

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2015-CP-02-02389, Appeal Case No. 2017-002321

Edward Pugh,

Appellant,

v.

CB&I AREVA MOX
SERVICES, LLC and
Global Pundits Technology
Consultancy, LLC,

Respondents.

RECEIVED

MAY 14 2018

SC Court of Appeals

RECORD ON APPEAL

Volume I of II

Edward W. Pugh
1085 Old Clemson Hwy., Ste. E
Seneca, South Carolina 29672
(864) 723-7251
Appellant, Pro Se

Michael D. Carrouth and
Benjamin Dudek
c/o Fisher & Phillips, LLP
PO Box 11612
Columbia, South Carolina 29211
Attorneys for Respondent
(803) 255-0000

INDEX

<u>Volume I of II</u>	1-220
-----------------------------	-------

ORDERS

Order/Form 4 – Motion for Summary Judgement denied as to both parties	Sept. 8, 2016.....	5-6
Order/Form 4 – Order Granting Continuance (& Consent Motion for Continuance [no date])	Oct. 4 & 17, 2016.....	7-11
Order/ Consent for Withdrawal of Counsel	Dec. 16, 2016.....	12-16
Order/Form 4 - Continue Case 180 Days (& Hear Motion to Enforce on Feb 15, 2017)	Jan. 4, 2017.....	17
Order/Denying Motion to Enforce Written Agreement	Mar. 2, 2017.....	18-20
Order/Granting Motion to Compel and Motion to Comply	Aug. 14, 2017.....	21-23
Order/Form 4 - Denying Motion/Reconsider	Oct. 11, 2017.....	24-25

PLEADINGS

Plaintiffs Complaint	Oct. 8, 2015.....	26-49
Defendants' Answer	Dec. 16, 2015.....	50-58
Defendants' Amended Answer	Dec. 21, 2015.....	59-67
Plaintiffs Motion for Summary Judgment	July 29, 2016.....	68-89
Plaintiffs Memo in Support of Summary Judgment	Aug. 30, 2016.....	90-135
Defendants' Motion for Summary Judgment	Aug. 19, 2016.....	136-138
Defendants' Memo in Support of Summary Judgment and in Opposition to Plaintiffs Motion For Summary Judgment	Sept. 6, 2016.....	139-190
Defendants–Motion to Enforce Written Agreement	Jan. 4, 2017.....	191-197
Defendants - Memorandum in Support of Defs Motion to Enforce	Feb. 13, 2017.....	198-220

<u>Volume II of II</u>		221-373
Plaintiff - Memorandum to Deny Defendants Motion to Enforce Written Agreement, Feb. 15, 2017.....		221-238
Plaintiff - Exhibit A, Defense Proposed Order showing “preliminary agreement”		233
Plaintiff – Exhibit B, email from Defendant attorney Carrouth to Judge Early		234
Plaintiff – Exhibit C, Specific ~~Confidential~~ Settlement Information (attorney emails)		235-238
Defendants - Motion to Compel Plaintiff to Comply with/Order (March 2, 2017) Enforcing Written Agreement June 7, 2017.....		239-242
Plaintiff - Motion to Declare Agreement to Settle Null, Void, Non-binding, July 3, 2017.....		243-247
Plaintiff - Motion for Continuance, Case 180 days from 8-21-17 July 3, 2017.....		248-250
Plaintiff - Memorandum to Deny Defense Motion to Enforce and Memo to Support Plaintiff’s Motion to Declare Agreement to Settle Null, Void July 18, 2017.....		251-302
Exhibit A – Defendant’s proposed Order Granting Continuance (previous filing)		265-266
Exhibit B – Defendant’s letter to Judge Early via email dated December 16, 2016 presenting the Motion for Continuance.....		267-268
Exhibit C, ~~Confidential~~ – Three (3) pages of a November 17, 2016 email thread between Plaintiff’s counsel Summerlin and Defense Counsel Christy (Landsdowne) Rogers.....		269-271
Exhibit D – Jan 4, 2017 Defense Motion to Enforce Written Agreement, page 2.....		272-273

Exhibit E – Four (4) pages of a December 20, 2016 email thread from Plaintiff to Defense counsel and their personnel, Defendants, and Judge Early’s Clerk 275-278

Exhibit F, ~~Confidential~~ – Two (2) page letter dated March 15, 2017 from Defense Counsel Carrouth to Plaintiff, with six (6) page attachment of “Settlement Agreement” signed by Plaintiff on November 11, 2016, and Three (3) page Order Denying Defendant’s Motion to Enforce Written Agreement = 11 pages..... 279-289

Exhibit G, ~~Confidential~~ – Signed two (2) page September 30, 2016 “Agreement to Settle” 290-291

Exhibit H – Supreme Court Opinion No. 26120 – 4 pages..... 292-296

Exhibit I – Court of Appeals Opinion No. 3118 – 5 pages..... 297-302

Defendants - Memo in Support of Def Motion to Compel Plt to Comply w/Order July 20, 2017..... 303-305

Defendants - Affidavit of Rolland Norton July 20, 2017..... 306-307

Defendants - Memo in Opposition July 20, 2017..... 308-312

Plaintiff – Plaintiff’s Motion for Reconsideration Aug. 23, 2017..... 313-316

Defendants - Memo in Opposition Aug. 24, 2017..... 317-319

Plaintiff - Response to Defense Memo in Opposition Sept. 1, 2017..... 320-326

TRANSCRIPTS

Transcript of Proceedings (CR Ms. Cheri L. Young), Motion Hearing January 4, 2017 pp. 1-9..... 327-335

Transcript of Proceedings (CR Ms. Bethanie K. Creppon), Motion Hearing from February 15, 2017 pp. 1-14..... 336-349

Transcript of Proceedings (CR Ms. Cheri L. Young), Motion Hearing July 24, 2017 pp. 1-21..... 350-370

OTHER MATERIALS OR DOCUMENTS

Email August 10, 2017 from Defense counsel Dudek
to Plaintiff Pugh with thread to Judge Early Law Clerk
Ms. Hannah Marsh regarding status of Motions from
July 24, 2017 Hearing and request to prepare Judge Early
an Order

Aug. 10, 2017..... 371-372

Email August 11, 2017 from Defense counsel Dudek
to Judge Early Law Clerk Ms. Hannah Marsh with
Defendant's proposed Order for Judge Early to Grant
Defendant's Motion

Aug. 11, 2017..... 373

CERTIFICATE OF APPELLANT

CERTIFICATE..... 374

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-02-02389

Edward Pugh

CB&I AREVA Mox Services LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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

MOTION FOR SUMMARY JUDGMENT DENIED AS TO BOTH PARTIES. NO FORMAL ORDER FORTHCOMING.

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.

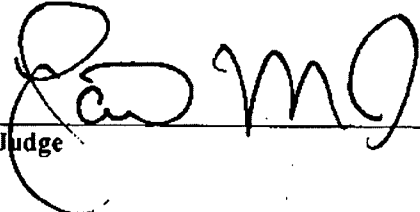
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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.

FILED 9/8 2016

Shirley S. 374
J. B. 443
C. M. Payne
S. 21


Circuit Court Judge

2155
Judge Code

9-7-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Sept, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Sept, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Clerk of Court by Ashley M. Payne
CLERK OF COURT

Court Reporter:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Edward Pugh,)
)
Plaintiff,)
)
v.)
)
CB&I AREVA MOX Services,)
LLC, and Globalpundits Technology)
Consultancy, LLC,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

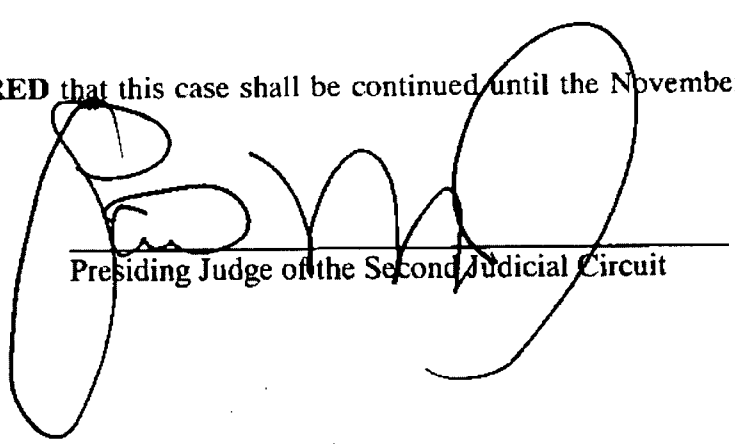
ORDER GRANTING CONTINUANCE

FILED 10/17 2016
Rei Gadard
Clerk of Court
Asst. Clerk M. Payne
12:45

This matter comes before me on the consent of the parties to continue this case until the jury term of November 2016.

The parties mediated this case on September 30, 2016 and came to a preliminary agreement that should be finalized within two weeks of that date. However, because this case is on the October 10, 2016 trial docket, the parties will be unable to finalize the agreement prior to appearing for trial.

THEREFORE, IT IS ORDERED that this case shall be continued until the November 2016 jury term.



Presiding Judge of the Second Judicial Circuit

Aiken, SC

October 4, 2016

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0202389**

Edward Pugh		CB&I AREVA MOX Services LLC	Globalpundits Technology Consultancy LLC
--------------------	--	--	---

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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:

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)

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.**

For Clerk of Court Office Use Only

This judgment was entered on **10/17/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **10/17/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy Randall Summerlin 307 Pettigru Street Greenville,
SC 29601

Christina Landsdowne Rogers Fisher & Phillips, LLP 1320
Main Street, Suite 750 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard by Ashley M. Payne
Liz Godard - Clerk of Court

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.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Case No. 2015-CP-02-02389
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CB&I AREVA MOX Services,	)	
LLC, and Globalpundits Technology	)	
Consultancy, LLC,	)	
	)	
Defendants.	)	
	)	

CONSENT MOTION FOR CONTINUANCE

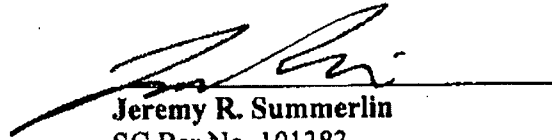
COME NOW Defendants CB&I AREVA MOX Services, Globalpundits Technology Consultancy, and Plaintiff Edward Pugh and move this Court for an Order granting a continuance of this case until the November 2016 jury trial docket. The parties mediated this case on September 30, 2016 and came to a preliminary agreement that should be finalized within two weeks of that date. However, because this case is on the October 10, 2016 trial docket, the parties will be unable to finalize the agreement prior to appearing for trial.

WHEREFORE, the parties request that this Court grant their Motion and issue an Order to continue that case until the November 2016 jury trial term.

[signatures on following page]

Respectfully submitted,

HORTON LAW FIRM, P.A.



Jeremy R. Summerlin

SC Bar No. 101383

jsummerlin@hortonlawfirm.net

307 Pettigru Street

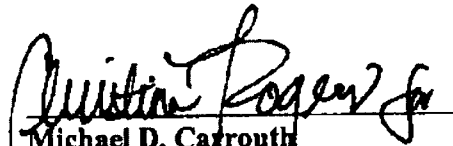
Greenville, South Carolina 29601

Telephone: (864) 233-4351

Facsimile: (864) 242-4885

Attorney for Plaintiff

FISHER & PHILLIPS, LLP



Michael D. Carrouth

mcarrouth@fisherphillips.com

1320 Main Street, Suite 750

Columbia, SC 29211

Telephone: (803) 255-0000

Facsimile: (803) 255-0202

Attorneys for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

v.

CB&I AREVA MOX Services,
LLC, and Globalpundits Technology
Consultancy, LLC,

Defendants.

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

CONSENT ORDER FOR WITHDRAWAL OF COUNSEL

This matter comes before me on a consent motion to permit Plaintiff's counsel, Jeremy R. Summerlin, to withdraw as counsel in the above-captioned matter. Plaintiff Edward Pugh has consented to Mr. Summerlin's withdrawal as counsel. Plaintiff's counsel has also consulted with counsel for Defendants, Michael Carrouth, who has consented to this motion. Plaintiff further seeks a temporary stay of proceedings until January 1, 2017 so he can retain new counsel. I find that this motion was made in good faith and not for purposes of delay.

THEREFORE, IT IS ORDERED that Mr. Summerlin be relieved of further representation of Plaintiff Edward Pugh and that all proceedings will be stayed until January 1, 2017 so that Mr. Pugh can retain new counsel.

[signatures on following page]

FILED 12.15.16
Li. Leland
CLERK OF COURT
W. Sample
Deputy Clerk

WE SO MOVE/CONSENT:

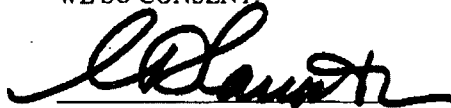


Jeremy R. Summerlin
SC Bar No. 101383
jsummerlin@hortonlawfirm.net
307 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 233-4351
Facsimile: (864) 242-4885
Attorney for Plaintiff

 Dec 6, 2016

Edward Pugh
edwardpugh@myexcel.com
1085 Old Clemson Hwy, Ste. E
Seneca, SC 29672
Telephone: (864) 723-7251
Plaintiff

WE SO CONSENT:



Michael D. Carrouth
mcarrouth@fisherphillips.com
1320 Main Street, Suite 750
Columbia, SC 29211
Telephone: (803) 255-0000
Facsimile: (803) 255-0202
Attorney for Defendants

I SO ORDER:


Presiding Judge of the Second Judicial Circuit

Aiken, SC

12.15, 2016

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Edward Pugh,

☒ Plaintiff

CASE NO.

2015-CP-02-02389

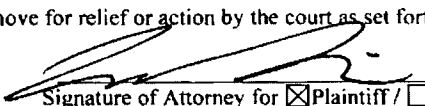
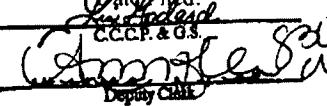
v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

CB&I AREVA MOX Services, LLC, and

Globalpundits Technology Consultancy, LLC

☐ Defendant.

Plaintiff's Attorney: Jeremy R. Summerlin Bar No. 101383 Address: 712 E. Washington Street, Greenville, SC 29601 phone: 864-242-4800 fax: 864-242-4885 e-mail: jsummerlin@aallawfirm.com other:		Defendant's Attorney: Michael D. Carrouth Bar No. Address: 1320 Main St., Ste 750, Columbia, SC 29211 phone: 803-255-0000 fax: 803-255-0202 e-mail: crogers@laborlawyers.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion:		Court Reporter Needed: ☐ YES / ☐ NO	
Estimated Time Needed:			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		December 12, 2016 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____	
		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____ Clerk of Court	
☒ MOTION FEE COLLECTED: <u>CK# 3572</u>		 Deputy Clerk	
☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0202389

Edward Pugh		CB&I AREVA MOX Services LLC	Globalpundits Technology Consultancy LLC
-------------	--	--------------------------------	--

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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: _____

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)

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

12/16/2016

Date

For Clerk of Court Office Use Only

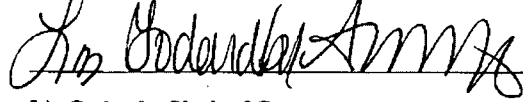
This judgment was entered on **12-15-16**, and a copy mailed first class or placed in the appropriate attorney's box on **12-15-16**, to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy Randall Summerlin 307 Pettigru Street Greenville,
SC 29601 mailed and email

Christina Landsdowne Rogers - via email
Edward Pugh via email

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Liz Godard - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

Edward Pugh

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP02 2389 ASK

CBT AREVA MOX Services

LC et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

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

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Case is continued ^{180 days} past the January 9th jury term. motion to enforce settlement/written agreement will be heard February 15, 2017 @ 1:30 pm

Dated at Aiken, South Carolina, this 4 day of January, 2017.

Michael D. Carrouth
PRESIDING JUDGE

This judgment was entered on the 5 day of Jan, 20 17, and a copy mailed first class this 5 day of Jan, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Edward Pugh

Michael D. Carrouth

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Robert J. Harte by Amglo d/c
CLERK OF COURT

SCCA SCRPC Form 4 Revised 06/2008

Defendants.

FILED

Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk


Doyet A. Early III
Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0202389

Edward Pugh

CB&I AREVA MOX
Services LLC

Globalpundits
Technology Consultancy
LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ 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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: _____

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)

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

3/2/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on 3-2-17, and a copy mailed first class or placed in the appropriate attorney's box on 3-2-17, to attorneys of record or to parties (when appearing pro se) as follows:

Edward Pugh 1085 Old Clemson Hwy Ste E Seneca, SC
29672

Christina Landsdowne Rogers Fisher & Phillips, LLP 1320
Main Street, Suite 750 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Robert J Harte by S Park
D/C

Court Reporter

Robert J Harte - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Edward Pugh,)
Plaintiff,)
vs.)
CB&I AREVA MOX Services, LLC)
and Globalpundits Technology)
Consultancy, LLC)
Defendants.)

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL PLAINTIFF
TO COMPLY WITH ORDER
ENFORCING WRITTEN AGREEMENT**

This matter comes before me on Defendants' Motion to Compel Plaintiff to Comply with my prior Order regarding the enforcement of a Written Agreement ("Agreement to Settle") reached by the parties following mediation on September 30, 2016. In that Order, filed March 2, 2017, the Court found the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) should not be included as "Released Parties" in a comprehensive settlement agreement. However, the Court only denied Defendants' Motion "as to any parties other than those named in the complaint." Pursuant to the March 2, 2017 Order, Plaintiff was obligated to execute a comprehensive settlement agreement with the parties named in the complaint. Plaintiff has not filed any motion to have this Order reconsidered.¹

Following the Court's Order, Defendants attempted to have Plaintiff execute an appropriate comprehensive settlement agreement on several occasions. Plaintiff rejected these efforts, and Defendants filed the instant Motion to compel Plaintiff's compliance on June 2, 2017. The Court

¹ To the extent Plaintiff's Motion to Declare Settlement Null, Void, Non-Binding filed on July 3, 2017, could be considered a Motion to Alter or Amend the March 2, 2017 Order, the Motion is denied. *See* Rule 59(e), SCRC ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order)."

now grants Defendants' Motion and compels Plaintiff to comply with its March 2, 2017 Order by executing a final settlement agreement with Defendants in accordance with the express terms of the September 30, 2016 "Agreement to Settle."

Due to the Court's disposition of the foregoing Motions, it unnecessary to address any outstanding motions, including: (1) Defendants' Motion for a Protective Order filed June 2, 2017; and (2) Plaintiff's Motion for Continuance filed July 3, 2017. The Clerk of Court is directed to remove this matter from the Jury Trial roster.

IT IS SO ORDERED.

Doyet A. Early, III
Circuit Court Judge, Second Judicial Circuit

Dated this ____ day of August 2017.



Aiken Common Pleas

Case Caption: Edward Pugh VS CB&I AREVA MOX Services LLC , defendant,
et al
Case Number: 2015CP0202389
Type: Order/Other

So Ordered

s/D.A. Early III 2136

Electronically signed on 2017-08-12 07:36:45 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-02-02389

Edward Pugh

CB&I AREVA MOX Services, LLC and
Globalpundits Technology Consultancy, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Edward Pugh

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.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCp; ☐ 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: After full consideration, Plaintiff Edward Pugh's Motion to Reconsider is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

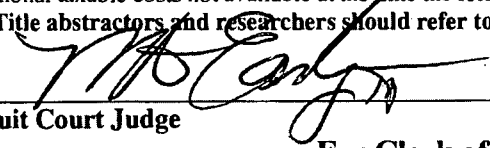
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
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
SCRCp Form 4C (12/2011)

Page 1

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2136

Judge Code

10/11/2017

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh

Plaintiff(s)

vs.

CB&I AREVA MOX Services, LLC., and
Globalpundits Technology Consultancy, LLC,

Defendant(s)

Submitted By: Jeremy Summerlin

Address: Law Office of W. Andrew Arnold, P.C.

712 E. Washington Street

Greenville, SC 29601

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP- 02- 02389

SC Bar #: 10183

Telephone #: 864-242-4800

Fax #: 864-242-4885

Other:

E-mail: jsummerlin@aalawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☒ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -NI- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature:

FILED

October 8, 2015

W. Andrew Arnold
C.C.P. & S.
Deputy Clerk

Date: October 6, 2015 9:50am

Note: Frivolous civil proceedings may be subject to sanctions pursuant to 26 C.F.R. 41, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
Edward Pugh,)
)
Plaintiff,)
)
v.)
)
CB&I AREVA MOX Services,)
LLC, and Globalpundits Technology)
Consultancy, LLC,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

SUMMONS

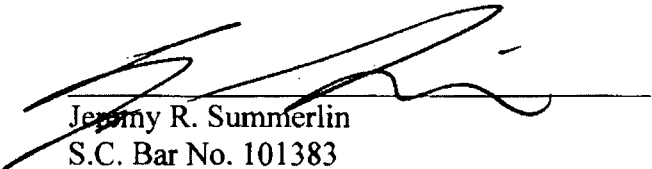
FILED October 8, 2015
Sp. Lord
Clk. C.P. & C.S.
9:50am

TO THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,

LAW OFFICE OF W. ANDREW ARNOLD, P.C.


Jeremy R. Summerlin
S.C. Bar No. 101383
712 E. Washington St.
Greenville, SC 29601
864.242.4800 864.242.4885 fax
jsummerlin@aalawfirm.com
ATTORNEY FOR PLAINTIFF

October 6th, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Edward Pugh,)
)
Plaintiff,)
)
v.)
)
CB&I AREVA MOX Services,)
LLC, and Globalpundits Technology)
Consultancy, LLC,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

**COMPLAINT
(JURY TRIAL DEMANDED)**

FILED October 8, 2015
Lea Godard
9:50am

Plaintiff Edward Pugh ("Plaintiff"), by and through his counsel, brings this claim against Defendant CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC (collectively "Defendants"), based on the allegations set forth below.

PARTIES

1. Plaintiff is a citizen and resident of the County of Oconee, South Carolina.
2. Defendant CB&I Areva MOX Services, LLC ("MOX") is a South Carolina company that is licensed to do business in South Carolina and has its principal place of business in Aiken County, South Carolina.
3. Defendant Globalpundits Technology Consultancy, LLC ("Globalpundits") is a South Carolina company that is licensed to do business in South Carolina and has its principal place of business in Lexington County, South Carolina.

JURISDICTION

4. This Court has subject matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.
5. This Court has personal jurisdiction over Defendant MOX and Defendant Globalpundits because (1) they are companies that are doing business in South Carolina, (2) they

29 of 374

maintain their principal places of business in South Carolina, and (3) they have purposely availed themselves of the rights and privileges afforded to them under South Carolina law.

VENUE

6. Venue is proper in this circuit under South Carolina Code § 15-7-30(B) because Defendant MOX has established its headquarters in Aiken County and it does business in Aiken County; Defendant Globalpundits provides workers for MOX in Aiken County; and the acts or omissions that are the subject of this action occurred in Aiken County, South Carolina.

APPLICABLE LAW

7. This action is brought pursuant to the South Carolina Wage Payment Statute (S.C. Code Ann. § 41-10-10, *et seq.*), the South Carolina Declaratory Judgment Act (S.C. Code Ann. 15-53-10, *et seq.*), and the common law of South Carolina.

FACTS

8. Defendant MOX has an agreement with the National Nuclear Security Administration to design, build, and operate a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site in Aiken, South Carolina.

9. Defendant MOX contracts with third party contractors to perform the work on the actual facility. One of these contractors is Globalpundits, which is based in Lexington, South Carolina. Globalpundits works as a middleman to arrange for engineers and other workers with the needed skills to come work at the Savannah River Site.

10. Plaintiff Edward Pugh is a welding engineer, with over 30 years of experience in his field. He has worked as a welding engineer on projects all across the United States, as well as in foreign countries. The offer of Jobsite Living Expenses by employers has almost always played a part in Plaintiff's decision to accept such employment.

11. In October 2012, Plaintiff signed an employment contract (“Employment Contract”)¹ with Globalpundits to serve as a materials engineer for Globalpundits’ client, MOX (then called Shaw Areva MOX Services, LLC).

12. Along with the description of pay and other benefits, the Employment Contract includes a paragraph related to the provision of Jobsite Living Expenses (“JLE”), which was to be provided and paid by MOX and administered by Globalpundits. The paragraph cites to the “JLE Policy attached” to the Employment Contract.

13. On October 15, 2012, Globalpundits also issued Plaintiff “Globalpundits Clarification of MOX JLE Policy,”² which required Plaintiff to acknowledge by signing that it was his “responsibility to ensure that [he] notify Globalpundits if at any time [he was] no longer eligible for JLE. [He] also authorize[d] Globalpundits to deduct any overpayment of JLE from [his] paycheck.”

14. The JLE Policy referred to in the Employment Contract is entitled “Subcontractor Job Site Living Expenses (JLE)” (referred to hereinafter as “JLE Policy”).³ The JLE Policy was revised in February 2012, as noted in the footer at the bottom of the page.

15. The Employment Contract and JLE Policy constitute a contract between Plaintiff and Defendants.

16. The JLE Policy states that MOX has a need to fill vacant positions “with permanent personnel,” and that during this search for permanent personnel, MOX will be using “staff augmentation subcontractor employees” to “occupy such positions on an as-needed basis”; the JLE was offered to these employees to “accomplish the purpose of MOX Services” by attracting the employees necessary to fill the temporary positions until permanent workers could be hired. (JLE Policy, Paragraph 1).

¹ Attached as Exhibit 1.

² Attached as Exhibit 2.

³ Attached as Exhibit 3.

17. The JLE Policy further states that “a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred).” (JLE Policy, Paragraph 1).

18. Plaintiff owns a residence in Walhalla, South Carolina (Oconee County). This residence is approximately 130 miles from the MOX jobsite where Plaintiff has been employed.

19. Plaintiff has owned this property since 2006 and this residence since 2011, and has paid regular property taxes and utilities on the property and residence at all times during his ownership. This address is his permanent address for IRS tax purposes.

20. Since beginning his employment with MOX and Globalpundits in Aiken, Plaintiff has incurred a separate expense for his local housing in Aiken, as the 130 miles to his home in Seneca would be time- and cost-prohibitive to return to every evening.

21. Plaintiff was hired on October 8, 2012. As part of his employment paperwork, he received the JLE Policy. The promised provision of JLE to Plaintiff was a significant basis for Plaintiff's decision to accept ongoing employment so far from his home in Seneca.

22. Plaintiff applied for JLE on November 2, 2012, which was denied by MOX on January 9, 2013 for reasons that were false.

23. Plaintiff has made innumerable attempts to provide Defendants with all the additional information that they requested, and Defendants have continued to refuse to pay him the JLE. This included Plaintiff's use of the MOX Employee Concerns Program and meeting with two different MOX presidents.

24. Plaintiff submitted his “Expense Report—Jobsite Living Expenses” forms on a weekly basis, as required by the JLE Policy, until October 2014.

25. Defendants still have not compensated Plaintiff for his jobsite living expenses, which totals \$59,758.85.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

27. Plaintiff and Defendants are interested persons or entities in a written contract (i.e., the Employment Agreement and JLE Policy, attached as Attachments 1 and 3) whose rights, status, or other legal relations are affected by such contract, and Plaintiff presents questions of construction or validity arising under the contract and to obtain a declaration of rights, statute, or other legal relations under state law.

28. This action seeks declaratory and equitable remedies.

29. Questions of law concerning the construction or validity arising under the Employment Agreement and JLE Policy exist, and questions of law exist as to the rights, status, or other legal relations of the parties under state law.

30. The Employment Agreement and the JLE Policy constitute the contract between Plaintiff and Defendants.

31. Plaintiff has met the requirements of JLE, as laid out in the JLE Policy, and he should be compensated by Defendants as agreed to under the Policy.

32. Plaintiff was promised in the Employment Contract and JLE Policy that he would receive JLE, and he based his decision to work for Defendants on that promise. The JLE was to be provided as part of Plaintiff's compensation. Therefore, the JLE constitutes wages under the South Carolina Wage Payment Act.

33. There is a justiciable controversy between the parties concerning the matters in this First Cause of Action, and a declaratory judgment would terminate the uncertainty or controversy giving rise to this proceeding.

SECOND CAUSE OF ACTION
(Breach of Contract)

34. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

35. The Employment Contract and the JLE Policy constitute the terms of the contract entered into by Defendants and Plaintiff.

36. The Employment Contract and the JLE Policy provide for Plaintiff to receive JLE for up to two years while Plaintiff is employed by Defendants.

37. Plaintiff met all requirements to receive the JLE.

38. Defendants failed to pay the promised JLE to Plaintiff, which is a breach of the contract.

39. Plaintiff has suffered damages from this breach in the form of unpaid JLE.

THIRD CAUSE OF ACTION
(Unpaid Wages Under S.C. Wage Payment Act)

40. Plaintiff incorporates by reference all prior allegations into this Third Cause of Action.

41. Plaintiff earned compensation in the form of JLE, according to the promise made to him by Defendants in the Employment Contract and the JLE Policy. The JLE constitutes "wages" under South Carolina Code § 41-10-10, *et seq.*

42. Defendants meet the definition of "employers" under South Carolina law and under the Wage Payment Statute. Plaintiff was an employee of Defendants.

43. Despite efforts by Plaintiff, Defendants refuse to pay all wages due. Defendants owe Plaintiff a total of \$59,758.85.

44. Defendants' failure to pay Plaintiff wages is willful and in bad faith.

45. Plaintiff is entitled to a judgment awarding all wages due, treble damages, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against the

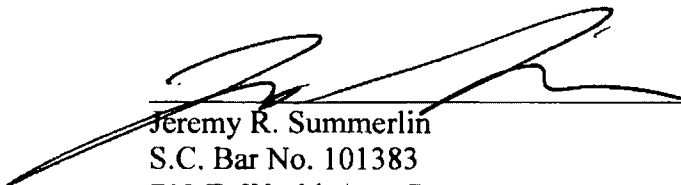
Defendants as follows:

- a. Declare the Employment Contract and the JLE Policy to be the contract between Plaintiff and Defendants;
- b. Declare that Plaintiff has met all of the contractual requirements to qualify for JLE;
- c. Declare that the JLE to be provided under the Employment Contract and the JLE Policy constitutes wages as defined by the South Carolina Wage Payment Act;
- d. Award Plaintiff all unpaid JLE;
- e. Award Plaintiff all unpaid wages;
- f. Award Plaintiff treble damages for unpaid wages under the S.C. Wage Payment Act;
- g. Award Plaintiff reasonable attorneys' fees and costs; and
- h. Award Plaintiff such other legal and equitable relief, including pre-judgment and post-judgment interest, as this Court may deem proper.

Dated this 6th day of October, 2015.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.



Jeremy R. Summerlin
S.C. Bar No. 101383
712 E. Washington St.
Greenville, SC 29601
864.242.4800 864.242.4885 fax
jsummerlin@aalawfirm.com
ATTORNEY FOR PLAINTIFF

Attachment 1

FILED October 8, 2001
John H. Ford
Lisa Comer
9:50am



October 4, 2012

Edward Pugh
edwardpugh@myexcel.com

EMPLOYMENT OFFER LETTER

Dear Ed,

Globalpundits, Inc. is pleased to offer you a regular full-time exempt position as a **Materials Engineer** at our client location, **Shaw Areva MOX Services, LLC (MOX)** in Aiken SC. This offer of employment is contingent upon successful completion of a background and drug screen, providing legal proof of your identity and authorization to work in the United States, and approved TOR from MOX. Your tentative start date will be Monday, October 8, 2012. Your salary will be based upon an hourly rate of \$75.00 (seventy-five dollars and zero cents) per hour on all hours worked and approved by your End User (Mgr) at MOX in accordance to the Company's standard payroll practices for exempt employees. You will be eligible for additional compensation of \$75.00 (seventy-five dollars and zero cents) per hour over 40 hours and approved in advance by your End User. You are also eligible to accrue PTO benefits bi-weekly at the rate of 4.615 hours for a total of 120 hours per year and 8 paid holidays at 8 hours per holiday.

In addition to your compensation, you will be eligible to participate in the Globalpundits Employee Benefits-MOX on the attached summary. You will be eligible for Health Insurance, Dental, 401k and Voluntary benefits on November 1, 2012. Globalpundits pays bi-weekly on Friday one week in arrears via direct deposit. Your first paycheck will be Friday, October 19, 2012 for the approved hours for week ending October 12, 2012. Approved weekly time sheets must be sent to timesheet@globalpundits.com by 10:00am each Monday. We use HR Online to give you online access to your pay and benefit information. You will receive a login and password separately. All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes. Globalpundits will make deductions for state and federal income tax, and FICA. Other deductions include those elected for insurance and benefits. Specifically, Globalpundits reserves the right to make deductions from your final paycheck for the following reasons: advance unearned PTO and advanced JLE expenses not approved by MOX.

If you are requesting MOX Services Jobsite Living Expense (JLE Policy attached) this must be approved prior to receiving reimbursement of temporary expenses. We have attached forms necessary to obtain approval and process these requests going forward. You will send in your EXPENSE REPORT- Jobsite Living Expense forms weekly with your timesheet.

Like all Company employees, you will be required, as a condition to your employment with the Company, to sign the Company's standard NON-COMPETITION, NON-DISCLOSURE, AND NON-SOLICITATION AGREEMENT FOR EMPLOYEES, a copy of which is attached. Your employment with the Company will be "at will," meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term.

Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company.

You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter and the enclosed Non-Disclosure Agreement. This offer is contingent upon your review and acceptance of our Standard Employee Agreement, a favorable response from your references, successful completion of a Background and Drug Screen, and our review and verification of your identity and employment authorization documents as set forth in the Immigration Reform and Control Act. In addition, you also agree to adhere to all the policy and procedures of MOX to include but not limited to Environmental Health and Safety, WorkPlace Substance Abuse Program, General Employee Training and Annual Employee Training, Security Education, MOX Security, and Confidentiality of Information

Additionally, please be aware that when a personally/private owned vehicle (personally owned vehicle, subcontractor vehicle, vendor, etc.) is pulled for a random vehicle inspection at a perimeter barricade, WSI-SRS, in addition to checking for required security badges and conducting a search of the vehicle, will also ask for driver's license, registration and proof of insurance. A driver is required to have all of these documents in order to drive the vehicle and is required to have these documents on his/her person or in his/her vehicle. Anyone not having these documents is subject to being denied Site access, and, if in violation of a law, being cited for the violation.

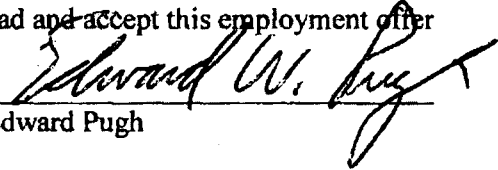
Please be aware that our client, Shaw Areva MOX Services, LLC, has the right to offer you a regular full-time employment after 90 days on the project unless the duration of the assignment will be less than six (6) months. You are not obligated to accept a regular full-time employment offer. We will send you a separate email next week on how to enroll in the Health, Dental, 401k and Voluntary Benefits with Colonial Insurance.

We will need this offer letter signed and returned along with all the attached forms as soon as possible. We look forward to you joining our team. If you have any questions, please feel free to call Stephanie O'Neal at 803-354-9400 regarding questions during this onboarding process.

Sincerely,

Joe Doyle
Director of Recruiting and Sales

I have read and accept this employment offer

Signed: 
Edward Pugh

THIS AGREEMENT DOES NOT CREATE AN EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT BETWEEN THE PARTIES HERETO, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT EMPLOYEE'S RELATIONSHIP WITH GLOBALPUNDITS IS AT-WILL, WHICH MEANS IT MAY BE TERMINATED BY EITHER PARTY AT ANY TIME AND FOR ANY OR NO REASON.

**NON-COMPETITION, NON-DISCLOSURE, AND NON-SOLICITATION
AGREEMENT FOR EMPLOYEES**

This Non-Competition, Non-Disclosure, and Non-Solicitation Agreement ("Agreement") is entered into this 11th day of October by and between Globalpundits, Inc. ("GLOBALPUNDITS") and [Edward Pugh] ("EMPLOYEE"). 2012

GLOBALPUNDITS wishes to engage EMPLOYEE, and EMPLOYEE desires employment with GLOBALPUNDITS. EMPLOYEE and GLOBALPUNDITS acknowledge and agree that by virtue of the services to be performed by EMPLOYEE for GLOBALPUNDITS and the special knowledge of GLOBALPUNDITS' business, customers, and operations that EMPLOYEE will gain as a result of EMPLOYEE'S employment with GLOBALPUNDITS, GLOBALPUNDITS has a legitimate interest in entering into this Agreement with EMPLOYEE.

1. EMPLOYEE COVENANTS

(a) **Covenant Not To Compete:** EMPLOYEE agrees that so long as EMPLOYEE is employed by GLOBALPUNDITS and for a period of twelve (12) months following the cessation of EMPLOYEE'S employment with GLOBALPUNDITS for any reason, EMPLOYEE shall not accept employment with a competitor of GLOBALPUNDITS in the same or similar capacity as EMPLOYEE held with GLOBALPUNDITS, or act as a consultant, contractor, or advisor for a competitor of GLOBALPUNDITS if such position involves rendering services or advice the same or similar as EMPLOYEE provided to GLOBALPUNDITS, or enter into competition with GLOBALPUNDITS, either by himself [or herself] or through any entity owned or managed in whole or in part (ownership does not mean holding less than 5% of stock in a publicly traded company) by EMPLOYEE, in any county or other locality in any state in which EMPLOYEE engages in GLOBALPUNDITS' business and/or in which EMPLOYEE has contacted, solicited, or provided services to a customer of GLOBALPUNDITS during the last twenty-four (24) months of EMPLOYEE'S employment with GLOBALPUNDITS.

The term "competitor" as used in this Agreement is defined to include any entity primarily engaged in the same or similar business as GLOBALPUNDITS. EMPLOYEE acknowledges and agrees that this covenant is intended to protect the investment GLOBALPUNDITS has made and will make in continuing to employ and train EMPLOYEE, and that the restrictions contained herein are reasonable in duration and geographic scope.

The term "customer" as used in this Agreement is defined to include those customers with whom EMPLOYEE had material contact (i.e., direct contact on behalf of GLOBALPUNDITS or indirect contact by virtue of supervising others who had direct contact on behalf of GLOBALPUNDITS) or provided services to within the twenty-four (24) month period immediately preceding EMPLOYEE'S separation from employment for any reason.

(b) Covenant Not To Solicit Or Service Customers: EMPLOYEE agrees that for a period of twelve (12) months following the cessation of EMPLOYEE'S employment with GLOBALPUNDITS for any reason, EMPLOYEE shall not, directly or indirectly, on EMPLOYEE'S own behalf or behalf of any competitor, service, solicit, or attempt to service or solicit, any of GLOBALPUNDITS' customers with whom EMPLOYEE had material contact or provided services to or on behalf of GLOBALPUNDITS within the twenty-four (24) month period immediately preceding EMPLOYEE'S separation from employment for any reason.

(c) Covenant Not To Solicit Employees: EMPLOYEE agrees that so long as EMPLOYEE is employed by GLOBALPUNDITS and for a period of twelve (12) months following the cessation of EMPLOYEE'S employment with GLOBALPUNDITS for any reason, EMPLOYEE shall not, on EMPLOYEE'S own behalf or behalf of any competitor, directly or indirectly, solicit, recruit, entice, persuade, or induce, or attempt to solicit, recruit, entice, persuade, or induce, any employee, consultant, or independent contractor employed or otherwise engaged by GLOBALPUNDITS at the time of cessation of EMPLOYEE'S employment with GLOBALPUNDITS, to sever his or her relationship with GLOBALPUNDITS or to be employed or otherwise engaged in any capacity by any competitor of GLOBALPUNDITS.

(d) Covenant Not To Disclose Trade Secrets And Other Confidential Information: EMPLOYEE understands that, as a result of EMPLOYEE'S employment with GLOBALPUNDITS, EMPLOYEE has or will necessarily become informed of, and have access to, certain valuable and confidential information of GLOBALPUNDITS, including, without limitation, trade secrets, customer information, training programs, customer lists, information related to GLOBALPUNDITS' operations and related businesses, financing sources, financial results and condition, contemplated acquisitions, marketing plans and strategies, research, computer systems and software, employees, officers and directors, and affiliated businesses. EMPLOYEE agrees that all customers, records, files, lists, information, forms, notes, or questionnaires, whether written or on computer disks, tapes, drives, or other electronic data, including all or any information collected by EMPLOYEE from any source within or by any means from GLOBALPUNDITS, are deemed to be the sole property of GLOBALPUNDITS. EMPLOYEE will not remove or cause to be removed any such materials from the offices or other premises of GLOBALPUNDITS, either in original form or in duplicated or copied form, or transmit verbally or in written form the names, addresses, and other facts in such records, except as necessary in the ordinary course of conducting business for GLOBALPUNDITS. Collectively, such information is considered to be trade secrets and/or confidential information of GLOBALPUNDITS and is not generally known to GLOBALPUNDITS' competitors. GLOBALPUNDITS derives economic value from such trade secrets and confidential information, and GLOBALPUNDITS has made efforts that are reasonable under the circumstances to maintain the information's secrecy and/or confidentiality.

EMPLOYEE agrees that so long as EMPLOYEE is employed by GLOBALPUNDITS and for a period of twenty-four (24) months following the cessation of EMPLOYEE'S employment with GLOBALPUNDITS for any reason, EMPLOYEE shall not, other than on behalf of GLOBALPUNDITS, divulge or make use of any confidential information of GLOBALPUNDITS directly, indirectly, personally, or on behalf of any other person, business, corporation, or entity. This covenant is not intended to limit in any way EMPLOYEE'S obligations to GLOBALPUNDITS under statutory or common law not to disclose or make personal use of such information or any trade secrets of GLOBALPUNDITS. EMPLOYEE agrees that if EMPLOYEE has any doubt as to the appropriateness of dissemination of GLOBALPUNDITS' confidential information and/or trade secrets, EMPLOYEE will err on the side of non-disclosure.

Upon termination of EMPLOYEE'S employment with GLOBALPUNDITS for any reason, EMPLOYEE shall, within forty-eight (48) hours, deliver to GLOBALPUNDITS (in whatever tangible or intangible form and whether original or copy) all books, records, drawings, plans, renderings, manuals, letters, letterhead, notes, notebooks, computer files, reports, lists and all other documents and materials, including, without limitation, those of a confidential nature, relating to GLOBALPUNDITS' business and customers that are in EMPLOYEE'S possession or control.

(e) **Remedies For Breach:** EMPLOYEE acknowledges and agrees that GLOBALPUNDITS has expended and will continue to expend substantial time, money, effort, and other resources to develop its good will, customer base, referral sources, and business relationships, and that GLOBALPUNDITS has a legitimate business interest in protecting such matters. EMPLOYEE further acknowledges and agrees that, by virtue of the duties and responsibilities attendant to EMPLOYEE'S employment with GLOBALPUNDITS, EMPLOYEE will be in a position of substantial responsibility and authority and will have special knowledge of GLOBALPUNDITS' affairs, business, customers, operations, and the like. EMPLOYEE acknowledges that any breach or violation of the covenants contained in subparagraphs (a) through (d) of this Agreement would cause substantial and irreparable loss or damages to GLOBALPUNDITS.

EMPLOYEE agrees that GLOBALPUNDITS shall be entitled to any and all available remedies and damages, including, but not limited to, an injunction restraining violations or threatened violations of this Agreement, as well as an award of any attorneys' fees which GLOBALPUNDITS may incur in enforcing, to any extent, the provisions of this Agreement, whether or not litigation has actually commenced and including any appeal. GLOBALPUNDITS has the right to seek equitable or other relief against EMPLOYEE as a court may deem appropriate. Any such forfeiture or recovery shall not relieve EMPLOYEE of EMPLOYEE'S obligations under this Agreement.

For enforcement purposes, the restrictive covenants contained in this Agreement shall remain in effect independent of any other obligations between the parties, and the existence of any claim or cause of action against GLOBALPUNDITS shall not constitute a defense to enforcement of said covenants by injunction. Likewise, the restrictive covenant provisions of this Agreement survive whether termination is with or without cause and alleged to be rightful or wrongful or whether EMPLOYEE voluntarily quits.

(f) **Severability:** The covenants set forth in subparagraphs (a) through (e) of this Agreement shall be construed to be separate and distinct from each other and every other provision of this Agreement. In the event that any court of competent jurisdiction shall declare any covenant to be invalid, prohibited, or unenforceable, the remaining covenants and obligations of this Agreement shall remain independent, divisible, and enforceable. Any such unenforceable or prohibited provision or provisions may be modified in a court of law to the fullest extent allowed by the law of such jurisdiction so as to allow such a provision or provisions to be written in such a manner and to such an extent as to be enforceable in such jurisdiction under the circumstances. Without limitation of the foregoing, with respect to subparagraphs (a) through (e) of this Agreement, if it is determined that any restriction contained in such provisions is excessive as to duration or scope, it is intended that such restriction be enforced for such shorter duration or with such narrower scope as will render it enforceable.

(g) **Notice To Prospective/Future Employers:** EMPLOYEE agrees to notify any prospective or future employer of EMPLOYEE of EMPLOYEE'S obligations under this

Agreement. EMPLOYEE further understands and agrees that GLOBALPUNDITS may notify any prospective or future employer of the existence of this Agreement.

2. MISCELLANEOUS

(a) **Amendments:** No amendments, changes, alterations, modifications, additions, or qualifications to the terms of this Agreement shall be binding unless reduced to writing and signed by all parties hereto.

(b) **Waiver:** The failure of any party to enforce at any time any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of such party thereafter to enforce any such provisions. Waiver by any party hereto of any breach or default by the other party of any of the terms and provisions of this Agreement shall not operate as a waiver of any other breach, whether similar to or different from the breach or default waived.

(c) **Governing Law:** This Agreement shall be construed and governed in accordance with the substantive laws of the State of South Carolina, excluding any conflict of laws rule or principle that might otherwise refer to the substantive law of another jurisdiction, without regard to the place of execution or the place of performance thereof. EMPLOYEE hereby consents to the jurisdiction of any local, state, or federal court located in the State of South Carolina.

(d) **Assignment:** This Agreement may not be assigned by EMPLOYEE, but may be assigned by GLOBALPUNDITS to any successor in interest to GLOBALPUNDITS' business. In the event GLOBALPUNDITS makes such an assignment, EMPLOYEE shall continue to perform, on behalf of such successor, the services required of EMPLOYEE by this Agreement, and the provisions of this Agreement shall be binding upon, and inure to the benefit of, such successor.

(e) **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) **Merger:** This Agreement supersedes any prior written or oral understandings or agreements between the parties pertaining to the same or a similar subject matter.

Agreed to as of the date first written above.

GLOBALPUNDITS, INC.

By: _____

Date: _____

EMPLOYEE

Edward W. King
Date: Oct 7, 2012

CONSUMER AUTHORIZATION

I. I understand that an investigative report may be generated on me that may include information as to my character, general reputation, personal characteristics, or mode of living; work habits, performance or experience, along with reasons for termination of past employment/professional license or credentials; financial/credit history; or criminal/civil/driving record history. I understand that General Information Services, Inc., on behalf of Globalpundits Technology Consultancy, Inc. may be requesting information from public and private sources about any of the information noted earlier in this paragraph in connection with Globalpundits Technology Consultancy, Inc.'s consideration of me for employment, promotion or position re-assignment or contract now, or at any time during my tenure with Globalpundits Technology Consultancy, Inc., and give my full consent for this information to be obtained.

II. IF APPLICABLE, medical and worker's compensation information will only be requested in compliance with the Federal Americans with Disabilities Act (ADA) and/or any other applicable state laws. According to the Fair Credit Reporting Act (FCRA, Public Law 91-508, Title VI), I am entitled to know if the considerations for which I am applying are denied because of information obtained from a consumer reporting agency. If so, I will be notified and be given the name of the agency providing that report.

III. I acknowledge that a telephonic facsimile (FAX) or photographic copy of this release shall be as valid as the original. This release is valid for most federal, state and county agencies.

IV. I understand that if I am a resident of Minnesota/Oklahoma (only) I may obtain a copy of the report ordered, and now indicate my desire to do so by checking this box ☐.

V. I hereby authorize, without reservation, any financial institution, law enforcement agency, information service bureau, school, employer or insurance company contacted by General Information Services, Inc. to furnish the information described in Section I.

VI. Communications with General Information Services, Inc. should be directed to PO Box 353, Chapin SC 29036 or (877) 590-4012.

CANDIDATE COMPLETE THE FOLLOWING:

Signature

Today's Date

Please print full name

The following information is required by law enforcement agencies and other entities for positive identification purposes when checking public records. It is confidential and will not be used for any other purposes.

Month, Day and Year of Birth

Social Security Number

Home Address

City

State

Zip

Driver's License Number and State

Name as it appears on License

Have you ever been convicted of a crime? ☐ No ☐ Yes Do you currently have charges pending? ☐ No ☐ Yes If yes, please provide city and state of conviction and details of conviction.

FAIR CREDIT REPORTING ACT NOTICE:

In accordance with the Fair Credit Reporting Act (FCRA, Public Law 91-508, Title VI), this information may only be used to verify a statement(s) made by an individual in connection with legitimate business needs. The depth of information available varies from state to state. Status of updates are available on request. Although every effort has been made to ensure accuracy, General Information Services, Inc. cannot act as guarantor of information accuracy or completeness. Final verification of an individual's identity and proper use of report contents are the user's responsibility. General Information Services, Inc.'s policy requires purchasers of these reports to have signed a Service Agreement. This assures General Information Services, Inc. that users are familiar with and will abide by their obligations, as stated in the FCRA, to the individuals named in these reports. If information contained in this report is responsible for the suspension or termination of an employee or the application process, have the Candidate/employee contact General Information Services, Inc.

Attachment 2

FILED October 8 2001
San Diego
Paula Gomez
9:50am

Globalpundits Clarification of MOX JLE Policy

The MOX "Subcontractor Job Site Living Expense (JLE) Policy is the official policy of record. If there is any discrepancy the MOX policy is the official record. The points below were created to make sure our employees understand the policy.

JLE

No expenses will be reimbursed until MOX approves JLE. Employees are responsible for submitting required documentation supporting that the employee will be maintaining two households. Required documentation is outlined by MOX JLE policy and IRS guidelines. JLE must be recertified every six months. JLE is non-taxable in the first year. In the second year and beyond it is taxable.

Once JLE is approved by MOX the individual will be eligible for Lodging allowance is \$60.20 and M&IE is \$32.20 per day.

Settling-In Period - Up to 60 days while searching for more economical living arrangements. Begins the first day you incur expenses in the Aiken area but can be no more than 2 days prior to your scheduled start date.

Lodging: During your Settling-In Period you will be reimbursed for your actual submitted hotel receipts up to \$86.00/day not including taxes. If hotel taxes put you over \$86.00/day you will be able to include taxes on the Hotel Tax line item of the expense report. You must submit an itemized hotel bill including proof of payment.

M&IE: The settling in M&IE is reimbursed at \$46.00/day and is not receipts driven. (Ex: If you arrive in Aiken on Saturday you are eligible only for lodging, on Sunday you are eligible for lodging and M&IE).

Relocation Expenses: Relocation expenses for mobilization to the site to start work or de-mobilization at end of contract are not reimbursable (mileage, airfare, rental car, etc.).

Once a Month Trips to Home of Record

Eligibility for your Once A Month Trips to your Home of Record do not begin until your JLE Certification has been approved and signed off by MOX approval committee board or 30 days after your start date whichever is greater. Your JLE Certification package includes the certification paperwork, JLE worksheet, proof of residency for your home of record and a lease agreement for your temporary housing in the Aiken area. If your home of record is 400 miles or more (one-way) you are required to fly. This must be a 14 day advance airline ticket. The airline ticket and associated expense receipts must accompany your expense report. Other expenses for trips to home of record include, airport parking fees, baggage fees, cab fare to and from the airport, mileage if driving your personal vehicle to the airport. Please note: Rental Cars are not a reimbursed expense.

M&IE is not reimbursable on days of travel to your home of record, while you are at your home of record or on the day you return to Aiken.

Rental Car Expense for Once a Month Trip to Home of Record are not authorized.

Acknowledgement: I have read and understand the MOX Subcontractor Job Site Living (JLE) Policy and the items above. I understand it is my responsibility to ensure that I notify Globalpundits if at any time I am no longer eligible for JLE. I also authorize Globalpundits to deduct any over payment of JLE from my paycheck. An overpayment can be any expense that is not approved by MOX or if it is determined that the employee was not eligible for JLE reimbursement as provided by the policy.

Signature: Edward W. Rye

Date: 15-Oct-12

Attachment 3

FILED October 8, 2001
Lee, Richard
Jill Comer
9:50am

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

1. Eligibility and Term of Assignment

Whereas Shaw AREVA MOX Services, LLC (MOX Services) desires to fill vacant positions on the MOX project with permanent personnel, it is understood by the parties to this associated staff augmentation subcontract that recruitment efforts are ongoing by MOX Services' Human Resources to fill vacant positions with MOX Services' permanent personnel. Until the vacant positions are filled with permanent MOX Services personnel, staff augmentation subcontractor employees may occupy such positions on an as-needed basis and may be eligible for Jobsite Living Expenses (JLE). Only JLE necessary to accomplish the purposes of MOX Services and the government effectively and economically will be authorized.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred). Permanent residence must be within the 48 continental United States of America. A subcontractor employee who owns secondary property (e.g., real property, mobile home or RV lot) within a 50-mile-radius-of-the-MOX duty station does not meet the dual expense requirement and will not be approved for reimbursement of JLE expenses. Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized to participate in the MOX Services JLE program. It is the responsibility of the subcontractor to immediately notify the MOX Services Subcontract Administrator regarding any change in the eligibility status of any subcontractor employee participating in the JLE program.

2. Written Advance Authorization

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board. All JLE applications, including renewals, must be sponsored by the associated MOX Vice President level manager. All JLE applications will be reviewed by MOX Procurement for completeness and compliance with subcontract requirements. Upon concurrence by Procurement, the MOX JLE Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

All applications for entry into JLE status must be supported by documentation proving that the employee has a primary residence location over 50 miles from the jobsite (rental agreement, property tax statement) and proving residency at or near the MOX jobsite (lease/rental agreement, cancelled rent checks, or lodging receipts). JLE applications will not be processed without supporting documentation.

In the event that any JLE supporting documentation used to support eligibility are later found to be invalid or a misrepresentation, the affected staff augmentation subcontractor employee will be ineligible to receive JLE and all costs associated with the invalid JLE will be considered unallowable and will be refunded to MOX Services by the subcontractor.

The MOX review process is intended to ensure that JLE for the applicant is consistent with the best interests of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense. However, the ultimate responsibility for the accuracy and eligibility of an applicant's supporting documentation and representations remains with the subcontractor.

3. JLE Certification Requirement

All subcontractor employees approved to participate in the JLE program in support of the MOX Project are required to execute a JLE Certification upon entering the JLE program and every 180 calendar days thereafter. This certification will confirm that the subcontractor employee understands the minimum requirements that must be met to be eligible for reimbursement for living expenses while in JLE status and the employee certifies that the information provided is current, complete and accurate as of the date of the employee's signature on the JLE application. The minimum requirements are:

- The individual's JLE eligibility has been approved by MOX based on accurate information; and
- The individual is eligible under IRS guidelines to receive JLE, i.e., is in a situation where dual living expenses are being incurred directly as a result of the MOX work assignment; and
- The JLE duty station is more than 50 miles from the subcontractor employee's permanent home of record for income tax purposes and the subcontractor employee does not own property within the 50 mile radius of the JLE duty station.
- In the event, an individual's circumstances change before the 6 month recertification period, whereby the individual no longer meets the eligibility criteria, it is the responsibility of the subcontractor employee to notify the Subcontractor immediately. It is the ultimate responsibility of the Subcontractor to notify MOX Services to terminate payments under this program.
- Subcontractor may not bill for any JLE reimbursement until a certification is approved by MOX Services.

4. Settling-In Period

Newly hired subcontractor employees approved for JLE status may use up to sixty (60) days, on a one time basis, as a settling-in period on full GSA lodging and M&IE while searching for more economical living arrangements. If personnel share accommodations during the settling-in period and both are assigned to the MOX project, each person will only be reimbursed 50% of the actual lodging costs, not to exceed the maximum single occupancy GSA lodging rate.

- Subcontractor employees should use a letter or other identification provided by DOE Contracting Officer to establish eligibility to receive government rates (available from MOX Services Subcontract Administrator). Lodging taxes are not included in the maximum GSA rate but are reimbursable as miscellaneous travel expenses.
- Reimbursement at greater than the GSA maximum lodging rate may be allowed under special circumstances but requires advance written approval by the MOX Services Subcontract Administrator. Requests for approval will be reviewed on a case-by-case basis.

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

- M&IE are allowable up to the GSA maximum rate for the locale. The GSA M&IE rate includes an allowance for incidental expenses such as gratuities, laundry, dry-cleaning, etc. Such incidental expenses will not be reimbursed as separately itemized expenses on a travel expense report.
Note: Laundry and Dry Cleaning services are reimbursable as separate itemized expenses only when the stay exceeds 4 consecutive days duration.
- During the settling-in period, receipts are required for lodging and any individual miscellaneous expenses of \$75 or more. Taxes on lodging are allowable as miscellaneous expenses and must be itemized on the expense report separately from the lodging rate.
- Telephone calls and taxes in support of official company business are allowable and must be itemized on the expense report.
- Parking fees are allowable and must be itemized on the expense report.

5. JLE Reimbursement

Subject to the certification requirements in 3 above, as soon as personnel locate more economical living arrangements or on the sixty-first (61) day of the assignment, whichever occurs first, JLE reimbursement will be reduced to a flat-rate equivalent to 70% of the combined GSA maximum lodging and M&IE rate at the duty location. Maximum rates for lodging, meals and incidental expenses by locale can be viewed at <http://www.gsa.gov/perdiem>.

JLE reimbursement for lodging will be reduced to 35% of the GSA maximum lodging rate per person if personnel share both primary living accommodations as well as temporary living accommodations with another person assigned to the MOX Project who is also eligible for JLE. M&IE will be reimbursed at 70% of the GSA maximum rate per person. NO other miscellaneous or incidental expenses are reimbursable.

Subcontractor shall advise the MOX Services SA when personnel share accommodations.

~~Receipts are not required for lodging and M&IE at the 70% flat-rate while subcontractor personnel are in JLE status.~~

Subcontractor employees in JLE Status are only authorized reimbursement for M&IE expenses at one location (e.g., if the subcontractor employee is in a business travel status and elects to continue to receive M&IE reimbursement at the JLE 70% flat-rate, then M&IE must not be claimed on the business travel expense report. If the subcontractor employee elects to claim reimbursement for M&IE on the business travel expense report, then M&IE expenses for those travel days must not be claimed on the JLE expense report [at the 70% flat-rate]).

6. JLE Expense/Claim Documentation

Receipts are not required for M&IE within the GSA stated rate structure.

Receipts are always required for transportation by common carrier (trips home) during any phase of JLE.

All JLE expenses must be itemized on the applicable firm's approved travel expense report form. If expenses exceeding those authorized by this policy are included on the expense report, the charges must be identified as "unallowable" when submitting the expense report to MOX Services for reimbursement. Unallowable expenses will not be reimbursed.

JLE expense reports must be reviewed and approved by the responsible administrative supervisor or manager from the subcontractor submitting the invoice for reimbursement prior to processing for reimbursement from MOX Services. It is the responsibility of each subcontractor to thoroughly review every expense report to ensure no unallowable expenses are billed to MOX Services and subsequently passed along to the government before submitting it to MOX Services for reimbursement. Repeated instances of poor quality in managing expense report submissions will result in non-payment of invoices and/or return of the unpaid expense reports to the generator for correction. JLE expense reports should be submitted to the subcontractor employee's corporate travel organization and thereafter on to MOX Services each month within 30 calendar days of costs incurred.

It is the subcontractor's responsibility to ensure compliance with appropriate government regulations, including Internal Revenue Service requirements, for reimbursement of expenses for all its employees.

7. Other Benefits and Requirements

The following benefits and requirements pertain to subcontractor employees approved to enter into JLE:

- Rental Car - Rental cars are not authorized for use by personnel on JLE unless circumstances warrant, and then only with the advanced approval of the Chair of the MOX Services JLE Review Board or the MOX Services Chief Administrative Officer (CAO).
- Trips Home - While on JLE, subcontractor employees are authorized one trip home per month, the first of which may occur no sooner than 30 calendar days after actual reporting date.
 - Receipts for airfare and other miscellaneous travel expenses shall be provided with all subcontractor employee travel expense reports for trips home.
 - M&IE is not authorized for days traveling to and from, or spent at the subcontractor employee's principal residence.
 - If travel home is accomplished by Privately Owned Vehicle, mileage will be reimbursed at the then current GSA rate.
 - Only one trip home per month will be reimbursable.
 - Travel under 400 miles will be approved via personal vehicle and travel 400 miles or greater will be by air using a two week advance, non-reimbursable coach fare ticket unless a lower fare is available. Travel outside of these guidelines must be approved in advance by the JLE Review Board.

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

8. Business Travel

- Business travel is travel of typically short duration (60 days or less) to locations outside the SRS area, when required in performance of work assigned to the Subcontractor's employee. Business travel in excess of 60 days requires the advance approval of the Chair of the MOX Services JLE Review Board or the MOX Services CAO, such approval may be given on a case-by-case basis.
 - Reimbursement claims for business travel expenses must be submitted on a subcontractor expense report form. There must not be any overlap of JLE and business travel expenses.
 - There is no pre-approval form for US Domestic business travel. Subcontractor will confirm with MOX Services Hiring Manager that business travel is required prior to making reservations.
 - Foreign travel in support of the MOX Project requires pre-approval by the Department of Energy. MOX Services Project Procedure PP13-15, copy provided for your information, governs foreign travel. The pre-approval process will be handled by the prospective traveler and hiring manager and reservation should not be made by Subcontractor until travel has been authorized.
 - All subcontractor personnel are responsible for compliance with individual company policies pertaining to use of Subcontractor corporate travel cards and booking travel reservations (including common carrier, lodging and rental cars, etc).
-

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS

C/A No.2015-CP-02-02389

ANSWER

Defendants CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC (collectively "Defendants") answer and respond to Plaintiff Edward Pugh's ("Pugh" or "Plaintiff") Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants are without sufficient information at this time to admit the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.

2. Paragraph 2 of the Complaint is admitted.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 4.

5. Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 5.

FILED 18 December 15
50 of 374 L. J. Haddad
cccp. & o.s. oab
April Bracco
Deputy Clerk 12:50pm

6. Paragraph 6 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 6.

7. Answering the allegations of Paragraph 7 of the Complaint, Defendants acknowledge Pugh has asserted a cause of action under the South Carolina Wage Payment Statute and has also brought claims for declaratory judgment and breach of contract. The remaining allegations of Paragraph 7 are denied.

8. Paragraph 8 of the Complaint is admitted.

9. Paragraph 9 of the Complaint is admitted.

10. Answering the allegations of Paragraph 10 of the Complaint, Defendants admit so much as alleges that Pugh is a welding engineer. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 10 of the Complaint and, therefore, deny same.

11. The allegations contained in Paragraph 11 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 11 are inconsistent with the contents of the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

12. The allegations contained in Paragraph 12 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 12 are inconsistent with the contents of the Employment

Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

13. The allegations contained in Paragraph 13 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy, which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 13 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy, those allegations are denied.

14. The allegations contained in Paragraph 14 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), which are written documents that speaks for themselves. To the extent the allegations contained in Paragraph 14 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

15. Paragraph 15 of the Complaint is denied.

16. The allegations contained in Paragraph 16 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 16 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

17. The allegations contained in Paragraph 17 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 17 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

18. Answering the allegations of Paragraph 18 of the Complaint, Defendants admit so much as alleges that Pugh owns property in Walhalla, South Carolina. The remaining allegations of Paragraph 18 are denied.

19. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint and, therefore, deny same.

20. Paragraph 20 of the Complaint is denied.

21. Answering the allegations of Paragraph 21 of the Complaint, Defendants admit so much as alleges that Pugh was hired in October 2012 and received the Subcontractor Job Site Living Expenses (JLE). Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 21 of the Complaint and, therefore, deny same.

22. Answering the allegations of Paragraph 22 of the Complaint, Defendants admit so much as alleges that Pugh's JLE request was denied by MOX. The remaining allegations of Paragraph 22 are denied.

23. Defendant admits that Pugh has repeatedly requested JLE reimbursement for expenses. The remaining allegations in Paragraph 23 of the Complaint are denied.

24. Paragraph 24 of the Complaint is admitted.

25. Defendants deny that Plaintiff is due any compensation and deny Paragraph 25 of the Complaint.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. With respect to Paragraph 26 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

27. Paragraph 27 of the Complaint is denied.

28. Answering the allegations of Paragraph 28, Defendants acknowledge that Plaintiff seeks declaratory and equitable remedies. All other allegations in Paragraph 28 are denied.

29. Paragraph 29 of the Complaint is denied.

30. Paragraph 30 of the Complaint is denied.

- 31. Paragraph 31 of the Complaint is denied.
- 32. Paragraph 32 of the Complaint is denied.
- 33. Paragraph 33 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 33.

SECOND CAUSE OF ACTION
(Breach of Contract)

34. With respect to Paragraph 34 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

- 35. Paragraph 35 of the Complaint is denied.
- 36. Paragraph 36 of the Complaint is denied.
- 37. Paragraph 37 of the Complaint is denied.
- 38. Paragraph 38 of the Complaint is denied.
- 39. Paragraph 39 of the Complaint is denied.

THIRD CAUSE OF ACTION
(Unpaid Wages Under S.C. Wage Payment Act)

40. With respect to Paragraph 40 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

- 41. Paragraph 41 of the Complaint is denied.
- 42. Answering the allegations of Paragraph 42 of the Complaint, Defendants acknowledge they are employers for purposes of the Wage Payment statute. All remaining allegations of Paragraph 42 of the Complaint are denied.
- 43. Paragraph 43 of the Complaint is denied.
- 44. Paragraph 44 of the Complaint is denied.

45. Paragraph 45 of the Complaint is denied.

Responding to the final, unnumbered paragraph of the Complaint, including subsections a through h, containing Pugh's Prayer for Relief, Defendants deny that Pugh is entitled to any relief whatsoever and deny all subsections.

FOR A SECOND DEFENSE

46. All paragraphs and allegations not herein specifically admitted are denied.

FOR A THIRD DEFENSE

47. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

48. Defendants asserts they made all payments Plaintiff was entitled to.

FOR A FIFTH DEFENSE

49. In the event Defendants withheld money Plaintiff believed he was entitled to, which Defendants deny, Defendants acted in good faith in disputing any withheld pay and, therefore, treble damages are an inappropriate remedy.

FOR A SIXTH DEFENSE

50. Upon information and belief, Plaintiff is seeking to recover unsubstantiated amounts and any recovery of such amounts as damages is barred or limited accordingly.

FOR A SEVENTH DEFENSE

51. Observing and without waiving all defenses previously stated with respect to the contract alleged by Plaintiff to have been breached (which Defendants deny existed), Plaintiff has

failed to satisfy all conditions precedent to Defendants' performance under the alleged contract and, therefore, Defendants were relieved of any obligation to perform and were entitled to withhold performance.

FOR AN EIGHTH DEFENSE

52. To the extent Plaintiff has suffered any damages as a result of any act or omission by Defendant, which is denied, then, upon information and belief, Plaintiff failed to mitigate damages in a timely or proper fashion.

FOR A NINTH DEFENSE

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

FOR AN TENTH DEFENSE

54. Any recovery on Plaintiff's Complaint may be barred, in whole or in part, based upon after-acquired evidence that may be discovered during the course of litigation.

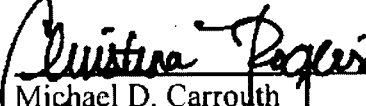
FOR AN ELEVENTH DEFENSE

55. Defendant reserves the right to assert further affirmative defenses upon discovery of facts not previously known.

THEREFORE, having fully answered, Defendants pray that Pugh's Complaint be dismissed with prejudice, and the Court award costs and attorney fees to Defendants.

Respectfully submitted,

FISHER & PHILLIPS LLP


Michael D. Carrouth
mcarrouth@laborlawyers.com
Christina L. Rogers
crogers@laborlawyers.com

FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: (803) 255-0000
Facsimile: (803) 255-0202

Attorneys for Defendants

Dated this 16th day of December 2015.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS

C/A No.2015-CP-02-02389

CERTIFICATE OF SERVICE

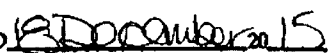
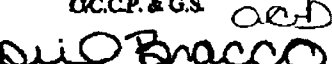
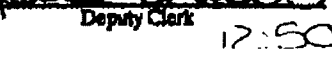
It is hereby certified that a copy of the foregoing Answer in the above-captioned case has been served upon Plaintiff by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097


Carolyn F. Spires

Dated this 16th day of December, 2015

FILED  15
58 of 374 
D.C.C.P. & G.S. 
Deputy Clerk 

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Civil Action No: 2015-CP-02-02389

Edward Pugh,)

Plaintiff,)

vs.)

AMENDED ANSWER

CB&I AREVA MOX Services, LLC)
and Globalpundits Technology)
Consultancy, LLC)

Defendants.)

Defendants CB&I AREVA MOX Services, LLC ("MOX Services") and Globalpundits Technology Consultancy, LLC ("Globalpundits") (hereinafter both Defendants will be referred to collectively as "Defendants") answer and respond to Plaintiff Edward Pugh's ("Pugh" or "Plaintiff") Complaint as follows¹:

FOR A FIRST DEFENSE

1. Defendants are without sufficient information at this time to admit the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 4.

FILED

23 December 15

L. J. Boland
C.C.P. & G.S.

April Bracco
Deputy Clerk

¹ By answering the Complaint collectively, neither Defendant waives, mitigates or otherwise prejudices any defense it may have either one to the other or as to the Plaintiff. Defendant Globalpundits answers collectively for the Defendants pursuant to an indemnification agreement between the Defendants.

5. Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 5.

6. Paragraph 6 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 6.

7. Answering the allegations of Paragraph 7 of the Complaint, Defendants acknowledge Pugh has asserted a cause of action under the South Carolina Wage Payment Statute and has also brought claims for declaratory judgment and breach of contract. The remaining allegations of Paragraph 7 are denied.

8. Answering the allegations of Paragraph 8 of the Complaint, MOX Services is the prime contractor for the Department of Energy ("DOE") Mixed Oxide Fuel Fabrication Facility Project located at the DOE's Savannah River Site near Aiken, South Carolina, any other allegation remaining in Paragraph 8 of the Complaint is denied.

9. Paragraph 9 of the Complaint is admitted.

10. Answering the allegations of Paragraph 10 of the Complaint, Defendants admit so much as alleges that Pugh is a welding engineer. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 10 of the Complaint and, therefore, deny same.

11. The allegations contained in Paragraph 11 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 11 are inconsistent with the contents of the Employment

Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

12. The allegations contained in Paragraph 12 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 12 are inconsistent with the contents of the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

13. The allegations contained in Paragraph 13 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy, which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 13 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy, those allegations are denied.

14. The allegations contained in Paragraph 14 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 14 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

15. Paragraph 15 of the Complaint is denied.

16. The allegations contained in Paragraph 16 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 16 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

17. The allegations contained in Paragraph 17 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 17 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

18. Answering the allegations of Paragraph 18 of the Complaint, Defendants, upon information and belief, admit so much as alleges that Pugh owns property in Walhalla, South Carolina. The remaining allegations of Paragraph 18 are denied.

19. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint and, therefore, deny same.

20. Paragraph 20 of the Complaint is denied.

21. Answering the allegations of Paragraph 21 of the Complaint, Defendants admit so much as alleges that Pugh was hired in October 2012 and received the Subcontractor Job Site Living Expenses (JLE). Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 21 of the Complaint and, therefore, deny same.

22. Answering the allegations of Paragraph 22 of the Complaint, Defendants admit so much as alleges that Pugh's JLE request was denied by MOX. The remaining allegations of Paragraph 22 are denied.

23. Defendant admits that Pugh has repeatedly requested JLE reimbursement for expenses. The remaining allegations in Paragraph 23 of the Complaint are denied.

24. Paragraph 24 of the Complaint is admitted.

25. Defendants deny that Plaintiff is due any compensation and deny Paragraph 25 of the Complaint.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. With respect to Paragraph 26 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

27. Paragraph 27 of the Complaint is denied.

28. Answering the allegations of Paragraph 28, Defendants acknowledge that Plaintiff seeks declaratory and equitable remedies. All other allegations in Paragraph 28 are denied.

29. Paragraph 29 of the Complaint is denied.

30. Paragraph 30 of the Complaint is denied.

31. Paragraph 31 of the Complaint is denied.

32. Paragraph 32 of the Complaint is denied.

33. Paragraph 33 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 33.

SECOND CAUSE OF ACTION
(Breach of Contract)

34. With respect to Paragraph 34 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

35. Paragraph 35 of the Complaint is denied.

36. Paragraph 36 of the Complaint is denied.

37. Paragraph 37 of the Complaint is denied.

38. Paragraph 38 of the Complaint is denied.

39. Paragraph 39 of the Complaint is denied.

THIRD CAUSE OF ACTION
(Unpaid Wages Under S.C. Wage Payment Act)

40. With respect to Paragraph 40 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

41. Paragraph 41 of the Complaint is denied.

42. Answering the allegations of Paragraph 42 of the Complaint, Defendant Globalpundits admits that it is an employer for purposes of the Wage Payment statute while Defendant MOX Services denies same. All remaining allegations of Paragraph 42 of the Complaint are denied.

43. Paragraph 43 of the Complaint is denied.

44. Paragraph 44 of the Complaint is denied.

45. Paragraph 45 of the Complaint is denied.

Responding to the final, unnumbered paragraph of the Complaint, including subsections a through h, containing Pugh's Prayer for Relief, Defendants deny that Pugh is entitled to any relief whatsoever and deny all subsections.

FOR A SECOND DEFENSE

46. All paragraphs and allegations not herein specifically admitted are denied.

FOR A THIRD DEFENSE

47. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

48. Defendants asserts they made all payments Plaintiff was entitled to.

FOR A FIFTH DEFENSE

49. In the event Defendants withheld money Plaintiff believed he was entitled to, which Defendants deny, Defendants acted in good faith in disputing any withheld pay and, therefore, treble damages are an inappropriate remedy.

FOR A SIXTH DEFENSE

50. Upon information and belief, Plaintiff is seeking to recover unsubstantiated amounts and any recovery of such amounts as damages is barred or limited accordingly.

FOR A SEVENTH DEFENSE

51. Observing and without waiving all defenses previously stated with respect to the contract alleged by Plaintiff to have been breached (which Defendants deny existed), Plaintiff has failed to satisfy all conditions precedent to Defendants' performance under the alleged contract and, therefore, Defendants were relieved of any obligation to perform and were entitled to withhold performance.

FOR AN EIGHTH DEFENSE

52. To the extent Plaintiff has suffered any damages as a result of any act or omission by Defendant, which is denied, then, upon information and belief, Plaintiff failed to mitigate damages in a timely or proper fashion.

FOR A NINTH DEFENSE

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

FOR AN TENTH DEFENSE

54. Any recovery on Plaintiff's Complaint may be barred, in whole or in part, based upon after-acquired evidence that may be discovered during the course of litigation.

FOR AN ELEVENTH DEFENSE

55. Defendant reserves the right to assert further affirmative defenses upon discovery of facts not previously known.

THEREFORE, having fully answered, Defendants pray that Pugh's Complaint be dismissed with prejudice, and the Court award costs and attorney fees to Defendants.

Respectfully submitted,

FISHER & PHILLIPS LLP


Michael D. Carrouth
mcarrouth@laborlawyers.com
Christina L. Rogers
crogers@laborlawyers.com

FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: (803) 255-0000
Facsimile: (803) 255-0202

Dated this 21st day of December 2015.

Attorneys for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS

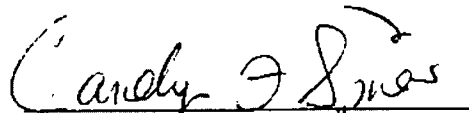
C/A No.2015-CP-02-02389

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **Amended Answer** in the above-captioned case has been served upon Plaintiff by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097


Carolyn F. Spires

Dated this 21st day of December, 2015

FILED 23 December 2015
67 of 374 Handwritten
C.C.P. & G.S. aab
April O Bracco
Deputy Clerk 1:05pm

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Case No. 2015-CP-02-02389

Edward Pugh,)

Plaintiff,)

v.)

CB&I AREVA MOX Services,)

LLC, and Globalpundits Technology)

Consultancy, LLC,)

Defendants.)

FILED 8/11 2016
Jeri Hadard
J.C.C.P. & G.S.
William M. Payne
8:30

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Edward Pugh ("Plaintiff"), by and through his undersigned counsel, comes before this Court pursuant to South Carolina Rule of Civil Procedure 56 and moves this Court to issue an Order granting summary judgment because there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law.

Plaintiff seeks summary judgment on his own causes of action: (1) declaratory judgment as to the existence and terms of the contract and obligations between Plaintiff and Defendants; (2) breach of contract; and (3) failure to pay wages under the South Carolina Wage Payment Act.

Plaintiff supports his motion for summary judgment with the Affidavit of Edward Pugh and attached documents, along with the following legal arguments, which will be detailed in a Memorandum of Law to follow:

1. Plaintiff has sought a declaration of the rights and obligations between Plaintiff and Defendants as to whether certain documents (attached to the Complaint) given to Plaintiff during his initial hiring in 2012 constitute a contract between Plaintiff and Defendants. Specifically, whether the Job Site Living Expenses ("JLE") Policy obligate Defendants to pay

Plaintiff his JLE reimbursement amount if he qualifies under the JLE Policy itself. Plaintiff has testified in his affidavit that he received JLE on a prior tour with Defendants; that his circumstances had not changed between his first tour and his second tour (the second tour being the one where this lawsuit arose); that his expectation that he would receive JLE as part of his compensation package was a basis for accepting employment with Defendants; that he qualified for JLE benefits; and that Defendants knew about his expectation of and reliance on receipt of JLE as a basis for accepting employment with Defendants. Based on these reasons, this court should declare that Plaintiff is entitled to receive JLE benefits.

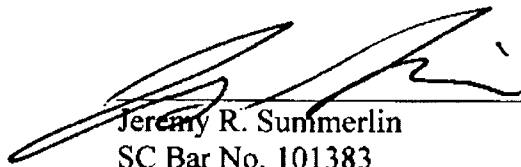
2. The money paid out under the JLE Policy qualifies as “wages” under the South Carolina Wage Payment Act. Plaintiff bases this argument on the fact that South Carolina law states that “wages” means “all amounts at which labor rendered is recompensed.” As Plaintiff testifies in the attached Affidavit, Plaintiff did not accept his employment with Defendants to provide free labor to Defendants. He accepted the job with Defendants in part based on Defendants’ provision of JLE benefits as part of his compensation. Such compensation was supposed to be provided to Plaintiff in exchange for his labor on Defendants’ behalf, thereby making it “wages” under SC law.

WHEREFORE, Plaintiff requests that this Court grant his Motion for Summary Judgment.

[signature and date on following page]

Respectfully submitted,

Law Office Of W. Andrew Arnold, P.C.



Jeremy R. Summerlin

SC Bar No. 101383

712 E. Washington Street

Greenville, SC 29601

864.242.4800 864.242.4885 fax

jsummerlin@aalawfirm.com

ATTORNEY FOR PLAINTIFF

July 29, 2016

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Edward Pugh,

☒ Plaintiff

CASE NO.

2015-CP-02-02389

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

CB&I AREVA MOX Services, LLC, and

Globalpundits Technology Consultancy, LLC

☐ Defendant.

Plaintiff's Attorney: Jeremy R. Summerlin Bar No. 101383 Address: 712 E. Washington Street, Greenville, SC 29601 phone: 864-242-4800 fax: 864-242-4885 e-mail: jsummerlin@aalawfirm.com other:		Defendant's Attorney: Christina L. Rogers Bar No. Address: 1320 Main St., Ste 750, Columbia, SC 29201 phone: 803-255-0000 fax: 803-255-0202 e-mail: crogers@laborlawyers.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Plaintiff's Motion for Summary Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Edward Pugh,)

Plaintiff,)

v.)

CB&I AREVA MOX Services,)

LLC, and Globalpundits Technology)

Consultancy, LLC,)

Defendants.)

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

AFFIDAVIT OF EDWARD PUGH

FILED 8/1 2016
Hei Haddad
J.C.C.P. & S.
Adrian M. Pugh 8:30

I, Edward Pugh, testify that I am an adult over the age of eighteen (18) year of age and that the following is true and accurate information:

1. I am a welding engineer with over 30 years of experience in my field. I have worked as a welding engineer on projects all across the United States, as well as in foreign countries.

2. I'm currently employed by Globalpundits Technology Consultancy, LLC ("Globalpundits") and CB&I AREVA MOX Services, LLC ("MOX").

3. MOX has an agreement with the National Nuclear Security Administration to design, build, and operate a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site in Aiken, South Carolina.

4. One of these contractors is Globalpundits, which is based in Lexington, South Carolina. Globalpundits works as a middleman to arrange for engineers and other workers with certain professional expertise and critical skills to come work at the Savannah River Site.

5. In 2011, I came to work at the Savannah River Site for a period of fourteen months, from March 2011 to May 2012, where I worked as a welding engineer. (This present

lawsuit concerns my second tour with MOX and Globalpundits, which will be addressed in more detail below.)

6. During the first tour with MOX and Globalpundits, I applied for and received Jobsite Living Expenses ("JLE") during my employment. The JLE was taxed as income to me by the IRS after the first year.

7. JLE is a form of compensation that is provided to subcontractor employees to entice them to come to work at the Savannah River Site. Since most of these subcontract employees with certain professional expertise do not live in or within commuting distance of the Savannah River site in Aiken, South Carolina, they have to pay for local housing near the worksite. This arrangement results in dual expenses in both their primary residence and at the worksite. JLE is intended to induce them to work in an area where they do not live. JLE also helps recruiting efforts by offering compensation to employees for the uncertainty of when the project would begin, how long the funding for the project would last, and the potentially limited duration of employment.

8. In order to receive JLE during my 2011 tour, I had to meet the requirements of the JLE policy. This policy required that I be in a situation where I incurred dual expenses as a result of completing the work assignment at the Savannah Rive Site, which meant that I had to have a permanent residence of record that was 50 miles or more from the Savannah River Site while incurring local housing expenses near the site. This policy had the same requirements in 2011 that the JLE Policy had when I began my second tour in October 2012.

9. At the time of my first tour, I had a primary residence in the form of an apartment in Clemson, South Carolina, where I'd lived for over eight years. I also owned a piece of land in Walhalla, South Carolina. I moved a trailer onto the Walhalla property in 2010, and in May

2011, it became my permanent residence of record for income tax purposes. My residence in Walhalla is over 100 hundred miles from the Savannah River Site. I have paid regular property taxes and utilities on the property and residence at all times during my ownership. As MOX and Globalpundits have conceded in this litigation, under the JLE Policy, I met all the requirements to receive JLE for my 2011 tour.

10. I left Globalpundits and MOX in May 2012, but returned to work for them at the Savannah River Site in October 2012. As part of my offer of employment from Globalpundits, and as outlined in the Employment Offer Letter (attached hereto as Exhibit 1), Globalpundits stated that my requests for JLE would again be governed by the "Subcontractor Job Site Living Expenses (JLE) Policy" (attached hereto as Exhibit 2 and hereinafter referred to as "JLE Policy"), which was appended to the Employment Offer Letter. I accepted this offer of employment on October 8, 2012.

11. The JLE Policy states that "a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred)." (JLE Policy, Paragraph 1).

12. I based my October 2012 decision to accept employment with MOX and Globalpundits on that offer of JLE, as I had in 2011. Globalpundits knew that I had based my decision to accept this assignment on the expectation that I would again receive JLE. (See "Email from Denise Dobbs at Globalpundits to Vera Smith at MOX, January 8, 2013," attached as Exhibit 3).

13. In October 2012, my living situation had not changed since I received the JLE in

2011-12 for my first tour with MOX and Globalpundits. I was still at my Walhalla residence when not on assignment at a job site; that residence was still more than 50 miles from the Savannah River Site; and I was still in a situation where I incurred dual expenses from my permanent residence in Walhalla and my local housing expenses in Aiken (first a hotel room and then an apartment). Nor had anything changed in the process for requesting JLE. However, the outcome was radically different.

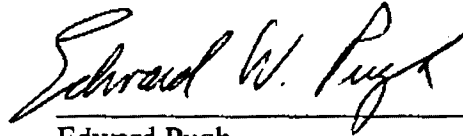
14. I submitted my request for JLE on October 8, 2012. I began submitting weekly expense reports to Globalpundits to comply with the JLE requirements and establish my accrual of living expenses. I further engaged in extended communications with MOX and Globalpundits employees about my JLE request and submitted as many additional documents to them as they requested to prove my qualification for JLE. After repeated denials, I asked the MOX Employee Concerns program to investigate. At one point during this Employee Concerns process, Chris Bethmann, the JLE subject matter expert for MOX, performed a review of my case and determined in an internal email that I fully qualified for JLE. (See "Internal Email from Chris Bethmann to Felicia Pinkson," attached as Exhibit 4).

15. Ultimately, however, MOX and Globalpundits denied my JLE request, and despite my best efforts, MOX and Globalpundits have continued to refuse to pay me any JLE benefits. Nearly four years after my initial request, I still have not received a single dollar of JLE reimbursement from MOX or Globalpundits.

16. Finally, I did not accept my employment with MOX and Globalpundits to provide free labor to them. I accepted the job with MOX and Globalpundits in part based on their provision of JLE benefits as part of my compensation package. Such compensation was supposed to be provided to me in exchange for my labor on MOX and Globalpundits' behalf.

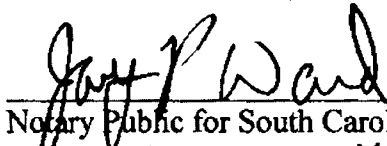
17. This affidavit is accurate and true to the best of my knowledge

Dated this 27 day of July, 2016.



Edward Pugh

Sworn to before me this
27th day of July, 2016



Notary Public for South Carolina

My Commission Expires: My commission expires
March 17th, 2021

EXHIBIT 1

FILED 8/11 2006

Shirley Hodard

J.C. PAGE

Ashtley M. Page

8:30



October 4, 2012

Edward Pugh
edwardpugh@myexcel.com

EMPLOYMENT OFFER LETTER

Dear Ed,

Globalpundits, Inc. is pleased to offer you a regular full-time exempt position as a **Materials Engineer** at our client location, **Shaw Areva MOX Services, LLC (MOX)** in Aiken SC. This offer of employment is contingent upon successful completion of a background and drug screen, providing legal proof of your identity and authorization to work in the United States, and approved TOR from MOX. Your tentative start date will be Monday, October 8, 2012. Your salary will be based upon an hourly rate of \$75.00 (seventy-five dollars and zero cents) per hour on all hours worked and approved by your End User (Mgr) at MOX in accordance to the Company's standard payroll practices for exempt employees. You will be eligible for additional compensation of \$75.00 (seventy-five dollars and zero cents) per hour over 40 hours and approved in advance by your End User. You are also eligible to accrue PTO benefits bi-weekly at the rate of 4.615 hours for a total of 120 hours per year and 8 paid holidays at 8 hours per holiday.

In addition to your compensation, you will be eligible to participate in the Globalpundits Employee Benefits-MOX on the attached summary. You will be eligible for Health Insurance, Dental, 401k and Voluntary benefits on November 1, 2012. Globalpundits pays bi-weekly on Friday one week in arrears via direct deposit. Your first paycheck will be Friday, October 19, 2012 for the approved hours for week ending October 12, 2012. Approved weekly time sheets must be sent to timesheet@globalpundits.com by 10:00am each Monday. We use HR Online to give you online access to your pay and benefit information. You will receive a login and password separately. All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes. Globalpundits will make deductions for state and federal income tax, and FICA. Other deductions include those elected for insurance and benefits. Specifically, Globalpundits reserves the right to make deductions from your final paycheck for the following reasons: advance unearned PTO and advanced JLE expenses not approved by MOX.

If you are requesting MOX Services Jobsite Living Expense (JLE Policy attached) this must be approved prior to receiving reimbursement of temporary expenses. We have attached forms necessary to obtain approval and process these requests going forward. You will send in your EXPENSE REPORT- Jobsite Living Expense forms weekly with your timesheet.

Like all Company employees, you will be required, as a condition to your employment with the Company, to sign the Company's standard NON-COMPETITION, NON-DISCLOSURE, AND NON-SOLICITATION AGREEMENT FOR EMPLOYEES, a copy of which is attached. Your employment with the Company will be "at will," meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term.

Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company.

You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter and the enclosed Non-Disclosure Agreement. This offer is contingent upon your review and acceptance of our Standard Employee Agreement, a favorable response from your references, successful completion of a Background and Drug Screen, and our review and verification of your identity and employment authorization documents as set forth in the Immigration Reform and Control Act. In addition, you also agree to adhere to all the policy and procedures of MOX to include but not limited to Environmental Health and Safety, WorkPlace Substance Abuse Program, General Employee Training and Annual Employee Training, Security Education, MOX Security, and Confidentiality of Information

Additionally, please be aware that when a personally/private owned vehicle (personally owned vehicle, subcontractor vehicle, vendor, etc.) is pulled for a random vehicle inspection at a perimeter barricade, WSI-SRS, in addition to checking for required security badges and conducting a search of the vehicle, will also ask for driver's license, registration and proof of insurance. A driver is required to have all of these documents in order to drive the vehicle and is required to have these documents on his/her person or in his/her vehicle. Anyone not having these documents is subject to being denied Site access, and, if in violation of a law, being cited for the violation.

Please be aware that our client, Shaw Areva MOX Services, LLC, has the right to offer you a regular full-time employment after 90 days on the project unless the duration of the assignment will be less than six (6) months. You are not obligated to accept a regular full-time employment offer. We will send you a separate email next week on how to enroll in the Health, Dental, 401k and Voluntary Benefits with Colonial Insurance.

We will need this offer letter signed and returned along with all the attached forms as soon as possible. We look forward to you joining our team. If you have any questions, please feel free to call Stephanie O'Neal at 803-354-9400 regarding questions during this onboarding process.

Sincerely,

I have read and accept this employment offer

Joe Doyle
Director of Recruiting and Sales

Signed: _____
Edward Pugh

EXHIBIT 2

FILED 8/11 2006
Shirley Haddard
Clerk of Court
William M. Payne 8:30
Deputy Clerk

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

1. Eligibility and Term of Assignment

Whereas Shaw AREVA MOX Services, LLC (MOX Services) desires to fill vacant positions on the MOX project with permanent personnel, it is understood by the parties to this associated staff augmentation subcontract that recruitment efforts are ongoing by MOX Services' Human Resources to fill vacant positions with MOX Services' permanent personnel. Until the vacant positions are filled with permanent MOX Services personnel, staff augmentation subcontractor employees may occupy such positions on an as-needed basis and may be eligible for Job Site Living Expenses (JLE). Only JLE necessary to accomplish the purposes of MOX Services and the government effectively and economically will be authorized.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred). Permanent residence must be within the 48 continental United States of America. A subcontractor employee who owns secondary property (e.g., real property, mobile home or RV lot) within a 50-mile radius of the MOX duty station does not meet the dual expense requirement and will not be approved for reimbursement of JLE expenses. Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized to participate in the MOX Services JLE program. It is the responsibility of the subcontractor to immediately notify the MOX Services Subcontract Administrator regarding any change in the eligibility status of any subcontractor employee participating in the JLE program.

2. Written Advance Authorization

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board. All JLE applications, including renewals, must be sponsored by the associated MOX Vice President level manager. All JLE applications will be reviewed by MOX Procurement for completeness and compliance with subcontract requirements. Upon concurrence by Procurement, the MOX JLE Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

All applications for entry into JLE status must be supported by documentation proving that the employee has a primary residence location over 50 miles from the jobsite (rental agreement, property tax statement) and proving residency at or near the MOX jobsite (lease/rental agreement, cancelled rent checks, or lodging receipts). JLE applications will not be processed without supporting documentation.

In the event that any JLE supporting documentation used to support eligibility are later found to be invalid or a misrepresentation, the affected staff augmentation subcontractor employee will be ineligible to receive JLE and all costs associated with the invalid JLE will be considered unallowable and will be refunded to MOX Services by the subcontractor.

The MOX review process is intended to ensure that JLE for the applicant is consistent with the best interests of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense. However, the ultimate responsibility for the accuracy and eligibility of an applicant's supporting documentation and representations remains with the subcontractor.

3. JLE Certification Requirement

All subcontractor employees approved to participate in the JLE program in support of the MOX Project are required to execute a JLE Certification upon entering the JLE program and every 180 calendar days thereafter. This certification will confirm that the subcontractor employee understands the minimum requirements that must be met to be eligible for reimbursement for living expenses while in JLE status and the employee certifies that the information provided is current, complete and accurate as of the date of the employee's signature on the JLE application. The minimum requirements are:

- The individual's JLE eligibility has been approved by MOX based on accurate information; and
- The individual is eligible under IRS guidelines to receive JLE, i.e., is in a situation where dual living expenses are being incurred directly as a result of the MOX work assignment; and
- The JLE duty station is more than 50 miles from the subcontractor employee's permanent home of record for income tax purposes and the subcontractor employee does not own property within the 50 mile radius of the JLE duty station.
- In the event, an individual's circumstances change before the 6 month recertification period, whereby the individual no longer meets the eligibility criteria, it is the responsibility of the subcontractor employee to notify the Subcontractor immediately. It is the ultimate responsibility of the Subcontractor to notify MOX Services to terminate payments under this program.
- Subcontractor may not bill for any JLE reimbursement until a certification is approved by MOX Services.

4. Settling-In Period

Newly hired subcontractor employees approved for JLE status may use up to sixty (60) days, on a one time basis, as a settling-in period on full GSA lodging and M&IE while searching for more economical living arrangements. If personnel share accommodations during the settling-in period and both are assigned to the MOX project, each person will only be reimbursed 50% of the actual lodging costs, not to exceed the maximum single occupancy GSA lodging rate.

- Subcontractor employees should use a letter or other identification provided by DOE Contracting Officer to establish eligibility to receive government rates (available from MOX Services Subcontract Administrator). Lodging taxes are not included in the maximum GSA rate but are reimbursable as miscellaneous travel expenses.
- Reimbursement at greater than the GSA maximum lodging rate may be allowed under special circumstances but requires advance written approval by the MOX Services Subcontract Administrator. Requests for approval will be reviewed on a case-by-case basis.

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

- M&IE are allowable up to the GSA maximum rate for the locale. The GSA M&IE rate includes an allowance for incidental expenses such as gratuities, laundry, dry-cleaning, etc. Such incidental expenses will not be reimbursed as separately itemized expenses on a travel expense report.
Note: Laundry and Dry Cleaning services are reimbursable as separate itemized expenses only when the stay exceeds 4 consecutive days duration.
- During the settling-in period, receipts are required for lodging and any individual miscellaneous expenses of \$75 or more. Taxes on lodging are allowable as miscellaneous expenses and must be itemized on the expense report separately from the lodging rate.
- Telephone calls and faxes in support of official company business are allowable and must be itemized on the expense report.
- Parking fees are allowable and must be itemized on the expense report.

5. JLE Reimbursement

Subject to the certification requirements in 3 above, as soon as personnel locate more economical living arrangements or on the sixty-first (61) day of the assignment, whichever occurs first, JLE reimbursement will be reduced to a flat-rate equivalent to 70% of the combined GSA maximum lodging and M&IE rate at the duty location. Maximum rates for lodging, meals and incidental expenses by locale can be viewed at <http://www.gsa.gov/perdiem>.

JLE reimbursement for lodging will be reduced to 35% of the GSA maximum lodging rate per person if personnel share both primary living accommodations as well as temporary living accommodations with another person assigned to the MOX Project who is also eligible for JLE. M&IE will be reimbursed at 70% of the GSA maximum rate per person. NO other miscellaneous or incidental expenses are reimbursable.

Subcontractor shall advise the MOX Services SA when personnel share accommodations.

~~Receipts are not required for lodging and M&IE at the 70% flat-rate while subcontractor personnel are in JLE status.~~

Subcontractor employees in JLE Status are only authorized reimbursement for M&IE expenses at one location (e.g., if the subcontractor employee is in a business travel status and elects to continue to receive M&IE reimbursement at the JLE 70% flat-rate, then M&IE must not be claimed on the business travel expense report. If the subcontractor employee elects to claim reimbursement for M&IE on the business travel expense report, then M&IE expenses for those travel days must not be claimed on the JLE expense report (at the 70% flat-rate).

6. JLE Expense/Claim Documentation

Receipts are not required for M&IE within the GSA stated rate structure.

Receipts are always required for transportation by common carrier (trips home) during any phase of JLE.

All JLE expenses must be itemized on the applicable firm's approved travel expense report form. If expenses exceeding those authorized by this policy are included on the expense report, the charges must be identified as "unallowable" when submitting the expense report to MOX Services for reimbursement. Unallowable expenses will not be reimbursed.

JLE expense reports must be reviewed and approved by the responsible administrative supervisor or manager from the subcontractor submitting the invoice for reimbursement prior to processing for reimbursement from MOX Services. It is the responsibility of each subcontractor to thoroughly review every expense report to ensure no unallowable expenses are billed to MOX Services and subsequently passed along to the government before submitting it to MOX Services for reimbursement. Repeated instances of poor quality in managing expense report submissions will result in non-payment of invoices and/or return of the unpaid expense reports to the generator for correction. JLE expense reports should be submitted to the subcontractor employee's corporate travel organization and thereafter on to MOX Services each month within 30 calendar days of costs incurred.

It is the subcontractor's responsibility to ensure compliance with appropriate government regulations, including Internal Revenue Service requirements, for reimbursement of expenses for all its employees.

7. Other Benefits and Requirements

The following benefits and requirements pertain to subcontractor employees approved to enter into JLE:

- Rental Car - Rental cars are not authorized for use by personnel on JLE unless circumstances warrant, and then only with the advanced approval of the Chair of the MOX Services JLE Review Board or the MOX Services Chief Administrative Officer (CAO).
- Trips Home - While on JLE, subcontractor employees are authorized one trip home per month, the first of which may occur no sooner than 30 calendar days after actual reporting date.
 - Receipts for airfare and other miscellaneous travel expenses shall be provided with all subcontractor employee travel expense reports for trips home.
 - M&IE is not authorized for days traveling to and from, or spent at the subcontractor employee's principal residence.
 - If travel home is accomplished by Privately Owned Vehicle, mileage will be reimbursed at the then current GSA rate.
 - Only one trip home per month will be reimbursable.
 - Travel under 400 miles will be approved via personal vehicle and travel 400 miles or greater will be by air using a two week advance, non-reimbursable coach fare ticket unless a lower fare is available. Travel outside of these guidelines must be approved in advance by the JLE Review Board.

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

8. Business Travel

- Business travel is travel of typically short duration (60 days or less) to locations outside the SRS area, when required in performance of work assigned to the Subcontractor's employee. Business travel in excess of 60 days requires the advance approval of the Chair of the MOX Services JLE Review Board or the MOX Services CAO, such approval may be given on a case-by-case basis.
- Reimbursement claims for business travel expenses must be submitted on a subcontractor expense report form. There must not be any overlap of JLE and business travel expenses.
- There is no pre-approval form for US Domestic business travel. Subcontractor will confirm with MOX Services Hiring Manager that business travel is required prior to making reservations.
- Foreign travel in support of the MOX Project requires pre-approval by the Department of Energy. MOX Services Project Procedure PP13-15, copy provided for your information, governs foreign travel. The pre-approval process will be handled by the prospective traveler and hiring manager and reservation should not be made by Subcontractor until travel has been authorized.
- All subcontractor personnel are responsible for compliance with individual company policies pertaining to use of Subcontractor corporate travel cards and booking travel reservations (including common carrier, lodging and rental cars, etc).

EXHIBIT 3

FILED 8/11 2006
Shir Hadad
J.C. CPAGS
Ashley M. Kane
J 8:10

Smith, Vera

From: Denise Dobbe [denise@globalpundits.com]
Sent: Wednesday, January 09, 2013 3:07 PM
To: Smith, Vera
Subject: Re: Ed Pugh

Thank you

Did the reviewer consider the electricity/utility bills? Those should be sufficient proof of a permanent residence. Mr. Pugh is very frustrated and is willing to submit whatever is needed to prove this is where he lives. During his previous assignment last year at MOX, he was approved for JLE at the same residence. He accepted this assignment with the expectation of having JLE, seeing that he qualified for it previously using the same criteria; he didn't foresee this being an issue. He has been maintaining two homes since October with no reimbursement and I can understand his frustration. Please ask the reviewer what else can be done/submitted at this point and please let me know so that I can tell Mr. Pugh.

Thank you,
Denise

On Wed, Jan 9, 2013 at 2:36 PM, Smith, Vera <VLSmith@moxproject.com> wrote:

Here is the written response:

"JLE eligibility has not been established. He has only shown he has a piece of land but no expenses in keeping w/a permanent residence."

I will ask about the meeting.

Thanks,

Vera Smith

Procurement Specialist / Buyer

Shaw AREVA MOX Services, LLC

Savannah River Site - 706-5F

P.O. Box 7097

Aiken, SC 29804-7097

EXHIBIT 4

FILED 8/11 2016
Shirley Haddad
RECEIVED
William M. Payne 8:30

Pinkston, Felicia

From: Bethmann, Christopher L.
Sent: Tuesday, November 12, 2013 3:14 PM
To: Pinkston, Felicia
Cc: Wylie, Lauren M.
Subject: Position Statement Regarding Ed Pugh Submission for JLE
Attachments: Ed Pugh Supporting Docs - Submitted to HR 9-18-13.pdf

Felicia,

Per your request I have reviewed the information you provided to me regarding the concern by Mr. Ed Pugh regarding his denial of Job Site Living Expenses. The following facts were reviewed for this request:

Ed Pugh submitted a request for JLE reimbursement on 10/8/2012. The document was received by MOX Services on 5 NOV 2012. The document was signed by Vera Smith as meeting the terms of the JLE requirements per the subcontract terms and conditions on 05 NOV 2013 and by Denise Dobbs of Global Pundits on 2 NOV 2013.

Over the course of a several months and communication back and forth, documents provided by Mr. Pugh to the project that his property was classified as a permanent residence or that dual expenses were incurred included:

- Oconee County Property Tax Assessment for the property at 330 Briar Creek Rd in Walhalla, SC
- Additional Property Tax Bill for the improvements to that property which is identified on the tax document as a single family occupancy location.
- Bills from Duke Energy of his electric service for Nov, 2012;
- City of Walhalla water bill for OCT-NOV;
- Oconee County Treasurers office Document showing the county tax on the property being \$91.59 for 2012 for the Mobile Home and a bill for \$181.05 for the property;
- Lease for local Apartment in Aiken at Brittany Downs, 122 Mossback Cir, Apt. C.
- Cancelled Checks for rent at Brittany Downs

Mr. Pugh subsequently asked for some of my time to discuss his request. I granted the request only to allow him to verbally make note of his request and did so in the presence of his manager Jessie Bumette. During the meeting I explained to Mr. Pugh that I was not the decision maker in this situation but would review the facts as they have been presented and offer an opinion to the Employee Concerns Program. Based on that meeting Mr. Pugh also provided me information that was not provided in his initial requests for living allowance. Those documents include photographs of the location at 330 Briar Creek Rd. in Walhalla, SC as well has a copy of his driver's license (issued 7/27/12), voters registration card issued 7/27/12), a vehicle registration issued in June of 2013; an insurance card dated 7/27/2013; letters of services he utilized in the Walhalla area. These documents do appear to add validity to the initial documents in support of his claim of establishing a permanent residence in Walhalla. I have included the added documents in this email.

Part of the reason for disallowance of Mr. Pugh's request is due to the fact that the documents provided by Mr. Pugh indicated the location he was claiming as a permanent residence was a vacant lot. Mr. Pugh's documents include two different documents (one for a lot and one for a mobile home). I believe the denial of Mr. Pugh's request for job Site Living Allowance was appropriate initially; however, there is an area of question into the qualification of what is a permanent residence. I am unable to find any government definition of a permanent residence.

Reference to "mobile home" being referred to as a permanent residence is captured in FAR 302.-10.2 regarding eligibility of transporting a "mobile home" when such is a "primary residence" of one's immediate family. Mr. Pugh is single and has no immediate

family living with him at his claimed permanent residence in Walhalla. While he has no immediate family residing in the mobile home he claims as his permanent residence, he does have documents that support a claim of dual expenses. Confidential

Mr. Pugh has also provided me with photographs of the locations he refers to as 330 Briar Creek Rd. in Walhalla, SC. This information was not provided to MOX Services prior to this review.

I have had an opportunity to review the documents thoroughly and feel that the documents provided satisfy the necessary requirements for payment of living allowance to Mr. Pugh. Therefore, it is my opinion that Mr. Pugh has met the criteria for qualifying for living allowance.

Chris Bethmann, Human Resources Manager

Shaw AREVA MOX Services, LLC

Shaw Project Services Group, LLC

803.819.5650 Direct

803.819.5654 Confidential Fax

803.795.7048 Cell

Privileged/Confidential Information, or Attorney-Client Privileged Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such case, you should destroy this message and notify the sender by reply email. Please advise immediately if you or your employer do not consent to Internet email for messages of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of Chicago Bridge & Iron, or its subsidiaries shall be understood as neither given nor endorsed by it.

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Case No. 2015-CP-02-02389

Edward Pugh,)

Plaintiff,)

v.)

CB&I AREVA MOX Services,)

LLC, and Globalpundits Technology)

Consultancy, LLC,)

Defendants.)

CERTIFICATE OF SERVICE

I, Jodie D. Fowler, Paralegal for Jeremy Summerlin, do hereby certify that on July 28, 2016, I served upon the below-named individual Motion Coversheet, Plaintiff's Motion for Summary Judgment, and Affidavit of Edward Pugh by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Michael D. Carrouth, Esquire
Fisher & Phillips, LLP
1320 Main Street
Suite 750
Columbia, SC 29201

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FILED 8/1 2016
Shirley Hadfield
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8:30

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

v.

CB&I AREVA MOX Services, LLC.
and Globalpundits Technology
Consultancy, LLC,

Defendants.

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

**PLAINTIFF'S MEMORANDUM OF
LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND/OR FOR
DECLARATORY JUDGMENT**

FILED

9/16/16
Shirley Hedard
C.C.C.P. & G.S.
Ample
Deputy Clerk

Plaintiff Edward Pugh ("Plaintiff" or "Pugh"), by and through his undersigned counsel, comes before this Court pursuant to South Carolina Rule of Civil Procedure 56 and files this Memorandum of Law in support of his Motion for Summary Judgment and Declaratory Judgment, and in opposition to Defendants' own motion for summary judgment.

I. INTRODUCTION/SUMMARY

In summary, Defendants entered into an employment relationship with Pugh, the terms and conditions of which were set out in a written Employment Contract, as well as its accompanying policies and procedures, including an incorporated policy that provides for repayment of jobsite living expenses, or "JLE." Pugh seeks a declaration that this policy, which obligates Defendants to pay Pugh JLE benefits, is a legally enforceable contract and that such benefits constitute wages under South Carolina law.

Plaintiff filed this action against Defendants seeking a declaration of rights under the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.*, regarding the existence and enforceability of a contract between Plaintiff and Defendants. Under South Carolina law, contract actions are actions at law. *Hofer v. St. Clair*, 298 S.C. 503, 508, 381

S.E.2d 736, 739 (1989). Thus, Plaintiff filed a Motion for Summary Judgment requesting declaratory judgment on questions of law and matters of contract interpretation. In support of this motion, Plaintiff submitted his affidavit with attached exhibits. This Memorandum is also in support of Plaintiff's Motion and includes additional attached exhibits.

II. FACTS

A. The Parties

Plaintiff Edward Pugh ("Pugh") is a welding engineer with over 30 years of experience in his field. ("Affidavit of Edward Pugh," ¶ 1).¹ He has worked as a welding engineer on projects all across the United States, as well as in foreign countries. (*Id.*). From March 2011 to May 2012, in what turned out to be his first of two tours with Defendant CB&I AREVA MOX Services, LLC ("MOX"), Pugh worked as a welding engineer at the Department of Energy Mixed Oxide Fuel Fabrication Facility Project in Aiken, South Carolina. (Exhibit 5, "Defendants' Responses to Request to Admit," #2).

Defendant MOX is the prime contractor for the DOE project. (*Id.* at #3). MOX contracts with third party contractors to perform the work on the actual facility. (Exhibit 6, "Defendants' Amended Answer," ¶ 9). One of these contractors is Defendant Globalpundits Technology Consultancy, LLC ("Globalpundits"). (*Id.*). Globalpundits works as a middleman to arrange for engineers and other workers with the needed skills to come work at the Savannah River Site. (*Id.*).²

B. The Need for and Purpose of Job Site Living Expenses

However, MOX and Globalpundits recognized that finding permanent personnel to fill

¹ Previously attached to Plaintiff's Motion for Summary Judgment. Plaintiff's Affidavit contained four exhibits, and when referring to Exhibits 1-4 in this Memo, such reference will be to the Affidavit's exhibits.

² Both Defendants are Pugh's joint employers, with Globalpundits providing wage and benefit support, among other things, and MOX directing Pugh's work on a daily basis.

positions at the Aiken facility would be difficult and that they would need to hire temporary personnel to fill positions in the meantime. (See Exhibit 2 to Pugh Aff., "Subcontractor Job Site Living Expenses (JLE)," ¶ 1) (hereinafter called "the JLE Policy"). One method that MOX and Globalpundits uses to attract talent from across the country to come to Aiken to work on the facility comes in the form of Job Site Living Expenses ("JLE"). (See *id.*; see also Pugh Aff. ¶ 7). Since most of these subcontract employees with certain professional expertise do not live in or within commuting distance of the Savannah River site in Aiken, South Carolina, they have to pay for local housing near the worksite. (Pugh Aff. ¶ 7). This arrangement results in dual expenses in both their primary residence and at the worksite. (*Id.*).

JLE is intended to induce these professionals to work in an area where they do not live. (*Id.*). JLE also helps recruiting efforts by offering compensation to employees for the uncertainty of when the project would begin, how long the funding for the project would last, and the potentially limited duration of employment. (*Id.*).

C. Pugh's First Tour with MOX and Globalpundits

As mentioned previously, Pugh worked at the Savannah River site for MOX from March 2011 to May 2012. (Def. Responses to RTA, ¶ 2). During this tour, he applied for and received JLE from MOX and Globalpundits. (*Id.* at ¶ 5). The requirements to get JLE were laid out in the JLE Policy. He received JLE because he met all the requirements under the JLE Policy and was found by MOX to be eligible for JLE benefits. (Def. Responses to RTA, ¶ 6). In order to receive JLE benefits, the JLE Policy required that Pugh be in a situation where he incurred dual expenses as a result of completing the work assignment at the Savannah River Site, which meant that he had to have a permanent residence of record that was 50 miles or more from the Savannah River Site while incurring local housing expenses near the site. (JLE Policy, ¶ 1; Pugh Aff. ¶ 8). Pugh

met all of these requirements. (Def. Responses to RTA, ¶ 5; Pugh Aff. ¶ 9).

D. Pugh's Second Tour and New Request for JLE: Formation of the Contract

In the fall of 2012, Pugh accepted employment with Globalpundits for what would be his second tour at the Savannah River Site. (Pugh Aff. ¶ 10). As part of his offer of employment from Globalpundits, and as outlined in the Employment Offer Letter, Globalpundits stated that his requests for JLE would again be governed by the same MOX JLE Policy, which was appended to the Employment Offer Letter. (Exhibit 1 to Pugh Aff., "Employment Offer Letter"). Pugh accepted this offer of employment on October 8, 2012 and immediately applied for JLE. (Pugh Aff. ¶ 10, 14). Pugh based his October 2012 decision to accept employment with MOX and Globalpundits on that offer of JLE, just as he had in 2011. Crucially for purposes of this litigation, Globalpundits (and later MOX) *knew* that Pugh had based his decision to accept this assignment on the expectation that he would again receive JLE. (See Exhibit 3 to Pugh Aff., "Email from Denise Dobbs at Globalpundits to Vera Smith at MOX, January 8, 2013"; Pugh Aff. ¶ 12). Specifically, Globalpundits stated that

[d]uring [Pugh's] previous assignment last year with MOX, he was approved for JLE at the same residence. **He accepted this assignment with the expectation of having JLE**, seeing that he qualified for it previously using the same criteria; he didn't foresee this being an issue. He has been maintaining two homes since October with no [JLE] reimbursement

Id. (emphasis added).

Pugh's expectation of JLE benefits—and Globalpundits understanding of Pugh's expectation at the time the contract of employment was entered into—makes sense, as his living situation had not changed between his first tour and his second tour. (Pugh Aff. ¶ 13).³ Nor had

³ Although Defendants systematically deny Plaintiff's Request to Admit on this very topic (see Def. Responses to RTA, nos. 7-10, 13), they also simultaneously admit that they did not have sufficient information about the Requests to offer a proper response. This leaves Pugh's sworn statements as the only remaining admissible evidence on the matter.

the process or standards changed for requesting and receiving JLE. (*Id.*; *see also* JLE Policy). In fact, MOX repeatedly stated in internal documents that Pugh was fully qualified for JLE. First, when Pugh initially applied for JLE, he was sponsored by a VP-level MOX manager, who attested (and was seconded by a Globalpundits manager) that Pugh was being hired for “a senior level position where it is reasonable and customary to pay JLE,” and that Pugh was filling a “critical needs position” where there was a “limited availability of local candidates . . . willing to relocate.” (Exhibit 7, “MOX Project: Job Site Living Expenses Form,” p. 2). Second, the JLE Subject Matter Expert for MOX, Chris Bethmann, performed an extensive review of Pugh’s request and determined that he was fully qualified for JLE. (*See* Exhibit 4 to Pugh Aff., “Internal Email from Chris Bethmann to Felicia Pinkston, November 12, 2013”; Pugh Aff. ¶ 14).

Additionally, Pugh did not accept employment with MOX and Globalpundits to provide free labor to them. (Pugh Aff. ¶ 16). He accepted the job with MOX and Globalpundits in part based on their provision of JLE benefits as part of his compensation package. (*Id.*). Such compensation was supposed to be provided to him in exchange for his labor on MOX and Globalpundits’ behalf. (*Id.*).

E. Defendants’ Unjustified Breach of the Contract

After Pugh submitted his request for JLE on October 8, 2012, he began submitting weekly expense reports to Globalpundits to comply with the JLE requirements and establish his accrual of living expenses. (Pugh Aff. ¶ 14). He further engaged in extended communications with MOX and Globalpundits employees about his JLE request and submitted as many additional documents to them as they requested to prove his qualification for JLE. (*Id.*). Ultimately, however, MOX and Globalpundits denied his JLE request, and despite his best efforts, MOX and Globalpundits have continued to refuse to pay him any JLE benefits. (*Id.*).

Nearly four years after Pugh's initial request, he still has not received a single dollar of JLE reimbursement from MOX or Globalpundits. (*Id.*).

III. STANDARDS

A. Standard for Granting Summary Judgment

Under South Carolina Rule of Civil Procedure 56, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56. The party seeking summary judgment bears the burden of informing the court of the basis of its motion and identifying those portions of the "pleadings, depositions, answers to interrogatories, any admissions on file, together with affidavits, if any, which show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Baughman v. American Telephone and Telephone Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

B. Declaratory Judgment of Action

Through this declaratory judgment action, Pugh seeks from this Court a declaration of the rights and obligations between Pugh and Defendants as to whether certain documents given to Plaintiff during his initial hiring in 2012 constitute a contract between Plaintiff and Defendants. Specifically, whether the Employment Agreement and the JLE Policy obligates Defendants to pay Plaintiff his JLE reimbursement amount if he qualifies under the JLE Policy itself.

Under South Carolina's declaratory judgment act:

Any person interested under a . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by . . . contract . . . may have determined any question of construction or validity arising under the instrument [or] . . . contract . . . and obtain a declaration of rights, status or other legal

relations thereunder.

S.C. Code Ann. § 15-53-30 (2016). Further, § 15-53-20 of the Act provides that:

[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. [...] The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

Specifically, a declaration of Pugh's entitlement to JLE benefits is required under the law because (a) Defendants explicitly contracted to provide the benefits, (b) Defendants offered the benefits as part of an implied contract, and (c) Defendants owe the benefits as legally earned wages.

IV. LEGAL ARGUMENT

A. Defendants Owed Contractual Obligations to Pugh

Defendants entered into an employment relationship with Pugh, the terms and conditions of which were set out in the written Employment Contract, as well as its policies and procedures, including the incorporated JLE Policy. Quite simply, Pugh seeks a declaration that the JLE Policy, which obligates Defendants to pay Pugh JLE benefits, is a legally enforceable contract.

1. The JLE Policy is part of the legally enforceable contract between Pugh and Defendants.

Under South Carolina contract law, "[a] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." *Roberts v. Gaskins*, 327 S.C. 478, 486 S.E.2d 771, 773 (Ct. App. 1997). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). Further, "[i]t is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent [i.e., meeting of the minds] to the terms" of the contract. *Potomac Leasing Co. v. Otts*

Mkt., Inc., 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987); *see also Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010). “A meeting of minds is based upon the intent and purposes **as shown by all the circumstances.**” *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292, 300 (1996) (emphasis added).

Two documents prove key in this dispute: the Employment Contract and the JLE Policy issued by MOX. When Globalpundits made its formal offer of employment to Pugh in early October 2012, it included all the pertinent terms and conditions of employment in the Employment Contract, including a paragraph devoted to JLE. (See Employment Offer Letter, ¶ 3). This paragraph incorporated by reference the JLE Policy that MOX administers. Although the Employment Contract does state that JLE requests must be approved before reimbursement, it’s clear that the proffering of JLE was an inducement to Pugh in signing the contract, especially since Globalpundits was aware that Pugh had previously received JLE on his last tour and would reasonably expect the same reimbursement for moving from Walhalla to Aiken. Defendants were fully willing to dangle the prospect of JLE in front of Pugh to get him to move across the state, but when the time came for them to perform, they proved unwilling to ultimately give him that JLE upon his actual arrival.

In this case, it’s undisputed that Pugh previously received JLE from Defendants during his first tour with Defendants and it’s undisputed that Pugh’s living situation had not changed in between his first and second tours. Globalpundits, as evidenced by its email (Exhibit 6), knew that Pugh considered the provision of JLE to be an essential term of the contract and part of his compensation package when he entered into employment. So when Globalpundits made the offer of employment to Pugh with its reference to and incorporation of MOX’s JLE Policy, there was a meeting of the minds as to the essential terms of the contract, and those terms included the

provision of JLE to Pugh. As the court stated in *Rickborn v. Liberty Life Ins. Co.*, the requisite meeting of the minds is "based upon the intent and purposes **as shown by all the circumstances**" of the case, 321 S.C. at 303, 468 S.E.2d at 300. Here, the intent and purposes of the JLE provision in the Employment Contract and the JLE Policy were to induce and compensate Pugh to leave his home in Walhalla and venture across the state to apply his considerable knowledge and experience for the sole benefit of the Defendants. These circumstances prove that there was a meeting of the minds as to the terms of this contract.

Finally, these terms were offered to Pugh by the Defendants, and he accepted. Adequate consideration takes the form of Pugh's agreement to work for Defendants and of Defendants' agreement to employ Pugh under the terms of the contract. Because the terms of the contract, including the provision of JLE under the JLE Policy, were in full contemplation of the parties at the time the contract was entered into, Plaintiff respectfully requests that this court declare that the JLE Policy was a term of the contract and that Defendants are obligated to pay Pugh the JLE benefits.

2. The JLE Policy also functions as an implied contract under South Carolina law.

Additionally, South Carolina courts have articulated rules governing implied contracts under that arise under employment policies, the most famous of which are the series of cases discussing employee handbooks. In essence, the courts have stated that "[i]f an employer wishes to issue policies, manuals, or bulletins as purely advisory statements with no intent of being bound by them . . . , he certainly is free to do so." But, the courts continued, "it is patently unjust to allow an employer to couch a handbook, bulletin, or other similar material in mandatory terms and then allow him to ignore these very policies as 'a gratuitous, nonbinding statement of general policy' whenever it works to his disadvantage." *Small v. Springs Indus., Inc.*, 292 S.C. 481, 485.

In this case, Defendants committed to pay Pugh JLE benefits, provided Pugh meet the JLE criteria, but then in had faith unilaterally determined that Pugh was suddenly not entitled to the benefits, despite the fact that he met those criteria under the JLE Policy. Defendants desire to keep the benefit of the bargain (Pugh's initial and continued employment on their behalf) while attempting to render their own obligation as illusory. *See id.* at 485, 357 S.E.2d at 455 (quoting *Toussaint v. Blue Cross & Blue Shield of Michigan*, 408 Mich. 579, 619, 292 N.W.2d 880, 895 (1980): "Having announced the policy, presumably with a view to obtaining the benefit of improved employee attitudes and behavior and improved quality of the work force, the employer may not treat its promise as illusory."). Such actions by Defendants violate the contract between Pugh and Defendants.

Plaintiff anticipates that the Defendants will argue that the JLE benefits were subject to their approval and were to be awarded at their sole discretion, and thus the benefits were not guaranteed. However, as already noted, Defendants used the JLE benefits as an inducement, and thus they were obligated to award those benefits when Pugh met the criteria under the JLE Policy. Defendants are further obligated to abide by the terms of the JLE Policy in good faith, as every contract requires the parties to act in good faith regarding the terms of the contract. *See Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 366-67, 147 S.E.2d 481, 484 (1966) ("[T]here exists in every contract an implied covenant of good faith and fair dealing.")

B. Defendants Breached the Contract by Failing to Pay Pugh What He was Owed.

Pugh must also prove that Defendants breached this contract by failing to pay him the JLE benefits he was entitled to. In order to recover for breach of contract, a plaintiff must allege and prove (1) the existence of a contract, (2) breach of the contract, and (3) damages caused by

the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). As argued above, the Employment Contract and the JLE Policy were an enforceable contract between Pugh and Defendants, which obligated Defendants to pay Pugh JLE benefits if he qualified under the applicable provisions of the JLE Policy. This fact meets element (1), as to the existence of a contract.

The JLE Policy clearly states that in order to qualify for JLE benefits, "a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred)." (JLE Policy, ¶ 1). As Pugh has testified, he has a permanent residence for income tax purposes in Walhalla, South Carolina that is more than 50 miles from the Savannah River Site, and he was incurring dual living expenses between his Walhalla residence and his Aiken apartment. (Pugh Aff. ¶ 13). Pugh provided Defendants with all additional information and documents that they requested during this process. (*Id.* at ¶ 14).

Additionally, MOX's JLE Subject Matter Expert, Chris Bethmann, stated in an internal email that Pugh was fully qualified to receive JLE because he met all of the Policy's criteria. (Exhibit 4 to Pugh Aff.). Defendants have explicitly admitted that they possess no information (nor, evidently, have they sought to obtain any information) that would contradict Pugh's statements about meeting these criteria. (Def. Responses to RTA. #7-12). Therefore, there's no dispute of fact that Pugh met his obligations under the contract.

Finally, Pugh was damaged as result of Defendants' breach of the contract. Pugh has testified that Defendants have failed to pay him a single dollar under the JLE Policy (Pugh Aff. ¶ 15). This amount totals \$59,758.85, which remains unpaid as of this filing date. (Exhibit 8,

Plaintiff's Complaint, ¶ 25; Exhibit 6, Defendants' Amended Answer, ¶ 25). Defendants refusal to pay Pugh his lawfully owed JLE benefits has caused Pugh to suffer damage in the form of \$59,758.85.

C. The JLE benefits constitute "wages" under South Carolina law.

Under the South Carolina Payment of Wages Act, an employer is obligated to employees all earned wages. The Act defines "wages" to mean:

all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. . . .

S.C. Code Ann. § 41-10-10(2). The law provides for broad coverage of employees, which does include Pugh in its definition. *See Williams v. S. Carolina Dep't of Corr.*, 372 S.C. 255, 258, 641 S.E.2d 885, 887 (2007) (providing the test for an employer-employee relationship under the Wage Payment Act). The Act is intended as "remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld." *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995). The law's definition of "wages" is likewise broad, capturing all types of compensation within its nets, and the Court of Appeals has explicitly interpreted this to include "'all amounts . . . which are due to an employee under any . . . employment contract.'" *Id.* at 195 n.4, 463 S.E.2d at 645 (ellipses in original); *see also Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 28, 738 S.E.2d 480, 495 (Ct. App. 2013).

In this case, Pugh, as an employee of Defendants, earned the JLE benefits under South Carolina law. Specifically, JLE benefits meet the definition of "wages" because, as Pugh has testified, he did not accept his employment with Defendants to provide free labor to Defendants (nor would any employee in South Carolina). He accepted the job with Defendants in part based

on Defendants' provision of JLE benefits as part of his compensation package. Such compensation was supposed to be provided to Pugh in exchange for his labor on Defendants' behalf, thereby making it "wages" under SC law.⁴ Pugh earned the benefits because he met all the criteria laid out in the JLE Policy itself. Thus, he is entitled to be paid his wages in the form of JLE benefits.

Additionally, the Employment Contract and JLE Policy that Pugh and Defendants agreed to at the start of his employment includes the provision of JLE among a list of benefits to be provided to Pugh during his employment. As noted in *Dumas*, wages include all monies due to an employee under any employment contract. 320 S.C. 195 n.4, 463 S.E.2d at 645, which is exactly what Pugh and Defendants entered into, rendering Defendants liable to Pugh for unpaid wages under the law. The JLE Policy also falls under the Wage Payment Act's inclusion of compensation that is due under an "employer's policy," which MOX's JLE Policy certainly is.

V. CONCLUSION

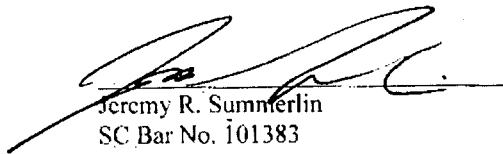
Based on the foregoing arguments, Pugh is entitled to a declaration of his rights under the contract (the Employment Contract and the JLE Policy) with Defendants. Further, Defendants have breached their obligations under the contract, as well as failed to pay Pugh all of his lawfully earned wages in the form of JLE benefits. Accordingly, Plaintiff respectfully requests that this Court deny Defendants' Motion for Summary Judgment and grant his Motion for Declaratory Judgment and Summary Judgment for the reasons laid out above.

[signature and date on following page]

⁴ It's interesting to note that Section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, defines wages to include the reasonable cost of "furnishing [an] employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees." JLE, in our case, is compensation for the reasonable cost of living expenses as well.

Respectfully submitted,

Law Office Of W. Andrew Arnold, P.C.

A handwritten signature in black ink, appearing to read 'Jeremy R. Summerlin', is written over a horizontal line.

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ATTORNEY FOR PLAINTIFF

August 30, 2016

EXHIBIT 5

DEFENDANTS' RESPONSES TO RTA

9.6.16
FILED
Lisa Hardaway
CP & GS
830
[Signature]
Deputy Clerk

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	Civil Action No: 2015-CP-02-02389
Edward Pugh,	)	
Plaintiff,	)	
vs.	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
Defendants.	)	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST
SET OF REQUESTS TO ADMIT**

TO: JEREMY R. SUMMERLIN, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendants CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC respond to Plaintiff's First Set of Requests to Admit as follows:

REQUESTS

1. Admit that Plaintiff Edward Pugh ("Plaintiff") was employed by Defendant Globalpundits Technology Consultancy, LLC ("Globalpundits") from March 2011 to May 2012.

ANSWER: Admitted.

2. Admit that Plaintiff worked as a welding engineer at the Department of Energy Mixed Oxide Fuel Fabrication Facility Project from March 2011 to May 2012.

ANSWER: Admitted.

3. Admit that Defendant CB&I AREVA MOX Services, LLC ("MOX") is the prime contractor for the Department of Energy Mixed Oxide Fuel Fabrication Facility Project.

ANSWER: Admitted.

FPDOCS 31722983.1

4. Admit that MOX or one of its agents makes the final decision whether to grant or deny an applicant's request for Jobsite Living Expenses ("JLE").

ANSWER: Denied. This Request implies that MOX makes the final determination on the allowability of any JLE paid.

5. Admit that Plaintiff applied for and received JLE during his employment with Globalpundits from March 2011 to May 2012.

ANSWER: Admitted. Under the JLE guidelines and requirements, Plaintiff was found to be eligible for JLE for the stated time period, and MOX Services received reimbursement from DOE for those monies paid to Globalpundits as JLE expenses.

6. Admit that Plaintiff met the requirements under the JLE Policy to receive JLE during his employment with Globalpundits from March 2011 to May 2012.

ANSWER: Admitted. Under the JLE guidelines and requirements, Plaintiff was found to be eligible for JLE for the stated time period.

7. For the time period of October 1, 2012 to October 31, 2014, admit that Plaintiff was in a situation where dual expenses were incurred by Plaintiff as a result of completing his work assignment at the MOX facility.

ANSWER: Denied. Defendants are without sufficient information to admit or deny this Request and, therefore, deny.

8. For the time period of October 1, 2012 to October 31, 2014, admit that Plaintiff had a primary residence of record for income tax purposes that was 50 miles or more from the MOX facility.

ANSWER: Denied. Defendants are without sufficient information to admit or deny this Request, and, therefore, deny, as they are not aware of all property owned by Plaintiff.

9. For the time period of October 1, 2012 to October 31, 2014, admit that Plaintiff does not own property within 50 miles of the MOX facility.

ANSWER: Denied. Defendants are without sufficient information to admit or deny this Request, and, therefore, deny, as they are not aware of all property owned by Plaintiff.

10. For the time period of October 1, 2012 to October 31, 2014, admit that Plaintiff incurred local housing expense in or around Aiken, South Carolina.

ANSWER: Denied. Defendants are without sufficient information to admit or deny this Request and, therefore, deny.

11. For the time period of October 1, 2012 to October 31, 2014, admit that Plaintiff owns a residence in Walhalla, South Carolina.

ANSWER: Denied. Defendants deny that Plaintiff owns a "residence," as defined by JLE policy, in Walhalla, South Carolina. Defendants admit that, upon information and belief, Plaintiff owns property in Walhalla, South Carolina.

12. Admit that Walhalla, South Carolina is more than 50 miles from the MOX facility.

ANSWER: Admitted.

13. Admit that Plaintiff's decision to accept employment with Globalpundits in October 2012 was based on Defendants' promise to provide him with JLE.

ANSWER: Denied. Defendants do not know the reason(s) why Plaintiff accepted employment with Globalpundits. Defendants specifically deny ever making a "promise" to Plaintiff that he would be provided JLE.

14. Admit that in 2012 Plaintiff was hired for a senior level position where it was reasonable and customer [sic] to pay JLE.

ANSWER: Denied that Plaintiff was hired for a "senior level position." Admitted that as part of his employment, Plaintiff was eligible to make an application for JLE. Denied to the extent this Request states that Plaintiff was not required to demonstrate eligibility for JLE by complying with all requirements and policies of JLE.

15. Admit that in 2012 Plaintiff was hired for a position that was of critical need to MOX.

ANSWER: Denied. The term "critical need" is ambiguous and, therefore, could not have been factor in Plaintiff's hiring.

16. Admit that in 2012 Plaintiff was hired for a position for which there was a limited number of local candidates or candidates willing to relocate.

ANSWER: Denied. Plaintiff's characterization of "limited number of local candidates or candidates willing to relocate" is ambiguous and, therefore, was not a factor in Plaintiff's hiring.

17. For the time period of October 1, 2012 to October 31, 2014, admit that the Chairman of the JLE Review Board never signed Plaintiff's two Subcontractor/Temporary Personnel Request for Approval of Job Site Temporary Living Expenses, as shown on Defendants' 01AD000003 and 01AD000019.

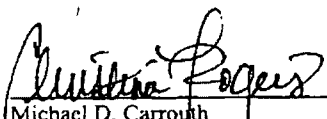
ANSWER: Admitted. The contents of the documents speak for themselves.

18. Admit that there are still subcontract employees receiving JLE while performing work at MOX Services.

ANSWER: Denied. The JLE Program was discontinued. See 01AI 1-2, previously produced.

Respectfully submitted,

FISHER & PHILLIPS LLP


Michael D. Carrouth
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Christina L. Rogers

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Dated this 6th day of June 2016.

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Attorneys for Defendants

FPDOCS 31722983.1

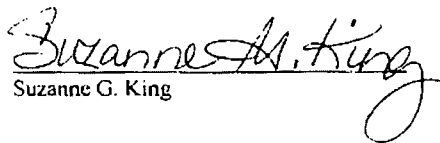
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	Civil Action No: 2015-CP-02-02389
COUNTY OF AIKEN	)	
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT** in the above-captioned case has been served upon Plaintiff by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin, Esquire
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II, Esquire
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097


Suzanne G. King

Dated this 6th day of June, 2016.

FPDOCS 31749184.1

9-6-16
FILED
J. H. Hardard
C.C.P. & G.S.
Amos
Deputy Clerk

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	Civil Action No: 2015-CP-02-02389
COUNTY OF AIKEN	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AMENDED ANSWER
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
Defendants.	)	

Defendants CB&I AREVA MOX Services, LLC ("MOX Services") and Globalpundits Technology Consultancy, LLC ("Globalpundits") (hereinafter both Defendants will be referred to collectively as "Defendants") answer and respond to Plaintiff Edward Pugh's ("Pugh" or "Plaintiff") Complaint as follows¹:

FOR A FIRST DEFENSE

1. Defendants are without sufficient information at this time to admit the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 4.

¹ By answering the Complaint collectively, neither Defendant waives, mitigates or otherwise prejudices any defense it may have either one to the other or as to the Plaintiff. Defendant Globalpundits answers collectively for the Defendants pursuant to an indemnification agreement between the Defendants.

5. Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 5.

6. Paragraph 6 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 6.

7. Answering the allegations of Paragraph 7 of the Complaint, Defendants acknowledge Pugh has asserted a cause of action under the South Carolina Wage Payment Statute and has also brought claims for declaratory judgment and breach of contract. The remaining allegations of Paragraph 7 are denied.

8. Answering the allegations of Paragraph 8 of the Complaint, MOX Services is the prime contractor for the Department of Energy ("DOE") Mixed Oxide Fuel Fabrication Facility Project located at the DOE's Savannah River Site near Aiken, South Carolina, any other allegation remaining in Paragraph 8 of the Complaint is denied.

9. Paragraph 9 of the Complaint is admitted.

10. Answering the allegations of Paragraph 10 of the Complaint, Defendants admit so much as alleges that Pugh is a welding engineer. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 10 of the Complaint and, therefore, deny same.

11. The allegations contained in Paragraph 11 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 11 are inconsistent with the contents of the Employment

Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

12. The allegations contained in Paragraph 12 of the Complaint refer to the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 12 are inconsistent with the contents of the Employment Offer Letter and Non-Competition, Non-Disclosure, and Non-Solicitation Agreement for Employees, those allegations are denied.

13. The allegations contained in Paragraph 13 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy, which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 13 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy, those allegations are denied.

14. The allegations contained in Paragraph 14 of the Complaint refer to the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), which are written documents that speak for themselves. To the extent the allegations contained in Paragraph 14 are inconsistent with the contents of the Globalpundits Clarification of MOX JLE Policy and Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

15. Paragraph 15 of the Complaint is denied.

16. The allegations contained in Paragraph 16 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 16 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

17. The allegations contained in Paragraph 17 of the Complaint refer to the Subcontractor Job Site Living Expenses (JLE), which is a written document that speaks for itself. To the extent the allegations contained in Paragraph 17 are inconsistent with the contents of the Subcontractor Job Site Living Expenses (JLE), those allegations are denied.

18. Answering the allegations of Paragraph 18 of the Complaint, Defendants, upon information and belief, admit so much as alleges that Pugh owns property in Walhalla, South Carolina. The remaining allegations of Paragraph 18 are denied.

19. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint and, therefore, deny same.

20. Paragraph 20 of the Complaint is denied.

21. Answering the allegations of Paragraph 21 of the Complaint, Defendants admit so much as alleges that Pugh was hired in October 2012 and received the Subcontractor Job Site Living Expenses (JLE). Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 21 of the Complaint and, therefore, deny same.

22. Answering the allegations of Paragraph 22 of the Complaint, Defendants admit so much as alleges that Pugh's JLE request was denied by MOX. The remaining allegations of Paragraph 22 are denied.

23. Defendant admits that Pugh has repeatedly requested JLE reimbursement for expenses. The remaining allegations in Paragraph 23 of the Complaint are denied.

24. Paragraph 24 of the Complaint is admitted.

25. Defendants deny that Plaintiff is due any compensation and deny Paragraph 25 of the Complaint.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. With respect to Paragraph 26 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

27. Paragraph 27 of the Complaint is denied.

28. Answering the allegations of Paragraph 28, Defendants acknowledge that Plaintiff seeks declaratory and equitable remedies. All other allegations in Paragraph 28 are denied.

29. Paragraph 29 of the Complaint is denied.

30. Paragraph 30 of the Complaint is denied.

31. Paragraph 31 of the Complaint is denied.

32. Paragraph 32 of the Complaint is denied.

33. Paragraph 33 of the Complaint sets forth legal conclusions to which no response is required by Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 33.

SECOND CAUSE OF ACTION
(Breach of Contract)

34. With respect to Paragraph 34 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

35. Paragraph 35 of the Complaint is denied.

36. Paragraph 36 of the Complaint is denied.

37. Paragraph 37 of the Complaint is denied.

38. Paragraph 38 of the Complaint is denied.

39. Paragraph 39 of the Complaint is denied.

THIRD CAUSE OF ACTION
(Unpaid Wages Under S.C. Wage Payment Act)

40. With respect to Paragraph 40 of the Complaint, Defendants incorporate each and every allegation of Defendants' Answer to the same extent as if set forth verbatim.

41. Paragraph 41 of the Complaint is denied.

42. Answering the allegations of Paragraph 42 of the Complaint, Defendant Globalpundits admits that it is an employer for purposes of the Wage Payment statute while Defendant MOX Services denies same. All remaining allegations of Paragraph 42 of the Complaint are denied.

43. Paragraph 43 of the Complaint is denied.

44. Paragraph 44 of the Complaint is denied.

45. Paragraph 45 of the Complaint is denied.

Responding to the final, unnumbered paragraph of the Complaint, including subsections a through h, containing Pugh's Prayer for Relief, Defendants deny that Pugh is entitled to any relief whatsoever and deny all subsections.

FOR A SECOND DEFENSE

46. All paragraphs and allegations not herein specifically admitted are denied.

FOR A THIRD DEFENSE

47. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

48. Defendants asserts they made all payments Plaintiff was entitled to.

FOR A FIFTH DEFENSE

49. In the event Defendants withheld money Plaintiff believed he was entitled to, which Defendants deny, Defendants acted in good faith in disputing any withheld pay and, therefore, treble damages are an inappropriate remedy.

FOR A SIXTH DEFENSE

50. Upon information and belief, Plaintiff is seeking to recover unsubstantiated amounts and any recovery of such amounts as damages is barred or limited accordingly.

FOR A SEVENTH DEFENSE

51. Observing and without waiving all defenses previously stated with respect to the contract alleged by Plaintiff to have been breached (which Defendants deny existed), Plaintiff has failed to satisfy all conditions precedent to Defendants' performance under the alleged contract and, therefore, Defendants were relieved of any obligation to perform and were entitled to withhold performance.

FOR AN EIGHTH DEFENSE

52. To the extent Plaintiff has suffered any damages as a result of any act or omission by Defendant, which is denied, then, upon information and belief, Plaintiff failed to mitigate damages in a timely or proper fashion.

FOR A NINTH DEFENSE

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

FOR AN TENTH DEFENSE

54. Any recovery on Plaintiff's Complaint may be barred, in whole or in part, based upon after-acquired evidence that may be discovered during the course of litigation.

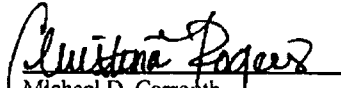
FOR AN ELEVENTH DEFENSE

55. Defendant reserves the right to assert further affirmative defenses upon discovery of facts not previously known.

THEREFORE, having fully answered, Defendants pray that Pugh's Complaint be dismissed with prejudice, and the Court award costs and attorney fees to Defendants.

Respectfully submitted,

FISHER & PHILLIPS LLP


Michael D. Carroth
mcarroth@laborlawyers.com
Christina L. Rogers
crogers@laborlawyers.com

FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: (803) 255-0000
Facsimile: (803) 255-0202

Dated this 21st day of December 2015.

Attorneys for Defendants

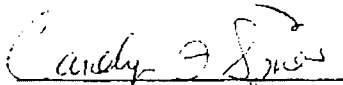
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
Edward Pugh,	)	
	)	C/A No.2015-CP-02-02389
Plaintiff,	)	
	)	
vs.	)	
	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **Amended Answer** in the above-captioned case has been served upon Plaintiff by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097


Carolyn F. Spires

Dated this 21st day of December, 2015

FPDOCS 31315361.1

EXHIBIT 7

MOX Project: Job Site Living Expenses Form

9.6.16
FILED
Jen Hedard
CCP & GS
8/20
Deputy Clerk

MOX Project: Job Site Living Expenses Form

Subcontractor / Temporary Personnel Request for Approval of Job Site Living Expenses

Subcontract No: 10888-B-6519-Release # 48

To: JLE Review Board
Shaw AREVA MOX Services, LLC
MOX Project

Date: 10/08/2012

It is requested that Job Site Living Expenses (JLE) status be approved for the following individual named below

EMPLOYEE INFO:

Name: Ed Pugh

Title/Position: Materials Engineer

Employer: Globalpundits, Inc

Start Date on Project: 10/8/2012

Period covered by this request: From: 10/8/2012 To: 02/28/2013

Duty Location: Savannah River Site- Aiken, SC Enter number of months covered by this request 5

Estimated Cost for one trip home per month via: < 400 mile, mileage or >400 miles refundable flight \$177.60

Estimated total Cost for Trips home this period \$ 888.00 (Note: per Subcontract, only one trip per month will be reimbursed, regardless of means of travel)

Estimated Total JLE Cost this Period \$ 14,193.60

RECERTIFICATION:

Is this a recertification? Yes ☐ No ☒

Has there been any change to your circumstances since your last recertification/certification? Yes ☐ No ☐ N/A ☒

PURPOSE/JUSTIFICATION:

1. Date employee commenced JLE Assignment: 10/8/2012 TOR Expiration Date: 02/28/2013
2. Est. JLE Cost billed to date total: \$ 0
3. Comments: New Employee

EMPLOYEE CERTIFICATION

I hereby certify that I have read the Subcontractor/Temporary Personnel Job Site Living Expenses subcontract clause, and that I understand that I must comply with the requirements delineated therein, especially those pertaining to establishment of individual eligibility to be reimbursed for expenses incurred as a result of my Job Site Living Expenses (JLE) to work on the MOX Project. Furthermore, I understand that submission of a claim for reimbursement of travel expenses (including JLE expenses) without meeting the requirements for individual eligibility may constitute fraud and may result in civil and/or criminal prosecution.

Employee Signature: *Edward W. Pugh*

Date: 15-Oct-12

(MOX Services Manager Use only)

JUSTIFICATION

As the manager of an individual seeking JLE you are responsible to establish that the individual qualifies for consideration and that providing JLE for this position is reasonable. The criteria the board will use to confirm that this individual meets the requirements are identified below. You must provide the board adequate information to establish that any or all of those criteria are met and ensure that the applicant provides supporting documentation as backup for auditing purposes. While you are not certifying that the individual meets the dual expense requirement or that they are legally eligible, you are compelled to sponsor their application.

	MOX Project: Job Site Living Expenses Form
Subcontractor / Temporary Personnel Request for Approval of Job Site Living Expenses	

I have determined that it is reasonable for this applicant to receive JLE on this MOX Project as supported below:

MOX Manager's Signature (VP Level required)

Date:

☒ Level of Position (is the applicant's position senior enough to reasonably justify paying them the JLE expense?)
This is a senior level position where it is reasonable and customary to pay JLE.

☒ Difficulty in recruiting applicants for the position (what has been done to locate a local person who would not require JLE expense? Is this position on the "critical needs list"?)
This is a critical needs position. There is limited availability of local candidates and/or candidates willing to relocate.

☒ Anticipated term of the position (is this a short term position that doesn't justify hiring a permanent employee?)
This position could potentially last 12 months or more.

EMPLOYER CERTIFICATION

I hereby certify that the information provided in support of this application is current and correct and that the individual meets the requirements of the Subcontract, in order to be eligible to receive JLE. Furthermore, I understand that submission of a claim for reimbursement of travel expenses (including JLE expenses) without meeting the requirements for individual eligibility may constitute fraud and may result in civil and/or criminal prosecution.

Employer Signature:

Date:

MOX Subcontract Administrator Signature

Date:

Committee Comments:

Chairman - MOX Services JLE Review Board Signature:

Date:

EXHIBIT 8

PLAINTIFF'S COMPLAINT

9.6.16
FILED
J. L. Anderson
CLERK
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh

Plaintiff(s)

vs.

CB&I AREVA MOX Services, LLC, and
Globalpundits Technology Consultancy, I.I.C.

Defendant(s)

Submitted By: Jeremy Summerlin

Address: Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-02 - 02389

SC Bar #: 10183

Telephone #: 864-242-4800

Fax #: 864-242-4885

Other:

E-mail: jssummerlin@aalawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

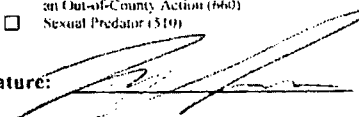
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☒ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20__ -SI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Stander/Label (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDCOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (980)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (610) | | |

Submitting Party Signature: 

Date: October 6, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (10/2014)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Edward Pugh,)

Plaintiff,)

v.)

CB&I AREVA MOX Services,)
LLC, and Globalpundits Technology)
Consultancy, LLC.)

Defendants.)

COURT OF COMMON PLEAS

Case No. 2015-CP-02-02389

SUMMONS

C O P Y *lmc*
ORIGINAL FILED

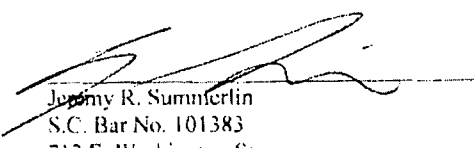
OCT 08 2015
9:50am
AIKEN COUNTY
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 712 E. Washington Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted,

LAW OFFICE OF W. ANDREW ARNOLD, P.C.


Jeremy R. Summerlin
S.C. Bar No. 101383
712 E. Washington St.
Greenville, SC 29601
864.242.4800 864.242.4885 fax
jsummerlin@a2alawfirm.com
ATTORNEY FOR PLAINTIFF

October 6th, 2015

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Case No. <u>2015-CP-02-02389</u>
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
	)	
CB&I AREVA MOX Services,	)	
LLC, and Globalpundits Technology	)	
Consultancy, LLC,	)	
	)	
Defendants,	)	
	)	

C O P Y *mc*
ORIGINAL FILED
OCT 08 2015
9:50am
AIKEN COUNTY
CLERK OF COURT

Plaintiff Edward Pugh ("Plaintiff"), by and through his counsel, brings this claim against Defendant CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC (collectively "Defendants"), based on the allegations set forth below.

PARTIES

1. Plaintiff is a citizen and resident of the County of Oconee, South Carolina.
2. Defendant CB&I Areva MOX Services, LLC ("MOX") is a South Carolina company that is licensed to do business in South Carolina and has its principal place of business in Aiken County, South Carolina.
3. Defendant Globalpundits Technology Consultancy, LLC ("Globalpundits") is a South Carolina company that is licensed to do business in South Carolina and has its principal place of business in Lexington County, South Carolina.

JURISDICTION

4. This Court has subject matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.
5. This Court has personal jurisdiction over Defendant MOX and Defendant Globalpundits because (1) they are companies that are doing business in South Carolina, (2) they

maintain their principal places of business in South Carolina, and (3) they have purposely availed themselves of the rights and privileges afforded to them under South Carolina law.

VENUE

6. Venue is proper in this circuit under South Carolina Code § 15-7-30(B) because Defendant MOX has established its headquarters in Aiken County and it does business in Aiken County; Defendant Globalpundits provides workers for MOX in Aiken County; and the acts or omissions that are the subject of this action occurred in Aiken County, South Carolina.

APPLICABLE LAW

7. This action is brought pursuant to the South Carolina Wage Payment Statute (S.C. Code Ann. § 41-10-10, *et seq.*), the South Carolina Declaratory Judgment Act (S.C. Code Ann. 15-53-10, *et seq.*), and the common law of South Carolina.

FACTS

8. Defendant MOX has an agreement with the National Nuclear Security Administration to design, build, and operate a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site in Aiken, South Carolina.

9. Defendant MOX contracts with third party contractors to perform the work on the actual facility. One of these contractors is Globalpundits, which is based in Lexington, South Carolina. Globalpundits works as a middleman to arrange for engineers and other workers with the needed skills to come work at the Savannah River Site.

10. Plaintiff Edward Pugh is a welding engineer, with over 30 years of experience in his field. He has worked as a welding engineer on projects all across the United States, as well as in foreign countries. The offer of Jobsite Living Expenses by employers has almost always played a part in Plaintiff's decision to accept such employment.

11. In October 2012, Plaintiff signed an employment contract ("Employment Contract")¹ with Globalpundits to serve as a materials engineer for Globalpundits' client, MOX (then called Shaw Areva MOX Services, LLC).

12. Along with the description of pay and other benefits, the Employment Contract includes a paragraph related to the provision of Jobsite Living Expenses ("JLE"), which was to be provided and paid by MOX and administered by Globalpundits. The paragraph cites to the "JLE Policy attached" to the Employment Contract.

13. On October 15, 2012, Globalpundits also issued Plaintiff "Globalpundits Clarification of MOX JLE Policy,"² which required Plaintiff to acknowledge by signing that it was his "responsibility to ensure that [he] notify Globalpundits if at any time [he was] no longer eligible for JLE. [He] also authorize[d] Globalpundits to deduct any overpayment of JLE from [his] paycheck."

14. The JLE Policy referred to in the Employment Contract is entitled "Subcontractor Job Site Living Expenses (JLE)" (referred to hereinafter as "JLE Policy").³ The JLE Policy was revised in February 2012, as noted in the footer at the bottom of the page.

15. The Employment Contract and JLE Policy constitute a contract between Plaintiff and Defendants.

16. The JLE Policy states that MOX has a need to fill vacant positions "with permanent personnel," and that during this search for permanent personnel, MOX will be using "staff augmentation subcontractor employees" to "occupy such positions on an as-needed basis"; the JLE was offered to these employees to "accomplish the purpose of MOX Services" by attracting the employees necessary to fill the temporary positions until permanent workers could be hired. (JLE Policy, Paragraph 1).

¹ Attached as Exhibit 1.

² Attached as Exhibit 2.

³ Attached as Exhibit 3.

17. The JLE Policy further states that "a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred)." (JLE Policy, Paragraph 1).

18. Plaintiff owns a residence in Walhalla, South Carolina (Oconee County). This residence is approximately 130 miles from the MOX jobsite where Plaintiff has been employed.

19. Plaintiff has owned this property since 2006 and this residence since 2011, and has paid regular property taxes and utilities on the property and residence at all times during his ownership. This address is his permanent address for IRS tax purposes.

20. Since beginning his employment with MOX and Globalpundits in Aiken, Plaintiff has incurred a separate expense for his local housing in Aiken, as the 130 miles to his home in Seneca would be time- and cost-prohibitive to return to every evening.

21. Plaintiff was hired on October 8, 2012. As part of his employment paperwork, he received the JLE Policy. The promised provision of JLE to Plaintiff was a significant basis for Plaintiff's decision to accept ongoing employment so far from his home in Seneca.

22. Plaintiff applied for JLE on November 2, 2012, which was denied by MOX on January 9, 2013 for reasons that were false.

23. Plaintiff has made innumerable attempts to provide Defendants with all the additional information that they requested, and Defendants have continued to refuse to pay him the JLE. This included Plaintiff's use of the MOX Employee Concerns Program and meeting with two different MOX presidents.

24. Plaintiff submitted his "Expense Report—Jobsite Living Expenses" forms on a weekly basis, as required by the JLE Policy, until October 2014.

25. Defendants still have not compensated Plaintiff for his jobsite living expenses, which totals \$59,758.85.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

27. Plaintiff and Defendants are interested persons or entities in a written contract (i.e., the Employment Agreement and JLE Policy, attached as Attachments 1 and 3) whose rights, status, or other legal relations are affected by such contract, and Plaintiff presents questions of construction or validity arising under the contract and to obtain a declaration of rights, statute, or other legal relations under state law.

28. This action seeks declaratory and equitable remedies.

29. Questions of law concerning the construction or validity arising under the Employment Agreement and JLE Policy exist, and questions of law exist as to the rights, status, or other legal relations of the parties under state law.

30. The Employment Agreement and the JLE Policy constitute the contract between Plaintiff and Defendants.

31. Plaintiff has met the requirements of JLE, as laid out in the JLE Policy, and he should be compensated by Defendants as agreed to under the Policy.

32. Plaintiff was promised in the Employment Contract and JLE Policy that he would receive JLE, and he based his decision to work for Defendants on that promise. The JLE was to be provided as part of Plaintiff's compensation. Therefore, the JLE constitutes wages under the South Carolina Wage Payment Act.

33. There is a justiciable controversy between the parties concerning the matters in this First Cause of Action, and a declaratory judgment would terminate the uncertainty or controversy giving rise to this proceeding.

SECOND CAUSE OF ACTION

(Breach of Contract)

34. Plaintiff incorporates all allegations of paragraphs above into this cause of action.
35. The Employment Contract and the JLE Policy constitute the terms of the contract entered into by Defendants and Plaintiff.
36. The Employment Contract and the JLE Policy provide for Plaintiff to receive JLE for up to two years while Plaintiff is employed by Defendants.
37. Plaintiff met all requirements to receive the JLE.
38. Defendants failed to pay the promised JLE to Plaintiff, which is a breach of the contract.
39. Plaintiff has suffered damages from this breach in the form of unpaid JLE.

THIRD CAUSE OF ACTION

(Unpaid Wages Under S.C. Wage Payment Act)

40. Plaintiff incorporates by reference all prior allegations into this Third Cause of Action.
41. Plaintiff earned compensation in the form of JLE, according to the promise made to him by Defendants in the Employment Contract and the JLE Policy. The JLE constitutes "wages" under South Carolina Code § 41-10-10, *et seq.*
42. Defendants meet the definition of "employers" under South Carolina law and under the Wage Payment Statute. Plaintiff was an employee of Defendants.
43. Despite efforts by Plaintiff, Defendants refuse to pay all wages due. Defendants owe Plaintiff a total of \$59,758.85.
44. Defendants' failure to pay Plaintiff wages is willful and in bad faith.
45. Plaintiff is entitled to a judgment awarding all wages due, treble damages, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees and costs.

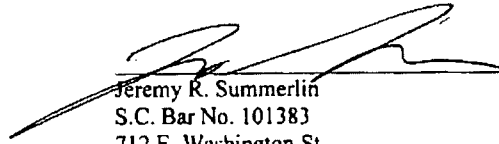
WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against the Defendants as follows:

- a. Declare the Employment Contract and the JLE Policy to be the contract between Plaintiff and Defendants;
- b. Declare that Plaintiff has met all of the contractual requirements to qualify for JLE;
- c. Declare that the JLE to be provided under the Employment Contract and the JLE Policy constitutes wages as defined by the South Carolina Wage Payment Act;
- d. Award Plaintiff all unpaid JLE;
- e. Award Plaintiff all unpaid wages;
- f. Award Plaintiff treble damages for unpaid wages under the S.C. Wage Payment Act;
- g. Award Plaintiff reasonable attorneys' fees and costs; and
- h. Award Plaintiff such other legal and equitable relief, including pre-judgment and post-judgment interest, as this Court may deem proper.

Dated this 6th day of October, 2015.

Respectfully Submitted,

Law Office of W. Andrew Arnold, P.C.

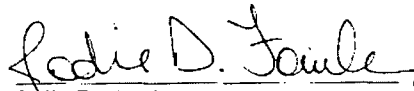


Jeremy R. Summerlin
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712 E. Washington St.
Greenville, SC 29601
864.242.4800 864.242.4885 fax
jsummerlin@aalawfirm.com
ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Case No. 2015-CP-02-02389
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
CB&I AREVA MOX Services,	)	
LLC, and Globalpundits Technology	)	
Consultancy, LLC,	)	
	)	
Defendants.	)	
	)	

I, Jodie D. Fowler, Paralegal for Jeremy Summerlin, do hereby certify that on August 30, 2016, I served upon the below-named individual Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment and/or for Declaratory Judgment by depositing a copy of the same in the United States Mail, proper postage affixed thereto, in an envelope addressed as shown below:

Michael D. Carrouth, Esquire
Fisher & Phillips, LLP
1320 Main Street
Suite 750
Columbia, SC 29201


Jodie D. Fowler

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

FILED

8.22.16

Heidi Godard

CCCPAGS

Deputy Clerk

40

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC, by and through their undersigned counsel, hereby move for a hearing within ten (10) days or as soon thereafter as can be heard, requesting an Order:

1. For a declaratory judgment that Plaintiff does not have an employment contract with Defendants, as alleged in Plaintiff's first cause of action for declaratory judgment;
2. For summary judgment in favor of Defendants that they did not breach any contract with Plaintiff, as alleged in Plaintiff's second cause of action for breach of contract; and
3. For a summary judgment in favor of Defendants that the JLE Policy does not provide for the payment of wages under the South Carolina Wage Payment Act, as alleged in Plaintiff's third cause of action for unpaid wages under the South Carolina Wage Payment Act.

FPDOCS 31895818.1

This Motion is based upon relevant South Carolina law, the South Carolina Rules of Civil Procedure, and any additional written memorandum, affidavits, and exhibits, as may be submitted prior to a hearing.

Respectfully submitted,

FISHER & PHILLIPS LLP


Michael D. Carrouth
mcarrouth@laborlawyers.com
Christina L. Rogers
crogers@laborlawyers.com
FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: (803) 255-0000
Facsimile: (803) 255-0202

Dated this 19th day of August 2016.

Attorneys for Defendants

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Edward Pugh,)
)
Plaintiff,)
)
vs.)
)
CB&I AREVA MOX Services, LLC)
)
and Globalpundits Technology)
)
Consultancy, LLC)
)
Defendants.)

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

FILED 8.22.16
Shirley Haderd
J.C.C.P. & Q.S.
Christa Thompson 1240
Clerk of Court

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** in the above-captioned case have been served upon the parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin, Esquire
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II, Esquire
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097

Kathy Fraley
Kathy Fraley

Dated this 19th day of August 2016

FPDOCS 31835997.1

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF AIKEN)

____ JUDICIAL CIRCUIT)

CASE NO.: 2015-CP-02-02389)

Edward Pugh,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

CB&I AREVA MOX Services, et al.)

Defendant.)

Plaintiff's Attorney: Jeremy R. Summerlin, Bar No. 101383 Address: 712 E. Washington St., Greenville SC 29601 Phone: 864-242-4800 Fax 846-242-4885 E-mail: jsummerlin@aalawfirm.com Other: _____		Defendant's Attorney: Christina L. Rogers, Bar No. _____ Address: 1320 Main St., Suite 750, Columbia SC 29201 Phone: 803-255-0000 Fax 803-255-0202- E-mail: crogers@fisherphillips.com Other: _____															
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 Mins. Court Reporter Needed: ☒ YES / ☐ NO																	
SECTION II: Motion/Order Type																	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.																	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant <i>Christina Rogers</i>		August 19, 2016 Date submitted															
SECTION III: Motion Fee																	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>				☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status	☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act	☐ Post-Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRPC)	☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
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Name of Court Reporter: _____																	
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JUDGE'S SECTION																	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ FILED <u>8.22.16</u> Date: _____ <i>John Hadard</i> JUDGE <i>John Hadard</i> Deputy Clerk															
CLERK'S VERIFICATION																	
Collected by: _____ Date Filed: <u>8/22/16</u> ☒ MOTION FEE COLLECTED: \$ <u>4135</u> ☐ CONTESTED - AMOUNT DUE: \$ _____																	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

Edward Pugh,)
)
Plaintiff,)
)
vs.)
)
CB&I AREVA MOX Services, LLC)
and Globalpundits Technology)
Consultancy, LLC)
)
Defendants.)

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

FILED 9.16.16
[Signature]
J. C. P. & G. S.
Deputy Clerk

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants CB&I AREVA MOX Services, LLC ("MOX") and Globalpundits Technology Consultancy, LLC, ("Globalpundits") ("collectively "Defendants") submit this memorandum in support of their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment.

As a matter of law, Pugh cannot support his causes of action based on the rejection of his application for certain living expenses that can be reimbursed through a discretionary federal program. First, neither Pugh's Complaint nor his self-serving Affidavit contain any facts establishing that he was given a contract that expressly promised or guaranteed reimbursement for the living expenses at issue in this case. Second, neither Pugh's Complaint nor his Affidavit contain any facts claiming that he was verbally promised or guaranteed reimbursement for the living expenses applicable to this lawsuit. Third, even if Pugh had a contract, which he does not, relevant documents explaining and addressing the discretionary federal program involving

reimbursement for certain living expenses do not contain any mandatory language promising or guaranteeing Pugh reimbursement for the living expenses at issue in this case. Fourth, to create a material issue of fact where none exists, Pugh attempts to support his claim by alleging he had certain "expectations" that he would receive reimbursement for certain living expenses at the time he was hired. As a matter of law, Plaintiff's subjective, personal "expectations" do not establish any cause of action recognized by the State of South Carolina. Finally, to the extent Plaintiff is attempting to create a statutory claim under the South Carolina Wage Payment Act, this claim fails as a matter of law because the reimbursement for expenses at issue in this case do not satisfy the statutory definition of wages, as recognized by the state statute or other analogous statutes.

II. FACTUAL BACKGROUND

This case arises out of Edward Pugh's ("Pugh") employment with Globalpundits, a staff augmentation company which subcontracted with MOX to provide personnel who assist MOX to carry out its duties under a prime "cost reimbursable" contract with the Department of Energy ("DOE"). The MOX Project is a one-of-a-kind design-build project at the Savannah River Site in Aiken County, which is supervised by the National Nuclear Security Administration ("NNSA") – a semi-autonomous agency within the DOE.

As a prime contractor with the Federal Government, the reimbursement of costs incurred by MOX is governed by the Cost Accounting Standards of the Federal Acquisition Regulations ("FAR"). Moreover, as is often the case with DOE prime contracts, MOX is an unpopulated LLC. All of its team members are actually employed by some other entity – Pugh by Globalpundits, for

example, Pugh is a welding engineer and began his employment with Globalpundits, for the timeframe relevant to this litigation, in 2012.¹

A. Offer Letter Explains that JLE Policy is Discretionary

On October 4, 2012, Pugh was sent an Employment Offer Letter (“Offer Letter”) by Globalpundits. (**Exhibit 1 – Offer Letter**). Among other things, this Offer Letter informed Pugh of his tentative start date, hourly rate, and overtime rate. (Id.). The letter also referenced the MOX Services Jobsite Living Expenses (“JLE”) program, which allows for potential reimbursement of expenses for team members who maintain a dual residence and live more than 50 miles from the MOX facility. The Offer Letter made clear the receipt of these benefits required prior approval and explained, “If you are requesting MOX Services Jobsite Living Expense (JLE Policy attached) this must be approved prior to receiving reimbursement of temporary expenses. We have attached forms necessary to obtain approval and process these requests going forward.” (Id.) (emphasis added). Pugh was informed, before he ever accepted employment with Globalpundits, that any receipt of JLE would require advanced approval; JLE was never promised.

B. Terms of JLE Policy Show it Was Discretionary

Pugh was also provided with a copy of the Subcontractor Jobsite Living Expenses Policy (“JLE Policy”) outlining the requirements of the program and explaining the discretionary process for approval of reimbursement of expenses. (**Exhibit 2 – JLE Policy**). The JLE Policy sets out the discretionary nature of the approval process and explains that meeting the criteria in the policy “does not automatically mean a subcontractor employee will be authorized for participation in the MOX Services JLE Program.” (Id.) (emphasis added). The JLE Policy requires written

¹ In his Affidavit, Pugh discusses in great detail a prior request for JLE that he made in 2011. However, Pugh’s claim that he received benefits previously are irrelevant to his current claim of breach of contract, and by his own admission contained circumstances different than those presented here, which makes his 2011 request distinguishable.

advanced approval of JLE before any reimbursements are provided to a subcontractor employee.

"All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE . . . the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application." (Id.) (emphasis added).

As part of the review process, MOX is required to abide by guidelines set forth by the DOE. (Exhibit 3 – Affidavit of Deborah Alderman). When MOX pays JLE to the subcontractor's employer (in this case, Globalpundits), MOX then requests reimbursement from the Government. (Id.). As a result, all approvals of JLE must adhere to Governmental standards of reasonableness and allowability. (Id.) As the JLE Policy explains, **"Only JLE necessary to accomplish the purpose of MOX Services and the government effectively and economically will be authorized."** (Ex. 2). DOE guidelines require discretionary review and approval of JLE and allow MOX, as a steward of the Government's money, to disapprove any request that it deems to be inadequately supported. (Id.).

C. Pugh Was an At-Will Employee

From the outset, the parties agreed that Pugh's employment would be on an at-will basis – a fact that Pugh has not disputed. In the Offer Letter, Globalpundits explained that Pugh would be an at-will employee:

Your employment with the Company will be at will, meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. **This is the full and complete agreement between you and the Company on this term.**

Although your job duties, title, compensation, and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express

written agreement signed by you and a duly authorized officer of the Company.

(Id.) (emphasis added).

Pugh executed this Offer Letter, acknowledging his agreement to at-will employment with Globalpundits.

In April of 2013, Pugh filled out the Jobsite Living Expense form requesting reimbursement of his living expenses. Based on the information submitted, MOX determined that Pugh had failed to adequately support his request for reimbursement of dual living expenses. As such, MOX denied his request. This lawsuit followed.

III. STANDARD OF REVIEW

A. Summary Judgment Standard

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Traynum v. Scavens*, 416 S.C. 197, 201, 786 S.E.2d 115, 117 (2016), *reh’g denied* (June 17, 2016) (quoting Rule 56(c), SCRPC). The rule “mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. *Gould v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (S.C. Ct. App.2008).

In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). “However, it is not sufficient for a party to create an inference that is not reasonable or an

issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

B. Declaratory Judgment Standard

Section 15-53-20 of the South Carolina Code identifies the purpose of the Uniform Declaratory Judgments Act (“the Act”) and provides that courts “shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (2005); *see* Rule 57, SCRPC. To state a viable cause of action under the Act, a party must “demonstrate a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (S.C. Ct. App. 2002). This requirement is satisfied by “[a]ny person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a . . . contract or franchise may have determined any question of construction or validity arising under the instrument, . . . contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30 (1977); *see also* Rule 57, SCRPC.

IV. ANALYSIS OF PLAINTIFF’S CLAIMS

A. Breach of contract

Pugh has asserted a breach of contract claim against MOX and Globalpundits. Specifically, Pugh alleges the Offer Letter and JLE Policy constitute the terms of the contract between him and the Defendants. However, Pugh is unable to satisfy the elements of a *prima facie* case of breach of contract and Defendants are entitled to judgment as a matter of law.

A contract is "an agreement on sufficient consideration, to do or not to do a particular thing." *Rabon v. State Finance Corp.*, 203 S.C. 183, 26 S.E.2d 501, 502 (1943). Because a contract of employment is no different than any other type of contract, the Court must look to general principles of contract law in order to analyze Pugh's claim of breach of an employment contract. *Taylor v. Cummins Atl., Inc.*, 852 F. Supp. 1279, 1285 (D.S.C. 1994), *aff'd*, 48 F.3d 1217 (4th Cir.1995).

In order to prevail on his claim of breach of contract, Pugh bears the burden of establishing: (1) a binding contract entered into by the parties, (2) breach or unjustifiable failure to perform the contract, and (3) damages suffered by him as a direct and proximate cause of the breach. *Taylor* at 1279. An action for damages for breach of contract is thus predicated on the existence of the contract. *Tidewater Supply Co. v. Industrial Electric Co.*, 253 S.C. 483, 171 S.E.2d 607, 608 (1969). The essential elements of a contract are an offer, an acceptance, and valuable consideration. *Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co.*, 437 S.E.2d 122, 125 (S.C. Ct. App.1993).

In the employment context, "[f]or a contract to be created, the employee must be aware of promises . . . , must have relied on (and continued work in reliance on) those promises, and the promises must restrict the right to discharge." *Lawrence v. Westinghouse Savannah River Co., Inc.*, C.A. No. 1:03-484-27, 2005 WL 3968031, at *14 (D.S.C. March 31, 2005); *see also Storms v. Goodyear Tire & Rubber Co.*, 775 F.Supp. 862, 867 (D.S.C. 1991) (finding language in the agreement insufficient to form a contract when it is "not couched in mandatory terms and does not contain language that specifically limits the employer's right to demote or terminate [plaintiff] without cause."). *See also Kaplan v. Capital Co. of Am. LLC*, 298 A.D.2d 110, 747 N.Y.S.2d 504 (2002) (where employee brought action against employer for breach of contract after he was denied

bonus compensation and court dismissed employee's claim because there was no evidence the company entered into an enforceable agreement entitling employee to the bonus compensation because clearly expressed policy of the company stated that bonuses were to be paid solely at the company's discretion, and there was a provision requiring a writing executed by specified persons on the company's behalf to alter the terms of the employment relationship).

1. Pugh's Offer Letter Confirms That He Was Not Promised or Guaranteed Reimbursement for JLE Expenses

In his Complaint, Pugh alleges the Offer Letter given to him by Globalpundits constitutes a contract. According to Pugh, the Offer Letter "promised" that he would be given JLE. However, the language in the Offer Letter states exactly the opposite. On October 4, 2012, Globalpundits sent Pugh an Employment Offer Letter. This Offer Letter explicitly stated that Pugh's employment would be at-will. **"Your employment with the Company will be at will,** meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. **This is the full and complete agreement between you and the Company on this term.**" (Ex. 1) (emphasis added). Pugh has not disputed this fact.

The Offer Letter clearly describes the JLE Policy as discretionary and requiring advance approval before any benefit is conferred. "If you are requesting MOX Services Jobsite Living Expense (JLE Policy attached) **this must be approved prior to receiving reimbursement of temporary expenses.**" (Id.) (emphasis added). Absent mandatory language, Pugh cannot establish the Offer Letter was intended to create a binding contract for JLE. *Storms*, 775 F.Supp. at 867 ("Non-mandatory and permissive language is evidence that the employer did not intend to create a binding agreement."); *Youngblood v. QualServe Corp.*, No. 2005-UP-14, 2005 WL 7083483, at *3 (S.C. Ct. App. Mar. 1, 2005) (finding defendant's disciplinary policy "contained no mandatory

or promissory language” and “clearly contained disclaimers and was couched in permissive language,” thus “notifying the employee that the disciplinary provisions did not create a mandatory progressive discipline policy”). Importantly, the Offer Letter establishes that Pugh was never *offered* JLE; he was told that he could *apply* for JLE, and if he met the requisite qualifications, he could receive the benefits.

It is obvious from a plain reading of the Offer Letter, the parties agreed the JLE Policy was discretionary and Pugh was not automatically entitled to benefits. To read the provisions of the Offer Letter in any other manner contravenes the purpose of the document. The language clearly conveys the intent of the parties. “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009); *Catawba Indian Tribe of S.C. v. City of Rock Hill*, 501 F.3d 368, 372 (4th Cir.2007) (“South Carolina follows an objective contract interpretation rule, meaning that if the language of a contract is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument.”); *Pierce v. Office Depot, Inc.*, No. 0:13-CV-3601-MGI., 2014 WL 6473630, at *8 (D.S.C. Nov. 18, 2014) (“Words cannot be read into a contract which impart intent wholly unexpressed when the contract was executed.”).

Because this Offer Letter makes clear that Pugh is not promised any JLE benefits, his breach of contract claim is without merit and Defendants should be granted summary judgment.

2. *The Express Terms of the JLE Policy Confirm That JLE Benefits Were Not Promised or Guaranteed*

Pugh maintains that the JLE Policy itself entitles him to benefits. However, the language and express terms of the Policy itself demonstrate otherwise.

The JLE Policy makes clear the decision to award benefits is purely discretionary. In fact the very first paragraph of the policy is entitled, “Eligibility and Term of Assignment” and indicates that an employee “may be eligible for Jobsite Living Expenses (JLE).” (Ex. 2) (emphasis added). The JLE Policy further explains.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontract employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment . . . Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized for participation in the MOX Services JLE Program.

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board . . . Upon concurrence by Procurement, the MOX Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

(Id.) (emphasis added).

As explained in the policy, any payments made for JLE are only subject to reimbursement *after* application and approval. Pugh’s assertion that he was entitled to JLE benefits because he occupied a “critical needs position” finds no support in the policy itself. The policy explains in great detail the discretionary review process that must occur before benefits are awarded. The review process for JLE applications is conducted in accordance with specific guidance provided by the Department of Energy. (Ex. 3). This framework gives MOX discretion to determine what costs are reasonable and allowable. (Id. at ¶ 8). The guidance states in pertinent part, “The contracting officer [MOX Services] may disallow all or part of a claimed cost that this inadequately supported,” and “No presumption of reasonableness shall be attached to the incurrence of costs by

a contractor . . . what is reasonable depends of a variety of considerations and circumstances.” (Id. at ¶ 9).

The discretionary nature of this policy does not make it binding on Defendants. *Hessenthaler v. Tri-City Sister Help, Inc.*, 365 S.C. 101, 103, 616 S.E.2d 694, 698 (2005) (“To qualify as mandatory language sufficient to establish an implied contract, policy manual language must be definitive in nature, promising specific treatment in specific situations.”).

Pugh has also, himself, admitted the discretionary nature of JLE. In his affidavit, Pugh states, “In order to receive JLE during my 2011 tour, *I had to meet the requirements of the JLE Policy.*” (Pl.’s Aff. ¶ 8) (emphasis added); “Globalpundits stated that *my requests for JLE* would again be governed by the Subcontractor Job Site Living Expense (JLE) Policy.” (Id. at ¶ 10) (emphasis added); “[I] submitted as many additional documents to them as they requested *to prove my qualification for JLE.*” (Id. at ¶ 14) (emphasis added); “MOX and Globalpundits *denied my JLE request.*” (Id. at ¶ 16) (emphasis added). These statements are a tacit acknowledgment that the JLE Policy was purely discretionary – Pugh had to apply for the program, prove his qualification for the program, and await a determination from MOX regarding whether he would be eligible to receive reimbursement under the policy.

Pugh is unable to show that the terms of the policy mandate payment. Therefore, the JLE Policy cannot be used to assert a breach of contract claim against Defendants.

3. Pugh Cannot Establish Any Breach by Defendants Because JLE Policy Affords Discretion to Defendants.

Pugh has asserted that Defendants’ wrongfully denied him JLE. As previously articulated in section 2c. *supra*, the JLE Policy requires, among other things, application to the program and proof of compliance with all requirements, after which MOX either approves or disapproves the request for benefits. See Exhibit 3. MOX exercised its discretionary authority to deny Pugh’s

application for JLE – a power proscribed under the policy and in accordance with Department of Energy directives – because it determined that Pugh’s request did not meet the required standards of reasonableness and allowability.² Pugh failed to make the requisite showing required to prove dual living expenses, and MOX was well within its right to disapprove expenses that it believed the Government would not pay for.

Further, Pugh has not presented any evidence that Defendants breached the implied covenant of good faith and fair dealing in their administration of the JLE Program’s discretionary power. Pugh has failed to present any evidence that Defendants either acted in bad faith or performed the contract in a commercially unreasonable manner. In fact, MOX did quite the opposite. MOX exercised its discretionary authority to deny Pugh’s application for JLE – a power proscribed under the policy and in accordance with Department of Energy directives – because it determined that Pugh’s request did not meet the required standards of reasonableness and allowability. Pugh failed to make the requisite showing required to prove dual living expenses, and MOX was well within its right to disapprove expenses that it believed the Government would not pay for. 23 Williston on Contracts § 63:22 (4th Ed.) (“As a general principle, there can be no

² Further, Pugh has not presented any evidence that Defendants breached the implied covenant of good faith and fair dealing in their administration of the JLE Program’s discretionary power. Pugh has failed to present any evidence that Defendants either acted in bad faith or performed the contract in a commercially unreasonable manner. In fact, MOX did quite the opposite. MOX exercised its discretionary authority to deny Pugh’s application for JLE – a power proscribed under the policy and in accordance with Department of Energy directives – because it determined that Pugh’s request did not meet the required standards of reasonableness and allowability. Pugh failed to make the requisite showing required to prove dual living expenses, and MOX was well within its right to disapprove expenses that it believed the Government would not pay for. 23 Williston on Contracts § 63:22 (4th ed.) (“As a general principle, there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the action being challenged, and the defendant acts in accordance with the express terms of the contract. This is so even where the contractual provision at issue is one that purports to grant to the defendant absolute discretion to take certain actions or engage in certain conduct under the contract . . .”); *Johnson v. Bank of Am., N.A.*, No. CA 3:09-1600-JFA, 2010 WL 1542560, at *3 (D.S.C., Apr. 16, 2010) (“there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do.” (citing *First Fed. Sav. & Loan Ass’n v. Dangerfield*, 307 S.C. 260, 414 S.E.2d 590 (S.C. Ct. App. 1992))).

breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the action being challenged, and the defendant acts in accordance with the express terms of the contract. This is so even where the contractual provision at issue is one that purports to grant to the defendant absolute discretion to take certain actions or engage in certain conduct under the contract . . ."); *Johnson v. Bank of Am., N.A.*, No. CA 3:09-1600-JFA, 2010 WL 1542560, at *3 (D.S.C. Apr. 16, 2010) ("there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do." (citing *First Fed. Sav. & Loan Ass'n v. Dangerfield*, 307 S.C. 260, 414 S.E.2d 590 (S.C. Ct. App.1992)).

4. Pugh Cannot Establish Damages Caused by a Breach

It is axiomatic that in order to recover damages for breach of contract, Pugh must establish both a contract with Defendants and Defendants breach of the contract. As previously explained, Pugh is unable to prove either element of his claim. Therefore, the final prong of his cause of action must also fail. "It is elemental . . . that before a party can recover for the breach of a contract, he must allege and prove by competent, relevant testimony each one of the material elements of the contract sued on." *Taylor* at 1286.

5. Pugh's "Expectation" of Receipt of Benefits is Irrelevant

Pugh notes both in his Complaint and in his motion for summary judgment that he based his decision to accept the offered position on his "expectation" that he would receive JLE. However, Pugh's "expectation" of receipt of JLE is immaterial to his breach of contract claim. Even to the extent it was relevant, the only evidence Pugh has presented substantiating his claim of this "expectation" is the Offer Letter and JLE Policy, both of which clearly explain the benefits are not guaranteed and the process is discretionary.

Pugh has failed to plead a cause of action for detrimental reliance or promissory estoppel, and based on the clear language in the Offer Letter and JLE Policy, there are no facts to substantiate such a claim. Accordingly, Pugh's "expectation" of the receipt of JLE does not create a genuine issue of material fact.

Further, Pugh's argument that Defendants "knew" he accepted the job based on his expectation that he would receive JLE is also without merit. The email referenced in Pugh's Affidavit was sent several months *after* Pugh had already accepted employment, and was written by a Globalpundits employee after Pugh explained that he had previously received JLE – a fact this employee did not know. (**Exhibit 4 – Email from Pugh to Denise Dobbe, dated January 9, 2013**). Pugh's conclusory allegation of imputed knowledge onto Defendants is insufficient to overcome summary judgment. "A party cannot create a genuine issue of material fact solely with conclusions in his or her own affidavit or deposition that are not based on personal knowledge." *See also Latif v. The Cmty. Coll. of Baltimore*, 354 Fed.Appx. 828, 830 (4th Cir.2009) (affirming district court's grant of summary judgment, noting plaintiff's affidavit, which offered conclusions not based on his own knowledge, did not create genuine issues of material fact).

For the foregoing reasons, Pugh's claim for breach of contract fails as a matter of law, and Defendants should be granted summary judgment on this cause of action.

B. South Carolina Payment of Wages Act

In his third cause of action, Pugh has alleged a claim under the South Carolina Payment of Wages Act ("SCPWA"), asserting that JLE constitutes "wages" under the statute. The SCPWA creates a cause of action that may be maintained by an employee against an employer for the employer's failure to pay wages as required by the Act. *See S.C. Code Ann. § 41-10-80(C)*. Here, Pugh cannot establish a claim under SCPWA because JLE benefits are not "wages," as defined

under the Act, nor are JLE benefits compensation under Defendants' "policy" or "contract." As such, Defendants are entitled to summary judgment on this cause of action.

1. JLE is Not "Wages" Under the Act¹

Pugh first asserts he is entitled to JLE because it constitutes "wages" under the Act. However, a plain reading of the statute reveals otherwise. Under the Act, "wages" are defined as:

[A]ll amounts at which **labor rendered** is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

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

The fundamental question presented by Pugh's claim is whether JLE meets the statutory definition of wages under SCWPA. In order to answer this inquiry, it is necessary to determine what "labor rendered" entails, as used in the definition of "wages." The primary purpose of statutory interpretation is to ascertain the intent of the legislature. *State v. Ramsey*, 311 S.C. 555, 430 S.E.2d 511 (1993). In doing so, review of the language of the statute itself is the best guide for determining such intent. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991) (Where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself.) Here, wages constitute all amounts at which "labor rendered" is paid. According to Black's Law Dictionary, "labor" is defined as "to work, especially with great

¹ In his Complaint, Pugh alleges that he "earned compensation in the form of JLE according to the promise made to him by Defendants in the Employment Contract and the JLE Policy." (Compl. ¶ 41). However, in his Motion for Summary Judgment, Pugh argues "The money paid out under the JLE Policy qualifies as 'wages' under the South Carolina Wage Payment Act. Plaintiff bases this argument on the fact that South Carolina law states that 'wages' means 'all amounts at which labor rendered is recompensed.'" (Plt's MFSJ, p. 2). It appears Pugh is asserting both that JLE benefits constitute wages, as defined by the statute itself, and that the "contract" Pugh had with defendants dictated that he would be paid JLE as compensation. While these two theories are seemingly incongruent, Defendants will address both.

exertion,” and “render” is defined as “to transmit or deliver.” Black’s Law Dictionary (10th ed. 2014). Therefore, “labor rendered” is work delivered to an employer by an employee. Giving labor rendered its plain and ordinary meaning, it is evident that JLE does not qualify as labor rendered. JLE is reimbursement for expenses incurred by a subcontract employee, not compensation for work performed.⁴

Other statutes, including the Fair Labor Standards Act (“FLSA”), have similarly defined wages and do not include expenses as part of an employee’s regular compensation. Under the FLSA, expenses incurred by an employee on the employer’s behalf or expended solely by reason of action taken for the convenience of the employer is “not included in the regular rate” because “such payment is not compensation for services rendered by the employee during any hours worked in the workweek.” 29 C.F.R. § 778.217. *See also McCausland v. Walter USA, Inc.*, 918 N.E.2d 420, 424 (Ind. Ct. App.2009) (noting the Indiana Code § 22 -2- 9-1(b) defines “wages” as “all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or in any other method of calculating such amount” and holding “**if compensation is not linked to the amount of work done by the employee** or if the compensation is based on the financial success of the employer, **it is not a wage.**”) (emphasis added).

Pugh is without any evidence that JLE is payment for work delivered to Defendants. In fact, the only evidence provided by Pugh in support of his claim under SCWPA is his own self-

⁴ Pugh has asserted the term “wages” is broad and has been defined by the South Carolina Court of Appeals as “all amounts . . . which are due to an employee under any . . . employment contract.” *See* Pl.’s Brief, p. 12; citing *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 195 n.4, 463 S.E.2d 641, 645 (S.C. Ct. App.1995). However, the Court’s definition of “wages” in the *Dumas* case was merely a shortened recitation of the definition of wages under the SCWPA. *See* S.C. Code Ann. § 41-10-10. As such, it is not instructive to the inquiry presented here.

serving Affidavit. Pugh's unsubstantiated assertion that JLE benefits were part of his "compensation package" and were "supposed to be provided to [him] in exchange for his labor" is insufficient to overcome summary judgment. (Pl's Aff. ¶16). These statements amount to conclusory allegations. *Champion Int'l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (S.C. Ct. App.1987) ("[S]tatements of ultimate facts and conclusions are not sufficient to make a genuine issue of trial."). Therefore, JLE does not qualify as "wages" under SCWPA, and Defendants are entitled to summary judgment on Plaintiff's third cause of action.

2. JLE is Not "Wages" Under the "Employer Policy" or "Employment Contract"

To the extent Pugh is attempting to assert his entitlement to JLE is predicated upon his "employment contract" (i.e. JLE Policy) with Defendants or that the employer policy (i.e. JLE Policy) entitles him to payment, these arguments also fail. The Act provides relief for an employer's failure to pay wages in accordance with its own policies or an employment contract. However, in such instances, the language and provisions of the policy or contract govern payments. *Rice v. Multimedia, Inc.*, 318 S.C. 95, 100, 456 S.E.2d 381, 384 (1995) (explaining that the employer's "policy establishes the manner in which it will pay sales commissions," and disagreeing with plaintiff's argument that the "policy violates the Wage Payment Act since it determines, by private agreement, what wages are 'due' under the Act"); *Baugh v. Columbia Heart Clinic*, 402 S.C. 1, 738 S.E.2d 480, 495 (S.C. Ct. App.2013) (holding that the contract between the employer and the employees which included a forfeiture provision was enforceable and controlled whether employees were due the compensation at issue).

As previously articulated in Section 2c, *supra*, and explained in more detail by MOX Procurement Director, Deborah Alderman, the language of the JLE Policy is purely discretionary. Pugh is not guaranteed payment. The policy sets out that a subcontractor employee *may* be eligible

for reimbursement of expenses *if* he applies for the reimbursement, shows compliance with all requirements, and is approved. There is no binding language that requires payment by Defendants, and there is no language that even remotely suggests reimbursement under this policy is meant to constitute wages.

Absent such language Pugh is without evidence that Defendants violated a “contract” or “policy” for payment of wages, and Defendants are entitled to summary judgment on Pugh’s cause of action under the SCWPA. *Visco v. Aiken Cty., S.C.*, 974 F. Supp. 2d 908, 920 (D.S.C. 2013) (granting the defendant’s motion for summary judgment as it pertained to a SCPWA claim because the SCPWA only required that defendant pay plaintiff’s benefit days in accordance with or as set forth in defendant’s ordinances, which defendant did).

C. Declaratory Judgment Cause of Action

Pugh has requested that the Court declare the rights and obligations between the parties under the “contract.” As more fully explained, *supra*, the JLE Policy and payment of benefits was purely discretionary. MOX was vested with this discretionary authority by the Government in an effort to ensure that only reasonable and allowable expenses were paid from federal funds. As such, the Court should declare that Defendants are not contractually obligated to pay Pugh JLE benefits.

V. CONCLUSION

Based on the foregoing, Pugh is unable to establish his claims for breach of contract and failure to pay wages under the South Carolina Payment of Wages Act, and the Court should grant summary judgment to Defendants. Further, the Court should declare that under the discretionary JLE Policy, Defendants are not required to pay Pugh JLE benefits.

Respectfully submitted,

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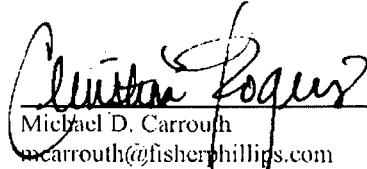
Dated this 1st day of September 2016.

Attorneys for Defendants

**Defendants' Memorandum in Support of
Summary Judgment and in Opposition to
Plaintiff's Motion for Summary Judgment**

Respectfully submitted,

FISHER & PHILLIPS LLP

A handwritten signature in black ink, appearing to read "Michael D. Carrouth", is written over a horizontal line.

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Dated this 1st day of September 2016.

Attorneys for Defendants

**Defendants' Memorandum in Support of
Summary Judgment and in Opposition to
Plaintiff's Motion for Summary Judgment**

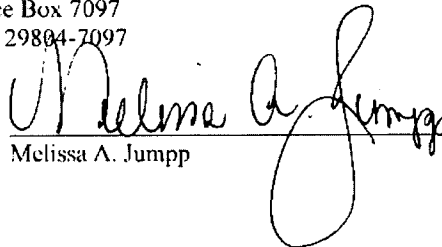
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	Civil Action No: 2015-CP-02-02389
COUNTY OF AIKEN	)	
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** in the above-captioned case have been served upon the parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Jeremy R. Summerlin, Esquire
Law Office of W. Andrew Arnold, P.C.
712 E. Washington Street
Greenville, SC 29601

Noah "Chip" M. Hicks II, Esquire
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097



 Melissa A. Jumpp

Dated this 1st day of September 2016

EXHIBIT 1

FILED 9-6-16
Liz Hedard
U.S. CP & RS
Amey
Deputy Clerk



October 4, 2012

Edward Pugh
edwardpugh@myexcel.com

EMPLOYMENT OFFER LETTER

Dear Ed,

Globalpundits, Inc. is pleased to offer you a regular full-time exempt position as a **Materials Engineer** at our client location, **Shaw Arava MOX Services, LLC (MOX)** in Aiken SC. This offer of employment is contingent upon successful completion of a background and drug screen, providing legal proof of your identity and authorization to work in the United States, and approved TOR from MOX. Your tentative start date will be Monday, October 8, 2012. Your salary will be based upon an hourly rate of \$75.00 (seventy-five dollars and zero cents) per hour on all hours worked and approved by your End User (Mgr) at MOX in accordance to the Company's standard payroll practices for exempt employees. You will be eligible for additional compensation of \$75.00 (seventy-five dollars and zero cents) per hour over 40 hours and approved in advance by your End User. You are also eligible to accrue PTO benefits bi-weekly at the rate of 4.615 hours for a total of 120 hours per year and 8 paid holidays at 8 hours per holiday.

In addition to your compensation, you will be eligible to participate in the Globalpundits Employee Benefits-MOX on the attached summary. You will be eligible for Health Insurance, Dental, 401k and Voluntary benefits on November 1, 2012. Globalpundits pays bi-weekly on Friday one week in arrears via direct deposit. Your first paycheck will be Friday, October 19, 2012 for the approved hours for week ending October 12, 2012. Approved weekly time sheets must be sent to timesheet@globalpundits.com by 10:00am each Monday. We use HR Online to give you online access to your pay and benefit information. You will receive a login and password separately. All forms of compensation referred to in this letter are subject to reduction to reflect applicable withholding and payroll taxes. Globalpundits will make deductions for state and federal income tax, and FICA. Other deductions include those elected for insurance and benefits. Specifically, Globalpundits reserves the right to make deductions from your final paycheck for the following reasons: advance unearned PTO and advanced JLE expenses not approved by MOX.

If you are requesting MOX Services Jobsite Living Expense (JLE Policy attached) this must be approved prior to receiving reimbursement of temporary expenses. We have attached forms necessary to obtain approval and process these requests going forward. You will send in your EXPENSE REPORT- Jobsite Living Expense forms weekly with your timesheet.

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Like all Company employees, you will be required, as a condition to your employment with the Company, to sign the Company's standard NON-COMPETITION, NON-DISCLOSURE, AND NON-SOLICITATION AGREEMENT FOR EMPLOYEES, a copy of which is attached. Your employment with the Company will be "at will," meaning that either you or the Company will be entitled to terminate your employment at any time and for any reason, with or without cause. Any contrary representations which may have been made to you are superseded by this offer. This is the full and complete agreement between you and the Company on this term.

Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company.

You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter and the enclosed Non-Disclosure Agreement. This offer is contingent upon your review and acceptance of our Standard Employee Agreement, a favorable response from your references, successful completion of a Background and Drug Screen, and our review and verification of your identity and employment authorization documents as set forth in the Immigration Reform and Control Act. In addition, you also agree to adhere to all the policy and procedures of MOX to include but not limited to Environmental Health and Safety, Workplace Substance Abuse Program, General Employee Training and Annual Employee Training, Security Education, MOX Security, and Confidentiality of Information.

Additionally, please be aware that when a personally/private owned vehicle (personally owned vehicle, subcontractor vehicle, vendor, etc.) is pulled for a random vehicle inspection at a perimeter barricade, WSI-SRS, in addition to checking for required security badges and conducting a search of the vehicle, will also ask for driver's license, registration and proof of insurance. A driver is required to have all of these documents in order to drive the vehicle and is required to have these documents on his/her person or in his/her vehicle. Anyone not having these documents is subject to being denied Site access, and, if in violation of a law, being cited for the violation.

Please be aware that our client, Shaw Areva MOX Services, LLC, has the right to offer you a regular full-time employment after 90 days on the project unless the duration of the assignment will be less than six (6) months. You are not obligated to accept a regular full-time employment offer. We will send you a separate email next week on how to enroll in the Health, Dental, 401k and Voluntary Benefits with Colonial Insurance.

We will need this offer letter signed and returned along with all the attached forms as soon as possible. We look forward to you joining our team. If you have any questions, please feel free to call Stephanie O'Neal at 803-354-9400 regarding questions during this onboarding process.

Sincerely,

Joe Doyle

Director of Recruiting and Sales

I have read and accept this employment offer

Signed:

Edward Pugh

EXHIBIT 2

9.6.16
FILED
by: *Hodard*
CP&GS
[Signature]
Deputy Clerk

SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

1. Eligibility and Term of Assignment

Whereas Shaw AREVA MOX Services, LLC (MOX Services) desires to fill vacant positions on the MOX project with permanent personnel, it is understood by the parties to this associated staff augmentation subcontract that recruitment efforts are ongoing by MOX Services' Human Resources to fill vacant positions with MOX Services' permanent personnel. Until the vacant positions are filled with permanent MOX Services personnel, staff augmentation subcontractor employees may occupy such positions on an as-needed basis and may be eligible for Jobsite Living Expenses (JLE). Only JLE necessary to accomplish the purposes of MOX Services and the government effectively and economically will be authorized.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred). Permanent residence must be within the 48 continental United States of America. A subcontractor employee who owns secondary property (e.g. real property, mobile home or RV lot), within a 50 mile radius of the MOX duty station does not meet the dual expense requirement and will not be approved for reimbursement of JLE expenses. Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized to participate in the MOX Services JLE program. It is the responsibility of the subcontractor to immediately notify the MOX Services Subcontract Administrator regarding any change in the eligibility status of any subcontractor employee participating in the JLE program.

2. Written Advance Authorization

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board. All JLE applications, including renewals, must be sponsored by the associated MOX Vice President level manager. All JLE applications will be reviewed by MOX Procurement for completeness and compliance with subcontract requirements. Upon concurrence by Procurement, the MOX JLE Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

All applications for entry into JLE status must be supported by documentation proving that the employee has a primary residence location over 50 miles from the jobsite (rental agreement, property tax statement) and proving residency at or near the MOX jobsite (lease/rental agreement, cancelled rent checks, or lodging receipts). JLE applications will not be processed without supporting documentation.

In the event that any JLE supporting documentation used to support eligibility are later found to be invalid or a misrepresentation, the affected staff augmentation subcontractor employee will be ineligible to receive JLE and all costs associated with the invalid JLE will be considered unallowable and will be refunded to MOX Services by the subcontractor.

The MOX review process is intended to ensure that JLE for the applicant is consistent with the best interests of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense. However, the ultimate responsibility for the accuracy and eligibility of an applicant's supporting documentation and representations remains with the subcontractor.

3. JLE Certification Requirement

All subcontractor employees approved to participate in the JLE program in support of the MOX Project are required to execute a JLE Certification upon entering the JLE program and every 180 calendar days thereafter. This certification will confirm that the subcontractor employee understands the minimum requirements that must be met to be eligible for reimbursement for living expenses while in JLE status and the employee certifies that the information provided is current, complete and accurate as of the date of the employee's signature on the JLE application. The minimum requirements are:

- The individual's JLE eligibility has been approved by MOX based on accurate information; and
- The individual is eligible under IRS guidelines to receive JLE, i.e., is in a situation where dual living expenses are being incurred directly as a result of the MOX work assignment; and
- The JLE duty station is more than 50 miles from the subcontractor employee's permanent home of record for income tax purposes and the subcontractor employee does not own property within the 50 mile radius of the JLE duty station.
- In the event, an individual's circumstances change before the 6 month recertification period, whereby the individual no longer meets the eligibility criteria, it is the responsibility of the subcontractor employee to notify the Subcontractor immediately. It is the ultimate responsibility of the Subcontractor to notify MOX Services to terminate payments under this program.
- Subcontractor may not bill for any JLE reimbursement until a certification is approved by MOX Services.

4. Settling-In Period

Newly hired subcontractor employees approved for JLE status may use up to sixty (60) days, on a one time basis, as a settling-in period on full GSA lodging and M&IE while searching for more economical living arrangements. If personnel share accommodations during the settling-in period and both are assigned to the MOX project, each person will only be reimbursed 50% of the actual lodging costs, not to exceed the maximum single occupancy GSA lodging rate.

- Subcontractor employees should use a letter or other identification provided by DOE Contracting Officer to establish eligibility to receive government rates (available from MOX Services Subcontract Administrator). Lodging taxes are not included in the maximum GSA rate but are reimbursable as miscellaneous travel expenses.
- Reimbursement at greater than the GSA maximum lodging rate may be allowed under special circumstances but requires advance written approval by the MOX Services Subcontract Administrator. Requests for approval will be reviewed on a case-by-case basis.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

- M&IE are allowable up to the GSA maximum rate for the locale. The GSA M&IE rate includes an allowance for incidental expenses such as gratuities, laundry, dry-cleaning, etc. Such incidental expenses will not be reimbursed as separately itemized expenses on a travel expense report.
Note: Laundry and Dry Cleaning services are reimbursable as separate itemized expenses only when the stay exceeds 4 consecutive days duration.
- During the settling-in period, receipts are required for lodging and any individual miscellaneous expenses of \$75 or more. Taxes on lodging are allowable as miscellaneous expenses and must be itemized on the expense report separately from the lodging rate.
- Telephone calls and taxes in support of official company business are allowable and must be itemized on the expense report.
- Parking fees are allowable and must be itemized on the expense report.

5. JLE Reimbursement

Subject to the certification requirements in 3 above, as soon as personnel locate more economical living arrangements or on the sixty-first (61) day of the assignment, whichever occurs first, JLE reimbursement will be reduced to a flat-rate equivalent to 70% of the combined GSA maximum lodging and M&IE rate at the duty location. Maximum rates for lodging, meals and incidental expenses by locale can be viewed at <http://www.gsa.gov/perdiem>.

JLE reimbursement for lodging will be reduced to 35% of the GSA maximum lodging rate per person if personnel share both primary living accommodations as well as temporary living accommodations with another person assigned to the MOX Project who is also eligible for JLE. M&IE will be reimbursed at 70% of the GSA maximum rate per person. NO other miscellaneous or incidental expenses are reimbursable.

Subcontractor shall advise the MOX Services SA when personnel share accommodations.

Receipts are not required for lodging and M&IE at the 70% flat-rate while subcontractor personnel are in JLE status.

Subcontractor employees in JLE Status are only authorized reimbursement for M&IE expenses at one location (e.g., if the subcontractor employee is in a business travel status and elects to continue to receive M&IE reimbursement at the JLE 70% flat-rate, then M&IE must not be claimed on the business travel expense report. If the subcontractor employee elects to claim reimbursement for M&IE on the business travel expense report, then M&IE expenses for those travel days must not be claimed on the JLE expense report [at the 70% flat-rate]).

6. JLE Expense/Claim Documentation

Receipts are not required for M&IE within the GSA stated rate structure.

Receipts are always required for transportation by common carrier (trips home) during any phase of JLE.

All JLE expenses must be itemized on the applicable firm's approved travel expense report form. If expenses exceeding those authorized by this policy are included on the expense report, the charges must be identified as "unallowable" when submitting the expense report to MOX Services for reimbursement. Unallowable expenses will not be reimbursed.

JLE expense reports must be reviewed and approved by the responsible administrative supervisor or manager from the subcontractor submitting the invoice for reimbursement prior to processing for reimbursement from MOX Services. It is the responsibility of each subcontractor to thoroughly review every expense report to ensure no unallowable expenses are billed to MOX Services and subsequently passed along to the government before submitting it to MOX Services for reimbursement. Repeated instances of poor quality in managing expense report submissions will result in non-payment of invoices and/or return of the unpaid expense reports to the generator for correction. JLE expense reports should be submitted to the subcontractor employee's corporate travel organization and thereafter on to MOX Services each month within 30 calendar days of costs incurred.

It is the subcontractor's responsibility to ensure compliance with appropriate government regulations, including Internal Revenue Service requirements, for reimbursement of expenses for all its employees.

7. Other Benefits and Requirements

The following benefits and requirements pertain to subcontractor employees approved to enter into JLE:

- Rental Car - Rental cars are not authorized for use by personnel on JLE unless circumstances warrant, and then only with the advanced approval of the Chair of the MOX Services JLE Review Board or the MOX Services Chief Administrative Officer (CAO).
- Trips Home - While on JLE, subcontractor employees are authorized one trip home per month, the first of which may occur no sooner than 30 calendar days after actual reporting date.
 - Receipts for airfare and other miscellaneous travel expenses shall be provided with all subcontractor employee travel expense reports for trips home.
 - M&IE is not authorized for days traveling to and from, or spent at the subcontractor employee's principal residence.
 - If travel home is accomplished by Privately Owned Vehicle, mileage will be reimbursed at the then current GSA rate.
 - Only one trip home per month will be reimbursable.
 - Travel under 400 miles will be approved via personal vehicle and travel 400 miles or greater will be by air using a two week advance, non-reimbursable coach fare ticket unless a lower fare is available. Travel outside of these guidelines must be approved in advance by the JLE Review Board.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)**8. Business Travel**

- Business travel is travel of typically short duration (60 days or less) to locations outside the SRS area, when required in performance of work assigned to the Subcontractor's employee. Business travel in excess of 60 days requires the advance approval of the Chair of the MOX Services JLE Review Board or the MOX Services CAO, such approval may be given on a case-by-case basis.
- Reimbursement claims for business travel expenses must be submitted on a subcontractor expense report form. There must not be any overlap of JLE and business travel expenses.
- There is no pre-approval form for US Domestic business travel. Subcontractor will confirm with MOX Services Hiring Manager that business travel is required prior to making reservations.
- Foreign travel in support of the MOX Project requires pre-approval by the Department of Energy. MOX Services Project Procedure PP13-15, copy provided for your information, governs foreign travel. The pre-approval process will be handled by the prospective traveler and hiring manager and reservation should not be made by Subcontractor until travel has been authorized.
- All subcontractor personnel are responsible for compliance with individual company policies pertaining to use of Subcontractor corporate travel cards and booking travel reservations (including common carrier, lodging and rental cars, etc).

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EXHIBIT 3

9.6.16
FILED
Sgt. Hardaway
J.C.P.A.G.S.
Amn
Deputy Clerk

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	Civil Action No: 2015-CP-02-02389
COUNTY OF AIKEN	)	
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF DEBORAH ALDERMAN
	)	
vs.	)	
	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
Defendants.	)	

Personally appeared before me Deborah "Irish" Alderman, who, being duly sworn, states the following:

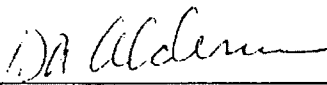
1. I am over the age of eighteen (18) and competent to testify. I submit this affidavit in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, and I have personal knowledge of the facts set forth herein.
2. I have been a Team Member with CB&I AREVA MOX Services, LLC ("MOX Services") for 13 years. Currently, I am a manager in the MOX Services Procurement Department. In that capacity I reviewed applications submitted by subcontractors' employees for Jobsite Living Expense ("JLE") reimbursements to initially determine whether subcontractors' employees were entitled to benefits based on the information submitted. I reviewed both of Edward Pugh's ("Pugh") requests for JLE benefits; the last-in-time is the subject of this lawsuit.
3. The JLE Policy provided for reimbursement of dual living expenses for eligible subcontractors' employees who work at the MOX facility, but were not permanent residents of the area (i.e., outside a 50 mile radius). JLE was paid to the subcontractor/staff augmentation company for whom the subcontracted employee worked. This payment was made by MOX Services after approval of the JLE application. MOX Services then submitted a request to the Department of Energy ("DOE") for reimbursement of these expenses.
4. As part of MOX Services' agreement with DOE, JLE was available for qualifying subcontracted employees or subcontractors' employees who work at MOX's Fuel Fabrication Facility. Globalpundits Technology Consultancy, LLC ("Globalpundits") is a Staff Augmentation Company that has subcontracted with MOX Services to provide personnel to work at the facility on an as-needed basis. Globalpundits' subcontractor employees were eligible to receive JLE if they met all necessary requirements. Pugh is an employee of Globalpundits.

5. The MOX Services JLE Policy set out eligibility for benefits and also explained the requirements of the program. Attached hereto as **Exhibit 1** is a true and accurate copy of the JLE Policy. ("JLE Policy"). The JLE Policy states that "in order to be considered for reimbursement of JLE expenses in accordance with Internal Revenue Services (IRS) relocation guidelines, a subcontractor must be in a situation where dual expenses will be incurred." The policy explains that meeting the criteria listed in the policy does not automatically entitle a subcontractor to participate in the JLE Program.
6. The Policy further explains that MOX Services will approve or disapprove the application submitted by the subcontractor's employee, based on the information provided in the application. Subcontractor's employees are informed, "the MOX review process is intended to ensure that JLE for the applicant is consistent with the best interest of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense." Subcontractor's employees were required to submit sufficient documentation and information to verify that they qualified for reimbursement. The decision to either grant or deny the application was made at the discretion of MOX Services.
7. The entire JLE process is discretionary. A subcontractor's employment with a Staff Augmentation Company did not guarantee JLE benefits. This employment merely afforded eligibility to apply for the benefits. As the policy explains, eligibility for the program is just the first step towards potentially receiving benefits.
8. As part of the review process Procurement Directors are required to determine whether the request for JLE complies with the DOE requirements of reasonableness, allocability, cost accounting standards, and the terms of the contract between DOE and the federal contractor. The DOE has provided guidance on determining allowability and reasonableness of a request for JLE. Attached hereto as **Exhibit 2** is a copy of the DOE guidance sent to MOX Services.
9. The guidance explains the process for review of JLE requests. Under section 31.201-1 Determining Allowability, the DOE explains, "The contracting officer [MOX Services] may disallow all or part of a claimed cost that this inadequately supported." The discretionary nature of the JLE review is further explained in section 31.201-3 - Determining Reasonableness. The guidance states, "No presumption of reasonableness shall be attached to the incurrence of costs by a contractor . . . what is reasonable depends of a variety of considerations and circumstances." These terms gave MOX discretion to decide whether to the JLE benefits should be paid by MOX.
10. As an employee of Globalpundits, Pugh was eligible to apply for JLE benefits. However, these benefits were never guaranteed. Pugh's request for JLE was denied because, based on the information he provided, he failed to show that he met the qualifications for receipt of benefits. Based on my personal knowledge, at no time did MOX Services ever promise or induce a staff augmentation company employee to work at the MOX facility because of

(or including) JLE payments. At no time did MOX Services ever promise or induce Pugh to work at the MOX facility because of (or including) JLE payments.

11. Because JLE is an expense reimbursed to MOX Services by DOE, MOX Services would not approve a JLE application that it believed the Government would not reimburse. If the Government disapproved the reimbursement to MOX Services, MOX Services would terminate the JLE approval.
12. MOX Services has always maintained discretion to both approve JLE upon application, and also subsequently terminate the JLE or seek repayment of JLE that was initially paid but then disapproved by the Government.
13. Over time, the JLE expense process became more controversial and less appealing to the Government. As a result, the Government ultimately ceased allowing MOX Services to approve or disapprove JLE. MOX Services transitioned all Team Members receiving JLE off the JLE program as a result of this direction from the Government. MOX Services does not have any subcontractor/staff augmentation employees, such as Mr. Pugh, who presently receive JLE. Attached hereto as **Exhibit 3** is a copy of the letter MOX Services received from DOE discontinuing the JLE Program.

Dated this 1st day of September, 2016.


DEBORAH ALDERMAN

Sworn before me this September 24th
1st day of ~~August~~, 2016

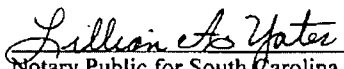

Notary Public for South Carolina
My Commission Expires: 03/16/2025

EXHIBIT 1

1. Eligibility and Term of Assignment

Whereas Shaw ARKVA MOX Services, LLC (MOX Services) desires to fill vacant positions on the MOX project with permanent personnel, it is understood by the parties to this associated staff augmentation subcontract that recruitment efforts are ongoing by MOX Services' Human Resources to fill vacant positions with MOX Services' permanent personnel. Until the vacant positions are filled with permanent MOX Services personnel, staff augmentation subcontractor employees may occupy such positions on an as-needed basis and may be eligible for Jobsite Living Expenses (JLE). Only JLE necessary to accomplish the purposes of MOX Services and the government effectively and economically will be authorized.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred). Permanent residence must be within the 48 continental United States of America. A subcontractor employee who owns secondary property (e.g. real property, mobile home or RV lot), within a 50 mile radius of the MOX duty station does not meet the dual expense requirement and will not be approved for reimbursement of JLE expenses. Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized to participate in the MOX Services JLE program. It is the responsibility of the subcontractor to immediately notify the MOX Services Subcontract Administrator regarding any change in the eligibility status of any subcontractor employee participating in the JLE program.

2. Written Advance Authorization

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board. All JLE applications, including renewals, must be sponsored by the associated MOX Vice President level manager. All JLE applications will be reviewed by MOX Procurement for completeness and compliance with subcontract requirements. Upon concurrence by Procurement, the MOX JLE Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

All applications for entry into JLE status must be supported by documentation proving that the employee has a primary residence location over 50 miles from the jobsite (rental agreement, property tax statement) and proving residency at or near the MOX jobsite (lease/rental agreement, cancelled rent checks, or lodging receipts). JLE applications will not be processed without supporting documentation.

In the event that any JLE supporting documentation used to support eligibility are later found to be invalid or a misrepresentation, the affected staff augmentation subcontractor employee will be ineligible to receive JLE and all costs associated with the invalid JLE will be considered unallowable and will be refunded to MOX Services by the subcontractor.

The MOX review process is intended to ensure that JLE for the applicant is consistent with the best interests of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense. However, the ultimate responsibility for the accuracy and eligibility of an applicant's supporting documentation and representations remains with the subcontractor.

3. JLE Certification Requirement

All subcontractor employees approved to participate in the JLE program in support of the MOX Project are required to execute a JLE Certification upon entering the JLE program and every 180 calendar days thereafter. This certification will confirm that the subcontractor employee understands the minimum requirements that must be met to be eligible for reimbursement for living expenses while in JLE status and the employee certifies that the information provided is current, complete and accurate as of the date of the employee's signature on the JLE application. The minimum requirements are:

- The individual's JLE eligibility has been approved by MOX based on accurate information; and
- The individual is eligible under IRS guidelines to receive JLE, i.e., is in a situation where dual living expenses are being incurred directly as a result of the MOX work assignment; and
- The JLE duty station is more than 50 miles from the subcontractor employee's permanent home of record for income tax purposes and the subcontractor employee does not own property within the 50 mile radius of the JLE duty station.
- In the event, an individual's circumstances change before the 6 month recertification period, whereby the individual no longer meets the eligibility criteria, it is the responsibility of the subcontractor employee to notify the Subcontractor immediately. It is the ultimate responsibility of the Subcontractor to notify MOX Services to terminate payments under this program.
- Subcontractor may not bill for any JLE reimbursement until a certification is approved by MOX Services.

4. Settling-In Period

Newly hired subcontractor employees approved for JLE status may use up to sixty (60) days, on a one time basis, as a settling-in period on full GSA lodging and M&IE while searching for more economical living arrangements. If personnel share accommodations during the settling-in period and both are assigned to the MOX project, each person will only be reimbursed 50% of the actual lodging costs, not to exceed the maximum single occupancy GSA lodging rate.

- Subcontractor employees should use a letter or other identification provided by DOE Contracting Officer to establish eligibility to receive government rates (available from MOX Services Subcontract Administrator). Lodging taxes are not included in the maximum GSA rate but are reimbursable as miscellaneous travel expenses.
- Reimbursement at greater than the GSA maximum lodging rate may be allowed under special circumstances but requires advance written approval by the MOX Services Subcontract Administrator. Requests for approval will be reviewed on a case-by-case basis.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

- M&IE are allowable up to the GSA maximum rate for the locale. The GSA M&IE rate includes an allowance for incidental expenses such as gratuities, laundry, dry-cleaning, etc. Such incidental expenses will not be reimbursed as separately itemized expenses on a travel expense report.
Note: Laundry and Dry Cleaning services are reimbursable as separate itemized expenses only when the stay exceeds 4 consecutive days duration.
- During the settling-in period, receipts are required for lodging and any individual miscellaneous expenses of \$75 or more. Taxes on lodging are allowable as miscellaneous expenses and must be itemized on the expense report separately from the lodging rate.
- Telephone calls and faxes in support of official company business are allowable and must be itemized on the expense report.
- Parking fees are allowable and must be itemized on the expense report.

5. JLE Reimbursement

Subject to the certification requirements in 3 above, as soon as personnel locate more economical living arrangements or on the sixty-first (61) day of the assignment, whichever occurs first, JLE reimbursement will be reduced to a flat-rate equivalent to 70% of the combined GSA maximum lodging and M&IE rate at the duty location. Maximum rates for lodging, meals and incidental expenses by locale can be viewed at <http://www.gsa.gov/perdiem>.

JLE reimbursement for lodging will be reduced to 35% of the GSA maximum lodging rate per person if personnel share both primary living accommodations as well as temporary living accommodations with another person assigned to the MOX Project who is also eligible for JLE. M&IE will be reimbursed at 70% of the GSA maximum rate per person. NO other miscellaneous or incidental expenses are reimbursable.

Subcontractor shall advise the MOX Services SA when personnel share accommodations.

Receipts are not required for lodging and M&IE at the 70% flat-rate while subcontractor personnel are in JLE status.

Subcontractor employees in JLE Status are only authorized reimbursement for M&IE expenses at one location (e.g., if the subcontractor employee is in a business travel status and elects to continue to receive M&IE reimbursement at the JLE 70% flat-rate, then M&IE must not be claimed on the business travel expense report. If the subcontractor employee elects to claim reimbursement for M&IE on the business travel expense report, then M&IE expenses for those travel days must not be claimed on the JLE expense report [at the 70% flat-rate]).

6. JLE Expense/Claim Documentation

Receipts are not required for M&IE within the GSA stated rate structure.

Receipts are always required for transportation by common carrier (trips home) during any phase of JLE.

All JLE expenses must be itemized on the applicable firm's approved travel expense report form. If expenses exceeding those authorized by this policy are included on the expense report, the charges must be identified as "unallowable" when submitting the expense report to MOX Services for reimbursement. Unallowable expenses will not be reimbursed.

JLE expense reports must be reviewed and approved by the responsible administrative supervisor or manager from the subcontractor submitting the invoice for reimbursement prior to processing for reimbursement from MOX Services. It is the responsibility of each subcontractor to thoroughly review every expense report to ensure no unallowable expenses are billed to MOX Services and subsequently passed along to the government before submitting it to MOX Services for reimbursement. Repeated instances of poor quality in managing expense report submissions will result in non-payment of invoices and/or return of the unpaid expense reports to the generator for correction. JLE expense reports should be submitted to the subcontractor employee's corporate travel organization and thereafter on to MOX Services each month within 30 calendar days of costs incurred.

It is the subcontractor's responsibility to ensure compliance with appropriate government regulations, including Internal Revenue Service requirements, for reimbursement of expenses for all its employees.

7. Other Benefits and Requirements

The following benefits and requirements pertain to subcontractor employees approved to enter into JLE:

- Rental Car - Rental cars are not authorized for use by personnel on JLE unless circumstances warrant, and then only with the advanced approval of the Chair of the MOX Services JLE Review Board or the MOX Services Chief Administrative Officer (CAO).
- Trips Home - While on JLE, subcontractor employees are authorized one trip home per month, the first of which may occur no sooner than 30 calendar days after actual reporting date.
 - o Receipts for airfare and other miscellaneous travel expenses shall be provided with all subcontractor employee travel expense reports for trips home.
 - o M&IE is not authorized for days traveling to and from, or spent at the subcontractor employee's principal residence.
 - o If travel home is accomplished by Privately Owned Vehicle, mileage will be reimbursed at the then current GSA rate.
 - o Only one trip home per month will be reimbursable.
 - o Travel under 400 miles will be approved via personal vehicle and travel 400 miles or greater will be by air using a two week advance, non-reimbursable coach fare ticket unless a lower fare is available. Travel outside of these guidelines must be approved in advance by the JLE Review Board.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

8. Business Travel

- Business travel is travel of typically short duration (not day or less) to locations outside the SRS area, when required in performance of work assigned to the Subcontractor's employee. Business travel in excess of 60 days requires the advance approval of the Chair of the MOX Services JLE Review Board or the MOX Services CAO, such approval may be given on a case-by-case basis.
- Reimbursement claims for business travel expenses must be submitted on a subcontractor expense report form. There must not be any overlap of JLE and business travel expenses.
- There is no pre-approval form for US Domestic business travel. Subcontractor will confirm with MOX Services Hiring Manager that business travel is required prior to making reservations.
- Foreign travel in support of the MOX Project requires pre-approval by the Department of Energy. MOX Services Project Procedure PP13-15, copy provided for your information, governs foreign travel. The pre-approval process will be handled by the prospective traveler and hiring manager and reservation should not be made by Subcontractor until travel has been authorized.
- All subcontractor personnel are responsible for compliance with individual company policies pertaining to use of Subcontractor corporate travel cards and booking travel reservations (including common carrier, lodging and rental cars, etc.)

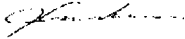
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EXHIBIT 2

POLICY FLASH 2013-07

DATE: October 18, 2012

TO: Procurement Directors

FROM: 
Director, Contract and Financial Assistance Policy Division
Office of Policy
Office of Acquisition and Project Management

SUBJECT: Acquisition Letter on Contractor Domestic Extended Personnel
Assignments

SUMMARY: The attached Acquisition Letter has been issued to provide guidance on the Department's policy governing reimbursement of costs associated with contractor domestic extended personnel assignments.

This Flash will be available online at the following website:
<http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/policy-flashes>.

Questions concerning this policy flash should be directed to Jason Taylor of the Contract and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management at (202) 287-1945 or at jason.taylor@hq.doe.gov.

Attachment

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Department of Energy
Acquisition Regulation

No. AL 2013-01
October 18, 2012



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professionals of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Contractor Domestic Extended Personnel Assignments

References:

FAR 31.201-2	Determining Allowability
FAR 31.201-3	Determining Reasonableness
FAR 31.205-35	Relocation Costs
FAR 31.205-46	Travel Costs
DEAR 970.3102-05-46	Travel Costs
DOE O 350.2B	Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C. Area
DOE M 552.1-1A	U.S. Department of Energy Travel Manual
FTR 302-3.400-429	Employee's Temporary Change of Station
Memorandum for Heads of Contracting Activity, "Contractor Domestic Personnel Extended Assignments" issued May 16, 2012	

When Is this Acquisition Letter (AL) Effective?

This AL is effective immediately upon issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who Is the Intended Audience For this AL?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting Officers are the audience for this AL.

Who Is the Point of Contact For this AL?

DOE Contracting Officers may contact Jason Taylor of the Contracts and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management by phone at (202) 287-1945 or by email to jason.taylor@hq.doe.gov. NNSA Contracting Officers may contact Rocio Bolivar by phone at (505) 845-6057 or by email to Rocio.Bolivar@nnsa.doe.gov.

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AL-2013-01 (10/18/12)

Need More Information on ALs?

Visit the website at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement> for information on Acquisition Letters and other policy issues.

What Is the Purpose Of this AL?

The purpose of this AL is to provide guidance on the Department's policy governing reimbursement of costs associated with contractor domestic extended personnel assignments. This AL supersedes the guidance provided in the Memorandum for Heads of Contracting Activity, "*Contractor Domestic Personnel Extended Assignments*" issued May 16, 2012.

What Types of Contracts Are Affected by this AL?

This AL applies to all cost reimbursement contracts.

What Is the Background Of this AL?

Generally speaking, contractor travel costs are governed by the FAR travel cost principle at 31.205-46 (or DEAR 970.3102-05-46). This principle (incorporated into contracts by either the Payments and Advances clause in M&O contracts, or the Allowable Cost and Payment clause in non-M&O contracts) provides that lodging costs may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. It provides further that these costs shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation (FTR), Joint Travel Regulation (JTR) or Standardized Regulations (SR).

Importantly, the travel cost principle does not incorporate the entirety of the FTR, JTR or SR. Absent specific contract language to the contrary, only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated. Accordingly, when determining the reasonableness of costs associated with contractor domestic extended personnel assignments, we must rely on the general principles established by FAR 31.201-2 and 31.201-3.

According to FAR 31.201-2, a cost is allowable only when it complies with all of the following requirements: reasonableness, allocability, cost accounting standards if applicable (otherwise generally accepted accounting principles), the terms of the contract, and the limitations set forth in FAR Subpart 31.2.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. If the contractor is not subject to effective competitive restraints, reasonableness of specific costs must be examined with particular care. What is reasonable depends on a variety of circumstances, including whether the cost: is generally recognized as ordinary and necessary for the conduct of a contractor's business or contract performance; incurred per a generally accepted sound business practice, arm's-length bargaining, law or regulation; congruent with

AL-2013-01 (10/18/12)

the contractor's responsibilities to the Government and the public at large; and consistent with the contractor's established practices.

No presumption of reasonableness is attached to the incurrence of costs by a contractor. If the Government's initial review of the facts results in a challenge of a cost by the Government, the burden of proof is on the contractor to establish that the cost is reasonable. In order to avoid disallowance or dispute based on reasonableness, it is often a good idea to reach an advance agreement on certain costs. FAR 31.109(h) provides a list of examples of costs for which advance agreements can be particularly important. Among those listed are: off-site pay, incentive pay, location allowances, hardship pay, and cost of living differential.

What Guidance is Included in this AL?

1. What's new for Contracting Officers?

Definition

Contractor domestic extended personnel assignments are defined as any assignment of contractor personnel to a domestic location different than their normal duty station for a period expected to exceed 30 consecutive calendar days. This includes (but is not limited to) Management and Operating (M&O) contractor personnel details to Washington, D.C. in accordance with DOE O 350.2B. NNSA M&O contractor personnel details to Washington, D.C., or other detailees to NNSA, are governed by NNSA SD 350.2.

Policy

The Department has adopted the following policy regarding contractor domestic extended personnel assignments:

- Contractors should be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400—§302.3.429) or a reduced per diem (Extended Travel Duty) described below. Contracting Officers are encouraged to request input from their contractor and the affected program office prior to making a decision on the appropriate reimbursement method.
- When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows: For the first 60 days and last 30 days of the assignment, DOE/NNSA will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days will be reimbursed at the lesser of actual cost or 55% of Federal per diem. For the first 30 days and last 30 days of the assignment, DOE/NNSA will reimburse costs associated with meals and incidental expenses (M&IE) at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. Otherwise, DOE/NNSA will reimburse these costs at the lesser of actual cost or 55% of Federal per diem. DOE/NNSA will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for contractor employees on domestic extended personnel assignments after 3 years (except for the reimbursements described above during the last 30 days of the assignment). DOE/NNSA will

AL-2013-01 (10/18/12)

not reimburse any costs associated with per diem (except for en-route travel) unless the contractor employee maintains a residence at the permanent duty station.

- DOE/NNSA will not reimburse costs associated with salary premiums that exceed 10%.
- Contracting Officers are prohibited from entering into advance agreements that are inconsistent with this AL.

The policy is inapplicable in the following three circumstances:

- Assignments pursuant to the Intergovernmental Personnel Act
- Assignments in support of Continuity of Operations (COOP) and contingency operations
- A waiver has been granted in writing by the cognizant HCA and Assistant Secretary (or for NNSA, the HCA in individual cases and the Senior Procurement Executive with Principal Deputy Administrator concurrence for blanket waivers)

In addition to ensuring compliance with the above policy, Contracting Officer's should consider the following questions when reviewing contractor policies or proposals for domestic extended personnel assignments for reasonableness:

- *Would it be more economical to relocate the employee?* Contractors should be reimbursed the lesser of relocation costs or reduced per diem. Accordingly, programs should conduct a cost comparison prior to commencing the assignment in order to ascertain which allowance to pay. In order to make an accurate choice, it will be necessary to have an idea of the length of the proposed assignment.
- *Has the contractor considered whether it would be more economical to secure longer term accommodations, rather than to stay in a hotel on a daily rate?* It is almost always possible to secure long-term lodging at a cost well below per-diem. Contractors will be reimbursed at the lesser of actual cost or 55% of per diem (if using the Extended Travel Duty option).
- *Is any field salary premium justified and reasonable?* As with any other cost, the field salary premium must be reasonable in both nature and amount. A salary premium should not be an automatic allowance provided to employees on domestic extended assignments. It should be provided only on an as needed basis with proper justification. If a salary premium is intended to offset a higher cost of living at the assignment location. Contracting Officers should consider whether that additional cost is already being offset by payment of per diem. Contracting Officers should keep in mind the prudent person test outlined in FAR 31.201-3. Salary premiums shall not exceed 10%, and must be discontinued after 3 years.
- *Is the overall reimbursement justified and reasonable?* Keep in mind that the purpose of long term per diem allowance under the Extended Travel Duty option is to reimburse contractor employees for the additional expenses associated with maintaining a separate residence away from home. Contracting Officers should remember the prudent person test outlined in FAR 31.201-3.

AI-2013-01 (10/18/12)

Questions and Answers regarding interpretation of the new policy

- The new policy states "DOE/NNSA will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for contractor employees on domestic extended personnel assignments after 3 years."
 - *Please clarify: Does this apply to all contractor personnel, including those funded by non-DOE/NNSA entities under a Work for Others project?* Yes.
- *Is there a waiver process for exceptional circumstances?* In exceptional cases, this policy (or portions thereof) may be waived with the written approval of the cognizant HCA and Assistant Secretary. Within NNSA, this policy or portions thereof may be waived with the written approval of the HCA for individual actions, and by the Senior Procurement Executive with Principal Deputy Administrator concurrence for blanket waivers.
- *Some contractor employees travel intermittently to the same location in support of project type tasks but are not in any meaningful sense considered "assigned" to that location even though some periods of travel may exceed 30 days. Does the AI apply in this circumstance?* If a contractor employee travels intermittently to the same location with some periods in excess of 30 days but it is not practical or cost effective to obtain long term lodging, the program office may consider pursuing a waiver from the restrictions in this Acquisition Letter.
- *What should be done about contractor employees who are already on a domestic extended personnel assignment under terms inconsistent with the new policy?* The new policy applies immediately to all new contractor domestic extended personnel assignments. Existing assignments shall be transitioned to the new policy after providing 90 days notice. In the case of assignments with less than 90 days term remaining before renewal, the existing reimbursement scheme will carry forward into the renewal period until the 90 day notice period has elapsed.
- *How does the three year rule limiting the reimbursement of per diem apply to those contractor employees who have a series of temporary assignments to the same location, all for short periods but that together cover three years?* If an assignment has breaks within a three year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Department will consider the assignment continuous for purposes of the three year clock. For instance, if an employee completes a 2 year assignment at location A and returns to his permanent duty station for 12 months, a subsequent new 2 year assignment back to location A will restart the 3 year clock. The assignments will be considered two separate 2 year assignments. On the other hand, if in the previous example the employee's return to his permanent duty station was 6 months, the Department would consider the second assignment to be a continuation of the first and it would run afoul of the three year rule.
- *What if our contract contains an advance agreement governing treatment of these costs that is inconsistent with the new policy?* The advance agreement should be modified to be consistent with the new policy. Keep in mind the FAR requirements for a valid advance

AL-2013-01 (10/18/12)

agreement which are described at 31.109(b). If your agreement does not meet these requirements (for instance if it lacks a "statement of its applicability and duration") it may not even be binding.

- *Is HCA approval required for each individual assignment?* The policy does not require HCA approval of individual extended assignments (unless a waiver is requested). HCA approval is also required before finalizing any advance agreements (such as Personnel Appendix changes) or approving any contractor domestic extended personnel assignment policies.
- *Is this policy applicable only to prime contractors, or does it flow down to subcontractors?* The policy should be considered a cost standard that flows down to all subcontractors.

2. *What's new for Other Officials Involved in the Acquisition Process?*

This AL requires nothing new from other officials involved in the acquisition process.

3. *Who has what responsibility for implementing this AL's guidance?*

The Contracting Officer has the responsibility of implementing this AL.

4. *What changes implemented by this AL's guidance affect current contracts, future contracts, or both?*

This AL's guidance affects both current and future contracts.

31.201-2 -- Determining Allowability.

(a) A cost is allowable only when the cost complies with all of the following requirements:

- (1) Reasonableness.
- (2) Allocability.
- (3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the circumstances.
- (4) Terms of the contract.
- (5) Any limitations set forth in this subpart.

(b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

31.201-3 -- Determining Reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including --

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

EXHIBIT 3



Department of Energy
National Nuclear Security Administration
MOX Integrated Project Division
Savannah River Site
P.O. Box A
Aiken, South Carolina 29802



August 12, 2014

Rex Norton
Vice President, Contracts and Supply Chain
Shaw AREVA MOX Services, LLC
Savannah River Site
P.O. Box 7097
Aiken, SC 29804-7097

Dear Mr. Norton:

SUBJECT: Contract DE-AC02-99CH10888, MOX Fuel Fabrication Facility, Contracting Officer (CO)
Direction on the use of Job Site Living Expenses (JLE)

Reference: (1) NA-APM-14-0111, Swett to Whittingham, 5/29/2014, NNSA Approval Required to Authorize Job Site Living Expenses (JLE)
(2) NA-APM-14-0112, Cannon to Trice, 6/9/2014, Assessment of Shaw AREVA MOX Services, LLC Job Site Living Expense Procedures
(3) NA-APM-14-0120, Swett to Whittingham, 6/18/2014, Job Site Living Expense (JLE) Approval

MOX Services' Job Site Living Expenses (JLE) program has been under observation by my office for several months. Based on the findings in our recent assessment (Reference 2) and the information provided with the most current JLE approval requests, I am no longer able to support MOX Services use of JLE under this contract.

Recently, MOX Services submitted JLE approval requests for several positions. The JLE requests for HR Requisitions #3556, #3557, and #3466 are hereby denied. MOX Services has not adequately shown recruitment efforts for these positions, has not provided a sound basis of why JLE is required, and has not shown documentation of alternatives considered in lieu of offering JLE. The information provided with these requests does not provide a sound basis for me to consider JLE as a reasonable or allowable cost for these positions.

The JLE requests for Kuhns (3/31/2014-5/2/2014), Ravsten (3/24/2014 - 6/19/2014) and Pinerio (6/2/2014-8/31/2014) are hereby approved. Approval is being granted solely due to the short duration of assignment and the fact that reimbursement of these expenses as business travel instead of JLE would be more expensive for the government. The JLE re-certification requests for Albert (6/28/2014-12/28/2014) and Miller (6/27/2014-12/27/2014) are also approved. Approval for these positions is being granted for 90 days to allow adequate transition time for these positions.

Any direct hire employees or subcontractor's currently receiving JLE must be removed from the JLE Program and have all JLE reimbursements end no later than 90 days from the date of this letter. MOX Services is authorized to continue to offer JLE to employees that you believe meets the criteria listed in DOE Acquisition Letter (AL) 2013-01, Contractor Domestic Extended Personnel Assignments. In particular, employees must be working away from the duty stations. Before offering JLE to these employees, MOX Services is required to submit an advance written approval request to the Contracting Officer.

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24264.0013

Norton

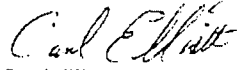
-2-

August 12, 2014

Please note, approval of these JLE requests, does not constitute an advance determination of the allowability of costs.

If you have any questions or comments please contact Audrey Rischbieter at 803-952-4357.

Sincerely,



Carol Elliott
Contracting Officer

SV:AWR:ele

NA-APM-14-0140

cc:

S. Cannon, NA-APM-1.4

K. Trice, MOX

P. Whittingham, MOX

D. Alderman, MOX

C. Sportes, MOX

MOXPMODCA@dtrs.gov

01A1000002
24264.0013

EXHIBIT 4

9.6.16
FILED
Sgt. Hedard
106 CP 805
Amj
Deputy Const.

Smith, Vera

From: Denise Dobbe [denise@globalpundits.com]
Sent: Wednesday, January 09, 2013 2:25 PM
To: Smith, Vera
Subject: Fwd: Ed Pugh

Vera,

Ed Pugh would like clarification on what is considered "residential proof".
He would also like to set up a time with MOX and Globalpundits to discuss the decision regarding his JLE.

Please let me know who all needs to be included on the call and I will try to set up for a time that works best for all parties.

Thank you,
Denise

----- Forwarded message -----

From: Pugh, Edward W. <EWPugh2@moxproject.com>
Date: Wed, Jan 9, 2013 at 2:13 PM
Subject: RE: Ed Pugh
To: Denise Dobbe <denise@globalpundits.com>

I have complied with all the rules and have shown that is where I live.

You, me and Globalpundits will have to set up a time to discuss.

Last time, before you were here, I got the JLE approved.

It was approved for all the time I was here, and Globalpundits even had their accountant establish that is where I live.

First, you must write back to them and ask them to answer what they mean by "residential proof".

Can you do that please?

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

vs.

CB&I AREVA MOX Services, et al.

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2015-CP-02-02389

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Michael D. Carrouth, Bar No. _____ Address: _____ 1320 Main St., Suite 750, Columbia SC 29201 Phone: 803-255-0000 Fax 803-255-0202- E-mail: mcarrouth@fisherphillips.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Enforce Written Agreement Estimated Time Needed: 15 mins. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant January 3, 2017 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☒ MOTION FEE COLLECTED: \$ 25.00 CK# 52934 ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

FILED January 4, 2017
Rhonda M. Bailey
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

**MOTION TO
ENFORCE WRITTEN AGREEMENT**

FILED January 4 2017 09:20
Rhonda M. Bailey
C.C.P. & G.S.
Deputy Clerk

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants, CB&I AREVA MOX Services, LLC ("MOX") and Globalpundits Technology Consultancy, LLC ("Globalpundits" and collectively "Defendants"), through their undersigned counsel, hereby move the Court to enforce and approve the written agreement reached by the Parties at mediation on September 30, 2016. Defendants have attempted in good faith to secure the execution of a final, comprehensive Settlement Agreement based on the September 20, 2016 written agreement without burdening the Court but have reached an impasse with Plaintiff.

PROCEDURAL BACKGROUND

Plaintiff commenced this lawsuit on October 8, 2015, by filing his Complaint in the Court of Common Pleas in the County of Aiken. Plaintiff, a contract employee of Defendant MOX, alleged three causes of action: (1) Declaratory Judgment; (2) Breach of Contract; and (3) Unpaid Wages Under S.C. Wage Payment Act. (*See generally*, Compl.).

The parties agreed to mediation and the same was scheduled for September 30, 2016 and was mediated before Eugene H. Matthews, a mediator chosen and agreed to by the parties. The mediation was attended by Plaintiff, Plaintiff's then counsel, Jeremy Summerlin, Noah M. Hicks

FPDOCS 32467334.1

III, Senior Attorney for MOX, Joe Doyle, Director for Globalpundits and the below signed counsel. At the conclusion of mediation, a settlement was reached and *all* parties present signed the "Agreement to Settle."

At all times during the litigation process, Plaintiff was represented by Jeremy R. Summerlin. Mr. Summerlin represented Mr. Pugh up and until he was relieved as counsel by Order of this court dated December 15, 2016. Defendants now request that the Court enforce the written agreement reached by the Parties to this matter.

RELEVANT TERMS OF "AGREEMENT TO SETTLE"

Between September 30, 2016 and November 14, 2016, the Parties to this litigation worked on finalizing a comprehensive Settlement Agreement as described in the "Agreement to Settle." All terms for a comprehensive Settlement Agreement were accepted except for one issue related to the scope of parties to be released by the comprehensive Settlement Agreement.

In the comprehensive Settlement Agreement, "Released Parties" included the United States Department of Energy and the National Nuclear Security Administration. These entities were included as Released Parties because of their ownership and oversight of the Savannah River Site. Basically, because these entities had the ability and authority to review and approve the terms of the applicable Settlement Agreement, they were included as Released Parties.

The ability to include the United States Department of Energy and the National Nuclear Security Administration as Released Parties in the final, comprehensive Settlement Agreement was agreed to and accepted by all Parties during the mediation. Specifically, Paragraph 3 of the "Agreement to Settle" states as follows:

3. The parties will execute a Settlement Agreement including a mutual, full and complete release of all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement and release will be drawn by counsel for the Defendants.

Nothing contained in the above Paragraph 3 limited the final, comprehensive Settlement Agreement to only claims between the Parties to the litigation. Nothing in the "Agreement to Settle" or in Paragraph 3 limited the final, comprehensive Settlement Agreement to only claims asserted by the Plaintiff (Mr. Edward Pugh) against the named Defendants.

To the extent the Parties to the settlement in this matter conditioned the settlement on the terms being confidential, counsel for Defendants has not attached a copy of the "Agreement to Settle" signed by all Parties, including Mr. Pugh, and his counsel. However, counsel for Defendants can make the "Agreement to Settle" available for the Court's review in an effort to maintain the confidentiality agreed to as a term of the original settlement.

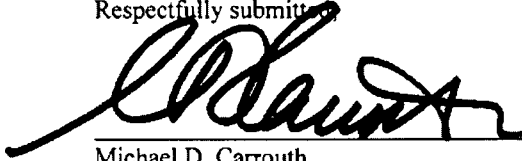
"AGREEMENT TO SETTLE" CAN BE ENFORCED THROUGH RULE 43(k)

The applicable "Agreement to Settle" was in writing and was reviewed and signed by all Parties and their counsel. As discussed above, the "Agreement to Settle" provided counsel for Defendants the opportunity to draft the final Settlement Agreement and confirmed that the final Settlement Agreement would involve a "mutual, full and complete release of all claims arising on or before the date of the settlement agreement is executed, and covenant not to sue." (emphasis added) Given the terms of the "Agreement to Settle", Defendants properly relied on this provision to include the United States Department of Energy ("DOE") and the National Nuclear Security Administration ("NNSA") as Released Parties in the final, comprehensive Settlement Agreement.

CONCLUSION

Based on the foregoing, and pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants respectfully request that the Court enforce the "Agreement to Settle" reached between the parties at mediation on September 30, 2016, including the Defendant's right to draft a final, comprehensive Settlement Agreement that includes released parties beyond the parties to this lawsuit.

Respectfully submitted,



Michael D. Carrouth
Christina L. Rogers
Fisher & Phillips LLP
1320 Main Street, Suite 750
Columbia, SC 29211
Phone: (803) 255-0000
Facsimile (803) 255-0202
mcarrouth@fisherphillips.com
crogers@fisherphillips.com
Attorneys for Defendants

Dated this 3rd day of January 2017

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Edward Pugh,)

Plaintiff,)

vs.)

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC)

Defendants.)

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

FILED

January 4th 2017
@ 9:10
R. M. Bailey
Deputy Clerk

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **MOTION TO ENFORCE WRITTEN AGREEMENT** in the above-captioned case has been served upon the following via hand delivery:

Edward Pugh
1085 Old Clemson Hwy., Ste. E
Seneca, SC 29672

The foregoing **MOTION TO ENFORCE WRITTEN AGREEMENT** in the above-captioned case has been served upon the following parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Noah "Chip" M. Hicks II, Esquire
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097

Suzanne G. King
Suzanne G. King

Dated this 3rd day of January 2017

FPDOCS 32491918.1

Common Pleas

Clerk : Robert J Harte

P O Box 583

Aiken, SC 29802

Phone:(803) 642-1715 Fax:(803) 642-1718

DUPLICATE

Received From:	Rogers, Christina Landsdowne	Date:	1/ 4/2017
	Fisher & Phillips, LLP	Receipt #:	52934
	Columbia, SC 29201	Clerk:	c02awiley
Paying for:	CB&I AREVA MOX Services LLC.		
Transaction Type:	Payment	Reference #:	4195
Payment Type:	Check	Comment:	Non-Refundable
Total Paid:	\$25.00		

You may check the status of your Aiken case at:

<http://www.sccourts.org/caseSearch/>

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2015CP0202389	Edward Pugh VS CB&I AREVA MOX Services LLC , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases:	1	\$25.00	\$25.00	\$0.00
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ReceiptSingleCase.rpt V6.1

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE WRITTEN AGREEMENT**

FILED 2-13 2/17/20
Shadell Phibbs
CCCP & G.S.
Deputy Clerk

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants, CB&I AREVA MOX Services, LLC ("MOX") and Globalpundits Technology Consultancy, LLC ("Globalpundits" and collectively "Defendants"), through their undersigned counsel, have moved to enforce and approve the written agreement reached by the Parties at mediation on September 30, 2016. This Motion is based on grounds and authorities set forth more fully below.

I. Relevant Background

The underlying lawsuit which resulted in the Defendants' Rule 43(k) Motion in this case involved claims related to Edward Pugh's ("Pugh") employment with Globalpundits, a staff augmentation company which subcontracted with MOX to provide personnel who assist MOX to carry out its duties under a prime "cost reimbursable" contract with the Department of Energy ("DOE"). The MOX project is a one-of-a-kind design-build project at the Savannah River Site in Aiken County. The MOX project is supervised by the National Nuclear Security Administration ("NNSA") – a semi-autonomous agency within the DOE. Because MOX is a prime contractor with the federal government, there are varying degrees of oversight, approval, and review retained and maintained by DOE and NNSA over MOX's operations and performance of its contract.

While Pugh filed several different causes of action in this lawsuit against Defendants, his primary claim involved allegations that he was wrongfully denied reimbursement through a program that allowed for the reimbursement for joint living expenses.¹ In sum, Pugh felt that he was guaranteed reimbursement for any joint living expenses he submitted and that defendants had no ability or discretion to deny reimbursement. On the other hand, Defendants contended that the joint living expense policy at issue in the underlying lawsuit made it clear that no reimbursements were guaranteed and that MOX had discretion to deny reimbursements. A copy of the Joint Living Expense Policy is attached as Exhibit A.

On September 30, 2016, the parties participated in a mediation to resolve the underlying lawsuit. That mediation was successful and the parties reached an agreement to settle. The basic terms of this settlement were confirmed in a written document entitled "Agreement to Settle." A copy of this "Agreement to Settle" is attached as Exhibit B.

Regarding this pending Motion, the "Agreement to Settle" specifically noted that the "parties agree to dismiss with prejudice all claims, counterclaims and defenses brought in lawsuits referenced in the captions above." Further, the "Agreement to Settle" stated: "The Parties will execute a Settlement Agreement including a mutual, full and complete release of all claims arising on or before the date of the Settlement Agreement is executed, and a Covenant Not to Sue. This Agreement and Release will be drawn by counsel for the Defendants." The "Agreement to Settle" was signed by Pugh, Pugh's counsel, Defendants, and their counsel. At no point in the mediation

¹ Joint living expenses involve those expenses incurred by individuals working on a DOE contract in which they maintain a separate home, household, or residence, and also maintain a residence near the DOE site. Due to the special skills, education, and experience backgrounds associated with many DOE subcontractor jobs, individuals filling those positions often travel and work between multiple DOE and related sites. As a result, many of these individuals find it convenient to maintain a personal, home residence and a work residence. The Joint Living Expense program was aimed at providing reimbursement in these situations if certain criteria and eligibility requirements were met.

or in the finalizing and execution of the "Agreement to Settle" did anyone, including Pugh, raise any issues or concerns over the terms of the "Agreement to Settle."

The dispute which necessitated this Motion occurred when Pugh objected to one specific part of the final comprehensive Settlement Agreement prepared by Defendants' counsel. A copy of this comprehensive and final Settlement Agreement is attached as Exhibit C.

Specifically, in Section C(7), page 3 of 6, of Exhibit C, the "Released Parties" covered by the Agreement were defined. This section specifically lists the "Released Parties" to include "(a) CB&I AREVA MOX Services, LLC and the United States Department of Energy, including the National Nuclear Security Administration...." Of all the terms and conditions stated in the final comprehensive Settlement Agreement, this was the only specific term or item objected to by Pugh and for which he refused to execute the final comprehensive Settlement Agreement.

Defendants prepared and drafted the final comprehensive Settlement Agreement (Exhibit C) and listed the DOE and NNSA as released parties because the "Agreement to Settle" executed on September 30, 2016 specifically stated that the final Settlement Agreement will include a "mutual, full and complete release of all claims arising on or before the date of the Settlement Agreement is executed...." Nothing in the language of the "Agreement to Settle" indicated that the released or waived claims had to be claims asserted by or against parties to the pending lawsuit. Although this position was explained to Pugh and his counsel, Pugh would not execute the final, comprehensive Settlement Agreement.

II. The "Agreement to Settle" is Enforceable because it Satisfies the Requirements of Rule 43(k).

The purpose of Rule 43(k) is to prevent possible disputes that can arise over the existence of terms of the agreement, thereby increasing the certainty and finality of settlement agreements. *Ashcroft Corp. v. Palmetto Constr. Grp. Inc.*, 318 S.C. 492 (1995). Rule 43(k) states:

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRPC.

S. C. R. Civ. P. 43(k) (emphasis added). Prior to 2009, Rule 43(k) only applied to written stipulations signed and entered into the court record, consent orders signed and entered into the court record, and settlement agreements announced in open court and noted upon the record. In April 2009, the South Carolina Supreme Court amended Rule 43(k) with Order 2009-04-02-04, adding at the end of the above-quoted rule: "or reduced to writing and signed by the parties and their counsel." Rule 43(k), SCRPC.

Rule 43(k) applies to the Agreement to Settle signed by the parties during mediation in mediation on September 30, 2016. While most of the cases involving Rule 43(k) are used to enforce settlement agreements, the rule states that it can be used for any "agreement between counsel affecting the proceedings." An agreement to enter into a settlement agreement surely affects how a case proceeds and, therefore, falls within the Rule.

Next, the Agreement to Settle satisfies the requirements of Rule 43(k) and, therefore, is enforceable. In order to enforce an agreement under Rule 43(k), South Carolina courts require strict compliance with the rule, meaning all of the elements of the rule must be satisfied for the agreement to be enforceable. See *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding a letter signed by both parties' counsel regarding settlement did not meet the qualifications of pre-2009 Rule 43(k) because the agreement was not in the form of a consent order or entered into the record); *Galloway v. Regis Corp.*, 325 S.C. 541, 546 (Ct. App. 1997) (holding handwritten damages calculations and notes made during mediation and signed by counsel were not sufficient to comply with pre-2009 43(k)); *Buckly v. Shealy*, 370

SC 317, 322 (2006) (divorce settlement not enforceable under pre-2009 43(k) because it was not entered into the record or acknowledged in open court).

For an agreement to be enforceable based on the third requirement listed in the post-2009 rule, the agreement must be (1) in writing, (2) signed by the parties, and (3) signed by the parties' counsel. The Agreement to Settle in this case was signed by the Plaintiff, Plaintiff's then-counsel, Jeremy Summerlin, Noah M. Hicks III, Senior Attorney for MOX, Joe Doyle, Director for Globalpundits, and the below signed counsel. Therefore, the Agreement to Settle strictly complies with the requirements of Rule 43(k) and, consequently, is enforceable. The above-cited cases interpreting the pre-2009 Rule 43(k) would have found the same result using the same logic but with the amended, post-2009 Rule.

III. The Plain Language of the Agreement to Settle is Unambiguous.

To enforce the "Agreement to Settle," this Court can simply follow the unambiguous language. Under Rule 43(k), courts review the at-issue agreements in much the same way as contracts. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634, 640 (Ct. App. 2007). When an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement. *Messer v. Messer*, 359 S.C. 614, 628 (Ct. App. 2004). When an agreement is plain and unambiguous, the court does not have the authority to modify its terms. *Patricia Grand Hotel*, 372 S.C. at 640. A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230 (1993). A contract must be read as a whole document such that litigants may not create an ambiguity by pointing to a single sentence or clause. *Maybank v. BB&T Corp.*, 416 S.C. 541, 576 (2016).

The plain language of Paragraph 3 of the Agreement to Settle is unambiguous. It states: "The parties will execute a Settlement Agreement including a mutual, full and complete release of

all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement will be drawn by counsel for the Defendants” (emphasis added). Reading Paragraph 3 in conjunction with the remainder of the Agreement sufficiently limits the scope of the Agreement to all claims related to the subject matter of the lawsuit, as opposed to including a claim Plaintiff may have in an unrelated automobile accident or the like. Therefore, Paragraph 3 cannot be understood in more than one way. Plaintiff agreed to sign a comprehensive settlement agreement releasing *all claims* he possessed prior to the date of settlement. That includes all claims Plaintiff has against the United States Department of Energy, including the National Nuclear Security Administration, prior to the date he signs the settlement agreement. While Plaintiff is asking this Court to read the Agreement as stating he would release “all claims between the parties,” the clear, unambiguous language of the Agreement to Settle forbids the court from reading such a provision into the Agreement.

As such, this Court should order Plaintiff to sign the comprehensive Settlement Agreement drawn up by Defendants’ counsel (Exhibit C) that includes the release of all claims Plaintiff possesses against (a) CB&I AREVA MOX Services, LLC and the United States Department of Energy, including the National Nuclear Security Administration; (b) Globalpundits Technology Consultancy, LLC; (c) each of the Defendants past, present, and future parents, subsidiaries, divisions, partnerships, affiliates, and other related entities (closely or remotely connected); (d) each of their past, present, and future owners, directors, officers, trustees, fiduciaries, shareholders, administrators, agents, employees, partners, members, associates, and attorneys; and (e) the predecessors, successors, and assigns of each of the foregoing persons and entities.

IV. The Parties Intended to Include "All Claims" in the Agreement to Settle.

Even if this Court determines that the language of the Agreement to Settle is ambiguous, it was the intent of the parties to include the United States Department of Energy ("DOE"), including the National Nuclear Security Administration, within the umbrella of "released parties."

Where "the language of a settlement agreement is susceptible of more than one interpretation, it is the duty of the court to ascertain the intentions of the parties." *Patricia Grand Hotel*, 372 S.C. at 640.

Plaintiff knew that by releasing Defendant MOX in this Lawsuit, it would release the DOE, including the National Nuclear Security Administration, because of the relationship between those parties. Defendant MOX contracts with the DOE to run the Savannah River Nuclear Site. Therefore, the DOE had the right to review and approve any settlement agreement entered into by Defendant MOX. The Plaintiff was aware of this during mediation. To allow Plaintiff to recover from Defendants through this settlement agreement without releasing the DOE, including the National Nuclear Security Administration, would allow Plaintiff the opportunity to seek double recovery from the government. Therefore, according to reason and justice, the contract must be interpreted to include a release of the DOE and National Nuclear Security Administration. *Columbia East Assocs. v. Bi-Lo, Inc.*, 299 S.C. 515, 520-521 (Ct. App. 1989) ("In the absence of an express provision in the contract, the law will imply an agreement to do those things that according to reason and justice should be done to carry out the purpose for which the contract was made.").

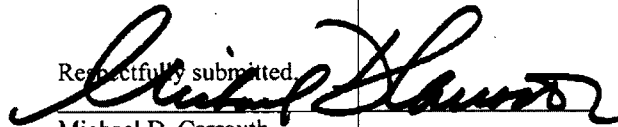
Additionally, if the parties had intended to limit the scope of the agreement to include a release of claims only between the parties of the lawsuit, they easily could have stated as much in the Agreement. In *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234 (Ct. App. 2009), the parties entered

into a settlement agreement where the parties agreed to "a full and complete release of all landlord/tenant claims and issues, known or unknown, between the parties." The following paragraph included language about how the agreement specifically did not affect claims the plaintiff had against another defendant. The court held that the term "all landlord/tenant claims" was ambiguous because there was no definition for landlord/tenant. The court stated, "[h]ad it been the parties' intention to extinguish all claims by [Plaintiff], the Settlement Agreement could have simply done so, instead of expressly carving out specific exceptions." *Id.* at 244. Using that same logic, by not carving out specific exceptions to the term "all claims" or limiting the release to only claims between the Plaintiff and the parties to the Lawsuit when the parties easily could have done so, it is clear that the parties intended the Agreement to encompass all of the claims Plaintiff has in the matter.

V. **Conclusion.**

Based on the foregoing, and pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants respectfully request that the Court enforce the "Agreement to Settle" reached between the parties at mediation on September 30, 2016, including the Defendant's right to draft a final, comprehensive Settlement Agreement that includes released parties beyond the parties to this lawsuit.

Respectfully submitted,



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crogers@fisherphillips.com
Attorneys for Defendants

Dated this 10th day of February 2017

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

**EXHIBIT FOR
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE WRITTEN AGREEMENT**

FILED

2-13 2017 12:20 SP

Robert L. White
CCCP & O.S.
Shondell Price
Deputy Clerk

Exhibit A
(Joint Living Expense Policy)

FPDOCS 32624284.1

1. Eligibility and Term of Assignment

Whereas Shaw AREVA MOX Services, LLC (MOX Services) desires to fill vacant positions on the MOX project with permanent personnel, it is understood by the parties to this associated staff augmentation subcontract that recruitment efforts are ongoing by MOX Services' Human Resources to fill vacant positions with MOX Services' permanent personnel. Until the vacant positions are filled with permanent MOX Services personnel, staff augmentation subcontractor employees may occupy such positions on an as-needed basis and may be eligible for Jobsite Living Expenses (JLE). Only JLE necessary to accomplish the purposes of MOX Services and the government effectively and economically will be authorized.

In order to be considered eligible for reimbursement of JLE expenses in accordance with Internal Revenue Service (IRS) relocation guidelines, a subcontractor employee must be in a situation where dual expenses will be incurred by the subcontractor employee as a result of completing the work assignment (i.e., the employee has a permanent residence of record for income tax purposes that is 50 miles or more from the MOX duty station, and local housing expense is incurred). Permanent residence must be within the 48 continental United States of America. A subcontractor employee who owns secondary property (e.g. real property, mobile home or RV lot), within a 50 mile radius of the MOX duty station does not meet the dual expense requirement and will not be approved for reimbursement of JLE expenses. Meeting these criteria however, does not automatically mean a subcontractor employee will be authorized to participate in the MOX Services JLE program. It is the responsibility of the subcontractor to immediately notify the MOX Services Subcontract Administrator regarding any change in the eligibility status of any subcontractor employee participating in the JLE program.

2. Written Advance Authorization

All MOX Services subcontractor personnel proposed for coverage under the MOX JLE Program must be approved in advance to enter into JLE by submitting a JLE package for review and approval by MOX Services JLE Review Board. All JLE applications, including renewals, must be sponsored by the associated MOX Vice President level manager. All JLE applications will be reviewed by MOX Procurement for completeness and compliance with subcontract requirements. Upon concurrence by Procurement, the MOX JLE Review Board will review the application and the MOX Services JLE Review Board chair will approve/disapprove the application based on information provided in the application.

All applications for entry into JLE status must be supported by documentation proving that the employee has a primary residence location over 50 miles from the jobsite (rental agreement, property tax statement) and proving residency at or near the MOX jobsite (lease/rental agreement, cancelled rent checks, or lodging receipts). JLE applications will not be processed without supporting documentation.

In the event that any JLE supporting documentation used to support eligibility are later found to be invalid or a misrepresentation, the affected staff augmentation subcontractor employee will be ineligible to receive JLE and all costs associated with the invalid JLE will be considered unallowable and will be refunded to MOX Services by the subcontractor.

The MOX review process is intended to ensure that JLE for the applicant is consistent with the best interests of the project and the government, and that the appropriate JLE documentation is on file to support the associated expense. However, the ultimate responsibility for the accuracy and eligibility of an applicant's supporting documentation and representations remains with the subcontractor.

3. JLE Certification Requirement

All subcontractor employees approved to participate in the JLE program in support of the MOX Project are required to execute a JLE Certification upon entering the JLE program and every 180 calendar days thereafter. This certification will confirm that the subcontractor employee understands the minimum requirements that must be met to be eligible for reimbursement for living expenses while in JLE status and the employee certifies that the information provided is current, complete and accurate as of the date of the employee's signature on the JLE application. The minimum requirements are:

- The individual's JLE eligibility has been approved by MOX based on accurate information; and
- The individual is eligible under IRS guidelines to receive JLE, i.e., is in a situation where dual living expenses are being incurred directly as a result of the MOX work assignment; and
- The JLE duty station is more than 50 miles from the subcontractor employee's permanent home of record for income tax purposes and the subcontractor employee does not own property within the 50 mile radius of the JLE duty station.
- In the event, an individual's circumstances change before the 6 month recertification period, whereby the individual no longer meets the eligibility criteria, it is the responsibility of the subcontractor employee to notify the Subcontractor immediately. It is the ultimate responsibility of the Subcontractor to notify MOX Services to terminate payments under this program.
- Subcontractor may not bill for any JLE reimbursement until a certification is approved by MOX Services.

4. Settling-In Period

Newly hired subcontractor employees approved for JLE status may use up to sixty (60) days, on a one time basis, as a settling-in period on full GSA lodging and M&IE while searching for more economical living arrangements. If personnel share accommodations during the settling-in period and both are assigned to the MOX project, each person will only be reimbursed 50% of the actual lodging costs, not to exceed the maximum single occupancy GSA lodging rate.

- Subcontractor employees should use a letter or other identification provided by DOE Contracting Officer to establish eligibility to receive government rates (available from MOX Services Subcontract Administrator). Lodging taxes are not included in the maximum GSA rate but are reimbursable as miscellaneous travel expenses.
- Reimbursement at greater than the GSA maximum lodging rate may be allowed under special circumstances but requires advance written approval by the MOX Services Subcontract Administrator. Requests for approval will be reviewed on a case-by-case basis.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

- M&IE are allowable up to the GSA maximum rate for the locale. The GSA M&IE rate includes an allowance for incidental expenses such as gratuities, laundry, dry-cleaning, etc. Such incidental expenses will not be reimbursed as separately itemized expenses on a travel expense report.
Note: Laundry and Dry Cleaning services are reimbursable as separate itemized expenses only when the stay exceeds 4 consecutive days duration.
- During the settling-in period, receipts are required for lodging and any individual miscellaneous expenses of \$75 or more. Taxes on lodging are allowable as miscellaneous expenses and must be itemized on the expense report separately from the lodging rate.
- Telephone calls and faxes in support of official company business are allowable and must be itemized on the expense report.
- Parking fees are allowable and must be itemized on the expense report.

5. JLE Reimbursement

Subject to the certification requirements in 3 above, as soon as personnel locate more economical living arrangements or on the sixty-first (61) day of the assignment, whichever occurs first, JLE reimbursement will be reduced to a flat-rate equivalent to 70% of the combined GSA maximum lodging and M&IE rate at the duty location. Maximum rates for lodging, meals and incidental expenses by locale can be viewed at <http://www.gsa.gov/perdiem>.

JLE reimbursement for lodging will be reduced to 35% of the GSA maximum lodging rate per person if personnel share both primary living accommodations as well as temporary living accommodations with another person assigned to the MOX Project who is also eligible for JLE. M&IE will be reimbursed at 70% of the GSA maximum rate per person. NO other miscellaneous or incidental expenses are reimbursable.

Subcontractor shall advise the MOX Services SA when personnel share accommodations.

Receipts are not required for lodging and M&IE at the 70% flat-rate while subcontractor personnel are in JLE status.

Subcontractor employees in JLE Status are only authorized reimbursement for M&IE expenses at one location (e.g., if the subcontractor employee is in a business travel status and elects to continue to receive M&IE reimbursement at the JLE 70% flat-rate, then M&IE must not be claimed on the business travel expense report. If the subcontractor employee elects to claim reimbursement for M&IE on the business travel expense report, then M&IE expenses for those travel days must not be claimed on the JLE expense report [at the 70% flat-rate]).

6. JLE Expense/Claim Documentation

Receipts are not required for M&IE within the GSA stated rate structure.

Receipts are always required for transportation by common carrier (trips home) during any phase of JLE.

All JLE expenses must be itemized on the applicable firm's approved travel expense report form. If expenses exceeding those authorized by this policy are included on the expense report, the charges must be identified as "unallowable" when submitting the expense report to MOX Services for reimbursement. Unallowable expenses will not be reimbursed.

JLE expense reports must be reviewed and approved by the responsible administrative supervisor or manager from the subcontractor submitting the invoice for reimbursement prior to processing for reimbursement from MOX Services. It is the responsibility of each subcontractor to thoroughly review every expense report to ensure no unallowable expenses are billed to MOX Services and subsequently passed along to the government before submitting it to MOX Services for reimbursement. Repeated instances of poor quality in managing expense report submissions will result in non-payment of invoices and/or return of the unpaid expense reports to the generator for correction. JLE expense reports should be submitted to the subcontractor employee's corporate travel organization and thereafter on to MOX Services each month within 30 calendar days of costs incurred.

It is the subcontractor's responsibility to ensure compliance with appropriate government regulations, including Internal Revenue Service requirements, for reimbursement of expenses for all its employees.

7. Other Benefits and Requirements

The following benefits and requirements pertain to subcontractor employees approved to enter into JLE:

- Rental Car - Rental cars are not authorized for use by personnel on JLE unless circumstances warrant, and then only with the advanced approval of the Chair of the MOX Services JLE Review Board or the MOX Services Chief Administrative Officer (CAO).
- Trips Home - While on JLE, subcontractor employees are authorized one trip home per month, the first of which may occur no sooner than 30 calendar days after actual reporting date.
 - o Receipts for airfare and other miscellaneous travel expenses shall be provided with all subcontractor employee travel expense reports for trips home.
 - o M&IE is not authorized for days traveling to and from, or spent at the subcontractor employee's principal residence.
 - o If travel home is accomplished by Privately Owned Vehicle, mileage will be reimbursed at the then current GSA rate.
 - o Only one trip home per month will be reimbursable.
 - o Travel under 400 miles will be approved via personal vehicle and travel 400 miles or greater will be by air using a two week advance, non-reimbursable coach fare ticket unless a lower fare is available. Travel outside of these guidelines must be approved in advance by the JLE Review Board.

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SUBCONTRACTOR JOB SITE LIVING EXPENSES (JLE)

8. Business Travel

- Business travel is travel of typically short duration (60 days or less) to locations outside the SRS area, when required in performance of work assigned to the Subcontractor's employee. Business travel in excess of 60 days requires the advance approval of the Chair of the MOX Services JLE Review Board or the MOX Services CAO, such approval may be given on a case-by-case basis.
- Reimbursement claims for business travel expenses must be submitted on a subcontractor expense report form. There must not be any overlap of JLE and business travel expenses.
- There is no pre-approval form for US Domestic business travel. Subcontractor will confirm with MOX Services Hiring Manager that business travel is required prior to making reservations.
- Foreign travel in support of the MOX Project requires pre-approval by the Department of Energy. MOX Services Project Procedure PP13-15, copy provided for your information, governs foreign travel. The pre-approval process will be handled by the prospective traveler and hiring manager and reservation should not be made by Subcontractor until travel has been authorized.
- All subcontractor personnel are responsible for compliance with individual company policies pertaining to use of Subcontractor corporate travel cards and booking travel reservations (including common carrier, lodging and rental cars, etc).

Official Use Only

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

vs.

CB&I AREVA MOX Services, LLC
and Globalpundits Technology
Consultancy, LLC

Defendants.

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

**EXHIBIT FOR
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE WRITTEN AGREEMENT**

FILED

2-13 2017 12:20
SP

C.C.P. & C.S.

Deputy Clerk

Exhibit B
("Agreement to Settle")

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

v.

CB&I AREVA MOX Services, LLC and
Globalpundits Technology Consultancy,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-02-02389

AGREEMENT TO SETTLE

This Agreement, dated September 30, 2016, sets forth the understanding between the parties to this Agreement to Settle.

1. All undersigned parties agree to dismiss with prejudice all claims, counterclaims, and defenses brought in lawsuits referenced in the captions above.

2. As additional consideration for the above, the parties agree to the following:

a. Plaintiff will receive a payment for past JLE reimbursement requests in the aggregate amount of NINE THOUSAND DOLLARS (\$9,000.00). The amount is not taxable.

b. Plaintiff will receive a payment for a retroactive equitable pay increase in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00). The amount is subject to normal withholding as required by law.

i. The terms of this retroactive equitable pay increase must be approved by CB&I AREVA MOX Services, LLC within two (2) weeks of this effective date of this Agreement. If such approval is not obtained, the Agreement is null and void.

ii. As a condition of this receiving this retroactive equitable pay increase, Plaintiff agrees to remain an employee of Globalpundits Technology Consultancy, LLC for two (2) years, and will return the payment if he (a) voluntarily leaves the employment of Globalpundits Technology Consultancy, LLC, or (b) is terminated for misconduct by Globalpundits Technology Consultancy, LLC. "Misconduct" is defined as a willful or intentional act of fraud or misrepresentation, a felony under South Carolina law, misconduct that results in the inability to work at an SRS facility, unreasonable refusal to perform

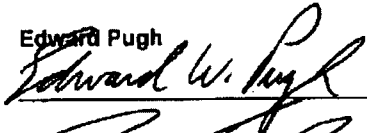
assigned duties or comply with work rules, and breach of fiduciary duties. The return of the payment is subject to pro-rata retention by the Plaintiff (i.e., the Plaintiff retain one-half of the payment for working one year following the acceptance of the Agreement).

- c. Plaintiff will receive an immediate pay increase of NINE DOLLARS PER HOUR (\$9.00/hour) following execution of the Settlement Agreement.

3. The parties will execute a Settlement Agreement including a mutual, full and complete release of all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement and release will be drawn by counsel for the Defendants.

4. The parties agree to include a provision in the Settlement Agreement to keep the provisions of the settlement, and this Agreement, confidential, and will also include a clause disclaiming any admission of liability by any party.

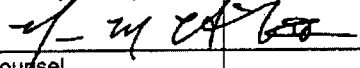
Edward Pugh


Counsel

CB&I AREVA MOX Services, LLC

By: NOAH M. HICKS II
(name of representative)

Its: SENIOR ATTORNEY
(title of representative)

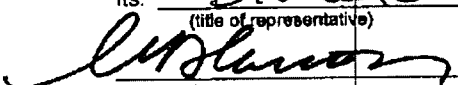

Counsel

Counsel

Globalpundits Technology Consultancy, LLC

By: 
(name of representative)

Its: Director
(title of representative)


Counsel

Counsel

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

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Consultancy, LLC

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FILED 2-13 17 12-20 SP
Shadell Pugh
CCCP & G.S.
Deputy Clerk

Exhibit C
(Final Comprehensive Settlement Agreement)

FPDOCS 32624530.1

SETTLEMENT AGREEMENT AND RELEASE

between

EDWARD PUGH

and

**CB&I AREVA MOX SERVICES, LLC and GLOBALPUNDITS
TECHNOLOGY CONSULTANCY, LLC**

A. INTRODUCTION

The purpose of this Confidential Settlement Agreement and Release ("Agreement") is to settle all potential claims that may exist between Edward Pugh ("Pugh") and CB&I AREVA MOX Services, LLC ("MOX") and Globalpundits Technology Consultancy, LLC ("Globalpundits") (collectively "Defendants"), related to Pugh's employment with the Company, including all claims alleged in a lawsuit captioned *Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC*, Case No: 2015-CP-02-02389, pending in the South Carolina Court of Common Pleas, County of Aiken. Defendants deny all of Pugh's allegations and have expressed their intent to vigorously defend against his claims and allegations. The Parties, however, want to resolve all disputes between them and, therefore, enter into this Agreement.

The purpose of this Settlement Agreement and Release is to settle the pending Causes of Action and any and all other claims that may exist between the Parties. In this Agreement and Release, "Pugh" means Edward Pugh, his heirs, beneficiaries, executors, successors, assigns, and all others claiming an interest through him. "Agreement" or "Release" means this Settlement Agreement and Release.

B. MOX AND GLOBALPUNDITS' PROMISES TO PUGH

In consideration and in exchange for the promises made by Pugh in Section C below, MOX and Globalpundits agree to the following:

- (1) **Payment for Past JLE Reimbursement Requests:** Globalpundits will make a payment for past Jobsite Living Expenses ("JLE") reimbursement requests in the amount of NINE THOUSAND DOLLARS (\$9,000.00) to Pugh. This payment will be made payable to Edward Pugh and will be issued via 1099.
- (2) **Payment for Retroactive Equitable Pay Increase:** Defendants will make a payment for a retroactive equitable pay increase in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00) to Pugh. This payment will be made subject to withholdings for all applicable state and federal taxes as deemed necessary by Defendants, including deductions for state and federal income taxes, FICA, etc. and issuance of an IRS Form W-2.

*Page 1 of 6
Initials of the Parties*

Pugh _____ *MOX* _____ *Globalpundits* _____

- (3) **Immediate Pay Increase:** Defendants will provide Pugh with an immediate pay increase of NINE DOLLARS PER HOUR (\$9.00/hour) following execution of this Agreement.

C. PUGH'S PROMISES TO DEFENDANTS

In exchange for the consideration to Pugh under Section B, above, which Pugh acknowledges constitutes good, sufficient, and valuable consideration, over and above any consideration to which Pugh is otherwise entitled, Pugh agrees and promises the following:

- (1) **Conditions for Receipt of Payment in Section B.2.:** As a condition of receiving the retroactive equitable pay increase set out in Section B.2., Pugh agrees to remain an employee of Globalpundits for two (2) years, and will return the payment if he (a) voluntarily leaves the employ of Globalpundits or (b) is terminated for misconduct by Globalpundits. "Misconduct" is defined as a willful or intentional act of fraud or misrepresentation, a felony under South Carolina law, misconduct that results in the inability to work at a Savannah River Site facility, unreasonable refusal to perform assigned duties or comply with work rules, and breach of fiduciary duties. The return of this payment is subject to pro-rata retention by Pugh (i.e., Pugh may retain one-half of the payment for working one year following the execution of this Agreement).
- (2) **Voluntary Dismissal of Lawsuit:** Pugh agrees to execute or cause to be executed on his behalf, by his counsel, a Joint Stipulation of Voluntary Dismissal with Prejudice in *Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC*, Case No: 2015-CP-02-02389. By executing this Agreement, Pugh agrees to dismiss the lawsuit with prejudice as soon as practicable, but not more than seven (7) days following the Effective Date of this Agreement.
- (3) **General Waiver:** Pugh waives, releases, and discharges Defendants, individually and collectively, and the other Released Parties (as defined below), from all actions, causes of actions, claims and demands whatsoever, whether in law or in equity, and whether currently known or unknown, arising from or related to any act, omission, or thing occurring or existing at the time of or prior to the date of the execution of this Agreement.
- (4) **Specific Waiver:** This Release includes, but is not limited to, any and all claims based upon or related to: (a) Pugh's employment to-date; (b) any and all claims arising out of any state wage laws, including the South Carolina Payment of Wages Act; (c) any and all claims for breach of contract any and all claims for unpaid or underpaid employee expense reimbursements; (d) any and all claims for unjust enrichment; (e) any and all derivative claims relating to unpaid wages, expenses, or other compensation against Defendants, whether arising under state or federal law or any of Defendants' reimbursement policies or procedures; (f) claims for attorneys' fees and costs; (g) the causes of action asserted by Pugh in his Complaint in the action referenced in Paragraph (2); and (h) all other claims arising under any federal, state, or local constitutional law, statutory law, common law, regulations,

Page 2 of 6 Initials of the Parties Pugh _____ MOX _____ Globalpundits _____

ordinances, or equity, contract, or other source of law. Nothing in this Agreement will serve to waive any of Pugh rights which under law cannot be waived.

- (5) **Unknown Claims:** Pugh agrees that this Release specifically includes any and all claims, demands, obligations, and/or causes of action that have, through ignorance, oversight, or error, been omitted from the terms of this Agreement that would have existed prior to execution of this Agreement. Pugh makes this waiver with the full knowledge of his rights and with specific intent to release both known and unknown claims.
- (6) **Pugh's Confirmations:** Pugh confirms that he has not filed any other legal proceeding(s) against any of the Released Parties, is the sole owner of the claims released herein, has not transferred any such claims to anyone else, and has the full right to grant the releases and agreements in this Agreement.
- (7) **"Released Parties" Include:** (a) CB&I AREVA MOX Services, LLC and the United States Department of Energy, including the National Nuclear Security Administration; (b) Globalpundits Technology Consultancy, LLC; (c) each of the Defendants past, present, and future parents, subsidiaries, divisions, partnerships, affiliates, and other related entities (closely or remotely connected); (d) each of their past, present, and future owners, directors, officers, trustees, fiduciaries, shareholders, administrators, agents, employees, partners, members, associates, and attorneys; and (e) the predecessors, successors, and assigns of each of the foregoing persons and entities.
- (8) **Tax Indemnification:** Pugh agrees that he is solely responsible for the payment of all taxes and for the penalties and interest owing or determined to be owed related to any settlement payments by any appropriate taxing authority and that he will indemnify Defendants for the same. This responsibility includes, but is not limited to, defending against any claim or liability against Defendant and holding them harmless against the liability for the amount of federal, state, or local withholding taxes, penalties, and interest that, in such event should have been withheld from the payments under Section B of this Agreement and any amounts that are due and payable by Pugh under the law. Pugh agrees that Defendants offer no opinion on the taxability of such payments under Section B of this Agreement.
- (9) **Satisfaction of All Obligations:** Pugh agrees that all obligations of Defendants and the other Released Parties under any and all plans, agreements, policies, and/or practices have been satisfied or exceeded by the promises and payments described in Section B, above.
- (10) **Attorneys' Fees:** Pugh agrees that all attorneys' fees or other costs of litigation due to Pugh or his attorneys by statute, common law, or otherwise will be paid from the promises and payments described in Section B, above. Pugh further agrees that the right to pursue any claim or action for attorneys' fees or costs of litigation incurred before the date of this Agreement is forever waived and released.

<i>Page 3 of 6</i> <i>Initials of the Parties</i> <i>Pugh</i> _____ <i>MOX</i> _____ <i>Globalpundits</i> _____
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FPDOCS 32321120.1

- (11) **Confidentiality:** Pugh agrees that he will keep the terms and conditions of this Agreement strictly confidential unless compelled to disclose them pursuant to any legal or administrative proceedings. Pugh, however, may disclose the details of this Agreement to his spouse, significant other, attorney and tax or financial advisors after first informing them of this confidentiality requirement. Pugh understands and agrees that this is a material term of this Agreement. Pugh further understands that a breach of this confidentiality provision will act as a material breach of this Agreement and that in the event of such a breach, Defendants may file a lawsuit to address such breach. This Section is not intended to prevent cooperation through investigation, testimony or otherwise with an administrative agency or court, or as otherwise required by law.

D. MISCELLANEOUS TERMS AGREED TO BY THE PARTIES

In exchange for the promises made by and to Pugh and Defendants, they mutually agree to the following terms:

- (1) **Enforcement:** Any party may enforce this Agreement in court if any other party breaches it. This Agreement may be used in a subsequent proceeding to enforce its terms.
- (2) **Severability:** If a court refuses to enforce any part of this Agreement, the remainder of the Agreement will not be affected and will remain in force.
- (3) **Rule of Construction:** The language of all parts of this Agreement shall be construed as a whole and according to its fair meaning, and not strictly for or against either party. It is expressly understood and agreed that any rule requiring construction of this Agreement against its drafter shall not be applied in this case.
- (4) **Choice of Law:** Defendants and Pugh expressly agree that this Agreement shall, in all respects, be interpreted, enforced, and governed under the laws of the State of South Carolina. The parties further agree that South Carolina is the proper venue for any dispute over this Agreement.
- (5) **Non-Admission of Wrongdoing:** This Agreement does not constitute an admission by Defendants of a violation of any federal, state, or local laws. It is further understood and agreed that this settlement is a compromise of a real or potential dispute and that the promises of Defendants are not to be construed as an admission of liability, but rather that liability is expressly denied.
- (6) **Merger Clause:** This Agreement contains the entire and only agreement between Defendants and Pugh regarding the subject matter of this Agreement. To the extent there are confidentiality agreements, non-solicitation agreements, non-compete agreements, the obligations of this Agreement will supplement, but not replace such agreements. Any oral or written promises or assurances related to the subject matter of this Agreement that are not contained in this Agreement are waived, abandoned, and withdrawn, and are without legal effect. Pugh acknowledges that this Agreement does not change the at-will nature of

<i>Page 4 of 6</i> <i>Initials of the Parties</i> Pugh _____ MOX _____ Globalpundits _____

his employment with Defendants. Pugh further acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to sign this Agreement, except for those set forth in this Agreement.

- (7) **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- (8) **Amendment:** This Agreement may not be amended except by written agreement signed by all parties which specifically refers to this Agreement.
- (9) **Effective Date:** This Agreement shall, upon execution by Pugh, immediately become effective and enforceable ("Effective Date").

E. PUGH'S ASSURANCES TO MOX AND GLOBALPUNDITS

This Agreement is a legal document with legal consequences. Defendants want to be certain that Pugh fully understands the legal effect of signing this Agreement. Pugh, therefore, makes the following assurances to SRNS:

- (1) **I have carefully read the complete Agreement.**
- (2) **The Agreement is written in language that I understand.**
- (3) **I understand all of the provisions of this Agreement:**
- (4) **I understand that this Agreement is a waiver of any and all claims I may have against the Released Parties.**
- (5) **I own each and every claim being settled and released in this Agreement. I have not assigned any interest in or otherwise encumbered such claims.**
- (6) **I willingly waive any and all claims, known and unknown, in exchange for the promises of Defendants in this Agreement, which I acknowledge constitute valuable consideration that I am not otherwise entitled to receive.**
- (7) **I enter this Agreement freely and voluntarily. I am under no coercion or duress whatsoever in considering or agreeing to the provisions of this Agreement.**
- (8) **I have been given a reasonable period of time to decide whether to enter into this Agreement. This period has provided me with sufficient time to consider my options and to seek the advice of legal counsel, tax or financial advisors, family members, and anyone else whose advice I value.**
- (9) **I have been encouraged, in writing, to review this document with an attorney.**

<i>Page 5 of 6</i> <i>Initials of the Parties</i> <i>Pugh</i> _____ <i>MOX</i> _____ <i>Globalpundits</i> _____
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- (10) I understand that this Agreement is a contract. As such, I understand that either party may enforce it.
- (11) I am fully satisfied with the terms and conditions of this Agreement.

IN WITNESS OF, we have hereunto set our hand and seal.

EDWARD PUGH

WITNESS

Signature Date

Signature Date

Print Name

CB&I AREVA MOX SERVICES, LLC

By: _____
Date

Its: _____

GLOBALPUNDITS TECHNOLOGY CONSULTANCY, LLC

By: _____
Date

Its: _____

Page 6 of 6
Initials of the Parties
Pugh _____ MOX _____ Globalpundits _____

FPDOCS 32321120.1

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Edward Pugh,)

Plaintiff,)

vs.)

CB&I AREVA MOX Services, LLC)
and Globalpundits Technology)
Consultancy, LLC)

Defendants.)

COURT OF COMMON PLEAS
Civil Action No: 2015-CP-02-02389

FILED

2-13

17 12:30 SP

CCCP & GS

Deputy Clerk

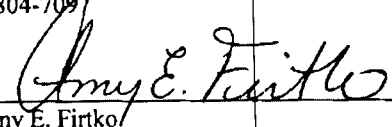
CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **Memorandum in Support of Defendants' Motion to Enforce Written Agreement** in the above-captioned case has been served upon the following via United States Mail:

Edward Pugh
1085 Old Clemson Hwy., Ste. E
Seneca, SC 29672

The foregoing **Memorandum in Support of Defendants' Motion to Enforce Written Agreement** in the above-captioned case has been served upon the following parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Noah "Chip" M. Hicks II, Esquire
Senior Attorney
CB&I AREVA MOX Services, LLC
Post Office Box 7097
Aiken, SC 29804-7097


Amy E. Firtko

Dated this 13th day of February 2017

FPDOCS 32624672.1