

20193

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

C.A. NO.: 2010-CP-23-03597

Delta Apparel Respondent,

v.

Daniel G. Farina Appellant.

RECORD ON APPEAL

Candy M. Kern-Fuller
Upstate Law Group, LLC
200 E. Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (facsimile)
ATTORNEY FOR APPELLANT

Samuel W. Outten
Catherine R. Atwood
Womble Carlyle Sandridge & Rice, LLP
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
(864) 255-5440 (facsimile)
ATTORNEYS FOR RESPONDENT

RECEIVED

JAN 23 2013

SC Court of Appeals

R

JAN 23 2013

SC

INDEX

ORDERS

Order of November 21, 2011 denying relief from Judgment	1
Order of September 2, 2011.....	3
Order of July 12, 2010.....	5

PLEADINGS

Summons, Complaint, and attachments	8
Plaintiff's Motion for Temporary Restraining Order, Ex. A, Affidavit of Deb Merrill, dated May 4, 2010.....	33
Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order, Ex. A, Affidavit of Deb Merrill, dated July 22, 2012.....	43
Notice of Hearing.....	54
Motion for Entry of Default and Default Judgment.....	55
Affidavit of Default.....	56
Affidavit of Service.....	59
Motion to Dismiss.....	60

TRANSCRIPTS

Transcript of September 1, 2011 hearing.....	64
Transcript of September 7, 2011 hearing.....	71

CERTIFICATE OF COUNSEL.....	87
-----------------------------	----

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2303597

Delta Apparel Incorporated	Daniel G Farina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☒ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:
This matter comes before the Court on Defendant's Motion to Be Relieved from Judgment under Rule 60(b), SCRCP.
Defendant's Motion is Denied. Judgment remains in the amount of \$96,484.14 plus interest from September 1, 2011.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

RECEIVED
NOV 21 2011
Clerk of Court
Greenville County

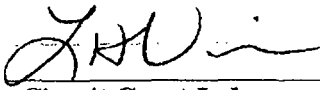
INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A (Same as already entered).		

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

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



Circuit Court Judge

2162

Judge Code

11/9/2011

Date

For Clerk of Court Office Use Only

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

Samuel W. Outten Womble Carlyle Sandridge & Rice P.O.
Box 10208 Greenville, SC 296030208

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel G Farina 1201 E Fairway Drive #122 Douglas, AZ
85607

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated,

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-3597

ORDER OF DEFAULT JUDGMENT

This matter came before the Court for hearing on Thursday, September 1, 2011, on Delta Apparel, Incorporated's ("Delta Apparel") Motion for Default Judgment. Delta Apparel appeared and was represented by Samuel W. Outten of Womble Carlyle Sandridge & Rice, PLLC. Defendant Daniel G. Farina ("Defendant") was not present at the hearing despite being properly served with notice of the hearing by Delta Apparel's counsel.

Pursuant to Rule 55 of the South Carolina Rules of Civil Procedure and upon Delta Apparel's Motion for Default Judgment, I find that:

A Complaint was filed and Summons issued in this action; Defendant has been duly served with process; the time within which pleadings may be filed by the Defendant has expired; the Defendant has filed his Motion to Dismiss out of time and after notice of this hearing was served upon him; the Defendant was served with a Notice of Motion of Default; Notice was sent to the Defendant stating that Delta Apparel was seeking to recover damages related to the allegations asserted in the Complaint; Delta Apparel is otherwise entitled to a Judgment against the Defendant by a default final; and

Delta Apparel presented evidence of Deborah Merrill demonstrating that Delta Apparel has been damaged in an amount equal to \$96,484.14, which includes the \$57,981.14

WCSR 6945410v1

cc'd to Att'y Outten

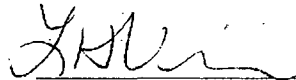
SCANNED

Verified

directly to Defendant, plus \$38,500.00 in attorneys' fees spent by Delta Apparel in defending the Honduran lawsuit. Therefore, Delta Apparel is entitled to recover from the Defendant \$96,484.14.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT: Delta Apparel have and recover of the Defendant \$96,484.14 plus interest from the date of Judgment at the maximum legal rate until paid.

IT IS SO ORDERED this 1st day of September, 2011.



The Honorable Letitia H. Verdin
Thirteenth Judicial Circuit

In the present action, Plaintiff seeks to have this Court issue a restraining order enjoining "Farina from executing the Honduran judgment in Honduras or elsewhere." See, Memorandum of Plaintiff dated July 2, 2010, p. 5.

Plaintiff argues that Farina fraudulently or otherwise improperly obtained the judgment in Honduras and that it will suffer irreparable harm in the event that Farina is not prohibited from executing on this judgment "until this matter can be litigated in a court in the United States." See, Memorandum of Plaintiff, dated July 2, 2010, p. 6.

After a careful review of the applicable law and facts of this case, and as noted above, the Court is compelled to deny Plaintiff's request.

First, to the extent that the courts of South Carolina have jurisdiction over a California resident working as an expatriate in the Country of Honduras, Plaintiff seeks to ask this Court for what is tantamount to a *de facto* finding that the judgment issued by the Honduran court is fraudulent or otherwise improper. This Court does not have sufficient facts nor such authority to make such a finding.

Second, the courts of the State of South Carolina do not have authority to enjoin the Honduran judicial process any more than a Honduran court would have authority to enjoin the South Carolina judicial process.

Third, as noted by Plaintiff, the Honduran judgment in question is currently being ~~appealed by Ceiba Textiles. As such, the judgment may or may not be upheld by the Honduran~~ courts. It is premature for the courts of this State, even to the extent that it had such authority, to issue a restraining order under the facts set forth here.

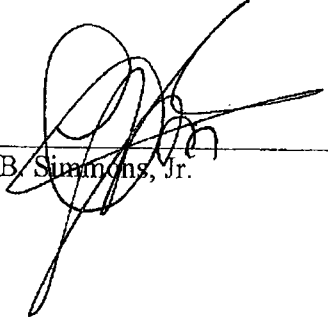
Fourth, there is simply no irreparable harm to Plaintiff under the facts of this case. To the extent that Defendant holds a valid judgment against Plaintiff and attempts to execute upon it in this State, Defendant will be required to first domesticate the same by filing the judgment in



South Carolina. At that point, Plaintiff would certainly be able to attack the underlying judgment pursuant to Rule 60 (b) SCRCP and §15-35-940 of the S. C. Code (2005). See also, Pitts v. Fink, Op. 4706, S.C. App. filed June 30, 2010.

For the reasons set forth above, Plaintiff's Motion for a Temporary Restraining Order is denied.

AND IT IS SO ORDERED.



Charles B. Simmons, Jr.
Judge

July 9 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON
PLEAS

Delta Apparel, Incorporated,

C.A. NO. 2010-CP-23 -

3597

Plaintiff,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 14 2010

v.

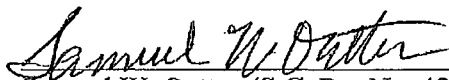
SUMMONS

Daniel G. Farina,

Defendant.

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon Samuel W. Outten, of Womble Carlyle Sandridge & Rice, PLLC, Plaintiff's attorney, whose address is 550 South Main Street, Suite 400, Greenville, South Carolina 29601, an answer to the Complaint which is herewith served upon you, within thirty (30) days after service of the Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.



Samuel W. Outten (S.C. Bar No. 4295)

Email: soutten@wcsr.com

Womble Carlyle Sandridge & Rice, PLLC

550 South Main Street, Suite 400

Greenville, South Carolina 29601

Telephone: (864) 255-5400

Attorney for Plaintiff

May 4, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-

3597

2010 MAY -4 P 4 34

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMMER

COMPLAINT

Delta Apparel, Inc. ("Delta Apparel") complaining of the defendant Daniel G. Farina ("Defendant" or "Farina") would respectfully show unto this Court that:

PARTIES

1. Delta Apparel is a corporation organized and existing under the laws of the state of Georgia, with its corporate offices in Greenville, South Carolina.
2. Upon information and belief, Daniel Farina is a citizen of the County of Los Angeles, State of California, has caused tortious injury to Delta Apparel, a resident of this State, by an act in Honduras, and has engaged in an ongoing business relationship with Delta Apparel.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Daniel Farina because Farina entered into an employment relationship with Delta Apparel, a corporation doing business in this State, and Farina has engaged in an ongoing business relationship with Delta Apparel.

4. Venue is proper in this Court because Delta Apparel's corporate headquarters are located in Greenville County, and the parties' employment relationship was partially performed in Greenville County.

FACTUAL ALLEGATIONS

5. On October 16, 2006, Delta Apparel hired Farina as the General Manager of its Ceiba Textiles S de RL ("Ceiba Textiles") plant in Villanueva, Honduras.

6. Farina was hired as an employee of Delta Apparel, working as an ex-patriot in Honduras.

7. Farina has never been an employee of Ceiba Textiles.

8. On or about April 20, 2007, Delta Apparel began receiving Earnings Withholding Orders ("Withholding Orders") from the State of California Franchise Tax Board. These Withholding Orders are attached as Exhibit A.

9. Between April 2, 2007 and October 29, 2008, Delta Apparel received three Withholding Orders from the California Franchise Tax Board stating that Farina was delinquent in the amounts of \$17,816.29, \$20,824.68, and \$6,153.42, respectively. The Withholding Orders required Delta Apparel to begin withholding 25 percent of Farina's weekly disposable earnings beginning with the first pay period that would end at least 15 days after Delta Apparel received the Withholding Order. See Exhibit A.

10. Between August 15, 2007 and July 15, 2008, Delta Apparel levied Farina's disposable earnings a total of eleven times, withholding 25 percent from eleven paychecks. See California Tax Levy Withholdings, attached as Exhibit B.

11. On or about July 10, 2008, Delta Apparel terminated Farina's employment.

12. On August 8, 2008, Farina signed a Solvency Settlement and Effective Payment Letter, accepting \$41,022.92 as full severance payment corresponding to labor days covered from October 16, 2007 up to July 10, 2008. See Solvency Settlement and Effective Payment Letter, attached as Exhibit C.

13. On August 15, 2008, pursuant to the California Tax Board mandate, Delta Apparel withheld 25 percent, or \$9,673.63, from its severance payment of \$41,022.92 to Farina.

14. On or about October 14, 2008, Farina filed suit against Ceiba Textiles in Honduras claiming that he was an employee of Ceiba Textiles, that he was wrongfully terminated, and that he was owed \$57,984.14 in unpaid severance and salaries under Honduran employment law.

15. On September 1, 2009, the Honduran court ruled in Farina's favor, ordering Ceiba Textiles to pay Farina \$57,984.14 in unpaid severance salaries prior to Farina's termination and \$172,055.64 as damages and losses for unpaid salaries for a total of thirteen months and twenty days as a result of his wrongful termination. The Honduran judgment is attached as Exhibit D.¹

16. Ceiba Textiles, through Delta Apparel, has appealed the Honduran judgment, and that appeal is currently pending.

COUNT I
(Breach of Contract)

17. Delta Apparel incorporates by reference Paragraphs 1 through 16, as though fully set forth herein.

18. Delta Apparel entered into an implied employment agreement with Farina when he began his employment on October 16, 2006.

19. During the course of Farina's employment, Delta Apparel was ordered by the California Tax Board to withhold a certain sum of Farina's earnings because Farina was a Delta Apparel employee.

20. Delta Apparel complied with the California Tax Board's orders.

¹ Delta Apparel has interpreted the Honduran judgment to the best of its ability at this time. However, due to the urgency of this matter, the interpretation may not be precise. Once the Honduran judgment has been interpreted by a certified translator, Delta Apparel will amend this Complaint to reflect the facts surrounding the judgment.

21. Farina filed a lawsuit in Honduras, fraudulently claiming that (1) he was an employee of Ceiba Textiles subject to Honduran law, and (2) he was entitled to a severance payment and salary continuance pursuant to Honduran law.

22. By fraudulently misrepresenting his employment to an Honduran court and causing the court to enter a judgment based on a false Honduran employment status, Farina breached the employment agreement entered into by the parties.

23. As a result, Delta Apparel has been damaged in an amount totaling approximately \$230,039.78, as reflected in the Honduran judgment.

COUNT II
(Breach of Implied Duty of Good Faith and Fair Dealing)

24. Delta Apparel incorporates by reference Paragraphs 1 through 23, as though fully set forth herein.

25. Delta Apparel entered into an implied employment agreement with Farina when he began his employment on October 16, 2006.

26. Implied in that agreement was a duty for both parties to act in good faith throughout the course of the agreement.

27. By fraudulently misrepresenting his employment to a Honduran court and causing the court to enter a judgment based on a false Honduran employment status, Farina breached the implied duty of good faith and fair dealing.

COUNT III
(Unjust Enrichment)

28. Delta Apparel incorporates by reference Paragraphs 1 through 27, as though fully set forth herein.

29. Pursuant to section 706.074 of the California Code of Civil Procedure, Delta Apparel was required to withhold \$22,426.37 from Farina's paychecks and severance.

30. In September, 2009, the Honduran court erroneously found that Delta Apparel was liable to Farina in excess of \$230,000.

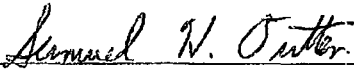
31. Therefore, under Honduran law, Farina has been given the right to collect \$230,039.78 from Delta Apparel.

32. If Farina is allowed to proceed to execute that judgment, Farina will be unjustly enriched.

33. Delta Apparel will be irreparably harmed if Farina is permitted to collect the \$230,039.78 Honduran judgment.

34. Delta Apparel has no adequate remedy at law for Farina's possible execution of the Honduran judgment because the execution of that judgment will adversely affect Delta Apparel's business.

WHEREFORE, Delta Apparel prays for a judgment in its favor and against Daniel Farina, for injunctive relief against Farina prohibiting him from executing, obtaining, accepting, spending, depositing, investing, or in any way claiming ownership of the \$230,039.78 ordered in the Honduran judgment, and for all other relief which this Court deems just and proper.



Samuel W. Outten (SC Bar #4295)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852
Attorneys for Delta Apparel, Inc.

May 4, 2010



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044

MP93

PERSONAL INCOME TAX EARNINGS WITHHOLDING ORDER FOR TAXES

PART 1 - EMPLOYERS COPY (RETAIN FOR YOUR RECORDS)

Date: 04/20/07

14580981000

Case Number: 568655722

Account Number: 568655722

SSN or ITIN: 568-65-5722

Tax Year(s): 2004,2003

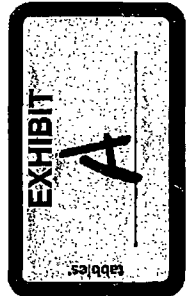
MJ SOFFE COMPANY
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Order Number: 249291834657616226

AMOUNT DUE
\$17,816.29

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748



The Franchise Tax Board issued this EARNINGS WITHHOLDING ORDER FOR TAXES under authorization of section 706.074 of the California Code of Civil Procedure.

You must do all of the following:

1. **Deliver** parts 3 and 4 of this order to the taxpayer within 10 days after you receive this order.

We may be able to mail or fax a release of this order if your employee qualifies for an installment agreement. Advise your employee to call the number shown above.

Please provide your fax number to your employee.

2. **Complete** and mail part 2 of this order to the Franchise Tax Board in the enclosed return envelope within 15 days after you receive this order.

NOTE: You must complete part 2 and return it to our office even if no payment is withheld. If part 2 is incomplete or not returned, it may cause another order to be sent.

3. **Begin** withholding from the taxpayer's earnings for the first pay period that ends at least 15 days after you receive this order.

4. **Withhold** from the taxpayer's earnings for each pay period an amount equivalent to the lesser of 25% of the taxpayer's weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

Please refer to reverse side, "How much do I withhold?", for more information.

If you have other withholding orders, please refer to the reverse side "What do I do when I receive more than one type of withholding order?"

5. **Continue** withholding until you have withheld the total amount due listed above or until we withdraw this order.

Please see the reverse side, "How Much Do I Withhold?", for more information

6. **Please** select one of the payment methods listed below:

- a. Send to our office no later than the 15th of each month all amounts withheld from the employee's pay period(s) during the previous month.
- b. If you elect to send payments more frequently than monthly, send the amount withheld from each pay period no later than ten days after the end of each pay period.

7. **When** mailing payments, please enclose the following:

- a. a copy of Part 1 of this form; and
- b. a check or money order made payable to:
Franchise Tax Board

Please include the employee's full name and account number as listed above. Also, include the date you withheld the funds.

Please mail all payments to our office at the address listed on the top of this form.

SEND A COPY OF PART 1 OF THIS FORM WITH YOUR PAYMENT.
KEEP THE ORIGINAL FOR YOUR RECORDS.

Please see side 1B of this page for additional instructions



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044

MP93

PERSONAL INCOME TAX EARNINGS WITHHOLDING ORDER FOR TAXES

PART 2 – EMPLOYER'S COPY (ACKNOWLEDGMENT)

Date: 04/20/07

14580981000

Case Number: 568655722

Account Number: 568655722

SSN OR ITIN: 568-65-5722

MJ SOFFE COMPANY
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2004,2003

Order Number: 249291834657616226

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE

\$17,816.29

TAXPAYER GENERAL INFORMATION

Return this part in the enclosed return envelope within 15 days from the date you receive this letter.

1. If the Taxpayer's name, address or Social Security number in your records differ from those shown above, please provide the following:

Name: _____

Phone number: (____) _____

Address: _____

SSN/ITIN: _____

Occupation: _____

Union VTF and Local #: _____

2. Please select and complete the appropriate box below;
mail this form to our office in the enclosed envelope. Keep a copy for your records.

☐ A. EMPLOYED – No higher priority orders in effect.

PAY PERIOD IS:

- ☐ Weekly ☐ Semi-monthly
☐ Bi-weekly ☐ Other _____

Total earnings _____

Refer to part 1A, to determine the amount to be withheld.

Disposable earnings _____

25% of disposable earnings _____

Please send this amount.

Date withholding will begin: ____ / ____ / ____

☐ EMPLOYED – Another order is in effect.

Please provide the information requested on the back of this part.

☐ C. NO RECORD OF TAXPAYER

☐ B. TERMINATED

If known, please provide the name, address and telephone number of the taxpayer's new employer:

(____) _____

Date of termination: _____

Do you plan to rehire the taxpayer?

No ___ Yes ___ Return date: _____

☐ D. DISABILITY/LEAVE OF ABSENCE

Anticipated Return Date: _____

Completed by: _____

Tel. No.: _____ Date: _____

FOR FTB USE ONLY

A B C D E F G H I J K L M
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

PART 2A

FTB 2905 ARCS (REV 03-2007)



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044

MP93

**PERSONAL INCOME TAX
EARNINGS WITHHOLDING
ORDER FOR TAXES**

**PART 3 – NOTICE OF TAXPAYER'S
RIGHTS**

Date: 04/20/07

14580981000

MJ SOFFE COMPANY
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2004,2003

Order Number: 249291834657616226

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE

\$17,816.29

The Franchise Tax Board issued this Earnings Withholding Order to the employer shown above under authorization of section 706.074 of the California Code of Civil Procedure to enforce payment of your tax liability due to the State of California.

Your employer must:

1. **Withhold** from your earnings for each pay period an amount equivalent to the lesser of 25% of your weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

2. **Continue** withholding until the total amount due is withheld or until we withdraw this order.

If you terminate employment, this order remains in effect for one year from the date of termination. If your employer rehires you during this period, withholding of your wages will be resumed unless you have satisfied your tax liability.

Your employer will pay the amount withheld to the Franchise Tax Board and we will apply it to your account. If the amount to be withheld by your employer is less than the amount due, you should forward a copy of this page and make your check or money order payable to the FRANCHISE TAX BOARD and mail to the Franchise Tax Board address shown at the top of this page.

You may qualify for an installment agreement. If you qualify, we may be able to release or modify your Earnings Withholding Order for Taxes by mailing or faxing a release or modification to your employer. Before calling us, check with your employer to get their fax number. For more information, or to find out if you qualify for an installment agreement, please call the number shown above. If you have internet access, you will find more information about our installment agreement program at our website: www.ftb.ca.gov

SPECIAL INFORMATION CONCERNING TAXPAYER RIGHTS

If immediate full payment of the amount due will create undue hardship, or you have already paid the amount due, contact us immediately. You have a right to a hearing to reconsider the amount to be withheld, pursuant to Section 706.075(c) of the California Code of Civil Procedure. To request a hearing, call the number or write to the address shown on the top of the left portion of this notice. You should have this notice with you when you contact us.

The Franchise Tax Board has a Taxpayer Advocate who reviews those cases when taxpayers have been unable to resolve their problems with the Franchise Tax Board through normal channels. To contact the Taxpayer Advocate, write to: Taxpayer Advocate Bureau, PO Box 157, Rancho Cordova CA 95741-0157. FAX (916) 845-6614 or access our website at: www.ftb.ca.gov

PART 3A

FTB 2905 ARCS (REV 03-2007)

See part 3B for Language - Assistance Information



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044

MP93

**PERSONAL INCOME TAX
EARNINGS WITHHOLDING
ORDER FOR TAXES**

**PART 4 – TAXPAYER'S COPY OF
ORDER**

Date: 04/20/07

14580981000

MJ SOFFE COMPANY
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2004,2003

Order Number: 249291834657616226

AMOUNT DUE

\$17,816.29

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

The Franchise Tax Board issued this EARNINGS WITHHOLDING ORDER FOR TAXES under authorization of section 706.074 of the California Code of Civil Procedure.

You must do all of the following:

1. **Deliver** parts 3 and 4 of this order to the taxpayer within 10 days after you receive this order.

We may be able to mail or fax a release of this order if your employee qualifies for an installment agreement. Advise your employee to call the number shown above.

Please provide your fax number to your employee.
2. **Complete** and mail part 2 of this order to the Franchise Tax Board in the enclosed return envelope within 15 days after you receive this order.

NOTE: You must complete part 2 and return it to our office even if no payment is withheld. If part 2 is incomplete or not returned, it may cause another order to be sent.
3. **Begin** withholding from the taxpayer's earnings for the first pay period that ends at least 15 days after you receive this order.
4. **Withhold** from the taxpayer's earnings for each pay period an amount equivalent to the lesser of 25% of the taxpayer's weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

Please refer to reverse side, "How much do I withhold?," for more information.

If you have other withholding orders, please refer to the reverse side "What do I do when I receive more than one type of withholding order?"
5. **Continue** withholding until you have withheld the total amount due listed above or until we withdraw this order.

Please see the reverse side, "How Much Do I Withhold?," for more information
6. **Please** select one of the payment methods listed below:
 - a. Send to our office no later than the 15th of each month all amounts withheld from the employee's pay period(s) during the previous month.
 - b. If you elect to send payments more frequently than monthly, send the amount withheld from each pay period no later than ten days after the end of each pay period.
7. **When** mailing payments, please enclose the following:
 - a. a copy of Part 1 of this form; and
 - b. a check or money order made payable to:
Franchise Tax Board
Please include the employee's full name and account number as listed above. Also, include the date you withheld the funds.

Please mail all payments to our office at the address listed on the top of this form.



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0021

Notice Date: 10/24/07

WITHDRAWAL OF ORDER TO WITHHOLD TAX

14580981000

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Part 1 – EMPLOYER'S COPY
(PAGE 1)
(Retain for Your Records)

	CASE NUMBER 568655722
TAXPAYER	SOCIAL SECURITY NUMBER
DANIEL G FARINA	568-65-5722
ACCOUNT NUMBER	FTB BRANCH
568655722	633
ORDER NUMBER	BRANCH TELEPHONE NUMBER
603287798186309993	(800) 689-4776

THE ORDER TO WITHHOLD TAX THAT WE SENT TO YOU IS
WITHDRAWN.

PLEASE FURNISH Page 2 of this notice to the taxpayer.

MANUEL GOMEZ
AUTHORIZED REPRESENTATIVE



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0021

Notice Date: 10/24/07

WITHDRAWAL OF ORDER TO WITHHOLD TAX

14580981000

Part 2 – TAXPAYER'S COPY
(PAGE 2)

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

TAXPAYER	
DANIEL G FARINA	
	FTB BRANCH
	633
ORDER NUMBER	BRANCH TELEPHONE NUMBER
603287798186309993	(800) 689-4776

THE ORDER TO WITHHOLD TAX THAT WE SENT TO YOU IS
WITHDRAWN.

PLEASE FURNISH Page 2 of this notice to the taxpayer.

MANUEL GOMEZ
AUTHORIZED REPRESENTATIVE



STATE OF CALIFORNIA
FRANCHISE TAX BOARD

Date :10/31/07

FACSIMILE TRANSMITTAL COVER SHEET

CONFIDENTIALITY NOTE:

This telecopy may contain confidential and / or legally privileged information and is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, the employee, or agent responsible for delivering this telecopy to the intended recipient, be advised that any copying dissemination, distribution, or disclosure of information from this telecopy is strictly prohibited. Persons disclosing confidential information are subject to penalties under applicable law.

If you have received this telecopy in error, please notify the sender immediately by telephone and mail the entire facsimile message back to us at the address listed on the attached document.

Please deliver the following page(s)

TO:

NAME: DELTA APPAREL, INC.

FAX NO: 16787756999

SUBJECT: 2705 W - MOD. OF ORDER TO W/H - WITHDRAWAL - ITCB

ATTN:

FROM:

NAME:

UNIT: Franchise Tax Board

FAX NO: (916) 845-0993

PHONE NO: (800) 689-4776

Number of pages faxed (including this page): 3

Comments:

See attached document(s)



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94287-0011
Telephone: (916) 845-7044
Fax: (916) 843-0944

MP93

**PERSONAL INCOME TAX
EARNINGS WITHHOLDING
ORDER FOR TAXES**
**PART 1 – EMPLOYERS COPY
(RETAIN FOR YOUR RECORDS)**

Date: 10/29/08 14580981000

Case Number: 568655722
Account Number: 568655722
SSN or ITIN: 568-65-5722

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2005

TERM
08

Order Number: 317301965868021190

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE

\$6,153.42

The Franchise Tax Board issued this EARNINGS WITHHOLDING ORDER FOR TAXES under authorization of section 706.074 of the California Code of Civil Procedure.

You must do all of the following:

1. **Deliver** parts 3 and 4 of this order to the taxpayer within 10 days after you receive this order.

We may be able to mail or fax a release of this order if your employee qualifies for an installment agreement. Advise your employee to call the number shown above.

Please provide your fax number to your employee.

5. **Continue** withholding until you have withheld the total amount due listed above or until we withdraw this order.

Please see the reverse side, "How Much Do I Withhold?," for more information

6. **Please select one of the payment methods listed below:**

- a. Send to our office no later than the 15th of each month all amounts withheld from the employee's pay period(s) during the previous month.
- b. If you elect to send payments more frequently than monthly, send the amount withheld from each pay period no later than ten days after the end of each pay period.

3. **Begin** withholding from the taxpayer's earnings for the first pay period that ends at least 15 days after you receive this order.

4. **Withhold** from the taxpayer's earnings for each pay period an amount equivalent to the lesser of 25% of the taxpayer's weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

Please refer to reverse side, "How much do I withhold?," for more information.

If you have other withholding orders, please refer to the reverse side "What do I do when I receive more than one type of withholding order?"

7. **When** mailing payments, please enclose the following:

- a. a copy of Part 1 of this form; and
- b. a check or money order made payable to:
Franchise Tax Board

Please include the employee's full name and account number as listed above. Also, include the date you withheld the funds.

Please mail all payments to our office at the address listed on the top of this form.

SEND A COPY OF PART 1 OF THIS FORM WITH YOUR PAYMENT;
KEEP THE ORIGINAL FOR YOUR RECORDS.

Please see side 1B of this page for additional instructions



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044
Fax: (916) 843-0944

MP93

PERSONAL INCOME TAX EARNINGS WITHHOLDING ORDER FOR TAXES

PART 2 – EMPLOYER'S COPY (ACKNOWLEDGMENT)

Date: 10/29/08

14580981000

Case Number: 568655722

Account Number: 568655722

SSN OR ITIN: 568-65-5722

Tax Year(s): 2005

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Order Number: 317301965868021190

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE
\$6,153.42

TAXPAYER GENERAL INFORMATION

1. If the Taxpayer's name, address or Social Security number in your records differ from those shown above, please provide the following:

Name: _____

Phone number: (____) _____

Address: _____

SSN/ITIN: _____

Occupation: _____

Union VTF and Local #: _____

2. Please select and complete the appropriate box below.

☐ **A. EMPLOYED** – No higher priority orders in effect.

PAY PERIOD IS:

☐ Weekly ☐ Semi-monthly
☐ Bi-weekly ☐ Other _____

Total earnings _____

Refer to part 1A, to determine the amount to be withheld.

Disposable earnings _____

25% of disposable earnings _____

Please send this amount.

Date withholding will begin: ____ / ____ / ____

☐ **EMPLOYED** – Another order is in effect.

Please provide the information requested on the back of this part.

☐ **C. NO RECORD OF TAXPAYER**

☐ **B. TERMINATED**

If known, please provide the name, address and telephone number of the taxpayer's new employer:

(____) _____

Date of termination: _____

Do you plan to rehire the taxpayer?

No ____ Yes ____ Return date: _____

☐ **D. DISABILITY/LEAVE OF ABSENCE**

Anticipated Return Date: _____

Completed by: _____

Tel. No.: _____ Date: _____

FOR FTB USE ONLY

A B C D E F G H I J K L M
☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

PART 2A

FTB 2905 ARCS (REV 08-2008)



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044
Fax: (916) 843-0944

MP93

PERSONAL INCOME TAX

EARNINGS WITHHOLDING ORDER FOR TAXES

PART 3 – NOTICE OF TAXPAYER'S RIGHTS

Date: 10/29/08

14580981000

FTB Number: 1112384338

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2005

Order Number: 317301965868021190

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE

\$6,153.42

The Franchise Tax Board issued this Earnings Withholding Order to the employer shown above under authorization of section 706.074 of the California Code of Civil Procedure to enforce payment of your tax liability due to the State of California.

Your employer must:

1. **Withhold** from your earnings for each pay period an amount equivalent to the lesser of 25% of your weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

2. **Continue** withholding until the total amount due is withheld or until we withdraw this order.

If you terminate employment, this order remains in effect for one year from the date of termination. If your employer rehires you during this period, withholding of your wages will be resumed unless you have satisfied your tax liability.

Your employer will pay the amount withheld to the Franchise Tax Board and we will apply it to your account. If the amount to be withheld by your employer is less than the amount due, you should forward a copy of this page and make your check or money order payable to the FRANCHISE TAX BOARD and mail to the Franchise Tax Board address shown at the top of this page.

You may qualify for an installment agreement. If you qualify, we may be able to release or modify your Earnings Withholding Order for Taxes by mailing or faxing a release or modification to your employer. Before calling us, check with your employer to get their fax number. For more information, or to find out if you qualify for an installment agreement, please call the number shown above. If you have internet access, you will find more information about our installment agreement program at our website: www.ftb.ca.gov

SPECIAL INFORMATION CONCERNING TAXPAYER RIGHTS

If immediate full payment of the amount due will create undue hardship, or you have already paid the amount due, contact us immediately. You have a right to a hearing to reconsider the amount to be withheld, pursuant to Section 706.075(c) of the California Code of Civil Procedure. To request a hearing, call the number or write to the address shown on the top of the left portion of this notice. You should have this notice with you when you contact us.

In keeping with the California Taxpayers' Bill of Rights, we have a Taxpayer Advocate who reviews cases where taxpayers have been unable to resolve their problems with us through regular channels. You can contact the Taxpayer Advocate by mail: Taxpayer Advocate Bureau, PO Box 157, Rancho Cordova CA 95741-0157. Telephone: (800) 883-5910. Website: www.ftb.ca.gov.

PART 3A

FTB 2905 ARCS (REV 06-2008)

See part 3B for Language - Assistance Information



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 942867
Sacramento CA 94267-0011
Telephone: (916) 845-7044
Fax: (916) 843-0944

MP93

**PERSONAL INCOME TAX
EARNINGS WITHHOLDING
ORDER FOR TAXES**
**PART 4 – TAXPAYER’S COPY OF
ORDER**

Date: 10/29/08

14580981000

FTB Number: 1112384338

DELTA APPAREL, INC.
2750 PREMIERE PKY STE 100
DULUTH GA 30097

Tax Year(s): 2005

Order Number: 317301965868021190

Taxpayer's Name and Address:

DANIEL G FARINA
9341 PARROT AVE
DOWNEY CA 90240-2748

AMOUNT DUE

\$6,153.42

The Franchise Tax Board issued this EARNINGS WITHHOLDING ORDER FOR TAXES under authorization of section 706.074 of the California Code of Civil Procedure.

You must do all of the following:

1. **Deliver** parts 3 and 4 of this order to the taxpayer within 10 days after you receive this order.

We may be able to mail or fax a release of this order if your employee qualifies for an installment agreement. Advise your employee to call the number shown above.

Please provide your fax number to your employee.

2. **Complete** and mail part 2 of this order to us in the enclosed return envelope within 15 days after you receive this order. Or, if you are not sending a payment, you can fax PART 2 to (916) 843-0944.

NOTE: You must complete part 2 and return it to our office even if no payment is withheld. If part 2 is incomplete or not returned, it may cause another order to be sent.

3. **Begin** withholding from the taxpayer's earnings for the first pay period that ends at least 15 days after you receive this order.

4. **Withhold** from the taxpayer's earnings for each pay period an amount equivalent to the lesser of 25% of the taxpayer's weekly disposable earnings, or the amount of weekly disposable earnings that exceeds 30 times the federal minimum hourly wage.

Please refer to reverse side, "How much do I withhold?" for more information.

If you have other withholding orders, please refer to the reverse side "What do I do when I receive more than one type of withholding order?"

5. **Continue** withholding until you have withheld the total amount due listed above or until we withdraw this order.

Please see the reverse side, "How Much Do I Withhold?," for more information

6. **Please select one of the payment methods listed below:**
- a. Send to our office no later than the 15th of each month all amounts withheld from the employee's pay period(s) during the previous month.
 - b. If you elect to send payments more frequently than monthly, send the amount withheld from each pay period no later than ten days after the end of each pay period.

7. **When** mailing payments, please enclose the following:

- a. a copy of Part 1 of this form; and
- b. a check or money order made payable to:
Franchise Tax Board

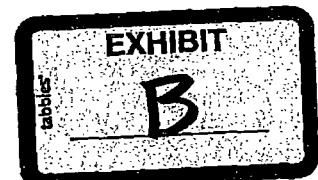
Please include the employee's full name and account number as listed above. Also, include the date you withheld the funds.

Please mail all payments to our office at the address listed on the top of this form.

Please see side 4B of this page for additional instructions

California Tax Levy Withholdings
Daniel Farina

Pay Date	Levy	%	Gross Pay	Fed Tax	FICA	SDI	State
8/15/2007	1,142.45	25.0%	6,041.67	(758.67)	(447.78)	-	(265.41)
8/31/2007	1,142.45	25.0%	6,041.67	(758.67)	(447.78)	-	(265.41)
9/15/2007	1,217.18	25.0%	6,041.67	(758.67)	(148.88)	-	(265.41)
9/30/2007	1,233.18	25.0%	6,041.67	(758.67)	(84.87)	-	(265.41)
10/15/2007	1,233.18	25.0%	6,041.67	(758.67)	(84.87)	-	(265.41)
10/31/2007	1,233.18	25.0%	6,041.67	(758.67)	(84.87)	-	(265.41)
5/15/2008	1,141.31	25.0%	6,041.67	(733.19)	(443.55)	(46.39)	(253.31)
5/30/2008	1,141.31	25.0%	6,041.67	(733.19)	(443.55)	(46.39)	(253.31)
6/15/2008	1,089.50	25.0%	6,041.67	(884.24)	(443.55)	(46.39)	(309.49)
6/30/2008	1,089.50	25.0%	6,041.67	(884.24)	(443.55)	(46.39)	(309.49)
7/15/2008	1,089.50	25.0%	6,041.67	(884.24)	(443.55)	(46.39)	(309.49)
8/15/2008	9,673.63	25.0%	41,022.92	-	(2,238.72)	(89.69)	-





12

SOLVENCY SETTLEMENT AND EFFECTIVE PAYMENT LETTER

Hereby I, DANIEL GUSTAVO FARINA No. 0001
Declare that on this date, August 08, 2008 I receive from DELTA APPAREL INCORPORATED, the
quantity of Forty one thousand twenty two US dollars with ninety two cents of a dollar (US\$41,022.92)
paid via deposit to the account number at the bank :

BANK OF AMERICA New York

Swift : BOFAUS33

BRANCH : NEW YORK

BENEFICIARY : DANIEL GUSTAVO FARINA

SWIFT : PISAHNTE

ACCOUNT : 1901880758

For final credit account: 6349459

of: DANIEL G FARINA

as Full Severance Payment (Vacations, Pre Notice, Severance and Worked days) corresponding to
labor days covered from October 16, 2007 up to July 10, 2008.

Therefore, having received full payment, I exonerate the Company of any past, present or future
lawsuit that could derive from the already finalized working relationship.

This document constitutes a Final Solvency Settlement and Effective Payment Letter.

We extend this Final Solvency Settlement and Effective Payment Letter in the city of Duluth, Georgia,
state of Atlanta being the 8th day of August of 2008.

Daniel Farina

Employee's Signature

Passport Number 39022399

c.c. - file

Notary Public, DeKalb County, Georgia
My Commission Expires 12/31/2009
Janelle Hornbuckle

Janelle Hornbuckle
1.23.09



13

Daniel Farina

254,958.33

Fecha retiro	7/10/2008	7/10/2008
Fecha Ingreso	10/16/2006	7/10/2008
Antigüedad dias	633	-

Salario mensual	\$ 12,083.33
Salario diario	\$ 402.78

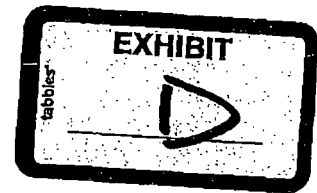
	Dias <u>derecho</u>	Dias <u>pagados</u>	Saldo dias <u>a pagar</u>	Total USD <u>a Pagar</u>
Vacations	9.10		9.10	\$ 3,665.28
Prenotice	30		30	\$ 12,083.33
Severance	1.76		1.758333	\$ 21,246.53
Worked days	10		10	\$ 4,027.78

Gross to pay

\$ 41,022.92

Janessa Hombuck
1.23.09

Notary Public, DeKalb County, Georgia
My Commission Expires 1/1/2011
Janessa Hombuck



04-MJM

Exp.294/08

In the city of Santa Bárbara, department of Santa Bárbara, being the first day of September of 2009, being two o'clock at the appointed date and time for the hearing celebration in which will be read and notified to the parties through their legal attorneys the verdict that will fall of the current trial, the current hearing starts with the presence of the attorneys and the verdict is pronounced in the following terms: **SECOND DEPARTMENTAL COURT.-** Santa Bárbara September 1st, 2009. **VIEW.** To dictate final verdict on the ordinary labor lawsuit for Severance Payment promoted by Lawyer VICTOR GUILLERMO PERELLO PARANKY, acting as legal representative of DANIEL GUSTAVO FARINA, who is older age, married, American citizen, against the company CEIBA TEXTILES S DE R L through their legal representative SYLVIA ELIZABETH HAUGHTON located their facilities at Green Valley Industrial Park at the Naco city, municipality of Quimistán. **PARTS:** Lawyer VICTOR GUILLERMO PERELLO PARANKY, as actor's legal representative and Lawyer DANNY MARIA MELENDEZ VALLADARES, as legal representative of the defendant. **CONSIDERING:** THAT ON DATE October 14 of 2008, appeared Mr DANIEL GUSTAVO FARINA, by means of his Lawyer VICTOR GUILLERMO PERELLO PARANKY as legal representative, to place an ordinary labor lawsuit of severance payment and the rest of legal indemnity and the rest of down salaries not perceived upon the termination date up to the verdict date plus the costs of the current trial. – **CONSIDERING:** That the plaintiff establishes as facts to prove, the followings: 1) That the plaintiff started working for the defendant company on October 16th of 2006, earning an annual salary of 145,000 US\$ plus 1,500 US\$ for housing expenses, representing in all a monthly salary of 13,583.03 US\$ 2) That on July 10 of 2008 the plaintiff was terminated unjustified by Ceiba Textiles S de R L with the promise that all his rights according to the law would be paid... therefore he signed a document Final Solvency Settlement and Payment Letter in both English and Spanish... 3) Once signed and sent to the defendant he awaited for the promised payment, without this one being done,

having received a payment of 28,963.00 US\$. **CONSIDERING:** That the plaintiff establishes as the quantity of the lawsuit the amount of 57,984.14 US\$ in severance payment and as indemnity for salaries not received to the time that the ruling of the case plus the expenses of the current trial.- **CONSIDERING:** That the defendant being represented by Lawyer Danny Maria Meléndez Valladares on February 19th of the current year refused all facts on the lawsuit arguing : 1.That his defendant has not hired the plaintiff services; 2) That the plaintiff never received salary payment on behalf the defendant company. 3)That the plaintiff worked for a foreign company.- 4) That the relationship that existed between the foreign company and the defendant company was finalized and settled.- **CONSIDERING:** That on the first hearing celebrated on March the 5th of the current year, at 9:30 am, the parties presented the following proof means: Plaintiff: Number One named documental that consisted on a authenticated photocopy of an employment letter on behalf the plaintiff given by Mr Pedro Andreu as Controller of Ceiba Textiles S de RL where it states the date, salary and position of the plaintiff; Number Two named documental consisting on an authenticated Social Security proving; Number Three named documental, consisting on the severance calculation issued by the Ministry of Labor in San Pedro Sula where it states the amount owed to the plaintiff; Number Four named documental consisting in two quotes sent by the companies Corporación Audio Visual S de R L and IMPONO S de RL; Number Five named documental consisting on payments to the house being rented by the company Ceiba Textiles S de RL; b) Deposit constancy to the account of Daniel Farina; c) Commercial credit invoice of the hardware shop Monterroso.- Number Six named documental consisting on the emission of check requests; Number Seven named documental consisting on Judicial Inspection of the Social Security offices; Number Eight named Judicial Inspection of the main offices of Ficohsa Bank; Number Nine named Judicial Inspection of the mercantile companies Copantl Hotel, Panavisión Industries, Company Milano MADEESMA, Tecno Supply at San Pedro Sula city department of Cortés; Number Ten named Judicial Inspection to the Green Valley Industrial Park offices located in Naco, Santa

Bárbara; Number Eleven named Judicial Inspection to the main offices of Bank del País in San Pedro Sula, Cortés; Number Twelve named testimonial consisting on the versions of Hans Rudolf Cramer Kretshmer and Angel Fernando Alvarado Barrientos; on their behalf the defendant company through their legal representative proposed the following means of proof: Number One named documental consisting on authenticated copies of eleven documents in English and translated into Spanish of the company DELTA APPAREL INC; Number Two named inspectional of the defendant's facility; Number Three: Ficohsa Bank from San Pedro Sula, department of Cortés; Number Four: named judicial communication from the Property Institute of Cortés department.- All the probation means were admitted and evacuated with the exception of the inspectional number three and four proposed by the defendant, which were not evacuated by reasons attributed to the party who proposed them.-

CONSIDERING: That this Court using the scientific rules of criticizing the proof, which is the same as sane critic, esteem and declares proved the following facts:

1.-) The First Fact of the Lawsuit, same that proves with the employment letter issued on May 31st, 2008 (f,17) by Mr Pedro Andreu, controller of Ceiba Textiles S de R L which prove the labor relationship between both parties the identified documental with numbers two, four, five, six, in which appears the plaintiff name performing proper actions of a Manager (Quotations) or at least as and employee of the Company (Social Security proving); defendant; with the probation means number seven, eight, nine, ten and eleven; are also useful to prove the existing labor relationship between parties, by the diligence we were able to prove the existing documents in which the plaintiff appears signing in his condition of Manager of the defendant company and also registered under the number 201070377-1 which is the Social Security's number of the defendant company.- at the same time with the testified prove it was fully demonstrated that the plaintiff worked for the defendant, performing the job as Manager.- The Inspectional Prove of the defendant was also useful to determine the existing labor relationship between the plaintiff and the defendant and also were able to state that some payrolls were authorized by himself in his General Manager

condition or General Manager of the defendant company, a personal action. And also appears recorded in the internal payroll of the Social Security.2.-) Second Fact is Declared Proved, of the lawsuit with the expressed by the plaintiff and that was not defeated by the defendant, this also making a judicial presumption in the sense that there was in its beginning a labor relationship without contract, there must also exist a termination of the same labor relationship without a document that establishes it and all this is company's responsibility according to the labor law.- Of the second fact also proved that the plaintiff signed an document named final solvency settlement for the quantity of 41,022.92 US\$; this for having been said by the plaintiff and this document is filed, because when having proved the existing labor relationship between both parties and not existing a labor contract, it is not proven in written the legal reason to take the labor relationship to an end; therefore the Judge has to consider as true all facts that the worker argues.- CONSIDERING: That the defendant proposed a series of documents on English language with its Spanish translation fully authenticated consisting on records of the company DELTA APPAREL INC from Duluth, United States of America where it appears the plaintiff's name, but among them it doesn't appear that between the length of time in which the plaintiff worked for the defendant company ever existed a labor contract between the transnational company and the defendant, therefore it doesn't receive any probation credit in attention to the expectation of the defendant company.- CONSIDERING: That even thought the Ministry of Labor made a calculation of the values that the company demands, it is still owed to the plaintiff the amount of 86,957.62 US\$, the quantity of the lawsuit is being determined by the plaintiff on 57,984.14 US\$ as severance payment and request as indemnity title, all salaries not perceived upon the termination date of July 11, 2008 up to September 1st of 2009.- It is recorded in this process (f.16) the corresponding severance calculation issued by the Secretary of Work, for an amount of 86,957.62 US\$ and it is taken as valid the clarification made by the plaintiff referring to the symbols used on it.- CONSIDERING: That the defendant didn't refused, nor rejected the labor rights calculations of Mr Daniel Gustavo Farina.- CONSIDERING: That the Labor Law

(Labor Code) establishes which are the fair causes by which a worker can be terminated without responsibility.- **CONSIDERING:** That the party defeated in trial must be condemned in expenses.- **THEREFORE:** This Second Court of the Santa Bárbara department in application of the articles 134, 135, 303 of the Republic's Constitution, 1, 38 and 137 of the Organizational and Attributes Law of the Post Courts; 1, 2, 4, 5, 6, 19, 20, 25, 113, 664, 665, 666 letter a, 667, 669, 674, 690, 738, 739, 740, 744, 759 and 858 of Labor Code; 183, 184, 188, 189, 190 and 192 of Civil Procedures Code.- **RULES: First:** Declaring WITH PLACE the lawsuit promoted by the Lawyer VICTOR GUILLERMO PERELLO PARANKY, as far as pre notice payment, severance payment, proportional severance payment, proportional vacations, thirteen month, proportional thirteen month, fourteen month, proportional fourteen month, pending vacations for eight days, and as damages and losses the salaries that were not received; in consequence.- **Second:** Condemn the Defendant Company Ceiba Textiles S de R L to pay the plaintiff the amount of 57,984.14 US\$ as Labor Rights not paid to the plaintiff.- **Third:** Condemn the Defendant Company Ceiba Textiles S de R L to pay the plaintiff as damages and losses the down salaries that were not received for a quantity of 172,055.64 US\$ for thirteen month and twenty days, having as base the document issued by the Secretary of Work.- **Fourth:** With charges in this instance.- **AND ORDERS: First:** That upon this date both legal representatives be notified.- **Second :** That if among the legal term and appeal resource is not presented, then the current ruling be definitive and with all said the current statement letter comes to its end signing it by the Judge and Secretary at their office who gives faith. -NOTIFY IT.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE P 4: 41
2010 MAY

Delta Apparel, Incorporated

Plaintiff,

v.

Daniel G. Farina,

Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 1 2010

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23- 3597

**DELTA APPAREL, INC.'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

Delta Apparel, Inc. ("Delta Apparel"), pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, moves this Court for entry of a temporary restraining order against Daniel G. Farina ("Farina"), enjoining him from executing, obtaining, accepting, spending, depositing, investing, or in any way claiming ownership of the \$230,039.78 ordered in an Honduran judgment dated September 1, 2009. As grounds for this Motion, Delta Apparel attaches the Affidavit of Deborah Merrill as Exhibit A and states as follows:

1. Delta Apparel has filed its Complaint seeking damages and injunctive relief against Farina. The Complaint, as well as its accompanying exhibits, are all incorporated by reference into this Motion.

2. On October 16, 2006, Delta Apparel hired Farina as the General Manager of its Ceiba Textiles S de RL ("Ceiba Textiles") plant in Villanueva, Honduras.

3. Farina was hired as an employee of Delta Apparel, working as an ex-patriot in Honduras.

4. Farina has never been an employee of Ceiba Textiles.

5. Between April 2, 2007 and October 29, 2008, Delta Apparel received three Earnings Withholding Orders ("Withholding Orders") from the California Franchise Tax Board

stating that Farina was delinquent in the amounts of \$17,816.29, \$20,824.68, and \$6,153.42, respectively. The Withholding Orders required Delta Apparel to begin withholding 25 percent of Farina's weekly disposable earnings beginning with the first pay period that would end at least 15 days after Delta Apparel received the Withholding Order. The Withholding Orders are attached to the Complaint as Exhibit A.

6. Between August 15, 2007 and July 15, 2008, Delta Apparel levied Farina's disposable earnings a total of eleven times, withholding 25 percent from eleven paychecks. See California Tax Levy Withholdings, attached to the Complaint as Exhibit B.

7. On or about July 10, 2008, Delta Apparel terminated Farina's employment.

8. On August 8, 2008, Farina signed a Solvency Settlement and Effective Payment Letter, accepting \$41,022.92 as full severance payment corresponding to labor days covered from October 16, 2007 up to July 10, 2008. See Solvency Settlement and Effective Payment Letter, attached to the Complaint as Exhibit C.

9. On August 15, 2008, pursuant to the California Tax Board mandate, Delta Apparel withheld 25 percent, or \$9,673.63, from its severance payment of \$41,022.92 to Farina.

10. On or about October 14, 2008, Farina filed suit against Ceiba Textiles in Honduras claiming that he was an employee of Ceiba Textiles, that he was wrongfully terminated, and that he was owed \$57,984.14 in unpaid severance and salaries under Honduran employment law.

11. On September 1, 2009, the Honduran court ruled in Farina's favor, ordering Ceiba Textiles to pay Farina \$57,984.14 in unpaid severance salaries prior to Farina's termination and \$172,055.64 as damages and losses for unpaid salaries for a total of thirteen months and twenty

days as a result of his wrongful termination. The Honduran judgment is attached to the Complaint as Exhibit D.

12. Ceiba Textiles, through Delta Apparel, has appealed the Honduran judgment, and that appeal is currently pending.

13. This Court has discretion to grant a temporary injunction, and in determining whether the requisites underlying such relief are present “narrow and artificial rules” should not be employed. Levine v. Spartanburg Regional Services District, Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). A temporary/preliminary injunction is an appropriate remedy where the moving party shows:

- (1) it would suffer irreparable harm if the injunction is not granted;
- (2) it will likely succeed on the merits of the litigation; and
- (3) there is an inadequate remedy at law.

Scratch Golf Company v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *see also* Levine, 367 S.C. at 464, 626 S.E.2d at 41.

DELTA APPAREL WILL BE IRREPARABLY HARMED WITHOUT A TRO

14. Under South Carolina law, even just the *potential* loss of business and/or business goodwill is sufficient to show irreparable harm. *See* Levine, 367 S.C. at 464-65, 626 S.E.2d at 42 (*citing* District of Columbia v. E. Trans-Waste of Md., Inc., 758 A.2d 1, 15 (D.C. 2000); Campbell Inns, Inc. v. Banholzer, Turnure & Co., 148 Vt. 1, 527 A.2d 1142, 1146 (1987); IAC, Ltd. v. Bell Helicopter Textron, Inc., 160 S.W.3d 191, 200 (Tex. App. 2005)).

15. Here, Delta Apparel is threatened with a potential loss if Farina is allowed to execute the judgment against Delta Apparel in Honduras.

16. In order to execute the judgment in Honduras, Delta Apparel is informed and believes that Honduran officials will enter the Ceiba Textiles plant by any means necessary and

demand that Delta Apparel management satisfy the Honduran judgment. This act will interrupt business and productivity at the Ceiba Textiles plant.

17. Further, this business interruption and public display would damage Delta Apparel's reputation and business goodwill in the textile industry. Delta Apparel has had an exemplary reputation with those in the textile business, and if this judgment is allowed to be unjustly executed against Delta Apparel, other textile companies will think that Delta Apparel has unaddressed problems with Honduran law enforcement. Consequently, Delta Apparel's ability to secure business in the textile industry could be adversely impacted.

18. Finally, if the judgment is executed in Honduras, Delta Apparel will have no means of recouping the money it will lose due to Farina's fraudulent representations to the Honduran court and the Honduran court's erroneous order reflecting Farina's fraudulent representations. If this Court does not enter a temporary restraining order against Farina's execution of the Honduran judgment, Delta Apparel will be forced to pay over \$230,000 to Farina in Honduras for complying with the California Tax Board's orders in the United States.

LIKELIHOOD OF SUCCESS ON THE MERITS

19. To demonstrate a likelihood of success on the merits, "the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise the existence of such a right." Levine, 367 S.C. at 465, 626 S.E.2d at 42 (internal quotation omitted). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Levine, 367 S.C. at 466, 626 S.E.2d at 42; *see also* AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (S.C. App. 2009).

20. The threshold for meeting the requisite of a likelihood of success on the merits is not exacting. For example, the court in Levine held that the plaintiff's prima facie showing that she was protected by the agreement she sought to enforce was sufficient to show a likelihood of success on the merits. Levine, 367 S.C. at 465-66, 626 S.E.2d at 42.

21. Delta Apparel clearly meets the threshold requirement for showing a likelihood of success on the merits. Indeed, the amount awarded in the Honduran judgment alone presents a fair question as to the legitimacy of the court's order because the \$230,039.78 judgment far exceeds the mere \$22,426.37 levied from Farina's earnings by Delta Apparel.

22. Because it is clear that Delta Apparel was simply following the mandate of the California Tax Board when it withheld a percentage of Farina's earnings, and because Farina would be unjustly enriched by a payment in excess of \$230,000, Delta Apparel has certainly demonstrated a likelihood of success on the merits.

23. In addition, the Honduran court entered judgment against Delta Apparel based on Farina's fraudulent misrepresentation that he was an employee of Ceiba Textiles, Delta Apparel's Honduran legal entity, rather than Delta Apparel, Inc. However, it is clear from Farina's employment file that he was considered a Delta Apparel employee, rather than a Ceiba employee. Therefore, the Honduran judgment was obtained through fraud, and Delta Apparel will likely succeed in overturning the Honduran judgment in the United States.

NO ADEQUATE LEGAL REMEDY

24. Delta Apparel simply has no adequate remedy at law. As has been recognized, a temporary injunction is proper when necessary to preserve the subject of controversy. *See, e.g., Levine*, 626 S.E.2d at 42 (lack of an adequate legal remedy requisite satisfied where plaintiff could lose her career before claims were finally adjudicated). Without a temporary injunction

Farina will execute the erroneous judgment against Delta Apparel, and Delta Apparel will have no recourse because all actions will occur through the Honduran court system.

25. Monetary damages alone will not remedy the harm Farina could potentially cause Delta Apparel. Indeed, Farina's execution of the Honduran judgment, if allowed, could result in Honduran officials storming in to the Ceiba Textiles plant, demanding money for the judgment, and unreasonably frightening and causing alarm to employees and plant management.

26. Further, allowing Farina to execute the fraudulently obtained Honduran judgment would be against public policy. Other ex-patriots employed by Delta Apparel could be inclined to follow Farina's lead by filing fraudulent lawsuits in a foreign country seeking damages and protection under that foreign country's laws, when, based on their employment status, they are employed in the United States.

27. Ordering Farina to refrain from executing the judgment or obtaining the \$230,039.78 in any way, will simply require Farina to do what he should have done in the first place -- litigate the dispute in an American court.

28. The issuance of an injunction prohibiting Farina from executing the Honduran judgment will in all respects serve the public good. It will promote proper adjudication of disputes between American employers and American ex-patriot employees, and it will prevent an ex-patriot from getting away with refusal to pay his taxes.

WHEREFORE, Delta Apparel respectfully requests that the Court enter a temporary restraining order and preliminary injunction prohibiting Daniel Farina from executing, obtaining, accepting, spending, depositing, investing, or in any way claiming ownership of the \$230,039.78 ordered in the Honduran judgment, and that the Court grant such other and further relief as the Court may deem just and proper.

4
May 8, 2010

Samuel W. Outten

Samuel W. Outten (SC Bar #4295)

Catherine R. Atwood (SC Bar #77367)

WOMBLE CARLYLE SANDRIDGE & RICE

A Professional Limited Liability Company

Post Office Box 10208

Greenville, SC 29603-0208

Telephone: (864) 255-5421

Fax: (864) 239-5852

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated,

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-_____

AFFIDAVIT OF DEB MERRILL

PERSONALLY APPEARED before me, Deborah Merrill, who being duly sworn

deposes and states as follows:

1. I am employed by Delta Apparel, Inc., in its corporate offices located in Greenville, South Carolina.

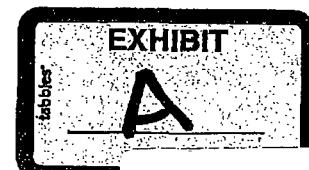
2. I am familiar with the underlying facts and matters alleged in the Summons and Complaint captioned *Delta Apparel, Incorporated v. Daniel G. Farina*.

3. Delta Apparel terminated Mr. Farina on July 10, 2008. The parties reached an agreement for Delta Apparel to pay Mr. Farina severance totaling \$41,022.92.

4. Delta Apparel withheld earnings from Mr. Farina's severance compensation pursuant to an Earnings Withholding Order ("Withholding Order") issued by the California Franchise Tax Board in an amount equal to \$9,673.63. The Withholding Orders issued to Delta Apparel are attached to the Complaint as Exhibit A.

5. Upon information and belief, Delta Apparel was legally required to withhold this sum from Mr. Farina's severance payment.

6. Mr. Farina filed an action in Honduras claiming that he was an employee of Ceiba Textiles S de RL, one of Delta Apparel's Honduran legal entities, that he was wrongfully



terminated, and that he was owed in excess of \$57,984.14 in unpaid severance and salaries under Honduran employment law.

7. Mr. Farina has never been an employee of Ceiba Textiles S de RL. Rather, Mr. Farina was an American employee of Delta Apparel working as an ex-patriot in Honduras.

8. Upon information and belief, the Honduran court made an award to Mr. Farina in the amount of \$230,039.78. That decision is currently on appeal to the Honduran Court of Appeals.

9. Based upon my knowledge and experience of doing business in Honduras, I am informed and believe that the Honduran government will pursue collection of this judgment after it is entered.

10. Delta Apparel will, in essence, be forced to pay this amount to Mr. Farina in Honduras.

11. Unless this Court issues an order prohibiting Mr. Farina from spending or otherwise using these funds, Delta Apparel will not be able to recover these amounts in this action in the Court of Common Pleas, County of Greenville, State of South Carolina.

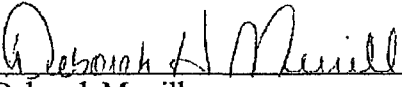
12. Because Delta Apparel withheld these sums from Mr. Farina pursuant to lawful orders from the State of California Franchise Tax Board, Mr. Farina would be unjustly enriched if he were allowed to retain these funds.

13. If Mr. Farina is not ordered to hold these funds until this matter can be litigated, Delta Apparel will likely never recover these funds and will be damaged to that extent.

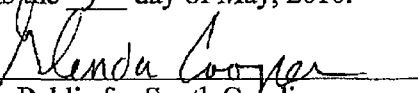
14. In addition, if this dispute is not handled in a United States court, Delta Apparel could suffer irreparable harm because other ex-patriots employed by Delta Apparel could be

inclined to follow Mr. Farina's lead by filing fraudulent lawsuits in a foreign country seeking damages and protection under that foreign country's laws.

AFFIANT FURTHER SAYETH NAUGHT.


Deborah Merrill

SWORN to and subscribed before
me this the 3rd day of May, 2010.


Notary Public for South Carolina
My commission expires: 12-23-2018



OFFICIAL SEAL
GLENDA COOPER
Notary Public State of South Carolina
My Commission Expires December 23, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-3597

2010 JUL 13 A 8:08

**MEMORANDUM IN SUPPORT OF
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

Delta Apparel, Incorporated ("Delta Apparel") submits the following memorandum of law in support of its Motion for a Temporary Restraining Order against Daniel G. Farina ("Farina"), enjoining him from executing, obtaining, accepting, spending, depositing, investing, or in any way claiming ownership of the \$230,039.78 ordered in an Honduran judgment dated September 1, 2009.

STATEMENT OF FACTS

On October 16, 2006, Delta Apparel hired Farina as the General Manager of its Ceiba Textiles S de RL ("Ceiba Textiles") plant in Villanueva, Honduras. Farina was hired as an employee of Delta Apparel, working as an expatriate in Honduras.

On or about April 20, 2007, Delta Apparel began receiving Earnings Withholding Orders ("Withholding Orders) from the State of California Franchise Tax Board. Between April 2, 2007

and October 29, 2008, Delta Apparel received three Withholding Orders from the California Franchise Tax Board stating that Farina was delinquent in the amounts of \$17,816.29, \$20,824.68, and \$6,153.42, respectively. The Withholding Orders required Delta Apparel to begin withholding 25 percent of Farina's weekly disposable earnings beginning with the first pay period that would end at least 15 days after Delta Apparel received the Withholding Order.

SCANNED

ENTERED COMPUTER

Between August 15, 2007 and July 15, 2008, Delta Apparel levied Farina's disposable earnings a total of eleven times, withholding 25 percent from eleven paychecks.

On or about July 10, 2008, Delta Apparel terminated Farina's employment. Pursuant to that termination, on August 8, 2008, Farina signed a Solvency Settlement and Effective Payment Letter, accepting \$41,022.92 as full severance payment corresponding to labor days covered from October 16, 2007 up to July 10, 2008. On August 15, 2008, pursuant to the California Tax Board mandate, Delta Apparel withheld 25 percent, or \$9,673.63, from its severance payment of \$41,022.92 to Farina.

On or about October 14, 2008, Farina filed suit against Ceiba Textiles in Honduras claiming that he was an employee of Ceiba Textiles, that he was wrongfully terminated, and that he was owed \$57,984.14 in unpaid severance and salaries under Honduran employment law. On September 1, 2009, the Honduran court ruled in Farina's favor, ordering Ceiba Textiles to pay Farina \$57,984.14 in unpaid severance salaries prior to Farina's termination and \$172,055.64 as damages and losses for unpaid salaries for a total of thirteen months and twenty days as a result of his wrongful termination. The judgment totaled \$230,039.78. Ceiba Textiles, through Delta Apparel, has appealed the Honduran judgment, and that appeal is currently pending.

LEGAL STANDARD

This Court has discretion to grant a temporary injunction, and in determining whether the requisites underlying such relief are present "narrow and artificial rules" should not be employed. Levine v. Spartanburg Regional Services District, Inc., 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). A temporary/preliminary injunction is an appropriate remedy where the moving party shows:

- (1) it would suffer irreparable harm if the injunction is not granted;
- (2) it will likely succeed on the merits of the litigation; and
- (3) there is an inadequate remedy at law.

Scratch Golf Company v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *see also* Levine, 367 S.C. at 464, 626 S.E.2d at 41.

ARGUMENT

A. Personal Jurisdiction

In order to issue a temporary restraining order against Farina, this Court has an obligation to determine that there is a basis for exercising personal jurisdiction over the defendant. Farina has established minimum contacts with South Carolina through his employment with Delta Apparel, whose corporate headquarters are located here, and therefore, this Court's exercise of personal jurisdiction over him is proper. Pursuant to the South Carolina long-arm statute, this Court has specific jurisdiction over Farina based on Farina's contacts with Greenville, South Carolina. Traditionally, courts have conducted a two-step analysis to determine whether specific jurisdiction is proper: (1) determine if the long-arm statute applies; and (2) determine whether the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. Power Prods. & Servs. Co. v. Kozma, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct. App. 2008). Recently, however, courts have compressed the analysis into a due process assessment only. Cribb v. Spatholt, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct. App. 2009). Thus, the sole question is whether the exercise of personal jurisdiction would violate Farina's due process. The answer to that question is no.

"Due process requires a defendant possess minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice." Id. (internal citations omitted). In the present case, Farina's employment with Delta Apparel,

whose corporate headquarters are located in Greenville, South Carolina, establishes the minimum contacts necessary for this Court to exercise personal jurisdiction over him. Not only was Farina aware that he was employed by a company whose headquarters are located in Greenville, SC, he also had telephone conversations and corresponded by email with Delta Apparel's senior leadership in Greenville. If Farina had questions about his employee benefits, he contacted Vice President and Secretary responsible for Human Resources for Delta Apparel, Sam Watson in Greenville, SC. See Supplemental Affidavit of Deborah Merrill, attached as **Exhibit A**. If Farina had questions or issues regarding financial matters, such as the assets he was purchasing in Honduras, he would speak to Deborah Merrill, the Vice President, Chief Financial Officer and Treasurer of Delta Apparel in Greenville. Id. Finally, all communications regarding the Ceiba Textiles plant start-up and plant production levels occurred between and among Farina, Dennis Carrington, Delta Apparel's Senior Vice President of Manufacturing, and Bobby Sayer, Director of Planning and Logistics. Id. Like Ms. Watson and Ms. Merrill, Mr. Sayer's office is also located in Greenville, SC. Id. Therefore, it is clear that Farina had consistent contacts with the management team at the Greenville headquarters of Delta Apparel, and for that reason, he could have expected to be haled into court in South Carolina. Thus, this Court's exercise of personal jurisdiction over Farina is proper.

B. Court's Authority to Issue a Temporary Restraining Order

Where a litigant threatens to divest a court of jurisdiction, the court "has a right—indeed, a duty—to preserve its ability to do justice between the parties in cases that are legitimately before it." Quaak v. Klynveld Peat Marwick Goerdeler Bdijsrevisoren, 361 F.2d 11, 20 (1st Cir. 2004). Because Farina was a United States employee, working for Delta Apparel as an expatriate in its Honduras plant, this case is properly before this Court.

This Court's issuance of a temporary restraining order enjoining Farina from executing the Honduran judgment can be likened to a federal court's power to issue an anti-suit injunction. "[W]hen the availability of the domestic courts is necessary to a full and fair adjudication of the plaintiff's claims, a court should preserve that forum." Umbro Intern. Inc. v. Japan Professional Football League, 1997 WL 33378853, at *4 (Oct. 2, 1997). In the present case, Delta Apparel cannot receive a full and fair adjudication of its claims in Honduras because Farina obtained a judgment against Delta Apparel's subsidiary, Ceiba Textiles, by fraudulently misrepresenting his status as an employee of the Honduran company. Thus, in the interests of justice, this Court has the power to enjoin Farina from executing the Honduran judgment in Honduras or elsewhere.

Although the Fourth Circuit has never addressed the legal standard for issuing an anti-suit injunction, the Fifth, Seventh, and Ninth Circuits have identified five occasions when a foreign suit may be enjoined: when (1) a policy of the forum issuing the injunction would be frustrated; (2) the litigation will be vexatious or oppressive; (3) the issuing courts *in rem* or *quasi in rem* jurisdiction is threatened; (4) other equitable considerations would be prejudiced; or (5) adjudication of the same issue in separate actions would result in delay, inconvenience, expense, inconsistency, or a race to judgment. In re Unterweser Reederei GmbH, 428 F.2d 888, 890 (5th Cir. 1970); Seattle Totems Hockey Club, Inc. v. National Hockey League, 652 F.2d 852, 856 (9th Cir. 1981). The present case implicates the first and fourth scenarios.

First, the policy of South Carolina would be frustrated if this Court does not issue an order enjoining Farina from executing the Honduran judgment. Sitting by and doing nothing while Farina executes a fraudulently obtained judgment in Honduras is against the public policy of this State and the United States. Farina was a United States employee working as an expatriate in Honduras. If Farina is allowed to execute the judgment in Honduras, other

expatriates employed by Delta Apparel could be inclined to file fraudulent lawsuits in a foreign country in an attempt to receive a more favorable forum than in the United States. Ordering Farina to refrain from executing the judgment will simply require Farina to do what he should have done in the first place – litigate the dispute in an American court.

In addition, this Court has the authority to grant this Motion because the fourth occasion for issuing an anti-suit injunction is implicated – the equities weigh in favor of Delta Apparel. A temporary injunction is an equitable remedy. As discussed in more detail below, Delta Apparel has met its burden in proving the necessary elements for a temporary injunction, and thus, without the issuance of this Order, Delta Apparel would suffer irreparable harm and prejudice. Delta Apparel does not ask this Court to divest the Honduran court of jurisdiction over a pending dispute, nor does it ask this Court to impeach the ruling of the Honduran court. Rather, Delta Apparel asks this Court to exercise its *in personam* jurisdiction over Farina and prevent him from executing on this judgment until this matter can be litigated in a court in the United States.

C. Irreparable Harm

Under South Carolina law, even just the *potential* loss of business and/or business goodwill is sufficient to show irreparable harm. See Levine, 367 S.C. at 464-65, 626 S.E.2d at 42 (citing District of Columbia v. E. Trans-Waste of Md., Inc., 758 A.2d 1, 15 (D.C. 2000); Campbell Inns, Inc. v. Banholzer, Turnure & Co., 148 Vt. 1, 527 A.2d 1142, 1146 (1987); IAC, Ltd. v. Bell Helicopter Textron, Inc., 160 S.W.3d 191, 200 (Tex. App. 2005)).

Here, Delta Apparel is threatened with a potential loss if Farina is allowed to execute the judgment against Delta Apparel in Honduras. In order to execute the judgment in Honduras, Delta Apparel is informed and believes that Honduran officials will enter the Ceiba Textiles plant and demand that Delta Apparel management satisfy the Honduran judgment. This will

interrupt business and productivity at the Ceiba Textiles plant. This business interruption and public display would likely damage Delta Apparel's reputation and business goodwill in the textile industry. Consequently, Delta Apparel's ability to secure business in the textile industry could be adversely impacted.

In addition, if the judgment is executed in Honduras, Delta Apparel will have no means of recovering the money it will lose due to Farina's fraudulent representations to the Honduran court and the Honduran court's erroneous order based upon Farina's fraudulent representations. Without the intervention of this Court, Delta Apparel may be forced to pay over \$230,000 to Farina in Honduras for complying with lawful orders of the State of California.

D. Likelihood of Success on the Merits

To demonstrate a likelihood of success on the merits, "the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise the existence of such a right." Levine, 367 S.C. at 465, 626 S.E.2d at 42 (internal quotation omitted). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Levine, 367 S.C. at 466, 626 S.E.2d at 42; *see also* AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (S.C. App. 2009).

The threshold for meeting the requisite of a likelihood of success on the merits is not exacting. For example, the court in Levine held that the plaintiff's prima facie showing that she was protected by the agreement she sought to enforce was sufficient to show a likelihood of success on the merits. Levine, 367 S.C. at 465-66, 626 S.E.2d at 42.

Delta Apparel clearly meets the threshold requirement for showing a likelihood of success on the merits. Indeed, the amount awarded in the Honduran judgment alone presents a

fair question as to the legitimacy of the court's order because the \$230,039.78 judgment far exceeds the \$22,426.37 levied from Farina's earnings by Delta Apparel. Because it is clear that Delta Apparel was simply following the mandate of the California Tax Board when it withheld a percentage of Farina's earnings, and because Farina would be unjustly enriched by a payment in excess of \$230,000, Delta Apparel has certainly demonstrated a likelihood of success on the merits.

In addition, the Honduran court entered judgment against Delta Apparel based on Farina's misrepresentation that he was an employee of Ceiba Textiles, Delta Apparel's Honduran legal entity, rather than Delta Apparel, Inc. However, it is clear from Farina's employment file that he was a Delta Apparel employee, rather than a Ceiba employee. Therefore, the Honduran judgment was obtained through fraud, and Delta Apparel will likely succeed in overturning the Honduran judgment.

E. No Adequate Legal Remedy

As has been recognized, a temporary injunction is proper when necessary to preserve the subject of controversy. *See, e.g., Levine*, 626 S.E.2d at 42 (lack of an adequate legal remedy requisite satisfied where plaintiff could lose her career before claims were finally adjudicated). Without a temporary injunction Farina will execute the erroneous judgment against Delta Apparel, and Delta Apparel will have no recourse because all actions will occur through the Honduran court system.

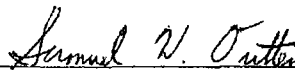
Monetary damages alone will not remedy the harm Farina could potentially cause Delta Apparel. Indeed, Farina's execution of the Honduran judgment, if allowed, could result in Honduran officials storming in to the Ceiba Textiles plant, demanding money for the judgment, and disrupting the business of the plant.

Further, allowing Farina to execute a fraudulently obtained Honduran judgment would be against public policy. Other expatriates employed by Delta Apparel could be inclined to follow Farina's lead by filing fraudulent lawsuits in a foreign country seeking damages and protection under that foreign country's laws, when, based on their employment status, they are employed in the United States. Ordering Farina to refrain from executing the judgment or obtaining the \$230,039.78 in any way, will simply require Farina to do what he should have done in the first place – litigate the dispute in an American court.

CONCLUSION

The issuance of an injunction prohibiting Farina from executing the Honduran judgment will in all respects serve the public good. It will promote proper adjudication of disputes between American employers and their employees, and not allow an American citizen to avoid his lawful obligation to pay taxes.

Respectfully submitted,



Samuel W. Outten (SC Bar #4295)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852

July 2, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated,

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-3597

DOCK IN TIME CANCELLED
JUL 13 10:52 AM
Date 7/13/10

**SUPPLEMENTAL AFFIDAVIT OF
DEBORAH MERRILL**

PERSONALLY APPEARED before me, Deborah Merrill, who being duly sworn deposes and states as follows:

1. I am Vice President, Chief Financial Officer and Treasurer of Delta Apparel, Inc. ("Delta Apparel"), and I work in Delta Apparel's corporate offices located in Greenville, South Carolina.

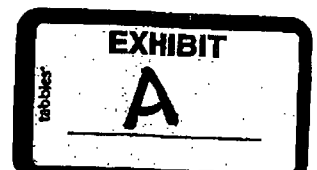
2. I am familiar with the underlying facts and matters alleged in the Summons and Complaint and Motion for Temporary Restraining Order captioned *Delta Apparel, Incorporated v. Daniel G. Farina*.

3. The Greenville, South Carolina office of Delta Apparel serves as the corporate headquarters for Delta Apparel.

4. Delta Apparel's executive leadership is based in Greenville, South Carolina.

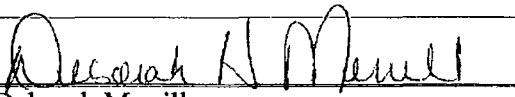
5. Daniel Farina was an employee of Delta Apparel.

6. Bob Humphreys, Chairman and CEO of Delta Apparel and Martha "Sam" Watson, Delta Apparel's Vice President (responsible for Delta Apparel, Inc. Human Resources) and Secretary, interviewed Mr. Farina and discussed the requirements of the position with him. Mr. Humphreys contacted the reference provided by Mr. Farina to discuss Mr. Farina's past experience. Mr. Humphreys and Ms. Watson made the final decision regarding the employment of Mr. Farina.

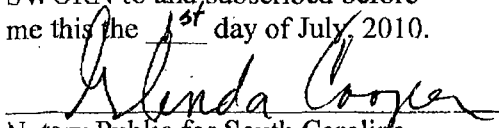


7. Ms. Watson's office is located in Greenville, South Carolina.
8. Bob Humphreys's office is located in Greenville, South Carolina.
9. During his employment and through his termination, if and when Mr. Farina had questions regarding his employment, employee benefits, his termination, and his severance, communications would take place with Ms. Watson.
10. Mr. Farina had discussions regarding his responsibilities and the status of the start-up of the Ceiba Textiles plant and production levels with Mr. Humphreys and Denis Carrington, Senior Vice President of Manufacturing of Delta Apparel.
11. Mr. Farina had discussions regarding financial matters relating to the Ceiba Textiles facility, including the equipment he was purchasing for the start-up of the Ceiba Textiles plant with me.
12. Ms. Watson made the final decision to terminate Mr. Farina's employment with Delta Apparel.
13. After Mr. Farina initiated the lawsuit in Honduras, Mr. Humphreys made attempts to contact Mr. Farina to discuss the situation and attempt to resolve the issue.
14. Mr. Farina is aware that Delta Apparel's headquarters are located in Greenville, South Carolina, and Mr. Farina had contact with individuals in the Greenville, South Carolina office on a regular basis.

AFFIANT FURTHER SAYETH NAUGHT.


Deborah Merrill

SWORN to and subscribed before
me this the 1st day of July, 2010.


Notary Public for South Carolina

My commission expires: 12/23/2018



OFFICIAL SEAL
GLENDA COOPER
Notary Public, State of South Carolina
My Commission Expires December 23, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated

Plaintiff,

v.

Daniel G. Farina,

Defendant.

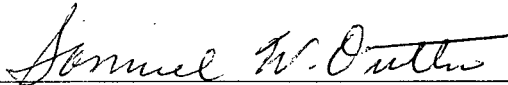
IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-3597

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUN 10 2010

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing has been scheduled before The Honorable Charles B. Simmons, Jr. on the plaintiff's Motion for Temporary Restraining Order, for **Wednesday, June 9, 2010 at 2:30 o'clock p.m.** at the **Greenville County Courthouse, Third Floor, 305 East North Street, Greenville, South Carolina 29601.**


Samuel W. Outten (SC Bar #4295)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated

Plaintiff,

v.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2010-CP-23-3597

**MOTION FOR ENTRY OF DEFAULT
AND DEFAULT JUDGMENT**

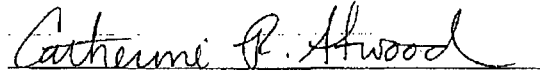
The Plaintiff, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, moves the Court for an Entry of Default and for Default Judgment against Defendant, Daniel G. Farina, on the grounds that the Defendant has failed to plead or appear and is subject to Default Judgment as provided by Rule 55 and as shown by the Affidavit filed in this action.

Accordingly, the Plaintiff respectfully requests that the Court schedule a hearing on damages and award all sums set forth by Plaintiff at that hearing.

Notice of this Motion and Affidavit of Default is being served upon Defendant at his last known address.

This the 5th day of July, 2010.

Womble Carlyle Sandridge & Rice, PLLC



Samuel W. Outten (SC Bar #4295)

Catherine R. Atwood (SC Bar #77367)

WOMBLE CARLYLE SANDRIDGE & RICE

A Professional Limited Liability Company

Post Office Box 10208

Greenville, SC 29603-0208

Telephone: (864) 255-5421

Fax: (864) 239-5852

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Delta Apparel, Incorporated,

Plaintiff,

vs.

Daniel G. Farina,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. 2010-CP-23-3597

20 JUL 22 P 2:40

FILED-CLERK OF COURT
GREENVILLE SC 29601

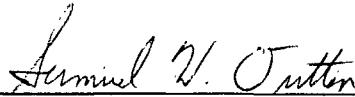
AFFIDAVIT OF DEFAULT

PERSONALLY appeared before me the undersigned, who, on oath, states as follows:

1. He is the attorney for Plaintiff in the above captioned lawsuit;
2. Daniel G. Farina was served with the Summons and Complaint on May 6, 2010;
3. An Affidavit of Service was filed with the Clerk of Court on May 13, 2010;
4. No Notice of Appearance, Answer or other responsive pleading has been served upon him by Daniel G. Farina;
5. Daniel G. Farina is not, to his knowledge, a minor, incompetent or in military service; and
6. Upon information and belief Daniel G. Farina has failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure

SCA 11-15

Respectfully Submitted,



Samuel W. Outten (SC Bar No. 4295)

Email: soutten@wcsr.com

WOMBLE CARLYLE SANDRIDGE & RICE

A Professional Limited Liability Company

550 S. Main Street, Suite 400

P.O. Box 10208

Greenville, SC 29603

Tel: (864) 255-5400

Fax: (864) 239-5865

Attorney for Plaintiff

Subscribed and sworn to before me
this 22 day of July, 2010.



Julie A. Curll

Notary Public for South Carolina

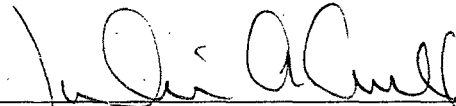
My commission expires 8/12/2014

CERTIFICATE OF SERVICE

2010-CP-23-3597

The undersigned hereby certifies that, on the nd22 day of July, 2010, (s)he mailed a copy of the attached **Affidavit of Default** by depositing same in United States mail, proper postage, affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

Daniel G. Farina
9341 Parrot Ave.
Downey, CA 90240


Julie A. Curll

Legal Assistant to Samuel W. Outten

FILED-CLERK OF COURT
COUNTY OF S.F.
JUL 22 2010

310 JUL 22 P 2:40

58

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2010-CP-23-3597.

2010 MAY 13 P 4:36

Plaintiff:

Delta Apparel Incorporated

vs.

Defendant:

Daniel G Farina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 14 2011

For: Samuel Outten

Womble Carlyle Sandridge & Rice

Received by SERVE-ONE, INC. to be served on Daniel G Farina, 9341 Parrot Avenue, Downey, CA 90240. I, GARY HANSEN, being duly sworn, depose and say that on the 6th day of MAY, 2010 at 5:47 p.m., executed service by delivering a true copy of the Notice of Hearing, Certificate of Service, Delta Apparel Inc's Motion for Temporary Restraining Order, Affidavit, Motion and Order Information Form and Cover Sheet, Civil Action Cover Sheet, Summons and Complaint, Exhibits in accordance with state statutes in the manner marked below:

() INDIVIDUAL SERVICE: Served personally to the within-named.

☒ SUBSTITUTE SERVICE: By delivering to: PABLO FARINA, as CO_OCCUPANT, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described in the Comments below by serving _____ as _____.

() NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATUS: Y ☒ If Yes, what branch: _____

COMMENTS: COPY MAILED ALSO BY FIRST CLASS MAIL POSTAGE PREPAID
ON MAY 7th, 2010 FROM DOWNEY, CA.

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 7th day of May, 2010 by the affiant who is

Rachael Bodnar
personally known to me. Proved to me on the
basis of satisfactory evidence to be
the person who appears before me.

NOTARY PUBLIC

My Commission Expires: 7-14-2011

GARY HANSEN
PROCESS SERVER # LA CO., #2988
Appointed in accordance with State Statutes

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2010003715



Copyright © 1992-2008 Database Services, Inc. - Process Server's Toolbox V6.3x

SCANNED

ENTERED COMPUTER

July 26, 2011

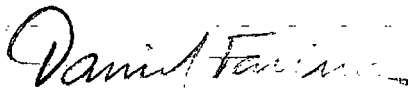
The Honorable Paul B. Wickensimer
Clerk of Court, Greenville County
305 E. North St.
Greenville, SC 29601

Re: Delta Apparel, Incorporated v. Daniel G. Farina
C.A. No. 2010-CP-23-3597

Dear Sir:

I am enclosing my motion for dismiss, my affidavit in support of my motion and a copy of my Arizona voter registration

Sincerely,



Daniel G Farina
1201 E Fairway Dr, Apt 122
Douglas, AZ 85607

CC: Catherine Atwood

1 STATE OF SOUTH CAROLINA
2 COUNTY OF GREENVILLE

3
4 Delta Apparel, Incorporated

5 Plaintiff,

6 vs.

7 Daniel G. Farina

8 Defendant

) IN THE COURT OF COMMON PLEAS
) CA No. 2010-CP-23-3597
)
)
)

MOTION TO DISMISS

9
10 Pursuant to 60(b) Rules, Defendant hereby moves the Court to dismiss
11 Plaintiff's Complaint with prejudice. The bases for this Motion are set forth
12 in the accompanying Affidavit.
13
14
15
16
17

Dated this 26 of July, 2011

18 Daniel G Farina
19 1201 E Fairway Drive, #122
20 Douglas, AZ 85607
21
22
23
24
25
26
27
28

1 STATE OF SOUTH CAROLINA
2 COUNTY OF GREENVILLE

3
4 Delta Apparel, Incorporated) IN THE COURT OF COMMON PLEAS
5 Plaintiff,) C.A. NO. 2010-CP-23-3597
6 vs.) AFFIDAVIT IN SUPPORT
7 Daniel G. Farina) OF MOTION TO DISMISS
8 Defendant)

9
10 FACTS

- 11 1. I am resident of Arizona since April of 2010. (Support by Voter
12 Identification Card from Cochise County, Arizona)
13 2. I was not served on May 6, 2010 in California as the statement of
14 Samuel Outten specifies
15 3. Any return receipt that was presented to the court with Plaintiff's
16 Affidavit of Service dated May 13, 2010 is not signed by me
17 4. I have never been a resident of South Carolina
18 5. I have never been employed in South Carolina
19 6. I have never conducted any business in South Carolina
20 7. There is no relationship between plaintiff and myself that merits a
21 hearing on a Family Court Division in South Carolina

22
23 ARGUMENT

- 24 I. Plaintiff's cannot be awarded a Default Judgment in a case
25 that he cannot show proper proof of service
26 II. I have not had any relationship that could result in a
27 monetary judgment award from a Family Court Division of South
28 Carolina in favor of plaintiff

III. I was employed as General Manager in plaintiff's Honduran subsidiary, Ceiba Textiles SRL, from October 2006 until my termination on June 2008

IV. Any labor matter from that relationship is under the jurisdiction of the labor law of a foreign country, Honduras

V. Plaintiff is using South Carolina legal system to harass me, knowing well that I cannot afford legal representation and/or a personal appearance without losing a significant amount of income, jeopardizing my employment in these uncertain economic times, plus incurring in non-planned expenses.

CONCLUSION

For the reason stated above, Defendant's Motion to Dismiss should be granted.

Dated this 26th day of July, 2011

Daniel G Farina
1201 E Fairway Dr, #122
Douglas, AZ 85607

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2010-CP-23-3597

ORIGINAL

DELTA APPAREL, INCORPORATED)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

DANIEL G. FARINA)

DEFENDANT)

September 1, 2011

Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, Judge.

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

SAMUEL W. OUTTEN, ESQ.

Attorney for the Plaintiff

APRIL HERRON

Official Court Reporter

» > ° < «

Certificate of Reporter7

1 MR. OUTTEN: May it please the Court, Your
2 Honor, I'm Sam Outten, Catherine Outwood and I represent
3 Delta Apparel. This is a motion for default judgment
4 against the defendant, Daniel Farina. I'd like to give
5 the Court a brief statement of the facts of the case.

6 THE COURT: All right.

7 MR. OUTTEN: Daniel Farina was employed by Delta
8 Apparel. He worked for our Honduran facilities, Steven
9 Textiles. At all times he was employed by Delta Apparel,
10 he was never an employee of Steven Textiles. He was
11 terminated, Mr. Farina was terminated on July the 10th,
12 2008. The parties reached an agreement for Delta Apparel
13 to pay \$41,022.92 as severance. At around the same time
14 there was an agreement reached as to the severance
15 package. The California Franchise Tax Board sent Delta
16 Apparel an earnings withhold order. And that order
17 advised that Mr. Farina owed the State of California back
18 taxes. So pursuant to that order, Delta Apparel withheld
19 \$9,673.63 from Mr. Farina's severance pay.

20 Mr. Farina then filed an action in Honduras.
21 Claiming that he was an employee of Steven Textiles and
22 that he was wrongfully terminated and owed him
23 approximately \$57,984.14. This lawsuit was a fraud in the
24 Honduran court because Mr. Farina was never an employee of
25 Steven Textiles, was an employee of Delta Apparel at all

1 times. And he was not entitled to any award under
2 Honduran law because Delta Apparel lawfully withheld sums
3 from his severance payment pursuant to a tax notice which
4 we received from the State of California.

5 The Honduran court made an award to Mr. Farina
6 of the \$57,984.14. Delta Apparel satisfied this judgment
7 and a copy of the check is attached to the affidavit of
8 Deb Merrill, which was filed, I believe, on August 29th.
9 It's attached to Exhibit 1. The check cleared the bank on
10 March 28th, 2011. Delta Apparel also spent \$38,500.00
11 defending the lawsuit Mr. Farina brought in Honduras.
12 Delta Apparel filed a summons and complaint in May of 2010
13 against Mr. Farina alleging that he had perpetrated a
14 fraud on Honduran court and seeking damages for the award
15 he received in Honduras. And for the amount Delta Apparel
16 spent on legal fees defending this case.

17 This summons and complaint was served on
18 Mr. Farina in May of 2010. And that affidavit of service
19 was filed with this court on May the 13th of 2010. Your
20 Honor, we actually served Mr. Farina three different ways.
21 We served him at his last known address, we served him by
22 certified mail and that certified receipt was signed. And
23 we sent a Fed Ex to his address and it was signed and
24 returned. As a practical matter, Your Honor, we know that
25 Mr. Farina was served because he contacted Brian Murphy to

1 represent him and then decided for whatever reason not to
2 retain Mr. Murphy. But as a practical matter we know he
3 was aware of this lawsuit which Delta Apparel filed
4 against him.

5 Mr. Farina never responded to the summons and
6 complaint by motion or by answer. Your Honor, may be
7 aware that within the last month or so he filed a motion
8 to dismiss but he did not timely respond to the summons
9 and complaint. We have filed an affidavit of default on
10 July 22, 2010. When this hearing was set, Your Honor, we
11 sent a notice of hearing to Mr. Farina dated July 27th,
12 2011 which advised him of the date, time and place of this
13 hearing. Now, that notice was sent after we had received
14 correspondence and a motion from Mr. Farina telling us
15 what his address was. So the notice of hearing for this
16 hearing was sent to his last known address and the address
17 in Arizona, which he provided to us.

18 On August 29th, 2011, we filed an affidavit of
19 Deborah Merrill, who was employed by Delta Apparel. And
20 we also served that affidavit on Mr. Farina. In this
21 affidavit, Your Honor, Ms. Merrill states that Delta
22 Apparel paid \$57,984.14 judgment to Mr. Farina and Delta
23 Apparel has paid \$38,500.00 to defend the action in
24 Honduras.

25 Your Honor, Delta Apparel seeks an award from

1 this court of \$96,484.14 based on the testimony of
2 Ms. Merrill. Now, Your Honor, I did not know whether or
3 not you would want to hear live testimony in addition to
4 the affidavit. Ms. Merrill is here in the courtroom with
5 us and can testify if the Court deems that necessary. I
6 believe that her affidavit and the attachments are
7 sufficient evidence upon which this Court in entering a
8 default judgment. But if you'd like to hear live
9 testimony, she's here.

10 THE COURT: I believe that it is sufficient, her
11 affidavit is sufficient, I reviewed it.

12 MR. OUTTEN: Your Honor, I have a Proposed Order
13 if you'd like for me to hand that up.

14 THE COURT: Yes, sir.

15 MR. OUTTEN: May I approach?

16 THE COURT: Yes, sir. All right, I find that
17 Mr. Farina was given proper notice to today's hearing and
18 failed to appear. I find that the plaintiff is entitled
19 to an Order of Default Judgment in this case for
20 \$96,484.14. All right, thank you.

21 MR. OUTTEN: Thank you, Your Honor.

22 (WHEREUPON, the proceedings were concluded.)
23
24
25

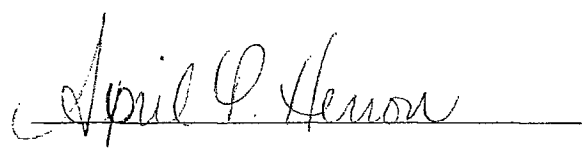
CERTIFICATE OF REPORTER

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
First day of September, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 6, 2012



APRIL P. HERRON, Court Reporter

COPY

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2010CP2303597
	)	
Delta Apparel Incorporated,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Daniel G. Farina,	)	
	)	
Defendant.	)	

September 07, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

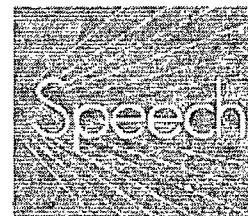
A P P E A R A N C E S:

SAMUEL W. OUTTEN, Esquire
Attorney for the Plaintiff

DANIEL G. FARINA, Pro Se
Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	4			
Certificate of Reporter	16			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
------------	--------------------	-----------	-----------

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

(WHEREUPON, the proceedings begin on the 7th day of November, 2011 at approximately 10:13 a.m.)

THE COURT: All right. Uh, Mr. Farina?

MR. FARINA: Yes.

THE COURT: Yes, sir.

MR. FARINA: Yes, I just want you to vacate a judgement that I have against me because I was not even informed that this matter was in this court. I -- I don't know if you're aware of this. I'm a resident in Arizona. In order to be here, I had to drive almost four hours and fly about almost six. Okay. And I'm working in northern Mexico. That's where my employer is.

And they -- in their papers I received in July, they say that they were serving me in California. I have not been a resident of California since April of 2010. And they filed this in July.

In July of this year, I was in front of my residence in Arizona. That's when I received the first thing that there was a motion for, uh, award some money to them on September 1st. I tried to reach the court before that matter.

1 I sent several letters here. It seems I didn't
2 fill the proper paperwork. The court sent me
3 back proper paperwork. When they sent it back,
4 they said they didn't accept personal checks.
5 Then I had to submit everything back with a
6 money order. That got inside here, I think
7 some time in August or the first of September.
8 And what I'm asking is that they revert that
9 order that they have against me, that award.

10 **THE COURT:** All right. All right. Thank
11 you, sir.

12 Mr. Outten.

13 **MR. OUTTEN:** May it please the court, Your
14 Honor. Sam Outten on behalf of Delta Apparel.
15 Here's the thing, Judge. In July of 2010, we
16 had a hearing in this matter before Judge
17 Simmons. And Mr. Farina contacted Bryan
18 Murphy, who Your Honor probably knows -- he's a
19 fine lawyer -- to represent him at that
20 hearing. For whatever reason, Mr. Murphy was
21 never retained. He and I had two conversations
22 about it. And I think, if my memory serves,
23 that Mr. Murphy showed up at the hearing before
24 Judge Simmons to say he was not going to
25 represent Mr. Farina.

1 But here's the point, 14 months passed
2 between the time that we had that hearing
3 before Judge Simmons. And I appeared before
4 Your Honor on September the 1st to ask for a
5 default judgement. In that 14 months, Mr.
6 Farina did nothing to defend this case. He
7 knew 14 months before we asked this court to
8 grant a default judgement that this case was
9 pending against him and he didn't do anything
10 to defend him.

11 Now, Your Honor may remember the hearing
12 before you on September the 1st, 2011. The
13 only reason I remember is it was my birthday.
14 And the older I get, uh, the less cause to
15 celebrate. But in any event, I remember that
16 hearing. Before that hearing, Your Honor, and
17 I think we filed -- filed those documents with
18 the court, we sent a Notice of Hearing to Mr.
19 Farina at the Arizona address that he had sent
20 to us. So we gave him Notice of Hearing, date,
21 time, place, well in advance of the hearing.

22 We also sent him the affidavit of Ms.
23 Merrill which Your Honor, again, may remember
24 served as a basis for the damages calculation.
25 That too was served on him. Just to be

1 cautious, not only did we send it to the
2 Arizona address that he gave us, we sent it to
3 the California address. Here's my point. We
4 did everything we knew how to do to give him
5 notice of that September the 1st hearing. And
6 for whatever reason, Mr. Farina chose not to
7 attend that hearing.

8 And the final point is, and I know Mr.
9 Farina is not a lawyer, but procedurally where
10 we are is, the only way he can obtain relief is
11 based upon 60(b). I know he put 60(b) in his
12 motion. And that's fine, Your Honor. But
13 there are no grounds alleged for relief under
14 60(b), nor is there any evidence in the record
15 that would support relief under 60(b). So we
16 would respectfully submit to the Court that
17 this motion be denied and that our judgement
18 against him stand.

19 **THE COURT:** All right.

20 **MR. OUTTEN:** Thank you.

21 **THE COURT:** Anything in response, sir?

22 **MR. FARINA:** Yes. The -- the -- regarding
23 that in July of the previous year, that was
24 another matter that really -- it was a
25 temporary restraining order. That one, I did

1 not answer because, uh, the lawyer here wants,
2 like, \$20,000 in advance and I didn't have it.
3 Okay. By the way, I can show the court that I
4 was here for that hearing. They changed the
5 date when I was here and told me what was the
6 time.

7 **THE COURT:** Sir, how long have you been
8 aware of this lawsuit?

9 **MR. FARINA:** Of this now?

10 **THE COURT:** Yes, sir.

11 **MR. FARINA:** The other one was a
12 restraining order for -- to begin with, if you
13 can read in the matter, it was -- it's, uh, --
14 I have, uh, action done in Honduras when I work
15 in Honduras for a company which is a
16 subsidiary. Okay. In that matter, it was
17 represented. I really assume because it --
18 that matter was for \$230,000 or something like
19 that in Honduras. That matter was, uh, a judge
20 found in my favor. The appeal court found in my
21 favor. And the Supreme Court of Honduras, the
22 only thing they did, they removed the punitive
23 damages. I thought once they removed that, it
24 was \$170,000. I thought -- my logical
25 assumption is the temporary restraining has

1 nothing about it. They were asking for
2 \$230,000 plus. The only thing that was awarded
3 was what it was miscalculated.

4 **THE COURT:** Okay.

5 **MR. FARINA:** But that's the thing, it's a
6 matter that is not for South Carolina, you
7 know, the matter in Honduras. They deal that
8 with it. Then this, when I receive this in
9 July, I thought they represent that one again
10 because, like, uh, the motions were different.
11 It was not for -- also, I never knew if the
12 court gave them a temporary restraining order.
13 I was never aware of that.

14 I thought they dropped that matter. The
15 reason he say it was for 14 months without me
16 answering, I thought that matter was dead
17 because they should have had no cause to pursue
18 it. The punitive damages. That was the --
19 these were not sustained in another court,
20 which was even in another country. Okay.

21 **THE COURT:** Okay.

22 **MR. FARINA:** Then in July, and this true,
23 I have tried to be here before September 1st,
24 but I have a copy from the Greenville court. I
25 tried to present the motion. Like I told you,

1 resident in Arizona. It's very hard for me to
2 come to court. I have to stop working and I
3 have travel here and spend a lot of money.
4 That's the reason I said no, no reason for
5 being awarded. Because even if they served me
6 July of last year, really I was a resident of
7 Arizona, not California.

8 Also, I got the motion he said -- the
9 affidavit that he says from Debra Merrill. I
10 just receive it Friday when I came here.
11 Friday, when I came back from work, there was
12 an envelope under my things, it says November
13 3rd. Here is the affidavit of Ms. Merrill.

14 **THE COURT:** All right.

15 **MR. FARINA:** He didn't have it before.

16 **THE COURT:** All right.

17 **MR. FARINA:** They don't have the story
18 very straight here. Okay.

19 **THE COURT:** All right.

20 **MR. FARINA:** And also something else,
21 every time I was sent something from them now
22 that I'm in Arizona, I have no problem in going
23 and getting it. For instance, I go to -- see,
24 all this is for correspondence with this court.
25 I pick up. See. This was left by the UPS and

1 I went to pick it up at UPS. When I'm
2 informed, I act. When I not informed, I don't.
3 That's the case.

4 **THE COURT:** All right. All right.
5 Mr. Outten.

6 **MR. OUTTEN:** Well, Your Honor, just to
7 make sure the record is clear, I know Mr.
8 Farina is not a lawyer. He almost got it
9 right. But the hearing before Judge Simmons
10 was in this case. If you look in the file,
11 you'll see what we were asking for is we were
12 asking Judge Simmons, because Mr. Farina is a
13 United States citizen, we were asking him to
14 issue an order enjoining Mr. Farina from using,
15 disposing of the funds that he was going to
16 receive in the Honduran law suit.

17 And Judge Simmons, for reasons that you can
18 see in the file, he denied that relief. So
19 what happened was is we waited until the award
20 in Honduras was filed and we paid the Honduran
21 judgement for Mr. Farina. That, too, is a part
22 of the record in this case. After that, we
23 moved for a default judgement, then we came
24 before Your Honor to get a default judgement
25 and to set damages.

1 Now again, 14 months after Mr. Farina knew
2 the lawsuit had been filed against him because
3 he talked with a lawyer, at least, and said he
4 did, about defending it, but that never
5 happened. But there's no question that with
6 regard to the hearing before you on September
7 the 1st, the motion we filed for default
8 judgement, affidavit of Ms. Merrill, all those
9 things were sent to the Arizona address that
10 Mr. Farina claims it should have been sent.
11 All of that is in the record, in the file
12 before you, Your Honor.

13 So the time for Mr. Farina to litigate
14 service, whatever issues has come and gone.
15 That time was September the 1st before Your
16 Honor. And there was no question that he was
17 given notice of that hearing.

18 **THE COURT:** All right. This is what I
19 want to know from you, sir, tell me -- I want
20 to know your correct present address.

21 **MR. FARINA:** It is 1201 East Fairway
22 Drive, Apartment 122.

23 **THE COURT:** 122? Okay.

24 **MR. FARINA:** Yes. Douglas.

25 **THE COURT:** What?

1 **MR. FARINA:** Douglas, D-O-U-G-L-A-S,
2 Arizona, 85607. Excuse me, Your Honor, that's
3 the address the court has in the file.

4 **THE COURT:** Okay. All right. I just
5 wanted to --

6 **MR. FARINA:** By the way, they sent it to,
7 the wrong one.

8 **THE COURT:** Okay. Here's what I'm going
9 to do. I'm going to take a look at some of the
10 documents that are in the file and I'll be
11 issuing my decision shortly. All right. Thank
12 you.

13 **MR. FARINA:** Okay.

14 **MR. OUTTEN:** Thank you, Your Honor.

15 **MR. FARINA:** Excuse me. Do you need that
16 I was here in the first audience? My airline
17 ticket that I was here?

18 **THE COURT:** Okay. All right. All right.
19 That's noted. We don't need it. I don't need
20 it.

21 **MR. FARINA:** You need it?

22 **THE COURT:** No, I do not need it.

23 **MR. FARINA:** I was in that audience, but I
24 was flying when they change the date.

25 **THE COURT:** All right. All right.

1 **MR. OUTTEN:** Your Honor, one additional
2 point, if I may.

3 **THE COURT:** Yes, sir.

4 **MR. OUTTEN:** I thank the Court for
5 indulging me, but Notice of Hearing is in the
6 file in this case. It gives notice of a
7 Thursday, September 1st hearing, the address of
8 this courthouse. And if you look over at the
9 Certificate of Service, it was sent -- and this
10 was over a month before the hearing, Your Honor
11 -- and it was sent to the Douglas, Arizona
12 address that Mr. Farina just represented to the
13 court where he lives.

14 So respectfully, Your Honor, I know you
15 want to look through the documents. I'm not
16 asking you to change that. But I am saying if
17 you looked at the Notice of Hearing, we sent it
18 over a month before that to that address.
19 There's nothing in the record to indicate that
20 he didn't get that. Certainly, a month is
21 sufficient notice.

22 **MR. FARINA:** Excuse me. I said that is
23 the first notice that I have. I'm tried to
24 reach the court. The court tried to reach me
25 back, returning my checks. As a matter of

1 fact, here, the last thing from this court is
2 dated September 1st. I'm trying to reach them
3 in that case with that audience. I was trying
4 to -- not to have to come here.

5 **THE COURT:** All right. Thank you, sir.

6 **MR. OUTTEN:** Thank you, Your Honor.

7 **THE COURT:** Thank you.

8 (WHEREUPON, the proceedings conclude at
9 approximately 10:27 a.m.)
10
11
12
13

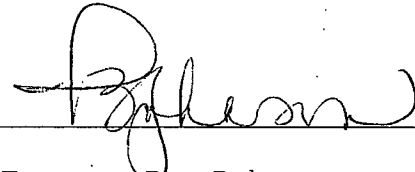
CERTIFICATE

16

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 3rd day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

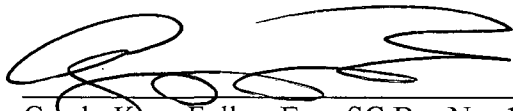
A handwritten signature in cursive script, appearing to read 'T. Johnson', is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

Certificate of Counsel

Candy M. Kern-Fuller, Attorney for Appellant, does hereby certify, pursuant to Rule 210 of the SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Candy Kern-Fuller, Esq. SC Bar No. 11392

UPSTATE LAW GROUP, LLC

200 E. Main Street

Easley, SC 29640

(864) 855-3114

(864) 855-3446 (facsimile)

Attorney for Appellant

Dated: December 7, 2012

RECEIVED

JAN 23 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

C.A. NO.: 2010-CP-23-03597

Delta Apparel Respondent,

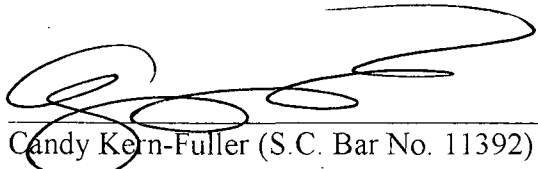
v.

Daniel G. Farina Appellant.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the Record on Appeal was served upon Respondent by depositing a true and correct copy thereof in the United States Mail, proper postage affixed thereto, on the same day addressed to

Mr. Samuel W. Outten, Esq., Attorney for Respondent
P.O. Box 10208
Greenville, SC 29603


Candy Kern-Fuller (S.C. Bar No. 11392)

UPSTATE LAW GROUP, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114 (Ph)

(864) 855-3446 (Fax)

Candy@UpstateLawGroup.com

December 7, 2012

ATTORNEY FOR APPELLANT

DEC 12 2012

Court of Appeals