

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Perry H. Gravely, Circuit Court Judge

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Appellate Case No.: 2019-001038

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**RECEIVED**  
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SC Court of Appeals

Reggie ("Reg") Keith Wells.....Appellant.

v.

Vetech, LLC; Vetech Group; Fastube; Process Development Corporation; and  
James R. Pongracz, individually.....Respondents.

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**RECORD ON APPEAL**

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*Attorney for Appellant*

Other Counsel of Record:  
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*Attorney for Respondents*

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**Court Reporter:**

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

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This matter came before the Court on May 20, 2019 upon Plaintiff's Motion for Attorneys Fees and Treble Damages. The Plaintiff accepted an Offer of Judgment filed by the Defendant and sought attorneys fees and treble damages under S.C. Code Section 41-10-80, but there was no record from which to determine whether attorneys fees and treble damages were appropriate under this statute. Therefore, Plaintiff's Motion is denied.



Greenville Common Pleas

**Case Caption:** Reggie Reg Keith Wells vs. Vetech LLC , defendant, et al

**Case Number:** 2018CP2301745

**Type:** Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-05-20 13:05:36 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Reggie ("Reg") Keith Wells, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Vetech, LLC; Vetech Group; Fastube; )  
 Process Development Corporation; James )  
 R. Pongracz, individually, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

**SUMMONS**  
(JURY TRIAL DEMANDED)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribers at their mailing address at Post Office Box 1633, Spartanburg, South Carolina, 29304, within thirty (30) days after such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

Respectfully Submitted,

By: S/ John G. Reckenbeil  
 John G. Reckenbeil  
 Lawrence E. McNair, III  
 LAW OFFICE OF JOHN RECKENBEIL, LLC  
 215 Magnolia Street (29306)  
 Post Office Box 1633  
 Spartanburg, South Carolina 29304  
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 Email: john@johnreckenbeillaw.com

Dated: March 21, 2018  
 Spartanburg, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Reggie (“Reg”) Keith Wells, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Vetech, LLC; Vetech Group; Fastube; )  
Process Development Corporation; James )  
R. Pongracz, individually, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

**COMPLAINT**  
**(JURY TRIAL DEMANDED)**

Plaintiff Reggie (“Reg”) Keith Wells (“Plaintiff”), brings this lawsuit against Vetech, LLC, Vetech Group, Fastube, Process Development Corporation, and James R. Pongracz, individually (collectively “Defendants”) seeking to recover for Defendants’ violations of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110, and/or equitable remedy of unjust enrichment. Plaintiff alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Reg Wells is a resident of the State of South Carolina, County of Greenville.
2. Defendant Vetech, LLC is a Michigan Limited Liability Company operating as a Service Disabled Veteran owned small business, headquartered at 41714 Haggerty Circle, Canton, Michigan 48188, and was the joint employer of this Plaintiff.
3. Defendant Vetech Group is a Michigan Limited Liability Company operating as a Service Disabled Veteran owned small business, headquartered at 41714 Haggerty Circle, Canton, Michigan 48188, and was the joint employer of this Plaintiff.

4. Defendant Fastube is a Michigan Limited Liability Company operating as a Service Disabled Veteran owned small business, headquartered at 41714 Haggerty Circle, Canton, Michigan 48188, and was the joint employer of this Plaintiff.

5. Defendant Process Development Corporation is a Michigan Limited Liability Company operating as a Service Disabled Veteran owned small business, headquartered at 41714 Haggerty Circle, Canton, Michigan 48188, and was the joint employer of this Plaintiff.

6. Defendant James R. Pongracz upon information and belief has been deemed to meet the eligibility criteria of a Service Disabled Veteran under the Service Disabled Veteran Owned Small Business (“SDVOSB”) Concern Procurement Program thus Vetech, LLC, Vetech Group, Fastube, and Process Development Corporation all enjoy the benefits afforded under federal law of Congress and The Executive Orders of the President.

7. That ownership under SDVOSB must be direct ownership and the “control” of both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more service-disabled veterans.

8. That all business Defendants have no separate legal existence as a matter of economic reality, as those entities have no other business purpose, function, or economic viability except as to serve as instruments for conducting the operations giving rise to claims asserted in this Complaint.

9. All business Defendants, would be subject to the South Carolina long arm statute, as the Defendants have employed residents of this state, and therefore have come in direct contact with residents of this state and have purposely availed themselves to the law and jurisdiction of this state.

10. Further, to ensure uniformity, business Defendants have implemented a comprehensive operating system for all Defendants which lays forth mandatory detailed instructions and specifications on operating standards including acceptable payment methods for the company's servers.

11. By virtue of the complete control of the Operating Entities all the Defendants have assumed the status of joint employer of the Plaintiffs. The imposition of joint employer status is justified by the level of control and the directing of decisions regarding day-to-day employment matters at the operating entities, which is required by the SDVOSB.

12. Vetech, LLC, Vetech Group, Fastube, Process Development Corporation, and James R. Pongracz (hereinafter collectively referred to as "Defendant") are a single enterprise under the PWA because the entities perform related activities through unified operation and common control for a common business purpose.

13. During the relevant time period, Defendant employed individuals who handled, sold, or otherwise worked on goods or materials that have been moved in, or produced for, commerce in the state of South Carolina.

14. This Court has subject matter jurisdiction over this matter pursuant to the South Carolina Wage Payment Act.

15. Plaintiff asserts a state law cause of action pursuant to South Carolina Long Arm Statute 36-2-803 and a state common law cause of action for Unjust Enrichment.

16. Venue is proper in this court because a substantial part of the direct contact of Defendant to Plaintiff and the Defendant transacting business with Plaintiff took place giving rise to this Plaintiff claims occurred within Greenville County and because this Court has personal jurisdiction over the corporate and individual Defendants.

**SUMMARY OF CLAIMS**

17. Plaintiff brings this action to recover unpaid wages pursuant to South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 (“PWA”).

18. Defendants have willfully committed widespread violations of the South Carolina Wages Act by engaging in a pattern, practice, and policy of failing to pay employees wages and reimbursements.

19. Plaintiff allege that Defendants violated South Carolina state laws by, *inter alia*:

- (i) failing to pay them the appropriate wages for all hours worked;
- (ii) failing to pay all reimbursements of business expenses and costs; and
- (iii) improperly denying paying all wages that have become due and owed.

**FIRST CLAIM FOR RELIEF**  
**(SOUTH CAROLINA PAYMENT OF WAGES ACT)**

20. Plaintiff re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

21. Plaintiff was hired by the Defendant in August of 2016 as General Manager of Southern Operations.

22. At all relevant times, Defendant employed Plaintiff within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 (“PWA”). Plaintiff is an “employee” and is not free from the control and direction of Defendant.

23. Plaintiff worked for Defendant with the clear understanding and agreement by Defendant that their compensation would be consistent with all applicable laws, including state wage and hour laws.

24. Pursuant to the PWA, “[a]n employer shall not withhold or divert any portion of the employee’s wages unless the employer is required or permitted to do so by state or federal law. . . .” S.C. Code Ann. § 41-10-40(C).

25. Further, “any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective.” S.C. Code Ann. § 41-10-30(A).

26. Accordingly, Plaintiff is entitled to receive all compensation due and owing him.

27. As a result of Defendant’s unlawful policies and practices as set forth above Plaintiff has been deprived of compensation due and owing which Defendant promised to pay in their commitment to abide by applicable wage and hour laws and in violation of the PWA’s mandate that no wages be withheld or diverted unless required or permitted under applicable law.

28. Defendant has set and withheld wages of the Plaintiff without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

29. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered a substantial loss and has been deprived of compensation to which he is entitled, including monetary damages in the amount of three (3) times the unpaid wages as well as costs and reasonable attorney’s fees.

**SECOND CLAIM FOR RELIEF**  
**(SOUTH CAROLINA COMMON LAW – UNJUST ENRICHMENT)**

30. This second claim is brought in the alternative to the first claim (violation of the PWA) to the extent that Defendant disavows any agreement to pay Plaintiff in a manner consistent with state and federal law. Plaintiff re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

31. Plaintiff was employed by Defendant within the meaning of South Carolina Common Law.

32. At all relevant times, Defendant maintains a policy of denying reimbursements that, by law or equitably owed and belong to Plaintiff.

33. During the employment period covered by this Complaint, Defendant had, and maintains, a willful policy and practice of having their employees subsidize Defendant's business expenses but failing to provide reimbursement.

34. Defendant retained the benefit from the Plaintiff and outlaying of business expenses which rendered it inequitable and unjust for Defendant to retain such benefits.

35. Defendant was unjustly enriched by subjecting Plaintiff and to such unequitable business practice.

36. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff has suffered an injury and is entitled to reimbursement, restitution, and disgorgement from Defendant of the benefits conferred by Plaintiff.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that the Court grant the following relief:

- A. For *disgorgement* of revenues, profits and money unjustly earned from the unlawful practices;
- B. An award of unpaid wages to Plaintiff.
- C. An award of unpaid reimbursement of business expenses to Plaintiff.
- D. Restitution of wages improperly retained by Defendant;
- E. An award of treble damages to Plaintiff to the extent permitted by S.C. Code Ann. § 41-10-80(C);

- F. An award of costs and expenses of this action together with reasonable attorneys' fees; and
- G. Such other and further equitable relief as this Court deems just and proper.

Respectfully Submitted,

By: S/ John G. Reckenbeil  
John G. Reckenbeil  
Lawrence E. McNair, III  
LAW OFFICE OF JOHN RECKENBEIL, LLC  
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Dated: March 21, 2018  
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Reggie (“Reg”) Keith Wells,  
Plaintiff,

vs.

Vetech, LLC, Vetech Group, Fastube, Process  
Development Corporation, James R.  
Pongracz, individually.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2018-CP-23-1745

Defendants, responding to and answering the Complaint of Plaintiff, would respectfully allege and show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE**  
**(General Denial)**

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiff’s Complaint
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff’s Complaint.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff’s Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of Plaintiff’s Complaint.
5. Defendants admit the allegations contained in Paragraph 5 of Plaintiff’s Complaint.
6. Defendants admit the allegations contained in Paragraph 6 of Plaintiff’s Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff’s Complaint.
8. Defendants deny the allegations contained in Paragraph 8 of Plaintiff’s Complaint.
9. Defendants deny the allegations contained in Paragraph 9 of Plaintiff’s Complaint.
10. Defendants deny the allegations contained in Paragraph 10 of Plaintiff’s Complaint.
11. Defendants deny the allegations contained in Paragraph 11 of Plaintiff’s Complaint.
12. Upon information and belief, Defendants deny the allegations contained in Paragraph 12 of Plaintiff’s Complaint and demand strict proof thereof.

13. Upon information and belief, Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.

14. Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Responding to Paragraph 15 of the Plaintiff's Complaint, the Defendants assert that the allegations contained therein do not set forth any allegations of fact, but rather, set forth one or more conclusions of law, to which no response by the Defendants are required. To the extent this paragraph contains any allegation of fact to which a further response may be required of the Defendants, the Defendants deny the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Responding to Paragraph 17 of the Plaintiff's Complaint, the Defendants assert that the allegations contained therein do not set forth any allegations of fact, but rather, set forth one or more conclusions of law, to which no response by the Defendants are required. To the extent this paragraph contains any allegation of fact to which a further response may be required of the Defendants, the Defendants deny the allegations contained in Paragraph 17 of Plaintiff's Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. Responding to paragraph 20 of the Complaint, Defendants incorporate their response to paragraphs 1 through 19 as if restated verbatim herein.

21. Defendants admit the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Responding to Paragraph 24 of the Plaintiff's Complaint, the Defendants assert that the allegations contained therein do not set forth any allegations of fact, but rather, set forth one or more conclusions of law, to which no response by the Defendants are required. To the extent this paragraph contains any allegation of fact to which a further response may be required of the Defendants, the Defendants deny the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Responding to Paragraph 25 of the Plaintiff's Complaint, the Defendants assert that the allegations contained therein do not set forth any allegations of fact, but rather, set forth one or more conclusions of law, to which no response by the Defendants are required. To the extent this paragraph contains any allegation of fact to which a further response may be required of the Defendants, the Defendants deny the allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. Responding to the allegations contained in Paragraph 26 of Plaintiff's Complaint, Defendants deny that any compensation is due and owing to Plaintiff.

27. Defendants deny the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of Plaintiff's Complaint.

30. Responding to paragraph 30 of the Complaint, Defendants incorporate their response to paragraphs 1 through 29 as if restated verbatim herein.

31. Defendants deny the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of Plaintiff's Complaint.
36. Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Complaint.

**FOR A SECOND DEFENSE**  
**(Motion to Dismiss)**

37. Defendants incorporate their response to paragraphs 1 through 36 as if restated verbatim herein.
38. Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted.

**FOR A THIRD DEFENSE**  
**(Lack of Jurisdiction/Improper Venue)**

39. Defendants incorporate their response to paragraphs 1 through 38 as if restated verbatim herein.
40. Plaintiff's Complaint must be dismissed for lack of jurisdiction and/or improper venue.

**FOR A FOURTH DEFENSE**  
**(Bona Fide Dispute)**

41. Defendants incorporate their response to paragraphs 1 through 40 as if restated verbatim herein.
42. Plaintiff's Complaint is barred, in whole or in part, by the doctrine of *bona fide* dispute over whether the wages claimed were owed.

**FOR A FIFTH DEFENSE**  
**(Failure to Mitigate Damages)**

43. Defendants incorporate their response to paragraphs 1 through 42 as if restated verbatim herein.
44. Plaintiff's claims are barred, in whole or in part, because he failed to take reasonable steps, which would have mitigated or eliminated some or all of Plaintiff's alleged damages.

**FOR A SIXTH DEFENSE**  
**(Satisfaction and Accord)**

45. Defendants incorporate their response to paragraphs 1 through 44 as if restated verbatim herein.

46. Plaintiff's Complaint's is barred, in whole or in part, by the equitable doctrine of satisfaction and accord.

**FOR A SEVENTH DEFENSE**  
**(Defendants' Actions Were in Good Faith And  
Based Upon a Reasonable Belief That No Wages Were Owed)**

47. Defendants incorporate their response to paragraphs 1 through 46 as if restated verbatim herein.

48. Plaintiff's Complaint must be dismissed, in whole or in part, because Defendants' actions were in good faith and based upon a reasonable belief that no wages were owed.

**FOR AN EIGHTH DEFENSE**  
**(Defendants Actions Were Done Without An Intent to Harm Or Reckless Indifference)**

49. Defendants incorporate their response to paragraphs 1 through 48 as if restated verbatim herein.

50. Plaintiff's Complaint must be dismissed, in whole or in part, as any alleged actions by Defendants were done without an intent to harm or reckless indifference.

**FOR A NINTH DEFENSE**  
**(Waiver, Laches, Estoppel)**

51. Defendants incorporate their response to paragraphs 1 through 50 as if restated verbatim herein.

52. Defendants rely upon the defenses of waiver, laches, and estoppel to the extent applicable to the facts of this case.

**FOR A TENTH DEFENSE**  
**(Reservation of Defenses)**

53. Defendants incorporate their response to paragraphs 1 through 52 as if restated verbatim herein.

54. Defendants reserve the right to amend their Answer to Plaintiff's Complaint and plead their defenses more specifically at the conclusion of its investigation and discovery proceedings.

WHEREFORE, having answered the Plaintiff's Complaint, Defendants hereby pray for an Order dismissing the Plaintiff's Complaint with prejudice and awarding Defendants all available damages, attorneys' fees and costs, and any such other and further relief the Court may deem just and proper.

s/Hannah Rogers Metcalfe  
Hannah Rogers Metcalfe, SC Bar No. 73046  
Metcalfe & Atkinson, LLC  
1395 S. Church Street  
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Facsimile: (864) 214-3067  
hmetcalfe@malawfirmssc.com  
*Attorney for Defendants*

September 6, 2018  
Greenville, South Carolina



computed on the amount of the verdict or award from the date of the Offer to the entry of the judgment.

METCALFE & ATKINSON, LLC

**s/Hannah Rogers Metcalfe**

Hannah Rogers Metcalfe, S.C. Bar #73046

1395 S. Church Street

Greenville, South Carolina 29605

864-214-2319

[hmetcalfe@malawfirm.com](mailto:hmetcalfe@malawfirm.com)

*Attorney for Defendants*

October 11, 2018  
Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Reggie "Reg" Wells, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Vetech, LLC; Vetech Group; Fastube; )  
Process Development Corporation; James )  
R. Pongracz, individually, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

**PLAINTIFF'S ACCEPTANCE OF  
DEFENDANTS' OFFER OF JUDGMENT**

C.A. NO.: 2018-CP-23-01745

Plaintiff, by and through his undersigned counsel, hereby accepts Defendants' Offer of Judgment that was filed in this case on October 11, 2018.

Respectfully Submitted,

By: S/ John G. Reckenbeil  
John G. Reckenbeil  
LAW OFFICE OF JOHN RECKENBEIL, LLC  
Post Office Box 16735  
Greenville, South Carolina 29306  
Phone: (864) 248-0436  
Fax: (864) 326-5940  
Email: john@johnreckenbeillaw.com

Dated: October 31, 2018  
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
Reggie "Reg" Wells,	)	<b>PLAINTIFF COUNSEL'S VERIFIED</b>
	)	<b>MOTION FOR COURT APPROVAL/</b>
Plaintiff,	)	<b>ORDER FOR ATTORNEY FEES AND</b>
	)	<b>COSTS AND AWARD OF TREBLE</b>
vs.	)	<b>DAMAGES</b>
	)	
Vetech, LLC; Vetech Group; Fastube;	)	
Process Development Corporation; James	)	C.A. NO.: 2018-CP-23-01745
R. Pongracz, individually,	)	
	)	
Defendants.	)	

On October 11, 2018 counsel for the Defendant served upon Plaintiff's counsel an Offer of Judgement in accordance with Rule 68 of SCRPC. This petition is being subsequently filed within ten (10) days of Plaintiff's acceptance of the Offer of Judgment. Plaintiff's counsel, supported by Declaration (Exhibit 1), seeks Attorney fees and costs under South Carolina Code of Laws Section 41-10-80(c) and SCRPC 54.

41-10-80 provides in pertinent part:

In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50, 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 as the court may allow.

This provision is not mandatory. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 384 (1995). In using "may" rather than "shall," the South Carolina Legislature has provided that discretion in allowing treble damages or attorney's fees rests with the judge. *Id.* at 98, 456 S.E.2d at 383. The South Carolina Supreme Court made clear in Mathis vs Brown & Brown of SC 698 SE 2d 773: "the relevant date for determining whether the employer reasonably withheld wages is the time at which the wages were withheld, i.e., when the employer allegedly violated the

Act. *See Rice*, 318 S.C. at 99, 456 S.E.2d at 383 (in enacting the Payment of Wages Act, "the legislature intended to punish the employer who forces the employee to resort to the court in an unreasonable or bad faith wage dispute."). *See Mathis* at 773. In fact, Plaintiff Wells sought, on his own from his former employer, payment of the exact amount (\$5,968.89) set forth in the Offer of Judgment back in October of 2017. This total amount is comprised of \$3,252.29 in owed expenses as well as \$2,716.60 in owed wages. (See Exhibit 2 -Wells October 2017 email exchange).

This lawsuit was filed by Plaintiff's Counsel on March 21, 2018. Defendants' Offer of Judgment pays every penny of owed wages to Plaintiff Wells. To the extent that the Judgment filed for the Plaintiff in this case is for the exact amount owed, it's not a quantum leap that no bona fide dispute existed as to the amount of the owed wages. The General Assembly of South Carolina has clearly set forth that an unreasonable failure to pay owed wages demands an award of attorneys' fees, litigation costs to Plaintiff's Counsel and treble damages of owed wages in favor of Plaintiff.

#### ***Reasonableness of the Attorney Fees & Costs***

Upon finding that an award of attorneys' fees is appropriate, the court is charged with then determining the reasonable amount of fees to award to the petitioning party. *See In re Abrams & Abrams, P.A.*, 605 F.3d 238, 243 (4th Cir. 2010). The court's determination of the reasonableness of a fee award begins with the court's calculation of the lodestar figure. *See Robinson v. Equifax Information Srvs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009). The lodestar amount is calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended. *Id.* The Fourth Circuit has adopted a 12-factor test for making a lodestar determination. These factors include: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in

pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorney's fees awards in similar cases. See *Robinson*, 560 F.3d at 243 (citing *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978)). The court may find that some of the factors are inapplicable; as such, these factors need not be strictly applied. See *E.E.O.C. v. Service News Co.*, 898 F.2d 958, 965 (4th Cir. 1990).

Plaintiff's counsel has expended approximately 10.4 hours of labor in relation to prosecuting Plaintiff's claims. This attorney's labor rate is \$375.00 per hour. In addition, Plaintiff's Counsel seeks \$198.73 in litigation costs. Plaintiff's counsel has set forth his itemized fees and costs, attached to his Declaration in Exhibit 1. Plaintiff's Counsel believes the billing rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skills, experience, and reputation. Plaintiff's Counsel was left with no other choice but to file a lawsuit for the collection of Plaintiff's owed wages and expenses. The hours spent in handling this case were necessary due to Defendants' blatant disregard of South Carolina wage and hour laws. Additionally, few lawyers are willing to undertake these types of wage and hour cases on behalf of employees because of the unique difficult area of the law, typical low recovery, and the amount of resources needed to pursue a case on a contingency arrangement.

The undersigned has extensive experience with representing Plaintiffs with FLSA/Wages Payment claims. Over the last three years, counsel has represented plaintiffs in thirteen (13) wage and hour lawsuits involving FLSA and/or Wage Payment Act claims. See eight of the thirteen

listed below. See; Smith et al v. American Health Associates, 6:16-cv-03480-TMC (D.S.C. Oct. 25, 2016); Parker et al v. Sealed Air Corp., 2:15-cv-01354-KM-MAH (D.N.J. Feb. 20, 2015); Meller et al v. Wings Over Spartanburg, LLC et al, 2:15-cv-02094-PMD (D.S.C. May 21, 2015); DeBenedetto et al v. Thaxton Investment Corp. et al, 6:15-cv-02475-MGL (D.S.C. June 19, 2015); Mullis et al v. Wings Over Spartanburg, LLC et al, 2:16-cv-03578-PMD (D.S.C. Nov. 7, 2016); Morris et al v. Southern Concrete and Construction Inc., 8:16-cv-01440-TMC (D.S.C. May 5, 2016); Huffman et al v. Greenville Technical College et al, 2016-CP-23-06875. Hankins et al v. Rooterman et al, 7:14-cv-04094-TMC (D.S.C. Oct. 21, 2014) (multiple Plaintiff FLSA collective action).

Lastly, the Fourth Circuit has held that “‘the most critical factor’ in calculating a reasonable fee award ‘is the degree of success obtained.’” Brodziak v. Runyon, 145 F.3d 194, 196 (4th Cir. 1998) (quoting Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)). Plaintiff Wells is to receive every penny of his owed wages and expenses (\$5,968.89) of which was demanded as due and owed. The amount sought in fees is fair, reasonable and necessary in light of this matter.

For the foregoing reasons, Plaintiff’s Counsel should be awarded \$3,900.00 for attorney fees and \$198.73 as reimbursement of litigation costs. Furthermore, the Court should award this Plaintiff treble damages of owed wages in the total amount of \$8,149.80.

Respectfully Submitted,

By: S/ John G. Reckenbeil  
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Email: [john@johnreckenbeillaw.com](mailto:john@johnreckenbeillaw.com)

# EXHIBIT 1

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Reggie "Reg" Wells, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Vetech, LLC; Vetech Group; Fastube; )  
Process Development Corporation; James )  
R. Pongracz, individually, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

**DECLARATION OF  
JOHN G. RECKENBEIL**

C.A. NO.: 2018-CP-23-01745

John G. Reckenbeil is over the age of eighteen (18) and, declares and states the following:

1. I graduated from the University of South Carolina-Spartanburg in 1996 and the Oklahoma City School of Law in 2000.
2. I have been licensed to practice law in South Carolina since November 2000. I am also permitted to practice before the District of South Carolina and the United States Court of Appeals for the Fourth Circuit.
3. Since 2006, I have practiced with the Law Office of John G. Reckenbeil, LLC and have focused my practice on Wage & Hour laws Title VII employment law, general litigation and criminal defense. I have participated in a significant amount of employment law-related cases in both state and federal court, to include: DeBenedetto et al v. Thaxton Investment Corp. et al, 6:15-cv-02475-MGL (D.S.C. June 19, 2015) (FLSA collective class settlement of 100 Plaintiffs); Hankins et al v. Rooterman et al, 7:14-cv-04094-TMC (D.S.C. Oct. 21, 2014) (multiple Plaintiff FLSA collective action settlement); Smith et al v. American Health Associates, 6:16-cv-03480-TMC (D.S.C. Oct. 25, 2016) (multiple Plaintiff FLSA collective action settlement); Parker et al v.

Sealed Air Corp., 2:15-cv-01354-KM-MAH (D.N.J. Feb. 20, 2015); (46 member class regarding owed wages).; Meller et al v. Wings Over Spartanburg, LLC et al, 2:15-cv-02094-PMD (D.S.C. May 21, 2015); Huffman et al v. Greenville Technical College et al, 2016-CP-23-06875. Morris et al v. Southern Concrete and Construction Inc., 8:16-cv-01440-TMC (D.S.C. May 5, 2016);

4. I served as the principal lead attorney in the above-captioned matter since inception of the case.
5. My regular hourly rate for employment cases is \$375. To the best of my knowledge, this is the hourly rate customarily charged by lawyers with my experience and type of practice in South Carolina.
6. All of the hours for which I am seeking fees as indicated in the attached chart were devoted entirely to the claims for which a significant successful result for the prevailing Plaintiff has been achieved.
7. The records of my time and activities in this matter were kept contemporaneously as the events occurred and were formatted into the document attached.
8. I verify that the amount of my fees and costs stated in Plaintiff's Verified Motion for Attorney Fees and Costs are true and correct.



John G. Reckenbeil

Dated: October 31, 2018  
Greenville, South Carolina

**Reg Wells v. Vetech, LLC, et al.**  
**Case No. 2018-CP-23-01745**

**ATTORNEY FEES**

<b>Date</b>	<b>Description</b>	<b>Hours</b>
1/16/2018	Meeting with Client	1.4
3/21/2018	Final draft and filing of Summons and Complaint	1.1
4/3/2018	Preparation and mailing via certified mail to serve lawsuit on defendants	0.5
4/16/2018	Filing of Proofs of Service on Defendants	0.5
5/21/2018	Phone call from defense attorney; Letter to Ms. Bankey confirming phone call	0.3
5/22/2018	Drafting and preparation of email to defense attorney Bankey regarding owed wages	0.5
6/6/2018	Review of email from Ms. Bankey regarding Vetech's records of pay	0.3
6/8/2018	Emails with Client	0.2
6/13/2018	Email to Client with update	0.1
6/14/2018	Email from Client	0.1
7/30/2018	Email from Client	0.1
8/3/2018	Email to Attorney Metcalfe	0.1
8/17/2018	Emails to/from Attorney Metcalfe (x3); Phone call to Client	0.5
8/22/2018	Emails to/from Client	0.2
8/23/2018	Phone call with Client; Email to Attorney Metcalfe	0.6
9/6/2018	Review of Defendants' Answer	0.3
10/11/2018	Review of Defendants' Offer of Judgment	0.3
10/16/2018	Phone call with Client	0.4
10/17/2018	Emails to/from Client	0.3
10/19/2018	Email to Client with update	0.1
10/30/2018	Preparation of memorandum for attorney fees	2.1
10/31/2018	Final preparation of memorandum for attorney fees	0.4
	<b>Total Hours</b>	<b>10.4</b>
	<b>Hourly rate \$375</b>	
	<b>Total Attorney Fees</b>	<b>\$ 3,900.00</b>

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**Reg Wells v. Vetech, LLC, et al.**  
**Case No. 2018-CP-23-01745**

**CASE COSTS**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
3/21/2018	Filing Fee in State Court	\$ 180.32
4/3/2018	Postage for certified mail to serve complaint on Registered Agents (x2)	\$ 13.76
4/3/2018	Printing of letters to registered agents with summons and complaint (x2) (18 pgs x \$.15)	\$ 2.70
4/16/2018	Printing of Proofs of Service (2 pages x \$.15 each)	\$ 0.30
5/21/2018	Printing of letter to defense attorney Bankey (1 page x \$.15)	\$ 0.15
5/22/2018	Printing of documents provided to attorney Bankey (3 pages x \$.15)	\$ 0.45
6/6/2018	Printing of document provided by attorney Bankey (1 page x \$.15)	\$ 0.15
9/6/2018	Printing of Defendant's Answer (6 pages x \$.15)	\$ 0.90
	<b>Total Case Costs</b>	<b>\$ 198.73</b>

# EXHIBIT 2

-----Original Message-----

From: Reg Wells <[wellsnsc@aol.com](mailto:wellsnsc@aol.com)>  
To: Mirella Gervasi <[MGervasi@vetechgroup.com](mailto:MGervasi@vetechgroup.com)>  
Sent: Fri, Oct 6, 2017 4:11 pm  
Subject: Re: Pay Issue

Hey Mirella,

I trust you have enjoyed a great day. Any new developments?

Best regard,

Reg

Sent from my iPhone

On Oct 3, 2017, at 1:42 PM, Mirella Gervasi <[MGervasi@vetechgroup.com](mailto:MGervasi@vetechgroup.com)> wrote:

Hi Reg,

I have attached a payroll schedule for your review. I can assure you that based on your start date of September 19<sup>th</sup> you were paid during the October 14<sup>th</sup> pay date.

Please allow me time to review the final pay period of your employment. This will be a priority that I will complete ASAP.

Thank you for your patience in this matter.

## **Mirella Gervasi**

**Manager, Human Resources**

41714 Haggerty Circle ? Canton, MI 48188  
Phone: (734) 266-7564 ? Fax: (734) 266-7500  
Email: [mgervasi@vetechgroup.com](mailto:mgervasi@vetechgroup.com)

<image003.png>

**From:** [wellsnsc@aol.com](mailto:wellsnsc@aol.com) [<mailto:wellsnsc@aol.com>]  
**Sent:** Tuesday, October 3, 2017 1:22 PM  
**To:** [MGervasi@vetechgroup.com](mailto:MGervasi@vetechgroup.com)  
**Subject:** Pay Issue

Hi Mirella,

This is regarding my outstanding compensation and expense reimbursement due from Vetech.

I was advised on 13 Jun 2017 that I was involuntarily released from employment with the company.

My last pay check from Vetech was received on 9 Jun 2017. Therefore, I have not been paid currently.

I joined Vetech on 19 Sep 2016. My first pay was received on 14 Oct 2016. Therefore, I have not been paid for the first my first two weeks of employment.

I have been very patient. However, my patience has become thin. I would be very appreciative of your assistance in prompting the company to pay me for the salary and expenses which are outstanding.

As you know not paying me for salary earned and expenses incurred in carrying out my responsibilities is illegal.

Thank you,

Reg Wells

<2017 Payroll Schedule.pdf>

<2016 Paydates and period paid dates.pdf>

**Attachment 2**

Reg Wells

**Calculations used to determine outstanding salary due from Vetech**

Annual salary	\$90,000.00
Rate per pay period $\$90,000 \div 26 =$	\$3,461.538
50% of pay period rate	\$1,730.769
Net income deposited in checking Account each pay period	\$2,438.16*
50% of net income	\$1,219.08

Vetech define work week begins on Saturday of each week. The company pays bi-weekly.

I was advised of my termination on Tuesday, 13 Jun 17. Therefore, I was four days into a new pay period when terminated.

Seven (7) work days $\div 4$	57%	
57% of \$1,730.769 =		\$ 986.53
Remainder of salary withheld when hired		<u>\$1,730.769**</u>
Total salary outstanding from Vetech:		\$2,716.60
Paid 50% of bi-weekly salary on 11 Jul 17**	<u>\$1,730.076</u>	

Expenses outstanding	\$3,252.29
Salary outstanding from Vetech:	<u>\$2,716.60</u>
Total due from Vetech:	\$5,968.89

\*Net amount following deductions for taxes, etc. Initially my pay deposited did not include my car and phone allowance. Therefore the net of the first checks deposited was \$2,337.00 each pay period. I based all calculations including the auto and phone allowances as I was utilizing and provided an allowance for these resources until my final date of work. These were a part of my employment agreement.

\*\* There was no detail provided with the check. My calculations are based on the assumption that the check was for one week of salary. Further to this it is assumed that this payment was for 50% of my salary withheld when hired.



I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: All right. And this is the case, Reggie  
3 Wells v. Vetech. A motion for attorney's fees and -- let me  
4 pull that case back up.

5 Is it attorney's fees and treble damages or --

6 MR. RECKENBEIL: Yes, sir.

7 THE COURT: All right. I'll be glad to hear from  
8 you.

9 MR. RECKENBEIL: May it please the Court, Your Honor.  
10 John Reckenbeil on -- on behalf of my client, Mr. Reg  
11 Wells.

12 I heard the Court saying that there was difficulties  
13 with computers. Do you need a copy of what was filed back  
14 in --

15 THE COURT: It's actually -- it seems to be working  
16 right now --

17 MR. RECKENBEIL: Okay.

18 THE COURT: -- so I'm -- I'm good.

19 MR. RECKENBEIL: Okay. Well, I -- if -- if the Court  
20 needs, I do have --

21 THE COURT: I've got Plaintiff's verified motion for  
22 Court approval for attorney's fee and costs and treble  
23 damages.

24 MR. RECKENBEIL: Correct, Your Honor.

25 Your Honor, this is a case of a Wage Payment Act of

1 South Carolina. Mr. Wells was a sales associate for  
2 Vetech back in 2017. Mr. Wells made a -- a request, which  
3 is Exhibit 2, for the amount of wages that was owed. The  
4 amount of wages that was owed, along with the amount of  
5 expenses, was submitted to Vetech in very plain and  
6 outlined form to demonstrate to them exactly the amount of  
7 wages that Mr. Wells was owed as a result.

8 The amount of wages that he was entitled to was  
9 \$2,716.60. The expenses that were outstanding that was  
10 owed to him was \$3,252.29. Giving a grand total of  
11 \$5,968.89. Mr. Wells was -- received silence in his  
12 petition to them, basically, to pay him the amount of  
13 wages that were owed to include the expenses.

14 As I've provided for the Court in our file -- and  
15 there was e-mail communications going back and forth with  
16 the DHR. Mr. Wells then had to employ my services. We  
17 filed a lawsuit in March of 2018. Ultimately, this case  
18 ended up with an offer of judgment coming last fall in the  
19 exact dollar amount that was owed to Mr. Wells for the  
20 expenses, as well as the wages.

21 There has been a significant amount of litigation  
22 that has gone through our appellate courts, Court of  
23 Appeals, Supreme Court dealing with the Wage Payment Act  
24 and dealing with, basically, the -- the punishment portion  
25 of the act --

1           THE COURT: And I, actually, tried one of these in  
2           Horry about two -- I guess about a month ago, so.

3           MR. RECKENBEIL: And so we are seeing more and  
4           more -- and I handle a lot in the federal court system  
5           under the Fair Labor Standards Act. We're seeing a lot  
6           more of this wage litigation.

7           And what is very clear -- I think Justice Few put it  
8           in a 2014 case is that if the Court looks to see if  
9           there's a bonafide dispute. If there's a bonafide good  
10          faith dispute and the employer has some sort of legitimate  
11          business reason for withholding those wages, then that's  
12          not what the legislature intended the -- the treble to be  
13          for.

14          The legislature intended it to be for an individual  
15          who tries and attempts to get their wages paid that's  
16          genuinely owed these wages, communicates through the  
17          employer that they're due and owed, and then the employer  
18          for no good faith reason whatsoever prohibits payment to  
19          the employee. And then this person has to hire counsel  
20          and come into court. This is what the general assembly  
21          established the stature for, this type of case.

22          A confession of judgment then comes forth in a Rule  
23          68. We sign it and say, okay, the exact dollar amount  
24          that was offered in the confession of judgment -- the  
25          offer of judgment. But that still doesn't take away from

1 the critical analysis that has been set forth by the  
2 general assembly and by our courts is that to determine  
3 whether or not that there's a good faith dispute as to the  
4 amount of wages owed.

5 And in this situation when the offer of judgment  
6 comes forth, when confession in the exact dollar amount  
7 that the wages were owed, then that's where we now have  
8 the opportunity to come forth before the Court and seek  
9 trebling the damages and then reasonable attorney's fees.

10 THE COURT: Well, what is in the record that shows  
11 that there's not a bonafide dispute? I mean, I don't --  
12 there's no record for this Court to even look at.

13 MR. RECKENBEIL: That's it. That's the point.

14 THE COURT: So how can I make a ruling that there was  
15 not a bonafide dispute?

16 MR. RECKENBEIL: Because you -- that's what -- that's  
17 what our courts have said. The Court of Appeals and the  
18 Supreme Court have said that the trial court looks at the  
19 facts in the record, makes a determination based upon the  
20 facts in the record --

21 THE COURT: Well, I'm not the trial court.

22 MR. RECKENBEIL: Well --

23 THE COURT: I didn't try the case. I mean -- I mean,  
24 what's in the record for me to make a finding either way  
25 on -- on --

1 MR. RECKENBEIL: On the attachment that was filed in  
2 the post-trial motion.

3 THE COURT: An affidavit from you?

4 MR. RECKENBEIL: The verified motion seeking the  
5 attorney's fees and seeking the treble damages.

6 THE COURT: Yeah. But, I mean --

7 MR. RECKENBEIL: That's what's in the record.

8 THE COURT: Right. An affidavit -- I think it was a  
9 declaration from you; isn't that correct?

10 MR. RECKENBEIL: Correct.

11 And so when you have --

12 THE COURT: I mean, you're, basically, saying since  
13 they agreed to settle for the amount that you were  
14 claiming, therefore, there's no bonafide dispute.

15 MR. RECKENBEIL: But that's -- Your Honor, it's not a  
16 settlement. It's a confession of judgment.

17 And our Supreme Court has talked about that in the  
18 Hueble v. Department of Natural Resources case. It was a  
19 civil rights case. And there was a confession of  
20 judgment. And I have an extra copy of this case that I'm  
21 happy --

22 THE COURT: Yeah. I'll be glad to look at it.

23 MR. RECKENBEIL: If I can approach, Your Honor.

24 And what this case sets forth, Your Honor, on the  
25 fourth page of -- of the opinion, it goes through the

1 cannon [phonetic] analysis. This is to determine whether  
2 or not that that -- a offer of judgment and acceptance of  
3 offer of judgment, actually, is a determinant to see  
4 whether or not that the Plaintiff is a prevailing party.

5 And so in the Civil Rights Act in which this case was  
6 brought to the Supreme -- I mean to the --

7 THE COURT: Let me stop you there.

8 I mean, yeah. I mean, I -- I agree with you on  
9 prevailing party. But this is a totally different  
10 standard. Because this is a statute that says -- it  
11 doesn't say the prevailing party gets attorney's fees. It  
12 says, If the trial court finds that there was no bonafide  
13 dispute and it was, I think, willful -- it seems like  
14 there's willful language in there, or something. But I  
15 may be wrong on that. That then the Court may find treble  
16 damages and attorney's fees.

17 So it's not whether you're a prevailing party.  
18 Because, clearly, when you have an offer of judgment and  
19 it's accepted, then you are the prevailing party.

20 But how does that relate to the statutory language of  
21 the wage payment statute?

22 MR. RECKENBEIL: Based upon the fact that the Court  
23 may. It's a -- it's a totality of the circumstances that  
24 the Court looks at the entire record of the case. And  
25 with the filing of the confession of judgment being an

1 identical amount to what Mr. Wells requested originally,  
2 which is now part of the record, because that was part of  
3 our motions. We submitted the attachment as Exhibit 2.  
4 That is part of the record and the totality of the  
5 circumstances that this Court should consider in making a  
6 determination of whether or not there was a bonafide  
7 dispute.

8 THE COURT: All right.

9 MR. RECKENBEIL: And so the public policy standpoint,  
10 I think, is enormous is that we're going to allow  
11 employers to not pay employees and then, ultimately, just  
12 file a confession of judgment for the exact amount that  
13 they owe them two years after the fact.

14 THE COURT: But you're in the role of saying I'm not  
15 going to agree with that unless you pay my attorney's  
16 fees.

17 MR. RECKENBEIL: Right. Let's see how that goes with  
18 the bar commission. That we're going to put the Plaintiff  
19 lawyer in a position where they're going to take a -- a --  
20 an equity interest over their client. And I really  
21 genuinely think that my bar card would be tore up if I  
22 come to that conclusion that, ultimately, I'm going to say  
23 I'm not going to accept the exact amount that my client is  
24 owed under the Wage Payment Act, and then make a motion  
25 for attorney's fees afterwards.

1 I think that you would put a Plaintiff's lawyer in a  
2 position where we would have an extreme conflict of  
3 interest. Because we're going to put our interest over  
4 our clients.

5 The Wage -- the Wage Payment Act says you can pay the  
6 employee what you are -- what you believe that they're  
7 owed. And that doesn't affect the Plaintiff's ability to  
8 come forward to say that they're entitled to, you know,  
9 additional wages.

10 It's clear that this is a post-trial -- a post-fact  
11 motion. It's a separate basic cause of action. It's a  
12 separate standard in which you have the Plaintiff's lawyer  
13 having the ability to come before the Court to, basically,  
14 vindicate a statutory right that Mr. Wells has as an  
15 employee to be paid the compensation that he's due and  
16 owed.

17 THE COURT: All right. I'll be glad to hear from  
18 you.

19 MS. METCALFE: I'm going to try to address some of  
20 the things he raised. And I'll start with Hueble. Hueble  
21 is not a wage payment case. The Hueble decision does  
22 allow -- the Court says that there can be attorneys fees  
23 in that case. Hueble does not address treble damages.

24 Your Honor, in this case, there was a complaint filed  
25 and an answer filed. And the answer the Defendant raised

1 as a defense, bonafide dispute, as well as their actions  
2 were done in good faith, and based upon a reasonable  
3 belief that there -- no wages were owed, and it was done  
4 without intent to harm. The attachments -- Mr. Reckenbeil's  
5 own attachments show that my client, Vetech, believed that  
6 he had been paid.

7 What happened in this case is after the answer was  
8 filed, the parties exchanged -- throughout the course of  
9 this case, the parties exchanged seven e-mails and two  
10 phone calls. And then we made an offer of judgment and  
11 disputed the amount. But, as Your Honor is well aware, an  
12 offer of judgment is the Plaintiff's -- is the Defendants  
13 opportunity to get the case resolved by making an offer of  
14 judgment. They disputed the amount. But they offered the  
15 amount, \$5,968.89.

16 As Your Honor stated, the Plaintiff has the option of  
17 not accepting the offer of judgment. But once the  
18 Plaintiff accepted that offer, that is then the judgment.  
19 There's been no determination of facts. This Court has  
20 not had a trial. But that is the amount of judgment --  
21 the judgment, the damages.

22 So the Plaintiff cannot come back after accepting  
23 that judgment and ask for treble damages, which can only  
24 be had under the Wage Payment Act if there is a finding  
25 that the employer acted unreasonably and that there --

1 there was no -- the Court has to make a finding that the  
2 withholding was unreasonable and there was no good faith  
3 wage dispute. That's based on the South Carolina Supreme  
4 Court case of [inaudible] v. Lydien [phonetic]  
5 Pharmaceuticals. So there's been no finding of that in  
6 this case.

7 The Defendant made an offer of judgment. The  
8 Plaintiff accepted. That is it as far as damages goes.  
9 Hueble doesn't apply. Hueble only speaks to attorney's  
10 fees in the civil rights context where there's a fee  
11 shifting provision.

12 As Mr. Reckenbeil said, the Court may award  
13 attorney's fees, but does not have to. And the fees have  
14 to be according to the Williamson case, Williamson v.  
15 Middleton. This is the case involving Mr. Parham here up  
16 in Greenville. So the South Carolina Supreme Court -- the  
17 fees have to have been actually and reasonably incurred.

18 And I'd like to shift to discuss the actual  
19 attorney's fees portion of the petition. Mr. Reckenbeil  
20 attached his affidavit with regard to the fees. But  
21 there's no fee agreement attached that shows that the fees  
22 were -- what the fee agreement was between the parties.

23 And the Court has stated that -- the Supreme Court  
24 has been very clear that in order for this Court to award  
25 attorney's fees, there has to be a showing that the

1 parties agreed to that fee arrangement. In addition,  
2 the -- the Plaintiff's fee petition asks for \$3,900 in  
3 attorney's fees on a case where judgment was accepted for  
4 \$5,968. That amounts to 66 percent of the judgment.

5 Using the lodestar method, which we contend is not  
6 appropriate in an individual action, a 33 percent  
7 attorney's fee amount would be \$1,969. 40 percent would  
8 be \$2,387. This is not a complex case. There was no  
9 discovery. There were no motions. A summons was filed.  
10 An answer was filed. An offer of judgment was filed. And  
11 an acceptance was filed. There was no fee agreement  
12 provided.

13 It's not a difficult question. The fees are based on  
14 an hourly rate, which is higher than those that have been  
15 awarded by Judge Gergel for John Nichols and Brian Murphy,  
16 and higher than what's been awarded by Judge Currie for  
17 David Rothstein, who is a certified employment specialist,  
18 which Mr. Reckenbeil is not.

19 So we would contend that even if attorney's fees were  
20 allowed in this case, the attorney's fees sought are not  
21 reasonable based on the amount of work that was involved  
22 and the simple nature of this case. No discovery, no  
23 motions, nothing. 66 percent of the judgment is  
24 unreasonable in light of the -- the circumstances.

25 Again, treble damages turn on whether or not an

1 employer was successful in defending against a suit for  
2 [inaudible] wages, but -- whether there has to be a  
3 bonafide dispute. There's no jury determination about a  
4 bonafide dispute. So the Plaintiff is not allowed to  
5 collect treble damages without a determination. And this  
6 Court cannot do so at -- at this stage. Once the offer of  
7 judgment was made, if the Plaintiff decides to accept it,  
8 that's it.

9 So the only thing that could be before the Court  
10 today would be the request for attorney's fees. We  
11 contend that Hueble does not apply, that he hasn't made  
12 the showing, again, for attorney's fees with regard to a  
13 bonafide dispute and that withholding on wages was  
14 unreasonable. You can't do that after an offer of  
15 judgment because there's no finding of fact.

16 And even if you could, the fees requested are  
17 unreasonable under the Williamson case and under all of  
18 the South Carolina Supreme Court precedent and Fourth  
19 Circuit cases involving wage payment showing that the  
20 percentage at 66 percent is too high.

21 And for those reasons, Your Honor, we would ask that  
22 the Court deny the motion for treble damages and deny the  
23 motion with regard to attorney's fees.

24 THE COURT: I mean, I'm looking at the case of  
25 Moran -- or Morin v. Integrity. And it says that the

1 treble on that portion of the Wage Payment Act statute is  
2 triggered if the Court finds there was no bonafide  
3 dispute, and withholding was unreasonable, and done in bad  
4 faith. And I don't think there's any kind of record to --  
5 to get to that level.

6 I mean, like I said, the one that I just tried in  
7 Horry, after the trial, then the motions were made. And I  
8 had to weigh the evidence that was presented to make that.  
9 And I don't think in this situation you get to that  
10 without some type of record.

11 So that and the -- based on the -- the fact that it  
12 was an offer of judgment, which was accepted, I'm going  
13 deny your motion.

14 MR. RECKENBEIL: Thank you, Your Honor.

15 THE COURT: And I'll do a Form 4 to that effect.

16 MS. METCALFE: That's fine, Your Honor.

17 MR. RECKENBEIL: Your Honor, if it please the Court.

18 Would it be okay if I submit a -- a formal order for  
19 the Court to then -- based upon your ruling?

20 THE COURT: No. I'll do a Form 4.

21 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 20th day of May, 2019.

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

June 20, 2019

---

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Perry H. Gravely, Circuit Court Judge

**RECEIVED**  
NOV 07 2019  
SC Court of Appeals

Appellate Case No.: 2019-001038

Reggie ("Reg") Keith Wells.....Appellant.

v.

Vetech, LLC; Vetech Group; Fastube; Process Development Corporation; and  
James R. Pongracz, individually.....Respondents.

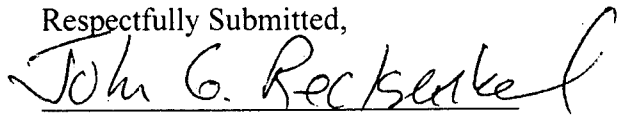
**CERTIFICATE**

I certify that the Record on Appeal contains all of the matter designated by the parties and not any other material.

I have served a copy of the Certificate on the following person this 21<sup>st</sup> day of October 2019:

Hannah Rogers Metcalfe  
Metcalfe & Atkinson, LLC  
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Respectfully Submitted,



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