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STATE OF SOUTH CAROLINA
In the Court of Appeals

JUL 31 2017

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

Case No. 2015-CP-10-3220
Appellate Case No. 2016-002469

Shane Gould, ... Respondent,

v.

Worldwide Apparel LLC, f/k/a
MusclePharm Sportswear LLC, and
Drew Ciccarelli, ... Appellants.

RECORD ON APPEAL

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INDEX

Orders and Decisions

Form 4 Order granting Summary Judgment filed July 15, 2016	1
Form 4 Order denying Defendant's Motion for Reconsideration filed November 8, 2016	3
Form 4 and Order on Plaintiff's Motion for Summary Judgment dated November 3, 2016.....	5

Pleadings

Complaint dated June 5, 2015	17
Answer dated July 6, 2015	25
Plaintiff's Motion for Summary Judgment and Discovery Sanctions filed May 26, 2016.....	31
Plaintiff's Amended Motion for Summary Judgment and Discovery Sanctions filed June 10, 2016	34
Defendant's Opposition to Plaintiff's Motion and Amended Motion for Summary Judgment and Discovery Sanctions dated July 7, 2016	39
Defendant's Motion for Reconsideration of Order Granting Summary Judgment and Brief in Support filed July 25, 2016	44
Notice of Appeal.....	57

Transcript of Hearing July 12, 2016

Page 1-32	73-104
-----------------	--------

Deposition of Drew Morgan Ciccarelli taken June 22, 2016.....

p. 3, lines 1-7.....	107
p. 15, lines 23- p.16, line 9; 15-18; 21-23	108-109

p. 17, lines 3-7	110
p. 18, lines 1-18.....	111
p. 19, lines 4-8.....	112
p. 23, lines 24- p. 24, line 6.....	113-114
p. 38, line 5- p. 39, line 3	115-116
p. 40, line 18- p. 41, line 16	117-118
p. 42, line 1- p.49, line 3	119-126
p. 52, line 6- p. 56, line 15; 20-25.....	127-131
p. 57, line 1.....	132
p. 58, lines 17-22	133
p. 59, line 12- p.60, lines 25	134-135
p. 61, line 9- p. 74	136-149
p. 75, lines 8- p. 76, line 10	150-151
p. 77, line 11- p. 83, line 16; 19-25	152-158
p. 84, line 1- p. 89, line 20	159-164
p. 92, line 18- p. 94, line 21	165-167
p. 98, line 8- p. 99, line 25	168-169
p. 102, line 18- p. 103, line 20	170-171
p. 106, lines 11-13	172
p. 107, lines 1-25.....	173
p. 108, lines 10-11; 14-17	174
p. 109, lines 1-25.....	175
p. 120, line 7- p.121, line 6	176-177
p. 122, lines 1-25	178
p. 139, line 19, p.140, line 1	179-180
p. 142, line 23, p.143, line 3	181-182

Deposition of Shane Levi Gould on July 6, 2016.....	183
p. 7, lines 10-21.....	185
p. 9, lines 4-p.11, line 15.....	186-188
p. 43, line 12- p.49, line 8	189-195
p. 54, line 11- p. 56, line 15	196-198
p. 61, line 8- p. 63, line 14	199-201
p. 65, line 21- p. 67, line 12	202-204
p. 72, line 17- p. 73, line 21	205-206
p. 78, line 24- p. 79, line 7	207-208
p. 82, lines 8-15.....	209
p. 84, line 16- p. 85, line 3	210-211
p. 95, lines 4-21.....	212
p. 100, lines 1-13.....	213
p. 101, lines 16-21.....	214
p. 104, line 22- p. 106, line 21	215-217

Other

Judge letter asking for draft Order Granting Motion for Summary Judgment dated July 8, 2016	218
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Certificate of Counsel

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP1003220

ROA 0001

Shane Gould
PLAINTIFF(S)

Worldwide Apparel, LLC, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Plaintiff's Motion for Summary Judgment filed 6/10/2016 is GRANTED. Attorney John E. Schmidt is to prepare a formal order.

Plaintiff's Motion for Summary and Sanctions filed 5/26/2016 is WITHDRAWN.

Plaintiff's Motion to Compel filed 3/11/2016 is CONTINUED by consent of the parties.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

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

ROA 0001

The judgment information above has been provided by the submitting party. Disputes concerning the amounts **ROA 0002** form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

July 15, 2016
Date

For Clerk of Court Office Use Only

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

John E. Schmidt

William Stephen Harris

Theodore Harry Huge

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda Kelly Haffenden

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROA 0002

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3220

ROA 0003

Shane Gould
PLAINTIFF(S)

Worldwide Apparel LLC f/k/a MusclePharm
Sportswear LLC and Drew Ciccarelli
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants' Motion for Reconsideration is DENIED.
(This motion is decided without oral arguments.)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Nov. 3, 2016
Date



ROA 0005

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

P. O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

November 3, 2016

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401-2210

RE: *Gould v. Worldwide Apparel LLC, et al.*
Case No. 2015-CP-10-3220

Dear Ms. Armstrong:

Please find enclosed for filing with your office the Form 4 Order denying the defendant's Motion for Reconsideration in the above referenced case. Please file this original and provide copies to counsel of record.

I thank you in advance for your service in this matter and with kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
Enclosure (a/s)

ROA 0005

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3220

ROA 0006

Shane Gould
PLAINTIFF(S)

Worldwide Apparel LLC f/k/a MusclePharm
Sportswear LLC and Drew Ciccarelli
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment is joint and severable.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Shane Gould	Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC	\$ 174,856.10
Shane Gould	Drew Ciccarelli	\$ 174,856.10

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

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

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

Nov. 3, 2016
Date

For Clerk of Court Office Use Only

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

John E. Schmidt

William Stephen Harris

Theodore Harry Huge

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda K. Haffenden

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROA 0007

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Shane Gould,

Civil Acton Number: 2015-CP-10-3220

Plaintiff,

vs.

Worldwide Apparel LLC f/k/a
 MusclePharm Sportswear LLC and
 Drew Ciccarelli

Defendants.

Order on Plaintiff's Motion for Summary
Judgment

BY

JULIE J. ARMSTRONG
 CLERK OF COURT

2016 NOV 16 PM 1:59

FILED

This case comes before the Court on Plaintiff's Motion for Summary Judgment, as amended. The claim involves a dispute under the South Carolina Wage Payment Act ("Act"). Based on the motions, briefs, and deposition testimony presented, as well as on arguments of counsel at the hearing held on July 12, 2016, this Court herewith enters summary judgment as against Defendants as a matter of law on all claims. In summary, the individual Defendant and Defendant Corporations conceded in Rule 30(b)(6) testimony all facts warranting summary judgment in favor of Plaintiff.

Background

Defendant Ciccarelli is a resident of Charleston, South Carolina. The Defendant Corporations were considered one and the same by their sole member, the Defendant Ciccarelli.¹ The Defendant Corporations are South Carolina Limited Liability Companies started in or around 2011 by Ciccarelli. It was not disputed that one or more Defendants had purchased a license for production and sale of certain sports apparel by a separate, unaffiliated and ongoing

¹ Deposition of Ciccarelli and Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC per Rule 30(b)(6), taken June 22, 2016 (hereinafter "Depo. Defendants"), Page 23, lines 6-15.

Colorado business known as MusclePharm Corporation.²

Defendants admitted that they hired Plaintiff as a W2 employee in May of 2013, at a rate of \$10,000 per month, as CEO.³ It was not disputed that Gould's duties involved mostly off-site work, and that he would typically attend office meetings, when held, on Wednesdays. Otherwise, his physical presence in the offices of the business was not required or expected. He was hired because the Defendant Corporations hoped to position the apparel company to be acquired by their licensor, a wholly distinct corporation, MusclePharm Corporation. When Gould was hired, none of the then current employees of Defendants had any experience whatsoever in apparel business. Mr. Gould brought with him decades of experience running his own apparel business of worldwide reach, located in Hilton Head.

It was not disputed that Mr. Gould was never given any written personnel action, demotion, termination or other written notice of downward adjustment of pay as would have been required by law. Even so, Defendants admitted that Mr. Gould was paid only partially, and then not at all, for the work he performed as employee of the Defendant companies during September through December of 2014. The Defendants ultimately did sell their operations to MusclePharm Corporation in 2015. That entity took over operations as of January 1, 2015. Defendants received about \$800,000.00 in cash and \$1.2 Million in stock for the 2015 sale of operations to MusclePharm Corporation, but never paid Gould the past due wages he had earned.⁴ Instead, they distributed the cash and stock to Mr. Ciccarelli and his associates, leaving only \$50.00 in a Wells Fargo account of the LLC, and unpaid debts and obligations.

² MusclePharm Corporation is not a party to this case. It is in the business of selling nutritional supplements to athletes and body builders.

³ Depo. Defendants at pages 44-45, 47.

⁴ Depo. Defendants, Page 109, lines 3-15.

Findings of Fact

The Corporate Defendants' sole member/owner, Drew Ciccarelli, gave deposition testimony and by stipulation of counsel on record, his testimony also served as the Corporate Defendants' Rule 30(b)(6) testimony as well. This binding testimony establishes all of the essential elements of the claims of Plaintiff as against Defendants:

1. Mr. Gould was hired in or around May of 2013 as a W2 employee for the Defendant Corporations, and his wages were set and agreed at \$10,000 per month. Depo. Defendants, p. 47, lines 2-9.
2. The Defendant corporations paid Mr. Gould the \$10,000 per month each month until July of 2014. Depo. Defendants, p. 52, line 15- P. 53, line 9.
3. Without written notice as required by law⁵, Mr. Gould's pay was reduced to \$5000.00 in August 2014, but he was paid nothing for his work in September, October, November and December of 2014. Depo. Defendants, p. 52, lines 15-25; p. 63, lines 4-22, p. 62, lines 23-25.
4. Although the Wage Payment Act requires no showing of bad faith, here such bad faith on the part of the employer is quite evident. The employer admitted in deposition that it fully intended to pay Mr. Gould at least half of his pay for the months of September, and October 2014 but that it never did so, despite receiving \$800,000.00 in cash and \$1.2 Million in stock for the sale of the operations in the ensuing months. Depo. Defendants, p. 64, lines 7-18.
5. Mr. Gould was never terminated, and he never resigned up until the date the business operations were taken over by the acquiring company as of January 1, 2015. Depo. Defendants, p. 66, line 17- p. 68, line 5.
6. Mr. Gould performed services for the Defendant LLCs in all of the months for which he was not paid – August, September, October, November and December of 2014; and that the employer intended to pay Gould compensation for work during these months but did not do so. Depo. Defendants, p. 68, line 6-21, p. 100, line 17-p. 101, line 8.

⁵ Defendants contend that the Wage Payment Act's written notice requirement applies only to "deductions" from pay, not to "reductions" in pay, citing *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 698 S.E. 2d 773 (2010). However, *Mathis* does not so hold, and such an interpretation directly contradicts the language of the statute, which states that "Any changes in these terms [i.e. hours, agreed wages, time and place of payment] must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases." The Court rejects Defendants' argument. *Facelli v. Southeast Mktg Co.*, 284 S.C. 449, 327 S.E. 2d 338 (1985), cited by Defendants, was decided prior to enactment of the Wage Payment Act in 1986.

Conclusions of Law

Under S.C. Code § 41-10-20, the Wage Payment Act applies to every employer in South Carolina except employers of domestic labor in private homes, and employers who employ five employees at any time in the preceding twelve-month period. There was no dispute, and the Defendants' deposition testimony and payroll manager testimony establish that the company had five W-2 employees in the relevant calendar year, 2014.⁶

The Wage Payment Act, Section 41-10-30 (A), requires that:

Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective....

S.C. Code Ann. § 41-10-30(A)(emphasis added).

As shown above by corporate admission, it is undisputed that Mr. Gould's salary wages were set at \$10,000 per month and were paid as such until the August, September, October, November and December 2014 time period at issue, at which time they were at first unlawfully reduced without written notice⁷ in violation of the above provision, and then, unlawfully withheld entirely in violation of the Act. As shown by the Rule 30(b)(6) testimony above, it is also undisputed that no written notice in compliance with Section 41-10-30(A) was ever given.

⁶ Mr. Ciccarelli and the corporate Defendants through Rule 30 (b)(6) testimony initially admitted that there were four W2 employees and erroneously asserted that Mr. Gould, the fifth W2 employee, was not such an employee, but was a contractor. However, at a later point in their testimony conceded that Mr. Gould was indeed a W2 employee, bringing the undisputed total to 5 employees. Depo. Defendants at 102-103.

⁷ The Wage Payment Act clearly requires the compliant written notices of changes, and forbids alleged oral "side agreements" inconsistent with the Act's requirements of such, by stating: "No provision of this chapter may be contravened or set aside by a private agreement." S.C. Code Ann. § 41-10-100.

Section 41-10-40 of the Wage Payment Act requires that:

(C) *An employer shall not withhold or divert any portion of an employee's wages* unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.

(D) *Every employer in the State shall pay all wages due at the time and place designated* as required by subsection (A) of Section 41-10-30.

S.C. Code. Ann. § 41-10-40 (emphases added).

Further, Section 41-10-50 of the Act provides that “[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.”

Here, based on the undisputed testimony of the Defendants themselves, I find and hold that:

- 1) Mr. Gould was an employee of the Defendant LLCs during the year 2014 though the end of December 2014;
- 2) Mr. Gould's rate of pay was \$10,000 per month;
- 3) The Wage Payment Act does apply to and govern in this case,
- 4) Defendant employers violated the Wage Payment Act provisions quoted above by:
 - a) not giving written notice to Mr. Gould of any change in pay rate; and
 - b) not paying Mr. Gould all wages due for the months of August, September, October, November and December of 2014 in the total amount of \$40,000.00.

I further find and conclude that Defendant employers also violated Section 41-10-60 of the Wage Payment Act, which provides that:

In case of a dispute over wages, *the employer shall give written notice to the employee of the amount of wages which he concedes*

to be due and shall pay the amount without condition within the time set by this chapter. Acceptance by the employee of the payment does not constitute a release as to the balance of his claim.

S.C. Code Ann. § 41-10-60 (emphasis added). The Defendant employer specifically violated the Wage Payment Act by not sending Mr. Gould written notice of the amount conceded to be due (at least the unpaid amount conceded in the deposition testimony) and by not paying such amount without condition.

Section 41-10-80 (C) provides that "[i]n case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." Because this case involves several clear violations of the Wage Payment Act, and because Defendants actually admitted that they owed and had intended to pay Mr. Gould wages that were never paid, despite the subsequent sale of the business operations for a substantial amount, and no good faith reason or basis for non-payment was given, I find and hold that the employee, Mr. Gould, shall recover as against the employers three times the amount of unpaid wages, a total of \$120,000.00, plus reasonable costs and attorneys fees incurred by Mr. Gould.

After a review of the submissions by Plaintiff, including Affidavits of counsel and other South Carolina attorneys, I find and hold that the costs and fees incurred were all reasonable and necessary in light of the claims at stake, as established by time records and affidavits submitted in support of the claimed fees and costs. "[T]he specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). Our Supreme Court has recognized that the six

factors as set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) are applicable to the reasonable fee analysis made in a case under the Wage Payment Act. See, e.g., *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E. 2d 381 (1995). Those factors, as analyzed in this case, are:

(1) *The Nature, Extent and Difficulty of the Legal Services Rendered.*

This Court finds and holds that the nature, extent and difficulty of the legal services in this case would have been typical, but was made more difficult to a degree by actions of the Defendants in resisting and delaying appropriate discovery, and by refusing to timely schedule mediation as required by the Court (as shown by affidavit and time entries) and thus Plaintiff's counsel had to expend considerably more time and effort on the case than was otherwise needed. Also, the Court notes that affidavits submitted established reasonable efforts by counsel to resolve the case early.

(2) *The Time and Labor Necessarily Devoted to the Case.*

This Court finds and concludes that a review of the statements and affidavits submitted by Plaintiff's trial attorney indicate clearly that the time and labor spent were reasonable and not duplicative.

(3) *The Professional Standing of Counsel.*

This Court finds and concludes that Plaintiff's trial attorney is an experienced, skilled attorney, of high professional standing in the community, based upon a careful review of the affidavits submitted, which included the attorney's resume.

(4) *The Contingency of Compensation.*

Not applicable since this was not a contingency case.

(5) *The Fee Customarily Charged in the Locality for Similar Legal Services.*

Based upon a review of the attorney's resume, affidavits and its familiarity with attorney fees customarily charged in this legal community, this Court finds and concludes that the rate of \$380.00 per hour for counsel of over 30 years experience was appropriate, and that the time and rate for paralegal work was reasonable and allowed the matter to be handled more efficiently;

(6) *The Beneficial Results Obtained.*

This Court finds and concludes that the total benefits obtained by Plaintiff include a sizeable judgment in the amount of unpaid wages sought. The total amount of fees sought is similar to the amounts awarded in similar cases.

I find and hold that the costs and attorney's fees incurred and submitted by Plaintiff in the total amount of \$54,856.10 are reasonable, and that Defendant employers are liable to Mr. Gould for such costs and attorneys fees in this case in that amount.

I further find and hold that upon Plaintiff's proof of the elements supporting the Wage Payment Act claim, the Defendants had the burden to bring forward more than a scintilla of evidence to support one or more legally cognizable defenses to the Wage Payment Act claim, but they did not do so. There was not, as required by law, more than a scintilla of evidence supplied to the Court that Mr. Gould breached a duty of loyalty. Further, any alleged disloyalty, by Defendants' own deposition admissions, would have taken place months before the period of non-payment at issue here. Under *Futch v McAllister Towing*, 335 S.C. 598. 518 S.E. 2d 591 (1999) and similar, subsequent cases, the defense of employee disloyalty applies only to affect compensation *during the asserted periods of disloyalty*. See *Futch* at 607-608 (Claimant not entitled to compensation for services performed *during the periods of disloyalty*). I find and hold that there was not a bona fide dispute as to the employer's obligation to pay unpaid wages, based on the Defendants' own testimony. The Wage Payment Act was designed specifically to protect

employees from the very kind of unjustified and willful retention of wages – including undisputed unpaid wages - that existed here.

Finally, I find and hold that Defendant Ciccarelli is individually liable for the obligations of the Defendant employers stemming from the above violations of the Wage Payment Act. Mr. Ciccarelli and the corporate Defendants admitted in testimony that Mr. Ciccarelli was the sole member of the LLC Defendants; that when the LLC was paid approximately \$800,000.00 in cash, and \$1.2 Million in stock in early 2015 for the sale of the business operations, the LLC thereafter promptly, without paying all debts and claims and without giving legally required written notices, distributed and disposed of substantially all of the assets of the LLCs (all but \$50.00 that remains today in the LLC account) to Mr. Ciccarelli and his associates.⁸ S.C. Code Ann. Section 33-44-406 prohibits LLC distributions that preclude the company from paying its debts as they become due. Under Section 33-44-407, Mr. Ciccarelli, the LLC member here, is personally liable to pay for the LLC debts in the case of such unlawful distributions.

WHEREFORE, for the reasons set forth in this Order, I find and hold that Plaintiff is entitled to summary judgment as a matter of law against each Defendant, and therefore, this Court hereby enters judgment in favor of Plaintiffs on all claims and hereby Orders that DEFENDANTS shall pay to Plaintiff the total sum of \$174,856.10, which includes \$40,000 in unpaid wages, trebled, plus reasonable attorneys' fees and costs in the amount of \$54,856.10.

IT IS SO ORDERED.



Hon. Benjamin H. Culbertson
Circuit Court Judge

Georgetown,

Charleston, South Carolina

Nov. 3, 2016

⁸ Depo. Defendants at 16, 108-109.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Shane Gould,

Civil Acton Number: 2015-CP-10-3220

Plaintiff,

vs.

SUMMONS

Worldwide Apparel LLC f/k/a)
 MusclePharm Sportswear LLC and)
 Drew Ciccarelli)

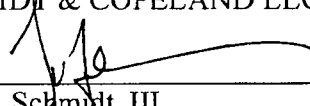
Defendants.

FILED
 2015 JUN -5 PM 2:53
 JULIE J. ARMSTRONG
 CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

SCHMIDT & COPELAND LLC


 John E. Schmidt, III
 S.C. Bar No. 4973
 John.Schmidt@thesclawfirm.com
 Melissa J. Copeland
 S.C. Bar No. 5904
 Missy.Copeland@thesclawfirm.com
 1201 Main Street, Suite 1100
 P.O. Box 11547
 Columbia, SC 29201 (29211)
 803.748.1342 (phone)
 803.748.1210 (fax)
 ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
 June 4, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Shane Gould,

Civil Acton Number: 2015-CP-10-3220

Plaintiff,

vs.

COMPLAINT

Worldwide Apparel LLC f/k/a
MusclePharm Sportswear LLC and
Drew Ciccarelli

Defendants.

FILED
2015 JUN -5 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, by and through his undersigned attorney, complaining of the Defendants, would respectfully show unto this honorable Court as follows:

1.

The Plaintiff is a citizen and resident of the county of Beaufort, state of South Carolina.

2.

Defendant Worldwide Apparel LLC, formerly known as "MusclePharm Sportswear, LLC" (hereinafter, collectively referred to as "MusclePharm") is a limited liability corporation organized and existing pursuant to the laws of the state of South Carolina, and was actively engaged in business in Beaufort County, as well as Charleston County, South Carolina at various locations including its business address of 681 Castle Pinkney Drive, Charleston, South Carolina and at 621A Windermere Blvd, Charleston, South Carolina.

3.

Defendant Drew Ciccarelli ("Ciccarelli"), upon information and belief, is an individual, resident of Charleston County South Carolina, with an address at 681 Castle Pinkney Drive,

Charleston, South Carolina and at 621A Windermere Blvd, Charleston, South Carolina and Ciccarelli is or was in 2014 the principal owner and operator of the MusclePharm, which he controls jointly and for which he sets the terms and conditions of employment for all employees of his business, MusclePharm. On information and belief, Ciccarelli operated MusclePharm as an alter ego, without full and proper respect and observance of corporate formalities, and therefore, Ciccarelli is liable for the just debts of MusclePharm, including those addressed herein.

4.

The subject matter hereof and the parties herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5.

Any and all allegations of paragraphs one through four of this Complaint are incorporated herein where not inconsistent or contrary hereto as fully as if repeated herein.

6.

The Plaintiff was an employee of the Defendants from April 2013 through December 31, 2014. From his date of hire through the date of his separation of employment with the Defendants, the Plaintiff rendered labor and services in Beaufort County and in Charleston County, as well as elsewhere, all at the discretion, direction and control of Defendants.

7.

The Plaintiff was hired to perform services for the Defendants, and in consideration of such labor to be rendered, was to be paid a wage of ten thousand dollars per month.

8.

On or about December 31, 2014, on information and belief, after many months of consecutive employment, the Defendants sold the MusclePharm business and Plaintiff's employment and services were no longer needed, and Plaintiff's employment at MusclePharm ended.

9.

As a result of the work that the Plaintiff had performed for the Defendants prior to the date of his termination, the Plaintiff had earned and was entitled to unpaid wages totaling Forty Thousand Dollars (\$40,000.00) that the Defendants have wrongfully withheld from the Plaintiff and have failed to pay to the Plaintiff as required by law.

10.

The Defendants' failure to pay the Plaintiff all of the wages that he has earned as a result of the work he performed for the Defendants prior to or upon the termination of his employment constitutes a breach of the payment term of Plaintiff's employment contract.

11.

The Defendants' breach of the employment contract with the Plaintiff has proximately caused the Plaintiff damages consisting of all of the wages that he has earned that the Defendants have failed and refused to pay, as well as attorneys fees and costs associated with attempts to recover the overdue payments without the need for a lawsuit.

12.

While the Plaintiff rendered labor for Defendants and earned wages under the direction of Defendants, from April 2013 through December of 2014, including through the date of his separation from service, all wages that were paid to the Plaintiff were paid by checks issued

by Ciccarelli's alter ego, MusclePharm such that the sums Plaintiff was paid for labor rendered were paid by Ciccarelli's alter ego, MusclePharm. However, not all earned wages were paid to Plaintiff. Specifically, Plaintiff's wages for September 1, 2014 through December 31, 2014 remain unpaid despite due demand. During the entire period, Ciccarelli personally induced Plaintiff to continue his work with Defendants and promised and assured Plaintiff that he and his company, MusclePharm would pay Plaintiff not only such wages as were past due, but also a bonus upon the sale of the business.

13.

The Plaintiff seeks to recover from the Defendants all of the wages that he earned and to which he is entitled for the work that he performed for the Defendants prior to his separation from service and the conclusion of his employment. Specifically, the Plaintiff claims that he is entitled to payment in the principal sum of Forty Thousand Dollars (\$40,000.00) in unpaid wages earned. The Plaintiff also seeks interest on this principal sum of wages due to him. Additionally, the Plaintiff seeks all consequential damages that he has incurred as a result of the Defendants' breach of contract.

FOR A SECOND CAUSE OF ACTION

(Wage Payment Claim)

14.

Any and all allegations of paragraphs one through thirteen of this Complaint are incorporated herein where not inconsistent or contrary hereto as fully as if repeated herein.

15.

At all times pertinent hereto, the Defendants were the employers of the Plaintiff as defined in S.C. Code Ann. §41-10-10 (1).

16.

All monies owed to the Plaintiff by the Defendants, as fully set forth herein, constitute wages as defined in *S.C. Code Ann.* §41-10-10(2).

17.

The Defendants have wrongfully failed to pay to the Plaintiff the wages he had earned and was entitled to be paid during the period of his employ. The Defendant Ciccarelli, as the principal owner and operator of MusclePharm, knowingly and intentionally misrepresented to the Plaintiff that he would receive payment for all monthly salary as was past due, plus a bonus of at least ten thousand dollars upon the sale of the business.

18.

Despite the conclusion and termination by business sale of the Plaintiff's employment with Defendants as of December 31, 2014, the Plaintiff has not been paid all wages due within the time required by *S.C. Code Ann.* §41-10-50. To the contrary, the Defendants, despite due demand and in violation of law, through the intentional and deliberate actions of Defendants, have wrongfully withheld from the Plaintiff wages that he had earned and to which he is entitled.

19.

Due to the Defendants' unlawful withholding of and refusal to pay to the Plaintiff his earned wages, the Plaintiff has been denied earned wages in the sum of Forty Thousand Dollars (\$40,000.00) and is entitled to three times the amount of the unpaid wages earned, totaling One hundred twenty thousand dollars (\$120,000.00), pursuant to *S.C. Code Ann.* §41-10-80(C).

Due to the actions of the Defendants in wrongfully withholding the wages earned by the Plaintiff as a result of his labor, the Plaintiff has been forced to retain attorneys to represent him and is entitled to the judgment of this Court, pursuant to S.C. *Code Ann.* §41-10-80(C), requiring the Defendants to pay the Plaintiff's reasonable attorneys' fees and costs incurred in the prosecution of this action, in an amount to be determined at the conclusion of this case.

WHEREFORE, the Plaintiff demands judgment:

1. For all actual and consequential damages that he has suffered, in addition to prejudgment interest, in an amount that the Court should find to be appropriate for the Defendants' breach of contract with the Plaintiff as fully alleged in the First Cause of Action;
2. For all wages earned by the Plaintiff as a result of his employment with the Defendants, pursuant to S.C. *Code Ann.* §41-10-10 *et seq.*, as fully alleged in the Second Cause of Action;
3. For damages totaling three (3) times the full amount of the unpaid wages due to the Plaintiff pursuant to S.C. *Code Ann.* §41-10-80(C), as fully alleged in the Second Cause of Action;
4. For the reasonable attorneys' fees and costs incurred by the Plaintiff this action pursuant to S.C. *Code Ann.* §41-10-80(C), as fully alleged in the Second Cause of Action;
5. and Granting the Plaintiff such other and further relief as this Court may deem just and proper.

[SIGNATURE BLOCK TO FOLLOW]

SCHMIDT & COPELAND LLC

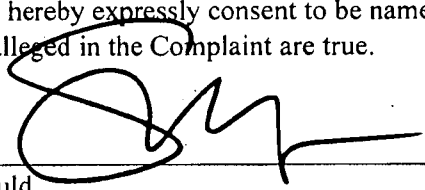


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803.748.1210 (fax)

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
June 4, 2015

I, Shane Gould, Plaintiff in the above-captioned action, hereby expressly consent to be named as a party to this action, and I hereby verify that all facts alleged in the Complaint are true.



Shane Gould

6-3-15

Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shane Gould,

Plaintiff,

vs.

Worldwide Apparel LLC f/k/a MusclePharm
Sportswear LLC and Drew Ciccarelli,

Defendants.

ROA 0025
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10-3220

DEFENDANTS'
ANSWER TO COMPLAINT

JULIE J. ARMSTRONG
CLERK OF COURT

2015 JUL -6 PM 2:31

FILED

Defendants Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC and Drew Ciccarelli (collectively "Defendants"), answering Plaintiff's Complaint ("Complaint"), allege and say as follows:

Defendants deny all allegations not hereinafter specifically admitted. As to the numbered paragraphs of the Complaint, Defendants respond as follows:

1. Defendants admit paragraph 1 of the Complaint upon information and belief.
2. Answering paragraph 2 of the Complaint, Defendants admit that Worldwide Apparel LLC is a limited liability company organized and existing pursuant to the laws of the state of South Carolina. Further Answering paragraph 2 of the Complaint, Defendants admit that Worldwide Apparel LLC maintains an office at 621A Windermere Boulevard, Charleston, South Carolina. The remaining allegations contained in paragraph 2 of the Complaint are denied.
3. Answering paragraph 3 of the Complaint, Defendants admit only that Drew Ciccarelli is a resident of Charleston County, South Carolina. Defendants deny the remaining allegations contained in paragraph 3 of the Complaint and demand strict proof thereof.

ROA 0025

4. The allegations of paragraph 4 constitute conclusions of law, which Defendants are not required to admit or to deny.

**AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)**

5. Answering paragraph 5 of the Complaint, Defendants incorporate herein their responses to paragraphs one through four of the Complaint as if fully repeated herein.
6. Defendants deny the allegations contained in paragraph 6 of the Complaint and demand strict proof thereof.
7. Defendants deny the allegations contained in paragraph 7 of the Complaint and demand strict proof thereof.
8. Defendants deny the allegations contained in paragraph 8 of the Complaint and demand strict proof thereof.
9. Defendants deny the allegations contained in paragraph 9 of the Complaint and demand strict proof thereof.
10. Defendants deny the allegations contained in paragraph 10 of the Complaint and demand strict proof thereof.
11. Defendants deny the allegations contained in paragraph 11 of the Complaint and demand strict proof thereof.
12. Defendants deny the allegations contained in paragraph 12 of the Complaint and demand strict proof thereof.
13. Defendants deny the allegations contained in paragraph 13 of the Complaint and specifically deny that Plaintiff is entitled to the relief requested.

**AS TO THE SECOND CAUSE OF ACTION
(Wage Payment Claim)**

14. Answering paragraph 14 of the Complaint, Defendants incorporate herein their responses to paragraphs 1 through 13 of the Complaint as if fully repeated herein.
15. The allegations of paragraph 15 constitute conclusions of law, which Defendants are required neither to admit nor to deny. To the extent a response is required, the allegations are denied.
16. The allegations of paragraph 16 constitute conclusions of law, which Defendants are required neither to admit nor to deny. To the extent a response is required, the allegations are denied.
17. Defendants deny the allegations contained in paragraph 17 of the Complaint and demand strict proof thereof.
18. Defendants deny the allegations contained in paragraph 18 of the Complaint and demand strict proof thereof.
19. Defendants deny the allegations contained in paragraph 19 of the Complaint and specifically deny that Plaintiff is entitled to the relief requested.
20. Defendants deny the allegations contained in paragraph 20 of the Complaint and specifically deny that Plaintiff is entitled to the relief requested.
21. In response to the WHEREFORE clause of Plaintiff's Complaint, including subparts 1-5, Defendants deny the allegations contained therein and specifically deny that Plaintiff is entitled to the relief requested, or any relief whatsoever.

ADDITIONAL DEFENSES

As Defendants have not yet had the opportunity to fully investigate the Plaintiff's allegations or conduct discovery regarding the Plaintiff's claims, Defendants believe there may be facts establishing the availability of certain defenses. In order to preserve those defenses, Defendants allege the following defenses:

SECOND DEFENSE

The Statute of Frauds and S.C. Code Ann § 32-3-10 bars recovery in the instant matter.

THIRD DEFENSE

The Complaint and the causes of action contained therein fail to state a claim upon which relief can be granted.

FOURTH DEFENSE

A good faith dispute existed with regard to any compensation due Plaintiff and therefore, Plaintiff is not entitled to treble damages or attorney's fees under the S.C. Payment of Wages Act (S.C. Code § 41-10-10 et. seq.) or any other law.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands, estoppel, quasi estoppel, equitable estoppel, waiver, and/or laches.

SIXTH DEFENSE

Plaintiff's employment relationship with Defendant Worldwide Apparel, LLC was for an indefinite term and was terminable at the will of either party for any, or no, reason.

SEVENTH DEFENSE

Subject to further proof, Plaintiff breached his duty of fidelity to Defendants by his actions, and this breach bars his recovery.

EIGHTH DEFENSE

Defendants state that, should the Plaintiff be successful in the payment of wages action, which Defendants maintain should not occur, Defendants did not knowingly violate the South Carolina Payment of Wages Act, and therefore individual liability cannot be imposed.

NINTH DEFENSE

Defendants assert that the Plaintiff has received full payment of all monies due to him in a timely manner.

TENTH DEFENSE

A good faith dispute existed with regard to amounts due Plaintiff, if any, and therefore, Defendant Ciccarelli should not be held individually liable.

ELEVENTH DEFENSE

To the extent Plaintiff engaged in misconduct, fraud or other conduct that is discovered after the termination of Plaintiff's employment, any remedy otherwise available to Plaintiff in this action should be barred or reduced by the after-acquired evidence doctrine.

TWELFTH DEFENSE

Without admitting that Plaintiff suffered any damages, Defendants aver that they are entitled to a setoff against any recovery by Plaintiff which must be reduced by the amount of money he received from any source subsequent to the termination of his employment relationship with Defendants.

THIRTEENTH DEFENSE

Plaintiff is barred from recovering a remedy to the extent that Plaintiff engaged in misconduct, violation of Defendants' policies, or other conduct that would have precluded him from obtaining and/or continuing employment had Defendants discovered such conduct.

FOURTEENTH DEFENSE

Plaintiff's claims are barred to the extent that he has failed to make reasonable efforts to mitigate the economic losses resulting from his alleged injuries, and his damages must be reduced by any amount he has earned or should have earned.

FIFTEENTH DEFENSE

Defendants hereby give notice that they intend to rely upon any other defenses that may become available or appear during the discovery proceedings in this case and hereby reserves their right to amend their Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendants request that the same be dismissed with prejudice and that Defendants be awarded the costs and attorneys' fees incurred in the defense of this matter, plus such further relief as the Court deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Adriane Malanos Belton, S.C. Bar No. 71944

Ashley Kutz Kelley, S.C. Bar No. 78013

5 Exchange Street

Charleston, SC 29401

(843) 722-3400

ATTORNEYS FOR DEFENDANTS

July 6, 2015

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

Civil Acton Number: 2015-CP-10-3220

Shane Gould,

Plaintiff,

vs.

Worldwide Apparel LLC f/k/a
 MusclePharm Sportswear LLC and
 Drew Ciccarelli

Defendants.

**PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT AND FOR
 DISCOVERY SANCTIONS**

FILED
 2016 MAY 26 PM 2:14
 JULE J. ARSANO
 CLERK OF COURT

TO: WORLDWIDE APPAREL LLC f/k/a MUSCLEPHARM SPORTSWEAR LLC and

DREW CICCARELLI:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the undersigned attorney, appearing on behalf of the Plaintiff, will move before this Honorable Court for the following:

1. An Order granting Plaintiff summary judgment on both claims brought against both Defendants on the grounds that there are no genuine issues as to any material fact in this case, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and therefore, Plaintiff is entitled to judgment in this action as a matter of law on all claims in the amount sought in the Complaint, namely, \$40,000.00 actual damages/unpaid wages, treble damages in the amount of \$120,000.00 and all attorneys' fees and costs, as will be submitted to the Court, all in an amount to be determined by the Court.

2. An Order of sanctions under SCRCP Rule 26 for repeated and persistent refusal to make discovery and to comply with discovery requests and agreements made by Defendants for the

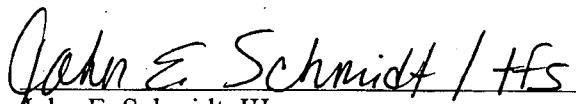
purpose of avoiding a motions hearing, and awarding Plaintiff attorneys fees and costs incurred in pursuing discovery responses for nearly a full year, and further, dismissing the First through Fifteenth Defenses set forth in the Defendants' Answer to Complaint. The Defendants have failed and refused to provide full and complete responses to Plaintiff's requests for discovery, despite previous motions, agreements and therefore provide no facts to establish any of these defenses.

This motion will be based on the Affidavit in Support of Plaintiff's Motion for Summary Judgment to be submitted prior to the hearing, requests for discovery, answers to discovery, and testimony from any depositions taken in this action.

Since both Defendants have failed to assert any facts to support their defenses, Plaintiff is entitled to a judgment in the amount of Forty Thousand Dollars actual damages for unpaid wages, and further, statutory damages in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00), which is three times the amount of unpaid wages earned pursuant to *S.C. Code Ann.* §41-10-80(C), plus all costs and reasonable attorney's fees, and such further relief as the Court deems just and proper.

Plaintiff respectfully moves that there is no genuine issue of material fact and would further request that Plaintiff be granted summary judgment on both claims against both Defendants as a matter of law, plus costs and reasonable attorney's fees, and such further relief as the Court deems just and proper.

SCHMIDT & COPELAND LLC

Handwritten signature of John E. Schmidt in cursive, followed by a forward slash and the initials 'HFS'.

John E. Schmidt, III

S.C. Bar No. 4973

John.Schmidt@thesclawfirm.com

Melissa J. Copeland

S.C. Bar No. 5904

ROA 0033

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 24, 2016

ROA 0033

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Acton Number: 2015-CP-10-3220

Shane Gould,

Plaintiff,

vs.

Worldwide Apparel LLC f/k/a)
 MusclePharm Sportswear LLC and)
 Drew Ciccarelli)

Defendants.

**PLAINTIFF'S AMENDED MOTION
 FOR SUMMARY JUDGMENT AND
 FOR DISCOVERY SANCTIONS**

FILED
 2016 JUN 10 AM 11:08
 JULIE H. ARMSTRONG
 CLERK OF COURT

**TO: WORLDWIDE APPAREL LLC f/k/a MUSCLEPHARM SPORTSWEAR LLC and
 DREW CICCARELLI:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney, appearing on behalf of the Plaintiff, moves before this Honorable Court for the following:

1. An Order granting Plaintiff summary judgment on both claims brought against both Defendants on the grounds that there are no genuine issues as to any material fact in this case, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and therefore, Plaintiff is entitled to judgment in this action as a matter of law on all claims in the amount sought in the Complaint, namely, \$40,000.00 actual damages/unpaid wages, treble damages in the amount of \$120,000.00 and all attorneys' fees and costs, as will be submitted to the Court, all in an amount to be determined by the Court.

2. An Order of sanctions under SCRPC Rule 26 for repeated and persistent refusal to make available discovery and to comply with discovery requests and agreements made by Defendants for the purpose of avoiding a motions hearing, and awarding Plaintiff attorneys' fees

and costs incurred in pursuing discovery responses for nearly a full year, and further, dismissing the First through Fifteenth Defenses set forth in the Defendants' Answer to Complaint. The Defendants have failed and refused to provide full and complete responses to Plaintiff's requests for discovery, despite previous motions and agreements and therefore provide no facts to establish any of these defenses. Depositions of Defendants were noticed properly for June 2, 2016, in Charleston, SC and such notices were properly served. See Exhibit A. Defendant Worldwide Apparel was under prior Order of this Court, dated April 6, 2016, to engage counsel and to be prepared to proceed with motions and with discovery on or before May 15, 2016, but failed and refused to do so. See Exhibit B. Both Defendants failed and refused to attend their depositions properly noticed for June 2, 2016, in Charleston, SC and Plaintiff incurred significant costs as a consequence. Accordingly, sanctions, including costs and fees, as well as entry of judgment in favor of Plaintiff, should be granted in view of the refusal of Defendants to honor the Court's Order and the rules of discovery regarding attendance at depositions and regarding production of documents.

This motion will be based on the Affidavit in Support of Plaintiff's Motion for Summary Judgment to be submitted prior to the hearing, requests for discovery, answers to discovery, notices of deposition and testimony from any depositions taken in this action.

Since both Defendants have failed to assert any facts to support their defenses, Plaintiff is entitled to a judgment in the amount of Forty Thousand Dollars actual damages for unpaid wages, and further, statutory damages in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00), which is three times the amount of unpaid wages earned pursuant to *S.C. Code Ann.* §41-10-80(C), plus all costs and reasonable attorney's fees, and such further relief as the Court deems just and proper.

Plaintiff respectfully moves that there is no genuine issue of material fact and would further request that Plaintiff be granted summary judgment on both claims against both Defendants as a matter of law, plus costs and reasonable attorneys' fees, and such further relief as the Court deems just and proper.

SCHMIDT & COPELAND LLC

John E. Schmidt /Hfs

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
June 8, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	Civil Acton Number: 2015-CP-10-3220
Shane Gould,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	
	)	
	)	<u>PLAINTIFF'S NOTICE OF</u>
	)	<u>DEPOSITION OF DREW</u>
Worldwide Apparel LLC f/k/a	)	<u>CICCARELLI and WORLDWIDE</u>
MusclePharm Sportswear LLC and	)	<u>APPAREL LLC f/k/a</u>
Drew Ciccarelli	)	<u>MUSCLEPHARM SPORTSWEAR</u>
	)	<u>LLC</u>
	)	
<i>Defendants.</i>	)	
	)	

TO: THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, the undersigned attorneys for Plaintiff, Shane Gould, will take the stenographic recorded deposition of the person(s) identified below, upon oral examination before a court reporter or some other officer duly authorized by law to take the deposition, **at the offices of AWR Court Reporting, BB&T Building, 234 Seven Farms Drive, Suite 210, Charleston, SC 29492.** The depositions will commence at **11:00 am on June 2, 2016**, and will continue day to day until completed. The depositions are being taken for the purpose of discovery, for use at trial, or both of the foregoing, or for such other purposes as are permitted under the applicable and governing rules. The deponents are:

- (1) **Drew Ciccarelli, and**
- (2) **Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC**

Worldwide Apparel LLC is requested to designate one or more 30(b)(6) witnesses who is (are) knowledgeable and are prepared to testify fully on behalf of Worldwide Apparel LLC

regarding all allegations of the (1) Complaint, (2) Answer to Complaint, and (3) all answers to discovery and documents produced to and by Defendants.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodations to participate in this proceeding should contact the undersigned no later than seven (7) days prior to the deposition to ensure reasonable accommodations are available.

Schmidt & Copeland LLC



John E. Schmidt, III

S.C. Bar No. 4973

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Melissa J. Copeland

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Attorneys For Plaintiff

Columbia, South Carolina
May 17, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Shane Gould)

Plaintiff,)

v.)

Worldwide Apparel LLC f/k/a)
MusclePharm Sportswear LLC; and)
Drew Ciccarelli)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-3220

**DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION AND
AMENDED MOTION FOR
SUMMARY JUDGMENT AND
DISCOVERY SANCTIONS**

2016 JUL -7 PM 4:35
J. ARMSTRONG
CLERK OF COURT

FILED

Pursuant to Rule 56, SCRCF, Defendants come, through undersigned counsel, and hereby oppose both "Plaintiff's Motion for Summary Judgment and for Discovery Sanctions" and "Plaintiff's Amended Motion for Summary Judgment and for Discovery Sanctions" for the reasons set forth below.

In summary, Plaintiff's motion for summary judgment should be denied as genuine issues of material fact are present. Further, while discovery has begun in earnest, including the taking of four depositions and Defendants' production of thousands of pages of documents by Defendants' prior attorneys in response to Plaintiffs' requests, discovery is not complete and thus any motion for summary judgment is premature. Plaintiff has not complied fully with Defendants' discovery requests and has produced only a limited set of documents. Plaintiff continues to refuse to provide answers to Defendants' interrogatories, which were served on Defendants five months ago. Given Plaintiff's failure to comply with discovery, Plaintiff is in no position to complain about Defendants' alleged lack of discovery responses at this stage in the litigation to or use the same as a basis for sanctions or summary judgment.

Summary judgment is appropriate only where there is no genuine issue of material

fact, and it is clear the moving party is entitled to judgment as a matter of law. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329, 673 S.E.2d 801 (2009). "In determining whether any trial issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.*, 381 S.C. at 329-30, 673 S.E.2d at 802. In cases where the burden of proof is preponderance of the evidence, the non-moving party is required only to submit "a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* Defendants can submit more than a mere scintilla of evidence, and thus summary judgment should be denied in its entirety.

In this case, Plaintiff alleges Defendants breached a contract by not paying Plaintiff wages during the last four months of 2014. During this timeframe, Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC was in the process of being sold to MusclePharm Corporation. Plaintiff was aware of this pending sale and was seeking to be hired on by the buyer. Plaintiff admitted in several text messages in the first week of October 2014 that "my job is done as far as my duties" at Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. [Ex. A] Plaintiff admitted further in the same text messages in early October that Plaintiff anticipated MusclePharm Corporation would hire him and agreed that he would take "50% for my last two months." *Id.* Plaintiff also had oral conversations with Defendant Drew Ciccarelli that Plaintiff was to stop working and that Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC was in the process of being sold to MusclePharm Corporation.¹ The evidence cited above demonstrates much more than a mere scintilla of evidence which contradicts Plaintiff's allegations, and this evidence goes to material issues in the case, including the terms of the alleged contract and whether a contract was in fact breached.

¹ Defendants will provide an exhibit of deposition transcripts in a supplemental filing.

Further, Defendants have evidence which supports their defenses that Plaintiff breached his duty of loyalty to Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC and that Plaintiff comes into this Court with unclean hands. Plaintiff was Defendant's CEO and was brought on, *inter alia*, for creation of new products, marketing and sales.² Plaintiff had a duty of loyalty to the company not to usurp a corporate opportunity and not to conduct himself in ways contrary to his employer's best interests. Plaintiff admitted in deposition on July 6, 2016 that he handed out products from his own company at a trade show while he was working for and having his travel expenses paid for by Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. In addition, Defendant Drew Ciccarelli testified that Plaintiff was handing out Plaintiff's own products at trade shows while Plaintiff was working as Defendant's CEO and having his travel expenses paid for by Defendants.³

Plaintiff seeks to obtain summary judgment for an alleged failure of Defendant Drew Ciccarelli to appear at a deposition noticed for June 2, 2016. However, this deposition notice was not properly served under the South Carolina Rules of Civil Procedure. Mr. Ciccarelli's deposition did take place later in the month on June 22, 2016. Further, none of the alleged discovery problems cited by Plaintiff, and which Defendants deny, would warrant a judgment for the Plaintiff or sanctions. Defendants will present further argument on all issues in Plaintiff's motion at the hearing.

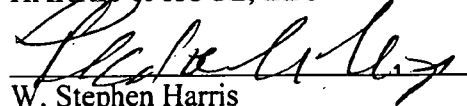
² Defendants will provide deposition transcript excerpts to the extent they are available. Plaintiff's deposition was taken yesterday, and the depositions of two former employees of Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC were taken today. Their transcripts are not available as of the date this opposition.

³ Defendants will provide an exhibit of relevant deposition transcript testimony in a supplemental filing as available.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff's

Motion and Amended Motion in their entirety for the reasons stated above.

HARRIS & HUGE, LLC



W. Stephen Harris

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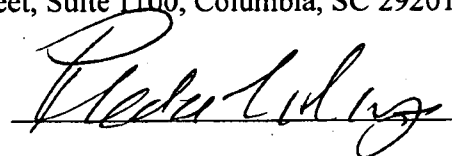
Tel. 843.805.8031

Fax 843.636.5229

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on July 7, 2016, I mailed by US Mail copy of this document to John E. Schmidt III, Esq., Schmidt Copeland, 1201 Main Street, Suite 1100, Columbia, SC 29201, Attorneys for Plaintiff.



ROA 0043

now. If soon prob tell office Monday.
What you think is fair bout ur pay from
last pay period til then. We talked
about possible hourly? Sales have
been non existent still

Sorry to hear about Megs Aunt. I have not been paid for 5 weeks now. I know everyone else is still being paid at the office. I would like to have my last two check paid in full and I will not worry about the rest of the time until Brad takes over. I will let Brad know my job is done as far as my duties over here. Then when he takes over he can hire me as a employee over there if he chooses. I will tie up any loose ends in the next few weeks. So will be fair for both of us. That is the same as paying me 50% for my last two months. Let me know when I can expect payment please. Thanks again and sorry again about Megs Aunt.

K that sounds good and fair is brad communicating with u?

I will shoot him a text today. we talked a bunch at the show and he is all about having me come aboard. He said I am battle tested and he wants me to be his go to guy. He was also pumped on all the samples too.

10/6/14, 5:00 PM

Do you want me to send the CC back to your office or cut up?

ROA 0043

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Shane Gould

Plaintiff,

v.

Worldwide Apparel LLC f/k/a
MusclePharm Sportswear LLC; and
Drew Ciccarelli

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-3220

DEFENDANTS' MOTION FOR
RECONSIDERATION OF THIS
COURT'S ORDER GRANTING
SUMMARY JUDGMENT AND
BRIEF IN SUPPORT

FILED
2016 JUL 25 PM 2:31
JUL 25 2016
CLERK OF COURT
BY [Signature]

Pursuant to Rule 59(e), SCRCP, Defendants come, through undersigned counsel, and respectfully move for reconsideration of and/or to alter or amend the order of summary judgment. Defendants also supplement herein Defendant's Opposition to Plaintiff's Motion and Amended Motion for Summary Judgment with deposition transcript excerpts¹, Plaintiff's late, non-responsive discovery responses and further argument in support of Defendants' Opposition. Defendants also respectfully respond below to Plaintiffs' Brief in Support and argue below that genuine issues of material fact exist precluding summary judgment and that Plaintiff has denied Defendants a full and fair opportunity to obtain discoverable, relevant evidence, making summary judgment premature at this stage in the litigation.² *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003).

¹ Defendant Ciccarelli's and Plaintiff Gould's entire deposition transcripts were provided in hard copy to the Court at the hearing on July 12. Defendant did not receive transcripts from the court reporter for Plaintiff's and two witnesses' testimony until the afternoon before the hearing. Defendants did not have time to provide relevant excerpts to the Court prior to the hearing and indicated in their original opposition that they would supplement their opposition with transcripts. Further, Plaintiff mailed a late, non-responsive, non-certificated set of responses to Defendants' written discovery, without a single document in response, such that Defendants' counsel received it the afternoon prior to the hearing. Argument on the discovery issue and the denial of Defendants' opportunity for full and fair discovery is provided below in Defendants' arguments.

² Plaintiff's Brief in Support was submitted to the Court and counsel via email twenty (20) hours prior to the hearing and thus less than three (3) days before as directed by the Court for filing of memoranda and briefs.

**Testimony of Defendants Drew Ciccarelli and Worldwide Apparel LLC f/k/a
MusclePharm Sportswear LLC**

Defendant Drew Ciccarelli testified at his deposition on behalf of himself and as the 30(b)(6) representative of Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. The following excerpts are discussed more fully in the argument section below.

1. Defendant Ciccarelli and Plaintiff Gould openly discussed and orally agreed to a new compensation structure for September 2014 in exchange for Plaintiff's significant reduction in duties during the sale of Worldwide Apparel LLC:

Page 53

2...Q...Now, can you give me a more specific
3...month or date on which you actually spoke to
4...Mr. Gould about reducing his pay in any way?
5...A...Yeah, we discussed it in August and in
6...greater detail in the beginning of September.

22...Q...Okay...And what did you say?

23...A...Via the phone before that, I explained
24...to Shane [Gould] how we were selling the company. Shane
25...also had talks with Jeff Kovlosky about it and

Page 54

1...Scott Garbard. But we explained to Shane how we
2...were selling the company and winding down things.
3...We weren't making any money. I explained to Shane how,
4...when he came on board to - - that time, we lost
5...\$820,000. Prior to Shane coming onboard when we
6...ran the Company, we only lost 120 grand, and sales
7...have gone down and that we wanted to pay off our
8...accounts payable while we were still receiving
9...money from accounts receivable. And we asked
10...Shane what he thought he was worth, and we asked
11...him, are you really doing any of the workload that
12...you did when you first came on? And he agreed that
13...he was not. And we asked him what he thought was a
14...fair pay.

15... We also explained to him that
16...MusclePharm wanted him to come on board and that we
17...were going to help facilitate him getting a job
18...with that. And he understood that and said to us,
19...you know, I have no problem helping out while we
20...wind down things, and I would be interested in
21...coming onboard with MusclePharm.

22...Q. And so were those things you just
23...testified to documented anywhere in writing?

24...A. Some of that is in text messages, and
25...the rest is via phone. We didn't really document

Page 61

12.....Q...Okay...So your testimony is that you
13...discussed with Shane Gould in August of 2014 that
14...the company was not doing well, being your company,
15...MusclePharm Sportswear and Worldwide---

16.....A...Um-hum.

17.....Q...Is that a yes?

18.....A...Correct.

19.....Q...--in that you were going to look to
20...try to sell the company to MusclePharm Corp, which
21...is a separate business?

22.....A...Yes.

23.....Q...And then you had -- you say you had a
24...text with him in September of 2014, the first week?

25.....A...I believe so, yes.

Page 62

1.....Q...Okay...And tell me what you told him in
2...the text, not the verbal, but what the text told
3...him about this stuff.

4.....A...That we were unable to pay him his full
5...amount of salary that we started paying him, and
6...that we had to cut the pay.

10.....Q...And so what did you say you had to cut
11...the pay to?

12.....A...Well, we didn't say right there in that
13...text...I believe Shane mentioned \$5000 per month.

Page 70

13.....Q...Now, the reasons that you gave
14...Shane for the reduction of his pay were what?

15.....A...We weren't conducting business. We
16...were winding operations down and trying to have
17...MusclePharm buy the company..

21.....Q...Any other reasons?

22.....A...I mean, just his workload was not what
23...it used to be. [...]

2. Plaintiff acted disloyally by giving MusclePharm-sponsored MMA fighters Plaintiff's Fuel Clothing Company apparel while at industry trade shows Defendants paid Plaintiff to attend --

Page 75

8.....Q...Okay. Now, you have asserted that
9...Mr. Gould breached his duty of loyalty?

10.....A...Correct.

11.....Q...I need you to tell me all the facts
12...that you know about that.

19.....THE WITNESS: He, with our other
20...employees, with our other employees being present
21...on our dollar on trips, would hand out out of his

22 book bag his clothing to other athletes, slash,
23 models that were associated with us or were working
24 on -- at events that we sent him to. We paid
25 for our fighters a lot of money to wear our
Page 76

1 clothing and logo in fights. And one or more
2 instances, they wore Shane's clothing.

8 Q That he would go to events and pass out
9 Fuel gear?

10 A Correct.

Page 83

23 Q Who did he pass out Fuel stuff to?

24 A Our fighters, our spokespeople.

25 Q Can you give me any names?

Page 84

1 A Clay Guida.

4 Q Any others?

5 A Chady Dunmar.

10 Q Any others?

11 A Travis Browne.

Page 87

12 A [...]we had a UFC

13 fight that was televised to tens of millions of
14 people. And our fighter that we paid walked out in

15 Fuel socks instead of our socks.

16 Q Name of who?

17 A Clay Guida.

3. MusclePharm employee, Whit Rabon, witnessed Plaintiff distributing Fuel Clothing at industry trade shows:

Page 92

18 Q Now, the Fuel socks that Shane gave
19 away, did someone see him give away Fuel socks at
20 the trade show?

21 A Correct, Whit Rabon. He had a

22 bookbag -- the way Whit described it, Shane had a

23 bookbag with Fuel Clothing gear and was walking

24 around to different booths and handing out his

25 gear.

Testimony of Plaintiff Shane Gould

As an exhibit to Defendants' Opposition to Summary Judgment, Defendants provided a series of text messages between Plaintiff and Drew Ciccarelli wherein Plaintiff admitted in

the first week of October 2014 that “my job is done as far as my duties” at Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC, that he would “send his [company credit card] back to your office or cut it up”, and that Plaintiff anticipated MusclePharm Corporation would hire him and agreed that Plaintiff would take “50% for my last two months.” Plaintiff’s deposition transcript was not provided to counsel by the court reporter until the afternoon before the hearing, so Defendants provide below certain relevant testimony which gives the foundation and authentication of those text messages in

Defendants’ Exhibit A:

Page 94

20.. Q. . . . Let’s start at the bottom of what’s marked
21.. or indicated as Gould 174. And you see the date
22.. there, 10/3/14?

23.. A. Yes.

24.. Q. Okay. That gives you a time frame.

25.. A. Right. . . .

Page 95

4.. Q. Do you know who the two people texting back and
5.. forth are here?

6.. A. This looks like it’s from Drew asking
7.. about Scott and Brad.

8.. Q. And it’s from Drew to you and back and
9.. forth; right?

10.. A. Yeah..

. . . .

16.. Q. . . . The dark boxes, that’s your
17.. texting?

18.. A. Yeah, yeah, to the right, yes.

19.. Q. The ones to the right are you, and the
20.. ones to the left are Drew?

21.. A. Yes.

Plaintiff also testified in deposition that MMA fighter Clay Guida wore Fuel clothing, i.e. clothes provided by Plaintiff’s company, instead of MusclePharm clothing, while he was working for and being paid by Defendant Worldwide Apparel / MusclePharm Sportswear. During the time Plaintiff worked for Defendant Worldwide Apparel / MusclePharm Sportswear, Mr. Guida was a MusclePharm sponsor athlete, according to Defendant

Ciccarelli's testimony. This testimony supports Defendants' defense of breach of loyalty and illustrates the existence of a genuine issue of material fact:

Page 101

16.. Q. Let me ask another question. You know who Clay
17.. Guida is; correct?

18.. A. Yeah, he was our main fighter.

19.. Q. Did Clay Guida ever wear Fuel Clothing
20.. at an event where he was fighting?

21.. A. Yes.

22.. Q. When was that?

23.. A. I don't know the time.

24.. Q. Was it after you worked at MusclePharm
25.. Sportswear?

Page 102

1.. A. I would say probably afterwards.

2.. Q. So you don't know for sure; right?

3.. A. No, I don't, not for sure.

DISCUSSION

I. A Breach of the Duty of Loyalty by an Employee Operates as a Forfeiture of Compensation for the Services Performed During the Periods of Disloyalty.

The South Carolina Payment of Wages Act does not prohibit an employer from asserting valid defenses or counterclaims against former employees. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 605, 518 S.E.2d 591 (1999); *accord* O'Neal v. Intermedical Hosp., 355 S.C. 499, 509-10, 585 S.E.2d 526 (Ct. App. 2003); Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381 (1995). It is well established that "an employee who breaches the common law duty of loyalty to an employer, often described as a 'faithless servant,' forfeits the right to compensation." Futch, 335 S.C. at 605.

It is implicit in any employment contract that the employee must remain loyal to his employer. Berry v. Goodyear Tire & Rubber Co., 270 S.C. 489, 491, 242 S.E.2d 551 (1978) (citing Lowndes Products, Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972)). An employee

who "acts adversely to the interest of his employer" is disloyal. Berry, 270 S.C. at 491. The case law is clear that "solicitation of an employer's customers likely will constitute a violation of the duty of loyalty in almost every case[.]" particularly when combined with acts "aimed at competing with the employer." Futch, 335 S.C. at 606 (citing Brower, 259 S.C. at 335-39); see also Berry, 270 S.C. at 491 (engaging in a business "which necessarily renders [an employee] a competitor and rival of his employer, no matter how much or how little time and attention he may devote to it" conflicts with his duty to his employer).

There is substantial evidence in the case at bar which supports Defendants' argument that Plaintiff Gould breached his duty of loyalty to Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. Defendant Ciccarelli testified that Plaintiff distributed his own Fuel Clothing Company apparel while at industry trade shows Plaintiff attended while working for and on behalf of Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. Furthermore, Plaintiff Gould himself testified that he distributed Fuel Clothing Company products while at trade shows he attended while working for Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC and for which his travel expenses were paid by Defendants.³ Because Plaintiff promoted his own company while working for Defendants, thereby engaging in behavior aimed at competing with Defendants, Plaintiff is not entitled to any compensation for services performed during the periods in which he breached his duty of loyalty. See Futch, 335 S.C. at 607-08.

³ Page 105

15.....Q. And you didn't hand out any other --

16 any Fuel clothing --

20 Q. [...] -- to anyone

21 at any of these other expos or events you went to

22 while working for MusclePharm Sportswear?

23 A. At any event, yes, I handed out Fuel

24 socks.

II. A Breach of the Duty of Loyalty by an Employee Creates a "Bona Fide Dispute" Over the Payment of Wages, Thus Making the Imposition of Treble Damages and Attorney's Fees Improper.

The failure of an employer to pay wages due to an employee may allow the employee to recover an amount equal to three times the amount of the unpaid wages plus reasonable attorney fees. S.C. Code Ann. § 41-10-80 (C). However, an award of treble damages and attorney's fees is not appropriate where there is no "bona fide dispute" over an employee's entitlement to wages. Rice v. Multimedia, Inc., 318 S.C. 95, 98-99, 456 S.E.2d 381 (1995). Thus, a trial court must determine whether a "bona fide dispute" exists *before* awarding treble damages or attorney's fees. Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 98, 757 S.E.2d 560 (Ct. App. 2014) (citing Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414 (2009)). This is because the imposition of treble damages or attorney fees in cases where there is a bona fide dispute would be "unjust and harsh," as the legislature never intended to deter the litigation of good faith wage disputes. Rice, 318 S.C. at 98-99. Where the Court determines a bona fide wage dispute exists, the Court may not impose treble damages or attorney's fees under § 41-10-80(C). Rice, 318 S.C. at 98; see also O'Neal v. Intermedical Hosp., 355 S.C. 499, 509, 585 S.E.2d 526 (Ct. App. 2003) (an award of treble damages, while a matter of discretion for the trial court, is inappropriate in circumstances where there is a bona fide wage dispute).

In this case, a breach of the duty of loyalty by Plaintiff creates a good faith dispute as to the amount of wages due, if any, and thus it would be inappropriate to impose an award of treble damages or attorney fees, should the Court determine that any wages are due. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 605-06, 612 (1999). Further, the testimony cited above and the text messages in Defendants' Exhibit A show that genuine issues of material fact prevail, and thus summary judgment is inappropriate at this time.

III. Plaintiff's Argument Regarding § 41-10-30(C) Has No Merit.

Assuming *arguendo* that Plaintiff is due something in this case despite the evidence of his disloyalty and bad faith, Plaintiff's counsel has confused the parties' renegotiation of employment terms -- the reduction in Plaintiff's salary and his substantially diminished workload-- with the requirement of § 41-10-30(C) that an employer "shall not withhold or divert any portion of an employee's wages unless [...] the employer has given written notification to the employee of the amount and terms of the *deductions* as required by subsection A of § 41-10-30."⁴ However, a proper reading of § 41-10-30 establishes that the latter portion of § 41-10-30(C) requiring written notice to employees applies only to *deductions* in compensation as opposed to *reductions*.⁵ Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 317, 698 S.E.2d 773 (2010). Furthermore, given the at-will nature of the parties' employment agreement, Plaintiff Gould impliedly consented to the reduction in his compensation by continuing to work, albeit in a substantially reduced capacity, for Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC, after agreeing to \$5,000 per month in September 2014. See, e.g., Facelli v. Southeast Mktg. Co., 284 S.C. 449, 451-52, 327 S.E.2d 338 (1985) (an employee "impliedly consents" to changed compensation by continuing to work under the new arrangement and is "estopped from seeking damages" arising therefrom).

⁴ S.C. Code Ann. § 41-10-30(A) provides: "Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, *and the deductions which will be made from the wages, including payments to insurance program.* The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases."

⁵ A "deduction" within the terms of the statute "is the act of taking away from a salary in order to find some benefit[.]" which is distinguishable from a "reduction" in compensation. Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 317 (2010).

IV. Summary Judgment Is Premature as Discovery Is Ongoing and Defendants Have Been Denied a Fair and Full Opportunity to Conduct Discovery, and Plaintiff Should Not Be Rewarded for Abuse of the Discovery Process.

Summary judgment is inappropriate where discovery is ongoing and Plaintiff has utterly failed to comply with discovery requests and has denied the non-moving party a full and fair opportunity to complete discovery. Baughman v. AT&T, 306 S.C. 101, 112-14, 410 S.E.2d 537 (1991); Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003) (summary judgment reversed where defendants diligently pursued discovery and were denied a fair and full opportunity to conduct discovery).

Since it is a drastic remedy, summary judgment “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” Watson v. Southern Ry. Co., 420 F.Supp. 483, 486 (D.S.C. 1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) (summary judgment is “an extreme remedy to be cautiously invoked”). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Baughman, 306 S.C. at 112 (citations omitted).

Defendants served interrogatories and requests to produce on Plaintiff on February 9, 2016. [Ex. 1] After repeated requests by Defendants’ counsel for discovery responses and a suggestion during a dispute at deposition that a motion to compel was going to be filed based on Plaintiff’s continued refusal to respond, Plaintiff mailed the attached document (Ex. 2), which has no certificate of service, to Defendants’ counsel by letter dated July 6, 2016. These “responses” to discovery are wholly inadequate and over three months late.

More importantly, Plaintiff has failed to produce a single document in response to discovery requests.⁶ Plaintiff has his own email domain and conducted much of his business through this email account while working for Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. In fact, he refused to use a company email account.⁷ Thus, Defendants have no access to emails Plaintiff sent during his work for Defendant Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC. These emails may very well contain, among other relevant information, communications between Plaintiff and third parties which support Defendant's defenses of disloyalty, bad faith and unclean hands. See Baughman, 306 S.C. at 112, 410 S.E.2d at 544 (summary judgment may be denied on the grounds that further discovery has not been completed where the party opposing summary judgment demonstrates the likelihood that further discovery will uncover additional relevant evidence). Further, Defendants specifically requested emails between Plaintiff and current and former employees Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC and third parties (see e.g. Defendants' Requests No. 9, 10 and 17 in Ex. 1).

Before summary judgment should be considered in this case, Defendants should be afforded the opportunity to obtain and inspect relevant electronic and written documents in

⁶Plaintiff provided approximately 270 pages of unnumbered, selected text messages and other documents to Defendants' prior counsel, who stamped them Gould001 et seq., during informal, pre-discovery discussions between Plaintiff's counsel and Defendants' former counsel. Plaintiff has not provided any of his emails, while Defendants have provided over 2,500 pages of emails, text messages, payroll reports and other documents in response to Defendants' discovery requests.

⁷Deposition of Jeffrey Taylor, July 7, 2016 [Ex. 3]:
Page 20:

17.. Q. You said earlier that Shane did not
18.. have a MusclePharm - or mpsportswear.com email.
19.. Is there any reason why he didn't have a
20.. musclepharmsportswear.com email?
21.. A. No. We offered him one. He didn't
22.. want it. . . .

Plaintiff's possession which may further support Defendants' defenses in this case. The revelations which may very well arise in Plaintiffs' emails, texts and other documents which Defendants are entitled to review in this case may be needed for Defendants' anticipated expert witness on the issues of Defendants' defenses of disloyalty and unclean hands. Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003); See also United States v. Shaffer Equipment Co., 11 F.3d 450, 457-58 (4th Cir.1993) (the judicial system can provide "no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end.").

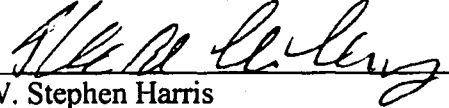
CONCLUSION

Genuine issues of material fact predominate in this case on several significant issues, including Plaintiff's disloyalty and bad faith towards Defendants, how much, if any, Plaintiff may be due in unpaid wages, and if any wages are due, whether or not Plaintiff is entitled to treble damages and reasonable attorney fees. As shown by the testimony and argument provided above and in Defendant's original opposition to summary judgment, Defendants have shown a scintilla of evidence to withstand a motion by plaintiff for summary judgment as a matter of law on all issues in this case. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329, 673 S.E.2d 801 (2009). Further, Plaintiff has failed to comply with discovery requests or produce one email or other document in response to requests to produce, and Defendants should have a full and fair opportunity to complete discovery before summary judgment is considered in this case. Baughman v. AT&T, 306 S.C. 101, 112-14, 410 S.E.2d 537 (1991).

WHEREFORE Defendants respectfully request that this Court reconsider the grant of summary judgment and deny Plaintiff's Motion and Amended Motion for Summary Judgment for the reasons set forth above.

Respectfully submitted,

HARRIS & HUGE, LLC



W. Stephen Harris

Theodore Huge

180 Spring Street

Charleston, SC 29403

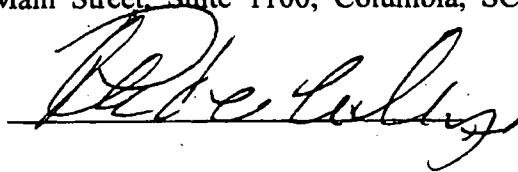
Tel. 843.805.8031

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on July 25, 2016, I mailed by US Mail copy of this document to John E. Schmidt III, Esq., Schmidt Copeland, 1201 Main Street, Suite 1100, Columbia, SC 29201, Attorneys for Plaintiff.



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE
Trial Court Case No. 2015-CP-10-3220

Shane Gould,

Respondent,

Vs.

Worldwide Apparel LLC, f/k/a
MusclePharm Sportswear LLC and
Drew Ciccarelli,

Appellants.

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DEC 08 2016

SC Court of Appeals

NOTICE OF APPEAL

Appellants Worldwide Apparel, LLC f/k/a MusclePharm Sportswear LLC and Drew Ciccarelli individually (hereafter referred to collectively as "Appellants") appeal from the orders of the Honorable Benjamin H. Culbertson dated November 3, 2016, and the order denying reconsideration filed November 8, 2016, received by counsel for Appellants on or about November 9, 2016. Copies of both orders on appeal are attached hereto and incorporated herein.

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ROA 0057

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ATTORNEYS FOR APPELLANTS

Other counsel of record:

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ATTORNEY FOR RESPONDENT

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

JUDGMENT IN A CIVIL CASE ROA 0059

CASE NO. 2015-CP-10-3220

Shane Gould
PLAINTIFF(S)

Worldwide Apparel LLC f/k/a MusclePharm
Sportswear LLC and Drew Ciccarelli
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court.

Defendants' Motion for Reconsideration is DENIED.
(This motion is decided without oral arguments.)

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SC Court of Appeals

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

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

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

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge ROA 0059

2148
Judge Code

Nov. 3, 2016
Date

For Clerk of Court Office Use Only

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

John E. Schmidt

William Stephen Harris

Theodore Harry Huge

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



ROA 0061

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

P. O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

November 3, 2016

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401-2210

RE: *Gould v. Worldwide Apparel LLC, et al.*
Case No. 2015-CP-10-3220

Dear Ms. Armstrong:

Please find enclosed for filing with your office the Form 4 Order denying the defendant's Motion for Reconsideration in the above referenced case. Please file this original and provide copies to counsel of record.

I thank you in advance for your service in this matter and with kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
Enclosure (a/s)

ROA 0061

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

JUDGMENT IN A CIVIL CASE

ROA 0062

CASE NO. 2015-CP-10-3220

Shane Gould
PLAINTIFF(S)

Worldwide Apparel LLC f/k/a MusclePharm
Sportswear LLC and Drew Ciccarelli
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RECEIVED

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

Judgment is joint and severable.

DEC 08 2016

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Shane Gould	Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC	\$ 174,856.10
Shane Gould	Drew Ciccarelli	\$ 174,856.10

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

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

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

ROA 0062

2148
Judge Code

Nov. 3, 2016
Date

For Clerk of Court Office Use Only

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

John E. Schmidt

William Stephen Harris

Theodore Harry Hugel

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Amanda K. Haffenden

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROA 0063

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Shane Gould,

Plaintiff,

vs.

Worldwide Apparel LLC f/k/a
MusclePharm Sportswear LLC and
Drew Ciccarelli

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action Number: 2015-CP-10-3220

Order on Plaintiff's Motion for Summary
Judgment

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SC Court of Appeals

This case comes before the Court on Plaintiff's Motion for Summary Judgment, as amended. The claim involves a dispute under the South Carolina Wage Payment Act ("Act"). Based on the motions, briefs, and deposition testimony presented, as well as on arguments of counsel at the hearing held on July 12, 2016, this Court herewith enters summary judgment as against Defendants as a matter of law on all claims. In summary, the individual Defendant and Defendant Corporations conceded in Rule 30(b)(6) testimony all facts warranting summary judgment in favor of Plaintiff.

Background

Defendant Ciccarelli is a resident of Charleston, South Carolina. The Defendant Corporations were considered one and the same by their sole member, the Defendant Ciccarelli.¹ The Defendant Corporations are South Carolina Limited Liability Companies started in or around 2011 by Ciccarelli. It was not disputed that one or more Defendants had purchased a license for production and sale of certain sports apparel by a separate, unaffiliated and ongoing

¹ Deposition of Ciccarelli and Worldwide Apparel LLC f/k/a MusclePharm Sportswear LLC per Rule 30(b)(6), taken June 22, 2016 (hereinafter "Depo. Defendants"), Page 23, lines 6-15.

Colorado business known as MusclePharm Corporation.²

Defendants admitted that they hired Plaintiff as a W2 employee in May of 2013, at a rate of \$10,000 per month, as CEO.³ It was not disputed that Gould's duties involved mostly off-site work, and that he would typically attend office meetings, when held, on Wednesdays. Otherwise, his physical presence in the offices of the business was not required or expected. He was hired because the Defendant Corporations hoped to position the apparel company to be acquired by their licensor, a wholly distinct corporation, MusclePharm Corporation. When Gould was hired, none of the then current employees of Defendants had any experience whatsoever in apparel business. Mr. Gould brought with him decades of experience running his own apparel business of worldwide reach, located in Hilton Head.

It was not disputed that Mr. Gould was never given any written personnel action, demotion, termination or other written notice of downward adjustment of pay as would have been required by law. Even so, Defendants admitted that Mr. Gould was paid only partially, and then not at all, for the work he performed as employee of the Defendant companies during September through December of 2014. The Defendants ultimately did sell their operations to MusclePharm Corporation in 2015. That entity took over operations as of January 1, 2015. Defendants received about \$800,000.00 in cash and \$1.2 Million in stock for the 2015 sale of operations to MusclePharm Corporation, but never paid Gould the past due wages he had earned.⁴ Instead, they distributed the cash and stock to Mr. Ciccarelli and his associates, leaving only \$50.00 in a Wells Fargo account of the LLC, and unpaid debts and obligations.

² MusclePharm Corporation is not a party to this case. It is in the business of selling nutritional supplements to athletes and body builders.

³ Depo. Defendants at pages 44-45, 47.

⁴ Depo. Defendants, Page 109, lines 3-15.

Findings of Fact

The Corporate Defendants' sole member/owner, Drew Ciccarelli, gave deposition testimony and by stipulation of counsel on record, his testimony also served as the Corporate Defendants' Rule 30(b)(6) testimony as well. This binding testimony establishes all of the essential elements of the claims of Plaintiff as against Defendants:

1. Mr. Gould was hired in or around May of 2013 as a W2 employee for the Defendant Corporations, and his wages were set and agreed at \$10,000 per month. Depo. Defendants, p. 47, lines 2-9.
2. The Defendant corporations paid Mr. Gould the \$10,000 per month each month until July of 2014. Depo. Defendants, p. 52, line 15- P. 53, line 9.
3. Without written notice as required by law⁵, Mr. Gould's pay was reduced to \$5000.00 in August 2014, but he was paid nothing for his work in September, October, November and December of 2014. Depo. Defendants, p. 52, lines 15-25; p. 63, lines 4-22, p. 62, lines 23-25.
4. Although the Wage Payment Act requires no showing of bad faith, here such bad faith on the part of the employer is quite evident. The employer admitted in deposition that it fully intended to pay Mr. Gould at least half of his pay for the months of September, and October 2014 but that it never did so, despite receiving \$800,000.00 in cash and \$1.2 Million in stock for the sale of the operations in the ensuing months. Depo. Defendants, p. 64, lines 7-18.
5. Mr. Gould was never terminated, and he never resigned up until the date the business operations were taken over by the acquiring company as of January 1, 2015. Depo. Defendants, p. 66, line 17- p. 68, line 5.
6. Mr. Gould performed services for the Defendant LLCs in all of the months for which he was not paid – August, September, October, November and December of 2014; and that the employer intended to pay Gould compensation for work during these months but did not do so. Depo. Defendants, p. 68, line 6-21, p. 100, line 17-p. 101, line 8.

⁵ Defendants contend that the Wage Payment Act's written notice requirement applies only to "deductions" from pay, not to "reductions" in pay, citing *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 698 S.E. 2d 773 (2010). However, *Mathis* does not so hold, and such an interpretation directly contradicts the language of the statute, which states that "Any changes in these terms [i.e. hours, agreed wages, time and place of payment] must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases." The Court rejects Defendants' argument. *Facelli v. Southeast Mktg Co.*, 284 S.C. 449, 327 S.E. 2d 338 (1985), cited by Defendants, was decided prior to enactment of the Wage Payment Act in 1986.

Conclusions of Law

Under S.C. Code § 41-10-20, the Wage Payment Act applies to every employer in South Carolina except employers of domestic labor in private homes, and employers who employ five employees at any time in the preceding twelve-month period. There was no dispute, and the Defendants' deposition testimony and payroll manager testimony establish that the company had five W-2 employees in the relevant calendar year, 2014.⁶

The Wage Payment Act, Section 41-10-30 (A), requires that:

Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective....

S.C. Code Ann. § 41-10-30(A)(emphasis added).

As shown above by corporate admission, it is undisputed that Mr. Gould's salary wages were set at \$10,000 per month and were paid as such until the August, September, October, November and December 2014 time period at issue, at which time they were at first unlawfully reduced without written notice⁷ in violation of the above provision, and then, unlawfully withheld entirely in violation of the Act. As shown by the Rule 30(b)(6) testimony above, it is also undisputed that no written notice in compliance with Section 41-10-30(A) was ever given.

⁶ Mr. Ciccarelli and the corporate Defendants through Rule 30 (b)(6) testimony initially admitted that there were four W2 employees and erroneously asserted that Mr. Gould, the fifth W2 employee, was not such an employee, but was a contractor. However, at a later point in their testimony conceded that Mr. Gould was indeed a W2 employee, bringing the undisputed total to 5 employees. Depo. Defendants at 102-103.

⁷ The Wage Payment Act clearly requires the compliant written notices of changes, and forbids alleged oral "side agreements" inconsistent with the Act's requirements of such, by stating: "No provision of this chapter may be contravened or set aside by a private agreement." S.C. Code Ann. § 41-10-100.

Section 41-10-40 of the Wage Payment Act requires that:

(C) *An employer shall not withhold or divert any portion of an employee's wages* unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.

(D) *Every employer in the State shall pay all wages due at the time and place designated* as required by subsection (A) of Section 41-10-30.

S.C. Code. Ann. § 41-10-40 (emphases added).

Further, Section 41-10-50 of the Act provides that "[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days."

Here, based on the undisputed testimony of the Defendants themselves, I find and hold that:

- 1) Mr. Gould was an employee of the Defendant LLCs during the year 2014 though the end of December 2014;
- 2) Mr. Gould's rate of pay was \$10,000 per month;
- 3) The Wage Payment Act does apply to and govern in this case,
- 4) Defendant employers violated the Wage Payment Act provisions quoted above by:
 - a) not giving written notice to Mr. Gould of any change in pay rate; and
 - b) not paying Mr. Gould all wages due for the months of August, September, October, November and December of 2014 in the total amount of \$40,000.00.

I further find and conclude that Defendant employers also violated Section 41-10-60 of the Wage Payment Act, which provides that:

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes

to be due and shall pay the amount without condition within the time set by this chapter. Acceptance by the employee of the payment does not constitute a release as to the balance of his claim.

S.C. Code Ann. § 41-10-60 (emphasis added). The Defendant employer specifically violated the Wage Payment Act by not sending Mr. Gould written notice of the amount conceded to be due (at least the unpaid amount conceded in the deposition testimony) and by not paying such amount without condition.

Section 41-10-80 (C) provides that "[i]n case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." Because this case involves several clear violations of the Wage Payment Act, and because Defendants actually admitted that they owed and had intended to pay Mr. Gould wages that were never paid, despite the subsequent sale of the business operations for a substantial amount, and no good faith reason or basis for non-payment was given, I find and hold that the employee, Mr. Gould, shall recover as against the employers three times the amount of unpaid wages, a total of \$120,000.00, plus reasonable costs and attorneys fees incurred by Mr. Gould.

After a review of the submissions by Plaintiff, including Affidavits of counsel and other South Carolina attorneys, I find and hold that the costs and fees incurred were all reasonable and necessary in light of the claims at stake, as established by time records and affidavits submitted in support of the claimed fees and costs. "[T]he specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). Our Supreme Court has recognized that the six

factors as set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) are applicable to the reasonable fee analysis made in a case under the Wage Payment Act. See, e.g., *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E. 2d 381 (1995). Those factors, as analyzed in this case, are:

(1) *The Nature, Extent and Difficulty of the Legal Services Rendered.*

This Court finds and holds that the nature, extent and difficulty of the legal services in this case would have been typical, but was made more difficult to a degree by actions of the Defendants in resisting and delaying appropriate discovery, and by refusing to timely schedule mediation as required by the Court (as shown by affidavit and time entries) and thus Plaintiff's counsel had to expend considerably more time and effort on the case than was otherwise needed. Also, the Court notes that affidavits submitted established reasonable efforts by counsel to resolve the case early.

(2) *The Time and Labor Necessarily Devoted to the Case.*

This Court finds and concludes that a review of the statements and affidavits submitted by Plaintiff's trial attorney indicate clearly that the time and labor spent were reasonable and not duplicative.

(3) *The Professional Standing of Counsel.*

This Court finds and concludes that Plaintiff's trial attorney is an experienced, skilled attorney, of high professional standing in the community, based upon a careful review of the affidavits submitted, which included the attorney's resume.

(4) *The Contingency of Compensation.*

Not applicable since this was not a contingency case.

(5) *The Fee Customarily Charged in the Locality for Similar Legal Services.*

Based upon a review of the attorney's resume, affidavits and its familiarity with attorney fees customarily charged in this legal community, this Court finds and concludes that the rate of \$380.00 per hour for counsel of over 30 years experience was appropriate, and that the time and rate for paralegal work was reasonable and allowed the matter to be handled more efficiently;

(6) *The Beneficial Results Obtained.*

This Court finds and concludes that the total benefits obtained by Plaintiff include a sizeable judgment in the amount of unpaid wages sought. The total amount of fees sought is similar to the amounts awarded in similar cases.

I find and hold that the costs and attorney's fees incurred and submitted by Plaintiff in the total amount of \$54,856.10 are reasonable, and that Defendant employers are liable to Mr. Gould for such costs and attorneys fees in this case in that amount.

I further find and hold that upon Plaintiff's proof of the elements supporting the Wage Payment Act claim, the Defendants had the burden to bring forward more than a scintilla of evidence to support one or more legally cognizable defenses to the Wage Payment Act claim, but they did not do so. There was not, as required by law, more than a scintilla of evidence supplied to the Court that Mr. Gould breached a duty of loyalty. Further, any alleged disloyalty, by Defendants' own deposition admissions, would have taken place months before the period of non-payment at issue here. Under *Futch v McAllister Towing*, 335 S.C. 598. 518 S.E. 2d 591 (1999) and similar, subsequent cases, the defense of employee disloyalty applies only to affect compensation *during the asserted periods of disloyalty*. See *Futch* at 607-608 (Claimant not entitled to compensation for services performed *during the periods of disloyalty*). I find and hold that there was not a bona fide dispute as to the employer's obligation to pay unpaid wages, based on the Defendants' own testimony. The Wage Payment Act was designed specifically to protect

employees from the very kind of unjustified and willful retention of wages - including undisputed unpaid wages - that existed here.

Finally, I find and hold that Defendant Ciccarelli is individually liable for the obligations of the Defendant employers stemming from the above violations of the Wage Payment Act. Mr. Ciccarelli and the corporate Defendants admitted in testimony that Mr. Ciccarelli was the sole member of the LLC Defendants; that when the LLC was paid approximately \$800,000.00 in cash, and \$1.2 Million in stock in early 2015 for the sale of the business operations, the LLC thereafter promptly, without paying all debts and claims and without giving legally required written notices, distributed and disposed of substantially all of the assets of the LLCs (all but \$50.00 that remains today in the LLC account) to Mr. Ciccarelli and his associates.⁸ S.C. Code Ann. Section 33-44-406 prohibits LLC distributions that preclude the company from paying its debts as they become due. Under Section 33-44-407, Mr. Ciccarelli, the LLC member here, is personally liable to pay for the LLC debts in the case of such unlawful distributions.

WHEREFORE, for the reasons set forth in this Order, I find and hold that Plaintiff is entitled to summary judgment as a matter of law against each Defendant, and therefore, this Court hereby enters judgment in favor of Plaintiffs on all claims and hereby Orders that DEFENDANTS shall pay to Plaintiff the total sum of \$174,856.10, which includes \$40,000 in unpaid wages, trebled, plus reasonable attorneys' fees and costs in the amount of \$54,856.10.

IT IS SO ORDERED.

Georgetown,

Charleston, South Carolina

Nov. 3, 2016

Benjamin H. Culbertson

Hon. Benjamin H. Culbertson
Circuit Court Judge

⁸ Depo. Defendants at 16, 108-109.

ROA 0073

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON 2015-CP-10-3220

SHANE GOULD,

Plaintiff,

-vs-

WORLDWIDE APPAREL, LLC;

f/k/a MUSCLEPHARM, et al.,

Defendants.

TRANSCRIPT OF RECORD

July 12, 2016

Charleston, South Carolina

B E F O R E:

The Benjamin Culbertson, Judge.

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

John E. Schmidt, III, Esquire
Attorney for the PlaintiffTheodore Harry Huge, Esquire
W. Stephen Harris, Esquire
Attorneys for the DefendantsAmanda K. Haffenden, RPR, CRR
Circuit Court Reporter**ROA 0073**

ROA 0074

1 (July 12, 2016.)

2 THE COURT: Shane Gould versus Worldwide
3 Apparel, LLC and others. According to my roster, we have
4 a motion to amend, a motion for summary judgment, a
5 motion for summary judgment and sanctions, and two
6 motions to compel.

7 Please give the court reporter your names and
8 who you represent.

9 MR. SCHMIDT: My name's John Schmidt, and I
10 represent the plaintiff, Shane Gould. I'm with the law
11 firm of Schmidt & Copeland.

12 MR. HARRIS: Stephen Harris. I represent
13 Worldwide Apparel and others. I'm with the law firm of
14 Harris & Huge.

15 MR. HUGE: Good morning, Your Honor. I'm
16 Theodore Huge. I go by Ted, Ted Huge, and I also
17 represent the defendants, which are Worldwide Apparel.

18 THE COURT: All right. Does it matter what
19 order we take these in?

20 MR. SCHMIDT: Your Honor, John Schmidt for
21 the plaintiff.

22 I believe all the motions are mine; although
23 I will say I'm not aware of a motion to amend. Maybe --
24 I did an amended motion for summary judgment, and that
25 may have put --

ROA 0074

ROA 0075

1 THE COURT: Okay. They're all plaintiff
2 motions?

3 MR. SCHMIDT: Correct. I've got two motions,
4 and what I suggest is that we take up the motion for
5 summary judgment first because obviously it could obviate
6 the need for the discovery motion, and I don't want to
7 get into a bunch of discovery issues on a simple matter
8 that you dispose of.

9 I forwarded to the Court, and I do apologize
10 for the delay, our brief in support of the motion. This
11 case is a fairly simple Wage Payment Act case. We have
12 other claims, but the Wage Payment Act is core to it, and
13 my client, Shane Gould, was hired on by the defendants,
14 Worldwide Apparel and MusclePharm Sportswear, LLC, both
15 of which were wholly owned by a single LLC member, which
16 was Drew Ciccarelli. He was hired in 2013, I believe it
17 was, to perform services as a president of the company.

18 And what the business was -- there is this
19 company out there called MusclePharm Corporation. It's
20 not involved at all in this case. MusclePharm is a
21 company from Colorado. It sells body builder stuff; you
22 know, supplements and things that are associated with
23 body builders and MMA fighters. The defendants, Mr.
24 Ciccarelli, I think is how he pronounced it, and his
25 LLCs, one or some of them, purchased a license from

ROA 0075

ROA 0076

1 MusclePharm to be able to sell apparel using that logo,
2 and that was the idea.

3 When they purchased it -- and this is all
4 evident and not disputed in the transcript of depositions
5 that we'll supply -- the idea was to get this apparel
6 business up and running enough to where MusclePharm
7 Corporation would hopefully buy it; let somebody else
8 build it and buy it back, if you will. Even though it
9 was really a license, it wasn't a subsidiary or anything
10 like that.

11 The problem that they had, or one problem
12 that they had when they first started out, was none of
13 the people, Mr. Ciccarelli or any of his colleagues, knew
14 anything about the apparel business, and they were very
15 frank about that. They hired my client, Shane Gould,
16 who's been running a company out of Hilton Head that is
17 international for 25 something, 30 years that's called
18 Fuel Clothing Company. It's in a different market. They
19 sell to board sports; you know, surfboards, skateboards,
20 snowboards, some other products as well. That's kind of
21 called action sports category, and that business was
22 ongoing.

23 When he was hired to become the guy in charge
24 of the operations and the marketing, not the financing,
25 just the operations and marketing at the MusclePharm, Mr.

ROA 0076

ROA 0077

1 Ciccarelli's MusclePharm, LLC for apparel, his purpose
2 was to bring the brains of an apparel operation here, and
3 so they had an arrangement. He was a salaried employee.
4 He got \$10,000 a month for a month's work. He was
5 salaried, and they paid that \$10,000 a month for about a
6 year, in that range, without any problem.

7 His duties were different from what you and I
8 might figure for a president. They would agree that he
9 was to come to Charleston to be present at this business
10 approximately every Wednesday, at which time he would
11 have meetings with Mr. Ciccarelli and some of the other
12 people.

13 Other than that, what he brought to the
14 business -- and he was free to keep continue running his
15 separate business in Hilton Head, Fuel, which did not
16 compete -- other than that, what he brought to the table
17 was stuff that he could do by e-mail and by phone from
18 pretty much everywhere. He traveled around. He went to
19 trade shows; he introduced them to manufacturers as far
20 as the Orient and all around; people that could make
21 anything from watches to compression wear, all this kind
22 of stuff. So that's what he did.

23 He didn't have set hours, no requirements in
24 that regard. It was essentially show up for the meetings
25 about once a week, if they were held, and then do the

ROA 0077

ROA 0078

1 other functions over his e-mail and so forth, and then he
2 would get \$10,000 a month, and he did.

3 Now, the testimony is undisputed, and we have
4 it in our brief -- and if Your Honor would please, I'll
5 hand up a copy. You asked us to be sure to have these
6 available, our brief, and I'll get Mr. Ciccarelli's
7 deposition for you as well, if you want to look at the
8 whole context of it.

9 I've quoted what we thought were the
10 significant parts. These have already been served on
11 counsel, but here's our brief and the full deposition of
12 Mr. Ciccarelli.

13 That deposition was given -- and this is
14 important to the fact that this is a summary judgment
15 motion. That deposition was given by Ciccarelli as the
16 sole member of the LLCs, and it was stipulated that the
17 testimony served both as his individual testimony and as
18 the 30(b)6 testimony of the defendants.

19 And so these are firm and binding admissions,
20 the statements he makes in here, on the defendant
21 corporations, because those are put forth under Rule
22 30(b)6 as the corporation testifying, so they cannot be
23 disputed.

24 As you'll see there, what happened was that
25 as 2014 progressed, there came a time that they perceived

ROA 0078

ROA 0079

1 they would be in shape to sell their operations to the
2 MusclePharm corporation that's not a part of this case,
3 the one that is out in Colorado, and my understanding
4 from the testimony is that while that transition, that
5 acquisition took longer than was anticipated, it was
6 finally somewhat completed in January of 2015. I think
7 full payment was made in two parts, but the operations
8 were actually taken over by this separate corporation
9 that's not before you as of January 1, 2015.

10 As things started to wind toward the point
11 where this corporation was going to take over, of course
12 there was some awareness that either the employees would
13 stay on with the new corporation or be done, one or the
14 other, but Mr. Gould, as president, of course, you could
15 imagine, would have ongoing responsibilities, even up to
16 the end, of helping facilitate this final acquisition.

17 What you'll find from the testimony, and it's
18 not disputed, is Mr. Ciccarelli admitted that Mr. Gould
19 was never terminated. He was never given a written
20 document reducing his pay on any kind of seven days'
21 notice, and you'll see from the law, the termination nor
22 the written -- nor the reduction in pay, even if agreed
23 to, is effective under the Wage Payment Act without a
24 written document from the employer saying seven days
25 hence, your pay deescalates to whatever.

ROA 0079

ROA 0080

1 What did happen was that Mr. Ciccarelli came
2 to Mr. Gould and said, Hey, we're tied here. We don't
3 have a ton of cash flow, and Mr. Gould was okay about
4 receiving half of his pay the last four months, each of
5 them, into December, so long as he was made well when the
6 payment for the whole acquisition was paid.

7 That's when the money would come, and he was
8 okay with that. Although that agreement did not comply
9 with the Wage Payment Act on the employer's behalf, and
10 it's specifically prohibited by the Wage Payment Act, as
11 I'll show you, that was something they had agreed to.

12 Problem was, they never paid him. They
13 didn't pay him a number of last -- they didn't pay the
14 last four months, and they never paid any get well when
15 they got \$800,000, plus \$1.2 million in stock in 2015,
16 somewhat of a surprise and disappointment to Mr. Gould
17 who had put in his time.

18 What you'll see, and we've quoted in the
19 brief extensively, is, again, Mr. Ciccarelli said he was
20 never terminated; never got a written statement that your
21 pay is going to decrease. He admits, Mr. Ciccarelli,
22 that he stopped paying him, and he admits that he
23 intended to continue to pay him, but he just didn't.

24 If you look at page five -- for example,
25 there's a lot quoted from his deposition because it was

ROA 0080

ROA 0081

1 all useful to the point.

2 So I say, on page 52: Okay. Back to my
3 question --

4 THE COURT: What are you talking about?

5 MR. SCHMIDT: On page 5 of the brief, and I'm
6 quoting the deposition here, under where it says page 52:

7 Okay. Going back to my question, from the
8 time you started, whether it was May or June of 2013
9 until July or August of 2014, the time the fellow states
10 he was uncertain of, your company, MusclePharm, LLC and
11 Worldwide Apparel paid Mr. Gould the agreed amount every
12 month up till then?

13 And his answer is: Yes. For his work,
14 that's correct.

15 And it was your intent to pay him for those
16 months?

17 And then it goes on to 62.

18 I say: Because documentation is important,
19 as I indicated, I'll take it from the Wage Payment Act, I
20 apologize to be picky, did you give him at any time seven
21 days' written notification of reduction in pay in a
22 specific amount?

23 Answer: No.

24 The reduction was supposed to start taking
25 place in what month?

ROA 0081

ROA 0082

1 September of 2014.

2 Did you pay him the reduced amount in
3 September 2014?

4 No.

5 Did you pay him the full 10,000 in September
6 2014?

7 No.

8 How much did you pay him?

9 The answer is zero.

10 And, Your Honor -- and I'll find out in here
11 exactly where it is, but I asked him in detail -- here I
12 think it is -- it's undisputed that he did the work,
13 so -- here it is, page eight.

14 As I say, there's a lot of other data in
15 here, but at page eight of the brief, referencing page 68
16 of the deposition -- Shane is Mr. Gould's first name:

17 Did Shane perform any services for the
18 company, Worldwide Sportswear, Worldwide Apparel, and
19 MusclePharm Sportswear during the month of September
20 2014?

21 Answer: Yes.

22 Did he do so in October of 2014?

23 Yes.

24 Did they do so in November of 2014?

25 He said: Yes, not per my request.

ROA 0082

ROA 0083

1 I would, just as an aside, say that's an odd
2 thing. I mean, if he's your employee, you don't have to
3 ask him to do the work. Unless he's terminated, he's
4 still working, and he did the work.

5 And then I said this: And did he do so in
6 December of 2014?

7 And his answer is: Yes.

8 And he even says, We're not claiming January
9 because we know the company was taken over January 1. He
10 even did some work in January.

11 And I say: By your own testimony, you had
12 agreed to pay Shane at least 10,000 to cover September
13 and October, but you have not done so. Why have you not
14 done so? And you see on the next page, he says correct.

15 I say: Why have you not done so?

16 With that, I told him I wanted to pay off our
17 accounts receivable, and then we got into a lawsuit. I
18 did offer him \$10,000 and he denied it.

19 And that's when I go into the relevant law.
20 The relevant law, as you can well imagine, is pretty
21 important, but the Wage Payment Act is key. You'll see
22 there in the brief, page nine requires, specifically
23 under 41-10-30(a), any changes to the terms of employment
24 must be made in writing at least seven calendar days
25 before they become effective. You see he's already

ROA 0083

ROA 0084

1 admitted he never did any of that in any way.

2 The title continues, and you'll see on page
3 10, the Wage Payment Act says, 41-10-40: An employer
4 shall not withhold or divert any portion of an employee's
5 wages unless the employer is required or permitted to do
6 so by state or federal law or given written notification
7 of deductions. Indeed, every employer of the state
8 should pay wages at the time and place designated.

9 Now, you're probably most familiar with what
10 I've quoted without bold there below on page 10, which is
11 41-10-80(c) provides: In the case of any failure to pay
12 wages due an employee required by 41-10-40 or 50, the
13 employee may recover in a civil action an amount equal to
14 three times the full amount of unpaid wages plus costs
15 and attorney's fees as the Court may allow.

16 There is also a couple of points to make
17 here. You heard in the deposition the tone of Mr.
18 Ciccarelli, Well, I offered him something, is basically
19 what he said. You'll see that the Wage Payment Act takes
20 that into account, and it specifically provides under
21 41-10-60 -- I'm reading from the top of page 11 -- in the
22 case of a dispute over wages, the employer should give
23 written notice to the employee of the amount of wages
24 which he concedes to be due, which you heard in his
25 testimony he did concede at least 10, and pay the amount

ROA 0084

ROA 0085

1 without condition within the time set by this chapter,
2 which is within 30 days after the end of work.

3 Acceptance by the employee of the payment
4 does not constitute a release of the balance of this
5 claim. This is the General Assembly basically saying
6 we're protecting the worker from the employer trying to
7 change the game after the fact, and you'll find that even
8 more specifically later in the law.

9 I've got -- there's a provision, I wanted to
10 quote it, that specifically provides under the Wage
11 Payment Act -- oh, yeah. Here it is, page 12 of our
12 brief. We quote 41-10-100, and this is really important
13 because of all this back and forth, you would think maybe
14 it's not a summary judgment case because there's some
15 back and forth, and I think in the brief that was
16 submitted to you, you got sent texts about something my
17 client was told, or said he was told, around October, but
18 listen to this: No provision of this chapter may be
19 contravened or set aside by a private agreement.

20 What does that mean, and what is that about?
21 That is specifically about this. The law says if you're
22 going to terminate somebody, you do it in writing. They
23 already admitted he was never terminated. The law also
24 says if you're going to change his pay, you must give
25 seven days' written notice, and they admit they never did

ROA 0085

ROA 0086

1 that.

2 So to the extent that their argument in
3 response to this motion is, Well, but they agreed, this
4 law says you can't come to a private agreement to
5 contravene that. You cannot do that.

6 I will say this: From a factual standpoint,
7 the reason that these set of texts that they offer where
8 Mr. Gould referenced the fact that some of his duties
9 were completed in October, they admitted that he worked
10 in October, November, and December of 2014.

11 So the evidence would be he was asked to
12 continue working. He was still on the payroll. He was
13 still charged to do his job, and he took it seriously, so
14 they admit he continued to work. They just didn't pay
15 him, and as you'll see and we'll quote in detail, the
16 company was sold. They received an \$800,000 cash payday
17 in 2015 and then \$1.2 million in stock, and they still
18 didn't pay, and that's why this case came about, and that
19 is also why we bring this motion because we think the
20 undisputed facts support only a grant of summary judgment
21 here.

22 I would add one other thing: There was a
23 defense raised, not a counterclaim, but there was a
24 defense raised of disloyalty, and I don't know if Your
25 Honor is familiar with the Futch case. It came out of

ROA 0086

ROA 0087

1 Georgetown, just like you. There was a tugboat captain
2 in Georgetown named Futch, and his company was going to
3 be ending operations, and so he clearly and admittedly
4 started a year-long process of developing a competitor.
5 He got bank loans, set up with a partner, made sales; in
6 other words, got commitments from customers, et cetera,
7 et cetera, et cetera. He was doing all this stuff that
8 was highly competitive.

9 In the end, the Court directed the verdict
10 for Mr. Futch. They found that under the Wage Payment
11 Act, he was still entitled to be paid as a matter of law.
12 Futch really doesn't apply here for a couple of reasons,
13 and, in fact, the whole disloyalty issue is a nonstarter
14 for a couple reasons I just wanted to tell you in
15 advance.

16 One is, whereas Mr. Futch, you know, you had
17 him getting a loan, starting the business, getting
18 customers to commit to come over to him, this sort of
19 thing, the only thing we could get out of depositions was
20 that Mr. Ciccarelli said somebody else within his
21 business mentioned that some months before, probably
22 early in 2014, Mr. Gould had passed out a couple of pairs
23 of Fuel Clothing, his other business, socks, socks, to a
24 model and an athlete; tchotchkes, give-aways at trade
25 shows.

ROA 0087

ROA 0088

1 Mr. Gould's testimony, of course, is to the
2 extent he did that, he did that after hours. He didn't
3 do it while he was on the clock with these guys, but to
4 say that constitutes disloyalty and competition I think
5 is going pretty far. That's one point.

6 The other two points that show that the
7 argument is meritless is this: What the Supreme Court
8 held in Futch is that the disloyalty that has to take
9 place in order to be a defense to payment has to be
10 immediate disloyalty; in other words, if Mr. Gould's
11 disloyalty was five months before, their recourse was to
12 scold him, maybe demote him, or fire him, not to wait the
13 rest of the year and then dock his pay on the basis of
14 it.

15 And what Futch recognizes is, look, if you
16 did something back here and then along and along you're
17 doing valid work for the company, you should get paid for
18 the valid work for the company. There is no argument
19 whatsoever. In fact, the deposition shows Mr. Gould did
20 not go to any trade show in October, November, December
21 because those are not trade show months.

22 So I think that would preclude any argument,
23 and I don't think there's enough evidence to really
24 support that defense. Other than that, we're not really
25 aware of any other opposition to the motion, and we think

ROA 0088

ROA 0089

1 it should be granted.

2 THE COURT: All right. Mr. Harris,
3 Mr. Huger?

4 MR. HARRIS: Thank you, Your Honor. May it
5 please the Court?

6 THE COURT: Yes, sir.

7 MR. HARRIS: Your Honor, there's a few things
8 that we dispute in what was just said, and I'll get to
9 those when it's the proper time. A few facts that were
10 left out that we've talked about in our brief, this is an
11 oral contract, not a written contract. This is an oral
12 contract, having drinks on a rooftop one night, with a
13 man saying, Here, we need help with, like he said,
14 getting into this market.

15 And it's funny, at one point he was saying
16 he's a CEO. Of course, at the end, he's going to run the
17 company until it's done, but earlier, he said he's not
18 your typical CEO, that you and I would know. He was a
19 CEO that was supposed to report four times a month to
20 Charleston and was basically brought on as a person to
21 try to bring in -- you know, to give some help in a
22 company that already had apparel. It wasn't to expand
23 their apparel line, it was to expand their business.
24 They had an apparel line already. So did Mr. Gould.
25 Mr. Gould had Fuel Clothing.

ROA 0089

ROA 0090

1 But this was an oral contract that was done
2 on a rooftop. This is not a written out contract that
3 says here's the terms of your contract and here's how
4 long you're going to be employed; anything that's going
5 to go on, when your termination is, when anything like
6 that happens. So first, I believe that's a little bit of
7 a differentiator here.

8 Secondly, to say he was not terminated, he
9 was terminated. There's evidence in depositions that say
10 he was terminated; there's text messages; there's e-mails
11 that say he's terminated: Your services are no longer
12 needed.

13 THE COURT: When was that?

14 MR. HARRIS: It was in August.

15 THE COURT: August of 20 --

16 MR. HARRIS: '14, yes.

17 THE COURT: So when did he work, September,
18 October, November, and December?

19 MR. HARRIS: Again, he agreed to take \$5,000
20 for September.

21 THE COURT: Wait a minute. Was he terminated
22 in August 2014?

23 MR. HARRIS: Yes, sir.

24 THE COURT: So why did he come back and
25 perform work if he was terminated?

ROA 0090

ROA 0091

1 MR. HARRIS: Because, Judge, part of this
2 agreement between them was the company was going to sell
3 to MusclePharm. He was going to try to help him get a
4 job at MusclePharm, which he did. He got him an offer
5 from MusclePharm corporate.

6 The purpose was to get that job, and that's
7 another thing. That was originally what was said by
8 Mr. Gould --

9 THE COURT: Let me ask you, your client
10 expected him to work September -- September, October,
11 November, up to December in hopes of getting a job as a
12 purchaser but without pay from your client?

13 MR. HARRIS: No. That's not the case, Your
14 Honor.

15 THE COURT: Then he wasn't terminated.

16 MR. HARRIS: He was not expecting to pay him
17 or work for those months. He said, in essence, to stop
18 doing anything substantive for the company. He was
19 trying to help him get a job at the new company.

20 The company was winding down. He was trying
21 to help him get a job. He told him, We no longer need
22 your services. Please stop doing anything substantive
23 for this company.

24 THE COURT: When you say quit doing anything
25 substantive, does that mean, You're fired? Don't come to

ROA 0091

ROA 0092

1 work? You're not getting another penny from us, or does
2 that mean, We're going to scale you back on a reduced
3 pay, at a reduced time, and we're going to gradually, you
4 know, phase you out with the purchase?

5 I mean, those are two -- your argument he was
6 terminated in August, if I'm terminated, I'm not coming
7 into work. I'm not getting paid, I'm not going to do
8 this freebie unless there is some compensation that's
9 anticipated or agreed to.

10 So it sounds like you're telling me that your
11 client is saying, You're terminated in August of 2014.
12 We want you to keep doing some stuff, but we want you to
13 cut back on what you were doing, and we're not going to
14 pay you as much as we were going to pay you.

15 Was it a termination or was it a scale-back,
16 or what was the arrangement?

17 MR. HARRIS: Judge, the arrangement was that
18 he was no longer to be doing anything substantive as
19 CEO of Worldwide Apparel.

20 THE COURT: Was he supposed to be doing
21 something un-substantive?

22 MR. HARRIS: They agreed to cut his wages in
23 half for that next month, and that was the month
24 September, and that was the agreement they made, but they
25 said they cannot make an agreement like that, but the

ROA 0092

ROA 0093

1 agreement that was made was you get paid \$5,000 for the
2 month of September, and I'm going to try to help you get
3 a job.

4 And it's, again, where Mr. Gould's
5 deposition, that changed recently. That was on July 6th.
6 He said now that they were conspiring to get the company
7 sold, and there was an agreement between the two of them
8 that's not supported by any evidence, other than
9 Mr. Gould's testimony, that this was a conspiracy between
10 the two of them to make MusclePharm buy the company by --
11 I don't even know what -- the first time we heard that
12 was July 6th, and we've only been on this case, Judge,
13 since June because Mr. Ciccarelli had another lawyer, and
14 he had Womble Carlyle until March 31, I believe.

15 And so that's the reason. We've gotten these
16 things done. We've gotten depositions and things done
17 this month, and we've got dates for mediation and all
18 that scheduled, but we're brand new in the case. This
19 hearing was scheduled for -- Judge Nicholson continued
20 it. It was scheduled for about five days after we got on
21 the case, so they continued it until this date.

22 But, Your Honor, what we're saying is this is
23 a motion for summary judgment, and I'm saying there is
24 more than a scintilla of evidence that says-- I mean,
25 there's testimony from these depositions. It's jut not

ROA 0093

ROA 0094

1 these bits that he took out of Drew Ciccarelli's
2 testimony. There's text messages. There's even 2,500
3 pages of documents that show that there was other things
4 going on here, and he did say there is no counterclaim,
5 Your Honor.

6 There's going to be a counterclaim but we
7 just learned from the horse's mouth in the deposition
8 that he did give away -- and they were more than
9 tchotchkes, if tchotchkes are what your company sells as
10 a product. When I go to a trade show -- I was in sales
11 for years. When I go to a trade show, a tchotchke is a
12 little squeeze ball. If I'm selling socks and I give
13 away socks, that's not a tchotchke, that's a product.
14 I'm trying to get that fighter, who actually later on
15 went to wear Fuel Clothing, the MusclePharm fighter was
16 wearing Fuel Clothing, so there's where the disloyalty
17 comes in. It's not just, Here is a pin from Fuel
18 Clothing.

19 This was clothing from Fuel Clothing in
20 direct -- like he said, they're not competing with them
21 in the MMA setting, but they are. He's getting into the
22 MMA setting, and he's getting there while being paid by
23 MusclePharm -- by Worldwide Clothing to be there, so the
24 disloyalty thing is not just something we pass along
25 because it was a tchotchke.

ROA 0094

ROA 0095

1 This is socks. He sells socks. That would
2 be like me saying, I'm a shirt salesman. I just gave him
3 a shirt, but I call it a tchotchke because it was a
4 give-away, because I was in the business. But there's a
5 fighter that's under MusclePharm's contract to wear their
6 clothing, and he's giving them Fuel Clothing while he's
7 being paid as the CEO of MusclePharm, or of Worldwide
8 Clothing, to be at this trade show to promote
9 MusclePharm.

10 So therefore there is a violation of the duty
11 to loyalty. Here's the exact title, and we brought
12 photos of Mr. Guida in MusclePharm Clothing. He's a
13 MusclePharm sponsored fighter. Mr. Guida now wears Fuel
14 Clothing. Mr. Guida was given Fuel Clothing socks at
15 this trade show.

16 THE COURT: When was the trade show?

17 MR. HARRIS: On or about August.

18 THE COURT: That's why he was terminated in
19 August 2014 but was told to come back and do
20 un-substantive work?

21 MR. HARRIS: Your Honor, Drew didn't know 100
22 percent about this. We didn't know 100 percent until Mr.
23 Gould admitted it in his deposition on July 6th. It was
24 hearsay until then.

25 THE COURT: July 6 of when --

ROA 0095

ROA 0096

1 MR. HARRIS: Of last week.

2 THE COURT: So how could he claim that he's
3 not due for wages for something you did not even know had
4 occurred? I mean, I don't understand how you can say, We
5 terminated him in August of 2014, but he came back and he
6 kept working in September, October, November, and
7 December, and now we find out, in July of 2016, that he
8 had given away these shirts and socks and we don't owe
9 him for September, October, November, December; and,
10 besides, we also terminated him in August, and that's
11 when it happened.

12 I mean --

13 MR. HARRIS: Judge, Mr. Ciccarèlli did not
14 know. Mr. Jeff Taylor knew back then, and there's
15 testimony from Mr. Jeff Taylor.

16 THE COURT: And how did that play into the
17 termination, or the cutting back of the scale of the
18 wages?

19 MR. HARRIS: No, Judge, that didn't, but he
20 brought up the fact that they're using as a defense the
21 disloyalty.

22 THE COURT: I think what he's saying is he's
23 distinguishing that case that said you find out there's
24 disloyalty, you terminate him on the spot. You don't pay
25 him after that. Then there might be an exception to the

ROA 0096

ROA 0097

1 payment of wages act.

2 MR. HARRIS: I understand. I understand, and
3 what I'm saying is this was -- Mr. Ciccarelli did not
4 know about this, but there is much more behind this --
5 they didn't just say -- I mean, there's text messages.
6 There's e-mails. There's phone calls, even from Scott
7 Pyatt at MusclePharm -- I mean, at corporate.

8 This is a lot more than he said, You're
9 terminated in August, and then he said, But I'll pay you
10 \$5,000 for September.

11 Like I said, it's much more than any summary
12 judgment case. There are facts that are in dispute here.
13 There are a lot of facts that are in dispute here, and
14 that's -- again, when we have, you know, deposition
15 testimony from all these people, and we got the
16 deposition -- we got this yesterday, yesterday, about 20
17 hours ago, was prepared for today.

18 THE COURT: You have the deposition. You
19 know what your client testified to at the deposition.

20 MR. HARRIS: My partner was at the
21 deposition. I was not at the deposition.

22 MR. HUGE: We just got the other deposition
23 yesterday.

24 MR. HARRIS: We did just got the other
25 deposition yesterday.

ROA 0097

ROA 0098

1 THE COURT: Y'all were not present at the
2 discovery deposition?

3 MR. HARRIS: I was not. My law partner was.

4 THE COURT: Okay. Go ahead.

5 MR. HARRIS: What I'm saying is their motion
6 for today that was due, you know, three days ago came to
7 our office yesterday. We got it about 20 hours ago,
8 so I'm saying I --

9 THE COURT: Wait a minute. Your partner was
10 at the deposition on June 22, 2016, so you knew what your
11 client's testimony was on June 22nd, 2016?

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: So how are you caught off guard
14 by just getting the written deposition? Did y'all order
15 a copy of the deposition?

16 MR. HARRIS: I'm talking about his --

17 MR. HUGER: Argument.

18 MR. HARRIS: -- his argument today, his
19 written argument today that he filed. I'm not talking
20 about that. Because in that, that's clips out of a
21 deposition that was hours long, and we're talking
22 about -- and in that deposition, Mr. Ciccarelli also said
23 that he terminated him, that he spoke to him and
24 terminated him.

25 There's a lot of different things. It wasn't

ROA 0098

ROA 0099

1 just, Yes, he worked there; yes, we didn't pay him.

2 It's like taking a chunk out of something and
3 not taking the before and after. Like I said, that's
4 what I'm trying to say. I didn't have time to get that
5 deposition and prepare each section of that.

6 THE COURT: Let me ask you this: Is it a
7 factual dispute that the plaintiff worked in September,
8 October, November, and December?

9 MR. HARRIS: Yes, it is.

10 THE COURT: All right. So you're saying he
11 did not work during those months.

12 MR. HARRIS: Your Honor, I'm saying he did
13 not work and that his capacity as CEO that he had --

14 THE COURT: Did he work in any capacity for
15 the defendants in September, October, November, and
16 December?

17 MR. HARRIS: In September, yes, Your Honor.

18 THE COURT: All right. Was he paid?
19 According to the deposition, he was not paid anything for
20 that work; is that correct?

21 MR. HARRIS: Yes, Your Honor, that's correct.

22 THE COURT: All right those facts are not in
23 dispute.

24 MR. HARRIS: Right. September is not in
25 dispute. They agreed to \$5,000 for that month, but, as

ROA 0099

ROA 0100

1 he said, they cannot do that.

2 THE COURT: So you're saying he didn't show
3 up for October, November, December; he didn't work in any
4 way, shape, or form?

5 MR. HARRIS: Right. He didn't show up in
6 September either, Judge, but he agreed to pay him
7 \$5,0000. That's another thing from the depositions, is
8 the office manager said that he did not come every
9 Wednesday like he was supposed to. He didn't come up
10 from Hilton Head. He stayed in Hilton Head.

11 THE COURT: All right. Go ahead.

12 MR. HARRIS: So in September 2014, texts from
13 Mr. Gould show that his job was done at Worldwide, and he
14 would pursue getting hired on by MusclePharm. That's in
15 September.

16 He sent a text message, said: My job is
17 done. I'm going to pursue a job at MusclePharm, and
18 that's what Mr. Ciccarelli agreed to do, is help him get
19 a job at MusclePharm, which he did. Mr. Gould didn't
20 like the salary at MusclePharm, so he rejected it.

21 And, Your Honor, there is one more witness
22 testimony that we're still waiting to get. It's a
23 deposition from a man named Whit Rabon who knows even
24 more about all this. He knows both parties, and he went
25 to work with MusclePharm after this was said and done,

ROA 0100

ROA 0101

1 and one argument they made is that they fell behind
2 paying him back and they still haven't paid him back by
3 vendors that Mr. Gould got, but according to Mr. Rabon,
4 the one vendor that was left unpaid was paid right when
5 the company was sold to MusclePharm, a \$20,000 debt.
6 That's been paid.

7 And Mr. Rabon is the other person. He's the
8 one at the trade shows, working for Mr. Gould at the
9 trade show, that was the one that witnessed this, and
10 that's why that was hearsay until Mr. Gould admitted
11 doing it. Mr. Rabon was the one -- we haven't had his
12 testimony yet, but we've ordered him back.

13 Mr. Gould was working as a MusclePharm
14 employee -- by Worldwide. I'm sorry I keep saying
15 MusclePharm. That's the clothing line, but working there
16 and was also doing work for Fuel sportswear, trying to
17 attract fighters to wear the sportswear logo.

18 But, Judge, like I said, there's evidence.
19 There's evidence in dispute here. There's evidence in
20 dispute there. There's text messages from --

21 THE COURT: Where is the text messages?
22 We're hearing a motion for summary judgment. They
23 presented me with the deposition.

24 MR. HARRIS: Attached to our response, Your
25 Honor. May I approach?

ROA 0101

ROA 0102

1 THE COURT: Oh, I can't -- that's wiped out.
2 All right. Go ahead.

3 MR. HARRIS: This is a case that started with
4 an oral contract. An oral contract, that's an oral -- I
5 mean, saying he doesn't work there anymore, they've
6 agreed to \$5,000 and to help him get a job at the other
7 company, but his duties at MusclePharm no longer exist --
8 or at Worldwide Apparel no longer exist.

9 THE COURT: How do you get around the South
10 Carolina payment of wages act? Distinguish it why the
11 reduction in pay and the termination does not have to be
12 in writing.

13 MR. HARRIS: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: All right.

16 MR. HARRIS: Well, Your Honor, I guess it's
17 just this, like, interpretation of the statute. I mean,
18 it's an oral contract. It's been changed orally. It's
19 not a written contract that's been changed in writing or
20 anything. Nothing's ever been put in writing for this
21 thing. It's an oral contract that's been more than a
22 year that none of the -- nothing in this agreement,
23 nothing in this has been put to any sort of writing thus
24 far, and that's why we would say oral amendments to this
25 oral contract are acceptable.

ROA 0102

ROA 0103

1 THE COURT: Okay. All right. Anything else?

2 MR. HARRIS: Your Honor, we would further
3 brief that for you, if you like.

4 THE COURT: That's fine.

5 MR. SCHMIDT: Your Honor, if I might just
6 point out two specific things that address in the
7 entirety the argument you just heard.

8 If you will turn to Mr. Ciccarelli's
9 deposition that I handed up, at pages 65 and 68.

10 At page 65 I asked: Was he terminated for
11 September of 2014?

12 Answer: No.

13 Was he terminated for October of 2014?

14 Answer: No.

15 Was he terminated for November of 2014?

16 The word termination, you're referring to did
17 I fire him, answer.

18 I said: Right.

19 And he answers: No.

20 So they're taking a position right now that
21 he was terminated at the time when both Mr. Ciccarelli's
22 testimony, and this is what I made a point of at the
23 beginning, the 30(b)6 admission of a corporation that he
24 was not fired. That can't be disputed by them now. His
25 testimony was he was not fired.

ROA 0103

ROA 0104

1 And then, lastly, on page 68: Did Shane
2 perform any services for your company during the month of
3 September 2014?

4 Answer: Yes.

5 Did he do so in October of 2014?

6 Answer: Yes.

7 Did he do so in November of 2014?

8 Yes, not per my request.

9 And then: Did he do work in December of 2014
10 for the company?

11 Answer: Yes.

12 That's dispositive. That's why summary
13 judgment should be granted.

14 THE COURT: All right. I'm going to take it
15 under advisement. I got to read the South Carolina
16 Payment of Wages Act to see what portions, if any of it,
17 is applicable, and I'll just take it under advisement.
18 I'll let you all know my decision.

19 MR. SCHMIDT: Your Honor, the other motion is
20 the discovery motion, and you've heard a lot from us
21 already. I don't want to wear you out, but I do want to
22 preserve my client's rights, if I could briefly go over
23 it.

24 As counsel did indicate, there was -- Womble
25 Carlyle was representing the defendant at the outset.

ROA 0104

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Shane Gould,

Plaintiff,

vs.

CASE NO. 2015-CP-10-3220

Worldwide Apparel LLC f/k/a
MusclePharm Sportswear LLC and
Drew Ciccarelli,

Defendants.

30(B)(6)

DEPOSITION OF:

DREW MORGAN CICCARELLI

DATE:

June 22, 2016

TIME:

10:03 a.m.

LOCATION:

A. William Roberts, Jr. &
Associates
234 Seven Farms Drive
Charleston, SC

TAKEN BY:

Counsel for the Plaintiff

REPORTED BY:

Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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9 SPORTSWEAR LLC and DREW CICCARELLI:

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12 ALSO PRESENT:
13 SHANE GOULD

25 (INDEX AT REAR OF TRANSCRIPT)

ROA 0106



1 DREW MORGAN CICCARELLI,
2 being first duly sworn, was examined and testified
3 as follows:

4 EXAMINATION

5 BY MR. SCHMIDT:

6 Q. Give us your name, please?

7 A. Drew Ciccarelli.

8 Q. Do you have a middle name, Drew?

9 A. Morgan.

10 Q. And is your first name Drew or Andrew?

11 A. Drew.

12 Q. Okay. And spell Ciccarelli.

13 A. C-I-C-C-A-R-E-L-L-I.

14 Q. All right, Mr. Ciccarelli. Have you
15 ever given deposition testimony before?

16 A. No.

17 Q. Well, the way it works, I'm duty-bound
18 to explain this to you. I'm a lawyer representing
19 Mr. Gould in his case here, and I get to ask you
20 questions. Just like in court, you've already been
21 sworn to tell the truth. You understand that?

22 A. Um-hum.

23 Q. And your job is to answer my questions
24 fully, like they say, to the best of your ability,
25 et cetera, et cetera, under oath. It's important

ROA 0107



ROA 0108

15

1 companies I'm associated with, do you mean an
2 operating agreement as well, where I made an
3 investment into another company?

4 Q. Yeah, let's go ahead and get that.
5 First, let's get DMC Capital. What's the nature of
6 DMC Capital?

7 A. Investments, all different types. It
8 could be real estate. It could be into a publicly
9 traded company.

10 Q. Okay. Now, are all of these LLCs?

11 A. Correct.

12 Q. And do any of them have members other
13 than you?

14 A. Hilton Head Hospitality Holdings.

15 Q. Who are the members of the Hilton Head
16 Hospitality Holdings other than you?

17 A. Nick Bergelt, B-E-R-G-E-L-T.

18 Q. And where does Nick live?

19 A. Hilton Head.

20 Q. All the others are -- you're the sole
21 member of?

22 A. Yes.

23 Q. With respect to the MusclePharm
24 Sportswear LLC, were you the sole member of that?

25 A. Correct.

ROA 0108



ROA 0109₁₆

1 Q. When did MusclePharm, LLC -- it has not
2 been terminated or otherwise legally ended; right?

3 A. Correct.

4 Q. Okay. What assets does it hold?

5 A. Currently?

6 Q. Yeah.

7 A. A bank account with \$50 in it.

8 Q. Okay. Any other assets?

9 A. No.

10 Q. Where is the bank account?

11 A. Wells Fargo.

12 Q. Now, was there any time that it had
13 more assets than that?

14 A. Correct.

15 Q. When was it that it had more assets
16 than that?

17 A. Between the date of inception until
18 about three months ago -- two months ago.

19 Q. Two months ago?

20 A. Yes.

21 Q. What happened two months ago?

22 A. From the sale of -- I sold shares in a
23 company that MusclePharm Sportswear owned.

24 Q. Which was what?

25 A. The stock symbol?

ROA 0109

A W R

ROA 0110 17

1 Q. Um-hum. Well, what was the company?

2 A. MusclePharm.

3 Q. So you said that it was from the sale
4 of shares of a company you owned?

5 A. Correct. I sold a license that I owned
6 back to the parent company and received 170,000
7 shares for that.

8 Q. Okay. And where are the shares?

9 A. In the market.

10 Q. Did you sell them back?

11 A. I sold them in the open stock market.

12 Q. And when did you sell them?

13 A. The first date of sale I have to check,
14 but I sold them over a three-week time period,
15 roughly two to three months ago.

16 Q. Do you have the records of those
17 transactions?

18 A. Of course.

19 Q. Okay.

20 A. Would you like me to tell you right
21 now?

22 Q. Sure.

23 A. Roughly, April 13th --

24 Q. 2016?

25 A. Yes, sir -- to the beginning of May.

ROA 0110



ROA 0111₁₈

1 Q. And what was the gross amount that you
2 received in exchange for the sale of those shares?

3 A. Roughly?

4 Q. Um-hum.

5 A. \$510,000.

6 Q. Okay. Now, MusclePharm Sportswear LLC
7 sold the shares?

8 A. Yes. MusclePharm Sportswear LLC also
9 is doing business as Worldwide Apparel.

10 Q. Right. Were the funds from the sale of
11 the shares deposited into the same Wells Fargo
12 account that the \$50 is in?

13 A. Yes.

14 Q. And how long did they remain there?

15 A. Days.

16 Q. And then what happened to them?

17 A. They were then deposited to my personal
18 checking account.

19 Q. And where is that?

20 A. Wells Fargo. And then funds were also
21 distributed to my business partner. That was an
22 operating partner.

23 Q. And who is that?

24 A. Scott Gelbard.

25 Q. Can you spell --

ROA 0111



ROA 0112₁₉

1 A. G-E-L-B-A-R-D.

2 Q. Where does Scott live?

3 A. Vancouver, Canada.

4 Q. Now, you say business partner. Were
5 you or were you not the sole member of MusclePharm
6 Sportswear LLC?

7 A. I was the sole member of MusclePharm
8 Sportswear LLC.

9 Q. Did you have a separate partnership
10 agreement with Mr. Gelbard?

11 A. I had an operating agreement.

12 Q. An operating agreement. All right. Do
13 you know the account number for your Wells Fargo
14 accounts, both the business and the personal?

15 A. Not off the top of my head.

16 Q. Okay. All right. During the course of
17 this case, we asked for certain corporate
18 documents, business documents of MusclePharm
19 Sportswear LLC and Worldwide Apparel LLC. We
20 haven't gotten any of those yet. Do they --

21 A. Can you please be more specific?

22 Q. Yes. Well, we asked specifically for
23 all documents and things constituting corporate
24 records of Worldwide Apparel LLC and of MusclePharm
25 Sportswear LLC, to include the corporate books of

ROA 0112



ROA 0113₂₃

1 all communications related to the possible sale,
2 membership, ownership, stock, or any substantial
3 assets of Worldwide Apparel LLC and of MusclePharm
4 Sportswear LLC from April 1st, 2013, to date?

5 A. Yes.

6 Q. All right. Is it your intention to
7 dissolve MusclePharm Sportswear LLC?

8 A. Yes.

9 Q. Now, Worldwide Apparel LLC, was that in
10 the list you gave me?

11 A. It's a d/b/a. I'm not sure how that
12 goes, as far as whether it was actually a company
13 formed. I did not handle that. But I consider for
14 the sake of our conversation Worldwide Apparel and
15 MP Sportswear being the same business.

16 Q. For the sake of our conversation, let
17 me ask you about Worldwide Apparel LLC. Who formed
18 it?

19 A. I believe our attorney, Leslie Marlow.

20 Q. And who is she with?

21 A. Marlow Gracin Law Firm out of New York
22 City. And we had a registered agent for the
23 business, CT Corp.

24 Q. Right. And who were the members of
25 Worldwide Apparel LLC?

ROA 0113



ROA 0114 24

1 A. I am the owner.

2 Q. Sole owner?

3 A. Yes.

4 Q. Is it still in operation?

5 A. Yes. As I stated before, I consider
6 them the same company.

7 Q. Do you have separate formation records,
8 annual reports, accounts for Worldwide Apparel and
9 for MusclePharm Sportswear LLC?

10 A. Not that I know of, but I didn't handle
11 that for the business for MusclePharm Sportswear.
12 One of our employees who will be deposed in two
13 weeks handled both of those.

14 Q. And who is that?

15 A. Jeff Taylor and Tonya Soltani,
16 S-O-L-A-N-T-I.

17 MR. HUGE: Excuse me. I think it's
18 T-A-N-I.

19 THE WITNESS: What's that?

20 MR. HUGE: Sorry to interrupt.
21 S-O-L-T-A-N-I.

22 THE WITNESS: S-O-L-T-A-N-I, sorry.

23 BY MR. SCHMIDT:

24 Q. And where does Ms. Soltani live?

25 A. Charleston area, as well as Jeff

ROA 0114



ROA 0115₃₈

1 A. The Internet.

2 Q. Right. And what sources on the
3 Internet itself have you looked at?

4 A. Google. I use Google.

5 Q. Okay. Have you ever seen a website
6 called Ripoff Report?

7 A. Correct.

8 Q. Have you used it?

9 A. I do not use it for anything.

10 Q. Have you ever seen references to
11 yourself on there?

12 A. Yes, my business partner and Republic,
13 his ex-business-partner wrote a fictitious report
14 about me. You're an attorney. You should know if
15 you read it that it says that he's in my restaurant
16 with his wife, and then he refers to her as his
17 girlfriend. Then he refers to her as his wife
18 again. So which one is it? If you were married,
19 you'd know if you were married or not, wouldn't
20 you? I've never been inside my nightclub wearing
21 that outfit he talks about as well. And I never
22 made any of those -- I never met that person that
23 he talks about in that. It's a completely
24 fictitious report. He's done that to try to hurt
25 me. He's done fake Instagram accounts. He's done

ROA 0115



ROA 0116₃₉

1 a lot of stuff like that, a jealous person of my
2 success and my business partner and Republic's
3 success.

4 Q. And what's his name?

5 A. That guy's name?

6 Q. Um-hum.

7 A. Jon Lebed.

8 Q. How do you spell his last name?

9 A. L-E-B-E-D. I've tried to reach out to
10 Ripoff Report, and I've also written on the bottom,
11 I believe, to prove that you were there with a
12 credit card. But if you read the report and you're
13 a smart guy, it says it's his wife, and then he
14 says his girlfriend, and then he says his wife
15 again. It's a complete fictitious, erroneous
16 report.

17 Q. So you're saying that Jon Lebed is the
18 fellow who wrote the Ripoff Report?

19 A. I have it via e-mail him telling me
20 that he did it.

21 Q. Okay, good. And where is he located?

22 A. I do not know.

23 Q. Have you ever seen him in your life?

24 A. Once in New York City.

25 Q. How does he know of you?

ROA 0116



ROA 0117₄₀

1 A. His business partner that he started
2 the first company with who now sold his last
3 company for \$50 million was a partner of mine in
4 Republic. He is, in my opinion, jealous of the
5 success.

6 Q. So you've seen him one time, and he's
7 jealous enough to write something like that?

8 A. Yes, he did that after I put up a
9 picture on social media saying something about me
10 and my business partner. I have 50 e-mails with
11 the guy saying -- he's a druggie, and I have many
12 e-mails of him saying that he did that Ripoff
13 Report and that he is jealous of his success and
14 just is trying to use me to get his
15 ex-business-partner to contact him.

16 Q. And you still have those e-mails?

17 A. Correct.

18 Q. If you'll hold on to those, that would
19 be good. And let me ask you this. Did you portray
20 yourself as the owner of MusclePharm to him or
21 others?

22 A. I was never there. I did not do any of
23 that. So no.

24 Q. Let me ask you this. I'm not talking
25 about in a specific instance initially.

ROA 0117



ROA 0118 41

1 A. No.

2 Q. Let me ask you this. Have you ever --

3 A. No.

4 Q. Let me finish the question first. You
5 don't know what I'm going to ask. Have you ever
6 portrayed yourself as the owner of MusclePharm?

7 A. No.

8 Q. Were you the owner of MusclePharm
9 Sportswear LLC?

10 A. Yes.

11 Q. And have you ever portrayed yourself as
12 the owner of MusclePharm Sportswear LLC?

13 A. I am the owner of MusclePharm
14 Sportswear LLC.

15 Q. So you have?

16 A. Yes.

17 Q. Okay. Have you ever asked anyone to
18 invest \$100,000 in MusclePharm Sportswear LLC?

19 A. No.

20 Q. Have you ever asked anyone to make any
21 investment in it?

22 A. No.

23 Q. Okay.

24 A. As I stated before, that report is
25 completely fictitious and fake.

ROA 0118



ROA 0119₄₂

1 Q. All right. How did you first come to
2 know Shane Gould?

3 A. I knew of Shane from growing up in a
4 small town that he also lived in.

5 Q. What town was that?

6 A. Hilton Head.

7 Q. And how did you get to actually meet
8 him?

9 A. I came in to Fuel Clothing and met him
10 and bought a GoPro that day.

11 Q. And when was that?

12 A. April 2013 or '14. 2013, April 2013.

13 Q. Okay. And did you have a purpose of
14 going there other than to buy the GoPro?

15 A. To introduce myself to Shane.

16 Q. And what was the purpose of introducing
17 yourself to Shane?

18 A. To see if there was any interest in him
19 coming on to MusclePharm Sportswear.

20 Q. All right. And did you ask him that?

21 A. I did not offer him a job that day, no.
22 I asked him to come to -- I just -- it was an
23 icebreaker conversation.

24 Q. What do you remember about the
25 conversation?

ROA 0119



1 A. Checking out his store, introducing
2 myself, talking to him for 15, 20 minutes.

3 Q. Okay. And what was the next time you
4 saw or spoke to him after that?

5 A. He then came up to Charleston, South
6 Carolina, a week or so later.

7 Q. And what happened then?

8 A. We had further talks about him coming
9 on board and being an employee of the company.

10 Q. Okay. The company being what?

11 A. MusclePharm Sportswear.

12 Q. At that time were you drawing a
13 distinction between MusclePharm Sportswear LLC --

14 A. No.

15 Q. -- and Worldwide Apparel?

16 A. No.

17 Q. Were they both in existence at the
18 time?

19 A. No.

20 Q. All right. And when he came to
21 Charleston, when was that? What month was that?

22 A. I'm not sure if it was April or May,
23 but it was shortly after we met in his shop in
24 Hilton Head.

25 Q. And did you make an arrangement there

ROA 0120

ROA 0121₄₄

1 or still further talks?

2 A. I believe there were still further
3 talks. He came up one more time, and we finalized
4 everything, went to a dinner and then finalized
5 everything the next morning at a breakfast at
6 Hominy Grill.

7 Q. What month was that?

8 A. This was shortly after we met still,
9 within the first month.

10 Q. When you say you finalized everything,
11 what does that mean?

12 A. We discussed him coming on board. He
13 agreed that he would like to do it and could handle
14 the job and went over paying him \$10,000 a month.

15 Q. Okay. Did you sign any papers?

16 A. No.

17 Q. Did you present any papers?

18 A. No.

19 Q. Did you receive any papers?

20 A. No.

21 Q. Did you discuss what his
22 responsibilities would be?

23 A. Correct.

24 Q. And what were they?

25 A. His job was to be in charge of

ROA 0121

ROA 0122₄₅

1 manufacturing. That was the main focus. His
2 duties were to come to Charleston every single
3 week, once a week.

4 Q. Any particular day a week?

5 A. It was either a Tuesday or a Wednesday,
6 middle of the week.

7 Q. Okay.

8 A. His job was to help out with sales.

9 Q. Okay.

10 A. And leverage any relationships he had
11 in the business.

12 Q. Anything else?

13 A. No, basically a CEO role.

14 Q. And his title was CEO?

15 A. I don't believe there was really a
16 title. He didn't have a MusclePharm e-mail address
17 either since he was still running his company, Fuel
18 Clothing.

19 Q. What was the discussion about him still
20 running his company, Fuel Clothing?

21 A. He said his company ran itself pretty
22 much. He said he had the capacity and time and
23 effort and energy to run Sportswear.

24 Q. Did you understand that he would still
25 be operating Fuel, his own company --

ROA 0122



ROA 0123₄₆

1 A. Yes.

2 Q. -- at the same time? And did you
3 understand that he would have to do -- well, let me
4 ask you this. Did you understand that he was the
5 sole owner and manager of that business?

6 A. Yes.

7 Q. And so, naturally, you understood that
8 he would have to do what he would have to do to
9 keep that business running in whatever time he
10 wasn't dedicating to the MusclePharm work; right?

11 A. Can you say the question again?

12 Q. Well, you understand that as a business
13 owner, he had to spend whatever time he had to
14 spend supporting Fuel as long as he wasn't engaged
15 with MusclePharm at the time?

16 A. I understood he could do both jobs and
17 do a good job at both.

18 Q. Okay. Now, was there a specific
19 discussion about the number of hours he would
20 dedicate to MusclePharm per week?

21 A. No.

22 Q. Did you --

23 A. The biggest prerequisite, that he would
24 come to the office once a week.

25 Q. Okay. All right. And so when did he

ROA 0123



ROA 0124 47

1 start?

2 A. He started in, I believe, May.

3 Q. May of 20 --

4 A. '13.

5 Q. -- 13. And what was the pay

6 arrangement? In other words, did you pay him first
7 of the month for the month of May? Did you pay him
8 15th to 15th? How did do you that?

9 A. We paid him once a month, \$10,000.

10 Q. And the 10,000, when was it paid?

11 A. I'm not sure if it was the beginning or
12 the end of the month. Tonya and Jeff Taylor
13 handled payroll.

14 Q. So you don't know whether you paid in
15 advance or in arrears?

16 A. I'm not sure, actually.

17 Q. Okay. But the month was the calendar
18 month? In other words, 10,000 for each calendar
19 month?

20 A. He'd be paid \$10,000 for a month of
21 work.

22 Q. Going by calendar months?

23 A. I'm not sure of the details. Jeff
24 Taylor and Tonya...

25 Q. Were Jeff and Tonya in the meetings

ROA 0124



ROA 0125₄₈

1 where you came to an agreement with Mr. Gould
2 about --

3 A. No, another gentleman was, Jeff
4 Kovlosky.

5 Q. How do you spell that name?

6 A. K-O-V-L-O-S-K-Y. I believe that's how
7 you spell it.

8 Q. During those discussions, did you
9 define for Mr. Gould whether the month would be a
10 calendar month or a 30-day period?

11 A. We did not.

12 Q. So Mr. Kovlosky wouldn't have heard
13 that either; right?

14 A. Correct.

15 Q. Okay. And Jeff, the other Jeff --
16 what's his name?

17 A. Taylor.

18 Q. -- Taylor and Tonya wouldn't know what
19 the discussion was about whether the month was a
20 calendar month as agreed or a 30-day period?

21 A. Correct.

22 Q. Okay. And did Mr. Gould commence
23 working for MusclePharm and Worldwide sportswear in
24 May of 2013?

25 A. Yes.

ROA 0125



ROA 0126₄₉

1 Q. Okay.

2 A. There or shortly after we met and
3 agreed on everything.

4 Q. Did he do the job responsibilities that
5 you listed during the month of May 2013?

6 A. Initially, yes.

7 Q. During the month of May? Was there a
8 point in May that he didn't?

9 A. I'm not sure. We'd have to go back and
10 check the books. That would be a question for
11 Tonya and Jeff.

12 Q. Are you aware of him not performing any
13 of his duties in May of 2013?

14 A. Ask me again, please.

15 Q. Are you aware of Mr. Gould not
16 performing any of his duties in May of 2013?

17 A. I'm not sure.

18 Q. Well, I'm asking you if you're aware of
19 him not performing any of his duties in May of
20 2013.

21 A. I'm not sure of the exact day of his
22 start and the exact day he started performing the
23 duties. When he came on board, we hit the ground
24 running.

25 Q. Did you complain to him about any of

ROA 0126



ROA 0127₅₂

1 throughout the time we owned the company. When it
2 comes in the retrospect of paying Shane, it would
3 have been in the July, August time frame.

4 Q. July or August of what?

5 A. 2014.

6 Q. Okay. So just to make sure I've
7 captured this correctly, between when he started in
8 or around May of 2013 --

9 A. His first time being paid was June 7th,
10 2013.

11 Q. June 7th. And do you know whether he
12 was paid for -- that was payment for June or for
13 May?

14 A. I'm not sure.

15 Q. Okay. So going back to my question,
16 from the time he started, whether it was May or
17 June of 2013, until July or August of 2014, your
18 company, MusclePharm Sportswear LLC, or Worldwide
19 Apparel, paid Mr. Gould the agreed amount every
20 month up until then?

21 A. Um-hum.

22 Q. For his work. Is that true?

23 A. Correct.

24 Q. Okay. And it was your intent to pay
25 him for each of those months, the full amount?

ROA 0127



ROA 0128₅₃

1 A. Yes.

2 Q. Now, can you give me a more specific
3 month or date on which you actually spoke to
4 Mr. Gould about reducing his pay in any way?

5 A. Yeah, we discussed it in August and in
6 greater detail in the beginning of September.

7 Q. Was your first discussion with
8 Mr. Gould about reducing his pay in August of 2014?

9 A. Correct.

10 Q. Okay. Did you document that in any
11 way?

12 A. We had text messages in September. We
13 also discussed it on the phone.

14 Q. Okay. So your first text message about
15 it was in September of 2014?

16 A. Yes.

17 Q. Do you know when in September?

18 A. It's subpoenaed in the documents, us
19 discussing it.

20 Q. Right. Do you know when?

21 A. The first week of September.

22 Q. Okay. And what did you say?

23 A. Via the phone before that, I explained
24 to Shane how we were selling the company. Shane
25 also had talks with Jeff Kovlosky about it and

ROA 0128



ROA 0129⁵⁴

1 Scott Gelbard. But we explained to Shane how we
2 were selling the company and winding down things.
3 We weren't making money. I explained to Shane how,
4 when he came onboard to -- that time, we lost
5 \$820,000. Prior to Shane coming onboard when we
6 ran the company, we only lost 120 grand, and sales
7 have gone down, and that we wanted to pay off our
8 accounts payables while we were still receiving
9 money from accounts receivables. And we asked
10 Shane what he thought he was worth, and we asked
11 him, are you really doing any of the workload that
12 you did when you first came on? And he agreed that
13 he was not. And we asked him what he thought was a
14 fair pay.

15 We also explained to him that
16 MusclePharm wanted him to come on board and that we
17 were going to help facilitate him getting a job
18 with that. And he understood that and said to us,
19 you know, I have no problem helping out while we
20 wind down things, and I would be interested in
21 coming onboard with MusclePharm.

22 Q. And so were those things that you just
23 testified to documented anywhere in writing?

24 A. Some of that is in text messages, and
25 the rest is via phone. We didn't really document

ROA 0129



ROA 0130 55

1 everything. As you can tell, we never did an
2 employment agreement with him. We weren't really
3 big in documenting -- documentation.

4 Q. In terms of documenting, did you
5 document any of these things by any means other
6 than a text message?

7 A. Actual documentation, no. We may have
8 had e-mails go back and forth, but phone calls as
9 well.

10 Q. At the outset of his employment, did
11 you provide Mr. Gould with a statement of when his
12 pay period would be, when he would be paid, and how
13 payment would be made?

14 A. What was the first part of that?

15 Q. Did you provide him with --

16 A. When he first came on board?

17 Q. -- a written statement of how he would
18 be paid and when he would be paid?

19 A. When we hired him?

20 Q. Yeah.

21 A. Not to my knowledge.

22 Q. At any time did you document when and
23 where he would be paid in writing?

24 A. We may have talked it very early on in
25 e-mail. I'm not sure though.

ROA 0130



ROA 0131 56

1 Q. Did you ever present him with a paper
2 that said when and where he would be paid?

3 A. Not that I know of. We didn't have any
4 operating agreements with any of our employees.

5 Q. How many employees did MusclePharm
6 Sportswear have in 2013 and 2014?

7 A. That were ADP employees?

8 Q. Let's start with any employees.
9 Employees who you paid.

10 A. Okay. Shane had two guys that came
11 onboard with him -- I believe it was two -- that we
12 paid. I had a sales guy named Whit Rabon; an
13 office manager who did the books, Tonya; an office
14 manager, Jeff Taylor; and then another sales guy,
15 Justin Gonzales.

16 Q. So a total of how many employees the
17 company had?

18 A. ADP employees, we had Tonya, Jeff,
19 Justin, and Whit. So four full-time employees.

20 Q. When you say ADP, what do you mean?

21 A. Those are employees that got W-2s at
22 the end of the year that were not like Shane's pay,
23 a 1099.

24 Q. And that was true in 2013 and
25 throughout 2014 as well?

ROA 0131



ROA 0132 57

1 A. Correct.

2 Q. Did your company provide any benefits,
3 insurance, anything like that?

4 A. We did not. When we gave our current
5 employees -- it was pretty loose there. We gave
6 our current employees vacation and some sick time.
7 It was pretty much, you know, if they had to go
8 somewhere, we were fine with it and whatnot.

9 Q. Were any of your employees hourly?

10 A. Yes.

11 Q. Who?

12 A. Jeff -- sorry, Tonya, Whit, and Justin.
13 And we also had -- yeah, Shane brought in two
14 employees: One was a graphic designer, and one was
15 a guy that helped out initially with some sales and
16 stuff like that.

17 Q. And you didn't W-2 them?

18 A. 1099.

19 Q. How did you make the decision to 1099
20 Shane and the other two?

21 A. I think that was something that Shane
22 wanted. And the other guys, we just met them. We
23 didn't really need more full-time employees, and
24 they were going to be part-time work as well.

25 Q. So was it your understanding by 1099

ROA 0132



ROA 0133₅₈

1 for Shane that he was a part-time employee?

2 A. No.

3 Q. Full-time?

4 A. Correct.

5 Q. So you 1099 Shane Gould as a full-time
6 employee of the business?

7 A. It was Shane's request to be 1099.

8 Q. Do you have any knowledge about whether
9 it's appropriate to 1099 a full-time employee of
10 the company?

11 A. I'm not sure. Like I said, it was
12 Shane's request to do it. He had his own company
13 that he was running, and that was that.

14 Q. Did your CPA that you named before
15 manage the books for these companies?

16 A. Excuse me? Yes.

17 Q. And was Shane employed by Worldwide
18 Apparel or MusclePharm Sportswear or both?

19 A. I consider them both the same thing.
20 But initially the company was MusclePharm
21 Sportswear, and then it turned into Worldwide
22 Apparel, d/b/a.

23 Q. Why did it turn into Worldwide Apparel?

24 A. We got into a lawsuit with MusclePharm,
25 and it was their request -- they tried to cancel

ROA 0133



ROA 0134 59

1 the license on us with not true statements. And we
2 sued them, and we -- they ended up -- we ended up
3 not going to court. They ended up pulling it back,
4 and we got the license back.

5 Q. Who was your lawyer that helped you
6 with that case?

7 A. Leslie Marlow.

8 Q. And she was with what firm?

9 A. She's out of New York. We had to have
10 an attorney in Denver as well where we were
11 fighting at, and New York as well.

12 Q. What -- for what occasion did you use
13 the law firm of Mintz Levin?

14 A. Mintz Levin is for this occasion.

15 Q. And Leslie was with Mintz Levin?

16 A. It was a company that she works with or
17 recommended and whatnot.

18 Q. So Mintz Levin out of New York was your
19 law firm in connection with the claim of
20 MusclePharm Corporation against MusclePharm
21 Sportswear; is that right?

22 A. Correct.

23 Q. Okay. And how did that case end?

24 A. We never went -- it was a two-month
25 case. We never went to trial. We never went to a

ROA 0134



ROA 0135-60

1 deposition or anything like that. Per our contract
2 that Leslie did, if there was a dispute, we're
3 supposed to be -- I'm not sure what the term is,
4 but we're supposed to go work it out. And they
5 never did any of the proper steps. The statements
6 they made were not true, and it was just a wild
7 play by them to try to pull back the license.

8 Q. So did you consider the outcome of that
9 litigation a success for your company?

10 A. Correct.

11 Q. Is there a reason that you did not
12 voluntarily pay Mintz Levin for its services?

13 A. Jeff Kovlosky was in charge of handling
14 everything with the attorneys. When we interviewed
15 several different attorneys, they told us the case
16 would cost \$50,000. And in less than two months'
17 time, I think the legal fees were 157,000 --

18 Q. Right.

19 A. -- without going to court or anything
20 like that. We paid them out of that -- I'm not
21 sure the exact amount, but it was maybe 70,000,
22 80,000.

23 Q. And then did Mintz Levin sue you or
24 your company?

25 A. They are currently doing that.

ROA 0135



ROA 0136 61

1 Q. And what's the status of that?

2 A. They are suing for 50 some thousand
3 dollars.

4 Q. Unpaid?

5 A. Correct.

6 Q. And where is that lawsuit pending?

7 A. In the State of South Carolina, I
8 believe.

9 Q. Okay. Did they sue you individually?

10 A. They sued MusclePharm Sportswear, I
11 believe. I'm not sure actually the answer to that.

12 Q. Okay. So your testimony is that you
13 discussed with Shane Gould in August of 2014 that
14 the company was not doing well, being your company,
15 MusclePharm Sportswear and Worldwide --

16 A. Um-hum.

17 Q. Is that a yes?

18 A. Correct.

19 Q. -- in that you were going to look to
20 try to sell the company to MusclePharm Corp, which
21 is a separate business?

22 A. Yes.

23 Q. And then you had -- you say you had a
24 text with him in September of 2014, the first week?

25 A. I believe so, yes.

ROA 0136



ROA 0137₆₂

1 Q. Okay. And tell me what you told him in
2 the text, not the verbal, but what the text told
3 him about this stuff.

4 A. That we were unable to pay him his full
5 amount of salary that we started paying him, and
6 that we had to cut the pay.

7 Q. And is that how you put it, to the best
8 of your recollection?

9 A. Yes.

10 Q. And so what did you say you had to cut
11 the pay to?

12 A. Well, we didn't say right there in that
13 text. I believe Shane mentioned \$5000 per month.
14 He also asked MusclePharm to pick up his pay and
15 salary. Also, he dealt with Scott and Jeff
16 regarding it.

17 Q. So this text did not define an amount?

18 A. He -- Shane --

19 Q. Let's first answer my question, and
20 then you can tell me more. Did the text define the
21 amount of the reduction?

22 A. I don't believe so.

23 Q. Anywhere did you ever document the
24 amount of the reduction?

25 A. Only via phone.

ROA 0137



ROA 0138
63

1 Q. Did you -- how did you document it by
2 phone? Was it documented by phone?

3 A. We spoke about it via phone.

4 Q. Because documentation is important to
5 me. I apologize to be picky about it, but it is.
6 Did you give him at any time seven days' written
7 notification of reduction in pay in a specific
8 amount?

9 A. No.

10 Q. The reduction that you told him about
11 was supposed to start taking place in what month?

12 A. September.

13 Q. September of 2014?

14 A. Um-hum, yes.

15 Q. And did you pay him the reduced amount
16 for September of 2014?

17 A. No.

18 Q. Did you pay him the full 10,000 for
19 September 2014?

20 A. No.

21 Q. What did you pay him?

22 A. Zero.

23 Q. Okay.

24 A. With the acknowledgment that we would
25 pay him the money. I explained to him how we

ROA 0138

A W R

ROA 0139₆₄

1 wanted to pay down accounts receivable, how the
2 MusclePharm hasn't paid us for our online sales,
3 how we had no operations really going on, and how
4 we wanted to pay off our vendors that were some of
5 Shane's relationships, and he understood that and
6 was okay with it.

7 Q. Okay. Understand I wasn't there, so
8 this may seem stupid, but I've got to figure this
9 out. As I understand it, you paid him in full from
10 his first day, full agreed amount, up until the
11 first day of September, you paid the full amount?

12 A. Correct.

13 Q. As agreed. It was your intention by a
14 text to pay him a reduced amount for September and
15 ensuing months?

16 A. Um-hum.

17 Q. Is that a yes?

18 A. Yes.

19 Q. And that the text did not say how much
20 the reduction would be?

21 A. Correct.

22 Q. And the text was not sent until
23 September of 2014?

24 A. Correct. That was documentation we
25 had. We spoke about it in August.

ROA 0139



ROA 0140
65

1 Q. Regardless, it was your intention to
2 pay him at least the reduced amount for the month
3 of September 2014 for his work?

4 A. Correct.

5 Q. And he did work in September of 2014?

6 A. To the same capabilities of previous
7 months, no. But, yes, he was still helping and
8 assisting with things.

9 Q. Was he terminated for September of
10 2014?

11 A. No.

12 Q. Was he terminated for October of 2014?

13 A. No.

14 Q. Was he terminated for November of 2014?

15 A. The word termination, you're referring
16 to did I fire him?

17 Q. Right.

18 A. No. But we had the talks where it was
19 no longer needed, he was no longer needed. The
20 transition was happening. The buyout was
21 happening. We were winding down everything
22 completely. We were letting go all of our
23 employees as well. He was in a unique situation
24 because he was coming onboard to work with
25 MusclePharm. He was going to have a job with them

ROA 0140



ROA 0141₆₆

1 as well. So he started communicating with
2 MusclePharm as well, and that was it.

3 Q. Was he terminated for November or
4 December of 2014 by your company?

5 A. By what you're asking me, Shane is
6 still an employee, because we never terminated him.

7 Q. All right. So you did not terminate
8 him for November 2014 or December 2014?

9 A. Technically, we did not terminate him.

10 Q. Did he resign in any of those months?
11 Did he submit a resignation in --

12 A. Shane is still working for us. He
13 never resigned, based off what you're asking me.

14 Q. Well, I'm just asking you this. Did he
15 resign in September?

16 A. No.

17 Q. Did he resign in October?

18 A. No.

19 Q. November?

20 A. No.

21 Q. December?

22 A. No.

23 Q. 2014?

24 A. Correct.

25 Q. When did your company, Worldwide

ROA 0141



ROA 0142
67

1 Apparel and MusclePharm Sportswear LLC, cease
2 operations?

3 A. Not until, officially, the end of
4 January. The buyout took, roughly, from start to
5 finish, six months.

6 Q. January 2015?

7 A. Yeah, the end of January 2015.

8 Q. Okay. All right. Now, it was your
9 intention to pay Mr. Gould the reduced amount in
10 September of 2014?

11 A. Yes.

12 Q. It was your intention to pay him the
13 reduced amount for October of 2014?

14 A. Yes.

15 Q. November of 2014?

16 A. No.

17 Q. Not November. And did you intend to
18 pay him the reduced amount in December of 2014?

19 A. No.

20 Q. Okay. Did you ever pay him the reduced
21 amount or any amounts for his work in September of
22 2014?

23 A. No.

24 Q. Did you ever pay him the reduced amount
25 or any amount for his work in October of 2014?

ROA 0142



ROA 0143₆₈

1 A. No.

2 Q. And it goes without saying you didn't
3 pay him anything for November or December of 2014
4 either?

5 A. Correct.

6 Q. Did Shane perform any services for the
7 company, your company, Worldwide Sportswear -- I'm
8 sorry -- Worldwide Apparel and MusclePharm
9 Sportswear LLC, during the month of September of
10 2014?

11 A. Yes.

12 Q. Did he do so in October of 2014?

13 A. Yes.

14 Q. Did he do so in November of 2014?

15 A. Yes, not per my request.

16 Q. And did he do so in December of 2014?

17 A. Yes.

18 Q. Did he do any work for the company in
19 January of 2015?

20 A. I believe I saw e-mails from him still
21 talking to our current suppliers in January, yes.

22 Q. Was one of the things he was having to
23 address during those last months the fact that your
24 company was not making payments to suppliers that
25 he had introduced your company to?

ROA 0143



ROA 0144
69

1 A. I believe that was the only thing, yes..

2 Q. Okay. Why didn't your company pay its
3 suppliers?

4 A. We had no money. We had accounts
5 receivable, and so we weren't being paid on those.
6 And we never -- we were losing tens of thousands of
7 dollars per month. From the date Shane came
8 onboard, we lost \$822,000.

9 Q. When was the last time -- were you
10 receiving goods during September, October,
11 November, and December from suppliers?

12 A. We did maybe one or two small purchase
13 orders. I think we did a \$6000 P.O. sent out to
14 the military, and I believe that was it. All of
15 our clothing was shipped -- Jeff would know the
16 exact answer. We shipped all of our clothing
17 early, maybe September, to MusclePharm because the
18 buyout was supposed to take -- the buyout was
19 supposed to happen a lot quicker than it really
20 did.

21 Q. Now, earlier you testified that it was
22 your plan to reduce the amount that you would pay
23 Shane for September and October, but that you were
24 going to arrange for MusclePharm to pick up the
25 rest?

ROA 0144



ROA 0145₇₀

1 A. No.

2 Q. You said that.

3 A. You take it out of context. I told you
4 that we were working with MusclePharm to bring
5 Shane on as an employee once MusclePharm bought
6 back the license to the clothing.

7 Q. So it's your testimony you did not
8 refer to MusclePharm picking up Shane's pay?

9 A. When I say the word picking up, I meant
10 employing Shane and offering him a job when
11 MusclePharm bought back MusclePharm sports license,
12 which they did do.

13 Q. Now, the reasons that you gave Shane
14 for the reduction of his pay were what?

15 A. We weren't conducting business. We
16 were winding operations down and trying to have
17 MusclePharm buy the company.

18 Q. Any other reasons?

19 A. We were running out a big -- you know,
20 negative.

21 Q. Any other reasons?

22 A. I mean, just his workload was not what
23 it used to be. Part of his job was coming to
24 Charleston. There was no need for that anymore as
25 well.

ROA 0145



ROA 0146₇₁

1 Q. Starting when?

2 A. Even before that. I mean, I think his
3 last time coming was in June. We had these talks
4 of MusclePharm buying us, you know, early on. It
5 took a long time.

6 Q. When Shane was coming to Charleston,
7 did you meet with him?

8 A. Yes -- well, if I was in town, yes.

9 Q. And what was the nature of your
10 conversations with him? What was your role?

11 A. I kept an office inside the office, and
12 I was there to just make approvals of Shane's
13 suggestions.

14 Q. Did you do any other things in your
15 meetings with Shane?

16 A. I would sit in the meeting that Shane
17 would have with the employees and listen and talk
18 and give my two cents.

19 Q. Okay. What else? What other kinds of
20 things did you address with Shane in the meetings?

21 A. Performance of the company, how the
22 company was doing.

23 Q. Okay. Anything else?

24 A. Just, you know, business.

25 Q. Did you ever document any performance

ROA 0146



ROA 0147₇₂

1 concerns with respect to Mr. Gould?

2 A. I documented with Tonya, having her
3 send me our profit, loss, and revenues from when
4 Shane came onboard and then shared them with Shane.
5 I'm not sure I sent him the numbers, since it's
6 important docs, but I spoke to him about it via
7 phone as well.

8 Q. Did you document to Shane a performance
9 deficiency in any way, in other words, give him a
10 document saying, this is a counseling --

11 A. We talked about it at the office. We
12 talked about business. I had Tonya pull the
13 numbers and talk about how we were doing in revenue
14 and the performance of the company, of course.

15 Q. Right. I think you understand my
16 question. I'm asking you if you presented a
17 document that showed on it, these are your
18 performance deficiencies?

19 A. Yes.

20 Q. You did give him a document that said,
21 these are your performance issues?

22 A. In the office in Charleston, I would
23 have showed him our sales numbers, yes.

24 Q. Did the sales numbers say, Mr. Gould,
25 your performance is deficient for these reasons?

ROA 0147



ROA 0148₇₃

1 A. They would say, this is the amount of
2 money we are losing. Before you came on, we were
3 doing X amount of dollars. Since you came on,
4 we're doing X amount of dollars and operating at X
5 amount of loss.

6 Q. So they looked like regular profit and
7 loss statements?

8 A. Correct.

9 Q. They weren't addressed to Mr. Gould?

10 A. No, they were for our company. They
11 weren't addressed to him.

12 Q. They didn't say anything in them about
13 specifically using words like, Mr. Gould, you're
14 not doing your job?

15 A. I wouldn't try to say it like that
16 about him or break somebody down like that. But I
17 think he knew what I was getting at. Shane made
18 comments where it wasn't his fault and things like
19 that. We had discussions regarding it.

20 Q. What did he say?

21 A. We had numerous discussions about his
22 performance. We've had discussions about whether
23 his suppliers, he was getting kickbacks. We had
24 discussions why he was -- why our fighters that we
25 paid top dollar for were wearing his company's

ROA 0148



ROA 0149⁷⁴

1 clothing at media events.

2 Q. Is any of that documented anywhere, on
3 a piece of paper?

4 A. We had those calls via phone. And some
5 of this stuff may have been documented with our
6 employees. Some of our employees came back and
7 said, hey, I went with Shane to this event, he was
8 pretty much out there promoting his company and
9 handing out his socks on our dollar. And that was
10 a pretty common thing with Shane.

11 Q. And I want to discuss that in detail --

12 A. We would see that via --

13 Q. One at a time. Very important for her.

14 A. Okay. Can I just finish? We would see
15 that via social media of our athletes that we paid
16 wearing Shane's stuff.

17 Q. Okay. I want to ask you this. I want
18 to discuss those things. But right now, I'm trying
19 to figure out, did you have any documents that you
20 gave to Shane about any of those things that told
21 him that these were problems?

22 A. I printed out a profit loss, and he
23 would look at it and see it.

24 Q. Other than that?

25 A. No.

ROA 0149



ROA 0150₇₅

1 Q. Did you address any memos or anything
2 to him, even an e-mail or a text saying, you're not
3 doing your job well enough?

4 A. Just via phone.

5 Q. So there were no documents like that?

6 A. To the best of my knowledge, I'm not
7 sure if we ever e-mailed each other about it.

8 Q. Okay. Now, you have asserted that
9 Mr. Gould breached his duty of loyalty?

10 A. Correct.

11 Q. I need you to tell me all the facts
12 that you know about that.

13 A. He --

14 MR. HUGE: I just object to the form.
15 You may answer.

16 MR. SCHMIDT: You're allowed to go
17 ahead and answer.

18 MR. HUGE: Yeah.

19 THE WITNESS: He, with our other
20 employees, with our other employees being present
21 on our dollar on trips, would hand out out of his
22 book bag his clothing to other athletes, slash,
23 models that were associated with us or were working
24 on -- at events that we sent him to do. We paid
25 for our fighters a lot of money to wear our

ROA 0150



ROA 0151₇₆

1 clothing and logo in fights. And one or more
2 instances, they wore Shane's clothing.

3 BY MR. SCHMIDT:

4 Q. Okay. Are you done?

5 A. Yeah, I just had another thought in my
6 head. I just lost it. But those are two that --
7 the big cases.

8 Q. That he would go to events and pass out
9 Fuel gear?

10 A. Correct.

11 Q. Okay. Anything else that was a breach
12 of his duty of loyalty?

13 A. I don't know if you consider this a
14 breach of due loyalty, but he asked our employee to
15 sign a document that he is friends with stating
16 that he's still employed at MusclePharm.

17 Q. After this litigation started?

18 A. The time frame was after the lawsuit --
19 after you e-mailed me and contacted me to start
20 suing me, Shane asked an employee who is now
21 friends with him that I don't really communicate
22 with, that got a job at MusclePharm and uses
23 Shane's contacts. Shane asked him to sign a
24 document stating that he was an employee at
25 MusclePharm falsely.

ROA 0151



ROA 0152₇₇

1 Q. Who was that?

2 A. Whit Rabon.

3 Q. And was that before or after
4 MusclePharm Sportswear ceased operations?

5 A. I'm not sure what you mean, the word
6 cease operations, because, in my opinion,
7 operations were ceased -- if you're going to say we
8 sold stock, then I was selling stock two months
9 ago. From when I sold back the license to
10 clothing, it was after, since the lawsuit started.

11 Q. Okay. Any other breaches to the duty
12 of loyalty that you're aware of?

13 A. We just feel that he was getting
14 kickbacks from our suppliers. He had us buy some
15 pretty new things that we questioned, watches that
16 were very expensive, and large numbers of it
17 through his contacts.

18 Q. Anything else?

19 A. That's it.

20 Q. Okay. Let's start with the kickbacks.
21 You said, we feel that way. Who are we?

22 A. I think all the employees were
23 questioning it, but more so me and my partner Scott
24 got Shane on a call and asked him, are you
25 receiving kickbacks.

ROA 0152



ROA 0153₇₈

1 Q. When was that?

2 A. During the time of the purchase orders,
3 in early 2014, late 2013.

4 Q. Okay. And who were the kickbacks
5 supposedly coming from?

6 A. We just asked him. We didn't say you
7 are getting kickbacks. We asked him if they were
8 coming from our suppliers.

9 Q. Which suppliers were you thinking they
10 were coming from?

11 A. Our watch supplier, sock supplier, all
12 suppliers. And when we asked if you weren't
13 getting kickbacks, if you're then getting maybe a
14 reduction in pay for what you would then produce.

15 Q. Watches, socks, what else?

16 A. A company called Virus, hats.
17 Basically every single supplier that Shane brought
18 on, to make it easier for you.

19 Q. What made you think he was getting a
20 kickback from any of these?

21 A. When I use the word kickback, I would
22 say either money, if he did a \$30,000 purchase
23 order, either a little money returned to him, or a
24 reduction in his orders. So if we bought 20,000
25 hats and Shane bought 20,000 hats, we felt that

ROA 0153



ROA 0154₇₉

1 Shane was getting a cheaper price because of him
2 bringing us on with his supplier.

3 Q. And what made you think this was
4 happening?

5 A. Just some of the unique purchases that
6 Shane wanted me to do.

7 Q. What was unique about the purchases?

8 A. He wanted us to buy watches that were
9 1300 per to hand out to management and athletes.
10 He wanted us to also order -- I forget the number
11 of watches, like \$60,000 or \$70,000 worth of
12 watches from that same supplier. He was gung ho
13 about us using certain suppliers. We just felt
14 there was a hidden agenda.

15 Q. You felt that because he was gung ho
16 about certain suppliers that he must have been
17 getting a kickback?

18 A. Kickback or in some ways benefitting
19 his back pocket.

20 Q. And you couldn't find another
21 explanation in the whole wide world for it other
22 than him being excited about using a particular
23 vendor other than he was getting a kickback?

24 A. We never -- early on, no, we didn't
25 think that. We just asked him that.

ROA 0154



ROA 0155₈₀

1 Q. I keep coming back to you really
2 can't -- can you sitting here imagine why someone
3 might be gung ho about a particular product without
4 getting a kickback about it?

5 A. Sure. I can also look at it the other
6 way and say the same thing.

7 Q. Okay. But your assumption was he was
8 doing something naughty?

9 A. We started to think that.

10 Q. So, we, being you and Scott?

11 A. Scott, some of the employees.

12 Q. Which employees?

13 A. Jeff Taylor.

14 Q. Yeah, who else?

15 A. Whit, Tonya. I mean, every employee
16 made comments about it.

17 Q. They all thought he was getting a
18 kickback?

19 A. They thought there had to be a hidden
20 agenda for the some of the purchases that we did,
21 and some of the purchases made no sense, in their
22 opinion.

23 Q. Now, how long had you been involved in
24 the sportswear business before this?

25 A. I had no experience before 2011.

ROA 0155



ROA 0156 81

1 Q. How about Jeff, Whit, Tonya?

2 A. No.

3 Q. How about Scott?

4 A. I'm not sure if he's had other
5 investments that are in retail clothing.

6 Q. Now, when you -- you said you spoke to
7 Shane about this concern about a kickback in early
8 2014?

9 A. Yes.

10 Q. When was that?

11 A. I'm not sure of the exact time. We did
12 a three-way with me and Scott. I believe Jeff
13 Kovlosky may have been on as well.

14 Q. What was said?

15 A. They led the conversation, since I'm
16 obviously seeing Shane on a weekly basis and having
17 to deal with him more, they pretty much asked
18 Shane, Shane, is there a hidden agenda here? Are
19 you receiving any kickbacks or anything like that
20 or any benefits from the suppliers by bringing us
21 on?

22 Q. What did he say?

23 A. No.

24 Q. Did you ever get any other information
25 that showed that he was wrong?

ROA 0156



ROA 0157₈₂

1 A. I never pursued it.

2 Q. So apart from -- I don't want to
3 mischaracterize this. But it sounds like you're
4 saying that you and others that didn't have any
5 experience in the apparel business decided that his
6 preference for certain suppliers must have meant he
7 might be having a kickback?

8 A. It was certain suppliers and things
9 purchased, watches. We were a clothing brand.
10 Certain things he wanted to do.

11 Q. Right. And those things led you to a
12 suspicion --

13 A. Correct.

14 Q. -- that there might be a kickback?

15 A. Correct.

16 Q. And other than that, you never
17 discerned that there was any fact to support that
18 there was a kickback, ever?

19 A. Correct.

20 Q. Okay. Standing here today, can you say
21 that there was any kickback or any --

22 A. I guess we'd have to subpoena Shane's
23 documents like the way you subpoenaed my documents
24 and compare our purchase orders and compare his
25 bank statements and see if he was getting a

ROA 0157



ROA 0158₈₃

1 kickback. That would be the only way, wouldn't you
2 think?

3 Q. Well, let me ask you, standing here
4 today, do you have any facts to suggest that he was
5 getting a kickback?

6 A. I never asked the manufacturers. I
7 didn't want to step on toes or boundaries. And I
8 can't look at Shane's documents, so...

9 Q. We know what you haven't done. I'm
10 asking you, as of today, do you know anything that
11 would suggest there is a kickback?

12 A. I don't know what you mean.

13 Q. Do you have any evidence of any
14 kickbacks?

15 A. No. I mean, that would be tough for me
16 to find out, wouldn't you think?

17 Q. I'm not really the one who answers the
18 questions.

19 Now, the other thing with the duty of
20 loyalty was that he was passing out Fuel stuff at
21 events.

22 A. Correct.

23 Q. Who did he pass out Fuel stuff to?

24 A. Our fighters, our spokespeople.

25 Q. Can you give me any names?

ROA 0158



ROA 0159₈₄

1 A. Clay Guida.

2 Q. G-U-I-D-A?

3 A. G-U-I-D-A, yes.

4 Q. Any others?

5 A. Chady Dunmar.

6 Q. How do you spell that first name?

7 A. C-H-A-D-Y.

8 Q. D-U-N-M-A-R?

9 A. I believe so.

10 Q. Any others?

11 A. Travis Browne.

12 Q. Any others?

13 A. There was other employees of ours at
14 MusclePharm and -- sorry, not of ours, but other
15 employees of the parent company and other spokes
16 models that we hired.

17 Q. And when you say parent company, you're
18 talking about a separate company, which is
19 MusclePharm Corp?

20 A. Yes, sorry.

21 Q. Now, you're saying that your company
22 had, what, a contractual relationship with Clay
23 Guida, Chady Dunmar, and Travis Browne?

24 A. Correct.

25 Q. Any others that they had a contractual

ROA 0159



ROA 0160 85

1 relationship with that Shane was passing out goods
2 to?

3 A. Just other people that were our models
4 that we were paying for that time for those events.

5 Q. Do you have any names?

6 A. I could get you the names.

7 Q. Okay. Now, who was it that saw Shane
8 do this?

9 A. Our employees -- the employee that he
10 went out to LA with, Shane's friend, Whit Rabon.

11 Q. Anybody else saw it?

12 A. It may have been Justin Gonzales as
13 well. I'm not sure if Justin ever went on an
14 event. I don't think Justin actually went. But
15 that was it. Also Shane had personal -- we made
16 introductions to Shane, so he had their personal
17 e-mails and addresses to also send them stuff to as
18 well.

19 Q. Do you have any evidence that he ever
20 e-mailed them?

21 A. I have seen e-mails between and Travis
22 Browne, yes.

23 Q. Saying I'm going to give you some Fuel
24 gear?

25 A. No, just -- you just asked me if I had

ROA 0160



ROA 0161₈₆

1 evidence of him ever knowing him, and that answer
2 is yes. So you asked me another question, and I'm
3 not sure about that.

4 Q. That's good. Sounds like we're on the
5 same page.

6 A. You know it.

7 Q. And so you say Whit Rabon has knowledge
8 of this happening in LA?

9 A. Correct.

10 Q. What was the event and when in LA?

11 A. It was the LA Fit Expo, and I'd have to
12 have Jeff Taylor pull up when that was. He pretty
13 much just stated that Shane wanted to go to this
14 event -- well, Shane wanted to go to the event, and
15 it was just pretty much stating that Shane was out
16 there just promoting his brand the whole time.

17 Q. And Whit told you that?

18 A. Yep.

19 Q. Did Whit tell you that himself or tell
20 someone who told you?

21 A. He told me that himself.

22 Q. And was that 2013, 2014?

23 A. 2014.

24 Q. Okay.

25 A. They went to a couple of events

ROA 0161



ROA 0162₈₇

1 together.

2 Q. Can you give me a season that it was?
3 Was it in the first half of the year, second half
4 of the year?

5 A. I cannot off the top of my head right
6 now. I can ask, if you like.

7 Q. LA Fit? Are you aware of any other
8 events --

9 A. Yes.

10 Q. -- which you were told that Shane did
11 this?

12 A. Not other events, but we had a UFC
13 fight that was televised to tens of millions of
14 people. And our fighter that we paid walked out in
15 Fuel socks instead of our socks.

16 Q. Name of who?

17 A. Clay Guida.

18 Q. Did you ever ask Clay about it?

19 A. We asked Shane. I'm not going to ask
20 Clay Guida and make us look like we're idiots and
21 not know what's going on and things like that. We
22 asked Shane about it and what was his reasoning
23 behind that and why he would do that to our company
24 to a fighter that we paid for as well. And that
25 was not documented. It was via phone.

ROA 0162



ROA 0163₈₈

1 Q. What did he say?

2 A. He said that he doesn't know why Clay
3 Guida wore his socks out there over MusclePharm
4 socks.

5 Q. Do you have any evidence that would
6 suggest that what Shane told you about that wasn't
7 true?

8 A. I'm sorry, say that again.

9 Q. Do you have any evidence that says
10 that's not true, that he doesn't know why Clay
11 chose to wear the socks he wore?

12 MR. HUGE: Object to the form. You can
13 answer.

14 THE WITNESS: I'm not going to answer
15 that.

16 MR. SCHMIDT: Well, yeah, you do have
17 to answer that.

18 THE WITNESS: Okay.

19 MR. HUGE: Answer if you understand it.

20 THE WITNESS: I don't understand it.

21 BY MR. SCHMIDT:

22 Q. Do you have any information -- let's
23 put it this way. Shane told you he didn't know why
24 Clay Guida chose the socks he wore?

25 A. Correct. Shane dealt with Clay Guida

ROA 0163



ROA 0164⁸⁹

1 on what he was going to wear going out, walking out
2 to the fight.

3 Q. Right. My question is this. Do you
4 have any reason to believe that it's not true that
5 he told you, I don't know why he wore them?

6 A. In my opinion, Shane lied to us
7 regarding that. He would know why a fighter was
8 wearing his clothing socks over our clothing socks
9 that we paid. Shane wasn't splitting the cost with
10 us with his company. It was a contract fight that
11 we had with our fighter.

12 Q. And do you have any -- have you told me
13 all the facts you know about that?

14 A. If you ask me -- as far as I know, yes.
15 If you continue to ask me --

16 Q. Are there any other facts that you know
17 about whether or not Shane was telling the truth
18 when he said, I don't know why Clay chose the socks
19 he wore?

20 A. I do not.

21 Q. Can you make Clay wear a particular
22 pair of socks personally for any event?

23 A. Yes. That's contracts we have saying
24 he would wear our shirt. You know, I pay for your
25 hat; you wear a hat. I pay for your shirt; you

ROA 0164



ROA 0165₉₂

1 being that it's the first time ever versus the
2 first time to your knowledge?

3 A. As far as I know, and talking to Shane,
4 I don't think he's ever marketed inside the UFC.

5 Q. And UFC fighters don't like
6 skateboards, and they don't like surfboards, and
7 they don't like snowboards; right?

8 A. I don't know.

9 MR. HUGE: Object to the form. You can
10 answer.

11 THE WITNESS: I don't know. You tell
12 me.

13 BY MR. SCHMIDT:

14 Q. Well, is it possible that UFC fighters
15 would like --

16 A. I'm sure anything is possible. I'm
17 sure attorneys would like it, a lot of things.

18 Q. Now, the Fuel socks that Shane gave
19 away, did someone see him give away Fuel socks at
20 the trade show?

21 A. Correct, Whit Rabon. He had a
22 bookbag -- the way Whit described it, Shane had a
23 bookbag with Fuel Clothing gear and was walking
24 around to different booths and handing out his
25 gear.

ROA 0165



ROA 0166₉₃

1 Q. At the booths?

2 A. Correct.

3 Q. Did you have a counseling with
4 Mr. Gould about that?

5 A. Via the phone.

6 Q. And what was said?

7 A. Shane, we understand that you were out
8 there passing out your gear. Is there a reason for
9 this when MusclePharm is paying for this?

10 Q. And what did he say?

11 A. I forget what his statement was, but he
12 pretty much said he didn't do that.

13 Q. And did you say, don't do it anymore?

14 A. Correct.

15 Q. Did he do it anymore?

16 A. I don't think we had many more events.
17 He did one more event. I think he went to the
18 Olympia. And I'm not sure. I was not -- I didn't
19 go to the event, and I wasn't watching over him.

20 Q. Did you get any reports of him passing
21 out socks or other Fuel gear at any other events?

22 A. I didn't ask for reports. The first
23 report was given to me based off them wanting to
24 tell me. I never would go back from an event and
25 report, what did Shane do.

ROA 0166



ROA 0167₉₄

1 Q. Did you ever get any information that
2 Shane was passing out his Fuel goods at any other
3 events other than the LA one?

4 A. I believe at one other event, the
5 Olympia, that he was doing that.

6 Q. Any others?

7 A. No.

8 Q. Do you know what order they appeared
9 in, the Olympia versus --

10 A. I believe the Olympia was last. LA was
11 first.

12 Q. Okay. If you thought that Shane had
13 actually passed out gear of Fuel while he was
14 working for you and got your sponsored fighters to
15 wear it and that he continued doing that after you
16 talked to him about it, would you have fired him?

17 A. After we had to talk with him regarding
18 Clay Guida, it was toward the tail end, and I don't
19 believe there was any more fights from then, since
20 we were winding down operations, that he would have
21 had the opportunity to do that.

22 Q. Can you define or quantify any harm or
23 injury that the company suffered by virtue of poor
24 Clay Guida's socks on that particular day?

25 A. Yes. We didn't get the exposure that

ROA 0167



ROA 0168₉₈

1 we need to subpoena that.

2 Q. Did you get an image of it?

3 A. Yes. It's national. It's in front of
4 tens of millions of people. It's on television.

5 Q. Do you have a copy of it now, printed
6 copy?

7 A. I will get you one.

8 Q. Okay. Were there any goods other than
9 socks that you were told that Mr. Gould had passed
10 out at these events?

11 A. I was just told gear in general. I
12 mentioned gear and socks. So hats, all clothing
13 items.

14 Q. So you were specifically told that hats
15 and other items, as well as socks, were passed out,
16 and this was told to you by Whit?

17 A. Yes.

18 Q. And did anybody else tell you this or
19 just Whit?

20 A. I believe just Whit.

21 Q. Okay. Is it true that Mr. Gould did
22 not perform any job duties in November or December
23 of 2014?

24 A. He still e-mailed his current suppliers
25 regarding the money that was owed.

ROA 0168



ROA 0169₉₉

1 Q. Did he also coordinate in any way with
2 the proposed acquiring company?

3 A. I believe he did have talks with
4 MusclePharm and/or was talking with MusclePharm
5 regarding him coming onboard.

6 Q. Did he do those things for his own
7 benefit or for the company's benefit?

8 A. I would say both.

9 Q. Okay. What was your problem with the
10 watch company, Rockwell?

11 A. I can't answer that because I don't
12 know what you mean.

13 Q. Are you aware of any problem with a
14 watch company called Rockwell?

15 A. I still don't know what you mean.

16 Q. Are you aware of a watch company called
17 Rockwell?

18 A. Yes.

19 Q. Okay. What do you know about them?

20 A. They're a watch company.

21 Q. Do you have any problem with them?

22 A. I don't really know them that well.

23 Q. Do you have any problem with their
24 product?

25 A. Not that I know of.

ROA 0169



ROA 0170
102

1 phone, and there also may be some e-mails out there
2 letting him know this was the proper protocol we
3 had to follow. We had the protocol at the office
4 written on the board with how we had to do things
5 with samples. And the company was very picky about
6 using the proper Pantone color, and every supplier
7 has a different system with the way their ink
8 dries. That's why, when we do a sample, we'd want
9 the parent company to approve it.

10 MR. SCHMIDT: Okay. All right. This
11 is a good time for a break, and I for one intend to
12 eat.

13 (A recess transpired.)

14 BY MR. SCHMIDT:

15 Q. Let's go back on the record. You're
16 still under oath. Is that cool?

17 A. Yep.

18 Q. Now, I have some scattered questions.
19 This is the way it kind of gets sometimes at this
20 stage, because you've answered many of my
21 questions, and I do appreciate it. One of the
22 things that you were saying is that Shane was a
23 1099 employee. But I wanted to check and see if
24 you're 100 percent sure of that.

25 A. I'm glad you asked that, because during

ROA 0170



ROA 0171
103

1 this, I wanted to mention it looks like we were
2 docking his taxes out. I'm not sure of the
3 classification. We were paying him biweekly.

4 Q. Yeah, you were paying him biweekly and
5 taking out withholdings?

6 A. Correct.

7 Q. And I represent to you that he received
8 W-2s. Would you disagree with that?

9 A. I would not.

10 Q. Okay.

11 A. My apology for not knowing that. His
12 first time being paid was on 6/7.

13 Q. Now, you have run a number of
14 businesses. Have you run many businesses that have
15 had five or more employees?

16 A. No.

17 Q. And are you aware of the laws that
18 relate to businesses that have five or more
19 employees in South Carolina?

20 A. No.

21 Q. Okay. Were you aware that -- has
22 anybody ever made you aware that South Carolina law
23 requires most employers to notify each employee in
24 writing at the time they are hired of the time and
25 place of payment and to pay all wages due at the

ROA 0171



ROA 0172
106

1 October?

2 A. Same thing that we stated via text and
3 we documented -- or was documented through text
4 messages that we were going to pay Shane for the
5 two months at the reduced rate, but wanted to get
6 our account receivables, since they were Shane's
7 relationships, paid off first, and Shane was okay
8 with that. That was the reason.

9 Q. Okay. Now --

10 A. Shane was okay with that.

11 Q. -- when you did the closing of the deal
12 with MusclePharm, you received stock and cash?

13 A. Correct.

14 Q. How much cash did you receive?

15 A. I did not receive it. It went directly
16 from MusclePharm Corporation -- it did not touch
17 our account or anything like that -- it went to our
18 third silent partner. That was his 33 percent.

19 Q. Who is that?

20 A. His name?

21 Q. Yeah.

22 A. Paul, last name is I-Q-B-A-N, I
23 believe. That's how you spell it.

24 Q. I-Q...

25 A. B-A-N. I dealt with him three or four

ROA 0172



ROA 0173
107

1 times before. It was a silent investor that my
2 partner brought on.

3 Q. Was there documentation of this silent
4 investor in your business?

5 A. As in operating agreement?

6 Q. Anything.

7 A. Yes.

8 Q. Can you provide that to your lawyer to
9 give me?

10 A. Yes.

11 (This page contains information to be
12 supplied by counsel and/or the deponent.)

13 BY MR. SCHMIDT:

14 Q. Was Mr. Paul --

15 THE WITNESS: Will you make note of
16 that?

17 MR. HUGE: Um-hum.

18 BY MR. SCHMIDT:

19 Q. Was Paul Iqban a member of either --

20 A. It was an operating agreement.

21 Q. But the operating agreement provided
22 that he would get the cash out of the deal?

23 A. The operating agreement -- when I make
24 an operating agreement with a person, how would I
25 know I'm selling a company when I've done an

ROA 0173



ROA 0174
108

1 operating agreement?

2 Q. Well, you can go into an acquisition if
3 you're going to sell; right?

4 A. I did the operating agreement saying he
5 owned -- for his investment in the company, he
6 owned 33 percent of the company, profit.

7 Q. So his 33 percent was paid in the form
8 of the cash?

9 A. Correct.

10 Q. And how much was the cash?

11 A. 850,000.

12 Q. And he got all of it?

13 A. Correct.

14 Q. Okay. And then your 850,000 was
15 represented by the stock shares in MusclePharm
16 Corporation?

17 A. Correct.

18 Q. And then --

19 A. Restricted stock.

20 Q. And it sounds like that diminished
21 between then and when you sold it for 500 and
22 something. Is that right?

23 A. Incorrect. Me and my partners was
24 850,000 times 2, so that's 1.7 million. So that
25 1.7 million turned into 500,000.

ROA 0174

A W R

ROA 0175
109

1 Q. So it diminished from 1.7 to 500,000?

2 A. Correct, my share being 250,000.

3 Q. Your share was 250,000. Now, at that
4 point -- let's go back a little bit. The payment
5 for the acquisition by MusclePharm Corporation of
6 MusclePharm Apparel LLC, whatever, was a payment to
7 the LLC?

8 A. Correct, yes.

9 Q. Okay. And at that point, that LLC,
10 your LLC, had a total value in cash and stock of
11 1.7 plus 850,000. Right?

12 A. Not true. We did -- there was a
13 separate clause in the contract where MusclePharm
14 withheld stock for 90 days. So it was 45,000
15 shares, I believe -- or 37,500 shares withheld.

16 Q. So walk me through it then more slowly,
17 because I'm not as fast with numbers as you are.

18 A. And I think I provided the buyout
19 agreement..

20 Q. Sure. At the buyout, January -- when?

21 A. It was titled the end of January,
22 January 28th, I guess when it was finally approved.
23 We didn't get notification of it until February 9th
24 or 10th, I believe.

25 Q. Of 2013?

ROA 0175



ROA 0176
120

1 Q. Can you give me any other names of such
2 people?

3 A. Off the top of my head, no. If you
4 would like to do, I can write it down and come back
5 on that, or when you subpoena Whit Rabon, we can
6 ask him and some others.

7 Q. Sure. Did Whit go to LA for the LA
8 Fit?

9 A. Whit or Justin Gonzales did. One of
10 them went there, and whichever one went there was
11 the one that was telling me that Shane was handing
12 out the gear.

13 Q. So as of today, you can't testify sworn
14 truth as to who told you or who went; is that
15 right?

16 A. I believe it was Justin -- it was
17 either Justin Gonzales or Whit, and one of them
18 directly had a conversation with me. When we
19 subpoena them, we can ask them that question.

20 Q. But I'm asking you, from your memory,
21 you can't tell me who told you this? You can say
22 it's one of two people, but you can't say which
23 one?

24 A. Correct. They've both come to me.
25 They've both been on events with him. It's

ROA 0176



ROA 0177
121

1 statements both of them have made to me. I'm not
2 sure if it's the LA one or the Ohio one. But both
3 of them have been on events with Shane alone, and
4 both of them have come back to me and said that
5 Shane's purpose out there was to promote his own
6 brand and hand out his own clothing.

7 Q. The influencers and fighters that you
8 were concerned with wearing Fuel merchandise, is it
9 your testimony that they were under contract to
10 your LLC, or were they under contract to
11 MusclePharm Corporation which did not as of that
12 time own your company?

13 A. Both. And I think if you look at the
14 contract between our license agreement between
15 MusclePharm Sportswear and MusclePharm, we're
16 entitled to the marketing that MusclePharm does.
17 That's why I pay a premium and a royalty. So I
18 would answer yes to both of those.

19 Q. And was MusclePharm Corporation's claim
20 that you weren't paying your royalty?

21 A. That was a statement made. But as you
22 can tell, that division of royalty, it's regarding
23 making money, and we didn't make any money. You
24 can't pay a 10 percent profit if you don't turn a
25 profit. We spent money marketing the business.

ROA 0177



ROA 0178
122

1 Q. The lawyer who represented you
2 previously in this case submitted a document to the
3 court saying that you didn't pay them, the Womble
4 Carlyle people. Why didn't you pay them?

5 A. I'm talking to the lady now. My
6 attorney left. I'm talking to Womble Carlyle, and
7 they're adjusting what they're charging me because
8 of -- I told them that I feel like \$13,000 in
9 e-mails is a bit excessive.

10 Q. So how much did they charge you all
11 total?

12 A. \$37,000. They also quoted me that
13 everything would take around \$30,000.

14 Q. And how much have you paid them?

15 A. I'm not sure of the exact figure. They
16 kept my -- the retainer deposit, and then I paid
17 them a couple of months.

18 Q. So you don't know the total amount that
19 you've paid them?

20 A. Correct.

21 Q. But you haven't paid them because you
22 thought it was too much?

23 A. I just asked them if they could go
24 through and look at the charges and see what they
25 thought with some of the stuff being excessive.

ROA 0178



ROA 0179
139

1 A. To my knowledge, yes. I have not heard
2 from them in a year and a half. So I would assume
3 yes. If a creditor hasn't reached out to me, I
4 would assume they were paid. Wouldn't you?

5 Q. And when you say you haven't heard from
6 them in a year and a half, you mean the last year
7 and a half?

8 A. I haven't heard from them since March
9 of 2015.

10 Q. Who is the person there that you would
11 deal with, do you know?

12 A. Which place are you talking about?

13 Q. PromoVentures.

14 A. If I look at my phone, are you going to
15 try to do something?

16 Q. I've already done what I'm going to do
17 with your phone.

18 A. Steve Kay.

19 Q. You have asserted as a defense that
20 Mr. Gould's claims are barred by the doctrine of
21 unclean hands, estoppel, quasi estoppel, equitable
22 estoppel, waiver, and laches. Can you tell me all
23 the facts you know that support that?

24 MR. HUGE: Object to the form. You can
25 answer it if you know.

ROA 0179



ROA 0180
140

1 THE WITNESS: No.

2 BY MR. SCHMIDT:

3 Q. You have asserted as a defense that a
4 good faith dispute existed with regard to any
5 compensation due to plaintiff; and, therefore,
6 plaintiff is not entitled to treble damages or
7 attorneys' fees under the Wage Payment Act.

8 MR. HUGE: Object to form.

9 BY MR. SCHMIDT:

10 Q. Do you have any knowledge about that?

11 A. Repeat the question.

12 Q. Well, let me ask you this. Are you
13 aware that the Wage Payment Act requires that you
14 may be -- provides that you may be liable for three
15 times the amount of unpaid wages and Mr. Gould's
16 attorneys' fees if you haven't paid wages due him
17 within 30 days after the conclusion of his
18 employment?

19 MR. HUGE: Object to the form.

20 THE WITNESS: I've read the Employment
21 Wages Act.

22 BY MR. SCHMIDT:

23 Q. Okay. All right.

24 A. And it looks like your e-mail found me
25 guilty already. You demanded \$120,000 from me.

ROA 0180



ROA 0181₁₄₂

1 company.

2 MR. HUGE: Well, hold on a second.
3 There are three companies. He's two. He's
4 MusclePharm Sportswear --

5 MR. SCHMIDT: And Worldwide.

6 MR. HUGE: Right. One is d/b/a. The
7 use of MusclePharm is separate, which is the
8 corporation.

9 MR. SCHMIDT: Right. And I guess my
10 point is this. We have a separate notice that we
11 can do now for the corporation, or if you prefer,
12 we can stipulate that testimony was in the nature
13 of a 30(b)(6) as well as his individual testimony.

14 MR. HUGE: Yeah, I would be willing to
15 stipulate it's the same thing, unless you have some
16 corporate-related questions that you want to ask
17 him.

18 MR. SCHMIDT: I would ask him a lot of
19 the same things over.

20 MR. HUGE: That's what I figured.

21 THE WITNESS: Let's do it. Let's do
22 it.

23 MR. HUGE: Hold on. We'll stipulate
24 that the deposition questions you've asked covers
25 both Mr. Ciccarelli and the corporations that were

ROA 0181



ROA 0182
143

1 noticed today.

2 MR. SCHMIDT: Perfect. That's it.

3 Stipulations on the record.

4 (The witness, after having been advised
5 of his right to read and sign this transcript, does
6 not waive that right.)

7 (The deposition was concluded at 2:03
8 p.m.)

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ROA 0182



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3
4 Shane Gould,

5 Plaintiff,

6 vs.

CASE NO. 2015-CP-10-3220

7 Worldwide Apparel LLC f/k/a
8 MusclePharm Sportswear LLC and
Drew Ciccarelli,

9 Defendants.

10 DEPOSITION OF: SHANE LEVI GOULD

11 DATE: July 6, 2016

12 TIME: 10:04 a.m.

13 LOCATION: A. William Roberts, Jr. &
14 Associates
234 Seven Farms Drive
15 Charleston, SC

16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: Janice N. Shepherd,
18 Registered Professional
Reporter19
20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
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19 ALSO PRESENT:
20 DREW CICCARELLI

21
22
23
24
25 (INDEX AT REAR OF TRANSCRIPT)

ROA 0184



ROA 0185 7

1 Q. When was your last year there?

2 A. I believe 1990. I believe -- I went
3 '89, '90, but I left at Christmastime, so I didn't
4 do '91.

5 Q. So you left after fall semester --

6 A. That's correct.

7 Q. -- of your third year there?

8 A. No, second. It would be the second.

9 So it wasn't into the next year.

10 Q. I understand.. Okay. Why did you leave
11 college?

12 A. I become a professional snowboarder.

13 Q. Where did you do your professional
14 snowboarding?

15 A. On the World Tour.

16 Q. Were you based out of Colorado or
17 somewhere else?

18 A. Colorado.

19 Q. How long did you do this professional
20 snowboarding?

21 A. Ten years.

22 Q. Did you compete in any national events,
23 international? Give me a sense of what you were
24 doing for ten years as a snowboarder.

25 A. The World Tour, it's only the top 48

ROA 0185



1 skateboarded together.

2 Q. In Pennsylvania?

3 A. Yes.

4 Q. What was the name of the company you
5 all started in '92?

6 A. Fuel.

7 Q. Fuel, did it have Inc. or LLC?

8 A. Fuel Clothing Company, Incorporated,
9 but just called Fuel.

10 Q. Got it. Where is that company
11 incorporated?

12 A. South Carolina.

13 Q. Are there any other companies that
14 you're a member of or you have any ownership
15 interest in besides that one?

16 A. No.

17 Q. Does Buster Halterman still own part of
18 Fuel?

19 A. No.

20 Q. How did it come to pass that he's no
21 longer an owner of Fuel Clothing Company?

22 A. I just bought him out.

23 Q. When did you buy him out?

24 A. '94, I believe.

25 Q. So you're the sole owner now?

ROA 0187
10

1 A. Yes. He was still a pro skateboarder,
2 so he wanted to keep skateboarding. So it was
3 easier for him to go on and do that than it was for
4 me to stop doing what I'm doing.

5 Q. Okay. So you started Fuel in 1992,
6 April 1992. Where did you start it? In Hilton
7 Head or somewhere else?

8 A. Well, I was living in Colorado at the
9 time. Buster was in Pennsylvania. So -- but we
10 actually started it in a summer in Hilton Head at
11 my father's and stepmother's house as a thought.

12 Q. When did it become more than a thought?

13 A. Well, that was the incubation of it.
14 Then we literally went to -- he went back to
15 Pennsylvania. I went back to Colorado, and we
16 started promoting our company that we started.

17 Q. What was the business of the company
18 going to be at that time?

19 A. Apparel.

20 Q. What kind of apparel?

21 A. Namely at that time?

22 Q. Um-hum.

23 A. It was for -- for what industry or for
24 what kind of product?

25 Q. Let's start with the products.

ROA 0187

ROA 0188

11

1 A. T-shirts, hats, polar fleece, beanies,
2 outerwear, jeans, hoodies, button-ups, skirts,
3 shorts.

4 Q. And then for what industry or what
5 target market?

6 A. Action sports.

7 Q. Action sports?

8 A. Correct.

9 Q. When you say action sports, what do you
10 mean in specifics?

11 A. Action sports would be skateboard,
12 snowboard, surf, motocross, and racing.

13 Q. Have you done all of those action
14 sports?

15 A. Yes.

16 Q. What happened next? So you had the
17 idea, and then what did you do after that, just to
18 get the company going?

19 A. Develop products, market the products,
20 sell the products.

21 Q. Let's take those one at a time. Give
22 me more detail when you say develop the products.
23 What would you do to do that at that time?

24 A. At that time, we didn't decide to -- at
25 that time, blank goods weren't available, so we

ROA 0188



ROA 0189₄₃

1 Q. Who did you have besides Nikka Tech?

2 A. Jalp, J-A-L-P. Had a ten-year license
3 agreement with them, and I believe it ended in
4 2013, maybe '14. I'd have to look.

5 Q. Were there any other license agreements
6 in 2013 besides Jalp and Nikka Tech?

7 A. No.

8 Q. Did you pick up any others in 2014?

9 A. No.

10 Q. 2015?

11 A. No.

12 Q. Okay. In 2013 you started working for
13 MusclePharm Sportswear; right?

14 A. Yes.

15 Q. Tell me how that came about. How did
16 you get that job?

17 A. I don't know who introduced Drew to me
18 or if he knew somebody who knew me, but we did not
19 know each other at that time.

20 Q. But you guys met?

21 A. Yes, he came in my retail store.

22 Q. Do you recall when that was
23 approximately?

24 A. No.

25 Q. Would springtime be correct,

ROA 0189



ROA 0190₄₄

1 springtime, 2013?

2 A. Sounds about right.

3 Q. And then what happened? What was the
4 substance of what you all talked about?

5 A. He had an apparel license, I believe,
6 and asked if I would help him out.

7 Q. And what did you say back or what was
8 your response to that?

9 A. I didn't have the -- I don't know if I
10 even had a response that day. I think it was more
11 just talking about what could you do.

12 Q. Okay.

13 A. That day. I know he had texted me a
14 few times afterwards asking if I would come to
15 Charleston to talk about it.

16 Q. At some point, were you offered a job
17 with MusclePharm Sportswear?

18 A. At some point, yes.

19 Q. When was that?

20 A. In 2013.

21 Q. When in 2013?

22 A. Sometime after that first meeting. I
23 would say probably within that week.

24 Q. Within the week, okay. Did you meet
25 with anyone else besides Drew from MusclePharm

ROA 0190

A W R

ROA 0191₄₅

1 Sportsweat or anyone else in regard to working for
2 MusclePharm Sportsweat?

3 A. That week, I don't believe I did. I
4 don't think I met anybody that week. I think the
5 week after, I came to his office to meet with his
6 staff.

7 Q. Okay. And who did you meet in
8 particular when you say you met with his staff?

9 A. Tonya, Jeff, and Witt. And I don't
10 think I met Justin at that particular time.

11 Q. Was that Jeff Taylor?

12 A. Yes.

13 Q. Did you meet Jeff Kovlosky at some
14 point?

15 A. Yes, but that was later. That was
16 another meeting.

17 Q. Tell me about the meeting you had with
18 Jeff Kovlosky.

19 A. They had asked me if I was interested
20 in doing the job. I said yes. We came to terms.
21 We agreed on them, and I started work.

22 Q. When was the meeting with Jeff
23 Kovlosky?

24 A. Within the month of Drew coming down.

25 Q. Do you recall where that meeting was?

ROA 0191



ROA 0192₄₆

1 A. It was in Charleston. It was on a
2 rooftop, but I don't know the name of the
3 restaurant.

4 Q. And it was you, Jeff Kovlosky, and
5 Drew?

6 A. That's correct.

7 Q. And no one else?

8 A. No.

9 Q. Do you recall about how long that
10 meeting took place?

11 A. Less than five hours.

12 Q. More than one hour?

13 A. Yeah. I think it was longer than an
14 hour, but I don't know the exact time frame. I
15 didn't recall it being -- I know it was long. It
16 was more than an hour, could have been two, could
17 have been three.

18 Q. Okay. You just testified you came to
19 terms. What were the terms you came to?

20 A. That I would receive \$10,000, my salary
21 was \$10,000 a month.

22 Q. And what were you to do -- what were
23 your job duties going to be?

24 A. At that time, being the creative side
25 of things, coming up with the apparel line,

ROA 0192



ROA 0193₄₇

1 sourcing the apparel line, and actively helping the
2 sales staff with sales.

3 Q. Were you going to work full-time for
4 MusclePharm Sportswear at that point?

5 A. No.

6 Q. How were you going to divide your time?

7 A. From the beginning, Fuel was always 100
8 percent of my time. MusclePharm was basically, I
9 would say, when I could fit in. If I had to come
10 to Charleston, I would come up on a Tuesday night
11 or a Wednesday morning and meet with the group, if
12 everybody was there. If they weren't there, I
13 wouldn't come up. If it wasn't needed, I wouldn't
14 come up. But basically I would still be on the
15 phone conversing back and forth with either sales
16 or production people throughout the week.

17 Q. When you say on the phone, with people
18 at MusclePharm Sportswear?

19 A. Or the factories that was making the
20 apparel.

21 Q. Okay. And I assume you also spoke with
22 MusclePharm Corporate, correct, at times?

23 A. Very rare. That was the communication
24 with Drew and the MusclePharm Corporate, there was
25 no communication there.

ROA 0193



ROA 0194 48

1 Q. Okay. I'm still trying to get the
2 terms from the meeting you had at the rooftop bar.
3 Fuel was 100 percent of your time. What do you
4 mean by that exactly? 100 percent means you have
5 nothing left to spend on anything else.

6 A. Well, it was 100 percent before I took
7 on the job, of course.

8 Q. Right. What was --

9 A. What was my percentage?

10 Q. No, no, let me just ask you. Did you
11 come to an agreement for a split in time between
12 Fuel and MusclePharm work that you were
13 anticipating doing?

14 A. There was no agreement on time.

15 Q. Did you ask for any split or agreement
16 on time?

17 A. No.

18 Q. With Jeff or Drew?

19 A. No.

20 Q. And you were given the title of CEO; is
21 that right?

22 A. Officially, that's what they had said.
23 Was it done on paperwork, I don't believe so.

24 Q. There never was a written agreement for
25 your work with MusclePharm, was there?

ROA 0194

A W R

ROA 0195₄₉

1 A. No.

2 Q. Did you ask for one?

3 A. No.

4 Q. Is there a reason you did not ask for
5 one?

6 A. I wasn't presented one.

7 Q. Did you want one at that time?

8 A. No.

9 Q. What was your first date, active first
10 date of employment?

11 A. I don't know.

12 Q. June 7, 2013, sound about right?

13 A. I think it was summertime, so I think
14 that would probably be pretty fair. I don't know
15 exactly though, but I believe that was very close.
16 I could look at my records and find out.

17 Q. You were paid twice a month; correct?

18 A. Yes.

19 Q. And that was the arrangement from the
20 start?

21 A. Yes.

22 Q. And you were paid through ADP with
23 withholding?

24 A. Yes.

25 Q. Did you keep records of the work you

ROA 0195



ROA 0196 54

1 A. No.

2 Q. Did you ask for any training for the
3 job that you'd be doing?

4 A. No.

5 Q. Did you feel like you needed any
6 training for the job --

7 A. No.

8 Q. You felt like your experience was --

9 A. More than enough.

10 Q. -- more than enough, okay. Did you
11 take any trips for work for MusclePharm Sportswear
12 during the time you worked for that company?

13 A. For them? Or my own trips?

14 Q. For them.

15 A. Yes.

16 Q. Paid for by MusclePharm?

17 A. Yes, by Apparel, not by MusclePharm.

18 Q. I mean by Apparel, right. When I say
19 MusclePharm, I mean MusclePharm Sportswear. How
20 many trips did you take?

21 A. I would say between -- I would say
22 about five trips.

23 Q. When was the first one?

24 A. Probably fall of that year, and we did
25 trade shows.

ROA 0196



ROA 0197₅₅

1 Q. Where were the trade shows?

2 A. Ohio and Vegas.

3 Q. Where in Ohio?

4 A. The Arnold, I believe, was in Ohio,
5 Arnold Trade Show. I'm not sure what town he
6 was -- where he was from or where it was placed. A
7 major city. Cleveland, Columbus. I'm not
8 positive. One of those.

9 Q. Does that refer to Arnold
10 Schwarzenegger?

11 A. Yeah.

12 Q. Okay.

13 A. And I believe we went to that show
14 once.

15 Q. And what did you do at that show?

16 A. The Arnold was in Ohio, so I would walk
17 around and look at trends. And then I would speak
18 to distributors with the international sales
19 manager about the apparel. But mostly I would take
20 the time to spot trends and see what we needed to
21 do.

22 Q. When you say spotting trends, you mean
23 trends in the industry --

24 A. Um-hum.

25 Q. Let me not guess. Why were you looking

ROA 0197



1 at the trends?

2 A. To design the apparel for them.

3 Q. For MusclePharm Sportswear?

4 A. Um-hum.

5 Q. Was there any sales-related work you
6 did at the trade shows, the one in particular in
7 the fall of 2013?

8 A. Did I do sales?

9 Q. Um-hum.

10 A. I would talk to distributors to explain
11 the product to them. The sales manager would sell
12 the product.

13 Q. Okay.

14 A. I would basically give them the
15 information on what the product was.

16 Q. Okay. Let's back up for a minute. You
17 mentioned names. What was Jeff Taylor's role with
18 MusclePharm Sportswear when you were there?

19 A. Office manager.

20 Q. Did he do anything else for MusclePharm
21 Sportswear? You said office manager. Did he do
22 any other work for them, any trips, any sales?

23 A. He went on the trips, but he wasn't --
24 he was an office manager. I don't have any other
25 title for him. But he would go on it. I know they

ROA 0199₆₁

1 A. I have no -- I think it was something
2 to do with he didn't have -- he either couldn't
3 come or there was a reason why he had Jeff always
4 being the sound board or the person to talk to.
5 But I never met him personally.

6 Q. Never met which one?

7 A. Scott.

8 Q. You met with Jeff at the rooftop;
9 correct?

10 A. Yes, and I met Jeff one other time, in
11 Colorado.

12 Q. Do you recall what that meeting was
13 about in Colorado?

14 A. That was a meeting I had with Brad, who
15 was the CEO at the time of MusclePharm Supplements,
16 and it was trying to fix the damage between Drew
17 and him of communication.

18 Q. Drew and Brad?

19 A. Brad.

20 Q. Okay. And just so we're clear, Brad
21 is --

22 A. Was the CEO.

23 Q. Of MusclePharm Corporation?

24 A. Yeah.

25 Q. Okay. When was that meeting when you

ROA 0199

ROA 0200 62

1 met with Brad and Jeff Kovlosky?

2 A. 2014, I believe.

3 Q. Was it the latter part of 2014? Do you
4 recall the month or season or --

5 A. I would say earlier. If I had to
6 guess, I would say earlier, springtime. At that
7 time, when Drew had hired me on, he had said they
8 worked together. But once I got involved, I
9 realized there was no communication between the two
10 companies. There was just nothing but headbutting
11 going on between them. And Drew was needed -- he
12 couldn't be the CEO of the apparel company because
13 Brad didn't want him to. So he had to show that he
14 had the ability, so he brought me in. At that
15 time -- and Brad and I got along fine when we met.
16 He's obviously a -- he's a business guy, you know.
17 He's hard to deal with. But when we went out
18 there, he believed I knew what I was doing, or, you
19 know, he understood I had the apparel business
20 down, the design aspect of it more than anything.
21 So -- and I believe I met -- I also met Brad a
22 second time -- I met him probably three times in
23 that year and a half.

24 Q. What were the other two meetings for?

25 A. Talk about apparel. The third meeting,

ROA 0200



ROA 0201₆₃

1 the last one, was in Las Vegas, I believe. And it
2 was really one of the things where he wanted me to
3 come and explain what the new line was for the next
4 year, because he was at that time wanting to
5 purchase -- not purchase, but to release the
6 licensee from Drew and wanted to see what was
7 coming out and how I could be -- you know, how
8 could I explain what I was thinking down the road.

9 Q. Would that have been -- for the next
10 year, would that have been in '14 or '13?

11 A. '14.

12 Q. So you met with him in '14 to talk to
13 him about '15?

14 A. '15, yeah.

15 Q. Is it fair to say for MusclePharm
16 Sportswear maybe apparel in general, that you go by
17 calendar year?

18 A. Yeah. You have seasons. It's seasons:
19 Spring, summer, fall, winter. We didn't have the
20 finances to do four seasons at MusclePharm
21 Sportswear. So we turned it into two seasons,
22 spring/summer, fall/winter. We had an issue -- we
23 would always try to -- typically in apparel, you
24 manufacture samples, and you get the feedback from
25 your biggest distributors, your licensees. And

ROA 0201



ROA 0202
65

1 You miss that whole thing. So we would play
2 catch-up constantly the whole year round.

3 Q. When you say we, you mean MusclePharm
4 Sportswear?

5 A. Yeah, Sportswear. The communication
6 with your vendors is key. You know, they went on
7 my 20-year, you know, history to say, all right,
8 Shane, we'll take care of you, we'll take care of
9 getting this started, we'll do this for you. But
10 then they weren't getting paid.

11 Q. One of those is Promo Ventures; right?

12 A. Every vendor.

13 Q. Okay. But Promo Ventures is one that
14 you brought to --

15 A. Yes.

16 Q. You made the introduction?

17 A. Yes.

18 Q. So they would provide product for
19 MusclePharm Sportswear?

20 A. Right, that's correct.

21 Q. Let me go back to the trips for a
22 minute. First trip, you said, was in the fall of
23 '13. You went to the Arnold show in Ohio?

24 A. I believe that was the very first one.
25 You probably have a chronicle or some order of when

ROA 0202



ROA 0203₆₆

1 the shows are. But I'm not sure if that was a
2 spring show or a fall show. But we did the Arnold
3 Schwarzenegger show. I remember it was a very big
4 show, and it was cold. So it had to be either
5 winter or early February or something, January or
6 February.

7 Q. Okay. You mentioned Las Vegas too.
8 Did you go to trade shows for MusclePharm
9 Sportswear in Vegas?

10 A. Yes, and that was called -- I believe
11 the Olympia is -- Olympia is Vegas, and Arnold is
12 Ohio. The LA Fitness show was in LA, and those are
13 the three shows that I went to. I don't know of
14 any other shows besides those three.

15 Q. Okay. Did you go to them each once, or
16 did you go to, say, the Vegas one twice?

17 A. I don't know if Vegas was more than
18 once a year. It could have been twice a year. So
19 I might have went there twice.

20 Q. Okay. Well, you mentioned
21 approximately five. So there might have been more.
22 You've given me three: The Arnold, the Olympia,
23 and LA Fitness. But you might have doubled up --

24 A. Yeah, I believe that the Olympia -- I
25 don't know if it was twice a year, but I went there

ROA 0203



ROA 0204 67

1 twice. LA Fitness once, and I think Arnold once.

2 Q. Okay.

3 A. So, yeah, four. I'm not positive. I'd
4 have to go back and look. I can easily look, but I
5 don't know.

6 Q. But as you sit here today, those are
7 the ones you recall?

8 A. Yes.

9 Q. Did MusclePharm Sportswear pay your
10 expenses for those trips?

11 A. Yes, they paid my flight and hotel and
12 food. They were my employer.

13 Q. Would it be fair to say you and Drew
14 were friendly in at least 2013 while you worked for
15 MusclePharm Sportswear?

16 A. Oh, yeah, no question.

17 Q. You came up here and met him and went
18 out for dinner with him?

19 A. Yeah, yeah.

20 Q. Obviously talking about business as
21 well; correct?

22 A. Yeah, of course, it was all business.
23 But, of course, yeah, I'm friendly with almost
24 everybody I ever meet. I don't have any issues not
25 to.

ROA 0204



ROA 0205₇₂

1 Q. What other vendors were you having
2 conversations with?

3 A. In what year?

4 Q. You said January 2015.

5 A. That was the only one that was not paid
6 at that time.

7 Q. Okay. Before that, were there other
8 vendors you were working to get paid -- or working
9 with --

10 A. Yes.

11 Q. Who were they?

12 A. Virus, Rockwell -- let's see, who
13 else -- OGO, any vendors that we really used.
14 There was a gentleman -- I'd have to look his name
15 up. I don't remember. RPM, I think -- or not
16 RPM --

17 Q. Stop there. What was the nature of
18 your communication with Virus, Rockwell, and these
19 other vendors?

20 A. Obviously making sure that the product
21 was manufactured correctly, first, you know,
22 design, mechanicals, making sure sampling was
23 right. Then they would turn to me, which I had no
24 control over, which would be the finance side of
25 when will we get paid. On my good word, they would

ROA 0205



ROA 0206₇₃

1 ship product, knowing they've done business with me
2 for 20 plus years.

3 Q. When you said they did business with
4 you, with Fuel; correct?

5 A. Yeah, with myself in general. I mean,
6 it could be something that I did -- I mean, I've
7 done a lot of other people's manufacturing over the
8 years. So I may have manufactured something at
9 Promo Ventures that had nothing to do with Fuel.
10 But I would go there and subcontract the work
11 through them. So they've known me for quite a
12 number of years. And those relationships got
13 strained.

14 I mean, the Virus guys, you know, we
15 didn't pay for months and months and months. And
16 these are guys that are friends of mine and don't
17 even speak to me anymore. And Rockwell, same
18 thing. They were good friends of mine. They won't
19 speak to me anymore. Those are all strained
20 relationships that I've, you know, come across from
21 this episode with MusclePharm.

22 Q. How were you communicating with these
23 companies? E-mail, phone?

24 A. Phone and e-mail.

25 Q. That's it?

ROA 0206



ROA 0207₇₈

1 show in, I think, October. I was still talking to
2 Brad. Brad really wanted me to come over. I don't
3 know when the letter actually was sent to me, what
4 month it was. But I was still working at
5 MusclePharm apparel for several months afterwards
6 tying up loose ends, making shipments go, make sure
7 the products -- things were taken care of. There
8 was no interest at that point in going to work for
9 Brad. I just saw the -- you know, for me, the
10 writing on the wall was they just -- it was very
11 difficult for them to do anything corporate-wise.

12 Q. Do you have a month in mind for that
13 timing when you decided it was not worth your time?

14 A. Probably January 2015 maybe. I'd have
15 to look at the records of when I e-mailed. We
16 e-mailed a few times, and just -- I didn't have an
17 interest.

18 Q. Did Drew tell you in August or
19 September 2014 that your job was going to be
20 ending?

21 A. In what month?

22 Q. August or September 2014.

23 A. No.

24 Q. Did he tell you that the company was
25 going to be sold or there was negotiations going on

ROA 0207



ROA 0208₇₉

1 with MusclePharm Corporate to take MusclePharm
2 Sportswear back over?

3 A. That was the whole goal of the
4 business.

5 Q. Right.

6 A. That was the goal when I came on was to
7 put it in a position to be sold back to them.

8 Q. Right. What I'm asking is, did there
9 come a time when you knew the negotiations between
10 MusclePharm Sportswear and MusclePharm Corporate
11 were actually taking place and was going to be
12 happening?

13 A. Yeah, at the end of 2014. I would say
14 at the end of -- I didn't think it was done until
15 2015. But I know my work there was done at the end
16 of 2014.

17 Q. Okay. And how did you know your work
18 was done at the end of 2014?

19 A. Because I hadn't been paid for the four
20 months. I got to a point where I was like; I can't
21 do any more. And I kept being promised I was
22 getting paid. The vendors weren't getting paid.
23 They didn't get -- they weren't getting their
24 money. There was a point where I said, this
25 doesn't make sense anymore. I'm literally chasing

ROA 0208



ROA 0209₈₂

1 Q. Did you ever suggest that method of
2 mediation with Drew to resolve your differences in
3 the end of 2014?

4 A. His communication just stopped with me.

5 Q. I'm asking if you ever asked him to
6 mediate the matter.

7 A. No.

8 Q. You agreed with Drew in October 2014,
9 actually in September of 2014, that you would take
10 \$5000 for September and 5000 for October as your
11 pay. Correct?

12 A. I suggested that, yes, I would take a
13 pay cut for the months coming -- that were coming
14 out, and I think it was September and October, if
15 I'm correct.

16 Q. And, again, that time frame, September,
17 October, you were also looking to get a full
18 position with MusclePharm Corporate; correct?

19 A. I wasn't. They offered me one, but I
20 wasn't looking for a job there.

21 (DFT. EXH. 1, One-page Document: Text
22 Messages, was marked for identification.)

23 BY MR. HUGE:

24 Q. I'm going to show you a text message
25 sequence that apparently was produced, and I will

ROA 0209



1 you because we wouldn't have had this.

2 MR. SCHMIDT: Okay. Let me confer with
3 him to make sure of that. If so, that will be the
4 limit of it. Take just a minute.

5 MR. HUGE: Just for the record, I don't
6 think that's proper, but do what you've got to do.
7 Actually, hey, John, there is -- I couldn't see it.
8 There is a Bates number right there. I'm assuming
9 you produced this.

10 MR. SCHMIDT: I don't know whether we
11 did or not, but I'll find out.

12 (Off-the-record conference.)

13 MR. SCHMIDT: He's seen it, so you can
14 ask him what we talked about.

15 BY MR. HUGE:

16 Q. Back on the record. Mr. Gould, have
17 you had a chance to review what's been marked as
18 Exhibit Number 1?

19 A. Yes.

20 Q. Can you identify what it is?

21 A. It looks like a text message, and I
22 don't know who it's from. It doesn't say.

23 Q. It's a series of text messages; is that
24 correct?

25 A. Yes.

ROA 0210



ROA 0211₈₅

1 Q. Are the text messages in the dark color
2 on the right, are those from you?

3 A. Yes.

4 Q. The text on the left that doesn't have
5 a box, in white, it says: What have you been doing
6 for four months? Has our action stuff keep you
7 busy? Didn't you and Drew agree on a numbers and
8 your expectations?

9 Can you read what your response is?

10 A. Yes. I told him I would finish out
11 September, October. He would split my salary for
12 those two months. He said Brad would bring me on
13 in October when this deal was done so I would not
14 lose out on any of my work. I...

15 Q. It continues.

16 A. Oh, you want me to -- okay. You asked
17 for this box right here.

18 Q. Yeah, well, I think it's cut in the
19 page. Keep going.

20 A. So it just basically says I've been
21 dealing with sales, shipments, productions,
22 factories that were looking for their money.

23 Do you want me to expand on that?

24 Q. No, let's stop there.

25 A. I mean, obviously these are -- go

ROA 0211



ROA 0212₉₅

1 Q. You go to the next page.

2 A. 10/6.

3 Q. We're going to get to that in a sec.

4 Do you know who the two people texting back and
5 forth are here?

6 A. This looks like it's from Drew asking
7 about Scott and Brad.

8 Q. And it's from Drew to you and back and
9 forth; right?

10 A. Yeah.

11 Q. Okay. Look at the bottom of Gould
12 0174.

13 A. Yeah.

14 Q. And let's skip the personal stuff
15 there. And then it says -- this is Drew -- well,
16 let me ask you. The dark boxes, that's your
17 texting? Just in general.

18 A. Yeah, yeah, to the right, yes.

19 Q. The ones to the right are you, and the
20 ones to the left are Drew?

21 A. Yes.

22 Q. Reading on the bottom of Gould 174 on
23 the left, which is Drew, it says: Spoke to Scott
24 yesterday. He's going to see about this weekend --
25 see this weekend how long he thinks buyout is.

ROA 0212



ROA 0213
100

1 Q. Down at the bottom you sent another
2 text dated October 6, 2014, 5:00 p.m., and it
3 reads: Do you want me to send the CC back to your
4 office or cut up?

5 That's referring to credit cards;
6 correct?

7 A. That's correct.

8 Q. Is that your credit card that was to
9 pay expenses for working for MusclePharm
10 Sportswear?

11 A. Yeah, that was for if I came up for a
12 hotel or fuel to get somewhere, yes. But I didn't
13 need it.

14 Q. Okay. On the next page, which is
15 marked Gould 0176, at the top there is another text
16 from you: I have a call with Scott tomorrow.

17 Do you recall if that call took place?

18 A. Let's read.

19 I had a call with Scott, but I didn't
20 want to call Scott.

21 I don't understand that.

22 Q. Let's go to the very top. There is an
23 eight-word question from Drew. It says: You can
24 cut it up. Any word from Brad?

25 Then your response: I had a call with

ROA 0213



ROA 0214
101

1 Scott tomorrow. I didn't want to call him until
2 after I talked to Scott on this takeover.

3 Is it fair to say that him in the first
4 sentence is Brad?

5 A. Yes, looks like it.

6 Q. Okay. So my question is, did you have
7 a call with Scott as indicated in that text?

8 A. I don't know if I actually spoke to
9 him, because numerous times I would call and never
10 get any response or answer. I mean, this stuff --
11 calling Scott or Brad or Drew for months never
12 happened. Those things were -- you'd call, you'd
13 get a voicemail, you'd leave a voicemail. To get
14 any response from any of these was like pulling
15 teeth.

16 Q. Let me ask another question. You know
17 who Clay Guida is; correct?

18 A. Yeah, he was our main fighter.

19 Q. Did Clay Guida ever wear Fuel Clothing
20 at an event where he was fighting?

21 A. Yes.

22 Q. When was that?

23 A. I don't know the time.

24 Q. Was it after you worked at MusclePharm
25 Sportswear?

ROA 0214



ROA 0215
104

1 don't know his job description.

2 Q. Do you have any reason to admit or deny
3 whether some girls hired by MusclePharm were
4 handing out Fuel Clothing accessories when you were
5 on a MusclePharm Sportswear trip?

6 A. The only girls that were hired by
7 MusclePharm were hired by me that were friends of
8 mine before I was with MusclePharm.

9 Q. Were they handing out Fuel gear --

10 A. No.

11 Q. -- at MusclePharm -- that never
12 happened at the LA Fitness Expo?

13 A. No.

14 Q. Do you have any idea why Drew Miller
15 would have said he saw that happening?

16 MR. SCHMIDT: Object to the form.

17 THE WITNESS: I have no idea why. But
18 there was never any product of Fuel that was handed
19 out at the MusclePharm booth in the LA Fitness show
20 by the girls that were hired by MusclePharm.

21 BY MR. HUGE:

22 Q. Did anyone hand out Fuel Clothing or
23 any other Fuel items at the LA FitNess Expo in 2013
24 or '14 when you were there working for MusclePharm
25 Sportswear?

ROA 0215



ROA 0216
105

1 A. Um-hum, I did.

2 Q. You did?

3 A. Yeah.

4 Q. Who did you hand out Fuel Clothing to?

5 A. Diane Dahlgren, who is a good friend of
6 mine. And I saw her there, and I already knew I
7 was going to see her there, so I gave her a pair of
8 socks.

9 Q. One pair? You gave her one pair of
10 socks?

11 A. Yeah. We were doing a sock for her.

12 Q. You didn't hand out anything else to
13 anyone else?

14 A. No.

15 Q. And you didn't hand out any other --
16 any Fuel clothing --

17 A. No.

18 Q. -- or items to --

19 A. No.

20 Q. Let me finish the question -- to anyone
21 at any of these other expos or events you went to
22 while working for MusclePharm Sportswear?

23 A. At any event, yes, I handed out Fuel
24 socks.

25 Q. Well, except for that instance, rather.

ROA 0216



ROA 0217
106

1 MR. SCHMIDT: Object to form.

2 BY MR. HUGE:

3 Q. The instance involving Diane -- you can
4 answer --

5 A. Yeah.

6 Q. -- Diane Dahlgren, there was no other
7 time which you handed out Fuel Clothing?

8 A. Yes, there was.

9 Q. Okay. When was that?

10 A. What show?

11 Q. Um-hum.

12 A. Probably Olympia. I hired those girls.
13 They were all friends of mine. So when they left,
14 I gave them Fuel socks when they left the
15 convention, when it was over.

16 Q. Did you give each girl one pair, or did
17 you give them two pairs?

18 A. I may have given them several pair, but
19 I always would do it when the show was over and my
20 work was done. Never during business hours, never
21 during the show in the booth.

22 Q. What do you consider business hours?

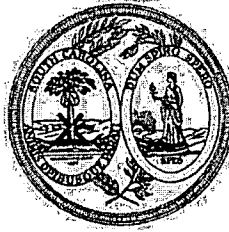
23 A. Business hours?

24 Q. Um-hum.

25 A. I think the shows were like 10:00 to

ROA 0217





ROA 0218

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

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July 18, 2016

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RE: *Gould v. Worldwide Apparel, LLC, et al.* (2015-CP-10-3220)

Gentlemen:

I ask that Mr. Schmidt prepare an order granting the plaintiff's Motion for Summary Judgment in the above referenced based upon arguments presented at the hearing on 7/12/2016. I conclude that the defendants are subject to and violated the *South Carolina Payment of Wages Act* when they reduced and refused to pay the plaintiff wages upon his severance from employment.

I thank you in advance for your prompt attention to this matter and with kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc

ROA 0218

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
BENJAMIN H. CULBERTSON, CIRCUIT COURT JUDGE

RECEIVED

Case No. 2015-CP-10-3220
Appellate Case No. 2016-002469

JUL 31 2017
SC Court of Appeals

Shane Gould, ... Respondent,

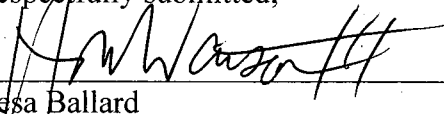
v.

Worldwide Apparel LLC, f/k/a
MusclePharm Sportswear LLC, and
Drew Ciccarelli, ... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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July 18, 2017