

RECEIVED

APR 15 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Appellate Case No. 2012-213453

2012-CP-23-0314

Jeff Yelton, ...Appellant,

v.

ScanSource, Inc., ...Respondent.

Record on Appeal

VOLUME 1 of 3

Brian P. Murphy
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400

Attorney for Appellant

William H. Foster
Carmen Thomas
Nelson, Mullins, Riley & Scarborough, LLP
P.O. Box 1004
Greenville, SC 29603
(864) 250-2300

Attorneys for Respondent

INDEX
VOLUME 1

Orders

Preliminary Injunction	4
Temporary Restraining Order	9
Order of Reference	12
Amended Order of Reference	13
Order on Motion for Contempt re Violation of TRO	15
Consent Amended Confidentiality Order	18
Consent Order on Protocol for Discovery	30

Pleadings

Plaintiff's Summons and Complaint	40
Defendant's Answer, Affirmative Defenses and Counterclaims	47
Plaintiff's Response to Defendant's Counterclaims	120
Notice of Appeal to Circuit Court	131
Notice of Appeal to Court of Appeals	132

Transcripts

Transcript of Hearing January 27, 2012	139
Transcript of Hearing June 19, 2012	180
Transcript of Hearing August 31, 2012	186
Transcript of Hearing October 2, 2012	234
Scott Benbenek Deposition Excerpts	272

Exhibits and other materials or documents

Motion for TRO and Preliminary Injunction	288
Plaintiff's Opposition documents regarding Motion for TRO	348

VOLUME 2

Plaintiff Opposition to Defendant's Motion for TRO and Prelim. Inj.	396
Defendant's 9/17/12 submission re Motion for Prelim. Inj.	589
Defendant's documents in support of Motion for Prelim Inj.	594
Plaintiff's 9/21/12 Affidavit	788
Plaintiff's Response to Defendant's Submission re Prelim. Inj.	798
Defendant's Reply to Plaintiff's Memo in Opp. to Motion Prelim. Inj.	830
Plaintiff's Submission re Damages	855

VOLUME 3

Petition for Rule to Show Cause for Civil Contempt	869
Plaintiff Documents in Opposition to Rule to Show Cause	1036
Plaintiff Additional Docs in Opposition to Rule to Show Cause	1073
January 28, 2012 e-mails	1091
February 13, 2012 e-mails	1104
February 14, 2012 e-mails	1106
Special Referee letter to S. Erwin 2/10/12.	1109
S. Erwin response to Special Referee 2/13/12	1111
Special Referee letter to Harper 2/14/12	1113
Erwin response to Special Referee 2/15/12	1114
Thomas e-mail and attachments 2/15/12	1116

3/16/12 - 4/5/12 e-mails among counsel and Special Referee	1148
October 1, 2012 e-mails	1160
October 8, 2012 W.H. Foster e-mail with draft order	1163
October 8 and 16 e-mails between counsel and Special Referee	1168
Certificate of Counsel	1173

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH
WASHINGTON, DC

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

J.D. QUATTLEBAUM
DIRECT DIAL NUMBER 864.240.3249
EMAIL jquattlebaum@hsblawfirm.com

October 26, 2012

VIA E-MAIL AND U.S. MAIL

William H. Foster, Esquire
Nelson Mullins Riley & Scarborough LLP
Ninth Floor
104 South Main Street
Greenville, SC 29601

Brian P. Murphy, Esquire
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

Re: Jeff Yelton v. ScanSource, Inc.
C.A. No.: 2012-CP-23-0314

Dear Bill and Brian:

Enclosed please find a filed-stamped copy of the signed Order regarding Defendant's Motion for Preliminary Injunction. Should you have any questions regarding this Order, please contact me.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.



J.D. Quattlebaum

JDQ:jmb
Enclosures

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Jeff Yelton,)

Plaintiff,)

vs.)

ScanSource, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-23-0314

ORDER

2012 OCT 26 P 2:12

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

This matter is before the Special Referee on Motion by Defendant ScanSource, Inc. ("ScanSource") for a Preliminary Injunction pursuant to South Carolina Rule of Civil Procedure 65. On February 8, 2012, the Court issued a Temporary Restraining Order in this case. By separate Order of Reference also dated February 8, 2012, the Court appointed the undersigned as Special Referee to rule on Defendant's Motion for Preliminary Injunction.¹ After allowing additional discovery at the request of Plaintiff and considering all submissions and arguments from both parties, including ScanSource's original Motion and supporting affidavits, and the briefs and replies of both parties on the issue of preliminary injunctive relief, the Special Referee finds preliminary injunctive relief is appropriate in this case.

A preliminary injunction is appropriate when necessary to preserve the status quo pending trial and "only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter v. Century Builders*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010); *see also Scratch Golf Co. v. Dunes West Residential Golf Props.*, 361 S.C. 117, 603 S.E.2d 905

¹ By Order dated August 31, 2012 and entered on September 4, 2012, the Circuit Court entered an Amended Order Appointing Special Referee, clarifying the powers and authority of the Special Referee.

(2004); *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60 (1973); *Peek v. Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005).

Defendant has demonstrated that it faces the very real threat of irreparable harm absent continued injunctive relief by virtue of the potential use or disclosure of its confidential, trade secret and proprietary information. Furthermore, Plaintiff has acknowledged that Plaintiff is or was in possession of information that is confidential, trade secret and/or proprietary, and that Defendant is entitled to the return of this information in Plaintiff's possession. Although Plaintiff has assured the Special Referee that all such information has been returned pursuant to the Court's February 8, 2012 TRO, Defendant has presented evidence which suggests that this claim is at the very least in doubt and that the requested injunctive relief is necessary to protect Defendant and to preserve the status quo pending a trial upon the merits.

Defendant has also demonstrated a likelihood of success on the merits. Plaintiff is clearly bound not to use or disclose Defendant's proprietary confidential information pursuant to the parties' agreements and South Carolina law, and Plaintiff has no right to make any use or disclosure of this information. Plaintiff also agrees that he should not contact Defendant's employees for the purpose of obtaining such information.

Based on the record before me, absent injunctive relief, Defendant has no adequate remedy at law given that once Defendant's confidential information or trade secrets are improperly used or disclosed, it will be difficult if not impossible to rectify the loss by monetary damages. *Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) ("Irreparable harm is present where an injunction 'is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.'").

Finally, Rule 65(c) requires that "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be suffered or incurred by any party who is found to have been wrongfully enjoined or restrained." Defendant argues that the bond required by the Court's February 8, 2012 TRO is sufficient. Not surprisingly, Plaintiff disagrees. In *Atwood Agency v. Black, et al.*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), our Supreme Court made clear that a restraining order requiring only a nominal security bond does not satisfy Rule 65(c) "because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect [the enjoined party]."

Based upon the nature of the injunctive relief sought, the undersigned's knowledge of the procedural history relating to the motion for injunctive relief, as well as case law addressing the damages that are recoverable on an injunction bond, it does not appear that the current bond is adequate should it be determined that Plaintiff has been wrongfully enjoined and/or restrained. *Hylar v. Wheeler*, 240 S.C. 386, 126 S.E.2d 173 (1962); *Walker v. Oswald*, 181 S.C. 278, 186 S.E. 916 (1935).

THEREFORE, IT IS ORDERED that Defendant's Motion for Preliminary Injunction is granted as follows:

- 1) Plaintiff is prohibited from directly or indirectly contacting any Defendant employee to provide Plaintiff with Confidential Information.
- 2) Plaintiff is prohibited from directly or indirectly contacting any vendor or customer of Defendant to provide Plaintiff with Confidential Information.
- 3) Plaintiff is required to immediately return to Defendant any Confidential Information remaining in his possession, custody or control, including, but not limited to, any and all documents, materials, or electronic media containing Confidential Information, including all copies thereof, and eliminating any and all access to the property or information via any Dropbox or other online or cloud accounts. Any disputes regarding the identity of Confidential Information or the form of its return may be decided by the Special Referee.

- 4) To the extent not previously identified, within a reasonable time after discovery, Plaintiff shall identify to the Special Referee and Defendant all computer systems and data storage devices of any kind, including third party-operated personal accounts such as Drop Box or other accounts with cloud based servers or the like, to which Plaintiff has had access, directly or indirectly, since December 16, 2011, for the purposes of submitting same to inspection and verification pursuant to the Consent Protocol dated April 5, 2012 and filed with the court on April 9, 2012.
- 5) Plaintiff is prohibited from intentionally, whether directly or indirectly, using, disclosing, or transmitting any ScanSource Confidential Information.
- 6) For purposes of this Order, Confidential Information is defined as set forth in the Court's February 8, 2012, Temporary Restraining Order.
- 7) Pursuant to Rule 65(c), ScanSource must post a bond in the amount of \$15,000 in addition to the \$5,000 bond previously required by the February 8, 2012 TRO. The total security required is \$20,000.

This Order shall remain in effect during the pendency of this action, and until a further order of the Court.

IT IS SO ORDERED.


J.D. Quattlebaum
Special Referee

October 26, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jeff Yelton,

Plaintiff,

vs.

ScanSource, Inc.,

Defendant.

FILED-CLERK OF THE COURT OF COMMON PLEAS

GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

THIRTEENTH JUDICIAL CIRCUIT

2012 FEB -8

Civil Action No. 2012-CP-23-0314

TEMPORARY RESTRAINING ORDER

Defendant ScanSource, Inc. ("ScanSource") moves for a Temporary Restraining Order ("TRO") and Preliminary Injunction. The court held a hearing on the motion on January 27, 2012. Counsel for ScanSource and counsel for Plaintiff Jeff Yelton ("Yelton") presented arguments and filed documents, including affidavits. Based on those arguments, the documents and evidence presented, and Rule 65 of the South Carolina Rules of Civil Procedure, the court hereby grants Defendant's Motion for Temporary Restraining Order as follows:

The Court finds the remedy of a temporary restraining order appropriate in this case as ScanSource has established that it (1) would suffer irreparable harm if the injunction is not granted; (2) will likely succeed on the merits of the litigation; and (3) has no adequate remedy at law. See Scratch Golf Co. v. Dunes West Residential Golf Props., 361 S.C. 117, 603 S.E.2d 905 (2004). Preliminary equitable relief may be granted in appropriate cases to preserve the status quo. See S.C.R.C.P. 65; Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (1973).

At this preliminary stage, ScanSource has demonstrated that immediate and irreparable injury, loss or damage will result to ScanSource unless this order is issued. ScanSource has no adequate remedy at law, given that once ScanSource's confidential information or trade secrets

#123
JH

are disclosed, it will be difficult if not impossible to rectify the loss by monetary damages. Irreparable harm is present where an injunction "is reasonably necessary to protect the legal rights of the plaintiff pending the litigation." *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) (internal quotation marks omitted).

THEREFORE, IT IS ORDERED that Defendant's Motion for Temporary Restraining Order is granted as follows:

- 1) Plaintiff is prohibited from directly or indirectly contacting ScanSource's employees for the purpose of obtaining Confidential Information;
- 2) Plaintiff must return to ScanSource any Confidential Information in his possession, custody, or control within the time period set by the Special Referee. Any disputes concerning the identity of Confidential Information or the form of its return shall be decided by the Special Referee.
- 3) Confidential Information or Trade Secrets ("Confidential Information") include but are not limited to information described in Plaintiff's Employment Agreement (attached as Exhibit A to ScanSource's Answer and Counterclaims), ScanSource's Business Ethics and Code of Conduct (attached as Exhibit D to ScanSource's Answer and Counterclaims), the S.C. Trade Secrets Act, and South Carolina law.
- 4) Pursuant to Rule 65(c), ScanSource must post a bond in the amount of \$5,000.
- 5) If personally identifiable or financial information about persons other than Plaintiff is included in the information returned to ScanSource, ScanSource must treat that information as confidential.

283
H11

AND IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

Issued February 8, 2012 at 4:24 A.M/P.M.
Greenville, South Carolina

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

Jeff Yelton,

2012 FEB - 8 P 4:31

Civil Action No. 2012-CP-23-0314

Plaintiff,

vs.

ORDER OF REFERENCE

ScanSource, Inc.,

Defendant.

On January 24, 2012, Defendant ScanSource, Inc. moved for a Temporary Restraining Order and Preliminary Injunctive Relief. This court heard argument on Defendant ScanSource's motion for Temporary Restraining Order on January 27, 2012. Since that time, counsel for the parties have engaged in protracted correspondence concerning the existence and identity of the alleged confidential information and the manner and form of its return to Defendant ScanSource. Accordingly, pursuant to Rule 53, SCRCP, this court appoints J. Derrick Quattlebaum, Esquire, as Special Referee to decide the equitable issue of Preliminary Injunction and to rule upon the identity and form of disclosure of confidential information pursuant to any preliminary equitable relief.¹

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

February 8, 2012
Greenville, South Carolina

¹ Judge Simmons, the circuit's excellent Master-in-Equity, has a conflict of interest precluding his appointment as Special Referee. This Order of Reference has been approved by Chief Administrative Judge Welmaker.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Jeff Yelton,)
Plaintiff,)
)
vs.)
)
ScanSource, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-23-0314
AMENDED ORDER APPOINTING
SPECIAL REFEREE

2012 SEP -14 P 2:40
CLERK OF COURT
J. B. WICKERSHAM

This Order clarifies and amends the February 8, 2012 Order appointing Mr. J. Derrick Quattlebaum, Esquire, as Special Referee pursuant to Rule 53, SPRCP. Mr. Quattlebaum is granted jurisdiction, power and authority to rule on all issues related to preliminary equitable relief, including but not limited to the following:

- (1) Ruling on issues relating to Defendant's Motion for Preliminary Injunction filed with the Court on January 24, 2012 and currently pending in this case;
- (2) Ruling on issues related to Plaintiff's alleged possession, custody or control of confidential or proprietary information, in whatever form or location it may exist;
- (3) Determining protocol for the identification of and search for electronic files or information, hard copies of such data, and any hardware, portable devices, or software (including any data stored in or accessible by cloud computing or other remote application);
- (4) Ensuring compliance with any preliminary injunctive order, including this Court's February 8, 2012 TRO, which has now become the Order of the Special Referee;
- (5) Determining whether a party has complied with or is in contempt of the February 8, 2012 TRO or any other preliminary equitable order;
- (6) Determining whether attorney's fees, costs or other sanctions should be imposed pursuant to rule or inherent authority as related to any preliminary injunctive order which has or

ENTERED COMPUTER

JH
#122

may be entered, including this Court's February 8, 2012 TRO as well as any protocol ordered by the Special Referee.

The February 8, 2012 Order is reaffirmed in all other respects not inconsistent with this Order. The parties are reminded that as Special Referee, Mr. Quattlebaum is empowered with the full authority and power of the Circuit Court as to the above matters. Rule 53(c), SCRCP.

IT IS SO ORDERED!

D. Garrison Hill

D. Garrison Hill
Circuit Judge

August 31, 2012
Greenville, South Carolina

282

GH

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2300314

Jeff Yelton vs. ScanSource Inc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Amended Order Appointing Special Referee in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org.

If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

Brian Patrick Murphy 514 Pettigru St Greenville,
SC 296013117

Sue Erwin Harper PO Box 11070 Columbia, SC
292111070
Carmen Harper Thomas Nelson Mullins Riley &
Scarborough LLP P.O. Box 11070 Columbia, SC

CPFORM4M
SCCA SCRPC Form 4 Revised 06/2008

29211

Dowse Bradwell Rustin IV Poinsett Plaza, 9th Floor
104 S. Main St. Greenville, SC 29601

William Harrell Foster III PO Box 10084
Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

State of South Carolina

) IN THE COURT OF COMMON PLEAS

County of Greenville

2012 SEP 11 PM 4:10 C.A. No.: 2012-CP-23-00314

Jeff Yelton,

Plaintiff,

ORDER

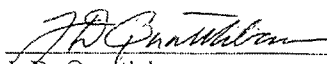
vs.

ScanSource, Inc.,

Defendant.

This matter is before the Special Referee on Petition by Defendant ScanSource, Inc. for a Rule to Show Cause why Plaintiff Jeff Yelton should not be held in contempt for violation of the Court's February 8, 2012, Temporary Restraining Order. A hearing on the matter was held on August 31, 2012. Civil contempt must be proved by clear and convincing evidence. *Durlach v. Durlach*, 359 S.C. 64, 596 S.E.2d 908 (2004); *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (1998); *Anonymous v. State Bd. of Medical Examiners*, 329 S.C. 371, 496 S.E.2d 17 (1998). To find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. *Davis v. Davis*, 372 S.C. 64, 641 S.E.2d 446 (Ct. App. 2006); *Hawkins v. Mullins*, 359 S.C. 497, 597, 897 (Ct. App. 2004); *Brasington v. Shannon*, 288 S.C. 183, 341 S.E.2d 130 (1986). Based on the materials submitted by both parties as well as extensive argument presented to the Special Referee during the hearing, Defendant has not met its burden of proving by clear and convincing evidence that Plaintiff is in violation of the Court's February 8, 2012 Order. Therefore Defendant's Motion is

DENIED.


D. Quattlebaum
Special Referee

September 11, 2012
Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2300314

Jeff Yelton vs. ScanSource Inc

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; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of June, 2012.

Court Reporter:

PRESIDING JUDGE - G edward Welmaker

This judgment was entered on the 29th day of June, 2012, and a copy mailed first class this 29th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Patrick Murphy 514 Pettigru St Greenville,
SC 29601

Sue Erwin Harper Nelson Mullins Riley &
Scarborough, LLP P.O. Box 11070 Columbia, SC
29211
Dowse B Rustin IV Nelson Mullins Riley &
Scarborough LLP P.O. Box 10084 Greenville, SC
29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

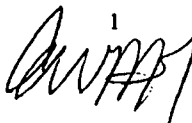
State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
	)	
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Consent Amended Confidentiality Order
ScanSource, Inc.	)	
	)	
<u>Defendant.</u>	)	

Whereas, the parties to this Consent Confidentiality Order ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this order; accordingly, it is this 14th day of February, 2012, ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests and all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney who has, in



good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at Attachment A which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential.

4. **Use of a Party's Own Material.** This Order has no effect upon, and shall not apply to any producing party's use of his or its own Confidential documents or material for any purpose.

5. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

6. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (¶ 6.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation). The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified.

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be

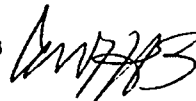


made has executed an acknowledgment (in the form set forth at Attachment B hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed²;
- (3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (4) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (5) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along

² At or prior to the time such party or employee completes his or her acknowledgment of review of this Order and agreement to be bound by it (Attachment B hereto), counsel shall complete a certification in the form shown at Attachment C hereto. Counsel shall retain the certification together with the form signed by the party or employee.

³ 

with the originals of the forms signed by those persons acknowledging their obligations under this Order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

7. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion.

8. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection. However, the parties

⁴ 

agree that ScanSource may secure additional protection of certain key proprietary information by designating the material as CONFIDENTIAL – ATTORNEY RESTRICTED. Any documents so designated by ScanSource must be retained by Plaintiff's counsel. Plaintiff shall be entitled to review any document marked CONFIDENTIAL – ATTORNEY RESTRICTED solely at the office of Plaintiff's counsel in "hard copy" format, but shall not be allowed to remove such documents from his counsel's office or make copies or summaries of such documents of any kind. Documents marked CONFIDENTIAL – ATTORNEY RESTRICTED may be stored electronically by Plaintiff's counsel, but may not be shared electronically with Plaintiff. Documents marked CONFIDENTIAL – ATTORNEY RESTRICTED shall otherwise be subject to the provisions of this Order as they relate to CONFIDENTIAL documents, without exception, including those provisions regarding the right of a party to challenge any designation and the use of documents in depositions and filings.

9. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

- a. The burden of proving the necessity of a Confidential designation remains with the party asserting confidentiality.
- b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

5 

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (1) the party who claims that the documents are confidential withdraws such designation in writing;
- (2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 9.b. above; or
- (3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

10. Treatment on Conclusion of Litigation.

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (¶6.d.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the

⁶ 

above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

11. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

12. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

13. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

A handwritten signature in black ink, appearing to be "C. H. B.", is written over the signature line.

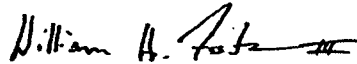
IT IS SO ORDERED.


The Honorable G. Edward Welmaker

6-19, 2012
Greenville, South Carolina

WE SO CONSENT:

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____
William H. Foster III, SC Bar No. 66221
bill.foster@nelsonmullins.com
Carmen Harper Thomas, SC Bar No. 76012
carmen.thomas@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for ScanSource, Inc.

BRIAN MURPHY LAW FIRM, PC



Brian P. Murphy
brian@brianmurphyfirm.com
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

Attorneys for Plaintiff

**ATTACHMENT A
CERTIFICATION BY COUNSEL OF DESIGNATION
OF INFORMATION AS CONFIDENTIAL**

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
	)	
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
ScanSource, Inc.	)	Consent Amended Confidentiality Order
	)	
Defendant.	)	

Documents produced herewith [whose bates numbers are listed below (or) which are listed on the attached index] have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action which Order is dated [confidentiality order date].

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Date: [date attachment A signed]

[Signature of Counsel [s/name]]

Signature of Counsel

[Printed Name of Counsel [A]]

Printed Name of Counsel

ATTACHMENT B

**ACKNOWLEDGMENT OF UNDERSTANDING
AND
AGREEMENT TO BE BOUND**

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
	)	
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Consent Amended Confidentiality Order
ScanSource, Inc.	)	
	)	
Defendant.	)	

The undersigned hereby acknowledges that he or she has read the Confidentiality Order dated [confidentiality order date], in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the Greenville County Court of Common Pleas in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties for contempt of court.

Name: [undersigned name [att B]]
Job Title: [Job Title [att B]]
Employer: [Employer [att B]]
Business Address: [Business Address [att B]]

Date: [date attachment B signed]

[Signature [attachment B]]
Signature

ATTACHMENT C

CERTIFICATION OF COUNSEL OF NEED
FOR ASSISTANCE OF PARTY/EMPLOYEE

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
	)	
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Consent Amended Confidentiality Order
ScanSource, Inc.	)	
	)	
Defendant.	)	

Pursuant to the Confidentiality Order entered in this action, most particularly the provisions of Paragraph 6.b.2., I certify that the assistance of [name of assistant [att C]] is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL.

I have explained the terms of the Confidentiality Order to the individual named above and will obtain his or her signature on an "Acknowledgment of Understanding and Agreement to be Bound" prior to releasing any confidential documents to the named individual and I will release only such confidential documents as are reasonably necessary to the conduct of the litigation.

The individual named above is:

- ☐ A named party;
- ☐ An employee of named party [employee of named party]. This employee's job title is [employee's job title] and work address is [employee's work address].

Date: [date attachment C signed]

[Signature [attachment C]]
Signature

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH
WASHINGTON, DC

75 BEATTIE PLACE, 11TH FLOOR (29601-2119)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

J. D. QUATTLEBAUM
DIRECT DIAL NUMBER 864.240.3249
EMAIL dquattlebaum@hsblawfirm.com

April 12, 2012

VIA E-MAIL AND U.S. MAIL

William H. Foster, Esquire
Nelson Mullins Riley & Scarborough LLP
Ninth Floor
104 South Main Street
Greenville, SC 29601
bill.foster@nelsonmullins.com

Brian P. Murphy, Esquire
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
brian@brianmurphyllawfirm.com

Re: Jeff Yelton v. ScanSource, Inc.
C.A. No.: 2012-CP-23-0314.

Dear Bill and Brian:

Enclosed please find a filed copy of the Consent Order on Protocol for Conducting Discovery as to Certain Hardware Produced by Plaintiff in the above-referenced case.

Please do not hesitate to contact me should you have any questions.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.


J. D. Quattlebaum

JDQ:jmb
Enclosures

IN THE COURT OF COMMON PLEAS

2012-CP-23-00314

2017 APR -9 PM 4.10

Jeff Yelton,

Plaintiff,

VS.

ScanSource, Inc.,

Defendant.

**CONSENT ORDER ON PROTOCOL
FOR CONDUCTING DISCOVERY
AS TO CERTAIN HARDWARE
PRODUCED BY PLAINTIFF**

On February 8, 2012, the Court entered an Order appointing the undersigned as Special Referee “to decide the equitable issue of Preliminary Injunction and to rule upon the identity and form of disclosure of Confidential Information pursuant to any preliminary equitable relief.”

On February 14, 2012, the Special Referee met with counsel for the parties to discuss the Preliminary Injunction, protocols for the identity and form of disclosure of Confidential Information as well as Defendant's request for an examination and inspection of Plaintiff's computer systems and data (hereinafter referred to as a "forensic examination") as set forth in Defendant's Motion for Temporary Restraining Order and Preliminary Injunction. Later on February 14, 2012, the parties jointly delivered a sealed box of hardware to the office of the Special Referee with a label that represents the contents of the box as being: "(1) A hard drive from an HP laptop; (2) another HP laptop; (3) a Dell Inspiron 9100 laptop; (4) a black WD external hard drive; (5) a silver WD external hard drive; (6) three silver Epson/ScanSource flashdrives; (7) a Microsoft flashdrive; (8) a BMW flashdrive; and (9) an iPad 1" (collectively referred to as "Plaintiff's Devices"). In addition to Plaintiff's Devices, the Special Referee has

been informed that Plaintiff has a desktop computer at his home that he will also produce to an Approved Consultant for examination pursuant to this Consent Order. (See paragraph 19)

Defendant seeks to have Plaintiff's Devices preserved and to conduct a forensic examination of Plaintiff's Devices. Plaintiff does not oppose an examination, but desires protections to prohibit the discovery or disclosure of privileged information or confidential information that does not relate to the subject matter of this action.

THEREFORE, IT IS HEREBY ORDERED, with the consent of both parties and pursuant to the Court's Order of Reference, the following protocol will govern the examination of Plaintiff's Devices and the handling of information derived from Defendant's examinations:

1. The parties will jointly meet at the office of the Special Referee to take possession of Plaintiff's Devices. Plaintiff's Devices will remain with counsel for Plaintiff throughout the pendency of this Action unless otherwise agreed to by the parties or ordered by the Court.¹
2. Defendant is authorized to use FTI Consulting ("FTI"), Rosen Litigation Technology Consulting or any other consultant approved by both parties in writing (each an "Approved Consultant") to create mirror images of Plaintiff's Devices and conduct forensic examinations of such images of Plaintiff's Devices in accordance with the terms and conditions of this Order.
3. Any Approved Consultant and/or representative of an Approved Consultant who is involved in this litigation in any way, including but not limited to the imaging, examination, compilation, use or disclosure of data from Plaintiff's Devices, must

¹ After the examinations are complete, the parties will confer and determine whether there is any objection to the immediate return of some of the devices to Plaintiff.

execute a copy of Attachment B of the Consent Confidentiality Order and must be provided a copy of this Order and agree to be bound by the same by executing a copy of the Acknowledgement attached hereto as Exhibit A.

4. An Approved Consultant may create forensic mirror images of any of the Plaintiff's Devices (hereinafter the "Forensic Image") in a format that can be searched by an Approved Consultant. Whenever a Forensic Image is created, the Approved Consultant shall simultaneously create an exact duplicate "read only" mirror image (hereinafter the "Read Only Image") in a format that preserves and secures the original images from the Plaintiff's Devices, shall not be searched and shall only be used for creating additional Forensic Images, if necessary. (The Forensic Images and Read Only Images are collectively referred to hereafter as the "Images".)
5. The creation of the Images will occur either at a lab or office at which such work is regularly performed by an Approved Consultant in Greenville County or at a location agreed to by the parties. At all times, Plaintiff's Devices shall not be moved by mail or common carrier. The Images shall be encrypted by the Approved Consultant to further safeguard the information stored therein.
6. After the Images are created and processed, Approved Consultant shall return all of Plaintiff's Devices to the office of the Plaintiff's Counsel and the Plaintiff's Devices shall at all times remain in the exclusive possession and control of Plaintiff's Counsel until the conclusion of this litigation, unless otherwise agreed by the parties or ordered by the Court. While in the custody of Plaintiff's Counsel

Plaintiff's Devices shall be secured by Plaintiff's Counsel so as not to be accessed by any party, person or entity, for any purpose.

7. After the creation of the Images, Approved Consultant shall deliver all Images to Counsel for the Defendant. Counsel for the Defendant shall maintain exclusive possession and control of the Images until the conclusion of the litigation, except as set forth herein or otherwise agreed by the parties. Counsel for the Defendant shall not allow access to the Read Only Images by any person or entity, including an Approved Consultant, except as ordered by the Special Referee or by the Court. Unless otherwise ordered by the Court, within ten (10) business days of the entry of judgment by the Court or dismissal of the case with prejudice by agreement of the parties Counsel for Defendant shall certify to the Court that all Images have been destroyed.
8. No data may be removed, copied, transferred, or disclosed by any person, party or entity except an Approved Consultant and only as specifically provided for herein.
9. Defendant will submit to the Special Referee and counsel for Plaintiff a list of search terms to be used in searching the Forensic Images. Counsel for Plaintiff shall have five (5) working days from receipt of this list to raise any objections to the term search list. If there are any objections raised that the parties cannot resolve, the Special Referee will resolve them. Defendant may proceed with searches using the terms to which Plaintiff has not objected.
10. At Defendant's request and expense, the Approved Consultant may conduct a search of the Forensic Images to locate documents and/or files containing the

approved search terms. The results of this search will be the "Search Results." The search of the Forensic Images may occur either at a lab or office at which such work is regularly performed by Approved Consultant, but need not be within Greenville County. The Forensic Images, which shall be encrypted as set forth above, may be shipped where necessary by hand or Federal Express.

11. Depending on the volume of the Search Results, Plaintiff's Counsel may review the Search Results in a hard copy list format, or electronically in a review platform.
12. An Approved Consultant will provide the Special Referee with a copy of the Search Results but shall make no disclosures to Defendant or counsel for Defendant until Plaintiff has determined whether to assert any objection to a particular file.
13. Counsel for Plaintiff will review the Search Results and within 7 working days of receiving the Search Results shall identify for Defendant's Counsel any files/documents for which he raises an objection as to the production of such information to Defendant. In the event Plaintiff's Counsel needs additional time to conduct this review, he may request a reasonable extension of this time period to complete his review, which shall not be unreasonably denied. Any files to which Plaintiff does not assert an objection within the review period will then be provided to Defendant's Counsel by the Approved Consultant.
14. Defendant must respond to any objection within 7 working days, but shall not be provided copies of the data/file itself until a ruling by the Special Referee.

15. Within seven (7) working days of receiving Defendant's responses, if Plaintiff maintains the objection, Plaintiff must present its objection to the Special Referee. The Special Referee may review any contested documents/files en camera to determine whether they should be disclosed. If the objection is resolved or is not presented to the Special Referee within seven (7) working days, the file may be made available to the Defendant.
16. All Search Results that are not withheld by Order of the Special Referee will be produced to each of the parties. These documents will be presumed Confidential under the terms of the Consent Confidentiality Agreement for Fourteen (14) days and this presumption is waived as to a specific document unless the party seeking to preserve the designation of such document as Confidential notifies the opposing party of the designation within the Fourteen (14) day period. This does not affect any term of the Court's Consent Confidentiality Order.
17. At Defendant's request and expense, an Approved Consultant also may conduct an examination of the Forensic Images to determine data relative to Plaintiff's Devices, including, but not limited to, reporting on alteration/deletion of files or determining when, for example, a particular peripheral (e.g. flash drive, external hard drive) was plugged in to the particular machine. The results of this examination will be the "Forensic Analysis" and will be Defendant's work product and shall be subject to discovery only as set forth in the South Carolina Rules of Civil Procedure. However, any report generated by the Forensic Analysis that Defendant intends to use as an exhibit at any hearing, deposition or trial of this matter must be timely disclosed to Plaintiff prior to such use. If

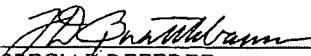
Defendant's Approved Consultant is subsequently designated as an expert for purposes of offering any testimony in this case, then the Approved Consultant's report(s) shall be timely disclosed as required by the Rules. If the Forensic Analysis shows that a particular file is related to the subject matter of this action and that file is not included in the Search Results, the same procedures described in paragraphs 9 through 16 will apply to these files. The forensic examination may occur either at a lab or office at which such work is regularly performed by Approved Consultant as set forth in Paragraph 10.

18. Defendant may request additional searches of the Forensic Images. Any additional searches of the Forensic Images shall be conducted as set forth above, and any objection to additional searches shall be determined by the Special Referee.
19. Except as otherwise provided herein, Plaintiff's Devices shall remain in the possession and control of Plaintiff's Counsel until otherwise agreed to by the parties or until further Order. Plaintiff may identify any devices that he wants returned to him once the devices have been imaged and examined. For any device he wants returned, the Parties will confer regarding a procedure to remove from such device any information which Defendant believes to be Defendant's confidential information. Any dispute regarding the removal of information will be resolved by the Special Referee. For any device Plaintiff does not want to be returned the parties will confer as to how to handle such devices and any disputes will be submitted to the Special Referee. The home desktop computer referred to above will be returned by the Approved Consultant to counsel for Plaintiff

immediately upon completion of the imaging process, which shall be no longer than three (3) days from the time Plaintiff provides it upon request by counsel for Defendant.

20. Within ten (10) days from the entry of this order, Plaintiff will identify any online cloud-based server accounts or similar accounts where it is possible to transmit or store data or information, which may be subject to the TRO. Defendant will identify accounts that it wishes to investigate. Disputes regarding the identification of the accounts and procedures for investigating the accounts, if any, will be resolved by the Special Referee.
21. The activities covered by this Order shall be governed by the South Carolina Rules of Civil Procedure. Any modifications to this order must be made in writing signed, by hand or electronically, by the Parties or their representatives.
22. The parties agree that by consenting to this order Defendant does not waive its rights to seek additional equitable relief as requested by Defendant's Motion for preliminary injunction, where appropriate. The Motion for preliminary injunction is held in abeyance.

IT IS SO ORDERED.


SPECIAL REFEREE

April 5, 2012
Greenville, South Carolina

WE CONSENT:

By: 

William H. Foster, Esq.
Carmen Harper Thomas, Esq.
NELSON MULLINS RILEY & SCARBOROUGH LLP
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601

Attorneys for Defendant ScanSource, Inc.

By: 

Brian P. Murphy
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

Attorney for Plaintiff Jeff Yelton

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jeff Yelton,

Plaintiff(s)

vs.

ScanSource, Inc.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 23-0314

(Please Print)

Submitted By: Brian Murphy

Address: Brian Murphy Law Firm, PC, 514 Pettigru
Street, Greenville, SC 29601

SC Bar #: 06770

Telephone #: 864-370-9400

Fax #: 864-241-1386

Other:

E-mail: brian@brianmurphylawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:

Date: January 18, 2012

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

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

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

State of South Carolina

County of Greenville

IN THE COURT OF COMMON PLEAS

2012-CP-23-0314

JAN 18 11:20:03

Jeff Yelton,

Plaintiff,

vs.

ScanSource, Inc.,

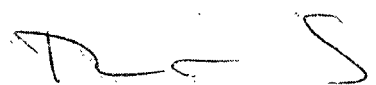
Defendant.

SUMMONS

To: The above-named Defendant:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 514 Pettigru Street, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully submitted this 18th day of January, 2012.



Brian P. Murphy, Bar No. 6770
Attorney for Plaintiff.

Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

) 2012-CP-23-0314 at 9:02

Jeff Yelton,

Plaintiff,

v.

ScanSource, Inc.,

Defendant.

) Complaint

) Jury Trial Demanded

Plaintiff, through his attorney, would respectfully show unto the Court as follows:

1. Plaintiff is a resident of Greenville County and, at all relevant times, was employed by Defendant in Greenville County.
2. Defendant is a South Carolina corporation with a principal place of business in Greenville County.
3. Plaintiff and Defendant were party to a May 28, 2008 employment contract ("Employment Agreement") under which Defendant agreed to provide certain compensation and benefits in the event it terminated Plaintiff's employment without "cause," which is a term defined in the Agreement, upon Plaintiff's execution of a separation agreement.
4. In December, 2011, Defendant notified Plaintiff that it was exercising its right to terminate Plaintiff's employment without cause. The parties agreed to the timing and circumstances of the termination of employment, and Plaintiff executed the separation agreement addendum, which constituted full performance under the Employment

Agreement for his part and entitled Plaintiff to the compensation and benefits set forth in the Employment Agreement.

5. Defendant acknowledged Plaintiff's execution and delivery of the agreement, his entitlement to the compensation and benefits set forth in the Employment Agreement, and an intent to abide by the parties' agreements.
6. Approximately one month after the termination of Plaintiff's employment and the execution of the separation agreement addendum, Defendant sent Plaintiff a letter stating that, while Plaintiff was terminated without cause, it was retroactively designating the termination as being one for cause. Defendant further disavowed its obligations under the Employment Agreement and the agreement and understandings of the parties. Defendant attempt has attempted to justify this change in position based on false and misleading claims by Defendant, which are a mere pretext to avoid paying its contractual obligations.
7. Defendant's actions are willful and recklessly disregard the rights of Plaintiff.

**Count I
For A First Cause of Action
Breach of Contract**

8. Plaintiff incorporates by reference the averments in the foregoing paragraphs as if set forth here in full.
9. Defendant terminated Plaintiff in violation of the terms of the Employment Agreement.
10. Defendant has breached its obligation to pay compensation and benefits as called for in the Employment Agreement.
11. Defendant has breached the express and implied terms of the Employment Agreement and the parties' understandings including, but not limited to, the covenant of good faith and fair dealing.

12. Plaintiff has been damaged as a result of Defendant's breaches.
13. Plaintiff performed all material duties required of him under the terms of the Employment Agreement.

WHEREFORE, Plaintiff respectfully requests a trial by jury on his claim for breach of contract and entry of judgment to include all amounts owed under the Employment Agreement, specific performance, other actual damages, consequential damages, and all other relief to which Plaintiff can show he is entitled including, but not limited to, costs prejudgment and post-judgment interest.

Count II
For a Second Cause of Action
Breach of Contract Accompanied By Fraudulent Act

14. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
15. Defendant has breached the Employment Agreement as set forth above.
16. Defendant has breached the Employment Agreement with fraudulent intent relating to the breach.
17. Defendant committed one or more fraudulent acts accompanying its breaches of contract as evidenced by its dishonesty in fact and unfair dealing such as making blatant misrepresentations regarding Plaintiff and his activities as part of the effort to breach the Employment Agreement.

WHEREFORE, Plaintiff respectfully requests a trial by jury on his claim for breach of contract accompanied by fraudulent act and entry of judgment to include all amounts owed under the Employment Agreement, specific performance, other actual damages, consequential damages, punitive damages, and all other relief to which Plaintiff can show he is entitled including, but not limited to, costs prejudgment and post-judgment interest.

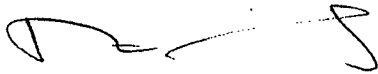
**Count III
For a Third Cause of Action
Payment of Wages**

18. Plaintiff incorporates by reference the foregoing averments as if set forth here in full.
19. Some of the compensation owed Plaintiff under the Employment Agreement, such as variable pay, constitutes remuneration for labor provided and therefore constitutes "wages" under the Payment of Wages Law.
20. Defendant has failed and refused to pay wages when due and/or has declared its intent to not do so.
21. Defendant has failed to comply with the Payment of Wages law in seeking to unilaterally change the terms and conditions of employment without sufficient prior written notice.

WHEREFORE, Plaintiff respectfully requests a trial by jury on his claim for wages owed and entry of judgment to include all amounts owed and all other relief to which Plaintiff can show he is entitled including, but not limited to, treble damages, attorney fees, costs prejudgment and post-judgment interest.

Respectfully submitted this 18th day of January, 2012.

For the Plaintiff:



Brian P. Murphy No. 6770

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
Plaintiff,)
vs.) SUMMONS
ScanSource, Inc.,)
Defendant.)

2012 JAN 21 A 10:46

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL E. JOHNSON

To Plaintiff Jeff Yelton, by and through his attorney of record Brian Murphy, Esquire:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims in this action, a copy of which is hereby served upon you, and to serve a copy of your Reply to the said Counterclaims upon the subscribers at 1320 Main Street, Seventh Floor, PO Box 11070, Columbia, South Carolina, 29211 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Counterclaims within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Counterclaims.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: Dm B. R

Sue Erwin Harper
S. C. Bar No. 1917
corky.harper@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
Telephone: (803) 255-5544
Fax: (803) 255-9034

Dowse "Brad" Rustin, IV
SC Bar No. 74934
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
Telephone: (864) 250-2300
brad.rustin@nelsonmullins.com

January 24, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ScanSource, Inc.,	)	
	)	
Defendant.	)	

FILED CLERK OF COURT
GREENVILLE, S.C.
PAUL S. MOORE, JR.
2012 JAN 24 AM 10:46

VERIFIED ANSWER AND COUNTERCLAIMS FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DAMAGES

Defendant ScanSource, Inc. ("ScanSource" or "the Company"), by its undersigned attorneys, denying each and every allegation of the Complaint not admitted herein, for its Answer and Counterclaim in this action against its former officer and employee, Plaintiff Jeffrey E. Yelton ("Yelton" or "Plaintiff"), will show as follows:

FOR A FIRST DEFENSE

1. Defendant admits paragraph 1.
2. Defendant admits paragraph 2.
3. Defendant admits that Plaintiff and it were parties to the May 28, 2008 Employment Agreement ("Agreement"), attached hereto and incorporated herein as Exhibit A. Further responding to paragraph 3, Defendant prays reference to that Agreement for the specific terms, conditions and limitations thereof; to the extent the allegations of paragraph 3 are inconsistent with those terms, conditions and limitation, those allegations are denied.
4. Defendant denies paragraph 4.

5. Defendant denies paragraph 5.

6. Defendant admits that it sent Plaintiff the letter of January 16, 2011 attached hereto and incorporated herein as Exhibit E. Further responding to paragraph 6, Defendant prays reference to that letter for the specific terms, conditions and limitations thereof; to the extent the allegations of paragraph 6 are inconsistent with those terms, conditions and limitation, those allegations are denied. Other than the Complaint, the only response ScanSource has received to Exhibit E came in the form of an email from Plaintiff's counsel, attached hereto and incorporated herein as Exhibit F.

7. Defendant denies paragraph 7.

8. In response to paragraph 8, Defendant realleges the foregoing responses to paragraphs 1-7 as though repeated verbatim here.

9. Defendant denies paragraph 9.

10. Defendant denies paragraph 10.

11. Defendant denies paragraph 11.

12. Defendant denies paragraph 12.

13. Defendant denies paragraph 13.

14. In response to paragraph 14, Defendant realleges the foregoing responses to paragraphs 1-13 as though repeated verbatim here.

15. Defendant denies paragraph 15.

16. Defendant denies paragraph 16.

17. Defendant denies paragraph 17.

18. In response to paragraph 18, Defendant realleges the foregoing responses to paragraphs 1-17 as though repeated verbatim here.

19. The allegations of paragraph 19 are conclusions of law to which no response is required.

20. Defendant denies paragraph 20.

21. Defendant denies paragraph 21.

FOR A SECOND DEFENSE
(Failure to State a Claim)

22. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

23. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against ScanSource and, therefore, Plaintiff cannot recover against ScanSource pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE
(Authorization Under Contract/Law)

24. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

25. ScanSource would show that Plaintiff's claims are barred by the express terms of the contracts and agreements between Plaintiff and ScanSource.

FOR A FOURTH DEFENSE
(Preceding Breach)

26. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

27. Some or all of Plaintiff's contract claims are barred by his own breach of his obligations to ScanSource.

FOR A FIFTH DEFENSE
(Excuse/Justification)

28. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

29. The alleged contractual obligations that form the basis of Plaintiff's claims were legally excused or ScanSource was legally justified in refusing to perform these actions.

FOR A SIXTH DEFENSE
(Speculative Damages /Set-Off)

30. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

31. Plaintiff's alleged damages are speculative and impossible to ascertain or allocate.

FOR A SEVENTH DEFENSE
(Damages Unrecoverable/Set-Off)

32. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

33. Any damages found to be due from ScanSource must be offset by any amount that is found to be due ScanSource from Plaintiff or that Plaintiff receives from any third-parties.

FOR AN EIGHTH DEFENSE
(Economic Loss)

34. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

35. The claims, to the extent they seek to recover only economic loss in tort, are barred by the economic loss doctrine.

FOR AN NINTH DEFENSE
(Damages Unrecoverable)

36. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

37. Plaintiff has failed to state facts or a claim sufficient to support an award of punitive damages.

38. ScanSource would show that some awards of punitive damages can and do violate the South Carolina and United States Constitutions. ScanSource reserves the right to challenge any award of punitive damages pursuant to the authority established by the United States Supreme Court and the South Carolina Supreme Court interpreting the United States and South Carolina Constitutions.

39. To the extent Plaintiff seeks to recover attorneys' fees, Plaintiff has failed to state facts sufficient or a claim to support the award of attorneys' fees. ScanSource reserves the right to challenge any award of attorneys' fees on the basis of unreasonableness.

FOR AN TENTH DEFENSE
(Rule 9(b), SCRPC)

40. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

41. Plaintiff has failed to plead his claim sounding in fraud with particularity as required by Rule 9(b), SCRPC. It must, therefore, be dismissed.

FOR AN ELEVENTH DEFENSE
(Good Faith)

42. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

43. To the extent Defendant is found to have violated the Wage Payment Act, Plaintiff is not entitled to recover treble damages or attorneys' fees because Defendant did not commit any alleged willful, oppressive, fraudulent or malicious acts, or act with reckless indifference to Plaintiff's rights, and believed in good faith that all wages owed to Plaintiff had been paid. ScanSource believes it has paid Plaintiff all wages due and owing as required by the Act.

FOR A TWELFTH DEFENSE
(Equity)

44. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

45. Plaintiff's claims, to the extent sounding in equity, are barred by the defenses of unclean hands and/or waiver.

FOR A THIRTEENTH DEFENSE
(Estoppel)

46. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

47. The Complaint, or certain claims therein, is barred by the doctrine of estoppel by reason of Plaintiff's conduct and actions.

FOR A FOURTEENTH DEFENSE
(Failure to Mitigate)

48. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

49. Plaintiff has failed to reasonably mitigate his claimed damages, his entitlement to which is expressly denied.

FOR A FIFTEENTH DEFENSE
(Reservation of Defenses)

50. The preceding paragraphs, not inconsistent herewith, are incorporated herein by reference.

51. Defendant has not had an opportunity to conduct a full and sufficient investigation or to engage in adequate discovery touching on the circumstances of Plaintiff's allegations. Defendant intends to act expediently to inform itself as to the pertinent facts and prevailing circumstances surrounding any claimed damages and hereby gives notice of its intent to assert any affirmative defenses or allegations of fact that this information gathering process may indicate are supported by law.

52. Defendant thus reserves the right to amend this Answer and Counterclaim to insert additional defenses and allegations of fact as may be appropriate.

53. Defendant further expressly reserves its right to seek an award of attorneys' fees and costs pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. CODE ANN. §15-36-10.

COUNTERCLAIMS

Allegations Applicable to All Counterclaims

54. ScanSource is a wholesale distributor of specialty technology products, providing value-added distribution sales to resellers in the specialty technology markets.

55. ScanSource operates through two geographic distribution segments, North American and International Distribution. The North American Distribution segment markets automatic identification and data capture and point-of-sale products through its ScanSource POS and Barcoding sales unit. Defendant was President of this sales unit for the past 3½ years.

56. ScanSource is a distributor of hardware technology products manufactured by its vendors.

57. ScanSource's customers, known as Value Added Resellers, or VARs, resell those technology products.

58. In addition to reselling the hardware that ScanSource purchases from vendors and sells to them, VARs provide solutions and service to the end-users of those products.

59. ScanSource's primary assets are the non-public information that is created or used in support of its activities, including but not limited to information concerning its vendors, VARs, customers, suppliers, business partners, and employees, as well as information pertaining to ScanSource's competitive position, business strategies and data relating to negotiations with employee or third parties.

60. ScanSource has assembled vendor and customer lists over a period of years and has gathered detailed data about vendors' and customers' products, needs, preferences, purchasing habits, prices, margins, *etc.*, all of which constitute confidential information and trade secrets of ScanSource.

61. ScanSource's confidential information and trade secrets include in-depth reports of profitability, customers, specific plans, and strategies as well as reviews of years of past performance relating to both its vendors as well as its own business units.

62. Except when disclosure is authorized or legally required, ScanSource's employees, such as Plaintiff, are required to maintain the confidentiality of the information and trade secrets described in the preceding three paragraphs, which is entrusted to them by ScanSource, its customers, vendors or consultants.

63. ScanSource maintains its competitive edge by the collection, analysis and protection of the aforementioned detailed, highly confidential records it collects and maintains for each of its vendors, resellers and purchasers and which are contained in, among other things, ScanSource's quarterly business reports, or "QBRs."

64. ScanSource owns all information, in any form (including electronic information), that is created by its employees and used in support of its activities, including all QBRs and the information and analysis contained therein.

65. In the four-day period preceding his final departure from the ScanSource facility on December 16, 2011, Plaintiff collected and took with him QBRs for several ScanSource vendors, including Motorola Solutions, Honeywell, and Intermec.

66. QBRs for a particular vendor derive their value from not being known to others, including other ScanSource vendors and VARs.

67. QBRs contain information concerning vendors and VARs that, if other vendors and VARs in competition with them were to access such QBRs it would be enormously damaging not only to the former vendors' and VARs' business, but also to ScanSource's business, as competing vendors and competing VARs could unfairly use this confidential information to determine how and where they should focus their competitive efforts.

68. ScanSource's primary assets are its customer and vendor lists and the data concerning them that it has gathered over the course of their relationships concerning their products, needs, purchasing habits, prices, margins, etc.

69. On December 9, 2011, Plaintiff's supervisor told him that ScanSource was terminating his employment effective December 31, 2011.

70. The two men agreed that, until Plaintiff determined how he wanted to describe his departure from the company, the fact that he would be leaving would be kept in confidence.

71. Thereafter, before Plaintiff told anyone he was leaving the company, he surreptitiously obtained QBRs and other highly confidential information from his direct reports by directing them to download this information onto a thumb drive.

72. After his last full day of work at ScanSource, Plaintiff cleaned out his office, removing not only hard copies of ScanSource records, but also, at that time or earlier, an external hard drive upon which he is believed to have kept ScanSource data.

73. While Plaintiff left behind the laptop that Defendant had assigned to him, upon information and belief, he had attempted to prevent ScanSource from being able to boot the laptop up following his departure.

74. Since his departure, Plaintiff has contacted at least one employee who formerly reported to him in an attempt to obtain from her additional confidential, proprietary information belonging to the company.

75. Plaintiff denied any knowledge of the current location of either the external hard drive or the materials removed from his office.

76. ScanSource has demanded return of these materials, but, other than the communication from his attorney in Exhibit F, Plaintiff has declined to return them.

77. The information removed by the Plaintiff from his office derives its value from not being known or used by any ScanSource vendor, supplier, customer or reseller to the advantage or disadvantage of any other vendor, supplier, customer, or reseller.

78. If information regarding one vendor were revealed to one of its competing vendors, this revelation would be highly damaging to ScanSource.

79. ScanSource is entitled to an order requiring, *inter alia*, that Plaintiff return these data in all of its forms (hard copy, electronic copies), that he never use this information for any purpose, that he identify any third party to whom he has revealed it, and that the Court order an independent third-party examination of all electronic media (computers, notebooks, iPads, hard drives, computer discs, PDAs, USB drives, etc.), any internet-based repository containing information regarding ScanSource, its products, customers, and/or suppliers, including all copies thereof, where Plaintiff has deposited same, or that he be held in contempt.

The Parties

80. ScanSource's business is automatic identification and data capture (AIDC) and point-of-sale (POS) technology solutions which it sells to its reseller partners ("Resellers" or "VARs"). Services that ScanSource sells include education and training, state-of-the-art logistics, financial services, technical support, custom configuration, professional assistance, marketing support, and e-commerce solutions.

81. ScanSource continuously employed Plaintiff in various management roles at its facility in Greenville County from January 2005 through December 2011.

82. On June 20, 2008, ScanSource promoted Plaintiff to the office of President of ScanSource North America's Bar Code POS ("Point of Sale") business unit (hereafter "President of ScanSource North America"). In that position Plaintiff had overall responsibility for ScanSource's

North American Bar Code POS business unit ("ScanSource North America") which represented the majority of the company's North American revenue.

83. As President of ScanSource North America, Plaintiff served on ScanSource's top leadership team representing the highest-ranking management personnel in the company.

84. As President of ScanSource North America, Plaintiff had access to and gained knowledge of a wide variety of confidential business information of ScanSource, including but not limited to information concerning business plans and strategies, identification and needs of vendors and Resellers, costs of sales and profit margins, inventories, manufacturing technologies and capabilities, and information regarding ScanSource's employees.

85. During his employment, ScanSource assigned Plaintiff a laptop computer and gave him access to its computer network for his use in conducting ScanSource's business.

86. ScanSource's computer network contained its valuable and confidential information, as well as trade secrets, including but not limited to, vendor and customer data (*e.g.*, vendor and customer account histories, client plans, relationship maps, organizational charts, *etc.*), customer proposals, vendor programs, QBRs, contract data, customer correspondence, and financial data concerning ScanSource's business and its customers.

87. The aforementioned information is not generally known to the public.

88. ScanSource treats this information as confidential and proprietary and takes steps, reasonable under the circumstances, to safeguard this information from improper and unauthorized use and disclosure.

The Parties' Agreements

89. On or about May 28, 2008, Plaintiff and ScanSource entered into an "EMPLOYMENT AGREEMENT" (hereinafter referred to as the "Agreement"), a true and correct copy of which is attached hereto and incorporated herein as Exhibit A.

90. On December 18, 2011, pursuant to ¶ 6 of the Agreement, Plaintiff signed and returned to ScanSource a Release Agreement (hereafter referred to as the "Release"), a true and correct copy of which is attached hereto and incorporated herein as Exhibit B.

91. The Agreement recites that the consideration for it included Plaintiff's employment as President of ScanSource North America, the Company's agreement to provide Plaintiff with access to the Company's "Confidential Information" and "Trade Secrets" (as defined in the Agreement), access to vendors and customers, and other promises contained in the Agreement. (Ex. A)

92. After he signed the Agreement, Plaintiff received from ScanSource employment and related compensation and benefits for approximately 3 and ½ additional years, as well as access to the Company's Confidential Information and Trade Secrets.

93. The Agreement contains Plaintiff's promise to not disclose the Company's Confidential Information and/or Trade Secrets and not to use these for the benefit of any person or entity other than the Company. (Ex. A, ¶ 11(c)(v) and (vi), p. 12). This promise expressly binds Plaintiff for twenty-four (24) months after the Termination Date with respect to Confidential Information that does not constitute a Trade Secret, and for Trade Secret information binds Plaintiff for so long as the information at issue remains a Trade Secret. (*Id.*)

94. The Agreement contains a provision in which Plaintiff promised not to violate the company's policies concerning employee conduct. (Ex. A., ¶ 5(b)(ii)).

95. The Agreement contains a provision in which Plaintiff promised not to disparage the Company for a period of five (5) years after the term of his employment ends. (Ex. A., ¶ 11(d)).

96. The Agreement contains a provision in which Plaintiff promised not to solicit or otherwise encourage certain ScanSource employees to leave the Company's employment for a period of twenty-four (24) months following the Termination Date. (Ex. A., ¶ 11(c)(iv)).

97. In addition to executing Exhibit A and Exhibit B, attached hereto, Plaintiff acknowledged, on or about July 15, 2010, that he had received and reviewed the ScanSource Business Code of Conduct, including Policy # 111 and Policy # 112, as is indicated by the Special Handbook Acknowledgement/Code of Conduct Certification attached hereto and incorporated herein as Exhibit C.

98. In Exhibit C, Plaintiff agreed to "respect the confidentiality of information acquired in the course of business except when authorized or otherwise legally obligated to disclose the information."

99. In Exhibit C, Plaintiff also acknowledged that "confidential information acquired in the course of business is not to be used for personal advantage."

100. In Exhibit C, Plaintiff agreed not to use for personal gain or take for himself opportunities that are discovered through the use of Company property, information or position and not to use Company property, information or position for personal gain.

101. A true copy of Policy # 111 and Policy # 112 in the ScanSource Business Code of Conduct are attached hereto and incorporated herein as Exhibit D.

102. Policy 112, entitled "Intellectual Property and Confidentiality," provides, in part, as follows:

Confidentiality

Confidential information includes all non-public information that might be of use to competitors or harmful to ScanSource or its customers, if disclosed. The Company owns all information, in any form (including electronic information) that is created or used in support of its activities. This information is a valuable asset and the Company expects employees to protect it from unauthorized disclosure. This information includes ScanSource customer, supplier, business partner, and employee data. Federal and state law may restrict the use of this information and may penalize the employee if the person uses or discloses it. Each employee should protect information pertaining to ScanSource's competitive position, business strategies and information relating to negotiations with employees or third parties and share it only with employees who need to know it in order to perform their jobs.

Employees must maintain the confidentiality of information entrusted to them by ScanSource, its customers, vendors or consultants, except when disclosure is authorized or legally required. Employees must take all reasonable efforts to safeguard confidential information that is in their possession against inadvertent disclosure and must comply with any non-disclosure obligations imposed on ScanSource.

103. Before Plaintiff's breach, ScanSource satisfied all of its obligations to Plaintiff pursuant to Exhibits A, C and D.

104. Plaintiff has breached Exhibits A, C and D as is more fully set forth herein.

Actions of Plaintiff Before His Employment With ScanSource Terminated

105. Plaintiff's supervisor, Scott Benbenek, President of Worldwide Operations for ScanSource, met with him on December 9, 2011, and at that time advised him of the impending termination of his employment, to be effective December 31, 2011.

106. After Plaintiff learned that he was to be terminated, and while still employed by ScanSource, Plaintiff asked several employees who reported to him to provide him with Confidential Information and Trade Secrets belonging to ScanSource as defined in ¶ 11(b) of Exhibit A (hereafter "Confidential Information" and "Trade Secrets").

107. On December 12, 2011, Plaintiff asked Jeanne Aiken, a ScanSource Director of Merchandising who reported directly to him, if she had "the Dell List."

108. The "Dell List" was a reference to a highly confidential point of sale ScanSource customer list.

109. Ms. Aiken told Plaintiff she had the Dell List.

110. Plaintiff asked her if the Dell List included the contact name and address of customers.

111. When Ms. Aiken said the Dell List did not include customer contact name and address, Plaintiff told her he did not want it.

112. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Chris Spearman, a ScanSource Team Leader who reported directly to Director of Merchandising Ansley Hoke, to download the last vendor quarterly business report for Motorola onto a thumb drive that Plaintiff handed to Mr. Spearman.

113. Mr. Spearman downloaded the information Plaintiff requested and returned the thumb drive to Plaintiff.

114. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Stephen Fowler, a ScanSource employee who reported to Merchandising Director Robbie Cox (who in turn reported directly to Plaintiff), to provide him with the quarterly business report for Honeywell, a ScanSource vendor.

115. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Robbie Cox, to download the quarterly business reports for Intermec, a large ScanSource vendor.

116. This and other quarterly business reports, known within the company as "Vendor QBRs," contained detailed background on the purchases of ScanSource supplier Intermec over twelve (12) quarters, including sales, margin, profit, revenue, etc.

117. The data Plaintiff requested from Ms. Aiken, Mr. Spearman, Mr. Cox and Mr. Fowler included, among other things, vendor QBRs and other detailed sales data, for a number of ScanSource vendors..

118. After and as a result of receiving his requests, Messrs. Spearman, Cox and Fowler provided Plaintiff with Confidential Information and Trade Secrets (as defined in Exhibit A).

**Actions of Plaintiff Before and/or After His Employment
With ScanSource Terminated**

119. Before Plaintiff's employment with ScanSource terminated, he surreptitiously communicated with ScanSource's largest vendor, Motorola Solutions, and asked that vendor to communicate with him via the vendor's personal email account.

120. Plaintiff caused to be installed software on the laptop ScanSource provided for his use which permitted him to store highly confidential information on an internet-based program called "Drop Box," and which permits him, perhaps even today, to continue to have access to such information via his personal Drop Box account.

121. Plaintiff also used and maintained an external hard drive on his desk for the purpose of downloading confidential ScanSource data and information.

122. During the period beginning at 5:00 p.m. on December 15 until 7:45 a.m. on December 16, 2011, Plaintiff removed confidential and proprietary documents and data belonging to ScanSource, in hard copy and electronic form, from his private office at ScanSource.

123. Plaintiff has not returned the confidential and proprietary documents and data belonging to ScanSource that he removed from his office on or about December 15 and 16, 2011.

124. Plaintiff has since told representatives of ScanSource that he does not know the location of the confidential and proprietary documents and data belonging to ScanSource he removed from his office on or about December 15 and 16, 2011.

Actions of Plaintiff After His Employment With ScanSource Terminated

125. Plaintiff's employment with ScanSource terminated effective December 31, 2011.

126. Since December 31, 2011, Defendant is informed and believes that Plaintiff has contacted ScanSource resellers and has told them he can help them get more money from vendors and distributors.

127. On Wednesday, January 4, 2012, Plaintiff directed at least two text messages to at least one ScanSource employee seeking confidential proprietary information belonging to ScanSource.

128. Specifically, on Wednesday, January 4, 2012, Plaintiff actively engaged in communications with Jeanne Aiken, a ScanSource Director of Merchandising who formerly reported to him in his role as President of ScanSource North America.

129. On Wednesday, January 4, 2012, at approximately 5:34 p.m., Plaintiff sent the following text message to Jeanne Aiken: "Would you send me the HP customer list from your home email or give it to me on a memory stick? Pretty please."

130. On Wednesday, January 4, 2012, at approximately 5:36 p.m., Ms. Aiken responded as follows: "Jeff, I would love to help you, but I just can't do that, that type of stuff is ScanSource confidential now."

131. On Wednesday, January 4, 2012, at approximately 5:37 p.m., Plaintiff responded to Ms. Aiken as follows: "The HP stuff? Ok. Thanks. Still love you."

132. On Saturday, December 31, 2011, Plaintiff sent a text message to Mark Morgan asking if he had "hit \$265m?"

133. The aforesaid text message to Mr. Morgan was seeking to learn whether the business unit had achieved its fourth quarter 2011 commit number.

134. Information such as the foregoing is maintained in confidence by ScanSource.

**FOR A SIXTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
BREACH OF CONTRACT (Employment Agreement, Business Ethics and Code of
Conduct, and Confidentiality Policies)**

135. Defendant incorporates by reference the allegations and denials of paragraphs 1 through 134 as if set forth verbatim here.

136. Unknown to ScanSource at the time, Plaintiff breached the Agreement before termination of his employment by soliciting employees of ScanSource to provide him with Confidential Information or Trade Secrets.

137. Plaintiff breached the Agreement after termination of his employment by soliciting or encouraging employees of ScanSource to provide him with Confidential Information or Trade Secrets.

138. Plaintiff has violated the parties' agreement set forth in ScanSource Policy # 111.

139. Plaintiff has violated the parties' agreement set forth in ScanSource Policy # 112.

140. Plaintiff's breaches have or will cause ScanSource to suffer damages, including but not limited to a loss of reputation, lost profits, loss of customers, loss of vendors, loss of goodwill, loss of confidentiality of its trade secrets, and loss of competitive position for which ScanSource should be compensated.

141. Further, unless enjoined by this Court, Plaintiff is likely to continue breaching his agreements with ScanSource.

142. Plaintiff's past, ongoing, and likely future breaches of ScanSource Policies and the Agreement are likely to cause damages as well as irreparable harm to ScanSource for which no adequate remedy at law exists.

**FOR A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(MISAPPROPRIATION OF TRADE SECRETS, S. C. CODE §39-8-10, et seq.)**

143. Defendant incorporates by reference the allegations and denials of paragraphs 1 through 142 as if set forth verbatim here.

144. ScanSource has unique, valuable, confidential, and proprietary information concerning its vendors and customers and their needs, including, but not limited to, information described in Paragraphs 59 through 61, and elsewhere, herein.. This information and/or the compilation thereof constitutes a trade secret under S. C. Code Ann. § 39-8-20(5).

145. ScanSource's trade secrets are known only to ScanSource and its limited, specified employees and are not generally known to the public or ScanSource's competitors or amongst its different vendors or customers with respect to each other.

146. ScanSource's trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, the public or any other person who can obtain economic value from their disclosure or use.

147. ScanSource's trade secrets cannot be duplicated by Plaintiff or any competitor without significant time, effort, and expense.

148. ScanSource's confidential trade secret information provides it with a competitive business advantage.

149. ScanSource goes to great lengths and expense to maintain the confidentiality of its trade secrets, including, but not limited to, restricting access to the information to employees who need to know it, by password protecting all electronic databases, by creating, communicating and educating its employees on its company policies concerning its code of conduct and by entering into agreements (such as Exhibits A, C and D) with employees to protect its trade secrets and other confidential information.

150. ScanSource communicated its trade secrets and other confidential information in confidence to Plaintiff while he was employed by ScanSource.

151. Plaintiff was repeatedly made aware of policies restricting the use of such trade secrets and confidential information, and ScanSource's trade secrets and confidential information were disclosed by Plaintiff in breach of the confidence entrusted to him by ScanSource.

152. Plaintiff misappropriated ScanSource's trade secrets in violation of S. C. Code Ann. § 39-8-30 by, among other things, causing a USB flash drive to be introduced to ScanSource's computers and downloading ScanSource's trade secrets and then, upon information and belief, importing the information that was downloaded on the USB drive to another computer not belonging to ScanSource.

153. Plaintiff misappropriated ScanSource's trade secrets in violation of S. C. Code Ann. § 39-8-30 by, utilizing a "Drop Box" internet service where, upon information and belief, he caused to be transmitted to and stored upon it confidential and proprietary information and Trade Secrets belonging to ScanSource.

154. Upon information and belief, Plaintiff continues to have access to the "Drop Box" internet service and the confidential and proprietary information belonging to ScanSource that he transmitted and stored there.

155. The information described above contained a compilation of trade secrets information developed and maintained by ScanSource and/or for ScanSource's benefit at substantial effort and expense.

156. Plaintiff misappropriated the data described above and continues to maintain custody of and/or control over it.

157. Upon information and belief, ScanSource's confidential information and trade secrets were or will be used by Plaintiff to the detriment of ScanSource in order to obtain an unfair competitive advantage for himself or those in association with him.

158. Plaintiff's actions as described above were willful, wanton, and in reckless disregard of ScanSource's rights.

159. As a proximate result of Plaintiff's willful misappropriation, ScanSource has suffered damages, including, but not limited to, loss of reputation, lost profits, loss of customers, loss of vendors, loss of goodwill, loss of confidentiality of its trade secrets, and loss of competitive position for which ScanSource should be compensated.

160. ScanSource is entitled to all relief available under the South Carolina Trade Secrets Act for Plaintiff's actions, including injunctive relief, actual damages, unjust enrichment damages, costs, prejudgment interest, and reasonable attorney's fees, as well as an award of exemplary damages in an amount not exceeding twice the actual damages awarded. ScanSource is entitled to damages pursuant to S.C. Code Ann. §39-8-40.

161. Plaintiff's actions as alleged herein will be a continual cause of irreparable harm to ScanSource unless Plaintiff is enjoined from using and/or disclosing ScanSource's trade secrets. Because there is not an adequate remedy at law, ScanSource is entitled to a preliminary and permanent injunction restraining and enjoining Plaintiff from, among other things, using

and/or disclosing ScanSource's trade secrets or taking any action that would permit or require him to use and/or disclose ScanSource's trade secrets. ScanSource is entitled to injunctive relief pursuant to S.C. Code Ann. §39-8-50.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(BREACH OF DUTY OF LOYALTY)

162. Defendant incorporates by reference the allegations and denials of paragraphs 1 through 161 as if set forth verbatim here.

163. As its employee, Plaintiff owed ScanSource a duty of loyalty.

164. During and/or after his employment with ScanSource, Plaintiff breached his duty of loyalty by, among other things, knowingly and intentionally causing by causing to be introduced a USB flash drive and Drop Box to download information from ScanSource's computers for the unlawful purpose of depriving ScanSource of the benefit of such information in order for Plaintiff to gain an unfair competitive business advantage over ScanSource.

165. Plaintiff further breached his duty of loyalty to ScanSource by, among other things, surreptitiously and under false pretenses obtaining confidential proprietary information from employees who reported or formerly reported to him, by removing data, in hard copy and electronic forms, from his office during the last 24 hours that he had access to his office at ScanSource, employment, and by denying any knowledge of the current whereabouts of this information and data

166. As a direct and proximate result of Plaintiff's breach of his duty of loyalty to ScanSource, ScanSource has suffered actual and consequential damages in an amount to be determined at trial.

167. Therefore, ScanSource seeks actual and consequential damages, and is entitled to punitive damages because Plaintiff's conduct was willful, wanton, and/or undertaken in reckless disregard of ScanSource's rights.

**FOR A NINETEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

168. Defendant incorporates by reference the allegations and denials of paragraphs 1 through 167 as if set forth verbatim here.

169. South Carolina law implies a covenant of good faith and fair dealing in all contracts between parties.

170. An implied term of the Agreement attached hereto as Exhibit A is a covenant of good faith and fair dealing.

171. As a result of the conduct described above, Plaintiff has violated the implied covenant of good faith and fair dealing.

172. Plaintiff's actions as herein described, in violation of said implied covenant of good faith and fair dealing, have caused ScanSource to suffer damages.

**FOR A TWENTIETH DEFENSE AND BY WAY OF COUNTERCLAIM
(CONVERSION)**

173. Defendant incorporates by reference the allegations and denials of paragraphs 1 through 172 as if set forth verbatim here.

174. Plaintiff has, without authorization, assumed and exercised the rights of ownership over goods, data and information belonging to ScanSource.

175. Plaintiff's assumption and exercise of rights of ownership over goods, data and information belonging to ScanSource has excluded the rights of ScanSource.

176. Plaintiff's assumption and exercise of rights of ownership over goods, data and information belonging to ScanSource has caused damage to ScanSource.

WHEREFORE, Defendant ScanSource Corporation respectfully prays for entry of judgment in its favor and an award of relief from the Court as follows:

A. A temporary restraining order and preliminary injunction prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter, or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any person employed by ScanSource to provide him with Confidential Information or Trade Secrets;

B. A temporary restraining order and preliminary injunction prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter, or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any customer or supplier of ScanSource to provide him with Confidential Information or Trade Secrets;

C. A preliminary and permanent injunction requiring Plaintiff to return any and all property and/or information rightfully belonging to, or wrongfully taken from, ScanSource, including, but not limited to, any and all documents, materials, or electronic media (computers, hard drives, computer discs, PDAs, USB drives, etc.) containing information regarding ScanSource, its products, customers, and/or suppliers, including all copies thereof, and eliminating any and all access to same via Drop Box or other personal accounts with cloud based servers;

D. A preliminary and permanent injunction requiring Plaintiff to submit to a computer examination and inspection of all of his computer systems and data, including third party operated personal accounts containing any company information, such as Drop Box or other

personal accounts with cloud based servers and verification by a computer forensics expert at Defendant's expense to ensure all of the information unlawfully transmitted or destroyed by Plaintiff from ScanSource's protected computer is not in Plaintiff's possession, custody , or control.

- E. Dismissal of Plaintiff's Complaint;
- F. An award to ScanSource of actual damages, consequential damages, punitive damages, reasonable attorney's fees, prejudgment interest, and costs in an amount to be determined at trial;
- G. An award to ScanSource of its costs and disbursements of this action; and
- H. An award of such other and further relief as the Court may deem just and equitable.

NELSON MULLINS RILEY & SCARBOROUGH LLP

Sue Erwin Harper by DBR

Sue Erwin Harper, SC Bar No.1917
corky.harper@nelsonmullins.com
Carmen Harper Thomas, SC Bar No. 76012
carmen.thomas@nelsonmullins.com
1320 Main Street/ 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
Telephone: (803) 799-2000
Facsimile: (803) 255-9034

Dowse "Brad" Rustin, IV

Dowse "Brad" Rustin, IV
SC Bar No. 74934
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
Telephone: (864) 250-2300
brad.rustin@nelsonmullins.com

Attorneys for Defendant ScanSource, Inc.

January 24, 2012

EXHIBIT A

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") between ScanSource, Inc., a South Carolina corporation ("Company"), and Jeffrey E. Yelton ("Executive") (collectively "the Parties") is effective as of May 28, 2008 ("Effective Date").

BACKGROUND

The Company desires to employ Executive as President of its ScanSource North America POS & Barcoding business unit, and Executive is willing to serve in such capacity, in accordance with the terms and conditions of this Agreement.

In consideration of the mutual commitments set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Employment. On the Effective Date, Executive will be employed in the capacity stated above with such commensurate responsibilities as are assigned to him by the Company's President of Worldwide Operations.

2. Employment Period. Unless earlier terminated in accordance with Section 5, Executive's employment will be for a term (the "Employment Period"), beginning on the Effective Date and ending on December 31, 2008, the Employment Period End Date ("Initial Term"). After the Initial Term and on the last day of any subsequent term, this Agreement will automatically renew for successive one year periods ("Renewal Term"), unless, more than sixty (60) days before the expiration of the Initial Term or any Renewal Term, either Party gives written notice to the other Party that the Agreement will not be renewed ("Notice of Non-Renewal"), then the Employment Period will end upon the expiration of the Initial Term or any Renewal Term, as the case may be.

3. Extent of Service. During the Employment Period, and excluding any periods of vacation and sick leave to which Executive is entitled, Executive agrees to devote his business time, attention, skill and efforts exclusively to the faithful performance of his duties hereunder. *Provided, however*, that it shall not be a violation of this Agreement for Executive to (i) devote reasonable periods of time to charitable and community activities and, with the approval of the Company, industry or professional activities, and/or (ii) manage personal business interests and investments, so long as these activities do not interfere with the performance of Executive's responsibilities under this Agreement.

RSB

J E Y

4. Compensation and Benefits.

(a) Base Salary. During the Employment Period, the Company will pay to Executive a base salary at the rate specified on Exhibit A ("Base Salary"), less normal withholdings, payable per the Company's customary payroll practices. The Company's President of Worldwide Operations will review Executive's Base Salary annually and in his sole discretion may increase Executive's Base Salary from year to year. The annual review of Executive's Base Salary by the President of Worldwide Operations will consider, among other things, the Executive's performance, the Company's performance, and the performance of the Company's ScanSource North America POS & Barcoding business unit.

(b) Variable Compensation, Savings and Retirement Plans. During the Employment Period, Executive will be entitled to participate in all savings and retirement plans, practices, policies and programs applicable to staff officers of the Company ("Peer Executives") pursuant to their terms. The Executive will also be eligible to receive certain variable compensation ("Variable Compensation") based on performance criteria as specified on Exhibit A.

(c) Welfare Benefit Plans. During the Employment Period, Executive and Executive's eligible dependents may participate pursuant to their terms in the welfare benefit plans, practices, policies and programs provided by the Company which may include medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs ("Welfare Plans") to the extent applicable to Peer Executives. Contributions will be required by the Executive. The Company may, in its sole discretion, modify, change, or eliminate its Welfare Plans.

(d) Expenses. During the Employment Period, Executive will be entitled to receive reimbursement for all reasonable expenses incurred by Executive in accordance with the policies, practices and procedures of the Company, and such reimbursement will be made no later than the last day of the year following the year in which the Executive incurs the reimbursable expense.

(e) Fringe Benefits. During the Employment Period, Executive will be entitled to fringe benefits in accordance with the plans, practices, programs and policies of the Company in effect for Peer Executives.

(f) Vacation. During each fiscal year during the Employment Period, Executive will be entitled to the number of days of paid vacation specified on Exhibit A. Executive may take vacation at the times Executive reasonably requests, subject to the prior approval of the person specified on Exhibit A. Unused vacation time will not carry over to the next fiscal year and will not be paid upon termination of employment.

5. Termination of Employment

ASB

9-24²

(a) Death, Retirement or Disability. Executive's employment terminates automatically upon Executive's death or Retirement during the Employment Period. For purposes of this Agreement, "Retirement" means normal retirement as defined in the Company's retirement plan in effect when Executive retires, or if there is no retirement plan, "Retirement" will mean Executive's voluntary termination of employment after age 55 with fifteen years of service. If the Company determines that Executive has become disabled during the Employment Period (pursuant to the definition of Disability set forth below), it may give to Executive written notice of its intention to terminate Executive's employment. Executive's employment with the Company will terminate effective on the 30th day after receipt of such written notice by Executive ("Disability Effective Date"), unless, within the 30 days after such receipt, Executive has returned to full-time performance of Executive's duties. For purposes of this Agreement, "Disability" means a mental or physical disability as determined by the Company in accordance with standards and procedures similar to those under the Company's long-term disability plan, if any. If the Company has no long-term disability plan, "Disability" will mean the inability of Executive, as determined by the Board, to perform the essential functions of his regular duties and responsibilities, with or without reasonable accommodation, due to a medically determinable physical or mental condition which has lasted (or can reasonably be expected to last) for twelve workweeks in any twelve-month period. At the request of Executive or his personal representative, the Company's determination that the Disability of Executive has occurred will be certified by two physicians mutually agreed upon by Executive, or his personal representative, and the Company. If the two physicians are unwilling to certify that the Executive is disabled, Executive's termination will be deemed a termination by the Company without Cause and not a termination because of his Disability.

(b) Termination by the Company. The Company may terminate Executive's employment during the Employment Period with or without Cause. For purposes of this Agreement, "Cause" means:

(i) the failure of Executive to satisfactorily perform Executive's duties with the Company (other than failure resulting from incapacity due to Disability), after a written demand for satisfactory performance is delivered to Executive by the President of Worldwide Operations, which specifically identifies the manner in which the President of Worldwide Operations believes that Executive has not satisfactorily performed Executive's duties. The decision of whether Executive has satisfactorily performed his duties with the Company or complied with the demand for satisfactory performance is in the sole discretion of the Company.

(ii) engaging in unethical or illegal conduct or misconduct that includes but is not limited to violations of the Company's policies concerning employee conduct.

(iii) the Executive's breach of any term of this Agreement.

ASB

3
Jey

(c) Termination by Executive. Executive's employment may be terminated by Executive for Good Reason or no reason. For purposes of this Agreement, "Good Reason" means:

(i) without the consent of Executive, the assignment to Executive of any duties materially inconsistent with Executive's position, as compared to Peer Executives, excluding an isolated, insubstantial, and inadvertent action taken in good faith which is remedied by the Company promptly after receipt of notice from Executive;

(ii) a material reduction by the Company in Executive's Base Salary or a material reduction in Executive's Variable Compensation opportunity;

(iii) the failure by the Company (a) to continue in effect any compensation plan in which Executive participates as of the Effective Date that is material to Executive's total base compensation, unless the Company provides a substantially equivalent alternative plan, or (b) to continue Executive's participation in the alternative plan on a basis that is substantially equivalent in terms of the value of benefits provided;

(iv) the Company's requiring Executive, without his consent, to be based at any location that increases Executive's normal work commute by fifty (50) miles or more as compared to Executive's normal work commute or otherwise is a material change in the location at which Executive is to be based;

(iv) any failure by the Company to comply with and satisfy Section 12(c) of this Agreement; or

(v) the material breach of this Agreement by the Company.

Executive must provide written notice to the Company of Executive's intent to terminate employment for Good Reason within 30 days of the initial existence of the Good Reason. The Company will have an opportunity to cure any claimed event of Good Reason within 30 days of notice from Executive. The Company's good faith determination of cure will be binding. The Company will notify Executive in writing of the timely cure of any claimed event of Good Reason and how the cure was made. Any Notice of Termination delivered by Executive based on a claimed Good Reason which was thereafter cured by the Company will be deemed withdrawn and ineffective to terminate this Agreement. If the Company fails to cure any claimed event of Good Reason within 30 days of notice from Executive, Executive must terminate employment for such claim of Good Reason within 180 days of the initial existence of the Good Reason, and if Executive fails to do so, such claimed event of Good Reason will be deemed withdrawn and ineffective to terminate this Agreement.

(d) Notice of Termination. Any termination of Executive's employment by the Company or by Executive must be communicated by Notice of Termination to the

RSB

4
J.E.Y.

other Party in accordance with Section 13(f) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) states the specific termination provision in this Agreement relied upon, including whether such termination is for Cause or Good Reason, (ii) if such termination is for Cause or Good Reason, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provisions so indicated, and (iii) specifies the termination date. The failure by Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause will not waive any right of Executive or the Company, or preclude Executive or the Company from asserting applicable facts or circumstances in enforcing rights under this Agreement.

(e) Date of Termination. "Date of Termination" means the date specified in the Notice of Termination or, if Executive's employment is terminated by reason of death, Retirement or Disability, the date of death or Retirement or the Disability Effective Date.

6. Obligations of the Company upon Termination.

(a) Termination by Executive for Good Reason; Termination by the Company Other Than for Cause, Death, Disability, Retirement, or Normal Expiration of Employment Period. If, during the Employment Period, the Company terminates Executive's employment other than for Cause, death, Disability, Retirement, or non-renewal and the normal expiration of the Employment Period, or Executive terminates employment for Good Reason following the Company's failure to cure such Good Reason as set forth in Section 5(c) of this Agreement, the Company will pay Executive the following amounts and provide the following benefits:

(i) the sum of (1) Executive's Base Salary earned through the Date of Termination to the extent not already paid, and (2) unpaid Variable Compensation earned to the Date of Termination (the sum of the amounts described in clauses (1) and (2) being the "Accrued Obligations") will be paid as soon as practicable after the Date of Termination per the Company's customary payroll practices. For purposes of determining the amount of unpaid Variable Compensation earned in the event the Date of Termination is in the middle of a fiscal quarter, the Company will pro-rate and reduce the amount it determines would have been earned for the complete quarter, based on the ratio of the number of days the Executive was employed in the quarter over the number of actual days in the quarter; and

(ii) to the extent not previously paid or provided and only if earned as of the Date of Termination, the Company will timely pay or provide to Executive any other amounts or benefits which Executive is eligible to receive under any plan, program, policy, practice, contract or agreement of the Company ("Other Benefits") per the terms of such Other Benefits; and

RSB

⁵
Jey

(iii) subject to Section 13(i) of this Agreement and Executive's execution of a Release in substantially the form of Exhibit B (the "Release") within the time set forth in Section 6(g), on the 30th day after the Date of Termination, the Company will pay to Executive in a lump sum in cash the amounts in (A) and provide the benefits in (B):

(A) the amount equal to one (1) times the combined annual Base Salary and Variable Compensation earned by Executive from the Company, including any such amounts earned but deferred, in the last calendar year before the Date of Termination (the "Severance Benefits"), less normal withholdings. Executive's entitlement to receive and retain amounts set forth in this Section 6 are conditioned on Executive's compliance with the Restrictions on Conduct described in Section 11.

(B) for up to twelve (12) months following the Date of Termination, the Company will reimburse Executive on a monthly basis for COBRA payments made by Executive which are in excess of the monthly rates paid by active employees, for medical and dental insurance benefits. Reimbursement may cease sooner than twelve (12) months if Executive becomes eligible to receive similar benefits under another employer provided or group plan (which may be the plan of the Executive's new employer or his spouse's employer), and, in such event, Executive's right to COBRA will end. These cash reimbursements will be made according to the Company's customary payroll practices (at least monthly) for up to twelve (12) months following the Date of Termination.

(b) Death. If Executive's employment is terminated because of Executive's death during the Employment Period, this Agreement will terminate without further obligations to Executive's legal representatives under this Agreement other than the payment of Accrued Obligations as described in Section 6(a)(i) and the timely payment or provision of Other Benefits as described in Section 6(a)(ii). The Accrued Obligations will be paid to Executive's estate or beneficiary, as applicable. Other Benefits as used in this Section 6(b) will include, without limitation, and Executive's estate and/or beneficiaries will be entitled to receive, benefits under such plans, programs, practices and policies relating to death benefits, if any, as are applicable to Executive on the date of his death per the terms of such Other Benefits.

(c) Disability. If Executive's employment is terminated because of Executive's Disability during the Employment Period, this Agreement will terminate without further obligations to Executive other than the payment of Accrued Obligations as described in Section 6(a)(i) and the timely payment or provision of Other Benefits as described in Section 6(a)(ii). The term Other Benefits as used in this Section 6(c) includes, without limitation, and Executive will be entitled after the Disability Effective Date to receive, disability and other benefits under such plans, programs, practices and policies relating to disability, if any, as are applicable to Executive and his family on the Date of Termination per the terms of such Other Benefits.

RSB

6
24

(d) Retirement. If Executive's employment is terminated because of Executive's Retirement during the Employment Period, this Agreement will terminate without further obligations to Executive other than the payment of Accrued Obligations as described in Section 6(a)(i) and the timely payment or provision of Other Benefits as described in Section 6(a)(ii). The term Other Benefits as used in this Section 6(d) includes, without limitation, and Executive shall be entitled after the Date of Termination to receive, retirement and other benefits under such plans, programs, practices and policies relating to retirement, if any, as applicable to Executive on the Date of Termination per the terms of such Other Benefits.

(e) Cause or Voluntary Termination without Good Reason. If Executive's employment is terminated for Cause during the Employment Period, or if Executive voluntarily terminates employment during the Employment Period without Good Reason, this Agreement will terminate without further obligations to Executive other than the payment of Accrued Obligations as described in Section 6(a)(i) and the timely payment or provision of Other Benefits as described in Section 6(a)(ii).

(f) Normal Expiration of Employment Period. If Executive's employment is terminated due to the normal expiration of the Employment Period following notice of non-renewal of this Agreement, this Agreement will terminate without further obligations to Executive other than the payment of Accrued Obligations as described in Section 6(a)(i) and the timely payment or provision of Other Benefits as described in Section 6(a)(ii). Notwithstanding anything to the contrary in this Agreement, if the Company provides notice that the Agreement will not be renewed and a new employment agreement is not offered and the Executive remains an employee of the Company in any capacity, Executive's employment will not be governed by this Agreement and Executive will be an at-will employee. In that instance, Executive remains subject to the Restrictions on Conduct described in Section 11.

(g) Execution of Release. Notwithstanding anything to the contrary in this Section 6, the Release must be executed and provided to the Company, and the period for revoking the same must have expired, before the 30th day following the Date of Termination.

7. Non-exclusivity of Rights. Nothing in this Agreement prevents or limits Executive's continuing or future participation in any plan, program, policy or practice provided by the Company and for which Executive may qualify, nor, subject to Section 13(d), will anything in this Agreement limit or otherwise affect any rights Executive may have under any contract or agreement with the Company. Amounts which are vested benefits or which Executive is otherwise entitled to receive under any plan, policy, practice, program, contract or agreement with the Company at or subsequent to the Date of Termination will be payable in accordance with such plan, policy, practice, program, contract or agreement except as explicitly modified by this Agreement.

RSB

7
Q & Y

8. Mandatory Reduction of Payments in Certain Events. Any payments made to Executive under this Agreement will be made with the Executive's best interests in mind related to the excise tax imposed by Code Section 4999 (the "Excise Tax").

(a) Anything in this Agreement to the contrary notwithstanding, if it is determined that any benefit, payment or distribution by the Company to or for the benefit of Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (a "Payment") would be subject to the Excise Tax, then, before making the Payment to Executive, a calculation will be made comparing (i) the net benefit to Executive of all Payments after payment of the Excise Tax, to (ii) the net benefit to Executive if the Payment had been limited to the extent necessary to avoid being subject to the Excise Tax. If the amount calculated under (i) above is less than the amount calculated under (ii) above, then the Payments will be limited to the extent necessary to avoid being subject to the Excise Tax. In that event, Executive will direct which Payments are to be reduced and any such reduction will be made so as not to violate Code Section 409A.

(b) The determination of whether an Excise Tax would be imposed, the amount of such Excise Tax, and the calculation of the amounts referred to in Section 8(a)(i) and (ii) above will be made by the Company's regular independent accounting firm at the expense of the Company or, at the election and expense of Executive, another nationally recognized independent accounting firm (the "Accounting Firm") which will provide detailed supporting calculations. Any determination by the Accounting Firm will be binding upon the Company and Executive. As a result of the uncertainty in the application of Code Section 4999 at the time of the initial determination by the Accounting Firm hereunder, it is possible that Payments to which Executive was entitled, but did not receive pursuant to Section 8(a), could have been made without the imposition of the Excise Tax ("Underpayment"). In such event, the Accounting Firm will determine the amount of the Underpayment that has occurred and any such Underpayment will be promptly paid by the Company to or for the benefit of Executive.

(c) If the provisions of Code Sections 280G and 4999 or any successor provisions are repealed without succession, this Section 8 will be of no further force or effect.

9. Costs of Enforcement. Subject to Section 8(b), each Party will pay its own costs and expenses incurred in enforcing or establishing its rights under this Agreement, including, without limitation, attorneys' fees, whether a suit is brought or not, and whether or not incurred in trial, bankruptcy, or appellate proceedings.

10. Representations and Warranties. Executive represents and warrants to the Company that Executive is not a party to, or otherwise subject to, any restrictive covenant not to compete, not to solicit or not to disclose or use confidential information, with any person or entity, and Executive's execution of this Agreement and performance of his obligations will not violate the terms or conditions of any contract or obligation, written or oral, between Executive and any other person or entity.

RSB

8
254

11. Restrictions on Conduct of Executive.

(a) General. Executive agrees that as part of the services he will perform for the Company he will be exposed to, and help create and maintain, competitive advantages over other "Competitive Businesses," as well as good will with the Company's customers and suppliers. By virtue of the position Executive will hold, Executive is receiving, will receive, or will be provided access to the Company's: (1) customers, suppliers, advertisers, and vendors as well as pricing information, distribution channels, and other terms of those relationships; (2) "Confidential Information" and "Trade Secrets;" (3) the relationships and other elements that together comprise good will; and/or (4) institutional knowledge regarding product development, its engineering, product specification, material suppliers, material specifications, product suppliers, manufacturing knowledge, customer feedback, surveys, design-around information, research and development information, internal quality control tests, other quality control information, and other similar information. Executive agrees that the competitive advantage and good will the Company has created, and which Executive will assist in furthering and maintaining, is an important and legitimate business asset of the Company. Should Executive compete against the Company, having intimate knowledge of the information that gives the Company its competitive advantage and good will would give Executive, or those "Competitive Businesses" he is assisting, an unfair advantage over the Company.

(b) Definitions. The following capitalized terms used in this Section 11 will have the meanings assigned to them below, which definitions will apply to both the singular and the plural forms of these terms:

"Competitive Business" means any entity that distributes any goods or services in or to the point of sale, automatic identification, data capture, security, business telephony, or communications products and peripherals markets if such entity distributes any product that is the same or similar to any good or service offered by the Company, including reasonable alternatives, within the final two (2) years of Executive's employment with the Company. Executive agrees that Competitive Businesses include, but are not limited to, the following entities: Ingram Micro, Tech Data, Avnet, BlueStar, Westcon, Arrow, Agilysis, and PC POS.

"Confidential Information" means any and all information of the Company that has value and is not generally known to the Company's competitors. This includes, but is not limited to, any information or documents about: the Company's accounting practices; financial data; financial plans and practices; the

Initials:

Jeffrey E. Yulston
Scott B. Bledsoe

Company's operations; its future plans (including new products, improved products, and products under development); its methods of doing business; internal forms, checklists, or quality assurance testing; programs; customer and supplier lists or other such related information as pricing or terms of business dealings; supply chains; shipping chains and prices; packaging technology or pricing; sourcing information for components, materials, supplies, and other goods; employees; pay scales; bonus structures; contractor information and lists; marketing strategies and information; product plans; distribution plans and distribution channel relationships; business plans; manufacturing, operation, sales and distribution processes; costs; margins for products; prices, sales, orders and quotes for the Company's business that is not readily attainable by the general public; existing and future services; testing information (including methods and results) related to materials used in the development of the Company's products or materials that could be used with the Company's products; development information (including methods and results) related to computer programs that design or test products or that track information from a central database; and the computer or electronic passwords of all employees and/or firewalls of the Company. Notwithstanding the definitions stated above, the term Confidential Information does not include any information which (i) at the time of disclosure to Executive, was in the public domain; (ii) after disclosure to Executive, is published or otherwise becomes part of the public domain through no fault of Executive; (iii) without a breach of duty owed to the Company, was already in Executive's possession at the time of disclosure; (iv) was received after disclosure to Executive from a third party who had a lawful right to the information other than through a relationship of trust and confidence with the Company, and without a breach of duty to the Company, disclosed the information to Executive; or (v) where Executive can show it was independently developed by Executive on non-Company time without reference to, or reliance upon, other Confidential Information or Trade Secrets.

"Prohibited Duties" means supervising, consulting, advising, coaching, providing any information related to, or directly or indirectly performing any task for a Competitive Business that is similar or related to one or more duties Executive performed or supervised for the Company. Prohibited duties include owning greater than 10% of any Competitive Business. Prohibited duties includes supervising, consulting, advising, coaching, providing any information related to, or directly or indirectly performing any task for any material, product or service provider of any Competitive Business, if Executive's work for such material, product or service provider is associated with a Competitive Business.

"Restricted Territory" means any place where the Company or its affiliates is (or is attempting to) actively manufacturing, marketing, selling, or distributing its products within the final two (2) years of Executive's employment, or places where the Company made affirmative steps to market or sell its products within the final six (6) months of Executive's employment. If Executive was assigned only a portion of the territory in which the Company operates or sells, then the

RSB 10
JEY

Restricted Territory will be narrowly construed to include only the limited territory of the Executive.

"Trade Secrets" means information related to the business or services of the Company which (1) derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reasonable reverse engineering processes by persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts by the Company and affiliated third parties that are reasonable under the circumstances to maintain its secrecy. Assuming the foregoing criteria in clauses (1) and (2) are met, Trade Secret encompasses business and technical information including, without limitation, know-how, designs, formulas, patterns, compilations, programs, devices, inventions, methods, techniques, drawings processes, finances, actual or potential customers and suppliers, and existing and future products and services of the Company. Notwithstanding the definitions stated above, the term Confidential Information does not include any information which (i) at the time of disclosure to Executive, was in the public domain; (ii) after disclosure to Executive, is published or otherwise becomes part of the public domain through no fault of Executive; (iii) without a breach of duty owed to the Company, was already in Executive's possession at the time of disclosure; (iv) was received after disclosure to Executive from a third party who had a lawful right to the information through some avenue other than through a relationship of trust and confidence with the Company, and without a breach of duty to the Company, disclosed the information to Executive; or (v) where Executive can show it was independently developed by Executive on non-Company time without reference to, or reliance upon, other Confidential Information or Trade Secrets.

(c) Restrictions. Executive understands and agrees that the compensation the Company has agreed to provide pursuant to this Agreement would not be as lucrative if the restrictions set forth in this section were not included in this Agreement. Therefore, in consideration of the compensation provided in this Agreement, and the other terms agreed to by the Company, along with the disclosure and continued disclosure of Confidential Information and Trade Secrets a portion of which is being paid to compensate Executive for these covenants, Executive covenants and agrees as follows:

(i) for the term of Executive's employment, and for a period of twenty-four (24) months following the Date of Termination, Executive agrees he will not engage in any Prohibited Duties for a Competitive Business in the Restricted Territory;

(ii) for the term of Executive's employment, and for a period of twenty-four (24) months following the Date of Termination, Executive agrees he will not solicit any of the Company's customers or suppliers with whom Executive had contact during the course of Executive's employment with the Company for any Competitive Business;

11
RSB 254

(iii) for the term of Executive's employment, and for a period of twenty-four (24) months following the Date of Termination, Executive agrees he will not solicit any of the Company's prospective customers or prospective suppliers with whom Executive had contact during the course of Executive's employment with the Company for any Competitive Business;

(iv) for the term of Executive's employment, and for a period of twenty-four (24) months following the Termination Date, Executive agrees he will not solicit any of the Company's employees whom Executive supervised during the course of his employment with the Company, any employees with whom he had contact during his employment, any employees who had contacts of employment with the Company at the time solicited, or any employees who had restrictive covenants at the time solicited, to leave the Company for any purpose;

(v) for the term of Executive's employment, and for a period of no less than twenty-four (24) months (for Confidential Information) or for so long as the information remains protected under this Agreement or applicable statute (for Trade Secrets) thereafter, Executive agrees that he will not, either directly or indirectly, publish, disseminate, provide, or otherwise disclose any Confidential Information or Trade Secrets to any third party, unless required to do so by legal process or other law, without the Company's prior written consent. Executive agrees that if he believes he is compelled to reveal Confidential Information or Trade Secrets pursuant to the limited exception provided herein, Executive will provide the Company at least 7 days advance written notice before doing so, and will explain the specifics under which such Confidential Information or Trade Secrets are to be disclosed.

(vi) for the term of Executive's employment, and for a period of no less than twenty-four (24) months (for Confidential Information) or for so long as the information remains protected under this Agreement or applicable statute (for Trade Secrets) thereafter, Executive agrees that he will not, either directly or indirectly, for his own behalf or otherwise, use in any manner the Company's Confidential Information or Trade Secrets.

(d) Non-Disparagement. The Company and Executive agree that for the term of Employee's employment, and for a period of five (5) years thereafter, the Parties will not disparage each other to any non-governmental third parties. Nothing in this subsection should be interpreted as any restriction on either Party's compliance with any laws requiring or compelling disclosure, or any disclosures that are considered absolutely privileged, such as legal proceedings.

(e) Blue Pencil. The Company and Executive agree that the provisions of Section 11, including all subparts, are intended to strike the balance between Executive earning a livelihood and the Company protecting its important competitive advantages and good will. The Parties have drafted the provisions of Section 11, including all

12
RSB JCY

subparts, to allow for enforcement. The Parties agree that should a court determine that any word, phrase, clause, sentence, or paragraph is unreasonably broad in time, territory, or scope so as to render any remaining provisions unenforceable, the Parties desire the court to strike the offending language in the narrowest way possible and enforce the remainder as if the offending language was not there, so that only reasonable restrictions are enforced.

(f) Elective Right of the Company. If Executive challenges the enforceability of the Restrictive Covenants (or asserts an affirmative defense to an action seeking to enforce the Restrictive Covenants) based on an argument that the Restrictive Covenants are (i) not enforceable as a matter of law, (ii) unreasonable in geographical scope or duration or (iii) void as against public policy, the Company will have the right (1) to cease making the payments required under Section 6 above, and (2) upon demand, to have Executive repay, within 10 business days of any such demand, any payments already made. Any right afforded to, or exercised by, the Company under this Agreement will not affect the enforceability of the Restrictive Covenants or any other right of the Company under this Agreement.

12. Assignment and Successors.

(a) This Agreement is personal to Executive and without the prior written consent of the Company will not be assignable by Executive otherwise than by will or the laws of descent and distribution. This Agreement will inure to the benefit of and be enforceable by Executive's legal representatives.

(b) This Agreement will inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" will mean the Company as herein before defined and any successor to its business and/or assets which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous.

(a) Waiver. Failure of either Party to insist, in one or more instances, on performance by the other in strict accordance with the terms and conditions of this Agreement will not be deemed a waiver or relinquishment of any right granted in this Agreement or of the future performance of any such term or condition or of any other term or condition of this Agreement, unless the waiver is in a writing signed by the Party making the waiver.

13
ASB QCY

(b) Severability. If any provision or covenant, or any part thereof, of this Agreement should be held by any court to be invalid, illegal or unenforceable, either in whole or in part, such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of the remaining provisions or covenants, or any part thereof, of this Agreement, all of which will remain in full force and effect.

(c) Other Agents. Nothing in this Agreement is to be interpreted as limiting the Company from employing other personnel on such terms and conditions as may be satisfactory to it.

(d) Entire Agreement. Except as provided herein, this Agreement contains the entire agreement between the Parties on the subject matter hereof. From and after the Effective Date, this Agreement will supersede any other agreement between the Parties on the subject matter hereof, including without limitation, any prior Agreement.

(e) Governing Law and Jurisdiction. Without regard to conflict of laws principles, the laws of the State of South Carolina will govern this Agreement in all respects, whether as to its validity, construction, capacity, performance or otherwise. This Agreement may only be enforced in a court of competent jurisdiction in Greenville County, South Carolina and Executive agrees to submit to the exclusive jurisdiction of a court of competent jurisdiction in Greenville, South Carolina.

(f) Notices. All notices, requests, demands and other communications required or permitted in this Agreement must be in writing and will be deemed to have been duly given if delivered or three days after mailing if mailed, first class, certified mail, postage prepaid:

To Company: ScanSource, Inc.
6 Logue Court
Greenville, SC 29615
Attn: General Counsel

To Executive:
To the address specified on Exhibit A

Any Party may change the address to which notices, requests, demands and other communications will be delivered or mailed by giving notice thereof to the other Party in the same manner provided herein.

(g) Amendments and Modifications. This Agreement may be amended or modified only by a writing signed by both Parties, which makes specific reference to this Agreement.

(h) Construction. Each Party and him or its counsel have been provided the opportunity to review and revise this Agreement and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party

14
RSP Q.E.Y.

will not be employed in the interpretation of this Agreement. Instead, the language of all parts of this Agreement will be construed as a whole, and according to its fair meaning, and not strictly for or against either party.

(i) Deferred Compensation Provision. Notwithstanding any other provision of this Agreement, it is intended that any payment or benefit provided under this Agreement that is considered to be "deferred compensation" subject to Code Section 409A will be provided in such manner and at such time, including without limitation in connection with a permissible payment event under Code Section 409A, as is exempt from or complies with the requirements of Code Section 409A. All rights to payments and benefits under this Agreement are to be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Code Section 409A. Termination of employment under this Agreement, to the extent required by Code Section 409A, will be construed to mean a "separation from service" under Code Section 409A where it is anticipated that no further services will be performed after such date or that the level of services Executive would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than twenty percent (20%) of the average level of services Executive performed over the prior thirty-six (36)-month period. The terms of this Agreement are intended to, and will be construed and administered to the fullest extent possible, to permit compensation to be paid under this Agreement to be exempt from or comply with Code Section 409A. Regardless, the Company will not be liable to Executive or anyone else if the Internal Revenue Service or any court or other authority determines that any payments or benefits to be provided under this Agreement are subject to taxes, penalties or interest as a result of failing to comply with or be exempt from Code Section 409A.

Notwithstanding anything in this Agreement to the contrary, if any payment or benefit that constitutes non-exempt "deferred compensation" under Code Section 409A would otherwise be provided under this Agreement due to Executive's separation from service during a period in which he is a "specified employee" (as defined in Code Section 409A and the associated final regulations), then, to the extent required by Code Section 409A, such payments or benefits will be delayed, to the extent applicable, until six months after Executive's separation from service or, if earlier, Executive's death (the "409A Deferral Period"). If such payments are otherwise due to be made in installments during the 409A Deferral Period, the payments that would otherwise have been made in the 409A Deferral Period will be accumulated and paid in a lump sum as soon as the 409A Deferral Period ends, and the balance of the payments will be made as otherwise scheduled. In the event benefits are required to be deferred, any such benefit may be provided during the 409A Deferral Period at Executive's expense, with Executive having the right to reimbursement from the Company once the 409A Deferral Period ends, and the balance of the benefits will be provided as otherwise scheduled.

15
RSB QRY

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Employment Agreement as of the dates indicated below.

EXECUTIVE:

Name: Jerry E. Yelton
Date: 7-28-08

SCANSOURCE, INC.:

By: R. Scott Benbenek
Name R. Scott Benbenek
Title: President Worldwide Operations
ScanSource, Inc.
Date: 8/4/08

RSB

16

EXHIBIT A TO EMPLOYMENT AGREEMENT

Executive: Jeffrey E. Yelton

Base Salary: \$225,000.10 annually

Variable Compensation: Variable compensation may be paid in such amounts and at such times as may be determined by the President of Worldwide Operations based upon Executive's performance and attainment of management and performance goals established by the President of Worldwide Operations, with a target amount of \$150,000.00 annually.

Notwithstanding any other provision of this Agreement or this Exhibit, any Variable Compensation to be paid under this Agreement will be paid to Executive by the later of (i) March 15th following the end of the calendar year in which Executive's right to such Variable Compensation vests or (ii) the 15th day of the third month following the end of the Company's fiscal year during which Executive's right to such Variable Compensation vests.

Days of Paid Vacation per Fiscal Year:

20

Approving Person:

President of Worldwide Operations

Executive Notice Address:

716 Brixton Circle
Simpsonville, SC 29681

Initials:

J E Y , R S B

EXHIBIT B TO EMPLOYMENT AGREEMENT

Form of Release

THIS RELEASE ("Release") is granted effective as of the ____ day of _____, ____ by _____ ("Executive") in favor of ScanSource, Inc. (the "Company"). This is the Release referred to that certain Employment Agreement dated as of _____ by and between the Company and Executive (the "Employment Agreement"). Executive gives this Release in consideration of the Company's promises and covenants as recited in the Employment Agreement, with respect to which this Release is an integral part.

1. **Release of the Company.** Executive, for himself, his successors, assigns, executors, administrators, insureds, attorneys, and all those entitled to assert his rights, now and forever hereby releases and discharges the Company and its respective officers, directors, shareholders, stockholders, trustees, partners, joint ventures, board members, employees, agents, parent corporations, divisions, wholly or partially owned subsidiaries, affiliates, estates, predecessors, successors, heirs, executors, administrators, assigns, representatives, and attorneys (the "Released Parties"), from any and all legal, administrative, and equitable claims, actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages, judgments, agreements, promises, demands, claims for attorneys' fees and costs, or liabilities of any nature whatsoever, in law or in equity, which Executive ever had or now has against the Released Parties, including any claims arising by reason of or in any way connected with any employment relationship which existed between the Company or any of its parents, subsidiaries, affiliates, or predecessors, and Executive. It is understood and agreed that this Release is intended to cover all actions, causes of action, claims or demands for any damage, loss or injury, which may be traced either directly or indirectly to the aforesaid employment relationship, or the termination of that relationship, that Executive has, had or purports to have, from the beginning of time to the date of this Release, whether known or unknown, that now exists, no matter how remotely they may be related to the aforesaid employment relationship including but not limited to claims for employment discrimination under federal, state or local statutes, except as provided in Paragraph 2. without limiting the broadness of the foregoing language, Executive agrees to release Company from any and all claims under:

- (1) local, state or federal common law, statute, regulation, ordinance or treaty;
- (2) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*
- (3) 42 U.S.C. §§ 1981, 1981A, 1983 and 1985;
- (4) the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*;
- (5) the Federal Rehabilitation Act of 1973;
- (6) the Older Worker Benefit Protection Act, 29 U.S.C. §§ 621, *et seq.*;
- (7) the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq.*;
- (8) Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 301, *et seq.*;
- (9) the Health Insurance Portability Act;
- (10) the Occupational and Safety Health Act;
- (11) the Equal Pay Act;
- (12) the Worker Adjustment and Retraining Notification Act;
- (13) the Sarbanes-Oxley Corporate Reform Act of 2002, 15 U.S.C. 7201, *et seq.*;

- (14) Executive Orders 11246 and 11141;
- (15) South Carolina Human Affairs Law;
- (16) the South Carolina Payment of Wages Act;
- (17) the South Carolina Bill of Rights for Handicapped Persons;
- (18) the state workers' compensation law, including S.C. Code Ann. § 41-1-80;
- (19) tort claims including, but not limited to, claims of wrongful termination, constructive discharge, defamation, invasion of privacy, interference with contract, interference with prospective economic advantage and intentional or negligent infliction of emotional distress and outrage;
- (20) contract claims, whether express or implied;
- (21) claims for unpaid wages, benefits or entitlements asserted under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, or under South Carolina wages and hours laws, including, but not limited to, the South Carolina Payment of Wages Act;
- (22) claims for unpaid benefits or entitlements asserted under any Company plan, policy, benefits offering or program except as otherwise required by law;
- (23) claims for attorneys' fees, interest, expenses and costs, injunctive relief or reinstatement to which he is, claims to be or may be entitled; and
- (24) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*;

each as amended, and all other such similar statutes, city or county ordinances or resolutions and laws of the State of South Carolina, provided, however, that nothing herein shall release the Company of its obligations to Executive under the Employment Agreement or any other contractual obligations between the Company or its affiliates and Executive, or any indemnification obligations to Executive under the Company's bylaws, certificate of incorporation, South Carolina law, or otherwise.

Without waiving any prospective or retrospective rights under the Family and Medical Leave Act ("FMLA") or the Fair Labor Standards Act ("FLSA"), Executive admits that he has received from the Company all rights and benefits, if any, potentially due to him pursuant to the FMLA or FLSA. It is the parties' intent to release all claims, which can legally be released, but no more than that.

Executive specifically agrees not to attempt to institute any proceedings or pursue any action pursuant to any laws (state, local, or federal) with any agency or in any jurisdiction (state, local, or federal) based on employment with or termination from the Company except as required or protected by law. Executive covenants that he will in no way encourage or assist any person or entity (including, but not limited to, any past, present or future employee(s) of Company) to take part or participate in any legal or administrative action against Company, except as otherwise required or protected by law. Nothing in the Agreement shall be interpreted or applied in a manner that affects or limits Executive's otherwise lawful ability to bring an administrative charge with the Equal Employment Opportunity Commission or other appropriate state or local comparable administrative agency; however, the parties agree that Executive has released Company from all liability arising from the laws, statutes, and common law listed in paragraph 1 (except as set forth in this paragraph below, with respect to the Age Discrimination in Employment Act ("ADEA")) and, as such, Executive is not and will not be entitled to any monetary or other comparable relief on his own behalf. Nothing in this Agreement shall be

interpreted or applied in a manner that affects or limits Executive's ability to challenge (with a lawsuit or administrative charge) the validity of Executive's release of Company in this Agreement for age claims under the ADEA (which release is provided for in paragraph 2 of this Agreement). Other than a challenge to the validity of the release of ADEA claims under this Agreement, Executive has released Company from all liability with respect to the laws, statutes, and common law listed in paragraph 2, including the ADEA

2. Release of Claims Under Age Discrimination in Employment Act. Without limiting the generality of the foregoing, Executive agrees that by executing this Release, he has released and waived any and all claims he has or may have as of the date of this Release for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* It is understood that Executive is advised to consult with an attorney prior to executing this Release; that he in fact has consulted a knowledgeable, competent attorney regarding this Release; that he may, before executing this Release, consider this Release for a period of twenty-one (21) calendar days; and that the consideration he receives for this Release is in addition to amounts to which he was already entitled. It is further understood that this Release is not effective until seven (7) calendar days after the execution of this Release and that Executive may revoke this Release within seven (7) calendar days from the date of execution hereof.

3. Executive acknowledges and represents that as an employee of the Company he has been obligated to, and has been given the full and unfettered opportunity to, report timely to the Company any conduct that would give rise to an allegation that the Company or any affiliate of the Company has violated any laws applicable to its businesses or has engaged in conduct which could otherwise be construed as inappropriate or unethical in any way, even if such conduct is not, or does not appear to be, a violation of any law. Executive acknowledges that a condition of the payment of any consideration provided by the Company to the Executive hereunder is his truthful and complete representation to the Company regarding any such conduct, including but not limited to conduct regarding compliance with the Company's Code of Ethics, policies, and procedures, and with all laws and standards governing the Company's business.

Executive's truthful and complete representation, based on his thorough search of his knowledge and memory, is as follows: Executive has not been directly or indirectly involved in any such conduct; no one has asked or directed him to participate in any such conduct; and Executive has no specific knowledge of any conduct by any other person(s) that would give rise to an allegation that the Company or any affiliate of the Company has violated any laws applicable to its businesses or has engaged in conduct which could otherwise be construed as inappropriate or unethical in any way.

Executive agrees that he has carefully read this Release and is signing it voluntarily. Executive acknowledges that he has had twenty one (21) days from receipt of this Release to review it prior to signing or that, if Executive is signing this Release prior to the expiration of such 21-day period, Executive is waiving his right to review the Release for such full 21-day period prior to signing it. Executive has the right to revoke this release within seven (7) days following the date of its execution by him, and must deliver written notice of revocation in person to _____ at the following address: _____, and such revocation

shall not be effective unless actually received by _____, within seven (7) days following the date the release was signed by Executive. If Executive revokes this Release within such seven (7) day period, no severance benefit will be payable to him under the Employment Agreement and he shall return to the Company any such payment received prior to that date.

EXECUTIVE HAS CAREFULLY READ THIS RELEASE AND ACKNOWLEDGES THAT IT CONSTITUTES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE COMPANY UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AND ANY AND ALL OTHER STATE AND FEDERAL LAWS, WHETHER STATUTORY OR COMMON LAW. EXECUTIVE ACKNOWLEDGES THAT HE HAS HAD A FULL OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR OTHER ADVISOR OF HIS CHOOSING CONCERNING HIS EXECUTION OF THIS RELEASE AND THAT HE IS SIGNING THIS RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE COMPANY FROM ALL SUCH CLAIMS.

Executive

Date: _____

EXHIBIT B

RELEASE AGREEMENT

THIS RELEASE ("Release") is granted effective as of the 31 day of December, 2011, by Jeffrey E. Yelton ("Executive") in favor of ScanSource, Inc. (the "Company"). This is the Release referred to in that certain Employment Agreement dated as of May 28, 2008 by and between the Company and Executive (the "Employment Agreement"). Executive gives this Release in consideration of the Company's promises and covenants as recited in the Employment Agreement, with respect to which this Release is an integral part.

The Company has also advised Executive to observe the Company's employee handbook policies, including the Insider Trading in Securities policy through the date of separation. While the Company cannot generally enforce such policies post-employment, it recommends to former employees to observe the Company's stock trading windows at least one quarter following separation or until any material non-public information possessed by an individual is made public or is no longer material.

1: Release of the Company. Executive, for himself, his successors, assigns, executors, administrators, insureds, attorneys, and all those entitled to assert his rights, now and forever hereby releases and discharges the Company and its respective officers, directors, shareholders, stockholders, trustees, partners, joint ventures, board members, employees, agents, parent corporations, divisions, wholly or partially owned subsidiaries, affiliates, estates, predecessors, successors, heirs, executors, administrators, assigns, representatives, and attorneys (the "Released Parties"), from any and all legal, administrative, and equitable claims, actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages, judgments, agreements, promises, demands, claims for attorneys' fees and costs, or liabilities of any nature whatsoever, in law or in equity, which Executive ever had or now has against the Released Parties, including any claims arising by reason of or in any way connected with any employment relationship which existed between the Company or any of its parents, subsidiaries, affiliates, or predecessors, and Executive. It is understood and agreed that this Release is intended to cover all actions, causes of action, claims or demands for any damage, loss or injury, which may be traced either directly or indirectly to the aforesaid employment relationship, or the termination of that relationship, that Executive has, had or purports to have, from the beginning of time to the date of this Release, whether known or unknown, that now exists, no matter how remotely they may be related to the aforesaid employment relationship including but not limited to claims for employment discrimination under federal, state or local statutes, except as provided in Paragraph 2. without limiting the broadness of the foregoing language, Executive agrees to release Company from any and all claims under:

- (1) local, state or federal common law, statute, regulation, ordinance or treaty;
- (2) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*
- (3) 42 U.S.C. §§ 1981, 1981A, 1983 and 1985;
- (4) the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*;
- (5) the Federal Rehabilitation Act of 1973;
- (6) the Older Worker Benefit Protection Act, 29 U.S.C. §§ 621, *et seq.*;
- (7) the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq.*;

- (8) Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 301, *et seq.*;
- (9) the Health Insurance Portability Act;
- (10) the Occupational and Safety Health Act;
- (11) the Equal Pay Act;
- (12) the Worker Adjustment and Retraining Notification Act;
- (13) the Sarbanes-Oxley Corporate Reform Act of 2002, 15 U.S.C. 7201, *et seq.*;
- (14) Executive Orders 11246 and 11141;
- (15) South Carolina Human Affairs Law;
- (16) the South Carolina Payment of Wages Act;
- (17) the South Carolina Bill of Rights for Handicapped Persons;
- (18) the state workers' compensation law, including S.C. Code Ann. § 41-1-80;
- (19) tort claims including, but not limited to, claims of wrongful termination, constructive discharge, defamation, invasion of privacy, interference with contract, interference with prospective economic advantage and intentional or negligent infliction of emotional distress and outrage;
- (20) contract claims, whether express or implied;
- (21) claims for unpaid wages, benefits or entitlements asserted under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, or under South Carolina wages and hours laws, including, but not limited to, the South Carolina Payment of Wages Act;
- (22) claims for unpaid benefits or entitlements asserted under any Company plan, policy, benefits offering or program except as otherwise required by law;
- (23) claims for attorneys' fees, interest, expenses and costs, injunctive relief or reinstatement to which he is, claims to be or may be entitled; and
- (24) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*;

each as amended, and all other such similar statutes, city or county ordinances or resolutions and laws of the State of South Carolina, provided, however, that nothing herein shall release the Company of its obligations to Executive under the Employment Agreement or any other contractual obligations between the Company or its affiliates and Executive, or any indemnification obligations to Executive under the Company's bylaws, certificate of incorporation, South Carolina law, or otherwise.

Without waiving any prospective or retrospective rights under the Family and Medical Leave Act ("FMLA") or the Fair Labor Standards Act ("FLSA"), Executive admits that he has received from the Company all rights and benefits, if any, potentially due to him pursuant to the FMLA or FLSA. It is the parties' intent to release all claims, which can legally be released, but no more than that.

Executive specifically agrees not to attempt to institute any proceedings or pursue any action pursuant to any laws (state, local, or federal) with any agency or in any jurisdiction (state, local, or federal) based on employment with or termination from the Company except as required or protected by law. Executive covenants that he will in no way encourage or assist any person or entity (including, but not limited to, any past, present or future employee(s) of Company) to take part or participate in any legal or administrative action against Company, except as otherwise required or protected by law. Nothing in the Agreement shall be interpreted or applied

in a manner that affects or limits Executive's otherwise lawful ability to bring an administrative charge with the Equal Employment Opportunity Commission or other appropriate state or local comparable administrative agency; however, the parties agree that Executive has released Company from all liability arising from the laws, statutes, and common law listed in paragraph 1 (except as set forth in this paragraph below, with respect to the Age Discrimination in Employment Act ("ADEA")) and, as such, Executive is not and will not be entitled to any monetary or other comparable relief on his own behalf. Nothing in this Agreement shall be interpreted or applied in a manner that affects or limits Executive's ability to challenge (with a lawsuit or administrative charge) the validity of Executive's release of Company in this Agreement for age claims under the ADEA (which release is provided for in paragraph 2 of this Agreement). Other than a challenge to the validity of the release of ADEA claims under this Agreement, Executive has released Company from all liability with respect to the laws, statutes, and common law listed in paragraph 2, including the ADEA

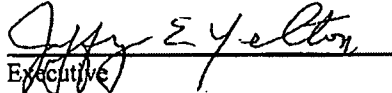
2. Release of Claims Under Age Discrimination in Employment Act. Without limiting the generality of the foregoing, Executive agrees that by executing this Release, he has released and waived any and all claims he has or may have as of the date of this Release for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* It is understood that Executive is advised to consult with an attorney prior to executing this Release; that he in fact has consulted a knowledgeable, competent attorney regarding this Release; that he may, before executing this Release, consider this Release for a period of twenty-one (21) calendar days; and that the consideration he receives for this Release is in addition to amounts to which he was already entitled. It is further understood that this Release is not effective until seven (7) calendar days after the execution of this Release and that Executive may revoke this Release within seven (7) calendar days from the date of execution hereof.

3. Executive acknowledges and represents that as an employee of the Company he has been obligated to, and has been given the full and unfettered opportunity to, report timely to the Company any conduct that would give rise to an allegation that the Company or any affiliate of the Company has violated any laws applicable to its businesses or has engaged in conduct which could otherwise be construed as inappropriate or unethical in any way, even if such conduct is not, or does not appear to be, a violation of any law. Executive acknowledges that a condition of the payment of any consideration provided by the Company to the Executive hereunder is his truthful and complete representation to the Company regarding any such conduct, including but not limited to conduct regarding compliance with the Company's Code of Ethics, policies, and procedures, and with all laws and standards governing the Company's business.

Executive's truthful and complete representation, based on his thorough search of his knowledge and memory, is as follows: Executive has not been directly or indirectly involved in any such conduct; no one has asked or directed him to participate in any such conduct; and Executive has no specific knowledge of any conduct by any other person(s) that would give rise to an allegation that the Company or any affiliate of the Company has violated any laws applicable to its businesses or has engaged in conduct which could otherwise be construed as inappropriate or unethical in any way.

Executive agrees that he has carefully read this Release and is signing it voluntarily. Executive acknowledges that he has had twenty one (21) days from receipt of this Release to review it prior to signing or that, if Executive is signing this Release prior to the expiration of such 21-day period, Executive is waiving his right to review the Release for such full 21-day period prior to signing it. Executive has the right to revoke this release within seven (7) days following the date of its execution by him, and must deliver written notice of revocation in person to R. Scott Benbenek at the following address: 6 Logue Court, Greenville, South Carolina, and such revocation shall not be effective unless actually received by R. Scott Benbenek, within seven (7) days following the date the release was signed by Executive. If Executive revokes this Release within such seven (7) day period, no severance benefit will be payable to him under the Employment Agreement and he shall return to the Company any such payment received prior to that date.

EXECUTIVE HAS CAREFULLY READ THIS RELEASE AND ACKNOWLEDGES THAT IT CONSTITUTES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE COMPANY UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT, AND ANY AND ALL OTHER STATE AND FEDERAL LAWS, WHETHER STATUTORY OR COMMON LAW. EXECUTIVE ACKNOWLEDGES THAT HE HAS HAD A FULL OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR OTHER ADVISOR OF HIS CHOOSING CONCERNING HIS EXECUTION OF THIS RELEASE AND THAT HE IS SIGNING THIS RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE COMPANY FROM ALL SUCH CLAIMS.


Executive

Date: 12-18-11

EXHIBIT C

Special Handbook Acknowledgement

Code of Conduct Certification

ScanSource, Inc. and its affiliates and subsidiaries (the "Company") is committed to adhering to the highest ethical standards with respect to its management, compliance with its legal obligations and the disclosure of information in connection with the business and operations of the Company. Accordingly, all officers of the Company are required to certify to the statements below.

In my role as an officer of the Company, I have received and reviewed the Company's Business Code of Conduct (the "Code of Conduct"), which provides principles to which I am expected to adhere and advocate. The Code of Conduct consists of the following policies contained in the Company Handbook:

Policy	Policy #
Business Ethics and Code of Conduct	111
Intellectual Property & Confidentiality	112
Conflicts of Interest	113
Financial and Accounting Matters	114
Insider Trading in Securities	115
Securities Laws and Disclosures	116
International Business	117
Open Door Policy	121
Equal Employment Opportunity	201

The Code of Conduct embodies rules regarding individual and peer responsibilities, as well as responsibilities to the Company, its shareholders and the public. I certify to you that I adhere to and advocate the Code of Conduct, including the following principles and responsibilities governing my professional and ethical conduct, to the best of my knowledge and ability:

1. I actively engage in and promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.
2. I avoid conflicts of interest and disclose to the appropriate persons within the Company any material transaction or relationship that reasonably could be expected to give rise to such a conflict.
3. I provide full, fair, accurate, timely and understandable disclosure in reports and documents filed with, or submitted to, the Securities and Exchange Commission and in other public communications.
4. I comply with rules and regulations of federal, state, provincial and local governments and other appropriate private and public regulatory agencies, and to the best of my knowledge, the rules and regulations of foreign governments.
5. I comply with the Company's Insider Trading in Securities policy which, among other provisions, requires me to pre-clear all trading in Company securities with the Company's General Counsel and prohibits me from trading in Company securities during a blackout period.
6. I respect the confidentiality of information acquired in the course of business except when authorized or otherwise legally obligated to disclose the information. I acknowledge that confidential information acquired in the course of business is not to be used for personal advantage.

7. I promote the protection and preservation of the Company's assets and resources, strive to ensure their efficient use and assist the Company in its efforts to control costs.

8. I conduct myself with fairness, honesty, integrity and professionalism, proactively promote such ethical behavior among employees at the Company and as a responsible partner with industry peers and associates and endeavor to deal fairly with the Company's customers, suppliers, competitors and employees.

9. I provide communications that are both accurate and forthright when promoting the Company and its products.

10. I act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing my independent judgment to be subordinated.

11. I will not (a) use for personal gain or take for myself opportunities that are discovered through the use of Company property, information or position; (b) use Company property, information or position for personal gain; or (c) compete with the Company.

12. I promptly report to the appropriate persons within the Company or the Board of Directors any violations of the Code of Conduct of which I become aware.

13. I am accountable for adherence to the Code of Conduct. I acknowledge that any waiver of the Code by me may only be made in advance by the Board of Directors and must be promptly disclosed to shareholders.

Department:	Merchandising
Employee Name:	Jeff Yelton
Employee's Extension:	4994
Employee's Title:	President, ScanSource POS/Barcode
Employee Acceptance:	Accepted
Signoff Date:	07/15/2010 09:07 AM

EXHIBIT D

Business Ethics and Code of Conduct

Business Ethics

The successful business operation and reputation of ScanSource, Inc. (the Company) is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.

Our continued success is dependent upon our customers' and vendors' trust, and we are dedicated to preserving that trust. Employees owe a duty to the Company, our customers, our vendors, and shareholders to act in ways that will merit the continued trust and confidence of the public.

As an organization, the Company strives to ensure compliance with all applicable laws and regulations. We expect our directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

Code of Conduct

In general, you should find that using good judgment, based on high ethical principles, will guide you to act appropriately. Further, it is the responsibility of every ScanSource employee, officer and director to comply with our Code of Conduct. Our Code of Conduct includes the following 9 policies provided in this same section of the Company Handbook:

Code of Conduct:	Policy #:
Business Ethics and Code of Conduct	111
Intellectual Property & Confidentiality	112
Conflicts of Interest	113
Financial and Accounting Matters	114
Insider Trading in Securities	115
Securities Laws and Disclosures	116
International Business	117
Open Door Policy	121
Equal Employment Opportunity	201

Fair and Honest Dealing

You must deal fairly and honestly with the Company's employees, shareholders, customers, suppliers, and competitors. You must behave in an ethical manner and not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

You must respect the integrity of persons and firms with whom the Company deals. You must limit the fees and commissions paid to agents and other representatives to amounts

that are consistent with proper business conduct. You cannot make a payment to any employee, agent or representative of a third party with or through whom the Company does business without full, documented disclosure to all parties.

Other Conflicts of Interest policies which are an integral part of this Code are provided in policy #113.

The Company and its employees deal with government officials in the course of the Company's business, either out of necessity or in legitimate efforts to develop or maintain good working relationships. It is important that the responsible employees be thoroughly familiar with and comply with laws and regulations applicable to dealing with government officials. Employees should be aware that business practices which are acceptable in a commercial environment (e.g. meals, transportation or entertainment) may not be acceptable when dealing with government officials. Employees should follow Company guidelines in their relationships with government officials, and should direct questions about particular situations to the General Counsel. Personal contributions to any political cause, party, candidate or charity should not be represented as coming from the Company.

Any investigation or review of the Company or its business practices by any government official is important to the Company. The Company's General Counsel must be notified of any request for information from any government official or agency before any information is furnished and before there is any agreement or understanding to furnish such information. While it is the Company's policy to cooperate with all appropriate inquiries, in order to make certain this is done properly, the General Counsel must be advised at the outset. Under no circumstance should any employee lie to or mislead a government official. Nor may an employee destroy any documents which have been, or which he or she believes will be, requested for inspection by a government official.

Compliance with Antitrust Laws

You must comply with applicable antitrust and similar laws that regulate competition in the countries in which we operate. If a question arises as to how the antitrust laws apply to a particular business situation or whether our existing business practices comply with the law, every employee has both the right and the responsibility to review the question by calling the General Counsel. These laws prohibit:

- Agreements that unreasonably restrain competition including agreements (whether reflected through tacit understandings, oral commitments or written contracts) regarding price fixing, bid rigging, market allocation and collusion (including price sharing) with anyone, including competitors, customers and suppliers
- Monopolization, boycotts, certain exclusive dealing arrangements and price discrimination agreements
- Unfair trade practices, including bribery, misappropriation of trade secrets, deception, intimidation and similar unfair practices

Compliance with Other Laws, Rules and Regulations

The Company strives to ensure all activity on its behalf is in compliance with applicable laws, rules and regulations. You must comply with all applicable laws, rules and regulations, whether or not specifically addressed in this Code of Conduct. Securities Laws and Insider Trading policies are included as part of this Code as policies #115 and #116. Please contact the Company's General Counsel for additional guidance or if you have questions on laws, rules and regulations.

Proceeds of Illegal Activity

It is a crime under federal and some state money laundering statutes for any person to engage in commercial transactions with the proceeds of criminal activity knowing that the property involved is the proceeds of criminal activity, if the intent in so doing is to promote the criminal activity, conceal or disguise the source or ownership of the proceeds, avoid transaction reporting requirements or evade taxes. If a financial institution, such as a bank or Loan Company, or a travel agency is involved, and the transaction exceeds \$10,000, it is not even necessary that the person have the intent to promote the criminal activity, conceal or disguise it, evade taxes or avoid a reporting requirement. These statutes are not limited to cash transactions. Transactions such as payments for hotel bills, airline tickets and retail purchases that involve personal checks, company checks or wire transfers may be covered.

While it is often thought that such statutes are limited to drug money laundering, these statutes reach almost every crime that generates large amounts of money. Violations of these statutes are extremely serious and can subject a person to 20 years in prison and a fine of the greater of \$500,000 or twice the amount of money involved in each transaction.

The Company does not want to be misused by those engaged in criminal activity. Each employee is expected to be on the alert for activities indicative of drug trafficking, money laundering or other crimes. If an employee has reason to believe that a transaction involves criminal proceeds, or if the transaction otherwise appears suspicious, the employee must immediately notify his or her supervisor, or alternatively, report the transaction to the General Counsel.

Foreign Countries

As we expand our operations abroad, we encounter new challenges as a result of cultural differences and unfamiliar business practices. While we are bound by U.S. laws and regulations as well as Company policy, we must recognize that in many cases we are introducing our culture and methods of conducting business into different environments. When conducting business in other countries, it is imperative that we be especially sensitive to foreign legal requirements and cultural differences and make every effort to integrate our culture as smoothly as possible.

The Company must be careful not to knowingly enter into relationships that, directly or indirectly, expose employees to undue health and safety risks, or that use child, prison or forced labor, or other similarly exploitative practices. The Company and employees will not act illegally to secure or conduct business. The Company will adhere to all applicable legal requirements, both foreign and those in the United States, such as the Foreign Corrupt Practices Act, anti-boycott laws, export laws, and embargo/sanctions regulations.

Delegation of Authority

Only employees who are specifically authorized may commit the Company to others. A "commitment" by the Company includes execution of any written agreement, the making of any oral agreement, or any other undertaking that obligates or binds the Company in any respect, whether or not it involves the payment of money. Employees must never execute a document of otherwise commit the Company unless they have clear authority to do so. You should check with your VP or the General Counsel to determine what authority limits have been delegated to you. Failure to follow this policy may subject you to prompt disciplinary action up to and including termination of employment.

Reporting Violations

You must promptly report any possible violation of these policies of business ethics and Code of Conduct, including any allegation of questionable accounting or auditing activity. Disregarding or failing to comply with this standard of business ethics and conduct could lead to prompt disciplinary action, up to and including termination of employment. The Company will not retaliate against any employee who makes such a report or who assists in the processing of any claim regarding such alleged corporate fraud. We are committed to this principle. Multiple independent channels of communications are available to employees; these are fully described in the nine policies which comprise our Code of Conduct.

Investigations and Enforcement

Reports of possible violations of the Code of Conduct will be collected, reviewed and processed by the General Counsel. The General Counsel may refer reports that are submitted, as he or she determines to be appropriate or as required under the directives of the Board of Directors or an appropriate committee of the Board. Any reports submitted that involve the Company's accounting, auditing and internal auditing controls and disclosure practices will be presented directly to the Audit committee of the Board of Directors on a periodic basis, unless immediate attention by the Audit Committee is warranted.

Reports of possible violations of the Code of Conduct will be investigated by the Company and, if a violation of the Code is substantiated, disciplinary action will be taken, where necessary, including appropriate sanctions for the individual(s) involved, up to and including termination of employment. Any executive officer or director believed to have participated in a possible violation shall not be permitted to participate in any investigation or recommendation for disciplinary action or sanctions.

Violations of the Code of Conduct that may also constitute illegal conduct shall be addressed, which may include making a report to civil or criminal authorities for further action. In addition, the Company may, under certain circumstances, be required to disclose violations of the Code to the stockholders of the Company.

The Company may also from time to time conduct reviews to assess compliance with the Code of Conduct.

Senior Financial Officers

Additional guidelines and standards for the Company's principal executive officer, principal financial officers, principal accounting officer or controller, or persons performing similar functions (the "Senior Financial Officers") can be found under "Supplemental Standards for Senior Financial Officers" within the Financial and Accounting Matters policy #114.

Amendments and Waivers

Only ScanSource, Inc.'s Board of Directors may amend this Code of Conduct. Only the Board of Directors or an authorized committee of the Board may waive a part of the Code for a Senior Financial Officer, executive officer or director. ScanSource will disclose publicly all material amendments and any waivers for Senior Financial Officers, executive officers or directors, to the extent required by law.

Policy No. 111 Issued: 11/1/2004 Applicable: 11/1/2004 Revised:
3/17/2009

THIS HANDBOOK IS NOT AN EMPLOYMENT CONTRACT. EMPLOYMENT IS AT-WILL.

Intellectual Property and Confidentiality

This policy #112 is an integral part of the Company's Code of Conduct, which is introduced under policy #111.

Intellectual Property

Every employee must carefully maintain and manage ScanSource's intellectual property rights, including patents, trademarks, copyrights, licenses and trade secrets, to preserve and protect their value. In addition, employees must respect the intellectual property rights of others. If any employee violates other's intellectual property rights, that individual and ScanSource could face substantial liability, including criminal penalties. An invention, concept, discovery or improvement (all referred to as "Intellectual Property") whether patentable or not, which is conceived or made by an employee, alone or with others, and with the use of the Company's time, materials or facilities, at any time during the term of an employee's employment is the property of the Company. This provision does not apply to Intellectual Property for which no equipment, supplies,

facility, or trade secret information of the Company was used and which was developed entirely on the employee's own time, unless (a) the invention related (i) to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) the invention resulted from any work performed by the employee for the Company.

An employee must promptly make full disclosure of all Intellectual Property to his/her immediate supervisor. At the Company's request and expense and without further compensation, the employee will sign patent applications, assignments and other documents and will perform any other services considered necessary by the Company to vest title to the Company to such Intellectual Property and to perfect, defend and maintain the Company's rights therein. An employee must disclose to the Company prior to the commencement of his/her employment with the Company a list of all inventions that he/she has, alone or jointly with others, conceived, developed, and/or reduced to practice that he/she considers to be his or her property.

Confidentiality

Confidential information includes all non-public information that might be of use to competitors or harmful to ScanSource or its customers, if disclosed. The Company owns all information, in any form (including electronic information) that is created or used in support of its activities. This information is a valuable asset and the Company expects employees to protect it from unauthorized disclosure. This information includes ScanSource customer, supplier, business partner, and employee data. Federal and state law may restrict the use of this information and may penalize the employee if the person uses or discloses it. Each employee should protect information pertaining to ScanSource's competitive position, business strategies and information relating to negotiations with employees or third parties and share it only with employees who need to know it in order to perform their jobs.

Employees must maintain the confidentiality of information entrusted to them by ScanSource, its customers, vendors or consultants, except when disclosure is authorized or legally required. Employees must take all reasonable efforts to safeguard confidential information that is in their possession against inadvertent disclosure and must comply with any non-disclosure obligations imposed on ScanSource.

Confidential information includes, but is not limited to, the following examples:

- Compensation data
- Computer Processes
- Computer Programs and codes
- Customer lists
- Customer preferences
- Financial information
- Labor relations strategies
- Marketing strategies
- New materials research
- Pending projects and proposals
- Technological data
- Technological prototypes

Because the Company considers security breaches very serious, improper use or disclosure of trade secrets or confidential business information will result in prompt

disciplinary action, up to and including termination of employment and legal action, even if the offending employee does not actually benefit from the disclosed information.

This policy does not supersede or limit any separate confidentiality agreements that ScanSource may enter into with individual employees.

Policy No.112
3/17/2009

Issued: 11/1/2004

Applicable: 11/1/2004

Revised:

THIS HANDBOOK IS NOT AN EMPLOYMENT CONTRACT. EMPLOYMENT IS AT-WILL.

EXHIBIT E

January 16, 2012

Via Electronic Mail (JYelton215@gmail.com)
Via Certified Mail/Return Receipt Requested
Via First Class Mail

Mr. Jeffrey E. Yelton
716 Brixton Circle
Simpsonville SC 29681

Dear Jeff:

We have learned that immediately after you were advised that the Company was terminating your employment under your May 28, 2008, Employment Agreement (hereafter "Employment Agreement"), you undertook a course of action to obtain ScanSource Confidential Information in violation of both the law and the agreements you have with ScanSource, Inc.

A few examples of activities about which ScanSource is aware are as follows:

1. You contacted ScanSource employees asking that they provide you with certain customer lists that are highly confidential and proprietary to ScanSource and that they do so via their personal email accounts;
2. Before ScanSource employees who reported to you were aware of your impending departure from the Company, you asked them to download confidential, proprietary customer and vendor information onto a thumb drive that you provided. When you were questioned about this, you initially denied having done this; however, since then you have admitted these activities but have told the Company that you do not know where the thumb drive is;
3. You removed all ScanSource files and hard copies of data formerly housed in your office; you have since advised the Company that you do not know where any of this information is at present;
4. In violation of Company rules, you installed unapproved software on the Company provided laptop, which permitted via drop box the transfer of Company data to your personal account;
5. You surreptitiously communicated with ScanSource's largest vendor and asked that vendor to communicate with you via the vendor's personal email account;
6. You have told us that you plan on starting a Company using our proprietary customer list data and soliciting our customer business.

These activities violate not only the contractual duties you owe ScanSource under your Employment Agreement and the Release Agreement

ScanSource

6 Logue Court • Greenville, South Carolina 29615
864-288-2432 • fax 864-288-4940

you signed on December 18, 2011, but also the duty of loyalty you owe ScanSource as its employee. Moreover, you may be liable for your actions under other legal theories, *e.g.*, claims for damages for conversion, for an accounting, or for imposition of a constructive trust. In addition, your actions may violate state and federal statutes; these include the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030, *et seq.* and the South Carolina Trade Secrets Act, S. C. Code Ann. §§ 39-8-10, *et seq.* If you have misappropriated, used or disclosed trade secrets belonging to ScanSource, you may be enjoined from such misappropriation and also be subject to liability for any damages suffered by ScanSource as a result of such misappropriation, including any attorneys' fees it incurs in proceeding against you.

ScanSource believes you have illegally misappropriated its confidential, proprietary information and that you are violating both the law and your contracts by possessing, disclosing, or threatening to disclose this information to third parties. None of this information should be in your possession at all, much less is it properly used by you or anyone else outside the Company for *any* purpose.

In addition to immediately ceasing any contacts with ScanSource vendors, customers or employees for the purpose of obtaining confidential information, we also demand that no later than 4:00 p.m. on Thursday, January 18, 2012, you return to ScanSource any of its confidential, proprietary information which is in your possession, including all copies in whatever form or medium, including hard copy, CD, DVD, flash drive, thumb drive or external hard drive.

You must also confirm to me in writing, no later than 4:00 p.m. on Thursday, January 18, 2012, that you do not have (in any form or medium) any ScanSource property or information that is confidential or proprietary to ScanSource and that you have not made and will not make such information available to a third party or otherwise use or disclose such information. You must also confirm that you have not transferred any of ScanSource's electronically stored information from its computer or email systems. Electronically stored information includes, but is not limited to, any ScanSource data or files that resided on any computer, server, digital storage device, personal data device, cell phone, or email account that was used in the course of work performed for ScanSource. In this context, transfer means copying, emailing, uploading, downloading and/or using a CD, DVD, flash drive, thumb drive or external hard drive in order to move such electronically stored information. This would also include any attempt to email such electronically-stored information to a personal email account used by you or any other third person. After this confirmation is received, you must also permit a computer forensics expert of our choosing to examine your computer(s) to determine your compliance.

If any of this information has already been used by you or any third party, you must affirmatively advise me, in the writing referenced in the preceding

paragraph, of the specific use to which it has been put and how you intend to remedy its disclosure.

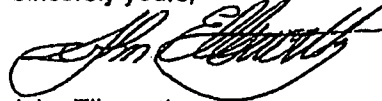
If I you do not return all such information and provide the writing set forth above within the referenced time frame, we will assume you are unwilling to provide this information or assurances, and that you have either violated or intend to violate your obligations under your agreements and the law. **If you do not return this information, please be advised that applicable laws impose an affirmative duty on you to preserve and to protect from destruction all such information in whatever form or medium (e.g., CD, DVD, flash drive, thumb drive or external hard drive as well as any communications you have initiated, posted or received on any social media (e.g., Facebook, Twitter), or any other communications by any mode or medium, including but not limited to all electronic communications (email, text messages), voice mail messages, and written communications since 2004 that relate in any way to your employment by ScanSource, termination of that employment, and any business-related activities you have engaged in since December 9, 2011.**

Until your recent actions came to light, we thought our tacit agreement was that you would leave the company on December 31, 2011, waiving written notice, and that your termination would be without "Cause" under section 5(b) of the Agreement. In such event, any obligation of the company to pay you and afford you benefits under section 6(a) of the Agreement, and your entitlement to receive and retain those amounts, are expressly conditioned upon your compliance with the restrictions set forth in section 11. You have not complied with those conditions and thus are ineligible to receive the benefits set forth in section 6(a).

If it is your position that written notice of termination is now required to terminate your employment, then this letter constitutes notice under section 5(d) of the Employment Agreement that your employment has been terminated for "Cause" as defined therein. Your actions as set forth in detail above breach subsections (ii), (iii), (v) and (vi) of section 11(c) of the Employment Agreement, and your employment has terminated effective the date of this letter.

In addition, ScanSource intends to pursue all available legal remedies to bring to a halt your activities such as those set forth here, to recover its confidential, proprietary information and trade secrets, and to remedy the damages that your actions have inflicted on the company.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Ellsworth", written over a horizontal line.

John Ellsworth

EXHIBIT F

From: Brian Murphy [<mailto:brian.murphy@mindspring.com>]

Sent: Friday, January 20, 2012 1:42 PM

To: John Ellsworth

Subject: ScanSource Materials

The only records/data located to date that were still in Mr. Yelton's possessions have been put on two flash drives, which are both in my office. If you agree to produce copies of what they contain in discovery, I have no objection to your picking them up.

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

brian@brianmurphyfirm.com

www.brianmurphyfirm.com

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified via mail, hand delivery and electronic mail to the following address(es):

Pleadings:

SUMMONS
VERIFIED ANSWER AND COUNTERCLAIMS FOR
TEMPORARY RESTRAINING ORDER, PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF, AND DAMAGES

Counsel Served:

Brian P. Murphy, Esquire
514 Pettigru Street
Greenville, SC 29601
brian@brianmurphyllawfirm.com

Attorney for Plaintiff

D. B. R.

January 24, 2012.

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
BRIAN B. MURPHY
JAN 24 A 10:46

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Jeff Yelton,

Plaintiff,

vs.

ScanSource, Inc.,

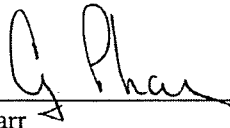
Defendant.

Civil Action No. 2012-CP-23-0314

**VERIFICATION OF ANSWER AND
COUNTERCLAIM**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2012 JAN 24 A 10:15

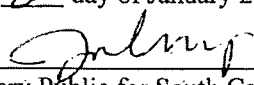
PERSONALLY appeared before me the undersigned, who being first duly sworn,
deposes and says: I am the Director, Compensation, in the Human Resources department of
ScanSource Corporation, Plaintiff in this action. I have read the VERIFIED ANSWER AND
COUNTERCLAIM FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF, AND DAMAGES attached hereto. I know of my own
knowledge that the matters and things stated therein are true, except those matters and things
therein stated on information and belief, and as to those I believe them to be true also.



(L.S.)

Amy Pharr
Director, Compensation, Human Resources
For ScanSource, Inc.

SWORN to and subscribed before me
this 23rd day of January 2012.



(L.S.)

Notary Public for South Carolina
My Commission Expires: 7/18/17

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
Jeff Yelton,	)	
	)	
Plaintiff/Counter Defendant,	)	Plaintiff/CounterDefendant's Reply
	)	and Affirmative Defenses to
v.	)	Defendant/Counterclaimant's
	)	Counterclaims
ScanSource, Inc.,	)	
	)	(Jury Trial Demanded)
Defendant/Counterclaimant.	)	

FILED CLERK OF COURT
GREENVILLE CO S C
2012 FEB 17 P 12:08

Plaintiff/Counterdefendant denies each and every allegation raised by Defendant/Counterclaimant not specifically admitted herein. Responding further to the numbered paragraphs of Defendant/Counterclaimant's Counterclaims:

- 54-58. Admitted.
59. Denied. Responding further, Counterclaimant's vague references to categories of information are too vague to allow Counter Defendant to ascertain what particular information Counterclaimant is claiming to be an "asset."
- 60-61. Counterclaimant's references to categories of information are too vague to allow Counter Defendant to ascertain what particular information Counterclaimant is claiming to be an "asset." Accordingly, Counter Defendant is without information or knowledge sufficient to form a belief as to the meaning ascribed to these terms by Counterclaimant and therefore denies each averment to them constituting "confidential information," which

is also a vague term that is not defined. Counterclaimant's averment to "trade secrets" is a conclusion of law to which no responsive pleading is required. To the extent a response is required, Counterdefendant denies that all such information that could be characterized by such terms constitutes a "trade secret."

62. Counterdefendant incorporates by reference the foregoing responses to paragraphs 59-61 as if set forth here in full. Responding further, Counterclaimant fails to identify the source of the "requirement" to which it avers and Counter Defendant is without information or knowledge sufficient to form a belief as to what particular requirements form the basis of this allegation or, as noted above, even the specific information allegedly subject to this unspecified "requirement." Accordingly, Counter Defendant denies the averments of paragraph 62.
63. Counter Defendant admits that QBR's contain information that is treated as confidential with respect to other vendors. Responding further, such information relates to only one of eight primary factors cited by Counterclaimant as the source of its competitive edge. Counter Defendant denies the balance of the averments in paragraph 63.
64. Denied as to the information contained in the QBR's. Counter Defendant denies that Counterclaimant owns "all information, in any form" as such an averment is so vague and overly broad that Counter Defendant cannot determine the meaning ascribed to it by Counterclaimant.
65. Denied.

- 66-67. Admitted in part and denied in part. Counter Defendant admits that QBRs contain information that should not be shared with other vendors and that some of the information contained in QBR's is considered confidential. Counter Defendant denies the balance of the averments in paragraphs 66 and 67.
68. Denied.
69. Admitted.
- 70-71. Denied.
72. Counter Defendant admits only that he cleaned out his office as he was directed to do. Counter Defendant denies he removed any confidential or proprietary data belonging to Counterclaimant. Counter Defendant is not aware of the "external hard drive" to which Counterclaimant refers and therefore denies any averments thereto.
73. Denied.
74. Counter Defendant is without information or knowledge sufficient to form a belief as to the contact to which Counterclaimant refers. Counter Defendant denies any alleged wrongdoing or any attempt to misappropriate information in any actionable way.
75. Denied.
- 76-79. Denied.
- 80-85. Admitted.
86. Counter Defendant admits that the specific files are examples of what is contained on Counterclaimant's network. Counter Defendant cannot

ascertain the scope of all documents to which Counterclaimant avers from the general categories listed. Counter Defendant therefore denies each averment to such categories constituting "confidential information," which is also a vague term that is not defined. Counterclaimant's averment to "trade secrets" is a conclusion of law to which no responsive pleading is required. To the extent a response is required, Counterdefendant denies that all such information that could be characterized by such terms constitutes a "trade secret."

87-88. Counter Defendant incorporates by reference his response to paragraph 86 and therefore denies the averments of paragraphs 87-88.

89. Admitted.

90. Admitted.

91. Paragraph 91 consists solely of averments to a writing, which speaks for itself. Responding further, the averment is denied as it is not accurate.

92. Counter Defendant admits only that, after executing the 2008 agreement, he remained employed for approximately 3 ½ years and that he had access to information he considered to be confidential. The balance of the averments are denied.

93-94. Paragraphs 93-94 consist solely of averments to a writing, which speaks for itself.

95. Paragraph 95 consists solely of an averment to a writing, which speaks for itself. Responding further, the averment is denied as it is not accurate.

- 96-100. Paragraphs 96-100 consist solely of an averment to a writing, which speaks for itself.
101. Counter Defendant is not able to confirm that the policies set forth in Exhibit D are those that were in place in 2010.
102. Paragraph 102 consists solely of an averment to a writing, which speaks for itself.
103. Denied.
104. Denied.
105. Admitted.
106. Denied. Counter Defendant is without information or knowledge as to the specific employees and specific information within the scope of the vague allegations of paragraph 106. Paragraph 106 also contains conclusions of law to which no responsive pleading is required.
107. Denied. Counter Defendant has no knowledge as to what a "Dell List" is and cannot recall why he would ask for such a list from Ms. Aiken.
108. Denied.
- 109-11. Denied. Counter Defendant has no knowledge as to what a "Dell List" is and cannot recall why he would ask for such a list from Ms. Aiken or discussing such a list with Ms. Aiken.
- 112-13. Counter Defendant admits only that he asked Mr. Spearman to copy the Motorola QBR onto a flash drive and that Mr. Spearman did so and handed the flash drive back to Counter Defendant.

114. Counter Defendant admits only that he asked Mr. Fowler for a copy of the Honeywell QBR.
115. Counter Defendant admits only that he asked Mr. Cox for a copy of the Intermec QBR.
116. Paragraph 116 consists solely of an averment to writings, which speak for themselves.
117. Denied. Counter Defendant recalls only requesting the three referenced QBR's.
118. Denied.
119. Denied.
120. Counter Defendant admits only to installing the Drop Box program on his work lap top. The balance of the averments are denied.
121. Denied as stated. Counter Defendant admits that, early in his tenure, he kept an external hard drive in his office. Counter Defendant does not recall that it contained any ScanSource data. That drive malfunctioned and likely was disposed of years ago. To the extent the averments relate to the December, 2011 time frame, Counter Defendant denies them.
122. Denied.
123. Denied.
124. Denied.
125. Admitted.

126. Counter Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments in paragraph 126 and therefore denies the same.
127. Denied.
128. Counter Defendant denies the averments of paragraph 128 to the extent they transcend the written text messages referred to in paragraphs 129-31.
- 129-32. Paragraphs 129-32 consist solely of averments to writings, which speak for themselves.
133. Admitted.
134. Denied. Such information is not held protected or in confidence by Counterclaimant as evidenced by the averment itself and the other documents Counterclaimant has filed in open court.
135. Counter Defendant incorporates by reference his responses to the foregoing paragraphs as if set forth here in full.
- 136-142. Denied.
143. Counter Defendant incorporates by reference his responses to the foregoing paragraphs as if set forth here in full.
144. Counter Defendant incorporates by reference his response to paragraph 61 as if set forth here in full. Counter Defendant denies the balance of the averments in paragraph 144.
- 145-151. Counter Defendant incorporates by reference his response to paragraph 61 as if set forth here in full. Counter Defendant denies the balance of the averments in paragraphs 145-51.

- 152-61. Denied.
162. Counter Defendant incorporates by reference his responses to the foregoing paragraphs as if set forth here in full.
163. Paragraph 163 consists solely of a conclusion of law to which no responsive pleading is required. Responding further, Counter Defendant denies any such duty extends post-employment.
- 164-67 Denied.
168. Counter Defendant incorporates by reference his responses to the foregoing paragraphs as if set forth here in full.
169. Paragraph 169 consists solely of a conclusion of law to which no responsive pleading is required. Responding further, there exists no such cause of action in South Carolina.
170. Admitted.
- 171-72. Denied.
173. Counter Defendant incorporates by reference his responses to the foregoing paragraphs as if set forth here in full.
- 174-76. Denied.

Counterclaimant's ad damnum clause consists solely of a prayer for relief to which no responsive pleading is required. To the extent a response is required, Counter Defendant denies any wrongdoing and any liability to Counterclaimant.

WHEREFORE, Counter Defendant denies any liability to Counterclaimant and respectfully requests entry of judgment as to all counterclaims and an award of attorney fees for bad faith assertions of trade secret act violations.

Affirmative Defenses

1. Counterclaimant's counterclaims fail to set forth a claim upon which relief may be granted.
2. There exists no cause of action for breach of the covenant of good faith and fair dealing in South Carolina.
3. Counterclaimant's claims are barred by Counterclaimant's predicate breaches.
4. Counterclaimant's claims are barred as Counterclaimant is seeking both rescission and specific performance.
5. Counterclaimant's trade secret claim is made, in whole or in part, in bad faith.
6. Counterclaimant has failed to mitigate any damages to the extent it could prove any kind of damage.
7. Counterclaimant has waived arguments regarding the secretive nature of information by filing such information, with explanatory affidavits, in open court (via exhibits and affidavits to Defendant's Motion for a TRO) and by specifically referring to the number at issue and explaining the meaning of such information in paragraphs 132-33 of the counterclaims.
8. Counterclaimant's claims are barred by waiver and estoppel.
9. Counterclaimant's claims are barred by the clean hands doctrine.
10. An award of punitive damages under the circumstances would be unwarranted and violative of the due process clauses of the United States and South Carolina Constitutions.
11. Any damages suffered by Plaintiff were not proximately caused by Counter Defendant.

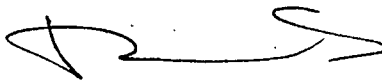
12. Counterclaimant's conversion claims are barred by consent.

Jury Demand

Counter Defendant demands a trial by jury on all counterclaims to the extent there exists any genuine issues for trial.

Respectfully submitted this 17th day of February, 2012.

For Plaintiff/Counter Defendant:



Brian P. Murphy No. 6770

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

) IN THE COURT OF COMMON PLEAS

) 2012-CP-23-0314

Plaintiff,

Y.

CERTIFICATE OF SERVICE

Défendant.

130

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Case No. 2012-CP-23-0314

Jeff Yelton,

Appellant,

v.

ScanSource, Inc.,

Respondent.

NOTICE OF APPEAL

Jeff Yelton appeals the order of Special Referee, J.D. Quattlebaum, dated October 26, 2012. Appellant received written notice of entry of this order on October 26, 2012.

November 5, 2012



Brian P. Murphy
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina 29601
(864) 370-9400
Attorney for Appellant

Other Counsel of Record:
William H. Foster
Nelson, Mullins, Riley & Scarborough
Ninth Floor
104 S. Main Street
Greenville, South Carolina 29601
Attorney for Respondent
(864) 250-2300

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
2012 NOV 14 PM 12:58

BRIAN MURPHY LAW FIRM PC

514 Pettigru Street, Greenville, South Carolina 29601
Office: 864.370.9400 • Fax: 864.241.1386
brianmurphyfirm.com

November 6, 2012

Jenny Abbott Kitchings
Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RE: Jeff Yelton v. ScanSource, Inc.
C.A. No.: 2012-CP-23-0314

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Notice of Appeal in this case. I have also enclosed the following:

1. Proof of Service of the Notice of Appeal on the Respondent;
2. A copy of the Order which is to be challenged on appeal; and
3. A filing fee of \$100.00.

Please return the additional filed copy to me in the enclosed self-addressed, stamped envelope. Thank you in advance for your attention to this matter.

Sincerely,



Brian P. Murphy

Enclosures

cc: The Honorable Paul B. Wickensimmer
William H. Foster, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Case No. 2012-CP-23-0314

Jeff Yelton,

Appellant,

v.

ScanSource, Inc.,

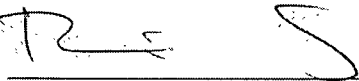
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on ScanSource, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2012, addressed to its attorney of record, William H. Foster, Ninth Floor, 104 S. Main Street, Greenville, South Carolina 29601.

I further certify that I have served the Notice of Appeal on ScanSource, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2012, addressed to the Honorable Paul J. Wickensimer, 305 E. North Street, Greenville County Courthouse, Greenville, SC 29601

November 5, 2012



Brian P. Murphy
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina 29601
(864) 370-9400
Attorney for Appellant

Other Counsel of Record:
William H. Foster
Nelson, Mullins, Riley & Scarborough
Ninth Floor
104 S. Main Street
Greenville, South Carolina 29601
Attorney for Respondent
(864) 250-2300

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Jeff Yelton,)

Plaintiff,)

vs.)

ScanSource, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-23-0314

ORDERFILED-CLERK OF COURT
GREENVILLE CO. S.C.
OCT 26 2012
AULBURN WICK

This matter is before the Special Referee on Motion by Defendant ScanSource, Inc. ("ScanSource") for a Preliminary Injunction pursuant to South Carolina Rule of Civil Procedure 65. On February 8, 2012, the Court issued a Temporary Restraining Order in this case. By separate Order of Reference also dated February 8, 2012, the Court appointed the undersigned as Special Referee to rule on Defendant's Motion for Preliminary Injunction.¹ After allowing additional discovery at the request of Plaintiff and considering all submissions and arguments from both parties, including ScanSource's original Motion and supporting affidavits, and the briefs and replies of both parties on the issue of preliminary injunctive relief, the Special Referee finds preliminary injunctive relief is appropriate in this case.

A preliminary injunction is appropriate when necessary to preserve the status quo pending trial and "only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." *Poynter v. Century Builders*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010); *see also Scratch Golf Co. v. Dunes West Residential Golf Props.*, 361 S.C. 117, 603 S.E.2d 905

¹ By Order dated August 31, 2012 and entered on September 4, 2012, the Circuit Court entered an Amended Order Appointing Special Referee, clarifying the powers and authority of the Special Referee.

(2004); *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60 (1973); *Peek v. Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005).

Defendant has demonstrated that it faces the very real threat of irreparable harm absent continued injunctive relief by virtue of the potential use or disclosure of its confidential, trade secret and proprietary information. Furthermore, Plaintiff has acknowledged that Plaintiff is or was in possession of information that is confidential, trade secret and/or proprietary, and that Defendant is entitled to the return of this information in Plaintiff's possession. Although Plaintiff has assured the Special Referee that all such information has been returned pursuant to the Court's February 8, 2012 TRO, Defendant has presented evidence which suggests that this claim is at the very least in doubt and that the requested injunctive relief is necessary to protect Defendant and to preserve the status quo pending a trial upon the merits.

Defendant has also demonstrated a likelihood of success on the merits. Plaintiff is clearly bound not to use or disclose Defendant's proprietary confidential information pursuant to the parties' agreements and South Carolina law, and Plaintiff has no right to make any use or disclosure of this information. Plaintiff also agrees that he should not contact Defendant's employees for the purpose of obtaining such information.

Based on the record before me, absent injunctive relief, Defendant has no adequate remedy at law given that once Defendant's confidential information or trade secrets are improperly used or disclosed, it will be difficult if not impossible to rectify the loss by monetary damages. *Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) ("Irreparable harm is present where an injunction 'is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.'").

Finally, Rule 65(c) requires that “no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be suffered or incurred by any party who is found to have been wrongfully enjoined or restrained.” Defendant argues that the bond required by the Court’s February 8, 2012 TRO is sufficient. Not surprisingly, Plaintiff disagrees. In *Atwood Agency v. Black, et al.*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), our Supreme Court made clear that a restraining order requiring only a nominal security bond does not satisfy Rule 65(c) “because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect [the enjoined party].”

Based upon the nature of the injunctive relief sought, the undersigned’s knowledge of the procedural history relating to the motion for injunctive relief, as well as case law addressing the damages that are recoverable on an injunction bond, it does not appear that the current bond is adequate should it be determined that Plaintiff has been wrongfully enjoined and/or restrained. *Hylar v. Wheeler*, 240 S.C. 386, 126 S.E.2d 173 (1962); *Walker v. Oswald*, 181 S.C. 278, 186 S.E. 916 (1935).

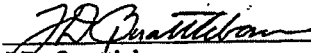
THEREFORE, IT IS ORDERED that Defendant’s Motion for Preliminary Injunction is granted as follows:

- 1) Plaintiff is prohibited from directly or indirectly contacting any Defendant employee to provide Plaintiff with Confidential Information.
- 2) Plaintiff is prohibited from directly or indirectly contacting any vendor or customer of Defendant to provide Plaintiff with Confidential Information.
- 3) Plaintiff is required to immediately return to Defendant any Confidential Information remaining in his possession, custody or control, including, but not limited to, any and all documents, materials, or electronic media containing Confidential Information, including all copies thereof, and eliminating any and all access to the property or information via any Dropbox or other online or cloud accounts. Any disputes regarding the identity of Confidential Information or the form of its return may be decided by the Special Referee.

- 4) To the extent not previously identified, within a reasonable time after discovery, Plaintiff shall identify to the Special Referee and Defendant all computer systems and data storage devices of any kind, including third party-operated personal accounts such as Drop Box or other accounts with cloud based servers or the like, to which Plaintiff has had access, directly or indirectly, since December 16, 2011, for the purposes of submitting same to inspection and verification pursuant to the Consent Protocol dated April 5, 2012 and filed with the court on April 9, 2012.
- 5) Plaintiff is prohibited from intentionally, whether directly or indirectly, using, disclosing, or transmitting any ScanSource Confidential Information.
- 6) For purposes of this Order, Confidential Information is defined as set forth in the Court's February 8, 2012, Temporary Restraining Order.
- 7) Pursuant to Rule 65(c), ScanSource must post a bond in the amount of \$15,000 in addition to the \$5,000 bond previously required by the February 8, 2012 TRO. The total security required is \$20,000.

This Order shall remain in effect during the pendency of this action, and until a further order of the Court.

IT IS SO ORDERED.


J.D. Quattlebaum
Special Referee

October 26, 2012

3130

BRIAN MURPHY LAW FIRM, P.C.

OPERATING ACCOUNT
514 PETTIGRU ST.
GREENVILLE, SC 29601

DATE Nov 6, 2012 67-813-532

PAY
TO THE
ORDER OF

Clerk of Court
One Hundred and no/100

\$ 100.00

DOLLARS



INDEPENDENCE
NATIONAL BANK
GREENVILLE, SC 29601
www.independenceNB.com • 800-657-7670

FOR

Jelton Apped Notice

⑈003130⑈ ⑈053208134⑈ 2000000016⑈

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JEFF YELTON,

PLAINTIFF,

vs.

SCANSOURCE, INC.,

DEFENDANT.

COURT OF COMMON PLEAS
2012-CP-23-00314

TRANSCRIPT OF RECORD

COPY

January 27, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

BRIAN P. MURPHY, ESQ.
Attorney for the Plaintiff

SUE E. HARPER, ESQ.
CARMEN H. THOMAS, ESQ.
Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is Yelton v. ScanSource, Inc.,
2012-CP-23-00314.

This is a motion for a temporary restraining order.
I have a remittal of potential disqualification that's
been signed by all parties after I disclosed a potential
disqualifying fact. And I'll make that a part of the
record.

And, Ms. Erwin [sic], yes, ma'am.

MS. HARPER: Yes, sir, Your Honor.

THE COURT: Good morning.

MS. HARPER: Good morning.

May it please the Court.

I'd like to introduce first my associate, Carmen
Thomas, who's here with me. And, in the back, we have
some ScanSource employees who -- I realize the Court does
not have time to hear testimony today. But in the event
that there is a need for testimony, we have our witnesses
here.

Jeff Yelton, the Plaintiff in this case, was a highly
placed executive at ScanSource. He was going to be let go
at the end of December. And he was advised of this by his
boss on December the 9th. And the company wanted to give
him time after telling him that he was to be gone to
effectuate -- and they wanted to effectuate a smooth

1 transition. So they gave him time to determine what it
2 was he wanted -- how he wanted to couch his departure to
3 others.

4 Now, he took that time not to create a smooth
5 transition. But he used it, rather, to obtain from
6 people, who were his direct reports, and to download
7 confidential and proprietary information and trade secrets
8 that he took with him when he left ScanSource. We have
9 copies of the information that he downloaded. And it is
10 available for the Court for in-camera review. Because
11 Mr. Yelton has said that whatever he downloaded was
12 just -- he told Mr. Benbenek, his boss, he said that it
13 was just industry-standard information. Well, what he
14 asked his people to download is not industry-standard
15 information at all.

16 We have communications and -- with vendors and
17 affidavits of subordinates, who in the days after he left,
18 he asked them to download information. And he didn't tell
19 them that he was leaving. We have communications with a
20 Motorola employee, who is a big vendor for ScanSource,
21 that the next business day after he learned he was going
22 to be let go, he asked this gentleman if he had a private
23 e-mail, that he would like to communicate something to him
24 that was for his eyes only.

25 Maybe not coincidentally, he downloaded the QBR, that

1 is the quarterly business report, of one of Motorola's
2 biggest competitors. Similarly, he asked one of his
3 employees to download the QBR of another of the biggest
4 competitors of Motorola, Honeywell. And he's traveled and
5 called on both Motorola and Honeywell in the weeks since
6 he departed.

7 Now, we have another affidavit from a direct report
8 that he asked for the Dell list. But then when he found
9 out that the Dell list didn't contain contact information,
10 then he didn't want it anymore. And we, also, have a copy
11 of the Dell list to proffer for in-camera review.

12 He -- we have a witness here, Amy Farr [phonetic],
13 who will testify that she saw his office before he left.
14 She's the HR representative that was dealing with
15 Mr. Yelton as he departed the company. She saw his office
16 before he left and after he left, and it had been
17 completely cleaned out the day of his departure with the
18 exception of some personnel files that -- of his direct
19 reports that were left in -- were left there in a cabinet,
20 which he showed her.

21 THE COURT: Well, didn't he give all this stuff back?
22 Hasn't he offered to do that?

23 MS. HARPER: No, sir.

24 We have not been -- nobody has offered to give back
25 any hard copies of anything. Now, we have been told that

1 there are two disk drives that he's offered to give back.
2 But he hasn't said -- until today, we find that it
3 contains -- there is a lot of ScanSource information on
4 there. But it's not -- it doesn't -- he's never certified
5 that this was everything. And it doesn't explain where
6 the hard copies are.

7 Now, his affidavit says he put the hard copies of
8 everything that was in his office in a shredder. But it's
9 hard -- this is the first we've heard of that. So we
10 don't know where the hard copies are that he took. And we
11 do have records that he entered and exited numerous times
12 the night before he left and the day of his departure.
13 Assumedly, he was taking things to his car.

14 THE COURT: Was he not supposed to clean out his
15 office?

16 MS. HARPER: He was supposed to clean out his office
17 of his own personal things. He was not supposed to clean
18 out his office of any confidential ScanSource information,
19 which we are informed and believe he took with him when he
20 left. It -- we can't find it. He says that he left us
21 the thumb drive that he asked these people to -- he said
22 he left it in his office. We've searched his office.
23 It's not there.

24 So he has -- since he left, he has sent a text to a
25 former direct report asking her to communicate and to send

1 him the HP list over her personal e-mail account from
2 home. She declined to do so.

3 Now, we have information, also, that he is using
4 this -- all of this data for his own benefit. He's
5 calling on vendors. He's calling on vendors who compete
6 with each other and -- having downloaded or sought his
7 employees to download the information concerning their
8 competitors before he left.

9 Now, he said he started a company called VarsGuide.
10 In fact, he has registered that with the Secretary of
11 State, VarsGuide, Inc., which he will outsource education
12 and marketing events for technology manufacturers. We
13 suspect that this information that he has taken would be
14 very helpful to him and would benefit him in that
15 business.

16 Now, Mr. Yelton needs to be more forthright about --
17 and he, to date, has not been. This information belongs
18 to ScanSource. And, frankly, whether it's highly
19 confidential as it is, or not highly confidential as he
20 claims, it's still our information. And he took it in
21 hard copy. He took it in electronic copies. And, now, he
22 says he doesn't know where it is.

23 We've assembled it at great expense. And Mr. Yelton
24 of all people knew how confidential it was. We have
25 distributorship agreements with all of these vendors that

1 provide for confidentiality. In fact, some of those
2 distributorship agreements that have the confidentiality
3 clause in them were signed by Mr. Yelton on behalf of the
4 company.

5 Now, he took these things under cover of night. And
6 then when Mr. Benbenek asked him about it, he said, Well,
7 I didn't know I was leaving when I had them downloaded.

8 Well, Mr. Benbenek said, Oh, yes, you did, because I
9 talked to you on Friday. And it was the next week that
10 you asked them to download it.

11 And then he said, Well, what I asked them to download
12 is industry-standard information.

13 Well, that's not industry-standard information that
14 we have here that he was asked to -- that he asked these
15 others to download for him.

16 When Mr. Benbenek asked him, Where's the thumb drive?
17 He said that he didn't know. And he didn't know where all
18 the papers that had been in his office were.

19 So Mr. Ellsworth, the general counsel of the company,
20 writes him and says, Mr. Yelton, would you, please, return
21 these copies, this data, and confidential information,
22 trade secrets? And would you certify that you don't have
23 any more copies, and that you haven't shared it with
24 anyone? And the response was a day and a half later,
25 rather than responding, we get a lawsuit that says, Oh,

1 you've breached the contract. I've performed it.

2 But then his lawyer says two days after that -- after
3 claiming that, you know, our assertions that he took stuff
4 with him was fraudulent, and blatant misrepresentations,
5 and pretextual, his lawyer says, oh, by the way, we do
6 have two thumb drives here at my office with stuff that
7 is -- they have put on to thumb drives, two flash drives.
8 I don't know who put it on there, or how they put it on
9 there. But it suggests that there are other copies. And
10 no one has told us otherwise.

11 And Mr. Murphy says, you know, we haven't even looked
12 at what's on the flash drives. Well, we don't -- what's
13 on the flash drives that he has provided us is not so
14 important as his certification that there isn't any more,
15 and that he doesn't have these hard copies of things that
16 he, apparently, took with him, and that -- you know,
17 where -- who has he -- has he shared this with anyone. In
18 the electronic age, of course, he could have shared this
19 numerous times over the Internet. And there would be
20 really nothing -- we wouldn't have any means of knowing
21 that.

22 So it's real simple, we want our information and data
23 back. We want all copies of it back. We want him to
24 certify, under oath, that that is all the copies. We want
25 him to tell us, under oath, who he shared it with, and

1 where it has been stored, and, also, that there is nothing
2 stored on this cloud or any sort of Internet repository
3 that he utilized.

4 And unless the Court has -- I'd be happy to answer
5 any questions the Court has.

6 THE COURT: Thank you very much.

7 MS. HARPER: You're welcome.

8 MR. MURPHY: Your Honor, Brian Murphy for Mr. Yelton.

9 As I listened to her argument, I keep going back to
10 the black letter rule of law. And we've got to remember
11 why we're here. We're not here to make any findings of
12 wrong doing. This is a TRO. Now, it's fashioned TRO and
13 preliminary injunction. And, just for the record, I need
14 to say we're not waiving 10 days notice as to a
15 preliminary injunction motion. But for a TRO, certainly,
16 that could be heard today.

17 But the law is clear. A TRO is a drastic remedy that
18 must be based on clear proof. It cannot be based on
19 conjecture or speculation. And Ms. Harper completely --
20 repeatedly said that we suspect this, we suspect that.
21 That's speculation and conjecture. When you look at the
22 actual facts that you now have in the record, that
23 speculation and conjecture is completely unfounded.

24 Now, I'm going to go through what the facts in the
25 record are, and then I'm going to go through what she's,

1 actually, requesting today. Because in her presentation,
2 Your Honor, notice that she doesn't, actually, go through
3 the requests she made in the motion itself. We can make
4 some progress here today in going through that, and I
5 informed her of that this morning.

6 The first thing she says she wants is certification
7 as to what he has and doesn't have. Well, you've got an
8 affidavit. The man is sitting right here, Your Honor. If
9 you want to ask him a question, he's willing to answer
10 your question.

11 But let's talk about the specific documents. Because
12 what they did in their motion and brief, and then in the
13 affidavit, they kept repeating about the same information
14 over and over and over again. And I'm going to go through
15 it. When you, actually, get down to it, there's only a
16 couple of things that are at issue here.

17 The first is these QBR's. Now, I don't know what
18 she's talking about when she says he downloaded QBR's.
19 The allegations as we understood it from the affidavits --
20 and I understand from Mr. Yelton that Mr. Yelton, after
21 being informed he was going to be terminated, asked the
22 various people in his group for the last QBR for their
23 particular vendor. We don't deny that. He did it --
24 while they claim he did it in some surreptitious and
25 secretive manner, he, actually, did it in the most open

1 manner you could do it, to the point of they even have
2 affidavits of people saying, We heard him say it in the
3 office. There's nothing surreptitious about this, nor is
4 there anything improper about it.

5 After he was told he was being terminated, Mr. Yelton
6 planned -- his first plan was to interview with these
7 vendors, which he has every right to do. We'll get to
8 their request for relief, because I'm starting to get
9 suspicious that that's what they're trying to stop him
10 from doing.

11 He has every right to go to Motorola and seek
12 employment. He has every right to go to Honeywell. And
13 he has every right to go to Intermecc. What he wanted to
14 do was to make sure that he was up to speed on their
15 business. Because if he wasn't, it would not only make
16 him look back, it would make ScanSource look bad because
17 he was, in fact, the leader of that business group.

18 But you've got to think for a second, what is a trade
19 secret? Well, a trade secret depends on who you're
20 talking about. I'll give you an analogy. If you have a
21 stock brokerage account with Merrill Lynch, that's between
22 you and Merrill Lynch. That's not a secret. That's
23 information readily shared. As to Dean Witter, it would
24 probably be a trade secret. You wouldn't -- you know,
25 Merrill Lynch wouldn't want their account information

1 disclosed to Dean Witter. But if Mr. Yelton is talking to
2 Motorola about Motorola, there's no disclosure or misuse
3 of a trade secret in that transaction.

4 Now, she speculates, with no proof whatsoever, that
5 Mr. Yelton would take Motorola information and disclose it
6 to Honeywell. Your Honor, not one single affidavit even
7 begins to suggest that. We can take the depositions of
8 Motorola, we can take the depositions of the Honeywell
9 people, we can take the depositions of the
10 Intermec people. And we can do that in the course. But,
11 for today's purpose, she's had -- there's absolutely no
12 proof he ever disclosed any information about one vendor
13 to another vendor.

14 THE COURT: But isn't the point that he agreed
15 contractually to not take or disclose contractual
16 information -- I mean, confidential information, whether
17 or not it was a trade secret within the meaning of the
18 act?

19 MR. MURPHY: To other folks, sure. There's no
20 evidence he did that.

21 THE COURT: But the stuff that you had from him on
22 these two thumb drives, are you saying that --

23 MR. MURPHY: Let me clarify the thumb drives.
24 Because, in her brief, she confuses that issue.

25 There's an allegation -- well, what happened was he

1 asked these people to download the last QBR to prepare for
2 his, essentially, job interviews with each. He left -- he
3 says he left the thumb drive in the office. They say they
4 can't find it, but they don't, actually, have a witness to
5 say he took it. The thumb drives I have are not that
6 thumb drive.

7 THE COURT: I understand that. I don't mean that.

8 MR. MURPHY: Okay. Well, it doesn't say that in the
9 brief. It says I deny he took it. And then two days
10 later I said, Oh, by the way, I have it. I have given you
11 the contents of those thumb drives. Okay. I made them
12 available last week. They had no interest in coming and
13 picking them up. And if you look at the contents of it,
14 you'll find out why. There's no QBR's on there.

15 THE COURT: Is there anything on there that would
16 constitute confidential information or a trade secret?

17 MR. MURPHY: On the thumb drives? Yes, I think so --
18 well, I'm assuming that from the file names. And we're
19 not opposed to them having that.

20 THE COURT: So why wouldn't it be reasonable for them
21 to want a certification that this is all I have out there,
22 I didn't share it with anybody else, and that there are no
23 more copies?

24 MR. MURPHY: Well, one, they've got the affidavit.
25 Two, you don't --

1 THE COURT: But that's not the same thing.

2 MR. MURPHY: But you can't bring a TRO to get a
3 certification without showing imminent harm that he's
4 doing something wrong. It's like getting a TRO saying
5 don't punch me in the nose. Okay. You've got to show
6 that there's an imminent threat, that he's done something
7 wrong.

8 The files that he had on his thumb drive were copied
9 in the normal course of him doing work. And we'll get to
10 the forensic exam. Because I think one of the things, you
11 know, when we get through all this, what was on his
12 computer and all that, we're not opposed to them knowing
13 that, Your Honor. And I'm going to suggest a way that we
14 can work through that.

15 But for purposes of today, they can have that
16 information back. I'm concerned about -- I want to raise
17 an issue on one of the thumb drives, the Cisco thumb
18 drive. And I didn't -- at the time I e-mailed
19 Mr. Ellsworth, I didn't even want to access the thumb
20 drives. After I saw their brief where it seems to me they
21 were suggesting that I had the thumb drive that he denied
22 taking, I thought I better look at those drives, copy off
23 so the Court can see what's on them.

24 What I didn't know at the time when I put them --
25 made them available -- and they're here in court. I mean,

1 I have them with me. I think they're in my bag. If you
2 look at Tab 2, the Cisco thumb drive -- well, I'll tell
3 you what's on that thumb drive. Because when I looked at
4 this -- you get a little -- it's a file. And you look at
5 the files on the computer. You get a little -- I don't
6 know what they call them, a thumbnail.

7 THE COURT: Well, this really requires no
8 explanation.

9 MR. MURPHY: The first document, ScanSource Revs,
10 5-26-09, I'm assuming that's their document. They're
11 welcome to have that. That's a 2009 document.

12 The Roger CCD Net Worth, that's the one I don't think
13 we -- they should have. That is information relative to
14 the net worth of a business partner of Mr. Yelton's that
15 has nothing to do with ScanSource. It's that gentleman's
16 personal financial information. And that's one that I
17 didn't realize was going to be on it. They shouldn't have
18 that.

19 ScanSource 2005 Business Plan, that was a document
20 that was backed up. And you can see that was last
21 modified on 6-9-2005. But it's their data, and we have no
22 objection to it.

23 The pictures appear to me to be pictures of
24 somebody's house. And I just have a little thumbnail that
25 I can look at. I have no objection to them looking at the

1 pictures. They don't look to be -- appear to be anything
2 personal. But I think they'll find it's not ScanSource.

3 If you go to Tab 3. That's the -- it's an Accubanker
4 flash drive. It's in a leather cover. That all appears
5 to be ScanSource-related information. And they can have
6 it back. This isn't the information that was in
7 notebooks. And I'm going to get to this industry-standard
8 allegation here in a minute.

9 This isn't the information from the notebooks. This
10 is stuff that ended up getting backed up over time. If
11 you check the dates on these, Your Honor, an interesting
12 thing is, they don't allege Mr. Yelton had any idea he was
13 being terminated. And there's no suggestion that he was
14 looking to start up any kind of business before he was
15 told he was being terminated. None of these documents
16 were created prior to Mr. Yelton being told he was being
17 terminated. So there's nothing suspicious there, but
18 we're not opposed to them having it. And we didn't oppose
19 it last week either.

20 The QBR documents, Your Honor, you could assume for
21 purposes of today that those contain -- that they would be
22 able to establish that those contain trade secrets. It's
23 sensitive business information on what happens with
24 respect to that particular vendor. He's given you an
25 affidavit. He doesn't have anything. There's nothing

1 there. Okay.

2 He looked at them. He went and spoke about possible
3 employment with two of those. If they want to try to
4 prove that in the Motorola meeting he disclosed Honeywell
5 or Intermec information, they are more than able to take
6 those depositions. I don't believe they're going to find
7 anything. But they, certainly, haven't given you anything
8 here today that could show the imminent threat of a
9 disclosure of any trade secret.

10 Documents in his office. Ms. Harper strayed from her
11 affidavits on this one. The actual statement in
12 Mr. Benbenek's affidavit is that the files that Mr. Yelton
13 took were industry-standard stuff. These are notebooks of
14 his stuff that even predates ScanSource. For example, you
15 know, lawyers may have CLE materials in their offices or
16 other types of papers that are not company confidential.
17 Did he take that stuff out? Yeah, it's his.

18 And, you know, this wasn't all done under some cover
19 of darkness of light -- of night. You see, they have an
20 affidavit saying my guy was doing it during working hours
21 where people were seeing what he was doing. He was
22 walking in and out with these boxes. There's nothing
23 surreptitious here. And he's given you an affidavit, Your
24 Honor, saying he has not taken any of their files. He has
25 none of their documents.

1 Can they request -- send me a document request to
2 review the files that were in his office? Sure, they can.
3 But they haven't given you anything here today to say that
4 in Mr. Yelton's home, there is a document containing trade
5 secrets that we've got to have back that he isn't being
6 forthright about. It's all speculation and conjecture.

7 The drop box, she mentioned that. He's explained
8 that. He and other people at the company --

9 Is Your Honor familiar with drop box?

10 THE COURT: Not really.

11 MR. MURPHY: Okay. I can even show it to you here on
12 my computer. I use it. A lot of solo's and small firms
13 use them as a file server. It's a file-seeking software.
14 And what you do is you sign up and you tie it to an e-mail
15 account. And when you put things in that folder -- and
16 you could even, as I understand it, sync it to e-mails. I
17 don't do that. But I use it for my file server.

18 When I create a file on this computer and put it in
19 that drop box folder, it gets synced up with my home
20 computer. It gets synced up with my desk top at work.
21 And anybody -- any changes made that -- my secretary is
22 synced up. Any changes to that document or if a new
23 document was put in that folder, it within seconds -- and
24 it's usually less than a couple of seconds -- it's on this
25 computer. If my secretary puts something in a drop box,

1 it will be right here. People use that instead of flash
2 drives. It's like instead of taking -- putting something
3 on a flash drive, taking it home, plugging it in and
4 working on it, taking the flash drive out, they use drop
5 box.

6 When they deactivated his e-mail account, that,
7 actually, deactivated all the syncing for that drop box.
8 He deleted that drop box. He believes that he can't
9 access the files on his computer anymore. A forensic exam
10 may show that they were at one point. We don't deny that.
11 But he doesn't think he has access to that drop box
12 account anymore. And he's deleted it.

13 We have to -- she raises an issue that we can't --
14 I'm not sure we can resolve anymore because he can't sign
15 in, whether those files exist on a cloud server to which
16 he doesn't have access. They can probably resolve that by
17 reactivating his e-mail. We can let him sign into it.
18 And they could delete it, if it is on a cloud server
19 somewhere, if there are files. He doesn't believe so. I
20 don't know the answer to that. He believes he doesn't
21 have access to the files. And then he even informed
22 Mr. Benbenek that -- if you look at the exhibit to his
23 affidavit, he explained that to Mr. Benbenek -- okay -- as
24 well as the business that he's going into, and how it's
25 not in any way competitive.

1 And I'll explain to you what the business is he's
2 going into, if he's successful. As you may know,
3 ScanSource is a distributor of products. It buys
4 hardware. It, typically, sells these to what are called
5 value-added retailers. And the value-added retailer --
6 let's say you owned a store, Your Honor, and you had a
7 checkout and you wanted to have a scanner -- bar code
8 scanner, and a printer, and a register. As I understand
9 it, a value-added retailer will come in and tell you
10 what's the best equipment, and set it up for you. And
11 then you've got to go to these different companies and buy
12 this equipment. Well, ScanSource is a distributor of this
13 equipment.

14 But Mr. Yelton has explained to them that what he is
15 seeking to do is work with one or more vendors when they
16 develop a product to sort of help market and educate these
17 value-added retailers of the benefit of that product. So
18 if Honeywell creates a device, he will help educate the
19 marketplace as to why that's a great device. That doesn't
20 divert any work away from ScanSource. And he has
21 explained to Mr. Benbenek, if he's successful, because
22 he's dealing with vendors of ScanSource, ScanSource will
23 have more business.

24 So there's nothing suspicious here. There's no
25 reason why he would need any of this information she

1 speculates he took in order to do his business. And
2 that's what he's looking for. He's looked at two options.
3 One is working directly for a vendor and, two, through
4 this VarsGuide working possibly with more than one vendor.
5 But, again, there's absolutely no contractual prohibition
6 on that.

7 Let me get to what they were asking for, because that
8 will help focus us on what we need to do here today. One
9 is they asked that he not contact any ScanSource employees
10 and ask for information. The only thing that gives any
11 validity to that is the Hewlett Packard list allegation.
12 That one is complicated. But any time you're up here
13 trying to explain yourself, it's not, you know, a
14 comfortable situation.

15 He understands now how that can be viewed. And he
16 agrees -- he just won't ask anybody for any more
17 information. That one is easy. There's no interest he
18 has really in contacting ScanSource. But what their
19 affidavit makes clear is no information was disclosed to
20 him. He doesn't have anything.

21 Even if you believe their affidavit completely, he
22 asked for -- and all it does is it attaches the e-mail
23 traffic. There's nothing to enjoin him, because he
24 doesn't have anything. And, certainly, in the context now
25 that we're in in this litigation, he's not going to talk

1 to any of the ScanSource employees about any information.
2 That one is easy. There's no imminent threat and no need
3 for an injunction on that. And, Your Honor, if you want
4 to get an assurance from him directly so you can enforce
5 that, that's fine.

6 The second one is the one that raised my eyebrows.
7 That is they don't want him soliciting a customer or a
8 supplier to provide them -- provide him with information.
9 Now, what is that, Your Honor? That is, in essence,
10 trying to get through a TRO under the guise of trade
11 secret in an effort to put a restrictive covenant that
12 they attempted to negotiate and he rejected twice.

13 When they first started with these employment
14 agreements, my understanding is, they had a draft which
15 precluded people from going to work for vendors, and the
16 executives balked. Okay. Vendors are not competitors.
17 Other distributors would be competitors. And he's agreed
18 to not go to work for distributors.

19 So the contract was changed. And it doesn't have
20 anything about -- saying you can't do work for vendors.
21 If you look at Mr. Benbenek's e-mail, which he attached to
22 his affidavit, you'll see some e-mail exchanges that arose
23 after they told Mr. Yelton that he was terminated.

24 And what you'll see is they proposed a restriction on
25 him going to work for Motorola. He said, No, I'm not

1 going to agree to that. I think what they're trying to
2 do, Your Honor, is through this notion of a trade secret
3 trying to get some restriction on him talking to the
4 Motorola's of the world when they didn't put it in the
5 employment agreement, and he didn't agree to it
6 post-employment.

7 Go back to my example, if you would, of the stock
8 broker. If the stock broker and the customer are
9 discussing the customer's information for the stock
10 brokerage's information, that's not an improper disclosure
11 of somebody else's trade secret.

12 An example I had from one case, I was in a -- I had a
13 case in the chemical industry. It's a very competitive
14 industry. And different chemical companies will supply
15 prices to a manufacturer to try to get the business.
16 Well, we proved in that case -- and everybody ended up
17 admitting it that the practice is when a manufacturer got
18 a price -- and if you're a salesman and you come in and
19 say, I want to sell you this chemical. They showed them
20 the price of the other company and said, Can you beat
21 this?

22 Now, when that happens, Your Honor, that's not a
23 disclosure of the other company's trade secret. That is a
24 disclosure of the customer's information, which the
25 customer has a right to do, unless it's got some contract

1 otherwise. That's not a Jeff Yelton misappropriating a
2 trade secret. If Motorola decides to share Motorola
3 information with Jeff Yelton, it has every right to do so,
4 absolutely every right to do so. But she, in her second
5 request, is seeking to stop him from disclosing
6 information with vendors.

7 Now, if she's talking about disclosing trade secrets
8 of ScanSource to Motorola, there's no evidence that he's
9 done anything but talk about Motorola business with
10 Motorola. There's no evidence of any other kind of trade
11 secret. Certainly, nothing of a Honeywell being discussed
12 with a Motorola.

13 And, again, we can tee those depositions up very
14 quickly and put an end to that speculation and conjecture.
15 That's the second request. It is absolutely not tied to
16 any even allegation of wrongdoing. I think it's an
17 attempt to back door and get a restrictive covenant that
18 it couldn't negotiate.

19 The number three request they have is the return of
20 information. That's the one she talked about the most. I
21 don't know what more I can do on that. She has an
22 affidavit about what he has and doesn't have. The one
23 flash drive, she can take it right now. I'm pretty sure
24 it's in my bag. The other one I would like to just give
25 her the one file off of. I mean, if she wants to see the

1 pictures, that's not a problem. I do have them, Your
2 Honor. And, other than that, there's nothing else there.
3 And nothing that -- for which a TRO can be granted.

4 Now, she can send a discovery request. She can send
5 a request to admit -- for admissions. She's noticed his
6 deposition. I can't do it next week. But if she wants to
7 take his deposition, that's a -- you know, she can do
8 that. And if she finds something, she can come back for a
9 preliminary injunction. But she doesn't have anything
10 today.

11 But I do agree that ScanSource is entitled to have
12 its information back. And we've been -- you know, we've
13 been trying to make that available. I don't understand
14 why they continue to refuse to pick up the information,
15 and then scream that they need an injunction and take up
16 the Court's time on it.

17 Number -- the fourth request of hers is for a
18 forensic examination. And I've already asked her if she
19 had a protocol that she had in mind for that. That's not
20 a TRO issue. But it is a legitimate discovery issue.
21 Okay. Mr. Yelton worked at home frequently.

22 I've been through these cases with these forensic
23 exams. What they can show is not only what active files
24 are on the computer, but they can often show like what has
25 been deleted. And, sometimes, when something is deleted,

1 it's -- the file is still there, but you can't access it.
2 It changes the registry data. And then sometimes it gets
3 overwritten, sometimes it doesn't.

4 They can spend the money on a forensic exam. What
5 they're going to find is probably a lot, over the years,
6 files that existed at one time or another on his computer.
7 I don't -- I think if we get the right protocols in place,
8 I don't think we're going to have a problem with that.
9 Since he's not competing -- where this becomes a real war
10 is when you have two companies competing, one competitor
11 wants to scan, the other wants hard drives. He's not
12 competing. So this makes that a lot easier.

13 Here is what I don't want, and what I will oppose. I
14 don't want them being able to scan his hard drive and
15 ScanSource being able to just see everything that's on
16 there. Most protocols don't call for that. And the
17 reason is -- well, first of all, our attorney-client
18 communications are on there. He's got a lot of other
19 personal and confidential matters that he doesn't want
20 them to see, as I think one could rightly understand.

21 But if they want to look for ScanSource data -- what
22 they, typically, have done in the cases I've been involved
23 with is there's a term search list. Again, that's not
24 going to be, I don't think, controversial in this case.
25 They can give us all the terms they want. And if -- and

1 then the expert will scan and find all those files. We
2 get to look at it to see if there's anything confidential,
3 non-business related, or privileged.

4 If we challenge that, that can be set aside, and you
5 can review it in camera to determine whether I'm right or
6 not. And then everything else they get to see and we get
7 a copy of. I think we can work that out. That's not a
8 restraining order issue, that's simply a discovery issue.
9 If she wants to send me a protocol, we'll look at it. I
10 do appreciate one thing in their request, they said
11 they'll do it at their cost. And I think we can work
12 number four out.

13 So, Your Honor, I don't think she's given you
14 anything today that shows Mr. Yelton poses an imminent
15 threat of misappropriation, use or disclosure of any trade
16 secret. It was -- and I haven't seen these files that
17 were supposedly downloaded. But what she hasn't told you
18 is that she has any proof that she can identify any
19 document that was theirs that's gone, that she can tell
20 you any electronic file that was there that's in his
21 possession. She can't do it. Until she can do that,
22 she's not entitled to any relief.

23 I will work with her. We can expedite discovery the
24 best we can. And I think they have a right to discover
25 whether that happened. I mean, this is litigation. But

1 until she comes to you with that, there's nothing on which
2 you can make findings that she has met the high standard
3 for a restraining order.

4 And if she has, if she's saying this is somehow a
5 massive amount of information -- and this Court is going
6 to make findings that, based on the evidence in the
7 record, I can find that Jeff Yelton took information,
8 disclosed it to somebody, and this information -- because
9 let's talk about it. These QBR's probably are extremely
10 valuable if they fell into the wrong hands. And it's
11 stuff you wouldn't want to give to your competitors. Then
12 there's going to be a massive bond that's required in this
13 case.

14 And the Atwood Agency, which included -- makes very
15 clear -- because when I get these cases, I always get both
16 sides of the argument. Well, since he has no interest in
17 it, there doesn't need to be a substantial bond. But we
18 can make a clear and convincing showing that there's a
19 tremendous amount of business value at play. Atwood said
20 you can't have it both ways. Okay.

21 They want to sit here and say that this is huge, then
22 they need to post a huge bond. We don't get to that,
23 because there's nothing that you could make findings of
24 fact on to show that there's any imminent threat of any
25 misuse, disclosure, or misappropriation of a trade secret.

1 THE COURT: Thank you, Mr. Murphy.

2 MS. HARPER: Your Honor, just briefly. The Trade
3 Secrets Act says that it is a misappropriation for someone
4 to acquire, just acquire. And Mr. Yelton's lawyer is
5 talking all about disclosure, and use, and all this. But
6 to acquire it is a violation of the Trade Secrets Act, and
7 through espionage or electronic means. And he did.

8 He went to his underlings and he didn't tell them he
9 was leaving. And he said, Download this for me. And he
10 did leave under cover of night. Because between 6:00 and
11 6:30 after everyone has left the building, he's cleaning
12 out his office. So there is some -- more than a hint that
13 this was done surreptitiously.

14 The idea that Motorola can give its own information
15 to him and there's nothing wrong with that, we're not
16 arguing about that. What we're arguing about is that he
17 had tremendous amounts of information on all of these
18 vendors who compete with each other.

19 So if he works for one of these vendors, he comes
20 into that relationship with all this information about its
21 competitors, very detailed. And if the Court would like
22 to see it, we can, actually, show it to the Court. It's
23 very detailed about the kinds of sales, the profit margin,
24 the benefits, the -- all of the money -- you know, the
25 rebates, et cetera. And so that is where this information

1 is valuable.

2 And we just want Mr. Yelton to be forthright about
3 this. The story has changed as to what he has or didn't
4 do. And, at first, it was fraudulent to claim that he did
5 it. Well, now, we have proof. He's admitted in his
6 affidavit that he's acquired confidential trade secrets.
7 And he's got them. And he's got them on these thumb
8 drives.

9 And the reason that we don't want to get the thumb
10 drives from his lawyer's office is that we would like to
11 create a chain of custody of those thumb drives so that
12 we -- when we hire the expert, the expert will get the
13 thumb drives from Mr. Yelton's lawyer.

14 And the idea that we now -- he has now told us some
15 10 or 12 days after we asked in a letter, Would you,
16 please, tell us, you know, what you've got and return it.
17 He's told us in this affidavit -- this affidavit was
18 received by e-mail this morning when we were in Greenville
19 County.

20 So I really haven't had -- it's not as though -- all
21 we wanted was early on for him to tell us this. And why
22 didn't he tell us? You know, frankly, I think that there
23 have been -- I'm going to have to read back through every
24 representation that's made, but there have been numerous
25 representations.

1 So, frankly, we want our stuff back. We want all
2 copies of it back. We want a certification from him that
3 we have all the copies, and who he's disclosed it to. He
4 says he hasn't disclosed it to ScanSource competitors, but
5 who has he disclosed it to? And why did he need it? Why
6 did he want it?

7 And just -- the forensics and all of that is not for
8 today. That's not an issue for today. And, you know, we
9 don't need to spend any time on that. But we would like
10 some certification from him that he has returned it all.
11 We want all the hard copies. If he's got things that he
12 says are industry standard, we'd like to see what it is he
13 took from his office.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. MURPHY: Again, Your Honor, as a matter of fact
17 of discovery, I probably won't oppose that, if he, you
18 know, has his notebooks. I don't know, they may still be
19 in boxes. They can look at that.

20 But for purposes of a TRO, she has to show you,
21 clearly, today that it's theirs, that it's a trade secret,
22 and he's using it, or there's some suggestion that there's
23 anything improper. She hasn't met that showing today.
24 Let's do discovery. She can bring a motion for
25 preliminary injunction at the appropriate time.

1 In terms of this letter. I'll address this letter.
2 That letter was not a gentlemanly we have concerns about
3 your conduct, let's resolve them. And nowhere in that
4 letter did it say if you can work with us on these
5 concerns, we're going to pay you under your contract.
6 This isn't my first rodeo. I know what these letters are.
7 And there's always -- it gives a deadline, and a TRO is
8 filed the next day. So, yes, we went into court because I
9 wanted this to be in state court in Greenville County.

10 But most of Mr. Ellsworth's demands in that letter
11 were improper. And Mr. Yelton is under no obligation to
12 meet them just because Mr. Ellsworth says you will do this
13 by Thursday at 4:00. Mr. Ellsworth makes one proper
14 request. If you have any information, give it to us.
15 We've been trying. For a week, we've been trying.

16 THE COURT: Thank you very much for your arguments.

17 So, Ms. Harper, you're requesting a no-contact
18 provision that Mr. Yelton not contact any employees of
19 ScanSource, and who else?

20 MS. HARPER: For purposes of obtaining confidential
21 information from them, yes, sir.

22 THE COURT: All right.

23 (Pause.)

24 MR. MURPHY: Your Honor, just for the record, if -- I
25 don't even need to -- in terms of a restraining order, he

1 has no objection to that. Mr. Yelton has no objection to
2 that.

3 THE COURT: Well --

4 MR. MURPHY: The only issue that was raised by that
5 with respect to the post-employment, not these QBR's, but
6 the post-employment was the HP list allegation in which he
7 was not provided any information about their account. But
8 we -- there hasn't been any contact throughout the
9 litigation. That's not at issue, sir.

10 THE COURT: Well, based on Scratch Golf Company v.
11 Dunes West Residential Golf Properties, Inc., and Rule 65
12 of the Rules of Civil Procedure, in order for a TRO to be
13 granted, the moving party must show that it would suffer
14 irreparable harm if the injunction or order is not
15 granted, that it will likely succeed on the merits of
16 litigation, and there's an inadequate remedy at law.

17 Obviously, the disclosure of confidential
18 information, trade secrets would constitute irreparable
19 harm to ScanSource given the nature of the information,
20 and the high level of management involved on both sides --
21 or former management.

22 And, secondly, if, in fact, disclosure occurred,
23 there would be an inadequate remedy at law. Because money
24 damages could not rectify that and compensate ScanSource
25 for the damage. In order to show that it would succeed on

1 the merits, it is likely to need only show that it has
2 alleged a prima facie case as to its causes of action.

3 I find that the only portions of the request that
4 should be granted are for a provision that Mr. Yelton not
5 contact any employees for purposes of obtaining
6 confidential information, which he, in fact, consents to.
7 And, second, that he is ordered to return any confidential
8 information or trade secrets to ScanSource within 24
9 hours.

10 I understand his affidavit. And I know he
11 understands the consequences of signing an affidavit. And
12 he may very well already be in compliance with that. But,
13 to the extent he's not, he has 24 hours to be in
14 compliance.

15 And as far as --

16 Are you still requesting a bond given the limited
17 nature of the injunction?

18 MR. MURPHY: The law requires a bond.

19 THE COURT: Well, but you're not willing to waive
20 that is what I'm asking?

21 MR. MURPHY: Yes, sir.

22 THE COURT: All right. I'll ask ScanSource to post a
23 bond of \$5,000.

24 MR. MURPHY: Can I ask for -- in terms of return,
25 Your Honor, we talked about that one Cisco thumb drive.

1 The one document on there that relates to another
2 non-parties personal financial information, I think when
3 they look at it, they would agree that there's only one
4 file on that thumb drive that has ScanSource information
5 on it. We've don't -- we've never opposed the return of
6 it.

7 But what do we do to protect that other gentleman's
8 information?

9 THE COURT: Now, wait a minute. I'm not sure --
10 which thumb drive are you talking about?

11 MR. MURPHY: There's two thumb drives I have. You
12 asked for the return of all information --

13 THE COURT: Well, there are three, aren't there?

14 I mean, I understand you say --

15 MR. MURPHY: Yeah. We only possess two.

16 THE COURT: You're just talking about the two that
17 are in that envelope?

18 MR. MURPHY: Right, right. There are two thumb
19 drives --

20 THE COURT: Okay. I'm with you.

21 MR. MURPHY: Yes. If he had the thumb drive with the
22 QBR's on it that they -- he says he left it in his office,
23 they don't have it. I understand you want it returned
24 within 24 hours. He doesn't have it.

25 But in terms of this information which I've been

1 trying to return, and you've ordered me to return and she
2 won't accept, I'm hesitant to just turn that thumb drive
3 over now with that gentleman's information on it. And I
4 don't know.

5 Is there another way I can give her that file?

6 THE COURT: Well, do y'all have any objection to
7 Mr. Murphy holding it in trust?

8 MS. HARPER: No, sir, not until we can -- you know,
9 we can hire the expert. We're in the process of doing
10 that. We just didn't want to go --

11 THE COURT: He may not agree to that.

12 Do you agree to that?

13 MR. MURPHY: To what, holding it?

14 THE COURT: Yes.

15 MR. MURPHY: I'd rather not hold it. I mean, I --

16 MS. HARPER: We'll give it to you, Judge.

17 THE COURT: No.

18 MR. MURPHY: You know, lots of things can happen.
19 I've given you a file list of -- you know, that we printed
20 off this morning. I just -- my only concern -- I'm not
21 concerned about the pictures on it, because they're just
22 pictures of a house, the outside of a house, I think. But
23 there's another person's whose personal financial
24 statement is on that thumb drive. And I don't think
25 anybody else should have access to that.

1 I don't know how I take that off or -- I don't want
2 to go in deleting files on this thumb drive when there's
3 forensic examinations, apparently, coming up.

4 THE COURT: Well --

5 MR. MURPHY: So I don't know how to handle that. But
6 just to turn it over to them is a little problematic.

7 The other thumb drive is not -- from what I can see
8 is not problematic at all. That's the one that has all
9 those files on it.

10 THE COURT: Right.

11 MR. MURPHY: The Cisco one that I'm talking about
12 only has one file that shows ScanSource on it. I'm fine
13 with them having that file. I can move it from one thumb
14 drive to another.

15 MS. HARPER: There's -- you're saying that one thumb
16 drive only has one thing -- I prefer to have the two thumb
17 drives as they are. Mr. Murphy can hold them in trust in
18 the next -- for the next few days until we can get our
19 expert in place. If he wants to give it to me and waive
20 any claim that I did anything to it, I'm happy to take it.

21 But we don't want down the road there to be some
22 claim that, oh, you picked it up and you changed it. I
23 mean, I --

24 MR. MURPHY: I don't know why we would want to do
25 that. We don't care about this -- we have no -- you'll

1 see -- Your Honor, as I said before, all this is data from
2 before when he got terminated. Some of it goes back to
3 2004, 2005.

4 THE COURT: Well, what if you turn it over to
5 Ms. Harper right now on the record, and she agrees to not
6 disclose anything related to that financial statement --

7 MR. MURPHY: That's fine with us.

8 THE COURT: -- and a protective order for that?

9 MS. HARPER: And I would agree to that, Your Honor.

10 MR. MURPHY: That's fine. No problem.

11 MS. HARPER: Can I ask for one clarification?

12 He is to return all confidential information, which
13 would include all copies in whatever form he has them, or
14 has access to them.

15 MR. MURPHY: My only concern is, Your Honor -- well,
16 I think in conjunction, it has to be a little more
17 specific than that. I know you can't give us a concrete
18 list of what every document might constitute confidential
19 information. I don't know what they're going to contend
20 is confidential information down the road. I've agreed
21 QBR's are.

22 It appears to me that this list of documents that's
23 on that other thumb drive would be their stuff. And what
24 I just want to kind of -- you know, any ScanSource stuff,
25 we'll get back to them. But I don't want to -- I don't

1 know if there's anything that's going to end up in the
2 gray area. I know for a contempt proceeding, it has to be
3 a clear and convincing showing.

4 THE COURT: Well, I mean, he knows what his contract
5 says, and so do they. So I'm not going to get involved in
6 that. I mean, I'm just going to say that whatever he
7 agreed to in the contract to not take, he needs to return.
8 That's the best I can do.

9 Thank you.

10 MS. HARPER: Thank you, Your Honor.

11 THE COURT: If you want to just send me a proposed
12 order, I'll be glad to look at it. And send a copy to
13 Mr. Murphy.

14 MS. HARPER: Thank you.

15 THE COURT: Thank you.

16 *****END OF TRANSCRIPT OF RECORD*****
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

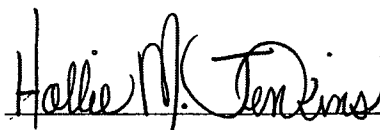
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 27th day of January, 2012.

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

February 1, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

JEFF YELTON,

PLAINTIFF,

-VS-

SCANSOURCE, INC.,

DEFENDANT.

)
)
)
)
)
)
)
)
)
)

2012-CP-23-00314

JUNE 19, 2012

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

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

BRIAN MURPHY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

BILL FOSTER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Jeff Yelton -vs- ScanSource, Inc. (2012-CP-23-00314)
Motions Hearing

2

I N D E X

	PAGE
Motion Hearing	3
Certificate of Reporter	26

E X H I B I T S

(NONE)

1 responses.

2 MR. FOSTER: I even them color-coded, Your
3 Honor.

4 MR. MURPHY: Your Honor, what this
5 interrogatory says is, if you contend Plaintiff has
6 misappropriated any information that you contend is a
7 trade secret belonging to you, it asks for four
8 different thing. He's referred to two affidavits.
9 The affidavit of a Mr. Spearman doesn't say that the
10 Plaintiff misappropriated anything. The Affidavit of
11 Mr. Cox doesn't say that he provided anything to Mr.
12 Yelton. So ...

13 THE COURT: The answer is zero then, I
14 guess.

15 MR. MURPHY: Well, if he'll say that, that's
16 fine. But they won't say that, Your Honor. And I'm
17 getting sued. Okay? My client is getting sued and
18 they're seeking injunctive relief, still, against him,
19 but they will not tell me what they claim he
20 misappropriated. I'm entitled to a clean answer to
21 say -- if they say -- one document keeps coming up,
22 QBRs. If they want to say he misappropriated QBRs,
23 that's fine. Just say it's QBRs. But instead, I got
24 objections and when they cite those two affidavits,
25 they add the language in here, ScanSource does not

1 intend to and does not limit its answer to the
2 information described in the affidavits. But then
3 they don't tell us what additional information they
4 are relying on. And I'm entitled to know.

5 MR. FOSTER: Your Honor, what he's not
6 reading to you is the next sentence which says,
7 ScanSource's investigation is on-going and it reserves
8 the right -- its right to supplement its answer. A
9 few points that are sort of ---

10 THE COURT: Isn't that boilerplate stuff?

11 MR. MURPHY: No, Your Honor.

12 THE COURT: It's not boilerplate?

13 MR. MURPHY: Yes. It's objectionable
14 boilerplate. Now if you read the response, you will
15 not see one trade secret mis ---

16 THE COURT: Well, the response refers to
17 affidavits.

18 MR. MURPHY: But they don't say we
19 misappropriated anything.

20 THE COURT: Maybe you ought to send them
21 another interrogatory and say, which part of the
22 affidavit has the trade secrets?

23 MR. MURPHY: Your Honor, ---

24 THE COURT: Frame it that since you now have
25 limited your trade secret violation to these two

1 affidavits, is it paragraph seven, is it paragraph
2 eight or is it paragraph nine?

3 MR. MURPHY: And then two months from now
4 I'll get responses and we'll be right back here. Why
5 am I not entitled to ask a contention interrogatory,
6 if you claim I did something, tell me what I did.

7 THE COURT: Can you tell him simply what he
8 did?

9 MR. FOSTER: Your Honor, I can. And I think
10 it's a bit, it's a bit of a ruse, not to cast
11 aspersions on my good friend, to say he doesn't know
12 what he did and to say, I've been sued. He sued us.

13 THE COURT: Well, but he's got a suit now
14 against him. It doesn't matter. ---

15 MR. FOSTER: Absolutely, Your Honor. We
16 certainly have counterclaimed.

17 THE COURT: You both are suing each other,
18 so ...

19 MR. FOSTER: Absolutely true, Your Honor.
20 But what we've done, and the linchpin to all of this,
21 not to oversimplify things, but it's like, Coca-Cola
22 is involved in a lawsuit with an executive who ran out
23 the door with the formula for Coca-Cola. And we
24 caught him like catching a thief running out of the
25 building with a TV over their head. We caught him, we

1 got the TV back. And he says discovery was -- he sues
2 us and says discovery response is, give me the formula
3 for Coca-Cola. No. We're not just going to give that
4 to you. We're not going to give the TV back to the
5 person we caught running out of the building with it,
6 unless you promise you're going to keep that TV in
7 your office, he can come and watch the shows.

8 THE COURT: That's been taken care of now;
9 right?

10 MR. FOSTER: But it wasn't when ---

11 THE COURT: Let's move forward now.

12 MR. FOSTER: Yes, sir, Your Honor.

13 THE COURT: Why can't you give a simple
14 answer without referring to affidavits, this is what
15 we think you did. And the trade secret is, you know
16 what it is and here it is, and specify it, rather than
17 saying in this affidavit you can find it if you look
18 all the way through the fine print.

19 MR. FOSTER: Absolutely, Your Honor, and we
20 can do that. But we don't believe ---

21 THE COURT: Then do it.

22 MR. FOSTER: Yes, sir. We don't believe
23 that we should be forced to waive otherwise valid
24 objections.

25 THE COURT: Well, we understand. And your

HEARING

1

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

HEARING

DATE TAKEN: August 31, 2012
TIME BEGAN: 1:03 p.m.
TIME ENDED: 2:52 p.m.
LOCATION: Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

SPECIAL REFEREE: J. D. Quattlebaum, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Debbie Gaddy, CVR
Notary Public for South Carolina

APPEARANCES:

BRIAN P. MURPHY, ESQUIRE

Brian Murphy Law Firm, PC

514 Pettigru Street

Greenville, South Carolina 29601

.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE

CARMEN HARPER THOMAS, ESQUIRE

Nelson, Mullins, Riley & Scarborough

104 South Main Street, Suite 900

Post Office Box 10084

Greenville, South Carolina 29603

.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton,
 John Ellsworth
 John Harvey
 Dean Gaida (via telephone)

INDEX

	PAGE
Mr. Foster.....	4
Mr. Murphy.....	19
Mr. Foster.....	50
Certificate.....	
Exhibits: (No exhibits introduced)	

1 SPECIAL REFEREE:

2 The first thing I want to do is to make sure we're
3 in agreement on what we're doing here today with
4 this hearing. There has been a TRO entered by Judge
5 Hill in this case. It's my understanding, first of
6 all, that the purpose of this hearing is to address
7 the Defendant's Motion as to whether the Plaintiff
8 has violated that TRO; is that correct?

9 MR. FOSTER:

10 Yes, sir.

11 SPECIAL REFEREE:

12 Okay. Is there any other purpose of this hearing
13 today?

14 MR. FOSTER:

15 No, sir.

16 SPECIAL REFEREE:

17 And also I think in doing this I want to confirm and
18 I've seen it in the transcript and I want to make
19 sure we're all in agreement as to exactly what's
20 going on. With regard to the TRO after I was
21 appointed Referee, shortly after that, I expressed
22 my opinion that because the TRO was issued after a
23 full hearing on the merits, that the TRO would stay
24 in place until either I ruled on the Motion for
25 Preliminary Injunction or until the Defendants

1 withdrew that Motion for Preliminary Injunction.

2 And so as of today and going forward the TRO is in
3 place. Is everybody in agreement with that?

4 MR. MURPHY:

5 I am. I guess I would respond by also saying that
6 the TRO required two things: one, that Mr. Yelton
7 not contact --

8 SPECIAL REFEREE:

9 well, the TRO speaks for itself. I don't want to
10 get into what it says because it says what it says.

11 MR. MURPHY:

12 And in terms of what it says, I think it's a matter
13 that's been completed. I don't know what part stays
14 in effect.

15 SPECIAL REFEREE:

16 That's for another day.

17 MR. MURPHY:

18 Okay.

19 SPECIAL REFEREE:

20 The TRO has been signed and it hasn't ended as of
21 today.

22 MR. MURPHY:

23 Okay.

24 SPECIAL REFEREE:

25 Do you disagree with that?

1 MR. MURPHY:

2 Certainly as to the one part I don't. It's the
3 second part I don't know what else it requires. It
4 required us to do something, we say we did it, they
5 say we didn't, and that's why we're here.

6 SPECIAL REFEREE:

7 Right. I appreciate that. And I want to also make
8 sure we're in agreement that the Motion for
9 Preliminary Injunction is still pending. And I
10 understand your position. To the extent it's the
11 same thing, you think you may have already completed
12 that.

13 MR. MURPHY:

14 And that's why Bill's email last night has me
15 somewhat -- I should have spoke up when you said
16 what the issue is. My position is that he can bring
17 a Motion for Preliminary Injunction or ask for
18 injunctive relief at any time he wants to.

19 SPECIAL REFEREE:

20 He can and he's done that. Do you agree he did
21 that?

22 MR. MURPHY:

23 Let's see how it's styled.

24 SPECIAL REFEREE:

25 I'm talking about the first one back in January.

1 MR. MURPHY:

2 Yes. It's styled Temporary Restraining Order and
3 Preliminary Injunction, Motion for --

4 SPECIAL REFEREE:

5 Judge Hill had a full hearing; is that correct?

6 MR. MURPHY:

7 He had a hearing. I think he was only addressing
8 the TRO aspect.

9 SPECIAL REFEREE:

10 I agree with that. He entered a Temporary
11 Restraining Order.

12 MR. MURPHY:

13 Yes.

14 SPECIAL REFEREE:

15 And it was referred to me.

16 MR. MURPHY:

17 Yes, yes, yes.

18 SPECIAL REFEREE:

19 And then the matter was referred to me.

20 MR. MURPHY:

21 Right.

22 SPECIAL REFEREE:

23 So we're in agreement there's a Temporary
24 Restraining Order?

25 MR. MURPHY:

1 Right. Now, I guess to complete my thought, what
2 threw me a little bit about -- and I didn't want to
3 send more emails out and get more email dialogue
4 going. But the pending Motion seeks injunctive
5 relief, which --

6 SPECIAL REFEREE:

7 I don't disagree with that. I'm not talking about
8 the pending Motion.

9 MR. MURPHY:

10 well, to the extent -- and that's why I'm in total
11 agreement with what you said in terms of the issue
12 today is did we violate --

13 SPECIAL REFEREE:

14 The TRO.

15 MR. MURPHY:

16 Any Order.

17 SPECIAL REFEREE:

18 The TRO.

19 MR. MURPHY:

20 Okay. But to the extent they're going to get into
21 injunctive relief, that -- you know, that's going to
22 open up other issues.

23 SPECIAL REFEREE:

24 well, let's wait and see if we get to that point.

25 MR. MURPHY:

1 But I agree with the issues of going backwards from
2 1/27, which is really the first Order, he gave an
3 Order from the bench, and then he memorialized that
4 February 8th. The stuff going backwards is the
5 stuff that Judge Hill will be addressing.

6 SPECIAL REFEREE:

7 Yeah. I don't want to get into all that. I want to
8 make sure we're all in agreement. Judge Hill issued
9 a TRO on February 8th.

10 MR. MURPHY:

11 Right.

12 SPECIAL REFEREE:

13 And then we have a Consent Order for a protocol
14 which ties in with the TRO. And you agree with
15 that?

16 MR. MURPHY:

17 Yeah.

18 SPECIAL REFEREE:

19 Okay. And before we get started I'd like to get an
20 update on where we are with the protocol because the
21 protocol was entered in April. And as I understood
22 what would be happening, I thought matters would be
23 brought back to me after the devices were given to
24 the Defendants. And nothing has been brought to me.
25 And so I'd like to get an update on what has

1 I don't know. This all could be completely
2 innocent, but I think it demonstrates the need we
3 have to have access to his current Dropbox and any
4 other cloud storage platform he may be using. I'm
5 sure I've probably taken up my time.

6 SPECIAL REFEREE:

7 No. I think you're --

8 MR. MURPHY:

9 You're a little short.

10 SPECIAL REFEREE:

11 You're right there. You might be a little short.

12 MR. FOSTER:

13 I reserve my additional time for follow-up.

14 SPECIAL REFEREE:

15 There's no --

16 MR. MURPHY:

17 No reserve. Can I have a break?

18 SPECIAL REFEREE:

19 You can.

20 (Short Break)

21 SPECIAL REFEREE:

22 Before you start and just for clarification because
23 I was going to ask this when you got to it at the
24 end, I'm under the impression there are two
25 Dropboxes?

1 MR. MURPHY:

2 Yeah.

3 SPECIAL REFEREE:

4 Is there any issue about them getting in the second
5 Dropbox?

6 MR. MURPHY:

7 We can respond in discovery, yeah. I mean I can
8 tell you a little bit about what we think is in it
9 right now, what we think those transactions are, but
10 --

11 SPECIAL REFEREE:

12 Well, let's --

13 MR. MURPHY:

14 This is all after the devices and everything are
15 gone. So it's not --

16 SPECIAL REFEREE:

17 I appreciate that, but --

18 MR. MURPHY:

19 We can probably access -- I don't know how much we
20 can go back to April now to tell -- I think we can
21 -- to tell what those files are, but we'll share
22 that with them. They haven't asked for it.

23 SPECIAL REFEREE:

24 Well, I tell you what, you just go on and respond,
25 and then maybe I'll talk to you more about that

1 Dropbox. I'm not understanding why that wouldn't be
2 a part of all this.

3 MR. MURPHY:

4 Because there would be no connection to anything
5 he's doing in March. If there's a suspicion, we can
6 look at that. That's fine. They haven't -- I mean
7 we've --

8 SPECIAL REFEREE:

9 why don't you give your response because I'm not
10 understanding why there wouldn't be a connection.
11 I'll tell you I would think anything he has that
12 could possibly have electronic information would be
13 subject to them looking at it.

14 MR. MURPHY:

15 I'm not sure I oppose that.

16 SPECIAL REFEREE:

17 I mean I'm not saying you oppose it or not. I'm
18 just saying it's there. It's already subject to it.
19 They don't have to re-ask.

20 MR. MURPHY:

21 well, there's stuff that has nothing to do with this
22 case we can go through with you and you can rule on
23 it. He's got some very personal data and stuff that
24 he doesn't have to open absolutely everything up to
25 them to look at. we'll respond. If there's

1 anything, you can look at it.

2 SPECIAL REFEREE:

3 well, why don't you respond to them.

4 MR. MURPHY:

5 I want to start where you started. What are we
6 really talking about here today? We're talking
7 about compliance with the TRO. You saw the stuff
8 about Jeanne Aiken, you saw the stuff about
9 KillDisk. I may respond very, very briefly to those
10 items. But they're not before you. Judge Hill
11 already heard about KillDisk. Judge Hill already
12 heard about Jeanne Aiken. He already heard our
13 response to that. It was a full-blown hearing. And
14 after hearing all of that, he didn't issue anything
15 on those things. He didn't find anything on it. By
16 their very nature that hearing was held on January
17 27th. It was all laid out on January 27. It
18 couldn't be a matter of contempt. It couldn't have
19 anything to do with what we did after 1/27. If you
20 take a look at everything Bill Foster just alleged
21 and you draw a line right there and you say how many
22 things fall before the hearing, how many things fall
23 after, what you'll see is absolutely zero fall
24 after. Now, he's created the issue that I will
25 address and probably the one that you have in your

1 mind is -- well, he's pointing to things that Jeff
2 did before which could suggest he's still in breach
3 today. And the only issue there that that would
4 relate to is the flash drives and I'll get into
5 that. But the TRO required us to do two things.
6 And I'm going to walk through that very carefully.
7 It required him to not contact employees for the
8 purpose of soliciting confidential ScanSource
9 information. And they're certainly entitled to do
10 reasonable discovery to find out if we're in breach
11 of that. But he said to the Dropbox, "We don't know
12 what that's about." well, clear and convincing
13 isn't standing up here and saying we don't know what
14 that's about. He needs to find out what it's about.
15 Then he can bring an issue of contempt if he thinks
16 -- I mean they've got Mr. Mulligan. They can ask
17 what's this about. You know, they haven't done
18 that. They either know what it's about and they're
19 just throwing up innuendo or they haven't made any
20 effort to find out. But neither is clear and
21 convincing. There has been not any showing that we
22 have done anything after January 27th other than
23 exceed what the court required, which was two
24 things, don't contact employees and to the extent
25 there's any confidential information, turn it over

1 within 24 hours. Now, they agreed and I've got the
2 emails, Corky Harper agreed on the 31st that that 24
3 hours, that all takes effect upon entry of the
4 order. That's kind of a moot point I think as I
5 understand it because between 1/27 and 2/8 there's
6 alleged nothing happened. So I'm not trying to say,
7 well, anything in here I can get away with because
8 nothing here happened either. So what happened on
9 the 27th. That's all we were ordered to do. And it
10 wasn't days after. Ms. Harper took the position and
11 provided a proposed order on the 27th that I had to
12 turn everything over to Brad Rustin, who's an
13 attorney at Nelson Mullins within 24 hours of the
14 hearing. I said, I don't think it's 24 hours from
15 the hearing. It would be 24 hours when his order
16 takes effect. But nonetheless, we did it. And
17 here's what we did. On the morning -- and this is
18 their Exhibit J to their original motion.

19 SPECIAL REFEREE:

20 I've got it here. Oh, to the original motion.

21 MR. MURPHY:

22 The original. It's an email chain.

23 SPECIAL REFEREE:

24 I've got it here.

25 MR. MURPHY:

1 Do you need it?

2 MR. FOSTER:

3 Sure, if you don't mind.

4 MR. MURPHY:

5 If you start at the back of this -- and the reason I
6 write this to Brad Rustin is this is what he's
7 proposing. And what we did was late in the 27th and
8 very early in the morning of the 28th Jeff Yelton
9 and I got together and he brought in -- you saw it,
10 Mr. Quattlebaum, when you came to my office. Do you
11 remember those big boxes and boxes of stuff, and
12 then we had all those devices sitting on the
13 conference room table? That stuff was in my office
14 the early morning hours of January 28th. January
15 28th is the day after the TRO hearing. And I
16 emailed Brad, "Are you in the office? Ms. Harper
17 says someone can be there if you're ready to comply
18 with the court's oral order." And my response is
19 over two pages long. And I detail in this over two
20 pages what we did to try to -- to me the biggest
21 issue at the time was avoiding this issue of what is
22 confidential information. I still don't agree with
23 broad concepts with vague definitions. But we're
24 talking about compliance with an order here, so what
25 do I try to do? Try to avoid that argument. And I

1 went through and in my first section I told her,
2 here's the hardware that we found. We weren't
3 ordered to disclose that. I said, here's what we
4 found. She had mentioned the day before at the
5 hearing she wanted to do forensic exams. We said at
6 the hearing, we're fine with that. We know what
7 they are. We know what they're going to turn up.
8 And we said that's fine. We said we wanted some
9 protections or confidentiality order, some
10 protections on protocol, but we'll work with you.
11 But they're here, they're in my -- you know, we have
12 it all identified. And the only one I think I
13 didn't have in my office at that time -- well, the
14 photography computer, which was scanned later, and
15 the laptop he was using at the time. We looked at
16 email clients to see, you know, where there might be
17 additional information. We found documents.
18 There's two series of older laptops as you may
19 remember that he had. We found documents on those.
20 We took screen shots of the progression of the file
21 order to show what the documents were and we
22 provided that. We said, here, if you look on his
23 electronic devices, you're going to see these files,
24 ScanSource files on these devices. I said what I
25 don't know how to do is search for deleted temp

1 files or temp files that don't have a file name that
2 I can search for. So we said, here's what we have
3 found. And I emailed that to her. And that's part
4 of the exhibit. Office contents, we had these
5 boxes. And I said, there's a lot of stuff here.
6 This is the morning. Their motion says we didn't do
7 this for sometime later. It's not true. That
8 morning we had that stuff all available for them to
9 go through. We did find some ScanSource documents,
10 related documents in those boxes. But I didn't play
11 needle in the haystack games with them. I told them
12 in this email, guess what, I've found some
13 ScanSource documents. Where's what they are. We
14 don't need them. We don't want them. You can have
15 them, but I want you to know that they're there and
16 where to look for them. I said, and everything is
17 here too if you want to search for it, do your own
18 determination as to whether there are any ScanSource
19 files. If they are, we're not going to fight about
20 them. He doesn't need them. We went through the
21 cloud Dropbox issue with them and we told them that
22 we believe he's got -- he deleted everything off,
23 but there is like a folder called research which I
24 think is clean. I don't even think that's an issue
25 for purposes of this motion. We did all of that. I

1 wrote all of that up by 11:15 the next morning and
2 it was all there. Now, nothing happened, nobody
3 came to look at any of this or came to see anything
4 until February 14th, the day that you met with the
5 parties in my conference room and you came over and
6 you saw all that stuff that was sitting there. Then
7 they started going through it. They asked for some
8 of the documents. We gave them every document they
9 asked for. The devices were in the manner that you
10 directed, were handled by myself and Mr. Harvey,
11 brought to your office. We came over together and
12 we gave it to you. There's been full compliance
13 with the TRO. In fact, at that point when you had
14 the devices and everything, there is no way for us
15 to violate the TRO unless we're not turning
16 everything over. Now, let's talk about the evidence
17 of that. Do you have a question?

18 SPECIAL REFEREE:

19 I was going to ask about they say you didn't turn
20 everything over.

21 MR. MURPHY:

22 I know.

23 SPECIAL REFEREE:

24 I agree if they haven't found five other devices.

25 MR. MURPHY:

1 They didn't find five.

2 SPECIAL REFEREE:

3 well, they identified five.

4 MR. MURPHY:

5 They talk about five, which you've got to --

6 SPECIAL REFEREE:

7 They've narrowed it down to one as I hear it.

8 MR. FOSTER:

9 Three.

10 MR. MURPHY:

11 Here's what they're saying as I understand it.

12 There are five devices that they identify were
13 plugged into his work computer at work. Two of them
14 they don't have any evidence that they were plugged
15 into his home computer. They have no evidence that
16 those ever left the building.

17 SPECIAL REFEREE:

18 That's why I said one. So we've got one, as I
19 understand it, that was plugged into his home
20 computer in January.

21 MR. MURPHY:

22 In January. No, no. They're saying there were
23 three that were plugged into his home computer in
24 January. Okay. They're saying one is the QBR flash
25 drive.

1 SPECIAL REFEREE:

2 Right.

3 MR. MURPHY:

4 Okay. Did you see any evidence of a QBR on any
5 flash drive? Did you see any report that said that?
6 No. There isn't one. There is no report of a QBR
7 being on a flash drive. If I'm wrong, I'll yield
8 the floor right now and tell me where it is in the
9 report.

10 MS. THOMAS:

11 We don't have the flash drive. That's the whole
12 point.

13 SPECIAL REFEREE:

14 Well, I'm going to probably give you time to get
15 back to that.

16 MR. MURPHY:

17 They would know if it is. And here's how I can show
18 that. Look at the analysis they did. You heard the
19 assertion about the link file analysis. That's
20 Exhibit G to Mr. Gaida's first affidavit. And what
21 they're showing in there is these were the files
22 that were opened on the computer at a time when the
23 flash drive was plugged in. Their ability to do
24 that analysis shows that they either know that their
25 allegations about the QBR flash drive are false, or

1 that they can't prove it. And I'll tell you how
2 that works. What they did to try to prove with
3 these five flash drives, they did two analyses. So
4 Let's look at two computers. There's actually more.

5 MR. FOSTER:

6 Derrick, I don't mean to interrupt him, but this may
7 be a good time to have Dean on the phone so he can
8 hear this. I think I understand where this is
9 going.

10 SPECIAL REFEREE:

11 well, let's see where it goes.

12 MR. FOSTER:

13 Yes, sir.

14 MR. MURPHY:

15 Exhibit B to Mr. Gaida's analysis is a report
16 showing what flash drives were plugged in. It's
17 that little list that says these five devices were
18 plugged into the computer. So B is devices plugged
19 in. Exhibit G is the files in use and links created
20 while a device was plugged in. And it's very
21 important to read that sidestep. Their brief is
22 very close to the line, but it doesn't exactly say
23 that Exhibit G shows you what files were on the
24 drives. And if you read the Gaida affidavit, he
25 never says that. He said by showing this analysis

1 it shows what files were likely on the drive. I'm
2 not sure he can actually say what was on the drive.
3 He was very careful, Mr. Gaida, in his affidavit.
4 He never said this shows that these files were on
5 the drive. But we got the work laptop and we got
6 the Yelton laptop. What they've done is say, all
7 right, we've given you a report on the work laptop,
8 what devices were plugged in. Then we've given you
9 on the work laptop this report showing you what
10 files were in use while certain devices were plugged
11 in and you have to match the times here with the
12 times here. Exhibit G doesn't tell you what flash
13 drive was plugged into the computer at any given
14 time. What they're extrapolating is saying since
15 this device was plugged in, assuming it was the only
16 device and today now we've heard that we think there
17 was more than one device plugged in at one time
18 calling into further doubt the ability to use these
19 two and match them up. But they're saying these
20 documents were open while this device and possibly
21 other devices were connected to the computer. Then
22 we're going to give you this report from the Yelton
23 laptop. And we want you to jump to the conclusion
24 that since some of these match some of these,
25 everything here must be on there later in time.

1 Now, how could they have closed the loop? They
2 could have given you this report. They never gave
3 you this report. They never told you, well, these
4 devices were plugged into the Yelton laptop later in
5 January, 2012. Here's the files that were used.
6 They have that drive.

7 MR. FOSTER:

8 we did not allow a protocol to access it. All we've
9 done is a serial port --

10 MR. MURPHY:

11 No. They're entitled to do all the forensics.
12 They're not doing the file search, but they can do
13 the forensics. They can show that this file -- they
14 can do Exhibit G with the Yelton laptop all day
15 long. And, frankly, I don't believe they have it.
16 But let's say they have it. Let's take their word
17 at it. They can't show clear and convincing
18 anything of what was on the flash drive in January
19 of 2012. They haven't even shown in December that
20 the QBR was on any of these drives. Let me show you
21 what they have shown. Let's go to -- because
22 they've left us some clues if we're going to use
23 their analysis. The QBR flash drive, we're going to
24 go to the serial number analysis list. The serial
25 number for that is a long number. When I looked at

1 this and did a review, I looked at the last three
2 numbers. So let's just call what Mr. Foster is
3 gratuitously referring to as the QBR flash drive,
4 flash drive number 702. Are we in agreement, Bill,
5 that's what you refer to as the QBR flash drive,
6 702?

7 MR. FOSTER:

8 Yes, sir.

9 MR. MURPHY:

10 Okay. The only indication we have of what not was,
11 but might have been on that flash drive on the
12 morning of December 12th is Mr. Gaida's Exhibit G.
13 If you look at Exhibit G, you will find that during
14 the pertinent time there was some device plugged in.

15 MR. FOSTER:

16 which affidavit are you looking at now?

17 MR. MURPHY:

18 The very first one.

19 MR. FOSTER:

20 Okay. We've got it.

21 SPECIAL REFEREE:

22 All right.

23 MR. MURPHY:

24 Do you see the table there?

25 SPECIAL REFEREE:

1 I'm looking at what I assume is Exhibit G, his
2 affidavit.

3 MR. MURPHY:

4 Can I check it?

5 SPECIAL REFEREE:

6 Please do. That's the same one.

7 MR. MURPHY:

8 Yes, it is. Okay. If you look at the top line, the
9 top line is an entry on 12/13. That's not 12/12.
10 And I don't know why that one is out of order. If
11 you study this, you will see the rest of it is
12 chronological more or less. Some of the times are a
13 little out, but they go by dates. The next one,
14 two, three, four, five, six, seven, eight, nine
15 lines are December 12th. They tell you what files
16 were opened on December 12th on the Yelton laptop,
17 work laptop while these devices were plugged in.
18 You don't see QBR on there. But what they're saying
19 is the QBR flash drive was plugged into his laptop
20 at nine o'clock. The only document -- and you'll
21 see there's multiple entries for each document.
22 Now, I don't fully understand this. What I
23 understand from the Gaida affidavit is -- if I'm
24 wrong about this, somebody correct me. And LNK is a
25 link file created to that document when it's open.

1 It's created on that device.

2 MR. FOSTER:

3 You've got to open it.

4 MR. MURPHY:

5 Excuse me?

6 MR. FOSTER:

7 It wouldn't happen if you just copied it. That's
8 the --

9 MR. MURPHY:

10 If the document is opened? I think that's right. I
11 think that's what he said. But the only one that's
12 opened around this time is new distribution
13 model.doc and it's also by title new distribution
14 model for Motorola. That's not a QBR. We've told
15 you what that is in the affidavit. New distribution
16 model was a document that -- we've given it to you.
17 It's the document that Mr. Yelton was using to send
18 to Motorola, to send to Honeywell. He had different
19 versions that he changed to seek employment or some
20 kind of business relationship with them. If you
21 look at the whole thing, you will not find a QBR on
22 there anywhere. So the point here is while Mr.
23 Foster will sit there and say that we have the QBR
24 document, we have the QBR document being plugged
25 into his computer, he hasn't begun to show that any

1 device plugged into the Yelton laptop in December
2 had the QBR's on it. But that wouldn't even be the
3 issue of contempt. The issue of contempt, he would
4 have to show that -- the other thing about this is
5 they're trying to use it both ways. We acknowledge
6 and agree and I think it's entirely proper that he
7 was deleting files when he found the ScanSource data
8 throughout January. I think that's what he should
9 do. If he came across files and they were work
10 related, the proper thing to do is get rid of them.
11 I don't completely dismiss the notion that in
12 January they haven't shown this -- and that's not
13 incumbent upon me to show. In January he deleted
14 those QBR's he's talking about. There were other
15 QBR documents that he found that he did delete, that
16 show up in the Dropbox deletion files. All of that
17 predates January 27th, all of it. So even if they
18 could establish there was a QBR flash drive that
19 left the premises and if it could establish that the
20 QBR was still on it in his flash drive and it was
21 still on it when he plugged it into his home
22 computer, they can't prove it was still there or
23 hadn't been deleted by January 27th. There can be
24 no contempt. And there hasn't been any showing of
25 lying either. We have always said throughout the

1 case in the very first filing he used Dropbox, he
2 deleted files. That's not lying. We admitted and
3 discussed why he used KillDisk. That's not lying.
4 But what Judge Hill said on January 27th is if you
5 have any confidential information, you've got 24
6 hours to turn it over. And I took that very
7 seriously. That is why, Mr. Quattlebaum, on January
8 28th, that morning, I'm drafting an email not just
9 saying I've got stuff if you want to look at it, I'm
10 saying we found some stuff. I don't want to argue
11 about whether it's confidential. I want all hands
12 on the table. I want to be completely upfront about
13 this. We could go through an analysis of each of
14 these three flash drives and we can talk about them
15 all day long, but it doesn't appear there's any
16 contempt allegation except with respect to 702.
17 What else do we know about 702? The other documents
18 on it was a document called book, something that
19 says meek or mook (phonetic), a PowerPoint, and
20 Motorola Public Relations Resources, which is a zip
21 file. Now, you can google that document and it will
22 take you to a Motorola site where Motorola offers
23 documents on its websites on public relations. So
24 we could go -- and I'm prepared to if there's a
25 question. I can go flash drive by flash drive

1 matching up the times of those five devices when
2 they were plugged in and when they were
3 disconnected. And I can show you which ones match
4 up to which documents. But here's the thing at the
5 end of the day, what is our standard here? Clear
6 and convincing evidence of a willful violation.
7 what were we ordered to do? Return confidential
8 information. Has Mr. Foster shown you what the
9 content of any document on Exhibit G is? No. He's
10 not established that even the stuff he accessed at
11 work was confidential. He certainly hasn't
12 established we had anything on January 27th, 2012
13 that's confidential. The only thing he has is our
14 agreement that as far as we know the QBR's do
15 contain confidential information. We assume they
16 haven't disclosed it to anybody outside. We'll
17 agree, QBR's are confidential. Any evidence that we
18 violated the TRO? No. As to any other document,
19 he's not putting any evidence of any confidential
20 information that's been retained in violation of the
21 TRO. He refers to these flash drives interestingly
22 as devices that, quote, potentially contain the
23 company's trade secrets and/or proprietary
24 information. That's their motion to expedite -- for
25 an expedited hearing at page two. Potentially

1 contain the company's trade secrets. well, first of
2 all, he hasn't proven that we have any devices.
3 Second of all, even if he proved that we have
4 devices, they merely potentially contain trade
5 secrets. That's not clear and convincing evidence.
6 That's a potential situation. His Motion for
7 Contempt states, "It is impossible to determine
8 whether Yelton deleted or removed files. Impossible
9 to determine." That's their Motion on page six.
10 That's not contempt. That's neither clear, that's
11 neither convincing, and it certainly isn't both. As
12 I mentioned before, the Gaida affidavit only goes so
13 far as to say, with respect to that link file
14 analysis that they found so conclusive, that it's
15 only likely that certain documents were opened while
16 that device, and possibly others now we've learned,
17 were plugged in at the same time. The other thing
18 I'll note about that link file analysis, while their
19 report -- and this isn't necessarily an
20 inconsistency, I think it just supports my reading
21 of it. Their own report, and correct me if I'm
22 wrong, doesn't show any activity at nine o'clock.
23 In other words, it was plugged in, unplugged,
24 plugged into somebody else's, unplugged, plugged
25 into somebody else's, unplugged, plugged back into

1 mine. When it was plugged back into mine the only
2 document they've got showing is his document that
3 he's emailing out trying to get a job, no QBR. So I
4 don't think they've established that the one that
5 was put in Spearman and Cox's computer had a QBR.
6 Now, when I argued about the Hewlett Packard laptop,
7 Mr. Foster just made the argument that he didn't
8 believe that they were entitled to look at the drive
9 yet and determine -- do a link file analysis on it.
10 That's not true under the Order.

11 MR. FOSTER:

12 That's clearly true under the Order. We would have
13 to do a report. We would have to get data off that
14 device that you're supposed to see first.

15 MR. MURPHY:

16 Not to do the link file analysis. But is there any
17 restriction on them doing that report on the Cox
18 computer? No. It's their computer. How about
19 Spearman's computer? If they wanted to prove that
20 the QBR is what was being passed around that day,
21 they could have done that analysis on Mr. Spearman's
22 computer. They either did and it doesn't support
23 their case or they're not doing it. Either way they
24 don't have clear and convincing evidence of
25 anything. So when you hear this QBR flash drive,

1 there is absolutely no foundation for calling any
2 device a QBR flash drive. We don't deny that there
3 was a flash drive passed around, maybe more than one
4 flash drive passed around in the open area at the
5 office when he asked people for a flash drive for
6 the QBR's. We don't deny it. But is there any
7 showing that as of January 27, 2012 we had it and we
8 just gave the proverbial finger to Judge Hill and
9 said we're not going to reveal that? No, because it
10 wouldn't have been a violation of anything. We
11 turned over devices with confidential data on it.
12 And when we had files that were arguably
13 confidential information, we could have just
14 shredded them. Nobody would have ever known. What
15 did we do? We flagged it. It would have been the
16 easiest get-out-of-jail card anybody could have ever
17 had. So why would we do it? Why would we lie?
18 There's no reason to. He's not in the business. He
19 has no reason to use the QBR's. They've had access
20 to their vendors, the Honeywells and the Motorolas.
21 And we're planning on taking their deposition. He
22 never disclosed anything to anybody with
23 confidential information from another company. In
24 fact, I've asked we get into this because he
25 continues to ask for things like injunctions. The

1 only real fact witness they have on any of this that
2 they've listed so far is Mr. Benbenek. And I asked
3 him in his deposition, he testified -- you may have
4 read this from the last transcript -- that Mr.
5 Benbenek does not believe that Mr. Yelton broke any
6 company rule or violated any policy. Did he violate
7 any provision of his employee contract? He has no
8 reason to believe Mr. Yelton has disclosed any
9 confidential information to ScanSource. No one has
10 told him Mr. Yelton has done that. He's not read
11 anything to believe that Mr. Yelton has done that.
12 No one has told him that Mr. Yelton used any
13 information. He's not read anything to indicate
14 that Mr. Yelton has used any confidential
15 information. He has no reason to believe Mr. Yelton
16 ever attempted to access information he's not
17 entitled to access. He has no reason to believe
18 that Mr. Yelton tried to compete with the company,
19 that he's tried to get anybody to stop doing
20 business with the company, that he's sought to get
21 anything to reduce their business with the company.
22 I asked him, this is on page 176 of his deposition,
23 "Has Jeff Yelton done anything to cause your company
24 damages in any way?" Now, the answer is "I'm not
25 aware of any." Question, "Has Mr. Yelton ever

1 threatened to do anything against the interest of
2 ScanSource to the best of your knowledge?" Answer,
3 "To the best of my knowledge, no." Question, "Has
4 Jeff Yelton done anything to benefit either himself
5 or another company to the detriment of ScanSource?"
6 Answer, "Not that I know of." "Has anybody told you
7 that they believe he's done anything to benefit
8 himself or a company to the detriment of
9 ScanSource?" "None that I can think of, no," is the
10 answer. So all they can really stand on in terms of
11 this TRO compliance hearing are two things. What
12 evidence they have that we've done anything wrong
13 after January 27th, the answer is nothing. He wants
14 to raise issues about what we did prior to January
15 27, you know, with respect to KillDisk that's
16 already been heard by the court, with respect to
17 Dropbox which has already been heard by the court,
18 or anything else, that we lied in an affidavit, and
19 we didn't. And we can go through that if you're
20 worried about it. But he can address that to Judge
21 Hill. The issue today is when Judge Hill said
22 you've got 24 hours to turn everything over, did we
23 fail to do so. They can't tell you that something
24 is in our possession January 27th and they can't
25 tell you the contents of anything in January on

1 those computers. They have the means to back up
2 some of their statements and they've chosen not to
3 do so. So there hasn't been clear and convincing
4 evidence of anything in that regard. I'll address
5 the Dropbox issue. You know, you can argue does it
6 support our side, does it support their side. Well,
7 we can work on disclosing that to them. That's not
8 -- again, they have access to Mr. Mulligan. They
9 can ask him.

10 SPECIAL REFEREE:

11 Let me ask this just so I understand where you all
12 are coming from. And I understand your position,
13 but I'm reading it. The TRO requires you to return
14 all confidential information.

15 MR. MURPHY:

16 Correct.

17 SPECIAL REFEREE:

18 with regard to these five devices, I guess really
19 three, and maybe really one, I have gathered from
20 the affidavits and from your argument that you are
21 saying you all looked for any devices that you could
22 possibly find and you turned them over.

23 MR. MURPHY:

24 Absolutely.

25 SPECIAL REFEREE:

1 There are no devices that you withheld on the basis
2 of we looked and there's not confidential
3 information and, therefore, we're just not going to
4 turn it over?

5 MR. MURPHY:

6 That's correct. In fact, we turned over like one is
7 a BMW flash drive he was almost certain had nothing
8 to do with work. We turned that over anyway. And I
9 think their analysis shows that there's nothing on
10 there. It hasn't been accessed, I think, since
11 2009. Yeah. We didn't withhold any flash drive or
12 external hard drive -- we turned those over too --
13 on the grounds that we looked at them and there was
14 nothing there. We disclosed everything we could
15 find.

16 SPECIAL REFEREE:

17 Knowing that the hearing was on the 28th and the
18 order was not entered until the 8th, when did you
19 all look for these devices?

20 MR. MURPHY:

21 The 27th and the early morning hours of the 28th. I
22 think it was all done by the evening of the 27th.

23 SPECIAL REFEREE:

24 You all remind me of when that device went into his
25 home computer.

1 MR. FOSTER:

2 January 17th at 9:19.

3 MR. MURPHY:

4 And what I proposed -- I mean I'll be honest. I
5 thought this was in the protocol. And when I went
6 to look for it, I must be thinking of another case.
7 What I propose today because we're not trying to
8 say, well, since -- and your question about the TRO
9 being in effect was aimed at this. I am certainly
10 not trying to take the position that after that 24
11 hours if we find something, we shouldn't be
12 disclosing it. That was never my intention. In
13 fact, an issue has come up that I don't think is an
14 issue or a problem whatsoever. When there was a
15 possible issue, I did notify Mr. Foster of
16 something. I'll continue to do so. So what I have
17 proposed is language not -- it's not an injunction
18 because they haven't begun to show any grounds for
19 an injunction. But my thought, you know, the
20 company has a legitimate interest in saying, well,
21 if our stuff is out there, you know, if there's a
22 flash drive he comes across -- one of these he found
23 in the back of his closet. You know, I was telling
24 -- you know, the other day I was up in my kids'
25 playroom and I found two of my flash drives in the

1 back of an X-Box. That's apparently how they expand
2 memory. They went in my desk, they took it, stuck
3 it in an X-Box. If we come across something, we're
4 going to turn it over. So what my suggestion was,
5 if we want to have something binding, that's binding
6 on us, there hasn't been any showing of a violation,
7 but we're certainly amenable to a provision of the
8 protocol which says if anything else comes to light,
9 I tell Bill Foster, I make it available to him and
10 we can work it out. If somehow we can't work it
11 out, you retain jurisdiction to rule on it. That
12 will protect any interest the company has to making
13 sure that, you know, to the extent there's something
14 out there, there's a binding obligation on Mr.
15 Yelton to make it known and to disclose it. And I
16 think that's reasonable. Like I said, I thought we
17 had that provision in there, but we didn't. But
18 it's a reasonable one. I can agree to it. I'll
19 address any other issue. I don't want to go into
20 all the allegations of lying. I'm not going to go
21 into Jeanne Aiken. It's already been heard by the
22 court. I'm not going to go into KillDisk since we
23 disclosed KillDisk from the very beginning. It
24 predates even a lawsuit. They can sue us if they
25 want. They can try to tell it to the jury. Mr.

1 Benbenek says there are no damages, no harm. They
2 can tell it to the jury. If we start that clock at
3 1/27 there has been no failure to comply on the part
4 of Mr. Yelton.

5 SPECIAL REFEREE:

6 Tell me what -- there's a footnote that says he has
7 a business called wired Fox Technologies, Inc.

8 MR. MURPHY:

9 we addressed that in his affidavit. He's selling
10 two-way radios, wired Fox.

11 SPECIAL REFEREE:

12 where does the name, wired Fox, come from; do you
13 know?

14 MR. YELTON:

15 Just made it up.

16 SPECIAL REFEREE:

17 All right.

18 MR. FOSTER:

19 Thank you, Your Honor.

20 SPECIAL REFEREE:

21 And you've got to stop calling me Your Honor.

22 MR. FOSTER:

23 I'm trying to do it.

24 SPECIAL REFEREE:

25 I assume that it's just habit, but --

1 MR. FOSTER:

2 It is. And I'm taking it seriously. And I
3 apologize. It's like going on a date and calling
4 her ma'am.

5 SPECIAL REFEREE:

6 I understand.

7 MR. FOSTER:

8 You know, I don't know if -- and it is complicated.
9 Dean gave his affidavits and the technology here is
10 complicated. I will presume Brian doesn't
11 understand and is not trying to be cute and argue
12 between the lines. But the fact of the matter is
13 we're being blamed for not being able to tell you
14 what's on a device that hasn't been produced to us.
15 we're being blamed for not conducting an analysis
16 that's absolutely unequivocally inappropriate for us
17 to do on his HP laptop until we go through the
18 protocol that he won't let us go through because he
19 won't sign up for Ringtail and let us produce the
20 report. That reports shows all the files that are
21 on that home laptop. He's proposing we could go
22 ahead and do that without his knowledge. we can't
23 do that without his knowledge. we can't do that.
24 we can look at the external USB ports and tell it's
25 been hooked up, but we can't go in that and look at

1 documents or files or produce reports to ourself to
2 show what's on that HP laptop that's subject to the
3 protocol and that's clear. He knows that. So to
4 argue that we somehow could prove it, but we haven't
5 tried is clearly false. You know what else is false
6 is saying that Scott Benbenek is our only fact
7 witness. We've listed no further than 12 different
8 fact witnesses. What Mr. Benbenek actually
9 testified is after he hung up the phone with Mr.
10 Yelton on January 4th and Jeanne Aiken came in with
11 that text, he reported it to his boss, Mr. Baur and
12 that's the last he had to do with it. He wasn't
13 involved in the investigation and what had occurred.
14 He hasn't been involved in this case. He wasn't
15 involved in the decision to characterize the
16 termination as one for cause. He's had no
17 involvement. His testimony actually, if you look at
18 it though. "Subsequent to your discussions with Mr.
19 Yelton on January 4th have you had to deal with any
20 Jeff Yelton related issues since January 4th other
21 than giving an affidavit?" "No, none come to mind."
22 "Did Jeff Yelton say anything to you on January 4th
23 you believe is not true?" "I think so. I have no
24 proof." But he's asking, "I'm not sure why anybody
25 would get a thumb drive for information, keep it for

1 two days and then not take it with them, or why
2 would they even want it knowing you're not going to
3 be with the company anymore." "Do you believe
4 that's untrue?" "If I had to bet, yes. Like I
5 said, I don't have a videotape of that, but you're
6 asking me and, yes, I think he knows where that
7 thumb drive is or was or whatever." "Anything other
8 than your understanding of human nature?" "I don't
9 know how to base many communications other than
10 that. There is logical steps and that's all I can
11 go on here." Mr. Benbenek testified that he didn't
12 know that he had done anything or said anything that
13 was untrue. He suspected it, but he didn't know.
14 So my point is that could be competitive, what he's
15 doing, but it could be competitive with the same
16 dollars. well, Mr. Yelton tells you today, Mr.
17 Murphy tells you today that he's not competing.
18 He's submitted to you a letter that he sent to one
19 of our biggest customers, our biggest partners
20 before he left that talks about taking business away
21 from ScanSource on page two, this letter to
22 Honeywell. He wants to help you so that you do not
23 pay distribution for marketing their own brand.
24 That's what we do. That's how we make our money.
25 And that's what he wants to do. He acts as if

1 customer lists for all of the customers of
2 ScanSource, thousands of them, is somehow not
3 helpful to someone who wants to market themselves as
4 those same people that take away marketing dollars
5 from us. That's not competitive? That information
6 is not useful? That's in his -- he wrote a letter
7 even before he's out the door to one of our
8 customers suggesting, hey, I can help you take away
9 business from ScanSource, money from ScanSource.
10 Your Honor, what's missing in this chart that Brian
11 did -- and, you know, Brian is one of the smartest
12 guys I know. I'll call him up and try to bounce
13 stuff off of him when we're not against each other,
14 but I think he knows this. And I think you know it
15 if you look at Dean Gaida's affidavit, paragraph
16 eight, I believe, where he says a link file means --
17 and Microsoft will tell you this -- means that you
18 open the document, you access the document. So if I
19 copy a QBR onto a thumb drive, there's not going to
20 be any link to it. I just copied it. It's only if
21 I open it on the thumb drive it establishes the
22 link. So the fact that there's no link file
23 analysis for the two subordinate employees that
24 shows the QBR being reviewed on their thumb drive,
25 that just means what they told you is true. And

1 what he told you he did is true. I had them copy
2 the QBR onto a thumb drive, copied it, not opened
3 it, not reviewed it, not looked at it, not
4 manipulated it, I copied it. So there's no link
5 file. What we've done is we've shown -- if you look
6 at the submissions of Mr. Gaida in his most recent
7 affidavit, you can see the USB serial port analysis
8 for the two subordinate employees for the entire
9 week of December 9th through the 15th. There's only
10 one USB flash drive, only one USB device plugged to
11 either one of those computers that whole week and
12 it's 207, it's the QBR --

13 MR. MURPHY:

14 702.

15 MR. FOSTER:

16 702. Thank you. I got it backwards. It's 702.
17 That's the only thing hooked to their computers all
18 week. What do we know happened that week by Mr.
19 Yelton's own testimony? He went to them with a
20 thumb drive and said, put the QBR on there. So we
21 know now that 702 is the QBR flash drive because
22 that's the only flash drive hooked to those two
23 employees' computers that week at all. It's also
24 hooked the same day to Mr. Yelton's work computer.
25 And it's also hooked to Mr. Yelton's computer 12

1 exactly sure what is being requested in terms of
2 preliminary injunctive relief, what they're seeking.
3 We don't have the devices. We don't -- I mean the
4 issue of contacting employees to solicit
5 confidential information, that's not an issue. We
6 don't have the devices. He's not in the business.
7 He's --

8 SPECIAL REFEREE:

9 Well, I don't want to argue it right here. They've
10 asked for it. We need to address it.

11 MR. MURPHY:

12 I would ask for further clarification of what's been
13 asked for.

14 MR. FOSTER:

15 I'll be happy to do that.

16 SPECIAL REFEREE:

17 Why don't we do that. What amount of time would you
18 all need to get that to me? And I want to rule on
19 it. I'll rule on it as quickly as you all want to,
20 unless you all are trying to expand it here. You
21 know, I've always been of the opinion there's a
22 Retraining Order in place that at least with regard
23 to the initial Preliminary Injunction just carries
24 forth what you all are asking for.

25 MR. MURPHY:

1 Is there something more you want?

2 MR. FOSTER:

3 Well, I mean the separate issue of relief requested
4 today, we'd hoped to get that resolved before --

5 SPECIAL REFEREE:

6 I understand that's --

7 MR. FOSTER:

8 But in terms of the Preliminary Injunction, I agree.
9 I think the only -- it's the same discussion we had
10 months ago about, you know, leaving the provisions
11 of the TRO that continued in place and adding a use
12 restriction. That's the only additional relief we
13 would ask for. We think that's within the scope of
14 the initial request which includes other and further
15 --

16 SPECIAL REFEREE:

17 Right. To continue it through the time of trial?

18 MR. FOSTER:

19 Correct.

20 SPECIAL REFEREE:

21 So why don't you all --

22 MR. FOSTER:

23 Come up with a briefing schedule?

24 SPECIAL REFEREE:

25 Right. Well, I don't think we need a -- you tell us

1 what you all are seeking, and then let me know if
2 you all need to have a hearing. And then you can
3 submit -- and he may see what you've proposed. And
4 I see that as completely separate from what we're
5 dealing with here.

6 MR. FOSTER:

7 Yes, sir.

8 SPECIAL REFEREE:

9 Brian, I don't think this has happened a lot so far,
10 but he might look at it and just say, okay, I agree,
11 just enter that.

12 MR. MURPHY:

13 I mean I'll tell you my position on it.

14 SPECIAL REFEREE:

15 You can do that next time.

16 MR. MURPHY:

17 We'll do it next time then.

18 SPECIAL REFEREE:

19 Okay. Thank you.

20 (Concluded at 2:52 p.m.)

21

22

23

24

25

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JEFF YELTON,

PLAINTIFF,

vs.

SCANSOURCE, INC.,

DEFENDANT.

COURT OF COMMON PLEAS

2012-CP-23-00314

TRANSCRIPT OF RECORD

ORIGINAL

October 2, 2012

Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

BRIAN P. MURPHY, ESQ.

Attorney for the Plaintiff

WILLIAM H. FOSTER, III, ESQ.

CARMEN H. THOMAS, ESQ.

Attorneys for the Defendant

HOLLIE M. JENKINS

Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1 THE COURT: This is 2012-CP-23-0314, Yelton v.
2 ScanSource, Inc. I understand the first motion, there's
3 some, I guess, agreement that it be heard in-chambers; is
4 that right? I don't know.
5

6 MR. MURPHY: Your Honor, I don't know that that
7 was -- is it the in-camera review?

8 THE COURT: Right.

9 MR. MURPHY: That's fine with me.

10 MR. FOSTER: Your Honor, there's two motions that we
11 would submit would require -- we would, certainly, prefer
12 it be heard in chambers. One is the motion by Mr. Yelton
13 for an in-camera review. There's -- I think there's seven
14 of our privileged designations that he'd like the Court to
15 review the redactions.

16 THE COURT: Right.

17 MR. FOSTER: And then our motion for protective
18 order, which we would submit we'd like to argue in
19 chambers.

20 MR. MURPHY: One way to handle it since there's
21 nobody else in the courtroom, I think, other than the
22 parties and the court staff --

23 MR. FOSTER: I don't want to have to stop if we're in
24 the middle of discussing it, Your Honor.

25 THE COURT: Well, we can just put Mr. Morris out

1 there so nobody can get in or out.

2 MR. MURPHY: I don't know that the in-camera
3 review -- I don't -- of course, I don't know the contents,
4 so I don't have anything to discuss that would reveal
5 anything. If they were going to do that in their
6 argument, then maybe that's an issue.

7 On the protective order motion -- protective order,
8 the third hearing, I think that is a good point. I mean,
9 I think -- because I would like to be able discuss the
10 substance of what is -- shows up in those deposition
11 excerpts, you know. However you'd like to do it, Your
12 Honor.

13 THE COURT: I don't -- I mean, it doesn't matter to
14 me. What do y'all want to do?

15 I don't know if I've got room for everybody back
16 here. I'm happy to bring everybody back there and serve
17 up our military-grade coffee, or whatever y'all would like
18 to --

19 MR. FOSTER: I, certainly, think it is appropriate
20 for the protective order, Your Honor.

21 THE COURT: Okay.

22 MR. MURPHY: Okay.

23 THE COURT: Well, let's go ahead and do what we can
24 on the record out here, which, I guess, is just the
25 partial summary judgment motion; right?

1 MR. MURPHY: Okay. You don't want to do the
2 in-camera review out here either?

3 THE COURT: Well, yes. We can do the in-camera
4 review, I mean, the actual argument on it.

5 MR. MURPHY: Sure, Your Honor. Because I don't know
6 what's on these.

7 Let me give you a little background on the in-camera
8 review. As part of the discovery in this process, the
9 Defendant submitted a 45-page privilege log. We looked
10 through those. A couple of things raised my eyebrows.
11 I'm, certainly, not asking for a review of all the
12 documents. I think some fall in the category of they
13 wouldn't matter. I mean, they did a good job of giving us
14 enough description. We can sort of tell what probably
15 doesn't make a difference, what would waste your time.
16 And there's some things that probably, clearly, are
17 privileged.

18 The limited documents we were requesting a review
19 on -- because there's three categories of documents that,
20 I would say, raised my eyebrows. One, there's
21 communications between people where there's not even an
22 attorney on the communication. There is a set of
23 communications that are being claimed as work product that
24 happened before there was even any hint of a dispute
25 between the parties. And there's a communication between

1 Mr. Ellsworth and a public relations firm, which is a
2 third party of ScanSource that's being claimed as
3 attorney-client privilege. Those are the ones that raise
4 my eyebrows.

5 As we -- we submitted a memo, Your Honor. I hope you
6 have it.

7 THE COURT: I read it.

8 MR. MURPHY: And all I can really do, at this point,
9 is just go through some of the general principles and ask
10 that you do an in-camera review, which is the normal
11 process, and apply those principles. We've grouped the
12 documents, as you can see in our memo, sort of topically
13 so we can discuss why their claim under South Carolina
14 law, where the principles we gather from other persuasive
15 forum [phonetic] should apply.

16 And one point I want to make at the outset of this,
17 Your Honor, and -- because I couldn't make it when I filed
18 the motion, obviously. And you're going to hear me make
19 this point on all three motions today, as I've made it to
20 the special referee on injunctive relief. It's very
21 important to realize that the burden here rests with the
22 Defendant to establish all the elements of the
23 attorney-client privilege or the work product. The party
24 bearing -- you know, asserting that privilege must make
25 that showing. That's under Wilson v. Preston. We cited

1 that to you.

2 In response to our motion, I've received nothing.
3 There's no affidavits establishing any kind of privilege,
4 what these involve. So I ask you to take that into
5 account. Because I've had to make this argument in front
6 of Mr. Quattlebaum. And you'll hear me make this argument
7 three times this morning. And that is, what we've done is
8 we keep submitting documentation on our submission, and
9 all we get back is arguments from the lawyers. There's no
10 affidavit supporting any of this. There's nothing that
11 they can rely on to establish the privilege.

12 But, even if they did, there's some very simple
13 principles that, at least, call into serious question
14 their assertion of attorney-client privilege and work
15 product. The first is they claim privilege over documents
16 because Mr. Ellsworth, who's here in the courtroom, he's
17 the general counsel and vice president of the company, is
18 copied on a document. We've given the authority that
19 merely copying an attorney on communications between
20 non-attorneys does not invoke the privilege.

21 They've asserted privilege because they say, well, a
22 document -- an e-mail -- most of these are e-mails, I
23 think they're all e-mails maybe. An e-mail was sent from
24 like Mr. Bauer to a director in the company discussing
25 Mr. Yelton. But Mr. Bauer sent it at the direction of the

1 attorney. We've given you law, Your Honor, that says
2 that's not sufficient to invoke the attorney-client
3 privilege, except in very certain circumstances. Again,
4 they've provided no affidavit to show those circumstances
5 exist here.

6 The third attorney-client principle that is very
7 important is that a subject matter is not privileged just
8 because it involves a subject on which the parties sought
9 legal advice. This happens -- you know, in employment
10 law, we deal with it all the time. Companies are taking
11 actions and asking lawyers for advice along the way. We
12 can deal with it. This happens in almost every case.
13 Those actions -- those communications that the parties
14 have are not privileged just because they're being advised
15 on what to say, what not to say, or what to do.

16 Work product principles that, at least, appear to
17 have been violated is that a file regarding a dispute with
18 another party is not work product just because they're in
19 a dispute. We've cited the Murray Sheet Metal case, which
20 is sort of the leading case in this area. And it
21 establishes several very important guide posts, I think.
22 One is the possibility of litigation arising is not
23 sufficient to invoke work product. The fact that
24 litigation, actually, ensues does not mean that the stuff
25 you're working on that leads up to that is work product.

1 Anticipating litigation is not even sufficient. You
2 have to show that it's imminent, there's a real
3 possibility, which you'll see. And the reason I question
4 some of these documents, Your Honor, some of them are from
5 mid-December of 2011. Mr. Benbenek, who was the witness
6 they listed for the termination, he testified there wasn't
7 even a problem until some employees came to him on the
8 last day of the year and said, Let us tell you what Jeff
9 did a couple of weeks ago. And you've heard some of that
10 already. And none of that's really before the Court.
11 That's the first hint of any kind of, there might even be
12 a dispute that might lead to litigation.

13 I argue there's, actually, no -- you don't even get
14 to that point until you get to Mr. Ellsworth's letter in
15 mid-January. That doesn't effect necessarily mid-December
16 documents. But I don't understand how a document in
17 mid-December could be work product that any kind of
18 litigation was imminent.

19 And the last principle on work product, Your Honor,
20 that we briefed for you is if Mr. Ellsworth did guide the
21 communication like a lot of lawyers do when there's a
22 dispute going on, they'll say, you know, tell the employee
23 this or don't say this, you know, that type of thing.
24 That's common place. And that's what attorneys should do.
25 The fact that the attorney is doing it doesn't make those

1 communications work product.

2 So those are just the general principles. I can't
3 really speak too much more to the specifics, Your Honor,
4 obviously. But we've given you the case law which says
5 what the normal process is when we bring these motions.
6 The Court reviews it applying these principles. I think
7 you'll find, at least, some. And we may be wrong on one
8 or two, you know, and I'll concede that coming out. You
9 may look at one and it may be Mr. Bauer saying, John wants
10 this information so he can help the buyers of the company.
11 And if that's what's in that redacted, then you'll have a
12 basis. And I understand that. That's about all I can say
13 on that motion, Your Honor.

14 THE COURT: I understand.

15 Thank you, Mr. Murphy.

16 MS. THOMAS: Your Honor, I'm Carmen Thomas for
17 ScanSource.

18 THE COURT: Yes, ma'am.

19 MS. THOMAS: And I have the documents here for your
20 review.

21 THE COURT: Okay. Thank you.

22 MS. THOMAS: I, also, just handed Mr. Murphy a copy
23 of this. And this is an expanded privilege log that we
24 gave him prior to the motion being filed. And the
25 right-hand shows the expanded description of the privilege

1 that we claim.

2 THE COURT: Okay.

3 MS. THOMAS: So we can go through each of these
4 documents. And I'll note we -- he mentioned the large
5 privilege logs that we produced. I think we've designated
6 582 documents as privileged. And we're here today about
7 seven of those. We have a lot of documents, because we
8 had a lot of investigation of the claims and the
9 allegations in this case, which are the basis of the
10 privilege for some of these.

11 THE COURT: Okay.

12 MS. THOMAS: And these excerpts from the privilege
13 log document covers more than what this motion is about.
14 But it's the document that we sent to try to resolve this
15 beforehand.

16 THE COURT: Okay. Yes, ma'am.

17 MS. THOMAS: The first document, 9896. They dispute
18 the privilege of it because we claim that it was an e-mail
19 sharing information with counsel. You can see on that
20 John Ellsworth is copied on it in response to a question
21 from Amy Pharr. And Mike Bauer is confirming that
22 information with John Ellsworth and Amy Pharr.

23 THE COURT: Okay.

24 MS. THOMAS: The next document -- there are a series
25 of documents that have a similar dispute. They're Yelton

1 9901 through 9904. And those are the next documents.
2 These relate to another document. You can see what's
3 redacted is an e-mail on December 19th, from Mike Bauer.
4 The original e-mail was completely withheld as privileged
5 and that's -- that document is Yelton Priv 2401. This
6 e-mail they dispute as not being privileged or work
7 product.

8 We claim the privilege because it was sent at the
9 direction of counsel. As you can read, it, also, conveys
10 legal advice that counsel has given about two different
11 matters. These are -- and you can see referenced in part
12 of that e-mail SEC requirements related to securities
13 filings. And those affect the communications about these
14 issues to the board members.

15 So this same discussion applies to five of the
16 documents, 9901, 9902, 9903, 9904, and the completely
17 privileged document, 2401. That's the last one on the
18 supplemental chart.

19 THE COURT: Okay.

20 MS. THOMAS: The next document on the chart is 12 --
21 Yelton 12809, it's in the middle of Page 3, and 12810.
22 These both relate to communications to Ellerman Barrett's,
23 a public relations firm that ScanSource was considering
24 retaining for litigation strategy. The case involves
25 information that belongs to other companies and

1 ScanSource. And how this is communicated is part of the
2 litigation strategy.

3 THE COURT: Now, wait. Run that by me one more time.

4 MS. THOMAS: Do you have the e-mails in front of you,
5 the 12809 and 12810?

6 THE COURT: I do.

7 MS. THOMAS: ScanSource was developing its litigation
8 strategy about the information that is at issue in the
9 case, and the companies that are affected by it. They,
10 ultimately, did not retain this company. But these are
11 the initial discussions about the strategy.

12 Yelton Priv 92 is the next one on the chart. We
13 claim privilege because that was sent at the direction of
14 counsel. It -- you can see the Mr. Ellsworth is copied on
15 it. It conveys the strategy and timing. It, also,
16 explains who's involved, and what the plan is for the
17 termination.

18 THE COURT: Okay.

19 MS. THOMAS: The next would be Yelton Priv 103, which
20 we claimed has privileged and work product sent at the
21 direction of counsel about work product. This is an
22 initial step in the investigation about activities of
23 Mr. Yelton.

24 THE COURT: Okay.

25 MS. THOMAS: And Yelton Priv 104 and 105 both relate

1 to investigations, and describe Mr. Ellsworth and his role
2 in the investigation. He's not copied on them, but I
3 think it's clear when you read them that they're about him
4 and what he is doing in relation to the investigation.
5 And then Yelton Priv 1333 initiates with John Ellsworth
6 and a discussion with Amy Pharr. And it relates to
7 Mr. Yelton's benefits and compensation, which are at issue
8 in this case.

9 THE COURT: Okay.

10 MS. THOMAS: Do you have any other questions about
11 these documents?

12 THE COURT: No, ma'am.

13 Thank you.

14 MR. MURPHY: If I could just respond quickly, Your
15 Honor. The only one -- I heard some new argument there.
16 And I'd like to address that as well. But the only
17 argument I heard that, to me, suggests a privilege is on
18 the 9910 -- 9901, 04, and 2401.

19 If the Court finds that Mr. Bauer is conveying legal
20 advice, that argument may have merit. It may be a
21 redaction issue. It -- I don't know if it withholds the
22 whole thing or just a partial redaction. But I'm
23 concerned about the arguments that I heard later on about
24 Mr. Ellsworth and his role in the investigation. And I
25 can brief this further, if you want.

1 When an attorney conducts the investigation,
2 especially in-house -- we've given you some cases that
3 touch on this. But when the attorney is performing the
4 investigation or doing something other than providing
5 legal advice, those documents absolutely are not
6 privileged. When I hear things that, well, this is an
7 e-mail that discusses the termination or his compensation
8 which are issues in the case, all I'm hearing is arguments
9 that they're directly relevant. But you can't cloak
10 something in privilege.

11 We have this come up in sexual harassment cases, Your
12 Honor. The attorney may do a sexual harassment
13 investigation. And then the company will try to assert,
14 well, because the attorney did it, it's -- the
15 investigation is privileged. And there is a long line of
16 cases that have said, no, that's not an attorney conveying
17 legal advice. That's an attorney engaging in a
18 transaction that itself is not privileged.

19 So, you know, Mr. Ellsworth's involvement in here has
20 been sort of a tangential issue. It hasn't bubbled up in
21 any court motions so far. But I suspect it will because
22 of the assertion of the privilege and his direct
23 involvement in some of the discussions between the parties
24 that are not before the Court today. But I'm very
25 concerned about that assertion, and I can provide more

1 authority.

2 I've never heard that argument before. I didn't see
3 that in the log. So if that's a concern to the Court, I
4 can, certainly, provide more information. But other than
5 that, I think all she's doing is repeating the principles
6 I've touched on earlier. So I know you've read the brief,
7 and I won't take any more of your time on that.

8 THE COURT: Okay. I'll look these over.

9 Thank you for your arguments.

10 What about the motion for partial summary judgment?

11 MR. MURPHY: I can address that at this time, Your
12 Honor.

13 Your Honor, this case is now -- oh, and I, also, Your
14 Honor, very briefly, you've met Mr. Yelton before. He's
15 come to all the hearings.

16 THE COURT: I've seen him before, yes.

17 MR. MURPHY: But, the young guy at the end of the
18 table is Alex Cable. He just joined my practice.

19 THE COURT: Okay. Good.

20 MR. MURPHY: He's a recent law grad. And I apologize
21 for not introducing you to him.

22 Your Honor, this case is, like I said, over nine
23 months old. We've conducted some significant discovery.
24 The Defendant has raised an issue about the pending
25 discovery and its affect on this motion. And I'll be

1 happy to address that as well.

2 But we have sought summary judgment completely on the
3 breach of contract claim, the duty of loyalty claim, the
4 covenant of good faith and fair dealing claim, and the
5 conversion claim, and a limited summary judgment in terms
6 of the trade secret claim. If I could go through it very
7 quickly again. I -- we filed a memorandum. And I think I
8 had it delivered to your chambers.

9 Does the Court have a copy of --

10 THE COURT: Well, let's see. I saw the motion, but I
11 don't remember seeing the memorandum.

12 MR. MURPHY: I have an extra copy.

13 THE COURT: Okay.

14 MR. MURPHY: On the breach of contract, Your Honor,
15 our grounds for this motion is damages are an essential
16 element of breach of contract. You have in the now
17 voluminous record we provided the discovery responses, and
18 so forth. The only witness that they've identified who
19 could know anything about damages that we can tell is
20 Mr. Benbenek.

21 Now, we've talked about Mr. Benbenek before. He's
22 the president of worldwide operations for ScanSource. He
23 was Mr. Yelton's direct boss. He's the guy who runs the
24 business on a day-to-day basis. He was directly involved
25 in all the issues leading up to the termination, and some

1 of the issues after the termination. So we took his
2 deposition first.

3 When we were last before the Court, I read you some
4 lengthy excerpts from his deposition where he freely
5 acknowledged he has no knowledge of any -- the company
6 having any damages, of Mr. Yelton attempting to cause any
7 damages, that he's attempted to do anything to harm the
8 company. I've, again, laid those out in the memo. I
9 don't want to read to you this morning, because I know
10 you'll read it. But that's, essentially, what we're
11 basing this contract claim on.

12 If anybody was to know whether the company incurred
13 any damages in this case, it would be Mr. Benbenek. But
14 all my burden is, Your Honor, on summary judgment, I have
15 to come forward and show you there's evidence that there's
16 no issue in dispute of fact. And, of course, the best way
17 to always do that is not with a self-serving affidavit
18 from your party, but from -- we have those in the record.
19 But, also, you know, your parties own witness. So we put
20 that in, Your Honor.

21 And the truth of this, you know, with all the six
22 figures that's been set on this case, all the trees that
23 have died in vain on motions and briefs, we stand here
24 today over nine months later in this case with ScanSource
25 not having lost one penny due to anything that they've

1 alleged Jeff Yelton has done. They respond by saying,
2 well, Mr. Benbenek is not really the witness for that.

3 Here again, I want to raise the point that I raised
4 in the last motion. Where is their evidence? I
5 understand they recite the mantra, and I would, too, if I
6 was in their situation. All they need is a mere
7 scintilla; right? Just a mere scintilla to win this. But
8 they don't, actually, offer that scintilla. They just
9 keep saying that's all they need. They point to
10 Mr. Foster's leading cross-examination of Mr. Benbenek,
11 which boils down to, basically, well, I don't have any
12 proof, but if Mr. Yelton did do something bad, that would
13 be bad. And I guess we would have damages. There's no
14 actual proof of any of these damages. Without proof of
15 actual damages, the breach of contract fails.

16 Now, I limited that motion because there are going to
17 be issues right now that are out there. They do have some
18 legitimate points on their pending electronic discovery,
19 which is awaiting a decision from the special referee
20 before it can go forward, that may impact other elements
21 of the breach of contract. So I didn't move on that.
22 Okay. But there's nothing that they're going to find
23 that's going to show any scintilla of, actually, any
24 damages. They don't contend that. You know, their
25 witnesses said there is none. And, you know, they've

1 offered nothing in response to our motion.

2 On the trade secret claim, I want to, again,
3 emphasize, this is a limited partial summary judgment on
4 the trade secret claim. And I'm doing that because every
5 time we have one of these motions, we hear the same litany
6 of allegations, starting back with things like kill disk
7 in an e-mail to Jeannie Aiken, and all of this. And
8 that's all fine. And some of that may get in front of the
9 jury. And we understand that. But we're not moving on
10 those things.

11 The only issues we're moving on in the trade secret
12 is use, disclosure, and actual damages. And I think it's
13 important that -- you might be thinking, well, why waste
14 the Court's time on something that isn't going to
15 completely resolve the case? That's because I've got to
16 know at this point, Your Honor. And I think the parties
17 need to know nine months into this and all this money
18 spent, what are we here for? We have a case with no
19 damages. We have a case where Mr. Benbenek again -- and
20 I've provided these citations to you -- has admitted
21 there's no evidence that Jeff Yelton has used any of their
22 information. And he hasn't. We've given you affidavits
23 on that. He hasn't used any of their information.
24 There's no evidence he's disclosed any of their
25 information, none. There's no actual evidence of any

1 actual damages, none.

2 So we're entitled on those aspects of the trade
3 secret claim to summary judgment. If they want to
4 continue litigating about what happened in December and
5 January, and what got deleted when, and what Mr. Yelton,
6 actually, possessed after Mr. Ellsworth sent him a letter,
7 I guess we can keep litigating those points, and I will,
8 you know, as long as they want to. But we need to make
9 it -- you know, we are entitled to a determination right
10 now as to use, disclosure, or actual damages.

11 In response, they've provided you nothing. They'll
12 sit there and say, well, Mr. Benbenek, you know, he's not
13 really the witness. Well, then who is? Who is the
14 witness? Where is the affidavit saying Jeff Yelton used
15 anything? The closest they came is in their response.
16 They've taken a document that's in the public record.
17 It's called a new model for distribution that Mr. Yelton
18 sent to different people in the industry saying, here is
19 where I think the industry is going. And here is where I
20 think, you know, changes are coming in the industry, and
21 how markets get to product -- I'm sorry, how products get
22 to the market.

23 And they said in their brief something that really
24 disturbed me. They said that that document shows he's
25 using ScanSource information. It's in the public record.

1 You can read it. It doesn't mention ScanSource. It
2 doesn't mention any ScanSource information. It doesn't
3 even suggest he's using any ScanSource information. And
4 that's one of the issues teed up in front of
5 Mr. Quattlebaum right now is their representations
6 regarding that document. That's all they can offer is a
7 document you read on its face. And it says nothing about
8 ScanSource, nothing about its business, nothing about its
9 strategies, nothing. There's no -- absolutely no trade
10 secret information in there.

11 So we can go into all these facts about, well, here
12 is what he did when he left, and here is what we think he
13 did in the first couple weeks of January. But they cannot
14 stand before this Court and provide you any evidence that
15 he's used their trade secrets, he's disclosed them. And
16 they can't prove one penny of damages. So those aspects
17 of the trade secret, we're entitled to judgment on.

18 And, like I said, if they want to keep litigating --
19 and once we have this case properly framed, I'll know what
20 I need to spend my time on. Because I don't want to be
21 chasing every rabbit in this case that they set loose just
22 because we're litigating the heck out of this case. This
23 case is spiraling completely out of control from a costs
24 basis, from a justification basis.

25 I saw Judge Childs just addressed recently a big

1 trade secret case that went on for years and years and
2 years, and attorneys fees requests of millions of dollars
3 in damages. And she really took both sides of that case
4 to task saying, this is a pretty easy to define trade
5 secret dispute and everybody let it spiral out of control.
6 They had something like 1,100 docket entries in that case,
7 multiple law firms. I mean, there just -- these things
8 become a feeding frenzy for litigation. And I think the
9 Court has an interest, as the parties do, of framing this
10 case up to what it really is. And then the parties can
11 really decide if this is what they want to keep doing.

12 On duty of loyalty, Your Honor, we've given you
13 Mr. Benbenek's deposition testimony. Again, this is
14 Mr. Yelton's direct supervisor. If he's not the witness
15 to a breach of duty of loyalty, I don't know who is. They
16 don't offer one. But he testified quite clearly he
17 doesn't think Jeff -- he doesn't know of anything Jeff
18 Yelton did against the interest of the company while he
19 was employed.

20 And duty of loyalty only runs during the term of
21 employment, Your Honor. After he's gone, there is no
22 common law duty of loyalty. You may have other legal
23 obligations, but not the common law duty of loyalty. So
24 what did he do up to December 15th to compete with the
25 company? Absolutely nothing. So we're entitled to

1 judgment on duty of loyalty.

2 Covenant of good faith and fair dealing, I think they
3 acknowledged in their response that's not a claim in South
4 Carolina. It is an implied covenant if it's part of the
5 contract cause of action. But it is not a separate cause
6 of action in and of itself. That's the Rotech [phonetic]
7 case, Your Honor. So that needs to be dismissed. What
8 they should have to do is seek to amend the contract
9 action. But if they don't have any actual damages in the
10 contract action, that would be futile. So we're entitled
11 to judgment on covenant of good faith and fair dealing.

12 Conversion, you know, as it stands now, the law in
13 South Carolina, as I understand it, is you have to take
14 something that belongs to somebody else and use it to
15 their exclusion. There's no allegation Mr. Yelton took
16 anything to the exclusion of the company that I can see.
17 I didn't see any response. The -- in terms of electronic
18 copies of files, if there were copies of files, the
19 company still had them. And I asked Mr. Benbenek, you
20 know, do you know of anything he kept you from having or
21 using? They'll talk about kill disk and his wiping off of
22 data on a laptop drive. All that data is on the server.

23 So we don't understand how conversion fits here. I
24 don't think it does based on the common law elements. He
25 could -- you know, in terms of he improperly copied and

1 took with him information, if they can prove that, that's
2 the trade secret claim, the part that we're not moving for
3 summary judgment on.

4 And I would agree with them that until the electronic
5 discovery is over on that, it would probably be premature
6 to address that. Because, you know, we don't know. We
7 turned over a bunch of devices. And we said in the first
8 hearing, they're going to find all sorts of -- if they do
9 a forensic exam, they're going to find all sorts of hits
10 because these are computers he used over the years. We
11 found some documents. We made them aware of that. If
12 they go back through, you know, deleted documents and the
13 old stuff that's down on the drive, I'm sure they're going
14 to find some more stuff. But if they want to do that, let
15 them do that. And if they can find evidence on there that
16 impacts that part of the trade secret claim, then we'll
17 litigate on that.

18 But as to this other thing -- that's what the case
19 bears down to. That's what their counterclaims are pared
20 down to. That's all that's really there that we see at
21 this time. And I'm happy to answer any questions.

22 THE COURT: Well, how is any of this really ripe if
23 all that electronic discovery has not been concluded?

24 MR. MURPHY: Because on that electronic discovery, it
25 would reveal any evidence of use disclosure or damages.

1 There isn't any. He hasn't been in the industry. He's
2 not worked in the industry. They have the e-mail.
3 They've got -- they sent out subpoenas. They've got
4 everybody he's been in contact with. That information
5 ended up being helpful to us. Because they got subpoenas
6 showing that we were putting data bases together by buying
7 them from other people.

8 So, you know, if -- and, Your Honor, if I do
9 something to you and I cause you damage, you know you're
10 damaged; right? You can show some damage. You don't need
11 my computer to show that you are damaged. They haven't
12 lost a penny of business. They haven't incurred any
13 actual damages. So they would have that. There's nothing
14 in the computer discovery that's going to show it.

15 There's nothing in the computer discovery that's
16 going to affect the duty of loyalty. Nothing in the
17 computer discovery is going to affect the legal issue on
18 covenant of good faith and fair dealing. There's nothing
19 in the computer discovery that's going to affect the legal
20 issues on conversion. I'm taking their allegations in
21 terms of, you know, they've alleged that he -- by putting
22 things in Dropbox copied them and he had -- they allege he
23 had a flash drive that he kept. And he said he didn't
24 keep it. That's fine. We're not moving for summary
25 judgment on that. That would be something that further

1 forensics, if they choose to pursue this, would relate to.
2 But these other things are either legal issues or stuff --
3 I mean, that after nine months of vigorous discovery, we'd
4 have a scintilla by now, a scintilla. But he offers none.

5 THE COURT: Thank you.

6 Mr. Foster.

7 MR. FOSTER: May it please the Court, Your Honor.

8 Thank you.

9 Part of my job is having to sit and listen to other
10 people other than me talk.

11 THE COURT: Now you know how I feel.

12 MR. FOSTER: Exactly, well said.

13 Your Honor, with all due respect to the Plaintiff's
14 position, let's not forget what this case is about. You
15 know, I frankly personally am tired of being accused of
16 litigating this thing to death --

17 THE COURT: Oh, come on, Mr. Foster. You've got a
18 thick skin --

19 MR. FOSTER: I know --

20 THE COURT: -- this isn't the first time somebody has
21 accused you of something as a lawyer. You get that all
22 the time.

23 MR. FOSTER: I know. But to be so intellectually
24 dishonest about it to say that we're doing these things
25 when we're responding to motions for partial summary

1 judgment that, clearly, under the law of South Carolina
2 are premature. Mr. Murphy wants partial summary judgment
3 on the issue of use and disclosure and damages by -- based
4 on his representation to the Court that the electronic
5 discovery won't show anything. Well, we don't know. All
6 we know is what Mr. Murphy would say. We've been unable
7 to proceed past a certain point. We can't look inside
8 those devices that have been turned in to see what was
9 done with our confidential information.

10 Your Honor, if our trade secrets have been disclosed,
11 if Mr. Yelton forwarded any of that confidential
12 information to a third party, then we have expediential
13 damages. There's three pieces -- three things wrong with
14 the Plaintiff's motion for partial summary judgment.
15 First is the law of South Carolina which says that summary
16 judgment -- or it says that a party must be allowed a full
17 and fair opportunity to conduct discovery before summary
18 judgment may be granted.

19 On every argument he's made, we're entitled to
20 conduct discovery. I know this case is eight or nine
21 months old. But, Your Honor, it's been three or four
22 months since we've been trying to get the Plaintiff to
23 review the documents using the reviewing software spelled
24 out in the protocol. And that's what we're going to have
25 a telephone conference call tomorrow with Derrick about.

1 Until that happens, we can't look at the documents. We
2 can't look to conduct further electronic discovery on the
3 very devices this Court ordered the Plaintiff to return
4 and have examined. That hasn't happened.

5 Your Honor, the second thing that's wrong is the
6 Plaintiff's misrepresentation of Mr. Benbenek's testimony.
7 It's as if the Plaintiff doesn't think the Court will read
8 the actual deposition transcript, or read beyond what the
9 Plaintiff has cited. He's, also, grossly misrepresented
10 the role of Mr. Benbenek as a witness. He's one of about
11 12, 15 witnesses we've listed thus far in discovery.

12 We've not -- he's not asked us to designate a
13 30(b)(6) representative on the issue of damages, the issue
14 of use. Mr. Benbenek is the only witness he chose to
15 depose. And if you, actually, read Mr. Benbenek's
16 testimony, he says, yeah, I was his boss. I'm the one
17 that decided to terminate him without cause, and had that
18 meeting with him on December 9th. I'm the one that called
19 him on January 4th, and said, What are you doing? The
20 stuff that's being told to me breaches your contract and
21 will cost you your severance. What are you doing? And
22 Mr. Yelton told him what he told him.

23 Mr. Benbenek then testified in his deposition, I took
24 my concerns to my boss and I had nothing to do with the
25 investigation that followed. He wasn't involved in the

1 investigation as to what Mr. Yelton did, and whether or
2 not it breached any of his obligations, whether or not it
3 was a misappropriation of trade secrets, whether we've
4 been harmed, what our damages are, none of that.

5 Your Honor, the third thing that's wrong with the
6 Plaintiff's presentation is the evidence that ScanSource
7 has already discovered and submitted in support of its
8 counterclaims. And, Your Honor, we've got Mr. Benbenek's
9 testimony, which we think, clearly, supports -- and it's
10 on Page, I think, 2 or 3 of our response. Our evidence
11 is, actually, outlaid -- or laid out on Page 2 and 3 of
12 our response. Your Honor, we've got a box of documents
13 right here that are a scintilla. It's cited in our brief.

14 With respect to use, disclosure, damages, we've got
15 the undisputed forensic testimony of Dean Gaida of FTI
16 Consulting who has conducted the electronic discovery that
17 we've had thus far. And what Mr. Gaida has testified to,
18 and hasn't been disputed, is that from December 9th to
19 December 15th, Plaintiff Yelton had five external storage
20 devices hooked to his work computer. All five were being
21 used to review what this Court has already said is
22 confidential and protected information.

23 Mr. Gaida has further testified that those five
24 devices weren't returned. They're not among the things
25 returned pursuant to the protective order, which is in the

1 TRO. Mr. Gaida has, also, testified that three of those
2 external devices were hooked to Mr. Yelton's home laptop a
3 month after he left ScanSource, including the QBR flash
4 drive, Your Honor, that Plaintiff admits those are trade
5 secrets, and admits that's protected. That QBR flash
6 drive that he went around and got subordinates that didn't
7 know he was leaving to put that stuff on, it was hooked to
8 his own computer less than 12 hours before he filed this
9 lawsuit, which means he's retained trade secret
10 information. He's misappropriated, if it's true, if he
11 still has that. We've already proven it, Your Honor. We
12 don't have to prove more than that to show that he's
13 breached his contract to us.

14 The electronic discovery we would seek, Your Honor,
15 will show us what he did with what QBR information. Did
16 he e-mail it to somebody? Did he send it off to another
17 one of his cloud storage accounts that we haven't had the
18 opportunity to discover yet? If those things happened,
19 Your Honor, we have massive damages. Our reputation for
20 being able to keep customer information secret is lost.

21 Your Honor, we have lost some business. We've lost
22 tens of millions of dollars worth of a contract to one of
23 our direct competitors. We don't know that the Plaintiff
24 had anything to do with it. But that's subject to
25 discovery. Those could be our potential contract damages.

1 Just because Mr. Benbenek testified very literally as to
2 what he knows for a fact and doesn't know, that doesn't
3 mean that information is not out there. He may not know
4 that any number of things happened, but that doesn't mean
5 that they didn't.

6 Your Honor, on each one of these, the breach of duty
7 of loyalty, Mr. Yelton was still our employee when he
8 left. And his contract with us retains he is still
9 obligated to honor the contractual provisions of his
10 employment agreement and the policies that incorporated.
11 So in terms of the breach of contract and the damages that
12 could result therefrom, we think that's beyond obvious.

13 Your Honor, the activity that he engaged in in
14 relation to the QBR, and the thumb drive, and everything
15 we've talked about to this Court before all happened when
16 he was still our employee. If he left our employ and took
17 things that he did not -- that he wasn't entitled to take,
18 that's a breach of the duty of loyalty. Your Honor, if he
19 went on the Internet and downloaded a computer program to
20 blow up his work laptop so we wouldn't know what he was up
21 to, that's a breach of the duty of loyalty.

22 Your Honor, misappropriation of trade secrets, I
23 think we've covered that. Conversion, Your Honor, I think
24 Mr. Murphy would admit and did admit that the electronic
25 discovery may show that he's still retained these things.

1 We think the affidavit of Mr. Gaida shows that he has
2 retained these things. We've got a separate bench brief,
3 Your Honor, if you want to entertain that. I will hand
4 that up. And I'll hand it to Mr. Murphy as well.

5 THE COURT: All right.

6 MR. FOSTER: And I do have thick skin, Your Honor.
7 But, you know, to file a motion --

8 THE COURT: Thank you, sir.

9 MR. FOSTER: Yes, sir.

10 -- for partial summary judgment and to misrepresent
11 the testimony of the only witness you've deposed, and to
12 represent that the electronic discovery that because of
13 the position the Plaintiff has taken with the protocol
14 discovery, we have not had access to or the ability to
15 conduct any discovery thereon. And to say that he's
16 entitled to summary judgment because trust him, that's not
17 going to support the other sides position, that makes no
18 sense. That's litigating a case to death.

19 You know, I'm at a loss to understand how given what
20 we've done thus far in this case and where discovery is
21 how it's appropriate to file a motion seeking to limit
22 damages and limit claims where we, clearly, have more than
23 a scintilla of evidence that can support each of those
24 causes of action. And the fundamental electronic
25 discovery that this Court has ordered to be conducted

1 hasn't happened yet. And, for that reason, Your Honor,
2 all of Plaintiff's arguments -- we've already offered to
3 amend our complaint -- excuse me, our counterclaims to --
4 implied covenant of good faith, fair dealing, and the
5 breach of contract claim.

6 But, other than that, Your Honor, none of these
7 issues are ripe. And Plaintiff's motion for summary
8 judgment with respect to them is simply improper.

9 THE COURT: Thank you.

10 MR. MURPHY: Your Honor, may I briefly respond?

11 THE COURT: Yes. I'll give you five minutes.

12 MR. MURPHY: Okay. As I suspected, Mr. Foster got up
13 and did exactly what I said he was going to do. He argued
14 misappropriation. He talks about QBR's, thumb drives, and
15 Dean Gaida, and all this stuff is not before the Court.
16 We didn't move for summary judgment on misappropriation.
17 I will, for today's purposes, concede that he would have a
18 good argument under Rule 56(f) as to why he should be
19 allowed to do more discovery on that.

20 But you, also, heard him say repeatedly they don't
21 have evidence of certain things. You know, I've got a
22 box. Here is my scintilla. I've got a box. Well, pull
23 out one document that shows damages out of your box, one
24 document. No, he didn't do that. He said, I've got
25 boxes. I've got motions. I've got stuff attached to my

1 briefs. But he never told you what his evidence was of
2 one penny in damages. He never told you that. Instead,
3 he talks about flash drives, and QBR's, and cloud storage
4 devices. None of that is before the Court. Let them have
5 their day and spend their money on doing all that
6 discovery that they want. I'm not asking you to limit
7 that. This motion would not limit that.

8 Now, he repeatedly said that I misrepresented
9 testimony. I quoted the testimony. It's in the briefs.
10 If he's saying I changed the quotes, he can get up and
11 tell you where. He won't do it. He can't. The testimony
12 isn't misrepresented. The testimony is absolutely quoted
13 for you. And I think we've even given you the
14 transcripts, so you can verify the quotes.

15 He says, well, we've lost business. We can't prove
16 Mr. Yelton did anything. But, if he did, we would have
17 damages. They filed this pleading in January with,
18 apparently, nothing to support these claims, except as to
19 some allegations with respect to misrepresentation. What
20 did they file this case on? What does Rule 11 mean
21 anymore if you can just make all sorts of boilerplate
22 allegations and accuse everybody of everything and say,
23 well, if we find it out later, then I'll have support.
24 That is what summary judgment is for. Parties are
25 entitled to summary judgment, Your Honor, because they're

1 entitled to not have these cases continue to be just red
2 herring after red herring.

3 If this Court were to grant summary judgment in the
4 manner I request, and let's say they come up with some
5 evidence that tens of millions of dollars were stolen
6 because Mr. Yelton took trade secrets and sent them to
7 whoever took this business from them -- I don't even -- we
8 don't even know what this issue is about. They've
9 provided nothing in discovery on this, by the way. But
10 let's say evidence came up, they could amend. They could
11 sue him for that. But what they want to keep saying is,
12 Your Honor, maybe someday I'll have it. Maybe someday
13 I'll find it.

14 With respect to misappropriation, because there is
15 pending discovery, that argument would have merit. As to
16 the rest of this, I don't care how many boxes he brings in
17 here, he's given you nothing. There's no affidavits,
18 nothing.

19 THE COURT: All right. Thank you.

20 I understand where you're coming from, Mr. Murphy,
21 theoretically. I think given the nature of this case
22 unfolding and electronic discovery is at the heart of a
23 lot of the matters that have been raised in the lawsuit.
24 I understand that you make the argument that that's
25 irrelevant to the partial summary judgment you're making.

1 But I don't think it would be proper for me to rule on
2 that until that's been fully completed. I don't know what
3 that's going to reveal, if anything. But I do know that
4 we don't know what it's going to reveal until it's,
5 actually, revealed.

6 And so I respectfully deny the motion. I will,
7 certainly, give you the right to renew it once that is
8 done.

9 And that brings us to, I think, the matter y'all want
10 to take up in chambers regarding the protective order.

11 MR. MURPHY: Who do you want back there, Your Honor?

12 THE COURT: Anybody who wants to come.

13 *****END OF TRANSCRIPT OF RECORD*****
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the 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 2nd day of October, 2012.

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

November 6, 2012

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

DEPOSITION OF SCOTT BENBENEK

DATE TAKEN: August 8, 2012

TIME BEGAN: 9:24 a.m.

TIME ENDED: 6:33 p.m.

LOCATION: Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

APPEARANCES:

BRIAN MURPHY, ESQUIRE
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601

.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE
Nelson, Mullins, Riley & Scarborough, LLP
Suite 900
104 South Main Street
Greenville, SC 29603

.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton, John Ellsworth

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

NON-WAIVER: Examination and reading of the deposition are not hereby waived by the witness and the parties.

INDEX

	PAGE
Examination by Mr. Murphy.....	4
Examination by Mr. Foster.....	223
Reexamination by Mr. Murphy.....	235
Reexamination by Mr. Foster.....	251
Further Reexamination by Mr. Murphy.....	257
Further Reexamination by Mr. Foster.....	262
Further Reexamination by Mr. Murphy.....	263
Certificate.....	265

EXHIBITS (Attached)

	PAGE
Exhibit 1 (E-mail).....	95
Exhibit 2 (E-mails).....	106
Exhibit 3 (E-mail).....	149
Exhibit 4 (Employment Agreement).....	170
Exhibit 5 (E-mail).....	209

1 access my files and so forth.

2 Q. Let me go back and give you a chance to
3 clarify. You said, you put something on your
4 computer to wipe it out, and he said, that's so
5 I could work from home.
6 wasn't that statement actually about the
7 Dropbox?

8 A. I'm calling because I'm saying that there was a
9 product on there that kept it from booting up.
10 He's saying whatever that product is -- he
11 didn't really speak about the fact that it
12 wouldn't boot up. He said, that's how I access
13 data from home, or something like that, and I
14 said, what about Citrix, you're supposed to use
15 Citrix. He said, I've never used Citrix in my
16 life, and I said, okay, well, you should have,
17 or something like that.

18 Q. During your conversation with Mr. Yelton on
19 January 4, did he say anything that you think
20 is untrue?

21 A. Anything that was untrue?

22 Q. That is untrue. Did Jeff Yelton say anything
23 to you on January 4th that you believe is not
24 true?

25 A. I think so, yes. I mean, I think that he knows

1 where that thumb drive -- I have no proof, but
2 if you just ask me what I was feeling at the
3 time, I think he had or has knowledge of where
4 that thumb drive is. I'm not sure why anybody
5 would get a thumb drive for information and
6 keep it for two days and not take it with them,
7 or why they would even want it knowing you're
8 not going to be at the company anymore.

9 Q. well, Jeff Yelton didn't tell you he took the
10 thumb drive with him, did he?

11 A. He said he didn't know where it was. He said,
12 I don't know where it is.

13 Q. And you believe that's untrue?

14 A. If I had to bet, yes. Like I say, I don't have
15 a videotape of that, but you're asking me, and
16 yes, I think he knows where that thumb drive is
17 or was or whatever.

18 Q. And what do you base that on?

19 A. Human nature.

20 Q. Anything other than your understanding of human
21 nature?

22 A. I don't know how to base many communications in
23 life other than that. There is logical steps,
24 and that's all I can go on here.

25 Q. Are you aware of any facts that you can point

1 to me that lead you to believe that anything
2 Jeff Yelton said to you on January 4th is
3 untrue?

4 A. Say it again.

5 Q. Can you point to me any facts, any evidence,
6 anything you can tell me that you know that
7 leads you to believe that anything Jeff Yelton
8 said on January 4 is untrue?

9 A. No, there is nothing I know that he said that
10 day that is untrue. Underline know.

11 Q. What was the first point in time that you know
12 of that anybody ever searched Jeff Yelton's
13 office, if they did, to see what was left
14 behind?

15 A. My knowledge is that he was to meet Ms. Farr on
16 the 16th, Friday the 16th, at a certain time,
17 but he had come in much earlier than that; and
18 so when they met at whatever their agreed-upon
19 time was, then she at that time would have
20 secured anything that was company property or
21 any stuff like that.

22 Q. Did Ms. Farr ever tell you that she went
23 through Jeff Yelton's office after he left the
24 company?

25 A. I don't know if she did or not.

1 A. No.

2 Q. With respect to this Exhibit 3, Yelton document
3 491, is there anything that Jeff Yelton says in
4 this e-mail to you that you believe is not
5 true?

6 A. That I believe is not true?

7 Q. Right. Is there anything that Jeff Yelton says
8 here that you believe is not true?

9 A. Not trying to be a wise aleck or whatever, I
10 think it's not true from the sense of this will
11 be noncompetitive with ScanSource. I think
12 that in some ways it's competing for the same
13 money, marketing money, at times that we do.
14 So vendors have discretionary marketing funds
15 that if their customers, and in our case we're
16 a distributor, come up with good ideas, they
17 will give you extra money in addition to their
18 contractual obligation with you for marketing
19 money. So my point is that could be
20 competitive, that could be competing with the
21 same dollars, and so that's the only statement
22 I'm making is in that sense it could be
23 competitive, but it's not obviously the same
24 business that we're in.

25 Q. And do you believe that the business as it's

1 on the record. That's fine. I'll deal with it
2 later. Just to be clear, you understand what
3 I'm talking about, what I'm referencing?

4 MR. MURPHY:

5 I understand what you're referencing.

6 MR. FOSTER:

7 Fair enough.

8 MR. MURPHY:

9 we don't have to dance around that. The
10 question was, do I see any issue here at the
11 deposition, and I don't.

12 MR. FOSTER:

13 Actually, have you considered it, yes.

14 EXAMINATION RESUMED BY MR. MURPHY:

15 Q. Mr. Benbenek, do you believe that Jeff Yelton
16 broke any company rule or violated any company
17 policy while he was an employee of the company?

18 A. No, I mean, I don't have any of that.

19 Q. You don't have any knowledge of him violating
20 any company policy or rule while he was an
21 employee of the company?

22 A. Like I say, I don't know the deal about the
23 Dropbox thing, whether that was policy or not,
24 but I'm saying I think in the context that
25 you're asking I don't know. I mean, no.

1 involved in, do you know how much the company
2 has spent on attorney's fees to date?

3 A. I have no idea.

4 Q. who would know that within your company, if you
5 know?

6 A. I would assume Mr. Ellsworth would know.

7 Q. You don't get any financial records or
8 statements that show you what's being spent or
9 being charged --

10 A. This case?

11 Q. Yes, sir.

12 A. No.

13 Q. Subsequent to your discussions with Mr. Yelton
14 on January 4th, have you had to deal with any
15 Jeff Yelton related issues since January 4th
16 other than giving an affidavit in this case?

17 A. None come to mind, no.

18 Q. Have there been any executives that have left
19 the company, say, in the last couple years who
20 have been paid their unvested deferred
21 compensation?

22 A. Not that I'm aware of.

23 Q. who is Patrick Burn; do you know? I'm not
24 trying to suggest you do or not. Do you know
25 who Patrick Burn is? I asked it in a funny

1 if that answers the question.

2 Q. Fair to say you called him because you were
3 concerned that his conduct, if proven to be
4 true, could put him at risk of being terminated
5 for cause?

6 MR. MURPHY:

7 Object to the form.

8 THE DEPONENT:

9 Yes, I think so. I mean, yes.

10 EXAMINATION RESUMED BY MR. FOSTER:

11 Q. The vendor QBR's, do they represent ScanSource
12 proprietary and confidential information?

13 A. Definitely, yes.

14 Q. Is a former employee of ScanSource entitled to
15 take ScanSource proprietary information with
16 him or her when she leaves?

17 A. No.

18 Q. If Mr. Yelton had asked his subordinates to
19 place ScanSource proprietary information,
20 QBR's, on a thumb drive, knowing he was already
21 leaving, and had taken that thumb drive with
22 him after he left ScanSource not to return,
23 would that be a violation of company policy?

24 MR. MURPHY:

25 Object to the form.

1 THE DEPONENT:

2 Yes.

3 EXAMINATION RESUMED BY MR. FOSTER:

4 Q. would that be taking company property?

5 A. Yes.

6 Q. Those QBR's, that proprietary information,
7 that's company property, correct?

8 A. Correct.

9 Q. No legitimate reason in your mind for a former
10 employee to have that information, correct?

11 A. Correct.

12 Q. when you called Mr. Yelton and asked him about
13 what those subordinates had told you, hey, they
14 came to you, we put two and two together, we're
15 concerned, he asked us to put these QBR's on a
16 thumb drive, Mr. Yelton lied to you about what
17 had happened; isn't that true?

18 MR. MURPHY:

19 Object to the form.

20 THE DEPONENT:

21 Yes, he said -- in the fact that he said that
22 it was after everybody knew he was leaving, and
23 I said no, it wasn't, it was before anybody
24 knew you were leaving.

25 EXAMINATION RESUMED BY MR. FOSTER:

1 what did he tell you or did he give you any
2 explanation as to why it wouldn't boot up?

3 A. No. We just kind of -- he just kind of skipped
4 over that aspect of it.

5 Q. Did he tell you during that conversation that
6 he had downloaded a software program on the
7 Internet called KillDisk in order to wipe his
8 hard drive and disable that computer?

9 A. No.

10 Q. Would you consider that to be unethical conduct
11 by a ScanSource executive?

12 MR. MURPHY:

13 Object to the form.

14 THE DEPONENT:

15 Yes.

16 EXAMINATION RESUMED BY MR. FOSTER:

17 Q. Would you consider that, in fact, to be willful
18 destruction of company property?

19 MR. MURPHY:

20 Object to the form.

21 THE DEPONENT:

22 Yes.

23 EXAMINATION RESUMED BY MR. FOSTER:

24 Q. Can you think of a legitimate reason for a high
25 level executive like Mr. Yelton to download

1 Q. And after Ms. Aiken left, you then reported
2 what you had learned to I guess your boss, Mr.
3 Baur, correct?

4 A. Correct.

5 Q. Thereafter, you were not involved in any
6 investigation or determination as to what to do
7 regarding Mr. Yelton's severance or his
8 contract or anything of that nature, correct?

9 A. Correct.

10 Q. Would it be appropriate in your mind for Mr.
11 Yelton to start a business such as the business
12 described in Plaintiff's Exhibit 3, VarsGuide,
13 using ScanSource proprietary information?

14 A. No.

15 Q. The business that's described as VarsGuide, if
16 you had the vendor QBR's and customer lists
17 that were ScanSource proprietary information,
18 you could use that information to solicit
19 business, correct?

20 MR. MURPHY:

21 Object to the form.

22 THE DEPONENT:

23 Correct.

24 EXAMINATION RESUMED BY MR. FOSTER:

25 Q. You had talked earlier about this QBR -- not

1 him that because you didn't know he had done
2 that, correct?

3 A. Correct.

4 Q. And he didn't tell you he had done it, did he?

5 A. No.

6 Q. Isn't it accurate that not only does company
7 policy forbid an employee to take ScanSource or
8 vendor or customer proprietary information with
9 them when they leave --

10 A. Yes.

11 Q. -- it's also our obligation to our customers,
12 correct, to the Motorola to the Intermecc to not
13 let that information leave, correct?

14 MR. MURPHY:

15 Object to the form.

16 THE DEPONENT:

17 That's correct.

18 REEXAMINATION RESUMED BY MR. FOSTER:

19 Q. By contract?

20 A. Most of the time by contract, yes.

21 Q. would Motorola, pursuant to our contract with
22 them -- it would be a violation for us to allow
23 an ex-employee or an employee to leave with
24 their proprietary information, regardless of
25 whether or not the employee did anything with

1 A. Right. I think he said the words, industry
2 standard.

3 Q. Do you know sitting here today whether or not
4 that statement Mr. Yelton made about the files
5 he removed from his office being industry
6 standard or not proprietary, do you know
7 whether or not that statement is true or not?

8 A. I don't know, no.

9 Q. If I stole your TV set and didn't watch it,
10 have I still stolen your TV set?

11 MR. MURPHY:

12 Object to the form.

13 THE DEPONENT:

14 Yes.

15 REEXAMINATION RESUMED BY MR. FOSTER:

16 Q. The thumb drive with the QBR's on it, do you
17 know where that thumb drive is today?

18 A. No.

19 Q. Mr. Yelton did not deny, did he, that he had a
20 thumb drive at some time with the Motorola,
21 Intermecc, and Honeywell QBR's on it, did he?

22 A. No.

23 Q. And you don't know where that thumb drive is
24 today, do you?

25 A. No.

1 Q. Does that create a risk to ScanSource that that
2 thumb drive that Mr. Yelton obtained is
3 somewhere unbeknownst to you?

4 A. Yes, it can be a risk, yes, if it were to get
5 in the wrong hands.

6 Q. Am I correct that you testified that on 12/12,
7 when you spoke to Mr. Yelton about sort of the
8 timeline, that he said he wanted to wait until
9 some point later because he was talking to
10 investors about a business?

11 A. Yeah, yes, he did.

12 Q. So the Monday after he was surprised to learn
13 that his employment was ending he's talking to
14 investors about starting a new business?

15 A. That's correct.

16 Q. Did that seem sudden to you?

17 A. Yes, it did.

18 Q. When you met with him on the 9th, he said to
19 you, if I recall correctly, or asked you if you
20 knew something you weren't telling him about I
21 guess the reasons for his termination?

22 A. Correct, I said that.

23 Q. Do you have any idea what he meant about that?

24 A. No.

25 Q. Was there anything unusual about the VDC

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

FILED-CLERK OF COURT CASE NO.: 2012-CP-23-0314
GREENVILLE, S.C.
JAN 24 2012

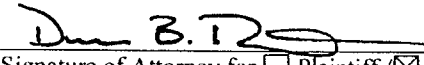
Jeff Yelton,

vs.

ScanSource, Inc.,

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Brian P. Murphy, Bar No. _____ Address: 514 Pettigru Street, Greenville, SC 29601 Phone: 864-370-9400 Fax 864-403-9517 E-mail: brian@brianmurphyllawfirm.com		Defendant's Attorney: Sue Erwin Harper, Bar No. 1917 Address: Nelson Mullins Riley & Scarborough, LLP, P.O. Box 11070, Columbia, SC 29211 Phone: 803-255-5544 Fax 803-255-9034 E-mail: corky.harper@nelsonmullins.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Temporary Restraining Order Estimated Time Needed: 60 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant 25.00 January 24, 2012 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA, CLERK OF COURT THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
THIRTEENTH JUDICIAL CIRCUIT

Jeff Yelton, 2012 JUN 21 10:00 AM) Civil Action No. 2012-CP-23-0314

Plaintiff,)

vs.)

ScanSource, Inc.,)

Defendant.)

**DEFENDANT SCANSOURCE'S
MOTION FOR TEMPORARY
RESTRaining ORDER AND
PRELIMINARY INJUNCTION**

Plaintiff Jeffrey Yelton is the former President of Defendant ScanSource's North America POS (Point of Sale) and Barcoding business unit. A day and a half after the General Counsel of ScanSource wrote Plaintiff that he had breached his Employment Agreement ("Agreement") by taking confidential information and trade secrets when he left the company, Plaintiff filed this suit alleging ScanSource breached the Agreement. (See Agreement and Letter attached as Exhibits A and E to Verified Answer and Counterclaim).

Plaintiff's unverified Complaint suggests that ScanSource's assertions that he took these materials are "false," "misleading," and "pretext[ual]"; he also alleges that after December 18, 2011, he had no further contractual obligations to ScanSource. (Complaint ¶¶ 4 & 6; Ex. B to Verified Answer and Counterclaim). Both claims are false. That Plaintiff did not take ScanSource's materials is belied by eight affidavits of former co-workers offered in support of this Motion, as well as two explicit admissions by him and his lawyer¹ that he took information with him when he

¹ In a two-sentence email sent a day after the deadline the General Counsel had set for Plaintiff to return the materials, to certify that he had no other confidential information belonging to ScanSource, and to identify any third party to whom any such materials were provided, Plaintiff's lawyer wrote: "The only records/data located to date that were still in Mr. Yelton's possessions [sic] have been put on two flash drives, which are both in my office. If you agree to produce copies of what they contain in discovery, I have no objection to your picking them up." Email of Brian Murphy [mailto:brian.murphy@mindspring.com] to ScanSource, Inc. General

left. The claim that Plaintiff has fully performed his Agreement is contradicted by the obligations specifically and expressly imposed upon him, during his employment and after, by section 11 of that Agreement as well as by evidence of his many violations of those and other obligations even before his employment terminated. (Verified Answer and Counterclaim, Exs. A, C & D).

Defendant's motion for a temporary restraining order and preliminary injunction is made pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. The attached affidavits of Jeanne Aiken, Rick Burke, Scott Benbenek, Robbie Cox, Christopher Eassy, Mark Morgan, Amy Pharr, and Chris Spearman, Plaintiff's attorney's email, and ScanSource's Verified Answer and Counterclaim are offered in support of this motion. Specifically, ScanSource seeks the following relief:

- (1) A temporary restraining order and preliminary injunction prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any person employed by ScanSource to provide him with Confidential Information or Trade Secrets;
- (2) A temporary restraining order and preliminary injunction prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any customer or supplier of ScanSource to provide him with Confidential Information or Trade Secrets;
- (3) A preliminary and permanent injunction requiring Plaintiff to return any and all property and/or information rightfully belonging to, or wrongfully taken from, ScanSource,

Counsel John Ellsworth, sent Friday, January 20, 2012 1:42 PM (Exhibit F to Verified Answer and Counterclaim).

including, but not limited to, any and all documents, materials, or electronic media (computers, hard drives, computer discs, PDAs, USB drives, etc.) containing information regarding ScanSource, its products, customers, and/or suppliers, including all copies thereof, and eliminating any and all access to same via Drop Box or other personal accounts with cloud based servers;

- (4) A preliminary and permanent injunction requiring Plaintiff to submit to a computer examination and inspection of all of his computer systems and data, including third party-operated personal accounts containing any company information, such as Drop Box or other personal accounts with cloud based servers, and verification by a computer forensics expert at Defendant's expense to ensure all of the information unlawfully transmitted or destroyed by Plaintiff from ScanSource's protected computer is not in Plaintiff's possession, custody, or control; and
- (5) Any other and further relief as the Court may deem just and equitable.

FACTS

The counterclaims made by ScanSource seek legal and equitable relief to enforce the obligations of its former officer and employee to keep the post-employment commitments set forth in his Agreement and in the ScanSource Business Ethics and Code of Conduct: not to misappropriate, disclose, or use ScanSource's confidential information or trade secrets, not to solicit ScanSource's customers or suppliers or certain prospective customers or suppliers, and not to compete against ScanSource, all of which Plaintiff promised while employed and when he was named President of ScanSource North America. (See Exs. A, C and D to Verified Answer and Counterclaim.)

ScanSource, Inc. is a distributor of specialty technology products, providing value-added distribution sales to resellers in the specialty technology markets. The company operates through two geographic distribution segments, North American and International Distribution. The North American Distribution segment markets automatic identification and data capture and point-of-sale products through its ScanSource POS and Barcoding sales unit. Plaintiff was President of this unit for the past 3½ years.

Plaintiff's Misconduct During the Last Days of His Employment and Since

On December 9, 2011, Plaintiff's boss, President of Worldwide Operations Scott Benbenek, told him that ScanSource was terminating his employment effective December 31, 2011. The two agreed that, until Plaintiff decided how he wanted to describe his exit to others, his impending departure would be kept in confidence. After the December 9th meeting, but before he announced he had resigned, Plaintiff surreptitiously obtained quarterly business reports of ScanSource and its vendors, as well as other highly confidential information, from individuals that reported directly to him and perhaps from others.

Specifically, before he announced to them he was leaving, Plaintiff separately instructed several of his subordinates to download confidential ScanSource information onto a thumb drive that he provided and which they returned to him. (Affidavits of Aiken, Cox, & Spearman). He also emailed an employee of ScanSource's largest vendor and asked for his private email so that he could send him something "for your eyes only." (Affidavit of Eassy ¶ 6 & Ex. A).

Moreover, during his last full day at ScanSource and the next morning when he left for good, Plaintiff completely cleaned out his office, removing not only his personal items, but also hard copies of ScanSource reports and records, an external hard drive upon which he is believed to have kept ScanSource's confidential data, and other similar items and materials. (Affidavit of

Pharr ¶ 5). There is compelling evidence that it was Plaintiff who removed these things from ScanSource headquarters. The night before he left ScanSource, he entered, exited and re-entered a door between his parking space and his office six times during a 13-minute period between 6:12 and 6:25 p.m. (Affidavit of Burke, ¶ 3). The next morning, just before his final meeting with the company's HR representative at 7:45 a.m., he entered, exited and re-entered through the same door 4 times between 7:33 and 7:38 a.m. (*Id.*) While he did leave behind the company laptop that had been assigned to him, it now had a new problem preventing ScanSource from being able to boot it up. (*Id.*, ¶ 5).

In the days since he departed from ScanSource, Plaintiff has contacted employees who formerly reported to him in an attempt to obtain from them additional confidential, proprietary information belonging to the company. (Affidavit of Aiken, ¶¶ 8-14 & Ex. A).

In a subsequent conversation with Mr. Benbenek, his former boss, Plaintiff flatly denied having any knowledge of either the thumb drive or the materials removed from his office. (Affidavit of Benbenek, ¶13). When Mr. Benbenek spoke with Plaintiff on January 4, 2012, he asked him where the thumb drive and the files were. (*Id.*) Plaintiff initially responded that his files were only "industry standard" information and that he got the thumb drive before he knew he was leaving. (*Id.*) Mr. Benbenek told him he knew the latter claim was not true, as the materials downloaded onto the thumb drive were requested the week after Mr. Benbenek told him, on Friday, December 9, that he would be leaving the company. (*Id.*) Mr. Benbenek again asked Plaintiff where the thumb drive was; he responded he did not know, and that it must have been left in his office somewhere.² (*Id.*) The thumb drive, the external hard drive, and hard copies of ScanSource reports that he, at least initially, admitted he had taken, disappeared from

² Plaintiff's counsel has since admitted that ScanSource "records/data . . . that were still in Mr. Yelton's possession[]" are on two flash drives he is holding at his office. *See* n. 1, *supra*.

his office in the final hours of Plaintiff's employment. (Affidavit of Pharr, ¶ 5). They are not, as Plaintiff suggested to Mr. Benbenek, in his office. (*Id.*)

The Confidential, Proprietary Information and Trade Secrets Involved

ScanSource is a distributor of technology products manufactured by its vendors. ScanSource's primary assets are the non-public information that is created or used in support of its activities, including but not limited to information concerning its vendors, VARs, business partners, and employees, as well as information pertaining to ScanSource's competitive position, business strategies and data relating to negotiations with employee or third parties.

ScanSource's customers, known as Value Added Resellers, or VARs, resell the technology products that ScanSource sells to them. In addition to reselling the hardware, VARs provide solutions and service to the end-users of those products. Thus ScanSource's primary assets are its vendor and customer lists and relationships. ScanSource has assembled vendor and customer lists over a period of years and has gathered comprehensive data about vendors' and customers' products, needs, preferences, purchasing habits, prices, margins, and other details, all of which constitute confidential information and trade secrets of ScanSource. ScanSource's confidential information and trade secrets include in-depth reports of profitability, customers, specific plans, and strategies as well as reviews of years of past performance relating to both its vendors as well as its own business units.

Except when disclosure is authorized or legally required, ScanSource's employees, such as Plaintiff, are required to maintain the confidentiality of the information and trade secrets described above, which is entrusted to them by ScanSource, its customers, vendors or consultants. (*See, e.g.*, Exs. A, C & D to Verified Answer and Counterclaim). ScanSource maintains its competitive edge by the collection, analysis and protection of the aforementioned

detailed, highly confidential records it collects and maintains for each of its vendors, resellers and purchasers and which are contained in, among other things, ScanSource's quarterly business reports, or "QBRs." ScanSource owns all information, in any form (including electronic information), that is created by its employees and used in support of its activities, and that includes QBRs and the information and analysis contained therein. (See, e.g., Exs. C & D to Verified Answer and Counterclaim).

QBRs and similar materials include in-depth reports of profitability, customers, specific plans, and strategies as well as reviews of years of past performance relating to both its vendors as well as ScanSource's own business units. The information that Plaintiff took from ScanSource and which he now possesses derives its value from not being known to competitors, as well as not being disclosed among competing vendors and competing customers. If vendors, customers, or competitors had access to this information it would be enormously damaging to ScanSource's business, as it would violate the Company's distribution agreements with its vendors and the confidentiality inherent in its customer relationships, and competitors could readily identify competitive business knowledge to take away market share. A vendor or customer competing with ScanSource's own vendors or customers, or a ScanSource competitor with access to this information, would immediately threaten ScanSource's business. Meanwhile, those who would benefit from the information would not have had to bear the effort and expense associated with building years of historical data relating to sales into individual vertical markets, sales by geography, product family sales, line item product sales, and large deals. The information taken by Plaintiff has been developed over years of business and through ScanSource's relationships, and it is not readily ascertainable by the public or any other person without resorting to improper means, as Plaintiff has done.

ScanSource's Efforts to Obtain the Return of These Materials

In the January 16, 2012, letter from its General Counsel (Ex. E to Verified Answer and Counterclaim), ScanSource demanded that Plaintiff return all of these highly confidential, proprietary materials, and to certify he had done so and that he had not shared them with others. When, instead of complying, Plaintiff filed suit, ScanSource filed this motion and the related counterclaims. Defendant's immediate need is for an Order requiring Plaintiff to return all ScanSource data or files in his possession or control that at any time resided on any ScanSource computer, server, digital storage device, personal data device, cell phone, or email account used in the course of the work he performed for ScanSource. Furthermore, ScanSource seeks an order that Plaintiff certify under oath that he never used any of this information for any purpose, that he identify any third party to whom he has revealed this information, and finally, that ScanSource be provided with assurances, through an examination by an independent third party at ScanSource's expense, that no such information remains in Plaintiff's possession or control.

Plaintiff Has Straightforward Obligations Under ScanSource's Business Ethics and Code of Conduct, the Agreement, and the S.C. Trade Secrets Act

1. Plaintiff's Obligations under the Business Ethics and Code of Conduct

Specific requirements regarding the confidentiality of the information and data that Plaintiff has misappropriated are set forth in the company's Business Ethics and Code of Conduct, specifically in Policy 112:

Confidentiality

Confidential information includes all non-public information that might be of use to competitors or harmful to ScanSource or its customers, if disclosed. The Company owns all information, in any form (including electronic information) that is created or used in support of its activities. This information is a valuable asset and the Company expects employees to protect it from unauthorized disclosure. **This information includes ScanSource customer, supplier, business partner, and employee data.** Federal and state law may restrict the use of this information and may penalize the employee if the person uses or

discloses it. Each employee should protect information pertaining to ScanSource's competitive position, business strategies and information relating to negotiations with employees or third parties and share it only with employees who need to know it in order to perform their jobs.

Employees must maintain the confidentiality of information entrusted to them by ScanSource, its customers, vendors or consultants, except when disclosure is authorized or legally required. Employees must take all reasonable efforts to safeguard confidential information that is in their possession against inadvertent disclosure and must comply with any non-disclosure obligations imposed on ScanSource.

Confidential information includes, but is not limited to, the following examples:

☐ Compensation data	☐ Labor relations strategies
☐ Computer Processes	☐ Marketing strategies
☐ Computer Programs, codes	☐ New materials research
☐ Customer lists	☐ Pending projects and proposals
☐ Customer preferences	☐ Technological data
☐ Financial information	☐ Technological prototypes

Because the Company considers security breaches very serious, improper use or disclosure of trade secrets or confidential business information will result in prompt disciplinary action, up to and including termination of employment and legal action, even if the offending employee does not actually benefit from the disclosed information.

This policy does not supersede or limit any separate confidentiality agreements that ScanSource may enter into with individual employees.

(ScanSource, Inc., Business Ethics & Code of Conduct, Policy No. 112, Issued: 11/1/2004, Applicable: 11/1/2004, Revised: 3/17/2009) (emphasis added) (Verified Answer and Counterclaim, Ex. D).

2. **Plaintiff's Obligations Under the Agreement**

The Agreement Plaintiff signed on June 20, 2008, provided for his promotion to the position of President of ScanSource's North America POS & Barcoding business unit, and the Company's agreement to provide Plaintiff with access to the Company's "Confidential Information" and "Trade Secrets" (as defined in the Agreement), access to customers, and other promises contained in the Agreement. (Verified Answer and Counterclaim, Ex. A). After he signed the Agreement,

Plaintiff received employment and related compensation and benefits from ScanSource for approximately 3½ years, during which time he had ample access to the Company's Confidential Information and Trade Secrets.

In return for his promotion, compensation, benefits and access to ScanSource's Confidential Information, Plaintiff promised to not disclose that information or the company's Trade Secrets, and that he would not use these for the benefit of any person or entity other than the Company. (Verified Answer and Counterclaim, Ex. A, ¶ 11(c)(v) and (vi), p. 12). This promise expressly binds Plaintiff for twenty-four (24) months after the Termination Date with respect to Confidential Information that does not constitute a Trade Secret, and for Trade Secret information binds Plaintiff for so long as the information at issue remains a Trade Secret. (*Id.*) The Agreement contains a provision in which Plaintiff promised not to disparage the Company for a period of five (5) years after his employment ends. (Verified Answer and Counterclaim, Ex. A., ¶ 11(d)).

3. **Plaintiff's Obligations Under the S.C. Trade Secrets Act**

Independent of any written nondisclosure or similar agreement, the S.C. Trade Secrets Act, S.C. Code Ann. §§ 39-8-10 to -130 (the "Act"), protects valuable trade secrets. As the Act provides, "[e]very employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret without the employer's permission." S.C. Code Ann. § 39-8-30(B). The key terms applicable to this motion are *misappropriation* and *Trade Secrets*. S.C. Code Ann. § 39-8-20.

**Plaintiff Has Ignored his Obligations to Protect
ScanSource's Confidential and Trade Secret Information**

As revealed in the affidavits offered in support of ScanSource's motion for injunctive relief, Plaintiff has breached the parties' Agreement and the company's Ethics Policy in a number of ways:

1. After he learned that he was to be terminated, and while this fact remained unknown to ScanSource employees who reported to him, Plaintiff asked several of those employees to provide him with Confidential Information and Trade Secrets belonging to ScanSource as defined in ¶ 11(b) of the Agreement (hereafter "Confidential Information" and "Trade Secrets") (Affidavits of Aiken, Spearman, and Cox).

2. On December 12, 2011, Plaintiff asked Jeanne Aiken, a ScanSource Director of Merchandising who reported directly to him, if she had "the Dell List." The "Dell List" was a reference to a highly confidential point of sale ScanSource customer list. When Ms. Aiken told Plaintiff she had it, he asked her if the Dell List included the contact name and address of customers. When Ms. Aiken said the list did not include customer contact name and address, Plaintiff told her he did not want it. (Affidavit of Aiken, ¶¶ 4-5).

3. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Chris Spearman, a ScanSource Team Leader, to download the last vendor quarterly business report for Motorola onto a thumb drive that Plaintiff handed to Mr. Spearman. Mr. Spearman downloaded the information Plaintiff requested and returned the thumb drive to Plaintiff. (Affidavit of Spearman, ¶ 4).

4. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Stephen Fowler, a ScanSource employee who reported to Merchandising Director

Robbie Cox (who in turn reported directly to Plaintiff), to provide him with the quarterly business report for Honeywell, a ScanSource customer. (Affidavit of Spearman, ¶ 5).

5. On Tuesday, December 13, 2011, or Wednesday, December 14, 2011, Plaintiff asked Robbie Cox, to download the quarterly business reports for Intermec, a large ScanSource vendor. (Affidavit of Cox, ¶ 4). This and other quarterly business reports Plaintiff requested that his subordinates provide constitute the aforementioned "QBRs." They contain exceedingly detailed background data on the purchases by ScanSource customers over twelve (12) quarters, and include such confidential, proprietary information as sales, margin, profit, revenue, *etc.* The data Plaintiff requested from Ms. Aiken, Mr. Spearman, Mr. Cox and Mr. Fowler included, among other things, QBRs as well as other detailed sales data for a number of ScanSource customers. (Affidavits of Aiken, Spearman and Cox).

6. Before Plaintiff's employment with ScanSource terminated, he surreptitiously communicated with ScanSource's largest vendor, Motorola Solutions, and asked an employee of that vendor to provide him with his personal email address so that he could communicate with him via his personal email account. (Affidavit of Eassy, Ex. A).

7. In the fifteen (15) hour period immediately prior to his final departure from ScanSource, Plaintiff surreptitiously removed confidential and proprietary documents and data belonging to ScanSource, in both hard copy and electronic forms, from his private office at ScanSource. (Affidavit of Pharr, ¶ 5).

8. Although ScanSource has demanded their return, Plaintiff has refused to return the documents and data he removed from his office just hours before he left the site for the last time on December 16, 2011. Plaintiff has since told ScanSource that he does not know where these confidential and proprietary documents and data are located. (Affidavit of

Benbenek, ¶ 13).

9. Since December 31, 2011, Plaintiff also has contacted ScanSource employees and has solicited and encouraged them to provide him with Confidential Information or Trade Secrets belonging to ScanSource. On Wednesday, January 4, 2012, Plaintiff communicated with Jeanne Aiken, a ScanSource Director of Merchandising who formerly reported to him in his role as President of ScanSource North America. On that date at approximately 5:34 p.m., Plaintiff sent the following text message to Ms. Aiken's personal Gmail account: "Would you send me the HP customer list from your home email or give it to me on a memory stick? Pretty please." At approximately 5:36 p.m., Ms. Aiken responded as follows: "Jeff, I would love to help you, but I just can't do that, that type of stuff is ScanSource confidential now." At approximately 5:37 p.m., Plaintiff responded to Ms. Aiken as follows: "The HP stuff? Ok. Thanks. Still love you." (Affidavit of Aiken, ¶¶ 8-14 & Ex. A).

10. On Saturday, December 31, 2011, Plaintiff sent a text message to ScanSource Vice President of Sales Mark Morgan asking if he will "hit \$265m?" This text message was seeking confidential information, *i.e.*, whether the business unit had achieved its Q4 commit number of \$265,000,000. (Affidavit of Morgan ¶ 8).

11. On December 12, 2011, Plaintiff disparaged the company and its management to his direct report, Jeanne Aiken. (Affidavit of Aiken, ¶ 4).

12. On December 15, 2011, Plaintiff disparaged the company and its management to co-worker Mark Morgan. (Affidavit of Morgan, ¶ 5).

Before and since his employment ended, Plaintiff has thumbed his nose at the legal obligations he owes to ScanSource and the restrictions imposed on him by the Business Ethics and Code of Conduct Policy, his Agreement, and the law. There is no legal justification for his

actions, and the harm he is inflicting on ScanSource is immediate and irreparable. This Court, therefore, is justified in issuing a temporary restraining order and preliminary injunction under Rule 65 of the South Carolina Rules of Civil Procedure.

ARGUMENTS AND CITATIONS TO AUTHORITY

A. A preliminary injunction is proper pursuant to Rule 65, SCRPC.

A trial court generally considers five factors when determining whether to grant a motion for preliminary injunction. *See, e.g., Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995); *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002). These factors include: (1) whether ScanSource risks immediate and irreparable injury; (2) ScanSource's likelihood of success on the merits; (3) whether ScanSource lacks any other adequate remedy at law; (4) the balance of hardships between ScanSource and Plaintiff; and (5) the impact on the public interest. *Id.* Because these five factors weigh heavily in favor of ScanSource, an order preliminarily enjoining Plaintiff is warranted.

(1) Irreparable Injury

ScanSource will suffer immediate and irreparable harm unless the Court enjoins Plaintiff from disclosing or using the confidential and trade secret information. (*See* Verified Answer and Counterclaim). A preliminary injunction is necessary in the instant case pending the determination of the obligations of Plaintiff under his Agreement. Without this injunction, ScanSource will suffer irreparable harm to its business and its employees. ScanSource's business is focused upon the confidential, trade secret information detailed above. The exposure of that information would effectively destroy its value as well as ScanSource's business in ways that cannot be measured or "undone." Plaintiff already has breached, and will continue to breach, the terms of his Agreement that prohibit the release of this information. As a result of

this breach, ScanSource's unique and valuable trade secret information is exposed. This would jeopardize ScanSource's business and the confidential information of its vendors and customers.

Moreover, if this information is exposed there is no effective way to "unring" the bell. No amount of money can substitute for the harm to ScanSource and its vendors and customers by the disclosure of this information.

Though ScanSource requested that Plaintiff protect and return this information, these requests have been ignored. (See Verified Answer and Counterclaim, Exhibit C). Initially, Plaintiff acknowledged taking company data, but told his boss he took only "industry standard information." (Affidavit of Benbenek, ¶ 13). Later he denied that this information was in his possession. (*Id.*) Now, he claims that ScanSource's claim that he has this information is fraudulent. (Complaint, ¶ 17). Plaintiff's intent is clear. He had his direct reports unwittingly download confidential information, sought confidential information from vendors, and took confidential information.

The party to be enjoined need not have actually harmed the movant; immediate and irreparable harm need only be threatened. For example, in Standard Register v. Kerrigan, 238 S.C. 54, 62, 119 S.E.2d 553, 537 (1961), the former employee had actively solicited all but one of the eighteen accounts assigned him while employed by the plaintiff. In upholding the covenant in his employment contract, the Court observed that "[a] business is built upon the confidence of its customers and the employee gains acquaintances and sells to customers by using the good will of the employer." *Id.* at 62-63, 119 S.E.2d at 537-38. As the Court noted, this is why

the employer may enjoin the ex-employee from working along his old route just as soon as the ex-employee starts working there for a rival . . . [T]he employer does not have to wait until the ex-employee starts picking off his old customers. He doesn't have to wait for the inevitable. Irreparable injury is impending and threatening.

Id. at 538.

Thus Plaintiff ought to be enjoined immediately, for once this information is disclosed there is no effective way to “un-ring the bell.” This information contains not only data analysis performed by ScanSource but confidential information from ScanSource’s vendors, customers and its business with both. The harm to ScanSource’s business and business goodwill could not be counteracted. This loss of a business or business goodwill is an irreparable harm, and appropriately prevented through injunctive relief. Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 456, 626 S.E.2d 34, 37 at n. 2 (Ct. App. 2005); CHARLES A. WRIGHT AND ARTHUR R. MILLER, 11A FED. PRAC. & PROC. CIV. 2D § 2948.1 (2007) (“[W]hen the potential economic loss is so great as to threaten the existence of the moving party’s business, then a preliminary injunction may be granted, even though the amount of direct financial harm readily is ascertainable.”)

Courts have routinely held in similar cases that the violation of a restrictive covenant or misappropriation of confidential customer information causes irreparable harm to the employer. Merrill Lynch v. Salvano, 999 F.2d 211 (7th Cir. 1993) (use of confidential information to solicit customers demonstrates irreparable harm); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Hagerty, 808 F. Supp. 1555 (S.D. Fla. 1992), aff’d 2 F.3d 405 (11th Cir. 1993). In Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley, 756 F.2d 1048 (4th Cir. 1985), the Fourth Circuit Court of Appeals held that a case with facts virtually identical to this one satisfied the requirements for issuance of an injunction. Like this case, Merrill Lynch alleged that its former employee had used confidential information to contact clients of Merrill Lynch following his resignation. In Bradley, the Court affirmed the District Court’s finding that these circumstances presented “irreparable harm” that was properly prevented through injunctive relief. 756 F.2d at 1055.

Moreover, irreparable harm lies in the fact that ScanSource vendors and customers expect, and many have an independent contractual right, to have their financial and product related information be kept confidential; that includes information such as business trends, margins, and pricing data. Plaintiff's theft and misuse of that confidential information is causing, and will continue to cause, ScanSource to lose immeasurable client good will, trust and confidence. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kramer, 816 F. Supp. 1242, 1247 (N.D. Ohio 1992). Once ScanSource's confidential, commercial information and trade secrets are disclosed, the information will no longer be a trade secret and the damage to ScanSource's business will be done, regardless of any monetary compensation later ordered by the Court. Smith v. Bic Corporation, 869 F.2d 194 (3rd Cir. 1989).

(2) Likelihood of Success on the Merits

ScanSource will likely succeed on the merits of this case for the following reasons: (1) ScanSource's Ethics Code prohibits this use of the confidential and trade secret information; (2) Plaintiff entered into an Agreement that requires that he maintain the confidentiality of this information; (3) the Trade Secrets Act protects the data from disclosure; (4) Plaintiff took this information and performed affirmative acts to "hide" his actions from ScanSource; and (5) Plaintiff has no legitimate right to or use of this information other than for efforts to harm or divert ScanSource and its vendors and customers.

(i) Plaintiff Was Bound by the Company's Ethics Code, Which Prohibits this Use of this Confidential and Trade Secret Information.

Plaintiff acknowledged the Company's Business Ethics and Code of Conduct on July 15, 2010, certifying that he would "adhere to and advocate" the Code of Conduct. See Handbook Acknowledgment, attached as Exhibit C to Verified Answer and Counterclaim. In addition to including certain policies, the Acknowledgment itself states that Plaintiff affirmed "that

confidential information acquired in the course of business is not to be used for personal advantage.” *Id.* at 1. Further, the Confidentiality policy explains that “[e]mployees must maintain the confidentiality of information entrusted to them by ScanSource, its customers, vendors or consultants, except when disclosure is authorized or legally required.” (Code of Conduct, Ex. D to Verified Answer and Counterclaim, at 6). As the evidence demonstrates, disclosure is not authorized, so the confidentiality of the information must be maintained.

(ii) Plaintiff Signed a Binding Employment Agreement that Protects the Confidential and Trade Secret Information.

Plaintiff, as a condition of his employment, signed an Agreement that protects the confidential and trade secret information. (Agreement, § 11(c)(v), Ex. A to Verified Answer and Counterclaim). This Agreement provides, in pertinent part, that during employment and for at least two years after his employment terminates, he “will not, either directly or indirectly, for his own behalf or otherwise, use in any manner the Company’s Confidential Information or Trade Secrets.” (Agreement, § 11(c)(vi)(emphasis added)). Additionally, he agreed that for at least a two-year period he would not “publish, disseminate, provide, or otherwise disclose any Confidential Information or Trade Secrets to any third party. . . .” (Agreement, § 11(c)(vi)(emphasis added)).

In complete disregard of these clear, express obligations, Plaintiff has collected this information and used it improperly. The Agreement, which Plaintiff signed in return for hundreds of thousands of dollars in compensation, was designed to prevent the very situation confronting ScanSource now.

(iii) The Trade Secrets Act Protects this Information.

An injunction is a remedy for appropriation, disclosure, use, or wrongful acts pertaining to trade secrets. S.C. Code Ann. § 39-8-30(C). “Misappropriation” includes “disclosure or use

of a trade secret of another without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret.” Id. at 39-8-20(2)(v)(i). Plaintiff’s many different actions following his termination lead conclusively to “improper means,” which include but are not limited to “breach or inducement of a breach of a duty to maintain secrecy, duties imposed by the common law, statute, contract, license, protective order, or other court or administrative order, or espionage through electronic or other means.” Id. at 39-8-20(1). At the least, Plaintiff’s actions violated the parties’ contract. Thus, these claims have a strong probability of success on the merits.

(iv) The Evidence and Plaintiff’s Conduct Demonstrate He Took this Information from ScanSource.

Though Plaintiff initially denied that he obtained the confidential and trade secret information, based upon his own statements to his boss and his lawyer’s acknowledgment of being in possession of two flash drives containing information, Plaintiff cannot now dispute that he took confidential and trade secret information with him when he left ScanSource. Plaintiff is effectively holding this information “hostage” in an ostensible dispute over the propriety of his termination. The tacit threats of disclosure and use demonstrate the value of this information and the reasons ScanSource so carefully guards it. ScanSource takes all steps necessary to prevent the disclosure of its and its vendors’ and customers’ confidential and highly sensitive, competitive, business information.

(iv) Plaintiff Has No Legitimate Reason to Retain the Information.

The evidence of affirmative concealment of his actions, both by his initial denial of taking the information and the loading of destructive software on his ScanSource laptop demonstrate the malicious intent of Plaintiff. Plaintiff has no legitimate reason to obtain this information. If he intended to abide by the terms of his Agreement and to not compete with

ScanSource, he would have had no use for this data. Plaintiff's only possible use of this data would be to harm ScanSource, to help himself, and as leverage in this litigation.

(3) No Adequate Remedy Exists at Law

No adequate remedy at law exists for the harms resulting from Plaintiff's possession and use of the information. (*See, generally*, Verified Answer and Counterclaim). Once Plaintiff has revealed vendors' or customers' confidential information, the harm to ScanSource's business is complete. No amount of money damages can compensate ScanSource for the harm caused by disclosure of this priceless information. It would be impossible to calculate the future harm to ScanSource's business and reputation. If this information is disclosed, more troubling is the fact that ScanSource will be significantly threatened by the loss of confidence of its vendors and customers. This loss, too, would be immeasurable.

Plaintiff must be enjoined. Even if he could be expected to satisfy any judgment that might ultimately be entered, it will be impossible to calculate the monetary impact upon ScanSource should this information be used or disclosed. Plaintiff should not be allowed to use highly confidential, trade secret information as either a leverage tool in litigation or as a threat to ScanSource.

(4) The Equities Militate in Favor of the Requested Relief

The equities militate in favor of the requested relief. ScanSource will encounter the substantial harms described above. (*See also* Verified Answer and Counterclaim). By contrast, Plaintiff will suffer no harm if the *status quo* is maintained and the disclosure and use of this information is enjoined pending a resolution on the merits. While the harm to ScanSource of changing the *status quo* is material, the harm to Plaintiff in maintaining the *status quo* is non-existent. "[T]he inherent purpose behind the equitable remedy of an injunction [is] to preserve

the *status quo*.” County of Richland v. Simpkins, 348 S.C. 664, 671, 560 S.E.2d 902, 905 - 906 (Ct. App. 2002); accord Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973) (“[T]he sole purpose of a temporary injunction is to preserve the *status quo*....”); “[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation”; County Council of Charleston v. Felkel, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964). Plaintiff would not be harmed by an order of this court denying his ongoing use of the confidential information and continuing threats of disclosure.

(5) Impact on the Public Interest

Granting ScanSource’s motion positively impacts the public, while denying the motion harms the public. The information taken by Plaintiff contains extensive, highly confidential financial and business information relating to its business and that of its vendors and customers. Moreover, the information contains highly competitive pricing and marketing information for major companies across the country. The disclosure of this information would harm these businesses and their competitive position in the marketplace.

Allowing Plaintiff to use and disclose this information, and thereby force ScanSource into a devastating situation with its vendors and customers, harms the livelihoods of several hundred ScanSource employees, as well as the numerous vendors and customers who rely upon ScanSource and entrust this confidentiality of information. Denying this motion would harm not only ScanSource, but its employees, vendors and customers.

As stated by the Fourth Circuit Court of Appeals in addressing this issue, “the court should consider wherein lies the public interest, sometimes described as preserving the [s]*tatus*

quo ante litem until the merits of a serious controversy can be fully considered by a trial court.”
Maryland Undercoating Co., Inc. v. Payne, 603 F.2d 477, 481 (4th Cir. 1979). In this case, there are strong reasons to maintain the *status quo* until a court is able to adjudicate the issues regarding the obligations under the Agreement.

Not only is the public policy in favor of allowing the careful adjudication of serious controversies implicated, but also the broader concerns regarding the ability of former employees to effectively “blackmail” their employers. The public interest weighs heavily in favor of granting this motion for a temporary restraining order and preliminary injunction:

CONCLUSION

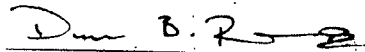
For the foregoing reasons, ScanSource prays that the Court issue a temporary restraining order and preliminary injunction requiring the following:

- (1) Prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter, or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any person employed by ScanSource to provide him with Confidential Information or Trade Secrets;
- (2) Prohibiting Plaintiff Jeffrey E. Yelton, and all those acting in concert and active participation with him, through and including a trial on this matter, or further order of this Court, whichever comes first, from directly or indirectly soliciting or encouraging any customer or supplier of ScanSource to provide him with Confidential Information or Trade Secrets;
- (3) Requiring Plaintiff to return any and all property and/or information rightfully belonging to, or wrongfully taken from, ScanSource, including, but not limited to, any and all documents,

materials, or electronic media (computers, hard drives, computer discs, PDAs, USB drives, etc.) containing information regarding ScanSource, its products, customers, and/or suppliers, including all copies thereof, and eliminating any and all access to same via Drop Box or other personal accounts with cloud based servers;

- (4) Requiring Plaintiff to submit to a computer examination and inspection of all of his computer systems and data, including third party-operated personal accounts containing any company information, such as Drop Box or other personal accounts with cloud based servers and verification by a computer forensics expert at Defendant's expense to ensure all of the information unlawfully transmitted or destroyed by Plaintiff from ScanSource's protected computer is not in Plaintiff's possession, custody, or control.
- (5) Ordering any other and further relief as the Court may deem just and equitable.

NELSON MULLINS RILEY & SCARBOROUGH LLP



Sue Erwin Harper
SC Bar No. 1917
corky.harper@nelsonmullins.com
Carmen Harper Thomas
SC Bar No. 76012
carmen.thomas@nelsonmullins.com
1320 Main Street/ 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
Telephone: (803) 799-2000

Dowse "Brad" Rustin, IV
SC Bar No. 74934
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
Telephone: (864) 250-2300
brad.rustin@nelsonmullins.com

Attorneys for Defendant ScanSource, Inc.

January 24, 2012

AFFIDAVIT OF JEANNE AIKEN

FILED-CLERK OF COURT
GREENVILLE, SOUTH CAROLINA
2012 DEC 11 PM 4:00
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
Plaintiff,)
vs.)
ScanSource, Inc.,)
Defendant.)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) AFFIDAVIT OF JEANNE AIKEN

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Jeanne Aiken who, being duly sworn deposes and says:

1. I am a Director of Merchandising for ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource continuously since 2002.
2. I am competent to give this affidavit and have personal knowledge of its contents. I give this affidavit under penalty of perjury.
3. Until December 2010, the plaintiff in this action, Jeffrey Yelton, then President of ScanSource North America, was my immediate supervisor.
4. On Monday, December 12, 2011, I attended a morning meeting of our management team that Mr. Yelton normally conducted every Monday morning. Mr. Yelton did not tell us then that he would be leaving ScanSource. At that time I did not know this; it was only later that I first learned that Mr. Yelton was leaving the company. I learned that he was leaving the company on Tuesday afternoon, December 13, 2011, after I asked him about his

recent Facebook post. He stated that he had decided to resign from the company. He stated that he wasn't Paul Constantine or Buck Baker who simply did everything Scott Benbenek and Mike Baur wanted them to do. He asked me not to say anything to anyone as he was going to tell the rest of the group the following day.

5. After that Monday morning meeting, Mr. Yelton came to me and told me he had "been confused" about a list of 18,000 customers that had been mentioned at the meeting. He then asked me if I had "the Dell List," a reference to a highly confidential point of sale ScanSource customer list. I told him that I did have the list. He then said, "That has contact name and address, right?" When I said that it did not contain that information, Mr. Yelton said he did not want it.

6. I later learned from other Directors of Merchandising that Mr. Yelton had also asked other employees to download confidential ScanSource customer and vendor information onto a thumb drive that he provided.

7. I and others met with Scott Benbenek the afternoon of December 30, 2011, to advise him of these requests.

8. Later, on Wednesday, January 4, 2012, at 4:20 p.m., I received a text message from Mr. Yelton which asked for the following: "Would you send me the HP customer list from your home email or give it to me on a memory stick? Pretty please."

9. Five minutes later, at 4:25 p.m., I responded: "Jeff, I would love to help you, but I just can't do that, that type of stuff is ScanSource confidential now."

10. Immediately after, at 4:25 p.m., Mr. Yelton responded, "The HP stuff? Ok. Thanks. Still love you."

11. I immediately reported this exchange to Scott Benbenek, Mr. Yelton's former supervisor and showed him the text messages.

12. Hard copies of the content of those messages are attached hereto and incorporated herein as Exhibit A.

13. The HP customer list that Mr. Yelton asked me to send from my home email or to download on a memory stick contains highly confidential customer information belonging to ScanSource. Specifically, for example, that list contains Customer names, Customer Contact Names and Addresses. This list was obtained as part of our HP authorization. If this list or similar lists were obtained by a competitor to ScanSource, it would allow them to proactively market to these customers and potentially steal share and erode margins.

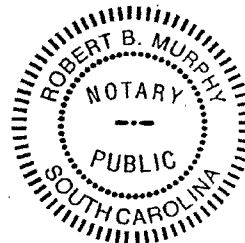
14. ScanSource has made it very clear to me and others in the company that lists such as the Dell customer list that Mr. Yelton requested are extremely confidential and that we are not to disclose such information to anyone outside the company.

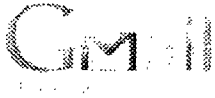
FURTHER AFFIANT SAYETH NOT.

Jeanne Aiken
Jeanne Aiken

SWORN AND SUBSCRIBED before me this 19th
day of January 2012:

Robert B. Murphy
Notary Public for South Carolina
My Commission Expires: October 12, 2017





Jeanne Aiken <jmmaiken4840@gmail.com>

SMS with Yelton Jeff

3 messages

Yelton Jeff <8642707462@unknown.email>
To: jmmaiken4840@gmail.com

Wed, Jan 4, 2012 at 4:20 PM

Would you send me the HP customer list from your home email or give it to me on a memory stick? Pretty please.

jmmaiken4840@gmail.com <jmmaiken4840@gmail.com>
To: Yelton Jeff <8642707462@unknown.email>

Wed, Jan 4, 2012 at 4:25 PM

Jeff, I would love to help you, but I just can't do that, that type of stuff is ScanSource confidential now.

Yelton Jeff <8642707462@unknown.email>
To: jmmaiken4840@gmail.com

Wed, Jan 4, 2012 at 4:25 PM

The HP stuff? Ok. Thanks. Still love you.

AFFIDAVIT OF RICK BURKE

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

Jeff Yelton,)
Plaintiff,)
vs.)
ScanSource, Inc.,)
Defendant.)
Civil Action No. 2012-CP-23-0314

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
AFFIDAVIT OF RICK BURKE

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Rick Burke
who, being duly sworn deposes and says:

1. I am Manager, IT Help Desk for ScanSource, Inc. ("ScanSource"), Defendant in
this action; I have been employed by ScanSource continuously since 1994.

2. I am competent to give this affidavit and have personal knowledge of its contents.
I give this affidavit under penalty of perjury.

3. I am in charge of the Company's PassPoint access control system, which is the
Company's secured door entry system. To enter any door at ScanSource, an individual must
swipe their company issued ID badge on the Door Entry System. My records indicate the
following door entries by Mr. Jeff Yelton:

Thursday, December 15, 2011:
6:12 p.m.
6:14 p.m.
6:16 p.m.
6:18 p.m.
6:20 p.m.
6:25 p.m.

Friday, December 16, 2011:

7:33 a.m.

7:35 a.m.

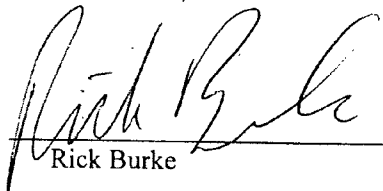
7:36 a.m.

7:38 a.m.

4. In December 2011, I received a laptop computer, manufactured by Hewlett Packard, serial number CNU0423784, that had, until December 16, 2011, been assigned to Jeffrey Yelton, Plaintiff in this action. Mr. Yelton had been President of ScanSource North America.

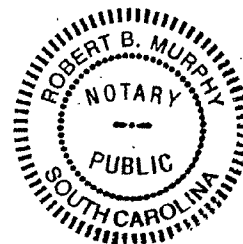
5. In December 2011, I examined the laptop computer formerly assigned to Jeffrey Yelton and determined that drop box functionality had been installed onto this computer. This drop box software program synchronizes any file or folder located on such drop box folder with any internet based drop box server, such that any personal account will then have access to such files without accessing the Company's network.

6. FURTHER AFFIANT SAYETH NOT.


Rick Burke

SWORN AND SUBSCRIBED before me this 23rd
day of January 2012:


Notary Public for South Carolina
My Commission Expires: October 12, 2017



AFFIDAVIT OF SCOTT BENBENEK

FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
 2012)

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)
 Plaintiff,)
)
 vs.)
)
 ScanSource, Inc.,)
)
 Defendant.)
)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) AFFIDAVIT OF SCOTT BENBENEK

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Scott Benbenek who, being duly sworn, deposes and says:

1. I am President of Worldwide Operations for ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource continuously since 1998
2. I am competent to give this affidavit and have personal knowledge of its contents. I give this affidavit under penalty of perjury.
3. Until December 2011, the plaintiff in this action, Jeffrey Yelton, reported directly to me in his role as President of ScanSource North America.
4. On Friday, December 9, 2011, I met with Jeffrey Yelton and told him that his employment with ScanSource would terminate at the end of the month. At that meeting, he advised me he would resign; we agreed that neither of us would announce his impending departure from the company until Mr. Yelton decided how he wanted to describe it. Mr. Yelton

and I agreed at that time we would discuss on Monday, December 12, 2011 when the best time to tell his management team would be and when his last day in the office would be.

5. On the morning of Monday, December 12, 2011, before I talked to Mr. Yelton, I received a call from a vice president in one of our business units asking me if Jeff was leaving ScanSource. When I asked what made him ask that question, he said Mr. Yelton had posted a message on his Facebook page on Sunday, December 11, 2011 saying something like it felt like it was time for a major change in his life.

6. I did not hear from Mr. Yelton before lunch on Monday, December 12, 2011 so I wondered if he had decided to tell his management team at his regular Monday morning staff meeting since he had posted the message I heard about on Facebook the prior evening. I sent an email to Mr. Yelton after lunch telling him that I needed to know his thoughts about a timeline and asked him if he had already told his team. He walked over to my office shortly after my email and replied that he had not told anyone and when I told him I had heard that he posted something odd on Facebook he said that it was obscure and nobody would know that he was leaving.

7. On Tuesday, December 13, 2011, I met with Mark Morgan, Vice President of North American Sales, and advised him that Mr. Yelton would soon be leaving the company but to keep that information to himself.

8. On Wednesday, December 14, 2011 I let Mr. Yelton know via email that he should go ahead and tell his team right away that he was leaving because people from all over the company were asking HR and other executives about whether he was leaving ScanSource.

9. On Thursday, December 15, 2011, Mr. Morgan told me he had met with Mr. Yelton and during that meeting Mr. Yelton had made disparaging remarks about the company and its management.

10. On Thursday, December 15, 2011, after I talked to Mr. Morgan about his conversation, I told Mike Baur, Chief Executive Officer of ScanSource, that according to Mr. Morgan, Mr. Yelton had said that people were "not allowed to think" at ScanSource, that ScanSource was not nirvana, that other people were leaving, that he should not put his stock in this company because "Mike and Scott" only want people that will do what they say.

11. Mr. Yelton's last day at ScanSource was Friday, December 15, 2011.

12. On Friday, December 30, 2011 I learned that Mr. Yelton had asked several employees who had reported directly to him, as well as other employees that reported to one of his managers, to download confidential ScanSource information onto a thumb drive. He asked and received this information on Wednesday, December 14, 2011 before he told some of his management team that he was leaving later that day.

13. On Wednesday, January 4, 2012 I learned that Mr. Yelton had turned his company laptop in but that it would not boot up, and that he had removed all papers except personnel files from his office. I telephoned Mr. Yelton that day and told him that I was aware that he had taken all his files, that his laptop would not boot up and that he had gotten the information on the thumb drive. I told him that he could be in trouble as it relates to his contract and agreement that he had signed. I asked him where the thumb drive and files were; he said his files were only industry standard information and that he got the thumb drive before he knew he was leaving. I said no, it was the Wednesday after the Friday that he was told he was leaving. I

then asked again where the thumb drive was and he said he didn't know and that it must have been left in his office somewhere.

14. Just as I got off the phone with Mr. Yelton that day, Jeanne Aiken, a Director of Merchandising who formerly reported to Mr. Yelton, told me that, during approximately the same period I had been on the phone with him, Mr. Yelton had sent her a text message in which he had asked her to provide him with a highly confidential ScanSource customer list that one of our vendors had provided to us. His text message, which she showed me, asked Ms. Aiken to send "the HP customer list" to him "from your home email or give it to me on a memory stick."

FURTHER AFFIANT SAYETH NOT.

Scott Benbenek

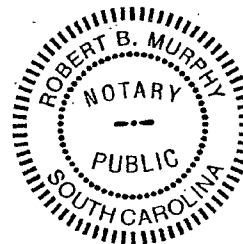
Scott Benbenek

SWORN AND SUBSCRIBED before me this 23rd
day of January 2012:

Robert B. Murphy

Notary Public for South Carolina

My Commission Expires: October 12, 2017



Search

Because I can't keep presents a secret I gave my mom hers two weeks early.
Straight from the door step to her hands. A Charlie Brown Christmas Tree!!!!
December 12, 2011 at 5:50pm near Asheton



u **Constance Williams** likes
Monastery Home



Bill Nulf was with Jeff Yelton and 2 others at The Georgia Dome.

Like · Comment · December 12, 2011 at 4:01pm in Atlanta, GA ·



Jeff Yelton

Getting lots of vibes that it's time for some changes in my life. The good lord is telling me to embrace the next adventure and not to play it safe. I just wish he'd be more specific but I'm ready. I got a devotional today that was a bit eerie. I swear it was talking directly to me. It said you are at a cross roads and should take the route with less security. Then in church the preacher said to do the say thing. Maybe it wasn't a burning bush but it got my attention. Do I believe that much to follow it blindly. AJ, Roger and Jami say yes. We'll see. Kim says she's ready.

Like · Comment · December 11, 2011 at 9:16pm ·

13 people like this.



Dot Abrams I think it is our "age" Jeff. We have played a fairly "safe" life...secure and we hear the clock ticking...getting a deep breath of wanderlust and adventure! I hear the same from a lot of 50-somethings...self included!

December 11, 2011 at 9:26pm · Like



Dot Abrams P.S. GO FOR IT!! ;)

December 11, 2011 at 9:29pm · Like



Jeff Yelton I'm thinking major change. 2 month sabbatical to Africa or Australia and then back for one last lap around the business world. This is not a mid life crisis. Maybe it's just a perspective. And by the way. There is no pot involved in this discussion. It's just been on my mind. The bucket list is a big thing for me after our lose of Emily. I'm figuring life is to short to wait.

December 11, 2011 at 9:33pm · Like · 5



Larry Wright Hmmm. With age there comes something very valuable, and that is called wisdom. Use it as best you can, and you will make good decisions that are not the "be young, be foolish" type.

December 11, 2011 at 9:36pm · Like · 1



Nancy Goforth Carson Good for you Jeff! I can't wait to hear all about "it"...once you decide what "it" is.

December 11, 2011 at 9:45pm · Like



Kristin Wright Blanton If you choose to travel around the world for 2 months you will be carrying lots of luggage. I would be honored as Kim's beloved baby sister to sacrifice myself to go with you and manage that luggage for you ♥

December 11, 2011 at 9:46pm · Like · 1



Meredith Yelton As long as you don't buy a motorcycle, I'm down. you need a break!!!...As long as I get to be included in it.

December 11, 2011 at 9:50pm · Like · 3



Kim Wright Yelton Smiling.

December 11, 2011 at 10:00pm · Like · 3



YLonne F. Swalls Good for you!

December 11, 2011 at 11:07pm · Like



Charlotte Brock Sarvis Love you Jeff, you will figure this out. He won't lead you astray, he loves you..

December 11, 2011 at 11:25pm · Like · 1



Helen Phillips Vanvick Jeff.....HE has great plans for you. Jeremiah 29:11

December 12, 2011 at 8:05am · Like · 1



Bill Giles I always figured the Lord quit lighting up shrubs so we would come seeking him rather than waiting to see smoke

December 12, 2011 at 9:19am · Like · 1

Julie Astin Wayne go for it baby...trust in The Lord!



Lok-yi Yip Meetze and Bryan Cochran are now friends.



Taylor Spratt likes Caln Barnett's post on her own Wall.



Chase Dayim gay



Charlie Wilson commented on Austin McCaskill's status: "Yeah I'm not following you "



Aimee Mitchell McGrath likes Allan Marquez's status.



Michael Cheatham commented on Susan Jett's post in United Methodist Lay Speaking Ministries: "I took the



Allison Nagy Taylor



Andrew Kurtz



Bart Heres



Cindi Whitman Wiener



Guy Seymour



Kirk Fisher



Lan Quattlebaum



Mackenzie Constantine



Missy Swinney Baynes



Nick Miller..



Roopal Das



Tom Day



Ty Mooneyham



Vicki Rickabaugh

Search

Timeline

Scott Benbenek

Sent: Monday, December 12, 2011 2:05 PM

To: Jeff Yelton

I need to know what your thoughts are as far as what you see as your timeline. Have you told your team, etc? I will need to start having some internal conversations with people in other units at some point to come up with timelines with them regarding different assignments and so forth.

RE: Items we discussed

Scott Benbenek

Sent: Wednesday, December 14, 2011 5:27 PM

To: Jeff Yelton

OK. What did you say exactly so I can try to be consistent and was there reaction I should know about?

I am having John E. prepare the agreement.

From: Jeff Yelton

Sent: Wednesday, December 14, 2011 5:22 PM

To: Scott Benbenek

Subject: Re: Items we discussed

I told Viki and the Directors at 4:00 today. I'll tell Mark and the team leaders tomorrow.

I'll a few of the vendors tomorrow and Friday.

Jeff

Sent from my iPhone

On Dec 14, 2011, at 1:59 PM, "Scott Benbenek" <scott.benbenek@scansource.com> wrote:

By the way, you should tell your people ASAP! Everyone is asking HR and other members of management team what is going on with you. Let me know once you have done so.

From: Jeff Yelton

Sent: Wednesday, December 14, 2011 12:47 PM

To: Scott Benbenek

Subject: Re: Items we discussed

Prepare the agreement. I will not agree to limit my employment to anyone beyond the companies listed in my employment agreement.

Jeff

Sent from my iPhone

On Dec 14, 2011, at 12:18 PM, "Scott Benbenek" <scott.benbenek@scansource.com> wrote:

We need to go ahead and get our agreement in place. In addition to the items in our standard release agreement, I have itemized the items we discussed on Monday below and our offer as it relates to them.

- You can have your mobile phone number back.
- ScanSource will agree to reimburse you for the premium costs of your disability insurance coverage should you decide to continue your coverage the same as it is today for twelve months.

- Your deferred comp money will have to be disbursed to you six months after your employment ends which we will agree to be December 31, 2011. It cannot be rolled into any other tax deferred program.
- Subject to board approval, ScanSource will agree to vest all unvested monies in your deferred comp account if you agree to not work for or with, in any capacity, Motorola Solutions, Avaya, or Polycom for one year. If this is not suitable then the disbursement will be only all vested monies.
- We will not vest any outstanding restricted shares.
- We cannot provide any legal services you asked about concerning incorporation papers and copyrighting, but will be glad to refer you to people that we might know who we think provide these services at a reasonable price.
- We will waive or remove Agilysis from the competitive business definition in your employment agreement.
- In relation to your 10b51, you will no longer be subject to the company rules we have set once your employment ends.
- ScanSource would also advise you to observe the Company's employee handbook policies, including the Insider Trading in Securities policy through the date of separation. While the Company cannot generally enforce such policies post-employment, it recommends to former employees to observe the Company's stock trading windows at least one quarter following separation or until any material non-public information possessed by an individual is made public or is no longer material.

Let me know how you want me to have Legal/HR prepare the agreement related to these items.

AFFIDAVIT OF ROBBIE COX

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JAN 10 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

2012 CP 0314 IN THE COURT OF COMMON PLEAS

Jeff Yelton,

Plaintiff,

vs.

ScanSource, Inc.,

Defendant.

Civil Action No. 2012-CP-23-0314

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

AFFIDAVIT OF ROBBIE COX

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Robbie Cox who, being duly sworn, deposes and says.

1. "I am a Director of Merchandising for ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource continuously since 1997.

2. I am competent to give this affidavit and have personal knowledge of its contents. I give this affidavit under penalty of perjury.

3. Until December 2010, the plaintiff in this action, Jeffrey Yelton, then President of ScanSource North America, was my immediate supervisor.

4. On Monday, December 12, 2011, I attended a morning meeting of our management team that Mr. Yelton normally conducted every Monday morning. Mr. Yelton did not tell us that he would be leaving ScanSource. At that time I did not know this; it was only later that Mr. Yelton told me that he had submitted his resignation.

5. Sometime on Tuesday or Wednesday, December 13 and 14, Mr. Yelton asked me to download the quarterly business reports for Intermec, a large ScanSource customer. This report, known within the company as a "QBR," contained detailed background on the purchases by that ScanSource customer over twelve (12) quarters, including sales, margin, profit, revenue, etc.

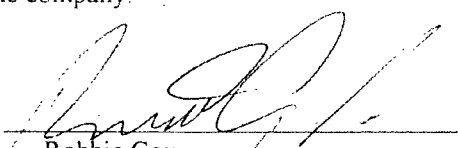
6. I later learned from other Directors of Merchandising that Mr. Yelton had also asked them to download confidential ScanSource customer information onto a thumb drive that he provided.

7. Lisa McIntosh, Jeanne Aiken, Nell Alverson, Ansley Hoke and I met with Scott Benbenek the afternoon of January 4, 2012, to advise him of these requests.

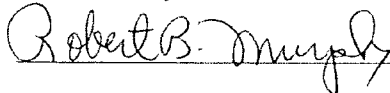
8. The Intermec customer list that Mr. Yelton asked me to download on a memory stick contains highly confidential customer information belonging to ScanSource. Specifically, for example, that list contains Ryzex, Velocitor Solutions, CDW, and Informs. Were this information to fall into the hands of a ScanSource competitor, it would enable that competitor to gauge revenue and share levels, target top strategic customers and pursue market-share, among other things.

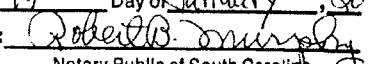
9. ScanSource has made it very clear to me and others in the company that lists such as the Intermec customer list that Mr. Yelton requested are extremely confidential and that we are not to disclose such information to anyone outside the company.

FURTHER AFFIANT SAYETH NOT.


Robbie Cox

SWORN AND SUBSCRIBED before me this 19th
day of January 2012:



Sworn to and Subscribed Before Me,
This 19th Day of January, 2012
Signed: 
Notary Public of South Carolina
My Commission Expires: October 12, 2017

AFFIDAVIT OF CHRISTOPHER EASSY

FILED-CLERK OF COURT
GREENVILLE CO. SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE 2012) IN THE COURT OF COMMON PLEAS

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)
Plaintiff,)
)
vs.)
)
ScanSource, Inc.,)
)
Defendant.)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) AFFIDAVIT OF CHRISTOPHER EASSY

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Christopher Eassy who, being duly sworn, deposes and says:

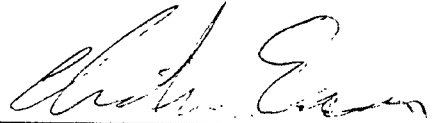
1. I am employed as a Systems Administrator II in the IT department of for ScanSource, Inc. ("ScanSource"), Defendant in this action.
2. It is my job to oversee all email on the ScanSource server, among other things.
3. I have been employed by ScanSource continuously since 2007.
4. I am competent to give this affidavit and have personal knowledge of its contents.

I give this affidavit under penalty of perjury.

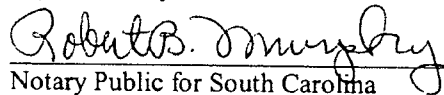
5. I have recently examined the inbox and outbox mailboxes of former employee Jeffrey Yelton on the ScanSource email server.

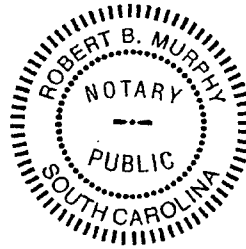
6. The attached email was printed out from Mr. Yelton's out-box. This email was sent by him on Monday, December 12, 2011 at approximately 7:00 pm.

FURTHER AFFIANT SAYETH NOT.


Christopher Eassy

SWORN AND SUBSCRIBED before me this 23rd
day of January 2012:


Notary Public for South Carolina
My Commission Expires: October 12, 2017



Re: Outside email

Welch Jim-AJW062 [james.h.welch@motorolasolutions.com]

Sent: Monday, December 12, 2011 2:51 PM

To: Jeff Yelton

Hardywelch@gmail.com

Sent from my Verizon Wireless 4GLTE Phone

-----Original message-----

From: Jeff Yelton <jeff.yelton@scansource.com>
To: Jim Welch <james.h.welch@motorolasolutions.com>
Sent: Mon, Dec 12, 2011 18:59:52 GMT+00:00
Subject: Outside email

Do you have an outside email address? I would like to send you a note that I intend for your eyes only.

Jeff

ScanSource
6 Logue Court
Greenville, SC 29615
1-864-286-4994

www.twitter.com/JYelton



Get the free mobile app at
<http://gettag.mobi>

AFFIDAVIT OF MARK MORGAN

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE 2012)

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)
 Plaintiff,)
)
 vs.)
)
 ScanSource, Inc.,)
)
 Defendant.)
)

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF MARK MORGAN
 COUNTY OF GREENVILLE)

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Mark Morgan who, being duly sworn deposes and says:

1. I am Vice President of North American Sales for ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource continuously since 2003.
2. I am competent to give this affidavit and have personal knowledge of its contents. I give this affidavit under penalty of perjury.
3. Until December 2010, the plaintiff in this action, Jeffrey Yelton, then President of ScanSource North America, was my immediate supervisor.
4. On Wednesday, December 14, 2011, Mr. Yelton's supervisor, Scott Benbenek, ScanSource's President of Worldwide Operations, met with me and advised me that Mr. Yelton would be leaving the company at the end of the month.

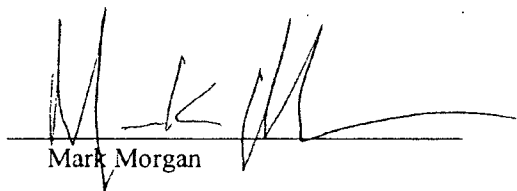
5. On Thursday, December 15, I met with Mr. Yelton to discuss his departure from the company. He told me that "I'm moving on - I've been working on some other things that have finally come together. I learned a long time ago that if you think - this is not the place for you. This is Mike's company they don't want you to think - and unless you are a Buck, Paul or Bobby, then this isn't the place for you. If it weren't for this, ScanSource would be the best place to work in Greenville - it's not the nirvana they like to portray it as".

6. After meeting with Mr. Yelton, I repeated these and other statements he had made to me to Scott Benbenek.

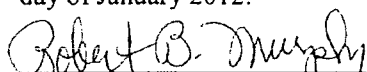
7. Just before 7:30 the morning of Friday, December 16, 2011, I saw Mr. Yelton at an intersection near our offices at ScanSource. He was driving toward the office. We parked on opposite sides of the building. As I came into the building, I saw Mr. Yelton exiting his office and it appeared that he was carrying something. He exited through the break room door by the training room.

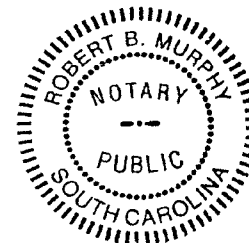
8. On December 31, 2011, I received a text message from Mr. Yelton which asked. "Did you hit \$265M?" This was a reference to whether or not we achieved our Q4 commit number of \$265,000,000. I did not respond. A hard copy of this text message is attached hereto as Exhibit A.

FURTHER AFFIANT SAYETH NOT.


Mark Morgan

SWORN AND SUBSCRIBED before me this 19th
day of January 2012:


Notary Public for South Carolina
My Commission Expires: October 12, 2017



AT&T

10:58 AM

94%

Messages

Jeff Yelton

Edit

Call

FaceTime

Contact

iMessage

Dec 30, 2011 5:11 PM

Will you hit \$265m?



iMessage

Send

AFFIDAVIT OF AMY PHARR

FILED-CLERK OF COURT
 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)
 2012 JAN 24 A.M.

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)
 Plaintiff,)
)
 vs.)
)
 ScanSource, Inc.,)
)
 Defendant.)
)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) AFFIDAVIT OF AMY PHARR

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Amy Pharr
 who, being duly sworn, deposes and says:

1. I am Director, Compensation, in the Human Resources department of
 ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource
 continuously since 2003.

2. I am competent to give this affidavit and have personal knowledge of its contents.
 I give this affidavit under penalty of perjury.

3. Until December 2011, the plaintiff in this action, Jeffrey Yelton, was President of
 ScanSource's POS/Barcode business unit.

4. In connection with his imminent departure from ScanSource's employ, I met with
 Mr. Yelton at approximately 7:45 a.m. on Friday, December 16, 2011. This was his last day at
 the ScanSource office.

5. When we met, Mr. Yelton showed me the files that remained in his office that HR would want to remove; these were personnel files of his direct reports. At that time I saw that his office had been completely cleaned out. All of the papers, notebooks, files, books, and other items that I had observed in his office before had disappeared. All that remained in Mr. Yelton's office were the office furniture (desk, chair, bookshelves), the company laptop he had referred to and that was on top of his desk, and the personnel files mentioned above which were in a drawer of the file cabinet in his office.

6. After meeting with Mr. Yelton, he departed and I returned to his office to collect his laptop.

7. When I tried to turn off the laptop Mr. Yelton had left on his desk, it would not shut down. I locked it in an HR confidential file cabinet until later when I turned it over to Scott Benbenek.

FURTHER AFFIANT SAYETH NOT.

A. Pharr

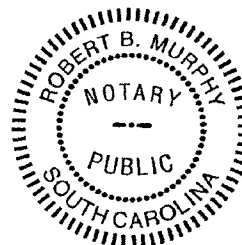
Amy Pharr

SWORN AND SUBSCRIBED before me this 19th
day of January 2012:

Robert B. Murphy

Notary Public for South Carolina

My Commission Expires: October 12, 2017



AFFIDAVIT OF CHRIS SPEARMAN

STATE OF SOUTH CAROLINA) FILED-CLERK OF COURT
) GREENVILLE CO. S.C.
) JEFF WICKENHIMER
) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2012 JAN 24 A 10:50

Jeff Yelton,) Civil Action No. 2012-CP-23-0314
)
 Plaintiff,)
)
 vs.)
)
 ScanSource, Inc.,)
)
 Defendant.)

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF CHRIS SPEARMAN
 COUNTY OF GREENVILLE)

PERSONALLY APPEARED BEFORE me, the undersigned Notary Public, Christopher Spearman who, being duly sworn, deposes and says:

1. I am a Team Leader reporting to Ansley Hoke, Director of Merchandising for ScanSource, Inc. ("ScanSource"), Defendant in this action; I have been employed by ScanSource continuously since 2001.

2. I am competent to give this affidavit and have personal knowledge of its contents. I give this affidavit under penalty of perjury.

3. Until December 2010, the plaintiff in this action, Jeffrey Yelton, then President of ScanSource's POS and Barcoding North America business unit, was the supervisor of my immediate supervisor.

4. Sometime on Tuesday or Wednesday, December 13 and 14, Mr. Yelton came to me and asked me to download the last vendor quarterly business report for Motorola onto a thumb drive that he had in his hand. He did not tell me why he wanted this information. He

stood there and waited for me to download the information. Because I could not immediately locate the report, I asked him to leave the thumb drive with me. I found the report, downloaded it, and then took the thumb drive back to him.

5. Later that day I overheard a conversation between Mr. Yelton and Stephen Fowler, a Product Manager who works with me. In that conversation, Mr. Yelton asked Mr. Fowler to provide him with the quarterly business report for Honeywell; he also asked Mr. Fowler to create some slides for him.

6. The quarterly business reports that Mr. Yelton referred to are known within the company as "QBRs." QBRs contain detailed background information on purchases by each major ScanSource customer over at least twelve (12) quarters; this information includes sales, margin, profit, revenue, market share, long term plans, etc.

7. Initially, I did not think anything of either Mr. Yelton's conversation with me or the conversation I overheard him having with Mr. Fowler, as I did not know then that Mr. Yelton's employment with ScanSource was ending soon. It was not until later that evening that I received an email from Jeff Yelton that advised that Mr. Yelton was leaving the company. I talked to Mr. Fowler about Mr. Yelton's earlier request, and we agreed that it was unusual.

8. I later learned from other Directors of Merchandising that Mr. Yelton had also asked them to download confidential ScanSource customer information onto a thumb drive that he provided.

9. Because of these requests, I informed Ansley Hoke my supervisor and the Merchandising Directors met with Scott Benbenek the afternoon of January 4, 2012, to advise him of these requests.

10. The Motorola QBR that Mr. Yelton asked me to send from my home email or to download on a memory stick contains highly confidential customer information belonging to ScanSource. Specifically, for example, that list contains marketing plans, Motorola initiatives for 2012, and customer sales for calendar year 2010 and 2011, large opportunities for the upcoming year, and customer levels in the Motorola partner program. Were this information to fall into the hands of a ScanSource competitor, it would enable that competitor to target specific customers with significant revenue through ScanSource, gain insight to the ScanSource business plan for Motorola products, and margins and strategy for specific customers purchasing Motorola product from ScanSource, among other things.

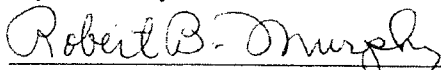
11. ScanSource has made it very clear to me and others in the company that lists such as the Motorola customer list that Mr. Yelton requested are extremely confidential and that we are to protect this information from disclosure and are not to reveal it to anyone outside the company:

FURTHER AFFIANT SAYETH NOT.



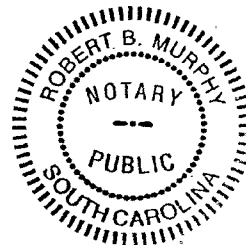
Christopher Spearman

SWORN AND SUBSCRIBED before me this 19th
day of January 2012:



Notary Public for South Carolina

My Commission Expires: October 12, 2017



12-0314

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified via mail, hand delivery and electronic mail to the following address(es):

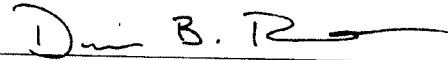
Pleadings:

DEFENDANT SCANSOURCE'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Counsel Served:

Brian P. Murphy, Esquire
514 Pettigru Street
Greenville, SC 29601
brian@brianmurphylawfirm.com

Attorney for Plaintiff



January 24, 2012.

FILED-CLERK OF COURT
SOUTH CAROLINA
2012 JAN 24 A 10:50

State of South Carolina

County of Greenville

) IN THE COURT OF COMMON PLEAS

) 2012-CP-23-0314

Jeff Yelton,

Plaintiff,

v.

ScanSource, Inc.,

Defendant.

) Documents in Opposition to
) Defendant's Motion for Temporary
) Restraining Order and Preliminary
) Injunction
)
)

2012 JAN 27 AM 9:14
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKENSHED

Tab	Document
1	Plaintiff's Affidavit with exhibit
2	File list of Cisco flash drive
3	File list of Accubanker flash drive
4	Web site list of vendors
5	SEC Annual Report list of vendors
6	<u>Atwood Agency v. Black</u>
7	<u>Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.</u>
8	<u>Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.</u>

EXHIBIT 1

State of South Carolina

County of Greenville

) **IN THE COURT OF COMMON PLEAS**

)

) **2012-CP-23-0314**

Jeff Yelton,

Plaintiff,

v.

ScanSource, Inc.,

Defendant.

)

)

)

)

) **Plaintiff's Affidavit in Opposition to**

) **Defendant's Motion for Temporary**

) **Restraining Order and Preliminary**

) **Injunction**

)

)

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. I have not sought work with any other distributor and do not have an intention at this time to do so.
2. Since the termination of my employment, I have not performed any services for anyone as an employee or independent contractor.
3. I have not disclosed any confidential information of ScanSource to any competitor of ScanSource, or to anyone else.
4. I agree that QBR (quarterly business review) documents contain information that ScanSource would not want to provide to a competitor and that, if given to a competitor, it could help them to the disadvantage of ScanSource.
5. I do not have any QBR's in my possession of which I am aware and have not had any since I left the Company. I did not take any QBR's when I left. Defendant's suggestion that I took any documents is false. Prior to the termination of my

employment, I did request to review the most recent QBR's for Motorola, Honeywell, and Intermec. A QBR is a report on the status of the business for the vendor and is shared with the vendor. There is nothing secretive about the information as between the particular vendor and ScanSource as the information (including the document itself) is shared between them. And there was nothing "surreptitious" about my request. I wanted to review the reports because I planned on possibly seeking work with these companies. I wanted to make sure it was clear that I was knowledgeable about the state of their business. If I interviewed and did not display knowledge regarding the state of the vendor's business, it would have reflected poorly not only on myself, but also on ScanSource. There never was any intent or effort to use any QBR information to the detriment of ScanSource, and certainly no desire, intent, or attempt to use it to compete against ScanSource or to disclose it to any competitors. Again, this is information already provided to the vendor and me.

6. If I wanted to secretly, or "surreptitiously" obtain the QBR documents, I could have pulled them off of the servers myself and, in fact, the documents may have been in my emails. I simply asked various people for the QBR's because it was the quickest and easiest way. I requested the information in what I call the "bullpen" area where the cubicles are located. As Mr. Spearman's affidavit establishes, I made the requests in a manner in which others could easily hear me.
7. I have had contact with Motorola, Honeywell, and Intermec. I have discussed possible employment with Motorola and Honeywell.

8. My intention when I learned I was leaving ScanSource was to obtain employment with a vendor.
9. I e-mailed Jim Welch at Motorola and a contact at Honeywell (two vendors) for purposes of inquiring about employment and discussing certain industry views. The first e-mail to Welch is attached to the Eassy affidavit. I have actually had contact with both, but none of the information ultimately exchanged has anything to do with ScanSource or its confidential information. Instead, the information I provided them describes the strategies I was considering for my new venture or work with them.
10. I cleaned out my office on Thursday, December 15 and Friday, December 16. I was instructed by Mike Bauer and John Ellsworth to clean out my office at this time. It took several trips as I had many personal items and papers pre-dating my employment with ScanSource that I kept in my office. With respect to company papers, I put documents that were not confidential in the regular trash. I put copies of documents that contained business information that were in my office in a secured trash can designated for confidential documents. To the best of my knowledge, I did not destroy or discard any documents that are not stored at ScansSource but only notes I had that would not be of any use to anyone else or paper copies of documents that are stored electronically.
11. The suggestion that I have told anyone that I took documents about which I do not know the whereabouts now is completely false. I explained, in detail, what I did with respect to the documents in my office when questioned by Scott Benbenek.

12. I did not remove company documents or electronic files when I left. I did not remove from company premises hard copies of ScanSource reports and records or an external hard drive as claimed by ScanSource.
13. When I left the office the QBR documents were on a flash drive that was in my office. To the extent that drive "disappeared," I certainly have no knowledge as to how that would have happened since it was there when I left.
14. The documents that are on the flash drives that I provided to my counsel for the purpose of returning to ScanSource are not documents from my ScanSource office. The flash drive files I have turned over contain documents that were on a backup drive at home that backed up my hard drive in the normal course of my work. I put these documents on the flash drive so they could be returned. I would be surprised if the QBR documents provided to me in December are on those flash drives. The only way that would have happened that I can imagine is if the QBRs were sent earlier in an email that was in the Dropbox at the time of a backup. I am not, however, aware that they are on those drives. In any event, any suggestion that either of the flash drives I have turned over is the same flash drive that was in my office would be incorrect.
15. I deleted data off of my laptop hard drive because I kept personal records on that computer. I did not destroy any company documents or data as it is all stored on ScanSource servers.
16. On January 4, I informed ScanSource of my plans to start a technology manufacturing outsourcer for education, marketing, and lead generation called

VarsGuide. A copy of my email is attached. I am still considering this as an option to working directly for a vendor.

17. With respect to Ms. Aiken's affidavit:

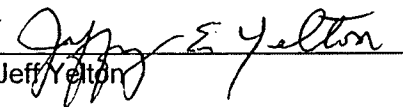
- a. Re paragraph 5: I have no understanding what Ms. Aiken is referring to about a list with 18,000 customers, I don't know what a "Dell list" is, or that there is any "Dell customer list." To the best of my knowledge, Dell is not a vendor of ScanSource. I certainly did not ask Ms. Aiken for such a list.
- b. HP is not a current vendor of ScanSource, except that another division buys one product of which I am aware that has nothing to do with point of sale or bar coding division. The HP document does not contain a list of ScanSource customers. From what I understand there is very little overlap between ScanSource customers and HP customers such that an HP list would be useful in any attempt to compete against ScanSource if one was so inclined. I did not request the list for the purpose of competing with ScanSource. Nor was my request for the purpose of competing with HP. I was trying to get a better understanding of what possible customers could be served by a Honeywell product for which HP has no competitive product. The Honeywell product is sold by ScanSource. The HP document does not actually contain information proprietary to ScanSource. Nonetheless, as she states, Ms. Aiken never provided such information and I was not requesting it for purposes of competing with ScanSource.

18. Mr. Benbenek's statements regarding our conversations are not accurate.
- a. Benbenek told me that he wanted me to resign. My agreement to do so was part of our agreement that it would be considered a termination without cause, and I executed the agreement in exchange for promised compensation and benefits.
 - b. My conversation with Mark Morgan was between just me and him. No one else was present. Morgan had made comments multiple times about ScanSource being Mike Bauer's company, as have other members of management. Mr. Morgan also has had ongoing conversations with me regarding Mr. Bauer's conduct towards employees and has discussed other serious issues involving Mr. Bauer, some of which Scott Benbenek has also discussed with me regarding the risks to which Mr. Bauer has exposed the company. The statements Mr. Benbenek and others have relayed to me about Mr. Bauer are of a far more serious level than my concerns that Mr. Bauer preferred executives who would not disagree with him.
 - c. I never told Mr. Benbenek that I took any flash drives or hard drives containing company information as he states. The statement that I said "I got the thumb drive before I was leaving" is not accurate as stated. If Mr. Benbenek is saying that I said I got the QBR files that were on the drive before I knew I was leaving, I did not say that as I reviewed them after I knew I was leaving. If, however, he is referring to the thumb drive device itself, it is accurate that I acquired that device before I knew I was leaving.

19. With respect to Robbie Cox's affidavit:
- a. I only requested to review the last QBR for Intermec;
 - b. To the best of my knowledge, Intermec is not a ScanSource customer as he states and the last time it was as I recall was approximately 5-6 years ago;
 - c. Intermec is a vendor. QBR's are for vendors, not customers;
 - d. There would not be a QBR report for "purchases by that ScanSource customer" as stated in paragraph 5;
 - e. With respect to paragraph 8, I am not aware of the Intermec customer list to which he is referring unless he is referring to data in the QBR document.
20. With respect to Mark Morgan's affidavit and the attached e-mail, I inquired about hitting the \$265 Million Dollar mark because my bonus is based on that goal. This is information to which I am entitled, but the only purpose for which I inquired was to understand my compensation.
21. Amy Pharr never asked me about any files if she thought files were missing. We reviewed the files in the office.
22. I installed Dropbox on my computer. My best recollection is that I did so approximately two years ago. Dropbox and Evernote were products used by ScanSource employees to allow us to work on documents on different computers. I learned about Dropbox from employees on the Motorola team at work. Other ScanSource employees have told me about their use of Dropbox, including a current Director. It was a way of facilitating work and it allowed me to work from home or while on the road. It provides better access and more security than the thumb drives, which I previously used to take work back and forth.

23. The Dropbox account in use when I was employed with ScanSource was tied to my ScanSource e-mail account. When my ScanSource e-mail was deactivated (or I no longer had access) there was no further syncing of files. I deleted the Dropbox icon, which I believe caused the files in the folder to be deleted. To the best of my knowledge, they no longer exist on my computer in any accessible form.¹
24. My personal computer at home has personal financial information, personal family information of a confidential nature, and confidential e-mails, including attorney-client communications. I would object to giving ScanSource unfettered access to all files on my home computer.
25. I did use my home computer through the years to do work at home. It is very likely that, if a forensic examination can detect deleted and inaccessible files, such an examination would show that I worked at home while employed at ScanSource.
26. The identity of vendors used by ScanSource is not a secret, but something that the Company makes public.

Respectfully submitted this 26th day of January, 2012.


Jeff Yelton

Sworn to and subscribed before me
this 26th day of January, 2012



Notary Public - South Carolina
my commission expires 9/11/14

¹ I have since created a new Dropbox account with a different e-mail address, but it would have no ability to sync with any ScanSource computer.

Attorney-Client Privilege

From: **Jeff Yelton** <jyelton215@gmail.com>
Date: Wed, Jan 4, 2012 at 8:02 PM
Subject: What I'm Going to Do
To: Scott Benbenek <scott.benbenek@scansource.com>

Just so you know and can relax, I'm starting a company called VarsGuide with the help of John Hoffman and will following a business plan that he used to start a company called Right Source. This is the company that John Black used to work for after IBM. John used to work for IBM before he started Right Source and is a friend.

The company will outsource education and marketing events for technology manufacturers. This will be non-competitive with ScanSource. In fact, it should should help increase the sales for ScanSource if it is successful.

As you can see I have no need for any information from ScanSource.

I have no animosity against anyone at ScanSource. I enjoyed my time there and I'm looking forward to my next opportunity. I hope this helps resolve any concerns you have. I reviewed my drop box files and have nothing in it that is ScanSource confidential.

Jeff

EXHIBIT 2

F:\

Name	Size	Type	Last Modified	
Scansource Revs 5-26-09.docx	24KB	Microsoft Office Word Document	6/16/2009 11:07 AM	
Roger CCD Network 4-10-08.xls	17KB	Microsoft Office Excel 97-2003 Worksheet		4/7/2004 12:05 AM
ScanSource 2005 Business Plan.doc	47KB	Microsoft Office Word 97 - 2003 Document		6/9/2005 2:48 PM
IMG_2427.jpg	504KB	JPEG image	4/23/2008 6:58 PM	
IMG_2428.jpg	934KB	JPEG image	4/23/2008 6:58 PM	
IMG_2429.jpg	806KB	JPEG image	4/23/2008 6:58 PM	
IMG_2430.jpg	754KB	JPEG image	4/23/2008 6:58 PM	
IMG_2431.jpg	782KB	JPEG image	4/23/2008 6:58 PM	
IMG_2432.jpg	720KB	JPEG image	4/23/2008 6:58 PM	
IMG_2433.jpg	830KB	JPEG image	4/23/2008 6:58 PM	
IMG_2434.jpg	1,058KB	JPEG image	4/23/2008 6:58 PM	
IMG_2435.jpg	408KB	JPEG image	4/23/2008 6:58 PM	
IMG_2436.jpg	462KB	JPEG image	4/23/2008 6:58 PM	
IMG_2437.jpg	413KB	JPEG image	4/23/2008 6:58 PM	
IMG_2438.jpg	472KB	JPEG image	4/23/2008 6:58 PM	
IMG_2439.jpg	543KB	JPEG image	4/23/2008 6:58 PM	
IMG_2440.jpg	785KB	JPEG image	4/23/2008 6:58 PM	
IMG_2441.jpg	718KB	JPEG image	4/23/2008 6:59 PM	
IMG_2442.jpg	912KB	JPEG image	4/23/2008 6:59 PM	
IMG_2448.jpg	332KB	JPEG image	4/23/2008 6:59 PM	
IMG_2449.jpg	357KB	JPEG image	4/23/2008 6:59 PM	
IMG_2450.jpg	365KB	JPEG image	4/23/2008 6:59 PM	
IMG_2451.jpg	346KB	JPEG image	4/23/2008 6:59 PM	
IMG_2452.jpg	309KB	JPEG image	4/23/2008 6:59 PM	
IMG_2453.jpg	378KB	JPEG image	4/23/2008 6:59 PM	
IMG_2454.jpg	378KB	JPEG image	4/23/2008 6:59 PM	
IMG_2455.jpg	357KB	JPEG image	4/23/2008 6:59 PM	
IMG_2456.jpg	369KB	JPEG image	4/23/2008 6:59 PM	
IMG_2457.jpg	345KB	JPEG image	4/23/2008 6:59 PM	
IMG_2458.jpg	326KB	JPEG image	4/23/2008 6:59 PM	
IMG_2460.jpg	461KB	JPEG image	4/23/2008 6:59 PM	
IMG_2461.jpg	339KB	JPEG image	4/23/2008 6:59 PM	
IMG_2462.jpg	400KB	JPEG image	4/23/2008 6:59 PM	
IMG_2464.jpg	305KB	JPEG image	4/23/2008 6:59 PM	
IMG_2465.jpg	343KB	JPEG image	4/23/2008 6:59 PM	
IMG_2466.jpg	397KB	JPEG image	4/23/2008 6:59 PM	
IMG_2467.jpg	632KB	JPEG image	4/23/2008 6:59 PM	
IMG_2468.jpg	400KB	JPEG image	4/23/2008 6:59 PM	
IMG_2469.jpg	370KB	JPEG image	4/23/2008 6:59 PM	
IMG_2470.jpg	403KB	JPEG image	4/23/2008 6:59 PM	
IMG_2471.jpg	421KB	JPEG image	4/23/2008 6:59 PM	
IMG_2472.jpg	396KB	JPEG image	4/23/2008 6:59 PM	
IMG_2473.jpg	323KB	JPEG image	4/23/2008 6:59 PM	
IMG_2474.jpg	323KB	JPEG image	4/23/2008 6:59 PM	
IMG_2476.jpg	358KB	JPEG image	4/23/2008 6:59 PM	
IMG_2477.jpg	314KB	JPEG image	4/23/2008 6:59 PM	
IMG_2478.jpg	415KB	JPEG image	4/23/2008 6:59 PM	
IMG_2479.jpg	381KB	JPEG image	4/23/2008 6:59 PM	
IMG_2480.jpg	361KB	JPEG image	4/23/2008 6:59 PM	
IMG_2481.jpg	365KB	JPEG image	4/23/2008 6:59 PM	
IMG_2482.jpg	317KB	JPEG image	4/23/2008 6:59 PM	
IMG_2483.jpg	308KB	JPEG image	4/23/2008 6:59 PM	
IMG_2484.jpg	330KB	JPEG image	4/23/2008 6:59 PM	
IMG_2485.jpg	335KB	JPEG image	4/23/2008 6:59 PM	
IMG_2486.jpg	304KB	JPEG image	4/23/2008 6:59 PM	
IMG_2487.jpg	331KB	JPEG image	4/23/2008 6:59 PM	
IMG_2488.jpg	326KB	JPEG image	4/23/2008 6:59 PM	
IMG_2489.jpg	300KB	JPEG image	4/23/2008 6:59 PM	
IMG_2490.jpg	337KB	JPEG image	4/23/2008 6:59 PM	
IMG_2491.jpg	310KB	JPEG image	4/23/2008 6:59 PM	
IMG_2492.jpg	324KB	JPEG image	4/23/2008 6:59 PM	
IMG_2493.jpg	336KB	JPEG image	4/23/2008 6:59 PM	
IMG_2494.jpg	335KB	JPEG image	4/23/2008 6:59 PM	
IMG_2495.jpg	340KB	JPEG image	4/23/2008 6:59 PM	
IMG_2496.jpg	309KB	JPEG image	4/23/2008 6:59 PM	
IMG_2497.jpg	315KB	JPEG image	4/23/2008 6:59 PM	

IMG_2499.jpg	401KB	JPEG image	4/23/2008 6:59 PM
IMG_2500.jpg	301KB	JPEG image	4/23/2008 6:59 PM
IMG_2502.jpg	318KB	JPEG image	4/23/2008 6:59 PM
IMG_2503.jpg	349KB	JPEG image	4/23/2008 6:59 PM
IMG_2504.jpg	384KB	JPEG image	4/23/2008 6:59 PM
IMG_2505.jpg	448KB	JPEG image	4/23/2008 6:59 PM
IMG_2506.jpg	395KB	JPEG image	4/23/2008 6:59 PM
IMG_2509.jpg	282KB	JPEG image	4/23/2008 6:59 PM

EXHIBIT 3

F:\

Name	Size	Type	Last Modified
2005 SS Merch Strategic Plan.ppt	368KB	Microsoft Office PowerPoint 97-2003 Presentation	6/13/2005 7:08 AM
SS Merch Strategy Brochure3 (2).doc	189KB	Microsoft Office Word 97 - 2003 Document	6/10/2005 3:11 PM
John Bandy-Termination.doc	36KB	Microsoft Office Word 97 - 2003 Document	2/10/2005 4:45 PM
Dept compensation.xls	33KB	Microsoft Office Excel 97-2003 Worksheet	1/31/2005 6:01 PM
Datalogic Terms Letter2.doc	28KB	Microsoft Office Word 97 - 2003 Document	12/9/2011 11:51 AM
Datalogic Terms Letter.doc	27KB	Microsoft Office Word 97 - 2003 Document	12/9/2011 10:54 AM
Jeffs 2011 Presentation Final.pptx	2,836KB	Microsoft Office PowerPoint Presentation	9/13/2011 7:58 AM
Company mtg 7-15 POS.ppt	1,786KB	Microsoft Office PowerPoint 97-2003 Presentation	7/14/2011 4:09 PM
POS combined merit book.xlsx	98KB	Microsoft Office Excel Worksheet	4/11/2011 10:31 AM
Fujitsu Channel Presentation 1.ppt	4,349KB	Microsoft Office PowerPoint 97-2003 Presentation	3/16/2011 7:28 AM
Feb2011PerfEvalScoresMerch.xls	33KB	Microsoft Office Excel 97-2003 Worksheet	2/17/2011 2:00 PM
2011_Future_Path Jeff.ppt	2,873KB	Microsoft Office PowerPoint 97-2003 Presentation	2/1/2011 11:41 AM
2010 Partner Conference.ppt	264KB	Microsoft Office PowerPoint 97-2003 Presentation	9/6/2010 2:35 PM
JY Version POS Merchandising and Tech Support 2010.xlsx	93KB	Microsoft Office Excel	
Worksheet	4/5/2010 2:21 PM		
PerfEvalScoresMerch.xls	33KB	Microsoft Office Excel 97-2003 Worksheet	2/19/2010 3:51 PM
ScanSourceBUSuccessionplan-09.ppt	114KB	Microsoft Office PowerPoint 97-2003 Presentation	11/6/2009 9:42 AM
AccuBANKER_ScanSource Meeting .pdf	1,112KB	Adobe Acrobat Document	10/14/2009 10:35 AM
Blue Ocean Value Curve.jpg	59KB	JPEG image	10/14/2009 10:12 AM
2009 Tech Services Strategy.doc	48KB	Microsoft Office Word 97 - 2003 Document	6/5/2009 7:04 AM
TS Business Plan - TS Present.pptx	612KB	Microsoft Office PowerPoint Presentation	6/5/2009 6:44 AM
NDA-OCR Canada Ltd 09-03-18.docx	20KB	Microsoft Office Word Document	3/18/2009 4:20 PM
MerchRankingQ12009.doc	48KB	Microsoft Office Word 97 - 2003 Document	3/5/2009 4:02 PM
SlsRepRankingQ12009.doc	62KB	Microsoft Office Word 97 - 2003 Document	2/27/2009 11:12 AM
PerfEvalScoresMerchQ109.xls	27KB	Microsoft Office Excel 97-2003 Worksheet	2/20/2009 2:53 PM
Fuel Surcharge Letter (2).doc	23KB	Microsoft Office Word 97 - 2003 Document	1/13/2009 12:27 PM
Ending Fuel Surcharge Letter.doc	20KB	Microsoft Office Word 97 - 2003 Document	1/13/2009 11:04 AM
Fishbein, Michael PXT - SS Merchandising PM.rtf	3,321KB	Rich Text Format	1/13/2009 10:58 AM
ScanSource Merchandising Ranking.doc	21KB	Microsoft Office Word 97 - 2003 Document	12/29/2008 4:03 PM
ScanSourceBU-08.ppt	42KB	Microsoft Office PowerPoint 97-2003 Presentation	11/12/2008 3:07 PM
Revolution 5 27 08.ppt	10MB	Microsoft Office PowerPoint 97-2003 Presentation	10/20/2008 2:37 PM
Nell Announcement.doc	21KB	Microsoft Office Word 97 - 2003 Document	10/16/2008 3:29 PM
2009 Marketing Package Budget 10 1 08.xls	23KB	Microsoft Office Excel 97-2003 Worksheet	10/7/2008 3:30 PM
2008 Sept QBR-DRAFT.pptx	147KB	Microsoft Office PowerPoint Presentation	10/3/2008 4:20 PM
AccuBANKER_What We Do.pdf	1,644KB	Adobe Acrobat Document	7/8/2008 4:53 PM
Fulfillment Presentation 052208.ppt	708KB	Microsoft Office PowerPoint 97-2003 Presentation	5/22/2008 10:37 AM
Merit Spreadsheet - Yelton 08 (3).xls	1,123KB	Microsoft Office Excel 97-2003 Worksheet	3/31/2008 10:18 AM
Merit Spreadsheet - Yelton - Aiken 08.xls	847KB	Microsoft Office Excel 97-2003 Worksheet	3/25/2008 8:13 AM
Merit Spreadsheet - Yelton - Hoke 08.xls	852KB	Microsoft Office Excel 97-2003 Worksheet	3/25/2008 8:13 AM
Merit Spreadsheet - Yelton - McIntosh 08.xls	846KB	Microsoft Office Excel 97-2003 Worksheet	3/24/2008 4:59 PM
Merit Spreadsheet - Yelton - Dotson 08.xls	820KB	Microsoft Office Excel 97-2003 Worksheet	3/24/2008 4:59 PM
Merit Spreadsheet - Yelton - McCurry 08.xls	829KB	Microsoft Office Excel 97-2003 Worksheet	3/24/2008 4:59 PM
PerfEvalScoresQ108Merch-Analysis.xls	74KB	Microsoft Office Excel 97-2003 Worksheet	2/26/2008 9:53 AM
PerfEvalScoresQ108Merch.xls	67KB	Microsoft Office Excel 97-2003 Worksheet	2/25/2008 5:45 PM
VendorPositionFunding08.xls	20KB	Microsoft Office Excel 97-2003 Worksheet	12/27/2007 5:37 PM
FuturePath2006jeffwithcomments.ppt	611KB	Microsoft Office PowerPoint 97-2003 Presentation	12/12/2007 2:48 PM
Nacent Market For Retail Cash Handling Equipment.jpg	60KB	JPEG image	11/2/2007 11:44 AM
Partner Conference 2007.doc	21KB	Microsoft Office Word 97 - 2003 Document	9/10/2007 9:55 PM
ssmerchandising 3-24-07.xls	1,052KB	Microsoft Office Excel 97-2003 Worksheet	3/26/2007 1:59 PM
ssMerchandising 3-20-07.xls	1,051KB	Microsoft Office Excel 97-2003 Worksheet	3/22/2007 2:25 PM
TL vs Director Comp.xls	15KB	Microsoft Office Excel 97-2003 Worksheet	3/8/2007 10:58 AM
StaffRating02-07.xls	19KB	Microsoft Office Excel 97-2003 Worksheet	2/12/2007 11:10 AM
2007 ScanSource roadshow.doc	23KB	Microsoft Office Word 97 - 2003 Document	2/5/2007 9:53 AM
2007 Sym Scanner rebate Mike.doc	25KB	Microsoft Office Word 97 - 2003 Document	1/26/2007 4:27 PM
FuturePath ICAR.ppt	5,638KB	Microsoft Office PowerPoint 97-2003 Presentation	11/1/2006 10:48 AM
FuturePath 2007 Final.ppt	620KB	Microsoft Office PowerPoint 97-2003 Presentation	10/31/2006 4:08 PM
REVISEDFuturePath2006jeff.ppt	604KB	Microsoft Office PowerPoint 97-2003 Presentation	10/25/2006 5:12 PM
Forecasting Worksheet SS Oct - Dec 06.xls	20KB	Microsoft Office Excel 97-2003 Worksheet	10/12/2006 9:04 AM
Dan Bogan Letter 3-2-06.doc	24KB	Microsoft Office Word 97 - 2003 Document	3/2/2006 10:43 AM
Supply Chain Presentation.ppt	2,557KB	Microsoft Office PowerPoint 97-2003 Presentation	2/20/2006 11:27 AM
Rich Cleys Meeting.ppt	1,010KB	Microsoft Office PowerPoint 97-2003 Presentation	2/20/2006 8:23 AM
SSMerchCurPot.ppt	72KB	Microsoft Office PowerPoint 97-2003 Presentation	12/2/2005 5:10 PM
October Company Meeting.ppt	1,239KB	Microsoft Office PowerPoint 97-2003 Presentation	10/27/2005 4:33 PM
Yelton Opening Session.ppt	1,165KB	Microsoft Office PowerPoint 97-2003 Presentation	10/24/2005 9:07 AM
Future Path Mike.ppt	10MB	Microsoft Office PowerPoint 97-2003 Presentation	10/23/2005 10:08 PM
Future Path Mike Hickey.ppt	2,443KB	Microsoft Office PowerPoint 97-2003 Presentation	10/23/2005 9:46 PM

Future Path Greg.ppt	2,328KB	Microsoft Office PowerPoint 97-2003 Presentation	10/21/2005 4:16 PM
newcm.ppt	408KB	Microsoft Office PowerPoint 97-2003 Presentation	10/17/2005 2:40 PM
Sales Template.3.9.High Tech.ppt	2,434KB	Microsoft Office PowerPoint 97-2003 Presentation	10/17/2005 2:40 PM
Presentation_08302000_Symbol.ppt	230KB	Microsoft Office PowerPoint 97-2003 Presentation	10/16/2005 8:12 PM
Fulfillment Program Benefits_5_25_2000.ppt	115KB	Microsoft Office PowerPoint 97-2003 Presentation	10/14/2005 12:42 PM
Presentation_032000_Symbol.ppt	215KB	Microsoft Office PowerPoint 97-2003 Presentation	10/14/2005 12:42 PM
Zebra Pres 4-6-2000.ppt	137KB	Microsoft Office PowerPoint 97-2003 Presentation	10/14/2005 12:41 PM
IB Presentation_03172000_Print.ppt	175KB	Microsoft Office PowerPoint 97-2003 Presentation	10/14/2005 12:41 PM
Intermec Specialty Distributor Discount.doc	30KB	Microsoft Office Word 97 - 2003 Document	9/12/2005 10:14 AM
POS' Strategy Document.doc	72KB	Microsoft Office Word 97 - 2003 Document	9/8/2005 7:42 AM
IBM 7-29-05 Meeting.doc	32KB	Microsoft Office Word 97 - 2003 Document	7/28/2005 2:39 PM
Jeff Y June Mthly.doc	28KB	Microsoft Office Word 97 - 2003 Document	7/22/2005 9:41 AM
Copy of 2005FY Q4-Jeanne Perf.xls	48KB	Microsoft Office Excel 97-2003 Worksheet	7/22/2005 7:42 AM
Team Jeanne - 2005 June Variable.doc	24KB	Microsoft Office Word 97 - 2003 Document	7/22/2005 7:41 AM
Mark Team 2005FYQ4 Bonus Calculations.xls	40KB	Microsoft Office Excel 97-2003 Worksheet	7/21/2005 7:57 AM



Select a ScanSource, Inc. Site



News

Careers

Investor Relations

Site Map

Search


[PRODUCTS](#) [PROMOTIONS](#) [RESELLER SUPPORT](#) [MANUFACTURER PARTNERS](#) [BECOME A RESELLER](#) [COMMUNITY](#)
[Login >](#)[Home](#) > [Manufacturer Partners](#) > [Barcode Printers](#)**MANUFACTURER PARTNERS**[Barcode Printers](#)[Barcode Scanners](#)[Media](#)[Mobile Computers](#)[Network Infrastructure](#)[Point-of-Sale](#)[RFID](#)[Service](#)[All Manufacturers](#)**DISTRIBUTOR OF BARCODE PRINTERS**

In today's fast paced economy, your customers demand efficiency and effectiveness. ScanSource specializes in providing barcode printers and accessories for almost any challenge or situation. Whether the requirement calls for thermal transfer or direct transfer, serial or ethernet, we've got you covered. Our expansive partnership with manufacturers of barcode printers means that our access to inventory is as vast as your needs to fulfill customer orders. Read below for a brief introduction to each of our barcode printer manufacturer partnerships, and then learn how we can become your hardware and services distributor.

BARCODE PRINTERS**COGNITIVE TPG**

CognitiveTPG has a comprehensive line of printing products and supplies to meet your customer's POS and Auto ID needs. CognitiveTPG printers are known for their durability, small footprint and ease of operation. The A798 & A799 POS printers have the best performance to value, suited for retail and hospitality environments. The line of Advantage DLX and C Series barcode label printers excel in harsh environments where printing shipping labels and return to vendor labels are required, and the EZ-LP printer fits a wide range of applications at an attractive price point. With over 35 years experience and millions of installations worldwide, CognitiveTPG offers a prosperous solution.



datamax•oneil
right by our customers

Datamax-O'Neil brings the strength of two leading auto ID companies to form one of the world's largest providers of largest desktop and portable printer solutions. Our printers have a long track record of being technologically advanced, highly reliable and delivering the industry's best return on investment. But we offer more than hardware. We provide solutions that improve our partners business through our deep market knowledge and consultative approach. We value technology, and more importantly, we value relationships.

[Visit the DataMax O'Neil microsite.](#)

Global Technology Systems, Inc., manufacturers of Honeywell Batteries, is a recognized leader in the design, development and manufacture of battery packs, chargers and power management technology for portable devices. GTS provides mobile power solutions for mobile computers, hand held data collection devices and printers, two-way radios, wireless telephones, and uninterruptible power supply (UPS) systems.

[Visit the Honeywell Batteries microsite](#)

Intermec designs and builds the automated data capture industry's most complete lineup of rugged, reliable and versatile equipment. Use Gen2 RFID, bar code systems, rugged computers or a Cisco WLAN infrastructure to create a total solution that harmonizes with your networks, platforms and processes.

[Visit the Intermec microsite.](#)

Avery Dennison/Monarch is a global leader in providing innovative merchandising systems for the retail and apparel industry. Avery Dennison/Monarch designs and manufactures tickets, tags and labels, and provides the technology—including the printers, software control systems

BUY PRODUCTS ONLINE
[Start Shopping >](#)

Download Our Browser Toolbar

Become a ScanSource Reseller

Join our Community

Contact Us | Terms of Use | © 2010 ScanSource, Inc. All rights reserved

ScanSource ScanSource CatalystTelecom. ScanSource
POS & BARCODING SECURITY COMMUNICATIONS

and necessary supplies—for retail product identification. Let Avery Dennison/Monarch build your brand, manage your data and distribute your merchandise throughout the supply chain.

PRINTRONIX

Printronix is the market-leading supplier of line matrix printers, as well as a leading innovator in continuous form laser printers, thermal bar code label printers and online data validation products. Printronix also has become an established leader in pioneering technologies, including radio frequency identification (RFID) printing, bar code compliance and networked printer management. Printronix provided through ScanSource gives you industry leaders across the board.

[Visit the Printronix microsite](#)



RJS scanners and verifiers monitor barcode readability and quality to make sure you are providing the most accurate data in your barcode labels. With their Inspector Series and newest SV Series products, RJS provides the leading hardware in verification products. Whether it's fixed position scanning, high-speed online ANSI verification, portable scanning, or hard to read barcodes, ScanSource and RJS have the solution you need to meet industry specifications!



SATO revolutionized the barcoding industry by introducing the Data Collection System (DCS) & Labeling concept – a total barcode and labeling solution providing high quality barcode printers, scanners/hand-held terminals, label design software and consumables. SATO is one of the first in the industry to introduce a complete, multi-protocol EPC-compliant, UHF RFID solution.

[Visit the SATO microsite](#)

unitech

For the past twenty years, Unitech has been focusing on automatic data collection products and services to enhance productivity and efficiency. Unitech manufactures a full range of AIDC products, including mobile computers, fixed mount computers, bar code scanners, POS keyboards, and MSR readers and encoders.



ZEBRA
TECHNOLOGIES

Zebra Technologies is a leading global provider of rugged and reliable specialty printing solutions, including on-demand thermal bar code label and receipt printers and supplies, plastic card printers, RFID smart label printer/encoders, certified smart media, and digital photo printers. With the most recognized brand in the automatic identification industry and the most complete product line, Zebra solutions are used by more than 90 percent of Fortune 500 and global 2000 companies to improve business processes, increase productivity, and strengthen security. Over five million Zebra printers have been sold worldwide.

[Visit the Zebra microsite](#)

CITIZEN

Citizen Systems engineers receipt printers, POS printers and barcode label printers that make business easier for a world hard at work. Citizen's high-quality, feature-rich products are designed with practicality, reliability and a commitment to their customers in mind. In industries varying from hospitality and restaurant environments to healthcare and small manufacturing organizations, Citizen's array of thermal, impact and barcode label printers (including new blue-tooth enabled mobile printers) perform optimally even in busy, hot or cramped environments.



Select a ScanSource, Inc. Site



News

Careers

Investor Relations

Site Map

Search


[PRODUCTS](#) [PROMOTIONS](#) [RESELLER SUPPORT](#) [MANUFACTURER PARTNERS](#) [BECOME A RESELLER](#) [COMMUNITY](#)
[Login >](#)[Home](#) > [Manufacturer Partners](#) > Barcode Scanners**MANUFACTURER PARTNERS**[Barcode Printers](#)[Barcode Scanners](#)[Media](#)[Mobile Computers](#)[Network Infrastructure](#)[Point-of-Sale](#)[RFID](#)[Service](#)[All Manufacturers](#)**BARCODE SCANNERS AND READERS**

Here at ScanSource, we partner with industry leaders to bring you the latest and greatest barcode scanners and readers. Our manufacturing partners are on the cutting edge in barcode data capture technology. By developing a relationship with these partners, we're able to bring you this scanner technology, combined with a keen knowledge of the systems with which to integrate them. We invite you to browse our extensive list of barcode scanner manufacturer partners below for more details.

DATALOGIC[View the Datalogic Microsite](#)**Honeywell**[View the Honeywell Microsite](#)[View the Intermec Microsite](#)**MOTOROLA SOLUTIONS**

Value Added Distributor

[View the Motorola Microsite](#)**Metrologic**

Metrologic is now part of Honeywell

[View the Honeywell Microsite](#)**OPTICON**

always scanning for new ID's

[View the Opticon Microsite](#)

Value Added Distributor

<http://citizen-systems.com>**BARCODE SCANNERS****BUY PRODUCTS ONLINE** [Start Shopping >](#) [Download Our Browser Toolbar](#)**Become a ScanSource Reseller** [Join our Community](#)[Contact Us](#) | [Terms of Use](#) | © 2010 ScanSource, Inc. All rights reserved.ScanSource
POS & BARCODINGScanSource
SECURITY

CatalystTelecom

ScanSource
COMMUNICATIONS



Select a ScanSource, Inc. Site



News

Careers

Investor Relations

Site Map

Search


[PRODUCTS](#) [PROMOTIONS](#) [RESELLER SUPPORT](#) [MANUFACTURER PARTNERS](#) [BECOME A RESELLER](#) [COMMUNITY](#)
[Login >](#)[Home](#) > [Manufacturer Partners](#) > [Point-of-Sale](#)**MANUFACTURER PARTNERS**[Barcode Printers](#)[Barcode Scanners](#)[Media](#)[Mobile Computers](#)[Network Infrastructure](#)[Point-of-Sale](#)[RFID](#)[Service](#)[All Manufacturers](#)**A LEADING POINT-OF-SALE PRODUCTS DISTRIBUTOR PARTNERING WITH MAJOR MANUFACTURERS**

At ScanSource, we take great pride in being a world class point-of-sale (POS) distributor. Without the valuable partnerships that we have created with the leading POS manufacturers, we would not be able to provide our resellers with the products and solutions that we do. It is these partnerships that allow us to fully customize solutions for a variety of point-of-sale scenarios, in many industries. Below is an extensive list of the partnerships that we've cultivated in order to become a premier POS products distributor. Browse the list to learn more about how we can incorporate these point-of-sale companies into an integrated solution for the POS needs that your customers face today. To find out how to become a POS Reseller, contact us or [start an application](#) today!

POINT-OF-SALE

3M Touch Systems was created in 2001, after 3M acquired two established touchscreen companies, Dynapro Systems and MicroTouch Systems. 3M Touch Systems is a business group of the Optical Systems Division of 3M and consists of three business groups: Touch Screen Sensors, Touch Monitors, and Specialty Sensor Products. Primary touch markets include Gaming/entertainment, point-of-sale (POS), point-of-information (POI), self-service kiosks, financial, portable, handheld, and consumer products. MicroTouch Monitors

**by Schneider Electric**

American Power Conversion provides protection against many of the primary causes of data loss, hardware damage and downtime. APC is a leading provider of global, end-to-end AC and DC-based back-up power products and services, which include surge suppressors, uninterruptible power supplies (UPS), power conditioning equipment, power management software, and DC power systems as well as precision cooling equipment, and professional and consulting services for Nonstop Networking™. From desktop systems to data center operations to entire facilities, APC sets the standard for quality, innovation and support for power protection solutions. APC focuses on applications for both home and corporate environments. Its comprehensive solutions improve the manageability, availability and performance of sensitive electronic, network, communication and industrial equipment of all sizes.

**The Recognized Leader**

For over 25 years, APG has been designing and delivering cash drawers and related products used in a variety of retail environments including fast food, hospitality, gasoline service stations, grocery, convenience stores, postal, and concessions. A broad range of heavy duty, standard duty, and customized cash drawer solutions is offered with a variety of sizing, color and interface options. Integration products are also available to organize the POS installation into a clean, integrated workstation, along with a variety of accessories to complement your cash drawer.

[Visit the APG microsite.](#)

With the industry's best products, services and support, Cherry provides the most advanced keyboard solutions available for ANY application need. From Healthcare to Security, POS to the office, Government to Industrial. If the need is added security of biometrics to smart card readers, or spill-resistant to completely washable, Cherry offers a broad range of versatile keyboards and accessories.

Citizen Systems engineers receipt printers, POS printers and barcode label printers that make business easier for a world hard at work. Citizen's high-quality, feature-rich products are

BUY PRODUCTS ONLINE [Start Shopping >](#)[Download Our Browser Toolbar](#)**Become a ScanSource Reseller**[Join our Community](#)

Contact Us | Terms of Use | © 2010 ScanSource, Inc. All rights reserved.

ScanSource POS & BARCODING
ScanSource SECURITY
CatalystTelecom.
ScanSource COMMUNICATIONS

CITIZEN

designed with practicality, reliability and a commitment to their customers in mind. In industries varying from hospitality and restaurant environments to healthcare and small manufacturing organizations, Citizen's array of thermal, impact and barcode label printers (including new blue-tooth enabled mobile printers) perform optimally even in busy, hot or cramped environments.

COGNITIVE TPG

CognitiveTPG has a comprehensive line of printing products and supplies to meet your customer's POS and Auto ID needs. CognitiveTPG printers are known for their durability, small footprint and ease of operation. The A798 & A799 POS printers have the best performance to value, suited for retail and hospitality environments. The line of Advantage DLX and C Series barcode label printers excel in harsh environments where printing shipping labels and return to vendor labels are required, and the EZ-LP printer fits a wide range of applications at an attractive price point. With over 35 years experience and millions of installations worldwide, CognitiveTPG offers a prosperous solution.

DATALOGIC

Datalogic is the third largest world producer and leader in Europe for bar code readers, data collection mobile computers, and RFID systems. Datalogic offers outstanding and innovative business solutions in numerous markets, including retail, manufacturing, transport and logistics.

[Visit the Datalogic microsite](#)



datamax-o'neil
right by our customers.

Datamax-O'Neil brings the strength of two leading auto ID companies to form one of the world's largest providers of largest desktop and portable printer solutions. Our printers have a long track record of being technologically advanced, highly reliable and delivering the industry's best return on investment. But we offer more than hardware. We provide solutions that improve our partners business through our deep market knowledge and consultative approach. We value technology, and more importantly, we value relationships.

[Visit the DataMax O'Neil microsite](#)



Digi International is the leader in device networking for business, developing reliable products and technologies to connect and securely manage local or remote electronic devices over the network or via the web. Digi's enterprise solutions include cellular gateways, Wi-Fi device servers, video and sensor products, USB connectivity, zero-clients, serial-servers, serial cards, embedded solutions, single board computers, and ZigBee and RF radio modules.



Elo TouchSystems, a Tyco Electronics business, invented touch technology and for nearly 40 years it has led the industry in introducing innovative touchscreen solutions. Today Elo develops, manufactures and markets a complete line of touch products that simplify the interface between people and computers in both public-access and employee-activated applications, selling in more than 40 countries around the world. Touch input solutions have become more widespread – even becoming the de facto standard for certain applications. Elo offers the largest selection of touchscreen technologies, LCD touch computers and touch monitors, and carefully designs each product for the demanding requirements of diverse applications, such as industrial, medical, POS, kiosks, retail, hospitality, transportation, office automation, gaming, and government markets.

ScanSource offers the largest Elo inventory, on-time delivery from our 600,000-square-foot distribution center, technical support for all Elo products, online ordering, Partner Marketing services, and customer financing.

[Visit the Elo microsite.](#)

EPSON®

EXCEED YOUR VISION

Epson is one of the leading suppliers of advanced POS technology solutions and services for a wide range of industries including retail, banking, hospitality and supermarkets. The Epson System Device Group, a division of Epson America, Inc., is responsible for the sales, marketing, distribution, service and support throughout the US, Canada and Latin America. Epson America, Inc. is the US affiliate of Japan-based Seiko Epson Corporation, a global manufacturer and supplier of high-quality technology products.

[Visit the Epson microsite.](#)

FUJITSU

Fujitsu provides superior Retail Point-of-Sale solutions designed to fill the gaps in your customers' stores, enterprise, and data center needs. Built on this solid foundation, in partnering with ScanSource, Fujitsu provides powerful channel programs fostering strong collaboration to sell and deliver world class hardware, software, and solutions. Visit the [Fujitsu Accelerator Channel Partner Program](#) page to learn more and register to become a partner now.

Honeywell Scanning & Mobility is a leading manufacturer of high-performance image- and laser-based data collection hardware, including rugged mobile computers and **barcode scanners**. Honeywell's product portfolio is one of the broadest in the AIDC Industry, providing customers with solutions for vertical markets, such as retail, healthcare, and transportation and logistics. Honeywell complements its innovative products with advanced software, service and professional solutions that enable customers to effectively manage data and assets. Honeywell products are sold worldwide through a network of distributor and reseller partners. For more information on Honeywell, contact your ScanSource sales representative at 800.944.2432.

[Visit the Honeywell microsite.](#)



With more than 30 years of point-of-sale (POS) market leadership, IBM and its network of IBM Business Partners provide retailers of all sizes store solutions that can help increase sales and reduce costs.

[Visit the IBM Point-of-Sale microsite](#)

ID TECH

Value through Innovation

ID TECH designs and manufactures a wide range of Automatic Identification Products & components, which include MagStripe, Smart & Contactless Card Reader/Writers, Bar Code readers, CCD scanners, POS Keyboards, and Secure PIN Entry products. ID TECH supports its customers with standard products and custom solutions for the Point of Sale, Hospitality, Access Control, Transportation, Gaming, and Kiosk Industries. Products provide practical, economical solutions to customers needs.



LOGIC CONTROLS, INC. is a manufacturer of best-of-breed hardware for PC-based point-of-sale (POS) peripherals, kitchen display systems, and industrial computers. Drawing on 20 years of expertise in hardware design and manufacturing, Logic Controls' products are known in the market for their reliability, advanced functionality and value.

[Visit the Logic Controls microsite](#)



Since 1972, MagTek has been a leading manufacturer of electronic devices and systems for the reliable issuance, reading, transmission and security of cards, checks, PINs and other identification documents. Leading with innovation and engineering excellence, MagTek is known for quality and dependability. Its products include secure card readers, check scanners.

PIN pads and distributed credential issuing systems. These products are used worldwide by financial institutions, retailers, hotels, law enforcement agencies and other organizations to provide secure and efficient electronic payment and identification transactions.
[Visit the MagTek microsite.](#)

Metrologic

Metrologic is now part of Honeywell

Metrologic is now a part of Honeywell! Honeywell is a worldwide leading manufacturer of data collection and management solutions for in-premise, mobile, and transaction processing applications. Through its exclusive Adaptus® Imaging Technology platform, Honeywell delivers product solutions that improve productivity, lower costs, and enhance customer service.

[Visit the Honeywell microsite.](#)

Microsoft

Microsoft Dynamics Retail Management System (RMS) offers small and mid-market retailers a complete point-of-sale (POS) solution that can be adapted to meet unique retail requirements. This powerful software package automates POS processes and store operations, provides centralized control for multi-store retailers, and integrates with Microsoft Office system programs, Microsoft Dynamics GP, and other popular applications. Microsoft Dynamics RMS is built on a proven Microsoft platform that adapts to meet unique and changing retail needs.

[Visit the Microsoft microsite.](#)

[Visit the Microsoft Business Solutions microsite](#)



MMF POS is the leading supplier of cash drawers and accessories to POS/Retail distributors and many OEM manufacturers in North America. MMF POS also provides "custom designs" to OEMs requiring cash drawers, enclosures, and/or platforms that meet specific system configuration requirements.

[Visit the MMF microsite.](#)



MOTOROLA SOLUTIONS

Value Added Distributor

Motorola Solutions serves both enterprise and government customers with core markets in public safety government agencies and commercial enterprises. Motorola's leadership in these areas includes public safety communications from infrastructure to applications and devices such as task-specific mobile computing devices for enterprises. Motorola produces advanced data capture devices such as barcode scanners and RFID (radio-frequency identification) products for business. Motorola also brings wireless local area networks – or WLAN – to retail enterprises.

[Visit the Motorola microsite.](#)



NCR is leading the way in the new world of retail interactions, helping retailers interact, transact and connect with consumers in revolutionary new ways. NCR manufactures Point-of-Sale Systems and Peripherals, including terminals, all in ones, printers, cash drawers, and scanners. NCR is also the global leader in self- and assisted-service. NCR's kiosks and self-checkout systems are changing the way retailers interact with their customers.

[Visit the NCR Corporation microsite](#)

Panasonic

Panasonic provides components and design solutions to leading manufacturers in the electronics, computer, communications, and home appliance industries, among others. Let Panasonic meet your specific design needs, wherever in the world you manufacture. Panasonic's POS solutions include printers, mobile computers, integrated systems, and monitors and plasma screens.



ParTech, Inc. (PAR) has been a leading provider of restaurant and retail technology for more than 30 years with point-of-sale (POS) systems in more than 50,000 restaurants in more than 110 countries. We offer technology solutions for the full spectrum of restaurant operations, from large chain and independent table service restaurants to international QSR chains.

[Visit the ParTech microsite.](#)



With today's demanding applications, you need a reliable partner who can offer products with consistent quality and service. Pioneer POS designs and manufactures state-of-the-art touchscreen systems with longer shelf-life. Pioneer POS's products have been deployed into industries like restaurant, bar, hotel, airport, retail store, casino, labor management, manufacturing floor, hospital, nursing home, kiosk, and many other demanding applications.

[Visit the PioneerPOS microsite.](#)



Established in 2002, POS-X is a company born to fulfill the need for fully integrated POS solutions for today's retail and restaurant operations. Designed to work in harmony with guaranteed performance and compatibility right out of the box, POS-X products remove the guesswork from point of sale! Our commitment to quality and value is uncompromising - POS-X offers better flexibility, more customization choices and unparalleled warranties.

PrehKeyTec

PrehKeyTec is a leading manufacturer and supplier of advanced data input devices with an industry reputation for highly reliable products. Preh's solutions are installed in demanding operating conditions requiring high-quality data entry systems. Our keyboards adapt to your customer's ever-changing business. Preh's Application Specific Keyboards (ASK) are ideal for use in a wide range of verticals from Healthcare to Government, Financial to Enterprise, Airlines to Customs, Retail, Grocery, and beyond.

Sensormatic

Sensormatic solutions provide vital loss prevention and support for the retail industry. Today, nearly 80 percent of world's top 200 retailers using EAS rely on Sensormatic for EAS anti-theft visible and concealed systems as well as tough-to-defeat hard tags, labels, deactivators and detachers. And our portable products offer some of the most innovative solutions on the market today. Sensormatic RFID solutions provide the physical foundation for greater supply chain efficiency and visibility, boosting sales through greater availability of goods and cutting costs through process optimization.

Rhac POS and Printing Printers by

TRANSACT

When it comes to quality and reliability, TransAct's market-specific transaction printers are the industry-standard. TransAct is the printer-of-choice for such distinct and demanding markets as banking, point-of-sale (POS) and gaming and lottery.

unitech

For the past twenty years, Unitech has been focusing on automatic data collection products and services to enhance productivity and efficiency. Unitech manufactures a full range of AIDC products, including mobile computers, fixed mount computers, bar code scanners, POS keyboards, and MSR readers and encoders.



VeriFone is a global leader in secure electronic payment technologies. We provide solutions, services, and expertise that enable electronic payment transactions and value-added services at the point of sale. Our devices and systems process a broad spectrum of payment types including signature and PIN-based debit cards, credit cards, EMV smart cards, contactless, value-added applications, and signature capture. Our solutions incorporate existing and emerging technologies, comply with the latest global security standards, and take advantage of the latest connectivity options from GPRS, CDMA, and Wi-Fi to IP and Bluetooth-enabled devices.



ZEBRA
TECHNOLOGIES

Zebra Technologies is a leading global provider of rugged and reliable specialty printing solutions, including on-demand thermal bar code label and receipt printers and supplies, plastic card printers, RFID smart label printer/encoders, certified smart media, and digital photo printers. With the most recognized brand in the automatic identification industry and the most complete product line, Zebra solutions are used by more than 90 percent of Fortune 500 and global 2000 companies to improve business processes, increase productivity, and strengthen security. Over five million Zebra printers have been sold worldwide.

[Visit the Zebra microsite.](#)



Posiflex has four primary objectives - provide revolutionary technology, reliable quality, reasonable pricing and recognized service. For over 25 years we have designed and manufactured Point-of-Service (POS) and industrial touch terminals. Recognized as a pioneer and leader in the industry, Posiflex has been awarded more than 30 patents for innovative design. In partnership with software application companies, Posiflex's products are sold worldwide through VARS and distributors to various vertical industries. Posiflex's comprehensive suite comprises of a wide range of peripherals, terminals ranging from small footprint electronic cash register replacements, to POS and kiosk touch terminals, to robust back office file servers in two ISO 9001/9002/14001 certified facilities.

EXHIBIT 5

CLOSE WINDOW**PRINT PAGE**

SCANSOURCE INC filed this 10-K on 08/29/2011.

Table of Contents**Index to Financial Statements**

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-K

(Mark One)☒ **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the fiscal year ended June 30, 2011

OR

☐ **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from _____ to _____.

Commission File Number: 000-26926

ScanSource.

ScanSource, Inc.

(Exact name of registrant as specified in its charter)

South Carolina
(State or other jurisdiction of
incorporation or organization)

57-0965380
(L.R.S. Employer
Identification No.)

6 Logue Court
Greenville, South Carolina
(Address of principal executive offices)

29615
(Zip Code)

(864) 288-2432
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class
Common Stock, no par value

Name of Each Exchange on Which Registered
NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act:

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☒ Yes ☐ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ☐ Yes ☒ No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Table of Contents**Index to Financial Statements****Vendors**

The Company's key vendors in its worldwide POS and barcoding sales units include Bematech, Cisco, Datalogic, Datamax-O'Neil, Elo, Epson, Honeywell, IBM, Intermec, LXE, Motorola, NCR and Zebra Technologies. The Company's key vendors in its worldwide communications sales units, including Catalyst *Telecom*, sales unit include Aruba, Avaya, Audiocodes, Dialogic, Extreme Networks, Juniper Networks, Plantronics, Polycom and ShoreTel. The Company's key vendors in its security sales units include Alvarion, Axis, Bosch, Cisco, Datacard, DSC, Fargo, HID, March Networks, Panasonic, Pelco, Ruckus Wireless, Sony, United Technologies Fire and Security and Zebra Card.

The Company's products are typically purchased directly from the manufacturer on a non-exclusive basis. The Company's agreements with its vendors generally do not restrict the Company from selling similar or comparable products manufactured by competitors. The Company has the flexibility to terminate or curtail sales of one product line in favor of another due to technological change, pricing considerations, product availability, customer demand or vendor distribution policies.

The Company has approximately 220 hardware and software vendors that currently supply its products. Of all of the Company's vendors, only two, Motorola and Avaya, each constituted more than 10% of the Company's net sales.

The Company has three non-exclusive distribution agreements with Motorola. One agreement covers sales of Motorola hardware and software products in North and South America, another agreement covers sales of Motorola hardware and software products in Europe, the Middle East and Africa and another agreement covers sales of wireless products in Europe. The Motorola agreements each have a one year term that automatically renews for additional one year terms, and either party may terminate the agreement upon 30 days and 90 days notice, respectively, to the other party.

The Company also has two non-exclusive distribution agreements with Avaya. One agreement covers the distribution of Avaya products in the United States and the other agreement covers distribution of Avaya products in the United Kingdom and certain portions of continental Europe. In addition, the Avaya agreements provide separate authorizations for the Avaya Enterprise Communications Group ("ECG") and Avaya Small to Medium Business ("SMB") product lines. The Avaya agreements each have a one year term that automatically renews for additional one year terms if not terminated by either party upon 180 days or 90 days notice, respectively, to the other party.

In addition to the Motorola and Avaya agreements mentioned above, the Company has written distribution agreements with almost all of its vendors. These agreements are in the form that the Company believes are customarily used by manufacturers and distributors. The Company's agreements generally provide it with non-exclusive distribution rights and often include territorial restrictions that limit the countries in which the Company can distribute its products. These agreements typically provide the Company with stock rotation and price protection provisions. Stock rotation rights give the Company the ability, subject to certain limitations, to return for credit or exchange a portion of those inventory items purchased from the vendor. Price protection situations occur when a vendor credits the Company for declines in inventory value resulting from the vendor's price reductions. Along with the Company's inventory management policies and practices, these provisions are designed to reduce the Company's risk of loss due to slow-moving inventory, vendor price reductions, product updates or obsolescence.

Some of the Company's distribution agreements contain minimum purchase requirements that the Company must meet in order to receive preferential prices. The Company participates in various rebate, cash discount and cooperative marketing programs offered by its vendors to support expenses associated with distributing and marketing the vendor's products. These rebates and purchase discounts are generally influenced by sales volumes and are subject to change.

The Company's distribution agreements are generally short term, subject to periodic renewal, and provide for termination by either party without cause upon 30 to 120 days notice. The Company's vendors generally warrant the products the Company distributes and allow returns of defective products, including those returned to the Company by its customers. The Company generally does not independently warrant the products it distributes; however, local laws may in some cases impose warranty obligations on the Company.

The Company's merchandising department recruits vendors and manages important aspects of its vendor relationships, such as purchasing arrangements, cooperative marketing initiatives, vendor sales force relationships, product training, monitoring of rebate programs and various contract terms and conditions.

Customers

EXHIBIT 6

374 S.C. 68
Supreme Court of South Carolina.

The ATWOOD AGENCY, d/b/a Atwood Vacations
and d/b/a RE/MAX Lowcountry Realty,
Respondent,

v.

John T. BLACK, Jr., David Lybrand, Elaine Shaw,
and Edisto Sales and Rental Realty, Inc., Appellants.
No. 26348. | Heard March 6, 2007. | Decided June 25,
2007. | Rehearing Denied July 26, 2007.

Synopsis

Background: Employer, which operated vacation rental business, brought action for misappropriation of trade secrets after former employee took position with competitor. Employer filed motion for a temporary injunction to restrain former employee and other employees of competitor from contacting and contracting with any vacation renter or homeowner of employer. The Circuit Court, Charleston County, Kenneth G. Goode, J., 2005 WL 5168139, granted employer's motion and set security bond at \$250. Former employee, competitor, and its employees appealed.

Holdings: The Supreme Court, Moore, J., held that:

1 information regarding vacation home renters and homeowners, which was available from sources other than plaintiff, was not protected as a trade secret under South Carolina Trade Secrets Act, and

2 order requiring only a nominal security bond did not satisfy civil procedure rule governing restraining orders and temporary injunctions.

Reversed and remanded.

Pleicones, J., filed an opinion concurring in part, in which Burnett, J., joined.

Attorneys and Law Firms

****883** M. Dawes Cooke, Jr., and John A. Jones, both of

Barnwell Whaley Patterson & Helms, LLC, of Charleston, for appellants.

Lawrence E. Richter, Jr., and David K. Haller, both of Richter & Haller, LLC, of Mt. Pleasant, for respondent.

Opinion

Justice MOORE:

***70** 1 This appeal is from a temporary injunction¹ issued in an action brought by respondent Atwood Agency (Atwood) alleging that appellant Elaine Shaw misappropriated trade secrets when she left its employ. We reverse.

1 An order granting a temporary injunction is directly appealable. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001).

FACTS

Atwood is a vacation rental business on Edisto Island that matches homeowners (rental property owners) with renters (those seeking vacation accommodations). Shaw worked for Atwood as a property manager from 1990 until August 26, ***71** 2005, when she left and began work for another vacation rental agency, Edisto Sales and Rental Realty, Inc. (Edisto Sales). Shaw's job as a property manager involved overseeing the rental of vacation homes in Edisto Beach, including contact with both renters and rental property homeowners.

After Shaw left its employ, Atwood commenced the underlying action alleging Shaw had misappropriated its homeowners list and its renters list and was using them to take business from Atwood to Edisto Sales. Atwood claimed it had lost more than fifty rental homes causing damages amounting to "hundreds of thousands of dollars" in revenue. It alleged, among other causes of action, a violation of the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 et seq.

On December 1, 2005, the circuit court issued an ex parte temporary restraining order based on the affidavit of Mark Steedley, Atwood's president, restraining Shaw and the other appellants employed at Edisto Sales from "contacting and contracting with" any vacation renter or homeowner of Atwood's. Bond was set at \$250. After a hearing, the circuit

court issued an order granting Atwood's motion for a temporary injunction. The court found Atwood's renter list and homeowners list were trade secrets and reiterated the terms of the temporary restraining order. The circuit court refused to grant a supersedeas pending appeal.

ISSUE

1. Does the information regarding homeowners and renters qualify as a trade secret?
2. Is the amount of bond insufficient?

DISCUSSION

1. Temporary injunction

2 Appellants contend the circuit court erred in finding Shaw misappropriated trade secrets. They claim the information regarding renters and homeowners is not "secret" because it is available from other sources. We agree.

The South Carolina Trade Secrets Act authorizes an injunction against misappropriating a trade secret. *72 S.C. Code Ann. § 39-8-30(C) (Supp. 2006). A "trade secret" is defined as information, including a compilation, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and

****884** (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5) (Supp. 2006).

3 4 5 Temporary injunctive relief rests within the sound discretion of the trial judge and will not be overturned unless the order is clearly erroneous. Gilley v. Gilley, 327 S.C. 8, 488

S.E.2d 310 (1997); Transcontinental Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 167 S.E.2d 313 (1969). The facts alleged must be sufficient to support a temporary injunction and the injunction must be reasonably necessary to protect the rights of the moving party. Transcontinental, supra. The merits of the underlying case are to be considered only to the extent necessary to determine whether there has been a prima facie showing to support a temporary injunction. Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001).

Here, the information that is the subject of the temporary injunction is readily ascertainable from other sources and therefore does not qualify for protection under § 39-8-20(5). It is undisputed that a list of all the homeowners in Edisto Beach and their contact information is a matter of public record available at Town Hall. The record also indicates the names of renters were available to Shaw through other proper means. According to Shaw, she was contacted directly by Atwood renters after Atwood sent out an announcement of her departure. In addition, although by contract Atwood attempted to restrict homeowners' personal contact with renters, there is evidence that homeowners sometimes knew their renters or kept a guestbook where renters provided personal contact information.

Because the information Atwood seeks to protect is available through other proper means, it is not protected as a trade secret. Accordingly, we find the temporary injunction restraining ***73** appellants from contacting or contracting with Atwood clients clearly erroneous.

2. Security Bond

6 The circuit court ordered a security bond in the amount of \$250 reasoning that "since [appellants] have no right to the Atwood trade secrets, the damage which may be sustained by them as a result of this injunction is minimal." Appellants contend this amount of bond is inadequate. We agree.

Rule 65(c), SCRCP, provides that:

no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully

enjoined or restrained.

The circuit court's order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper. In light of our finding that appellants were improperly enjoined, we remand to the circuit court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction.

REVERSED.

TOAL, C.J., and Acting Justice EDWARD B. COTTINGHAM, concur. PLEICONES, J., concurring in part in a separate opinion in which BURNETT, J., concurs.

Justice PLEICONES, concurring in part:

I concur in the majority's ruling that Atwood's homeowners list is not a trade secret as defined by the South Carolina Trade Secrets Act, S.C.Code Ann. § 39-8-10 et seq ("Act"). Accordingly, I agree that the circuit court improperly enjoined Shaw and other appellants employed at Edisto Sales from "contacting and contracting" with any Edisto Island homeowner on Atwood's client list.

***74** However, based upon the record before us, I cannot join the majority's holding that Atwood's renters list does not qualify as a trade secret. I would thus affirm the temporary injunction in regards to Atwood's renters list and allow Atwood's cause of action based on a violation of the Act to proceed to trial.

A vacation rental agency derives independent economic value from protecting the ****885** identity of its renters because the agency's renters list is not "readily ascertainable by proper means" by any other competing rental agency. See S.C.Code Ann. § 39-8-20(5)(i) (Supp.2006). Atwood understandably attempts to prevent disclosure of its renters list in order to maintain clients, as repeat business is vital to its success.

The majority reasons that Atwood's renters list is not a trade

secret because some of Atwood's renters contacted Shaw and because some renters provided personal contact information in guestbooks or directly to homeowners. While these facts may be relevant to Shaw's defense to Atwood's claim that Shaw misappropriated the renters list, i.e. received the identity of renters by improper means, they do not determine whether the renters list, taken as a whole, qualifies as a trade secret. Regardless, simply because some renters chose to contact Shaw or because the occasional renter left his contact ***75** information does not make Atwood's entire renters list "readily ascertainable."

2 Misappropriation of a trade secret is specifically defined in S.C.Code Ann. § 39-8-20(2) as:

(a) acquisition of a trade secret of another by a person by improper means;
(b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired by mistake or under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Accordingly, I concur with the majority that Atwood's homeowners list is not a trade secret as defined under the Act. I also agree with the majority's holding that the security bond ordered in this case was inadequate to satisfy Rule 65(c), SCRPC, and the case should be remanded to the circuit court for a determination of the proper amount of the security bond. However, as to its renters list, Atwood has met the necessary criteria for a temporary injunction,¹ and I would allow

Atwood's claim under the Act to continue to trial.

- 3 To obtain a preliminary injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117, 603 S.E.2d 905 (2004).

BURNETT, J., concurs.

Parallel Citations

646 S.E.2d 882

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 7

361 S.C. 117
Supreme Court of South Carolina.

SCRATCH GOLF COMPANY, Respondent,
v.

DUNES WEST RESIDENTIAL GOLF PROPERTIES,
INC.; Dunes West Property Owners Association,
Inc.; Allan Feker, a/k/a Ali Daghighfekr; Melinda
McDonald; Julian Michael Murrin; Larry Schultz;
Wilbur "Bill" Upson; Kathy Merritt; William "Bill"
Fellers; Charles V. Cuddeback; and John Does and
Jane Does, as past and current directors and officers
of Dunes West Property Owners Association, Inc.,
Defendants,
of whom Dunes West Residential Golf Properties,
Inc., and Allan Feker, a/k/a Ali Daghighfekr, are
Appellants.

No. 25878. | Heard May 25, 2004. | Decided Oct. 11,
2004.

Synopsis

Background: Golf course sued developer alleging breach of contract and negligence in designing irrigation system that allowed salt water to infiltrate irrigation lagoons. Golf course moved for preliminary injunction to freeze developer's assets. The Circuit Court, Charleston County, Roger M. Young, Master-in-Equity, granted injunction and set escrow amount at \$4.5 million. Developer appealed.

Holding: The Supreme Court, Toal, C.J., held that golf course did not lack an adequate remedy at law.

Reversed and remanded.

Attorneys and Law Firms

****906 *118** John A. Massalon, of Wills and Massalon, of Charleston, for Appellants.
H. Brewton Hagood and Richard S. Rosen, both of Rosen, Rosen, and Hagood, of Charleston, for Respondent.

Opinion

***119** Chief Justice TOAL:

Dunes West Residential Golf Properties (Developer) asserts that the Master-in-Equity erred in granting a preliminary injunction in favor of Scratch Golf Company (Scratch Golf). The action arose after the Dunes West Golf Course was damaged by the alleged saltwater infiltration of various irrigation ponds that were supposed to be maintained by the Developer. The Master granted a preliminary injunction in favor of Scratch Golf, ordering the Developer to place \$4.5 million into an escrow account to provide a fund for the damages arising out of Scratch Golf's pending civil action for breach of contract and negligence against the Developer. We find that the Master erred in granting the preliminary injunction because Scratch Golf did not present sufficient evidence to establish that injunctive relief was appropriate.

Factual/Procedural Background

The Dunes West subdivision in Mount Pleasant, South Carolina, began as a joint venture between Wild Dunes Associates and Georgia-Pacific Investment Corporation (Joint Venture). In 1991, Scratch Golf purchased Dunes West Golf Club and now owns and operates the golf course and its facilities. In 1998, Allan Feker (Feker) purchased all of the undeveloped property in the community from the Joint Venture and immediately assigned his rights to a shell corporation, Dunes West Residential Golf Properties (Developer). The Developer assumed all of the Joint Venture's rights and obligations, including its obligation under section 7.2(w) of the Sale and Purchase Agreement with Scratch Golf to maintain the water quality of the subdivision's lagoon system.

Various freshwater lagoons surround the Dunes West Golf Course and provide a source of water that Scratch Golf uses to irrigate the golf course. The lagoons collect rainwater, and if the water level rises too high, the excess water will flow into adjacent saltwater creeks through an outflow pipe. ****907** The pipe system is only supposed to allow the fresh water to flow out, but in some lagoons—most notably the lagoon located next to the 17th hole—the saltwater flows in through the pipes and ***120** infiltrates the freshwater lagoons.¹ Because the saltwater contamination of the lagoons has allegedly damaged the golf course, Scratch Golf filed a cause of action for breach of contract and negligence against the Developer and the Dunes West Property Owners Association.

- ¹ The saltwater inflow occurs during an above-average high tide.

Meanwhile, based on its concern that it would be unable to collect on a judgment entered against the Developer, Scratch Golf argued before the Master that he should grant a preliminary injunction in order to capture some of the Developer's assets before the undeveloped Dunes West property was sold to John Weiland Homes. Scratch Golf asserted that the total damages caused by the saltwater contamination were \$6 million, which represents the cost of rebuilding much of the golf course. The Developer, however, asserted that the damages amount to \$600,000.²

- ² This amount comes from the affidavit of the Director of Golf Course Management at Kiawah Island Club, Tommy Witt, who is not an expert in engineering or plant and soil science. These damage figures only cover replacing dead grass and not replacing contaminated soil.

The Master granted Scratch Golf's motion for a preliminary injunction and set an escrow amount at \$4.5 million. In addition, pursuant to Rule 65, SCRPC, the Master held that Scratch Golf would purchase a \$1 million bond as security in the event the Developer was wrongfully enjoined. The Developer has appealed the Master's ruling, and pursuant to Rule 204(b), SCACR, this Court certified the case from the court of appeals.

The Developer raises the following issues on appeal:

- I. Did the Master have the authority to issue the preliminary injunction?
- II. Did the Master err in finding that Scratch Golf presented sufficient evidence to justify an injunction?
- III. Did the Master err in setting the amount of Scratch Golf's bond at \$1 million?

Standard of Review

- ¹ Upon review of an action in equity, this Court may make factual findings based on its own view of the preponderance *121 of the evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

Law/Analysis

I. Authority to Issue an Injunction

The Developer asserts that the Master did not have the authority to issue the preliminary injunction that poured \$4.5 million of the Developer's assets into an escrow account. We disagree.

The Developer relies on a United States Supreme Court decision, *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999), which held that a U.S. District Court was not authorized to issue a preliminary injunction-absent a prior attachment of a money judgment-because the remedy was historically unavailable in a federal court of equity. This decision limiting a federal court's equitable powers is not dispositive of whether a state court judge may restrain a defendant's assets prior to the attachment of a money judgment. There is no federal question here that would cause the *Grupo* decision to be binding in this state court proceeding. Thus we decline to apply the *Grupo* analysis to this matter.

II. Appropriateness of the Preliminary Injunction

- ² The Developer asserts that the Master erred in granting the preliminary injunction because Scratch Golf did not present sufficient evidence to establish that injunctive relief was appropriate. We agree.

- ³ An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. Flanagan, *S.C. Civil Procedure*, 507 (2d **908 ed.1996). For a preliminary injunction to be granted, the plaintiff must establish that (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. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002).

Although Scratch Golf may be able to satisfy elements 1 and 2, it cannot satisfy element 3 because there was an alternative ***122** remedy at law available for Scratch Golf: the statutory remedy of attachment. Therefore, an injunction was not the appropriate remedy.

At the preliminary injunction hearings, Scratch Golf argued that if an injunction were not granted, it would suffer irreparable harm having no adequate legal remedy to recover the proceeds from the sale of Dunes West in order to satisfy the potential judgment it would have against the Developer. Scratch Golf feared that the Developer's \$1 million umbrella insurance policy, the Property Owner's Association \$1 million umbrella insurance policy, or any leftover proceeds from the sale of the development would not be available to satisfy a judgment. Scratch Golf further argued that even if there were leftover proceeds from the sale, the Developer would take the proceeds out of the state to invest elsewhere, making it difficult for Scratch Golf to recover its judgment interest from those proceeds.

This argument that Scratch Golf asserted—that once it receives a money judgment from its contract and tort action, it may have difficulty *collecting* from the Developer because the Developer may “take its assets and run” out of the state—is not proper justification for why a preliminary injunction should be issued but rather is justification for the statutory remedy of attachment. S.C.Code Ann. § 15-19-10 (2003), the attachment statute, provides:

In any action:

(8) When any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors as mentioned in this chapter;

The plaintiff at the time of issuing the summons or any time afterwards may have the property of such defendant or corporation attached, in the manner prescribed in this chapter, as a security for the satisfaction of such judgment as the plaintiff may recover.

4 5 As this Court has stated, “[t]he purpose of attachment generally is to take a defendants property into legal custody so that it may be applied to the plaintiffs debt, when established.” John Deere Plow Co. of St. Louis v. L.D. *123 Jennings, Inc., 203 S.C. 426, 27 S.E.2d 571, 572 (1943). “[A]n attachment is

merely a provisional remedy in aid of an action, and hence, to make it available, an action must be commenced in regular form.” Williamson v. Eastern Bldg. & Loan Ass'n., 54 S.C. 582, 32 S.E. 765, 770 (1899) (citation omitted).

We find Scratch Golf's argument that a preliminary injunction was necessary to protect its pre-judgment interest in the Developer's property should have been an argument justifying the necessity of an attachment. Due to the confusing and unusual posture of this case, we remand this matter to the Master so that the parties may argue the merits of whether an attachment-not an injunction-may be litigated pursuant to the attachment statute.

Conclusion

We remand the matter to the Master for further proceedings to evaluate the attachment issue. We preserve the status quo, both the escrow of \$4.5 million and the \$1 million surety bond, until the Master issues an order resolving the attachment question.

REVERSED AND REMANDED.

MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

Parallel Citations

603 S.E.2d 905

Footnotes

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 8

Westlaw.

602 S.E.2d 83

360 S.C. 473, 602 S.E.2d 83

(Cite as: 360 S.C. 473, 602 S.E.2d 83)

Page 1

Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.
S.C.App., 2004.

Court of Appeals of South Carolina.
SHAPEMASTERS GOLF COURSE
BUILDERS, INC., James Michael Harbin,
Joseph Cagle and Benton Marc Burger,
Respondents,
v.
SHAPEMASTERS, INC., Jeffrey Stein and
Lilly Jayawant a/k/a Lilly Stein, Appellants.
No. 3851.

Submitted April 6, 2004.

Decided Aug. 2, 2004.

Rehearing Denied Sept. 23, 2004.

Certiorari Denied Oct. 5, 2005.

Background: Operators of spinoff corporation that built golf courses brought shareholder derivative action against original corporation. Original corporation counterclaimed for accounting, stock buyout, and temporary restraining order. The Circuit Court, Horry County, John L. Breeden, Jr., J., first issued order appointing custodian to oversee original corporation, then vacated that order, referred case to a master in equity, ordered audit,

appointed custodian, and denied temporary restraining order. Original corporation appealed.

Holdings: The Court of Appeals, Beatty, J., held that:

(1) spinoff corporation had the right to use corporate name and logo, and
(2) original corporation failed to show irreparable harm resulting from its employees' working for competitors, and was thus not entitled to temporary restraining order.

Affirmed in part, dismissed in part, and remanded.

West Headnotes

[1] Appeal and Error 30 242(2)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(B) Objections and Motions, and Rulings Thereon

30k242 Necessity of Ruling on Objection or Motion

30k242(2) k. Rulings on Motions.

Most Cited Cases

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Appeal and Error 30 ⇐ 281(1)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(D) Motions for New Trial

30k281 Necessity in General

30k281(1) k. In General. Most

Cited Cases

Appellants failed to preserve for review the issue of whether the trial court erred in refusing to grant appellants' motion for restraining order with regards to respondent corporation's use of corporate name and logo, where trial judge did not rule on use of name and logo, and appellants failed to pursue motion for new trial. Rules Civ.Proc., Rule 59.

[2] Appeal and Error 30 ⇐ 100(1)

30 Appeal and Error

30III Decisions Reviewable

30III(E) Nature, Scope, and Effect of Decision

30k96 Relating to Provisional Remedies

30k100 Injunction

30k100(1) k. In General. Most

Cited Cases

The refusal to grant a restraining order is immediately appealable.

[3] Trademarks 382T ⇐ 1189

382T Trademarks

382TVI Nature, Extent, and Disposition of Rights

382Tk1187 Persons Entitled to Assert Rights

382Tk1189 k. Change in Business, Effect Of. Most Cited Cases
(Formerly 382k107)

Spinoff corporation had the right to use corporate name and logo of original corporation; original corporation consented to use of name and logo when it established spinoff corporation, spinoff corporation had been using name since its formation, to require spinoff corporation to cease use of name and logo during pendency of litigation would disrupt business and have negative effect on spinoff corporation, and all parties were shareholders in spinoff corporation, and would share its profits.

[4] Injunction 212 ⇐ 150

212 Injunction

212IV Preliminary and Interlocutory Injunctions

212IV(A) Grounds and Proceedings to Procure

602 S.E.2d 83
360 S.C. 473, 602 S.E.2d 83
(Cite as: 360 S.C. 473, 602 S.E.2d 83)

Page 3

212IV(A)4 Proceedings

212k150 k. Restraining Order

Pending Hearing of Application. Most Cited Cases

Original corporation failed to show irreparable harm resulting from its employees' working for competitors, and thus, original corporation was not entitled to temporary restraining order; there was no evidence that employees acquired or attempted to acquire any business for competitor.

[5] Appeal and Error 30 ↪ 71(4)

30 Appeal and Error

30III Decisions Reviewable

30III(D) Finality of Determination

30k67 Interlocutory and Intermediate

Decisions

30k71 Affecting Provisional

Remedies

30k71(4) k. Receiver. Most

Cited Cases

Appointment of corporate custodian was interlocutory, and thus, not immediately appealable; custodian was appointed for the purposes of overseeing ongoing projects and to allocate men and machinery among the proposed projects to maximize profits, and was thus an unbiased party to protect corporate assets.

[6] Corporations 101 ↪ 560(4)

101 Corporations

101XII Insolvency and Receivers

101k560 Powers, Duties, and Liabilities of Receivers in General

101k560(4) k. Title to and Possession of Property. Most Cited Cases

One of the purposes of a receivership is that corporate assets shall be held in impartial hands, that the proceeds may be administered according to the priorities of the claims thereto. Code 1976, § 33-14-320.

****84*475** Adam Fisher, Jr., of Greenville; Charles Craig Young, of Florence; and Jonathan P. Kresken, of North Myrtle Beach, for Appellants.

Michael R. Daniel and M. Anthony Stith, Jr., both of Mt. Pleasant, for Respondents.

BEATTY, J.

Shapemasters, Inc., Jeffrey Stein and Lilly Jayawant, a/k/a Lilly Stein ("Appellants") appeal various aspects of the trial court's order in favor of Shapemasters Golf Course Builders, Inc., James Michael Harbin, Joseph Cagle, and Benton Burger ("Respondents"), in this shareholder derivative action. We affirm.

FACTS

In 1993, Respondents James Harbin and Joseph Cagle, together with Appellant Jeffrey Stein, established Shapemasters, Inc. ("S.C. Corp."), a South Carolina corporation engaged in the business of golf course construction.**85 In 2001, the same parties established Shapemasters Golf Course Builders, Inc. ("N.C. Corp."), a North Carolina corporation for the same purpose.

Respondents Cagle and Harbin ceased active involvement in S.C. Corp., and only remained associated with the company as shareholders. At that point, Appellant Jeffrey Stein operated S.C. Corp. and Respondents Harbin, Cagle, and Burger operated N.C. Corp. Appellants claim Stein, Harbin, and Cagle *476 own S.C. Corp., and Harbin, Cagle, Burger, and Stein own N.C. Corp.^{FN1}

FN1. Respondents aver that prior to the establishment of N.C. Corp., Burger became a 25% shareholder in S.C. Corp. Accordingly, Respondents assert the four partners own equal 25% interests in both companies.

In December 2001, Respondents commenced this action against Appellants asserting several causes of action. Appellants answered and counterclaimed seeking, in part, an accounting,

stock buy out, and a temporary restraining order.

Both parties filed motions for the appointment of a custodian to protect the assets of the various companies while the case was being litigated. Respondents agreed to the appointment of a custodian for N.C. Corp., but Appellants objected to a custodian being appointed for S.C. Corp. on grounds that such an appointment would be unduly costly and burdensome.

The trial court found that Respondents successfully made a prima facie case to justify the appointment of a custodian to oversee S.C. Corp. The court granted Respondents' request for an appointment in an order dated July 15, 2002. The court's order delineated the responsibility of the custodian, including that he or she should assemble and review both of the companies' financial statements, seek to maximize profits, and serve bi-monthly income and expenditure reports on attorneys for each party.

Appellants filed a motion to alter or amend the July 15, 2002 order. In addition, Appellants filed supplemental motions seeking the withdrawal of the court's July 15, 2002 order, referral to a master-in-equity, the termination of discovery, elimination of a custodian for S.C. Corp., restraining orders preventing anyone from

competing with the two companies or obtaining employment with a competitor, restraining order preventing Respondents from using the name or logo "Shapemasters" in their business dealings, eliminating any commingling of assets between the two companies, and the designation of a CPA to audit the companies.

into four issues for our consideration. Appellants' remaining issues are unsupported by authority and are deemed abandoned.

In response to these motions the trial court issued a second order dated December 21, 2002. This order vacated the court's July 15, 2002 order. The court ordered mediation and referred the case to a master-in-equity with the reservation *477 that the master should report any jury matters. The court also ordered an audit going back to 1996, denied Appellants' request to eliminate the need for a custodian, appointed Richard E. Heath as the custodian, denied Appellants' request to end discovery, and denied Appellants' requests that Respondents be restrained from working for competitors. As to the use of the name and logo "Shapemasters," the trial court specifically reserved ruling on the issue, stating that the master should address it in his final order. This appeal followed.

I. Is the denial of a restraining order immediately appealable?

II. Did the trial court err in refusing to grant Appellants' motion for a restraining order?

III. Is the appointment of a custodian immediately appealable?

IV. Did the trial court err in appointing a custodian to oversee operations?

LAW/ANALYSIS

I. Restraining Order

ISSUES^{FN2}

FN2. Appellants state a total of seven issues on appeal. However, we feel that most of the issues may be condensed

[1] Appellants first assert the trial court erred in refusing to grant Appellants' motion **86 for a restraining order with regards to the use of the "Shapemasters" name and logo and regarding Cagle's, a Respondent in this matter, employment with a direct competitor. We

disagree.

[2] Appellants correctly argue that the refusal to grant a restraining order is immediately appealable. "An order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable." S.C.Code Ann. § 14-3-330(4); *see also Appeal of Paslay*, 230 S.C. 55, 64, 94 S.E.2d 57, 61 (1956) (appeal lay from the *478 restraining order or temporary injunction). However, we must first determine whether the issue is preserved for appellate review.

Appellants further argue the trial court erred in refusing to grant an injunction regarding the use of the name Shapemasters as the company logo and name. Appellants argue that Cagle and other Respondents in this matter are not only using the company name, but also working with a direct competitor.

[3] The trial judge did not rule on the use of the Shapemasters name and logo issue. Further, Appellants failed to pursue a Rule 59 motion on the December 2002 order; therefore, the issue is not preserved for review.^{FN3} Moreover, we believe Appellants' arguments are without merit. Appellants consented to the use of the name and logo when they established N.C. Corp. N.C. Corp. has been conducting business under the

Shapemasters name since its formation in 2001. To require N.C. Corp to cease the use of the name and logo during the pendency of this action would disrupt business and have an unduly negative impact on N.C. Corp. Appellants and Respondents are shareholders in N.C. Corp. and will share any profits generated by N.C. Corp.

FN3. See I'On v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (stating parties should raise all necessary issues and arguments to trial court and attempt to obtain a ruling); Townsend v. City of Dillon, 326 S.C. 244, 486 S.E.2d 95 (1997) (holding issues not ruled upon by the trial judge are not preserved for appellate review); Noisette v. Ismail, 304 S.C. 56, 403 S.E.2d 122 (1991) (ruling issue was not preserved for appellate review where the trial court did not explicitly rule on the appellant's argument and the appellant made no Rule 59(e) motion to alter or amend the judgment).

[4] Additionally, Appellants have failed to show irreparable harm with regards to Appellants' employees working for competitors. *See FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct.App.2002) ("Generally, to obtain an injunction, a party

must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law.”). The fact that Appellants’ employees occasionally work for direct competitors is not unduly harmful to Appellants as there is no evidence in the record that the employees acquired, or attempted to acquire, any business for the competitor. In fact, the record reflects that *479 the employees’ function for competitors is one of providing labor as heavy machine operators. Accordingly, we find no error in the trial court’s ruling.

II. Appointment of Custodian

[5] Appellants next assert that the appointment of a custodian is immediately appealable and that the trial court erred in appointing a custodian to manage the daily operations of the company’s affairs. Appellants assert that the appointment of a custodian has the same effect as the appointment of a receiver. See S.C. Code Ann. § 14-3-330(4) (stating an appellate court has jurisdiction to review an interlocutory order refusing the appointment of a receiver). We disagree.

Receivers and custodians are distinguishable. A receiver’s duty is to wind up and liquidate the business and affairs of a corporation, while custodians manage the affairs of the corporation.

See S.C. Code Ann. 33-14-320 (Supp.2003). A receiver, in performing its duties, may:

[D]ispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this State.

However, a custodian may:

[E]xercise all of the powers of the corporation, through or in place of its board of **87 directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

S.C. Code Ann. § 33-14-320(c)(2).

[6] “One of the purposes of a receivership is that the assets shall be held in impartial hands, that the proceeds may be administered according to the priorities of the claims thereto.” National Cash Register Co. v. Burns, 217 S.C. 310, 316, 60 S.E.2d 615, 618 (1950). The refusal of a trial court to appoint a receiver should be immediately appealable because of the potential harm in not having an unbiased party to protect a corporation’s assets. We do not believe the same level of harm attends an order to appoint a custodian. The custodian in this matter was

appointed specifically for the purposes of "overseeing ongoing projects and to allocate man and machinery among the proposed projects to maximize *480 profits." The trial court did not commit error in appointing a custodian and assigning him with the aforementioned duties. Additionally, we do not believe the term receiver, as set forth in section 14-3-320(4) has the same effect as the term custodian. Therefore the court's order to appoint a custodian is interlocutory and not immediately appealable.^{FN4}

FN4. It is not necessary for this court to address Appellants' remaining issues because Appellants fail to provide legal authority to support their arguments. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding when a party fails to provide arguments or supporting authority for his assertion, the party is deemed to have abandoned the issue). Moreover, Appellant's remaining issues are without merit.

CONCLUSION

The lower court did not err in refusing to grant a restraining order regarding the use of the Shapemasters' name and logo. Further, the appointment of a custodian is interlocutory in

nature and does not fall into a delineated exception. As such, the trial court's rulings are

AFFIRMED IN PART; DISMISSED IN PART; AND REMANDED.

HEARN, C.J., and ANDERSON, J., concur.
S.C.App., 2004.
Shapemasters Golf Course Builders, Inc. v.
Shapemasters, Inc.
360 S.C. 473, 602 S.E.2d 83

END OF DOCUMENT