85.

88. Defendant denies the allegations of Paragraph 86.

89. Defendant denies Paragraph 87 to the extent it alleges any wrong-doing by Defendant. Defendant denies having misused assets in furtherance of his own personal business efforts. Defendant denies any wrongdoing in connection with any use of CCC assets in furtherance of the business of ZOi Films as ZOi Films is a wholly-owned subsidiary of CCC. Defendant denies the remaining allegations of Paragraph 87.

90. Paragraph 88 constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

91. Paragraph 89 constitutes conclusions of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

92. Defendant denies that Plaintiff is a proper derivative representative and denies the allegations of Paragraph 90.

93. Defendant denies the allegations of Paragraph 91.

94. Paragraph 92 constitutes a conclusion of law to which no response is required. To the extent that a response is required, Defendant denies the allegations.

FOR A SECOND DEFENSE TO PLAINTIFF'S THIRD CAUSE OF ACTION

(Rule 12(b)(6), SCRCP)

95. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

96. Defendants state that Plaintiff fails to state a claim upon which relief may be granted, as Plaintiff's cause of action for disassociation lies against CCC rather than the named Defendants.

FOR A THIRD DEFENSE TO THE THIRD CAUSE OF ACTION

(Unclean Hands)

97. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

98. On information and belief, Plaintiff continued to transact business as EFS months and years after the formation of CCC, thereby denying business and profits to CCC and taking such profits for himself.

99. On information and belief, Plaintiff has acted against the interests of CCC by disclosing sensitive and confidential Company information to competitors of CCC.

100. On information and belief, Plaintiff has utilized confidential and proprietary information from CCC to compete with CCC.

101. On information and belief, Plaintiff deleted numerous files and documents from the Company laptop before returning it to CCC, thereby depriving CCC of important useful information and hindering its sales.

102. On information and belief, Plaintiff owes over \$100,000.00 to CCC and, despite receiving a demand for payment from the Company, has refused to repay the amount owed.

103. Plaintiff has used the threat of dissolution in attempting to negotiate favorable terms of a purchase of his interest.

104. Given the above, based on the doctrine of unclean hands, Plaintiff is not entitled to equitable relief of any kind.

**FOR A FIRST DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANT
(Statute of Limitations)**

105. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

106. On information and belief, some or all of Plaintiff's claims must be reduced or barred by the applicable statute of limitations or statute of repose.

**FOR A SECOND DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Failure to Mitigate)**

107. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

108. Defendant alleges that Plaintiff has failed to mitigate his damages as required by law.

FOR A THIRD DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Laches, Waiver, Estoppel)

109. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

110. On information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, or estoppel.

FOR A FOURTH DEFENSE TO ALL OF PLAINTIFF'S
ALLEGATIONS AGAINST DEFENDANTS
(Set Off)

111. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

112. Over the course of his time with CCC, Plaintiff obtained numerous loans from the Company. These loans were non-recourse, but secured by Plaintiff's membership interest in CCC. The loans included interest at 10% and were due upon demand. Beginning in October 2011, the loans were recourse loans.

113. Additionally, Plaintiff charged personal expenses to his Company credit card and account.

114. Plaintiff is currently indebted to CCC in excess of \$110,000.00.

115. In the event that it is determined that Plaintiff is entitled to an award of monetary damages against Defendant, which is denied and admitted solely for the purpose of this defense, Defendant contends that he is entitled to set-off against such award.

COUNTERCLAIMS

By way of counterclaim, Defendant, complaining of Plaintiff, respectfully show as follows:

116. Defendant's counterclaims stem from the same incidents and facts which form the basis for Plaintiff's Complaint. Therefore, jurisdiction is proper. Defendant adopts the Counterclaims concurrently being sought by CCC.

COUNTERCLAIM **(Breach of Fiduciary Duty)**

117. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

118. As a member with manager responsibilities of CCC, Plaintiff had a fiduciary relationship with CCC and Defendants.

119. When CCC accepted Plaintiff's resignation on January 17, 2012, Plaintiff was instructed that, while he would be allowed to take personal items, he was not to remove Company property.

120. Nonetheless, Plaintiff left the offices with a cell phone and two laptop computers, both belonging to CCC.

121. After multiple requests from CCC and Defendants, Plaintiff later returned these items, but only after copying numerous Company records and erasing the hard drives.

122. On information and belief, Plaintiff has since utilized confidential and proprietary information obtained from CCC to compete with CCC.

123. Plaintiff's actions constituted a breach of his fiduciary duty to CCC and Defendant.

124. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to lost profits.

COUNTERCLAIM
(Breach of Fiduciary Duty)

125. Defendant incorporates by reference his responses to the foregoing paragraphs as if fully set forth herein.

126. Upon receiving the laptops and cell phone, CCC discovered that the phone's SIM card had been removed.

127. CCC provided these items to a forensic technology firm for analysis. Based on this analysis, it was determined that Plaintiff had copied thousands of files from the computers and then "swept" the computer, attempting to perform a permanent delete. It is impossible to quantify the number of files deleted as the forensic team was only able to recover certain files not deleted by the "sweep" computer program Plaintiff ran.


128. On information and belief, the permanently deleted files included numerous files and information useful to the Company in its operations and included names of newly-identified suppliers, names of clients that were currently negotiating new deals and opportunities, and pricing information.

129. These actions constituted a breach of Plaintiff's fiduciary duty to CCC and Defendant.

130. As a result of Plaintiff's breach, Defendant suffered damages, including but not limited to lost profits.

WHEREFORE, having fully answered the Verified Second Amended Complaint, Defendant prays that Plaintiff's Verified Second Amended Complaint be dismissed with prejudice, together with the costs and disbursements of this action, Defendant seeks an award of damages on his counterclaims, including actual and punitive damages, in an amount to be determined by the jury and for such other and further relief as this honorable Court deems proper.

ELMORE GOLDSMITH, PA

By: 
MASON A. GOLDSMITH, SC Bar No. 2182
55 Beattie Place, Suite 1050 (29601)
Post Office Box 1887
Greenville, SC 29602
Telephone: 864-255-9500
Attorneys for Defendant John Gandis

November 15, 2013

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

David Wilson, individually and derivatively on)
behalf of Carolina Custom Converting, LLC,)

C.A. NO: 2012-CP-23-02887

Plaintiff,)

**VERIFICATION OF
DEFENDANT JOHN GANDIS**

v.)

John Gandis, Andrea Comeau-Shirley, Zoi)
Films, LLC, and Carolina Custom Converting,)
LLC,)

Defendants,)

John Gandis and Andrea Comeau-Shirley,)

Third-Party Plaintiffs,)

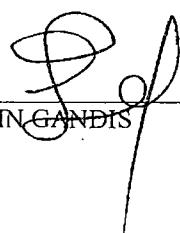
v.)

Carolina Custom Converting, LLC,)

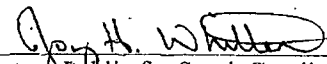
Third-Party Defendant.)

I, John Gandis, being duly sworn, testify that I have read the ANSWER OF DEFENDANT JOHN GANDIS TO VERIFIED SECOND AMENDED COMPLAINT and RESTATED DEFENSES AND COUNTERCLAIMS and the allegations contained therein are correct to the best of my knowledge and belief. The allegations made upon information belief I believe to be true.

SWORN to before me this
15th day of November, 20**.



JOHN GANDIS

 (SEAL)

Notary Public for South Carolina

My commission expires:

~~My Commission Expires March 16 2018~~

Answer of Defendant John Gandis to
Verified Second Amended Complaint

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EXHIBIT A

CERTIFICATE OF EXISTENCE

CAROLINA CUSTOM CONVERTING, LLC

Dated November 5, 2007

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CAROLINA CUSTOM CONVERTING, LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on November 2nd, 2007, with a duration that is until December 31st, 2057, has as of this date filed all reports due this office, including its most recent annual report as required by section 33-44-211, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 5th day of November, 2007.


Mark Hammond, Secretary of State

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

David Wilson, individually and)
derivatively on behalf of Carolina)
Custom Converting, LLC,) C.A. NO.: 2012-CP-23-02887
)
Plaintiff,)

John Gandis, Andrea Comeau-)
Shirley, Zoi Films, LLC, and)
Carolina Customer Converting, LLC,)
)
Defendants,)
)

John Gandis and Andrea Comeau-)
Shirley,)
)
Third Party Plaintiffs,)

Carolina Custom Converting, LLC,)
)
Third Party Defendant.)

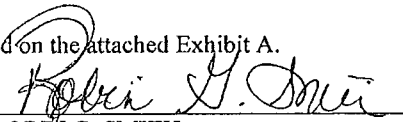
CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 NOV 18 PM 4 03

I, Robin G. Smith, an employee of Elmore Goldsmith, PA, pursuant to Rule 5(b)(1) SCRPC and counsel's regular business practices, do hereby certify that I have this date, mailed a copy of ANSWER OF DEFENDANT JOHN GANDIS TO VERIFIED SECOND AMENDED COMPLAINT and RESTATED DEFENSES AND COUNTERCLAIMS to Plaintiff's Attorney W. Andrew Arnold, by United States Postal Service, First Class, postage pre-paid and affixed thereto and addressed as follows:

W. Andrew Arnold, Esquire
Law Office of W. Andrew Arnold, PA
712 East Washington Street
Greenville, SC 29601

with copies electronically transmitted to the attorneys listed on the attached Exhibit A.


ROBIN G. SMITH
Legal Assistant to Mason A. Goldsmith
Elmore Goldsmith, PA

Dated: November 15, 2013

EXHIBIT A

CERTIFICATE OF SERVICE AS TO
DEFENDANT JOHN GANDIS' ANSWER TO VERIFIED SECOND AMENDED COMPLAINT
and RESTATED DEFENSES AND COUNTERCLAIMS

W. Andrew "Andy" Arnold, Esquire
Law Office of W. Andrew Arnold, PA
aarnold@aalawfirm.com

L. Lee Plumblee, Esquire
Eppes & Plumblee, PA
lplumblee@eppesandplumblee.com

Steven E. Farrar, Esquire
Smith Moore Leatherwood LLP
Steve.farrar@smithmoorelaw.com

Thomas L. Stephenson, Esquire
Burl F. Williams, Esquire
Nexsen Pruet, LLC
tstephenson@nexsenpruet.com
bwilliams@nexsenpruet.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively
on behalf of Carolina Custom Converting,
LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom
Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson,

Counterclaim Defendant.

Carolina Custom Converting, LLC,

Third-Party Plaintiff,

vs.

Steven Norvell, NeoLogic Distribution, Inc.,
and Fresh Water Systems Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-02887

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSJIMER
2014 MAY 16 PM 12 09

**REPLY TO COUNTERCLAIMS AND
ANSWER TO THIRD-PARTY
COMPLAINT OF STEVEN NORVELL,
NEOLOGIC DISTRIBUTION, INC., AND
FRESH WATER SYSTEMS, INC.**

Third-Party Defendants Steven Norvell (“Norvell”), NeoLogic Distribution, Inc. (“NeoLogic”), and Fresh Water Systems, Inc. (“Fresh Water”) respectfully submit the following reply and answer to Carolina Custom Converting, LLC’s (CCC) Answer to the Second Amended Complaint and Counterclaims.

PRELIMINARY STATEMENT

CCC’s answer to Plaintiff’s Second Amended Complaint alleges new causes of action against the above-captioned “Counterclaim Defendants.” CCC’s claims against the “Counterclaim Defendants” are more properly characterized as Counterclaims against Dave Wilson and a Third-Party Complaint versus Norvell, NeoLogic and Fresh Water. Norvell, NeoLogic and Fresh Water are therefore responding to CCC’s Answer to the Second Amended Complaint and Counterclaims as Third-Party Defendants to CCC’s Counterclaims and Third-Party Complaint.

FOR A FIRST DEFENSE

1. Each and every allegation hereafter not admitted, qualified, modified or explained is denied and strict proof is demanded thereof.
2. CCC’s Preliminary Statement to its Answer and Counterclaims contains legal conclusions to which no responsive pleading is required; to the extent a response is required, Third-Party Defendants deny the allegations and demand strict proof thereof.
3. Third-Party Defendants are informed and believe that Paragraphs 1 through 14 of CCC’s Answer to the Second Amended Complaint and Counterclaims do not require responses from them; to the extent a response is required, Third-Party Defendants deny the allegations contained therein and demand strict proof thereof.

4. Third-Party Defendants admit, upon information and belief, the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20 and 21 of the Counterclaim and Third-Party Complaint.

5. With reference to the allegations contained in Paragraph 22 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to the details of the official formation, registration or business of CCC and therefore deny same and demand strict proof thereof.

6. With reference to the allegations contained in Paragraph 23 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to facts alleged therein and therefore deny same and demand strict proof thereof.

7. Third-Party Defendants admit the allegations contained in Paragraph 24 of the Counterclaim and Third-Party Complaint.

8. With reference to the allegations contained in Paragraphs 25 and 26 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack knowledge or information sufficient to form a belief as to the facts alleged therein and therefore deny same and demand strict proof thereof.

9. Third-Party Defendants deny the allegations contained in Paragraphs 27, 28, 29, 30 and 31 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

10. With reference to the allegations contained in Paragraph 32 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell had access to a bank account through which he funded limited film transactions for Wilson and EFS while EFS was winding down. These transactions were done with CCC's knowledge and consent.

11. With reference to the allegations contained in Paragraph 33 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell and Wilson transacted limited business as "Commerce Films" while EFS was winding down.

12. Third-Party Defendants deny the allegations contained in Paragraph 34 and 35 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

13. With reference to the allegations contained in Paragraph 36 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit only that Norvell financed a limited number of film purchases by EFS in 2008 and 2009 and that CCC had actual knowledge of these transactions and generated revenue from some of the transactions. Third-Party Defendants deny the remaining allegations contained in Paragraph 36 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

14. With reference to the allegations contained in Paragraph 37 of The Counterclaim and Third Party Complaint, Third-Party Defendants admit that Norvell is the brother-in-law of Wilson. Third-Party Defendants deny the remaining allegations contained in Paragraph 37 of the Counterclaim and Third Party Complaint and demand strict proof thereof.

15. Third-Party Defendants deny the allegations contained in Paragraph 38, 39 and 40 and demand strict proof thereof.

16. With reference the allegations contained in Paragraphs 41, 42, 43, 44, 45, 46 and 47 of the Counterclaim and Third Party Complaint, Third-Party Defendants lack sufficient knowledge or information sufficient to form belief as to the allegations contained therein and therefore deny same and demand strict proof thereof.

17. Third-Party Defendants admit the allegations contained in Paragraph 48 of the Counterclaim and Third-Party Complaint.

18. Third-Party Defendants lack knowledge and information sufficient to form belief as to the allegations contained in Paragraph 49 of the Counterclaim and Third-Party Complaint and therefor deny same and demand strict proof thereof.

19. Third-Party Defendants admit the allegations contained in Paragraph 50 of the Counterclaim and Third-Party Complaint.

20. Third-Party Defendants lack knowledge and information sufficient to form belief as to the allegations contained in Paragraphs 51, 52, 53, and 54 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

21. Third-Party Defendants deny the allegations contained in Paragraph 55 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

22. With reference to the allegations contained in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66 of the Counterclaim and Third-Party Complaint, Third-Party Defendants lack sufficient knowledge or information sufficient to form belief as to the allegations contained therein and therefore deny same and demand strict proof thereof.

23. Third-Party Defendants deny the allegations contained in Paragraph 67 and 68 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

24. With reference to the allegations contained in Paragraph 69 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Fresh Water loans certain employees to NeoLogic, and that the arrangement is documented in the records of the companies and proper consideration is paid by NeoLogic for any services provided to it by Fresh Water employees.

25. Third-Party Defendants deny the allegations contained in Paragraphs 70 and 71 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

26. Third-Party Defendants admit the allegations contained in Paragraph 72 of the Counterclaim and Third-Party Complaint.

27. With reference to the allegations contained in Paragraph 73 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell has loaned Wilson funds that have been used to pay Wilson's attorney's fees and costs in the present litigation.

28. Third-Party Defendants lack knowledge or information sufficient to form belief as to the allegations contained Paragraphs 74 and 75 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

29. With reference to the allegations contained in Paragraph 76 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

30. The allegations contained in Paragraphs 77 through 81 are not directed towards the Third Party Defendants and therefore Third Party Defendants neither admit nor denies same; to the extent a response is required, Third Party Defendants deny the allegations.

31. With reference to the allegations contained in Paragraph 82 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

32. With reference to the allegations contained in Paragraph 83 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell is the brother-in-law of

Wilson. Third-Party Defendants deny the remaining allegations contained in Paragraph 83 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

33. Third-Party Defendants deny the allegations contained in Paragraphs 84, 85, 86, 87 and 88 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

34. With reference to allegations contained in Paragraph 89 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of its previous responses, not inconsistent herewith, as if fully repeated herein.

35. Third-Party Defendants lack knowledge or information sufficient to form belief as to the facts alleged in Paragraphs 90, 91, 92 and 93 of the Counterclaim and Third-Party Complaint and therefore deny same and demand strict proof thereof.

36. With reference to allegations contained in Paragraph 94 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that NeoLogic was formed less than two (2) months after Wilson left CCC, but further allege that NeoLogic was formed for purposes of wholesaling water and health related products, not film, and was formed months before any conversations took place between Norvell and Wilson about Wilson coming to work for NeoLogic.

37. Third-Party Defendants admit the allegations contained in Paragraph 95 of the Counterclaim and Third-Party Complaint.

38. With reference to the allegations contained in Paragraph 96 of the Counterclaim and Third-Party Complaint, Third-Party Defendants admit that Norvell has loaned funds to Wilson that have been used to pay Wilson's attorney's fees and costs in the present litigation.

39. Third-Party Defendants deny the allegations contained in Paragraph 97 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

40. The allegations contained in Paragraph 98 through 104 of the Counterclaim and Third-Party Complaint are not directed towards Third-Party Defendants and therefore Third-Party Defendants neither admit nor deny the allegations; to the extent a response is required, Third-Party Defendants deny the allegations.

41. With reference to the allegations contained in Paragraph 105 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

42. Third-Party Defendants deny the allegations contained in Paragraphs 106, 107, 108, 109, 110 and 111 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

43. The allegations contained in Paragraphs 112 through 127 of the Counterclaim and Third-Party Complaint are not directed to Third-Party Defendants and therefore Third-Party Defendants neither admit nor deny same; to the extent a response is required, Third-Party Defendants deny the allegations.

44. With reference to the allegations contained in Paragraph 128 of the Counterclaim and Third-Party Complaint, Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

45. With reference to the allegations contained in Paragraph 129, Third-Party Defendants admit that CCC owned and owns various assets and information used to operate its business. Third-Party Defendants deny that these assets and information constitute confidential information or trade secrets as defined by South Carolina law and demand strict proof thereof.

46. Third-Party Defendants deny the allegations contained in Paragraph 130, 131, 132 and 133 of the Counterclaim and Third-Party Complaint and demand strict proof thereof.

47. The allegations contained in Paragraph 134 through 140 are not directed at Third-Party Defendants, therefore Third-Party Defendants neither admit nor deny same; to the extent a response is required, Third-Party Defendants deny the allegations.

FOR A SECOND DEFENSE
(Waiver, Estoppel and Laches)

48. Third-Party Defendants reincorporate all of their previous responses, not inconsistent herewith, as if fully repeated herein.

49. By the acts and/or admissions of the Plaintiff, the Plaintiff's claims against Third-Party Defendants are barred by the Doctrines of Waiver, Estoppel and Laches.

FOR A THIRD DEFENSE
(Statutes of Limitation)

50. Third-Party Defendants reincorporate all of its previous responses, not inconsistent herewith, as if fully repeated herein.

51. The Plaintiff's claims are barred in whole or in part by the statutes of limitation.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(S.C. Code Ann §§ 39-8-10, et seq)

52. Third-Party Defendants reincorporate all of its previous response, not inconsistent herewith, as if fully repeated herein.

53. The information CCC is claiming to be trade secrets was available to the public and anyone interested in inquiring of customers and vendors as to the information.

54. The information CCC is claiming to be trade secrets was not subject to any effort on the part of CCC, much less the reasonable efforts, to maintain the secrecy of the alleged trade secrets.

55. The Plaintiff's claims against Neologic and Fresh Water for misappropriation of trade secrets under S.C. Code Ann. §§ 39-8-10, et seq. are being made in bad faith and warrant the award of attorney's fees and costs to Neologic and Fresh Water in accordance with S.C. Code Ann. §39-8-80.

WHEREFORE, Defendants Dave Wilson, Steven Norvell, NeoLogic Distribution, Inc., and Fresh Water Systems, Inc., having fully answered the Counterclaim and Third-Party Complaint, pray for the following relief:

1. Dismissal of all claims against the Third-Party Defendants;
2. Judgment against CCC for the payment of Neologic's and Fresh Water's attorney's fees and costs in accordance with S.C. Code Ann. §39-8-80; and
3. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

HORTON, DRAWDY, WARD, MULLINAX
& FARRY, P.A.



Bruce B. Campbell, SC Bar #65343
307 Pettigru Street
Greenville, SC 29601
(864) 233-4351
Attorney for Defendants

May 16, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively
on behalf of Carolina Custom Converting,
LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom
Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson,

Counterclaim Defendant.

Carolina Custom Converting, LLC,

Third-Party Plaintiff,

vs.

Steven Norvell, NeoLogic Distribution, Inc.,
and Fresh Water Systems Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2012-CP-23-02887

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 MAY 16 PM 12:05

CERTIFICATE OF SERVICE

I, Erica M. Courson, legal assistant to Bruce B. Campbell, do hereby certify that on May 16, 2014, I served upon the below-named individuals Reply to Counterclaims and Answer to Third-Party Complaint by depositing a copy of the same in the United States Mail, proper

postage affixed thereto, in envelopes addressed as shown below and also I electronically served the document on the below-named individuals by emailing a copy of the document to the email address listed below:

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, SC 29602
mag@elmoregoldsmith.com

L. Lee Plumblee, Esquire
EPPS & PLUMBLEE, P.A.
P.O. Box 1006
Greenville, SC 29603
lplumblee@eppsandplumblee.com

Burl F. Williams, Esquire
Nexsen Pruet, LLC
P.O. Box Drawer 10648
Greenville, SC 29603
bwilliams@nexsenpruet.com

Thomas L. Stephenson, Esquire
Nexsen Pruet, LLC
P.O. Box Drawer 10648
Greenville, SC 29603
tstephenson@nexsenpruet.com

Steven Farrar, Esquire
Smith, Moore, Leatherwood, LLP
P.O. Box 87
Greenville, SC 29602
steve.farrar@smithmorelaw.com

W. Andrew Arnold
Law Office of W. Andrew Arnold
712 East Washington St.
Greenville, SC 29601
aarnold@aalawfirm.com



ERICA M. COURSON

Legal Assistant to Bruce B. Campbell

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOI Films, LLC, and Carolina Custom Converting, LLC,

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic Distribution, Inc., and Fresh Water Systems Inc.,

Counterclaim Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-23-02887

ANSWER/REPLY TO COUNTERCLAIM OF NEOLOGIC AND FRESH WATER

Carolina Custom Converting, LLC ("CCC") responds to the allegations and counterclaim of Neologic Distribution, Inc. ("Neologic") and Fresh Water Systems Inc. ("Fresh Water") as follows:

(General Denial & Affirmative Response)

1. CCC denies the allegations of Paragraph 53 of Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts and alleges that while Defendant David Wilson ("Wilson") worked for CCC he operated as the Vice President of Sales. Because of that position, Wilson had access to intimate knowledge of CCC's customers, distributors, potential

NPGVLI:956200.1

customers, and potential distributors; Wilson also had access to the corporate knowledge of the products that each customer and potential customer desired, and the products that each distributor and potential distributor could provide; Wilson further had access to sensitive pricing information, and access to the Company's organizational methods for storing and cataloguing all of the above information (hereinafter collectively referred to as "trade secret and confidential information"). Wilson's, Neologic's, and Fresh Water's apparent belief that the absence of a standalone non-compete agreement, and/or a non-disclosure/secrecy agreement with CCC is fatal to CCC's claims is belied by the plain language of the Trade Secret Act:

Every employee who . . . 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(B). When Wilson left CCC, he took all of the trade secret and confidential information with him and provided the same to Neologic and Fresh Water. As the Vice President of Sales it is beyond question that Wilson knew he had a duty not to misappropriate and disclose this information.

2. CCC denies the allegations of Paragraph 54 of the Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts that it did make efforts to protect its trade secret and confidential information. By way of example, the confidential and trade secret information was not shared with non-essential employees, nor was it available for review by any visitor at CCC's headquarters.

3. CCC denies the allegations of Paragraph 55 of the Counterclaim Defendants' Answer and Counterclaim; further answering, CCC asserts and alleges that Wilson took its trade secret and confidential information and delivered the same to Neologic and Fresh Water and that

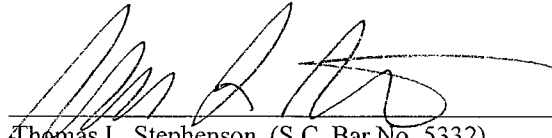
the latter have used said information to the detriment of CCC, and that the latter have damaged CCC as a direct result of their illegal use of CCC's trade secret and confidential information. Accordingly, CCC's claims against Neologic and Fresh Water are being asserted in good faith and with the express purpose of recovering the damages inflicted upon CCC through the illegal use of its trade secret and confidential information.

(Good Faith)

4. CCC has brought this action in good faith; accordingly, Neologic and Freshwater's assertion of bad faith fails.

WHEREFORE, CCC prays that, having answered the Counterclaim of Neologic and Fresh Water, that the counterclaim against CCC be dismissed, and that CCC have judgment against the Counterclaim-Defendants in the manner requested in its Answer and Counterclaim filed on November 19, 2013.

Respectfully submitted,



Thomas L. Stephenson (S.C. Bar No. 5332)
Burl F. Williams (S.C. Bar No. 77901)
NEXSEN PRUET, LLC
55 East Camperdown Way, Suite 400 (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
864.370.2211

Attorneys for Carolina Custom Converting LLC

June 11, 2014

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

David Wilson, individually and derivatively on
behalf of Carolina Custom Converting, LLC,

Civil Action No. 2012-CP-23-02887

Plaintiff,

vs.

John Gandis, Andrea Comeau-Shirley, ZOi
Films, LLC, and Carolina Custom Converting,
LLC,

CERTIFICATE OF SERVICE

Defendants,

Carolina Custom Converting, LLC,

Counterclaim Plaintiff,

vs.

Dave Wilson, Steven Norvell, Neologic
Distribution, Inc., and Fresh Water Systems
Inc.,

Counterclaim Defendants.

This is to certify that a copy of the foregoing CAROLINA CUSTOM CONVERTING, LLC'S ANSWER/REPLY TO NEOLGIC AND FRESH WATER COUNTERCLAIM has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 11th day of June, 2014.

W. Andrew Arnold, Esquire
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, South Carolina 29601
Attorney for Plaintiff

Mason A. Goldsmith, Esquire
Elmore Goldsmith, P.A.
P.O. Box 1887
Greenville, South Carolina 29602
Attorney for John Gandis

L. Lee Plumblee, Esquire
Eppes & Plumblee, P.A.
P.O. Box 10066
Greenville, South Carolina 29603
Attorney for ZOi Films, LLC

Steven Farrar, Esquire
Smith Moore Leatherwood, LLP
P.O. Box 87
Greenville, South Carolina 29602
Attorney for Andrea Comeau-Shirley


NEXSEN PRUET, LLC

Copy & Index

Neologic, Inc.

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2 COUNTY OF GREENVILLE CASE NO. 2012-CP-23-02887
3 David Wilson, individually,
4 and derivatively on behalf
of Carolina Custom Converting, LLC,
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8 Converting, LLC,
9 Defendants,
10 Carolina Custom Converting, LLC,
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13 Dave Wilson, Steven Norvell,
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14 and Fresh Water Systems, Inc.,
15 Counterclaim Defendants.
16
17 DEPOSITION OF NEOLOGIC, INC.,
GIVEN BY STEVEN NORVELL,
18 JULIEANNE KIGHT AND DAVID WILSON
19
20 DATE TAKEN: August 15, 2013
21 TIME BEGAN: 9:41 a.m.
22 TIME ENDED: 11:49 a.m.
23 LOCATION: Nexsen Pruet, LLC
55 East Camperdown Way
24 Suite 400
Greenville, South Carolina
25 REPORTED BY: Traci L. Barr, RPR

1 APPEARANCES:

2

3 BURL F. WILLIAMS, ESQUIRE
4 Nexsen Pruet, LLC
5 55 East Camperdown Way
6 Fourth Floor
7 Post Office Box 10648
8 Greenville, SC 29603

9On behalf of Carolina Custom Converting, LLC

10

11 BRUCE B. CAMPBELL, ESQUIRE
12 The Horton Law Firm
13 307 Pettigru Street
14 Greenville, SC 29601

15On behalf of Neologic, Inc.

16 W. ANDREW ARNOLD, ESQUIRE
17 Law Office of W. Andrew Arnold
18 712 E. Washington Street
19 Greenville, SC 29601

20On behalf of David Wilson

21 ALSO ATTENDING: John Gandis

22

23

24

25 STIPULATIONS: The within deposition was taken pursuant
to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are
hereby waived by the witness and the parties.

26

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2 3, but I'm going to start with Exhibit 4.

3 Who's talking?

4 MR. CAMPBELL: Depends on the question.

5 (The following testimony was given by
6 JulieAnne Kight:)

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8 BY MR. WILLIAMS:

9 Q. Exhibit 4 is -- well, tell me what Exhibit 4
10 is.

11 A. Exhibit 4 is the due from account detail for
12 Dave and Julie Wilson. It's comprised of legal
13 fees and accounting fees paid on their behalf.

14 Q. Where did this entry come from, Exhibit 3, the
15 printout?

16 A. QuickBooks.

17 Q. Look in the memo line.

18 MR. CAMPBELL: Of Exhibit 4?

19 MR. WILLIAMS: Of Exhibit 4. Actually, I take that
20 back.

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22 BY MR. WILLIAMS:

23 Q. Previously, Mr. Norvell testified on behalf of
24 Neologic that Steve and Emily Norvell paid
25 attorney's fees and costs for Mr. Wilson.

EXAMINATION RESUMED

BY MR. WILLIAMS:

Q. Neologic has made a credit memo and referred to these legal fees as overhead. Tell me about that.

A. When it was brought to my attention that we would be paying these legal fees, I coded in the memo as overhead, so if I'm doing any analysis I know what type of expense it is versus cost of goods, direct expense to products being sold.

Q. So you consider this an overhead expense?

A. Yes.

Q. We're done with attorney's fees. We're not going to get confused again.

Topic number 4 is relationship between Fresh Water Systems, Inc. and Neologic, Inc., including, but not limited to, shared resources.

So can you tell me the corporate officers of Neologic, Inc.?

A. Emily Norvell.

Q. What is her corporate position?

A. She's the president, treasurer and secretary, according to the Articles of Incorporation.

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Neologic, Inc.

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7 Post Office Box 10648
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12 Greenville, SC 29601

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A. Emily Norvell.

Q. What is her corporate position?

A. She's the president, treasurer and secretary, according to the Articles of Incorporation.

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STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 COURT OF COMMON PLEAS

DAVID WILSON, INDIVIDUALLY AND
 DERIVATIVELY ON BEHALF OF
 CAROLINA CUSTOM CONVERTING, LLC,
 Plaintiff,
 vs.
 JOHN GANDIS, ANDREA COMEAU-SHIRLEY,
 ZOI FILMS, LLC, AND CAROLINA CUSTOM
 CONVERTING, LLC,
 Defendants. CASE NO. 2012-CP-23-2887

CAROLINA CUSTOM CONVERTING, LLC,
 Counterclaim, Plaintiff,
 vs.
 DAVE WILSON, STEVEN NORVELL, NEOLOGIC
 DISTRIBUTION, INC., AND FRESH WATER
 SYSTEMS, INC.,
 Counterclaim Defendants.

DEPOSITION OF: WILLIAM R. SHAW

DATE: September 22, 2014

TIME: 9:55 A.M.

LOCATION: Law Offices of
 Nexsen Pruet, LLC
 55 East Camperdown Way, Suite 400
 Greenville, SC

TAKEN BY: Counsel for the Defendant CCC

REPORTED BY: LORI S. MORTGE,
 Certified Court Reporter, CCR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
 Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

**A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
 scheduledepo.com**

Page 2

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 DAVID WILSON, INDIVIDUALLY AND

4 DERIVATIVELY ON BEHALF OF

5 CAROLINA CUSTOM CONVERTING, LLC:

6 LAW OFFICE OF W. ANDREW ARNOLD

7 BY: W. ANDREW ARNOLD

8 JEREMY SUMMERLIN

9 712 E. Washington Street

10 Greenville, SC 29601

11 (864) 242-4800

12 aarnold@aalawfirm.com

13 jsummerlin@aalawfirm.com

14 ATTORNEYS FOR THE DEFENDANT

15 JOHN GANDIS:

16 ELMORE GOLDSMITH ATTORNEYS AT LAW

17 BY: MASON A. GOLDSMITH

18 55 Beattie Place, Suite 1050

19 Greenville, SC 29601

20 (864) 255-9505

21 mag@elmoregoldsmith.com

22 ATTORNEYS FOR THE DEFENDANT

23 CAROLINA CUSTOM CONVERTING, LLC:

24 STEPHENSON & MURPHY, LLC

25 BY: THOMAS L. STEPHENSON

207 Whitset Street

Greenville, SC 29601

(864) 374-9600

Tom@stephensonmurphy.com

and

NEXSEN PRUET, LLC

BY: BURL F. WILLIAMS

55 East Camperdown Way, Suite 400

Greenville, SC 29601

(864) 370-2211

bwilliams@nexsenpruet.com

Page 4

1 STIPULATION

2 It is stipulated by and among Counsel

3 that this deposition is being taken in accordance

4 with the South Carolina Rules of Civil Procedure,

5 Rule 30; that all objections as to Notice of this

6 deposition are hereby waived; that all objections

7 except as to form are reserved until the time of

8 trial.

9 * * * * *

10 WILLIAM R. SHAW

11 being first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. STEPHENSON:

14 Q. Mr. Shaw, my name is Tom Stephenson, I

15 represent Triple-C in this case. Do you understand

16 that?

17 A. Yes, sir.

18 Q. Have you ever had your deposition taken

19 before?

20 A. No, sir.

21 Q. You understand this is just like

22 testifying in court, that is, you have to tell the

23 truth and if you don't it's considered to be

24 perjury?

25 A. Yes, sir.

Page 3

1 APPEARANCES OF COUNSEL (CONCLUDING):

2 ATTORNEYS FOR THE COUNTERCLAIM PLAINTIFFS

3 STEVEN NORVELL, NEOLOGIC DISTRIBUTION,

4 INC., AND FRESH WATER SYSTEMS, INC.:

5 HORTON, DRAWDY, WARD, MULLINAX & FARRY,

6 PA

7 BY: BRUCE B. (BO) CAMPBELL

8 307 Pettigru Street

9 Greenville, SC 29601

10 (864) 233-4351

11 bcampbell@hortonlawfirm.net

12 ALSO PRESENT:

13 John Gandis

14 Dave Wilson

15

16

17

18

19

20

21

22

23

24

25 (INDEX AT REAR OF TRANSCRIPT)

Page 5

1 Q. You understand that if I ask you a

2 question and you have a question about the question,

3 which is likely, you need to direct that to me and

4 not your attorney.

5 A. Okay.

6 Q. Is there any reason your memory would be

7 affected today? In your own words, are you able to

8 testify normally?

9 A. I have just completed eight months of

10 cancer treatment at MD Anderson, the combination of

11 the hormone therapy and the oral hormone therapy for

12 the eight months has somewhat had a little bit

13 effect on my short-term memory --

14 Q. All right.

15 A. -- as a side effect, but I don't see

16 that impacting anything significantly today.

17 MR. STEPHENSON: Off the record.

18 (Off-the-record conference.)

19 BY MR. STEPHENSON:

20 Q. Mr. Shaw, if you would, give me your

21 employment history starting with who you work for

22 now, going backwards in time and just sort of

23 approximate dates.

24 A. Currently with Neologic Distribution

25 from January of '13. Prior employment history with

Page 62

1 Q. Does that seem to be what happened?
 2 A. Yes.
 3 Q. Your recollection?
 4 A. I seem to recall.
 5 Q. You never even talked to him before?
 6 A. I mean, I did talk with Andy one time.
 7 However, I went by his office but I don't recall the
 8 particulars of it.
 9 Q. Would that be before or after you left
 10 Triple-C?
 11 A. Way after I left Triple-C.
 12 Q. Would that be after you delivered the
 13 documents?
 14 A. I don't recall. I honestly don't.
 15 Q. All right. So you're out of Triple-C
 16 and you go by the office. Do you recall what y'all
 17 talked about?
 18 A. No, I really don't, Counselor. I think
 19 a lot was just how did I come about possession of
 20 those documents.
 21 Q. Okay. It was about the documents, the
 22 conversation you had with Andy?
 23 A. As I recall, yes.
 24 Q. Have you ever given a statement to
 25 anybody in connection to this case?

Page 63

1 A. No.
 2 Q. Now, you said earlier that you, quote,
 3 publicized, end quote -- and I'm trying to quote
 4 you, not trying to put words in your mouth, the fact
 5 that you had these documents and I thought you said
 6 you told John. Do you remember telling John that
 7 you had those documents?
 8 A. I don't recall ever telling John that.
 9 Q. Okay.
 10 A. It wouldn't be something I would have
 11 said the morning that I was blind sided and let go.
 12 Q. Yeah. You said you publicized it. What
 13 did you mean by that?
 14 A. I mean, you know, just in talking with
 15 Dave I said, you know, I've got purchase orders and
 16 things like that I've still got in the office that;
 17 you know, didn't ever have a chance to take back to
 18 CCC and file.
 19 Q. Well, tell me about that. You leave and
 20 you have a conversation with Dave about the fact
 21 that you got these documents. When did those
 22 conversations occur?
 23 A. November.
 24 Q. Right after you left?
 25 A. Mm-hmm.

Page 64

1 Q. You have to say yes or no.
 2 A. Yes, after I left.
 3 Q. And how did you have a conversation with
 4 Dave after you left? Did you call him or he called
 5 you?
 6 A. I called him.
 7 Q. Tell me about the conversation you had
 8 with Dave after you left.
 9 A. That was several years ago. I really
 10 don't recall very many specifics to it other -- you
 11 know, I understood through John and Andrea that Dave
 12 was -- had initiated a lawsuit and -- other than
 13 just what he had been up to I really don't recall.
 14 Q. All right. Does this fairly summarize
 15 what happened? You got let go, you give Dave a
 16 call, y'all talk, you let Dave know that you had a
 17 bunch of documents and then you got a subpoena from
 18 Andy Arnold? Or do you remember?
 19 MR. STEPHENSON: I believe you.
 20 MR. ARNOLD: No, no. I just think the
 21 dates are getting mixed up here, to be honest with
 22 you, for the record.
 23 MR. STEPHENSON: All right. Well,
 24 let's -- off the record.
 25 (Off-the-record conference.)

Page 65

1 BY MR. STEPHENSON:
 2 Q. We have determined that Andy Arnold
 3 issued a subpoena in October of 2012, served you and
 4 you delivered documents in response to that
 5 subpoena. And I'm going to tell you that knowing
 6 Andy he would have followed the rules, that is,
 7 served you and copied the other people and you got
 8 the subpoena. Do you recall when you got that
 9 subpoena, while you were still employed at Triple-C
 10 or not? If you don't know you don't know.
 11 A. I don't recall.
 12 Q. Let me ask you this.
 13 A. I don't recall.
 14 Q. If it turns out it was before you were
 15 let go, do you have any idea why Andy Arnold would
 16 send you a subpoena before you were let go?
 17 A. No.
 18 Q. To your knowledge, had you had any
 19 conversations with Dave Wilson before you were let
 20 go other than the one con -- two conversations you
 21 told me about, the one the day after he was let go
 22 and another one where he called you and said, hey,
 23 if you need a CSR, John, you can call Steve Norvell?
 24 A. I had zero contact with Dave Wilson
 25 until after I was let go.

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1 disassociated from the entity. And we would --

2 THE COURT: Wait a minute now. Who do you want to be
3 disassociated?

4 MR. ARNOLD: Mr. Gandis and Ms. Shirley.

5 THE COURT: Okay.

6 MR. ARNOLD: And so we've asked to disassociate them
7 for their wrongful acts.

8 THE COURT: Okay.

9 MR. ARNOLD: We don't want to gut the entity. We
10 think the business has value. Remember, we were here not
11 long ago because they didn't want to give us the customer
12 list because that customer list has such value. Well, we
13 agree it has value. And we want -- well, actually, we've
14 made an offer to purchase this business for almost half a
15 million dollars, their interest. That hasn't been -- they
16 haven't accepted or rejected that yet. But we think this
17 business has value. We don't want to dissolve the entity
18 unless it's absolutely necessary. We want a
19 disassociation.

20 And so we've pled a cause of action for
21 disassociation. Our prayer for relief, clearly, states
22 that we're asking for an order disassociating the
23 Defendants from CCC, or in the alternative dissolving CCC.
24 What they want you to do is say, well, before we litigate
25 the issues, I just -- we're going to do away with your

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000476

Case No. 2012-CP-23-02887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting,
LLC; Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

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Of Whom David Wilson, Neologic Distribution, Inc. and Fresh Water Systems, Inc. are the
Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of
the parties and not any other material.

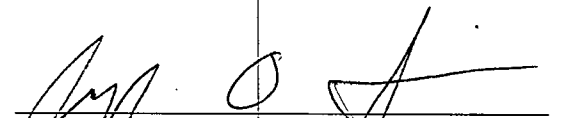
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JUN 22 2016

SC Court of Appeals

June 1, 2016

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody, II S.C. Bar # 14135

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

*Attorneys for Appellants John Gandis and
Andrea Comeau-Shirley*

Greenville, South Carolina