

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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SC Court of Appeals

The Honorable Robin B. Stilwell, Circuit Court Judge

Case No. 2015-CP-23-00142

DD DANNAR, LLC

Appellant,

vs.

SC LAUNCH !, INC.

Respondent.

RECORD ON APPEAL – VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff/Counterclaim Defendant,

v.

SC LAUNCH!, Inc.,

Defendant/Counterclaim Plaintiff.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-23-00142

**ORDER GRANTING DEFENDANT/COUNTERCLAIM PLAINTIFF SC LAUNCH!,
INC.'S MOTION FOR SUMMARY JUDGMENT**

Introduction

This dispute arises from Plaintiff/Counterclaim Defendant DD Dannar, LLC's ("Dannar") participation in the Defendant/Counterclaim Plaintiff SC Launch!, Inc. ("SC Launch") program for start-up businesses located in South Carolina pursuant to which SC Launch provides valuable mentoring and other services, as well as certain funding for selected businesses. Dannar entered into the SC Launch program, the parties executed a Financing Agreement dated as of April 14, 2011 ("the Agreement"), and SC Launch provided Dannar high-risk financing for its start-up business, in the form of a \$200,000 loan, in addition to mentoring and other valuable services. DD Dannar executed a Promissory Note in connection with the loan. The Agreement contained a Relocation Provision pursuant to which Dannar promised to pay a Relocation Fee equal to the amount of the loan if it relocated its business to another state within five years from the date of the Agreement. On or about April 30, 2013, Dannar repaid SC Launch the balance due under the Financing Agreement in the amount of \$222,634.23. Dannar subsequently relocated its business to Indiana less than five years after executing the Agreement.

In this lawsuit, Dannar asserts a single cause of action for declaratory relief declaring that the Relocation Provision constitutes an unenforceable penalty or that it has no obligation to pay it. SC Launch asserted a single counterclaim for breach of the Relocation Provision and for an award of judgment in the amount of the Relocation Fee and prejudgment interest.

This matter is currently before the Court on SC Launch's Motion for Summary Judgment ("SC Launch Motion"), filed February 23, 2017, and Dannar's Motion for Summary Judgment ("Dannar Motion"), filed on February 28, 2017. The Court heard oral argument on both motions on April 5, 2017. Appearing for SC Launch were Robert Y. Knowlton, Esq. and John G. Tamasitis, Esq. Appearing for Dannar were Natalma M. McKnew, Esq. and Emily I. Bridges, Esq.

Attached to the SC Launch Motion were affidavits from Harry Greg Hillman, executive director for SC Launch, and Mark Housley, Upstate Regional Manager for SC Launch. Prior to the April 5, 2017 hearing, SC Launch submitted a Memorandum in Support of its Motion for Summary Judgment, along with a combined 15 exhibits. Additionally, prior to the April 5, 2017 hearing, Dannar submitted a Memorandum in Support of its Motion for Summary Judgment and a Memorandum in Opposition to SC Launch's Motion for Summary Judgment, along with a combined seven exhibits.

After considering these various submissions and the arguments of counsel, for the reasons more fully discussed below, SC Launch's Motion is GRANTED, and Dannar's Motion is DENIED. The parties to the Agreement are sophisticated commercial entities, represented by counsel, who reached an arm's length agreement. The Agreement is clear and unambiguous, and it articulates and describes the relationship between the parties. Dannar breached the Agreement by relocating to Indiana within the meaning of the Relocation Provision within five years of

executing the Agreement, thereby triggering the obligation to pay the Relocation Fee. Further, the defenses to payment of the Relocation Fee raised by Dannar are unavailing. Pursuant to the clear language of the Agreement, the obligations under the Relocation Provision survive the payment of the subject Promissory Note. In addition, the Relocation Provision does not constitute an unenforceable penalty under the controlling legal principles set forth in *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011).

Factual Background

The facts presented herein are either undisputed or are construed in the light most favorable to Dannar. *See Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

I. SC Launch.

In 2006, the SC Launch program was formed by the South Carolina Research Authority (“SCRA”) pursuant to S.C. Code Ann. § 13-17-87 and § 13-17-88. SC Launch’s statutory mission is to facilitate applied research, product development and commercialization programs, and to strengthen South Carolina’s knowledge economy by creating high paying jobs. (Affidavit of Harry Greg Hillman Aff. at ¶ 5).¹ The program operates in partnership with SCRA and the research foundations of the University of South Carolina, the Medical University of South Carolina, and Clemson University to support high-potential companies with services and grant funding. (*Id.* at ¶ 3). SC Launch is an independent nonprofit 501(c)(3) corporation affiliated with SCRA, and the SC Launch program makes seed investments in businesses that anticipate financial returns. (*Id.* at ¶ 4).

To fulfill its charter, SC Launch supports advanced technology and knowledge based businesses with seed capital that fills gaps in funding from individual investors, angel investment

¹ A copy of the Hillman Affidavit is attached as Exhibit I to SC Launch’s Motion for Summary Judgment.

groups, lenders, private equity firms, and other sources. (*Id.* at ¶ 5). Funding from SC Launch is supplemental; it is not intended to replace funding from other sources. (*Id.*)

Companies that are admitted into the SC Launch program are referred to as “Client Companies.” (*Id.* at ¶ 6). These companies receive mentoring and support services from SC Launch staff, as well as access to SC Launch’s resource partner network. (*Id.*) SC Launch staff members are salaried employees who dedicate significant amounts of time and energy into developing and mentoring companies admitted into the SC Launch program. (*Id.* at ¶ 7).

Companies are considered for investment by SC Launch upon recommendation of the SC Launch staff under direction of the SC Launch Executive Director. (*Id.* at ¶ 8). The staff recommends only companies that are active client companies in the SC Launch program. (*Id.*) They must complete a rigorous due diligence process and demonstrate ability to execute plans which will result in significant contributions to the South Carolina knowledge economy. (*Id.*)

In order to fulfill its mission to enrich the state’s innovation economy, SC Launch invests its net revenues and an annual \$2,080,000 from the Industry Partnership Fund into qualified South Carolina-based technology companies who have been accepted into the SC Launch program. (*Id.* at ¶ 9).

Contributions to the Industry Partnership Fund come from South Carolina contributors and those contributions are certified by SCRA to the State Department of Revenue and are eligible for a 100% tax credit against South Carolina income taxes, insurance premium taxes, and certain license fees up to a maximum credit of \$2 million. (*Id.* at ¶ 10). Since 2006, SC Launch has invested over \$25 million of seed capital in over 90 companies and currently has deep relationships with approximately 100 companies at varying stages of development. (*Id.*)

The Executive Director recommends the most promising candidate companies to meet with the SC Launch Board of Directors (the “Board”) and request funding. (*Id.* at ¶ 12). The Chair or designated member of the Board determines which companies are invited to present. (*Id.*) A presenting company submits written materials in advance. (*Id.*) Principals meet with the Board and staff in executive session during a regularly scheduled meeting. (*Id.*) After the presentation and a question and answer session, the Board deliberates and decides by resolution what, if any, funding to offer. (*Id.*) Presenting to the Board does not guarantee funding. (*Id.* at ¶ 13). The Board, in its sole discretion, selects the best opportunities and directs available funding for maximum benefit to the state's knowledge economy. (*Id.*)

The Board determines whether to invest and amounts offered are based on availability of funds to invest, potential risk and return, and the relative merit of candidate companies. (*Id.* at ¶ 16). The maximum investment is normally \$200,000. (*Id.*)

An average of approximately 12 companies are chosen for an initial round of funding each year. (*Id.* at ¶ 17). Additional follow-on funding may also be available in certain situations. (*Id.*) According to SCRA’s 2015 Annual Report on SC Launch, the average salary of the jobs created through the SC Launch program is \$69,000 and follow-on capital secured by SC Launch companies is \$362,700,000. (*Id.* at ¶ 11, Ex. A, p. 42).

II. Dannar.

Gary Dannar, President of Dannar, holds ownership interest in three companies in addition to DD Dannar, LLC, including Little Industries and two real estate companies. (*See* Transcript of Rule 30(b)(6) Deposition of Dannar (“Dannar Tr.”) at 9:3 – 11:22). Prior to 1995, Mr. Dannar spent several years in product development, sales, and marketing for various equipment manufacturers. (*See id.* at 7:14 – 9:2).

DD Dannar, LLC is a start-up enterprise, which focuses on the development and sale of an alternatively powered multi-purpose maintenance vehicle called the Mobile Power Station ("MPS"), primarily for use in the government sector. Dannar was represented by competent counsel during the negotiation of the Agreement with SC Launch, and thereafter.

Simply put, the parties to the Agreement are sophisticated commercial entities represented by counsel who reached an arm's length agreement.

III. The Terms of the Agreement are Clear and Unambiguous.

On April 14, 2011, SC Launch entered into the Agreement with Dannar. Pursuant to the Agreement, SC Launch loaned Dannar \$200,000, and Dannar executed a Promissory Note evidencing the debt. Dannar agreed to repay the loan by the maturity date of April 14, 2014. (Agreement at p. 9).² Dannar also agreed that if it relocated its business outside the state of South Carolina within a period of five years from the date of the Agreement, before April 14, 2016, a relocation fee would apply. (Agreement at p. 4, § 3.3.A). Dannar accepted the financing from SC Launch and the benefits of the program. These benefits included, but were not limited to, the loan, mentoring with respect to Dannar's business plan, introductions to financial players in the area, and guidance on presenting to the SC Launch board of directors in support of Dannar's attempts to obtain subsequent rounds of funding. (See Hillman Aff. at ¶ 19; Affidavit of Mark Housley at ¶ 3; Transcript of Rule 30(b)(6) Deposition of SC Launch ("SC Launch Tr.") at 34:1 – 35:12).

Dannar acknowledged in the Agreement that SC Launch made funds available to it "for the purpose of economic development for the State of South Carolina and particularly for

² The Agreement is attached to SC Launch's Motion as Exhibit B to Hillman's Affidavit.

generating professional research and development jobs in South Carolina.” (Agreement at p. 4, § 3.3.A).

Under the relocation provision contained within the Agreement, Dannar specifically agreed for a period of five (5) years after the execution of the Agreement:

not to (a) move or relocate the Company Business or the Company’s principal office or principal place of business outside the state of South Carolina and (b) not to have more than one-half, based on payroll expenses, of the Company’s total employees, senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a “Company Relocation”), unless the Company has paid SC Launch a Relocation Fee as set forth below.

(the “Relocation Provision”). (Agreement at p. 4, § 3.3.A).³

Section 3.3 of the Agreement defines the “Relocation Fee” as follows:

B. Relocation Fee. The “Relocation Fee” will be an amount equal to the aggregate amount of all funds advanced by SC Launch to [Dannar, LLC]. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the cost to SC Launch, including both tangible and intangible costs, of a Company Relocation is not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

(Agreement at p. 5, § 3.3.B). The Relocation Provision also requires Dannar to reimburse SC Launch for its reasonable attorneys’ fees and expenses, and court costs incurred in connection with the enforcement of Dannar’s obligations under the Relocation Provision. (Agreement at p. 5, § 3.3.C). The Relocation Provision and Relocation Fee are standard provisions contained in

³ Dannar argues in its Memorandum in Support of its Motion for Summary Judgment that a “Company Relocation” under the terms of the Agreement requires that a supported company satisfy both (a) and (b) of the Relocation Provision. (Pl.’s Mem. in Supp. of Mot. for Summary J., at pp. 3, 8-9). However, as the parenthetical at the end of the provision (“any of which shall be deemed a “Company Relocation”) makes clear, Dannar expressly agreed that violating the terms of either (a) or (b), standing alone, would constitute a Company Relocation under the Agreement.

every agreement with companies that receive funding from the SC Launch program. (Aff. of Hillman at ¶ 22; SC Launch Tr. at 47:6-10).

The Agreement's Termination Provision further states as follows:

7.10 Termination of Agreement. Except as otherwise specified herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by [Dannar] of all securities of [Dannar] held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

(Agreement at p. 8, § 7.10) (emphasis added).

The Agreement also contains the following merger clause:

7.13 Entire Agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

(*Id.* at p. 8, § 7.13).

As discussed further herein, these provisions of the Agreement are clear and unambiguous.

IV. Dannar's Repayment of the Loan and Relocation to Indiana.

Unbeknownst to SC Launch, as early as January 26, 2013 (approximately 21 months after receiving the initial round of funding from SC Launch), Dannar began investigating and applying for additional economic development funding from other states, namely Indiana. (*See* Dannar Tr. at Ex. 9; *see also* Dannar Tr. at 77:13 – 78:9; Dannar Second Supp. Resp. to SC Launch's First Set of Interrogs. at ¶ 15).

In its application to Indiana for additional taxpayer incentivized funding, dated December 15, 2012, Dannar represented that its project's "impact on Indiana will be substantial." (Dannar Tr. at Ex. 9, p. 1) "Dannar's pro forma shows \$240 [million in annual] revenue by Year 5."

(*Id.*)⁴ Further, Dannar represented that the effect of Dannar's relocation to Indiana "can be measured in job creation of up to 479 direct jobs; additional significant indirect job creation; new tax revenue (state and local); ... capital investment; ... and other areas of impact." (*Id.*) Dannar further anticipated a corporate tax liability by 2016 in the amount of \$1,929,343.00 to be realized by Indiana. (*Id.* at p. 2)

Without disclosing the fact that it had made this application to Indiana, Dannar also sought an additional round of funding from SC Launch in March 2013. The SC Launch Board ultimately declined the request. (*See* Hillman Aff. at ¶ 22; SC Launch Tr. at Ex. 12, p. 4).

On or about April 30, 2013, Dannar repaid the SC Launch loan in full, including interest. (Hillman Aff. at ¶ 26). The day prior to repayment, SC Launch reminded Dannar of its obligations under the Relocation Provision even if the loan was repaid. (*Id.* at ¶ 25).

The Indiana economic incentive program provided by governmental entities in Indiana is similar to that provided by SC Launch. (*See e.g.*, Dannar Tr. at Exs. 11 and 12). Specifically, Dannar entered into a Loan Agreement and Redevelopment Agreement with Delaware County, Indiana dated effective July 23, 2013.⁵ Pursuant to the Loan Agreement, Dannar received a tax incentivized loan from Delaware County in the amount of \$150,000. (Dannar Tr. at Ex. 12, § 2.1(b)). Dannar represented that its project "will preserve and create additional jobs and employment opportunities within the boundaries of Delaware County, Indiana." (*Id.* at § 2.2(c)). Dannar provided Delaware County a copy of its Agreement with SC Launch and acknowledged

⁴ In its Private Placement Memorandum, dated March 7, 2013, Dannar represented that it expected annual revenues of \$184 million by the end of 2016. (Dannar Tr. at Ex. 3, p. 58).

⁵ Dannar also obtained economic incentives from the Indiana Economic Development Corporation. In Dannar's letter agreement with that entity dated March 13, 2013, Dannar represented that it was considering Delaware County as a site for its operations and that Dannar advised that the project involved 288 net new full-time positions for Indiana residents by 2016.

that Dannar, “pursuant to an agreement with SC Launch!, Inc., may be required to pay a Relocation Fee in the amount of \$200,000.” (*Id.* at Ex. D).⁶

As part of the Redevelopment Agreement, the Delaware County Redevelopment Commission and the county agreed to provide an additional \$500,000 for improvements to a facility in which Dannar would locate. (Dannar Tr. at Ex. 11, ¶ 2). Those funds were not distributed directly to Dannar. In exchange, Dannar represented that it reasonably expected to meet or exceed certain job creation and wage rate targets, including 288 jobs by the end of 2017 and 479 jobs by the end of 2018. (*Id.* at pp. 1, 9). Dannar also expected that those jobs would provide an average hourly wage of \$27.33. (*Id.*) As further part of the Redevelopment Agreement, Dannar agreed to certain liquidated damages if it did not meet those job and wage targets. (*Id.* at ¶ 5).

In addition to the liquidated damages provisions tied to Dannar’s job creation, Dannar also agreed to pay a relocation fee up to \$650,000, which represents the total amount of funding provided to Dannar pursuant to the Loan Agreement and Redevelopment Agreement, if Dannar relocated its operations outside of Delaware County within 6 years of the date of the Redevelopment Agreement. (*Id.* at ¶ 8).

On June 19, 2013, Dannar, in conjunction with the Muncie-Delaware County, Indiana Economic Development Alliance, issued a public announcement that Dannar would be relocating its corporate headquarters and assembly facility to Muncie, Indiana. (Dannar Tr. at Ex. 5).

In response to reading the June 19, 2013 announcement, SC Launch sent a letter to Dannar requesting payment of the Relocation Fee on or about September 19, 2013, and again on

⁶ Dannar also raised private investment by way of a private placement and informed potential investors in its Private Placement Memorandum that it may have to pay the Relocation Fee and that a portion of the funds raised may be used to pay that fee. (Dannar Tr. at Ex. 3, pp. 21).

November 7, 2013. (Hillman Aff. at ¶¶ 27-28). Dannar's response in both instances was that it had not relocated, as that term is defined in the Agreement. (*Id.* at ¶ 29).

In response to these reassurances, via letter dated October 7, 2014, SC Launch agreed not to pursue payment of the Relocation Fee if Dannar would confirm by affidavit that it had in fact not relocated. (*Id.* at ¶ 30). Dannar elected not to sign the affidavit, and initiated this suit.

Dannar filed its original Complaint on January 7, 2015 seeking a declaratory judgment from this Court that the Relocation Fee was a "penalty." (Compl. at ¶ 10; Agreement at p. 5, § 3.3.B). Dannar also asserted that it did not owe the Relocation Fee because it had repaid the loan SC Launch had made to it.

In its Supplemental Complaint filed on April 27, 2015, Dannar admitted that, as of April 1, 2015, it had moved or relocated its business from South Carolina, or had more than one-half of its total employees engaged principally in professional research and development, outside of the State of South Carolina. (Supp. Compl. at ¶¶ 2-4).

SC Launch answered the Supplemental Complaint and asserted a counterclaim for breach of the Agreement. (SC Launch Answer and Counterclaim at ¶¶ 39-64). Additionally, SC Launch asserted various affirmative defenses to Dannar's claim for declaratory relief. (*Id.* at ¶ 37.)

STANDARD OF REVIEW

Summary judgment is appropriate 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 summary judgment as a matter of law. Rule 56(c), SCRCF. With respect to an issue upon which the non-moving

party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. *Id.*

After the moving party has met its initial burden, Rule 56(e), SCRCF requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact." *Id.* Thus, "the non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E. 2d 659, 661 (Ct. App. 1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C.311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993)); Rule 56(c), SCRCF.

The parties agree that there are no genuine issues as to any material fact in this case. The construction of a clear and unambiguous contract is a matter of law for the court. *See Lee v. Univ. of South Carolina*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014). The deadline for discovery has expired, and this case is ripe for summary judgment.

ANALYSIS

I. Danner Breached the Terms of the Agreement's Relocation Provision by Relocating from South Carolina within Five Years of Executing the Agreement.

Pursuant to the Agreement, Danner agreed for a period of five (5) years after execution of the Agreement not to relocate its business and not to have more than one-half of its employees engaged principally in professional research in development employed outside South Carolina, unless Danner paid SC Launch the Relocation Fee. (Agreement at p. 4, § 3.3.A).

On April 27, 2015, Dannar admitted in its Supplemental Complaint that it (a) had “relocated a majority of its assets and inventory from South Carolina to Indiana . . .” and (b) “hired two employees in Indiana and retained one employee in South Carolina” as of April 1, 2015. (Supp. Compl. at ¶¶ 3). Further, as discussed above, Dannar announced publically in June 2013 that it was moving its corporate headquarters to Delaware County, Indiana (Dannar Tr. at Ex. 5) and had entered into the Loan Agreement and Redevelopment Agreement with Delaware County on July, 23, 2013. (*See* Dannar Tr. at Exs. 11, 12).⁷

There is no genuine issue of material fact that Dannar relocated from the State of South Carolina as of April 1, 2015, which was within five years of the Agreement as defined in the Relocation Provision. Dannar relocated and thereby breached the terms of the Agreement.

II. Per the Express Language of the Agreement, the Relocation Provision Survives Repayment of the Promissory Note.

Dannar argues that its repayment of the Promissory Note to SC Launch extinguished its other obligations under the Agreement, including the Relocation Provision. The Agreement’s Termination Provision, however, specifically states that the Agreement “shall continue in full force and effect until the repurchase or redemption by [Dannar] of all securities of [Dannar] held by SC Launch or its successors or assigns, **and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.**” (Agreement p. 8, § 7.10) (emphasis added). Under this clear language, Dannar’s obligations under the Relocation Provision were not extinguished until after the five-year period

⁷ In addition, as part of the Redevelopment Agreement, on July 23, 2013, Dannar entered into a lease agreement with the Delaware County Redevelopment Commission to lease approximately 25,000 square feet of certain real property referred to as the “Former Twoson Facility” for a period of five years beginning on the date of the lease agreement (the “Lease Agreement”). A copy of the Lease Agreement is attached as Exhibit E to SC Launch’s Memorandum in Support of its Motion for Summary Judgment.

ran or, in the event it relocated from South Carolina before then, until it paid the Relocation Fee. This interpretation of the Agreement is further supported by the fact that Dannar agreed to repay the loan, plus applicable interest, by April 14, 2014 (the “Maturity Date”), which was two years earlier than the Relocation Provision’s five year period. (*Id.* at Ex. A, p. 9). That is to say, when Dannar entered the Agreement it expressly promised to remain in South Carolina until April 14, 2016 or pay the Relocation Fee regardless of whether it paid back the loan early or on the agreed upon Maturity Date. *See Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct. App. 2000) (“The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used.”).

III. The Relocation Fee Does Not Constitute an Unenforceable Penalty.

Dannar further argues that the Relocation Fee constitute an unenforceable penalty. I disagree.

Given the context and the relationship of the parties at issue, SC Launch disputes that the traditional law pertaining to whether a liquidated damages provision constitutes an unenforceable penalty applies to this situation. People or entities providing financing and services to a high risk, start-up business normally insist on receiving substantial equity in the company, seats on the board of directors, involvement in management, and other valuable consideration. SC Launch’s request for a commitment to remain in this State for five years or pay a fee in order to obtain state tax incentivized funds and services is modest consideration in this context, and this situation is differs in character from the liquidated damages provisions often seen in construction and other commercial contracts that are analyzed by the courts as to whether they constitute an unenforceable penalty. This context and relationship is important, but I need not reach this issue

because, even applying traditional liquidated damages law in this case, I conclude that the Relocation Provision is valid and enforceable.

“South Carolina law allows parties to prospectively set an amount of damages for breach through the inclusion of a liquidated damages provision.” *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011). “[W]here the sum stipulated is reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reasons of nonperformance, the stipulation is for liquidated damages.” *Tate v. LeMaster*, 231 S.C. 429, 441, 99 S.E.2d 39, 45-46 (1957). In addition, “[w]hether such a stipulation is one for liquidated damages or for a penalty is . . . primarily a matter of the intention of the parties.” *Id.* at 441, 99 S.E.2d at 45. Accordingly, the analysis must first look to the language of the agreement, and then to the reasonable intention of the parties to determine whether the liquidated damages provision was the predetermined measure of compensation. *ERIE*, 393 S.C. at 461, 713 S.E.2d at 321.

The cardinal rule of contract construction and interpretation is that when the language of the contract is clear, explicit, and unambiguous, the language of the contract dictates the contract’s force and effect, and the court must construe the contract according to its plain and ordinary meaning. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). Further, “[w]here an agreement is clear and capable of legal interpretation, the court’s only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.” *Id.* (citing *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)).

At issue in this action is Section 3.3 of the Agreement. Section 3.3 provides in pertinent part:

B. Relocation Fee. The “Relocation Fee” will be an amount equal to the aggregate amount of all funds advanced by SC Launch to [Dannar, LLC] . . . The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. **The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.**

(Agreement at p. 4, § 3.3.B) (emphasis added). As noted above, the language of the Agreement is clear and unambiguous. In the event Dannar relocated from South Carolina under the terms of the Agreement within five years from the date of the Agreement, SC Launch would be entitled to a Relocation Fee in the amount of \$200,000.

After analyzing the language of the contract at issue, the key question in determining “whether the sum stipulated in the [Agreement] is a liquidated damage or an unenforceable penalty is whether the amount is ‘reasonably intended by the parties as the predetermined measure of compensation for actual damages that **might be sustained** by reasons of nonperformance.’” *ERIE*, 393 S.C. at 462, 713 S.E.2d at 322 (quoting *Tate v. Le Master*, 231 S.C. at 441, 99 S.E.2d at 46) (emphasis in original). The stipulation will be deemed a penalty only if it is so large that it “is **plainly disproportionate to any probable damage** resulting from breach of contract” *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002) (emphasis added). In making this determination

it is necessary to look at the whole contract, its subject-matter, the ease or difficulty in measuring the breach in damages and the magnitude of the stipulated sum, not only as compared with the value of the subject of the contract, but in proportion to the probable consequences of the breach.

Foster v. Roach, 119 S.C. 102, 107, 111 S.E. 897, 899 (1922) (quotation omitted).

“To the extent that there is uncertainty as to the harm, the estimate of the court or jury may not accord with the principle of compensation any more than does the advance estimate of

the parties.” Restatement (Second) of Contracts § 365 cmt. b (quoted by *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 27, 738 S.E.2d 480, 494 (Ct. App. 2013) and cited by *ERIE*, 393 S.C. at 462, 713 S.E.2d at 322). Indeed, “[t]he greater the difficulty either of proving that loss has occurred or of establishing its amount with the requisite certainty, the easier it is to show that the amount fixed is reasonable.” *Id.* “If the difficulty of proof of loss is great, considerable latitude is allowed in the approximation of anticipated or actual harm.” *Id.*

Dannar acknowledged in the Agreement “that the costs to SC Launch, including both **tangible** and **intangible costs**, of a Company Relocation are not susceptible to precise measurement.” (*Id.*) (emphasis added). Moreover, this sophisticated entity expressly agreed in Section 3.3 that “**the Relocation Fee is not a penalty.**”⁸

Undeniably, these types of economic development financing arrangements and the SC Launch program do not entail standard business contracts. The parties are not bargaining for the construction of a building or the delivery of goods. Rather, SC Launch provides tax incentivized funding and other valuable resources with the hope that the supported company will be successful and, as a result, enhance the economic status of the community and its citizenry. (*See Hillman Aff.* at ¶¶ 3, 5). This is why SC Launch does not merely provide funding to its supported companies, but also has staff that mentor, develop, and steer its companies towards a path of success. (*See Aff. of Hillman* at ¶¶ 6, 7, 19; *Aff. of Housley* at ¶¶ 3, 8; *see SC Launch Tr.* at 100:15-25 (“[T]he bottom line to our program is to try and create wages and salaries that are higher than average in South Carolina. So the opportunity to bring tens to potentially hundreds

⁸ Dannar argues that SC Launch personnel and Board members referred to the Relocation Fee as a “clawback” or “penalty” on several occasions. However, such informal language does not alter the clear language of the Agreement to which Dannar is a party or the conclusions discussed herein.

of employees employed in South Carolina . . . revenues that ultimately were produced, tax revenue back to South Carolina . . . that's what we're trying to accomplish with this program.”).

At least one court construing these types of economic development financing arrangements has agreed that the actual loss sustained by a public entity from a borrower's breach of the agreement is difficult, if not impossible, to ascertain. *See City of Davenport v. Shewry Corp.*, 674 N.W. 2d 79, 86 (Iowa 2004). In *Davenport*, the borrowing company entered into an economic development agreement with the City of Davenport, which contemplated that the company would build a new welding and fabrication facility on property acquired by the company. *Id.* at 81. In exchange, the city agreed to provide up to \$200,000 of economic development grant money to the company in three phases coinciding with the company's construction of taxable improvements to its property. *Id.* In addition, the company was required to create 60 new full-time positions within 36 months of the date of the agreement, retain 186 existing jobs, and maintain at least 246 full-time positions from month 36 through month 120 from the date of the agreement. *Id.*⁹ The economic development agreement provided that a material breach of the agreement (which included failure to meet the employment requirements) would require repayment of all monies that have been granted to the company. *Id.*

The city ultimately advanced \$150,000 in economic incentivized funds between 1996 and 1997. *Id.* However, the company did not meet the employment requirements of the contract and the city was forced to file an action seeking to recoup the \$150,000 dispersed. *Id.* at 82. Much like Danner in this case, the company claimed that the repayment requirement was an unconscionable penalty. *Id.* The lower court held that it was not a penalty and entered judgment against the company for \$150,000. *Id.*

⁹ Unlike the economic development agreement in *Davenport* and Danner's agreement in Delaware County, SC Launch did not require Danner to satisfy job creation requirements.

The Supreme Court of Iowa, applying the Restatement (Second) of Contracts § 356, affirmed and found that the city would have great difficulty in establishing with any degree of certainty the loss sustained from the company's breach of the economic development agreement and, therefore, held that the repayment provision was not an unenforceable penalty. *Id.* at 85-86.

The court explained that the company's arguments rested on the "erroneous assumption that the City's only loss [was] the grant money paid to the company." *Id.* at 85. According to the Iowa Supreme Court, the company's assumption ignored the fact that the economic development agreement expressly recognized two anticipated benefits to the city under the agreement: (1) an increased tax base and (2) job creation. *Id.* The court concluded that the city's loss from the company's failure to create jobs was "difficult, if not impossible, to measure." *Id.* Ultimately, the court held that the repayment provision was clearly not an unreasonably large sum so as to constitute a penalty in view of the anticipated or actual harm because, "[w]hile the City will recover the cash outlays made to the company, this repayment does not cover the costs to the City in issuing bonds required to obtain grant funds, nor does it encompass the damages resulting from loss of the anticipated jobs." *Id.* at 86.

South Carolina courts are in accord with the Iowa Supreme Court's reasoning in *Davenport*. See, e.g., *Baugh*, 402 S.C. at 23-27, 738 S.E.2d at 492-94 (upholding a stipulated damages provision contained in a covenant not to compete and a separate forfeiture provision in shareholder-physician employment agreements where both provisions contained an acknowledgement that the stipulated amounts reflected a portion of the damages the employer would suffer from breach and the damages to be expected by competition were highly difficult to predict at the time the agreements were entered into by sophisticated parties through arm's length negotiation); *ERIE*, 393 S.C. at 460-65, 713 S.E.2d at 320-23 (upholding an administrative

burden provision in a subcontract as a liquidated damage where the language of the subcontract was clear that the parties agreed the stipulated sum was one for liquidated damages and the damages that the contractor might reasonably anticipate were difficult to ascertain because of the nature of the work being performed such that the sum stipulated was reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reasons of nonperformance).

Lost Jobs and Wages for South Carolina Citizens and Tax Revenue.

Here, Dannar expressly acknowledges that tax incentivized funds were made available to it under the Agreement “in whole or in part for the purpose of economic development for the State of South Carolina **and particularly for generating professional research and development jobs in South Carolina.**” (Agreement at p. 4, § 3.3.A) (emphasis added). The parties stipulated in the Agreement that the costs to SC Launch, both tangible and intangible, of Dannar’s relocation “are not susceptible to precise measurement.” (*Id.* at p. 5, § 3.3B). Indeed, determining the intangible cost associated with the loss of jobs in South Carolina as a result of Dannar’s relocation is nearly impossible to ascertain. (SC Launch Tr. at 44:7-18).¹⁰

Costs Associated with Administering SC Launch Program.

Further, there are additional costs associated with the development of a company funded by SC Launch. SC Launch does not only provide funding to the companies within its program, it also provides mentoring and guidance to the companies regarding board presentations, consultation services, and a wealth of business and relationship experience. (*See* SC Launch Tr.

¹⁰ However, it is relevant that, as part of its application to Delaware County, Indiana, Dannar anticipated the creation of 288 jobs in Indiana by the year 2016 with an hourly average wage for those employees of \$27.33. (Dannar Tr. at Ex. 9, p. 2). In addition, Dannar expected Indiana Corporate Tax Liability from adjusted gross income by 2016 in the amount of \$1,929,343.00. (*Id.*) These are the types of costs contemplated by the Relocation Provision and Relocation Fee. (*See* SC Launch Tr. at 100:15-25).

at 33:21 – 35:12; Housley Tr. at 29:6-21; 31:13 – 32:21; Aff. of Hillman at ¶¶ 6, 7, 18; Aff. of Housley at 3, 8). These services require a large number of man hours and expenditure of goodwill in the community from SC Launch’s salaried employees operating on behalf of the State of South Carolina and her citizens that cannot be computed into a single identifiable cost. (See Aff. of Hillman at ¶ 7; SC Launch Tr. at 33:21 – 35:12).

Lost Opportunity Costs.

In addition, there are significant opportunity costs associated with providing funding to a company that will eventually leave the State of South Carolina. SC Launch’s annual direct investment budget is \$2,080,000 each year. (*Id.* at 98:9 – 99:6; Aff. of Hillman at ¶ 9). SC Launch has provided funding to over 90 companies since it began the program and, at any given time, there are approximately 100 additional companies that are involved at some level in the program. (Hillman Aff. at ¶ 10; SC Launch Tr. at 37:10-20). Thus, when SC Launch makes a decision to invest and expend its resources in one company that eventually leaves South Carolina without creating knowledge economy jobs, the State of South Carolina necessarily loses the potential gain from the other companies not chosen who may have been able to generate valuable jobs for South Carolina citizens. (SC Launch Tr. at 100:7 – 101:5 (“When we have [a] company that spent . . . considerable team resource[s] and – and we lose that company, either they go out of business or they make a decision to go to another state. South Carolina loses that opportunity.”). Naturally, this type of cost is difficult, if not impossible, to quantify and is another reason why the parties entered into the stipulated Relocation Fee in the event Danner decide to leave the State of South Carolina before the 5 year deadline.

Furthermore, it logically follows that the longer a supported company remains in South Carolina, the more likely South Carolina and its citizens will benefit from the growth and

development of that company. (*See* Hillman Aff. at ¶ 23). The Relocation Provision attempts to foster that development and, in addition, guards against companies that intend to take tax incentivized funds from the State of South Carolina and, in the next breath, leave the state to seek additional opportunities elsewhere, thereby depriving the South Carolina of the benefit of its bargain. Hence, SC Launch, as a steward of South Carolina tax incentivized funds, has determined that the Relocation Provision and Relocation Fee are critical to the success of its program and, as a result, has included a virtually identical Relocation Provision and Relocation Fee in each of its financing agreements. (Aff. of Hillman at ¶ 22; SC Launch Tr. at 47:6-10).

Based on the foregoing, SC Launch is entitled to summary judgment. The damages associated with a premature relocation that SC Launch and Dannar might reasonably anticipate when they entered into the Agreement were undoubtedly difficult, if not impossible, to ascertain because of the very nature of these types of public funding arrangements. As set forth above, the costs associated with administering the program, the opportunity costs in choosing one company over another, and the lost jobs, wages, and tax revenue were simply not susceptible to precise measurement in the event of default because the future costs were unknown at the time of the Agreement.

Due to the virtual impossibility of determining the actual and consequential damages stemming from Dannar's relocation, the parties included the Relocation Provision and Relocation Fee, which was reasonably intended by the parties as the predetermined measure of compensation for damages that might have been sustained by SC Launch in connection with Dannar's relocation from South Carolina in breach of the Agreement. It is clear from the express language of the Agreement that these sophisticated commercial entities agreed that "the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to

compensate SC Launch for its actual costs in connection with a Company Relocation.” The South Carolina Court of Appeals’ decision in *ERIE Insurance Company v. Winter Construction Company*, 393 S.C. 455, 713 S.E.2d 318 (Ct. App. 2011) is controlling in this case and there are no genuine issues of material fact. Thus, summary judgment is appropriate in favor of SC Launch on its counterclaim for breach of the Agreement and as to Dannar’s claim for declaratory judgment.

It is therefore ORDERED:

1. SC Launch is granted summary judgment in its favor on Dannar’s declaratory judgment action, and Dannar’s claims against SC Launch are hereby dismissed with prejudice; and

2. SC Launch is granted summary judgment in its favor on its counterclaim asserted against Dannar for breach of the Financing Agreement, and a judgment in the principal amount of \$200,000.00 is hereby rendered in SC Launch’s favor and against Dannar. In addition, SC Launch is hereby awarded prejudgment interest thereon at the rate of 8.75% pursuant to S.C. Code Ann. § 34-31-20(a), from April 1, 2015 (the date Dannar admitted that it had relocated from South Carolina) to the date of entry of judgment.

3. SC Launch is also entitled to an award of its attorneys’ fees and expenses, and court costs incurred in connection with its enforcement of Dannar’s obligations under the Relocation Provision pursuant to the terms of the Financing Agreement in an amount to be determined by the Court. Within 10 business days after entry of this Order, SC Launch shall submit an affidavit relating its attorneys’ fees, after which Dannar shall have 10 days to reply thereto.

It is so ordered.

Dated: , 2017
Greenville, South Carolina

The Honorable Robin B. Stilwell
Judge, Thirteenth Judicial Circuit



Greenville Common Pleas

Case Caption: DD Dannar LLC vs. SC LAUNCH Inc

Case Number: 2015CP2300142

Type: Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

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ELECTRONICALLY FILED - 2017 Jun 15 10:02 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2300142

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff/Counterclaim Defendant,

v.

SC LAUNCH!, Inc.,

Defendant/Counterclaim Plaintiff.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-23-00142

ORDER GRANTING DEFENDANT/COUNTERCLAIM PLAINTIFF SC LAUNCH, INC.'S MOTION FOR AWARD OF ITS ATTORNEY'S FEES AND EXPENSES

This matter came before the Court for hearing on August 9, 2017 upon motion of Defendant/Counterclaim Plaintiff SC Launch!, Inc. ("SCL") for an award of its attorneys' fees and expenses incurred in this lawsuit. In support of its motion, SCL submitted the affidavit of its counsel and submitted detailed billing information and legal authorities. Counsel for Plaintiff/Counterclaim Defendant DD Dannar, LLC ("Dannar") submitted a memorandum in opposition and argued for a reduction in the amount of the award of fees requested on several grounds. For the reasons set forth below, SCL's motion is granted, and SCL is awarded judgment against Dannar for fees in the total amount of \$147,977 plus expenses of \$2,195.78.

When Dannar entered into the SCL'S program for start-up businesses located in South Carolina, the parties executed a Financing Agreement dated as of April 14, 2011 ("the Agreement"), and SC Launch provided Dannar high-risk financing for its start-up business and mentoring and other valuable services. The Agreement contained a Relocation Provision pursuant to which Dannar promised to pay a Relocation Fee if it relocated its business to another state within

five years from the date of the Agreement. Section 3.3.C of the Agreement provides that, should SCL elect to employ the services of an attorney to represent it in the enforcement of Dannar's obligations under Relocation Fee section of the Agreement, Dannar "will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs."

Dannar repaid the amount advanced in April 2013 and subsequently relocated its business to Indiana less than five years after executing the Agreement. Dannar filed this lawsuit on January 7, 2015 and asserted a cause of action for declaratory relief declaring that the Relocation Provision constitutes an unenforceable penalty or that it has no obligation to pay it. SCL asserted a counterclaim for breach of the Relocation Provision and for an award of judgment in the amount of the Relocation Fee and prejudgment interest. A review of the record reveals that the case was hard fought by capable counsel.

By order of the Honorable Robin S. Stillwell filed on June 15, 2017, SCL was granted summary judgment in its favor against Dannar as to the claim Dannar asserted and as to SCL's counterclaim, and judgment was awarded for the Relocation Fee of \$200,000 plus interest. In addition, Judge Stillwell's order held that SCL is also entitled to an award of its attorneys' fees and expenses incurred in connection with its enforcement of Dannar's obligations in an amount to be determined by the Court.

SCL filed its motion for an award of its attorneys' fees and expenses dated June 29, 2017 with the supporting affidavit of its counsel outlining why the award is proper under the factors set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993) and related cases. Pursuant to *Blumberg*, "[t]here are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case;

3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.”

On August 2, 2017, Dannar filed its memorandum opposing SCL’s fee request. In its memorandum and in oral argument at the hearing on this matter, counsel for Dannar did not dispute that SCL was entitled to an award of fees and expenses and did not challenge the request under the *Blumberg* factors with regard to the standing of counsel or the hourly rates charged by counsel for SCL. Further, SCL’s fees were not contingent on the outcome of the proceedings, so that factor is not in dispute. I find that SCL adequately established under the *Blumberg* factors that the hourly rates charged were reasonable, that counsel for SCL is capable, and that there was no contingency fee at issue.

Dannar also does not challenge the amount of expenses SCL requested. I also find that the expenses SCL requests in the amount of \$2,195.78 are reasonable and appropriate.

Dannar challenges the amount of the fee request under the *Blumberg* factors 1, 2, and 6 enumerated above. Those issues are addressed below.

Nature, extent, and difficulty of the legal services rendered.

Dannar’s primary objection to SCL’s motion is that the amount of time spent on this matter by SCL’s counsel was excessive and that the Court should exercise its discretion to award less than the amount requested. Dannar argues that the case simply involved the interpretation of a contract provision, did not require any proof of damages, and did not involve factual or legal issues that were sufficiently complex to warrant the amount of fees requested. In addition, Dannar submits that it prevailed on a motion to compel discovery and that fees incurred in connection with that motion should not be awarded.

While the case did not go to trial, a review of the affidavit of counsel for SCL, the case file, and the detailed billing information provided demonstrate that the amount of the fees requested is justified. As noted, it is clear that the case was hard fought by capable counsel for both parties. Further, a review of Judge Stillwell's 24 page order granting SCL summary judgment reveals the rather complex facts and legal issues involved in this case, which further supports SCL's motion.

Counsel for SCL also argues that the Court should take into consideration the fact that the fees at issue were actually incurred by, billed to, and paid by a sophisticated organization. In the case of *Johnson v. Johnson*, 296 S.C. 289, 372 S.E.2d 107 (Ct. App. 1988), the Court held that it was an abuse of discretion for the trial court not to award the full amount of the fees actually incurred by the prevailing party absent sufficient justification. Similarly, in the case of *Palmetto Health Credit Union v. Open Solutions, Inc.*, 2011 WL 11702 (D.S.C. 2011), Judge Currie addressed the argument that the court should find the fees a prevailing party actually incurred presumptively reasonable by virtue of acceptance in the marketplace as follows:

The court finds the reasoning of the Seventh Circuit somewhat persuasive on this point:

[A]s a matter of the efficient and fair administration of the federal courts, individual scrutiny of line-item entries is neither necessary nor appropriate in contractual fee-shifting cases. Given the fact that the fees were paid by a party who had no reassurance of indemnity, we believe that market considerations normally would render unnecessary resort to the time-consuming examination of individual expenses.

Metavante Corp. v. Emigrant Sav. Bank, 619 F.3d 748, 774 (7th Cir.2010). This factor weighs in favor of finding the fees reasonable but is not sufficient standing alone.

2011 WL 11702, *5. This Court also finds that reasoning persuasive, although not sufficient standing alone. SCL is a sophisticated organization, and it actually incurred and paid the fees at

issue. SCL has established the reasonableness of those fees, and Dannar has failed to demonstrate a sufficient basis for awarding less than the amount of fees actually incurred.

Dannar also argues the award requested should be reduced on the grounds that approximately \$10,000 of the amount requested had not yet been incurred by SCL, based on a statement in SCL's supporting affidavit anticipating amounts that might be incurred in the future. The affidavit and detailed billing information submitted by counsel for SCL reflected that fees had been incurred, billed to, and actually paid by SCL in the amount of \$147,997.¹ That amount was supported by detailed billing information in two spreadsheets, one of which included total billings of \$137,055 and one included total billings of \$10,992. I find that the amount of fees requested were amply supported and actually billed and paid by SCL.

The motion to compel that Dannar filed was denied in part and granted in part by order of the Honorable W. Jeffrey Young filed on November 16, 2016. Among other things, the order required SCL to confirm that it did not have additional documents responsive to certain of Dannar's discovery requests and to clarify one of SCL's responses. It appears that there were reasonable issues in dispute and no sanctions were imposed against SCL. I find the time spent on this motion was reasonable and appropriate and see no basis for a reduction of the fee request.

Time and labor necessarily devoted to the case.

Counsel for Dannar contends that the amount of time counsel for SCL spent on this case was excessive given the factual and legal issues in this case. The affidavit of SCL's counsel, the supporting detailed billing information, and a review of the record in this case, including the order

¹ In the affidavit of counsel in support of SCL's motion, the fees requested were calculated to be \$148,997. Counsel for SCL acknowledged at the hearing on this motion that the amount included a \$1,000 math error, and that the requested amount should be reduced to \$147,997.

granting SCL summary judgment, amply demonstrate that counsel for SCL actually devoted the amount of time on this case that is the subject of the fee request and that the amount of time was reasonable and necessary under the circumstances. Accordingly, I find and conclude that SCL has demonstrated that it is entitled to the amount of the fees requested under this *Blumberg* factor.

The beneficial results obtained.

Counsel for Dannar contends that the amount of the fees awarded SCL should be reduced because there was nothing extraordinarily beneficial about the result obtained by SCL in this case. SCL achieved complete success in this case with regard to both the claims asserted by Dannar and the claims asserted by SCL in its counterclaim. I find and conclude that SCL has demonstrated that it is entitled to the amount of the fees requested under this *Blumberg* factor.

For the reasons set forth herein, I find and conclude that SCL has demonstrated that it is entitled to an award of fees in the total amount of \$147,977, plus expenses of \$2,195.78, under the factors set forth in *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993) and related cases. Accordingly, judgment is hereby awarded in favor of SCL against Dannar in the amount of \$147,977 for its attorneys' fees, plus expenses of \$2,195.78

IT IS SO ORDERED.

The Honorable Perry H. Gravely
Presiding Judge, Thirteenth Judicial Circuit

August _____, 2017
_____, South Carolina

DM: 5081368 v.1



Greenville Common Pleas

Case Caption: DD Dannar LLC vs. SC LAUNCH Inc

Case Number: 2015CP2300142

Type: Order/Attorney Fees

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA)
FILED-3 JENK OF COURT IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE GREENVILLE CO. S.C.
PAUL B. WICKENS CLERK No. 2015-CP-23- 00142

2015 JAN 7 PM 3 49

DD Dannar, LLC,

Plaintiff,

-vs-

SC LAUNCH!, Inc.,

Defendant.

COMPLAINT

(Declaratory Judgment)

(Non-Jury)

Plaintiff DD Dannar, LLC ("DD Dannar"), complaining of Defendant SC LAUNCH!, Inc. ("SC Launch"), would show unto the Court as follows:

OVERVIEW

This dispute arises out of a lender's threat to use legal process to try to obtain a windfall from a borrower after the borrower paid the lender the amount of the loan in full, terminating the loan. SC Launch loaned DD Dannar \$200,000 contingent upon various terms and conditions. DD Dannar repaid the loan in full. After this repayment, SC Launch threatened to enforce a "Relocation Fee" in the amount of \$200,000, which SC Launch contends is required if DD Dannar relocates its principal place of business or a majority of its employees outside of South Carolina. However, by the terms of the contract (and common sense), after DD Dannar repaid the loan in full, DD Dannar was no longer obligated to maintain the company's principal place of business and majority of employees in South Carolina. Even assuming it was, which is absolutely denied, DD Danner has not violated the relocation provision; SC Launch has acted in bad faith in trying to enforce it; and, in any event, the Relocation Fee provision is an unenforceable penalty under these circumstances.

PARTIES, JURISDICTION AND VENUE

1. DD Dannar is a South Carolina Limited Liability Company with its principal place of business in Greenville County, South Carolina. DD Dannar designs and manufactures an alternatively powered multi-purpose maintenance vehicle called the Mobile Power Station for use in the government sector.

2. SC Launch is a South Carolina non-profit corporation with business offices located in Greenville County, South Carolina. SC Launch makes early-stage loans to qualified technology-based companies located and operating in South Carolina.

3. This Court has subject matter jurisdiction over this dispute, and personal jurisdiction over these parties.

4. Venue is proper in Greenville County under South Carolina law and the forum selection clause in the contract between the parties, because the most substantial part of the acts or omissions giving rise to this dispute occurred in Greenville County. *See* S.C. Code Ann. § 15-7-308(E)(2).

FACTUAL ALLEGATIONS

5. After a rigorous due diligence process, SC Launch makes early-stage loans to qualified technology-based companies located and operating in South Carolina for the purpose of economic development for the State of South Carolina.

6. On April 14, 2011, SC Launch and DD Dannar entered into a financing agreement whereby SC Launch agreed to make an initial advance of \$200,000 to DD Dannar (the "Initial Advance") in exchange for DD Dannar's agreement to issue a Promissory Note in the amount of the Initial Advance and to use the Initial Advance for certain agreed upon purposes (the "Agreement"). *See* ¶ 1.1, Agreement, attached hereto as **Exhibit A**.

7. The Agreement also provides that, before either the expiration of the five-year period beginning on the effective date of the Agreement or the payment of a "Relocation Fee," DD Dannar would neither move nor relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina nor have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (the "Relocation Provision"). See ¶ 3.3(A), Agreement.

8. The Agreement also provides:

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

See ¶ 3.3(B), Agreement.

9. Upon information and belief, contrary to the recital in paragraph 3.3(B), SC Launch would incur no actual costs in connection with a Company Relocation.

10. Thus, the Relocation Fee is a penalty calculated to deter and punish breaches of the Relocation Provision. The Relocation Fee is unenforceable as a matter of law.

11. Section 7.10 of the Agreement provides as follows:

7.10 Termination of Agreement. Except as otherwise specified herein, the provisions hereof, including all covenants, shall continue in full force and effect *until* the repurchase or redemption by [DD Dannar] of all securities of [DD Dannar] held by SC Launch or its successors or assigns, and payment of fees, *including the Relocation Fee* to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

(emphasis added).

12. Thus, under Section 7.10, if the Relocation Provision is violated *before* the Agreement is terminated, the Relocation Fee can be sought by SC Launch—i.e., the obligations (including the Relocation Fee) shall continue in full force and effect “*until*” the loan is repaid; otherwise, the word “*until*” means nothing.

13. Conversely, once DD Dannar pays off the Initial Advance, the Agreement is terminated and the provisions therein, including the Relocation Fee, are no longer in full force and effect.

14. On April 30, 2013, DD Dannar repaid the Initial Advance in full, with interest.

15. At that time, the Agreement was terminated, and the Relocation Provision was no longer in full force and effect—i.e., the requirement that DD Dannar maintain its principal place of business and a majority of its employees in South Carolina was extinguished.

DD Dannar Has Not Relocated

16. Even assuming the Relocation Provision remained in effect after the Initial Advance was repaid (which is absolutely denied), DD Dannar has not “relocated” as provided for by the Agreement.

17. DD Dannar has neither moved its principal place of business nor a majority of its employees outside of South Carolina.

**As a Result of SC Launch’s Refusal to Provide Additional Funding,
DD Dannar Was Forced to Seek Funding From Outside South Carolina**

18. DD Dannar has obtained funding from outside South Carolina, but only as a result of SC Launch’s refusal to loan additional amounts to DD Dannar. This refusal also cut off DD Dannar’s ability to secure funding from other sources inside South Carolina.

19. In January 2013, prominent members of Greenville County's business community pledged \$1,000,000 to DD Dannar if SC Launch loaned \$500,000 to DD Dannar in addition to the Initial Advance.

20. SC Launch routinely makes additional loans after the Initial Advance.

21. Further, new investors are more likely to loan capital to a start-up company that secures additional capital from the original investors.

22. In March 2013, without any explanation, SC Launch refused to make additional advances to DD Dannar after the Initial Advance.

23. This decision, which was essentially a vote of "no-confidence" by SC Launch, ultimately doomed DD Dannar's ability to secure funding not only from the Greenville County business community but also from the South Carolina business community at large.

24. Faced with the outright loss of its business, DD Dannar looked outside South Carolina, and ultimately obtained financing from sources in Indiana. For example, Delaware County, Indiana, offered the use of a manufacturing facility rent free.

25. Despite this fact, DD Dannar has not departed South Carolina, and a majority of its employees do not work outside South Carolina.

26. In September 2013, five months after DD Dannar repaid the Initial Advance, SC Launch demanded DD Dannar pay the "Relocation Fee" for relocating outside of South Carolina within five years after the Agreement was executed.

27. DD Dannar informed SC Launch, on numerous occasions, that the Agreement terminated when DD Dannar repaid the Initial Advance, plus interest, and therefore the Relocation Provision is no longer in full force and effect. DD Dannar also informed SC Launch, on numerous occasions, that even assuming the Relocation Provision was still in full force and effect (which is denied), DD Dannar has not relocated.

28. Despite all of these facts, SC Launch continues to demand DD Dannar pay the Relocation Fee.

29. SC Launch merely hopes to extract an unjustified windfall—the \$200,000 Relocation Fee (or a compromised amount)—after the Agreement has been terminated by the repayment of the Initial Advance.

30. This position is particularly galling in light of the fact that SC Launch refused to make additional financing to DD Dannar after the Initial Advance. SC Launch's refusal doomed DD Dannar's attempt to secure funding in South Carolina and forced DD Dannar to secure funding outside South Carolina (with the accompanying obligations to that outside investor). Now, after refusing to make additional advances and after receiving full repayment of the Initial Advance, SC Launch threatened to sue DD Dannar for the \$200,000 "Relocation Fee." If SC Launch's position is correct, DD Dannar was faced with a dilemma: Without seeking additional funding from outside South Carolina (which could obligate DD Dannar eventually to violate the Relocation Provision), DD Dannar risked insolvency and the certain inability to pay back the Initial Advance of \$200,000. Conversely, DD Dannar could secure funding outside South Carolina, generate the capital to pay back the Initial Advance, but then be faced with the "Relocation Fee" penalty. SC Launch's legal position is incorrect, but it will apparently require legal action to determine.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

31. The above paragraphs are incorporated herein by reference to the extent not inconsistent herewith.

32. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.*, and Rule 57 of the South Carolina Rules of Civil Procedure, DD Dannar seeks an Order from this Court declaring that under the Agreement:

(a) Once DD Dannar repaid the Initial Advance, the Relocation Provision was (and is) no longer in full force and effect and, therefore, DD Dannar was not (and is not) obligated to pay the Relocation Fee;

(b) Even assuming the Relocation Provision remained in full force and effect after DD Dannar repaid the Initial Advance, DD Dannar is not in violation of the Relocation Provision; and/or

(c) Even assuming the Relocation Provision remained in full force and effect after DD Dannar repaid the Initial Advance, and even assuming DD Dannar is in violation of the Relocation Provision, the Relocation Fee is an unenforceable penalty.

33. DD Dannar reserves the right to seek any and all declarations necessary to clarify the obligations of the parties under the Agreement.

WHEREFORE, DD Dannar prays for a declaration from this Court as set forth in the First Cause of Action; and/or such other and further relief as this Court may deem just and proper.



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Jason D. Maertens (S.C. Bar #73583)
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jason.maertens@smithmoorelaw.com

Attorneys for Plaintiff

January 7, 2015

Exhibit A

Financing Agreement dated April 14, 2011

FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made as of the 14th day of April, 2011, by and between SC LAUNCH!, INC., a South Carolina nonprofit corporation ("SC Launch") with an office at 1000 Catawba Street, Columbia, South Carolina 29201, and DD Dannar, LLC, (the "Company"), a limited liability company under the laws of the state indicated on Schedule I (the "State of Organization"), with an office at the address set forth on Schedule I.

WITNESSETH

WHEREAS, the Company is engaged in the business described on Schedule I (the "Company Business") and has need of capital financing to sustain and expand the Company Business; and

WHEREAS, SC Launch has been incorporated exclusively for scientific, educational, charitable and other public purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and to support the mission of the South Carolina Research Authority under South Carolina Code § 13-17-87 to establish research innovation centers and provide financing to qualified companies; and

WHEREAS, the Company has been admitted as a qualified company to one of SC Launch's centers and desires for SC Launch to provide capital financing to the Company in accordance with the terms and conditions of this Agreement, and SC Launch has approved the Company to receive such financing.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and SC Launch agree as follows:

ARTICLE I THE SECURITIES

1.1 Note. The Company agrees to issue to SC Launch a promissory note in the form attached hereto as Exhibit A (the "Note") in the face amount set forth on Schedule I; and SC Launch agrees to make an initial advance (an "Advance") to the Company under the Note in the amount set forth on Schedule I, and SC Launch may in its sole discretion in the future make additional Advances under the Note, any of which may be made in cash or in consideration of cancellation by SC Launch of the principal and interest payable by the Company to SC Launch under existing indebtedness, if any, or any combination thereof. The Company further agrees to use the initial Advance only for the uses set forth on Schedule I, and to use any future Advances only for any uses specified by SC Launch at the time of the Advance. This Agreement, the Note and all other documents and instruments executed by the Company which may be reasonably required by SC Launch are hereinafter sometimes referred to collectively as the "Financing Documents."

1.2 Possible conversion to equity. Upon a conversion of the Company into a corporation and at the request of SC Launch, the Company agrees to negotiate in good faith with SC Launch over terms by which the principal and interest outstanding under the Note will be convertible into preferred stock of the Company (any such stock, together with the Note, are hereafter referred to as the "Securities") with the basis for such negotiations primarily to be the terms under which the Company has issued preferred stock, or a similar equity interest, to a non-related third party in an arms length transaction and within a reasonable time period prior to the conversion or, if no such third party issuance has occurred then the basis of the negotiations shall be the terms under which SC Launch provides financing to corporations at the time of the conversion.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

2.1 Complete disclosure. In order to induce SC Launch to enter into and execute this Agreement and to make the initial Advance and any future Advances under the Note, the Company represents and warrants to SC Launch, as of the date hereof and as of any future date on which the Company accepts an Advance from SC Launch, that no representation or warranty of the Company contained in this Agreement or any of the Financing Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument, document or communication furnished to SC Launch by or on behalf of the Company, taking into consideration the total mix of information made available, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

2.2 Survival. All warranties and representations of the Company contained herein shall survive the execution of this Agreement and the issuance of the Note and any Advances thereunder.

ARTICLE III COVENANTS OF THE COMPANY

3.1 Affirmative covenants. The Company will at all times while any of the Securities are outstanding:

A. Financial and business information. Deliver the following to SC Launch:

(i) Quarterly statements. As soon as practicable, and in any event within sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year of the Company, balance sheets, statements of income and statements of cash flows of the Company as of the close of such quarter and covering operations for such quarter and for the portion of the Company's fiscal year ending on the last day of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles in the United States, consistently applied from period to period and within each period ("GAAP"), subject to year-end adjustments.

(ii) Annual statements. As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, duplicate copies of:

(a) Consolidated and consolidating balance sheets of the Company at the end of such year; and

(b) Statements of income, members' equity and cash flows of the Company for such year,

all in reasonable detail and prepared in accordance with GAAP and beginning with the fiscal year ended on December 31, 2012, accompanied by a review opinion of independent certified public accountants of recognized standing selected by the Company.

(iii) Correspondence with reviewing accountants. Promptly following receipt or transmission thereof, any correspondence to or from the Company's accountants in connection with any material change in the Company's financial statements or condition, or any disagreement or dispute with the accountants.

(iv) Meetings and communications. Provide SC Launch with a copy of all written notices of meetings of the governing body or the members of the Company and all materials or communications provided generally to the governing body or members, including, without limitation, forms of actions without meeting, all at the same time such notices, materials, communications or forms are provided to the governing body or members; and permit representatives of SC Launch to attend any and all meetings of the governing body or members.

(v) Requested information. With reasonable promptness, the Company shall furnish SC Launch with such other data and information as from time to time may be reasonably requested.

B. Access. Permit SC Launch and its duly authorized agents reasonable access to the Company's offices, property and assets and shall make available for audit and inspection, at any reasonable time by SC Launch, or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Company as may be reasonably requested in writing by SC Launch, where such access would not be in violation of any confidentiality or similar agreement.

C. Notices. Promptly give to SC Launch written notice of:

(i) any default or event of default under any material contractual obligation of the Company;

(ii) any litigation or similar proceeding affecting the Company; or

(iii) any event or circumstance which has had, or is reasonably likely to have, a material adverse effect on the Company or the Company Business.

D. Further assurances. Execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the other Financing Documents and all of the transactions contemplated hereby.

3.2 Negative covenants. The Company will not for so long as the Note is outstanding, without prior written consent of SC Launch, which shall not be unreasonably withheld:

A. Capital transactions and Status Changes. Enter into any merger, consolidation, share exchange, reorganization or recapitalization, or liquidate, sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired, or change its jurisdiction of organization or its legal or tax status.

B. Organizational documents. Amend, modify or change its articles of organization or operating agreement.

C. Related party transactions. Engage in transactions in which any manager, director, officer or promoter of the Company, or any member who owns more than ten percent (10%) of any class of the Company's outstanding membership interests, or any relative or spouse of any of the foregoing, or any relative of such spouse, or any entity or organization that is affiliated with or controlled by any of the foregoing, has a direct or indirect interest (a "Related Interest"), except (i) transactions for which the material facts of the transaction and the Related Interest were disclosed or known to the governing body of the Company, and a majority of the members of the governing body, who are not employees of the Company and who have no Related Interest, approved the transaction, but a transaction may not be approved by a single person; (ii) compensation paid to employees in amounts as disclosed on Schedule I; (iii) reimbursements for properly documented, ordinary and customary business expenses; or (iv) employee benefits provided generally to all employees of the Company including stock option or similar type plans and bonus or other incentive compensation plans. The term "transactions" for purposes of this provision includes, without limitation, any form of compensation, such as the grant of any option, warrant or right, or exercisable, exchangeable or convertible security, and any personal use of corporate assets or other perquisites.

3.3 Relocation.

A. Company relocation. The Company acknowledges that funds are made available to it under this Agreement in whole or in part for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina. Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee as set forth below.

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

C. Costs and fees. Should SC Launch, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of the Company's obligations under this Section 3.3, the Company will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SC LAUNCH

4.1 General representations and warranties from SC Launch. SC Launch represents and warrants to the Company as follows:

A. Investment; no resale or distribution. It is acquiring or will acquire the Securities for its own account, for investment, and not with a view towards the resale, transfer, or distribution thereof, nor with any present intention of distributing the Securities.

B. Accredited investor; residence. It is an "Accredited Investor" within the meaning of Rule 501(a) under the Securities Act of 1933, as amended. Its principal office is located within the State of South Carolina.

ARTICLE V COVENANTS OF SC LAUNCH

5.1 Compliance with securities laws. SC Launch will not, directly or indirectly, sell any of the Securities, unless such sale is made pursuant to either (i) an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws or (ii) an available exemption from the registration requirements of the Securities Act and such laws and, prior to any such sale, SC Launch provides to the Company a written opinion of legal counsel reasonably satisfactory in form and substance to the Company to the effect that the proposed sale may be effected without registration under the Securities Act and any applicable state securities laws.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of default. Each of the following shall constitute an "Event of Default", whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental authority or otherwise:

A. Payment. If the Company shall fail to pay the principal of or interest on the Note when due, and shall fail to cure such failure within five (5) business days after notice from SC Launch specifying the failure;

B. Representations and warranties. If any representation or warranty made by the Company herein shall have been materially incorrect when made;

C. Covenants and obligations. If the Company shall breach or fail to comply with any of the covenants, terms and conditions of, or any of its obligations (other than payment defaults as set forth above) under, this Agreement or any of the Financing Documents, all of which are cumulative to this Agreement and to each other, and shall fail to cure such breach or failure within thirty (30) days after notice from SC Launch specifying the default or failure; or

D. Insecurity. If while the Note is outstanding, SC Launch deems itself insecure or the prospect of payment of the Note or continued existence of the Company Business or performance of the Company's obligations is impaired for any reason whatsoever, including, but not limited to, termination of employment of any key employee, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, the Company, or entry of any judgment against the Company.

6.2 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, SC Launch may, at its option, without presentment, demand, notice of dishonor, or protest, declare the Note immediately due and payable in full. All powers and remedies given herein to SC Launch shall be cumulative and not exclusive of any other right or remedy or any other powers and remedies available to SC Launch at law or in equity, by judicial proceeding or otherwise, to enforce the performance or observance of the covenants and agreements of the Company contained in this Agreement, and no delay or omission of SC Launch to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given herein or by law to SC Launch may be exercised from time to time, and as often as may be deemed expedient, by SC Launch.

ARTICLE VII MISCELLANEOUS

7.1 Waiver. No waiver at any time of the provisions or conditions of this Agreement or of any of the other Financing Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

7.2 Severability. Unenforceability for any reason of any provision of this Agreement, or of any of the Financing Documents or other agreements between the Company and SC

Launch shall not limit the operation or validity of any other provisions of this Agreement, any of the Financing Documents or any other agreement.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by any overnight express mail service, postage or fees prepaid to the addresses set forth in the preamble to this Agreement. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

Any notice which is delivered personally in the manner provided herein is deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed by registered or certified mail in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, at the time of actual receipt. Any notice which is addressed and mailed by overnight express mail service in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the next business day following delivery of such notice to such overnight express mail service prior to such service's deadline for next day delivery.

7.4 Time of the essence. The parties hereto agree that time is of the essence to this Agreement.

7.5 Binding effect. Except as otherwise expressly provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of SC Launch and the Company, and their respective successors, transferees and assigns.

7.6 Governing law; forum. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to the conflicts or choice of law principles thereof. Any civil action arising out of or in connection with this Agreement will be instituted and maintained exclusively in the state or federal courts located within the State of South Carolina and each of the parties hereto consents to the personal jurisdiction of such courts.

7.7 Titles and captions. Titles and captions of Articles, Sections and subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns, and all of which taken together shall constitute one and the same agreement.

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the

terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

7.10 Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by the Company of all securities of the Company held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

SC LAUNCH!, INC.

By: _____

David C. McNamara, Executive Director

DD Dannar, LLC

By GARY DANNAR, President

[Signature]

[Signature]

Exhibit A

This Note has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold and no such transaction will be registered on the books of the Company unless: (a) the sale has been registered under said Act, or (b) the Company is presented with a written opinion of counsel in form and substance acceptable to the Company, to the effect that such registration is not required under the circumstances of such sale.

The transfer of this Note by any holder is restricted under the terms of a financing agreement between the Company and the original holder of the Note.

\$200,000

DD Dannar, LLC

Greenville, South Carolina

April 14, 2011

Promissory Note

Due April 14, 2014

DD Dannar, LLC, a South Carolina limited liability company, (the "Company"), for value received, promises to pay to SC Launch!, Inc. or its assigns, the sum of \$ 200,000, or whatever portion thereof shall be advanced by SC Launch!, Inc. to the Company, on April 14, 2014 (this date and any extended maturity date under the terms hereof are referred to hereafter as the "maturity date"), and to pay interest as set forth herein at an annual rate equal to the higher of: (a) the prime rate (as published in the Market Data section of *The Wall Street Journal*) plus two percent (2.00%), but in no event higher than ten percent (10.00%), or (b) five percent (5.00%), on the outstanding balance, compounded monthly, computed from the date of this Note until payment of the principal and all interest under this Note has been made. The initial interest rate will be based on the prime rate first published on or after the most recent January 1 or July 1, and will be adjusted biannually thereafter based on the first publication of the prime rate on or after January 1 and July 1 each year. Payment of principal and interest shall be made in lawful money of the United States of America at 1000 Catawba Street, Columbia, South Carolina 29201, or such other place or to such other party or parties as the holder of this Note may from time to time designate.

1. Financing agreement. This Note is issued under and is subject to the terms of a separate financing agreement (the "Financing Agreement") dated April 14, 2011 between the Company and SC Launch!, Inc. The terms and conditions of the Financing Agreement are incorporated into this Note by reference as if fully repeated herein.

2. Extension of maturity date; demand for payment. At any time the holder of this Note may, in its sole discretion, by notice to the Company:

- (a) extend the maturity date to any date designated by the holder; or

(b) extend the maturity date to any date designated by the holder and demand that the Company begin to immediately make monthly payments of interest to the holder beginning with the prior maturity date and continuing on the same date of each month thereafter, with such interest based on the combined principal and accrued interest balance outstanding under this Note on the prior maturity date.

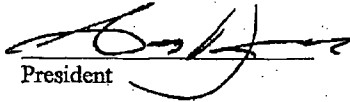
3. Payments. The Company will make any payments demanded by the holder in accordance with the preceding Section 2 above. Payments shall be applied first to any interest due and then to principal. Prepayment of principal and interest by the Company is permitted without penalty.

IN WITNESS WHEREOF, the Company has signed and sealed this Note effective as of the 14th day of April, 2011.

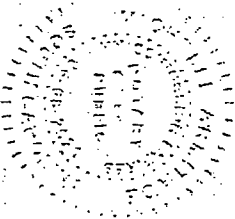
DD Dannar, LLC

Corporate
Seal or
Facsimile

President



Secretary



Schedule I to Financing Agreement

Name of Company: DD Dannar, LLC
State of Organization: South Carolina
Street address: 86 Osage Drive
Greenville, SC 29605

Description of business: OEM Manufacturer / Assembler of the Dannar - *Mobile PowerStation* (MPS), which is a hybrid/battery-electric powered vehicle designed to reduce emissions, and is a purpose built vehicles for the government and non-governmental roadside (right-of-way) management and to which to which numerous implements may be attached including but not limited to mowers, snow blowers, sweepers, grapple buckets and blades for moving earth and loose objects, earth augers, hydraulic buckets, chain saws, crimpers, shears, impact wrenches, water pumps, asphalt planers, tree stump grinders, compactors, beach rakes, herbicide sprayers, cultivators, plows, trenchers, earth borers, pruners and clippers; electric, pneumatic, hydraulic, and mechanical power generators with wheels and tracks. with the ability to market.

Face amount of note: \$200,000

Amount of initial advance: \$200,000

Uses of initial advance:	MPS	\$ 90,000
	Consulting/ Legal	50,000
	Operations	35,000
	Product Launch Introduction	<u>25,000</u>
	Total	\$ 200,000

Existing written compensation agreements with related parties and amounts of compensation to be paid to such parties (see Section 3.2C): None

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

DD Dannar, LLC,

vs.

SC Launch!, Inc.,

Defendant(s)

Submitted By: Peter A. Rutledge
Address: Smith Moore Leatherwood LLP
2 West Washington St Suite 1100 (29601)
PO Box 87
Greenville, SC 29602

SC Bar #: 15899
Telephone #: 864-751-7610
Fax #: 864-751-7800
Other:
E-mail: peter.rutledge@smithmoorelaw.com

CIVIL ACTION COVERSHEET

2015-CP - 23- 00142

Verified

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 -NI- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (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)
Declaratory Judgment			
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) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ 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 (510)		

Submitting Party Signature:

Date: January 7, 2015

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

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.**

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA)
GREENVILLE CO. SC)
COUNTY OF GREENVILLE) PAUL B. WICKENLIMER
IN THE COURT OF COMMON PLEAS

2015 APR 28 AM 9 51

DD Dannar, LLC,)

Plaintiff,)

v.)

SC LAUNCH!, Inc.,)

Defendant.)

SUPPLEMENTAL COMPLAINT

C.A. No. 2014-CP-23-00142

Pursuant to Rule 15(d) of the South Carolina Rules of Civil Procedure, Plaintiff DD Dannar, LLC ("DD Dannar"), complaining of Defendant SC LAUNCH!, Inc. ("SC Launch"), would show unto the Court as follows:

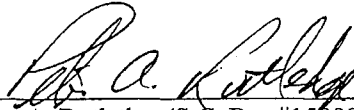
1. The Original Complaint was filed on January 7, 2015. Certain events have occurred since the filing of the Original Complaint that necessitate the filing of this Supplemental Complaint. The allegations of the Original Complaint are incorporated herein by reference to the extent not inconsistent herewith.

2. Paragraphs 16 and 17 of the Original Complaint alleged that DD Dannar had not "relocated" as provided for by the Agreement, as it had neither moved its principal place of business nor a majority of its employees outside of South Carolina. At this time, however, DD Dannar intends to and will relocate its business from South Carolina to Indiana.

3. As of April 1, 2015, DD Dannar relocated a majority of its assets and inventory from South Carolina to Indiana. DD Dannar entered into building and property leases in Indiana. DD Dannar established utility and communications (mail and telephone) services in Indiana. DD Dannar hired two employees in Indiana and retained one employee in South Carolina.

4. Accordingly, DD Dannar recants Paragraphs 16, 17, 25, and 32(b). All other allegations remain in full force and effect, and are expressly incorporated herein by reference.

WHEREFORE, DD Dannar prays for a declaration from this Court as set forth in the First Cause of Action; and/or such other and further relief as this Court may deem just and proper.



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Attorneys for Plaintiff

April 27, 2015

STATE OF SOUTH CAROLINA	FILED-CLERK OF COURT	
COUNTY OF GREENVILLE	GREENVILLE	ON THE COURT OF COMMON PLEAS
	PAUL B. WICKENSIMER	
DD Dannar, LLC,	2015 JUN 2	AM 8:41 Action No. 2015-CP-23-00142
Plaintiff/Counterclaim Defendant,	)	
	)	
v.	)	(JURY TRIAL DEMANDED)
	)	
SC LAUNCH!, Inc.,	)	
	)	
Defendant/Counterclaim Plaintiff.	)	

**SC LAUNCH!, INC.'S ANSWER TO PLAINTIFF'S
SUPPLEMENTAL COMPLAINT AND COUNTERCLAIM**

Plaintiff filed its original Complaint on January 7, 2015. In response, Defendant and Counterclaim Plaintiff SC Launch!, Inc. ("SC Launch") filed a Motion to Dismiss Plaintiff's Complaint on February 11, 2015. Pursuant to this Court's Order filed on April 6, 2015, Plaintiff withdrew its Complaint, Plaintiff was granted leave to file a Supplemental Complaint, and SC Launch was not required to respond to the original Complaint. Rather than file a revised version of its Complaint, Plaintiff's Supplemental Complaint incorporated by reference the allegations of the withdrawn Complaint "to the extent not inconsistent" with the Supplemental Complaint. SC Launch's attempt to incorporate the majority of its allegations from a withdrawn pleading violates the South Carolina Rules of Procedure, SC Launch is not required to respond to the allegations incorporated by reference, and the material allegations incorporated by reference are denied. Without waiving its objections and defenses to the Supplemental Complaint and the attempt to incorporate by reference allegations from the withdrawn Complaint, SC Launch hereby answers Plaintiff's Supplemental Complaint and asserts a counterclaim against DD Dannar, LLC, as follows:

FOR A FIRST DEFENSE
(Denial of Material Allegations)

1. SC Launch denies each and every allegation of the Supplemental Complaint, including allegations incorporated by reference from the original Complaint, except those hereinafter expressly admitted.

2. In response to the allegations of Paragraph 1 of the Supplemental Complaint, SC Launch admits that, pursuant to consent order of this Court filed on April 6, 2015, Plaintiff withdrew its Complaint and was granted leave to file a supplemental complaint. SC Launch denies that Plaintiff was given permission to file a supplemental complaint that adopts allegations from the Complaint in wholesale fashion and denies that such procedure comports with the South Carolina Rules of Civil Procedure. Without waiving its objections, SC Launch denies the allegations of the Complaint adopted by reference except those expressly admitted herein.

3. In response to Paragraph 2 of the Supplemental Complaint, SC Launch refers to the referenced Paragraphs 16 and 17 of the Complaint for their allegations, denies those allegations, and admits the allegations of Paragraph 2 of the Supplemental Complaint to the extent they allege Plaintiff intended to relocate its business from South Carolina to Indiana. SC Launch further alleges that DD Dannar has in fact relocated its business to Indiana and has triggered its obligation to pay the Relocation Fee pursuant to the provisions of the Agreement of the parties dated as of April 14, 2011 (the "Agreement"), as discussed more fully below.

4. In response to the allegations of Paragraph 3 of the Supplemental Complaint, SC Launch admits, upon information and belief, that DD Dannar has relocated a majority of its assets and inventory to Indiana, entered into building and property leases in Indiana, has a majority of its employees in Indiana, and took other actions that constitute a relocation of its

business from South Carolina to Indiana within the meaning of the parties' Agreement and thereby triggered the obligation to pay the Relocation Fee pursuant to the provisions of the Agreement.

5. In response to the allegations of Paragraph 4 of the Supplemental Complaint, SC Launch acknowledges that Plaintiff recants Paragraphs 16, 17, 25, and 32(b) of the Complaint. Defendant does not need to respond to those allegations of the Complaint, but to the extent a response is required, they are denied. In further response to the allegations of Paragraph 4 of the Supplemental Complaint, SC Launch denies that Plaintiff was given permission to file a supplemental complaint that adopts allegations from its withdrawn Complaint in wholesale fashion and denies that such procedure comports with the South Carolina Rules of Civil Procedure. Without waiving its objections, SC Launch denies the allegations of the Complaint adopted by reference except those expressly admitted herein.

Without waiving its objections, SC Launch denies the allegations of the withdrawn Complaint incorporated by reference by Plaintiff as follows:

6. In response to the allegations contained in the unnumbered introductory paragraph on page 1 of the Complaint, SC Launch admits that it loaned Plaintiff \$200,000 contingent upon various terms and conditions set forth in written agreements between the parties, including the requirement that Plaintiff pay a Relocation Fee in the event it relocated its business from South Carolina to another state. SC Launch denies the remaining allegations of the paragraph, including the allegations that Plaintiff has not relocated its business to Indiana so as to trigger its obligation to pay the Relocation Fee set forth in the parties' Agreement, that SC Launch's conduct was in bad faith, and that the Relocation Fee is an unenforceable penalty.

7. In response to the allegations of Paragraph 1 of the Complaint, upon information and belief, SC Launch only admits that Plaintiff is a limited liability corporation incorporated in South Carolina that designs and manufacturers an alternatively powered multi-purpose maintenance vehicle called the Mobile Power Station for use in the government sector. SC Launch denies the remaining allegations of Paragraph 1.

8. SC Launch admits the allegations of Paragraph 2 of the Complaint.

9. The allegations of Paragraphs 3 and 4 of the Complaint assert legal conclusions to which SC Launch is not required to respond. To the extent a response is required, the allegations are denied, except that SC Launch admits that South Carolina courts have jurisdiction over the parties to and the subject matter of this dispute.

10. SC Launch admits the allegations of Paragraph 5 of the Complaint.

11. In response to the allegations of Paragraphs 6 and 7 of the Complaint, SC Launch alleges that a partially executed copy of the Agreement between the parties is attached to the Complaint. A fully executed copy is attached hereto as Exhibit 1. SC Launch refers to the Agreement for its terms and provisions, and denies the allegations of Paragraphs 6 and 7 of the Complaint that are inconsistent with the document, including the allegation that the loan of \$200,000 to Plaintiff was "an initial advance" to the extent Plaintiff alleges that any other extension of credit was promised.

12. In response to the allegations of Paragraph 8 of the Complaint, SC Launch refers to the provisions of Section 3.3 of the Agreement and denies any inconsistent allegations.

13. SC Launch denies the allegations of Paragraphs 9 and 10 of the Complaint.

14. In response to the allegations of Paragraph 11 of the Complaint, SC Launch refers to the provisions of Section 7.10 of the Agreement and denies any inconsistent allegations.

15. SC Launch denies the allegations of Paragraph 12 of the Complaint and refers to the Agreement for its terms.

16. SC Launch denies the allegations of Paragraph 13 of the Complaint.

17. SC Launch admits the allegations of Paragraph 14 of the Complaint.

18. SC Launch denies the allegations of Paragraph 15 of the Complaint.

19. Plaintiff recanted the allegations of Paragraphs 16 and 17 of the Complaint in its Supplemental Complaint filed with this court on April 28, 2015. Thus, the allegations of Paragraphs 16 and 17 of the Complaint do not require a response from SC Launch. To the extent a response is required, the allegations are denied.

20. In response to the allegations of Paragraph 18 of the Complaint, SC Launch lacks knowledge or information sufficient to form a belief as to whether Plaintiff has obtained funding from outside South Carolina. SC Launch denies the remaining allegations of Paragraph 18.

21. SC Launch lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 19 of the Complaint.

22. SC Launch denies the allegations of Paragraph 20 of the Complaint and denies that it had an obligation to provide any other funding to Plaintiff.

23. SC Launch denies the allegations of Paragraph 21 of the Complaint.

24. In response to the allegations of Paragraph 22 of the Complaint, SC Launch only admits that it refused to provide additional funding to Plaintiff. SC Launch denies the remaining allegations.

25. SC Launch denies the allegations of Paragraph 23 of the Complaint.

26. SC Launch denies the allegations of Paragraph 24 of the Complaint.

27. Plaintiff recanted the allegations of Paragraph 25 of the Complaint in its Supplemental Complaint filed with this court on April 28, 2015. Thus, the allegations of Paragraph 25 of the Complaint do not require a response from SC Launch. To the extent a response is required, the allegations are denied.

28. In response to the allegations of Paragraph 26 of the Complaint, SC Launch admits that it sent letters to Plaintiff requesting payment of the Relocation Fee after Plaintiff issued a public announcement that it was relocating to the State of Indiana. SC Launch denies the remaining allegations.

29. In response to the allegations of Paragraph 27 of the Complaint, SC Launch admits that Plaintiff has refused and continues to refuse to pay the Relocation Fee. SC Launch denies the remaining allegations of Paragraph 27, denies that Plaintiff does not have the obligation to pay the Relocation Fee, and denies that Plaintiff has not relocated its business to another state thereby triggering that obligation.

30. SC Launch denies the allegations of Paragraph 28 of the Complaint, except that it admits that it demands that DD Dannar pay the Relocation Fee pursuant to the provisions of the Agreement.

31. SC Launch denies the allegations of Paragraph 29 of the Complaint.

32. SC Launch denies the allegations of Paragraph 30 of the Complaint.

33. In response to the allegations of Paragraph 31 of the Complaint, SC Launch realleges the above Paragraphs of this Answer and Counterclaim as fully as if repeated herein.

34. Plaintiff recanted the allegations of Paragraph 32(b) of the Complaint in its Supplemental Complaint filed with this court on April 28, 2015. Therefore, a response is not required from SC Launch to the allegations contained in Paragraph 32(b), but, to the extent a

response is required, the allegations are denied. SC Launch denies the remaining allegations of Paragraph 32, including subparagraphs (a) and (c).

35. The allegations of Paragraph 33 of the Complaint do not require a response from SC Launch. To the extent a response is required, they are denied, and SC Launch further alleges that amendments to the pleadings are governed by the South Carolina Rules of Civil Procedure.

36. SC Launch denies that Plaintiff is entitled to the relief requested in its Prayer for Relief or to any other relief against SC Launch.

FOR A SECOND DEFENSE

37. Plaintiff's claims are barred, in whole or in part, by all equitable doctrines available to Defendant, including, but not limited to, waiver, estoppel, ratification, condonation, consent, and laches.

FOR A THIRD DEFENSE
(Failure to State a Cause of Action)

38. Plaintiff's Complaint fails to state facts sufficient to state cause of action and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

COUNTERCLAIM
(Breach of Contract)

39. SC Launch incorporates the allegations of the above paragraphs as if fully repeated herein.

40. SC Launch is a South Carolina nonprofit corporation that supports the mission of the South Carolina Research Authority under South Carolina Code Ann. § 13-17-87 to establish innovation centers and provide financing to qualified companies. As such, SC Launch provides financing to selected start-up enterprises.

41. Because of its South Carolina statutory mandate and its use of South Carolina tax incentivized funds received from companies and individuals, the sole reason SC Launch takes the substantial risk of extending financing to certain start-up enterprises, such as Plaintiff, is the potential that the enterprise will be successful and that success will lead to high-paying knowledge economy jobs for South Carolina citizens.

42. As a result, SC Launch insists on provisions in its financing agreements that, in addition to requiring repayment of the advances with interest, impose obligations designed to create jobs for South Carolinians.

43. As of April 14, 2011, SC Launch and Plaintiff entered into a financing agreement under which SC Launch agreed to make an initial advance to Plaintiff in the amount of \$200,000.00 in exchange for Plaintiff's agreement to issue a Promissory Note in the amount of the initial advance to SC Launch and to use the initial advance for certain agreed upon purposes (the "Agreement"). A copy of the Agreement is attached hereto as **Exhibit 1**.

44. Under the Agreement, Plaintiff was required to repay the initial advance by April 14, 2014.

45. Additionally, Plaintiff acknowledged in writing in the Agreement that SC Launch made funds available to Plaintiff "for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina." Agreement at p. 4, § 3.3.A.

46. Plaintiff specifically agreed, in Section 3.3 of the Agreement, "not to (a) move or relocate [Plaintiff's] Business or the [Plaintiff's] principal office or principal place of business outside the state of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of [Plaintiff's] total employees, senior management employees, or employees engaged

principally in professional research and development, employed at locations outside of the State of South Carolina . . . , unless [Plaintiff] has paid SC Launch a Relocation Fee” for a period of five years from the date of the Agreement (the “Relocation Provision”).

47. Section 3.3 of the Agreement defines the “Relocation Fee” as follows:

B. Relocation Fee. The “Relocation Fee” will be an amount equal to the aggregate amount of all funds advanced by SC Launch to [DD Dannar, LLC]. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

48. Based on its assent to the provisions of Section 3.3, Plaintiff agreed, in writing, that the Relocation Fee did not constitute a penalty.

49. Section 3.3.C of the Agreement also provides that SC Launch is entitled to recover its attorneys’ fees and court costs from Plaintiff that SC Launch incurs to enforce Plaintiff’s obligations under the Relocation Provision.

50. The Agreement’s Termination Provision further states as follows:

7.10 Termination of Agreement. Except as otherwise specified herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by [Plaintiff] of all securities of [Plaintiff] held by SC Launch or its successors or assigns, *and* payment of fees, including the Relocation Fee to the extent applicable, *and* performance of all other obligations owed SC Launch hereunder.

(Emphasis added). Thus, the Agreement remains in full force and effect until payment of the Relocation Fee or Plaintiff complies with the obligations of the Relocation Provision.

51. On June 19, 2013, Plaintiff issued a public announcement that it was relocating to the State of Indiana.

52. As a result, SC Launch sent a letter to Plaintiff requesting payment of the Relocation Fee.

53. At that point in time, Plaintiff took the position that it had not relocated to Indiana and had not triggered the Relocation Fee.

54. In response, SC Launch agreed not to pursue payment of the Relocation Fee if Plaintiff would confirm by affidavit that it had in fact not relocated.

55. Rather than sign the affidavit, Plaintiff elected to bring this suit and filed its original Complaint on January 7, 2015 seeking a declaratory judgment from this Court that the Relocation Fee was a "penalty," even though Plaintiff agreed that the Relocation Fee was not a penalty in the Agreement.

56. In response, SC Launch filed a motion to dismiss Plaintiff's Complaint on the grounds that the issue was not ripe because Plaintiff had not yet triggered the Relocation Fee.

57. Subsequently, Plaintiff moved, with the consent of SC Launch, for an order for leave to file a supplemental Complaint to allege facts that had occurred after the filing of its original Complaint. As a result of the developments alleged by Plaintiff, SC Launch consented to withdraw its motion to dismiss.

58. Plaintiff then filed its Supplemental Complaint with this Court on April 27, 2015, admitting that it has now (a) moved or relocated its business or its principal office or principal place of business outside the state of South Carolina and, (b) has more than one-half, based on payroll expenses, of its total employees, senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina.

59. The Agreement constitutes a valid, binding written contract between Plaintiff and SC Launch.

60. In the Agreement, Plaintiff expressly represented, covenanted, warranted and agreed to pay the Relocation Fee in "an amount equal to the aggregate amount of all funds advanced by SC Launch" in the event that it (a) moved or relocated Plaintiff's business or Plaintiff's principal office or principal place of business outside the State of South Carolina, and (b) had more than one-half, based on payroll expenses of Plaintiff's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina within five years after the execution of the Agreement.

61. Plaintiff has relocated a majority of its assets and inventory from South Carolina to Indiana and more than one-half, based on payroll expenses, of its total employees, senior management employees, or employees engaged principally in professional research and development, are employed at locations outside of the State of South Carolina.

62. As a result, Plaintiff is obligated to pay the Relocation Fee pursuant to the provisions of the Agreement.

63. Despite demand for payment, Plaintiff has refused and continues to refuse to pay the Relocation Fee in breach of the terms of the Agreement.

64. Accordingly, SC Launch is entitled to judgment against DD Dannar, LLC for the amount of the Relocation Fee of \$200,000.00, plus pre-judgment interest, and an award of SC Launch's reasonable attorneys' fees and expenses incurred in connection with its attempt to enforce DD Dannar to perform its obligations.

WHEREFORE, having fully replied and answered the Supplemental Complaint, SC Launch!, Inc. prays that the Supplemental Complaint be dismissed with prejudice, with costs; for a judgment against Plaintiff DD Dannar, LLC on SC Launch!, Inc.'s Counterclaim in the amount of \$200,000, plus prejudgment interest, and an award of its reasonable attorneys' fees, costs, and expenses; and for such other and further relief as the Court may deem just and proper.

JURY DEMAND

SC Launch demands a trial by jury for all issues so triable.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Robert Y. Knowlton, SC Bar No. 3589

John G. Tamasitis, SC Bar No. 101875

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*Attorneys for Defendant/Counterclaim
Plaintiff SC Launch!, Inc.*

May 28, 2015
Columbia, South Carolina

DM: 4059778 v.3

EXHIBIT 1

FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made as of the 14th day of April, 2011, by and between SC LAUNCH!, INC., a South Carolina nonprofit corporation ("SC Launch") with an office at 1000 Catawba Street, Columbia, South Carolina 29201, and DD Dannar, LLC, (the "Company"), a limited liability company under the laws of the state indicated on Schedule I (the "State of Organization"), with an office at the address set forth on Schedule I.

WITNESSETH

WHEREAS, the Company is engaged in the business described on Schedule I (the "Company Business") and has need of capital financing to sustain and expand the Company Business; and

WHEREAS, SC Launch has been incorporated exclusively for scientific, educational, charitable and other public purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and to support the mission of the South Carolina Research Authority under South Carolina Code § 13-17-87 to establish research innovation centers and provide financing to qualified companies; and

WHEREAS, the Company has been admitted as a qualified company to one of SC Launch's centers and desires for SC Launch to provide capital financing to the Company in accordance with the terms and conditions of this Agreement, and SC Launch has approved the Company to receive such financing.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and SC Launch agree as follows:

ARTICLE I THE SECURITIES

1.1 Note. The Company agrees to issue to SC Launch a promissory note in the form attached hereto as Exhibit A (the "Note") in the face amount set forth on Schedule I; and SC Launch agrees to make an initial advance (an "Advance") to the Company under the Note in the amount set forth on Schedule I, and SC Launch may in its sole discretion in the future make additional Advances under the Note, any of which may be made in cash or in consideration of cancellation by SC Launch of the principal and interest payable by the Company to SC Launch under existing indebtedness, if any, or any combination thereof. The Company further agrees to use the initial Advance only for the uses set forth on Schedule I, and to use any future Advances only for any uses specified by SC Launch at the time of the Advance. This Agreement, the Note and all other documents and instruments executed by the Company which may be reasonably required by SC Launch are hereinafter sometimes referred to collectively as the "Financing Documents."

1.2 Possible conversion to equity. Upon a conversion of the Company into a corporation and at the request of SC Launch, the Company agrees to negotiate in good faith with SC Launch over terms by which the principal and interest outstanding under the Note will be convertible into preferred stock of the Company (any such stock, together with the Note, are hereafter referred to as the "Securities") with the basis for such negotiations primarily to be the terms under which the Company has issued preferred stock, or a similar equity interest, to a non-related third party in an arms length transaction and within a reasonable time period prior to the conversion or, if no such third party issuance has occurred then the basis of the negotiations shall be the terms under which SC Launch provides financing to corporations at the time of the conversion.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

2.1 Complete disclosure. In order to induce SC Launch to enter into and execute this Agreement and to make the initial Advance and any future Advances under the Note, the Company represents and warrants to SC Launch, as of the date hereof and as of any future date on which the Company accepts an Advance from SC Launch, that no representation or warranty of the Company contained in this Agreement or any of the Financing Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument, document or communication furnished to SC Launch by or on behalf of the Company, taking into consideration the total mix of information made available, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

2.2 Survival. All warranties and representations of the Company contained herein shall survive the execution of this Agreement and the issuance of the Note and any Advances thereunder.

ARTICLE III COVENANTS OF THE COMPANY

3.1 Affirmative covenants. The Company will at all times while any of the Securities are outstanding:

A. Financial and business information. Deliver the following to SC Launch:

(i) Quarterly statements. As soon as practicable, and in any event within sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year of the Company, balance sheets, statements of income and statements of cash flows of the Company as of the close of such quarter and covering operations for such quarter and for the portion of the Company's fiscal year ending on the last day of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles in the United States, consistently applied from period to period and within each period ("GAAP"), subject to year-end adjustments.

(ii) Annual statements. As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, duplicate copies of:

(a) Consolidated and consolidating balance sheets of the Company at the end of such year; and

(b) Statements of income, members' equity and cash flows of the Company for such year,

all in reasonable detail and prepared in accordance with GAAP and beginning with the fiscal year ended on December 31, 2012, accompanied by a review opinion of independent certified public accountants of recognized standing selected by the Company.

(iii) Correspondence with reviewing accountants. Promptly following receipt or transmission thereof, any correspondence to or from the Company's accountants in connection with any material change in the Company's financial statements or condition, or any disagreement or dispute with the accountants.

(iv) Meetings and communications. Provide SC Launch with a copy of all written notices of meetings of the governing body or the members of the Company and all materials or communications provided generally to the governing body or members, including, without limitation, forms of actions without meeting, all at the same time such notices, materials, communications or forms are provided to the governing body or members; and permit representatives of SC Launch to attend any and all meetings of the governing body or members.

(v) Requested information. With reasonable promptness, the Company shall furnish SC Launch with such other data and information as from time to time may be reasonably requested.

B. Access. Permit SC Launch and its duly authorized agents reasonable access to the Company's offices, property and assets and shall make available for audit and inspection, at any reasonable time by SC Launch, or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Company as may be reasonably requested in writing by SC Launch, where such access would not be in violation of any confidentiality or similar agreement.

C. Notices. Promptly give to SC Launch written notice of:

(i) any default or event of default under any material contractual obligation of the Company;

(ii) any litigation or similar proceeding affecting the Company; or

(iii) any event or circumstance which has had, or is reasonably likely to have, a material adverse effect on the Company or the Company Business.

D. Further assurances. Execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the other Financing Documents and all of the transactions contemplated hereby.

3.2 Negative covenants. The Company will not for so long as the Note is outstanding, without prior written consent of SC Launch, which shall not be unreasonably withheld:

A. Capital transactions and Status Changes. Enter into any merger, consolidation, share exchange, reorganization or recapitalization, or liquidate, sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired, or change its jurisdiction of organization or its legal or tax status.

B. Organizational documents. Amend, modify or change its articles of organization or operating agreement.

C. Related party transactions. Engage in transactions in which any manager, director, officer or promoter of the Company, or any member who owns more than ten percent (10%) of any class of the Company's outstanding membership interests, or any relative or spouse of any of the foregoing, or any relative of such spouse, or any entity or organization that is affiliated with or controlled by any of the foregoing, has a direct or indirect interest (a "Related Interest"), except (i) transactions for which the material facts of the transaction and the Related Interest were disclosed or known to the governing body of the Company, and a majority of the members of the governing body, who are not employees of the Company and who have no Related Interest, approved the transaction, but a transaction may not be approved by a single person; (ii) compensation paid to employees in amounts as disclosed on Schedule I; (iii) reimbursements for properly documented, ordinary and customary business expenses; or (iv) employee benefits provided generally to all employees of the Company including stock option or similar type plans and bonus or other incentive compensation plans. The term "transactions" for purposes of this provision includes, without limitation, any form of compensation, such as the grant of any option, warrant or right, or exercisable, exchangeable or convertible security, and any personal use of corporate assets or other perquisites.

3.3 Relocation.

A. Company relocation. The Company acknowledges that funds are made available to it under this Agreement in whole or in part for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina. Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee as set forth below.

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

C. Costs and fees. Should SC Launch, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of the Company's obligations under this Section 3.3, the Company will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SC LAUNCH

4.1 General representations and warranties from SC Launch. SC Launch represents and warrants to the Company as follows:

A. Investment; no resale or distribution. It is acquiring or will acquire the Securities for its own account, for investment, and not with a view towards the resale, transfer, or distribution thereof, nor with any present intention of distributing the Securities.

B. Accredited investor; residence. It is an "Accredited Investor" within the meaning of Rule 501(a) under the Securities Act of 1933, as amended. Its principal office is located within the State of South Carolina.

ARTICLE V COVENANTS OF SC LAUNCH

5.1 Compliance with securities laws. SC Launch will not, directly or indirectly, sell any of the Securities, unless such sale is made pursuant to either (i) an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws or (ii) an available exemption from the registration requirements of the Securities Act and such laws and, prior to any such sale, SC Launch provides to the Company a written opinion of legal counsel reasonably satisfactory in form and substance to the Company to the effect that the proposed sale may be effected without registration under the Securities Act and any applicable state securities laws.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of default. Each of the following shall constitute an "Event of Default", whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental authority or otherwise:

A. Payment. If the Company shall fail to pay the principal of or interest on the Note when due, and shall fail to cure such failure within five (5) business days after notice from SC Launch specifying the failure;

B. Representations and warranties. If any representation or warranty made by the Company herein shall have been materially incorrect when made;

C. Covenants and obligations. If the Company shall breach or fail to comply with any of the covenants, terms and conditions of, or any of its obligations (other than payment defaults as set forth above) under, this Agreement or any of the Financing Documents, all of which are cumulative to this Agreement and to each other, and shall fail to cure such breach or failure within thirty (30) days after notice from SC Launch specifying the default or failure; or

D. Insecurity. If while the Note is outstanding, SC Launch deems itself insecure or the prospect of payment of the Note or continued existence of the Company Business or performance of the Company's obligations is impaired for any reason whatsoever, including, but not limited to, termination of employment of any key employee, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, the Company, or entry of any judgment against the Company.

6.2 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, SC Launch may, at its option, without presentment, demand, notice of dishonor, or protest, declare the Note immediately due and payable in full. All powers and remedies given herein to SC Launch shall be cumulative and not exclusive of any other right or remedy or any other powers and remedies available to SC Launch at law or in equity, by judicial proceeding or otherwise, to enforce the performance or observance of the covenants and agreements of the Company contained in this Agreement, and no delay or omission of SC Launch to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given herein or by law to SC Launch may be exercised from time to time, and as often as may be deemed expedient, by SC Launch.

ARTICLE VII MISCELLANEOUS

7.1 Waiver. No waiver at any time of the provisions or conditions of this Agreement or of any of the other Financing Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

7.2 Severability. Unenforceability for any reason of any provision of this Agreement, or of any of the Financing Documents or other agreements between the Company and SC

Launch shall not limit the operation or validity of any other provisions of this Agreement, any of the Financing Documents or any other agreement.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by any overnight express mail service, postage or fees prepaid to the addresses set forth in the preamble to this Agreement. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

Any notice which is delivered personally in the manner provided herein is deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed by registered or certified mail in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, at the time of actual receipt. Any notice which is addressed and mailed by overnight express mail service in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the next business day following delivery of such notice to such overnight express mail service prior to such service's deadline for next day delivery.

7.4 Time of the essence. The parties hereto agree that time is of the essence to this Agreement.

7.5 Binding effect. Except as otherwise expressly provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of SC Launch and the Company, and their respective successors, transferees and assigns.

7.6 Governing law; forum. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to the conflicts or choice of law principles thereof. Any civil action arising out of or in connection with this Agreement will be instituted and maintained exclusively in the state or federal courts located within the State of South Carolina and each of the parties hereto consents to the personal jurisdiction of such courts.

7.7 Titles and captions. Titles and captions of Articles, Sections and subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns, and all of which taken together shall constitute one and the same agreement.

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the

terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

7.10 Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by the Company of all securities of the Company held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

Jeffrey C. DeRue

SC LAUNCH, INC.

By: David C. McNamara

David C. McNamara, Executive Director

Lily Hech
27

DD Dannar, LLC

By: Gary Dannar, President

Gary Dannar

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

SC LAUNCH, INC.

By: _____

David C. McNamara, Executive Director

The Danner Company, LLC

By: _____

Exhibit A

This Note has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold and no such transaction will be registered on the books of the Company unless: (a) the sale has been registered under said Act, or (b) the Company is presented with a written opinion of counsel in form and substance acceptable to the Company, to the effect that such registration is not required under the circumstances of such sale.

The transfer of this Note by any holder is restricted under the terms of a financing agreement between the Company and the original holder of the Note.

\$200,000

DD Dannar, LLC

Greenville, South Carolina

April 14, 2011

Promissory Note
Due April 14, 2014

DD Dannar, LLC, a South Carolina limited liability company, (the "Company"), for value received, promises to pay to SC Launch!, Inc. or its assigns, the sum of \$ 200,000, or whatever portion thereof shall be advanced by SC Launch!, Inc. to the Company, on April 14, 2014 (this date and any extended maturity date under the terms hereof are referred to hereafter as the "maturity date"), and to pay interest as set forth herein at an annual rate equal to the higher of: (a) the prime rate (as published in the Market Data section of *The Wall Street Journal*) plus two percent (2.00%), but in no event higher than ten percent (10.00%), or (b) five percent (5.00%), on the outstanding balance, compounded monthly, computed from the date of this Note until payment of the principal and all interest under this Note has been made. The initial interest rate will be based on the prime rate first published on or after the most recent January 1 or July 1, and will be adjusted biannually thereafter based on the first publication of the prime rate on or after January 1 and July 1 each year. Payment of principal and interest shall be made in lawful money of the United States of America at 1000 Catawba Street, Columbia, South Carolina 29201, or such other place or to such other party or parties as the holder of this Note may from time to time designate.

1. Financing agreement. This Note is issued under and is subject to the terms of a separate financing agreement (the "Financing Agreement") dated April 14, 2011 between the Company and SC Launch!, Inc. The terms and conditions of the Financing Agreement are incorporated into this Note by reference as if fully repeated herein.

2. Extension of maturity date; demand for payment. At any time the holder of this Note may, in its sole discretion, by notice to the Company:

- (a) extend the maturity date to any date designated by the holder; or

(b) extend the maturity date to any date designated by the holder and demand that the Company begin to immediately make monthly payments of interest to the holder beginning with the prior maturity date and continuing on the same date of each month thereafter, with such interest based on the combined principal and accrued interest balance outstanding under this Note on the prior maturity date.

3. Payments. The Company will make any payments demanded by the holder in accordance with the preceding Section 2 above. Payments shall be applied first to any interest due and then to principal. Prepayment of principal and interest by the Company is permitted without penalty.

IN WITNESS WHEREOF, the Company has signed and sealed this Note effective as of the 14th day of April, 2011.

DD Dannar, LLC

Corporate
Seal or
Facsimile

President



Secretary



Schedule I to Financing Agreement

Name of Company: DD Dannar, LLC
State of Organization: South Carolina
Street address: 86 Osage Drive
Greenville, SC 29605

Description of business: OEM Manufacturer / Assembler of the Dannar - *Mobile PowerStation* (MPS), which is a hybrid/battery-electric powered vehicle designed to reduce emissions, and is a purpose built vehicles for the government and non-governmental roadside (right-of-way) management and to which to which numerous implements may be attached including but not limited to mowers, snow blowers, sweepers, grapple buckets and blades for moving earth and loose objects, earth augers, hydraulic buckets, chain saws, crimpers, shears, impact wrenches, water pumps, asphalt planers, tree stump grinders, compactors, beach rakes, herbicide sprayers, cultivators, plows, trenchers, earth borers, pruners and clippers; electric, pneumatic, hydraulic, and mechanical power generators with wheels and tracks. with the ability to market.

Face amount of note: \$200,000

Amount of initial advance: \$200,000

Uses of initial advance:	MPS	\$ 90,000
	Consulting/ Legal	50,000
	Operations	35,000
	Product Launch Introduction	<u>25,000</u>
	Total	\$ 200,000

Existing written compensation agreements with related parties and amounts of compensation to be paid to such parties (see Section 3.2C): None

STATE OF SOUTH CAROLINA)
 FILED-CLERK OF COURT IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 DD Dannar, LLC,) Civil Action No. 2015-CP-23-00142
 2015 JUN 2 AM 8 41
 Plaintiff,)
 v.) **CERTIFICATE OF SERVICE**
 SC LAUNCH!, Inc.,)
 Defendant.)

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 28th day of May, 2015, caused the foregoing **Answer to Plaintiff's Supplemental Complaint and Counterclaim** to be served via U.S. mail, postage prepaid, *or by some other means*, on counsel of record at the addresses shown below:

Peter A. Rutledge, Esq.
 Jason D. Maertens, Esq.
 Smith Moore Leatherwood LLP
 PO Box 87
 Greenville, SC 29602
Peter.rutledge@smithmoorelaw.com
Jason.maertens@smithmoorelaw.com
Attorneys for Plaintiff

Louisa H. Gantt
 Louisa H. Gantt

DM: 3945345 v.5

ROA 000083

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

DD Dannar, LLC,

Civil Action No. 2015-CP-23-00142

Plaintiff/Counterclaim Defendant,

v.

SC LAUNCH!, Inc.,

Defendant/Counterclaim Plaintiff.

DEFENDANT/COUNTERCLAIM PLAINTIFF SC LAUNCH!, INC.'S
MOTION FOR SUMMARY JUDGMENT

This dispute arises from DD Dannar, LLC's ("Dannar") participation in the SC Launch!, Inc. ("SC Launch") program for certain start-up businesses located in South Carolina pursuant to which SC Launch provides valuable mentoring and other services, as well as certain funding for selected businesses. Dannar entered into the SC Launch program, the parties executed a Financing Agreement dated as of April 14, 2011 ("the Agreement"), and SC Launch provided Dannar high-risk financing for its start-up business and mentoring and other valuable services. The Agreement contained a Relocation Provision pursuant to which Dannar promised to pay a Relocation Fee if it relocated its business to another state within five years from the date of the Agreement. Dannar subsequently relocated its business to Indiana less than five years after executing the Agreement.

In this lawsuit, Dannar asserts a single cause of action for declaratory relief declaring that the Relocation Provision is not enforceable as a penalty or that it has no obligation to pay it. SC Launch asserted a single counterclaim for breach of the Relocation Provision and for an award of judgment in the amount of the Relocation Fee and prejudgment interest, as well as an award of

its attorneys' fees and expenses in this action to be determined by the Court based on an affidavit to be submitted.

Pursuant to Rule 56, SCRCP, Defendant/Counterclaim Plaintiff SC Launch!, Inc. hereby moves the Court for an Order granting it summary judgment as to all claims (with the exception of SC Launch's request for an award of its attorneys' fees and expenses in this action that will be requested by separate motion) on the grounds that there is no genuine issue of material fact and SC Launch is entitled to judgment as a matter of law. The bases for this motion are as follows:

1. SC Launch is a South Carolina nonprofit corporation that supports the mission of the South Carolina Research Authority ("SCRA") under South Carolina Code Section 13-17-87 to establish innovation centers and provide financing to qualified companies. It provides certain financing, mentoring, and other services to companies that enter its program. SC Launch utilizes South Carolina tax-incentivized funds received from companies and individuals to pursue this statutory mission, and the sole reason SC Launch takes the substantial risk of extending financing to certain start-up enterprises, such as Dannar, is the potential that the enterprise will be successful and that success will lead to high-paying knowledge economy jobs for South Carolina citizens. SC Launch does not require certain significant terms typically required by providers of this type of high risk financing of start-up enterprises – such as substantial equity in the company, seats on the board of directors or participation in management, and corporate governance changes and controls. However, a key provision in the financing agreements for the SC Launch program is the requirement of the payment of a relocation fee if the start-up relocates from the State of South Carolina within five years of receiving funds from the program.

2. The Relocation Provision in this commercial contract is clear and unambiguous, and it was negotiated by sophisticated parties represented by counsel. There is no dispute that

Dannar relocated its business to Indiana within five years of the Agreement within the meaning of the Agreement. Accordingly, the Relocation Provision should be enforced pursuant to its terms and SC Launch should be awarded judgment in the amount of the Relocation Fee, plus prejudgment interest.

3. Because of the nature and context of the state tax-incentivized funding involved, the relationship of the parties, and the abundant services provided to Dannar besides the funds paid under the Agreement, the Relocation Provision is not a typical “liquidated damages” provision. Even if the Court analyzes the Relocation Provision under South Carolina law applicable to typical liquidated damages provisions, however, the Relocation Provision is enforceable pursuant to its terms. “South Carolina law allows parties to prospectively set an amount of damages for breach through the inclusion of a liquidated damages provision.” *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011). The Relocation Fee was agreed to by the parties in the Agreement and is in an amount “‘reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reasons of nonperformance.’” *Id.* at 463, 713 S.E.2d at 323 (Ct. App. 2011) (quoting *Tate v. Le Master*, 231 S.C. 429, 441, 99 S.E.2d 39, 46 (1957)).

4. Pursuant to the foregoing, SC Launch hereby moves for an order granting summary judgment against Plaintiff as to its declaratory judgment action and in favor of SC Launch as to its counterclaim.

This Motion is supported by the applicable statutory and case law; the pleadings filed to date; the deposition transcripts of SC Launch, Plaintiff, and Mark Housley; all discovery responses to date and all documents served in connection with those discovery responses; the Affidavit of Harry Greg Hillman attached hereto as **Exhibit 1**, the Affidavit of Mark Housley

attached hereto as **Exhibit 2**, and any memorandum of law and additional materials that may be filed in support of this Motion.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Robert Y. Knowlton
Robert Y. Knowlton, SC Bar No. 3589
John G. Tamasitis, SC Bar No. 101875
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
bknowlton@hsblawfirm.com
jtamasitis@hsblawfirm.com
*Attorneys for Defendant/Counterclaim
Plaintiff SC Launch!, Inc.*

February 23, 2017
Columbia, South Carolina

DM: 4368954 v.5

Exhibit 1

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff/Counterclaim Defendant,

v.

SC LAUNCH!, Inc.,

Defendant/Counterclaim Plaintiff.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-23-00142

AFFIDAVIT OF HARRY GREG HILLMAN

Before me, the undersigned authority, personally appeared Harry Greg Hillman, the Affiant, in the jurisdiction aforesaid, who being duly sworn according to law did depose and state:

1. I, Harry Greg Hillman, am over the age of eighteen and competent to testify as to the facts and matters set forth herein. I make this affidavit upon my own personal knowledge.

2. I am employed by the South Carolina Research Authority ("SCRA") as the director of entrepreneurial programs and the executive director for Defendant SC Launch!, Inc. ("SC Launch").

3. In 2006, the SC Launch program was formed by the SCRA pursuant to S.C. Code Ann. § 13-17-87 and § 13-17-88 to facilitate applied research, product development, and commercialization programs and strengthen South Carolina's knowledge economy to create high paying jobs. The program operates in partnership with SCRA and the research foundations of the University of South Carolina, the Medical University of South Carolina, and Clemson University to support high-potential companies with services and grant funding.

4. SC Launch is an independent nonprofit 501(c)(3) corporation affiliated with SCRA and the SC Launch program makes seed investments which anticipate financial returns.

5. The mission of SC Launch is to strengthen the state's knowledge economy and help create high paying jobs. To fulfill its charter, SC Launch supports advanced technology and knowledge-based businesses with seed capital that fills gaps in funding from individual investors, angel investment groups, lenders, private equity firms, and other sources. Funding from SC Launch is supplemental; it is not intended to replace funding from other sources. Returns from SC Launch investments help fund continuing SC Launch programs and investments.

6. Companies that are admitted into the SC Launch program are referred to as "Client Companies." These companies receive mentoring and support services from SC Launch staff, as well as access to SC Launch's resource partner network and may be eligible for grant or investment funding.

7. SC Launch staff members are salaried employees who dedicate significant amounts of time and energy into developing and mentoring companies admitted into the SC Launch program.

8. Companies are considered for investment by SC Launch upon recommendation of the SC Launch staff under direction of the SC Launch Executive Director. The staff recommends only companies that are active client companies in the SC Launch program. They must complete a rigorous due diligence process and demonstrate ability to execute plans which will result in significant contributions to the South Carolina knowledge economy.

9. In order to fulfill its mission to enrich the state's innovation economy, SC Launch directly invests an annual \$2,080,000 from the Industry Partnership Fund into qualified South Carolina-based technology companies who have been accepted into the SC Launch program.

10. Contributions to the Industry Partnership Fund come from South Carolina contributors and those contributions are certified by SCRA to the State Department of Revenue and are eligible for a 100% tax credit against South Carolina income taxes, insurance premium taxes, and certain license fees up to a maximum credit of \$2 million. Since 2006, SC Launch has invested over \$25 million of seed capital in over 90 companies and, at any given time, there are approximately 100 companies that are involved in the program at varying levels of development.

11. According to SCRA's 2015 Annual Report on SC Launch, the average salary of the jobs created through the SC Launch program is \$69,000 and follow-on capital secured by SC Launch companies is \$362,700,000. A copy of the 2015 Annual Report is attached as **Exhibit A**.

12. The Executive Director recommends the most promising candidate companies to meet with the SC Launch Board of Directors (the "Board") and request funding. The Chair or designated member of the Board determines which companies are invited to present. A presenting company submits written materials in advance. Principals meet with the Board and staff in executive session during a regularly scheduled meeting. After the presentation and a question and answer session, the Board deliberates and decides by resolution what, if any, funding to offer.

13. Presenting to the Board does not guarantee funding. The Board, in its sole discretion, selects the best opportunities and directs available funding for maximum benefit to the state's knowledge economy.

14. Evaluation of candidate companies and due diligence are performed by the SC Launch staff under direction of the SC Launch Executive Director. Successful completion of due diligence is a necessary but not sufficient condition for investment.

15. Whenever possible, at least one member of the Board meets face to face with principals of each candidate company before the Board considers investment. The purpose is to augment the staff's analysis and due diligence, assist in determining whether the company is an appropriate candidate at the time, and help the principals prepare for their presentation to the Board. Such an in-person meeting is required, without exception, if an investment decision requiring Board approval is necessary between regularly scheduled Board meetings.

16. The Board determines whether to invest and amounts offered are based on availability of funds to invest, potential risk and return, and the relative merit of candidate companies. The maximum investment is normally \$200,000. Lesser amounts are approved in many cases. In select situations, cumulative SC Launch investments in an individual company may exceed \$200,000. Any amounts above \$200,000 are subject to additional scrutiny.

17. An average of about 12 companies are chosen for an initial round of funding each year. Additional follow-on funding may also be available in certain situations.

18. On April 14, 2011, SC Launch entered into a financing agreement with Dannar whereby, in exchange for a \$200,000 loan, Dannar agreed to repay the loan within three years and to not move or relocate its business outside the state of South Carolina for a period of five years (the "Agreement"). A copy of the Agreement is attached hereto as **Exhibit B** and its terms are incorporated by reference.

19. Dannar accepted the financing from SC Launch and the benefits of the program. These benefits included, but were not limited to, mentoring with respect to Dannar's business plan, introductions to key financial players in the area, and guidance on presenting to the SC Launch board of directors in support of obtaining subsequent rounds of funding.

20. Under a relocation provision contained within the Agreement, Dannar agreed for a period of five (5) years after the execution of the Agreement:

not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee"

(the "Relocation Provision").

21. Section 3.3 of the Agreement defines the "Relocation Fee" as follows:

B. Relocation Fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to [Dannar, LLC]. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the cost to SC Launch, including both tangible and intangible costs, of a Company Relocation is not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

22. The Relocation Provision and Relocation Fee are standard provisions that are contained in every financing agreement with companies that are supported financially by the SC Launch program. The Relocation Provision and Relocation Fee are critical to the continued success of the SC Launch program.

23. The longer a company stays in South Carolina, the less likely it is to leave the State. Over time, typically a start-up business will grow (assuming it succeeds and remains in business), and the loss to the State of South Carolina resulting from a growing company's relocation will increase over time. Considering the context and all of the facts and circumstances at the time the Agreement was executed, the amount of the Relocation Fee was fair and reasonable.

24. In 2013, Dannar applied for a second tranche of funding from SC Launch. On or about March 6, 2013, Dannar presented to the Board seeking an additional \$250,000 loan investment, conditionally convertible to equity and conditioned upon Dannar closing a minimum external investment of \$2,250,000. The resolution was not approved by a majority of the Board and Dannar's request for funding was denied.

25. On or about April 29, 2013, I met with Dannar principals Gary Dannar and Alan Austin, and we discussed Dannar's interest in paying back the balance due under the Financing Agreement. During that meeting, Mr. Dannar expressed his appreciation for the efforts of SC Launch and stated that his company would not be moving forward were it not for the support of and investment made by SC Launch. I sent Mr. Dannar an email that same day reminding him of the obligations under the Relocation Provision even if the loan was repaid.

26. On or about April 30, 2013, Dannar repaid SC Launch the balance due under the Financing Agreement in the amount of \$222,634.23.

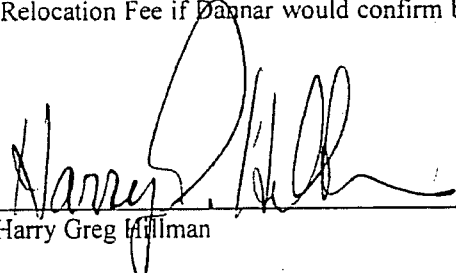
27. On or about June 19, 2013, I became aware of a public announcement made by Dannar on or about June 19, 2013, in conjunction with the Muncie-Delaware

County, Indiana Economic Development Alliance, which indicated that Dannar was relocating its corporate headquarters and assembly facility to Muncie, Indiana.

28. In response, SC Launch sent a letter to Dannar requesting payment of the Relocation Fee on or about September 19, 2013, and again on November 7, 2013.

29. On November 25, 2013, Dannar's counsel responded to these requests and denied that Dannar had relocated under the Agreement. Dannar's counsel maintained this position in a letter dated December 13, 2013, and again by letter dated September 19, 2014.

30. In response to these reassurances, via letter dated October 7, 2014, SC Launch agreed not to pursue payment of the Relocation Fee if Dannar would confirm by affidavit that it had in fact not relocated.


Harry Greg Millman

SWORN TO and subscribed before me this
the 14th day of February, 2017.


Notary Public for South Carolina
My commission expires: 2/23/2025

MORRISA L. PERKINS
Notary Public, State of South Carolina
My Commission Expires 2/23/2025

Exhibit A



Annual Report

2015

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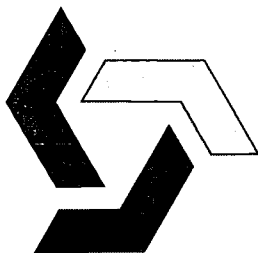
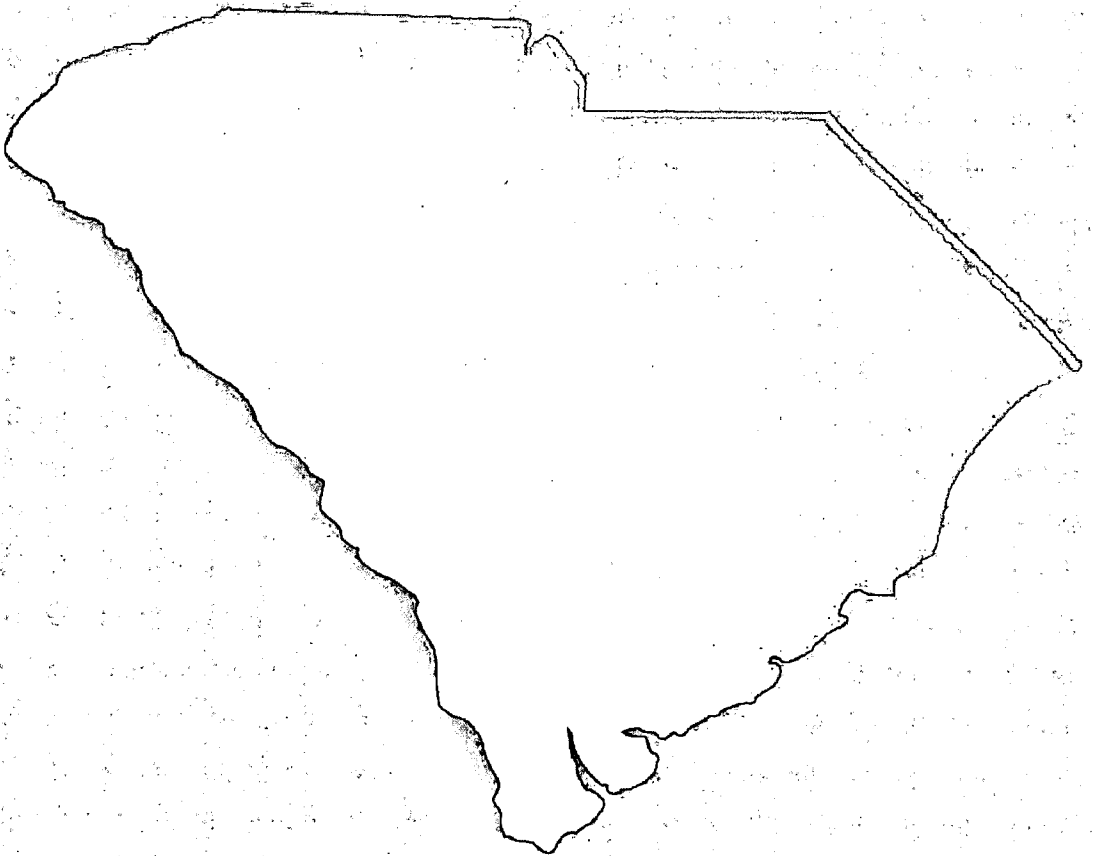


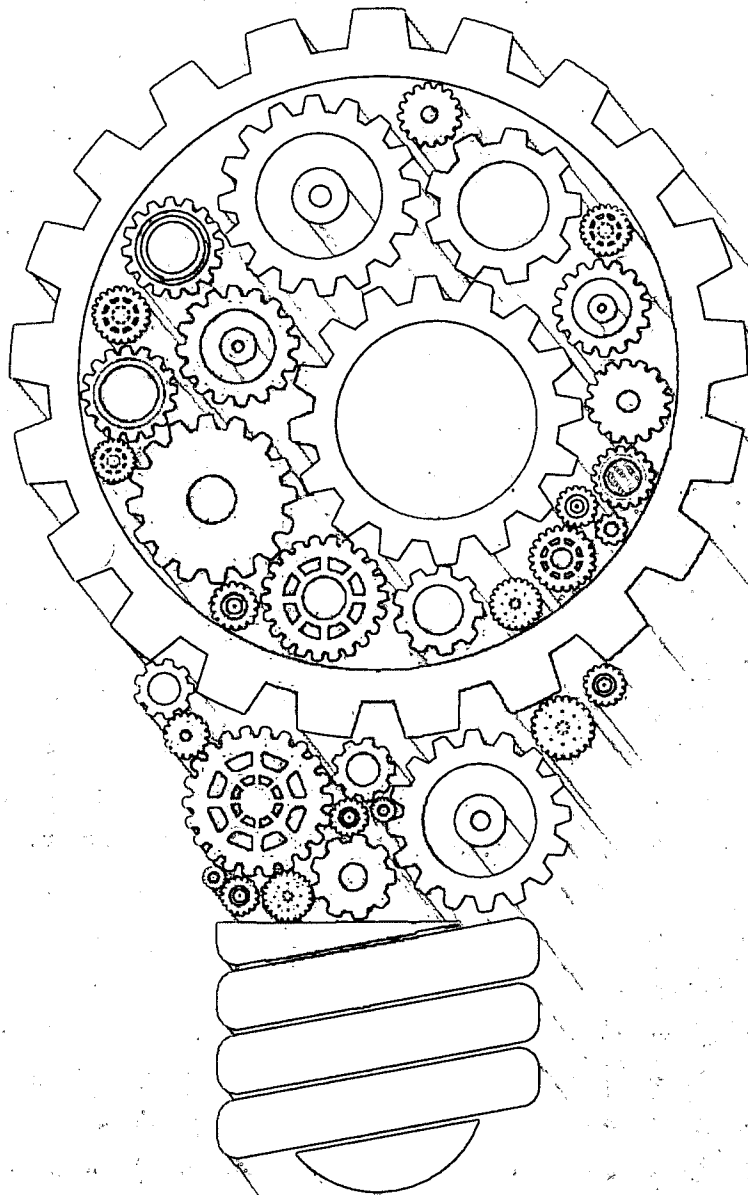
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SCRA Technology Ventures' SC Launch Program is growing South Carolina's high-tech economy.

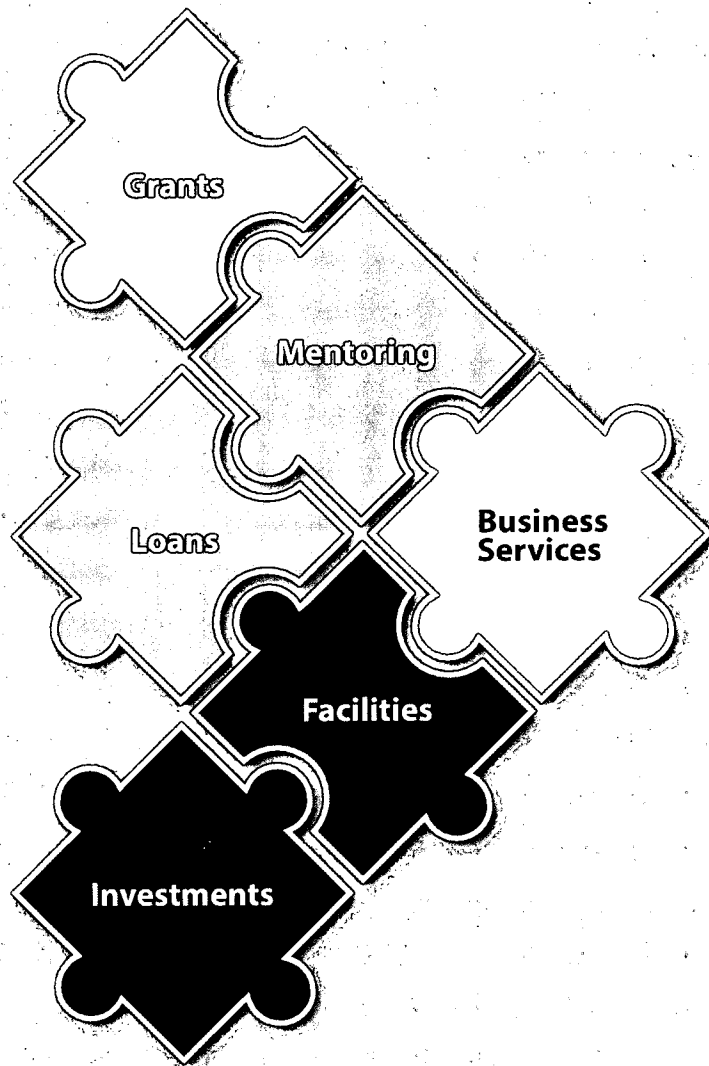
SC Launch fosters the growth of South Carolina's high-tech economic ecosystem. The program enables research commercialization, provides mentoring and support services and makes investments in technology-based start-ups.



How it Works

SC Launch is able to invest in and support South Carolina startups through the Industry Partnership Fund (IPF), which was established in 2006 under the Industry Partners Act. South Carolina taxpayers who contribute to the IPF are eligible for a 100% tax credit against South Carolina income taxes, insurance premium taxes and certain license fees.

Equity returns are re-invested into the program, providing additional resources to South Carolina's high-tech companies.



SC Launch provides a comprehensive suite of resources to support entrepreneurs.

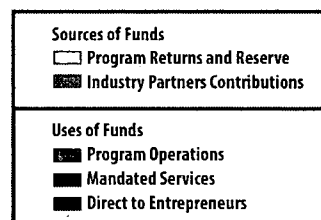
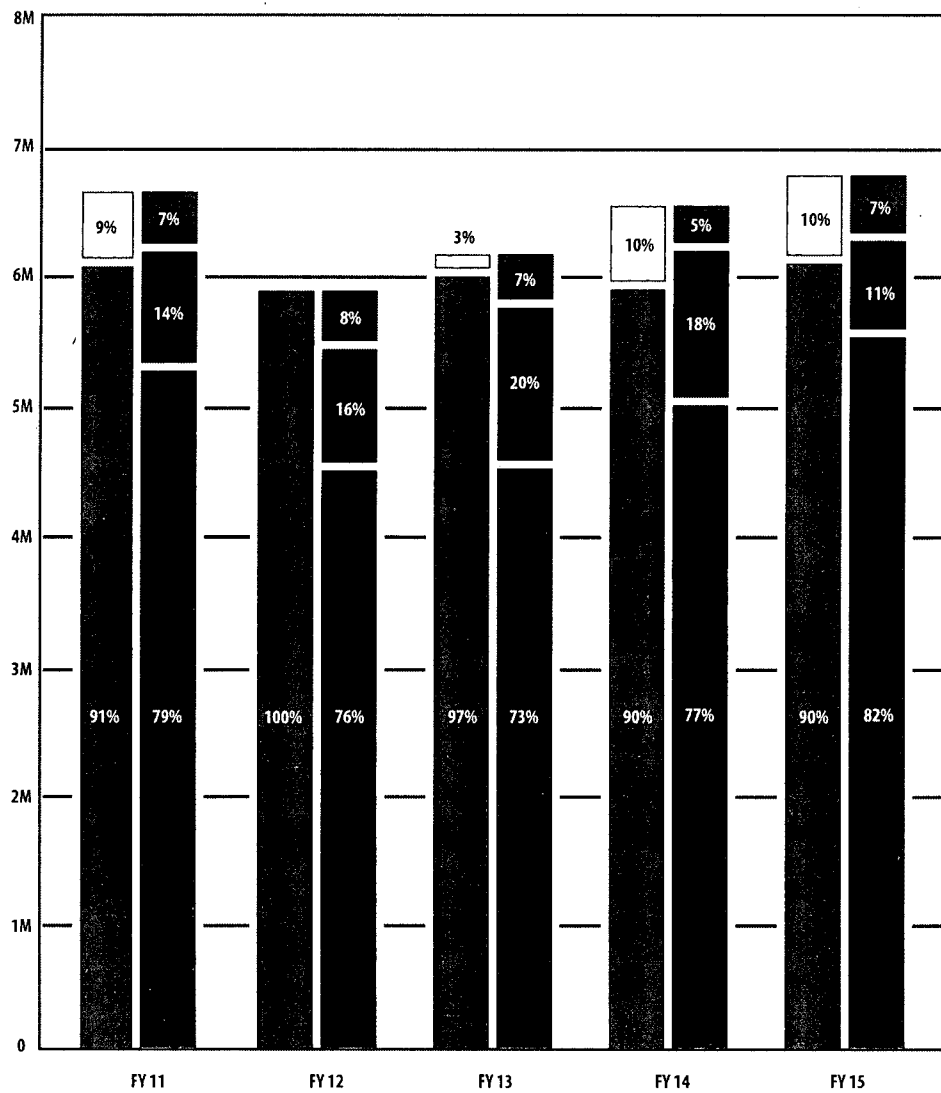
Companies who are admitted into the SC Launch program are commonly called "client companies." These companies receive mentoring, support services, access to our "Resource Partner Network" and may be eligible for federal Phase I SBIR/STTR grant matching or University Start-up Assistance Program grants. They may also be eligible for SC Launch equity investments or loans.

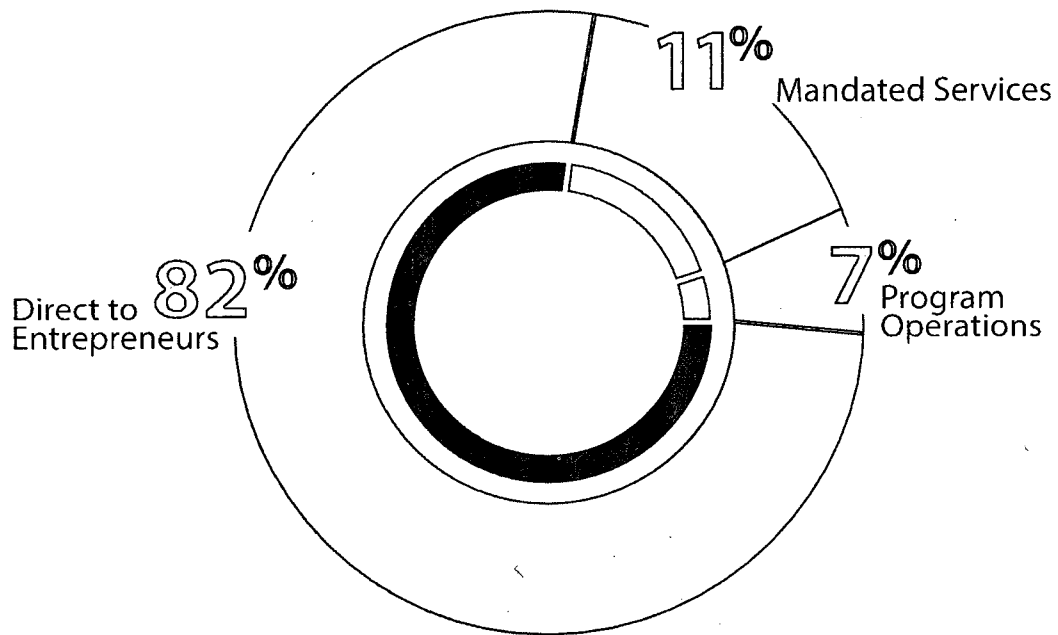
To be considered for an investment, client companies go through an extensive due diligence process and must appear before the SC Launch Board of Directors for approval. Companies receiving an SC Launch investment become "Portfolio Companies" and often receive additional capital from private venture groups.

SC Launch companies must reside in South Carolina, and the program may assist more established technology companies in their relocation to the state. Some SC Launch companies take advantage of SCRA-operated Innovation Centers throughout the state that offer state-of-the-art lab space and areas for collaborative research.

**In 2006, SCRA invested
\$12 million of its retained
earnings to form SC Launch
and the Innovation Centers.**

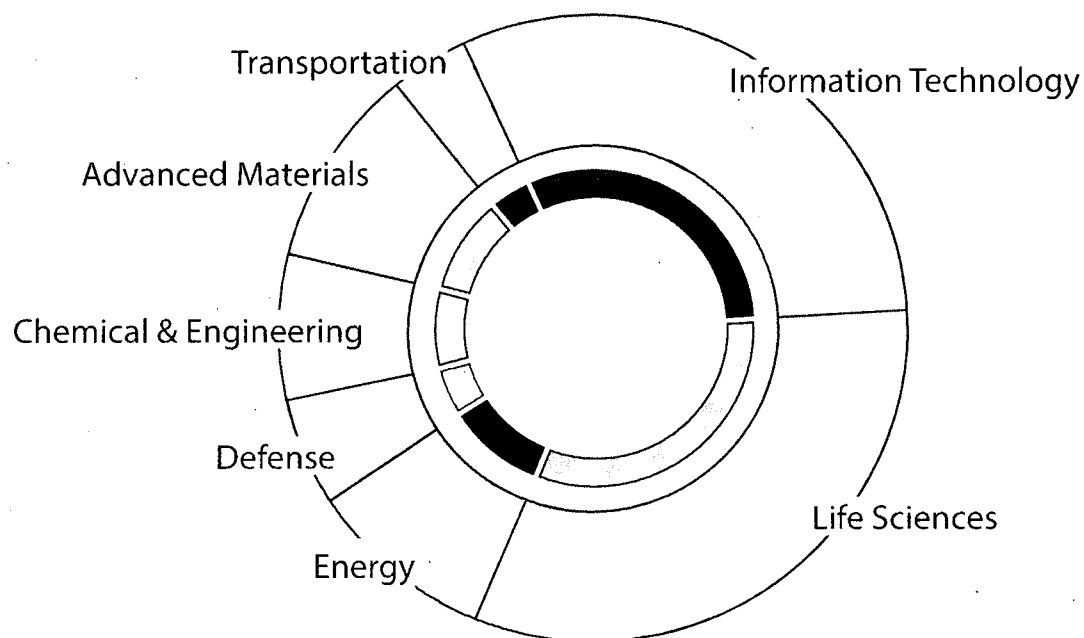
Sources and Uses of Funds





Judicious Investments

Program operations are efficient and lean so that the majority of the Industry Partnership Fund is invested in support of entrepreneurial companies.



Focused Investments

Investments are aligned with the focus areas in South Carolina's universities, industry and emerging technology clusters.



Client Companies

Once accepted into the SC Launch Program, a company becomes a Client Company and has full access to program benefits. These include: our Resource Partner Network of business service experts, company mentoring, networking opportunities and possible funding for qualified companies.



Region: Coastal

Industry: Information Technology

SC Launch company since: 2014

It all started as an idea. Vickie Waller, Founder and CEO of the company, said, "I'm married to a boat captain, and I could see how difficult it was to manage everything." Vickie knew she had an opportunity. She formed EZ Waves and began to build the company.

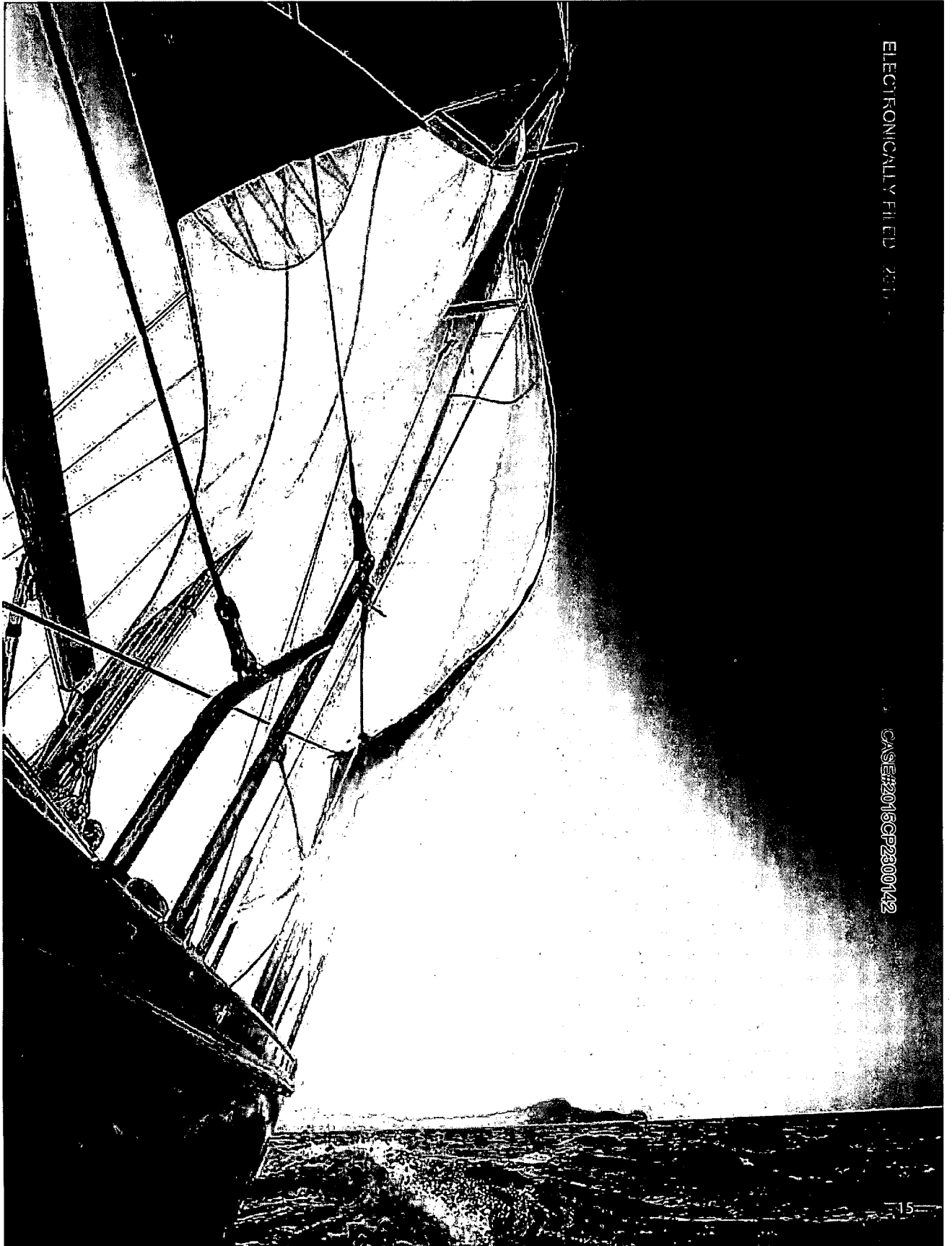
EZ Waves is a software as a service company that provides a comprehensive, online booking and reservation system for boat charters and excursions. Consumers can book boating trips in real-time, similar to booking an airline ticket online, using the company's proprietary, interactive scheduling software. The software provides captains the ability to manage their businesses with customized web sites, real-time schedulers, financial reporting tools, credit card processing abilities and full mobile capabilities.

What began as an idea was built with persistence. The company now has 12 employees and is looking at new market opportunities.

"It's been quite a ride," said Waller. "We're thrilled to be a part of the SC Launch program and to do business in South Carolina. I'm looking forward to the next chapter."

"We're offering something unique. With the strong tourism market and business community here, we can't imagine anywhere better than Charleston, South Carolina to call our home."





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SBIR/STTR matching grant
awards since 2006

Grant Matches

The SC Launch Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Phase I Matching Grant Program is designed to award matching funds to for-profit, South Carolina-based companies in the SC Launch program. We are one of only a handful of states that offer such a program to promising start-up companies.



Region: Upstate

Industry: Life Sciences

SC Launch Company since: 2012

Founded in 2009, NUBAD is a drug discovery company devoted to identifying therapeutic agents that target nucleic acids. The company's technologies and probes assist discovery of DNA and RNA-targeted drugs. Their technology assays could significantly lower the time for performing initial screening of compounds- helping doctors and researchers to find better therapeutics faster.

Originally founded on Clemson University developed technology, NUBAD opened a lab at the Greenville Hospital System's Institute for Translational Oncology Research (ITOR) facility in 2011. The company was accepted to the SC Launch program in 2012 and has received Small Business Technology Transfer matching funds from the SC Launch program.

"Having the support of SC Launch and other important resources in South Carolina, like Clemson University and ITO, has helped us to move NUBAD forward," said company Founder Dev Arya. "We are working to prevent disease, advance medicine and improve people's lives. We're glad to do that here in South Carolina."



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Region: Coastal

Industry: Life Sciences

SC Launch Company since: 2014

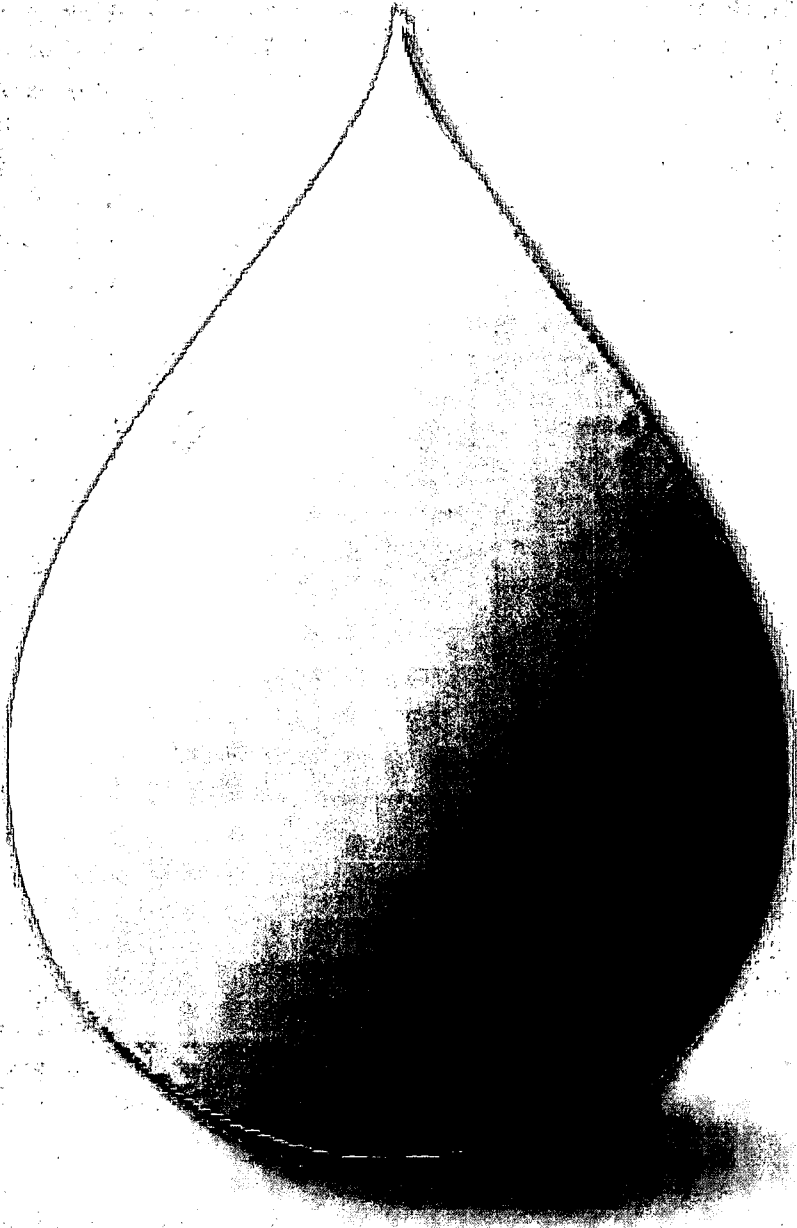
Incorporated in 2012 in Pennsylvania, Leukogene Therapeutics Inc. is an oncology drug discovery and development company whose mission is to develop the next generation of treatments for patients with incurable blood cancers like multiple myeloma. The company relocated to Charleston, South Carolina in 2014, where scientific Founder Nathan Dolloff is on staff at the Medical University of South Carolina.

Leukogene joined the SC Launch program in September 2014 and has received Small Business Innovation Research matching funds and mentoring from the program.

"South Carolina offers many opportunities to companies looking to conduct world-class cancer research and innovation. We were drawn to the state for this reason and the wonderful quality of life offered in the Charleston area" said Leukogene Therapeutics Founder Nathan Dolloff. "Multiple myeloma remains a significant health burden, particularly in the state of South Carolina, and the goal of Leukogene is to provide new and better treatment options for these patients toward the ultimate goal of curing this disease."

"At Leukogene, we're developing the next generation of therapeutics for blood cancers. When looking to move from Pennsylvania to South Carolina, the support and available resources for the company were part of those considerations. We're delighted to be a part of the SC Launch program and to have their support."







Portfolio Companies

Portfolio Companies are Client Companies that have received an equity investment from SC Launch. Companies must pass a rigorous qualification process and board approval to receive SC Launch funding.



Region: Upstate

Industry: Information Technology

SC Launch company since: 2014

"The most overlooked learning style of kids is the kinesthetic learner- those that want to move as they learn," said ActivEd Founder and CEO Julian Reed. "I was one of those kids. I learned through engaging my content."

Founded by Furman University professor of health sciences Julian Reed, ActivEd is an educational software company aimed at giving teachers interactive lessons that incorporate movement into learning for pre-K through second grade students. ActivEd cites 15 years of research examining the connection between movement and academic achievement, cognitive ability and health.

The company joined the SC Launch program in 2014 and received mentoring and support services as a client company. In October of 2014, the company received a "big check" investment.

"At ActivEd, we believe learning is physical and research is clear. Kids who move more, perform better academically," said Reed. "Having the support of SC Launch to move ActivEd forward is helping us to expand our software and reach for South Carolinians and children everywhere."

"This is more than just a business opportunity to me," said Furman University Professor and ActivEd Founder Julian Reed. "I was one of those kids that learned through movement and engaging with content. We appreciate the support of SC Launch as we bring ActivEd to classrooms and help children to learn in a fun, healthy way."

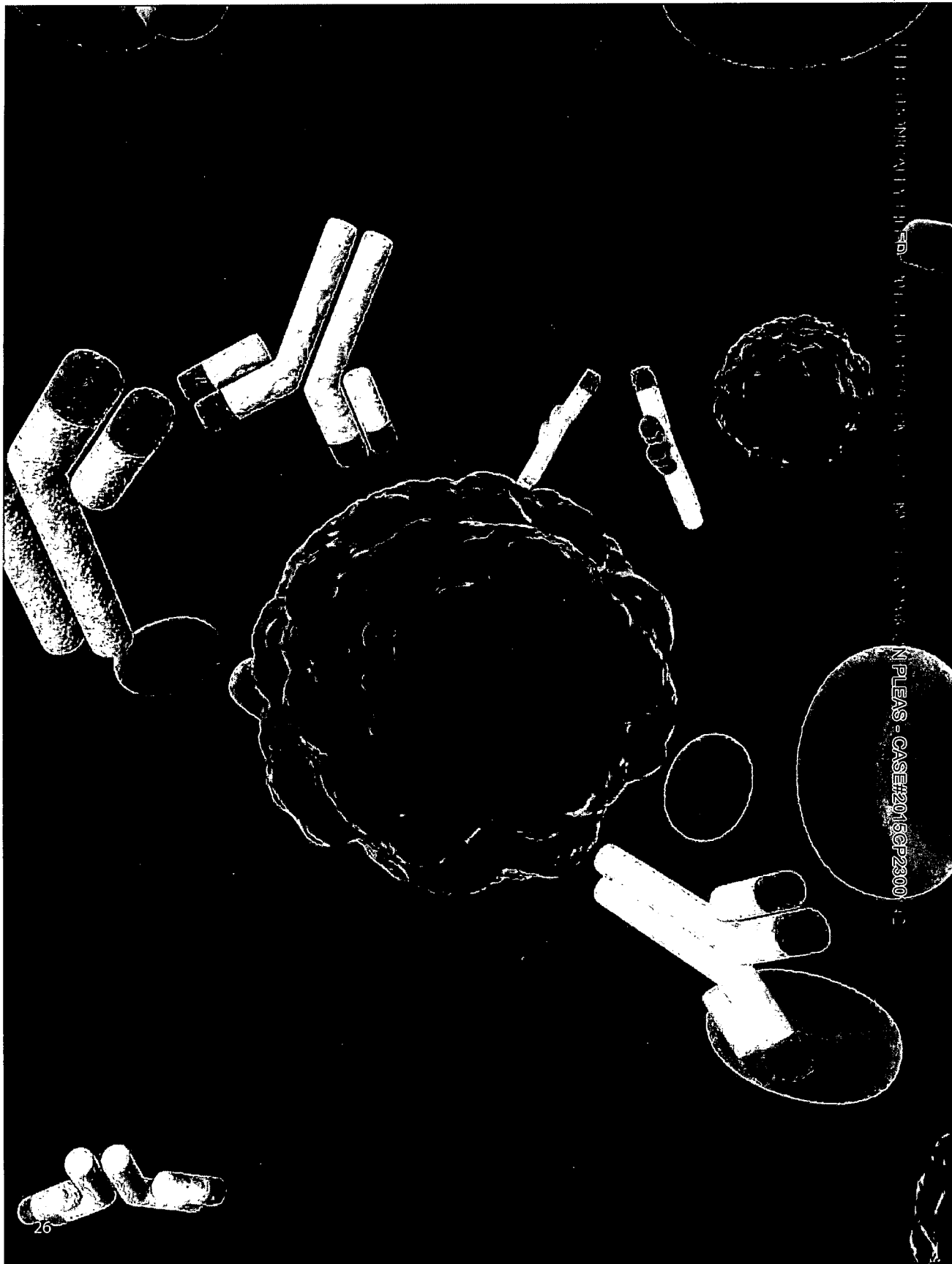


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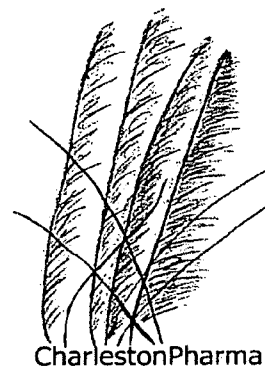
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Region: Coastal

Industry: Life Sciences

SC Launch company since: 2010

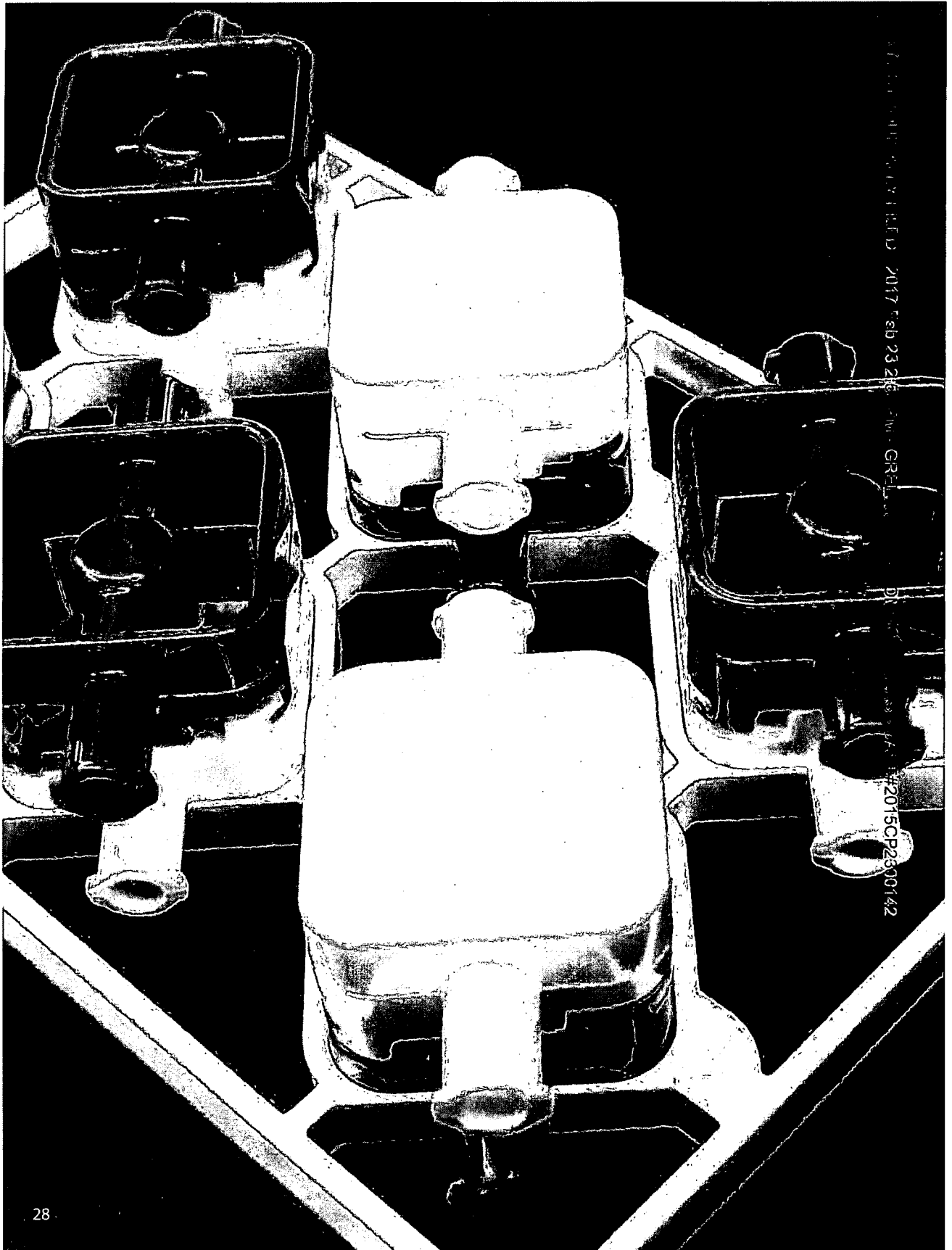
CharlestonPharma is developing innovative therapeutic antibodies to a target found only on cancer cells and working on a related diagnostic test for cancer patients and healthcare providers. Based on technology from the Medical University of South Carolina (MUSC), the company's research is done in its laboratories located at the SCRA MUSC Innovation Center in Charleston, and is designed to establish preclinical efficacy and preliminary safety of these antibodies.

Part of the SC Launch program since October 2010, CharlestonPharma has received a grant and three rounds of investment from the program. The most recent round of investment is to expand recombinant production efforts, explore antibody-drug conjugates and perform additional animal efficacy studies.

"We have dedicated ourselves to finding better therapeutic and diagnostic options for cancer patients and healthcare providers," said CEO Brad Goodwin. "SC Launch has been an instrumental part of our success as we move these innovations in oncology forward."

"We're delighted to have resources such as the Innovation Center and the SC Launch program here. We are committed to this community. So much so that we put Charleston in the company name. We're glad to be a part of South Carolina's technology-based economy."





Region: Upstate

Industry: Life Sciences

SC Launch company since: 2007

It all began as a Clemson University biomedical engineering program thesis. Could cells be grown in a standardized method to recreate human tissue and its behavior? Then, as the idea matured, a second question - could those cells predict a patient-specific response to cancer treatments? Realizing that ideas in this space had potential in the commercial marketplace, two entrepreneurial graduate students took this research, which eventually became a Clemson-patented technology, licensed it and created upstate company KIYATEC, Inc. in 2005. Accepted as one of the first companies into the SC Launch program in 2007, KIYATEC received non return-based funding in March of 2007 and two rounds of SC Launch investment funding in 2008 and 2009.

Today, KIYATEC's business model is to accurately predict patients' responses to drug treatment without ever exposing actual patients to drugs. The company recreates tumor tissues - using the patient's own living cells - and uses them to test different combinations of cancer-treating drugs to see which has the best response. This can better assist oncologists and ultimately provide better patient outcomes.

In 2011, KIYATEC moved to a lab inside

Greenville Health System's Institute for Translational Oncology Research, enabling them to more easily test and develop their products. SC Launch continued to support the company, providing two additional rounds of follow-on investment funding.

In 2014 company received a \$1.975 million National Cancer Institute contract to expand their 3D breast cancer model to address cancer's interaction with the patient's immune system and blood supply. And in 2015, KIYATEC received a second \$1.725M contract, also from the National Cancer Institute, to tackle lung cancer by using "cancer stem cells." These awards will enable the company to broaden its technology platform beyond its original use in primary ovarian cancer into breast cancer, glioblastoma multiforme (a type of brain cancer with a 5 year survival rate that is less than 10 percent) and lung cancer, also one of the deadliest cancer diagnoses. The funded contracts have the potential to radically change the future of cancer patient care. KIYATEC currently has 11 full-time employees and hopes to add 7 more in the upcoming year.

"KIYATEC is making a difference in the way we treat cancer. We are grateful to have had continual support from SC Launch that enables us further our research and commercialization."





Region: Coastal

Industry: Information Technology

SC Launch company since: 2014

Good Done Great began around a kitchen table in 2008 as a small company with the idea of changing giving to make the good that companies do great. The company uses a cloud-based software to aid corporations and individuals with their charitable giving. The technology gives companies tools to connect and process donations more quickly and efficiently. Good Done Great became an SC Launch company this year and received an investment in June, which was used to expand operations.

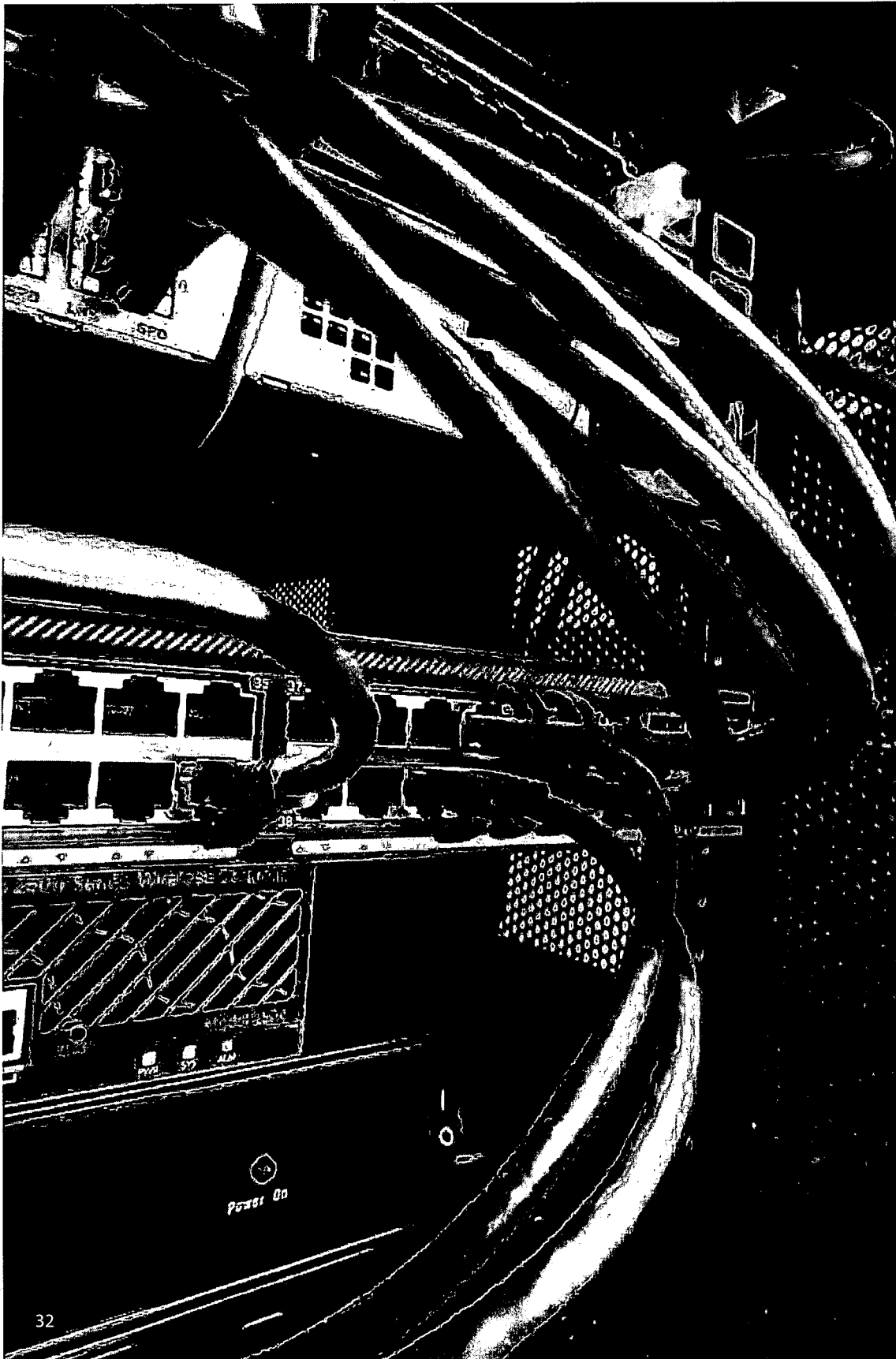
Good Done Great has experienced a period of accelerated growth and now works with some of the biggest, most well-known brands both in the United States and internationally, whose 2.5 million employees give to over 60,000 non-profits throughout the world. Employees can give to any charity in any country in any currency, which creates an "ecosystem of giving." The company currently has 64 full time employees and plans to hire around 50 more in the upcoming year.

"The SC Launch program has helped us to grow at a rapid pace, expanding our operations in South Carolina. The work we are doing is truly making a difference, and SC Launch has helped make that possible."





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Region: Upstate

Industry: Information Technology

SC Launch company since: 2014

Servosity CEO and Founder, Damien Stevens, knew there was a real need to protect IT data through recovery - making disaster recovery systems easy to use. He was right - what was once a side project became a company in 2005. Servosity delivers mission-critical disaster recovery as a service to managed service providers and IT resellers. During a disaster recovery situation, the technology allows for streaming of operating systems, so information is immediately received with very little wait time for downloads.

As the company grew, they moved to the NEXT Innovation Center, a Greenville Chamber program that supports knowledge-based businesses in the Upstate, in 2009 and soon expanded into a larger space to accommodate their growth this year.

Servosity became an SC Launch company in 2014 and received an investment in June of the following year. They have also received support from Michelin and the South Carolina Department of Commerce. SC Launch funds were used to expand operations and add jobs - Servosity's average earnings are \$80,000 and some positions are significantly higher; more than double the average prevailing wage in South Carolina. High-tech jobs include: software developers, system administrators, support engineers and sales.

"We are thrilled to be part of the SC Launch program - not only are we creating jobs in the high-tech economy, we are creating meaningful, high paying positions with nearly unlimited growth potential for employees."





Landing Parties

Landing Parties are companies that relocate and establish operations within South Carolina. These companies join the SC Launch program as a Client Company and are eligible for all program benefits and resources.



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Region: Midlands

Industry: Information Technology

SC Launch company since: 2011

To some, it seemed like Pandoodle's CEO and founder, Dirk Brown, took a big risk when he moved his company from Silicon Valley to Columbia in 2011. To him, it was the right move for the company. Looking for financial resources and infrastructure-support resources, he thought South Carolina would be a good fit, and he was right.

Pandoodle is a computer vision, machine learning and big data company that specializes in monetizing images and video. They have created a SaaS platform for publishers that automates the analysis and dynamic insertion of branded content, providing advertisers and publishers with seamless, personalized branding, in real-time; in any video or photo. The company's patented technologies and production systems provide turn-key setup and delivery of animation-based products that allow users to include their own personal information, such as an avatar, into a client's custom online and mobile platforms.

SC Launch made an initial investment in 2011, shortly after the company was accepted into the program. Additional investments followed in 2012 and in March of 2015. When it comes to entrepreneurship, Brown knows what he's doing: he is a professor at the University of South Carolina and serves as Director of the Faber Entrepreneurial Center at the university's Darla Moore School of Business.

"Pandoodle is excited to continue our growth in South Carolina. Our unique software has the potential to revolutionize brand strategy through advertising. We are grateful for SC Launch's support and the access to capital they have provided throughout the years."





Positive Exits

SC Launch's mission is to serve technology-based start-ups, fostering their growth as they reach new benchmarks. Eventually, companies reach the next stages of growth in a company's life cycle. We celebrate these achievements and enjoy seeing our SC Launch companies meet new milestones.



Region: Upstate

Industry: Life Sciences

SC Launch company since: 2007

Vascular surgeon Dr. David Cull believed there was a major opportunity to address the vascular access complications of End Stage Renal Disease patients. He invented a device that could offer significant relief to dialysis patients, and with the help of CEO Steve Johnson, CreatiVasc was created to commercialize this new technology. The device, called the Hemoaccess Valve System®, allows blood flow to a dialysis graft to be selectively turned on for dialysis, then turned off afterward, restoring normal circulation between dialysis treatments. Currently, patients with dialysis grafts universally suffer a high rate of complications that frequently require surgical intervention.

SC Launch accepted the company into the program in 2007 and made an investment later that year. CreatiVasc received an additional round of SC Launch investment in 2010. Not long after, the Food and Drug Administration selected the company as one of three in the U.S. to be included in its Innovation Pathway program, designed to accelerate important breakthrough technologies through the regulatory approval process without compromising patient safety. Clinical trials at Johns Hopkins Medicine resulted, taking the device to the next level.

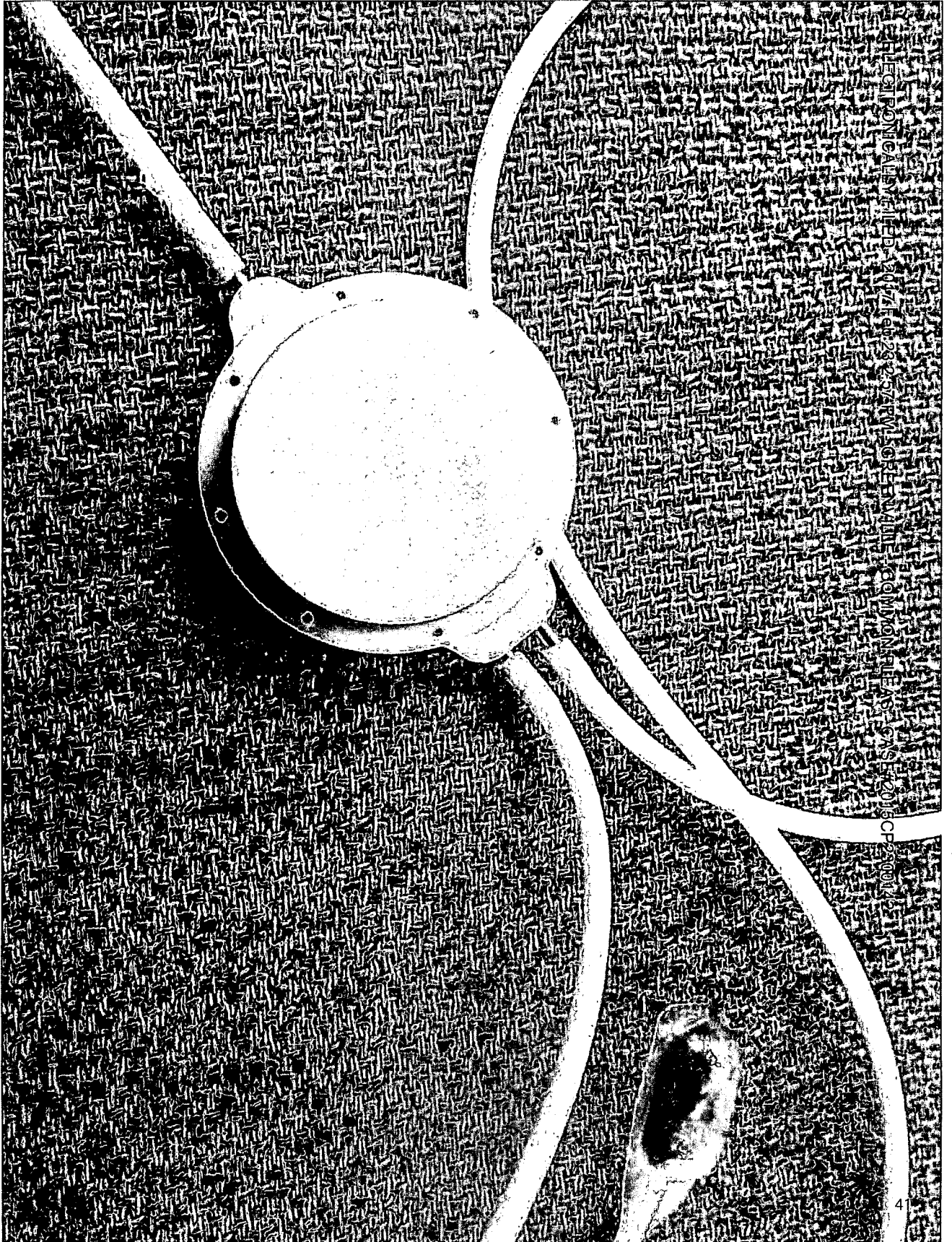
In 2013, SC Launch made another investment into the company, and Brookhaven Medical followed suit, but with a larger, \$5 million

investment. With those infusions, CreatiVasc is now completing development of the next generation Hemoaccess Valve System® which replaces needle activation of the system with a no-needle magnetic activation which could be a platform technology for a variety of clinical applications. This technology, along with others that CreatiVasc and Brookhaven are looking to license, focuses on maturing additional devices that reduce or alleviate problems that increase medical costs and mortality rates for dialysis patients.

Earlier this year, Brookhaven Medical acquired CreatiVasc, and as a result, the company became a graduate of the SC Launch program, repaying their loans in exchange for equity. Today, CreatiVasc remains in Greenville, with Steve Johnson at the helm as CreatiVasc CEO and President/COO of Brookhaven Medical. They are now working with FDA on expanded human clinical trials for the Hemoaccess Valve System®, which is expected to enter the market early in 2017.

As CreatiVasc CEO Steve Johnson said, "SCRA and SC Launch recognize that capital is the fuel that drives our economic engine. Without this program, many companies, including CreatiVasc, wouldn't exist. Our company is changing the lives of End Stage Renal Disease patients, bringing technology to a field that has seen little innovation in over 30 years, and we are grateful that the support of SC Launch is helping change the world around us."





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\$12 million

retained earnings invested to form SC Launch and the Innovation Centers

313

technology-based companies in South Carolina
have been funded since SC Launch started in 2006

158

companies currently receiving
support services

\$362,700,000

In follow-on capital secured by SC Launch portfolio companies

\$69,000

is the average salary of the jobs created

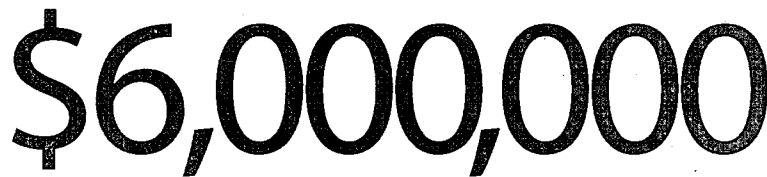
2015



SBIR/STTR matching grants awarded

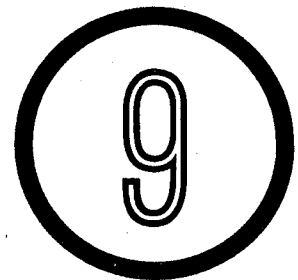


directly invested into the
top start-ups in the state



dollars in annual, tax-creditable
private contributions to the
Industry Partnership Fund
fuels SC Launch

12 exit events from 2006-2015 with **22%**
internal rate of return. Each and every dollar generated by
exit events is reinvested in tech-based startups.



national and international
economic development awards

SC Launch Board



Larry Blackwell



Ernie Csiszar



Judith Davis



Peter Dunphy



Andrea Marshall



John Warner



Joe Wischerath

SC Launch Leadership



From Left: Julia Linton, Derek Willis, Marty Ettlemeyer, Ambrose Schwallie, Greg Hillman, Greg Clark, Angela Long and Tiffany DuPree.

Resource Partners

Accounting

Bauknight Pietras & Stormer, P.A.
Elliott Davis

Banking

BB&T
Square
Wells Fargo Bank, NA

Business Services

Cedar Ventures
Ceterus Inc.
HS Diversified Solutions, LLC,
Integrity Professionals, LLC
Knowledge Capital Group
Newport Board Group
Supporting Strategies

Engineering

Flextronics
UEC Electronics, LLC
Vetronix

Human Resources

Clarke & Company Benefits, LLC
Green Door
Corporate Benefits, Inc.
KeenanSuggs
The Kidder Group, Inc.
McPherson, Berry & Associates, Inc.
Smart Work | Network, Inc.
Snelling

Information Technology

CSASS
Cyberwoven
HillSouth
Immedion
ProActive Technology
PST
VC3

Insurance/Risk Management

Clarke & Company Benefits, LLC
Corporate Benefits, Inc.
KeenanSuggs
Neace Lukens

Legal

Counts & Huger
Dority & Manning
entrepreneurs law group
Haynsworth Sinkler Boyd, P.A.
McNair Law Firm
Attorney Michael D. Layman
Monahan & Moses, LLC
Nelson Mullins Riley & Scarborough
Nexsen Pruet
Ogletree Deakins
Rogers Townsend & Thomas, PC
Thrivelp
Willcox, Buyck & Williams, P.A
Womble Carlyle Sandridge & Rice
Wyche Burgess Freeman & Parham, P.A.

Sales and Marketing

Byrum Innovation Group
CarterTodd & Associates
Chernoff Newman
Dynamic Exhibits
ECI
Gil Shuler Graphic Design, Inc.
GrowthSpring Group
JC Rose & Associates
Mad Monkey, Inc.
Patrick Marketing & Communications, Inc.
Post No Bills, Inc.
Silicon Harbor Communications
Smoak Public Relations
Strategic Marketing International
StrategicPartner
Trevelino/Keller Communications
VantagePoint

SBIR/STTR Assistance

Nimbus Technologies

Other

Delegge Medical
Dilks-Simone Enterprises, Inc.
SCBIO
South Carolina Chamber of Commerce
South Carolina Manufacturing Extension Partnership



scra.org

Exhibit B

FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made as of the 14th day of April, 2011, by and between SC LAUNCH!, INC., a South Carolina nonprofit corporation ("SC Launch") with an office at 1000 Catawba Street, Columbia, South Carolina 29201, and DD Dannar, LLC, (the "Company"), a limited liability company under the laws of the state indicated on Schedule I (the "State of Organization"), with an office at the address set forth on Schedule I.

WITNESSETH

WHEREAS, the Company is engaged in the business described on Schedule I (the "Company Business") and has need of capital financing to sustain and expand the Company Business; and

WHEREAS, SC Launch has been incorporated exclusively for scientific, educational, charitable and other public purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and to support the mission of the South Carolina Research Authority under South Carolina Code § 13-17-87 to establish research innovation centers and provide financing to qualified companies; and

WHEREAS, the Company has been admitted as a qualified company to one of SC Launch's centers and desires for SC Launch to provide capital financing to the Company in accordance with the terms and conditions of this Agreement, and SC Launch has approved the Company to receive such financing.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and SC Launch agree as follows:

ARTICLE I
THE SECURITIES

1.1 Note. The Company agrees to issue to SC Launch a promissory note in the form attached hereto as Exhibit A (the "Note") in the face amount set forth on Schedule I; and SC Launch agrees to make an initial advance (an "Advance") to the Company under the Note in the amount set forth on Schedule I, and SC Launch may in its sole discretion in the future make additional Advances under the Note, any of which may be made in cash or in consideration of cancellation by SC Launch of the principal and interest payable by the Company to SC Launch under existing indebtedness, if any, or any combination thereof. The Company further agrees to use the initial Advance only for the uses set forth on Schedule I, and to use any future Advances only for any uses specified by SC Launch at the time of the Advance. This Agreement, the Note and all other documents and instruments executed by the Company which may be reasonably required by SC Launch are hereinafter sometimes referred to collectively as the "Financing Documents."

1.2 Possible conversion to equity. Upon a conversion of the Company into a corporation and at the request of SC Launch, the Company agrees to negotiate in good faith with SC Launch over terms by which the principal and interest outstanding under the Note will be convertible into preferred stock of the Company (any such stock, together with the Note, are hereafter referred to as the "Securities") with the basis for such negotiations primarily to be the terms under which the Company has issued preferred stock, or a similar equity interest, to a non-related third party in an arms length transaction and within a reasonable time period prior to the conversion or, if no such third party issuance has occurred then the basis of the negotiations shall be the terms under which SC Launch provides financing to corporations at the time of the conversion.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

2.1 Complete disclosure. In order to induce SC Launch to enter into and execute this Agreement and to make the initial Advance and any future Advances under the Note, the Company represents and warrants to SC Launch, as of the date hereof and as of any future date on which the Company accepts an Advance from SC Launch, that no representation or warranty of the Company contained in this Agreement or any of the Financing Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument, document or communication furnished to SC Launch by or on behalf of the Company, taking into consideration the total mix of information made available, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

2.2 Survival. All warranties and representations of the Company contained herein shall survive the execution of this Agreement and the issuance of the Note and any Advances thereunder.

ARTICLE III COVENANTS OF THE COMPANY

3.1 Affirmative covenants. The Company will at all times while any of the Securities are outstanding:

A. Financial and business information. Deliver the following to SC Launch:

(i) Quarterly statements. As soon as practicable, and in any event within sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year of the Company, balance sheets, statements of income and statements of cash flows of the Company as of the close of such quarter and covering operations for such quarter and for the portion of the Company's fiscal year ending on the last day of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles in the United States, consistently applied from period to period and within each period ("GAAP"), subject to year-end adjustments.

(ii) Annual statements. As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, duplicate copies of:

(a) Consolidated and consolidating balance sheets of the Company at the end of such year; and

(b) Statements of income, members' equity and cash flows of the Company for such year,

all in reasonable detail and prepared in accordance with GAAP and beginning with the fiscal year ended on December 31, 2012, accompanied by a review opinion of independent certified public accountants of recognized standing selected by the Company.

(iii) Correspondence with reviewing accountants. Promptly following receipt or transmission thereof, any correspondence to or from the Company's accountants in connection with any material change in the Company's financial statements or condition, or any disagreement or dispute with the accountants.

(iv) Meetings and communications. Provide SC Launch with a copy of all written notices of meetings of the governing body or the members of the Company and all materials or communications provided generally to the governing body or members, including, without limitation, forms of actions without meeting, all at the same time such notices, materials, communications or forms are provided to the governing body or members; and permit representatives of SC Launch to attend any and all meetings of the governing body or members.

(v) Requested information. With reasonable promptness, the Company shall furnish SC Launch with such other data and information as from time to time may be reasonably requested.

B. Access. Permit SC Launch and its duly authorized agents reasonable access to the Company's offices, property and assets and shall make available for audit and inspection, at any reasonable time by SC Launch, or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Company as may be reasonably requested in writing by SC Launch, where such access would not be in violation of any confidentiality or similar agreement.

C. Notices. Promptly give to SC Launch written notice of:

(i) any default or event of default under any material contractual obligation of the Company;

(ii) any litigation or similar proceeding affecting the Company; or

(iii) any event or circumstance which has had, or is reasonably likely to have, a material adverse effect on the Company or the Company Business.

D. Further assurances. Execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the other Financing Documents and all of the transactions contemplated hereby.

3.2 Negative covenants. The Company will not for so long as the Note is outstanding, without prior written consent of SC Launch, which shall not be unreasonably withheld:

A. Capital transactions and Status Changes. Enter into any merger, consolidation, share exchange, reorganization or recapitalization, or liquidate, sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired, or change its jurisdiction of organization or its legal or tax status.

B. Organizational documents. Amend, modify or change its articles of organization or operating agreement.

C. Related party transactions. Engage in transactions in which any manager, director, officer or promoter of the Company, or any member who owns more than ten percent (10%) of any class of the Company's outstanding membership interests, or any relative or spouse of any of the foregoing, or any relative of such spouse, or any entity or organization that is affiliated with or controlled by any of the foregoing, has a direct or indirect interest (a "Related Interest"), except (i) transactions for which the material facts of the transaction and the Related Interest were disclosed or known to the governing body of the Company, and a majority of the members of the governing body, who are not employees of the Company and who have no Related Interest, approved the transaction, but a transaction may not be approved by a single person; (ii) compensation paid to employees in amounts as disclosed on Schedule I; (iii) reimbursements for properly documented, ordinary and customary business expenses; or (iv) employee benefits provided generally to all employees of the Company including stock option or similar type plans and bonus or other incentive compensation plans. The term "transactions" for purposes of this provision includes, without limitation, any form of compensation, such as the grant of any option, warrant or right, or exercisable, exchangeable or convertible security, and any personal use of corporate assets or other perquisites.

3.3 Relocation.

A. Company relocation. The Company acknowledges that funds are made available to it under this Agreement in whole or in part for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina. Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee as set forth below.

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

C. Costs and fees. Should SC Launch, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of the Company's obligations under this Section 3.3, the Company will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SC LAUNCH

4.1 General representations and warranties from SC Launch. SC Launch represents and warrants to the Company as follows:

A. Investment; no resale or distribution. It is acquiring or will acquire the Securities for its own account, for investment, and not with a view towards the resale, transfer, or distribution thereof, nor with any present intention of distributing the Securities.

B. Accredited investor; residence. It is an "Accredited Investor" within the meaning of Rule 501(a) under the Securities Act of 1933, as amended. Its principal office is located within the State of South Carolina.

ARTICLE V COVENANTS OF SC LAUNCH

5.1 Compliance with securities laws. SC Launch will not, directly or indirectly, sell any of the Securities, unless such sale is made pursuant to either (i) an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws or (ii) an available exemption from the registration requirements of the Securities Act and such laws and, prior to any such sale, SC Launch provides to the Company a written opinion of legal counsel reasonably satisfactory in form and substance to the Company to the effect that the proposed sale may be effected without registration under the Securities Act and any applicable state securities laws.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of default. Each of the following shall constitute an "Event of Default", whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental authority or otherwise:

A. Payment. If the Company shall fail to pay the principal of or interest on the Note when due, and shall fail to cure such failure within five (5) business days after notice from SC Launch specifying the failure;

B. Representations and warranties. If any representation or warranty made by the Company herein shall have been materially incorrect when made;

C. Covenants and obligations. If the Company shall breach or fail to comply with any of the covenants, terms and conditions of, or any of its obligations (other than payment defaults as set forth above) under, this Agreement or any of the Financing Documents, all of which are cumulative to this Agreement and to each other, and shall fail to cure such breach or failure within thirty (30) days after notice from SC Launch specifying the default or failure; or

D. Insecurity. If while the Note is outstanding, SC Launch deems itself insecure or the prospect of payment of the Note or continued existence of the Company Business or performance of the Company's obligations is impaired for any reason whatsoever, including, but not limited to, termination of employment of any key employee, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, the Company, or entry of any judgment against the Company.

6.2 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, SC Launch may, at its option, without presentment, demand, notice of dishonor, or protest, declare the Note immediately due and payable in full. All powers and remedies given herein to SC Launch shall be cumulative and not exclusive of any other right or remedy or any other powers and remedies available to SC Launch at law or in equity, by judicial proceeding or otherwise, to enforce the performance or observance of the covenants and agreements of the Company contained in this Agreement, and no delay or omission of SC Launch to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given herein or by law to SC Launch may be exercised from time to time, and as often as may be deemed expedient, by SC Launch.

ARTICLE VII MISCELLANEOUS

7.1 Waiver. No waiver at any time of the provisions or conditions of this Agreement or of any of the other Financing Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

7.2 Severability. Unenforceability for any reason of any provision of this Agreement, or of any of the Financing Documents or other agreements between the Company and SC

Launch shall not limit the operation or validity of any other provisions of this Agreement, any of the Financing Documents or any other agreement.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by any overnight express mail service, postage or fees prepaid to the addresses set forth in the preamble to this Agreement. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

Any notice which is delivered personally in the manner provided herein is deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed by registered or certified mail in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, at the time of actual receipt. Any notice which is addressed and mailed by overnight express mail service in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the next business day following delivery of such notice to such overnight express mail service prior to such service's deadline for next day delivery.

7.4 Time of the essence. The parties hereto agree that time is of the essence to this Agreement.

7.5 Binding effect. Except as otherwise expressly provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of SC Launch and the Company, and their respective successors, transferees and assigns.

7.6 Governing law; forum. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to the conflicts or choice of law principles thereof. Any civil action arising out of or in connection with this Agreement will be instituted and maintained exclusively in the state or federal courts located within the State of South Carolina and each of the parties hereto consents to the personal jurisdiction of such courts.

7.7 Titles and captions. Titles and captions of Articles, Sections and subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns, and all of which taken together shall constitute one and the same agreement.

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the

terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

7.10 Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by the Company of all securities of the Company held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

Anthony Cuica DeRue

SC LAUNCH, INC.

By: David C. McNamara

David C. McNamara, Executive Director

Lily Herlihy
27

DD Dannar, LLC

By: Gary Dannar, President

Gary Dannar

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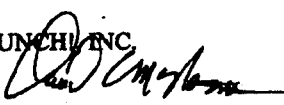
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES



SC LAUNCH, INC.

By: 

David C. McNamara, Executive Director

The Dannar Company, LLC

By: _____

Exhibit A

This Note has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold and no such transaction will be registered on the books of the Company unless: (a) the sale has been registered under said Act, or (b) the Company is presented with a written opinion of counsel in form and substance acceptable to the Company, to the effect that such registration is not required under the circumstances of such sale.

The transfer of this Note by any holder is restricted under the terms of a financing agreement between the Company and the original holder of the Note.

\$200,000

DD Dannar, LLC

Greenville, South Carolina

April 14, 2011

Promissory Note

Due April 14, 2014

DD Dannar, LLC, a South Carolina limited liability company, (the "Company"), for value received, promises to pay to SC Launch!, Inc. or its assigns, the sum of \$ 200,000, or whatever portion thereof shall be advanced by SC Launch!, Inc. to the Company, on April 14, 2014 (this date and any extended maturity date under the terms hereof are referred to hereafter as the "maturity date"), and to pay interest as set forth herein at an annual rate equal to the higher of: (a) the prime rate (as published in the Market Data section of *The Wall Street Journal*) plus two percent (2.00%), but in no event higher than ten percent (10.00%), or (b) five percent (5.00%), on the outstanding balance, compounded monthly, computed from the date of this Note until payment of the principal and all interest under this Note has been made. The initial interest rate will be based on the prime rate first published on or after the most recent January 1 or July 1, and will be adjusted biannually thereafter based on the first publication of the prime rate on or after January 1 and July 1 each year. Payment of principal and interest shall be made in lawful money of the United States of America at 1000 Catawba Street, Columbia, South Carolina 29201, or such other place or to such other party or parties as the holder of this Note may from time to time designate.

1. Financing agreement. This Note is issued under and is subject to the terms of a separate financing agreement (the "Financing Agreement") dated April 14, 2011 between the Company and SC Launch!, Inc. The terms and conditions of the Financing Agreement are incorporated into this Note by reference as if fully repeated herein.

2. Extension of maturity date; demand for payment. At any time the holder of this Note may, in its sole discretion, by notice to the Company:

- (a) extend the maturity date to any date designated by the holder; or

(b) extend the maturity date to any date designated by the holder and demand that the Company begin to immediately make monthly payments of interest to the holder beginning with the prior maturity date and continuing on the same date of each month thereafter, with such interest based on the combined principal and accrued interest balance outstanding under this Note on the prior maturity date.

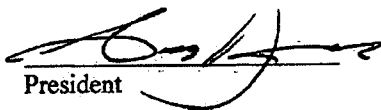
3. Payments. The Company will make any payments demanded by the holder in accordance with the preceding Section 2 above. Payments shall be applied first to any interest due and then to principal. Prepayment of principal and interest by the Company is permitted without penalty.

IN WITNESS WHEREOF, the Company has signed and sealed this Note effective as of the 14th day of April, 2011.

DD Dannar, LLC

Corporate
Seal or
Facsimile

President



Secretary



Schedule I to Financing Agreement

Name of Company: DD Dannar, LLC
 State of Organization: South Carolina
 Street address: 86 Osage Drive
 Greenville, SC 29605

Description of business: OEM Manufacturer / Assembler of the Dannar - *Mobile PowerStation* (MPS), which is a hybrid/battery-electric powered vehicle designed to reduce emissions, and is a purpose built vehicles for the government and non-governmental roadside (right-of-way) management and to which to which numerous implements may be attached including but not limited to mowers, snow blowers, sweepers, grapple buckets and blades for moving earth and loose objects, earth augers, hydraulic buckets, chain saws, crimpers, shears, impact wrenches, water pumps, asphalt planers, tree stump grinders, compactors, beach rakes, herbicide sprayers, cultivators, plows, trenchers, earth borers, pruners and clippers; electric, pneumatic, hydraulic, and mechanical power generators with wheels and tracks. with the ability to market.

Face amount of note: \$200,000

Amount of initial advance: \$200,000

Uses of initial advance:	MPS	\$ 90,000
	Consulting/ Legal	50,000
	Operations	35,000
	Product Launch Introduction	<u>25,000</u>
	Total	\$ 200,000

Existing written compensation agreements with related parties and amounts of compensation to be paid to such parties (see Section 3.2C): None

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff/Counterclaim Defendant,

v.

SC LAUNCH!, Inc.,

Defendant/Counterclaim Plaintiff.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-23-00142

AFFIDAVIT OF MARK HOUSLEY

Before me, the undersigned authority, personally appeared Mark Housley, the Affiant, who being duly sworn according to law did depose and state:

1. I, Mark Housley, am over the age of eighteen and competent to testify as to the facts and matters set forth herein. I make this affidavit upon my own personal knowledge.
2. I am employed by the South Carolina Research Authority ("SCRA") as the Upstate Regional Manager for Defendant SC Launch!, Inc. ("SC Launch").
3. In or about October of November of 2011, I was hired to work as a zone manager for the SC Launch program. My primary responsibility in that role was to respond to companies in the Upstate of South Carolina that had applied to the SC Launch program to assist them with their business development and to provide guidance for companies admitted to the SC Launch program as they were preparing to present to the SC Launch Board of Directors (the "Board"). I was also responsible for identifying potential applicants for the SC Launch program.
4. The mission of SC Launch is to strengthen the state's knowledge economy and help create high paying jobs in South Carolina. To fulfill its charter, SC Launch supports advanced technology and knowledge-based businesses with seed capital that fills gaps in funding


1/26/17

from individual investors, angel investment groups, lenders, private equity firms, and other sources. Funding from SC Launch is supplemental; it is not intended to replace funding from other sources. Returns from SC Launch investments help fund continuing SC Launch programs and investments.

5. At the time Dannar was applying for its second round of funding from SC Launch, the Executive Director of SC Launch recommended the most promising candidate companies to meet with the Board and request funding. The Executive Director, in consultation with the regional managers and operational staff, then determined which companies were invited to present.

6. After an invitation is extended, the presenting company submits written materials to the Board in advance. Principals meet with the Board and staff in executive session during a regularly scheduled meeting. After the presentation and a question and answer session, the Board deliberates and decides by resolution what, if any, funding to offer. Presenting to the Board does not guarantee funding. The Board, in its sole discretion, selects the best opportunities and directs available funding for maximum benefit to the state's knowledge economy.

7. Whenever possible, at least one member of the Board meets face to face with principals of each candidate company before the Board considers investment. The purpose is to augment the staff's analysis and due diligence, assist in determining whether the company is an appropriate candidate at the time, and help the principals prepare for their presentation to the Board. Such an in-person meeting is required, without exception, if an investment decision requiring Board approval is necessary between regularly scheduled Board meetings.

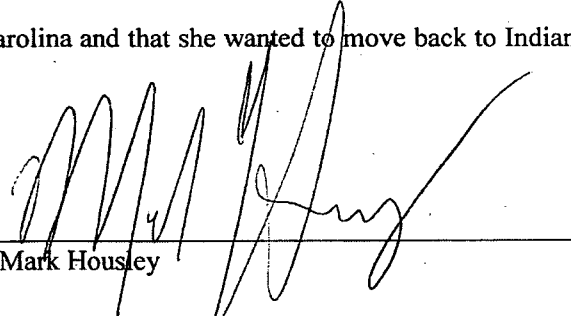
8. I was personally involved in Plaintiff DD Dannar, LLC's ("Dannar") request for a second round of funding in 2013. My involvement focused on preparing Dannar and its owner, Gary Dannar, for their presentation to the Board seeking an additional \$250,000 in funding. I personally spent a substantial amount of time assisting Dannar in its preparations.

9. On March 6, 2013, Mr. Dannar made his presentation to the Board. Based on my recollection, Mr. Dannar did not perform well in front of the Board. He failed to make consistent eye contact with the members of the Board and appeared disheveled.

10. Following Dannar's presentation, the Board members expressed concern about Dannar's sales forecast and the company's lack of progress since the initial round of funding in April 2011, specifically the lack of market validation and market testing for Dannar's Mobile Power Station.

11. Ultimately, the Board decided not to make an additional investment in Dannar. However, nothing precluded Dannar from applying for additional funding at a later date.

12. During my involvement with Dannar, Mr. Dannar expressed to me that his wife was not happy living in Greenville, South Carolina and that she wanted to move back to Indiana where she was from.


Mark Housley

SWORN TO and subscribed before me this
the 26th day of Jan, 2017.

Kevin M. Feenster
Notary Public for South Carolina
My commission expires: _____

My Commission Expires May 14th, 2025

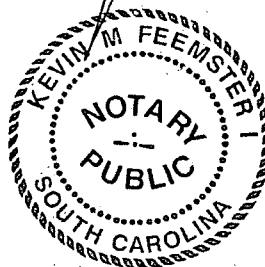


Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff,

v.

SC Launch!, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. 2015-CP-23-00142

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES**

TO: ROBERT Y. KNOWLTON, ESQ. AND JOHN G. TAMASITIS, ESQ.,
HAYNSWORTH SINKLER BOYD, P.A., PO BOX 11889, COLUMBIA, SC, 29211-
1889, ATTORNEYS FOR DEFENDANT S.C. LAUNCH!, INC.:

Pursuant to Rule 26 and Rule 33, SCRCP, Plaintiff DD Dannar, LLC ("Dannar") answers the First Interrogatories of Defendant set forth herein. Plaintiff's Second Supplemental Responses are submitted pursuant to Court Order dated May 12, 2016, directing plaintiff to respond as requested in Defendant's Second Motion to Compel, which particularly addressed Interrogatory 9 and Requests for Production 2, 3, 4, 5, 7, 10, 11 and 17.

Plaintiff objects to producing or providing information subject to the attorney work product or attorney-client privilege and does not understand the Court's Order to require the disclosure of such items.

Plaintiff reserves the right to further supplemental or amend these responses.

RESPONSES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Gary Dannar

c/o Smith Moore Leatherwood, LLP
2 West Washington Street Suite 1100
Greenville, SC 29601

Mr. Dannar is a principal in DD Dannar, LLC and is expected to offer testimony regarding the Plaintiff's claims and the facts supporting those claims. Areas of his testimony could include the genesis, development, marketing, and manufacturing of the Mobile Power Station, the beginnings of the relationship between SC Launch and DD Dannar, LLC, the company's efforts to secure financing from investors, the request that SC Launch extend a second round of financing, SC Launch's denial of the request for a second round of financing, Dannar's involvement with business leaders in Greenville who pledged \$1M if SC Launch agreed to extend an additional \$500,000 in loans, Dannar's seeking investment outside Greenville and outside South Carolina, Dannar's business dealings with economic development authorities in Delaware County, Dannar's decision to repay the loan made under the Financing Agreement between SC Launch, as well as Dannar's current operations both in South Carolina and in Greenville.

Alan Austin
412 Hidden Hills Drive
Greenville, SC 29605

Mr. Austin is the former chief financial officer for DD Dannar, LLC and is expected to offer testimony in substantially the areas as will Gary Dannar.

Greg Hillman
C/o Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Mr. Hillman is a principal in SC Launch and his testimony is known to the Defendant.

Mark Housley
 c/o Nexsen Pruet, LLC
 1230 Main Street, Suite 700
 Columbia, South Carolina 29201

Mr. Housley is a principal in SC Launch and his testimony is known to the Defendant.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claims or defenses in the case.

ANSWER: See documents produced in response to Defendant's First Requests for Production.

3. Identify all Documents that relate to any claim or defense in this case.

ANSWER: Defendant objects to this interrogatory as vague and overbroad. Subject to that objection, see documents produced in response to the Defendant's Requests for Production and documents produced in response to Plaintiff's Requests for Production.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case. For any expert witness so identified, set forth (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the fact or data considered by the witness in forming [sic] them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the study and testimony of the case.

ANSWER: Plaintiff has not selected an expert witness but reserves the right to do so and will supplement this answer at an appropriate time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See response to Interrogatory number 1.

6. Set forth the details and facts regarding Plaintiff's relocation from South Carolina. Specifically, provide a timeline of the relocation process and any agreements entered into by Plaintiff and any other entity in another state that facilitated Plaintiff's relocation from South Carolina.

ANSWER: Dannar received an offer letter from the Indiana Economic Development Corporation ("IEDC") dated March 13, 2013. In general terms, IEDC offered Dannar future tax credits in exchange for DD Dannar, LLC executing an expansion project that called for it to relocate its headquarters and assembly operations to Indiana. The parties signed the Economic Development Agreement August 8, 2014, which has been produced. Notwithstanding the execution of such Agreement, plaintiff's employees and independent contractors were located in South Carolina through 2015, and plaintiff did not hire its first Indiana employee until 2015. The plaintiff's founder and CEO continues to maintain his principal residence in South Carolina.

Referring to the definition of "relocation" in the Financing Agreement between SC Launch! And DD Dannar, the effective date of the plaintiff's "relocation" is between October 2015 and February 2016.

7. Set forth details of any agreements entered into by Plaintiff that are supporting or part of Plaintiff's relocation from South Carolina. Include the name(s) of all parties to these agreements and set forth Plaintiff's main point of contact with these entities.

ANSWER:

- 1) Loan Agreement, DD Dannar, LLC, Gary Dannar, and Delaware County, IN.
POC: Terry Murphy, Muncie Delaware County Economic Development Alliance
POC: Gary Dannar and Alan Austin, DD Dannar, LLC
- 2) DD Dannar, LLC Series 2013 Note.
POC: Terry Murphy, Muncie Delaware County Economic Development Alliance
POC: Gary Dannar and Alan Austin, DD Dannar, LLC
- 3) Economic Development Agreement.
POC: Terry Murphy, Muncie Delaware County Economic Development Alliance
POC: Gary Dannar and Alan Austin, DD Dannar, LLC
- 4) General Certificate of DD Dannar, LLC.
POC: Terry Murphy, Muncie Delaware County Economic Development Alliance
POC: Gary Dannar and Alan Austin, DD Dannar, LLC
- 5) Delaware County Redevelopment Agreement
POC: Terry Murphy, Muncie Delaware County Economic Development Alliance
POC: Gary Dannar and Alan Austin, DD Dannar, LLC

6) Lease Agreement

POC: Terry Murphy, Muncie Delaware County Economic Development Alliance

POC: Gary Dannar and Alan Austin, DD Dannar, LLC

Each of these agreements will be produced in response to Defendant's Requests for Production. Other documents may refer to or support the facts concerning plaintiff's relocation, although not specifically listed in this response.

8. Set forth any evidence Plaintiff intends to introduce which shows that the sum stipulated in the Relocation Fee provision in the Agreement is disproportion [sic] to any probable damage resulting from Plaintiff's relocation from South Carolina.

ANSWER: Plaintiff objects to disclosing what information or documents may be used at the trial of this case, as violative of the attorney work product privilege. Plaintiff further objects to this interrogatory because it presumes that Dannar carries this burden of proof when instead the burden is on the Defendant to demonstrate that the Relocation Fee is an enforceable liquidated damages provision. Notwithstanding that objection, among the evidence that Plaintiff believes is relevant are the following: 1) the Financing Agreement and the exhibit to the Financing Agreement setting forth the dedicated uses of the loan; 2) that only four people were ever employed in South Carolina, some of whom were only employed part-time; and 3) that only three people became employed by Dannar in Indiana.

9. Identify all employees hired by Plaintiff since the execution of the Agreement and set forth the current addresses of those employees. In so doing, identify which employees will remain in Plaintiff's employ after its relocation and whether these employees will be employed in South Carolina.

ANSWER: In addition to principals of the plaintiff, Michelle Armitage and Neeraj Chirmulay both from Greenville, were employed or engaged by Dannar and remained so until sometime in 2015. Neither relocated to Indiana.

10. Set forth the details of any communication that supports Plaintiff's allegation in its Original Complaint that, in January 2013, members of the Greenville County's business community pledged \$1,000,000 to Plaintiff if SC Launch made an additional advance under the Agreement and identify who made such a pledge and all witnesses to such representations.

ANSWER: At a meeting on January 24, 2013 at Dannar's Greenville location, attended by Michael Kerski, Craig Brown, Jim Bourey, Toby Stansell, Gary Dannar, and Alan Austin, Dannar learned that prominent members of Greenville's business community (some of whom were in attendance) had indeed pledged \$1M provided that SC Launch would invest an additional \$500,000 in Dannar. At the time, it seemed likely that SC Launch would make the additional investment, in part because it was Dannar's belief that SC Launch routinely participates in second rounds of investment in the start-up companies it supports.

Further, in April 2013, despite SC Launch's refusal to loan additional capital, Dannar still harbored hopes that it could persuade the Greenville community to invest the \$1M they had previously pledged. The interested thus parties convened at SC Launch's ICAR location on April 17, 2013. Attending the meeting were Tim Reed, Craig Brown, Toby Stansell, Greg Hillman, Jim Bourey, Mike Kerski, Alan Austin and others from the City of Greenville's equipment fleet management. One topic of the meeting was to determine whether Dannar could secure orders for the Mobile Power Station from the City of Greenville. Unfortunately, the City's budget was already committed, and there were no realistic prospects for orders.

11. Identify all persons and/or employees that negotiated the execution of the Agreement on behalf of Plaintiff.

ANSWER: Plaintiff objects to this interrogatory to the extent that it suggests that the Agreement was negotiated by the parties. It was not. Notwithstanding that objection, the two persons who were primarily involved in securing the loan from SC Launch on behalf of Dannar were Gary Dannar and Alan Austin.

12. Identify all evidence relating to your contention that the Relocation Fee is an "unenforceable penalty."

ANSWER: See objection set forth in response to Interrogatory No. 8 above. Plaintiff further objects to this interrogatory because it presumes that Dannar carries this burden of proof when instead the burden is on the Defendant to demonstrate that the Relocation Fee is an enforceable liquidated damages provision. Notwithstanding that objection, in addition to the response to interrogatory number 8 above, the parties did not discuss whether it represented their estimate of any damages that might arise in the event that Dannar effected a Company Relocation. Additionally, Plaintiff disputes that SC Launch has suffered any damages as the result of its relocating to Indiana. Finally, given that the Relocation Fee is in an amount precisely equaling the amount of the loan, it is clearly punitive as a matter of law.

13. Set forth a list of all entities and/or persons that Plaintiff sought financing from before and after the Agreement was executed.

ANSWER: To the best of Gary Dannar's memory, the list is as follows: Jim Thomasson; John Bell; Bob Castalone, Formerly N. American Rescue; Mark Cothran; John Helmes; Paul Clark, SVP, Certus Bank; Atlanta Start Up Lounge; Jack McBride, Contec; Larry Webb, Medbridge; Donnie & Ron Shaw, Shaw Resources; Steve Ownings, Scan Source; Mike Green; Mike Kirakadis; Sam Phillips; Todd Mitchell, Elliott Davis; Denver Client of Todd Mitchell; Jim Bourey, Elliott Davis; John Otten, Elliott Davis; Deron Stancil, Elliott Davis; Matt Dunbar, UCAN; Tee Hooper and Marty Harrison, General Wholesale; EDI Investments (Singapore based venture firm); Louis Smoak; Rick Davis; John Lewis; Ron DiFelice; Trey Jackson; Kevin Dooley, Jr.; Paul Beckwith; Robert S. Wynne; Chris Douglas, Red Wing Cap; Scott Wolfrum and Bob Welch of David A. Noyes; Jim Bernhardt with McAllister Machinery; Cambridge Capital - Jean Wojtowicz; Gannon Clark; Renn Crichlow; Jerry Lindsey; David Clark, Elevate Ventures; Douglas P. Conner, Periculum Capital Company; John R. Thornburgh; Charlie Decker; Michael Kerski; Alan Ballew; Tom Faris; Toby Stansell; Ed Marshall for Mead

Treadwell; Glenn Cleland; Lloyd & Ramona Jones; Todd Murray; Jud Fisher; Frank Conte, MD; Dan Irwin, Pres of Magna-Tec; Paul Kirkland; Juan Citron; Jeff Daniels; Phil Daniels; Bruce McIntyre and Shelly Guzman - The Dane Group; Mark Peters; Jeff Warner; Andy Townsend-Townsend Group; Frank Hoffman of Krieg DeVault; Maxwell Tang; Vivian Wong; Scott Crepeau; Robert Laikin; and Jeff Lang. See also, lists of potential inventors, contracts and persons receiving Dannar's Confidential Private Placement Memo, which have been produced.

14. Identify all of the directors and officers of Plaintiff and their respective titles since its inception.

ANSWER: Gary Dannar, CEO and board member; Alan Austin, board member; Larry Blackwell, board member; Mark Peters, board member; Glen Clelenad, board member.

15. Identify the first entity that Plaintiff made contact with to discuss relocating from South Carolina and state the date that this contact occurred.

ANSWER: Gary Dannar made multiple visits during 2012-2013 to suppliers, universities, engineering consultants, potential investors and other entities outside of South Carolina. Some of these exploratory visits are reflected in documents produced by plaintiff in this action. Some of the visits resulted in follow-up meetings between Dannar and economic development and/or chamber of commerce representatives. Similar to the initial conversations with Indiana, the discussions typically envisioned DD Dannar, LLC expanding, but not relocating. During the same time Dannar was in discussions with Indiana representatives, it was also conversing with representatives from Texas and Colorado regarding expanding operations into those two states.

16. Set forth the details concerning how Plaintiff began its relationship with SC Launch.

ANSWER: In April 2010, Gary Dannar and Alan Austin met with Ed Marshall of Indigo Ridge, to discuss his firm's ability to assist Dannar in securing investment from SC

Launch for prototype development. Mr. Marshall later made the introductions between Gary Dannar, Alan Austin, and Greg Hillman.

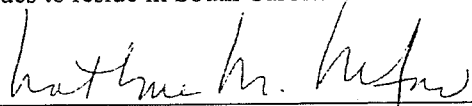
17. Identify the evidence that supports Plaintiff's contention set forth in Paragraph 20 of the Original Complaint that "SC Launch routinely makes additional loans after the Initial Advance."

ANSWER: SC Launch represented this to Dannar as a fact. Additionally, there are news stories that include examples of multiple loans.

See <http://thenerve.org/news/2011/12/19/SCRA-Lending-Legality>.

18. Set forth all facilities owned or leased by Plaintiff in South Carolina, to include the names of the owners of these properties and whether Plaintiff will continue using the properties after its relocation has been completed.

ANSWER: Plaintiff has produced copies of leases in South Carolina and Indiana. At the time of these responses, the plaintiff does not own or lease any properties in South Carolina. Its founder and principal Gary Dannar continues to reside in South Carolina.



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jason.maertens@smithmoorelaw.com

Attorneys for Plaintiff

Dated: June 14, 2016.

Exhibit D



Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, Indiana 46204

Tel: 317.232.8800
Fax: 317.232.4146
www.iedc.in.gov

March 13, 2013

Gary Dannar
CEO and Founder
DD Dannar LLC
86 Osage Drive
Greenville, SC, 29605

Project ID: 415740

Dear Gary Dannar:

The Indiana Economic Development Corporation ("IEDC") is pleased to learn that DD Dannar LLC (the "Company") is considering Delaware County as a site for its expansion ("Project"). We have been advised that the Project involves a capital investment of approximately \$8,750,000 and the creation of approximately 288 net new full-time positions for Indiana resident employees, earning an average wage of \$27.33 an hour by 2016.

Training Assistance

The IEDC will offer a grant of up to \$25,000 from the Skills Enhancement Fund for training the Company's eligible, Indiana resident employees. This flexible training program will provide partial reimbursement for a wide variety of training costs. The training grant will be for a two (2) year period and will be limited to a maximum of 50% of the Company's eligible training costs.

Economic Development for a Growing Economy Program

The IEDC will offer up to \$2,600,000 in Economic Development for a Growing Economy ("EDGE") tax credits over a 10-year period (2013-2022). The calculation is based on the creation of 288 net new full-time positions for Indiana resident employees in connection with the Project, earning an average wage of \$27.33 per hour by year 2016. In order to receive an EDGE tax credit, the Company must commit to the location and operation of the Project in Indiana for at least two (2) years after the last year in which an EDGE tax credit is claimed.

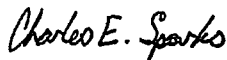
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Page 2
March 13, 2013
Project ID: 415740

The proposal set forth in this letter shall remain available for acceptance by the Company until Friday, April 19, 2013. Failure to respond by this date will result in cancellation of this offer of assistance. As we proceed forward, the base employment level will be verified upon receipt by the IEDC of the Company's employment level certification. Upon request, the Company must also provide the IEDC an update on the status of the Project. All incentives are subject to the final review and approval of the IEDC. This letter supersedes any and all previous correspondence concerning this project.

To accept this offer of incentives, please return this document with the attached acceptance letter to our project manager, Ben Bontrager. Please feel free to contact Ben at 317-233-3040 with any questions.

Sincerely,



Charles E. Sparks
Vice President

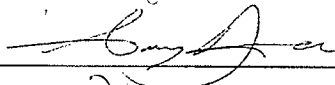
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ROA 000174

Page 3
March 13, 2013
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The Company accepts the above offer of the Indiana Economic Development Corporation and desires to work with the IEDC to confirm all application information and complete these incentives through the negotiation and execution of final incentive agreements, all in due course. The Company affirms that the IEDC incentives offered in this letter are a major factor in the Company's decision to proceed with the project as summarized herein. The undersigned represents that he or she is duly authorized to accept this offer on behalf of the Company.

DD Dannar, LLC

By: 

Printed: GARY DANNAR

Its: President

Company: DD Dannar, LLC

Date: 6-6-13

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ROA 000175

Exhibit E

LEASE AGREEMENT

among

DELAWARE COUNTY REDEVELOPMENT COMMISSION

LESSOR,

DD DANNAR, LLC,

LESSEE

And

GARY DANNAR,

GUARANTOR

Dated as of July 23, 2013

CONFIDENTIAL

ROA 000177

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and dated as of this 23 day of July, 2013, by and among the DELAWARE COUNTY REDEVELOPMENT COMMISSION (the "Lessor"), the governing body of the Delaware County Department of Redevelopment acting for and on behalf of Delaware County, Indiana, an Indiana municipal corporation, DD DANNAR, LLC, a South Carolina limited liability company (the "Lessee"), and GARY DANNAR, as personal guarantor (the "Guarantor").

WITNESSETH:

WHEREAS, the Lessor has the authority to lease to the Lessee certain real property as described in Exhibit A hereto, consisting of approximately 25,000 square feet of the former Twoson building located at 4620 West Bethel Avenue, Muncie, Indiana (the "Former Twoson Facility") (the "Leased Premises");

WHEREAS, the Lessor has determined that the lease rentals provided for in this Lease are fair and reasonable, that the execution of this Lease is necessary and will serve the public purpose of Delaware County, Indiana, and is in the best interests of its residents and will also further the redevelopment and economic development purposes and mission of the Lessor, and the Lessor has duly authorized the execution of this Lease;

THIS AGREEMENT WITNESSETH THAT:

1. Premises, Term and Warranty. The Lessor hereby leases to the Lessee the Leased Premises for a period of five years (the "Lease Term"), beginning on the date hereof, during which time the Lessee shall be responsible for an equitable share of the cost of utilities, taxes and insurance on the Former Twoson Facility. In addition, Lessee and its representatives and invitees shall be entitled to the non-exclusive use of the common areas and parking spaces located within the common areas upon or adjacent to the Leased Premises. For purposes of this Lease, "common area(s)" shall mean all areas and facilities outside the Leased Premises and within the exterior boundaries of the building or located on the land described surrounding the Leased Premises that are not leased to, or otherwise contractually committed to, other tenants and that are provided and designated by Lessor for the general use and convenience of Lessee and other tenants and their authorized representatives, employees, invitees and the general public (such as common entrances, walkways, stairways, elevators, restrooms, and lobbies).

TO HAVE AND TO HOLD the Leased Premises with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee, during the Lease Term. However, the term of this Lease will terminate at the earlier of (a) the exercise by the Lessee of the option to purchase the Leased Premises pursuant to Section 8 and the payment of the option price or (b) the Company's relocation to another site in Delaware County, any time after the third anniversary of this Lease. The Lessor hereby represents that it is possessed of the Leased Premises and the Lessor warrants and will defend the Leased Premises against all claims whatsoever not suffered or caused by the acts or omissions of the Lessee or its assigns. Lessee shall, and may peacefully have, hold, and enjoy the Leased Premises subject to the terms of this Lease and this covenant and all other covenants of Lessor shall be binding upon Lessor and its successors and assigns.

CONFIDENTIAL

ROA 000178

2. Lease Rental. (a) Fixed Rental Payments. The Lessee agrees to pay rental for the Leased Premises as follows:

- (i) During the first three years of the Lease Term, the lease rate shall be \$0 per year.
- (ii) During the next two years of the Lease Term, the annual lease rental rate payable by the Lessee to the Lessor shall be \$2.50 per square foot, triple net, payable in advance on the first day of each month in equal monthly installments.

(b) Additional Rental Payments. The Lessee shall pay as further rental in addition to the rentals paid under Section 2 (a) for the Leased Premises ("Additional Rentals") the Lessee's equitable portion of the amount of all real estate taxes and assessments levied against or on account of the Leased Premises and the amount required to reimburse the Lessor for any insurance payments made by it under Section 5. The Lessor shall pay all taxes and insurance premiums as they come due and shall bill the Lessee for its equitable share of said payments. Provided, Lessor bills Lessee at least forty (40) days prior to the day upon which such payments must be paid to avoid delinquency, then the Lessee shall make all such payments to Lessor at least ten (10) days before the last day upon which such payments must be paid to avoid delinquency. Regardless of when Lessor bills Lessee, Lessee shall reimburse Lessor for such expenses within thirty (30) days of being billed therefor. If the Lessee shall in good faith desire to contest the validity of any such tax or assessment, the Lessee shall so notify the Lessor and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the nonpayment thereof when due, the Lessee shall not be obligated to pay the contested amounts until such contests shall have been determined.

3. Cessation of Operations. If the Lessee ceases operations in the Former Twoson Building at any time during the first three years of the Lease (Other than in connection with resuming substantially similar business activities at a different location in the County), then the Lessee shall immediately thereupon transfer to the Lessor unencumbered title to all personal property purchased with the proceeds of the Loan.

4. Maintenance, Alterations and Repairs. Except as provide in Section 6 hereof, the Lessee shall be responsible for the operation, maintenance, repair and alterations of all or any portion of the Leased Premises, excluding, to the extent any of the same cost in excess of \$2,500, structural repairs and repairs to roof, unless such repairs are necessitated by, or occur as the result of, the acts, omissions and/or damage caused by Lessee. At the end of the term of this Lease, the Lessee shall deliver the Leased Premises to the Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted. Subject to compliance with all applicable signage statutes and ordinances, and subject to Lessor's prior written approval of any signage and the location thereof (which consent shall not be unreasonably withheld), Lessee may install such signage as it deems appropriate.

5. Insurance. During the full term of this Lease, the Lessee shall, at its own expense, carry combined bodily injury insurance, including accidental death, and property damage insurance with reference to the Leased Premises in an amount not less than One Million Dollars (\$1,000,000) on account of each occurrence with one or more good and responsible insurance companies. Such public liability insurance may be by blanket insurance policy or policies.

The proceeds of the public liability insurance required herein (after payment of expenses incurred in the collection of such proceeds) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds are paid. Such policies shall be for the benefit of persons having an insurable interest in the Leased Premises, shall specifically name Lessor as an insured and shall be made payable to the Lessor, the Lessee, and to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana and deposited with the Lessor. If, at any time, the Lessee fails to maintain insurance in accordance with this Section, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rentals payable by the Lessee under this Lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance.

6. Destruction of Leased Premises. If the Leased Premises or any part thereof shall be damaged by fire or other casualty, Lessee shall give prompt written notice thereof to Lessor if Lessor does not otherwise have actual knowledge thereof. In case the building shall be so damaged that substantial alteration or reconstruction of the building (substantial alterations or reconstruction costs being those which in the aggregate will cost in excess of \$100,000) shall, in Lessor's reasonable opinion, be required (whether or not the Leased Premises shall have been damaged by such casualty), Lessor may, at its option, terminate this Lease by notifying Lessee in writing of such termination within thirty (30) days after the date of such casualty. Unless Lessor properly and timely terminates this Lease pursuant to the immediately preceding sentence, Lessor shall no later than forty-five (45) days after Lessor has knowledge that the building has been damaged by fire or other casualty notify Lessee in writing of the time period measured from the date of such casualty damage, that Lessor in its good faith determination, estimates that it will take for Lessor to complete the repair, restoration or rebuilding of the building so that the building (including the Leased Premises) is returned as near as possible to the condition as existed just prior to such fire or other casualty damage (the "Lessor's Estimated Repair Period Notice"); provided, however, that Lessor shall not have any obligation whatsoever to repair, reconstruct, or restore the Leased Premises when the damage resulting from any casualty contained under this Paragraph occurs during the final twelve (12) months of the Lease Term, and Lessor or Lessee may terminate the Lease upon written notice to the other within thirty (30) days after the occurrence of the damage or destruction. If the Lessor's Estimated Repair Notice indicates that the repairs, restoration and rebuilding will take more than one hundred twenty (120) days measured from the date of the occurrence of the damage or destruction, then Lessor or Lessee shall have the option, by written notice to the other, given within fifteen (15) days of Lessee's receipt of the Lessor's Estimated Repair Notice, to terminate this Lease. If neither Lessor nor Lessee elect to terminate this Lease pursuant to the provisions of this Paragraph, then Lessor shall promptly commence and proceed with reasonable diligence and without unreasonable delay or interruption to restore the building (including the Leased Premises) to the condition as near as possible to the condition as existed just prior to such damage or destruction. In the event that Lessor shall fail to complete such repairs, restoration and rebuilding within the estimated time period set forth in Lessor's Estimated Repair Notice (as such period may be extended by delays caused by force majeure) and such failure continues uncured by Lessor for more than thirty (30) days following written notice from Lessee, then Lessee shall have the right to terminate this Lease by delivering written notice of such termination to Lessor. All amounts due by Lessee under this Lease shall abate during the time the Leased Premises are rendered

unfit or unsuitable for Lessee's use and occupancy. Notwithstanding the foregoing, Lessor shall have no obligation to expend funds to repair or restore the Leased Premises or the building in which the Leased Premises are located in excess of the cost of such repairs or restorations covered by the amount of insurance proceeds received by Lessor in connection therewith.

7. Eminent Domain. If title to or the temporary use of the Leased Premises, or any part thereof, shall be taken under the exercise or the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any net proceeds received from any award made in such eminent domain proceedings (after payment of expenses incurred in such collection) shall be paid to Lessor or the Lessee as their interests shall appear.

The Lessor shall cooperate fully with the Lessee in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Leased Premises or any part thereof and will to the extent it may lawfully do so permit the Lessee to litigate in any such proceedings in its own name or in the name and on behalf of the Lessor.

8. General Covenant. The Lessee shall not assign this Lease or mortgage, pledge or sublet the Leased Premises herein described, without the written consent of the Lessor. The Lessee shall use and maintain the Leased Premises in accordance with the laws, regulations and resolutions of the United States of America, the State of Indiana, Delaware County, and all other proper governmental authorities.

9. Renewal of Lease. The Lessee and the Lessor may, in their sole discretion, extend the term of the Lease Period subject to such terms as the Lessor and the Lessee may mutually determine.

10. Option to Purchase. The Lessor hereby grants to the Lessee the right and option, on any date following the date that is three years after the date of execution of this Lease, upon twelve (12) months' written notice to the Lessor, to purchase the Former Twoson Property, including the Leased Premises, at a price equal to the average of two appraisals. One appraiser will be selected by the Lessee and one by the Lessor. Both parties must approve the selection of the appraisers and the specific instructions, including appraisal methodology to be used, to be provided to each appraiser to prepare their respective appraisals.

Upon the exercise of the option to purchase granted herein, the Lessor will upon payment of the option price deliver, or cause to be delivered, to the Lessee documents conveying to the Lessee, all of the Lessor's title to the property being purchased, as such property then exists, subject to the following: (i) those liens and encumbrances (if any) to which title to the property was subject as of the date of this Lease; and (ii) those liens and encumbrances created by the Lessor and to the creation or suffering of which the Lessee consented, and liens for taxes or special assessments not then delinquent. The property shall be conveyed in its "as is, where is" condition by limited warranty deed. Lessee shall assume all real estate taxes assessed, or otherwise a lien against, the property.

Except during the term of this Lease (i.e., the period prior to the exercise of the option to purchase described in this Section 10 herein), Lessor has not, and will not, make any warranties or representations of any kind or character, express or implied, with respect to the Former Twoson Property, including, without limitation, any warranties or representations as to

habitability, merchantability, fitness for a particular purpose, title (other than Lessor's limited warranties set forth in the limited warranty deed), zoning, tax consequences, physical or environmental condition, operating history or projections, valuation, governmental approvals, or governmental regulations, the accuracy or completeness of the items or any other information provided by or on behalf of Lessor to Lessee or any other matter or thing regarding the Former Twoson Property. Upon the closing of the sale to Lessee, Lessor shall convey to Lessee, and Lessee shall accept, the Former Twoson Property "as is, where is, with all faults". In connection with the exercise by Lessee of the option to purchase under this Section 10 hereof, Lessee has not relied upon and will not rely upon either directly or indirectly, any representation or warranty of Lessor with respect to the Former Twoson Property except as otherwise expressly provided herein. In connection with the exercise by Lessee of the option to purchase under Section 10 hereof, Lessee will conduct such investigations of the Former Twoson Property, including but not limited to, investigations of the physical and environmental conditions thereof, as Lessee deems necessary to satisfy itself as to the condition of the Former Twoson Property and will rely solely upon same and not upon any information provided by or on behalf of Lessor. Lessee is aware that the Former Twoson Property may contain lead-based paint, asbestos, or other hazardous or toxic substances and Lessor shall not be liable for any clean-up, remediation or removal thereof.

Upon closing of the purchase option, Lessee shall assume the risk that adverse matters, including, without limitation, construction defects and adverse physical and environmental conditions, may not have been revealed by Lessee's investigations. Except during the term of this Lease (i.e., the period prior to the exercise of the option to purchase described in Section 10 herein), Lessee hereby waives, relinquishes and releases Lessor from and against, and Lessee hereby indemnifies, defends and holds Lessor harmless from and against, any and all claims, demands, causes of action (including causes of action in tort), losses, fines, penalties, damages, liens, liabilities, costs, and expenses of any kind or character, known or unknown, that Lessee might have asserted or alleged against Lessor, or that any other party may assert against Lessee and/or Lessor, at any time by reason or arising out of any construction defects, physical or environmental conditions, violation of any laws, and any other matters regarding the Former Twoson Property. This Section shall survive the closing of the transaction and shall be set forth in full in the limited warranty deed conveying the Former Twoson Property to Lessee.

In the event Lessee exercises the option to purchase the Former Twoson Property, the Lessee shall procure and pay for all surveys, title searches, abstracts, title policies, environmental audits, inspections and legal services that may be required, and shall furnish at the Lessee's expense all documentary stamps or tax payments required for the transfer of title.

Lessee shall be required to close on the purchase of the Former Twoson Property on the twelfth (12th) month anniversary of Lessor's receipt of the exercise notice, or such earlier date as Lessor and Lessee shall agree, provided, in the event Lessee exercises the option to purchase hereunder when there is less than twelve (12) months remaining on the term of this Lease, closing shall occur on or before the expiration of the term of this Lease, the failure of which shall result in the forfeiture of Lessee's right to purchase the Former Twoson Property.

Nothing contained herein shall be construed to provide that the Lessee shall be under any obligation to purchase the Leased Premises or the Former Twoson Property, or under any obligation respecting the creditors, members or security holders of the Lessor.

11. Defaults. If the Lessee shall default (a) in the payment of any rentals or other sums payable to the Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor; and such default shall continue for ten (10) days after written notice to correct such default; or (b) in the observance of any other covenant, agreement or condition hereof, and such default shall continue for ninety (90) days after written notice to correct such default; then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

12. Notices. Whenever either party shall be required to give notice to the other under this Lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at the following addresses: (a) to Lessor: Director, Delaware County Redevelopment Commission, Attention: President, Attn: Brad Bookout, 401 S. High Street, Muncie, Indiana 47305; (b) to Lessee, Attention: Gary Dannar, 4620 West Bethel Avenue, Muncie Indiana 47304, (with copy to William L. Pitman, Smith Moore Leatherwood, LLP, 300 E. McBee Ave., Suite 500, Greenville, SC 29601); (c) to Guarantor: Gary Dannar, 4620 West Bethel Avenue, Muncie Indiana 47304.

The Lessor, the Lessee and the Guarantor may by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

13. Successors or Assigns. All covenants of this Lease, whether by the Lessor or the Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

14. Environmental Condition. The Lessor shall provide the Lessee with copies of a Phase I environmental report dated not earlier than thirty (30) days prior to the date of the Lease showing the Leased Premises to be in a condition reasonably acceptable to the Lessee, which delivery will be a condition to the Company proceeding with the transactions described in this Agreement. The Lessee shall bear no responsibility for the environmental condition of the Leased Premises unless with respect to conditions directly caused by the Lessee or its agents.

15. Option to Lease Additional Space. Lessee shall have the option, at any time hereafter, provided Lessee is not then in default under its Economic Development Agreement or this Lease, and provided this Lease is still in full force and effect, to lease that certain office space containing approximately 2,732 square feet and more particularly depicted in Exhibit B attached hereto (the "Office Space") by providing Lessor no less than 12 months prior written notice of its election to lease such Office Space. In addition, the Lessee shall have the option (i) at any time hereafter but during the first three years of the Lease Term of this Lease, provided

Lessee is not then in default under its Economic Development Agreement or this Lease, and provided this Lease is still in full force and effect, to lease up to an additional 20,000 square feet (which may or may not include the Office Space described above, at the Lessee's sole discretion) in a location mutually agreed upon by Lessor and Lessee, and (ii) after the first three years of the Lease Term, provided Lessee is not then in default under its Economic Development Agreement or this Lease, and provided this Lease is still in full force and effect, to lease the remainder of the building, by providing Lessor, whether exercising under subsection (i) or (ii) above, no less than 12 months notice of its election to lease such additional space. In the event Lessee exercises any such option, the additional leased space shall be added to the Leased Premises, and thereafter, all references to the Leased Premises shall include the additional leased space. The lease of such additional leased space shall be on an "as-is, where is" basis and on the same terms and conditions contained herein, and any calculations or allocations of costs, expenses or other items (including, without limitation, any calculations of rents and/or additional rents) based upon square footage or otherwise to be equitably share among the parties shall be recalculated to reflect the increase in square footage hereunder. The term of this Lease, as to the additional leased space, shall commence on the date Lessor delivers possession thereof to Lessee.

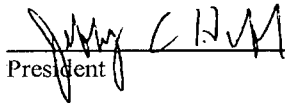
16. Memorandum of Lease. The parties hereto agree that there shall be recorded upon execution hereof a memorandum of lease summarizing the terms hereof, including in particular Lessee's option to purchase under Section 10 hereof.

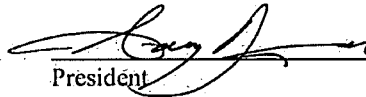
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed for and on their behalf on the date first written above.

LESSOR:

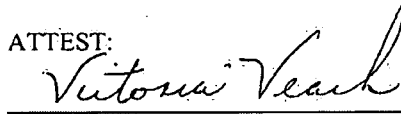
LESSEE:

DELAWARE COUNTY REDEVELOPMENT COMMISSION DD DANNAR, LLC


President


President

ATTEST:

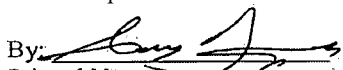

Secretary-Treasurer

ATTEST:


Secretary

GUARANTEE

Gary Dannar, of CEO DD Dannar, LLC hereby personally guarantees all of Lessee's obligations under this Lease (the "Guarantor"), subject to the limitations set forth in the Redevelopment Agreement dated July 23, 2013, by and among DD Dannar, LLC, a South Carolina limited liability company, the Guarantor, Delaware County, Indiana, and the Delaware County Redevelopment Commission.

By: 
Printed Name: GARY DANNAR
Dated: 7-23-2013

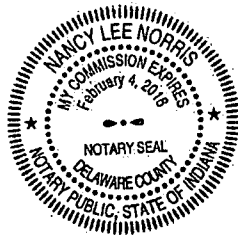
This instrument was prepared by Thomas A. Pitman, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of the Delaware County Redevelopment Commission (the "Lessor"), and acknowledged the execution of the foregoing Lease for and on behalf of the Lessor.

WITNESS my hand and notarial seal this 24 day of July, 2013.

(Seal)



Nancy Lee Norris
(Written Signature)
Nancy Lee Norris
(Printed Signature)
Notary Public

My Commission expires:

2/4/18

My county of residence is: ✓

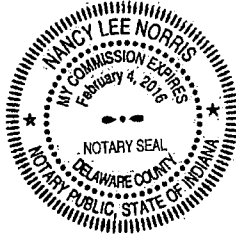
Delaware

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared _____ and _____, personally known to be the President and Secretary, respectively, of DD Dannar, LLC (the "Lessee"), and acknowledged the execution of the foregoing Lease for and on behalf of the Lessee.

WITNESS my hand and notarial seal this 24 day of July, 2013.

(Seal)



Nancy Lee Norris
(Written Signature)

Nancy Lee Norris
(Printed Signature)
Notary Public

My Commission expires:

2/4/16

My county of residence is:

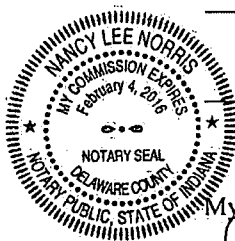
Delaware

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for this City and State, personally appeared Gary Danner, and acknowledged the execution of the foregoing Guarantee.

WITNESS my hand and notarial seal this 27 day of July, 2013.

(Seal)



Nancy Lee Norris
(Written Signature)

Nancy Lee Norris
(Printed Signature)
Notary Public

My Commission expires:

2/4/16

My county of residence is:

Delaware

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

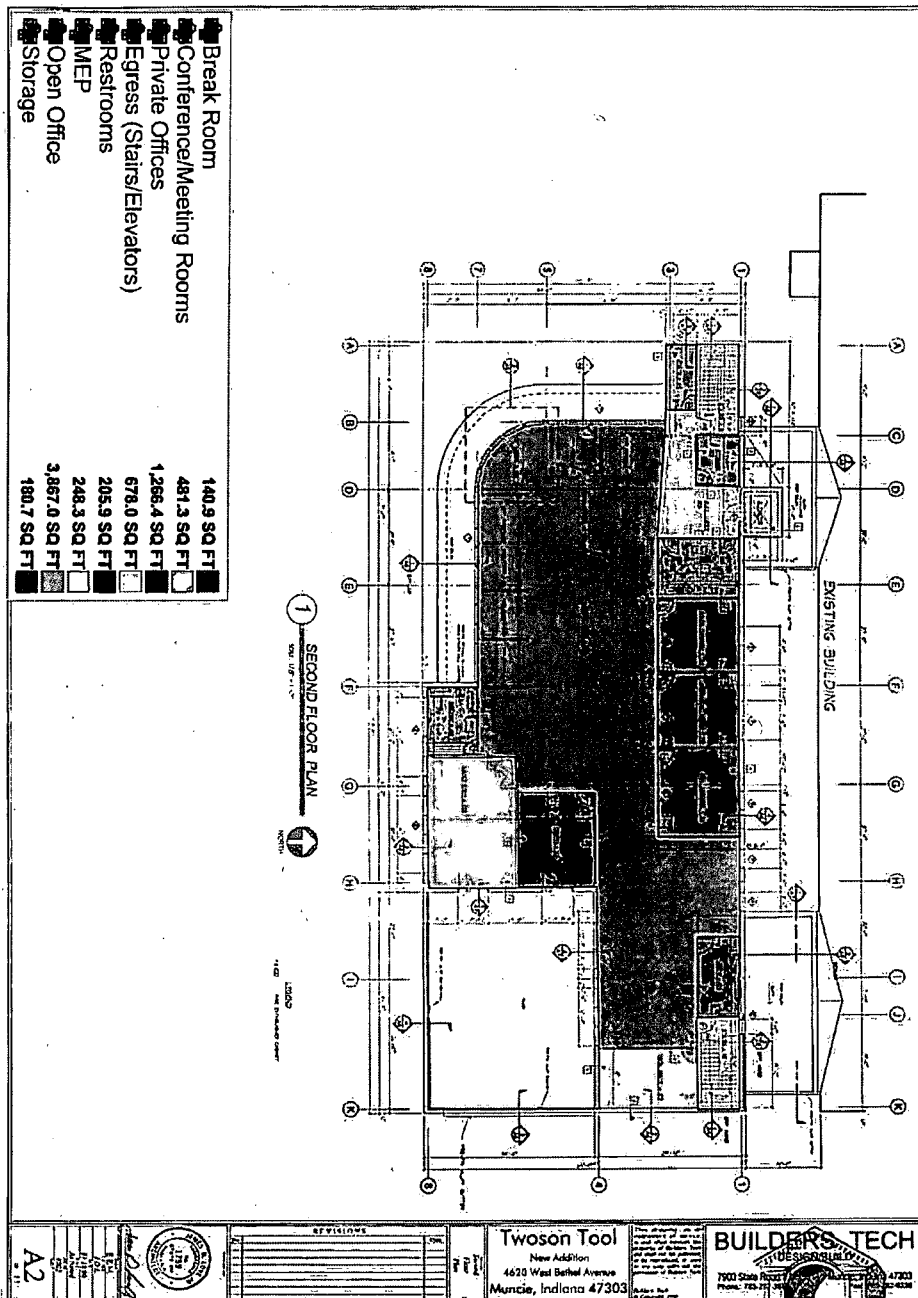
(See attached)

A-1

CONFIDENTIAL

ROA 000189

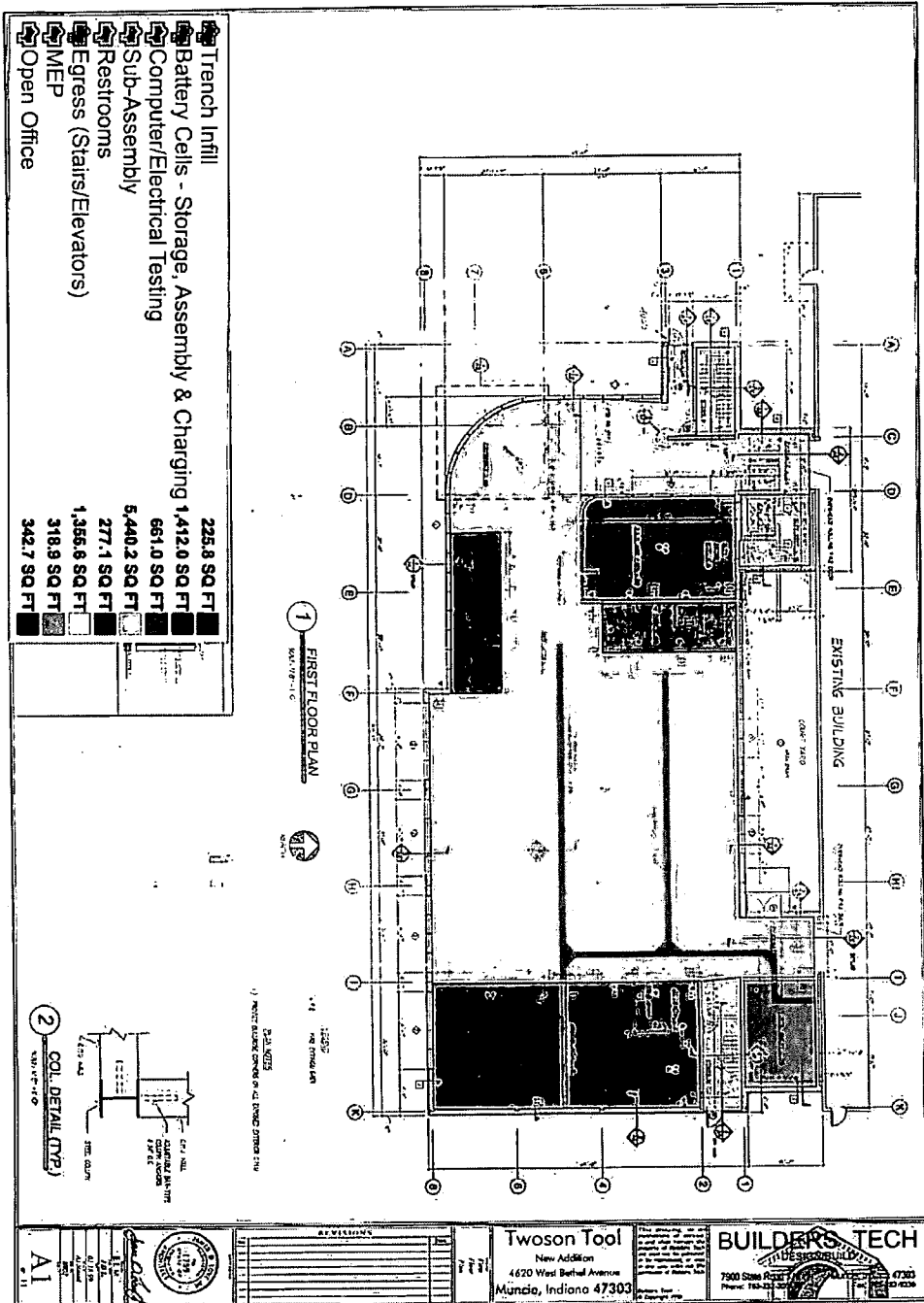
Exhibit C - Second Floor Project Areas



CONFIDENTIAL

ROA 000190

Exhibit B - First Floor Project Areas



CONFIDENTIAL

ROA 000191

EXHIBIT B
DEPICTION OF OFFICE SPACE

INDS01 1405511v3

B-1

CONFIDENTIAL

ROA 000192

Exhibit B - First Floor Project Areas

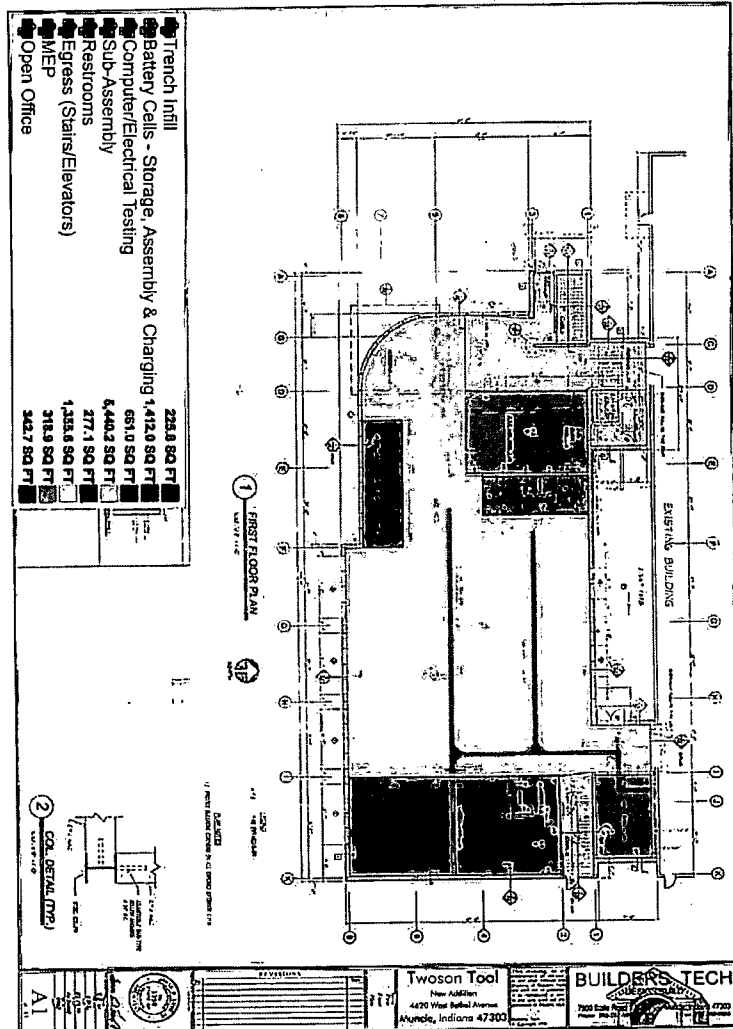


Exhibit F

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

DD DANNAR, LLC,

Plaintiff,

vs.

CASE NO. 2015-CP-23-00142

SC LAUNCH!, INC.,

Defendant.

DEPOSITION OF: MARK HOUSLEY

DATE: December 9, 2016

TIME: 1:08 PM

LOCATION: Smith Moore Leatherwood
2 West Washington Street
Suite 1100
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 wherewithal and capability and you look at sales
2 and marketing capability. And those form the
3 foundation for virtually any assessment of any new
4 or operating company. And so that visit at Dannar
5 was my first opportunity to really look across
6 those three and say, where are we and, you know,
7 what might be necessary going forward.

8 Q. Okay. And do you recall what your
9 reaction was to those three -- in those three
10 categories: Operational engineering, and sales,
11 and marketing?

12 A. Yeah.

13 Q. Okay. And what were they?

14 A. That they had a mountain in front of
15 them in all three of those categories. And I know
16 that's kind of a broad description, but that there
17 was a tremendous amount that had to happen to make
18 that go on a scaleable commercial basis. One thing
19 to make that unit in the back of a building, it's
20 another thing to make a hundred a month. And that
21 there was a pretty significant gap that would need
22 to be traversed.

23 Q. And so that the scaleability of the
24 endeavor, do you categorize that in all three
25 categories, that is operational, engineering and

1 sales and marketing?

2 A. Mostly on the operational side at that
3 stage, but certainly from the market side, the key
4 hurdle being that there was nothing like this in
5 the market; that's a good thing and a bad thing.

6 Q. And what were your conversations with
7 Gary about the good thing and the bad thing or the
8 good side and the bad side of it being so unique?

9 A. And I think there's an e-mail somewhere
10 in there pretty much to this effect that over the
11 course of those conversations, I think I identified
12 for them eight or nine sort of specific things that
13 they really needed to kind of address as a company
14 and...

15 Q. Was this to get ready for the
16 presentation?

17 A. Yes, but it's also more than that. I
18 mean, what we want to see is companies creating --
19 being successful and creating jobs. And that's
20 really what drives it. And then, of course, making
21 investment as an element of that.

22 Q. Okay. So to the best of your
23 recollection, as of the date that you visited
24 Dannar's facility, no significant jobs have been
25 created from the point -- from the time of funding?

1 A. That's right.

2 Q. Okay. Do you know how many jobs Dannar
3 has now?

4 A. No.

5 Q. Do you know how many jobs Dannar had at
6 the time he moved to -- well, let me ask it a
7 different way.

8 I will assume for this question, and
9 Mr. Knowlton is going to object, but assume for
10 this question that Gary Dannar moved within the
11 meaning of the financing agreement in April of this
12 year -- last year, April of last year. As of that
13 time, do you know how many employees Dannar had?

14 A. As of that time last year?

15 Q. Yes.

16 A. No, I do not.

17 Q. Do you know how many employees Dannar
18 has in Indiana now?

19 A. No.

20 (PLF. EXH. 6, E-mail from Mark Housley
21 to Gary Dannar, dated 12/12/2012, Bates stamped
22 SCL000241, was marked for identification.)

23 BY MS. McKNEW:

24 Q. Okay. Mr. Housley, I'm giving you
25 something that's been marked as Exhibit 6 to your

1 deposition. It appears to be another e-mail dated
2 December the 12th, 2012. Do you recall this?

3 A. If you wouldn't have given it to me,
4 no, but now that I see it, yeah.

5 Q. Who is Ambrose?

6 A. At that time, Ambrose was executive
7 vice president of SCRA and I guess ultimately the
8 person that we -- you know, that our operating
9 team -- we reported to Greig and then Greig
10 reported to Ambrose.

11 Q. Okay. And what did you mean by a
12 qualified yes?

13 A. So we have a team meeting once a month
14 to talk about companies that we're trying to get
15 ready for the Board, among lots of other business,
16 and one of the decisions that we -- one of the
17 agenda items is which companies do we think are
18 making enough progress that we would need to go in
19 front of the Board. And so that's what this
20 references, it references a discussion where, in
21 this case, the highest-ranking person of that team,
22 gave a qualified, yeah, you know, you're not there
23 yet, but if you keep working it, I'm going to give
24 you the provisional okay, that you can keep working
25 this one towards the Board because sometimes we're

1 not making enough progress and we'll just stop that
2 process.

3 Q. And was that a position that you
4 suggested to Ambrose?

5 A. It would have to have been because
6 that's really my job, otherwise it would never get
7 to him, I would just -- you know...

8 Q. Thank you, that was my assumption, but
9 I needed to know for sure.

10 A. Yeah, got to ask.

11 Q. As a result of this -- or not really as
12 a result of this, I take it that Dannar did move
13 forward with the Board with a request for second
14 follow-on financing?

15 A. They did move forward.

16 (PLF. EXH. 7, E-mail correspondence
17 between Mark Housley and Gary Dannar, dated 12/17
18 and 12/18/2012, Bates stamped SCL000387, was marked
19 for identification.)

20 BY MS. McKNEW:

21 Q. Okay. Mr. Housley, I'm giving you
22 something marked Exhibit 7 to your deposition. Do
23 you recall this e-mail?

24 A. Let's see, I do.

25 Q. What did you mean by the final sentence

1 of the message at the top, it says: If your two
2 says 30, and your three says 75 or even 100, I
3 think I can get to yes. What did you mean there?

4 A. So there was internal -- so this was
5 not our Board, this is still our operating team
6 having vigorous debate, which is the way our
7 process is designed. So we have -- we discuss
8 companies, we -- you know, we have vigorous debate
9 about what the issues are and where they are, and,
10 you know, facts and verification of facts and all
11 of that; the normal kind of discussions you would
12 have about new companies.

13 And so this references back to one of
14 those internal discussions, probably from the week
15 before, about folks had concerns about -- and I
16 can't even begin to recall what Dannar's selling
17 rate was, but this means number of units of those
18 MPS units, and there was a consensus or there were
19 a vocal part of our team -- again, not the Board,
20 but just our operating team, that were -- they did
21 not believe that Dannar could reach the kind of
22 unit sales that they were showing in their
23 projections.

24 And that when we looked at the -- their
25 ability to deliver and their planning, we felt like

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	C.A. No. 2015-CP-23-00142
DD Danner, LLC,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF DD DANNER, LLC'S
-vs-	)	MOTION FOR SUMMARY JUDGMENT
	)	
SC LAUNCH!, Inc.,	)	
	)	
Defendant.	)	

Plaintiff DD Danner, LLC ("Danner") respectfully moves the Court for an Order granting summary judgment against the defendant SC Launch!, Inc. ("SCL") on its Counterclaim; and granting Danner declaratory judgment on its Complaint. The facts recited below are unchallenged in the record.

Danner and SCL signed a Financing Agreement on April 14, 2011 (the "Financing Agreement"), securing a Promissory Note (the "Note") in the amount of \$200,000 payable to SCL by Danner. Payment of the loan in full was due, according to the Note, by April 14, 2014. However, Danner prepaid the Note, in full, with interest, on April 30, 2013, almost a full year ahead of schedule. Prepayment was specifically permitted, "without penalty," by the terms of the Note. The Financing Agreement which secured the Note included a "relocation fee," which SCL contractually represented to be "a good faith estimate of the amount necessary to compensate [SCL] for its actual costs" in connection with relocation, although no estimate of any such costs has ever been made by SCL. At the time Danner repaid the Note in full, with interest, no "relocation fee" was due to SCL.

Thereafter, Danner established some corporate operations in the state of Indiana, but the majority of Danner's assets and/or employees did not relocate to Indiana until April 2015, nearly

two years after it had prepaid the SCL loan in full. Even thereafter, certain Dannar operations remained in South Carolina.

On September 19, 2013 SCL demanded payment of a "relocation fee" equal to the full amount of the loan, despite the fact that Dannar had prepaid the Note in full five months earlier, and had not then relocated within the meaning of the Financing Agreement, Dannar refused, asserting that no relocation fee was required because the loan had been prepaid, the company had not "relocated" within the meaning of the Financing Agreement, and the "fee" was an unenforceable penalty. SCL renewed its demand in 2015, after sufficient Dannar operations had moved to Indiana to constitute a "relocation" as defined in the Financing Agreement.

Dannar initiated this litigation, specifically seeking a Declaratory Judgment, as expressed in the Complaint and Supplemental Complaint in this action. SCL counterclaimed for breach of the Financing Agreement.

Discovery is now complete in this matter. The parties submitted written Interrogatories and Requests for Production, and depositions were taken. The pleadings, discovery record and applicable law establish that there is no genuine issue as to any material fact, and that judgment in appropriate pursuant to Rule 56, South Carolina Rules of Civil Procedure.

Plaintiff respectfully moves for an order granting it summary judgment on SCL's counterclaim for breach of contract, which fails as a matter of law:

1. When Dannar prepaid the loan in full, with interest, to SCL on April 30, 2013, no "relocation" had occurred within the meaning of the Financing Agreement, and no "relocation fee" was due.
2. Dannar's applicable obligations to SCL were fulfilled on April 30, 2013, at which time the Financing Agreement by its terms expired.

3. Dannar's repayment of the loan in full satisfied the Note; after repayment, no debt was secured by the Financing Agreement, and the Agreement had no further effect. Specifically, once the loan was repaid in full, with interest, there was no obligation between SCL and Dannar to be secured by the Financing Agreement.

4. The "relocation" fee is an unenforceable penalty, because:

a. As construed by SCL, it purports to restrict Dannar's business regardless of the absence of any continuing debt from Dannar to SCL.

b. The amount of the penalty, \$200,000, bears no relationship to any potential costs that SCL might incur as a direct result of Dannar's relocation.

c. SCL has never identified or attempted to identify the type or amount of any actual costs that it might incur as a direct result of Dannar's relocation.

d. Internally, SCL employees and Board members refer to the "relocation fee," specifically including the relocation fee in the Financing Agreement with Dannar, as a "penalty" or a "clawback."

e. SCL's representation in the Financing Agreement that a "relocation fee" equal to the original amount of the loan, i.e., \$200,000, was "a good faith estimate of the amount necessary to compensate [SCL] for its actual costs" in connection with relocation was false and misleading and without basis in fact. Dannar had no way of knowing that the assertion by SCL was false.

Plaintiff further respectfully moves for an order granting a declaratory judgment in its favor, as follows:

1. Upon its repayment of the full amount of the loan, with interest, no "relocation fee" was due to SCL.

2. After repaying the full amount of the SCL loan, with interest, prior to relocating, Dannar had no further obligation to SCL under the Note or the Financing Agreement.

3. The "relocation fee" provision in the Financing Agreement is an unenforceable penalty.

4. The "relocation fee" provision in the Financing Agreement is unenforceable, as it is based on a false and misleading representation by SCL.

This Motion is accompanied by a supporting Memorandum, the pleadings, depositions, and matters of record in this action.

Respectfully submitted,

s/Natalma M. McKnew

Natalma M. McKnew (S.C. Bar #3864)

Jason D. Maertens (S.C. Bar #73583)

Emily I. Bridges (S.C. Bar #102199)

Smith Moore Leatherwood LLP

2 West Washington Street, Suite 1100 (29601)

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(864) 751-7800 (fax)

tami.mcknew@smithmoorelaw.com

jason.maertens@smithmoorelaw.com

emily.bridges@smithmoorelaw.com

Attorneys for Plaintiff

Dated: February 28, 2017.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
DD Dannar, LLC,	)	C.A. No. 2015-CP-23-00142
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN SUPPORT
	)	OF ITS MOTION FOR SUMMARY JUDGMENT
v.	)	ON DEFENDANTS COUNTERCLAIM AND ON
	)	PLAINTIFF'S DECLARATORY JUDGMENT
SC LAUNCH!, Inc.,	)	ACTION
	)	
Defendant.	)	

This Motion for Summary Judgment asks whether a creditor, SC Launch!, Inc. ("SCL") may continue to impose restrictions on a debtor, DD Dannar, LLC ("Dannar"), nearly two years after the debtor has repaid the loan in full, with interest; whether a purported fee equal to the amount of the loan and unconnected to any actual costs is an unenforceable penalty; and whether a fee falsely purporting to compensate the creditor for its "actual expenses" is void.

Dannar contends that the law answers each of these questions in the negative and respectfully moves for summary judgment in its favor on its declaratory judgment action and on SCL's counterclaim for breach of the Financing Agreement that secured repayment of SCL's \$200,000 loan to Dannar.

The Facts

The facts of the case are fairly straightforward and unchallenged, although SCL's Motion for Summary Judgment, filed February 23, 2017, ignores many critical facts. SCL avoids telling the Court that Dannar prepaid the loan from SCL in full on year before it was due, with interest; that Dannar relocated almost two *years* after repayment; that SCL never attempted to identify (let alone calculate) the expenses it would allegedly incur resulting from a loan recipient's

relocation; and that within SCL, employees and Board members referred to the relocation fee as a "penalty" or "clawback."

Dannar is a South Carolina start-up that has developed a proprietary "Mobile Power Station" ("MPS"). The MPS is an innovative, multi-purpose vehicle to be used in the government sector utilizing clean energy and featuring a creative, state-of-the-art design. Gary Dannar, founder and President of the plaintiff, has worked through many challenges over many years to develop the MPS. In 2011, Gary Dannar anticipated that with adequate funding the MPS could be commercially produced within a few years. He submitted a request for funding to the defendant SC Launch!, Inc. SCL is a publicly-established entity whose mission is to select promising South Carolina companies and assist with venture funding. Ideally, the funded company succeeds, creating jobs and paying taxes to South Carolina. The funding is not a grant, however; it is a loan, which the funded company is expected to pay back, with interest.¹ SCL's mission is not to profit from its loans to funded companies but rather recoup its investment and encourage economic development and job creation in South Carolina. A funded company's indebtedness to SCL is memorialized in a Promissory Note secured by a Financing Agreement.

Dannar applied for and was approved for a loan of \$200,000 by SCL in March 2011. On April 14, 2011, Dannar executed a Promissory Note in the principal amount of \$200,000 (the "Note"), and the parties signed a Financing Agreement securing repayment of the Note (the "Financing Agreement").² Repayment of the loan in full was due, according to the Note, on April 14, 2014. Section 3.3B of the Financing Agreement which secured the Note included a "relocation fee" that imposes a high cost on a debtor that relocates while the Agreement is in effect:

¹ Not all funded companies actually pay off SCL loans, however.

² The Note and Financing Agreement are attached as Exhibit 1 to this Memorandum.

Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. . . . The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

"Company Relocation" is defined in Section 3.3A as moving or relocating the company's principle place or business outside of South Carolina *and* having more than "one-half, based on payroll expenses, of the Company's total employees, or senior employees, or employees engaged principally in professional research and development, employed at locations" outside South Carolina.

Dannar applied to SCL for additional financing early in 2013, but the request was denied. SCL officials admit that such a denial was unusual, as most organizations that receive initial from SCL also receive follow-on funding. After SCL's refusal to provide follow-on funding, Dannar continued trying to raise investment funds in South Carolina, but felt that SCL's denial negatively affected its ability to do so. To address the issue, Dannar prepaid the SCL debt in full, with interest, on April 30, 2013, nearly a full year ahead of schedule. At the time Dannar repaid the Note, no "relocation fee" was due to SCL.

Sometime later in 2013, Dannar established some corporate operations in the state of Indiana.³ On September 19, 2013, five months after Dannar had prepaid the SCL loan in full, SCL demanded payment of a "relocation fee" that would have more than doubled SCL's recovery on the \$200,000 it originally loaned Dannar. Dannar refused, reminding SCL that no relocation fee was required when the loan had been repaid and that Dannar had not "relocated"

³ Indiana offered Dannar financing to renovate a building for corporate operations in Indiana. No direct governmental funds were provided to Dannar, however.

within the meaning of the Financing Agreement. SCL renewed its demand in 2015, by which time sufficient Dannar operations had been established in Indiana to constitute a "relocation" as defined in the Financing Agreement.⁴

Dannar initiated this litigation, specifically seeking a Declaratory Judgment,⁵ and SCL counterclaimed for breach of the Financing Agreement.

Motion for Summary Judgment

Dannar's Motion for Summary Judgment should be granted on the following grounds:

1. When Dannar prepaid the SCL loan in full, with interest, on April 30, 2013, no "relocation" had occurred within the meaning of the Financing Agreement, and no "relocation fee" was due.

2. All of Dannar's applicable obligations to SCL were fulfilled on April 30, 2013, at which time the Financing Agreement by its terms expired.

3. Dannar's repayment of the loan in full extinguished the Note; after repayment, no debt was secured by the Financing Agreement, and the Financing Agreement had no further effect. Specifically, once the loan was repaid in full, with interest, there was no obligation between SCL and Dannar to be secured by the Financing Agreement.

4. The "relocation" fee is an unenforceable penalty, because:

a. As construed by SCL, it purports to restrict Dannar's business regardless of the absence of any continuing debt from Dannar to SCL.

b. The amount of the penalty, \$200,000, bears no relationship to any actual costs that SCL might incur as a direct result of Dannar's relocation.

⁴ Dannar relocated, as the term is defined in the Financing Agreement, in April 2015. There is no contradictory evidence. *See* Dannar Depo. 45:2-4 (attached hereto as Exhibit 2).

⁵ Dannar seeks a declaration of the Court that SCL is not entitled to recover any "relocation fee" from Dannar.

c. SCL has never identified or attempted to identify the type or amount of any actual costs that it might incur as a direct result of Dannar's (or any debtor company's) relocation.

d. SCL witnesses admit that they referred to the "relocation fee," specifically including the relocation fee in the Financing Agreement with Dannar, as a "penalty" or a "clawback."

e. SCL's representation in the Financing Agreement that a "relocation fee" equal to the original amount of the loan, i.e., \$200,000, was "a good faith estimate of the amount necessary to compensate [SCL] for its actual costs" in connection with relocation was false and misleading and without basis in fact. Dannar had no way of knowing that the assertion by SCL was baseless.

Consistent with the above, the Court should issue its declaratory judgment providing:

1. Upon Dannar's repayment of the full amount of the loan on April 30, 2013, no "relocation fee" was due to SCL.
2. Following Dannar's full repayment of the SCL loan, the Note was extinguished, and Dannar had no further obligation to SCL under the Financing Agreement.
3. The "relocation fee" provision in the Financing Agreement is an unenforceable penalty.
4. The "relocation fee" provision in the Financing Agreement is unenforceable, as it is based on a false and misleading representation by SCL.

Argument

Rule 56(c), South Carolina Rules of Civil Procedure, provides that on a motion for summary judgment, the "judgment shall be rendered forthwith if the pleadings, depositions,

answers to interrogatories and admissions on file, together with affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” When examining a motion for summary judgment, the “evidence and all inferences reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party.” *Strother v. Lexington Cnty Recreation Comm’n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998) (citing *Hamiter v. Retirement Division of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997)). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (citing *Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005)).

The factual issues in this case are simple, and none are in doubt:

- Did the parties enter into a Financing Agreement to secure a Promissory Note? On April 14, 2011 Dannar executed a Promissory Note in the amount of \$200,000 in connection with a loan of the same amount from SCL, and the parties entered into a Financing Agreement securing that Note.⁶
- Did Dannar pay its indebtedness to SCL in full? There is no debate that Dannar prepaid the Note in full on April 30, 2013.
- When did Dannar “relocate” from South Carolina, within the meaning of the Financing Agreement? There is no disagreement that Dannar did not “relocate” until April 2015.
- On what basis did SCL determine that a “relocation fee” of \$200,000 was a “good faith estimate of the amount necessary to compensate [SCL] for its actual costs” in

⁶ The Note and Financing Agreement are attached as Exhibit 1 to this Memorandum.

connection with relocation? SCL witnesses admit that it never attempted to identify or calculate its “actual costs” associated with the relocation of Dannar (or any other company).

Rather than factual issues, legal issues appear to determine the outcome of this case, namely:

- Is the “relocation fee” in the Financing Agreement an unenforceable penalty?
- Did the Financing Agreement by its terms end on April 30, 2013?
- Did the relocation penalty in the Financing Agreement survive extinguishment of the Note and continue in effect for two years thereafter?

These issues are questions of law reserved for the Court. *See Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999) (“When a contract is clear and unambiguous, the construction of the contract is a question of law for the court.”). Absent any “genuine issue of material fact,” these questions are ripe for decision as a matter of law. As explained more fully below, the relocation fee is an unenforceable penalty, it expired when Dannar repaid the loan in full when it had not relocated, and it did not survive extinguishment of the Note.

I. No “relocation fee” was due when Dannar repaid the SCL loan in full.

When Dannar prepaid the SCL note in full on April 30, 2013, Dannar had not relocated within the meaning of the Financing Agreement; therefore the “relocation fee” was not applicable. Dannar was unable to secure follow-on funding from SCL in early 2013, and, after having difficulty raising funds from other sources, Dannar decided to prepay the SCL Note in full, plus interest.⁷ The full amount was prepaid on April 30, 2013. At that time, Dannar still maintained operations in South Carolina. (Dannar Depo. 42:18-20). Dannar established some

⁷ The Note specifically permits prepayment “without penalty.”

operations in Indiana late in 2013, but continued operations in South Carolina. (Dannar Depo. 42: 18-20). On September 19, 2013, SCL nevertheless demanded that Dannar pay a "relocation fee." Dannar declined to do so, having not relocated from South Carolina and having already prepaid the loan in full.

"It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). "The construction of a clear and unambiguous contract is a question of law for the court." *Robarge v. City of Greenville*, 382 S.C. 406, 411, 675 S.E.2d 788, 790 (Ct. App. 2009). The provision at issue regarding the definition of "relocation" is clear. Section 3.3A of the Financing Agreement specifically defines a relocation as moving or relocating the company's principal place of business outside of South Carolina *and* having more than "one-half, based on payroll expenses, of the Company's total employees, or senior employees, or employees engaged principally in professional research and development, employed at locations" not in South Carolina. Dannar stated that this was not the case in April 2013, and SCL has produced no evidence which contradicts these statements. In order for a relocation as defined by the Financing Agreement to have occurred, both the principal place of business and more than one-half of payroll expenses must be outside of South Carolina. In 2013, when Dannar prepaid the loan in full, neither of these had occurred. Dannar had not yet moved any payroll expenses from South Carolina, nor had it established a principal place of business in Indiana.

Thus, in September 2013 SCL demanded the "relocation fee" when no such payment was due; Dannar had not relocated from South Carolina. "Relocation" is a defined term in the Financing Agreement and must be interpreted as written. *See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) ("If its language is plain, unambiguous, and capable of

only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.""). Dannar continued operations in South Carolina throughout 2013, and did not meet the definition of relocation until April 2015, approximately two years after prepaying the SCL loan in full. Therefore, SCL could not impose the alleged "relocation fee" on Dannar in April 2013 when Dannar prepaid the SCL loan; the relocation fee was not applicable at that time.

II. Dannar fulfilled all its obligations to SCL on April 30, 2013 at which time the Financing Agreement expired by its terms.

Section 7.10 of the Financing Agreement provides:

Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the . . . payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed to SC Launch hereunder.

In addition, the terms of the promissory note permits Dannar to prepay the Note "without penalty."

On April 30, 2013, Dannar prepaid the Note in full. At that time as explained above, the Relocation Fee was not "applicable," and prepayment of the Note satisfied "all other obligations owed to SC Launch" under the Financing Agreement at that time. Thus, according to its clear terms, the Financing Agreement terminated on April 30, 2013.

III. Dannar's repayment of the SCL loan in full extinguished the Note and Financing Agreement as a matter of law.

Dannar prepaid the SCL in full, including interest, on April 30, 2013, which extinguished the Note and Financing Agreement. As stated by Mr. Hillman, a purpose of the Note and Financing Agreement was to secure the amount of the loan. (Hillman Depo. 33:8-16, attached hereto as Exhibit 3). The language of both the Financing Agreement and the Note reflect the

same purpose: securing repayment of the Note.⁸ The intention of the parties was that the Financing Agreement was to secure the Note itself. "The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct. App. 2000). Even if the language of the Financing Agreement did not clearly provide for termination, extinguishment of the Note as a matter of law ended Dannar's obligations to SCL. A debtor is no longer obligated to its creditor when a loan is repaid and the underlying monetary obligation satisfied. Satisfaction is "the fulfillment of an obligation; esp., the payment in full of a debt." *Black's Law Dictionary* 10th ed. 2014. SCL accepted the repayment by Dannar as full satisfaction of Dannar's debt. Upon this repayment, there was no longer any promissory note or indebtedness secured by the Financing Agreement. Its purpose had been fulfilled.

IV. *The "relocation fee" is an unenforceable penalty.*

Finally, the alleged "relocation fee" is an unenforceable penalty, not a liquidated damages clause. Under South Carolina law, "[p]arties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance. Where, however, the sum stipulated is plainly disproportionate to any probable damage resulting from breach of contract, the stipulation is an unenforceable penalty." *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 364 (2002) (internal citations omitted). Accordingly, "[t]he question of whether a sum stipulated to be paid upon breach of contract is liquidated damages or a penalty is one of

⁸ The Financing Agreement reflects provisions typical of security arrangements: it supports a loan (Agreement preamble), a promissory note undergirds the Agreement (Agreement, Section 1.1); SCL has a right to acquire equity in the debtor (Section 1.2); the debtor is bound by negative covenants (Section 3.2) and must notify SCL as creditor of financial matters (Section 3.1); SCL is permitted to act if it deems itself insecure (Section 6.1(D)).

construction and is generally determined by the intention of the parties.” *Moser v. Gosnell*, 334 S.C. 425, 431, 513 S.E.2d 123, 126 (Ct. App. 1999).

SCL’s reliance on the contractual representation regarding the nature of the payment is misplaced. Whether a charge or fee is in fact and law an unenforceable penalty “does not depend solely upon the language used in the contract. Rather, it depends upon the nature of the contract in light of the circumstances, and the attitude and intentions of the parties.” *Id.* “Irrespective of its terminology, a stipulation will be held to constitute a penalty where the sum stipulated is so large that it is plainly disproportionate to any probable damage resulting from [a] breach of the contract.” *Benya v. Gamble*, 282 S.C. 624, 630, 321 S.E.2d 57, 61 (Ct. App. 1984) (internal quotation marks and citations omitted).

The test for determining whether a contract provision is an unenforceable penalty or a permissible liquidated damages clause has been set forth by the South Carolina Supreme Court:

Implicit in the meaning of ‘liquidated damages’ is the idea of compensation; in that of ‘penalty’, the idea of punishment. Thus, where the sum stipulated is reasonably intended by the parties as the predetermined measure of compensation for actual damages that might be sustained by reason of nonperformance, the stipulation is for liquidated damages; and where the stipulation is not based upon actual damages in the contemplation of the parties, but is intended to provide punishment for breach of the contract, the sum stipulated is a penalty.

Tate v. Lemaster, 231 S.C. 429, 441, 99 S.E.2d 39, 45-46 (1957).

South Carolina case law makes clear that in order for a contractual provision to be considered a liquidated damages clause rather than an unenforceable penalty, there must be some basis on which the amount stated is determined; the figure cannot be a number unconnected and unrelated to an amount of damages potentially suffered by a party.

While the language of the Financing Agreement purports to define a “relocation fee” equal to the original \$200,000 loan, a court is not constrained to make its decision based solely on the language of the contractual provision in isolation. In fact, a court is required to “look at the whole contract, its subject-matter, the ease or difficulty in measuring the breach in damages and the magnitude of the stipulated sum, not only as compared with the value of the subject of the contract, but in proportion to the probable consequences of the breach.” *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 462, 713 S.E.2d 318, 322 (Ct. App. 2011) (quoting *Foster v. Roach*, 119 S.C. 102, 107, 111 S.E. 897, 899 (1922)). A court must look beyond the amount stated in a contract to determine whether the amount is “plainly disproportionate to any probable damage....” *Foreign Academic & Cultural Exchange Services, Inc. (FACES) v. Tripon*, 394 S.C. 197, 204, 715 S.E.2d 331, 334 (2011). Moreover, if the enforcing party would still have incurred the claimed costs, regardless of any alleged breach, and these costs are not directly related to the alleged breach, then a court cannot consider the contractual provision and amount of claimed costs to be a proper liquidated damages clause. *See id.* (discussing how FACES would still have invested the money it claimed as damages regardless of any alleged breach). Finally, “[e]quity will not enforce a penalty for breach of contract. Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.” *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 364 (2002) (internal quotation marks and citations omitted).

SCL witnesses admit that there was no attempt to calculate the amount of the alleged “Relocation Fee,” or even to define the type of any such damages. SCL has been unable to give any estimate of the type or amount of actual costs that would be incurred by SCL when Dannar, or any company, relocates. (Hillman Depo., 34:1-36:10, Exhibit 3). SCL admits it has no

formula, factors, or other basis on which it based the amount of the alleged relocation fee. (Defendant's Second Supplemental Responses to Plaintiff's Second Set of Interrogatories, Interrogatory #8, attached hereto as Exhibit 7; Hillman Depo. 40:1-41:9, Exhibit 3). SCL attempts to broaden the definition of "costs" to include the hours and time associated in preparing a company for its presentation to the SCL board (Hillman Depo., 34:1-36:10, Exhibit 3), but the relocation fee provision specifically identifies the fee as an "estimate of the amount necessary to compensate SC Launch for its *actual costs* in connection with a [relocation]," not those incurred for SCL simply fulfilling corporate purposes (emphasis added). Costs based on the amount of time assisting Dannar would have been incurred by SCL regardless of whether the efforts were directed at Dannar or another South Carolina company. Specifically, SCL would have incurred its operational costs regardless of whether Dannar moved to Indiana because those expenses incurred to assist Dannar in its presentations for obtaining funding simply would have shifted to another company. These are more akin to "sunk costs" than actual damages suffered by SCL. See *FACES*, 394 S.C. at 204-05, 715 S.E.2d at 334-35 (discussing that "sunk costs," cannot be included in the determination of whether a party has suffered actual damages when that party is seeking enforcement of an alleged liquidated damages clause). SCL cannot point to any specific costs incurred by it, or anything resembling actual costs suffered by it, that were caused by Dannar's relocation to Indiana after fully prepaying the SCL loan. SCL simply contractually represented that \$200,000 was "a good faith estimate of the amount necessary to compensate [SCL] for its actual costs," and Dannar could have no way of knowing otherwise. (Dannar Depo. 15:9-10, Exhibit 2). In fact, SCL had never formulated *any* estimate, let alone a good faith estimate.

Consistent with the absence of any rational basis for the fee, SCL employees and board members referred to the alleged “relocation fee” as a “clawback” and a “penalty.” The minutes of an SCL board meeting, held on July 17, 2013, question whether Danner “is required to pay the \$200,000 *clawback* for relocation outside of SC.” (Hillman Depo., Ex. 3 (minutes of meeting), Exhibit 4 hereto) (emphasis added). Additionally, the minutes of the September 11, 2013, SCL board meeting state that the staff of SCL “may consider sending Danner a demand letter based on the *penalty clause* in the [Agreement].” (Hillman Depo., Ex. 8, Exhibit 5 hereto) (emphasis added). In an email to Greg Hillman, an SCL board member also referred to the relocation fee as a “claw back.” (Hillman Depo., Ex. 17 (email), attached hereto as Exhibit 6). In response to the communication, Mr. Hillman stated that SCL “still have the potential for *penalty* through early 2016”. (Hillman Depo., Ex. 17, email, attached hereto as Exhibit 6) (emphasis added).

SCL invites the Court to consider the laudable purposes of SCL financing as a substitute for the law’s requirement.⁹ But it has not and cannot cite any precedent that forgives the requirement for a reasonable relationship between liquidated damages and actual potential losses. SCL implicitly acknowledged the legal requirement in the Financing Agreement, citing *not* laudable purposes as the reason for the fee, but an alleged (but non-existent) “good faith estimate of the amount necessary to compensate [SCL] for its actual costs.”

South Carolina law clearly prohibits an unenforceable penalty. The alleged “relocation fee” in the Financing Agreement is not a liquidated damages clause but rather a severe, unreasonable, and unenforceable penalty. The amount of the relocation fee is not a reasonable estimate of any alleged actual costs incurred by SCL; SCL had no basis for the amount of the relocation fee or any information about the actual costs SCL suffered due to Danner’s move to Indiana, *Tate v. Lemaster*, 231 S.C. 429, 441, 99 S.E.2d 39, 45-46 (1957); and SCL employees

⁹ SCL’s Motion for Summary Judgment, page 4.

and board members explicitly referred to the relocation fee as both a penalty and clawback. The “relocation fee” is actually an impermissible and unenforceable contractual penalty.

Conclusion

There are no genuine issues of material fact remaining. For all the reasons explained above, Dannar is not obligated to pay any clawback “relocation fee” to SCL.

Dannar therefore respectfully requests that this Court issue an Order granting summary judgment to Dannar on its motion for declaratory judgment and on SCL’s counterclaim for breach of the Financing Agreement that secured repayment of SCL’s loan to Dannar.

Respectfully submitted,

s/Natalma M. McKnew

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Attorneys for Plaintiff DD Dannar, LLC

Dated: February 28, 2017.

Exhibit 1

FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made as of the 14th day of April, 2011, by and between SC LAUNCH!, INC., a South Carolina nonprofit corporation ("SC Launch") with an office at 1000 Catawba Street, Columbia, South Carolina 29201, and DD Dannar, LLC, (the "Company"), a limited liability company under the laws of the state indicated on Schedule I (the "State of Organization"), with an office at the address set forth on Schedule I.

WITNESSETH

WHEREAS, the Company is engaged in the business described on Schedule I (the "Company Business") and has need of capital financing to sustain and expand the Company Business; and

WHEREAS, SC Launch has been incorporated exclusively for scientific, educational, charitable and other public purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and to support the mission of the South Carolina Research Authority under South Carolina Code § 13-17-87 to establish research innovation centers and provide financing to qualified companies; and

WHEREAS, the Company has been admitted as a qualified company to one of SC Launch's centers and desires for SC Launch to provide capital financing to the Company in accordance with the terms and conditions of this Agreement, and SC Launch has approved the Company to receive such financing.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and SC Launch agree as follows:

ARTICLE I THE SECURITIES

1.1 Note. The Company agrees to issue to SC Launch a promissory note in the form attached hereto as Exhibit A (the "Note") in the face amount set forth on Schedule I; and SC Launch agrees to make an initial advance (an "Advance") to the Company under the Note in the amount set forth on Schedule I, and SC Launch may in its sole discretion in the future make additional Advances under the Note, any of which may be made in cash or in consideration of cancellation by SC Launch of the principal and interest payable by the Company to SC Launch under existing indebtedness, if any, or any combination thereof. The Company further agrees to use the initial Advance only for the uses set forth on Schedule I, and to use any future Advances only for any uses specified by SC Launch at the time of the Advance. This Agreement, the Note and all other documents and instruments executed by the Company which may be reasonably required by SC Launch are hereinafter sometimes referred to collectively as the "Financing Documents."

1.2 Possible conversion to equity. Upon a conversion of the Company into a corporation and at the request of SC Launch, the Company agrees to negotiate in good faith with SC Launch over terms by which the principal and interest outstanding under the Note will be convertible into preferred stock of the Company (any such stock, together with the Note, are hereafter referred to as the "Securities") with the basis for such negotiations primarily to be the terms under which the Company has issued preferred stock, or a similar equity interest, to a non-related third party in an arms length transaction and within a reasonable time period prior to the conversion or, if no such third party issuance has occurred then the basis of the negotiations shall be the terms under which SC Launch provides financing to corporations at the time of the conversion.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

2.1 Complete disclosure. In order to induce SC Launch to enter into and execute this Agreement and to make the initial Advance and any future Advances under the Note, the Company represents and warrants to SC Launch, as of the date hereof and as of any future date on which the Company accepts an Advance from SC Launch, that no representation or warranty of the Company contained in this Agreement or any of the Financing Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument, document or communication furnished to SC Launch by or on behalf of the Company, taking into consideration the total mix of information made available, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

2.2 Survival. All warranties and representations of the Company contained herein shall survive the execution of this Agreement and the issuance of the Note and any Advances thereunder.

ARTICLE III COVENANTS OF THE COMPANY

3.1 Affirmative covenants. The Company will at all times while any of the Securities are outstanding:

A. Financial and business information. Deliver the following to SC Launch:

(i) Quarterly statements. As soon as practicable, and in any event within sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year of the Company, balance sheets, statements of income and statements of cash flows of the Company as of the close of such quarter and covering operations for such quarter and for the portion of the Company's fiscal year ending on the last day of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles in the United States, consistently applied from period to period and within each period ("GAAP"), subject to year-end adjustments.

(ii) Annual statements. As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, duplicate copies of:

(a) Consolidated and consolidating balance sheets of the Company at the end of such year; and

(b) Statements of income, members' equity and cash flows of the Company for such year,

all in reasonable detail and prepared in accordance with GAAP and beginning with the fiscal year ended on December 31, 2012, accompanied by a review opinion of independent certified public accountants of recognized standing selected by the Company.

(iii) Correspondence with reviewing accountants. Promptly following receipt or transmission thereof, any correspondence to or from the Company's accountants in connection with any material change in the Company's financial statements or condition, or any disagreement or dispute with the accountants.

(iv) Meetings and communications. Provide SC Launch with a copy of all written notices of meetings of the governing body or the members of the Company and all materials or communications provided generally to the governing body or members, including, without limitation, forms of actions without meeting, all at the same time such notices, materials, communications or forms are provided to the governing body or members; and permit representatives of SC Launch to attend any and all meetings of the governing body or members.

(v) Requested information. With reasonable promptness, the Company shall furnish SC Launch with such other data and information as from time to time may be reasonably requested.

B. Access. Permit SC Launch and its duly authorized agents reasonable access to the Company's offices, property and assets and shall make available for audit and inspection, at any reasonable time by SC Launch, or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Company as may be reasonably requested in writing by SC Launch, where such access would not be in violation of any confidentiality or similar agreement.

C. Notices. Promptly give to SC Launch written notice of:

(i) any default or event of default under any material contractual obligation of the Company;

(ii) any litigation or similar proceeding affecting the Company; or

(iii) any event or circumstance which has had, or is reasonably likely to have, a material adverse effect on the Company or the Company Business.

D. Further assurances. Execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the other Financing Documents and all of the transactions contemplated hereby.

3.2 Negative covenants. The Company will not for so long as the Note is outstanding, without prior written consent of SC Launch, which shall not be unreasonably withheld:

A. Capital transactions and Status Changes. Enter into any merger, consolidation, share exchange, reorganization or recapitalization, or liquidate, sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired, or change its jurisdiction of organization or its legal or tax status.

B. Organizational documents. Amend, modify or change its articles of organization or operating agreement.

C. Related party transactions. Engage in transactions in which any manager, director, officer or promoter of the Company, or any member who owns more than ten percent (10%) of any class of the Company's outstanding membership interests, or any relative or spouse of any of the foregoing, or any relative of such spouse, or any entity or organization that is affiliated with or controlled by any of the foregoing, has a direct or indirect interest (a "Related Interest"), except (i) transactions for which the material facts of the transaction and the Related Interest were disclosed or known to the governing body of the Company, and a majority of the members of the governing body, who are not employees of the Company and who have no Related Interest, approved the transaction, but a transaction may not be approved by a single person; (ii) compensation paid to employees in amounts as disclosed on Schedule I; (iii) reimbursements for properly documented, ordinary and customary business expenses; or (iv) employee benefits provided generally to all employees of the Company including stock option or similar type plans and bonus or other incentive compensation plans. The term "transactions" for purposes of this provision includes, without limitation, any form of compensation, such as the grant of any option, warrant or right, or exercisable, exchangeable or convertible security, and any personal use of corporate assets or other perquisites.

3.3 Relocation.

A. Company relocation. The Company acknowledges that funds are made available to it under this Agreement in whole or in part for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina. Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee as set forth below.

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

C. Costs and fees. Should SC Launch, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of the Company's obligations under this Section 3.3, the Company will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SC LAUNCH

4.1 General representations and warranties from SC Launch. SC Launch represents and warrants to the Company as follows:

A. Investment; no resale or distribution. It is acquiring or will acquire the Securities for its own account, for investment, and not with a view towards the resale, transfer, or distribution thereof, nor with any present intention of distributing the Securities.

B. Accredited investor; residence. It is an "Accredited Investor" within the meaning of Rule 501(a) under the Securities Act of 1933, as amended. Its principal office is located within the State of South Carolina.

ARTICLE V COVENANTS OF SC LAUNCH

5.1 Compliance with securities laws. SC Launch will not, directly or indirectly, sell any of the Securities, unless such sale is made pursuant to either (i) an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws or (ii) an available exemption from the registration requirements of the Securities Act and such laws and, prior to any such sale, SC Launch provides to the Company a written opinion of legal counsel reasonably satisfactory in form and substance to the Company to the effect that the proposed sale may be effected without registration under the Securities Act and any applicable state securities laws.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of default. Each of the following shall constitute an "Event of Default", whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental authority or otherwise:

A. Payment. If the Company shall fail to pay the principal of or interest on the Note when due, and shall fail to cure such failure within five (5) business days after notice from SC Launch specifying the failure;

B. Representations and warranties. If any representation or warranty made by the Company herein shall have been materially incorrect when made;

C. Covenants and obligations. If the Company shall breach or fail to comply with any of the covenants, terms and conditions of, or any of its obligations (other than payment defaults as set forth above) under, this Agreement or any of the Financing Documents, all of which are cumulative to this Agreement and to each other, and shall fail to cure such breach or failure within thirty (30) days after notice from SC Launch specifying the default or failure; or

D. Insecurity. If while the Note is outstanding, SC Launch deems itself insecure or the prospect of payment of the Note or continued existence of the Company Business or performance of the Company's obligations is impaired for any reason whatsoever, including, but not limited to, termination of employment of any key employee, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, the Company, or entry of any judgment against the Company.

6.2 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, SC Launch may, at its option, without presentment, demand, notice of dishonor, or protest, declare the Note immediately due and payable in full. All powers and remedies given herein to SC Launch shall be cumulative and not exclusive of any other right or remedy or any other powers and remedies available to SC Launch at law or in equity, by judicial proceeding or otherwise, to enforce the performance or observance of the covenants and agreements of the Company contained in this Agreement, and no delay or omission of SC Launch to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given herein or by law to SC Launch may be exercised from time to time, and as often as may be deemed expedient, by SC Launch.

ARTICLE VII MISCELLANEOUS

7.1 Waiver. No waiver at any time of the provisions or conditions of this Agreement or of any of the other Financing Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

7.2 Severability. Unenforceability for any reason of any provision of this Agreement, or of any of the Financing Documents or other agreements between the Company and SC

Launch shall not limit the operation or validity of any other provisions of this Agreement, any of the Financing Documents or any other agreement.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by any overnight express mail service, postage or fees prepaid to the addresses set forth in the preamble to this Agreement. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

Any notice which is delivered personally in the manner provided herein is deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed by registered or certified mail in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, at the time of actual receipt. Any notice which is addressed and mailed by overnight express mail service in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the next business day following delivery of such notice to such overnight express mail service prior to such service's deadline for next day delivery.

7.4 Time of the essence. The parties hereto agree that time is of the essence to this Agreement.

7.5 Binding effect. Except as otherwise expressly provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of SC Launch and the Company, and their respective successors, transferees and assigns.

7.6 Governing law; forum. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to the conflicts or choice of law principles thereof. Any civil action arising out of or in connection with this Agreement will be instituted and maintained exclusively in the state or federal courts located within the State of South Carolina and each of the parties hereto consents to the personal jurisdiction of such courts.

7.7 Titles and captions. Titles and captions of Articles, Sections and subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns, and all of which taken together shall constitute one and the same agreement.

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the

terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

7.10 Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by the Company of all securities of the Company held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

Stephanie Guica DeRue

SC LAUNCH, INC.

By: David C. McNamara

David C. McNamara, Executive Director

Lily Herlihy
J. 27

DD Dannar, LLC

By: GARY DANNAR, President

Gary Dannar

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

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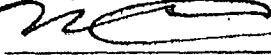
7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

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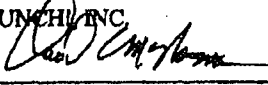
7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES



SC LAUNCH, INC.

By: 

David C. McNamara, Executive Director

The Danner Company, LLC

By: _____

Exhibit A

This Note has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold and no such transaction will be registered on the books of the Company unless: (a) the sale has been registered under said Act, or (b) the Company is presented with a written opinion of counsel in form and substance acceptable to the Company, to the effect that such registration is not required under the circumstances of such sale.

The transfer of this Note by any holder is restricted under the terms of a financing agreement between the Company and the original holder of the Note.

\$200,000

DD Dannar, LLC

Greenville, South Carolina
April 14, 2011

Promissory Note
Due April 14, 2014

DD Dannar, LLC, a South Carolina limited liability company, (the "Company"), for value received, promises to pay to SC Launch!, Inc. or its assigns, the sum of \$ 200,000, or whatever portion thereof shall be advanced by SC Launch!, Inc. to the Company, on April 14, 2014 (this date and any extended maturity date under the terms hereof are referred to hereafter as the "maturity date"), and to pay interest as set forth herein at an annual rate equal to the higher of: (a) the prime rate (as published in the Market Data section of *The Wall Street Journal*) plus two percent (2.00%), but in no event higher than ten percent (10.00%), or (b) five percent (5.00%), on the outstanding balance, compounded monthly, computed from the date of this Note until payment of the principal and all interest under this Note has been made. The initial interest rate will be based on the prime rate first published on or after the most recent January 1 or July 1, and will be adjusted biannually thereafter based on the first publication of the prime rate on or after January 1 and July 1 each year. Payment of principal and interest shall be made in lawful money of the United States of America at 1000 Catawba Street, Columbia, South Carolina 29201, or such other place or to such other party or parties as the holder of this Note may from time to time designate.

1. Financing agreement. This Note is issued under and is subject to the terms of a separate financing agreement (the "Financing Agreement") dated April 14, 2011 between the Company and SC Launch!, Inc. The terms and conditions of the Financing Agreement are incorporated into this Note by reference as if fully repeated herein.

2. Extension of maturity date; demand for payment. At any time the holder of this Note may, in its sole discretion, by notice to the Company:

- (a) extend the maturity date to any date designated by the holder; or

(b) extend the maturity date to any date designated by the holder and demand that the Company begin to immediately make monthly payments of interest to the holder beginning with the prior maturity date and continuing on the same date of each month thereafter, with such interest based on the combined principal and accrued interest balance outstanding under this Note on the prior maturity date.

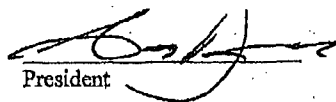
3. Payments. The Company will make any payments demanded by the holder in accordance with the preceding Section 2 above. Payments shall be applied first to any interest due and then to principal. Prepayment of principal and interest by the Company is permitted without penalty.

IN WITNESS WHEREOF, the Company has signed and sealed this Note effective as of the 14th day of April, 2011.

DD Danner, LLC

Corporate
Seal or
Facsimile

President



Secretary



Schedule I to Financing Agreement

Name of Company: DD Dannar, LLC
 State of Organization: South Carolina
 Street address: 86 Osage Drive
 Greenville, SC 29605

Description of business: OEM Manufacturer / Assembler of the Dannar - *Mobile PowerStation* (MPS), which is a hybrid/battery-electric powered vehicle designed to reduce emissions, and is a purpose built vehicles for the government and non-governmental roadside (right-of-way) management and to which to which numerous implements may be attached including but not limited to mowers, snow blowers, sweepers, grapple buckets and blades for moving earth and loose objects, earth augers, hydraulic buckets, chain saws, crimpers, shears, impact wrenches, water pumps, asphalt planers, tree stump grinders, compactors, beach rakes, herbicide sprayers, cultivators, plows, trenchers, earth borers, pruners and clippers; electric, pneumatic, hydraulic, and mechanical power generators with wheels and tracks. with the ability to market.

Face amount of note: \$200,000

Amount of initial advance: \$200,000

Uses of initial advance:	MPS	\$ 90,000
	Consulting/ Legal	50,000
	Operations	35,000
	Product Launch Introduction	<u>25,000</u>
	Total	\$ 200,000

Existing written compensation agreements with related parties and amounts of compensation to be paid to such parties (see Section 3.2C): None

Exhibit 2

STATE OF SOUTH CAROLINA IN THE COURT OF
COUNTY OF GREENVILLE COMMON PLEAS OF THE
 THIRTEENTH JUDICIAL CIRCUIT

DD DANNAR, LLC, CIVIL ACTION NO.
 Plaintiff, 2015-CP-23-00142
 vs.
SC LAUNCH!, INC. Defendant.

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF DD DANNAR, LLC
GIVEN BY: GARY DANNAR

DATE TAKEN: October 28, 2016
TIME BEGAN: 10:27 a.m.
TIME ENDED: 12:46 p.m.
LOCATION: Smith Moore Leatherwood, LLC
 2 West Washington Street
 Suite 1100
 Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

30(b)(6) Deposition of DD Dannar, LLC given by Gary Dannar

CONFIDENTIAL DEPOSITION OF GARY DANNAR

1 2, is that the financing agreement that DD Dannar
2 entered into with SC Launch! back in 2011?

3 A. Yes.

4 Q. Is that your signature on pages 8 and 10?

5 A. Yes.

6 Q. When you signed this agreement, were you
7 aware that it contained A relocation provision that
8 is under section 3.3?

9 A. When I signed this, I don't recall being
10 familiar with that provision, it wasn't discussed.

11 Q. Did you have counsel representing you at
12 the time?

13 A. Yes.

14 Q. Who was your counsel?

15 A. It would have been the Smith Moore
16 Leatherwood Firm.

17 Q. Do you remember which lawyer?

18 A. Most likely, Tom Pittman.

19 MS. MCKNEW: Bill Pittman.

20 THE WITNESS: Bill, thank you. Bill
21 Pittman.

22 EXAMINATION RESUMED BY MR. KNOWLTON:

23 Q. But you're not certain of that?

24 A. I'm not sure.

25 Q. Leading up to that period of time, tell me

CONFIDENTIAL DEPOSITION OF GARY DANNAR

1 A. That's probably a correct statement. It's
2 probably considered a joint press release.

3 Q. And at that point, you had announced an
4 intention to locate your headquarters for the mobile
5 power station and assembly in Muncie, Indiana, is
6 that correct?

7 A. That's what it says, yes.

8 Q. Is that true?

9 A. Well, I love the -- I've been learning
10 good lessons with PR and economic development
11 people. Much of the phraseology seems pretty benign
12 to me, that's why you have attorneys sometimes help
13 you out. I did not realize the significance of
14 corporate headquarters. That seemed to be important
15 to economic development. The mobile power station
16 is designed to be assembled in multiple locations,
17 that's the way it's been engineered.

18 And we represented to Greg Hillman, and SC
19 Launch!, and Mike Holmes here that we would continue
20 operations here in South Carolina. Now, which one
21 of those becomes technically the headquarters and
22 which one becomes, you know, an assembly point,
23 that's really what this was about, assembly, and
24 manufacturing could be someone or somewhere else.
25 Those details, I'll be honest at the time, I did not

CONFIDENTIAL DEPOSITION OF GARY DANNAR

1 A. Okay.

2 Q. One thing that's clear though is as of

3 April 2015, you had relocated it to Indiana?

4 A. That's clear, yes.

5 Q. Take a look, if you would, at Exhibit 6.

6 There's a statement on the bottom attributed to you,

7 that last paragraph says, "Quackenbush noted

8 although Dannar repaid his \$200,000 loan to South

9 Carolina, the organization there might require him

10 to pay another \$200,000. And it's attributing the

11 following quote to you: "Yes, we would be prepared

12 to pay that back. We have not received any

13 indication SC Launch! is pursuing that." Is that

14 what you told Mr. Quackenbush?

15 A. No.

16 Q. That's not an accurate quote?

17 A. It's not an accurate quote.

18 Q. Is any part of it accurate?

19 A. We have not received any indication SC

20 Launch! is pursuing that, that's accurate.

21 Q. As of June -- July 2013?

22 A. Correct.

23 Q. The first part is accurate, I assume, by

24 omitting that part of it?

25 A. No.

SIGNATURE OF DEPONENT

I, the undersigned, GARY DANNAR,
do hereby certify that I have read the foregoing
deposition transcript and find it to be a true
and accurate transcription of my testimony,
with the following corrections, if any:

[illegible]

GARY DANNAR

Date

Exhibit 3

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 2 COUNTY OF GREENVILLE C.A. No: 2015-CP-23-00142
 3
 4 DD DANNAR, LLC,
 5 Plaintiff,
 6 vs
 7 SC LAUNCH!, INC.,
 8 Defendant.

9
 10 30(b)(6)
 DEPOSITION OF: HARRY GREIG HILLMAN
 11 DATE: November 30, 2016
 12 TIME: 9:02 AM
 13 LOCATION: SMITH MOORE LEATHERWOOD, LLP
 2 West Washington Street, Suite 1100
 14 Greenville, SC 29601
 15 TAKEN BY: Counsel for the Plaintiff
 16 REPORTED BY: SUSSY LUNA,
 17 Court Reporter

18
 19 A. WILLIAM ROBERTS, JR. & ASSOCIATES

20 Fast Accurate & Friendly

21 Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
22 (843) 722-8414	(843) 785-3263	(843) 839-3376
23 Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
 scheduledepo.com

1 make sure that this is a complete accurate copy.

2 That's really what I'm asking you.

3 A I believe it is, yes.

4 Q Okay. Thank you.

5 Does it include a copy of the
6 promissory note in the amount of \$200,000?

7 A Yes. It does.

8 Q What is the purpose of the -- let me
9 ask it this way: Is the purpose of the Financing
10 Agreement to secure SC Launch! in the loan?

11 That's what the Financing Agreement
12 does, right?

13 MR. KNOWLTON: Object to the form.

14 THE WITNESS: I think it does that.

15 And it describes the relationship between the
16 company and SC Launch!.

17 BY MS. MCKNEW:

18 Q Okay. And I would like to direct your
19 attention to Section 3.3B. The relocation fee, page
20 5 of Exhibit 7, the top.

21 And I see the last sentence says -- a
22 phrase that says, A good-faith estimate in the
23 amount necessary to compensate SC Launch! for its
24 actual costs in connection with a Company
25 Relocation.

What are those costs?

A The costs involved in the launch program getting to a point where a company is offered an opportunity to present to the Board are very difficult to delineate specifically.

However, I can tell you that the program contains a large number of people hours. There are quite a number of expenses associated with pulling the teams together. You know, those are the most closely related costs.

But in addition to that, the entire program is based on being able to interact pretty broadly with entities in South Carolina for the purpose of getting all of those contacts and networks and so on to the benefit of a company that we're trying to help get off the ground.

So it's very difficult to, you know, give you a line-by-line detail. The consulting services that I mentioned earlier are certainly part of this. The team is composed of individuals that have pretty extensive -- you know, ten to 20-plus years of experience in business. So all of those efforts come together to support an entity that is in front of us. The other aspect of this is that we as representatives of the State of South Carolina,

1 we are funded through a mechanism that makes us a
2 South Carolina organization, South Carolina state
3 organization. We have to make a decision with these
4 companies. It means that when we do that, there are
5 other companies that don't have the benefit of these
6 funds. So what is the cost is quite broad and it's
7 very difficult to try and get to the point that one
8 can peer into the future and see who will really do
9 what they claim they will be doing. So the cost of
10 the State of South Carolina is pretty significant
11 every time we put one of these companies up for an
12 investment.

13 Q Okay. Not my question.

14 I'll ask my question again.

15 A Okay.

16 Q What are your costs on a relocation?

17 A So what -- are you asking me -- can
18 you repeat exactly what you're asking?

19 Q Yeah. What are your -- SC Launch! or
20 SCRA's actual costs on a relocation?

21 Not how much it took to get them to
22 the funding, but on relocation what are your actual
23 costs?

24 A So let me state that I don't believe
25 you can separate what it took for them to get there

1 other than to say that when an investment is put in
2 front of a company and the company leaves prior to
3 the agreed-upon time frame that they would stay in
4 the state, it means that some other company -- and
5 we have always a line of companies that are hoping
6 to get these investments. It means that other
7 companies would not have the opportunity to get
8 these funds. And therefore, the success of those
9 companies present an opportunity lost to the State
10 of South Carolina and that's really a piece of art.

11 Q And who were those companies in --
12 well, first of all, you agree with me, don't you,
13 that after getting the funding in 2011, Dannar
14 continued doing business in South Carolina for at
15 least two years?

16 A What I know is that there was a date
17 specific when Dannar agreed that it had departed the
18 state.

19 Q And it was after -- they did business
20 for a full two years after funding, isn't that
21 correct?

22 A I assume that. I can't tell you for
23 sure that that is the case. We hope that's the
24 case.

25 Q And who were the companies that didn't

(HILLMAN EXH. 9, Defendant's Second
Supplemental Responses to Plaintiff's Second Set of
Interrogatories, was marked for identification.)

BY MS. MCKNEW:

Q Let me hand you a document --

A Yes.

Q -- marked Exhibit 9. And this appears
to be SC Launch!'s second Supplemental Responses to
Plaintiff's Second Set of Interrogatories.

Do you see that?

A Yes. I do.

Q And you have reviewed this document
before, have you not?

A Yes. I have.

Q And I would invite your attention to
page 5 of this document, wherein we ask the question
we requested that South Carolina Launch identify by
category an amount all costs incurred in connection
with the relocation of a Supported Company.

In response to which, you can see the
supplemental response, down at the -- down at
bottom, including the statement -- well -- can you
please publish into the record the last sentence of
the supplemental response to interrogatory number
eight?

1 A Am I correct in pointing to the
2 sentence that begins, Defendant does not have?

3 Q Yes. That's correct.

4 A So Defendant does not have any further
5 information related to any amounts of costs incurred
6 by Defendant in connection with relocation of a
7 Supported Company beyond that which has previously
8 been provided in discovery including the Rule
9 30(b)(6) deposition of the plaintiff.

10 Q What in the Rule 30(b)(6) deposition
11 of Gary Dannar, in your estimation, purported to be
12 a cost that was incurred by SC Launch1 in connection
13 with the relocation of Dannar?

14 A I would have to say it again, it goes
15 to the program itself, which is a body of knowledge
16 and information that has been accrued at a fairly
17 substantial cost. And so the program in its
18 existence, you know, contains costs that were put
19 forth to the benefit of the plaintiff here.

20 Q And what in the -- let me repeat my
21 question.

22 What in Mr. Dannar's 30(b)(6)
23 deposition identified costs to SC Launch1 based on
24 Dannar's relocation?

25 MR. KNOWLTON: Object to the form of



Exhibit 4

CONFIDENTIAL

Minutes of a
**MEETING of the
BOARD OF DIRECTORS**
Of
SC LAUNCH!, INC.
July 17, 2013

CALL TO ORDER

The fifty-fifth meeting of the Board of Directors of SC Launch!, Inc. was held Wednesday, July 17, 2013 at the Greenville Hospital System, 607 Grove Road, Greenville, South Carolina. Mr. John J. Warner, Chair, called the meeting to order at 10:05a and noted a quorum was present. He welcomed all Directors and other attendees.

DIRECTORS AND OTHERS PRESENT

Directors Present: Mr. John J. Warner (Chair); Mrs. Judy Davis (via telephone); Mr. Deepal Eliatamby; Mrs. Andrea Marshall (via telephone); Mr. Tim Reed; Mr. Thomas Strange; Mr. Joseph Wischerath

Directors Absent: None

Officers Present: Mrs. Julia Martin, Treasurer (via telephone); Ms. Connie Lollis, Secretary

Officers Absent: None

Others Present: Mr. Greg Hillman, Interim SC Launch Executive Director; Mr. Marty Ettlemeyer, SC Launch Director of Operations; Mr. Greg Clark, SC Launch Midlands Zone Manager; Mr. Derek Willis, SC Launch Lowcountry Zone Manager; Mr. Ambrose Schwallie, EVP Corporate Development, SCRA; Mrs. Tiffany DuPree, Senior Financial Manager (via telephone), SCRA; Mrs. Ashley Hannah, Manager, SCRA Communications & Marketing; Ms. Shannon Pierce, CareCam

APPROVAL OF MINUTES

There being no objections, the minutes of the May 8, 2013 meeting of the Board of Directors and actions and authorizations reflected in such minutes were unanimously approved and reaffirmed.

ADMINISTRATION

Chair Warner opened to any administrative items to be discussed. Director Reed informed the group he has a conflict with the Board meeting scheduled for September 11th, but added the meeting did not need to be rescheduled for his benefit.

Chair Warner asked Ms. Connie Lollis if there were any other administrative items for discussion. Ms. Lollis and Mrs. Julia Martin provided a brief overview of Diligent Boardbooks, the portal to be used in the future to share Board meeting material and other Board information.

SC LAUNCH FINANCIAL UPDATE

Chair Warner turned over the meeting to Director Reed who reviewed the Financial Report which is attached to and made a part of these minutes (*Attachment I*). Director Reed highlighted from the report

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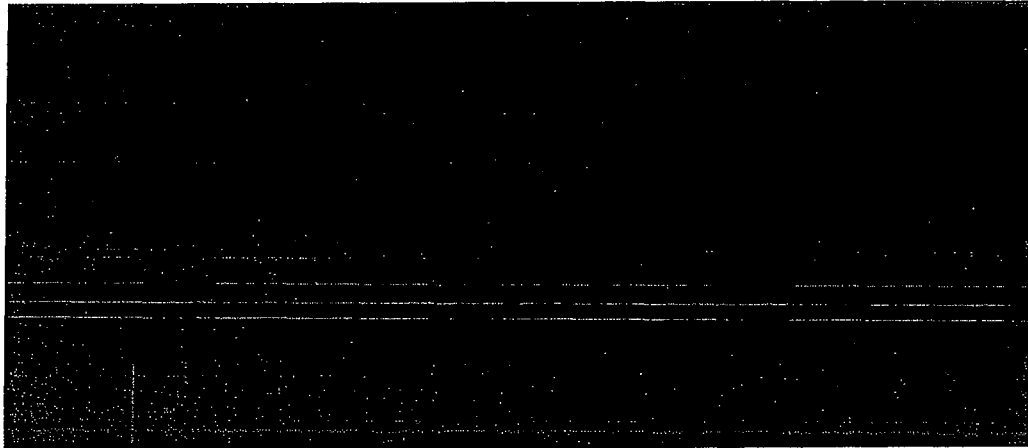
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ELECTRONICALLY FILED - 2017 Feb 28 11:23 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2300142

CONFIDENTIAL

2 | SC Launch!, Inc. Board of Directors Meeting, July 17, 2013

DD Dannar, who have repaid their loan and are planning to move out of the state. Director Strange requested additional information on Dannar. Mr. Greg Hillman informed the group that Dannar is planning a move to Indiana, and that the SC Launch Program staff are in discussions with them now to get more information. To date, Dannar has informed SC Launch that they will still be in South Carolina performing work. Mr. Hillman noted the question still remains if Dannar is required to pay the \$200,000 clawback for relocation outside of SC. Mr. Hillman also informed the group that SCRA/SC Launch have other discussions going on with Indiana which may come into play.

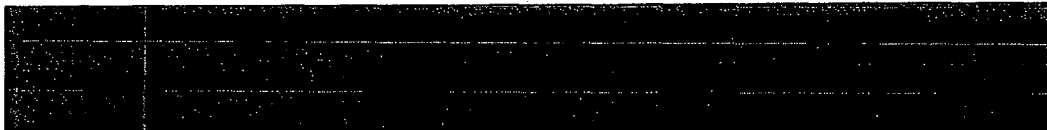


Director Reed continued with the report including the FY13 Investment Summary, Statement of Cash Flows, etc.

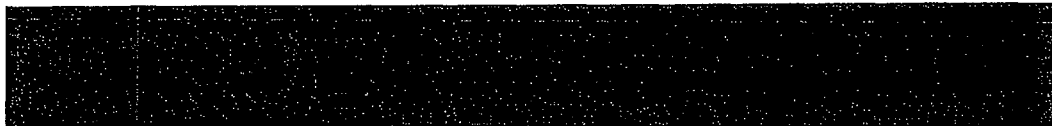
Director Eliatamby made the motion to accept the SC Launch!, Inc. Audit & Finance Committee report as presented. Seconded by Director Wischerath and unanimously approved.

Director Reed updated the group on the FY14 Audit Plan. He noted the Audit & Finance Committee reviewed the Plan in depth. He offered to distribute to the Board.

SC LAUNCH PROGRAM UPDATE



Ms. Shannon Pierce joined the meeting at 10:42a.



Ms. Shannon Pierce left the meeting at 11:15a.

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SCL000714

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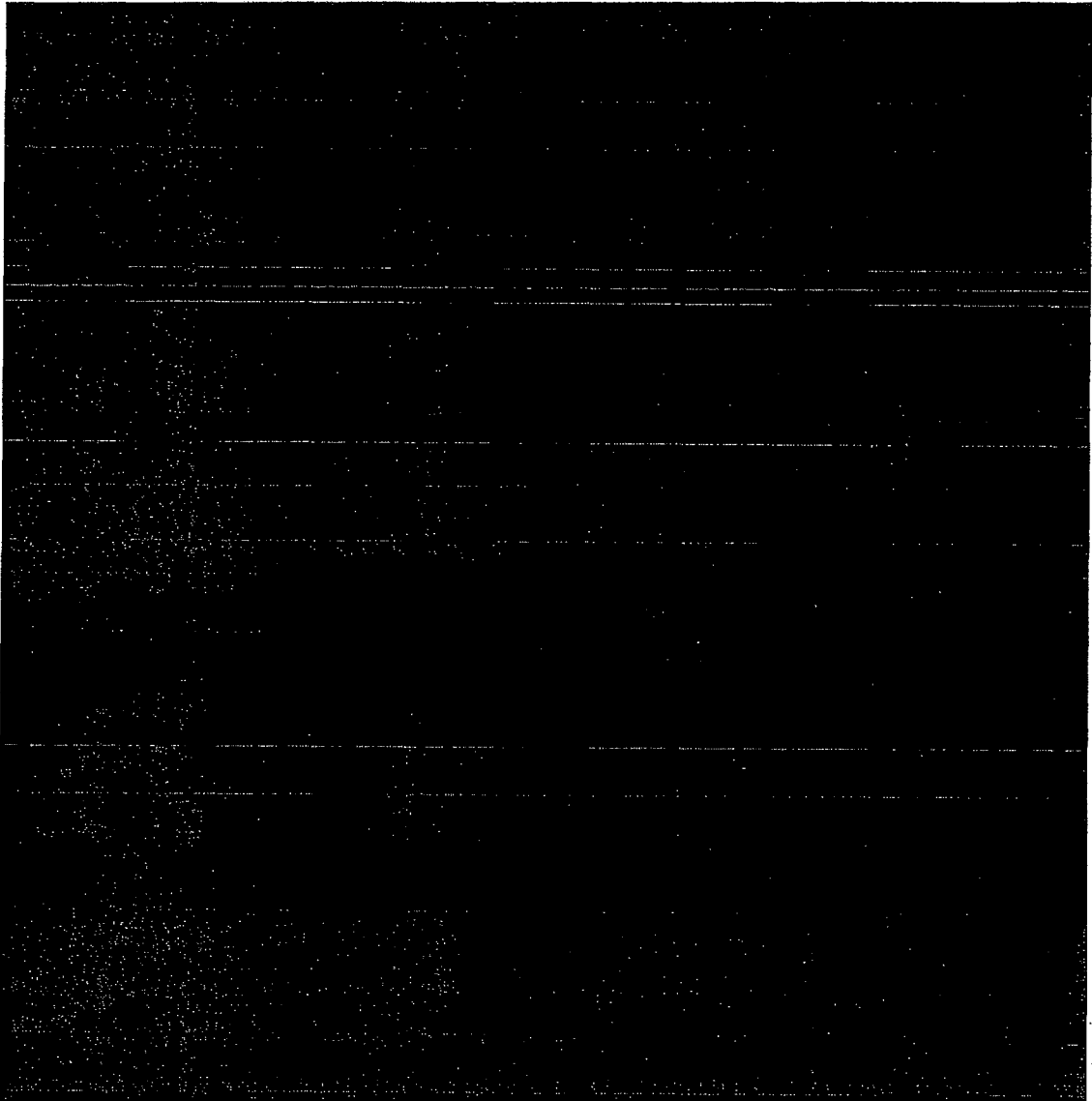
CONFIDENTIAL

3 | *SC Launch!, Inc. Board of Directors Meeting, July 17, 2013*

EXECUTIVE SESSION

Director Reed made a motion to go into **EXECUTIVE SESSION** at 11:16a to hear and discuss proprietary business of SC Launch candidate companies and receive an update from a previously funded company. Director Wischerath seconded the motion and the Board unanimously approved.

RETURN TO OPEN SESSION at 3:13p



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SCL000715

ROA 000251

CONFIDENTIAL

4 | SC Launch!, Inc. Board of Directors Meeting, July 17, 2013

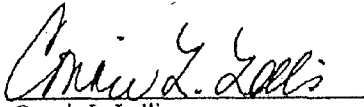
NEW BUSINESS

Chair Warner opened the meeting to any new business. Director Eliatamby thanked the SC Launch Program Staff for their meeting preparation in light of Ms. Lori Mack's departure from the company. He also commended the group on bringing a new company/technology to the meeting, and asked if there is a trend towards repeat requests. Discussion ensued in reference to the pipeline. Director Eliatamby asked if there is anything the Directors can do to assist in bringing new companies/technologies to the Board. Mr. Hillman stated that staff is diligently working to boost the pipeline. He also noted that staff conducts company reviews, and actually met with seven new companies on July 16th.



ADJOURN

There being no further business and no objections, the meeting was adjourned at 3:43p.


Connie L. Lollis
Secretary


John J. Warner
Chair



SC Launch! BOD Minutes_07.17.13.docx

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SCL000716

ROA 000252

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Exhibit 5

CONFIDENTIAL

Minutes of a
MEETING of the
BOARD OF DIRECTORS
Of
SC LAUNCH!, INC.
September 11, 2013

ELECTRONICALLY FILED - 2017 Feb 28 11:23 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2300142

CALL TO ORDER

The fifty-sixth meeting of the Board of Directors of SC Launch!, Inc. was held Wednesday, September 11, 2013 at the SCRA, 1000 Catawba Street, Columbia, South Carolina. Mr. John J. Warner, Chair, called the meeting to order at 9:02a and noted a quorum was present. He welcomed all Directors and other attendees.

DIRECTORS AND OTHERS PRESENT

Directors Present: Mr. John J. Warner (Chair); Mrs. Judy Davis; Mr. Deepal Eliatamby; Mrs. Andrea Marshall; Mr. Thomas Strange; Mr. Joseph Wischerath

Directors Absent: Mr. Tim Reed

Officers Present: Mrs. Julia Martin, Treasurer; Ms. Connie Lollis, Secretary

Officers Absent: None

Others Present: Mr. Greg Hillman, Interim SC Launch Executive Director; Ms. Lindsay Kuhnhein, SC Launch Program Administrator; Mr. Marty Ettlemeyer, SC Launch Director of Operations; Mr. Greg Clark, SC Launch Midlands Zone Manager; Mr. Derek Willis, SC Launch Lowcountry Zone Manager; Mr. Ambrose Schwallie, EVP Corporate Development, SCRA; Mrs. Tiffany DuPree, Senior Financial Manager, SCRA; Mr. Bill Mahoney, CEO, SCRA; Mr. Brendon Lee, Co-Founder & Lead Developer, 52 Apps; Mr. Stephen Leight, CEO, 52 Apps; Mr. Frank Greer, Zipit Wireless

APPROVAL OF MINUTES

There being no objections, the minutes of the July 17, 2013 meeting of the Board of Directors and actions and authorizations reflected in such minutes were unanimously approved and reaffirmed.

ADMINISTRATION

Chair Warner introduced Mr. Bill Mahoney, CEO, SCRA. Mr. Mahoney welcomed everyone and provided a brief update on opportunities for SCRA that will coincide with the SC Launch program. He added that as discussed at the Executive Committee Retreat in June, regardless of any other opportunities in SC or outside of SC, it is the obligation of SCRA to keep the SC Launch program as the core of its public mission.

Mr. Mahoney left the meeting at 9:15a.

Chair Warner clarified that the next meeting of the full Board of Directors will be held in Charleston at the SCRA Applied Research Center.

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SCL000717

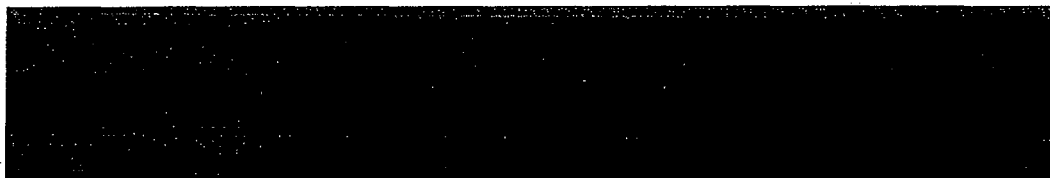
ROA 000254

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2 | SC Launch1, Inc. Board of Directors Meeting, September 11, 2013

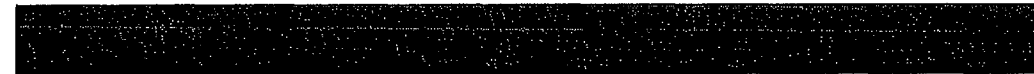
Director Strange noted that he will be rolling off the Board next year, and stated it might be a good idea to begin inviting visitors to the meetings to start identifying qualified candidates. Discussion centered on Board terms. Chair Warner suggested that he, Mr. Schwallie, and Mr. Hillman meet to discuss terms for Directors.

SC LAUNCH FINANCIAL UPDATE



Director Strange asked Mr. Greg Hillman for an update on Dannar. Mr. Hillman informed the group that the SC Launch staff is working to get an updated status on the company. He added that there is some work Dannar is doing in Indiana, but they have assured SC Launch that the DoD work is being done in Greenville. The SC Launch staff continues to track Dannar's progress and, based on their findings, may consider sending Dannar a demand letter based on the penalty clause in the financing agreement. Director Eliatamby asked for a timeline to settle the situation. Mr. Hillman stated the decision will be made prior to the next full Board meeting in November.

Director Strange continued with the report. At the conclusion of the report, Director Strange asked Mrs. Julia Martin if there was anything she needed to review with the group. Mrs. Martin stated that the staff continues to work with the portfolio companies to obtain current financials. The Board and Mrs. Martin thanked Mrs. Tiffany DuPree for her work on the project. Mrs. Martin added that the staff will work to develop criteria for evaluating these companies and set timelines for when SC Launch should write off the investments.



Director Davis made the motion to accept the SC Launch1, Inc. Audit & Finance Committee report as presented. Seconded by Director Marshall and unanimously approved.

SC LAUNCH PROGRAM UPDATE

Chair Warner turned over the meeting to Mr. Hillman who invited Mr. Greg Clark to provide the Program Update which is attached to and made a part of these minutes (*Attachment II*). The Board agreed the update provides a lot of good information for the group. Director Eliatamby asked if there are enough resources to manage all the SC Launch work. Mr. Clark stated that currently staffing is not an issue, but management is tracking the program. Director Wischerath expressed his concern for lack of deal flow. Mr. Hillman stated they are seeing new companies, but those companies simply are not ready for presentation to the Board. Director Wischerath asked what the staff and/or the Board can do to get these companies ready. Mr. Hillman informed the group that sometimes there is not much the staff can do other than mentor them and help them along. Director Marshall stated she experiences the same issues with companies presenting to CHAP. She continued by commending the SC Launch staff on their work getting the companies ready for the Board, and for performing all the due diligence work on those companies. Director Wischerath stated he still believes there is something more staff and the Board can do to create more deal flow.

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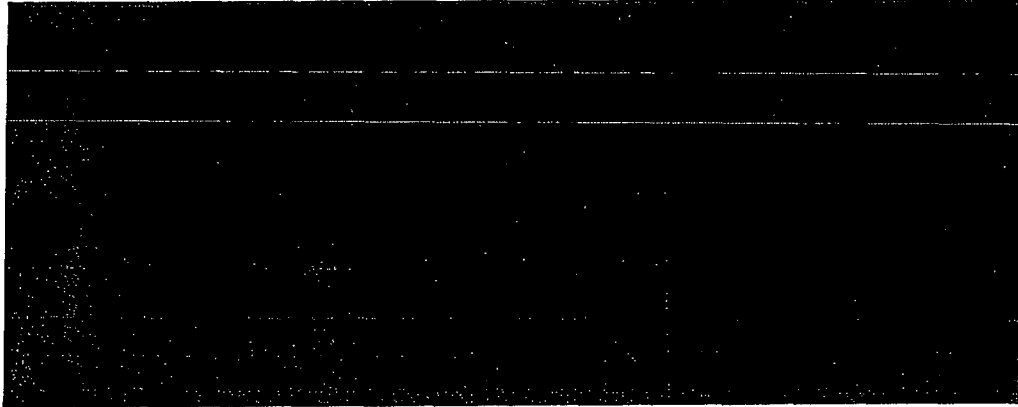
SCL000718

ROA 000255

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3 | SC Launch1, Inc. Board of Directors Meeting, September 11, 2013

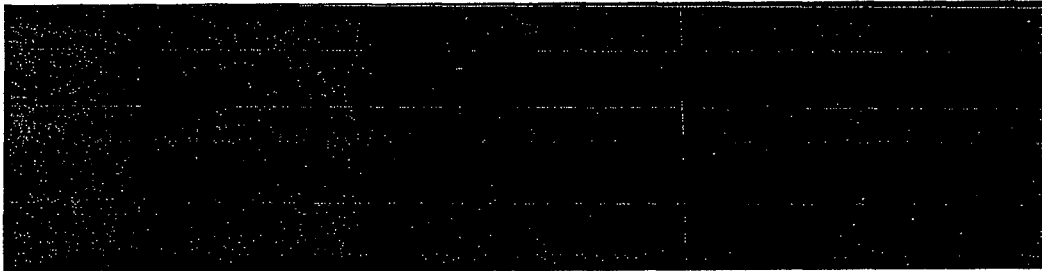
PORTFOLIO COMPANY STATUS UPDATES



EXECUTIVE SESSION

Director Strange made a motion to go into **EXECUTIVE SESSION** at 10:42a to hear and discuss proprietary business of SC Launch candidate companies and receive an update from a previously funded company. Director Davis seconded the motion and the Board unanimously approved.

RETURN TO OPEN SESSION at 11:57a



Director Eliatamby left the meeting at 12:00p.

RETURN TO EXECUTIVE SESSION at 12:26p

RETURN TO OPEN SESSION AT 2:51p



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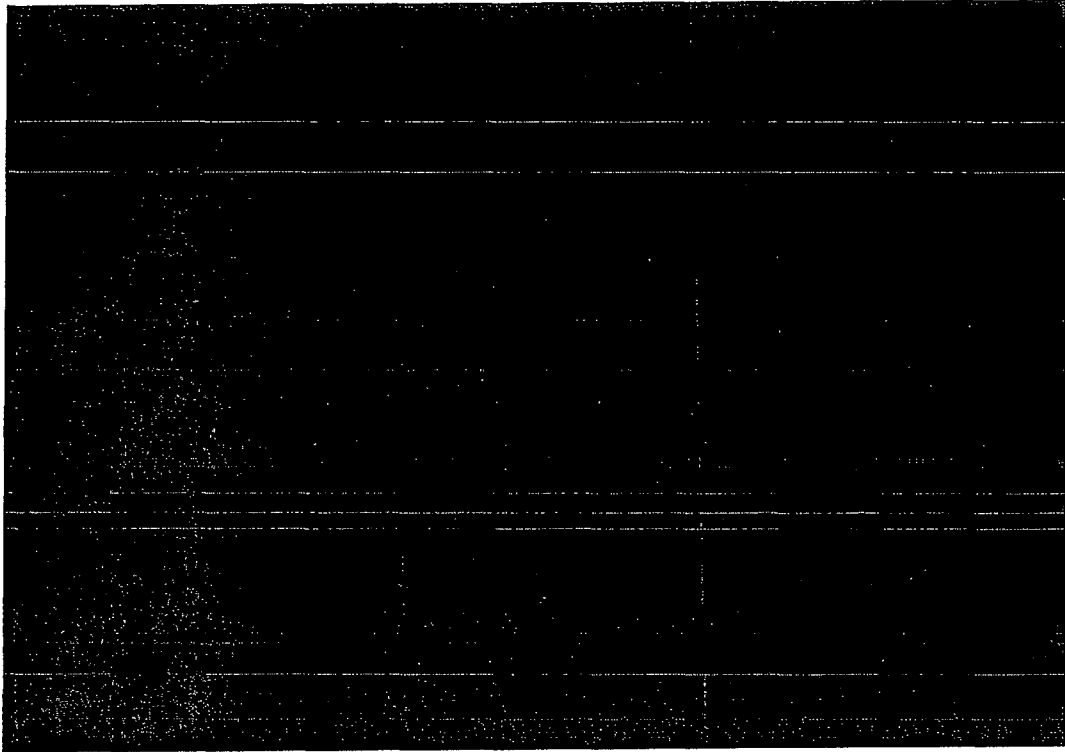
SCL000719

ROA 000256

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4 | SC Launch!, Inc. Board of Directors Meeting, September 11, 2013

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NEW BUSINESS



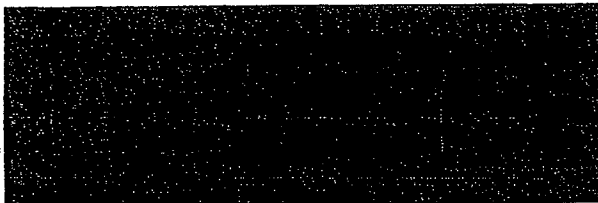
Discussion continued on the Board terms.

ADJOURN

There being no further business and no objections, the meeting was adjourned at 3:07p.

Connie L. Lollis
Secretary

John J. Warner
Chair



SC Launch! BOD Minutes_09.11.13.docx

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SCL000720

ROA 000257

Exhibit 6

From: Hillman, Greg
To: Tim Reed
Sent: 6/19/2013 6:05:45 PM
Subject: RE: dannar investment and move from SC

They did Tim. Still have potential for penalty through early 2016 depending how much they leave in SC (DoD is what they said).

From: Tim Reed [mailto:timjreed@prodigy.net]
Sent: Wednesday, June 19, 2013 4:49 PM
To: Hillman, Greg
Subject: Re: dannar investment and move from SC

If I'm not mistaken, they paid all of our loans back, in anticipation of a claw back?

Tim Reed
PO Box 8758
Greenville, SC, 29604
Timjreed@prodigy.net
864 270 0310

Sent from my iPad

On Jun 19, 2013, at 3:37 PM, <greg.hillman@scra.org> wrote:

We did Tim. Really a kick to everyone's efforts but we've to learn from it. I've suggested a review w ICAR and others and will keep you posted - your input would be much appreciated. Thinking a few weeks down the road.

Watch out for the hula dancers!!

Best, Gh.

Sent from my iPhone

On Jun 19, 2013, at 11:00 AM, "Tim Reed" <timjreed@prodigy.net> wrote:

Oh well, we tried!

Tim Reed
PO Box 8758
Greenville, SC 29604
864 270 0310

Sent from my iPhone

On Jun 19, 2013, at 10:04 AM, <greg.hillman@scra.org> wrote:

<image001.gif>



SCL000621

ROA 000259

Dannar company will announce this morning at 11am the movement of their commercial vehicle manufacturing operations to Muncie, Indiana. DoD related activity will remain in SC through 2014 and possibly beyond. \$2.5M in new investment obtained initially at current valuation.

BUSINESS SENSITIVE COMMUNICATION: The content of this message is privileged information which may contain proprietary and business sensitive material. It is provided only for the intended business purpose by the addressee.

BUSINESS SENSITIVE COMMUNICATION: The content of this message is privileged information which may contain proprietary and business sensitive material. It is provided only for the intended business purpose by the addressee.

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SCL000622

ROA 000260

Exhibit 7

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
DD Dannar, LLC,	)	Civil Action No. 2015-CP-23-00142
	)	
Plaintiff,	)	
	)	
v.	)	<u>DEFENDANT'S SECOND</u>
	)	<u>SUPPLEMENTAL RESPONSES TO</u>
SC LAUNCH!, Inc.,	)	<u>PLAINTIFF'S SECOND SET OF</u>
	)	<u>INTERROGATORIES</u>
	)	
Defendant.	)	

TO: DD DANNAR, LLC AND ITS ATTORNEYS NATALMA M. MCKNEW, ESQ. AND
JASON D. MAERTENS, ESQ.:

Pursuant to South Carolina Rule of Civil Procedure 33, Defendant SC LAUNCH!, Inc.
("Defendant") responds to Plaintiff's Second Set of Interrogatories as follows:

INTERROGATORIES

3. Identify each Supported Company that relocated its business, in whole or in part,
at any time after receiving funding from SCL.

ORIGINAL RESPONSE: See response to Number 1 above.

SUPPLEMENTAL RESPONSE:

- a. DigitalSmiths Corporation
320 Blackwell Street, Suite 200, Durham, NC 27701
Phone: 919-460-4747
www.digitalsmiths.com
Matthew Berry, COO and Co-Founder
Ben Weinberger, CEO – ben@digitalsmiths.com
- b. Get Interactive, Inc.
6365 Raven Forest Drive
Winston-Salem, NC 27105
Phone: 336-761-2997 or 336-655-5229
No website
Frederick Harrison, President and CEO – rick.harrison@getinteractive.tv

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4. Identify each Supported Company that has paid a Relocation Fee to SCL, including the date of initial funding, date of relocation, and date of Relocation Fee.

ORIGINAL RESPONSE:

- a. DigitalSmiths Corporation
- b. Date of Initial Funding: July 31, 2006
- c. Date of Relocation: On or about June 18, 2007
- d. Date of Payment of Relocation Fee: October 22, 2008

SUPPLEMENTAL RESPONSE: No supplemental response required. DigitalSmiths is fully identified in response to Number 3 above.

5. Identify each Supported Company that has repaid SCL in full, with interest, including the date of initial funding, the date(s) of any subsequent funding by SCL, and the date of repayment.

ORIGINAL RESPONSE: Defendant objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence. Whether other companies have fully honored their financing agreements with Defendant is irrelevant to the declaratory relief Plaintiff seeks in this current action and the request is not reasonably calculated to lead to the discovery of admissible evidence.

SUPPLEMENTAL RESPONSE: Defendant objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence. Whether other companies have fully honored their financing agreements with Defendant is irrelevant to the declaratory relief Plaintiff seeks in this current action and the request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and reserving these objections, Defendant identifies the following Supported Companies:

- a. Advanced Automation Consulting, Inc.
Investment Date(s): June 16, 2006
Date of Repayment: March 29, 2007

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- b. DigitalSmiths Corporation
Investment Date(s): July 31, 2006
Date of Repayment: November 3, 2008
- c. Sabal Medical, Inc.
Investment Date(s): May 23, 2006; August 24, 2006; May 3, 2007; August 13, 2009; September 10, 2010
Date of Repayment: January 6, 2011
- d. Ometric Corporation
Investment Date(s): November 4, 2008
Date of Repayment: January 21, 2011
- e. Immunologix, Inc.
Investment Date(s): March 10, 2010
Date of Repayment: November 15, 2011
- f. Charleston Laboratories, Inc.
Investment Date(s): August 3, 2007
Repayment Date: October 4, 2012
- g. Ion Surgical Technologies, Inc.
Investment Date(s): October 1, 2009; June 29, 2011
Repayment Date: February 4, 2013
- h. DD Dannar, LLC
Investment Date(s): April 14, 2011
Repayment Date: April 30, 2013
- i. Bridge To Life, Ltd.
Investment Date(s): April 16, 2009
Repayment Date: November 17, 2014
- j. SmartTruck Systems, LLC
Investment Date(s): July 26, 2011
Repayment Date: May 22, 2015
- k. CareCam Innovations, LLC
Investment Date(s): November 3, 2010; April 24, 2012
Repayment Date: June 30, 2015
- l. VidiStar, LLC
Investment Date(s): September 25, 2008; August 6, 2010
Repayment Date: October 26, 2015
- m. Vigilix, LLC

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Investment Date(s): December 11, 2007; March 5, 2009

Repayment Date: July 8, 2016

6. Identify each Supported Company that has paid any fees to SCL, other than the loan principal, interest and Relocation Fee, regardless of nomenclature, and for each such Company include the date of initial funding, the date(s) of any subsequent funding by SCL, and the nature and dates of all payments to SCL.

ORIGINAL RESPONSE: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence as no such additional fees were part of the Financing Agreement between Defendant and Plaintiff. Subject to this objection, Defendant has included a Sale of Company Fee for the following company:

- a. Ion Surgical Technologies
- b. Date of Initial Funding: Fiscal Year 2011
- c. Date of Subsequent Funding by Defendant: None.
- d. Date of Sale of Company Fee: On or about March 1, 2013
- e. Amount of Sale of Company Fee: \$30,000.

SUPPLEMENTAL RESPONSE: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence as no such additional fees were part of the Financing Agreement between Defendant and Plaintiff. Subject to and reserving theSE objections, Defendant has included a Sale of Company Fee for the following company:

- a. Ion Surgical Technologies, Inc.
3400 Salterbeck Street
Mount Pleasant, SC 29466
Phone: 843-708-2051
<http://www.ionsurgicaltechnologies.com>

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Brian Dross, President – brian@ionsurgicaltechnologies.com

- b. Date of Initial Funding: Fiscal Year 2011
- c. Date of Subsequent Funding by Defendant: None.
- d. Date of Sale of Company Fee: On or about March 1, 2013
- e. Amount of Sale of Company Fee: \$30,000.

8. Identify by category and amount all costs incurred by SCL in connection with the relocation of a Supported Company.

ORIGINAL RESPONSE: Due, in part, to the relative difficulty in determining the tangible and intangible costs and adverse impact resulting from Plaintiff's relocation, the parties included the Relocation Fee in the Financing Agreement, which was agreed to by Plaintiff and was intended by both parties to serve as a good faith and fair measure of appropriate compensation to Defendant. Defendant does not have any further information responsive to this Interrogatory.

SUPPLEMENTAL RESPONSE: Due, in part, to the relative difficulty in determining the tangible and intangible costs and adverse impact resulting from Plaintiff's relocation, the parties included the Relocation Fee in the Financing Agreement, which was agreed to by Plaintiff, and was intended by both parties to serve as a good faith and fair measure of appropriate compensation to Defendant. Defendant does not have any further information related to any amounts of costs incurred by Defendant in connection with the relocation of a Supported Company beyond that which has previously been provided in discovery, including the Rule 30(b)(6) deposition of Plaintiff.

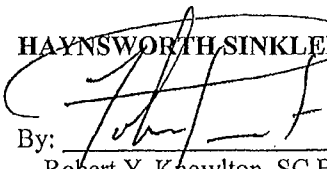
12. Identify all SCL personnel, officers, Board members, representatives or consultants who provided any analysis, recommendations, vote, review or analysis regarding Danner and, with respect to each such person, describe in detail the date(s) nature of the involvement of each such person.

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ORIGINAL RESPONSE: Defendant objects to this Interrogatory because the decision was made by a deliberative body composed of multiple members with authority to make business decisions, including any decision as to whether to advance any further funding to Plaintiff.

SUPPLEMENTAL RESPONSE: Defendant objects to this Interrogatory because the decision was made by a deliberative body composed of multiple members with authority to make business decisions, including any decision as to whether to advance any further funding to Plaintiff. Subject to and reserving this objection, Defendant has provided all information responsive to this Interrogatory in its responses to Plaintiff's first and second set of requests for production. See documents Bates stamped SCL000001-SCL000720, which have been served on Plaintiff.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Robert Y. Knowlton, SC Bar No. 3589
John G. Tamasitis, SC Bar No. 101875
1206 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
bknowlton@hsblawfirm.com
Attorneys for Defendant SC Launch1, Inc.

November 17, 2016
Columbia, South Carolina

Karen Kolb

From: efiledonotreply@sccourts.org
Sent: Tuesday, February 28, 2017 11:25 AM
To: Peter Rutledge
Cc: Karen Kolb
Subject: Courtesy NEF RE: 2015CP2300142

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2300142

Official File Stamp: 02-28-2017 11:23:27 AM
Court: CIRCUIT COURT
Common Pleas
Greenville
Case Caption: DD Dannar LLC vs. SC LAUNCH Inc
Document(s) Submitted: Motion/Summary Judgment
Memo/Memo in Support
- Exhibit/Filing of Exhibits
Filed by or on behalf of: Natalma M. McKnew

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

Jason Daniel Maertens for DD Dannar LLC
Natalma M. McKnew for DD Dannar LLC
Thomas W. Cooper, Jr.
John Gwilym Tamasitis for SC LAUNCH Inc
Robert Yates Knowlton, Sr. for SC LAUNCH Inc
Peter Andrew Rutledge for DD Dannar LLC
Emily Irene Bridges for DD Dannar LLC

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Ronald R. Hall

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|                         |   |                                    |
|-------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                    |
|                         | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF GREENVILLE    | ) |                                    |
|                         | ) | C.A. No. 2015-CP-23-00142          |
| DD Dannar, LLC,         | ) |                                    |
|                         | ) |                                    |
| Plaintiff,              | ) |                                    |
|                         | ) | <b>PLAINTIFF DD DANNAR, LLC'S</b>  |
| -vs-                    | ) | <b>MEMORANDUM IN OPPOSITION TO</b> |
|                         | ) | <b>DEFENDANT'S MOTION FOR</b>      |
| SC LAUNCH!, Inc.,       | ) | <b>SUMMARY JUDGMENT</b>            |
|                         | ) |                                    |
| Defendant.              | ) |                                    |

In response to the Defendant SC Launch, Inc.'s ("SCL") Motion for Summary Judgment, plaintiff DD Dannar, LLC ("Dannar") craves reference to Plaintiff's Motion for Summary Judgment and supporting memorandum. In particular:

- When Dannar repaid the full amount of the SCL loan on April 30, 2013, no relocation fee was due to SCL.
- Upon Dannar's full repayment of the SCL loan, the Note was extinguished, and Dannar had no further obligation to SCL under the Financing Agreement.
- The "relocation fee" described in the Financing Agreement is an unenforceable penalty.
- The "relocation fee" described in the Financing Agreement is unenforceable, as it is based on a false and misleading representation by SCL.

Dannar incorporates its Memorandum in Support of Motion for Summary Judgment, filed on February 28, 2017, in opposition to SCL's Motion for Summary Judgment.

Respectfully submitted,

s/Natalma M. McKnew

Natalma M. McKnew (S.C. Bar #3864)  
Jason D. Maertens (S.C. Bar #73583)  
Emily I. Bridges (S.C. Bar #102199)  
Smith Moore Leatherwood LLP  
2 West Washington Street, Suite 1100 (29601)  
Post Office Box 87  
Greenville, SC 29602  
(864) 751-7600 / (864) 751-7800 (fax)  
[tami.mcknew@smithmoorelaw.com](mailto:tami.mcknew@smithmoorelaw.com)  
[jason.maertens@smithmoorelaw.com](mailto:jason.maertens@smithmoorelaw.com)  
[emily.bridges@smithmoorelaw.com](mailto:emily.bridges@smithmoorelaw.com)  
*Attorneys for Plaintiff*

Dated: March 30, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD DANNAR, LLC

vs.

SC LAUNCH!, INC.

PLAINTIFF)

DEFENDANT)

) COURT OF COMMON PLEAS  
) 2015-CP-23-00142  
)  
)  
)

**ORIGINAL**

) TRANSCRIPT OF RECORD  
)  
)

April 5, 2017  
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

NATALMA M. MCKNEW, ESQ.  
EMILY IRENE BRIDGES, ESQ.  
Attorneys for the Plaintiff

ROBERT YATES KNOWLTON, SR., ESQ.  
JOHN GWILYM TAMASITIS, ESQ.  
Attorneys for the Defendant

APRIL HERRON  
Official Court Reporter

There were no witnesses.

There were no exhibits.

» > o < «

Certificate of Reporter . . . . . 43

1 THE COURT: Next case up is DD Dannar, LLC vs.  
2 SC LAUNCH! That's case number 2016-CP-23-142. Now,  
3 I presume since y'all have competing motions for  
4 summary judgment, that you're going to give me a fact  
5 sheet wherein y'all agree to all the outstanding  
6 facts in this case and there's no disagreement.

7 MS. BRIDGES: Essentially, that's what I briefs.  
8 Do.

9 THE COURT: Okay. Good.

10 MS. BRIDGES: If you have a question, I'll be  
11 happy to answer.

12 MR. KNOWLTON: It is our both of our positions  
13 that there are no material facts.

14 THE COURT: Okay, good enough. Well, I will do  
15 is I will defer to y'all and I will here from  
16 whomever should go first. In y'all's estimation.

17 MS. MCKNEW: Well, Your Honor, we are the  
18 Plaintiff.

19 THE COURT: Yes, ma'am.

20 MS. MCKNEW: So, we'll take the opportunity to  
21 go first. I'm Tammy McKnew, it's good to see you  
22 again.

23 THE COURT: Yes, ma'am, you too. I spent a  
24 little time your daughter a few weeks ago.

25 MS. MCKNEW: Oh, I be darn.

1 THE COURT: Or a few months ago.

2 MS. MCKNEW: I hope she won.

3 THE COURT: I don't know. Frankly, I don't see  
4 her too much to keep score.

5 MS. MCKNEW: Well, you know, she surprised me.  
6 I keep thinking she's been at it five years. She  
7 says, I have been there eight years.

8 I said, What happened? Why am I still young?  
9 Yeah, right.

10 I'd like to introduce Emily Bridges. You may  
11 already know her. Ad I have the great privilege of  
12 working with Emily closely. And she's been with us  
13 two years. And she is going to be making this  
14 argument, Your Honor.

15 THE COURT: Fantastic, I can't wait.

16 MS. BRIDGES: Thank you, Your Honor, may it  
17 please the Court?

18 THE COURT: Yes, ma'am.

19 MS. BRIDGES: Before we begin, I'll just give  
20 sort of a brief factual overview for the facts that  
21 are not in dispute. As Mr. Knowlton said, we agree  
22 that there are no factual disputes or material facts  
23 of dispute. But just to give Your Honor a since of  
24 whether both parties are coming from.

25 So, we represent DD Dannar. And it's a company

1       founded by Gary Dannar. He evented something called  
2       a mobile power station. And this is a brand new  
3       product that's going to be, hopefully, used to  
4       government and military sections for heavy  
5       construction, different things like that. But using  
6       more green energy and that kind of thing. So, it's a  
7       pretty unique product. When he was in the  
8       development phase of this, he entered into a  
9       financing arrangement with SC LAUNCH! on April 14th  
10      of 2011. This is an exchange for a \$200,000 loan.  
11      The understanding of the parties is that the loan was  
12      to be repaid by April 30th of 2013. And the loan  
13      would be accruing, it was not a grant, it was not a  
14      scholarship, it was, in fact, a loan with a  
15      promissory note that was the secured by the financing  
16      arrangement.

17             He applied for additional financing in early  
18      2013. This request was denied. So, Dannar then went  
19      out -- he had already gotten some investors in South  
20      Carolina and was looking for investors within South  
21      Carolina and other states. But found that because of  
22      the denial of SC LAUNCH! for the second round of  
23      financing, some investors were questioning that  
24      decision. So, he made the business decision, as he  
25      stated in his deposition, to pay off the loan with



1 interest and then go out, and no longer have it on  
2 his business balance sheet, go out and try to get  
3 other investors in South Carolina and elsewhere.

4 So, he repaid the loan in full by the end of  
5 April 2013. This was, in fact, a full year early of  
6 repayment. So, a \$200,000 loan he, repaid a total of  
7 \$222,634.23. So, the loan, plus interest, in April  
8 of 2013. Later on in the year 2013, Dannar began to  
9 investigate other places. So, in fact, his invention  
10 of a power station was designed to build in multiple  
11 locations and then combine together. This is fairly  
12 common in manufacturing. That one piece is built  
13 here, one piece is built over there, then another  
14 location and it's all combined. So, his idea was  
15 that it could be built in multiple locations and put  
16 together in South Carolina, originally.

17 So, he was going out looking, raising money in  
18 South Carolina, raising money elsewhere. And Indiana  
19 offered financing for part of it. Now, Mr. Dannar  
20 did not personally receive nor his company receive  
21 any direct funds from Indiana. They, in fact, used  
22 the funds to take an old building or to rehabilitate  
23 the building, buy fixtures, make it better. Kind of  
24 like South Carolina is doing with a lot of the old  
25 mills in this area. They were doing that with one of

1        their own buildings. So, Dannar did not receive any  
2        of those funds himself, nor did his company DD  
3        Dannar.

4                Now, in September of 2013, SC LAUNCH! demanded  
5        that Dannar be paid, what they call in their  
6        financing arrangement, A relocation fee. It's  
7        actually Danner's position that this relocation fee  
8        is -- that it would be an unenforceable penalty under  
9        South Carolina law. And I'll sort of discuss that  
10       argument in a moment after going through the facts.  
11       But they demanded that. Dannar said he hadn't, in  
12       fact, relocated. There's a specific definition of  
13       relocation under the financing arrangement. And in  
14       September of 2013, Mr. Dannar, DD Dannar, had not met  
15       this definition.

16               At this point the parties sort of agreed on  
17       that. And -- but the parties did agree that Dannar  
18       relocated in approximately of April 2015. Now, this  
19       was only one year before even if the relocation  
20       penalty had survived, it would have expired. And  
21       under the financing arrangement, this so-called  
22       relocation fee was equaled to \$200,000, the amount  
23       equaled to what Dannar repaid, plus interest, early  
24       in two years prior.

25               At this point SC LAUNCH! demanded the repayment

1 of this relocation penalty and we conducted discovery  
2 and at this point the parties have filed a cross  
3 motion for summary judgment, agreeing on the basic  
4 timeline of the facts, what was in the financing  
5 agreement, those types of things.

6 THE COURT: Right.

7 MS. BRIDGES: So, your Honor, DD Dannar really  
8 has two arguments in this case. The first is that  
9 this relocation fee is actually a nullity. Because  
10 the promissory note was extinguished at the time that  
11 Dannar met the definition of relocation under the  
12 financing arrangement. Second, even if this  
13 relocation fee somehow survived the extinguishment of  
14 the promissory note, then it would be considered an  
15 unenforceable penalty under South Carolina law.

16 Now, Dannar did not relocate until April of  
17 2015. And SC LAUNCH! originally -- relocate in  
18 September of 2013. And at no point during the course  
19 of discovery has SC LAUNCH! presented any evidence  
20 refuting the --- refuting that DD Dannar did not meet  
21 the definition of relocation until April of 2015.

22 Now, the promissory note says, in fact, that if  
23 there is any type of dispute, that the terms of the  
24 note control. The note also says that there's no  
25 penalty for prepayment. Which is basically what

1 Mr. Dannar did in this case. He repaid the note,  
2 plus interest, so for a little over \$220,000, in  
3 April 2013. A year before it was due and two years  
4 before any type of relocations may have occurred.  
5 Now, the definition of relocation under the financing  
6 arrangement is a defined term.

7 And it is under Section 3.3 on Page 4 of the  
8 Financing Arrangement. And it has two parts to it.  
9 It says that, Relocation is defined as moving or  
10 relocating the company's principle base business  
11 outside South Carolina and having more than one half  
12 of certain types of employees based on various  
13 aspects outside the State of South Carolina. This is  
14 3.3(a) of the Financing Agreement on Page 4.

15 THE COURT: Okay.

16 MS. BRIDGES: And so, Dannar, who repaid the  
17 loan in April of 2013, did not meet this definition.  
18 He didn't have employees outside the State of South  
19 Carolina, he hadn't moved his corporate headquarters  
20 at this point; and so he did not meet the definition  
21 of relocation. And it is our position that the  
22 prepayment by DD Dannar of the loan, the \$222,000,  
23 extinguished the promissory note.

24 In his deposition, Mr. Hellman, the SC  
25 LAUNCH's!, representative, said that the purpose of

1 the financing agreement was to secure repayment of  
2 the debt. That's clearly the intent of the parties.  
3 But D Dannar in this case, DD Dannar, repaid the  
4 note. So therefore, the note was extinguished and DD  
5 Dannar was no longer responsible for the financing  
6 arrangement at this point. SC LAUNCH! accepted this  
7 full repayment, plus interest, as full satisfaction  
8 of the debt. So, it's our position that this  
9 financing arrangement and the relocation fee were  
10 extinguished upon repayment.

11 Second, Your Honor, even if the relocation  
12 penalty fee somehow survived the extinguishment of  
13 the promissory note and the full repayment, plus  
14 interest, a year early; it's our position that this  
15 would be considered an unenforceable penalty under  
16 South Carolina law.

17 Now, parties can stipulate to a liquidated  
18 damages clause. But a stipulation is considered an  
19 unenforceable penalty when it's so large that it's  
20 plainly disproportionate to any probable damage  
21 resulting from the breach of contract. That was the  
22 definition given in the Lewis case at 351 SC 167.

23 And the South Carolina courts have also said  
24 that you don't just look at does the statement say  
25 This is a liquidated damages clause. You can't just

1       rely on that statement. It doesn't depend  
2       necessarily on the language used in the contract. In  
3       the Erie case the Court has said you have to look at  
4       the whole contract. The subject matter, the ease or  
5       difficulty in measuring the breach in damages and the  
6       magnitude of the stipulated sum, not only as compared  
7       with the value of the subject. And that's in the  
8       Erie Insurance case at 393 SC 455.

9               So, in this case, the relocation fee reads at  
10       Section 3.3(b), Page 5, that is the amount necessary  
11       to compensate SC LAUNCH! for its actually costs in  
12       connection with a company relocation. SC LAUNCH! has  
13       admitted that it has no formula, no factors or other  
14       basis on which to base the amount of this relocation  
15       penalty, other than the fact that it was equal to the  
16       amount of the loan that was already repaid, plus  
17       interests.

18              In the depositions given in this case, SC  
19       LAUNCH! has tried to broaden the definition to say,  
20       well, it was the hours of time that we spent on  
21       counseling DD Dannar. That it could have been given  
22       to other companies that we spend a lot of time with  
23       them. Well, SC LAUNCH! would have incurred those  
24       costs regardless of whether they were given to DD  
25       Dannar, another company, anything like that. These

1 are -- kin to sub costs. And south Carolina courts  
2 have said that if it's a sub cost of the parties  
3 seeking enforcement of a relocation fee or a  
4 liquidated damages clause would have incurred, that's  
5 not really a proper liquidated damages. None of  
6 those things that SC LAUNCH! has described in this  
7 case, the amount of time spent, the payroll for its  
8 employees, spending time with DD Dannar, none of  
9 those are actual costs connected with a company  
10 relocation as required by the clause in the financing  
11 arrangement.

12 Your Honor, even further, employees and board  
13 members of SC LAUNCH! have referred to this clause as  
14 the both a penalty and a clawback. And so the  
15 exhibits attached to our memorandum, in July of 2013,  
16 the members were talking about the \$200,000 that was  
17 in clawback. Then in September of 2013, the board  
18 discussed how they may consider sending a demand  
19 letter to DD Dannar based on the penalty clause in  
20 the financing arrangement. And several emails to  
21 Mr. Hellman, one of the representatives of SC  
22 LAUNCH!, it was referred to again as a clawback and  
23 as penalty.

24 So, in four different instances, twice as a  
25 clawback, twice as a penalty is how SC LAUNCH!

1       referred to this clause. And while SC LAUNCH! does  
2       have a great purpose in trying to get companies to  
3       South Carolina, there isn't any type of worthy lender  
4       exception in this agreement. There's no worthy  
5       lender exception under South Carolina law for having  
6       an unenforceable penalty in your financing  
7       arrangement.

8               So, for these two reasons, Your Honor, first  
9       that the promissory note was extinguished because  
10      there was full repayment, plus interest. So,  
11      \$220,000 prior to any form of defined relocation that  
12      would extinguish this. So, that should not be an  
13      issue. And second, even if somehow this clause  
14      survived the extinguishment of the note, it would be  
15      an unenforceable penalty. Because SC LAUNCH! is  
16      basically get double of what it -- it already got its  
17      money back plus interest. So, it's trying to get  
18      double that. If it had given DD Dannar a million  
19      dollars, it's saying that it would have had a  
20      relocation for a million dollars in there. So, it's  
21      with no actual cost defined and nothing given. For  
22      these two reasons, Your Honor, we would ask that you  
23      grant summary judgment to DD Dannar.

24              THE COURT: Thank you, Ms. Bridges.

25              Yes, sir.



1 MR. KNOWLTON: May it please the Court?

2 THE COURT: Yes, sir. Make yourself  
3 comfortable.

4 MR. KNOWLTON: Thank you. I've just got some  
5 written stuff that's easier to refer to if it's  
6 closer to me.

7 THE COURT: Sure.

8 MR. KNOWLTON: Judge Stilwell, I'm Robert  
9 Knowlton and with me today is John Tamasitis, who did  
10 the laboring work on this case but together we  
11 represent South Carolina Launch! And as Ms. Bridges  
12 stated this matter is before you on cross motions for  
13 summary judgment. Discovery is complete. And we  
14 think summary judgment is appropriate for SC LAUNCH!.

15 There are basically two causes of action in this  
16 case. One by the Plaintiff for declaratory judgment  
17 to declare that the relocation provision is either  
18 and unenforceable penalty or that otherwise Dannar  
19 has no obligation to repay it. We filed an answer  
20 and counterclaim for enforcement of the provision.  
21 And seek a judgment against Dannar for the amount of  
22 relocation fee which is \$200,000 plus interest, plus  
23 attorney fees. Which we prefer, as far our motion,  
24 we'll deal with that later with a separate affidavit.  
25 And Your Honor we had delivered to your office a copy

1 of our memo. And I've just handed up, I just  
2 realized we didn't deliver the motion with two  
3 affidavits attached to it. So, I've just handed  
4 those up prior to the hearing.

5 THE COURT: Y'all have given me more than enough  
6 to think about in the space of an half hour hearing.  
7 Go ahead.

8 MR. KNOWLTON: And Your Honor I appreciate the  
9 thickness of the documents but I think for the test  
10 the Courts have set forth, context is important. And  
11 the factual context and background are important.

12 THE COURT: Yes, sir.

13 MR. KNOWLTON: And while we don't necessarily  
14 agree on all the facts, I don't think there are any  
15 material facts that are in dispute. And, you know,  
16 we start with the fundamental premises that since the  
17 formation of this country, one of the most important  
18 and basic principles that has been a real engine of  
19 our economic success, is the ability to enforce  
20 commercial contracts according to the law. That's  
21 what we ask you to do today, Your Honor, is enforce  
22 this commercial contract.

23 The language we submit is clear and unambiguous.  
24 In fact, there's really no argument about an  
25 ambiguity. The amount of the relocation fee is

1 clear, it's \$200,000. There's no dispute about that.  
2 There's also no dispute that it was for if you  
3 relocated from this state within five years, as  
4 defined in the agreement, you owe the fee. There's  
5 no dispute, from my understanding, unless I  
6 misunderstood Ms. Bridges in prior dealings in this  
7 case, I don't think there's any dispute that Dannar  
8 left the State of South Carolina, relocated from the  
9 State of South Carolina before five years. So,  
10 there's no question that there was a trigger of the  
11 relocation fee within the meaning of the contractual  
12 language.

13 And as I stated, the context is important and  
14 this is an unusual sort of arrangement. This is not  
15 just some commercial bank loan, Your Honor. That's  
16 sort of the analogy they would like to make. Bank  
17 loans were unavailable to Dannar. This is a startup  
18 enterprise. It needed seed capital in order for this  
19 company to survive. There are an awful lot of  
20 companies that have ideas that don't get seed  
21 capital, they never make the next step.

22 SC LAUNCH! is a creature of statute. It's a  
23 South Carolina statute in connection with the South  
24 Carolina Research Authority, that provides  
25 essentially tax payers funds. And they do it in such

1 a way that it creates partners in this program. But  
2 you can make a contribution to this program of let's  
3 say \$100,000, you get a \$100,000 dollar for dollar  
4 tax credit. So, it's, essentially, taxpayer money  
5 that goes into this program.

6 And when you have in this type of high risk  
7 lending involved, if you're in the private sector,  
8 you don't just get your money back. There's a high  
9 risk you won't get it back at all. That's why banks  
10 don't participate in this agreement. This is  
11 where -- when Warren Buffet comes in in the financial  
12 crisis and cuts his deals, he doesn't get bank  
13 lending sort of deals, he has significant equity, he  
14 has seats on the board and whatever else he  
15 negotiates. He's made a lot of money negotiating  
16 with companies who had no other source of funding.

17 That is the context of this arrangement. SC  
18 LAUNCH! is filled a void in the market. There are  
19 angle investigators out there and different  
20 terminology involved where you get to a certain  
21 level. If you got a prototype and you need to scale  
22 up with some promisee of interest in the industry for  
23 what you've got, they're other types of investors.  
24 This startup enterprise is to take it from the idea  
25 to the prototype sort of level.

1           And that context is important here in a number  
2           of ways. One, I first of all, dispute that this even  
3           should be analyzed under the standard liquidated  
4           damages versus penalty language. Because this is  
5           essentially the deal that was cut. And the context  
6           of this, SC LAUNCH! could ask for significant equity.  
7           In fact, shortly after the SC LAUNCH! investment,  
8           Mr. Dannar got \$600,000 of follow on investment. And  
9           that gentleman got 20 percent equity in the company  
10          and seats on the board.

11          SC LAUNCH! does not ask for seats on the board  
12          and equity upfront. The one thing it does and the  
13          other thing it does -- let me explain the SC LAUNCH!  
14          program a little bit more. It has a staff, it has  
15          people experienced in creating startup enterprises  
16          and growing them and in getting in contact with  
17          players in the industry and financial investors.  
18          They put them before people who make investments in  
19          this type of company. You probably read about the  
20          company itself in paper. They're announcements  
21          regularly about new companies that SC LAUNCH! has  
22          helped. A lot of them in upstate. And they work  
23          together with the angle investors that you see. Some  
24          of those people come in here too. And if, you know,  
25          sort of rely on some due diligence at SC LAUNCH! If

1       they see it as successful, that attracts its further  
2       interest. And some of the people involved in those  
3       will express an interest here.

4             The SC LAUNCH! program is more than just a loan.  
5       They don't just say, here's a check, good luck.  
6       They provide mentoring. They provide also sorts of  
7       services. So, they've got a staff, that's what they  
8       do full-time. Is happy their client companies.  
9       They're probably 100 of them in the system at any one  
10      time. And these experienced people involved in  
11      creating and building businesses, guide these people  
12      along and they help them find other investors and  
13      they help them with all sorts of logistical and other  
14      issues for these startup businesses.

15            The SC LAUNCH! program loans out about or it  
16      invests about 2 million dollars in various companies  
17      each year. Again, those are tax funds, tax  
18      incentivize funds is the way they refer to it. These  
19      companies in the program that get to a certain level  
20      and who have promised are sometimes invited to  
21      present to the board to get funding.

22            Dannar was one of those entities. It got to a  
23      certain level, it had a program that still maybe very  
24      successful, we hope they are. And then they're  
25      presented to the board. The board makes its on

1 independent decision. Like a legislative body. It's  
2 totally up to the board. You have to understand,  
3 too, there are a lot of competing companies that  
4 would like to get this critical money. But the ones  
5 invited to the board make a pitch to the board and if  
6 the board agrees, they get certain funding. Everyone  
7 of the companies in the SC LAUNCH! program that gets  
8 funding, has one of these relocation fees in their  
9 funding agreement. And they continue to get  
10 mentoring, they continue to get the support  
11 throughout their participation in the program.

12 Now, since it is a creature of statute, a state  
13 entity -- not a state entity but get the state  
14 incentivized funds, the one thing that they ask for,  
15 apart from asking for the money to be repaid with  
16 interest, is instead of the Warren Buffet, I want  
17 equity or the Larry Blackwell who wanted equity in  
18 this business, the one thing they ask for you to do,  
19 the whole reason for this SC LAUNCH! program, is to  
20 treat knowledge economy jobs for South Carolina for  
21 South Carolina.

22 So, the one thing they ask you to do is stay in  
23 South Carolina for five years. And if you stay in  
24 South Carolina for five years, that obligation goes  
25 away entirely. So, you can avoid it. And so, I

1 don't think that's really -- for one thing, I don't  
2 think that fits the traditional analysis--

3 THE COURT: When you say That obligation goes  
4 away. Do you mean the underlining obligation to  
5 satisfy the note or the obligation for penalty?

6 MR. KNOWLTON: Their independent obligations.  
7 If you look at the finance agreement, Your Honor, and  
8 it's attached in multiple places. But it's attached  
9 to our motion as exhibit -- and not the memo but the  
10 motion as Exhibit 1B.

11 THE COURT: Got it.

12 MR. KNOWLTON: All right. And it's entitled, A  
13 Finance Agreement -- Financing Agreement. If you  
14 look at -- and this is not unusual in a lot of  
15 complex agreements. You have independent  
16 obligations. Like a lot time a confidentiality  
17 obligation certainly survives other obligations in  
18 commercial context. Here, the relocation provision  
19 is set forth in Section 3.3 on Page 4.

20 And Your Honor Ms. Bridges read part of that  
21 provision but she didn't read all of it. It says--

22 THE COURT: So back to my question. When you --  
23 when you articulated that obligation, you were  
24 specifically commenting on the relocation obligation?

25 MR. KNOWLTON: That's correct.



1 THE COURT: Okay. Okay.

2 MR. KNOWLTON: That's correct.

3 THE COURT: Good.

4 MR. KNOWLTON: So, first of all -- and there's a  
5 note attached to this. That is another obligation is  
6 that you have to repay the note. And the note, I  
7 think that's instructive at the starting point. The  
8 note is attached as Exhibit A. It's due by  
9 April 14th, 2014. This relocation obligation is a  
10 five year obligation. So, clearly they're different  
11 and independent obligations.

12 Going back to the relocation provision, it says  
13 there's two ways you can be defined as having  
14 relocated. One is A, move, relocate the -- basically  
15 the principle place of business outside of South  
16 Carolina. B, is to have, based on payroll, half of  
17 your employees located out of South Carolina. And  
18 what Ms. Bridges did not read is the parenthetical.  
19 It says, Any of which shall be deemed a company  
20 relocation.

21 So, you can have all of your employees in South  
22 Carolina but move your principle place of business to  
23 Indiana and you triggered this obligation. And  
24 conversely, you can have all your employees in  
25 Indiana, that would trigger the obligation of whether

1           you keep what you would call your principle place of  
2           business here. Either one--

3           THE COURT: That's not an issue. Didn't  
4           Ms. Bridges acknowledged that they relocated in  
5           April 2015?

6           Is that what you said, Ms. Bridges?

7           MS. BRIDGES: Yes, sir, Your Honor.

8           THE COURT: Okay. All right. I just want to  
9           make sure -- I'm going to utilize some mental capital  
10          and I just want to make sure that I'm--

11          MR. KNOWLTON: And that was my mistake. I  
12          thought they acknowledged that as well, I just  
13          misunderstood what you said.

14          THE COURT: That's okay.

15          MR. KNOWLTON: And, in fact, they -- there was a  
16          dispute in this case early on in 2013, and I'll get  
17          back to this a little bit more. But in 2013, Dannar  
18          announced that they had opened up there new  
19          headquarters in Indiana. Totally a surprise to us.  
20          Our guys picked it up in the news. And they said  
21          okay, well, in that case, if you've relocated, you  
22          need to pay the fee. They said, no, no, no maybe we  
23          said that but we haven't really relocated yet. All  
24          right, well, you know, you obviously are leaving.  
25          And Dannar had told one of the SC LAUNCH! employees

1 his wife didn't like Greenville, she wanted to move  
2 back to the frozen tundra of Indiana for some reason,  
3 which I think is hard to understand.

4 But they actually filed a suit. And we said,  
5 Wait a minute, if you're saying you haven't relocated  
6 yet, this isn't ripe for litigation. There's no  
7 reason for us to have a lawsuit about whether this is  
8 enforceable or not if you haven't relocated. And  
9 after hemming and hawing, they finally said, all  
10 right, at least as of April 1st, 2015, we've not  
11 relocated. Whether there was no relocation --  
12 whether it was technically triggered or not, two year  
13 period is a little unclear but we don't think it  
14 matters. Because clearly -- they clearly relocated  
15 by April of 2015.

16 Now, Your Honor, so that language, one, shows  
17 you that you can trigger it through A or B but they  
18 definitely triggered it. And if you look at B, where  
19 it describes the relocation fee.

20 THE COURT: Yes, sir.

21 MR. KNOWLTON: The parties acknowledge that it  
22 includes costs to SC LAUNCH! including tangle and  
23 intangible costs. The parties agree that the  
24 relocation fee is not a penalty but rather that a  
25 good faith estimate of the amount necessary to

1           compensate SC LAUNCH! for its actually costs.

2           Then, Your Honor, if you'll turn to Page 8,  
3           Section 7.10, is the termination provision. And  
4           there we submit it's clear that the convenance and  
5           promises you made survive repayment. So, I just want  
6           to give you a moment to read it.

7           THE COURT: Yeah.

8           MR. KNOWLTON: But, Your Honor, we think that  
9           language is clear. If you look at the whole contract  
10          in context, they're independent obligations. One  
11          even survives longer than the other. But it's clear  
12          that that's what we've negotiated for is you're not  
13          going to leave South Carolina for five years, if we  
14          give you this money and we give you this mentoring,  
15          we give you all these services in our program, that's  
16          the one obligation we ask for.

17          THE COURT: So does SC LAUNCH! still maintain  
18          the securities of the company?

19          MR. KNOWLTON: No, we don't. We did not have  
20          their -- there are way I think where if they turn  
21          this into a C Corp that we could convert to come  
22          equity or something. That -- the securities don't  
23          apply. I don't think that language has any  
24          applicability here. But their covenants do survive.  
25          Those obligations do survive the repayment.

1 THE COURT: Okay.

2 MR. KNOWLTON: Your Honor, in their 2012  
3 application in Indiana -- well, this was something  
4 that came out in discovery. We didn't realize it,  
5 they made a pitch for another round of funding in  
6 2013. But unbeknownst to SC LAUNCH!, they had  
7 already started applying in Indiana for funding. And  
8 government subsidized sort of funding for that. He  
9 didn't make a very good presentation, he didn't get  
10 the second round of financing at SC LAUNCH!.

11 But when we start talking about the context of  
12 this, you look and see in his December of 2012  
13 application, and this is attached to our memo as  
14 Exhibit A9, is one of them. It has in the second  
15 page you'll see their telling Indiana in 2012, that  
16 by 2016 we expect to owe Indiana 1.9 million dollars  
17 in taxes for that year along. They're telling  
18 Indiana that by that year, we will have 288  
19 employees. They're telling -- they also submitted  
20 a -- this is Exhibit A3 to our memo. And that is  
21 Confidential Placement Memorandum.

22 And if you look at the very last page of that  
23 document, Your Honor, and this is in March of 2013.  
24 On the very last page to Exhibit A of the memo, it  
25 says for year four they expect to have 263 employees.

1       They expect to have revenues of 184 million dollars  
2       and profits of 61. -- roughly 7 million dollars. And  
3       pay total taxes, this would include state and  
4       federal, of 13 million dollars.

5             And Your Honor it's also interesting that at the  
6       same time he was applying for additional funding with  
7       us, he entered into promises with Indiana and the  
8       loan agreements there, and we've briefed this and  
9       attached them, that he agreed to a relocation fee  
10      there. If he ever left Indiana he would have to pay  
11      a relocation fee. And I really think, you know, that  
12      just disingenion [verbatim] really of going to  
13      Indiana and telling them hey, I might have to pay  
14      this fee back in South Carolina. And he said that,  
15      in fact, it's an exhibit to the confidential  
16      placement memo, he disclosed that. I may have to pay  
17      South Carolina. I'm able to do it, I could do it but  
18      I don't want to do it. And by the way, made the same  
19      promise in Indiana when he's down there now telling  
20      this court that the similar provision is simply  
21      unenforceable. In Indiana it was tide to employment  
22      and that sort of thing.

23             Now, let me focus on some of the law. First of  
24      all, I think I've already addressed the -- whether or  
25      not the fee is -- the relocation fee is a independent

1 clause. Let met focus on whether or not under  
2 traditional -- even if he applied the traditional  
3 penalty versus liquidated damages law, I think this  
4 provision should be enforced. Again, remember the  
5 context is critical. And you look at what Warren  
6 Buffet negotiates and what Larry Blackwell negotiated  
7 with Dannar himself, compared to what we negotiated.  
8 We could have gotten 10 percent equity and you're  
9 talking about 61 million dollars in profit instead of  
10 that. We're asking for the modest repayment of a  
11 relocation fee that you could have avoided entirely  
12 if you waited here long enough.

13 That's in that context, that's very modest. The  
14 courts look at the -- I think probably to me, the  
15 most -- the courts sort of repeat the same standard.  
16 So, the standard really isn't controversial. The  
17 Ball case -- I don't know if it's Bale or Ball vs.  
18 The Columbia Heart Clinic case that we've sited.  
19 There's an interesting one there. There the Court of  
20 Appeals reversed the trial Court and held that a  
21 noncompetition agreement among some heart doctors  
22 were enforceable. And, of course, Your Honor a  
23 noncompetition contract, that's an area where  
24 contracts are strictly construed and disfavored.

25 But the principles announced there are I don't

1 think controversial but are important to look at  
2 specifically here. First of all, parties to a  
3 contract can certainly stipulate to damages in the  
4 event of a breach. That's well known and recognized  
5 in the law. You see it in construction contracts, in  
6 particular, all the time. And so, they are  
7 enforceable, recognized provisions. They are not  
8 disfavored. But there is a limit. And the courts  
9 have said that if the courts consider them a penalty  
10 rather than liquidated damages, then they won't  
11 enforce them. That is to be determined by the  
12 intention of the parties.

13 The courts analogy you must look at the whole  
14 contract. It's subject matter. The difficulty in  
15 measuring damages in the context of that arrangement.  
16 And the magnitude of the stipulated sum in context of  
17 the value of the contract and the probably  
18 consequences of the breach. And it cites to  
19 restatements section 356 comments.

20 And says that, The stipulation will be deemed a  
21 penalty if it so large, it is plainly  
22 disproportionate to any probable damage resulting  
23 from the breach.

24 So, it's a doctrine reserved for only the most  
25 extreme situations. And this is not such an extreme



1 situation. It's also important to note that the  
2 amount fixed is reasonable to the extent that it  
3 approximates the loss anticipated at the time of the  
4 making of the contracted. Even though it may not  
5 approximate actual lost. And the second factor under  
6 the restatement language that they cited with  
7 approval is whether or not the loss was difficult to  
8 calculate.

9 Applying those factors here, again, we've  
10 pointed out where this company was projecting, should  
11 it succeed, it's going to be making a lot of money  
12 and generating a lot of taxes and employing a lot of  
13 South Carolina citizens. At the time we negotiated  
14 this contract, he was making those same proposals to  
15 us. We had enough reason to believe in him to think  
16 that, you know, he's got something here that might  
17 work, that's why they gave him the money. That's why  
18 they gave him all the other valuable services that  
19 cost South Carolina citizens out of the pocket to pay  
20 for.

21 And in that context, rather than a 10 percent  
22 equity or anything else, to think if you leave South  
23 Carolina, you're going to be leaving us without  
24 giving us those jobs that you projected, without  
25 giving us those tax revenues that you were

1       projecting. And Your Honor there has been no showing  
2       by Dannar that at the time the contract was formed,  
3       that calculation was plainly -- again, this is the  
4       language of the Ball case and the Erie case and  
5       others that the amount was plainly limpidities  
6       disproportionate to any probable damage resulting  
7       from the breach of contract. I don't think there's  
8       any dispute that the amount would certainly be  
9       difficult to compute. What would happen five years  
10      from now if you leave early.

11             I think probably the most factually similar case  
12      that we found was the Iowa case that we've cited in  
13      our brief. And I can hand up -- if I may approach,  
14      Your Honor?

15             THE COURT: Sure, yeah. You can come around  
16      either way is fine. Either way is fine. Thank you,  
17      sir.

18             Ms. Bridges, do you have copies of these?

19             MS. BRIDGES: Yes, sir.

20             MR. KNOWLTON: And, Your Honor, in that case, it  
21      was a projection -- it involved an economic  
22      development agreement. Where they were given a grant  
23      of funds. And if they created enough jobs and these  
24      sort of metrics, they were free to go. If they  
25      didn't, they had to repay and they did not. They

1 challenged it as a penalty. And the court, also  
2 citing Section 356, that our courts have said, said  
3 Wait a minute, maybe that's difficult to measure  
4 these damages. That's one of the reasons we allow  
5 liquidated damages provisions. But two, the trial  
6 court failed to consider the fact that, you know, you  
7 would have other employment in the community. You  
8 would be paying taxes. And all of the positive  
9 synergies that go along with having a productive  
10 company in the community. So, I think factually, I  
11 think, that's the closest one. And that upheld the  
12 provision.

13 It's also important here to note that we need to  
14 look at both, as the contract resites, tangle and  
15 intangible lawsuits. We've mentioned lost jobs and  
16 tax revenue. We've also mentioned the costs in  
17 administering the SC LAUNCH! program that we've, you  
18 know, devoted to this company. There's also a loss  
19 of goodwill. You know, these people that supports  
20 the SC LAUNCH! program and the people that mentor  
21 them and all of that, in the context that we give  
22 these outside investors, we expose them to -- when  
23 somebody thumbs their nose at South Carolina and  
24 leaves, that impacts the program. Again, this is  
25 considered an important part of the entire program.

1 Everyone of our companies get funding have one of  
2 these.

3 So, I think there's also a lawsuit of goodwill  
4 and other intangibles. There's also a lost  
5 opportunity cost. If Dannar gets funding that means  
6 another one of the client companies will not. They  
7 only have a couple of a million dollars to invest in  
8 client companies each year. So, that opportunity  
9 cost is lost as well.

10 The -- it's also relevant that the parties were  
11 sophisticated and represented by counsel. Mr. Dannar  
12 had started a number of businesses. He always filed  
13 a couple of bankruptcies before. So, he's somebody  
14 who knows the legal system and had adequate counsel.  
15 And maybe that also illustrates the high risk nature  
16 of this funding. So, that you get significantly more  
17 in your negotiation than just a repayment of the  
18 funds you submit. And I think Dannar ignores all the  
19 other valuable services that were provided along the  
20 way.

21 So, in sum I don't think there's any doubt that  
22 at the time this was negotiated, there can be no  
23 conclusion that the amount of the relocation fee was  
24 plainly disproportionate to any damage in the event  
25 of the breach of that relocation provision. It's

1 true that after five years, we -- it's -- there's no  
2 further obligation to pay a relocation fee. That  
3 doesn't mean South Carolina won't be damaged, it's  
4 just what we negotiated. There will still be damage  
5 if you leave. And part of the thinking here was, all  
6 right, five years gives you plenty of time to get  
7 here. And after you kind of get your roots sunk in,  
8 you're less likely to leave anyway.

9 But you can't have a program like this and have  
10 somebody come in, pick up the check, then go to  
11 Indiana. I mean, the whole thing is for South  
12 Carolina citizens, it's South Carolina tax money  
13 going into this program. And the one thing that we  
14 ask for is that you stay here for five years. And  
15 you look at the context of this high risk seed  
16 capital and what you could negotiate. And the impact  
17 on South Carolina, at the time you negotiate this, is  
18 clearly in line with the amount of the relocation  
19 provision in this agreement.

20 I appreciate your patience, Your Honor. But we  
21 ask for your to rule in favor of SC LAUNCH! and grant  
22 our motion for summary judgment.

23 THE COURT: Thank you, Mr. Knowlton, I  
24 appreciate it.

25 Ms. Bridges, I'll give you just a few minutes.

1 It looks like you're anticipating another hearing.

2 MS. BRIDGES: Yes, sir, Your Honor and I'll be  
3 very brief in this response--

4 THE COURT: Sure.

5 MS. BRIDGES: -- on a couple of points  
6 Mr. Knowlton specifically raised. First of all,  
7 starting from the back, the Iowa case that he  
8 mentioned, we would assert that it is not parallel  
9 factually really at all in this situation. This case  
10 involves grant money. Not a loan that accrued  
11 interest. There was no expectation that the company  
12 at issue was going to pay it back because it was a  
13 grant, not a loan, there was to promissory note.  
14 That's part one.

15 A second, the amount that was required by the  
16 city to be paid back was equivalent to the grant.  
17 So, they'd given the, I believe it was \$150,000. And  
18 in this case they asked for the \$150,000 back.  
19 That's exactly what Mr. Dannar -- DD Dannar did in  
20 this case. Plus interest, plus over \$20,000.00 in  
21 interest. So, in fact, DD Dannar met this case. It  
22 did exactly the same thing, repaid back the amount  
23 that was given to as a loan by SC LAUNCH!, not a  
24 grant. So, a more applicable comparison would be  
25 within Iowa, the city had required \$300,000 to come

1 back rather than \$150,000. In this case SC LAUNCH!  
2 is requiring \$400,000, plus the interest. That would  
3 be the more accurate comparison.

4 Second, Your Honor, when it comes to the  
5 termination clause in this case, Mr. Knowlton read  
6 the Section 7.10 on Page 8 of the Financing  
7 Arrangement. And this says that, Except when  
8 otherwise provided, shall continue in full force,  
9 etcetera. And it says, including the relocation fee  
10 to the extent applicable. Well, in this case, the  
11 extent applicable is what comes into it. It was not  
12 applicable as of April 2013 when there was repayment  
13 plus interest in this case. So, it's no longer  
14 applicable because the note has been distinguished.

15 Finally, Mr. Knowlton mentioned some of the  
16 things involving Indiana Mr. Danner's sophistications  
17 with his statements. First, just because the parties  
18 are sophisticated, that doesn't mean that you can  
19 agree to something that's not unenforceable in this  
20 case. Second, we would say there's been no evidence  
21 to the contrary that Mr. Danner has net -- has any  
22 employees, he's not a profitable company, he wasn't a  
23 profitable company in 2016, he hasn't met these  
24 things. And there was no requirements that he do.

25 Finally, in his statements about the newspaper

1 articles, in deposition Mr. Dannar refuted these  
2 newspaper article, said that he was misquoted. And  
3 said that he thought he had to pay or knew he had to  
4 pay. At best, he said there was some statement about  
5 whether he would be prepared to pay. But preparation  
6 is not an obligation. And this would be more like a  
7 car insurance company has to be prepared to pay the  
8 limits of a policy. That doesn't mean that they're  
9 going to or they think they're required to a specific  
10 case. And that Mr. Dannar does say that he was  
11 misquoted and that he never said he was going to move  
12 his corporate headquarters to Indiana. So, based on  
13 those three points, specifically responding to  
14 Mr. Knowlton, we would, again, ask that Your Honor  
15 grant summary judgment to Mr. Dannar.

16 THE COURT: Okay. All right. Thank you, I  
17 appreciate it.

18 You got something you need to say?

19 MR. KNOWLTON: Can you give me sixty seconds,  
20 Your Honor.

21 THE COURT: Yes, sir.

22 MR. KNOWLTON: In 2013 Mr. Dannar is signing  
23 loan agreements leases and other obligations in  
24 Indiana. It's clearly an effort to move. The  
25 importance of the Iowa case is, a key part of it, is



1 the Court made it clear that you got to consider the  
2 jobs that would have been created and tax revenues  
3 and other features. And that is exactly what we're  
4 trying to focus on here. You got to look at the  
5 opportunity clause that will be missing and the  
6 intangibles. I recited what should be included. And  
7 I think that's all I need address, Your Honor.

8 THE COURT: Okay. All right.

9 MR. KNOWLTON: Thank you.

10 THE COURT: Thank you, have appreciate it. All  
11 right. Thank y'all, I appreciate it. I will tell  
12 you that as bazaar as it may sound, I think this is  
13 fairly interesting. And I look forward to looking  
14 through it and looking at all the law that relates to  
15 it. Now, it seems to me, at just first blush,  
16 without inspecting it any closer than I already have,  
17 there's one of three ways that I can go. That is  
18 either find for Dannar that it's unenforceable and  
19 that nothing is due. Find for SC LAUNCH! that it's  
20 clearly enforceable and that the amount is due. Or  
21 determine that it's enforceable and LAUNCH! has to  
22 prove its damages in a hearing on the merits. Okay.

23 I don't know which one is appropriate. But it  
24 looks to me like those are the three options that are  
25 available. My question to y'all is have you mediated

1           it and do you want to mediate it before I potentially  
2           make an all or nothing ruling?

3           MS. MCKNEW: Your Honor, we have submitted -- we  
4           sent Mr. Knowlton a letter some months ago making an  
5           offer, we got no response. We have been trying to  
6           get this thing mediated. Because I agree with Your  
7           Honor's observation that this seems to be an all or  
8           nothing roll of the dice. You know, obviously, I  
9           think we have the stronger side, but after 40 years,  
10          I understand the value of meditation. And I can't  
11          seem to get them to the table with a spirit to  
12          settle. I'll keep trying. And I think we have to  
13          mediate this case anyway. So --

14          THE COURT: Well --

15          MS. BRIDGES: -- at some point they will be  
16          forced to.

17          MR. KNOWLTON: Your Honor, can I respond to?  
18          That because I that's an unfair characterization of  
19          what's transpired. They made probably a couple of  
20          years ago, what we thought was a very, very, very  
21          lowball offer.

22          THE COURT: Right.

23          MR. KNOWLTON: That made it almost meaningless.  
24          We rejected that and made a counterproposal that we  
25          thought was fair. Then they clammed up. We didn't

1           have any other settlement negotiations. They never  
2           rejected that -- well they rejected it but never made  
3           another proposal.

4           MS. BRIDGES: Yeah, we did --

5           MR. KNOWLTON: No --

6           MS. BRIDGES: -- six months ago --

7           MR. KNOWLTON: -- months ago they repeated the  
8           very first offer they made that been rejected.

9           THE COURT: All right, hold on --

10          MR. KNOWLTON: -- and so--

11          THE COURT: Let me tell you, I'm not going to  
12          make a determination as to who's being reasonable or  
13          unreasonable, I'm really not. Believe me, having  
14          worked on these cases, having presided over court  
15          cases such as this, I recognize that everyone has a  
16          perspective. And generally speaking, neither side is  
17          necessarily wrong or unreasonable. Y'all are just  
18          advocating strongly for your perspective positions  
19          and I respect that, okay. So, I don't see any dirty  
20          pool going on here. And I don't see necessarily a  
21          lack of respect between y'all. And frankly, that  
22          doesn't concern me. Okay. My question is do, do  
23          y'all want to mediate it? Because here's what's  
24          going to happen. I'm either going to rule in fairly  
25          short order or I'm going to take it under advisement

1 and give you a chance to mediate. If you tell me you  
2 don't want to mediate, then okay, I'm not going to  
3 make you. Okay.

4 MS. BRIDGES: Your Honor, we were made -- we  
5 were ready and more than willing to mediate.

6 THE COURT: Do you want to mediate,  
7 Mr. Knowlton?

8 MR. KNOWLTON: Your Honor, I think my client  
9 feels like it's fruitless given how far a part we  
10 are. Meditation surprises me sometimes, but.

11 THE COURT: Yeah, yeah me to. Me to.

12 MR. KNOWLTON: But if it's so far apart and  
13 we've now spend money.

14 THE COURT: I understand. I understand. The  
15 benefit of meditation, obviously, is that you will  
16 come to a resolution that may not suit both parties  
17 but a resolution to which you both ultimately agree.  
18 The result of a Court Order is that it's going to  
19 establish a precedent. Some, precedent that maybe  
20 uncomfortable. I don't know because I'm not  
21 projecting right now. I'm going to read all this  
22 first and I'm going to deliberate over it to some  
23 degree. So, the question is, do you want a all or  
24 nothing ruling that potentially establishes prejudice  
25 that has negative consequences for you going forward?

1 I don't know. And I don't presume to know the answer  
2 to that question. What I will tell you is this, in  
3 the next day, if y'all want me to take it under  
4 advisement for 30 days or 45 days so that you can  
5 mediate, I will. Otherwise, I'm going to rule on it  
6 probably within the next two weeks. Just tell me  
7 what you want me to do, okay. And I'll accommodate  
8 you.

9 MS. MCKNEW: Thank you, Your Honor.

10 MR. KNOWLTON: Thank you, Your Honor.

11 MS. MCKNEW: We'll do that.

12 THE COURT: Yes, ma'am.

13 MS. MCKNEW: Thank you for your time.

14 THE COURT: Yes, ma'am, thank you.

15 (WHEREUPON, the proceedings were concluded.)  
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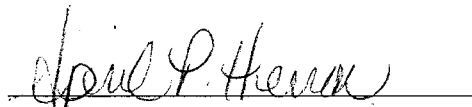
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA           )  
COUNTY OF GREENVILLE           )

I, APRIL P. HERRON, Official Court Reporter for  
the Thirteenth Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the trial of  
the captioned case, relative to appeal, in the Court of  
Common Pleas for Greenville County, South Carolina, on the  
Fifth day of April, 2017.

I do further certify that I am neither of kin,  
counsel nor interest to any party hereto.

November 2, 2017



APRIL P. HERRON, Court Reporter

|                         |   |                            |
|-------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA | ) | COURT OF COMMON PLEAS      |
|                         | ) |                            |
| COUNTY OF GREENVILLE    | ) | Case No(s) : 2015CP2300142 |
|                         | ) |                            |
| DD Dannar, LLC,         | ) |                            |
|                         | ) |                            |
| Plaintiff,              | ) |                            |
|                         | ) |                            |
| -VS-                    | ) | TRANSCRIPT OF RECORD       |
|                         | ) |                            |
| SC Launch!, Inc,        | ) |                            |
|                         | ) |                            |
| Defendant.              | ) |                            |

August 09, 2017  
Greenville, South Carolina

B E F O R E:

**HONORABLE PERRY H. GRAVELY**, Judge.

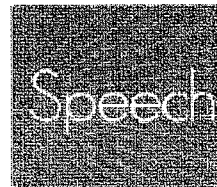
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EXHIBITS PAGE

NO.

DESCRIPTION

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**PLAINTIFF EXHIBITS**

(No exhibits offered.)

**DEFENSE EXHIBITS**

(No exhibits offered.)

**COURT EXHIBITS**

(No exhibits offered.)

**P R O C E E D I N G S**

(Proceedings begin on the 9th day of August, 2017 at approximately 10:41 a.m.)

**MR. KNOWLTON:** Your Honor, I'm Robert Knowlton representing SC Launch!. It's our motion, but we can proceed in any manner you wish.

**THE COURT:** Well, proceed. If it's your motion, you can -- I'll let you go.

**MR. KNOWLTON:** Okay. Thank you, Your Honor. Your Honor, my firm represents SC Launch in this lawsuit, and it involved a -- actually, we're the defendant, but we counterclaimed. We prevailed on all issues at summary judgement. The motion before you today is for an award of attorney's fees, which is required under the contract between the parties.

The case was hard fought. It was reasonably complex. The attorney's fees are significant. You can see from the 25-page order of Judge Stilwell granting summary judgement, the number of issues that were involved. I don't think there's any dispute about who won. All of the plaintiff's claims were dismissed at summary

1 judgement. SC Launch was granted judgement in  
2 its entire counterclaim. The claim involved --  
3 there were, I guess, a few motions along the  
4 way.

5 We had -- I guess I need to drop back a  
6 little bit to give you some of the context.  
7 What this, as Judge Stilwell's order goes  
8 through all of this, SC Launch is an entity --  
9 is a creature of statute. It provides high risk  
10 funding to start-up enterprises. These are  
11 funds that aren't available to start-up  
12 companies from banks. It's high risk funding.  
13 Instead of -- if you're Warren Buffet and you  
14 give somebody high risk funding, you expect  
15 seats on the board, a big chunk of equity,  
16 corporate governance, you know, controls and  
17 things of that nature.

18 SC Launch raises it's money through tax  
19 incentivize funds. Basically, if you  
20 participate in the program, if you put \$100,000  
21 into SC Launch for loans to these entities, you  
22 get a dollar for dollar tax credit. So it's  
23 essentially tax money that's at issue here.  
24 This money comes back and stays in the pot and  
25 is used to fund other start-up enterprises. The

1 SC Launch program is not just a loan of high  
2 risk financing. It also involves mentorship.  
3 These people have had successful careers.  
4 Entrepreneurs are involved. They put you in  
5 contacts with other people to help, who are  
6 interested in investing. It's a great program  
7 for the State of South Carolina. Instead of  
8 substantial equity, instead of seats on the  
9 board and corporate governance controls, the  
10 key -- a key provision in finance agreements  
11 with SC Launch is if you leave the State of  
12 South Carolina within five years of the  
13 agreement, you not only have to pay the money  
14 back, that's separate -- a separate maturity  
15 date, but you also have to pay a relocation fee  
16 of \$200,000. That's well known upfront. Each  
17 side is sophisticated business with lawyers  
18 involved. When they moved out of state, it  
19 looks like, really for the reason that his wife  
20 didn't like Greenville and would have preferred  
21 to move to Indiana.

22 This lawsuit was brought, originally, by  
23 Dannar -- DD Dannar, LLC, arguing that the case  
24 -- that this Relocation Provision was an  
25 unenforceable penalty and that the penalty

1 didn't apply because they had paid the loan  
2 back. At that point, the case -- they had not  
3 relocated, so we thought it was moot. Then, we  
4 dealt with that issue. Then they actually did  
5 relocate, admitted they had relocated. So we  
6 answered in counterclaim for the payment of the  
7 relocation fee.

8 **THE COURT:** Let me ask you this, just so I  
9 can get -- is it -- are y'all -- is there -- is  
10 there conflict on whether attorney's fees are  
11 owed or just the amount?

12 **MS. MCKNEW:** Just the amount, Your Honor.

13 **THE COURT:** Okay.

14 **MS. MCKNEW:** And we have -- we have some  
15 very specific objections.

16 **THE COURT:** Let's kind of -- yeah. I'm  
17 familiar with SC Launch. Let's get to why you  
18 are entitled to the fees you are entitled to  
19 and then I'll hear from her.

20 **MR. KNOWLTON:** Okay, Your Honor. And Your  
21 Honor, I can hand up -- these have been served  
22 on counsel for the plaintiff. If I can  
23 approach, Your Honor.

24 **THE COURT:** Yeah.

25 **MR. KNOWLTON:** Your Honor, we have

1       supplied counsel for the plaintiff -- there  
2       were actually four spreadsheets, but two are  
3       for a modest amount of expenses that aren't  
4       contested. These are for the fees. The total is  
5       to be \$148,000 roughly. There are two  
6       spreadsheets because originally, we -- this  
7       file was being billed under general file for  
8       billing purposes. If you add the two together,  
9       it's about \$148,000. That's important to note,  
10      Your Honor, that here, these are fees that were  
11      actually billed to and paid by SC Launch!.

12             I will refer, Your Honor, to a couple of  
13      cases. One is a case in federal court by Judge  
14      Currie. She found persuasive a Seventh Circuit  
15      opinion that said when you're dealing with  
16      somebody who actually pays fees out of their  
17      pocket in sophisticated business, it's almost -  
18      - should be almost a presumption that it's  
19      reasonable, let the market forces deal with  
20      that. They don't challenge the propriety of the  
21      fee rate, but to say that too much time was  
22      spent on this file. This is a sophisticated  
23      client that paid each and every one of these  
24      bills without complaint.

25             There's another case, Your Honor, and that

1 is another credit, Palmetto Health Credit Union  
2 versus Open Solutions. I can hand up this case,  
3 Your Honor.

4 **THE COURT:** Okay.

5 **MR. KNOWLTON:** There's another case,  
6 Johnson v. Johnson. It's a state court case.  
7 It's a divorce case where Judge Bell -- this is  
8 296 S.C. 289. Judge Bell concluded that the  
9 trial court had abused its discretion by not  
10 awarding the full amount of fees actually  
11 incurred without -- because there was no  
12 substantial justification for not awarding the  
13 full amount of the fees incurred.

14 Here, we would submit there needs to be a  
15 substantial justification for not awarding the  
16 full amount of the fees actually incurred and  
17 paid by SC Launch in this case. I'll hand these  
18 cases up. I have only one copy of the Johnson  
19 case.

20 **MS. MCKNEW:** That's all right.

21 **MR. KNOWLTON:** Your Honor, I can -- I can  
22 take you through all of the individual sort of  
23 tasks involved out of a summary affidavit that  
24 deals with it. It may be easier to deal with  
25 some of that in reply.

1           **THE COURT:**     Yeah, it sounds like -- I  
2           think she -- sounds like she had -- I don't  
3           mean to cut you off, but that may be an easier  
4           way.

5           **MR. KNOWLTON:**    The one point I was trying  
6           to make before we started was that one point  
7           she made was there was \$10,000 that had not  
8           been incurred. She may have overlooked the  
9           other spreadsheet, but every nickel that's  
10          actually been -- has been incurred and taken.  
11          Thank you.

12          **THE COURT:**     All right.

13          **MS. MCKNEW:**     Your Honor, I can start with  
14          the spreadsheets. Mr. Knowlton told me before  
15          we began this hearing that they may have missed  
16          a page when they sent it to me. But I would  
17          invite Your Honor's attention to the final page  
18          of that spreadsheet. The total is \$137,000, not  
19          148. And in Mr. Knowlton's affidavit, and  
20          perhaps this is how I read the difference, Mr.  
21          Knowlton's affidavit, paragraph 3 says all the  
22          invoices, except the most recent one had been  
23          paid in full and they expect additional time  
24          and expense will be necessary to collect. So I  
25          read that and the fact that the 148 figure



1        didn't match the total on the spreadsheet that  
2        he gave me as being anticipated fees. Well, we  
3        think we're going to have trouble collecting.

4                That was the source of my argument, Your  
5        Honor. You can't anticipate, gee, we're going  
6        to have problems, we want an additional  
7        \$10,000.

8                **THE COURT:**     But if you add these two  
9        sheets together, I calculate it being 147,977.

10               **MS. MCKNEW:**     So this is the sheet we  
11       didn't have.

12               **THE COURT:**     Okay. Aren't y'all \$1000 off?

13               **MS. MCKNEW:**     I can't do math, but I just  
14       looked at the -- I just looked at the total of  
15       what he gave me. If Mr. Knowlton says actually  
16       his affidavit was wrong, that's a different  
17       matter. I mean, I was misled, frankly, by the  
18       affidavit that says we think we're going to  
19       have trouble. Then, I looked at the total and  
20       it said 137,000. And I said, whoa, this is a --  
21       you can't get an extra 10,000 for fees you  
22       didn't incur. We just got this one this  
23       morning, Your Honor.

24               Our other point is that Mr. Knowlton says  
25       this was a complex case because SC Launch is a

1 different kind of entity. Well, I have never  
2 heard or very rarely have ever heard of the  
3 status for the particular structure of somebody  
4 who entered into a contract to effect the terms  
5 of the contract. This was a contract question.  
6 This was simple contract question. The fact  
7 that SC Launch how they are funded, how they  
8 are organized, and I can talk about how DD  
9 Dannar was funded and organized, would that  
10 make a difference to the contract? No. As a  
11 matter of law, no.

12 There's one thing that's totally irrelevant  
13 to this issue, but I have to -- I have to  
14 correct a suggestion that Mr. Knowlton has  
15 made. DD Dannar did not move to Indiana because  
16 Ms. Dannar didn't like South Carolina. They  
17 moved -- or the company moved because SC Launch  
18 declined to diffuse additional funds into --  
19 into DD Dannar. DD Dannar was having a very  
20 hard time raising funds with South Carolina  
21 investors knowing that SC Launch had said no.  
22 They had an opportunity for additional funding  
23 in Indiana. That's why they moved, not because  
24 of anything that Ms. Dannar said or did. And  
25 the company is there now. Gary Dannar still

1 spends a lot of time here because his home is  
2 here, or was here until his daughter graduated  
3 from college -- or went to college. Sorry. So  
4 that is not relevant to this, but I wanted to  
5 clear that up.

6 In terms of were these fees reasonably  
7 incurred, there are expenses -- there are fees  
8 listed on this spreadsheet. One is completely  
9 blacked out, so I don't know what it was. We  
10 have to trust that it was related to this case.  
11 I understand blacking out attorney client  
12 privilege items. But there's one entry by Mr.  
13 Knowlton in November of 2016 that has no  
14 description because it's all been blanked out.

15 In addition, some of these fees, the early  
16 motions practices Your Honor might expect were  
17 in connection with discovery. Part of them are  
18 that there's at least one motion that was based  
19 on SC Launch!'s failure to respond  
20 appropriately to our discovery. So they created  
21 the issue, then they are charging us for  
22 fighting us on that issue, because we had to  
23 move in order to get discovery.

24 Mr. Knowlton argues, in addition to SC  
25 Launch!'s status, creating complexity, that the

1 results of the case was an important case for  
2 SC Launch Okay. Fine. That doesn't add into  
3 complexity. It's not complex. It is a contract  
4 matter. Yes, they have this clause in most of  
5 their other contracts. So is this important to  
6 them? Yes, they have precedent for saying that  
7 even though we argued it was a penalty, and  
8 indeed, internally, they called it a penalty.  
9 But even though the Court disagreed with us,  
10 now they can -- now they can go to another  
11 company and say, okay, you have to pay us  
12 because we have this decision under our belt.  
13 That's great for SC Launch!. It's not some that  
14 DD Dannar, as the party who opposed the fee,  
15 should pay for. It is not a proper element in  
16 the assessment of attorney's fees, Your Honor.

17 There was -- there was -- there wasn't even  
18 any damage testimony or work necessary in this  
19 case, because it was set. The fee was set by  
20 contract. No damage argument, no damage cases,  
21 no damage discovery. It was set.

22 SC Launch!, Mr. Knowlton ably argues that  
23 the case was hard fought and they had to deal  
24 with a mootness issue. The way that SC Launch  
25 dealt with the mootness issue, that was in

1 response to a letter that Mr. Knowlton wrote to  
2 Mr. Rutledge in our office. Mr. Rutledge said,  
3 wait, we haven't moved yet. So dealing with the  
4 mootness issue, you just had to wait. That was  
5 how it was dealt with is nobody file. I don't  
6 think that's a good deal.

7 We, on our side, had some issues. That was  
8 that Mr. Rutledge had a health issue and had to  
9 withdraw, rather abruptly. So we had to -- we  
10 had to recover the case. That's when I took  
11 over, because I knew the client. So we had some  
12 challenges. But if we had been in the  
13 (Indiscernible.) seat here, I would have, and  
14 we did, for the client, take out a lot of those  
15 expenses, because we had to transition the case  
16 unexpectedly, at no fault of either Mr.  
17 Knowlton, his client, or our client.

18 At any rate, this is not -- these fees,  
19 \$150,000 to collect a contractually mandated  
20 \$200,000 where the sole issue is how do you  
21 interpret the contract, that's not a complex  
22 matter, Your Honor. The status of the parties  
23 to the agreement doesn't matter. It doesn't  
24 make it complex. This is a contract matter.  
25 It's simply too much.

1           **THE COURT:**     How does the hours compare to  
2           the hours from your firm?

3           **MS. MCKNEW:**    I knew you were going to ask  
4           that and that's why I said we had to transition  
5           --

6           **THE COURT:**     Yeah, with that calculated in.

7           **MS. MCKNEW:**    And that --

8           **THE COURT:**     Is it way off or is it pretty  
9           close?

10          **MS. MCKNEW:**    I think it's really way off.  
11          I think ours is very much less, frankly. I  
12          would guess ours is in the -- not including the  
13          transition stuff, I'm guessing it's in the 200-  
14          hour range. That might be about right. That's  
15          purely a yes.

16          **THE COURT:**     All right.

17          **MS. MCKNEW:**    And we don't question -- as  
18          Mr. Knowlton said in the beginning, and I  
19          certainly want to reiterate, we certainly don't  
20          challenge Mr. Knowlton's hourly rate or the  
21          reputation of counsel. We're perfectly fine  
22          there. No question at all.

23          **THE COURT:**     All right. Mr. Knowlton.

24          **MR. KNOWLTON:**   Thank you, Your Honor.  
25          First, on the two spreadsheets, they were both

1 produced on July 12th. Don't trust my math.  
2 Whatever they add up to, we may have backed  
3 some entries out that --

4 **THE COURT:** Well, no, if you add -- like I  
5 said, if you add the bottom of both, you come  
6 to 147,977 as opposed to 148,977 by my math.

7 **MR. KNOWLTON:** I --

8 **THE COURT:** That's Pickens math.

9 **MR. KNOWLTON:** Never trust a lawyer's  
10 math.

11 **MS. MCKNEW:** I would agree with that  
12 statement, my own included.

13 **MR. KNOWLTON:** Your Honor, as far as -- we  
14 don't argue that the type of entity this is  
15 makes it more complex, but what we've had to  
16 deal with is context. It was really an  
17 unsettled issue as to South Carolina law as to  
18 a fact pattern like this as to whether or not  
19 this was an unforceable penalty or an  
20 appropriate fee clause. What we had to do was  
21 develop the Warren Buffet context. This is high  
22 risk capital. This is why we have a relocation  
23 fee in here, rather than just sue for damages.  
24 It's hard to calculate. It's difficult. All  
25 that goes into whether or not it's an

1 appropriate fee. The reasons behind it, we had  
2 to develop for an articulate.

3 The discovery is usually not equal  
4 bilaterally. They saw discovery about all of  
5 our contracts with other client companies. They  
6 saw information about our budget. They saw  
7 other information. We also -- we had filed a  
8 couple of motions to compel to get information.  
9 The one order they got that she mentions about  
10 discovery is -- I can hand this up. This is  
11 Judge Young's order dated -- it looks like  
12 November 16th of 2016. All it did was confirm  
13 we didn't have any more documents and explain  
14 more broadly. If I can hand this up.

15 **THE COURT:** Yeah.

16 **MR. KNOWLTON:** Your Honor, we also had  
17 Rule 30(b)(6) deposition and topics that we had  
18 to prepare our clients for. Again, broad-  
19 reaching topics dealing with our operation  
20 generally, how it worked, budgets and things of  
21 that nature. We added -- we took a 30(b)(6)  
22 deposition of Dannar as well. Bottom line is,  
23 this is what it took. You know, we had it  
24 staffed, I think, leanly. We had -- I had one  
25 associate working on it, to try to keep



1 expenses done, who did first drafts of most  
2 things and handled the motions to compel.  
3 That's -- this is simply what it took. The  
4 client was billed for it and paid for it. We  
5 think the fees should be awarded, Your Honor.

6 **THE COURT:** All right. Brief response?

7 **MS. MCKNEW:** Very briefly. First of all,  
8 Mr. Knowlton said they had to establish a fact  
9 pattern. When Mr. Knowlton and I and Ms.  
10 Bridges, who made the argument, stood before  
11 Judge Stilwell on summary judgement, we both  
12 agreed there were no material issues of fact.  
13 The facts were what they were. There was no  
14 issue. We submitted it for decision on the  
15 merits, by agreement, on summary judgement. As  
16 to -- there were three depositions taken in  
17 this case. That's the total response to that  
18 point.

19 Our motion to compel was necessitated  
20 because the responses that we had received from  
21 SC Launch did not say, in fact, we've produced  
22 everything. They just produced some documents.  
23 And we didn't know. I had asked and had not  
24 gotten an answer that was clear. So we felt we  
25 had to move to compel. That did finally prompt

1 a clear answer, we've given you everything we  
2 have. We had to -- at any rate, that will do  
3 it, Your Honor, on that one.

4 **THE COURT:** All right.

5 **MS. MCKNEW:** So again, our --

6 **THE COURT:** All right. Let me look at this  
7 and then I'll let y'all know.

8 **MS. MCKNEW:** Thank you, Your Honor.

9 **MR. KNOWLTON:** Thank you, Your Honor.

10

11 (Proceedings conclude at approximately

12 11:03 a.m.)

13

14

15

16

CERTIFICATE

21

STATE OF SOUTH CAROLINA     )  
                                      )  
COUNTY OF GREENVILLE     )

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 9th day of December, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

*Teresa B. Johnson*

Official Court Reporter

ROA 000334

*In the Matter Of:*

DD Dannar, LLC v  
SC Launch!, Inc.

---

Harry Greig Hillman

November 30, 2016

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF GREENVILLE C.A. No: 2015-CP-23-00142  
3  
4 DD DANNAR, LLC,  
5 Plaintiff,  
6 vs  
7 SC LAUNCH!, INC.,  
8 Defendant.  
9  
10 30(b)(6)  
11 DEPOSITION OF: HARRY GREIG HILLMAN  
12 DATE: November 30, 2016  
13 TIME: 9:02 AM  
14 LOCATION: SMITH MOORE LEATHERWOOD, LLP  
15 2 West Washington Street, Suite 1100  
16 Greenville, SC 29601  
17 TAKEN BY: Counsel for the Plaintiff  
18 REPORTED BY: SUSSY LUNA,  
19 Court Reporter  
20  
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ROA 000336

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(INDEX AT REAR OF TRANSCRIPT)

1 Thereupon,

2 HARRY GREIG HILLMAN

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MS. MCKNEW:

6 Q Please state your full name for the  
7 record, Mr. Hillman.

8 A It's Harry Greig Hillman, and it's  
9 G-R-E-I-G.

10 Q Like the composer?

11 A Like Edvard, yes.

12 Q Okay. All right.

13 What is your current residence  
14 address?

15 A It's 518 Live Oak Court, Greer,  
16 South Carolina.

17 Now we're just in the process of  
18 selling it actually.

19 Q That's 296- --

20 A -- 51.

21 Q -- 51. Okay. All right.

22 And by whom are you employed?

23 A South Carolina Research Authority,  
24 SCRA.

25 Q And what are your -- what is your

1 title at SCRA?

2 A My job title is director of  
3 entrepreneurial programs. And I'm executive  
4 director for SC Launch!, Inc.

5 Q Are the people who work at SC Launch!  
6 employees of SCRA?

7 A Yes. All of them.

8 Q All of them?

9 A Right.

10 Q And is --

11 A At this point, seven -- seven people.

12 Q Seven people who are assigned to work  
13 at SC Launch!; is that correct?

14 A Correct.

15 Q Is Mr. Ettlemeyer still one of them?

16 A Yes. He is.

17 Q And is Mr. Housley still one of them?

18 A He is, yes.

19 (HILLMAN EXH. 1, Notice of deposition,  
20 was marked for identification.)

21 BY MS. MCKNEW:

22 Q I'm going to give you what's been  
23 marked as -- let me see.

24 What I'm going to do is -- oh, you  
25 have both of them. Okay.



1                   Let's -- what I have handed you is the  
2 notice of today's deposition.

3                   Have you seen that before?

4           A       Yes. I have.

5           Q       Is that why you're here in response to  
6 that notice?

7           A       I am.

8           Q       So you are here to testify on behalf  
9 of SC Launch! as identified in the notice,  
10 Exhibit 1, correct?

11          A       Yes. I am.

12          Q       Can you give us a brief history of  
13 your educational background, beginning with college?

14          A       Sure. Bachelor of business  
15 administration, Park College, Kansas. MBA,  
16 University of Utah.

17          Q       Okay. Any other degrees or  
18 certifications?

19          A       Not that are relevant.

20          Q       What are the ones that are not  
21 relevant?

22          A       Well, I was in the Air Force for eight  
23 years.

24          Q       For how long?

25          A       Eight years.

1 Q Eight years.

2 What rank?

3 What was the highest rank you achieved  
4 in the Air Force?

5 A I was a tech sergeant.

6 Q And when did you exit the Air Force?

7 A 1978.

8 Q Honorably I take it?

9 A As far as I know.

10 Q Nobody's told you otherwise.

11 How long have you been employed by  
12 SCRA?

13 A For nine years and 25 days.

14 Q Let's call it nine years.

15 What positions have you held at SCRA  
16 during that time?

17 A Sure. Role one was zone manager for  
18 the Upstate of South Carolina until approximately --  
19 well, two years into the job. And then I took the  
20 role of operations, director for SC Launch!

21 And then in 2012, I took an interim  
22 role as executive director of SC Launch! And then  
23 as of July -- well, August 1, I think August 1 this  
24 year, you know, was given my current titles, so.

25 Q Who preceded you in your current

1 position at SC Launch!?

2 A David McNamara. That was March of  
3 2012, thereabouts.

4 Q And prior to that was Bill Mahoney in  
5 that position?

6 A No. I worked for Bill Mahoney. He  
7 was --

8 Q Go ahead.

9 A -- yeah, CEO of SCRA.

10 Q As CEO of SCRA, did he have any direct  
11 relationship or involvement in SC Launch!?

12 A No. He didn't.

13 Q What about Mr. McNamara, did he have  
14 any direct relationship or involvement in  
15 SC Launch!?

16 A He did.

17 Q And what was the extent of his  
18 involvement?

19 A With this particular -- I assume  
20 relative to --

21 Q No. Just generally.

22 A General, just in general?

23 Q Yes.

24 A Well, he had management and executive  
25 responsibilities for SC Launch! until his departure.

1 As I said, I think it was March of -- March or  
2 April of 2012.

3 Q So he left in 2012?

4 A Yes. To the best of my recollection.

5 Q So you've held the interim position  
6 since then?

7 A No. The interim, I'm sorry, was  
8 converted to full time 2013.

9 Q Okay.

10 A Sorry.

11 Q That's what was confusing me.

12 A Okay. And the reason there was  
13 actually a date, you know, of note is because they  
14 pulled an officer position with SC Launch!, Inc. and  
15 that became a ratifying position.

16 Q So the board ratified your ascension  
17 to the permanent position --

18 A That's correct.

19 Q -- for which you had held the interim  
20 position?

21 A That's correct.

22 Q All right. I'm looking for the --  
23 sorry.

24 MS. MCKNEW: Exhibit 2. Thank you.

25 (HILLMAN EXH. 2, Defendant's Third

1 Supplemental Responses to Plaintiff's Second Request  
2 for Production, was marked for identification.)

3 BY MS. MCKNEW:

4 Q Mr. Hillman, I'm handing you --

5 A Yes.

6 Q -- a document marked Exhibit 2, which  
7 is the Defendant's Third Supplemental Responses to  
8 the Plaintiff's Second Request for Production.

9 Is that a fair representation of what  
10 I've given you?

11 A Yes.

12 Q And have you seen that document  
13 before?

14 A Yes.

15 Q Did you direct or participate in the  
16 search for documents responsive to the plaintiff's  
17 requests for production generally?

18 A I did.

19 Q That included a search of your files  
20 whether maintained electronically or in paper form;  
21 is that correct?

22 A Yes. It did.

23 Q Are the documents that were produced  
24 by SC Launch! documents maintained by SC Launch! in  
25 the normal business records?

1 A Yes. They were.

2 Q I would like to go back to Exhibit 1  
3 and invite your attention to Exhibit A attached to  
4 Exhibit 1. It's a list of topics.

5 And have you previously reviewed this  
6 list of topics?

7 A I have. Yes.

8 Q Are there any for which you are not  
9 the most knowledgeable person at SC Launch!?

10 And I will -- you don't have to answer  
11 the question with respect to item number 18, the  
12 very last item.

13 A Okay. The only item for which I  
14 wouldn't consider myself to be the expert is item  
15 number six. And that's because I was not present in  
16 the company when the original relationship between  
17 SC Launch! and SCRA was established.

18 So there are a couple of lawyers and  
19 prior CIO -- CEO rather --

20 Q All right.

21 A -- as well as -- and the financial  
22 person in charge at the time probably has more, you  
23 know, knowledge of the establishment.

24 Q Would you consider yourself to be the  
25 most knowledgeable person regarding the nature of

1 the relationship since 2010, for instance?

2 A Yes. I would.

3 Q Any others?

4 A No. One could always argue at some  
5 level.

6 Q And I'm not asking for a warranty or  
7 anything that you -- that others would agree with  
8 you. But I just wanted your own reaction, so  
9 that's -- thank you.

10 With respect to either 2011 funding  
11 for DD Dannar or the situation regarding a request  
12 for follow-on funding in 2013, are you comfortable  
13 if I refer to those collectively as  
14 Dannar Funding, unless I specify otherwise, like  
15 2011 or 2013, or would you rather I ask the  
16 questions separate?

17 A I think it would probably be more  
18 accurate to ask the questions separately.

19 Q That's great. Okay. No problem.

20 Can you please define for me the role  
21 that Mr. Ettlemeyer had in the 2011 Dannar funding  
22 considerations?

23 A Certainly. So decisions to bring a  
24 company in front of our board arrived through a team  
25 discussion and an agreement among the team that a

1 most qualified in our macular company is proposed to  
2 the board. And through team meetings Marty was  
3 present. He was fairly new in the company at that  
4 time. But Mr. Ettlemyer would have been present in  
5 those meetings. And that really was the extent of  
6 it.

7 Q And you said he was relatively new to  
8 the company at the time.

9 Roughly, when did Mr. Ettlemyer become  
10 employed by SCRA?

11 A It would have been early in 2011, even  
12 January I would say.

13 Q And what was Mr. Ettlemyer's role in  
14 connection with the 2013 request for Dannar funding?

15 A It -- it would have been very similar.

16 Q Attending meetings?

17 A Right. Attending meetings. He was --  
18 he was present certainly as was the rest of the team  
19 when decisions were made in -- to take a look at the  
20 most qualified companies to --

21 Q I should have said at the beginning of  
22 this deposition that I don't want to run over your  
23 answers. So if you're not finished, please just cut  
24 me off. I -- I won't take offense. If you don't  
25 understand the question that I ask, please ask me to



1 restate my question rather than asking your -- your  
2 counsel. I'm happy to rephrase it. I sometimes  
3 trip over my own tongue, as we all do from time to  
4 time, and I don't mean to confuse you. If -- if you  
5 answer a question, I'll assume you've understood it.

6  
7 But, again, if you don't -- if there's  
8 any question in your mind, please let me know. For  
9 instance, when I said, Can I refer to them  
10 collectively 2011, 2013, you said you would rather I  
11 do it separately, which is great and that sort of  
12 thing.

13 So as we go along -- and as I said off  
14 the record, if you need a break, fine. Just ask us.  
15 This is not an endurance contest. Just please  
16 complete the question on the floor and then we can  
17 take a break.

18 A Okay. Fine.

19 Q You referred to a team consideration.

20 For the 2011 funding, who composed the  
21 team?

22 A So are you looking for a list of  
23 names?

24 Q Yes. Who comprised the team is  
25 probably a better way?

1 A Sure. Dave McNamara, of course  
2 myself, Derek Willis.

3 Q Derek?

4 A Willis, W-I-L-L-I-S, D-E-R- --

5 Q E-K?

6 A -- E-K.

7 Q Okay.

8 A Lori Mack.

9 Q L-O-R-I?

10 A Yes.

11 Q M-A-C-K?

12 A Yes.

13 Ambrose Schwallie..

14 Q Ambrose -- can you spell the last  
15 name?

16 A S-C-H-W-A-L-L-I-E.

17 Q Okay.

18 A Greg Clark. That's probably it.

19 Q Okay. Are all of those people that  
20 you've named, or were they at the time, employees of  
21 SCRA?

22 A Yes.

23 Q Are all of them still with SCRA?

24 A No. They're not.

25 Q And who is not there?

15  
1 I'll go over the names and you can say  
2 yes or no.  
3 A Okay.  
4 Q Mr. McNamara, we know is not there?  
5 A Correct.  
6 Q You're obviously still there?  
7 A Yes, ma'am.  
8 Q Derek Willis?  
9 A Yes.  
10 Q Lori Mack?  
11 A No. She's not.  
12 Q Ambrose Schwallie?  
13 A Yes. Although he's not in the current  
14 organization. He has other responsibilities at  
15 SCRA. He's not within the entrepreneurial SC  
16 Launch! program.  
17 Q And what -- what are his new  
18 responsibilities?  
19 A He is director of university  
20 associated programs.  
21 Q Greg Clark?  
22 A He's no longer employed.  
23 Q Do you know where Mr. McNamara went?  
24 A I do not.  
25 And Marty Ettlemeyer, by the way, if I

1 didn't mention him.

2 Q Oh, Marty. Okay.

3 And -- and he's still with you?

4 A He is.

5 Q Is he still in the same  
6 entrepreneurial section?

7 A Yes. He -- he -- so there -- yeah,  
8 he's moved around a little bit within our SCRA and  
9 Launch! efforts over the years. But with today's  
10 world, he is part of the entrepreneurial.

11 Q Okay. And I'll ask the same question  
12 with respect to the 2013 Dannar funding request.

13 Who was the team?

14 A Okay. Well, I'll start with myself.

15 Q Yeah.

16 A Mark Housley, Ambrose Schwallie,  
17 Marty Ettlemeyer, Lindsay Khunhein, K-H-U-N-H-E-I-N.

18 Q K-H-U-N-H-E- --

19 A E-I-N.

20 Q -- E-I-N. Okay. I would have never  
21 guessed that one.

22 A I'm thinking here for a minute.  
23 Greg Clark, Derek Willis, Tiffany DuPree would have  
24 been there.

25 Q D-U-P-R-E-E?

1 A Yes. That's probably it.

2 Q Okay. Of all of the people that  
3 you've named, at the time were they SC Launch!  
4 employees or SCRA employees?

5 A They were all SCRA employees, yes.

6 Q And of those you named, Greg Clark is  
7 no longer there?

8 A Correct.

9 Q Anybody else who is no longer at SCRA?

10 A Can you --

11 Q Yeah. I can read them off.

12 You, Mark Housley, Schwallie we know.

13 Ettlemeyer you said is still there. Lindsay Khun- --

14 A Khunhein is no longer there.

15 Q Okay. Derek Willis, Tiffany DuPree?

16 A She is. And she is not part of the,  
17 entrepreneurial program. She is directly working  
18 for SCRA.

19 Q All right.

20 A And may I just take a quick look at a  
21 record here just to make sure I'm not missing  
22 anyone?

23 There is a chance that Ms. Ashley  
24 Hannah would have been in the meetings for 2013.

25 Q Ashley Hannah.

1 And what is the document you're  
2 looking at?

3 A I'm looking at the meetings, the  
4 minutes of the board meeting of 2013.

5 Q Oh. What is the date of those  
6 minutes?

7 A Yeah. This one is July 17, 2013.

8 Q Okay. Let's see.

9 A And --

10 Q Let's go back.

11 (HILLMAN EXH. 3, Minutes of Meeting of  
12 Board of Directors of SC Launch!, Inc. July 17, 2013,  
13 was marked for identification.)

14 BY MS. MCKNEW:

15 Q And Mr. Hillman, I'm giving you what's  
16 been marked as Exhibit 3.

17 Are these the minutes to which you  
18 referred in adding Ashley Hannah's name to the list  
19 of 2013 team members?

20 A Yes.

21 Q And you were -- you were saying  
22 something when we were marking the document.

23 What did you wish to add?

24 A I said the reason that I looked at  
25 this document was that others present in this

1 meeting represents the closest list to me right now  
2 of the people that were on the team at that time.  
3 And so I'd forgotten that Ashley Hannah probably had  
4 participated in the earlier review meetings. That's  
5 what I think.

6 Q Okay. I see -- in your earlier  
7 testimony and I see on Exhibit 3 there's mention of  
8 zone manager.

9 Are there zone teams as well or were  
10 there zone teams either in 2011 or 2013?

11 A Not -- not as such. It's the  
12 SC Launch! team.

13 Q Did -- were all decisions made by  
14 committee consensus, those funding decisions?

15 MR. KNOWLTON: Object to the form.

16 MS. MCKNEW: Yeah. That was a bad  
17 question.

18 Let me redo it.

19 BY MS. MCKNEW:

20 Q Was it the practice of SC Launch! to  
21 come to a recommendation that would go -- for  
22 funding, that would go to the board by consensus of  
23 the team or did any one person have decision-making  
24 authority or veto power?

25 MR. KNOWLTON: You're referring to the

1 staff versus --

2 MS. MCKNEW: Yes. Exactly. I'm  
3 trying to separate out the board action from, you  
4 know, the staff. That's why I said recommendation.

5 THE WITNESS: So I would say that team  
6 functioned as body deliberating around the business  
7 decision to offer the company an opportunity to  
8 present their case to the board.

9 BY MS. MCKNEW:

10 Q And would -- go ahead. I'm sorry.

11 A Yes. And so the team would make a  
12 consensus decision.

13 Q And would that be a recommendation to  
14 the Board that funding for this company be  
15 considered or would it be -- I'll leave it at that.

16 Would that be a recommendation to the  
17 Board of SC Launch! that funding should be  
18 considered for this particular company?

19 A It would be that because the team does  
20 not have the authority to provide funding in this  
21 manner to any company. That's reserved for the  
22 Board.

23 Q During the team meetings when you were  
24 deciding whether to allow a company to make a  
25 presentation to the Board, did the team tend to vote



1 or was it more of just a consensus by discussion?

2 A The latter.

3 Q Consensus by discussion?

4 A Yes.

5 Q When was Mark Housley hired?

6 A I can give you -- roughly four years  
7 ago.

8 Q Okay. Well, I think I might have  
9 something in here that helps a little when we get  
10 there.

11 A Okay.

12 Q But that's fair enough.

13 During your time with SC Launch!, have  
14 any members of an SC Launch! entrepreneurship team  
15 become employed by the funded company?

16 A I don't believe that has ever been the  
17 case. Not that I'm aware of.

18 Q Okay. Have any -- would that be true  
19 of any former employees of SC Launch!?

20 A I think so. Yeah. I -- I don't know  
21 of a case that that would have happened.

22 Q Any current or former employee of  
23 SC Launch! who has become engaged by a funded  
24 company as a consultant, has that ever happened?

25 A I can't speak for any of the employees

1 that have left, but none that I'm aware of.

2 Q Okay. All right.

3 Have you personally ever told  
4 anyone -- when I say tell, it doesn't have to be  
5 oral. It could be, you know, written communication,  
6 e-mail, whatever, that Dannar sold prototype  
7 vehicles that were funded by SC Launch!?

8 A Say that -- would you repeat that?

9 Q Yes.

10 Have you personally ever told anyone  
11 that Dannar sold prototype vehicles that were funded  
12 by SC Launch!?

13 A Not that I'm aware of.

14 Q Do you know of anybody at SC Launch!  
15 who ever told anyone that?

16 A I don't believe so. I don't believe  
17 that would have been the case.

18 Q Okay.

19 A Can I ask you to repeat the prior  
20 question again just to make sure that I've answered  
21 it?

22 Q You mean, the one I just -- just  
23 finished --

24 A No. Prior to this one. The one a  
25 moment ago before that.

1 Q You mean, did you personally; is that  
2 the one?

3 A Right.

4 Q My question was, have you personally  
5 told, meaning verbally --

6 A I'm sorry. Not this question. The  
7 one about consulting.

8 Q Oh. Yes. Oh. Okay. I'm sorry. I'm  
9 sorry. I did go back literally one question instead  
10 of two.

11 Has -- to the best of your knowledge,  
12 has any current or former employee of SC Launch! or  
13 actually current or former employee of SCRA become a  
14 consultant to a funded company?

15 A So what I would like to clarify is  
16 that the team members of SC Launch! performed  
17 consulting services as a routine part of our work.

18 If you're asking me if anyone was  
19 employed either independently or through another  
20 firm, then my answer stands. I don't believe so.

21 Q Good. Thank you. That's how I  
22 understood your answer. But I'm glad you made that  
23 clarification.

24 Okay. Let's go, 364.

25 THE REPORTER: Exhibit Number 4.

1 (HILLMAN EXH. 4, E-mail; SCL364, was  
2 marked for identification.)

3 BY MS. MCKNEW:

4 Q Mr. Hillman, I'm handing you a  
5 document with the Bates numbers -- and when I say  
6 Bates numbers, they're the lower right-hand corner,  
7 Bates number SCL364 marked Exhibit 4, right?

8 A Yes.

9 Q Have you seen this document before?

10 A I believe so, yes.

11 Q And I see -- is this -- does this  
12 accurately show it's from you messaged to  
13 Ed Marshall, Gary Dannar and Alan Austin,  
14 February 23rd, 2011; is that right?

15 MR. KNOWLTON: It's a chain of  
16 e-mails.

17 MS. MCKNEW: Chain. Yes. That's one  
18 of them.

19 BY MS. MCKNEW:

20 Q Is that right?

21 A Yes.

22 Q I would like you to -- I would invite  
23 your attention to the message that begins about a  
24 quarter of the way down, your message of  
25 February 23rd to those gentlemen that I just

1 identified.

2 A Okay.

3 Q And you're suggesting, as I see it,  
4 that general advice from Tom and advice from  
5 financials from John.

6 A Uh-huh.

7 Q The Tom that you refer to is  
8 Tom Strange, right?

9 A It is.

10 Q And the John is John Warner, right?

11 A Correct. Of the Governor's School, by  
12 the way.

13 Q Okay.

14 A There is another --

15 Q Yeah. John Warner --

16 A -- John Warner in town. It's not that  
17 John Warner.

18 Q I see. Okay. That --

19 A That's not -- John Warner.

20 Q Okay. That was actually my question.

21 Okay. Because throughout these there is a  
22 John Warner, for instance, on your Board and so it's  
23 the John Warner of the Governor's School, not the  
24 John Warner -- the other John Warner that we just  
25 talked --

1 A Correct.

2 Q Okay. All right. That --

3 A Very different human beings.

4 MS. MCKNEW: Off the record.

5 (Off-the-record discussion.)

6 BY MS. MCKNEW:

7 Q With respect to Exhibit 4, what sort  
8 of general advice did you believe that Tom would be  
9 useful for giving Gary?

10 Did you have anything in particular in  
11 mind?

12 A I do have to say I don't recall, you  
13 know, what the details are here. But it would be  
14 the same advice that we would give to practically  
15 any one of the companies that would get in front of  
16 us. And it had to do with making the best stab that  
17 they could possibly make in terms of generating a  
18 pro forma for what they intended to do in the  
19 future.

20 Q So this would be something you would  
21 do with any company, suggest that they might get in  
22 touch with some of your board members for advice?

23 A It's really pretty specific. It would  
24 have been in situations where either the member was  
25 known by the company prior to coming in or during a

1 informal review of any kind, where a board member  
2 would raise a hand and say, I'd be glad to help, you  
3 know, review this with you.

4 Q I see.

5 A I don't recall if these two gentlemen  
6 were in any or all of those situations, so.

7 Q Okay. All right. Thank you.

8 Thank you for clearing up the  
9 John Warner confusion.

10 A Okay. You're welcome.

11 MS. MCKNEW: 370.

12 This will be -- we're on 5?

13 THE REPORTER: Yes.

14 (HILLMAN EXH. 5, E-mail; SCL370, was  
15 marked for identification.)

16 BY THE REPORTER:

17 Q Mr. Hillman, I've given you what's  
18 been marked as Exhibit 5. It looks like an e-mail  
19 string between you and Gary Dannar. Ask if you have  
20 seen this before?

21 A Yes. I have.

22 Q I'd like to invite your attention to  
23 the bottom, the very first message in this e-mail  
24 chain regarding Black Box.

25 A Uh-huh.

1 MR. KNOWLTON: If you would, when  
2 she's typing this instead of saying uh-huh, uh-uh,  
3 say yes or no.

4 THE WITNESS: Okay. Sure.

5 MS. MCKNEW: Thank you, Bob.

6 That's something else I should have said  
7 at the beginning.

8 MR. KNOWLTON: It didn't matter then.  
9 But I'd rather interrupt when it did matter. When  
10 it's -- just to get in the habit.

11 MS. MCKNEW: That's -- that's very  
12 good addition. I appreciate it.

13 BY MS. MCKNEW:

14 Q I'm looking again at the first  
15 message. I'll give you a moment to read it.

16 A Yes.

17 Q Question is a pretty simple one.

18 Why did you suggest that Gary get in  
19 touch with or be interviewed by Black Box?

20 A We thought it would be a good way to  
21 profile a company in its early growth and then be  
22 able to follow the company as growth and development  
23 of, you know, their property continued into a  
24 commercialization stage. And that was one of the  
25 goals of Black Box, so that's the reason for that.



1 Q What is the relationship, if any,  
2 between SC Launch! or SCRA and Black Box?

3 A I don't believe there is any kind of a  
4 formal relationship. In years past, prior to this  
5 more than likely, SCRA would have placed an ad in  
6 Black Box just an informative -- you know,  
7 information ad -- and for some years, most of  
8 the -- since their existence began, I've been listed  
9 as an advisor to Black box. I'll periodically,  
10 write an article or something. There's no  
11 compensation at all involved any of this --

12 Q Are you listed on the advisory board  
13 or something like that?

14 A I think I still am. We have very  
15 limited communication.

16 Q Did SC Launch! or SCRA fund Black Box  
17 at any time to the best of your knowledge?

18 A Not at all. Except that we did place  
19 advertising probably once a year. We haven't done  
20 that for a number of years by the way.

21 Q And --

22 A Oh. Oh. Yeah. So -- yeah.

23 Q Okay. And have you offered or  
24 suggested to other funded companies that they  
25 provide an interview to Black Box from time to time?

1 A Yes.. We have.

2 MS. MCKNEW: 368.

3 Number 6..

4 THE REPORTER: Number 6.

5 (HILLMAN EXH. 6, E-mail; SCL368, was  
6 marked for identification.)

7 BY MS. MCKNEW:

8 Q Mr. Hillman, I'm handing you what's  
9 marked as Exhibit 6.

10 And do you remember a while ago I  
11 asked you when Mark Housley became employed. And I  
12 said I thought I had something that would help with  
13 the date.

14 A Okay.

15 Q And that's why I'm giving you this.

16 A Okay.

17 Q Have you seen this before?

18 A Yes. I have.

19 Q And does this help you pinpoint the  
20 date that Mark Housley became -- and I don't mean  
21 the day, but does this give you a better idea from  
22 when he became employed by SCRA?

23 A This is a different Mark than  
24 Mark Housley --

25 Q Oh.

1           A       -- in reference here. This is as  
2 indicated in the address where Mark Anderson is  
3 copied.

4           Q       Oh. I'm sorry.

5           A       This was a gentleman by the name of  
6 Mark Anderson, who is no longer employed in SCRA.

7           Q       How long was Mark Anderson employed at  
8 SCRA?

9           A       I would say two years.

10          Q       What was his role?

11          A       His initial role was business  
12 development, VP of AA, VP of business development.  
13 Principally working in areas outside of SC Launch!.

14          Q       Okay.

15          A       Happened to share an office in the  
16 Upstate and a sharp young fellow I thought would be  
17 a good catch for Dannar to know of Mark.

18          Q       What was his role or interaction to  
19 the best of your knowledge with Dannar?

20          A       I don't think there was any  
21 interaction that really transpired following, you  
22 know, this introduction. This was a pretty big  
23 event that Zipit Wireless had. And they had a  
24 chance meeting there. And that was the extent of it  
25 to my knowledge.

1 Q Did -- to the best of your  
2 recollection, did Mr. Anderson leave SCRA prior to  
3 the decision on the 2013 funding for Dannar?

4 A I -- I believe he did. And he  
5 wouldn't have known about it.

6 Q Okay. Thank you.

7 THE REPORTER: Number 7.

8 MS. MCKNEW: Okay.

9 (HILLMAN EXH. 7, Financing Agreement,  
10 was marked for identification.)

11 BY MS. MCKNEW:

12 Q Mr. Hillman, I'm handing you what has  
13 been marked as Exhibit 7, which is -- purports to be  
14 a financing agreement dated April 14th, 2011 between  
15 SC Launch! and Dannar. And when I say Dannar in all  
16 cases, I presume your understanding meaning that I  
17 mean the corporate entity, is that what this --

18 A I would object to it being a purported  
19 financing agreement. In my estimation it is a  
20 financing agreement.

21 Q Okay. Well, what I meant was, the  
22 document I handed -- handing you, purports -- in  
23 other words, it says it's a Financing Agreement.  
24 I'm asking you to confirm that. And perhaps -- I'm  
25 sorry my question confused you. So I just want to

1 make sure that this is a complete accurate copy.

2 That's really what I'm asking you.

3 A I believe it is, yes.

4 Q Okay. Thank you.

5 Does it include a copy of the  
6 promissory note in the amount of \$200,000?

7 A Yes. It does.

8 Q What is the purpose of the -- let me  
9 ask it this way: Is the purpose of the Financing  
10 Agreement to secure SC Launch! in the loan?

11 That's what the Financing Agreement  
12 does, right?

13 MR. KNOWLTON: Object to the form.

14 THE WITNESS: I think it does that.

15 And it describes the relationship between the  
16 company and SC Launch!.

17 BY MS. MCKNEW:

18 Q Okay. And I would like to direct your  
19 attention to Section 3.3B. The relocation fee, page  
20 5 of Exhibit 7, the top.

21 And I see the last sentence says -- a  
22 phrase that says, A good-faith estimate in the  
23 amount necessary to compensate SC Launch! for its  
24 actual costs in connection with a Company  
25 Relocation.

1 What are those costs?

2 A The costs involved in the launch  
3 program getting to a point where a company is  
4 offered an opportunity to present to the Board are  
5 very difficult to delineate specifically.

6 However, I can tell you that the  
7 program contains a large number of people hours.  
8 There are quite a number of expenses associated with  
9 pulling the teams together. You know, those are the  
10 most closely related costs.

11 But in addition to that, the entire  
12 program is based on being able to interact pretty  
13 broadly with entities in South Carolina for the  
14 purpose of gelling all of those contacts and  
15 networks and so on to the benefit of a company that  
16 we're trying to help get off the ground.

17 So it's very difficult to, you know,  
18 give you a line-by-line detail. The consulting  
19 services that I mentioned earlier are certainly part  
20 of this. The team is composed of individuals that  
21 have pretty extensive -- you know, ten to 20-plus  
22 years of experience in business. So all of those  
23 efforts come together to support an entity that is  
24 in front of us. The other aspect of this is that we  
25 as representatives of the State of South Carolina,

1 we are funded through a mechanism that makes us a  
2 South Carolina organization, South Carolina state  
3 organization. We have to make a decision with these  
4 companies. It means that when we do that, there are  
5 other companies that don't have the benefit of these  
6 funds. So what is the cost is quite broad and it's  
7 very difficult to try and get to the point that one  
8 can peer into the future and see who will really do  
9 what they claim they will be doing. So the cost of  
10 the State of South Carolina is pretty significant  
11 every time we put one of these companies up for an  
12 investment.

13 Q Okay. Not my question.

14 I'll ask my question again.

15 A Okay.

16 Q What are your costs on a relocation?

17 A So what -- are you asking me -- can  
18 you repeat exactly what you're asking?

19 Q Yeah. What are your -- SC Launch! or  
20 SCRA's actual costs on a relocation?

21 Not how much it took to get them to  
22 the funding, but on relocation what are your actual  
23 costs?

24 A So let me state that I don't believe  
25 you can separate what it took for them to get there

1 other than to say that when an investment is put in  
2 front of a company and the company leaves prior to  
3 the agreed-upon time frame that they would stay in  
4 the state, it means that some other company -- and  
5 we have always a line of companies that are hoping  
6 to get these investments. It means that other  
7 companies would not have the opportunity to get  
8 these funds. And therefore, the success of those  
9 companies present an opportunity lost to the State  
10 of South Carolina and that's really a piece of art.

11 Q And who were those companies in --  
12 well, first of all, you agree with me, don't you,  
13 that after getting the funding in 2011, Dannar  
14 continued doing business in South Carolina for at  
15 least two years?

16 A What I know is that there was a date  
17 specific when Dannar agreed that it had departed the  
18 state.

19 Q And it was after -- they did business  
20 for a full two years after funding, isn't that  
21 correct?

22 A I assume that. I can't tell you for  
23 sure that that is the case. We hope that's the  
24 case.

25 Q And who were the companies that didn't



1 have the benefit of these funds that you would have  
2 funded in 2011, had you and had Dannar had a crystal  
3 ball that it would have -- it would eventually move  
4 from South Carolina?

5 MR. KNOWLTON: Object to the form.

6 THE WITNESS: Can you repeat that,  
7 please?

8 BY MS. MCKNEW:

9 Q Yes.

10 You mentioned -- you said, quote,  
11 other companies don't have the benefit of these  
12 funds.

13 Who were those companies in 2011?

14 MR. KNOWLTON: Same objection.

15 THE WITNESS: So at any given time,  
16 there are roughly 100 companies that are part of our  
17 client portfolio. Within that group of companies,  
18 they are developing at different rates. We don't  
19 list the companies in such a finite state as to know  
20 exactly who might be next on the list.

21 BY MS. MCKNEW:

22 Q So you don't know?

23 A I don't know who it would have been.

24 MS. MCKNEW: Exhibit 7.

25 THE REPORTER: Exhibit 8.

1 MS. MCKNEW: 8. I'm sorry.  
2 (HILLMAN EXH. 8, Minutes of Meeting of  
3 the Board of Directors of SC Launch!, Inc.  
4 September 11, 2013, was marked for identification.)  
5 BY MS. MCKNEW:

6 Q Mr. Hillman, I'm handing you what's  
7 been marked as Exhibit 8.

8 A Yes.

9 Q It appears to be -- I won't use  
10 purports again, it appears to be minutes of the  
11 board meeting of SC Launch! September 11, 2013,  
12 correct?

13 A Correct.

14 Q And it's been redacted by SC Launch!.  
15 Do you recognize this document?

16 A I do.

17 Q And I would like to direct your  
18 attention to the second page of that document under  
19 the heading, SC Launch! Program Update.

20 During this meeting in 2013, did  
21 director -- and I won't try to pronounce his name  
22 Wisch- -- Wischerath?

23 A It's close. Wischerath.

24 Q Wischerath. I missed the E-R in  
25 there. Express a concern for the lack of deal flow;

1 is that what it says?

2 A That's what it says.

3 Q Okay. Thank you.

4 Is that an accurate representation of  
5 what he said?

6 A That's an accurate representation of  
7 what he said.

8 Q Okay. Thank you. Okay.

9 Now, getting back to Exhibit 7, the  
10 Financing Agreement?

11 A Yes.

12 Q In response to interrogatories and  
13 request for production, do you recall SC Launch!  
14 saying that it did not have a list of actual costs  
15 nor did it have any documents that would explain the  
16 nature and extent of those costs on relocation of a  
17 company?

18 A Would you repeat that, please?

19 Q Well, here. Rather than do that, let  
20 me -- let's do this.

21 MS. MCKNEW: See, I'm unpredictable.

22 THE REPORTER: Number 9.

23 MS. MCKNEW: This is 9?

24 THE REPORTER: Yes.

25 MS. MCKNEW: Okay.

1 (HILLMAN EXH. 9, Defendant's Second  
2 Supplemental Responses to Plaintiff's Second Set of  
3 Interrogatories, was marked for identification.)

4 BY MS. MCKNEW:

5 Q Let me hand you a document --

6 A Yes.

7 Q -- marked Exhibit 9. And this appears  
8 to be SC Launch!'s second Supplemental Responses to  
9 Plaintiff's Second Set of Interrogatories.

10 Do you see that?

11 A Yes. I do.

12 Q And you have reviewed this document  
13 before, have you not?

14 A Yes. I have.

15 Q And I would invite your attention to  
16 page 5 of this document, wherein we ask the question  
17 we requested that South Carolina Launch identify by  
18 category an amount all costs incurred in connection  
19 with the relocation of a Supported Company.

20 In response to which, you can see the  
21 supplemental response, down at the -- down at  
22 bottom, including the statement -- well -- can you  
23 please publish into the record the last sentence of  
24 the supplemental response to interrogatory number  
25 eight?

1           A       Am I correct in pointing to the  
2 sentence that begins, Defendant does not have?

3           Q       Yes. That's correct.

4           A       So Defendant does not have any further  
5 information related to any amounts of costs incurred  
6 by Defendant in connection with relocation of a  
7 Supported Company beyond that which has previously  
8 been provided in discovery including the Rule  
9 30(b)(6) deposition of the plaintiff.

10          Q       What in the Rule 30(b)(6) deposition  
11 of Gary Dannar, in your estimation, purported to be  
12 a cost that was incurred by SC Launch! in connection  
13 with the relocation of Dannar?

14          A       I would have to say it again, it goes  
15 to the program itself, which is a body of knowledge  
16 and information that has been accrued at a fairly  
17 substantial cost. And so the program in its  
18 existence, you know, contains costs that were put  
19 forth to the benefit of the plaintiff here.

20          Q       And what in the -- let me repeat my  
21 question.

22                   What in Mr. Dannar's 30(b)(6)  
23 deposition identified costs to SC Launch! based on  
24 Dannar's relocation?

25                   MR. KNOWLTON: Object to the form of

1 the question.

2 THE WITNESS: I, you know -- can we  
3 take a minute?

4 MS. MCKNEW: No. You can't. I'm  
5 sorry. You can't -- that's the other thing. You  
6 can't discuss the substance of the deposition with  
7 your counsel --

8 THE WITNESS: I see.

9 MS. MCKNEW: -- during the deposition.

10 THE WITNESS: Okay. Well, I'm going  
11 to have to say that I'm not familiar enough with  
12 details there to try and delineate costs. And I  
13 think my answer is going to have to stand from my  
14 perspective and indicate to you that the program has  
15 been put together at a fairly large cost.

16 BY MS. MCKNEW:

17 Q And have you ever referred to -- well,  
18 let's go back to the Financing Agreement. Page 5,  
19 Section 3B.

20 A Okay.

21 Q What is called here, Relocation Fee.

22 Have you ever referred to the fee as a  
23 penalty?

24 A It's not a penalty. It's a relocation  
25 fee.

1 Q Not my question.

2 Have you personally ever referred to  
3 the fee as a penalty?

4 A I probably have.

5 Q Have you personally ever referred to  
6 the fee as a callback?

7 A I probably have until our lawyer made  
8 it very clear to me that those are pejorative.

9 Q She shouldn't say that?

10 A It's not appropriate.

11 Q Well, I --

12 A So we had a long discussion about  
13 that.

14 MS. MCKNEW: Well -- I don't think --

15 MR. KNOWLTON: Don't get into what  
16 your lawyers --

17 MS. MCKNEW: -- yeah. I was just  
18 going to say, I won't take that as a waiver. But I  
19 don't think that can be used, you know, in --

20 MR. KNOWLTON: We don't waive  
21 attorney-client.

22 MS. MCKNEW: And I don't -- but, you  
23 know, so let's just pretend that answer -- that part  
24 of the answer didn't happen.

25 THE WITNESS: Okay.

1 MS. MCKNEW: Because I don't want you  
2 to waive it.

3 THE WITNESS: Okay.

4 MS. MCKNEW: That's not my intention.

5 THE WITNESS: Sure. Sure.

6 BY MS. MCKNEW:

7 Q Okay. And how did you determine the  
8 amount of that fee?

9 A It was determined that it was almost  
10 impossible for us to delineate specific costs  
11 associated with efforts to provide a financing -- to  
12 provide financing to a company. So we in concert  
13 with other members of management made a decision  
14 that the easiest way for both the company that we're  
15 dealing with and we in the program to lay out what  
16 we thought was fair was to use the same amount of  
17 money for the relocation fee as was put forth in  
18 investments that were authorized by the Board.

19 Q So you doubled the amount of the loan?

20 A No.

21 Q Well, if they have to pay the loan  
22 back plus interest, right?

23 A Yes.

24 Q So you're over 200,000 and according  
25 to the amortization schedule -- well, I think -- let



1 me interrupt myself and say, my recollection is that  
2 Dannar repaid the loan and accrued interest and it  
3 was roughly \$225- -- \$225,000 in that range; is that  
4 right?

5 A Is that the question?

6 Q Well, that's the first question. In  
7 the range, I'm just -- I don't mean exactly.

8 A It is.

9 Q Okay.

10 A I don't know exactly what the interest  
11 was on that, but yes.

12 Q Okay. So they paid back 200- --  
13 roughly \$25,000. And then you expected them -- they  
14 paid -- you expected them then to pay an additional  
15 \$200,000, correct?

16 A Let me answer by saying what we  
17 expected them to do is to live up to the agreement  
18 that we put on the table that everybody understood  
19 at the time that we made the agreement.

20 Q I appreciate your -- your nonanswer.

21 A And the rationale for it being in  
22 there was explained in as it always is, you know, to  
23 our companies.

24 Q Let's go back to my question.

25 A Okay.

1 Q So you expected that Dannar would pay  
2 more than double the amount of their original loan  
3 back if it decided to -- if it had to leave  
4 South Carolina prior to five years, correct?

5 A Correct.

6 MR. KNOWLTON: Object to the form.

7 BY MS. MCKNEW:

8 Q Okay. Let's -- Let's go to Exhibit 9,  
9 please.

10 A Yes.

11 Q And I would like to go to  
12 interrogatory number three, where supported  
13 companies that relocated have been identified.

14 Do you see where I am?

15 A Yes.

16 Q And page 1?

17 A Page 1.

18 Q Yes.

19 A Oh, yes.

20 Q DigitalSmiths Corporation, you  
21 indicate later on page 3 of this document, I  
22 believe, that -- that DigitalSmiths paid a  
23 relocation fee; is that correct?

24 A That's correct.

25 Q Was that double the amount of the loan

1 or was it the same amount as their loan?

2 A It was whatever was listed in the  
3 Financing Agreement. I haven't looked at this in  
4 years. But I imagine it would be the same text as  
5 in the document we've been reviewing.

6 Q And -- and would that -- was it your  
7 practice, that is SC Launch!'s practice, to make the  
8 relocation fee as a general rule, the same amount as  
9 the principal amount of the loan?

10 A Yes.

11 Q Okay. Do you remember the range of  
12 DigitalSmiths' original loan?

13 A I believe it was 200,000.

14 Q Did DigitalSmiths pay back the loan in  
15 full?

16 A Yes. They did.

17 Q Did they pay back the loan in full  
18 before they relocated?

19 A Yes. They did.

20 Q Did they pay it back contemporaneously  
21 with relocation?

22 A They did not.

23 Q Did they pay a -- and they paid a  
24 relocation fee?

25 A Yes. They did.

1 Q Was there any discount off the amount  
2 of the loan for the relocation fee?

3 A I believe there was not.

4 Q Did they challenge the amount of the  
5 relocation fee -- fee via counsel or otherwise?

6 A I don't believe they challenged it.  
7 But of course they tried to negotiate it.

8 Q Did they actually pay the relocation  
9 fee before they repaid the loan?

10 A No. They didn't.

11 Q Let me invite your attention to page 2  
12 of this document, which is Exhibit 9. And I see in  
13 response to interrogatory number four, you indicate  
14 that DigitalSmiths paid a relocation fee on  
15 October 22, 2008, correct?

16 A That's what I see here, yes.

17 Q And then on page 3, same document,  
18 Exhibit 9, right up at the top, up in paragraph B,  
19 you indicate that the loan was repaid later,  
20 November 3rd, 2008, correct?

21 A That's what it says.

22 Q Okay.

23 A And I'm thinking that that is not  
24 correct. But that's what it says here. I would  
25 be -- there would be no reason for the company to

1 pay the relo fee prior to repaying the company.

2 Q My question -- and you looked at these  
3 before they went out, correct?

4 A I haven't studied DigitalSmiths in  
5 probably seven years. But yes, I looked at this  
6 document.

7 Q And you -- and you authorized it to be  
8 served upon as your -- the answers of South Carolina  
9 Launch!, correct?

10 A Yes.

11 Q So the best information that we have  
12 now is set forth in this document, correct?

13 A As far as I know, yes.

14 Q Okay.

15 A I would like to say that I would like  
16 to go back and take a look at that -- that  
17 particular detail.

18 Q You can do that. And if -- that's  
19 perfectly fine. You're always allowed under the  
20 rules to amend your responses.

21 Let me go back to page 1 of Exhibit 9.

22 A May I?

23 Q Yeah.

24 A So --

25 Q I mean, yes. Not yeah. Yes.

1           A       It's a little vague.

2                    It says, Date of repayment. And then  
3 on the prior page 2 or let me see -- it says, Date  
4 of repayment on page 3. That's the November 3, 2008  
5 date.

6           Q       Yes.

7           A       And then it's a little bit more  
8 information, date of payment of relocation fee in  
9 section D on page 2. So -- so there's different  
10 nomenclature there for both of those dates. So I  
11 would have to go back and put some detail, I think,  
12 around page 3 date.

13           Q       Well, you know the difference between  
14 a loan repayment and a relocation fee repayment,  
15 correct?

16           A       Sure. Sure.

17           Q       And -- and the question five to which  
18 subparagraph B on page 3 of Exhibit 9 is responsive,  
19 clearly refers to the loan repayment, correct?

20           A       I think it does, yes.

21           Q       And question three -- actually, sorry,  
22 question four on page 2 of Exhibit 9, clearly refers  
23 to the relocation fee, correct?

24           A       I believe it does.

25           Q       Thank you.

1 A Yes.

2 Q Okay. Let's go back to page 1 of  
3 Exhibit 9. Another company that you identified was  
4 Get Interactive, Inc., correct?

5 A Correct.

6 Q And my understanding is they did not  
7 pay a relocation fee; is that right?

8 A To my knowledge, they did not.

9 Q Did they -- and it does not appear  
10 that they repaid the loan either; is that correct?

11 A Correct. They did not.

12 Q Okay.

13 A And the reason is they went out of  
14 business. There was no asset remaining in the  
15 company.

16 Q When did they go out of business?

17 A I don't know the exact date.

18 Q But at the time they moved, they were  
19 not out of business, were they?

20 A I think it was happening at the same  
21 time as they stopped operating in South Carolina.

22 Q Well, you have an address here for  
23 them in Winston?

24 A Correct.

25 Q So that would indicate they did

1 relocate, correct?

2 A They probably were in process of  
3 leaving South Carolina. As we tried to stay in  
4 contact with them, it became more and more difficult  
5 and more and more obvious that the company was no  
6 longer operating.

7 Q That became clear over time?

8 A Yeah. It did. I mean, these things  
9 happen over a period, you know, of weeks and even  
10 months, you know.

11 Q But you really don't know when they  
12 went out of business?

13 A I don't have a specific date.

14 Q And you did list them here as a  
15 company that relocated?

16 A Correct.

17 Q Let me invite your attention again to  
18 page 3 of Exhibit 9.

19 A Yes.

20 Q And confirm for me, if you will, that  
21 the companies listed in subparagraph C, G, K, L and  
22 M all received additional funding from SC Launch!,  
23 is that right, and that would be Sabal, S-A-B-A-L,  
24 Medical?

25 A Sabal.



1 Q Sabal Medical.

2 A Uh-huh.

3 Q Ion Surgical, I-O-N, Surgical,  
4 CareCam, that's C-A-R-E-C-A-M, VidiStar,  
5 V-I-D-I-S-T-A-R and Vigilix, V-I-G-I-L-I-X; is that  
6 right?

7 A Yes. Vigilix. That's the way they  
8 pronounce it.

9 So would you repeat the question,  
10 please?

11 Q Okay. I just wanted you to confirm  
12 that the companies that we've just identified all  
13 received additional financing whether you call it  
14 follow-on or second tranche financing from  
15 SC Launch!, correct?

16 A Correct.

17 Q I would now like to invite your  
18 attention to page 4 of Exhibit 9, question six.  
19 Sorry. And you've identified there a company that  
20 paid -- correction, a company whose financing  
21 agreement included a sale of company fee, is that --  
22 and you identify that company as Ion Surgical; is  
23 that right?

24 A That's correct.

25 Q And was that fee in the Financing

1 Agreement itself?

2 A It was.

3 Q And is this a fee that you routinely  
4 include in financing agreements?

5 A We do now. Yes. It was -- I don't  
6 believe it was in Dannar's --

7 Q Okay.

8 A -- agreement. And if you'd like, I  
9 can let you know why it was added. It was added  
10 later.

11 Q Okay. At the bottom of page 4 and  
12 over to page 5 of Exhibit 9 it indicates that for  
13 Ion Surgical the amount of the fee was \$30,000; is  
14 that right?

15 A That's correct.

16 Q It also indicates somewhat  
17 confusingly, frankly, that there was no follow-on  
18 funding. At the top of page 5 it says, none, follow  
19 on subsequent funding by defendant -- oh. I'm  
20 sorry. I answered my own question.

21 On page 3, Ion Surgical indicates two  
22 rounds of funding; one in October of 2009, the other  
23 one in June of 2011. And then on page 5, you've  
24 indicated that the date of the initial funding is  
25 fiscal year 2011. That was really the date of the

1 follow-on funding, correct. It says initial but --

2 A Well --

3 Q -- according to page 3, that would be  
4 follow-on funding? Since initial funding was --

5 A I believe that's correct. And, you  
6 know, of course we have the fiscal year versus, the  
7 calendar year.

8 Q Yeah. But --

9 A You know, we try and be very careful  
10 by noting, you know, which is which.

11 Q Yeah. But October 2009, even if it's  
12 fiscal or calendar, is not going to be in any 2011  
13 area?

14 A Correct. That's correct.

15 Q So that's really the follow-on  
16 funding, the fiscal year of 2011?

17 A That's correct.

18 Q Was the total funding for Ion \$30,000  
19 or was it more?

20 A Oh. It was more, yes. This was a  
21 percentage calculation.

22 Q So it was a percentage of the sales  
23 price?

24 A It was -- I believe so. I'd have to  
25 go back and look at the language in there, you know.

1 This has not happened very often. But it was a  
2 percentage of -- it may have been a percentage of  
3 our investment. I would have to check. I -- I  
4 probably should add that for companies that convert  
5 to becoming a C-corp we have an opportunity to  
6 convert our note to equity.

7 Q And that's in Dannar financing  
8 agreement as well, correct?

9 A Correct. And in those companies that  
10 remain LLC, we cannot -- we have a policy not to  
11 take equity. So, therefore, if a company has an  
12 exit while they are an LLC, the opportunity for the  
13 program to have an upside is reduced dramatically,  
14 even though we take such great early risks. So the  
15 idea of the sale of company fee was to put some  
16 funding back into the program based on that sale of  
17 the company fee. If a company is not or had not  
18 chosen to convert to a C-corp or had not chosen to  
19 negotiate into an equity or entry.

20 Q And part of the reason that you --  
21 well, let me put it this way.

22 Is part of the reason that you include  
23 an opportunity to convert SC Launch!'s investment  
24 into equity as you say, to take an upside in the  
25 progress of the company, correct?

1           A       That's correct. To recover more of  
2       our costs.

3           Q       And it's another reason to protect  
4       your investment.

5           A       It is.

6           Q       Okay.

7           A       Certainly.

8           Q       Okay.

9           A       We would hope that the company would  
10       be gaining strength. You know, the equity is not as  
11       valuable if the company is very, very weak of  
12       course.

13          Q       And in Section 1.1 of Exhibit 7, the  
14       Financing Agreement in this case, there is such  
15       conversion opportunity, correct, at least  
16       contractually?

17          A       I believe so, yes.

18          Q       Okay. All right.

19          A       Well -- so we're looking at Exhibit 7.  
20       So Dannar at that time was an LLC.

21          Q       Right.

22          A       Right.

23          Q       So you would not have exercised that  
24       in any way?

25          A       No. That is correct.

1 Q But you left it in here?

2 You left it in the agreement, Exhibit  
3 7?

4 A Yes. I mean, the goal would be to be  
5 able to convert at some point when the company  
6 gained strength. It's a positive thing all the way  
7 around.

8 Q When did Dannar relocate from  
9 South Carolina within the meaning of paragraph 3.3A  
10 of Exhibit 7?

11 A I believe Dannar formally made a  
12 statement they had relocated on April 1st of 2015.

13 Q 2015?

14 A Correct. Whether they did prior to  
15 that or not is sometimes difficult to tell. They  
16 had indicated to me early on that they would be  
17 moving.

18 Q And do you have any evidence or  
19 information that would conflict with the April 2015  
20 date?

21 A May I ask you -- let me know what you  
22 mean by conflict with that date?

23 Q Do you have any basis on which to  
24 challenge the April 2015 date as the date that  
25 Dannar relocated within the meaning of section 3.3A

1 of the Financing Agreement?

2 A I -- I think there were a number of  
3 newspaper reports, you know, that indicated that  
4 they had moved prior to this. And then I would say  
5 my conversation with Dannar, when they indicated  
6 they would like to repay the note included, they had  
7 told me that they were going to be relocating to  
8 Indiana.

9 Q And that was going to be, correct?

10 A Correct.

11 Q Relocation has a very specific  
12 definition within the meaning of Exhibit 7, the  
13 Financing Agreement; doesn't it?

14 A I don't know if it is all spelled out  
15 in that part of the agreement. But it means that  
16 more than 50 percent of the payroll would be paid  
17 outside the State of South Carolina.

18 Q So so long as 50 percent of the  
19 payroll is paid within the state of South Carolina,  
20 the fact that the business may have an additional  
21 location outside of the state would not affect  
22 the -- would not rise to a contract level, correct?

23 MR. KNOWLTON: Object to the form.

24 THE WITNESS: Let me be a little more  
25 specific. So an officer of record is established

1 outside of the state of South Carolina.  
2 Headquarters for the company would be outside of the  
3 State of South Carolina and payroll. So, you know,  
4 those are the three things that we would look at to  
5 determine whether relocation has, you know, been  
6 made.

7 BY MS. MCKNEW:

8 Q So it has to be and. And I'm looking  
9 at 3.3 of Exhibit 7. And I would invite your  
10 attention, if -- if you -- if you disagree with my  
11 assessment. But it looks to me as if it has to be  
12 and.

13 In other words, the company's  
14 principal office or principal place of business --

15 A What page is that? On page 4?

16 Q Yeah. Page 4.

17 A Yeah.

18 Q Yeah. Okay.

19 A Thank you.

20 Q I'm toward the -- you see I'm about --  
21 it starts about a third of the way down, Section  
22 3.3A. The company's principal office or principal  
23 place of business has to move outside of  
24 South Carolina. And -- that next word is, and.  
25 Then there's your half, one-half payroll expenses of



1 the company's total employees or senior management,  
2 et cetera are outside South Carolina. It has to be  
3 both, correct?

4 A That's the way it reads.

5 Q So my question was, do you have any  
6 basis on which --

7 MR. KNOWLTON: Object to the form.

8 MS. MCKNEW: I'm sorry the form of?

9 MR. KNOWLTON: I mean, the document  
10 speaks for itself.

11 BY MS. MCKNEW:

12 Q Well -- well -- I'm asking -- okay.  
13 I'm asking him the word, and, is in there, correct?

14 A Correct.

15 Q That's what the contract says.  
16 It doesn't say, or; it says, and,  
17 correct?

18 And so back to my question, do you  
19 have any basis on which to question April 2015 as  
20 the effective date of relocation of Dannar within  
21 the meaning of Section 3.3A. That is movement of  
22 the principal place of business and more than half  
23 the payroll paid outside the state.

24 A So I -- I don't have any reason.

25 Q Okay.

1           A       I don't have any reason to think that  
2       it didn't happen before April 1st either.

3           Q       That's -- that's not my question.

4                   My question is, do you have anything  
5       to contradict or to -- to throw into doubt the  
6       April 2015 date as the date of effective relocation  
7       of Dannar within the meaning of Exhibit 7, the  
8       Financing Agreement.

9           A       Just that's the date that Dannar  
10       agreed that they were moved, you know, according to  
11       the agreement that we had in place. I assume it's  
12       correct.

13          Q       Okay. Thank you. So -- thank you.

14                   Did you sign this agreement,  
15       Exhibit 7?

16                   I just didn't --

17          A       Probably not. Probably Eric Trailor  
18       did or I might have. It looks like --

19          Q       I don't -- I don't have -- I think in  
20       the --

21                   MR. KNOWLTON: Okay. It's McNamara.

22       BY MS. MCKNEW:

23          Q       McNamara. Okay. All right.

24                   And that would have been the person  
25       that you would expect to sign it at the time?

1 A Correct.

2 Q Okay. Thank you.

3 Let's move to the 2013 funding request  
4 by Dannar.

5 Were you involved in conversations or  
6 meetings with Dannar regarding how they should  
7 fashion their request for additional funding?

8 A Can you be more specific, please?

9 Q Yes. That was a very poor question.  
10 I'm so sorry.

11 Did you give Dannar advice as to what  
12 to say or not say in connection with their request  
13 for additional funding in 2013?

14 A The conversations that I would have,  
15 did have and the team would have with Dannar Company  
16 would be pretty broad. They -- they would include  
17 experience that we've had with our Board. It would  
18 include experiences that the team has had with many  
19 companies and many situations. So I think the  
20 answer to your question is yes. But it's not a  
21 matter of coaching a company to parrot, you know,  
22 specific responses necessarily. It's more along the  
23 line of, you know, explain to the Board why these  
24 pro formas, why these projections have validity.  
25 And, you know, do it to the best of the ability that

1 you have as a growing company to do that.

2 MS. MCKNEW: Okay.

3 Exhibit 10?

4 THE REPORTER: 10.

5 (HILLMAN EXH. 10, E-mail; SCL396 of  
6 deposition, was marked for identification.)

7 BY MS. MCKNEW:

8 Q Mr. Hillman, I'm handing you what's  
9 been marked as Exhibit 10. It appears to be an  
10 e-mail string. The majority of which is a message  
11 that appears to be from Mark Housley to Gary Dannar  
12 and others at Dannar dated January 31st, 2013.

13 Have you seen this document before?

14 A I have.

15 Q Have you seen it -- and I don't  
16 want -- never mind. Can that question.

17 Is this the kind of support and  
18 consulting advice that you would give -- that you  
19 would typically give to a company that is applying  
20 for a second -- for second round -- second round  
21 tranche for SC Launch!?

22 A I wouldn't say that there was, you  
23 know, typicality here. But I will say that each  
24 individual that works with these companies, you  
25 know, calls on their own experiences and so on and

1 so.

2 Q Is there no -- is there no typical  
3 approach or typical process or procedure?

4 A There is a goal and an endpoint to  
5 preparing these companies. And that is what is  
6 typical. What goes on, you know, with work products  
7 and so on in the middle of those kinds of  
8 discussions, you know, can vary widely.

9 Q So there's no policy, no written  
10 policy and boundaries of -- at the SC Launch! with  
11 what you can or can't do with advising the company;  
12 is that right?

13 A That's accurate.

14 Q Okay. Thank you.

15 THE REPORTER: 11.

16 (HILLMAN EXH. 11, E-mails; SCL412, was  
17 marked for identification.)

18 BY MS. MCKNEW:

19 Q Mr. Hillman, I'm handing you a  
20 document that has been marked as Exhibit 11.

21 Have you seen this before?

22 It purports to be, sorry, an e-mail  
23 from Mark Housley to Gary Dannar and Alan Austin at  
24 Dannar dated February 8, 2013?

25 A Yes. I have.

1           Q       It looks like Mark is referring to --  
2     the initial part of this says, What I was asked to  
3     do in our internal call is go to a few prospective  
4     customers.

5                   Do you recall the call that  
6     Mark Housley is referring to in this document?

7           A       I don't recall, you know, a specific  
8     call here. But what this suggests to be is, again,  
9     what we would normally do with a company that is in  
10    this early development stage and try and get some  
11    first-hand understanding of who potential customers  
12    or clients would be of that company. And that that  
13    appears to be what Mark Housley is indicating that  
14    he is about ready to do and, you know, thinking back  
15    to the board meeting, you know, I think he did that.  
16    Yeah.

17           Q       Okay. Did you ask him to do that to  
18    the best of your recollection? That is go to a few  
19    prospective customers as Exhibit 11 says?

20           A       I didn't specifically. But any of  
21    members of the team that would likely would've been  
22    on that call, I'm sure could have been on that call.  
23    But I'm -- I certainly don't recall the details.

24           Q       Okay.

25           A       We have done over 100 of these by the

1 way.

2 Q One hundred?

3 A We've made over 100 investments.

4 Q Ah.

5 A And it probably took 300 companies to  
6 get to the 100 and over a thousand that are in our  
7 client portfolio over -- over the years.

8 Q How long has the SC Launch! program  
9 been in existence to the best of your knowledge,  
10 even if you were not sure?

11 A Sure. It began in 2006.

12 Q Okay. So ten years?

13 A Ten years through an act of the  
14 South Carolina legislature.

15 Q Okay. Why don't we take about five  
16 minutes. And I'll get a bobby pin, so this doesn't  
17 keep doing this.

18 (A recess transpired.)

19 (HILLMAN EXH. 12, Minutes of a Meeting  
20 of the Board of Directors of SC Launch!, Inc. March  
21 6, 2013, was marked for identification.)

22 BY MS. MCKNEW:

23 Q Mr. Hillman, I'm handing you what's  
24 been marked Exhibit 12, which appears to the Minutes  
25 of the Meeting of the Board of Directors of

1 SC Launch! dated March 6, 2013; is that a correct  
2 characterization?

3 A Yes. It is.

4 Q And have you seen these before?

5 A Yes. I have.

6 Q And at first, I'd like to draw your  
7 attention to the others present notation on the  
8 first page of Exhibit 12?

9 A Yes.

10 Q And I see two board members have  
11 guests?

12 A Yes.

13 Q Including Arnie Nemirow, Mike Burgess  
14 and Sherry Smith; is that right?

15 A Correct.

16 Q Did they leave the meeting at any time  
17 during the meeting to the best of your knowledge?

18 A I don't recall specifically. And at  
19 that time, I don't believe we would have asked  
20 guests to leave. But we -- before a company  
21 presented itself, we would inform the company that  
22 we had guests.

23 Q All right. And have any of these  
24 guests become members of your Board?

25 A They have not.



1 Q Okay.

2 A Sherry Smith, I think, has become a  
3 member of the SCRA Board of Trustees.

4 Q What about Arnie?

5 A I don't know.

6 Q Do you know Arnie?

7 A You know, I've met Arnie.

8 Q Okay.

9 A Yes.

10 Q I know him pretty well, so that's the  
11 only reason I asked.

12 Mike Burgess?

13 A Again, I don't recall.

14 Q All right. I invite your attention to  
15 the next page of Exhibit 12. And I'm just -- just  
16 as a matter of information, what is a Non-Exit  
17 Portfolio Return. You see -- in between all of the  
18 redactions, there's one Director Reed, that's  
19 Tim Reed, right?

20 A Uh-huh. Yes. Yes.

21 Q Continue to review of the report. And  
22 there's a reference there to the Non-Exit Portfolio  
23 Returns in init- caps -- initial caps. That  
24 suggests to me that it's a --

25 A Oh. Certainly. So in some cases, we

1 will take payments back into Launch! from companies  
2 they have received a note. It's not -- it's not  
3 originally intended to be a payment process. But  
4 some companies cannot afford to pay the whole note  
5 back at one time. So we will, you know, put a  
6 stream of payments out there that they agree to  
7 comply with, you know, will amend the agreement,  
8 they will offer a stream of payments. And what he's  
9 talking about here are companies that are still a  
10 portfolio, that are in a portfolio and they are  
11 paying back the note over time.

12 Q What does non-exit refer to?

13 A Oh. They have not exited as a  
14 company. They have not been acquired by another  
15 entity, which is for a lot of our companies  
16 hopefully are going to do when they grow up. They  
17 will be acquired and they will become part of a  
18 larger entity. They can afford additional  
19 investment into the company.

20 Q And if a company grows or doesn't  
21 grow, but pays back the loan and does not request  
22 follow-on financing or second tranche, are they  
23 still in the portfolio?

24 A They are, yes. They, you know -- in  
25 some cases, we would refer to them as, you know,

1 graduates of the program. Many of them are  
2 interested in sharing their experiences with younger  
3 companies and we take advantage of that.

4 Q So it's a more of a -- maybe a --

5 A Alum.

6 Q Alum. Alumni. So they're -- they  
7 might at their discretion and yours provide advice  
8 or support?

9 A Correct. Yeah. We count on that as  
10 part of the growth strategy.

11 Q And for those companies where you  
12 accept payments rather than, as you said, it's not  
13 really contemplated in the financing agreements that  
14 you have with these companies.

15 A Correct.

16 Q Is there a discount -- typically is  
17 there a discount on payback rather than paying back  
18 the entire loan, is there a discount offered?

19 A Unfortunately, it's quite the  
20 opposite. There is an interest rate that's applied,  
21 very low. It's non-onerous rate. But they -- they  
22 will continue to accrue interest.

23 Q Okay. And the decision to enter into  
24 that kind of arrangement, is that a decision by  
25 management or is it the decision that the Board has

1 to approve?

2 A It is a management decision.

3 Q I'm a little confused about same  
4 section of this document, page -- the second page  
5 reflects the Returns for Exits.

6 You see where I am of the SC Launch!  
7 portfolio page, Reflects the Returns for Exits?

8 A Yes. So if -- if a company has an  
9 exit, if we own equity in that company, we will  
10 reflect it in the financials.

11 Q So this is just for companies that you  
12 still -- that SC Launch! would own equity in as of  
13 the time of the report?

14 A That -- that -- that is correct.

15 Q Okay. All right.

16 Would you please -- I would invite  
17 your attention to page 4 of Exhibit 12.

18 A Yes.

19 Q And as I read this and please correct  
20 me if I'm wrong. This is where Tim Reed, Director  
21 of SC Launch! offered a resolution that had it been  
22 approved would have provided second-round funding or  
23 second tranche to Dannar in the amount of \$250,000;  
24 is that accurate?

25 A Along with the conditions in there,

73  
1 yes. And the conditions in -- in this case included  
2 Dannar being able to show that they had received  
3 investment of 2.2 million, 2.25 million.

4 Q And Tom Strange second it?

5 A That's correct.

6 Q And what were the discussions around  
7 this resolution that resulted in directors  
8 Davis, Marshall and Wischerath would have made to  
9 the best of your recollection?

10 A You know, I'd have to say that I'm not  
11 sure what the discussion really was. I will say it  
12 was a rather, you know, painful process for everyone  
13 because there was a lot of support to try and make  
14 this happen. So, you know, again, this is a  
15 deliberate body with independent thoughts going into  
16 the final decisions.

17 Q And -- and so that was the basis for  
18 my question is, what do you recall of those  
19 discussions?

20 A I -- I can't -- I can't really  
21 pinpoint any specifics here. And I -- I would say  
22 that, you know, the way that these back and -- they  
23 go back and forth, there's a, you know, it's  
24 difficult to judge what is on the mind of these  
25 board members as the presentation goes on for

1 roughly an hour. And then there's, you know, at the  
2 end of the meeting, these discussions take place,  
3 you know, it's a -- it's not a highly structured,  
4 highly disciplined process. It's a matter of  
5 discussion among the members. And then when the  
6 discussion stops, a vote is -- a vote is taken.

7 Q Do you remember any concerns that were  
8 expressed during this meeting regarding Dannar or  
9 the proposal for the second tranche?

10 A At this point?

11 Q Any time.

12 A You mean, prior to the board meeting?

13 Q At -- yeah. Any time during this  
14 request process for 2013 follow-on or second-tranche  
15 funding?

16 A You know --

17 MR. KNOWLTON: I'm sorry. Any  
18 discussions about what?

19 MS. MCKNEW: The particular issues,  
20 the particular concerns expressed by either Dannar  
21 or its executives during the process of  
22 consideration of second-round funding or  
23 second-tranche funding in 2013.

24 A Well, one thing is certain when there  
25 is a follow-on request for funds. The Board kind

1 of -- not kind of, they -- they take a more detailed  
2 look at what is in front of them and try and make a  
3 determination as to the progress, call it milestones  
4 achieved, if you will, between the time of an  
5 earlier investment and the current time. And you  
6 know, the closer that a company has come to  
7 fulfilling its stated initiatives and milestones,  
8 you know, easier it probably is for those board  
9 members to make a final decision.

10 Q Okay. And was this an issue that you  
11 recall being discussed in the -- or coming up in the  
12 consideration of second-round funding for Dannar?

13 A Dannar. I really can't -- I really  
14 can't say. You know, it's -- it's kind of  
15 far-ranging discussion about market opportunity.  
16 The companies' representation of what it considers  
17 to be feasible or possible with current funding  
18 levels, things like this. You know, the members --  
19 this one presented an opportunity for a number of  
20 items of discussion revolving, creating a  
21 manufacturing environment for the State of South  
22 Carolina that was really desirable. This company  
23 represented an opportunity for literally hundreds of  
24 jobs and significant payroll coming back into the  
25 State.

1                   And so, you know, there was a general  
2                   desire to want to make this happen. When the  
3                   discussion stops, the board members take a vote and,  
4                   you know, it's not surprising to say that there was  
5                   disappointment that it didn't pass. There was a lot  
6                   of support for Dannar.

7                   Q       Okay. Are you aware of the number of  
8                   jobs and payroll for Dannar in Indiana?

9                   A       I -- I have recently read some of the  
10                  numbers. Yes. And those are not too different than  
11                  what we had hoped would incur here in  
12                  South Carolina.

13                  Q       I think they have like 20 employees  
14                  maybe. Is that --

15                  A       I don't know what the exact number is  
16                  now, but it's very low. It's a startup team. Once  
17                  production begins, you know, you're talking about a  
18                  necessity for hundreds of semi-skilled, skilled  
19                  workers, you know, designers, engineers, et cetera.  
20                  Very desirable --

21                  Q       And --

22                  A       -- for society in general.

23                  Q       As of -- let's go back to Exhibit 7,  
24                  which is the Financing Agreement?

25                  A       Okay.



1 Q The date of this agreement is  
2 April 14, 2011, correct, on the first page up at the  
3 top?

4 A Yes. It is. Yes.

5 Q And the relocation provision would  
6 extend until April 14, 2016, correct?

7 A Correct. Five years, yes.

8 Q Do you know how many employees Dannar  
9 had in Indiana as of April 16th -- April 14, 2016?

10 A I do not.

11 Q Do you know what the payroll was of  
12 Dannar in Indiana as of April 14th, 2016?

13 A I do not.

14 Q Would you agree that as you said  
15 earlier, they still have a low number of employees  
16 even in Indiana?

17 A I -- I would -- I would think that we  
18 would know if they had reached production in full  
19 production, which by the way we would still love to  
20 see. But I imagine it's taking longer than he  
21 anticipated to make this happen.

22 Q And under the Financing Agreement  
23 regardless of anything, all other considerations  
24 aside, any obligation that Dannar would have to  
25 SC Launch! would have ended as of April 16th --

1 April 14, 2016, correct?

2 A Under this current agreement, yes.

3 Q And no further agreement was offered,  
4 right?

5 A No. It wasn't. It would have been  
6 really nice to see, you know, opportunities for  
7 additional investment in South Carolina come to the  
8 table.

9 Q The -- going to -- back to Exhibit 12.

10 A Yes.

11 Q I understand that the result of the  
12 vote on the Dannar proposal on page 4 of Exhibit 12  
13 represented a three-three split; is that right?

14 A Yes.

15 Q It was even?

16 A It was even. And unfortunately that  
17 meant that it did not pass.

18 Q So under the bylaws of SC Launch! the  
19 majority must approve?

20 A Correct.

21 Q Okay. The financing arrangement  
22 between SC Launch! and Dannar does not require by  
23 its terms any specific level of job creation or  
24 payroll creation, does it?

25 A That's correct.

1           Q       To the best of your knowledge, does  
2       the secretary of SC Launch!, Ms. Lawless, keep  
3       accurate minutes of the meetings of the Board of  
4       Directors such as those we have seen in this  
5       deposition?

6           A       I think she does a very good job. And  
7       you've been in many board meetings and you know that  
8       people talk over one another frequently. And so  
9       Ms. Lawless has done a fine job in getting the  
10      essence captured and of course the facts associated  
11      with the companies are -- are nicely represented as  
12      well as the end point for the resolutions. You look  
13      at that very carefully along with the treasurer and  
14      myself.

15          Q       Okay. I would like to invite your  
16      attention back to Exhibit 8, which we have  
17      previously marked.

18          A       Okay.

19          Q       I will ask you to simply read the  
20      provisions or the sections of this document that --  
21      I know we've looked at the SC Launch! program update  
22      toward the bottom of page 2 and in the -- under the  
23      SC Launch! Financial Update, there is additional  
24      information. And I want to see if that matches the  
25      recollection that you have of that meeting. And

1 also, I see, refers to Tiffany DuPree. First time I  
2 have seen that.

3 A Is it? Yes.

4 Q Okay. And -- okay. That's all right.

5 Let me invite your attention to  
6 Exhibit 3, which we previously marked. These are  
7 minutes July 17th, 2013?

8 A Yes.

9 Q And at first I'd like you to turn to  
10 the last page of this document. And it looks as if  
11 you are assuring the Board that the staff is  
12 diligently working to boost the pipeline.

13 Does that reflect a similar concern  
14 that the pipeline is not as full as the directors  
15 would like it to be?

16 A That's probably a true statement. And  
17 so perhaps a little bit of an explanation on the  
18 pipeline. The effort involved in getting a company  
19 to the point that it's prepared to make a  
20 presentation of the board is pretty extensive, as  
21 I've indicated. And so at any given time, you know,  
22 we may have maybe half a dozen to a dozen companies  
23 that we think are approaching an ability to qualify  
24 themselves. The pipeline here is directly related  
25 to the companies that actually have attained that

1 status.

2 Q Okay.

3 A Okay. So --

4 Q Okay.

5 A Yeah.

6 Q Let me invite your attention to page 2  
7 of this document. Last sentence of the paragraph at  
8 the top, Mr. Hillman also informed the group that  
9 SCRA, SC Launch! have other discussions going on  
10 with Indiana which may come into play.

11 Do you see that?

12 A Yes. I do.

13 Q What were those discussions?

14 A We had been working with an agency of  
15 the federal government by the name of Craine in  
16 Indiana. Craine, C-R-A-I-N-E, I believe is the  
17 spelling.

18 That agency produces technology for  
19 units of the Department of Defense such as the  
20 Navy Seals and things like this. You know, a lot of  
21 devices and so on, you know, that the various  
22 military units use. We had discussions with Craine  
23 and -- and to some extent continue to through our  
24 government business, which is ATI. Now split from  
25 SCRA.

1 Q ATI, what does that stand for?

2 A Advanced Technology Incorporated.

3 Q And was that part of SC Launch!?

4 A It was and -- and will continue to be  
5 until the end of this year.

6 Q Okay.

7 A Okay. At which time that  
8 half-a-billion-dollar organization will become an  
9 independent entity. It's sort of outgrew SCRA  
10 essentially.

11 So in working with SCRA and Craine,  
12 there were efforts to try and use our program as a  
13 way to bring in technologies that might be  
14 relinquishing elsewhere in the U.S. and allow  
15 companies that we're working with to engage in  
16 various ways. My thought at the time is that, you  
17 know, Dannar had an interest in doing some things  
18 with DOD and hope against hope, you know, would  
19 there be some opportunity for us to help Dannar link  
20 in to an opportunity that could be based in South  
21 Carolina, but may have been initially funded in  
22 Indiana at Craine. So that's what that discussion  
23 was about and unfortunately it never did -- it never  
24 did play out.

25 Q Was -- is Craine then an independent

1 contractor to the U.S. Government, DOD?

2 A It has a lot of independent  
3 contractors. But it's -- it's much like -- I mean,  
4 it's a military institute -- military installation.

5 Q Or it's an installation in Indiana?

6 A In Indiana. Uh-huh.

7 And, you know, we had direct  
8 relationship with consultants and senior people  
9 there that expressed interest in helping some of  
10 these technologies come into South Carolina  
11 companies. So, you know, it felt like it might be a  
12 good fit at some point. It's very difficult to make  
13 those things happen.

14 Q Sounds like a lot of moving parts.

15 A Yes.

16 Q You said that the part of this -- one  
17 of the moving parts was that there were other  
18 companies -- there were companies that were, I think  
19 you said languishing in other areas of the US?

20 A Not so much companies. But what I was  
21 talking about there were technologies that perhaps  
22 the Department of Defense had begun to fund. And  
23 there are all sorts of examples. You know, some  
24 millions of dollars often go into the development of  
25 a transparent whatever.

1 Q Yeah.

2 A And unfortunately the funds run out  
3 and so this technology at various stages of  
4 development, it is deposited on the shelf. And our  
5 hope was that technologies that had high value might  
6 be able to be linked into some of the companies that  
7 we were helping to get off the ground and turn them  
8 into commercial opportunity.

9 Q And so you've indicated in your  
10 testimony, and correct me if I'm wrong, I don't mean  
11 to be misquoting you, that you were aware that  
12 Dannar was working with DOD or had a link to DOD?

13 A What I was aware of is that  
14 Gary Dannar had told me he had an interest in being  
15 involved in developing product for the Department of  
16 Defense. I didn't know what the status was or, you  
17 know, where that existed and so on.

18 Q Did part of your knowledge of that  
19 come from Gary Dannar telling you that the intent  
20 was to keep some operations that would be directed  
21 to DOD within the state of South Carolina?

22 A He -- he did mention that he would  
23 like to see that happen.

24 Q And so you don't know at that time or  
25 now what the status of this work with DOD is or



1 where it is; is that right?

2 A That's correct.

3 THE REPORTER: 13.

4 MS. MCKNEW: 13.

5 (HILLMAN EXH. 13, E-mails; SCL559, was  
6 marked for identification.)

7 BY MS. MCKNEW:

8 Q Mr. Hillman, I'm handing you a  
9 document that's been marked Exhibit 13, which  
10 appears to be an e-mail from you to various people  
11 at SCRA and SC Launch! really and then one board  
12 member, John Warner, the John Warner of  
13 Governor's School?

14 A Yes. Correct.

15 Q Have you seen this before?

16 A Yes. I have.

17 Q And this is dated April 29th, 2013.

18 And we had talked about the amount of  
19 a payoff. And I think that's in, like, the fifth  
20 bullet point on the first page.

21 Do you see that 222,634.19 --  
22 \$222,634.19?

23 A Yes.

24 Q Is -- that's one -- so that -- does  
25 that refresh your recollection as to the rough

1 amount of the payback?

2 A Yes.

3 Q Okay.

4 A Sure.

5 Q I'm sorry. I was a little above that,  
6 I guess I was about two- -- \$2,500 above that.  
7 Sorry about that.

8 At this time, did it indicate that --  
9 did Gary indicate to you, as reflected in  
10 Exhibit 13, that he did intend to keep operations,  
11 some operations in South Carolina; that was his  
12 initial intention?

13 A Yes. He did.

14 Q And to the best of your recollection,  
15 did Dannar, in fact, pay back the loan roughly  
16 around this time in full with interest?

17 A He did.

18 Q The details of Exhibit 13, were those  
19 an accurate reflection of your discussion with  
20 Gary Dannar and your communication with your team?

21 A As best as I could recount the  
22 discussion that had taken place hours prior, yes.

23 Q But it had taken place only hours  
24 prior when you wrote this?

25 A Yes.



1 Q Okay. Thank you. Excuse me.

2 A It is -- pardon if I say this, but it  
3 was -- it was kind of alarming because we wanted  
4 them to stay here. Anyway.

5 MS. MCKNEW: Excuse me. I'm sorry.

6 Off the record.

7 (Off-the-record discussion.)

8 (HILLMAN EXH. 14, E-mails; Dannar002523,  
9 was marked for identification.)

10 BY MS. MCKNEW:

11 Q I'm handing you what's been marked as  
12 Exhibit 14.

13 This appears to be an e-mail string  
14 between you and Gary Dannar dated April 30, 2013.

15 Have you seen this document before?

16 A I have.

17 Q Did you author the e-mail that begins  
18 the string, which includes -- it appears to come  
19 from you-all. I will say that.

20 A It did.

21 Q And in this document, as I read it,  
22 you say, Our practice -- I'm on page 2. Well, let  
23 me ask you to publish into the record the sentence  
24 that begins with, Our practice is to?

25 A Certainly.

1                   Our practice is to include a reminder  
2                   that paragraph 3.3. relocation clause and subject  
3                   financing agreement may survive satisfaction of the  
4                   loan.

5                   Q        Okay. And does -- in response, did  
6                   Gary Dannar take issue with that also in Exhibit 14?

7                   A        He indicates that he disagrees with  
8                   our interpretation of the requirement.

9                   Q        Does he say that his belief is that  
10                  once the loan is paid in full, their -- Dannar's  
11                  obligations cease?

12                  A        That's what he says, yes.

13                  Q        And does he indicate that he does not  
14                  have a commitment to relocate, which I take to mean  
15                  within the meaning of the Financing Agreement out of  
16                  South Carolina, but that he will -- he's going to  
17                  have to examine all alternatives?

18                  A        Yes.

19                           THE REPORTER: Exhibit 15.

20                           MS. MCKNEW: Okay.

21                           (HILLMAN EXH. 15, E-mails; SCL654, was  
22                           marked for identification.)

23                           BY MS. MCKNEW:

24                   Q        All right. Mr. Hillman, I'm handing  
25                   you what's been marked as Exhibit 15, which appears

1 to be at the bottom, your e-mail to Gary on  
2 October -- October -- April 29, 2013. And then it  
3 appears to be a forwarding message to John Warner  
4 the board member in June 2013?

5 A Correct.

6 Q And at that time, do you indicate your  
7 belief still is that Dannar has indicated that half  
8 the company will remain in South Carolina focused on  
9 Department of Defense, DOD?

10 A That's what Gary had indicated.

11 Q Okay. And so that was what you knew  
12 at the time and you communicated to Mr. Warner; is  
13 that right?

14 A Correct.

15 MS. MCKNEW: 16?

16 THE REPORTER: 16.

17 (HILLMAN EXH. 16, E-mail; SCL457, was  
18 marked for identification.)

19 BY MS. MCKNEW:

20 Q All right. Mr. Hillman, I've handed  
21 you what's been marked as Exhibit 16.

22 It appears to be an e-mail from you to  
23 Suzanne Dickerson dated June 19th of 2013, which I  
24 think is a little -- yeah, the same day that you --  
25 of Exhibit 15, when you communicated with

1 Mr. Warner?

2 A Yes.

3 Q Have you -- do you recognize this?

4 A I do.

5 Q Okay. First of all, who is  
6 Suzanne Dickerson?

7 A Suzanne is or was director of business  
8 development for Clemson's ICAR campus, global  
9 business development actually.

10 Q Okay. And to Suzanne you say, It was  
11 almost inevitable.

12 Why did you say that?

13 I'll say, on what basis did you say  
14 that?

15 A You know, we had tried to initiate a  
16 relationship using our -- you know, we have an  
17 office at ICAR and we've worked pretty closely with  
18 them over the years. We had done a number of things  
19 to get Dannar involved with ICAR to help support  
20 their continued development of the vehicle. And  
21 Suzanne was very instrumental in getting -- getting  
22 some of that accomplished. So when I think what had  
23 -- what had precipitated this was this press  
24 release, you know, indicating that Dannar was moving  
25 to -- out of state. I don't remember the details of

1 the release.

2 But, again, it was quite disappointing  
3 because to me at the time it just seemed like almost  
4 four years of effort, you know, were going away. So  
5 what was inevitable about it, I think, was, you  
6 know, the fact that the company felt like it did not  
7 have an opportunity to continue to work in  
8 South Carolina.

9 And, you know, did we do a postmortem  
10 on it? No, we didn't. It was a -- it was a very  
11 difficult thing, as you can tell by this, this is  
12 pretty hurt.

13 Q But at the time -- as we saw on  
14 Exhibit 15, you still believed, as Gary told you,  
15 that his intention was to leave some of the company  
16 in South Carolina for DOD business, right?

17 A Right.

18 Q Okay.

19 A Right. Just to clarify, that's what  
20 Gary told me.

21 Q Okay.

22 A And I have not seen any --  
23 unfortunately there was nothing really that was  
24 visible that would lead one to believe that DOD was  
25 really doing anything. I mean, had pretty good

1 amount of experience in dealing with DOD over the  
2 years. It's a very long process and -- you know.

3 Q Did you know how long Gary had been  
4 working on the DOD relationship?

5 A I did not.

6 Q And did you know where his  
7 relationship with DOD was?

8 Did he tell you the details of the  
9 relationship with --

10 A What he -- what he indicated was that  
11 he was working with some senior DOD officials.  
12 That's the extent of it. I couldn't tell you who or  
13 what agency or anything. I mean, take him at his  
14 word that he was trying to make some things happen.

15 Q And were you aware that Dannar had a  
16 Clemson University professor on the Board or  
17 involved in the company?

18 A I think we had crafted that  
19 relationship at some point.

20 Q So the answer is yes?

21 A Yes.

22 Q Okay. Thank you.

23 THE REPORTER: 17.

24 (HILLMAN EXH. 17, E-mails; SCL621, was  
25 marked for identification.)



1 BY MS. MCKNEW:

2 Q Mr. Hillman, I'm handing you what's  
3 been marked as Exhibit 17, which appears to be an  
4 e-mail string between you and Tim Reed. Again,  
5 June 19, 2013.

6 A Yes.

7 Q And Tim is asking you -- well, this is  
8 about -- well, let me focus your attention, if I  
9 might, on the center of page 1, where I think that's  
10 you say, I've suggested a review of ICAR and others.

11 Is that the postmortem that you  
12 refer -- referring -- were referring to in  
13 Exhibit 16?

14 A It probably was. We don't have  
15 anything that is a formal debrief, but probably it  
16 was.

17 Q A lessons learned kind of situation?

18 A Yes. Lessons learned. A lot of  
19 effort went into trying to make this happen, so.

20 Q And Tim refers to the claw-back in his  
21 message to you, correct?

22 A He did.

23 Q And you refer that they still have the  
24 potential for penalty, correct?

25 A What did I say?

1 Q At the very top.

2 A Yeah. I did. Yeah.

3 Q Thank you.

4 Did you or to the best of your  
5 knowledge, did anyone at SC Launch! ever talk with  
6 any official of any governmental or  
7 quasi-governmental agency in the State of Indiana  
8 about Dannar?

9 A Not to my knowledge. I know I  
10 certainly did not. I don't know if anybody on my  
11 team did, so SCRA is a fairly large organization.  
12 If there were discussion, you know, being on my  
13 team, nobody has mentioned it to me.

14 Q Do you know whether Mr. Ettlemeyer  
15 talked to any official in Indiana?

16 A Not that I'm aware of.

17 Q Have you talked -- since June of 2013,  
18 have you talked with Gary Dannar directly?

19 A There was an effort to try and resolve  
20 this prior to litigation, you know, being on the  
21 table.

22 Q Would that be in 2016?

23 A I don't think it was 2016. It would  
24 have been, you know, a couple of -- several years  
25 ago probably. It could have been two-plus years ago

1 where we arranged a meeting with the SCRA CEO,  
2 Bill Mahoney.

3 Q Did they meet, as far as you know?

4 A They met. It was a brief meeting. It  
5 wasn't particularly pleasant, which was unusual for  
6 Mahoney.

7 Q So would that have been before  
8 April of 2015?

9 A I think it would have been. Although  
10 I'm not sure about it.

11 Q When did Bill Mahoney leave?

12 A February of 2015.

13 Q So it would have been April of 2015?

14 A Come to think of it, yes.

15 Q It would have to be, right?

16 A Mahoney is -- I'm sorry, February of  
17 '16 is when Bill Mahoney departed. That makes more  
18 sense. Yeah. His formal departure was February of  
19 '16, this year.

20 Q But you said several years ago this  
21 meeting occurred, so is it still your belief that it  
22 probably happened before April of 2015?

23 A I am not sure. I'm just not sure.  
24 I'm trying to recall, you know, the circumstances.  
25 I wasn't present at the meeting. It was just to be

1 a face-to-face meeting. And I just can't pinpoint  
2 the date.

3 Q Okay. Other than the meeting --  
4 setting up the meeting between Bill Mahoney and  
5 Gary Dannar, have you spoken with anyone about the  
6 Dannar situation?

7 A Other than our board, I don't believe  
8 so.

9 Q Did you speak with Ed Marshall?

10 A Ed Marshall spoke with me.

11 Q I assumed that you replied?

12 A I wouldn't have said anything about  
13 Dannar really to Ed. Ed was the person that was  
14 trying -- actually, I think he was instrumental in  
15 pulling this meeting together with Mahoney. There  
16 was a time that Ed indicated that Gary wanted to  
17 settle this thing. And I didn't feel it was  
18 appropriate really to have discussion with him, so.  
19 He had reached out actually a couple of times, I  
20 believe.

21 MS. MCKNEW: Okay. Give us a few  
22 minutes. We may get you out of here early.

23 (A recess transpired.)

24 MS. MCKNEW: Subject to any questions  
25 your counsel may have and leaving it open for -- in

1 case you do change some of these answers that you've  
2 indicated you want to look at, that's all I have.

3 But, again, if you change these answers,  
4 we may want to bring you back for a very brief  
5 interrogation regarding the changes, but subject to  
6 that and subject to whatever Bob may have.

7 MR. KNOWLTON: I only have one  
8 question. You know, as far as leaving it open, I  
9 need to be able to talk to my witness.

10 MS. MCKNEW: Oh. Yeah. You can talk  
11 to him.

12 MR. KNOWLTON: I will consider it  
13 closed. If you need to redepose him --

14 MS. MCKNEW: Absolutely. Absolutely.  
15 I didn't mean to suggest you couldn't meet with your  
16 witness.

17 MR. KNOWLTON: Well, and I  
18 perfectly -- you know, it's -- I'd like to be able  
19 to talk to him about his deposition after we --

20 MS. MCKNEW: Yes. Yes. Absolutely.

21 MR. KNOWLTON: Let me make sure we are  
22 clear on that.

23 MS. MCKNEW: Yeah. No problem.

24 EXAMINATION

25

1 BY MR. KNOWLTON:

2 Q Mr. Hillman, I do have -- let's take a  
3 look at the Financing Agreement and the relocation  
4 provision, which is Exhibit 7 in looking at page 5.

5 MS. MCKNEW: I changed to the glasses  
6 that I can read with.

7 THE WITNESS: Oh. Yeah. Okay. Okay.

8 BY MR. KNOWLTON:

9 Q And I just want to refresh your  
10 memory. You were talking about the cost  
11 SC Launch! -- the company you had mentioned. You  
12 mentioned loss of opportunity cost and specifically  
13 mentioned what other companies may have gotten the  
14 financing --

15 MS. MCKNEW: Object to the form.

16 Go ahead.

17 BY MR. KNOWLTON:

18 Q -- are there -- and you also talked  
19 about future jobs and tax revenues; is that also a  
20 lost opportunity cost?

21 A It certainly is.

22 MS. MCKNEW: Objection to the form.

23 THE WITNESS: So it's probably  
24 important to recognize that we have a limited amount  
25 of resource available to provide to these companies.

1 \$2.08 million is available for direct advance on an  
2 annual basis. And so when we put \$200,000 into a  
3 company to --

4 Q 2.- -- 2,080,000?

5 A Yes. Yes. 2,080,000 is a routine  
6 direct investment budget that we have.

7 Q Let me clean up my question.

8 I want to make sure I have your  
9 testimony complete while you're here today.

10 Tell me what opportunity costs you're  
11 aware of that SC Launch! would incur due to the  
12 company relocation?

13 MS. MCKNEW: Objection to the form.

14 Go ahead and answer.

15 MR. KNOWLTON: What's wrong with the  
16 form?

17 MS. MCKNEW: Opportunity costs. It  
18 says actual costs. But you can answer the question,  
19 it's just --

20 MR. KNOWLTON: I just said if it was  
21 something I can fix, but --

22 MS. MCKNEW: No. You can't.

23 MR. KNOWLTON: I think that's one that  
24 we can go ahead and have him answer the question.

25 THE WITNESS: Sure.

1                   From the program perspective, it's  
2     been between 2010 and mid-2013. We probably pulled  
3     the team together to have discussions about Dannar  
4     and -- with and without Dannar, I don't know, over a  
5     dozen times. So the cost of the salaries for --

6     BY MR. KNOWLTON:

7                   Q       Well -- and you've talked about that  
8     and I don't want to repeat that. But just as I  
9     recall your testimony, you talked about loss of  
10    future jobs, you talked about loss of future taxes.  
11    And -- but I don't know if you talked about it in  
12    connection with the costs --

13                  A       That really is --

14                  Q       -- relocation.

15                  A       Right. You know, if the bottom line  
16    to our program is not about the people inside the  
17    program; the bottom line to our program is to try  
18    and create wages and salaries that are higher than  
19    average in South Carolina.

20                         So the opportunity to bring tens to  
21    potentially hundreds of employees employed in  
22    South Carolina and bring them into South Carolina,  
23    revenues that ultimately were produced, tax revenue  
24    back to South Carolina, you know, that's what we're  
25    trying to accomplish with this program. When we



1 have company that spent, you know, considerable team  
2 resource and -- and we lose that company, either  
3 they go out of business or they make decision to a  
4 go to another state. South Carolina loses that  
5 opportunity.

6 MR. KNOWLTON: That's all I have.

7 MS. MCKNEW: Okay. I have one  
8 follow-up.

9 EXAMINATION

10 BY MS. MCKNEW:

11 Q Mr. Hillman, the language of paragraph  
12 3.3B in the Financing Agreement, which is Exhibit 7,  
13 refers to compensating SC Launch! for its actual  
14 costs in connection with the company relocation,  
15 correct?

16 Yes? You have to -- you have say  
17 something verbally so the court reporter can say  
18 yes.

19 A Oh. That's what it refers to.

20 Q Okay. Then my question is, does  
21 SC Launch! reimburse or pay the state the tax  
22 revenues for jobs that it expected would have been  
23 created had the company stayed in South Carolina?

24 A There -- there's no way to calculate  
25 those specific numbers.

1 Q So the answer is no?

2 A Correct.

3 Q And do all the companies that the SC  
4 Launch! personnel spend time helping, finding,  
5 consulting with, encouraging, do all of them end up  
6 financed by SC Launch!?

7 A Not at all.

8 Q And do all of them end up with an  
9 opportunity to present a case for financing to the  
10 SC Launch! Board?

11 A No. They do not.

12 MS. MCKNEW: Okay. Thank you.

13 MR. KNOWLTON: No more questions.

14 MS. MCKNEW: Thank you very much.

15 THE WITNESS: You're very welcome.

16 (The deponent does not waive reading and  
17 signing of this deposition.)

18 (The deposition was concluded at 11:40  
19 AM)

20

21

22

23

24

25

SIGNATURE OF DEPONENT

DEPONENT: HARRY GREIG HILLMAN  
DEPOSITION DATE: NOVEMBER 30, 2016  
REPORTER: SUSSY LUNA  
CASE CAPTION: DD DANNAR, LLC v. SC LAUNCH!, INC.

I, the undersigned, HARRY GREIG HILLMAN,  
do hereby certify that I have read the foregoing  
deposition and find it to be a true and accurate  
transcription of my testimony, with the following  
corrections, if any:

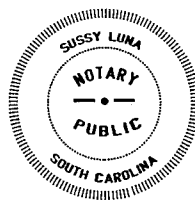
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HARRY GREIG HILLMAN DATE

I, Sussy Luna, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



A handwritten signature in cursive script, appearing to read "Sussy Luna", written over a horizontal line.

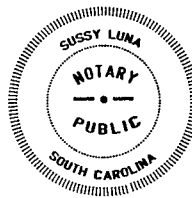
SUSSY LUNA  
Certified Shorthand Reporter  
My Commission Expires  
March 17, 2024

CERTIFICATE OF REPORTER

I, Sussy Luna, Certified Shorthand  
Reporter and Notary Public for the State of  
South Carolina at large, do hereby certify that  
the foregoing transcript is a true, accurate  
and complete record.

I further certify that I am neither  
related to nor counsel for any party to the cause  
pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto  
affixed my official seal this 7th day of December,  
2016 at Greenville County, South Carolina.



A handwritten signature in cursive script, appearing to read "Sussy Luna", positioned to the right of the notary seal.

SUSSY LUNA  
Certified Shorthand Reporter  
My Commission Expires  
March 17, 2024

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# CONFIDENTIAL

Minutes of a  
**MEETING of the  
BOARD OF DIRECTORS**  
Of  
**SC LAUNCH!, INC.**  
July 17, 2013

## CALL TO ORDER

The fifty-fifth meeting of the Board of Directors of SC Launch!, Inc. was held Wednesday, July 17, 2013 at the Greenville Hospital System, 607 Grove Road, Greenville, South Carolina. Mr. John J. Warner, Chair, called the meeting to order at 10:05a and noted a quorum was present. He welcomed all Directors and other attendees.

## DIRECTORS AND OTHERS PRESENT

Directors Present: Mr. John J. Warner (Chair); Mrs. Judy Davis (via telephone); Mr. Deepal Eliatamby; Mrs. Andrea Marshall (via telephone); Mr. Tim Reed; Mr. Thomas Strange; Mr. Joseph Wischerath

Directors Absent: None

Officers Present: Mrs. Julia Martin, Treasurer (via telephone); Ms. Connie Lollis, Secretary

Officers Absent: None

Others Present: Mr. Greg Hillman, Interim SC Launch Executive Director; Mr. Marty Ettlemeyer, SC Launch Director of Operations; Mr. Greg Clark, SC Launch Midlands Zone Manager; Mr. Derek Willis, SC Launch Lowcountry Zone Manager; Mr. Ambrose Schwallie, EVP Corporate Development, SCRA; Mrs. Tiffany DuPree, Senior Financial Manager (via telephone), SCRA; Mrs. Ashley Hannah, Manager, SCRA Communications & Marketing; Ms. Shannon Pierce, CareCam

## APPROVAL OF MINUTES

There being no objections, the minutes of the May 8, 2013 meeting of the Board of Directors and actions and authorizations reflected in such minutes were unanimously approved and reaffirmed.

## ADMINISTRATION

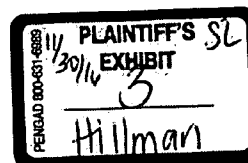
Chair Warner opened to any administrative items to be discussed. Director Reed informed the group he has a conflict with the Board meeting scheduled for September 11<sup>th</sup>, but added the meeting did not need to be rescheduled for his benefit.

Chair Warner asked Ms. Connie Lollis if there were any other administrative items for discussion. Ms. Lollis and Mrs. Julia Martin provided a brief overview of Diligent Boardbooks, the portal to be used in the future to share Board meeting material and other Board information.

## SC LAUNCH FINANCIAL UPDATE

Chair Warner turned over the meeting to Director Reed who reviewed the Financial Report which is attached to and made a part of these minutes (*Attachment I*). Director Reed highlighted from the report

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SCL000713

ROA 000444

## CONFIDENTIAL

2 | SC Launch!, Inc. Board of Directors Meeting, July 17, 2013

DD Dannar, who have repaid their loan and are planning to move out of the state. Director Strange requested additional information on Dannar. Mr. Greg Hillman informed the group that Dannar is planning a move to Indiana, and that the SC Launch Program staff are in discussions with them now to get more information. To date, Dannar has informed SC Launch that they will still be in South Carolina performing work. Mr. Hillman noted the question still remains if Dannar is required to pay the \$200,000 clawback for relocation outside of SC. Mr. Hillman also informed the group that SCRA/SC Launch have other discussions going on with Indiana which may come into play.



Director Reed continued with the report including the FY13 Investment Summary, Statement of Cash Flows, etc.

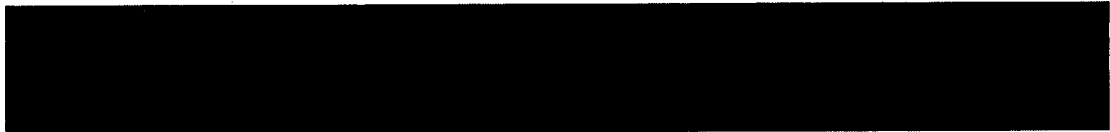
Director Eliatamby made the motion to accept the SC Launch!, Inc. Audit & Finance Committee report as presented. Seconded by Director Wischerath and unanimously approved.

Director Reed updated the group on the FY14 Audit Plan. He noted the Audit & Finance Committee reviewed the Plan in depth. He offered to distribute to the Board.

### SC LAUNCH PROGRAM UPDATE



Ms. Shannon Pierce joined the meeting at 10:42a.



Ms. Shannon Pierce left the meeting at 11:15a.

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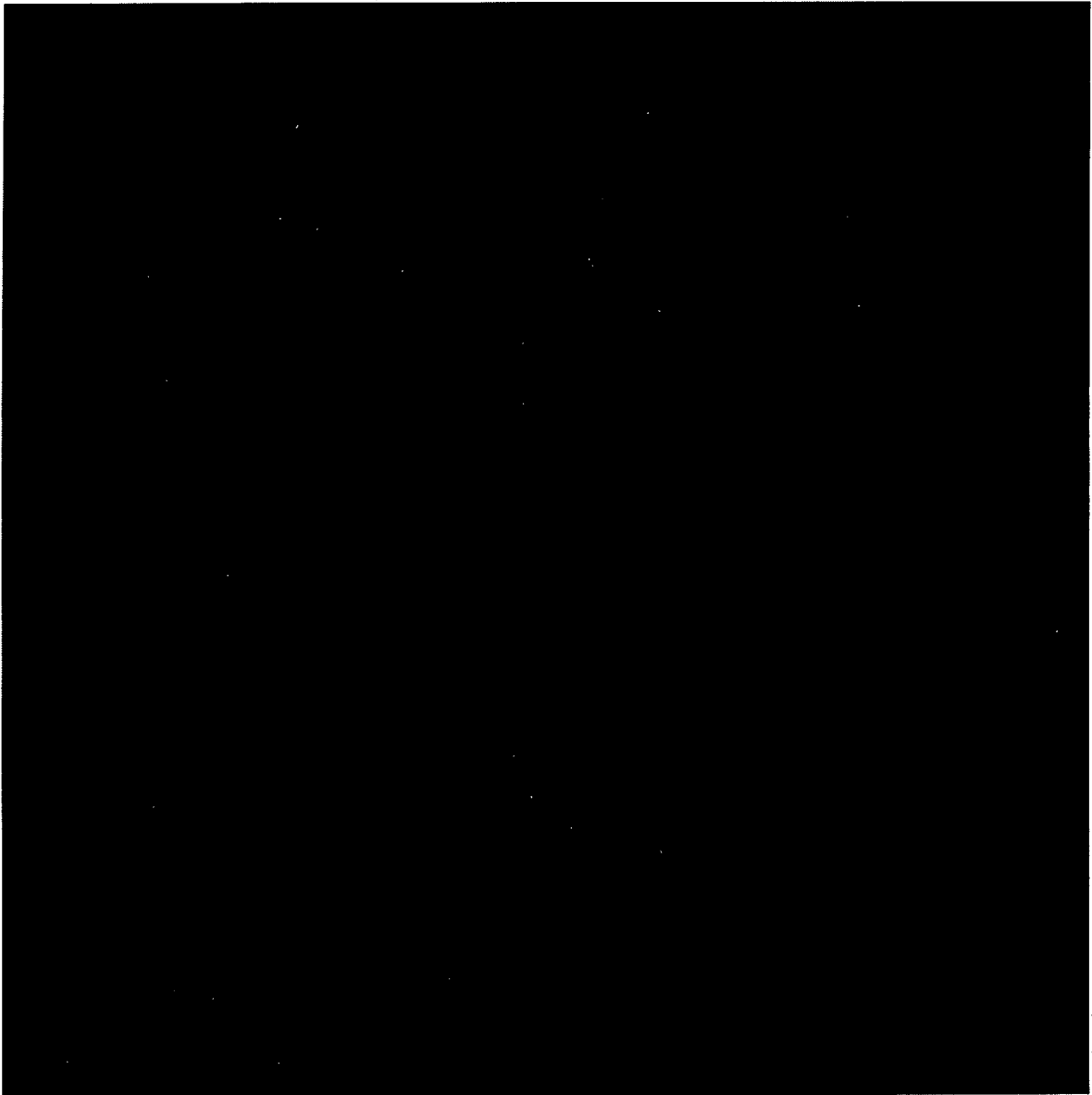
## CONFIDENTIAL

3 | *SC Launch1, Inc. Board of Directors Meeting, July 17, 2013*

### **EXECUTIVE SESSION**

Director Reed made a motion to go into **EXECUTIVE SESSION** at 11:16a to hear and discuss proprietary business of SC Launch candidate companies and receive an update from a previously funded company. Director Wischerath seconded the motion and the Board unanimously approved.

**RETURN TO OPEN SESSION at 3:13p**



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## CONFIDENTIAL

4 | SC Launch!, Inc. Board of Directors Meeting, July 17, 2013

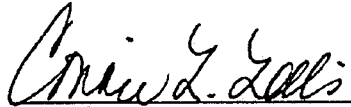
### NEW BUSINESS

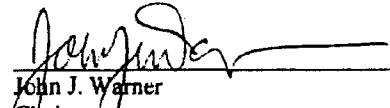
Chair Warner opened the meeting to any new business. Director Eliatamby thanked the SC Launch Program Staff for their meeting preparation in light of Ms. Lori Mack's departure from the company. He also commended the group on bringing a new company/technology to the meeting, and asked if there is a trend towards repeat requests. Discussion ensued in reference to the pipeline. Director Eliatamby asked if there is anything the Directors can do to assist in bringing new companies/technologies to the Board. Mr. Hillman stated that staff is diligently working to boost the pipeline. He also noted that staff conducts company reviews, and actually met with seven new companies on July 16<sup>th</sup>.



### ADJOURN

There being no further business and no objections, the meeting was adjourned at 3:43p.

  
\_\_\_\_\_  
Connie L. Lollis  
Secretary

  
\_\_\_\_\_  
John J. Warner  
Chair



SC Launch! BOD Minutes\_07.17.13.docx

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SCL000716

ROA 000447

---

**From:** Gary Dannar  
**To:** Hillman, Greg  
**Sent:** 3/30/2011 12:44:58 AM  
**Subject:** RE: Initial discussion with KTK

Thanks Greg for the follow up, and for the introduction again to Mark. I plan to see Mark this Friday. I would like to discuss the SC Launch Financing agreement with you early next week, which probably means a closing date the following week. I'm traveling back to Greenville on Wednesday, and look forward to seeing you on Thursday.

---

**From:** greg.hillman@sclaunch.org [mailto:greg.hillman@sclaunch.org]  
**Sent:** Tuesday, March 29, 2011 4:21 PM  
**To:** garydannar@dannarpowerstation.com  
**Cc:** mark.anderson@scra.org  
**Subject:** Initial discussion with KTK

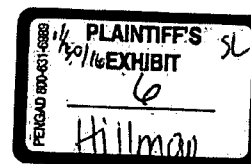
Hello Gary:

Hope all continues to move forward. I saw Alan at the Zipit Wireless event last Wednesday evening where he mentioned that you were ready to discuss our SC Launch financing agreement. Just wanted to be sure you knew I'd not yet received same. In any case we should begin to consider a straw-man date for closing.

Also, I wanted to suggest that you and Mark, whom you met briefly during the board member review here at ICAR some weeks ago, and who has been hired by SCRA as VP of Business Development working in the Upstate, have a conversation at an early opportunity to begin to explore a path forward between Dannar and the ICAR / SSCRA new entity of KTK. Please don't hesitate to call me with questions and I'll plan to see you on Thursday.

Best regards!

Gh.



SCL000366

ROA 000448

## FINANCING AGREEMENT

THIS FINANCING AGREEMENT ("Agreement") is made as of the 14th day of April, 2011, by and between SC LAUNCH!, INC., a South Carolina nonprofit corporation ("SC Launch") with an office at 1000 Catawba Street, Columbia, South Carolina 29201, and DD Dannar, LLC, (the "Company"), a limited liability company under the laws of the state indicated on Schedule I (the "State of Organization"), with an office at the address set forth on Schedule I.

### WITNESSETH

WHEREAS, the Company is engaged in the business described on Schedule I (the "Company Business") and has need of capital financing to sustain and expand the Company Business; and

WHEREAS, SC Launch has been incorporated exclusively for scientific, educational, charitable and other public purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 and to support the mission of the South Carolina Research Authority under South Carolina Code § 13-17-87 to establish research innovation centers and provide financing to qualified companies; and

WHEREAS, the Company has been admitted as a qualified company to one of SC Launch's centers and desires for SC Launch to provide capital financing to the Company in accordance with the terms and conditions of this Agreement, and SC Launch has approved the Company to receive such financing.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and SC Launch agree as follows:

### ARTICLE I THE SECURITIES

1.1 Note. The Company agrees to issue to SC Launch a promissory note in the form attached hereto as Exhibit A (the "Note") in the face amount set forth on Schedule I; and SC Launch agrees to make an initial advance (an "Advance") to the Company under the Note in the amount set forth on Schedule I, and SC Launch may in its sole discretion in the future make additional Advances under the Note, any of which may be made in cash or in consideration of cancellation by SC Launch of the principal and interest payable by the Company to SC Launch under existing indebtedness, if any, or any combination thereof. The Company further agrees to use the initial Advance only for the uses set forth on Schedule I, and to use any future Advances only for any uses specified by SC Launch at the time of the Advance. This Agreement, the Note and all other documents and instruments executed by the Company which may be reasonably required by SC Launch are hereinafter sometimes referred to collectively as the "Financing Documents."



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1.2 Possible conversion to equity. Upon a conversion of the Company into a corporation and at the request of SC Launch, the Company agrees to negotiate in good faith with SC Launch over terms by which the principal and interest outstanding under the Note will be convertible into preferred stock of the Company (any such stock, together with the Note, are hereafter referred to as the "Securities") with the basis for such negotiations primarily to be the terms under which the Company has issued preferred stock, or a similar equity interest, to a non-related third party in an arms length transaction and within a reasonable time period prior to the conversion or, if no such third party issuance has occurred then the basis of the negotiations shall be the terms under which SC Launch provides financing to corporations at the time of the conversion.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

2.1 Complete disclosure. In order to induce SC Launch to enter into and execute this Agreement and to make the initial Advance and any future Advances under the Note, the Company represents and warrants to SC Launch, as of the date hereof and as of any future date on which the Company accepts an Advance from SC Launch, that no representation or warranty of the Company contained in this Agreement or any of the Financing Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument, document or communication furnished to SC Launch by or on behalf of the Company, taking into consideration the total mix of information made available, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

2.2 Survival. All warranties and representations of the Company contained herein shall survive the execution of this Agreement and the issuance of the Note and any Advances thereunder.

## ARTICLE III COVENANTS OF THE COMPANY

3.1 Affirmative covenants. The Company will at all times while any of the Securities are outstanding:

A. Financial and business information. Deliver the following to SC Launch:

(i) Quarterly statements. As soon as practicable, and in any event within sixty (60) days after the close of each of the first three fiscal quarters of each fiscal year of the Company, balance sheets, statements of income and statements of cash flows of the Company as of the close of such quarter and covering operations for such quarter and for the portion of the Company's fiscal year ending on the last day of such quarter, all in reasonable detail and prepared in accordance with generally accepted accounting principles in the United States, consistently applied from period to period and within each period ("GAAP"), subject to year-end adjustments.

(ii) Annual statements. As soon as practicable after the end of each fiscal year of the Company, and in any event within 120 days thereafter, duplicate copies of:

(a) Consolidated and consolidating balance sheets of the Company at the end of such year; and

(b) Statements of income, members' equity and cash flows of the Company for such year,

all in reasonable detail and prepared in accordance with GAAP and beginning with the fiscal year ended on December 31, 2012, accompanied by a review opinion of independent certified public accountants of recognized standing selected by the Company.

(iii) Correspondence with reviewing accountants. Promptly following receipt or transmission thereof, any correspondence to or from the Company's accountants in connection with any material change in the Company's financial statements or condition, or any disagreement or dispute with the accountants.

(iv) Meetings and communications. Provide SC Launch with a copy of all written notices of meetings of the governing body or the members of the Company and all materials or communications provided generally to the governing body or members, including, without limitation, forms of actions without meeting, all at the same time such notices, materials, communications or forms are provided to the governing body or members; and permit representatives of SC Launch to attend any and all meetings of the governing body or members.

(v) Requested information. With reasonable promptness, the Company shall furnish SC Launch with such other data and information as from time to time may be reasonably requested.

B. Access. Permit SC Launch and its duly authorized agents reasonable access to the Company's offices, property and assets and shall make available for audit and inspection, at any reasonable time by SC Launch, or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Company as may be reasonably requested in writing by SC Launch, where such access would not be in violation of any confidentiality or similar agreement.

C. Notices. Promptly give to SC Launch written notice of:

(i) any default or event of default under any material contractual obligation of the Company;

(ii) any litigation or similar proceeding affecting the Company; or

(iii) any event or circumstance which has had, or is reasonably likely to have, a material adverse effect on the Company or the Company Business.



D. Further assurances. Execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the other Financing Documents and all of the transactions contemplated hereby.

3.2 Negative covenants. The Company will not for so long as the Note is outstanding, without prior written consent of SC Launch, which shall not be unreasonably withheld:

A. Capital transactions and Status Changes. Enter into any merger, consolidation, share exchange, reorganization or recapitalization, or liquidate, sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired, or change its jurisdiction of organization or its legal or tax status.

B. Organizational documents. Amend, modify or change its articles of organization or operating agreement.

C. Related party transactions. Engage in transactions in which any manager, director, officer or promoter of the Company, or any member who owns more than ten percent (10%) of any class of the Company's outstanding membership interests, or any relative or spouse of any of the foregoing, or any relative of such spouse, or any entity or organization that is affiliated with or controlled by any of the foregoing, has a direct or indirect interest (a "Related Interest"), except (i) transactions for which the material facts of the transaction and the Related Interest were disclosed or known to the governing body of the Company, and a majority of the members of the governing body, who are not employees of the Company and who have no Related Interest, approved the transaction, but a transaction may not be approved by a single person; (ii) compensation paid to employees in amounts as disclosed on Schedule I; (iii) reimbursements for properly documented, ordinary and customary business expenses; or (iv) employee benefits provided generally to all employees of the Company including stock option or similar type plans and bonus or other incentive compensation plans. The term "transactions" for purposes of this provision includes, without limitation, any form of compensation, such as the grant of any option, warrant or right, or exercisable, exchangeable or convertible security, and any personal use of corporate assets or other perquisites.

### 3.3 Relocation.

A. Company relocation. The Company acknowledges that funds are made available to it under this Agreement in whole or in part for the purpose of economic development for the State of South Carolina and particularly for generating professional research and development jobs in South Carolina. Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation"), unless the Company has paid SC Launch a Relocation Fee as set forth below.

B. Relocation fee. The "Relocation Fee" will be an amount equal to the aggregate amount of all funds advanced by SC Launch to the Company. SC Launch will continue to retain any Securities or other interests it holds in the Company after payment of such fee and this Agreement will continue in full force and effect. The parties acknowledge that the costs to SC Launch, including both tangible and intangible costs, of a Company Relocation are not susceptible to precise measurement. The parties hereby agree that the Relocation Fee is not a penalty, but rather, a good-faith estimate of the amount necessary to compensate SC Launch for its actual costs in connection with a Company Relocation.

C. Costs and fees. Should SC Launch, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of the Company's obligations under this Section 3.3, the Company will reimburse SC Launch the reasonable fees and expenses of said attorneys and any court costs.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SC LAUNCH

4.1 General representations and warranties from SC Launch. SC Launch represents and warrants to the Company as follows:

A. Investment; no resale or distribution. It is acquiring or will acquire the Securities for its own account, for investment, and not with a view towards the resale, transfer, or distribution thereof, nor with any present intention of distributing the Securities.

B. Accredited investor; residence. It is an "Accredited Investor" within the meaning of Rule 501(a) under the Securities Act of 1933, as amended. Its principal office is located within the State of South Carolina.

#### ARTICLE V COVENANTS OF SC LAUNCH

5.1 Compliance with securities laws. SC Launch will not, directly or indirectly, sell any of the Securities, unless such sale is made pursuant to either (i) an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and any applicable state securities laws or (ii) an available exemption from the registration requirements of the Securities Act and such laws and, prior to any such sale, SC Launch provides to the Company a written opinion of legal counsel reasonably satisfactory in form and substance to the Company to the effect that the proposed sale may be effected without registration under the Securities Act and any applicable state securities laws.

#### ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of default. Each of the following shall constitute an "Event of Default", whatever the reason for such event and whether it shall be voluntary or involuntary or be effected

by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental authority or otherwise:

A. Payment. If the Company shall fail to pay the principal of or interest on the Note when due, and shall fail to cure such failure within five (5) business days after notice from SC Launch specifying the failure;

B. Representations and warranties. If any representation or warranty made by the Company herein shall have been materially incorrect when made;

C. Covenants and obligations. If the Company shall breach or fail to comply with any of the covenants, terms and conditions of, or any of its obligations (other than payment defaults as set forth above) under, this Agreement or any of the Financing Documents, all of which are cumulative to this Agreement and to each other, and shall fail to cure such breach or failure within thirty (30) days after notice from SC Launch specifying the default or failure; or

D. Insecurity. If while the Note is outstanding, SC Launch deems itself insecure or the prospect of payment of the Note or continued existence of the Company Business or performance of the Company's obligations is impaired for any reason whatsoever, including, but not limited to, termination of employment of any key employee, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against, the Company, or entry of any judgment against the Company.

6.2 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, SC Launch may, at its option, without presentment, demand, notice of dishonor, or protest, declare the Note immediately due and payable in full. All powers and remedies given herein to SC Launch shall be cumulative and not exclusive of any other right or remedy or any other powers and remedies available to SC Launch at law or in equity, by judicial proceeding or otherwise, to enforce the performance or observance of the covenants and agreements of the Company contained in this Agreement, and no delay or omission of SC Launch to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given herein or by law to SC Launch may be exercised from time to time, and as often as may be deemed expedient, by SC Launch.

## ARTICLE VII MISCELLANEOUS

7.1 Waiver. No waiver at any time of the provisions or conditions of this Agreement or of any of the other Financing Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof, nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

7.2 Severability. Unenforceability for any reason of any provision of this Agreement, or of any of the Financing Documents or other agreements between the Company and SC

Launch shall not limit the operation or validity of any other provisions of this Agreement, any of the Financing Documents or any other agreement.

7.3 Notices. Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by any overnight express mail service, postage or fees prepaid to the addresses set forth in the preamble to this Agreement. Either party may change the address to which notices, requests, demands, claims, or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

Any notice which is delivered personally in the manner provided herein is deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed by registered or certified mail in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, at the time of actual receipt. Any notice which is addressed and mailed by overnight express mail service in the manner herein provided is conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the next business day following delivery of such notice to such overnight express mail service prior to such service's deadline for next day delivery.

7.4 Time of the essence. The parties hereto agree that time is of the essence to this Agreement.

7.5 Binding effect. Except as otherwise expressly provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of SC Launch and the Company, and their respective successors, transferees and assigns.

7.6 Governing law; forum. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to the conflicts or choice of law principles thereof. Any civil action arising out of or in connection with this Agreement will be instituted and maintained exclusively in the state or federal courts located within the State of South Carolina and each of the parties hereto consents to the personal jurisdiction of such courts.

7.7 Titles and captions. Titles and captions of Articles, Sections and subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and shall be binding upon all parties, their successors and assigns, and all of which taken together shall constitute one and the same agreement.

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the

terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

7.10 Termination of Agreement. Except as otherwise specifically provided herein, the provisions hereof, including all covenants, shall continue in full force and effect until the repurchase or redemption by the Company of all securities of the Company held by SC Launch or its successors or assigns, and payment of fees, including the Relocation Fee to the extent applicable, and performance of all other obligations owed SC Launch hereunder.

7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

Anthony Cuica DeRue

SC LAUNCH, INC.

By: David C. McNamara

David C. McNamara, Executive Director

Lily Herlihy  
27

DD Dannar, LLC

By: Gary Dannar, President

Gary Dannar

7.9 Conflicts. In the event of any conflict between the terms and provisions contained in this Agreement and the Note, the Note shall control. In the event of any conflict between the terms and provisions contained in this Agreement and any other of the Financing Documents, this Agreement shall control.

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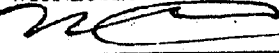
7.11 Limitation of liability. SC Launch will not under any event in connection with this Agreement be liable for any consequential, incidental, special, punitive or other indirect damages of the Company or any other person.

7.12 Disclaimer of agency and fiduciary duty. The Company acknowledges and agrees that SC Launch exercising its rights under this Agreement as a holder of securities of the Company will not have any obligation, or be liable, to the Company or any other person, or be obligated to consider the interests of the Company or any other person, in exercising such rights.

7.13 Entire agreement. This Agreement together with the Financing Documents are intended to supersede all prior agreements, representations and understandings between or among any of the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

WITNESSES

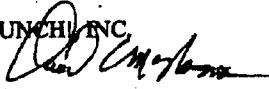
  
\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

SC LAUNCH, INC

By:   
\_\_\_\_\_

David C. McNamara, Executive Director

The Danner Company, LLC

By: \_\_\_\_\_  
\_\_\_\_\_

Exhibit A

This Note has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold and no such transaction will be registered on the books of the Company unless: (a) the sale has been registered under said Act, or (b) the Company is presented with a written opinion of counsel in form and substance acceptable to the Company, to the effect that such registration is not required under the circumstances of such sale.

The transfer of this Note by any holder is restricted under the terms of a financing agreement between the Company and the original holder of the Note.

\$200,000

DD Dannar, LLC

Greenville, South Carolina

April 14, 2011

Promissory Note

Due April 14, 2014

DD Dannar, LLC, a South Carolina limited liability company, (the "Company"), for value received, promises to pay to SC Launch!, Inc. or its assigns, the sum of \$ 200,000, or whatever portion thereof shall be advanced by SC Launch!, Inc. to the Company, on April 14, 2014 (this date and any extended maturity date under the terms hereof are referred to hereafter as the "maturity date"), and to pay interest as set forth herein at an annual rate equal to the higher of: (a) the prime rate (as published in the Market Data section of *The Wall Street Journal*) plus two percent (2.00%), but in no event higher than ten percent (10.00%), or (b) five percent (5.00%), on the outstanding balance, compounded monthly, computed from the date of this Note until payment of the principal and all interest under this Note has been made. The initial interest rate will be based on the prime rate first published on or after the most recent January 1 or July 1, and will be adjusted biannually thereafter based on the first publication of the prime rate on or after January 1 and July 1 each year. Payment of principal and interest shall be made in lawful money of the United States of America at 1000 Catawba Street, Columbia, South Carolina 29201, or such other place or to such other party or parties as the holder of this Note may from time to time designate.

1. Financing agreement. This Note is issued under and is subject to the terms of a separate financing agreement (the "Financing Agreement") dated April 14, 2011 between the Company and SC Launch!, Inc. The terms and conditions of the Financing Agreement are incorporated into this Note by reference as if fully repeated herein.

2. Extension of maturity date; demand for payment. At any time the holder of this Note may, in its sole discretion, by notice to the Company:

- (a) extend the maturity date to any date designated by the holder; or

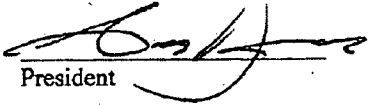
(b) extend the maturity date to any date designated by the holder and demand that the Company begin to immediately make monthly payments of interest to the holder beginning with the prior maturity date and continuing on the same date of each month thereafter, with such interest based on the combined principal and accrued interest balance outstanding under this Note on the prior maturity date.

3. Payments. The Company will make any payments demanded by the holder in accordance with the preceding Section 2 above. Payments shall be applied first to any interest due and then to principal. Prepayment of principal and interest by the Company is permitted without penalty.

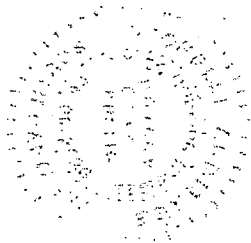
IN WITNESS WHEREOF, the Company has signed and sealed this Note effective as of the 14th day of April, 2011.

DD Danner, LLC

Corporate  
Seal or  
Facsimile

  
\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary





Schedule I to Financing Agreement

Name of Company: DD Dannar, LLC  
State of Organization: South Carolina  
Street address: 86 Osage Drive  
Greenville, SC 29605

Description of business: OEM Manufacturer / Assembler of the Dannar - *Mobile PowerStation* (MPS), which is a hybrid/battery-electric powered vehicle designed to reduce emissions, and is a purpose built vehicles for the government and non-governmental roadside (right-of-way) management and to which to which numerous implements may be attached including but not limited to mowers, snow blowers, sweepers, grapple buckets and blades for moving earth and loose objects, earth augers, hydraulic buckets, chain saws, crimpers, shears, impact wrenches, water pumps, asphalt planers, tree stump grinders, compactors, beach rakes, herbicide sprayers, cultivators, plows, trenchers, earth borers, pruners and clippers; electric, pneumatic, hydraulic, and mechanical power generators with wheels and tracks. with the ability to market.

Face amount of note: \$200,000

Amount of initial advance: \$200,000

|                          |                             |            |
|--------------------------|-----------------------------|------------|
| Uses of initial advance: | MPS                         | \$ 90,000  |
|                          | Consulting/ Legal           | 50,000     |
|                          | Operations                  | 35,000     |
|                          | Product Launch Introduction | 25,000     |
|                          | Total                       | \$ 200,000 |

Existing written compensation agreements with related parties and amounts of compensation to be paid to such parties (see Section 3.2C): None

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## **WIRING INSTRUCTIONS**

**Send Wire to this Bank:**

SCBT, NA- Routing # 053200983  
Orangeburg, SC

**Beneficiary of Wire:**

BankGreenville  
Account # 500000625\*\*\*

**For Final Credit to:**

DD Dannar, LLC  
40002776

**Bank Name and Address:**

Bank Greenville  
499 Woodruff Road  
Post Office Box 6246  
Greenville, SC 29606  
(864) 355-2209 (telephone)  
(864) 355-2202 (Fascimile)

\*\*\* Bank Greenville must show as the initial beneficiary/recipient of the wire. If the wire is sent to your account rather than BankGreenville for your benefit, it may delay the receipt of your funds.

# CONFIDENTIAL

Minutes of a  
**MEETING of the  
BOARD OF DIRECTORS**  
Of  
**SC LAUNCH!, INC.**  
September 11, 2013

## CALL TO ORDER

The fifty-sixth meeting of the Board of Directors of SC Launch!, Inc. was held Wednesday, September 11, 2013 at the SCRA, 1000 Catawba Street, Columbia, South Carolina. Mr. John J. Warner, Chair, called the meeting to order at 9:02a and noted a quorum was present. He welcomed all Directors and other attendees.

## DIRECTORS AND OTHERS PRESENT

Directors Present: Mr. John J. Warner (Chair); Mrs. Judy Davis; Mr. Deepal Eliatamby; Mrs. Andrea Marshall; Mr. Thomas Strange; Mr. Joseph Wischerath

Directors Absent: Mr. Tim Reed

Officers Present: Mrs. Julia Martin, Treasurer; Ms. Connie Lollis, Secretary

Officers Absent: None

Others Present: Mr. Greg Hillman, Interim SC Launch Executive Director; Ms. Lindsay Kuhnhein, SC Launch Program Administrator; Mr. Marty Ettlemeyer, SC Launch Director of Operations; Mr. Greg Clark, SC Launch Midlands Zone Manager; Mr. Derek Willis, SC Launch Lowcountry Zone Manager; Mr. Ambrose Schwallie, EVP Corporate Development, SCRA; Mrs. Tiffany DuPree, Senior Financial Manager, SCRA; Mr. Bill Mahoney, CEO, SCRA; Mr. Brendon Lee, Co-Founder & Lead Developer, 52 Apps; Mr. Stephen Leight, CEO, 52 Apps; Mr. Frank Greer, Zipit Wireless

## APPROVAL OF MINUTES

There being no objections, the minutes of the July 17, 2013 meeting of the Board of Directors and actions and authorizations reflected in such minutes were unanimously approved and reaffirmed.

## ADMINISTRATION

Chair Warner introduced Mr. Bill Mahoney, CEO, SCRA. Mr. Mahoney welcomed everyone and provided a brief update on opportunities for SCRA that will coincide with the SC Launch program. He added that as discussed at the Executive Committee Retreat in June, regardless of any other opportunities in SC or outside of SC, it is the obligation of SCRA to keep the SC Launch program as the core of its public mission.

Mr. Mahoney left the meeting at 9:15a.

Chair Warner clarified that the next meeting of the full Board of Directors will be held in Charleston at the SCRA Applied Research Center.

CONFIDENTIAL



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## CONFIDENTIAL

2 | SC Launch!, Inc. Board of Directors Meeting, September 11, 2013

Director Strange noted that he will be rolling off the Board next year, and stated it might be a good idea to begin inviting visitors to the meetings to start identifying qualified candidates. Discussion centered on Board terms. Chair Warner suggested that he, Mr. Schwallie, and Mr. Hillman meet to discuss terms for Directors.

### SC LAUNCH FINANCIAL UPDATE

Director Strange asked Mr. Greg Hillman for an update on Dannar. Mr. Hillman informed the group that the SC Launch staff is working to get an updated status on the company. He added that there is some work Dannar is doing in Indiana, but they have assured SC Launch that the DoD work is being done in Greenville. The SC Launch staff continues to track Dannar's progress and, based on their findings, may consider sending Dannar a demand letter based on the penalty clause in the financing agreement. Director Eliatamby asked for a timeline to settle the situation. Mr. Hillman stated the decision will be made prior to the next full Board meeting in November.

Director Strange continued with the report. At the conclusion of the report, Director Strange asked Mrs. Julia Martin if there was anything she needed to review with the group. Mrs. Martin stated that the staff continues to work with the portfolio companies to obtain current financials. The Board and Mrs. Martin thanked Mrs. Tiffany DuPree for her work on the project. Mrs. Martin added that the staff will work to develop criteria for evaluating these companies and set timelines for when SC Launch should write off the investments.

Director Davis made the motion to accept the SC Launch!, Inc. Audit & Finance Committee report as presented. Seconded by Director Marshall and unanimously approved.

### SC LAUNCH PROGRAM UPDATE

Chair Warner turned over the meeting to Mr. Hillman who invited Mr. Greg Clark to provide the Program Update which is attached to and made a part of these minutes (*Attachment II*). The Board agreed the update provides a lot of good information for the group. Director Eliatamby asked if there are enough resources to manage all the SC Launch work. Mr. Clark stated that currently staffing is not an issue, but management is tracking the program. Director Wischerath expressed his concern for lack of deal flow. Mr. Hillman stated they are seeing new companies, but those companies simply are not ready for presentation to the Board. Director Wischerath asked what the staff and/or the Board can do to get these companies ready. Mr. Hillman informed the group that sometimes there is not much the staff can do other than mentor them and help them along. Director Marshall stated she experiences the same issues with companies presenting to CHAP. She continued by commending the SC Launch staff on their work getting the companies ready for the Board, and for performing all the due diligence work on those companies. Director Wischerath stated he still believes there is something more staff and the Board can do to create more deal flow.

CONFIDENTIAL

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CONFIDENTIAL

3 | SC Launch1, Inc. Board of Directors Meeting, September 11, 2013

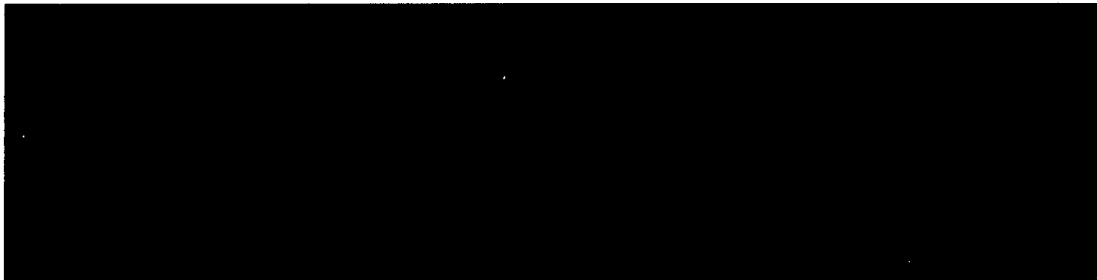
**PORTFOLIO COMPANY STATUS UPDATES**



**EXECUTIVE SESSION**

Director Strange made a motion to go into **EXECUTIVE SESSION** at 10:42a to hear and discuss proprietary business of SC Launch candidate companies and receive an update from a previously funded company. Director Davis seconded the motion and the Board unanimously approved.

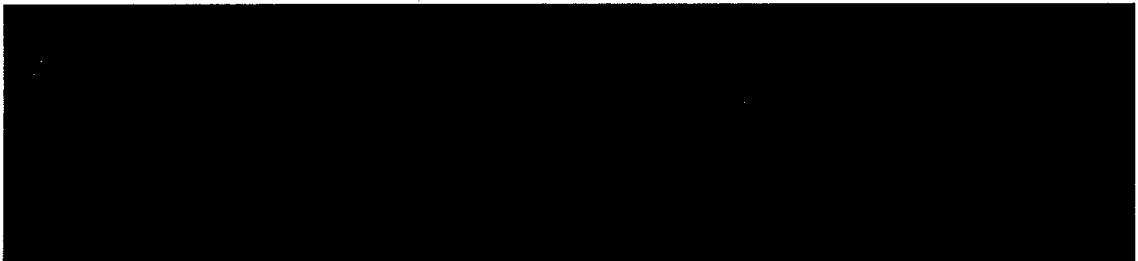
**RETURN TO OPEN SESSION at 11:57a**



Director Eliatamby left the meeting at 12:00p.

**RETURN TO EXECUTIVE SESSION at 12:26p**

**RETURN TO OPEN SESSION AT 2:51p**



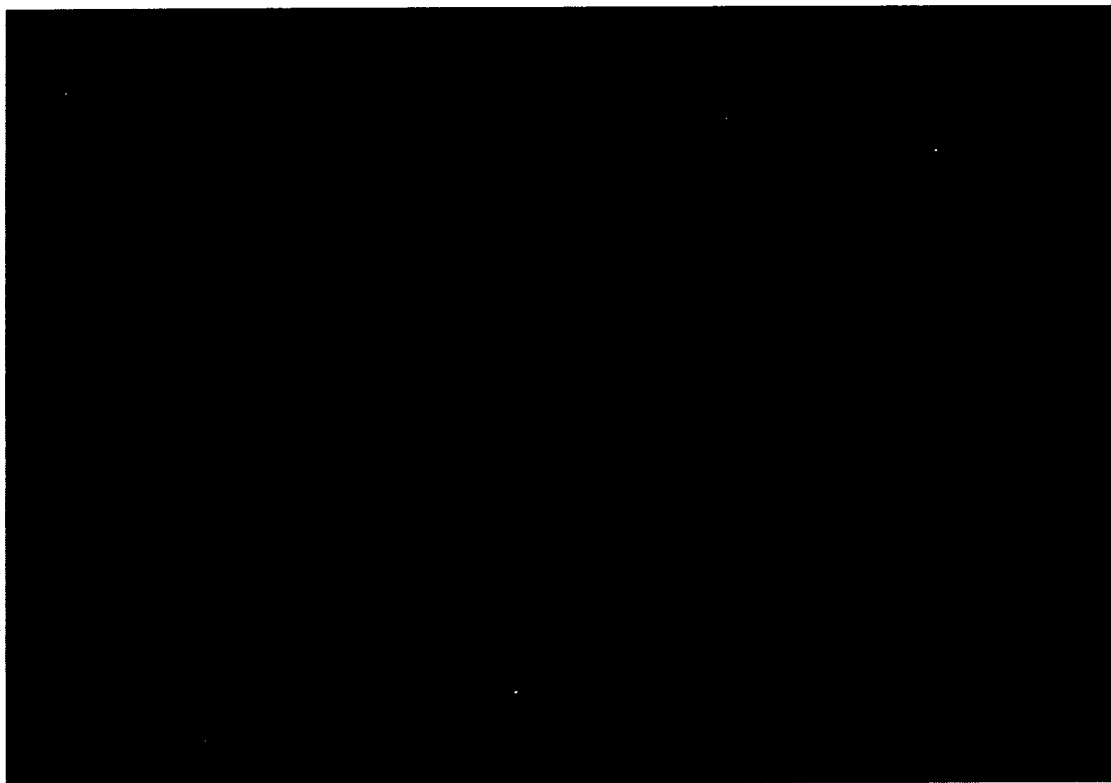
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CONFIDENTIAL

4 | SC Launch!, Inc. Board of Directors Meeting, September 11, 2013



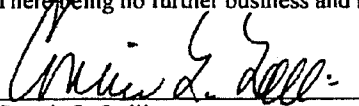
NEW BUSINESS

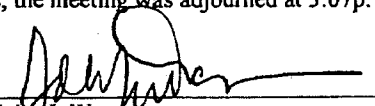


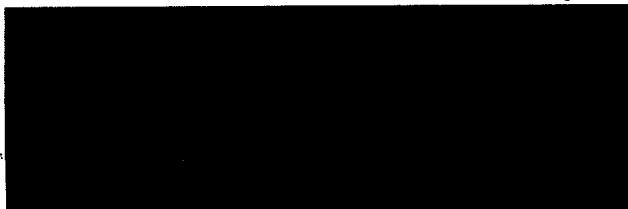
Discussion continued on the Board terms.

ADJOURN

There being no further business and no objections, the meeting was adjourned at 3:07p.

  
\_\_\_\_\_  
Connie L. Lollis  
Secretary

  
\_\_\_\_\_  
John J. Warner  
Chair



SC Launch! BOD Minutes\_09.11.13.docx

CONFIDENTIAL

SCL000720

ROA 000465

CONFIDENTIAL

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DD Dannar, LLC,

Plaintiff,

v.

SC LAUNCH!, Inc.,

Defendant.

)  
) IN THE COURT OF COMMON PLEAS

) Civil Action No. 2015-CP-23-00142

) DEFENDANT'S SECOND  
) SUPPLEMENTAL RESPONSES TO  
) PLAINTIFF'S SECOND SET OF  
) INTERROGATORIES

TO: DD DANNAR, LLC AND ITS ATTORNEYS NATALMA M. MCKNEW, ESQ. AND  
JASON D. MAERTENS, ESQ.:

Pursuant to South Carolina Rule of Civil Procedure 33, Defendant SC LAUNCH!, Inc.

("Defendant") responds to Plaintiff's Second Set of Interrogatories as follows:

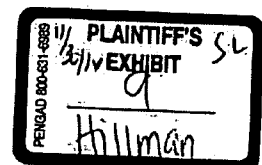
INTERROGATORIES

3. Identify each Supported Company that relocated its business, in whole or in part,  
at any time after receiving funding from SCL.

ORIGINAL RESPONSE: See response to Number 1 above.

SUPPLEMENTAL RESPONSE:

- a. DigitalSmiths Corporation  
320 Blackwell Street, Suite 200, Durham, NC 27701  
Phone: 919-460-4747  
www.digitalsmiths.com  
Matthew Berry, COO and Co-Founder  
Ben Weinberger, CEO – [ben@digitalsmiths.com](mailto:ben@digitalsmiths.com)
- b. Get Interactive, Inc.  
6365 Raven Forest Drive  
Winston-Salem, NC 27105  
Phone: 336-761-2997 or 336-655-5229  
No website  
Frederick Harrison, President and CEO – [rick.harrison@getinteractive.tv](mailto:rick.harrison@getinteractive.tv)



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4. Identify each Supported Company that has paid a Relocation Fee to SCL, including the date of initial funding, date of relocation, and date of Relocation Fee.

**ORIGINAL RESPONSE:**

- a. DigitalSmiths Corporation
- b. Date of Initial Funding: July 31, 2006
- c. Date of Relocation: On or about June 18, 2007
- d. Date of Payment of Relocation Fee: October 22, 2008

**SUPPLEMENTAL RESPONSE:** No supplemental response required. DigitalSmiths is fully identified in response to Number 3 above.

5. Identify each Supported Company that has repaid SCL in full, with interest, including the date of initial funding, the date(s) of any subsequent funding by SCL, and the date of repayment.

**ORIGINAL RESPONSE:** Defendant objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence. Whether other companies have fully honored their financing agreements with Defendant is irrelevant to the declaratory relief Plaintiff seeks in this current action and the request is not reasonably calculated to lead to the discovery of admissible evidence.

**SUPPLEMENTAL RESPONSE:** Defendant objects to this interrogatory as it is not reasonably calculated to lead to the discovery of admissible evidence. Whether other companies have fully honored their financing agreements with Defendant is irrelevant to the declaratory relief Plaintiff seeks in this current action and the request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and reserving these objections, Defendant identifies the following Supported Companies:

- a. Advanced Automation Consulting, Inc.  
Investment Date(s): June 16, 2006  
Date of Repayment: March 29, 2007



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- b. DigitalSmiths Corporation  
Investment Date(s): July 31, 2006  
Date of Repayment: November 3, 2008
- c. Sabal Medical, Inc.  
Investment Date(s): May 23, 2006; August 24, 2006; May 3, 2007; August 13, 2009; September 10, 2010  
Date of Repayment: January 6, 2011
- d. Ometric Corporation  
Investment Date(s): November 4, 2008  
Date of Repayment: January 21, 2011
- e. Immunologix, Inc.  
Investment Date(s): March 10, 2010  
Date of Repayment: November 15, 2011
- f. Charleston Laboratories, Inc.  
Investment Date(s): August 3, 2007  
Repayment Date: October 4, 2012
- g. Ion Surgical Technologies, Inc.  
Investment Date(s): October 1, 2009; June 29, 2011  
Repayment Date: February 4, 2013
- h. DD Dannar, LLC  
Investment Date(s): April 14, 2011  
Repayment Date: April 30, 2013
- i. Bridge To Life, Ltd.  
Investment Date(s): April 16, 2009  
Repayment Date: November 17, 2014
- j. SmartTruck Systems, LLC  
Investment Date(s): July 26, 2011  
Repayment Date: May 22, 2015
- k. CareCam Innovations, LLC  
Investment Date(s): November 3, 2010; April 24, 2012  
Repayment Date: June 30, 2015
- l. VidiStar, LLC  
Investment Date(s): September 25, 2008; August 6, 2010  
Repayment Date: October 26, 2015
- m. Vigilix, LLC

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**Investment Date(s): December 11, 2007; March 5, 2009**

**Repayment Date: July 8, 2016**

6. Identify each Supported Company that has paid any fees to SCL, other than the loan principal, interest and Relocation Fee, regardless of nomenclature, and for each such Company include the date of initial funding, the date(s) of any subsequent funding by SCL, and the nature and dates of all payments to SCL.

**ORIGINAL RESPONSE:** Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence as no such additional fees were part of the Financing Agreement between Defendant and Plaintiff. Subject to this objection, Defendant has included a Sale of Company Fee for the following company:

- a. Ion Surgical Technologies
- b. Date of Initial Funding: Fiscal Year 2011
- c. Date of Subsequent Funding by Defendant: None.
- d. Date of Sale of Company Fee: On or about March 1, 2013
- e. Amount of Sale of Company Fee: \$30,000.

**SUPPLEMENTAL RESPONSE:** Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence as no such additional fees were part of the Financing Agreement between Defendant and Plaintiff. Subject to and reserving these objections, Defendant has included a Sale of Company Fee for the following company:

- a. Ion Surgical Technologies, Inc.  
3400 Salterbeck Street  
Mount Pleasant, SC 29466  
Phone: 843-708-2051  
<http://www.ionsurgicaltechnologies.com>

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Brian Dross, President – [brian@ionsurgicaltechnologies.com](mailto:brian@ionsurgicaltechnologies.com)

- b. Date of Initial Funding: Fiscal Year 2011
- c. Date of Subsequent Funding by Defendant: None.
- d. Date of Sale of Company Fee: On or about March 1, 2013
- e. Amount of Sale of Company Fee: \$30,000.

8. Identify by category and amount all costs incurred by SCL in connection with the relocation of a Supported Company.

**ORIGINAL RESPONSE:** Due, in part, to the relative difficulty in determining the tangible and intangible costs and adverse impact resulting from Plaintiff's relocation, the parties included the Relocation Fee in the Financing Agreement, which was agreed to by Plaintiff and was intended by both parties to serve as a good faith and fair measure of appropriate compensation to Defendant. Defendant does not have any further information responsive to this Interrogatory.

**SUPPLEMENTAL RESPONSE:** Due, in part, to the relative difficulty in determining the tangible and intangible costs and adverse impact resulting from Plaintiff's relocation, the parties included the Relocation Fee in the Financing Agreement, which was agreed to by Plaintiff, and was intended by both parties to serve as a good faith and fair measure of appropriate compensation to Defendant. Defendant does not have any further information related to any amounts of costs incurred by Defendant in connection with the relocation of a Supported Company beyond that which has previously been provided in discovery, including the Rule 30(b)(6) deposition of Plaintiff.

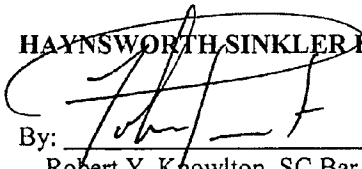
12. Identify all SCL personnel, officers, Board members, representatives or consultants who provided any analysis, recommendations, vote, review or analysis regarding Dannar and, with respect to each such person, describe in detail the date(s) nature of the involvement of each such person.

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**ORIGINAL RESPONSE:** Defendant objects to this Interrogatory because the decision was made by a deliberative body composed of multiple members with authority to make business decisions, including any decision as to whether to advance any further funding to Plaintiff.

**SUPPLEMENTAL RESPONSE:** Defendant objects to this Interrogatory because the decision was made by a deliberative body composed of multiple members with authority to make business decisions, including any decision as to whether to advance any further funding to Plaintiff. Subject to and reserving this objection, Defendant has provided all information responsive to this Interrogatory in its responses to Plaintiff's first and second set of requests for production. See documents Bates stamped SCL000001-SCL000720, which have been served on Plaintiff.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Robert Y. Knowlton, SC Bar No. 3589  
John G. Tamasitis, SC Bar No. 101875  
1201 Main Street, 22<sup>nd</sup> Floor  
Post Office Box 11889 (29211-1889)  
Columbia, South Carolina 29201  
(803) 779.3080 - telephone  
(803) 765.1243 - fax  
bknowlton@hsblawfirm.com  
*Attorneys for Defendant SC Launch!, Inc.*

November 17, 2016  
Columbia, South Carolina

Minutes of a  
MEETING of the  
BOARD OF DIRECTORS  
Of  
SC LAUNCH!, INC.  
March 6, 2013

**CALL TO ORDER**

The fifty-third meeting of the Board of Directors of SC Launch!, Inc. was held Wednesday, March 6, 2013 at the SCRA, 5300 International Blvd, North Charleston, South Carolina. Mr. John J. Warner, Chair, called the meeting to order at 8:30a and noted a quorum was present. He welcomed all Directors and other attendees and guests. The Directors with guests introduced each and provided a brief bio.

**DIRECTORS AND OTHERS PRESENT**

Directors Present: Mr. John J. Warner (Chair); Mrs. Judy Davis; Mr. Deepal Eliatamby; Mrs. Andrea Marshall; Mr. Tim Reed; Mr. Thomas Strange (via phone); Mr. Joseph Wischerath

Directors Absent: None

Officers Present: Mrs. Julia Martin, Treasurer

Officers Absent: Ms. Connie Lollis, Secretary

Others Present: Mrs. Marcia Lytton, Acting Secretary; Mr. Greg Hillman, Interim SC Launch Executive Director; Ms. Lori Mack, SC Launch Program Coordinator; Mr. Derek Willis, SC Launch Coastal Zone Manager; Mr. Marty Entlemyer, SC Launch Director of Operations; Mr. Greg Clark, SC Launch Midlands Zone Manager; Mr. Mark Housley, SC Launch Upstate Zone Manager; Mrs. Tiffany DuPree, Senior Financial Manager, SCRA; Mr. Ambrose Schwallie, EVP Corporate Development, SCRA; Ms. Sherry Smith guest of Mrs. Martin; Mr. Arnie Nemirow guest of Director Reed; Mr. Mike Burgess guest of Director Wischerath

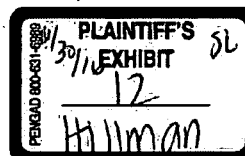
**APPROVAL OF MINUTES**

Director Marshall requested changes to the minutes of the January 31, 2013 meeting of the Board of Directors. The changes will be reviewed and the modified minutes will be presented for approval at the May 8, 2013 meeting of the Board.

**ADMINISTRATION**

Chair Warner asked Mrs. Julia Martin to explain the necessity for the Conflict of Interest form provided prior to the meeting. Mrs. Martin explained that four Board members had identified a potential conflict and would need to abstain from voting on the [REDACTED] resolution. [REDACTED]

**CONFIDENTIAL**



**SCL000708**

ROA 000472

Mrs. Martin then referred to the Audit and Finance Committee's recent question concerning whether the Board has the authority to determine if there is a conflict of interest. It was determined that the Board does not have the authority, and that each case would need to be compared to the law to determine potential conflict.

**SC LAUNCH FINANCIAL UPDATE**

Chair Warner turned over the meeting to Director Reed who reviewed the Financial Report which is attached to and made a part of these minutes (*Attachment I*).

[REDACTED]

Director Reed continued with the review of the report. Upon completion, he opened to questions. Director Wischerath asked to return to the company portfolios where he pointed out that Vigilix did not list a return amount although an amount is shown on the Non-Exit Portfolio Returns. Mrs. Martin explained that the returns reflected on the Non-Exit Portfolio Returns are exactly that, non-exit returns. The SC Launch Portfolio page reflects the returns for exits. It was decided to include all returns on the SC Launch Portfolio page even if not non-exit. There were no more questions.

Chair Warner made the motion to accept the SC Launch!, Inc. Audit & Finance Committee report as presented. Seconded by Director Davis and unanimously approved.

Chair Warner distributed to the Board the SC Launch!, Inc. Annual Reports.

**SC LAUNCH PROGRAM UPDATE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Director Deepal Eliatamby joined the meeting at 12:30p.

**EXECUTIVE SESSION**

Director Strange made a motion to go into **EXECUTIVE SESSION** at 9:16a to hear and discuss proprietary business of SC Launch candidate companies and receive an update from a previously funded company. Director Reed seconded the motion and the Board unanimously approved.

**RETURN TO OPEN SESSION at 1:19p**

Due to Director Eliatamby's limited availability, the Board came out of Execution Session to finalize the resolution.

[REDACTED]

[REDACTED]

Chair Warner moved the following resolution:

[REDACTED]

[REDACTED]

**EXECUTIVE SESSION**

Director Strange made a motion to return to **EXECUTIVE SESSION** at 1:30p to hear and discuss remaining proprietary business of SC Launch candidate companies. Director Wischerath seconded the motion and the Board unanimously approved.

Director Deepal Eliatamby left the meeting at 1:38p.

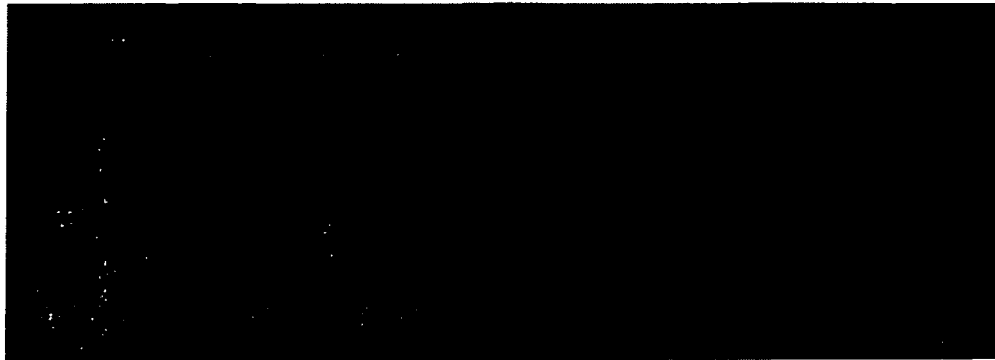
**RETURN TO OPEN SESSION at 2:14p**

[REDACTED]

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**SCL000710**

ROA 000474



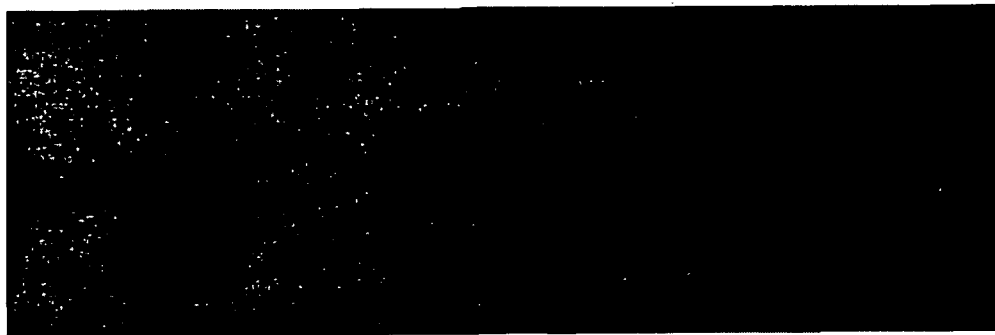
**DANNAR, LLC**

Director Reed moved the following resolution:

**BE IT RESOLVED**, that the SC Launch! Board has approved, in principle pending usual and customary negotiation and documentation, a \$250,000 loan investment, conditionally convertible to equity and conditionally upon the company closing an external investment of, minimally, \$2,250,000, to Dannar, LLC. Investment and fund distribution is to be made within 90 days from the date of this resolution after which time the offer of investment will be rescinded.

Seconded by Director Strange; however, not approved by the majority. Directors Davis, Marshall, and Wischerath voted nay.

**Therefore, the resolution was not approved.**



**RETURN TO EXECUTIVE SESSION**

Director Reed made the motion to return to **EXECUTIVE SESSION** at 2:46p to hear and discuss proprietary business of CreatiVasc Medical, LLC. Seconded by Director Marshall and unanimously approved.

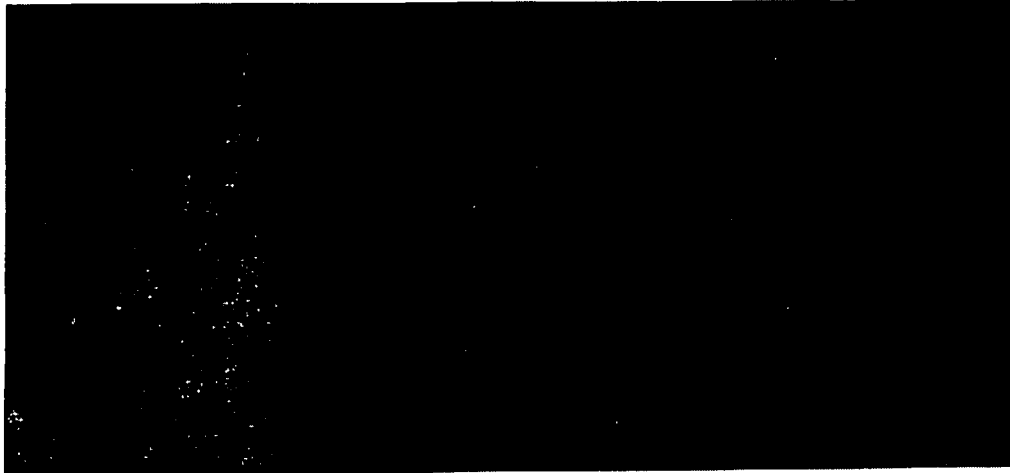
**RETURN TO OPEN SESSION at 2:51p**

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**SCL000711**

ROA 000475





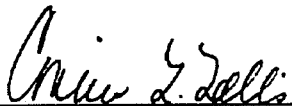
**NEW BUSINESS**

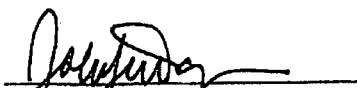
Chair Warner opened the meeting to any new business. There was no new business.

Chair Warner confirmed the next meeting of the Board is scheduled for May 8.

**ADJOURN**

There being no further business and no objections, the meeting was adjourned at 2:55p.

  
\_\_\_\_\_  
Connie L. Lollis  
Secretary  
(as recorded by Ms. Marcia Lytton)

  
\_\_\_\_\_  
John J. Warner  
Chair

**Attachments:**

1. SC Launch Financial Report

SC Launch! BOD Minutes\_03.06.13.docx

**CONFIDENTIAL**

**SCL000712**

ROA 000476

**Alan Austin**

---

**From:** Gary Danner <gdanner@danner.us.com>  
**Sent:** Tuesday, April 30, 2013 1:46 PM  
**To:** greg.hillman@scra.org  
**Subject:** Financing agreement between SC Launch and DD Danner, LLC dated April 14, 2011

Greg,

Greg, Alan and I enjoyed talking with you as well. We have appreciated your support with the loan, and your encouragement. However, candidly, we were disappointed that you all did not step in to help with our next round. We believe our future capital raising efforts will best served by paying off the loan and moving forward with a group of committed investors who are not clouded by SC Launch's lack of participation in the current round.

As to paragraph 3.3 of the Financing Agreement, please note that we do disagree with your interpretation as to the requirement. We believe once the loan is paid in full, our obligations cease. Frankly, at this juncture we do not have any commitments to relocate out of South Carolina. However, in the future as we seek capital to implement our business plan, we may examine all alternatives. Obviously, our main concern is getting this venture humming and benefiting our investors.

No matter how our plans unfold we hope we can continue to be mutually supportive.

Sincerely,

Gary Danner  
[gdanner@danner.us.com](mailto:gdanner@danner.us.com)

On Apr 29, 2013, at 8:20 PM, [greg.hillman@scra.org](mailto:greg.hillman@scra.org) wrote:

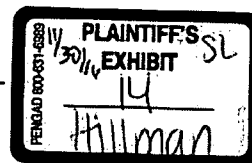
<image001.gif>  
Hello Gary:

It was good to catch-up with you and Alan today and of course we wish you the best going forward. Danner is entering into the arena of being an SC Launch Program, Graduate Portfolio company. You and the Danner Team have our admiration and sincere congratulations. Don't hesitate to let us know how we might be of assistance as Danner Company development continues.

Today you indicated that Danner, Inc. would like to repay SC Launch in full according to the agreement between SC Launch and DD Danner, LLC dated April 14, 2011. Also, you indicated that Danner would like to repay SC Launch before the close of business tomorrow, April 30, 2013. Our determination is that the total outstanding balance as of tomorrow is **\$222,634.23**. From our discussion you indicated that Danner will remit payment tomorrow using a wire transfer. Please send funds to:

**SC Launch!, Inc.**  
**Wells Fargo**

1  
CONFIDENTIAL



Danner 002523

ROA 000477

ABA: 121000248  
Account Number: 2000027839427

We appreciate your interest in continuing your efforts to build Danner in South Carolina and that you have no plans to relocate out of the state. Our practice is to include a reminder that Paragraph 3.3, the Relocation Clause in subject financing agreement, may survive satisfaction of the loan.

**3.3 Relocation**

*"...Accordingly, the Company agrees for thereafter period of five years from the date of this Agreement, not to (a) move or relocate the Company Business or the Company's principal office or principal place of business outside the State of South Carolina, and (b) not to have more than one-half, based on payroll expenses, of the Company's total employees, or senior management employees, or employees engaged principally in professional research and development, employed at locations outside of the State of South Carolina (any of which shall be deemed a "Company Relocation", unless the Company has paid SC Launch a Relocation Fee as set forth below..."*

Please let us know if you have any questions in regard to Paragraph 3.3. Note that for Danner, this clause will expire on April 14, 2016.

Thank you for your significant efforts in building the Danner Company and launching the Mobile Power Station in South Carolina.

Our best regards,

Gh.

Greg Hillman  
Director, SC Launch

<image002.png>

1000 Catawba Street | Columbia, SC 29201

3 Research Drive, Suite 220, Greenville, SC 29607

5300 International Drive, Charleston, SC 29418

Office: 843-760-3280

Mobile: 864-634-9670

[greg.hillman@scra.org](mailto:greg.hillman@scra.org) | [www.scra.org](http://www.scra.org)

<image003.jpg><image004.gif><image005.jpg><image004.gif><image006.jpg><image004.gif><image007.jpg>

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BUSINESS SENSITIVE COMMUNICATION: The content of this message is privileged information which may contain proprietary and business sensitive material. It is provided only for the intended business purpose by the addressee.

**From:** Hillman, Greg  
**To:** Tim Reed  
**Sent:** 6/19/2013 6:05:45 PM  
**Subject:** RE: dannar investment and move from SC

They did Tim. Still have potential for penalty through early 2016 depending how much they leave in SC (DoD is what they said).

---

**From:** Tim Reed [mailto:timjreed@prodigy.net]  
**Sent:** Wednesday, June 19, 2013 4:49 PM  
**To:** Hillman, Greg  
**Subject:** Re: dannar investment and move from SC

If I'm not mistaken, they paid all of our loans back, in anticipation of a claw back?

Tim Reed  
PO Box 8758  
Greenville, SC. 29604  
[Timjreed@prodigy.net](mailto:Timjreed@prodigy.net)  
864 270 0310

Sent from my iPad

On Jun 19, 2013, at 3:37 PM, <[greg.hillman@scra.org](mailto:greg.hillman@scra.org)> wrote:

We did Tim. Really a kick to everyone's efforts but we've to learn from it. I've suggested a review w ICAR and others and will keep you posted - your input would be much appreciated. Thinking a few weeks down the road.

Watch out for the hula dancers!!

Best, Gh.

Sent from my iPhone

On Jun 19, 2013, at 11:00 AM, "Tim Reed" <[timjreed@prodigy.net](mailto:timjreed@prodigy.net)> wrote:

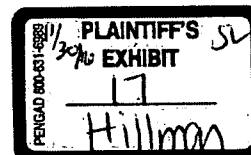
Oh well, we tried!

Tim Reed  
PO Box 8758  
Greenville, SC 29604  
864 270 0310

Sent from my iPhone

On Jun 19, 2013, at 10:04 AM, <[greg.hillman@scra.org](mailto:greg.hillman@scra.org)> wrote:

<image001.gif>



SCL000621

ROA 000479

Dannar company will announce this morning at 11am the movement of their commercial vehicle manufacturing operations to Muncie, Indiana. DoD related activity will remain in SC through 2014 and possibly beyond. \$2.5M in new investment obtained initially at current valuation.

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