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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2015-000670

Anita Bacchi and Kristine Lomas,

Respondents,

v.

America's Source Consulting
Agency, LLC,

Appellant.

RECORD ON APPEAL

Francis A. Humphries, Jr.
1300 Professional Drive, Suite 102
Myrtle Beach, South Carolina 29577
Attorney for the Respondents

James R. Snell, Jr.
Vicki Koutsogiannis
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
Attorneys for the Appellant

James Marshall Biddle
Post Office Box 50460
Myrtle Beach, South Carolina 29579
Attorney of Record for the
Respondents

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 Anita Bacchi and Kristine Lomas,)
)
 Plaintiffs,)
)
 vs.)
)
 America's Source Consulting)
 Agency, LLC, and)
 Sergey Sokolovsky)
)
 Defendants:)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2008-CP-26-7586

**ORDER GRANTING MOTION
 TO VACATE JUDGMENT**

2014 OCT - 8 PM 2:40
 MELANIE JOSEPHS-WARD
 CLERK OF COURT
 Horry County

This matter comes before the Court upon the motion of Sergey Sokolovsky filed on May 19, 2014. A hearing was scheduled on August 5, 2014. Appearing at the call of the case was Jennifer M. Clinkscales, on behalf of the Defendant America's Source Consulting Agency, LLC, and J. Marshall Biddle on behalf of the Plaintiffs. The default judgment has already been vacated as to the Defendant Sergey Sokolovsky for lack of proper service. The order grants Ms. Clinkscales's motion on behalf of the Defendant America's Source Consulting Agency, LLC, finding that the default judgment entered against it is void.

The default judgment in question was filed on May 24, 2010. It was entered against America's Source Consulting Agency, LLC. There was some question as to whether a hearing was held in this matter, but Plaintiffs have been unable to provide any documentation evidencing such a hearing and as such, the court hereby determines there is insufficient evidence to show that one did take place. In light of this fact, the court hereby determines that a hearing did not take place in this matter prior to the issuance of a default judgment.

The Defendant's motion to vacate raises an objection to the issuance of this judgment based on a lack of a verified pleading, affidavit, or hearing on default damages as required under

SCRCP Rule 55(b)(1).

Rule 55(c) and Rule 60, SCRCP, read together, allow the court to entertain an independent action to set aside a default judgment within a reasonable time. *Momani v. Van Surdam*, 296 S.C. 409, 373 S.E.2d 691 (Ct. App. 1988). The trial court has broad discretionary authority to set aside a default judgment. *Harbor Is. Owner's Ass'n v. Preferred Is. Props., Inc.*, 369 S.C. 540, 633 S.E.2d 497 (2006). Rule 55(c) specifically states: "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 55(c), SCRCP. Rule 60(b)(4) states that a court may relieve a party from a final judgment within a reasonable time where the judgment is void.

The default judgment in the present case is void for lack of proper verification under Rule 55(b)(1). Rule 55(b)(1) details the requirements for obtaining a default judgment when the complaint seeks liquidated damages or sum-certain amounts. In the present case, each Plaintiff seeks specific and certain damages in the complaint against America's Source Consulting Agency, LLC. Specifically, Rule 55(b)(1) states:

- (b) Judgment. Judgment by default may be entered as follows:
 - (1) *Cases Involving Liquidated Damages or Sum Certain Amounts.* When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

Rule 55(b)(1), SCRCP.

"The purpose of the requirement of a verified statement of account is to give the

defendant notice of the basis for the claim and to afford evidence of the indebtedness sufficient for entry of judgment.” *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 457 S.E.2d 340 (1995) (citing previous statute). Where the complaint is not verified and the complaint seeks a sum certain in damages, as where a sum is allegedly due on an account or contract, and no affidavit is provided regarding the amount due, Rule 55 is not satisfied and default judgment is void. *Harbor Is. Owners’ Ass’n*, 369 S.C. at 547, 633 S.E.2d at 500-501. In that case, the plaintiff homeowners association failed to verify as required under Rule 55, its demand in the complaint for an 18% prejudgment and postjudgment interest rate on unpaid membership fees, thereby precluding the payment of these amounts by the defaulting defendant.

Likewise, in the instant case, while the Plaintiffs both seek a sum certain in damages in the complaint based on their alleged employment with Defendant America’s Source Consulting Agency, LLC, the complaint was not verified. Further, when Plaintiffs sought to obtain a default judgment against the Defendant America’s Source Consulting Agency, LLC under Rule 55, they failed to include in their certification and petition for judgment an “affidavit of the amount due [to permit the court to] enter judgment for that amount and costs against the party against whom the judgment by default is sought.” Rule 55(b)(1), SCRPC. The Certification and Petition for Judgment filed by the Plaintiffs in 2010 included an Amended Affidavit of Default, but that affidavit does not verify the sum certain in damages sought by the Plaintiffs against the Defendants. This constitutes good cause for the court to proceed with an action to set aside the default judgment.

Neither the complaint nor the Certification and Petition for Judgment satisfies the Rule 55(b)(1) requirements. Because Plaintiffs fail to provide sufficient information for the entering of a default judgment, the default judgment was improperly ordered. For this reason, the default

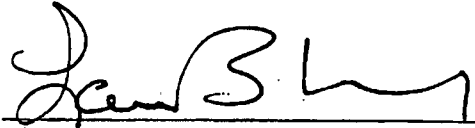
judgment is void under Rule 55(b)(1) and should be vacated at this time.

CONCLUSION

Plaintiffs failed to provide sufficient information to satisfy the requirements of SCRCP 55(b)(1) for the entrance of a default judgment against the Defendant America's Source Consulting Agency. Plaintiffs did not provide an affidavit establishing the amount of the sum certain, nor did they provide a verified complaint to determine or compute the sum certain. Therefore, the entry of default judgment is void.

IT IS ORDERED!

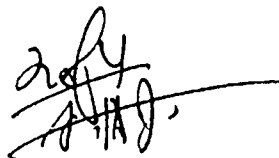
10-3-, 2014
Conway, South Carolina


The Honorable Larry B. Hyman

No/100's (\$3,600.00) Dollars; and in Ms. Bacchi's case, she is owed Twenty-four Thousand Twenty-eight (\$24,028.00) Dollars as respectively set forth in Plaintiffs' Exhibits 2 and 3.

Further, the Court finds that the Defendant Employer, America's Source Consulting Agency, LLC has violated the provisions of South Carolina Code of Laws, Annotated, §§41-10-10, et seq., Payment of Wages Act regarding the payment of wages, and in that, by the evidence presented, in the proper standard of evidence, that not only are these wages due and owing to the Plaintiffs from the Defendant, but they are entitled to three (3) times the full amount of the unpaid wages as a penalty. So for Ms. Lomas, she is entitled to three (3) times Three Thousand Six Hundred and No/100's (\$3,600.00) Dollars or Ten Thousand Eight Hundred and No/100's (\$10,800.00) Dollars as a penalty; and for Ms. Bacchi, she is entitled to three (3) times Twenty-four Thousand Twenty-eight and No/100's (\$24,028.00) Dollars or Seventy-two Thousand Eighty-four and No/100's (\$72,084.00) as a penalty.

Further, The Court further finds that the Plaintiffs are entitled to an award of their costs in the amount of Four Hundred Forty-four and 77/100's (\$444.77) Dollars and an award of reasonable attorneys' fees in this matter. The Court finds that the reasonable attorneys' fees are awarded based upon the Affidavits of James Marshall Biddle in the amount of Fifteen Thousand Six Hundred Seventy Five and No/100's (\$15,675.00) Dollars and Ryan C. Siden in the amount of Three Thousand Six Hundred Twenty-five and No/100's (\$3,625.00) Dollars which have been submitted to the Court in support of Plaintiffs' award of reasonable attorney's fees. The Plaintiffs are further entitled to and hereby awarded interest in this matter from the date of termination of the employment on each of their respective wage damage awards. So for Ms. Lomas, she is entitled to the statutory interest on her damage award of Three Thousand Six Hundred and No/100's (\$3,600.00) Dollars from the date of termination (i.e. February 4, 2008)

A handwritten signature in black ink, appearing to be "R. H. H.", with a horizontal line drawn through it.

until February 2, 2015 and Ms. Bacchi is entitled to the statutory interest on her damage award of Twenty-four Thousand Twenty-eight and No/100's (\$24,028.00) from the date of termination (i.e. February 4, 2008) of her employment until February 2, 2015. It is well settled law in South Carolina that, "[t]he law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993); see Builders Transport, Inc., 307 S.C. at 406, 415 S.E.2d at 424. ("A claim is liquidated if the sum claimed is certain or capable of being reduced to a certainty."). "The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." Babb, 310 S.C. at 353, 426 S.E.2d at 791. The statutory basis for prejudgment interest in this matter shall as set forth in South Carolina Code of Laws, § 34-31-20(A).

NOW THEREFORE,

PLAINTIFFS are awarded damages as follows:

Ms. Lomas:

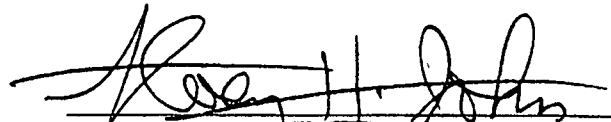
Damages:	\$3,600.00
2008 Interest:	\$ 367.41 (331 days at 1.11 per day)
2009 Interest:	\$ 367.28 (365 days at 0.79 per day)
2010 Interest:	\$ 308.48 (365 days at 0.85 per day)
2011 Interest:	\$ 330.85 (365 days at 0.91 per day)
2012 Interest:	\$ 354.83 (365 days at 0.97 per day)
2013 Interest:	\$ 380.56 (365 days at 1.04 per day)
2014 Interest:	\$ 408.15 (365 days at 1.12 per day)
<u>2015 Interest:</u>	<u>\$ 39.60 (33 days at 1.20 per day)</u>
Subtotal:	\$6,157.16
<u>Penalty:</u>	<u>\$ 10,800.00</u>
Total:	\$ 16,957.16 Judgment

Ms. Bacchi:
Damages: \$ 24,028.00
2008 Interest: \$ 2,452.71 (331 days at 7.41 per day)
2009 Interest: \$ 1,919.85 (365 days at 5.26 per day)
2010 Interest: \$ 2,059.04 (365 days at 5.64 per day)
2011 Interest: \$ 2,208.32 (365 days at 6.05 per day)
2012 Interest: \$ 2,368.42 (365 days at 6.49 per day)
2013 Interest: \$ 2,540.17 (365 days at 6.96 per day)
2014 Interest: \$ 2,724.34 (365 days at 7.46 per day)
2015 Interest: \$ 264.00 (33 days at 8.00 per day)
Subtotal: \$40,564.07
Penalty: \$ 72,084.00
Total: \$112,648.07 Judgment

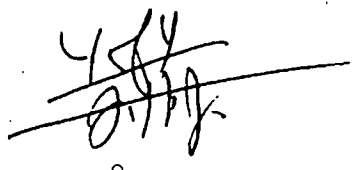
Total Costs: \$444.77

Attorneys Fees: \$15,675.00 (Mr. Biddle)
\$ 3,625.00 (Mr. Siden)
Total: \$19,300.00 Reasonable Attorneys' Fees

IT IS SO ORDERED.


Steven H. John, ~~██████████~~
~~██████████~~ Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina
February 13, 2015



STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Anita Bacchi and Kristine Lomas, }
Plaintiffs, }

Case No.: 2008-CP-26-7586

vs. }

**MOTION TO SET ASIDE ENTRY OF
DEFAULT AND TO PERMIT
DEFENDANT'S ANSWER**

America's Source Consulting }
Agency LLC, }
Defendant. }

FILED
2015 JAN 15 PM 4:07
MELANIE HUGGINS-WARD
CLERK OF COURT

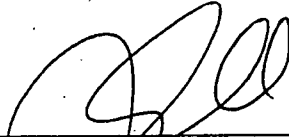
TO J. MARSHALL BIDDLE, ESQ., ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that defendant America's Source Consulting Agency, LLC, acting by and through the undersigned attorney, will move before the Court of Common Pleas for Horry County on the tenth day after service of as soon thereafter as the court deems acceptable for a Motion to Set Aside Entry of Default and Permit Defendant's Answer. A copy of the Defendant's proposed Answer is attached hereto as Exhibit "A". This motion is based on grounds to include, *inter alia*:

- 1) Prior order in this case vacating default judgment against Sergey Sokolovsky for improper service;
- 2) Prior order in this case vacating default judgment against America's Source Consulting Agency, LLC, for failure to hold a hearing or file an affidavit or verification;
- 3) That although service of the initial pleadings in this case were delivered to the registered agent for service of process, they were not actually received by any principal or other party responsible for tendering a defense.;

- 4) The Plaintiff's efforts to attempt to enforce any judgment obtained against America's Source Consulting Agency, LLC, outside of South Carolina, and indications of further out of state litigation as to Sergey Sokolovsky to attempt to enforce any judgment obtained;
- 5) That the Defendant has a meritorious defense, and that the Plaintiffs are not entitled to their requested judgment from the Defendant or other prayers for relief;
- 6) That this motion is filed after notice of the Court's order vacating the prior judgment in October, 2014.

Defendant further reserves the right to submit a memorandum in support of its motion prior to the hearing.



James R. Snell, Jr., S.C. Bar # 72633
Attorney for the Defendant
Law Office of James R. Snell, Jr., LLC
316 South Lake Drive
Lexington, South Carolina 29072
Phone: (803) 359-3301
Fax: (803) 359-7691

December 29, 2014
Lexington, South Carolina

EXHIBIT "A"

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

IN THE COURT OF COMMON PLEAS
FOR THE 15th JUDICIAL CIRCUIT

Anita Bacchi and Kristine Lomas, }
Plaintiffs, }

Case No.: 2008-CP-26-7586

vs. }

ANSWER

America's Source Consulting
Agency LLC, }

Defendant. }

The Defendant Answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein;
2. The Defendant admits the allegations contained in Paragraph One (1) of the Complaint;
3. The Defendant denies the allegations contained in Paragraph Two (2) of the Complaint;
4. The Defendant denies the allegations contained in Paragraph Three (3) of the Complaint;
5. The Defendant admits so much of the allegations contained in Paragraphs Four (4), Five (5), Six (6), and Seven (7), of the Plaintiff's complaint in that it was attempting to operate a business to be operated by the Plaintiffs in Horry County, South Carolina, and that this court would have resulting jurisdiction and that Horry County would be a proper venue;

6. The Defendant denies the allegations contained in Paragraphs Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16) of the Complaint;

FOR A SECOND DEFENSE

7. That the Defendant will show that the Plaintiffs were fully paid all wages due prior to their termination, further the Plaintiffs were terminated by written notice;

FOR A THIRD DEFENSE

8. The Defendant is informed and believes that S.C. Code § 41-10-10, et. seq., is inapplicable as the Defendant employed fewer than five employees during the 12 preceding months;

FOR A FOURTH DEFENSE

9. The Defendant is informed and believes that the Plaintiff's Complaint should be dismissed on the grounds of accord and satisfaction;

FOR A FIFTH DEFENSE

10. The Defendant is informed and believes that the Plaintiff's Complaint should be dismissed on the grounds of the statute of limitations;

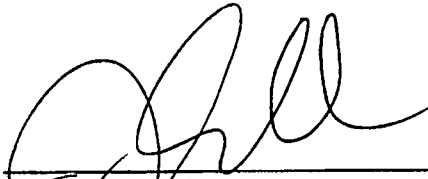
FOR A SIXTH DEFENSE

11. The Defendant is informed and believes that the Plaintiff's Complaint should be dismissed on the grounds of laches;

FOR A SEVENTH DEFENSE

12. The Defendant is informed and believes that the Plaintiff's Complaint should be dismissed on the grounds of misrepresentation;

WHEREFORE having fully Answered the Defendant prays for the dismissal of the Plaintiffs' Complaint with prejudice, costs of this action and for all other relief which is just and proper:



James R. Snell, Jr., S.C. Bar # 72633
Attorney for the Defendant
Law Office of James R. Snell, Jr., LLC
316 South Lake Drive
Lexington, South Carolina 29072
Phone: (803) 359-3301
Fax: (803) 359-7691

December 29, 2014
Lexington, South Carolina

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }
IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Anita Bacchi and Kristine Lomas, }
Case No.: 2008-CP-26-7586

Plaintiff, }

vs. }

MOTION TO VACATE DEFAULT JUDGMENT

America's Source Consulting Agency, }
LLC, and Sergey Sokolovsky, }

Defendant. }

FILED
Horry County
2013 NOV 22 PM 4:07
KELANIE JUGGINS, WARD
CLERK OF COURT

TO J. MARSHALL BIDDLE, ESQ., ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that defendant Sergey Sokolovsky, acting by and through the undersigned attorney, will move before the Court of Common Pleas for Horry County on the tenth day after service or as soon thereafter as the Court deems acceptable for a Motion to Vacate the Default Judgment filed on May 24, 2010. A copy of this order is attached hereto as Exhibit "A". This motion is based on the fact that Service of Process was defective and the Court lacked personal jurisdiction over the defendants.

Grounds include, *inter alia*:

- 1) Service was ineffective based on certified mail that was not sent to or signed for by Sergey Sokolovsky.
- 2) Service was ineffective based on a UPS Proof of Delivery.
- 3) There is otherwise a lack of personal jurisdiction over the defendant Sergey Sokolovsky and America's Source Consulting Agency, LLC.
- 4) There was non-compliance with the requirement of a verified pleading or affidavit requirement of Rule 55(b)(1), SCRCP, and the court did not otherwise hold a hearing as contemplated by Rule 55(b)(2), SCRCP;

Defendant further reserves the right to submit a memorandum in support of its motion prior to the hearing.

Respectfully submitted,



James R. Snell, Jr., S.C. Bar # 72663
Attorney for the Defendants
Law Office of James R. Snell, Jr., LLC
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
(803) 359-7691 (facsimile)

November 22, 2013
Lexington, South Carolina

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION #2008-CP-26-7586

Anita Bacchi and Kristine Lomas,)

Plaintiff,)

v.)

America's Source Consulting)
Agency, LLC, and Sergey)
Sokolovsky,)

Defendants.)

ORDER OF DEFAULT
AND JUDGMENT

FILED
HORRY COUNTY
10 MAY 24 PM 1:14
MELANIE HUGGINS-WARD
CLERK OF COURT

Based upon the facts certified to in the accompanying Affidavit of Default and Certification & Petition for Judgment, and it appearing that the Defendants have failed to answer or otherwise plead in the above-captioned action, it is

ORDERED that the Defendants, America's Source Consulting Agency, LLC and Sergey Sokolovsky, are hereby declared to be in default. It is further

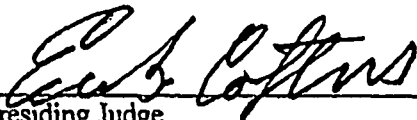
ORDERED that the Plaintiff, Anita Bacchi, have judgment for treble damages pursuant to South Carolina Labor Law §41-10-80(c) against the Defendants, America's Source Consulting Agency, LLC, and Sergey Sokolovsky, in the principal amount of Eighty-One Thousand Eight Hundred Thirty Four and No/100's (\$81,834.00) Dollars, (representing three (3) times the wages due said Plaintiff in the amount of Twenty Seven Thousand Two Hundred Seventy-Eight and No/100's (\$27,278.00) Dollars) together with interest on the total sum from the date hereof at the statutory rate. It is further

ORDERED that the Plaintiff, Kristine Lomas, have judgment for treble damages pursuant to South Carolina Labor Law §41-10-80(c) against the Defendants, America's Source Consulting

Agency, LLC, and Sergey Sokolovsky, in the principal amount of Eleven Thousand Five Hundred Twenty and No/100's (\$11,520.00) Dollars, (representing three (3) times the wages due said Plaintiff in the amount of Three Thousand Eight Hundred Forty and No/100's (\$3,840.00) Dollars) together with interest on the total sum from the date hereof at the statutory rate. It is further

ORDERED that J. Marshall Biddle, Esquire be awarded attorney's fees in the amount of 15% of the total damages listed above or such other reasonable amount as this Court deems just and proper.

AND IT IS SO ORDERED.



Presiding Judge
Fifteenth Judicial Circuit

~~April~~ ^{MAY} 19, 2010

Conway, South Carolina

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF Horry) (2008-CP-26-07586)
3)

4 ANITA BACCHI, et al)
5)
6)
7 VERSUS) TRANSCRIPT OF RECORD
8)
9)
10 AMERICA'S SOURCE CONSULTING) February 2, 2015
11 AGENCY, LLC) Conway, S. C.
12)
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B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

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

JAMES MARSHALL BIDDLE, ESQ.
ATTORNEY FOR PLAINTIFFS

JAMES ROSS SNELL, JR., ESQ.
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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MR. SNELL		36		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Letter/attachments(3/18/2010) (Biddle Law Firm)		23
P-2	ASCA Severance Package (Lomas)		50/53
P-3	ASCA Severance Package (Bacchi)	29	48
P-4	Compensation Report	29	41
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P-6	Compensation Report (Bacchi)	29	41
P-7	Compensation Report (Lomas)	50	50/53
P-8	Affidavit		

(NOT ADMITTED) (TO BE PREPARED BY MR. BIDDLE)

D-1	Letter (2pg) (2/05/08) Amy Jenkins, Esq.		40
D-2	Biddle letter to Jenkins (February 5, 2008)		40

1 (THE FOLLOWING TAKES PLACE ON FEBRUARY 2, 2015,)

2 COURT: All right, gentlemen, this is (2008-CP-26-
3 07586), Anita Bacchi and Kristine Lomas, Plaintiffs, versus
4 America's Source Consulting Agency, LLC. In this matter there
5 was a previous Order Granting Motion to Vacate Judgment, as
6 issued by the Honorable Larry B. Hyman on October 3rd, 2014,
7 thereafter there was a motion to set aside the entry of
8 default and permit the Defendant's Answer.

9 So that I am clear, the entry of default that we are
10 talking about in this matter was the Affidavit of Default, Mr.
11 Biddle, and -- that Mr. Biddle filed on February 18, 2009. Is
12 that -- is that what we are talking about?

13 MR. BIDDLE: Yes sir, the one against America's Source
14 Consulting Agency; that's correct.

15 COURT: All right. There was no -- there was no order
16 of default, there was an Affidavit of Default filed by you,
17 Mr. Biddle; is that correct?

18 MR. BIDDLE: That's correct, Your Honor.

19 COURT: All right. And so then, gentlemen, it would
20 be my belief that, based on the motion of the Defendant that
21 we are here under Rule 55; is that your understand, Mr.
22 Biddle?

23 MR. BIDDLE: Yes sir, Your Honor.

24 COURT: All right.

25 All right, so -- all right, counsel, it's your motion to

1 set aside. If you want to state your name for the record, and
2 then I'll be glad to hear from you, sir.

3 MR. SNELL: Judge, it's James Snell. I go by Jim.
4 And thank you so much, Judge.

5 And first off, Judge, we -- I have probably misread the
6 court roster, the notice, and I thought this was in front of
7 Judge Burch, and so last week, I think Friday, I e-mailed some
8 information to Judge Burch, and if it's okay, I've got a hard
9 copy, if I may approach.

10 COURT: Yes sir. Be glad for you to do so.

11 (COUNSEL APPROACHES THE BENCH.)

12 MR. BIDDLE: Your Honor, if I may, I believe Judge
13 Cottingham did find an Order of Default.

14 COURT: All right. So when ---

15 MR. BIDDLE: That would have been in this matter when
16 we did the default judgment.

17 COURT: All right, so can -- how about tell me when it
18 was that he signed it, please.

19 MR. BIDDLE: Let's see, because -- that would have been
20 in conjunction with -- Order of Default and Judgment would
21 have been May 24th, 2010, and then it was the judgment that
22 was overturned, but not the default. Judge Hyman was real
23 specific at our hearing ---

24 COURT: All right. Well, tell me the date of Judge
25 Cottingham's Order again.

1 **MR. BIDDLE:** Oh. The date of his Order was May 19th,
2 2010.

3 **COURT:** All right. And it was clocked in the Office
4 of the Clerk of Court May 24, 2010; is that right?

5 **MR. BIDDLE:** Yes sir, that's correct.

6 **COURT:** All right, so hold on a second. Let me read
7 that.

8 **MR. BIDDLE:** Okay.

9 **COURT:** All right. So, since there is an Order of
10 Default, and as indicated, it was signed by Judge Cottingham
11 May 19, 2010, and filed in the Office of the Clerk of Court
12 May 24, 2010.

13 Mr. Snell, would it not be correct that you have to
14 proceed under Rule 60 then?

15 **MR. SNELL:** Judge, I believe that that Order was
16 previously vacated by Judge Hyman.

17 **COURT:** Well, okay, let's look at Judge Hyman's Order.
18 It's -- the title of it says, "Order Granting Motion to Vacate
19 Judgment", okay, and in the first paragraph it says, "The
20 Order grants Ms. Clinkscales' motion on behalf of the
21 Defendant, America's Source Consulting Agency, LLC, finding
22 that the default judgment entered against it is void", and
23 there's -- on page two it says, "The default judgment in the
24 present case is void for lack of proper verification under
25 Rule 55(B)(1) or ...", and it says, "...details and

1 requirements for obtaining a default judgment when the
2 Complaint seeks liquidated damages, or sum certain amounts",
3 and it goes on, page three it says, "In the instant case
4 Plaintiffs both seek a sum certain in damages in the Complaint
5 based on their alleged employment", and the Complaint was not
6 verified, so the Court said, "Neither the Complaint nor the
7 certification and Petition for Judgment satisfied the Rule
8 55(B)(1) requirements because the Plaintiff failed to provide
9 sufficient information for entering a default judgment, the
10 default judgment was improperly ordered. For this reason
11 default judgment is void under Rule 55(B)(1), and should be
12 vacated."

13 All right. But anyway, says "The entry of default
14 judgment is void." Now, if we go to Judge Cottingham's Order,
15 it's entitled "Order of Default and Judgment", and it sets
16 forth in it's Order -- and again, that's Judge Cottingham's
17 Order of May 19, 2010, filed with the Clerk May 24, 2010 --
18 first it says, "It is ordered that the Defendants, America's
19 Source Consulting Agency, LLC, and Sergey Sokolovsky are
20 hereby declared to be in default, and it is further ordered
21 that the Plaintiff, Anita Bacchi, have judgment for treble
22 damages pursuant to South Carolina Labor Law", and it says
23 "It's further ordered that the Plaintiff, Kristine Lomas, have
24 judgment for treble damages", and it ordered the -- and it
25 ordered them against the Defendants, America's Source

1 Consulting Agency, LLC and Sergey Sokolovsky, okay.

2 Judge Hyman's Order just says, "The entry of default
3 judgment is void"; correct?

4 MR. SNELL: Yes, Your Honor.

5 COURT: Okay. So are you saying that that means the
6 default, the Order of Default is void too?

7 MR. SNELL: Yes, Your Honor.

8 COURT: How do you ---

9 MR. SNELL: I think it's an entry of default from the
10 August 200 -- or from the 2009 Affidavit of Default of Judge
11 Cottingham's -- the Order of Default, and the -- basically
12 that entire Order was vacated by ---

13 COURT: Well, that's not what it says. If you think
14 that's what it says that's not what it says on it's face. If
15 you are representing to me that's what Judge Hyman told you at
16 the time of the hearing that's not what's in the Order.

17 MR. SNELL: Judge, I will say, I wasn't at the hearing.
18 I know there was -- by reading -- when I read the Order and I
19 looked I took that to mean that Judge Cottingham's Order was
20 out, we were back in the same -- the case was in the same
21 posture we would have been but for it.

22 COURT: Well, that's not what it says. It -- I would
23 expect there to be in that Order that says, if that was the
24 case, okay, that the matter is remanded to the jury trial
25 docket for a jury trial on these issues. It doesn't say that.

1 All it says is, the default judgment is void. That's all it
2 says. Judge Cottingham's Order ordered two things, and it
3 specifically sets forth in the Order and in the caption that
4 it's ordering two things, Order of Default, and Judgment, and
5 then in the body of the Order it says, the Defendants, both
6 Defendants, are hereby declared in default. It is further
7 ordered - and that's when they get the monetary judgment
8 against them - so he has ordered two things. Judge Hyman has
9 clearly said the default judgment is void. He doesn't say
10 anything about the default. Judge Hyman issued this Order
11 October 3rd, 2014. Did you file a motion for reconsideration?

12 MR. SNELL: Judge, let me say this. At the time we
13 filed the Motion to Vacate on the grounds of the default
14 judgment, at that time there was not an -- part of the motion
15 wasn't specifically pled or argued as far as moving for
16 removal of the entry of default, or putting the case back in a
17 posture where, at that time, it could have been eligible for a
18 trial, and Judge, at that time we did not have the information
19 that we have today, and at that time, looking at the case, it
20 was my thought, my understanding, that service wasn't
21 originally proper back in 2008, I believe, as to the LLC.
22 Once Judge Hyman's Order came out in October -- and I --
23 Judge, my understanding was that that Order was canceled and
24 we were back in the same posture we would have been but for
25 it, with no order of default, simply an Affidavit of Default,

1 and I thought the Plaintiffs failed to move for an order -- or
2 ---

3 COURT: Well, they clearly didn't feel that way because
4 October 21, 2014 the Plaintiffs filed a motion for a damages
5 hearing.

6 MR. SNELL: They did, Your Honor, and I received that
7 Friday. On January 6, I received the notice from the Clerk's
8 e-mail system, but I didn't actually get the accompanying
9 filing, their motion until, again, Friday.

10 And I'm sure -- I don't know if Mr. -- I'm sure Mr.
11 Biddle probably ---

12 COURT: Mr. Biddle, who did you send your motion to?

13 MR. BIDDLE: I sent it to Mr. Snell's office, Your
14 Honor, I mean, I -- you know ---

15 COURT: Let me see an Affidavit of Service.

16 MR. BIDDLE: Okay.

17 COURT: Madame Clerk, you need me?

18 CLERK OF COURT: Yes sir.

19 COURT: While you are looking for that let me talk to
20 the Clerk.

21 (COURT HAS A CONVERSATION WITH THE CLERK OF COURT.)

22 MR. BIDDLE: Your Honor, it appears I only have one-
23 half of my file. I apologize. Is it not attached to what was
24 filed with the Court?

25 COURT: Well, let me look some more. I did not see it

1 but I'll -- let me just make sure. There is a motion cover
2 sheet, okay, that lists James Ross Snell, Jr., 316 South Lake
3 Drive, Lexington, South Carolina, 29072, phone (803-359-3301).

4 Is that information correct, Mr. Snell?

5 **MR. SNELL:** Yes, Your Honor.

6 **COURT:** All right. So the motion cover sheet has his
7 name. The -- after that is the request for the damages
8 hearing as to America's Source Consulting Agency, LLC only,
9 and that's filed October 21, 2014. There is, after that, the
10 Plaintiffs' Motion for Damages Hearing pursuant to Rule 55(B)
11 as to America's Source Consulting Agency, LLC only. After
12 that is a copy of the Affidavit of Default that Mr. Biddle
13 filed February 18, 2009. There is an Affidavit of Service
14 that was attached to the Affidavit of Default. It's not an
15 Affidavit of Service and Motion; it's the Affidavit of Service
16 of the original matters, and the attached documentation to
17 that, and that's the end of it.

18 **MR. BIDDLE:** Okay.

19 **COURT:** There is another filing, but just for that
20 particular motion, Mr. Biddle. That's all the Clerk of
21 Court's ---

22 **MR. BIDDLE:** Okay.

23 **COURT:** ---Records contain. It contains no affidavit
24 of service saying that, you know, on the 24th of October, or
25 whatever, copy was mailed to Mr. Snell at that address listed

1 on the face of the -- face of the motion, so ---

2 All right, as an officer of the Court, Mr. Snell, you
3 are telling me you didn't know about the motion for a damages
4 hearing until last week?

5 MR. SNELL: Well, Judge, what -- on January 6th I got
6 an e-mail from the Clerk's Office, and I was glad to get it,
7 telling me about the hearing ---

8 COURT: Okay.

9 MR. SNELL: ---About it coming up on the roster.

10 COURT: Okay.

11 MR. SNELL: I looked online at that time, and I didn't
12 see where a motion or anything had been filed, just where they
13 kind of docket things as they come in.

14 COURT: Okay.

15 MR. SNELL: So I just, at that time, thought it was
16 something automated by the Clerk, and then last week I was
17 looking again at the roster and saw where something had been
18 filed. I e-mailed Mr. Biddle, and Judge, I -- right away he
19 communicated, confirmed the hearing, and Friday he e-mailed me
20 his motion.

21 COURT: All right. So somewhere in there, after that
22 January 6, time, when you saw it on the motion, something else
23 must have happened because you filed your Motion to Set Aside
24 Entry of Default and Permit Defendant's Answer on January
25 15th.

1 **MR. SNELL:** That's right, Judge, and based on what I
2 saw the Clerk had scheduled I ---

3 **COURT:** So based on what you saw on January 6, that's
4 why you filed the January 15th, motion?

5 **MR. SNELL:** Yes, Your Honor.

6 **COURT:** Okay. Looking at Judge Hyman's Order can you
7 point to me some language that would indicate that the Order
8 of Default is void?

9 **MR. SNELL:** And Judge -- no, Judge, and actually
10 hearing -- hearing your -- your reading, and your
11 interpretation of the Order ---

12 **COURT:** Well, let's not worry about my interpretation
13 of it, is there something in the Order that I'm not seeing?

14 **MR. SNELL:** I don't believe so, Judge.

15 **COURT:** Okay. I mean, that's what I'm asking, is --
16 because I just don't see ---

17 **MR. BIDDLE:** If I may ---

18 **COURT:** Yes sir.

19 **MR. BIDDLE:** Mr. Snell's office prepared that Order.
20 Judge Hyman would not have signed an Order like that because
21 at that hearing he specifically advised Mr. Snell's associate
22 that he was not undoing the default. He said it more than
23 three times that, I'm not undoing the default because
24 America's Source Consulting is in default, you know, I'm only
25 undoing the judgment. I'll be happy to order the transcript

1 and have it provided ---

2 COURT: Well, I appreciate that, and I just don't see
3 that it's necessary ---

4 MR. BIDDLE: Okay.

5 COURT: ---Because it just seems clear to me from the
6 face. We've got Judge Cottingham's Order, and Judge
7 Cottingham clearly orders two different things in his Order, a
8 default, and a default judgment. The Order of Judge Hyman
9 says the matter came before him, a hearing was scheduled,
10 people that were -- appeared, and he indicates, in his Order,
11 that the Order grants the Defendant, America's Source
12 Consulting Agency, LLC's motion, finding that the default
13 judgment entered against it is void, and all the reasons why,
14 and they are talking about -- and in the reasons, even in the
15 reasons it's not talking about the service of the
16 documentation, it's talking about the verified documentation
17 that needs to support a judgment, and that's what Judge Hyman
18 bases his decision on, is the supporting documentation that is
19 necessary to issue a monetary judgment was not present,
20 therefore, you couldn't get a monetary judgment, but there's
21 just no language in there about lifting the actual default, so
22 I think, and the Court's ruling is, the stage of the
23 proceedings that we are at right now is, I find that, based on
24 the information presented, and the notice to counsel, that he
25 timely filed a Motion to Set Aside Entry of Default and Permit

1 Defendant's Answer, because, you know, I don't see any service
2 of the original Order of Judge Hyman, and based upon counsel's
3 assertion to me, as an officer of the Court, that he saw the
4 situation on January 6th, he filed -- well, obviously he had
5 to send it to the Clerk's Office before then because they --
6 because they filed it January 15th -- so I do find that the
7 motion is timely filed.

8 Now, so where we are is, Judge Cottingham, in 2010,
9 issued an Order of Default. There was issues about notice of
10 this and so, I'm going to hear the Motion to Set Aside the
11 Entry of Default.

12 MR. SNELL: Thank you very much, Judge.

13 COURT: And just one thing. And I appreciate -- Mr.
14 Biddle, I appreciate the fact that you are indicating to me
15 that Judge Hyman indicated he wasn't lifting the default, but
16 it's not in his Order, so I don't have that in front of me,
17 and I appreciate that it might be in the transcript, or what
18 he was saying, but I don't have that in front of me, so I've
19 got to go ---

20 MR. BIDDLE: I understand that, Your Honor.

21 COURT: ---Based upon what's in front of me.

22 MR. BIDDLE: Your Honor, okay, no problem. I'll make
23 my argument during the ---

24 COURT: All right. Very good.

25 All right, go ahead, Mr. Snell.

1 **MR. SNELL:** Thank you very much, Judge. And I meant to
2 say, this -- I got in this case, I guess early -- well,
3 previously there was a default judgment against two
4 Defendants, Mr. Sokolovsky personally, and the America's
5 Source Consulting, LLC, and at the time I was hired to help
6 Mr. Sokolovsky, which we did, we had a -- basically a motion,
7 ended up vacating the judgment as to him, basically voiding
8 it, and so now he's out of the litigation. We kind of thought
9 that was going to be the end of it but there was some other
10 activity going on out of state that necessitated they hire me
11 to try to help America's Source Consulting, and that led us to
12 Judge Hyman's Order. And Judge, at the time we were before
13 Judge Hyman I didn't -- I didn't have all the information
14 about how America's Source Consulting had been served, and I
15 really had -- I mean, as best I could tell, looking at the
16 records, it looked like somebody probably dropped the ball on
17 the end of America's Source Consulting. Subsequently I found
18 out some additional information, and I've attached some
19 materials into the Memorandum and the Affidavit, and all the
20 attachments I've provided to Your Honor.

21 Judge, when service was made it was made to the
22 registered agent for service of process for the LLC, and
23 that's one of these professional registration companies. I
24 think it's called SeeNSearch. I received documentation last
25 week that the -- that the pleadings did go to the registration

1 company who then forwarded them on to an individual, who is
2 not a, we don't believe, a company officer or anybody
3 respons -- anybody with any responsibility, and in fact, was
4 somebody who was engaged in litigation adversarial to Mr.
5 Sokolovsky, who I think was, at one point, a person with the
6 responsibility for the LLC. So basically, Judge, the
7 pleadings never got -- back in 2008 or 2009, never got to
8 anyone connected with responsibility to the LLC. I think the
9 Plaintiffs did, procedurally, the correct thing, and they
10 delivered the LLC portion to the registered agent, the
11 registered agent, however, turned them over to an individual
12 that was involved with, again, adversarial type litigation,
13 and that's the reason why the LLC never filed an appearance,
14 or never filed an answer back in '08 or '09, no one with any
15 responsibility for the LLC operations, other than the
16 Plaintiffs, actually got them, or were aware of the case.

17 Judge, this is a case involving a suit over unpaid wages
18 and other benefits, and I've attached material. There's an
19 Affidavit from Mr. Sokolovsky. Number one, doesn't appear
20 that the LLC ever had enough employees to subject them to the
21 cause of action that the Complaint was for. I think the
22 statute requires five or more employees and the LLC never had
23 that many. Two, and there's a series of correspondence that
24 the LLC was able to provide to me, indicating that there were
25 negotiations between the parties back in 2009, I believe, or

1 2008, indicating that the wages had, in fact, been paid, and
2 they've provided other documentation indicating that all the
3 wages that would have been due have, in fact, been paid.

4 But basically, Judge, at this time we would feel that
5 any issue as far as default would be improper to hold the LLC
6 to, and again, not fair, simply because they didn't receive
7 notice, and they didn't receive service. The Court has
8 previously found that the service as to Mr. Sokolovsky, who
9 was alleged to be the principal, or the person in charge of
10 the LLC at the time, was improper, and that he never received
11 them. That was Judge Culbertson's Order from earlier in 2014.
12 And we had Judge Hyman's Order, again, holding that the
13 procedures to get the default against the LLC, as far as the
14 judgment, were improper because no hearing and no affidavit,
15 and nothing filed.

16 What we think this shows is that the LLC had a --
17 basically had a good reason for not appearing or answering in
18 that no one ever actually received the pleadings, and two, the
19 LLC would have had a good meritorious defense, and number
20 three, of course these Plaintiffs, we don't believe, would be
21 any prejudice by lifting a default, just allowing us to have a
22 trial, and letting the Court decide the issues on the merits.

23 Thank you very much.

24 COURT: All right, sir.

25 Go ahead, Mr. Biddle.

1 **MR. BIDDLE:** Your Honor, I'll do these in reverse
2 order. My clients will be greatly prejudiced. These wages
3 were earned back in 2008, and they've, quite frankly, been
4 through quite a lot. A person associated with this entity
5 did, in fact, receive all of the documents. Mr. Sokolovsky
6 did, in fact, receive the documents. We were -- they were
7 sent to him by UPS, and he did receive them, which was not, at
8 the time, an appropriate manner of service, which was the
9 reason that he was deemed to have not been served, but he did,
10 in fact, receive them. The purposes for which America's
11 Source Consulting -- their registered agent did receive them
12 in 2008. You know, it's not my client's fault that their
13 registered agent, that they picked, did something else with
14 them, you know. Mr. Sokolovsky had the documents in
15 accordance with the Amended Affidavit of Service in -- where
16 we sent to it him, again, in conjunction with -- by UPS, and
17 he received it sometime in -- you know, prior to the obtaining
18 of the default judgment in 2010, so he had ample opportunity
19 for -- to know that the LLC was subject to this litigation,
20 and he chose not to. You know, the fact is that, regardless,
21 America's Source Consulting Agency was in default. They had
22 been in default -- they had been in default in this thing for
23 six years, Your Honor, and the fact is -- or coming up on six
24 years. You know, the fact is, to come back and find that they
25 are somehow now not in default, I think would be beyond the

1 statute of limitations. I mean, you know, they were fully
2 aware that America's Source Consulting was in default. You
3 know, they got their choice of coming in and asking that the
4 default judgment be set aside. They didn't come in to set
5 aside the default because they knew they couldn't have that
6 argument, and of course, the Judge said at the hearing - of
7 course we don't have that transcript and you weren't there -
8 but you know, they -- the -- you know, they did actually
9 receive the documents, they didn't respond, the manner for
10 service is sending it to their certified registered agent.
11 You know, what is a Plaintiff to do, make sure that the
12 registered agent does what they are suppose to do under Law?
13 I mean, we served the registered agent, they know what they
14 are suppose to do. It's incumbent upon the company to make
15 sure that they use that registered agent, and they receive it
16 it's their responsibility that they do what they are suppose
17 to do with it. If they did something wrong with it then they
18 can sue that registered agent for violations, or whatever they
19 didn't do, but the bottom line is, we did what we were suppose
20 to do, they received the documents, and now some five years
21 later they have not filed an answer, they were aware of the
22 documents, Mr. Sokolovsky got personal copies of the
23 documents, he knew America's Source Consulting was involved in
24 this case, and now where we are at a damages hearing, now he
25 wants to set aside the default of America's Source Consulting

1 because he's got that litigation looming up in Massachusetts
2 where he ultimately is going to be held personally responsible
3 because he owns that LLC, so that's what this is all about.

4 I mean, Exhibit D(2) to Mr. Snell's document, is a
5 letter from SeenSearch, LLC that says, "We received service of
6 process 10/20/2008 by a certified mail for both the above
7 entity and the individual." Well, the individual was
8 determined that that wasn't appropriate service, so we are not
9 asking for that. We want damages against America's Source
10 Consulting Agency. There's no question, in his own document,
11 they received service on 10/20/2008. We filed an Affidavit of
12 Default, whenever that was, at some point after that, saying
13 that they had been served, and they didn't respond, and that
14 they were in default, and the Judge ordered them in default,
15 it hasn't been overturned. Your Honor, they are in default.
16 We are entitled to our damages hearing, and we would request
17 it.

18 COURT: All right. Very good.

19 MR. BIDDLE: Thank you, Your Honor.

20 COURT: Yes sir, Mr. Snell. Any brief reply?

21 MR. SNELL: No, Judge, I think I agree with everything
22 Mr. Biddle said almost. I think Mr. Sokolovsky learned about
23 the -- basically no one with any connection of responsibility
24 for this learned about the existence of this until 2013,
25 according to his Affidavit.

1 And Judge, the other thing I would say, it wasn't until
2 after Judge Hyman's Order that I was able to learn that the
3 pleadings never made it to anybody with responsibility to the
4 LLC, I mean officially. I was kind of thinking we would go to
5 the registered agent company and they would say, well, we
6 mailed them to somebody that would have had some level of
7 responsibility, and it wasn't until after Judge Hyman's Order
8 we found the -- according to records, that the pleadings were
9 sent to this individual involved with litigation, apparently
10 just would have sat on them, or not done anything with them.
11 And Judge, if I had had that -- I think if we had had that
12 information at the get-go we probably would have incorporated
13 all that into a prior motion. At the time everybody was
14 before Judge Hyman I don't think anybody knew that.

15 Thank you, Judge.

16 **COURT:** All right. Thank you.

17 **MR. BIDDLE:** Your Honor, I have a copy showing Mr.
18 Sergey's signature on a UPS showing March 18th, 2010. Can I
19 show that to Your Honor?

20 **COURT:** Yes sir.

21 **MR. BIDDLE:** Thank you. This is where we provided this
22 because Judge Hyman asked me to send it to him with something
23 showing that he signed it - and that was where he had signed
24 for it in 2010 - before he was going to grant me an order of
25 default, and that was the document that he had signed there.

1 But, again, UPS was not appropriate for service in that day
2 and time ---

3 COURT: On a individual.

4 MR. BIDDLE: ---According to the South Carolina Rules.

5 COURT: Right.

6 MR. BIDDLE: It is now, but in those times it was not.

7 COURT: All right, sir.

8 Yes sir.

9 MR. SNELL: Very briefly. Just with regards to the UPS
10 document Mr. Sokolovsky says it's not his signature. UPS had
11 no other documentation as far as anything beyond that notice,
12 but again, Mr. Sokolovsky says that that wasn't the address
13 that he was at at the time, and not him.

14 Thank you, Your Honor.

15 COURT: All right, sir. Very good.

16 (LETTER AND ATTACHMENTS DATED MARCH 18, 2010, BIDDLE LAW
17 FIRM, MARKED PLAINTIFF'S EXHIBIT NUMBER 1, AND ADMITTED INTO
18 EVIDENCE.)

19 COURT: All right. All right, that documentation that
20 was provided by Mr. Biddle has been marked as Plaintiff's
21 Exhibit 1 regarding this particular motion.

22 In this particular motion the Defendant, America's
23 Source Consulting Agency, LLC has moved to set aside the entry
24 of default, and permit Defendant's answer. This has caused
25 the Court to examine the original Affidavits of Service as

1 / filed in the Clerk of Court's records, as well as Rule 4, and
2 Rule 60 in this matter, as well as the information provided by
3 counsel, and their arguments. It's clear from the arguments,
4 and from the documentation, including this letter from the
5 registered agent for America's Source Consulting Agency, LLC,
6 that the Plaintiffs properly served the registered agent for
7 service. That was -- there's no issue here about the matters
8 Judge Culbertson dealt with about UPS. I mean, under Rule 4,
9 in existence in the time of service, a corporation could set
10 forth a proper person, or entity, to receive service, which
11 they did, and they set up their registered agent for service
12 of process. It was the Plaintiff's responsibility, and duty,
13 to either serve an officer, proper officer, director of the
14 corporation or a registered agent for service that the
15 corporation set up. The Plaintiff did so. They properly
16 served the Summons and Complaint on the registered agent for
17 service of process, and that is reflected in the documentation
18 in the Clerk of Court's file. Thereafter, Mr. Biddle properly
19 filed his request, his Affidavit of Default and Request for
20 the Entry of Default - and I believe which he amended also -
21 but thereafter Judge Cottingham, in his Order of May 19,
22 2010 - and it's filed with the Clerk of Court May 24, 2010 -
23 ordered that the Defendant, America's Source Consulting
24 Agency, LLC was declared in default based upon the
25 documentation in the Clerk of Court's file, and I do find that

1 that was proper, they were properly served, and they were held
2 in default by Judge Cottingham in 2010.

3 In looking at Rule 60 I do not find that there is any
4 exception in Rule 60 that allows the Order of Default by Judge
5 Cottingham to be set aside. There is nothing wrong with the
6 actual service of the Summons and Complaint on the registered
7 agent for service of process. That's what we have to look at,
8 was that actual service done properly. Obviously Judge
9 Culbertson found, in accordance with the Rules at the time,
10 that the service on the individual was not done properly
11 according to the Rules, but this service in 2008, as so found
12 by Judge Cottingham in 2010, was proper under the Rules at the
13 time. The Rules allowed for the service on the registered
14 agent in the service of process, and the Plaintiff did so.
15 There's nothing wrong with that service of process, therefore
16 there is nothing in Rule 60, or any of the case law that
17 emanates from Rule 60 of which there are many, numerous cases,
18 that the Court is aware of, but there is nothing in that that
19 would indicate when you have absolute, proper correct service
20 of process on the registered agent of process that would
21 excuse and allow the setting aside of the entry of default.
22 The fact that the agent, registered agent for service of
23 process may, or may not have done anything wrong - we don't
24 know that, and that's not been provided to the Court, there's
25 an allegation, but there's no proof of that - that doesn't

1 change that the Plaintiff did what they were obligated to do,
2 and properly did, therefore, I deny the request of America's
3 Source Consulting Agency, LLC to set aside the Order of
4 Default as issued by Judge Cottingham in 2010, having found
5 that service is proper, and that there is no avenue to -- of
6 relief under Rule 60, as set forth under Rule 60 and the case
7 law that emanates from that Rule.

8 All right, therefore, we are here then -- and I'll be
9 glad to hear from you, Mr. Snell, if you have an issue, but
10 the Plaintiffs have requested a damages hearing, and it was so
11 placed on the roster, as noticed by you, and noted by the
12 Clerk of Court. There had been no ruling on your Motion to
13 Set Aside the Entry of Default, however, so what is the
14 position of America's Source Consulting Agency, LLC at this
15 time?

16 MR. SNELL: Judge, I think if -- at this point I guess
17 the question is, do you go forward on ---

18 COURT: All right. Yes sir, I'm asking you, are you
19 prepared to go forward?

20 MR. SNELL: We are -- we are ready.

21 COURT: All right. Very good.

22 All right, so, Mr. Biddle, you want to go forward with
23 your hearing on the damages then?

24 MR. BIDDLE: Yes sir.

25 COURT: All right. Very good. I'll be glad to hear

1 from you then.

2 MR. BIDDLE: Thank you, Your Honor. Plaintiff calls
3 Anita Bacchi to the stand.

4 COURT: All right. Please come around to be sworn,
5 Ma'am.

6 ANITA BACCHI, being first duly
7 sworn, testifies as follows:

8 DIRECT-EXAMINATION BY MR. BIDDLE:

9 Q. Ms. Bacchi, please explain to me what America's Source
10 Consulting Agency was.

11 A. We were a temporary staffing agency, and we staffed
12 pharmacists and pharmacy techs, and we handled six states.

13 Q. Okay. And how many employees did America's Source
14 Consulting Agency have?

15 A. We had about sixty-five at any given point in time,
16 depending, because they -- it's a temporary staffing service
17 it would fluctuate. The people that were in the office, at
18 one point in time we had the three people up in the Boston
19 office, and myself and Kristine Lomas in the South Carolina
20 office.

21 Q. Okay. How many offices -- there were just the two
22 offices?

23 A. Yes sir.

24 Q. Okay. And we are here today requesting a damages
25 hearing for wages that you didn't receive; is that correct?

1 A. Yes sir.

2 Q. Okay. Tell me what your income, or your wages or
3 compensation was at the time associated with America's Source
4 Consulting and what your position was?

5 A. I started out as a Territory Manager when I first
6 started there, and I worked my way up to Director of Pharmacy,
7 and then when they closed the Boston office I was promoted to
8 Vice-President of Operations.

9 Q. Okay. And did you have an annual salary, or what was
10 your starting salary, or at that time -- I guess, really, the
11 time at issue was, what was your salary at the time you were -
12 --

13 A. My ending salary was Seventeen Fifty a week, One
14 Thousand Seven Hundred and Fifty Dollars a week.

15 Q. Okay.

16 A. That was gross.

17 Q. That was gross. Okay. And do you have any
18 documentation that would verify your payments at that rate?

19 A. There is payroll from paychecks that I provided.

20 MR. BIDDLE: May I approach, Your Honor?

21 COURT: Yes sir.

22 MR. BIDDLE: Let me identify -- mark these for
23 identification.

24 MR. BIDDLE: Can we just do it as a package, Your
25 Honor?

1 COURT: Make sure Mr. Snell has seen them.

2 MR. BIDDLE: You want to do -- how do you want to do
3 them? Do you want to do it as a package, you want to do it as
4 ---

5 COURT: It would probably be -- if she's going to be
6 talking about them it would probably be easier to mark them
7 one at a time so that it's clear what she's talking about.

8 MR. BIDDLE: Okay.

9 (ASCA SEVERANCE PACKAGE FOR MS. BACCHI MARKED
10 PLAINTIFF'S EXHIBIT NUMBER 3, FOR IDENTIFICATION.)

11 (COMPENSATION REPORT MARKED PLAINTIFF'S EXHIBIT NUMBER
12 4, FOR IDENTIFICATION.)

13 (EMPLOYEE HANDBOOK MARKED PLAINTIFF'S EXHIBIT NUMBER 5,
14 FOR IDENTIFICATION.)

15 (COMPENSATION REPORT MARKED PLAINTIFF'S EXHIBIT NUMBER
16 6, FOR IDENTIFICATION.)

17 COURT: Just make sure you identify them by document
18 number when you are talking about them, Mr. Biddle.

19 MR. BIDDLE: Yes sir.

20 Q. I have what has been marked as -- I'm going to give you
21 what's been marked as Plaintiff's Exhibit Number 4. Can you
22 tell me what that is?

23 A. That's the paychecks when they -- when Paychecks does
24 your payroll, they give you a report.

25 Q. Okay. And just, what is Paychecks?

- 1 A. Paychecks is the payroll service that we used.
- 2 Q. Okay. So that's a company?
- 3 A. Yes sir.
- 4 Q. And what does that show as your earnings for that
- 5 period?
- 6 A. Seventy -- Seventy-Two Thousand Seven Hundred and Fifty
- 7 Dollars.
- 8 Q. Okay. What does it show as your -- does it show a
- 9 check amount?
- 10 A. The check amount is One Thousand Seven Hundred and
- 11 Fifty Dollars, and that's weekly.
- 12 Q. Okay. And then I'm going to show you what's been
- 13 marked as Plaintiff's Exhibit Number 6.
- 14 A. I'm sorry. That Seventeen Fifty was after deductions.
- 15 I just saw that. No, it says gross. Never mind.
- 16 Q. Okay. And those time periods are what, on those
- 17 documents?
- 18 A. These are weekly pays.
- 19 Q. Okay. And what is the period of time that we are
- 20 dealing with?
- 21 A. From 12/28/2007 to 1/18/2008.
- 22 Q. Okay. And when did you become severed from America's
- 23 Source Consulting Agency?
- 24 A. It was in 2008, and he -- it was Super Bowl Sunday, he
- 25 sent me an e-mail.

1 Q. Okay. Show me what is -- or explain to me what's been
2 marked as Plaintiff's Exhibit Number 5.

3 A. This is our Employee Handbook. That was made up in
4 Boston by Chrissy Scatini.

5 Q. Okay. Who is Chrissy Scatini?

6 A. Chrissy Scatini was the Director of Operations at that
7 point in time ---

8 Q. All right.

9 A. ---When we still had the Boston office.

10 Q. Okay. And then the last document. Who prepared those
11 documents that you have in front of you?

12 A. The compens -- Payroll Compensation Report was prepared
13 by PayChecks, which was the payroll company, the Employee
14 Handbook was prepared by Chrissy Scatini ---

15 Q. Okay.

16 A. ---Prior to her leaving the company. That actually was
17 a carry-over from when the company first was founded back in
18 2001. And this Severance Package was prepared by me.

19 Q. Okay. So the -- explain to me the amount of time that
20 you didn't get paid for, that you are asking to be paid for.

21 A. I'm asking for what -- I'm asking for what is owed to
22 me according to the company handbook ---

23 Q. Okay.

24 A. ---Which is, when you are severed from the company that
25 you get -- for my amount of time there I was working with the

1 company I was entitled to one month's salary, and my unused
2 vacation pay. Now, I figured that out as -- because at one
3 point in time I was at a lower pay grade than I was at -- when
4 the company ended, so I did three weeks at the lower portion,
5 and six weeks at the upper portion, because it's not fair.

6 Q. Now, have you been as a, you said a manager of the
7 company for the South Carolina office. Were you involved in
8 paying other people who had received severances from the
9 company?

10 A. There were temporary employees, so the only one at that
11 point in time when we split was Kristine and myself. When he
12 said that our services were no longer required he was bringing
13 the office to Pennsylvania so that his new wife could handle
14 it.

15 Q. Okay. Were you aware of any other employees in the
16 company receiving severance packages?

17 A. No.

18 Q. Okay. Through the history from the -- had you ever
19 discussed severance packages with Chrissy Scatini?

20 A. With Chrissy, when I asked her about the Employee
21 Handbook Chrissy had turned around and sent me an e-mail - I
22 had sent it to her and -- you know, asking her, and she had
23 sent me an e-mail saying that the Handbook is as she wrote it.

24 Q. Okay. So there was no changes in any of those items;
25 is that correct?

1 A. No.

2 Q. Okay. So, the document that you've described as the
3 Severance Package, what number is that? Plaintiff's Exhibit?

4 A. Five.

5 Q. That's this document; is that correct?

6 A. Oh no. I thought you were talking about the Employee
7 Handbook.

8 Q. This document, the Severance Package.

9 A. Oh that. I'm sorry. That is Exhibit 3.

10 Q. Okay. Tell me what Exhibit 3 shows for you in terms of
11 what you are asking the Court to grant you damages of.

12 A. One month's salary at Nine Thousand Seven Hundred and
13 Seventy-Eight Dollars ---

14 Q. Okay.

15 A. ---Three weeks of vacation pay paid at One Thousand Two
16 Hundred and Fifty Dollars, and six weeks vacation pay at One
17 Thousand Seven Hundred and Fifty Dollars, for a total of
18 Twenty-Four Thousand Twenty-Eight Dollars.

19 Q. Okay. And that's based on the information contained in
20 the Employee Handbook; is that correct?

21 A. Yes sir.

22 Q. And that was the terms -- that Handbook governed the
23 terms of your employment ---

24 A. Yes.

25 Q. ---At all times that you were present there?

1 A. Yes.

2 Q. Okay. And you were paid these amounts in accordance
3 with your contract with your employer; is that correct?

4 A. Yes.

5 Q. Okay. Now, the compensation reports that are attached,
6 or there, show how much you paid -- you got paid, and received
7 as an employee for that entity; is that correct?

8 A. Yes.

9 Q. Okay. Now, you also are asking for treble damages in
10 accordance with the South Carolina Statute; is that correct?

11 A. Yes sir.

12 Q. Okay. Now, these wages were from how long ago?

13 A. From 2008.

14 Q. Okay. And what year is this?

15 A. This is 2015.

16 Q. Okay. So it's been approximately six and a half years?

17 A. Yes.

18 Q. Okay. And are you asking the Court to grant you an
19 attorney's fee ---

20 A. Yes sir.

21 Q. ---In accordance with this.

22 A. Yours, and my attorney's fees from up in Boston of
23 having to track him down.

24 Q. Okay. So you also have engaged an attorney in Boston
25 to chase ---

1 A. Yes sir.

2 Q. ---To chase these wages; is that correct?

3 A. Yes sir.

4 Q. Okay. And do you know how much those attorney's fees
5 are in Boston?

6 A. I think it's like Forty Thousand Dollars, something
7 like that.

8 Q. Did you ask -- you would be asking the Court to pay his
9 fees, whatever they are ---

10 A. Yes sir.

11 Q. ---And we'll have him do an affidavit; is that correct?

12 A. Yes.

13 Q. Okay. And so if it's Twenty-Four Thousand Oh Twenty-
14 Eight are you asking for any interest if it's available?

15 A. Yes sir.

16 Q. Okay. From the date that the wages should have been
17 paid?

18 A. Yes sir.

19 Q. Okay. Are there any other damages that you are asking
20 for in conjunction with this matter?

21 A. Well, because of him I -- because of this I lost my
22 house and my car, but I don't think I can do that.

23 Q. Okay. And -- okay, anything else you can think of?

24 A. I'd like it to be known that when we first ended he
25 turned around and reversed the -- our last paycheck, on both

1 myself and Kristine, and we had to go after him with -- the
2 State of South Carolina penalize -- gave him a penalty, and
3 he had to pay it.

4 Q. Okay. Okay. But these are the wages that you are
5 asking for in conjunction with this lawsuit; is that correct?

6 A. Yes sir.

7 Q. Okay.

8 MR. BIDDLE: I have no further questions. Please
9 answer any questions Mr. Snell may have.

10 COURT: Cross-examination.

11 MR. SNELL: Thank you. Thank you so much.

12 CROSS-EXAMINATION BY MR. SNELL:

13 Q. Just -- I want to make sure I understand. You were --
14 you were paid up through your last week of employment;
15 correct? You got your last paycheck?

16 A. Yes. And then he reversed it, and then he had to give
17 it back.

18 Q. Okay. All right. So as far as -- basically, as far as
19 you know, all wages were paid to you, and it's simply a
20 severance and a vacation?

21 A. Yes.

22 Q. And is it your understanding that's also the same
23 situation that Ms. Lomas is in?

24 A. Yes.

25 Q. And at the time, back in 2008, isn't it true you

1 actually had a lawyer to help you in some negotiations with
2 America's Source? Did you have Mr. Biddle back in 2008 help
3 write some letters for you?

4 A. I'm sorry. What?

5 Q. Did you ---

6 MR. BIDDLE: Your Honor, objection. His -- I believe
7 his -- he can only address the issue of arguing about the
8 damages. I don't think he can really get into other issues.

9 COURT: Well, I don't know if it's going to affect the
10 amount of damages or not.

11 Obviously, Mr. Snell, you understand you are in default.
12 You can attack the amount of damages, not the liability. You
13 are here to attack damages, so if that cross-examination is
14 for the purpose of negating, or reducing the amount of damages
15 I'll be glad for you to proceed.

16 MR. SNELL: And Judge, just a line of questions
17 regarding the portion that is severance.

18 COURT: All right, sir. Go ahead.

19 Q. And Ms. Bacchi, did you -- I just want to know, did
20 you, back in 2008 did you have Mr. Biddle help write a letter,
21 he wrote some letters for you about your -- about this issue?

22 A. I know he wrote the letter in regards to the fact that
23 he reversed the paycheck, and that he want -- that Sergey
24 wanted to -- wanted us to do a bunch of stuff that he
25 specifically turned around and told us not to do when he -- he

1 told us that we weren't allowed to do anything, and then he
2 turned around and sent -- had a lawyer send a letter saying
3 that, well, why didn't you do payroll.

4 Q. Is it your understanding that there was an offer from
5 the lawyers, through the lawyers, to offer you the four weeks
6 of severance package in exchange for kind of winding down the
7 Myrtle Beach office?

8 A. No. All that was suppose -- all they offered us was
9 that they would pay us our hourly wage. We were never --
10 severance package was never mentioned to anybody.

11 Q. All right. So based on your understanding there was
12 never a -- was there ever a request to turn over the company
13 reports and other documentations by a certain time?

14 A. Yes, which we did.

15 Q. Okay. All right, so as far as your understanding
16 everything that the company asked you to do through the
17 lawyers, to wind down the office, you did everything
18 satisfactory for the company?

19 A. Yes.

20 Q. Okay. And did the company give you any reason for not
21 paying the severance, since they told you they would if you
22 wound the company down?

23 A. They never told us that they would pay it once they
24 wound the company down. Severance was never spoken about on
25 their behalf.

1 Q. All right. Are you aware of the correspondence ---
2 MR. SNELL: And if I may approach?
3 COURT: Yes sir.
4 MR. SNELL: ---Dated February the 5th?
5 MR. BIDDLE: Yes, that's fine.
6 Q. That letter dated February the 5th, 2008?
7 A. This is not for severance. This was -- what they --
8 they were talking about was that they wanted to -- they just
9 wanted us to turn around and pack up the office.
10 Q. All right. Now I know in the letter -- I know in the
11 second paragraph -- the las -- the first sentence is
12 underlined ---
13 A. Uh huh (indicating positive)
14 Q. ---And that specifically references four weeks of
15 transition and severance pay; correct?
16 A. No. They never paid that.
17 Q. If I understand correctly though there was a -- the
18 letter from the company lawyer to your lawyer references the
19 steps he needed to take to get the severance pay; correct?
20 A. I'm sorry? I'm sorry. I'm reading and I didn't ---
21 Q. I'm sorry. This letter, this February 5th letter from
22 the Company lawyer to your lawyer, states the steps that need
23 to be undertaken in order for you to receive the transition or
24 severance pay; correct?
25 A. That's what it's looking like.

1 MR. SNELL: And Your Honor, I think by stipulation we
2 would offer this February 8th letter into evidence.

3 COURT: All right. Well, have the Court Reporter mark
4 it.

5 (LETTER DATED FEBRUARY 5, 2008, MARKED DEFENDANT'S
6 EXHIBIT NUMBER 1, AND ADMITTED INTO EVIDENCE.)

7 MR. SNELL: And Judge, by agreement we've got a second
8 letter from Mr. Biddle dated February 5th, 2008, as
9 Defendant's Exhibit 2.

10 COURT: All right.

11 (LETTER DATED FEBRUARY 5, 2008, MARKED DEFENDANT'S
12 EXHIBIT NUMBER 2, AND ADMITTED INTO EVIDENCE.)

13 COURT: All right, so Defendant's 1 and 2 are in
14 evidence without objection.

15 Regarding the Plaintiff's exhibits that were offered,
16 they were -- what were the numbers?

17 MR. BIDDLE: Three, four, five and six, I believe, Your
18 Honor.

19 COURT: All right. Is there any objection to those,
20 Mr. Snell?

21 MR. SNELL: Judge, as far as -- if I understand
22 correctly one exhibit has ---

23 COURT: Well, how about look at them and see -- and
24 look -- go ahead and grab three, four, five and six. Tell me
25 if you have any objection to any of them.

1 MR. SNELL: Judge, as far as Number 3, I'm not sure if
2 the witness was able to lay a foundation, or describe -- if
3 I -- well ---

4 COURT: All right, so you object to Number 3?

5 MR. SNELL: Number 3, yes sir.

6 COURT: All right, sir, how about 4, 5, and 6?

7 MR. SNELL: No objection.

8 COURT: All right, so 4, 5, and 6 are in evidence,
9 without objection.

10 Plaintiff's 3, you will need to cover that more
11 particularly in redirect, Mr. Biddle.

12 MR. BIDDLE: No problem, Your Honor.

13 (PAYROLL REPORT MARKED PLAINTIFF'S EXHIBIT NUMBER 4, AND
14 ADMITTED INTO EVIDENCE.)

15 (EMPLOYEE HANDBOOK MARKED PLAINTIFF'S EXHIBIT NUMBER 5,
16 AND ADMITTED INTO EVIDENCE.)

17 (E-MAIL MARKED PLAINTIFF'S EXHIBIT NUMBER 6, AND
18 ADMITTED INTO EVIDENCE.)

19 COURT: Go ahead, Mr. Snell.

20 Q. All right, Ms. Bacchi, I just want to make sure. So
21 based on these two letters, if I may ---

22 MR. SNELL: And if I could offer them. They are not
23 stapled together.

24 Q. It looks like at that time your lawyer and the Company
25 lawyer were engaged in discussions as far as how to get you

1 the four weeks of severance; correct?

2 A. Well, just because you offer it doesn't mean it has to
3 be agreed upon, you know.

4 Q. Right. And it's my understanding that back in 2008,
5 although there was letters -- the correspondence exchange as
6 far as how you could become eligible for the severance. That
7 was never -- never occurred; correct?

8 A. I'm sorry.

9 Q. I understand, based on -- back in 2008 the
10 correspondence between your lawyer and the Company lawyer
11 indicates the steps that needed to occur in order for you to
12 be eligible for severance; would you agree with that?

13 A. I did. I packed up the office, Kristine and I both
14 packed up the office, and we sent it to where it was suppose
15 to be. There's no reason why I should be not compensated for
16 the amount of severance that is set forth in the Employee
17 Handbook.

18 Q. Do you have any type of documentation or record
19 regarding your compliance with the agreement worked out
20 between your lawyer and the Company lawyer regarding the
21 severance?

22 A. There was never any agreement.

23 MR. SNELL: All right. Thank you.

24 If I may approach I'll get those ---

25 COURT: Yes sir.

1 MR. SNELL: And, Judge, if I may staple these ---

2 COURT: Certainly. That's fine.

3 MR. SNELL: And no other questions.

4 COURT: All right. Go ahead, Mr. Biddle.

5 MR. BIDDLE: Okay.

6 REDIRECT-EXAMINATION BY MR. BIDDLE:

7 Q. You said there was no agreement. We were communicating
8 back and forth - I believe it was Ms. Amy Jenkins - and I; is
9 that correct?

10 A. Yes.

11 Q. Okay. And if you would, read the last -- hang on.
12 This letter is missing a page of mine.

13 MR. BIDDLE: Do you have the third page of my letter?
14 There it is.

15 Q. If you would, read that paragraph at the top of that
16 last page for me.

17 COURT: What document are you ---

18 MR. BIDDLE: I'm sorry. This is the Defendant's 2.
19 This is my letter to Ms. Amy Jenkins ---

20 COURT: All right.

21 MR. BIDDLE: ---Dated February 5th.

22 COURT: Go ahead, Ma'am.

23 A. Okay. This is from Biddle Law Firm to Amy Jenkins.

24 "Based on the information provided to me by my clients
25 regarding vacation and severance pay Mr. Sokolovsky is wrong.

1 I am in possession of an ASCA Employment Manual and it clearly
2 shows the ability to accrue vacation, how much per year, as
3 well as a severance pay policy. I will provide this document
4 to you under separate cover."

5 Q. So, did we ever enter into an agreement with Amy
6 Jenkins?

7 A. No.

8 Q. Okay. Do you recall what actually happened with Amy
9 Jenkins?

10 A. Yes. Actually when we turned around and sent her this
11 she said that she was no longer representing the client due to
12 lack of payment.

13 Q. Okay. So we never finished doing whatever the
14 transaction was with Ms. Jenkins; is that correct?

15 A. Correct.

16 Q. Okay. Now, with respect to Item Number Three, you
17 created this document based on what your one-month's salary
18 was?

19 A. Right.

20 Q. And please, for me, pull out of what is marked
21 Plaintiff's Exhibit Number 5 and let's discuss the items of
22 where you came up with the unused vacation time and the
23 severance from your Employee Manual.

24 A. Okay.

25 Q. Give me that calculation of how you arrived at those

1 numbers for me.

2 A. On the last page of the Employee Manual it says,
3 "Vacation. Company will grant two weeks vacation per -- paid
4 per calendar year paid vacation time after one year of
5 service. After five years of service you will be granted
6 three weeks per year thereafter. After ten years of service
7 you will be granted four weeks per year thereafter. All
8 unused vacation time may be carried over from previous years,
9 or may be cashed in for the monetary value at the end of the
10 year. In the event of termination all unused and/or accrued
11 vacation time shall be reimbursed at that time equal to the
12 monetary cash value.

13 Q. Okay. And how long did you work for the company?

14 A. I started work in '01, in, I want to say June or July.

15 Q. Okay. So you worked for more than five years?

16 A. Yes. As a matter of fact, on my five-year anniversary
17 the Company sent me on a cruise, completely paid.

18 Q. Okay. So -- so you had -- so on your calculation you
19 had two years carried -- two weeks carried over from the
20 previous year when you were making Twelve Hundred and Fifty
21 Dollars; is that correct?

22 A. Yes sir. Because I felt that it was unfair to
23 calculate everything at my rate of pay when some of the
24 vacation time came from before that.

25 Q. Okay. That makes sense. And then the three weeks was

1 after your five years; correct?

2 A. Yes sir.

3 Q. Okay. And then -- and then the four weeks for your
4 severance; is that correct?

5 A. Yes.

6 Q. All right. And that's on the very last page of the
7 Employee Handbook?

8 A. The Employee Manual.

9 Q. And again, that was subject to -- that was the document
10 that were all the terms and conditions of your employment ---

11 A. Yes.

12 Q. ---At ASCA?

13 A. This is our Policy and Procedure Manual.

14 Q. Okay. And that's the grounds for the calculation of
15 this severance package ---

16 A. Yes.

17 Q. ---Is the one-month's salary?

18 A. Uh huh (indicating positive)

19 Q. Is that one-month salary listed in there as a
20 severance?

21 A. Yes. I'm trying to find it.

22 Q. Sure.

23 A. Here it is.

24 Q. Okay. What page? There it is. It's under Reduction
25 in Force.

1 A. Yes. It's not exactly where I would have put it.

2 Q. But what does it say?

3 A. "In the event of reduction in force of salaried
4 employees a severance package of one-month's of employees'
5 salaries and any unused vacation time shall be paid upon
6 termination."

7 Q. Okay. And that says "...paid upon termination"?

8 A. Uh huh (indicating positive)

9 Q. Okay. And you were terminated in 2008?

10 A. Yes sir.

11 Q. Okay. And have you been paid that?

12 A. No.

13 Q. Okay. And is that the calculation for your damages on
14 that form?

15 A. Yes.

16 Q. Okay. And is that where you receive -- and all of
17 those calculations came from your pay stubs associated in
18 conjunction with this Policy and Procedures -- or Employee
19 Handbook; is that correct?

20 A. Yes.

21 Q. Okay. And you are asking -- you are asking for
22 attorneys' fees ---

23 A. Both yours and the attorney up in Boston.

24 Q. Okay. And that's in accordance with the South Carolina
25 Payment of Wages Statute; is that correct?

1 A. Yes.

2 Q. Okay.

3 A. I'm also asking for treble damages, and interest.

4 MR. BIDDLE: Okay.

5 And at this time, Your Honor, we would like to introduce
6 Exhibit Number 3. I believe we've ---

7 COURT: Any objection?

8 MR. SNELL: Judge, I just want to -- I just want to
9 make sure. If I understand correctly it's being offered as a
10 summary of testimony ---

11 MR. BIDDLE: That's correct.

12 MR. SNELL: ---That the witness was to go through ---

13 COURT: Yes.

14 MR. SNELL: No objection.

15 MR. BIDDLE: Okay. Thank you.

16 COURT: It's in evidence then without objection.

17 (SEVERANCE PACKAGE MARKED PLAINTIFF'S EXHIBIT NUMBER 3,
18 AND ADMITTED INTO EVIDENCE.)

19 Q. And you are asking for treble damages based on the
20 statutory requirement ---

21 A. Yes.

22 Q. Thank you.

23 A. ---And interest.

24 Q. Yes.

25 A. Paid from -- back from 2008.

1 Q. Okay.

2 MR. BIDDLE: No further questions, Your Honor.

3 COURT: Anything on those other questions asked by Mr.
4 Biddle?

5 MR. SNELL: Nothing further, Judge.

6 COURT: All right.

7 You may step down, Ma'am.

8 All right, next witness, sir.

9 MR. BIDDLE: Plaintiff calls Kristine Lomas, Your
10 Honor.

11 COURT: Please come around, Ma'am.

12 KRISTINE LOMAS, being first duly
13 sworn, testifies as follows:

14 DIRECT-EXAMINATION BY MR. BIDDLE:

15 Q. Ms. Lomas, in front of you is what I believe has been
16 marked as Defendant's Exhibit Number -- I'm sorry --
17 Plaintiff's Exhibit Number 5. Is that the Employee Handbook
18 upon which you, in your employment with ASCA, was based on?

19 A. Yes.

20 Q. That's the Policies and Procedures?

21 A. Yes.

22 Q. You are familiar with it?

23 A. Yes.

24 Q. You are also familiar with the severance provisions in
25 that?

1 A. Yes.

2 Q. Okay. Are you familiar with the provision that
3 provides for a one-month salary upon termination ---

4 A. Yes.

5 Q. ---As well as any unused vacation time?

6 A. Yes sir.

7 Q. Okay. I'm going to give you what I'm going to have
8 marked as Plaintiff's -- you want to go ahead and do 2?

9 COURT REPORTER: I'll go back to 2.

10 MR. BIDDLE: All right. We'll take 2, and I'm going
11 to staple this one and then make this one whatever the next
12 one.

13 COURT REPORTER: Seven.

14 MR. BIDDLE: Plaintiff's 7.

15 MR. SNELL: No objection as to Exhibit 2 as a summary
16 of the witness's testimony, and as soon as a foundation is
17 laid for ---

18 MR. BIDDLE: Okay.

19 COURT: All right. Very good.

20 (ASCA SEVERANCE PACKAGE FOR MS. LOMAS MARKED PLAINTIFF'S
21 EXHIBIT NUMBER 2, AND ADMITTED INTO EVIDENCE.)

22 (COMPENSATION REPORT FOR MS. LOMAS MARKED PLAINTIFF'S
23 EXHIBIT NUMBER 7, FOR IDENTIFICATION.)

24 Q. I'm going to ask you if you can identify for me what's
25 been marked as Plaintiff's Exhibit 7.

1 A. It's the payroll records.

2 Q. Okay. And what did that show your payroll check amount
3 as?

4 A. Six Hundred Dollars per week.

5 Q. Okay. And is that what you received at all times that
6 you were employed ---

7 A. Yes.

8 Q. ---With ---

9 Okay. And you heard the testimony regarding the
10 discussions regarding Amy Jenkins at Nelson Mullins and my
11 office when you -- you and Ms. Bacchi were terminated. Were
12 there any discussions regarding times and points at which you
13 were -- some things that you were suppose to do in order to
14 get your severance package?

15 A. No.

16 Q. Okay. Were you involved in that negotiation? Were you
17 aware of that negotiation, or whether there were any
18 agreements associated with that?

19 A. No.

20 Q. Okay. At the time that you were an employee there you
21 said you made Six Hundred Dollars a week; is that correct?

22 A. Yes.

23 Q. And when you were terminated you did not receive your
24 last paycheck; is that correct?

25 A. That's correct.

- 1 Q. Or it was reversed by ---
- 2 A. Correct.
- 3 Q. Okay. And at that time you filed an action, ultimately
- 4 got that returned?
- 5 A. Yes.
- 6 Q. Okay. And so you are asking the Court to grant you, in
- 7 accordance with the Employee Handbook, your one-month's
- 8 severance of Twenty-Four Hundred Dollars; is that correct?
- 9 A. That's correct.
- 10 Q. Okay. And then your unused vacation of two weeks ---
- 11 A. Yes.
- 12 Q. ---Of Twelve Hundred Dollars ---
- 13 A. Uh huh (indicating positive)
- 14 Q. ---For a total of -- severance package of Thirty-Four
- 15 Hundred Dollars in accordance with the handbook?
- 16 A. Thirty-Six.
- 17 Q. Thirty-Six Hundred -- I'm sorry.
- 18 A. That's okay.
- 19 Q. And then you are asking the Court to grant you
- 20 attorneys' fees and costs?
- 21 A. Yes.
- 22 Q. Okay. In both this action here as well as in
- 23 Massachusetts?
- 24 A. Correct.
- 25 Q. Is that correct? You are also asking the Court to

1 grant you treble damages ---

2 A. Yes.

3 Q. ---Accordance with the statute. You are also asking
4 him to grant you any interest that would be available from the
5 time these wages were due and owing; is that correct?

6 A. That's correct.

7 MR. BIDDLE: And at this time I would like to introduce
8 those items into evidence.

9 COURT: What number is ---

10 MR. BIDDLE: These are Plaintiff's 2 and Plaintiff's 7.

11 COURT: Any objection to Plaintiff's 2 and 7?

12 MR. SNELL: No objection.

13 COURT: All right.

14 (ASCA SEVERANCE PACKAGE FOR MS. LOMAS ADMITTED INTO
15 EVIDENCE AS PLAINTIFF'S EXHIBIT NUMBER 2.)

16 (COMPENSATION REPORT ADMITTED INTO EVIDENCE AS
17 PLAINTIFF'S EXHIBIT NUMBER 7.)

18 MR. BIDDLE: And those are the questions that I have
19 for her, Your Honor.

20 COURT: All right. Cross-examination.

21 CROSS-EXAMINATION BY MR. SNELL:

22 Q. And Ms. Lomas, America's Source was an employment
23 staffing company; correct?

24 A. Correct.

25 Q. What was your job there?

1 A. I was the Director of Operations. I ran payroll,
2 filing, correspondence, scheduling.

3 Q. All right. And the employees -- the people staffed,
4 they would be employees of the pharmacies; is that correct?
5 What kind of employees did you staff?

6 A. They were pharmacists. They worked for -- they were
7 temporary employees that worked for ASCA, and they were
8 staffed in pharmacies throughout the Eastern Seaboard.

9 Q. All right, how many -- how many actual people worked at
10 the America's Source office, in South Carolina?

11 A. Just Anita and myself.

12 Q. Two employees?

13 A. Yes.

14 MR. SNELL: Thank you. No other questions.

15 COURT: Okay. You may step down, Ma'am.

16 Is there any redirect?

17 MR. BIDDLE: No, Your Honor. Thank you.

18 COURT: You may step down, Ma'am.

19 MR. BIDDLE: Your Honor, I have an Affidavit of
20 Attorney's fees from the attorney up in Massachusetts ---

21 COURT: All right, sir. You want to mark that, please,
22 and show it to Mr. Snell.

23 MR. BIDDLE: ---And with respect to my fees, Your
24 Honor, I would simply ask for a reasonable fifteen percent,
25 Your Honor. If you would like for me to provide an affidavit

1 I'll be glad to do so.

2 COURT: All right.

3 MR. SNELL: And Judge, just with regard to attorney
4 fees ---

5 COURT: Yes sir.

6 MR. SNELL: ---And I always hate objecting -- I think
7 it's an Affidavit from an out-of-state lawyer. I haven't had
8 a chance to look at it before today, but just looking at it it
9 looks like a lot of it is not related.

10 COURT: All right. Is it itemized?

11 MR. BIDDLE: It is. Some of it is regarding this
12 litigation, and it looks like that -- that litigation -- I
13 tell you what, how about if I get him to do an invoice
14 regarding this litigation and not to that one.

15 COURT: Well, I think it would need to be specific as
16 to this particular litigation, any help that the Boston
17 counsel had regarding this particular ---

18 MR. BIDDLE: Okay.

19 COURT: ---What I'm going to -- well, let's get --
20 we'll get to that in just a second.

21 MR. BIDDLE: Okay.

22 COURT: Any further evidentiary presentation by the
23 Plaintiffs?

24 MR. BIDDLE: No sir. That's the Plaintiffs' showing,
25 Your Honor.

1 **COURT:** Witnesses on behalf of the Defendant?

2 **MR. SNELL:** None, Your Honor.

3 **COURT:** All right. Very good. Any brief argument you
4 need to make, Mr. Biddle?

5 **MR. BIDDLE:** No, Your Honor, other than I believe that
6 these ladies are entitled to their severance, they are
7 entitled to these wages. They've been waiting for quite some
8 time. We've been through this a number of times, and quite
9 frankly, at every turn they've been ham-strung, and I think
10 they deserve it, and we would ask the Court to grant them what
11 they've asked for, including the treble damages, the
12 attorneys' fees, costs, and the interest, Your Honor.

13 Thank you.

14 **COURT:** All right. And Mr. Snell, any argument?

15 **MR. SNELL:** Judge, I just -- I don't believe there's
16 been a proper showing made that the Plaintiffs would be
17 eligible for any trebling of damages. I think that requires
18 five or more employees. The evidence is -- and it's a
19 staffing company. They are placing other employ -- they are
20 placing people at other locations. We've got no records
21 indicating -- and basically the evidence is that America's
22 Source had two employees in this office, and that was two in -
23 - only two we have here, so we don't believe trebling would be
24 appropriate, and based on the correspondence with regard to
25 Ms. Bacchi - I apologize to her if I'm mispronouncing it - we

1 don't believe that the Plaintiff would be entitled to the
2 requested damages or the severance pay.

3 Thank you very much.

4 COURT: All right. You are talking about the number
5 of employees. I don't see that definition restriction in 41-
6 10-80, which is the provision for the ---

7 MR. BIDDLE: It's not there, Your Honor.

8 COURT: ---Penalties. Where might it be?

9 MR. SNELL: I believe it's under -- it's either under
10 10 or 20. It's the first part of the chapter ---

11 COURT: All right. Hold on a second. Let me look at
12 that then.

13 Okay. 41-10-10' is definitions, and it only defines
14 employer and wages in that paragraph, so let's -- you said 20?

15 MR. SNELL: Judge, I know it's at the top and I
16 apologize. I had it printed out and I can't find it.

17 COURT: Okay. Well, let me -- I'll -- we'll keep
18 looking here. That's the applicability of the chapter, is 41-
19 20.

20 All right, here we go, Applicability of the Chapter:
21 The chapter applies to all employers in South Carolina, and it
22 applies to employers of domestic labor in private homes, and
23 number two, employers employing fewer than five employees at
24 all times during the preceding twelve months. Okay.

25 All right, Mr. Biddle, what about his argument that the

1 chapter applies to all employers in South Carolina except it
2 does not apply to domestic labor in private homes, and
3 employers employing fewer than five employees at all times
4 during the preceding twelve months?

5 MR. BIDDLE: Your Honor, I believe her testimony was
6 they had over sixty employees. I can bring her up for
7 rebuttal testimony regarding how they were paid, but my
8 understanding is, they were paid by ASCA, and not by the
9 pharmacies, so they were employees of ASCA, the temporary
10 service ---

11 COURT: I think you -- I'll allow you to recall her
12 just for that one purpose.

13 MR. BIDDLE: Okay. Ms. Bacchi, please recall for that
14 purpose.

15 I thought I covered that, Your Honor.

16 COURT: Well, you covered a number, but it didn't -- it
17 did not specify by whom they were paid.

18 MR. BIDDLE: Thank you.

19 MS. BACCHI: I still understand ---

20 COURT: Yes Ma'am. You are under oath still.

21 Go ahead and ask your question, Mr. Biddle.

22 ANITA BACCHI, having been
23 previously sworn, states as follows: /

24 DIRECT-EXAMINATION BY MR. BIDDLE:

25 Q. Ms. Bacchi, how many employees -- or I think your

1 testimony was you had sixty employees?

2 A. Anywhere from sixty-five to eighty-five per week.

3 Q. Okay. How many employees did you have here in South
4 Carolina, on an average?

5 A. Well, we would have at least four that we were
6 staffing, plus myself and Kristine, and then also you had some
7 up in the home office, up in Boston.

8 Q. But in South Carolina how many did you have?

9 A. We had ---

10 Q. Did you have more than five?

11 A. Yes.

12 Q. Okay. And those were paid by ASCA?

13 A. Yes, and we took out FICA, Social Security, everything.

14 Q. Okay. And so -- and that was more than -- on a regular
15 basis?

16 A. Yes.

17 Q. More than the twelve months ---

18 A. Yes.

19 Q. ---Prior to this happening? Okay.

20 **MR. BIDDLE:** Do you have any questions, Your Honor?

21 **COURT:** Cross examination, Mr. Snell.

22 **MR. SNELL:** Thank you very much.

23 **CROSS-EXAMINATION BY MR. SNELL:**

24 Q. And if I understand correctly, there were only two
25 employees of America's Source that worked in the South

1 Carolina office?

2 A. There are two employees that worked in the office.
3 That di -- we had also the employees that we staffed out. We
4 also had employees that we staffed in Connecticut, Rhode
5 Island, New York, and Maine.

6 Q. All right, now, the employees that the LLC, or the
7 business staffed, they worked -- they were temporary
8 employees; correct? Temporary ---

9 A. Yes. We would staff them every week. We would call
10 them up and give them their assignments.

11 Q. And they worked at pharmacies?

12 A. Yes.

13 Q. And would they work at different pharmacies, or would
14 they just go to one pharmacy and stay till they weren't
15 needed?

16 A. Different pharmacies. We had -- we staffed at Wal-
17 green's, we staffed at -- the name is escaping me now, that
18 place underneath the bridge, over by Bishop Parkway. It's for
19 recovering drug -- that place, but we also did Walgreen's, and
20 we had Walmarts, and Costco.

21 Q. Who hired them, these individuals?

22 A. We do. Well, we did.

23 MR. SNELL: All right. Thank you. No other
24 questions.

25 COURT: All right. So that I understand it, Ma'am,

1 you had two people in the office for -- you were terminated in
2 2008?

3 A. Yes sir.

4 COURT: So for a year prior to the date of your
5 termination there were two people at all times in the office;
6 correct?

7 A. Yes.

8 COURT: All right. And then outside of the office,
9 employed and paid by the America's Source Consulting Agency,
10 LLC, there were at least, including these two, at least five
11 employees for a period of a year prior to your termination?

12 A. Yes. We had Kristine and I in the office, and we had
13 four to six people that we would rotate throughout different
14 pharmacies.

15 COURT: And so, no question, during the preceding
16 twelve months, or the year before you were fired, there were
17 more than five employees being paid by America's Source
18 Consulting Agency, LLC, out of the South Carolina office?

19 A. Yes.

20 COURT: Very good. Thank you very much. You may step
21 down.

22 A. Thank you.

23 COURT: All right. In this particular matter I do find
24 that the Plaintiff has proved that the Defendant, America's
25 Source Consulting Agency, LLC was -- is properly covered under

1 these statute -- employment statutes, they had the requisite
2 number of employees, there was written documentation pursuant
3 to the Employees Handbook regarding the payment of wages, and
4 amounts that were owed for their employment. I do find that
5 both the Plaintiffs, Ms. Lomas and Ms Bacchi were owed one
6 month's salary, and payment for the unused vacation. In the -
7 - Ms. Lomas's case it is Three Thousand Six Hundred Dollars
8 total; in Ms. Bacchi's case it's Twenty-Four Thousand Twenty-
9 Eight Dollars as reflected respectively in Plaintiff's
10 Exhibits 2 and 3.

11 The Court finds that the employer, America's Source
12 Consulting Agency, LLC, has violated the provisions of the
13 statutes of the State of South Carolina regarding the payment
14 of wages, and in that, by the evidence presented, and the
15 proper standard of evidence, that not only are these wages due
16 and owing to the Plaintiffs from the Defendant, but they are
17 entitled to three times the full amount of the unpaid wages as
18 a penalty, so for Ms. Lomas it's three times Three Thousand
19 Six Hundred Dollars, and for Ms. Bacchi it's Three Thousand --
20 Twenty-Four Thousand Twenty-Eight Dollars, as well as their
21 cost and attorneys fees in this matter -- now -- reasonable
22 attorneys fees.

23 Now regarding this, the Court is going to require that
24 the Affidavits of the counsel in Boston and the counsel in
25 South Carolina are limited to the action in South Carolina

1 only, their cost and fees limited to the South Carolina action
2 only. Those shall be filed with the Clerk of Court, and a
3 copy to Mr. Snell within seven days of today's date, and if
4 you have any objection to those, Mr. Snell, you will need to
5 immediately make that known to the Court.

6 Regarding the interest in this matter, the case law of
7 this State is such that, if a sum can be made certain, and a
8 demand date or payment date made certain, that statutory
9 interest is proper for prejudgment interest. I find that the
10 sums as presented are calculable, and calculable to a sum
11 certain, and that interest is owed. Now, interest is owed on
12 the amount demanded, that is, for Ms. Lomas it's interest on
13 the Three Thousand Six Hundred Dollars, and for Ms. Bacchi
14 it's on the Twenty-Four Thousand Twenty-Eight Dollars,
15 interest is owed. It's not on the treble because that's a
16 separate penalty, but it is on the amount claimed, proved and
17 owed, and it goes from the date of termination as set forth in
18 the Employees Handbook, because that is the date that it says
19 that it is due and payable, on the termination of the
20 employee, so interest is owed to today's date on those two
21 amounts.

22 What I'm going to require that you do, Mr. Biddle, is
23 prepare a proposed order that sets forth all of the Court's
24 rulings in this matter, and I would like for you to have that
25 within seven days of today's date. I want you to e-mail it to

1 my Clerk and to opposing counsel within that time limit.

2 MR. BIDDLE: Okay.

3 COURT: Anything further, Mr. Biddle?

4 MR. BIDDLE: No sir, Your Honor.

5 COURT: Anything further, Mr. Snell?

6 MR. SNELL: No, Your Honor.

7 COURT: All right, gentlemen, I appreciate it.

8 And Mr. Biddle, if you would reflect the code sections
9 that are applicable ---

10 MR. BIDDLE: Yes sir.

11 COURT: ---As well as the -- there's a -- more than
12 one, but there's some case law regarding the interest. If you
13 will reflect that in the interest also.

14 All right, sir.

15 MR. BIDDLE: Yes sir.

16 COURT: Thank you, gentlemen.

17 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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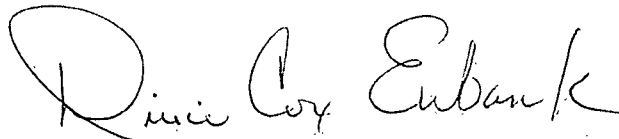
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate portion of record of the proceedings had in the of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 2nd day of February, 2015.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF Horry

Anita Bacchi and Kristine Lomas,

Case No.: 2008-CP-26-7586

Plaintiffs,

vs.

AFFIDAVIT SUBMITTED ON BEHALF OF
AMERICA'S SOURCE CONSULTING AGENCY, LLC

America's Source Consulting Agency,
LLC.


Defendant.

1. I am providing this affidavit in support of the motion filed seeking to lift the entry of default entered against America's Source Consulting Agency, LLC, and to permit that LLC to file an Answer now.
2. The underlying lawsuit is based on an allegation that there is unpaid wages owed to two former employees of America's Source Consulting Agency, LLC. These were the two employees who were operating this business. They were both paid all wages due, and are not owed any additional amounts. At a trial the LLC can demonstrate that it is entitled to a defense verdict through testimony and other evidence.
3. The business employed fewer than 5 employees during the 12 months prior, making S.C. Code § 41-10-10, *et seq.*, inapplicable in this case.
4. By order dated April 24, 2014, The Honorable Benjamin H. Culbertson, has vacated the default judgment entered against me individually in this same case. Even though I am no longer a defendant, the Plaintiffs have engaged counsel out of state who are attempting to collect any judgment entered against this LLC from me personally.
5. The pleadings in this case that were the basis of the default judgment were served by certified mail to CN Search, LLC. This was the registered agency for the LLC. So although service of

process was technically satisfied by this delivery, no one responsible for the LLC or to tender a defense ever received the pleadings, with the exception of the Plaintiffs who were the ones initiating the suit.

6. I did not receive a copy of the pleadings from the registered agent. According to the information that was obtained from CN Search LLC after this matter was brought to my attention in 2013, it appears that CN Search forwarded the pleading to Attorney Val Gurvis on October 20, 2008. (See Exhibit D). I never received any pleadings from Attorney Gurvis and in fact had been involved in litigation in which I was a plaintiff and he was a defendant during 2008. See Exhibit E). If anyone was associating with Mr. Gurvis at that time it was the plaintiffs in this action, not myself.
7. I was never served with a copy of the Summons, Complaint, by personal service, substitute service, or certified mail. The first time I learned of the existence of the judgment in this case was on November 21, 2013; when my South Carolina attorney sent me a copy he had retrieved from the Horry County Clerk of Court's office.
8. I was never given a chance to challenge this lawsuit. If I had I would have immediately retained counsel in South Carolina to take whatever steps were necessary to protect its interests. The basis of the underlying lawsuit is meritless as the Plaintiffs were fully paid for all wages earned as well as accrued time off. This has been verified through payroll records maintained by the company. At the time Ms. Bacchi was separated from the company we had to retain South Carolina counsel specifically for that purpose, that counsel was also never advised or informed about the subsequent filing of this lawsuit.
9. I am attaching a letter of February 5, 2008, from the LLC attorney to the Plaintiffs' attorney regarding her termination and offer of severance pay. This is Exhibit "A" to this affidavit.

10. I am attaching a letter of February 5, 2008, from the Plaintiffs' attorney to the LLC attorney regarding their separation. This is Exhibit "B" to this affidavit.
11. The LLC provided written notice to Anita Bacchi regarding her termination. This was by facsimile dated February 4, 2008. I am attaching a copy as Exhibit "C" to this affidavit.
12. There was never any affidavit or verification to support the Court's original granting of a default judgment in this case, and there was never a hearing as required by Court rule. When the original default judgment was vacated on this ground, the court left the case open. The LLC attorney in South Carolina learned on January 6, 2015, that there is a damages hearing set in this case. He has not yet been served with the motion filed by the Plaintiffs. I was hoping this case was completely concluded, but since learning that they are continuing I am submitting this affidavit along with a motion to lift any entry of default, and to permit the LLC to answer.



 Sergey Sokolovsky

SWORN TO AND SUBSCRIBED BEFORE ME
 THIS 26th DAY OF Jan, 2015

Shawn Karimi

Notary Public for the State of MA

My Commission Expires: Nov. 7, 2019



SHAWN S. KARIMI
 Notary Public
 Commonwealth of Massachusetts
 My Commission Expires
 November 7, 2019

 (Handwritten signature)

Nelson Mullins

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February 5, 2008

Via Facsimile

J. Marshall Biddle, Esq.
Biddle Law Firm, P.A.
4012 Postal Way, Suite A
Myrtle Beach, SC 29579

RE: America's Source Consulting Agency - Anita Bacchi
NMRS File No. 31804/05000

Dear Marshall:

This letter is a follow up to our telephone conversation at 3:00 p.m. on Monday, February 4, 2008. As we discussed, I represent America's Source Consulting Agency ("ASCA"). As you know, ASCA terminated your client Anita Bacchi yesterday. A copy of the termination letter is attached hereto. When I spoke with you at 3:00 p.m. yesterday, you indicated that you believed it was in the interest of both sides to work together to transition the ASCA office from Myrtle Beach to Philadelphia. You promised to send me some related information by roughly 5:00 p.m. yesterday. It is now 11:00 a.m. on Tuesday and I have not heard back from you. I attempted to call you again this morning and have been told that you are in a meeting.

Please take notice that unless you (on behalf of your client) or Anita Bacchi signs in agreement on the space below regarding the terms set forth below, and faxes this document back to me by 4:00 p.m. today, the offer to pay Ms. Bacchi for up to four (4) weeks of transition or severance pay shall be null and void. Additionally, ASCA may communicate with the police, or take other legal action, to obtain its company property, files, etc. from Ms. Bacchi.

Your client's recent actions in refusing to transition the ASCA telephone line, taking it upon herself to delete the company website and/or email addresses, and refusal to provide ASCA contracts and other documents to ASCA's owner, merits this response. Additionally, as we have not heard anything from you, we have no confidence or guarantee that a smooth transition

J. Marshall Biddle, Esq.

February 5, 2008

Page 2

is going to occur and that we will receive all ASCA files within two (2) business days of the termination, as required by the termination letter.

The only way for Ms. Bacchi to remain eligible for the up to four (4) weeks of transition/severance pay is to agree as follows:

- All ASCA files or documents, whether in hard copy or saved electronically, or other ASCA property must be returned by no later than tomorrow, Wednesday, February 6, 2008, as specified in the termination letter;
- Ms. Bacchi will assist, in the manner requested by ASCA, in transitioning any remaining phone lines, fax lines, email addresses or web pages to ASCA;
- Ms. Bacchi will fully cooperate in transitioning customers and clients of ASCA to the Philadelphia office; and
- Ms. Bacchi will keep confidential, and not use for her personal gain or that of a third party, any trade secrets of ASCA, as required by the termination letter.

Please sign on behalf of your client, or have her sign, her agreement with these terms by no later than 4:00 p.m. today, or this offer of transition/severance pay and amicable separation from ASCA is no longer an option.

Very truly yours,



Amy Yager Jenkins

AYJ:caz

Enclosure

cc: Sergey Sokolovsky (via email)

ANITA BACCHI, ON HER OWN BEHALF OF THROUGH HER ATTORNEY, AGREES TO THE TERMS SET FORTH ABOVE AND WILL FULLY COOPERATE IN ACHIEVING THEM.

Date

BIDDLE LAW FIRM, P.A.
ATTORNEY AND COUNSELOR AT LAW

J. Marshall Biddle
marshall@biddlelawfirm.net

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February 5, 2008

Amy Y. Jenkins, Attorney at Law
Nelson, Mullins, Riley & Scarborough, LLP
151 Meeting Street
Charleston, SC 29401

RE: Anita Bacchi and Kristine Lomas/Sergey Sokolovsky/America's Source Consulting
Agency ("ASCA")

Dear Amy:

Pursuant to our telephone conversation yesterday my clients are completely willing to cooperate with Mr. Sokolovsky's requests in exchange for certain understandings on your client's part. The most pressing issue is that payroll is now due for last week and will be payable this Friday, February 8, 2008. The time sheets have been faxed to my client at her home office. As you know, it is the obligation of the company to pay payroll, if it is not done, then paychecks will not be going out. Should this already be addressed, please advise in writing. If not, and your client wishes for Ms. Bacchi to proceed, we will need written confirmation signed by you and him allowing my clients to take that limited action on behalf of ASCA. The second most pressing issue is that my client has in her possession two (2) checks made payable to ASCA from clients in the approximate amount of \$10,000.00 that arrived in the mail over the weekend. They have been stamped and prepared for deposit and we would like written directions regarding these checks as well. In addition, since my client's cannot schedule work, then ASCA will effectively be out of business. My clients have been receiving calls to their phones and have not been answering them to prevent causing issues with your clients directive. My understanding is that the phone lines have been transferred in accordance with a request from Mr. Sokolovsky's. Hopefully that should address the phone problem. If that is not the case, please advise immediately.

As set forth hereinabove, my clients will completely comply with your client's request as they are honorable and professional people who understand business. However, some of the information stated in Mr. Sokolovsky's letter is not in my clients' possession and never has been. However, any and all documents in our possession will be provided to him in a reasonable and expeditious manner.

My clients do not have a problem with sending all of these items however logistically there are some impossibilities as far as time and scope are concerned. Ms. Bacchi has been working for two (2) solid days and everything is still not packed. She has accumulated eleven (11) banker boxes so far and estimates that there are approximately another five (5) or six (6) more banker boxes of documents and related items to be packed. Additionally, there is a large

BIDDLE LAW FIRM, P.A.
ATTORNEY AND COUNSELOR AT LAW

Amy Jenkins, Attorney at Law
Nelson, Mullins, Riley & Scarborough
February 5, 2008
Page 2 of 3

copy machine, a fax machine, two (2) phones, two (2) lateral filing cabinets, a paper shredder and a laser printer. The "packing" and shipping of these items simply cannot be completed in a mere forty-eight (48) hours. My client would like some directive as to how your client would like these items shipped and who is going to pay for the shipping costs and reimburse my client for the additional boxes needed to complete the shipment preparation. I believe that a reasonable time frame for completing the packing and shipping of the documents by one person shall be no later than end of business on Wednesday or first thing Thursday morning. As for the remaining items, we need some directions on how to send them and what method of shipment your client wishes to use and how are we to effectuate payment for the shipments. Reimbursement is not an option for my clients.

As to "Trade Secrets", if any, the South Carolina Trade Secrets Act, S.C. Code § 39-8-10 et seq. would apply. However, it should be noted that all lists of licensed pharmacies and pharmacists are public record. As such the locations of pharmacies, their managers, and pharmacists are in the public domain and not covered under this act. In addition, as a nationally certified pharmacy professional, my client is a member of trade groups; as well as has many friends in the industry nationwide whom she has worked with over the years, prior to ASCA. As far as any other "Trade Secrets" owned by ASCA, since the entire business is based on readily accessible records in the public domain, market information that is public, and the fact that my client is a certified pharmacy professional, through education and experience, and managed pharmacy operations, no "trade secrets" seem to exist. With this in mind, Mr. Sokolovsky should be a little clearer in what he feels is covered as our legal review does not show anything to be trade secrets under the Act. As you know, the Act clearly states that information in the public domain is not covered under the Act.

In addition, Mr. Sokolovsky has stated that he has copies of non-compete agreements for Ms. Bacchi and Ms. Lomas. Many times these documents have been requested because my clients do not remember executing one for ASCA, and my clients have requested directly from Mr. Sokolovsky and I personally asked him to provide this information that is allegedly in the employment files. He has not complied and has informed my clients and me that he would only produce them in court. If you can convince your client to produce these documents I think it would save you and me a considerable amount of time and energy in dealing with any related or relevant issues.

Regarding ASCA's web presence -- It has none. ASCAGroup.com was set up and is owned by a friend of Ms. Bacchi who was helping her to grow the business, Mr. Sokolovsky is well aware of this, never provided any assistance to, paid for, or owns any of the web information. The owner of the web site and domain has terminated any ASCA marketing presence effective yesterday as well as any email accounts associated with ASCAGroup.

BIDDLE LAW FIRM, P.A.
ATTORNEY AND COUNSELOR AT LAW

Amy Jenkins, Attorney at Law
Nelson, Mullins, Riley & Scarborough
February 5, 2008
Page 3 of 3

Based on the information provided to me by my clients, regarding vacation and severance pay, Mr. Sokolovsky is wrong. I am in possession of an ASCA Employment Manual and it clearly shows the ability to accrue vacation, how much per year, as well as a severance pay policy. I will provide this document to you under separate cover.

Please advise regarding payroll as soon as possible if we do not hear from you, we will assume that your client has taken care of this matter.

With kind regards, I am

Yours very truly,
Biddle Law Firm, P.A.



J. Marshall Biddle

JMB:edb

cc: Ms. Anita Bacchi
Ms. Kristine Lomas

America's Source Consulting Agency

(215) 364-2343

By facsimile
Ms. Anita Bacchi

February 4th 2008

Dear Anita:

Please be advised that Americas Source Consulting Agency ("ASCA") no longer has a need for your services, and your employment is terminated effective immediately. You have no authority from this moment forward to contact our customers, manage our accounts, incur expenses, enter into any contracts for ASCA, or otherwise act in any manner with respect to ASCA's business (other than returning our files to us, as mentioned below). Our business phone lines, fax lines and email will be immediately redirected. All mail from the PO box will be forwarded.

You must keep confidential, and not use for your personal gain or that of a third party, any trade secrets of ASCA that you learned during your employment in accordance with the South Carolina Trade Secrets Act, S.C. Code § 39-8-10 *et seq.* Trade Secrets include but are not limited to: customer lists, prospect lists, customer contract information, customer preferences, personnel data, pricing information, strategic plans, and other confidential information of the company.

ASCA is relocating its South Carolina to Philadelphia. Please immediately return all company files, at our expense, to me at the following address: 55 Buck Rd. Suite# 11 Huntingdon Valley, PA 19006. This would include customer files, financial files, personnel files, marketing files, and any other ASCA-files or documents, whether currently in hard copy or saved electronically. These records should obviously include, but not be limited to: Articles of Organization for the several states that ASCA operates in, all tax forms, all employee personnel files-to include non-compete forms, business contracts with contact person for staffing & accounts payable, liability insurance, worker's comp insurance, department of unemployment files, list of all Pharmacists, Paychex system info, Payroll & accounts receivable, contact information for Web Account, files for accounts payable: phone, office supplies, postage, banking information & insurance (if applicable), Pre-qualification exam for Pharmacy/Nursing, Job applications for new employees & passwords to every account. All software belonging to the company should also be returned: Coats, Paychex, etc.

We know what records should exist for the Company and expect them to be returned in complete, organized, proper business shape.

I expect to receive the complete, organized, non-damaged files and property from you by no later

America's Source Consulting Agency

(215) 364-2343

than two (2) business days from the date of this letter. Failure to return the Company's property and files in such fashion and by such deadline could result in us bringing civil and/or criminal claims against you.

Anita, it is your choice whether or not this transition will go smoothly. If you fail to follow the instructions above, and/or fail to protect and not use the trade secrets of ASCA, then we will have no choice but to take appropriate legal action against you, including without limitation, seeking recoupment of the self-dealing wages that you awarded to yourself without permission or authority and/or bringing claims related to destruction or failure to return our Company records and property. If you are cooperative in this transition, we may choose to forgo the legal claims that we have against you and may choose not to oppose any application for unemployment benefits that you may file with the South Carolina Employment Security Commission. Again, your actions in the coming days and weeks will determine the nature of how we part ways.

Finally, you will be paid your wages at the rate of \$1250.00 per week through today's date. The paycheck will be provided to you by the next regularly scheduled pay date. If you agree to assist with the transition, then you will be paid up to four weeks. In response to your recent email about vacation pay, you entirely misunderstand South Carolina law. You are not entitled to a payout of accrued vacation "within 48 hours of the request, or the next payroll date." That is simply not what is required under the Payment of Wages Act, S.C. Code §41-10-10 *et seq.* Further, you do not currently have any accrued vacation owed to you. You have used all of your vacation, and then some, in each year of being employed for ASCA in South Carolina.

If you have any further questions, you may direct them to our South Carolina counsel: Amy Jenkins, Esq., Nelson Mullins Riley & Scarborough, LLP, 151 Meeting Street, Suite 600, Charleston, SC 29401, 843-720-4365. Otherwise, I expect to receive the company's files within 2 days of the date of this letter.

Very truly yours,

Sergey Sokolovsky

CN SEARCH LLC

PO Box 74
Middlefield, CT 06455-0074
860-349-3772 phone
860-349-8581 fax
cnsearchct@comcast.net

May 2, 2014

Frank C. Corso
Corso Law LLC
492 Winthrop Street, Suite 5
Rehoboth, MA 02769

Re: AMERICA'S SOURCE CONSULTING AGENCY LLC

Dear Attorney Corso:

Per your request, we are sending this letter with the information we have in reference to the service of process in question.

CN Search LLC received service of process 10/20/08 via certified mail for both the above entity and the individual Serge Sokolovsky as member of the entity. The same afternoon, we emailed our client, Hubco, requesting mailing instructions. We were told to send the SOP to America's Source Consulting Agency LLC c/o Val Gurvis, 20 Park Plaza, Ste 637, Boston, MA 02117, which we did.

The contact information we had for Hubco was: attention Bruce or Laurie, phone 800-443-8177 or 516-935-3940, Fax 800-293-4075.

We hope this helps.

Very truly yours,

Nancy Cooner

**Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket**

Sokolovsky v Gurvits et al

Details for Docket: SUCV2007-02172

Case Information

Docket Number:	SUCV2007-02172/	Caption:	Sokolovsky v Gurvits et al
Filing Date:	05/22/2007	Case Status:	Disposed: Appeal awaiting Transcript
Status Date:	11/16/2010	Session:	CtRm 1017, 3 Pemberton Sq, Boston
Lead Case:	NA	Case Type:	Complex

Tracking Deadlines

TRK:	F	Discovery:	02/13/2009
Service Date:		Disposition:	03/12/2009
Rule 15:		Rule 12/19/20:	
Final PTC:		Rule 56:	
Answer Date:		Jury Trial:	YES

Case Information

Docket Number:	SUCV2007-02172	Caption:	Sokolovsky v Gurvits et al
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Tracking Deadlines

TRK:	F	Discovery:	02/13/2009
Service Date:		Disposition:	03/12/2009
Rule 15:		Rule 12/19/20:	
Final PTC:		Rule 56:	
Answer Date:		Jury Trial:	YES

Parties Involved

3 Parties Involved In Docket: SUCV2007-02172

Party	Role:	Defendant
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2015-000670

Anita Bacchi and Kristine Lomas,

Respondents,

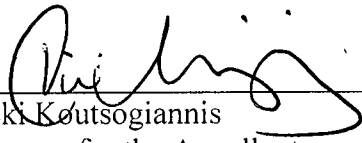
v.

America's Source Consulting
Agency, LLC,

Appellant.

RULE 209(c) Certification

The Record on Appeal contains no matter which is not relevant to the appeal.


Vicki Koutsogiannis
Attorney for the Appellant
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301