THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James C. Williams, Jr., Special Referee

Case No. 2010-CP-40-8621

C.R. Meyer and Sons Company, ... Plaintiff,

v.

Custom Mechanical CSRA, LLC ..... Defendant.

And

Custom Mechanical CSRA, LLC is ..... Respondent,

v.

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SC Court of Appeals

Plumbers & Steam Fitters Local #150 Health and Welfare Fund; Plumbers & Steam Fitters Local #150 Pension Fund; Plumbers & Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust, Southeastern Carpenters and Millwrights Pension Trust, Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc.; Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.;

Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Bruce Pollock, Jr.; and, Security Federal Bank, ... Third Party Defendants,

Of Whom
Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. are ..... Appellants,

And Presidential Financial and Security Federal Bank, ... are also Respondents.

RECORD ON APPEAL - VOL. I

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)
) **Civil Action No.: 2010-CP-40-8621**
C.R. Meyer and Sons Company,)
)
Plaintiff/Petitioner,)
) **ORDER CONFIRMING ARBITRATION AWARD**
v.)
)
Custom Mechanical CSRA, LLC,)
)
)
Defendant/Respondent.)
)
Custom Mechanical CSRA, LLC)
)
Third-Party Plaintiff, Respondent)
)
v.)
)
Plumbers & Steam Fitters Local #150 Health)
and Welfare Fund, Plumbers & Steam Fitters)
Local #150 Pension Fund, Plumbers & Steam)
Fitters Local #150 Annuity Fund and Jackie K.)
Nordeen, Jr. and Patrick H. F. Smith, IV, as)
Trustees of these Funds; Plumbers & Steam)
Fitters Local #150 Vacation Fund, and Patrick)
H. F. Smith, IV and Joseph L. Dozier, as)
Trustees of this Fund; and Augusta Joint)
Apprenticeship and Journeymen Training)
Committee, and Patrick H. F. Smith, IV and)
Charles I. Hardigree, as Trustees of this Fund;)
Trustees of Southern Iron Workers Pension)
Fund; Trustees of Southeastern Iron Workers)
Healthcare Plan; Trustees of Southeastern Iron)
Workers Annuity Plan; Trustees of Iron)
Workers #709 Joint Apprenticeship and)
Training Committee and Local #709,)
International Association of Bridge, Structural,)
Ornamental and Reinforcing Iron Workers;)
Southeastern Carpenters and Millwrights)
Health Trust; Southeastern Carpenters and)
Millwrights Pension Trust; Larry Phillips and J.)
Kirk Malone, as Trustees of these Funds;)
Ferguson Enterprises, Inc., Presidential)

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C.P. & G.S.

Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Chris Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr,

Third-Party Defendants

This matter came before the Court on August 16, 2011 on the Motion for Summary Judgment filed by Custom Mechanical CSRA, LLC ("Custom Mechanical"). The Parties agreed that the issues were joined and the Court was in a position to rule on the merits. Plaintiff/Petitioner was represented by Henry P. Wall, Esquire, of Bruner, Powell, Wall & Mullins, LLC. Also present on behalf of Plaintiff/Petitioner was William E. Hughes, III, Esquire, of Whyte Hirschboeck Dudek, S.C., a Wisconsin law firm. Defendant Custom Mechanical was represented by Francis M. Mack, Esquire and Emily R. Gifford, Esquire, of Richardson Plowden & Robinson, PA. Both parties submitted Memoranda supporting their respective positions.

For the reasons set forth below, the Court CONFIRMS the underlying Arbitration Award pursuant to South Carolina Code section 15-48-120 and 9 USC section 9, and the Court further awards pre-judgment interest on the total amount of the Arbitration Award.

FACTUAL BACKGROUND

This action arises out of an arbitration that occurred between CR Meyer and Custom Mechanical in September 2010. CR Meyer made its initial demand for arbitration in July 2007. After three years of ongoing discovery and delays, the parties arbitrated the matter September 27-30, 2010 ("Arbitration Hearing"). The Arbitration Hearing proceeded pursuant to the South

Carolina Uniform Arbitration Act and the Federal Arbitration Act, South Carolina Code section 15-48-10 and 9 U.S.C. § 1, et seq., respectively, and the Construction Industry Rules of the American Arbitration Association. A panel of three arbitrators heard the proofs and allegations of Custom Mechanical and CR Meyer.

The issues heard at the arbitration related to work performed at the Kimberly Clark Beech Island project in Beech Island, South Carolina (the "Project"). Custom Mechanical was hired as a subcontractor on this project by CR Meyer, a Wisconsin company, in early 2006. Custom Mechanical worked on several projects for CR Meyer during 2006 and 2007, including providing labor and materials for a Tissue Machine that produced industrial size rolls of tissue paper and then converted them into individual rolls of toilet paper for consumers. Due to contractual disputes with CR Meyer, Custom Mechanical began demobilizing from the site in June 2007, and the parties were not able to resolve the contractual disputes.

Pursuant to a series of contracts between CR Meyer and Custom Mechanical, CR Meyer initially filed a claim for approximately $1.5 million in damages, exclusive of legal fees, expenses, and other costs. CR Meyer claimed it had paid out approximately $1.5 million to suppliers of Custom Mechanical. Custom Mechanical filed a reply seeking damages in the amount of approximately $6 million, which it later adjusted to approximately $4.5 million. After three years of protracted discovery and delays, on the eve of the Arbitration Hearing, CR Meyer dismissed its claims against Custom. By letter dated September 17, 2010, counsel for CR Meyer advised the Panel that it did not intend to advance an affirmative damages claim; therefore, the only remaining issue during the Arbitration Hearing was Custom Mechanical's entitlement to damages.

During the Arbitration Hearing, CR Meyer presented more than One Hundred Seventy-five (175) exhibits, which were utilized and referred to throughout the Arbitration Hearing. Custom Mechanical presented more than Eighty Five (85) exhibits. All exhibits were made available to the Panel during the Arbitration Hearing, and the Panel took a copy of all exhibits following the Arbitration Hearing for use and reference during its deliberations.

During the Arbitration Hearing, Custom presented four witnesses, and CR Meyer presented ten witnesses. Testimony lasted almost 4 full days, and closing arguments were heard in the early evening of Thursday, September 20, 2010 at the request of CR Meyer.

On November 8, 2010, through the American Arbitration Association, the Panel issued the Arbitration Award in favor of Custom Mechanical. The Panel awarded to Custom Mechanical damages in the amount of One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,776,548.00) Dollars, plus attorneys' fees and legal expenses in the amount of Two Hundred Thousand and no/100 ($200,000.00) Dollars, for a total award of One Million, Nine Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,978,548.00) Dollars.

CR Meyer filed this Complaint and Petition to Modify or Correct the Arbitration Award and/or Vacate the Arbitration Award on or around December 7, 2010. Custom Mechanical filed a Complaint to Confirm the Arbitration Award in Aiken County (the "Aiken case") on or around November 12, 2010. The parties agreed to transfer the Aiken Case to Richland County, at which time it was assigned the Civil Action No. 2011-CP-40-1060. By agreement, the parties have agreed to join the cases for purposes of litigating the issues regarding the arbitration award under the current matter, Civil Action No. 2010-CP-40-8621.

Custom Mechanical filed a Third-Party Complaint in this matter on or around February 8, 2010 and added as Third-Party Defendants all known judgment creditors of Custom Mechanical. All Third-Party Defendants have been served through their counsel, all of whom have either executed Acceptance of Service Affidavits or filed responsive pleadings in this matter.

An exhibit to the affidavit filed by CR Meyer indicated there are judgment creditors and claimants with claims exceeding $3.5 million against Custom Mechanical. Counsel for Custom Mechanical confirmed this and has indicated that any proceeds from the Arbitration Award, excluding the attorneys fees, will not go to Custom Mechanical. It will instead be deposited into the Court, or another agreeable location, until the Third-Party Defendants in this matter can determine their priority as to the Arbitration Award funds.

PROCEDURAL HISTORY

CR Meyer filed this action to Modify or Correct the Arbitration Award and/or Vacate the Arbitration Award. Custom Mechanical answered and counter-claimed seeking to confirm the Arbitration Award and have it entered as a judgment of the Court pursuant to South Carolina Code section 15-48-120 and 9 USC section 9. Custom Mechanical filed a Motion for Summary

Judgment in this matter. While the hearing on August 16, 2011 was initially scheduled for Custom Mechanical's Motion for Summary Judgment, the parties agreed that the issues were ripe for disposition on the merits.

SCOPE OF REVIEW OF ARBITRATION AWARD

As an initial matter, Article 14.1 of each of the contracts between CR Meyer and Custom Mechanical provide that the "agreement to arbitrate shall be governed by the Federal Arbitration Act." Both federal and state policy favors arbitrating disputes. Southland Corp. v. Keating, 465 U.S. 1 (1984); Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985).

Unless the parties have otherwise agreed, the Federal Arbitration Act ("FAA") "applies in federal or state court to any arbitration agreement regarding a transaction that involves interstate commerce." MBNA America Bank, N.A. v Christianson, 377 S.C. 210, 213, 659 S.E.2d 209, 211 (Ct. App. 2008) (citing Munoz v Green Tree Fin. Corp, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001)).

The contracts between CR Meyer and Custom Mechanical state the arbitration shall be governed by the Federal Arbitration Act ("FAA"), and during the Arbitration Hearing, the parties argued their positions in the context of South Carolina law, while acknowledging that the application of the FAA would lead to the same result. The relevant FAA and South Carolina law regarding modification and/or vacatur of an arbitration award are generally the same and lead to the same result.

The FAA evidences a strong federal policy in favor of arbitration of contractual disputes, and arbitration is meant to "serve as a substitute for and not merely a prelude to litigation." Lybrand v Merrill, Lynch, Pierce Fenner & Smith, Inc, 321, S.C. 70, 73, 467 S.E.2d 745, 747 (Ct. App. 1996).

Similarly, under South Carolina law, "the arbitrator determines questions of both law and fact. Generally, an arbitration award is conclusive and courts refuse to review the merits of an award." C-Sculptures, LLC v Brown, ___ S.E.2d ___, 2011 WL 2535543, 2 (Ct. App. 2011). The Court of Appeals recently reiterated the position of South Carolina courts that "an award

will be vacated only under narrow, limited circumstances." Id. (quoting Gissel v Hart, 382 S.C. 235, 241, 676 S.E. 2d 320, 323 (2009)).

South Carolina courts favor arbitration and generally hold that an arbitration award is conclusive, and the Courts will refuse to review the merits of an arbitration award. See Batten v Howell, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990). Indeed, "[a]rbitration is a favored method of settling disputes in South Carolina." Pittman Mortgage Co. v Edwards, 327 S.C. 72, 75, 488 S.E.2d 335, 337 (1997) (citing Batten, 300 S.C. 545).

Under South Carolina law, the Panel "need not specify [its] reasoning or basis for the [Arbitration] [A]ward as long as the factual inferences and legal conclusions support the award are 'barely colorable.'" Mills v William Clarke Jeep Eagle, Inc., 321 S.C. 150, 153, 467 S.E.2d 268, 269 (Ct. App. 1996). Thus, "if grounds for the [Arbitration] [A]ward can be inferred from the facts, the [Arbitration] [A]ward should be confirmed." Id.

In its Complaint in this matter, CR Meyer asserted only statutory grounds as the basis for modifying or setting aside the Arbitration Award. South Carolina Code sections 15-48-130 and 15-48-140 provide the exclusive statutory remedies by which an arbitration award can be modified or vacated. S.C. Code Ann §§ 15-48-130 to -140 (2005).

In its Brief in Support of its Petition to Modify or Vacate the Arbitration Award, CR Meyer raised as a new issue "manifest disregard" of the law on the part of the Panel as an additional basis on which to vacate the award. "[F]or a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator[s] must be well defined, explicit, and clearly applicable." Gissel v Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009).

"An arbitrator manifestly disregards the law when he or she appreciates the existence of a clearly governing legal principle and decides to ignore it." C-Sculptures, LLC v Brown, 2011 WL 2535543 at 2 (citing Harris v. Bennett, 332 S.C. 238, 246, 503 S.E.2d 782, 787 (Ct. App. 1998)). Cases in which awards have been vacated for manifest disregard of the law are "exceedingly rare, requiring circumstances far more egregious than mere errors in interpreting or applying the law." Trident Technical College v Lucas & Stubbs, Ltd 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985).

ATTORNEYS FEES AND INTEREST

As part of the Arbitration Award, Custom Mechanical was awarded, as the prevailing party, $200,000 in attorneys fees pursuant to a provision in the contracts between Custom Mechanical and CR Meyer. During the Arbitration Hearing, CR Meyer indicated it did not seek to reduce or set aside the attorneys fees awarded to Custom Mechanical if the Arbitration Award was modified.

Custom Mechanical is also entitled to pre-judgment interest on the Arbitration Award pursuant to South Carolina Code section 34-31-20. "In South Carolina, the law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, payment is demandable, if the sum due is certain or capable of being reduced to a certainty." Liberty Mut. Ins. Co. v. Employee Resource Mgmt., Inc., 176 F.Supp.2d 510 (D.S.C.2001) (citing APAC Carolina, Inc. v. Town of Allendale, 41 F.3d 157, 165 (4th Cir.1994)). See also GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (D.S.C. 2008).

South Carolina Code section 34-31-20(A) provides that "all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." In this matter, the monies owed to Custom Mechanical were reduced to a certainty by virtue of the Arbitration Award. The Panel awarded to Custom Mechanical One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,776,548.00) Dollars, plus attorneys' fees and legal expenses in the amount of Two Hundred Thousand and no/100 ($200,000.00) Dollars, for a total award of One Million, Nine Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,978,548.00) Dollars.

The amount due and owing to Custom Mechanical was reduced to a certainty when the Panel issued the Arbitration Award. Therefore, Custom Mechanical is entitled to pre-judgment interest on the Arbitration Award at the statutory rate of eight and three-fourths percent per annum from the date upon which the Arbitration Award was issued.

7

THE ARBITRATION AWARD SHOULD BE CONFIRMED AND SHOULD NOT BE MODIFIED OR REDUCED

In its Complaint, CR Meyer seeks to modify or correct the Arbitration Award pursuant to South Carolina Code section 15-48-140. Based upon a review of CR Meyer's claim, it appears that CR Meyer seeks to have the award modified under South Carolina Code section 15-48-140(a)(2), which provides than an arbitration award may be modified when, among other circumstances, the "arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted." Other grounds for modification include "evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award" and the award is "imperfect in a matter of form, not affecting the merits of the controversy." S.C. Code Ann § 15-48-140(a)(1), (3) (2005). CR Meyer did not assert any of these other statutory grounds as a basis on which to modify the Arbitration Award.

Under the FAA, an arbitration award may be modified when, among other things, the "arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted." 9 U.S.C.A. § 11(b) (2009). The language of the FAA regarding modification of an arbitration award closely tracks with that of South Carolina Code section 14-28-140(a)(2).

CR Meyer submitted six seemingly separate grounds in its Complaint upon which the Arbitration Award should be reduced, but in reality, the basis for each ground is that the Panel should not have considered a payment of $1.5 million made by Kimberly Clark to CR Meyer following the improper termination (as determined by the Panel) of Custom Mechanical from the Project. Kimberly Clark made the $1.5 million payment to CR Meyer following CR Meyer's payment of monies to certain of Custom Mechanical's suppliers and subcontractors following Custom Mechanical's improper termination from the Project. CR Meyer claims that the issue of the $1.5 million payment was not properly before the Panel and was not submitted to the Panel for consideration, and therefore the consideration of the $1.5 million payment in the Panel's calculation of the Arbitration Award was improper. CR Meyer further claims that the modification of the award by $1.5 million will not affect the merits of the controversy. These claims fail.

CR Meyer seeks to modify or reduce the Arbitration Award by the value of the $1.5 million payment it received from Kimberly Clark. As part of the contractual disputes in the underlying matter, CR Meyer received a payment of $1.5 million from Kimberly Clark to address the fact that CR Meyer paid out approximately $1.8 million to Custom Mechanical's suppliers after Custom Mechanical was improperly terminated by CR Meyer.

CR Meyer first claims that the issue of the propriety of the payment of the $1.5 million to CR Meyer was not submitted to the Panel and not properly considered by the Panel because Kimberly Clark was not a party to the arbitration and its contract with Kimberly Clark was not before the arbitrators.

Custom Mechanical's Memorandum in Support of its Motion for Summary Judgment sets forth the following factual scenario. It was not disputed by CR Meyer during the hearing on August 16, 2011.

The Blanket Construction Contract between CR Meyer and Kimberly Clark certainly was before the Panel, and it was entered as Exhibit 1 by Custom Mechanical at the Arbitration Hearing. Custom Mechanical included Kimberly Clark's Blanket Construction Contract with CR Meyer as an exhibit at the Arbitration Hearing, as well as the Purchase Order (Custom Mechanical Exhibit 3) for the Project and 6 Change Notices to the Purchase Order (Custom Mechanical Exhibits 4-8). Change Notice Number 6 notes an increase to CR Meyer's contract that includes the payment of the $1.5 million to CR Meyer. Additionally, a former employee of Kimberly Clark, John Froese, was called by and testified on behalf of CR Meyer at the Arbitration Hearing. During Mr. Froese's testimony at the Arbitration Hearing, the issue of and the reasoning behind the $1.5 million payment to CR Meyer was discussed. Furthermore, Custom Mechanical submitted, without objection from CR Meyer, a series of depositions excerpts to the Panel for its consideration, including an excerpt from the deposition of John Froese. The issue of the $1.5 million payment was discussed within the deposition excerpts submitted to the Panel.

While Kimberly Clark was not a party to the arbitration, both the contract between Kimberly Clark and CR Meyer and the $1.5 million payment were properly before the Panel and therefore was considered by the Panel. At no time during the Arbitration Hearing did CR Meyer object to the introduction of the Blanket Construction Contract, the Purchase Order and Change Notices. By allowing the Blanket Construction Contract, the Purchase Order and Changes

Notices into evidence, and by calling on its own behalf a former employee of Kimberly Clark, CR Meyer itself submitted the issue of the $1.5 million payment to the Panel. CR Meyer made the choice to present a Kimberly Clark witness to the Panel who could testify regarding the $1.5 million payment, and who in fact did testify regarding the $1.5 million payment in front of the Panel.

Under South Carolina law, when determining whether an issue is one that falls under the terms of the arbitration agreement, "the range of issues that can be arbitrated is restricted by the terms of the agreement." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 188 (2001) (citing Simmons v. Lucas & Stubbs Assocs., Ltd., 283 S.C. 326, 322 S.E.2d 467 (Ct.App.1984)).

When deciding whether "an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." *Id.* (citing Hinson v. Jusco Co., 868 F.Supp. 145 (D.S.C.1994); S.C. Pub. Serv. Auth. v. Great W. Coal, 312 S.C. 559, 437 S.E.2d 22 (1993)). The *Zabinski* Court indicated that "[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Id. The *Zabinksi* Court also stated that "unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered."

The *Zabinksi* court reviewed the arbitration agreement before it, which stated that "any controversy or claim arising out of the partnership agreement" should be settled by arbitration if it cannot be settled by the partnership. The *Zabinski* court concluded, therefore, that "any claim pursuant to the partnership agreement is arbitrable." Id. Although the *Zabinski* court was determining whether an issue should be submitted to arbitration prior to the arbitration taking place, the principle is the same – given the broad language of Article 14.8 in the contracts between CR Meyer and Custom Mechanical, the issue of the $1.5 million payment was within the scope of the arbitration provision and properly submitted to the Panel.

Article 14.8 of the contracts between CR Meyer and Custom Mechanical provides that "[t]o the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. " (emphasis added). The

payment of the $1.5 million to CR Meyer, and the fact that it was related to CR Meyer's improper termination of Custom Mechanical, necessarily dictates that the issue of the payment falls within the broad arbitration clause contained with the contracts written by CR Meyer.

CR Meyer next claims that the Arbitration Award is punitive in nature and that the issue of punitive or exemplary damages was not submitted to the Panel. In the Arbitration Award, the Panel did not award, or even discuss, punitive or exemplary damages. The Panel acknowledged that CR Meyer paid certain of Custom Mechanical's subcontractors, and it provided to CR Meyer a net offset for those payments in its calculation of the final award. To the extent CR Meyer paid money out in excess of the $1.5 million it received from Kimberly Clark following CR Meyer's improper termination of Custom Mechanical, it received an offset for those monies in the Arbitration Award. The consideration of the $1.5 million payment into the calculation of the Arbitration Award is not punitive in nature, and the Panel describes it merely as a reduction against the offsets credited to CR Meyer against the total monies owed to Custom Mechanical. The Panel accurately describes the $1.5 million payment as an increase to CR Meyer's contract, and determined that such sum should reduce the offsets owed to CR Meyer. At no point in the Arbitration Award does the Panel indicate that such a reduction is meant to punish CR Meyer for its actions.

CR Meyer also claims that the reduction is punitive because it is being forced to pay the same debt twice. CR Meyer is not being forced to pay the same debt twice. The Arbitration Award, as calculated by the Panel, was based upon the monies owed to Custom Mechanical at the time of the improper termination of its various contracts with CR Meyer. The monies owed to Custom Mechanical at termination were reduced by several factors, including an offset for monies paid by CR Meyer to some of Custom Mechanical's suppliers. The offset provided CR Meyer a credit for monies it spent in excess of the $1.5 million it received from Kimberly Clark. To the extent CR Meyer paid monies over and above the $1.5 million, the Panel provided CR Meyer a credit for that amount when calculating the damages owed to Custom Mechanical. However, for the initial $1.5 million paid out by CR Meyer, Kimberly Clark made CR Meyer whole for what the Panel described as its "unanticipated costs in paying Custom's suppliers/subcontractors."

The consideration by the Panel of the $1.5 million payment was not punitive in nature, and it was not described or applied as such. Nor was the offset a means of making CR Meyer

pay the same debt twice. The offset was only one part of a reasoned award issued by the Panel, and it was supported by the Panel's factual inferences and legal conclusions.

CR Meyer further claims that the reduction of its payments to subcontractors by the $1.5 million payment constituted an order forfeiting monies it received under a contract with Kimberly Clark that was not submitted to the Panel. As noted above, the Blanket Construction Contract, Purchase Order and Change Notices, the specific means by which the $1.5 million was paid to CR Meyer, were presented and entered as evidence at the Arbitration Hearing without objection by CR Meyer.

CR Meyer next claims that the payment of the $1.5 million payment was properly made pursuant to its contract with Kimberly Clark, but that the appropriateness of the payment was not before the Panel. The Panel offered no opinion on whether the payment was appropriate; the Panel only considered the payment to CR Meyer as part of the calculation of damages owed to Custom Mechanical. However, as noted above, the issue of the $1.5 million payment was properly before the Panel, both through documents entered into evidence, as well as the testimony of its own witnesses, including former Kimberly Clark employee John Froese.

CR Meyer next claims that the underlying merits of Custom Mechanical's claims are not affected by the payment or non-payment of the $1.5 million to CR Meyer. Custom Mechanical's claims related to monies owed to it at the time it was improperly terminated from the project by CR Meyer. Because of contractual issues, Custom Mechanical was not able to pay certain suppliers and subcontractors. Despite improperly terminating Custom Mechanical, CR Meyer paid certain of Custom's suppliers and subcontractors, and CR Meyer was reimbursed by Kimberly Clark for the payment.

To the extent that CR Meyer actually paid money out of its own pocket to pay the suppliers and subcontractors, it was provided a credit for that amount in the Arbitration Award and additional claims set forth in CR Meyer's Exhibit D to its Brief in Support of its Petition to Modify or Vacate the Arbitration Award. The payment of the $1.5 million did affect and touch upon the merits of Custom Mechanical's claim, as it related directly to monies owed to Custom Mechanical, as well as monies owed on behalf of Custom Mechanical.

The final issue raised by CR Meyer is that the payment of the $1.5 million was a collateral source payment, and that the issue of the collateral source payment was not before the Panel and therefore was not properly considered. Again, as discussed above, the $1.5 million

payment, regardless of how it is described or identified, was properly before the Panel. At no point during the Arbitration Hearing did CR Meyer object to the introduction of evidence related to the $1.5 million payment. Further, CR Meyer called as its own witness John Froese, a former employee of Kimberly Clark who was involved in the approval and payment of the $1.5 million to CR Meyer. The issue of the payment was properly submitted the Panel.

In considering the testimony of the witnesses, the documents in evidence, and certain deposition excerpts, the Panel had the opportunity to hear the basis for and reasoning behind the $1.5 million payment to CR Meyer. Further, under the terms of the contracts between Custom Mechanical and CR Meyer, which contain a broadly worded arbitration provision, the issue of the $1.5 million payment was a proper subject for the Panel to consider. The facts and circumstances of the claims involving the improper termination of Custom Mechanical necessarily and logically include a discussion of the $1.5 million payment.

The grounds upon which CR Meyer seeks to modify the Arbitration Award are not supported by South Carolina law or Federal law under the FAA. The Panel properly evaluated the $1.5 million payment during the Arbitration Hearing, and the $1.5 million payment was submitted to the Panel by actions or evidence submitted by both Custom Mechanical and CR Meyer.

The Arbitration Award is confirmed by this Court pursuant to South Carolina Code section 15-48-120.

THE ARBITRATION AWARD SHOULD BE CONFIRMED AND SHOULD NOT BE VACATED

As an alternative to modifying the Arbitration Award, CR Meyer seeks to vacate the Arbitration Award pursuant to South Carolina Code section 15-48-130. In its Complaint, CR Meyer asserted nine grounds upon which the Arbitration Award should be vacated. The first six grounds are identical to those raised under CR Meyer's claim to modify the award, and are based upon the claim that the Panel exceeded its powers by making an award based upon a matter not submitted to them. The remaining three grounds relate to additional claims that the Panel exceeded its power, as well as the claim that the Arbitration Award was procured by corruption, fraud or other undue means and that no arbitration provision applied to the Panel's decision. CR

Meyer also raised as a new issue in its Brief in Support of its Petition to Modify or Vacate the Arbitration Award its claim that the Arbitration Award should be vacated based upon the "manifest disregard" of the law on the part of the Panel.

South Carolina courts have recognized their limited ability to review an arbitration award, and the courts have indicated that the decision of an arbitrator will be vacated only upon statutory grounds, or on the non-statuary ground of manifest disregard or perverse misconstruction of the law. See Lauro v Visnapuu, 351 S.C. 507, 516, 570 S.E.2d 551, 555-56 (Ct. App. 2002). "The Court's function in...vacating an arbitration award is severely limited." Trident , 286 S.C. at 105.

The court may not review the merits of an arbitration decision so long as the arbitrator does not exceed his power. Under South Carolina law, a "party may not attempt to relitigate the merits of the arbitrators' resolution of the arbitrable issues under the guise of claiming that the arbitrator exceeded his power." Pittman, 327 S.C. at 76-77. "If the grounds for the award can be inferred from the facts, the award should be confirmed." Id. at 77.

Under the FAA, a court may vacate an arbitration award when it was procured by corruption, fraud or other undue means; there was evident partiality or corruption in the arbitrators; misconduct or misbehavior prejudicing the rights of any party; or the arbitrators exceeded their powers. 9 U.S.C.A. §10 (2009). The FAA language regarding the vacatur of an arbitration award tracks very closely with that of its South Carolina counterpart contained within the South Carolina Uniform Arbitration Act.

"For a court to vacate an arbitration award, the moving party must sustain the heavy burden of showing one of the grounds specified in the [FAA] or one of certain limited common law grounds." MCI Constructors, LLC v City of Greensboro, 610 F.3d. 849, 857 (4th Cir. 2010). The "scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration." MCI, 610 F.3d at 857-58 (citing Three S Delaware, Inc. v DataQuick Info Sys., Inc., 492 F.3d 520, 527 (4th Cir. 2007)(citation and internal quotations omitted)).

To sustain its claim to vacate the Arbitration Award based upon manifest disregard of the law, CR Meyer must demonstrate that "the governing law ignored by the arbitrator[s] must be well defined, explicit, and clearly applicable." Gissel, 382 S.C. at 241. "An arbitrator manifestly disregards the law when he or she appreciates the existence of a clearly governing legal principle

and decides to ignore it." C-Sculptures, 2011 WL 2535543 at 2 (citing Harris v. Bennett, 332 S.C. 238, 246, 503 S.E.2d 782, 787 (Ct. App. 1998)). Cases in which awards have been vacated for manifest disregard of the law are "exceedingly rare, requiring circumstances far more egregious than mere errors in interpreting or applying the law." Trident Technical, 286 S.C. at 108.

To prevail on the non-statutory claim of manifest disregard of the law to vacate the award, CR Meyer must show "something beyond and different from a mere error of law or failure on the part of the arbitrators to understand or apply the law." Batten, 300 S.C. at 548 (citing Trident Technical, 286 S.C. 98). CR Meyer has made no such showing.

As with its claim to modify the Arbitration Award, CR Meyer has submitted several grounds to support its claim to vacate the Arbitration Award. The first six grounds on which CR Meyer seeks to vacate the Arbitration Award are identical to those issues raised in its claim to modify the Arbitration Award. CR Meyer claims in those first six grounds that the Panel exceeded the scope of their powers by making an award based upon a matter not submitted to them, namely the payment of the $1.5 million from Kimberly Clark to CR Meyer. CR Meyer claims that the issue of the $1.5 million payment was not properly before the Panel and was not submitted to the Panel for consideration, and therefore the consideration of the $1.5 million in the Panel's calculation of the Arbitration Award was improper.

South Carolina courts have indicated that:

> The question of whether arbitrators have exceeded their powers under 14-48-130(a)(3) relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers when they attempt to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement. Conversely, if an issue is within the scope of the arbitration agreement, the statutory language does not require the court to review the merits of their decision.

Batten, 300 S.C. at 548. As noted above, the issue of the $1.5 million payment to CR Meyer was submitted to the Panel by virtue of documentary evidence, as well as the testimony of John Froese, who was called on behalf of CR Meyer. CR Meyer cannot now claim the issue of the $1.5 million payment was outside the scope of the arbitration agreement, and it cannot now attempt to relitigate the merits of the Panel's decision.

South Carolina courts have indicated that if an issue is within the scope of the arbitration agreement, the court need not review the merits of the decision. Harris v Bennett, 332 S.C. 238,

503 S.E.2d 782 (Ct. App 1998). Article 14.8 of each of the contracts between CR Meyer and Custom Mechanical provides that "[t]o the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding." (emphasis added). The very language of the contracts between CR Meyer and Custom Mechanical suggests that the issue of the $1.5 million payment could and should be considered during the Arbitration Hearing.

Article 14.8 further contemplates that the arbitration could encompass claims and disputes relating to not only CR Meyer and Custom Mechanical, but also the Owner, Kimberly Clark. To the extent the $1.5 million payment was made by the Owner in connection with the dispute of CR Meyer and Custom Mechanical and involved the common question of Custom Mechanical's improper termination, it was properly before the Panel. The expansive language of Article 14.8 indicates that the payment of the $1.5 million was well within the scope of the arbitration agreement between CR Meyer and Custom Mechanical.

Additionally, at no time during the Arbitration Hearing did CR Meyer object to the mention of or discussion of the $1.5 million dollar payment as being outside of the scope of the arbitration agreement between the parties. By failing to object to the introduction of evidence relating to the $1.5 million payment, CR Meyer allowed the issue to be submitted to the Panel.

In Dighello v. Busconi, the United States District Court, District of Connecticut, acknowledged that an award may be set aside if an arbitrator exceeds its powers. Dighello v. Busconi, 673 F.Supp. 85 (D. Conn. 1987). The Court indicated that "if an arbitration panel rules on issues not presented to it by the parties, it has exceeded its authority and the award must be vacated." Dighello, 673 F.Supp at 88. At the Arbitration Hearing, the Panel received evidence and heard testimony regarding the $1.5 million payment, thus it did not exceed its authority. The issue of the $1.5 million payment was presented to it, without objection by CR Meyer, and was therefore within the scope of information it could consider when issuing the Arbitration Award.

The *Dighello* Court further indicated that when evaluating whether a particular arbitration agreement "covers a particular issue, all doubts must be resolved in favor of arbitration." *Id.* (citing Metro Indus. Painting Corp. v. Terminal Construction Co., 287 F.2d 382, 385 (2d Cir. 1961)). The Court reasoned that "[a]ny issue that is 'inextricably tied up with the merits of the underlying dispute' may properly be decided by the arbitrator." Id. (quoting McAllister Bros. v.

A & S Trans. Co., 621 F.2d 519, 522-23 (2 Cir.1980)). See also Nolde Bros., Inc. v. Local 358, Bakery & Confectionery Workers Union, 430 U.S. 243, 254 (1977).

The issue of the $1.5 million payment to CR Meyer is inextricably tied up with the merits of the dispute between Custom Mechanical and CR Meyer. Kimberly Clark made the payment to CR Meyer to address CR Meyer's costs associated with Custom Mechanical's improper termination from the Project. For CR Meyer to now claim that the $1.5 million payment was outside the scope of the arbitration and beyond the consideration of the Panel is incorrect. The payment is inextricably tied to the merits of the dispute, therefore the consideration of it by the Panel does not exceed the Panel's power.

The seventh issued raised by CR Meyer as a possible ground upon which to vacate the Arbitration Award is that there was no arbitration agreement as to the issue arbitrated by the Panel, which they claim to be the propriety of the $1.5 million payment. It appears that CR Meyer relies upon South Carolina Code section 15-48-130(a)(5) as a basis for this claim.

As previously noted, the Panel offered no opinion on whether the payment was appropriate; the Panel only considered the payment to CR Meyer as part of the calculation of damages owed to Custom Mechanical. The Panel was made aware of the $1.5 million payment and utilized that knowledge, along with a series of other facts and circumstances presented during the Arbitration Hearing, to inform its Arbitration Award.

Regarding the claim that no arbitration agreement existed as to the issue of the $1.5 million payment, that claim fails. As previously noted, the contracts between CR Meyer and Custom contains Article 14.8, which provides that "[t]o the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding." (emphasis added). The very language of the contracts between CR Meyer and Custom Mechanical, as well as the contract between CR Meyer and Kimberly Clark, suggests that the issue of the $1.5 million payment could and should be considered as part of Arbitration Hearing.

Under *Zabinski,* "[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Zabinski, 346 S.C. at 597. "[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." Id. Given the broad language of Article 14.8 in the

contracts between CR Meyer and Custom Mechanical, the issue of the $1.5 million payment was within the scope of the arbitration provision and properly submitted to the Panel.

The fact that Kimberly Clark itself was not a party to the arbitration is immaterial. It is not the propriety of the payment that the Panel adjudged. The payment was considered by the Panel as one of many factors in reaching its final reasoned award. In light of the language of the Blanket Construction Contracts, noted above, as well as Article 14.8, the Panel was well within its powers to consider the $1.5 million payment and consider it when issuing its reasoned award.

Under the FAA, CR Meyer must clear a high hurdle to demonstrate that the Panel exceeded its powers. Under Stolt-Nielsen S.A. v. AnimalFeeds International Corp., the Court indicated that "[i]t not enough for petitioners to show that the panel committed an error-or even a serious error." Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 130 S.Ct. 1758, 1768 (2010). "It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable under the [FAA]." Id (quoting Major League Baseball Players Assn. v. Garvey, 532 U.S. 504, 509 (2001)(quoting Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, (1960))). When such a departure by the arbitrator has occurred, the Supreme Court indicated that an "arbitration decision may be vacated under [9 USCA] § 10(a)(4) of the FAA on the ground that the arbitrator 'exceeded [his] powers...'" Id.

There is no evidence that the Panel exceeded its powers in issuing the Arbitration Award. The Panel was presented with evidence of the $1.5 million payment, and it considered that evidence along with other information when reaching its reasoned award. CR Meyer could point to no instance where the Panel issued its own brand of "industrial justice."

The eighth issue upon which CR Meyer bases its claim in it is Complaint to vacate the Arbitration Award is that the Panel's decision to utilize the $1.5 million payment as a credit results in Custom Mechanical receiving more in the award than authorized by the provisions relied upon by the Panel. The Panel determined that Custom Mechanical was wrongfully terminated under Article 10.7 of its contracts with CR Meyer. Because of that wrongful termination, Custom Mechanical was entitled to receive "the reasonable value of work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Work performed, less prior payments made, and attorney's fees."

In calculating the Arbitration Award, as shown on page 10 of the Arbitration Award, the Panel first determined the reasonable value of Custom Mechanical's work for all subcontracts at issue, and then deducted payments made to Custom Mechanical by CR Meyer, as required under Article 10.7. The Panel further deducted an inadvertent overcharge by Custom Mechanical to CR Meyer. The Panel then deducted an additional $390,000, which was the credit to CR Meyer for monies CR Meyer paid out to Custom suppliers over and above the $1.5 million payment from Kimberly Clark.

Therefore, under the Panel's reasoning, it awarded to Custom Mechanical exactly what was owed under Article 10.7. The Panel determined the reasonable value worked by Custom on the Project, it reduced that amount by prior payments made to Custom Mechanical, it provided CR Meyer with an additional series of credits for an overcharge and monies paid to suppliers/subcontractors, and the Panel reached the subtotal award to Custom Mechanical, excluding attorneys fees. The monies awarded to Custom Mechanical did not include an additional or gratuitous $1.5 million as CR Meyer implies. The reasoned award of the Panel tracks exactly with Article 10.7, the provision upon which it relied when issuing the Arbitration Award in favor of Custom Mechanical. The Panel did not award to Custom Mechanical payments in excess of the amount authorized under the contracts between CR Meyer and Custom Mechanical.

The final issue raised by CR Meyer in its Complaint is that the Arbitration award was procured by corruption, fraud or other undue means. To wit, CR Meyer claims that Custom Mechanical: (1) relied upon fraudulent cost records in support of the claim; (2) submitted fraudulent invoices in support of the claim; (3) submitted invoices for fraudulent labor not performed; and (4) willfully and intentionally portrayed and purged its job cost records and accounting to fraudulent misrepresent and conceal its actual and true cost.

Under South Carolina law, an award may be vacated when it is show it was procured by corruption, fraud or other undue means. The FAA contains identical language with respect to grounds upon which an award may be vacated.

During the Arbitration Hearing, and in the months leading up to it, CR Meyer repeatedly claimed that Custom Mechanical was less than honest in its dealings with CR Meyer. CR Meyer hired a forensic accountant, Mr. Paul Rodriguez, to review Custom Mechanical's accounting records and computer records. Mr. Rodriguez had access to Custom Mechanical's accounting

system, as well as Custom Mechanical's entire project file, and he issued two lengthy reports and testified at the Arbitration Hearing. CR Meyer presented excerpts of his testimony from the Arbitration Hearing to the Court. While the testimony indicates poor accounting practices, Mr. Rodrigues did not identify any fraudulent activity.

Custom Mechanical retained its own forensic accountant, Mr. Roy Strickland, who testified he did not see any evidence of fraudulent accounting or invoicing. Mr. Strickland admitted that the methods utilized by Custom Mechanical did not represent the soundest accounting practices, but poor accounting is not fraudulent accounting.

The Fourth Circuit had addressed the issue of undue means and fraud in the context of vacating an arbitration award. The Court, following a Ninth Circuit case, indicated that "to prove that an award was procured by undue means, the party seeking vacatur must show that the fraud [or corruption] was (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence." MCI, 610 F.3d at 858 (citing A.G. Edwards & Sons, Inc. v. McCollough, 967 F.2d 1401, 1404 (9th Cir.1992)). See also Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378, 1383 (11th Cir.1988) (collecting cases).

CR Meyer's own forensic expert did not identify any fraudulent behavior on the part of Custom Mechanical. To the extent CR Meyer raised the specter of such behavior, the Panel was able to fully evaluate that testimony and consider it to the extent it chose when issuing the Arbitration Award.

In pursuing the claim of fraud as a means to vacate the Arbitration Award, CR Meyer seeks to perpetuate a claim of fraud by Custom Mechanical that was presented to, and apparently disregarded by, the Panel. The *MCI* Court stated that as part of a claim to vacate an award, "the moving party must sustain the heavy burden of showing one of the grounds specified in the [FAA] or one of certain limited common law grounds" has been satisfied. Id. at 857. CR Meyer has failed to meet this heavy burden with respect to the fraud issue, as well as the other issues it has raised. The mere specter of fraud, particularly when the issue was presented to the Panel during the Arbitration Hearing, is not a sufficient ground to vacate the Arbitration Award.

CR Meyer presented evidence to the Panel to support its claim that Custom Mechanical engaged in fraudulent activity, and Custom Mechanical presented its own evidence that no such fraudulent behavior took place. The Panel was able to evaluate both positions, which were

decidedly contradictory, and the Panel found in favor of Custom Mechanical, despite CR Meyer's claims. Because both parties presented to the Panel their respective positions regarding CR Meyer's claims of fraudulent behavior, the Panel made a credibility determination and found in favor of Custom Mechanical.

On the specific charge that Custom Mechanical submitted invoices for fraudulent labor not performed, Custom Mechanical stipulated to the fact that it overcharged CR Meyer for labor on the Project in the amount of approximately $29,000, an amount for which CR Meyer received credit in the calculation of the Arbitration Award. Custom Mechanical entered into approximately twenty-five contracts with CR Meyer for the Project, with a value of approximately $16 million, including change orders. The incorrect charges are de minimis in the context of the overall scope of work.

In its Brief in Support of its Complaint, CR Meyer raised an entirely new basis upon which it sought to vacate the Arbitration Award – manifest disregard of the law by the Panel. The burden to demonstrate manifest disregard of the law is a high one, and CR Meyer has failed to meet that burden.

CR Meyer argues that the Arbitration Award forces it to forfeit the $1.5 million payment. The Panel's calculation of the award does not include a $1.5 million addition. Rather, it calculates monies owed to Custom Mechanical at the time of its improper termination.

There is no evidence that the Panel considered or awarded punitive damages to Custom Mechanical in this matter. At no time in the Arbitration Award did the Panel address the issue of punitive damages. Instead, the Panel properly framed its award in the context of a breach of contract action pursuant to the applicable contractual provisions.

During the hearing before this Court, CR Meyer focused on the modification of the Arbitration Award, rather than the vacatur of the Arbitration Award. It apparently recognized that it failed to meet the high standard necessary to vacate an arbitration award on the grounds of manifest disregard of the law by the Panel.

The grounds upon which CR Meyer seeks to vacate the Arbitration Award are not supported by South Carolina law or federal law relating to the FAA. The Panel properly evaluated the $1.5 million payment during the Arbitration Hearing, and the $1.5 million payment was submitted to the Panel by actions or evidence submitted by both Custom Mechanical and CR

Meyer. The Panel did not exceed its authority in considering the $1.5 million payment, nor did it act with manifest disregard of the law.

The Arbitration Award is confirmed by this Court pursuant to South Carolina Code section 15-48-120 and 9 USC section 9.

FINDINGS OF THE COURT

Based on the record before the Court, including the Plaintiff's Brief in Support of its Complaint and the exhibits thereto and Custom Mechanical's Memorandum in Support of its Motion for Summary Judgment and the exhibits thereto, including the pleadings in this matter, and the arguments of counsel at the hearing of this matter on August 16, 2011, the Court finds as follows:

1. Custom Mechanical has presented sufficient evidence to the Court to support the confirmation of the Arbitration Award pursuant to South Carolina Code section 15-48-120 and 9 USC section 9.

2. CR Meyer has failed to meet its burden to demonstrate that the Arbitration Award should be modified pursuant to South Carolina Code section 15-48-140 9 USC section 11.

3. CR Meyer has failed to meet its burden to demonstrate that the Arbitration Award should be vacated pursuant to South Carolina Code section 15-48-130 and 9 USC section 10.

4. CR Meyer has failed to the meet the burden to demonstrate that the Arbitration Award should be vacated based upon "manifest disregard" of the law on the part of the Panel in issuing the Arbitration Award.

5. Accordingly, the Arbitration Award is HEREBY CONFIRMED in the amount of One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,776,548.00) Dollars, plus attorneys' fees and legal expenses in the amount of Two Hundred Thousand and no/100 ($200,000.00) Dollars, for a total award of One Million,

Nine Hundred Seventy-six Thousand, Five Hundred Forty-eight and no/100 ($1,978,548.00) Dollars, plus pre-judgment interest running from the date the Panel issued the Arbitration Award.

AND IT IS SO ORDERED.

October 31, 2011
Columbia, South Carolina

G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	**Civil Action No.: 2011-CP-40-1060**
Custom Mechanical CSRA, LLC,	)	
Plaintiff,	)	**ORDER**
v.	)	
C.R. Meyer and Sons Company and Kimberly-Clark Corporation,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
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JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter is before the Court upon joint motion of the Defendant, C.R. Meyer and Sons Company (hereinafter "C.R. Meyer"), and the Plaintiff, Custom Mechanical CSRA, LLC (hereinafter "Custom").

The Court entered an Order on November 1, 2011 confirming an arbitration award dated November 8, 2010 in the case entitled *C.R. Meyer and Sons v. Custom Mechanical CSRA, LLC*, Civil Action No. 2010-CP-40-8621. C.R. Meyer timely filed a Notice of Appeal of the Order confirming the award. The issues relating to the various Third-Party Defendants in Civil Action No. 2010-CP-40-8621 were not affected by the appeal and this Court retains jurisdiction over those matters.

C.R. Meyer and Custom have reached an agreement to resolve the matter and wish to memorialize it pursuant to Rule 40, SCRCP.

The parties have agreed:

1. C.R. Meyer will pay the sum of $2,000,000.00 to Custom within ten (10) days of the date of this Order. The funds will be transmitted by electronic funds transfer to the escrow account of Richardson Plowden & Robinson, P.A.
2. The arbitration award includes an award of $200,000.00 for attorneys' fees and expenses. This amount shall be segregated and dealt with pursuant to

the agreement between Custom and Richardson Plowden & Robinson, P.A.

3. The balance of the settlement, $1,800,000.00, shall be maintained in the escrow account of Richardson Plowden & Robinson, P.A. pending resolution of any claims asserted by the Third Party Defendants. The Court will schedule a hearing for all Third Party Defendants to assert their claims and priority to the funds being held. Custom shall be entitled to assert any priority to the funds. The funds being held pursuant to this paragraph shall be disbursed pursuant to further Order of the Court.
4. Upon approval by the court of this agreement, and payment by C.R. Meyer of the amount specified, C.R. Meyer will dismiss the pending appeal and C.R. Meyer shall be dismissed, with prejudice, in Civil Action No. 2010-CP-40-8621 and Civil Action No. 2011-CP-40-1060. None of the Third Party Defendants have asserted claims against C.R. Meyer; however, any such potential claims shall be barred upon payment by C.R. Meyer of the specified amount. Kimberly-Clark shall be dismissed with prejudice in Civil Action No. 2011-CP-40-1060.

The Parties agree to the entry of this agreement as the Order of the Court.

AND IT IS SO ORDERED

The Honorable James R. Barber, III
Judge, Fifth Judicial Circuit

February 23, 2012
Columbia, South Carolina

WE MOVE AND CONSENT:

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and

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ATTORNEYS FOR KIMBERLY-CLARK CORPORATION

I consent to the Order on Settlement.

WE SO CONSENT: With respect to claims asserted by Ginsburg Security Federal Bank consents subject to, and without waiving any provision of the relevant loan agreement and related instruments

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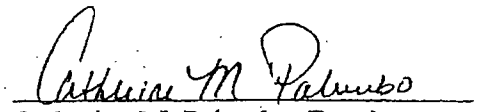
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Attorney for Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers

I consent to the Order on Settlement.

WE SO CONSENT:

_____

Robert L. Buchanan, Jr., Esquire
Buchanan Law Office, P.A.
P.O. Box 463
Aiken, SC 29802
Attorney for Security Federal Bank



Catherine M. Palumbo. Esquire
McCorkle & Johnson, LLP
319 Tattnall St.
Savannah, GA 31401
Attorneys for Ferguson Enterprises, Inc.

_____

Norman J. Slawsky, Esquire
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Suite 850
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Attorney for Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers

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2/28/12

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~~315 West Ponce de Leon Avenue~~
Decatur, GA ~~30030~~ 30032
Attorney for Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers

for: Charles O. Williams, III, Esquire with express permission with regards to claims asserted by Custom Plumbers and Steam Fitters Local #150 consents subj ect to, and without waiving its priority over Customs claims. HWM for COW, III
McAngus, Goudelock & Courie, LLC
P.O. Box 12519,
Columbia, SC 29211-2519
Attorneys for Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund

Nekki Shutt, Esquire
Callison Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202-01390
Attorney for Third Party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Chris Cullipher, David W. Cullipher, Charles R. Ellzey, Clayton W. Google, Jr., Martin Granger, Williams R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, and Bruce Pollock, Jr.

for: John T. Lay, Jr., Esquire with express permission
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1201 Main Street, Ste. 1110
Columbia, SC 29201
Attorney for Presidential Financial Corporation

Craig H. Allen, Esquire
P.O. Box 10854
Greenville, SC 29603
Attorney for United Rentals

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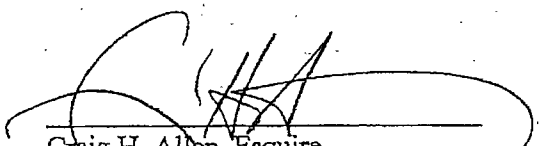
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Columbia, SC 29201
Attorney for Presidential Financial Corporation



Craig H. Allen, Esquire
P.O. Box 10854
Greenville, SC 29603
Attorney for United Rentals

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2010-CP-40-8621

RICHLAND COUNTY
FILED
2012 JUL 19 PM 2:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

C. R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC

Third-Party Plaintiff, Respondent,

VS.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this /fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk

ORDER

(Following 7-13-2012 Status Conference)

1

Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank,

Third-Party Defendants.

A status conference was convened July 13, 2012 at 11:00 a.m. at 1201 Main Street, Suite 1200, Columbia, SC 29201, the Columbia, SC law offices of Gallivan, White & Boyd, P. A. Judge Williams presided. The Plaintiff/Petitioner did not participate. Attorney Frank Mack appeared briefly by telephone on behalf of the Defendant/Respondent/Third-Party Plaintiff. Attorneys for all third-party defendants participated either in person (including Attorneys Robert L. Buchanan, Jr., Johnston Cox, Lindsay Joyner and Nekki Shutt) or by telephone (including Attorneys Eric Jon Taylor, Sherri Stoney, Brett Lancer, Clark Cooper and E. Righton Johnson).

On June 22, 2012, Third-Party Defendants Security Federal Bank ("SFB") and Presidential Financial Corporation ("PFC") moved to amend their Answer to include a Counterclaim and Cross-claim against other Third-Party Defendants for declaratory judgment relief. Without objection, the motion should be granted. SFB and PFC should file and serve their amended pleading as soon as practical after the filing and service of this order, and the relevant parties should respond as hereinafter provided.

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There was considerable discussion regarding extending the period of discovery as well as the parties' participation in discovery. Based on the positions of the parties, it is appropriate for the period of discovery to be extended and the parties' participation in discovery to be governed as hereinafter provided.

Therefore:

(1) Without objection, the motion of SFB and PFC to amend their Answer and to assert a Counterclaim and Cross-claim for declaratory relief is granted. SFB and PFC shall file and serve their amended pleading as soon as practicable after the filing and service of this order. Pursuant to Rule 15, SCRCP, relevant parties shall have fifteen (15) days after service to respond.

(2) The date for completion of discovery shall be Friday, October 19, 2012. Discovery requests are timely if served in time for the response to be served on or before said date.

(3) The costs of depositions shall be paid equally by participating parties as they are incurred, with leave for any party to move for an equitable adjustment of the costs as hereinafter provided. Upon notice of a deposition, all other parties shall opt-in or opt-out of the deposition in writing prior to the deposition. Those parties who opt-out shall not be participating parties, and they shall not appear at, participate in, or use the deposition or any portion thereof for any purpose.

(4) All parties shall have available, and be subject to, and shall have the right to enforce, all written discovery as per the South Carolina Rules of Civil Procedure.

(5) Upon completion of discovery but prior to trial, any party shall have leave to move for an equitable adjustment of discovery costs. In addition to evidence on the merits, evidence on the issue of the equitable adjustment of costs shall be introduced at trial by a moving party.

(6) The next status conference shall be held at Gallivan, White & Boyd, P.A., 1201 Main Street, Suite 1200, Columbia, S.C. 29201 on Thursday, September 13, 2012, at 11:00 a.m.

AND IT IS SO ORDERED.

Seneca, South Carolina

July 18, 2012

The Honorable James C. Williams, Jr.
Special Referee

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; United Rentals (North America), Inc.; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

ORDER GRANTING DISBURSEMENT OF FUNDS

RICHLAND COUNTY
FILED
2012 NOV 13 PM 4:32
JEANETTE W. McBRIDE
C.C.P. & G.S.

SCANNED

Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank.

Third-Party Defendants.

On October 19, 2012, Third-Party Defendants and Crossclaimants Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal"), by and through their undersigned attorneys, moved this Court for an Order disbursing a certain portion of undisputed funds from Custom Mechanical CSRA, LLC's settlement award from C.R. Meyer & Sons Company to Presidential and Security Federal during the pendency of the remaining claims.

I presided over a status conference was convened on November 1, 2012 at 11:00 a.m. at 1201 Main Street, Suite 1200, Columbia, SC, 29201, the Columbia, SC law offices of Gallivan, White & Boyd, P.A. Present at the status conference, either in person or by telephone, were Attorneys for Third-Party Defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart;

Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "Custom Employees"); Presidential; Security Federal; Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund (collectively the "Plumbers' Funds"); and Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds (collectively the "Carpenters' Funds").

During the status conference, the Plumbers' Funds and Carpenters' Funds agreed before me that they did not oppose Presidential and Security Federal's Motion for Disbursement of the Remaining Funds (hereinafter "Motion"). Thereafter, Presidential, Security Federal, and the Custom Employees agreed to brief the issue presented in the Motion by Monday November 5, 2012. I have considered the Motion as well as Presidential and Security Federal's Memorandum in Support of the Motion and the Custom Employees' Memorandum in Opposition to the Motion.

Following my review of the Motion, memoranda, and email correspondence from both sides, I find that a portion of the funds may be disbursed to Presidential and Security Federal at this time. Such action is well within the inherent powers of the Court. To that end, I order that Three Hundred Twenty-Five Thousand and NO/100 Dollars ($325,000) remain in escrow at Richardson Plowden & Robinson, P.A. during the pendency of the

remaining claims in this action. This amount is set aside without prejudice to either party as to any possible recovery. Accordingly, I further find that the Custom Employees will suffer no prejudice by the disbursement of One Million Four Hundred Seventy-Five Thousand and NO/100 Dollars ($1,475,000) to Presidential and Security Federal, to be shared equally. I hereby order Richardson Plowden & Robinson, P.A. to disburse Seven Hundred Thirty-Seven Thousand Five Hundred and NO/100 ($737,500) to Presidential and Seven Hundred Thirty-Seven Thousand Five Hundred and NO/100 ($737,500) to Security Federal from the settlement award by wire transfer immediately.

AND IT IS SO ORDERED.

The Honorable James C. Williams, Jr.
Special Referee

Seneca, South Carolina
November 7, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent
v.
Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black;

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

ORDER GRANTING PRESIDENTIAL FINANCIAL COMPANY AND SECURITY FEDERAL BANK'S MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2013 MAY 28 PM 3:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Bruce Pollock, Jr.; and Security Federal Bank.

Third-Party Defendants.

Pending before the Court are two motions: (1) the Motion for Summary Judgment filed by Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal") on January 24, 2013; and (2) the Motion for Summary Judgment filed by Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; Estate of William R. McFerrin by and through his duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "the Custom Employees") also filed on January 24, 2013. On March 19, 2013, the Court heard oral argument from counsel on both motions.

The Court has carefully reviewed and considered the pleadings, evidence, arguments of counsel, and relevant case law. For the reasons outlined below, the Court finds that Presidential

g2 JWD

and Security Federal's Motion for Summary Judgment is due to be granted and the Custom Employees' Motion for Summary Judgment is due to be denied.

FACTUAL BACKGROUND

Defendant Custom Mechanical, CSRA, LLC ("Custom Mechanical") borrowed money from Security Federal and Presidential in order to fund its work pursuant to a subcontract with Plaintiff, C.R. Meyer & Sons Company ("C.R. Meyer"). In order to fund Custom Mechanical's work on the subcontract, Security Federal loaned Custom Mechanical Two Million One Hundred Fifty-One Thousand Five Hundred Ninety-Four Dollars ($2,151,594.00) and Presidential loaned Custom Mechanical One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.00). Both Security Federal and Presidential filed UCC-1 Financing Statements perfected their respective security interests in the accounts receivable from C.R. Meyer to Custom Mechanical. Custom Mechanical defaulted on its loans from both lenders.

In furtherance of the subcontract, Custom Mechanical provided union labor services through its sister company, Custom Industrial Services, LLC ("Custom Industrial"). Those laborers could participate in a voluntary payroll deduction plan offered through their employer and through their union—Plumbers & Steamfitters Local No. 150. The laborers could elect, through the union, to have five, ten, or fifteen percent of their weekly wages withheld by their employer, and the withholdings would be set aside into a vacation/holiday savings fund. If the laborers participated in the program, Custom Industrial was supposed to remit the withheld wage amounts to the union and the union would remit checks to the union members twice a year. Custom Industrial stopped remitting payments to the union fund and twenty-nine (29) of those laborers, now known as the Custom Employees, seek to collect the wages that were to be set aside in their vacation funds.

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PROCEDURAL BACKGROUND

C.R. Meyer and Custom Mechanical disputed the amounts owed by C.R. Meyer to Custom Mechanical for work done pursuant to the subcontract. They arbitrated their dispute and the arbitrators issued an award in favor of Custom Mechanical. C. R. Meyer initiated this matter to modify and/or vacate the arbitration award. Custom Mechanical filed a third party complaint alleging that the third party defendants in this action "may have an interest in the proceeds of the $1,776,548.00 arbitration award because the total of all known claims exceeds the net proceeds of the arbitration award." Custom Mechanical asked the Court to require C.R. Meyer to pay the arbitration proceeds into the registry of the Court for distribution to the third party defendants.

The arbitration award was confirmed by the Trial Court on November 1, 2011. Rather than appeal, C.R. Meyer agreed to a settlement amount and, by court order, C.R. Meyer paid $1,800,000 into the trust account of Custom Mechanical's attorneys – Richardson, Plowden & Robinson, P.A. -- to be held for the benefit of the creditors until their priority was determined by the Court. All of the third party defendants stipulated to dismissal except Presidential, Security Federal, and the Custom Employees. Upon the union's dismissal, all but $325,000 was disbursed to Presidential and Security Federal. The three remaining parties continued to assert their priority to the arbitration award.

Presidential and Security Federal asserted a claim for declaratory judgment pursuant to South Carolina Code Annotated § 15-53-10, alleging priority over all other alleged liens of third party defendants and crossclaim defendants. Presidential and Security Federal's secured claims exceed the settlement award and encumber the entire balance. On August 1, 2012, the Custom Employees answered Presidential and Security Federal's Crossclaim with a Crossclaim and Counterclaim of their own. Under Section 15-53-10, the Custom Employees asserted a first lien

over the arbitration award under South Carolina Code Annotated § 29-7-10 and claimed they are entitled to the amount of their outstanding judgment of $275,000.00 against Custom Mechanical as well as prejudgment interest and costs including attorney's fees.

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRCP; See also Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 36, 637 S.E. 2d 560, 561 (2006). Rule 56(e) further provides:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Rule 56(e), SCRCP.

"A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Regional Medical Ct., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

FINDINGS OF FACT AND ANALYSIS OF LAW

The Custom Employees do not contest the fact that Presidential and Security Federal have recorded first liens. Pursuant to S.C. Code Ann. § 36-9-317, *et seq.*, the perfected security interests must take priority unless S.C. Code Ann. § 29-7-10 operates to establish a statutory lien in favor of the Custom Employees. The Custom Employees were "laborers" who were involved

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in the "erection, alteration, or repairing of buildings" under Section 29-7-10.[1] However, Section 29-7-10 does not establish a lien in this case for the following reasons:

The Custom Employees were employed by Custom Industrial and not by Custom Mechanical. It is Custom Mechanical who is a party to this litigation and who received the funds pursuant to an arbitration award between it and C.R. Meyer. The Custom Employees are not entitled to monies awarded to Custom Mechanical, a separate legal entity. See Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp., 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007) (citations omitted).

A lien under Section 29-7-10 only attaches if Custom Mechanical was paid pursuant to its contract with C.R. Meyer. See Morgan & Alston v. D. W. Alderman & Sons' Co., 70 S.C. 462, 50 S.E. 26, 27 (1905). No money has come into the hands of Custom Mechanical. Instead, the money was ordered by the Court to be paid into the trust account of Custom Mechanical's attorney for the benefit of the creditors. The case law construing Section 29-7-10 is clear that the statute must be strictly construed. See e.g., Bellsouth Telecomm., Inc. v. Dekalb Concrete Prod., Inc., 1995 WL 578191 (D.S.C. 1995) (citing Morgan & Alston v. D. W. Alderman & Sons' Co., 70 S.C. 462, 50 S.E. 26, 27 (1905)); Poinsett Constr. Co., Inc. v. Fischer, 301 S.C. 343, 344, 391 S.E.2d 875, 876 (Ct. App. 1990). Accordingly, by operation of law, a lien under Section 29-7-10 does not attach for the benefit of the Custom Employees. See Morgan & Alston, 70 S.C. 462, 50 S.E. 26.

The unpaid vacation funds that the Custom Employees allege they are entitled to were owed to the employees' union, the Plumbers & Steamfitters Local #150. A claim by the union

[1] Even if a lien under S.C. Code Ann. §29-7-10 had attached in this case, the Court would only award such actual damages as could be proven.

for the unpaid vacation funds has already been litigated and resolved. The Custom Employees do not have an independent claim.

The Court hereby GRANTS Presidential Financial Corporation and Security Federal Bank's Motion for Summary Judgment. The Court hereby DENIES the Custom Employees' Motion for Summary Judgment.

AND IT IS SO ORDERED on this 28 day of May, 2013.

The Honorable James C. Williams, Jr.
Special Referee

FORM 4

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

JUDGMI IN A CIVIL CASE

CASE NUMBER: 2010CP4008621

C R Meyer And Sons Company

PLAINTIFF(S)

Custom Mechanical CSRA LLC
Presidential Financial Corporation

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

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

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

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

RICHLAND COUNTY FILED 2013 MAY 30 AM 10: 12 JEANETTE W. McBRIDE C.C.P. G.S.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 May 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall

Francis Marion Mack
Emily Ruth Gifford
Robert L. Buchanan Jr.

Nekki Shutt
John Thomas Lay
Lindsay Anne Joyner

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
: FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND : CASE NO.: 2010-CP-40-8621
:
C.R. Meyer and Sons Company, :
:
Plaintiff/Petitioner, :
: **ORDER DENYING THIRD PARTY**
VS. : **DEFENDANTS CUSTOM**
: **EMPLOYEES' MOTION TO ALTER**
Custom Mechanical CSRA, LLC, : **OR AMENDED JUDGMENT**
:
Defendant/Respondent. :
:

Custom Mechanical CSRA, LLC :
Third-Party Plaintiff, Respondent :
v. :
Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; :

RICHLAND COUNTY
FILED
2013 JUL 16 AM
JEANETTE W. McBRIDE
C.C.P. & G.S.

SCANNED

Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank; and Joseph A. Doyle, Jr.; Brian Field; and Leonard Wade Cliett.

Third-Party Defendants.

On June 7, 2013, by and through their attorney, Third-Party Defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "Custom employees") moved the Court pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure for an Order to Alter or Amend Judgment. The Custom employees requested the Court reconsider, alter, and/or amend its Order Granting Presidential Financial Corporation and Security Federal Bank's Motion for Summary Judgment, which was filed on May 28, 2013.

I have considered the Custom employees' Motion to Alter or Amend Judgment and Presidential Financial Corporation's and Security Federal Bank's Response to the Custom

p2

Employees' Motion to Alter or Amend Judgment. I find the rulings I made regarding each of the issues in the Order Granting Presidential Financial Corporation and Security Federal Bank's Motion for Summary Judgment do not necessitate alteration or amendment. Accordingly, I hereby deny the Custom employees' Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

The Honorable James C. Williams, Jr.
Special Referee

Seneca, South Carolina
July 10, 2013.

COPIED

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

2008 SEP 18 AM 9:32

U.S. BANKRUPTCY COURT
AUGUSTA, GA
SAMUEL L. KAY, CLERK

IN RE:)
)
David Byron Herrington,)
)
Debtor.)
)

Chapter 7
Case No. 08-10912-SDB

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the following documents:

1. Proof of Claim (B10) (Official form 10) (12/07) of Daniel R. Friedmann;
2. Proof of Claim (B10) (Official form 10) (12/07) of Ralph D. Black;
3. Proof of Claim (B10) (Official form 10) (12/07) of Thomas Brittingham;
4. Proof of Claim (B10) (Official form 10) (12/07) of Arthur C. Carlson;
5. Proof of Claim (B10) (Official form 10) (12/07) of Al Carpenter;
6. Proof of Claim (B10) (Official form 10) (12/07) of Leonard Wade Cliett;
7. Proof of Claim (B10) (Official form 10) (12/07) of Chris Cullipher;
8. Proof of Claim (B10) (Official form 10) (12/07) of David W. Cullipher;
9. Proof of Claim (B10) (Official form 10) (12/07) of Joseph A. Doyle, Jr.;
10. Proof of Claim (B10) (Official form 10) (12/07) of Charles R. Ellzey;
11. Proof of Claim (B10) (Official form 10) (12/07) of Brian Field;
12. Proof of Claim (B10) (Official form 10) (12/07) of Clayton W. Googe, Jr.;
13. Proof of Claim (B10) (Official form 10) (12/07) of Martin Granger;
14. Proof of Claim (B10) (Official form 10) (12/07) of William R. Giffin, Jr.;
15. Proof of Claim (B10) (Official form 10) (12/07) of Timothy R. Hall, Jr.;
16. Proof of Claim (B10) (Official form 10) (12/07) of Tony Hall;
17. Proof of Claim (B10) (Official form 10) (12/07) of Jack E. Hegler;
18. Proof of Claim (B10) (Official form 10) (12/07) of George G. Lever;
19. Proof of Claim (B10) (Official form 10) (12/07) of Matt Lever;
20. Proof of Claim (B10) (Official form 10) (12/07) of Ernest H. Lewis, III;
21. Proof of Claim (B10) (Official form 10) (12/07) of William R. McFerrin;
22. Proof of Claim (B10) (Official form 10) (12/07) of Daniel Nichols
23. Proof of Claim (B10) (Official form 10) (12/07) of Kinda Phommachanh;
24. Proof of Claim (B10) (Official form 10) (12/07) of Raleigh B. Roye;
25. Proof of Claim (B10) (Official form 10) (12/07) of Nicholas Stewart;
26. Proof of Claim (B10) (Official form 10) (12/07) of Timothy P. Stock;

27. Proof of Claim (B10) (Official form 10) (12/07) of Al Tiska; and

28. Proof of Claim (B10) (Official form 10) (12/07) of James M. Waltemath

was served upon counsel for Debtor and the United States Bankruptcy Trustee by causing copies of the same to be deposited in the U.S. Mail, first-class postage prepaid, and addressed to the following:

J. Benjamin Kay, III, Esq.
1111 Wachovia Building
699 Broad Street
Augusta, GA 30901

Edward J. Coleman, III, Esquire
U.S. Bankruptcy Trustee
Surrett & Coleman PA
Post Office Box 1497
Augusta, Ga 30903

Ziva Bruckner, Esq.
CAPERS DUNBAR SANDERS & BRUCKNER, LLP
1500 Wachovia Building
699 Broad Street
Augusta, GA 30901

Francis M. Mack, Esq.
Emily R. Gifford, Esq.
RICHARDSON PLOWDEN & ROBINSON, PA
1900 Barnwell Street
P.O. Drawer 7788
Columbia, SC 29202

Mary Dameron Milliken

September 17, 2008
Columbia, South Carolina
5122.001\COS.Bankruptcy

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
James M. Waltemath

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

FILED
2008 SEP 18 AM 9:3
U.S. BANKRUPTCY COURT
AUGUSTA, GA
BY _____ DEP. CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,471.85

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 6276

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 1414

02-0000432 WALTEMATH, J -6276 23.620 HW 5/20/2007 001414

Regular	27.50	649.55	16,537.47	Federal W/H	117.61	5,065.87
Overtime	0.00	0.00	1,481.43	FICA	79.81	2,379.05
Doubletime	0.00	0.00	614.12	Medicare	18.67	556.38
OVERTIME	18.00	637.74	19,738.82	SC State W/H	68.46	2,231.33
				UNION BENEFIT	25.75	755.16
				VACATION	128.73	3,775.80
						5,216.73
		1,287.29	38,371.84		439.03	14,763.59
		848.26				

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Al Tiska

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent: Nekki Shutt, Esq., Callison Tighe & Robinson, LLP, P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $(estimated) 3,000.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 6463

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D Milliken

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED
2008 SEP 18 AM 9:53
U.S. BANKRUPTCY COURT
AUGUSTA, GA
CLERK

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Timothy P. Stock

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

2008 SEP 18 AM 9:30 FILED
BANKRUPTCY COURT
AUGUSTA, GA
SAMUEL L. KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,402.03

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 9755

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT

NUMBER 2338

02-0000078 STOCK, T

.9755 21.470 HW 7/8/2007 002338

Regular	33.00	708.51	18,668.20	Federal W/H	63.01	3,757.99
Overtime	0.00	0.00	708.51	FICA	43.93	1,738.49
OVERTIME	0.00	0.00	8,663.56	Medicare	10.27	406.56
				SC State W/H	31.04	1,461.74
				UNION BENEFIT	14.17	560.80
				VACATION	35.43	1,402.03
		708.51	28,040.27		197.85	9,327.61
		510.66				

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COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Nicholas Stewart

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

FILED
2008 SEP 18 AM 9:
BANKRUPTCY COURT
AUGUSTA, GA
MUELLER KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,345.32

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 7758

3a. Debtor may have scheduled account as: /
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 2339

02-0000120 STEWART, N 7758 23.620 HW 7/8/2007 002339

Regular	33.00	779.46	23,808.39	Federal W/H	19.19	6,208.36
Overtime	0.00	0.00	2,302.66	FICA	49.43	2,937.44
Doubletime	0.00	0.00	472.40	Medicare	11.56	687.02
OVERTIME	0.50	17.72	20,794.85	SC State W/H	18.67	2,510.77
				UNION BENEFIT	15.94	938.11
				VACATION	39.86	2,345.32
		797.18	47,378.30		154.65	15,627.02
		642.53				

B 10 (Official Form 10) (12/07)

COPY

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Raleigh B. Rove

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 16 PM 4:
U.S. BANKRUPTCY COURT
SAMUEL L. KAY, CLERK
AUGUSTA, GEORGIA

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 937.74

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** 4346

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D Milliken Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Kinda Phommachanh

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 9:
U.S. BANKRUPTCY CO
SAVANNAH, GA
MICHAEL B. KAY, CLER

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,924.83

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 0166

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(___).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D Milliken Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT

NUMBER 2342

-0166 21.470 HW 7/8/2007 002342

02-0000213 PHOMMACHANH, K

Regular	33.00	708.51	23,262.75	Federal W/H	100.42	7,389.23
Overtime	0.00	0.00	2,254.35	FICA	43.93	2,386.76
OVERTIME	0.00	0.00	12,978.98	Medicare	10.27	558.19
				SC State W/H	40.33	2,424.04
				UNION BENEFIT	14.17	769.94
				VACATION	35.43	1,924.83
		708.51	38,496.08		244.55	15,452.99
		463.96				

70

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Daniel Nichols

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

FILED
2008 SEP 18 AM 8:51
U.S. BANKRUPTCY COURT
AUGUSTA, GA
CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date:
09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): William R. McFerrin

Name and address where notices should be sent:

Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 A 8:23
SAMUEL L. KAY, CLERK
U.S. BANKRUPTCY COURT
AUGUSTA, GA

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,174.95

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 3567

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Ernest H. Lewis, III

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 8
U.S. BANKRUPTCY COURT
AUGUSTA, GA.
MUSE L. KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,157.75

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 5575

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

ACKNOWLEDGED

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 1393

02-0000348 LEWIS, E -5575 21.470 HW 5/20/2007 001393

Regular	40.00	858.80	17,090.13	Federal W/H	120.69	1,933.81
Overtime	0.00	0.00	96.62	FICA	73.21	1,289.20
OVERTIME	10.00	322.05	3,606.97	Medicare	17.12	301.48
				SC State W/H	67.20	1,130.86
				UNION BENEFIT	23.62	415.92
				VACATION	59.04	1,039.67
				may 21-25	59.04	118.08
				may 28-June 1	59.04	(1357.75)
						VACATION
	1,180.85	20,793.72	5-20		360.88	6,110.94
	819.97					

Final wages $23,155.42
Federal w/h $2175.65
SC. w/h $ 1265.26

77

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Matt Lever

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (If known)

Filed on: _____

FILED
2008 SEP 18 AM
BANKRUPTCY COURT
AUGUSTA, GA
CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,548.02

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2716

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

02-0000314 LEVER, M			-2716	23.620 HW	2/25/2007	003160	
Regular	40.00	944.80	7,730.10	Federal W/H	213.37		1,244
Overtime	0.00	0.00	708.60	FICA	102.51		691
OVERTIME	20.00	708.60	2,710.40	Medicare	23.97		161
				SC State W/H	100.28		641
				UNION BENEFIT	33.07		222
				VACATION	165.34		1,114

SEPTEMBER 2006 ~ FEBRUARY 2007

GROSS AMOUNT 1	2149.25	GROSS AMOUNT 2	2149.25
INTEREST	.00		.00
	.00		.00
	.00		.00
	.00		.00
	.00		.00
	.00		.00
PAYOUT:	.00		
TOTAL-->	2149.25		.00

PLUMBERS AND STEAMFITTERS LOCAL NO. 150
VACATION FUND
P.O. Box 1449 • Goodlettsville, Tennessee 37070-1449

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 226

02-0000314 LEVER, M			2716	23.620 HW	7/1/2007	002266	
Regular	40.00	944.80	23,555.60	Federal W/H	87.94		4,228.4
Overtime	0.00	0.00	708.60	FICA	59.68		2,271.0
OVERTIME	0.50	17.72	12,365.32	Medicare	13.96		531.1
				SC State W/H	51.91		2,146.6
				UNION BENEFIT	19.25		732.6
				VACATION	96.25		3,662.9

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
George G. Lever

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(*If known*)

Filed on: _____

U.S. BANKRUPTCY COURT
SAVANNAH, GA.
2008 SEP 18 AM 9:
CLERK

FILED

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Jack E. Hegler

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

FILED
2008 SEP 18 AM 8
BANKRUPTCY COURT
AUGUSTA, GA
KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Tony Hall

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:
(If known)

Filed on:

FILED
2008 SEP 18 A 10:54
U.S. BANKRUPTCY COURT
SAMUEL L. KAY, CLERK
AUGUSTA, GA

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 2,146.48

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** 8313

3a. **Debtor may have scheduled account as:**
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$ **Annual Interest Rate** %

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $ **Basis for perfection:**

Amount of Secured Claim: $ **Amount Unsecured: $**

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date:
09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D. Milliken Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

Tony Hall

RECEIVED
MAR 17 2008

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT

NUMBER 2253

-8313 23.620 HW 7/1/2007 002253

02-0000016 HALL, T

Regular	69.00	1,629.78	23,832.58	Federal W/H	223.33	6,188.35
Overtime	0.00	0.00	2,054.94	FICA	101.05	2,692.40
Doubletime	0.00	0.00	496.02	Medicare	23.63	629.67
OVERTIME	0.00	0.00	17,041.85	SC State W/H	101.72	2,718.25
				UNION BENEFIT	32.60	858.58
				VACATION	81.49	2,146.48
		1,629.78	43,425.39		563.82	15,233.73

1,065.96

ANN PENDREY

07/01/1999 22:46 7068690216 PAGE 01

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Timothy R. Hall, Jr.

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 9
U.S. BANKRUPTCY COURT
SO. DIST. GA.
AUGUSTA, GA.
SAMUEL L. KAY, CLERK

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

Name and address where payment should be sent (if different from above):

Telephone number:

1. Amount of Claim as of Date Case Filed: $ 1,719.90

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): William Griffin, Jr.

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

2009 SEP 18 P 3:34
U.S. BANKRUPTCY COURT
AUGUSTA, GEORGIA
CLERK

FILED

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2567

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Martin A. Granger

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (If known)

Filed on: _____

FILED
U.S. BANKRUPTCY COURT
SAVANNAH, GEORGIA
2008 SEP 18 P 2:03
AUGUSTUS L. KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Clayton W. Googe, Jr.

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

2008 SEP 18 AM 8:53
U.S. BANKRUPTCY COURT
AUGUSTA, GA.
FILED

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 1,138.59

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2319

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

ACKNOWLEDGED

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT

02-0000467 GOOGE, C

Regular			-2319	13.960 HW	NUMBER	2243
Overtime	29.50				6/24/2007	002243
OVERTIME	0.00	411.82	12,333.66	Federal W/H	37.54	3,529.27
	0.00	0.00	177.99	FICA	25.53	1,411.90
		0.00	10,260.60	Medicare	5.97	330.1[illegible]
				SC State W/H	17.08	1,289.49
				UNION BENEFIT	8.24	455.45
				VACATION	20.59	1,138.59
		411.82	22,772.25			
		296.87			114.95	8,154.87

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Brian Field

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 5,170.18

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2729

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT

NUMBER 234

-2729 23.620 HW 7/8/2007 002345

02-0000245 FIELD. B

Regular	33.00	779.46	23,968.26	Federal W/H	31.92	6,681.01
Overtime	0.00	0.00	3,011.56	FICA	48.33	3,236.10
Doubletime	0.00	0.00	493.80	Medicare	11.30	756.82
OVERTIME	0.00	0.00	24,721.60	SC State W/H	29.81	2,968.35
				UNION BENEFIT	15.59	1,034.06
				VACATION	77.95	5,170.18
		779.46	52,195.22		214.90	19,846.5
		564.56				

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Charles Elizey

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent: Nekki Shutt, Esq., Callison Tighe & Robinson, LLP P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,478.76

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 3423

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D Milliken Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED
2008 SEP 18 AM 9:33
U.S. BANKRUPTCY COURT
SAVANNAH GA
L. KING, CLERK

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 1920

2-0000528 ELLZEY, C 3423 21.470 HW 6/6/2007 001920

egular	20.00	429.40	12,839.06	Federal W/H	59.36	312.08	5,156.69
oubletime	0.00	0.00	5[illegible]28	FICA	30.62		1,568.77
VERTIME	2.00	64.42	[illegible]	Medicare	9.16		366.88
				SC State W/H	25.34		1,613.65
				UNION BENEFIT	9.88		495.75
				VACATION	49.38		2,478.76
		493.82	[illegible]		181.74		11,680.50
		312.08					

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Joseph A. Doyle, Jr.

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(*If known*)

Filed on: _____

2008 SEP 18 AM 9:33
BANKRUPTCY COURT
S.D. GA
CLERK

FILED

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 3,323.90

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 7907

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 1984

02-0000493 DOYLE, JR., J -7907 23.620 HW 6/10/2007 001984

Regular	40.00	944.80	16,236.21	Federal W/H	195.65	4,941.72
Doubletime	0.00	0.00	566.88	FICA	98.12	2,176.06
OVERTIME	18.00	637.74	18,294.44	Medicare	22.95	508.92
				SC State W/H	86.03	1,983.59
				UNION BENEFIT	31.65	701.95
				VACATION	158.25	3,509.70

#20

1,582.54	35,097.53	592.65	13,822.00
989.89			

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 2079

02-0000493 DOYLE, JR., J 7907 23.620 HW 6/17/2007 002079

Regular	40.00	944.80	17,181.01	Federal W/H	208.94	5,150.66
Doubletime	0.00	0.00	566.88	FICA	101.41	2,277.47
OVERTIME	19.50	690.89	18,985.33	Medicare	23.72	532.64
				SC State W/H	89.75	2,073.34
				UNION BENEFIT	32.71	734.66
				VACATION	163.57	3,673.33

#21

1,635.69	36,733.22	620.10	14,442.10
1,015.59			

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 2184

02-0000493 DOYLE, JR., J 7907 21.470 HW 6/24/2007 002184

Regular	30.00	644.10	17,825.11	Federal W/H	144.05	5,294.71
Doubletime	0.00	0.00	566.88	FICA	82.87	2,360.34
OVERTIME	21.50	692.52	19,677.85	Medicare	19.38	552.02
				SC State W/H	68.81	2,142.15
				UNION BENEFIT	26.73	761.39
				VACATION	133.66	3,806.99

135
93
228

#22

1,336.62	38,069.84	475.50	14,917.60

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): David W. Cullipher

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 8:53
U.S. BANKRUPTCY COURT
AUGUSTA, GA
BY _____ DEP. CLK.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 3,108.86

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** 608

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Chris Cullipher

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent: Nekki Shutt, Esq., Callison Tighe & Robinson, LLP, P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 2,211.96

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** _____

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED
2008 SEP 18 AM 8:35
U.S. BANKRUPTCY COURT
AUGUSTA, GA.
CLERK

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Wade Leonard Cliett

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent: Nekki Shutt, Esq., Callison Tighe & Robinson, LLP, P. O. Box 1390, Columbia, SC 29202

Court Claim Number: _____ (*If known*)

Telephone number: (803) 256-2371

Filed on: _____

FILED
U.S. BANKRUPTCY COURT
AUGUSTA, GA
2008 SEP 18 AM 9:52
SAMUEL L. KAY, CLERK

Name and address where payment should be sent (if different from above):

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 997.12

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** _____

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Al Carpenter

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ (estimated) 2,500.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 7068

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(___).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED
2008 SEP 15 AM 9:33
U.S. BANKRUPTCY COURT
SAVANNAH, GA.
CLERK

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Arthur C. Carlson

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $ 1,999.48

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** See Attached
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** _____

3a. **Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. **Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D Milliken Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

FILED
2008 SEP 18 AM 9:33
U.S. BANKRUPTCY COURT
SAV'H DIV. GA
CLERK

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor: George Byron Herrington

Case Number: 08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Thomas Brittingham

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 9:33
U.S. BANKRUPTCY COURT
AUGUSTA, GA.
KAY, CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,614.52

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 9961

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Case Number: 08-10912-SDB

Name of Debtor: George Byron Herrington

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Ralph Dennis Black

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number: (803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

FILED
2008 SEP 18 AM 9:37
U.S. BANKRUPTCY COURT
AUGUSTA, GA
BY: CLERK

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,999.70

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 4227

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

02-0000405 BLACK, R -4227 23.620 HW 7/1/2007 002272

Regular	40.00	944.80	22,410.73	Federal W/H	130.89	6,902.29
Overtime	0.00	0.00	2,302.66	FICA	69.56	2,818.36
OVERTIME	5.00	177.15	20,744.27	Medicare	16.27	659.16
				SC State W/H	69.27	2,923.97
				UNION BENEFIT	22.44	909.19
				VACATION	112.20	4,545.83
		1,121.95	45,457.66		420.63	18,758.80
		701.32				

120

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 2353

02-0000405 BLACK, R 4227 23.620 HW 7/8/2007 002353

Regular	13.00	307.06	22,717.79	Federal W/H	17.09	6,919.38
Overtime	0.00	0.00	2,302.66	FICA	20.14	2,838.50
OVERTIME	0.50	17.72	20,761.99	Medicare	4.71	663.87
				SC State W/H	14.69	2,938.66
				UNION BENEFIT	6.50	915.69
				VACATION	32.48	4,578.31
		324.78	45,782.44		95.61	18,854.41

Mark Green

3/21/2008 2:16 PM FROM: 803-279-9996 Aiken Augusta Window Tinting TO: 18034540914 PAGE: 001 OF 010

COPY

B 10 (Official Form 10) (12/07)

UNITED STATES BANKRUPTCY COURT Southern District of Georgia

PROOF OF CLAIM

Name of Debtor:
George Byron Herrington

Case Number:
08-10912-SDB

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Daniel R. Friedmann

Name and address where notices should be sent:
Nekki Shutt, Esq., Callison Tighe & Robinson, LLP
P. O. Box 1390, Columbia, SC 29202

Telephone number:
(803) 256-2371

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: _____
(If known)

Filed on: _____

2008 SEP 18 P 12:32
U.S. BANKRUPTCY COURT
SAVANNAH, GEORGIA
FILED

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 2,345.08

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See Attached
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 3450

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** ___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If **any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☑ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

FOR COURT USE ONLY

Date: 09/15/2008

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Mary D. Milliken

Mary Dameron S. Milliken, Attorney for Creditor

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Attachment re: Case Number: 08-10912-SDB

2. Basis for Claim: Debtor was an officer and/or managing member in an entity which withheld wages from this creditor employee and then never paid the same. Under South Carolina law (S.C. Code Ann. §41-10-10 et seq.), debtor is personally liable to creditor employee for said wages as well as treble damages, reasonable attorney's fees, costs and expenses, and statutory prejudgment interest at 8.75%. As attorney's fees, costs and expenses are unliquidated at present and they accrue daily, neither the treble damages nor any of these other items are factored into the "amount of claim" identified in Box 1. Rather, Box 1 contains only the gross amount of the wages that Debtor and/or his company wrongfully withheld from this Creditor.

CUSTOM INDUSTRIAL SERVICES, LLC - PAYROLL ACCOUNT NUMBER 1827

02-0000437 FRIEDMANN, D 3450 21.470 HW 6/3/2007 001827

Regular	30.00	644.10	16,617.79	Federal W/H	76.55	2,110.69
Overtime	0.00	0.00	563.60	FICA	58.91	1,476.59
OVERTIME	9.50	306.00	6,634.41	Medicare	13.78	345.33
				SC State W/H	47.95	1,243.76
				UNION BENEFIT	19.00	469.04
				VACATION	95.01	2,345.08
		950.10	23,815.80		311.20	7,990.49
		638.90				

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

PRESIDENTIAL FINANCIAL CORPORATION, a Georgia Corporation,	)	
Plaintiff,	)	
v.	)	Case No. 07CV10839-3
CUSTOM MECHANICAL CSRA, LLC, a South Carolina Limited Liability Company d/b/a CUSTOM MECHANICAL, CUSTOM INDUSTRIAL SERVICES, LLC, a South Carolina Limited Liability Company, DEAN DURAND, an individual, GEORGE HERRINGTON, an Individual, and DANNY L. KEY, an individual,	)	
Defendants.	)	

FILED IN OFFICE
SUPERIOR COURT
DEKALB COUNTY GA
2007 OCT 15 P 2:20

COMPLAINT

Comes now Presidential Financial Corporation ("Presidential"), by and through its undersigned counsel, and for its Complaint against Custom Mechanical CSRA, LLC d/b/a/ Custom Mechanical ("Custom Mechanical"), Custom Industrial Services, LLC ("Custom Industrial"), Dean Durand ("Durand"), George Herrington ("Herrington"), and Danny L. Key ("Key", and collectively with Custom Mechanical, Custom Industrial, Durand, and Herrington, the "Defendants") states as follows:

Parties

1. Presidential is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in DeKalb County, Georgia.

2. Custom Mechanical is a South Carolina Limited Liability Company with its principal place of business in Aiken County, South Carolina. Custom Mechanical can be served c/o Danny L. Key, Registered Agent, at 120 Revco Road, North Augusta, SC 29841.

3. Custom Industrial is a South Carolina Limited Liability Company with its principal place of business in Aiken County, South Carolina. Custom Industrial can be served c/o Danny L. Key, Registered Agent, at 120 Revco Road, North Augusta, SC 29841.

4. Durand is an individual who is a resident of Aiken County, South Carolina. Durand can be served at 414 River North Drive, North Augusta, SC 29841-5420.

5. Herrington is an individual who is a resident of Aiken County, South Carolina. Herrington can be served at 120 Revco Road, Beech Island, SC 29842-9424.

6. Key is an individual who is a resident of Aiken County, South Carolina. Key can be served at 120 Revco Road, North Augusta, SC 29841.

Jurisdiction & Venue

7. The Court has jurisdiction over this action pursuant to O.C.G.A. § 15-6-8 as well as the Loan Documents (as defined herein).

8. Venue is proper before the Court pursuant to O.C.G.A. § 9-10-30 through O.C.G.A. § 9-10-34 as well as the Loan Documents.

Facts

9. Custom Mechanical is or was in the business of, without limitation, fabricating and installing piping, drainage and tubing. Custom Mechanical would enter into contracts with its customers (the "Account Debtors") pursuant to which Custom Mechanical would be paid upon Custom Mechanical's substantial completion of work.

10. On or about May 3, 2007, Custom Mechanical executed and delivered to Presidential a Demand Secured Promissory Note (the "Note") whereby Custom Mechanical promised to pay on demand to the order of Presidential the original principal amount of One Million Two Hundred Fifty Thousand and 00/100 Dollars ($1,250,000.00). A true and correct copy of the Note is attached hereto as **Exhibit "A"**[1].

11. On or about May 3, 2007, in order to secure the obligations of Custom Mechanical under the Note, Presidential required, without limitation, Custom Mechanical to execute and deliver to Presidential a Loan Agreement and Security Agreement (the "Security Agreement"), whereby Custom Mechanical granted to Presidential a security interest in, without limitation, all of the amounts owed to Custom Mechanical from Account Debtors (the "Receivables"), whether owed at the time the Security Agreement was executed or acquired thereafter, as well as, without limitation, Custom Mechanical's accounts, securities, supporting obligations, inventory, proceeds, furniture, fixtures, equipment and other property, as defined in the Security Agreement, whether owned by Custom Mechanical at the time the Security Agreement was executed or thereafter acquired. A true and correct copy of the Security Agreement is attached hereto as **Exhibit "B"**.

12. Presidential maintains priority on the amounts owed to Custom Mechanical from C. R. Meyer & Sons, and has a junior security interest subordinate to Security Federal as to all other receivables.

13. Pursuant to the Security Agreement, Custom Mechanical promised it would, at its own expense, endeavor to collect all amounts owed to Custom Mechanical, including, without

[1] All exhibits attached to this Complaint are incorporated herein by reference.

limitation, the Receivables, and deliver to Presidential all funds which may be received by Custom Mechanical at any time pursuant to, without limitation, the Receivables.

14. On or about May 1, 2007, in order to secure the obligations of Custom Mechanical under the Note, Presidential required, without limitation, Custom Industrial to execute and deliver to Presidential a Limited Liability Company Guaranty Agreement (the "Custom Industrial Guaranty"), unconditionally guaranteeing payment to Presidential of all amounts owing to Presidential by Custom Mechanical, whether owed at the time of execution or arising thereafter. Pursuant to the terms of the Custom Industrial Guaranty, Presidential is not required to seek payment from any other source before demanding payment from Custom Industrial. A true and correct copy of the Custom Industrial Guaranty is attached hereto as **Exhibit "C"**.

15. On or about May 3, 2007, in order to secure the obligations of Custom Mechanical under the Note, Presidential required, without limitation, Durand to execute and deliver to Presidential a Guaranty Agreement (the "Durand Guaranty"), unconditionally guaranteeing payment to Presidential of all amounts owing to Presidential by Custom Mechanical, whether owed at the time of execution or arising thereafter. Pursuant to the terms of the Durand Guaranty, Presidential is not required to seek payment from any other source before demanding payment from Durand. A true and correct copy of the Durand Guaranty is attached hereto as **Exhibit "D"**.

16. On or about May 3, 2007, in order to secure the obligations of Custom Mechanical under the Note, Presidential required, without limitation, Herrington to execute and deliver to Presidential a Guaranty Agreement (the "Herrington Guaranty"), unconditionally guaranteeing payment to Presidential of all amounts owing to Presidential by Custom

Mechanical, whether owed at the time of execution or arising thereafter. Pursuant to the terms of the Herrington Guaranty, Presidential is not required to seek payment from any other source before demanding payment from Herrington. A true and correct copy of the Herrington Guaranty is attached hereto as **Exhibit "E"**.

17. On or about May 3, 2007, in order to secure the obligations of Custom Mechanical under the Note, Presidential required, without limitation, Key (and collectively with Custom Industrial, Durand and Herrington, the "Guarantors") to execute and deliver to Presidential a Guaranty Agreement (the "Key Guaranty", and collectively with the Custom Industrial Guaranty, the Durand Guaranty and the Herrington Guaranty, the "Guaranties"), unconditionally guaranteeing payment to Presidential of all amounts owing to Presidential by Custom Mechanical, whether owed at the time of execution or arising thereafter. Pursuant to the terms of the Key Guaranty, Presidential is not required to seek payment from any other source before demanding payment from Key. A true and correct copy of the Key Guaranty is attached hereto as **Exhibit "F"**.

18. Pursuant to the Note, the Security Agreement and the Guaranties (collectively, the "Loan Documents"), Custom Mechanical and the Guarantors are unconditionally, jointly and severally liable for all amounts due and owing to Presidential by Custom Mechanical, whether owed pursuant to the Note or otherwise.

19. Custom Mechanical has defaulted under the terms of the Note due to Custom Mechanical's failure to make payments to Presidential as required under the Note.

20. Pursuant to the Loan Documents, Custom Mechanical and the Guarantors are liable for Presidential's costs of collection, including, without limitation, attorneys' fees incurred in connection with the collection of amounts due under the Note.

21. As of September 28, 2007, the amount owed pursuant to the Note was One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86) plus interest, late charges and costs of collection, including, without limitation, attorneys' fees.

22. Despite a demand from Presidential, Custom Mechanical and the Guarantors have failed and/or refused to satisfy their debt to Presidential. See July 5, 2007 Letter and July 12, 2007 Letter attached hereto as **Exhibits "G" and "H"**

23. In an attempt to escape satisfying his debt to Presidential, Guarantor Dean Durand transferred title to his personal assets, including his house, to his wife without consideration.

24. Further, despite attempts to resolve this matter without litigation, Custom Mechanical and the Guarantors have been unduly and stubbornly litigious.

25. The Loan Documents, pursuant to their terms, are governed by and construed and enforced according to the laws of the State of Georgia.

26. The Defendants irrevocably consented in the Loan Documents that any legal action or proceeding arising out of, or in any manner related to the Loan Documents may by brought in any court in DeKalb County, Georgia.

Claims

Count I

Breach of Contract — Custom Mechanical

27. Presidential restates and re-alleges the averments set forth in paragraphs 1 through 26 of this Complaint as if fully set forth herein in their entirety.

28. Custom Mechanical has breached the Note and Security Agreement by its failure to pay to Presidential the amounts due thereunder.

29. Custom Mechanical has breached the Security Agreement by its failure to collect the amounts owed pursuant to, without limitation, the Receivables.

30. Custom Mechanical has breached the Security Agreement by its failure to deliver to Presidential all funds which may have been received by Custom Mechanical at any time pursuant to, without limitation, the Receivables.

WHEREFORE, PREMISES CONSIDERED, Presidential demands judgment against Custom Mechanical in the amount of One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86) plus accrued and accruing interest, late charges and costs of collection, including, without limitation, reasonable attorneys' fees.

Count II

Action on Note — Custom Mechanical

31. Presidential restates and re-alleges the averments set forth in paragraphs 1 through 30 of this Complaint as if fully set forth herein in their entirety.

32. Custom Mechanical has failed and refused to pay the amounts due under the Note. Accordingly, pursuant to the terms of the Note, Custom Mechanical is indebted to Presidential in the amount of One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86) plus accrued and accruing interest, late charges and costs of collection, including, without limitation, reasonable attorneys' fees.

Count III

Breach of Guaranty — Custom Industrial, Durand, Herrington, and Key

33. Presidential restates and re-alleges the averments set forth in paragraphs 1 through 32 of this Complaint as if fully set forth herein in their entirety.

34. Custom Industrial, Durand, Herrington and Key have breached their respective Guaranties by failing to pay to Presidential the amounts due thereunder.

WHEREFORE, PREMISES CONSIDERED, Presidential demands judgment against Custom Industrial, Durand, Herrington and Key, jointly and severally, in the amount of One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86) plus accrued and accruing interest, late charges and costs of collection, including, without limitation, reasonable attorneys' fees.

Count IV

Conversion — Custom Mechanical

35. Presidential restates and re-alleges the averments set forth in paragraphs 1 through 34 of this Complaint as if fully set forth herein in their entirety.

36. As a result of the Loan Documents, including, without limitation, the Security Agreement, the Receivables and any funds paid pursuant to the Receivables became the lawful property of Presidential.

37. Custom Mechanical retained funds paid pursuant to the Receivables without legal justification and to the detriment of Presidential.

WHEREFORE, PREMISES CONSIDERED, Presidential demands judgment against Custom Mechanical in the amount of One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86) plus accrued and accruing interest, late charges and costs of collection, including, without limitation, reasonable attorneys' fees, as well as any and all damages to which Presidential is determined by the trier of fact to be entitled, including, without limitation, punitive damages.

Count V

Expenses of Litigation — Custom Mechanical, Custom Industrial, Durand, Herrington, and Key

38. Presidential restates and re-alleges the averments set forth in paragraphs 1 through 37 of this Complaint as if fully set forth herein in their entirety.

39. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Presidential unnecessary trouble and expense.

WHEREFORE, PREMISES CONSIDERED, Presidential demands judgment against Custom Mechanical, Custom Industrial, Durand, Herrington, and Key, jointly and severally, for its expenses of litigation, including attorneys' fees and costs, pursuant to O.C.G.A. § 9-15-14 and O.C.G.A. § 13-6-11.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Presidential demands trial by jury and judgment against Defendants as follows:

(a) Actual damages, in amount to be determined at trial, but in no event less than One Million Two Hundred and Twenty Thousand Five Hundred Ninety-Seven Dollars and 86/100 ($1,220,597.86);

(b) Accrued and accruing interest and late charges in an amount to be determined at trial;

(c) Costs of litigation of this matter incurred by Presidential, including, without limitation, reasonable attorneys' fees,

(d) Punitive damages in an amount to be determined by the enlightened conscience of the jury;

(e) Such other relief the Court may deem proper.

Respectfully submitted, this 10th day of October, 2007.

Christopher S. Anulewicz
Georgia Bar No. 020914
BALCH & BINGHAM LLP
30 Ivan Allen, Jr. Blvd., NW, Suite 700
Atlanta, GA 30308
Telephone (404) 261-6020
Facsimile (404) 261-3656

Attorneys for Presidential Financial Corporation

Exhibit A

DEMAND SECURED PROMISSORY NOTE

Atlanta, Georgia

Date: May 3, 2007 $1,250,000.00

FOR VALUE RECEIVED, the undersigned promises to pay on demand to the order of Presidential Financial Corporation (hereinafter referred to as "Lender") at the Lender's main office in Atlanta, Georgia, or at such other place as Lender may designate, the principal amount of **ONE MILLION TWO HUNDRED FIFTY-THOUSAND AND NO/100 DOLLARS ($1,250,000.00)**, together with interest on said unpaid principal amount or on so much thereof as may from time to time be unpaid and outstanding, at the rate of **one percent (1.00%)** per annum above the prime rate of interest quoted in *The Wall Street Journal*. The initial interest rate as of the date hereof being **nine and one-quarter percent (9.25%)** and changes in such rate will be immediately effective upon a change in the prime rate of interest quoted in the Wall Street Journal, so long as any portion of this Note remains outstanding, such interest to be payable commencing on **May 15, 2007**, together with all costs of collection including reasonable attorney's fees if collected by or through an attorney-at-law. The rate of interest charged to the undersigned hereunder, together with all amounts reserved, charged, or taken by Lender as compensation for fees, services, or expenses incidental to the making, negotiation, or collection of the loan evidenced hereby, shall in no event exceed the maximum rate of interest on the unpaid principal balance hereof allowable by applicable law. If any sum is charged in excess of the applicable maximum rate, or in violation of any other usury statute of this state, Lender may reduce said charge in conformity therewith. If any sum is collected in excess of the applicable maximum rate, or in violation of any other usury statute of this state, the excess collected shall be applied to reduce the principal balance. All payments received will first be applied to interest and other charges due and owing to the Lender, and any remaining amount shall then be applied to principal.

THE INTEREST RATE ON THE PRINCIPAL INDEBTEDNESS EVIDENCED BY THIS NOTE, AS CALCULATED USING A SIMPLE INTEREST, ANNUAL PERCENTAGE RATE, AND ASSUMING THAT INTEREST PAYMENTS ARE MADE WHEN DUE, IS ONE PERCENT (1.00%) ABOVE THE DAILY PRIME INTEREST RATE AS QUOTED IN *THE WALL STREET JOURNAL*. ALL OTHER FEES AND CHARGES PAID IN CONNECTION WITH THIS NOTE BY THE UNDERSIGNED TO THE LENDER ARE PAYMENTS FOR THE COST OF ORIGINATING, BOOKING, SERVICING AND MAINTAINING THE LOAN AND OTHER ADMINISTRATIVE COSTS AS SET FORTH IN O.C.G.A. SECTION 7-4-2(A)(1) AND DO NOT CONSTITUTE FEES FOR THE USE OF MONEY. INTEREST HEREIN SHALL BE COMPUTED, AND IS DUE AND PAYABLE ON THE FIFTEENTH (15th) AND LAST DAY OF EACH MONTH. THEREAFTER, ALL UNPAID INTEREST AND OTHER CHARGES PROVIDED FOR HEREIN, ARE DEEMED BY THE PARTIES TO BE PRINCIPAL PURSUANT TO O.C.G.A. SECTION 7-4-2(A)(3), AND SHALL BE CHARGED AS ADVANCES TO BORROWER'S LOAN ACCOUNT WITH LENDER, BEARING INTEREST UPON THE SAME TERMS AS OTHER ADVANCES. BORROWER SPECIFICALLY AGREES, BY EXECUTION OF THIS NOTE, TO SAID TREATMENT OF ALL UNPAID INTEREST AND CHARGES AS PRINCIPAL ADVANCED UNDER THIS LOAN.

In addition to the interest provided for hereunder, the following service charge shall be earned by Lender and shall be payable by the undersigned to Lender upon the making of any advance by Lender to the undersigned, the Lender shall immediately earn and the undersigned shall pay a service charge equal to **four-tenths percent (.40%)** of the amount of the invoices pledged by the undersigned to secure the amount advanced to the undersigned; however, with respect to any such invoice paid to Lender within **twenty (20)** days from the date of such advance, the service charge shall be equal to the applicable percentage shown below, multiplied by the amount of such paid invoice and a corresponding rebate (if otherwise permitted) paid to the undersigned. With respect to any such invoice paid following the **thirtieth (30th)** day from the date of such advance, an additional service charge shall thereupon be immediately payable to Lender by the undersigned upon the earlier of the actual receipt of such payment by the Lender or upon the **ninety-first (91st)** day from the date of advance secured by such invoice if such invoice remains unpaid, which service charge shall be equal to the applicable percentage shown below less the **four-tenths percent (.40%)** earned and paid upon the making of the initial advance multiplied by the amount of the invoice paid, or by the amount of invoices unpaid on the **ninety-first** day of advance whichever first occurs:

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3416

APPLICABLE %: Number of days elapsed from date of advance to date of actual payment to Lender or the ninety-first day from date of advance, whichever first occurs.

Applicable %	Days
0.12%	1-10
0.24%	11-20
0.40%	21-30
0.60%	31-45
0.80%	46-60
1.00%	61-75
1.20%	76-90

In lieu of the above interest and service charges, any draw not paid within ninety (90) days, or in the event of the declaration of a default by Lender, will accrue interest at the rate of four percent (4%) per month.

The undersigned has entered into a Loan Agreement and Security Agreement ("Agreement") of even date herewith, pursuant to which this Demand Secured Promissory Note has been made and delivered to Lender. Any act of default by the undersigned under said Agreement and any default by the undersigned under its obligations under said Agreement shall constitute a default under this Note. The undersigned and Lender contemplate that the original principal sum evidenced by this Note may be reduced from time to time and that additional loans may be made by Lender to the undersigned in the future. Such additional loans, as so designated shall be evidenced by this Note and subject to its terms; provided, however, that the principal amount evidenced by this Note shall not exceed the principal amount shown above. Upon payment in full by the undersigned, any then unearned service charges hereunder shall become earned by and due and payable to Lender.

The undersigned hereby waives demand, presentment, notice, protest and notice of dishonor. Lender shall not be deemed to waive or have waived any of its rights hereunder unless such waiver be in writing and signed by Lender, and no failure, delay or omission by Lender in exercising any of its rights shall operate as a waiver of such rights. A waiver by Lender in writing on one occasion shall not be construed as a consent to or a waiver of any right or remedy on any future occasion.

This instrument shall be governed by and interpreted in accordance with the laws of the State of Georgia. Time is of the essence of this Promissory Note.

The word "undersigned" as used herein shall include the plural, should more than one execute this Note; the masculine and feminine gender, regardless of the sex of the undersigned or any of them; partnerships, corporations, and other legal entities, should such an entity execute this Note; endorsers, guaranters and sureties, unless by the express terms of the endorsement or guarantee, an obligation of the undersigned is limited or varied; and the heirs, legal representatives, successors and assigns of the undersigned. The word "Lender" as used herein shall when the circumstances or context requires, include the plural and the successors and assigns of Lender.

IN WITNESS WHEREOF, the undersigned has caused this Demand Secured Promissory Note to be duly executed and its seal to be affixed by its duly authorized officers, or has signed and sealed this Note as the case may be, and has delivered this Note to Lender, the day and year first above written.

Custom Mechanical CSRA, LLC
d/b/a Custom Mechanical

By: _____
Managing Member

ATTEST:

_____

Rev: 08/01

Exhibit B

LOAN AGREEMENT AND SECURITY AGREEMENT

Atlanta, Georgia — May 3, 2007

Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical — 6379
(Exact Name of Borrower) — (Taxpayer I.D. No.)

South Carolina Limited Liability Company — None
(Type & State of Borrower's formation, e.g., corporation, LLC., partnership, etc.) — (Organization No.)

120 Revco Road	North Augusta	Aiken	SC 29841
(No. and Street Address)	(City)	(County)	(State)

The undersigned debtor (hereinafter referred to as "Borrower"), for good and valuable consideration, and to induce Presidential Financial Corporation (hereinafter referred to as "Lender") to accept this agreement ("Agreement") and to make the loans and advances described hereunder, hereby agrees as follows:

1. Request for Loan. From time to time Borrower may request, and Lender in its sole discretion may loan Borrower up to: (a) sixty and four-tenths percent (60.40%) of the amount of Approved Receivables (as hereinafter defined) submitted by Borrower to Lender, or (b) **ONE MILLION TWO HUNDRED FIFTY-THOUSAND AND NO/100 DOLLARS ($1,250,000.00)**, or such greater or lesser amount as Lender may from time to time establish.

Provided, however, that the total principal amount of such loans and advances to Borrower shall not exceed Borrower's maximum line of credit extended from time to time by Lender and determined in Lender's sole discretion. All loans and advances made by Lender hereunder shall be evidenced by a demand promissory note (hereinafter the "Note") executed by Borrower and shall contain such terms as Lender shall require. "Approved Receivables" as used herein shall mean only such accounts, contract rights, chattel paper, instruments or general intangibles belonging to Borrower as from time to time shall be acceptable to Lender, in its sole judgment and discretion, in terms of quality and current status. "Value" as used herein shall mean the lower cost or market value of Inventory.

2. Grant of Security Interest. To secure the indebtedness evidenced by the Note together with any extensions or renewals thereof, in whole or in part, as well as all other indebtedness, obligations and liabilities of Borrower to Lender, now existing or hereafter incurred or arising whether direct, indirect or by way of assignment, whether joint or several, absolute or contingent, due or to become due and whether as principal, maker, endorser, surety, guarantor or otherwise, or which Lender may now or hereafter have, own or hold (the foregoing being hereinafter sometimes referred to collectively as the "Obligations"), Borrower does hereby grant to Lender a security interest in and security title to the following described property, whether now owned or existing or hereafter acquired or arising and wherever located:

(a) Receivables. All of Borrower's accounts, accounts receivable, notes receivable, contract rights, drafts, general intangibles (including but not limited to, software and payment intangibles), instruments and chattel paper, whether tangible or electronic (all of the foregoing being hereinafter collectively referred to as the "Receivables");

(b) Accounts and Securities. All of Borrower's money, deposit accounts, letters of credit, letter of credit rights and investment property;

(c) Supporting Obligations. All supporting obligations relating to any of the foregoing;

(d) Inventory. All of Borrower's finished goods and inventory, packing and shipping supplies, all goods intended to be sold or used by Borrower or to be furnished by Borrower under contracts of service, including all raw materials, goods in process, finished goods, materials and supplies of every kind

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and nature, used or usable in connection with the manufacture, shipping, advertising, selling, leasing or furnishing of such goods, all documents evidencing or representing the same and all documents of title, all negotiable and non-negotiable warehouse receipts representing the same and all products, accounts and proceeds resulting from the sale or other disposition of the foregoing, that may be rejected, returned repossessed or stopped in transit and all other items, customarily classified as inventory (all of the foregoing being hereinafter collectively referred to as the "Inventory");

(e) Furniture, Fixtures and Equipment. All of Borrower's presently owned and hereafter acquired machinery, furniture, fixtures and equipment wherever located (all of the foregoing being hereinafter collectively referred to as the "FF&E");

(f) Other Property. Any and all other property of any nature whatsoever of Borrower now or hereafter in the possession of, assigned to or hypothecated to Lender for any purpose, including, but not limited to balances, credits, deposits, accounts, items and monies of Borrower now or hereafter with Lender and all dividends and distributions on or rights in connection with any such property and all rights of Borrower earned or to be earned under contracts to sell goods or render services.

(g) Proceeds. All substitutions, improvements, accessions, additions, renewals and replacements of or to any of the foregoing (including, but not limited to, returned or unearned premiums from any insurance written in connection with this Agreement) and all proceeds of any of the foregoing, including, but not limited to, any and all proceeds in the form of Receivables and Inventory, and

The foregoing shall hereinafter be collectively referred to as the "Collateral". The security interest is granted pursuant to the Uniform Commercial Code of the State of Georgia, as amended from time to time (the "Code").

If at any time the Collateral pledged as security for any of the Obligations shall be or become unsatisfactory to Lender or should Lender deem itself insecure as to the adequacy or sufficiency of such Collateral, Borrower will immediately furnish such further property as additional Collateral to be held by Lender as if originally pledged as Collateral hereunder or make such payment on account as will be satisfactory to Lender.

3. Certain Lender Rights. Whether an event of default shall exist hereunder or not, Lender shall have, but shall not be limited to the following rights, each of which may be exercised at any time and from time to time: (i) to transfer the Note and the Collateral, and any transferee shall have all the rights of Lender hereunder and Lender shall be thereafter relieved from any liability with respect to any Collateral so transferred; (ii) to transfer the whole or any part of the Collateral in the name of itself or its nominees; (iii) to vote any investment securities forming a part of the Collateral; (iv) to notify the obligors on any Collateral to make payment directly to Lender of any amounts due thereon; (v) to execute at any time in the name of any party hereto and to file, without Borrower's signature, financing statements covering any of the Collateral or which describe the Collateral as "all assets" or "all property" of Borrower; (vi) to receive or take control of any income or other proceeds of any of the Collateral; and (vii) to request and receive current financial information from any party liable for all or any part of the Obligations.

4. Lender Rights as to Receivables. In addition to any other provision herein, as to Borrower's Receivables which are pledged as part of the Collateral, Lender shall have the following rights and privileges:

(a) Account Collections. Lender will handle the cash collection of the Receivables; however, Borrower will, at its own expense, endeavor to collect all amounts due under the Receivables, including the taking of such action with respect to such collection including, but not limited to, litigation, as Lender requests or, in the absence of such request, as Borrower may deem necessary or advisable. Borrower may in the ordinary course of business grant to any party obligated on Receivables any rebate or adjustment to which such party may be lawfully entitled, and, may accept, in connection therewith, the return of goods, the sale or lease of which have given rise to such Receivables. Borrower shall promptly notify Lender of and shall settle all customer disputes; however, if Lender elects, it shall have the right at all times to settle, compromise, adjust or litigate all customer disputes directly with

the customer or other complainant upon such terms and conditions as Lender deems advisable including but not limited to the right to surrender, release or exchange all or any part of any Receivable owed by a customer to Borrower, and to compromise or extend or renew for any period any such Receivable, all without incurring liability to Borrower for its performance of any such acts and Lender hereby shall have the right to stop goods in transit or to replevy or to reclaim such goods. All returned, replevied and reclaimed goods (unless released by Lender) coming into Borrower's possession shall be held by Borrower in trust for Lender. Borrower shall notify Lender promptly of all such returned goods and shall promptly pay to Lender the gross amount of the unpaid Receivables with respect thereto.

If any Receivable is not paid within ninety-one (91) days from the date of the invoice with respect thereto, or if any customer raises any claim of non-conformity of goods, total or partial failure of delivery, set off, counterclaim, or breach of warranty or any other claim inconsistent with Borrower's warranties as made below, Borrower will upon demand pay Lender the gross amount of the Receivable so affected or unpaid, together with any damages or loss sustained by Lender and any accrued but unpaid interest, fees, or other charges due Lender; provided, however, such payment may not be deemed a release of Lender's security interest therein nor a release thereof and security title thereto and to the goods represented thereby shall remain in Lender until and unless Lender executes a release. Lender may, at any time and from time to time, notify any parties obligated on any of the Receivables to make payment directly to Lender of any amount due or to become due thereunder, and enforce collection of any of the Receivables by suit or otherwise, as hereinbefore provided. Upon request of Lender, Borrower will, at its own expense, notify any parties obligated on any of the Receivables to make payment directly to Lender of any amounts due or to become due thereunder.

Borrower hereby appoints and constitutes Lender as Borrower's attorney-in-fact to receive, open, and, in Lender's sole discretion, dispose of all mail addressed to Borrower in order to fully protect Lender's interest in the Collateral, to notify the postal authorities to change the address and delivery of mail addressed to Borrower to such address as Lender may designate, to endorse Borrower's name upon any notes, acceptances, checks, drafts, money orders and other evidences of payment of Collateral that may come into Lender's possession and to deposit or otherwise collect the same, to sign Borrower's name on any bill of lading relating to any Collateral, on drafts against customers, listings of Receivables, and notices to customers; to prepare and mail invoices to Borrower's customers, to send verification of accounts to customers, to execute in Borrower's name any affidavits and notices with regard to any and all lien rights, and to do all other acts and things necessary or helpful to carry out this Agreement or to deal with the Collateral or proceeds thereof in its own name or in the name of Borrower. All acts of said attorney-in-fact are hereby ratified. This power, being coupled with an interest, is irrevocable while Borrower is indebted to Lender under any of the Obligations.

(b) Remittance by Borrower. Unless Lender shall otherwise consent in writing, Borrower will forthwith upon receipt, transfer and deliver to Lender in the form received, all cash, checks, chattel paper, drafts, items or other instruments for the payment of money (properly endorsed where required, so that such items may be collected by Lender) which may be received by Borrower at any time in full or partial payment or otherwise as proceeds of any Collateral. Unless Lender shall otherwise consent in writing, any such items which may be thus received by Borrower shall not be commingled with any other of Borrower's funds or property, but will be held separate and apart from its own funds or property and upon express trust for Lender until delivery is made to Lender. Borrower shall comply with the terms and conditions of any consent given by Lender pursuant to the provisions of this paragraph. Checks, drafts, wire and other electronic transfers, and any other non-cash instrument for the payment of money shall be credited to the Note on the second business day after the day of receipt by Lender, if a business day, or if not a business day, on the first business day following receipt. The excess of amounts actually collected by Lender from the proceeds of the Collateral over the amounts under the Note currently owing to Lender for loans, advances, interest and fees thereunder and hereunder, shall be paid by Lender from time to time to Borrower in such order of application as Lender may elect, periodically, but in no event less frequently than monthly. Lender shall deliver to Borrower a statement of account and such statement shall be binding and conclusive upon Borrower unless Borrower notifies Lender to the contrary within ten (10) days after the date of each statement is rendered.

(c) Billing Customers of Borrower. Billing on invoices by whomever done shall be conclusive evidence

of assignment and transfer hereunder to Lender of the Collateral represented thereby whether or not Borrower executes any document of transfer in regard thereto.

(d) Additional Representations and Warranties. Borrower hereby represents and warrants to Lender that the Receivables will be, at the time of their creation, bona fide and existing obligations of Borrower's customers arising out of the sale of goods and/or rendition of services by Borrower and are owned by and owed to Borrower without defense, offset, or counterclaim; that with regard to each Receivable as it arises Borrower will have made delivery of the goods or will have rendered the services ordered, and the customer will have accepted the goods and/or services.

5. Lender Rights as to Inventory. In addition to any other provisions herein, as to Borrower's Inventory which is pledged as a part of the Collateral, Lender shall have the following rights and privileges:

(a) Pay down on Sale. Borrower shall pay to Lender concurrently with each sale of Inventory an amount equivalent to the Value of Inventory (as defined herein) sold, or shall substitute other Inventory (acceptable as security to Lender) designated in written statements signed and delivered to Lender by Borrower, of a Value that, in the opinion of Lender, equals at least the Value of such sold Inventory. If at any time the aggregate amount of outstanding loans under this Agreement exceeds the Value of Inventory then acceptable to Lender, Borrower will, immediately upon demand, repay sufficient of the loans made to it by Lender hereunder so that said ratio of loan to Value is re-established or give to Lender a security interest in other Inventory acceptable to Lender of a sufficient Value to accomplish that result.

(b) Additional Representations and Warranties. Borrower represents and warrants to and covenants and agrees with Lender that (except as otherwise specified in the Agreement): (i) Inventory shall be kept only at the following location): _____ _____ _____. Borrower will promptly notify Lender in writing of any change in location of any place of business or of the Inventory, or the establishment of any new place of business; (ii) immediately upon each demand by Lender therefor, Borrower shall execute and deliver to Lender designations of Inventory specifying Borrower's cost of Inventory, the market value thereof and such other matters and information relating to Inventory as Lender may from time to time request; (iii) Borrower now keeps and shall keep correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Borrower's cost therefor and the selling price thereof, the daily withdrawals therefrom and the additions thereto; (iv) all Inventory is and shall be new Inventory of goods and shall be of merchantable quality, free from defects; (v) Inventory is not and shall not be stored with a bailee, warehouseman or similar party without Lender's prior written consent and in such event, Borrower will, concurrently with delivery to such party, cause any such party to issue and deliver to Lender, in form acceptable to Lender, warehouse receipts in Lender's name evidencing the storage of such Inventory; (vi) Lender and its agents and representatives may, upon demand, during Borrower's usual business hours: (1) inspect and examine Inventory and check and test the same as to quality, quantity, value and condition; and (2) inspect, audit, check and make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to Borrower's Inventory or to any other transaction between the parties hereto; and (vii) that Borrower's Inventory shall not be subject to any security interest, lien or encumbrance except in favor of Lender hereunder.

(c) Revisions. Borrower agrees that the percentage of Value advanced, the acceptability and Value of Inventory and the period during which such advances are to remain outstanding are and shall be entirely in Lender's sole discretion and that Lender shall have the right at any time to revise any limit placed by Lender upon the amount of such advances or upon the valuation of Inventory or Lender may, in its sole discretion, refuse to make further advances. If Inventory remains in stock for a period of time which Lender in its sole judgment deems excessive, such Inventory may, at Lenders option, be considered to be of no Value for the purposes of loans or advances although the same remains in stock and Lender retains its lien thereon according to the terms and provisions of this Agreement.

(d) Sale of Inventory. Until a default by Borrower, Borrower may, subject to the provisions of this Agreement, and not in a manner inconsistent therewith or unlawful, sell finished Inventory, but only in the ordinary course of Borrower's business; however, in no event shall Borrower make any sale of Inventory which would cause a breach of Borrower's warranties, representations and covenants under Section 5(b) of this Agreement. A sale of Inventory in the ordinary course of Borrower's business does not include a transfer in partial or total satisfaction of a debt owing by Borrower. Borrower shall report the receipt or creation of all sales or other dispositions of Inventory to Lender and promptly deliver such proceeds to Lender. Borrower shall execute and deliver to Lender, in form satisfactory to Lender, a formal assignment or schedule of accounts receivable or other proceeds resulting from the sale or other disposition of Inventory but in the absence of such assignment or schedule this Agreement shall constitute such assignment or schedule and the grant of a security interest therein. Lender's security interest hereunder shall attach to all proceeds (whether represented by cash, checks, drafts, notes, chattel paper, open accounts or otherwise) of all sales or other dispositions of Borrower's Inventory.

(e) Release. Lender shall not be liable or responsible for and Borrower hereby releases Lender from any and all causes of action or claims which Borrower may now or hereafter have for any loss or damage to it claimed to be caused by or arising from: (i) the safekeeping of Inventory; (ii) any damage thereto occurring or arising in any manner or fashion from any cause; (iii) any diminution in the value of Inventory; or (iv) any act of default of any carrier, warehouseman, bailee or forwarding agency thereof or other person whomsoever. All risk of loss, damage or destruction of Inventory shall be borne by Borrower.

6. Insurance. Borrower shall keep the Collateral fully insured against fire, theft and other casualty (as well as such other risks as Lender may hereafter request) with loss payable to Lender and shall pay all premiums promptly when same become due. Lender shall have the right to require Borrower to maintain such insurance with such companies and in such amounts as Lender may request. All policies of insurance will specify that such insurance shall not be cancelable by Borrower or the insurer without at least ten (10) days advance written notice to Lender. In the event any or all insurance hereinbefore provided is canceled, any returned premium thereon shall be payable to Lender and may be applied by Lender to any part of the Obligations, whether matured or unmatured. Lender is authorized to receive the proceeds of any insurance loss and at the option of Lender shall apply such proceeds toward either the repair or replacement of the Collateral or the payment of the Obligations secured hereby. If Borrower fails to maintain such insurance, Lender may, at its option, but without obligation, purchase such insurance or pay any premium owing and any such sum paid by Lender shall be payable by Borrower on demand by Lender or at Lender's option may be added to any of the Obligations.

7. Warranties of Borrower. Borrower hereby represents and warrants to Lender that the Collateral is now and will be kept free and clear of any and all liens, security interests and encumbrances whatsoever, other than the security interest hereunder; that Borrower has and will have the right to convey the Collateral as security for the Obligations; that Borrower will accurately and timely prepare and file any and all payroll, income, sales, franchise and any other applicable tax returns and pay or remit any taxes due therewith; that Borrower will promptly pay or discharge all taxes assessed against the Collateral and all liens which may attach thereto; that any and all information set forth in any writing heretofore or hereafter delivered to Lender by Borrower pertaining to the Collateral or Obligations is and will be true and correct as of the date thereof; that Borrower is solvent; if a registered organization (as defined in the Code) that Borrower is duly formed or organized as the type of organization set forth above and is validly existing under the laws of the State of its formation or incorporation as set forth above, is duly qualified and in good standing in every other state in which it is doing business as a registered organization and its exact name and organization number are as set forth above; that the execution, delivery and performance hereof are within Borrower's corporate or company powers, have been duly authorized, are not in contravention of law or the terms of Borrower's charter, bylaws or other incorporation or formation documents, or of any indenture, agreement or undertaking to which Borrower is a party or by which it is bound; that without prior written notice to Lender, Borrower will not obtain any loans, advances or other financial accommodations or arrangements from any party other than Lender and will not encumber any of its assets; that without prior written consent of Lender, Borrower will not change its name, reorganize, merge or consolidate, change its jurisdiction of incorporation or formation, or issue or sell or redeem any of its common stock or other ownership interests, or permit the transfer by the present shareholders of Borrower to any other person or entity any or all of the common stock or other

ownership interests of Borrower outstanding or in treasury as of the date hereof, that in the event of any transfer by operation of law, Borrower shall immediately notify Lender; that there is no order, notice, claim, litigation, proceedings or investigation pending or threatened against or affecting Borrower whether or not covered by insurance, that would materially and adversely affect Borrower's operations, financial condition, property or business; that Borrower will not sell, transfer, lease or otherwise dispose of all or (except in the ordinary course of business) any material part of its assets; that no account arises out of a contract with, or order from, an account debtor that, by its terms, forbids assignment or makes the assignment of that account to Lender void or unenforceable; that the representations and warranties made hereunder by Borrower are true on the date hereof and will be true on the date of each loan advance by Lender hereunder; that Borrower's address as shown above is the location of Borrower's principal place of business, that such place of business is Borrower's only place of business, and that Borrower has not maintained any other place of business or principal place of business or corporate or trade name during the five (5) years immediately preceding the date of the execution of this Agreement, unless having notified Lender in writing of all such previous addresses and names.

8. Duties and Further Assurances of Borrower. Borrower covenants and agrees that, so long as any of the Obligations remain outstanding and unpaid, it shall:

(a) Financing Statements - Execute upon request of Lender such financing statements and other documents and pay the cost of filing or recording the same, and do such other acts and things as Lender may from time to time request to establish and maintain a valid and perfected security interest of Lender in the Collateral;

(b) Control Agreements - Deliver to Lender such agreements giving Lender "control", as defined in the Code, of any investment property, deposit accounts, letters of credit or electronic chattel paper as Lender may request, with each such agreement being in form and substance satisfactory to Lender;

(c) Tort Claims - In the event the Borrower obtains a "commercial tort claim" (as defined in the Code), the Borrower shall immediately notify Lender and pledge such commercial tort claim to the Lender pursuant to a supplement to this Agreement, such supplement to be in form and substance satisfactory to the Lender;

(d) Inspection - Permit Lender, its agents and employees, from time to time, to inspect, audit and make copies of and extract from all records and other papers in the possession of Borrower, including but not limited to those pertaining to the Collateral and Borrower's debtors, and upon request of Lender, all such records and papers, including copies of customer invoices and exclusive evidence of shipment and such other documents and proof of delivery/rendition as Lender may at any time require;

(e) Financial Statements - Furnish to Lender on or before the forty fifth (45th) day after the end of each month, financial statements in form and substance satisfactory to Lender and certified by an appropriate officer or representative of Borrower, and furnish to Lender annually on or before the sixtieth (60th) day after the end of Borrower's fiscal year, a internally-prepared compiled financial statement in form and substance satisfactory to Lender and acceptable to Lender, with all such reports to be prepared in accordance with Generally Accepted Accounting Principles, consistently applied;

(f) Records Retention - Keep at its address shown herein its records concerning the Collateral, which records shall be of such character as will enable Lender to determine at any time the status of the Collateral;

(g) Information - Furnish such information and documents concerning Borrower, the Collateral and Borrower's debtors as Lender may from time to time request, and comply with loan procedures and reporting requirements established from time to time by Lender;

(h) Payment of Charges Against Collateral - Borrower shall pay all taxes and other charges against the Collateral promptly when same become due. Should Borrower fail to pay any such taxes or other charges, Lender may, at its option, pay any such amount owing and any such sum paid by Lender shall be payable by Borrower on demand by Lender or, at Lender's option, may be added to any of the Obligations; and

(i) Closing Costs - Borrower will pay all costs of closing the loan which is the subject of this Agreement and will reimburse Lender during the period of financing hereunder for all out-of-pocket or advanced expenses, including, but not limited to, long distance phone calls and travel expenses.

9. Default and Remedies. Upon the occurrence of any one or more of the following: (i) any failure of any Obligor (which term shall include Borrower, any co-borrower, and each endorser, surety or guarantor of the Note) to pay any of the Obligations when due or to observe or perform any agreement, covenant or promise hereunder or in any other agreement, note, instrument or certificate of any Obligor to Lender, now existing or hereafter executed in connection with any of the Obligations, including, but not limited to, a loan agreement, if applicable, and any agreement guaranteeing payment of any of the Obligations; (ii) any default of any Obligor in the payment or performance of any other liabilities, indebtedness or obligations of any Obligor to any other creditor, or any occurrence which would allow or permit any other liabilities, indebtedness or obligations to any other creditor to be accelerated; (iii) any failure of any Obligor to furnish Lender current financial information upon request; (iv) any failure of any Obligor or any pledgor of any security interest in the Collateral (the "Pledgor") to observe or perform any agreement, covenant or promise contained in any agreement, instrument or certificate executed in connection with the granting of a security interest in any Collateral to secure the Obligations; (v) any warranty, representation or statement made or furnished to Lender by or on behalf of any Obligor in connection with the extension of credit evidenced by the Note proving to have been false in any material respect when made or furnished; (vi) any loss, theft, substantial damage, destruction, sale, foreclosure of or encumbrance to any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon or the rendering of any judgment or lien or garnishment or attachment against any Obligor or its property, whether actual or threatened; (vii) the death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws, state or federal, by or against Borrower or any other Obligor; (viii) any discontinuance or termination of any guaranty of any of the Obligations by a guarantor; (ix) any amendment or termination of a financing statement naming the Borrower as debtor and the Lender as secured party, or any corrective statement with respect thereto, is filed without the prior written consent of the Lender; (x) any Receivable remaining unpaid for a period of ninety-one (91) days from the date of any advance under the Note with respect thereto; (xi) if the Collateral declines in value or for any reason becomes insufficient in Lender's sole and exclusive judgment to secure the repayment of the Obligations and Borrower, after demand, fails or refuses to substitute and/or make additions to the Collateral, or pay down the Obligations satisfactory to Lender; or (xii) Lender deeming itself insecure as to the ability of Borrower to repay the Obligations, or as to the sufficiency of the Collateral, thereupon, or at any time thereafter, Lender at its option may terminate any obligation to extend any additional credit, make additional advances or make any other financial accommodation to Borrower and/or may declare all of the Obligations to be due and payable and Lender may exercise any other rights of Lender under the Note or any other agreement with any Obligor or any Pledgor, or the remedies of a secured party under the Code, including, without limitation thereto, the right to take possession of the Collateral, or the proceeds thereof and to sell or otherwise dispose of the same, and for this purpose, to sign in the name of any Obligor any transfer, conveyance or instrument necessary or appropriate in order for Lender to sell or dispose of any of the Collateral, and Lender may, so far as Borrower can give authority therefor, enter upon the premises on which the Collateral or any part thereof may be situated and remove the same therefrom, without being liable in any way to any Obligor on account of entering any premises. Lender may require Borrower to assemble the Collateral and make the Collateral available to Lender at a place to be designated by Lender which is reasonably convenient to both parties. Furthermore, Lender shall be entitled to (and each Obligor hereby consents to) the immediate issuance of a writ of possession with respect to all personal items of Collateral in any Obligor's possession. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower written notice of the time and place of any public sale

thereof or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, or otherwise given, to Borrower at the last address shown on Lender's records at least five (5) days before such disposition. In the event of a sale of the Collateral, Lender may bid upon or become purchaser at any such sale, if public, free from any right of redemption, which is hereby expressly waived by Borrower, and Lender shall have the right at its option to apply or be credited with the amount of all or any part of the Obligations owing to Lender against the purchase price bid by Lender at any such sale. The net cash proceeds resulting from the collection, liquidation, sale, lease or other disposition of the Collateral shall be applied first to the expenses (including all attorney's fees) of retaking, holding, storing, processing and preparation for sale, selling, collecting, liquidating and the like, and then to the satisfaction of all Obligations, with application as to particular Obligations or against principal or interest to be in Lender's sole and absolute discretion. Borrower shall be liable to Lender and shall pay to Lender on demand, any deficiency which may remain after such sale, disposition, collection or liquidation of the Collateral, and Lender, in turn, agrees to remit to Borrower any surplus remaining after all Obligations have been paid in full. If any Obligation (including but not limited to the Note) is a demand instrument, the statement of a maturity date or the recitation of defaults and the right of Lender to declare any Obligation due and payable shall not constitute an election by Lender to waive its right to demand payment under a demand at any time and in any event as Lender in its sole discretion may deem appropriate. The rights of Lender specified herein shall be in addition to, and not in limitation of Lender's rights under the Code, or any other statute or rules of law conferring rights similar to those conferred by the Code, and under the provisions of any other instrument or agreement executed by Borrower, any other Obligor or any Pledgor to Lender. Any rights or remedies of Lender may be exercised or taken in any order or sequence whatsoever, at the sole option of Lender. No waiver by Lender of any default shall be effective unless in writing nor operate as a waiver of any other default or of the same default on a future occasion.

10. Minimum Payment. In consideration of Lender extending to Borrower a line of credit of up to $_____, Borrower agrees to (i) either maintain an outstanding loan balance of at least $_____ or, (ii) to borrow each month on invoices which aggregate at least $_____, or (iii) pay a minimum monthly administrative fee of $_____ whichever is greater.

11. Business Use. Borrower represents and warrants that lender's loan or loans to Borrower will be used for nonconsumer purposes and not for personal, family or household purposes.

12. Subordination. All indebtedness owed by Borrower to _____ shall be subordinate to Lender and will not be repaid in whole or in part without the written consent of Lender in accordance with the terms and conditions of that certain subordination agreement executed by _____, which subordination agreement is by this reference incorporated herein and made a part hereof.

13. Miscellaneous. The security agreement set forth herein and the security interest in and security title to the Collateral created hereby shall terminate only when all of the Obligations have been indefeasibly paid in full and such payments are no longer subject to rescission, recovery or repayment upon the bankruptcy, insolvency, reorganization, moratorium, receivership or similar proceeding affecting Borrower, any Obligor, or any other person. All rights of Lender hereunder shall inure to the benefit of its successors and assigns, and all obligations of Borrower shall bind the heirs, legal representatives, successors and assigns of Borrower, provided, however, Borrower shall have no right to assign its rights or obligations under this Agreement without having first received the prior written consent of Lender. Borrower and each endorser, surety or guarantor of the Note, whether bound by this or by separate instrument or agreement, shall be jointly and severally liable for the indebtedness evidenced by the Note and hereby jointly and severally (i) waive presentment for payment, demand, protest, notice of nonpayment or dishonor and any and all other notices and demands whatsoever; (ii) consent that at any time, or from time to time, payment of any sum payable under the Note may be extended by Lender without notice whether for a definite or indefinite time; (iii) agree to remain liable until all of the Obligations are paid in full notwithstanding any release or transfer of Collateral by Lender or of any extension, modification or renewal; and (iv) the undersigned irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner related to this

agreement may be brought in any court in DeKalb County, Georgia. The undersigned, by the execution and delivery of this agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of such court in any such action or proceeding. The undersigned hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction and proper venue or forum non conveniens or any similar defense. No conduct of Lender shall be deemed a waiver or release of such liability, unless the holder expressly releases such party in writing. In the event the Obligations evidenced hereby are collected by or through an attorney or Lender following a default hereunder, Lender shall be entitled to recover reasonable attorneys' fees and all other costs and expenses of collection. Time is of the essence. This Agreement, and the rights and obligations of the parties hereunder, shall be governed and construed in accordance with the laws of the State of Georgia. This Agreement, and the documents executed and delivered pursuant hereto, constitute the entire agreement between the parties, and may be amended only by a writing signed on behalf of the party sought to be charged. If any provision of this Agreement shall be held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision, and to this end, the provisions hereof are severable. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. Terms used in this Agreement which are defined in the Code shall have the meanings given such terms in the Code unless the context requires otherwise.

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement under seal the day and year set forth above.

ATTEST:

By:_____
Its:

BORROWER:

Custom Mechanical GSRA, LLC
d/B/A Custom Mechanical

By:_____
Its: **Managing Member**

LENDER:

Presidential Financial Corporation

By:_____
Its: **Senior Vice President**

Exhibit C

LIMITED LIABILITY COMPANY GUARANTY AGREEMENT

State of Georgia
County of Dekalb

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, and to induce Presidential Financial Corporation (hereinafter referred to as "Lender") to extend credit to Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical (hereinafter referred to as "Borrower") and/or to renew or extend, in whole or in part, loans or discounts already contracted for by Borrower, and/or from time to time to make loans to Borrower and/or enter into with Borrower any agreement with regard to the assignment and/or financing of accounts, which extensions, renewals, and other financial accommodations to Borrower will be of direct financial benefit to the undersigned, the undersigned, jointly and severally, do hereby unconditionally guarantee to Lender and to its endorsers, transferees, successors and assigns, of either this Guaranty or any of the Obligations (as hereinafter defined) secured hereby, the due and punctual payment in full of all principal of and interest and premium, if any, on, and all other amounts in respect of all Obligations of Borrower to Lender of any and every kind or character, according to their respective terms; and do agree that if such Obligations, or any of them, are not timely performed or paid by Borrower, the undersigned will immediately perform and/or pay such Obligations according to respective terms.

The "Obligations" covered by this Guaranty include all obligations of Borrower to Lender now existing or hereafter coming into existence, including, but not limited to, all obligations of Borrower to Lender arising under or pertaining to: any agreement regarding accounts receivable; any security device; any promissory note; any loan, advance, over-advance, and/or account; any and all other indebtedness and obligations of Borrower to Lender however evidenced or arising; and any renewals or extensions, in whole or in part, of any of the obligations heretofore described, together with all damages, losses, costs, interest, charges, expenses and liabilities of every kind, nature and description suffered or incurred by Lender, arising in any manner out of or in a way connected with, or growing out of said Obligations of Borrower to Lender. **This is a continuing guaranty and shall remain in force until a written notice revoking it has been received by the Lender via USPS Certified mail to the following address: Caller Service #105100, Tucker, GA 30085-5100, but such revocation shall not release the undersigned from liability for any and all Obligations of the principal then in existence, or from any renewals or extensions thereof, in whole or in part, and whether such renewals are made before or after such revocation.**

The undersigned hereby consent and agree that Lender may at any time, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing any of the Obligations covered by this Guaranty, or substitute any collateral so held by it for other collateral of like kind or of any kind without notice to or further consent from the undersigned and such surrender or substitution shall not in any way affect the liability of the undersigned hereunder. The undersigned shall not be discharged from their obligations and undertakings hereunder in the event Lender releases or agrees not to sue any person against whom the undersigned has, to the knowledge of Lender, a right of recourse or in the event Lender agrees to suspend its rights to enforce any promissory note(s) signed by Borrower, or any guaranty given by any other person, or any of Lender's rights in the collateral given by Borrower to secure the loans made by Lender. Lender shall be under no duty to exercise all or any rights and remedies given by any note or agreement signed by Borrower, nor given by any other guaranty given to Lender to secure Borrower's indebtedness to Lender, as a condition or requirement of enforcing this Guaranty.

The undersigned hereby waive any right to direct apportionment of payments provided for in O.C.G.A. Section 13-4-42. The undersigned further consent and agree that Lender shall have the right to apportion said payments at its election and in its sole discretion. The undersigned waive any further notice of election by Lender.

The undersigned waive notice of: the creation of any of the Obligations, notice of nonpayment or default by Borrower under any of the Obligations or under any agreement now or hereafter existing between Borrower and Lender; notice of presentment, demand, dishonor, or protest; notice of acceptance of this Guaranty or of the creation or extension or renewal of any Obligations of Borrower to which this Guaranty relates; and any other notices whatsoever; and agrees that no modification of any of the Obligations, and that no waiver, extension, renewal, indulgence, settlement, compromise or failure to exercise due diligence in collection, for any period or periods whether or not longer than the original period, nor any surrender, substitution or release of any other person directly or indirectly liable for any of the Obligations, or of any collateral security given by Borrower, shall release the undersigned from any of the indebtedness then accrued or thereafter to accrue under this Guaranty or any part thereof. In the event any claim hereunder is collected by law or through an attorney-at-law, the undersigned shall be liable to Lender for attorneys' fees equal to fifteen percent (15%) of the unpaid indebtedness and obligations of the undersigned.

The undersigned hereby waive and relinquish any right of contribution, reimbursement, recourse, indemnity, subrogation and any other 'claim', as that term is defined in Title 11 of the United States Code (hereinafter referred to as the 'Bankruptcy Code'), which the undersigned might now have or hereafter acquire, against Borrower or Borrower's estate, which arise from the existence or performance of the Obligations of the undersigned under this Guaranty. In the event that the Borrower files a petition under the Bankruptcy Code or is the subject of an involuntary petition filed under the Bankruptcy Code, then the Obligations covered by this Guaranty shall include all Obligations of the Debtor, Debtor-in-Possession, or a trustee in bankruptcy to the Lender. The Obligations of the undersigned shall not be considered fully paid, performed, and discharged unless and until all payments by Borrower to Lender are no longer subject to any right of any person (including, without limitation, any Debtor, Debtor-in-Possession or any trustee in bankruptcy) to set aside such payments, or to seek to recoup the amount of such payments or any part thereof. Without limiting the generality of the foregoing, the above-referenced right shall include, but is not limited to, any right to recover preferences avoidable under the Bankruptcy Code. If any such payments by the Borrower to the Lender are set aside, in whole or in part, or are settled by Lender (the terms and conditions of any such settlement to be determined in Lender's absolute discretion), then to the extent of such settlement, the undersigned shall indemnify and be liable for the full

amount Lender so pays together with costs, interest, attorneys' fees and any and all expenses which Lender pays or incurs in connection therewith.

The undersigned agree that no act or omission on the part of Lender shall in any way affect or impair this Guaranty. The undersigned hereby waive the right to require the holder of the Obligations guaranteed to take action against the principal as provided for in O.C.G.A. Section 10-7-24.

This Guaranty is made subject to all terms, conditions, agreements, or stipulations contained in the agreements, instruments and other documents evidencing the Obligations hereby guaranteed, which are hereby expressly incorporated herein, and the undersigned agrees that the terms, conditions and provisions of any agreements, instruments or other documents which may be executed by Borrower to evidence such Obligations in the future shall simultaneously with their execution, become a part of this Guaranty.

The undersigned and each of them waive and renounce each for himself and family any and all homestead or exemption rights either of them may have under or by virtue of the constitution or laws of Georgia, any other state, or the United States, against the liabilities and Obligations hereby created, and do hereby, jointly and severally, transfer, convey and assign to Lender or holder hereof a sufficient amount of any homestead or exemption that may be allowed to the undersigned, or any of them, including such homestead or exemption as may be set apart in bankruptcy to pay this obligation in full, with all costs of collection; and each of the undersigned hereby directs the trustee in bankruptcy having possession of such homestead or exemption to deliver to Lender a sufficient amount of property or money so set apart as exempt to pay the obligation hereby created.

Where the Obligations of Borrower hereby guaranteed is an obligation of a corporation, this Guaranty is to cover all Obligations to Lender purporting to be made in behalf of Borrower by an officer or agent of Borrower without regard to the actual authority of such officer or agent. The term "corporation" or Borrower shall include associations of all kinds and all purported corporations whether correctly and legally natural persons. This agreement binds any natural person's heirs, administrators and executors, and where a corporation, its successors and assigns. Where signed by more than one person, the singular term undersigned shall include the plural, and their obligation shall be joint and several.

The undersigned agree that this Guaranty shall be governed by and construed and enforced according to the laws of the State of Georgia. Wherever possible each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, such provision shall be effective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of the Guaranty. The undersigned irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner related to this agreement may be brought in any court in Dekalb County, Georgia. The undersigned, by the execution and delivery of this agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of such court in any such action or proceeding. The undersigned hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction and proper venue or forum non conveniens or any similar defense.

IN WITNESS WHEREOF, the undersigned, intending to be jointly and severally bound hereby, as hereinabove described, have caused this Guaranty to be signed and sealed this 1st day of May, 2007 at North Augusta, South Carolina

Custom Industrial Services, LLC,

By: **Custom Mechanical CSRA, LLC**
d/b/a Custom Mechanical

By: Danny L. Key
Its: Managing Member

Witness:

ACCEPTANCE

The foregoing guaranty is accepted in Atlanta, Georgia, this 4th day of May, 2007.

PRESIDENTIAL FINANCIAL CORPORATION

By: _____
Senior Vice President

Rev.3/02

Exhibit D

GUARANTY AGREEMENT

State of Georgia
County of Dekalb

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, and to induce Presidential Financial Corporation (hereinafter referred to as "Lender") to extend credit to Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical, (hereinafter referred to as "Borrower") and/or to renew or extend, in whole or in part, loans or discounts already contracted for by Borrower, and/or from time to time to make loans to Borrower and/or enter into with Borrower any agreement with regard to the assignment and/or financing of accounts, which extensions, renewals, and other financial accommodations to Borrower will be of direct financial benefit to the undersigned, the undersigned, jointly and severally, do hereby unconditionally guarantee to Lender and to its endorsers, transferees, successors and assigns, of either this Guaranty or any of the Obligations (as hereinafter defined) secured hereby, the due and punctual payment in full of all principal of and interest and premium, if any, on, and all other amounts in respect of all Obligations of Borrower to Lender of any and every kind or character, according to their respective terms, and do agree that if such Obligations, or any of them, are not timely performed or paid by Borrower, the undersigned will immediately perform and/or pay such Obligations according to respective terms.

The "Obligations" covered by this Guaranty include all obligations of Borrower to Lender now existing or hereafter coming into existence, including, but not limited to all obligations of Borrower to Lender arising under or pertaining to: any agreement regarding accounts receivable; any security device; any promissory note; any loan, advance, over-advance, and/or account; any and all other indebtedness and obligations of Borrower to Lender however evidenced or arising; and any renewals or extensions, in whole or in part, of any of the obligations heretofore described, together with all damages, losses, costs, interest, charges, expenses and liabilities of every kind, nature and description suffered or incurred by Lender, arising in any manner out of or in a way connected with, or growing out of said Obligations of Borrower to Lender. **This is a continuing guaranty and shall remain in force until a written notice revoking it has been received by the Lender via USPS Certified mail to the following address: Caller Service #105100, Tucker, GA 30085-5100, but such revocation shall not release the undersigned from liability for any and all Obligations of the principal then in existence, or from any renewals or extensions thereof, in whole or in part, and whether such renewals are made before or after such revocation.**

The undersigned hereby consent and agree that Lender may at any time, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing any of the Obligations covered by this Guaranty, or substitute any collateral so held by it for other collateral of like kind or of any kind without notice to or further consent from the undersigned and such surrender or substitution shall not in any way affect the liability of the undersigned hereunder. The undersigned shall not be discharged from their obligations and undertakings hereunder in the event Lender releases or agrees not to sue any person against whom the undersigned has, to the knowledge of Lender, a right of recourse or in the event Lender agrees to suspend its rights to enforce any promissory note(s) signed by Borrower, or any guaranty given by any other person, or any of Lender's rights in the collateral given by Borrower to secure the loans made by Lender. Lender shall be under no duty to exercise all or any rights and remedies given by any note or agreement signed by Borrower, nor given by any other guaranty given to Lender to secure Borrower's indebtedness to Lender, as a condition or requirement of enforcing this Guaranty.

The undersigned hereby waive any right to direct apportionment of payments provided for in O.C.G.A. Section 13-4-42. The undersigned further consent and agree that Lender shall have the right to apportion said payments at its election and in its sole discretion. The undersigned waive any further notice of election by Lender.

The undersigned waive notice of the creation of any of the Obligations, notice of nonpayment or default by Borrower under any of the Obligations or under any agreement now or hereafter existing between Borrower and Lender, notice of presentment, demand, dishonor, or protest, notice of acceptance of this Guaranty or of the creation or extension or renewal of any Obligations of Borrower to which this Guaranty relates, and any other notices whatsoever, and agrees that no modification of any of the Obligations, and that no waiver, extension, renewal, indulgence, settlement, compromise or failure to exercise due diligence in collection, for any period or periods whether or not longer than the original period, nor any surrender, substitution or release of any other person directly or indirectly liable for any of the Obligations, or of any collateral security given by Borrower, shall release the undersigned from any of the indebtedness then accrued or thereafter to accrue under this Guaranty or any part thereof. In the event any claim hereunder is collected by law or through an attorney-at-law, the undersigned shall be liable to Lender for attorneys' fees equal to fifteen percent (15%) of the unpaid indebtedness and obligations of the undersigned.

The undersigned hereby waive and relinquish any right of contribution, reimbursement, recourse, indemnity, subrogation and any other claim, as that term is defined in Title 11 of the United States Code (hereinafter referred to as the "Bankruptcy Code"), which the undersigned might now have or hereafter acquire, against Borrower or Borrower's estate, which arise from the existence or performance of the Obligations of the undersigned under this Guaranty. In the event that the Borrower files a petition under the

Bankruptcy Code or is the subject of an involuntary petition filed under the Bankruptcy Code, then the Obligations covered by this Guaranty shall include all Obligations of the Debtor, Debtor-In-Possession, or a trustee in bankruptcy to the Lender. The Obligations of the undersigned shall not be considered fully paid, performed, and discharged unless and until all payments by Borrower to Lender are no longer subject to any right of any person (including, without limitation, any Debtor, Debtor-In-Possession or any trustee in bankruptcy) to set aside such payments, or to seek to recoup the amount of such payments or any part thereof. Without limiting the generality of the foregoing, the above-referenced right shall include, but is not limited to, any right to recover preferences avoidable under the Bankruptcy Code. If any such payments by the Borrower to the Lender are set aside, in whole or in part, or are settled by Lender (the terms and conditions of any such settlement to be determined in Lender's absolute discretion), then to the extent of such settlement, the undersigned shall indemnify and be liable for the full amount Lender so pays together with costs, interest, attorneys' fees and any and all expenses which Lender pays or incurs in connection therewith.

The undersigned agree that no act or omission on the part of Lender shall in any way affect or impair this Guaranty. The undersigned hereby waive the right to require the holder of the Obligations guaranteed to take action against the principal as provided for in O.C.G.A. Section 10-7-24.

This Guaranty is made subject to all terms, conditions, agreements, or stipulations contained in the agreements, instruments and other documents evidencing the Obligations hereby guaranteed, which are hereby expressly incorporated herein, and the undersigned agrees that the terms, conditions and provisions of any agreements, instruments or other documents which may be executed by Borrower to evidence such Obligations in the future shall simultaneously with their execution, become a part of this Guaranty.

The undersigned and each of them waive and renounce each for himself and family any and all homestead or exemption rights either of them may have under or by virtue of the constitution or laws of Georgia, any other state, or the United States, against the liabilities and Obligations hereby created, and do hereby, jointly and severally, transfer, convey and assign to Lender or holder hereof a sufficient amount of any homestead or exemption that may be allowed to the undersigned, or any of them, including such homestead or exemption as may be set apart in bankruptcy to pay this obligation in full, with all costs of collection; and each of the undersigned Hereby directs the trustee in bankruptcy having possession of such homestead or exemption to deliver to Lender a sufficient amount of property or money so set apart as exempt to pay the obligation hereby created.

Where the Obligations of Borrower hereby guaranteed is an obligation of a corporation, this Guaranty is to cover all Obligations to Lender purporting to be made in behalf of Borrower by an officer or agent of Borrower without regard to the actual authority of such officer or agent. The term "corporation" or Borrower shall include associations of all kinds and all purported corporations whether correctly and legally natural persons. This agreement binds any natural person's heirs, administrators and executors, and where a corporation, its successors and assigns. Where signed by more than one person, the singular term "undersigned" shall include the plural, and their obligation shall be joint and several.

The undersigned agree that this Guaranty shall be governed by and construed and enforced according to the laws of the State of Georgia. Wherever possible each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, such provision shall be effective to the extent of such prohibition or invalidity without invalidating the remainder of such provisions or the remaining provisions of the Guaranty. The undersigned irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner related to this agreement may be brought in any court in Dekalb County, Georgia. The undersigned, by the execution and delivery of this agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of such court in any such action or proceeding. The undersigned hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction and proper venue or forum non conveniens or any similar defense.

IN WITNESS WHEREOF, the undersigned, intending to be jointly and severally bound hereby, as hereinabove described, have caused this Guaranty to be signed and sealed this 3rd day of May, 2007 at North Augusta, South Carolina

Dean Durand

Witness:

ACCEPTANCE

The foregoing guaranty is accepted in Atlanta, Georgia, this 4th day of May, 2007.

PRESIDENTIAL FINANCIAL CORPORATION

By: _____
Senior Vice President

Exhibit E

GUARANTY AGREEMENT

State of Georgia
County of Dekalb

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, and to induce Presidential Financial Corporation (hereinafter referred to as "Lender") to extend credit to Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical, (hereinafter referred to as "Borrower") and/or to renew or extend, in whole or in part, loans or discounts already contracted for by Borrower, and/or from time to time to make loans to Borrower and/or enter into with Borrower any agreement with regard to the assignment and/or financing of accounts, which extensions, renewals and other financial accommodations to Borrower will be of direct financial benefit to the undersigned, the undersigned, jointly and severally, do hereby unconditionally guarantee to Lender and to its endorsers, transferees, successors and assigns, of either this Guaranty or any of the Obligations (as hereinafter defined) secured hereby, the due and punctual payment in full of all principal of and interest and premium, if any, on, and all other amounts in respect of all Obligations of Borrower to Lender of any and every kind or character, according to their respective terms, and do agree that if such Obligations, or any of them, are not timely performed or paid by Borrower, the undersigned will immediately perform and/or pay such Obligations according to respective terms.

The "Obligations" covered by this Guaranty include all obligations of Borrower to Lender now existing or hereafter coming into existence, including, but not limited to, all obligations of Borrower to Lender arising under or pertaining to: any agreement regarding accounts receivable; any security device; any promissory note; any loan, advance, over-advance, and/or account; any and all other indebtedness and obligations of Borrower to Lender however evidenced or arising; and any renewals or extensions, in whole or in part, of any of the obligations heretofore described, together with all damages, losses, costs, interest, charges, expenses and liabilities of every kind, nature and description suffered or incurred by Lender, arising in any manner out of or in a way connected with, or growing out of said Obligations of Borrower to Lender. **This is a continuing guaranty and shall remain in force until a written notice revoking it has been received by the Lender via USPS Certified mail to the following address: Caller Service #105100, Tucker, GA. 30085-5100, but such revocation shall not release the undersigned from liability for any and all Obligations of the principal then in existence, or from any renewals or extensions thereof, in whole or in part, and whether such renewals are made before or after such revocation.**

The undersigned hereby consent and agree that Lender may at any time, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing any of the Obligations covered by this Guaranty, or substitute any collateral so held by it for other collateral of like kind or of any kind without notice to or further consent from the undersigned and such surrender or substitution shall not in any way affect the liability of the undersigned hereunder. The undersigned shall not be discharged from their obligations and undertakings hereunder in the event Lender releases or agrees not to sue any person against whom the undersigned has, to the knowledge of Lender, a right of recourse or in the event Lender agrees to suspend its rights to enforce any promissory note(s) signed by Borrower, or any guaranty given by any other person, or any of Lender's rights in the collateral given by Borrower to secure the loans made by Lender. Lender shall be under no duty to exercise all or any rights and remedies given by any note or agreement signed by Borrower, nor given by any other guaranty given to Lender to secure Borrower's indebtedness to Lender, as a condition or requirement of enforcing this Guaranty.

The undersigned hereby waive any right to direct apportionment of payments provided for in O.C.G.A. Section 13-4-42. The undersigned further consent and agree that Lender shall have the right to apportion said payments at its election and in its sole discretion. The undersigned waive any further notice of election by Lender.

The undersigned waive notice of the creation of any of the Obligations, notice of nonpayment or default by Borrower under any of the Obligations or under any agreement now or hereafter existing between Borrower and Lender; notice of presentment, demand, dishonor, or protest; notice of acceptance of this Guaranty or of the creation or extension or renewal of any Obligations of Borrower to which this Guaranty relates; and any other notices whatsoever, and agrees that no modification of any of the Obligations, and that no waiver, extension, renewal, indulgence, settlement, compromise or failure to exercise due diligence in collection, for any period or periods whether or not longer than the original period, nor any surrender, substitution or release of any other person directly or indirectly liable for any of the Obligations, or of any collateral security given by Borrower, shall release the undersigned from any of the indebtedness then accrued or thereafter to accrue under this Guaranty or any part thereof. In the event any claim hereunder is collected by law or through an attorney-at-law, the undersigned shall be liable to Lender for attorneys' fees equal to fifteen percent (15%) of the unpaid indebtedness and obligations of the undersigned.

The undersigned hereby waive and relinquish any right of contribution, reimbursement, recourse, indemnity, subrogation and any other claim, as that term is defined in Title 11 of the United States Code (hereinafter referred to as the "Bankruptcy Code"), which the undersigned might now have or hereafter acquire, against Borrower or Borrower's estate, which arise from the existence or performance of the Obligations of the undersigned under this Guaranty. In the event that the Borrower files a petition under the

Bankruptcy Code or is the subject of an involuntary petition filed under the Bankruptcy Code, then the Obligations covered by this Guaranty shall include all Obligations of the Debtor, Debtor-in-Possession, or a trustee in bankruptcy to the Lender. The Obligations of the undersigned shall not be considered fully paid, performed, and discharged unless and until all payments by Borrower to Lender are no longer subject to any right of any person (including, without limitation, any Debtor, Debtor-in-Possession or any trustee in bankruptcy) to set aside such payments, or to seek to recoup the amount of such payments or any part thereof. Without limiting the generality of the foregoing, the above-referenced right shall include, but is not limited to, any right to recover preferences avoidable under the Bankruptcy Code. If any such payments by the Borrower to the Lender are set aside, in whole or in part, or are settled by Lender (the terms and conditions of any such settlement to be determined in Lender's absolute discretion), then to the extent of such settlement, the undersigned shall indemnify and be liable for the full amount Lender so pays together with costs, interest, attorneys' fees and any and all expenses which Lender pays or incurs in connection therewith.

The undersigned agree that no act or omission on the part of Lender shall in any way affect or impair this Guaranty. The undersigned hereby waive the right to require the holder of the Obligations guaranteed to take action against the principal as provided for in O.C.G.A. Section 10-7-24.

This Guaranty is made subject to all terms, conditions, agreements, or stipulations contained in the agreements, instruments and other documents evidencing the Obligations hereby guaranteed, which are hereby expressly incorporated herein, and the undersigned agrees that the terms, conditions and provisions of any agreements, instruments or other documents which may be executed by Borrower to evidence such Obligations in the future shall simultaneously with their execution, become a part of this Guaranty.

The undersigned and each of them waive and renounce each for himself and family any and all homestead or exemption rights either of them may have under or by virtue of the constitution or laws of Georgia, any other state, or the United States, against the liabilities and Obligations hereby created, and do hereby, jointly and severally, transfer, convey and assign to Lender or holder hereof a sufficient amount of any homestead or exemption that may be allowed to the undersigned, or any of them, including such homestead or exemption as may be set apart in bankruptcy to pay this obligation in full, with all costs of collection; and each of the undersigned hereby directs the trustee in bankruptcy having possession of such homestead or exemption to deliver to Lender a sufficient amount of property or money so set apart as exempt to pay the obligation hereby created.

Where the Obligations of Borrower hereby guaranteed is an obligation of a corporation, this Guaranty is to cover all Obligations to Lender purporting to be made in behalf of Borrower by an officer or agent of Borrower without regard to the actual authority of such officer or agent. The term "corporation" or Borrower shall include associations of all kinds and all purported corporations whether correctly and legally natural persons. This agreement binds any natural person's heirs, administrators and executors, and where a corporation, its successors and assigns. Where signed by more than one person, the singular term 'undersigned' shall include the plural, and their obligation shall be joint and several.

The undersigned agree that this Guaranty shall be governed by and construed and enforced according to the laws of the State of Georgia. Wherever possible each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, such provision shall be effective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of the Guaranty. The undersigned irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner related to this agreement may be brought in any court in Dekalb County, Georgia. The undersigned, by the execution and delivery of this agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of such court in any such action or proceeding. The undersigned hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction and proper venue or forum non conveniens or any similar defense.

IN WITNESS WHEREOF, the undersigned, intending to be jointly and severally bound hereby, as hereinabove described, have caused this Guaranty to be signed and sealed this 3rd day of May, 2007 at North Augusta, South Carolina

George Herrington

Witness

ACCEPTANCE

The foregoing guaranty is accepted in Atlanta, Georgia, this 4th day of May, 2007.

PRESIDENTIAL FINANCIAL CORPORATION

By: _____
Senior Vice President

Exhibit F

GUARANTY AGREEMENT

State of Georgia
County of Dekalb

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, and to induce Presidential Financial Corporation (hereinafter referred to as "Lender") to extend credit to Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical, (hereinafter referred to as "Borrower") and/or to renew or extend, in whole or in part, loans or discounts already contracted for by Borrower, and/or from time to time to make loans to Borrower and/or enter into with Borrower any agreement with regard to the assignment and/or financing of accounts, which extensions, renewals, and other financial accommodations to Borrower will be of direct financial benefit to the undersigned, the undersigned, jointly and severally, do hereby unconditionally guarantee to Lender and to its endorsers, transferees, successors and assigns, of either this Guaranty or any of the Obligations (as hereinafter defined) secured hereby, the due and punctual payment in full of all principal of and interest and premium, if any, on, and all other amounts in respect of all Obligations of Borrower to Lender of any and every kind or character, according to their respective terms, and do agree that if such Obligations, or any of them, are not timely performed or paid by Borrower, the undersigned will immediately perform and/or pay such Obligations according to respective terms.

The "Obligations" covered by this Guaranty include all obligations of Borrower to Lender now existing or hereafter coming into existence, including, but not limited to, all obligations of Borrower to Lender arising under or pertaining to: any agreement regarding accounts receivable; any security device; any promissory note; any loan, advance, over-advance, and/or account; any and all other indebtedness and obligations of Borrower to Lender however evidenced or arising; and any renewals or extensions, in whole or in part, of any of the obligations heretofore described; together with all damages, losses, costs, interest, charges, expenses and liabilities of every kind, nature and description suffered or incurred by Lender, arising in any manner out of or in a way connected with, or growing out of said Obligations of Borrower to Lender. This is a continuing guaranty and shall remain in force until a written notice revoking it has been received by the Lender via USPS Certified mail to the following address: Caller Service #105100, Tucker, GA 30085-5100, but such revocation shall not release the undersigned from liability for any and all Obligations of the principal then in existence, or from any renewals or extensions thereof, in whole or in part, and whether such renewals are made before or after such revocation.

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The undersigned waive notice of: the creation of any of the Obligations, notice of nonpayment or default by Borrower under any of the Obligations or under any agreement now or hereafter existing between Borrower and Lender; notice of presentment, demand, dishonor, or protest; notice of acceptance of this Guaranty or of the creation or extension or renewal of any Obligations of Borrower to which this Guaranty relates; and any other notices whatsoever; and agrees that no modification of any of the Obligations, and that no waiver, extension, renewal, indulgence, settlement, compromise or failure to exercise due diligence in collection, for any period or periods whether or not longer than the original period, nor any surrender, substitution or release of any other person directly or indirectly liable for any of the Obligations, or of any collateral security given by Borrower, shall release the undersigned from any of the indebtedness then accrued or thereafter to accrue under this Guaranty or any part thereof. In the event any claim hereunder is collected by law or through an attorney-at-law, the undersigned shall be liable to Lender for attorneys' fees equal to fifteen percent (15%) of the unpaid indebtedness and obligations of the undersigned.

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Obligations of the Debtor, Debtor-in-Possession, or a trustee in bankruptcy to the Lender. The Obligations of the undersigned shall not be considered fully paid, performed, and discharged unless and until all payments by Borrower to Lender are no longer subject to any right of any person (including, without limitation, any Debtor, Debtor-in-Possession or any trustee in bankruptcy) to set aside such payments, or to seek to recoup the amount of such payments or any part thereof. Without limiting the generality of the foregoing, the above-referenced right shall include, but is not limited to, any right to recover preferences avoidable under the Bankruptcy Code. If any such payments by the Borrower to the Lender are set aside, in whole or in part, or are settled by Lender (the terms and conditions of any such settlement to be determined in Lender's absolute discretion), then to the extent of such settlement, the undersigned shall indemnify and be liable for the full amount Lender so pays together with costs, interest, attorneys' fees and any and all expenses which Lender pays or incurs in connection therewith.

The undersigned agree that no act or omission on the part of Lender shall in any way affect or impair this Guaranty. The undersigned hereby waive the right to require the holder of the Obligations guaranteed to take action against the principal as provided for in O.C.G.A. Section 10-7-24.

This Guaranty is made subject to all terms, conditions, agreements, or stipulations contained in the agreements, instruments and other documents evidencing the Obligations hereby guaranteed, which are hereby expressly incorporated herein, and the undersigned agrees that the terms, conditions and provisions of any agreements, instruments or other documents which may be executed by Borrower to evidence such Obligations in the future shall simultaneously with their execution, become a part of this Guaranty.

The undersigned and each of them waive and renounce each for himself and family any and all homestead or exemption rights either of them may have under or by virtue of the constitution or laws of Georgia, any other state, or the United States, against the liabilities and Obligations hereby created, and do hereby, jointly and severally, transfer, convey and assign to Lender or holder hereof a sufficient amount of any homestead or exemption that may be allowed to the undersigned, or any of them, including such homestead or exemption as may be set apart in bankruptcy to pay this obligation in full, with all costs of collection; and each of the undersigned hereby directs the trustee in bankruptcy having possession of such homestead or exemption to deliver to Lender a sufficient amount of property or money so set apart as exempt to pay the obligation hereby created.

Where the Obligations of Borrower hereby guaranteed is an obligation of a corporation, this Guaranty is to cover all Obligations to Lender purporting to be made in behalf of Borrower by an officer or agent of Borrower without regard to the actual authority of such officer or agent. The term "corporation" or Borrower shall include associations of all kinds and all purported corporations whether correctly and legally natural persons. This agreement binds any natural person's heirs, administrators and executors, and where a corporation, its successors and assigns. Where signed by more than one person, the singular term "undersigned" shall include the plural, and their obligation shall be joint and several.

The undersigned agree that this Guaranty shall be governed by and construed and enforced according to the laws of the State of Georgia. Wherever possible each provision of the Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, such provision shall be effective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of the Guaranty. The undersigned irrevocably consents that any legal action or proceeding against it under, arising out of, or in any manner related to this agreement may be brought in any court in Dekalb County, Georgia. The undersigned, by the execution and delivery of this agreement, expressly and irrevocably assents to and submits to the personal jurisdiction of such court in any such action or proceeding. The undersigned hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of jurisdiction and proper venue or forum non conveniens or any similar defense.

IN WITNESS WHEREOF, the undersigned, intending to be jointly and severally bound hereby, as hereinabove described, have caused this Guaranty to be signed and sealed this 3rd day of May, 2007 at North Augusta, South Carolina.

Witness: _____

_____
Danny L. Key

ACCEPTANCE

The foregoing guaranty is accepted in Atlanta, Georgia, this 4th day of May, 2007.

PRESIDENTIAL FINANCIAL CORPORATION

By: _____
Senior Vice President

2

Exhibit G

PRESIDENTIAL FINANCIAL CORPORATION

WORKING CAPITAL FINANCING

Affiliate Offices In:

Florida *Illinois*
Maryland *North Carolina*
New Jersey *Tennessee*
Pennsylvania *Massachusetts*

July 5, 2007

Mr. Danny Key
Managing Member
120 Revco Road
North Augusta, SC 29841

Re: Presidential Financial Corporation / Custom Mechanical CSRA, LLC

Dear Mr. Key:

This letter shall serve as your official notice that Custom Mechanical CSRA, LLC is in default under the Loan Agreement and Security Agreement with Presidential Financial Corporation ("Presidential"), dated May 3, 2007. Presidential has been notified by the attached email that Custom Mechanical CSRA, LLC has failed to transfer and deliver to Presidential all cash, checks and other instruments of payment as proceeds of collateral. Custom Mechanical has failed to comply with loan procedures and reporting requirements established by Presidential.

Presidential hereby notifies you that we are exercising our options under the "Default" section of the Agreement. Custom Mechanical has five days to cure the "Default" by forwarding funds to Presidential in the amount of $425,359.53, the deposited amount, per the attached email. In the event the payment is not received by July 10, 2007, Presidential, at our option will exercise all rights applicable under the law, including foreclosure on business, personal assets, notification to CR Meyers and Security Federal Bank.

Sincerely,

Jerry Noles
Vice President

cc: George Herrington
Dean Durand
Janice Dorris, Esq.

1979 Lakeside Parkway / Suite 400 / Tucker, GA 30084 / Mailing Address: CS 105100 / Tucker, GA 30085-5100
(770) 491-8345 Fax: (770) 493-5532 (770) 493-5542
www.presfin.com

Exhibit H

PRESIDENTIAL FINANCIAL CORPORATION

WORKING CAPITAL FINANCING

Affiliate Offices In:

Florida
Maryland
New Jersey
Pennsylvania
Illinois
North Carolina
Tennessee
Massachusetts

July 12, 2007

Mr. Danny Key
Managing Member
Custom Mechanical CSRA, LLC
120 Revco Road
North Augusta, SC 29841

Re: **Notice of default; Notice of declaration that all Obligations as defined in the Loan Agreement and Security Agreement ("Loan Agreement"), The Demand Secured Promissory Note ("Note") and all other related documents (collectively, the "Loan Documents") are now due and payable; and Notice that Presidential Financial Corporation shall exercise any or all of its rights under the Loan Documents or the remedies of a secured party under the uniform commercial code or other applicable law.**

Dear Mr. Key:

Reference is made to the Loan Agreement dated as of May 3, 2007 by and among **Custom Mechanical CSRA, LLC, d/b/a Custom Mechanical** ("Borrower") and **Presidential Financial Corporation** ("Lender"), the Demand Secured Promissory Note dated as of May 3, 2007 ").

By our letter dated July 5, 2007, you were notified that your failure to transfer and deliver to us all cash, checks and other instruments of payment as proceeds of collateral and to comply with loan procedures and reporting requirements constituted a default under the Loan Agreement. You were given five days to cure this default by forwarding funds to us in the amount of $425,359.53, which represents deposits not forwarded to us as required, and further notified that, in the event such funds were not received by July 10, 2007, we may elect to exercise all rights applicable under the law, including foreclosure on business, personal assets, notification to CR Meyers and Security Federal Bank.

1979 Lakeside Parkway / Suite 400 / Tucker, GA 30084 / Mailing Address: CS 105100 / Tucker, GA 30085-5100
(770) 491-8345 Fax: (770) 493-5532 (770) 493-5542
www.presfin.com

July 12, 2007

(Notice of default; Notice of declaration that all Obligations as defined in the Loan Agreement and Security Agreement ("Loan Agreement"), The Demand Secured Promissory Note ("Note") and all other related documents (collectively, the "Loan Documents") are now due and payable; and Notice that Presidential Financial Corporation shall exercise any or all of its rights under the Loan Documents or the remedies of a secured party under the uniform commercial code or other applicable law.)

As of this date, we have not received the funds required to cure the aforementioned default. Borrower is hereby notified that, because of this continuing default under the Section 4(b) of the Loan Agreement, Lender is declaring all Obligations of Borrower to Lender now due and payable. Borrower is also hereby notified that Lender shall exercise any or all of its rights under the Note or any other agreement with Borrower or any remedy afforded Lender, as a secured party under the Uniform Commercial Code or under any other applicable law, including all rights associated with amounts due from C.R. Meyer, foreclosure on business, personal assets and notification to Security Federal Bank. As of this date, the unpaid principal balance due under the Note is $1,186,678.96. Obligations now due also include interest, which will continue to accrue, and any other fees and/or costs chargeable under the Loan Agreements and the Uniform Commercial Code and any other applicable law.

In no event does this notice constitute a waiver of the rights and remedies of Lender under applicable law or under the terms of the loan documents

Sincerely,

Presidential Financial Corporation

By: Frank Palmieri

Name: Frank Palmieri

Title: Senior Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Civil Action No.: 2008 - CP - 02 - 413

Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Chris Cullipher, David W. Cullipher, Charles R. Ellzey, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, and James M. Waltemath,

Plaintiffs,

vs.

Custom Industrial Services, LLC, Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., Custom Machine and Welding, Inc., Danny Key, George Byron "Bo" Herrington, David Herrington, Dean Durant, David Barksdale, and Geneva Herrington Wright,

Defendants.

COMPLAINT
(S.C. Payment of Wages Act,
Breach of fiduciary duty, Conversion, etc.)

(Jury Trial Demanded)

COPY
ORIGINAL FILED
FEB 20 2008
AIKEN COUNTY
CLERK OF COURT

Plaintiffs Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Chris Cullipher, David W. Cullipher, Charles R. Ellzey, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, and James M. Waltemath (hereinafter "Plaintiffs"), complaining of the above-named Defendants, would respectfully show unto the Court as follows:

NATURE OF ACTION

1. This action arises out of the Defendants' wilful failure to pay their former

employees – twenty-three of whom are named Plaintiffs in this case – the proceeds of the employees' Christmas savings fund when due. Plaintiffs seek statutory treble damages, costs, interest, attorney's fees, actual and punitive damages, and equitable relief.

VENUE AND JURISDICTION

2. Plaintiff Daniel R. Friedmann is a citizen and resident of Richmond County, State of Georgia.

3. Plaintiff Tony Hall is a citizen and resident of Aiken County, State of South Carolina.

4. Plaintiff Timothy R. Hall, Jr. is a citizen and resident of Aiken County, State of South Carolina.

5. Plaintiff Ralph D. Black is a citizen and resident of Edgefield County, State of South Carolina.

6. Plaintiff Thomas Brittingham is a citizen and resident of Richmond County, State of Georgia.

7. Plaintiff Arthur C. Carlson is a citizen and resident of Aiken County, State of South Carolina.

8. Plaintiff Chris Cullipher is a citizen and resident of Aiken County, State of South Carolina.

9. Plaintiff David W. Cullipher is a citizen and resident of Aiken County, State of South Carolina.

10. Plaintiff Charles R. Ellzey is a citizen and resident of Burke County, State of Georgia.

11. Plaintiff Clayton W. Googe, Jr. is a citizen and resident of Columbia County, State of Georgia.

12. Plaintiff Martin Granger is a citizen and resident of Orangeburg County, State of

South Carolina.

13. Plaintiff William R. Giffin, Jr. is a citizen and resident of Richmond County, State of Georgia.

14. Plaintiff Jack E. Hegler is a citizen and resident of Aiken County, State of South Carolina.

15. Plaintiff George G. Lever is a citizen and resident of Columbia County, State of Georgia.

16. Plaintiff Matt Lever is a citizen and resident of Richmond County, State of Georgia.

17. Plaintiff Ernest H. Lewis, III is a citizen and resident of Aiken County, State of South Carolina.

18. Plaintiff William R. McFerrin is a citizen and resident of Richmond County, State of Georgia.

19. Plaintiff Daniel Nichols is a citizen and resident of Richmond County, State of Georgia.

20. Plaintiff Kinda Phommachanh is a citizen and resident of Richmond County, state of Georgia.

21. Plaintiff Raleigh B. Roye is a citizen and resident of Lincoln County, State of Georgia.

22. Plaintiff Nicholas Stewart is a citizen and resident of Columbia County, State of Georgia.

23. Plaintiff Timothy P. Stock is a citizen and resident of Richmond County, State of Georgia.

24. Plaintiff James M. Waltemath is a citizen and resident of Aiken County, State of South Carolina.

25. Defendant Custom Industrial Services, LLC ("Custom Industrial") is a limited

liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

26. Defendant Custom Mechanical CSRA, LLC ("Custom Mechanical") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

27. Defendant Custom Mechanical CSRA, Inc. is a Georgia corporation organized and existing under the laws of the State of Georgia, but which, upon information and belief, does business in South Carolina, which shares common management with and which is the recipient of some or all of the assets of Custom Mechanical CSRA, LLC.

28. Defendant Custom Machine and Welding, Inc. ("Custom Machine") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

29. Upon information and belief, Defendants Custom Industrial, Custom Mechanical, and Custom Machine are interrelated companies. Custom Industrial and Custom Mechanical shared the same principal location, members, and managing members. Most of the Plaintiffs were recruited to work for Custom Mechanical when the General Contractor of the Kimberly-Clark Project at Beech Island, South Carolina (CR Meyer) subcontracted with Custom Mechanical. Custom Mechanical then subcontracted with one or more of the corporate Defendants for work on the Beech Island job. While Custom Mechanical was the hiring employer, Plaintiff employees' paychecks said "Custom Industrial" was paying them wages. Likewise, upon information and belief, Custom Machine shared not only a similar name, but also a financial interest in Custom Industrial and Custom Mechanical. When the latter two were closing operations in Aiken County, their fleet of trucks was taken to Custom Machine to be used and/or sold.

30. Defendant Danny Key (hereinafter "Key") is a citizen and resident of Aiken County, State of South Carolina, and is President and a member in both Defendant

Custom Industrial and Defendant Custom Mechanical.

31. Upon information and belief, Defendant George Byron "Bo" Herrington (hereinafter "Bo Herrington") is a citizen and resident of Columbia County, State of Georgia, and he is the managing member of Defendant Custom Industrial and Defendant Custom Mechanical, chief executive officer and chief financial officer of Defendant Custom Mechanical CSRA, Inc., and, upon information and belief, a member or stakeholder in Defendant Custom Machine.

32. Upon information and belief, Defendant David Herrington (hereinafter "David Herrington") is a citizen and resident of Aiken County, State of South Carolina, and he is an officer of and a member in Defendant Custom Industrial and Defendant Custom Mechanical .

33. Defendant Dean Durant (hereinafter "Durant") is a citizen and resident of Aiken County, State of South Carolina, and, upon information and belief, he is a member in Defendant Custom Industrial and Defendant Custom Mechanical.

34. Defendant David Barksdale(hereinafter "Barksdale") is a citizen and resident of Aiken County, State of South Carolina, and he was the job superintendent for Defendant Custom Industrial and Custom Mechanical at the Kimberly-Clark Beech Island job site.

35. Defendant Geneva Herrington Wright (hereinafter "Wright") is a citizen and resident of Columbia County, State of Georgia, and, upon information, she is a member in Defendant Custom Industrial and Defendant Custom Mechanical and a director of those companies.

36. One or more of the corporate Defendants employed the Plaintiffs in the State of South Carolina at the Kimberly-Clark plant in Aiken County.

37. Venue is proper in Aiken County, State of South Carolina.

FACTS

38. In 2006 and 2007, Defendant Custom Industrial and/or Defendant Custom

Mechanical, employed all of the Plaintiffs.

39. When Defendants hired employees, each new employee was given an opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund.

40. Defendants were to hold said monies in trust according to the written plan.

41. Under the terms of the vacation/holiday savings fund, each employee could, at his sole discretion, have five, ten, or fifteen percent of his salary withheld by the Defendant employers in interest bearing accounts.

42. Defendant employers did not contribute any amount to this vacation/holiday savings fund; it was all earned, employee wages.

43. Under the vacation/holiday savings fund, Defendants were to hold their employees' wages in trust and then disburse half at the Christmas holiday and half in the summer.

44. Defendants began laying off employees in May 2007.

45. Defendants ultimately terminated all Plaintiffs' employment without cause in 2007.

46. Upon information and belief, Defendants did not disburse all amounts due to employees in Summer 2007.

47. Defendants did not pay the named Plaintiffs any of the vacation/holiday savings fund proceeds they were due in December 2007.

48. Upon information and belief, Defendants have not paid amounts due to Plaintiffs from the vacation/holiday savings fund to any organization on behalf of the Plaintiffs since March 2007.

49. No individual, entity, organization, or association has paid Plaintiffs the amount due from their vacation/holiday savings fund as outlined herein above.

50. On the other hand, Plaintiffs have had to pay taxes on the wages which Defendants withheld and retained.

51. Upon information and belief, one or more of the individual Defendants and Defendant Custom Mechanical CSRA, Inc. and/or Defendant Custom Machine have received money or assets from the Defendant employers which could be used to pay Plaintiffs' claims.

52. Plaintiffs have put Defendants on actual and constructive notice that they were due the withheld wages.

53. As a result of Defendants failure to pay Plaintiffs all withheld wages when due, many of the Plaintiffs were unable to provide Christmas gifts for their children.

FOR A FIRST CAUSE OF ACTION
(S.C. Payment of Wages Act
S.C. Code Ann. § 41-10-50, et al.)

54. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

55. The monies which Defendants withheld from Plaintiffs' paychecks under the vacation/holiday savings fund are "wages" as that term is defined by the South Carolina Payment of Wages Act. S.C. Code Ann. § 41-10-10(2).

56. The Defendants are "employers" as that term is defined by the South Carolina Payment of Wages Act ("the Act"). S.C. Code Ann. §§ 41-10-10(1) to 41-10-20.

57. Defendants have refused to pay Plaintiffs compensation earned and due to the discharged Plaintiffs in a timely manner. S.C. Code Ann. § 41-10-50.

58. Plaintiffs have repeatedly put Defendants on notice of the owing amounts and provided opportunity for payment, but Defendants have failed to do so.

59. Upon information and belief, Defendants' failure to pay Plaintiffs is in direct violation of S.C. Code Ann. § 41-10-50, which states, "[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday. . . ."

60. After formal written complaints by several Plaintiffs and ensuing investigations, the South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child

Labor ("LLR") issued citations against one or more of the corporate Defendants with accompanying civil penalty for failing to pay Plaintiffs the amounts owed.

61. To date, Defendants have failed to pay the amount of back wages owed to Plaintiffs, as determined by LLR. S.C. Code Ann. § 41-10-70, -80, -110.

62. There is no *bona fide* dispute over the amount of wages due each Plaintiff.

63. The individual Defendants are personally liable to the Plaintiffs under the Act as agents, officers, and managers who knowingly permitted their business to violate the Act.

64. Plaintiffs are entitled to recover three times the full amount of unpaid wages due plus costs, interest, and reasonable attorney's fees as provided under South Carolina Code Annotated § 41-10-80(c).

FOR A SECOND CAUSE OF ACTION
(Breach of fiduciary duty)

65. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

66. A fiduciary relationship existed between Plaintiff employees and the Defendants because said employees had special trust and confidence in their employers and the officers and managers, who were bound in good conscience to act reasonably and in good faith in withholding the employees' wages and saving it until it was due to be disbursed to Plaintiff employees.

67. Further, the individual Defendants Key, Bo Herrington, David Herrington, Durant, Barksdale, and Wright breached their individual duty of good faith and fair dealing as members, managers, officers, and/or directors pursuant to S.C. Code Ann. § 33-44-409.

68. Defendants have undertaken a course of conduct to benefit their own personal interests.

69. Plaintiffs seek actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

70. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

71. Plaintiffs further allege that Defendants' acts of retaining the withheld wages – detinue – amounted to conversion and were done in willful disregard of what they knew to be their legal duty and were performed with malice.

72. By reason of the conduct alleged above, Defendants have converted Plaintiffs' property as detailed herein above and including but not limited to wages, group insurance premiums, union dues, etc.

73. Plaintiffs have been and will continue to be injured by Defendants' conduct.

74. Plaintiffs are entitled to recover actual, punitive damages, and prejudgment interest as Defendants' conversion of their property was accomplished with conscious indifference to Plaintiffs' rights.

FOR A FOURTH CAUSE OF ACTION
(Declaratory judgment)

75. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

76. Plaintiffs are entitled to and do hereby seek from this Court an order and declaratory judgment, pursuant to South Carolina Code § 15-53-10, et seq. and Rule 57 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH CAUSE OF ACTION
(Breach of trust)

77. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

78. Plaintiffs entrusted Defendants with their property in Aiken County.

79. Defendants were to withhold Plaintiffs' money – described herein above – in

trust pursuant to a written agreement.

80. Defendants breached said trust with fraudulent intent.

81. Upon information and belief, Defendants have appropriated Plaintiffs' property and taken it to another county or state with the intent to destroy the right of the true owners, the Plaintiffs.

WHEREFORE, Plaintiffs request that this action be tried by a jury and pray that judgment be awarded against the Defendants as follows:

A. On Plaintiffs' First Cause of Action, for an award of treble actual damages, prejudgment interest, costs, and reasonable attorney's fees;

B. On Plaintiffs' Second Cause of Action, for an award of actual and punitive damages;

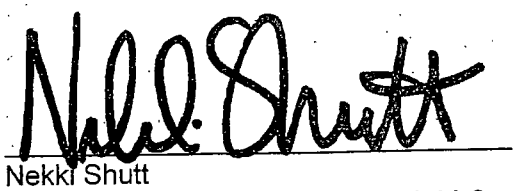
C. On Plaintiffs' Third Cause of Action, for an award of actual and punitive damages and prejudgment interest;

D. On Plaintiffs' Fourth Cause of Action, grant declaratory judgment and equitable in favor of Plaintiffs;

E. On Plaintiffs' Fifth Cause of Action, award equitable in favor of Plaintiffs;

F. Grant Plaintiffs an injunction restraining Defendants and all those acting in concert with them, including but limited to the directors, officers, members, managers, employees and agents, from selling, hiding, using, liquidating, harming, or moving property which belongs to Plaintiffs or which may be used to re-pay Plaintiffs; and/or,

G. For such other and further relief as this Court deems just and proper.



Nekki Shutt
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: (803) 256-2371
Facsimile: (803) 256-6431

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

February 20, 2008.

COPY

FILED
2008 MAR 10 P 12: 54
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

PRESIDENTIAL FINANCIAL CORPORATION, a Georgia Corporation, **Plaintiff,** **v.** **CUSTOM MECHANICAL CSRA, LLC, a South Carolina Limited Liability Company d/b/a CUSTOM MECHANICAL, CUSTOM INDUSTRIAL SERVICES, LLC, a South Carolina Limited Liability Company, DEAN DURAND, an individual, GEORGE HERRINGTON, an individual, and DANNY L. KEY, an individual,** **Defendants,** **and** **CUSTOM MECHANICAL CSRA, LLC d/b/a CUSTOM MECHANICAL, CUSTOM INDUSTRIAL SERVICES, LLC, DEAN DURAND, and DANNY L. KEY,** **Third-Party Plaintiffs,** **vs.** **John J. Kirlin, LLC and John J. Kirlin Special Projects, LLC** **Third-Party Defendants.**	**Civil Action No. 07CV10839-3** **Honorable Clarence F. Seeliger**

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO DISPUTE

COMES NOW Plaintiff Presidential Financial Corporation ("Presidential") and files this and hereby file this Statement of Material Facts as to Which There is No Dispute. Plaintiff shows the Court the following:

1.

In May 2007, Presidential and Custom Mechanical CSRA, LLC ("Custom Mechanical") executed a Promissory Note ("Note") and Loan Agreement and Security Agreement ("Security Agreement") whereby Custom Mechanical promised to pay Presidential on demand the original principal amount of One Million Two Hundred Fifty Thousand and 00/100 Dollars. See Affidavit of Christopher S. Anulewicz, Exhibits A and B.

2.

In order to secure Custom Mechanical's obligations, Custom Industrial Services, LLC ("Custom Industrial"), Dean Durand, Herrington, and Danny Key entered into individual guaranties. Herrington executed and delivered to Presidential a Guaranty Agreement ("Herrington Guaranty" and collectively with the Note and Security Agreement, "Loan Documents") on May 3, 2007. See Anulewicz Affidavit, Exhibit C; see also Anulewicz Affidavit Exhibit E, Requests for Admissions No. 1.

3.

Custom Mechanical defaulted under the terms of the Note by failing to make payments to Presidential.

4.

Herrington's duties under the Herrington Guaranty include immediately performing and/or paying Custom Mechanical's obligation according to the Note, as referred to in Paragraph 10 of the Complaint, and the Security Agreement, as referred to in Paragraph 11 of the Complaint, if such obligations are not timely performed or paid by Custom Mechanical. See Anulewicz Affidavit, Exhibit C; see also Anulewicz Affidavit Exhibit E, Requests for Admissions No. 3.

5.

Herrington defaulted under the terms of the Herrington Guaranty. See Anulewicz Affidavit Exhibit E, Requests for Admissions No. 4.

6.

Herrington owes Presidential additional unpaid interest, late charges, costs of collection, and attorneys' fees and expenses pursuant to the Note, the Security Agreement, and the Herrington Guaranty. See Anulewicz Affidavit Exhibit E, Requests for Admissions No. 5.

7.

Herrington has not satisfied his debt to Presidential. See Anulewicz Affidavit Exhibit E, Requests for Admissions No. 6.

8.

By refusing to pay without justification and by forcing Presidential to file this litigation, Herrington has been stubbornly litigious and has caused Presidential unnecessary trouble and expense. See Anulewicz Affidavit Exhibit E, Requests for Admissions No. 7.

9.

Plaintiff Presidential filed this lawsuit on October 10, 2007 alleging breach of guaranty against Herrington. See Anulewicz Affidavit at ¶ 5.

10.

Herrington was served on October 17, 2007. See Anulewicz Affidavit at ¶ 6.

11.

Herrington filed an Answer on November 14, 2007. See Anulewicz Affidavit at ¶ 7.

12.

On November 20, 2007, Presidential served Herrington with its First Requests for Production of Documents, First Request for Admissions, and First Set of Interrogatories. See Anulewicz Affidavit at ¶ 8; see also Anulewicz Affidavit Exhibit G.

13.

Herrington's responses to Presidential's discovery requests were due on or before December 24, 2007. See Anulewicz Affidavit at ¶ 9.

14.

Herrington did not respond to the discovery requests in a timely manner. See Anulewicz Affidavit at ¶ 10.

15.

On January 28, 2008, Plaintiff's counsel sent a letter to Herrington's counsel notifying Defendant that Plaintiff had not received responses to its discovery requests. See Anulewicz Affidavit at ¶ 11 and Exhibit E.

16.

Neither Herrington nor his counsel has responded to either letter. See Anulewicz Affidavit at ¶ 12.

17.

Plaintiff's counsel has also made at least two unreturned phone calls to Herrington's counsel requesting discovery responses. See Anulewicz Affidavit at ¶ 13.

18.

As of March 6, 2008, Presidential still has not received any response to its discovery requests, letters, or phone calls. See Anulewicz Affidavit at ¶ 14.

Respectfully submitted this 10th day of March, 2008.

Christopher S. Anulewicz
Georgia Bar No. 020914
Lucy W. Rankin
Georgia Bar No. 558245

BALCH & BINGHAM LLP
30 Ivan Allen Jr. Boulevard, NW
Suite 700
Atlanta, GA 30308
Telephone: (404) 261-6020
Facsimile: (404) 261-3656

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, and James M. Waltemath,

Plaintiffs,

vs.

Custom Industrial Services, LLC, Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., Custom Machine and Welding, Inc., Danny Key, George Byron "Bo" Herrington, David Herrington, Dean Durand David Barksdale, and Geneva Wright,

Defendants.

Civil Action No.: 2008-CP-02-413

AMENDED
COMPLAINT
(S.C. Payment of Wages Act, Breach of fiduciary duty, Conversion, etc.)

(Jury Trial Demanded)

COPY
ORIGINAL FILED
JUL 25 2008
8:30 Am
AIKEN COUNTY
CLERK OF COURT

Plaintiffs Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, and James M. Waltemath (hereinafter "Plaintiffs"), complaining of the above-named Defendants, would respectfully show unto the Court as follows:

NATURE OF ACTION

1. This action arises out of the Defendants' wilful failure to pay their former employees – twenty-three of whom are named Plaintiffs in this case – the proceeds of the employees' Christmas savings fund when due. Plaintiffs seek statutory treble damages, costs, interest, attorney's fees, actual and punitive damages, and equitable relief.

VENUE AND JURISDICTION

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11. Plaintiff Joseph A. Doyle, Jr. is a citizen and resident of Georgia.

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14. Plaintiff Clayton W. Googe, Jr. is a citizen and resident of Columbia County, State of Georgia.

15. Plaintiff Martin Granger is a citizen and resident of Orangeburg County, State of South Carolina.

16. Plaintiff William R. Giffin, Jr. is a citizen and resident of Richmond County, State of Georgia.

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18. Plaintiff George G. Lever is a citizen and resident of Columbia County, State of Georgia.

19. Plaintiff Matt Lever is a citizen and resident of Richmond County, State of Georgia.

20. Plaintiff Ernest H. Lewis, III is a citizen and resident of Aiken County, State of South Carolina.

21. Plaintiff William R. McFerrin is a citizen and resident of Richmond County, State of Georgia.

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32. Upon information and belief, Defendants Custom Industrial, Custom Mechanical, and Custom Machine are interrelated companies. Custom Industrial and Custom Mechanical shared the same principal location, members, and managing members. Most of the Plaintiffs were recruited to work for Custom Mechanical when the General Contractor of the Kimberly-Clark Project at Beech Island, South Carolina (CR Meyer) subcontracted with Custom Mechanical. Custom Mechanical then subcontracted with one or more of the corporate Defendants for work on the Beech Island job. While Custom Mechanical was the hiring employer, Plaintiff employees' paychecks said "Custom Industrial" was paying them wages. Likewise, upon information and

belief, Custom Machine shared not only a similar name, but also a financial interest in Custom Industrial and Custom Mechanical. When the latter two were closing operations in Aiken County, their fleet of trucks was taken to Custom Machine to be used and/or sold.

33. Defendant Danny Key (hereinafter "Key") is a citizen and resident of Aiken County, State of South Carolina, and is President and a member in both Defendant Custom Industrial and Defendant Custom Mechanical.

34. Upon information and belief, Defendant George Byron "Bo" Herrington (hereinafter "Bo Herrington") is a citizen and resident of Columbia County, State of Georgia, and he is the managing member of Defendant Custom Industrial and Defendant Custom Mechanical, chief executive officer and chief financial officer of Defendant Custom Mechanical CSRA, Inc., and, upon information and belief, a member or stakeholder in Defendant Custom Machine.

35. Upon information and belief, Defendant David Herrington (hereinafter "David Herrington") is a citizen and resident of Aiken County, State of South Carolina, and he is an officer of and a member in Defendant Custom Industrial and Defendant Custom Mechanical.

36. Defendant Dean Durand (hereinafter "Durand") is a citizen and resident of Aiken County, State of South Carolina, and, upon information and belief, he is the majority member in Defendant Custom Industrial and Defendant Custom Mechanical.

37. Defendant David Barksdale(hereinafter "Barksdale") is a citizen and resident of Aiken County, State of South Carolina, and he was the job superintendent for Defendant Custom Industrial and Custom Mechanical at the Kimberly-Clark Beech Island job site.

38. Defendant Geneva Wright (hereinafter "Wright") is a citizen and resident of Columbia County, State of Georgia, and, upon information, she is a member in Defendant Custom Industrial and Defendant Custom Mechanical and a director of those companies.

39. One or more of the corporate Defendants employed the Plaintiffs in the State of South Carolina at the Kimberly-Clark plant in Aiken County.

40. Venue is proper in Aiken County, State of South Carolina.

FACTS

41. In 2006 and 2007, Defendant Custom Industrial and/or Defendant Custom Mechanical, employed all of the Plaintiffs.

42. When Defendants hired employees, each new employee was given an opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund.

43. Defendants were to hold said monies in trust according to the written plan.

44. Under the terms of the vacation/holiday savings fund, each employee could, at his sole discretion, have five, ten, or fifteen percent of his salary withheld by the Defendant employers in interest bearing accounts.

45. Defendant employers did not contribute any amount to this vacation/holiday savings fund; it was all earned, employee wages.

46. Under the vacation/holiday savings fund, Defendants were to hold their employees' wages in trust and then disburse half at the Christmas holiday and half in the summer.

47. Defendants began laying off employees in May 2007.

48. Defendants ultimately terminated all Plaintiffs' employment without cause in 2007.

49. Upon information and belief, Defendants did not disburse all amounts due to employees in Summer 2007.

50. Defendants did not pay the named Plaintiffs any of the vacation/holiday savings fund proceeds they were due in December 2007.

51. Upon information and belief, Defendants have not paid amounts due to Plaintiffs from the vacation/holiday savings fund to any organization on behalf of the Plaintiffs since March 2007.

52. No individual, entity, organization, or association has paid Plaintiffs the amount due

from their vacation/holiday savings fund as outlined herein above.

53. On the other hand, Plaintiffs have had to pay taxes on the wages which Defendants withheld and retained.

54. Upon information and belief, one or more of the individual Defendants and Defendant Custom Mechanical CSRA, Inc. and/or Defendant Custom Machine have received money or assets from the Defendant employers which could be used to pay Plaintiffs' claims.

55. Plaintiffs have put Defendants on actual and constructive notice that they were due the withheld wages.

56. As a result of Defendants failure to pay Plaintiffs all withheld wages when due, many of the Plaintiffs were unable to provide Christmas gifts for their children.

FOR A FIRST CAUSE OF ACTION
(S.C. Payment of Wages Act
S.C. Code Ann. § 41-10-50, et al.)

57. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.\

58. The monies which Defendants withheld from Plaintiffs' paychecks under the vacation/holiday savings fund are "wages" as that term is defined by the South Carolina Payment of Wages Act. S.C. Code Ann. § 41-10-10(2).

59. The Defendants are "employers" as that term is defined by the South Carolina Payment of Wages Act ("the Act"). S.C. Code Ann. §§ 41-10-10(1) to 41-10-20.

60. Defendants have refused to pay Plaintiffs compensation earned and due to the discharged Plaintiffs in a timely manner. S.C. Code Ann. § 41-10-50.

61. Plaintiffs have repeatedly put Defendants on notice of the owing amounts and provided opportunity for payment, but Defendants have failed to do so.

62. Upon information and belief, Defendants' failure to pay Plaintiffs is in direct violation

of S.C. Code Ann. § 41-10-50, which states, "[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday. . . ."

63. After formal written complaints by several Plaintiffs and ensuing investigations, the South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor ("LLR") issued citations against one or more of the corporate Defendants with accompanying civil penalty for failing to pay Plaintiffs the amounts owed.

64. To date, Defendants have failed to pay the amount of back wages owed to Plaintiffs, as determined by LLR. S.C. Code Ann. § 41-10-70, -80, -110.

65. There is no *bona fide* dispute over the amount of wages due each Plaintiff.

66. The individual Defendants are personally liable to the Plaintiffs under the Act as agents, officers, and managers who knowingly permitted their business to violate the Act.

67. Plaintiffs are entitled to recover three times the full amount of unpaid wages due plus costs, interest, and reasonable attorney's fees as provided under South Carolina Code Annotated § 41-10-80(c).

FOR A SECOND CAUSE OF ACTION
(Breach of fiduciary duty)

68. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

69. A fiduciary relationship existed between Plaintiff employees and the Defendants because said employees had special trust and confidence in their employers and the officers and managers, who were bound in good conscience to act reasonably and in good faith in withholding the employees' wages and saving it until it was due to be disbursed to Plaintiff employees.

70. Further, the individual Defendants Key, Bo Herrington, David Herrington, Durand, Barksdale, and Wright breached their individual duty of good faith and fair dealing as members,

managers, officers, and/or directors pursuant to S.C. Code Ann. § 33-44-409.

71. Defendants have undertaken a course of conduct to benefit their own personal interests.

72. Plaintiffs seek actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

73. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

74. Plaintiffs further allege that Defendants' acts of retaining the withheld wages – detinue – amounted to conversion and were done in willful disregard of what they knew to be their legal duty and were performed with malice.

75. By reason of the conduct alleged above, Defendants have converted Plaintiffs' property as detailed herein above and including but not limited to wages, group insurance premiums, union dues, etc.

76. Plaintiffs have been and will continue to be injured by Defendants' conduct.

77. Plaintiffs are entitled to recover actual, punitive damages, and prejudgment interest as Defendants' conversion of their property was accomplished with conscious indifference to Plaintiffs' rights.

FOR A FOURTH CAUSE OF ACTION
(Declaratory judgment)

78. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

79. Plaintiffs are entitled to and do hereby seek from this Court an order and declaratory judgment, pursuant to South Carolina Code § 15-53-10, et seq. and Rule 57 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH CAUSE OF ACTION
(Breach of trust)

80. The allegations of paragraphs one (1) through fifty-three (53) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

81. Plaintiffs entrusted Defendants with their property in Aiken County.

82. Defendants were to withhold Plaintiffs' money – described herein above – in trust pursuant to a written agreement.

83. Defendants breached said trust with fraudulent intent.

84. Upon information and belief, Defendants have appropriated Plaintiffs' property and taken it to another county or state with the intent to destroy the right of the true owners, the Plaintiffs.

WHEREFORE, Plaintiffs request that this action be tried by a jury and pray that judgment be awarded against the Defendants as follows:

A. On Plaintiffs' First Cause of Action, for an award of treble actual damages, prejudgment interest, costs, and reasonable attorney's fees;

B. On Plaintiffs' Second Cause of Action, for an award of actual and punitive damages;

C. On Plaintiffs' Third Cause of Action, for an award of actual and punitive damages and prejudgment interest;

D. On Plaintiffs' Fourth Cause of Action, grant declaratory judgment and equitable in favor of Plaintiffs;

E. On Plaintiffs' Fifth Cause of Action, award equitable in favor of Plaintiffs;

F. Grant Plaintiffs an injunction restraining Defendants and all those acting in concert with them, including but limited to the directors, officers, members, managers, employees and agents, from selling, hiding, using, liquidating, harming, or moving property which belongs to Plaintiffs or which may be used to re-pay Plaintiffs; and/or,

G. For such other and further relief as this Court deems just and proper.

Nekki Shutt
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: (803) 256-2371
Facsimile: (803) 256-6431

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
June 25 2008

5122.001\COMPLAINT.AMENDED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMM
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDIC

RECEIVED
JUL - 1 2009

Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James M. Waltemath, Al Tiska, and Al Carpenter, Plaintiffs, vs. Custom Industrial Services, LLC, Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., Custom Machine and Welding, Inc., Danny Key, Dean Durand, and David Barksdale, Defendants.	)	**Civil Action No.: 2(** **SECOND AMENDED COMPLAINT** (S.C. Payment of Wages Act, Breach of fiduciary duty, Conversion, etc.) **(Jury Trial Demanded)**

COPY
ORIGINAL FILED
JUN 30 2009
AIKEN COUNTY
CLERK OF COURT

Plaintiffs Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James M. Waltemath, Al Tiska, and Al Carpenter (hereinafter "Plaintiffs"), complaining of the above-named Defendants, would respectfully show unto the Court as follows:

NATURE OF ACTION

1. This action arises out of the Defendants' wilful failure to pay their former employees – twenty-eight of whom are named Plaintiffs in this case – the proceeds of the employees' Christmas savings fund when due. Plaintiffs seek statutory treble damages, costs, interest, attorney's fees, actual and punitive damages, and equitable relief.

VENUE AND JURISDICTION

2. Plaintiff Daniel R. Friedmann is a citizen and resident of Richmond County.

3. Plaintiff Tony Hall is a citizen and resident of Aiken County, State of South Carolina.

4. Plaintiff Timothy R. Hall, Jr. is a citizen and resident of Aiken County, State of South Carolina.

5. Plaintiff Ralph D. Black is a citizen and resident of Edgefield County, State of South Carolina.

6. Plaintiff Thomas Brittingham is a citizen and resident of Richmond County, State of Georgia.

7. Plaintiff Arthur C. Carlson is a citizen and resident of Aiken County, State of South Carolina.

8. Plaintiff Leonard Wade Cliett is a citizen and resident of Georgia.

9. Plaintiff Chris Cullipher is a citizen and resident of Aiken County, State of South Carolina.

10. Plaintiff David W. Cullipher is a citizen and resident of Aiken County, State of South Carolina.

11. Plaintiff Joseph A. Doyle, Jr. is a citizen and resident of Georgia.

12. Plaintiff Charles R. Ellzey is a citizen and resident of Burke County, State of Georgia.

13. Plaintiff Brian Field is a citizen and resident of Aiken County, State of South Carolina.

14. Plaintiff Clayton W. Googe, Jr. is a citizen and resident of Columbia County, State of Georgia.

15. Plaintiff Martin Granger is a citizen and resident of Orangeburg County, State of South Carolina.

16. Plaintiff William R. Giffin, Jr. is a citizen and resident of Richmond County, State of Georgia.

17. Plaintiff Jack E. Hegler is a citizen and resident of Aiken County, State of South Carolina.

18. Plaintiff George G. Lever is a citizen and resident of Columbia County, State of Georgia.

19. Plaintiff Matt Lever is a citizen and resident of Richmond County, State of Georgia.

20. Plaintiff Ernest H. Lewis, III is a citizen and resident of Aiken County, State of South Carolina.

21. Plaintiff William R. McFerrin is a citizen and resident of Richmond County, State of Georgia.

22. Plaintiff Daniel Nichols is a citizen and resident of Richmond County, State of Georgia.

23. Plaintiff Kinda Phommachanh is a citizen and resident of Richmond County, State of Georgia.

24. Plaintiff Raleigh B. Roye is a citizen and resident of Lincoln County, State of Georgia.

25. Plaintiff Nicholas Stewart is a citizen and resident of Columbia County, State of Georgia.

26. Plaintiff Timothy P. Stock is a citizen and resident of Richmond County, State of Georgia.

27. Plaintiff James M. Waltemath is a citizen and resident of Aiken County, State of South Carolina.

28. Plaintiff Al Tiska is a citizen and resident of Aiken County, State of South Carolina.

29. Plaintiff Al Carpenter is a citizen and resident of Columbia County, State of Georgia.

30. Defendant Custom Industrial Services, LLC ("Custom Industrial") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

31. Defendant Custom Mechanical CSRA, LLC ("Custom Mechanical") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

32. Defendant Custom Mechanical CSRA, Inc. is a Georgia corporation organized and existing under the laws of the State of Georgia, but which, upon information and belief, does business in South Carolina, which shares common management with and which is the recipient of some or all of the assets of Custom Mechanical CSRA, LLC.

33. Defendant Custom Machine and Welding, Inc. ("Custom Machine") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

34. Upon information and belief, Defendants Custom Industrial, Custom Mechanical, and Custom Machine are interrelated companies. Custom Industrial and Custom Mechanical shared the same principal location, members, and managing members. Most of the Plaintiffs were recruited to work for Custom Mechanical when the General Contractor of the Kimberly-Clark Project at Beech Island, South Carolina (CR Meyer) subcontracted with Custom Mechanical. Custom Mechanical then subcontracted with one or more of the corporate Defendants for work on

the Beech Island job. While Custom Mechanical was the hiring employer, Plaintiff employees' paychecks said "Custom Industrial" was paying them wages. Likewise, upon information and belief, Custom Machine shared not only a similar name, but also a financial interest in Custom Industrial and Custom Mechanical. When the latter two were closing operations in Aiken County, their fleet of trucks was taken to Custom Machine to be used and/or sold.

35. Defendant Danny Key (hereinafter "Key") is a citizen and resident of Aiken County, State of South Carolina, and is President and a member in both Defendant Custom Industrial and Defendant Custom Mechanical.

36. Upon information and belief, Defendant George Byron "Bo" Herrington (hereinafter "Bo Herrington") is a citizen and resident of Columbia County, State of Georgia, and he is the managing member of Defendant Custom Industrial and Defendant Custom Mechanical, chief executive officer and chief financial officer of Defendant Custom Mechanical CSRA, Inc., and, upon information and belief, a member or stakeholder in Defendant Custom Machine.

37. Upon information and belief, Defendant David Herrington (hereinafter "David Herrington") is a citizen and resident of Aiken County, State of South Carolina, and he is an officer of and a member in Defendant Custom Industrial and Defendant Custom Mechanical.

38. Defendant Dean Durand (hereinafter "Durand") is a citizen and resident of Aiken County, State of South Carolina, and, upon information and belief, he is the majority member in Defendant Custom Industrial and Defendant Custom Mechanical.

39. Defendant David Barksdale(hereinafter "Barksdale") is a citizen and resident of Aiken County, State of South Carolina, and he was the job superintendent for Defendant Custom Industrial and Custom Mechanical at the Kimberly-Clark Beech Island job site.

40. Defendant Geneva Wright (hereinafter "Wright") is a citizen and resident of Columbia County, State of Georgia, and, upon information, she is a member in Defendant Custom Industrial and Defendant Custom Mechanical and a director of those companies.

41. One or more of the corporate Defendants employed the Plaintiffs in the State of South Carolina at the Kimberly-Clark plant in Aiken County.

42. Venue is proper in Aiken County, State of South Carolina.

FACTS

43. In 2006 and 2007, Defendant Custom Industrial and/or Defendant Custom Mechanical, employed all of the Plaintiffs.

44. When Defendants hired employees, each new employee was given an opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund.

45. Defendants were to hold said monies in trust according to the written plan.

46. Under the terms of the vacation/holiday savings fund, each employee could, at his sole discretion, have five, ten, or fifteen percent of his salary withheld by the Defendant employers in interest bearing accounts.

47. Defendant employers did not contribute any amount to this vacation/holiday savings fund; it was all earned, employee wages.

48. Under the vacation/holiday savings fund, Defendants were to hold their employees' wages in trust and then disburse half at the Christmas holiday and half in the summer.

49. Defendants began laying off employees in May 2007.

50. Defendants ultimately terminated all Plaintiffs' employment without cause in 2007.

51. Upon information and belief, Defendants did not disburse all amounts due to employees in Summer 2007.

52. Defendants did not pay the named Plaintiffs any of the vacation/holiday savings fund proceeds they were due in December 2007.

53. Upon information and belief, Defendants have not paid amounts due to Plaintiffs from the vacation/holiday savings fund to any organization on behalf of the Plaintiffs since

March 2007.

54. No individual, entity, organization, or association has paid Plaintiffs the amount due from their vacation/holiday savings fund as outlined herein above.

55. On the other hand, Plaintiffs have had to pay taxes on the wages which Defendants withheld and retained.

56. Upon information and belief, one or more of the individual Defendants and Defendant Custom Mechanical CSRA, Inc. and/or Defendant Custom Machine have received money or assets from the Defendant employers which could be used to pay Plaintiffs' claims.

57. Plaintiffs have put Defendants on actual and constructive notice that they were due the withheld wages.

58. As a result of Defendants failure to pay Plaintiffs all withheld wages when due, many of the Plaintiffs were unable to provide Christmas gifts for their children.

FOR A FIRST CAUSE OF ACTION
(S.C. Payment of Wages Act
S.C. Code Ann. § 41-10-50, et al.)

59. The allegations of paragraphs one (1) through fifty-eight (58) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

60. The monies which Defendants withheld from Plaintiffs' paychecks under the vacation/holiday savings fund are "wages" as that term is defined by the South Carolina Payment of Wages Act. S.C. Code Ann. § 41-10-10(2).

61. The Defendants are "employers" as that term is defined by the South Carolina Payment of Wages Act ("the Act"). S.C. Code Ann. §§ 41-10-10(1) to 41-10-20.

62. Defendants have refused to pay Plaintiffs compensation earned and due to the discharged Plaintiffs in a timely manner. S.C. Code Ann. § 41-10-50.

63. Plaintiffs have repeatedly put Defendants on notice of the owing amounts and

provided opportunity for payment, but Defendants have failed to do so.

64. Upon information and belief, Defendants' failure to pay Plaintiffs is in direct violation of S.C. Code Ann. § 41-10-50, which states, "[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday. . . ."

65. After formal written complaints by several Plaintiffs and ensuing investigations, the South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor ("LLR") issued citations against one or more of the corporate Defendants with accompanying civil penalty for failing to pay Plaintiffs the amounts owed.

66. To date, Defendants have failed to pay the amount of back wages owed to Plaintiffs, as determined by LLR. S.C. Code Ann. § 41-10-70, -80, -110.

67. There is no *bona fide* dispute over the amount of wages due each Plaintiff.

68. The individual Defendants are personally liable to the Plaintiffs under the Act as agents, officers, and managers who knowingly permitted their business to violate the Act.

69. Plaintiffs are entitled to recover three times the full amount of unpaid wages due plus costs, interest, and reasonable attorney's fees as provided under South Carolina Code Annotated § 41-10-80(c).

FOR A SECOND CAUSE OF ACTION
(Breach of fiduciary duty)

70. The allegations of paragraphs one (1) through fifty-eight (58) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

71. A fiduciary relationship existed between Plaintiff employees and the Defendants because said employees had special trust and confidence in their employers and the officers and managers, who were bound in good conscience to act reasonably and in good faith in withholding the employees' wages and saving it until it was due to be disbursed to Plaintiff employees.

72. Further, the individual Defendants Key, Bo Herrington, David Herrington, Durand, Barksdale, and Wright breached their individual duty of good faith and fair dealing as members, managers, officers, and/or directors pursuant to S.C. Code Ann. § 33-44-409.

73. Defendants have undertaken a course of conduct to benefit their own personal interests.

74. Plaintiffs seek actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

75. The allegations of paragraphs one (1) through fifty-eight (58) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

76. Plaintiffs further allege that Defendants' acts of retaining the withheld wages – detinue – amounted to conversion and were done in willful disregard of what they knew to be their legal duty and were performed with malice.

77. By reason of the conduct alleged above, Defendants have converted Plaintiffs' property as detailed herein above and including but not limited to wages, group insurance premiums, union dues, etc.

78. Plaintiffs have been and will continue to be injured by Defendants' conduct.

79. Plaintiffs are entitled to recover actual, punitive damages, and prejudgment interest as Defendants' conversion of their property was accomplished with conscious indifference to Plaintiffs' rights.

FOR A FOURTH CAUSE OF ACTION
(Declaratory judgment)

80. The allegations of paragraphs one (1) through fifty-eight (58) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

81. Plaintiffs are entitled to and do hereby seek from this Court an order and declaratory

judgment, pursuant to South Carolina Code § 15-53-10, et seq. and Rule 57 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH CAUSE OF ACTION
(Breach of trust)

82. The allegations of paragraphs one (1) through fifty-eight (58) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

83. Plaintiffs entrusted Defendants with their property in Aiken County.

84. Defendants were to withhold Plaintiffs' money – described herein above – in trust pursuant to a written agreement.

85. Defendants breached said trust with fraudulent intent.

86. Upon information and belief, Defendants have appropriated Plaintiffs' property and taken it to another county or state with the intent to destroy the right of the true owners, the Plaintiffs.

WHEREFORE, Plaintiffs request that this action be tried by a jury and pray that judgment be awarded against the Defendants as follows:

A. On Plaintiffs' First Cause of Action, for an award of treble actual damages, prejudgment interest, costs, and reasonable attorney's fees;

B. On Plaintiffs' Second Cause of Action, for an award of actual and punitive damages;

C. On Plaintiffs' Third Cause of Action, for an award of actual and punitive damages and prejudgment interest;

D. On Plaintiffs' Fourth Cause of Action, grant declaratory judgment and equitable in favor of Plaintiffs;

E. On Plaintiffs' Fifth Cause of Action, award equitable in favor of Plaintiffs;

F. Grant Plaintiffs an injunction restraining Defendants and all those acting in concert with them, including but limited to the directors, officers, members, managers, employees and

agents, from selling, hiding, using, liquidating, harming, or moving property which belongs to Plaintiffs or which may be used to re-pay Plaintiffs; and/or,

G. For such other and further relief as this Court deems just and proper.

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Nekkishutt@ctrlawfirm.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

June 24 2009
5122.001\COMPLAINT.AMENDED.002

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Chris Cullipher, David W. Cullipher, Charles R. Ellzey, Clayton W. Google, Jr., Martin Granger, Williams R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, and Al Carpenter, Plaintiffs, vs. Custom Industrial Services, LLC, Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., Custom Machine and Welding, Inc., Danny Key, George Bryron "Bo" Herrington, David Herrington, Dean Durand, David Barksdale, and Geneva Herrington Wright, Defendants.	Civil Action No.: 08-CP-02-0413 **CUSTOM INDUSTRIAL SERVICES, LLC, CUSTOM MECHANICAL CSRA, INC., LLC, CUSTOM MACHINE AND WELDING, INC., DANNY KEY, DEAN DURAND AND DAVID BARKSDALE'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Custom Industrial Services, LLC; Custom Mechanical CSRA, LLC; Custom Mechanical CSRA, Inc.; Custom Machine and Welding, Inc.; Danny Key; Dean Durand; and David Barksdale answering the Amended Complaint herein allege:

FOR A FIRST DEFENSE

1. That these Defendants deny each and every allegation of the Second Amended Complaint unless hereinafter specifically admitted;

2. That they deny Paragraph 1.

3. That they admit Paragraph 2 upon information and belief.

4. That they lack sufficient information to form a belief as to the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29. and therefore deny same and demand strict proof thereof;

5. That they admit Paragraphs 30 and 31;

6. That they admit Paragraph 32 to the extent that Custom Mechanical CSRA, Inc. is a Georgia Corporation organized and existing under the laws of the State of Georgia, but deny the allegation that it shares or is the recipient of some or all of the assets of Custom Mechanical CSRA, LLC and they affirmatively allege that Custom Mechanical CSRA, Inc. has never conducted any business in Georgia or South Carolina, that it has no business or assets, and is a dormant shell corporation.

7. That they admit Paragraph 33;

8. That they admit Paragraph 34 to the extent that Custom Industrial and Custom Mechanical share the same principal location, members and managing members. Upon further information and belief, they admit that Plaintiffs worked for Custom Industrial on the Beech Island, South Carolina project. They further admit that Custom Industrial paid wages to Plaintiffs. They deny that Custom Machine had a financial interest in Custom Industrial or Custom Mechanical. They admit that the Custom Mechanical trucks were placed on the property of Custom Machine to be sold, but affirmatively allege that neither Custom Industrial nor Custom Mechanical paid any money to Custom Machine for those trucks or paid Custom

Machine any of the proceeds received from the sale of the truck. All other allegations contained with Paragraph 34 are denied;

9. That they admit Paragraph 35;

10. That they admit Paragraph 36 to the extent that George Bryon "Bo" Herrington is a member of Defendant Custom Industrial and Custom Mechanical, and that all other allegations contained within Paragraph 36 are denied.

11. Upon information and belief, they admit Paragraph 37 to the extent David Herrington is a citizen and resident of South Carolina, but they deny that he is a member of Custom Industrial and Custom Mechanical.

12. That they admit Paragraph 38 to the extent that Dean Durand is a citizen and resident of Aiken, South Carolina and is a member of Defendant Custom Industrial and Custom Mechanical, and that they lack sufficient information to form a belief as to the remaining allegations in Paragraph 36 and therefore deny same and demand strict proof thereof;

13. That they admit Paragraph 39;

14. That they lack sufficient information to form a belief as to the allegations of Paragraph 40;

15. That they admit Paragraph 41 to the extent that Custom Industrial employed the Plaintiffs in the State of South Carolina at the Kimberly Clark plant in Aiken County, but they deny the remaining allegations of Paragraph 41 and demand strict proof thereof;

16. That Paragraph 42 sets forth jurisdictional allegations to which no response is required of these Defendants, and they reserve all rights on issues related to jurisdiction and venue;

17. Upon information and belief, they admit Paragraph 43;

18. That they lack sufficient information to form a belief as to the allegations of Paragraph 44 and therefore deny same and demand strict proof thereof;

19. That they deny Paragraph 45;

20. That they lack sufficient information to form a belief as to the allegations of Paragraph 46 as to the allegations regarding the percentage that could be withheld by each employee, and deny that Defendants would hold money in interest bearing accounts;

21. That they admit Paragraph 47 to the extent that they did not directly contribute any amount to a savings fund and affirmatively allege that they made monthly payments to the appropriate local union, with no control over how the money was handled once in the hands of the appropriate local union;

22. That they deny Paragraph 48;

23. That they admit Paragraph 49 to the extent that the Defendants began reducing their work force during the spring and early summer of 2007 on the Beech Island Project;

24. That they admit Paragraph 50 to the extent that the employees were no longer necessary because the corporate Defendants were asked to leave the Beech Island Project and had no additional projects ongoing for which the Plaintiffs labor was required;

25. That they admit Paragraph 51 to the extent that they did not make the final payments to appropriate local union in the summer of 2007, and deny that they were responsible for disbursing vacation/holiday funds amounts directly to the employees and they affirmatively allege that the Plaintiffs received payroll checks for all work completed;

26. That they admit Paragraph 52 to the extent that they did not pay the named Plaintiffs directly for any vacation/holiday saving fund proceeds, and affirmatively allege that the appropriate local union was responsible for this;

27. That they lack sufficient information to form a belief as to the allegations of Paragraphs 53, 54, and 55 and therefore deny same and demand strict proof thereof;

28. That they deny Paragraph 56;

29. That they admit Paragraph 57 to the extent that the Defendants are aware that they have not paid final monies owed to the appropriate local union, but affirmatively allege they provided Plaintiffs with payroll checks for all work completed;

30. That they lack sufficient information to form a belief as to the allegations of Paragraph 58 and therefore deny same and demand strict proof thereof;

31. That each and every allegation of Paragraphs 1 through 30 are incorporated herein as if set forth verbatim in response to Paragraph 59 of the Second Amended Complaint;

32. That Paragraphs 60 and 61 set forth legal conclusions for which no response is required, however, to the extent that a response is required, they would reference to the Payment of Wages Act and deny any allegations inconsistent with the Act;

33. That they deny Paragraph 62 to the extent it alleges that Defendants have refused to pay Plaintiffs and affirmatively allege that monies from a higher-tiered subcontractor have been withheld from the Defendants, preventing them from paying monies to the appropriate local union;

34. That they lack sufficient information to form a belief as to the allegations of Paragraph 63 and therefore deny same and demand strict proof thereof;

35. That Paragraph 64 sets forth a legal conclusion for which no response is required, however, to the extent a response is required they deny same and demand strict proof thereof;

36. That they lack sufficient information to form a belief as to Paragraph 65 and therefore deny same and demand strict proof thereof;

37. That they admit Paragraph 66 to the extent that Defendants are unable to pay the appropriate local union because monies have been withheld from them by higher-tiered subcontractor on the Beech Island Project, but affirmatively allege that Plaintiffs received payroll checks for all work completed;

38. That they admit Paragraph 67;

39. That they deny Paragraphs 68 and 69;

40. That each and every allegation of Paragraph 1 through 39 are incorporated herein as if set forth verbatim in response to Paragraph 70 of the Second Amended Complaint;

41. That they deny Paragraph 71;

42. To the extent that Paragraph 72 contains allegations against Defendants Key, Durand and Barksdale, they deny the allegations of Paragraph 72;

43. That they deny Paragraph 73;

44. That they crave reference to Plaintiffs' Second Amended Complaint in response to Paragraph 74;

45. That each and every allegation of Paragraphs 1 through 44 are incorporated herein as if set forth verbatim in response to Paragraph 75 of the Second Amended Complaint;

46. That they deny Paragraphs 76, 77, 78, and 79;

47. That each and every allegation of Paragraphs 1 through 46 are incorporated herein as if set forth verbatim in response to Paragraph 80 of the Second Amended Complaint;

48. That they deny Paragraph 81;

49. That each and every allegation of Paragraphs 1 through __ are incorporated herein as if set forth verbatim in response to Paragraph 82 of the Second Amended Complaint;

50. That they deny Paragraph 83, 84, 85 and 86.

FOR A SECOND DEFENSE
(Fails to state a claim)

51. That the Amended Complaint fails to state facts sufficient to constitute a cause of action against these Defendants;

FOR A THIRD DEFENSE
(Statute of Limitations)

52. That the Plaintiffs are barred by the Statute of limitations;

FOR A FOURTH DEFENSE
(Statute of Frauds)

53. That it is expressly denied that there was a contract between the individual Plaintiffs and these Defendants for the vacation/savings fund.

54. That the Statute of Frauds requires every contract or agreement as alleged by the Plaintiffs to be in writing, that there was no such writing and therefore no contract.

55. These Defendants plead the Statute of Frauds as a complete bar to this action.

FOR A FIFTH DEFENSE
(Lack of Standing)

56. That the individual Plaintiffs lack standing to assert any claims relating to this matter or any alleged damage because the Defendants did not directly contribute to the individual Plaintiffs vacation/savings funds, rather they provided monthly payments to the appropriate local union and relied upon the Union to provide payments to the individual Plaintiffs.

FOR A SIXTH DEFENSE
(Punitive Damages – Unconstitutional)

55. That the Plaintiffs claims for punitive damages is in violation of the US Constitution, Fourteenth Amendment (Due Process Clause), and the SC Constitution in that there is no objective standard to gauge or limit the amount of punitive damages that can be awarded with sufficient instruction provided in determining the amount of private damage that should be awarded.

WHEREFORE, having fully Answered the Second Amended Complaint, these Defendants demand the same be dismissed without costs and with such other and further relief as the Court deems just and proper.

Respectfully Submitted,

RICHARDSON PLOWDEN & ROBINSON

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Emily R. Gifford
S.C. Bar No. 3505
S.C. Bar No. 72785
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ATTORNEYS FOR CUSTOM INDUSTRIAL SERVICES, LLC, CUSTOM MECHANICAL CSRA, INC., LLC, CUSTOM MACHINE AND WELDING, INC., DANNY KEY, DEAN DURAND AND DAVID BARKSDALE

Columbia, South Carolina
Dated: June 30, 2009.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James M. Waltemath, Al Tiska, and Al Carpenter, and Bruce Pollock, Jr.,

Plaintiffs,

vs.

Custom Industrial Services, LLC, Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., Custom Machine and Welding, Inc., Danny Key, Dean Durand, and David Barksdale,

Defendants.

Civil Action No.: 2008-CP-02-413

THIRD AMENDED COMPLAINT
(S.C. Payment of Wages Act, Breach of fiduciary duty, Conversion, etc.)

(Jury Trial Demanded)

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AIKEN COUNTY
CLERK OF COURT

Plaintiffs Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James M. Waltemath, Al Tiska, Al Carpenter, and Bruce Pollock, Jr. (hereinafter "Plaintiffs"), complaining of the above-named Defendants, would respectfully show unto the Court as follows:

NATURE OF ACTION

1. This action arises out of the Defendants' wilful failure to pay their former employees – twenty-nine of whom are named Plaintiffs in this case – the proceeds of the employees' Christmas savings fund when due. Plaintiffs seek statutory treble damages, costs, interest, attorney's fees, actual and punitive damages, and equitable relief.

VENUE AND JURISDICTION

2. Plaintiff Daniel R. Friedmann is a citizen and resident of Richmond County.

3. Plaintiff Tony Hall is a citizen and resident of Aiken County, State of South Carolina.

4. Plaintiff Timothy R. Hall, Jr. is a citizen and resident of Aiken County, State of South Carolina.

5. Plaintiff Ralph D. Black is a citizen and resident of Edgefield County, State of South Carolina.

6. Plaintiff Thomas Brittingham is a citizen and resident of Richmond County, State of Georgia.

7. Plaintiff Arthur C. Carlson is a citizen and resident of Aiken County, State of South Carolina.

8. Plaintiff Leonard Wade Cliett is a citizen and resident of Georgia.

9. Plaintiff Chris Cullipher is a citizen and resident of Aiken County, State of South Carolina.

10. Plaintiff David W. Cullipher is a citizen and resident of Aiken County, State of South Carolina.

11. Plaintiff Joseph A. Doyle, Jr. is a citizen and resident of Georgia.

12. Plaintiff Charles R. Ellzey is a citizen and resident of Burke County, State of Georgia.

13. Plaintiff Brian Field is a citizen and resident of Aiken County, State of South Carolina.

14. Plaintiff Clayton W. Googe, Jr. is a citizen and resident of Columbia County, State of Georgia.

15. Plaintiff Martin Granger is a citizen and resident of Orangeburg County, State of South Carolina.

16. Plaintiff William R. Giffin, Jr. is a citizen and resident of Richmond County, State of Georgia.

17. Plaintiff Jack E. Hegler is a citizen and resident of Aiken County, State of South Carolina.

18. Plaintiff George G. Lever is a citizen and resident of Columbia County, State of Georgia.

19. Plaintiff Matt Lever is a citizen and resident of Richmond County, State of Georgia.

20. Plaintiff Ernest H. Lewis, III is a citizen and resident of Aiken County, State of South Carolina.

21. Plaintiff William R. McFerrin is a citizen and resident of Richmond County, State of Georgia.

22. Plaintiff Daniel Nichols is a citizen and resident of Richmond County, State of Georgia.

23. Plaintiff Kinda Phommachanh is a citizen and resident of Richmond County, State of Georgia.

24. Plaintiff Raleigh B. Roye is a citizen and resident of Lincoln County, State of Georgia.

25. Plaintiff Nicholas Stewart is a citizen and resident of Columbia County, State of Georgia.

26. Plaintiff Timothy P. Stock is a citizen and resident of Richmond County, State of Georgia.

27. Plaintiff James M. Waltemath is a citizen and resident of Aiken County, State of South Carolina.

28. Plaintiff Al Tiska is a citizen and resident of Aiken County, State of South Carolina.

29. Plaintiff Al Carpenter is a citizen and resident of Columbia County, State of Georgia.

30. Plaintiff Bruce Pollock, Jr. is a citizen and resident of Aiken County, State of South Carolina.

31. Defendant Custom Industrial Services, LLC ("Custom Industrial") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

32. Defendant Custom Mechanical CSRA, LLC ("Custom Mechanical") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

33. Defendant Custom Mechanical CSRA, Inc. is a Georgia corporation organized and existing under the laws of the State of Georgia, but which, upon information and belief, does business in South Carolina, which shares common management with and which is the recipient of some or all of the assets of Custom Mechanical CSRA, LLC.

34. Defendant Custom Machine and Welding, Inc. ("Custom Machine") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, State of South Carolina.

35. Upon information and belief, Defendants Custom Industrial, Custom Mechanical, and Custom Machine are interrelated companies. Custom Industrial and Custom Mechanical shared the same principal location, members, and managing members. Most of the Plaintiffs were recruited to work for Custom Mechanical when the General Contractor of the Kimberly-Clark

Project at Beech Island, South Carolina (CR Meyer) subcontracted with Custom Mechanical. Custom Mechanical then subcontracted with one or more of the corporate Defendants for work on the Beech Island job. While Custom Mechanical was the hiring employer, Plaintiff employees' paychecks said "Custom Industrial" was paying them wages. Likewise, upon information and belief, Custom Machine shared not only a similar name, but also a financial interest in Custom Industrial and Custom Mechanical. When the latter two were closing operations in Aiken County, their fleet of trucks was taken to Custom Machine to be used and/or sold.

36. Defendant Danny Key (hereinafter "Key") is a citizen and resident of Aiken County, State of South Carolina, and is President and a member in both Defendant Custom Industrial and Defendant Custom Mechanical.

37. Upon information and belief, Defendant George Byron "Bo" Herrington (hereinafter "Bo Herrington") is a citizen and resident of Columbia County, State of Georgia, and he is the managing member of Defendant Custom Industrial and Defendant Custom Mechanical, chief executive officer and chief financial officer of Defendant Custom Mechanical CSRA, Inc., and, upon information and belief, a member or stakeholder in Defendant Custom Machine.

38. Upon information and belief, Defendant David Herrington (hereinafter "David Herrington") is a citizen and resident of Aiken County, State of South Carolina, and he is an officer of and a member in Defendant Custom Industrial and Defendant Custom Mechanical.

39. Defendant Dean Durand (hereinafter "Durand") is a citizen and resident of Aiken County, State of South Carolina, and, upon information and belief, he is the majority member in Defendant Custom Industrial and Defendant Custom Mechanical.

40. Defendant David Barksdale(hereinafter "Barksdale") is a citizen and resident of Aiken County, State of South Carolina, and he was the job superintendent for Defendant Custom Industrial and Custom Mechanical at the Kimberly-Clark Beech Island job site.

41. Defendant Geneva Wright (hereinafter "Wright") is a citizen and resident of Columbia County, State of Georgia, and, upon information, she is a member in Defendant Custom Industrial and Defendant Custom Mechanical and a director of those companies.

42. One or more of the corporate Defendants employed the Plaintiffs in the State of South Carolina at the Kimberly-Clark plant in Aiken County.

43. Venue is proper in Aiken County, State of South Carolina.

FACTS

44. In 2006 and 2007, Defendant Custom Industrial and/or Defendant Custom Mechanical, employed all of the Plaintiffs.

45. When Defendants hired employees, each new employee was given an opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund.

46. Defendants were to hold said monies in trust according to the written plan.

47. Under the terms of the vacation/holiday savings fund, each employee could, at his sole discretion, have five, ten, or fifteen percent of his salary withheld by the Defendant employers in interest bearing accounts.

48. Defendant employers did not contribute any amount to this vacation/holiday savings fund; it was all earned, employee wages.

49. Under the vacation/holiday savings fund, Defendants were to hold their employees' wages in trust and then disburse half at the Christmas holiday and half in the summer.

50. Defendants began laying off employees in May 2007.

51. Defendants ultimately terminated all Plaintiffs' employment without cause in 2007.

52. Upon information and belief, Defendants did not disburse all amounts due to employees in Summer 2007.

53. Defendants did not pay the named Plaintiffs any of the vacation/holiday savings fund

proceeds they were due in December 2007.

54. Upon information and belief, Defendants have not paid amounts due to Plaintiffs from the vacation/holiday savings fund to any organization on behalf of the Plaintiffs since March 2007.

55. No individual, entity, organization, or association has paid Plaintiffs the amount due from their vacation/holiday savings fund as outlined herein above.

56. On the other hand, Plaintiffs have had to pay taxes on the wages which Defendants withheld and retained.

57. Upon information and belief, one or more of the individual Defendants and Defendant Custom Mechanical CSRA, Inc. and/or Defendant Custom Machine have received money or assets from the Defendant employers which could be used to pay Plaintiffs' claims.

58. Plaintiffs have put Defendants on actual and constructive notice that they were due the withheld wages.

59. As a result of Defendants failure to pay Plaintiffs all withheld wages when due, many of the Plaintiffs were unable to provide Christmas gifts for their children.

FOR A FIRST CAUSE OF ACTION
(S.C. Payment of Wages Act
S.C. Code Ann. § 41-10-50, et al.)

60. The allegations of paragraphs one (1) through fifty-nine (59) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

61. The monies which Defendants withheld from Plaintiffs' paychecks under the vacation/holiday savings fund are "wages" as that term is defined by the South Carolina Payment of Wages Act. S.C. Code Ann. § 41-10-10(2).

62. The Defendants are "employers" as that term is defined by the South Carolina Payment of Wages Act ("the Act"). S.C. Code Ann. §§ 41-10-10(1) to 41-10-20.

63. Defendants have refused to pay Plaintiffs compensation earned and due to the discharged Plaintiffs in a timely manner. S.C. Code Ann. § 41-10-50.

64. Plaintiffs have repeatedly put Defendants on notice of the owing amounts and provided opportunity for payment, but Defendants have failed to do so.

65. Upon information and belief, Defendants' failure to pay Plaintiffs is in direct violation of S.C. Code Ann. § 41-10-50, which states, "[w]hen an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday. . . ."

66. After formal written complaints by several Plaintiffs and ensuing investigations, the South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor ("LLR") issued citations against one or more of the corporate Defendants with accompanying civil penalty for failing to pay Plaintiffs the amounts owed.

67. To date, Defendants have failed to pay the amount of back wages owed to Plaintiffs, as determined by LLR. S.C. Code Ann. § 41-10-70, -80, -110.

68. There is no *bona fide* dispute over the amount of wages due each Plaintiff.

69. The individual Defendants are personally liable to the Plaintiffs under the Act as agents, officers, and managers who knowingly permitted their business to violate the Act.

70. Plaintiffs are entitled to recover three times the full amount of unpaid wages due plus costs, interest, and reasonable attorney's fees as provided under South Carolina Code Annotated § 41-10-80(c).

FOR A SECOND CAUSE OF ACTION
(Breach of fiduciary duty)

71. The allegations of paragraphs one (1) through fifty-nine (59) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

72. A fiduciary relationship existed between Plaintiff employees and the Defendants

because said employees had special trust and confidence in their employers and the officers and managers, who were bound in good conscience to act reasonably and in good faith in withholding the employees' wages and saving it until it was due to be disbursed to Plaintiff employees.

73. Further, the individual Defendants Key, Bo Herrington, David Herrington, Durand, Barksdale, and Wright breached their individual duty of good faith and fair dealing as members, managers, officers, and/or directors pursuant to S.C. Code Ann. § 33-44-409.

74. Defendants have undertaken a course of conduct to benefit their own personal interests.

75. Plaintiffs seek actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

76. The allegations of paragraphs one (1) through fifty-nine (59) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

77. Plaintiffs further allege that Defendants' acts of retaining the withheld wages – detinue – amounted to conversion and were done in willful disregard of what they knew to be their legal duty and were performed with malice.

78. By reason of the conduct alleged above, Defendants have converted Plaintiffs' property as detailed herein above and including but not limited to wages, group insurance premiums, union dues, etc.

79. Plaintiffs have been and will continue to be injured by Defendants' conduct.

80. Plaintiffs are entitled to recover actual, punitive damages, and prejudgment interest as Defendants' conversion of their property was accomplished with conscious indifference to Plaintiffs' rights.

FOR A FOURTH CAUSE OF ACTION
(Declaratory judgment)

81. The allegations of paragraphs one (1) through fifty-nine (59) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

82. Plaintiffs are entitled to and do hereby seek from this Court an order and declaratory judgment, pursuant to South Carolina Code § 15-53-10, et seq. and Rule 57 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH CAUSE OF ACTION
(Breach of trust)

83. The allegations of paragraphs one (1) through fifty-nine (59) not inconsistent herewith are hereby realleged as fully and effectually as if set forth herein verbatim.

84. Plaintiffs entrusted Defendants with their property in Aiken County.

85. Defendants were to withhold Plaintiffs' money – described herein above – in trust pursuant to a written agreement.

86. Defendants breached said trust with fraudulent intent.

87. Upon information and belief, Defendants have appropriated Plaintiffs' property and taken it to another county or state with the intent to destroy the right of the true owners, the Plaintiffs.

WHEREFORE, Plaintiffs request that this action be tried by a jury and pray that judgment be awarded against the Defendants as follows:

A. On Plaintiffs' First Cause of Action, for an award of treble actual damages, prejudgment interest, costs, and reasonable attorney's fees;

B. On Plaintiffs' Second Cause of Action, for an award of actual and punitive damages;

C. On Plaintiffs' Third Cause of Action, for an award of actual and punitive damages and prejudgment interest;

D. On Plaintiffs' Fourth Cause of Action, grant declaratory judgment and equitable in favor of Plaintiffs;

E. On Plaintiffs' Fifth Cause of Action, award equitable in favor of Plaintiffs;

F. Grant Plaintiffs an injunction restraining Defendants and all those acting in concert with them, including but limited to the directors, officers, members, managers, employees and agents, from selling, hiding, using, liquidating, harming, or moving property which belongs to Plaintiffs or which may be used to re-pay Plaintiffs; and/or,

G. For such other and further relief as this Court deems just and proper.

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Nekkishutt@ctrlawfirm.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

November 16 2009
5122.001\COMPLAINT.AMENDED.003

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
SECURITY FEDERAL BANK, PLAINTIFF, VS. CUSTOM MECHANICAL CSRA, LLC, CUSTOM MECHANICAL CSRA, INC., CUSTOM INDUSTRIAL SERVICES, LLC, CUSTOM MACHINE AND WELDING, INC., DANNY L. KEY, DEAN H. DURAND, JOY B. DURAND, JANICE W. HERRINGTON, PRESIDENTIAL FINANCIAL CORPORATION, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, AN AGENCY OF THE STATE OF SOUTH CAROLINA, CHARLESTON RIGGING & MARINE, FERGUSON ENTERPRISES, INC., DEFENDANTS.	)	CASE NO. 2009-CP-02-02812 COMPLAINT

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AIKEN COUNTY
CLERK OF COURT

The plaintiff, complaining of the above-named defendants, would respectfully show and allege unto the Court:

GENERAL ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION WHERE RELEVANT

Parties, Jurisdiction and Venue

1. Security Federal Bank ("Security Federal") is a South Carolina corporation in good standing doing business as a federally chartered bank, the principal office of which is located at 238 Richland Avenue, NW, Aiken, South Carolina 29801.

2. Custom Mechanical CSRA, LLC ("Defendant Custom Mechanical South Carolina") is a South Carolina limited liability company, the principal office of which is located at 120 Revco Road, North Augusta, South Carolina 29841.

3. Security Federal is informed and believes that Custom Mechanical CSRA, Inc. ("Defendant Custom Mechanical Georgia") was at all relevant times a Georgia corporation doing business in Aiken County, South Carolina, the principal office of which was located at 5133 Parnell Way, Martinez, Georgia 30907.

4. Custom Industrial Services, LLC ("Defendant Custom Industrial") is a South Carolina limited liability company, the principal office of which is located at 120 Revco Road, North Augusta, South Carolina 29841.

5. Custom Machine and Welding, Inc. ("Defendant Custom Machine") is a South Carolina corporation, the principal office of which is located at 1026 Atomic Road, North Augusta, South Carolina 29841.

6. On information and belief, Danny L. Key ("Defendant Danny Key") is a citizen and resident of Edgefield County, South Carolina.

7. On information and belief, Dean H. Durand ("Defendant Dean Durand") is a citizen and resident of Aiken County, South Carolina.

8. On information and belief, Joy B. Durand ("Defendant Joy Durand") is a citizen and resident of Aiken County, South Carolina.

9. On information and belief, Janice W. Herrington ("Defendant Janice Herrington") is a citizen and resident of Columbia County, Georgia.

10. Presidential Financial Corporation ("Defendant Presidential Financial") is a Georgia corporation, which is not authorized to do business in South Carolina, but which is,

nevertheless, doing business in Aiken County, South Carolina; its principal office, on information and belief, is located at 3460 Preston Ridge Road, Suite 550, Alpharetta, GA 30005, and it may claim an interest in some of the property which is the subject of this action by reason of a judgment in its favor against Defendants Dean Durand and Danny Key, among others, recorded July 21, 2008 in Aiken County, S.C. in Judgment Roll #116168 and a claimed security interest of some nature.

11. The South Carolina Department of Revenue, a duly constituted agency of the State of South Carolina, is named a defendant solely because it may claim an interest in some of the property which is the subject of this action by reason of a tax lien (#3-51004386-1) filed in Aiken County, S.C. against Defendants Dean Durand and Danny Key, among others, on February 16, 2009, and a tax execution (SL-08-78553) filed in Aiken County, S.C. on September 18, 2008 against Defendant Dean Durand and others.

12. Charleston Rigging & Marine is a business entity of some kind, having the address of 2052 B Gordon Highway, Augusta, GA 30909, and may claim some interest in the property which is the subject of this action by reason of a judgment in its favor against Defendant Danny Key, among others, recorded in Aiken County, S.C. on November 26, 2007, in Judgment Roll #114615.

13. Ferguson Enterprises, Inc. is a foreign corporation authorized to do business in South Carolina and may claim an interest in some of the property which is the subject of this action by reason of a judgment in its favor against Defendant Dean Durand, among others, recorded February 23, 2009 in Aiken County, S.C. in Case No. 2009-CP-02-276.

The Agreement

14. Prior to March 2006, Defendant Custom Mechanical South Carolina, together with its affiliates, maintained a pleasant business relationship with Security Federal from time to time.

15. Beginning at least as early as March 15, 2006, Defendant Custom Mechanical South Carolina and Security Federal began negotiating a business banking agreement, pursuant to which Security Federal would become the primary lender and banker for Defendant Custom Mechanical South Carolina.

16. The aforesaid negotiations culminated on or before June 20, 2006, when Security Federal, Defendant Custom Mechanical South Carolina and others hereinafter identified, for good and valuable consideration, entered into a single, substantial and comprehensive commercial agreement ("the Agreement"), pursuant to which Security Federal initially provided significant working capital loans and property refinancing, and which then included, *inter alia*, the following specific, material component parts, agreements and transactions, to wit:

(a) Defendant Custom Mechanical South Carolina agreed to maintain its primary deposit and operating accounts at Security Federal.

(b) Security Federal agreed to loan to Defendant Custom Mechanical South Carolina and others, as hereinafter alleged, the following funds for the following purposes:

(i) $434,000.00 to be used as permanent working capital;
(ii) $750,000.00 to be used as a working capital line of credit;
(iii) $131,756.00 to be used to refinance its office building and property; and
(iv) $86,740.00 to be used to refinance its fleet of vehicles

(c) Defendant Custom Mechanical South Carolina, Defendant Guarantors (see (f) below) and others, as hereinafter alleged, agreed to cross-collateralize all the loans referenced above in paragraph 17(b), with Security Federal obtaining:

(i) A first priority, perfected security interest in all Defendant Custom Mechanical South Carolina's owned and after-acquired assets (including, without limitation, goods, accounts, deposit accounts, investment property, instruments, chattel paper, documents, letter-of-credit rights, commercial tort claims, accounts receivable, furniture, fixtures, equipment and general intangibles);

(ii) A first priority mortgage on real property and improvements used by Defendants Custom Mechanical South Carolina and Custom Industrial as their principal places of business;

(iii) A second priority mortgage on real property and improvements in Aiken County, SC owned by Defendants Dean Durand and Joy Durand;

(iv) A second priority mortgage on real property and improvements in Edgefield County, SC owned by Defendant Danny Key;

(v) A second priority deed of trust on a portion of real property and improvements in Columbia County, GA owned in part by Defendant Janice Herrington.

(d) Defendant Custom Mechanical South Carolina, Defendant Guarantors (see (f) below) and others, as hereinafter alleged, agreed to cross-default all loans referenced above in paragraph 17(b) and all security interests referenced in paragraph 17(c), such that a default in any one or more component parts, agreements or transactions constitutes a default in the Agreement, and vice-versa.

(e) Defendant Custom Mechanical South Carolina, Defendant Guarantors (see (f) below) and others, as hereinafter alleged, agreed that all loans and all South Carolina mortgages contain a statutory waiver of appraisal rights.

(f) To induce Security Federal to enter into the Agreement, Defendants Dean Durand and Danny Key (collectively "Defendant Guarantors"), together with Bo Herrington, agreed to unconditionally guarantee payment of each and every debt, liability or obligation of Defendant Custom Mechanical South Carolina to Security Federal then existing or thereafter arising by reason of an extension, renewal or replacement of any debt, liability or obligation.

(g) Defendant Custom Mechanical South Carolina, Defendant Guarantors and others, as hereinafter alleged, agreed that Defendant Custom Mechanical South Carolina would not:

(i) Encumber, pledge or grant any lien (whether voluntary or involuntary) against its personal or real property (other than to Security Federal); and

(ii) Permit to exist any mortgage, lien, security interest, pledge, charge or other encumbrance against the property listed above in paragraph 17(c)(i)-(v), other than the then-existing mortgages.

17. In further consideration and performance of the Agreement, Defendant Custom Mechanical South Carolina, Defendant Guarantors and others, as hereinafter alleged, executed the following legal instruments:

(a) On June 20, 2006, Defendant Danny Key, as Managing Member of Defendant Custom Mechanical South Carolina, executed promissory note #5151003570 in the original principal amount of $434,000.00 in favor of Security Federal, evidencing the permanent working capital loan.

(b) On June 20, 2006, Defendant Danny Key, as Managing Member of Defendant Custom Mechanical South Carolina, executed promissory note #5151003562 in the original principal amount of $750,000.00 in favor of Security Federal, evidencing the working capital line of credit.

(c) On June 20, 2006, Defendant Danny Key, as Managing Member of Defendant Custom Mechanical South Carolina, executed Commercial Security Agreements in favor of Security Federal, requiring that all present and future debts of Defendant Custom Mechanical South Carolina be secured by accounts and other rights to payment existing or thereafter acquired, inventory, equipment, instruments, chattel paper, general intangibles and documents.

(d) On June 20, 2006, Defendant Danny Key, as Managing Member of Defendant Custom Mechanical South Carolina executed a UCC-1 Financing Statement, which was thereafter duly recorded, providing a first security lien covering all inventory, furniture, fixtures, equipment, accounts, accounts receivable, instruments, documents, chattel paper, general intangibles and other rights to payments, whether then existing or thereafter acquired.

(e) On June 20, 2006, Defendant Danny Key, as Managing Member of Defendant Custom Mechanical South Carolina, executed Commercial Security Agreements in favor of Security Federal, requiring that all present and future debts of Defendant Custom Mechanical South Carolina be secured by the real property and improvements situate at (i) 161 Woodlawn Rd., Clark Hill, SC, (ii) 5133 Parnell Way, Martinez, GA, and (iii) 414 River North Dr., North Augusta, SC.

(i) On June 20, 2006, Defendant Danny Key executed a mortgage in favor of Security Federal, providing a lien against 161 Woodlawn Road, Clark Hill, SC, which expressly provided in paragraph 9 that Security Federal may, at its option, declare the entire balance of the amount of said commercial agreement owed and secured thereby immediately due and

payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the property;

(ii) On June 20, 2006, Defendant Janice Herrington, along with Bo Herrington, executed a deed to secure debt in favor of Security Federal, providing a lien against the real property and improvements having the address of 5133 Parnell Way, Martinez, GA 30917, which expressly provided in paragraph 13 (ix) that a transfer or conveyance of any interest in said property without the prior written consent of Security Federal would constitute an event of default; and

(iii) On June 20, 2006, Defendants Dean Durand and Joy Durand executed a mortgage in favor of Security Federal, providing a lien against the real property and improvements having the address of 414 River North Drive, North Augusta, SC 29841, which expressly provided in paragraph 9 that Security Federal may, at its option, declare the entire balance of the amount of said commercial agreement owed and secured thereby immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the property.

(f) On June 20, 2006, Defendant Danny Key executed a Guaranty, personally guaranteeing the payment and performance of each and every debt, liability and obligation of every kind and description which Defendant Custom Mechanical South Carolina then owed, or at any time thereafter owed, to Security Federal.

(g) On June 20, 2006, Defendant Dean Durand executed a Guaranty, personally guaranteeing the payment and performance of each and every debt, liability and obligation of every kind and description which Defendant Custom Mechanical South Carolina then owed, or at any time thereafter owed, to Security Federal.

(h) On June 20, 2006, Bo Herrington executed a Guaranty, personally guaranteeing the payment and performance of each and every debt, liability and obligation of every kind and description which Defendant Custom Mechanical South Carolina then owed, or at any time thereafter owed, to Security Federal.

(i) Subsequently, Defendants Danny Key and Dean Durand executed a mortgage, along with Bo Herrington, in favor of Security Federal, providing a lien against the real property and improvements used by Defendant Custom Mechanical South Carolina as its primary business location, having the address of 120 Revco Drive, North Augusta, SC 29841.

18. On November 3, 2006, Defendant Custom Mechanical entered into a large and potentially lucrative contract with C.R. Meyer and Sons Company ("C.R. Meyer") for work to be done at Kimberly-Clark Corporation in Beech Island, S.C.

19. Based on, and as a result of, the C.R. Meyer contract and the Kimberly-Clark project, Defendants Custom Mechanical, Dean Durand and Danny Key and others, as hereinafter alleged, along with Bo Herrington, agreed with Security Federal to materially modify the Agreement in the following particulars:

(a) On March 20, 2007, the permanent working capital loan was increased from $434,000.00 to $1,209,000.00, and the unpaid balance of promissory note #5151003570 was replaced by and renewed as promissory note #5151005419.

(b) On March 20, 2007, the working capital line of credit was increased from $750,000.00 to $1,200,000.00 and the unpaid balance of promissory note #5151003562 was replaced by and renewed as promissory note #5151005427.

(c) On March 20, 2007, Custom Industrial, through its Managing Member Danny L. Key, executed a Third Party Pledge Agreement which obligated it to Security Federal for the payment and performance of each and every existing or thereafter created or incurred debt, liability and obligation of every type of Defendant Custom Mechanical South Carolina to Security Federal, which was secured by all of Defendant Custom Industrial's inventory, furniture, fixtures, equipment, accounts, accounts receivable, instruments, documents, chattel paper, general intangibles and other rights to payment, whether then existing or thereafter acquired, and the security interests were perfected by the proper filing of a UCC-1.

20. All other terms and conditions of the Agreement remained in full force and effect.

Joint and Several Liability

21. Security Federal is informed and verily believes that Defendants Custom Mechanical South Carolina, Custom Mechanical Georgia, Custom Industrial, Custom Machine, Dean Durand, Danny Key, Joy Durand and Janice Herrington, as signatories to the Agreement or its parts, and/or as agents of each other, acting within the course and scope of said agency, as *alter egos* of each other, and/or as members of a joint venture or enterprise, are jointly and severally liable for such actual, consequential and incidental damages hereinafter alleged, and for such deficiency judgment remaining after due and proper credit for funds recovered from the foreclosure of some of the perfected security interests hereinafter alleged, reserving the right to

foreclose other relevant security interests and to apply such receipts to said deficiency judgment in the future.

22. The information upon which Security Federal bases its belief with respect to the allegations of agency, *alter ego*, joint venture and/or joint enterprise includes the following information known to date:

(a) Twenty-eight former employees of Defendant Custom Mechanical South Carolina or one or more of its affiliates have alleged in separate litigation that during relevant times:

(1) They were recruited to work for Defendant Custom Mechanical South Carolina to enable it to perform its subcontract with C.R. Meyer, the general contractor doing substantial work for Kimberly-Clark Corporation at Beech Island, S.C., but said employees received paychecks indicating their wages were being paid by Defendant Custom Industrial;

(2) Defendants Custom Mechanical South Carolina and Custom Industrial shared the same members;

(3) The Defendants Custom Mechanical South Carolina and Custom Industrial used the same fleet of trucks;

(4) They are informed and believe Defendant Custom Mechanical Georgia shared common management with Defendant Custom Mechanical South Carolina;

(5) They are informed and believe Defendant Custom Mechanical Georgia received some or all the assets of Defendant Custom Mechanical South Carolina;

(6) They are informed and believe Defendant Custom Machine had a financial interest in Defendant Custom Industrial and in Defendant Custom Mechanical South Carolina, and possibly in Defendant Custom Mechanical Georgia;

(7) When the operations of Defendants Custom Mechanical South Carolina and Custom Industrial ceased, the fleet of trucks used by said defendants was taken to the premises of Defendant Custom Machine to be used and/or sold;

(8) They are informed and believe Defendants Custom Mechanical Georgia and Custom Machine had common and/or interlocking officers, directors and/or shareholders; and

(9) They are informed and believe Defendant Custom Mechanical South Carolina subcontracted its work for C.R. Meyer at Kimberly-Clark with one or more of Defendants Custom Mechanical Georgia, Custom Industrial and Custom Machine.

(b) Records on file with the South Carolina Secretary of State indicate that during relevant times Defendants Custom Mechanical South Carolina and Custom Industrial shared the same principal office and the same managing member.

(c) The Agreement required the use of improved real estate owned by Defendants Joy Durand and Janice Herrington as collateral for both the Agreement and its component transactions.

(d) Months after the terms of the Agreement were established, Defendants Joy Durand and Janice Herrington exercised their voice in implementing the Agreement by voluntarily encumbering their property with a mortgage/deed to secure debt, respectively, in favor of Security Federal.

(e) Over a period of time commencing at least as early as April 2004, Defendant Joy Durand had maintained a regular course of business with Security Federal pursuant to which she mortgaged the very same property to Security Federal expressly for the business purposes of Defendants Custom Mechanical South Carolina, Dean Durand and Danny Key, as well as for the business purposes of Bo Herrington;

(f) The deed to secure debt executed by Janice Herrington provided Security Federal with a security interest in the same property used by Defendant Custom Mechanical Georgia as its principal office.

(g) Security Federal is informed and believes the Agreement was made and materially modified for the common purpose of, and served a community of interests in, positioning Defendant Custom Mechanical South Carolina and its affiliates to generate profits, which would flow through to or for the benefit of their owners, and ultimately benefit the Defendants Joy Durand and Janice Herrington, who are the lawful spouses of two of the owners.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

23. All allegations made above and below are incorporated herein where relevant.

24. The Agreement has been breached in at least one or more of the following particulars to date, to wit:

(a) Payments have not been made on the working capital permanent loan as per the terms of promissory note #5151005419 since November 2, 2007, and payments are more than twenty-four (24) months delinquent, as a result of which Security Federal has accelerated the amount due, rendering as of November 23, 2009, an unpaid principal amount due and owing in the amount of $776,481.01, with accrued and unpaid interest due and owing in the amount of $165,552.94, with a per diem accrual of interest thereafter in the amount of $221.08139, and late charges in the amount of $31,257.84, with late charges accruing monthly thereafter in the amount of $1,302.41.

(b) Payments have not been made on the working capital line of credit as per the terms of promissory note #5151005427 since October 18, 2007, and payments are more than twenty-five (25) months delinquent, as a result of which Security Federal has accelerated the amount due, rendering as of November 22, 2009, an unpaid principal amount due and owing in the amount of $1,200,000.00, with accrued and unpaid interest due and owing in the amount of $175,382.91, with interest accruing thereafter on the amount due as per the terms of the note.

(c) Defendant Dean Durand conveyed his interest in the property situate at 414 River North Drive, North Augusta, S.C. 29841, which secures said working capital loans, to Defendant Joy Durand by deed dated July 16, 2007, and recorded July 20, 2007 in Record Book 4150 at page 884, records of Aiken County, S.C., in violation of paragraph 9 of the second mortgage.

(d) Contrary to the terms of the Agreement, and constituting an event of default, liens and/or judgments have been entered of record against at least Defendants Custom Mechanical South Carolina, Custom Industrial, Dean Durand and Danny Key to date.

25. Security Federal is informed and believes it is entitled to judgment against Defendants Custom Mechanical South Carolina, Custom Mechanical Georgia, Custom Industrial, Custom Machine, Danny Key, Dean Durand, Joy Durand and Janice Herrington, jointly and severally, for the actual, consequential and incidental damages to date resulting from the breach, including, without limitation:

(a)	Unpaid principal in the amount of:	$1,976,481.01
(b)	Unpaid. accrued interest in the amount of: (accruing henceforth at $221.08 per day)	$ 340,935.85
(c)	Late charges in the amount of: (accruing henceforth at 5% of the unpaid amount per month)	$ 31,257.84
(d)	Miscellaneous expenses of the Special Assets department of Security Federal	$ 2,920.00
	SUBTOTAL AS OF NOVEMBER 23, 2009	$2,351,594.70
(e)	Reasonable attorney's fees and costs of collection in such amount as the Court shall find and conclude to be fair, reasonable and just.	

FOR A SECOND CAUSE OF ACTION

(Foreclosure of Second Mortgage on Property Situate at 414 River North Drive, North Augusta, S.C. 29841)

26. All allegations hereinabove made are incorporated herein where relevant.

27. The second mortgage in favor of Security Federal covering the property situate at 414 River North Drive, North Augusta, S.C. 29841, which is a material component part of the Agreement, was recorded June 28, 2006 in Record Book 4072, at pages 2045-2059, records of Aiken County, S.C., and the property, which is situate in Aiken County, is more fully described as follows, to wit:

> All that certain piece, parcel or lot of land, together with all improvements thereon, situate, lying and being in the City of North Augusta, County of Aiken, State of South Carolina, and being known and designated as **Lot No. 290, Block A, Phase I, Section I, River North Subdivision** as shown on plat recorded in Plat Book 33, at pages 307-308, inclusive, records of Aiken County, South Carolina and also shown upon an individual plat recorded in Misc. Book 1004, at Page 231, aforesaid records; said plats are incorporated herein by reference thereto, and made a part and parcel hereof, and should be referred to for a more complete and accurate description as to the location, metes, bounds and courses of said parcel.

The within described property being subject to all easements, covenants, conditions and restrictions of record.

This being the same property as conveyed to Dean H. Durand and Joy B. Durand by deed recorded in Deed Book 1850, at page 19, records of Aiken County, South Carolina.

28. Pursuant to the terms of both the Agreement and the second mortgage, the second mortgage is in default as alleged in paragraph 24 above.

29. Pursuant to the terms of both the Agreement and the second mortgage, the actual, consequential and incidental damages resulting from the breach and default, including, without limitation, the unpaid principal, accrued interest, late fees, attorney's fees and all costs of collection as alleged in paragraphs 24 and 25 above, are now due and payable.

30. Pursuant to the terms of both the Agreement and the second mortgage, Security Federal is entitled to have the second mortgage on property situate at 414 River North Drive, North Augusta, S.C. 29841 foreclosed, and the property sold at public auction after due and lawful advertisement, the equity of redemption barred, and the proceeds of sale applied first to the costs and expenses of the within action and sale, including reasonable attorney's fees, and then to the satisfaction of the amount due and owing, with any surplus to be distributed according to law, and for a deficiency judgment against Defendants Custom Mechanical South Carolina, Custom Mechanical Georgia, Custom Industrial, Custom Machine, Danny Key, Dean Durand, Joy Durand and Janice Herrington, jointly and severally, for the difference, if any, between the net proceeds of sale and the amount owed as alleged in paragraph 26 above.

FOR A THIRD CAUSE OF ACTION

(Foreclosure of First Mortgage on Property Situate at 414 River North Drive, North Augusta, S.C. 29841)

31. All allegations hereinabove made are incorporated herein where relevant.

32. For good and valuable consideration, Defendants Dean Durand and Joy Durand executed a promissory note in favor of Security Federal dated May 28, 2004, in the original amount of $100,000.00.

33. To better secure payment of said promissory note, Defendants Dean Durand and Joy Durand executed a first mortgage covering the real property situate at 414 River North Drive, North Augusta, S.C. 29841, which was recorded June 3, 2004, in Real Estate Mortgage Book 4075, at page 2045, records of Aiken County, S.C.

34. Pursuant to paragraph 4B of said first mortgage, the real property situate at 414 River North Drive, North Augusta, S.C. 29841 secures both the indebtedness evidenced by said note and the indebtedness due Security Federal under the Agreement, which is in default.

35. Pursuant to paragraph 8 of said first mortgage, events of default include, *inter alia*, a transfer of the property, and the property has been transferred, and any other action or inaction of the mortgagors that adversely affects the property or Security Federal's rights in the property, and the property has been adversely affected by the liens to which it has been subjected as hereinabove alleged, as well as by the default under the terms of the Agreement.

36. Security Federal is entitled to have the amount due and owing under the terms of said first mortgage declared, the first mortgage on the property situate at 414 River North Drive, North Augusta, S.C. 29841 foreclosed, and the property sold at public auction after due and lawful advertisement, the equity of redemption barred, and the proceeds of sale applied first to the costs and expenses of the within action and sale, including attorney's fees, with any surplus to be distributed according to law, and for judgment to be entered against Defendants Dean Durand and Joy Durand for any deficiency as hereinabove alleged.

FOR A FOURTH CAUSE OF ACTION

(Declaratory Judgment Cause of Action against Defendant Presidential Financial)

37. All allegations hereinabove made are incorporated herein where relevant.

38. In connection with the UCC-1 executed by Defendant Custom Mechanical South Carolina more fully described in paragraph 39 above, Security Federal is informed and believes that a loan officer of Presidential Financial obtained the signature of the North Augusta branch manager of Security Federal purporting to subordinate Security Federal's UCC-1 to Presidential Financial's UCC-1.

39. Security Federal did not authorize the subordination.

40. Security Federal is informed and believes it is entitled to a judicial declaration that the subordination document is null and void, and the UCC-1 of Security Federal is a perfected, first security interest in and to the property.

FOR A FIFTH CAUSE OF ACTION

(Judicial Foreclosure of Perfected Security Interest in and to Personal Property Executed by Defendant Custom Mechanical South Carolina in Favor of Security Federal)

41. All allegations hereinabove made are incorporated herein where relevant.

42. In connection with the Agreement, Defendant Custom Mechanical South Carolina executed and delivered to Security Federal on June 20, 2006 a UCC-1, which was thereafter filed at the office of the South Carolina Secretary of State, and Security Federal is informed and believes it owns a perfected, first security interest in then existing and after-acquired inventory, furniture, fixtures, equipment, accounts, accounts receivable, instruments, documents, chattel paper, general intangibles and rights to payment.

43. Defendant Custom Mechanical South Carolina has breached the Agreement and is indebted to Security Federal as alleged in paragraphs 24 and 25 above, for which it is entitled to

judicially foreclose on the assets secured by the UCC-1 by which the Court will sell the property to the highest bidder after due and lawful advertisement, free and clear of all encumbrances, returning the surplus according to law, or entering a deficiency judgment, jointly and severally, against Defendants Custom Mechanical South Carolina, Custom Mechanical Georgia, Custom Industrial, Custom Machinery, Dean Durand, Joy Durand, Danny Key and Janice Herrington for the difference, if any, between the amount owed to Security Federal and the net proceeds of the sale.

WHEREFORE, Security Federal prays that the Court grant the relief requested in each of the Causes of Action hereinabove alleged.

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Aiken, South Carolina

December 1, 2009.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO.:
C.R. Meyer and Sons Company Plaintiff-Petitioner, vs. Custom Mechanical CSRA, LLC Defendant-Respondent.	**COMPLAINT AND PETITION TO MODIFY OR CORRECT ARBITRATION AWARD AND/OR VACATE ARBITRATION AWARD** (NON-JURY)

2010 DEC -9 AM 9:23
RICHLAND COUNTY
FILED
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff-Petitioner, C.R. Meyer and Sons Company ("C.R. Meyer"), complaining of the Defendant, Custom Mechanical CSRA, LLC ("Custom"), would show:

General Factual and Jurisdictional Allegations

1. C.R. Meyer is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business in Wisconsin and authorized to do business in South Carolina. At all times relevant to this complaint, C.R. Meyer was engaged in the business of general construction contracting.
2. During 2006, C.R. Meyer entered into a contract with Kimberly-Clark Corporation ("Kimberly-Clark") to perform work at Kimberly-Clark's facility in Beech Island, South Carolina (the "Project"); the contract between Kimberly-Clark and C.R. Meyer (the "Kimberly-Clark Contract") was a Guaranteed Maximum Price contract.
3. C.R. Meyer subcontracted portions of the mechanical work on the Project to Custom pursuant to the terms of separate subcontracts (the "Subcontract Agreements"). At all times relevant to this Complaint, Custom was engaged in the business of mechanical contracting,

was a South Carolina entity, and maintained its principal place of business in South Carolina.

4. The Subcontract Agreements between C.R. Meyer and Custom each contained an arbitration clause.

5. Disputes occurred between C.R. Meyer and Custom under the Subcontract Agreements. C.R. Meyer demanded arbitration pursuant to the arbitration provision of the Subcontract Agreements, and Custom likewise filed a counter-demand against C.R. Meyer for arbitration of the disputes. The matters submitted to arbitration pertained solely to the Subcontract Agreements and did not include the Kimberly-Clark Contract or any matters or contract issues between Kimberly-Clark and C.R. Meyer; rather by agreement and submission, the matters submitted to arbitration concerned only the adjudication of disputes between C.R. Meyer and Custom pertaining to the Subcontract Agreements.

6. From September 27, 2010 through September 30, 2010, the parties engaged in arbitration pursuant to the Subcontract Agreements under the auspices of the American Arbitration Association in Richland County, South Carolina, the Rules of the Association, the Uniform Arbitration Act and the Federal Arbitration Act.

7. On November 11, 2010, the arbitrators issued a written award, a true copy of which is attached hereto as **Exhibit A,** in full settlement of all matters between C.R. Meyer and Custom.

8. This is an action to correct and/or modify an arbitration award pursuant to S.C. Code Ann. §15-48-140 and/or to vacate an arbitration award pursuant to S.C. Code Ann. §15-48-130, and venue and jurisdiction over this matter lies in Richland County pursuant to S.C. Code Ann. §15-48-180 and S.C. Code Ann. §15-48-190, respectively.

9. During the course of the arbitration, C.R. Meyer claimed and proved by a preponderance of evidence that it paid numerous debts and financial obligations of Custom by making direct payments on Custom's behalf to various sub-subcontractors and suppliers of Custom, which Custom had failed to pay as required by the Subcontract Agreements. C.R. Meyer contended it was entitled to a full credit for these payments made to Custom's sub-subcontractors and suppliers against any valid claims that Custom asserted against C.R. Meyer in the arbitration. The arbitration panel agreed, and made this finding in its decision: "The Panel finds that CRM is entitled, however, to offset against the amounts due Custom the net sum paid by CRM after July 5, 2007 directly to sub-contractors and suppliers of Custom for materials furnished to Custom and work performed for Custom at the Projects prior to July 5, 2007. The Panel finds that CRM paid $1,890,371.00 to such sub-contractors and suppliers of Custom...." This portion of the order is a correct finding and should be affirmed. However, the arbitration award subsequently disallowed a substantial portion of the credit and off-set based upon the following explanation: "[The Panel] determines that [the $1,890,371.00 amount] should be and is reduced by $1,500,000.00, the amount received by CRM *from Kimberly-Clark* as an increase to CRM's contract following Custom's termination specifically to defray CRM's unanticipated costs in paying Custom's suppliers/subcontractors. CRM is therefore entitled to a net offset of $390,371." (emphasis added).

By Way of a First Claim

(Modification or Correction to Arbitration Award Pursuant to §15-48-140)

10. The award should be modified and/or corrected to include the full amount of the payments C.R. Meyer made on behalf of Custom to Custom's sub-subcontractors and

suppliers as a credit against the award because the award, as written, establishes that the arbitrators issued an award upon a matter not submitted to them (the disposition of the $1,500,000 payment from Kimberly-Clark to C.R. Meyer), and the award may be modified or corrected without affecting the merits of the decision upon the issues submitted. Consequently, pursuant to S.C. Code Ann. §15-48-140 and for the reasons set forth below, the award, net of attorneys' fees, should be modified to the amount of $276,548.00 rather than $1,776,548.00 in order to properly reflect the full amount which C.R. Meyer has paid on Custom's behalf. The award should be modified for the following specific reasons:

(a) The issue of the propriety of the payment of $1,500,000 to C.R. Meyer from Kimberly-Clark under the Kimberly-Clark Contract was neither submitted to nor tried before the arbitrators because Kimberly-Clark: 1.) was not a party to this arbitration, and 2.)the Kimberly-Clark Contract was not before the arbitrators. Therefore, the award must be corrected and modified because the arbitrators made an award based upon a matter not submitted to them for resolution, and the amount may be corrected without affecting the merits of the controversy;

(b) The arbitrators' decision to reduce the credit to C.R. Meyer for the payments that C.R. Meyer previously made on Custom's behalf to Custom's sub-subcontractors and suppliers by the $1,500,000 amount paid to C.R. Meyer by Kimberly-Clark evidences an intent to arbitrarily punish C.R. Meyer by requiring C.R. Meyer to pay the same debts twice. The issue of punitive and/or exemplary damages was not submitted to the arbitrators, was not requested by the parties nor was it a matter for proper consideration in this breach of contract case. Therefore, the award must be corrected and modified because the arbitrators made an award based upon a

matter not submitted to them in gratuitously awarding punitive damages, and the amount may be corrected without affecting the merits of the controversy;

(c) The arbitrators' decision to reduce the credit to C.R. Meyer for the payments that C.R. Meyer previously made on Custom's behalf to Custom's sub-subcontractors and suppliers by the $1,500,000 amount paid to C.R. Meyer by Kimberly-Clark constitutes an order requiring forfeiture by C.R. Meyer of an amount received on a contract not submitted to the arbitrators for consideration. In requiring C.R. Meyer to forfeit and surrender to Custom the $1,500,000 amount received by C.R. Meyer under the Kimberly-Clark Contract, the arbitrators awarded on a matter not submitted to them. Therefore, the award must be corrected and modified because the arbitrators made an award based upon a matter not submitted to them, the arbitrators had no authority to require a forfeiture, and the amount may be corrected without affecting the merits of the controversy.

(d) Kimberly-Clark's payment of $1,500,000 to C.R. Meyer was properly made pursuant to the Kimberly-Clark Contract and was appropriate for that reason; however, the appropriateness of the payment was not submitted to the arbitrators for adjudication, resolution, hearing or decision nor was it in issue in the case. Therefore, the award must be corrected and modified because the arbitrators made an award based upon a matter not submitted to them and the amount may be corrected without affecting the merits of the controversy;

(e) The underlying merits of Custom's claim against C.R. Meyer are not affected by the payment or non-payment of $1,500,000 from Kimberly-Clark to C.R. Meyer. Nonetheless, the arbitrators, in making a determination to reduce the appropriate credit due C.R. Meyer on a matter which has no bearing on the merits of the underlying controversies and issues in dispute

between C.R. Meyer and Custom, made an award on a matter not submitted to them. Therefore, the award must be corrected and modified and the award may be corrected without affecting the merits of the controversy;

(f) The payment of $1,500,000 from Kimberly-Clark to C.R. Meyer is a collateral source payment. In making a determination to reduce the lawful and proper credits due C.R. Meyer because of a collateral source payment, the arbitrators made an award on a matter not submitted to them. Therefore, the award must be corrected and modified, and the award may be corrected without affecting the merits of the controversy;

By Way of a Second Claim

(Petition to Vacate Arbitration Award Pursuant to §15-48-130)

11. Alternatively, the award should be vacated pursuant to S.C. Code Ann. §15-48-130, for the following reasons:

(a) The issue of the propriety of the payment of $1,500,000 to C.R. Meyer from Kimberly-Clark under the separate Kimberly-Clark Contract was neither submitted to nor tried before the arbitrators because Kimberly-Clark was: 1.) not a party to this arbitration, 2.) and the Kimberly-Clark Contract was not before the arbitrators. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based upon a matter not submitted to them for resolution;

(b) The arbitrators' decision to reduce the credit to C.R. Meyer for the payments that C.R. Meyer previously made on Custom's behalf to Custom's sub-subcontractors and suppliers by the amount of $1,500,000 paid to C.R. Meyer by Kimberly-Clark evidences an intent to

arbitrarily punish C.R. Meyer by requiring C.R. Meyer to pay the same debts twice. The issue of punitive and/or exemplary damages was not submitted to the arbitrators, was not requested by the parties, nor was it a matter for proper consideration in this breach of contract case. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based upon a matter not submitted to them in gratuitously awarding punitive damages;

(c) The arbitrators' decision to reduce the credit to C.R. Meyer for the payments that C.R. Meyer previously made on Custom's behalf to Custom's sub-subcontractors and suppliers by the $1,500,000 amount paid to C.R. Meyer by Kimberly-Clark constitutes an order requiring forfeiture by C.R. Meyer of an amount received on a contract not submitted to the arbitrators for consideration. In requiring C.R. Meyer to forfeit and surrender to Custom the $1,500,000 amount received by C.R. Meyer under the Kimberly-Clark Contract, the arbitrators awarded on a matter not submitted to them, and acted beyond the scope of their powers. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based upon a matter not submitted to them.

(d) Kimberly-Clark's payment of $1,500,000 to C.R. Meyer was properly made pursuant to the terms of the Kimberly-Clark Contract and was appropriate for that reason; however, the appropriateness of the payment was not submitted to the arbitrators for adjudication, or resolution, hearing or decision nor was it in issue in the case. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based upon a matter not submitted to them;

(e) The underlying merits of the Custom claim against C.R. Meyer are not affected by the payment or non-payment of $1,500,000 from Kimberly-Clark to C.R. Meyer. Nonetheless, the

arbitrators unilaterally reduced the appropriate credit due C.R. Meyer on a matter which has no bearing on the merits of the underlying controversies and issues in dispute between C.R. Meyer and Custom. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based on a matter not submitted to them;

(f) The payment of $1,500,000 from Kimberly-Clark to C.R. Meyer is a collateral source payment. In making a determination to reduce the lawful and proper credits due C.R. Meyer simply because of a collateral source payment, the arbitrators exceeded the scope of their powers. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based on a matter not submitted to them;

(g) There was no arbitration agreement as to the issue the arbitrators actually adjudicated, the propriety of the payment from Kimberly-Clark to C.R. Meyer. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award based on a matter not submitted to them.

(h) The arbitrators' decision to reduce the credit to C.R. Meyer for the payments that C.R. Meyer previously made on Custom's behalf to Custom's sub-subcontractors and suppliers by the $1,500,000 amount paid to C.R. Meyer by Kimberly-Clark results in Custom receiving payment in excess of the amount authorized by the applicable provision of the Subcontract Agreements relied upon the arbitrators to make the award to Custom. Therefore, the award must be vacated because the arbitrators exceeded the scope of their powers by making an award in excess of the amount authorized under the applicable provision of the Subcontract Agreements.

(i) The award was procured by corruption, fraud or other undue means:

1.) Custom relied upon fraudulent cost records in support of the claim;

2.) Custom submitted fraudulent invoices in support of the claim;

3.) Custom submitted invoices for fraudulent labor not performed;

4.) Custom willfully and intentionally portrayed and purged its job cost records and accounting in order to fraudulently misrepresent and conceal its actual and true cost.

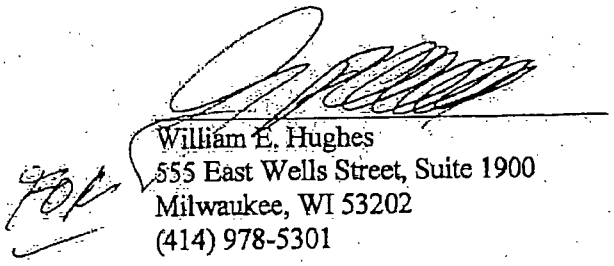
WHEREFORE, Plaintiff-Petitioner hereby moves and prays that the Court correct and modify the arbitration award to properly reflect the credit of $1,500,000 in payment that C.R. Meyer made on behalf of Custom to Custom's sub-subcontracts or suppliers, or in the alternative that the Court issue an order vacating the award, for a redetermination of the prevailing party and the attorneys' fees award for a non-jury hearing of this matter, and for such further relief as is deemed just and proper.

BRUNER, POWELL, WALL & MULLINS, LLC

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	**Civil Action No.: 2010-CP-40-8621**
C.R. Meyer and Sons Company, Plaintiff/Petitioner, v. Custom Mechanical CSRA, LLC, Defendant/Respondent.	**ANSWER AND THIRD PARTY COMPLAINT**
Custom Mechanical CSRA, LLC Third-Party Plaintiff, Respondent v. Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply,	

Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Chris Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr,

Third-Party Defendants

Subject to the Motion to Dismiss previously filed, the Defendant, Custom Mechanical CSRA, LLC, (hereinafter "Custom Mechanical"), answering the Complaint herein alleges:

FOR A FIRST DEFENSE

1. That it denies each and every allegation of the Complaint unless hereinafter specifically admitted;

2. That it admits Paragraph One (1) upon information and belief;

3. That it admits Paragraphs Two (2), Three (3) and Four (4);

4. That it admits so much of Paragraph (5) as alleges that the parties demanded arbitration pursuant to the contractual terms, but it denies that the matters submitted to the Arbitration Panel pertain solely to the subcontract agreements and affirmatively alleges that Kimberly Clark's contract with C.R. Meyer and relevant Change Orders thereo, were submitted to the arbitration panel for consideration, more specifically as noted in Exhibits One (1) through Eight (8) of Custom Mechanical's submissions to the panel, as well as the testimony of Phil Martini, President and CEO of C.R. Meyer, John E. Froese, Project Manager for Kimberly Clark, and other witnesses;

5. That it admits Paragraphs Six (6) and Seven (7);

6. That Paragraph Eight (8) sets forth a prayer for relief in matters relating to venue and jurisdiction to which no response is required;

7. That it denies Paragraph Nine (9) as stated and craves reference to the decision of the Arbitration Panel for their findings and denies that C. R. Meyer is entitled to any relief as requested;

8. That it denies Paragraph Ten (10) and Eleven (11) and specifically denies Paragraph Eleven (i) (11[i]) in that C.R. Meyer's expert witness testified that it was a possibility of fraud, however, he could not document any actual instances of fraud, that the Panel heard all evidence relating to this issue and found that C. R. Meyer's claims of alleged fraud were not proven;

9. That Custom Mechanical is entitled to an Order of the Court confirming the arbitration award and entering it as judgment in the case pursuant to Federal and State Arbitration Statutes;

FOR A SECOND DEFENSE AND BY WAY OF A THIRD-PARTY COMPLAINT

10. The arbitration award is in the amount of One Million, Nine Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 ($1,976,548.00) Dollars. This includes an award of attorneys fees of Two Hundred Thousand and No/100 ($200,000) Dollars so that the net award to Custom Mechanical is One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 ($1,776,548.00) Dollars;

11. That the Third-Party Defendants may have an interest in the proceeds of the One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 ($1,776,548.00) Dollars arbitration award;

12. That the total of all known claims presented by the Third-Parties exceed the net proceeds of the arbitration award;

13. That all known claimants and judgment creditors with claims as to Custom Mechanical (and a related entity, Custom Industrial Services) have been named as Third-Party Defendants;

14. That C. R. Meyer should be required to pay the net proceeds of One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 ($1,776,548.00) Dollars into the Court pursuant to Rule 22 of S.C.R.C.P. for distribution among the Third-Party Defendants, according to their priority as to be determined by the Court;

15. That C. R. Meyer should be required to pay the attorney's fee portion of the award over to Richardson Plowden & Robinson, P.A. pursuant to the terms of the arbitration award.

WHEREFORE, having fully Answered the Complaint herein, the Defendant, Custom Mechanical CSRA, LLC, demands that:

- The Plaintiff's Complaint be dismissed;
- That the award of the Arbitration Panel be confirmed and judgment entered on the award;
- That the Plaintiff be required to pay the net proceeds of One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 ($1,776,548.00) Dollars to the Court for distribution among the Third-Party Defendants;
- That C. R. Meyer be required to pay the attorney's fees portion (Two Hundred Thousand and No/100 [$200,000.00] Dollars)of the arbitration award to Richardson Plowden & Robinson, P.A.;
- That the rights and obligations of the various Third-Party Defendants be determined by the Court;

- That Custom Mechanical be reimbursed for attorney's fees incurred in this action pursuant to the terms of the contract between C. R. Meyer and Custom Mechanical
- And for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Francis M. Mack, Esq. S.C. Bar No. 3505
Emily R. Gifford, Esq. S.C. Bar No. 72785
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR CUSTOM MECHANICAL CSRA, INC., LLC

Columbia, South Carolina
February 8, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,)
)
Plaintiff/Petitioner)
)
-v-)
)
Custom Mechanical CSRA, LLC,)
)
Defendant/Respondent)
)
Custom Mechanical CSRA, LLC,)
)
Third-Party Plaintiff, Respondent)
)
-v-)
)
Plumbers & Steam Fitters Local $150 Health)
and Welfare Fund, Plumbers & Steam)
Fitters Local #150 Pension Fund, Plumbers)
& Steam Fitters Local #150 Annuity Fund)
and Jackie K. Nordeen, Jr. And Patrick H.F.)
Smith, IV, as Trustees of these Funds;)
Plumbers & Steam Fitters Local #150)
Vacation Fund, and Patrick H. F. Smith, IV)
and Joseph L. Dozier, as Trustees of this)
Fund; and Augusta Joint Apprenticeship)
and Journeymen Training Committee, and)
Patrick H.F. Smith, IV and Charles I.)
Hardigree, as Trustees of this Fund;)
Trustees of Southern Iron Workers Pension)
Fund; Trustees of Southeastern Iron)
Workers Healthcare Plan; Trustees of)
Southeastern Iron Workers #709 Joint)
Apprenticeship and Training committee and)
Local #709, International Association of)
Bridge, Structural, Ornamental and)
Reinforcing Iron Workers; Southeastern)
Carpenters and Millwrights Health Trust;)
Southeastern Carpenters and Millwrights)
Pension Trust; Larry Phillips and J. Kirk)
Malone, as Trustees of these Funds;)
Ferguson Enterprises, Inc., Presidential)
Financial Corporation; Norton Welding)
Supply, Inc.; United Rentals (North)

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JEANETTE W. WALDRUP
C.C.P. & G.S.

ANSWER TO THIRD PARTY COMPLAINT BY DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, DAVID W. CULLIPHER, CHARLES R. ELLZEY, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR, JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. McFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTERMATH, AL TISKA, AL CARPENTER, AND BRUCE POLLOCK

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltermath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.,

Third-party Defendants.

Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, David W. Cullipher, Charles R. Ellzey, Clayton W. Googe (improperly designated in the caption and pleadings as "Google",) Jr., Martin Granger, Williams (improperly designated in the caption and pleadings as "Williams") R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltermath, Al Tiska, Al Carpenter, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees"), answering the Third-party Complaint of Custom Mechanical CSRA, LLC allege as follows:

FOR A FIRST DEFENSE

1. Custom Employees deny each and every allegation of the Third-party Complaint unless hereinafter specifically admitted, qualified or explained.

2. As to the allegations contained in Paragraphs One (1) through Nine (9) of the Third-party Complaint of Custom Mechanical CSRA, LLC, Custom Employees believe that no answer is required of them to these allegations.

FOR A SECOND DEFENSE

3. Custom Employees admit the allegations contained in Paragraph Ten (10) of the

Third-party Complaint upon information and belief.

4. As to the Custom Employees only, the Custom Employees admit the allegations contained in Paragraph Eleven (11) of the Third-party Complaint. Answering further, the Custom Employees assert interest in $275,000.00 of said arbitration proceeds and post-judgment interest.

5. As to the allegations contained in Paragraphs Twelve (12) and Thirteen (13) of the Third-party Complaint, the Custom Employees lack sufficient information to admit or deny and, therefore, deny the same and demand strict proof thereof.

6. The Custom Employees admit the allegations contained in Paragraph Fourteen (14) of the Third-party Complaint.

7. As to the allegations contained in Paragraph Fifteen (15) of the Third-party Complaint, the Custom Employees are informed and believe that the arbitration panel did award attorney's fees to the Law Firm of Richardson Plowden and Robinson, P.A.

WHEREFORE, having fully answered the Third-party Complaint herein, the Custom Employees demand that Plaintiff and Defendant be required to pay the arbitration award proceeds into court and for such other relief as this court deems just and proper.

Nekki Shutt
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200 (29201)
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901
Nekkishutt@callisontighe.com

ATTORNEYS FOR DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, DAVID W. CULLIPHER, CHARLES R. ELLZEY, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER,

MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTERMATH, AL TISKA, AL CARPENTER, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

March 9, 2011
5122.001\Answer to 3rd Party Complaint

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

ANSWER OF PRESIDENTIAL FINANCIAL CORPORATION TO THIRD PARTY COMPLAINT OF CUSTOM MECHANICAL CSRA, LLC

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel

R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.,

Third-Party Defendants.

Now comes the Third Party Defendant, Presidential Financial Corporation, answering the Answer and Third Party Complaint of Custom Mechanical CSRA, LLC.

AS TO THE FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, qualified or explained, is denied.

2. This Defendant does not have sufficient information to admit or deny the allegations of Paragraphs One, Two, Three, Four, Five, Six, Seven, Eight and Nine and therefore denies the same.

AS TO THE SECOND DEFENSE AND BY WAY OF THIRD PARTY COMPLAINT

3. Upon information and belief, this Third Party Defendant believes that an arbitration award was made. All other allegations of Paragraph Ten are denied.

4. This Defendant admits that it has an interest in the proceeds of the arbitration award based on its Notice of Filing Foreign Judgment that was recorded in the Aiken County Clerk of Court's office on July 24, 2008 and the Order entered in the Aiken County Court of Common Pleas ordering Plaintiff to preserve and safeguard any funds in their hands as may be determined to be owed to Custom Mechanical after the arbitration, filed on September 3, 2009.

5. This Third Party Defendant does not have sufficient information to admit or deny the allegations of Paragraph Twelve and Thirteen of the Answer and Third Party Complaint.

6. This Third Party Defendant agrees that C.R. Meyer should be required to pay the net proceeds stated in Paragraph Fourteen and that the Court determine the priorities of the respective Third Party Defendants.

7. This Third Party Defendant does not have sufficient information to admit or deny the allegations of Paragraph Fifteen, and therefore would deny same and demand strict proof thereof.

RESERVATION OF RIGHTS

8. This Third Party Defendant reserves the right to amend this pleading in accordance with the South Carolina Rules of Civil Procedure and to include any additional affirmative defenses that may become apparent through the course of discovery.

WHEREFORE, having fully answered the Answer and Third Party Complaint, Presidential Financial Corporation requests that if the Court orders C.R. Meyer to pay the net proceeds of the amount awarded in arbitration into the Court pursuant to Rule 22 of SCRCP, that the Court determine the priority of Presidential Financial Corporation and the amount to be awarded to Presidential Financial Corporation and for any other relief the Court may deem just and proper.

ELLIS LAWHORNE & SIMS, P.A.

Shaun C. Blake.
1501 Main St., 5th Floor.
P.O. Box 2285
Columbia, SC 29202
Tel.: (803) 254-4190
Fax: (803) 779-4749

&

David J. Marmins
E. Righton Johnson
BALCH & BINGHAM, LLP
30 Ivan Allen, Jr. Blvd., NW
Suite 700
Atlanta, Georgia 30308
Tel.: (404) 962-3524
Fax: (404) 261-3656
admitted pro hac vice

Attorneys for Presidential Financial Corporation

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
C. R. Meyer and Sons Company, Plaintiff/Petitioner, vs. Custom Mechanical CSRA, LLC, Defendant/Respondent,	CASE NO.: 2010-CP-40-8621 **ANSWER OF SECURITY FEDERAL BANK TO THIRD PARTY COMPLAINT OF CUSTOM MECHANICAL CSRA, LLC**
Custom Mechanical CSRA, LLC, Third-Party Plaintiff/Respondent, vs. Plumbers & Steam Fitters Local #150 Health and Welfare Fund; Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustee of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights	

Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Griffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye, Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.,

Third Party Defendants.

Third Party Defendant Security Federal Bank ("Third-Party Defendant Security Federal"), answering Custom Mechanical CSRA, LLC's ("Custom Mechanical") Answer and Third Party Complaint, would respectfully show and allege to the Court:

AS TO THE FIRST DEFENSE

1. Third-Party Defendant Security Federal is informed and believes no response is required as to paragraphs one through nine; to the extent a response is required, Third-Party Defendant Security Federal does not have sufficient information to admit or deny the allegations of paragraphs one, two, three, four, five, six, seven, eight and nine and, therefore, denies the same.

AS TO THE SECOND DEFENSE AND BY WAY OF THIRD PARTY COMPLAINT

2. On information and belief, Third-Party Defendant Security Federal admits the allegations of paragraph ten.

3. With respect to paragraph eleven, Third-Party Defendant Security Federal admits, on information and belief, it has an interest in the proceeds of the arbitration award based on its perfected, first security interest in Custom Mechanical CSRA, LLC's accounts receivable and other rights to payment. Third-Party Defendant Security Federal makes no representations concerning the interests of other third-party defendants.

4. Third-Party Defendant Security Federal is without sufficient information to admit or deny the allegations of paragraph twelve and, therefore, denies the same.

5. Third-Party Defendant Security Federal is without sufficient information to admit or deny the allegations of paragraph thirteen and, therefore, denies the same.

6. On information and belief, Third-Party Defendant Security Federal admits the allegations of paragraph fourteen.

7. Third-Party Defendant Security Federal is without sufficient information to admit or deny the allegations of paragraph fifteen and, therefore, denies the same.

AS TO THE ENTIRE ANSWER AND THIRD PARTY COMPLAINT

8. Third-Party Defendant Security Federal admits so much of the prayer for relief as alleges that the award of the Arbitration Panel be confirmed, that judgment be entered on the award, that C.R. Meyer be required to pay the net proceeds of One Million, Seven Hundred Seventy-six Thousand, Five Hundred Forty-eight and No/100 Dollars ($1,776,548.00) into Court, and that Third-Party Defendant Security Federal's priority be determined according to law, with funds distributed to it in said amount.

9. All allegations of the Answer and Third Party Complaint, including the allegations of the prayer for relief, not hereinabove specifically admitted qualified or explained are denied.

WHEREFORE, having answered the Answer and Third Party Complaint, subject to any amendment hereafter made pursuant to SCRCP, Third-Party Defendant Security Federal prays: (a) that C.R. Meyer be required to pay the net proceeds of the arbitration award ($1,776,548.00) into the Court pursuant to Rule 22, SCRCP; (b) that the Court determine the priority of Third-Party Defendant Security Federal according to law; (c) that the Court distribute said amount to Third-Party Defendant Security Federal; and (d) for such other and further relief and the Court may deem just and proper.

BUCHANAN LAW OFFICE, P.A.

Robert L. Buchanan, Jr.
Attorney for Security Federal Bank
S.C.Bar #992
Post Office Box 463
212 Newberry Street, N.W. (29801)
Aiken, South Carolina 29802-0463
Telephone: 803-649-2586
Facsimile: 803-649-1392

Aiken, South Carolina

October 20, 2011.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)
) Civil Action No.: 2010-CP-40-8621
C.R. Meyer and Sons Company,)
)
Plaintiff/Petitioner,)
)
v.)
)
Custom Mechanical CSRA, LLC,)
)
Defendant/Respondent.)
)
Custom Mechanical CSRA, LLC)
)
Third-Party Plaintiff, Respondent)
)
v.)
)
Plumbers & Steam Fitters Local #150 Health)
and Welfare Fund, Plumbers & Steam Fitters)
Local #150 Pension Fund, Plumbers & Steam)
Fitters Local #150 Annuity Fund and Jackie K.)
Nordeen, Jr. and Patrick H. F. Smith, IV, as)
Trustees of these Funds; Plumbers & Steam)
Fitters Local #150 Vacation Fund, and Patrick)
H. F. Smith, IV and Joseph L. Dozier, as)
Trustees of this Fund; and Augusta Joint)
Apprenticeship and Journeymen Training)
Committee, and Patrick H. F. Smith, IV and)
Charles I. Hardigree, as Trustees of this Fund;)
Trustees of Southern Iron Workers Pension)
Fund; Trustees of Southeastern Iron Workers)
Healthcare Plan; Trustees of Southeastern Iron)
Workers Annuity Plan; Trustees of Iron)
Workers #709 Joint Apprenticeship and)
Training Committee and Local #709,)
International Association of Bridge, Structural,)
Ornamental and Reinforcing Iron Workers;)
Southeastern Carpenters and Millwrights)
Health Trust; Southeastern Carpenters and)
Millwrights Pension Trust; Larry Phillips and J.)
Kirk Malone, as Trustees of these Funds;)
Ferguson Enterprises, Inc., Presidential)
Financial Corporation; Norton Welding Supply,)

2011 OCT 24 AM 11:35
JEANNETTE W. McBRIDE
C.C.P. & G.S.

ASSIGNMENT OF JUDGMENT

SCANNED

Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Chris Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.,

Third-Party Defendants

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STATE OF GEORGIA	)	IN THE SUPERIOR/STATE COURT
	)	CIVIL ACTION NO.: 2008-RCCV-1654
COUNTY OF RICHMOND	)	
	)	
Norton Welding Supply, Inc. Plaintiff(s),	)	
	)	
vs.	)	
	)	
John West, as Registered Agent: Custom Mechanical CSRA, LLC First Defendant,	)	**ASSIGNMENT OF JUDGMENT**
	)	
and	)	
	)	
Danny Key, Second Defendant,	)	
	)	
and	)	
	)	
Greg A. Thompson, as Registered Agent: Thompson Construction Group, Inc. Third Defendant.	)	
	)	

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STATE OF GEORGIA)
)
COUNTY OF RICHMOND)

ASSIGNMENT

FILED
2011 OCT 24 PM 11:35
JEANETTE W. HOLMES
C.C.C. & S.C.

KNOW ALL MEN BY THESE PRESENT that Norton Welding Supply, Inc. (The Assignor) for and in consideration of the sum of Twenty-One Thousand and No/100 ($21,000.00) Dollars paid by Thompson Construction Company, Inc. (The Assignee), the receipt of which has been paid and is acknowledged, paid by the Assignee, has assigned, bargained, transferred and conveyed and by these presents, the Assignor does assign, bargain, transfer and convey until the said Assignee, its successors and assigns all of its interest, entitlement, claim judgments or right to any funds, proceeds, recovery, money, judgment settlement or other assets to be received from Custom Mechanical, CSRA, LLC or any other person or entity from any claim settlement or recovery from any action, arbitration, judgment or award for which Norton Weldon Welding Supply, Inc. might be entitled up to the sum of Twenty-One Thousand and No/100 ($21,000.00) Dollars.

The Assignor does authorize the Assignee to duplicate this document and to provide copies to any and all persons, corporations, entities or otherwise to make them aware of this Assignment and to ensure collection of the proceeds comply with this Assignment.

This Assignment includes, but is not limited to, any proceeds to be received for and on behalf of Norton Welding Supply, Inc. in regard to any certain arbitration action related to this matter and the confirmation action filed in the State of South Carolina and the action filed in the Court of Common Pleas for Richland County and assigned civil action number 2010-CP-40-8621.

I, Douglas J. Flanagan, attorney for Norton Welding Supply, Inc. and Miller Electric Finance Department, hereby acknowledge that I have read and approve the above Release and that I have explained the contents to my clients and that I am satisfied that they understand same and have been advised of the ramifications contained herein and acknowledge the execution of this document along with the Bill of Sale and Assignment.

Douglas J. Flanagan

Oct. 5, 2011.

This Assignment also includes an assignment of Consent Judgment dated September 14, 2009 whereby Norton Welding Supply, Inc. obtained judgment against Custom Mechanical CSRA, LLC in the amount of One Hundred Twelve Thousand, Three Hundred Fifty-Seven and 38/100 ($112,357.38) Dollars. Said judgment was filed in the Superior Court of Richmond County, State of Georgia and assigned docket number 2008-RCCV-1654.

To have and to hold all and singularly said interest being here and assigned unto the Assignee, its agents, servants, successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Assignor has signed, sealed and delivered the within Assignment this 7 day of Oct, 2011.

Norton Welding Supply, Inc.

WITNESSES:

BY: [signature]

Its: Sec - Treas
(Title of Officer)

JEANETTE W. HEBRIDE
CLERK SUP. & STATE CT.
RICHMOND CO., GA.
2011 OCT 24 AM 11:35
FILED

STATE OF GEORGIA)
)
COUNTY OF RICHMOND)

ACKNOWLEDGMENT

I, Deborah K. Hart a Notary Public, do hereby certify that Douglas S. Norton personally appeared before me this 5th day of October, 2011 and acknowledged the due execution of the foregoing instrument.

Deborah K. Hart (Seal)
NOTARY PUBLIC FOR _____
My Commission Expires: _____

NOTARY PUBLIC RICHMOND COUNTY GEORGIA DEBORAH K HART MY COMMISSION EXPIRES JULY 24, 2012

2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

v.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC

Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, et al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-40-8621

PRESIDENTIAL FINANCIAL CORPORATION AND SECURITY FEDERAL BANK'S AMENDED ANSWER TO THIRD-PARTY COMPLAINT AND COUNTERCLAIM AND CROSSCLAIM

Now comes these Third-Party Defendants, Presidential Financial Corporation and Security Federal Bank, by and through their undersigned counsel, answering the Answer and Third-Party Complaint of Custom Mechanical CSRA, LLC and asserting a Counterclaim against Custom Mechanical CSRA, LLC and Crossclaim against Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this

Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Chris Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Griffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively referred to as "other Third-Party Defendants/Crossclaim Defendants").

FOR A FIRST DEFENSE

1. Third-Party Defendant Presidential Financial Corporation ("Presidential") re-alleges and incorporates by reference its previously filed Answer to the Third-Party Complaint of Custom Mechanical CSRA, LLC (attached hereto as "Exhibit A").

2. Third-Party Defendant Security Federal Bank ("Security Federal") re-alleges and incorporates by reference its previously filed Answer to the Third-Party Complaint of Custom Mechanical CSRA, LLC (attached hereto as "Exhibit B").

NATURE OF COUNTERCLAIM AND CROSSCLAIM

3. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and reincorporated herein by reference.

4. Third-Party Defendants Presidential and Security Federal assert the following Counterclaim and Crossclaim pursuant to Rule 13 of the South Carolina Rules of Procedure.

5. The Counterclaim and Crossclaim are brought pursuant to the provisions of the Uniform Declaratory Judgment Act as codified in South Carolina Code Annotated §15-53-10 *et seq.*

PARTIES

6. Third-Party Defendant and Counterclaim/Crossclaim Plaintiff Presidential is a corporation organized and existing under the laws of the State of Georgia. Presidential specializes in asset-based lending and frequently accepts accounts receivable as collateral for its loans. Presidential's principal place of business is in Atlanta, Georgia.

7. Third-Party Defendant and Counterclaim/Crossclaim Plaintiff Security Federal is a lending institution organized and existing under the laws of the State of South Carolina. Security Federal's principal place of business is in Aiken County, South Carolina.

8. Defendant, Third-Party Plaintiff, and Counterclaim Defendant Custom Mechanical CSRA, LLC ("Custom Mechanical") is a Limited Liability Company organized and existing under the laws of the State of South Carolina. Custom Mechanical's principal place of business is in Aiken County, South Carolina.

9. Upon information and belief, Third-Party Defendants/Crossclaim Defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Chris Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Griffin, Jr.; Jack E. Hegler;

George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr., were allegedly union members who worked on the Kimberly Clark Beech Island project in Beech Island, South Carolina. These individuals allege a lien against Custom Mechanical. Upon information and belief, some of these individuals are citizens and residents of the State of South Carolina and some are citizens and residents of the State of Georgia.

10. Upon information and belief, Third-Party Defendants and Crossclaim Defendants Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (collectively "Southern Iron Workers") are unions, union funds, and/or union trustees which allegedly provided workers to Custom Industrial Services, LLC for the Project. Upon information and belief, these unions, union funds, and/or union trustees operate under the laws of the State of South Carolina. Southern Iron Workers alleges a claim against the monies at issue in this action.

11. Upon information and belief, Third-Party Defendants and Crossclaim Defendants Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and

Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund, (collectively "Plumbers #150") are unions, union funds, and/or union trustees who allegedly provided workers for the Project and have an outstanding judgment against Custom Industrial Services, LLC. Upon information and belief, these unions, union funds, and/or union trustees operate under the laws of the State of South Carolina. Plumbers #150 alleges a claim for the monies at issue in this action.

12. Upon information and belief, Third-Party Defendants and Crossclaim Defendants Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds (collectively "Southeastern Carpenters") are unions, union funds, and/or union trustees who allegedly provided workers for the Project and have an outstanding judgment against Custom Industrial Services, LLC. Upon information and belief, these unions, union funds, and/or union trustees operate under the laws of the State of South Carolina. Southeastern Carpenters alleges a claim for the monies at issue in this action.

13. Upon information and belief, Third-Party Defendant and Crossclaim Defendant Norton Welding Supply, Inc. ("Norton") allegedly supplied materials for the Project. Upon information and belief, Norton is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Augusta, Georgia. Norton alleges a claim for the monies at issue in this action.

JURISDICTION

14. This Court has personal jurisdiction over each party because the causes of action against them stated herein arise out of transactions and conduct occurring in the State of South Carolina and because the monies that are the subject of this dispute are

located in Richland County, South Carolina. Therefore, the State of South Carolina is the jurisdiction in which a substantial part of the events or omissions giving rise to the parties' claims occurred, and each party is subject to this Court's specific personal jurisdiction pursuant to the South Carolina "Long Arm" Statute, S.C. Code Ann. § 36-2-803 (Supp. 2011) and to the limits of due process.

15. Venue is proper in Richland County, South Carolina, pursuant to S.C. Code Ann. § 15-7-30 (1976, as amended), because the causes of action stated herein arise out of transactions and conduct occurring in Richland County and because the monies that are the subject of this dispute are located in Richland County, South Carolina.

FACTS

16. Following C.R. Meyer & Sons Company's ("C.R. Meyer") failure to pay Custom Mechanical, C.R. Meyer's subcontractor on the Kimberly Clark Beech Island project in Beech Island, South Carolina ("the Project"), litigation between C.R. Meyer and Custom Mechanical ensued in Richland County, South Carolina. An arbitration between the parties was held on September 27-30, 2010, in Richland County, South Carolina, pursuant to the South Carolina Uniform Arbitration Act and Federal Arbitration Act, S.C. Code Ann. § 15-48-10 and 9 U.S.C. §1 *et seq.*, respectively, and the Construction Industry Rules of the American Arbitration Association.

17. The issues heard at the arbitration related to work performed at the Project. Custom Mechanical was hired by C.R. Meyer to work on several projects. A three-person arbitration panel found that Custom Mechanical was owed monies from C.R. Meyer, and the panel issued an Arbitration Award.

18. On November 1, 2011, an Order Confirming Arbitration Award (attached

hereto as "Exhibit C") was filed by the Honorable Judge G. Thomas Cooper, Jr. of the Fifth Judicial Circuit.

19. The Order confirmed the Arbitration Award in the amount of One Million, Seven Hundred Seventy-Six Thousand, Five Hundred Forty-eight and NO/100 ($1,776,548.00) Dollars, and also awarded attorneys' fees and legal expenses in the amount of Two Hundred Thousand and NO/100 ($200,000.00) Dollars, resulting in a total award of One Million, Nine Hundred Seventy-Six Thousand, Five Hundred Forty-eight and NO/100 ($1,976,548.00), plus pre-judgment interest to run from the date the arbitration panel issued the Arbitration Award.

20. Following C.R. Meyer's appeal of the Order Confirming Arbitration Award, C.R. Meyer and Custom Mechanical reached a settlement agreement (attached hereto as "Exhibit D"), by which C.R. Meyer agreed to pay the sum of Two Million and NO/100 ($2,000,000.00) Dollars to an escrow account of Richardson, Plowden & Robinson P.A. That settlement agreement was approved and signed by the Honorable Judge James R. Barber, III of the Fifth Judicial Circuit on February 23, 2012. The settlement amount included Two Hundred Thousand and NO/100 ($200,000.00) Dollars in attorneys' fees and expenses, which was segregated and disbursed pursuant to the agreement between Custom Mechanical and Richardson, Plowden & Robinson P.A.

21. The settlement balance, which totaled One Million Eight Hundred Thousand and NO/100 ($1,800,000.00) Dollars, was paid to the Richardson, Plowden & Robinson P.A. trust account.

22. The total of all known claims against Custom Mechanical exceeds the $1,800,000.00 settlement amount.

23. Presidential and Security Federal are secured parties having a perfected security interest and all rights to payments by C.R. Meyer & Sons to Custom Mechanical, including accounts, accounts receivable, proceeds, and all Supporting Obligations related thereto. Pursuant to S.C. Code Ann. § 36-9-310(a) (2003), Presidential and Security Federal each filed a UCC-1 Financing Statement to perfect their security interests.

24. Custom Mechanical is now in default on its loans from both Presidential and Security Federal.

25. Presidential obtained a consent judgment against Custom Mechanical for One Million Two Hundred Twenty Thousand, Five Hundred Ninety-seven and 86/100 ($1,220,597.86) Dollars plus post-judgment interest in the State of Georgia, and that judgment was later domesticated in South Carolina and returned *nulla bona.*

26. Security Federal has a perfected security interest in Two Million One Hundred Fifty-one Thousand, Five Hundred Ninety-Four and NO/100 ($2,151,594.00) Dollars against Custom Mechanical.

27. Pursuant to S.C. Code Ann. § 36-9-322 (2003), Presidential and Security Federal have priority over all other judgment creditors.

28. Presidential and Security Federal have agreed to divide the monies received from the $1,800,000.00 settlement amount.

FOR A COUNTERCLAIM AND CROSSCLAIM
(Declaratory Judgment)
(S.C. Code Ann. §15-53-10 *et seq.*)

29. The allegations contained in Paragraphs 1 through 28 are re-alleged as if repeated herein verbatim.

30. Presidential and Security Federal have priority over all other alleged liens

held by all other Third-Party Defendants/Crossclaim Defendants.

31. Presidential and Security Federal's secured claims exceed the settlement award of $1,800,000.00.

32. Presidential and Security Federal claim a right to the entire $1,800,000.00 award being held in trust at Richardson, Plowden & Robinson P.A. All other Third-Party Defendants/Crossclaim Defendants also claim a right to all or part of the $1,800,000.00 award being held in trust at Richardson, Plowden & Robinson P.A.

33. Pursuant to S.C. Code Ann. §15-53-10 *et seq.*, this Court has the power to declare the rights, status, and other legal relations of the parties involved herein. Such a declaration is necessary to establish the rights, status, and other legal relations of the parties involved herein.

34. These facts demonstrate the existence of an actual, justiciable controversy involving specific, adverse claims concerning the $1,800,000.00 award being held in trust at Richardson, Plowden & Robinson P.A.

RESERVATION OF RIGHTS

35. Presidential and Security Federal reserve the right to amend this pleading in accordance with the South Carolina Rules of Civil Procedure and to include any additional affirmative defenses that may become apparent.

WHEREFORE, having fully answered the Answer and Third-Party Complaint and having asserted a Counterclaim and Crossclaim, Presidential and Security Federal pray:

a. For judgment by the Court declaring as follows:

i. Presidential and Security Federal have secured claims against Custom Mechanical which have priority over all other alleged liens held by all

other Third-Party Defendants/Crossclaim Defendants;

ii. Presidential and Security Federal's secured claims exceed the settlement award of $1,800,000.00;

iii. Presidential and Security Federal should receive the $1,800,000.00 award being held in trust at Richardson, Plowden & Robinson P.A.

b. For judgment against Custom Mechanical and all other Third-Party Defendants/Crossclaim Defendants for the costs of this action pursuant to S.C. Code Ann. § 15-53-100; and

c. For any such other and further relief as this Court deems just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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ATTORNEY FOR THIRD-PARTY DEFENDANT, SECURITY FEDERAL BANK

Columbia, South Carolina
July 19, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

C.R. Meyer and Sons Company,)
)
Plaintiff/Petitioner)
)
-v-)
)
Custom Mechanical CSRA, LLC,)
)
Defendant/Respondent)
)
Custom Mechanical CSRA, LLC,)
)
Third-Party Plaintiff, Respondent)
)
-v-)
)
)
Plumbers & Steam Fitters Local #150 Health)
and Welfare Fund; Plumbers & Steam)
Fitters Local #150 Pension Fund, Plumbers)
& Steam Fitters Local #150 Annuity Fund)
and Jackie K. Nordeen, Jr. and Patrick H.F.)
Smith, IV, as Trustees of these Funds;)
Plumbers & Steam Fitters Local #150)
Vacation Fund, and Patrick H. F. Smith, IV)
and Joseph L. Dozier, as Trustees of this)
Fund; and Augusta Joint Apprenticeship)
and Journeymen Training Committee, and)
Patrick H.F. Smith, IV and Charles I.)
Hardigree, as Trustees of this Fund;)
Trustees of Southern Iron Workers Pension)
Fund; Trustees of Southeastern Iron)
Workers Healthcare Plan; Trustees of)
Southeastern Iron Workers #709 Joint)
Apprenticeship and Training committee and)
Local #709, International Association of)
Bridge, Structural, Ornamental and)
Reinforcing Iron Workers; Southeastern)
Carpenters and Millwrights Health Trust;)
Southeastern Carpenters and Millwrights)
Pension Trust; Larry Phillips and J. Kirk)
Malone, as Trustees of these Funds;)
Ferguson Enterprises, Inc., Presidential)
Financial Corporation; Norton Welding)
Supply, Inc.; United Rentals (North)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-8621

RICHLAND COUNTY
FILED
2012 AUG -1 PM 4:58
JEANETTE W. WALDRON
C.C.P. & G.S.

JOINT REPLY, COUNTERCLAIM, AND CROSSCLAIM TO PRESIDENTIAL FINANCIAL CORPORATION AND SECURITY FEDERAL BANKS' AMENDED ANSWER TO THIRD- PARTY COMPLAINT AND COUNTERCLAIM AND BANKS' CROSSCLAIM FROM THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, RALPH D. BLACK, THOMAS BRITTINGHAM, LEONARD WADE CLIETT, ARTHUR C. CARLSON, R CHRISTOPHER CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, JR, CHARLES R.ELLZEY, BRIAN FIELD, CLAYTON W.GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTEMATH, AL TISKA, AL CARPENTER, AND BRUCE POLLOCK, JR.

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltermath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

Third-Party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe (improperly designated in the caption and pleadings as "Google",) Jr., Martin Granger, William (improperly designated in the caption and pleadings as "Williams") R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, and Bruce Pollock, Jr. – of whom Cliett, Doyle, and Field were inadvertenly omitted from the Complaint when Custom Mechanical CSRA, LLC implead its creditors (hereinafter collectively referred to as "Custom Employees") – responding to Presidential Financial Corporation and Security Federal Bank's Amended Answer to Third-Party Complaint and Counterclaim and Banks' Crossclaim (hereinafter "Banks' Banks' Crossclaim"), would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Custom Employees deny each and every allegation of the Banks' Banks' Crossclaim not herein specifically admitted, qualified, or explained.

2. The allegations contained in paragraphs 1, 2, and 3 of the Banks' Crossclaim require no response from the Custom Employees, but to the extent they do, the Custom Employees deny the same.

3. The allegations contained in paragraph 4 of the Banks' Crossclaim call for a legal conclusion and require no response from the Custom Employees. To the extent a response is required, the Custom Employees deny the same.

4. Custom Employees admit the allegations contained in paragraph 5 of the Crossclaim.

5. Custom Employees lack sufficient information to admit or deny the allegations contained in paragraphs 6 and 7 of the Crossclaim and, therefore, deny the same and demand strict proof thereof.

6. Upon information and belief, Custom Employees admit the allegations of paragraph 8 of the Crossclaim.

7. Custom Employees admit so much of the allegations of paragraph 9 of the Banks' Crossclaim as allege that they are residents of South Carolina and Georgia; that they were union members who labored for Custom Mechanical CSRA, LLC at the Kimberly Clark Beech Island project in Beech Island, South Carolina ("the Project"); and that they assert a priority lien over the arbitration proceeds which Custom Mechanical CSRA, LLR received from C.R. Meyer and Sons Company by virtue of a Judgment, a Warrant of Attachment, an Assignment, and by virtue of South Carolina Law, but denies the remaining allegations of said paragraph as stated.

8. Custom Employees lack sufficient information to admit or deny the allegations contained in paragraph 10 of the Banks' Crossclaim and, therefore, deny the same.

9. Upon information and belief, Custom Employees admit so much of the allegations of paragraph 11 of the Banks' Crossclaim as allege that Third-party Defendants "Plumbers #150," as the Banks' Crossclaim refers to them, are unions and union trustees who operate under South Carolina law and who assert a claim for monies in this action by virtue of a judgment, but deny the

remaining allegations of said paragraph as stated.

10. Custom Employees lack sufficient information to admit or deny the allegations contained in paragraphs 12 and 13 of the Banks' Crossclaim and, therefore, deny the same.

11. Custom Employees admit the allegations of paragraphs 14 and 15 of the Banks' Crossclaim as to jurisdiction.

12. Custom Employees admit so much of the allegations of paragraphs 16 and 17 of the Banks' Crossclaim as allege that Custom Mechanical CSRA, LLC and C.R. Meyer and Sons Company had a dispute over performance and payment for service related to the Project, which they submitted to arbitration, and for which Custom Mechanical CSRA, LLC received an arbitration award. Custom Employees deny the remaining allegations in said paragraphs anddemand strict proof thereof.

13. Custom Employees admit the allegations of paragraphs 18 and 19 of the Banks' Crossclaim.

14. Upon information and belief, Custom Employees admit the allegations of paragraph 20 of the Banks' Crossclaim.

15. Custom Employees admit so much of the allegations of paragraph 21 of the Banks' Crossclaim as allege that pursuant to a Court order, Richardson, Plowden & Robinson, P.A. is holding arbitration award proceeds due Custom Mechanical CSRA, LLC in trust for the benefit of Custom Mechanical CSRA, LLC's creditors, but deny the remaining allegations of said paragraph as stated.

16. Custom Employees admit the allegations of paragraph 22 of the Banks' Crossclaim.

17. Custom Employees lack sufficient information to admit or deny the allegations of paragraphs 23, 24, 25, and 26 of the Banks' Crossclaim as stated and, therefore, deny the same and demand strict proof thereof.

18. Custom Employees deny the allegations of paragraph 27 of the Banks' Crossclaim.

19. Custom Employees lack sufficient information to admit or deny the allegation contained in paragraph 28 of the Banks' Crossclaim and, therefore, deny the same.

FOR A SECOND DEFENSE

20. Custom Employees reassert and reallege paragraphs 1-19 hereinabove in response to the allegations contained in paragraph 29.

21. Custom Employees deny the allegations of paragraph 30 of the Banks' Crossclaim.

22. Custom Employees admit so much of the allegations of paragraph 31 of the Banks' Crossclaim as allege that the Banks assert secured interests exceeding the arbitration award, but denies the remaining allegations of said paragraph as stated.

23. Custom Employees admit the allegations of paragraph 32 of the Banks' Crossclaim to the extent that the Custom Employees, the Banks, and certain other Third-party Defendants are asserting claims to the arbitration proceeds. Answering further, some Third-party Defendants have abandoned their claims since this proceeding was initiated. Custom Employees deny the remaining allegations of paragraph 32 as stated.

24. Custom Employees admit the allegations of paragraphs 33 and 34 of the Banks' Crossclaim regarding the Court's power to issue a declaratory judgment in this case.

25. Custom Employees deny the allegations contained in paragraph 35 of the Banks' Crossclaim. Answering further, Custom Employees object to the Banks' attempt to reserve pleading of affirmative defenses as the same is ineffectual.

FOR A THIRD DEFENSE
AND BY WAY OF A COUNTERCLAIM AGAINST CUSTOM MECHANICAL CSRA, LLCAND A CROSSCLAIM AGAINST ALL OTHER THIRD-PARTY DEFENDANTS
(Declaratory Judgment)
(S.C. Code Ann. section 15-53-10)

26. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and reincorporated herein by reference.

27. C.R. Meyer and Sons Company was a contractor for the Project, which was the

subject of the arbitration between C.R. Meyer and Sons Company and Custom Mechanical CSRA, LLC.

28. Custom Mechanical CSRA, LLC was a subcontractor on the Project, which was the subject of the arbitration between C.R. Meyer and Sons Company and Custom Mechanical CSRA, LLC.

29. The Custom Employees were laborers who provided services on the Project.

30. Custom Mechanical CSRA, LLC has received money – being held in trust by Richardson, Plowden & Richardson, PA – for the erection, alteration, or repairs of buildings at the Project upon which the Custom Employees were employed or interested.

31. Pursuant to S.C. Code Ann. section 29-7-10, as laborers, Custom Employees have a first lien on the money received by or on behalf of Custom Mechanical CSRA, LLC from C.R. Meyer and Sons Company.

32. The Custom Employees have obtained a $275,000.00 judgment against Custom Mechanical CSRA, LLC and its sister companies.

33. Thus Custom Employees have a first lien over the $1.8 million arbitration award being held in trust at Richardson, Plowden, & Robinson P.A.

34. Under S.C. Code section 29-7-10, Custom Employees have a first lien which takes priority over even secured interests asserted by Third-party Defendants Presidential Financial Corporation and Security Federal Bank in arbitration award proceeds stemming from the Project.

35. Pursuant to S.C. Code Ann. section15-53-10 *et seq.*, this Court has the power to declare the rights, status, and other legal relations of the parties involved herein. Such a declaration is necessary to establish the rights, status, and other legal relations of the parties involved herein.

FOR A FOURTH DEFENSE

36. Custom Mechanical CSRA, LLC has failed to join real parties in interest and indispensable parties as required by Rule 19, SCRCP, as it failed to name certain of the twenty-nine

Custom Employees -- Cliett, Doyle, and Field -- who filed suit and who received a judgment against Custom Mechanical CSRA, LLC.

WHEREFORE, having fully answered the Banks' Crossclaim and having asserted a Counterclaim against Custom Mechanical CSRA, LLC and a Crossclaim against all other Third-party Defendants, Custom Employees pray for the following relief:

a. For judgment by the Court declaring as follows:

i. Custom Employees have a first lien on the monies received by Custom Mechanical CSRA, LLC now held in trust at Richardson, Plowden, & Robinson P.A.

ii. Custom Employees' lien has priority over all other alleged liens and claims of all other Third-Party Defendants.

iii. Custom Employees are entitled to $275,000.00 plus pre-judgment interest of the $1.8 million arbitration award being held in trust at Richardson, Plowden, & Robinson P.A.

b. For judgment against Custom Mechanical CSRA, LLC and all other Third-Party Defendants for the costs of this action pursuant to S.C. Code Ann. section 15-53-100; and

c. For any such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Nekki Shutt
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ATTORNEYS FOR THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, THOMAS BRITTINGHAM, , ARTHUR C. CARLSON, LEONARD WADE CLIETT, CHRIS CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, CHARLES R. ELLZEY, BRIAN FIELD, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTERMATH, AL TISKA, AL CARPENTER, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

August 1, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
C.R. MEYER AND SONS COMPANY, Plaintiff, v. CUSTOM MECHANICAL CSRA, LLC, Defendant/Third-Party Plaintiff, v. PLUMBERS & STEAM FITTERS LOCAL #150 HEALTH AND WELFARE FUND, ET AL. Third-Party Defendants.	Civil Action No. 2010-CP-40-8621 ANSWER TO PRESIDENTIAL FINANCIAL CORPORATION AND SECURITY FEDERAL BANK'S AMENDED ANSWER TO THIRD-PARTY COMPLAINT AND COUNTERCLAIM AND CROSSCLAIM

Third-Party Defendants Plumbers & Steam Fitters Local #150 Health and Welfare Fund; Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie N. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; and Southeastern Carpenters and Millwrights Health Trust, Southeastern Carpenters and Millwrights Pension Trust, and Larry Phillips and J. Kirk Malone, as Trustees of these Funds (hereinafter the "Funds") provide the following answer and defenses in response to Amended Answer to Third-Party Complaint and Counterclaim and Crossclaim (the "Crossclaim") filed by Presidential Financial Corporation and Security Federal Bank (collectively, the "Crossclaimants").

FOR A FIRST DEFENSE

1.

The allegations contained in Paragraph 1 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 1 of the Crossclaim.

2.

The allegations contained in Paragraph 2 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 2 of the Crossclaim.

3.

The allegations contained in Paragraph 3 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 3 of the Crossclaim.

4.

The allegations contained in Paragraph 4 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 4 of the Crossclaim.

5.

The allegations contained in Paragraph 5 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 5 of the Crossclaim.

6.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 6, which all relate to the Crossclaimants, and are therefore denied.

7.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 7, which all relate to the Crossclaimants, and are therefore denied.

8.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 8, and are therefore denied.

9.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 9, and are therefore denied.

10.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 10, and are therefore denied.

11.

The Funds admit that they have outstanding judgments against Custom Industrial Services, LLC and Custom Mechanical CSRA, LLC, and that they claim an interest in the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 11 of the Crossclaim.

12.

The Funds admit that have outstanding judgments against Custom Industrial Services, LLC and Custom Mechanical CSRA, LLC, and that they claim an interest in the monies at issue

in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 12 of the Crossclaim.

13.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 13, and are therefore denied.

14.

The allegations contained in Paragraph 14 state a legal conclusion that does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 14 of the Crossclaim.

15.

The allegations contained in Paragraph 15 state a legal conclusion that does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 15 of the Crossclaim.

16.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 16 of the Crossclaim.

17.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in

this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 17 of the Crossclaim.

18.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 18 of the Crossclaim.

19.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 19 of the Crossclaim.

20.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 20 of the Crossclaim.

21.

The Funds admit that Custom Mechanical CSRA, LLC and C.R. Meyer & Sons Company arbitrated a dispute between them that ultimately led to a $2,000,000 settlement and

that the settlement funds, less the amount withheld for attorneys' fees, are the monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 21 of the Crossclaim.

22.

On information and belief, the Funds admit that the claims against Custom Mechanical CSRA, LLC exceed the settlement amount. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 22 of the Crossclaim.

23.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 23, and are therefore denied.

24.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 24, and are therefore denied.

25.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 25, and are therefore denied.

26.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 26, and are therefore denied.

27.

The Funds deny the allegations contained in Paragraph 27 of the Crossclaim.

28.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 28, and are therefore denied.

29.

The allegations contained in Paragraph 29 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 29 of the Crossclaim.

30.

The Funds deny the allegations contained in Paragraph 30 of the Crossclaim.

31.

The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 31, which all relate to the Crossclaimants, and are therefore denied.

32.

The Funds admit that they claim a right to the settlement monies at issue in this action. The Funds are without sufficient knowledge on which to form a belief as to the truth of the allegations in Paragraph 32 that do not relate to the Funds, and are therefore denied.

33.

The allegations contained in Paragraph 33 does not require a response from the Funds.

34.

The Funds admit that there is an actual, justiciable controversy involving specific, adverse claims regarding the settlement monies at issue in this action. Except as expressly admitted herein, the Funds deny the allegations contained in Paragraph 34 of the Crossclaim.

35.

The allegations contained in Paragraph 35 does not require a response from the Funds. To the extent that a response is required, the Funds deny the allegations contained in Paragraph 35 of the Crossclaim.

FOR A SECOND DEFENSE

36.

Except as expressly admitted herein, the Funds deny each and every allegation contained in the Crossclaim.

FOR A THIRD DEFENSE

37.

The Crossclaim fails to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

38.

The Crossclaimants' claims are barred, in whole or in part, by Crossclaimants' failure to satisfy conditions precedent or statutory prerequisites.

* * * *

39.

The Funds deny any allegation in the Crossclaim not expressly admitted above. The Funds further deny that Crossclaimants are entitled to the relief sought in the Crossclaim, including as set forth in Crossclaimants' "WHEREFORE" Paragraph.

* * * *

WHEREFORE, having fully answered, the Funds pray that they be made whole and have such other and further relief as is just and proper.

Submitted this 3rd of August, 2012.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR THIRD-PARTY DEFENDANTS PLUMBERS & STEAM FITTERS LOCAL #150 HEALTH AND WELFARE FUND, ET AL.

DISCOVERY RESPONSES TO
PRESIDENTIAL & SECURITY FEDERAL
DOCUMENTS PRODUCED 08/03/2012
File No. 5122.001

Exhibit #	Descripton
1	Timothy Hall's Union Card
2	Tony Hall's Union Card & Employee Information
3	Jack Hegler's Union Card & Employee Information
4	George Lever's Union Card & Employee Information
5	Matthew Lever's Union Card & Employee Information
6	Ernest Lewis's Union Card & Employee Information
7	William McFerrin's Union Card & Employee Information
8	Daniel Nichols's Union Card & Employee Information
9	Raleigh Roye's Union Card & Employee Information
10	Nicholas Stewart's Union Card & Employee Information
11	Timothy Stock's Union Card & Employee Information
12	Ralph Black LLR Investigation
13	Ralph Black's Pay Stubs
14	Ralph Black's Personnel File
15	Thomas Brittingham's Union Card & Employee Information
16	Arthur Carlson's Union Card & Employee Information
17	Leonard Cliett's Personnel File
18	Custom Mechanical Employee Roster 2006-2007
19	Chris Cullipher's Union Card & Employee Information
20	Joseph Doyle's Pay Stubs
21	Joseph Doyle's Personnel File
22	Charles Ellzey's Pay Stubs
23	Brian Field's Pay Stubs
24	Brian Field's Personnel File

25	Daniel Friedmann's Personnel File
26	Daniel Friedmann LLR Investigation
27	Daniel Friedmann's Pay Stubs
28	Clayton Googe's Pay Stubs
29	Clayton Googe's Union Card & Employee Information
30	Martin Granger's Union Card & Employee Information
31	William Giffin's Union Card & Employee Information
32	Tony Hall's Pay Stubs
33	Matt Lever's Pay Stubs
34	Ernest Lewis's Pay Stubs
35	Union Notice of Delinquent Contributions to Employees of Custom Mechanical
36	Plumbers & Steamfitters Local Union No. 150 Sent to Work Report dated February 19, 2008
37	Kinda Phommachanh's Pay Stubs
38	Bruce Pollock's Pay Stubs
39	Raleigh Roye's Pay Stubs
40	Nicholas Stewart's Pay Stubs
41	Timothy Stock's Pay Stubs
42	Al Tiska's Pay Stubs
43	James Waltemath's LLR Investigation
44	James Waltemath's Pay Stubs
45	James Waltemath's Personnel File
46	Confession of Judgment
47	Warrant of Attachment
48	Assignment
49	Affidavit of Jeff Rice
50	Proofs of Claim (B10) (Official form 10) (12/07) of Daniel R. Friedmann; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Al Carpenter; Leonard Wade Cliett; Chris Cullipher; David W. Cullipher; Joseph A.

	Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Timothy R. Hall, Jr.; Tony Hall; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; Al Tiska and James M. Waltemath.
51	Thomas Brittingham's Personnel File
52	Arthur Carlson's Personnel File
53	Chris Cullipher's Personnel File
55	David Cullipher's Personnel File
56	Charles Ellzey's Personnel File
57	William Giffin's Personnel File
58	Clayton Googe's Personnel File
59	Martin Granger's Personnel File
60	Timothy Hall's Personnel File
61	Tony Hall's Personnel File
62	Jack Hegler's Personnel File
63	George Lever's Personnel File
64	Matt Lever's Personnel File
65	Ernest Lewis's Personnel File
66	William McFerrin's Personnel File
67	Daniel Nichols's Personnel File
68	Kinda Phommachanh's Personnel File
69	Raleigh Roye's Personnel File
70	Nicholas Stewart's Personnel File
71	Timothy Stock's Personnel File
72	Pay Records: Checks to Employees & Vacation Fund
73	Complaint by Daniel Friedmann filed with the SC Department of Labor, Licensing, and Regulation Division of Investigations and Enforcement/Office of Wages and Child Labor and related documents

74	Complaint by James Waltemath filed with S.C. Department of Labor, Licensing and Regulation Division of Investigations and Enforcement/Office of Wages and Child Labor and related documents
75	Complaint by Ralph Black filed with S.C. Department of Labor, Licensing and Regulation Division of Investigations and Enforcement/Office of Wages and Child Labor and related documents
76	Affidavit of Jeff Rice dated August 7, 2007 filed in District Court action 1:07-CV-02184-MBS
77	Proofs of Claim (B10) (Official form 10) (12/07) of Daniel R. Friedmann; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Al Carpenter; Leonard Wade Cliett; Chris Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Timothy R. Hall, Jr.; Tony Hall; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; Al Tiska and James M. Waltemath
78	Listing of Plumbers and Steamfitters Local No. 150 members who were Custom Mechanical/Custom Industrial Employees 2006-2007
79	Plumbers & Steamfitters Local Union No, 150 Sent to Work Report dated February 19, 2008
80	Notice of Delinquent Contribution to Employees of Custom Industrial Services dated October 15, 2007 from Plumbers and Steamfitters Local No. 150 Vacation Fund Board of Trustees

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C. R. Meyer and Sons Company,)
)
Plaintiff/Petitioner,)
)
VS.)

Case No. 2010-CP-40-8621

THIRD-PARTY DEFENDANTS PRESIDENTIAL FINANCIAL CORPORATION AND SECURITY FEDERAL BANK'S **REPLY** AND **ANSWER** TO CROSS-CLAIM(S) AND COUNTERCLAIMS OF

Custom Mechanical CSRA, LLC,)
)
Defendant/Respondent.)

Custom Mechanical CSRA, LLC)
)
Third-Party Plaintiff, Respondent,)
)
VS.)
)
Plumbers & Steam Fitters Local #150)
Health and Welfare Fund, Plumbers &)
Steam Fitters Local #150 Annuity Fund)
and Jackie K. Nordeen, Jr. and Patrick H.F.)
Smith, IV, as Trustees of these Funds;)
Plumbers & Steam Fitters Local #150)
Vacation Fund, and Patrick H.F. Smith, IV)
and Joseph L. Dozier, as Trustees of this)
/fund; and Augusta Joint Apprenticeship)
and Journeymen Training Committee, and)
Patrick H.F. Smith, IV and Charles I.)
Hardigree, as Trustees of this Fund;)
Trustees of Southern Iron Workers Pension)
Fund; Trustees of Southeastern Iron)
Workers Healthcare Plan; Trustees of)
Southeastern Iron Workers Annuity Plan;)
Trustees of Iron Workers #709 Joint)
Apprenticeship and Training Committee)
and Local #709, International Association)
of Bridge, Structural, Ornamental and)
Reinforcing Iron Workers; Southeastern)
Carpenters and Millwrights Health Trust;)

Daniel R. Friedmann,
Tony Hall,
Timothy R. Hall,
Ralph D. Black,
Thomas Brittingham,
Leonard Wade Cliett,
Arthur C. Carlson,
R. Christopher Cullipher,
David W. Cullipher,
Joseph A. Doyle, Jr.
Charles R. Ellzey,
Brian Field,
Clayton W. Googe, Jr.
Martin Granger,
William R. Giffin, Jr.
Jack E. Hegler,
George G. Lever,
Matt Lever
Ernest H. Lewis, III
William R. McFerrin,
Daniel Nichols,
Kinda Phommachanh,
Raleigh B. Roye,
Nicholas Stewart,
Timothy P. Stock,
James Waltemath,
Al Tiska,
Al Carpenter,
Bruce Pollock, Jr.

Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank,

Third-Party Defendants.

Answering cross-claims, and replying to counterclaims, if any, alleged by Third-Party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Chris Cullipher, David W. Cullipher, Joseph A. Doyle, Jr., Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr. (improperly designated in the caption and pleadings as "Google"), Martin Granger, William (improperly designated in the caption and pleadings as "Williams") R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter and Bruce Pollock, Jr. (hereinafter "Custom Employees") against Third-Party Defendants Presidential Financial Corporation and Security Federal Bank, Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal") would respectfully show and allege unto the Court:

AS TO THE FIRST DEFENSE

1. As to the First Defense of Custom Employees, Presidential and Security Federal reaffirm and reiterate all of the allegations contained in their Amended Answer to Third-Party Complaint and Counterclaim and Cross-claim filed July 19, 2012.

2. To the extent Custom Employees incorporate into any affirmative defense, counterclaim or cross-claim so much of paragraph seven (7) as alleges they "labored for Custom Mechanical CSRA, LLC at the Kimberly Clark Beech Island project," Presidential and Security Federal deny the same on information and belief.

AS TO THE SECOND DEFENSE

3. As to the Second Defense of Custom Employees, Presidential and Security Federal reaffirm and reiterate all of the allegations contained in their Amended Answer to Third-Party Complaint and Counterclaim and Cross-claim filed July 19, 2012.

4. To the extent Custom Employees incorporate into any affirmative defense, counterclaim or cross-claim so much of paragraph seven (7) as alleges they are, or were, employees of Custom Mechanical CSRA, LLC ("Custom Mechanical") during the Kimberly Clark Beech Island project ("the Project"), Presidential and Security Federal deny the same on information and belief.

AS TO THE THIRD DEFENSE,
THE COUNTERCLAIM AGAINST CUSTOM MECHANICAL CSRA, LLC,
AND THE CROSS-CLAIM AGAINST PRESIDENTIAL AND SECURITY FEDERAL

FOR A FIRST DEFENSE
(Qualified General Denial)

5. With respect to paragraph twenty-six (26), all allegations made above are incorporated herein where relevant.

6. Presidential and Security Federal admit so much of paragraph twenty-seven (27) as alleges the arbitration between C.R. Meyer and Sons Company ("C.R. Meyer") and Custom Mechanical was related to the performance of C.R. Meyer as the contractor for the Project. Upon information and belief, Presidential and Security Federal deny any and all allegations of said paragraph that are contrary to or inconsistent with the aforesaid limited admission.

7. Presidential and Security Federal admit so much of paragraph twenty-eight (28) as alleges the arbitration between C.R. Meyer and Custom Mechanical was related to the performance of Custom Mechanical as a subcontractor for the Project. Upon information and belief, Presidential and Security Federal deny any and all allegations of said paragraph that are contrary to or inconsistent with the aforesaid limited admission.

8. With respect to paragraph twenty-nine (29), upon information and belief, Presidential and Security Federal deny that Custom Employees were employees of Custom Mechanical who provided services as laborers in connection with work performed by C.R. Meyer for the Project.

9. With respect to paragraph thirty (30), on information and belief, Presidential and Security Federal deny that Custom Mechanical has received money, and allege that Richardson, Plowden & Robinson, P.A. is holding money in escrow pending a resolution of all third-party claims in this case, including priority claims asserted or to be asserted by Custom Mechanical, if any. Presidential and Security Federal deny any and all allegations of said paragraph that are contrary to or inconsistent with the aforesaid limited admission.

10. Presidential and Security Federal deny the allegations of paragraph thirty-one (31).

11. Answering paragraph thirty-two (32), Custom Mechanical, Custom Industrial, and Custom Mechanical CSRA, Inc. entered a Confession of Judgment in favor of Custom Employees; however, the following employees: Leonard Wade Cliett, Joseph A. Doyle, Jr., and Brian Field do not appear to be a part of the caption on the aforementioned Confession of Judgment. In that document, Custom Mechanical, Custom Industrial, and Custom Mechanical CSRA, Inc. collectively consented to be responsible for the aggregate sum of $275,000.00. Upon information and belief, this Confession of Judgment was an accommodation to the individual owners of Custom Mechanical, Custom Industrial, and Custom Mechanical CSRA, Inc., who were also defendants in the same lawsuit and who lacked the financial wherewithal to defend the lawsuit.

12. Presidential and Security Federal deny the allegations of paragraph thirty-three (33).

13. Presidential and Security Federal deny the allegations of paragraph thirty-four (34).

14. Presidential and Security Federal admit the allegations of paragraph thirty-five (35).

GENERAL ALLEGATIONS INCORPORATED INTO AFFIRMATIVE DEFENSES
(Standing)

15. All allegations made above are incorporated herein where relevant.

16. Presidential and Security Federal are informed and believe that during relevant times Custom Employees were members of "Plumbers #150" (which includes Third-Party Defendants Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie

K. Nordeen, Jr. and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund), which placed Custom Employees on the Project as employees of Custom Industrial Services, LLC ("Custom Industrial").

17. Presidential and Security Federal are informed and believe that during relevant times the Plumbers #150 acted as an agent of Custom Employees, within the course and scope of said agency, in collecting and managing most, if not all, of the benefits Custom Employees are claiming in this action.

18. Presidential and Security Federal are informed and believe that Plumbers #150, in keeping with its duty to Custom Employees, filed suit on their behalf against Custom Industrial, their employer, for the same monies Custom Employees are claiming in this lawsuit, and for which the union obtained a judgment for their benefit.

19. Trustees of union funds have standing to act on behalf of laborers who have performed services.

20. Custom Employees, therefore, lack standing to maintain this action.

FOR A SECOND AND AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action)

21. All allegations made above are incorporated herein where relevant.

22. The cross-claim against Presidential and Security Federal fails to state facts sufficient to constitute a cause of action, in the following particulars, to wit:

(a) Custom Employees have failed to state a prima facie case for declaratory relief in that they failed to allege a substantial, direct, and legally protected present interest in the arbitration award.

(b) Custom Employees lack standing to maintain this action because their interests are being represented by Plumbers #150.

(c) Custom Employees cannot state a claim under S.C. Code Ann. § 29-7-10.

(d) While Presidential Financial and Security Federal do not admit Custom Employees have an enforceable judgment against Custom Mechanical, any enforceable judgment they do have is subject to the perfected security interests of Presidential Financial and Security Federal.

FOR A THIRD AND AFFIRMATIVE DEFENSE
(Waiver)

23. All allegations made above are incorporated herein.

24. On information and belief, Custom Employees have waived their claims by intentionally relinquishing known rights in the following particulars:

(a) On information and belief, Custom Employees entered into an agreement with the Plumbers #150, or otherwise undertook a course of business conduct as members of Plumbers #150, which authorized and directed the Plumbers #150 to act on their behalf, including in the collection of the very same monies Custom Employees are seeking to collect in the within-captioned action; based on said relationship or authority, the Plumbers #150 actually obtained a judgment on behalf of Custom Employees against Custom Industrial, the contractor that furnished the labor provided by Custom Employees. As a result, Custom Employees have waived their rights, if any, to pursue these claims for themselves.

(b) To the extent Custom Employees allege they are entitled to proceed under § 29-7-10 against any and all contractors and subcontractors who performed work on the Project, and not just the subcontractor providing their labor, namely Custom Industrial, such allegation should be strictly denied under the statute. On information and belief, C.R. Meyer, the general contractor, was the only relevant contractor paid in full (by the owner) for labor provided, and Custom Employees have made no claims against C.R. Meyer in the within-captioned action or otherwise. As a result, Custom Employees have waived their claims under the statute.

FOR A FOURTH AND AFFIRMATIVE DEFENSE
(Estoppel)

25. All allegations made above are incorporated herein where relevant.

26. Custom Employees claims are barred in whole or in part by the doctrine of estoppel.

FOR A FIFTH AND AFFIRMATIVE DEFENSE
(Laches)

27. All allegations made above are incorporated herein where relevant.

28. Custom Employees claims are barred in whole or in part by the doctrine of laches.

FOR A SIXTH AND AFFIRMATIVE DEFENSE
(Unjust Enrichment)

29. All allegations made above are incorporated herein where relevant.

30. In the event Custom Employees are able to maintain any cause of action, an award of damages based on the Confession of Judgment amount asserted in their counterclaim and cross-claim would result in unjust enrichment to Custom Employees.

FOR A SIXTH AND AFFIRMATIVE DEFENSE
(Timeliness)

31. All allegations made above are incorporated herein where relevant.

32. Presidential Financial and Security Federal object to Custom Employees Leonard Wade Cliett, Joseph A. Doyle, Jr., and Brian Field being allowed to answer and assert a cross-claim because as they are not listed in the caption to this case; therefore, they are not parties to this action.

33. The answers and cross-claim of Custom Employees Leonard Wade Cliett, Joseph A. Doyle, Jr., and Brian Field should be barred as untimely made.

AS TO THE FOURTH DEFENSE OF CUSTOM EMPLOYEES

34. All allegations made above are incorporated herein where relevant.

35. The allegations contained in paragraph thirty-six (36) state a legal conclusion and require no response from Presidential and Security Federal. To the extent a response is required, Presidential and Security Federal deny the allegations. Additionally, Presidential and Security Federal specifically deny that employees Leonard Wade Cliett, Joseph A. Doyle, Jr., and Brian Field obtained a judgment against Custom Mechanical.

FOR A FIRST AND AFFIRMATIVE DEFENSE
(Statute of Limitations)

36. All allegations made above are incorporated herein where relevant.

37. Custom Employees Leonard Wade Cliett, Joseph A. Doyle, Jr., and Brian Field are barred from being joined in this action by the applicable statutes of limitations.

[Signature Block on Following Page]

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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ATTORNEY FOR THIRD-PARTY DEFENDANT, SECURITY FEDERAL BANK

Columbia, South Carolina
August 15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black;

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

THIRD-PARTY DEFENDANTS AND CROSSCLAIMANTS PRESIDENTIAL FINANCIAL CORPORATION'S AND SECURITY FEDERAL BANK'S MOTION FOR SUMMARY JUDGMENT

Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank.

Third-Party Defendants.

YOU WILL PLEASE TAKE NOTICE that the third-party defendants and crossclaimants Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal"), by and through their undersigned attorneys, respectfully move the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in favor of Presidential and Security Federal as to their crossclaim for declaratory judgment and as to the crossclaim of third-party defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "Custom Employees"). For the reasons more fully discussed in a Memorandum of Law to be filed prior to the hearing on this Motion, there is no genuine issue as to any material fact, and as such, Presidential and Security Federal are entitled to judgment as a matter of law on one or more of the following grounds:

(1) Presidential and Security Federal have priority over all alleged liens held by all other Third Party Defendants/Crossclaim Defendants because they are secured parties having a perfected security interest in the arbitration award at issue in this litigation.

(2) The Custom Employees are not entitled to monies awarded in favor of Custom Mechanical CSRA, LLC, because they were not employees of Custom Mechanical CSRA, LLC.

(3) The Custom Employees are not entitled to a judgment on nonpayment of vacation savings funds because the issue has been previously litigated and brought to final judgment against Custom Industrial Services, LLC by the Plumbers and Steamfitters Local No. 150 Vacation Fund. Accordingly, the Custom Employees are not entitled to judgment in their favor because their claims are barred by the doctrine of *res judicata*.

(4) A lien under S.C. Code § 29-7-10 does not attach for the benefit of the Custom Employees or Norton Welding Supply because the subcontractor, Custom Mechanical CSRA, LLC, did not receive payment from the contractor, C.R. Meyer and Sons Company.

(5) A lien under S.C. Code § 29-7-10 does not attach for the benefit of the Custom Employees because they were not laborers for subcontractor Custom Mechanical CSRA, LLC.

(6) A lien under S.C. Code § 29-7-10 does not attach for the benefit of Norton Welding Supply because there is no evidence that Norton Welding Supply furnished materials used pursuant to the subcontract between C.R. Meyer & Sons

Company and Custom Mechanical CSRA, LLC, or in the erection, alteration, or repair of a building.

(7) A lien under S.C. Code § 29-7-10 does not attach for some of the Custom Employees because their labor did not contribute to the erection, alteration, or repair a building.

(8) A lien under S.C. Code § 29-7-10 does not attach for the Custom Employees because the Custom Employees have no evidence of the portion of their labor or the amount of their wages that are related to or involved in the erection, alteration, or repair of a building.

Respectfully submitted,

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ATTORNEY FOR THIRD-PARTY DEFENDANT SECURITY FEDERAL BANK

Columbia, South Carolina
October 12, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff/Petitioner

-v-

Custom Mechanical CSRA, LLC,

Defendant/Respondent

Custom Mechanical CSRA, LLC,

Third-Party Plaintiff, Respondent

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North

Civil Action No: 2010-CP-40-8621

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JEANETTE W. WALKER
C.C.P. & G.S.
RICHLAND COUNTY
FILED

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,

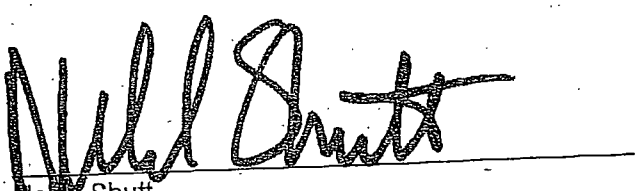
Third-party Defendants.

TO: JOHN T. LAY, JR., ESQ., ROBERT L. BUCHANAN, JR., ESQ., FRANCIS M. MACK, ESQ., CHARLES O. WILLIAMS, III, ESQ., ERIC JON TAYLOR, ESQUIRE, AND SHERRI H. STONEY, ESQ., Attorneys for Co-Third-party Defendants:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as counsel may be heard, the Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, Leonard Wade Cliett, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees"), by and through their undersigned counsel, will move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in favor of the Custom Employees on all causes of action because there are no genuine issues of material fact and the Custom Employees are entitled to judgment in the their favor as a matter of law.

Custom Employees are entitled to summary judgment on the following grounds:

This motion is based on the pleadings filed in this matter, the rules of court, any depositions and discovery taken prior to the hearing on this motion, and any memorandum of law to be submitted by the Custom Employees prior to the hearing on this matter.



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ATTORNEYS FOR THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, THOMAS BRITTINGHAM, ARTHUR C. CARLSON, CHRISTOPHER CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, CHARLES R. ELLZEY, BRIAN FIELD, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTEMATH, AL TISKA, AL CARPENTER, LEONARD WADE CLIETT, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

October 19, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff/Petitioner

-v-

Custom Mechanical CSRA, LLC,

Defendant/Respondent

Custom Mechanical CSRA, LLC,

Third-Party Plaintiff, Respondent

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North

Civil Action No: 2010-CP-40-8621

COPY

MEMORANDUM OF CUSTOM EMPLOYEES IN OPPOSITION TO BANKS' JOINT MOTION FOR DISBURSEMENT OF FUNDS

RICHLAND COUNTY
FILED
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JEANNETTE W. MCBRIDE
C.C.P. & G.S.

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

TO: JOHN T. LAY, JR., ESQ., ROBERT L. BUCHANAN, JR., ESQ., FRANCIS M. MACK, ESQ., CHARLES O. WILLIAMS, III, ESQ., ERIC JON TAYLOR, ESQUIRE, AND SHERRI H. STONEY, ESQ., Attorneys for Third-party Defendants:

This Memorandum is offered in opposition to Third-party Defendants Presidential Financial Corporation and Security Federal Banks' (collectively referred to hereinafter as "the Banks") Motion for Disbursement of Remaining Funds by Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, Leonard Wade Cliett, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees").

References to pleadings herein below are to documents filed in the Custom Employees' underlying lawsuit against their employers, styled as "Friedman, et al. v. Custom Industrial Services, LLC, et al., " C/A No: 2008-CP-02-413 (hereinafter "Friedman Case").

FACTS

In 2006 and 2007, Custom Industrial Services, LLC and/or Defendant Custom Mechanical (collectively hereinafter "Custom") employed the 29 Custom Employees as plumbers, pipefitters, and welders on a project at the Kimberly-Clark plant at Beech Island, South Carolina. (2nd Amended Friedman Case Compl. ¶¶ 38, 43; Friedman Case Answer ¶¶ 12, 43.) Upon their initial employment, each Custom Employee was provided the opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund, wherein the employee would choose to have either five, ten, or fifteen percent of their weekly wages withheld by Custom. (2nd Amended Friedman Case Compl. ¶¶ 44, 46; Friedman Case Answer ¶¶ 18, 20.) These withheld amounts, consisting entirely of employee-earned wages, were to be paid monthly to the appropriate local union so that the union could cut checks to the Custom Employees and their coworkers during the summer and Christmas holiday. (2nd Amended Friedman Case Compl. ¶¶ 47, 48; Friedman Case Answer ¶¶ 21, 22.)

As a subcontractor on the Kimberly-Clark project, Custom was responsible for laying two stories of underground pipe as well as in-wall, internal, and external pipe for a facility built to house a giant, multi-story, toilet-tissue making machine. The general contractor on the project was Plaintiff C.R. Meyer and Sons Company ("C.R. Meyer").

Around May 2007, Custom began laying off employees, terminating each Custom Employee without cause by the year's end. (2nd Amended Friedman Case Compl. ¶¶ 49, 50; Friedman Case Answer ¶¶ 23, 24.) Despite the Custom Employees' participation in the vacation/holiday savings fund, Custom admitted in their Answer that "they have not paid final monies owed to the appropriate local union," leaving the union without money to disburse and preventing the Custom Employee from receiving wages that Custom has owed them for more

than five years. (2nd Amended Friedman Case Compl. ¶¶ 51, 52; Friedman Case Answer ¶¶ 25, 29.)

In the interim, Custom retained counsel on an hourly basis to sue C.R. Meyer for allegedly failing to pay Custom all monies due by contract.

By Confession of Judgment entered on February 14, 2011, Defendant Custom Mechanical CSRA, LLC and its sister companies confessed judgment to the Custom Employees in the amount of Two-Hundred Seventy-five Thousand and no/100 ($275,000.00) Dollars for vacation pay wrongfully withheld. (Ex. 1.)

Previously, the trial court issued a Warrant of Attachment commanding law enforcement to attach and seize so much of the proceeds of the $1,976,548.00 arbitration award as was needed to secure the Custom Employees' judgment. (Ex. 2.)

Ultimately, Custom recovered a pool of $1.8 million Dollars. The instant lawsuit is largely between Custom's creditors over their rights to said pool.

ARGUMENT

The Custom Employees oppose the Banks' motion to have all but $275,000 of the $1.8 million Dollar pool disbursed to the Banks. The Custom Employees oppose said disbursement on numerous grounds including but not limited to the following: (1) Custom Employees are entitled to more than $275,000 as they are entitled to post-judgment interest and, arguably, attorney's fees and taxable costs; (2) there is no statutory authority for allowing one creditor to receive priority disbursement over another in the midst of a lawsuit; (3) disbursing money to the Banks now will prejudice the Custom Employees as it will fund the Banks' campaign to run off and/or compromise other creditors' claims with the use of large amounts of discovery and motions practice; (4) the Banks have improperly used the promise of sharing the funds they seek to have disbursed with other creditors to induce said other creditors into consenting to the

Banks' motion for disbursement; (5) under S.C. Code Ann. § 29-7-10, the Custom Employees have a priority interest above all creditors in the arbitration proceeds; (6) discovery is incomplete as Custom Employees have asked the special referee to extend discovery; and, (7) the Custom Employees are real parties in interest to and have a greater priority to the arbitration proceeds than the Banks and, therefore, the Banks may not enter into settlement agreements with other creditors without the consent and approval of the Custom Employees.

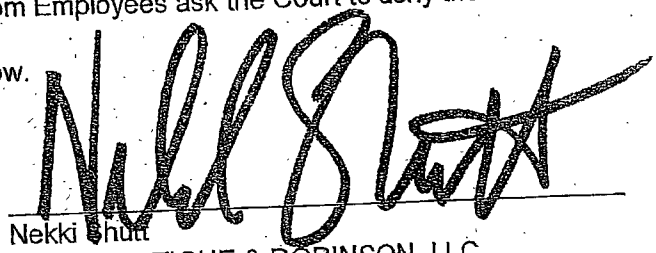
Despite the Banks' assertion to the contrary, the Custom Employees have identified circumstances in which they would be entitled to receive more than $275,000.

It is not dispositive that no other creditor has objected to the Banks' motion for disbursement. While the Banks assert that all other creditors save the Banks and the Custom Employees have abandoned their claims, the Custom Employees are informed and believe that some of said creditors were induced to dismiss their claims based upon secret settlement agreements they entered into with the Banks. The Banks had no authority to enter into settlement agreements involving monies which Custom Employees were entitled to. Said settlement agreements have not been shared with the Custom Employees. Terms of said settlement agreements have prejudiced the Custom Employees by allowing the Banks to represent to the Court that no parties except the Custom Employees oppose their motion.

The argument contained in this memorandum is based on the pleadings filed in this matter, the rules of court, any depositions and discovery taken prior to the hearing on this motion, oral argument, and any further memorandum of law to be submitted by the Custom Employees prior to the hearing on this matter.

CONCLUSION

For the foregoing reasons, the Custom Employees ask the Court to deny the Banks' Motion to Disburse $1.525 million Dollars now.



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Columbia, South Carolina

November 5, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black;

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

THIRD-PARTY DEFENDANTS AND CROSSCLAIMANTS PRESIDENTIAL FINANCIAL CORPORATION'S AND SECURITY FEDERAL BANK'S **AMENDED** MOTION FOR SUMMARY JUDGMENT

Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank.

Third-Party Defendants.

YOU WILL PLEASE TAKE NOTICE that the third-party defendants and crossclaimants Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal"), by and through their undersigned attorneys, respectfully amend their initial Motion for Summary Judgment and move the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in favor of Presidential and Security Federal as to their crossclaim for declaratory judgment and as to the crossclaim of third-party defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "Custom Employees"). Additionally, Presidential and Security Federal respectfully move for an Order granting summary judgment in their favor as to their crossclaim for declaratory judgment against third-party defendants Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers &

Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund (collectively the "Plumbers' Funds"); and third-party defendants Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds (collectively the "Carpenters' Funds"). For the reasons below, which will be discussed more fully in a Memorandum of Law to be filed prior to the hearing on this Motion, there is no genuine issue as to any material fact, and as such, Presidential and Security Federal are entitled to judgment as a matter of law on one or more of the following grounds:

(1) Presidential and Security Federal have priority over all alleged liens held by all other Third Party Defendants/Crossclaim Defendants because they are secured parties having a perfected security interest in the arbitration award at issue in this litigation.

(2) The Custom Employees are not entitled to monies awarded in favor of Custom Mechanical CSRA, LLC, because they were not employees of Custom Mechanical CSRA, LLC.

(3) The Plumbers' Funds are not entitled to monies awarded in favor of Custom Mechanical CSRA, LLC, because they did not have an agreement with Custom Mechanical CSRA, LLC.

(4) The Carpenters' Funds are not entitled to monies awarded in favor of Custom Mechanical CSRA, LLC, because they did not have an agreement with Custom Mechanical CSRA, LLC.

(5) The Custom Employees are not entitled to a judgment on nonpayment of vacation savings funds because the issue has been previously litigated and brought to final judgment against Custom Industrial Services, LLC by the Plumbers and Steamfitters Local No. 150 Vacation Fund. Accordingly, the Custom Employees are not entitled to judgment in their favor because their claims are barred by the doctrine of *res judicata*.

(6) A lien under S.C. Code Ann. § 29-7-10 does not attach for the benefit of the Custom Employees, Norton Welding Supply, the Plumbers' Funds, or the Carpenters' Funds because the subcontractor, Custom Mechanical CSRA, LLC, did not receive payment from the contractor, C.R. Meyer and Sons Company.

(7) A lien under S.C. Code Ann. § 29-7-10 does not attach for the benefit of the Custom Employees, the Plumbers' Funds, or the Carpenters' Funds because they were not laborers for subcontractor Custom Mechanical CSRA, LLC.

(8) A lien under S.C. Code Ann. § 29-7-10 does not attach for some of the Custom Employees, members of the Plumbers' Funds, or members of the Carpenters' Funds because their labor did not contribute to the erection, alteration, or repair a building.

(9) A lien under S.C. Code Ann. § 29-7-10 does not attach for the Plumbers' Funds or the Carpenters' Funds because a union fund is not a "laborer" or "materialman."

(10) A lien under S.C. Code Ann. § 29-7-10 does not attach for the Custom Employees because the Custom Employees, the Plumbers' Funds, or the Carpenters' Funds have no evidence of the portion of their labor or the amount of their wages that are related to or involved in the erection, alteration, or repair of a building.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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ATTORNEY FOR THIRD-PARTY DEFENDANT SECURITY FEDERAL BANK

Columbia, South Carolina
November 15 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No: 2010-CP-40-8621

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

-v-

Custom Mechanical CSRA, LLC,

Defendant/Respondent,

Custom Mechanical CSRA, LLC,

Third-Party Plaintiff, Respondent,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North

RICHLAND COUNTY
FILED
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JEANETTE W. McBRIDE
C.C.P. & G.S.

NOTICE OF MOTION AND AMENDED MOTION FOR SUMMARY JUDGMENT

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,	)
Third-party Defendants.	)

TO: JOHN T. LAY, JR., ESQ., ROBERT L. BUCHANAN, JR., ESQ., CHARLES O. WILLIAMS, III, ESQ., FRANCIS M. MACK, ESQ., AND SHERRI H. STONEY, ESQ., Attorneys for Co-Third-party Defendants:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as counsel may be heard, the Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, Leonard Wade Cliett, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees"), by and through their undersigned counsel, will move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in favor of the Custom Employees on all causes of action because there are no genuine issues of material fact and the Custom Employees are entitled to judgment in the their favor as a matter of law.

Custom Employees are entitled to summary judgment because under S.C. Code Ann § 29-7-10, the Custom Employees have a priority interest above all creditors in the arbitration proceeds from General Contractor C.R. Meyer and Sons Company because they were "laborers" of Subcontractor Custom Mechanical CSRA, LLC who erected, altered, and/or repaired buildings at the Kimberly Clark Beech-Island Project.

This motion is based on the pleadings filed in this matter, the rules of court, any depositions and discovery taken prior to the hearing on this motion, and any memorandum of law and affidavits to be submitted by the Custom Employees prior to the hearing on this matter.

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ATTORNEYS FOR THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, THOMAS BRITTINGHAM, ARTHUR C. CARLSON, CHRISTOPHER CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, CHARLES R. ELLZEY, BRIAN FIELD, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTEMATH, AL TISKA, AL CARPENTER, LEONARD WADE CLIETT, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

December 3, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

VS.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC
Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Presidential

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-8621

THIRD-PARTY DEFENDANTS AND CROSSCLAIMANTS PRESIDENTIAL FINANCIAL CORPORATION'S AND SECURITY FEDERAL BANK'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO CUSTOM EMPLOYEES' MOTION FOR SUMMARY JUDGMENT

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Financial Corporation; Norton Welding Supply, Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Charles R. Ellzey; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr.; and Security Federal Bank.

Third-Party Defendants.

TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DANIEL R. FRIEDMANN; TONY HALL; TIMOTHY R. HALL, JR.; RALPH D. BLACK; THOMAS BRITTINGHAM; ARTHUR C. CARLSON; LEONARD WADE CLIETT; CHRISTOPHER CULLIPHER; DAVID W. CULLIPHER; JOSEPH A. DOYLE, JR.; CHARLES R. ELLZEY; BRIAN FIELD; CLAYTON W. GOOGLE, JR.; MARTIN GRANGER; WILLIAMS R. GIFFIN, JR.; JACK E. HEGLER; GEORGE G. LEVER; MATT LEVER; ERNEST H. LEWIS, III; WILLIAM R. MCFERRIN; DANIEL NICHOLS; KINDA PHORMMACHANH; RALEIGH B. ROYE; NICHOLAS STEWART; TIMOTHY P. STOCK; JAMES WALTEMATH; AL TISKA; AL CARPENTER; AND BRUCE POLLOCK, JR.;

By and through their undersigned attorneys, Third-Party Defendants and Crossclaimants Presidential Financial Corporation ("Presidential") and Security Federal Bank ("Security Federal") jointly moved pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for summary judgment in favor of Presidential and Security Federal as to their crossclaim for declaratory judgment and as to the crossclaim of Third-Party Defendants Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Google, Jr.; Martin Granger; Williams R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phormmachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James

Waltemath; Al Tiska; Al Carpenter; and Bruce Pollock, Jr. (collectively "Custom employees"). Third-Party Defendants Presidential and Security Federal file this Memorandum of Law both in support of their Motion for Summary Judgment ("Presidential and Security Federal's Motion") and in opposition to Custom employees' Motion for Summary Judgment ("Custom employees' Motion").[1]

Presidential and Security Federal each loaned money to Custom Mechanical CSRA, LLC ("Custom Mechanical") to fund its work on a contract between Custom Mechanical and C.R. Meyer & Sons Company ("C.R. Meyer"). Presidential and Security Federal obtained perfected security interests in the accounts receivable owed by C.R. Meyer to Custom Mechanical. C.R. Meyer stopped payment to Custom Mechanical and Custom Mechanical defaulted on the loans and on a number of other debts. C.R. Meyer and Custom Mechanical arbitrated their dispute and when C.R. Meyer lost, it paid the $1,800,000 it owed Custom Mechanical into a trust where it is being held until this Court determines the priority of Custom Mechanical's creditors.

Perfected security interests take priority over all other creditors except those entitled to a first lien under S.C. Code Ann. § 29-7-10. The Custom employees wrongly assert they are entitled to priority pursuant to Section 29-7-10. The statute does not operate to establish a lien for them because they were employed by Custom Industrial, a different corporate entity which is not a creditor of Custom Mechanical. Second, the unpaid vacation funds were to be paid to and held by the union, and any claim for default of that agreement belonged to the union and has been litigated. Third, even if they were entitled to a judgment against Custom Mechanical for

[1] The Custom Employees argue they are entitled to summary judgment "because under S.C. Code Ann. § 29-7-10, the Custom Employees have a priority interest above all creditors in the arbitration proceeds from General Contractor C.R. Meyer and Sons Company." Custom Employees' Am. Mot. For Summary Judgment at 3. The Custom Employees assert they have priority because they were "laborers" of Custom Mechanical who "erected, altered, and/or repaired buildings" at Kimberly Clark's Beech Island Project. *Id.*

their unpaid vacation funds, which they are not, the employees are not entitled to a Section 29-7-10 first lien and are behind the secured parties. The statute must be strictly construed and any laborer wishing to obtain a lien must show that they (1) were laborers for a contractor (2) who received money for (3) the erection, alteration, or repair of a building. The employees cannot satisfy these three elements because they were not employees of the contractor, Custom Mechanical; Custom Mechanical never received the money such that the lien would attach; and most of the employees admit they did not erect, alter, or repair a building. Of those employees that allege they did, they have presented no substantive evidence as to the amounts paid by C.R. Meyer to Custom Mechanical for work they performed.

Presidential and Security Federal are entitled to summary judgment because as a matter of law their perfected security interests take priority over the employees' claim to an unpaid vacation fund. Presidential's and Security Federal's Motion is due to be granted, the Custom employees' Motion is due to be denied, and Presidential and Security Federal are entitled to an order awarding the remainder of the arbitration award to them.

I. STATEMENT OF FACTS

A. The Project

In 2006, the Kimberly-Clark Corporation sought to add a fourth tissue-paper line, known as the B-14 Expansion Project/Tissue Machine Project, to its existing plant in Beech Island, South Carolina. Kimberly-Clark hired C.R. Meyer as its general contractor. C.R. Meyer hired Custom Mechanical as a subcontractor to construct portions of the piping and plumbing work for the B-14 Expansion Project. Custom Mechanical was also to work on an existing diaper line at another part of the facility, known as the Hulk Project (the B-14 Expansion Project and the Hulk Project are collectively referred to as the "Project"). (C.R. Meyer Compl., with Exhibit A

Arbitration Award, attached hereto as **Exhibit A**). Custom Mechanical provided union-labor services for the Project through its wholly-owned subsidiary, Custom Industrial Services, LLC ("Custom Industrial"). (Ex. A, Arbitration Award, p.1; Affidavit of Lisa Glevenyak, ¶ 1, attached hereto as **Exhibit B**).

B. The Loans

Custom Mechanical borrowed money from Security Federal and Presidential in order to fund its work on the Project. Security Federal loaned Custom Mechanical Two Million One Hundred Fifty-One Thousand, Five Hundred Ninety-Four and NO/100 Dollars ($2,151,594). (Security Federal Loan Agreements and corresponding Affidavit, attached hereto as **Exhibit C**). In order to secure its loans, Security Federal perfected a security interest in inventory, furniture, fixtures, equipment, accounts receivable, instruments, documents, chattel paper, and general intangibles that were existing then or to be thereafter acquired on August 1, 2006. (Security Federal UCC-1, UCC-3 Subordination Statement, & UCC-3 Continuation Statement, attached hereto as **Exhibit D**).

Presidential provided One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) as a working capital line of credit to Custom Mechanical to fund its work on the Project. (Presidential Loan Agreement and Security Agreement, attached hereto as **Exhibit E**). Presidential filed a UCC-1 financing statement perfecting its security interest in the accounts receivable paid by C.R. Meyer to Custom Mechanical on May 4, 2007. (Presidential UCC-1, UCC-3 Continuation Statement, attached hereto as **Exhibit F**). Presidential also took a secured interest in

> (1) all accounts, . . ., notes receivable, contact rights, money, deposit accounts, general intangibles (including but not limited to payment intangibles), documents, instruments, chattel paper (whether tangible or electronic), letters of credit, letter of credit

> rights and investment property; (2) all supporting obligations relating to any of the foregoing; (3) all inventory, equipment, fixtures and other goods of any nature whatsoever; (4) all substitutions, accessions, additions and replacement of or to any of the foregoing; and (5) all proceeds of any of the foregoing.

Id. Custom Mechanical defaulted on all of these loans.[2] (*See, e.g.* Consent Judgment, attached hereto as **Exhibit G**).

C. The Vacation Fund

Twenty-nine individuals make up the group known as the Custom employees. These individuals were employed by Custom Industrial during the Project. (Ex. B, ¶ 3, Attachments A-G). The Custom employees were all members of the Plumbers & Steamfitters Local #150 (the "Local #150 union" or "union") and the union gave them the opportunity to participate in a voluntary payroll deduction plan. The Custom employees elected to have five, ten, or fifteen percent of their weekly wages deducted, and the amounts deducted would be set aside into a vacation/holiday savings fund. (*See e.g.*, Employee Union Cards, attached hereto as **Exhibit H**). Custom Industrial would then remit the withheld amounts to the Local #150 union. The money withheld from each individual's wages was then held by the union Vacation Fund until the union drafted checks to the Custom employees during the summer and before the Christmas holiday. (Friedmann Depo., p.28:6-19, attached hereto as **Exhibit I**). At some point, Custom Industrial stopped remitting payments to the union fund and the employees now claim priority to Custom Mechanical's arbitration funds. (Custom Employees' Joint Reply, ¶ 33).

II. NATURE OF THE CASE

C.R. Meyer initiated this matter to modify and/or vacate the arbitration award that was

[2] Security Federal and Presidential were involved in separate litigation over their respective priority to monies owed by C.R. Meyer to Custom Mechanical. Security Federal and Presidential reached a settlement agreement whereby they agreed to share equally in the proceeds of the arbitration award. Accordingly, their interests in the arbitration award at issue in this case are mutual.

granted to Custom Mechanical following disputes which arose under the subcontract agreement between the two parties. (Ex. A, C.R. Meyer Compl. ¶¶ 2-8). In addition to its Answer, Custom Mechanical initiated a Third-Party Complaint alleging that the Third-Party Defendants in this action "may have an interest in the proceeds of the One Million, Seven Hundred Seventy-Six Thousand, Five Hundred Forty-eight and No/100 ($1,776,548.00) Dollars [sic] arbitration award," because the total of all known claims exceeds the net proceeds of the arbitration award. (Custom Mechanical's Ans. & 3d Party Compl. ¶¶ 11-12). Custom Mechanical asked the court to require C.R. Meyer to pay the arbitration proceeds into the registry of the court for distribution to the third-party defendants. (*Id.* at ¶ 14).

The arbitration award was confirmed by the trial court on November 1, 2011. (Order Confirming Arbitration Award, attached hereto as **Exhibit J**). Rather than appeal, C.R. Meyer agreed to pay Custom Mechanical Two Million Dollars ($2,000,000). (Settlement Order, p.1, attached hereto as **Exhibit K**). Two Hundred Thousand Dollars ($200,000) was segregated for Custom Mechanical's attorneys' fees and expenses. (*Id.*). The remaining funds were to be held in escrow for the benefit of the creditors until their priority was determined by the Court. (*Id.* at 2).

Thereafter, the Third-Party Defendants answered Custom Mechanical's Third-Party Complaint acknowledging they were all creditors of Custom Mechanical. On July 19, 2012, Presidential and Security Federal filed a joint amended answer and counterclaim and crossclaim. Presidential and Security Federal assert a claim for Declaratory Judgment pursuant to S.C. Code Ann. § 15-53-10 *et seq.*, because they have priority over all other alleged liens of Third-Party Defendants/Crossclaim Defendants. (Am. Ans. & Counterclaim & Crossclaim, ¶ 30). Presidential's and Security Federal's secured claims exceed the settlement award and encumbers

the entire balance. (*Id.* at ¶¶ 31-32).

On August 1, 2012, the Custom employees answered Presidential's and Security Federal's Crossclaim with a crossclaim of their own. They assert a first lien over the arbitration award under S.C. Code Ann. § 29-7-10 and claim they are entitled to the amount of their outstanding judgment, Two Hundred and Seventy-Five Thousand ($275,000), as well as pre-judgment interest of the arbitration award.[3] (Joint Reply, ¶¶ 31-34).

One Million Four Hundred Seventy-Five Thousand and NO/100 Dollars ($1,475,000) of the settlement funds were disbursed to Presidential and Security Federal on November 14, 2012. (Order dated November 7, 2012). Three hundred and twenty-five hundred thousand ($325,000), more than is allegedly owed to the Custom employees, remains in trust at Richardson, Plowden & Robinson, P.A. pending the outcome of this litigation.

III. ARGUMENT

Based on the record in this matter and the arguments herein, Presidential and Security Federal's Motion should be granted, and the Custom employees' Motion should be denied.

A. Summary Judgment Standard

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E. 2d 565, 568 (Ct. App. 2005) (citing *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 602 S.E.2d 389 (2004); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004)); *see also* Rule 56, SCRCP; *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 601 S.E.2d 342 (2004); *Medical*

[3] Because the Custom employees assert they are entitled to a first lien pursuant to S.C. Code § 29-7-10, their outstanding judgment is not relevant. Secured interests take priority over judgments. S.C. Code Ann. § 36-9-317(a). Accordingly, Presidential and Security Federal disregard the employees' judgment for purposes of this Motion.

Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); *McNair v. Rainsford,* 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Rife*, 363 S.C. at 215, 609 S.E.2d at 568 (citing *Dawkins v. Fields,* 354 S.C. 58, 580 S.E.2d 433 (2003)).

Summary judgment depends upon the existence of plain, undisputable facts on which reasonable minds cannot differ. *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown,* 302 S.C. 405, 396 S.E.2d 638 (Ct.App.1990)). If the moving party meets its initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings; rather, the opponent must present specific facts which infer there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324-25 (1986) (finding a non-moving party must go beyond the pleadings and present evidence designating specific facts showing that there is a genuine issue for trial). Moreover, if the plaintiff fails to establish a genuine issue of fact as to one essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore subject to summary judgment. *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537, 545-46 (1991) ("plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case"); *see also Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970 (4th Cir. 1990) (finding a party "will not be permitted to manufacture a genuine issue of material fact to survive a motion for summary judgment"); *Thompkins v. Festival Centre Group I*, 306 S.C. 193, 410 S.E.2d 593, 594 (Ct. App. 1991) (stating "[i]t is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine").

B. **The Custom Employees Do Not Have Standing to Assert a Claim to the Arbitration Award.**

1. **The Employees Are Not Creditors of Custom Mechanical.**

The employees were employed by Custom Industrial Services, LLC and cannot maintain an action against Custom Mechanical CSRA, LLC. A corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007) (citations omitted). Custom Mechanical and Custom Industrial are separate corporate entities. (Ex. B; Secretary of State Business Filings for Custom Mechanical CSRA, LLC and Custom Industrial Services LLC, attached hereto as **Exhibit L**).

Custom Mechanical is the only Custom entity that is a party to this lawsuit. (Ex. A, C.R. Meyer Compl., ¶¶ 1-8 and Arbitration Award; Ex. K). The Court ordered the money held in trust for the debtors of Custom Mechanical. (Ex. K, p.2).

Custom Mechanical is not liable for the debts of Custom Industrial even if they shared officers and managers. *See, e.g., Mid-S. Mgt. Co., Inc.*, 374 S.C. 588, 649 S.E.2d 135. Moreover, a theory for piercing the corporate veil or treating Custom Mechanical and Custom Industrial as alter egos of one another has been neither alleged nor proved. *Id.* at 597, 649 S.E.2d at 140-41 (finding the burden of proof rests with the party seeking to pierce the corporate veil). Accordingly, the employees are not creditors of Custom Mechanical and are not entitled to the money awarded to Custom Mechanical and held in the trust for the benefit of Custom Mechanical creditors.

2. The Only Entity With Standing To Seek Judgment For Unpaid Vacation Funds is the Local #150 union.

One not in privity of contract with another cannot maintain an action against him and damage resulting from the breach of a contract between the defendant and a third-party is not recoverable by the plaintiff. *See Bob Hammond Constr. Co., Inc. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994)(citations omitted). There is no privity of contract for vacation funds between the employees and Custom Industrial, much less between the employees and Custom Mechanical. The vacation funds were withheld pursuant to a collective bargaining agreement ("CBA") between Custom Industrial and the Local #150 union. (CBA, attached hereto as **Exhibit M**; Local #150 Compl., ¶¶ 8-12, attached hereto as **Exhibit N**). The wages for employees on the Project were paid by Custom Industrial, so the vacation fund money would also have been funded by Custom Industrial. (*See* Paycheck stubs for Custom employees, attached hereto as **Exhibit O**; Ex. B, ¶ 3, Attachments C-G). If there is money owed to these employees it is owed by the Local #150 union. The Local #150 Vacation Fund sued Custom Industrial and has already obtained a judgment. The prior action was litigated in the U.S. District Court for the District of South Carolina and is styled *Plumbers and Steamfitters Local No. 150 Health and Welfare Fund, Plumbers and Steamfitters Local No. 150 Pension Fund, Plumbers and Steamfitters Local No. 150 Annuity Fund, and Jackie Nordeen, Jr. and Patrick J.F. Smith, IV, as trustees of these funds; Plumbers and Steamfitters Local No. 150 Vacation Fund, and Patrick H.G. Smith, IV and Joseph L. Dozier, as trustees of this fund; and August Joint Apprenticeship & Journeyman Training Committee, and Patrick H.F. Smith, IV and Charles I.*

Hardigree as trustees of this fund v. Custom Industrial Services, LLC, Civil Action Number 1:07-CV-02184-MBS.[4]

C. Presidential's and Security Federal's Secured Interests Have Priority Over Any Claim by the Employees.

1. Presidential and Security Federal Have Perfected Security Interests.

Presidential's and Security Federal's Motion is due to be granted because they are secured parties having perfected security interests in the arbitration award at issue in this litigation and therefore have priority over the claims by Custom employees. *See* S.C. Code Ann. §§ 36-9-322(a), 36-9-317(a). A security interest is an interest in personal property that secures the payment of an obligation, which includes a payment intangible such as a loan. S.C. Code Ann. § 36-9-109(a) (2002). A security interest attaches when it becomes enforceable against the debtor with respect to the collateral, and to attach, there must be a security agreement; the debtor must have rights in the collateral or the power to transfer rights in the collateral to the secured party; and the secured party has given value. S.C. Code Ann. § 36-9-203. Generally, for a security interest to be perfected, a financing statement must be filed before it is considered perfected. S.C. Code Ann. § 36-9-310. Once a security interest is filed or perfected, that security interest usually has priority over all security interests filed or perfected after it. S.C. Code Ann. § 36-9-322(a). If a debtor defaults, or fails to make payment when due, a secured party may reduce its claim to judgment, and if the claim is reduced to judgment and execution is levied against the collateral, its execution lien relates back to the earliest of the date of perfection or the date of filing. S.C. Code Ann. § 36-9-601(a) & (c). A **perfected security interest takes priority over a subsequent judgment lien** or other lien obtained by legal or equitable

[4] The Local #150 union Pension Fund has a judgment in Georgia against Custom Mechanical which was obtained by default on December 7, 2009. (Local #150 Pension Judgment, attached hereto as **Exhibit P**). There is no judgment against Custom Mechanical for the vacation fund.

proceedings. S.C. Code Ann. § 36-9-317(a); *J.M. Smith Corp. v. In re Greenwood Petroleum Co., Inc.*, 341 S.C. 442, 535 S.E.2d 131 (2000) (finding that a secured party who perfects its security interest before a creditor acquires a lien upon the collateral by "attachment, levy, or the like" has priority over the lien creditor).

Security Federal perfected its security interest of $2,151,594 by filing a UCC financing statement, in accordance with S.C. Code Ann. § 36-9-310 as to "all [of Custom Mechanical's] inventory, furniture, fixtures, equipment, accounts, accounts receivable, instruments, documents, chattel paper, general intangibles, and other rights to payments, whether now existing or hereafter acquired" on August 1, 2006. (Ex. D). Presidential also perfected a security interest by filing a financing statement in accordance with S.C. Code Ann. § 36-9-310 on May 4, 2007. (Ex. F, Presidential UCC-1). Therefore, Security Federal and Presidential perfected their security interests before the Custom employees' claims even arose. The Custom employees' confession of judgment, which they cite in their answer and crossclaim, was entered on February 14, 2011, approximately four years after the security interests were perfected. Thus, since the Custom employees are unable to rely on S.C. Code Ann. § 29-7-10, as is discussed *infra* in Section C.2, Presidential and Security Federal have priority over the Custom employees' judgment. Since the perfected security interests are for an amount greater than the total arbitration award, Presidential and Security Federal should receive the arbitration award in its entirety. S.C. Code Ann. § 36-9-601, cmt. 6 (stating "any judicial lien that the secured party may acquire against the collateral effectively is a continuation of the original security interest (if perfected) and not the acquisition of a new interest").

2. The Custom Employees Are Not Entitled to a First Lien Under S.C. Code Ann. § 29-7-10.

The employees allege they are entitled to a first lien pursuant to S.C. Code Ann. § 29-7-10 which provides,

> Any contractor or subcontractor in the ***erection, alteration, or repairing*** of buildings in this State shall pay all laborers, subcontractors, and materialmen for their lawful services and material ***furnished out of the money received for the erection, alteration, or repairs of buildings*** upon which such laborers, subcontractors, and materialmen are employed or interested and such laborers, as well as all subcontractors and persons who shall furnish material for any such building, shall have a first lien on the money ***received by such contractor*** for the erection, alteration, or repair of such building in proportion to the amount of their respective claims.

(emphasis added). Where a statute is clear and unambiguous, there is no room for construction, and, the terms of the statute must be given their literal meaning." *Poinsett Constr. Co., Inc. v. Fischer*, 301 S.C. 343, 344, 391 S.E.2d 875, 876 (Ct. App. 1990). (citing *Spires v. Spires*, 296 S.C. 422, 423, 373 S.E.2d 698, 699 (Ct. App. 1988)). "The courts of South Carolina have quite clearly stated that Section 29-7-10 must be strictly construed." *Bellsouth Telecomm., Inc. v. Dekalb Concrete Prod., Inc.*, 1995 WL 578191 (D.S.C. 1995) (citing *Morgan & Alston v. D. W. Alderman & Sons' Co.*, 70 S.C. 462, 50 S.E.26, 27 (1905)); *see also Poinsett Constr.*, 301 S.C. at 344, 491 S.E.2d at 876.

If this statute applied to the employees, their lien would have priority over the secured parties; however, this statute does not apply to these employees. *See Poinsett Constr. Co.*, 301 S.C. at 344. The employees are not entitled to obtain a lien under this statute because: (1) the subcontractor was Custom Mechanical and these employees were not laborers for Custom Mechanical; (2) the lien does not attach because the money was never received by Custom Mechanical; (3) most of the employees were not involved in the erection, alteration, or repair of

a building; and (4) even if they were involved in the erection, alteration, or repair of a building, there is no evidence the money awarded by the arbitrators was for their labor in the erection, alteration, or repair of a building.

a. Section 29-7-10 Would Only Provide for a Lien if the Custom Employees Were Employed by Custom Mechanical, and They Were Not.

Custom Mechanical was the subcontractor hired by contractor C.R. Meyer to perform work at the Kimberly-Clark plant. (*See* Ex. A, Arbitration Award). The arbitration was between C.R. Meyer and Custom Mechanical and the money was awarded to Custom Mechanical. The statute says that the lien is for amounts received ***by the contractor*** for the erection, alteration, or repair of a building. The employees worked for Custom Industrial, but Custom Industrial was not a contractor to C.R. Meyer, was not involved in the arbitration with C.R. Meyer, and was not paid for the erection, alteration, or repair of a building. Because the statute must be strictly construed, the employees of Custom Industrial are not entitled to a lien against Custom Mechanical because they were not employed by a contractor.

b. A Lien Does Not Attach Because Custom Mechanical Never Received the Money.

The law is well established that a statutory lien based on Section 29-7-10 does not exist until the contractor has received the money. *Morgan & Austin*, 50 S.E. at 27. In *Morgan & Austin*, Clark & Bennyfield were contractors hired to construct the Revis building. *Id.* D.W. Alderman & Sons supplied builders' materials to Clark & Bennyfield for use in the erection of the Revis building. *Id.* D.W. Alderman & Sons was not paid for its materials and brought suit against Clark & Bennyfield for the nonpayment of debts owed. *Id.* A warrant was issued and the sheriff attached the debt due by Revis to Clark & Bennyfield for the construction of the Revis building. *Id.*

Morgan & Austin also supplied builders' materials to Clark & Bennyfield for the same construction project. *Id.* Morgan & Austin brought suit against D.W. Alderman & Sons asserting a prior lien to the monies owed by Revis to Clark & Bennyfield. *Id.* The court held that a lien under Section 29-7-10 did not exist because Clark & Bennyfield never received the money from Revis; instead, the money was received by the sheriff by virtue of the attachment. *Id.* Because the statute is to be strictly construed, the contractor must receive the money. Clark & Bennyfield did not receive the money—the sheriff did—so Morgan & Austin was not entitled to a lien. *Id.*

This interpretation was affirmed in *Bellsouth Telecomm.*, 1995 WL 57819. In *Bellsouth Telecomm.*, Southern Bell hired Kelly Green to bury underground telephone cable. Kelly Green subcontracted a portion of the work to Dekalb Concrete Products, Inc., ("Dekalb"). *Id.* at *1. Kelly Green failed to pay Dekalb for its work and also failed to pay the IRS. *Id.* Southern Bell initiated a lawsuit seeking to pay the disputed $8,000 it owed Kelly Green into the registry of the court so that the court could determine the priority of Kelly Green's creditors. *Id.*

Dekalb argued it had a first lien (over the IRS) to the Southern Bell proceeds because it provided labor pursuant to Section 29-7-10. *Id.* at *2. The court declined to agree because the "statutory lien created by Section 29-7-10 does not come into existence until the contractor has received the money." *Id.* at *3 (citing *Morgan & Alston*, 50 S.E.2d 26). Kelly Green never received the money because it was being held pending a resolution of the creditor dispute. *Id.* Accordingly, there could be no lien.

Custom Mechanical has not received the money either. On November 8, 2010, an arbitration panel ordered C.R. Meyer to pay $1,976,548 to Custom Mechanical for subcontracting services rendered pursuant to a series of contracts between them. C. R. Meyer sought to vacate that award on December 9, 2010. (Ex. A, C.R. Meyer Compl., ¶ 8). Custom

Mechanical filed a third-party complaint alleging that the various third-party defendants were creditors of Custom Mechanical and that their claims exceeded the proceeds of the arbitration award. (*See* Custom Mechanical's Ans. & 3d Party Compl., ¶ 12). Custom Mechanical asked the court to require C.R. Meyer to pay the arbitration proceeds into the registry of the court for distribution among the third-party defendants. (*Id.*, ¶ 14).

On November 1, 2011, the court confirmed the arbitration award and C.R. Meyer and Custom Mechanical settled for $2,000,000. The Court ordered C.R. Meyer to pay the money into the escrow account of Richardson Plowden & Robinson, P.A. (*See* Ex. K, p.1). One-million eight hundred thousand dollars of the $2,000,000 settlement ($200,000 was expressly designated as attorneys' fees) was to be held for the benefit of the creditors until priority was determined by the court. (*Id.*). This money was never considered the property of Custom Mechanical, as exhibited by Custom Mechanical's request that the money be placed into escrow and by Paragraph 3 of the Order which provides, "Custom shall be entitled to assert any priority to the funds. The funds being held pursuant to this paragraph shall be disbursed pursuant to further Order of the Court." (*Id.* at 3). If Custom Mechanical had to prove a claim to the money, it was never considered Custom Mechanical's money. Because the arbitration award was placed, by Order of the Court, into a trust for the benefit of the creditors, and because Custom Mechanical had to demonstrate to the Court it had any right to the money, Custom Mechanical never received the money and the lien does not attach.

c. Even If the Custom Employees are Considered Laborers for Custom Mechanical, and the Lien Attaches, 19 of the Employees Have No Evidence They Erected, Altered, or Repaired a Building.

If the work performed by the laborers did not constitute erection, alteration, or repair of a building, the laborers are not entitled to a lien based on Section 29-7-10. *BellSouth*, 1995 WL

57819 at *3 (holding that the work Dekalb performed for Kelly Green involved the burying of underground telecommunications wires and not the erection of a building). There are nineteen Custom employees who either admit they did not erect, alter, or repair a building during the Project or provide no substantive evidence at all, and Presidential and Security Federal's Motion for Summary Judgment should be granted as to those employees at the very least.

Five employees were neither deposed nor filed an affidavit regarding their work on the Project: (1) Martin Granger, (2) Jack Hegler, (3) Clayton Googe, (4) Nicholas Stewart, and (5) Timothy Stock. Thus, there is no evidence they erected, altered, or repaired a building during the Project.

Presidential and Security Federal deposed twenty of the twenty-nine Custom employees. The twenty individuals did work which included pipefitting, plumbing, and welding, and over half of the individuals deposed did not testify that work involved the alteration, erection, or repair of a building. Thirteen of the employees did not consider the work they performed to be the erection, alteration, or repair of a building.[5] Five of the Custom employees affirmatively stated that they did not "alter, erect, or repair" anything.[6] The other seven employees admitted that other contractors or trades were responsible for actually building the walls, floors, and roof

[5]George Lever showed up for his deposition; however, due to a disability, he was unable to testify and his wife, although she appears on the record, could not testify as to whether George Lever altered, erected, or repaired a building during the Project. (G. Lever Depo., p.8:1-5, attached hereto as **Exhibit Q**). Accordingly, George Lever did not present any evidence that he erected, altered, or repaired a building.

[6] Kinda Phommachanh testified he did not do anything to erect or build the building and did not alter or repair anything either because he only "r[a]n all the pipe" and welded it together, which he stated did not alter or repair the building itself. (Phommachanh Depo., pp.22:20-23:17, attached hereto as **Exhibit R**). Additionally, Brian Field stated he or the people he oversaw did not erect, alter, or repair a building while working on the project, noting the only holes he drilled in the roof or the wall were two-inch "small penetrations" because the larger ones would have already been drilled as part of the initial plans so that the walls would not be messed up by the pipefitters. (Field Depo., pp.49:6-18; 61:11-62:1, attached hereto as **Exhibit S**). William Giffin agreed that his work did not involve the erection, alteration, or repair of a building. (Giffin Depo., pp.25:13-17; 32:23-33:6, attached hereto as **Exhibit T**). Daniel Nichols testified he did nothing to change the configuration of the building. (Nichols Depo., pp.32:21-33:15, attached hereto as **Exhibit U**). Christopher Cullipher stated that he did not erect anything while working on the Project and could not testify he altered or repaired a building either. (C. Cullipher Depo., p.28:9-15, attached hereto as **Exhibit V**).

and the Custom employees were only responsible for running pipe through them. (Carlson Depo., pp.29:16-31:13, attached hereto as **Exhibit W**; Brittingham Depo., pp.25:2-26:6; 31:15-32:1, attached hereto as **Exhibit X**; Lewis Depo., p.22:10-16, attached hereto as **Exhibit Y**; Tiska Depo., pp.35:20-37:10, attached hereto as **Exhibit Z**; Black Depo., pp.29:22-31:25, attached hereto as **Exhibit AA**; Carpenter Depo., pp.26:24-27:18, attached hereto as **Exhibit BB**; Tony Hall Depo., pp.42:23-45:11, attached hereto as **Exhibit CC**). Accordingly, the lien does not apply to (1) Kinda Phommachanh, (2) Brian Field, (3) William Giffin, (4) Christopher Cullipher, (5) Daniel Nichols, (6) Arthur C. Carlson, (7) Thomas Brittingham, (8) Ernest Lewis, (9) Al Tiska, (10) Ralph Black, (11) Al Carpenter, (12) Tony Hall and (13) George Lever.

The remaining seven employees who were deposed, Leonard Wade Cliett, David Cullipher, Joseph A. Doyle, Daniel Friedmann, Matt Lever, Raleigh Roye, and Charles Ellzey, asserted in a variety of ways that they erected, altered, or repaired a building while working on the Project. (Cliett Depo., pp.39:4-42:5; 43:24-44:11, attached hereto as **Exhibit DD**; D. Cullipher Depo., pp.25:16-26:24, attached hereto as **Exhibit EE**; Doyle Depo., 30:10-31:10; p.33:1-34:3, attached hereto as **Exhibit FF**; Ex. I, Friedmann Depo., pp.54:25-55:25; M. Lever Depo., pp.28:3-29:8, attached hereto as **Exhibit GG**; Roye Depo., pp. 32:24-34:3, 47:1-12, attached hereto as **Exhibit HH**; Ellzey Depo., p.26:10-16, attached hereto as **Exhibit II**). Additionally, three more employees, Timothy Hall, Bruce Pollock, and James Waltemath, filed affidavits which alleged they altered, erected, or repaired a building. Therefore, for purposes of this section's analysis only, these eight employees have provided some evidence, albeit only their own testimony, that they erected, altered, or repaired a building.

Finally, although Nancy McFerrin, William McFerrin's wife and executrix of his estate, provided an affidavit as to the work performed by William McFerrin, it cannot be considered

competent evidence as it is highly unlikely she had personal knowledge that the work he did erected, altered, or repaired a building at the Project, and as such, the affidavit should not be considered. (Affidavit of Nancy McFerrin, attached hereto as **Exhibit JJ**). Rule 56(e), SCRCP, provides that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein;" however, Nancy McFerrin's affidavit cannot be said to be made on personal knowledge unless she witnessed her husband erecting, altering, or repairing a building at the Project, and the affidavit provided does not show affirmatively that she is competent to testify as to such matters. *See e.g., Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304, 433 S.E.2d 871, 874 (Ct. App. 1993) (finding an "affiant's status as vice-president of the general contractor, standing alone, does not make him competent to testify on the specifications" at issue because he "still must have personal knowledge of the specifications before his testimony is admissible" and noting the affidavit did not demonstrate any such personal knowledge). Therefore, William McFerrin's claims should also be dismissed since there is no evidence he erected, altered, or repaired a building during the Project.

In sum, there is no competent evidence to support nineteen of the twenty-nine employees' claims under Section 29-7-10; therefore, the claims of those nineteen individuals should be dismissed.

d. Those Custom Employees That Claimed They Erected, Altered, or Repaired a Building Have No Evidence of What Portion of the Vacation Fund They are Owed for Work Done to Erect, Alter, or Repair

A lien under S.C. Code § 29-7-10 does not attach for the Custom employees because the Custom employees have no evidence of the portion of their labor or the amount of their wages that are related to or involved in the erection, alteration, or repair of a building.

Even if the nineteen Custom employees who presented no competent evidence that their work concerned the erection, alteration, or repair of a building, not one of the Custom employees deposed could give any evidence as to what portion of their work was spent erecting, altering, or repairing a building for purposes of Section 29-7-10, or whether C.R. Meyer ever paid for that work. Doyle testified that he could not describe in detail what he did during a specific day, and he stated that as a foreman, the different jobs present at the Project varied from day to day. (Ex. FF, Doyle Depo., pp.30:10-31:10; p.33:1-17). Additionally, Doyle stated that between March and June 2007, the Custom employees worked inside the buildings "probably more" but worked outside as well. (*Id.* at pp.33:18-34:3). A majority of the Custom employees could not reconstruct a day of work or otherwise describe what they did during a day from beginning to end. (Ex. AA, Black Depo., pp.34:10-15; 37:1-2; Ex. X, Brittingham Depo., p.38:3-14; Ex. W, Carlson Depo., p.33:16-23; Ex. BB, Carpenter Depo., pp.35:22-36:18; Ex. DD, Cliett Depo., p.53:6-25; Ex. V, C. Cullipher Depo., p.27:3-10; Ex. EE, David Cullipher Depo., p. 27:17-28:10; Ex. HH, Roye Depo., p.39:8-40:1; Ex. II, Ellzey Depo., p.27:1-18; Ex. S, Field Depo., p.50:11-20; Ex. I, Friedmann Depo., p.39:22, 57:6-9; Ex. T, Giffin Depo., p.25:18-25; Ex. CC, Tony Hall Depo., 56:7-16; Ex. GG, M. Lever Depo., p.33:19-25; Ex. U, Nichols Depo., p.36:1-18; Ex. Z, Tiska Depo., p.39:21-40:19; Ex. Q, G. Lever Depo., p.8:1-5). Although Ernest Lewis attempted to reconstruct his days, all he could remember was that during May his day was generally spent

"running pipe machine threading for the air line" and that during March his day was spent doing underground plumbing. (Ex. Y, Lewis Depo., pp.51:1-23, 52:19-53:23).

Moreover, none of the affidavits filed by Timothy Hall, Bruce Pollock, James Waltemath, and Nancy McFerrin stated what portion of work was spent erecting, altering, or repairing a building, those four claims should be dismissed as well. Finally, as stated above, five employees have neither been deposed nor filed an affidavit, and as such, the claims of (1) Martin Granger, (2) Jack Hegler, (3) Clayton Googe, (4) Nicholas Stewart, and (5) Timothy Stock should also be dismissed.

As Section 29-7-10 must be strictly construed, the Custom employees must provide substantive evidence of the portion of work spent erecting, altering, or repairing a building, and without that competent evidence, they cannot show that the statutory lien attaches. *Bellsouth Telecomm.*, 1995 WL 578191; *see also Poinsett Constr.*, 301 S.C. at 344, 491 S.E.2d at 876; *Morgan & Alston*, 70 S.C. 462, 50 S.E.26, 27. Since no competent evidence was presented as to the portion of work spent erecting, altering, or repairing a building, all of the Custom employees' claims should be dismissed.

IV. CONCLUSION

The Custom employees have no competent evidence they are entitled to priority over a perfected security interest. The employees are not entitled to money owed to Custom Mechanical because they were not employees of Custom Mechanical; the employees had no contractual agreement with Custom Mechanical; and the employees are not entitled to a statutory lien pursuant to S.C. Code Ann. § 29-7-10. Based upon the foregoing, Presidential and Security Federal respectfully request the Court grant this Motion for Summary Judgment, deny the

Custom employees' Motion for Summary Judgment, and grant any additional remedy available under law.

[Signature Block on Following Page]

Respectfully submitted,

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Columbia, South Carolina
January 24, 2013

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
C.R. Meyer and Sons Company, Plaintiff/Petitioner -v- Custom Mechanical CSRA, LLC, Defendant/Respondent	**Civil Action No: 2010-CP-40-8621**
Custom Mechanical CSRA, LLC, Third-Party Plaintiff, Respondent -v- Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North	**MEMORANDUM OF CUSTOM EMPLOYEES IN SUPPORT OF THEIR ORIGINAL AND AMENDED MOTIONS FOR SUMMARY JUDGMENT AND IN OPPOSITION TO BANKS' MOTION FOR SUMMARY JUDGMENT**

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

TO: JOHN T. LAY, JR., ESQ. and ROBERT L. BUCHANAN, JR., ESQ., Attorneys for Third-party Defendants; and FRANCIS M. MACK, ESQ., Attorneys for Defendant/Respondent:

This Memorandum is offered in support of the original and Amended Motions for Summary Judgment of Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, Leonard Wade Cliett, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees") filed on October 19, 2012, and December 3, 2012. It is also offered in opposition to the Motion for Summary Judgment filed by Third-party Defendants Presidential Financial Corporation and Security Federal Banks' (collectively referred to hereinafter as "the Banks").

References to pleadings herein below are to documents filed in the Custom Employees' underlying lawsuit against their employers, styled as "Friedman, et al. v. Custom Industrial

Services, LLC, Custom Mechanical CSRA LLC, Custom Mechanical CSRA, Inc., et al., " C/A No: 2008-CP-02-413 (hereinafter "Friedman Case").

FACTS

In 2006 and 2007, Custom Industrial Services, LLC and/or Defendant Custom Mechanical (collectively hereinafter "Custom") employed the 29 Custom Employees as plumbers, pipefitters, and welders on a project at the Kimberly-Clark plant at Beech Island, South Carolina (the "Project"). (2nd Am. Friedman Case Compl. ¶¶ 38, 43; Friedman Case Answer ¶¶ 12, 43.) Upon their initial employment, each Custom Employee was provided the opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund, wherein the employee would choose to have either five, ten, or fifteen percent of their weekly wages withheld by Custom. (2nd Am. Friedman Case Compl. ¶¶ 44, 46; Friedman Case Answer ¶¶ 18, 20.) These withheld amounts, consisting entirely of employee-earned wages, were to be paid monthly to the appropriate local union so that the union could cut checks to the Custom Employees and their coworkers during the summer and Christmas holiday. (2nd Am. Friedman Case Compl. ¶¶ 47, 48; Friedman Case Answer ¶¶ 21, 22.)

As a subcontractor on the Project, Custom was responsible for laying two stories of underground pipe as well as in-wall, internal, and external pipe for a facility built to house a giant, multi-story, toilet-tissue making machine. The general contractor on the Project was Plaintiff C.R. Meyer and Sons Company ("C.R. Meyer"). At arbitration, the Arbitration Panel found the following to be the scope of the work performed at Kimberly-Clark by Custom:

> Beginning in 2005 and through 2007, C.R. Meyer & Son, Inc. ("CRM"), as Construction Manager and General Contractor, undertook to construct a fourth tissue paper line for Kimberly-Clark Corporation at it facility at Beech Island, SC. CRM's work for the new line included modifying the existing facility in order to accommodate the new tissue paper machine and line. The preparatory and modification scope of work for the new line included underground piping, clarifier relocation, converting, cooling tower, and plumping. These scopes of work, together with the installation of the new Tissue Machine itself, were collectively

referred to as BI-4 Tissue Machine and Expansion Project ("BI-4"). CRM's work also included improvements to Kimberly-Clark's diaper line at another part of the Beech Island facility, known as the Hulk Project ("Hulk") (BI-4 and Hulk are collectively referred herein as the "Projects"). Industrial piping was required for each of the Projects, and CRM solicited bids from Custom Mechanical ("Custom") [per footnote: Custom Mechanical provided union-labor services to the Projects through its wholly-owned subsidiary, Custom Industrial] and eight other piping subcontractors for the Projects.

. . .

Beginning in early 2006, CRM awarded Custom the underground piping, clarifier relocation piping, converting piping, cooling tower piping, and plumbing, as the BI-4 preparatory work to the new tissue machine installation, in five subcontracts, identified as #37507, 37531, #37556, #37557, and #37560. Custom successfully substantially completed these subcontracts prior to July 5, 2007. On July 26, 2006, Custom was awarded the piping subcontract for the Hulk Project, identified as #37355, and thereafter substantially completed its piping work for the Hulk prior to July 5, 2007.

. . .

The last part of the BI-4 work to be designed and constructed was the delivery, installation, start-up, and operation of the #4 Tissue Machine itself. The piping work for the #4 Tissue Machine, which became #4 Tissue Machine Piping Subcontract #37579, was larger in scope and more involved than the piping work of the other five BI-4 subcontracts combined. In order to create a competitive pricing atmosphere for #37579, CRM subdivided the work of #37579 into five discrete scopes of piping work, utility bridge, utilities, stock prep, steam and condensate, and #4 Tissue Machine hook-up.

. . .

As of September 5, 2006, [CRM] estimated the reasonable value of the piping installation costs of the five subparts of #37579 to be in excess of $4,000,000.00, exclusive of overtime

. . .

Soon after the CRM/Custom October 21, 2006 meeting, Custom advised CRM that it would submit a bid for the remaining subpart of #37579, the Tissue Machine Installation. On November 3, 2006, CRM immediately awarded #37579 to Custom for the subparts previously bid by Custom, in the amount of $2,821,630.00. . . . A review of Custom's bid record shows that Custom's labor bid for all of #37579 was $3,027,912.00.

(Ex. 1, Wall Aff., Ex. A [Arb. Award].)

Around May 2007, Custom began laying off employees, terminating each Custom Employee without cause by the year's end. (2nd Amended Friedman Case Compl. ¶¶ 49, 50; Friedman Case Answer ¶¶ 23, 24.) Despite the Custom Employees' participation in the

vacation/holiday savings fund, **Custom admitted in their Answer that "they have not paid final monies owed to the appropriate local union," leaving the union without money to disburse and preventing the Custom Employee from receiving wages that Custom has owed them for more than five years.** (2nd Amended Friedman Case Compl. ¶¶ 51, 52; Friedman Case Answer ¶¶ 25, 29 [emphasis added].)

In the interim, Custom retained counsel on an hourly basis to sue C.R. Meyer for allegedly failing to pay Custom all monies due by contract. At arbitration, the Arbitration Panel found that C.R. Meyer had "materially breached the seven subcontracts with Custom, #37355 (Hulk), #37505, #37531, #37556, #37580, and #37579. (Ex.1, Wall Aff., Ex. A [Arb. Award at p. 6.].) The Arbitration Panel determined that Custom was entitled to recover from C.R. Meyer, "the reasonable value of work performed by Custom on all seven subcontracts, including reasonable overhead and profit (less prior payments), and Custom's reasonable attorneys fees." (Id. at pp. 6-7.) On November 8, 2010, the Arbitration Panel issued an award in favor of Custom against C.R. Meyer in the amount of $1,976,548.00. (Id. at pp. 8.)

By Confession of Judgment entered on February 14, 2011, Defendant Custom Mechanical CSRA, LLC and its sister companies confessed judgment to the Custom Employees in the amount of Two-Hundred Seventy-five Thousand and no/100 ($275,000.00) Dollars for vacation pay wrongfully withheld. (Ex. 2.)

Previously, the Friedman Case trial court issued a Warrant of Attachment commanding law enforcement to attach and seize so much of the proceeds of the $1,976,548.00 Arbitration Award as was needed to secure the Custom Employees' judgment. (Ex. 3.)

Ultimately, Custom recovered a pool of $1.8 million Dollars. The instant lawsuit is now between Custom's remaining creditors, the Custom Employees and the Banks, over their rights to the remaining arbitration proceeds. Previously, this Court released all but $325,000.00 of

said funds to the Banks. (Order dated Nov. 13, 2012.)

ARGUMENT

The Custom Employees are entitled to summary judgment because they were "laborers" of Custom who were involved in the "erection, alteration, or repairing of buildings" at the Project and, as such, they have a priority interest above all creditors as to the arbitration proceeds paid by the General Contractor C.R. Meyer to Subcontractor Custom pursuant to S.C. Code Ann. §§ 29-7-10 and 41-10-10 et seq.

I. Summary Judgment Standard

A trial court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), SCRCP. The non-moving party "may not rest on the mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this rule, **must set forth specific facts showing that there is a genuine issue for trial.**" Rule 56(e), SCRCP (emphasis added).

To determine whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). Where the burden of proof is the preponderance of the evidence, the non-moving party is required to submit only a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330, 673 S.E.2d at 803.

Even where the standard of proof is the preponderance of the evidence, the non-moving party must still make some evidentiary showing to survive a motion for summary judgment. This Court has defined a scintilla of evidence as "any material evidence that, if true, would tend

to establish the issue in the mind of a reasonable juror." Turner v. American Motorists Ins. Co., 176 S.C. 260, 180 S.E. 55, 58 (1935). Speculative, theoretical, and hypothetical views do not constitute material evidence necessary to meet the scintilla standard. Id.; Gosnell v. S.C. Dept. of Transp., 282 S.C. 526, 533, 320 S.E.2d 454, 457 (1984). Evidence must be probative; mere speculation is not probative and will be insufficient to overcome a motion for summary judgment. McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872, 875 (1947).

II. Custom Employees are entitled to priority

The Custom Employees have a priority interest in the arbitration proceeds which Custom received from C.R. Meyer. According to section 41-10-40 of the South Carolina Code, the Payment of Wages Act, an employer is required to timely pay all wages due. Additionally, under section 41-10-50, if an employer discharges an employee, it must timely pay him all wages due. S.C. Code Ann. § 41-10-40, 50 (1976). If an employer fails to pay an employee, the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees that the court may allow. S.C. Code Ann. § 41-10-80 (1976). As used in this statute, "wages" includes vacation, holiday, and sick leave payments which are due to an employee under a policy or employment contract. S.C. Code Ann. § 41-10-10 (1976). In this particular case at hand, the employees are claiming wages due to them under an employment contract setting up a vacation/ holiday savings fund which consisted of all earned employee money. Therefore, the wages claimed in this case fall within those covered by the Payment of Wages Act. Treble damages are appropriate when the witholding was unreasonable and there was no good faith wage dispute. Treble damages are appropriate when an employer should be punished for forcing an employee to resort to the court in an unreasonable or bad faith wage dispute. Rice v. Multimedia Inc., 318 S.C. 95, 98, 456 S.E.2d 381, 383 (1995).

Under section 29-7-10, the Custom Employees have a first lien on the money received by Custom from C.R. Meyer for the work done. S.C. Code Ann. § 29-7-10 (1976). According to this code section, a contractor or *subcontractor* in the "erection, alteration, or repairing of buildings" shall pay all *laborers* for their lawful services out of the money received for the "erection, alteration, or repairs of buildings" upon which the *laborers* are employed, and such *laborers* shall have a first lien on the money received by such contractor for the "erection, alteration, or repair of such building" in proportion to the amount of their claim. *Id.* The lien cannot exist until the contractor (or sub-contractor) has received the money from the property owner. The owner is expressly exempt from any responsibility and will not be liable to the laborer or material supplier, the lien is only upon the money once it is in the hands of the contractor (or sub-contractor). Morgan & Austin v. D.W. Alderman & Sons' Co., 70 S.C. 462; 50 S.E. 26 (1905). This statute is concerned with the rights of subcontractors, laborers and materialmen in the money that has been paid by the property owner to the prime contractor, and not against the property owner or in the balance of the contract price in the hands of that owner. Lowndes Hill Realty Company v. Greenville Concrete Company, 229 S.C. 619, 93 S.E.2d 855 (1956). The statute provides laborers with a means to receive payment from contractors for work performed on building projects. Poinsett Const. Co., Inc. v. Fischer, 301 S.C. 343, 391 S.E.2d 875, 876 (1990).

In deciding the issue of a subcontractor's or laborer's first lien, Article 9 of the Uniform Commercial Code does not apply. Poinsett, 391 S.E.2d 875 (A statutory lien created by 29-7-10 was a first lien and had priority over security interest in which contractor had given in its accounts receivable, even though the security interest was perfected before the statutory lien came into existence.)

As section 29-7-10 does not expand on what types of work are covered, and South Carolina case law does not define the terms, the application of similar statutes can be looked to

for guidance.

A. Little Miller Acts interpretation

The national Miller Act and accompanying state Little Miller Acts also look to provide remedies for unpaid subcontracting laborers on public projects. 40 U.S.C. § 3133(a)(1) gives "[e]very person that has furnished labor or material in carrying out work provided for in a contract" the right to bring an action for payment. In analyzing the Miller Acts, the Fifth Circuit described a subcontractor as "one who performs and takes from the prime contractor a specific part of the labor or material requirements of the original contract." Elmer v. U.S. Fidelity & Guar. Co., 275 F.2d 89, 90 (5th Cir. 1960). In this case, Custom signed a series of subcontracts with the contractor for both labor and material. If the Project fit into the Miller Act framework, then the Custom Employees would certainly have qualified for recovery under the Miller Act standards.

In discussing Alaska's Little Miller Act, the Supreme Court of Alaska stated that "the Alaska statute, like the federal Miller Act, is remedial in nature and is to be liberally construed to effectuate its purpose." Imperial Mfg. Ice Cold Coolers, Inc. v. Shannon, 101 P.3d 627, 630 (Alaska 2004) (citations omitted). The Alaska Court also stated that the statute's purpose is "to protect persons who furnish labor or material for a state public works project from the risk of nonpayment." Id. at 629. Citing a Colorado case, Alaska's Court further stated that "[t]he purpose of the Miller Act is to ensure that subcontractors have some remedy if they are not paid, since on public projects they cannot protect themselves by filing a lien." Id. at 630.

In this case, the Custom Employees are at risk of nonpayment. South Carolina's laborer's lien statute, which has purposes similar to those of the Miller and Little Miller Acts, should work to protect the workers from this risk. The Miller Act provides extra protection for laborers "since on public projects they cannot protect themselves by filing a lien." Id. Here, the

Kimberly-Clark project was not a public project, and the laborers could not file a lien. To subject these workers to nonpayment because the statute does not specifically name the work they performed would go against the purpose of this type of statute.

"Historically, when interpreting the Maryland Little Miller Act, [the Maryland courts] have analogized the Act with the Maryland mechanics' lien statute." Insurance Co. of North America v. Genstar Stone Products Co., 338 Md. 161, 174, 656 A.2d 1232, 1238 (Ct. App. 1239) (internal citation omitted). The court reasoned that it is to the advantage of contractors and subcontractors who work on state, local, and private projects to apply the same rules under the Little Miller Act and the mechanic's lien statute. Id. at 179, 656 A.2d at 1241. Looking to "highly relevant precedent" under the in-state mechanic's lien statute instead of the varying application of other Little Miller Acts cuts down on the amount of persuasive precedent that needs to be considered. Id.

B. Mechanic's liens guidance

The Research References listed in the S.C. Code after section 29-7-10 on laborer's liens specifically point to mechanics' liens for guidance. South Carolina's mechanic's lien statute, which also ensures payment of laborers, uses the same erection, alteration, and repair language as section 29-7-10 and goes on to describe what type of work fits into those categories:

> As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris.

S.C. Code Ann. § 29-5-10(a).

Discussing that statute, the South Carolina Court of Appeals stated that "the rule in this State is that mechanic's lien statutes, being remedial, are to be given a liberal construction." Clo-Car Trucking, at 575-76, 320 S.E.2d at 53. Further discussing the statute, the court stated that the word building includes "an erection intended for use and occupation as a habitation, or for some purpose of trade, manufacture, ornament, or use, such as a house, store, church, or shed." Id. at 576-577, 320 S.E.2d at 54. The court also stated that "a mechanic's lien cannot attach to land or to an owner's interest in land where the work done is unconnected with and forms no integral part of the erection, alteration, or repair of either a building or a structure of some description." Id. at 578, 320 S.E.2d at 54.

In this case, the Custom Employees did both underground and above-ground plumbing work, laid utility lines and pipes on the roof and through the building, installed drains on the roof and in the basement, and installed a large, complex, tissue machine. All of this work falls under the description of erecting, altering, and repairing given in the mechanic's lien statute. The court should apply the same standards to the laborer's lien – provided by section 29-7-10 – as the mechanic's lien – provided by section 29-5-10(a) – and find that the Custom Employees qualify for a first lien as laborers under the statute.

C. Buildings and fixtures

It might be argued that Custom Employees' contributions to the Project were only fixtures and should not be considered part of the building. However, a South Carolina Law Review article about mechanics' liens, listed as a Research Reference to section 29-7-10 on laborers' liens, states that "[t]hose who furnish fixtures in connection with the erection, alteration, or repair of any building, or to improvement of any real estate are entitled both to a mechanic's lien and to a security interest under [the U.C.C.]." Mechanics' Liens in South Carolina, 25 S.C. L. Rev. 817, 825 (1974). Application of laborer's liens under section 29-7-10

should be viewed in the same manner.

A fixture is "personal property that is attached to land or a building and that is regarded as an irremovable part of the real property, . . . personal property becomes a fixture when it is physically fastened to or connected with the land or building and the fastening or connection was done to enhance the utility of the land or building." Black's Law Dictionary (9th ed.-2009), fixture. Fixtures are permanent, "fixed" features and are considered part of a building. Whether or not something is a fixture depends on "the nature of the fixtures, the manner of their attachment, and the permanent or temporary nature of the same." *Carroll v. Britt*, 227 S.C. 9, 15, 86 S.E.2d 612, 615 (1955).

At the very least, the #4 Tissue Machine constructed and installed by Custom Employees should be considered a permanent fixture and part of the building. In Hughes v. Edisto Cypress Shingle Co., the South Carolina Supreme Court held that permanent attachments were fixtures and that portable machines were not. 51 S.C. 1, 12, 28 S.E. 2 (1897) (finding a cotton gin to be a fixture but portable engine and sawmill not to be). Quoting a Washington state case, the Court in Hughes stated:

> If a building be erected for a definite purpose, or to enhance its value for occupation, whatever is built in it to further those objects becomes a part of it, even though there be no permanent fastenings, such as would cause a permanent injury if removed. But mere furniture, although some fastenings be necessary to its advantages use, is removable.

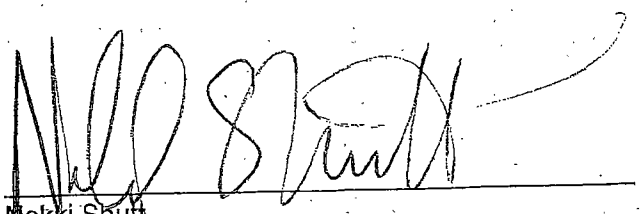
Hughes, at 6 (quoting Wade v. Donau Brewing, 10 Wash. 284, 289, 38 P. 1009, 1011 (1894)). Our Court of Appeals has held that the pipping, utilities, and duct work for air conditioning a building should be considered part of the building. Carson v. Living Word Outreach Ministries, Inc., 315 S.C. 64, 431 S.E.2d 615 (Ct. App. 1993) (holding pipes, wires, ducts, and air conditioning units were fixtures as a matter of law) and Marine Midland Trust Co. of Binghamton v. Ahern, 16 N.Y.S.2d 656 (1939) (holding a refrigeration machine was a permanent fixture, even though it was only attached by pipes and wires and could be removed without injuring the

building). The work on these fixtures should be considered erection, alteration, or repair of the building.

The court should find that the work done by the Custom Employees falls within the "erection, alteration, or repairing of buildings" under S.C. Code Ann. Section 29-7-10 and, thus, entitles the Custom Employees to a priority lien over the Banks. Liens have been allowed for comparable labor under statutes with similar purposes and language, especially the State's mechanic's lien statute. South Carolina's mechanic's lien applies to laborers that furnish fixtures for building projects. As such, these laborers should be entitled to a first lien on the monies paid to the Custom.

CONCLUSION

For the reasons set forth above, the Custom Employees ask that the Court to conclude that they are entitled to a priority lien over the arbitration award as a matter of law and to schedule a separate damages hearing to determine the amount of the said lien. The argument contained in this memorandum is based on the pleadings filed in this matter, the rules of court, any depositions and discovery taken prior to the hearing on this motion, any affidavits, oral argument, and any further memorandum of law to be submitted by the Custom Employees prior to the hearing on this matter.



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Columbia, South Carolina

January 24, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

C.R. Meyer and Sons Company,

Plaintiff/Petitioner,

v.

Custom Mechanical CSRA, LLC,

Defendant/Respondent.

Custom Mechanical CSRA, LLC

Third-Party Plaintiff, Respondent

v.

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, et al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-40-8621

STIPULATION OF DISMISSAL WITH PREJUDICE

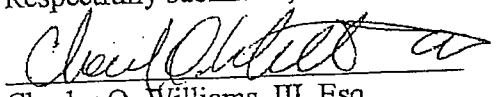
RICHLAND COUNTY
FILED
2013 JAN 24 PM 4:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

PLEASE TAKE NOTICE that Third-Party Defendants Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. and Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H.F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds (collectively the "Funds") waive any claims to the proceeds of this action, whether held in escrow or otherwise, and consent to a dismissal of its claims in this action. The Funds,

with the consent of the other parties that remain in this action, stipulate to the dismissal ONLY pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure. Any counterclaims and crossclaims against the Funds are also dismissed with prejudice pursuant to Rule 41(c), SCRCP. This notice and stipulation is signed by all parties in this action. The action shall continue as to the remaining parties.

[Signatures on Following Page]

Respectfully submitted,



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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff/Petitioner

-v-

Custom Mechanical CSRA, LLC,

Defendant/Respondent

Custom Mechanical CSRA, LLC,

Third-Party Plaintiff, Respondent

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North

Civil Action No: 2010-CP-40-8621

COPY

REPLY OF CUSTOM EMPLOYEES IN OPPOSITION TO THE BANKS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
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JEANNETTE W. McBRIDE
C.C.P. & G.S.

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

TO: JOHN T. LAY, JR., ESQ. and ROBERT L. BUCHANAN, JR., ESQ., Attorneys for Third-party Defendants; and FRANCIS M. MACK, ESQ., Attorneys for Defendant/Respondent:

On January 24, 2013, Third-party Defendants Presidential Financial Corporation and Security Federal Banks' (collectively referred to hereinafter as "the Banks") filed "Third-party Defendants and Crossclaimants Presidential Financial Corporation's and Security Federal Bank's Memorandum in Support of their Motion for Summary Judgment and in Opposition to Custom Employees' Motion for Summary Judgment." This reply is offered in opposition to the same by Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, William R. McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, Leonard Wade Cliett, and Bruce Pollock, Jr., (hereinafter collectively referred to as "Custom Employees").

References to pleadings herein below are to documents filed in the Custom Employees'

underlying lawsuit against their employers, styled as "Friedman, et al. v. Custom Industrial Services, LLC, Custom Mechanical CSRA LLC, Custom Mechanical CSRA, Inc., et al., " C/A No: 2008-CP-02-413 (hereinafter "Friedman Case").

"The Project" refers to contracts under which Custom Industrial Services, LLC, Custom Mechanical CSRA, Inc., and/or Defendant Custom Mechanical CSRA, LLC (collectively herein after "Custom") employed the 29 Custom Employees as plumbers, pipefitters, and welders at the Kimberly-Clark plant at Beech Island, South Carolina.

REPLY ARGUMENT

The Custom Employees respectfully ask the Court to deny the Banks' motion for summary judgment because the Custom Employees are entitled to summary judgment as "laborers" of Custom who were involved in the "erection, alteration, or repairing of buildings" at the Project and, as such, they have a priority interest above all creditors as to the arbitration proceeds paid by the General Contractor C.R. Meyer to Subcontractor Custom pursuant to S.C. Code Ann. §§ 29-7-10 and 41-10-10 et seq.

I. Summary Judgment Standard

A trial court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), SCRCP. To determine whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). Where the burden of proof is the preponderance of the evidence, the non-moving party is required to submit only a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330, 673 S.E.2d at 803.

II. The Court should deny the Banks' motion for summary judgment

A. Custom Employees do have standing

The Banks do not have standing to object to the Custom Employees' standing because that issue was decided as part of the Friedmann case. In the underlying case, the Custom Employees sued Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial (herein after collectively referred to as "Custom"). (Compl.) All three Custom Defendants confessed to a judgment in favor of the Custom Employees. (Custom Employees' Mem. Supp. Summ. J., Ex. 2 [Confession of Judgment].) Judge Early also issued a Warrant of Attachment as to the very arbitration proceeds which are at issue now. (Id., Ex. 3.) Thus, it is disingenuous of the Banks to assert that the Custom Employers are not creditors of Custom Mechanical. Morever, it is the law of the case, and the Banks should be estopped from asserting this defense by collateral estoppel and res judicata doctrines.

Nor can the Banks assert lack of standing vis-a-vis the Custom Employees and their union from a factual standpoint. As Custom Employees' earned wages were deducted from their paychecks and never returned in any form, they have standing in the case at hand regardless of whether or not they directly participated in the agreement between the Local Union No. 150 and Custom. Notably, those employees who complained about Customs' actions to the Office of Wages and Child Labor in the Department of Labor, Licensing and Regulation, all received letters stating the following: "If you have not received your wages, you may pursue legal action in court under Section 41-10-80 (c) of the South Carolina Payment of Wages Law. This section allows for triple damages, court costs and reasonable attorney fees." (See Exs. A & B to Pls.' Mem. Opp. to Summ. J in Friedman case.) In this sense, after completing their investigation of Custom, the regulatory agency most intimately involved with the South Carolina Payment of Wages Act certified the Custom Employees' standing to sue in this matter.

Nevertheless, even without this statutory standing, the Custom Employees still meet their Constitutional burden. South Carolina courts have adopted the United States Supreme Court's three-part test, outlined in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), to determine if an individual has standing according to the parameters of the Constitution. This test was recently articulated in ATC South, Inc. v. Charleston County, 380 S.C. 191, 669, S.E.2d 337 (2008):

> First, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Id, at 196, 669 S.E.2d at 339 (citing Lujan, 504 U.S. at 560-61).

In applying this test to the case at hand, the Custom Employees certainly have standing. First, the fact that the Custom Employees had wages withheld and never repaid is a clear indication of an "injury in fact," concrete and particularized and actual. Put simply, the Custom Employees agreed to have a specific percentage of their wages deducted from each paycheck under the promise that those wages would be returned during summer and winter vacations. They have not received a penny of those withheld wages. As to the second part of the test, the very reason that Custom Employees do not have their money is because Custom would not pay the amounts owed. There is no intervening factor here, as fault was admitted by Custom. (3rd Am. Compl. ¶¶ 54, 55; Answer ¶¶ 25, 29.) Finally, the third part of the test is satisfied by the Confession of Judgment. Thus, the Custom Employees clearly satisfy this test.

B. Custom Employees are entitled to priority because they erected, altered, or repaired a building

The Custom Employees have a priority interest in the arbitration proceeds which Custom received from General Contractor C.R. Meyer. Under section 29-7-10, a contractor or

subcontractor in the "erection, alteration, or repairing of buildings" shall pay all *laborers* for their lawful services out of the money received for the "erection, alteration, or repairs of buildings" upon which the *laborers* are employed, and such *laborers* shall have a first lien on the money received by such contractor for the "erection, alteration, or repair of such building" in proportion to the amount of their claim. S.C. Code Ann. § 29-7-10 (Law. Co-op 1976). The statute provides laborers with a means to receive payment from contractors for work performed on building projects. Poinsett Const. Co., Inc. v. Fischer, 301 S.C. 343, 391 S.E.2d 875, 876 (1990). Moreover, Article 9 of the Uniform Commercial Code does not apply. Poinsett, 391 S.E.2d 875. Notably, in Poinsett, the Supreme Court found that a statutory lien created by section 29-7-10 was a first lien and had priority over security interest in which contractor had given in its accounts receivable, even though the security interest was perfected before the statutory lien came into existence.

The Custom Employees have collectively proved that they were engaged in the erection, alteration, and repairing of buildings at the Project. In affidavits on file with the Court – and attached hereto as **Exhibit 1** – Custom Employees Timothy Hall, George Lever, Bruce Pollock, Nick Stewart, James Waltemath, and Nancy McFerrin on behalf of her deceased husband William McFerrin testified as follows:

- They were laborers for Custom at the Project;
- Custom was a subcontractor for General Contractor C.R. Meyer and Sons Company;
- Custom was responsible for installing all piping and tubing on the Project;
- As plumbers, pipefitters, and welders, they helped erect, alter, and repair a building to house the "giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant." This included laying pipes for water, sewage, water treatment, and drainage purposes at the Project.
- The tissue machine was built into the building and it required Custom Employees to fabricate and install "substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to

> erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant . . . . The tissue machine was wired into the building's electrical system."

(Ex. 1.) These affidavits are illustrative of the work done by all of the Custom Employees. The Banks deposed twenty Custom Employees. For the sake of brevity and so as not to overwhelm the clerk, the Custom Employees are not attaching all deposition transcripts to this Memorandum. Admittedly, three Custom Employees have not been deposed or provided affidavits yet; however, these men were all named parties in the Friedman case, and their Complaint outlines the assertions they will make at trial.

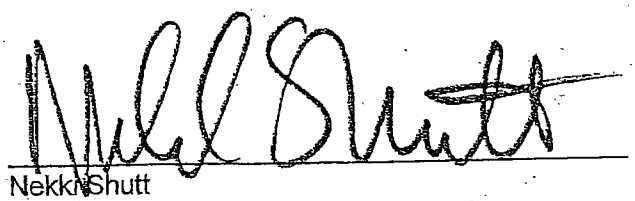
While their educational backgrounds and levels of sophistication differ, these men are all plumbers, pipefitters, and welders by trade. They belonged to a plumbers, pipefitters, and welders union during all times that Custom provided labor to the Project. In fact, Custom did not hire them individually. Rather, Custom relied upon their union to send them to the job site. As such, the trade skills they provide are fungible and interchangeable. And, it is undisputed that every one of the Custom Employees worked on the Project.

The court should find that the work done by the Custom Employees falls within the "erection, alteration, or repairing of buildings" under S.C. Code Ann. Section 29-7-10 and, thus, entitles the Custom Employees to a priority lien over the Banks. Liens have been allowed for comparable labor under statutes with similar purposes and language, especially the State's mechanic's lien statute. (See Custom Employees' Mem. Supp. Mot. Summ. J., Jan. 24, 2013.) As such, these laborers should be entitled to a first lien on the monies paid to the Custom.

CONCLUSION

For the reasons set forth above, the Custom Employees ask that the Court to conclude that they are entitled to a priority lien over the arbitration award as a matter of law and to schedule a separate damages hearing to determine the amount of the said lien. The argument

contained in this memorandum is based on the pleadings filed in this matter, the rules of court, any depositions and discovery taken prior to the hearing on this motion, any affidavits, oral argument, and any further memorandum of law to be submitted by the Custom Employees prior to the hearing on this matter.



Nekki Shutt
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200 (29201)
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901
Nekkishutt@callisontighe.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, THOMAS BRITTINGHAM, ARTHUR C. CARLSON, CHRISTOPHER CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, CHARLES R. ELLZEY, BRIAN FIELD, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, WILLIAM R. MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTEMATH, AL TISKA, AL CARPENTER, LEONARD WADE CLIETT, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

January 31, 2013

EXHIBIT 1

Index to Filed Affidavits

Re: C.R. Meyer and Sons Company, Plaintiff/Petitioner v. Custom Mechanical CSRA, LLC Defendant/Respondent/Third-Party Plaintiff, Respondent Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Ellzey; Brian Field, Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett, Bruce Pollock, Jr., and Security Federal Bank
C/A No: 2010-CP-40-8621
Our File No.: 5122.001

A. Timothy Hall
B. George Lever
C. Nancy McFerrin, Duly-appointed Executrix for William R. McFerrin
D Bruce Pollock
E Nicholas Stewart
F James Waltemath

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Ellzey; Brian Field, Clayton W. Googe, Jr.; Martin

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C.P. & G.S.

AFFIDAVIT OF TIMOTHY R. HALL, JR.

Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,

Third-Party Defendants.

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is Timothy R. Hall, Jr. My address is South Carolina.

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. I was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about January 3, 2006. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible for installing all piping and tubing on the Project.

8. My services were always as a pipefitter on the Project. In that capacity, I helped my fellow Custom laborers to erect, alter, and repair a building to house the giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant. As part of the Custom crew, I laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. I provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay me all of my wages due.

13. Custom owes me $2,808.25 in wages plus interest, treble damages, and attorney's fees for work I did at the Project.

FURTHER AFFIANT SAYETH NOT.

TIMOTHY R. HALL, JR.

Sworn to before me this
5th day of December, 2012.

Notary Public for the State of TN
My Commission Expires: My Commission Expires June 8, 2016

STACEY BEENE
STATE OF TENNESSEE
NOTARY PUBLIC
HAMILTON COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

C/A No: 2010-CP-40-8621

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Elizey; Brian Field, Clayton W. Googe, Jr.; Martin

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JEANETTE W. McBRIDE
C.C.P. & G.S.

AFFIDAVIT OF GEORGE G. LEVER

Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,

Third-Party Defendants.

COUNTY OF Columbia)
) ss
STATE OF GEORGIA)

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is George G. Lever. My address is C/O Ms. Sharon Lever, GA

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. I was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about May 8, 2006. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible installing all piping and tubing on the Project.

8. My services were always as a pipefitter on the Project. In that capacity, I helped my fellow Custom laborers to erect, alter, and repair a building to house the giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant.

As part of the Custom crew, I laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. I provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay me all of my wages due.

13. Custom owes me $2,693.71 in wages plus interest, treble damages, and attorney's fees for work I did at the Project.

FURTHER AFFIANT SAYETH NOT.

George G. Lever

GEORGE G. LEVER

Sworn to before me this
14th day of December, 2012.

Heide M. Andrews

Notary Public for the State of Georgia
My Commission Expires: 3-3-14

HEIDE M. ANDREWS
NOTARY PUBLIC
COLUMBIA COUNTY
STATE OF GEORGIA
My Commission Expires March 3, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Elizey; Brian Field, Clayton W. Googe, Jr.; Martin

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RICHLAND C.C.P. & G.S.

AFFIDAVIT OF NANCY McFERRIN

Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,

Third-Party Defendants.

COUNTY OF Richmond)
) ss
STATE OF GEORGIA)

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is Nancy McFerrin. My address is , GA

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. My deceased husband, William R. McFerrin, was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about March 20, 2006. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible for installing all piping and tubing on the Project.

8. My husband served as a pipefitter on the Project. In that capacity, he helped erect, alter, and repair a building to house the giant tissue machine which became a fixture and

permanent part of the building at the Kimberly-Clark plant. As part of the Custom crew, my husband laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. My husband provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay my husband all of my wages due.

13. I understand that Custom owed my husband $1,174.95 in wages plus interest, treble damages, and attorney's fees for work he did at the Project.

14. My husband died on March 21, 2011.

15. I was appointed as Executrix of my husband's estate on June 27, 2011. A copy of my Letters Testamentary is attached as **Exhibit 1**.

FURTHER AFFIANT SAYETH NOT.

Nancy McFerrin

NANCY McFERRIN AS THE
DULY-APPOINTED EXECUTRIX OF THE
ESTATE OF WILLIAM R. McFERRIN

Sworn to before me this
14th day of December, 2012.

Kendria Mobley

Notary Public for the State of Georgia
My Commission Expires: 08/26/2014

Notary Public State of Georgia
Kendria Mobley
Richmond County
Expires 08/26/ 2014

EXHIBIT 1

STATE OF GEORGIA
COUNTY OF RICHMOND

GEORGIA PROBATE COURT
STANDARD FORM
File # 2011-RCGP-270

LETTERS TESTAMENTARY
(RELIEVED FROM FILING RETURNS)

By Isaac S. Jolles, Judge of the Probate Court of said County.

KNOW ALL WHOM IT MAY CONCERN:

That on the 27TH day of JUNE, 2011 at a regular term of the Probate Court, the Last Will and Testament dated MARCH 9TH, 2011 of WILLIAM R. MCFERRIN at the time of HIS death a resident of said County, was legally proven in solemn form and was admitted to record by order, and it was further ordered that NANCY A. MCFERRIN named as EXECUTRIX in said Will be allowed to qualify, and that upon so doing, Letters Testamentary be issued to such EXECUTRIX.

NOW, THEREFORE, the said NANCY A. MCFERRIN having taken the oath of office and complied with all the necessary prerequisites of the law, IS legally authorized to discharge all the duties and exercise all the powers of EXECUTRIX under the Will of said deceased, according to the Will and the law.

Given under my hand and official seal, this 27TH day of JUNE, 2011

Isaac S. Jolles
JUDGE OF PROBATE COURT

I certify this instrument
to be a true and correct
copy of the original record
filed in this court.
Joy Daniels
Probate Court Clerk Richmond County, GA
Date 6/27/2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America),

RICHLAND COUNTY
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JEAN W. HOSEY
C.C.P. & G.S.

AFFIDAVIT OF BRUCE POLLOCK

Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Ellzey; Brian Field, Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,

Third-Party Defendants.

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is Bruce Pollock. My address is , SC.

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. I was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about February 28, 2007. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible for installing all piping and tubing on the Project.

8. My services were always as a pipefitter on the Project. In that capacity, I helped my fellow Custom laborers to erect, alter, and repair a building to house the giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant. As part of the Custom crew, I laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. I provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay me all of my wages due.

13. Custom owes me $4,420.98 in wages plus interest, treble damages, and attorney's fees for work I did at the Project.

FURTHER AFFIANT SAYETH NOT.

BRUCE POLLOCK

Sworn to before me this
8TH day of DECEMBER, 2012.

Notary Public for the State of SC
My Commission Expires: 12.15.15

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Ellzey; Brian Field, Clayton W. Googe, Jr.; Martin

C/A No: 2010-CP-40-8621

AFFIDAVIT OF
NICHOLAS STEWART

RICHLAND COUNTY, SC
FILED
2013 JAN 23 AM 11:20
JEANETTE W. McBRIDE
C.C.P. & G.S.

Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,.

Third-Party Defendants.

COUNTY OF DADE)
) ss
STATE OF ~~GEORGIA~~ FLORIDA)

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is Nicholas Stewart. My address is Georgia

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. I was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about August 9, 2004. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible for installing all piping and tubing on the Project.

8. My services were always as a pipefitter on the Project. In that capacity, I helped my fellow Custom laborers to erect, alter, and repair a building to house the giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant.

As part of the Custom crew, I laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. I provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay me all of my wages due.

13. Custom owes me $1,682.56 in wages plus interest, treble damages, and attorney's fees for work I did at the Project.

FURTHER AFFIANT SAYETH NOT.

NICHOLAS STEWART

Sworn to before me this
15 day of January, 2013.

Blanca Espinal

Notary Public for the State of Florida
My Commission Expires: _____

NOTARY PUBLIC
BLANCA ESPINAL
Notary Public, State of Florida
Commission# EE 94038
My comm. expires May 15, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff,

-v-

Custom Mechanical CSRA, LLC,

Defendant,

Custom Mechanical CSRA, LLC,

Third-party Plaintiff,

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers and Steam Fitters Local #150 Annuity Fund, and Jackie K. Nordeen, Jr., and Patrick H. F. Smith, IV, as Trustees of these Funds; Plumbers and Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H. F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers Annuity Plan; Trustees of Iron Workers #709 Joint Apprenticeship and Training Committee, and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Charles R. Ellzey; Brian Field, Clayton W. Googe, Jr.; Martin

RICHLAND COUNTY
FILED
2012 DEC 12 PM 2:47
JEANETTE W. WALDEN
C.C.P. & G.S.

AFFIDAVIT OF
JAMES M. WALTEMATH

Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Leonard Wade Cliett,; Bruce Pollock, Jr., and Security Federal Bank,

Third-Party Defendants.

COUNTY OF MADISON)
) ss
STATE OF ILLINOIS)

PERSONALLY APPEARED before me on the date below, who, being first duly sworn, deposes and says as follows:

1. My name is James M. Waltemath. My address is Illinois

2. I am over 18 years old.

3. I have personal knowledge of the truth of the facts stated herein.

4. I am a citizen of the United States of America.

5. I was hired as a laborer for Custom Mechanical CSRA, LLC, Custom Mechanical CSRA, Inc., and Custom Industrial Services, LLC (hereinafter collectively referred to as "Custom") on or about January 2, 2007. I say all three because they were indistinguishable to me. They shared the same office, owners, officers, and jobs.

6. Custom was a subcontractor for C.R. Meyer and Sons Company ("General Contractor") at the Beech Island, Kimberly-Clark Corporation plant ("the Project").

7. It is my understanding that Custom was responsible for installing all piping and tubing on the Project.

8. My services were always as a pipefitter on the Project. In that capacity, I helped my fellow Custom laborers to erect, alter, and repair a building to house the giant tissue machine which became a fixture and permanent part of the building at the Kimberly-Clark plant.

As part of the Custom crew, I laid pipes for water, sewage, water treatment, and drainage purposes at the Project.

9. The tissue machine was built into the building. The Project required Custom Employees to fabricate and install substantial above-ground and underground piping that connected the tissue machine to the sewer system and water supply system, to erect structural piping supports, to attach the tissue machine to the concrete structures, to do drainage work, to alter the building's heating system, to work on a water treatment plant, and to insulate the piping system. The tissue machine was wired into the building's electrical system.

10. I provided lawful services to Custom on the Project.

11. I understand that Custom has now been paid by the General Contractor for construction services performed on the Project.

12. Custom failed to pay me all of my wages due.

13. Custom owes me $2,471.85 in wages plus interest, treble damages, and attorney's fees for work I did at the Project.

FURTHER AFFIANT SAYETH NOT.

JAMES M. WALTEMATH

Sworn to before me this
10 day of DECEMBER, 2012.

Linda Masulla
Notary Public for the State of IL
My Commission Expires: 8/23/2013

"OFFICIAL SEAL"
Linda Masulla
Notary Public, State of Illinois
My Commission Expires 8/23/2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C.R. Meyer and Sons Company,

Plaintiff/Petitioner

-v-

Custom Mechanical CSRA, LLC,

Defendant/Respondent

Civil Action No: 2010-CP-40-8621

RICHLAND COUNTY
FILED
2013 JUN -7 PM 4:09
JEANETTE W. McBRIDE
C.C.P. & G.S.

Custom Mechanical CSRA, LLC,

Third-Party Plaintiff, Respondent

-v-

Plumbers & Steam Fitters Local #150 Health and Welfare Fund, Plumbers & Steam Fitters Local #150 Pension Fund, Plumbers & Steam Fitters Local #150 Annuity Fund and Jackie K. Nordeen, Jr. And Patrick H.F. Smith, IV, as Trustees of these Funds; Plumbers & Steam Fitters Local #150 Vacation Fund, and Patrick H. F. Smith, IV and Joseph L. Dozier, as Trustees of this Fund; and Augusta Joint Apprenticeship and Journeymen Training Committee, and Patrick H.F. Smith, IV and Charles I. Hardigree, as Trustees of this Fund; Trustees of Southern Iron Workers Pension Fund; Trustees of Southeastern Iron Workers Healthcare Plan; Trustees of Southeastern Iron Workers #709 Joint Apprenticeship and Training committee and Local #709, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Southeastern Carpenters and Millwrights Health Trust; Southeastern Carpenters and Millwrights Pension Trust; Larry Phillips and J. Kirk Malone, as Trustees of these Funds; Ferguson Enterprises, Inc., Presidential Financial Corporation; Norton Welding Supply, Inc.; United Rentals (North

THIRD-PARTY DEFENDANTS CUSTOM EMPLOYEES' NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT

America), Inc.; Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Leonard Wade Cliett; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle, Jr.; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; the Estate of William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltemath; Al Tiska; Al Carpenter; Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

TO: JOHN T. LAY, JR., ESQ., Attorney for Third-party Defendant Presidential Financial Corporation; ROBERT L. BUCHANAN, JR., ESQ., Attorney for Third-party Defendant Security Federal Bank; and FRANCIS M. MACK, ESQ., Attorney for Defendant/Respondent/Third-party Plaintiff:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as counsel may be heard, Third-party Defendants Daniel R. Friedmann, Tony Hall, Timothy R. Hall, Jr., Ralph D. Black, Thomas Brittingham, Arthur C. Carlson, Leonard Wade Cliett, Christopher Cullipher, David W. Cullipher, Joseph Doyle, Charles R. Ellzey, Brian Field, Clayton W. Googe, Jr., Martin Granger, William R. Giffin, Jr., Jack E. Hegler, George G. Lever, Matt Lever, Ernest H. Lewis, III, the Estate William R. McFerrin by and through its duly-appointed Executrix, Nancy McFerrin, Daniel Nichols, Kinda Phommachanh, Raleigh B. Roye, Nicholas Stewart, Timothy P. Stock, James Waltemath, Al Tiska, Al Carpenter, and Bruce Pollock, Jr. (hereinafter collectively referred to as "Custom Employees") , by and through their undersigned counsel, will move pursuant to Rule 52(b) and Rule 59(e), SCRCP, for an order reconsidering and/or altering and amending the Court's Order Granting Presidential Financial Company and Security Federal Bank's Motion for Summary Judgment dated May 30, 2013

(attached at Exhibit 1), and received by mail by counsel for Custom Employees on June 3, 2013. Based upon the pleadings filed in this action, arguments of counsel, the evidence presented in conjunction with the Court's hearing, together with supporting memoranda, briefs, deposition testimony of the Custom Employees and other information in the record, as well as upon the applicable South Carolina law on these issues, the following are the grounds for said motion:

1. The Court erred in holding that Third-party Defendants Presidential Financial Corporation and Security Federal Banks (collectively referred to hereinafter as "the Banks") had priority over arbitration proceeds awarded from General Contractor C.R. Meyer and Sons Company ("General Contractor") to Subcontractor Custom Mechanical CSRA, LLC ("Subcontractor" or "Custom Mechanical") when the twenty-nine Custom Employees were laborers whose wages were wrongfully withheld on the project.

2. The Court erred in holding that the Custom Employees did not have a statutory lien which takes priority over the Banks' security interest when the Court also held that the Custom Employees were "laborers" involved in the "erection, alteration, or repairing of buildings" as those terms are defined in South Carolina Code Annotated section 29-7-10. The statute provides laborers with a means to receive payment from contractors for work performed on building projects. Poinsett Const. Co., Inc. v. Fischer, 301 S.C. 343, 391 S.E.2d 875, 876 (1990).

3. The Court erred in holding that section 29-7-10 was not triggered based upon a finding that "[n]o money has come into the hands of Custom Mechanical." It cannot be seriously disputed that a lawyer is capable of receiving money on behalf of a client. The fact the Subcontractor's lawyer is holding the arbitration proceeds from the General Contractor in trust for the benefit of creditors did not

avoid attachment of the Custom Employees' priority lien under section 29-7-10. None of the creditors – and most certainly not the Banks who are the largest creditors – wanted Custom Industrial and Custom Mechanical (herein after collectively referred to a "Custom") to get their hands on the arbitration proceeds. Afterall, both companies were defunct, deeply in debt, and under federal investigation. Moreover, Custom Mechanical had conceded that any monies it recovered was owed to creditors. Even this Court found that the Subcontractor itself "asked the Court to require the General Contractor to pay the arbitration proceeds into the registry of the Court for distribution to third parties" and that Custom Mechanical initiated the third-party action because third-party defendants "may have an interest in the proceeds of the $1,776,548.00 arbitration award because the total of all known claims exceeds the net proceeds of the arbitration award." (Order at 4.) Importantly, even if Custom Mechanical had wanted to, it could not have received the arbitration proceeds directly because by warrant of attachment issued by the Friedman Court in favor of the Custom Employees, law enforcement officials were commanded to attach and seize so much of the proceeds of the $1,976,548.00 Arbitration Award as was needed to secure the Custom Employees' judgment. (Ex. 3 to Custom Employees' Mem. Supp. Mot. Summ. J.) Therefore, under the law, having Custom's attorney receive the arbitration proceeds and hold them in trust was the closest Custom could come to the money. The Banks should be barred from now asserting that the Custom Employees' lien failed because Custom Mechanical's attorney received the arbitration proceeds when that is the course that the Banks urged and consented to.

4. The Court applied the wrong rule of construction. The Court erred in determining

that the Law requires that section 29-7-10 be strictly construed. Section 29-7-10 is remedial in nature and, therefore, should be liberally construed to carry out its purpose. There is no South Carolina case law that is directly on point. However, other states with similar legislation have determined that it is remedial. For example, in discussing Alaska's Little Miller Act, the Supreme Court of Alaska stated that "the Alaska statute, like the federal Miller Act, is remedial in nature and is to be liberally construed to effectuate its purpose." Imperial Mfg. Ice Cold Coolers, Inc. v. Shannon, 101 P.3d 627, 630 (Alaska 2004) (citations omitted). The Alaska Court also stated that the statute's purpose is "to protect persons who furnish labor or material for a state public works project from the risk of nonpayment." Id. at 629. Citing a Colorado case, Alaska's Court further stated that "[t]he purpose of the Miller Act is to ensure that subcontractors have some remedy if they are not paid, since on public projects they cannot protect themselves by filing a lien." Id. at 630. In this case, the Custom Employees are at risk of nonpayment.

South Carolina's laborer's lien statute, which has purposes similar to those of the Miller and Little Miller Acts, should work to protect the workers from the risk on non-payment. The Miller Act provides extra protection for laborers "since on public projects they cannot protect themselves by filing a lien." Id. Here, the Kimberly-Clark project was not a public project, and the laborers could not file a lien.

Also instructive on this point is South Carolina's Mechanic Lien Statute. Section 29-7-10 is analogous to the Mechanic's Lien statute – S.C. Code Ann. § 29-5-10(a) – which contains similar terms and phrases. As to South Carolina's Mechanic Lien statute, our courts have ruled that it is remedial and that it should

be liberally construed. Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, 282 S.C. 573, 575-76, 320 S.E.2d 51, 53 (Ct. App. 1984).

5. The Court erred in strictly construing section 29-7-10.

6. The Court erred in holding that the Custom Employees were precluded from recovering under section 29-7-10 if they were employed by Custom Industrial rather than Custom Mechanical because the term "laborer" is broader than the term "employee." In enacting section 29-7-10, the General Assembly could have limited employees to recovery but instead it used the term laborer. Laborer encompasses all who provide manpower to a subcontractor, whether they are employees, independent contractors, statutory employees, temporary personnel, union or non-union. Certainly the Custom Employees are the very type of laborers which the General Assembly sought to protect by enacting section 29-7-10 whether they were employees of Custom Industrial or Custom Mechanical or shared employees of both because it is undisputed that the Custom Employees provided the plumbing and pipefitting labor which Custom Mechanical contracted with the General Contractor to provide on the Kimberly Clark project.

7. The Court erred in failing to consider the Custom Employees' rights under South Carolina Code Annotated section 41-10-10, which is the statute under which they sued Custom Industrial and Custom Industrial in the underlying matter styled as "Friedman, *et al.* v. Custom Industrial Services, LLC, Custom Mechanical CSRA LLC, Custom Mechanical CSRA, Inc., *et al.*, " C/A No: 2008-CP-02-413 (hereinafter "Friedman Case"), in which the these employers entered a Confession of Judgment in favor the Custom Employees for $275,000.00, and in which the Court issued a Warrant of Attachment as to the arbitration proceeds.

8. The Court erred in holding that unpaid vacation funds that the Custom

Employees were owed were actually due to their union, that the union's case foreclosed the Custom Employees' claim, and that the Custom Employees do not have an independent claim. Upon their initial employment, each Custom Employee was provided the opportunity to participate in a voluntary payroll deduction vacation/holiday savings fund, wherein the employee would choose to have either five, ten, or fifteen percent of their weekly wages withheld by Custom. (2nd Am. Friedman Case Compl. ¶¶ 44, 46; Friedman Case Answer ¶¶ 18, 20.) These withheld amounts, consisting entirely of employee-earned wages, were to be paid monthly to the appropriate local union so that the union could cut checks to the Custom Employees and their coworkers during the summer and Christmas holiday. (2nd Am. Friedman Case Compl. ¶¶ 47, 48; Friedman Case Answer ¶¶ 21, 22.) Custom Industrial and Custom Mechanical withheld said wages and never paid them to the union. Consequently, because the union never received these wages, the union could not pay them to the Custom Employees. As employees whose wages were wrongfully withheld, each Custom Employees had a claim under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* ("Payment of Wages Act"), for wages owed, treble damages, and attorney's fees. The union could not and did not sue under the Payment of Wages Act. In the lawsuit which the Custom Employees brought against Custom Industrial and Custom Mechanical under the Payment of Wages Act, Custom Industrial and Custom Mechanical admitted that they had wrongfully withheld wages from the Custom Employees. (2nd Amended Friedman Case Compl. ¶¶ 51, 52; Friedman Case Answer ¶¶ 25, 29 [emphasis added].) Ultimately, by Confession of Judgment entered on February 14, 2011, Custom Industrial, Custom Mechanical, and their sister company

confessed judgment to the Custom Employees in the amount of Two-Hundred Seventy-five Thousand and no/100 ($275,000.00) Dollars for vacation pay wrongfully withheld. (Ex. 2.) That is the law of the case. The Banks do not have standing now to challenge the Friedman Court's judgment and orders.

9. The Court erred in granting summary judgment to the Banks because there is more than a scintilla of evidence from which a trier of fact could conclude that the Custom Employees had a priority over the arbitration proceeds. This Court has defined a scintilla of evidence as "any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror." Turner v. American Motorists Ins. Co., 176 S.C. 260, 180 S.E. 55, 58.

10. The Court erred in including dicta in its Order which implies that the Custom Employees would have been limited to actual wages lost if their lien had been found to have priority. The Payment of Wages Act outlines remedies available to the Custom Employees. Under section 41-10-50, if an employer discharges an employee, it must timely pay him all wages due. S.C. Code Ann. § 41-10-40, 50 (1976). If an employer fails to pay an employee, the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees that the court may allow. S.C. Code Ann. § 41-10-80 (1976). As used in this statute, "wages" includes vacation, holiday, and sick leave payments which are due to an employee under a policy or employment contract. S.C. Code Ann. § 41-10-10 (1976). In the case at hand, the Custom Employees are claiming wages due to them under an employment contract setting up a vacation/ holiday savings fund which consisted of all earned employee money. Therefore, the wages claimed in this case fall within those covered by the Payment of Wages Act. Treble damages are

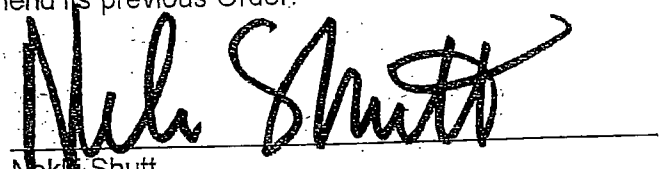
appropriate when the witholding was unreasonable and there was no good faith wage dispute. Treble damages are appropriate when an employer should be punished for forcing an employee to resort to the court in an unreasonable or bad faith wage dispute. Rice v. Multimedia Inc., 318 S.C. 95, 98, 456 S.E.2d 381, 383 (1995). Under that Act, the Custom Employees were awarded $275,000.00. That is the law of the case, and it is not appropriate to look behind that judgment.

Morever, the Custom Employees are now entitled to more than their judgment in the Friedman Case. The Custom Employees are seeking post-judgment interest which accrues daily. They also seek costs pursuant to South Carolina Code Annotated section 15-53-100, which also continue to accrue daily. (Jt. Reply, Counterclaim, and Crossclaim of Custom Employees, Prayer.) Also, attorney's fees may be recoverable as costs in a declaratory judgment action. Presidential Financial's attorney's firm newsletter from 2012 acknowledged that attorney's fees are recoverable in declaratory judgment actions while explaining the case of *Jessco, Inc. v. Builders Mutual Insurance Co.*, No. 2:08-CV-1759 (D.S.C. May 3, 2012) . (Gallivan, White & Boyd, P.A. Newsletter, Vol. IV, Issue 2 – May 12, 2012, http://www.gwblawfirm.com/enewsletter-ic-may-2012.php) .

11. The Court erred in giving the Banks' security interests priority over the Custom Employees' statutory lien created by section 29-7-10.

CONCLUSION

Based upon the foregoing, the Customer Employees respectfully request that the Court reconsider the above rulings and alter or amend its previous Order.



Nekki Shutt
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suites 100 and 200 (29201)
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: 803-404-6900
Facsimile: 803-404-6901
Nekkishutt@callisontighe.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS DANIEL R. FRIEDMANN, TONY HALL, TIMOTHY R. HALL, JR., RALPH D. BLACK, THOMAS BRITTINGHAM, ARTHUR C. CARLSON, CHRISTOPHER CULLIPHER, DAVID W. CULLIPHER, JOSEPH A. DOYLE, CHARLES R. ELLZEY, BRIAN FIELD, CLAYTON W. GOOGE, JR., MARTIN GRANGER, WILLIAM R. GIFFIN, JR., JACK E. HEGLER, GEORGE G. LEVER, MATT LEVER, ERNEST H. LEWIS, III, THE ESTATE OF WILLIAM R. MCFERRIN BY AND THROUGH HIS DULY-APPOINTED EXECUTRIX, NANCY MCFERRIN, DANIEL NICHOLS, KINDA PHOMMACHANH, RALEIGH B. ROYE, NICHOLAS STEWART, TIMOTHY P. STOCK, JAMES WALTEMATH, AL TISKA, AL CARPENTER, LEONARD WADE CLIETT, AND BRUCE POLLOCK, JR.

Columbia, South Carolina

June 7, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF RICHLAND)	CASE NO.: 2010-CP-40-8621	
C.R. Meyer and Sons Company,)		
Plaintiff/Petitioner,)	MOTIONS FOR SUMMARY	
vs.)	JUDGEMENT	
Custom Mechanical CSRA, LLC,)	MARCH 19, 2013	
Defendant/Respondent.)		
)		
Custom Mechanical CSRA, LLC,)		
Plumbers & Steam Fitters Local)		
#150 Health and Welfare Fund,)		
Plumbers & Steam Fitters Local)		
#150 Pension Fund, Plumbers &)		
Steam Fitters Local #150 Annuity)		
Fund and Jackie K. Nordeen, Jr.,)		
and Patrick H.F. Smith, IV, as)		
Trustees of these Funds; Plumbers)		
& Steam Fitters Local #150)		
Vacation Fund, and Patrick H.F.)		
Smith, IV and Joseph L. Dozier,)		
as Trustees of this Fund; and)		
Augusta Joint Apprenticeship and)		
Journeymen Training Committee,)		
and Patrick H.F. Smith, IV and)		

Charles I. Hardigree, as Trustees)
of this Fund; Trustees of)
Southern Iron Workers Pension)
Fund; Trustees of Southeastern)
Iron Workers Healthcare Plan;)
Trustees of Southeastern Iron)
Workers #709 Joint Apprenticeship)
and Training Committee and Local)
#709, International Association)
of Bridge, Structural, Ornamental)
and Reinforcing Iron Workers;)
Southeastern Carpenters and)
Millwrights Health Trust;)
Southeastern Carpenters and)
Millwrights Pension Trust; Larry)
Phillips and J. Kirk Malone, as)
Trustees of these Funds; Ferguson)
Enterprises, Inc.; Presidential)
Financial Corporation; Norton)
Welding Supply, Inc.; United)
Rentals (North America), Inc.,;)
Daniel R. Friedmann; Tony Hall;)
Timothy R. Hall, Jr.,; Ralph D.)
Black; Thomas Brittingham; Arthur)
C. Carlson; christopher Cullipher;)

David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltermath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.; and Security Federal Bank,

Third-party Defendants.

APPEARANCES:

John T. Lay, Jr., Esq. and Robert L. Buchanan, Jr., Esq.
Attorneys for Third-party Defendants

Francis M. Mack, Esq., Attorneys for Defendant/Respondent

E. Righton Johnson, Esq., Attorney for Presidential Financial Corporation

Nekki Shutt, Esq., Attorney for Daniel R. Friedmann; Tony Hall; Timothy R. Hall, Jr.,; Ralph D. Black; Thomas Brittingham; Arthur C. Carlson; Christopher Cullipher; David W. Cullipher; Joseph A. Doyle; Charles R. Ellzey; Brian Field; Clayton W. Googe, Jr.; Martin Granger; William R. Giffin, Jr.; Jack E. Hegler; George G. Lever; Matt Lever; Ernest H. Lewis, III; William R. McFerrin; Daniel Nichols; Kinda Phommachanh; Raleigh B. Roye; Nicholas Stewart; Timothy P. Stock; James Waltermath; Al Tiska; Al Carpenter; Leonard Wade Cliett; Bruce Pollock, Jr.

Also Present: Ashley Joyner, Esq.

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Word Index

* * * * *

EXHIBIT INDEX: PAGE:

(None proffered.)

* * * * *

Court Reporter's Legend:

dashes [--]	Intentional or purposeful interruption
...	Indicates trailing off
[ph]	Denotes phonetically written
[sic]	Written as said

Said motion for summary judgement is taken in accordance with the South Carolina Rules of Civil Procedure.

SPECIAL REFEREE: I don't know that it makes any difference who goes first. I don't know who filed the first motion or -- who wants to go first? I have tried to look at the material that you sent me. John T., you sent me all of that without a single staple and a single tab on it. And I had to go through there, one at a time, and pick out what it is, one -- one page at time to do that. I hope I got them all marked.

MR. LAY: Well, thank you. Sorry I didn't -- we didn't tab that.

SPECIAL REFEREE: And I hadn't read all of those, but I looked to see what they are. But anyhow, who wants to -- who --

MS. SHUTT: John, I'll be happy -- be happy to go first.

SPECIAL REFEREE: All right. That would be fine. We'll be arguing both side of the same coin.

MS. SHUTT: We are, Your Honor. May it please the Court: My name is Nekki Shutt. I'm here today on behalf of third-party defendants, what I call the Custom employees. Basically, there are 29 employees of Custom Industrial and Custom Mechanical. They start with Danny

Friedman, just purposes of identification, and they're the 29 individuals listed.

I think it's apropos I -- I get to view the Capital from -- from my seat here, 'cause I think today is about justice for these 29 employees. And I -- and I'm not going to belabor the facts of why, 'cause I know you have lived through them with us for a long time. But sufficed to say, my 29 employees have been owed wages for about six years. They are itinerant plumbers and pipe-fitters, so that means they're welders, plumbers, people who put pipes together. They all participated in good faith -- faith in a vacation/holiday savings plan, which means, voluntarily, out of each paycheck, they said to their employer, "Take some money out, because they're not -- I'm not a very good saver. I'll be like -- you know, this -- I don't want that to be my beer money, so you take some out of my paycheck, either 5 percent, 10 percent, 15 percent each time."

And each made a choice and left it to their employer to hold that money; and the employer was supposed to give it to them at summer vacation, then at Christmas vacation. Half at each. And that did not happen the last year of these employer -- employees' work for the employer.

So what we started with Your Honor, was a lawsuit brought by my clients, in Aiken, before Judge Early, against Custom Industrial Services, Custom

Mechanical -- and there's actually two Custom Mechanicals: there's CSRA, Inc., and then CSRA, LLC. But against those three companies, as well as key employees, Your Honor.

And it was a hard-fought battle, but we fought for several years; and depositions taken, lots of motions. Ms. Gifford's here, she can attest to that. And at the eve of trial we settled with a Confession of Judgement. We came out of that lawsuit with a $275,000 Confession of Judgement. We knew that this arbitration was -- was behind the scenes. And so what Judge Early did was, he issued a Warrant of Attachment, as to the proceeds of that, on behalf of my 29 employees.

We also got an Assignment from Custom Industrial, the Custom Mechanical folks, and the individuals that were still left in the suit, assigning their rights in the arbitration proceeds, and anything else that was left of the company, to my 29 employees. So basically, that's how we came out of the lawsuit.

SPECIAL REFEREE: Who assigned your rights, now?

MS. SHUTT: Custom Industrial, the two Custom Mechanical employees --

SPECIAL REFEREE: Okay. All right.

MS. SHUTT: Dean Duran, Danny Key, assigned all of their rights, in the arbitration proceeds, and

anything else left in the company, to my 29 employees. Basically, in recognition of the fact that but for this labor, this -- you know, this was a contract that -- and more fundamentally, Your Honor, my folks all worked at the Kimberly Clark Beach Island project. Kimberly Clark was building a new tissue machine. And when we say "new tissue machine," Your Honor I'm not talking Coke machine; I am talking two football-field-sized apparatus that was several stories high, under the ground and above the ground.

And what happened, first, was a giant hole was dug, concrete was laid, my folks, just because -- I say "my folks," Custom Industrial and Custom Mechanical got the bid for the seven contracts for all the plumbing and pipe-fitting on this project.

So they came in and laid all the pipes underground; cement was laid around them; the tissue machine was brought in; walls and a roof were erected around it; and my -- my guys connected the tissue machine that was going to build -- build giant rolls of paper, into the walls; ran all of the plumbing to the bathrooms, all of the sewage, you know, out of the bathrooms, out of the tissue machine; connected all the water from the rest of the plant. I've got some schematics, Your Honor, which I'd be happy to show you. But I mean, we're talking about a mammoth project.

You know, there were seven contracts. On the one contract alone, there was $3 million estimated in labor alone. My folks were the labor, you know. But for the laborer -- Custom Industrial and Custom Mechanical weren't selling anything else; they didn't provide widgets; they didn't make the tissue machine; they didn't provide the pipes. What they did was, they provided the labor. So my folks were the labor; they were the service that were provided. So but for my folks, there wouldn't have been a contract because there wouldn't have been any labor for it.

So my folks worked in good faith, had money taken out of their check. And at around June/July of 2007, C.R. Meyer, who was the general contractor on -- for Kimberly Clark, terminated the services of Custom Industrial and Custom Mechanical. And Custom Industrial and Custom Mechanical were a subcontractor. All of this is undisputed. They went into arbitration; they had counterclaims against each other; and ultimately, what happened was, at arbitration, C.R. Meyer withdrew its counterclaims. Custom Industrial and Custom Mechanical -- Ms. Gifford and Mr. Mack represented them -- went forward, and they ultimately got a arbitration order of $1.77 million dollars, plus some attorneys' fees. And that was ultimately rounded up to $2 million.

There is an order, Your Honor, and I think

it's important to bring that to your attention. I'm looking at what Mr. Lay provided to you. And if you look behind --

SPECIAL REFEREE: Did he send you that nice notebook?

MS. SHUTT: He did not, Your Honor.

SPECIAL REFEREE: Okay. Well, I just want --

MS. SHUTT: I put this all --

SPECIAL REFEREE: -- to be sure about that.

MS. SHUTT: I printed this off and made it myself. So I'm looking behind tab number K, Your Honor.

SPECIAL REFEREE: Tab number what?

MS. SHUTT: "K" -- "K" for -- "K" for King.

SPECIAL REFEREE: "K." Some of the numbers repeat themselves.

MS. SHUTT: Do you want to look at my "K"?

SPECIAL REFEREE: Well, just -- let me get -- I should have it. How far down is it?

MS. SHUTT: Your Honor, it is about --

SPECIAL REFEREE: I got Exhibit A --

MS. SHUTT: -- a third of the way.

SPECIAL REFEREE: -- B attachments. Is it an attachment or a exhibit?

MS. SHUTT: It's an exhibit, Your Honor.

And it's the Order. And I'll tell you, it's the --

SPECIAL REFEREE: "H," "I," "J," -- I think that should be "K," but --

MS. SHUTT: They should be in order, Your Honor.

SPECIAL REFEREE: The next one's "D" to me. After "J" comes --

MR. LAY: You looking for Judge Barber's order?

MS. SHUTT: I am looking --

SPECIAL REFEREE: "E," "F" --

MS. SHUTT: Yeah, Judge Barber's order.

SPECIAL REFEREE: All right. I got "K."

(Off-the-record discussion.)

SPECIAL REFEREE: I got "K." I think I got it. Let me be sure. The Order, the file of March 5th, 2012?

MS. SHUTT: Yes, Your Honor. Yes, Your Honor.

SPECIAL REFEREE: All right.

MS. SHUTT: And I think that the part that I'd like to bring to your attention here, is where the number -- paragraph No. 1 is, near the bottom of the page. So ultimately, the C.R. Meyer, the contractor, and Custom Mechanical and Custom Industrial settled, and just Custom

Mechanical is actually on this pleading. But when they -- when they settled over arbitration, No. 1 says:

"C.R. Meyer will pay the sum of $2 million to Custom within ten days of the Order. The funds will be transmitted by electric funds transfer to the escrow account of Richardson Plowden."

Now, I bring that to your attention, Your Honor, because a lot is made by the banks about who this money was paid to. This order was carefully constructed and was the result of much negotiation. You know, none of the creditors wanted the Custom folks to have the money; They have been the subject of Federal investigation, some of them have been indicted, and, you know, some of them are bank -- one of the -- at least one of them is bankrupt. So none of us wanted them to have the money. But the money was certainly paid to Custom; it was just Ms. Gifford's law firm that got to hold the money.

So that brings us here, Your Honor. That's what we're fighting over, is this money. Custom's employee -- the Custom's attorneys got paid by the hour; they got paid $200,000 to handle the arbitration. My folks, on the other hand, Your Honor, have been fighting for almost six years, haven't been paid their wages. And I'm happy to tell you, Your Honor, I -- I've taken this on a contingency fee, and I have -- and I am sitting here, you know, with

five other lawyers, you know, and we are all doing our best to try to sort this out. But -- but I think that justice militates in favor of my folks.

The -- when I was trying to boil down the essence of this -- you know, my law partner, Reese Williams, always says, "Boil down the essence of it. What -- what's the simplistic way to say this?"

The simplistic way to say this, Your Honor, is: These banks lent Custom Industrial and Custom Mechanical money. They lent both of them money -- these Custom entities money. Presidential Financial, which is Mr. Lay and Mr. Joyner's client -- and I'm not sure about Ms. Johnson's client. I get the long-distance lawyers confused. But they didn't lend the money until, I think, May of 2007. By that point, my -- my folks were already being stiffed their money.

So now we come to the table. And the banks have already gotten the -- the court already dispersed $1.4 million out of this money, to the banks. The banks have gotten paid, and excuse me my fuzzy math, but let's just say they've gotten paid about 50 cents on the dollar. My folks, whose on -- whose backs this -- this work was done on, still haven't gotten paid their wages that they've been owed six years. So that is the essence of what we're here fighting over, Your Honor.

The statute that I think controls this, is 29-7-10. And I know Your Honor's read that, because we've had some back-and-forth. I think this is the quintessential example of what the Legislature was talking about when they designed this statute. This statute says, if a general pays a subcontractor for work -- or for erection altering or repairing a building, then the laborers -- and that's what I -- and I'm not interested in any -- anybody else, because nobody else is left in the suit. It's just the banks and my 29 employees. So the laborers get the first priority.

There's not a lot of case law interpreting this statute, Your Honor. We do have the Poinsett case, which I'm going to hand you, Your Honor, 'cause I think it's very instructive; we've all cited it in our briefs. Here you go. There's a copy of each of you-all, each of the sides.

But the Poinsett case, basically, is a -- is a case the Court of Appeals handled in 1990, and basically interpreting this statute. And they basically said, you know, vis a vis, folks covered by this statute, 29-7-10, and banks, the folks covered by this statute have a first lien. Whether somebody has a perfected security interest or not, there -- these folks have a first lien.

Now, one point -- and I -- one point I think

we're going to disagree about amongst the parties, is the nature of this legislation, the nature of this statute. I think this statute is remedial in nature, and should be liberally construed in favor of meeting the purposes of the statute. You know, I looked at Black's Law Dictionary, and it tells me "remedial" means something creating a way that didn't previously exist. My clients have no other way to assert any type of priority than this statute. This is remedial in nature, and it gives them a foothold. They would have no other way to fight the bank, other than this statute.

I know that there is an unpublished decision out there by Judge Anderson, in Federal court, which is not binding on this court, obviously. I certainly respect Judge Anderson where he says that it should be strictly construed. I don't think there is any binding precedent for that. You know, I believe when you look at all of the other -- the nature of this legislation, that this is definitely remedial; it's just like the Workers' Comp statute, and it's just like the Firemen's Pension Fund. There are -- there are cases Knight vs. Board of Trustees, which is 239 Southeastern 2nd, 720; Fox vs. Buffalo Mills, which is 82 Southeastern 2nd, 253, which basically says remedial legislation should be strictly construed to meet the intent.

And then I'm also going to hand up, Your Honor, an AmJur article. And this is American Jurisprudence Second Edition, updated February 2013, and Section 176. And it means that it's about interpretation over remedial statutes.

Your Honor, my folks are asking that this court grant summary judgement in this favor, under the premise of 29-7-10, that they a first priority over the money that they got a Confession of Judgement to. Now, I need to delve into that for a minute, too, Your Honor.

The Confession of Judgement was for $275,000. Now, Mr. Buchanan and I spent, I don't know -- (To Mr. Buchanan) How many days did we spend in North Augusta, Bob? Three or four.

MR. BUCHANAN: We were in Augusta, but I can't remember --

MS. SHUTT: Augusta, yeah.

MR. BUCHANAN: -- it was --

MS. SHUTT: For a long time.

MR. BUCHANAN: About four days.

MS. SHUTT: Mornings, way into the evening, deposing my folks. I think we deposed 20 of my folks, Your Honor. And, you know, Mr. Buchanan asked a lot of questions about how much they were each entitled to. Now, again, Your Honor, they're itinerant steelworkers. Some of

them have prison records; some of them have -- that didn't get through high school; some of them didn't get to high school; some of them have college degrees. But by and large, these are folks who work with their hands. Not real good with numbers.

The defense -- the banks have certain numbers that they've assigned to them. My folks don't necessarily agree, and have good reason, maybe, to think that the Custom folks aren't necessarily credible when they provided these numbers, 'cause they had some basis for not.

But looking behind that $275,000 number, Your Honor, that was a number that was agreed on based on my clients' claims under Title 41, under the South Carolina Payment of Wages statute; that's what our lawsuit was about, and the underlying action before Judge Early in Aiken. That included actual damages, treble damages, attorneys' fees and costs. It was not differentiated what was what, Your Honor. But basically, it was what the parties came to, and let the Court blessed, as an appropriate remedy in this case, based on the Payment of Wages statute.

So, Your Honor, I would not think it would be appropriate for this court to look behind that now, and to somehow divide that up into what parts and bits it was. I will say, Your Honor, in the pleadings in the underlying

case, Custom admitted that it had not paid my clients all of the wages they were entitled to. So there was certainly a basis for a finding that there was bad faith, as there had been non-payment of wages in that case. And so, again, would be entitled to treble damages and attorneys's fees. So that's what the $275,000 is -- is for.

I want to get into, a minute, Your Honor, about the 29-7-10. Again, the banks have made a lot about erection, alteration or repair -- repairing the buildings. You know, Mr. Buchanan did an artful job, as he always does, of deposing my folks; he's a wonderful lawyer. And, you know, some of my folks didn't understand what "alter, repair, erection" was. I certainly objected every time that question was asked, because I think it is a legal definition that is within the court's purview.

All of them will tell you, though, that -- that they were not hired, one-by-one. It wasn't like they came in, submitted their resume, came in for job interviews. This was something where Custom called the local union, and said, "We need plumbers and pipe-fitters. Send over some -- some guys." And I say "guys"; they're all men. I don't have any females. And so, "Send over some guys."

So they were somewhat -- I don't mean this in derogatory terms -- derogatory terms, but they were

somewhat fungible in that, you know, they -- Custom, for this contract at Beach Island, needed this may welders, this many pipe-fitters; and so they sent over my guys. They -- so they -- I say that to explain to the Court, they basically were doing the same thing. You know, so I think it would not be appropriate to carve one out from the other, and say, "Mr. Friedman did this, but Mr. Black did this. Mr. Hall did this, but Mr. Phommachanh did this."

Because basically, they were working in this huge facility, and they were in teams, but they were all running the pipe underground. They were running it up through the walls; they were -- they were connecting this fixture to the building; they were running things up through the roof; they were putting the plumbing in the bathroom; they were running the sewage. So personally, Your Honor, I don't think there can be much now, that they -- these folks were altering, repairing, or erecting a building.

When some of my folks arrived, there was no building; there was a hole in the ground. They laid the pipe, then the tissue machine was put in, then the walls went up around it. They were connecting it. So I am happy, if -- if the banks want to get into it, I brought every one of their deposition transcripts. And I'm happy to put in context, the -- the quotes that they gave.

But by and large, again, they were all doing the same thing. They might not have understood the terms, but they were all doing the same things.

The Court asked, yesterday, about the Mechanics Liens Statute. And I think that is a very insightful observation, you know. We don't have a lot of guidance about 29-7-10. 29-7-10 does carefully say "laborers." If the General Assembly wanted to use the word "employees," they certainly knew that word. And they use it a lot throughout the code. But in this case, they chose to use the word "laborers," which I think is a broader term.

So I think for -- I think it doesn't matter whether it is -- you know, in the lawsuit between C.R. Meyer, it was C.R. Meyer versus Custom Mechanical. In my lawsuit, I sued everybody because it was unclear to me, where the money was going. There seemed to be joint-ownership, joint shareage [sic] of tools, joint-shared of employees, all of that stuff. And I came out with a judgement against everyone. So I -- I think it's disingenuous for the banks to claim now, that because only C.R. Meyer only sued Custom Mechanical, and Custom Mechanical has the money, my folks have no standing or -- because we certainly have a judgement, a Warrant of Attachment and Assignment that includes Custom Mechanical.

And I know I'm kind of jumping around, Your Honor. But as far as the -- the Mechanics' Lien or -- and 29-7-10, there is not -- they use the word "laborers"; there is no kind of guidance about what erection, alteration, or repair is. I pointed the Court to the "Little Miller Acts," which are the state versions of the National Labor Relations Act that had to do with public contracts and -- you know, interpret that language. I think closer to home, though, is the Mechanics Liens Statute, 29-5-10, and in that it's -- you know, it uses the same language, as the Court has pointed out. And it specifically says, "Construction, including drainage of facilities" -- which my folks did. It also says, "Laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes."

You know, if we needed some -- something outside to con -- to -- to interpret the 29-7-10, I think certainly the Mechanics Lien would be appropriate for that purpose.

The bank argues that my clients lack standing. You know, they -- I think they -- their argument is, the union brought a lawsuit. I don't think it -- "standing" is not appropriate to raise now. You know, my -- my folks are certainly creditors. We have, again, a judgement, a Warrant of Attachment and Assignment.

The union -- the way this was -- was supposed to was, my clients got their wages withheld; Custom was supposed to hold the wages; and then Custom was supposed to pay the union, and the union was supposed to pay my folks. Custom never paid the union, so the union never paid my folks. So my folks have causes of action directly against their employer; that's who they sued. They didn't sue their union, because their union didn't get the money, and didn't pay them. So they're not mad at the union. Their gripe was with their employer, who basically stole their wages -- who withheld the wages and then used them for their own benefit. So we appropriately sued the employer.

The union brought its own lawsuit. The union's lawsuit was very comprehensive; they only sued Custom Industrial. They sued for nonpayment of union fees. They sued for nonpayment of benefits. They sued for nonpayment of what my -- the client -- my clients' money, even though they didn't pay it out, but they still sued for -- they sued for a -- you know, a myriad of things. No one showed up to defend the union lawsuit, and they got a default judgement against Custom Industrial only. And they're now out of the lawsuit. There are affidavits in -- that are -- that are on file, where the union basically says, "We never got any money for your clients. No money's

still been paid out for your clients."

My folks didn't get any money from the -- the money that the banks gave them to settle in this case. So I -- you know, I think this is -- I think the standing is a -- argument is a red herring.

SPECIAL REFEREE: But the union, they sued -- they sued for this same damages that you're talking about.

MS. SHUTT: Well, Your Honor, they sued --

SPECIAL REFEREE: Vacation pay.

MS. SHUTT: -- they -- they sued only one entity. They --

SPECIAL REFEREE: I understand.

MS. SHUTT: Okay. They did not sue under the South Carolina Payment of Wages Statute. They sued under a -- I guess, a contract theory and an ERISA theory. And they sued for failure -- failure to pay union dues, because Custom also withheld union dues, but didn't give them to the union. Custom was supposed to pay for health benefits, dental benefits, 401K pension benefits, and didn't do that. So the bulk of theirs had to do with all of those other things. They did include this in there, and they got -- because no one showed up for Custom Industrial, they got a default judgement that was, basically, undistinguishable; it didn't -- it didn't allot for

different things.

But the money -- ultimately, they sued and -- and the bank's going to correct me, if they're wrong -- but out of the money the -- the Court dispersed in this case, the $1.4 million. The banks paid, I think, $10,000 to the union -- to my folks' union. And they had a judgement for one-million-and-something dollars. So certainly it was not something my folks got any money from. And, you know, there were different causes of action. There is no doubt that my clients have the right to bring a lawsuit directly against their employer, and seek their own remedies. They -- they brought it against multiple entities and against the owner/managers of the company, as they were entitled to do under Title 41. So different causes of action, but my folks definitely had standing.

SPECIAL REFEREE: If you add up the amounts that each of your employees has claimed in their affidavits, or depositions, how much would that come to?

MS. SHUTT: Well, Your Honor, there are different numbers. You know, the -- the -- I think that the bank's numbers that -- they have provided for -- and I say "the banks" -- Custom's numbers that they have provided. Remember, the -- they're under indictment and been -- some have been arrested for -- for not doing the numbers correctly, and they've been under Federal

investigation. But I think those numbers come to approximately like $58,000. And those are not my clients' numbers. My clients' numbers come more to something like $80,000. But again, because Custom admitted to nonpayment of wages, that was the basis of treble damages, plus attorneys' fees, and cost and expenses we're entitled to.

SPECIAL REFEREE: All right.

MS. SHUTT: So, Your Honor, thank you for listening. I appreciate your time. And --

SPECIAL REFEREE: Well, I'll hear from you again, after I hear from them --

MS. SHUTT: Thank you, Your Honor.

SPECIAL REFEREE: -- since we've got cross-motions here. Who's going to speak first?

MR. LAY: I will speak first, Your Honor.

SPECIAL REFEREE: All right, Mr. Lay.

MR. LAY: Your Honor, I -- what -- what is undisputed is there is a perfected security interest by the banks, in the money -- in the arbitration award. There's a perfected security interest for $3.5 million. 1.4 million has been paid. So the -- the banks are out almost about $2 million in this case. And let's make sure that we describe this accurately. Because I think it is -- and I understand the spin. But here's the scenario:

These workers were not out wages. These

workers got paid their wages. The only thing that was not paid was the vacation fund. The reason these workers got paid at all was because of the money loaned by the banks, to Custom Mechanical, to keep this project going. The first big loan was made by Security Federal in 2006. Presidential Financial comes in and owns -- loans over a million dollars in May of 2007, and these folks got their wages as a result. They did not get the vacation fund part of that, but they got most of the money that they are -- they were entitled to get for working there.

SPECIAL REFEREE: Were they behind in paying wages at that time?

MR. LAY: There was a period of time, as I understand it, where they were behind. And what happened is, C.R. Meyer came in and made a payment to cover some of Custom Mechanical's back wages; and then Custom Mechanical was able to negotiate this accounts receivable loan with Security Federal; and then Presidential Financial came in and loaned some more money. So they ended up borrowing about $3.5 million, that kept this project going, kept these guys getting paid. They were working. It was the vacation fund that was -- where there was a trust created by the union, a trust account, where trustees ran the account -- the union actually ran it -- where money was supposed to be paid there for the vacation fund.

The union was then responsible for paying the employees. Custom Industrial -- not Custom Mechanical -- Custom Industrial was the employer that was to pay the -- the union for the vacation funds. So this notion of justice, I mean, I -- what I would ask you to do, obviously, let's look at what the statutes say, let's look at what the law says. There is a situation where both these individuals, they want their vacation funds. Understood. The banks are out almost $2 million. So there's a justice on both sides of this. And but for the loan that was made by the banks, these guys never would have gotten their wages; that never would have occurred.

To try to define what this -- the vacation fund is, I don't really -- I'm not sure whether it's this $80,000 is coming from. If you go through the depositions, you look at the only competent evidence that's been provided, you look at the union's claim against us -- and they do have a very specific claim that's reduced to judgement on the vacation fund, for $59,000 -- that includes everyone. Ms. Shutt has not sued on behalf of everyone that had a vacation fund. Everyone -- every cent that was available to be paid into the vacation fund, for everyone, from that April 2007 to the June 1st determination of C.R. -- or Custom Mechanical, the total amount is 59,000.

We think, on the best day, going through the depositions and looking at the documentation provided by Custom Mechanical, the best they could ever do is about $40,000. And we think that's giving them very much the benefit of the doubt.

Custom Mechanical is not under indictment; that's just not a factual statement. We do have the documents that were created at the time. We have the union documents that was -- where they did an accounting of the vacation funds that had not been paid, and they have identified those, and that was part of the judgement. That's also part of the record. We know what the total amount is. On a best-case scenario, if she were representing every single person that had a claim, and that's $59,000. But she's not. And we think it's reduced down to the 42,000. So I wanted to be sure we had some perspective on -- on how all this -- this came about.

Now, talking about her claim, specifically, first, and then we'll get to -- to our situation. We have a perfected security interest; we're first in line, unless she can jump priority. How do they jump priority? The only arguable way they can jump priority is 29-7-10. What appears to be going on, without any support of law, without any support of statute, without support of any treatise, without support of any law that I can find, is trying to

convert a judgement lien, the -- the Payment of Wages Act, trying to convert that judgement lien into some sort of statutory lien.

Trying to read these statutes together, when there's no case or support for it anywhere, not in South Carolina, not in other jurisdictions that have similar statutes, that simply doesn't exist. In fact, you look at the claim under the Wage -- the Payment of Wages statute, and she even made this argument when she was talking about the union claim -- there are different causes of action. Precisely. This is a different cause of action. They are entitled to travel damages; they're entitled to attorneys' fees. She had breach of fiduciary claims that were made under the Payment of Wages claim, that were punitive damages-type claims that were made that she'd said there was fraud that was involved. It was all sorts of things. Even the parties were different. Even the plaintiffs were different.

In fact, when she first brought suit, there were 26 plaintiff -- plaintiffs, and when the Rid of Attachment was done, it suddenly inflated to 29, and there's no real place where those were added, other than Rid of Attachment. The defendants were different. So that is a completely different cause of action than the labor lien statute. And the labor lien statute is very precise.

It -- it -- you don't take a judgement lien and convert it; what you do is, are -- is there a contractor that is involved with the erection, alteration, and repair of a building? We've got to look at that first. Were there laborers involved? Did the contractor actually receive money? And the case law is very specific on that. And I'm going to talk to you more about that in a second.

So you have to look at -- discretely, we have to look at the plaintiff. All right, we got Plaintiff No. 1. Did he -- was he a laborer on a project that involved the erection, alteration, or repair? We got to determine that. No. 2, did the contractor that was involved with that erection, alteration, and repair actually get paid money? Did he receive money and then withhold payment to that laborer? We've got to find that out.

So we've got to look at those three things and determine whether or not it is a valid claim, discretely, with all 29 of her plaintiffs, we have to do that. Because a judgement lien does not convert. Does that individual plaintiff have a lien for unpaid wages when he was working on the erection, alteration, and repair? That's the analysis under 29-7-10. That's the only way she gets there. She did not plead 29-7-10 in the Wage Payment claim.

And the -- in this lawsuit, she didn't plead the wage -- the Wage Payment claim. She only plead 29-7-10. So those were two different claims that were going on. So we have to analyze this under that particular statute. Now, going to whether or not the individual employees actually fit within that statute, I think is -- is the analysis that we need to focus on. And if we go, first -- all right. Excuse me. All right.

Since we have to -- we have to go into a discrete analysis, did -- we have to look at whether or not the contractor, the employer here, actually received the money. What is undisputed in this case, I believe, the only documents that are there, the only competent testimony that is there, is that Custom Industrial was the employer of the individual -- of the individual plaintiffs in this case. Not Custom Mechanical. No alter-ego theory has been plead, at any time in this situation, nor could it. Because they were run as separate entities.

And there was a reason Custom Industrial was involved in this: they had the collective bargaining agreement, and were dealing with the union; the union employees were working out of Custom Industrial. Custom Mechanical is the one that the arbitration award -- that -- that's what the arbitration dealt with. The Custom Mechanical, not Custom Industrial. Because Custom

Industrial did not receive payment, there's no standing here. They have to have received payment before there can be a situation where the lien would even attach.

In the cases here, if you look at the Poinsett case -- and I want to deal with this very directly. The Poinsett case, and all of the progeny, not just the Judge Anderson case, the state court cases, like the Bellsouth case that's cited in our brief, state that the statute 29-7-10 has to be strictly construed. There's no debate about it. The cases that are on point, and say that, that statute, particularly, has to be strictly construed on state court cases that are binding, not this federal court case that would be instructive. State court cases that say that it has to be strictly construed.

The cases -- the Poinsett case, the Bellsouth case, talks specifically about this issue of payment; it says that the contractor actually has to receive it. If the money goes into a registrar, for example, there's an award, but we're going to pay it into a -- the court, to determine who can make a claim on it. That's not receipt. And the case says that on point.

What we have here is a very interesting scenario. You look at the Order -- in Judge Barber's order -- (To Mr. Buchanan) And if you'd pull that out for me, very quickly.

MR. BUCHANAN: Here. We got it right here.

MR. LAY: She only read you one paragraph of that. If you look at Paragraph 3 --

SPECIAL REFEREE: Paragraph 3?

MR. LAY: Exactly. -- it is set aside for everyone, including Custom, to make a claim. It says Custom shall be entitled to assert any priority of the funds. So everyone -- this stuff's going to -- this money's going to sit in escrow, and everyone, including Custom, can make a play for it. If it were Custom's funds, if it had been payment received and their funds, which is what the statute says must occur, there wouldn't be this part about having them, where they have the right to assert priority of the funds; it's just theirs. And other people can try to grab it, but it's their money. That's not the way the stat -- the way it reads.

This was a -- a consent order. As she said, everybody was involved in it. And there was a reason: Because no one knew who the money belonged to. We had the arbitration award; we're going to put it in escrow; and we'll figure out who gets the money, and we'll figure out who it belongs to. That's what the statute says. And if you look at those cases, again, strictly construed, they got to have receipt. It may seem like a technicality -- and it is, frankly -- but it's the law. And the court says

they have got to actually get receipt before they're allowed to assert this lien, before the lien even attaches. It hasn't even attached here.

Now, the unpaid vacation funds, I've already -- with the Local Union 150, you know, I don't know -- really know how to get by this. You know, we -- there are two people that are making a claim. It is undisputed that it's not the employer owes them the -- paid them the money; that was a misstatement, or inaccurate statement. The employer, Custom Industrial, was paying the union. The union was paying the employees.

There was a trust set up, there were trustees set up to manage that vacation account, and to send the money to the individual employees. When that money was not received, the trustees made a claim on behalf of all of their members that are in that trust, which would be everyone of these plaintiffs, sued Custom Industrial -- the person who was responsible for making that claim -- sued them to get the vacation funds, and reduced it to judgement of $59,000.

They have settled that claim with us. They settled that claim and all these other claims on the potention -- petition --

SPECIAL REFEREE: They're claiming fifty-nine?

MR. LAY: They had a separate claim for 59,000, and then they had other judgements as well. And they had a total of 1.6-, $1.7 million.

SPECIAL REFEREE: But they were claiming fifty-nine for the vacation fund.

MR. LAY: Yes, sir. They were claiming 59,000 --

MS. SHUTT: Let me ask --

MR. LAY: -- for the vacation fund.

MS. SHUTT: -- Mr. Lay to point that out on the record, 'cause I don't -- I don't know where that is.

MR. LAY: Sure. If you look at one of the -- it's the Answer of Third-party Defendants, Plaintiff [sic] & Steam, they have a judgement against Custom Industrial for $59,941.87, which is on page 3 of 4 of that Answer.

SPECIAL REFEREE: Is that one of my exhibits?

MR. LAY: Here, I can show you that. I'm not sure if that was an exhibit. We can give you that -- that document.

SPECIAL REFEREE: Fifty-nine thousand with accrued interest of 4600?

MR. LAY: Yes, sir. And that -- again, that's everyone. That's not -- there's only --

MR. BUCHANAN: That includes us.

MR. LAY: Yeah, right. That includes us. But the 59,000 includes people from all part of this suit.

All right. So we have the standing issue, because Custom Industrial was the employer. We have the standing issue because this is the union's claim. We have the no receipt of payment issue, that I have outlined. All of this means that the lien does not attach, and they don't have priority. Then a -- another ground is this erection, alteration, and repair. And this a -- a difficult issue. Because there definitely are plaintiffs that say that they were involved with alteration and repair, and there are a bunch of them that say that they weren't. And it is a phrase in 29-7-10, and even under the Mechanic's Lien Statute, that's not very well defined, especially as it applies to fixtures, and what's a fixture, and that sort of thing.

But let me make it easier. They have -- they have got to prove, individually, that each one of those plaintiffs, number one, was involved with alteration and repair; and if they can prove that some portion of their work was alteration and repair, they've got to prove what part of that would -- that they did not receive a benefits. What part of the vacation fund would be related to the alteration and repair? If they're not -- if they're

doing something in addition to alteration and repair and erection of a building, if they're doing in addition, they don't get a statutory lien on that.

It is a terrible way that, that statute is put together. But that's the reality of it. They have got to in -- do an individualized analysis and prove that part of the work that was erection and repair, and that part of the non-payment of wages that was related to erection and repair.

Now, here's the problem they've got --

SPECIAL REFEREE: What did they do that wouldn't be erection and repair? Are you -- are you -- it sounds like you got something particular in mind --

MR. LAY: I do.

SPECIAL REFEREE: -- that they did that -- okay.

MR. LAY: They had seven different contracts that were involved in all of this. And the arbitration award ends up paying parts of some of those, and not parts of some of them. The problem for them, I think, is, there was work -- some of those contracts dealt with underground piping, and such, that didn't have anything to do with the building. They had work that was being done on some equipment that was in buildings, but was not setting up like a tissue line, for example.

So under contract, under the contracts that we see, they've got work that's being done outside of alteration, repair, and erection. They have no idea what percentage of their work dealt with erection, alteration, and repair, and what percentage didn't. Mr. Buchanan went through it, in exhausting detail, trying to get them to determine how much of it -- how it would be divided up, and then once it's divided up, what part of that would be related to vacation funds? This is how complicated it gets.

Let's say that they're there for a year, and they spend, you know, six months, one hundred percent, in alteration and repair, and they spend the next six months, including the three or four months where there was no vacation fund, where they're not doing alteration and repair. What -- do they get anything? Under the statute, no; because they're not doing -- they're not falling within the statute on the alteration, repair, and alteration [sic]. They've got to do that, and they've got to prove it. It's their job to prove they fall within the statute, how much, and what damages they have related to it. And there's just a failure of proof. They cannot prove what they're required to prove here.

I mean, at the end of the day, there are a couple of things that I hope you will -- you'll do today.

I mean, number one, I think we established that we've got priority. I mean, it's un -- it's undisputed that we've got a perfected security interest; can they jump us? And I think for the four reasons that I delineated, they don't. Because there's just no attachment to the lien.

Even if they did, this is a 42,000-max -- max -- lawsuit. There's no treble damages. There's no attorneys' fees. That's not contemplated under 29-7-10. They can't convert this judgement lien into a security lien with no basis in the law, anywhere, that allows them to do that. So that's where we are. It's a 42,000 lawsuit -- $42,000 lawsuit, even if you buy everything that she says. Thank you.

(To Mr. Buchanan) Anything else?

MR. BUCHANAN: I would just simply notes that, the judgement that was obtained by Ms. Shutt's clients, was attained after the securities interests were perfected by the filing of the UCC ones, and the judgement is subject to that.

MS. SHUTT: Thank you, Your Honor. May it please the court. Just a couple of corrections. When Mr. Lay said my clients weren't out of wages, that's just simply not true. Their employer withheld their wages. They were supposed to pay them to the union, but they didn't. Instead, the employer converted them for their own

personal use. So my folks are out of wages.

Obviously, there is a difference in what the amount of the money is. I think that creates a fact issue, Your Honor. And so it would be -- not be proper to grant the bank summary judgement based on that information. Instead, let's hear from my 29 folks. They have all submitted, now, affidavits, or submitted to depositions. But, you know, I'd be happy to have a trial, Your Honor, and bring them in here. They're -- they're certainly a factual dispute; we disagree over the amount of the money, Your Honor.

Mr. Lay said that Custom Industrial was not under indictment. I didn't mean to imply that they were. Danny Key, who was one of the owner-operators, we know is under indictment. You recall we had significant wrangling over whether to try to take his deposition, and he was under arrest at the time. And that was in relation to mishandling of money related to this contract.

I want to also address Mr. Lay, said that I somehow inflated my employees from 26 to 29. That's also not accurate, Your Honor. The pleadings in the underlying case in Aiken were amended, I think, three times. And each time, we added additional folks. So there was, I think, some confusion. And I think, just a scrivener's error of picking up a caption that might not have included them.

We've corrected that now. But certainly all 29 of my folks were rightful parties. And Ms. Gifford's here, and she can certainly attest to that.

SPECIAL REFEREE: I think you-all had wasted three big pine trees, putting all their names down. And every --

MS. SHUTT: I know, Your Honor. I know.

SPECIAL REFEREE: -- into two sheets --

MS. SHUTT: I know.

SPECIAL REFEREE: -- for the caption on ever plea. There were thousands of pages.

MS. SHUTT: Yeah. Yeah, I agree, Your Honor. I agree.

I also wanted to address what Mr. Lee -- Lay said about the -- the -- the Poinsett case and its progeny. I think the Bellsouth case is, in fact, Judge Anderson's case; it was the Federal case, and it's an unpublished decision. And I think it is the only one that I read, saying that 29-7-10 should be strictly construed. I didn't find any other case law in South Carolina, that addressed that issue. And in fact, I think if you look at the other sites that I had pointed you to, that this is remedial legislation that could be liberally construed in favor of the folks who are seeking justice under it.

So, Your Honor, I think this boils down to,

we've got dueling motions for summary judgement. I think my folks should be granted summary judgement on the issue of liability. It does not matter when they -- when the banks perfected their security interest. But I'm just assuming for the sake of this argument, that they are perfected. We really haven't looked into that. But assuming that they are, it doesn't matter when -- when in time they did it. 29-7-10 says, if the subcontractor gets paid money from the general contractor, then the laborers should get paid first. And it doesn't matter when that lien arose, that they get paid first.

And so I'm asking Your Honor to grant summary judgement on the issue of liability in favor of my folks. I think as to the issue of how much that is, there's obviously a factual dispute. And I think the Court's going to have to hear from the 29 folks, themselves, and -- as to the damages.

SPECIAL REFEREE: Mr. Lay?

MR. LAY: We might --

SPECIAL REFEREE: I didn't mean to leave you out. I know you kind of --

MS. GIFFORD: Yes, sir. I think I'm just here to observe.

SPECIAL REFEREE: You're welcome to speak, if you'd like.

MS. GIFFORD: No, sir.

MR. BUCHANAN: Judge, one thing that -- one thing that we would take issue with, and that is that whether Custom Mechanical, or more appropriately, Custom Industrial, the employer of these folks, actually converted or took or stole the money. Apparently, the -- even the C.R. Meyer people agreed that it was just a bad account; it was just -- couldn't get paid. But that the money hadn't been misdirected. I know that Danny Key has been indicted in Federal court, and there was one other guy from Augusta whose name escapes me at the moment, who was indicted.

MS. SHUTT: Dean Durant?

MR. BUCHANAN: No, Dean Durant -- Dean Durant was not indicted.

MS. GIFFORD: I believe it was Bo Harrington --

MR. BUCHANAN: Bo Harrington. Bo Harrington. They -- they were indicted for something that we can't tell you, as we sit here, what they were indicted for. But in terms of any of these companies that were involved, and most particularly, the subject company, Custom Industrial, we don't believe there was any evidence that they pocketed the money; they just didn't have it. But -- and I -- I know -- this doesn't really have anything technically to do with -- with the argument here, but we've

been -- we -- you know, we -- we've been using a lot of general terms here. We've been using "Custom employees," and -- and, you know, as if there's just all one big bunch of employees. And they weren't. They worked for different entities. They were owned by the same people, they did have the same offices and directors. But there's no evidence in this record, and there's no allegation that one was the alter ego of the other.

Obviously, the union sued Custom Industrial for the vacation funds. And the reason is, that because Custom Industrial had the collective bargaining agreement with the union, and Custom Industrial was the company that was paying that money to the union. And there's no issue or fact about the arbitration award being to Custom Mechanical and not to Custom Industrial.

And, again, we've got these multiple layers of having to connect up. as -- as John T. said, you know, had -- you know, there's a proof problem -- there's a failure of proof, and it -- and it really is on two levels. One is, that -- that the -- the employees can't -- don't -- they don't have any evidence, and they don't know of any records, that would help them determine, precisely, during the relevant period, how much of the work they did was related to alteration and repair versus didn't something else.

There's a second -- there's a second level of -- of -- of proof that none of us could control here, because we weren't -- we -- the parties to -- none of the parties to this action can control, because we weren't really involved in the -- in the arbitration, other than Custom Mechanical. And that -- and that is, it -- we -- we can't see how there's any way to discern, in the arbitration award, how -- how much money C.R. Meyer paid to Custom Mechanical, that -- that was related to -- to which job, and which activity within each job. It just was not that precise.

So there's really two levels of proof failure; one is in terms of what C.R. Meyer paid -- paid into the fund with respect to which Custom Mechanical, like other claimants, can prove-up their share. And, of course, there hadn't been any of that -- hadn't been any such proof in this case.

But -- but another term that we've kind of thrown together, too, we've kind of kicked around, is "banks." And while it's true that I represent a bank, I represent a small bank. It's Security Federal Bank in Aiken, and we do have -- you know, we've recently got -- we've got an office over on Assembly Street across from BB&T. And it -- basically, Security Federal Bank runs -- is headquartered in Aiken. We've got an office here and we've got one in --

we've got one in West Columbia and one in Lexington and there's one in Evans, Georgia. And the rest of them are just sort of in-between. And it's a small bank. And -- and, of course, Presidential, who are principally John T's client, is not even a bank; it's a -- it's a -- it's lender. They don't do banking. They loan money on accounts, and that kind of thing.

So, and as John T. mentioned, we're -- you know, it's a -- it's been a huge hit for us. So, you know, just in terms of the fairness and the equity and the justice, I'd simply want to make that point. But other than what Mr. Lay has so well laid out, I don't really have anything to add at this time. Thank you.

SPECIAL REFEREE: Ms. Shutt, anything you want to add?

MS. SHUTT: Your Honor, it's been a huge hit for my clients too. And -- and I -- I would love for them to have a day in court, so they can tell you about the Christmases that they could not afford to buy any presents for their kids. So on a localized level, these are 29 employees who had counted on having their own money handed back to them. And it wasn't. So that is what we are after in this case. I think it's not correct to say that -- that this is just about Custom Mechanical. My folks sued Custom Mechanical and Custom Industrial.

In the underlying lawsuit, they said same officers, same directors, same tools, same job site, same job. So, you know, we think there is a commonality of -- of many things, and we came out of that with a judgement against Custom Mechanical for $275,000, that -- that was supposed to make my folks whole. And we've been looking for that money for the last two years, and for a total of about six years now, Your Honor.

SPECIAL REFEREE: Ms. Johnson, are you still there? Or are you napping?

MS. JOHNSON: I'm still here, Judge.

SPECIAL REFEREE: You want to add anything?

MS. JOHNSON: No. I think everybody's covered it.

SPECIAL REFEREE: All right. Nothing else.

MR. LAY: Nothing else.

SPECIAL REFEREE: All right. We'll stand and adjourn, I guess.

Further deponent sayeth not.

(There being no further questions, the hearing concluded at 12:14 p.m.)