THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

Unpublished Opinion No. 2016-UP-247 (S.C. Ct. App. filed June 1, 2016)

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., ... Petitioner,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME III

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Trial Court Case No.: 2011-CP-23-07338
Appellate Case No. 2015-000162

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., ... Appellant,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... Respondents.

RECORD ON APPEAL
Volume 3 of 3

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mobile telephone numbers, are available in certain markets. A list of these markets and the required equipment to access the automated activation systems are set forth in Exhibit F. It is Verizon Wireless' intention eventually to implement automated activation systems in all of its markets. Verizon Wireless will notify Authorized Agent in writing as automated activation systems become available in new markets and provide notice if the computerized system requirements are modified.

6.5. Failure to Properly Process Applications. Authorized Agent's failure to properly process Verizon Wireless' Subscriber applications in accordance with Verizon Wireless' procedures, which failure leads to subscription fraud due to Authorized Agent activating Subscribers through the use of stolen, invalid, unverifiable and/or unauthorized credit information, will cause the following to occur:

(1) Verizon Wireless will notify Authorized Agent in writing that Authorized Agent has been placed on temporary probation for a thirty (30) day period.

(2) Within ten (10) days of receipt of Verizon Wireless' probation notice, Authorized Agent shall prepare a corrective action plan to improve its procedures for verifying Subscribers, and submit the plan to Verizon Wireless for review and acceptance.

(3) Within three (3) days of receipt of such plan, Verizon Wireless will review the plan and notify Authorized Agent of its approval or suggest revisions to the plan that could make it acceptable.

(4) If, in Verizon Wireless' judgment, there has not been a reasonable improvement in the rate of subscription fraud, as a result of the implementation of the corrective action plan, within thirty (30) days of the original notice, Verizon Wireless will have the right to terminate the Agreement.

(5) If, as a result of the implementation of the corrective action plan, in Verizon Wireless' judgment there has been a reasonable improvement, the Agreement will continue; however, should significant subscription fraud occur again, Verizon Wireless will have the right to take further action up to and including immediate termination.

6.6 Insurance. Without limiting Authorized Agent's duty to indemnify Verizon Wireless as set forth in this Agreement, Authorized Agent will maintain at all times during the Term or any extension or renewal thereof, at Authorized Agent's sole expense, the following insurance with an insurance company rated at least A- by A.M. Best Company and qualified to do business within the Area. Coverage required can be satisfied with primary and/or umbrella excess coverage.

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6.6.1 Workers Compensation Insurance as required by each State in which Authorized Agent performs the Agreement including a waiver of subrogation endorsement against Verizon Wireless.

6.6.2 Comprehensive or Commercial General Liability Insurance with the minimum limits as follows:

6.6.2.1 for Authorized Agents having three (3) or less Authorized Locations: One Million Dollars ($1,000,000) per occurrence for bodily and personal injury or death; One Million Dollars ($1,000,000) per occurrence for property damage; and One Million Dollars ($1,000,000) per occurrence for product liability arising out of any defects in the use of Equipment; and

6.6.2.2 for Authorized Agents having more than three (3) Authorized Locations: Two Million Dollars ($2,000,000) per occurrence of bodily and personal injury or death; Two Million Dollars ($2,000,000) per occurrence for property damage; and Two Million Dollars ($2,000,000) per occurrence for product liability arising out of any defects in the use of Equipment.

6.6.3 Employer's Liability Insurance within limits of not less than:

6.6.3.1 for Authorized Agents having three (3) or less Authorized Locations, Two Hundred Thousand Dollars ($200,000) per occurrence; and

6.6.3.2 for Authorized Agents having more than (3) Authorized Locations, One Million Dollars ($1,000,000) per occurrence.

6.6.4 Automobile Liability, Comprehensive Form, with limits of not less than Five Hundred Thousand Dollars ($500,000) for bodily injury and Five Hundred Thousand Dollars ($500,000) for property damage per occurrence or One Million Dollars ($1,000,000) combined single limit, subject to such deductibles Verizon Wireless determines to be appropriate, covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles [used on any occasion in the business of the Authorized Agent]. Authorized Agent acknowledges, understands and expressly agrees that all personal vehicles will meet applicable State statutory requirements for business use.

6.6.5 For Authorized Agents having at any time during the Term or any extension or renewal thereof more than three (3) Authorized Locations, Professional Liability

Insurance (Errors and Omissions) covering trademark and copyright infringement with limits of not less than One Million Dollars ($1,000,000) per occurrence.

6.6.6 If Authorized Agent has more than twenty-five (25) Locations: A Commercial Crime Bond or Employee Dishonesty Policy with a minimum aggregate limit of Five Hundred Thousand dollars ($500,000) is required.

6.6.7 At Verizon Wireless' request, Authorized Agent will submit to Verizon Wireless a Certificate of Insurance, on an ACORD form or a similar form acceptable to Verizon Wireless in its sole discretion, evidencing all required insurance prior to the start of any work under this Agreement and annually thereafter on the policy renewal date during the Term or any extension or renewal thereof. Cellco Partnership or Verizon Wireless and, if applicable, any partnerships who participate in this Agreement, will be named as "Additional Insured" on all policies except Workers Compensation, Employees Liability Insurance and Professional Liability coverage, which will also be so evidenced on the Certificate of Insurance. Each insurance policy will state by endorsement that such policy will not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to Verizon Wireless.

6.6.8 The insurance required in Sections 6.6.1 through 6.6.5 will provide that such insurance is primary coverage with respect to all insureds and will contain a waiver against Cellco Partnership or Verizon Wireless and any applicable Partnership(s) and such parties' Affiliates, directors, officers, employees and partners.

6.6.9 Verizon Wireless may at any time, upon sixty (60) calendar days prior written notice to Authorized Agent, require Authorized Agent to increase the amount of coverage of any type of insurance or require different or additional types of insurance to reflect inflation, higher damage awards or comparable factors which make the above limits insufficient to cover Authorized Agent liabilities and Authorized Agent's obligations to indemnify of Verizon Wireless under this Agreement.

6.7 Demonstration Service. At its sole discretion, Verizon Wireless may provide CMRS to Authorized Agent or its employees at a reduced cost to the Authorized Agent or its employees or at no charge. Such CMRS shall not be considered as Compensation to Authorized Agent. Coverage provided may be limited as set forth in the regional demonstration service policy.

Further, the Numbers provided for such service shall remain the property of Verizon Wireless.

7. USE OF MARKS BY AUTHORIZED AGENT.

7.1. Grant of License. Subject to the terms and conditions specified herein and provided there is no breach by the Authorized Agent, Verizon Wireless hereby grants to Authorized Agent a limited nonexclusive license to use the Licensed Marks in accordance with Verizon Wireless' standards throughout the Area solely in connection with the sale and promotion of Verizon Wireless CMRS and Verizon Wireless branded terminal equipment for the term of this Agreement. Periodically, Verizon Wireless will publish a list of the Licensed Marks that Authorized Agent is licensed to use under this Agreement. Verizon Wireless may at any time, in its sole discretion, add, delete, modify, amend or restrict the Marks on such list.

7.2. Authorized Agent recognizes the great value of the goodwill associated with the Licensed Marks, and it acknowledges that the Licensed Marks, and all rights therein and goodwill pertaining thereto, belong exclusively to Verizon Wireless or its Affiliates, and that the Licensed Marks have a secondary meaning in the minds of the public. Authorized Agent acknowledges and agrees that all usage of the Licensed Marks, and any goodwill established thereby, shall inure to the exclusive benefit of Verizon Wireless or its Affiliates and that this Agreement does not confer any goodwill or other interests in the Licensed Marks to Authorized Agent.

7.2.1. Authorized Agent acknowledges that the Licensed Marks and the registrations thereof are good, valid and enforceable in law and equity, and Authorized Agent agrees not to challenge or assist in challenging the validity of registrations thereof.

7.2.2. Authorized Agent acknowledges that any unauthorized use of any Marks, and any use of such Marks in violation of this Agreement, shall constitute an infringement of such Marks.

7.3. Supervision

7.3.1. For the purpose of protecting and maintaining the standards of quality established by Verizon Wireless for Equipment and services marketed under the Licensed Marks, Verizon Wireless shall have the right to supervise the marketing of Equipment and the services by Authorized Agent, to inspect and test the Equipment offered for sale by Authorized Agent, and to inspect Authorized Agent's premises at all reasonable times.

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7.3.2. All labels, packaging, designs, stationery, promotional materials, and advertising of every kind using any of the Licensed Marks shall be developed by Authorized Agent in consultation with Verizon Wireless, and shall not be publicly disseminated without Verizon Wireless' prior written approval.

7.3.3. If Verizon Wireless at any time finds the products or services marketed by Authorized Agent under the Licensed Marks to be deficient in quality or marketed in a misleading or deceptive manner or otherwise in violation of this Agreement or of any laws, then Verizon Wireless may notify Authorized Agent in writing of such deficiency, and if Authorized Agent fails to correct or eliminate such deficiency within thirty (30) days after receipt of such notice, Verizon Wireless may at its election declare this Agreement terminated.

7.4. Sub-Licenses: Authorized Agent shall not directly or indirectly license or attempt to license, whether orally or in writing, any Entity to use any of the Licensed Marks unless expressly authorized in writing by Verizon Wireless.

7.5. Disclaimer of Assignment. The parties expressly agree that Authorized Agent shall not have any right, title, or interest in the Licensed Marks, or in the registration or applications thereof, except only the right to use the Licensed Marks in connection with the services/products provided by Authorized Agent described herein. Nothing contained in this Agreement shall be construed to grant or assign to Authorized Agent any additional right, title, or interest in the Licensed Marks, or in the registrations thereof, except such limited right to use the Licensed Marks.

7.6. Restrictions on Use of Licensed Marks.

7.6.1. Authorized Agent shall not use any of the Licensed Marks unless modified with such words identifying Authorized Agent's agency relationship with Verizon Wireless as Verizon Wireless may approve in writing.

7.6.2. Authorized Agent shall not use any of the Licensed Marks or any confusingly similar marks as part of its corporate, trade or business names.

7.6.3. Authorized Agent shall not use any of the Verizon Wireless Marks that are licensed hereunder except as set forth in Verizon Wireless Indirect Corporate Identity Standards (Exhibit G).

7.6.4. Authorized Agent shall not register or otherwise use the Licensed Marks or any portion of the Licensed Marks as part of any Internet domain name, Internet address, or telephone number.

7.6.5. Authorized Agent shall not use the Licensed Marks in connection with the sale or lease of any unauthorized Equipment or service, or in any other manner not expressly authorized by this Agreement or separately in writing by Verizon Wireless.

7.7. Modification or Discontinuation of Licensed Marks. In the event that Verizon Wireless decides in its sole discretion to modify or discontinue the use of any of the Licensed Marks, or to substitute one or more Marks in place of any of the Licensed Marks, Authorized Agent agrees that within thirty (30) days after receipt or written notice from Verizon Wireless it shall:

7.7.1. Refrain from using the unmodified or discontinued Licensed Marks; and

7.7.2. Destroy or return to Verizon Wireless all designs, stationery, promotional materials, and advertising of every kind using any of the unmodified or discontinued Licensed Marks; and

7.7.3. Commence using the modified or substituted Marks in accordance with this Agreement as if such Marks had been identified herein as the original Licensed Marks.

7.8. Infringement.

7.8.1. In the event that any infringement of the Licensed Marks comes to the attention of Authorized Agent, it shall promptly notify Verizon Wireless of such infringement. Authorized Agent agrees to assist Verizon Wireless, its Affiliates, and, if applicable, any partnerships that participate in this Agreement, or its successor in interest as the case may be, in the prosecution of any claim or lawsuit against infringement of the Licensed Marks by providing such evidence and expert assistance as Authorized Agent may have within its control, and, to the extent permitted by law, Authorized Agent shall have the right to intervene, at its own expense, in any legal proceedings affecting the rights acquired by it under this Agreement. Verizon Wireless may, at its own expense and in its sole discretion, bring a claim or lawsuit to restrain any infringement of the Licensed Marks, either in its own name or in Authorized Agent's name, or may cause the joinder of Authorized Agent as a party to such lawsuit, and Verizon Wireless shall be entitled to receive and retain for its own use and benefit any recovery awarded in such lawsuit.

7.8.2. Verizon Wireless shall indemnify Authorized Agent and hold it harmless from any damages and costs imposed on Authorized Agent as a result of any claim or lawsuit

brought against Authorized Agent arising out of Authorized Agent's authorized use of the License Marks in accordance with this Agreement, provided that:

7.8.2.1. Authorized Agent shall promptly notify Verizon Wireless of any such claim or lawsuit; and

7.8.2.2. Verizon Wireless shall have the option to undertake and conduct the defense of such claims or lawsuit; and

7.8.2.3. Authorized Agent shall not settle or attempt to settle such claim or lawsuit without Verizon Wireless' prior written consent.

7.9. Infringement by Authorized Agent and Irreparable Injury. Authorized Agent acknowledges and agrees that:

7.9.1. Any use by Authorized Agent of any Mark in violation of this Agreement shall constitute an infringement or dilution of such Mark; and

7.9.2. Any infringement or dilution of a Mark by Authorized Agent shall constitute immediate and irreparable injury to Verizon Wireless not compensable in money damages and shall warrant preliminary and other injunctive and equitable relief against Authorized Agent upon a showing satisfactory to the court to which an application for relief may be made, of the failure of Authorized Agent to carry out its obligations.

7.9.3. Authorized Agent waives and shall not claim any right to any bond with respect to any application for preliminary or other injunctive relief Verizon Wireless may make to protect its Marks from infringement or dilution.

7.10. Termination.

7.10.1. The Parties shall have the right to terminate this Agreement in accordance with Sections 8 and 9 hereof.

7.10.2. Upon termination of this Agreement for any reason, all rights and privileges granted to Authorized Agent hereunder shall immediately terminate, and Authorized Agent, its trustees, receivers, successors or assigns shall have no further right to use of the Licensed Marks. Authorized Agent agrees that upon such termination it shall immediately:

7.10.2.1. destroy or return to Verizon Wireless all designs, stationery, promotional materials, and advertising of every kind using any of the Licensed Marks; and

7.10.2.2. return to the manufacturer or other supplier all products bearing the Licensed Marks, together with all labels, packaging and other promotional materials associated therewith.

8. TERM OF RELATIONSHIP. The term of this Agreement (the "Term") shall be three (3) years, which shall commence on the date this Agreement is executed by authorized representatives of both parties (the "Effective Date"). Upon expiration of the Term, this Agreement will continue on a month-to-month basis until terminated by either party, with or without cause, on thirty (30) days prior written notice, or the parties enter into a renewal agreement. It is expressly understood and agreed that neither party has any right or expectation of renewal of this Agreement beyond the Term or any month-to-month term of operation, and that either party may decide in its sole discretion not to renew this Agreement.

9. TERMINATION OF AGREEMENT

9.1. Termination. This Agreement may be terminated in the following manner:

9.1.1. Notwithstanding Section 15 of this Agreement, Verizon Wireless has the right to terminate this Agreement upon thirty (30) days written notice to Authorized Agent if:

9.1.1.1. Authorized Agent fails to pay its bills or to discharge its obligations as they become due and fails to cure such default within the thirty (30) day notice period;

9.1.1.2. Authorized Agent fails to attain and maintain the Minimum Activation Level as specified in Exhibit B and fails to cure such deficiency within the thirty (30) day notice period;

9.1.1.3. Authorized Agent fails to comply with any provision or requirement of any tariff relating to CMRS, and, if such failure is capable of being cured, Authorized Agent does not cure such failure within the thirty (30) day period.

9.1.2. Verizon Wireless has the right to terminate this Agreement immediately upon written notice to Authorized Agent if Authorized Agent commits any other material or nonmaterial breach of this Agreement, except as specified in Sections 9.1.1.1, 9.1.1.2 or 9.1.1.3 above. In addition, Verizon Wireless has the right to terminate this Agreement immediately upon written notice to Authorized Agent if:

9.1.2.1. Authorized Agent engages in conduct that, in Verizon Wireless' reasonable discretion, constitutes unethical, misleading, or unfair business practices; or

9.1.2.2. Verizon Wireless determines, in its reasonable discretion that any representation or warranty made by Authorized Agent in connection with this Agreement or its application to act as a Verizon Wireless limited Agent is untrue; or

9.1.2.3. Authorized Agent, or one or more of its personnel, is convicted of, or pleads no contest to, any felony or other crime that is likely to affect adversely the reputation or goodwill of Verizon Wireless or its Affiliates, with such effect being judged solely by Verizon Wireless; or

9.1.2.4. Authorized Agent has more than three (3) unresolved Subscriber complaints within any sixty (60) day period; or

9.1.2.5. Authorized Agent breaches the terms of this Agreement in a manner described in Sections 9.1.1.1, 9.1.1.2 or 9.1.1.3 above, three (3) or more times within any one hundred eighty (180) day period, regardless of whether such breach is cured within the thirty (30) day notice period; or

9.1.2.6. Authorized Agent ceases to conduct business at any of the Authorized Agent Locations, moves an existing Location, or opens a new store location, without prior written notice to Verizon Wireless.

9.1.3. Either party has the right to terminate this Agreement immediately upon written notice to the other if the other:

9.1.3.1. makes an assignment for the benefit of creditors; or

9.1.3.2. enters an Order for Relief or has such an order filed against it under Title II of the United States Bankruptcy Code; or

9.1.3.3. has a trustee or receiver of any substantial part of its assets appointed by any court.

9.1.4. Verizon Wireless has the right to terminate this Agreement at any time, with or without cause, upon six (6) months prior written notice to Authorized Agent.

9.1.5. This Agreement may be terminated at any time by mutual written consent of the parties.

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9.1.6. This Agreement may be terminated immediately by Verizon Wireless upon assignment of this Agreement by Authorized Agent, or any other change in ownership or principals, without express written consent by Verizon Wireless.

9.2. Cross-default. Verizon Wireless has the right, at its sole option, to terminate this Agreement effective upon delivery of written notice to Authorized Agent if Authorized Agent breaches its obligations under any other agreement between Authorized Agent and Verizon Wireless or any Affiliate thereof, and such other agreement is ultimately terminated as a result of such breach. In this event, any and all outstanding amounts owed to Verizon Wireless under all agreements between Authorized Agent and Verizon Wireless shall become due and payable to Verizon Wireless immediately upon demand.

9.3. Excusal From Performance. The time within which Authorized Agent is required to make payments to Verizon Wireless for outstanding invoices and its ability to do so is an essential term of this Agreement. If Authorized Agent fails to make payment in full to Verizon Wireless when such payment is due, then Verizon Wireless, in addition to its other remedies under this Agreement or at law or in equity, will not be required to perform its obligations hereunder including, but not limited to payment of Compensation, during the period for which payment is overdue. Verizon Wireless will be required to resume performance hereunder only at such time as Authorized Agent has fully cured its failure to make timely payment hereunder, provided that Verizon Wireless has not terminated this Agreement before that time. The withholding of performance by Verizon Wireless pursuant to this provision shall in no event be grounds for Authorized Agent to terminate this Agreement; nor shall Verizon Wireless be required at any later time to perform any performance it has previously withheld hereunder.

9.4. Obligations of Authorized Agent Upon Termination or Expiration. Upon the expiration or Termination of this Agreement by either party for any reason whatsoever, and notwithstanding any claims or defenses that Authorized Agent may assert against Verizon Wireless, Authorized Agent and its owner(s) and Affiliates shall:

9.4.1. not thereafter use any of the Licensed Marks, or any trade name, service mark, trademark, logo, insignia, symbol or decorative design similar to the Licensed Marks or heretofore used by Authorized Agent in the conduct of its business hereunder; and

9.4.2. return to Verizon Wireless all materials containing any Mark or otherwise identifying or relating to Verizon Wireless' business within ten (10) business days following the

expiration or termination date, upon instruction from Verizon Wireless, destroy all such materials; and

9.4.3. take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to any Mark; and

9.4.4. provide Verizon Wireless with an updated list of names, addresses and all other relevant information Authorized Agent possesses concerning Subscribers that Authorized Agent has enrolled in the Area; and

9.4.5. settle all outstanding accounts with Verizon Wireless including CMRS charges, inventory and consigned inventory within thirty (30) days following termination; and

9.4.6. refrain from advertising, directly or indirectly, that it was formerly an Agent of, or in any way affiliated with, Verizon Wireless.

9.5. Except as may otherwise be expressly provided herein, upon expiration or termination of this Agreement for any reason, Authorized Agent's right to receive any form of Compensation hereunder shall automatically cease, except for Compensation due to Authorized Agent at time of termination.

10. **OUTSTANDING DEBTS AND OFFSET.** Authorized Agent agrees that at any time, regardless of whether this Agreement is in effect, any sums for which Authorized Agent or any of its employees or agents is responsible as well as any amount owed to Verizon Wireless by Authorized Agent, its employees or agents, arising out of or related to this Agreement or any of the obligations or rights or relationships contemplated by this Agreement or any other agreement between the parties, for any cause whatsoever, may be offset against Compensation or any other amounts owed Authorized Agent. Such offset may include but is not limited to: Subscriber security deposits, all charges incurred by the Subscriber, including but not limited to, airtime charges, access charges, long distance charges, roaming charges (including charges outside the specific price plan's home area), cellular regional calling charges, special feature charges, and activation fees on activations where Verizon Wireless has reason to believe that Verizon Wireless' procedures to verify the applicant's identity were not followed, and any charges incurred by Subscribers signed on by unauthorized subagents. If there are insufficient amounts owed Authorized Agent by Verizon Wireless to effect such offset, Authorized Agent shall pay any remaining sums to Verizon Wireless immediately upon demand; such payment shall be made through certified funds or by wire transfer.

Authorized Agent agrees that Verizon Wireless may, at its discretion, deduct from any Compensation owed to Authorized Agent hereunder an amount equal to any debt owed by Authorized

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Agent to Verizon Wireless or its Affiliates, under this Agreement or any other agreement between Authorized Agent and Verizon Wireless or any of its Affiliates. Amounts to be set off may include amounts for which Authorized Agent is obligated to indemnify Verizon Wireless hereunder.

11. MISCELLANEOUS.

11.1. Governing Law. Except to the extent explicitly provided elsewhere in this Agreement, the interpretation and enforcement of this Agreement and all matters arising out of or relating to it shall be governed by the law of New York, including New York General Obligations Law Section 5-1401, and without regard to its conflict of laws provisions.

11.2. No Implied Duties. It is understood and agreed that this Agreement is not subject to any implied duties of good faith or fair dealing.

11.3. Severability. In the event that any provision, or part thereof, of this Agreement is declared invalid or unenforceable by a final nonappealable ruling by a court or agency of competent jurisdiction, the remaining provisions hereof shall in no way be invalidated thereby but shall continue in full force and effect, provided that the material intent of this Agreement is not altered.

11.4. Rights Cumulative/No Waiver. The rights of Verizon Wireless and Authorized Agent hereunder are cumulative, and the exercise of any rights or remedies hereunder shall not preclude the exercise by either party of other rights and remedies, available either within or outside of this Agreement, in addition to the rights or remedies exercised. Furthermore, no exercise or enforcement by Verizon Wireless or Authorized Agent of any rights or remedies hereunder or forbearance from such exercise shall preclude the exercise or enforcement by Verizon Wireless or Authorized Agent of any other right or remedy hereunder, or the exercise of enforcement of the same right or remedy at another time or in another instance.

11.5. Force Majeure.

11.5.1. Neither party shall be deemed to be in breach of this Agreement for failure to perform if such failure results from acts of God, fires, strikes, embargoes, war, insurrection, riot, explosion, earthquake, government action, epidemic and other causes beyond the reasonable control of a party.

11.5.2. Verizon Wireless shall not be liable for loss or damage or be deemed to be in breach of this Agreement for failure to perform if such failure results from:

11.5.2.1. compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof, or any court or other body of competent jurisdiction; or

11.5.2.2. acts or omissions of Authorized Agent.

Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

11.6. Injunctive Relief. In addition to Section 7 and subsection 3.3, Authorized Agent acknowledges and agrees that:

11.6.1. Any material, non-monetary breach by Authorized Agent of this Agreement shall constitute immediate and irreparable injury to Verizon Wireless not compensable in money damages and shall warrant preliminary and other injunctive or equitable relief against Authorized Agent upon a showing satisfactory to the court or arbitrator or arbitrators to which an application for relief may be made.

11.6.2. In any action for preliminary or other injunctive or equitable relief against Authorized Agent or its Affiliates under this subsection, subsection 3.3 or Section 7, Verizon Wireless shall be entitled to recover from Authorized Agent the reasonable attorney's fees, costs, and disbursements expended by Verizon Wireless.

11.6.3. Any claim by Authorized Agent with respect to termination of this Agreement or commissions is compensable by money damages only, and Authorized Agent agrees it has no right to seek preliminary or other injunctive or equitable relief against Verizon Wireless for such claim.

11.7. Indemnification.

11.7.1. Authorized Agent shall indemnify and hold harmless Verizon Wireless, its Affiliates, and their respective directors, officers, employees, contractors, agents, shareholders, and/or any successors and/or assignees thereof, and their respective heirs and legal representatives (collectively, "Indemnities"), from and against any and all obligations, losses, judgments, payments of interest, penalties, amounts paid in settlement, deficiencies, damages, injuries, including death, actions, suits, costs or liabilities, and any and all demands not yet matured into one of the foregoing, including attorney's fees and expenses incurred in the enforcement of this indemnification (collectively, "Losses"), for any claims, demands, actions, disputes, controversies, damages and/or requests for equitable or injunctive relief arising or alleged to have arisen in whole or in part out of:

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11.7.1.1. the conduct of Authorized Agent's business, or

11.7.1.2. Authorized Agent's breach or violation of any of the terms of this Agreement, or

11.7.1.3. alleged acts or omissions of the Authorized Agent and/or its affiliates, Authorized Agent personnel, employees, contractors, subcontractors or subagents; or

11.7.1.4. breach by Authorized Agent of the warranty and representation set forth in Section 12.

11.7.2. Further, Authorized Agent shall defend, indemnify, and hold harmless Verizon Wireless and the Indemnities from and against all Losses, damages and liabilities whatsoever (including all claims, actions, suits, fines, interest, penalties, costs and expenses [together, "Claims"]) including reasonable attorneys' fees incurred on account thereof incident to or arising from any of Authorized Agent's agents, subagents, employees, contractors, or subcontractors (together, "Subagents") resulting from the Authorized Agent's relationship with the Subagents or its relationship with Verizon Wireless incurred by Authorized Agent's breach of this representation and warranty, which includes, but is not limited to, any Losses resulting from Authorized Agent's breach of any other such agreement with another wireless provider.

11.7.3. Verizon Wireless shall have sole control of the defense and settlement of any claims and any litigation proceedings against Verizon Wireless that are the subject of Authorized Agent's indemnification obligations herein.

11.7.4. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

11.8. Assignment and Amendment. This Agreement is fully assignable by Verizon Wireless to any Entity, and it shall inure to the benefit of any assignee or other legal successor to the interest of Verizon Wireless hereunder. Authorized Agent may not voluntarily or involuntarily, or directly or indirectly, assign or otherwise transfer this Agreement without the prior written approval of Verizon Wireless. Subject to the foregoing sentence, this Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns and successors in interest. All amendments to this Agreement must be in writing. No amendment to this Agreement shall be effective or enforceable unless in writing and fully executed by an authorized representative of Verizon Wireless.

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11.9. No Third Party Beneficiaries. No provision of this Agreement shall be construed as conferring upon any third party any rights, benefits, obligations or duties under this Agreement.

11.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all together constituting but one agreement.

11.11. Effects of Headings. Headings to articles and paragraphs of this Agreement are to facilitate reference only, do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

11.12. Survival of Authorized Agent's Obligations. All terms, provisions, representations, warranties and obligations of Authorized Agent shall survive the expiration or termination of this Agreement and the performance by either party hereunder and shall continue in full force and effect subsequent to and notwithstanding such expiration or termination of performance until they are satisfied in full or by their nature expire.

12. ACKNOWLEDGEMENTS AND REPRESENTATIONS.

Authorized Agent acknowledges that it has not received or relied upon, any guaranty, express or implied, as to the amount of Compensation or other revenue that it may earn as a result of its agency relationship with Verizon Wireless. Authorized Agent represents and warrants that:

12.1. the execution, delivery and/or performance of this Agreement will not conflict with or result in any breach of any provision of the charter or by-laws of Authorized Agent or any agreement, contract or legally binding commitment or arrangement to which Authorized Agent is a party; and

12.2. Authorized Agent is not subject to any limitation or restriction (including, without limitation, noncompetition/exclusivity, and confidentiality arrangements) that would prohibit, restrict or impede the performance of any of Authorized Agent's obligations under this Agreement; and

12.3. Neither Authorized Agent nor any Entity affiliated with Authorized Agent is currently under contract to offer for sale CMRS from another wireless provider or another wireless provider's agent, nor is it or any such Entity contractually prohibited, under an expired/terminated contract, from representing Verizon Wireless as a CMRS provider; and

12.4. (1) This Agreement is an entirely new, distinct and separate agreement, (2) it is not a renewal or extension of any pre-existing agreement(s), and (3) Verizon Wireless will have no further obligations of any kind or character under any pre-existing agency agreement(s) (whether with Verizon Wireless or any predecessor entity). For the consideration described in this

Agreement, Authorized Agent hereby releases and forever discharges Verizon Wireless and all of its predecessors, successors, assigns, and affiliated, associated or related entities from any and all claims, demands, and causes of action of whatever kind or character (whether sounding in tort, contract, or otherwise) that Authorized Agent has, or may have in the future, whether known or unknown, based on any events that have occurred prior to the date this Agreement is signed. This release shall be interpreted as the broadest form of general release. Authorized Agent acknowledges that it enters this release of its own free will, and that there has been no duress or undue influence exerted by anyone.

12.5 Authorized Agent represents and warrants that no service performed by Authorized Agent pursuant to this Agreement shall be provided, directed, controlled, supervised, or managed, and no Subscriber Information relating to any such service shall be stored or transmitted, at, in, or through a site located outside of the United States without the advance written consent of Verizon Wireless. Authorized Agent further represents, warrants and covenants that it will not use, or allow the use, outside of the United States of any user identifications and passwords assigned to it for access to the Subscriber Information.

13. INDEPENDENT INVESTIGATION/DISCLAIMER OF REPRESENTATIONS

AUTHORIZED AGENT ACKNOWLEDGES THAT THERE HAVE BEEN NEGOTIATIONS BETWEEN ITSELF AND VERIZON WIRELESS REGARDING THIS AGREEMENT. AUTHORIZED AGENT DECIDED WHETHER TO RETAIN AN ATTORNEY FOR ADVICE AND TO REVIEW THIS AGREEMENT. AUTHORIZED AGENT IS NOT RELYING UPON ANY REPRESENTATION MADE BY VERIZON WIRELESS REGARDING THE MEANING OR EFFECT OF ANY OF THE TERMS OF THIS AGREEMENT.

VERIZON WIRELESS AND AUTHORIZED AGENT ACKNOWLEDGE THEY HAVE READ THIS AGREEMENT AND UNDERSTAND AND ACCEPT THE TERMS, CONDITIONS, AND COVENANTS CONTAINED HEREIN AS BEING REASONABLY NECESSARY TO MAINTAIN VERIZON WIRELESS' HIGH STANDARDS FOR SERVICE. AUTHORIZED AGENT ACKNOWLEDGES AND UNDERSTANDS THAT VERIZON WIRELESS MAY AT ANY TIME ALSO BE ENGAGED DIRECTLY OR INDIRECTLY THROUGH ITS DIRECT SALES FORCE, AGENTS, OTHER RETAILERS, OR OUTLETS OF ANY KIND, IN SOLICITING POTENTIAL SUBSCRIBERS FOR THE SERVICE OR OTHER SERVICES OR PRODUCTS OR FOR THE SALE, LEASE, INSTALLATION, REPAIR, OR SERVICING OF EQUIPMENT IN THE MARKET.

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AUTHORIZED AGENT ALSO ACKNOWLEDGES AND UNDERSTANDS THAT VERIZON WIRELESS MAY SELL THE SERVICE TO OTHERS WHO MAY RESELL IT. AUTHORIZED AGENT HAS INDEPENDENTLY INVESTIGATED THE CMRS OR EQUIPMENT SALES BUSINESS AND THE PROFITABILITY (IF ANY) AND RISKS THEREOF AND IS NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OF VERIZON WIRELESS OTHER THAN AS SET FORTH IN THIS AGREEMENT.

IN PARTICULAR, AUTHORIZED AGENT ACKNOWLEDGES THAT VERIZON WIRELESS HAS NOT REPRESENTED EITHER DIRECTLY OR INDIRECTLY: (A) AUTHORIZED AGENT'S PROSPECTS OR CHANCES FOR SUCCESS SELLING SERVICES UNDER THIS AGREEMENT; (B) THE TOTAL INVESTMENT THAT AUTHORIZED AGENT MAY NEED TO MAKE TO OPERATE UNDER THIS AGREEMENT (VERIZON WIRELESS DOES NOT KNOW THE AMOUNT OF THE TOTAL INVESTMENT THAT MAY BE REQUIRED FOR THIS PURPOSE); OR (C) THAT IT WILL LIMIT ITS EFFORTS TO SELL SERVICE OR ESTABLISH OTHER AGENTS OR RETAILERS IN THE AREA.
AUTHORIZED AGENT ALSO ACKNOWLEDGES THAT VERIZON WIRELESS HAS NOT REPRESENTED TO IT, EITHER DIRECTLY OR INDIRECTLY, THAT: (A) VERIZON WIRELESS WILL PROVIDE LOCATIONS OR ASSIST AUTHORIZED AGENT TO FIND LOCATIONS TO PROMOTE THE SALE OF SERVICE UNDER THIS AGREEMENT; (B) VERIZON WIRELESS WILL PURCHASE ANY PRODUCTS MADE BY AUTHORIZED AGENT THAT ARE IN ANY WAY ASSOCIATED WITH THE SERVICE SOLD BY AGENT UNDER THIS AGREEMENT; (C) AUTHORIZED AGENT WILL DERIVE A PARTICULAR AMOUNT OF INCOME FROM THE SALE OF VERIZON WIRELESS' SERVICES UNDER THIS AGREEMENT, OR VERIZON WIRELESS WILL REFUND ANY PAYMENTS MADE BY AUTHORIZED AGENT TO VERIZON WIRELESS UNDER THIS AGREEMENT; OR (D) VERIZON WIRELESS WILL PROVIDE A SALES OR MARKETING PROGRAM THAT WILL ENABLE AUTHORIZED AGENT TO DERIVE INCOME UNDER THIS AGREEMENT.

AUTHORIZED AGENT FURTHER ACKNOWLEDGES THAT VERIZON WIRELESS HAS NOT MADE ANY REPRESENTATIONS, EITHER DIRECTLY OR INDIRECTLY, REGARDING: (A) THE QUANTITY OR QUALITY OF SERVICE TO BE SOLD BY AUTHORIZED AGENT OTHER THAN AS STATED IN THIS AGREEMENT; (B) THE PROVISION BY VERIZON WIRELESS TO AUTHORIZED AGENT OF TRAINING AND MANAGEMENT ASSISTANCE; (C) THE

AMOUNT OF PROFITS, NET OR GROSS, THAT AUTHORIZED AGENT CAN EXPECT FROM ITS OPERATIONS UNDER THIS AGREEMENT; (D) THE SIZE (OTHER THAN THE GEOGRAPHIC AREA), POTENTIAL, OR DEMOGRAPHIC NATURE OF THE MARKET IN WHICH VERIZON WIRELESS' SERVICE IS AVAILABLE OR THE NUMBER OF OTHER RETAILERS OR AGENTS THAT ARE OR MAY IN THE FUTURE OPERATE IN THAT AREA; OR (E) THE TERMINATION, TRANSFER OR RENEWAL PROVISIONS OF THIS AGREEMENT OTHER THAN AS SET FORTH IN THE AGREEMENT. AUTHORIZED AGENT ACKNOWLEDGES THAT IT UNDERSTANDS THAT IT WILL NOT OBTAIN ANY EXCLUSIVE RIGHTS UNDER THIS AGREEMENT EITHER WITH RESPECT TO TERRITORY OR OTHERWISE, AND UNDERSTANDS THAT VERIZON WIRELESS MAY APPOINT OTHER AGENTS OR RETAILERS IN THE MARKET AFFECTED BY THIS AGREEMENT. AUTHORIZED AGENT ALSO ACKNOWLEDGES THAT VERIZON WIRELESS CANNOT CALCULATE IN ADVANCE THE TOTAL AMOUNT THAT VERIZON WIRELESS WILL PAY TO AUTHORIZED AGENT UNDER THIS AGREEMENT AS THAT AMOUNT DEPENDS, AMONG OTHER THINGS, ON THE QUANTITY OF SERVICE THAT SUBSCRIBERS PURCHASE FROM VERIZON WIRELESS.

14. **WAIVER AND DISCLAIMER OF RIGHTS CONSUMER RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT (THE "TEXAS DTPA").**

FOR THOSE AUTHORIZED AGENTS AUTHORIZED TO CONDUCT SALES OF CMRS IN THE STATE OF TEXAS, AUTHORIZED AGENT SPECIFICALLY ACKNOWLEDGES THAT IT IS NOT A CONSUMER (AS DEFINED IN THE TEXAS DTPA) AND THAT THE TEXAS DTPA DOES NOT APPLY TO AUTHORIZED AGENT. AUTHORIZED AGENT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISK OF ITS TRANSACTION WITH VERIZON WIRELESS. AUTHORIZED AGENT ACKNOWLEDGES AND AGREES THAT IT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH VERIZON WIRELESS. AUTHORIZED AGENT ACKNOWLEDGES THAT IT IS REPRESENTED BY LEGAL COUNSEL IN EVALUATING THIS AGREEMENT AND THAT SUCH LEGAL COUNSEL WAS NOT DIRECTLY OR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY VERIZON WIRELESS OR ANY VERIZON WIRELESS REPRESENTATIVE.

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT AUTHORIZED AGENT HAS ANY RIGHTS UNDER THE TEXAS DTPA, AUTHORIZED AGENT AGREES TO WAIVE ANY RIGHTS UNDER THE TEXAS DTPA, SECTION 17.41 ET SEQ OF THE TEXAS BUS. & COM. CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND

PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, AUTHORIZED AGENT VOLUNTARILY AGREES TO THIS WAIVER.

15. LIMITED LIABILITY.

VERIZON WIRELESS SHALL NOT BE LIABLE TO AUTHORIZED AGENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR TREBLED OR ENHANCED DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS, OR OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER SUCH DAMAGES ARE CLAIMED FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE AND WHETHER OR NOT VERIZON WIRELESS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNLESS APPLICABLE LAW FORBIDS A WAIVER OF SUCH DAMAGES.

16. DISPUTE RESOLUTION AND ARBITRATION.

Except to the extent explicitly provided below, ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRIOR OR FUTURE AGREEMENT BETWEEN THE PARTIES SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH THE WIRELESS INDUSTRY ASSOCIATION ("WIA") RULES OF THE AAA, AS MODIFIED BELOW, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. A COPY OF THE WIA RULES CAN BE FOUND ON THE AAA'S WEBSITE. THE WEBSITE INTERNET ADDRESS IS CURRENTLY:

WWW.ADR.ORG/RULES/COMMERCIAL/WIRELESS_RULES

16.1. The Federal Arbitration Act Applies. THIS AGREEMENT INVOLVES INTERSTATE COMMERCE AND IS SUBJECT TO THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1-16. THE FEDERAL ARBITRATION ACT PREEMPTS ANY INCONSISTENT STATE OR LOCAL LAW, RULE, OR REGULATION CONCERNING ARBITRATION.

16.2. Disputes Not Covered. Nothing in this Agreement shall preclude either party from:

16.2.1. Seeking to compel arbitration before a court of competent jurisdiction, should it become necessary for either party to seek to compel arbitration and a court of competent jurisdiction issues an order compelling arbitration of one or more of the

claims or controversies, then the party seeking to compel arbitration shall be entitled to recover its attorneys' fees and costs incurred in seeking to compel arbitration; or

16.2.2. Seeking to confirm or challenge any arbitral award before a court of competent jurisdiction; or

16.2.3. Seeking relief with respect to any internet domain name pursuant to the dispute resolution rules of The Internet Corporation for Assigned Names and Number or of any domain name registrar; or

16.2.4. Seeking relief with respect to any infringement or threatened infringement of a party's Marks; or

16.2.5 Seeking relief from a court of competent jurisdiction for any breach or threatened breach of the obligations set forth in subsections 3.3. or 7; or

16.2.6. Seeking emergency injunctive relief or a temporary restraining order, to the extent otherwise permitted by this Agreement, from a court of competent jurisdiction pending appointment of the arbitrator or arbitrators required by this section. Upon appointment of the arbitrator or arbitrators required by this section, the arbitrator or arbitrators shall immediately consider whether such emergency injunctive relief, or temporary restraining order, shall be continued or dissolved, and on what terms. NEITHER PARTY SHALL SEEK FROM ANY COURT ANY EMERGENCY INJUNCTIVE RELIEF OR TEMPORARY RESTRAINING ORDER THAT WOULD CONTINUE TEN (10) DAYS BEYOND THE APPOINTMENT OF THE ARBITRATOR OR ARBITRATORS.

16.3. Written Notice and Negotiation. Neither party may, except as to the items in subsection 16.2., commence any arbitration or court case without first providing written notice and an opportunity to negotiate with the other party.

16.3.1. The written notice required by this subsection shall specify the alleged claim or controversy, summarizing the factual basis for the claim or controversy and the contractual provisions at issue.

16.3.2. Within thirty (30) days of such written notice, the parties shall meet in person or by telephone and in good faith attempt to settle the alleged claim or controversy. IF THE PARTY RECEIVING THE NOTICE REFUSES TO MEET, THIS PERIOD WILL BE DEEMED TO HAVE EXPIRED UPON THE SOONER OF THIRTY (30) DAYS OR THE DATE OF SUCH REFUSAL.

16.3.3. Any applicable time periods or statutes of limitation shall be tolled during the negotiation period required by this subsection.

16.3.4. In the event a party has to go into court to enforce this Section, such party shall be entitled to receive from the other party fees incurred for such enforcement.

16.4. Additional Notice Concerning Disputed Commissions. In addition to the requirements of subsection 16.3, Authorized Agent shall not assert any claim or controversy with respect to the amount, timing, or any other issue arising out of or relating to any commission, fee, or amount paid or allegedly not paid by Verizon Wireless pursuant to this Agreement unless Authorized Agent shall have provided to Verizon Wireless, within forty-five (45) business days of the payment or first alleged due date of such commission, fee, or amount, written notice that Authorized Agent in good faith believes such commission, fee, or amount, or failure to pay such commission, fee, or amount, to be incorrect.

16.4.1. Authorized Agent must include with such notice a detailed statement of the reason why the Authorized Agent believes there is an error, and must provide therewith all supporting documentation, including, but not limited to, any relevant Service Forms, inventory reports, canceled checks, installment sales contracts, or similar materials.

16.4.2. Any objections not raised by Authorized Agent within the time period and in the manner required under this subsection shall be deemed forever waived by Authorized Agent.

16.5. Time for Commencement of Arbitration. Neither party may commence any arbitration:

16.5.1. Before satisfying the requirements of written notice and an opportunity to negotiate; or

16.5.2. Before satisfying the requirements of written notice with respect to any commission matter, if applicable; or

16.5.3. After expiration of the applicable statute of limitations, or two (2) years from the date the claim to be arbitrated accrued, whichever is less.

16.6. Place of Arbitration. ANY ARBITRATION BETWEEN THE PARTIES SHALL BE HELD, AT VERIZON WIRELESS' DISCRETION, EITHER IN NEW YORK CITY OR IN THE CITY OF THE PRINCIPAL OFFICE OF THE VERIZON WIRELESS REGION WHERE THE CONTROVERSY OR CLAIM AROSE.

16.7. Number and Selection of Arbitrators. ANY ARBITRATION BETWEEN THE PARTIES SHALL BE HEARD ON AN EXPEDITED BASIS BY THREE (3) INDEPENDENT

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ARBITRATORS, EXCEPT THAT ANY ARBITRATION BETWEEN THE PARTIES INVOLVING LESS THAN $50,000 IN THE AGGREGATE, AND NOT INVOLVING DECLARATORY OR INJUNCTIVE RELIEF, SHALL BE HEARD BY A SINGLE ARBITRATOR. SUCH ARBITRATOR OR ARBITRATORS SHALL BE FAMILIAR WITH THE WIRELESS TELECOMMUNICATIONS INDUSTRY.

16.7.1 In a three arbitrator matter, the arbitrators shall be selected as follows:

16.7.1.1. Immediately upon initiation of arbitration, the AAA shall provide the parties with a complete list of all arbitrators on the AAA's Telecommunications Panel, and a selection of at least five (5) arbitrators from the AAA's Commercial Panel and five (5) arbitrators from the AAA's Large/Complex Case Panel.

16.7.1.2. Each party shall select one (1) arbitrator either from the AAA lists or independently within fourteen (14) days of the initiation of arbitration.

16.7.1.3. Within fourteen (14) days of the selection of the later of the two (2) arbitrators selected by the parties, those arbitrators shall select a third arbitrator, either from lists to be provided by the AAA, or independently, as they choose. If the arbitrators selected by the parties cannot agree on a third arbitrator, the AAA shall appoint a third arbitrator from the AAA's Telecommunications Panel, Commercial Panel, or Large/Complex Case Panel. Any third arbitrator's fees shall be paid directly by the parties in equal shares.

16.7.2. The arbitrator in a single arbitrator matter shall be selected as follows:

16.7.2.1 Immediately upon initiation of arbitration, the AAA shall provide the parties with a selection of five (5) arbitrators from the AAA's Telecommunications Panel, and a selection of five (5) arbitrators from the AAA's Commercial Panel.

16.7.2.2 Within fourteen (14) days of initiation of the arbitration, the parties shall either have mutually agreed upon an arbitrator, whether from the AAA's list or otherwise, or shall provide to the AAA at least three (3) names from the Telecommunications Panel list provided by the AAA, and at least three names from the Commercial Panel list provided by the AAA. Each party shall rank from one (1) to six (6) (or higher, if a party leaves more than six (6) total names on the lists) the names received from the AAA and submit

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the names and ranking to the AAA. The arbitrator common to both parties' list with the lowest combined number when the rankings of each party are added together shall be appointed as the arbitrator. The arbitrator's fees shall be paid in equal shares by the parties directly to such arbitrator.

16.7.3. The AAA shall, upon being notified of the selection of an arbitrator, immediately provide such arbitrator with all documents served on or filed with it in the arbitration.

16.8. Arbitration Procedures. The following procedures shall supplement or modify the procedures in the WIA Rules.

16.8.1. Upon selection of the arbitrator or arbitrators, the parties and the arbitrator or arbitrators may mutually agree to self-administration in whole or in part of the arbitration, including direct payment of any arbitrator or arbitrators.

16.8.2. No Fast Track Arbitration as defined in the WIA Rules shall be employed in any arbitration between the parties, unless the parties mutually agree, in which case, the Fast Track rules shall govern selection of the arbitrator.

16.8.3. NO ARBITRATION BETWEEN THE PARTIES MAY PROCEED ON A CLASS BASIS, OR BE CONSOLIDATED WITH ANY OTHER ARBITRATION, WITHOUT THE WRITTEN CONSENT OF ALL PARTIES.

16.8.4. ANY ARBITRATION AWARD MAY BE REVIEWED PURSUANT TO RULE 1-6 OF THE WIA RULES.

16.8.5. NO ARBITRATION AWARD MAY REFORM OR AMEND THIS AGREEMENT.

16.8.6. ANY ARBITRATION AWARD MUST INCLUDE A STATEMENT BY THE ARBITRATOR OR ARBITRATORS OF THE REASONS FOR THE AWARD.

16.8.7. The parties may submit petitions to the neutral arbitrator for summary disposition of one or more of the issues to be arbitrated in a manner consistent with Rule 56 of the Federal Rules of Civil Procedure, and the neutral arbitrator shall rule in a manner consistent with Rule 56 on the petitions before proceeding with any hearings. Any petitions filed pursuant to this subsection shall be submitted to the neutral arbitrator no later than sixty (60) days prior to the date of the hearing.

16.8.8. NO ARBITRATION AWARD MAY INCLUDE ANY AWARD OF ATTORNEY'S FEES (EXCEPT AS MAY BE REQUIRED BY ANY STATUTE PREEMPTING THE FEDERAL ARBITRATION ACT TO SUCH EXTENT), PUNITIVE DAMAGES, EXEMPLARY DAMAGES, OR TREBLE OR OTHER MULTIPLE DAMAGES.

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16.9. Severance. If any court case is commenced involving the parties, and any controversy or claim exists or arises between the parties in such case that would be subject to arbitration pursuant to this Agreement, the controversy or claim shall be severed for resolution by arbitration pursuant to the provisions of this Agreement. If any third party not subject to the provisions of this Agreement is a necessary party to any such controversy or claim between the parties, and that third party refuses to consent to arbitration pursuant to this Agreement, all issues that can be resolved without such third party shall remain subject to this Agreement and shall be severed and resolved by arbitration before any other issues between the parties are resolved.

16.10. Confidentiality. The parties shall comply with the following confidentially provisions with respect to dispute resolution and arbitration:

16.10.1. No admission or statement made by either party in the course of a good faith negotiation pursuant to this Section 16 may be used in any fashion in any arbitration or court case. All such admissions or statements shall be deemed confidential and made pursuant to a settlement privilege. The making of any such admission or statement shall not, however, preclude the admission in any arbitration or court case of any evidence that would otherwise be admissible.

16.10.2. No admission, statement, or document made or disclosed by either party in the course of arbitration may be disclosed to any third party except as required by law or to compel arbitration, compel compliance with this Agreement, or to confirm any arbitration award. This shall not preclude disclosure to the arbitrators or the AAA, to the Affiliates and successors of a party, or to the officers, directors, employees, shareholders, or agents and professional advisors of any of them, to the extent such entities and persons agree to be bound by these provisions.

17. WAIVER OF TRIAL BY JURY. IN THE EVENT THAT THE DISPUTE RESOLUTION AND ARBITRATION CLAUSE IS DEEMED TO BE NOT ENFORCEABLE, WITH RESPECT TO ANY JUDICIAL ACTION THAT MAY ARISE UNDER OR WITH RESPECT TO THIS AGREEMENT, OR ANY RELATIONSHIP OR DEALINGS BETWEEN THE PARTIES THAT ARISE OUT OF OR BY VIRTUE OF THIS AGREEMENT, EACH PARTY AGREES TO WAIVE TRIAL BY JURY. AGENT CONSENTS TO THE BRINGING OF ANY SUCH ACTION UNDER THIS AGREEMENT TO NEW YORK OR IN THE CITY OF THE PRINCIPAL OFFICE OF THE VERIZON WIRELESS

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REGION WHERE THE CONTROVERSY OR CLAIM AROSE, SUCH VENUE TO BE CHOSEN BY VERIZON WIRELESS.

18. NOTICE. Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by: a) registered or certified mail, postage prepaid in any post office in the United States; b) hand delivery; c) overnight courier prepaid; or d) via facsimile transmission upon confirmation of receipt. If to Authorized Agent, Verizon Wireless shall address all written notices required under the terms of this Agreement to the individual whose signature appears on this Agreement at the principal place of business set forth in the preamble of this Agreement. If to Verizon Wireless, Authorized Agent shall send all notices required under the terms of this Agreement to:

Verizon Wireless
701 Brookfield Parkway
Greenville, SC 29607
Attention: Patricia Cook, Consultant, Indirect Sales Operations

With a copy to:

Verizon Wireless
One Verizon Place
Alpharetta, Georgia 30004
Attention: Director, Indirect Sales

Verizon Wireless
One Verizon Place GA1B3VGC
Alpharetta, Georgia 30004
Attention: General Counsel, South Area

19. ENTIRE AGREEMENT. This Agreement, including its exhibits, schedules and addenda, which are incorporated herein by this reference, constitutes the understanding between the parties pertaining to the subject matter hereof and supersedes any and all prior agreements and understandings. There are no other oral or written understandings or agreements between Verizon Wireless and Authorized Agent relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement in counterparts on the day and year written below.

Cellco Partnership
d/b/a Verizon Wireless

By: _____

Name: Gerald M. Fountain

Title: Regional President

Date: 7/14/08

P Communications, Inc.
d/b/a Wireless Communications

By: _____

Name: Corby S. Phillips

Title: President

Date: 6-27-08

Corby S. Phillips, Individually as Principal

Name: _____

Date: 6-27-08

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Contract Information

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 7/02/08 6:22 PM
To: Allen Hill (ahill@greenvillelaw.net); Rebecca Jones (rebecca@greenvillelaw.net)
Cc: vijay831@hotmail.com
1 attachment
Corby and Krish's P Comm.docx (13.7 KB)

Allan,

Here is the information that you asked for to write the contract with Corby and my self. If you think there is anything i'm missing or suggestions please let me know.

Also, Ron is getting anxious about our comfort & quality closing . I don't want him to have a lot of time to keep thinking about our final deal. Can we close this soon? Mike from BB & T is prepared with the financing.

Julio (Quality Inn tenant) set up and appointment with you next tuesday. We want this meeting at your office to allow you to be present. We wrote him a final letter warning (see attachment) . Our final offer to him is rent $2300.00 and he pays all utilities , water, electric, gas. One year lease only with a review to renew of restaurant condition and choice hotels international passing inspection at end of lease. If nothing is agreed he needs to vacate by July 26th.

If you have any questions please call me. I know you are very busy at this moment, thanks for your help.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

July 2, 2008

Allan,

These are the terms that I would like you to write up in a contract between myself and Corby Phillips:

P Communications, Inc

93% ownership - Krish Vijay Patel

7% ownership – Corby S. Phillips

1. Corby will receive 7% of profit after expenses of the business expenditures have been removed. First year's profit must be reinvested into the business if requested. If invested After 2nd year has option to take profit out.
2. Krish has option to buy out corby's 7% at any time; price will be determined by one fair market value assessment. In addition, Corby has the option to buy an additional share of 7% at the fair market value price when is asked to be bought out. Both parties will have to agree on price or no agreement will be made.
3. Corby has the right to view company's accounting books with 5 business day prior written notice.
4. Corby will not play any active role in the operations of the business.
5. All business decisions and all legal binding agreements must be signed by Krish.
6. Corby will not hold any legal liability of P Communications.
7. Corby will only be held liable to pay tax on his profit.
8. Corby will not be held liable specifically for any lease agreements.
9. Corby will not be held liable for any money Verizon Wireless offers to P Communications as long as Krish receives it.
10. Corby can not offer to sell his share or buy additional share to or with any third party.

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

EMILY F. TEMPLE
TERRY H. MANN, JR.
LARRY N. DANOS
S. ALLAN HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4931
FAX
(864) 242-5310
STUDENT'S EMAIL: ALLAN.HILL@MAIL.WOFFORD.EDU

November 19, 2008

PLAINTIFF'S EXHIBIT 38 K-Comm

Via Email: patricia.cook@verizonwireless.com
Verizon Wireless
Attention: Patricia L. Cook

Re: P Communications, Inc. - Ownership Change

Dear Patricia:

This letter is in regards to the change of ownership for the above mentioned company and the questions you had as a result of the change.

- The corporate name and its FEIN will remain the same, the only change will be the shareholders of the corporation.
- All accounts already open and any future accounts will remain under the control of the corporation.
- As you can see from the attached Director's Minutes of the corporation, Krish Patel will own 60% of the corporation and Keith Galley will own 40%.
- Corby Phillips has transferred all of his shares of corporate stock back to the corporation and his stock certificate has been cancelled.
- All checking accounts will remain the same.
- The new owners will carry the Dymax balance of approximately $50,000.00 as of November 18, 2008.
- The new owners will also carry the buildout funds liability.
- All equipment and fixtures on hand will transfer with the new owners.

Please let me know if you have any more questions.

Sincere regards,

S. Allan Hill

The undersigned agree to the above representations.

Krish V. Patel

Corby S. Phillips

Keith R. Galley

Ill be in touch .
Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

RE: wireless business oppt

From: krish patel (krishv.patel@hotmail.com)
Sent: Sun 7/27/08 1:36 PM
To: Kaj (kaj.patel@charter.net)

Kaj,

When I clicked on the link it came up unavailable ?

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Fri, 25 Jul 2008 05:11:16 -0700
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject: Fwd: wireless business oppt
> CC: krishv.patel@yahoo.com
>
>
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com
>
> > Date: Thu, 24 Jul 2008 14:41:02 -0700
> > From: Kaj <kaj.patel@charter.net>
> > To: Krish Patel <krishv.patel@hotmail.com>
> > Subject: wireless business oppt
> > Cc: kaj.patel@charter.net
> >

> > Krish,
> > Check this link out for wireless business for sale. Revenue=5.2M, Asking 1.9M cashflow=880K. Multiple locations in SC with 36 FT employees.
> >
> > http://www.sunbeltnetwork.com/component/sbsearch/?view=profile&lid=COLUMSC001723
> >
> > --
> > Pankaj Patel
> > President
> > Arman Consulting, Inc
> > www.armanci.com
>

FW: KVP Investments

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 8/20/08 12:14 AM
To: kaj patel (kaj.patel@charter.net); Vijay Patel (vijay831@hotmail.com)

Krish Patel - Project Manager,

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Subject: KVP Investments
Date: Tue, 19 Aug 2008 08:27:04 -0400
From: MRPavlick@BBandT.com
To: krishv.patel@hotmail.com

Krish -
I am working on the "permanent financing" for the KVP Investments loan. Can you ask your father & Pankaj if they can send me a copy of their 2007 tax returns. I have yours but the most recent tax returns I have on your father or Pankaj is from 2006.
Thanks,
Mike Pavlick
MRPavlick@BBandT.COM
(864) 242-8661 Phone
(864) 242-8428 Fax

Borrower: P COMMUNICATIONS INC, KRISH V PATEL and KEITH A GAILEY

Account Number: [redacted] Note Number: 00001

Address: 403 ASHBY PARK LANE GREENVILLE, SC 29607-0000

BB&T GREENVILLE, South Carolina

Date: August 25, 2009

PROMISSORY NOTE

BORROWER(S) REPRESENTS HEREWITH THAT THE LOAN EVIDENCED HEREBY IS BEING OBTAINED FOR BUSINESS/COMMERCIAL PURPOSES. For value received, the undersigned, jointly and severally, if more than one, promises to pay to BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation (the "Bank"), or order, at said bank at any of its offices in the above referenced city (or such other place or places that may be hereafter designated by Bank), the sum of

SIXTY THOUSAND DOLLARS & 00/100

Dollars ($ 60,000.00), in immediately available coin or currency of the United States of America.

[ ] Borrower shall pay a prepayment penalty as set forth in the Prepayment Penalty Addendum attached hereto.

Interest shall accrue from the date hereof on the unpaid balance outstanding from time to time at the:

[ ] Fixed rate of ____ % per annum.

[X] Variable rate of the Bank's Prime Rate plus 0.500 % per annum to be adjusted Daily as the Bank's Prime Rate changes. If checked here [X], the interest rate will not exceed a(n) [X] fixed [ ] average maximum rate of 9.000 % or a [ ] floating maximum rate of the greater of ____ % or the Bank's Prime Rate; and the interest rate will not decrease below a fixed minimum rate of 5.500 %. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made: [ ] when Note is repaid in full by Borrower, [ ] annually beginning on ____

[ ] Fixed rate of ____ % per annum through ____ which automatically converts on ____ to a variable rate equal to the Bank's Prime Rate plus ____ % per annum which shall be adjusted as such Prime Rate changes.

[ ] ____

Principal and interest is payable as follows:

[ ] Principal (plus any accrued interest not otherwise scheduled herein) } is due in full at maturity on ____
[ ] Principal plus accrued interest }

[X] Payable in consecutive Monthly installments of [ ] Principal [X] Principal and interest } commencing on 10/05/2009 and continued on the same day of each calendar period thereafter, in 71 equal payments of $ 934.75 with one final payment of all remaining principal and accrued interest due on 09/05/2015.

[ ] ChoiceLine Payment Option: 2% of outstanding balance is payable monthly commencing on ____ and continuing on the same day of each calendar period thereafter, with one final payment of all remaining principal and accrued interest due on ____.

[X] Accrued interest is payable Monthly commencing on October 5, 2009 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on September 5, 2009.

[X] Bank reserves the right in its sole discretion to adjust the fixed payment due hereunder Annually on 10/05/2010 and continuing on the same day of each calendar period thereafter, in order to maintain an amortization period of no more than 72 months from the date of the initial principal payment due hereunder. Borrower understands the payment may increase if interest rates increase.

[ ] Prior to an event of default, Borrower may borrow, repay, and reborrow hereunder pursuant to the terms of the Loan Agreement, hereinafter defined.

[ ] ____

[ ] Borrower hereby authorizes Bank to automatically draft from its demand deposit or savings account(s) with Bank or other bank, any payment(s) due under this Note on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) at Bank or other bank.

The undersigned shall pay to Bank a late fee in the amount of five percent (5%) of any installment past due for fifteen (15) or more days. When any installment payment is past due for fifteen (15) or more days, subsequent payments shall first be applied to the past due balance. In addition, the undersigned shall pay to Bank a returned payment fee if the undersigned or any other obligor hereon makes any payment at any time by check or other instrument, or by any electronic means, which is returned to Bank because of nonpayment due to nonsufficient funds.

All interest shall be computed and charged for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in the Bank's sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as the interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in the variable interest rate; provided that unless elected otherwise above, the fixed payment amount shall not be reduced below the original fixed payment amount. However, Bank shall have the right, in its sole discretion, to lower the fixed payment amount below the original payment amount.

This Note is given by the undersigned in connection with the following agreements (if any) between the undersigned and the Bank.

Mortgage(s) / Deed of Trust(s) granted in favor of Bank as mortgagee / beneficiary:

[ ] dated ____ in the maximum principal amount of $ ____
granted by ____

[ ] dated ____ in the maximum principal amount of $ ____
granted by ____

ACCOUNT# / NOTE#
9321838075 0000

14725C (0501)

Security Agreement(s) granting a security interest to Bank:

[X] dated 08/25/2003 given by P COMMUNICATIONS INC

[ ] dated _____ given by _____

[ ] Securities Account Pledge and Security Agreement dated _____, executed by _____

[ ] Control Agreement(s) dated _____, covering [ ] Deposit Account(s) [ ] Investment Property [ ] Letter of Credit Rights [ ] Electronic Chattel Paper

[ ] Assignment of Certificate of Deposit, Security Agreement, and Power of Attorney (for Certificated Certificates of Deposit dated _____, executed by _____

[ ] Pledge and Security Agreement for Publicly Traded Certificated Securities dated _____, executed by _____

[ ] Assignment of Life Insurance Policy as Collateral dated _____, executed by _____

[ ] Loan Agreement dated _____, executed by Borrower and [ ] Guarantor(s).

[ ] _____

[ ] _____

[ ] _____

All of the terms, conditions and covenants of the above described agreements (the "Agreements") are expressly made a part of this promissory note (the "Note") by reference in the same manner and with the same effect as if set forth herein at length and any holder of this Note is entitled to the benefits of and remedies provided in the Agreements and any other agreements by and between the undersigned and the Bank.

No delay or omission on the part of the holder in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or of any other right on any future occasion. Every one of the undersigned and every endorser or guarantor of this Note regardless of the time, order or place of signing waives presentment, demand, protest and notices of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral if at any time there be available to the holder collateral for this Note, and to the additions or releases of any other parties or persons primarily or secondarily liable.

The failure to pay any part of the principal or interest when due on this Note or to fully perform any covenant, obligation or warranty on this or on any other liability to the Bank by any affiliate (as defined in 11USC Section (101) (2)), or by any guarantor or surety of this Note (said affiliate, guarantor, and surety are herein called "Obligor"); or if any financial statement or other representation made to the Bank by any of the undersigned or any Obligor shall be found to be materially incorrect or incomplete; or if any of the undersigned shall fail to furnish information to the Bank sufficient to verify the identity of the undersigned as required under the USA Patriot Act; or in the event of a default pursuant to any of the Agreements or any other obligation of any of the undersigned or any Obligor in favor of the Bank; or in the event the Bank demands that the undersigned secure or provide additional security for its obligations under this Note and security deemed adequate and sufficient by the Bank is not given when demanded; or in the event one or more of the undersigned or any Obligor shall die, terminate its existence, allow the appointment of a receiver for any part of its property, make an assignment for the benefit of creditors, or where a proceeding under bankruptcy or insolvency laws is initiated by or against any of the undersigned or any Obligor; or in the event the Bank should otherwise deem itself, its security interest, or any collateral unsafe or insecure; or should the Bank in good faith believe that the prospect of payment or other performance is impaired; or if there is an attachment, execution, or other judicial seizure of all or any portion of the Borrower's or any Obligor's assets, including an action or proceeding to seize any funds on deposit with the Bank, and such seizure is not discharged within 20 days; or if final judgment for the payment of money shall be rendered against the Borrower or any Obligor which is not covered by insurance or debt cancellation and shall remain undischarged for a period of 30 days unless such judgment or execution thereon is effectively stayed; or the termination of any guaranty agreement given in connection with this Note, then any one of the same shall be a material default hereunder and this Note and other debts due the Bank by any one or more of undersigned shall immediately become due and payable without notice, at the option of the Bank. From and after any event of default hereunder, interest shall accrue on the sum of the principal balance and accrued interest then outstanding at the variable rate equal to the Bank's Prime Rate plus 5% per annum ("Default Rate"), provided that such rate shall not exceed at any time the highest rate of interest permitted by the laws of the State of South Carolina; and further provided that such rate shall apply after judgement. In the event of any default, the then remaining unpaid principal amount and accrued but unpaid interest then outstanding shall bear interest at the Default Rate called for hereunder until such principal and interest have been paid in full. In addition, upon default, the Bank may pursue its full legal remedies at law or equity, and the balance due hereunder may be charged against any obligation of the Bank to any party, including any Obligor. Bank shall not be obligated to accept any check, money order, or other payment instrument marked "payment in full" on any disputed amount due hereunder, and Bank expressly reserves the right to reject all such payment instruments. Borrower agrees that tender of its check or other payment instrument so marked will not satisfy or discharge its obligation under this Note, disputed or otherwise, even if such check or payment instrument is inadvertently processed by Bank unless in fact such payment is in fact sufficient to pay the amount due hereunder.

WAIVER OF TRIAL BY JURY. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS NOTE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HEREWITH OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN EVIDENCED BY THIS NOTE. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OR RIGHT TO JURY TRIAL PROVISION IN THE EVENT OF LITIGATION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION.

Unless otherwise required under a Loan Agreement, if applicable, and as long as any indebtedness evidenced by this Note remains outstanding or as long as Bank remains obligated to make advances, the undersigned shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of the Bank.

The term "Prime Rate," if used herein, means the rate of interest per annum announced by the Bank from time to time and adopted as its Prime Rate. The Prime Rate is one of several rate indexes employed by the Bank when extending credit. Any change in the interest rate resulting from a change in the Bank's Prime Rate shall become effective as of the opening of business on the effective date of the change. If this Note is placed with an attorney for collection, the undersigned agrees to pay, in addition to principal and interest, all costs of collection, including reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of acceleration or other action by Lender to collect the sums due hereunder, unless the actual attorneys' fees incurred, based upon Bank's counsel's normal hourly fees chargeable to Bank, shall be greater than 15% of principal and interest, in which case such billed amount based on such hourly rate shall be the attorneys' fee payable hereunder. All obligations of the undersigned and of any Obligor shall bind his heirs, executors, administrators, successors, and/or assigns. Use of the masculine pronoun herein shall include the feminine and the neuter, and also the plural. If more than one party shall execute this Note, the term "undersigned" as used herein shall mean all the parties signing this Note and each of them, and all such parties shall be jointly and severally obligated hereunder. Whenever possible, each provision of this Note shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. All of the undersigned hereby waive all exemptions and homestead laws. The proceeds of the loan evidenced by this Note may be paid to any one or more of the undersigned. No waivers and modifications shall be valid unless in writing and signed by the Bank. In case of conflict between the terms of this Note and the Loan Agreement or Commitment Letter issued in connection herewith, the priority of controlling terms shall be first this Note, then the Loan Agreement, and then the Commitment Letter. This Note shall be governed by and construed in accordance with the laws of South Carolina.

(SIGNATURES ON FOLLOWING PAGE)

BB&T

PROMISSORY NOTE SIGNATURE PAGE

Borrower: P COMMUNICATIONS INC

Account Number: Redact Note Number: 00001

Note Amount: $ 60,000.00 Date: 03/25/2008

Notice of Right to Copy of Appraisal: If a 1-4 family residential dwelling is pledged as collateral for this Note, you, the undersigned, have a right to a copy of the real estate appraisal report used in connection with your application for credit. If you wish to receive a copy, please notify in writing the branch office where you applied for credit. You must forward your request to the Bank no later than 90 days after the date of this Note. In your request letter, please provide your name, mailing address, appraised property address, the date of this Note, and the Account and Note Numbers shown on the front of this Note.

Waiver of Appraisal Rights: The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, the undersigned, on the day and year first written above, has caused this Note to be executed under seal.

If Borrower is a Corporation:

WITNESS:

P COMMUNICATIONS INC
NAME OF CORPORATION

By: (SEAL)

Title: President

By: (SEAL)

Title:

If Borrower is a Partnership, Limited Liability Company, or Limited Liability Partnership:

WITNESS:

NAME OF PARTNERSHIP, LLC, OR LLP

By: (SEAL)

Title:

By: (SEAL)

Title:

By: (SEAL)

Title:

If Borrower is an Individual:

WITNESS:

(SEAL)

KRISH V PATEL

Additional Co-makers:

WITNESS:

(SEAL)

KEITH A CALLEY

(SEAL)

(SEAL)

(SEAL)

1472SC (0001)

BB&T

Relationship: P COMMUNICATIONS INC

Date Prepared: 07/31/2008

Credit Approval Report	City Office: GREENVILLE/SC - COMMERCIAL LOANS		Client Profile: SB	Date Prepared: 07/31/2008
Relationship: P COMMUNICATIONS INC & KEITH R. GAILEY (Co-Borrower) Krish V. Patel (Co-Borrower)			Account #: Redacted	Date Requested: 07/29/2008
Current Relationship Risk Grade: 3n	RiskCalc:	Relationship Industry Code:	Loan ROE:	Date Promised:
Proposed Relationship Risk Grade:	Exposure Strategy:	443100 - RT	Relationship ROE:	Servicing Class:

For Clients with TBE ≤ $1,000,000

COS: 552	ALoRM:	Combined Cash Flow: +1.43	Combined Leverage: +0.37	Combined Liquidity: +36.29%

Deposit Account Information

Does Borrower have current DDA's?	Will Borrower open new DDA's?		For CRE Requests: CRE Net Operating Income:	Other Debt Service:

LDM#: L20080729012J0

	Committed	Outstanding
Request 1: P COMMUNICATIONS INC & Krish V. Patel (Co-Borrower)	$ 60,000.00	$
Existing Commitments (See Attached) Keith R. Gailey (Co-Borrower)	$ 240,000.00	$
Total Credit Exposure	$ 300,000.00	$

Obligor Name	Rate	Fees	Repayment	Collateral	Guarantor
Request 1:					
Borrower: P COMMUNICATIONS INC Krish V. Patel (Co-Borrower) Keith R. Gailey (Co-Borrower) Account #: [redacted]	Prime + 0.500%	$100.00	Source: Cash Flow from Business	Code: Equipment/Machinery Description:	Name:
Amount: $60,000.00			Description: 12 MTHS INTEREST ONLY / 72 MTHS P&I	Value: $45,000.00 Loanable Equity: $33,750.00 Prior Liens: Net Value: $33,750.00	Beacon: Guaranty: Name:
Purpose: Machinery/Equipment-Other Equipment			Amortization Period:	Code: Inventory Description:	Beacon: Guaranty: Name:
	Min Rate: 5.50%		Balloon Period:	Value: $3,000.00 Loanable Equity: Prior Liens: Net Value:	Beacon: Guaranty:
	Max Rate: 9.00%		Term: Int. Only followed by P&I Schedule	Code: Accounts Receivable Description:	Name: Beacon: Guaranty:
Type: Non Rev Note				Value: $1,000.00 Loanable Equity: Prior Liens: Net Value:	Name:
Risk Grade: 3D	Risk Rator:			Total Value: $48,000.00 Total Loanable Equity: $101,250.00 Total Prior Liens: Total Net Value: $101,250.00 Total LTV%: 42.30%	Beacon: Guaranty: Name: Beacon: Guaranty:

ACCOUNTW/NOTER

Red

1014 (0504)

Kaj003520

(2)

CERTIFICATE OF CORPORATE RESOLUTIONS
And Authorization To Borrow

I HEREBY CERTIFY to Branch Banking and Trust Company (herein "Bank") and BB&T Financial, FSB (herein "BB&T Financial"), that I am the duly elected or appointed and qualified President ("Certifying Officer") of P COMMUNICATIONS INC, a corporation organized and existing under the laws of the State of South Carolina, having its executive offices in the City of GREENVILLE, State of South Carolina (herein "Corporation"); that the taxpayer identification number of the Corporation is [redacted]; that I am the keeper of the records of the Corporation and its corporate seal, if required by law or its bylaws; that the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the Corporation held in accordance with its bylaws and the laws of said state on the 25th day of August, 2008, as taken and transcribed by me from the minutes of said meeting and compared by me with the original of said resolutions recorded in said minutes; and that the same have not in any way been modified, repealed, or rescinded but remain in full force and effect:

COPY OF RESOLUTIONS

BE IT RESOLVED that the following officers of this Corporation, President, Vice President, or any one or more of them unless otherwise limited below, are hereby authorized, empowered and directed to perform the following acts and deeds in the name of and on behalf of this Corporation:

(a) To negotiate and procure loans from the Bank and BB&T Financial up to an amount not exceeding (if there is no limit, so indicate) $ UNLIMITED in the aggregate at any one time outstanding on such terms and conditions as said officer or agent deems proper, and to negotiate and procure loans from BB&T Financial on BB&T Business Cards under such terms and conditions as contained in the BB&T Financial, FSB Commercial Card Plan Agreement; and

(b) To pledge collateral to secure and/or to guarantee the indebtedness and obligations of _____ (herein "Borrower"), who/which is a _____ (Sole owner or state, Corporation, Partnership, LLC, LLP or LLP of state), and to enter into and execute any one or more of the following: security agreement, deed of trust, guaranty agreement, mortgage, other security instrument or other writing (herein "Documents") in favor of Bank and/or BB&T Financial upon such terms, in such form, and pledging as security such collateral owned by the Corporation, as such officer deems advisable and appropriate to guarantee payment and secure performance of all obligations of Borrower to Bank and/or BB&T Financial, whether direct or indirect, absolute or contingent, or now existing or hereafter arising. Corporation acknowledges that it has an economic interest in Borrower and that the funds, credit, or financial assistance desired by said Borrower from Bank and/or BB&T Financial will only be extended upon the promise of Corporation to guarantee and secure all obligations of Borrower as set forth in the Documents; and

(c) To give security for any liabilities of the Corporation to Bank and/or BB&T Financial by pledge, mortgage, assignment, security interest, or other lien upon any real or personal property, tangible or intangible, of the Corporation, and to execute in such a form as may be required by the Bank or BB&T Financial all notes and other evidences of such loans, all instruments of pledge, mortgage, assignment, security interest, or other lien, all financing and other agreements with Bank and/or BB&T Financial relating to the terms and conditions upon which any such loans may be obtained and to the security to be furnished by this Corporation therefore, provided, however, that the endorsement of commercial or other business paper discounted may be effected by any one of them; and

(d) To discount with said Bank and/or BB&T Financial, commercial or other business paper belonging to this Corporation, made or drawn by or upon third parties, without limit as to amount; and

(e) To modify, supplement or amend such agreements, guarantees, notes or other writings, any such terms or conditions thereof, and any such security; and

(f) To pledge, assign, guarantee, mortgage, cosign, grant security interests in and otherwise transfer to Bank and/or BB&T Financial additional security and collateral for any and all debts and obligations of either this Corporation or of Borrower to Bank and BB&T Financial, whenever and however arising; and

(g) To do and perform all other acts and things deemed by any such officer or agent necessary, convenient, or proper to carry out any of the contents of these resolutions; hereby ratifying, approving, and confirming all that any such officers or agents have done or may do in the premises.

RESOLVED FURTHER, that the following officer(s), _____ are hereby authorized to enter into and execute on behalf of the Corporation foreign exchange transactions and wire transfers through the Bank and/or BB&T Financial to and from accounts of the Corporation in accordance with the Bank's and/or BB&T Financial's procedures and requirements, and such officers are hereby authorized and directed to do and perform all necessary and proper acts to carry out such authority; and

RESOLVED FURTHER, that the Certifying Officer of this Corporation shall certify to said Bank and/or BB&T Financial the names and signatures of the persons who are at present authorized to act on behalf of this Corporation under the foregoing resolutions and shall from time to time hereafter, as changes in the personnel of said officers and employees are made, immediately certify such changes to said Bank and BB&T Financial, and Bank and BB&T Financial shall be fully protected in relying on such certifications of the Certifying Officer and shall be indemnified and saved harmless in any claims, demands, expenses, loss, or damage resulting from or growing out of honoring the signature of any officer or employee so certified; and

ACCOUNTS / NOTES
952193B075 [redacted]
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IMAGE OF POOR QU
DUE TO CONDITI
ORIGINAL DOC

2)

1E 2)

RESOLVED FURTHER, that any officer, employee or person designated hereunder is authorized to sign, endorse and negotiate ny Convenience Checks issued to the Corporation in connection with the BB&T Business Card. BB&T Financial is authorized to ınor, receive and pay all Convenience Checks even though drawn or endorsed to the order of any person signing the same or ndered by him for cashing, or in payment of the individual obligation of such persons, or for deposit to his personal account(s), and 3&T Financial shall not be required or be under any obligation to inquire as to the circumstances of issuance, use or disposition of ny Convenience Checks; and

RESOLVED FURTHER, that the foregoing resolutions shall remain in full force and effect until written notice of their amendment or scission shall have been received by said Bank and BB&T Financial, and that receipt of such notice shall not affect any action taken said Bank or BB&T Financial prior thereto; and

RESOLVED FURTHER that the Certifying Officer of the Corporation is hereby authorized and directed to attest the signatures of the ove authorized officers as may be required from time to time by the Bank and/or BB&T Financial; and

RESOLVED FURTHER, that all transactions by any of the officers or employees of this Corporation on its behalf and in its name, th Bank or BB&T Financial prior to the delivery to Bank and BB&T Financial of a certified copy of the foregoing resolutions are, in all spects, hereby ratified, confirmed, approved, and adopted; and

RESOLVED FURTHER, that _____

RESOLVED FURTHER, that the following LIMITATIONS to the above apply, if any:

HEREBY CERTIFY that neither these resolutions nor any action to be taken pursuant hereto are or will be in contravention of any ovision of the articles of incorporation, bylaws or any agreement, indenture, or other instrument to which such Corporation is a rty, and that no consent by shareholders is required to authorize the actions taken by this resolution, and that the actions uthorized hereby are not in contravention of any applicable law or statute.

HEREBY FURTHER CERTIFY that the following named persons have been duly elected or appointed to the offices set opposite eir respective names, that they continue to hold these offices at the present time, and that the signatures appearing hereon are the enuine, original signatures of each respectively:

PLEASE SUPPLY GENUINE SIGNATURES HEREUNDER

President	Vice President
(Signature)	(Signature)
Type or Print Name	Type or Print Name
Treasurer	Asst. Treasurer
(Signature)	(Signature)
Type or Print Name	Type or Print Name
Secretary	Asst. Secretary
(Signature)	(Signature)
Type or Print Name	Type or Print Name
(Signature)	(Signature)
Type or Print Name	Type or Print Name

N WITNESS WHEREOF, I have hereunto affixed my name as President f the Corporation this 25 day of August, 2008.

Witness: _____ _____
(Signature of Certifying Officer)

Mike Pavlick — Type or Print Name

Kalish V. Patel — Type or Print Name

IMPRINT SEAL HERE (If Corporation has official seal)

TATE OF SOUTH CAROLINA
:OUNTY OF _____

he foregoing instrument was acknowledged before me this _____ day of _____, 0_____, by _____ (the _____) of _____ corporation, on behalf of the corporation.

_____
Notary Public

Seal)

ommission Expires: _____

477SC (8/04)

Pl. Trial Document 00263 B

Wireless Communications

September 8, 2008

Corby Phillips
[redacted]
Greenville, SC

Attn: Verizon Wireless;
Patricia Cook
Brookfield Parkway
Greenville, SC

Dear Patricia,

Please change and update all head quarter address of P Communications Inc. to:

3712-B Pelham Road
Greenville, SC 29615

Additionally, please add Krish Patel as a direct point of contact for P Communications Inc. Krish will serve as Director of Operations. He should be able to answer any questions and make all business decisions for the company.

Sincerely,

Corby S. Phillips

Kaj000087

Pl. Trial Document 00266

October 1, 2008

Verizon Wireless
Attn: Tim Butler
Patricia Cook

Dear: Tim & Patricia

This letter is to confirm in writing that Branch Banking and Trust Company (BB&T) has established the following accounts I/N/O P-Communications DBA Wireless Communications. A loan was established 8/5/2008 in the amount of $60,000. As of today $45,702 is available for their use. The loan is in good standing. P-Communications DBA Wireless Communications also has a $10,000 Business Visa account with BB&T. This account has also been handled "as agreed".

P-Communications DBA Wireless Communications also maintains a deposit relationship with BB&T. The account was opened 8/25/2008. The average collected balance since the account opened is $4,000. The account has had zero NSF activity.

If you require further information or assistance I can be reached at the numbers listed below.

Sincerely,

Mike Pavlick
Vice President
Business Services Team Leader
864-242-8661
MRPavlick@BBandT.com

EXHIBIT
52
K. PATEL

Defendants 000225

PI. Trial Document 00269

Verizon Wireless Retailer Grand Opening !

From: krish patel (krishv.patel@hotmail.com)

Sent: Tue 10/07/08 6:58 PM

To: Bogari Furniture (ivet.ivanova@bogarifurniture.com); Brandi Jackson (bjgolf12@msn.com); Brett Caldwell (bcaldwell@caldwellconstructors.com); bruce ko (bruce@newwayproperties.net); Carol Pyfrom (carol@carolpyfrom.com); Casey Moore (casey_moore@adp.com); Cheyenne Riley (cheyenne@coopsfitness.com); chris nordmeyer (cnordmeyer@pazdan-smith.com); christina perez (zetagrl21@yahoo.com); Christy (christy@moneypagesinc.com); Claudia Hinsdale (claudia@naiearlefurman.com); Clay Mardre (claym@naiearlefurman.com); Corby Phillips (corbyscott@hotmail.com); Creel (cgullic@youngos.com); Dan East Coast (designs@eastcoastsignsusa.com)

Cc: Danyale Cochran (choicehotels01@yahoo.com); David Kopelson (dkopelson@entercom.com); Deana Blanding (deana.blanding@e-hps.com); Donna Sinclair (dsinclair@youngos.com); Earle Furman (efurman@naiearlefurman.com); Gaela Bailey (gbailey@greenvillenews.com); gary (gcaldwell@caldwellconstructors.com); Jeff Saunders (jesaunders@rim.com); jim cashion (jimc@hollyoakchem.com); Jon Good (jgood@naiearlefurman.com); Keith Gailey (keith.gailey@gmail.com); Kelly VanLeeuwen (kvanleeuwen@greenvillenews.com); kevin cash (kjcash@uscupstate.edu); Kia Harvey (kharvey@ecountybank.com); kim conner (kim6750@yahoo.com); Klauber@k-plus.com (klauber@k-plus.com); Kristen Carter (mskncarter@yahoo.com); Kyle Barnell (kbarnell@yahoo.com); Marc Ford (marc@erariverside.com); Michael Pavlick (mrpavlick@bbandt.com); Phil Shin (pyshin@uscupstate.edu); price (price@hughescommercial.com); Rebecca Jones (rebecca@greenvillelaw.net); renita crain (rcrain@alrlaw.net); Richard Winley (richwininc@gmail.com); Rudy Painter (rpainter@ecountybank.com); rusty harrison (rharrison@signcraftersusa.com); Ryan (ryan@eastcoastsignsusa.com); Ryan Plantin (plantinr23@yahoo.com); shane skilles (bestkepsekret1@aol.com); Sign Source (signsource@bellsouth.net); Skip (skip@hoodhargett.com); Ted Lyerly (tlyerly@naiearlefurman.com); Tim R Derossett (trdeross@us.ibm.com); Todd Ford (todddford@mac.com); tom first data (tom.alexander@firstdata.com); Vijay Patel (vijay831@hotmail.com); vloveless@gibbonspeck.com; Young (tryoung@youngos.com); Zack Barack (zjbarack@uscupstate.edu)

1 attachment

Verizon Wireless Retailer Grand Opening !.pdf (1743.8 KB)

Please join us for our Special *Grand Opening* Celebration at our Brand New **Verizon Wireless** Retailer Location!

When : Saturday - October 18, 2008

11:00 - 2:00 - B-93.7 live remote

2:00 - 7:00 - Tail Gate Kick Off

Defendants 000249

PI. Trial Document 00270

Accessory Give Away, Blackberry Curve Raffle , Food & Fun !

Where: **3712-B Pelham Road** (Pelham Hills Shopping Center, next to Chick-fil-a)

Please see attached flyer for complete details.

Hope To See You Soon,

Krish Patel – Director of Operations

Wireless Communications

Verizon Wireless Authorized Retailer

864.275.5605 _C

864.284.1000 _O

864.281.1200 _F

This communication, including any attachment(s), may contain privileged, confidential, or private information intended for a specific individual and purpose, and is protected by law. If you are not the person for whom this information is intended, please delete it, destroy any attachment, notify me immediately, and do not copy, use, or send this message or attachment to anyone else.

Verizon wireless AGENT APPLICATION Page 1 of 4

- To avoid processing delays and rejection of application, please complete all requested information on the Application. Do not leave any blank spaces. If requested information does not apply, please indicate with "N/A" or "NONE".
- *Applicant may also attach any information deemed necessary or relevant to application for agency status.*

NOTE: If you are applying for agent (or subagent status through one of Verizon Wireless' Agents) to sell Verizon Wireless' cellular mobile radio service, Verizon Wireless' only obligation is to advise you (or the Agent who submitted your application) with the final result of Verizon Wireless' review of the application (approved or not approved).

Agency Status Requested: PostPay AND PrePay Agent X Data Agent

Please indicate Agent status: ☐ New X Existing Agent-Please list region(s): Carolinas

Are you requesting to have Sub-Agent(s)? X No ☐ Yes - Subagent must complete an entire Agent Application Packet, including Attachments 1 and abide by Attachment 2.

General Agent Information

1. Legal Name of Company (as listed on Certificate/Business License): P.Communications Inc.
   (If company was known or previously operated under a different name(s), please list name(s):
2. List all dba names: Wireless Communications
3. Agent Mailing Address and applicable county (notices will be sent to this address) and length of time at this location:
   2007 Augusta St Greenville,SC 29605
4. Name, home address, and title of each Principal(s)/Owner(s) with 20% or more ownership (each principal/owner must complete a copy of page 1 and 2 of Attachment 1):
   Krish V Patel – Director of Operations , 408 Ashby Park Lane Greenville, SC 29615
5. Type of Company:

☐ Corporation* ☐ Sole Proprietorship ☐ Limited Liability Company (LLC) ☐ Partnership*

*State and Date of Incorporation SC 05-2008 *Type of Corporation/Partnership S-Corp

For Corporations attach: ***Certified Certificate of Incorporation AND Certified Certificate of Good Standing*** **(photocopies are NOT acceptable)**
For Partnership or Sole Proprietorship attach:
Certified Local / state registration to do business **(photocopies are NOT acceptable)**
For New Company attach: ***Business Registration***
(If company previously operated under a different name(s), please list name(s) and address(es):

6. Name of Parent Company if Subsidiary: NONE
7. Person Completing Application: Krish V Patel
   Position/Title: Director of Operations
8. List primary store location and length of time at this address: 3712-B Pelham Road, Greenville, SC 29607 – October 1st, 2008
9. Is this building: ☐ Owned by you? X Leased

10a. Do you have existing retail stores? X Yes* ☐ No

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*If yes, please list name, full address, functions (ie, sales, service, installation), all other store locations and length of time at each location: 3712-B Pelham Road Greenville, SC 29615 – October 1, 2008 - current & 2007 Augusta St Greenville, SC 29605-October 28, 2008- current

(please complete this information on the credit application)

10b. If no, where do you plan to open a store? Please list full address.

(please complete this information on the credit application)

10c. Do you plan to open additional locations? X Yes* ☐ No
*If yes, where, and when is the estimated opening (mo/yr)? _____

Target Locations

	Name	Address	City	State	Zip
1	**Wireless Communications**	**2007 Augusta Street**	**Greenville**	**SC**	**29605**
2	**Wireless Communications**	**3712 Pelham Road**	**Greenville**	**SC**	**29615**
3	Five Forks	2531 Woodruff Road	Simpsonville	SC	29681
4	Powdersville Plaza	2365 Earle E. Morris Hwy	Greenville	SC	29611
5	Freshmarket	27 S. Pleasantburg Drive	Greenville	SC	29607
6	Sweetbriar	1120 N. Pleasantburg Dr.	Greenville	SC	29607
7	Clemson/Central	1286 Eighteen Mile Road	Central	SC	29630
8	Travlers Rest	148 Walnut Lane	Travelers Rest	SC	29690
9	Anderson (Eastside)	1611 E. Greenville Street	Anderson	SC	29621
10	Mauldin	207 W. Butler Road	Mauldin	SC	29662
11	Fountain Inn	1122 N Main Street	Fountain Inn	SC	29644
12	Downtown	103 N Main Street	Greenville	SC	29601

Approximatly, 2 years will be needed to open all locations on this list.

11. Nature of Current Business. (Please list and explain all former, current, and other affiliations with wireless carriers and Verizon Wireless in all markets (please explain, include markets). Please also include all business or personal relationships or acquaintances who market or sell wireless products and/or services.

1. Retail Customer Support / Service Technician - Verizon Wireless, Greenville, SC – May 2004 – September 2004

2. Retail Sales Representative - Verizon Wireless, Greenville, SC – October 2004 – October 2007

Revised 06/07

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
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3. Assistant Store Manager – Verizon Wireless, Greenville, SC – December 2007 – June 2007

4. Director of Operations – Wireless Communications, Greenville, SC – May 2008 - Current

12. Please list nature of business of any parent company, affiliates, and/or subsidiaries. na

13a. Please list all names and full addresses of key personnel responsible for wireless operations in your company. Please also indicate background of all individuals.

Keith Robert Gailey

[redacted]
Simpsonville, SC 29681

Keith held positions with Verizon Wireless for over 8 years. Keith served many positions in the direct retail channel inclu senior sales representative and store manager of a top ten store in the south area of Verizon Wirel

13b. How many people will you employ? 5 Outside sales 15 Inside sales 5 Administration

13c. Are you willing to require employees to have formal training from Verizon Wireless? XYes ☐ No

13d. Are you willing to participate in periodic training sessions? XYes ☐ No

14. Please list all communication products and/or services you are selling or have sold in the past. State effective dates for these products and/or services.
Full line up of Verizon Wireless retail products. Post Pay, Pre Pay, Data and Enhanced Service Products. 2004 – Current

15. Does Applicant propose to carry other types of wireless products or services? ☐ Yes* X No
*If yes, please describe below.
NA

Sales

16. Do you currently offer any of the following: X Cellular ☐ Wireless Data ☐ PrePay

17. Have you ever sold cellular service? X Yes* ☐ No
*If yes, what carriers and specific timeframe Verizon Wireless , 2004 - Current

18. Have you ever sold wireless data? X☐ Yes* ☐ No
*If yes, what carriers and specific timeframe Verizon Wireless , 2004 - Current

19. Have you ever sold PrePay? X Yes* ☐ No
*If yes, what carriers and specific timeframe Verizon Wireless, 2004 - Current

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20. What are you interested in selling: (check all that apply) X Cellular X Wireless Data X PrePay

21. What will be your sales focus? (% of overall cellular sales activity vs. other products/services) _100_____%

22. Please indicate the breakdown of your proposed wireless business. (percentage of PrePay, post-pay & wireless data)
_5_____% PrePay ___70_____% Post-Pay _____25_____% Wireless Data

23. Activation Projections
Please estimate your monthly activation totals for the following:
Cellular _50_____/month Wireless Data __15____/month PrePay __5_____/month

24. Do you have a facility capable of performing installations of cellular phones into vehicles? ☐ Yes ☐ No

25. Do you plan on selling PrePay replenishment cards or PINS? X Yes ☐ No

Sales and Promotion Strategies

CO-OP Advertising

29. Will you participate in CO-OP advertising? X Yes ☐ No

Advertising Budget

30. What will your monthly advertising budget be? 1000.00

31. What are your advertising plans for the upcoming year? What is your strategy?
Our goal will be to determine the target market. Advertising will be done by radio, mailers, networking and promo events. Our strategy will be to drive customers to our store by providing a perfect customer experience.

Newspaper	x Yes ☐ No	Direct Mail	x Yes ☐ No
Journals	xYes ☐ No	Billboards	x Yes ☐ No
Television	x Yes ☐ No	Internet	x Yes ☐ No
Cable	Yes x No	Other	x Yes ☐ No
Radio	x Yes ☐ No		

Displays and Merchandising

Signage (Interior/Exterior)

Interior:

Wireless Communications

Exterior: (Signage specs/size)

Please attach your company logo and layout of your store design.

33. Applicant understands that Verizon Wireless at its own expense may request a credit report and perform a criminal

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background investigation on Applicant ,mpany and individuals.

34. Applicant understands that unless and until an Authorized Agency Agreement has been executed by BOTH Verizon Wireless and the Applicant that there is no Contractual relationship between the parties.

35. For your Information: All Verizon Wireless agents, upon execution of an Authorized Agency Agreement between company and Verizon Wireless, are required to provide to Verizon Wireless proof of insurance coverage. See Attachment 2, hereto, for complete requirements.

I HEREBY CERTIFY THAT THE INFORMATION IN THIS DOCUMENT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF ANY INFORMATION PROVIDED IS DETERMINED TO BE INCORRECT BY VERIZON WIRELESS, THAT MY APPLICATION FOR AGENCY STATUS CAN BE DENIED, OR MY AGENCY STATUS REVOKED.

I HEREBY CERTIFY THAT NO PERSON, CORPORATION OR OTHER ENTITY AFFILIATED WITH COMPANY ("COMPANY") APPLYING FOR AGENT STATUS IS OWNED, IN WHOLE OR IN PART, EMPLOYED BY, OR OTHERWISE CONNECTED WITH MY COMPANY, IS CONTRACTUALLY PROHIBITED UNDER A CURRENT, EXPIRED/TERMINATED CONTRACT FROM REPRESENTING VERIZON WIRELESS AS A PROVIDER OF WIRELESS SERVICES. COMPANY FURTHER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS VERIZON WIRELESS AGAINST ALL FUTURE OBLIGATIONS, LOSSES, DAMAGES, ACTIONS, SUITS, COSTS OR LIABILITIES (INCLUDING ATTORNEY'S FEES) INCURRED IN THE ENFORCEMENT OF THIS INDEMINIFICATION, FOR ANY CLAIMS OR DEMANDS ARISING OR ALLEGED TO HAVE ARISEN IN WHOLE OR IN PART OUT OF ANY BREACH OR VIOLATION OR ALLEGED BREACH OR ALLEGED VIOLATION OF ANY TERM OF ANY CONTRACTUAL AGREEMENT SUCH COMPANY MAY HAVE ENTERED WITH ANY OTHER CARRIER OR THIRD PARTY ENTITY.

I RECOGNIZE THAT VERIZON WIRELESS MAY REJECT ANY OR ALL APPLICATIONS IN ITS SOLE AND ABSOLUTE DISCRETION, AND THAT VERIZON WIRELESS'S ONLY OBLIGATION PURSUANT TO THIS APPLICATION IS TO TELLTHE APPLICANT AFTER FINAL REVIEW WHETHER THE APPLICATION HAS BEEN APPROVED OR DENIED. VERIZON WIRELESS WILL HAVE NO OTHER OBLIGATION TO ANY APPLICANT UNLESS AND UNTIL AN AUTHORIZED AGENCY AGREEMENT IS SIGNED BY A VERIZON WIRELESS REGIONAL OR AREA PRESIDENT. I UNDERSTAND THAT ANY INVESTMENTS OR COMMITMENTS I MAKE BEFORE RECEIVING A PROPERLY SIGNED AUTHORIZED AGENCY AGREEMENT ARE ENTIRELY AT MY OWN RISK. NO PERSONNEL OF VERIZON WIRELESS EXCEPT THE AREA PRESIDENT WITH AREA GENERAL COUNSEL CONCURRENCE ARE AUTHORIZED TO ALTER THIS PROCESS.

POTENTIAL AGENT PRINCIPAL SIGNATURE: KRISH V PATEL

TITLE: Director of Operations DATE: October 28, 2008

verizonwireless

AUTHORIZATION FOR RELEASE OF INFORMATION

EACH principal/owner owning 20% of Agent's company is required to complete ALL information on pages 1 and 2 of this Attachment 1. The Authorization for Release of Information expedites the approval process.

Please make as many copies of Attachment 1 as needed.

TO WHOM IT MAY CONCERN:

I, Krish V Patel, am having a confidential background investigation of me performed by a security firm retained by Verizon Wireless, in connection with prospective business undertakings. The investigation is being conducted by an authorized agent of a security firm retained by Verizon Wireless.

Therefore, I do hereby authorize a review and full disclosure of all records, or any part thereof, concerning myself or any business enterprise with which I am associated to a duly authorized agent of a security firm retained by Verizon Wireless.

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

whether said records are public private, and including those which may be d. ed to be of a privileged or confidential nature.

The intention of this authorization is to provide information, which will be utilized as investigative source material. The undersigned releases all persons, including but not limited to, a security firm retained by Verizon Wireless and its agents, and any person or firm which may have retained them to conduct this investigation, from any and all liability which may arise in connection with this investigation or the good faith disclosure of any information by or on behalf of the undersigned or by any individual or firm contacted in connection with this investigation.

Photostatic copies of this authorization will be considered as effective and valid as the original.

The original copy of this Authorization must be returned to Verizon Wireless.

Witness: Danielle Clark

Date: 10/28/08

Applicant: Krish V Patel

Signature:

Title: Director of Operations

Date: October 28, 2008

Social Security No: Redacted

Date of Birth Redacted

Home Address 403 Ashby Park Lane
Greenville, SC 29607

Drivers License No: Redacted

PLEASE PRINT LEGIBLY

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CONFIDENTIAL

PERSONAL HISTORY QUESTIONNAIRE

- To avoid processing delays and rejection of application, please complete all requested information on this questionnaire. Do not leave any blank spaces. If requested information does not apply, please indicate with "N/A" or "NONE".
- *Applicant may also attach any information deemed necessary or relevant to application for agency status.*

1. Name Patel, Krish V
(Last, First, Middle Initial)

Any Other Names Used

Addresses During the Last Ten Years (use attachments if needed): 2

Current Permanent Residence: Number of Years at Residence

Street Address 408 Ashby Park Lane

City, State & Zip Code Greenville, SC 29607

Home Tel. No. 864-275-5605 (Area Code and No.) Bus. Tel. No. 864-275-5605 (Area Code and No.)

County of Residence Greenville

2. Criminal History:
Have you ever been convicted of a crime(s) or entered a plea of nolo contendere to a criminal charge(s) other than a minor traffic violation(s)? ☐ Yes X No
If yes, please furnish details, location and dates.

3. Criminal History:
Please list the locations and dates of all criminal convictions of company officers and directors, other than minor traffic violations. If none, state "NONE".
NONE

4. Bankruptcy History:
List any bankruptcy actions during the past ten years. Include dates filed and where, whether business or personal, court of jurisdiction, docket number and name and address of trustee. If none, state "NONE".
NONE

5. Litigation History:
List any pending and settled suits or actions for the past five years. Provide a brief description, dates, liability estimate, court of jurisdiction and location and disposition. If none, state "NONE".
NONE

Revised 06/07

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ATTACHMENT 2

INSURANCE REQUIREMENTS

Please be advised that Verizon Wireless requires its Agents and subagents to maintain the following insurance with a recognized insurance company qualified to do business in Verizon Wireless' area.

Agent will maintain at all times during the Term or any extension or renewal thereof, at Authorized Agent's sole expense, the following insurance with an insurance company rated at least A- by A.M. Best Company and qualified to do business within the Area. Coverage required can be satisfied with primary and/or umbrella excess coverage.

(1) Workers Compensation Insurance as required by each State in which Authorized Agent performs the Agreement including a waiver of subrogation endorsement against Verizon Wireless.

(2) Comprehensive or Commercial General Liability Insurance with the minimum limits as follows:

(a) For Authorized Agents having three (3) or less Authorized Locations: One Million Dollars ($1,000,000) per occurrence for bodily and personal injury or death; One Million Dollars ($1,000,000) per occurrence for property damage; and One Million Dollars ($1,000,000) per occurrence for product liability arising out of any defects in the use of Equipment; and

(b) For Authorized Agents having more than three (3) Authorized Locations: Two Million Dollars ($2,000,000) per occurrence of bodily and personal injury or death; Two Million Dollars ($2,000,000) per occurrence for property damage; and Two Million Dollars ($2,000,000) per occurrence for product liability arising out of any defects in the use of Equipment.

(3) Employer's Liability Insurance within limits of not less than:

(a) For Authorized Agents having three (3) or less Authorized Locations, Two Hundred Thousand Dollars ($200,000) per occurrence; and

(b) For Authorized Agents having more than (3) Authorized Locations, One Million Dollars ($1,000,000) per occurrence.

(4) Automobile Liability, Comprehensive Form, with limits of not less than Five Hundred Thousand Dollars ($500,000) for bodily injury and Five Hundred Thousand Dollars ($500,000) for property damage per occurrence or One Million Dollars ($1,000,000) combined single limit, subject to such deductibles Verizon Wireless determines to be appropriate, covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles [used on any occasion in the business of the Authorized Agent]. Authorized Agent acknowledges, understands and expressly agrees that all personal vehicles will meet applicable State statutory requirements for business use.

(5) For Authorized Agents having at any time during the Term or any extension or renewal thereof more than three (3) Authorized Locations, Professional Liability Insurance (Errors and Omissions) covering trademark and copyright infringement with limits of not less than One Million Dollars ($1,000,000) per occurrence.

(6) If Authorized Agent has more than twenty-five (25) Locations: A Commercial Crime Bond or Employee Dishonesty Policy with a minimum aggregate limit of Five Hundred Thousand dollars ($500,000) is required.

At Verizon Wireless' request, Authorized Agent will submit to Verizon Wireless a Certificate of Insurance, on an ACORD form or a similar form acceptable to Verizon Wireless in its sole discretion, evidencing all required insurance prior to the start of any work under this Agreement and annually thereafter on the policy renewal date during the Term or any extension or renewal thereof. Cellco Partnership or Verizon Wireless and, if applicable, any partnerships who participate in this Agreement, will be named as "Additional Insured" on all policies except Workers Compensation, Employees Liability Insurance and Professional Liability coverage, which will also be so evidenced on the Certificate of Insurance. Each insurance policy will state by endorsement that such policy will not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to Verizon Wireless.

The insurance required in Sections 1 through 5 will provide that such insurance is primary coverage with respect to all insureds and will contain a waiver against Cellco Partnership or Verizon Wireless and any applicable Partnership(s) and such parties' Affiliates, directors, officers, employees and partners.

Verizon Wireless may at any time, upon sixty (60) calendar days prior written notice to Authorized Agent, require Authorized Agent to increase the amount of coverage of any type of insurance or require different or additional types of insurance to reflect inflation, higher damage awards or comparable factors which make the above limits insufficient to cover Authorized Agent liabilities and Authorized Agent's obligations to indemnify of Verizon Wireless.

Revised 06/07

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

Please note: The insurance requirements set forth above are included in Verizon Wireless' Authorized Agency Agreement. If you and Verizon Wireless enter into an Agreement, failure to provide Verizon Wireless with evidence of your insurance coverage in the form required by Verizon Wireless could result in termination of the Agreement.

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
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CONFIDENTIAL

PLAINTIFF'S EXHIBIT 37 PAGE C

verizon wireless

AUTHORIZATION FOR RELEASE OF INFORMATION

EACH principal/owner owning 20% of Agent's company is required to complete ALL information on pages 1 and 2 of this Attachment 1: The Authorization for Release of Information expedites the approval process.

Please make as many copies of Attachment 1 as needed.

TO WHOM IT MAY CONCERN:

I, KEITH GRIGGY, am having a confidential background investigation of me performed by a security firm retained by Verizon Wireless, in connection with prospective business undertakings. The investigation is being conducted by an authorized agent of a security firm retained by Verizon Wireless.

Therefore, I do hereby authorize a review and full disclosure of all records, or any part thereof, concerning myself or any business enterprise with which I am associated to a duly authorized agent of a security firm retained by Verizon Wireless, whether said records are public or private, and including those which may be deemed to be of a privileged or confidential nature.

The intention of this authorization is to provide information, which will be utilized as investigative source material. The undersigned releases all persons, including but not limited to, a security firm retained by Verizon Wireless and its agents, and any person or firm which may have retained them to conduct this investigation, from any and all liability which may arise in connection with this investigation or the good faith disclosure of any information by or on behalf of the undersigned or by any individual or firm contacted in connection with this investigation.

Photostatic copies of this authorization will be considered as effective and valid as the original.

The original copy of this Authorization must be returned to Verizon Wireless.

Witness: [signature]

Date: 11/1/08

Applicant: KEITH GRIGGY

Signature: [signature]

Title: Director of Sales

Date: 10/30/08

Social Security No: Redacted

Date of Birth: Redacted

Home Address: [redacted]
Simpsonville, SC 29681

Drivers License No: Redacted

PLEASE PRINT LEGIBLY

Revised 06/07

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It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

CONFIDENTIAL

PERSONAL HISTORY QUESTIONNAIRE

- To avoid processing delays and rejection of application, please complete all requested information on this questionnaire. Do not leave any blank spaces. If requested information does not apply, please indicate with "N/A" or "NONE".
- *Applicant may also attach any information deemed necessary or relevant to application for agency status.*

1. Name Gailey Keith R
(Last, First, Middle Initial)

Any Other Names Used

Addresses During the Last Ten Years (use attachments if needed):

Current Permanent Residence: Number of Years at Residence 1

Street Address [redacted]

City, State & Zip Code Simpsonville SC 29681

Home Tel. No. 864-238-0900 (Area Code and No.) Bus. Tel. No. 864-284-1000 (Area Code and No.)

County of Residence Greenville

2. Criminal History:
Have you ever been convicted of a crime(s) or entered a plea of nolo contendere to a criminal charge(s) other than a minor traffic violation(s)? ☐ Yes ☒ No
If yes, please furnish details, location and dates.

3. Criminal History:
Please list the locations and dates of all criminal convictions of company officers and directors, other than minor traffic violations. If none, state "NONE".

NONE

4. Bankruptcy History:
List any bankruptcy actions during the past ten years. Include dates filed and where, whether business or personal, court of jurisdiction, docket number and name and address of trustee. If none, state "NONE".

NONE

5. Litigation History:
List any pending and settled suits or actions for the past five years. Provide a brief description, dates, liability estimate, court of jurisdiction and location and disposition. If none, state "NONE".

NONE

Revised 09/07

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ATTACHMENT 2

INSURANCE REQUIREMENTS

Please be advised that Verizon Wireless requires its Agents and subagents to maintain the following insurance with a recognized insurance company qualified to do business in Verizon Wireless' area.

Agent will maintain at all times during the Term or any extension or renewal thereof, at Authorized Agent's sole expense, the following insurance with an insurance company rated at least A- by A.M. Best Company and qualified to do business within the Area. Coverage required can be satisfied with primary and/or umbrella excess coverage.

(1) Workers Compensation insurance as required by each State in which Authorized Agent performs the Agreement including a waiver of subrogation endorsement against Verizon Wireless.

(2) Comprehensive or Commercial General Liability insurance with the minimum limits as follows:

(a) For Authorized Agents having three (3) or less Authorized Locations: One Million Dollars ($1,000,000) per occurrence for bodily and personal injury or death; One Million Dollars ($1,000,000) per occurrence for property damage; and One Million Dollars ($1,000,000) per occurrence for product liability arising out of any defects in the use of Equipment; and

(b) For Authorized Agents having more than three (3) Authorized Locations: Two Million Dollars ($2,000,000) per occurrence of bodily and personal injury or death; Two Million Dollars ($2,000,000) per occurrence for property damage; and Two Million Dollars ($2,000,000) per occurrence for product liability arising out of any defects in the use of Equipment.

(3) Employer's Liability insurance within limits of not less than:

(a) For Authorized Agents having three (3) or less Authorized Locations, Two Hundred Thousand Dollars ($200,000) per occurrence; and

(b) For Authorized Agents having more than (3) Authorized Locations, One Million Dollars ($1,000,000) per occurrence.

(4) Automobile Liability, Comprehensive Form, with limits of not less than Five Hundred Thousand Dollars ($500,000) for bodily injury and Five Hundred Thousand Dollars ($500,000) for property damage per occurrence or One Million Dollars ($1,000,000) combined single limit, subject to such deductibles Verizon Wireless determines to be appropriate, covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles (used on any occasion in the business of the Authorized Agent). Authorized Agent acknowledges, understands and expressly agrees that all personal vehicles will meet applicable State statutory requirements for business use.

(5) For Authorized Agents having at any time during the Term or any extension or renewal thereof more than three (3) Authorized Locations, Professional Liability Insurance (Errors and Omissions) covering trademark and copyright infringement with limits of not less than One Million Dollars ($1,000,000) per occurrence.

(6) If Authorized Agent has more than twenty-five (25) Locations: A Commercial Crime Bond or Employee Dishonesty Policy with a minimum aggregate limit of Five Hundred Thousand dollars ($500,000) is required.

At Verizon Wireless' request, Authorized Agent will submit to Verizon Wireless a Certificate of Insurance, on an ACORD form or a similar form acceptable to Verizon Wireless in its sole discretion, evidencing all required insurance prior to the start of any work under this Agreement and annually thereafter on the policy renewal date during the Term or any extension or renewal thereof. Cellco Partnership or Verizon Wireless and, if applicable, any partnerships who participate in this Agreement, will be named as "Additional Insured" on all policies except Workers Compensation, Employees Liability Insurance and Professional Liability coverage, which will also be so evidenced on the Certificate of Insurance. Each insurance policy will state by endorsement that such policy will not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to Verizon Wireless.

The insurance required in Sections 1 through 6 will provide that such insurance is primary coverage with respect to all insureds and will contain a waiver against Cellco Partnership or Verizon Wireless and any applicable Partnership(s) and such parties' Affiliates, directors, officers, employees and partners.

Verizon Wireless may at any time, upon sixty (60) calendar days prior written notice to Authorized Agent, require Authorized Agent to increase the amount of coverage of any type of insurance or require different or additional types of insurance to reflect inflation, higher damage awards or comparable factors which make the above limits insufficient to cover Authorized Agent liabilities and Authorized Agent's obligations to indemnify of Verizon Wireless.

Revised 06/07

The information contained herein is proprietary and should not be disclosed to unauthorized persons.

Please note: The insurance requirements set forth above are included in Verizon Wireless' Authorized Agency Agreement. If you and Verizon Wireless enter into an Agreement, failure to provide Verizon Wireless with evidence of your insurance coverage in the form required by Verizon Wireless could result in termination of the Agreement.

The information contained herein is proprietary and should not be disclosed to unauthorized persons.

5yrs [redacted]
Greenville, SC 29607

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PHILIP I. TEMPLE
BOBBY H. MANN, JR.
LARRY N. BRIGGS
S. ALLAN HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4995
FAX
(864) 242-5300
SENDER'S EMAIL: AHILL@GREENVILLELAW.NET

November 19, 2008

Via Email: patricia.cook@verizonwireless.com
Verizon Wireless
Attention: Patricia L. Cook

Re: P Communications, Inc. - Ownership Change

Dear Patricia:

This letter is in regards to the change of ownership for the above mentioned company and the questions you had as a result of the change.

- The corporate name and its FEIN will remain the same, the only change will be the shareholders of the corporation.
- All accounts already open and any future accounts will remain under the control of the corporation.
- As you can see from the attached Director's Minutes of the corporation, Krish Patel will own 60% of the corporation and Keith Gailey will own 40%.
- Corby Philips has transferred all of his shares of corporate stock back to the corporation and his stock certificate has been cancelled.
- All checking accounts will remain the same.
- The new owners will carry the Dymax balance of approximately $50,000.00 as of November 18, 2008.
- The new owners will also carry the buildout funds liability.
- All equipment and fixtures on hand will transfer with the new owners.

Please let me know if you have any more questions.

Sincere regards,

S. Allan Hill

The undersigned agree to the above representations:

Krish V. Patel

Corby S. Phillips

Keith R. Gailey

TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

DEC 0 4 2008

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OR BOTH OF A SOUTH CAROLINA OR FOREIGN CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the corporation is P Communications, Inc.

2. The corporation is (complete either a or b, whichever is applicable):

   a. a domestic corporation incorporated in South Carolina on 4/28/08; or

   b. a foreign corporation incorporated in _____ (State) on _____ (Date), and authorized to do business in South Carolina on _____ (Date).

3. The street address of the present registered office in South Carolina is [redacted] (Street & Number) in the city of Greenville, South Carolina 29615 (Zip Code).

4. If the current registered office is to be changed, the street address to which its registered office is to be changed is 2007 Augusta St. (Street Address) in the city of Greenville South Carolina 29605 (Zip Code).

5. The name of the present registered agent is Corby S. Phillips.

6. If the current registered agent is to be changed, the name of the successor registered agent is Krish V. Patel.

   * I hereby consent to the appointment as registered agent of the corporation:

   _____ (Signature of New Registered Agent)

7. The address of the registered office and the address of the business office of the registered agent, as changed, will be identical.

8. Unless a delayed date is specified, this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended) Upon Filing.

Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws, as amended, the written consent of the registered agent may be attached to this form.

081208-0115 FILED: 12/04/2008
P COMMUNICATIONS, INC.
Filing Fee: $10.00 ORIG
0.00579
Mark Hammond South Carolina Secretary of State

Pl. Trial Document 00287

P Communications, Inc.
Name of Corporation

Date December 2, 2008

P Communications, Inc.
Name of Corporation

Signature

Krish V. Patel, President
Type or Print Name and Title

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy must be filed.
2. Filing Fee (payable to the Secretary of State at the time of filing this document) – $10.00
3. Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of Laws, as amended, the registered agent can file this when the only change is the street address of the registered office. In this situation, the following statement should be typed on the form above the registered agent's signature: "The corporation has been notified of this change." In this case the filing fee is $2.00.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

Form **2553**
(Rev. December 2007)
Department of the Treasury
Internal Revenue Service

Elec..on by a Small Business Corporation

(Under section 1362 of the Internal Revenue Code)

▶ See Parts II and III on page 3 and the separate instructions.
▶ The corporation can fax this form to the IRS (see separate instructions).

OMB No. 1545-0146

Note. This election to be an S corporation can be accepted only if all the tests are met under Who May Elect on page 1 of the instructions; all shareholders have signed the consent statement; an officer has signed below; and the exact name and address of the corporation and other required form information are provided.

Part I Election Information

Type or Print		
	Name (see instructions) P Communications, Inc.	A Employer identification number R
	Number, street, and room or suite no. (If a P.O. box, see instructions.) 3712 Pelham Rd., Unit B	B Date incorporated April 28, 2008
	City or town, state, and ZIP code Greenville, SC 29615	C State of incorporation South Carolina

D Check the applicable box(es) if the corporation, after applying for the EIN shown in A above, changed its ☐ name or ☐ address

E Election is to be effective for tax year beginning (month, day, year) (see instructions) ▶ 9 / 1 / 08

Caution. A corporation (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than January 1.

F Selected tax year:

(1) ☐ Calendar year
(2) ☑ Fiscal year ending (month and day) ▶ December
(3) ☐ 52-53-week year ending with reference to the month of December
(4) ☐ 52-53-week year ending with reference to the month of ▶

If box (2) or (4) is checked, complete Part II

G If more than 100 shareholders are listed for item J (see page 2), check this box if treating members of a family as one shareholder results in no more than 100 shareholders (see test 2 under Who May Elect in the instructions) ▶ ☐

H Name and title of officer or legal representative who the IRS may call for more information	I Telephone number of officer or legal representative
Krish V. Patel	(864) 616-6798

If this S corporation election is being filed with Form 1120S, I declare that I had reasonable cause for not filing Form 2553 timely, and if this election is made by an entity eligible to elect to be treated as a corporation, I declare that I also had reasonable cause for not filing an entity classification election timely. See below for my explanation of the reasons the election or elections were not made on time (see instructions).

Sign Here

Under penalties of perjury, I declare that I have examined this election, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of officer — Title: President — Date: 12/4/08

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 18629R Form 2553 (Rev. 12-2007)

Kaj 002003

Pl. Trial Document 00289

Part I Election Information (continued)

J Name and address of each shareholder or former shareholder required to consent to the election. (See the instructions for column K.)	K Shareholders' Consent Statement. Under penalties of perjury, we declare that we consent to the election of the above-named corporation to be an S corporation under section 1362(a) and that we have examined this consent statement, including accompanying schedules and statements, and to the best of our knowledge and belief, it is true, correct, and complete. We understand our consent is binding and may not be withdrawn after the corporation has made a valid election. (Sign and date below.)		L Stock owned or percentage of ownership (see instructions)		M Social security number or employer identification number (see instructions)	N Shareholder's tax year ends (month and day)
	Signature	Date	Number of shares or percentage of ownership	Date(s) acquired		
Krish V. Patel 408 Ashby Park Lane Greenville, SC 29607		12-2-08	60	9/1/08	Redacted	12/31
Keith R. Gailey [redacted] Simpsonville, SC 29681		12-4-08	40	9/1/08	Redacted	12/31

Kaj 002004

Pl. Trial Document 00290

Part II Selection of Fiscal Tax Year (see instructions)

Note. All corporations using this part must complete item O and item P, Q, or R.

O Check the applicable box to indicate whether the corporation is:

1. ☑ A new corporation adopting the tax year entered in item F, Part I.
2. ☐ An existing corporation retaining the tax year entered in item F, Part I.
3. ☐ An existing corporation changing to the tax year entered in item F, Part I.

P Complete item P if the corporation is using the automatic approval provisions of Rev. Proc. 2006-46, 2006-45 I.R.B. 859, to request (1) a natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) or (2) a year that satisfies the ownership tax year test (as defined in section 5.08 of Rev. Proc. 2006-46). Check the applicable box below to indicate the representation statement the corporation is making.

1. Natural Business Year ▶ ☐ I represent that the corporation is adopting, retaining, or changing to a tax year that qualifies as its natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) and has attached a statement showing separately for each month the gross receipts for the most recent 47 months (see instructions). I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

2. Ownership Tax Year ▶ ☐ I represent that shareholders (as described in section 5.08 of Rev. Proc. 2006-46) holding more than half of the shares of the stock (as of the first day of the tax year to which the request relates) of the corporation have the same tax year or are concurrently changing to the tax year that the corporation adopts, retains, or changes to per item F, Part I, and that such tax year satisfies the requirement of section 4.01(3) of Rev. Proc. 2006-46. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

Note. If you do not use item P and the corporation wants a fiscal tax year, complete either item Q or R below. Item Q is used to request a fiscal tax year based on a business purpose and to make a back-up section 444 election. Item R is used to make a regular section 444 election.

Q Business Purpose—To request a fiscal tax year based on a business purpose, check box Q1. See instructions for details including payment of a user fee. You may also check box Q2 and/or box Q3.

1. Check here ▶ ☐ if the fiscal year entered in item F, Part I, is requested under the prior approval provisions of Rev. Proc. 2002-39, 2002-22 I.R.B. 1046. Attach to Form 2553 a statement describing the relevant facts and circumstances and, if applicable, the gross receipts from sales and services necessary to establish a business purpose. See the instructions for details regarding the gross receipts from sales and services. If the IRS proposes to disapprove the requested fiscal year, do you want a conference with the IRS National Office?

☐ Yes ☐ No

2. Check here ▶ ☐ to show that the corporation intends to make a back-up section 444 election in the event the corporation's business purpose request is not approved by the IRS. (See instructions for more information.)

3. Check here ▶ ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event (1) the corporation's business purpose request is not approved and the corporation makes a back-up section 444 election, but is ultimately not qualified to make a section 444 election, or (2) the corporation's business purpose request is not approved and the corporation did not make a back-up section 444 election.

R Section 444 Election—To make a section 444 election, check box R1. You may also check box R2.

1. Check here ▶ ☐ to show that the corporation will make, if qualified, a section 444 election to have the fiscal tax year shown in item F, Part I. To make the election, you must complete Form 8716, Election To Have a Tax Year Other Than a Required Tax Year, and either attach it to Form 2553 or file it separately.

2. Check here ▶ ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event the corporation is ultimately not qualified to make a section 444 election.

Part III Qualified Subchapter S Trust (QSST) Election Under Section 1361(d)(2)*

Income beneficiary's name and address	Social security number
Trust's name and address	**Employer identification number**

Date on which stock of the corporation was transferred to the trust (month, day, year) ▶ / /

In order for the trust named above to be a QSST and thus a qualifying shareholder of the S corporation for which this Form 2553 is filed, I hereby make the election under section 1361(d)(2). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(d)(3) and that all other information provided in Part III is true, correct, and complete.

Signature of income beneficiary or signature and title of legal representative or other qualified person making the election | Date

*Use Part III to make the QSST election only if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes its election to be an S corporation. The QSST election must be made and filed separately if stock of the corporation is transferred to the trust after the date on which the corporation makes the S election.

Kal 002005



ACTION TAKEN BY WRITTEN CONSENT OF ALL THE DIRECTORS

OF

P COMMUNICATIONS, INC.

The undersigned, constituting all of the Directors of P Communications, Inc., hereby adopted the following resolutions by unanimous consent and without the necessity of a meeting therefor pursuant to the authority granted in Section 33-8-210 of the South Carolina Business Corporation Act.

WHEREAS, the current corporation share ownership is as follows:

	Number of Shares	Certificate #
Corby S. Phillips	100	1
Total Shares Outstanding	100	and;

WHEREAS, Corby S. Phillips wishes to transfer his One Hundred (100) shares of corporate stock back to the corporation and wishes to resign as an officer and director of the corporation; and,

WHEREAS, the corporation intends to add additional shareholders and issue Sixty (60) new shares of corporate stock to Krish V. Patel; and,

WHEREAS, the corporation intends to issue Forty (40) new shares of corporate stock to Keith R. Gailey; and,

WHEREAS, the corporation intends to appoint new officers and new directors;

NOW, THEREFORE, it is unanimously resolved as follows:

RESOLVED, the corporation's Secretary is authorized to cancel the shares of Corby S. Phillips and accept his resignation.

RESOLVED FURTHER, the corporation is hereby authorized and directed to issue to Krish V. Patel, a certificate representing Sixty (60) fully paid and nonassessable shares of the corporation.

RESOLVED FURTHER, the corporation is hereby authorized and directed to issue to Keith R. Gailey, a certificate representing Forty (40) fully paid and nonassessable shares of the corporation.

RESOLVED FURTHER, the corporation's share ownership, after the after the issuance of the above shares is ratified by the shareholders and recognized to be as follows:

	Number of Shares	Certificate No.
Krish V. Patel	60	2
Keith R. Gailey	40	3
Total Shares Outstanding	100	and;

RESOLVED, the officers of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel	President
Keith R. Gailey	Secretary, Treasurer

RESOLVED FURTHER, the directors of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel
Keith R. Gailey

Effective the 15th day of December, 2008.

Krish V. Patel

Keith R. Gailey

I consent.

Corby S. Phillips

Defendants 000616

Pl. Trial Document 00293



AMENDMENT No. 1

This Amendment No. 1 to the Authorized Agency Agreement (this "Amendment") is made and entered into by and between Cellco Partnership doing business as Verizon Wireless (hereinafter "Verizon Wireless") and P Communications, Inc., a South Carolina corporation, doing business as Wireless Communications (hereinafter "Authorized Agent") and Corby S. Phillips,, individually as principal (hereinafter "Principal") for attachment to the Authorized Agency Agreement No. CAR-SC007-2008, as amended (the "Agreement").

WHEREAS, Verizon Wireless and Authorized Agent have entered into an Agreement pursuant to which Authorized Agent shall provide Verizon Wireless with certain services;

WHEREAS, Verizon Wireless and Authorized Agent mutually desire to amend the Agreement to reflect Authorized Agent's removal of Principal Corby S. Phillips and the replacement of two Principals to the existing Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Any and all references to "Principal" shall now include the following names:

   Krish V. Patel;
   Keith R. Gailey

2. Except as specifically amended herein, the remaining terms of the Agreement shall remain in full force and effect.

3. Krish V. Patel and Keith R. Gailey, newly added Principals, agree they have received a copy of the aforementioned Authorized Agency Agreement, have read and understands it, and, furthermore, agree to be bound by the terms and conditions set forth therein.

4. Krish V. Patel and Keith R. Gailey understand, acknowledge and agree that they are jointly and severally liable for the fulfillment of the terms of the Agreement and any and all liabilities, obligations and/or duties owed to Verizon Wireless.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Amendment pursuant to due authority.

Celico Partnership
d/b/a Verizon Wireless

By: _____

Name: Jerald M. Fountain

Title: Regional President

Date: 12/4/08

P Communications, Inc.
d/b/a Wireless Communications

By: _____

Name: Krish V. Patel

Title: President

Date: 12-2-08

Corby S. Phillips,
Individually as departing Principal

By: _____

Date: 12-2-08

Krish V. Patel,
Individually as new Principal

By: _____

Date: 12-2-08

Keith R. Gailey,
Individually as new Principal

By: _____

Date: 12-3-08

TO BE A TRUE AND CORRECT COPY
TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

DEC 04 2008

SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OR BOTH OF A SOUTH CAROLINA OR FOREIGN CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Sections 33-5-102 and 33-15-108 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the corporation is P Communications, Inc.

2. The corporation is (complete either a or b, whichever is applicable):

   a. a domestic corporation incorporated in South Carolina on 4/28/08 ; or

   b. a foreign corporation incorporated in _____ (State) on _____ (Date), and authorized to do business in South Carolina on _____ (Date).

3. The street address of the present registered office in South Carolina is 33 Doverdale Rd. (Street & Number) in the city of Greenville, South Carolina 29615 (Zip Code).

4. If the current registered office is to be changed, the street address to which its registered office is to be changed is 2007 Augusta St. (Street Address) in the city of Greenville South Carolina 29605 (Zip Code).

5. The name of the present registered agent is Corby S. Phillips

6. If the current registered agent is to be changed, the name of the successor registered agent is Krish V. Patel .

   *I hereby consent to the appointment as registered agent of the corporation.

   _____ (Signature of New Registered Agent)

7. The address of the registered office and the address of the business office of the registered agent, as changed, will be identical.

8. Unless a delayed date is specified, this will be effective upon acceptance for filing by the Secretary of State (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended) Upon Filing.

*Pursuant to Sections 33-5-102(5) and 33-5-108(5) of the 1976 South Carolina Code of Laws, as amended, the written consent of the registered agent may be attached to this form.

081208-0115 FILED: 12/04/2008
P COMMUNICATIONS, INC.
Filing Fee: $10.00 ORIG
000579
Mark Hammond South Carolina Secretary of State

PI. Trial Document 00296

P Communications, Inc.
Name of Corporation

Date December 2, 2008

P Communications, Inc.
Name of Corporation

Signature

Krish V. Patel, President
Type or Print Name and Title

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy must be filed.
2. Filing Fee (payable to the Secretary of State at the time of filing this document) - $10.00
3. Pursuant to Section 33-5-102(b) of the 1976 South Carolina Code of Laws, as amended, the registered agent can file this when the only change is the street address of the registered office. In this situation, the following statement should be typed on the form above the registered agent's signature: "The corporation has been notified of this change." In this case the filing fee is $2.00.

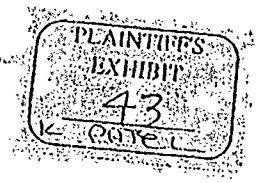
Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTICE OF CHG OF REG OFFICE OR AGT.doc

Form Revised by South Carolina
Secretary of State, January 2000

Defendants 000580

Pl. Trial Document 00297



ACTION TAKEN BY WRITTEN CONSENT OF ALL THE DIRECTORS

OF

P COMMUNICATIONS, INC.

The undersigned, constituting all of the Directors of P Communications, Inc., hereby adopted the following resolutions by unanimous consent and without the necessity of a meeting therefor pursuant to the authority granted in Section 33-8-210 of the South Carolina Business Corporation Act:

WHEREAS, the current corporation share ownership is as follows:

	Number of Shares	Certificate #
Krish V. Patel	60	2
Keith R. Galley	40	3
Total Shares Outstanding	100	and;

WHEREAS, Keith R. Galley desires to sell his Forty (40) shares of corporate stock to the corporation in consideration of Five Thousand Dollars ($5,000.00) and wishes to be removed as an officer and director of the corporation;

WHEREAS, the corporation intends to appoint new officers and new directors;

NOW, THEREFORE, it is unanimously resolved as follows:

RESOLVED FURTHER, the corporation's share ownership, after the after the issuance of the above-shares is ratified by the shareholders and recognized to be as follows:

	Number of Shares	Certificate No.
Krish V. Patel	60	2
Total Shares Outstanding	60	and;

RESOLVED FURTHER, the officers of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel — President, Secretary, Treasurer

RESOLVED FURTHER, the directors of the corporation for this year and forward, unless changed by entry into the minute book, are as follows:

Krish V. Patel

Effective the 1st day of January, 2009.

Krish V. Patel

I CONSENT.

Keith R. Gailey

Defendants 000618

From: Krish Patel <krish.patel@wcvzw.com>
Sent: Thursday, April 15, 2010 9:23 PM
To: kaj.patel@armancl.com
Subject: Re: Pryor HUD

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

No problem .

I am always interested in looking for new sites .

We can get together and talk about possibilities .

Do you have time next week?

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Premium Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: "Kaj Patel" <kaj.patel@armancl.com>
Date: Thu, 15 Apr 2010 21:01:49 -0400
To: 'Krish Patel'<krish.patel@wcvzw.com>
Cc: <vijay831@hotmail.com>
Subject: RE: Pryor HUD

Got it. Looks fine. Thanks for getting it closed.

I checked verizon's site as you sugested, there is no store listed for that area. When do you want to get together and talk? Please let me know your interest level in this as soon as posible since I have another party I can partner up with in this if you are not interested. I have already looked at a few buildings that are available for lease, rent range is $1200 to $1800 and are willing to do a 1yr term.
Thanks.

Pankaj (Kaj) Patel
Arman Consulting, Inc.
www.armancl.com

Print | Close Window

Subject: RE: When do you anticipate Allan will have the draft agreement ready for me to review?
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Sat, Jun 05, 2010 1:11 pm
To: <krish.patel@wcvzw.com>

Krish,
I know you a busy with the opening in Laurens, but can you spare 15-20 mins today or tomorrow sunday and meet with me for an issue I would like to discuss with you in person. We can meet somewhere on woodruff rd for a drink or something if you are coming from your hoem and is convenient.
Thanks

Pankaj (Kaj) Patel

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Friday, June 04, 2010 8:33 AM
To: Kaj Patel
Subject: Re: When do you anticipate Allan will have the draft agreement ready for me to review?

Kaj,

Allan said he was busy today so it would be until next week.

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Premium Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: "Kaj Patel" <kaj.patel@charter.net>
Date: Fri, 4 Jun 2010 08:31:08 -0400
To: <krish.patel@wcvzw.com>
Subject: When do you anticipate Allan will have the draft agreement ready for me to review?

Krish,
When do you anticipate Allan will have the draft agreement ready for me to review?
Thanks

Pankaj (Kaj) Patel

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P COMMUNICATIONS, INC.

Note:This online database was last updated on 2/12/2012 6:02:15 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	KRISH V PATEL
ADDRESS:	2007 AUGUSTA ST
CITY:	GREENVILLE
STATE:	SC
ZIP:	29605
SECOND ADDRESS:	

FILE DATE:	04/28/2008
EFFECTIVE DATE:	04/28/2008
DISSOLVED DATE:	/ /

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	12/04/2008	CHANGED AGT/ADD FROM-CORBY S PHILLIPS	
Incorporation	04/28/2008	STATUTORY CLOSE CORPORATION	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

PLAINTIFF'S EXHIBIT 47 PAGE

Hot Wire

Twenty-something biz whiz Krish Patel made a good call

/ by Jae Chebatoris

Maybe it's because he was born first that Krish Patel doesn't like coming in second.

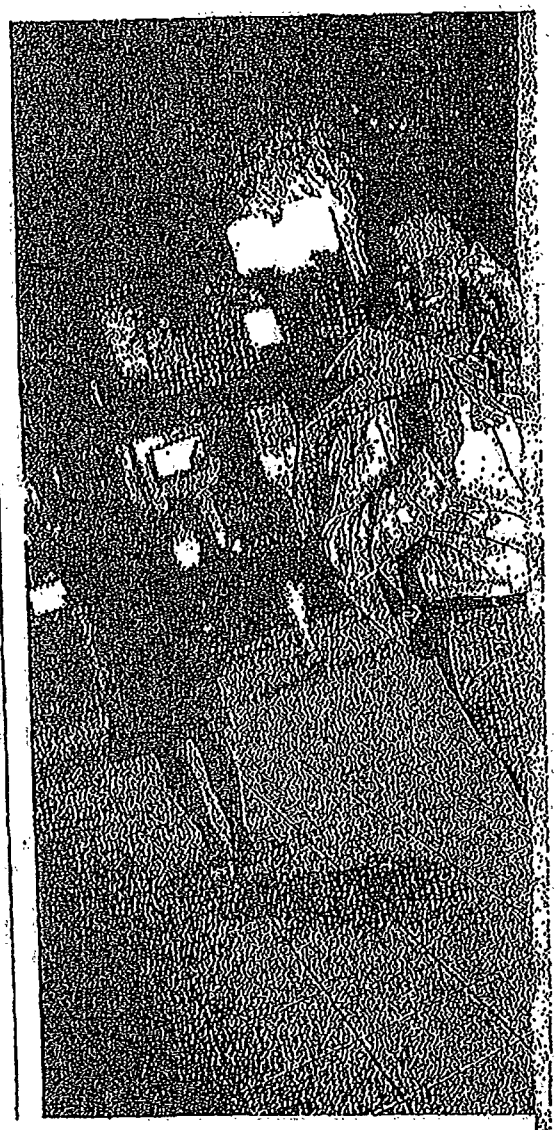
Krish has built what you might call a wireless empire across much of South Carolina and northern Georgia as the president of Wireless Communications, a premium retailer for Verizon Wireless. He is also only 25 years old, and, no, he made his fortune the old-fashioned way—he earned it.

His drive, determination, and entrepreneurial spirit were clearly handed down from his mother and father who came to the United States from Gujrath, India. "They came with nothing but a dream," says Krish of his parents' spirit to succeed. They owned a liquor store business (in Houston, where Krish was born) and a dry-cleaning business (in Atlanta), before moving to Greenville, where they opened the very first hotel in Traveler's Rest (a Sleep Inn) and then another in 2000.

While still in middle school, Krish helped out with the housekeeping on the weekends for $10 or sometimes $20. After a string of retail jobs (three at one time when he was 16), he started as a customer service representative at Verizon when he was 18, and by his sophomore year of college at University of South Carolina—Upstate, Krish was working full time as both a sales rep and a student.

Sounds like a drag for that age, maybe? Not for Krish. He loved it. "I was working 40 hours a week, going to class full time, and it was incredible." He surpassed his sales quota that first year, reaching 157 percent. By the time he was 21, he decided to open his own Verizon store, launching Wireless Communications in 2009, the year he graduated college (using the business plan he had drafted in one of his college classes). By the end of 2009, he had opened five stores, and the company reached $3.3 million in sales. He now has 23 stores, with plans to reach 30 by the end of this year, 50 by the end of next.

Krish, who also fluently speaks a dialect



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

INITIAL ANNUAL REPORT OF CORPORATIONS

CL-1
(Rev. 8/7/03)
3134

Office Use Only
▶ File Number _____ ▶ ENDING PERIOD _____ Month _____ Year _____ SID Number _____

For Secretary of State Use Only

Date "Application for Charter" filed with Secretary of State JAN 24 2008
Date of "Request for authority to do business in this state" (Foreign Corp.) _____
FED EI Number _____ Business Code (Office Use Only) _____

NAME OF CORPORATION VP Enterprises, Inc.

PHYSICAL ADDRESS OF HEADQUARTERS (NUMBER AND STREET)			MAILING ADDRESS FOR TAX MATTERS	
408 Ashby Park Ln.				
CITY AND STATE	ZIP	COUNTY	CITY AND STATE	ZIP
Greenville, SC	29607	Greenville		

1. State of incorporation: South Carolina 2. Indicate month corporation closes its books: December
3. Nature of principal business in SC:
4. Location of registered office of the corporation in the state of SC is same as above in the city of _____. Registered agent at such address is Vijay R.Patel
5. Location of principal office in SC (street, city, zip and county): Same as above
6. Date business commenced in SC: Telephone # 864-363-6767
7. If a professional corporation, are all shareholders, one-half of the directors (or individuals functioning as directors) and all officers (other than the secretary and treasurer) qualified to practice the professional services engaged in by the corporation?
8. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the corporation are:

SSN	Name/Title	Business Address and Office
Redacted	Pankaj Patel President	same as above
Redacted	Vijay R.Patel VP	same as above
Redacted	Krish Vijay Patel	same as above

ATTACH REMITTANCE HERE

9. The total number of **authorized shares** of capital stock itemized by class and series, if any, within each class is as follows:

Number of Shares	Class	Series
100,000	common	

10. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:

Number of Shares	Class	Series
100	common	

1. Fee due with this report	▶ 1.	25 00
2. Interest due	▶ 2.	
3. Penalty due	▶ 3.	
4. Total - Due	▶ 4.	25 00

Make remittance payable to SC Department of Revenue and mail to:
SC Department of Revenue, License and Registration Unit, Columbia, SC 29214-0140.

AFFIDAVIT

I, the undersigned incorporator or principal officer of the corporation for which this return is made, declare that this return, including accompanying statements and schedules, has been examined by me and is to the best of my knowledge and belief a true and complete return made in good faith.

S. Allan Hill, Esquire
THIS RETURN PREPARED BY

January 21, 2008
DATE

Rebecca Jones
SIGNATURE OF INCORPORATOR OR OFFICER AUTHORIZED TO SIGN

Incorporator
TITLE

Defendants 000665

Pl. Trial Document 00364

ACTION TAKEN BY WRITTEN CONSENT BY INCORPORATOR

OF

VP ENTERPRISES, INC.

February 14, 2008

The following resolutions are adopted by the written consent of the incorporator of the company pursuant to the authority granted in South Carolina Revised Code § 33-2-105(a)(2) & (b).

1. Resolution Adopting Bylaws

The following resolution adopting bylaws for the company is adopted:

> RESOLVED, that the form of bylaws presented to the incorporators, a copy of which is attached to these minutes and incorporated herein by reference are hereby adopted and approved as the bylaws of the company. Said bylaws shall remain in full force and effect until amended or repealed by action of the board of directors or shareholders.

2. Resolution Electing Directors

The corporation bylaws provide that the corporation shall have two director(s). The following resolution with respect to the election of the first board of directors of this corporation is hereby adopted:

> RESOLVED, that the following persons are hereby elected as the initial directors of the corporation, to serve as such until the next election of directors, or until their successors have been duly elected and qualified:
>
> Pankaj Patel
> Vijay R. Patel

3. Resolution Affirming Articles of Incorporation

Articles of incorporation for the company were filed with the South Carolina Secretary of State, a stamped filed copy of which was returned and shall be retained by the corporation in its minute book. This resolution reaffirms all of the terms and provisions contained in said articles of incorporation.

6. Appointment of Officers

The following resolution with respect to the appointment of the officers of the corporation is hereby adopted:

RESOLVED, that the following persons are hereby appointed to the offices set opposite their respective names:

Pankaj Patel	President
Vijay R. Patel	Vice President
Krish Patel	Secretary, Treasurer

Each such officer shall serve in accordance with the provisions of the bylaws and until his successor shall have been duly appointed and qualified.

7. Tax Identification Number

The following resolution with respect to obtaining a federal tax identification number for the corporation is hereby adopted:

RESOLVED, that the proper officer shall file the appropriate form to obtain a federal tax identification number for the corporation.

8. Adoption of Seal

The following resolution with respect to the adoption of a corporation seal is hereby adopted:

RESOLVED, that the corporate seal, an impression of which is affixed in the margin of the by-laws, is hereby approved and adopted as the official corporate seal of the corporation. The use of such seal on any document is optional and not required. The absence of the corporation seal on any document shall not affect the validity of the document in any way.

9. Selection of Accounting Method and Annual Accounting Year

The following resolution with respect to the adoption of a fiscal year for the corporation and a method of accounting are hereby adopted:

RESOLVED, that the corporation hereby adopts an accounting in a timely manner as recommended by the accountants of the corporation.

RESOLVED FURTHER, that the corporation hereby adopts a calendar year as its accounting period.

VP Enterprises, Inc.

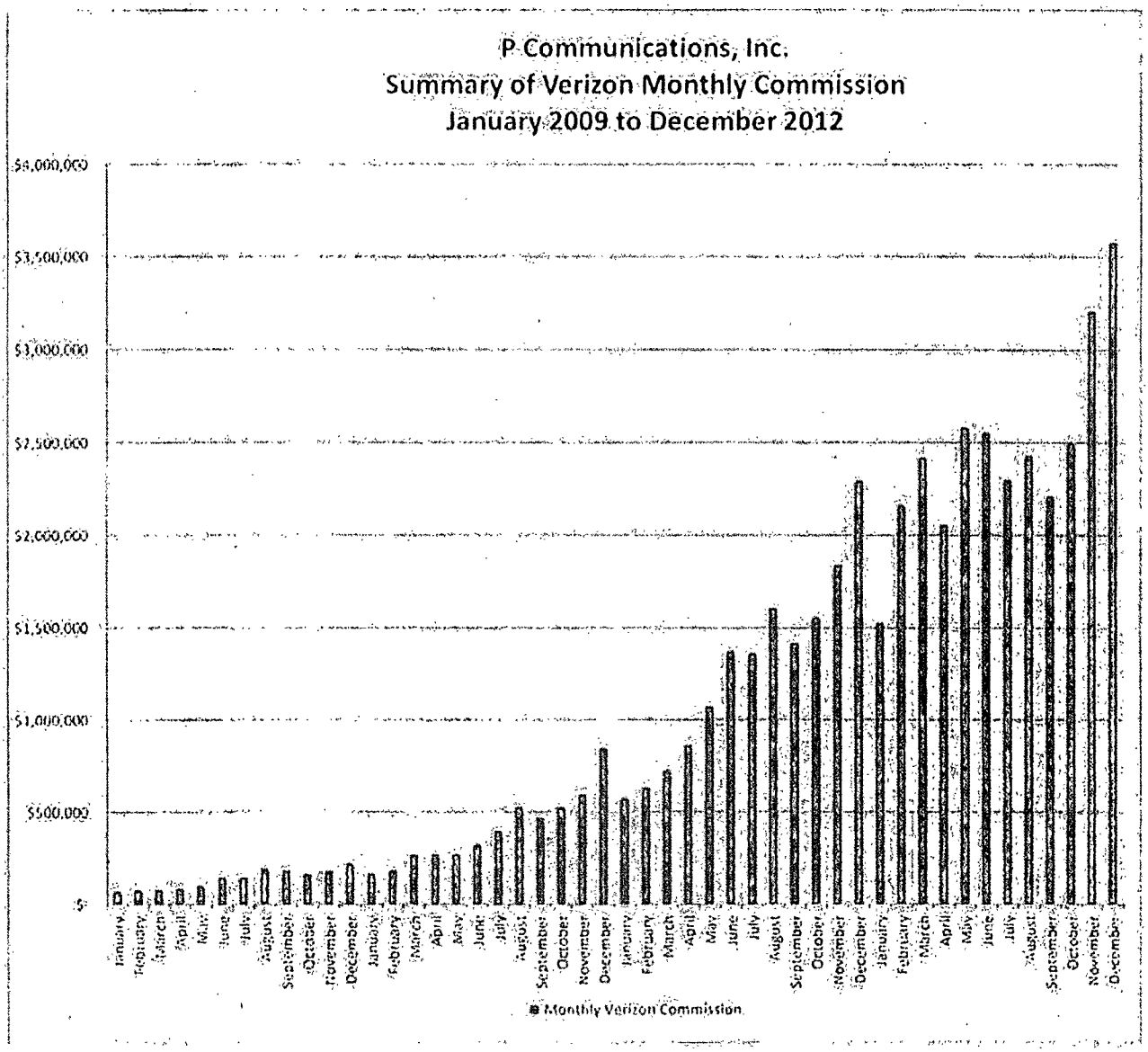
Corporate Data

as of February 14, 2008

Date of Incorporation:	**January 24, 2008**
State of Incorporation:	South Carolina
Principal Place of Business:	408 Ashby Park Lane Greenville, SC 29607
Directors:	Pankaj Patel Vijay R. Patel
Officers:	Pankaj Patel, President Vijay R. Patel, Vice President Krish Patel, Secretary, Treasurer
Federal Identification Number:	Redacted
Fiscal Year:	December 31
Annual Meeting Date:	January 1

Shareholders	Number of Shares
Pankaj Patel	50
Vijay R. Patel	50

EXHIBIT 16



Pl. Trial Document 00466

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- Company Description (Tava TD 00004)

This company is formed by a group a local entrepreneurs. This South Carolina based company will opperate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

-Objective:

-To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.

-To provide training and support for store personal, maintaining excellent moral of all store employees.

-To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

-To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

P Communications

- Owner Description:

This company will be owned by Corby S. Phillips. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

-Objective:

-To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.

-To provide training and support for store personal, maintaining excellent moral of all store employees.

-To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

-To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- Development & Status (Tava)

The company has not been incorporated and licensed yet. Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be pursued immediately. The founders are Pankaj Patel and Vijay R Patel. Pankaj will take roll as the CEO & President. The agent location will be operated and managed by the company. Vijay Patel will be the Vice President. Startup capital will be provided by Pankaj Patel and Vijay R. Patel. Additional capital requirements of up to $250,000.00 can be available. Bank of America and BB&T have established relationships with our principle.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607, Earle Furman, NAI has already been contacted to confirm availability.

9 additional locations have been preliminary outlines to be located as follows:

Pelham Road, Greenville, SC
Augusta Road, Greenville,SC
Haywood Road, Greenville, SC
Butler Road, Mauldin, SC
Blackstock Road, Spartanburg, SC
SC Highway 9, Spartanburg, SC
SC Highway 123, Easley SC
Anderson, SC
Gaffney, SC

Earle Furman, NAI (Broker in charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

P Communications

- Development & Status

Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be pursued immediately. The agent location will be operated and managed by my established management team. Startup Capital will be provided by myself and additional capital requirements of up to $200,000 can be available. Relationships have been established with Palmetto Bank and BB&T for financing.

The Company I used to represent, Exit Realty has helped me find locations based on demographics and traffic counts on retail locations.

Rick Markowski with Exit Realty has dealt in the retail industry. His firm will keep us up to date on availability of key retail locations for future expansions.

Items in red are duplicated

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- Expansion Timeline

Immediate Actions- After the business meets its projections within 3-6 months, we will start expanding locations starting with the highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

Short Term- We would like to expand north and south of I-85. Our stretch goal would entail expanding vastly in the Carolinas and Tennessee regions.

Long Term- Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis- The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and strategically planned business team, both companies will benefit and succeed.

The Wireless industry has evolved from trunk phones to the ability to down load your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over $118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fasted mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

P Communications

Immediate Actions- After the business meets its projections within 1 month, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina within a year time span.

Short Term-We would like to expand north and south of I-85. our stretch goal would entail expanding vastly in the Carolinas and Tennessee regions.

Long Term- Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis- The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 Billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned business team, both companies will benefit and succeed.

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There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fasted mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Items in red are duplicated

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

Products & Related Services

Our locations will have full intent to offer the complete line of products a wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our customers.

Service- A team of professional, motivated, positive and knowledgeable staff will be available for our customers. Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained in CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless v. Competitors- AT&T, T-Mobile, Sprint, Alltel

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

P Communications

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Services- A team of professional, motivated, positive and knowledgeable staff will be available for our customers. Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes and evolves our company will be proactive in trainings and learning. Verizon's competitive advantage will be taught to be sure our employees providing customers with accurate information.

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- The Target Market (Kundo TD 00012)

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densley populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

- Market Location & Customers (Tava TD 00006)

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

-Local population- The county of Greenville with a year-round population of 500,000+

-Local businesses- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

-Venues- Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000), Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000) (Tava TD 00006)

-The student- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

P Communications

- The Target Market

The market for the Verizon Wireless products and services is almost anyone from middle school children and up to the elderly. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and South Financial Bank coming into Greenville, it will increase the demand for cellular users.

- Market Location & Customers

Our first location will be placed on Five Forks & Woodruff Road or on Pelham Road by the new Wal-Mart. These two locations will be very successful locations base on demographics, traffic counts and other neighbor retailers.

-Local population-The county of Greenville with a year-round population of 500,000+

-Local businesses- The Chamber od Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

-Venues- Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium, Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)

-The student- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, north Greenville College

Items in red are duplicated

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- Competitive Strategy(Kundo TD00014)

Our location will offer:

-A professional, perfect customer experience and total wireless solutions.

-Trained Individuals, guided by professionals of the business industry.

-Changing behaviors to change results

-High employee motivation and good sales attitude

- Marketing Plan & Sales Strategy

Market Penetration- Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy- Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

-Print Media- Local newspapers, magazines and student publications

-Chamber of Commerce brochures

-Direct mail- subscriber lists, office

-Misc.- Yellow pages, charity events

-Internet Website

-Corporate Relations

The marketing effort will be split into 3 phases;

1)Opening- An advanced notice sent out to our personal, business and community contacts.

2)Ongoing- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.

3)Point of Sale- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.(Kundo TD00014)

P Communications

- Competitive Strategy

Our locations will offer:

-A professional, perfect customer experience and total wireless solutions.

-Trained individuals, guided by professionals of the business industry.

-Changing behaviors to change results

-High employee motivation and good sales attitude

- Marketing Plan & Sales Strategy

Market Penetration- entry into the market should not be a problem. The first stores will have extremely high visibility with heavy foot traffic all day long. The most traveled roads in the upstate Pelham and Woodruff.

Marketing Strategy- Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs, backed up by Verizon Wireless. Worry Free Guarantee.

-Print Media- local newspapers, magazines and student publications

-Chamber of Commerce brochures

-Direct mail- subscriber lists, office

-Misc.- Yellow pages, charity events

-Internet Website

-Corporate Relations

The marketing effort will be split into 3 phases;

1)Opening- An advanced notice sent out to our personal, business and community contacts.

2) Ongoing – A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.

3)Point of Sale- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Work-of- mouth referral is very important in building a solid customer base.

Items in red are duplicated

Comparison of VP Enterprises Business Plan to P Communications Business Plan

VP Enterprises

- Hours of Operation

TBA, 7 Days a week operation

- Employee Training and Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept.(Kundo TD00015) They will receive extensive information from the management and be kept informed of the latest information in the industry.

- System & Controls

Selling with integrity

- Management & Organization

Pankaj Patel, CEO & President

Vijay R. Patel, Vice President

Krish Patel, General Manager & Project Development

TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory

Alka V. Patel, Director of Marketing

S. Allen Hill- Attorney& Professional Business/Legal support

Mukund Desai, CPA, Consultant

P Communications

- Hours of Operation

TBA, 7 Days a week operation

- Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

- Systems & Controls

Selling with integrity

- Management & Organization

Corby S Phillips- President

Greg Freitag- Director of Operations

Jeremy Strine- General manager

Katie Spaeth- Director of Training & Inventory Control

Trey Galloway- Director of Sales & Marketing

Dale Mckinney- Attorney & Professional Business/ Legal Support

Dan Jones- Business Accountant, CPA

Items in red are duplicated

Comparison of VP Enterprises Business Plan to Business Plan Submitted at USC

VP Enterprises

- Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objective:

- To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.
- To provide training and support for store personal, maintaining excellent moral of all store employees
- To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.
- To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

USC

- General Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objective:

- To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.
- To provide training and support for store personal, maintaining excellent moral of all store employees
- To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also Verizon Wireless.
- To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district

Items in red are duplicated

Comparison of VP Enterprises Business Plan to Business Plan Submitted at USC

VP Enterprises

- Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our customers.

- Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers. Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on hoe to generate small business leads as well as how to establish and create them. Employees will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors- AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

USC

- Products & Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our customers.

- Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers. Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on hoe to generate small business leads as well as how to establish and create them. Employees will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors- AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

Comparison of VP Enterprises Business Plan to Business Plan Submitted at USC

VP Enterprises

- Marketing Plan & Sales Strategy

Market Penetration- Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy- Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

-Print Media- Local newspapers, magazines and student publications

-Chamber of Commerce brochures

-Direct mail- subscriber lists, office

-Misc.- Yellow pages, charity events

-Internet Website

-Corporate Relations

The marketing effort will be split into 3 phases;

1)Opening- An advanced notice sent out to our personal, business and community contacts.

2)Ongoing- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.

3)Point of Sale- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

USC

- Marketing Plan & Sales Strategy

Market Penetration- Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy- Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

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Items in red are duplicated

Comparison of VP Enterprises Business Plan to Business Plan Submitted at USC

VP Enterprises

- The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

- Market Location & Customers
- Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

-Local population- The county of Greenville with a year-round population of 500,000+

-Local businesses- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

-Venues- Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000), Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)

-The student- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

USC

- The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

- Market Location & Customers
- Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

-Local population- The county of Greenville with a year-round population of 500,000+

-Local businesses- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

-Venues- Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000), Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)

-The student- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Items in red are duplicated

Comparison of VP Enterprises Business Plan to Business Plan Submitted at USC

VP Enterprises

- Competitive Strategy

Our location will offer:

-A professional, perfect customer experience and total wireless solutions.

-Trained Individuals, guided by professionals of the business industry.

-Changing behaviors to change results

-High employee motivation and good sales attitude

- Employee Training and Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information in the industry.

USC

- Competitive Strategy

Our location will offer:

-A professional, perfect customer experience and total wireless solutions.

-Trained Individuals, guided by professionals of the business industry.

-Changing behaviors to change results

-High employee motivation and good sales attitude

- Employee Training and Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information in the industry.

Items in red are duplicated

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, And, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **AMENDED VERIFIED COMPLAINT (Jury Trial Demanded)** FILED-CLERK OF COURT GREENVILLE CO.S.C. 2012 FEB -1 P 4:33

The Plaintiff, complaining of the Defendants in this Amended Complaint, would respectfully show to the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Pankaj Patel ("Kaj"), is a citizen and resident of Greenville County, South Carolina. Kaj brings this action both individually and on behalf of VP Enterprises, Inc., a South Carolina corporation whose principal place of business is in Greenville, South Carolina.

2. The Defendant, Krish Patel ("Krish"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief Krish is an officer of VP Enterprises, Inc.

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3. The Defendant, Vijay Patel ("Vijay"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief, Vijay is an officer, stockholder and director of VP Enterprises, Inc.

4. The Defendant P Communications, Inc. is a South Carolina corporation which was formed on or about April 28, 2008. Its registered agent is Krish Patel and its principal place of business is in Greenville County, South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and venue is properly laid in Greenville County, South Carolina.

6. The Nominal Defendant, VP Enterprises, Inc. (sometimes hereinafter "VP" or "VP Enterprises") is a South Carolina corporation which was formed on or about January 28, 2008 with a principal place of business in Greenville County, South Carolina. Further details of its formation are outlined below.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

7. This is an action by Plaintiff Kaj Patel, individually and derivatively, on behalf of VP Enterprises, Inc. against certain officers and directors of VP Enterprises, Inc., namely the Defendants, Krish and Vijay for breach of the standards of conduct for directors and officers; for dissolution and/or purchase of the Plaintiff's shares for fraudulent, oppressive, and unfairly prejudicial conduct of the Defendant shareholders, directors and officers; for breach of fiduciary duty for diversion of corporate opportunities and assets; for breach of fiduciary duties as partners and/or joint venturers; for fraud, constructive fraud and negligent misrepresentation and unjust enrichment; for an accounting and disgorgement; for a declaratory judgment regarding the ownership of VP Enterprises Inc. and P Communications Inc.; and for violations of the South Carolina

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Unfair Trade Practices Act. VP Enterprises, Inc. is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

8. Plaintiff, by and through his undersigned attorneys, brings this action upon personal knowledge as to himself and his own acts and upon the investigation conducted by his attorneys. Plaintiff, as of February 7, 2012, is out of the country and will file the original sworn verification to this Amended Complaint upon return.

9. At all times relevant hereto Plaintiff Kaj Patel was a shareholder of VP Enterprises, and he will fairly and adequately represent the interests of VP Enterprises relevant to the Defendants' wrongful course of conduct alleged herein.

10. VP Enterprises, Inc. was formed with the assistance of Greenville attorney Allan Hill who also served as the certifying attorney on the Articles of Incorporation. The formation documents were drafted pursuant to the instructions of one or more of the individual parties who contacted Allan Hill on behalf of the corporation and the individual parties.

11. According to records recently obtained from the file of Attorney Allan Hill, the stockholders of VP Enterprises were Kaj and Vijay, each of whom was to be issued 50 shares of stock. The file of attorney Hill contains two unsigned stock certificates dated January 24, 2008, with Certificate #1 being for 50 shares to Vijay and certificate #2 being to Kaj for 50 shares with the understanding among all three individuals that Vijay would own 25 shares and Krish would also own 25 shares .

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12. The Corporate Data sheet from attorney Hill's files, dated as of February 14, 2008, shows Kaj and Vijay as directors, Kaj as the President, Vijay as the Vice President, and Krish as the Secretary and Treasurer.

13. Pursuant to Rule 23(b)(1) SCRCP, no demand was made on VP Enterprises, Inc. and the Defendants, Krish and Vijay, since such a demand would have been futile as further outlined below.

14. The director defendant of VP Enterprises, Inc., namely Vijay, and the Secretary/Treasurer, namely Krish, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred, participated in efforts to conceal or disguise those wrongs from Kaj Patel as a stockholder and director of VP Enterprises, Inc., and/or negligently disregarded the wrongs complained of herein, and are not disinterested parties.

15. Because there are at most only three directors of VP and because there is no majority of independent directors capable of making a decision on the question of whether to bring this action, any demand on the inside directors who undertook the actions complained of would have been futile. Moreover, any demand would have requested that Vijay and Krish sue themselves which they will not do, thereby effectively making any demand futile.

FACTUAL ALLEGATIONS

16. In early to mid-2007, the Defendant Krish Patel had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business. At or about this time, while discussing various real estate ventures with Krish and his father, Vijay, Kaj Patel asked Krish Patel about the

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possibility of establishing some type of business venture which would operate independent wireless communications stores under a license agreement with Verizon Wireless Communications. Krish informed Kaj that the Verizon idea was a very good business opportunity and he would like to have his own Verizon store(s), but Verizon would probably never allow that since he was a former Verizon employee.

17. Kaj Patel then suggested that Krish give him some further details and later, in about November 2007, Krish shared various information with Kaj who began work on a proposed business plan for Verizon independent stores which would be operated between Kaj and Krish's father, Vijay, since Verizon presumably would not allow Krish to become an owner.

18. Kaj Patel along with Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. The parties were also considering hiring Andre as an employee of VP Enterprises.

19. Before Krish and Kaj visited potential store locations together, Krish would e-mail the addresses of potential locations to Kelly McPherson of Verizon. She would pre-approve the various locations submitted to her to let Kaj and Krish know that the proposed locations were not in a restricted area.

20. In December of 2007 Kaj and Krish met, over a four day period, at Kaj's home to discuss various cash flow scenarios using spreadsheets Kaj had developed for the business. Kaj and Krish also drafted a business plan for VP Enterprises on Krish's

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computer for him to submit to Verizon. The business plan also included the potential store locations researched by Kaj Patel together with Krish Patel.

21. Under the proposed business plan, Vijay was to be the CEO and President, Kaj was to be Vice President, and Krish was to be the general manager. Kaj, Vijay and Krish all planned to be the co-owners of VP Enterprises and to share the profits therefrom. The object of the venture was stated in the business plan as follows:

> To build the flagship agent store of Verizon Wireless in the district. Not only through sales and revenues but customer experience as well. To provide training and support for store personal [sic], maintaining excellent moral [sic] of all store employees. To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless. To hold store meetings that will result in the continued commitment of building one team, who, by working together will make this flagship agent store of the district.

22. The final business plan, which is dated December 6, 2007, was emailed to Kaj on or about December 4, 2007, and Krish received a marked up version from Kaj shortly thereafter. A copy of the version showing Kaj's revisions is attached to this complaint as Exhibit 1.

23. On or about December 19, 2007 Kaj sent an additional calculation worksheet to Krish for the new business plan and told Krish "I have not received your email regarding loan yet."

24. On January 6, 2008 Kaj emailed Krish and forwarded to him additional financial calculations in a worksheet form.

25. On information and belief this business plan was sent to Verizon, and on December 20, 2007, Kaj emailed Krish and requested that Krish send him the final version of the business plan that was sent to Verizon.

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26. On February 8, 2008 Kaj emailed Krish a cell phone price list from a supplier in Hong Kong and asked "Will that work with Verizon?"

27. It was agreed that the ownership for the new venture, named VP Enterprises, Inc., would be 50% to Kaj, 25% to Krish, and 25% to Vijay. The members of the initial board of directors for VP Enterprises, Inc. were to be Vijay and Kaj.

28. Greenville attorney, Allan Hill represented Kaj, Vijay and Krish in the incorporation of VP Enterprises, Inc. and was responsible for drafting all of the initial corporate documents, the charter, stock certificates and initial minutes. The "VP" stood for Vijay and Pankaj. The corporate charter was filed with the South Carolina Secretary of State on January 28, 2008.

29. On or about January 29, 2008, Kaj gave his check number 1015 in the amount of $5,000 payable to VP Enterprises, Inc. to Krish to be deposited in the new business account for VP Enterprises, Inc.

30. Kaj, Krish and Vijay spent the next few months in discussions with Verizon Wireless while Kaj, Vijay and Krish reviewed locations throughout the Greenville, Easley, and Clemson, South Carolina areas for proposed new Verizon free-standing stores.

31. In the March-April 2008 time frame, the parties had at least three meetings with various Verizon personnel regarding a possible license operation with Verizon.

32. Shortly after the March-April meetings, Kaj was informed by Krish and Vijay that Verizon was denying any type of license operation with the new proposed venture; however, they gave Kaj no explanation or details for Verizon's unexpected actions.

33. Following what Kaj thought was a denial of any possible business operation with Verizon, the parties then looked at existing Verizon stores that might be on sale and continued to do so up until July of 2008.

34. On July 24, 2008, Kaj emailed Krish regarding a wireless business opportunity offered by the Sunbelt Business Network and wrote "check this link out for wireless business for sale ....." Krish replied the next day and said "when I clicked on the link it came up unavailable?"

35. Shortly thereafter, in the August to September 2008 time frame, Kaj, while visiting Vijay at his home, discovered that Krish had just attended the grand opening of a Verizon store on Pelham Road at a specific location the three parties, namely Kaj, Vijay, and Krish, had previously reviewed and discussed as a possible store location. Kaj immediately inquired of Krish as to what was going on as this should have been in the VP Enterprises, Inc. name that Kaj, Vijay and Krish were in the process of forming and organizing. Vijay and Krish told Kaj that since Verizon would not approve a license with their proposed entity, VP Enterprises, Inc., Krish had purchased an interest in an existing corporation which had a license for a Verizon store. Kaj was not at this time told the name of this corporation. However he was told this corporation had been formed by Corby Phillips and that Krish had purchased an interest in Mr. Phillips' corporation in order "to get his foot in the door" with Verizon. Krish and Vijay then assured Kaj that the three of them (Kaj, Krish and Vijay) would continue to pursue their original plans through VP Enterprises as contemplated in the business plan (outlined in Paragraphs 20-27 above) as soon as they could figure a way to "kick" Corby Phillips out of P Communications. Upon learning this information, Kaj inquired of Vijay as to

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whether Vijay was involved in the Pelham Road store with Corby Phillips, and Vijay informed Kaj that he (Vijay) had no involvement.

36. Following this development, Kaj was told by Vijay that it appeared the $5,000 he had put in VP Enterprises was not going anywhere and suggested that the $5,000 be moved to another venture they owned named KVP Investments which was in the real estate business.

37. Following these developments Kaj, during the period between August of 2008 and May of 2010 (except during January-May of 2010 when he was out of the country), would, at least twice a week, meet with Vijay, on various matters. During the course of these numerous meetings, he was never told any more about the status of Krish and the new Verizon store venture with Corby Phillips.

38. In the spring of 2010, Kaj became aware of what he thought would be an excellent opportunity for a Verizon store in the Columbus-Tryon, North Carolina area. He immediately inquired of Krish to see if this would be something the three of them could pursue. While they were pursuing the potential Columbus-Tryon store operation, Krish came back to Kaj with an opportunity to buy seven Verizon stores in the Columbia-Florence, South Carolina area. Kaj informed him that he was only interested in a 50-50 equity partnership with Kaj managing those stores as outlined in the original VP Enterprises business plan.

39. Krish assured Kaj that he was agreeable to that proposition and informed him they should shortly be able to get back on track with their original VP Enterprises business plan. At this meeting they shook hands and further confirmed what Kaj had always thought was a 50-50 ownership in any Verizon business deal. At this point Krish

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said he would meet with attorney Allan Hill and have him draw up the appropriate legal paperwork.

40. However, after a few more weeks of discussions on this proposal between Kaj and Krish, which sometimes included Krish's "CFO" named Bruce, Kaj was informed that Krish only wanted Kaj to be an employee, not an owner. Krish tried to convince Kaj that he would be getting the same benefit as a 50% owner without having to invest any money.

41. It was at or about this time, namely the spring of 2010, that Krish informed Kaj that he had "kicked" Mr. Corby Phillips out of the corporation he and Mr. Phillips had started in August of 2008. It was at this time in 2010 when Kaj first was told the name of the Corby Phillips related corporation, which was P Communications, Inc. It was at this same time, namely the spring of 2010, that Krish told Kaj there was a lot of pain and anguish in getting Mr. Phillips out of P Communications, Inc. and that it had cost him in excess of $30,000. As described in paragraph 47 below, upon information and belief, Krish actually only paid Corby Phillips $14,000.

42. It was at this same time that Krish informed Kaj that he was operating eight or nine Verizon stores under P Communications, Inc. He also told him he was operating all of his Verizon stores as separate limited liability companies which were owned/controlled by P Communications, Inc. Following this revelation, Kaj discovered, for the first time, from a review of records in the South Carolina Secretary of State's file, that P Communications had been formed on April 28, 2008 by Kaj's attorney, Allan Hill. At this time Kaj also discovered that Corby Phillips was removed as the registered agent on December 4, 2008 and Krish was named as the new registered agent on that same

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date. He has since learned that Corby Phillips is or was the owner of a restaurant known as "ROLY POLY SANDWICHES" which is located at 1616 Woodruff Road, Greenville, South Carolina and is either next door or very near to the Verizon Store where Krish worked when he was employed with Verizon.

43. Upon becoming aware of all these facts, Kaj immediately confronted Krish and told him that he and Vijay had wrongfully concealed their extensive involvement with Verizon and P Communications from him. At this time he asked Krish what Vijay's involvement was and Krish informed him that Vijay, contrary to what Vijay told Kaj in August of 2008, had always been involved in the Verizon venture and was involved in all the Verizon stores that Krish was involved in.

44. During this meeting Kaj laid out the time line of his involvement with Krish and Vijay, as outlined above in this complaint. In subsequent meetings Kaj held separately with Krish and Vijay, Kaj forthrightly told each of them that they had "backstabbed" him. At the request of Krish, Kaj met with Krish on May 25, 2011 at Sabroso restaurant on Woodruff Road. After reviewing documents on his laptop computer, Krish confirmed that Kaj's timeline of events related to VP Enterprises and the Verizon Wireless business was basically correct. Kaj asked Krish "do you not see anything wrong with your conduct?" Krish replied "I was keeping my options open."

45. Throughout this time, Krish and Vijay Patel hid from Kaj their ownership and involvement in, and the existence of, P Communications in order to capture the Verizon Wireless business for themselves. Similarly, Krish and Vijay Patel hid from Corby Phillips the existence and involvement of Kaj Patel in VP Enterprises in order to appropriate its business for himself.

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46. During the start-up phase of P Communications, Krish Patel used the business plan originally drafted by Kaj Patel as the business plan for his Verizon Wireless venture with Corby Phillips with only minor insignificant changes.

47. To avoid properly sharing the profits of the Verizon Wireless business with his co-owner, Krish Patel concealed from Kaj the true operations of Krish and Vijay with Verizon Wireless. Likewise, Krish and Vijay Patel hid from Corby Phillips the extent of the real operations of P Communications with Verizon. Kaj is informed and believes that Krish Patel bought out the ownership interest of Corby Phillips in P Communications by offering to buy Phillips' shares for $7,000 per store. Krish Patel represented to Phillips that as of December 15, 2008, he had opened only two Verizon stores, thus convincing Phillips to sell his stock in P Communications to Krish for only $14,000. At the closing for the stock transfer, attorney asked Krish how the third store was doing, thus inadvertently revealing the existence of a third store. Plaintiff is informed and believes Krish failed to disclose the contracts and/or applications already in existence at that time for additional Verizon franchises.

48. In October of 2011 Plaintiff, for the first time became aware of the website of a company known as Wireless Communications. Its web address is: www.wirelesscommunicationsc.com. Plaintiff is informed and believes that this company is owned and/or controlled by P Communications, Inc. and/or Vijay and Krish.

49. According to the website of Wireless Communications, it owns and/or operates twenty-three (23) Verizon Wireless stores in Georgia and North and South Carolina in the following locations: Augusta Road, Pelham Road, Main Street and Haywood Road, all of which are in Greenville, South Carolina; Simpsonville/Five Forks

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on Woodruff Road in Greenville County; Anderson, Central, Chapin, Duncan, Hwy 153 in Powdersville, Irmo/Ballentine, Laurens, Lexington, Manning, Marion and Newberry, all in South Carolina; Southport, Conyers, Lawrenceville, Duluth and Winder, all in Georgia; and Monroe, North Carolina.

50. The original business plan originally drafted by Kaj and revised by both Kaj and Krish envisioned ten Verizon stores, with locations on Woodruff Road, Pelham Road, Augusta Road and Haywood Road, in Greenville, Butler Road in Mauldin, Blackstock Road in Spartanburg, Highway 9 in Spartanburg, Highway 123 in Easley and stores in Anderson and Gaffney, South Carolina.

51. Thus, it appears that Krish has now established Verizon stores at all ten locations envisioned in the original business plan drafted by Kaj, with the exception of Gaffney. These stores and the others since developed by the Defendants are in the exact line of business for which VP Enterprises was formed. VP Enterprises had an actual and expectant interest in developing these opportunities and had the financial ability to undertake the development of these Verizon stores.

52. The Wireless Communications website, referenced above, under the heading "Leadership Team" lists Krish Patel as President and Vijay Patel as Vice President.

53. According to a recent article in the Greenville business magazine, *Town*, entitled "Hot Wire", Krish, at the end of 2009, had opened five Verizon stores which had reached $3.3 million in sales. At the time this article was published, which Plaintiff believes was on or about September 30, 2011, Krish reportedly had 23 stores with plans

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to reach 30 stores by the end of 2011 and 50 by the end of 2012. According to this article the Defendant Vijay Patel is a vice president of Krish's wireless Verizon store business.

54. On June 22, 2011 the South Carolina Secretary of State filed a Certificate of Administrative Dissolution of VP Enterprises for failing to pay taxes and/or failing to deliver its annual report to the Department of Revenue. Defendant Vijay Patel was the registered agent to whom the Secretary of State on information and belief mailed the pre-dissolution sixty-day statutory notice of filing deficiencies at his home address listed on file with the Secretary of State's office. Neither Vijay Patel nor his son Krish Patel informed Kaj Patel of the pre-dissolution sixty-day statutory notice or the subsequent administrative dissolution. Plaintiff Kaj Patel is informed and believes Vijay and Krish Patel knew of the corporate filing deficiencies of VP Enterprises and the administrative dissolution, yet failed as officers and director to properly carry out the required administrative filings for the benefit of VP Enterprises and its other stockholder Kaj Patel.

FOR A FIRST CAUSE OF ACTION
(Dissolution and/or Buyout of Shares of VP Enterprises under §33-14-300 *et. seq.*)

55. All allegations stated above are realleged as if fully repeated herein.

56. This cause of action arises pursuant to §§ 33-14-300 and -310 of the South Carolina Business Corporation Act.

57. Because of the actions and events outlined above, the economic purpose of VP Enterprises has been unreasonably frustrated as it is not reasonably possible for the parties to continue owning the corporation together. The actions of Vijay Patel and Krish Patel relating to the business of VP Enterprises have made it impracticable to carry on business with said Defendants. Further, Defendants Vijay Patel and Krish Patel, as the

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shareholders in control of VP Enterprises, have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff and VP Enterprises.

58. The Plaintiff is a 50% owner in VP Enterprises, Inc. with Defendants Vijay Patel and Krish Patel owning the other half. The actions of Vijay Patel and Krish Patel as outlined above have severely damaged the Plaintiff's reasonable expectations to be realized from his interest in VP Enterprises, Inc. Vijay Patel and Krish Patel have acted in a manner unfairly prejudicial and oppressive to the Plaintiff within the meaning of South Carolina Code § 33-14-300. The Plaintiff is therefore entitled to have VP Enterprises, Inc. dissolved, or as an alternative to dissolution to be paid the fair value of his undiluted stock interest in VP Enterprises, Inc. pursuant to S.C. Code § 33-14-310.

FOR A SECOND CAUSE OF ACTION
(Violation of Standards of Conduct for Directors under § 33-8-300 against Vijay Patel)

59. All allegations stated above are realleged as if fully repeated herein.

60. Defendant Vijay Patel as a director of VP Enterprises has failed to discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendant negligently and intentionally failed to perform his duties as director in that he permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P

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Communications for the personal benefit of Vijay Patel and his son Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

61. While Defendant Vijay Patel served as a director of VP Enterprises, he negligently, carelessly and intentionally failed to perform his duties as director so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through his failure to develop the business opportunities associated with the Verizon Wireless franchises. He also failed to oversee critical administrative duties of which he had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

62. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay Patel, for disgorgement of Defendant Vijay Patel's ill-gotten gains and other equitable relief.

FOR A THIRD CAUSE OF ACTION
(Violation of Standards of Conduct for Officers under § 33-8-420 against Vijay Patel and Krish Patel)

63. All allegations stated above are realleged as if fully repeated herein.

64. Defendants Vijay Patel and Krish Patel, as officers of VP Enterprises, have failed to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation and its other

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shareholder Kaj Patel. Specifically, Vijay Patel and Krish Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendants negligently and intentionally failed to perform their duties as officers in that they permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

65. While Defendants Vijay Patel and Krish Patel served as officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform their duties as officers so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through their failure to develop the business opportunities associated with the Verizon Wireless franchises. They also failed to oversee critical administrative duties of which they had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

66. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P communications and assets of Vijay Patel and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties against All Defendants)

67. All allegations stated above are realleged as if fully repeated herein.

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68. While individual Defendant Vijay Patel was a director and individual Defendants Vijay Patel and Krish Patel were officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform the duties of director and officers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P. Communications. VP Enterprises thereby suffered great loss, and the value of the stock of the Plaintiff was greatly reduced. Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

69. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel.

70. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A FIFTH CAUSE OF ACTION
(Accounting from All Defendants)

71. All allegations stated above are realleged as if fully repeated herein.

72. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

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73. Defendants Vijay Patel and Krish Patel were the signatories to the bank account of VP Enterprises and controlled the financial records of VP Enterprises. They also have controlled all the accounting and financial records of P Communications to the complete exclusion of Plaintiff Kaj Patel. The Plaintiff is entitled to an accounting of both VP Enterprises, whether functioning as a partnership and/or joint venture or as a corporation, and P Communications from all the Defendants for all activities related to VP Enterprises and the gains diverted from VP Enterprises to P Communications.

FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty for Partnership Liability)

74. All allegations stated above are realleged as if fully repeated herein.

75. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

76. As partners and/or joint venturers with Plaintiff Kaj Patel, Defendants Vijay Patel and Krish Patel owed their partner a fiduciary duty. Instead, said Defendants carelessly and intentionally failed to perform their duties as partners and joint venturers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P Communications. The partnership interest of Kaj Patel in VP Enterprises thereby suffered great loss, the value of the partnership interest of the Plaintiff was greatly reduced, and Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

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77. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel to the detriment of Plaintiff Kaj Patel and VP Enterprises.

78. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A SEVENTH CAUSE OF ACTION
(Fraud as To Defendants Vijay Patel and Krish Patel)

79. All allegations stated above are realleged as if fully repeated herein.

80. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

81. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants Vijay Patel and Krish Patel concerning management decisions and the progress of store development opportunities for VP Enterprises.

82. Defendants Vijay Patel and Krish Patel knew their representations were false or had a reckless disregard for the truth of such representations.

83. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

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84. Plaintiff Kaj Patel was ignorant of the falsity of the representations of Defendants Krish Patel and Vijay Patel. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

85. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations were pertaining to matters peculiarly within their knowledge.

86. Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants' false representations.

87. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

FOR AN EIGHTH CAUSE OF ACTION
(Constructive Fraud)

88. All allegations stated above are realleged as if fully repeated herein.

89. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

90. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants concerning management decisions and progress of store development opportunities for VP Enterprises.

91. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

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92. Plaintiff Kaj Patel was ignorant of the falsity of said Defendants' representations. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

93. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations pertained to matters peculiarly within their knowledge.

94. The Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants false representations.

95. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentation against Defendants Vijay Patel and Krish Patel)

96. All allegations stated above are realleged as if fully repeated herein.

97. As stated above, Defendants Vijay Patel and Krish Patel made false representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores.

98. Said Defendants had a pecuniary interest in making the representations.

99. Defendants Vijay Patel and Krish Patel owed a duty of care to Plaintiff Kaj Patel to see that they communicated truthful information to him.

100. Said Defendants breached that duty by failing to exercise due care in their representations.

101. Plaintiff Kaj Patel justifiably relied on the representations of Vijay Patel and Krish Patel.

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102. Plaintiff Kaj Patel suffered a pecuniary loss as the proximate result of his reliance upon said Defendants' misrepresentations.

103. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

FOR A TENTH CAUSE OF ACTION
(Equitable Disgorgement against All Defendants)

104. All allegations stated above are realleged as if fully repeated herein.

105. By taking control of all the assets, contract negotiations, and finances of VP Enterprises, the Defendants have been able to misappropriate all business opportunities and assets to themselves. The misappropriation of the business of VP Enterprises has enabled Defendants Vijay Patel, Krish Patel and P Communications to take over the profits and future growth of VP Enterprises.

106. The misappropriation of the business opportunities of VP Enterprises by the Defendants was done by fraudulent, illegal and inequitable means. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are entitled to an order of this court requiring said Defendants to disgorge the profits and revenues received by said Defendants from their business operations related to the Verizon stores.

FOR AN ELEVENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)

107. All allegations stated above are realleged as if fully repeated herein.

108. Because of the diversion of valuable corporate opportunities away from VP Enterprises and Plaintiff Kaj Patel, said Plaintiff and VP Enterprises are entitled to

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have a constructive trust placed on the assets and stock of P Communications for the benefit of Plaintiff Kaj Patel and VP Enterprises.

FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

109. All allegations stated above are realleged as if fully repeated herein.

110. The actions of the Defendants constituted a trade within the meaning of S.C. Code Ann. § 39-5-20(a).

111. The repeated actions of Defendants Vijay Patel, Krish Patel and P Communications in repeatedly opening new Verizon stores, without the knowledge of Plaintiff Kaj Patel or the involvement of VP Enterprises, through misrepresentations and fraudulent concealment as outlined above were unfair and deceptive acts and willful violations of the S.C. Unfair Trade Practices Act, § 39-5-20, *et seq.*, S.C. Code Ann. (1976).

112. The acts of Defendants Vijay Patel, Krish Patel and P Communications impacted upon the public interest of the people of the state of South Carolina and were committed repetitiously against the Plaintiff.

113. The Plaintiff is informed and believes that the Defendants have employed similar acts of illegal, oppressive, fraudulent, or unfairly prejudicial conduct against other individual shareholders in other comparable companies including, but not limited to, Corby Phillips and shareholders/partners in their closely-held hotel companies.

114. As a result of the unfair and deceptive trade practices committed, the Plaintiff has suffered losses for which willful violations the Plaintiff is entitled to treble actual damages and an award of reasonable attorney fees and costs.

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FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment)

115. All allegations stated above are realleged as if fully repeated herein.

116. The Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 through -140 determining that the assets of P Communications and/or the stock therein belong to VP Enterprises and that the Plaintiff is entitled to a 50% interest in P Communications.

WHEREFORE, the Plaintiff, individually, and on behalf of VP Enterprises, Inc., prays:

A. For judgment against the Defendants in favor of VP Enterprises Inc. for actual and punitive damages due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants;

B. Alternatively, for judgment against the Defendants in favor of Kaj Patel for 50% of the damages to VP Enterprises, Inc. due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants along with punitive damages thereon;

C. For an accounting, constructive trust, disgorgement and such other equitable relief as the Court deems just and proper;

D. For actual and treble damages, costs and attorney fees for violation of the South Carolina Unfair Trade Practices Act;

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E. For such other relief as the Court deems just and proper.

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan

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William M. Hogan (SC Bar #65272)
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and

Monty D. Desai
The Carolina Law Group
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Greenville, SC 29607
Telephone: (864) 312-4444
Facsimile: (864) 312-4447
monty@thecarolinalawgroup.com

ATTORNEYS FOR PLAINTIFFS

Dated: February 7, 2012
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and VP Enterprises, Inc., Nominal Defendant.	2011-CP-23-7338 **VERIFICATION OF AMENDED COMPLAINT**

The undersigned, Pankaj Patel, hereby verifies that he has read the allegations of the foregoing Amended Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 7 day of February 2012.

Pankaj Patel

Pankaj Patel

Def.Trial Document 027

Exhibit 1

Verizon Wireless Agent Business Plan

verizonwireless

Def.Trial Document 028

Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objectives:

To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.

To provide training and support for store personal, maintaining excellent moral of all store employees.

To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

Development & Status

The company has not been incorporated and licenced yet, Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be persued immediately, The founders are Vijay Patel and Pankaj. Vijay will be the CEO & President. The agent location will be operated and managed by the company. Pankaj Patel will be the Vice President. Startup capital will be provided by Vijay and Pankaj Patel. Additional capital requirements of up to $250,000.00 can be available. Bank of America and BB&T have established relationships with our principles.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607,

Earle Furman, NAI has already been contacted to confirm availability.

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Comment: Krish, you may want to include a paragraph of your experience and accomplishments as verizon employee. I don't think that you being a previous employee would disqualify us. Call and check with them anonomously.

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9 Additional locations have been preliminery outlined to be located as follows;
Pelham Road , Greenville, SC
Augusta Road , Greenville, SC
Haywood Road , Greenville, SC
Butler Road , Mauldin , SC
Blackstock Road, Spartanburg, SC
SC Highway 9 , Spartanburg, SC
SC Highway 123, Easley, SC
Anderson, SC
Gaffney, SC

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Earle Furman, NAI (Broker in charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

Expansion Time Line

Immediate Actions

After the business meets its projections within 3-6 months, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

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Short Term

We would like to expand north and south of I – 85. Our stretch goal would entail expanding vastly in the Carolina and Tennessee regions.

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Long Term

Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis

The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned

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business team, both companies will benefit and succeed.

The wireless industry has evolved from trunk phones to the ability to down load your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over $118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fasted mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.
Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With ICAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population -- the county of Greenville with a year-round population of 500,000 +-.
Local businesses -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.
Venues: BI-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000),
Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)
The student -- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained individuals, guided by professionals of the business industry.
- changing behaviors to change results
- High employee motivation and good sales attitude

Marketing Plan & Sales Strategy

Market Penetration
Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website

Corporate relations

The marketing effort will be split into 3 phases;
1) Opening -- An advanced notice sent out to our personal, business and community contacts.
2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly
for effectiveness.
3) Point of sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Hours of Operation ( )

TBA, 7 Days a week operation

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Systems & Controls

Selling with Integrity

Management & Organization

Vijay R. Patel, CEO & President
Pankaj Patel, Vice President

Krish Patel, General Manager & Project Development
TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory Control
Alka V. Patel, Director of Marketing

S. Allan Hill – Attorney & Professional Business/Legal Support
Mukund Desai – CPA, Consultant

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	$100	$500	$12,000	$144,000
	25	$15	$375	$6,000	$72,000
Accessories					
Totals	30	$115	$875	$18,000	$216,000
	Tips	0%	$0	$0	$0

Expense		Tot/Month	Tot/Year	
18.00%	Food	$75	$900	
	Rent	$2,700	$32,400	
	CAM	$0	$0	
	Maintenance	$50	$600	
	Insurance	$200	$2,400	
25%	Payroll	$4,000	$48,000	
	Licences	$1,200	$14,400	
	Profesional Fees	$100	$1,200	
	Utilities	$800	$9,600	
	Uniforms	$0	$0	
	Linen Laundry	$0	$0	
	Linen Rental	$15	$180	
	Replacement costs	$0	$0	
	Flyers	$100	$1,200	
	Pest Extermination	$45	$540	
1%	Disposable supplies	$350	$4,200	
	Office Materials	$130	$1,560	
7%	Sales& Hospitality Tax	$1,260	$15,120	
	Credit card equipment rental	$0	$0	
2%	Credit Card Fees	$360	$4,320	Assume 75% by CC
	Total	$11,385	$136,620	

Profit	$6,615	$79,380
% Profit	58.10%	58.10%

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Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130
2%	Credit Card Fees	$140
	Total	$5,621

140.8

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Compatibility Report for Verizon Wireless Agent Financial Summary.xls

Run on 12/19/2007 18:40

The following features in this workbook are not supported by earlier versions of Excel. These features may be lost or degraded when you save this workbook in an earlier file format.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 FEB -7 P 4: 31

The undersigned attorney for the Plaintiff certifies that he served a copy of the **AMENDED VERIFIED COMPLAINT** by the following means:

____ Hand Delivery	____ Facsimile
__X__ United States Mail	____ Overnight Delivery
__X__ Other: Electronic Mail	

with adequate payment or arrangements for payment to insure delivery thereof to:

Thomas L. Stephenson, Esquire
William W. Wilkins, Esquire
Andrew A. Mathias, Esquire
Nexsen Pruet, LLC
P.O. Drawer 10648
Greenville, SC 29603

William M. Hogan

February 7, 2012
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: DEFENDANTS KRISH PATEL, VIJAY PATEL, AND P COMMUNICATIONS, INC. AND THEIR ATTORNEYS OF RECORD, THOMAS L. STEPHENSON, WILLIAM W. WILKINS, AND ANDREW A. MATHIAS:

The Plaintiff, Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., ("Plaintiff"), by and through his undersigned attorneys, sets forth below information in response to the interrogatories propounded to him by Defendants Krish Patel, Vijay Patel, and P. Communications, Inc., ("Defendants").

GENERAL OBJECTIONS

The following general objections shall, without separate repetition in each answer, be deemed to be incorporated in each of Plaintiff's answers to the numbered interrogatories.

1) Plaintiff objects to each interrogatory to the extent that it seeks discovery of matters protected from disclosure by the attorney-client privilege, the work product doctrine, or the joint defense privilege

2) In providing these responses and objections to the interrogatories, Plaintiff does not in any way waive nor intend to waive, but rather intends to preserve and is preserving:

a) All objections as to competency, relevancy, materiality and admissibility of the interrogatories or subject matter thereof;

b) All rights to object to the use of any said responses, or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other action; and

c) All rights to object on any ground to any request for further responses to these or any other interrogatories, or other discovery requests involving or related to the subject matter of the interrogatories.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

As qualified and limited by the foregoing general objections, incorporated herein by reference, Plaintiff responds and objects specifically to Defendants' interrogatories as follows:

INTERROGATORY NO. 1: Provide the caption for every lawsuit or action in which the Plaintiff is or has been named a party and state for each lawsuit or action whether he was a plaintiff or defendant; the date the lawsuit was filed, the entities and all of the parties involved and the attorneys; and describe the outcome of each case.

RESPONSE:

Patel v. Applied Engineering Solutions, Inc. et al, 2005-CP-23-371. The Plaintiff filed the lawsuit on January 18, 2005 in the Greenville County Court of Common Pleas against Applied Engineering Solutions, Inc., Brian D. Merriman, Kenneth J. O'Malley, and Michael D. Scott. The attorneys were Gregory English for the Plaintiff and Jeffrey P. Dunleavy and Phillip Arthur Kilgore for the Defendants. The action was settled pursuant to a confidentiality agreement.

INTERROGATORY NO. 2: Identify any individuals whom you may call as a witness in this action, including individual's current full name, business address, e-mail and telephone number.

RESPONSE:

A. Pankaj Patel
23 Avens Hill Drive
Greer, SC 29651

Said witness will testify about all causes of action in the Complaint and all allegations contained therein of which he has personal knowledge.

B. Corby Phillips
[redacted]
Pickens, SC 29671

Said witness is expected to testify about his relationship with Defendant Krish Patel in P Communications, Inc. and related entities.

C. Kelly McPherson
Verizon Wireless
701 Brookfield Parkway
Greenville, SC 29607

Said witness is expected to testify about the procedures for operating the franchise stores and her involvement with the individual parties in planning possible store locations.

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D. **"Andre" as referenced in Amended Complaint paragraph 18. Further detailed information will be provided when learned. Said witness is expected to testify to events described in paragraph 18 of the Amended Complaint.**

E. **All witnesses listed by the Defendants as potential witnesses.**

INTERROGATORY NO. 3: In regard to each individual identified above, state the substance of their anticipated testimony.

RESPONSE:

See response to Interrogatory No. 2 above.

INTERROGATORY NO. 4: Describe every business venture the Plaintiff has been involved with in the past 20 years. In answering this Interrogatory, give the name of the business, the location of the business, the owners of the business, and a description of the subject of the business.

RESPONSE:

A. **Global Connections. Established in early 1990s. Plaintiff was sole owner. Global Connections imported African art and sculptures for distribution and operated in Greenville, South Carolina.**

B. **Intuitive Business Solutions. Owners were the Plaintiff and Vipul Patel founded in the mid-1990s. The business engaged in software design for vertical markets, principally liquor stores, in South Carolina based on Macintosh platform. The company was located in Greenville, South Carolina.**

C. **Arman Consulting, Inc. Plaintiff is sole owner. The business engages in industry automation consulting. It was incorporated on September 19, 1994 and is located at Plaintiff's address in Greenville County.**

D. **Applied Engineering Solutions, Inc. Incorporated on June 26, 1998. The owners were the Plaintiff, Brian D. Merriman, Kenneth J. O'Malley, and Michael D. Scott located at 1200 Woodruff Road, Suite A21, Greenville, South Carolina 29607.**

E. **Blue Heaven Associates, LLC. Company was formed around 1999 to operate the Hampton Inn and Suites in Chapel Hill, North Carolina. It is owned by the Plaintiff, Mukund Desai and others.**

F. Richland Enterprises, LLC. It was formed in August 1997 and operated the Sleep Inn Hotel in Columbia, South Carolina. The owners were Mukund Desai, the Plaintiff and others.

G. Carolina Properties. Formed in the late 1990s to operate the Days Inn Express in Chapel Hill, North Carolina. The owners are the Plaintiff, Mukund Desai, and others.

H. Granite Distributors, Inc. Formed in August 2002. The owners were the Plaintiff, the Plaintiff's wife and Dennis Smythe. The company was located in Greenville County, South Carolina.

I. Premse Inc. Formed in March 2007 to own and operate condominiums in Clemson, South Carolina. The owners are the Plaintiff, Edward M. Alport, Manoj Nigam, and Rajeev Bahve.

J. KVP Investments and Operations, LLC. Formed in December 2007. The owners are the Plaintiff, Krish Patel, and Vijay Patel to manage and operate a house and property in Greer, South Carolina.

K. VP Enterprises, Inc. Formed in January 2008 with its principal owners being the Plaintiff and Defendant Vijay Patel. The business of the company is to operate Verizon Wireless franchises as alleged in the Complaint.

L. PAH LLC. A North Carolina company located in Hendersonville, North Carolina, with the owners being the Plaintiff, Ashok Patel and Hetal Patel. The company was set up to operate businesses in the gaming industry.

M. Manjala Enterprises, Inc. Formed in August 2009 to operate a store in the Anderson Mall in Anderson, South Carolina. Plaintiff was the sole owner. It sold at retail items "As Seen On TV" until the business was sold.

INTERROGATORY NO. 5: For each expert witness whom you propose to use as a witness at the trial of this case, identify the expert, list the subject matter on which that proposed expert witness is expected to testify; and describe such opinions held by each expert.

RESPONSE:

Charles L. Alford, Ph.D.
109 Laurens Road
Building 2, Suite C
Greenville, South Carolina 29607

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Said witness is expected to testify to the value of the damages incurred by the Plaintiff. No opinion has been rendered at this time.

INTERROGATORY NO. 6: Describe any experience or knowledge the Plaintiff has in owning or operating a retail business.

RESPONSE:

See response to Interrogatory 4(m) above regarding Manjala Enterprises, Inc.

INTERROGATORY NO. 7: Describe any experience or knowledge the Plaintiff has in owning or operating a business in the wireless communications industry.

RESPONSE:

None.

INTERROGATORY NO. 8: Describe all dealings the Plaintiff has had with Allan Hill.

RESPONSE:

Allan Hill assisted the Plaintiff in incorporating Arman Consulting, Inc., Granite Distributors, Inc., KVP Investments, and VP Enterprises, Inc.

INTERROGATORY NO. 9: Describe all efforts by the Plaintiff to secure his own wireless communications business or otherwise to mitigate his damages.

RESPONSE:

See the allegations regarding efforts to enter the wireless communications business through VP Enterprises, Inc. Plaintiff has entered no other company in the wireless communications business.

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INTERROGATORY NO. 10: Identify each educational institution the Plaintiff has attended. In answering this Interrogatory, give the date attended and degrees received.

RESPONSE:

Clemson University graduating in 1985 with a degree in computer engineering.

INTERROGATORY NO. 11: Identify all of the Plaintiff's employers for the last 25 years. For each, give the dates of employments and describe the jobs held.

RESPONSE:

A. **Flour Daniel - from 1985 to 1989. Plaintiff worked in process controls and automation engineering.**

B. **Jacobs Engineering – from 1989 to 1994. Plaintiff worked in process controls and automation engineering.**

C. **From 1994 to the present – Plaintiff has owned and operated Arman Consulting in the business of process controls, automation engineering and business management.**

D. **Applied Engineering Solutions, Inc. – from 2000 to 2004. The Plaintiff worked in process controls, automation engineering and business management.**

INTERROGATORY NO. 12: Specifically describe the damages you seek in this case.

RESPONSE:

Damages will be set forth in a report of the Plaintiff's expert as developed in this case.

THE GILREATH LAW FIRM, P.A.

By: William M. Hogan
William M. Hogan (SC Bar #65272)
James R. Gilreath (SC Bar #2133)
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Def.Trial Document 044

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monty@thecarolinalawgroup.com

ATTORNEYS FOR PLAINTIFF

Dated: March 6, 2012
Greenville, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **CERTIFICATE OF SERVICE**

The undersigned attorney for the Plaintiff certifies that he served a copy of the **Plaintiff's Responses to Defendants' First Set of Interrogatories to Plaintiff** by the following means:

____ Hand Delivery	____ Facsimile
__X__ United States Mail	____ Overnight Delivery
__X__ Other: Electronic Mail	

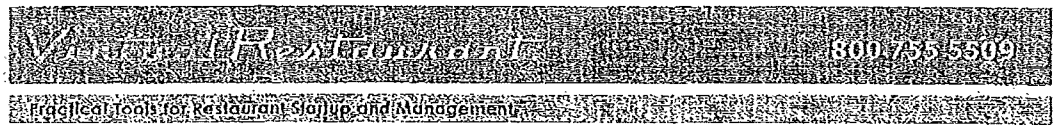
with adequate payment or arrangements for payment to insure delivery thereof to:

Thomas L. Stephenson, Esquire
William W. Wilkins, Esquire
Andrew A. Mathias, Esquire
NEXSEN PRUET, LLC
P.O. Drawer 10648
Greenville, SC 29603

William M. Hogan
William M. Hogan

March 6, 2012
Greenville, South Carolina.

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Restaurant Sample Business Plan Outline

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To download a sample business plan (free) click here...

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Company Description

Kundo, Inc., a Massachusetts based company, will operate Abonda, a single unit, medium-size restaurant serving healthy, contemporary style food. The restaurant will be located at 645 Deacon Street in Cambridge, Massachusetts.

Mission Statement
The company's goal is that of a multi-faceted success. Our first responsibility is to the financial well-being of the restaurant. We will meet this goal while trying to consider; 1) the effect of our products on the health and well being of our customers (and our staff), 2) the impact that our business practices and choices will have on the environment, and 3) the high quality of attitude, fairness, understanding, and generosity between management, staff, customers, and vendors. Awareness of all these factors and the responsible actions that result will give our efforts a sense of purpose and meaning beyond our basic financial goals.

Development & Status
The company was incorporated in September of 1995 and elected sub-chapter S.

The founders are Jack Morton and Wilma Mason. Jack is the President and Wilma the Vice President. There is a total of 10,000 shares of common stock issued. Wilma and Jack each own 3,000 and the remainder are retained by the company for future distribution. In addition they have loaned the company $25,000 of their own money for research and start-up costs.

A suitable site for the first restaurant was found last month and lease negotiations are in the final stages. The location will be on Deacon Street, just outside Harvard Square and close to a dense population of the target market. When the lease is signed there will be three months of free rent for construction and in that time the balance of the start-up funds must be raised. With that phase completed, Abonda Restaurant can then open and the operations phase of the project can begin.

Future Plans
If the business is meeting its projections by month nine, we will start scouting for a second location and develop plans for the next unit. Our five year goal is to have 3 restaurants in the greater Boston area with a combined annual profit of between $500,000 and $1,000,000.

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Industry Analysis

Although the restaurant industry is very competitive, the lifestyle changes created by modern living continue to fuel its steady growth. More and more people have less time, resources, and ability to cook for themselves. Trends are very important and Abonda is well positioned for the current interest in lighter, healthier foods at moderate to low prices.

The Restaurant Industry Today
The food service business is the third largest industry in the country. It accounts for over $240 billion annually in sales. The independent restaurant accounts for 15% of that total. The average American spends 15% of his/her income on meals away from home. This number has been increasing for the past seven years. In the past five years the restaurant industry has out-performed the national GNP by 40%. The reasons given by the Folkney Report (November 1994) are 1) lifestyle changes, 2) economic climate, and 3) increase of product variety.

There are 600 new restaurants opening every month and over 200 more needed to keep pace with increasing demand.

Future Trends & Strategic Opportunities
The predicated growth trend is very positive both in short and long-term projections. Folkney states again that as modern living creates more demands, people will be compelled to eat more meals away from home. The DMR Industrial Report (April 1995) estimates this as high as 30% over the next five years.

In 1988 The National Restaurant Association released the Foodservice Industry 2000 report that forcasted how the industry might look in the year 2000. Some highlights from the panel's findings:

- "Consumers will spend a greater proportion of their food dollar away from home.
- Independent operators and entrepreneurs will be the main source of new restaurant concepts.
- Nutritional concerns will be critical at all types of foodservice operations, and food flavors will be important.
- Environmental concerns will receive increased attention."

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Products & Related Services

Abonda Restaurant will be offering a menu of food and beverages with a distinctive image. There will be three ways to purchase these products; table service at the restaurant, take-out from the restaurant, and delivery to home or office.

The Menu
The Abonda menu (see appendices) is moderate sized, and moderate-low priced offering a collection of ethnic and American items with a common theme -- healthy (low-fat, low cholesterol, natural ingredients), flavorful, and familiar. Our goal is to create the image of light satisfying and still nutritious food.

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There has been an increased awareness of nutritional and health concerns in recent years and a growing market of people who now eat this style of cooking regularly.

Production
Food production and assembly will take place in the kitchen of the restaurant. Fresh vegetables, meat and dairy products will be used to crate most of the dishes from scratch. The chef will exercise strict standards of sanitation, quality production, and presentation or packaging over the kitchen and service staff.

Service
There will be three ways a customer can purchase food. They may sit down at one of the 54 seats in the dining room and get full service from a waitperson. A separate take-out counter will service those who wish to pick up their food. Most take-out food will be prepared to order with orders coming from either the telephone or fax. Delivery (an indirect form of take-out) will be available at certain times and to a limited area.

Future Opportunities
There is a market segment that prefers to eat this type of cooking at home although they do not have the time to cook. There are already caterers and even mail order companies that provide individuals and families with up to a month's supply of pre-prepared meals.

This opportunity will be researched and developed on a trial basis. If successful, it could become a major new source of income without creating the need for additional staff or production space.

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The Target Market

The market for Abonda's products covers a large area of diverse and densely populated groups. Although it will be located in a downtown urban setting, it is an area where people travel to eat out and one that is also frequented by tourists. It is also an area known for and catering to the demographic group we are targeting.

Market Location & Customers
The Harvard Square area is one of the most desirable retail locations in New England. The Mass. Chamber of Commerce rates it as the third best retail market in the state. There are more than 400 businesses in a 1/4 square mile area with average sales of $330 per square foot.

The customer base will come from 3 major segments;

- **Local population** -- the city of Cambridge with a year-round population of 145,000 is centrally located in the Boston area and is within 15 minutes drive of 8 major suburbs.
- **Colleges and Universities** -- Harvard alone has 6 different schools within walking distance of Deacon Street and a seasonal population of 22,000. In addition 5 more colleges near the square have large student bodies.
- **Tourism** -- between hotels, motels, bed & breakfast rooms and inns, there are over 8,500 rooms available. Last year they were at 92% occupancy.
- **Local businesses** -- The Cambridge Chamber of Commerce lists over 900 businesses with an average of 12 employees in the Harvard square area.

The food concept and product image of Abonda will attract 3 different customer profiles;

- **The student** -- more and more young people have developed healthy eating habits. Some also go through a "health food phase" while in college.
- **The health conscious person of any age or sex** -- this includes anyone on a restricted or prescribed diet or those who have committed to a healthy diet.
- **Curious and open-minded** -- "If you try it, you will like it." Through marketing, publicity, and word-of-mouth, people will seek out a new experience and learn that nutritious food can be tasty, fun, convenient, and inexpensive.

Market Trends & The Future
The population and demographics of Harvard square have remained steady for the last 14 years. Tourism has increased 24% over the last 3 years and is predicted to keep growing. Local businesses are increasing at a rate of 18% yearly.

The idea of a health consciousness through nutritional awareness and dietary change has been slowly building for

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the last 7 years. The extensive government studies and new Food Guide Pyramid have given everyone a new definition of a balanced, healthy diet. This is not a fad but a true dietary trend

backed by the scientific and medical community, the media, the government, and endorsed by the big food manufacturers. As the Foodservice 2000 report stated, this trend will be even more important by the turn of the century.

As people want to stay home more and cook less our strategy of delivering prepared meals on a weekly or monthly arrangement may be a widespread accepted new way of eating.

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The Competition

There are over two dozen restaurants in the Harvard Square area that sell food at similar prices. Although this presents an obvious challenge in terms of market share, it also indicates the presence of a large, strong potential. The newest competitors have made their successful entry based on an innovative concept or novelty. Abonda will offer an innovative product in a familiar style at a competitive price. Our aggressive plans of take-out and delivery will also give us an advantage to create a good market share before the competition can adjust or similar concepts appear.

Competitor's Profile
Competing with Abonda for the target market are these categories of food providers:

- Independent table service restaurants of similar menu and price structure.
- Chain " " " " "
- Commercial foodservice companies serving students directly.

Independent operators include Grendel's Den, Iako, Bombay Club, Iruna, and The Border Cafe. Most are ethnic based and will carry at least two similar menu items. Grendel's and Iruna are long-standing businesses while the others are fairly new. They all are doing very well.

The major chain restaurants are House of Blues, Chili's and Bertucci's. All are relatively new but well established and profitable. They have big resources of marketing and/or a specialty product or attraction (House of Blues is also a live music club). Ogden Foods and Cysco both service 24,000 Harvard students but their product is not appealing enough to prevent students from eating out 5 to 7 meals a week. In addition there are two local catering companies that deliver prepared meals daily to offices.

Competitive Strategy
There are three major ways in which we will create an advantage over our competitors;

- product identity, quality, and novelty
- high employee motivation and good sales attitude
- innovative and aggressive service options.

Abonda will be the only restaurant among all the competition which focuses the entire menu on healthy, low-fat cooking. Each of the competitors offers at least one "healthy" selection on their menu. Grendel's Den even has an entire section called "On the Lighter Side" but in all cases they are always seen as alternatives to the main style being offered. The target market will perceive Abonda as the destination location for healthy, low-fat cooking.

Once they have tried the restaurant, their experience will be reinforced by friendly, efficient, knowledgeable service. Return and repeat business will be facilitated by accessable take-out and delivery options. At the time of this writing all of the competitors offered take-out but only two (Bertucci"s & Chili's).

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Marketing Plan & Sales Strategy

Market Penetration
Entry into the market should not be a problem. The store has high visibility with heavy foot traffic all day long. The local residents and students always support new restaurants and the tourists do not have fixed preferences. In addition, $10,000 has been budgeted for a pre-opening advertising and public relations campaign.

Marketing Strategy
Focusing on the unique aspect of the product theme (healthy, tasty foods) a mix of marketing vehicles will be created to convey our presence, our image, and our message.

- **Print media** -- local newspapers, magazines and student publications
- **Broadcast media** -- local programming and special interest shows
- **Hotel guides**, concierge relations, Chamber of Commerce brochures
- **Direct mail** -- subscriber lists, offices for delivery
- **Misc.** -- yellow pages, charity events

A public relations firm has been retained to create special events and solicit print and broadcast coverage, especially at the start-up.

The marketing effort will be split into 3 phases;

1) **Opening** -- An advanced notice (press packet) sent out by the PR firm to all media and printed announcement ads in key places. Budget - $10,000

2) **Ongoing** -- A flexible campaign (using the above media), assessed regularly for effectiveness. Budget - $10,000

3) **Point of sale** -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Future plans and Strategic Opportunities
Catering to offices (even outside of our local area) may become a large part of gross sales. At that point a sales agent would be hired to directly market our products for daily delivery or catered functions.

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Operations

Facilities & Offices
The restaurant at 645 Deacon Street is a 2400 Square foot space. It was formerly a restaurant and needs on minor structural modifications. The licenses and codes' issues are all in order. New equipment and dining room furnishings will be purchased and installed by the general contractor. Offices of the corporation are presently at Jack Morton's home but will be moved to the restaurant after opening.

Hours of Operation
The restaurant will be open for lunch and dinner 7 days a week. Service will begin at 11:00 AM and end at 11:00 PM. The restaurant will be closed Christmas, Thanksgiving, and the Fourth of July.

Employee Training & Education
Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the chef and be kept informed of the latest information on healthy eating.

Systems & Controls
A big emphasis is being placed on extensive research into the quality and integrity of our products. They will constantly be tested for our own high standards of freshness and purity. Food costs and inventory control will be handled by our computer system and checked daily by management.

Food Production
Most food will be prepared on the premises. The kitchen will be designed for high standards of sanitary efficiency and cleaned daily. Food will be made mostly to order and stored in large coolers in the basement.

Delivery & Catering

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Food for delivery may be similar to take-out (prepared to order) or it may be prepared earlier and stocked. Catering will be treated as deliveries.

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Management & Organization

Key Employees & Principals
Jack Morton, President. Jack Morton is also the owner and manager of Grains & Beans, a local natural food wholesaler and retail store. Since 1977 his company has created a high-profile mainstream image for natural foods. In 1992 Grains & Beans opened a small cafe within the retail store that became so popular and profitable, he decided to expand the concept into a full service restaurant.

Jack brings with him a track record of success in the natural foods industry. His management style is innovative and in keeping with the corporate style outlined in the mission statement.

Compensation & Incentives
Abonda will offer competitive wages and salaries to all employees with benefit packages available to key personnel only.

Board of Directors
An impressive board of directors has been assembled that represents some top professional from the area. They will be a great asset to the development of the company.

Consultants & Professional Support Resources
At the present, no outside consults have been retained, excepting the design department at Best Equipment.

Management to be Added
We are presently searching for a general manager and executive chef. These key employees will be well chosen and given incentives for performance and growth.

Management Structure & Style
Jack Morton will be the President and Chief Operating Officer. The general manager and chef will report to him. The assistant manager and sous-chef will report to their respective managers, and all other employees will be subordinate to them.

Ownership
Jack Morton and the stockholders will retain ownership with the possibility of offering stock to key employees if deemed appropriate.

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Long-Term Development & Exit Plan

Goals
Abonda is an innovative concept that targets a new, growing market. We assume that the market will respond, and grow quickly in the next 5 years. Our goals are to create a reputation of quality, consistancy and security (safety of food) that will make us the leader of a new style of dining.

Strategies
Our marketing efforts will be concentrated on take-out and delivery, the areas of most promising growth. As the market changes, new products may be added to maintain sales.

Milestones
After the restaurant opens, we will keep a close eye on sales and profit. If we are on target at the end of year 1, we will look to expand to a second unit.

Risk Evaluation
With any new venture, there is risk involved. The success of our project hinges on the strength and acceptance of a

fairly new market. After year 1, we expect some copycat competition in the form of other independent units. Chain competition will be much later.

Exit Plan
Ideally, Abonda will expand to five units in the next 10 years. At that time, we will entertain the possibility of a buy-out by a larger restaurant concern or actively seek to sell to a new owner.

For information on an updated version of this page, click here

Please click here for more information about restaurant startup, business plans, opening, spreadsheets, consulting, management, marketing & software..

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7/12/2014

UNIVERSITY OF SOUTH CAROLINA

September 6, 2013

OFFICE OF THE GENERAL COUNSEL

William M. Hogan, Esq.
The Gilreath Law Firm, P.A.
PO Box 2147
Greenville, SC 29602

RE: Pankaj Patel v. Krish Patel and P. Communications, Inc.
Case No.: 2011-CP-23-7338

Dear Mr. Hogan:

This is in response to your subpoena dated August 5, 2013, to Jeff Smith, an instructor at the University of South Carolina Upstate, seeking education records pertaining to Krish Patel. The requested business plan submitted by Krish Patel is enclosed. We redacted the name of the other student who worked on the assignment.

Krish Patel took the following courses taught by Jeff Smith:

SBAD 225 Fall 2005: Kirsh Patel's final grade was D+. Course description: Financial Accounting (3) Principles of external financial reporting for business entities, including income measurement and determination of financial position. Prerequisites: SMTH 120 or 121 or 126.

SBAD 471 Spring 2008: Kirsh Patel's final grade was B. Course description: New Business Enterprise (3) Analysis of business opportunities; planning and establishing a business organization to exploit an opportunity; management of a small business. Prerequisite: SBAD 371.

Please contact me at (803)777-7854 if you have any questions.

Sincerely,

Henry J. White
Associate General Counsel

RECEIVED
SEP - 9 2013
Gilreath Law Firm, P.A.

Enclosure

2003

Verizon Wireless Agent Business Plan



Krish Patel

USC000002

Def.Trial Document 055

OWNERS

Jay Krish Inc.
408 Ashby Park Lane
Greenville,SC 29607
864-275-5605
864-451-7533
KrishV.Patel@Hotmail.Com

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II. Executive Summary

This business model consist of retail authorized Verizon Wireless retail locations. The product being sold is Verizon Wireless service, equipment and accessories. Verizon Wireless has invested more than $40 billion since the company was formed to increase the coverage and capacity of its national network and to add new services. Verizon Wireless currently serves 65.7 million customers. The voice network reliability test results have consistently shown that the rate of ineffective attempts for the Verizon Wireless national network, in major metropolitan centers and some remote areas, is lower than any other national carrier.

Verizon Wireless owns and operates the nation's most reliable wireless network, serving 65.7 million voice and data customers. Leveraging its greatest asset - its network - Verizon Wireless continues to lead the industry by offering the highest quality products and services while introducing innovative technology solutions.

Verizon Wireless Authorized Agents earn a commission, co-op accruals and account maintenance fees for the activation of customers on Verizon Wireless calling plans according to their agency agreements. Verizon Wireless performs all billing, collections and customer service for the Verizon Wireless customers activated by the Authorized Agent. Authorized Agents identify themselves as authorized agents of Verizon Wireless and use Verizón Wireless trademarks in accordance with their agency agreement. The Verizon Wireless Indirect Channel vision is to have strategic alliances with Authorized Agents by having a finite number of locations that are strategically placed within the market place.

The target market will be anyone of age 6 and up. The cellular industry is an evolving and growing business. The continuing growth will allow our business to expand and make a substantial profit. The focus of this business is to grow into multi retail locations. Multi locations result in a higher net profit. The key to success in this agent program is location, low cost equipment purchases, management and operations. This business could evolve over time becoming a large multi million dollar company. The future of this industry lies in the hands of new technology.

Initial start up capital of each location is projected to be $50,000 per location. That cost includes inventory, furniture, fixture, rent, salary compensation if needed, pos systems and legal services. Additionally, Verizon Wireless will pay $12,000 per store opened as start up capital.

A small business loan will be necessary to get start up capital. The company will use real estate as collateral for the loan and personal guarantees. This money allows the business to start up and pay off over a period of time rather than using all personal capital.

III. General Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objective:

- To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.
- To provide training and support for store personal, maintaining excellent moral of all store employees.
- To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.
- To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

IV. Products and Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.
Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

V. Marketing Plan And Strategy

Market Penetration
Entry into the market should not be a problem. The first store has extremely high visibility
with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website
- Corporate relations

The marketing effort will be split into 3 phases;
1) Opening -- An advanced notice sent out to our personal, business and community contacts.
2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly
for effectiveness.
3) Point of sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With ICAR research center and

south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population -- the county of Greenville with a year-round population of 500,000 +-.
Local businesses -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Flour, Jacobs, etc have large offices or corporate headquarter located here.
Venues: Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000),
Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)
The student – USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained individuals, guided by professionals of the business industry.
- changing behaviors to change results
- High employee motivation and good sales attitude

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Niche

Our company will be the one stop solution for the everyday consumer and small business clients. Our management and organization will be trained directly by individuals who have worked for and in this industry for several years. Our advantage will simply offer the total solution and no other agents in the upstate will be able to offer the service that we will.

Promotion

Our company will focus on building customer relationships and strive to keep high loyalty programs for our repeat clients. We will network within the community to offer our service to individuals and businesses.

Some of the promotional programs will include discounts on accessory items and waived equipment fees.

Pricing

Our pricing will reflect much of the corporate retail pricing. This will allow our company to stay competitive and make sustainable profits. Offering low prices will not necessarily be our mission but to provide service with the purchase.

Distribution Channels

Our channels will mostly consist of retail selling and b2b. As our company grows we will establish online purchasing.

Sales Forecast

VI. Operational Plan

Our first store will consist of a director of operations. This person will manage day to day cash controls, inventory and sales tracking. Additionally they will train, develop and coach the sales staff. Sales staff will be conducting cold calls to generate sales leads during slow times. As the company expands, central management will expand as well.

Production

All equipment will be purchased directly from Verizon Wireless as a vendor. This will ensure the quality and durability of the product. Not only that but it will ensure the sensitivity of time on orders placed. Our inventory control will be conducted by a pos system but will also include cycle counts in opening and closing procedures.

Location

Our first proposed location will be on east side of Greenville. It is important to qualify a location which has other anchor retail stores surrounding to drive walking traffic. Our locations will be road front within mixed shopping centers and plenty of visibility and parking.

Our locations will be replica of corporate Verizon Wireless retail locations to provide the complete image. It is very important to stay consistent for all locations.

Locations will need to be around 1000 -1500 sq ft. Finding locations around the $17-$24 ft will be the criteria to stay within rent budget.

Legal Environment

An s-corp. will need to be created for the company. Also a retail sales license will be needed to do business in the state and county.

Personnel

Each location will need a maximum of 3 employees initially. The staff of three will be sales representatives. The individuals will need to be qualified individuals seeking a commission based sales position.

Good computer and verbal skills will be required. All staff will be trained by our company and Verizon Wireless. Using companies like staffing and recruiting agents will help find right individuals.

Pay will be based strictly on commission to keep staff motivated to sell. This is usually standard in this type of business.

Upper management will be paid on salary plus commission on gross sales.

Inventory

Inventory levels will be maintained based on product promotions, vendor discounts and product demand. POS systems will allow the business to coordinate this process efficiently. ROP will be established on business supplies after understanding months of business needs.

Suppliers

The key supplier will be Verizon Wireless. This will ensure on time orders and quality warranted product.

Credit Policies

This business will not operate on any credits.

Managing Your Accounts Payable

The director of operations will control all accounts payable transactions using bank of America's business banking program for ease of use.

VII. Management and Organization

Professional and Advisory Support

Krish V. Patel, CEO & President
Vijay R. Patel, Vice President

Corby Phillips, General Manager & Project Development
Krish V. Patel, Director of Sales & Operations

Alka V. Patel, Director of Training & Inventory Control
Jay Patel, Director of Marketing

S. Allan Hill – Attorney & Professional Business/Legal Support
Mukund Desai – CPA, Consultant

IX. Startup Expenses and Capitalization

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Startup Expenses

Verizon Wireless

Sources of Capital

Owners' Investment (name and percent ownership)		
Jay Krish Inc.	$ 10,000	(per location)
Total Investment	$ 10,000	
Bank Loans		
BB&T	$ 25,000	
Bank of America	25,000	
Total Bank Loans	$ 50,000	

Startup Expenses

Capital Equipment List		
Furniture and Fixtures	$ 6,000	
Equipment	7,000	
Other	5,000	
Total Capital Equipment	$ 18,000	
Location and Admin Expenses		
Rental	$ 2,700	
Utility deposits	50	
Legal and accounting fees	500	
Prepaid Insurance	200	
Total Location and Admin Expenses	$ 3,450	
Opening Inventory		
Cellular Equipment	$ 10,000	
Accessories	800	
Total Inventory	$ 10,800	
Advertising and Promotional Expenses		
Advertising	$ 1,500	
Signage	500	
Printing	250	
Total Advertising/Promotional Expenses	$ 2,250	
Reserve for Contingencies	$ 1,500	
Working Capital	$ 5,000	

USC000015

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Summary Statement

Sources of Capital	
Owners' and other investments	$ 10,000
Bank loans	50,000
Total Source of Funds	$ 60,000
Startup Expenses	
Capital equipment	18,000
Location/administration expenses	3,450
Opening inventory	10,800
Advertising/promotional expenses	2,250
Contingency fund	1,500
Working capital	5,000
Total Startup Expenses	$ 41,000

Security and Collateral for Loan Proposal

Collateral for Loans	**Value**
Real estate	$ 200,000

Owners
Jay Krish Inc.

USC000017

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Balance Sheet (Projected)

Verizon Wireless

	Beginning as of 06/01/2008	Projected as of 06/01/2009
Assets		
Current Assets		
Cash in bank	$ 60,000	$ 65,259
Accounts receivable	-	1,406
Inventory	10,800	6,800
Prepaid expenses	3,450	3,450
Other current assets	5,000	5,000
Total Current Assets	$ 79,250	$ 83,915
Fixed Assets		
Machinery & equipment	$ 7,000	$ 7,000
Furniture & fixtures	6,000	6,000
Leasehold improvements	1,000	
(LESS accumulated depreciation on all fixed assets) $375/month	-	(4,500)
Total Fixed Assets (net of depreciation)	$ 14,000	$ 8,500
Other		
Total Other Assets		
TOTAL Assets	$ 93,250	$ 92,415
Liabilities and Equity		
rent Liabilities		
ounts payable	$ 19,000	$ 19,000
Interest payable (10%)	-	1,900
Taxes payable (6%)	1,140	1,140
Current part, long-term debt	-	-
Other current liabilities	11,560	6,000
Total Current Liabilities	$ 31,700	$ 28,040
Long-term Debt		
Bank loans payable	$ 50,000	$ 4,000
Other long term debt	1,650	-
Total Long-term Debt	$ 51,650	$ 4,000
Total Liabilities	$ 83,250	$ 32,040
Owners' Equity		
Invested capital	$ 10,000	$ 10,000
Retained earnings - beginning		-
Retained earnings - current	-	50,376
Total Owners' Equity	$ 10,000	$ 60,375
Total Liabilities & Equity	$ 93,250	$ 92,415

USC000018

Def.Trial Document 071

ive-Month Cash Flow
erion Wireless

Fiscal Year Begins: Jun-08

	Startup EST	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Total Item EST
Cash on Hand (beginning of month)	60,000	56,550	61,267	68,899	80,096	79,683	81,605	87,283	107,757	109,609	109,160	110,228	111,972	
CASH RECEIPTS														
Cash Sales	0	29,655	32,670	36,135	24,600	27,135	31,101	45,780	26,940	24,639	26,181	26,832	27,900	359,568
Collections fm CR accounts														
Loan/ other cash inj.														
TOTAL CASH RECEIPTS	0	29,655	32,670	36,135	24,600	27,135	31,101	45,780	26,940	24,639	26,181	26,832	27,900	359,568
Total Cash Available (before cash out)	60,000	86,205	93,937	105,034	104,696	106,818	112,706	133,063	134,697	134,248	135,341	137,060	139,872	359,568
CASH PAID OUT														
Linen Rental		15	15	15	15	15	15	15	15	15	15	15	15	180
Food and Beverage		75	75	75	75	75	75	75	75	75	75	75	75	900
Gross wages		6,000	6,750	7,500	4,875	5,475	6,375	9,000	5,475	5,100	5,250	5,400	5,625	72,825
Payroll expenses														
Supplies (office & oper.)		130	130	130	130	130	130	130	130	130	130	130	130	1,560
Repairs & maintenance		500	500	500	500	500	500	500	500	500	500	500	500	6,000
Advertising		1,750	1,800	1,750	1,900	1,875	1,985	2,100	1,800	1,700	1,800	1,875	1,750	22,085
Credit Card Fees and Rental		960	960	960	960	960	960	960	960	960	960	960	960	11,520
Accounting & legal	500	350	400	350	275	500	600	550	450	550	475	375	400	5,775
Rent	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	2,700	35,100
Telephone (60 *$150)		9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	108,000
Utilities	50	800	800	800	800	800	800	800	800	800	800	800	800	9,600
Insurance	200	200	200	200	200	200	200	200	200	200	200	200	200	2,600
Taxes (real estate, etc.)		1,463	1,463	1,463	1,463	1,463	1,463	1,463	1,463	1,463	1,463	1,463	1,463	17,556
Interest		500	500	500	500	500	500	500	500	500	500	500	500	6,000
Pest Extermination		45	45	45	45	45	45	45	45	45	45	45	45	540
Professional Fees		100	100	100	100	100	100	100	100	100	100	100	100	1,200
Disposable Supplies		350	350	350	350	350	350	350	350	350	350	350	350	4,200
SUBTOTAL	3,450	24,938	25,788	26,438	23,888	24,688	25,798	28,488	24,563	24,188	24,363	24,488	24,613	305,641
Loan principal payment														
TOTAL CASH PAID OUT	3,450	24,938	25,788	26,438	23,888	24,688	25,798	28,488	24,563	24,188	24,363	24,488	24,613	305,641
Cash Position (end of month)	56,550	61,267	68,149	78,596	80,808	82,130	86,908	104,575	110,134	110,060	110,978	112,572	[redacted]	

USC00079

Def.Trial.Document 072

ESSENTIAL OPERATING DATA (non cash flow information)														
Sales Volume (dollars)		29,655	32,670	36,135	24,500	27,135	31,101	45,780	26,940	24,639	26,181	26,832	27,900	359,568
Accounts Receivable		100	150	130	125	275	100	155	135	36	100	100	0	1,406
Bad Debt (end of month)		0	0	0	0	0	0	0	0	0	0	0	0	0
Inventory on hand (eom)	10,800	9,800	10,000	12,000	11,980	11,050	10,050	10,700	11,000	10,500	10,000	9,900	9,750	8,800
Accounts Payable (eom)	-19,000	-17,500	-18,625	-18,225	-17,000	-17,150	-16,800	-16,400	-16,750	-16,200	-15,900	-15,555	-15,000	-15,000
Depreciation	0	370	370	370	370	370	370	370	370	370	370	370	370	4,440

Def.Trial Document 073

USC000020

Opening Day Balance Sheet

Verizon Wireless

Assets	
Current Assets	
Cash in Bank	$ 60,000
Inventory	10,800
Prepaid Expenses	3,450
Other	5,000
Total Current Assets	$ 79,250
Fixed Assets	
Machinery & Equipment	$ 7,000
Furniture & Fixtures	6,000
Leasehold Improvements	1,000
Real Estate / Buildings	-
Other	-
Total Fixed Assets	$ 14,000
Other Assets	
Other	$ -
	-
Total Other Assets	$ -
Total Assets	$ 93,250
Liabilities & Net Worth	
Current Liabilities	
Accounts Payable	$ 19,000
Taxes Payable	1,140
Notes Payable (due within 12 months)	-
Current Portion Long-term Debt	-
Other current liabilities	11,560
Total Current Liabilities	$ 31,700
Long-term Liabilities	
Bank Loans Payable (greater than 12 months)	$ 50,000
Less: Short-term Portion	
Notes Payable to Stockholders	-
Other long-term debt	1,550
Total Long-term Liabilities	$ 51,550
Total Liabilities	$ 83,250
Owners' Equity (Net Worth)	$ 10,000
Total Liabilities & Net Worth	$ 93,250

USC000021

Def.Trial Document 074

Break Even Analysis

	profit per item	# sold	monthly total	yearly total
Sales Required				
New Activation	$160	60	$ 9,000.00	$ 108,000.00
Renewals	$45	10	$ 450.00	$ 5,400.00
Accessories	$12	114	$ 1,368.00	$ 16,416.00
Bill Payments	$3	7	$ 21.00	$ 252.00
				$ 130,068.00

Fixed Cost

	per Month	yearly
Taxes	$ 1,463.00	$ 17,556.00
Salary	$ 4,500.00	$ 54,000.00
rent	$ 2,700.00	$ 32,400.00
utility	$ 800.00	$ 9,600.00
Interest	$ 500.00	$ 488.00
depreciation	$ 375.00	$ 4,500.00
Credit Card Fees	$ 960.00	$ 11,520.00
		$ 130,064.00

X. Financial Plan

12-Month Profit and Loss Projection

Four-Year Profit Projection (Optional)

Projected Cash Flow

Opening Day Balance Sheet

Break-Even Analysis

Def.Trial Document 076

VZW AGENT PLANS

From: krish patel (krishv.patel@hotmail.com)
Sent: Wed 12/19/07 6:43 PM
To: kaj patel (kaj.patel@charter.net)
2 attachments
Verizon Wireless Agent Financial Summary.xls (36.0 KB), Verizon Wireless Agent Financial Summary.xlsx (15.2 KB)

Kaj,

Here are the calculations I configured. If you have any other questions let me know.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	$100	$500	$12,000	$144,000
	25	$15	$375	$6,000	$72,000
Accessories					
Totals	**30**	**$115**	**$875**	**$18,000**	**$216,000**
	Tips	0%	$0	$0	$0

Expense		Tot/Month	Tot/Year
18.00%	Food	$75	$900
	Rent	$2,700	$32,400
	CAM	$0	$0
	Maintenance	$50	$600
	Insurance	$200	$2,400
25%	Payroll	$4,000	$48,000
	Licences	$1,200	$14,400
	Profesional Fees	$100	$1,200
	Utilities	$800	$9,600
	Uniforms	$0	$0
	Linen Laundry	$0	$0
	Linen Rental	$15	$180
	Replacement costs	$0	$0
	Flyers	$100	$1,200
	Pest Extermination	$45	$540
1%	Disposable supplies	$350	$4,200
	Office Materials	$130	$1,560
7%	Sales& Hospitality Tax	$1,260	$15,120
	Credit card equipment rental	$0	$0
2%	Credit Card Fees	$960	$11,520
	Total	**$11,985**	**$143,820**

Profit	**$6,015**	**$72,180**
% Profit	**50.19%**	**50.19%**

Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130

Defendants 000344

Def.Trial Document 078

2%	Credit Card Fees	$140
	Total	$6,621

Assume 75% by CC

140.8

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	$100	$500	$12,000	$144,000
	25	$15	$375	$6,000	$72,000
Accessories					
Totals	**30**	**$115**	**$875**	**$18,000**	**$216,000**
	Tips	0%	$0	$0	$0

Expense		Tot/Month	Tot/Year
18.00%	Food	$75	$900
	Rent	$2,700	$32,400
	CAM	$0	$0
	Maintenance	$50	$600
	Insurance	$200	$2,400
25%	Payroll	$4,000	$48,000
	Licences	$1,200	$14,400
	Professional Fees	$100	$1,200
	Utilities	$800	$9,600
	Uniforms	$0	$0
	Linen Laundry	$0	$0
	Linen Rental	$15	$180
	Replacement costs	$0	$0
	Flyers	$100	$1,200
	Pest Extermination	$45	$540
1%	Disposable supplies	$350	$4,200
	Office Materials	$130	$1,560
7%	Sales& Hospitality Tax	$1,260	$15,120
	Credit card equipment rental	$0	$0
2%	Credit Card Fees	$960	$11,520
	Total	**$11,985**	**$143,820**

Profit	**$6,015**	**$72,180**
% Profit	**50.19%**	**50.19%**

Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130

2%	Credit Card Fees	$140
	Total	$5,621

Assume 75% by CC

140.8

New Calculations

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Thu 1/10/08 7:08 PM
To: kaj patel (kaj.patel@charter.net)
2 attachments
Verizon Wireless Agent Financial Summary.xlsx (15.2 KB) , Residual VZW.xlsx (12.2 KB)

Kaj,

Take look at this info. I will come by tomorrow and go over application with you , there are too many pages to scan. We can prob knock it out in 45 minutes. Call me if you have any questions.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Revenues				
				25
	Items sold per day	Avg/person	Total/Day	Tot/Month
Activations	2	$235	$470	$11,280
	25	$15	$375	$9,375
Accessories				
Totals	**27**	**$250**	**$845**	**$20,655**
	Tips	0%	$0	$0

Expense		Tot/Month
18.00%	Food	$75
	Rent	$2,700
	CAM	$0
	Maintenance	$50
	Insurance	$200
25%	Payroll	$6,000
	Licences	$0
	Profesional Fees	$100
	Utilities	$800
	Uniforms	$0
	Linen Laundry	$0
	Linen Rental	$15
	Replacement costs	$0
	Flyers	$100
	Pest Extermination	$45
1%	Disposable supplies	$350
	Office Materials	$130
7%	Sales& Hospitality Tax	$1,446
	Credit card equipment rental	$0
2%	Credit Card Fees	$960
	Total	**$12,971**

Profit	**$7,684**
% Profit	**59.24%**

Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130

2%	Credit Card Fees	$140
	Total	$5,621

Tot/Year
$135,360
$112,500
$247,860
$0

Tot/Year	
$900	
$32,400	
$0	
$600	
$2,400	
$72,000	
$0	
$1,200	
$9,600	
$0	
$0	
$180	
$0	
$1,200	
$540	
$4,200	
$1,560	
$17,350	
$0	
$11,520	Assume 75% by CC
$155,650	

$92,210
59.24%

Revenues				
				25
	Items sold per day	Avg/person	Total/Day	Tot/Month
Activations	2	$185	$370	$8,880
	25	$15	$375	$9,375
Accessories				
Totals	**27**	**$200**	**$745**	**$18,255**
	Tips	0%	$0	$0

Expense		Tot/Month
18.00%	Food	$75
	Rent	$2,700
	CAM	$0
	Maintenance	$50
	Insurance	$200
25%	Payroll	$6,000
	Licences	$0
	Profesional Fees	$100
	Utilities	$800
	Uniforms	$0
	Linen Laundry	$0
	Linen Rental	$15
	Replacement costs	$0
	Flyers	$100
	Pest Extermination	$45
1%	Disposable supplies	$350
	Office Materials	$130
7%	Sales& Hospitality Tax	$1,278
	Credit card equipment rental	$0
2%	Credit Card Fees	$960
	Total	$12,803

Profit	**$5,452**
% Profit	**42.69%**

Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130

2%	Credit Card Fees	$140
	Total	$5,621

Tot/Year
$106,560
$112,500
$219,060
$0
Tot/Year
$900
$32,400
$0
$600
$2,400
$72,000
$0
$1,200
$9,600
$0
$0
$180
$0
$1,200
$540
$4,200
$1,560
$15,334
$0
$11,520
$153,634
$65,426
42.59%

tiers	plans	acts	monthly 4% residual
t1	10	36	$14.40
t2	40	10	$16.00
t3	50	5	$12.50
t4	65	5	$13.00
t5	80	2	$6.40
t6	90	2	$7.20
			$69.5 month

12 month

$172.80
$192.00
$62.50
$156.00
$76.80
$86.40

$746.5 year

RE: mls

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 1/30/08 6:40 PM
To: kaj.patel@charter.net

John hamrick -realtors

listin agent delaney grahm -

$689,000

1-22-08 listed on

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Sat, 26 Jan 2008 08:55:28 -0800
> From: kaj.patel@charter.net
> To: krishv.patel@yahoo.com
> Subject: mls
> CC: krishv.patel@hotmail.com
>
> Here is the info.
> MLS 159170
>
> Address:
> 190 Walker pt
> Seneca 29672
>
> are you getting hotmail email???

Re: mls

From: krishv.patel@hotmail.com
Sent: Thu 1/31/08 1:56 PM
To: Kaj Patel (kaj.patel@charter.net)

Yes I sent earlier
Sent via BlackBerry by AT&T

-----Original Message-----
From: <kaj.patel@charter.net>

Date: Thu, 31 Jan 2008 8:29:15
To:krishv.patel@hotmail.com
Cc:krishv.patel@yahoo.com
Subject: Re: mls

R we OK to meet at 4:15pm this afternoon???
--
Pankaj Patel
President
Arman Consulting, Inc
www.armanci.com

---- krishv.patel@hotmail.com wrote:
> Ok
> Sent via BlackBerry by AT&T
>
> -----Original Message-----
> From: <kaj.patel@charter.net>
>
> Date: Thu, 31 Jan 2008 9:37:48
> To:krish patel <krishv.patel@hotmail.com>
> Cc:"krishv.patel: yahoo.com" <krishv.patel@yahoo.com>
> Subject: RE: mls
>
>
> Go ahead and call them to make appt for sat or sun. I may be able to do it tommorrow as well but will not know till 11:30am. If last min works ok for you we can go look tomorrow afternoon.
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com
>
> ---- krish patel <krishv.patel@hotmail.com> wrote:
> >
> > John hamrick -realtors
> >
> > listin agent delaney grahm -
> >
> > $689,000
> >
> > 1-22-08 listed on Krish Patel - Project Manager VIP Hospitality, LLCHotel & Retail Development 864-275-5605 Phone864-451-7533 Fax> Date: Sat, 26 Jan

2008 08:55:28 -0800> From: kaj.patel@charter.net> To: krishv.patel@yahoo.com>
Subject: mls> CC: krishv.patel@hotmail.com> > Here is the info.> MLS 159170>
> Address:> 190 Walker pt> Seneca 29672> > are you getting hotmail email???
>

Defendants 000070

Info

From: krishv.patel@hotmail.com
Sent: Mon 2/04/08 9:48 PM
To: Kaj Patel (kaj.patel@charter.net)
1 attachment
Mike Pavlick.vcf (0.2 KB)

Kaj,

Here is mikes contact, please call him.

Please email me the DL info. Thanks

Krish

Sent via BlackBerry by AT&T

Re: Verizon Stores

From: krishv.patel@hotmail.com
Sent: Fri 2/08/08 6:02 PM
To: Mike Pavlick (mrpavlick@bbandt.com)

Mike,
Sorry I didn't get back to you earlier. All the information is correct. We will get an answer monday from verizon to move forward.

Thanks

Krish
Sent via BlackBerry by AT&T

-----Original Message-----
From: "Pavlick, Michael" <MRPavlick@BBandT.com>

Date: Fri, 8 Feb 2008 16:54:06
To:krishv.patel@hotmail.com
Subject: Verizon Stores

Krish -
The information I have in my notes indicates you are looking for a $25,000 to $50,000 line of credit. The borrowing entity will be an "S- Corporation" named VP Enterprises, Inc, address 408 Ashby Park Lane. The company owners will be Vijay & Kaj @ 50% ownership each.
Please confirm.
Thanks & have a good weekend!
Mike Pavlick
MRPavlick@BBandT.COM
(864) 242-8661 Phone
(864) 242-8428 Fax

Def. Trial Document 098

Re: Cell phine price list from Hong kong

From: krishv.patel@hotmail.com
Sent: Fri 2/08/08 6:24 PM
To: Kaj Patel (kaj.patel@charter.net)

I will check these out , thanks.

You can keep researching to see if you find anymore.

Krish
------Original Message------
From: Kaj Patel
To: Krish Patel
Cc: Head Quarters
Sent: Feb 8, 2008 4:02 AM
Subject: Cell phine price list from Hong kong

Attched is a xls list of phones from a supplier in hong kong that i found from alibaba.com. Can U look at the list and see how the prices are. Also list list shows that the phiones are GSM or GPRS. Will that work with verizon???

--
Pankaj Patel
President
Arman Consulting, Inc
www.armanci.com

Sent via BlackBerry by AT&T

RE: Cell phine price list from Hong kong

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Sat 2/09/08 1:29 AM
To: kaj.patel@charter.net

there was no attachment

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Fri, 8 Feb 2008 09:12:27 -0500
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject: Cell phine price list from Hong kong
> CC: krishv.patel@yahoo.com
>
> Attched is a xls list of phones from a supplier in hong kong that i found from alibaba.com. Can U look at the list and see how the prices are. Also list list shows that the phiones are GSM or GPRS. Will that work with verizon???
>
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com

Tax return

From: krishv.patel@hotmail.com
Sent: Sun 2/10/08 4:21 AM
To: Kaj Patel (kaj.patel@charter.net)

Kaj,

Please email me 2 years of tax returns as soon as possible. I need to email them to tammy.

Thanks,

Krish
Sent via BlackBerry by AT&T

FW: Tax return

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Mon 2/11/08 4:14 PM
To: Kelley Pearson (kelley.pearson@verizonwireless.com)
2 attachments
2005 Income Tax Return Federal.pdf (2.5 MB) , 2006 Income Tax Return Federal.pdf (3.1 MB)

Kelley,

Here is the tax returns for Pankaj Patel.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Mon, 11 Feb 2008 05:47:31 -0800
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject: Re: Tax return
> CC: krishv.patel@yahoo.com
>
> Krish attached are my returns of 05 and 06. Please confirm reciept.
>
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com
>
> ---- krishv.patel@hotmail.com wrote:
> > Kaj,
> >
> > Please email me 2 years of tax returns as soon as possible. I need to email them to tammy.
> >
> > Thanks,
> >
> > Krish
> > Sent via BlackBerry by AT&T
> >

FW: Office Building / Part Medical Office Investment Opportunity

From: krish patel (krishv.patel@hotmail.com)
Sent: Wed 4/02/08 10:35 PM
To: Vijay Patel (vijay831@hotmail.com)

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Wed, 2 Apr 2008 14:23:43 -0400
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject: Fwd: Office Building / Part Medical Office Investment Opportunity
>
> FYI
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com
>
> > From: "Bryce Garbrecht" <consultants@sccoast.net>
> > To: "Kaj Patel" <kaj.patel@charter.net>
> > Subject: Office Building / Part Medical Office Investment Opportunity
> > Date: Wed, 2 Apr 2008 12:52:21 -0400
> >
> > Kaj: I thought you might be interested in this:
> >
> > Office building / part medical office in Miami Shores, Florida.
> > This is a 50,000 square feet building built in 1965 and renovated in 2006 at
> > a cost of $350,000.
> > The 100% occupancy breaks down this way: 45% Medical, 30% Law Firms, 25%
> > Misc. Professional.
> > The rents range from $11 to $22 per square foot per year. The actual NOI for
> > 2007 was $631,462 (To be Confirmed) which had a cap rate of 8.4% and they
> > have a 2008 projected NOI of $763,067with a cap rate of 10.2%(To be
> > Confirmed).
> >
> > Their asking price is $7.3 Million
> >
> > The cash flow after mortgage payment is still very good, especially this
> > year when the NOI goes up. In 2008 the estimated NOI is $763,067. If you

Defendants 000330

Def Trial Document 103

> > take a price of $7 Million and put 20% down this leaves a balance of
> > $5,600,000 at 6% for 15years = $472,640 yearly principal and interest
> > payment. This leaves a potential profit in 2008 of $290,427 (20.7% cash on
> > cash return).
> >
> >
> > Bryce
>

RE:

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Tue 4/08/08 11:45 PM
To: kaj.patel@charter.net

Kaj,

If you would like to put together the LOI you can. I am not ready to put anything on paper until we see the property. If he is not interested in giving us his time then we will go there on our own with out speaking to him. Stricktly to see the location and the property condition.

Tell Vip to keep us up to date on the NC store. We can make a move on that when its ready.

let me know your thoughts,

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Tue, 8 Apr 2008 13:21:41 -0700
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject:
>
> Krish,
> Vip called today, It will be a few weeks before we will get info on the 3 seized stores in NC.
> Also, If we want to go look at the Comfort and SleepInn in Charleston, please put together an LOI stating interest and a price between 10-11M. He will also need a letter from a bank stating that they will work with us on financing the deal. Only then will the current owner get motivated to show us the property.
> Call me.
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com

Re: AT&T independent dealer info

From: krishv.patel@hotmail.com
Sent: Fri 4/18/08 10:54 AM
To: Kaj Patel (kaj.patel@charter.net)

Kaj,

I believe me and my dad are going to charleston to take a look at the hotels.
Can you get me the address ?
------Original Message------
From: Kaj Patel
To: Krish Patel
Sent: Apr 18, 2008 3:06 AM
Subject: AT&T independent dealer info

Krish,
See link below for AT&T independent dealer info and contacts:

http://www.wireless.att.com/about/doing-business/local-dealers.jsp

--
Pankaj Patel
President
Arman Consulting, Inc
www.armanci.com

Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

Fw: Marriott Residence Inn, North Charleston from VIP

From: krishv.patel@hotmail.com
Sent: Sun 4/20/08 12:46 PM
To: Dad (vijay831@hotmail.com)
1 attachment
C airport 1.jpg (143.3 KB)

Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

-----Original Message-----
From: "Kaj Patel" <kaj.patel@charter.net>

Date: Sat, 19 Apr 2008 15:58:32
To:<krishv.patel@hotmail.com>
Subject: FW: Marriott Residence Inn, North Charleston from VIP

See below about marriot.
Addresses:
I26 exit 209 - Ashley phosphate rd. All 3 hotels on same exit

Marriot - 7645 Northwood blvd, North Charleston

Comfort and Sleep inn - 7435 Northside Drive, North Chaleston

---

From: Bryce Garbrecht [mailto:consultants@sccoast.net]
Sent: Friday, April 18, 2008 1:45 PM
To: Kaj Patel
Subject: Marriott Residence Inn, North Charleston from VIP

Kaj:

We talked to Karl Grover at Marriott and he says right now they will not extend the license beyond November 2011. The good news is that the property is currently being totally revamped and a new buyer will be able to keep the license until November 2011 without any PIP work. The current property sales are already exceeding last years sales, and will continue to grow due to all of the improvements. A new buyer could milk the property over the next 4 years while it is still a Marriott, and even when the flag is removed the property should still sustain excellent sales due to strong repeat

business, location, and service. The property has always been real popular with guests due to location and service, and the current average stay is 100+ days. The new buyer needs to, over the next 4 years pamper and stay in touch with the clients (Christmas Cards, Birthday Cards, Special Rates / Discounts, In-House rewards programs Free nights to replace Marriott Rewards Program) which will make the transition from Marriott to an Independent or other franchise smooth (most customers will not even notice as long as the property and service standards are maintained). In regards to Marriott Hotels, their rewards program is good, but this could be offset easily by immediately introducing an In-house program so that when the Marriott program is gone, the clients won't miss it.

If you can get the property for 6.5Million to 7Million (at $7million the cost per room is only $73,000 including 3+ acres of land in a AAA location / walking distance to Northwoods mall, and 3.2 miles to the Charleston International Airport, see map below) this would be a steal because you can still run it as a Marriott for 4 years, and even after the flag is gone it will still be an excellent location and property. The sales should still be strong especially if you work your customers and get them ready for the change. The only real difference between becoming an Independent / New franchise and Marriott is the rewards program, the customers will still come back as long as they still have the same quality, service, and get some kind of in-house rewards program, current customers are just use to coming to this location.

The sellers attorney states that they have made and will complete all of the capital improvements required by Marriott by the end of this summer.

The following was sent to the sellers attorney's from Karl Grover with Marriott:

Gregory, Lewis and John, I visited with Dora on 3/27/08 to check on the progress of the hotel renovation. Was pleased to see how much has been done and am hopeful that all will be done as committed by 6/30/08. I thought it would be beneficial to recap for all my notes from that visit and concern areas:

Items Done:

- Parking Lot
- Interstate sign removed
- Carpet in all but 8 rooms

Fw: Letter of Intent from Vip Patel

From: krishv.patel@hotmail.com
Sent: Fri 4/25/08 12:13 PM
To: Dad (vijay831@hotmail.com)
1 attachment
LOI.doc (22.0 KB)

Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

-----Original Message-----
From: "Bryce Garbrecht" <consultants@sccoast.net>

Date: Fri, 25 Apr 2008 11:59:16
To:"Krish Patel" <krishv.patel@hotmail.com>
Cc:"Kaj Patel" <kaj.patel@charter.net>
Subject: Letter of Intent from Vip Patel

Krish:

Please find attached the Letter of Intent for the North Charleston Hotels.
Please sign, initial, and then either email or fax back to me.

email: consultants@sccoast.net <mailto:consultants@sccoast.net>
fax: 843-652-4445

Please call me before you send it, so I know it's on it's way, Thanks.

Vip

LETTER OF INTENT

Greenville Hotel Partners Inc. hereby expresses its interest and tenders an offer of **Eleven Million Dollars ($11,000,000)** for the purchase of both the Comfort Suites located at 2540 North Forest Drive North Charleston, South Carolina 29420, Property Code SC270, and the Sleep Inn located at 7435 Northside Drive North Charleston, South Carolina 29420, Property Code SC209. Upon acceptance of the Letter of Intent by seller, Greenville Hotel Partners Inc. will submit a formal agreement.

This letter is intended only to express the interest of the parties to purchase and sell the Property. It is not legally binding on either party, notwithstanding anything to the contrary in this letter. It is, however, an indication of good faith intent between the parties to be detailed in the future contractual agreement if the parties so agree.

Greenville Hotel Partners Inc. have a strong background in both the hospitality industry and in Residential and Commercial Real Estate. Currently we own and operate 2 Choice Hotel Properties in South Carolina, one of which received a gold award in 2007. Proof of Funds will be provided within 24 hours after acceptance of Letter of Intent by seller.

This Letter of Intent will be good until 5 PM May 1st 2008, as time is of the essence.

Initials: Buyer___ Seller___

If the terms of this letter are acceptable, please execute the enclosed copy in the space below.

ACKNOWLEDGED AND AGREED as of this _____ day of April, 2008.
AGREED AND ACCEPTED:

BUYER:

BY:_____

NAME: Greenville Hotel Partners Inc.

ACKNOWLEDGED AND AGREED as of this _____ day of _____, 2008.
AGREED AND ACCEPTED:

SELLER:

BY:_____

NAME: _____

FW: 189 Will Bomar

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 6/25/08 4:32 PM
To: Vijay Patel (vijay831@hotmail.com); kaj patel (kaj.patel@charter.net)
1 attachment
ERARiverside proof.pdf (231.3 KB)

This is the article of Greer house, our realtor put it in the realestate guide. Forward to anyone you'd like to.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Wed, 25 Jun 2008 14:54:39 -0400
> Subject: 189 Will Bomar
> From: mford@servinggreenville.com
> To: krishv.patel@hotmail.com
>
> Krish,
> Here is the add that will be in the Journal of Homes, Friday...
> Just thought you would like to see it.
> Also, get back to me about the home I sent you in Woodruff. I also found
> a great foreclosure in off of N. Main in Greenville it could be a gold
> mine with the proper updates....
>
>
> Marc Ford
> ERA Riverside
> 864-414-1951
> www.marc.servinggreenville.com

Fw: Hotel in arkansas

From: krishv.patel@hotmail.com
Sent: Mon 7/14/08 4:15 PM
To: Dad (vijay831@hotmail.com)

-------Original Message-------
From: Kaj Patel
To: Krish Patel
Cc: Head Quarters
Sent: Jul 14, 2008 4:14 PM
Subject: Hotel in arkansas

Krish,
See link below for listing of 195 room hotel in arkansas.

http://www.southeastinternational.com/listings.php

--
Pankaj Patel
President
Arman Consulting, Inc
www.armanci.com

Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

RE: wireless business oppt

From: krish patel (krishv.patel@hotmail.com)
Sent: Sun 7/27/08 1:36 PM
To: Kaj (kaj.patel@charter.net)

Kaj,

When I clicked on the link it came up unavailable ?

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

> Date: Fri, 25 Jul 2008 05:11:16 -0700
> From: kaj.patel@charter.net
> To: krishv.patel@hotmail.com
> Subject: Fwd: wireless business oppt
> CC: krishv.patel@yahoo.com
>
>
> --
> Pankaj Patel
> President
> Arman Consulting, Inc
> www.armanci.com
>
> > Date: Thu, 24 Jul 2008 14:41:02 -0700
> > From: Kaj <kaj.patel@charter.net>
> > To: Krish Patel <krishv.patel@hotmail.com>
> > Subject: wireless business oppt
> > Cc: kaj.patel@charter.net
> >
> > Krish,
> > Check this link out for wireless business for sale. Revenue=5.2M, Asking 1.9M cashflow=880K. Multiple locations in SC with 36 FT employees.
> >
> > http://www.sunbeltnetwork.com/component/sbsearch/?view=profile&lid=COLUMSC001723
> >
> > --
> > Pankaj Patel
> > President
> > Arman Consulting, Inc
> > www.armanci.com

FW: KVP Investments

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 8/20/08 12:14 AM
To: kaj patel (kaj.patel@charter.net); Vijay Patel (vijay831@hotmail.com)

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Subject: KVP Investments
Date: Tue, 19 Aug 2008 08:27:04 -0400
From: MRPavlick@BBandT.com
To: krishv.patel@hotmail.com

Krish -
I am working on the "permanent financing" for the KVP Investments loan. Can you ask your father & Pankaj if they can send me a copy of their 2007 tax returns. I have yours but the most recent tax returns I have on your father or Pankaj is from 2006.
Thanks,
Mike Pavlick
MRPavlick@BBandT.COM
(864) 242-8661 Phone
(864) 242-8428 Fax

Verizon Wireless Retailer Grand Opening !

From: **krish patel** (krishv.patel@hotmail.com)

Sent: Tue 10/07/08 6:58 PM

To: Bogari Furniture (ivet.ivanova@bogarifurniture.com); Brandi Jackson (bjgolf12@msn.com); Brett Caldwell (bcaldwell@caldwellconstructors.com); bruce ko (bruce@newwayproperties.net); Carol Pyfrom (carol@carolpyfrom.com); Casey Moore (casey_moore@adp.com); Cheyenne Riley (cheyenne@coopsfitness.com); chris nordmeyer (cnordmeyer@pazdan-smith.com); christina perez (zetagrl21@yahoo.com); Christy (christy@moneypagesinc.com); Claudia Hinsdale (claudia@naiearlefurman.com); Clay Mardre (claym@naiearlefurman.com); Corby Phillips (corbyscott@hotmail.com); Creel (cgullic@youngos.com); Dan East Coast (designs@eastcoastsignsusa.com)

Cc: Danyale Cochran (choicehotels01@yahoo.com); David Kopelson (dkopelson@entercom.com); Deana Blanding (deana.blanding@e-hps.com); Donna Sinclair (dsinclair@youngos.com); Earle Furman (efurman@naiearlefurman.com); Gaela Bailey (gbailey@greenvillenews.com); gary (gcaldwell@caldwellconstructors.com); Jeff Saunders (jesaunders@rim.com); jim cashion (jimc@hollyoakchem.com); Jon Good (jgood@naiearlefurman.com); Keith Gailey (keith.gailey@gmail.com); Kelly VanLeeuwen (kvanleeuwen@greenvillenews.com); kevin cash (kjcash@uscupstate.edu); Kia Harvey (kharvey@ecountybank.com); kim conner (kim6750@yahoo.com); Klauber@k-plus.com (klauber@k-plus.com); Kristen Carter (mskncarter@yahoo.com); Kyle Barnell (kbarnell@yahoo.com); Marc Ford (marc@erariverside.com); Michael Pavlick (mrpavlick@bbandt.com); Phil Shin (pyshin@uscupstate.edu); price (price@hughescommercial.com); Rebecca Jones (rebecca@greenvillelaw.net); renita crain (rcrain@alrlaw.net); Richard Winley (richwininc@gmail.com); Rudy Painter (rpainter@ecountybank.com); rusty harrison (rharrison@signcraftersusa.com); Ryan (ryan@eastcoastsignsusa.com); Ryan Plantin (plantinr23@yahoo.com); shane skilles (bestkepsekret1@aol.com); Sign Source (signsource@bellsouth.net); Skip (skip@hoodhargett.com); Ted Lyerly (tlyerly@naiearlefurman.com); Tim R Derossett (trdeross@us.ibm.com); Todd Ford (todddford@mac.com); tom first data (tom.alexander@firstdata.com); Vijay Patel (vijay831@hotmail.com); vloveless@gibbonspeck.com; Young (tryoung@youngos.com); Zack Barack (zjbarack@uscupstate.edu)

1 attachment

Verizon Wireless Retailer Grand Opening !.pdf (1743.8 KB)

Please join us for our Special *Grand Opening* Celebration at our Brand New **Verizon Wireless** Retailer Location!

When : Saturday - October 18, 2008

11:00 - 2:00 - **B-93.7** live remote

2:00 - 7:00 - Tail Gate Kick Off

Defendants 000249

Accessory Give Away, Blackberry Curve Raffle , Food & Fun !

Where: **3712-B Pelham Road** (Pelham Hills Shopping Center, next to Chick-fil-a)

Please see attached flyer for complete details.

Hope To See You Soon,

Krish Patel – Director of Operations

Wireless Communications

Verizon Wireless Authorized Retailer

864.275.5605 _C

864.284.1000 _O

864.281.1200_F

This communication, including any attachment(s), may contain privileged, confidential, or private information intended for a specific individual and purpose, and is protected by law. If you are not the person for whom this information is intended, please delete it, destroy any attachment, notify me immediately, and do not copy, use, or send this message or attachment to anyone else.

RE: KVP Investments information

From: **Krish Patel** (KrishV.Patel@hotmail.com)
Sent: Thu 4/02/09 12:34 PM
To: 'Vijay Patel' (vijay831@hotmail.com); kaj.patel@armanci.com
Cc: rhonda.johnson@palmettopro.com

Krish Patel - Director of Operations

Wireless Communications

864-275-5605 C

864-282-8050 O

864-282-8550 F

verizon wireless

From: Vijay Patel [mailto:vijay831@hotmail.com]
Sent: Wednesday, April 01, 2009 10:57 AM
To: krish patel
Subject: FW: KVP Investments information

Defendants 000028

> Date: Wed, 1 Apr 2009 09:05:35 -0400
> Subject: Re: Fw: KVP Investments information
> From: kaj.patel@armanci.com
> To: rhonda.johnson@palmettopro.com
> CC: vijay831@hotmail.com; kaj.patel@armanci.com; krishv.patel@hotmail.com
>
> Rhonda,
> I had sent an email response on Sunday Mar 29 at around 4:30pm. For some
> reason I do not see it in my send folder so maybe I forgot to hit the send
> button or the email server neglegted to send it out. I will try to
> respond again. In the future if you do not see a response from me within
> a day please check with me again.
>
> Vijay, How do we get Krish to respond to these items????
>
> 1. Is the property that was purchsed in Feb 08 a rental property ? If
> not, how would the property be described ? (I have not located any
> information appearing to be rental income in the folder that was given to
> me.) yes, the rental income is 1400 a month.
>
> ANS: We had purchased property to flip, but were unable to do so.
> Therefore we rented it out. Renter has option to buy after 2 yrs from
> date of lease.
>
> 2. Please confirm ownership :
> Krish 25% owner, invested $25,000
> Vijay 25% owner, invested $25,000
> Kaj 50% owner, invested $25,000
>
> ANS: For Krish and Vijay they will have to confirm how they have invested
> their combined 50%. Mine is 50% with $50,000 investement plus 1/2 (half)
> of what was transfered from the VP enterprise account.
>
> 3. Outside of the $100,000 that appears to be the initial investment in
> Feb., there's 2 other deposits in Feb of $8,455.34 and $1,792.00. Any
> idea what they are?
>
> ANS: Krish will have to confirm those. These may be from renter. Krish
> had mentioned something about the renter paying upfron for 6 months.
>
> 4. July has a deposit of $10,000 THIS IS FROM VP ENT TRANSFERRED TO KVP INV and
August has a deposit of $9,300. Any
> idea what they are from? You mentioned the closing down of another
> company? Does this suit the timing and amount. If so, I need to know how
> to split it between the partners for additional capital contribution.
>
> ANS: One of these I am guessing the $9300 is the transfer from VP

Defendants 000029

> Investments. Half of which would be my additional investement as
> mentioned in Item 2. The 10K may be from additional investments we may
> have made. I will have to check my quicken entries, which I do not have
> with me here in Puerto Rico. Krish needs to confirm both of these.

IM GUESSING FOR RIGHT NOW, THE 9300 was the initial deposit (3,000) plus pre rent payment until Jan ..

I will be home Sunday and can finalize all the questions then.

Thank You

>
>
>
>
>
> >
> > I have emailed Kaj and Krish the below questions, but I have not gotten
> any response. I cannot go any further on the KVP tax return until I have
> > some answers. Someone please respond. Thanks
> >
> > --- On Mon, 3/30/09, Rhonda Johnson< rhonda.johnson@palmettopro.com>
> wrote:
> >
> >> From: Rhonda Johnson <rhonda.johnson@palmettopro.com>
> >> Subject: Fw: KVP Investments information
> >> To: krishv.patel@hotmail.com
> >> Date: Monday, March 30, 2009, 8:45 AM
> >> --- On Sat, 3/28/09, Rhonda Johnson< rhonda.johnson@palmettopro.com>
> wrote:
> >> > From: Rhonda Johnson <rhonda.johnson@palmettopro.com>
> >> > Subject: KVP Investments Information
> >> > To: "Kaj Patel" < kaj.patel@armancl.com>
> >> > Date: Saturday, March 28, 2009, 2:32 PM
> >> > Kaj - you respond quickly to email so
> >> > I am going to ask you some questions on KVP
> >> > Investments.
> >> >
> >> > 1. Is the property that was purchsed in Feb 08 a
> >> > rental property ? If not, how would the property be
> >> > described ? (I have not located any information
> >> > appearing to be rental income in the folder that was
> >> given
> >> > to me.)
> >> >
> >> > 2. Please confirm ownership :
> >> > Krish 25% owner, invested $25,000
> >> > Vijay 25% owner, invested $25,000

Defendants 000030

> >> > Kaj 50% owner, invested $25,000
> >> >
> >> > 3. Outside of the $100,000 that appears to be the
> >> > initial investment in Feb., there's 2 other deposits
> >> in Feb
> >> > of $8,455.34 and $1,792.00. Any idea what they are
> >> ?
> >> >
> >> > 4. July has a deposit of $10,000 and August has a
> >> > deposit of $9,300. Any idea what they are from?
> >> > You mentioned the closing down of another company?
> >> > Does this suit the timing and amount. If so, I need
> >> to
> >> > know how to split it between the partners for
> >> additional
> >> > capital contribution.
> >> >
> >> >
> >> >
> >
>
> Pankaj(Kaj) Patel
> Arman Consulting, Inc.
> www.armanci.com
>
>
>
>
>
>

Rediscover Hotmail®: Now available on your iPhone or BlackBerry Check it out.

Re: [FWD: 189 Will Bomar Property]

From: krish patel (krishv.patel@hotmail.com)
Sent: Tue 2/09/10 8:18 PM
To: Dad (vijay831@hotmail.com)

30 k is his best offer
Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Authorized Retailer

864.275.5605 _C
864.284.1000 _O
864.281.1200_F

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

-----Original Message-----
From: Vijay Patel <vijay831@hotmail.com>
Date: Wed, 10 Feb 2010 01:11:46
To: <kaj.patel@charter.net>; <krishv.patel@hotmail.com>
Subject: RE: [FWD: 189 Will Bomar Property]

how about $$$50,00.00 ??

> From: kaj.patel@charter.net
> To: krishpatel@wirelesscommunicationsc.com; vijay831@hotmail.com
> Subject: RE: [FWD: 189 Will Bomar Property]
> Date: Tue, 9 Feb 2010 19:46:30 -0500
>
>
>
>
>
>
>
>
>
> Krish,
>
> This values the 10 acres at only $120K. That seems
> low. However I will go with whatever you both think. If we decide to
> sell, I would ask him to pay all theclosing costs. Also how would this
> effect our marketing during the time it would take to close on the 2.5
> acres.
>
>
>
> Pankaj (Kaj) Patel
>
>
>
>
>

> _____
>
> From: krishpatel@wirelesscommunicationsc.com
> [mailto:krishpatel@wirelesscommunicationsc.com
<mailto:krishpatel@wirelesscommunicationsc.com>]
> Sent: Tuesday,
> February 09, 2010 6:14 PM
> To: vijay831@hotmail.com
> Cc:
> kaj.patel@charter.net
> Subject: [FWD: 189 Will Bomar
> Property]
>
>
>
> See offer below.
>
>
>
> I Spoke to him , he is agreeing to go with $30,000 for 2.5 acres.
>
>
>
> What do you guys think?
>
>
>
> Krish Patel - Director of Operations
>
>
> Verizon Wireless Authorized
> Retailer
>
> 864.275.5605_C
> 864.284.1000_O
> 864.281.1200_F
>
>
>
>
>
>
>
> -------- Original Message --------
> Subject: 189 Will
> Bomar Property
> From: Matthew_Pryor@m-petfilm.com
> Date: Tue, February 09,
> 2010 10:05 am
> To: KrishPatel@WirelessCommunicationSC.com
>
>
> Dear
> Mr. Patel,
>
> It was good to meet you on Saturday afternoon. I am sorry to
> hear about
> the problems with your tenants in the house at 189 Will Bomar
> Road. If you
> ever need someone to check on your property feel free to call
> me and I'll

Defendants 000033

> help you out in any way I can.
>
> I mentioned to you on
> Saturday that I would be interested in purchasing
> some land from you that
> is adjacent to my property at 155 Will Bomar Rd.
>
> Attached is a picture
> showing my proposed new property lines:
>
> (See attached file: Will Bomar
> Map.bmp)
>
> At this time the most I could offer is $10,000 per
> acre.
>
> Regards,
>
> Matt Pryor
>
> Cell: 864- 304-6129
> Home:
> 864- 895-1483
> Work: 864-879-5425

Hotmail: Trusted email with Microsoft's powerful SPAM protection.
http://clk.atdmt.com/GBL/go/201469226/direct/01/
<http://clk.atdmt.com/GBL/go/201469226/direct/01/>

Subject: RE: KVP property taxes
From: "Kaj Patel" <kaj.patel@armancl.com>
Date: Tue, Feb 16, 2010 8:37 am
To: "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>
Cc: <vijay831@hotmail.com>, <KrishPatel@WirelessCommunicationSC.com>

Rhonda,
Vijay just paid a tax bill in the past few weeks for appx $700-800, but that may have been for 2010.

Vijay,
Did you find anything else on the taxes?? If so please communicate directly with Rhonda and copy me on it.

I am on my way to NC and will be there the rest of the day

Thanks

Pankaj (Kaj) Patel
Arman Consulting, Inc.
www.armancl.com

—Original Message—
From: Rhonda Johnson [mailto:rhonda.johnson@palmettopro.com]
Sent: Tuesday, February 16, 2010 9:24 AM
To: Kaj Patel
Subject: KVP property taxes

I do not see where any property taxes were paid in 2009. Just wanted to bring this to your attention. Property Taxes were due 1/15/2010.

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FW: Bomar

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Tue 2/23/10 10:26 AM
To: Vijay Patel (vijay831@hotmail.com); kaj patel (kaj.patel@charter.net)

Here is some good news for a change. See below.

Also,

I checked with Mike Pavlick at BB&T. If we sell the land at $30k for 2.5 acres he said pay BB&T half and we can retain the other half leaving us with 15K.

What is everyone's thoughts? If both of you prefer I can set up a conference call later today for all three of us.

Thanks

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

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Date: Tue, 23 Feb 2010 07:16:47 -0800
From: barbie@rentcreative.com

Fw: Will Bomar lease

From: krish patel (krishv.patel@hotmail.com)
Sent: Wed 2/24/10 10:09 AM
To: Dad (vijay831@hotmail.com); Kaj Patel (kaj.patel@charter.net)
1 attachment
DOC022410.pdf (277.2 KB)

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Authorized Retailer

864.275.5605 _C
864.284.1000 _O
864.281.1200_F

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

-----Original Message-----
From: Jenny Richardson <jenny@rentcreative.com>
Date: Wed, 24 Feb 2010 15:07:43
To: <krishv.patel@hotmail.com>
Subject: Will Bomar lease

Please find attached the lease for the rental property on Will Bomar Road.

Thanks!
Jenny Richardson
Creative Housing

----- Forwarded Message ----
From: "joanne@rentcreative.com" <joanne@rentcreative.com>
To: Richardson Jenny <Jenny@rentcreative.com>
Sent: Wed, February 24, 2010 12:48:58 PM
Subject: Scanned from MFP-07019011 02/24/2010 09:48

Scanned from MFP-07019011.
Date: 02/24/2010 09:48
Pages:5
Resolution:200x200 DPI

Defendants 000041

Re: Will Bomar lease

From: krish patel (krishv.patel@hotmail.com)
Sent: Wed 2/24/10 6:38 PM
To: Kaj Patel (kaj.patel@charter.net)
Cc: Dad (vijay831@hotmail.com)

Kaj,

I have the 2.5 acres on hold . I am trying to get more out .

I have negotiated with the bank specific terms about the sale.

I will touch base with you by friday.

Please drop of the info to comfort inn.

That's the best way to get I'm to me.

The money has been transfer , I am going to sign the request tomorrow.
Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Authorized Retailer

864.275.5605 _C
864.284.1000 _O
864.281.1200_F

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

-----Original Message-----
From: Kaj Patel <kaj.patel@charter.net>
Date: Wed, 24 Feb 2010 20:40:14
To: <krishv.patel@hotmail.com>
Subject: RE: Will Bomar lease

Krish,
This is great news.
I didn't hear from you yesterday regarding the sale of 2.5 acres, is that on hold?
Also, did you deposit the $2K and paid up the 2008/09 taxes as we discussed week before last? For cash flow planning purposes, looks like we will be short about $400 each month = 4800/yr, $2200 for insurance and about 5K for taxes all totalling to about $12K/yr
I just remembered that I still need to take the KVP taxes that Rhonda prepared to your dad for signatures. Let me know if you are going to be in your 5 forks store, I can drop there, otherwise I can take to your dad.
Thanks

Pankaj (Kaj) Patel

-----Original Message-----
From: krish patel [mailto:krishv.patel@hotmail.com

(No Subject)

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Mon 5/24/10 12:57 PM
To: kaj patel (kaj.patel@charter.net)
1 attachment
Example DM Comp.xlsx (23.7 KB)

Call me to discuss.

thanks,

Krish Patel - Director of Operations

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Verizon Wireless Retailer

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864-282-8050- Office
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****EXAMPLI

Ordinary Income/Expense			
Income			
400 · Sales Revenue		25,000	
410 · Verizon Revenue		35,000	
450 · Customer Refunds			
Total Income			60,000
Cost of Goods Sold			
500 · Cost of Goods Sold		30,000	
520 · Merchant Account Fees		500	
525 · Health Insurance		4,000	
530 · Manager Salary		500	
535 · Utilities		400	
540 · Depreciation		15,000	
542 · Amortization Expense		100	
545 · Commissions		4,945	
565 · Manager Mileage			
770 · Telephone Expense			
Total COGS	Other		55445
Gross Profit			
Net Ordinary Income		$4,555.00	
Net Income			

Defendants 000053

Def.Trial Document 130

Comp Plan Comm Tiers

From: krish patel (krishv.patel@hotmail.com)
Sent: Tue 5/25/10 8:06 PM
To: kaj patel (kaj.patel@charter.net); bruce ko (bruce@newwayproperties.net)

Kaj,

This is the tier system we discussed:

0- $ 2,500 - 7%
$ 5,000 - 10%
$10,000 - 12%
$15,000 - 13%
$20,000 - 14%
$30,000 - 15%
$50,000 - 16%

if you have any questions please let me know.

Krish Patel - Director of Operations

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Subject: Re: When do you anticipate Allan will have the draft agreement ready for me to review?
From: "Krish Patel " <krish.patel@wcvzw.com>
Date: Fri, Jun 04, 2010 8:32 am
To: "Kaj Patel" <kaj.patel@charter.net>

Kaj,

Allan said he was busy today so it would be until next week .

Krish Patel - Director of Operations

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864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: "Kaj Patel" <kaj.patel@charter.net>
Date: Fri, 4 Jun 2010 08:31:06 -0400
To: <krish.patel@wcvzw.com>
Subject: When do you anticipate Allan will have the draft agreement ready for me to review?

Krish,
When do you anticipate Allan will have the draft agreement ready for me to review?
Thanks

Pankaj (Kaj) Patel

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Subject: RE: When do you anticipate Allan will have the draft agreement ready for me to review?
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Sat, Jun 05, 2010 1:11 pm
To: <krish.patel@wcvzw.com>

Krish,
I know you a busy with the opening in Laurens, but can you spare 15-20 mins today or tomorrow sunday and meet with me for an issue I would like to discuss with you in person. We can meet somewhere on woodruff rd for a drink or something if you are coming from your hoem and is convenient.
Thanks

Pankaj (Kaj) Patel

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Friday, June 04, 2010 8:33 AM
To: Kaj Patel
Subject: Re: When do you anticipate Allan will have the draft agreement ready for me to review?

Kaj,

Allan said he was busy today so it would be until next week .

Krish Patel - Director of Operations

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Verizon Wireless Premium Retailer

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864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: "Kaj Patel" <kaj.patel@charter.net>
Date: Fri, 4 Jun 2010 08:31:06 -0400
To: <krish.patel@wcvzw.com>
Subject: When do you anticipate Allan will have the draft agreement ready for me to review?

Krish,
When do you anticipate Allan will have the draft agreement ready for me to review?
Thanks

Pankaj (Kaj) Patel

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Subject: RE: 6/28 withdrawal
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Tue, Oct 26, 2010 8:08 pm
To: '"Krish Patel"' <krish.patel@wcvzw.com>
Cc: <vijay831@hotmail.com>

Krish,
I thought we had discussed all that in Mar/Apr and had it settled. I put in $2000 in Jan and another $5000 in Feb totalling 7K. You put in 2K, 3K and 2K and withdrew 2K. Am I missing something?
Thanks

Pankaj (Kaj) Patel

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Tuesday, October 26, 2010 7:40 PM
To: kaj.patel@charter.net
Cc: vijay831@hotmail.com
Subject: RE: 6/28 withdrawal

Kaj,

That was my funds that I over deposited months ago to KVP. I was just retrieving it back because never caught it until recently.

Thanks,

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

> -------- Original Message --------
> Subject: 6/28 withdrawal
> From: "Kaj Patel" <kaj.patel@charter.net>
> Date: Mon, October 25, 2010 9:12 pm
> To: <krish.patel@wcvzw.com>
> Cc: <vijay831@hotmail.com>
>
> Krish,
> There was a $2000 counter withdrawal from the KVP account on 6/28/10. Can you please let me know what the withdrawal was for?
> Thanks
>
> Pankaj (Kaj) Patel

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Subject: FW: IRS Notice
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Wed, Nov 03, 2010 9:14 pm
To: "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>
Cc: "'Krish Patel'" <krish.patel@wcvzw.com>
Attach: IRS Notice.PDF

Hello Rhonda,
Can you please look into the attached notice from the IRS.
Thanks

Pankaj (Kaj) Patel

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Wednesday, November 03, 2010 6:00 PM
To: Kaj Patel; Dad
Subject: Fw: IRS Notice

Kaj,

Please have our CPA handel this asap .

Thanks

Krish Patel - Director of Operations

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864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: <donna.ritchie@wcvzw.com>
Date: Wed, 03 Nov 2010 14:43:44 -0700
To: <vijay.patel@wcvzw.com>; Krish Patel<krish.patel@wcvzw.com>
Subject: IRS Notice

Attached is the IRS notice we received in the mail about the 2008 Form 1065 "Partnership Return of Income" not being filed for KVP Investments & Operations, LLC.

Thank you.

Donna Ritchie
Wireless Communications
803-603-7853 direct
864-631-2392 office
864-631-2390 fax

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Subject: RE: [FWD: KVP Investments]
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Fri, Dec 31, 2010 10:41 am
To: "'Krish Patel - Wireless Communications'" <Krish.Patel@WCVZW.com>
Cc: <vijay831@hotmail.com>
Attach: icon_sm_facebook.gif

Krish,
Do you or vijay have the copy to give to Mike or do we need Rhonda to send copy?

Pankaj (Kaj) Patel

From: Krish Patel - Wireless Communications [mailto:Krish.Patel@WCVZW.com]
Sent: Thursday, December 30, 2010 2:27 PM
To: Kaj Patel
Cc: vijay.patel@wcvzw.com
Subject: [FWD: KVP Investments]

Krish Patel - President

Wireless Communications
Verizon Wireless Premium Retailer

864-275-5605- Direct
864-631-2392- Office
864-631-2390- Fax

> -------- Original Message --------
> Subject: KVP Investments
> From: "Pavlick, Michael" <MRPavlick@BBandT.com>
> Date: Thu, December 30, 2010 12:47 pm
> To: krish.patel@wcvzw.com
>
> Krish -
> I am working on the renewal of the credit terms for the loan to KVP Investments (the loan matures in February). Can you or your CPA send me a copy of KVP's 2009 tax return?
> Thanks,
> Mike Pavlick
> Vice President Greenville Business Services
> BB&T

Defendants 000368

Print | Close Window

Subject: RE: [FWD: FW: debits]
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Thu, Mar 03, 2011 8:45 pm
To: "'Krish Patel - Wireless Communications'" <Krish.Patel@WCVZW.com>
Cc: <vijay.patel@wcvzw.com>
Attach: emails with Krish regarding jun2010 withdrawal.pdf

Krish,
I do agree with you that we do not have much activity in the account and based on my recollection that when the KVP bank account was opened, we had ordered a whole bunch of checks which we should still have. The last check written was 1052, so I am assuming there are still plenty of checks left that either you or Vijay have that can be used instead or counter withdrawals making it much easier for anyone, especially Rhonda to simply look at the copies of the checks that I am assuming are included in each monthly statement from the bank and avoid issues like this during tax time.

As far as the overpayment is concerned, I thought that we had both put in the same amounts sometime between Jan-May, which is what the deposits show. However you withdrew $2000. I inquired with you about this in Oct but never received a final response from you. Attached is a copy of those emails we had exchanged with the last email from me asking you "if I had missed anything" to which I have yet to get a response.

Thanks
Kaj

From: Krish Patel - Wireless Communications [mailto:Krish.Patel@WCVZW.com]
Sent: Thursday, March 03, 2011 6:39 PM
To: kaj.patel@charter.net
Cc: vijay.patel@wcvzw.com
Subject: [FWD: FW: debits]

Kaj,

See below the un reconciled final responses from the bank.

2 were county taxes and one was where I withdrawed the amount because I had thought I had made an over payment on my deposit.

With that being said, the reason it happend this way is because we don't have checks for this account since there is pretty much no activity.

We don't just mis use the company funds. I am not sure where you were going with that but after a little research everything was on point.

If you need anything else let me know,

Thanks

Krish Patel

| -------- Original Message --------
| Subject: FW: debits

Print | Close Window

Subject: Re: Garret heat and air bill
From: "kaj.patel@charter.net" <kaj.patel@charter.net>
Date: Fri, Mar 11, 2011 1:25 pm
To: "Krish Patel" <krish.patel@wcvzw.com>

He had mailed to your home address 3 weeks ago.

Sent from my Verizon Wireless Phone

----- Reply message -----
From: "Krish Patel" <krish.patel@wcvzw.com>
Date: Fri, Mar 11, 2011 12:21 pm
Subject: Garret heat and air bill
To: "kaj.patel@charter.net" <kaj.patel@charter.net>, "Dad" <vijay.patel@wcvzw.com>

Where s the bill?
--
Sent from my Android phone

"kaj.patel@charter.net" <kaj.patel@charter.net> wrote:

Krish
Can you go ahead and pay the garret bill. He is giving me flack about it

Sent from my Verizon Wireless Phone

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Subject: RE: KVP 2010 tax return PDF file
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Mon, Mar 21, 2011 8:07 pm
To: '"Vijay Patel"' <vijay831@hotmail.com>
Cc: '"Krish Patel - Wireless Communications"' <Krish.Patel@WCVZW.com>

Vijay,
Thanks.
Where do we stand on the sale of house? Pam went and looked at it and is ready to list it, but I told her to wait based on you call to me a couple of weeks asking me to put her on hold since you/Krish were going to get hold of the potential buyer that had previousely made an offer.

Pankaj (Kaj) Patel

From: Vijay Patel [mailto:vijay831@hotmail.com]
Sent: Monday, March 21, 2011 7:23 PM
To: kaj patel
Subject: FW: KVP 2010 tax return PDF file

> Date: Mon, 21 Mar 2011 09:52:09 -0700
> From: rhonda.johnson@palmettopro.com
> Subject: KVP 2010 tax return PDF file
> To: vijay831@hotmail.com
>

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Re: Scanned from MFP-07019011 01/14/2011 13:53

From: **Krish Patel** (krishv.patel@hotmail.com)
Sent: Tue 3/29/11 11:38 AM
To: <kaj.patel@charter.net> (kaj.patel@charter.net)

No 1050 , is for my other rental .

Sent from my Verizon Wireless iPhone, provided by Wireless Communications

On Mar 29, 2011, at 10:46 AM, "Kaj Patel" <kaj.patel@charter.net> wrote:

> Krish,
> Why the difference in the rental income of $1050 vs $1495? Was the old tenent paying only 1050 and the new one paying 1495?
> Thanks
>
> Pankaj (Kaj) Patel

From: krish patel [mailto:krishv.patel@hotmail.com]
Sent: Monday, March 28, 2011 1:10 PM
To: kaj patel
Subject: FW: Scanned from MFP-07019011 01/14/2011 13:53

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Retailer

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864-282-8550- Fax

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RE: Scanned from MFP-07019011 01/14/2011 13:53

From: **krish patel** (krishv.patel@hotmail.com)
Sent: Wed 3/30/11 12:06 PM
To: kaj patel (kaj.patel@charter.net)

Its not Kaj, It goes into my account, It just just invoiced to me that way.

Completely different LLC

Krish Patel - Director of Operations

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From: kaj.patel@charter.net
To: krishv.patel@hotmail.com
Subject: RE: Scanned from MFP-07019011 01/14/2011 13:53
Date: Wed, 30 Mar 2011 10:41:31 -0400

Krish,
Why is it in our account?

Pankaj (Kaj) Patel

From: Krish Patel [mailto:krishv.patel@hotmail.com]
Sent: Tuesday, March 29, 2011 11:39 AM
To: <kaj.patel@charter.net>
Subject: Re: Scanned from MFP-07019011 01/14/2011 13:53

No 1050 , is for my other rental .

Sent from my Verizon Wireless iPhone, provided by Wireless Communications

On Mar 29, 2011, at 10:46 AM, "Kaj Patel" <kaj.patel@charter.net> wrote:

> Krish,
> Why the difference in the rental income of $1050 vs $1495? Was the old tenent paying only 1050 and the new one paying 1495?
> Thanks
>
> Pankaj (Kaj) Patel

From: krish patel [mailto:krishv.patel@hotmail.com]
Sent: Monday, March 28, 2011 1:10 PM
To: kaj patel
Subject: FW: Scanned from MFP-07019011 01/14/2011 13:53

Krish Patel - Director of Operations

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Verizon Wireless Retailer

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Subject: RE:
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Thu, May 05, 2011 8:47 pm
To: "'Krish Patel'" <krish.patel@wcvzw.com>

Krish,
Won't have any time next week, I am kicking off a project in Utah and will either be there or tied up on teleconferences. May be able to get together on Thurs but it would have to be a last minute arrangement depending on where I am.
Next weekend or following week should work out.
Let me know.
Kaj

-----Original Message-----
From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Thursday, May 05, 2011 8:04 PM
To: Kaj Patel
Subject:

Kaj ,

I hope you and your family are you doing well.

I would like to follow up with you on a few items.

Can we get together Monday or Tuesday ?

Let me know ,

Krish V Patel - President

Wireless Communications , Verizon Wireless Premium Reteller

www.WirelessCommunicationSC.com

Sent from my Verizon Wireless iPhone, provided by Wireless Communications

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Subject: RE: RE:
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Tue, May 24, 2011 11:43 am
To: "'Krish Patel'" <krish.patel@wcvzw.com>

Krish,
I am available Thurs around 6pm. We can meet at Jack in Box at 5 forks or Mcdonalds on woodruff and hwy 14.
Let me know.
I may be available today at around 6pm but wont know till later around 5 pm today, if that works for you.
If you can, shoot me email with bullet points on items/issues to discuss.
Thanks
Kaj

-----Original Message-----
From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Tuesday, May 24, 2011 10:49 AM
To: Kaj Patel
Subject: Re: RE:

Yes

Krish V Patel - President

Wireless Communications , Verizon Wireless Premium Retailer

www.WirelessCommunicationSC.com

Sent from my Verizon Wireless iPhone, provided by Wireless Communications

On May 24, 2011, at 9:45 AM, "Kaj Patel" <kaj.patel@charter.net> wrote:

> Krish,
> Is it the Greer house we need to get together to discuss?
>
> Kaj
>
> -----Original Message-----
> From: Krish Patel [mailto:krish.patel@wcvzw.com]
> Sent: Monday, May 23, 2011 8:42 PM
> To: Kaj Patel
> Subject:
>
> Kaj ,
>
> Just wanted to touch base with you again , can we get together this week ?

> I've got a few items pending need to get with you on .
>
> Let me know ,
>
> Krish
>
>

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Subject: RE: RE:
From: "Krish Patel - Wireless Communications" <Krish.Patel@WCVZW.com>
Date: Tue, May 24, 2011 11:38 pm
To: "Kaj Patel" <kaj.patel@charter.net>

Kaj,

How about tomorrow around 6 at starbucks on woodruff road ? Let me know.

On May 24, 2011, at 9:45 AM, "Kaj Patel" <kaj.patel@charter.net>; wrote:

> Krish,
> Is it the Greer house we need to get together to discuss?
>
> Kaj
>
> -----Original Message-----
> From: Krish Patel [mailto:krish.patel@wcvzw.com]
> Sent: Monday, May 23, 2011 8:42 PM
> To: Kaj Patel
> Subject:
>
> Kaj ,
>
> Just wanted to touch base with you again , can we get together this week ?
>
> I've got a few items pending need to get with you on .
>
> Let me know ,
>
> Krish
>
>

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Subject: RE: KVP Investments
From: Kaj <kaj.patel@charter.net>
Date: Mon, Nov 21, 2011 6:45 pm
To: "rhonda.johnson; palmettopro.com" <rhonda.johnson@palmettopro.com>, KrishPatel@WirelessCommunicationSC.com
Cc: Vijay Patel <vijay831@hotmail.com>

Rhonda,
Thanks for taking the time to relay the information to me. I think it was inappropriate for vijay to involve you in this matter.

Krish,
You and I collectively looked at the finances for KVP after the partial sale of the land. The proceeds from the sale and the $2000 you were to deposit back into account per Rhonda's annual accounting (I am assuming that you have already done so) because you had "inadvertantly" cashed from the account. We had concluded that there would be enough cash to carry us through 2011. I have not looked at the account online in the past few months as I did not expect for it to go negative. Therefore I do not understand how, you could having "putting the money in the account for the past few months". If we had some unexpected expenses that put us in the negative sooner expected, then all you had to do, was to let me know so that we can handle it accordingly. Please email me details of the expenses, amounts and dates of the funds you have deposited, as online view of the account will not show me what the expenses are for. Additionally, Property taxes will be due soon therefore we need to look at the cash flow and determine the amounts we each have to deposit in equal amounts to cover any current shortages and carry us through for the next year.

Since you Krish are the official patner of KVP and not Vijay, please communicate directly with me via email regarding any issues with KVP.

Thanks.

Pankaj (Kaj) Patel

From: Rhonda Johnson [mailto:rhonda.johnson@palmettopro.com]
Sent: Monday, November 21, 2011 2:54 PM
To: Kaj Patel
Subject: KVP Investments

Kaj - VJ was in my office earlier today to discuss the overdraft on the KVP account. The mortgage drafts once a month and there is not sufficient cash flow in the account to cover it and the account is in the negative. He says that Krish has been putting the money in the account the past few months to cover this and now it is your turn. He asked that I contact you to make you aware of this situation. He said that you had access to log into the account to see the transactions and he is requesting that you make a deposit as soon as possible to bring the account out of the negative.

Regards,
Rhonda

Print | Close Window

Subject: RE: GC TAX
From: "Krish Patel - Wireless Communications" <Krish.Patel@WCVZW.com>
Date: Fri, Jan 13, 2012 5:01 pm
To: "Kaj Patel" <kaj.patel@charter.net>
Cc: vijay.patel@wcvzw.com

Kaj,

Actually no, you need to deposit to KVP bank if america account.

Then we will write a check to GC , Greenville County .

If we do not pay by the 15, there is a penalty . You can go ahead and deposit extra if that is the case.

Let me know,

Krish,
I am out of country till end of month and parul is our of town till 17th. I am assuming my check needs to be made to VP and not to GC to keep accounting straight. VP then writes check to GC. In which case Parul can deposit directly to VP account on tues 1/17. Please let me know if that will work.
Thanks
Kaj

Sent from my Verizon Wireless Phone

> ----- Reply message -----
> From: "Krish Patel - Wireless Communications" <Krish.Patel@WCVZW.com>
> To: <kaj.patel@charter.net>, <vijay.patel@wcvzw.com>
> Subject: GC TAX
> Date: Fri, Jan 13, 2012 4:27 pm
>
> Kaj,
>
> If you have any questions , let me know.
>
> You can drop the check off to the comfort Inn. Payment is due by Jan 15 or additional charges apply . If you dont want to deposit money into account immediatly , then we can cut a check from the account.
>
> Krish

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Print | Close Window

Subject: RE: FW: payment needed
From: "Krish Patel - Wireless Communications" <Krish.Patel@WCVZW.com>
Date: Wed, Mar 21, 2012 6:22 pm
To: "Kaj Patel" <kaj.patel@charter.net>, "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>

Rhonda,

I double checked with Vijay , he should this information should be in the book you have.

If you have any question let me know,

Thank You ,

Krish

This email and all attachments transmitted with it are confidential, may be subject to copyright, and are intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other unauthorized use of this message or its attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately via e-mail or by telephone at 877.424.2991 and delete this email and attachments from your system, including all copies or backups. Thank you.

-------- Original Message --------
Subject: FW: payment needed
From: "Kaj Patel" <kaj.patel@charter.net>
Date: Wed, March 21, 2012 5:28 pm
To: "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>, "'Krish Patel'" <krish.patel@wcvzw.com>

Rhonda,
This is the email I had received from Krish to deposit $309.68 ASAP, which Parul did on 12/19.
Please let me know if he deposited that amount.
Thanks
Kaj

From: kaj.patel@charter.net [mailto:kaj.patel@charter.net]
Sent: Friday, December 16, 2011 11:17 AM
To: krish patel
Cc: Vijay Patel
Subject: Re: payment needed

Krish,
I just now have had a chance to view receipt. The receipt has no vendor name or contact info. The handwriting is not legible so it is difficult to determine what repairs have been done. Can you please forward me the vendor name and contact info as soon as possible.
Thanks
Kaj

Defendants 000403

Sent from my Verizon Wireless Phone

----- Reply message -----
From: "krish patel" <krishv.patel@hotmail.com>
To: "kaj patel" <kaj.patel@charter.net>
Cc: "Vijay Patel" <vijay831@hotmail.com>
Subject: payment needed
Date: Wed, Dec 14, 2011 9:10 pm

Kaj,

Please see attached invoice.

KVP Investments & Operations checking account is negative .

Attached you will see an invoice for HVAC work that was needed for the home.

Also, I have RE detailed the mortgage amount vs monthly rent.

BB&T Mortgage $1719.36
RENT INCOME $1375.40
NET DUE $344.36/2 = **$172.18 each month , your share**

At this time I need you to pay this amount and your share of the HVAC repair of $137.50.

$309.68 DUE asap.

Let me know when you will deposit this amount, if you are out of the country please have your wife make this payment as I do not want checks to bounce for payments.

Going forward, you need to put your share in of the mortgage payment in monthly.

If you have questions, let me know.

Krish Patel

This communication, including any attachment(s), may contain privileged, confidential, or private information intended for a specific individual and purpose, and is protected by law. If you are not the person for whom this information is intended, please delete it, destroy any attachment, notify me immediately, and do not copy, use, or send this message or attachment to anyone else.

Defendants 000404

Print | Close Window

Subject: RE: payment needed
From: "Krish Patel - Wireless Communications" <Krish.Patel@WCVZW.com>
Date: Sat, Mar 24, 2012 6:30 pm
To: "Kaj Patel" <kaj.patel@charter.net>, vijay.patel@wcvzw.com
Cc: "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>

Kaj,

See below my response in red.

If you would like to take over the property management of the property just let us know.

We can then discuss my 10% management fee which is still accruing from day one. This is the management fee you and I discussed from day one which we have never asked for payment yet. I figured once we sell the house we could settle up on it.

However if you would like to take over 100% management, here are a few options:

1. Buy my partnership out at same cost I put into it
2. You take over management of the property , resume as normal ownership
3. resume as is , current standing

Let me know what your thoughts are, thank you.

Krish

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> -------- Original Message --------
> Subject: RE: payment needed
> From: "Kaj Patel" <kaj.patel@charter.net>
> Date: Thu, March 22, 2012 11:24 am
> To: "'Krish Patel'" <krish.patel@wcvzw.com>, <vijay.patel@wcvzw.com>
> Cc: "'Rhonda Johnson'" <rhonda.johnson@palmettopro.com>
>
> Krish,
> I just checked, you did not deposit in 2012. What is going on? (KRISH PATEL) A deposit was made in error on our part. The correct deposit has been made. This is the second time that funds that were supposed to be deposited by you were not. You send me an email to deposit ASAP the 309.68, I get that done even though I am out of the country. It cost us time and money to have Rhonda try to chase these discrepancies and it costs me significant amount of time as well. Please let me and Rhonda, know if you are going to deposit the 309.68 or are you going to send me a check.
>
> Rhonda, What would it take to have the KVP business audited from inception in 2008 to date and whom would you recommend that we get to audit it.

Defendants 000409

Thanks

Kaj

From: Rhonda Johnson [mailto:rhonda.johnson@palmettopro.com]
Sent: Thursday, March 22, 2012 8:53 AM
To: Kaj Patel
Subject: Re: payment needed

He did not in 2011, so your "investment" is out of balance for the 50/50 partnership. As of 12/31/11, you have contributed $309.68 more than he has.

I do not have the 2012 records to determine if he possibly made his deposit in 2012. Please review the 2012 bank statements to determine if he did make a deposit for this same amount. If not, then he will need to do so.

From: Kaj Patel <kaj.patel@charter.net>
To: 'Rhonda Johnson' <rhonda.johnson@palmettopro.com>; 'Krish Patel' <krish.patel@wcvzw.com>
Sent: Wednesday, March 21, 2012 5:28 PM
Subject: FW: payment needed

Rhonda,
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Thanks
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To: krish patel
Cc: Vijay Patel
Subject: Re: payment needed

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Thanks
Kaj

Sent from my Verizon Wireless Phone

----- Reply message -----
From: "krish patel" <krishv.patel@hotmail.com>
To: "kaj patel" <kaj.patel@charter.net>
Cc: "Vijay Patel" <vijay831@hotmail.com>
Subject: payment needed

Date: Wed, Dec 14, 2011 9:10 pm

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Please see attached invoice.

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Attached you will see an invoice for HVAC work that was needed for the home.

Also, I have RE detailed the mortgage amount vs monthly rent.

BB&T Mortgage $1719.36
RENT INCOME $1375.40
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At this time I need you to pay this amount and your share of the HVAC repair of $137.50.

$309.68 DUE asap.

Let me know when you will deposit this amount, if you are out of the country please have your wife make this payment as I do not want checks to bounce for payments.

Going forward, you need to put your share in of the mortgage payment in monthly.

If you have questions, let me know.

Krish Patel

This communication, including any attachment(s), may contain privileged, confidential, or private information intended for a specific individual and purpose, and is protected by law. If you are not the person for whom this information is intended, please delete it, destroy any attachment, notify me immediately, and do not copy, use, or send this message or attachment to anyone else.

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PHILIP J. TEMPLE
BOBBY H. MANN, JR.
LARRY N. BRIGGS
S. ALLAN HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4995
FAX
(864) 242-5500
SENDER'S EMAIL: AHILL@GREENVILLELAW.NET

November 19, 2008

Via Email: patricia.cook@verizonwireless.com
Verizon Wireless
Attention: Patricia L. Cook

Re: P Communications, Inc. - Ownership Change

Dear Patricia:

This letter is in regards to the change of ownership for the above mentioned company and the questions you had as a result of the change.

- The corporate name and its FEIN will remain the same, the only change will be the shareholders of the corporation.
- All accounts already open and any future accounts will remain under the control of the corporation.
- As you can see from the attached Director's Minutes of the corporation, Krish Patel will own 60% of the corporation and Keith Gailey will own 40%.
- Corby Philips has transferred all of his shares of corporate stock back to the corporation and his stock certificate has been cancelled.
- All checking accounts will remain the same.
- The new owners will carry the Dymax balance of approximately $50,000.00 as of November 18, 2008.
- The new owners will also carry the buildout funds liability.
- All equipment and fixtures on hand will transfer with the new owners.

Please let me know if you have any more questions.

Sincere regards,

S. Allan Hill

The undersigned agree to the above representations.

Krish V. Patel

Corby S. Phillips

Keith R. Gailey

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PHILIP J. TEMPLE
JOBBY H. MANN, JR.
LARRY N. BRIGGS
S. ALLAN HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4995
FAX
(864) 242-5500

February 14, 2008

VP Enterprises, Inc.
Pankaj Patel, President
830 Congaree Road
Greenville, SC 29607

Re: VP Enterprises, Inc.

Dear Pankaj, Vijay, and Krish:

Copies of Initial Documents:

Enclosed you will find (1) your Articles of Incorporation, (2) Bylaws, (3) organizational minutes for the company, and (4) First Annual Report (to the SC Tax Commission). You should retain these original documents in the enclosed minute book, and they must be kept at the company's principal office which you have advised will be as shown above. If you decide to move the company's principal office, please advise us so this can be appropriately reflected in the company records.

Current Maintenance of Record Book:

All corporations are required to maintain accurate records. Your original charter, bylaws, and organizational minutes have been filed in th is minute book. We have organized your corporation as a Statutory Close Corporation and therefore the corporation is not required to have an annual meeting or prepare annual minutes. It is always prudent practice to document changes to the corporation, if for no other reason other than tax considerations. We will be happy to prepare, according to your direction, the appropriate minutes.

Statutory Agent:

You have advised us that you have agreed to serve as the company's registered agent. The purpose of the agent is to receive any official papers which may be served upon the company. If you or the company at any time receives any official notifications which you do not understand, or if any lawsuits are served directly at the company office (or upon any company officer), you should contact our office immediately! Failure to timely respond to any such claims can cause the corporation to be found in default and expose the corporation to significant liability.

Records You Must Maintain at the Company's "Principal Place of Business":

You are required by law to have the following documents on file at all times at the company's official principal place of business:

1. Your Articles of Incorporation (being furnished to you today);



Defendants 000659

Def.Trial Document 154

2. Company Bylaws (being furnished to you today);

3. The most recent South Carolina "Annual Report" (which is filed as a part of your South Carolina Income Tax return). We have furnished to you a copy of the Initial Annual Report which was filed with the Articles of Incorporation.

4. A list of the names and business addresses of the current directors and officers (these will normally be listed in the Annual Report, and separate list is not required);

5. Any future minutes of shareholder meetings (and actions taken in writing without a meeting);

6. All written communications the company has made to the shareholders generally, within the past three years, including the last three annual financial statements;

Although not required, prudent practice requires that the company maintain adequate accounting records. Some companies elect to have their CPA's maintain these records at their offices, which is permissible.

Documents Which You Must Annually Prepare:

In addition to the normal government tax returns and filings, every South Carolina corporation must prepare the following documents on an annual basis:

1. Annual Report to the South Carolina Department of Revenue (this is actually a part of your South Carolina Corporate Tax Return with which your CPA will assist);

2. Annual financial statement - which must be delivered to each shareholder (there are very specific rules as to how this must be prepared);

Questions and Importance of Proper Records:

If you have any questions at any time regarding the maintenance of the company records please contact us. It is important to remember that simply failing to correctly keep your corporate records up to date may subject the individual owners, officers, and directors to personal liability. This must be avoided.

Please let me know if you have any questions.

Sincere regards,

S. Allan Hill/aw

S. Allan Hill

SAH:alw
Enclosure
c: File
Mukund J. Desai

Def.Trial Document 155

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PHILIP J. TEMPLE
BOBBY H. MANN, JR.
LARRY N. BRIGGS
S. ALLAN HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4995
FAX
(864) 242-5500

May 7, 2008

PLAINTIFF'S EXHIBIT 11

P Communications, Inc.
Corby S. Phillips, President
33 Doverdale Road
Greenville, SC 29615

Re: P Communications, Inc.

Dear Corby:

Copies of Initial Documents:

Enclosed you will find (1) your Articles of Incorporation, (2) Bylaws, (3) organizational minutes for the company, and (4) First Annual Report (to the SC Tax Commission). You should retain these original documents in the enclosed minute book, and they must be kept at the company's principal office which you have advised will be as shown above. If you decide to move the company's principal office, please advise us so this can be appropriately reflected in the company records.

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1. Your Articles of Incorporation (being furnished to you today);

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Def.Trial Document 156

2. Company Bylaws (being furnished to you today);

3. The most recent South Carolina "Annual Report" (which is filed as a part of your South Carolina Income Tax return). We have furnished to you a copy of the Initial Annual Report which was filed with the Articles of Incorporation.

4. A list of the names and business addresses of the current directors and officers (these will normally be listed in the Annual Report, and separate list is not required);

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6. All written communications the company has made to the shareholders generally, within the past three years, including the last three annual financial statements;

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If you have any questions at any time regarding the maintenance of the company records please contact us. It is important to remember that simply failing to correctly keep your corporate records up to date may subject the individual owners, officers, and directors to personal liability. This must be avoided.

Please let me know if you have any questions.

Sincere regards,

S. Allan Hill /sg

S. Allan Hill

SAH:alw
Enclosure
c: File
Dan T. Jones, III, CPA

Def.Trial Document 157

CONFIDENTIAL

verizon wireless

AGENT APPLICATION

To avoid processing delays and rejection of application, please complete all requested information on the Application. Do not leave any blank spaces. If requested information does not apply, please indicate with N/A or NONE.
Applicant may also attach any information deemed necessary to present to application for agency status.

NOTE: If you are applying for agent (or subagent status through one of Verizon Wireless' Agents) to sell Verizon Wireless' cellular mobile radio service, Verizon Wireless' only obligation is to advise you (or the Agent who submitted your application) with the final result of Verizon Wireless' review of the application (approved or not approved).

Agency Status Requested: ☐ PostPay Only Agent ☒ PostPay AND PrePay Agent ☐ PrePay Only Agent
☐ Joint Marketing Agreement ☐ Data Agent

Please Indicate Agent status: ☒ New ☐ Existing Agent-Please list region(s): _____

Are you requesting to have Sub-Agent(s)? ☒ No ☐ Yes - Subagent must complete an entire Agent Application Packet, including Attachments 1 and 2 by Attachment 2

General Agent Information

1. Legal Name of Company (as listed on Certificate/Business License): VP ENTERPRISES INC.
(If company was known or previously operated under a different name(s), please list name(s):

2. List all dba names:

3. Agent Mailing Address and applicable county (notices will be sent to this address) and length of time at this location:
408 ASHBY PARK LANE GREENVILLE, SC 09607

4. Name, home address, and title of each Principal(s)/Owner(s) with 20% or more ownership (each principal/owner must complete a copy of page 1 and 2 of Attachment 1):
PANKAJ PATEL - PRESIDENT
VIJAY R. PATEL - VICE PRESIDENT

5. Type of Company:
☒ Corporation* ☐ Sole Proprietorship ☐ Limited Liability Company (LLC) ☐ Partnership*
*State and Date of Incorporation 1/2008 *Type of Corporation/Partnership S-CORP
For Corporations attach: *Certified Certificate of Incorporation*
AND Certified Certificate of Good Standing (photocopies are NOT acceptable)
For Partnership or Sole Proprietorship attach:
Certified Local / state registration to do business (photocopies are NOT acceptable)
For New Company attach: *Business Registration*
(If company previously operated under a different name(s), please list name(s) and address(es):

6. Name of Parent Company if Subsidiary: _____

7. Person Completing Application VIJAY R. PATEL
Position/Title VICE PRESIDENT

8. List primary store location and length of time at this address: TBA

9. Is this building: ☐ Owned by you? ☐ Leased

Revised 06/07

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It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

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10a. Do you have existing retail stores? ☐ Yes* ☒ No
*If yes, please list name, full address, and functions (ie; sales, service, installation) of all other store locations and length of time at each location: N-A

(please complete this information on the credit application)

10b. If no, where do you plan to open a store? Please list full address. SEE ATTACHMENT

(please complete this information on the credit application)

10c. Do you plan to open additional locations? ☒ Yes* ☐ No
*If yes, where, and when is the estimated opening (mo/yr)? SEE ATTACHMENT

11. Nature of Current Business. (Please list and explain all former, current, and other affiliations with wireless carriers and Verizon Wireless in all markets (please explain, include markets). Please also include all business or personal relationships or acquaintances who market or sell wireless products and/or services.
NO AFFILIATES WITH WILELESS RETAIL.

12. Please list nature of business of any parent company, affiliates, and/or subsidiaries. VP ENTERPRISE INC, HAS BEEN ESTABLISHED FOR VERIZON WIRELESS AGENT BUSINESS.

13a. Please list all names and full addresses of key personnel responsible for wireless operations in your company. Please also indicate background of all individuals. SEE ATTACHMENT

13b. How many people will you employ? 1 PERLOC Outside sales 2 PER LOC Inside sales 1 PER LOC Administration

13c. Are you willing to require employees to have formal training from Verizon Wireless? ☒ Yes ☐ No

13d. Are you willing to participate in periodic training sessions? ☒ Yes ☐ No

14. Please list all communication products and/or services you are selling or have sold in the past. State effective dates for these products and/or services. N/A

15. Does Applicant propose to carry other types of wireless products or services? ☐ Yes* ☒ No
*If yes, please describe below: VERIZON WIRELESS PRODUCTS ONLY

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

Sales

16. Do you currently offer any of the following: ☐ Cellular ☐ Wireless Data ☐ PrePay

17. Have you ever sold cellular service? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

18. Have you ever sold wireless data? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

19. Have you ever sold PrePay? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

20. What are you interested in selling: (check all that apply) ☒ Cellular ☒ Wireless Data ☒ PrePay

21. What will be your sales focus? (% of overall cellular sales activity vs. other products/services) 100 %

22. Please indicate the breakdown of your proposed wireless business. (percentage of PrePay, post-pay & wireless data)
5% PrePay 60 % Post-Pay 35 % Wireless Data

23. Activation Projections
Please estimate your monthly activation totals for the following:
Cellular 70 /month Wireless Data 25 /month PrePay 10 /month

24. Do you have a facility capable of performing installations of cellular phones into vehicles? ☐ Yes ☒ No

25. Do you plan on selling PrePay replenishment cards or PINS? ☒ Yes ☐ No

Sales and Promotion Strategies

CO-OP Advertising

29. Will you participate in CO-OP advertising? ☒ Yes ☐ No

Advertising Budget

30. What will your monthly advertising budget be? RANGING FROM $700 - 1000.

31. What are your advertising plans for the upcoming year? What is your strategy?
THE PLANS FOR OUR COMPANIES ADVERTISING IS USING ALL FORMS OF MARKETING. WE WILL USE PRINT MEDIA, ELECTRONIC MEDIA AND TELECOMMUNICATIONS MEDIA TO GAIN MASS EXPOSURE. OUR STRATEGY IS TO STAY CONSISTENT WITH ADVERTISING LEGAL LOOPS.

Newspaper	☒ Yes ☐ No	Direct Mail	☒ Yes ☐ No
Journals	☒ Yes ☐ No	Billboards	☒ Yes ☐ No
Television	☒ Yes ☐ No	Internet	☒ Yes ☐ No
Cable	☐ Yes ☒ No	Other	☒ Yes ☐ No
Radio	☒ Yes ☐ No		

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Displays and Merchandising

Signage (Interior/Exterior)

Interior: _____

Exterior: (Signage specs/size) _____ — NA —

Please attach your company logo and layout of your store design.

33. Applicant understands that Verizon Wireless at its own expense may request a credit report and perform a criminal background investigation on Applicant company and individuals.

34. Applicant understands that unless and until an Authorized Agency Agreement has been executed by BOTH Verizon Wireless and the Applicant that there is no Contractual relationship between the parties.

35. For your information: All Verizon Wireless agents, upon execution of an Authorized Agency Agreement between company and Verizon Wireless, are required to provide to Verizon Wireless proof of insurance coverage. See Attachment 2, hereto, for complete requirements.

I HEREBY CERTIFY THAT THE INFORMATION IN THIS DOCUMENT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF ANY INFORMATION PROVIDED IS DETERMINED TO BE INCORRECT BY VERIZON WIRELESS, THAT MY APPLICATION FOR AGENCY STATUS CAN BE DENIED, OR MY AGENCY STATUS REVOKED.

I HEREBY CERTIFY THAT NO PERSON, CORPORATION OR OTHER ENTITY AFFILIATED WITH COMPANY ("COMPANY") APPLYING FOR AGENT STATUS IS OWNED, IN WHOLE OR IN PART, EMPLOYED BY, OR OTHERWISE CONNECTED WITH MY COMPANY, IS CONTRACTUALLY PROHIBITED UNDER A CURRENT, EXPIRED/TERMINATED CONTRACT FROM REPRESENTING VERIZON WIRELESS AS A PROVIDER OF WIRELESS SERVICES. COMPANY FURTHER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS VERIZON WIRELESS AGAINST ALL FUTURE OBLIGATIONS, LOSSES, DAMAGES, ACTIONS, SUITS, COSTS OR LIABILITIES (INCLUDING ATTORNEY'S FEES) INCURRED IN THE ENFORCEMENT OF THIS INDEMNIFICATION, FOR ANY CLAIMS OR DEMANDS ARISING OR ALLEGED TO HAVE ARISEN IN WHOLE OR IN PART OUT OF ANY BREACH OR VIOLATION OR ALLEGED BREACH OR ALLEGED VIOLATION OF ANY TERM OF ANY CONTRACTUAL AGREEMENT SUCH COMPANY MAY HAVE ENTERED WITH ANY OTHER CARRIER OR THIRD PARTY ENTITY.

I RECOGNIZE THAT VERIZON WIRELESS MAY REJECT ANY OR ALL APPLICATIONS IN ITS SOLE AND ABSOLUTE DISCRETION, AND THAT VERIZON WIRELESS'S ONLY OBLIGATION PURSUANT TO THIS APPLICATION IS TO TELL THE APPLICANT AFTER FINAL REVIEW WHETHER THE APPLICATION HAS BEEN APPROVED OR DENIED. VERIZON WIRELESS WILL HAVE NO OTHER OBLIGATION TO ANY APPLICANT UNLESS AND UNTIL AN AUTHORIZED AGENCY AGREEMENT IS SIGNED BY A VERIZON WIRELESS REGIONAL OR AREA PRESIDENT. I UNDERSTAND THAT ANY INVESTMENTS OR COMMITMENTS I MAKE BEFORE RECEIVING A PROPERLY SIGNED AUTHORIZED AGENCY AGREEMENT ARE ENTIRELY AT MY OWN RISK. NO PERSONNEL OF VERIZON WIRELESS EXCEPT THE AREA PRESIDENT WITH AREA GENERAL COUNSEL CONCURRENCE ARE AUTHORIZED TO ALTER THIS PROCESS.

POTENTIAL AGENT PRINCIPAL SIGNATURE: Vijay R Patel

TITLE: Vice Pres. DATE: 1-28-09

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
It is meant solely for use by authorized Verizon Wireless employees and persons employed, retained, or consulted by them.

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AUTHORIZATION FOR RELEASE OF INFORMATION

EACH principal/owner owning 20% of Agent's company is required to complete ALL information on pages 1 and 2 of this Attachment 1. The Authorization for Release of Information expedites the approval process.

Please make as many copies of Attachment 1 as needed.

TO WHOM IT MAY CONCERN:

I, VIJAY R. PATEL, am having a confidential background investigation of me performed by a security firm retained by Verizon Wireless, in connection with prospective business undertakings. The investigation is being conducted by an authorized agent of a security firm retained by Verizon Wireless.

Therefore, I do hereby authorize a review and full disclosure of all records, or any part thereof, concerning myself or any business enterprise with which I am associated to a duly authorized agent of a security firm retained by Verizon Wireless, whether said records are public or private, and including those which may be deemed to be of a privileged or confidential nature.

The intention of this authorization is to provide information, which will be utilized as investigative source material. The undersigned releases all persons, including but not limited to, a security firm retained by Verizon Wireless and its agents, and any person or firm which may have retained them to conduct this investigation, from any and all liability which may arise in connection with this investigation or the good faith disclosure of any information by or on behalf of the undersigned or by any individual or firm contacted in connection with this investigation.

Photostatic copies of this authorization will be considered as effective and valid as the original.

The original copy of this Authorization must be returned to Verizon Wireless.

Witness: _____

Date: _____

Applicant: VIJAY R. PATEL
Signature: Vijay R Patel
Title: Vice Pres.
Date: 1-28-08
Social Security No: [redacted]
Date of Birth [redacted]
Home Address 6, Eables Way
Greenville, SC. 29615
Drivers License No: [redacted]

PLEASE PRINT LEGIBLY

Revised 05/07

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
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Def. Trial Document 0162

VZW0000043

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Agent Application
Attachment 1
Page 2 of 2

PERSONAL HISTORY QUESTIONNAIRE

To avoid processing delays and rejection of application, please complete all requested information on this questionnaire. Do not leave any blank spaces. If requested information does not apply, please indicate with "NA" or "NONE".

Applicant may also attach any information deemed necessary or relevant to application for agency status.

1. Name PATEL, VIJAY R
(Last, First, Middle Initial)

Any Other Names Used N. A.

Addresses During the Last Ten Years (use attachments if needed):

Current Permanent Residence: Number of Years at Residence 8 YRS

Street Address 6 GABLES WAY

City, State & Zip Code GREENVILLE, SC 29615

Home Tel. No. 864-292-6717 (Area Code and No.) Bus. Tel. No. 864-288-6221 (Area Code and No.)

County of Residence GREENVILLE

2. Criminal History:
Have you ever been convicted of a crime(s) or entered a plea of nolo contendere to a criminal charge(s) other than a minor traffic violation(s)? ☐ Yes ☒ No
If yes, please furnish details, location and dates.

3. Criminal History:
Please list the locations and dates of all criminal convictions of company officers and directors, other than minor traffic violations. If none, state "NONE". NONE

4. Bankruptcy History:
List any bankruptcy actions during the past ten years. Include dates filed and where, whether business or personal, court of jurisdiction, docket number and name and address of trustee. If none, state "NONE".
NONE

5. Litigation History:
List any pending and settled suits or actions for the past five years. Provide a brief description, dates, liability estimate, court of jurisdiction and location and disposition. If none, state "NONE".
NONE

Revised 03/07

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ATTACHMENT 2

INSURANCE REQUIREMENTS

Please be advised that Verizon Wireless requires its Agents and subagents to maintain the following insurance with a recognized insurance company qualified to do business in Verizon Wireless' area.

Agent will maintain at all times during the Term or any extension or renewal thereof, at Authorized Agent's sole expense, the following insurance with an insurance company rated at least A- by A.M. Best Company and qualified to do business within the Area. Coverage required can be satisfied with primary and/or umbrella excess coverage.

(1) Workers Compensation Insurance as required by each State in which Authorized Agent performs the Agreement including a waiver of subrogation endorsement against Verizon Wireless. Deleted:

(2) Comprehensive or Commercial General Liability Insurance with the minimum limits as follows:

(a) For Authorized Agents having three (3) or less Authorized Locations: One Million Dollars ($1,000,000) per occurrence for bodily and personal injury or death; One Million Dollars ($1,000,000) per occurrence for property damage; and One Million Dollars ($1,000,000) per occurrence for product liability arising out of any defects in the use of Equipment; and

(b) For Authorized Agents having more than three (3) Authorized Locations: Two Million Dollars ($2,000,000) per occurrence of bodily and personal injury or death; Two Million Dollars ($2,000,000) per occurrence for property damage; and Two Million Dollars ($2,000,000) per occurrence for product liability arising out of any defects in the use of Equipment.

(3) Employer's Liability Insurance within limits of not less than:

(a) For Authorized Agents having three (3) or less Authorized Locations, Two Hundred Thousand Dollars ($200,000) per occurrence; and

(b) For Authorized Agents having more than (3) Authorized Locations, One Million Dollars ($1,000,000) per occurrence.

(4) Automobile Liability, Comprehensive Form, with limits of not less than Five Hundred Thousand Dollars ($500,000) for bodily injury and Five Hundred Thousand Dollars ($500,000) for property damage per occurrence or One Million Dollars ($1,000,000) combined single limit, subject to such deductibles Verizon Wireless determines to be appropriate, covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles [used on any occasion in the business of the Authorized Agent]. Authorized Agent acknowledges, understands and expressly agrees that all personal vehicles will meet applicable State statutory requirements for business use.

(5) For Authorized Agents having at any time during the Term or any extension or renewal thereof more than three (3) Authorized Locations, Professional Liability Insurance (Errors and Omissions) covering trademark and copyright infringement with limits of not less than One Million Dollars ($1,000,000) per occurrence.

(6) If Authorized Agent has more than twenty-five (25) Locations: A Commercial Crime Bond or Employee Dishonesty Policy with a minimum aggregate limit of Five Hundred Thousand dollars ($500,000) is required.

At Verizon Wireless' request, Authorized Agent will submit to Verizon Wireless a Certificate of Insurance, on an ACORD form or a similar form acceptable to Verizon Wireless in its sole discretion, evidencing all required insurance prior to the start of any work under this Agreement and annually thereafter on the policy renewal date during the Term or any extension or renewal thereof. Cellco Partnership or Verizon Wireless and, if applicable, any partnerships who participate in this Agreement, will be named as "Additional Insured" on all policies except Workers Compensation, Employees' Liability Insurance and Professional Liability coverage, which will also be so evidenced on the Certificate of Insurance. Each insurance policy will state by endorsement that such policy will not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to Verizon Wireless.

The insurance required in Sections 1 through 6 will provide that such insurance is primary coverage with respect to all insureds and will contain a waiver against Cellco Partnership or Verizon Wireless and any applicable Partnership(s) and such parties' Affiliates, directors, officers, employees and partners.

Verizon Wireless may at any time, upon sixty (60) calendar days prior written notice to Authorized Agent, require Authorized Agent to increase the amount of coverage of any type of insurance or require different or additional types of insurance to reflect inflation, higher damage awards or comparable factors which make the above limits insufficient to cover Authorized Agent liabilities and Authorized Agent's obligations to indemnify of Verizon Wireless.

Revised 08/07

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Def.Trial Document 0164
VZW0000045

Please note: The insurance requirements set forth above are included in Verizon Wireless' Authorized Agency Agreement. If you and Verizon Wireless enter into an Agreement, failure to provide Verizon Wireless with evidence of your insurance coverage in the form required by Verizon Wireless could result in termination of the Agreement.

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Microsoft Outlook

From:	car_scan_to_email@se.verizonwireless.com
Sent:	Thursday, February 28, 2008 1:18 PM
To:	Cook, Patricia L
Subject:	pankaj application
Attachments:	20080228131821728.pdf

This E-mail was sent from "1EN6" (Aficio 3260C).

Scan Date: 02.28.2008 13:18:21 (-0500)
Queries to: car_scan_to_email@se.verizonwireless.com

Def.Trial Document 0166

VZW0000047

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AGENT APPLICATION

To avoid processing delays and rejection of application, please complete all requested information on the Application. Do not leave any blank spaces. If requested information does not apply, please indicate with "NA" or "NONE". Applicant may also attach any information deemed necessary or relevant to application for agency status.

NOTE: If you are applying for agent (or subagent status through one of Verizon Wireless' Agents) to sell Verizon Wireless' cellular mobile radio service, Verizon Wireless' only obligation is to advise you (or the Agent who submitted your application) with the final result of Verizon Wireless' review of the application (approved or not approved).

Agency Status Requested: ☐ PostPay Only Agent ☒ PostPay AND PrePay Agent ☐ PrePay Only Agent ☐ Joint Marketing Agreement ☐ Data Agent

Please Indicate Agent status: ☒ New ☐ Existing Agent-Please list region(s)_____

Are you requesting to have Sub-Agent(s)? ☒ No ☐ Yes - Subagent must complete an entire Agent Application Packet, including Attachments 1 and ability by Attachment 2

General Agent Information

1. Legal Name of Company (as listed on Certificate/Business License): VP ENTERPRISES INC.
   (If company was known or previously operated under a different name(s), please list name(s):
2. List all dba names:
3. Agent Mailing Address and applicable county (notices will be sent to this address) and length of time at this location:
   408 ASHBY PARK LN GREENVILLE, SC 29607
4. Name, home address, and title of each Principal(s)/Owner(s) with 20% or more ownership (each principal/owner must complete a copy of page 1 and 2 of Attachment 1):
   PANKAJ PATEL - PRESIDENT
   VIJAY PATEL - VICE PRESIDENT
5. Type of Company:
   ☒ Corporation* ☐ Sole Proprietorship ☐ Limited Liability Company (LLC) ☐ Partnership*
   *State and Date of Incorporation 1/2003 *Type of Corporation/Partnership S-CORP
   For Corporations attach: *Certified Certificate of Incorporation AND Certified Certificate of Good Standing* (photocopies are NOT acceptable)
   For Partnership or Sole Proprietorship attach: *Certified Local / state registration to do business* (photocopies are NOT acceptable)
   For New Company attach: *Business Registration*
   (If company previously operated under a different name(s), please list name(s) and address(es):
6. Name of Parent Company if Subsidiary: N/A
7. Person Completing Application PANKAJ PATEL
   Position/Title PRESIDENT
8. List primary store location and length of time at this address: TBA
9. Is this building: ☐ Owned by you? ☐ Leased

Revised 04/07

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VZW0000048

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10a. Do you have existing retail stores? ☐ Yes* ☒ No
*If yes, please list name, full address, and functions (ie, sales, service, installation) of all other store locations and length of time at each location:

(please complete this information on the credit application)

10b. If no, where do you plan to open a store? Please list full address. SEE ATTACHMENT

(please complete this information on the credit application)

10c. Do you plan to open additional locations? ☒ Yes* ☐ No
*If yes, where, and when is the estimated opening (mo/yr)? SEE ATTACHMENT

11. Nature of Current Business. (Please list and explain all former, current, and other affiliations with wireless carriers and Verizon Wireless in all markets (please explain, include markets). Please also include all business or personal relationships or acquaintances who market or sell wireless products and/or services.
N/A AFFILIATES WITH WIRELESS RETAIL

12. Please list nature of business of any parent company, affiliates, and/or subsidiaries.
N/A
VP ENTERPRISES INC WAS CREATED FOR VERIZON WIRELESS AGENCY STORES.

13a. Please list all names and full addresses of key personnel responsible for wireless operations in your company.
Please also indicate background of all individuals. SEE ATTACHMENT

13b. How many people will you employ? 1 PER LOC Outside sales 2 PER LOC Inside sales 1 PER LOC Administration
13c. Are you willing to require employees to have formal training from Verizon Wireless? ☒ Yes ☐ No
13d. Are you willing to participate in periodic training sessions? ☒ Yes ☐ No

14. Please list all communication products and/or services you are selling or have sold in the past.
State effective dates for these products and/or services. - NA -

15. Does Applicant propose to carry other types of wireless products or services? ☐ Yes* ☒ No
*If yes, please describe below: VERIZON WIRELESS PRODUCTS ONLY.

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Sales

16. Do you currently offer any of the following: ☐ Cellular ☐ Wireless Data ☐ PrePay

17. Have you ever sold cellular service? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

18. Have you ever sold wireless data? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

19. Have you ever sold PrePay? ☐ Yes* ☒ No
*If yes, what carriers and specific timeframe _____

20. What are you interested in selling: (check all that apply) ☒ Cellular ☒ Wireless Data ☒ PrePay

21. What will be your sales focus? (% of overall cellular sales activity vs. other products/services) 100 %

22. Please indicate the breakdown of your proposed wireless business. (percentage of PrePay, post-pay & wireless data)
5 % PrePay 60 % Post-Pay 35 % Wireless Data

23. Activation Projections
Please estimate your monthly activation totals for the following:
Cellular 70 /month Wireless Data 25 /month PrePay 10 /month

24. Do you have a facility capable of performing installations of cellular phones into vehicles? ☐ Yes ☒ No

25. Do you plan on selling PrePay replenishment cards or PINS? ☒ Yes ☐ No

Sales and Promotion Strategies

CO-OP Advertising

29. Will you participate in CO-OP advertising? ☒ Yes ☐ No

Advertising Budget

30. What will your monthly advertising budget be? $700 - $1000

31. What are your advertising plans for the upcoming year? What is your strategy?
PLANS INCLUDE ALL FORMS OF ADVERTISING AND STAYING CONSISTENT YEAR ROUND.

Newspaper	☒ Yes ☐ No	Direct Mail	☒ Yes ☐ No
Journals	☐ Yes ☐ No	Billboards	☒ Yes ☐ No
Television	☒ Yes ☐ No	Internet	☒ Yes ☐ No
Cable	☐ Yes ☒ No	Other	☒ Yes ☐ No
Radio	☒ Yes ☐ No		

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Displays and Merchandising

Signage (Interior/Exterior)

Interior: _____

Exterior: (Signage specs/size) N/A

Please attach your company logo and layout of your store design.

33. Applicant understands that Verizon Wireless at its own expense may request a credit report and perform a criminal background investigation on Applicant company and individuals.

34. Applicant understands that unless and until an Authorized Agency Agreement has been executed by BOTH Verizon Wireless and the Applicant that there is no Contractual relationship between the parties.

35. For your information: All Verizon Wireless agents, upon execution of an Authorized Agency Agreement between company and Verizon Wireless, are required to provide to Verizon Wireless proof of insurance coverage. See Attachment 2, hereto, for complete requirements.

I HEREBY CERTIFY THAT THE INFORMATION IN THIS DOCUMENT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF ANY INFORMATION PROVIDED IS DETERMINED TO BE INCORRECT BY VERIZON WIRELESS, THAT MY APPLICATION FOR AGENCY STATUS CAN BE DENIED, OR MY AGENCY STATUS REVOKED.

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POTENTIAL AGENT PRINCIPAL SIGNATURE: Pankaj Patel

TITLE: PRESIDENT DATE: 1-28-08

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AUTHORIZATION FOR RELEASE OF INFORMATION

EACH principal/owner owning 20% of Agent's company is required to complete ALL information on pages 1 and 2 of this Attachment 1. The Authorization for Release of Information expedites the approval process.

Please make as many copies of Attachment 1 as needed.

TO WHOM IT MAY CONCERN:

I, PANKAJ PATEL, am having a confidential background investigation of me performed by a security firm retained by Verizon Wireless, in connection with prospective business undertakings. The investigation is being conducted by an authorized agent of a security firm retained by Verizon Wireless.

Therefore, I do hereby authorize a review and full disclosure of all records, or any part thereof, concerning myself or any business enterprise with which I am associated to a duly authorized agent of a security firm retained by Verizon Wireless, whether said records are public or private, and including those which may be deemed to be of a privileged or confidential nature.

The intention of this authorization is to provide information, which will be utilized as investigative source material. The undersigned releases all persons, including but not limited to, a security firm retained by Verizon Wireless and its agents, and any person or firm which may have retained them to conduct this investigation, from any and all liability which may arise in connection with this investigation or the good faith disclosure of any information by or on behalf of the undersigned or by any individual or firm contacted in connection with this investigation.

Photostatic copies of this authorization will be considered as effective and valid as the original.

The original copy of this Authorization must be returned to Verizon Wireless.

Witness: _____

Date: _____

Applicant: PANKAJ PATEL

Signature: Pankaj Patel

Title: PRESIDENT

Date: 1-28-08

Social Security No: [redacted]

Date of Birth [redacted]

Home Address 23 AVENS HILL DR
GREER SC 29651

Drivers License No: [redacted]

PLEASE PRINT LEGIBLY

Arvindbhai
expired vehicle
License
Sheriff

Plaintiff - Pankaj Patel
23 Avens Hill Dr.
Greer
Def = Pankaj Patel
4/1/2008
filed

Revised 06/07

The information contained herein is proprietary and should not be disclosed to unauthorized persons.
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Def.Trial Document 0171

VZW0000052

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PERSONAL HISTORY QUESTIONNAIRE

To avoid processing delays and rejection of application, please complete all requested information on this questionnaire. Do not leave any blank spaces. If requested information does not apply, please indicate with "NA" or "NONE".
Applicant may also attach any information deemed necessary or relevant to application for agency status.

1. Name PATEL PANKAJ A
(Last, First, Middle Initial)

Any Other Names Used KAJ

Addresses During the Last Ten Years (use attachments if needed):

Current Permanent Residence: Number of Years at Residence 7

Street Address 23 AUBAR HILL DR

City, State & Zip Code GREER SC 29651

Home Tel. No. 864-238-3137 (Area Code and No.) Bus. Tel. No. (Area Code and No.)

102 STEEPLECHASE CT
SIMPSONVILLE SC
29681

County of Residence USA

2. Criminal History:
Have you ever been convicted of a crime(s) or entered a plea of nolo contendere to a criminal charge(s) other than a minor traffic violation(s)? ☐ Yes ☒ No
If yes, please furnish details, location and dates.

3. Criminal History:
Please list the locations and dates of all criminal convictions of company officers and directors, other than minor traffic violations. If none, state "NONE".

N/A

4. Bankruptcy History:
List any bankruptcy actions during the past ten years. Include dates filed and where, whether business or personal, court of jurisdiction, docket number and name and address of trustee. If none, state "NONE".

N/A

5. Litigation History:
List any pending and settled suits or actions for the past five years. Provide a brief description, dates, liability estimate, court of jurisdiction and location and disposition. If none, state "NONE".

SUIT AGAINST AG SOLUTION - SETTLED
I HAD TO SUE MY PARTNERS FOR MINORITY SHARE HOLDER STATUES
& WRONGFUL TERMINATION

Revised 03/07

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Def.Trial Document 0172

VZW0000053

ATTACHMENT 2

INSURANCE REQUIREMENTS

Please be advised that Verizon Wireless requires its Agents and subagents to maintain the following insurance with a recognized insurance company qualified to do business in Verizon Wireless' area.

Agent will maintain at all times during the Term or any extension or renewal thereof, at Authorized Agent's sole expense, the following insurance with an insurance company rated at least A- by A.M. Best Company and qualified to do business within the Area. Coverage required can be satisfied with primary and/or umbrella excess coverage.

(1) Workers Compensation insurance as required by each State in which Authorized Agent performs the Agreement including a waiver of subrogation endorsement against Verizon Wireless. — Deleted:

(2) Comprehensive or Commercial General Liability Insurance with the minimum limits as follows:

(a) For Authorized Agents having three (3) or less Authorized Locations: One Million Dollars ($1,000,000) per occurrence for bodily and personal injury or death; One Million Dollars ($1,000,000) per occurrence for property damage; and One Million Dollars ($1,000,000) per occurrence for product liability arising out of any defects in the use of Equipment; and

(b) For Authorized Agents having more than three (3) Authorized Locations: Two Million Dollars ($2,000,000) per occurrence of bodily and personal injury or death; Two Million Dollars ($2,000,000) per occurrence for property damage; and Two Million Dollars ($2,000,000) per occurrence for product liability arising out of any defects in the use of Equipment.

(3) Employer's Liability Insurance within limits of not less than:

(a) For Authorized Agents having three (3) or less Authorized Locations, Two Hundred Thousand Dollars ($200,000) per occurrence; and

(b) For Authorized Agents having more than (3) Authorized Locations, One Million Dollars ($1,000,000) per occurrence.

(4) Automobile Liability, Comprehensive Form, with limits of not less than Five Hundred Thousand Dollars ($500,000) for bodily injury and Five Hundred Thousand Dollars ($500,000) for property damage per occurrence or One Million Dollars ($1,000,000) combined single limit, subject to such deductibles Verizon Wireless determines to be appropriate, covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles (used on any occasion in the business of the Authorized Agent). Authorized Agent acknowledges, understands and expressly agrees that all personal vehicles will meet applicable State statutory requirements for business use.

(5) For Authorized Agents having at any time during the Term or any extension or renewal thereof more than three (3) Authorized Locations, Professional Liability Insurance (Errors and Omissions) covering trademark and copyright infringement with limits of not less than One Million Dollars ($1,000,000) per occurrence.

(6) If Authorized Agent has more than twenty-five (25) Locations: A Commercial Crime Bond or Employee Dishonesty Policy with a minimum aggregate limit of Five Hundred Thousand dollars ($500,000) is required.

At Verizon Wireless' request, Authorized Agent will submit to Verizon Wireless a Certificate of Insurance, on an ACORD form or a similar form acceptable to Verizon Wireless in its sole discretion, evidencing all required insurance prior to the start of any work under this Agreement and annually thereafter on the policy renewal date during the Term or any extension or renewal thereof. Cellco Partnership or Verizon Wireless and, if applicable, any partnerships who participate in this Agreement, will be named as "Additional Insured" on all policies except Workers Compensation, Employees Liability Insurance and Professional Liability coverage, which will also be so evidenced on the Certificate of Insurance. Each insurance policy will state by endorsement that such policy will not be cancelled or materially changed without at least thirty (30) calendar days prior written notice to Verizon Wireless.

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Verizon Wireless may at any time, upon sixty (60) calendar days prior written notice to Authorized Agent, require Authorized Agent to increase the amount of coverage of any type of insurance or require different or additional types of insurance to reflect inflation, higher damage awards or comparable factors which make the above limits insufficient to cover Authorized Agent liabilities and Authorized Agent's obligations to indemnify of Verizon Wireless.

Revised 06/07

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **SUMMONS**

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to the said Complaint on the subscribers at their office located at 110 Lavinia Avenue (29601), Post Office Box 2147, Greenville, South Carolina 29602, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE GILREATH LAW FIRM, P.A.

By: _____
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November 4, 2011
Greenville, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, And, VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **VERIFIED COMPLAINT** **(Jury Trial Demanded)**

FILED
CLERK OF COURT
GREENVILLE CO. SC
2011 NOV -1 A 11:10

The Plaintiff, complaining of the Defendants, would respectfully show to the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Pankaj Patel ("Kaj"), is a citizen and resident of Greenville County, South Carolina. Kaj brings this action both individually and on behalf of VP Enterprises, Inc., a South Carolina corporation whose principal place of business is in Greenville, South Carolina.

2. The Defendant, Krish Patel ("Krish"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief Krish is an officer of VP Enterprises, Inc.

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3. The Defendant, Vijay Patel ("Vijay"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief, Vijay is an officer, stockholder and director of VP Enterprises, Inc.

4. The Defendant P Communications, Inc. is a South Carolina corporation which was formed on or about April 28, 2008. Its registered agent is Krish Patel and its principal place of business is in Greenville County, South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and venue is properly laid in Greenville County, South Carolina.

6. The Nominal Defendant, VP Enterprises, Inc. (sometimes hereinafter "VP" or "VP Enterprises") is a South Carolina corporation which was formed on or about January 28, 2008 with a principal place of business in Greenville County, South Carolina. Further details of its formation are outlined below.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

7. This is an action by Plaintiff Kaj Patel, individually and derivatively, on behalf of VP Enterprises, Inc. against certain officers and directors of VP Enterprises, Inc., namely the Defendants, Krish and Vijay for breach of the standards of conduct for directors and officers; for dissolution and/or purchase of the Plaintiff's shares for fraudulent, oppressive, and unfairly prejudicial conduct of the Defendant shareholders, directors and officers; for breach of fiduciary duty for diversion of corporate opportunities and assets; for breach of fiduciary duties as partners and/or joint venturers; for fraud, constructive fraud and negligent misrepresentation and unjust enrichment; for an accounting and disgorgement; for a declaratory judgment regarding the ownership of VP Enterprises Inc. and P Communications Inc.; and for violations of the South Carolina

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Unfair Trade Practices Act. VP Enterprises, Inc. is named as a Nominal Defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

8. Plaintiff, by and through his undersigned attorneys, brings this action upon personal knowledge as to himself and his own acts and upon the investigation conducted by his attorneys.

9. At all times relevant hereto Plaintiff Kaj Patel was a shareholder of VP Enterprises, and he will fairly and adequately represent the interests of VP Enterprises relevant to the Defendants' wrongful course of conduct alleged herein.

10. VP Enterprises, Inc. was formed with the assistance of Greenville attorney Allan Hill who also served as the certifying attorney on the Articles of Incorporation. The formation documents were drafted pursuant to the instructions of one or more of the individual parties who contacted Allan Hill on behalf of the corporation and the individual parties.

11. According to records recently obtained from the file of Attorney Allan Hill, the stockholders of VP Enterprises were Kaj and Vijay, each of whom was to be issued 50 shares of stock. The file of attorney Hill contains two unsigned stock certificates dated January 24, 2008, with Certificate #1 being for 50 shares to Vijay and certificate #2 being to Kaj for 50 shares with the understanding among all three individuals that Vijay would own 25 shares and Krish would also own 25 shares .

12. The Corporate Data sheet from attorney Hill's files, dated as of February 14, 2008, shows Kaj and Vijay as directors, Kaj as the President, Vijay as the Vice President, and Krish as the Secretary and Treasurer.

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13. Pursuant to Rule 23(b)(1) SCRCP, no demand was made on VP Enterprises, Inc. and the Defendants, Krish and Vijay, since such a demand would have been futile as further outlined below.

14. The director Defendant of VP Enterprises, Inc., namely Vijay, and the Secretary/Treasurer, namely Krish, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred, participated in efforts to conceal or disguise those wrongs from Kaj Patel as a stockholder and director of VP Enterprises, Inc., and/or negligently disregarded the wrongs complained of herein, and are not disinterested parties.

15. Because there are at most only three directors of VP and because there is no majority of independent directors capable of making a decision on the question of whether to bring this action, any demand on the inside directors who undertook the actions complained of would have been futile. Moreover, any demand would have requested that Vijay and Krish sue themselves which they will not do, thereby effectively making any demand futile.

FACTUAL ALLEGATIONS

16. In early to mid-2007, the Defendant Krish Patel had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business. At or about this time, while discussing various real estate ventures with Krish and his father, Vijay, Kaj Patel asked Krish Patel about the possibility of establishing some type of business venture which would operate independent wireless communications stores under a license agreement with Verizon Wireless Communications. Krish informed Kaj that the Verizon idea was a very good

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business opportunity and he would like to have his own Verizon store(s), but Verizon would probably never allow that since he was a former Verizon employee.

17. Kaj Patel then suggested that Krish give him some further details and later, in about November 2007, Krish shared various information with Kaj who began work on a proposed business plan for Verizon independent stores which would be operated between Kaj and Krish's father, Vijay, since Verizon presumably would not allow Krish to become an owner.

18. Kaj Patel along with Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. The parties were also considering hiring Andre as an employee of VP Enterprises.

19. In December of 2007 Kaj and Krish met, over a four day period, at Kaj's home to discuss various cash flow scenarios using spreadsheets Kaj had developed for the business. Kaj and Krish also drafted a business plan for VP Enterprises on Krish's computer for him to submit to Verizon. The business plan also included the potential store locations researched by Kaj Patel together with Krish Patel.

20. Under the proposed business plan, Vijay was to be the CEO and President, Kaj was to be Vice President, and Krish was to be the general manager. Kaj, Vijay and Krish all planned to be the co-owners of VP Enterprises and to share the profits therefrom. The object of the venture was stated in the business plan as follows:

> To build the flagship agent store of Verizon Wireless in the district. Not only through sales and revenues but customer experience as well. To

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provide training and support for store personal [sic], maintaining excellent moral [sic] of all store employees. To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless; To hold store meetings that will result in the continued commitment of building one team, who, by working together will make this flagship agent store of the district.

21. The final business plan, which is dated December 6, 2007, was emailed to Kaj on or about December 4, 2007, and Krish received a marked up version from Kaj shortly thereafter. A copy of the version showing Kaj's revisions is attached to this complaint as Exhibit 1.

22. On or about December 19, 2007 Kaj sent an additional calculation worksheet to Krish for the new business plan and told Krish "I have not received your email regarding loan yet."

23. On January 6, 2008 Kaj emailed Krish and forwarded to him additional financial calculations in a worksheet form.

24. On information and belief this business plan was sent to Verizon, and on December 20, 2007, Kaj emailed Krish and requested that Krish send him the final version of the business plan that was sent to Verizon.

25. On February 8, 2008 Kaj emailed Krish a cell phone price list from a supplier in Hong Kong and asked "Will that work with Verizon?"

26. It was agreed that the ownership for the new venture, named VP Enterprises, Inc., would be 50% to Kaj, 25% to Krish, and 25% to Vijay. The members of the initial board of directors for VP Enterprises, Inc. were to be Vijay and Kaj.

27. Greenville attorney, Allan Hill represented Kaj, Vijay and Krish in the incorporation of VP Enterprises, Inc. and was responsible for drafting all of the initial corporate documents, the charter, stock certificates and initial minutes. The "VP" stood

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for Vijay and Pankaj. The corporate charter was filed with the South Carolina Secretary of State on January 28, 2008.

28. On or about January 29, 2008, Kaj gave his check number 1015 in the amount of $5,000 payable to VP Enterprises, Inc. to Krish to be deposited in the new business account for VP Enterprises, Inc.

29. Kaj, Krish and Vijay spent the next few months in discussions with Verizon Wireless while Kaj, Vijay and Krish reviewed locations throughout the Greenville, Easley, and Clemson, South Carolina areas for proposed new Verizon free-standing stores.

30. In the March-April 2008 time frame, the parties had at least three meetings with various Verizon personnel regarding a possible license operation with Verizon.

31. Shortly after the March-April meetings, Kaj was informed by Krish and Vijay that Verizon was denying any type of license operation with the new proposed venture; however, they gave Kaj no explanation or details for Verizon's unexpected actions.

32. Following what Kaj thought was a denial of any possible business operation with Verizon, the parties then looked at existing Verizon stores that might be on sale and continued to do so up until July of 2008.

33. On July 24, 2008, Kaj emailed Krish regarding a wireless business opportunity offered by the Sunbelt Business Network and wrote "check this link out for wireless business for sale ....." Krish replied the next day and said "when I clicked on the link it came up unavailable?"

34. Shortly thereafter, in the August to September 2008 time frame, Kaj, while visiting Vijay at his home, discovered that Krish had just attended the grand opening of a Verizon store on Pelham Road at a specific location the three parties, namely Kaj, Vijay, and Krish, had previously reviewed and discussed as a possible store location. Kaj immediately inquired of Krish as to what was going on as this should have been in the VP Enterprises, Inc. name that Kaj, Vijay and Krish were in the process of forming and organizing. Vijay and Krish told Kaj that since Verizon would not approve a license with their proposed entity, VP Enterprises, Inc., Krish had purchased an interest in an existing corporation which had a license for a Verizon store. Kaj was not at this time told the name of this corporation. However he was told this corporation had been formed by Corby Phillips and that Krish had purchased an interest in Mr. Phillips' corporation in order "to get his foot in the door" with Verizon. Krish and Vijay then assured Kaj that the three of them (Kaj, Krish and Vijay) would continue to pursue their original plans through VP Enterprises as contemplated in the business plan (outlined in Paragraphs 19-26 above) as soon as they could figure a way to "kick" Corby Phillips out of P Communications. Upon learning this information, Kaj inquired of Vijay as to whether Vijay was involved in the Pelham Road store with Corby Phillips, and Vijay informed Kaj that he (Vijay) had no involvement.

35. Following this development, Kaj was told by Vijay that it appeared the $5,000 he had put in VP Enterprises was not going anywhere and suggested that the $5,000 be moved to another venture they owned named KVP Investments which was in the real estate business.

36. Following these developments Kaj, during the period between August of 2008 and May of 2010 (except during January-May of 2010 when he was out of the country), would, at least twice a week, meet with Vijay, on various matters. During the course of these numerous meetings, he was never told any more about the status of Krish and the new Verizon store venture with Corby Phillips.

37. In the spring of 2010, Kaj became aware of what he thought would be an excellent opportunity for a Verizon store in the Columbus-Tryon, North Carolina area. He immediately inquired of Krish to see if this would be something the three of them could pursue. While they were pursuing the potential Columbus-Tryon store operation, Krish came back to Kaj with an opportunity to buy seven Verizon stores in the Columbia-Florence, South Carolina area. Kaj informed him that he was only interested in a 50-50 equity partnership with Kaj managing those stores as outlined in the original VP Enterprises business plan.

38. Krish assured Kaj that he was agreeable to that proposition and informed him they should shortly be able to get back on track with their original VP Enterprises business plan. At this meeting they shook hands and further confirmed what Kaj had always thought was a 50-50 ownership in any Verizon business deal. At this point Krish said he would meet with attorney Allan Hill and have him draw up the appropriate legal paperwork.

39. However, after a few more weeks of discussions on this proposal between Kaj and Krish, which sometimes included Krish's "CFO" named Bruce, Kaj was informed that Krish only wanted Kaj to be an employee, not an owner. Krish tried to

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convince Kaj that he would be getting the same benefit as a 50% owner without having to invest any money.

40. It was at or about this time, namely the spring of 2010, that Krish informed Kaj that he had "kicked" Mr. Corby Phillips out of the corporation he and Mr. Phillips had started in August of 2008. It was at this time in 2010 when Kaj first was told the name of the Corby Phillips related corporation, which was P Communications, Inc. It was at this same time, namely the spring of 2010, that Krish told Kaj there was a lot of pain and anguish in getting Mr. Phillips out of P Communications, Inc. and that it had cost him in excess of $30,000.

41. It was at this same time that Krish informed Kaj that he was operating eight or nine Verizon stores under P Communications, Inc. He also told him he was operating all of his Verizon stores as separate limited liability companies which were owned/controlled by P Communications, Inc. Following this revelation, Kaj discovered, for the first time, from a review of records in the South Carolina Secretary of State's file, that P Communications had been formed on April 28, 2008 by Kaj's attorney, Allan Hill. At this time Kaj also discovered that Corby Phillips was removed as the registered agent on December 4, 2008 and Krish was named as the new registered agent on that same date. He has since learned that Corby Phillips is or was the owner of a restaurant known as "ROLY POLY SANDWICHES" which is located at 1616 Woodruff Road, Greenville, South Carolina, and is either next door or very near to the Verizon Store where Krish worked when he was employed with Verizon.

42. Upon becoming aware of all these facts, Kaj immediately confronted Krish and told him that he and Vijay had wrongfully concealed their extensive

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involvement with Verizon and P Communications from him. At this time he asked Krish what Vijay's involvement was and Krish informed him that Vijay, contrary to what Vijay told Kaj in August of 2008, had always been involved in the Verizon venture and was involved in all the Verizon stores that Krish was involved in.

43. During this meeting Kaj laid out the time line of his involvement with Krish and Vijay, as outlined above in this complaint. In subsequent meetings Kaj held separately with Krish and Vijay, Kaj forthrightly told each of them that they had "backstabbed" him. At the request of Krish, Kaj met with Krish on May 25, 2011 at Sabroso restaurant on Woodruff Road. After reviewing documents on his laptop computer, Krish confirmed that Kaj's timeline of events related to VP Enterprises and the Verizon Wireless business was basically correct. Kaj asked Krish "do you not see anything wrong with your conduct?" Krish replied "I was keeping my options open."

44. In October of 2011 Plaintiff, for the first time became aware of the website of a company known as Wireless Communications. Its web address is: www.wirelesscommunicationsc.com. Plaintiff is informed and believes that this company is owned and/or controlled by P Communications, Inc. and/or Vijay and Krish.

45. According to the website of Wireless Communications, it owns and/or operates twenty-three (23) Verizon Wireless stores in Georgia and North and South Carolina in the following locations: Augusta Road, Pelham Road, Main Street and Haywood Road, all of which are in Greenville, South Carolina; Simpsonville/Five Forks on Woodruff Road in Greenville County; Anderson, Central, Chapin, Duncan, Hwy 153 in Powdersville, Irmo/Ballentine, Laurens, Lexington, Manning, Marion and Newberry,

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all in South Carolina; Southport, Conyers, Lawrenceville, Duluth and Winder, all in Georgia; and Monroe, North Carolina.

46. The original business plan originally drafted by Kaj and revised by both Kaj and Krish envisioned ten Verizon stores, with locations on Woodruff Road, Pelham Road, Augusta Road and Haywood Road, in Greenville, Butler Road in Mauldin, Blackstock Road in Spartanburg, Highway 9 in Spartanburg, Highway 123 in Easley and stores in Anderson and Gaffney, South Carolina.

47. Thus, it appears that Krish has now established Verizon stores at all ten locations envisioned in the original business plan drafted by Kaj, with the exception of Gaffney. These stores and the others since developed by the Defendants are in the exact line of business for which VP Enterprises was formed. VP Enterprises had an actual and expectant interest in developing these opportunities and had the financial ability to undertake the development of these Verizon stores.

48. The Wireless Communications website, referenced above, under the heading "Leadership Team" lists Krish Patel as President and Vijay Patel as Vice President.

49. According to a recent article in the Greenville business magazine, *Town*, entitled "Hot Wire", Krish, at the end of 2009, had opened five Verizon stores which had reached $3.3 million in sales. At the time this article was published, which Plaintiff believes was on or about September 30, 2011, Krish reportedly had 23 stores with plans to reach 30 stores by the end of 2011 and 50 by the end of 2012. According to this article the Defendant Vijay Patel is a vice president of Krish's wireless Verizon store business.

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50. On June 22, 2011 the South Carolina Secretary of State filed a Certificate of Administrative Dissolution of VP Enterprises for failing to pay taxes and/or failing to deliver its annual report to the Department of Revenue. Defendant Vijay Patel was the registered agent to whom the Secretary of State on information and belief mailed the pre-dissolution sixty-day statutory notice of filing deficiencies at his home address listed on file with the Secretary of State's office. Neither Vijay Patel nor his son Krish Patel informed Kaj Patel of the pre-dissolution sixty-day statutory notice or the subsequent administrative dissolution. Plaintiff Kaj Patel is informed and believes Vijay and Krish Patel knew of the corporate filing deficiencies of VP Enterprises and the administrative dissolution, yet failed as officers and director to properly carry out the required administrative filings for the benefit of VP Enterprises and its other stockholder Kaj Patel.

FOR A FIRST CAUSE OF ACTION
(Dissolution and/or Buyout of Shares of VP Enterprises under §33-14-300 *et. seq.*)

51. All allegations stated above are realleged as if fully repeated herein.

52. This cause of action arises pursuant to §§ 33-14-300 and -310 of the South Carolina Business Corporation Act.

53. Because of the actions and events outlined above, the economic purpose of VP Enterprises has been unreasonably frustrated as it is not reasonably possible for the parties to continue owning the corporation together. The actions of Vijay Patel and Krish Patel relating to the business of VP Enterprises have made it impracticable to carry on business with said Defendants. Further, Defendants Vijay Patel and Krish Patel, as the shareholders in control of VP Enterprises, have acted, are acting, or will act in a manner

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that is illegal, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff and VP Enterprises.

54. The Plaintiff is a 50% owner in VP Enterprises, Inc. with Defendants Vijay Patel and Krish Patel owning the other half. The actions of Vijay Patel and Krish Patel as outlined above have severely damaged the Plaintiff's reasonable expectations to be realized from his interest in VP Enterprises, Inc. Vijay Patel and Krish Patel have acted in a manner unfairly prejudicial and oppressive to the Plaintiff within the meaning of South Carolina Code § 33-14-300. The Plaintiff is therefore entitled to have VP Enterprises, Inc. dissolved, or as an alternative to dissolution to be paid the fair value of his undiluted stock interest in VP Enterprises, Inc. pursuant to S.C. Code § 33-14-310.

FOR A SECOND CAUSE OF ACTION
(Violation of Standards of Conduct for Directors under § 33-8-300 against Vijay Patel)

55. All allegations stated above are realleged as if fully repeated herein.

56. Defendant Vijay Patel as a director of VP Enterprises has failed to discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendant negligently and intentionally failed to perform his duties as director in that he permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and his son Krish Patel and for

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the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

57. While Defendant Vijay Patel served as a director of VP Enterprises, he negligently, carelessly and intentionally failed to perform his duties as director so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through his failure to develop the business opportunities associated with the Verizon Wireless franchises. He also failed to oversee critical administrative duties of which he had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

58. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. Communications and assets of Vijay Patel, for disgorgement of Defendant Vijay Patel's ill-gotten gains and other equitable relief.

FOR A THIRD CAUSE OF ACTION
(Violation of Standards of Conduct for Officers under § 33-8-420 against Vijay Patel and Krish Patel)

59. All allegations stated above are realleged as if fully repeated herein.

60. Defendants Vijay Patel and Krish Patel, as officers of VP Enterprises, have failed to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel and Krish Patel diverted a corporate

opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendants negligently and intentionally failed to perform their duties as officers in that they permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

61. While Defendants Vijay Patel and Krish Patel served as officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform their duties as officers so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through their failure to develop the business opportunities associated with the Verizon Wireless franchises. They also failed to oversee critical administrative duties of which they had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

62. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties against All Defendants)

63. All allegations stated above are realleged as if fully repeated herein.

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64. While individual Defendant Vijay Patel was a director, and individual Defendants Vijay Patel and Krish Patel were officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform the duties of director and officers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P. Communications. VP Enterprises thereby suffered great loss, and the value of the stock of the Plaintiff was greatly reduced. Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

65. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel.

66. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. Communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A FIFTH CAUSE OF ACTION
(Accounting from All Defendants)

67. All allegations stated above are realleged as if fully repeated herein.

68. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

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69. Defendants Vijay Patel and Krish Patel were the signatories to the bank account of VP Enterprises and controlled the financial records of VP Enterprises. They also have controlled all the accounting and financial records of P Communications to the complete exclusion of Plaintiff Kaj Patel. The Plaintiff is entitled to an accounting of both VP Enterprises, whether functioning as a partnership and/or joint venture or as a corporation, and P Communications from all the Defendants for all activities related to VP Enterprises and the gains diverted from VP Enterprises to P Communications.

FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty for Partnership Liability)

70. All allegations stated above are realleged as if fully repeated herein.

71. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

72. As partners and/or joint venturers with Plaintiff Kaj Patel, Defendants Vijay Patel and Krish Patel owed their partner a fiduciary duty. Instead, said Defendants carelessly and intentionally failed to perform their duties as partners and joint venturers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P Communications. The partnership interest of Kaj Patel in VP Enterprises thereby suffered great loss, the value of the partnership interest of the Plaintiff was greatly reduced, and Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

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73. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel's and Krish Patel's to the detriment of Plaintiff Kaj Patel and VP Enterprises.

74. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

FOR A SEVENTH CAUSE OF ACTION
(Fraud as To Defendants Vijay Patel and Krish Patel)

75. All allegations stated above are realleged as if fully repeated herein.

76. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

77. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants Vijay Patel and Krish Patel concerning management decisions and the progress of store development opportunities for VP Enterprises.

78. Defendants Vijay Patel and Krish Patel knew their representations were false or had a reckless disregard for the truth of such representations.

79. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

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80. Plaintiff Kaj Patel was ignorant of the falsity of the representations of Defendants Krish Patel and Vijay Patel. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

81. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations were pertaining to matters peculiarly within their knowledge.

82. Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants' false representations.

83. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants' Vijay Patel and Krish Patel ill-gotten gains.

FOR AN EIGHTH CAUSE OF ACTION
(Constructive Fraud)

84. All allegations stated above are realleged as if fully repeated herein.

85. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

86. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants concerning management decisions and progress of store development opportunities for VP Enterprises.

87. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

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88. Plaintiff Kaj Patel was ignorant of the falsity of said Defendants' representations. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

89. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations pertained to matters peculiarly within their knowledge.

90. The Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants false representations.

91. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentation against Defendants Vijay Patel and Krish Patel)

92. All allegations stated above are realleged as if fully repeated herein.

93. As stated above, Defendants Vijay Patel and Krish Patel made false representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores.

94. Said Defendants had a pecuniary interest in making the representations.

95. Defendants Vijay Patel and Krish Patel owed a duty of care to Plaintiff Kaj Patel to see that they communicated truthful information to him.

96. Said Defendants breached that duty by failing to exercise due care in their representations.

97. Plaintiff Kaj Patel justifiably relied on the representations of Vijay Patel and Krish Patel.

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98. Plaintiff Kaj Patel suffered a pecuniary loss as the proximate result of his reliance upon said Defendants' misrepresentations.

99. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

FOR A TENTH CAUSE OF ACTION
(Equitable Disgorgement against All Defendants)

100. All allegations stated above are realleged as if fully repeated herein.

101. By taking control of all the assets, contract negotiations, and finances of VP Enterprises, the Defendants have been able to misappropriate all business opportunities and assets to themselves. The misappropriation of the business of VP Enterprises has enabled Defendants Vijay Patel, Krish Patel and P Communications to take over the profits and future growth of VP Enterprises.

102. The misappropriation of the business opportunities of VP Enterprises by the Defendants was done by fraudulent, illegal and inequitable means. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are entitled to an order of this court requiring said Defendants to disgorge the profits and revenues received by said Defendants from their business operations related to the Verizon stores.

FOR AN ELEVENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)

103. All allegations stated above are realleged as if fully repeated herein.

104. Because of the diversion of valuable corporate opportunities away from VP Enterprises and Plaintiff Kaj Patel, said Plaintiff and VP Enterprises are entitled to

Def. Trial Document 0197

have a constructive trust placed on the assets and stock of P Communications for the benefit of Plaintiff Kaj Patel and VP Enterprises.

FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

105. All allegations stated above are realleged as if fully repeated herein.

106. The actions of the Defendants constituted a trade within the meaning of S.C. Code Ann. § 39-5-20(a).

107. The repeated actions of Defendants Vijay Patel, Krish Patel and P Communications in repeatedly opening new Verizon stores without the knowledge of Plaintiff Kaj Patel, or the involvement of VP Enterprises through misrepresentations and fraudulent concealment as outlined above,, were unfair and deceptive acts and willful violations of the S.C. Unfair Trade Practices Act, § 39-5-20, *et seq.*, S.C. Code Ann. (1976).

108. The acts of Defendants Vijay Patel, Krish Patel and P Communications impacted upon the public interest of the people of the state of South Carolina and were committed repetitiously against the Plaintiff.

109. The Plaintiff is informed and believes that the Defendants have employed similar acts of illegal, oppressive, fraudulent, or unfairly prejudicial conduct against other individual shareholders in other comparable companies including, but not limited to, Corby Phillips and shareholders/partners in their closely-held hotel companies.

110. As a result of the unfair and deceptive trade practices committed, the Plaintiff has suffered losses for which willful violations the Plaintiff is entitled to treble actual damages and an award of reasonable attorney fees and costs.

FOR A THIRTEENTH CAUSE OF ACTION

Def. Trial Document 0198

(Declaratory Judgment)

111. All allegations stated above are realleged as if fully repeated herein.

112. The Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 through -140 determining that the assets of P Communications and/or the stock therein belong to VP Enterprises and that the Plaintiff is entitled to a 50% interest in P Communications.

WHEREFORE, the Plaintiff, individually, and on behalf of VP Enterprises, Inc., prays:

A. For judgment against the Defendants in favor of VP Enterprises Inc. for actual and punitive damages due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants;

B. Alternatively, for judgment against the Defendants in favor of Kaj Patel for 50% of the damages to VP Enterprises, Inc. due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants along with punitive damages thereon;

C. For an accounting, constructive trust, disgorgement and such other equitable relief as the Court deems just and proper;

D. For actual and treble damages, costs and attorney fees for violation of the South Carolina Unfair Trade Practices Act;

E. For such other relief as the Court deems just and proper.

Def. Trial Document 0199

THE GILREATH LAW FIRM, P.A.

By: _____

James R. Gilreath (SC Bar #2133)
William M. Hogan (SC Bar #65272)
110 Lavinia Avenue (zip 29601)
P. O. Box 2147
Greenville, SC 29602
Telephone: (864) 242-4727
Fax: (864) 232-4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

and

Monty D. Desai
The Carolina Law Group
517 Laurens Road
Greenville, SC 29607
Telephone: (864) 312-4444
Facsimile: (864) 312-4447
monty@thecarolinalawgroup.com

ATTORNEYS FOR PLAINTIFF

November 4, 2011
Greenville, South Carolina.

Def. Trial Document 0200

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and VP Enterprises, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT 2011-CP-23-7338 **VERIFICATION OF COMPLAINT**

The undersigned, Pankaj Patel, being first duly sworn, hereby verifies that he has read the allegations of the foregoing Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 4th day of November 2011.

Pankaj Patel

SWORN to and subscribed before me this
4th day of November 2011.

William M. Hiegon
Notary Public for South Carolina
My commission expires: 11/30/13

Def. Trial Document 0201

Exhibit 1

Verizon Wireless Annual Business Plan



Def. Trial Document 0202

Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objectives:

To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience,

To provide training and support for store personal, maintaining excellent moral of all store employees.

To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

Development & Status

The company has not been incorporated and licenced yet. Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be persued immediately. The founders are Vijay Patel and Pankaj. Vijay will be the CEO & President. The agent location will be operated and managed by the company. Pankaj Patel will be the Vice President. Startup capital will be provided by Vijay and Pankaj Patel. Additional capital requirements of up to $250,000.00 can be available. Bank of America and BB&T have established relationships with our principles.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607,

Earle Furman, NAI has already been contacted to confirm availability.

Deleted: a

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Comment: Make the following as bullet items.

Deleted: Not only t

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Deleted: be submitted to Columbia, SC via overnight

Deleted: ij

Deleted: take roll at t

Deleted: take roll as

Deleted: member

Comment: Kitish, you may want to include a paragraph of your experience and accomplishments as a verizon employee. I don't think that you being a previous employee would disqualify us. Call and check with them anonomously.

Def. Trial Document 0203

9 Additional locations have been preliminery outlined to be located as follows;
Pelham Road , Greenville, SC
Augusta Road , Greenville, SC
Haywood Road , Greenville, SC
Butler Road , Mauldin , SC
Blackstock Road, Spartanburg, SC
SC Highway 9 , Spartanburg, SC
SC Highway 123, Easley, SC
Anderson, SC
Gaffney, SC

Deleted: placed

Earle Furman, NAI (Broker In charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

Expansion Time Line

Immediate Actions

After the business meets its projections within 3-6 months, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

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Deleted: ng
Deleted: by
Deleted: these
Deleted: in the near future

Short Term

We would like to expand north and south of I – 85. Our stretch goal would entail expanding vastly in the Carolina and Tennessee regions.

Deleted: Then w
Deleted: /

Long Term

Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis

The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned

Deleted: as we see it only

business team, both companies will benefit and succeed.

The wireless industry has evolved from trunk phones to the ability to down load your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over $118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fasted mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.
Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With ICAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population -- the county of Greenville with a year-round population of 500,000 +-.
Local businesses -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.
Venues: Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirrine Stadium (13,000),
Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)
The student – USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained individuals, guided by professionals of the business industry.
- changing behaviors to change results
- High employee motivation and good sales attitude

Marketing Plan & Sales Strategy

Market Penetration
Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website

Corporate relations

The marketing effort will be split into 3 phases;
1) Opening -- An advanced notice sent out to our personal, business and community contacts.
2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly
for effectiveness.
3) Point of sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Hours of Operation :

TBA, 7 Days a week operation

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Systems & Controls

Selling with Integrity

Management & Organization

Vijay R. Patel, CEO & President
Pankaj Patel, Vice President

Krish Patel, General Manager & Project Development
TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory Control
Alka V. Patel, Director of Marketing

S. Allan Hill – Attorney & Professional Business/Legal Support
Mukund Desai – CPA, Consultant

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	$100	$500	$12,000	$144,000
	25	$15	$375	$6,000	$72,000
Accessories					
Totals	30	$115	$875	$18,000	$216,000
	Tips	0%	$0	$0	$0

Expense		Tot/Month	Tot/Year	
18.00%	Food	$75	$900	
	Rent	$2,700	$32,400	
	CAM	$0	$0	
	Maintenance	$50	$600	
	Insurance	$200	$2,400	
25%	Payroll	$4,000	$48,000	
	Licences	$1,200	$14,400	
	Profesional Fees	$100	$1,200	
	Utilities	$800	$9,600	
	Uniforms	$0	$0	
	Linen Laundry	$0	$0	
	Linen Rental	$15	$180	
	Replacement costs	$0	$0	
	Flyers	$100	$1,200	
	Pest Extermination	$45	$540	
1%	Disposable supplies	$350	$4,200	
	Office Materials	$130	$1,560	
7%	Sales& Hospitality Tax	$1,260	$15,120	
	Credit card equipment rental	$0	$0	
2%	Credit Card Fees	$360	$4,320	Assume 75% by CC
	Total	$11,385	$136,620	

Profit	$6,615	$79,380
% Profit	58.10%	58.10%

Def. Trial Document 0208

Expense		Tot/Month
	Rent	$2,170
	CAM	$600
	Insurance	$200
	Payroll	$1,700
	Utilities	$600
	Linen Rental	$26
	Takeaway Menus	$10
	Pest Extermination	$45
	Dishwasher rental	$130
2%	Credit Card Fees	$140
	Total	$5,621

140.8

Def. Trial Document 0209

Microsoft Outlook

From: krishv.patel@hotmail.com
Sent: Friday, December 07, 2007 9:38 AM
To: Pearson, Kelley
Subject: Re: Business Plan

Great, let me know if there are any questions.

What is the time frame for setting up a meeting if you are interested.

Sent via BlackBerry by AT&T

-----Original Message-----
From: Kelley.Pearson@VerizonWireless.com

Date: Fri, 7 Dec 2007 09:33:18
To:<krishv.patel@hotmail.com>
Subject: RE: Business Plan

I did receive your business plan.

-----Original Message-----
From: krishv.patel@hotmail.com [mailto:krishv.patel@hotmail.com]
Sent: Thursday, December 06, 2007 2:56 PM
To: Pearson, Kelley
Subject: Business Plan

Hello Kelley,

I wanted to follow up to see if you received my previous email.

Let me know and I can re send if not.

Thanks,

Krish
Sent via BlackBerry by AT&T

The information contained in this message and any attachment may be proprietary, confidential, and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank you.

Microsoft Outlook

From: krishv.patel@hotmail.com
Sent: Monday, December 17, 2007 2:41 PM
To: Pearson, Kelley
Subject: Meeting

Kelley,

I just wanted to follow up with you. With Christmas next week I wanted to make sure I schedule accordingly. Has your manager viewed our bs plan ?

Hope to here from you soon,

Krish
Sent via BlackBerry by AT&T

CONFIDENTIAL

Microsoft Outlook

From: krish patel <krishv.patel@hotmail.com>
Sent: Tuesday, November 18, 2008 11:56 PM
To: Pearson, Kelley
Subject: Employee Line

Kelley,

Here is the information of Vijay Patel, Director of Real Estate & Facilities

esn :
[redacted]
mtn:
[redacted]

please let me know if you need anything else.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

This communication, including any attachment(s), may contain privileged, confidential, or private information intended for a specific individual and purpose, and is protected by law. If you are not the person for whom this information is intended, please delete it, destroy any attachment, notify me immediately, and do not copy, use, or send this message or attachment to anyone else.

Microsoft Outlook

From: krishv.patel@hotmail.com
Sent: Thursday, January 31, 2008 10:23 AM
To: Pearson, Kelley
Subject: Certificate

Kelley,

I just wanted to follow up with you to see if you got my email yesterday?

Let me know ,

Thanks

Krish Patel
Sent via BlackBerry by AT&T

Microsoft Outlook

From: krishv.patel@hotmail.com
Sent: Thursday, January 31, 2008 12:00 PM
To: Pearson, Kelley
Subject: Re: Certificate

Yes to start out then we can re evaluate once we are multi store level, is that ok ?
Sent via BlackBerry by AT&T

-----Original Message-----
From: Kelley.Pearson@VerizonWireless.com

Date: Thu, 31 Jan 2008 11:51:04
To:<krishv.patel@hotmail.com>
Subject: RE: Certificate

Didn't you tell me that you all wanted to go with the NON- Residual Commission Structure?

-----Original Message-----
From: krishv.patel@hotmail.com [mailto:krishv.patel@hotmail.com]
Sent: Thursday, January 31, 2008 10:23 AM
To: Pearson, Kelley
Subject: Certificate

Kelley,

I just wanted to follow up with you to see if you got my email yesterday?

Let me know ,

Thanks

Krish Patel
Sent via BlackBerry by AT&T

The information contained in this message and any attachment may be proprietary, confidential, and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank you.

Microsoft Outlook

From: krish patel <krishv.patel@hotmail.com>
Sent: Monday, February 11, 2008 4:03 PM
To: Pearson, Kelley

Kelley,

here are the full names:

Vijay Raojibhai Patel
Pankaj Arvind Patel

thanks,

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Microsoft Outlook

From: krish patel <krishv.patel@hotmail.com>
Sent: Monday, February 11, 2008 9:35 PM
To: Blew, Tammy C
Cc: Pearson, Kelley
Subject: VP Enterprise Inc.
Attachments: VP_Enterprises_Term_Sheet_cover_letter[1].doc; Verizon Locations Premier.doc

Tammy,

Here is the information you requested. I have also attached a letter or intent from BB & T. If you need anything further please don't hesitate ask. Thanks for your time; we look forward to speaking with you again.

Sincerely,

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

Microsoft Outlook

From: krish patel <krishv.patel@hotmail.com>
Sent: Tuesday, February 19, 2008 12:37 PM
To: Pearson, Kelley; Blew, Tammy C
Subject: VP ENTERPRISE
Attachments: Premier Agent Time Line.doc

Here is the new time line we have created for our projected openings. If you have any questions please call or email me.

Thanks,

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

CONFIDENTIAL

February 2008

VP ENTERPRISES INC.

Our company feels that receiving "premier agent" status from the beginning of the contract is essential. VP Enterprises Inc is making additions to our central management team in efforts to expedite our expansion. Our company is under process of training and preparing a second "Director of Operations". This individual will work side by side to Krish Patel from pre opening to opening of our first location. Once our first location is up and running for 45 days, the company plans on expanding multiple stores simultaneously approximately every 30-45 days. This process will involve all hands on deck from central management and principles.

The illustration below has been created by our group based on statistical information regarding retail store openings. Our real estate broker examined best retail trade time which is how this time frame was created. This opening schedule will be possible based on our financial positioning, staffing and knowledge about this industry.

This example shows VP Enterprises Inc opening timeline:

Location 1 - May 1st

Location 2 - June 15th & Location 3 - June 20th

Location 4 - August 25th & Location 5 - August 30th

Location 6 - September 30th & Location 7 - October 5th

Location 8 - January 15th

Location 9 - February 29th

Location 10 - April 15th

Our group feels this time frame is achievable and essential for the success of VP Enterprise Inc and Verizon Wireless Communication's relationship.

As the company grows steadily, staff and central management will increase. VP Enterprise Inc seeks to expand vastly beyond the time line shown. The guidance and parameters set by Verizon Wireless will lead to our company's financial success and growth.

Microsoft Outlook

From: krishv.patel@hotmail.com
Sent: Wednesday, February 27, 2008 3:02 PM
To: Pearson, Kelley; tammy.blew@verizonwireless.com
Cc: Butler, Tim
Subject: Update

Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

-----Original Message-----
From: krishv.patel@hotmail.com

Date: Fri, 15 Feb 2008 15:40:19
To:"Kelley Pearson" <kelley.pearson@verizonwireless.com>
Cc:tammy.blew@verizonwireless.com
Subject: Follow Up

Good Morning,

Hope everything is going well, I just wanted follow up on any decisions.

Dba, sites, financial approvals?

If you have any information please let me know.

Have a great day,
Krish Patel - Project Manager
VIP Hospitality, LLC
Hotel & Retail Development
864-275-5605 Phone
864-451-7533 Fax

Sent via BlackBerry Email

Microsoft Outlook

From: krish patel <krishv.patel@hotmail.com>
Sent: Tuesday, September 30, 2008 10:06 AM
To: Pearson, Kelley
Subject: Follow Up

Kelley,

As a follow up, here's a list of items which still need to be completed for our store opening tomorrow:

1. Activate Demo Phones :
   a. USB AIR CARD - [redacted]
   b. W 755 - [redacted]
   c. BB PEARL - [redacted]
   d. Glyde - [redacted]
   e. Waiting for esn

2. Bags for Opening
3. Need Current Magalogs
4. Remainder POP Materials
5. Phone Price Stripes
6. Anything additional to finalize Data Scape ?
7. Activation of Employee Accounts (Keith & Jay) Not Urgent, just need an update please
8. Dummy Phones Needed for Opening

Please let me know what I need to do to help with this , thank you.

Krish Patel - Project Manager

VIP Hospitality, LLC
Hotel & Retail Development

864-275-5605 Phone
864-451-7533 Fax

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Stephenson, Thomas L.

To: Allan Hill
Subject: RE: email

Do you have the agreement to which this refers? Rob say "Paragraphs 4 and 5"'

Thomas L. Stephenson
Nexsen Pruet, LLC
55 E. Camperdown Way, Suite 400
Greenville, SC 29601
T: 864.370.2211, F: 864.477.2620
tstephenson@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET

From: Allan Hill [mailto:ahill@greenvillelaw.net]
Sent: Tuesday, June 26, 2012 3:17 PM
To: Stephenson, Thomas L.
Subject: FW: email

Here's what I have.

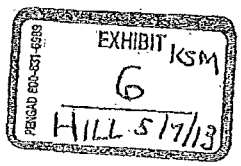
S. Allan Hill
Attorney, CPA
819 E. North St.
Greenville, SC 29601
(864)242-4996
(864)242-6500 fax
ahill@greenvillelaw.net

From: Robin Stilwell [mailto:robinbstilwell@yahoo.com]
Sent: Monday, October 13, 2008 3:34 PM
To: S. Allan Hill
Subject: RE: email

I have spoken with Corby and have reviewed the agreement. He does not like the provisions of Paragraphs 4 and 5. He does not feel comfortable with a mandatory buy back as he has been assured his 7% is his as remuneration for this service. Also, he says that he and Patel agreed that he would have 7% going forward and that he would be paid 7% of net profits (not discounted or reduced by the salaries, bonuses or remuneration paid to Patel, Gailey, or any other shareholder) as a shareholder's distribution each year.

Also, re: paragraph 8 he would feel more comfortable with the stock being returned to "the Corporation" and Phillips shall then execute docs on behalf of the corporation if in afct he is still is installed as an officer or director with the capacity to do so. (very technical/ chickenshit point but I have to contribute something)

Robin B. Stilwell
Hunter, Tomaszek & Stilwell, PA



2 Whitsett St.
Greenville, SC 29601
(864)232-5000
(864)907-7770 o
(864)242-5545 fax

--- On Tue, 10/7/08, S. Allan Hill <*ahill@greenvillelaw.net*> wrote:

From: S. Allan Hill <ahill@greenvillelaw.net>
Subject: RE: email
To: robinbstilwell@yahoo.com
Date: Tuesday, October 7, 2008, 9:37 AM

Here is what I tried to send you earlier. It helps if you spell Stilwell correctly.

From: S. Allan Hill [mailto:ahill@greenvillelaw.net]
Sent: Thursday, October 02, 2008 7:52 PM
To: 'robindstillwell@yahoo.com'
Subject: P Communications agreement

Did Corby Phillips bring anything to you to review? I have been asked by my client to get with you on it.

I've been referring several people to you so I hope they're calling. I'm sending pretty good stuff from what I can tell. The nut cases I send to people I don't like.

I still need to get those City Range certificates to you for a hot date for you with your wife. Don't let me forget.

S. Allan Hill
Attorney, CPA
Temple, Mann, Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864)242-4995
(864)242-5500 fax
ahill@greenvillelaw.net

From: Robin Stilwell [mailto:robinbstilwell@yahoo.com]
Sent: Tuesday, October 07, 2008 8:46 AM
To: ahill@greenvillelaw.net

2 Whitsett St.
Greenville, SC 29601
(864)232-5000
(864)907-7770 c
(864)242-5545 fax

--- On Tue, 10/7/08, S. Allan Hill <*ahill@greenvillelaw.net*> wrote:

From: S. Allan Hill <ahill@greenvillelaw.net>
Subject: RE: email
To: robinbstilwell@yahoo.com
Date: Tuesday, October 7, 2008, 9:37 AM

Here is what I tried to send you earlier. It helps if you spell Stilwell correctly.

From: S. Allan Hill [mailto:ahill@greenvillelaw.net]
Sent: Thursday, October 02, 2008 7:52 PM
To: 'robindstilwell@yahoo.com'
Subject: P Communications agreement

Did Corby Phillips bring anything to you to review? I have been asked by my client to get with you on it.

I've been referring several people to you so I hope they're calling. I'm sending pretty good stuff from what I can tell. The nut cases I send to people I don't like.

I still need to get those City Range certificates to you for a hot date for you with your wife. Don't let me forget.

S. Allan Hill
Attorney, CPA
Temple, Mann, Briggs & Hill
819 E. North St.
Greenville, SC 29601
(864)242-4995
(864)242-5500 fax
ahill@greenvillelaw.net

From: Robin Stilwell [mailto:robinbstilwell@yahoo.com]
Sent: Tuesday, October 07, 2008 8:46 AM
To: ahill@greenvillelaw.net

Subject: email

look to hear from you. Thanks.

Robin B. Stilwell
Hunter, Tomaszek & Stilwell, PA
2 Whitsett St.
Greenville, SC 29601
(864)232-5000
(864)907-7770 c
(864)242-5545 fax

Def. Trial Document 0222

Hunter, Tomaszek & Stilwell, P.A.
Attorneys at Law
2 Whitsett Street
Greenville, SC 29601
FEIN 57-0769949

Invoice submitted to:
~~Roly Poly Sandwiches~~
~~c/o Frederick Hequembourg~~
~~1618 Woodruff Road Unit C~~
Greenville SC 29607

Corby Phillips
[redacted]
Greenville, SC 29615

October 28, 2008

Invoice #27755

Professional Services

			Hours	
10/13/2008	RBS	Telephone call with client; review of agreement; email to Allen Hill; email to client	0.80	
	RBS	Followup telephone call with client regarding terms of agreement	0.15	
10/24/2008	RBS	Meeting with client	0.45	
				Amount
		For professional services rendered	1.40	$350.00
		Balance due		$350.00

Timekeeper Summary

Name	Hours	Rate	Amount
ROBIN B. STILWELL	1.40	250.00	$350.00

Def. Trial Document 0223 PHILLIPS00077

[redacted]

From: [redacted]
Sent: Wednesday, December 04, 2013 10:01 AM
To: [redacted]
Subject: FW: P Comm

From: corbyscott@hotmail.com
To: krishv.patel@hotmail.com
Subject: RE: P Comm
Date: Sun, 9 Nov 2008 09:29:28 -0500

I believe that is very reasonable. We need to come to an agreement I am tired of dealing with the situation.

> From: krishv.patel@hotmail.com
> To: corbyscott@hotmail.com
> Date: Thu, 6 Nov 2008 02:23:44 +0000
> Subject: Re: P Comm
>
> Corby,
>
> I really can't afford to pay 25k. Please try to be a little more reasonable.
>
>
> ------Original Message------
> From: Corby Phillips
> To: krishv.patel@hotmail.com
> Subject: P Comm
> Sent: Nov 5, 2008 9:16 PM
>
> Krish,
>
> Have you figured out what we are going to do yet.
>
> Corby
>
>
> ----------
> Color coding for safety: Windows Live Hotmail alerts you to suspicious email. Sign up today.
>
> Krish Patel - Director of Operations
>
> Wireless Communications
> Verizon Wireless Authorized Retailer

Def. Trial Document 0224
PHILLIPS00143

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PHILIP J. TEMPLE
BOBBY H. MANN, JR.
LARRY N. BRIGGS
S. ALLAW HILL, CPA

819 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4995
FAX
(864) 242-3300
SENDER'S EMAIL: AHILL@GREENVILLELAW.NET

November 19, 2008

Via Email: patricia.cook@verizonwireless.com
Verizon Wireless
Attention: Patricia L. Cook

Re: P Communications, Inc. – Ownership Change

Dear Patricia:

This letter is in regards to the change of ownership for the above-mentioned company and the questions you had as a result of the change:

- The corporate name and its FEIN will remain the same; the only change will be the shareholders of the corporation,
- All accounts already open and any future accounts will remain under the control of the corporation,
- As you can see from the attached Director's Minutes of the corporation, Krish Patel will own 60% of the corporation and Keith Gailey will own 40%,
- Corby Phillips has transferred all of his shares of corporate stock back to the corporation and his stock certificate has been cancelled.
- All checking accounts will remain the same.
- The new owners will carry the Dynamx balance of approximately $50,000.00 as of November 18, 2008.
- The new owners will also carry the buildout funds liability.
- All equipment and fixtures on hand will transfer with the new owners.

Please let me know if you have any more questions.

Sincere regards,

S. Allaw Hill

The undersigned agree to the above representations.

Krish V. Patel

Corby S. Phillips

Keith R. Gailey

EXHIBIT 9
HILL 5/7/13

De 0056

Def. Trial Document 0225

TEMPLE MANN BRIGGS & HILL
Attorneys at Law

PAUL I. TEMPLE
BOBBY E. MANN, JR.
LARRY N. BRIGGS
S. ALLAN HILL, CPA

919 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

TELEPHONE
(864) 242-4155
FAX
(864) 242-5511
SENDER'S EMAIL: AHILL@GREENVALLEY.NET

November 19, 2008

Via Email: patricia.cook@verizonwireless.com
Verizon Wireless
Attention: Patricia L. Cook

Re: P.Communications, Inc. - Ownership Change

Dear Patricia:

This letter is in regards to the change of ownership for the above-mentioned company and the questions you had as a result of the change.

- The corporate name and its FEIN, will remain the same, the only change will be the shareholders of the corporation.
- All accounts already open and any future accounts will remain under the control of the corporation.
- As you can see from the attached Director's Minutes of the corporation, Krish Patel will own 60% of the corporation and Keith Gailey will own 40%.
- Corby Phillips has transferred all of his shares of corporate stock back to the corporation and his stock certificate has been cancelled.
- All checking accounts will remain the same.
- The new owners will carry the Dymax balance of approximately 350,000.00 as of November 18, 2008.
- The new owners will also carry the buildout funds liability.
- All equipment and fixtures on hand will transfer with the new owners.

Please let me know if you have any more questions.

Sincere regards,

S. Allan Hill

The undersigned agree to the above representations.

Krish V. Patel

Corby S. Phillips

Keith R. Gailey

11/20/2008 4:31PM (GMT-05:00)

0057

Def. Trial Document 0226

CONFIDENTIAL

Microsoft Outlook

From:	Pearson, Kelley
Sent:	Friday, October 02, 2009 11:48 AM
To:	krishv.patel@hotmail.com
Cc:	Blew, Tammy C
Subject:	Location Approvals

Krish, I just received the below information regarding your location approvals that were submitted. Let's get together next week and talk about other possible areas.

Denied Locations:
P-Communications - 1021 S Pendleton St, Easley (Too Close to VZW Corp Store)
P-Communications - 1717 Woodruff Rd, Greenville (Too Close to VZW Corp Store)
P-Communications - 1941 C Woodrull Rd, Greenville (Too Close to VZW Corp Store)
P-Communications - 2013 Wade Hampton Blvd, Greenville (Mkt Share 56%, Low overlapping pops, 3 miles from a VZW Corp Store)

Kelley Pearson
Indirect Account Manager - Upstate SC
864-987-2348 - O
864-420-9339 - C
864-254-1430 - F

Def. Trial Document 0227 VZW 00301

Microsoft Outlook

From: Pearson, Kelley
Sent: Monday, November 02, 2009 4:37 PM
To: krishv.patel@hotmail.com; Keith Galley (keith.galley@Gmail.com)
Subject: FW: November 2009 Targets & MTD Results

Krish & Keith,

All locations have been assigned stretch goals for the month of November, See your targets below:

Agent/ Location	Outlet ID	Oct EIS Adds	Oct % of Contribution	Nov Goal	10% Stretch Goal
August Road	95058	45	8%	73	80
Anderson	102290	35	6%	56	62
Pelham Rd	94047	39	7%	63	69
5 Forks	94048	21	4%	34	37
153	99497	34	6%	55	60
Total:		174	31%	281	308

Each day during this month , (exception of weekends or holiday/vacation), I will be sending you, your daily leadersboard, so that you can keep up with where you are MTD!!

Gonna keep this simple, below are your goals:

Churn = Goal - .87%
Premium Plans = Goal - 3%
Connect Plans = Goal - 6%
DAPC new =Goal - $20
DAPC ALL = Goal - $15
BBAC = 10% of ALL customers
VZ Mail = Goal - 13%
VZ NAV = Goal 7.5%

Selling Broadband Access Connect takes care of 2 of our top 2 goals - GROW MORE CUSTOMERS AND GROW MORE DATA!!!

If you have any questions, about your stretch goals...call me!

Def. Trial Document 0228 VZW 00305

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Thursday, April 15, 2010 7:58 PM
To: kaj.patel@armanci.com
Subject: FW: Pryor HUD

From: Krish Patel [mailto:krish.patel@wcvzw.com]
Sent: Thursday, April 15, 2010 7:53 PM
To: 'kaj.patel@charter.net'
Cc: 'vijay831@hotmail.com'
Subject: FW: Pryor HUD

Closing is tomorrow @ 2:00 pm. I will be there. If anyone has any questions please let me know.

Thank You,

Krish Patel - Director of Operations

Wireless Communications

864-282-8050 - Office
864-275-5605 - Direct
864-282-8550 - Fax

verizonwireless

From: Bruce C Ko [mailto:Bruce@NewWayProperties.net]
Sent: Thursday, April 15, 2010 11:08 AM
To: krish.patel@wcvzw.com; Matthew_Pryor@m-petfilm.com
Subject: Pryor HUD

HUD attached for your review.
Please let me know if you have any questions.

Matt,

You will get your earnest money back at the closing, please make a certified check out to "J Darryl Holland Law Firm".

Amount; $35,698.56

Thank you.....

With kind regards,

Bruce C. Ko

From: Krish Patel <krish.patel@wcvzw.com>
Sent: Thursday, April 15, 2010 9:23 PM
To: kaj.patel@armanci.com
Subject: Re: Pryor HUD

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

No problem .

I am always interested in looking for new sites .

We can get together and talk about possibilities .

Do you have time next week?

Krish Patel - Director of Operations

Wireless Communications
Verizon Wireless Premium Retailer

864-275-5605- Direct
864-282-8050- Office
864-282-8550- Fax

Sent from my Verizon Wireless BlackBerry, Provided by Wireless Communications

---

From: "Kaj Patel" <kaj.patel@armanci.com>
Date: Thu, 15 Apr 2010 21:01:49 -0400
To: 'Krish Patel'<krish.patel@wcvzw.com>
Cc: <vijay831@hotmail.com>
Subject: RE: Pryor HUD

Got it. Looks fine. Thanks for getting it closed.

I checked verizon's site as you sugested, there is no store listed for that area. When do you want to get together and talk? Please let me know your interest level in this as soon as posible since I have another party I can partner up with in this if you are not interested. I have already looked at a few buildings that are available for lease, rent range is $1200 to $1800 and are willing to do a 1yr term.
Thanks.

Pankaj (Kaj) Patel
Arman Consulting, Inc.
www.armanci.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.,

Plaintiff,

v.

Krish Patel, Vijay Patel, and P Communications, Inc.,

Defendants,

and

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

VERIFICATION OF AMENDED COMPLAINT

2012 FEB 13 PM 4:09

The undersigned, Pankaj Patel, being first duly sworn, hereby verifies that he has read the allegations of the foregoing Amended Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 13th day of February 2012.

Pankaj Patel

SWORN to and subscribed before me this
13th day of February 2012

William M. Hogan
Notary Public for South Carolina
My commission expires: 1/30/13

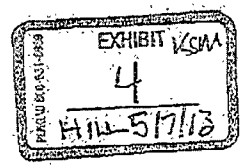
Def. Trial Document 0231

P Communications agreement notes

1. Retain 7% of ownership in company (10 stores)
2. Yearly compensation of 7% of net profits starting after year one.(with personal guarantee that P&L would not be massaged to show loss)
3. Option to allow Krish in as a share holder at the time Verizon will allow.
4. Not liable for any leases or accounts payable.
5. Option to be bought out at a later date (to be negotiated at that time)
6. Krish was to be in charge of all operations, I am a silent partner.
7. Access to discounted employee phone plans for duration of ownership.
8. Access to audit accounting information.
9. Buy out to be calculated at 7% of gross sales example given: $100,000* 0.07= $7,000.00

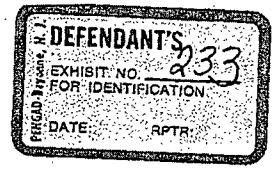
Projected value of stores: (Based on Krish's buiness plan for opening 10 stores)

One Store		Ten Stores	7%
Gross Sales:	$ 434,000.00	$ 4,340,000.00	$ 303,800.00
Net Profit	$ 85,000.00	$ 860,000.00	



PHILLIPS00076

Def. Trial Document 0232



Street	City	State	Zip	County	Store Open Date	Status	Added Date	Closed Date
1057 CORPORATE CENTER DR.	FORT MILL	SC	297077164		9/1/2010	Inactive	9/15/2010	9/21/2010
10177 N KINGS HWY	MYRTLE BEACH	SC	295724027		9/1/2010	Inactive	7/16/2010	9/20/2010
2201 WEST DEKALB STREET	CAMDEN	SC	290202070	KERSHAW	10/13/2009	Active-Open	9/29/2009	
335 CHESTERFIELD HWY	CHERAW	SC	2952293002	CHESTERFIELD	12/20/2013	Active-Open	12/19/2013	
142 HWY 274	CLOVER	SC	297109045	YORK	9/13/2011	Active-Open	7/15/2011	
2129 S. IRBY ST, SUITE 10	FLORENCE	SC	2953033445	FLORENCE	3/19/2010	Active-Open	2/15/2010	
1135 STONECREST BLVD , SUITE 113	FORT MILL	SC	297090509	YORK	6/27/2008	Active-Open	5/27/2008	
1624 WEST FLOYD BAKER BLVD.	GAFFNEY	SC	293411204	CHEROKEE	12/20/2013	Active-Open	12/19/2013	
2541 NORTH PLEASANTBURG DR.	GREENVILLE	SC	296062728	GREENVILLE	12/20/2013	Active-Open	12/19/2013	
10002 CHARLOTTE HIGHWAY, SUITE 100	INDIAN LAND	SC	297077136	LANCASTER	5/31/2012	Active-Open	7/15/2011	
4969 OLD YORK ROAD , SUITE 101	ROCK HILL	SC	297326127	YORK	8/10/2009	Active-Open	8/6/2009	
922 EAST LIBERTY ST	YORK	SC	297461662	YORK	7/11/2008	Active-Open	6/6/2008	
701 BROOKFIELD PARKWAY	GREENVILLE	SC	296078721			Inactive	7/26/2011	8/19/2011
201-B HWY 701 N	LORIS	SC	2958572495		7/11/2009	Inactive	6/17/2009	7/26/2010
2079 SAM RITTENBERG	CHARLESTON	SC	294074606		6/17/2009	Inactive	6/17/2009	10/26/2009
Charleston Air Force Base Building 1900	Charleston	SC	29404		6/17/2009	Inactive	6/17/2009	10/26/2009
NEX/Charleston 1845 Fletcher St Charleston Naval Weapon Station	Goose Creek	SC	29445		6/17/2009	Inactive	6/17/2009	10/26/2009
1263 Gelger Road Building 408	Beaufort	SC	29904		6/17/2009	Inactive	6/17/2009	10/26/2009
4110 Mosbey Street	Fort Jackson	SC	29207		6/17/2009	Inactive	6/17/2009	10/26/2009
100 COLUMBIANA CIR 6503	COLUMBIA	NC	292122231		6/17/2009	Inactive	6/17/2009	10/26/2009
Shaw Air Force Base Building 1422	Shaw Air Force Base	SC	29152		6/17/2009	Inactive	6/17/2009	10/26/2009
109 INTERSTATE BLVD	ANDERSON	SC	296212319			Inactive	5/13/2009	1/1/2013
2515 BOILING SPRINGS RD.	BOILING SPRINGS	SC	293165365		4/1/2008	Inactive	3/27/2008	7/25/2009
840 EAST LIBERTY STREET	YORK	SC	297461662		4/21/2008	Inactive	4/21/2008	8/6/2009
335 CHESTERFIELD HWY	CHERAW	SC	295293002	CHESTERFIELD	7/30/2008	Inactive	7/7/2008	12/19/2013
112 NICKLE PLATE ROAD	HARDEEVILLE	SC	2949774414			Inactive	1/25/2012	4/30/2012
2301 AUGUSTA ROAD	WEST COLUMBIA	SC	291694546			Inactive	1/25/2012	4/30/2012
451 FOLLY ROAD, SUITE 101	CHARLESTON	SC	294123434	CHARLESTON	12/30/2010	Active-Open	11/12/2010	
5401 FOREST DRIVE	COLUMBIA	SC	292064922	RICHLAND	11/11/2009	Active-Open	9/1/2009	
920 BUSH RIVER ROAD	COLUMBIA	SC	292137314	RICHLAND	4/7/2008	Active-Open	3/21/2008	
7541 GARNERS FERRY RD.	COLUMBIA	SC	292062527	RICHLAND	10/19/2010	Active-Open	9/15/2010	
331 KILLIAN ROAD, SUITE B-5	COLUMBIA	SC	2920369920	RICHLAND	2/17/2010	Active-Open	2/17/2010	
6175 WHITE HORSE ROAD	GREENVILLE	SC	296113632	GREENVILLE	11/22/2011	Active-Open	8/8/2011	
2 MARINA SIDE DRIVE	HILTON HEAD	SC	2992553S0	BEAUFORT	4/17/2009	Active-Open	3/29/2009	
905 JOHNNIE DODDS BOULEVARD	MT PLEASANT	SC	2946483104	CHARLESTON	5/20/2010	Active-Open	3/18/2010	
2856 S. HIGHWAY 17	MURRELLS INLET	SC	2957077021	HORRY	8/2/2011	Active-Open	2/14/2011	
102 LOYOLA DR, STE C	MYRTLE BEACH	SC	2955887735	HORRY	11/8/2012	Active-Open	7/14/2012	
4936 Center Point Dr., Suite 105	North Charleston	SC	29418	CHARLESTON	6/2/2008	Active-Open	4/28/2008	
2427 Cherry Road	Rock Hill	SC	29730	YORK	2/12/2008	Active-Open	2/12/2008	
6970 DORCHESTER ROAD, STE 100-105	SUMMERVILLE	SC	294857843	DORCHESTER	10/14/2008	Active-Open	8/8/2008	
850 FOLLY ROAD	CHARLESTON	SC	294123436		6/16/2009	Inactive	5/4/2009	2/19/2010
2427 Cherry Road	Rock Hl	SC	29730		2/17/2008	Inactive	2/17/2008	2/17/2008
301 C EAST BLVD	CHESTERFIELD	SC	2950811735	CHESTERFIELD	7/11/2009	Active-Open	6/12/2009	
109 E. MCGREGOR ST	PAGELAND	SC	2972822889	CHESTERFIELD	7/11/2009	Active-Open	6/10/2009	
141 L E. CHURCH STREET	LEESVILLE	SC	2907070B5		6/27/2008	Inactive	6/6/2008	7/21/2009
500 IDLEWILDE BLVD., UNIT A	COLUMBIA	SC	292014037	RICHLAND	12/17/2012	Inactive	12/3/2012	11/21/2013
601 CHESTERFIELD HWY	CHERAW	SC	2952207004		7/12/2009	Inactive	6/29/2009	8/31/2012
11849 DUNDARYON BLVD STE B	BARNWELL	SC	298129010	BARNWELL	5/30/2014	Active-Open	5/30/2014	
1020 S BROAD ST	CLINTON	SC	2953282800	LAURENS	5/30/2014	Active-Open	5/30/2014	
207C NORTH HARPER ST	LAURENS	SC	2958622337	LAURENS	5/30/2014	Active-Open	5/30/2014	
1227 WILSON RD	NEWBERRY	SC	291064600	NEWBERRY	5/30/2014	Active-Open	5/30/2014	
537 WHITMAN ST	ORANGEBURG	SC	291156027	ORANGEBURG	5/30/2014	Active-Open	5/30/2014	
701 BROOKFIELD PARKWAY	GREENVILLE	SC	296075721			Inactive	1/13/2012	2/20/2012

920 N MAIN STREET	WOODRUFF	SC	2938939323		7/12/2009	Inactive	6/19/2009	11/6/2009
1650 EAST MAIN STREET, STE D	DUNCAN	SC	2933549706		7/11/2009	Inactive	6/10/2009	2/10/2010
3740 BOILING SPRINGS ROAD	BOILING SPRINGS	SC	2933100719	SPARTANBURG	7/11/2009	Active-Open	6/10/2009	
11149 A ASHEVILLE HWY.	INMAN	SC	2934991952	SPARTANBURG	10/19/2009	Active-Open	6/19/2009	
1740 HIGHWAY 14 E	LANDRUM	SC	2939599727	SPARTANBURG	7/30/2009	Active-Open	6/19/2009	
306 SPARTANBURG HWY	LYMAN	SC	2933691099	SPARTANBURG	7/11/2009	Active-Open	6/10/2009	
515 A NORTH DUNCAN BYPASS	UNION	SC	2937981503	UNION	3/8/2010	Active-Open	10/26/2009	
912 NORTH MAIN STREET	WOODRUFF	SC	2938939023	SPARTANBURG	5/21/2010	Active-Open	5/21/2010	
610 HIGHWAY 1 SOUTH, STE G	LUGOFF	SC	2930789414		7/11/2009	Inactive	6/9/2009	11/19/2010
7392 TWO NOTCH ROAD	COLUMBIA	SC	2932237820		7/11/2009	Inactive	6/8/2009	3/4/2010
701 BROOKFIELD PARKWAY	GREENVILLE	SC	2960075721			Inactive	2/23/2012	2/23/2012
1403 HIGHWAY 86	PIEDMONT	SC	2935739322	ANDERSON	10/6/2008	Active-Open	9/8/2008	
212 KNOX ABBOTT DR.	CAYCE	SC	2930934314		4/4/2008	Inactive	3/24/2008	8/11/2009
9970 DORCHESTER ROAD	SUMMERVILLE	SC	2948836329		4/30/2008	Inactive	4/13/2008	5/12/2008
2120 HWY 9 E, STE. F7	LONGS	SC	2935386735		8/1/2008	Inactive	5/5/2008	8/14/2008
111 PAVILION DR., STE. 14	LITTLE RIVER	SC	2936668396		8/14/2008	Inactive	4/29/2008	4/16/2010
12060 HWY 17 BYPASS	MURRELLS INLET	SC	2937594401		8/20/2008	Inactive	8/20/2008	4/16/2010
3730 AVENUE OF THE CAROLINAS	FORT MILL	SC	2937082290		8/11/2008	Inactive	6/19/2008	12/2/2008
550 SEABOARD STREET	MYRTLE BEACH	SC	2935779732	HORRY	8/11/2011	Inactive	4/13/2011	5/8/2014
162 STATION DR	ANDERSON	SC	2936211173	ANDERSON	11/3/2010	Inactive	8/13/2010	5/8/2014
1132 BOWER PARKWAY	COLUMBIA	SC	2932123709	LEXINGTON	11/3/2010	Inactive	8/13/2010	5/8/2014
250 FORUM DR	COLUMBIA	SC	2932297930	RICHLAND	11/3/2010	Inactive	8/23/2010	5/5/2014
35 PARK WOODRUFF DRIVE	GREENVILLE	SC	2960075726	GREENVILLE	11/10/2010	Inactive	8/13/2010	5/5/2014
2100 MORRIS BAKER BLVD	NORTH CHARLESTON	SC	2943064651	CHARLESTON	11/3/2010	Inactive	8/20/2010	5/5/2014
105 FRANKLIN AVE UNIT B	SPARTANBURG	SC	2930316993	SPARTANBURG	11/3/2010	Inactive	8/13/2010	5/5/2014
1057 BROAD STREET	SUMTER	SC	2913302907		7/12/2009	Inactive	6/24/2009	1/25/2010
749 WINDY ROAD	GILBERT	SC	2905649185		7/30/2008	Inactive	7/28/2008	7/14/2010
2667 BROAD STREET	SUMTER	SC	2913501849		7/12/2009	Inactive	6/24/2009	12/14/2010
2331 WOODRUFF RD	SIMPSONVILLE	SC	2936515455		7/30/2008	Inactive	7/29/2008	7/25/2008
100 EAST NORTH STREET	GREENVILLE	SC	2960012102	GREENVILLE	1/1/2012	Active-Closed	8/16/2012	
1015 EAST GREENVILLE STREET	ANDERSON	SC	2936212034	ANDERSON	8/3/2009	Active-Open	7/31/2009	
334 SOUTH MAIN STREET	BELTON	SC	2936271502	ANDERSON	8/2/2011	Active-Open	6/21/2010	
1270 EIGHTEEN MILE ROAD	CENTRAL	SC	2933096814	PICKENS	3/31/2010	Active-Open	6/19/2009	
130 AMICKS FERRY ROAD	CHAPIN	SC	2930396400	LEXINGTON	7/30/2010	Active-Open	7/29/2010	
1000 JA COCHRAN BYPASS	CHESTER	SC	2976052191	CHESTER		Inactive	7/15/2011	11/27/2013
2028 EAST MAIN STREET	DUNCAN	SC	2933549433	SPARTANBURG	12/6/2010	Active-Open	6/21/2010	
2007 AUGUSTA ST.	GREENVILLE	SC	2953051757	GREENVILLE	10/17/2008	Active-Open	10/13/2008	
100 NORTH MAIN STREET	GREENVILLE	SC	2960012795	GREENVILLE	10/11/2010	Active-Open	5/21/2010	
3935 PELHAM ROAD, SUITE G	GREENVILLE	SC	2956155625	GREENVILLE	10/1/2008	Active-Open	7/28/2008	
1100 DUTCH FORK ROAD, SUITE G	IRMO	SC	2930638973	RICHLAND	7/12/2009	Active-Open	6/24/2009	
810 E MAIN STREET, SUITE A	LAURENS	SC	2933093936	LAURENS	6/7/2010	Active-Open	2/12/2010	
551 HWY 378	LEXINGTON	SC	2930728316	LEXINGTON	8/2/2011	Active-Open	8/8/2010	
1974 PAXVILLE HWY	MANNING	SC	2912254432	CLARENDON	7/12/2009	Active-Open	6/24/2009	
305 COMMERCE DRIVE SUITE B	MULLINS	SC	2934746241	MARION	7/12/2009	Active-Open	6/24/2009	
113 HERITAGE DRIVE	NEWBERRY	SC	2911094101	NEWBERRY	7/29/2010	Active-Open	7/29/2010	
3560 HIGHWAY 153	GREENVILLE	SC	2961175553	ANDERSON	6/10/2009	Active-Open	6/1/2009	
7488 AUGUSTA ROAD	PIEDMONT	SC	2937735093	GREENVILLE		Inactive	4/18/2011	7/31/2013
2603 WOODRUFF RD., UNIT 001	SIMPSONVILLE	SC	2936144193	GREENVILLE	12/16/2008	Active-Open	7/29/2008	
2190 SOUTHPORT RD	SPARTANBURG	SC	2930662258	SPARTANBURG	10/17/2010	Active-Open	5/21/2010	
2702 GENTRY MEMORIAL HWY.	PICKENS	SC	2967112479	PICKENS	12/5/2010	Active-Open	11/1/2010	
2 BENTON ROAD	TRAVELERS REST	SC	2965021169	GREENVILLE	8/8/2009	Active-Open	8/8/2009	
320 East Main Street	Moncks Corner	SC	29461		8/13/2008	Inactive	4/24/2008	8/3/2009
1065 SOUTH 4TH STREET	HARTSVILLE	SC	2955535751		7/11/2009	Inactive	5/19/2009	8/1/2011
1771 SHAW DRIVE	HARTSVILLE	SC	2955056943		7/11/2009	Inactive	5/19/2009	8/1/2009

1084 BROAD STREET	SUMTER	SC	291502541		7/11/2006	Inactive	6/11/2009	2/18/2010
1402 EAST MAIN ST.	DUNCAN	SC	293481890	SPARTANBURG	2/1/2013	Active-Closed	1/18/2013	
3014 PARKVILLE HIGHWAY, RT. 6 - BOX 200	MANNING	SC	291025448	CLARENDON	2/1/2013	Active-Closed	1/18/2013	
2014 E HWY 76, STE E	MARION	SC	295719330		7/11/2006	Inactive	6/10/2009	1/1/2011
516 CHERAW STREET	BENNETTSVILLE	SC	295122842		7/11/2006	Inactive	6/10/2009	7/28/2010
517 RADFORD BLVD , SUITE D	DILLON	SC	295382469		1/8/2010	Inactive	1/8/2010	8/13/2011
2305 S. CASHUA DRIVE	FLORENCE	SC	295015350		7/12/2006	Inactive	6/10/2009	8/27/2011
4005 HOWARD AVE.	MYRTLE BEACH	SC	295777644	HORRY	9/13/2012	Active-Open	9/5/2012	
1025 Bells Hwy	Walterboro	SC	29488		3/11/2008	Inactive	3/11/2008	1/1/2009
517 RADFORD BLVD, STE D	DILLON	SC	295063001		7/11/2006	Inactive	6/10/2009	3/18/2010

MARTIN C. MCWILLIAMS, JR.

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C.V.

PRESENT POSITIONS

Professor of Law, University of South Carolina. Subjects: Advanced Corporate Law Seminar, Agency & Partnership, Business Corporations, Contracts, English Legal History, Mergers and Acquisitions, Nonprofit Organizations, Securities Regulation, Transnational Dispute Resolution.

Co-founder, Director, and faculty member, USC School of Law London study abroad program in association with The Honourable Society of Gray's Inn ("London Maymester").

Law School Committees: Steering; Admissions (Chair, 2002-05); Academic Standing (past Chair); Curriculum (past Chair); Faculty Appointments (Chair, 2008-09). Adviser, South Carolina Law Review. Past Teacher of the Year. Faculty Service Award (multiple times).

University Committees: Strategic Directions and Initiatives (Vice Chair); Budget (past Chair); Steering (ex officio); Chief Financial Officer Search; Honorary Degrees.

Faculty member, Bar Review of South Carolina, Inc. Subjects: Agency, Partnership, Business Corporations, Limited Liability Companies.

Executive Director, South Carolina Law Institute, 1989 to present.

Counsel, Haynsworth Sinkler Boyd, P.A., Columbia, South Carolina.

EDUCATION

LL.M., Harvard University, 1976.
J.D., University of Mississippi, 1975.
Law Review, Comments Editor.
Instructor in legal writing.
B.A., University of Virginia, 1969.

PROFESSIONAL EXPERIENCE

Private Practice, Davis Polk & Wardwell, New York and London, 1977-83. Corporate and securities practice.

Private Practice, Sullivan & Cromwell, New York, 1986-87 (on leave from University). Corporate and securities practice.

Who Bears the Costs of a Lawyer's Mistakes? – Against Limited Liability, 36 ARIZ. ST. L.J. 885 (2004).

Limited Liability Law Practice, 49 S.C.L. REV. 359 (1998).

Hospital Liability for Torts of Independent Contractor Physicians, 47 S.C.L. REV. 431 (1996).

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"Crafting a Nonprofit Corporation, Part II" (co-author), S.C. LAWYER, February/March 1996.

"Charitable Immunity: Statutory Remnants in South Carolina," S.C. LAWYER, September/October 1996.

Co-Author, *South Carolina Reporter's Comments*, South Carolina Business Corporation Act of 1988.

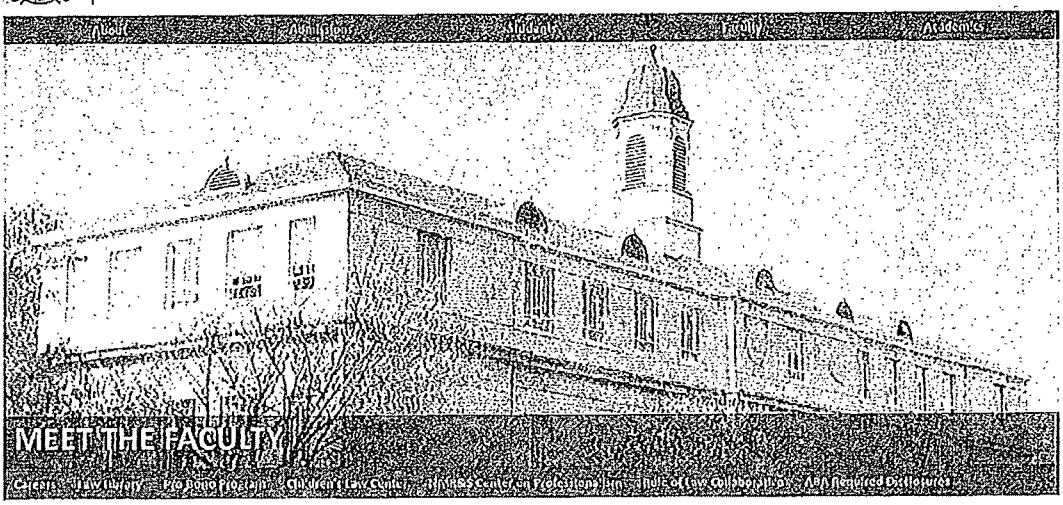
South Carolina Reporter's Comments, Article 8 (Investment Securities), South Carolina Uniform Commercial Code (1992)

Co-Author, *South Carolina Reporter's Comments*, South Carolina Nonprofit Corporation Act of 1994.

South Carolina Reporter's Comments, Article 8, South Carolina Uniform Commercial Code (comprehensive revision 2000).

South Carolina Reporter's Comments, Article 5 (Letters of Credit), South Carolina Uniform Commercial Code (2000).

UNIVERSITY OF SOUTH CAROLINA
School of Law



MARTIN C. MCWILLIAMS, JR.



PROFESSOR OF LAW

L.L.M. (1976) Harvard University
J.D. (1975) University of Mississippi
B.A. (1969) University of Virginia

Before joining the USC Law faculty in 1983, Professor McWilliams clerked for the Honorable R.A. Ainsworth, Jr., of the United States Court of Appeals for the Fifth Circuit and practiced for six years with Davis Polk & Wardwell in their New York and London offices. His principal teaching interests are Contracts, the advanced corporate law courses, and English Legal History. He developed (with former Adjunct Professor Tim Scrantom) and directs the Law School's Maymester study-abroad program at Gray's Inn in London, and teaches (with Prof. Joel Samuels) Transnational Dispute Resolution in that program. Professor McWilliams is executive director of the South Carolina Law Institute and in that role has been highly active in law reform in South Carolina. His current research and writing interests focus on the normative aspects of the regulation of the legal system.

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- Profile
- CV
- Presentations
- Scholarship
- Maymester in London

COURSES TAUGHT

- Contract Law (LAWS 504)
- Securities Regulation (LAWS 606)
- Mergers & Acquisitions (LAWS 774)
- English Legal History (LAWS 790)

Corporations
[Archived Catalog]

2012-2013 School of Law Bulletin

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LAWS 581 - Corporations

Credits: 3

A study of the formation, structure, and characteristics of enterprises organized to do business in the corporate form. Areas discussed include shareholder and promoter liability, division of enterprise ownership, owners and control, duties of management, and securities regulation.

Prerequisites: None

Note: Students who have taken Business Corporations may not register for this course.

Basis of Grade: Final examination

Form of Grade: Letter Grade

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Business Corporations
[Archived Catalog]

2012-2013 School of Law Bulletin

Print this Page

LAWS 600 - Business Corporations

Credits: 4

A study of the formation, structure, and characteristics of enterprises organized to do business in the corporate form. Areas discussed include shareholder and promoter liability, division of enterprise ownership, powers and control, duties of management, and securities regulation. The course will also briefly examine some basic agency, partnership, and LLC topics.

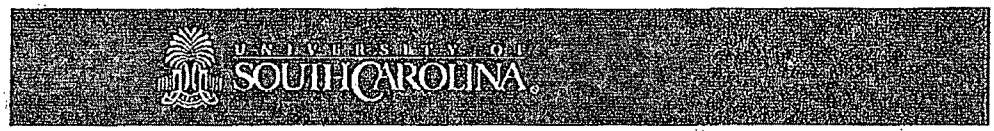
Prerequisites: None.

Note: Second year progression-entry course; 2L priority registration. Students who have taken the three credit hour Corporations in summer school may not register for Business Corporations.

Basis of Grade: Final examination and class participation

Form of Grade: Letter Grade

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LAWS 600 001 SPRING 2014

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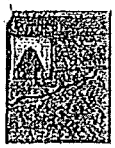


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School of Law 2012-2013 School of Law Bulletin

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Course Descriptions

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School of Law

- LAWS 500 - Introduction to the Legal Profession
- LAWS 504 - Contract Law
- LAWS 505 - Contracts I
- LAWS 506 - Contracts II
- LAWS 509 - Property
- LAWS 510 - Property I
- LAWS 511 - Property II
- LAWS 523 - Constitutional Law
- LAWS 524 - Criminal Law
- LAWS 525 - Constitutional Law I
- LAWS 526 - Constitutional Law II
- LAWS 529 - Torts
- LAWS 530 - Torts I
- LAWS 531 - Torts II
- LAWS 533 - Legal Research, Analysis and Writing I
- LAWS 534 - Legal Research, Analysis and Writing II
- LAWS 535 - Legal Writing I
- LAWS 536 - Legal Writing II
- LAWS 537 - Legal Research
- LAWS 538 - Legal Drafting
- LAWS 540 - Advanced Legal Writing (Bockman)
- LAWS 540 - Advanced Legal Writing
- LAWS 544 - Civil Procedure
- LAWS 545 - Civil Procedure I
- LAWS 546 - Civil Procedure II
- LAWS 547 - Criminal Procedure
- LAWS 554 - Problems in Professional Responsibility
- LAWS 555 - Professional Responsibility
- LAWS 556 - Advanced Legal Profession
- LAWS 557 - Law Practice Workshop
- LAWS 560 - Foundations of Law Practice and Professionalism
- LAWS 561 - CAPSTONE COURSE: Small Business Organization
- LAWS 562 - Advanced Legal Research
- LAWS 564 - Free Speech and Democracy
- LAWS 568 - Coastal Law
- LAWS 569 - Coastal Law Field Lab
- LAWS 581 - Corporations
- LAWS 600 - Business Corporations
- LAWS 601 - The Constitution and National Security
- LAWS 602 - Project Finance
- LAWS 606 - Securities Regulation
- LAWS 607 - Business Crime
- LAWS 608 - Law and Economics
- LAWS 611 - Agency Partnership and Limited Liability Companies
- LAWS 613 - Criminal Adjudication
- LAWS 614 - International Business Transactions
- LAWS 615 - Secured Transactions
- LAWS 617 - Commercial Law Seminar
- LAWS 618 - Consumer Law
- LAWS 623 - Comparative Employment Discrimination Seminar
- LAWS 624 - Employment Discrimination
- LAWS 626 - Principles of Labor Law
- LAWS 627 - Immigration Law
- LAWS 629 - Alternative Dispute Resolution
- LAWS 630 - Individual Employment Law
- LAWS 631 - Parents, Children and the Law
- LAWS 633 - Income Taxation
- LAWS 636 - Corporate Tax
- LAWS 637 - Partnership and LLC Taxation

- LAWS 745 - Drafting Business Agreements
- LAWS 749 - Consumer Bankruptcy Clinic
- LAWS 754 - Advanced Trial Advocacy
- LAWS 757 - Criminal Practice Clinic
- LAWS 758 - Sentencing and Correction Law
- LAWS 759 - Family Law
- LAWS 763 - Conflict of Laws
- LAWS 763A - Conflict of Laws
- LAWS 765 - International Litigation
- LAWS 766 - Education Law and Policy
- LAWS 767 - Media Law
- LAWS 768B - Law, Society and Justice
- LAWS 769 - Legislative Process
- LAWS 770 - Poverty Law & Policy
- LAWS 771 - Interviewing, Counseling and Negotiation
- LAWS 772 - Juvenile Justice Clinic
- LAWS 774 - Mergers and Acquisitions
- LAWS 775 - Law and Literature
- LAWS 777 - Sports Law
- LAWS 778 - Entertainment Law
- LAWS 780 - Comparative Law
- LAWS 782 - Race and the Law
- LAWS 784 - Transnational Law
- LAWS 790 - English Legal History
- LAWS 791 - Judicial Externship (Summer)
- LAWS 791A - Judicial Externship (Fall/Spring)
- LAWS 792 - American Legal History
- LAWS 796 - Statutory Interpretation
- LAWS 797 - Juvenile Justice
- LAWS 798 - Death Penalty Seminar
- LAWS 799A - Tort Theory Seminar
- LAWS 802 - Taxation of Property Transfers
- LAWS 803 - Women and the Law
- LAWS 806 - Cyberlaw
- LAWS 807 - Business Torts
- LAWS 808 - Writing in Law Practice
- LAWS 809 - CAPSTONE COURSE: Civil Litigation
- LAWS 810 - Comparative UK/US Negligence Law
- LAWS 811 - ADR in Employment Law Workshop
- LAWS 812 - International Human Rights Seminar
- LAWS 814 - Structuring Secured Transactions
- LAWS 815 - Rule of Law Seminar
- LAWS 816 - Introduction to Environmental Law and Policy
- LAWS 817 - International Criminal Law
- LAWS 820 - Religious Legal Systems: Jewish Law
- LAWS 823 - Religion and the Constitution
- LAWS 828 - S.C. Administrative Law
- LAWS 829 - Veterans' Rights Advocacy Seminar
- LAWS 830 - Veterans' Rights Clinic
- LAWS 831 - Children and the Courts
- LAWS 832 - Current Topics in Professional Responsibility Seminar
- LAWS 833 - The Warren Court
- LAWS 835 - Federal Constitutional Convention
- LAWS 836 - Consumer Bankruptcy Drafting Workshop
- LAWS 837 - Commercial Speech Seminar
- LAWS 838 - Federal Indian Law
- LAWS 839 - Transnational Dispute Resolution
- LAWS 841 - Law and Social Justice Seminar
- LAWS 845 - Race and Class in American Public Education Seminar
- LAWS 847 - Ethical Issues in Criminal Practice
- LAWS 849 - The Great Recession of 2008: Statutory Background and Legislative Response
- LAWS 850 - Government Regulation of Business
- LAWS 856 - Public Law & Leadership
- LAWS 857 - The American War on Terror: The U.S., Counter-Terrorism and International Law

Haynsworth Sinkler Boyd, P.A.

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Martin C. McWilliams, Jr.

Of Counsel

Professor McWilliams is our corporate law guru.

He has been Of Counsel to Haynsworth Sinkler Boyd since 1988. He provides our clients a unique resource in sophisticated transactions and complex litigation.

A member of the full-time faculty at the University of South Carolina School of Law, he is responsible for courses such as Agency & Partnership, Business Corporations, Contracts, Mergers & Acquisitions, Securities Regulation and Nonprofit Corporations.

He has been listed in *The Best Lawyers in America*® for Corporate Law since 1995.

SIGNIFICANT MATTERS

- Mr. McWilliams advised participants in the largest ever corporate transaction ($1.2 billion) in South Carolina.
- He chaired the task force that revised the South Carolina Securities Act.
- He chaired the committees that comprehensively revised the South Carolina Uniform Commercial Code.

Mr. McWilliams is the director of the USC School of Law's study abroad program at Gray's Inn in London and teaches (with Professor Joel Samuels) Transnational Dispute Resolution in that program. In the Fall of 2012, Mr. McWilliams was named a Fellow of the Honourable Society of Gray's Inn. Mr. McWilliams is the first non-British Fellow to be named.

Mr. McWilliams is executive director of the South Carolina Law Institute and has been highly active in law reform in South Carolina. His current research and writing interests focus on the normative aspects of the regulation of the legal system.

Before joining the USC Law faculty in 1983, Professor McWilliams clerked for the Honorable R.A. Ainsworth, Jr., of the U.S Court of Appeals for the Fifth Circuit, and practiced with Davis Polk & Wardwell in its New York and London offices.

INDUSTRY
Manufacturing, Mining & Agriculture
Textiles & Advanced Materials
Governments, Utility & Non-Profits
Professional Services

PRACTICE
Corporate & Business
Corporate Finance & Securities
Corporate Organization & Governance
Nonprofit Organizations
Financial Derivatives

EDUCATION
Harvard University, LL.M., 1976
University of Mississippi, J.D., 1975
University of Virginia, B.A., 1969

ADMISSIONS
New York, 1977
South Carolina, 1990
U.S. Court of Appeals, Fifth Circuit, 1976
Mississippi, 1976

PUBLICATIONS
Co-Author: *South Carolina Corporate Practice Manual*, South Carolina Bar, 1990; *South Carolina Limited Liability Company Practice Manual*, South Carolina Bar, 1994

PROFESSIONAL AND CIVIC ACTIVITIES
American Law Institute
South Carolina Bar
John Belton O'Neall Inn of Court

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

2008 FEB 12 P 2:21 ENTERED COMPUTER

PANKAJ PATEL,)
)
Plaintiff,)
FILED CLERK OF COURT
GREENVILLE CO. S.C.
vs. PAID F WICKENSIMER SUMMONS
)
BRIAN D. MERRIMAN,) Case No. 08-CP-23- 1169
KENNETH J. O'MALLEY, JR.,)
MICHAEL D. SCOTT, and)
APPLIED ENGINEERING)
SOLUTIONS, INC.,)
)
Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned at 44 East Camperdown Way, Post Office Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.

By: _____
Gregory J. English (65470)

44 E. Camperdown Way
P.O. Box 728
Greenville, SC 29602
(864) 242-8200

Attorneys for Plaintiff

SCANNED

February 12, 2008

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

PANKAJ PATEL,)
)
Plaintiff,)
)
vs.)
)
BRIAN D. MERRIMAN,)
KENNETH J. O'MALLEY, JR.,)
MICHAEL D. SCOTT, and)
APPLIED ENGINEERING)
SOLUTIONS, INC.,)
)
Defendants.)

FILED CLERK OF COURT GREENVILLE S.C. 2008 FEB 12 P 2:22

COMPLAINT
(JURY TRIAL DEMANDED)

Case No. 2008-CP-23-1169

The Plaintiff, Pankaj Patel ("Plaintiff" or "Patel"), complaining of the Defendants, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. Patel is an individual residing in Greenville County, South Carolina.

2. Defendant Brian D. Merriman ("Merriman") is an individual residing in Anderson County, South Carolina.

3. Defendant Kenneth J. O'Malley, Jr. ("O'Malley") is an individual residing in Greenville County, South Carolina.

4. Defendant Michael D. Scott ("Scott") is an individual residing in Greenville County, South Carolina.

5. Defendant Applied Engineering Solutions, Inc. ("AES") is a corporation organized and existing under the laws of the State of South Carolina with a principal place of business in Greenville County, South Carolina.

6. This Court has jurisdiction over the parties to and subject matter of this action.

GENERAL ALLEGATIONS

7. Patel was a minority shareholder of AES, previously owning and holding one-fourth (1/4), or twenty-five percent (25%), of the shares of AES.

8. Merriman, O'Malley, and Scott (collectively, the "Majority Shareholders") are the majority shareholders of AES, previously owning and holding three-fourths (3/4), or seventy-five percent (75%), of the shares of AES, and are managers, directors, and officers of AES.

9. On February 13, 2006, Patel, the Majority Shareholders, and AES entered a Stock Purchase and Option Agreement (the "Contract"), pursuant to which Patel agreed to sell, and the Majority Shareholders and AES agreed to purchase, Patel's stock in AES at fixed prices.

10. To induce Patel to enter the Contract, AES and the Majority Shareholders covenanted, warranted, and represented that on or before March 1, 2006, and thereafter within 15 days prior to the due date for delivery of Schedule K-1s to him, AES would pay Patel a dividend in an amount equal to 40% of the income taxable to Patel on such K-1s and that they had disclosed to Patel all material information about AES, including AES' finances and outlook.

11. In reliance upon the covenants, warranties, and representations in the Contract, Patel sold AES and the Majority Shareholders 130 shares of his stock in AES on February 17, 2006, and the remainder of such shares on March 3, 2006.

12. AES subsequently sent Patel and the IRS K-1s showing AES income taxable to Patel for tax years 2005 and 2006, on which Patel paid taxes.

13. AES and the Majority Shareholders have failed to pay Patel dividends in an amount equal to 40% of the income taxable to him on his K-1s and failed to disclose to Patel all material information about AES, including AES' finances and outlook.

FOR A FIRST CAUSE OF ACTION

14. The allegations hereinabove alleged are incorporated herein.

15. The Contract is a legally binding and enforceable contract and Patel has satisfied all conditions of Contract.

16. AES and the Majority Shareholders breached the Contract by:

(a) failing to pay Patel dividends in an amount equal to 40% of the income taxable to him on his K-1s for tax years 2005 and 2006;

(b) failing to disclose to Patel all material information about AES, including AES' finances and outlook, including but not limited to customers' plans to purchase in the near future burner management systems and services, fire and gas detection systems and services, and safety systems services; and

(c) otherwise failing to act in good faith and deal fairly with Patel.

17. AES' and the Majority Shareholders' breaches of the Contract, including but not limited to the implied covenant of good faith and fair dealing, caused Patel actual damages that Patel is entitled to recover from them, including, but not limited to, 40% of the income taxable to him on his K-1s for tax years 2005 and 2006 and the sale of his stock for less than fair market value and less than twenty-five percent (25%) of the fair value of AES.

18. Patel is entitled to recover from AES and the Majority Shareholders his actual damages, plus interest allowed by law, costs and reasonable attorneys' fees.

FOR A SECOND CAUSE OF ACTION

19. The allegations hereinabove alleged are incorporated herein.

20. The Majority Shareholders, as officers, directors, and majority shareholders of AES, owed Patel fiduciary duties to make a full disclosure of all relevant facts when purchasing Patel's stock from him.

21. The Majority Shareholders breached their fiduciary duties to Patel by failing to disclose to Patel all material information about AES, including AES' finances and outlook, including but not limited to customers' plans to purchase in the near future burner management systems and services, fire and gas detection systems and services, and safety systems services. Had the Majority Shareholders disclosed such information, Patel would not have sold his shares of stock in AES at the price he did, which price was below their fair market value and less than twenty-five percent (25%) of the fair value of AES.

22. As a direct and proximate result of the Majority Shareholders' breach of their fiduciary duties to him, Patel has suffered actual damages including, but not limited to, the sale of his stock for less than fair market value and less than twenty-five percent (25%) of the fair value of AES.

23. The Majority Shareholders' conduct was sufficiently willful, wanton, reckless, grossly negligent, and outrageous to entitle Patel to punitive damages.

FOR A THIRD CAUSE OF ACTION

24. The allegations hereinabove alleged are incorporated herein.

25. Patel made proper demand to inspect and copy records of AES. *See* Exhibit A attached hereto, which is incorporated herein by reference.

26. AES and the Majority Shareholders have failed and refused to produce the requested records in bad faith.

27. The Court should order AES and the Majority Shareholders to permit inspection and copying of the requested records at their expense and to pay Patel his costs, including reasonable attorneys' fees, incurred to obtain such order.

WHEREFORE, Plaintiff prays for (a) relief as hereinabove set forth, including but not limited to (1) actual damages plus pre-judgment interest to Plaintiff; (2) punitive damages to Plaintiff; and (3) Plaintiffs' attorneys' fees, costs, and other litigation expenses; and (b) such other and further relief as to the Court may appear just and proper.

Respectfully submitted:

WYCHE BURGESS FREEMAN & PARHAM, P.A.

By: _____

Gregory J. Duglish (#65470)

44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602
(803) 242-8200

Attorneys for Plaintiff

Dated: February 12, 2008

Greenville, South Carolina

Plaintiff respectfully requests a jury trial.

WYCHE

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

April 24, 2007

BY FIRST CLASS MAIL AND BY FACSIMILE

Phillip A. Kilgore, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Post Office Box 2757
Greenville, South Carolina 29602

Re: Pankaj Patel v. Brian D. Merriman, et al., Case No. 2005-CP-23-371

Dear Phillip:

In your letter dated March 7, 2006, you attempted to explain how AES was able to exercise its option to purchase Mr. Patel's stock so quickly when we spent so much time negotiating a deal that would give Defendants three (3) years to purchase it. You stated that the company wanted "the option to be able to purchase Patel's shares very quickly should the ability to do so arise. It eventually did arise." You further state that "defendants did not think they would get [the money necessary for the buyout]. They were pleasantly surprised when funding came together ...."

In order to determine whether the defendants satisfied their contractual and legal obligation to disclose to Mr. Patel all material information about the company, including its finances and outlook, we need to know more specifically (1) how the ability to purchase Mr. Patel's stock arose, and (2) how such "funding came together." Please be more specific about these two matters.

In connection with this request, please provide us with AES' financial statements, on both a cash and accrual basis, and tax returns for 2005 and 2006. Also, please provide us with historical balance sheets (cash and accrual), Job Progress vs. PO reports, proposals lists, and opportunity lists as of January 31, 2006 and February 28, 2006. Finally, we ask that you identify the Conoco-Phillips, BP, Pioneer, FMC, and Siemens opportunities, proposals, and POs for those two dates and as of December 31, 2005, as well as any agreements, written or oral, with those companies.

Best regards,

Gregory J. English
(864) 242-8247

GJE/sc
cc: Mr. Pankaj Patel (by mail)

PO Box 728 Greenville SC 29602-0728
44 East Camperdown Way Greenville SC 29601-3591
p 864.242.8200 f 864-235-8900 www.wyche.com

Exhibit A

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

Pankaj Patel,)
Plaintiff(s)) CIVIL ACTION COVERSHEET

vs.) 2008 - CP - 23 - 1169

2008 FEB 12 P 2:20

Brian D. Merriman, et al.,)
Defendant(s))

FILED CLERK OF COURT
GREENVILLE COUNTY
PAM D. WIGGINS

(Please Print) S.C. Bar #: 65470
Submitted By: Gregory J. English Telephone #: (864) 242-8200
Address: Wyche Law Firm; 44 E. Camperdown Way Fax #: (864) 235-8900
PO Box 728, Greenville, SC 29602 Other:
E-mail: genglish@wyche.com

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 Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499)

Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☒ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

Submitting Party Signature: _____ Date: February 12, 2008

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.

**R MANDATED ADR COUNTIES ONLY

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 within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case 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. Cases which are appellate in nature such as appeals or writs of certiorari;

    c. Post Conviction relief matters;

    d. Contempt of Court proceedings;

    e. Forfeiture proceedings brought by the State;

    f. Cases involving mortgage foreclosures; and

    g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. 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 had 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.**

** Florence, Horry, Lexington, Richland, Greenville, and Anderson

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

PANKAJ PATEL,

Plaintiff,

vs.

BRIAN D. MERRIMAN, KENNETH J. O'MALLEY, JR., MICHAEL D. SCOTT, and APPLIED ENGINEERING SOLUTIONS, INC.,

Defendants.

COMPLAINT

Case No. 05-CP-23-0371

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2005 JAN 18 P 4:06

The Plaintiff, Pankaj Patel ("Plaintiff" or "Patel"), complaining of the Defendants, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. Patel is an individual residing in Greenville County, South Carolina.

2. Defendant Brian D. Merriman ("Merriman") is an individual residing in Anderson County, South Carolina.

3. Defendant Kenneth J. O'Malley, Jr. ("O'Malley") is an individual residing in Greenville County, South Carolina.

4. Defendant Michael D. Scott ("Scott") is an individual residing in Greenville County, South Carolina.

5. Defendant Applied Engineering Solutions, Inc. ("AES") is a corporation organized and existing under the laws of the State of South Carolina with a principal place of business in Greenville County, South Carolina.

6. This Court has jurisdiction over the parties to and subject matter of this action.

GENERAL ALLEGATIONS

7. Patel is a minority shareholder of AES, owning and holding one-fourth (1/4), or twenty-five percent (25%), of the shares of AES. AES has no directors and instead is to be managed by its shareholders. Patel is a manager and was, until recently, a vice president of AES.

8. Merriman, O'Malley, and Scott (collectively, the "Majority Shareholders") are the majority shareholders of AES, owning and holding three-fourths (3/4), or seventy-five percent (75%), of the shares of AES and are managers and officers of AES.

9. Patel, the Majority Shareholders, and AES entered a Transition Business Agreement on November 5, 1998, pursuant to which the parties agreed that no later than January 1, 2000, Patel would become a full-time direct employee of AES and that his employment would not be terminated except upon unanimous vote and agreement of all stockholders of AES.

10. Patel and the Majority Shareholders entered a Shareholder Management Agreement on November 16, 1998, pursuant to which the parties agreed that "[t]he business and affairs of [AES] shall be managed by the undersigned shareholders," including Patel.

11. The Majority Shareholders as hereinafter shown have consistently utilized their superior position in an attempt to squeeze Patel out of his interest in AES.

12. On August 13, 2004, with no prior notice to Patel, Merriman and O'Malley stated that the Majority Shareholders were terminating Patel's employment with AES. The Majority Shareholders locked Patel out of AES' place of business and cut-off Patel's salary from AES.

13. After stating that they were terminating Patel's employment with AES, locking Patel out of AES' place of business, and cutting-off Patel's salary from AES, the Majority Shareholders demanded that Patel sell his shares in AES to them for an unreasonably low amount and sign a statement that he had "resigned".

14. Patel is informed and believes that, since cutting him off from AES' business and his salary, the Majority Shareholders have substantially increased the amounts they elect to pay themselves, so that the increased amounts withdrawn from the corporation leaves little or no amounts for dividends.

15. In the operation of AES, the Majority Shareholders have proceeded on a systematic and unremitting course of conduct to exclude Patel from the business and affairs of AES by denying Patel access to AES' place of business, employees, and information.

16. The Majority Shareholders have totally excluded Patel from any voice in the affairs of AES, despite the fact that he is a shareholder and manager of AES and has guaranteed $125,000 of AES' operating line of credit.

17. In the course of running AES, the Majority Shareholders have engaged in self-dealing, using the assets of the companies as they please and to their own personal advantage, without any authorization by, approval of, or consultation with Patel.

18. In the course of taking over the affairs of AES, the Majority Shareholders terminated all compensation to Patel as an officer and manager of the corporation. For

themselves, however, after having taken over the corporation to the exclusion of Patel, upon information and belief, they have siphoned off from the corporation large sums of money and personal expenses wholly unrelated to the business and affairs of the corporation.

19. Prior to the takeover of the corporation by the Majority Shareholders, AES paid certain distributions to each of the shareholders, such distributions being made to them in equal amounts. Following the Majority Shareholders' takeover of control, however, they claimed that such distributions were loans and declared that the corporation was demanding full payment of Patel's loans only, leaving their "loans" outstanding for an indeterminate amount of time.

20. The Majority Shareholders have made repeated attempts to buy Patel out of his interest in AES. In order to "squeeze" Patel into selling his interest to them at less than its fair value, the Majority Shareholders not only cut off all income to Patel from AES, but also charged AES fees and other personal expenses to diminish the funds in AES, a share of which would otherwise go to Patel. Additionally, the Majority Shareholders, in complete contravention of their fiduciary obligations to Patel as the minority shareholder, not only refused to pay distributions, but have openly declared past distributions as "loans" and demanded that Patel alone repay such distributions. The Majority Shareholders have pursued these squeeze-out tactics despite the fact that, even with the large amounts siphoned from the company by the Majority Shareholders for their own personal benefit, AES would be fully able to pay substantial distributions to its shareholders.

21. In an effort to secure information, Patel has been frustrated by the Majority Shareholders, who have made the release of information subject to a series of stumbling blocks, either ignoring requests, requiring that any information be furnished only through attorneys, or

requiring Patel first to hire and disclose to them his own accountant, which is needlessly expensive and seeks to deprive Patel of his right to consult with experts confidentially.

22. It is abundantly clear that the Majority Shareholders intend to continue their self-dealing, waste of corporate assets, and oppressive conduct until such time as the Court may intervene and call them to account.

23. Because AES has no board of directors and because the Majority Shareholders have an irreconcilable conflict of interest in deciding whether to pursue the relief claimed herein, any demand by Patel on the Majority Shareholders to pursue the relief claimed herein is and would be futile.

FOR A FIRST CAUSE OF ACTION

24. The allegations of Paragraphs 1 through 23 as hereinabove alleged are incorporated herein.

25. Pursuant to Sections 33-14-300 and 33-18-400 of the Code of Laws of South Carolina, grounds for judicial dissolution exist with respect to AES in that the Majority Shareholders, in controlling the corporation in the manner hereinabove set forth, have acted and continue to act in a manner that is illegal, oppressive and unfairly prejudicial to the Plaintiff and to the corporation in which he is a manager, guarantor, and minority shareholder.

26. Further grounds for dissolution exist in that the corporate assets are being misapplied and wasted by the Majority Shareholders.

27. Pursuant to Sections 33-14-310, 33-18-420, and 33-18-430 of the Code of Laws of South Carolina, grounds also exist for the Court to make such order or grant such relief, other than dissolution, as in its discretion is appropriate, including, without limitation, orders, *inter*

alia, directing or prohibiting any act of the corporations or shareholders, managers, or officers, selling the corporation as a going concern, or providing for the purchase at their fair value of shares of any shareholder, by the corporations or other shareholders.

28. The Plaintiff is informed, believes and alleges that the conduct of the Majority Shareholders makes imperative an intervention by the Court either by a decree of dissolution or other extraordinary relief, and that ordinary relief would be inadequate.

29. Accordingly, Plaintiff seeks an order of this Court for such extraordinary relief in lieu of dissolution, but if such alternative relief for any reason should not be deemed appropriate by the Court, Plaintiff would seek such other remedy, including dissolution, as to the Court may appear proper, any such relief to include costs, expenses and attorneys' and experts' fees.

FOR A SECOND CAUSE OF ACTION

30. The allegations of Paragraphs 1 through 29 are incorporated herein as hereinabove alleged.

31. The Defendant Majority Shareholders, as hereinabove alleged, have engaged in self-dealing and waste of the corporate assets, appropriating to their own use large sums of money of the corporation in the manner hereinabove set forth; that such self-dealing and waste of corporate assets constitute a gross breach of trust and of the Majority Shareholders' fiduciary obligations to the corporation and to the Plaintiff as the minority shareholder in such corporation, for which the Majority Shareholders are accountable.

32. Accordingly, Plaintiff, in his capacity as a shareholder, acting derivatively on behalf of the corporation, seeks the decree of this Court requiring a full accounting the Majority Shareholders to AES, and for judgment requiring restoration to such corporation of all amounts

paid out of or diverted from such corporation by the Majority Shareholders as a result of such self-dealing, waste, and breach of trust and fiduciary obligations, such judgment to include interest, costs, and fees for Plaintiff's attorneys and expert witnesses.

FOR A THIRD CAUSE OF ACTION

33. The allegations of Paragraphs 1 through 32 as hereinabove alleged are incorporated herein.

34. Pursuant to the Transition Business Agreement dated November 5, 1998, and the Shareholder Management Agreement dated November 16, 1998 (collectively, the "Contracts"), Patel is entitled to be a manager of AES.

35. Plaintiff is ready, willing and able to take an active role in carrying out the responsibilities of manager of AES.

36. Since August 13, 2004, the Majority Shareholders have prevented Patel from acting as manager of AES.

37. Without the order of this Court directing otherwise, Patel is informed, believes and alleges that the Majority Shareholders have no intention of allowing Plaintiff to act in the capacities to which he has been elected or permitting anything other than a deadlock on any actions proposed by Plaintiff, since they clearly view Patel as an unwelcome intruder into the businesses which they have come to consider subject to their sole and exclusive control.

38. In order to require the corporation to function as agreed and as required by law, and to protect such corporation and the Plaintiff from continued irreparable harm, Plaintiff is informed and believes that the Court should proceed under the provisions of § 33-14-320 and § 33-14-310 of the Code of Laws of South Carolina, 1976, giving the Court power to appoint a

receiver or alternatively, a Custodian to manage the business and affairs of the corporation, including a receiver or Custodian *pendente lite,* with such powers and duties as the Court may direct.

39. Plaintiff believes that a Custodian should be appointed immediately to act *pendente lite,* to carry on the business of the corporations until a full hearing can be held, pursuant to § 33-14-310 (c) of the Code of Laws of South Carolina, 1976, with powers and duties as follows:

a. Authorizing the Custodian to serve together with the Plaintiff and one of the Majority Shareholders, as directors of the corporation, with all of the powers and duties of a member of the board of directors of such corporation, and to act as the chairman of such board of directors, pending the hearing and disposition of this action;

b. Authorizing the board of directors of the corporation to be regularly convened by the Custodian acting as chairman of the board on his own initiative or at the request of either of the other two directors, namely the Plaintiff or one of the Defendant Majority Shareholders;

c. That the board of directors shall be empowered to elect officers of the corporations and fix their duties and compensation;

d. That the officers of the corporations be required to report to the board of directors and that such directors require all officers of the corporations to submit expense accounts, with reimbursements of such expenses to be limited to ordinary and necessary business expenses of the corporations;

e. That reasonable directors fees be fixed *pendente lite* for the Plaintiff and the Defendant Majority Shareholder in amounts approved by the Custodian, in addition to reasonable salaries, together with a fee for each meeting attended, plus any travel expenses;

f. That fees for the Custodian be fixed in a reasonable amount approved by the Court, such fees to include the services of such Custodian in acting as a member and Chairman of the board of directors; and

g. That such Custodian be authorized to exercise such other powers and duties as the Court may deem appropriate and proper, and such Custodian, as well as either the Majority Shareholders or Patel, shall have leave to apply to the Court for Orders prescribing additional powers or duties to the Custodian as may be deemed necessary or appropriate.

FOR A FOURTH CAUSE OF ACTION

40. The allegations of Paragraphs 1 through 39 as hereinabove alleged are incorporated herein.

41. The Majority Shareholders claim that certain distributions were loans to Patel and the other shareholders and have demanded that Patel only "re-pay" such "loans," leaving their "loans" outstanding for an indeterminate amount of time.

42. All amounts that have been paid by AES to Patel were salaries, bonuses, and distributions. AES has made no "loans" to Patel.

43. Patel has the right to have these questions determined by the Court pursuant to S.C. Code Ann. § 15-53-30, S.C.R.C.P. 57, and other proper legal authority.

44. For the foregoing reasons, Patel respectfully requests the Court to declare that all amounts that have been paid by AES to Patel were salaries, bonuses, and distributions and that AES has made no "loans" to Patel, or alternatively declare that all shareholders re-pay such loans and that such cash be immediately distributed equally among the shareholders of AES.

FOR A FIFTH CAUSE OF ACTION

45. The allegations of Paragraphs 1 through 44 as hereinabove alleged are incorporated herein.

46. Pursuant to the Contracts, including but not limited to the implied covenant of good faith and fair dealing, Patel is entitled to be a full-time direct employee of AES.

47. The Majority Shareholders breached the Contracts by locking Patel out of AES' place of business, denying him the rights of an employee and manager of AES, and terminating his wages without proper notice or vote.

48. The Majority Shareholders' breach of the Contracts, including but not limited to the implied covenant of good faith and fair dealing, caused Patel actual damages that Patel is entitled to recover from them, including but not limited to lost wages.

49. The Majority Shareholders owe Patel wages, including but not limited to the greater of (a) $60,000 per annum, or (b) the amount of salaries and bonuses paid to the other shareholders, from August 13, 2004, which have been unpaid for more than thirty (30) days since they were due, and other actual damages.

50. The Majority Shareholders withheld and are withholding the wages owed Patel with willful disregard for Patel's rights under the Contracts and the law.

51. Pursuant to S.C. Code Ann. §§ 41-10-10 *et seq.*, Patel is entitled to recover from the Majority Shareholders actual damages, treble damages, plus costs and reasonable attorneys' fees.

FOR A SIXTH CAUSE OF ACTION

52. The allegations of Paragraphs 1 through 51 as hereinabove alleged are incorporated herein.

53. In addition to Majority Shareholders' breach of contract, the circumstances described herein show a pattern of behavior and motive that demonstrate both a fraudulent intent relating to the breach, and a fraudulent act accompanying the breach.

54. The Majority Shareholders' fraudulent acts are characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of Plaintiff's property by design.

55. Plaintiff has been damaged by this breach and is entitled to all damages flowing from this breach, punitive damages, costs and interest.

FOR A SEVENTH CAUSE OF ACTION

56. The allegations of Paragraphs 1 through 55 as hereinabove alleged are incorporated herein.

57. Pursuant to the Contracts, Patel is entitled to be a full-time direct employee of AES.

58. The Majority Shareholders tortiously interfered with Patel's Contracts with AES by locking Patel out of AES' place of business and terminating his wages.

59. Such breach and interference was done with the intent of injuring Patel, and for an improper purpose and by improper methods.

60. As a direct and proximate result of the Majority Shareholders' tortious interference with his Contracts, Patel has suffered damages including, but not limited to, the loss of a salary in the amount of the greater of (a) $60,000 per annum, or (b) the amount of salaries and bonuses paid to the other shareholders, from August 13, 2004, through and after the date of trial.

61. Upon information and belief, the Majority Shareholders' conduct was sufficiently willful, wanton, reckless, grossly negligent, and outrageous to entitle Patel to punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

62. The allegations of Paragraphs 1 through 61 as hereinabove alleged are incorporated herein.

63. The Majority Shareholders unlawfully and secretly agreed among themselves to take the tortious and improper actions described herein in concert for the purpose of and with the effect of harming Plaintiff and his employment.

64. Each of the Majority Shareholders has acted as the agent of all others in all matters alleged herein.

65. The Majority Shareholders' conduct was willful and intentional, and Plaintiff has been damaged, and continues to be damaged, by their actions.

66. Plaintiff is entitled to special and punitive damages for this conspiracy.

WHEREFORE, Plaintiff prays for (a) relief as hereinabove set forth, including but not limited to (1) damages paid to AES, plus interest according to law; (2) an order of dissolution or such alternative relief, including *pendente lite* relief, as may appear equitable to the Court; (3) a declaration that Patel owes no "loans" to AES or, alternatively, that all shareholders immediately

re-pay such "loans" and such cash immediately be distributed equally among the shareholders; (4) actual damages plus pre-judgment interest to Plaintiff; (5) punitive and treble damages to Plaintiff; and (6) Plaintiffs' attorneys' fees, experts' fees, costs, and other litigation expenses; and (b) such other and further relief as to the Court may appear just, equitable, and proper.

Respectfully submitted:

WYCHE BURGESS FREEMAN & PARHAM, P.A.

By: _____

Gregory J. English (#65470)
Mark W. Bakker (#13996)

44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602
(803) 242-8200

Attorneys for Plaintiff

Dated: January 18, 2005

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

VERIFICATION

PERSONALLY appeared before me Pankaj Patel who, being duly sworn, verifies under oath that the allegations of the foregoing Complaint, except as made on information and belief, are true and correct and that as to the allegations made on information and belief, he believes the same to be true.

Pankaj Patel
PANKAJ PATEL

SWORN TO before me this
the 14th day of January, 2005.

Victoria A. Wood
Notary Public for South Carolina
My commission expires: 3/23/08

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

PANKAJ PATEL,

Plaintiff,

vs.

BRIAN D. MERRIMAN, KENNETH J. O'MALLEY, JR., MICHAEL D. SCOTT, and APPLIED ENGINEERING SOLUTIONS, INC.,

Defendants.

SUMMONS

Case No. 05-CP-23-0371

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2005 JAN 18 P 4:01

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned at 44 East Camperdown Way, Post Office Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.

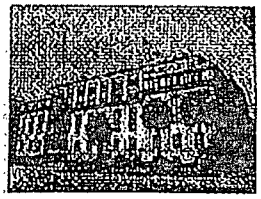
By: _____
Gregory J. English (68470)

44 E. Camperdown Way
P.O. Box 728
Greenville, SC 29602
(864) 242-8200

Attorneys for Plaintiff

January 18, 2005

Greenville County
13th Judicial Circuit
Public Index



Greenville County Home PageSouth Carolina Judicial Department Home Page

Family Court Public Index

Switch View

PANKAS PATEL VS RANDALL RICE					
Case Number:	030259	Court Agency:	Greer Summary Court	Filed Date:	04/01/2003
Case Type:	Civil	Case Sub Type:	Summons & Complaint	File Type:	
Status:	Disposed	Assigned Judge:	Werner, Ralph Carey		
Disposition:	Judicial Dismissal Civil	Disposition Date:	05/22/2009	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the ⊗ icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
⊗Brady, Kevin Phillip	POST OFFICE BOX 1716 GREENVILLE SC 29602				Defendant Attorney		04/16/2003
⊗Patel, Pankas	23 AVENS HILL DRIVE GREER SC 29651				Plaintiff		05/22/2009
⊗Pillsbury, Rodney F	408 NORTH CHURCH STREET SUITE B GREENVILLE SC 29601				Plaintiff Attorney		04/16/2003
⊗Rice, Randall	[redacted] TAYLORS SC 29687				Defendant		04/01/2003

CHSWeb 6.1
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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE MAGISTRATE'S COURT
Pankaj Patel, Plaintiff, v Randall Rice d/b/a R&R Irrigation & Landscaping, Defendant.	)	C.A. No.: 01-MJ-23-0973 **AMENDED COMPLAINT**

TO THE ABOVE-NAMED DEFENDANT:

Plaintiff, by and through his undersigned attorney, alleges the following:

JURISDICTIONAL STATEMENT

1. Plaintiff is a resident of Greenville County, South Carolina.

2. Defendant Randall Rice is a citizen and resident of Greenville County, South Carolina and his business, R&R Irrigation & Landscaping, has his principal place of business in Greenville County, South Carolina.

3. This Court has jurisdiction over the parties and subject matter of this action under Articles 5, Section 11 of the South Carolina Constitution, §14-1-80 of the *Code of Laws of South Carolina* (1976, Annotated) and the common law of South Carolina.

FACTUAL ALLEGATIONS

4. On or about October/November 2000, Plaintiff contracted with the defendant to landscape his yard and to install an irrigation system. Defendant represented he would use 8 pallets of Bermuda grass sod, 150 yds of commercial grade mulch to be purchased from a company called "The Backyard" and install an irrigation system with a one (1) year warranty on parts and labor.

5. Plaintiff paid the defendant all amounts due under the contract.

6. Defendant did not install the requisite amount of sod.

7. The sod installed by the defendant was not pure Bermuda grass, as warranted by the Defendant at the time of contract.

8. The defendant did not install the 150 yds. of commercial grade mulch, instead using scrape mulch believed to be obtained from the county landfill at no cost to the defendant.

9. The sprinkler system installed by the defendant did not contain the necessary backflow valve within the requisite footage from the line, as required by State regulations.

10. As a direct and proximate result, the plaintiff has suffered damages as set forth hereunder.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

11. To the extent not inconsistent herewith, Plaintiff realleges all above paragraphs as if set forth fully herein.

12. Plaintiff contracted with Defendant to install sod, to lay commercial grade mulch and to install a sprinkler system which was in compliance with all state and local regulations and laws.

13. Defendant materially and substantially breached his contract with Plaintiff inasmuch as the sod installed was not Bermuda grass, the mulch was not commercial grade and the irrigation system did not have the necessary backflow valve in compliance with state regulations.

14. As a direct and proximate result of said breach, Plaintiff has been damaged as herein set forth.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

15. To the extent not inconsistent herewith, Plaintiff realleges all above paragraphs as if set forth fully herein.

16. Plaintiff contracted with Defendant to install sod, to lay commercial grade mulch and to install a sprinkler system which was in compliance with all state and local regulations and laws.

17. Defendant knowingly installed a hybrid sod, which was not pure Bermuda, as Defendant had warranted and promised.

18. Defendant stated that he had installed eight (8) pallets of sod, when Defendant had only installed seven (7), thereby asking the plaintiff to purchase another pallet of sod, for which the defendant was already contractually obligated to obtain and install.

19. Defendant did not install commercial grade mulch, instead using mulch obtained for free at the public landfill. When confronted, the defendant insisted he had obtained the mulch from the Back Yard, which he had promised to do at the time of contract. However, Plaintiff learned from the Back Yard, that the defendant had never purchased mulch from them.

20. Defendant did not install the irrigation system in compliance with the applicable state and county standards and regulations.

21. Defendant intentionally deceived Plaintiff as evidenced by the actions set forth above. Defendant intentionally deceived Plaintiff with the fraudulent intent of breaching the agreement, which constituted unfair dealings and dishonesty in fact upon Plaintiff.

22. Defendant in this action has acted willfully, recklessly, knowingly, and consciously, and has harmed and injured the Plaintiff. Accordingly, Plaintiff is entitled to actual, consequential, and punitive damages as may be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

23. Plaintiff hereby realleges each and every allegation contained above as if fully set forth herein.

24. There is an implied covenant of Good Faith and Fair Dealing in all contracts entered into or to be performed in the State of South Carolina.

25. Defendant's actions as alleged herein were unreasonable, willful, reckless, and unjustified, and amount to a breach of the implied In-Law duty of Good Faith and Fair Dealing inherent in all contracts.

26. As a proximate result, Plaintiff has suffered actual and consequential damages.

27. Plaintiff is informed and believes he is entitled to judgment for his actual damages, for his consequential damages, and for his cost.

FOR A FOURTH CAUSE OF ACTION
(FRAUD, CONSTRUCTIVE FRAUD, NEGLIGENT MISREPRESENTATION)

28. Plaintiff incorporates all above paragraphs as fully as if reinstated verbatim herein.

29. Prior to and/or during the course of contracting with Defendant, Defendant impliedly and/or expressly represented to Plaintiff he would install eight (8) pallets of pure Bermuda grass sod, he would install 150 yds of commercial grade mulch and he would install an irrigation system in compliance with all applicable state and county regulations.

30. Said representations were false.

31. Said representatives were material.

32. Defendant knew said representatives were false when same were made.

33. Alternatively, Defendant knew his representation to Plaintiff was false and/or Defendant's representations were made with reckless disregard as to their truth or falsity.

34. Defendant's failure to inform Plaintiff of his true intentions was negligent with reckless disregard to the truth upon which Plaintiff was relying.

35. Defendant intended Plaintiff to rely on said representations.

36. Plaintiff did not know said representations were false.

37. Plaintiff had the right to rely upon, and in fact did rely upon the truth of said representations.

38. In the event that the elements of scienter are not found, alternatively, Plaintiff alleges and avers that Defendant committed constructive fraud in that Defendant breached his legal, equitable, and a fiduciary duty owed Plaintiff.

39. Defendant acted willfully, wantonly, carelessly, and recklessly, and as a direct and proximate result Plaintiff has been injured. Accordingly, Plaintiff is entitled to actual, consequential, and punitive damages as determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTY OF WORKMANSHIP)

40. To the extent not inconsistent herewith, Plaintiff realleges all above paragraphs as if set forth fully herein.

41. Defendant held itself out to Plaintiff as specifically qualified to perform work of a particular character, namely landscaping and irrigation installation.

42. Defendant impliedly warranted to Plaintiff that the work undertaken would be of proper workmanship and reasonably fit for its intended use and purpose.

43. Defendant breached his warranty as set forth above in detail.

44. As a direct and proximate result of said breach, Plaintiff has been damaged as herein set forth.

FOR A SIXTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

45. To the extent not inconsistent herewith, Plaintiff realleges all above paragraphs as if set forth fully herein.

46. Said actions and/or omissions by Defendant constitute unfair or deceptive acts or practices in the conduct of trade/commerce and are unlawful as set forth by *Code of Law of South Carolina* (1976), Section 39-5-20, et seq.

47. Said actions of Defendant affect the public interest because, upon information and belief, other homeowners have had similar problems. Alternatively and in further support, because the actions of Defendant are capable of repetition in the deception and defrauding of home owners, said actions affect the public interest.

48. The actions of said Defendant were willful, within the meaning and interest of §39-5-140, entitling Plaintiff to treble damages and reasonable attorney's fees.

FOR A NINTH CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

49. Plaintiff incorporates all above paragraphs as fully as if reinstated verbatim herein.

50. Plaintiff acted in reasonable reliance on Defendant's representations, promises, and other acts constituting inducements to enter into the agreement.

51. As a direct and proximate result of Defendant's actions and Plaintiff's reasonable reliance thereon, Plaintiff suffered damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays for the following relief:

1. For judgement for actual and punitive damages in an amount not to exceed the jurisdictional limit of this Court. Actual damages in an amount to be determined by a Court and jury including but not limited to the costs or remedying the items for which Plaintiff paid the defendant,

aggravation, anxiety mental and/or lost wages; lost time from work and/or lost wages; prejudgment interest; reasonable attorney's fees; all in an amount to be determined by the Court and jury.

2. For judgment on Plaintiff's Sixth Cause of Action, for treble Plaintiff's actual damages, plus reasonable attorney's fees.

3. For all taxable costs of this action and for such other and further relief as the Court may seem just and proper.

Respectfully submitted,

Yacobi & Pillsbury, LLC

Rodney F. Pillsbury
408 N. Church Street, Suite B
Greenville, SC 29601
(864) 242-3271
SC Bar #13067
ATTORNEY FOR PLAINTIFF

June 30, 2002

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Pankaj Patel, Plaintiff, v Randall Rice d/b/a R&R Irrigation & Landscaping, Defendant.	IN THE MAGISTRATE'S COURT C.A. No.: 01-MJ-23-0973 CERTIFICATE OF SERVICE

I, Lisa G. Ellis, the undersigned, of the law offices of Rodney F. Pillsbury, P.A., do hereby certify that I have deposited a true copy of the **Amended Complaint** upon the following person(s) via regular mail with proper postage affixed thereto:

The Honorable Charles R. Garrett
2801 Wade Hampton Blvd.
Taylors, South Carolina 29687-2758

This 2nd day of July, 2002.

Lisa G. Ellis
Legal Assistant
408 N. Church Street, Suite B
Greenville, SC 29601
(864) 242-3271

STATE OF SOUTH CAROLINA	)	
	)	IN THE MAGISTRATE'S COURT
COUNTY OF GREENVILLE	)	CIVIL CASE NO. 010973
PANKAS PATEL	)	
Plaintiff,	)	
	)	**MOTION AND**
vs	)	**CONSENT ORDER**
RANDALL RICE dba R&R	)	
Defendant.	)	

NOW COMES, Defendant's Counsel, Kevin P. Brady, requesting to withdraw as counsel for Defendant Randall Rice dba R&R. After considering the evidence before this Court, this Court finds the motion well-taken for the following reasons:

Whereas the Defendant's counsel has made numerous attempts to contact and locate the Defendant without success, and the Defendant having failed to keep in contact with his attorney, and this Court having also made its own independent search to locate the whereabouts of the same to no avail, the Defendant's counsel thereby moves this Court to withdraw from representation of the Defendant.

NOW, THEREFORE, for good cause shown, and with the consent of the Plaintiff's attorney, this Court hereby grants the defense counsel's motion to be relieved from any further representation or obligation in this matter and grants the Defendant thirty days from the date hereof to obtain new counsel in this matter.

Greer Summary Court

AUG 1 1 2008

Robert F. Simms, Magistrate

IT IS SO ORDERED.

August 12, 2008
Greenville, SC

Judge Robert F. Simms
Greenville County Magistrate

I SO MOVE:

Kevin P. Brady
SC Bar No. 68518
Guest & Brady, LLC
900 E. North Street
Suite 210
Greenville, SC 29601
864-233-7200
Attorney for Defendant

I CONSENT:

Rodney F. Pillsbury
SC Bar No. 13067
Pillsbury & Read
1204-A E. Washington Street
Greenville, SC 29601
864-241-9828
Attorney for Plaintiff

PILLSBURY LAW FIRM, P.C.

512 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 271-3511
Facsimile: (864) 271-3590
www.pillsburylawfirm.com

Member of South Carolina
Trial Lawyers Association

Member of The American
Trial Lawyers Association

September 6, 2006

The Honorable R. Carey Werner
ATTN: Michelle
1306-A W. Poinsett Street
Greer, SC 29650-1250

Re: *Pankaj Patel v. Randall Rice d/b/a R&R Irrigation* C.A. No.: 01-0973

Dear Michelle:

As you know, we represent the Plaintiff in the above referenced matter. I haven't heard from you since our last conversation on July 19, 2005, wherein I was inquiring as to the status of the case being placed back on the docket. The Defendant had requested a continuance and the case was most likely going to be re-scheduled for September or October of 2005, but you were going to give us a call when you were re-scheduling this case.

When this case is re-scheduled, please contact us before you begin scheduling to ensure that Mr. Pillsbury and our client is available.

Thank you and if you have any questions, please do not hesitate to call.

With kind regards,

Very truly yours,

Pillsbury Law Firm, P.C.

Tiffany P. Davenport
Paralegal to Rodney F. Pillsbury

RFP/tpd
cc: Mr. Pankaj Patel

RECEIVED 9/7/06

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Greenville)
)
Unifund CCR Partners) CIVIL ACTION COVERSHEET
Plaintiff(s))
2007 AUG 23 A 11:48 -CP- -
vs.)
) 2007-CP-23-5501
Pankaj Patel)
FILED-CLERK OF COURT
Defendant(s) GREENVILLE CO S.C.
PAUL R. WICKENSIMER

(Please Print) Mark A. Pearson Bar #: 15926
Submitted By: Brock & Scott, PLLC Telephone #: 336-354-1797
Address: 1315 Westbrook Plaza Drive Fax #: 336-354-1588
Ste 300 Other:
Winston-Salem, NC 27103 E-mail:

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 (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☒ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)

Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	

Submitting Party Signature: _____ **Date:** 8/9/07

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.

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
CIVIL ACTION NO. __-CP-__-___

2007 AUG 23 A 11:48

Unifund CCR Partners,
Plaintiff,

vs.

PANKAJ PATEL

Defendant.

FILED-CLERK OF COURT
GREENVILLE CO.S.C.
PAUL B. WICKENSIMER

2007-CP-23-5501

SUMMONS

ENTERED COMPUTER

TO: PANKAJ PATEL,
23 AVENS HILL DR , GREER, SOUTH CAROLINA, 29651

YOU ARE HEREBY SUMMONED and required to Answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of you Answer of said Complaint upon the Subscriber herein at his office at , with thirty (30) days from the date of service hereof, unless service is made by registered mail, in which case you have thirty-five (35) days from the date of receipt of the registered mail in which to serve you Answer, excluding the day of service, and if you fail to Answer the Complaint within the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

BROCK & SCOTT, PLLC

__ John M. Mosser, SC Bar No. 71929
__ Andrew M. Thompson, SC Bar No. 71090
__ Ronald F. Johnson, Jr., SC Bar No. 16931
✓ Mark A. Pearson, Sc Bar No. 15926

BROCK & SCOTT, PLLC
Attorneys for the Plaintiff
115 Westbrook Plaza Drive
Winston-Salem, NC 27103
Telephone: (336) 354-1797
Telefax: (336) 354-1588

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
CIVIL ACTION NO. __-CP-__-___

Unifund CCR Partners,
Plaintiff,

vs.

PANKAJ PATEL,
Defendant.

2007 AUG 23 A 11:44

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2007-CP-23-5501

COMPLAINT

NOW COMES the Plaintiff, Unifund CCR Partners, by and through the undersigned attorney of record and complaining of the Defendant, PANKAJ PATEL, avers and says as follows:

1. The Plaintiff is a corporation authorized to prosecute this civil action within the state of South Carolina.

2. Plaintiff is the assignee of this credit account forming the cause of this civil action, having purchased it from the original creditor or the original creditor's successor in interest. All right, title and interest to the credit account were thereafter assigned to the Plaintiff and Plaintiff is entitled to all sums due thereunder.

3. Upon information and belief, the Defendant, is an adult citizen and resident of GREENVILLE County, South Carolina and is under no legal disability of infancy or incompetency. Furthermore, upon information and belief, Defendant is not entitled to relief pursuant to the Servicemembers Civil Relief Act of 2003, 50 U.S.C. Appendix §§501 *et seq.*

4. Defendant requested and received a credit account from Plaintiff's predecessor in interest, by mutual agreement between the Defendant and the original creditor.

5. Plaintiff and Plaintiff's predecessor(s) in interest each duly performed all conditions on their respective parts under the terms of the credit account.

6. Defendant has defaulted under the terms of the credit account by failing, neglecting, and refusing to make payment upon the account when due, and the default of the Defendant continues to the date of this complaint.

7. Plaintiff has made demand upon Defendant for repayment of the outstanding balance due, and the Defendant has failed, neglected, and refused to pay the outstanding balance.

8. Defendant has an outstanding principle balance of $611.46. The "Agreement" further provides for interest to be recovered at the rate of 5 % per annum. Interest continues to accrue on the principal balance at the aforementioned rate from 3/23/2003, until the date of the judgment and then at the legal rate until the judgment is satisfied.

9. The account provides for the collection of reasonable attorney's fees, and the Defendant is hereby given notice by Plaintiff of its intention to collect reasonable attorney's fees.

10. A true and complete copy of the Affidavit of Default, Bill of Sale, and Card Holder Agreement are attached hereto and incorporated herein by reference as though set forth verbatim, labeled as Exhibits 1, 2, and 3, respectively, which together established Plaintiff's claim against the Defendant.

WHEREFORE, Plaintiff respectfully prays the court for relief as follows:

1. Plaintiff have and recover Judgment against the Defendant for the principal sum of $611.46, with interest thereon at 5% per annum from and after 3/23/2003, until entry of judgment, and at the lawful rate thereafter until satisfied in full; and,

2. That the costs of this civil action to be taxed to the Defendant, together with Plaintiff's reasonable attorney's fees in the amount of 15% of the total Judgment awarded, as allowed by the mutual agreement of the parties; and,

3. For such for such other, further, and general relief as to which the Plaintiff may be entitled in law or equity alike.

This the 10 day of July, 2007.

BROCK & SCOTT, PLLC

John M. Mosser, SC Bar No. 71929
Andrew M. Thompson, SC Bar No. 71090
Ronald F. Johnson, Jr., SC Bar No. 16931
Mark A. Pearson, SC Bar No. 15926

BROCK & SCOTT, PLLC
Attorneys for the Plaintiff
115 Westbrook Plaza Drive
Winston-Salem, NC 27103
Telephone: (336) 354-1797
Telefax: (336) 354-1588

This communication is from a debt collector. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

AFFIDAVIT OF INDEBTEDNESS

State of Ohio)
County of Hamilton) ss.

Kim Kenney being sworn, deposes and says that she is Media Supervisor of Unifund CCR Partners herein called assignee, which is doing business at 10625 Techwoods Circle, Cincinnati, Ohio 45242 and the statements and representations herein are within her personal knowledge.

The defendant is not in any branch of the military.

There is due and payable from PANKAJ PATEL, Account Number [redacted], the amount of $743.71 (principal balance in the amount of $611.46 plus interest up through 04/23/2007 in the amount of $132.25). By the terms of the agreement between the defendant and the original creditor, interest is accruing from the aforesaid date at the rate of 5.00 percent per annum. This balance reflects any payments, credits or offsets made since the account was charged off.

Citibank (South Dakota) National Association's account was issued under the name of PREFERRED. Unifund CCR Partners purchased this account from Citibank (South Dakota) National Association. Said account has been referred to Brock & Scott PLLC with full power and authority to do and perform all acts necessary for the collection, settlement, adjustment, compromise or satisfaction of said claim.

DATED this April 23, 2007

K Kenney

UNIFUND CCR PARTNERS

By: Kim Kenney
Media Supervisor

10625 Techwoods Circle Cincinnati, OH 45242
Address

Subscribed and sworn to before me this 23 day of April, 2007
Year

Notary Public

My commission Expires

NOTARIAL SEAL STATE OF OHIO

JENNIFER A. DUNCAN
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
July 04, 2007

Client # 1213

PLAINTIFF'S EXHIBIT

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of February 28, 2005, between Citibank (South Dakota), National Association, a national banking association organized under the laws of the United States, located at 701 East 60th Street North, Sioux Falls, SD 57117 (the "Bank") and Unifund CCR Partners, located at 10625 Techwoods Circle, Cincinnati, OH 45242 ("Buyer").

For value received and subject to the terms and conditions of the Purchase and Sale Agreement dated February 28, 2005, between Buyer and the Bank (the "Agreement"), the Bank does hereby transfer, sell, assign, convey, grant, bargain, set over and deliver to Buyer, and to Buyer's successors and assigns, good and marketable title to the Accounts described in Section 1.2 of the Agreement, free and clear of all encumbrances, equity, lien, pledge, charge, claim, or security interest.

This Bill of Sale, Assignment and Assumption Agreement is executed without recourse and without representations or warranties including, without limitation, warranties as to collectibility.

Citibank (South Dakota),
National Association

By: _____
(Signature)

Name: _____

Title: _____

Unifund CCR Partners

By: _____
(Signature)

Name: David G Rosenberg

Title: General Partner

PLAINTIFF'S EXHIBIT 9

CIT
(Citibank)

CITIBANK CARD AGREEMENT

This Agreement and the folder containing the card are your Citibank Card Agreement. The folder contains important account information, including the annual percentage rate and the amount of any membership fee. Please read and keep the folder and this Agreement for your records.

To simplify the rest of this Agreement for you, the following definitions will apply. The words *you*, *your* and *yours* mean the person responsible for this Agreement, to whom we direct the billing statement. The word *card* means one or more cards which we have issued with your account number. The words *we*, *us*, and *our* mean Citibank (South Dakota), N.A. The words *Citibank checks* mean one or more checks that we may provide to access your Citibank card account. This Agreement is binding on you unless you cancel your account within 30 days after receiving the card and you have not used or authorized use of your account.

Using Your Account and Your Credit Line:

The card must be signed to be used. Your initial credit line appears on the folder containing the card. A portion of your credit line, called the cash advance limit, is available for cash advances. At our discretion and at any time, we may change your credit line or cash advance limit. We will notify you if we do, either by mail or through a billing statement sent either before or after the change takes effect. You may request a change to your credit line or cash advance limit by contacting Customer Service by telephone or mail.

The full amount of your credit line is available to buy or lease goods or services wherever the card is honored. Your cash advance limit is available for cash through any bank or automated teller machine that accepts the card or by using Citibank checks. The total amount charged on your account, including purchases, balance transfers, cash advances, finance charges, fees, or other charges, must always remain below your credit line. However, if that total amount exceeds your credit limit you must still pay us.

Additional Cards:

You may request additional cards on your account for yourself or others and you may permit another person to have access to the card or account number. However, if you do, you must pay us for all charges made by those persons, including charges for which you may not have intended to be responsible. You must notify us to revoke permission for any person you previously authorized to use your account. If you tell us to revoke another person's use of your account, we may close the account and issue a new card or cards with a different account number. You are responsible for the use of each card issued on your account according to the terms of this Agreement.

Membership Fee:

The folder containing the card indicates whether your account is subject to a membership fee. If it is, the fee is added to the purchase balance and is non-refundable unless you notify us to cancel your account within 30 days from the mailing date of the billing statement on which the fee is billed.

PLAINTIFF'S EXHIBIT 3

Billing:

Your billing statement shows the balance, any finance charge, fees, the minimum payment, and the payment due date. It also shows your current and prior activity, including itemized list of current charges, Citibank checks, payments and credits; a summary showing separately the purchase and cash advance balances and finance charges for each balance, and other transactional information. If you default under this Agreement, we may, in our sole discretion, stop sending you billing statements. If we send your account to collection, you will be responsible for all collection agency or attorney fees.

You may notify us of a change in your address by writing to us at Citibank Customer Service, by telephone or in person. We will mail or deliver the billing statement to your mailing address.

How We Determine the Balance:

The most outstanding balance (the amount you owe us) appears as the "New Balance" on the billing statement. To determine the New Balance, we begin with the outstanding balance on your account at the beginning of each billing cycle, called the "Previous Balance" on the billing statement. We add any purchases and cash advances and subtract any payments and credits that we receive. We then add the periodic finance charges and fees we make under the Agreement.

Annual Percentage Rate for Purchases.

Your annual percentage rate for purchases and the corresponding daily periodic rate appears on the folder containing the card. A daily periodic rate is the applicable annual percentage rate divided by 365. Whether or not the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate, that is mentioned on the folder containing the card.

Annual Percentage Rate for Cash Advances:

Your ANNUAL PERCENTAGE RATE for cash advances is 19.99% which corresponds to a daily periodic rate of 0.0548%. The daily periodic rate is the cash advance annual percentage rate divided by 365. Please see the next section for information relating to how this rate may change if you default under any Citibank Card Agreement.

Variable Annual Percentage Rates for Purchases and Cash Advances:

If the annual percentage rate for purchases is based on the quarterly U.S. Prime Rate plus a margin, we will calculate the rate by adding the margin specified in the folder containing the card to the U.S. Prime Rate published in *The Wall Street Journal* on the third Tuesday of March, June, September and December of each year. If the third Tuesday is a holiday, we will use the Prime Rate published the next day. If more than one Prime Rate is published, we may choose the highest rate. If *The Wall Street Journal* ceases publication or no longer publishes the Prime Rate, we may use the Prime Rate published in any other newspaper of general circulation, or we may substitute a similar rate or index that we choose in our sole discretion. We will apply the annual percentage rate changes we make under this section to your existing balances, subject to any promotional rate that may apply.

In addition, the annual percentage rate for purchases and cash advances may increase if you default under any Citibank Card Agreement because you fail to make a payment to us or any other creditor, when due, you exceed your credit limit, or your make a payment to us that is not honored by your bank. In such circumstances, we may increase the ANNUAL PERCENTAGE RATE (including any promotional rate) on all balances to a higher rate of up to 23.99%. Factors considered in determining this higher rate may include the length of time the account has been open, the existence, seriousness, and timing of Citibank Card Agreement defaults, and other indications of account risk and performance. Your account may again become eligible for a lower annual percentage rate on new purchases, new cash advances, or both once you have met the terms of all Citibank Card Agreements for six months. Your existing purchase and cash advance balances will remain subject to the higher rate until they are paid in full.

Any increase or decrease in a variable annual percentage rate takes effect on the first day of the billing period directly following the month in which we change the rate. The annual percentage rate in effect and any subsequent change to it will appear on the billing statement. An increase in the variable annual percentage rate means you will pay a higher finance charge and probably a higher minimum payment.

Promotional Rate Offers:

At our discretion, we may offer you a promotional annual percentage rate for all or a part of the purchase and/or cash advance balances. The period of time for which the promotional rate applies may be limited. Any promotional rate, the corresponding periodic rates, and the period of time during which it is in effect will appear on the folder containing the card. We may also offer you a promotional annual percentage rate to encourage specific transactions, such as transferring balances from accounts you have with other credit card issuers. Any promotional rate offer will be subject to the terms of the offer and this Agreement.

Finance Charges:

Finance charges will begin to accrue from the date of the advance for cash advances and from the date of the transaction for purchases (including balances you transfer from any other credit card issuer) and continue to accrue until payment in full is credited to your account. However, if you pay the total New Balance listed on the first billing statement by the payment due date on that statement and you did not transfer a balance from any other credit card issuer during that billing period, you will have until the payment due date on your current statement to pay your total New Balance to avoid imposition of finance charges on purchases. In certain cases, this same grace period for purchases may apply even if you have transferred a balance during the billing period. If there is no such grace period for purchases, the applicable transfer offer will so indicate.

We will calculate finance charges as follows:

(1) We figure a portion of the finance charge on your account by multiplying the daily balance on purchases (which includes balances you transfer from any other credit card issuer) and the daily balance on cash advances by the applicable daily periodic rate and adding together any such finance charges for purchases and for cash advances for each day in the billing period.

(2) For finance charge calculation purposes, the billing period begins on the day after the Statement/Closing Date of the previous billing period and varies with the number of days in the billing period. It includes the Statement/Closing Date of the current billing period.

(3) To calculate the daily balances, we take the beginning balance for purchases and the beginning balance for cash advances each day, add any new transactions and fees and any finance charge on the previous day's balance, subtract any payments or credits, and make other adjustments. Unless we elect to use a later date, we add a new purchase to the purchase balance as

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on the date of the purchase to the cash advance balance on the date of the advance. A credit balance is treated as a zero balance.

☒ The "balances subject to finance charges" for purchases and for cash advances on the billing statement are each the average of the respective daily balances during the billing period. If you multiply these figures by the number of days in the billing period and by the applicable daily periodic rates, the results will be the finance charges assessed on purchases or cash advances, except for minor variations caused by rounding.

☒ If the balance for purchases or cash advances is subject to more than one rate (for example, because of purchases or cash advances made during a promotional rate offer), we will separately calculate the balance subject to finance charge and the resulting finance charge in the same manner as described above.

Cash Advances and Transaction Fee:

You have obtained a cash advance if you obtain funds from an automated teller machine (ATM); through a Checkmark check; through some casinos, or through a financial institution; make a wire transfer; acquire a money order, traveler's check, lottery ticket, betting or casino chips, or similar items; or engage in another similar transaction. For each cash advance, we add an additional FINANCE CHARGE of 3.0% of the amount, but not less than $3. This fee will be added to the cash advance balance. The amount of the cash advance transaction fee may cause the annual percentage rate on the billing statement on which the cash advance first appears to exceed the nominal annual percentage rate.

Minimum Finance Charge:

If finance charges based on periodic rates are being added to your account, but the total of such finance charges for purchases and cash advances is less than $.50, we assess a minimum FINANCE CHARGE, based on periodic rates, of $.50. We add the amount to either the purchase or cash advance balance at our discretion.

Credit Balance:

You may not make payments that create or increase a credit balance in excess of your assigned credit line. We will not refund any credit amount over $1.00 if the amount has been on your account for six months or more. You may request a refund of a credit balance at any time. We may reduce the amount of any credit balance by the amount of fees charged back to your account.

Security Interest for Secured Accounts:

The folder containing the card indicates if you are using a secured card. If so, you grant us a security interest in the cash deposit or a savings account to secure repayment of any account balance you owe. Until we terminate your account and return your deposit or savings account, we will close your card account.

Transactions Made in Foreign Currencies:

If a transaction is made in a foreign currency, we will convert it to U.S. dollars in accordance with operating regulations of Visa or MasterCard, depending on which card is used. Visa will convert the transaction into a U.S. dollar amount using its own procedures in accordance with their operating regulations or conversion procedures in effect at the time the transaction is processed. Currently, their regulations and procedures provide that the currency conversion rate they use is either (1) a wholesale market rate or (2) a government-mandated rate, in effect one day prior to the processing date. Visa increases this conversion rate by one percent for its international reimbursement fee and MasterCard increases this conversion rate by one percent. Both Visa and MasterCard keep this increase. The currency conversion rate used by Visa or MasterCard in this manner that is in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

Minimum Amount Due:

Each month you must pay a minimum amount that is the greater of two figures. The first is any previous amount that is past due plus any amount in excess of your credit line. The second is the greater of the amount of your accrued finance charges or one of the following:

☒ The New Balance on the billing statement if it is less than $20; or

☒ $20, if the New Balance is at least $20 and not greater than $960; or

☒ If the New Balance exceeds $960, 1/48 of the New Balance (rounded down to the nearest dollar).

You must pay at least the minimum amount by the payment due date, but you may pay more at any time without a penalty. We will allocate payments to amounts owed on your account at our discretion. This includes, but is not limited to, applying payments to promotional balances, such as balances on a transfer from other credit card issuers, before we apply such payments to your purchase or cash advance balances. If you pay more than the minimum, we will allocate the excess amount to the purchase or cash advance balances at our discretion. The sooner you pay the New Balance, the less you will pay in finance charges. We may also allow you to skip a payment from time to time; we will notify you. If you choose to skip a payment when offered, finance charges will continue to assess finance charges.

Payments:

Do not send cash payments. We can accept late or partial payments, as well as payments that reflect "paid in full" or other restrictive notations without losing any of our rights under this Agreement. There is a grace period of up to five days in crediting a payment if it is received at an address other than the address provided on the billing statement. You agree to pay with U.S. dollars drawn on funds on deposit in the United States in the form of a check, similar instrument, or automatic debit that will be processed and honored by your bank. We reserve the right to accept payments in currencies or foreign currency. If we do, we will select the currency conversion rate in our discretion.

Over-the-Credit-Line Fee:

We will add a $29 fee to the purchase balance for each billing period in which New Balance exceeds your credit line.

Late Fee:

We will add a $29 fee to the purchase balance for each billing period in which you fail to make the minimum payment by its due date.

Returned Payment Fee:

We will add a $29 fee to the purchase balance when a payment you send us is not honored, when a payment similar instrument is not honored, when we must return it because it cannot be processed, or when an automatic debit is returned unpaid. At our option we will assess this fee the first time your check or payment is not honored, even if it is honored upon resubmission.

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Citibank Checks:

Citibank checks may be used to purchase goods and services or to obtain cash up to the amount of your available cash advance limit unless that amount will cause the balance to exceed your credit line. We will treat Citibank checks as a cash advance and charge them against your cash advance line. Each Citibank check must be in the form we have issued and must be used according to any instructions we give you. Citibank checks may be used only by the person whose name is printed on them. Citibank checks may not be used to pay any amount owed to us under this or any other Citibank Card Agreement. We will not certify any Citibank checks, nor will we return paid Citibank checks.

Returned Citibank Check Fee:

We will add a $29 fee to the cash advance balance if we decline to honor a Citibank check. We may decline to honor a Citibank check, for example, if the amount of the check [illegible] your available credit limit or credit line, if you default, if you did not comply with our instructions regarding the check, if your account has been closed or if the card has expired.

Stop Payment Fee:

We will add a $20 fee to the cash advance balance when payment of a Citibank check is stopped at your request. You may stop payment on a Citibank check by notifying us in writing at P.O. Box 6500, Sioux Falls, South Dakota 57117 or by calling us at the telephone number listed on the billing statement. If you call you must confirm the call in writing within 14 days. A written stop payment order will remain in effect for six months unless renewed in writing.

Once a charge is made through the use of the card or account number we cannot "stop payment" on the charge. If there is a dispute involving a charge on your account, please refer to the section entitled "What To Do If There's An Error In Your Bill."

Lost or Stolen Cards, Account Numbers or Citibank Checks:

If any card, account number or Citibank check is lost or stolen or if you think someone used or may use them without your permission, call us [illegible] calling the telephone number shown on the billing statement or the number reserved for calling, between-or local directory assistance. We may require you to provide certain information in writing to help us find out what happened. Don't use the card or the Citibank checks after we've been notified, even if they are found or returned. You may be liable for unauthorized use of the card, but not for more than $50. You won't be liable for unauthorized purchases or cash advances made after we've been notified of the loss or the theft; however, you must identify for us the charges on the billing statement that were not made by you, or someone authorized by you, and from which you received no benefit.

Default:

You default under this Agreement if you fail to pay the minimum payment listed on each billing statement when due, fail to make a payment to any other creditor when due, file for bankruptcy, exceed your credit line without permission, pay by a check or similar instrument that is not honored or that we must return because it cannot be processed, pay by automatic debit that is returned unpaid, or default on any other Citibank Card Agreement. If you default, we may close your account and demand immediate payment of the full balance. If you have given us a security interest in a certificate of deposit or a savings account, we may use the deposit amount to pay any amount you owe.

Preauthorized Charges.

If you default, if the card is lost or stolen, or if we stop your account or account number for any reason, we may suspend automatic charges or credit account to third party vendors for insurance premiums or other goods or services. If preauthorized charges are suspended, you must contact the third-party vendor to reinstate them. You are responsible for making direct payment for such charges until you obtain a different charge.

Collection Costs:

If we sue, collection of your account by someone who is not our salaried employee, you will have to pay our attorney's fee plus court costs or any other fees. To the extent permitted by law, if we sue to collect and you win, we will pay your reasonable legal fees and court costs.

Customer Privacy:

We will safeguard, according to strict standards of security and confidentiality, any information you share with us. We will limit the collection and use of any such information to the minimum we require in order to deliver you superior service, which includes advising you about our products, services, and other opportunities, and to administer our business. We will permit only authorized employees who are trained in the proper handling of customer information to have access to your information. Whenever we hire other organizations to provide support services, we will require them to conform to our privacy standards and to allow us to audit them for compliance.

We will always maintain control over the confidentiality of your information. We will, however, facilitate relevant marketing and promotional offers from reputable companies that meet your needs. These companies are not permitted to retain any of your information unless you have specifically expressed interest in their products or services. If you do not want to receive these offers, write or call us at the address or telephone number listed on the billing statement. Be sure to include your name, address and account number. We will remind you at least once each year of your right to be excluded from these offers.

We may report your performance under this Agreement to credit reporting agencies, including your failure to make minimum payments on time. If you request additional cards on your account, for which you understand that we may report account information in your name as well as in the names of those other people. We may also obtain follow-up credit reports on you (for example, when we review your account for a credit line increase). If you wish to know the names of the agencies we have contacted, write us at the address listed on the billing statement. We will try to serve you by telephone or by mail if any legal process served on us in order to give you an opportunity to object to it, unless the law prohibits the notice.

Except as set forth in this Agreement and except for reports to credit reporting and collection agencies, information we are provided to share with Citibank affiliates, and information we share in connection with collection of your account, no one else will be given information about your account without your knowledge, authorization or proper legal authority.

Sharing Customer Information Among Citibank Affiliates:

To alert you to special offers and provide you with products and services that are tailored specifically to you, Citibank affiliates share information about you on a confidential basis.

Citibank affiliates are permitted by law to share this information about their transactions or experiences with you. Other information [illegible] that we obtain from third parties (for example, credit [illegible] shared if you notify us that you do not want such information [illegible] Citibank affiliates.

You may notify us in writing of your instruction at any time [illegible] name and address (as it appears on your account statement) [illegible] your account type, account number and Social Security number to: [illegible] Processing Center at CH 3178, South Hackensack, NJ 07606. We also [illegible] you mail your instruction in a stamped envelope that does not include other correspondence. If you have already told us that you do not want [illegible] other information shared, it was effective immediately. You do not [illegible] notify us again.

If you are also a customer of other Citigroup companies such as Commercial Credit, Travelers Property Casualty, Travelers Life & Annuity, Salomon Smith Barney and Primerica Financial Services, and you receive a notice of their intent to share certain information about you with their affiliates, you will need to separately notify them if you do not want that information shared.

Telephone Monitoring and Recording.

From time to time we may monitor and record your telephone calls to your account with us to assure the quality of our service.

Correcting Your Credit Report:

If you think we reported erroneous information to a credit reporting agency, write us at the address listed on the billing statement. We will promptly investigate the matter and if our investigation shows you are right, we will contact each credit reporting agency to whom we reported and will request they correct the report. If we disagree with you after our investigation, we will tell you in writing or by telephone and instruct you how to add a statement of your position to those agencies. Your statement will become part of your credit record with them.

Closing Your Account:

You may close your account at any time by notifying us in writing. However you remain responsible to pay the balance according to the terms of this Agreement. We may close your account or suspend your [illegible] at any time without prior notice. We may also reissue a different card or account number at any time. You must return the card to us upon [illegible]

Refusal of the Card:

We are not responsible if a purchase or cash advance on your card is not approved, either by us or by a third party, even if you have sufficient [illegible] available. We may limit the number of purchases or cash advances you may be approved in one day. If we detect unusual or suspicious activity in your account, we may temporarily suspend your credit privileges until we can verify the activity. We may approve purchases or cash advances which cause the balance to exceed your credit line without waiving any of our rights under this Agreement.

Changing this Agreement:

We can change this Agreement, including all fees and the [illegible] rate, at any time. However, if the change will cause a fee [illegible] payment to increase, we will mail you written notice at least 15 days before the beginning of the billing period in which the change becomes effective. If you do not agree to the change, you must notify us in writing within 25 days after the effective date of the change and pay us the balance, either at once

...under the terms of this Agreement. Otherwise, the change will not take effect until the billing cycle after the effective date of the change shall be deemed acceptance of the new terms, even if the 25 days have not expired.

Enforcing this Agreement:

We can delay in enforcing or fail to enforce any of our rights under this Agreement without losing them.

Assignment:

We reserve the right to assign any or all of our rights and obligations under this Agreement to a third party.

Applicable Law:

The terms and enforcement of this Agreement shall be governed by federal law and the law of South Dakota where we are located.

For Further Information:

Call us at the telephone number shown on the front of the billing statement. You can also call toll-free or local Directory Assistance to get our telephone number.

Thomas W. Jones
President & CEO

[illegible] South Dakota, N.A.
P.O. Box 6000
Sioux Falls, SD 57117

©1995 Citibank (South Dakota), N.A.

What To Do If There's An Error In Your Bill.

Your Billing Rights. Keep This Notice For Future Use.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill.

If you think your billing statement is wrong, or if you need more information about a transaction on your billing statement, write to us on a separate sheet at the address shown on the front of your billing statement. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first billing statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights in your letter, give us the following information:

☒ Your name and account number.

☒ The dollar amount of the suspected error.

☒ Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

☒ Please sign your letter.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct your account or explain why we believe your billing statement was correct. After we receive your letter, we cannot try to collect any amount you question or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your balance that are not in question.

If we find that we made a mistake on your billing statement, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And we must tell you the name and address of anyone to whom we reported you as delinquent. We must let you know the names of anyone to whom we will report this information. We must tell anyone we report you to that the matter has been settled between us when it is finally settled.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your billing statement was correct.

Special Rule for Credit Card Purchases.

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

☒ You must have made the purchase in your home state or within 100 miles of your current address; and

☒ The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant or if we mailed you the advertisement for the property or services.

[illegible]
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

2008 FEB 12 P 2:21 ENTERED COMPUTER

PANKAJ PATEL,)
)
Plaintiff,)
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
vs. PAM B WICKENSIMER SUMMONS
)
BRIAN D. MERRIMAN,) Case No. 08-CP-23- 1169
KENNETH J. O'MALLEY, JR.,)
MICHAEL D. SCOTT, and)
APPLIED ENGINEERING)
SOLUTIONS, INC.,)
)
Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned at 44 East Camperdown Way, Post Office Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.

By: _____
Gregory J. English (65470)

44 E. Camperdown Way
P.O. Box 728
Greenville, SC 29602
(864) 242-8200

Attorneys for Plaintiff

February 12, 2008

SCANNED

STATE OF SOUTH CAROLINA)) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS
PANKAJ PATEL,)) Plaintiff,)) vs.)) BRIAN D. MERRIMAN,) KENNETH J. O'MALLEY, JR.,) MICHAEL D. SCOTT, and) APPLIED ENGINEERING) SOLUTIONS, INC.,)) Defendants.)	COMPLAINT (JURY TRIAL DEMANDED) Case No. 2008-CP-23-1169

2008 FEB 12 P 2:22
FILED-CLERK OF COURT
GREENVILLE, S.C.

The Plaintiff, Pankaj Patel ("Plaintiff" or "Patel"), complaining of the Defendants, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. Patel is an individual residing in Greenville County, South Carolina.

2. Defendant Brian D. Merriman ("Merriman") is an individual residing in Anderson County, South Carolina.

3. Defendant Kenneth J. O'Malley, Jr. ("O'Malley") is an individual residing in Greenville County, South Carolina.

4. Defendant Michael D. Scott ("Scott") is an individual residing in Greenville County, South Carolina.

5. Defendant Applied Engineering Solutions, Inc. ("AES") is a corporation organized and existing under the laws of the State of South Carolina with a principal place of business in Greenville County, South Carolina.

6. This Court has jurisdiction over the parties to and subject matter of this action.

GENERAL ALLEGATIONS

7. Patel was a minority shareholder of AES, previously owning and holding one-fourth (1/4), or twenty-five percent (25%), of the shares of AES.

8. Merriman, O'Malley, and Scott (collectively, the "Majority Shareholders") are the majority shareholders of AES, previously owning and holding three-fourths (3/4), or seventy-five percent (75%), of the shares of AES, and are managers, directors, and officers of AES.

9. On February 13, 2006, Patel, the Majority Shareholders, and AES entered a Stock Purchase and Option Agreement (the "Contract"), pursuant to which Patel agreed to sell, and the Majority Shareholders and AES agreed to purchase, Patel's stock in AES at fixed prices.

10. To induce Patel to enter the Contract, AES and the Majority Shareholders covenanted, warranted, and represented that on or before March 1, 2006, and thereafter within 15 days prior to the due date for delivery of Schedule K-1s to him, AES would pay Patel a dividend in an amount equal to 40% of the income taxable to Patel on such K-1s and that they had disclosed to Patel all material information about AES, including AES' finances and outlook.

11. In reliance upon the covenants, warranties, and representations in the Contract, Patel sold AES and the Majority Shareholders 130 shares of his stock in AES on February 17, 2006, and the remainder of such shares on March 3, 2006.

12. AES subsequently sent Patel and the IRS K-1s showing AES income taxable to Patel for tax years 2005 and 2006, on which Patel paid taxes.

13. AES and the Majority Shareholders have failed to pay Patel dividends in an amount equal to 40% of the income taxable to him on his K-1s and failed to disclose to Patel all material information about AES, including AES' finances and outlook.

FOR A FIRST CAUSE OF ACTION

14. The allegations hereinabove alleged are incorporated herein.

15. The Contract is a legally binding and enforceable contract and Patel has satisfied all conditions of Contract.

16. AES and the Majority Shareholders breached the Contract by:

(a) failing to pay Patel dividends in an amount equal to 40% of the income taxable to him on his K-1s for tax years 2005 and 2006;

(b) failing to disclose to Patel all material information about AES, including AES' finances and outlook, including but not limited to customers' plans to purchase in the near future burner management systems and services, fire and gas detection systems and services, and safety systems services; and

(c) otherwise failing to act in good faith and deal fairly with Patel.

17. AES' and the Majority Shareholders' breaches of the Contract, including but not limited to the implied covenant of good faith and fair dealing, caused Patel actual damages that Patel is entitled to recover from them, including, but not limited to, 40% of the income taxable to him on his K-1s for tax years 2005 and 2006 and the sale of his stock for less than fair market value and less than twenty-five percent (25%) of the fair value of AES.

18. Patel is entitled to recover from AES and the Majority Shareholders his actual damages, plus interest allowed by law, costs and reasonable attorneys' fees.

FOR A SECOND CAUSE OF ACTION

19. The allegations hereinabove alleged are incorporated herein.

20. The Majority Shareholders, as officers, directors, and majority shareholders of AES, owed Patel fiduciary duties to make a full disclosure of all relevant facts when purchasing Patel's stock from him.

21. The Majority Shareholders breached their fiduciary duties to Patel by failing to disclose to Patel all material information about AES, including AES' finances and outlook, including but not limited to customers' plans to purchase in the near future burner management systems and services, fire and gas detection systems and services, and safety systems services. Had the Majority Shareholders disclosed such information, Patel would not have sold his shares of stock in AES at the price he did, which price was below their fair market value and less than twenty-five percent (25%) of the fair value of AES.

22. As a direct and proximate result of the Majority Shareholders' breach of their fiduciary duties to him, Patel has suffered actual damages including, but not limited to, the sale of his stock for less than fair market value and less than twenty-five percent (25%) of the fair value of AES.

23. The Majority Shareholders' conduct was sufficiently willful, wanton, reckless, grossly negligent, and outrageous to entitle Patel to punitive damages.

FOR A THIRD CAUSE OF ACTION

24. The allegations hereinabove alleged are incorporated herein.

25. Patel made proper demand to inspect and copy records of AES. *See* Exhibit A attached hereto, which is incorporated herein by reference.

26. AES and the Majority Shareholders have failed and refused to produce the requested records in bad faith.

27. The Court should order AES and the Majority Shareholders to permit inspection and copying of the requested records at their expense and to pay Patel his costs, including reasonable attorneys' fees, incurred to obtain such order.

WHEREFORE, Plaintiff prays for (a) relief as hereinabove set forth, including but not limited to (1) actual damages plus pre-judgment interest to Plaintiff; (2) punitive damages to Plaintiff; and (3) Plaintiffs' attorneys' fees, costs, and other litigation expenses; and (b) such other and further relief as to the Court may appear just and proper.

Respectfully submitted:

WYCHE BURGESS FREEMAN & PARHAM, P.A.

By: _____
Gregory J. English (#65470)

44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602
(803) 242-8200

Attorneys for Plaintiff

Dated: February 12, 2008

Greenville, South Carolina

Plaintiff respectfully requests a jury trial.

WYCHE

WYCHE BURGESS FREEMAN & PARHAM, P.A.

Attorneys at Law

April 24, 2007

BY FIRST CLASS MAIL AND BY FACSIMILE

Phillip A. Kilgore, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Post Office Box 2757
Greenville, South Carolina 29602

Re: Pankaj Patel v. Brian D. Merriman, et al., Case No. 2005-CP-23-371

Dear Phillip:

In your letter dated March 7, 2006, you attempted to explain how AES was able to exercise its option to purchase Mr. Patel's stock so quickly when we spent so much time negotiating a deal that would give Defendants three (3) years to purchase it. You stated that the company wanted "the option to be able to purchase Patel's shares very quickly should the ability to do so arise. It eventually did arise." You further state that "defendants did not think they would get [the money necessary for the buyout]. They were pleasantly surprised when funding came together ...."

In order to determine whether the defendants satisfied their contractual and legal obligation to disclose to Mr. Patel all material information about the company, including its finances and outlook, we need to know more specifically (1) how the ability to purchase Mr. Patel's stock arose, and (2) how such "funding came together." Please be more specific about these two matters.

In connection with this request, please provide us with AES' financial statements, on both a cash and accrual basis, and tax returns for 2005 and 2006. Also, please provide us with historical balance sheets (cash and accrual), Job Progress vs. PO reports, proposals lists, and opportunity lists as of January 31, 2006 and February 28, 2006. Finally, we ask that you identify the Conoco-Phillips, BP, Pioneer, FMC, and Siemens opportunities, proposals, and POs for those two dates and as of December 31, 2005, as well as any agreements, written or oral, with those companies.

Best regards,

Gregory J. English
(864) 242-8247

GJE/sc
cc: Mr. Pankaj Patel (by mail)

PO Box 728 Greenville SC 29602-0728
44 East Camperdown Way Greenville SC 29601-3591
p 864.242.8200 f 864-235-8900 www.wyche.com

Exhibit A

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

Pankaj Patel,)
Plaintiff(s)) CIVIL ACTION COVERSHEET
) 2008 - CP - 23 - 1169
vs.) 2008 FEB 12 P 2:20
Brian D. Merriman, et al.,)
Defendant(s))

FILED-CLERK OF COURT
GREENVILLE COUNTY
PAUL R. WICKENSIMER

(Please Print)
Submitted By: Gregory J. English — SC Bar #: 65470
Address: Wyche Law Firm, 44 E. Camperdown Way, PO Box 728, Greenville, SC 29602 — Telephone #: (864) 242-8200
Fax #: (864) 235-8900
Other:
E-mail: genglish@wyche.com

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 Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499)

Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☒ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

Submitting Party Signature: _____ Date: February 12, 2008

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.

**R MANDATED ADR COUNTIES ONLY

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 within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case 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. Cases which are appellate in nature such as appeals or writs of certiorari;

    c. Post Conviction relief matters;

    d. Contempt of Court proceedings;

    e. Forfeiture proceedings brought by the State;

    f. Cases involving mortgage foreclosures; and

    g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. 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 had 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.**

** Florence, Horry, Lexington, Richland, Greenville, and Anderson

03/03/14

NEXSEN|PRUET

Andrew A. Mathias
Associate

March 3, 2014

Via E-Mail (emillerj@sccourts.org) and U.S. Mail

The Honorable Edward W. Miller
Business Court Judge
Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, South Carolina 29601

Re: *Pankaj Patel v. Krish Patel, et al.*; C.A. No. 2011-CP-23-7338 and *Corby Phillips v. Krish Patel, Vijay Patel, et al.*; C.A. No. 2011-CP-23-7974

Dear Judge Miller:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

On December 3, 2013 the parties in the above-captioned matter entered into a Joint Agreement, which is enclosed for your review. The Joint Agreement provides that this case would be bifurcated, with liability to be tried first, before you. The parties further agreed that "[o]ther than expert designations and depositions, **there will be no further discovery on the liability issues.**" (Emphasis added.) Both parties have designated expert witnesses and are going to take their depositions this week. Trial is scheduled to begin on March 24, 2014.

With full knowledge that we are prohibited from conducting further discovery, however, the plaintiffs have recently named several additional fact witnesses, including The Honorable Robin Stillwell and others. We would be entitled to take the depositions of these witnesses under normal circumstances, but we are prohibited from doing so by the terms of the Joint Agreement.

Tom Stephenson is currently in Panama and I am unable to reach him to discuss this issue. Plaintiffs were aware of Tom's trip and unavailability when they identified these new witnesses. I must speak with Tom so that he and I can decide how to proceed. I am not sure if he will want to move to strike the plaintiffs' designations, request a pre-trial conference to take up this issue with you, or another

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Attorneys and Counselors at Law

action all-together. I will make every effort to speak with Tom in a timely manner. However, given the fact that the trial date is fast approaching and that I might not reach Tom this week, I wanted to make you aware of the issue sooner rather than later.

Please let me know if you have any questions or concerns.

Very truly yours,

Andrew A. Mathias

AAM:gb
Enclosure

cc: Courtney Camferdam, Law Clerk to Judge Miller (w/encl. - via email)
James R. Gilreath, Esquire (w/encl. - via email)
Charles W. Whetstone, Esquire (w/encl. - via email)
Monty Desai, Esquire (w/encl. - via email)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., Plaintiff, vs. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, And VP Enterprises, Inc. Nominal Defendant.	Case No. 2011-CP-23-7338

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS
Corby Phillips, Plaintiff, vs. Krish Patel, Vijay Patel, Keith R. Gailey, and P Communications, Inc., Defendants.	Case No. 2011-CP-23-7974

JOINT AGREEMENT

For and in consideration of premises and the mutual covenants herein contained the parties hereto agree as follows:

1. To waive their right to a jury trial and submit the matter to the Honorable Edward Miller on a non-jury basis;
2. The liability and damage issues will be bifurcated and the liability issues are to be tried first;
3. Other than expert designations and depositions, there will be no further discovery on the liability issues;
4. Additional discovery may be instituted if the damages aspect of the matter become an issue;
5. A scheduling order shall be executed following a status conference to be held before Judge Miller who will issue the formal scheduling order;
6. Defendant Keith Gailey will be dismissed from this action with prejudice.

Thomas L. Stephenson Andrew A. Mathias NEXSEN PRUET, LLC 55 East Camperdown Way (29601) Post Office Drawer 10648 Greenville, South Carolina 29603-0648	Charles W. Whetstone, Esquire Whetstone, Myers, Perkins & Fulda, LLC P.O. Box 8086 Columbia, SC 29202
James R. Gilreath, Esq. The Gilreath Law Firm, P.A. P.O. Box 2147 Greenville, SC 29602	

December 3, 2013

07/18/14

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. Plaintiff, v. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, and, VP Enterprises, Inc., Nominal Defendant.	2011-CP-23-7338 **PLAINTIFF'S PRETRIAL BRIEF**

This action is about the misappropriation of a corporate opportunity of VP Enterprises, Inc. ("VP Enterprises") and other wrongs committed by the defendants Krish Patel and his father Vijay Patel in favor of P Communications, Inc., now controlled by Defendant Krish Patel. Specifically, Plaintiff Pankaj Patel ("Kaj") along with the Defendants developed a model and plan for VP Enterprises to open and operate Verizon Wireless dealerships, and the individual Defendants without the knowledge or consent of Plaintiff Kaj Patel diverted the plan and opportunity to another corporation controlled by Krish Patel to the complete exclusion of Plaintiff Kaj Patel. As a result, Kaj Patel[1] has brought an action for violation of the standards of conduct for directors and officers under the S.C. Business Corporation Act, breach of fiduciary

[1] Kaj Patel has brought this action individually and derivatively as a stockholder in VP Enterprises, Inc. on behalf of VP Enterprises, Inc. for Defendants' breaches of the standards of conduct of directors and officers and their fraudulent, oppressive and unfairly prejudicial conduct toward Plaintiff as a shareholder.

duty, and other causes of action related to the misappropriation of VP Enterprises' business opportunities by Defendants Krish Patel, Vijay Patel, and P Communications, Inc.

I. FACTUAL BACKGROUND

A. VP Enterprises Planned and Created

Plaintiff anticipates the evidence will show the following events. During the latter part of 2007 Kaj Patel and Krish Patel along with Krish Patel's father, Vijay Patel, were co-owners in a real estate company. Krish Patel had previously quit his job at a Verizon corporate store to work full-time in his father's real estate ventures and complete his college degree. (Answer Am. Compl. ¶16; Pl. Tr. Doc. 273). While meeting about real estate company matters, Kaj began an inquiry with Krish regarding whether opening independent Verizon stores would be a profitable business opportunity. From his previous business ventures, Kaj Patel had developed a revenue and cost spreadsheet to help analyze whether a business plan would have potential. (Pl. Tr. Doc. 30B). Kaj and Krish Patel then met in late November and/or early December to run the projections using Kaj's spreadsheet. Krish has admitted that he and Kaj worked together on the financial projections for VP Enterprises. (Answer Am. Compl. ¶¶23 and 24). Krish at this time did not yet know how to create Excel spreadsheets for financial calculations. Krish had information on the revenues from Verizon account activations and sales of accessories, while Kaj had information on the various business costs to be incurred. (Pl. Tr. Doc. 31-41G). After Kaj and Krish ran the financial projections on his spreadsheet and saw the moderate profit projections for a single store, Kaj explained to Krish that running a multi-store venture could have significant profit possibilities. They then agreed to pursue the Verizon franchise business by developing a multi-store operation.

Kaj and Krish then met to develop a business plan to present to Verizon. (Answer Am. Compl. ¶17). Kaj had a business plan that he developed for a previous restaurant venture, Tava Grill, that included relevant demographic information for the Greenville market. Kaj's Tava Grill business plan was derived from a business plan he obtained off the internet but which Kaj then added his research on the Greenville, SC business environment. (Pl. Tr. Doc. 4-9). On December 5, 2007 Kaj e-mailed these business plans to Krish to use for their new Verizon business venture. (Pl. Tr. Doc. 3). In the e-mail Kaj asked Krish to "please keep confidential and do not distribute." Krish has admitted that both Kaj and Krish participated in the drafting of a business plan for VP Enterprises. (Answer Am. Compl. ¶23). As part of the parties' business plan, Kaj suggested that the three individuals – Kaj, Krish and Vijay Patel – needed to form a corporation and suggested using Kaj's attorney Allan Hill to do so. Krish was concerned that since he had formerly worked at a Verizon corporate-owned store, Verizon might not allow him to be an owner of independent Verizon stores. (Answer Am. Compl. ¶17). The three then agreed that the stock would be titled in Kaj and Vijay's names, each owning 50%, but that the 50% titled in the name of Vijay would be shared equally between Vijay and his son Krish. (Vijay dep. 12:24-13:10). In the business plan Kaj was named president and CEO, Vijay the vice-president, and Krish the general manager, project developer and sales and operations manager. (Pl. Tr. Doc. 23). The parties decided to name the company VP Enterprises, Inc.

In developing the business plan, Kaj and Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. (Answer Am. Compl. ¶18). Kaj and Krish agreed on 10 potential sites or areas they had located

for new stores. Krish admitted Kaj played a role in selecting locations, (though he denies it ws significant). (Answer Am. Compl. ¶19). These locations were included in the VP Enterprises business plan. (Pl. Tr. Doc. 19-20). After Kaj and Krish jointly drafted and finalized the VP Enterprises business plan, Krish e-mailed the business plan to Verizon's Kelley Pearson. (Pl. Tr. Doc. 17). The VP Enterprises – Verizon business plan closely tracked Kaj's business plan for Tava Grill.

After the business plan was submitted to Verizon, Krish Patel arranged with Allan Hill, Esquire, for Mr. Hill to draft the incorporation and organizational documents for VP Enterprises. The Articles of Incorporation for a Statutory Close Corporation were filed January 24, 2008 and listed Krish Patel's home as the registered office. The concurrently drafted Initial Annual Report of Corporations listed Kaj, Vijay and Krish Patel as the directors and principal officers. The Corporate Data sheet listed Kaj and Vijay as directors, Kaj as president, and Vijay as vice-president. Krish Patel was named as Secretary and Treasurer of VP Enterprises which positions he accepted. (Pl. Tr. Doc. 42-48; Krish dep. 21:1-12). The opening incorporator resolution appointed Kaj and Vijay as directors. (Pl. Tr. Doc. 389). However the minutes of the organizational meeting of directors and the stock certificates were never signed, and the Stock Transfer Ledger was not filled out. (Pl. Tr. Doc. 391-402). The day following the filing of the Articles of Incorporation, VP Enterprises filed its application for a federal ID number and listed "Verizon Cellular Store" as its principal service. (Pl. Tr. Doc. 51).

On January 28, 2008 Vijay and Kaj Patel both submitted their Verizon Agent Applications for VP Enterprises to Verizon. The address on the Verizon Application form was 408 Ashby Park Lane, Greenville, SC, which was Krish's residence. (Pl. Tr. Doc. 111-24). The application asked, among other things, whether the applicants had been convicted of non-traffic

criminal offenses or been involved in any civil litigation in the past 5 years. Kaj answered "no" to the criminal convictions question, and he reported his involvement in a civil suit in Greenville County Common Pleas court that had been settled. (Pl. Tr. Doc. 123). Krish filled out his father's application and answered "no" to both questions which Vijay then signed. (Pl. Tr. Doc. 116; Vijay dep. 10:20-11:7). Unbeknownst to Kaj, Vijay had actually been convicted of shoplifting on December 14, 2005. (Pl. Tr. Doc. 1-2).

While the Verizon agent application was pending, Krish opened a VP Enterprises account at Bank of America with Krish being an authorized signatory. On January 29, 2008 Kaj gave Krish a check for $5,000 payable to VP Enterprises which was deposited into the new business account. (Answer Am. Compl. ¶29; Pl. Tr. Doc. 54). In early February, VP Enterprises applied to BB&T Bank for a $50,000 line of credit based on Kaj and Vijay as owners. (Pl. Tr. Doc. 138). On February 11, 2008 BB&T, through loan officer Mike Pavlick, approved a $50,000 line of credit for VP Enterprises. (Pl. Tr. Doc. 141 and 144). During this time, Kaj, Krish and Vijay met with Verizon personnel, and Kaj and Krish continued to scout potential locations as Defendants have admitted. (Answer Am. Compl. ¶30).

B. Denial of VP Enterprises Application by Verizon

On February 26, 2008, Verizon sent a letter to VP Enterprises addressed to 408 Ashby Park Lane, Greenville (Krish's home) informing VP Enterprises that Verizon had denied its application. (Pl. Tr. Doc. 145). Verizon gave no explanation for the denial. Shortly thereafter the defendants informed Kaj of the denial letter. Kaj asked Vijay and Krish if anybody had any criminal or negative financial history which they both denied. At that point the parties agreed that they would continue to look for Verizon and non-Verizon wireless phone stores for VP Enterprises to acquire or open. In addition, the parties agreed that Krish, since he had previously

worked at Verizon, would find out why the application was denied so that the parties could try to overcome the reasons for the denial.

Pursuant to their agreed plan going forward, Kaj continued to look for other wireless phone stores. On April 18, 2008 Kaj sent to Krish information on possibly becoming AT&T independent dealers. (Pl. Tr. Doc. 153). On July 24, 2008 Kaj e-mailed Krish about other wireless stores available for purchase in South Carolina. (Answer Am. Compl. ¶34; Pl. Tr. Doc. 239-40). Defendants showed no real interest in these opportunities. During the spring of 2008 Kaj would meet with Vijay and oftentimes Krish about once or twice a week to discuss real estate and VP Enterprises matters. Krish assured Kaj on multiple occasions that he was still working on finding out why VP Enterprises had been turned down, and that he was having to go up the corporate ladder to get an answer. Unknown to Kaj, though, Krish and Vijay were carrying out a different plan to enter into the Verizon Wireless store business -- a plan which did not include VP Enterprises or Kaj at all. As Defendants admitted, but mischaracterized, in their Answer, "Krish decided to pursue his idea on his own". (Answer Am. Compl. ¶35).

C. P Communications Secretly Created

Within several weeks of Verizon's denial of VP Enterprises' application, Krish began discussions with Corby Phillips about Phillips applying to Verizon for a license to open wireless retail stores just as VP Enterprises had done. Corby Phillips ran a sandwich shop near the Verizon store where Krish had worked. Krish Patel provided Corby Phillips the VP Enterprises business plan to use for the new Verizon application through a new company named P Communications, Inc., a South Carolina close corporation. (Krish dep. 45:16-17). By April 4, 2008 a new Verizon business plan was completed for Corby Phillips and P Communications, Inc. (Pl. Tr. Doc. 146-50). Nearly all the terms in the new Corby Phillips/P Communications plan

were identical to the VP Enterprises business plan except the personnel names. Corby Phillips was listed as the sole owner. On April 28, Krish Patel working with attorney Allen Hill effected the filing of Articles of Incorporation for P Communications. The Initial Annual Report of Corporations, the South Carolina Business Tax Application and the federal ID application listed the business purpose as operating "Verizon Wireless Store", just like VP Enterprises. (Pl. Tr. Doc. 155-56, 175A). The new Verizon business venture by P Communications was spearheaded by Krish Patel. Corby Phillips was only a straw man listed nominally as the owner. (Pl. Tr. Doc. 228A at ¶4; 229). On May 28, 2008 Verizon signed the Agent Approval Form for P Communications. (Pl. Tr. Doc. 175B-177). None of this was disclosed to Kaj Patel even though Kaj Patel met at least weekly with Vijay Patel and sometimes Krish Patel to discuss the status of VP Enterprises and their real estate company.

On July 2, 2008, Krish wrote Allan Hill the terms for an agreement with Corby Phillips that Krish asked Mr. Hill to draft. The document provided in paragraph 4 that Phillips "will not play any active role in the operations of the business", reflecting the fact Corby Phillips was only a straw man. (Pl. Tr. Doc. 228A). The e-mail attaching this document was copied to Vijay. (Pl. Tr. Doc. 228). The July 7, 2008 notes of Defendants' accountant Dan Jones further show Corby Phillips as a silent partner. (Pl. Tr. Doc. 229).

In July 2008 Krish Patel informed Kaj that their real estate company needed some additional cash. Since VP Enterprises was not yet fully running, Krish requested that the $10,000 on deposit in VP Enterprises' bank account be transferred for the time being to the parties' real estate company KVP Investments. Since VP Enterprises also had a $50,000 line of credit available, Kaj agreed to the temporary transfer while the start-up was "on hold" while an investment opportunity was being developed. (Pl. Tr. Doc. 230).

During this time in the summer and fall of 2008, Krish and Vijay continued with their work on opening their first Verizon independent dealership to be located on Pelham Road, again without informing Kaj. Vijay Patel, using his real estate experience and contacts from the hotel business, provided important assistance to Krish Patel and P Communications in setting up the new store to be operated under the name Wireless Communications. (Krish dep. 48:17-49:14). And similar to what VP Enterprises had done, Krish obtained initial financing from Mike Pavlick at BB&T by October 1, 2008, except that the new loan application listed Krish and defendant Keith Gailey as the co-borrowers. (Pl. Tr. Doc. 261 and 269). Krish was designated as Director of Operations for P Communications by company letter to Verizon. (Pl. Tr. Doc. 266).

D. P Communications' Grand Opening

On October 7, 2008, Krish Patel sent out a mass e-mail to numerous people announcing the grand opening of P Communications' new Verizon store to be held on October 18. (Pl. Tr. Doc. 270-71). This e-mail, though, was not sent to Kaj Patel. As Krish admitted in his Answer, he made no effort at this time to do any deal with Kaj. (Answer Am. Compl. ¶35).

On the evening of October 18, 2008, Kaj stopped by the home of Vijay and Krish. When Kaj asked where Krish was, Vijay told him Krish was at a grand opening for an independent Verizon store. This was the first time Kaj had heard of any activity on the part of Vijay and Krish regarding Verizon. As Kaj was shocked to learn of this information, when Krish arrived home, Kaj met with Krish in a separate room to ask what was going on with Verizon. Krish then told Kaj that he had purchased an interest in an existing corporation that already had a Verizon license in order to get our foot in the door with Verizon. Krish stated it was going to take eight to twelve months to push the current owner, referred to only as "Corby", out of the company at which time they would all return to the VP Enterprises plan. Kaj at this time was working with

Fluor Construction but had turned in his resignation effective the beginning of 2009 so he could work full time with VP Enterprises. Kaj then had to scramble with Fluor to get his job back while Krish supposedly worked over the next eight to twelve months on obtaining ownership of the business for the shareholders of VP Enterprises. Krish did not disclose to Kaj that in reality there was a new corporation named P Communications that Krish had created specifically to take the Verizon retail business.

E. P Communication Ownership Changes

Within two weeks of the grand opening, Krish Patel and Keith Gailey submitted to Verizon applications to change the ownership of P Communications and the Verizon license to Krish Patel and Keith Gailey from Corby Phillips, with Krish owning 60% and Gailey 40%. (Pl. Tr. Doc. 272-85). Verizon approved the ownership change, and on November 19, 2008 Corby Phillips, Krish Patel and Keith Gailey submitted a signed change of ownership form to Verizon. (Pl. Tr. Doc. 231). By December 15, 2008 all corporate resolutions and Secretary of State filings were completed to divest Corby Phillips from any ownership or involvement in P Communications. Phillips was paid $14,000 for the stock transfer. (Pl. Tr. Doc. 287-97). Shortly thereafter in January 2009, Krish bought out Keith Gailey's 40% interest. (Pl. Tr. Doc. 299-300). Krish and Gailey belatedly informed Verizon of this ownership change one year later. (Pl. Tr. Doc. 302). All this change in ownership in Krish's Verizon venture was done without informing Kaj.

F. P Communications Uncovered

Throughout 2009 Kaj was working principally in Puerto Rico for Fluor, but during his return home on breaks he met regularly with Vijay and sometimes Krish to discuss the status of their business matters, including VP Enterprises. (Answer Am. Compl. ¶37). Krish repeatedly

told him to be patient because it is going to take him a while to get Corby Phillips out of the business. During this time Krish expanded P Communications by opening additional stores without disclosing these operations to Kaj. (Pl. Tr. Doc. 454). Krish admitted he had opened five Verizon stores by the end of 2009 which reached $3.3 million in sales that year. (Answer Am. Compl. ¶53).

In 2010 after returning permanently from Puerto Rico, Kaj continued his search for wireless store opportunities for VP Enterprises. On or before April 15, 2010 Kaj informed Krish that he had found some locations for the parties to consider. In a follow-up e-mail Kaj unequivocally told Krish that if Krish and his father did not have any interest in proceeding further to develop the Verizon wireless phone store business, he would go his separate way since he had another potential partner that may go into the venture with him. Krish responded: "I am always interested in looking for new sites. We can get together and talk about possibilities." (Pl. Tr. Doc. No. 304A).

In mid-May 2010 Kaj sent Krish photos of a potential location in the Tryon/Columbus, NC area for a Verizon store if they could find a way to get into the Verizon market. (Pl. Tr. Doc. 467-69). Defendants admitted Kaj and Krish discussed Kaj's proposal to develop a store in this area, but Krish did not have time to pursue it. (Answer Am. Compl. ¶38). Krish responded that he learned of an opportunity to buy some stores at a steep discount in the Columbia-Florence area that Kaj could run and develop. During these discussions, Krish refused to put the stores in the name of VP Enterprises and stated that he would only agree to allow Kaj to be an employee with a salary and bonus compensation because Verizon was sensitive to its licensees having recurring ownership changes. He refused to allow Kaj to have any equity ownership in the stores to be purchased. Krish conceded in his Answer that he only offered Kaj the possibility of Kaj

becoming an employee but not an owner. (Answer Am. Compl. ¶40). Krish represented that this arrangement would allow Kaj to have many of the same rights and benefits as an equity owner.

In these talks Kaj learned for the first time that Krish had an interest in a company called P Communications that was managing multiple stores. Krish also admitted to Kaj during these talks that he had bought out Corby Phillips. (Answer Am. Compl. ¶41). While meeting with Krish at his office on Augusta Road around June 4, 2010, Kaj saw Vijay in the office and learned for the first time that Vijay had been helping Krish in opening P Communications' stores. Krish represented that P Communications then operated about six stores. Krish admitted that he then disclosed to Kaj that he was operating a number of Verizon stores. (Answer Am. Compl. ¶42). Krish further admitted in his Answer that he in fact owned or operated at least 22 stores at the time Kaj filed his original Complaint in November 2011. (Answer Am. Compl. ¶49).

This information, revealed in June 2010, about the existence of P Communications and Vijay's work in helping to open new Verizon stores came as a shock to Kaj since Vijay had repeatedly stated over the past couple years that he knew nothing about what Krish was doing with the Verizon store business. That afternoon after learning of the name of P Communications for the first time, Kaj researched the online records of P Communications. From the Secretary of State's records, Kaj discovered information that made him suspect that Krish and Vijay had been lying to him about their Verizon business activities. He saw that P Communications had been formed in April 2008 which was only six months before the grand opening of the Pelham Road store. That called into question whether Krish had truly bought into an established company with an existing license as represented. The Secretary of State records also showed that Krish replaced Corby Phillips as registered agent in December 2008 which called into question Krish's representations from October 2008 through early 2010 that he was still trying to get Corby

Phillips out of the company. (Pl. Tr. Doc. 144). He learned too of the multitude of stores that Krish and Vijay had set up without telling him. Kaj then realized that he had been backstabbed, and that Krish and Vijay had taken for themselves the Verizon independent store opportunity envisioned for VP Enterprises. Krish admitted in his Answer that this Verizon store opportunity included the ownership of 23 stores by September 30, 2011 with plans to reach 30 stores by the end of that year and 50 stores by the end of 2012. (Answer Am. Compl. ¶53).

After uncovering Defendants' misappropriation of VP Enterprises' Verizon opportunities, Kaj met with Krish and Vijay separately and informed them that the parties' relationship in VP Enterprises and the wireless phone store business was over.

II. APPLICABLE LAW

The South Carolina Supreme Court enunciated the duties of a corporation's promoters as follows:

> The promoters of a corporation occupy a relation of trust and confidence towards the corporation which they are calling into existence as well as to each other, and the law requires of them the same good faith it exacts from directors and other fiduciaries...The rights and liabilities of promoters *inter se* are determined by the terms of the agreement which they have made between themselves and the fiduciary relationship which they bear to each other.

Duncan v. Brookview House, Inc., 262 S.C. 449, 456-57, 205 S.E.2d 707, 710-11 (1974).

The Court of Appeals has explained that the fiduciary duties of a corporate promoter are like those of a partner to his fellow partners stating:

> We note as a practical matter it makes no difference whether Mrs. Bivens characterizes her relationship with Watkins as a partner or promoter. The governing principles are the same. *See* 18 Am.Jur.2d *Corporations* § 143 (1985).

Bivens v. Watkins, 313 S.C. 228, 232, 437 S.E.2d 132, 135 n.4 (Ct. App. 1993).

The Bivens court thus held that a corporate promoter owes a corporation's investor "a duty to act in good faith and with due regard for her investment in the corporation." Id. at 233

(finding that where corporation had received its charter but was never fully organized, the promoter continued to owe fiduciary duty to corporation's investors).

The Bivens court applied a straightforward definition of promoters as "persons who plan or organize a corporation." Bivens v. Watkins, 313 S.C. 228, 233, 437 S.E.2d 132, 135 n.5 (Ct. App. 1993).

Consistent with the opinions of this State's appellate courts, the responsibilities of promoters have been summarized in Am. Jur. 2d Corporations as follows:

> A promoter participating in the formation and establishment of a corporation at any period prior to its incorporation stands in a fiduciary relation to both the corporation and its stockholders, present and prospective. The legal relationship between a promoter and the corporate enterprise he seeks to advance is analogous to that between an agent and his principal... A promoter owes the same fiduciary duty to the corporation for which he is acting and to its stockholders whether the promoter himself is or is not a stockholder... The fiduciary relation continues until the plan or scheme of promotion has been accomplished. Normally, that fiduciary duty ceases when the corporation has been established and an independent board of directors takes charge.
>
> Where the corporation is never formed, a fiduciary relationship exists between the promoters and stock subscribers and lasts until the relationship is either dissolved by the subscribers' complete withdrawal from the enterprise or converted to another organization formed by an agreement of the parties. As a fiduciary, a promoter is required to act with the utmost good faith in his dealings with those to whom he owes a fiduciary duty, must fully disclose to them all material facts involved, and must fully advise them of any interest he may have that may in any manner affect them. Accordingly, the fiduciary position of the promoter requires that his dealings be open and fair, and a promoter may not benefit by any secret profit or advantage gained at the expense of the corporation or its members.
>
> Promoters stand in a fiduciary relation to the corporation to the extent of being chargeable as trustees if they deal with it unconscionably, oppressively, or in violation of a statute.

18 Am. Jur. 2d Corporations § 107, Promoters. Failure to Disclose Material Facts to Stock Purchaser (emphasis added).

The duration of a promoter's duties to the corporation and its shareholders has been stated as:

> A promoter may begin his relationship with the corporation to be formed long before the organization of the corporation by seeking the opening for a venture and projecting a plan for its development and may continue it after the incorporation by attracting the investment of capital in corporate securities and providing the corporation with the commercial breath of life. Accordingly, a promoter does not necessarily lose his character as such on the creation or organization of the corporation. If he continues to perform the acts that characterize promoters, such as inducing persons to subscribe for capital stock, his status as promoter continues.

18 Am. Jur. 2d Corporations § 104, Commencement and Duration of Promoter Status (emphasis added).

One of the duties that corporate agents, such as promoters, directors and officers, may not violate is the obligation to refrain from misappropriating corporate opportunities for their own benefit. The Supreme Court has held:

> The defendant, as director and manager, was trustee not only of the corporation, but for all the stockholders. His duty was to manage the corporate property for the benefit of the stockholders; and in the performance of that duty he was chargeable with the utmost good faith. It was a breach of his trust to all of the stockholders to use any means to acquire for himself the corporate property, except in the open after giving to the stockholders, fully and candidly, all material information he possessed as to its condition and value.

Jacobson v. Yaschik, 249 S.C. 577, 584, 155 S.E.2d 601, 605 (1967) (quoting Black v. Simpson, 94 S.C. 312, 77 S.E. 1023 (1913).

This prohibition on a fiduciary's usurpation of business opportunities stems from the well-known case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928) where Justice Cardozo famously stated:

> Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market

> place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

Meinhard, 164 N.E. at 546 (citations omitted). Meinhard has been cited explicitly five times by our state's Court of Appeals.[2]

Applying the unbending and inveterate rule against diversion of corporate opportunities by fiduciaries, the Court of Appeals has held that misappropriation of a business opportunity continues even after the co-venturers have terminated their business. In Beck v. Clarkson, the court held:

> The view generally expressed is that the trust or fiduciary relation between partners and or their partnership, as to the firm business and assets, continues after dissolution... In *Fouchek v. Janicek*, 190 Or. 251, 225 P.2d 783 (1950), one partner appropriated a business opportunity after the termination of his partnership, having negotiated for the opportunity on his own behalf while the partnership was also engaged in negotiations regarding the same opportunity. The partner set forth the same argument as Clarkson does in the case now before us, i.e., that he had no duty to his former partners after the partnership was at an end. In finding a breach of fiduciary duty, the court stated:
>
> > *When a partner wrongfully snatches a seed of opportunity* from the granary of his firm, he cannot, thereafter, excuse himself from sharing with his co-partners the fruits of its planting, even though the harvest occurs after they have terminated their association.

Beck v. Clarkson, 300 S.C. 293, 303, 387 S.E.2d 681, 686-87 (Ct.App. 1989).

South Carolina has codified the standard of review of decisions of corporate officers under the business judgment rule as follows:

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[2] See McCarter v. Willis, 299 S.C. 198, 200, 383 S.E.2d 252, 253 (Ct.App. 1989); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct.App. 2000); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 478, 581 S.E.2d 496, 506 (Ct.App. 2003); Ramage v. Ramage, 283 S.C. 239, 246, 322 S.E.2d 22, 27 (Ct.App. 1984); and Kiriakides v. Atlas Food Sys. & Servs., Inc., 338 S.C. 572, 588, 527 S.E.2d 371, 379 (Ct.App. 2000).

(a) An officer with discretionary authority shall discharge his duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

S.C. Code Ann. § 33-8-420.

When a corporation is unable to avail itself of an opportunity, its agents such as employees, officers and directors are free to exploit it. Energy Res. Corp., Inc. v. Porter, 14 Mass.App.Ct. 296, 300, 438 N.E.2d 391, 394 (1982). However, that right is dependent on full and fair disclosure as explained in Am.Jur.2d Corporations §1551:

> ...[B]efore a director or officer invokes a refusal to deal as the reason for diverting a corporate opportunity, there must be an unambiguous disclosure of that refusal to the corporation, together with a fair statement of the reasons for that refusal. If the directors are uncertain as to whether the corporation can legally engage in the opportunity, they may choose not to embark on the venture; if they do, they may not substitute themselves for the corporation and divert possible benefits to themselves. Whenever a director or officer learns of a business opportunity of which he or she wants to take advantage but which potentially belongs to the corporation, there should be adequate and full information provided to the company... Indeed, pursuant to the corporate opportunity doctrine, the existence of any impediment to a corporation making use of an opportunity will not excuse the failure of a fiduciary to present the opportunity to the board and to disclose all material details before pursuing it for him or herself.

18B Am. Jur. 2d Corporations § 1551, Inability or Unwillingness of Corporation to Take Corporate Opportunity (emphasis added).

The prohibition on usurpation of corporate and partnership opportunities is consistent with the long-held principle that an agent must not misappropriate an opportunity belonging to his principal for himself as part of the duty of loyalty. In Lowndes Prods., Inc. v. Brower the

South Carolina Supreme Court, in holding key employees liable for diverting trade secrets and company customer accounts to their new corporation, quoted Am.Jur.2d Agency as follows:

> [§] 220. Generally; antagonistic dealings for agent's own benefit. . . . An agent is duty bound not to act adversely to the interest of his employer by serving or acquiring any private interest of his own in antagonism or opposition thereto, and this is a rule not only of law but of common sense and honesty as well. In all cases the principal is entitled to the best effort and unbiased judgment of his agent, and an agent is not permitted to assume two distinct and opposite characters in the same transaction—acting for himself and pretending to act for his principal. Indeed, it has been stated that in the usual case, it is the duty of the agent to further his principal's interests even at the expense of his own in matters connected with the agency.
>
> [§] 223. Unfair advantage or secret profit to agent in agency transaction. It is well established that profits made and advantages gained by an agent in the execution of his agency belong to the principal unless the parties themselves have otherwise agreed. In the absence of any agreement to the contrary between himself and his principal, an agent is not entitled to avail himself of any advantage that his position may give him to profit at his employer's expense beyond the agreed compensation for his services. An agent is bound to a high degree of good faith toward his employer, and cannot, without the latter's consent retain profits or earnings received in the course of performance of the employer's business or in an undertaking which constitutes a breach of duty to the employer. . . .'

Lowndes Prods., Inc. v. Brower, 259 S.C. 322, 336-37, 191 S.E.2d 761, 769 (1972) (quoting 3 Am. Jur.2d Agency, Duty Not to Act Adversely, §§ 220, 223).

The fiduciary duties and responsibilities of stockholders, directors and officers have been recognized in the close corporation setting. "Because of the fundamental resemblance of the close corporation to the partnership, the trust and confidence which are essential to this scale and manner of enterprise, and the inherent danger to minority interests in the close corporation, we hold that stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another." Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 592-93, 328 N.E.2d 505, 515 (1975). Donahue has been cited and relied on by the South Carolina Supreme Court in analyzing claims

of oppression in a statutory close corporation. See Kiriakides v. Atlas Food Sys. & Servs., Inc., 343 S.C. 587, 605, 541 S.E.2d 257, 267 n.27 (2001).

III. APPLICATION OF LAW TO FACTS.

There is no question that Krish Patel was a promoter of VP Enterprises. He specifically admitted he was a promoter of the corporation, though he later tried to retract his admission. (Krish dep. 123:7-20). Irrespective of his admission, he was one of the principals who planned and organized the corporation – *e.g.*, participating in drafting the business plan and financial projections, submitting the plan to Verizon, filling out and filing the Verizon Agent applications, handling all the communications with Verizon and with Allan Hill, Esquire for the incorporation, and controlling the subscribers' money received for the purchase of shares. He was the eyes and ears for VP Enterprises towards Verizon. As the promoter he owed a fiduciary duty to both VP Enterprises and its subscribing shareholders – Kaj and Vijay Patel – to act in good faith and with due regard for their investments. Duncan v. Brookview House, Inc., 262 S.C. at 456-57, 205 S.E.2d at 710-11.

VP Enterprises was never fully formed since no organizational meeting of directors occurred and no share certificates were signed and issued. Krish Patel's fiduciary duties as promoter thus continue until either Kaj's complete withdrawal as subscriber from the enterprise or conversion of the business plan to another corporation by agreement of the parties. 18 Am. Jur. 2d Corporations § 107. In this case Kaj continued to pursue the Verizon franchise opportunity by VP Enterprises with Krish and Vijay through June 4, 2010. He continued to look for locations and sent such leads and information to his co-venturers such as his e-mails, texts and photographs of April 18 and June 24, 2008 and May 15, 2010. He held regular discussions with Krish and Vijay on the status of the wireless phone store plans. Krish represented to Kaj

that he was working on finding out the reason Verizon turned down VP Enterprises. Moreover, Krish and Vijay did not even inform Kaj of the existence of P Communications until June 4, 2010. There was no agreement among the VP Enterprises' promoters and subscribers to convert the Verizon business plan to P Communications. Therefore the liability of Krish and Vijay Patel continued long past the Verizon denial letter of February 26, 2008 and the commencement of the Verizon retail business in October 2008.

The statement of Krish and Vijay Patel to Kaj about Verizon's denial, followed by a representation that Krish is working on finding out the reason, falls far short of the duty of full disclosure necessary for a legitimate taking of a corporate opportunity. The whole process of organizing, setting-up and carrying out the business operations of P Communications was done without ever telling Kaj a word about P Communications' existence. This secrecy enabled P Communications and Krish to gain the profits planned for VP Enterprises at the expense of Kaj.

Even after Verizon sent out its denial letter, Krish and Vijay did not lose their character as promoters. See Bivens v. Watkins, 313 S.C. at 231, 437 S.E.2d at 134 (holding defendant liable as promoter for actions taken several months after corporation commenced operations). They continued to do the exact same acts in setting up P Communications as they did for VP Enterprises. They just secretly moved the Verizon retail business to the name of another corporation that used the same business plan, the same locations, the same loan officer, same attorney, etc. Vijay and Krish both built out the Verizon stores, as anticipated by VP Enterprises, without disclosing a word about it to Kaj.

Even if VP Enterprises were considered fully formed and the duties of its promoters terminated, Krish and Vijay still owed fiduciary duties to VP Enterprises as directors and officers – Vijay being a director and vice president and Krish the secretary, treasurer and general

manager. See Black v. Simpson, supra (holding director and manager liable as trustee for corporation and stockholders).

Krish as an officer of VP Enterprises and Vijay as director and officer owed VP Enterprises and its shareholders fiduciary duties not to misappropriate the corporation's opportunities regardless of their status as promoters. The case of Energy Res. Corp., Inc. v. Porter, supra, is remarkably similar on its facts. In that case, the defendant was an officer of the plaintiff corporation. He developed a clean sulfur combustion process that was squarely in the corporation's line of business. He took the sulfur process to some professors at a racial minority university to enlist their help in obtaining government contracts. After the professors and the corporate officer completed draft proposals to the government, the professors informed the officer-defendant that they were not going to deal with the officer's corporation which was a white-owned and run company in fear that it may dominate the relationship. The officer-defendant, who was also a racial minority, informed the corporation that it was not going to be awarded the contract. He then left the corporation and secretively set up a new company which thereafter proceeded with the university to obtain the government contracts. The officer-defendant never told the corporation the reasons why the professors and the university refused to deal with the corporation, nor did he tell the corporation he was creating a new company to take the opportunity for himself.

In the corporation's suit for misappropriation of a corporate opportunity, the officer claimed the opportunity was unavailable to the corporation because the professors and the university refused to deal with the corporation. The court rejected that defense noting that the refusal to deal defense has not been favored when there has been a failure of full disclosure. The court stated "[w]ithout full disclosure it is too difficult to verify the unwillingness to deal and too

easy for the executive to induce the unwillingness." Energy Res. Corp., Inc. v. Porter, 14 Mass.App.Ct. at 300-301, 438 N.E.2d at 394. The court pointed out that with full disclosure there could have been various alternatives the corporation might have undertaken to overcome the concerns of the professors and the university. Instead the officer "acted secretively and ... masked his true reason for leaving." Id. at 302, 438 N.E.2d at 395. The court concluded stating:

> ...[B]efore a person invokes a refusal to deal as a reason for diverting a corporate opportunity he must unambiguously disclose that refusal to the corporation to which he owes a duty, together with a fair statement of the reasons for that refusal.

Id. at 14 Mass.App.Ct. at 302, 438 N.E.2d at 395.

In this case Krish Patel never found out or disclosed to Kaj the reasons for Verizon's denial, such as the criminal conviction of Vijay. If that were the sole reason, an alternative ownership arrangement could have been explored such as using Krish or Vijay's wife as the other owner. These are but two of many possibilities that could have been proposed. If the rejection were based on a misunderstanding by Verizon regarding either applicants background, such misunderstanding could have possibly been corrected to the satisfaction of Verizon. Krish, though, misrepresented that he was working with Verizon on finding out the reason and never suggested to Kaj that since he was getting no response, Kaj and Vijay as the owner/applicants should contact Verizon. Instead, he masked his true agenda and never told Kaj a word about his setting up a new corporation with a straw man to take the Verizon business for himself.

The assertion by Defendants of a refusal-to-deal defense when they made no disclosure of taking the Verizon opportunity would be an attempt "to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions." Meinhard v. Salmon, 164 N.E. at 546. The level of conduct required of fiduciaries should not consciously be lowered to that sought by Defendants.

Whether the court judges Defendants' conduct by the standards for a promoter, director, officer or agent, Defendants violated their fiduciary duties toward VP Enterprises by furtively diverting VP Enterprises' opportunity to P Communications for the benefit of its shareholder. See Demoulas v. Demoulas Super Mkts, Inc., 424 Mass. 501, 537, 677 N.E.2d 159, 184 (1997) (holding corporate director and officer liable for pursuing corporate opportunity for both his own and his family's behalf).

IV. STATUTE OF LIMITATIONS

Kaj anticipates that Defendants will argue that the case should be dismissed based on the three year statute of limitations in S.C. Code Ann. §15-3-530. Because of the discovery rule and the doctrines of equitable estoppel and fraudulent concealment, this defense is futile.

Under S.C. Code Ann. §15-3-530(5), there is a general three year statute of limitations applicable to actions for injury to the rights of another. The discovery rule under § 15-3-535 provides that "actions initiated under § 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. The "exercise of reasonable diligence" means that an injured party must act with some promptness where the facts and circumstances of injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when a full-blown theory of recovery is developed. Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 278 S.E.2d 333 (1981).

The S.C. Business Corporation Act contains two statutes of limitations for actions against directors and officers as follows:

> An action against a director [or officer] for failure to perform the duties imposed by this section must be commenced within three years after the cause of action

> has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently."

S.C. Code Ann. §§ 33-8-300 and -420 (for directors and officers respectively) (emphasis added).

Plaintiff filed his action on November 4, 2011. Defendants e-mailed their P Communications business plan to Verizon on April 5, 2008. P Communications and Verizon fully signed their Authorized Agency Agreement on July 18, 2008. None of this was disclosed to Kaj at that time. Therefore, under the discovery rule the statute of limitations could not commence at the above 2008 dates.

On October 18, 2008 Defendants told Kaj that Krish had opened his first Verizon store on that date. October 18, 2008 is three years and 3 weeks before the filing date, but the tolling principles applicable to the statutes of limitations and the particular facts of this case prevent the running of the statutes of limitations.

A. Fraudulent Concealment Prevents Running of the Statute of Limitations

It is established throughout the United States that fraudulent concealment that a cause of action exists tolls all statutes of limitation. 51 Am. Jur. 2d Limitation of Actions § 162. The South Carolina Supreme Court recognized this universal rule by stating:

> ... "[T]he practically universal rule is that deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action, thereby inducing him to postpone institution of suit will be held to toll the statute."... When the relationship ends, the duty to disclose, which is the basis of fraudulent concealment claim, ceases to exist absent extenuating circumstances such as the withholding or altering of plaintiff's medical records.

Strong v. Univ. of S. Carolina Sch. of Med., 316 S.C. 189, 191-92, 447 S.E.2d 850, 852 (1994).

The proof required to invoke fraudulent concealment has been explained as follows:

> The essence of fraudulent concealment is: (1) actual knowledge that a wrong has occurred, and (2) a fixed purpose to conceal the facts necessary for the plaintiff to know that the cause of action has accrued. Stated somewhat differently, to

> constitute concealment of a cause of action within the general rule tolling the statute of limitations on that ground, in the absence of a duty to disclose, there must be an actual misrepresentation of fact that fraudulently conceals the cause of action. In other words, there must be either an active suppression of the truth or a failure to disclose when there is a duty to speak, made with the intent to prevent inquiry or knowledge of the injury. There must be some concealment or fraud that is of such character as to prevent inquiry, or to elude investigation, or to mislead the plaintiff claiming the cause of action. Conduct amounting to false representation or concealment needs to be deceptive or fraudulent to equitably estop a defendant from asserting a statute of limitations defense... The "concealment" contemplated by a statute providing that fraudulent concealment tolls the running of the statute of limitations must consist of affirmative acts or representations calculated to lull or induce a claimant into delaying the filing of his or her claim, or to prevent a claimant from discovering a claim...

51 Am. Jur. 2d Limitation of Actions § 164.

Fraudulent concealment can thus occur either by (1) affirmative acts or representations or (2) silence by a fiduciary who is under a duty to disclose such material facts. DeLuna v. Burciaga, 223 Ill.2d 49, 76-77, 857 N.E.2d 229, 245-46 (2006)(holding attorney because of his fiduciary duty to client had duty to disclose his acts of legal malpractice, thus tolling statute of limitations by his failure to disclose his negligence).

1. Affirmative Acts and Misrepresentations.

When Kaj learned about the grand opening of P Communication's first Verizon store on October 18, 2008, Vijay falsely stated he know nothing about the store opening when he had been involved in the build-out of the store. Krish represented to Kaj that this was a good event for VP Enterprises because he had found someone with an existing Verizon license and was using it as an opportunity "to get our foot in the door" and that as soon as he could figure out a way to kick Corby out, the three parties would continue to pursue their original plans through VP Enterprises. (See Am. Compl. ¶35). Krish then represented to Kaj that it would take eight to twelve months to remove the existing shareholder/licensee out of the company.

Krish had actual knowledge that he was appropriating a corporate opportunity since he set up P Communications in secret. Further, Krish did not try to assert to Kaj that the VP Enterprises' plan was dead, but instead misrepresented that the use of a straw man was a way to accomplish the goals of VP Enterprises.

Moreover, Krish did not reveal Corby Phillips' last name but only referred to him as "Corby". He also did not disclose the name of the corporation, P Communications, to Kaj. Kaj thus had no means to dissect the inner structure or workings of the new company. Even assuming that Kaj could have learned Corby Phillips' full name and the name of P Communications, a review of the public records as then displayed on the Secretary of State's website would have shown a corporation formed in April 2008 (6 months before the grand opening of the Pelham Road store) with a registered agent of Corby Phillips. Neither of these facts would have been inconsistent with Krish's representations that Corby Phillips had an existing license on October 18, 2008 or that Corby was the sole owner. The facts Kaj could have learned upon further inquiry at that time would not have revealed anything to show Defendants were usurping VP Enterprises' opportunities for themselves. Those facts were not disclosed until June 2010, well within the statute of limitations.

2. Failure to Disclose by Fiduciary Constitutes Fraudulent Concealment.

"If there are fiduciary or confidential relations between the parties, or if the fraud itself is secret in its nature and such that its existence cannot be readily ascertained, the failure of a defendant to adequately disclose the facts that would give rise to a plaintiff's knowledge of a cause of action constitutes fraudulent conduct and is equivalent to fraudulent concealment." 51 Am. Jur.2d Limitation of Actions § 166.

In Demoulas v. Demoulas Super Mkts, Inc., supra, the Massachusetts Supreme Court held that fraudulent concealment tolls the statute of limitations, in an action for misappropriation of a corporate opportunity by directors and officers of a corporation, until such time as the defendants repudiated their fiduciary obligations. Demoulas v. Demoulas Super Mkts, Inc., 424 Mass. at 518-21, 677 N.E.2d at 173-76. The court cited the previously held requirement for fiduciaries that an oral repudiation of fiduciary obligations must be "open, definite, and *made to or brought to the attention*" of the other party. Id. at 519, 677 N.E.2d at 173. (emphasis in original).

The Demoulas court also rejected the argument that a plaintiff in such circumstance should be held to the "reasonable diligence" standard under the discovery rule. The court stated:

> An actual knowledge standard applies to a plaintiff who argues that a breach of fiduciary duty of disclosure constitutes fraudulent concealment... Such a plaintiff need only show that the facts on which the cause of action is based were not disclosed to him by the fiduciary. The plaintiff is not required to have made an independent investigation.

Demoulas v. Demoulas Super Mkts, Inc., 424 Mass. 501, 519-20, 677 N.E.2d 159, 174 (1997)

Krish's statements about "getting our foot in the door" and "getting back to our VP plan" fall far short of a repudiation of fiduciary obligations. Defendants' earliest repudiation of their duties to VP Enterprises did not occur until June 2010 when Krish rejected any equity interest for Kaj and when Defendants revealed that Vijay had been helping Krish open Verizon stores for P Communications in direct violation of Vijay's duties to VP Enterprises. That date is well within the statutes of limitations based on the November 4, 2011 filing date.

B. Equitable Estoppel Prevents Running of the Statute of Limitations

Under South Carolina case law, the doctrine of equitable estoppel may prevent a defendant's resort to the statute of limitations where a defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. See Hooper v. Ebenezer Senior

Servs & Rehab. Ctr., 377 S.C. 217, 239-40, 659 S.E.2d 213, 225 (Ct.App. 2008)(reversed on other grounds). The South Carolina Court of Appeals described the elements of equitable estoppel as follows:

> ...To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009) (internal citation omitted).

The same facts described for fraudulent concealment apply to meet all the elements of equitable estoppel. Therefore, the statute of limitations does not bar Plaintiff's case.

Conclusion

For the reasons stated above, Defendants are liable to Plaintiff Kaj Patel for their diversion of the corporate opportunity of VP Enterprises related to its plans to develop the Verizon independent dealership business and their oppressive and unfairly prejudicial conduct. The Court should thus hold them liable for the causes of action set forth in Plaintiff's Amended Complaint.

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ATTORNEYS FOR PLAINTIFF

July 18, 2014
Greenville, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., Plaintiffs, vs. Krish Patel, Vijay Patel, and P Communications, Inc., Defendants, And, VP Enterprises, Inc., Nominal Defendant	Case No. 2011-CP-23-7338 **PRE-TRIAL MEMORANDUM**

NOW COME Defendants Krish Patel, Vijay Patel, and P Communications, Inc., by and through their undersigned counsel, and submit this pre-trial memorandum.

INTRODUCTION

The parties in this matter are battling over the fruits of a company envisioned, created, and grown by Defendant Krish Patel ("Krish"). In late 2008, the individual parties in this case formed VP Enterprises, Inc. ("VP") for the singular purpose of acquiring an agency relationship with Verizon Wireless ("Verizon") and opening a handful of retail locations in Upstate South Carolina. Plaintiff Pankaj Patel ("Kaj") and Defendant Vijay Patel ("Vijay") each owned fifty-percent of VP, while Krish was an officer and employee. Krish is Vijay's son. Verizon denied

VP's application for an agency relationship. Kaj claims VP was rebuffed because Vijay failed to disclose relatively minor criminal charges in his background.

After Verizon denied VP's application, Krish was the impetus behind the creation of Defendant P Communications, Inc. ("P Comm"), which, like VP, was founded for the purpose of acquiring an agency relationship with Verizon and opening retail locations. Verizon granted P Comm's application. Krish did all the work to open two stores and, with Verizon's approval, became P Comm's owner. He has grown the company tremendously over the years, and P Comm now owns and operates more than forty stores.

Kaj claims that forming a company to gain an agency relationship with Verizon and open retail locations was his idea and that P Comm is executing his vision based on his business plan. These claims are not true. Even if they were, they are irrelevant because VP's application was denied, and it did not have the opportunity to achieve its singular goal: acquiring an agency relationship with Verizon and opening retail locations.

Kaj has indicated that he will parade before this court evidence that the Defendants—particularly Krish—made missteps and mistakes while attempting to achieve the goal of owning and operating independent Verizon wireless stores. Not a single one of these alleged missteps and mistakes is relevant to Plaintiffs' claims.

FACTUAL BACKGROUND

Kaj and Vijay each emigrated from India to the United States in the early 1980's. Years later, in Greenville, South Carolina, their families became friends. Kaj is an engineer. Vijay owns and operates a couple of hotels.

Krish—Vijay's son—has always been a hard worker with entrepreneurial spirit. While in middle school and high school, Krish had many retail related jobs. During college, he formed a

company that bought and sold real estate, but he also worked as a sales representative for a corporate-owned Verizon store. He held this full-time position from 2004 – 2007, while also attending college full-time. He was extremely successful with Verizon and ranked in the top ten-percent of sales representatives in the region. In late 2006, Krish became interested in owning and operating independent Verizon stores and began looking into how to begin a company that could accomplish this goal. In October 2007, at the age of twenty-one, Krish left Verizon and joined his father in the hotel business. But, he still wanted to own his own business. Since he knew how the Verizon retail business operated, a plan to open Verizon retail locations remained on the forefront of his mind.

VP Enterprises, Inc. – application denied

In early 2007, Kaj and Vijay began to informally discuss potential entrepreneurial endeavors. Krish joined in the conversation. The three of them discussed many possible investment opportunities including the following: buying a hotel in Charleston, a pine straw company in North Carolina, and many real estate opportunities. In late 2007, while Kaj, Vijay and Krish were traveling to inspect a potential investment, Krish educated Kaj and Vijay as to the possibility of forming a company that would own and operate Verizon retail stores. Unlike Krish, neither Kaj nor Vijay had any experience in the industry, and certainly no experience with Verizon.

At that time, the group agreed to form such a company and apply for an agency relationship with Verizon. Krish decided that he should not pursue an ownership stake in the company. He thought because of his youth and recent employment with Verizon, the application stood a better chance of being approved if older and experienced businessmen owned the

company that submitted the application. Thus, Kaj and Vijay formed VP for the sole purpose of applying for a Verizon agency relationship.

Kaj and Krish developed a business plan to be submitted with the Verizon application. The template for the business plan was provided to Krish by Kaj. (The business plan provided by Kaj is attached hereto as Exhibit A.) Krish did most of the substantive work to create the final business plan that was submitted to Verizon. They decided that, because of Krish's experience, he would run operations and would be listed as the treasurer and secretary of VP on the business plan. Kaj and Vijay, after all, were occupied with full time jobs and knew nothing about the wireless retail industry. All involved knew that Krish would run the stores and assume an ownership position at an appropriate time. VP submitted its application to Verizon on January 28, 2008.

Notwithstanding this plan, VP's application was denied. Until this suit was filed, no one outside of Verizon knew the reasons. During the course of discovery in this case, a 30(b)(6) designee for Verizon, Patricia Cook, testified "I can tell you that [VP's] application was denied based on nondisclosure." (Verizon 30(b)(6) at 10:17-18). "Nondisclosure," according to Verizon, meant that an individual failed to disclose relevant information on a questionnaire relating to his background. Verizon's designee elaborated, "[w]hen I run a background check on an individual, no information can come back that was not disclosed on the application. ***If they say they've not been involved in any litigation, any criminal offenses or that sort of thing and I find it, that's reason for rejection.***" (*Id.* at 12:12-17) (emphasis added). Nondisclosure of this sort, is the only apparent reason VP's application was denied.

P Communications, Inc. – a success story and fulfillment of Krish's idea

After VP's application was denied and the possibility of achieving its goal vanished, Krish did not give up on his goal of owning and operating independent Verizon retail locations. He approached an acquaintance, Corby Phillips ("Corby"), and asked if he would form a company and apply for an agency relationship with Verizon. Krish and Corby knew one another because Corby owned a sandwich shop next door to the Verizon store where Krish had previously worked. Corby agreed to form a company and submit an application. Krish hoped Verizon might approve the application of an experienced retailer such as Corby.

From the outset, Krish and Corby's agreement was that, if approved, Krish would pay Corby for establishing a company and acquiring a license in exchange for ownership of that company. After agreeing to these basic terms, Corby formed P Comm and applied for a Verizon agency relationship. Verizon approved P Comm's application, submitted in April 2008. Krish immediately began working on this business in earnest.

P Comm opened its first location on Pelham Road in Greenville, South Carolina in October 2008. In accordance with his and Corby's agreement, Krish did all the work to open the first store. He arranged all the financing, personally guaranteed all the loans, entered into the lease, oversaw all of the up-fitting of the property, acquired all the inventory, hired all the employees, and did anything else necessary to open the location. Krish even planned a party for October 18, 2008 to celebrate the grand-opening. After attending this party, Krish went directly to his parent's house to join a group of family friends, including Kaj, that had gathered there. Krish informed Kaj that he had just opened a new Verizon store on Pelham Road and that he hoped to own the company at some point in the future. Out of respect for Kaj, Krish told him that he would be willing to discuss potential opportunities for him and the Verizon business if he were to acquire it in the future.

Krish did, in fact, later acquire ownership of P Comm after he opened a second location and laid the groundwork for a third. Corby, in accordance with their arrangement, had done nothing. The evidence will show, and Kaj will admit that, on October 18, 2008, he knew of the agency and that Krish had opened a store.

Krish offers Kaj a potential opportunity

Kaj, Vijay, and Krish continued to discuss potential investment opportunities, including acquisition of hotels, convenience stores, and other real estate. Kaj, additionally, suggested to Krish that they could purchase a couple of existing wireless retail locations, but they did not discuss this idea in any significant fashion.

In the spring of 2010, consistent with their conversation on the day Krish opened the first P Comm retail location on Pelham Road, Krish asked Kaj to help him in the acquisition of a handful of already-existing, independently owned Verizon retail locations in the midlands of South Carolina. Kaj suggested that he and Krish purchase those stores together, each owning fifty-percent. Krish, however, wanted to purchase the stores on his own and hire Kaj to run them. Krish proposed a deal whereby Kaj would be paid as though he was a fifty-percent owner but not have any equity—or risk—associated with the operation. Kaj rejected this proposal and abandoned the idea. Krish—through P Comm—acquired the stores. Kaj and Krish never discussed investment in wireless retail again.

Krish's success makes the news

Krish continued to grow P Comm, attracting attention because of his success at such a young age. A prominent and widely distributed periodical, Town Magazine, published an article in its October 2011 issue highlighting Krish's success. Specifically, the author stated "Krish has built what you might call ***a wireless empire*** across much of South Carolina and northern Georgia

as President of [P Communications, d/b/a] Wireless Communications, a premium retailer for Verizon Wireless. He is also only 25 years old, and, no, ***he made his fortune*** the old fashioned way – he earned it."

Kaj then filed this suit more than three years after he had learned of Krish's efforts with P Comm and the opening of the company's first location on Pelham Road and approximately a year and a half since Kaj and Krish had last discussed doing anything in the wireless retail arena. Although Kaj had long known of Krish's endeavor's, it was his discovery that Krish was successful—and not that Krish was operating retail Verizon stores—that motivated him to attempt to jump onboard.

ARGUMENT

I. Kaj's claims are time-barred.

Kaj's claims are time-barred. The parties agree that Kaj learned on October 18, 2008 that Krish had joined forces with P Comm to pursue the opening of independently-owned Verizon retail locations. Kaj filed this suit on November 4, 2011—more than three (3) years after he knew or should have known of the claims he asserts. None of the statutes of limitation applicable to Kaj's individual claims are longer than three (3) years, and laches would similarly bar the equitable claims based on this unreasonable delay. (See chart attached hereto as Exhibit B.)

Kaj argues, however, that this Court—on equitable grounds—should toll the statutes of limitations. He is wrong. "Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations." *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008). "[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Hooper v. Ebeneezer Servs. and Rehab. Ctr.*, 386 S.C.

108, 117, 687 S.E.2d 29, 33 (2009). Equitable tolling is intended to protect a diligent plaintiff. Kaj is not a diligent plaintiff. There is no evidence that Kaj attempted to reincarnate the VP relationship. Kaj only filed this lawsuit after Krish's success was publicized in Town Magazine, which wrote that he "made a fortune."

For these reasons, this Court should refuse to extend relief to Kaj by tolling the statutes of limitations, and thus find that Kaj's claims are time-barred based on all applicable statutes of limitation and laches.

II. Even if not time-barred, Kaj's claims have no merit.

Kaj's complaint is an attempt to throw everything against the wall to see what might stick. He asserts claims for (1) dissolution of VP, (2) violation of standards of conduct for directors under S.C. Code Ann. § 33-8-300 against Vijay, (3) violation of standards of conduct for officers under § 33-8-420 against Vijay and Krish, (4) breach of fiduciary duty against Vijay and Krish, (5) an accounting from all Defendants, (6) breach of fiduciary duty for partnership liability, (7) fraud against Vijay and Krish, (8) constructive fraud against Vijay and Krish, (9) negligent misrepresentation against Vijay and Krish, (10) equitable disgorgement against all Defendants, (11) constructive trust against all Defendants, (12) a violation of the South Carolina Unfair Trade Practices Act, and (13) a declaratory judgment.

Notwithstanding the myriad of broadly-cast causes of action, this case boils down to a breach of fiduciary duty claim arising out of an alleged usurpation of a corporate opportunity. For reasons that will be more fully explained at trial, none of the defendants breached a fiduciary duty owed to the plaintiffs, and there was no corporate opportunity to usurp.

A. Fiduciary duty

In order to prevail on a claim for breach of fiduciary duty, a plaintiff must show:

(1) the existence of a fiduciary duty,
(2) a breach of that duty owed to the plaintiff by the defendant, and
(3) damages proximately resulting from the wrongful conduct of the defendant.

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). Defendants admit they owed Kaj and VP various fiduciary duties, but assert that these duties carried with them differing standards of care at various points in time throughout their relationship.[1]

With respect to the remaining elements of the claim, no matter what the applicable standard of care, there is no evidence that either Krish or Vijay did anything to violate any duty they owed Kaj and VP. And, notwithstanding the fact that no evidence of breach exists, there is also no evidence of damages. The only alleged breach from which damages could arguably flow is the usurpation of a corporate opportunity from VP.

B. Usurpation of corporate opportunity

Plaintiffs allege that the defendants usurped a corporate opportunity from VP—and thus breached their fiduciary duties—when P Comm applied for and received a Verizon agency relationship. The agency relationship, however, was not a corporate opportunity for two reasons: (1) VP had applied for and ***was denied*** an agency relationship with Verizon, and (2) P Comm's acquisition of a license did not preclude anyone—***including Kaj and VP***—from applying for and receiving an agency relationship with Verizon.

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[1] Prior to incorporation, the parties were "promoters" and shared fiduciary duties to the corporation and to one another similar to that of partners. *Bivens v. Watkins*, 313 S.C. 228, 232, 437 S.E.2d 132, 135 & n.4 (Ct. App. 1993) (citing 18 Am. Jur. 2d *Corporations* § 143 (1985)). However, once a party ceases acting as a promoter, *e.g.* inducing stock subscriptions, he or she is no longer a promoter. 18 Am. Jur. 2d *Corporations* §§ 104, 107. This occurs when "the corporation has been established. . . ." *See Old Dominion Copper Mining & Smelting Co. v. Bigelow*, 89 N.E. 193, 206 (Mass. 1909) aff'd, 225 U.S. 111 (1912); *Pub. Inv. Ltd. v. Bandeirante Corp.*, 740 F.2d 1222, 1235 n.72 (D.C. Cir. 1984); 18 Am. Jur. 2d *Corporations* § 107.

Once incorporated, however, the parties owed one another statutory and common law fiduciary responsibility to carry out their duties (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders. S.C. Code Ann. §§ 33-8-300; 420; South Carolina Corporate Practice Manual 454 (Gregory B. Adams et al eds., 2d ed. 2005).

1. Denial of VP's application – no longer any opportunity

"To establish a breach of fiduciary duty by usurping a corporate opportunity, the corporation must prove that an officer or director misappropriated a business opportunity that properly belongs to the corporation." *Landon v. S & H Mktg. Grp., Inc.*, 82 S.W.3d 666, 681 (Tex. App. 2002). Thus, in order to prove that the Defendants usurped a corporate opportunity, Kaj must first show that an agency relationship with Verizon was a corporate opportunity.

A corporate opportunity is something that the company has an "interest or reasonable expectancy" in. *Guth v. Loft, Inc.*, 5 A.2d 503, 511 (Del. 1939). The "interest or reasonable expectancy" required to establish a corporate opportunity "focuses on whether the corporation could realistically expect to seize and develop the opportunity." *Shapiro v. Greenfield*, 764 A.2d 270, 278 (Md. Ct. Spec. App. 2000); 18B Am. Jur. 2d *Corporations* § 1536 ("[T]he absence of an expectancy will render the corporate opportunity principle inapplicable."). "The interest-or-expectancy test . . . proscribes only those projects in which the corporation has an active commercial interest or expectancy." *Noble v. Lubrin*, 60 P.3d 1224, 1228 (Wash. Ct. App. 2003) (internal quotation marks omitted). Therefore, if a company abandons what may have once been a corporate opportunity, then it cannot succeed in a claim against an employee that chooses to pursue it. *Landon*, 82 S.W.3d at 681; *Maryland Metals, Inc. v. Metzner*, 382 A.2d 564, 573 (Md. 1978) ("[A]ppellant's procrastination and intransigence amounted to no less than an abandonment of whatever corporate opportunity might have existed . . . ."); 18B Am. Jur. 2d *Corporations* § 1551.

If a company is unable to undertake an opportunity then it is not, by definition, a corporate opportunity. In *Straight v. Goss*, the South Carolina Court of Appeals made clear that where a company "did not have the ability to acquire" an opportunity, there is no corporate

opportunity to usurp. *Straight v. Goss*, 383 S.C. 180, 200-01, 209-10, 678 S.E.2d 443, 454, 460 (Ct. App. 2009).

Thus, when VP's application was denied, the obtaining of an agency relationship with Verizon ceased to be a corporate opportunity and could have been pursued by anyone, including Krish. The evidence in this case makes clear that no one associated with VP thought they had any chance of resurrecting that application. No attempt was made to re-apply, ***and the money was removed*** from the VP bank account. The parties abandoned the enterprise, and either Krish or Kaj was free to pursue it by other means, such as P Comm.

2. An agency relationship is not a corporate opportunity.

The agency relationship Verizon denied VP but granted P Comm, is nothing more than an agreement to allow a company to sell Verizon's products and services. Anyone can apply for one. A corporate opportunity within the meaning of the law includes business prospects that are unique and particular, including things such as the:

- **Purchase/sale of share of unique stock.** *See Kohls v. Duthie*, 791 A.2d 772 (Del. Ch. 2000); *Yiannatsis v. Stephanis by Sterianou*, 653 A.2d 275 (Del. 1995); *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 833 A.2d 961 (Del. Ch. 2003).

- **Purchase of a unique company related to an ongoing enterprise.** *See Rapistan Corp. v. Michaels*, 511 N.W.2d 918 (Mich. Ct. App. 1994).

- **Purchase of unique corporate assets.** *See Collie v. Becknell*, 762 P.2d 727 (Colo. App. 1988).

- **Purchase unique real estate.** *See Carolina Park Assocs. LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012); *DiMaggio v. Rosario*, 950 N.E.2d 1272 (In. Ct. App. 2011); *Babb v. Estate of Watson*, No. 2008-UP-247, 2008 WL 9841508 (Ct. App. May 2, 2008); *Straight v. Goss*, 383 S.C. 180, 678 S.E.2d 443 (Ct. App. 2009); *Ne. Harbor Golf Club, Inc. v. Harris*, 725 A.2d 1018 (Me. 1999).

- **Acquisition of a unique and exclusive contract.** *See Klinicki v. Lundgren*, 695 P.2d 906 (Or. 1985).

An agency relationship with Verizon was not a unique business opportunity such as these. Even after P Comm entered into its agency agreement with Verizon, anyone—including Kaj and VP—could submit an application to acquire one. Therefore, because Kaj and/or VP could have done this, the agency relationship P Comm entered into with Verizon was not a corporate opportunity.

CONCLUSION

Based on the foregoing, and the evidence and argument to be presented at trial, the Defendants should prevail on all claims.

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July 18, 2014
Greenville, South Carolina

EXHIBIT A

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Company Description

Tava Grill, Inc., a South Carolina based company, will operate Tava Grill, a single unit, small to medium-size restaurant serving healthy Indian fusion cuisine. Outside catering will also be operated out of the restaurant. The restaurant will be located at _____ in Greenville, SC.

Mission Statement

The company's goal is that of a multi-faceted success. Our first responsibility is to the financial well-being of the restaurant. We will meet this goal while trying to consider; 1) serving fresh and healthy food. 2) Highest quality of food. 3) The best service to our customers and 4) the high quality of attitude, fairness, understanding, and generosity between management, staff, customers, and vendors. Awareness of all these factors and the responsible actions that result will give our efforts a sense of purpose and meaning beyond our basic financial goals.

Development & Status

The company was incorporated in September of 2005 and elected sub-chapter S. The founder is Parul Patel. Parul is the President. The restaurant will be operated and managed by four family members, Parul, Atul, Minal and Jyotin while Pankaj Patel will be the business advisor. Startup capital will be provided by Parul ($30,000), Atul ($20,000) and Jyotin ($10,000). Additional capital requirements of up to $50,000 have been arranged for at Bank of America and/or BB&T and will be drawn as needed.

A couple of suitable sites for the first restaurant were found last month and once the final location is picked, lease negotiations will be under way. The location will be around the Haywood Mall area and close to a dense population of the target market (Fluor, St. Francis, Greenville Hospital system, North Hill Medical, USPS, etc). Depending on the final location, the restaurant will start operating either immediately or by March 2006.

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Future Plans
After the business is meeting its projections by year Two, we will start developing a non-full service type of restaurant with a limited menu for deployment as franchise units. Our five year goal is to have 3 restaurants in the greater Greenville area with a combined annual profit of between $500,000 and $1,000,000.

Industry Analysis

Although the restaurant industry is very competitive, the lifestyle changes created by modern living continue to fuel its steady growth. More and more people have less time, resources, and ability to cook for themselves. Trends are very important and Tava Grill is well positioned in a niche market of Indian fusion cuisine, excellent service and healthy vegetarian and non-vegetarian foods at moderate prices.

The Restaurant Industry Today
The food service business is the third largest industry in the country. It accounts for over $476 billion annually in sales. More than 7 out of 10 eating and drinking places are single unit (independent) operations. The average American spends $910 of his/her income on meals away from home. This number has been increasing for the past seven years.

Products & Related Services

Tava Grill Restaurant will be offering a menu of food and beverages with a distinctive image. There will be three ways to purchase these products; table service at the restaurant, take-out from the restaurant, and delivery to home or office event/parties.

The Menu
The Tava Grill menu (see appendices) is moderate sized, and moderate priced offering a collection of Indian fusion dishes with a common theme -- healthy (low-fat, low cholesterol, natural ingredients), and flavorful. Our goal is to create the image of uniquely satisfying and still nutritious food. The menu will feature both vegetarian and non-vegetarian foods.
There has been an increased awareness of nutritional and health concerns in recent years and a growing market of people who now eat this style of cooking regularly.

Production
Food production and assembly will take place in the kitchen of the restaurant. Fresh vegetables, meat and dairy products will be used to crate all of the dishes from scratch. The chef will exercise strict standards of sanitation, quality production, and presentation or packaging over the kitchen and service staff.

Service
There will be three ways a customer can purchase food. They may sit down at one of the 75 seats in the dining room and get full service from a waitperson. A separate take-out counter will service those who wish to pick up their food. All of take-out

EXHIBIT A

food will be prepared to order with orders coming from either the website, telephone or fax. Delivery (an indirect form of take-out) will be available for planned events and parties.

The Target Market

The market for Tava Grill's products covers a large area of diverse and densely populated groups that would pay for and appreciate the fresh and healthy foods. It is also an area known for and catering to the demographic group we are targeting.

Market Location & Customers
The Haywood road area is one of the most desirable retail locations in Greenville. The customer base will come from 3 major segments;

- **Local population** -- the county of Greenville with a year-round population of 400,000.
- **Tourism** -- between hotels, motels, bed & breakfast rooms and inns, there are over 8,500 rooms available. Last year they were at 92% occupancy.
- **Local businesses** -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.
- **Venues:** Bi-Lo Center (16,000), Furman University Timmons Arena (4,750), Sirrine Stadium (13,000), Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)
- **Hotel Rooms:** 8,012 (Greenville County)

The food concept and product image of Tava Grill will attract 3 different customer profiles;

- **The student** -- more and more young people have developed healthy eating habits. Some also go through a "health food phase" while in college.
- **The health conscious person of any age or sex** -- this includes anyone who has committed to a healthy diet. Our unique vegetarian menu will offer a wide variety of foods to select from.
- **Curious and open-minded** -- "If you try it, you will like it." Through marketing, publicity, and word-of-mouth, people will seek out a new experience and learn that nutritious food can be tasty, fun, convenient, and inexpensive.
- **Large Indian and European community** -- Communities in Greenville, Anderson and Spartanburg that desire quality Indian cuisine.

The Competition

There are only two Indian restaurants in Greenville, Anderson and Spartanburg counties. Tava Grill will offer an innovative product in a familiar style at a competitive price. Our aggressive plans of take-out and delivery will also give us an advantage to create a good market share before the competition can adjust or similar concepts appear.

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Competitor's Profile
Competing with Tava Grill for the target market are these categories of food providers:

- Independent table service restaurants of similar menu and price structure.

Independent operators include India Palace, and Delhi Palace. Most are ethnic based and will carry at least two similar menu items. India Palace is a long-standing business while the other are fairly new. They are both doing very well despite their bad location, service and quality of food.
In addition neither company delivers prepared meals daily to offices.

Competitive Strategy
There are three major ways in which we will create an advantage over our competitors;

- product identity, quality, and novelty
- high employee motivation and good sales attitude
- innovative and aggressive service options.

Tava Grill will be the only restaurant among all the competition which focuses the entire menu on fresh healthy cooking. Each of the competitors offers at least one "healthy" selection on their menu. The target market will perceive Tava Grill as the destination location for fresh and healthy cooking.
Once they have tried the restaurant, their experience will be reinforced by friendly, efficient, knowledgeable service. Return and repeat business will be facilitated by accessable take-out and delivery options. At the time of this writing all of the competitors offered take-out.

Marketing Plan & Sales Strategy

Market Penetration
Entry into the market should not be a problem. The store has high visibility with heavy foot traffic all day long. The local residents always support new restaurants and the tourists do not have fixed preferences. In addition, Both Parul and Pankaj have been involved with the local Indian community since 1985. They have both served on the India Association of Greater Greenville (IAGG) committee at various times.

Marketing Strategy
Focusing on the unique aspect of the product theme (healthy, tasty foods) a mix of marketing vehicles will be created to convey our presence, our image, and our message.

- Print media -- local newspapers, magazines and student publications
- Hotel guides, concierge relations, Chamber of Commerce brochures
- Direct mail -- subscriber lists, offices for delivery
- Misc. -- yellow pages, charity events
- Internet Website

The marketing effort will be split into 3 phases;

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1) **Opening** -- An advanced notice sent out to our personal, business and community contacts. We want this to be a low key opening.
2) **Ongoing** -- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.
3) **Point of sale** -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Future plans and Strategic Opportunities
Catering to offices (even outside of our local area) may become a large part of gross sales. At that point a sales agent would be hired to directly market our products for daily delivery or catered functions.

Operations

Hours of Operation
The restaurant will be open for lunch and dinner 6 days a week. Service will begin at 11:00 AM and end at 2:00 PM for lunch and from 5:00 PM to 9:00 PM (11:00 PM on Friday and Saturday nights) for dinner. The restaurant will be closed Christmas, Thanksgiving, and the Fourth of July.

Employee Training & Education
Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the chef and be kept informed of the latest information on healthy eating.

Systems & Controls
A big emphasis is being placed on extensive research into the quality and integrity of our products. They will constantly be tested for our own high standards of freshness and purity. Food costs and inventory control will be handled by our computer system and checked daily by management.

Food Production
All the food will be prepared on the premises. The kitchen will be designed for high standards of sanitary efficiency and cleaned daily. All Food will be made to order.

Delivery & Catering
Food for delivery may be similar to take-out (prepared to order) or it may be prepared earlier and stocked. Catering will be treated as deliveries.

Management & Organization

Key Employees & Principals
Parul Patel, President.
Atul Patel, Vice President and General Manager
Minal Patel and Jyotin Patel, Executive chefs, Non-vegetarian and vegetarian respectively

EXHIBIT A

Compensation & Incentives
Tava Grill will offer competitive wages and salaries to all employees with benefit packages available to key personnel only.

Board of Directors
At the present, no outside board of directors will be retained.
Consultants & Professional Support Resources
At the present, no outside consults have been retained, excepting the design department at Best Equipment.

Long-Term Development & Exit Plan

Goals
Tava Grill is an innovative concept that targets a new, growing market. We assume that the market will respond, and grow quickly in the next 5 years. Our goals are to create a reputation of quality, consistancy and security (safety of food) that will make us the leader of a new style of dining.

Strategies
Our marketing efforts will be concentrated on take-out and delivery, the areas of most promising growth. As the market changes, new products may be added to maintain sales.

Milestones
After the restaurant opens, we will keep a close eye on sales and profit. If we are on target at the end of year 1, we will look to expand to a second unit.

Risk Evaluation
With any new venture, there is risk involved. The success of our project hinges on our unique menu, quality and freshness of our healthy food.

Cause of Action	Limitations Period	Legal Support
Dissolution – 33-14-300	Equitable action, laches apply	McDuffie v. O'Neal, 324 S.C. 297 (Ct. App. 1996); *Emery v. Smith*, 361 S.C. 207 (Ct. App. 2004)
Standards of Conduct (Directors) – 33-8-300, et seq.	3 years from violation, 2 years from when discovered or should have been discovered	S.C. Code Ann. 33-8-300(e)
Standards of Conduct (Officers) – 33-8-420, et seq.	3 years from violation, 2 years from when discovered or should have been discovered	S.C. Code Ann. 33-8-420(e)
Breach of Fiduciary Duty	3 years	S.C. Code Ann. 15-3-530; Magnolia North Property Owners Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348 (Ct. App. 2012)
Accounting	Equitable action, laches apply	Mazloom v. Mazloom, 382 S.C. 307, 319, 675 S.E.2d 746, 752 (Ct. App. 2009)
Breach of Fiduciary Duty for Partnership Liability	3 years	S.C. Code Ann. 15-3-530
Fraud	3 years	S.C. Code Ann. 15-3-530; Turner v. Milliman, 381 S.C. 101, 109, 10 (Ct. App. 2009)
Constructive Fraud	3 years	S.C. Code Ann. 15-3-530; Turner v. Milliman, 381 S.C. 101, 109, 671 S.E.2d 636, 640 (Ct. App. 2009)
Negligent Misrepresentation	3 years	S.C. Code Ann. 15-3-530; Brooks v. GAF Materials Corp., 284 F.R.D. 352 (D.S.C. 2012)
Equitable Disgorgement	Laches, not statute of limitations	See Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005) ("This Court has held that the statute of limitations does not apply to actions in equity.")
Constructive Trust	Laches, not statute of limitations	See Eldridge v. Eldridge, 398 S.C. 113, 123, 728 S.E.2d 24, 29 (2012)
SC Unfair Trade Practices Act	3 years	S.C. Code Ann. 39-5-150; Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 393, 503 S.E.2d 184, 188 (Ct. App. 1998)
Declaratory Judgment	Laches, not statute of limitations	Sloan v. Dep't of Transp., 379 S.C. 160, 174, 666 S.E.2d 236, 243 (2008)

EXHIBIT B

01505

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A NO: 2011-CP-23-7338
	)	
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.,	)	
	)	
Plaintiff,	)	**Motion for Involuntary Non-Suit Pursuant to Rule 41(b)**
	)	
v.	)	
	)	
Krish Patel, Vijay Patel, Keith R. Gailey, and P Communications, Inc.,	)	
	)	
Defendants,	)	
	)	
And,	)	
	)	
VP Enterprises, Inc.,	)	
	)	
Nominal Defendant.	)	

THE DEFENDANTS' MOTION FOR INVOLUNTARY NON-SUIT

Defendants Krish Patel, Vijay Patel, and P Communications, Inc., by and through their undersigned counsel, respectfully submit this Motion for Involuntary Non-Suit pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure.

STANDARD OF REVIEW

Rule 41(b) provides that "After the plaintiff ***in an action tried by the court without a jury*** has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff . . . ." Rule 41(b), SCRCP.

Unlike a Rule 50(a) motion for directed verdict, pursuant to Rule 41(b), the "trial judge clearly may dismiss the action even though the plaintiff may have established a prima facie case . . . [and may] weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." Johnson v. J.P. Stevens & Co., Inc., 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) (citing H. Lightsey & J. Flanagan, South Carolina Civil Procedure 368 (1985)). The Court may, after reviewing the plaintiff's evidence, find it unreliable and not worthy credence. In that event, the Court's decision is properly viewed as a non-jury action at law. Waterpointe, 342 S.C. at 58, 536 S.E.2d at 880 (Ct. App. 2000). In such cases, "the trial court's findings of fact will not be disturbed unless found to be without evidence which reasonably supports the court's findings." Stanley v. Atl. Title Ins. Co., 377 S.C. 405, 409, 661 S.E.2d 62, 64 (2008); Waterpoint, 342 S.C. 459, 536 S.E.2d at 881.

ARGUMENT

I. Plaintiff's claims are all barred by their applicable statutes of limitation or by laches.

A. Plaintiff's claims are barred.

Plaintiff's legal claims are barred by statutes of limitation because he acknowledges he knew or should have known about his claims well before he filed suit. Generally, accrual of a statute of limitations begins when "the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." Graham v. Welch, Roberts & Amburn, LLP, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013).

All Plaintiffs' claims have, at most, a three-year statute of limitations. However, the South Carolina Supreme Court has held that claims predicated upon a breach of fiduciary duty are codified by statutes that have a two-year limit from the date of discovery. Clearwater Trust v. Bunting, 367 S.C. 340, 350-51, 626 S.E.2d 334, 339-40 (2006). In this case, therefore,

Plaintiff's common law claims for Breach of Fiduciary Duty, Fraud, Constructive Fraud, and Negligent Misrepresentation must be brought within two years of discovery.

By Plaintiff's own admission, he became aware of Krish's new business selling Verizon products at least as early as "August to September 2008." (Kaj Dep. at 57). However, Plaintiff did not file his case until November 4, 2011.

Moreover, Plaintiff's equitable claims are barred by laches. "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or to enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Id. at 319, 675 S.E.2d at 753. If Plaintiff truly believed that Krish had stolen corporate opportunities from VP Enterprises, he should have pursued his rights when he found out. Instead, Plaintiff allowed Krish to devote years of his life and significant sums of money toward building P Communications only to step in over *three years* later and demand half the company. If Plaintiff had any rights in the profits of P Communications (which he does not), he "slumbered" on them far too long and his actions should be equitably barred.

B. Plaintiff's limitations periods should not be tolled.

Equitable tolling of the statute of limitation is an extraordinary remedy that is to be used sparingly. Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). It is intended to prevent unfairness to befall a "diligent plaintiff." Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 620 (Ct. App. 2008). Generally, it arises only in cases where "extraordinary circumstances prevented the plaintiff from filing despite his or her diligence . . . or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing

deadline to pass . . . ." Am. Legion Post 15 v. Horry Cnty., 381 S.C. 576, 583, 674 S.E.2d 181, 184 (Ct. App. 2009).

Nothing stopped Plaintiff from pursuing his rights. At most, Plaintiff alleges promises by Krish that he intended to use P Communications to "pursue their original plans through VP Enterprises as contemplated in the business plan [for VP]." (Amended Complaint ¶ 35). However, these alleged promises were never fulfilled and would not be the basis for equitable tolling even if they were. Originally, Krish owned no stake in P Communications and did not even have the ability to give any portion to Plaintiff. Once Krish purchased 100% of the stock of P Communications, he could not simply give it to Plaintiff because any such transfers must be approved by Verizon, who had already rejected VP as an agent. Kaj therefore cannot claim he was "induced or tricked" into not acting.

Likewise, tolling the statute of limitation based on claims of fraudulent concealment is not appropriate here. South Carolina has recognized this claim based solely on the "inherent in the relationship between physicians and patients." Maher v. Tietex Corp., 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998). Indeed, this exception applies specifically because of "the expert knowledge required to ascertain an injury." McClain v. Jarrard, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003). This is not a case where Plaintiff was unaware of his alleged injury. Kaj became aware of Krish opening Verizon stores without him and without VP Enterprises in October of 2008. Supposed promises to "fix" the matter in the future so as to get the VP plan back on track do not change the fact that Kaj had actual knowledge of injury. For that reason, tolling for fraudulent concealment does not apply.[1]

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[1] Plaintiff's reliance on Demoulas v. Demoulas Super Markets, Inc. is also unavailing. There, the Massachusetts court held that "[w]hen a defendant fraudulently conceals a cause of action from the knowledge of a plaintiff, the statute of limitations is tolled." 424 Mass. 501, 519, 677 N.E.2d 159, 174 (1997). Kaj knew about his cause of action, at the latest, in October of 2008.

Even if Plaintiff could articulate a viable reason that he did not file suit when he had the chance (which he does not), he nevertheless acknowledges that by the Spring of 2010, he was fully aware that Krish did not intend to pursue the original VP Enterprises plan. (Amended Complaint ¶¶ 40-44). Thus, Plaintiff still had time to satisfy the statutes of limitation for all his claims. Again, he did not do so. Plaintiff was not a "diligent plaintiff" deserving of an equitable remedy so rarely applied in South Carolina. Tolling should not apply here.

II. Plaintiff's claims are without merit.

Though Plaintiff's claims are varied, they essentially boil down to a claim for usurpation of corporate opportunities. For the reasons that follow, all of Plaintiff's claims must fail.

A. Plaintiff has not met his burden of proving a breach of fiduciary duty, or breaching statutory duties of Officers and Directors under S.C. Code Ann. §§ 33-8-330, 420.

In order to prevail on a claim for breach of fiduciary duty, a plaintiff must show:

(1) the existence of a fiduciary duty,
(2) a breach of that duty owed to the plaintiff by the defendant, and
(3) damages proximately resulting from the wrongful conduct of the defendant.

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). The existence of a fiduciary is a question for the court. Turpin v. Lowther, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013). However, except where a party is seeking an equitable remedy for the breach, "[a]n action for breach of fiduciary duty is an action at law and the trial judge's findings of fact will be upheld unless without evidentiary support." Kuznik v. Bees Ferry Associates, 342 S.C. 579, 589, 538 S.E.2d 15, 20 (Ct. App. 2000).

The common law breach of fiduciary duty has been codified and subsumed by statute. Clearwater Trust v. Bunting, 367 S.C. 340, 349-50, 626 S.E.2d 334, 339 (2006). Under

application statutes, Directors and officers of a corporation are must act "(1) in good faith, (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders." S.C. Code Ann. §§ 33-8-300(a), 420(a).[2]

a. Existence of a fiduciary duty

The existence or non-existence of a fiduciary relationship is a question for the court. Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). Here, Defendants acknowledge they owed different fiduciary duties to Plaintiff at different times.

i. Promoters

Prior to incorporation, promoters share a fiduciary duty to the corporation and to one another similar to that of partners. Bivens v. Watkins, 313 S.C. 228, 232 n.4, 437 S.E.2d 132, 135 & nn. 4-5 (Ct. App. 1993). However, once "the corporation has been established and an independent board of directors takes charge," the parties cease acting as a promoters. Old Dominion Copper Mining & Smelting Co. v. Bigelow, 203 Mass. 159, 188, 89 N.E. 193, 206 (1909) aff'd, 225 U.S. 111, 32 S. Ct. 641, 56 L. Ed. 1009 (1912); Pub. Inv. Ltd. v. Bandeirante Corp., 740 F.2d 1222, 1235 n.72 (D.C. Cir. 1984); 18 Am. Jur. 2d Corporations §§ 104, 107.

ii. Officers and Directors

As discussed above, officers and directors have statutory and common law fiduciary responsibility to carry out their duties (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

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[2] This is of particular importance because of the statute of limitations. The common law breach of fiduciary duty permitted claims brought within three (3) years of discovery. However, under the statutes, these claims must be brought within two (2) years of discovery. S.C. Code Ann. §§ 33-8-330(e), 420(e); see also Clearwater, at 350, 626 S.E.2d at 339 ("[The] breach of fiduciary duty claims against [the defendant] must be brought within the statute's terms.").

a. Defendants did not Breach any duty.

Fiduciaries breach their duty by not abiding by the applicable standards. For example, if a plaintiff wishes to show that a fiduciary did not act in good faith, it is incumbent upon the plaintiff to therefore demonstrate bad faith. Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 217, 352 S.E.2d 714, 716 (Ct. App. 1987) aff'd, 294 S.C. 86, 362 S.E.2d 874 (1987).

The only alleged breach of common law or statutory duty for which Plaintiff could potentially sustain damages is from a usurpation of corporate opportunity.

i. Corporate Opportunity

"To establish a breach of fiduciary duty by usurping a corporate opportunity, the corporation must prove that an officer or director misappropriated a business opportunity that properly belongs to the corporation." Landon v. S & H Mktg. Grp., Inc., 82 S.W.3d 666, 681 (Tex. App. 2002). Thus, in order to prove that Defendants have usurped a corporate opportunity, Plaintiff must first show that a corporate opportunity actually exists.

A. Inability to Undertake

A corporate opportunity is something that a company has an "interest or reasonable expectancy" in. Guth v. Loft, Inc., 23 Del. Ch. 255, 272-73, 5 A.2d 503, 511 (1939).; Aqua-Culture Technologies, Ltd. v. Holly, 677 So. 2d 171, 183 (Miss. 1996).

If a company is unable to undertake an opportunity then it is not, by definition, a corporate opportunity. In Straight v. Goss, the South Carolina Court of appeals made clear that where a company "did not have the ability to acquire" an opportunity, there is no corporate opportunity to usurp in the first place. Straight v. Goss, 383 S.C. 180, 200-01, 209-10, 678 S.E.2d 443, 454, 460 (Ct. App. 2009). Thus, "[w]hen a corporation is unable to avail itself of an opportunity, its employee, officer or director is free to exploit it." Beane v. Beane, 856 F. Supp.

2d 280, 311 (D.N.H. 2012) (citations omitted); Looney v. M-Squared, Inc., 262 Ga. App. 499, 502, 586 S.E.2d 44, 48 (2003); A. Teixeira & Co., Inc. v. Texeira, 699 A.2d 1383, 1388 (R.I. 1997); Field v. Allyn, 457 A.2d 1089, 1099 (Del. Ch. 1983); Energy Res. Corp., Inc. v. Porter, 14 Mass. App. Ct. 296, 300, 438 N.E.2d 391, 394 (1982); Fliegler v. Lawrence, 361 A.2d 218, 220 (Del. 1976); A. C. Petters Co., Inc. v. St. Cloud Enterprises, Inc., 301 Minn. 261, 266, 222 N.W.2d 83, 86 (1974); Schildberg Rock Products Co. v. Brooks, 258 Iowa 759, 769, 140 N.W.2d 132, 138 (1966); Solimine v. Hollander, 128 N.J. Eq. 228, 247, 16 A.2d 203, 215 (Ch. 1940); 18B Am. Jur. 2d Corporations §§ 1542, 1544, 1551. Similarly, where opportunities come to someone in their individual capacity, and is not essential to the corporation, that person is generally free to pursue the opportunity. Guth v. Loft, Inc., 23 Del. Ch. At 272-73, 5 A.2d at 511; 18B Am. Jur. 2d § 1542.

Where a non-employee entity refuses to allow a company to use its product, and the company is unable to pursue that market, employees of that company are freely able to pursue that "outside opportunity" for their own gain. Sci. Accessories Corp. v. Summagraphics Corp., 425 A.2d 957, 963-64 (Del. 1980); 18B Am. Jur. 2d Corporations § 1551.

"An opportunity may be embraced by a director as his own without accountability to the corporation if the corporation sought without success to obtain it." Nw. Terra Cotta Corp. v. Wilson, 74 Ill. App. 2d 38, 47, 219 N.E.2d 860, 864 (Ill. App. Ct. 1966) (citing 19 Am.Jur.2d, Corporations, § 1313); Puritan Med. Ctr., Inc. v. Cashman, 413 Mass. 167, 178, 596 N.E.2d 1004, 1011 (1992). Likewise, if a company abandons what may have once been a corporate opportunity, then it cannot succeed in a claim against an employee that chooses to pursue it. Landon, 82 S.W.3d at 681; Maryland Metals, Inc. v. Metzner, 282 Md. 31, 47, 382 A.2d 564, 573 (1978); 18B Am. Jur. 2d Corporations § 1551.

B. Nothing Unique

The agency relationship Verizon denied VP but granted P Comm, is nothing more than an agreement to allow a company to sell Verizon's products and services. Anyone can apply for one. A corporate opportunity within the meaning of the law includes business prospects that are unique and particular, including things such as the:

- **Purchase/sale of share of unique stock.** *See Kohls v. Duthie*, 791 A.2d 772 (Del. Ch. 2000); *Yiannatsis v. Stephanis by Sterianou*, 653 A.2d 275 (Del. 1995); *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 833 A.2d 961 (Del. Ch. 2003).

- **Purchase of a unique company related to an ongoing enterprise.** *See Rapistan Corp. v. Michaels*, 511 N.W.2d 918 (Mich. Ct. App. 1994).

- **Purchase of unique corporate assets.** *See Collie v. Becknell*, 762 P.2d 727 (Colo. App. 1988).

- **Purchase unique real estate.** *See Carolina Park Assocs. LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012); *DiMaggio v. Rosario*, 950 N.E.2d 1272 (In. Ct. App. 2011); *Babb v. Estate of Watson*, No. 2008-UP-247, 2008 WL 9841508 (Ct. App. May 2, 2008); *Straight v. Goss*, 383 S.C. 180, 678 S.E.2d 443 (Ct. App. 2009); *Ne. Harbor Golf Club, Inc. v. Harris*, 725 A.2d 1018 (Me. 1999).

- **Acquisition of a unique and exclusive contract.** *See Klinicki v. Lundgren*, 695 P.2d 906 (Or. 1985).

An agency relationship with Verizon was not a unique business opportunity such as these. Even after P Comm entered into its agency agreement with Verizon, anyone—including Kaj and VP—could submit an application to acquire one. Therefore, because Kaj and/or VP could have done this, the agency relationship P Comm entered into with Verizon was not a corporate opportunity.

b. Plaintiff cannot show any damages.

Damages are an essential element of a claim for breach of fiduciary duty. See RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012).

Any such damages must be ascertained with reasonable certainty. Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008).

1. Defendants Breached no Duty owed to Plaintiff.

Krish and Vijay acknowledge that at various times they owed fiduciary duties to the Plaintiff. Beginning "early to mid-2007" when the three men decided to pursue the possibility of becoming an agent of Verizon, the three acted as promoters to create and establish VP Enterprises, Inc. However, there is absolutely no evidence to suggest either Defendant did anything to violate his duties during this pre-incorporation stage. Plaintiff does not allege any violation during this stage in their Amended Complaint.

By February 14, 2008, VP Enterprises was established and a board of directors, Plaintiff and Vijay, were instituted. Once the corporation was established, the men ceased acting as promoters and instead took on their respective roles as officers and directors.

Unfortunately, for reasons not fully known, Verizon rejected VP Enterprises' bid to become a licensed agent. From there, Plaintiff, by his own admission, acknowledged that he thought there was not "any possible business operation with Verizon." (Amended Complaint ¶ 33). Thus, Plaintiff recognizes that VP Enterprises had neither the opportunity nor the ability to carry out its business purpose.

Once VP Enterprises' application was denied and it became clear that could not fulfill its stated purpose, Defendants decided, just as any "ordinarily prudent person in a like position would exercise under similar circumstances," to seek out other avenues to work with Verizon. Krish realized that VP was unable to avail itself of the opportunity and therefore searched for other way to pursue it.

Without a corporate opportunity belonging to VP Enterprises, Defendants breached no fiduciary duty to the company. Furthermore, without an opportunity to usurp, VP Enterprises (and by extension Plaintiff) did not and could not have suffered any damages. Krish merely embraced an opportunity that VP abandoned. There is no evidence to the contrary.

B. Plaintiff has not met his burden of proving a breach of fiduciary duty for partnership liability.

While partners are held to a high level of fiduciary duty with one another, Kuznik v. Bees Ferry Associates, 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct. App. 2000) (citing 59A Am. Jur. 2d Partnership § 420 (1987)), there is no partnership. There is no evidence to support a different finding. Plaintiff simply cannot show a violation of partnership fiduciary duties where no such entity ever existed.

C. Plaintiff has not met his burden of proving fraud as to Defendants Vijay Patel and Krish Patel.

In order to prevail on a claim for fraud, a plaintiff must prove the following nine elements by *clear, cogent, and convincing evidence* "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." Armstrong v. Collins, 366 S.C. 204, 218-19, 621 S.E.2d 368, 375 (2005) (citing Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct.App.2003)).

a. Representation

The representation relied on by a plaintiff must concern an existing fact. Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct. App. 1995). Mere unfilled promises cannot sustain a claim for fraud. Woodward v. Todd, 270 S.C. 82, 86,

240 S.E.2d 641, 643 (1978); Emerson v. Powell, 283 S.C. 293, 297, 321 S.E.2d 629, 632 (Ct. App. 1984).

b. Falsity

A statement must be false at the time it was made and cannot simply become untrue later. Mendelsohn v. Whitfield, 312 S.C. 17, 24, 430 S.E.2d 524, 529 (Ct. App. 1993), modified on other grounds, 312 S.C. 226, 439 S.E.2d 845 (1994).

c. Materiality

Generally, materiality exists only where an objective, reasonable person would have been induced to act based on the representation made. Culbreath v. Investors Syndicate, 203 S.C. 213, 26 S.E.2d 809, 812 (1943).

d. Defendants' Knowledge of Falsity

A plaintiff must demonstrate that a defendant either knew the material representation was false or showed reckless disregard for its truth. Goodwin v. Dawkins, 282 S.C. 40, 43, 317 S.E.2d 449, 451 (1984).

e. Defendants' Intent

"[T]he intent to deceive is an essential element of an action for fraud." Smith v. Hastie, 367 S.C. 410, 416, 626 S.E.2d 13, 16 (Ct. App. 2005).

f. Plaintiff's Ignorance

Knowledge can be imputed to a plaintiff where they are in position to know whether the representation was false. Armstrong v. Collins, 366 S.C. 204, 219, 621 S.E.2d 368, 375 (Ct. App. 2005); see also West v. Gladney, 341 S.C. 127, 134-35, 533 S.E.2d 334, 338 (Ct. App. 2000).

g. Reliance

In order to prove fraud, a plaintiff must show that he relied on the representation. Moorhead v. First Piedmont Bank & Trust Co., 273 S.C. 356, 359, 256 S.E.2d 414, 416 (1979); Thackston v. Shelton, 178 S.C. 240, 182 S.E. 436, 438 (1935); Robertson v. First Union Nat. Bank, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002); Burns v. Gardner, 328 S.C. 608, 616, 493 S.E.2d 356, 360 (Ct. App. 1997).

h. Right to Rely

A plaintiff cannot claim a right to rely in cases of arm-length transactions between "mature, educated people" absent a fiduciary relationship. Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003). This is particularly true in business transactions where one is expected to utilize caution to protect and safeguard their own interests. Id.

i. Damages

There can be no claim for fraud without establishing the essential element of damages. Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). Moreover, damage claims cannot be based on conjecture or speculation. Moore v. Moore, 360 S.C. 241, 255, 599 S.E.2d 467, 474 (Ct. App. 2004).

1. Affirmative Defenses

A person fully aware of alleged fraud committed against them may thereafter waive their claims by acting in a manner inconsistent with pursuing damages or by acting with unreasonable delay in bringing their claims. Bull v. Metro. Life Ins. Co., 195 S.C. 536, 12 S.E.2d 24, 26 (1940); McKay v. Anheuser-Busch, Inc., 199 S.C. 335, 19 S.E.2d 457, 462 (1942); Young v. Young, 111 S.C. 347, 97 S.E. 839, 840 (1919); see also Citizens & S. Sec. Corp. v. Braten, 733 F. Supp. 655, 668 (S.D.N.Y. 1990) (relying on Bull).

2. Plaintiff cannot sustain a claim for Fraud.

Plaintiff simply cannot show that Defendants Vijay or Krish defrauded him. As apparent support for his fraud claim, Plaintiff points out that Defendants told him "they would be developing a business plan with said Plaintiff for owning and operating multiple Verizon stores . . ." (Amended Complaint ¶ 80). However, this representation is true. There is simply no evidence whatsoever to even suggest that during this time either Defendant was doing anything other than what they honestly represented to Plaintiff.[3]

Plaintiff also alleges that Defendants "induced" him to invest money into VP. In fact, when money was invested, all parties hoped the application would be approved and they would become a licensed agent of Verizon. However, once the application was denied, they owed each other no duties.

Finally, Plaintiff alleges that Defendants induced him to continue believing that VP Enterprises would someday have Verizon stores of its own. Even if these supposed representations actually occurred, which they did not, they cannot be the basis for claim of fraud. The promise that Defendants would one day hope to get Plaintiff involved with their present company is not a representation of an existing fact.

Moreover, Plaintiff cannot show that he was ignorant to any supposed representations' falsity, that he relied on them, or that he had a right to rely. Plaintiff's logic simply makes no sense. Plaintiff was well-aware that Verizon must approve any organization that wanted to act as its licensed agent. Also, he was well-aware that Verizon had rejected VP Enterprises as an agent.

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[3] Furthermore, because the only basis for the claim stems from alleged statements made by Defendants stemming from their fiduciary duty to Plaintiff, the claims must be brought within the two year statute of limitations. Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006). Instead, they were brought over *three years* later.

Thus, any alleged representation by Defendants that they were going to reinstate the VP Enterprises plan simply could not have been true and Plaintiff knew it.

D. Plaintiff has not met his burden of proving constructive fraud.

A claim for constructive fraud requires proving all nine elements of actual fraud, see supra, except for intent. Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002) (quoting Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App. 1993)).

However, "[t]he right to rely must be determined in light of the plaintiffs duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." Armstrong, 366 S.C. at 219, 621 S.E.2d at 375 (quoting Regions Bank, 354 S.C. at 672, 582 S.E.2d at 445).

E. Plaintiff has not met his burden of proving negligent misrepresentation against Defendants Vijay Patel and Krish Patel.

To succeed in a claim for negligent misrepresentation, a plaintiff must show: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation." Turner v. Milliman, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011).

a. False Representation

"To be actionable, the representation must relate to a present or pre-existing fact and be false when made." Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993). Moreover, the claim cannot be based on unfilled promises. Turner v. Milliman, 392

S.C. 116, 123, 708 S.E.2d 766, 769-70 (2011). Nor can a statement be false when the plaintiff can find, with reasonable diligence, the truth. AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992).

b. Defendants' Pecuniary Interest

Generally, demonstrating a pecuniary interest requires a showing that the representation occurred in the course of a defendant's business, profession, or employment. Robertson v. First Union Nat. Bank, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002).

c. Defendants' Duty of Care

In negligent misrepresentation cases, a duty only exists where a defendant has some special level of knowledge or expertise about the matter being represented. AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). Where a duty does exist, it is only necessary to exercise whatever care a reasonable person would under the circumstances. Midland Mortgage Corp. v. Wells Fargo Bank, N.A., 926 F. Supp. 2d 780, 787 (D.S.C. 2013) (quoting Strasburger).

d. Breach of Duty

There can be no claim for negligent representation where there is no breach of duty. Turner, 392 S.C. at 123, 708 S.E.2d at 770.

e. Justifiable Reliance

"The recipient of a negligent misrepresentation is barred from recovery for pecuniary loss suffered in reliance upon it if he is negligent in so relying." ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 320 S.C. 143, 172, 463 S.E.2d 618, 635 (Ct. App. 1995) aff'd in part, rev'd in part on other grounds, 327 S.C. 238, 489 S.E.2d 470 (1997). It is unreasonable rely on a false

misstatement if the plaintiff knows or should know the truth. West v. Gladney, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).

f. Plaintiff's Pecuniary Loss

A claimant must show that the misrepresentation was the proximate cause of any losses suffered. ML-Lee, 320 S.C. at 174, 463 S.E.2d at 636. Damage claims cannot be based on "conjecture, guess or speculation." Armstrong v. Collins, 366 S.C. 204, 226, 621 S.E.2d 368, 379 (Ct. App. 2005).

1. Affirmative Defenses

a. Contributory Negligence

Negligent misrepresentation is subject to the defense of comparative negligence. Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App. 1992) (finding that contributory negligence applies to claim); but see Nelson v. Concrete Supply Co., 303 S.C. 243, 244-45, 399 S.E.2d 783, 784 (1991) (adopting comparative negligence in South Carolina). Thus, if a plaintiff is negligent in acting on or relying on a representation, its recovery will be reduced or barred accordingly. ML-Lee, 320 S.C. at 172, 463 S.E.2d at 635 (quoting Restatement (Second) of Torts § 552A (1977)).

b. Assumption of Risk

Claims are also defeated to the extent a plaintiff assumes a known risk in undertaking an action. Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998).

2. Plaintiff cannot support its Claim.

There is no evidence that Defendants ever negligently misrepresented anything to Plaintiff. The only support that Plaintiff provides for this claim is an allegation that Defendants

told him "they would be developing a business plan with said Plaintiff for owning and operating multiple Verizon stores." (Amended Complaint ¶ 97). However, this representation is true.[4]

Defendants had no pecuniary interest in falsely representing to Plaintiff that VP Enterprises would hopefully someday operate Verizon stores. Krish was sole owner of P Communications and Vijay acted as the company's vice president. Meanwhile, VP Enterprises has no stores and no opportunity for stores.

Moreover, Plaintiff cannot show that he was ignorant to any supposed representations' falsity, that he relied on them, or that he had a right to rely. Plaintiff was well-aware that Verizon must approve any organization that wanted to act as its license agent. Also, he was well-aware that Verizon had rejected VP Enterprises as an agent. Thus, any alleged representation by Defendants that they were going to reinstate the VP Enterprises plan simply could not have been true and Plaintiff knew it.

F. Plaintiff has not met his burden of proving a violation of the South Carolina Unfair Trade Practices Act.

In order to prevail on a claim for violation of the South Carolina Unfair Trade Practices Act (SCUTPA), the plaintiff must show "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010).

[4] Furthermore, because the only basis for the claim stems from alleged statements made by Defendants stemming from their fiduciary duty to Plaintiff, the claims must be brought within the two year statute of limitations. Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006). Instead, they were brought over *three years* later.

a. Unfair or Deceptive Act

While the courts have provided a clear rule, a review of the case law shows that where an actor uses deceptive tactics to induce another to act, the courts will find an unfair or deceptive act. See, e.g., Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 638, 564 S.E.2d 653, 666 (2002) (advertising gambling jackpots in excess of statutory limit); Global Prot. Corp. v. Halbersberg, 332 S.C. 149, 157, 503 S.E.2d 483, 487 (Ct. App. 1998) (copying a competitor's packaging, including logos); Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) (selling a wrecked and repaired truck of no value without disclosing its history); City of Charleston, SC v. Hotels.com, LP, 487 F. Supp. 2d 676, 681 (D.S.C. 2007) (collecting more in taxes than were remitted to the government).

On the other hand, where a party acts out of its own interest in a way that only protects or broadcasts those interests, the fact that such action may be injurious to another party does not make it unfair or deceptive. Bessinger v. Bi-Lo, Inc., 366 S.C. 426, 432, 622 S.E.2d 564, 567 (Ct. App. 2005) (grocery store's decision to stop doing business with company that placed racist labels on its products was within its "right to choose with whom they conduct their business"); Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993) (telling a customer that someone's services were unacceptable was not unfair or deceptive where customers had a right to choose with whom they do business).

b. Affecting Public Interest

Though "repetition" is a common basis for the claim, "[a]n unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace. . . ." Id., at 479, 351 S.E.2d at 349-50; see also Bessinger v. Food Lion, Inc., 305 F. Supp. 2d 574, 581 (D.S.C. 2003) aff'd sub nom. Bessinger v. Food Lion, LLC, 115 F. App'x 636

(4th Cir. 2004) ("[C]onduct that affects only the parties to the transaction and not the public interest provides no basis for a SCUTPA claim."). Repetition must endanger other members of the public and not merely create the possibility that the same plaintiff will be injured again. See, e.g., Singleton v. Stokes Motors, Inc., 358 S.C. 369, 381, 595 S.E.2d 461, 468 (2004); Daisy Outdoor Adver. Co., Inc. v. Abbott, 322 S.C. 489, 496, 473 S.E.2d 47, 51 (1996); Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 524, 381 S.E.2d 906, 909 (1989); Florence Paper Co. v. Orphan, 298 S.C. 210, 213, 379 S.E.2d 289, 291 (1989); Jefferies v. Phillips, 316 S.C. 523, 529, 451 S.E.2d 21, 24 (Ct. App. 1994); Barnes v. Jones Chevrolet Co., Inc., 292 S.C. 607, 613, 358 S.E.2d 156, 160 (Ct. App. 1987).

c. Proximate Cause

Plaintiffs must show that any damages they suffer occured "as a result of" the defendant's unfair or deceptive practice. Wogan v. Kunze, 366 S.C. 583, 607, 623 S.E.2d 107, 120 (Ct. App. 2005) (quoting S.C. Code Ann. § 39-5-140).

d. Damages

Damages are essential to a claim under SCUTPA. Without a showing of damages, the claim will fail. Charleston Lumber Co., Inc. v. Miller Hous. Corp., 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995). Moreover, damage claims cannot be based on conjecture or speculation. Moore v. Moore, 360 S.C. 241, 255, 599 S.E.2d 467, 474 (Ct. App. 2004).

1. Affirmative Defenses

Securities transactions are "subject to strict regulation and must comply with stringent requirements," and are therefore exempted from SCUPTA. Unisys Corp. v. S. Carolina Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 176, 551 S.E.2d 263,

273 (2001) (citing State ex rel. McLeod v. Rhoades, 275 S.C. 104, 107, 267 S.E.2d 539, 541 (1980)).

2. Plaintiff cannot support a claim for Unfair Trade Practices.

Plaintiff simply cannot establish that anything Defendants did or told him was unfair or deceptive. In fact, the evidence shows that everything Defendants told Plaintiff was either true or, at most, hopes and aspirations for future arrangements that later fell through. Furthermore, nothing in this case affects public interests. In a misguided attempt to show repetition, Plaintiff attempts to allege that Defendants have acted in an unfair or deceptive manner toward P Communication's original owner, Corby Phillips. Ostensibly, Plaintiff is referring to purchases of the shares of P Communications that occurred between Krish and Corby Phillips. However, as purchases of securities, they are specifically exempt from SCUTPA and therefore cannot form the basis for repetition, even if they were true.

Finally, Plaintiff can point to no damages he suffered from Defendants. Once VP Enterprises was rejected by Verizon, Defendants moved on and found another way to work with them. Defendants' resilience and ingenuity in breaking into the market after their initial efforts had been thwarted does not harm Plaintiff, who could have done the exact same thing.

G. Plaintiff has not met his burden for dissolution and/or buyout of shares of VP Enterprises under South Carolina Code Ann. § 33-14-300 *et. seq.*

In order for a court to dissolve a corporation, the plaintiff must show deadlock; illegal, fraudulent, oppressive, or unfairly prejudicial action by directors or persons in control; waste or misapplication of corporate assets; abandonment of corporate purpose; or that the duration of the entity as stated in the articles of incorporation has expired. S.C. Code Ann. § 33-14-300(2).

Plaintiff's only articulated basis for dissolution in this matter, see Kiriakides v. Atlas Food Sys. & Servs., Inc., 343 S.C. 587, 605 n.28, 541 S.E.2d 257, 267 n.28 (2001), comes from

an alleged oppression through usurpation of corporate opportunities. However, as fully discussed, there simply is no corporate opportunity to usurp in this case.

Furthermore, Plaintiff is seeking dissolution of a company that has already been dissolved. VP Enterprises was administratively dissolved in June, 2011. It is axiomatic that this Court cannot dissolve something that has already been disolved.

H. Plaintiff has not met his burden of proving that he is entitled to an accounting from all Defendants.

Partners may claim an accounting pursuant to S.C. Code Ann. § 33-41-550. However, this basis does not support the claim because there is no partnership in this case and there never was.

Shareholders of a statutory close corporation may petition for an accounting where there is deadlock, grounds for dissolution, or conduct otherwise "illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner" perpetrated by directors or persons in control. S.C. Code Ann. §§ 33-18-400, 410(a)(5). Thus, in order to petition the court for an accounting, it stands to reason that the claimant must show two things: First, the claimant must be shareholder. Second, the claimant must show grounds for dissolution or other misfeasance by directors or control persons.

Insofar as Plaintiff seeks an accounting as a shareholder, his claim is misplaced. VP Enterprises no longer exists and there is nothing to account. Also, Plaintiff provides no basis for his seeking an accounting of P Communications. He is not a shareholder of that company. Furthermore, Plaintiff has already received an accounting during discovery and everything was turned over.

I. Plaintiff has not met his burden of proving that he is entitled to equitable disgorgement, constructive trust, or declaratory judgment.

Disgorgement, constructive trust, and declaratory judgment are remedies, not standalone causes of action. In order to be entitled to any, Plaintiff must first show that Defendant is liable to him under some claim. See, e.g., Great-W. Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 229, 122 S. Ct. 708, 723, 151 L. Ed. 2d 635 (2002) (equitable disgorgement); Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010) (same); Gordon v. Busbee, 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012) (constructive trust); Tourism Expenditure Review Comm. v. City of Myrtle Beach, 403 S.C. 76, 82, 742 S.E.2d 371, 374 (2013) (declaratory judgment).

As discussed herein throughout, Plaintiff is unable to show that Defendants are liable under any of the claims plead. It follows, then, that Plaintiff cannot establish a right to disgorgement, constructive trust, or declaratory judgment.

CONCLUSION

For the reasons stated herein, Plaintiff's claims should be dismissed in full with prejudice.

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Respectfully submitted this
22nd day of July, 2014

Cause of Action	Limitations Period	Legal Support
Dissolution – 33-14-300	Equitable action, laches apply	McDuffie v. O'Neal, 324 S.C. 297 (Ct. App. 1996). *Emery v. Smith*, 361 S.C. 207 (Ct. App. 2004)
Standards of Conduct (Directors) – 33-8-300, et seq.	3 years from violation; 2 years from when discovered or should have been discovered	S.C. Code Ann. 33-8-300(e)
Standards of Conduct (Officers) – 33-8-420, et seq.	3 years from violation; 2 years from when discovered or should have been discovered	S.C. Code Ann. 33-8-420(e)
Breach of Fiduciary Duty	2 years from date of discovery	S.C. Code Ann. 15-3-530; Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc., 397 S.C. 348 (Ct. App. 2012); Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006)
Accounting	Equitable action, laches apply	Mazloom v. Mazloom, 382 S.C. 307, 319, 675 S.E.2d 746, 752 (Ct. App. 2009)
Breach of Fiduciary Duty for Partnership Liability	2 years from date of discovery	S.C. Code Ann. 15-3-530; Clearwater Trust, 367 S.C. 340, 626 S.E.2d 334.
Fraud	2 years from date of discovery	S.C. Code Ann. 15-3-530; Turner v. Milliman, 381 S.C. 101, 109-10 (Ct. App. 2009); Clearwater Trust, 367 S.C. 340, 626 S.E.2d 334.
Constructive Fraud	2 years from date of discovery	S.C. Code Ann. § 15-3-530; Turner v. Milliman, 381 S.C. 101, 109, 671 S.E.2d 636, 640 (Ct. App. 2009); Clearwater Trust, 367 S.C. 340, 626 S.E.2d 334.
Negligent Misrepresentation	2 years from date of discovery	S.C. Code Ann. 15-3-530; Brooks v. GAF Materials Corp., 284 F.R.D. 352 (D.S.C. 2012); Clearwater Trust, 367 S.C. 340, 626 S.E.2d 334.
Equitable Disgorgement	Laches, not statute of limitations	See Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005) ("This Court has held that the statute of limitations does not apply to actions in equity.")
Constructive Trust	Laches, not statute of limitations	See Eldridge v. Eldridge, 398 S.C. 113, 123, 728 S.E.2d 24, 29 (2012)
SC Unfair Trade Practices Act	3 years from date of discovery	S.C. Code Ann. 39-5-150; Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 393, 503 S.E.2d 184, 188 (Ct. App. 1998)
Declaratory Judgment	Laches, not statute of limitations	Sloan v. Dep't of Transp., 379 S.C. 160, 174, 666 S.E.2d 236, 243 (2008)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and P Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 5 AM 10:12

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR INVOLUNTARY NON-SUIT UNDER RULE 41(b)

Plaintiff, Pankaj Patel ("Kaj"), responds to Defendants motion for involuntary non-suit made after the close of Plaintiff's evidence and subsequently renewed after the close of all evidence. The Court did not rule on Defendants' motion after the close of Plaintiff's evidence and deferred ruling on Defendants' renewed motion made at the conclusion of all testimony. Based upon the law, facts in evidence and arguments set forth herein, Defendants' motion should be denied. Defendants Krish Patel ("Krish") and Vijay Patel ("Vijay") were officers, directors, promoters and/or co-venturers of VP Enterprises, Inc. ("VP Enterprises") at, and during, the numerous instances of material concealment from and misrepresentations to Kaj – a fellow officer, director and co-venturer.

STANDARD OF REVIEW

A motion for involuntary non-suit serves a similar function in non-jury trials as a directed verdict motion does in civil jury trials. See Rule 41(b) SCRCP, Rule 50(a) SCRCP; see also Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers § 4:47 at 316 (5th ed. 2012). The presentation of evidence by the defendant waives the right to have the court review the motion only in the light of the plaintiff's evidence alone. Evans v. Wabash Life Ins. Co., 247 S.C. 464, 148 S.E.2d 153 (1966). Therefore, for a motion for involuntary non-suit made after the close of all evidence, the court must consider all evidence presented, not just evidence presented in the plaintiff's case in chief.

Plaintiff's claims involve a breach of fiduciary duty by Defendants for their usurpation of a corporate opportunity of VP Enterprises, Inc. ("VP Enterprises"), for conduct that is fraudulent, oppressive, or unfairly prejudicial, and for violation of the statutory duties of directors and officers under S.C. Code Ann. §§ 33-8-300 and 420.[1] Plaintiff's causes of action pursued at trial were equitable claims. A claim for breach of fiduciary duty may be in equity or at law depending on the relief sought. Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). In this case, Plaintiff has sought remedies of accounting, constructive trust and disgorgement, all of which are equitable claims. The parties agreed to bifurcate the proceedings in this action between liability and remedies due to the complexity of the equitable remedies that could be fashioned and the expense of damage expert testimonies. Thus the primary remedy is equitable, making this matter an equitable action. See Historic Charleston Holdings, LLC v. Mallon, 381

[1] Plaintiff also brought causes of action for fraud, constructive fraud, negligent misrepresentation and violation of the South Carolina Unfair Trade Practices act, all legal actions. Plaintiff did not pursue these causes of action at trial and hereby agrees to dismiss such claims.

S.C. 417, 427, 673 S.E.2d 448, 453 (2009) ("An action for an accounting sounds in equity."); see also Lollis v. Lollis, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987) ("An action to declare a constructive trust is in equity"); see also Verenes v. Alvanos, 387 S.C. at 17, 690 S.E.2d at 773 (stating disgorgement is an equitable remedy). This case was also filed as a shareholder derivative suit which is a suit in equity. See Straight v. Goss, 383 S.C. 180, 207-208, 678 S.E.2d 443, 458 (Ct.App. 2009).

ARGUMENT

I. Plaintiff's claims are within the applicable statutes of limitation and laches.

A. Credibility of witnesses supports Kaj's testimony that Defendants fraudulently concealed the statute of limitations

Kaj testified that Krish made material misrepresentations to him on the night of October 18, 2008 about the status of VP Enterprises and the parties' Verizon venture. Kaj contends these misrepresentations fraudulently concealed the wrongs Defendants were committing and thus tolled the statute of limitations. Krish later testified that he made full and truthful disclosures to Kaj that night. Vijay did not testify. Determining the credibility of the two main witnesses – Kaj Patel versus Krish Patel – therefore is essential to the statute of limitations issue.

The evidence from the documents presented at trial and from the disinterested witnesses Corby Phillips and Mike Pavlick clearly shows that the testimony of Kaj is significantly more credible. The evidence established the following:

Krish commits two acts of perjury to the IRS:

- Krish Patel misrepresented his position as president of P Communications on the IRS Form 2553 – Sub Chapter S Election, which was signed under penalties of perjury. (Pl. Trial Doc. 165);

- Krish Patel misrepresented on the same form that he acquired the shares on September 1, 2008 when actually the earliest record of any change in ownership of P Communications occurred on November 19, 2008. (Pl. Trial Doc. 165);

Krish makes two false certifications to the S.C. Department of Revenue:

- Krish Patel represented to the Department of Revenue on the Business Tax Application for P Communications that he was the president of the corporation on September 19, 2008 when he was not. (Pl. Trial Doc. 163);

- Krish Patel represented in the Business Tax Application to the Department of Revenue that he owned 46.5% of the shares in P Communications on September 19, 2008 when he in fact owned no shares. (Id.);

Krish makes multiple false certifications to BB&T Bank:

- Krish Patel represented (1) he was president of P Communications to BB&T Bank in order to obtain a loan on August 25, 2008, and (2) that the board of directors of P Communications duly adopted at a meeting of that date that he was authorized to obtain the loan by the board. (Pl. Trial Doc. 263A).[2]

Vijay provided false criminal history to Verizon:

- Vijay represented to Verizon on his Agent Application that he had no criminal records when in fact he had been convicted for shoplifting on or about December 14, 2005 in Greenville County. (Pl. Trial Docs. 1-2A and 116).

Krish failed to inform Kaj Verizon terminated his employment

- Krish admitted at trial Verizon terminated him because of improper use of Verizon phone connections for his family members.

In contrast, Defendants in frustration tried to portray Kaj Patel as having lied on the VP Enterprises Agent application form by not declaring a $2,500 magistrate court lawsuit against his landscaper as being litigation Plaintiff was involved in within the five-year period prior to the application date. The documents presented by defense counsel, however, showed the last pleadings filed in that case were dated June 30, 2002 and were served on the court on July 2, 2002, thus being outside the five-year period. Also the

[2] Corby Phillips testified he did not authorize Krish Patel to lie on any bank applications and did not authorize Krish to serve as president of P Communications.

records presented show that the matter never went to court and was later dismissed after no prosecution.[3] Defendants subsequently tried to claim Kaj Patel was not being honest or making full disclosures by inadvertently failing to list on his interrogatory answers the landscaper matter that never went to court. The record is clear, however, Plaintiff disclosed the matter to Defendants, albeit inadvertently omitted from his Answer to Interrogatories Plaintiff produced a document to Defendants in discovery providing the name of the landscaper Randall Rice and the date of filing was noted on the Verizon records . (Def. Trial Doc. 171).[4]

Because Defendants had no legitimate impeachment issues against Kaj, they resorted to questioning Kaj about a suit on the public record entitled Unifund CCR Partners v. Patel. Kaj testified that suit was against a different Pankaj Patel which was dropped immediately after Kaj demonstrated to the plaintiff that he was not the same Pankaj Patel the plaintiff was trying to locate. There is no evidence in the record to the contrary.

Given the clear lack of credibility from Krish Patel and the consistency with which the testimony of Kaj Patel matched the documentary evidence in this matter, the credibility of Kaj Patel overwhelmingly trumps that of Krish Patel.[5]

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[3] Defendants introduced the Magistrate court case documents after their document notebook had been given to the Court and Plaintiff. Plaintiff therefore does not have the exhibit number of the pleadings but believes they may be found around or near Exhibit No. 234.

[4] This document was produced by Plaintiff to Defendants on January 17, 2012 pursuant to Plaintiff's document production response.

[5] Kaj testified that during the period of concealment from him of the true facts concerning the Verizon venture, he had numerous meetings with Vijay and sometimes Krish. Neither Defendant ever revealed to Kaj truthful information about the Verizon venture, Vijay's criminal conviction, Krish's firing from Verizon and many other material facts. Defendants admitted Vijay and sometimes Krish met regularly with Kaj to discuss business matters, including VP Enterprises. (Answer Am. Compl. ¶37).

B. Defendants' concealment and misrepresentations made in October 2008, and for many months following, toll the running of the statute of limitations.

Defendants claim the statutes of limitations in S.C. Code Ann. §§ 33-8-300 and -420 for breaches of duties by directors and officers bar Plaintiff's claims. Both statutes provide that such a claim must be brought within three years after the cause of action has accrued. Significantly for this case, both statutes contain an express fraudulent concealment exception that states:

> (e) An action against an officer [or director] for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

S.C. Code Ann. § 33-8-420 ("[or director]" and underline added) (see also S.C. Code Ann. § 33-8-300 for mirror director liability statute).

A plaintiff may thus bring an action more than three years after the wrongs have been committed if the defendants fraudulently concealed their wrongdoing and the plaintiff brings his action within two years after the cause of action is discovered or should reasonably have been discovered. See Clearwater Trust v. Bunting, 367 S.C. 340, 352, 626 S.E.2d 334, 340 (2006) (holding when breach of duty has been fraudulently concealed, three year outer limit does not apply and two year discovery rule governs).[6]

Defendants claim Plaintiff knew or should have known on October 18, 2008 that a cause of action existed against Vijay and Krish Patel for their wrongful conduct, thus triggering the two-year discovery rule of §§ 33-8-300 and -420. Plaintiff testified he learned on October 18, 2008 from Krish Patel that Krish had opened a Verizon Wireless

[6] Under the facts established at trial, if Kaj's testimony is believable, and it is, then he meets both the three and two year tests.

retail store on Pelham Road that day. Defendants claim the information about the grand opening of the Pelham Road store put Plaintiff on notice Krish had stolen corporate opportunities from VP Enterprises or that Plaintiff should have realized by reasonable diligence he had a cause of action against Defendants for their misappropriation.

The testimonies of Kaj Patel and Krish Patel diverged in significant details about the information disclosed on the night of October 18, 2008. Krish testified he told Plaintiff he had opened a Verizon retail business with someone else and that if he ever found an opportunity to include Kaj in the business, he would consider it.

The testimony of Kaj Patel was much more specific and detailed. He testified Krish said on October 18, 2008 he had found someone with an existing Verizon license to associate with in order that we can "get our foot in the door." Krish further stated, according to Kaj's testimony, that he was looking to kick out the other investor named Corby and that as soon as he did, Kaj, Krish and Vijay would be able to proceed with their business plans for VP Enterprises. In other words, instead of repudiating the rights of VP Enterprises and the parties' plans for a Verizon retail venture, Krish Patel was leading Kaj to believe that the partnering with "Corby" was actually a step forward for VP Enterprises and its goal of developing a Verizon chain store business.

In addition to representing that the partnering with "Corby" was furthering the Verizon plan, Kaj testified Krish represented it would take eight to twelve months to remove Corby from the business. This representation was made to induce delay in Kaj and to deceive him in thinking Defendants were protecting his rights as a VP Enterprises shareholder. In follow up meetings between the parties, Krish repeatedly represented to

Kaj that Kaj needed to be patient when Kaj asked about the status of Corby leaving the business so that Kaj, Vijay and Krish could take control.

Under the South Carolina discovery rule, a claim must be commenced within the applicable period after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). The Supreme Court stated:

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.

Id. at 128, 442 S.E.2d at 169 (quoting Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)).

In this case, Krish Patel did not inform Plaintiff on October 18, 2008 that some right of his had been invaded or provide him with any information or belief that a claim against him might exist. To the contrary, Krish Patel painted a picture to Kaj that led Kaj to believe Defendants were taking steps to move forward with the VP Enterprise plan.

A reasonable person under the same circumstances and subject to the same representations as made by Krish Patel would not have been placed on notice that any legal or equitable claim existed on October 18, 2008. The opening of a Verizon store combined with representations of Krish[7] that the store opening was a step towards their

[7] Krish was, without doubt, both a manager and officer of VP Enterprises at all times and thus a fiduciary towards Kaj regarding VP Enterprises. Vijay was a director and officer and also a fiduciary. While there were multiple misrepresentations and failures to disclose by both of them, there is no question Krish failed to disclose his termination from Verizon until the first day of this trial, and Vijay never disclosed his criminal record until Kaj discovered it in a document production from Verizon on or about March 7, 2012. Defendants had ample opportunity to disclose the significant events to Kaj during the pre-incorporation stage when promoter liabilities unquestionably were owed and later while Defendants served as director and officers.

Verizon plans did not put Kaj on notice that Defendants were breaching their duties to act in the best interests of the corporation and its shareholders. Defendants as director, officers and/or promoters of VP Enterprises made no repudiation to Kaj of their fiduciary duties to him and the company. Demoulas v. Demoulas Super Mkts., Inc., 424 Mass. 501, 677 N.E.2d 159 (1997) (holding fraudulent concealment tolls statute of limitations, in action for misappropriation of a corporate opportunity by directors and officers of a corporation, until such time as defendants repudiated their fiduciary obligations). By their misrepresentations, Defendants concealed from Kaj that they were invading his rights as a stockholder[8] of VP Enterprises and the rights of VP Enterprises itself.

In order to hold that Kaj's claims against Vijay as director and officer and Krish as a corporate officer (secretary, treasurer and general manager) are not tolled, it would be necessary to find Krish's testimony more credible than Kaj's. The untrustworthiness of Krish's testimony is shown not just by the contradictory testimony of Kaj but also by the testimonies of Corby Phillips and Mike Pavlick. Corby Phillips directly contradicted Krish's testimony by saying he never authorized Krish to take the title of president of P Communications as Krish did on documents submitted to the IRS, S.C. Department of Revenue and to BB&T Bank. Mike Pavlick testified Krish represented he was president of P Communications and that he had never heard of Corby Phillips until this trial. It is inescapable that Kaj's testimony is more accurate and that Krish fraudulently concealed Kaj's claims against Defendants. In short, to find there was no fraudulent concealment, the Court will need to find the testimony of Krish Patel, who falsely certified three

[8] In fact, unlike the Model Act, §§33-8-300 and -420 state that directors' and officers' duties are owed to the corporation "and its shareholders". S.C. Code Ann. §33-8-300, S.C. Rpts.' Cmt.

separate documents including, but not limited to, an IRS form signed under penalties of perjury, more believable than Kaj's testimony.

C. Defendants' fraudulent concealment continued until June 4, 2010

According to Kaj's testimony, Krish's representations about the status of Corby Phillips continued until the spring of 2010, specifically June 4, 2010. On or around that date, both parties testified Krish Patel revealed to Kaj the name of P Communications and Corby Phillips for the first time. Defendants also informed Kaj of Vijay's involvement with P Communications. In those disclosures Krish did not admit he had misappropriated VP Enterprises' opportunities, but the disclosures did reveal enough information to allow Kaj to investigate the entity that Krish claimed had partnered with Corby Phillips.

During his ensuing investigation, Kaj discovered facts from the Secretary of State's website, which combined with the circumstances of Vijay's involvement in P Communications, put Kaj on notice that the rights of VP Enterprises may have been violated. Kaj's investigation of the Secretary of State's website showed a date of incorporation for P Communications of April 24, 2008 that was not entirely inconsistent with the formation by an existing Verizon licensee but was suspiciously close to the grand opening date of October 18, 2008. Also the date of December 4, 2008, shown on the Secretary of State's records as when the registered agent changed from Corby Phillips to Krish Patel, did not conclusively confirm that Corby Phillips had been removed as a shareholder in 2008, but it did raise strong doubts to Kaj in June 2010 as to the truthfulness of Krish and Vijay about the Verizon venture. That investigation then led to the personal meetings on the three days following June 4, 2010 between Kaj and Krish and Kaj and Vijay.

The disclosures made by Krish Patel in the spring of 2010 did not state that he had used Corby Phillips as a straw man and P Communications as a mechanism to usurp the Verizon opportunity for himself. Instead, Kaj was able to take the information on the name of the new corporation and its straw man Corby Phillips to research the records and figure out that Krish Patel and Vijay Patel had likely backstabbed him by excluding him from the Verizon store business when they could have included him. The facts and circumstances discovered and disclosed in the spring of 2010 that led Kaj to investigate Defendants' corporate activities are what the South Carolina discovery rule envisions as the accrual date for statutes of limitations, not the fraudulent representations of Defendants in October 2008.

D. Fraudulent Concealment Prevents Running of the Statute of Limitations

As noted in Plaintiff's Pretrial brief, it is established throughout the United States that fraudulent concealment of facts underlying a cause of action tolls all statutes of limitation. 51 Am. Jur. 2d Limitation of Actions § 162. The South Carolina Supreme Court recognized this general rule by stating:

> ... "[T]he practically universal rule is that deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action, thereby inducing him to postpone institution of suit will be held to toll the statute.". . . When the relationship ends, the duty to disclose, which is the basis of [a] fraudulent concealment claim, ceases to exist absent extenuating circumstances such as the withholding or altering of plaintiff's medical records.

Strong v. Univ. of S. Carolina Sch. of Med., 316 S.C. 189, 191-92, 447 S.E.2d 850, 852 (1994) (quoting 1 David W. Louisell and Harold Williams, Medical Malpractice ¶ 13.03 p. 13-67 (1993)).

The proof required to invoke fraudulent concealment has been explained as follows:

> The essence of fraudulent concealment is: (1) actual knowledge that a wrong has occurred, and (2) a fixed purpose to conceal the facts necessary for the plaintiff to know that the cause of action has accrued. Stated somewhat differently, to constitute concealment of a cause of action within the general rule tolling the statute of limitations on that ground, in the absence of a duty to disclose, there must be an actual misrepresentation of fact that fraudulently conceals the cause of action. In other words, there must be either an active suppression of the truth or a failure to disclose when there is a duty to speak, made with the intent to prevent inquiry or knowledge of the injury...

51 Am. Jur. 2d Limitation of Actions § 164.

It has also been firmly established that a failure to reveal is fraudulent if there is a duty to disclose. "If there are fiduciary or confidential relations between the parties, or if the fraud itself is secret in its nature and such that its existence cannot be readily ascertained, the failure of a defendant to adequately disclose the facts that would give rise to a plaintiff's knowledge of a cause of action constitutes fraudulent conduct and is equivalent to fraudulent concealment." 51 Am. Jur.2d Limitation of Actions § 166.

Fraudulent concealment can thus occur either by (1) affirmative acts or representations or (2) silence by a fiduciary who is under a duty to disclose such material facts. DeLuna v. Burciaga, 223 Ill.2d 49, 76-77, 857 N.E.2d 229, 245-46 (2006) (holding attorney because of his fiduciary duty to client had duty to disclose his acts of legal malpractice, thus tolling statute of limitations by his failure to disclose his negligence).

As noted above Defendants made the following material misrepresentations among others:

- Vijay had no criminal history;
- Krish was working on finding out why VP Enterprises was turned down by Verizon;
- Krish had joined with an existing Verizon licensee and was working to "get our foot in the door";

- The parties would continue to look for Verizon opportunities after the Verizon denial letter;
- It would take 8 to 12 months to dislodge Corby when Krish actually ousted him in a month;
- Vijay had no involvement in the Verizon business Krish was working on.

The instances of failure to timely disclose material facts are vast. They include but are not limited to the following:

- Failure to disclose Krish being fired from Verizon[9];
- Non-disclosure on formation of P Communications;
- Use of VP Enterprises' business plan by P Communications in its Verizon application;
- Use of a straw man for P Communications to gain a Verizon license;
- The entire existence of P Communications;
- The removal of Corby Phillips as an owner in P Communications in November/December 2008;
- The opening of additional stores by Defendants; and
- The inclusion of Keith Gailey as an owner in November 2008 instead of Kaj.

Defendants, while having a fiduciary relationship to Kaj, concealed their true course of conduct from Kaj until June 4, 2010, thus tolling the statute of limitations to less than two years prior to Plaintiff's filing date of November 4, 2011.

[9] Plaintiff's counsel subpoenaed Krish's work history from Verizon, but Verizon did not include any documentation about Krish's termination of employment from Verizon.

E. Defendants do not have clean hands are not entitled to assert the defense of laches.

Defendants asserted laches bars Plaintiff's claims in the equitable causes of action. Defendants, though, are not entitled to assert laches resulting from their misrepresentations and lack of disclosures since laches is a defense in equity. As listed in the prior section Defendants made many material misrepresentations and fraudulent failures of disclosure that bar their assertion of laches.

"Laches is a defense in equity, and one who comes to the court seeking equity must come with clean hands." Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004). The Emery court held the defendant was precluded from asserting laches because of his failure to inform the plaintiff of material marital assets. Likewise, in this case Defendants acted with unclean hands in making untruthful statements to Plaintiff and failing to inform him of material events highly relevant to their Verizon venture. They are not entitled to the defense of laches.

II. Plaintiff amply demonstrated Defendants' Breaches of Fiduciary Duty and Violations of Duties by Promoters, Directors and Officers.

The Defendants claim VP Enterprises had no corporate opportunity to be diverted since Verizon turned down its application. However, Krish Patel found a way around the denial by simply repackaging the same business plan and applications by just using a straw man.[10] He presented essentially the same offer to Verizon through P Communications except that he used the name of Corby Phillips as the owner. He subsequently changed the ownership from Corby Phillips to Krish Patel and Keith Gailey in November 2008. There is no reason that Krish could not have used Kaj as the co-

[10] In addition, Vijay Patel, a director, officer and shareholder of VP Enterprises, was able to reap the benefits of Krish Patel's usurpation of this corporate opportunity despite having been previously denied a Verizon Wireless agency license.

shareholder with him instead of Keith Gailey in November 2008. Krish Patel undertook the entire exercise of applying through a straw man and then later replacing the straw man with Keith Gailey and himself as owners all without telling Kaj Patel. It is disingenuous for Defendants to contend the proverbial barn door was closed on Kaj Patel when Verizon first denied VP Enterprises' application, when the same "door" remained open for Krish Patel and Vijay Patel, neither of whom had clean hands.

The evidence presented at trial established the application denial was not final or permanent. Indeed, the denial letter stated "at this time." There was no evidence presented, other than Krish Patel's personal subjective belief, that the denial letter somehow "drew a line in the sand" or "closed the case" on VP Enterprises.

Krish claimed in his testimony that since VP Enterprises' application with Kaj's name attached had been rejected, he therefore had the right to proceed with someone else besides Kaj. There was no available evidence, though, that Kaj's background caused the rejection. In fact the far more likely cause of the rejection would have been Krish's own firing by Verizon and the criminal conviction of Vijay. Despite his name being on the VP Enterprises application as general manager, his presence as the point man with Verizon in the application process, and notwithstanding the glaring black marks on his record in relation to Verizon, Krish proceeded with making himself the new owner of P Communications. The excuse that Kaj's name was on a previously rejected application as the reason for excluding him from P Communications is a complete red herring.

There is no dispute the corporate purpose of VP Enterprises was to establish Verizon retail stores. That was the same corporate purpose of P Communications. Indeed Krish launched P Communications using the same business plan drafted by VP

Enterprises through Kaj and Krish Patel. Krish then followed the same operational and growth strategies first developed for VP Enterprises.

Krish Patel admitted he was the secretary and treasurer of VP Enterprises and therefore an officer. He was also the general manger as stated in the business plan presented to Verizon. Therefore the conduct of Krish Patel and the duties he owed to the corporation come under the auspices of S.C. Code Ann. § 33-8-420(a).

Even without the statute, Krish Patel as an officer of the corporation was an agent of VP Enterprises. It is black letter law an agent owes a fiduciary duty to his principal. Restatement (Second) of Agency § 13 (1958). Thus Krish owed a fiduciary duty to VP Enterprises.

Defendants claim there can be no usurpation of corporate opportunity because the Verizon business was not unique and was available to members of the public. However there is no requirement the opportunity be unique or specialized in order for the opportunity's diversion by a co-venturer to be wrongful. What is required is that:

> The opportunity must fit . . . into an established corporate policy that the acquisition of the opportunity would forward. Only those projects in which the corporation has an active commercial interest or expectancy are prescribed under this test.
>
> * * * *
>
> . . . [W]hether an opportunity is a corporate opportunity focuses on whether the corporation could realistically expect to seize and develop the opportunity; if so, the director or officer may not appropriate it and thereby frustrate the corporate purpose.

18B Am. Jur. 2d Corporations §1542.

Here, VP Enterprises clearly had an expectancy in entering the Verizon retail business as stated in its corporate formation documents. VP Enterprises had the financial ability to do so given the $800,000 line of credit that Kaj Patel brought to the enterprise.

Most critically, the opportunity was available to VP Enterprises as evidence by the repackaged deal that Krish Patel put together for P Communications using VP Enterprises' business plan but conveniently eliminating Kaj from the venture. Krish could have used Corby Phillips as a straw man and later replaced him with Krish and Kaj as the subsequent owners just as he did with Keith Gailey and himself. Krish, however, used this "expectancy" to his advantage to misguide and deceive Kaj while he was, in reality, seizing the same corporate opportunity for himself to the exclusion of Kaj Patel.

Defendants claim Verizon had an open corporate policy in accepting dealership applicants and that Kaj could have applied as well. This overlooks the fact that to do so, Kaj would have had to breach his fiduciary duty to his fellow Directors, Officers and Co-Venturers, Krish and Vijay. Second, as testified by Tammy Blew of Verizon, agents have to receive specific advance permission from Verizon for each prospective location to prevent dealerships from being too close to one another. As can be seen by documents presented, there were requests for real estate locations that were denied by Verizon because they were too close to other stores. (See eg. Def. Trial Doc. 227).

Once Krish had developed the locations that he and Kaj had explored, setting up a Verizon retail business in those areas was no longer an available opportunity. It had been snatched by Krish Patel. Further, Krish Patel's build-out of nine additional stores by June of 2010 in addition to the already existing stores operated by other owners left little to be developed by a third party such as Kaj. It is quite reasonable to assume the first stores were placed in the best locations.

In addition to committing a breach of fiduciary duty by usurpation of corporate opportunity, Defendants also acted oppressively, unfairly prejudicial and secretively

towards Plaintiff. First, Krish Patel admitted on cross examination that he was forced to resign from Verizon because he had violated their policies regarding use of phone connections by family members. Krish conceded he did not inform Kaj Patel of this material fact. Had it been disclosed, Krish's termination obviously would have had a significant impact on how the business application to Verizon was handled—such as the extent to which the involvement of Krish Patel was disclosed and whether Krish Patel should have been the contact person with Verizon after the denial was received. Because of Krish's non-disclosure, Kaj relied on Krish to handle the contacts with Verizon thinking Krish was the most appropriate person to handle Verizon relations.

Second, Vijay Patel did not disclose to Kaj that he had a criminal conviction for shoplifting which would have to be disclosed on the Verizon Agent Application. Had this information been truthfully disclosed to Kaj, he could have worked out an arrangement without using Vijay Patel as the named applicant just as Krish Patel did after the denial when submitting P Communications' application.

The Defendants should have disclosed the Verizon firing and criminal convictions to Kaj at the outset while the VP Enterprises venture was being formed. The lack of disclosure of this critical information occurred while Krish and Vijay were promoters of the corporation. See Bivens v. Watkins, 313 S.C. 228, 437 S.E.2d 132 (Ct.App. 1993) (holding promoter liable as fiduciary to co-shareholder and co-promoter for acts committed after formation of corporation). They owed a fiduciary duty to Kaj Patel to truthfully disclose these significant facts that impacted how the venture was to be structured. Their failure to do so was a breach of their fiduciary duty as promoters of VP Enterprises.

Defendants' continued failure to disclose the firing and arrest information after the corporate charter had been filed and while its Verizon application was under consideration, and even after the application was denied, also amounted to a breach of fiduciary duties to VP Enterprises and Kaj Patel under S.C. Code Ann. § 33-8-300 and -420 owed by directors and officers.

III. Comparison of Meinhard v. Salmon and this case reinforces the only conclusion that Defendants breached their fiduciary duties to Plaintiff.

The facts of this case are remarkably similar to those of the renowned case of Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928). Meinhard has been cited five times in approval by the South Carolina Court of Appeals. A thorough comparison of this case with Meinhard highlights the depth of Defendants' breaches of fiduciary duty to Kaj.

In Meinhard, the defendant was the manager of a venture with the plaintiff to operate the Hotel Bristol in New York City. The hotel and its underlying real estate were owned by a third-party lessor. At the end of the lease, the third-party owner approached the defendant–manager about undertaking a new project wherein the Hotel Bristol would be destroyed and some surrounding properties, where the Hotel Bristol had been located, would be combined, redeveloped and managed under a new lease. The defendant agreed to enter into the new venture but did not mention a word of it to the plaintiff, his co-venturer. The defendant did not disclose to the plaintiff that a new lease had been executed and a new venture undertaken until after the new lease had been signed and was an accomplished fact. Meinhard, 249 N.Y. at 461-63, 164 N.E. at 545-46. The defendant claimed that the third-party landlord was not willing to renew the current lease but insisted on a new project that included adding additional properties to the enterprise.

Therefore the opportunity to continue operating the Hotel Bristol as it currently existed was not available to the plaintiff and defendant. Id. at 475, 164 N.E. at 551.

Even though no misrepresentations were made to the plaintiff[11], Chief Justice Cardozo writing for the majority found that the defendant had breached his fiduciary duty and the standard of loyalty he owed to his co-venturer.

In setting up the new venture, the defendant kept all the negotiations to himself. The plaintiff was not informed even of the bear existence of the newly proposed project. Id. at 463, 164 N.E. at 546.

The court stated that as a co-venturer, the plaintiff misappropriated to himself in secrecy and silence the pre-emptive opportunity that was an incident of the enterprise. The court pointed out the defendant could have warned the plaintiff that a new venture was being proposed and that the plaintiff would be free to compete for the award of the new venture. Had the defendant done this, the court signaled the result could have been different. Id. at 464, 164 N.E. at 547.

Similarly in our case, Defendant Krish Patel breathed not a word to the Plaintiff of the new venture he was undertaking until he had already obtained an agreement with Verizon and had set up the new corporation and already opened the first store. And in fact, he hid from Kaj the bare facts that Kaj would need to discover that Krish had diverted the corporation and venture to himself until after nine stores had been opened in June 2010.

The Meinhard court pointed out that the defendant obtained the chance to enjoy the opportunity that came his way by virtue of his agency relationship with the joint

[11] Id. at 477, 164 N.E. at 551.

venture. He therefore owed it to his co-venturer to include him in the subsequent enterprise. Id. at 465. In our case, the opportunity came to Krish Patel from the business plan, spreadsheets, and site location work that he and Kaj developed during the formation of VP Enterprises. By virtue of his agency, he owed an obligation to Kaj and VP Enterprises to include it in the subsequent venture.

The dissent in Meinhard countered that the third-party landlord refused to renew the existing hotel lease on any terms, and therefore the defendant did not need to mention the new property lease to the plaintiff because of the landlord's refusal to deal on the same basis. Id. at 477, 164 N.E. at 552. Justice Cardozo responded, "No answer is it to say that the chance would have been of little value even if seasonably offered. Such a calculus of probabilities is beyond the science of the chancery." Id. at 465, 164 N.E. at 547 (emphasis added). The court further opined that the plaintiff could have successfully renegotiated the Hotel Bristol lease by offering better terms, or he could have reinforced his offer by alliance with others. Id. at 465, 164 N.E. at 547.

In our case, Kaj also could have worked an alliance with others to obtain the Verizon license. That is precisely what Krish did except he excluded Kaj from the revised venture undertaken in the name of P Communications.

The Meinhard court further pointed out that whatever the protestations of unwillingness from the landlord to renew the Hotel Bristol lease, a response with improved terms may have gained the landlord's assent. Id. at 465, 164 N.E. at 547. Similarly, the Defendants and Kaj could have proposed a new arrangement with Verizon that would have been acceptable had the opportunity been broached by Krish. P Communications did, and it was successful.

Justice Cardoza explained that the defendant's lack of disclosure was the catalyst of the inequities thereafter arising. He wrote:

> The very fact that Salmon was in control with exclusive powers and directions charged him the more obviously with the duty of disclosure, since only through disclosure could opportunity be equalized.

Id. at 466, 164 N.E. at 547.

Likewise with Krish being the general manager, the eyes and ears of VP Enterprises towards Verizon, the full-time manager, and with his father the constructive owner of 50% of the stock, he was in control of the company.[12] With these exclusive powers of control and direction, he more heavily is charged with the duty of disclosure "since only through disclosure could opportunity be equalized.

The Meinhard court recognized that the defendant had no conscious purpose to defraud. He very likely assumed in all good faith that he could ignore his co-adventurer given that he had provided the time and labor as well as money to the enterprise to make it work, and that he might view the plaintiff as grasping more than the plaintiff was entitled to receive. Id. at 467-68, 164 N.E. at 548. However, the court rejected that attempt at justification for usurping an opportunity pronouncing:

> [Defendant] Salmon had put himself in a position in which thought of self was to be renounced, however hard the abnegation. He was much more than a coadventurer. He was a managing coadventurer. For him and for those like him, the rule of undivided loyalty is relentless and supreme.

Id. at 468, 164 N.E. at 548.

Even though as Krish testified in his deposition excerpts played at trial that he was "the brains behind the business plan", "the brains behind the operation", "the one

[12] Plaintiff's corporate duty expert, John Freeman, testified he considered Krish not only a promoter and officer but also a controlling shareholder based on Vijay's uncontroverted testimony that he held his nominal 50% share in VP Enterprises on behalf of Krish and himself equally.

with the experience", "knowledge" and "expertise", the recipient of "awards from Verizon", those factors do not justify the disloyalty of non-disclosure and the secrecy in which he acted towards Kaj Patel. As the managing agent, Krish's duty of undivided loyalty was relentless and supreme.

The Meinhard court noted that even though the new venture involved not just the land where the Hotel Bristol was located but also multiple adjoining properties added to it, the imposition of the trust was still warranted. The court stated, "If confusion has resulted from the union of adjoining parcels, the trustee who consented to the union must bear the inconvenience." Id. at 469-70, 164 N.E. at 549. Likewise in this case, it is no defense for Defendants to claim that additional stores had been added to the corporate opportunity taken by Defendants. It was Krish's decision to appropriate the corporate opportunity without disclosure to his co-adventurer. The additional assets are part of the venture just as much as the adjoining and additional real properties were part of the Meinhard v. Salmon venture.

Justice Cardozo further pointed out that the defendant "neither by word nor by act did either partner manifest a choice to view the enterprise as ended." Id. at 470, 164 N.E. at 549. Similarly in this case, at no time did Krish inform Kaj that the Verizon venture was over for Kaj. Instead he hid the new P Communications venture while he expanded his territorial reach to saturate the Greenville market.

In describing the standard of loyalty owed by a co-adventurer, Justice Cardozo stated "the standard of loyalty for those in trust relations is without the fixed divisions of a graduated scale." Id. at 466, 164 N.E. at 547. Just as Plaintiff's expert John Freeman testified, the Defendants' duties were "relentless and supreme." Their fiduciary

obligations are not to be watered down "by the 'disintegrating erosion' of particular exceptions." Id. at 464, 164 N.E. at 546.

Because the defendant in Meinhard breached his duty of loyalty by his non-disclosures, the court found a constructive trust over the defendant's new venture was warranted. The court explained "a constructive trust is, then, the remedial device through which preference of self is made subordinate to loyalty to others." Id. at 467, 164 N.E. at 548. The only material distinctions between the facts of Meinhard and the case *sub judice* consist of the explicit misrepresentations made by Defendants and the valuable line of credit Kaj brought to the enterprise. With these factors included, the dissent in Meinhard acknowledges the defendant may well have been liable. See Id. at 473, 164 N.E. at 550 ("The issue, then, is whether actual fraud, dishonesty, or unfairness is present in the transaction. If so, the purchaser may well be held as a trustee."). In other words, if the Meinhard court had encountered the same misrepresentations Defendants made to Kaj, the Meinhard case would have been a unanimous opinion. As such, Defendants owed a fiduciary duty in which the stock of P Communications should be deemed to be held in a constructive trust for the benefit of VP Enterprises, Inc.

CONCLUSION

The statute of limitations does not limit Kaj Patel's claims because of Defendants' failure to disclose material facts and their fraudulent concealment of their undertakings until June 4, 2010. Defendants, as co-venturers with Kaj Patel, owed Kaj a duty of loyalty under the South Carolina Business Corporation Act in their roles as promoters, director and officers, which duties they breached by their misappropriation of corporate opportunities, failure to disclose, and misrepresentations. Therefore, Defendants

breached their duties to Plaintiff Kaj Patel, and the Court should so hold in denying Defendants' motion.

Contrary to discussions held at the end of the trial, Plaintiff respectfully requests oral arguments on Defendants' motion for involuntary nonsuit before the Court rules on the matter.

Respectfully submitted,

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August 1, 2014
Greenville, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A NO: 2011-CP-23-7338
	)	
Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc.,	)	**Reply to Plaintiff's Opposition to Motion for Involuntary Non-Suit Pursuant to Rule 41(b)**
Plaintiff,	)	
v.	)	
Krish Patel, Vijay Patel, Keith R. Gailey, and P Communications, Inc.,	)	
Defendants,	)	
And,	)	
VP Enterprises, Inc.,	)	
Nominal Defendant.	)	

FILED-CLERK OF COURT
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PAUL D. WICKENSIMER
2014 AUG 7 PM 4 55

INTRODUCTION

Plaintiff Kaj Patel's (Plaintiff) arguments in opposition to Defendants' motion for involuntary non-suit pursuant to Rule 41(b), SCRCP, are simply more of the same: a display of hurt feelings and greed arising out of a fractured friendship, which fell apart ***after*** a failed and abandoned business endeavor by the parties. His arguments are not—and have never been—supported by any evidence or relevant law. In fact, Plaintiff has now dismissed all his legal claims because they are, as he admits, unsupported by any law or evidence. Plaintiff's remaining claims—for breach of fiduciary duty—which he now characterizes as equitable and for which he seeks equitable remedies, are also unsupported by any evidence and this Court should dismiss them now. Notwithstanding all of the legal and evidentiary deficiencies Plaintiff's case, he also filed his suit too late.

STANDARD OF REVIEW

Defendants made this mid-trial motion for involuntary non-suit pursuant to Rule 41(b), SCRCP. This Court took the motion under advisement and Defendants presented their case. Plaintiff's characterization of the applicable standard of review—insofar as it asserts this Court should consider the evidence presented in Defendants' case when disposing of this motion—is inaccurate. It is true that when a defendant chooses to present a defense after his mid-trial dispositive motion has been denied, he forfeits his right to have ***an appellate court*** consider solely the plaintiff's evidence when reviewing a trial court's denial of that mid-trial motion. See State v. Hepburn, 406 S.C. 416, 431-32, 753 S.E.2d 402, 410 (2013) (recognizing the waiver rule applies ***to appellate proceedings*** the same in both civil and criminal cases). This rule applies only to appellate proceedings, and has no bearing here.

This Court has not yet decided Defendants' motion and need not consider Defendants' evidence when doing so. However, even if this Court views the arguments contained in the parties briefing as closing arguments and, thus, considers Defendants' evidence; it will merely reinforce the myriad reasons Plaintiff's claims must fail as a matter of law.

ARGUMENT

I. Plaintiff's claims are all barred by the applicable statutes of limitation or by laches.

A. Plaintiff did not meet the required two-year limitation for his legal claims.[1]

Plaintiff has dismissed all its claims except the Breach of Fiduciary Duty causes of action. (Pl. Opp. at 2 & n.1). These claims are subject to a two-year statute of limitation from the date Plaintiff knew of should have known about his cause of action. Clearwater Trust v. Bunting, 367 S.C. 340, 350-51, 626 S.E.2d 334, 339-40 (2006).

[1] Plaintiff now states that he brought his claims in equity. (Pl. Opp. at 2). Therefore Plaintiff has elected to forego his claim for actual or punitive damages.

In order for a statutory limitations period to begin to run, a plaintiff need not have a fully-developed legal theory of recovery or have sought the assistance of counsel. Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). All that must occur is that the plaintiff be aware through the "exercise of reasonable diligence" that a claim "might exist." Id.[2] The determination of whether a reasonable person knew or should have known of a potential claim is an objective test and does not rely on what Plaintiff subjectively thought or believed. Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

Plaintiff argues that this Court must weigh the credibility of the evidence in order to make a determination regarding the applicability of the statute of limitations in this case. While Defendant Krish Patel's ("Krish") credibility has not been impeached in any material way, Plaintiff's premise is incorrect. Even considering only Plaintiff's own self-serving testimony, there is no question the statute of limitations bars his actions. By Plaintiff's own admission, Krish informed him on October 18, 2008 that he had opened a Verizon store without Plaintiff. Without a doubt, Plaintiff at that moment either knew or through "exercise of reasonable diligence" should have known that he might have a claim against Defendants. However, he did not file his action until November 4, 2011—well outside the two-year window. His claims are barred.

B. Defendants did not fraudulently conceal anything.

Plaintiff's claims, assuming he had any, should have been obvious to him on October 18, 2008. Plaintiff relies on his own assertion that Krish led him to believe that P Communications

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[2] Notably, Plaintiff acknowledges his duty of reasonable diligence by his actions of June, 2010. (Pl. Opp. 10-11). Plaintiff testified that even as late as 2010, Krish had not told him all these details of this alleged "misappropriation." Nevertheless, Plaintiff then decided to further investigate the matter and then discovered more details about the nature of P Communications and Corby Phillips. These details, according to Plaintiff, are what led him to want to file suit. However, there is no reason this "investigation" could not have occurred in 2008 when he first found out about the new store. Likewise, there is no reason Plaintiff could not have filed suit between June 2010 and October 2010, which would have been within the time limits.

was just a means to revive the former VP Enterprises plan in order to establish fraudulent concealment. Even if Krish made these statements—which he did not—they do not change the fact that Plaintiff knew in 2008 that Krish had partnered with someone to open Verizon stores without the Plaintiff's involvement or knowledge. With that knowledge, Plaintiff's duty of reasonable diligence arose, and at that point the statutory limitations period began to run.[3] Alleged promises to get the VP Enterprises plan back on track do not change the fact that Plaintiff had actual knowledge of injury. For that reason, tolling for fraudulent concealment does not apply.

C. Plaintiff's equitable claims are barred by laches.

Plaintiff's equitable claims are barred by laches. If Plaintiff truly believed that Defendant Krish Patel had stolen corporate opportunities from VP Enterprises and breached certain fiduciary duties, he should have pursued his rights when he found that out. Instead, Plaintiff allowed Krish to devote years of his life and significant sums of money toward building P Communications only to step in over *three years* later and demand half the company.

Plaintiff's only stated defense to laches is that Krish has "unclean hands." (Pl. Opp. at 14). This assertion, while false, in inapplicable. Even if Krish misrepresented certain facts, which he did not, none of the misrepresentations were material to Plaintiff's ability or responsibility to timely bring his claims. For example, neither Defendant Vijay Patel's ("Vijay") criminal history, nor Krish's termination from Verizon, nor the name of Krish's new company,

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[3] Plaintiff's reliance on Demoulas v. Demoulas Super Mts., Inc. gets him nowhere. That case—which has never been cited to or relied upon by any court in South Carolina—says nothing other than what has occurred here. That court held that fraudulent concealment applies where a fiduciary does not disclose sufficient facts to put the plaintiff on notice of a cause of action. 424 Mass. 501, 519, 677 N.E.2d 159, 174 (1997); see also id. at n.25 (finding knowledge where a claimant has the facts or "the means to acquire such facts"). Here, Krish gave Plaintiff all the knowledge he needed to pursue a claim if he thought he had one.

nor the ownership interest of Keith Gailey in P Communications have any bearing on when Plaintiff should have brought his claim. (Pl. Opp. at 12-13).

Here, nothing material was hidden. Plaintiff knew or should have known of his alleged injury in October of 2008. His only effort to ascertain any further facts came after he realized Krish's success, at which point he suddenly ran to court. By then it was much too late. If Plaintiff had any claims against Defendants, he slumbered on them far too long and his claims should be equitably barred.

II. Plaintiff has not demonstrated any breach of fiduciary duty.

A. There was no corporate opportunity.

1. Verizon rejected VP Enterprises.

As Plaintiff rightly acknowledges, corporate opportunities exist only where "the corporation has an *active* commercial interest or *expectancy* . . . [and] the corporation could realistically expect to seize and the develop the opportunity." (Pl. Opp. at 16 (citing 18B Am. Jur. 2d § 1542) (emphases added)). However, as Plaintiff further acknowledged before this Court, Verizon rejected VP's application. Plaintiff testified at trial—***for the first time ever***—that he instructed Krish to figure out how they could fix the application and resubmit it to Verizon, and that he continued to follow up on this instruction for a significant period of time.

This ***brand new story*** is unsupported by any documentary evidence of corroborating testimony. However, even if this new story is true, there is no evidence to suggest a renewed application would have been accepted. In fact, the evidence is to the contrary: Tammy Blew from Verizon testified at trial that in her more than two decades of experience she was unaware of a single instance where an application had been turned down, resubmitted, and accepted. VP therefore had no active interest or expectancy in what it would like this Court to believe was a

corporate opportunity. See Moser v. Devine Real Estate, Inc., 42 A.D.3d 731, 735-36, 839 N.Y.S.2d 843 (2007) (tangible expectancy is more than a desire or hope). If a company cannot undertake an opportunity it is ***not*** a corporate opportunity. Straight v. Goss, 383 S.C. 180, 200-01, 209-10, 678 S.E.2d 443, 454, 460 (Ct. App. 2009).

2. Plaintiff's "repackaging" argument is without merit and makes no sense.

In his opposition, Plaintiff attempts to show the existence of a corporate opportunity by pointing out that VP Enterprises and P Communications used almost the same application and business plan information, save the names of the participants. (Pl. Opp. at 14-16). In fact, Plaintiff goes so far as to assert that "it is disingenuous for Defendants to contend the proverbial barn door was closed on Kaj Patel . . . when the same 'door' remained open for Krish Patel and Vijay Patel, neither of whom had clean hands." (Id. at 15). However, adopting this logic, Plaintiff's position is that Verizon apparently had no problem doing business with Krish or Vijay, two of the three names on the VP Enterprises application. Yet it refused to do business with VP Enterprises.

Of course, the only difference, at least according to Plaintiff's assertion, between VP Enterprises and P Communications was the substitution of Corby Phillips' name for Plaintiff's. Verizon agreed to do business with P Communications, however. Thus, the only logical conclusion is that Verizon refused to do business with Plaintiff.

Plaintiff asserts "[t]here was no available evidence [] that Kaj's background caused the rejection." (Id.). To the contrary, Verizon produced a document in discovery specifically noting Plaintiff's undisclosed pending civil litigation. (Defendant's Trial Doc. 171). There is every reason to believe this, along with the other undisclosed lawsuits, affected Verizon's decision to

do business with him.[4] In fact, Verizon's Rule 30(b)(6) designee testified that the application was denied for nondisclosure on the part of both Defendant Vijay Patel ***and Plaintiff Kaj Patel.*** VP's application was denied and the evidence unequivocally establishes it was—at least in part—because of Plaintiff's nondisclosure on the application. Thus, VP did not have a corporate opportunity and it was, at least partially, Plaintiff's fault.

B. There were no "oppressive, unfairly prejudicial, or secretive actions."

1. Krish's resignation from Verizon is meaningless.

Plaintiff next tries to shift the blame for VP's denial away from himself by pointing to Defendant Krish Patel's past termination from Verizon. However, Krish was not an applicant for VP's Verizon agency relationship. Nor did the application call for such information. Krish did not misrepresent anything.

Furthermore, Plaintiff states that had he known this information, it would have had a "significant impact on how the business application to Verizon was handled." To the extent Plaintiff is suggesting that he would have pursued the business without Krish, such an allegation is nonsensical and contradicts his own testimony. Plaintiff acknowledged he knew nothing about the wireless industry and would rely on Krish to run the business. His actions since 2008 confirm the veracity of this testimony—*i.e.* Plaintiff has done nothing to pursue a wireless company. Moreover, if Plaintiff believes it is Krish's past termination that has kept him out of the Verizon business, then nothing is stopping him from trying again without Krish. He simply has not done so and testified he does not intend to do so.

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[4] Worth noting is the gross mischaracterization in Plaintiff's Opposition that it produced a document to Defendants including the relevant information regarding a lawsuit against Randall Rice. (Pl. Opp. at 5). Verizon produced that document, not Plaintiff. (Defendant Trial Doc. 171). In fact, Plaintiff never disclosed this suit, despite a clear Interrogatory directly on point. It is clear that Plaintiff never intended to disclose this action to Verizon or to Defendants and was content having this Court believe that VP Enterprise's rejection was based solely on Vijay Patel.

CONCLUSION

For the reasons stated herein, Plaintiff's claims should be dismissed in full with prejudice. Defendants do not believe further oral argument on this matter is necessary and are prepared to rest on their briefs and the arguments previously made.

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Respectfully submitted this
7th day of August, 2014

01/26/15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Case No.: 2011-CP-23-07338

Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. ,..... APPELLANT,
v.

Krish Patel, Vijay Patel, and P Communications, Inc., ...RESPONDENTS,

and

VP Enterprises, Inc., ...APPELLANT.

NOTICE OF APPEAL

Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc. appeals the order of the Honorable Edward W. Miller dated December 31, 2014 (a copy which is attached as Exhibit A). Appellant received written notice of entry of this order on December 31, 2014.

January 23, 2015

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Case No.: 2011-CP-23-07338

Pankaj Patel, Individually and Derivatively on behalf of Nominal Defendant, VP Enterprises, Inc., ...APPELLANT,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... RESPONDENTS.

and

VP Enterprises, Inc., ...APPELLANT.

PROOF OF SERVICE OF NOTICE OF APPEAL

This is to certify that I have this day served counsel for the Respondents in the foregoing matter with a copy of the foregoing **NOTICE OF APPEAL** by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 13, 2015

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