

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Richard John Adolfi,)

Plaintiff,)

v.)

National Dental Systems, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS
2015-CP-10-1683

VERDICT FORM

RECEIVED

NOV 28 2016

SC Court of Appeals

VERDICT

Breach of Contract



We, the Jury, find for the **Plaintiff** that Defendant breached its contract with Plaintiff and award damages in the amount of

\$ 56,343.00 USD past wages due.

\$ 1,182,619.00 USD any other damages for breach of contract.



We, the Jury, find for the **Defendant**.

Quincy Egan-Hoskins
FOREPERSON

6/17/16

DATE



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-1683

Richard John Adolfi

National Dental Systems, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : Plaintiff, Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Jury finding for the Plaintiff and award of damages in the amount of \$1,238,962.00

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Richard John Adolfi	National Dental Systems, LLC	\$1,238,962.00
		\$
		\$

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

N/A

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

Circuit Court Judge

2134
Judge Code

6-17-2016
Date

FILED
2016 JUN 17 PM 2:41
CLERK OF COURTS
RECEIVED
NOV 28 2016
SC Court of Appeals

For Clerk of Court Office Use Only

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

William M. McLeod

Mark McKnight

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda Haffenden

FILED
 16 SEP 29 PM 3:00
 JULIE J. ARNISTONG
 CLERK OF COURT
 BY _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Richard John Adolfi,)
)
)
 Plaintiff,)
)
 v.)
)
 National Dental Systems, LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2015-CP-10-1683

**ORDER DENYING DEFENDANT'S
 MOTION FOR JNOV & NEW TRIAL,
 AND GRANTING IN PART
 PLAINTIFF'S MOTION FOR TREBLE
 DAMAGES, COSTS, AND
 ATTORNEY'S FEES**

BACKGROUND

A jury trial was held in the above captioned breach of contract case beginning on June 13, 2016. Plaintiff Richard John Adolfi was present and represented by attorney W. Mullins McLeod Jr. The defendant National Dental Systems, LLC ("NDS") was represented by attorney Mark W. McKnight. On June 17, 2016, the jury returned a verdict in favor of Plaintiff in the amount of one million, two hundred thirty-eight thousand, nine hundred sixty-two dollars and zero cents (\$1,238,962.00). Fifty-six thousand, three hundred forty-three dollars and zero cents (\$56,343.00) was for "past wages due," and one million, one hundred eighty-two thousand, six hundred nineteen dollars and zero cents (\$1,182,619.00) was for "any other damages for breach of contract." Verdict Form Adolfi v. Nat'l Dental Sys., Inc. (2015-CP-10-1683). This Court, *sua sponte*, polled the jury, and determined the verdict was unanimous. This Court granted the parties ten (10) days to file post-trial motions.

On June 23, 2016, Plaintiff filed a Motion for Treble Damages, Costs, and Attorney's Fees Pursuant to the South Carolina Payment of Wages Act. On June 27, 2016, Defendant filed a Motion for Judgment Notwithstanding the Verdict, New Trial Absolute, and New Trial Nisi Remittitur. This Court finds the parties' motions were timely made. Based on the consent of the



parties, this Court permitted the parties to submit memoranda in opposition to each other's motions no later than July 18, 2016.

STATEMENT OF FACTS

This breach of contract action involves several agreements admitted into evidence, including an Employment, Confidentiality, Non-Competition, and Non-Solicitation Agreement ("Noncompetition Agreement") (Pl's. Ex. 7). The terms of the Noncompetition Agreement, executed on March 23, 2013, include that Defendant would pay Plaintiff \$250,000.00 per year for the remainder of his initial five year term of employment, even if he was terminated for good cause, in exchange for Plaintiff's promise not to compete nor solicit employees or customers of the Defendant. (Pl's. Ex. 7). Defendant terminated Plaintiff's employment "for cause" on June 21, 2013. (Pl's. Ex. 11). The jury heard testimony regarding the multiple agreements and timeline of events leading up to the filing of this cause of action, from both Plaintiff's and Defendant's witnesses, including, the Plaintiff himself, Plaintiff's forensic accounting expert, and Defendant's President and CEO.

At the close of Plaintiff's case in chief, and at the close of all the evidence, Defendant moved for a directed verdict on the breach of contract and failure to pay wages causes of action, and this Court denied Plaintiff's motion. Prior to closing arguments, this Court held a charging conference and the attorneys for both parties reviewed the charges and the verdict form. No objection to either was received by this Court. The jury was charged with instructions on breach of contract arising out of a failure to pay wages under South Carolina Code §§ 41-10-50 and 41-10-60 based on Plaintiff's cause of action. (Ct's. Ex. 2). The jury was also charged with instructions on breach of contract arising out of competition in violation of the Noncompetition Agreement as an affirmative defense raised by Defendant. (Ct's. Ex. 2).

DISCUSSION

I. Judgment Notwithstanding the Verdict

Rule 50 of the South Carolina Rules of Civil Procedure permits “[a] party who has moved for a directed verdict [to] move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict;” Rule 50, SCRPC. When reviewing a motion for directed verdict or judgment notwithstanding the verdict, the trial court “must consider the evidence in the light most favorable to the non-moving party.” Sauers v. Poulin Bros. Homes, Inc., 328 SC 601, 605; 493 S.E.2d 503, 504-05 (Ct. App. 1997). “In essence, the court must determine whether a verdict for the opposing party ‘would be reasonably possible under the facts as liberally construed in his favor.’” Love v. Gamble, 316 S.C. 203, 208; 448 S.E.2d 876, 879 (Ct. App. 1994) (quoting Bultman v. Barber, 277 S.C. 5, 7; 281 S.E.2d 791, 792 (1981)). “Neither a directed verdict nor judgment notwithstanding the verdict should be granted unless only one reasonable inference can be drawn from the evidence.” Sauers 328 SC at 605. “[A] motion for JNOV under Rule 50(b), SCRPC is a renewal of a directed verdict motion[,]” and therefore the JNOV motion “simply takes us back to the point in the trial when a motion was made for a directed verdict, and is limited to those grounds.” Wright v. Craft, 372 S.C. 1, 20; 640 S.E.2d 486, 496 (Ct. App. 2006) and Standard Warehouse Co. v. Atlantic Coastline R. Co., 222 S.C. 93, 106-07; 71 S.E.2d 893, 897 (1952), respectively. When reviewing these motions, a trial court does not have the “authority to decide credibility issues or to resolve conflicts in the testimony and evidence.” Sauers, 328 SC at 605. It remains within the jury’s province “to accept or reject in whole or in part the testimony of any witness, including an expert witness.” Id.

In this case, at the close of Plaintiff’s case in chief, and again at the close of the evidence, Defendant moved for a directed verdict on the breach of contract and failure to pay wages causes of

action, and this Court denied Defendant's motions. Defendant's Motion for Judgment Notwithstanding the Verdict asserts two grounds: (1) the evidence is uncontroverted that Plaintiff violated the terms of the Noncompetition Agreement, and (2) the Noncompetition Agreement is an executory contract and the jury's award includes damages for the unexpired term of the agreement. Defendant's Post-Trial Motions and Memorandum in Support at 1 *Adolfi v. Nat'l Dental Sys., Inc.* (2015-CP-10-1683).

This Court denies Defendant's Motion for Judgment Notwithstanding the Verdict on both grounds. As to the first ground, this Court denies Defendant's motions for the same reasons articulated at trial denying Defendant's motions for directed verdict, namely, that the evidence is controverted as to which party, if any, may or may not have breached the terms of the Noncompetition Agreement. As to the second ground, Defendant failed to raise this issue in either motion for directed verdict and therefore has waived the right to raise such issues now.

II. New Trial

Rule 59 of the South Carolina Rules of Civil Procedure authorizes the granting of a new trial "on all or part of the issues [] in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State;" Rule 59, SCRPC. "The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88-89; 610 S.E.2d 852, 856 (Ct. App. 2005)).

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or

conservative and awards that are actuated by passion, caprice or prejudice.” Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000). In the case of the former, the trial judge may order a new trial *nisi additur* or new trial *nisi remittitur*; in the case of the later, “the trial judge is required to grant a new trial absolute.” Id. “In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the verdict on factual grounds” Vinson v. Hartley, 324 S.C. 389, 404; 477 S.E.2d 715, 723 (Ct. App. 1996).

Our appellate courts have held that in reviewing a jury’s verdict “the jury does not have to believe uncontradicted testimony” because “[t]he fact that testimony is not contradicted directly does not render it undisputed.” Id. at 409-410. It remains in the jury’s province to determine “the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.” Id. at 410. Furthermore, “[i]f there is any evidence to sustain the factual findings implicit in the jury’s verdict, this court must affirm.” Id. (quoting Hobgood v. Pennington, 300 S.C. 309, 313; 387 S.E.2d 690, 692 (Ct. App. 1989)).

A. New Trial Absolute

Under the thirteenth juror doctrine, the fact that “the trial judge is compelled to submit the issues to the jury” does not prevent the trial judge from granting a new trial absolute. Howard v. Roberson, 376 S.C. 143, 152; 654 S.E.2d 877, 881 (Ct. App. 2007). The South Carolina Supreme Court has explained the thirteenth juror doctrine as

a vehicle by which the trial court may grant a new trial absolute when [it] finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror “hangs” the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the “thirteenth juror” vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Folkens v. Hunt, 300 S.C. 251, 254; 387 S.E.2d 265, 267 (1990) (internal citations omitted).

Several reasons have been held to provide a basis for a trial judge granting a new trial absolute including: "that justice has not prevailed," "the verdict is inconsistent and reflects the jury's confusion," or "[the] verdict is unsupported by evidence." Vinson, 324 S.C. at 404. (internal citations omitted). Additionally, "[a] trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate[,] however, "[t]he jury's determination of damages . . . is entitled to substantial deference." Id. "If the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives, the trial judge is required to grant a new trial absolute." Waring v. Johnson, 341 S.C. 248, 257; 533 S.E.2d 906, 911 (Ct. App. 2000).

Here, Defendant has moved for a new trial absolute on two grounds: (1) that Plaintiff breached the noncompetition agreement, and (2) that the jury's verdict was a compromise or quotient verdict. For the reasons set forth supra Part I, this Court denies defendant's motion for a new trial absolute on ground one, that Plaintiff violated the Noncompetition Agreement.

"A compromise verdict is necessarily the result of the sacrifice by one or more jurors of their conscientious opinions in the case for the sake of agreeing upon a verdict." Nelson v. Atlantic, 191 S.C. 34; 4 S.E.2d 273, 280 (1939). "[A] jury verdict influenced by an improper compromise, *on its face*, cannot stand and a complete new trial is required." Spell v. McDaniel, 604 F. Supp. 641, 651 (E.D.N.C. 1985).

The South Carolina Supreme Court has stated that the rule regarding quotient verdicts is "well settled [and] that a verdict rendered in a civil action in pursuance of an agreement by the jurors to accept one-twelfth of the aggregate amount of their several estimates, without the assent of

their judgment of such a sum as their verdict, is invalid.” Wannamaker v. Traywick, 136 S.C. 21, 26; 134 S.E. 234, 236 (1926) (quoting 27 R. C. L. p. 847-850, §§ 20, 21). However, “[t]he impropriety of the practice . . . [in] accepting the resultant quotient as the sum of the verdict, consists, not in the method[,] nor the sum of the result, but in the *prior agreement* to be bound by it.” Id. at 27 (emphasis added). The Court stated that “[j]urors are presumed to do their duty, [] there is a presumption that they have regarded their oaths[, and] [t]he court would not be justified, except upon a clear showing, to hold contrary to these presumptions.” Id. at 31. Additionally, “the burden of establishing the fact that a quotient verdict had been rendered” is on the moving party, and it must be “clearly shown that the verdict rendered is such a one.” Id. at 29, and Bunton v. South Carolina State Highway Dept., 186 S.C. 463, 477; 196 S.E. 188, 194 (1938), respectively. See also Westbrook v. Hutchison, 195 S.C. 101; 10 S.E.2d 145 (1940) (discussing quotient verdicts and the high burden of proof necessary to establish that a quotient verdict was rendered).

In Wannamaker, affidavits were submitted by counsel and the court stenographer, among others, attesting to the fact that a sheet of paper had been found in the jury deliberation room after a verdict had been rendered, and the paper contained twelve columns of number ranges which were summed and divided by twelve resulting in a quotient of 1,750. Wannamaker 136 S.C. at 28-29. The verdict returned by the jury was in the amount of \$1,750.00. Id. The Court found these facts to be insufficient evidence to prove the jurors had agreed to a quotient verdict. Id. at 30-31.

In the case before this Court, the jury granted an award of damages in the amount of \$1,238,962.00 which included \$56,343.00 for “past wages due,” and \$1,182,619.00 for “any other damages for breach of contract.” Verdict Form Adolfi v. Nat’l Dental Sys., Inc. (2015-CP-10-1683). Defendant asserts that there is no evidence supporting the jury’s award in the amount of \$56,343.00 for past wages due and therefore the jury’s award must result from a compromise or

quotient verdict. Defendant's Post-Trial Motions and Memorandum in Support at 5-6. *Adolfi v. Nat'l Dental Sys., Inc.* (2015-CP-10-1683).

To meet its burden of proof, Defendant offers various methods by which Plaintiff's past wages due could have been calculated based on the evidence received by this Court, and demonstrates that none of these methods would result in the sum awarded by the jury. However, the proof required to show that a quotient verdict was reached is not that the jury utilized a particular method, nor that the jury awarded the average of the amounts each juror submitted to the group, but rather that the jurors had a *prior agreement to be bound* by such calculations.

This Court finds that Defendant has failed to provide any evidence that the jurors arrived at an award of wages past due through the use of a quotient verdict. Similarly, this Court finds that Defendant has failed to provide any evidence that any jurors were influenced by an improper coercion resulting in a compromise verdict. Therefore, Defendant's motion for a new trial absolute on the grounds of a compromise or quotient verdict is denied.

B. New Trial Nisi Remittitur

"The grant or denial of a motion for a new trial *nisi* rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Waring v. Johnson, 341 S.C. 248, 256; 533 S.E.2d 906, 910 (Ct. App. 2000). "The trial court alone has the power to grant a new trial *nisi* when [the court] finds the amount of the verdict to be merely inadequate or excessive." Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 320; 628 S.E.2d 496, 518 (Ct. App. 2006). The trial judge must "consider the adequacy of the verdict in light of the evidence presented[,] and offer "compelling reasons . . . to justify invading the jury's province by granting a new trial *nisi remittitur*." Id. When "the damages awarded [are] within the range of the evidence,

[the court] cannot hold the verdict was excessive as a matter of law.” Hyload, Inc. v. Pre-Engineered Products, Inc., 308 S.C. 277, 281; 417 S.E.2d 622, 625 (Ct. App. 1992).

In this case, Defendant moves for a new trial *nisi remittitur* on the ground that the jury’s award included future damages based on the Noncompetition Agreement, and therefore the verdict must be excessive because the Noncompetition Agreement is executory in nature requiring obligations to be performed by both parties in the future. Testimony was received from the Plaintiff and Plaintiff’s forensic accounting expert regarding Plaintiff’s income, past wages due, and future wages due based on the five year term in the Noncompetition Agreement. A lost earnings calculation was also admitted into evidence through Plaintiff’s expert asserting that Plaintiff was owed \$1,182,619.00 in post-termination wages. Pl’s. Ex. 13. The jury award for “any other damages for breach of contract” was the exact amount as testified to by Plaintiff’s expert. As such, this Court finds the damages to be within the range of the evidence and therefore not excessive as a matter of law. Defendant’s motion for a new trial *nisi remittitur* is denied.

III. Payment of Wages Act

Plaintiff’s post-trial motion moves this Court for an award of treble damages, costs, and attorney fees pursuant to the South Carolina Payment of Wages Act (“Act”). S.C. Code Ann. §§ 41-11-10, et seq. The Act requires wages due to a discharged employee be paid within a specified period of time following discharge. S.C. Ann. § 41-10-50 (Supp. 2015). In the event of a failure to comply with the Act, “the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney’s fees as the court may allow.” Id. § 41-10-80(C) (emphasis added).

A. Treble Damages

The trebling of damages is not mandatory, but is within the trial judge's discretion. Rice v. Multimedia, Inc., 318 S.C. 95, 98-100; 456 S.E.2d 381, 383-84 (1995). Additionally, the Court has recognized a good faith exception to the award of treble damages stating the purpose of the Act is "to protect employees from the unjustified and wilful (sic) retention of wages by the employer[,] and therefore "[t]he imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh." Id. at 98. The court of appeals found that "[w]hile a jury's partial award of damages does not, by itself, create the existence of a bona fide dispute," under certain facts, it may be indicative of "a good faith basis for refusal to pay at least a portion of [the] claimed wages." Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 100; 757 S.E.2d 560, 564 (Ct. App. 2014).

Here, Plaintiff's forensic accounting expert testified that the past wages due amounted to \$118,343.00. See also Pl's. Ex. 13. The jury awarded past wages due in the amount of \$56,343.00. Verdict Form Adolfi v. Nat'l Dental Sys., Inc. (2015-CP-10-1683). Admitted into evidence were an Executive Employment Agreement (Pl's. Ex. 2), an Operating Agreement (Pl's. Ex. 4), and an email (Def's. Ex. 1), all of which mentioned payment of wages to Plaintiff. Contradictory testimony was received regarding whether or not Plaintiff had agreed to lower his salary, or merely defer payment of a portion of his salary. Additionally, Defendant's President and CEO testified that Defendant owed Plaintiff \$18,000.00 in past wages. At the close of the evidence, and upon Plaintiff's motion for a directed verdict, this Court directed a verdict in the amount of \$18,000.00 past wages due and instructed the jury that it must award Plaintiff, at a minimum, \$18,000.00 past wages due.

This Court finds there was not a bona fide dispute as to \$18,000.00 in past wages due and will treble the \$18,000.00 portion of the awarded past wages due to the amount of \$54,000.00.

B. Attorney's Fees & Costs

1) Attorney's Fees

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 383; 377 S.E.2d 296, 297 (1989). As mentioned above, the Act permits the award of attorney's fees. In awarding attorney's fees the court should consider six factors to determine "reasonableness," but no single factor is controlling. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384; 377 S.E.2d 296, 297 (1989). The Baron court enumerated the six factors as follows:

- (1) nature, extent and difficulty of the legal services rendered,
- (2) time and labor necessarily devoted to the case,
- (3) professional standing of counsel,
- (4) contingency of compensation,
- (5) fee customarily charged in the locality for similar legal services, and
- (6) the beneficial results obtained.

Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384-85; 377 S.E.2d 296, 297 (1989).

Here, the affidavit of attorney's fees and costs ("affidavit"), submitted by Plaintiff's counsel, asserts \$118,769.91 in legal fees which include attorneys' fees, paralegal fees, and/or law clerk fees. Affidavit of Attorneys' Fees And Costs at 2 Adolfi v. Nat'l Dental Sys., LLC (2015-CP-10-1683). This case was originally filed August 9, 2013, but then stricken pursuant to 40(j), SCRCF on October 31, 2014. The case was restored on March 3, 2015, the parties engaged in discovery, and the case was tried before a jury from June 13-17, 2016. This breach of contract case involved numerous documents including multiple contracts and tax filings, and testimony from several witnesses including a witness qualified as an expert in forensic accounting. Based on these facts, this Court finds this case to have been more complex than a simple breach of contract case, and that

the number of hours attested to in the affidavit were necessarily spent in the preparation and trial of this case. Based on the affidavit, this Court finds that plaintiff's attorney, W. Mullins McLeod, Jr., has been a licensed attorney in good standing in the State of South Carolina since 1997. Mr. McLeod has also been admitted to practice in the federal courts in South Carolina, and the United States Supreme Court. Based on the same, this Court finds that Mr. McLeod is an experienced, skilled attorney, of high professional standing in the community. The representation agreement between the plaintiff and plaintiff's attorney requires plaintiff's firm be compensated at its usual and customary hourly rates, and as such, this Court finds the attorney's fees are contingent upon an award of fees. Additionally, based upon a review of the attorney's affidavits and this Court's familiarity with attorney fees customarily charged in this legal community, this Court finds the rate of \$250.00 per hour to be appropriate. Finally, this Court reviews the beneficial results obtained for the plaintiff. On June 17, 2016, the jury returned a verdict in favor of Plaintiff in the amount of one million, two hundred thirty-eight thousand, nine hundred sixty-two dollars and zero cents (\$1,238,962.00). Fifty-six thousand, three hundred forty-three dollars and zero cents (\$56,343.00) were for "past wages due," and one million, one hundred eighty-two thousand, six hundred nineteen dollars and zero cents (\$1,182,619.00) for "any other damages for breach of contract." Verdict Form Adolphi v. Nat'l Dental Sys., Inc. (2015-CP-10-1683). Therefore, this Court finds plaintiff's counsel obtained beneficial results for plaintiff.

Having consider all the above factors, this Court awards plaintiff's attorney \$27,950.00 in attorney fees.

2) Costs

Rule 54 provides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs;" Rule 54, SCRPC. However, a party seeking costs "must point to a specific

statute or rule of court to support each of his claims for costs, fees, and disbursements.” Black v. Roche Biomedical Laboratories, Inc., 315 S.C. 223, 228; 433 S.E.2d 21, 24 (Cl. App. 1993). The Supreme Court of South Carolina has explained that:

[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute, and they have always been regarded in this state as in the nature of penalties; hence statutes allowing them are strictly construed, and the party who claims the right to tax them against another must be able to point to some statute which allows him to do so.

South Carolina Public Service Authority v. Spearwaint Liquidating Co., 201 S.C. 207; 22 S.E.2d 252, 253 (1942) (citations omitted). As explained above, the Act provides for an award of “costs and reasonable attorney’s fees” at the discretion of the court. S.C. Ann. 41-10-80(C) (Supp. 2015). Subsection (e) of Rule 54 enumerates the taxable costs including among others: fees of the clerk, fees incurred in service of process, witness fees, and fees for the exemplification and copies of papers. Rule 54(e), SCRPC.

Here, the affidavit of attorney’s fees and costs, submitted by Plaintiff’s counsel, asserts \$14,832.10 in costs and expenses. Affidavit of Attorneys’ Fees And Costs at 2 Adolfi v. Nat’l Dental Sys., LLC (2015-CP-10-1683). The affidavit includes the following descriptions which this Court finds are not taxable: Travel, Court Reporter-transcript, Postage, Outside Research, Dixon Hughes retainer, Pro-Copy docs from Defendant, Pro-copy docs from Welch Roberts, Mediation, Transcripts, Trial Lunch, Meeting/lunch, and Meeting/dinner.

Additionally, the affidavit lists several expert, copies, and trial exhibit fees: Witness fees and mileage are only taxable if those fees were paid to a witness that was subpoenaed and testified at trial. Rule 54(e)(5), SCRPC. Furthermore, witnesses, lay or expert, are reimbursed for actual mileage driven and twenty five dollars per day of attendance. Rule 45(b)(1), SCRPC. Fees for copies are only permitted for one copy of a document that is “introduced in evidence in lieu of the

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original.” Rule 54(e)(6), SCRPC. Additionally, Rule 54 provides for “the cost of maps and one copy of a photograph introduced into evidence.” Id. Based on the foregoing, this Court denies plaintiff’s expert (Deposition-Brian Schleifer, Expert-DHG, and Expert DHG-trial prep and attendance), copies, and trial exhibit fees. This Court grants plaintiff’s filing fees in the amount of three hundred twelve dollars and fifty cents (\$312.50).

CONCLUSION

IT IS THEREFORE ORDERED that Defendant’s Motion for Judgment Notwithstanding the Verdict is DENIED; and it is further

ORDERED that Defendant’s Motion for New Trial Absolute is DENIED; and it is further

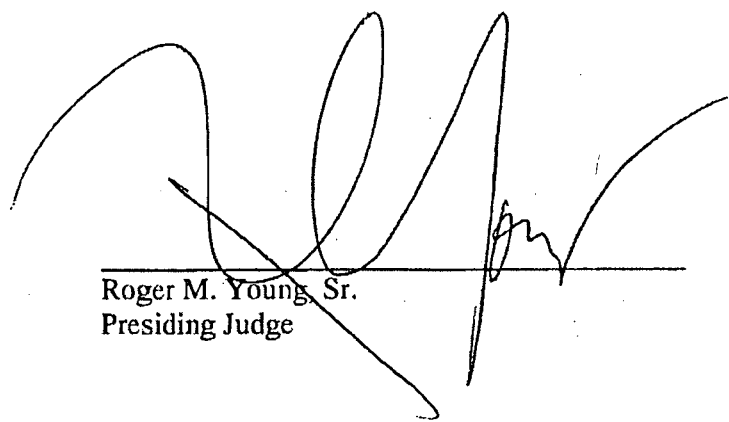
ORDERED that Defendant’s Motion for New Trial Nisi Remittitur is DENIED; and it is further

ORDERED that Plaintiff’s Motion for Treble Damages is GRANTED IN PART, and this Court trebles the portion of past due wages in the amount of \$18,000.00 to \$54,000.00 which shall be added to the verdict; and it is further

ORDERED that Plaintiff’s Motion for Attorney Fees and Costs is GRANTED IN PART, and this Court awards \$27,950.00 in attorney fees, and \$312.50 in costs, both of which shall be added to the verdict.

IT IS SO ORDERED!

September 27, 2016
Charleston, South Carolina



Roger M. Young, Sr.
Presiding Judge

AMENDED FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NO. 2015 CP-10-1683

Richard Adolff

National Dental Systems, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court.

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)
 Affirmed; Reversed; Remanded; Other.

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The attached formal order awards treble damages, attorney's fees, and costs to plaintiff. This Amended Form 4 replaces the Form 4 that was filed on June 17, 2016.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Richard Adolff	National Dental Systems, LLC	\$1,303,224.50
		\$
		\$

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

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

[Signature] 2134 9/29/16
 Circuit Court Judge Judge Code Date

FILED
 2016 SEP 29 PM 3:00
 JULIE J. ARNISTON
 CLERK OF COURT
 RECEIVED
 NO. 28 2016
 SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Richard John Adolfi,)
) Plaintiff,)
v.)
National Dental Systems, LLC,)
) Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-10-1683

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

RECEIVED
NOV 28 2016
SC Court of Appeals

FILED
2016 OCT 28 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURTS
BY _____

BACKGROUND

A jury trial was held in the above captioned breach of contract case beginning on June 13, 2016. Plaintiff Richard John Adolfi was present and represented by attorney W. Mullins McLeod Jr. The defendant National Dental Systems, LLC (“NDS”) was represented by attorney Mark W. McKnight. On June 17, 2016, the jury returned a verdict in favor of Plaintiff. On September 29, 2016, an Order Denying Defendant’s Motion for JNOV and New Trial, and Granting In Part Plaintiff’s Motion for Treble Damages, Costs, and Attorney’s Fees was filed with the Clerk of Courts. On October 24, 2016, Defendant filed a Motion for Reconsideration on the same grounds asserted in Defendant’s Motion for JNOV and New Trial.

STANDARD OF REVIEW

“The power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment.” Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper “vehicle to request the trial court ‘alter or amend the judgment,’” and “to seek ‘reconsideration’ of issues and arguments.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held “that Rule 59(e)

motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (internal citations omitted).

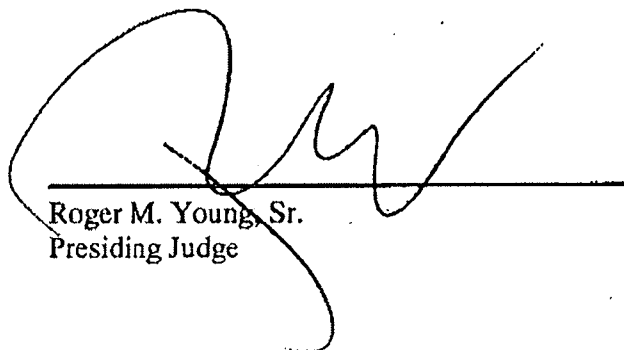
CONCLUSION

This Court, having considered defendant’s arguments, finds that defendant’s arguments fail to satisfy the aforementioned criteria to be successful in its motion for reconsideration.

IT IS THEREFORE ORDERED that Defendant’s Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

October 27, 2016
Charleston, South Carolina



Roger M. Young, Sr.
Presiding Judge