

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas for the Thirteenth Circuit

Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2019-000601

RECEIVED
APR 27 2020
SC Court of Appeals

Stone International, LLC, and Eugene E. Stone, IV, ...Appellants,

v.

Byte Software, LLC; Byte Software Services, LLC; Benjamin Gause;
Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett; Carolina First Bank;
Branch Banking and Trust Company; Greg Corbitt; Contemporary
Solutions-USA, Inc.; International Modapts Association, Inc.; and
South Carolina Department of Employment and Workforce, ... Defendants,

Of Which

Byte Software, LLC, Byte Software Services, LLC,
Benjamin Gause, and Janice Gause are the Respondents.

RECORD ON APPEAL

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Attorney for Appellants

Randall Scott Hiller
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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Edward W. Miller, Circuit Court Judge

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v.

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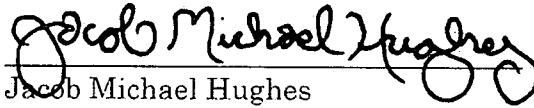
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Attorney for Appellants

April 20, 2020

Port Royal, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stone International, LLC,

Plaintiff,

vs.

Byte Software, LLC, GrandSouth Bank,
Carolina First Bank, Branch Banking and
Trust Company, Greg Corbitt, and
Contemporary Solutions-USA, Inc.,

Defendants.

) IN THE BUSINESS COURT

) THIRTEENTH JUDICIAL CIRCUIT

2010 NOV 18) P 3:24

) C.A. No.: 2009-CP-23-5000

CLERK OF COURT
GREENVILLE CO. S.C.

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND AND MOTION
TO COMPEL PRODUCTION**

This matter comes before the Court pursuant to Plaintiff's, Stone International, LLC (*hereinafter* Stone or Plaintiff), Motion to Amend filed on May 20, 2010, and a Motion to Compel Production filed on October 4, 2010.

This matter was before the Court on November 5, 2010, for a hearing on the motions set forth above. All parties were properly notified of the hearing, and all interested parties and counsel were present.

PROCEDURAL BACKGROUND

Plaintiff filed the original Complaint in this action on June 12, 2009, seeking to foreclose a security interest that was later amended on June 15, 2009, to correct a clerical error. Plaintiff obtained new counsel in May of 2010, who filed a Motion for Amendment of the Amended Complaint on May 20, 2010, which attached the proposed Second Amended Complaint. Plaintiff's Second Amended Complaint adds Benjamin Gause as a Defendant and sets forth four additional causes of action that include: (1) breach of contract; (2) *quantum meruit*; (3) promissory estoppel; and (4) interference with prospective contractual relationship(s).

Plaintiff's motion is made upon the grounds that no prejudice, as envisioned under Rule 15 of South Carolina Rules of Civil Procedure, will result if the Court grants Plaintiff leave to amend the Complaint.

ANALYSIS

A. MOTION TO AMEND

Plaintiff's Motion to Amend is made pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, which states that "[a] party may amend his pleading . . . by leave of court . . . and leave shall be freely given when justice so requires and does not prejudice any other party." The Rule governing amendment of pleadings strongly favors amendments, and the court is encouraged to freely grant leave to amend. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct.App. 2005). A motion to amend a pleading is addressed to the sound discretion of the trial judge. *Duncan v. CRS Serrine Engineers*, 337 S.C. 537, 524 S.E.2d 115 (Ct.App. 1999); *see also Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct.App. 1997) (courts have wide latitude in amending pleadings.). The prejudice envisioned by Rule 15, which would warrant denial of a motion to amend the pleadings, is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262 (Ct.App. 2005); *Parker*, 362 S.C. 276, 607 S.E.2d 711 (Ct.App. 2005); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000).

Based upon the evidence presented during the hearing and contained in the record, the Court finds it appropriate to grant Plaintiff leave to add the additional causes of action contained in the Second Amended Complaint. The new causes of action are based upon the Management Agreement, documents executed in implementing and facilitating that agreement, and the parties' business relationship and dealings with regards to Byte Software, LLC. The addition of

the new causes of action does not present issues that are new or novel to this case as they arose out of the same facts, circumstances, transactions, and occurrences that gave rise to the original action. Defendants, therefore, have had ample notice of the facts and issues underlying these additional claims, affording Defendant sufficient opportunity to refute them.¹

Secondly, as to adding Benjamin Gause as a Defendant, the Court likewise finds it appropriate to afford Plaintiff leave to make this proposed amendment. Benjamin Gause is the sole member of Defendant, Byte Software, LLC. As the sole member of the corporation, some of the alleged acts performed by Mr. Gause were undertaken on behalf of the business entity and gave rise to the current claims. However, there is evidence which demonstrates that Mr. Gause also acted in his individual capacity. Specifically, Mr. Gause executed the "Resolution of Sole Member of Byte Software, LLC" not only as the sole member of Byte Software, LLC but also in his individual capacity. Therefore, Mr. Gause's actions in his individual capacity justify and warrant the Court granting Plaintiff leave to amend and add him as an individual defendant.

Affording Plaintiff leave to make these amendments is in accord with both the letter and spirit of Rule 15. These amendments will not have the prejudicial effect that Rule 15 seeks to protect against.

B. MOTION TO COMPEL

Plaintiff filed a Motion to Compel on October 4, 2010, seeking an order compelling Defendant to respond to its discovery requests. During the hearing before this Court on November 5, 2010, Plaintiff's counsel informed the Court that Defendant had partially responded to its discovery requests the day prior, significantly narrowing the relief sought. Plaintiff

¹ In fact Defendant in its own Answer set forth defenses and counterclaims based upon the Management Agreement, related contracts/agreements, and the parties' actions in regards to Byte Software, LLC.

petitions the Court to compel production of information and documents Defendant objected to producing.

Defendant argues that only information regarding events and documents from the time during which Stone managed the company are relevant to the current action. Therefore, in its responses, Defendant objected to providing any information related to events or documents dated after April 9, 2009, claiming that this information and documentation was irrelevant and not reasonably calculated to lead to the discovery of relevant evidence. (Def. RFP at 3). Defendant also objected to providing Plaintiff a list of Byte customers from February of 2004 to the present time upon the same grounds and also claiming that such information constitutes a trade secret. (Def. Resp. to Int. at 3).

The Court finds that information regarding matters and documents produced after April 9, 2009, are relevant and germane to the issues involved in this case. The Court also recognizes and appreciates Defendant's interest in not divulging certain business related information directly to Plaintiff. Therefore, the Court orders that Defendant produce any and all information and documentation sought by Plaintiff in their discovery requests, including information related to and documentation produced after April 9, 2009, subject to the confidentiality protections set forth in this Order.

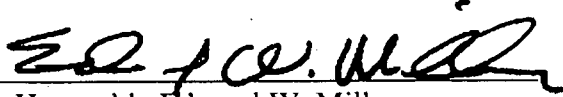
Plaintiff's Motion to Compel, as postured at the hearing, is GRANTED, and the Court orders Defendant to produce to Plaintiff's counsel any and all documents requested in Plaintiff's First Requests for Production as well as to fully respond to all Interrogatories contained in Plaintiff's First Set of Interrogatories. Defendant may mark documents and responses that concern proprietary business information and/or trade secrets produced pursuant to this Order as "CONFIDENTIAL-FOR ATTORNEYS' EYES ONLY". Responses and documents marked as

such may only be viewed by Plaintiff's counsel, D. Randle Moody, II, and Joseph O. Smith both of Roe, Cassidy, Coates & Price, P.A. In house counsel for Stone, M. Mitchell Goldsmith, is not to view responses or documents marked as "CONFIDENTIAL—FOR ATTORNEYS' EYES ONLY". Furthermore, any deposition testimony directly or indirectly discussing and/or addressing information from the responses or documents marked as "CONFIDENTIAL-FOR ATTORNEYS' EYES ONLY" shall be marked "CONFIDENTIAL" as the parties see fit. All documents, information, and testimony marked as "CONFIDENTIAL" pursuant to this Order may be utilized in an ordinary fashion in the course of the litigation. However, such testimony is not to become part of the public record and shall be filed under seal.

It is therefore ORDERED, ADJUDGED, AND DECREED that:

- (a) Plaintiff's Motion to Amend is GRANTED; and
- (b) Plaintiff's Motion to Compel, as postured at the hearing and subject to the limitations set forth above, is GRANTED.

IT IS SO ORDERED:


The Honorable Edward W. Miller

November 17, 2010

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP2305000

2010 NOV 18 P 3:24

Stone International Llc vs. Byte Software Llc

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DATE RECORDED

CHECK ONE:

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

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

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

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 18th day of November, 2010, and a copy mailed first class this 18th day of November, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

D. Randle Moody II Roe Cassidy Coates & Price,
P.A. P.O. Box 10529 Greenville, SC 29603
Joseph O Smith Roe Cassidy Coates & Price Pa

Randall Scott Hiller Randall S. Hiller, P.A. P.O.
Box 1716 Greenville, SC 29602

1052 North Church St Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stone International, LLC,

Plaintiff,

v.

Byte Software, LLC, Benjamin Gause,
Carolina First Bank, Branch Banking and
Trust Company, Greg Corbitt, Contemporary
Solutions-USA, Inc., and International
Modapts Association, Inc.,

Defendants.

Byte Software, LLC and Benjamin Gause,

Third-Party Plaintiffs,

v.

Eugene E. Stone, IV,

Third-Party Defendant.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) **BUSINESS COURT**

) C.A. No.: 2009-CP-23-5000

ORDER

This matter came before the Court pursuant to Plaintiff Counsel's Motion to Withdraw filed on April 6, 2017. The Court heard from all counsel concerning the motion and addressed the status of this matter at a duly noticed hearing on April 26, 2017. During that hearing, Defendant motioned to have this matter dismissed. Considering the facts and circumstances of this case, and in light of the submissions and representations made to the Court, it finds and holds as follows:

This case was originally filed on June 12, 2009 and later transferred to the Business Court. The case moved along the normal course of business litigation for several years,

during which time the parties completed all necessary discovery. However, approximately two years ago there ceased to be any activity in this case due to Plaintiff's failure to cooperate with its counsel. The Court finds that Plaintiff counsel attempted to address and reconcile those issues with their client to no avail, including their most recent effort accomplished via a March 21, 2017 letter notifying Plaintiff they would have to withdraw from the case should it not reconcile the issues preventing continued representation. Plaintiff did not respond to that letter, prompting Plaintiff counsel to file the instant motion.

Therefore, the Court hereby **GRANTS** Plaintiff Counsel's Motion to be Relieved as Counsel for the Plaintiff and Third-Party Defendant Eugene E. Stone, IV.

The Court **FURTHER ORDERS AND DIRECTS** that within thirty (30) days of the date Plaintiff is served with this Order, the Plaintiff shall:

- (1) obtain new counsel to represent Plaintiff Stone International, LLC;¹ and
- (2) inform both the Court and defense counsel Randall Hiller at 850 Wade Hampton Blvd. #850b, Greenville, SC 29609, that it has obtained new counsel and identify said counsel.

Should Plaintiff fail to obtain new counsel and notify the Court and defense counsel on or before the deadline set forth in this Order, the Court shall grant Defendants Motion to Dismiss and dismiss the current action *with prejudice*.

It is so ordered.

¹ An owner or member cannot represent an LLC before this court because a corporation must be represented by a licensed attorney before the circuit and appellate courts of this State. *Renaissance Enter., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651-53 (1999)(Defining the limitations of S.C. Code Ann. § 40-5-320 and holding that "[A] corporation may appear *pro se* only in magistrate's court.").

The Honorable Edward Miller
Circuit Court Judge for the
Thirteenth Judicial Circuit

May __, 2017

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Stone International LLC , plaintiff, et al vs. Byte Software LLC ,
defendant, et al
Case Number: 2009CP2305000
Type: Order/Relieve Counsel

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-05-15 09:59:32 page 4 of 4

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

C.A. No.: 2009-CP-23-5000

Stone International, LLC, and)
Eugene E. Stone, IV,)
Plaintiffs,)

v.)

ORDER

Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause;)
Janice Gause, f/k/a Janice Archer,)
f/k/a Janice Barnett; Carolina First)
Bank; Branch Banking and Trust)
Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association,)
Inc.; and South Carolina Department)
of Employment and Workforce,)
Defendants.)

This matter came before the Court on February 19, 2019, upon motion of both parties for partial summary judgment and upon Defendants' Motion to Dismiss pursuant to Rule 41, SCRCP. Present at the hearing were the Plaintiff, represented by his counsel, Jacob M. Hughes, Esq., and Randall S. Hiller, Esq., on behalf of Defendants Byte Software, LLC, Byte Software Services, LLC, Benjamin Gause, and Janice Gause. The parties submitted memoranda in support of their motions for summary judgment, along with accompanying discovery documents, deposition testimony, and affidavits.

After careful consideration of the memoranda, exhibits, testimony, affidavits, and history of proceedings in this action, the Court finds it unnecessary to address the specific issues raised by

either party under their motions for partial summary judgment as to each particular cause of action given that the Court decides to dismiss the entire action pursuant to Rule 41, SCRCP.

This lawsuit began by the filing of a summons and complaint on June 12, 2009, which, although stating numerous causes of action, essentially alleged a breach of contract, namely, the Management Agreement with Option to Purchase. The case proceeded along the course of business litigation for several years. Plaintiffs' original counsel was substituted on September 2, 2009. Again, on April 8, 2010, Plaintiffs' counsel was substituted, and the complaint was subsequently amended twice. On October 8, 2010, Plaintiffs filed a motion to compel production as a result of defense counsel's refusal to provide information related to events or documents created after April 9, 2009, the day Benjamin Gause "retook physical control of the company [Byte Software]." Granting Stone's motion, the Court found that the information requested and documents dated after April 9 "are relevant and germane to the issues involved in this case." (Order Granting Pl.'s Mot. to Am. and Mot. to Compel Produc. at 4.) Despite the November 18, 2010 Order, Defendants' counsel never provided the information sought by Stone. At some point, "Stone was no longer able to pay its legal fees." (Aff. of Josh Smith ¶ 2.) The answer to the Third Amended Complaint was filed on July 13, 2012. No other activity occurred from July 2012 until April 6, 2017, when Plaintiffs' counsel filed a motion to withdraw. Mr. Hughes filed a notice of appearance on July 7, 2017.

Defense counsel has moved to dismiss the case for failure to prosecute pursuant to Rule 41, SCRCP, relying upon *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006). *McComas* itself cites a decision of the Fourth Circuit Court of Appeals setting forth four factors that must be considered by the trial court before dismissing an action for failure to prosecute. *See McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976) (noting "dismissal is . . . a harsh sanction . . . [and]

should be resorted to only in extreme cases”) (internal quotation marks omitted). The factors are: (1) the plaintiff’s degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn-out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. *McComas*, 368 S.C. at 63, 626 S.E.2d at 904.

Based upon these factors, the Court hereby **GRANTS** Defendants’ Motion to Dismiss for failure to prosecute pursuant to Rule 41, SCRCP.

It is so ordered.

The Honorable Edward W. Miller

March 4, 2019
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Stone International LLC , plaintiff, et al vs. Byte Software LLC ,
defendant, et al
Case Number: 2009CP2305000
Type: Order/Dismissal

So Ordered

s/ Edward W. Miller

Electronically signed on 2019-03-07 09:21:36 page 4 of 4

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

C.A. No.: 2009-CP-23-5000

Stone International, LLC, and)
Eugene E. Stone, IV,)
Plaintiffs,)

v.)

AMENDED ORDER

Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause;)
Janice Gause, f/k/a Janice Archer,)
f/k/a Janice Barnett; Carolina First)
Bank; Branch Banking and Trust)
Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association,)
Inc.; and South Carolina Department)
of Employment and Workforce,)
Defendants.)

This matter came before the Court on February 19, 2019, upon motion of both parties for partial summary judgment and upon Defendants' Motion to Dismiss pursuant to Rule 41, SCRPC. Present at the hearing were the Plaintiff, represented by his counsel, Jacob M. Hughes, Esq., and Randall S. Hiller, Esq., on behalf of Defendants Byte Software, LLC, Byte Software Services, LLC, Benjamin Gause, and Janice Gause. The parties submitted memoranda in support of their motions for summary judgment, along with accompanying discovery documents, deposition testimony, and affidavits.

After careful consideration of the memoranda, exhibits, testimony, affidavits, and history of proceedings in this action, the Court finds it unnecessary to address the specific issues raised by

either party under their motions for partial summary judgment as to each particular cause of action given that the Court decides to dismiss the entire action pursuant to Rule 41, SCRCP.

This lawsuit began by the filing of a summons and complaint on June 12, 2009, which, although stating numerous causes of action, essentially alleged a breach of contract, namely, the Management Agreement with Option to Purchase. The case proceeded along the course of business litigation for several years. Plaintiffs' original counsel was substituted on September 2, 2009. Again, on April 8, 2010, Plaintiffs' counsel was substituted, and the complaint was subsequently amended twice. At some point, "Stone was no longer able to pay its legal fees." (Aff. of Josh Smith ¶ 2.) The answer to the Third Amended Complaint was filed on July 13, 2012. No other activity occurred from July 2012 until April 6, 2017, when Plaintiffs' counsel filed a motion to withdraw. Mr. Hughes filed a notice of appearance on July 7, 2017.

Defense counsel has moved to dismiss the case for failure to prosecute pursuant to Rule 41, SCRCP, relying upon *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006). *McComas* itself cites a decision of the Fourth Circuit Court of Appeals setting forth four factors that must be considered by the trial court before dismissing an action for failure to prosecute. *See McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976) (noting "dismissal is . . . a harsh sanction . . . [and] should be resorted to only in extreme cases") (internal quotation marks omitted). The factors are: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn-out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. *McComas*, 368 S.C. at 63, 626 S.E.2d at 904.

Based upon these factors, the Court hereby **GRANTS** Defendants' Motion to Dismiss for failure to prosecute pursuant to Rule 41, SCRCP.

It is so ordered.

The Honorable Edward W. Miller

March 4, 2019
Greenville, South Carolina

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

FORM 4
JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-23-5000

Stone International, LLC, et al

Byte Software, LLC, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Randall S. Hiller

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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 _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Jacob Hughes

Randall S. Hiller

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
 (Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Greenville Common Pleas

Case Caption: Stone International LLC , plaintiff, et al vs. Byte Software LLC ,
defendant, et al
Case Number: 2009CP2305000
Type: Order/Dismissal

So Ordered

s/ Edward W. Miller

Electronically signed on 2019-04-05 09:27:10 page 9 of 9

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stone International, LLC and Eugene E.
Stone, IV,

Plaintiffs,

v.

Byte Software, LLC; Byte Software Services,
LLC; Benjamin Gause; Janice Gause, f/k/a
Janice Archer, f/k/a Janice Barnett; Carolina
First Bank; Branch Banking and Trust
Company; Greg Corbitt; Contemporary
Solutions-USA, Inc.; International Modapts
Association, Inc.; and South Carolina
Department of Employment and Workforce,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

BUSINESS COURT

C.A. No.: 2009-CP-23-5000

THIRD AMENDED COMPLAINT

Plaintiffs Stone International, LLC and Eugene E. Stone, IV (*hereinafter, collectively, "Stone", "Plaintiffs", or "Mr. Stone"*), complaining of Defendants Byte Software, LLC (*hereinafter "Byte Software"*), Byte Software Services, LLC (*hereinafter "Byte Services"*), Benjamin Gause (*hereinafter "Mr. Gause"*), and Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett (*hereinafter "Mrs. Gause"*), files this Third Amended Complaint in order to add Eugene E. Stone, IV, Byte Services, Mrs. Gause, and the South Carolina Department of Employment and Workforce as parties to this action as well as add additional causes of action. Plaintiffs would respectfully allege the following:

PARTIES, JURISDICTION, AND VENUE

1. Stone is a limited liability company organized and existing under the laws of the State of South Carolina and is headquartered in Greenville County, South Carolina.

2. Mr. Stone is a resident and citizen of Greenville County, South Carolina, who resides and does business in Greenville County, South Carolina.

3. Upon information and belief, Byte Software is a limited liability company organized and existing under the laws of the State of South Carolina and is headquartered in Greenville County, South Carolina.

4. Upon information and belief, Byte Services is a limited liability company organized and existing under the laws of the State of Georgia with its principal place of business in Greenville County, South Carolina, and doing business in the State of South Carolina.

5. Upon information and belief, Mr. Gause is a resident and citizen of Hall County, Georgia, who resides and does business in Greenville County, South Carolina.

6. Upon information and belief, Mrs. Gause is a resident and citizen of Hall County, Georgia, who does resides in South Carolina and does business in Greenville County, South Carolina.

7. The present action involves contracts that were executed and associated acts that were performed in whole or in part in Greenville County, South Carolina. The personal property at issue in this case is also situated in Greenville County, South Carolina.

8. This court has jurisdiction over the subject matter and parties to this action and venue is appropriate concerning the pierce the corporate veil, breach of contract, civil conspiracy, *quantum meruit*, promissory estoppel, and interference with a prospective contractual relationship causes of action because the contract at issue and the associated acts were executed and/or performed in Greenville County, South Carolina. All the property at issue and parties to this matter are located, reside, own property, and/or conduct business in Greenville County, South Carolina.

9. This court has jurisdiction over the subject matter and parties to this action concerning the cause of action to foreclose a security interest covering personal property pursuant to South Carolina Code § 36-2-802 (2009) because Byte Software and/or Byte Services is a domiciliary of the State of South Carolina. Because Byte Software and/or Byte Services have their principal place of business, offices, and/or agents for the transaction of business in Greenville County, South Carolina, venue is proper in this Court pursuant to South Carolina Code § 15-7-30 (2009).

FACTUAL ALLEGATIONS

10. Stone retained Byte Software on or about June of 1997 to provide Stone with information technology software and support services. The conversion to Byte Software's software took in excess of one year and allowed Stone to more efficiently operate its apparel manufacturing business.

11. Once installed, Byte Software's system gave Stone the ability to automatically collect production, accounts, and payroll information from Stone's manufacturing facilities. Because of this automatic information collection feature, Stone was able to access real-time data and substantially reduce its operating costs.

12. On or about January of 2004, Carl Delaney (*hereinafter* "Mr. Delaney"), an employee of Byte Software, contacted one of Stone's employees, Dennis Garner (*hereinafter* "Mr. Garner"). Mr. Delaney informed Mr. Garner that Byte Software was experiencing substantial financial difficulties and that it was his opinion that if Byte Software did not obtain operating capital then Byte Software would cease to operate within approximately thirty (30) days.

13. Because Stone's entire information technology system had become dependent on Byte Software's system and support services, Stone's business would have been interrupted for a substantial period of time if Byte Software had ceased to operate.

14. Stone's representatives met with Mr. Gause on or about January of 2004 concerning the state of Byte Software. During this meeting, Mr. Gause disclosed that Byte Software was experiencing substantial financial difficulties and informed Stone that Mr. Gause would consider any potential solutions Stone could offer. Consequently, Stone began to consider acquiring Byte Software.

15. Stone began performing due diligence concerning the ownership, financials, composition, and legal status of Byte Software on or about February of 2004. This process continued for several months. During this process, Stone discovered that Byte Software had failed to pay any federal or state withholding taxes during 2002 and 2003.

16. Because of Byte Software's outstanding tax liabilities and in order to perform further due diligence, Stone decided against immediately acquiring Byte Software. Instead, Stone offered to provide management services and operating capital to Byte Software in exchange for an option to purchase Byte Software at a later time.

17. Byte Software accepted Stone's offer. On or about February 16, 2004, Eugene E. Stone, IV (*hereinafter* "Mr. Stone"), Chief Executive Officer for Plaintiff, and Mr. Gause, Principal for Byte Software, executed the Management Agreement (*hereinafter* the "Management Agreement"), a copy of which is attached hereto, marked as "Exhibit A", and incorporated herein as if fully set forth in this Complaint.

18. The Management Agreement provided that Stone would supply Byte Software with a full-time management team to provide oversight, sales, marketing, and other necessary

services. Stone further agreed to advance Byte Software a total of Two Hundred Thousand Dollars (\$200,000) (*hereinafter* the "Initial Capital Infusion"), which Stone provided in increments during 2004. Stone made the advances in the following increments until the total advance amount was met: an initial advance of Fifty Thousand Dollars (\$50,000) and an additional Thirty-Five Thousand Dollars (\$35,000) on a monthly basis.

19. Byte Software agreed that in consideration of the management services and the use of the operating capital provided by Plaintiffs to grant Stone an option to purchase Byte Software. The Management Agreement contained no provision setting forth a deadline for Stone to exercise its option. Instead, the exercise of the option was in Stone's sole discretion.

20. The Management Agreement provided that the purchase option could be in either ownership interests or via an asset purchase, again affording Stone sole discretion to choose the mode and/or nature of the transaction. Upon the exercise of the option, Stone was to immediately acquire 51 percent of Byte Software. The remaining 49 percent of Byte Software was to be acquired by Stone within five years of the exercise of the option. Stone was to receive five percent per year for four years and four percent at the end of the fifth year for management services rendered and without any payment. At the end of the fifth year, Stone and Byte Software were to retain an independent valuation expert to determine the value of the remaining 25 percent of Byte Software, and Stone was to render payment for that percentage to Mr. Gause at that time.

21. The Management Agreement provided that it could only be terminated by a subsequent, written agreement, which was to be mutually executed by both Stone and Byte Software.

22. Stone's management services commenced on or about February 16, 2004. The Management Agreement provided for an initial management term of 180 days from the date of execution, which was renewable for successive 180-day periods at the sole option of Stone. Stone properly noticed all required renewals of the Management Agreement as evidenced by the renewal agreements, which are attached hereto, marked as "Exhibits B-M" respectively, and incorporated herein as if fully set forth in this Complaint.

23. Following the execution of the Management Agreement, Mr. Gause, who had previously relocated to Charleston, South Carolina, was to begin sales operations in that area. Mr. Gause was given significant sales leads. Upon information and belief, however, no sales were made.

24. Upon information and belief, instead of creating sales on Byte Software's behalf, Mr. Gause formed Historic Renovations, LLC on or about April of 2005. The purpose of this business was to collaborate with 104 Rutledge, LLC, a business formed by Mr. Gause's brother, to acquire, restore, and sell historic homes in Charleston, South Carolina. Historic Renovations, LLC undertook a significant renovation project on or about June of 2005 in conjunction with 104 Rutledge, LLC. Mr. Gause served as the on-site manager for the project.

25. Following the execution of the Management Agreement, Stone assigned five of its employees to manage Byte Software on a full-time basis. During the course of 2004, Mr. Stone, Mr. Garner, Dennis Watt, Arthur Hodge, and Suzy Pike Harvey (*hereinafter* the "Management Team") relocated from Stone's offices in Columbia and Greenville, South Carolina, to Defendant Byte's office in Maudlin, South Carolina.

26. All members of the Management Team were paid solely from Stone's operating budget. No funds were extracted from either Byte Software or Mr. Gause in order to pay the Management Team.

27. From on or about 2004 until on or about 2005, the Management Team focused its efforts on researching as well as producing Byte Software's 2002 and 2003 tax returns and creating an accounting system for Byte Software. Stone's accountants estimated that Byte Software's federal tax liability was approximately Four Hundred Thousand and No/100 Dollars (\$400,000), plus interest and penalties, and the state tax liability was approximately Eighty Thousand and No/100 Dollars (\$80,000), plus interest and penalties.

28. The Management Team researched each account and determined that the majority of Byte Software's accounts were operating on outdated versions of Byte Software's operating system. Thereafter, a major effort was made to transition existing customers from the outdated operating system to an updated operating system. While these efforts were being undertaken, Stone redesigned and reconnected Byte Software's website.

29. On or about October of 2005, Stone entered into negotiations and successfully acquired Entel Systems (*hereinafter* "Entel"), a New York based software company, on behalf of Byte Software. This acquisition brought approximately twenty-five new customers to Byte Software and added approximately Five Hundred Thousand Dollars (\$500,000) to Byte Software's sales base.

30. Because of the expanded customer base that resulted from the Management Team's efforts and the acquisition of Entel, Byte Software required additional infusions of operating capital. As a result, Stone advanced funds equal to Two Hundred Thirty-Seven Thousand Fifty Dollars (\$237,050) to Byte Software in 2005.

31. Byte Software required additional infusions of operating capital in 2006. Stone agreed to make additional infusions of operating capital to Byte Software on the condition that Byte Software agreed to secure infusions of capital with Byte Software's personal property.

32. On or about May 22, 2006, Stone and Byte Software entered into a Commercial Line of Credit Agreement and Note (*hereinafter* "Note"), a copy of which is attached hereto, marked as "Exhibit N," and incorporated herein as if fully set forth in this Complaint; and a Commercial Security Agreement (*hereinafter* "Security Agreement"), a copy of which is attached hereto, marked as "Exhibit O", and incorporated herein as if fully set forth in this Complaint. The Note and Security Agreement collectively granted Stone a security interest in all of Byte Software's assets.

33. From on or about 2004 until on or about 2008, Stone advanced capital to Byte Software in an amount equal to One Million, Five Hundred Ninety-Eight Thousand, One Hundred Thirty-Eight and 68/100 Dollars (\$1,598,138.68).

34. Byte Software repaid the capital advances during this period in an amount equal to One Million, Three Hundred Eighty-Eight Thousand, Nine Hundred Thirty-Four and 52/100 Dollars (\$1,388,934.52).

35. Stone's Management Team conducted strategic planning meetings on or about mid-2007. The purposes of these meetings were to review the progress of Byte Software's operations, its strengths and weaknesses, and ascertain opportunities for further growth. As a result of these meetings, priorities were set concerning account development and systems enhancements. The meetings also resulted in the reallocation of the responsibilities of existing personnel and the hiring of additional personnel.

36. On or about 2008, Stone entered into negotiations on behalf of Byte Software with FoxFire Software, Inc. (*hereinafter* "FoxFire"). The purpose of these negotiations was to enter into a joint venture whereby Byte Software would utilize FoxFire's marketing and sales capabilities to greatly expand Byte Software's sales. Negotiations between Stone and FoxFire continued from on or about 2008 until on or about 2009.

37. From 2004 until 2009, the Management Team sought to eliminate Byte Software's outstanding tax liability in order to allow Stone International to exercise the option to purchase.

38. In February of 2004, the Management Team contacted the South Carolina Department of Revenue and received instructions on how to resolve Byte Software's outstanding state tax liabilities.

39. Stone International subsequently filed corrected South Carolina tax returns in March of 2004. Stone reached a settlement with the Department of Revenue in June of 2004 on behalf of Byte Software, and Byte Software began making installment payments on the outstanding tax liability. Byte Software's satisfied its outstanding tax liability to South Carolina by the end of 2007.

40. On or about March of 2004, Stone's Management Team contacted the Greenville, South Carolina, Office of the Internal Revenue Service (*hereinafter* "IRS") and received instructions on how to resolve Byte Software's outstanding federal tax liabilities. Plaintiffs subsequently faxed the 2002 and 2003 tax returns to the IRS on or about July 20, 2004. Thereafter, the IRS informed Stone that the revised tax returns could not be located.

41. On or about July of 2004, Stone's Management Team delivered copies of the revised tax returns to the IRS office in Greenville, South Carolina, which were also misplaced.

Stone had additional copies of the revised tax returns delivered to the IRS office on or about December 8, 2004.

42. Additional inquiries were made and documentation provided to the IRS office from on or about March of 2005 until December of 2005.

43. From on or about 2006 until on or about 2007, Stone made numerous attempts to determine the status of Byte Software's outstanding tax obligations to the IRS. However, Stone was repeatedly told by the Greenville, South Carolina, IRS office to either supply documentation that had already been provided or that the IRS was still reviewing the matter.

44. On or about mid 2008, Stone decided against purchasing FoxFire. Instead, Stone put FoxFire in contact with a third party who subsequently acquired FoxFire. Prior to the acquisition of FoxFire by the third party, Stone and the third party agreed that Byte Software and FoxFire would enter into a joint venture agreement. Stone projected that this joint venture would increase Byte Software's net sales by approximately Three Hundred Thousand and No/100 Dollars (\$300,000) within approximately one year.

45. Upon information and belief, due to financial difficulties, Historic Renovations, LLC largely ceased to do business on or about December of 2008.

46. Upon information and belief, on or about 2008, Mr. Gause approached the Management Team concerning executing a licensing and/or distribution agreement between Byte Software and Mr. Gause. Under the terms of this agreement, an entity created by Mr. Gause would have had exclusive rights to utilize Byte Software's trademark and proprietary software technology to develop technology solutions for the meat and poultry processing industry.

47. In order to make the software compatible with the needs of the meat processing and poultry industry, Byte Software would have had to substantially modify its proprietary

software technology. Because the economic environment at that time was volatile and the Management Team was concerned about the amount of resources required to modify Byte Software's proprietary software technology, the Management Team decided not to execute the licensing and/or distribution agreement at that time.

48. Upon information and belief, Mr. Gause came under increasing IRS scrutiny on or about 2008, and an IRS agent in Charleston, South Carolina, was assigned to investigate Mr. Gause's personal tax obligations. This development increasingly interfered with Byte Software's ability to operate. Mr. Gause subsequently requested Stone's assistance in resolving his personal tax obligations.

49. To effectively manage Byte Software and Mr. Gause's tax obligations, the Management Team contacted D.G. Yarborough, Inc. (*hereinafter* "Yarborough"), an independent tax consulting company located in Charlotte, North Carolina, on or about December of 2008 to negotiate a settlement to Byte Software and Mr. Gause's IRS tax obligations.

50. On or about early 2009, Yarborough presented a restructuring strategy to Stone and Mr. Gause to substantially reduce Byte Software's IRS tax obligations. Yarborough also agreed to propose strategies to assist Mr. Gause with his personal tax obligations.

51. Mr. Gause met with Stone's Management Team and representatives of Yarborough in order to review the strategy in early 2009. At this meeting, Stone's Management Team and Mr. Gause agreed that Stone would exercise its option to purchase Byte Software, and Yarborough's strategy would be implemented.

52. On or about March 29, 2009, Mr. Gause and/or Mrs. Gause formed Byte Services in Georgia. Upon information and belief, Mrs. Gause is the registered agent, the only member, and purportedly owns all of the assets of Byte Services.

53. On or about April 1, 2009, Mr. Gause, acting on behalf of Byte Software, and Mrs. Gause, acting on behalf of Byte Services, executed the Asset Purchase Agreement (*hereinafter* the "Asset Purchase Agreement"), a copy of which is attached hereto, marked as "Exhibit P", and incorporated herein as if fully set forth in this Complaint.

54. The Asset Purchase Agreement purports to transfer ownership of Byte Software and all of its assets to Byte Services in exchange for Byte Services assumption of all of Byte Services' obligations.

55. On or about April 9, 2009, Stone's Management Team reported for work at Byte Software's offices but was barred from entering by an individual purporting to act on instructions from Mr. Gause.

56. The individual who barred Stone's Management Team from entering the building provided Mr. Stone with a letter, a copy of which is attached hereto, marked as "Exhibit Q," and incorporated herein as if fully set forth in this Complaint, from Mr. Gause. In the letter, Mr. Gause purported to cancel the Management Agreement as a result of an unspecified breach by Plaintiffs.

57. On or about April 13, 2009, Mr. Stone sent a letter, a copy of which is attached hereto, marked as "Exhibit R," and incorporated herein as if fully set forth in this Complaint, to Mr. Gause on behalf of Plaintiffs. In the letter, Stone informed Mr. Gause that Plaintiffs was exercising the option to purchase Byte Software and demanded payment of the outstanding amount of capital advanced to Byte Software pursuant to the terms of the Note and Security Agreement, which totaled in excess of Two Hundred Nine Thousand, Two Hundred Four and 16/100 Dollars (\$209,204.16).

58. Mr. Gause responded to Stone's letter on or about April 15, 2009. In the letter, a copy of which is attached hereto, marked as "Exhibit S," and incorporated herein as if fully set forth in this Complaint, Mr. Gause falsely accused Stone of having breached the Management Agreement and entering into fraudulent business practices with Byte Software's banks and customers. Mr. Gause additionally claimed that Stone had failed to properly notice any extensions of the Management Agreement, despite the existence of some twelve such renewals (Exhibits B-M).

59. Upon information and belief, following the lockout of Stone's Management Team, Mr. Gause purportedly ceased operating Byte Software. Instead, Mr. Gause and/or Mrs. Gause purportedly transferred ownership of all of Byte Software's assets, which were Stone's security for its loans to Byte Software, to the ownership of Byte Services and/or Mrs. Gause without any payment to Stone.

60. Mr. Gause and Mrs. Gause, upon information and belief, contacted Byte Software's customers and informed them that they would no longer receive software support services unless they terminated their contracts with Byte Software entered into new contracts with Byte Systems.

61. Upon information and belief, the majority of Byte Software's customers terminated their contracts with Byte Software and executed support contracts with Byte Services.

62. Byte Services' contracts, upon information and belief, contained higher pricing for support services than Byte Software's contracts. Consequently, some of Byte Software's customers were lost to competitors.

63. Upon information and belief, Mr. Gause actively manages the daily operations of Byte Services. Mrs. Gause, upon information and belief, oversees operations, produces the payroll, and performs some bookkeeping functions.

FOR A FIRST CAUSE OF ACTION
Pierce the Corporate Veil
(As to Defendant Byte Services)

64. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

65. Mr. Gause and/or Mrs. Gause have failed to conduct the affairs of Byte Services in a manner necessary to conduct business as a corporate entity and disregarded the corporate formalities required by the laws of the State of South Carolina.

66. Mr. Gause and/or Mrs. Gause have failed to adhere to the corporate formalities required by the laws of the State of South Carolina to wit:

- a. Grossly undercapitalizing Byte Service's bank account by depositing funds only at such times as necessary to pay immediate expenses and withholding funds necessary for Byte Services' growth;
- b. Failing to observe corporate formalities, hold corporate meetings, and/or maintain necessary corporate records;
- c. Failing to pay dividends to Mrs. Gause, the purported sole member of Byte Services;
- d. Allowing Byte Services to become insolvent by only funding the company to the extent necessary to pay basic expenses;

e. Siphoning of Byte Services' corporate funds by the company's dominant shareholder(s), Mr. Gause and/or Mrs. Gause, for personal expenses, which has resulted in the company being unable to meet its obligations as they become due;

f. Allowing for the creation of officer and/or director positions that are non-functioning and failing to create and/or otherwise staff necessary positions within the company;

g. Failing to maintain adequate corporate records that are necessary for the proper functioning of a business, including minutes of meetings, corporate articles, profit and loss statements, and/or balance sheets; and

h. Operating the company as a mere façade for the dominant shareholder(s)', Mr. Gause and/or Mrs. Gause, personal affairs by utilizing the funds of the business for personal use.

67. Injustice, fundamental unfairness, and/or inequitable treatment will result to Stone if the actions of Byte Services are not regarded as the actions of Mr. Gause and/or Mrs. Gause because Byte Services serves as a mere façade to shield Mr. Gause and/or Mrs. Gause's improper transfer of Byte Software's assets and customers to Byte Services.

FOR A SECOND CAUSE OF ACTION
Breach of Contract
(As to Defendants Byte Software and Mr. Gause)

68. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

69. On or about February 16, 2004, Stone entered into a written contract, known as the Management Agreement, with Byte Software to provide management services and operating capital in the amount of Two Hundred Thousand Dollars (\$200,000), and Byte Software agreed to grant Stone an option to purchase Byte Software.

70. Stone performed its portion of the contract by assigning a full-time Management Team to operate Byte Software and providing Byte Software with the use of Two Hundred Thousand Dollars (\$200,000) in operating capital.

71. Byte Software and/or Mr. Gause materially breached their duties and obligations to Stone under the contract to wit: by unilaterally terminating the Management Agreement in violation of an express term of the contract and refusing to allow Stone to exercise its option to purchase Byte Software.

72. As a direct and proximate result of the breach of contract by Byte Software and/or Mr. Gause, Stone has suffered the loss of its option to purchase Byte Software and damages in excess of Two Million Dollars (\$2,000,000) in addition to attorneys' fees and costs.

FOR A THIRD CAUSE OF ACTION

Civil Conspiracy

(As to Defendants Byte Software, Byte Services, Mr. Gause, and Mrs. Gause)

73. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

74. Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause conspired together for the purpose of injuring Stone by:

- a. Removing Stone from the management of Byte Software;
- b. Depriving Stone of the benefit of the capital it invested in Byte Software;
- c. Depriving Stone of its option to purchase Byte Software; and
- d. Divesting Stone of its proprietary interests in Byte Software's assets.

75. The actions of Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause have resulted in special damages to Stone that include loss of prospective business opportunities in the

software industry, loss of profits that would have been generated under Stone's continued management of Byte Software, and damage to Stone's reputation in the software industry as well as the business community in general.

FOR A FOURTH CAUSE OF ACTION

Quantum Meruit

(As to Defendant Byte Software, Byte Services, Mr. Gause, and Mrs. Gause)

76. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

77. At all times relevant hereto, Stone supplied operating capital in excess of Two Hundred Thousand Dollars (\$200,000) and management services to Byte Software and/or Mr. Gause. The management services and operating capital were rendered to the benefit of Byte Software and/or Mr. Gause's benefit. Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause accepted and reaped the benefits of those management services and operating capital.

78. Under the circumstances, Stone expected to retain an option to purchase and/or ownership interest in Byte Software in exchange for the management services and operating capital provided to the benefit of Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause.

79. The value of the actual benefit realized and retained by Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause is in excess of Two Million Dollars (\$2,000,000).

80. Under the circumstances, it would be unjust for Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause to retain the benefit of the management services and operating capital provided by Stone to the benefit of Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause without compensating Stone for the management services and operating capital.

81. As a direct and proximate result of Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause failure to pay for the management services and operating capital provided to

Byte Software, Stone is entitled to payment from Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause in excess of Three Million Dollars (\$3,000,000).

FOR A FIFTH CAUSE OF ACTION

Promissory Estoppel

(As to Defendants Byte Software and Mr. Gause)

82. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

83. In order to induce Stone to enter into the Management Agreement, under which Stone was to provide management services and the Initial Capital Infusion, Byte Software and/or Mr. Gause promised to provide Stone with an option to purchase Byte Software.

84. In reliance upon that promise, Stone provided Byte Software with management services and operating capital with the expectation that Byte Software and/or Mr. Gause would honor their promise to allow Stone to exercise the option to purchase Byte Software when Stone deemed it prudent to do so.

85. It was foreseeable and Byte Software and/or Mr. Gause expected that Stone would rely on the promise by Byte Software and/or Mr. Gause to provide Stone with an option to purchase Defendant Byte.

86. As a direct and proximate result of Byte Software and/or Mr. Gause's failure to honor Stone's option to purchase, Stone has suffered harm because it provided management services and the Initial Capital Infusion with a combined value in excess of Two Million Dollars (\$2,000,000) to Byte Software and/or Mr. Gause in reliance upon their promise to provide Stone with an option to purchase Byte Software.

FOR A SIXTH CAUSE OF ACTION
Interference with a Prospective Contractual Relationship
(As to Defendants Byte Software, Byte Services, Mr. Gause, and Mrs. Gause)

87. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

88. Stone began discussions on or about 2007 with FoxFire concerning forming a joint venture with Byte Software. The purpose of this joint venture was to increase Byte Software's marketing and sales capabilities by utilizing FoxFire's existing resources and personnel.

89. On or about mid 2008, Stone decided against purchasing FoxFire. However, Stone put FoxFire in contact with a third party that subsequently acquired FoxFire.

90. Prior to the acquisition of FoxFire by the third party, Stone and the third party agreed that Byte Software and FoxFire would enter into a joint venture agreement. Stone projected that this joint venture would increase Byte Software's net sales by approximately Three Hundred Thousand Dollars (\$300,000) within approximately one year.

91. Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause intentionally interfered with Stone's potential contractual and/or business relationship with FoxFire when they removed Stone from the management of Byte Software and refused to allow Stone to exercise the option to purchase.

92. Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause actions were prompted by self-dealing, bad faith, and/or personal financial gain.

93. The actions undertaken by Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause in removing Stone from the management of Byte Software directly and proximately resulted in no contract being formed between FoxFire and Byte Software.

94. As the direct and proximate result of Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause's actions in removing Stone from the management of Byte Software, Stone has suffered damages in excess of Three Hundred Thousand Dollars (\$300,000) in the form of lost sales, market share, time and resources utilized in negotiating a potential contractual relationship with FoxFire, as well as other damages flowing from Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause's wrongful interference.

FOR A SEVENTH CAUSE OF ACTION

Foreclosure of Security Interest
(As to Defendant Byte Software)

95. To the extent they are consistent with this cause of action, Stone realleges and incorporates the foregoing paragraphs of this complaint as if repeated verbatim.

96. On or about May 22, 2006, Mr. Gause executed a resolution on behalf of Byte Software (Exhibit P) that authorized Stone to execute the Note (Exhibit N) and Security Agreement (Exhibit O) on behalf of Byte Software.

97. Stone executed the Note and Security Agreement on Byte Software's behalf on or about May 22, 2006.

98. The Note set forth the terms under which Stone would supply a line of credit to Byte Software in an amount up to Three Hundred Fifty Thousand Dollars (\$350,000) and under which Byte Software would repay the sum of Two Hundred Sixty-Nine Thousand Four Hundred Fifty Dollars (\$269,450) previously advanced thereunder.

99. The Security Agreement provided that Byte Software granted Stone a security interest in assets, including, but not limited to: "Accounts", "Inventory", "Equipment", "Instruments", "General Intangibles", "Investment Property", "Chattel Paper", and "Specific Collateral" (*hereinafter* the "Collateral"). These categories of Collateral include all accounts

receivables, computers, software, and other intellectual property in which Byte Software has a property interest.

100. On or about June 14, 2006, a UCC-1 financing statement (Exhibit Q) acknowledging the security interest in favor of Stone was duly recorded in the Office of the South Carolina Secretary of State, which described the Collateral set forth in the Security Agreement. Thereby, Stone perfected its security interest in South Carolina concerning the Collateral. Stone subsequently filed a UCC-1 financing statement (Exhibit S) in the state of Georgia on or about September 19, 2009. Thereby, Stone also perfected its security interest in the Collateral in Georgia.

101. The funds advanced by Stone to Byte Software were utilized to purchase and/or fund the acquisition of computer equipment, the development of Byte Software's software, and the development of accounts receivables.

102. Byte Software is currently in default on its obligations under the Note as a result of Byte Software's failure to make the payments required under the terms of the Note. The current principal balance on the Note is Two Hundred Nine Thousand, Two Hundred Four and 16/100 Dollars (\$209,204.16), plus interest, applicable costs, and attorneys' fees.

103. Byte Software is likewise presently in default on its obligations under the Security Agreement by failing to pay the principal, interest, and costs pursuant to the terms of the Security Agreement.

104. The terms of the Note and Security Agreement provided that upon Byte Software's failure to pay any installment of principal or interest or failure to meet any of the conditions and requirements of the Note and/or Security Agreement the total principal sum and accrued interest would, at Stone's option, become immediately due and payable as well as

collectible by foreclosure. Byte Software further agreed to pay costs and expenses associated with enforcing the provisions of the Note in the event the Note was collected by or foreclosed upon by an attorney.

105. Stone remains the owner and holder of the Note and Security Agreement. Upon information and belief, Byte Software remains the record owner of the Collateral.

106. Byte Software is in possession of all Collateral specified in the Security Agreement, including accounts receivables, specific computer equipment, and related software. Upon information and belief, Byte Software holds the Collateral at its office, which is located at 317 Neely Ferry Road, Mauldin, South Carolina.

107. Stone is informed and believes that the Collateral that is the subject of this foreclosure action is located in Greenville County, South Carolina. Stone is also informed and believes that the Collateral is in the exclusive possession and control of Byte Software and/or Byte Services or an agent holding the same.

108. Upon information and belief, certain costs for inspecting and securing the Collateral have been incurred by Stone as a result of this delinquency, and Stone is informed and believes it is entitled to reimbursement for such charges.

109. Stone is informed and believes the Security Agreement constitutes a valid first priority lien upon the Collateral.

110. Upon information and belief obtained from the records of the South Carolina Secretary of State's Office and the Greenville County Clerk of Court's Office, the Defendants named below may have some interest in or lien upon the Collateral:

a. Defendant Carolina First Bank filed a UCC-1 financing statement on or about May 6, 2009. Stone's security interest is prior in time to any interest or lien of Defendant

Carolina First Bank and is therefore superior and senior. Stone is also informed and believes that the security interest of Defendant Carolina First Bank has been paid in full but no termination statement has been filed.

b. Defendant Branch Banking and Trust Company filed a UCC-1 financing statement on about February 22, 2007. Stone's security interest is prior in time to any interest or lien of Defendant Branch Banking and Trust Company and is therefore superior and senior. Stone is also informed and believes the security interest of Defendant Branch Banking and Trust Company has been paid in full but no termination statement has been filed.

c. Defendant Contemporary Solutions-USA, Inc., obtained a judgment against Byte Software in the amount of Five Thousand Five Hundred Ninety-Five and 92/100 Dollars (\$5,595.92), which was recorded on or about December 10, 2008, as judgment number 2008-CP-23-08883 in the Greenville County Clerk of Court's Office. Stone's security interest is prior in time to any interest or lien of Defendant Contemporary Solutions-USA, Inc., and is therefore superior and senior. Stone is also informed and believes the judgment of said Defendant has been paid in full but no satisfaction of judgment has been filed.

d. Defendant Greg Corbitt obtained a judgment against Byte Software in the amount of Seven Thousand Two Hundred Fifty-Three and 45/100 Dollars (\$7,253.45), which was recorded on or about December 16, 2008, as judgment number 2008-CP-23-09356 in the Greenville County Clerk of Court's Office. Plaintiffs' security interest is prior in time to any interest or lien of Defendant Greg Corbitt and is therefore superior and senior.

e. Defendant International Modapts Association, Inc., obtained a judgment against Byte Software in the amount of Two Thousand Six Hundred Seventy-Three and 72/100 Dollars (\$2,673.72), which was recorded on or about November 24, 2009, as judgment number

2009-CP-23-09963 in the Greenville County Clerk of Court's Office. Stone's security interest is prior in time to any interest or lien of Defendant International Modapts Association, Inc., and is therefore superior and senior.

f. Defendant South Carolina Department of Employment and Workforce, obtained a judgment against Byte Software in the amount of Two Thousand Four Hundred Forty-One and 02/100 Dollars (\$2,441.02), which was recorded on or about June 21, 2010, as judgment number 2010-CP-23-05045 in the Greenville County Clerk of Court's Office. Stone's security interest is prior in time to any interest or lien of Defendant South Carolina Department of Employment and Workforce and is therefore superior and senior.

g. Upon information and belief, Defendant Byte Services claims to have purchased an interest in the assets that are the subject of this foreclosure action. Stone's security interest is prior in time to any interest or lien of Defendant Byte Services and is therefore superior and senior.

h. Upon information and belief, Defendant Mr. Gause claims to have purchased an interest in the assets that are the subject of this foreclosure action. Stone's security interest is prior in time to any interest or lien of Defendant Mr. Gause and is therefore superior and senior.

i. Upon information and belief, Defendant Mrs. Gause claims to have purchased an interest in the assets that are the subject of this foreclosure action. Stone's security interest is prior in time to any interest or lien of Defendant Mrs. Gause and is therefore superior and senior.

111. Stone does not waive but specifically demands judgment against Byte Software for the full amount due to Plaintiffs under the Note and the Security Agreement.

WHEREFORE, having fully set forth its Complaint, Plaintiffs pray that this Court grant the following relief:

1. As to the First Cause of Action, disregard Byte Services' corporate veil and hold Mr. Gause and/or Mrs. Gause personally liable for the acts of Byte Services;
2. As to the Second Cause of Action, specific enforcement of the terms of the Management Agreement, including the option to purchase Byte Software;
3. In the alternative, as to the Second Cause of Action, judgment against Byte Software and/or Mr. Gause for actual and consequential damages in an amount to be determined by the Court, plus prejudgment interest and costs;
4. As to the Third Cause of Action, judgment against Byte Software, Byte Services, Mr. Gause, and Mrs. Gause in an amount to be determined by the Court and requests punitive damages;
5. As to the Fourth Cause of Action, judgment against Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause in an amount in excess of Three Million and No/100 Dollars (\$3,000,000);
6. As to the Fifth Cause of Action, judgment against Byte Software and/or Mr. Gause in an amount in excess of Three Million and No/100 Dollars (\$3,000,000);
7. As to the Sixth Cause of Action, judgment against Byte Software, Byte Services, Mr. Gause, and/or Mrs. Gause in an amount in excess of Three Hundred Thousand and No/100 Dollars (\$300,000);
8. As to the Seventh Cause of Action:

a. The amount due upon the Note and Security Agreement held by Plaintiffs be ascertained and determined under the direction of the Court together with attorneys' fees and costs;

b. Plaintiffs' security interest be declared a first lien and that Plaintiffs have judgment of foreclosure for the amounts said to be due and owing thereon in addition to a reasonable sum as attorneys' fees and for all other costs of this action;

c. The secured Collateral be placed in Plaintiffs' possession;

d. In the alternative, the secured Collateral be sold under the direction of this Court, equity of redemption be barred, and the proceeds of the sale be applied as follows:

A. To the costs and expenses of this action and the sale;

B. To the payment and discharge of the amount due on the Note and Security Agreement, plus attorneys' fees and costs; and

C. The surplus, if any, be distributed according to the applicable laws of the State of South Carolina;

e. For an order empowering the Sheriff of Greenville County, South Carolina to place the successful purchaser at said foreclosure sale in possession of the property;

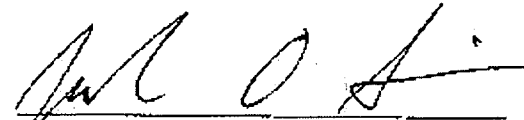
f. For reimbursement of all costs for inspecting and securing the property incurred by Plaintiffs as a result of the delinquency; and

9. For such other relief as the Court deems just and proper.

(SIGNATURE PAGE TO FOLLOW)

Respectfully Submitted,

ROE, CASSIDY, COATES & PRICE, P.A.



D. Randle Moody II, S.C. Bar # 14135

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, S.C. 29601

(864)-349-2600

(864)-349-0303 fax

RMoody@roecassidy.com

JSmith@roecassidy.com

October 13, 2011

EXHIBIT A

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER SECTION 12 HEREIN. THIS AGREEMENT IS BINDING ON ALL PARTIES TO THIS AGREEMENT, THEIR SUCCESSORS, HEIRS, ASSIGNS AND TRANSFEREES, INCLUDING ANY PERSON OBTAINING FINANCIAL RIGHTS IN THE LIMITED PARTNERSHIP.

MANAGEMENT AGREEMENT
(With Option To Purchase)

This Management Agreement (the "Agreement") is entered into by and between Byte Software, LLC, a South Carolina Limited Liability Company (hereinafter "Byte") and Stone International, LLC, a South Carolina Limited Liability Company, or its designee (hereinafter "Manager") this 16th day of January, 2004.

Whereas, Manager is in the business, among other things, of the management of companies such as Byte and is ready, willing and able to provide management services to Byte, including but not limited to: oversight and management; financial management; the management and operations support; and the retention of necessary and proper professionals and outside vendors and contractors;

Whereas, Byte is a Corporation operating a software development and services business located in Greenville County, South Carolina, and requires the services offered by Manager in order to efficiently develop and maintain its business;

Whereas, the parties agree to the terms and conditions contained in this Agreement;

Now therefore, it is mutually agreed as follows:

1. Services: Manager will supply Byte with day-to-day management, oversight, sales and other services which Byte may require, including but not limited to:
 - a. Acting as General Manager of Byte's office complex located in Greenville County, South Carolina.
 - b. Providing financial expertise and oversight, including hiring professionals for all financial reports and audits, including but not limited to development of short-term operational plans and maintenance of all accounts of Byte, wherever located.
 - c. Providing marketing and sales consultation and support.
 - d. Maintaining all required licenses and regulatory matters of Byte.
 - e. Coordinating tax and other professional services for Byte.
 - f. Filing or terminating positions and personnel of Byte.

BYTE 000036

8. Such other services as may be required by Byte and agreed to by the Parties.
2. Standard of Service: Manager shall work diligently and use best efforts to provide the services under the terms of this Agreement and in good faith. Byte shall continue to provide software support services under the terms of an Extended Software Maintenance Agreement which renewed under its terms on January 1, 2004.
3. Capital to Byte: During the initial term of this Agreement, Manager shall provide operating capital to Byte in the amount of \$50,000 initially then \$35,000 per month to be provided bi-monthly on the first and fifteenth day of each month. Such additional money shall not exceed \$200,000.
4. Hours Worked: Manager's days and hours for performing such services are variable from day to day and week to week as determined by Manager, the needs of the customers and as a result of any other agreements between the parties contracting hereto.
5. Relationship: Byte shall not be liable for any negligent, reckless or intentional acts or omissions of Manager, nor shall Manager bind or attempt to bind Byte in any manner through its acts or delicts during the term of this Agreement in connection with management services of Manager. Likewise, Manager shall not be liable for any negligent, reckless or intentional acts or omissions of Byte, nor shall Byte bind or attempt to bind Manager in any manner through its acts or delicts during the term of this Agreement in connection with management services to Byte. Furthermore, nothing herein shall be construed as creating the relationship of employer and employee between the parties, but rather, Manager shall, and at all times, be deemed to be an independent contractor and free of any control by Byte in selecting the time or methods of work, transportation used, or any other such things as may be construed to constitute a relationship of employer and employee between the parties.
6. Insurance: Byte shall provide Manager with coverage under its general liability insurance policy for the duration of the term of this Agreement.
7. Non-Disclosure of Information: Manager shall not, at any time after the date hereof, directly or indirectly, divulge or disclose for any purpose whatsoever any information that has been developed or obtained by, or disclosed to, Manager by Byte at any time or after the date hereof (exclusive of such information as is in the public domain). Manager acknowledges that such confidential information is of a special and unique nature and value relating to matters of Byte's business, including, without limitation, Byte's customer information, computer programs, copyrights, other proprietary information, trademarks, systems, procedures, manuals, brochures, newsletters, customer handouts, confidential reports, records, operational expertise, locations and lists of customer and potential customers, pricing information and lists, marketing materials and methods, the nature and type of services rendered by Byte, the methods used and preferred by Byte's customers, and the fees paid by them (all of which are deemed for all purposes to be confidential, proprietary, and trade secrets of Byte). Any confidential information in Manager's possession shall be returned by Manager upon any termination or expiration of this

Agreement. In the event of any termination, cancellation of this management arrangement or expiration of the term of this Agreement, this Section 7 shall survive.

8. Term of Agreement: The term of this Agreement shall commence of even date herewith and shall have an initial term of 180 days from the date of execution (the "Initial Term"). The parties, by mutual agreement in writing, may terminate this Agreement. This Agreement is renewable for additional, consecutive, successive 180-day periods, at the option of the Manager (an "Extension Term").

9. Option to Purchase: During the Initial Term and any Extension Term, Manager, in exchange for the management services provided herein and for such capital as may have been provided, shall have the right, in its sole discretion, to acquire 51 percent of the business of Byte (the "Purchase Option"). The Purchase Option may be in either ownership interests or via an asset purchase, in Manager's sole discretion. The remaining 49 percent of the business of Byte shall then be acquired by Manager within five years from the expiration of this Agreement. Upon the exercise of the Purchase Option, a buyout schedule will be provided by Manager to Byte, and day-to-day management decisions will be determined by Manager. The Manager will be entitled to an additional 5 percent per year until the end of the fourth year and an additional 4 percent at the end of year five. At that time, an independent valuation of the business will be done and the remaining 25 percent of the business will be purchased at 25 percent of the valuation. Such valuation to be provided by a business valuation expert, mutually agreed on, with appropriate certification(s) who has experience in the same line of business as Byte. All benefits provided to Ben Cause by Byte shall stay in effect until the Purchase Option is fully executed. After the exercise of the Purchase Option (i.e., acquisition of the initial 51 percent), Ben Cause shall be retained at his then-current annual salary and shall share all net profits of Byte with Manager on a 50/50 basis until the Purchase Option is fully realized (e.g., the acquisition of the 49 percent). If the Purchase Option is not fully realized, Manager will be entitled to payback of all capital provided under this Agreement from the proceeds of any future sale of Byte or its assets.

10. Assignment: This Agreement between the parties may not be assigned as to any of the parties' rights or duties under this Agreement without the prior written consent of both parties to this Agreement.

11. Law: This Agreement shall be governed and construed in accordance with the law of the State of South Carolina and shall be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns. Any disagreements between Byte and Manager shall be resolved through arbitration, as provided herein.

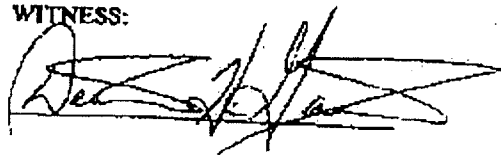
12. Arbitration: ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT OR ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL

ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY'S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC.

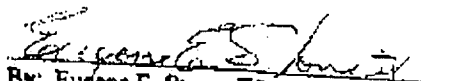
13. **Amendments:** This Agreement consists of this writing and its attachments identified herein, if any. This Agreement sets forth the full and complete understanding of the parties as of the date of even signature. This Agreement may only be amended in writing executed by duly authorized representatives of the parties.

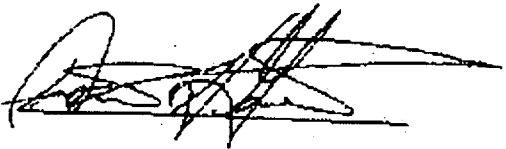
Executed on this 16th day of January, 2004, in the county of Greenville, state of South Carolina, by:

WITNESS:



STONE INTERNATIONAL, LLC


By: Eugene E. Stone, IV
Its: Member



BYTE SOFTWARE, LLC


By: BEA Gaudin
Its: Member

EXHIBIT B



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option To Purchase)**

Stone International LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 16th day of July, 2004 that Manager is extending the term of the Management Agreement ("Agreement") for an addition 180 day period to commence on the day the initial term expires, i.e. the 16th day of August, 2004.

COVENANT EXTENSION

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of February, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

[Signature]

STONE INTERNATIONAL LLC

[Signature]
By: Eugene B. Stone, IV
Its: Member

EXHIBIT C



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 1st day of February, 2005 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 9th day of February, 2005.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

Norman Davis Watts

STONE INTERNATIONAL:

Eugene E. Stone, IV

By: Eugene E. Stone, IV

Its: Member

EXHIBIT D



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 2nd day of August, 2005 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 8th day of August, 2005.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:



STONE INTERNATIONAL:



By: Eugene E. Stone, IV

Its: Member

EXHIBIT E



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 27th day of January, 2006 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 4th day of February, 2006.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:



STONE INTERNATIONAL:



By: Eugene E. Stone, IV

Its: Member

EXHIBIT F



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 25th day of July, 2006 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 3rd day of August, 2006.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

Karen D. West

STONE INTERNATIONAL:

Eugene E. Stone, IV

By: Eugene E. Stone, IV

Its: Member

EXHIBIT G



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 19th day of January, 2007 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 30th day of January, 2007.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

[Signature]

STONE INTERNATIONAL:

[Signature]

By: Eugene E. Stone, IV
Its: Member

EXHIBIT H



**NOTIFICATION OF INTENTION TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 20th day of July, 2007 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 29th day of July, 2007.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

Herman Dennis West

STONE INTERNATIONAL:

Eugene E. Stone, IV

By: Eugene E. Stone, IV

Its: Member

EXHIBIT I

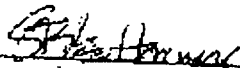


**NOTIFICATION OF INTENT TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 10th day of October, 2007 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 25th day of January, 2008.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:



STONE INTERNATIONAL

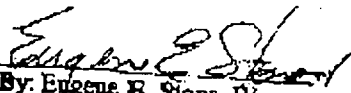

By: Eugene B. Stone, IV
Its: Member

EXHIBIT J



**NOTIFICATION OF INTENT TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 21st day of April, 2006 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 23rd day of July, 2008.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

A handwritten signature in black ink, appearing to be "Shirley Brown", written over a horizontal line.

STONE INTERNATIONAL

A handwritten signature in black ink, appearing to be "Eugene H. Stone, IV", written over a horizontal line.

Eugene H. Stone, IV
Its Member

EXHIBIT K

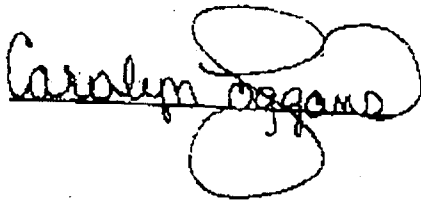


**NOTIFICATION OF INTENT TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte") this 23rd day of July, 2008 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 18th day of January, 2009.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

Handwritten signature of Carolyn Rogers in cursive script.

STONE INTERNATIONAL

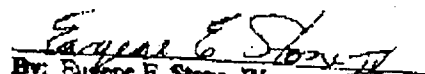

By: Eugene E. Stone, IV
Its: Member

EXHIBIT L



**NOTIFICATION OF INTENT TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software, LLC ("Byte") this 18th day of January, 2009 that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e. the 16th day of July, 2009.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

STONE INTERNATIONAL

A handwritten signature in dark ink, appearing to be "C. Drayton", written over a horizontal line.

A handwritten signature in dark ink, appearing to be "Eugene E. Stone, IV", written over a horizontal line.

By: Eugene E. Stone, IV
Its: Member

EXHIBIT M



**NOTIFICATION OF INTENT TO EXTEND
MANAGEMENT AGREEMENT
(With Option to Purchase)**

Stone International, LLC ("Manager") hereby gives notice to Byte Software LLC ("Byte"), this 14th day of July, 2009, that Manager is extending the term of the Management Agreement ("Agreement") for an additional 180 day period to commence on the day the current extension expires, i.e., commencing on the 16th day of July and extending through the 12th day of January 2010.

Manager is executing this Extension Term in accordance with Item No. 8 of the Management Agreement dated the 16th day of August, 2004. This extension does not alter the Agreement in any way except to extend the period of said Agreement.

WITNESS:

STONE INTERNATIONAL, LLC

A handwritten signature in dark ink, appearing to read "Charles L. Higgins".

A handwritten signature in dark ink, appearing to read "Eugene E. Stone, IV".
By: Eugene E. Stone, IV
Its: Member

EXHIBIT N

**COMMERCIAL LINE OF CREDIT
AGREEMENT AND NOTE**

EXHIBIT A

LINE OF CREDIT LIMIT	MATURITY DATE
\$150,000.00	January 1, 2009

Borrower Information:
**BYTE SOFTWARE,
LLC**

LINE OF CREDIT AGREEMENT AND NOTE. This Commercial Line of Credit Agreement and Note will be referred to in this document as the "Agreement".

LENDER. "Lender" means STONE INTERNATIONAL, LLC, its successors and assigns.

BORROWER. "Borrower" means BYTE SOFTWARE, LLC.

PROMISE TO PAY. The Borrower promises to pay, on demand by Lender, or if as directed in writing, on or before the Maturity Date, the principal amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars, or such lesser amount as shall have been advanced by Lender, from time to time, to or on behalf of Borrower under this Agreement, and all interest and any other charges, including service charges, to the order of Lender at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America. The balance outstanding as of February 28, 2006 is Two Hundred Sixty-Nine Thousand Four Hundred Fifty and 00/100 Dollars (\$269,450.00).

PAYMENT SCHEDULE. This Agreement will be paid according to the following required payment schedule: Monthly payments of accrued and unpaid interest. One final payment shall be due on the Maturity Date in an amount equal to the then unpaid principal and accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Line of Credit may be applied to the Borrower's obligations under the Line of Credit in such order as determined by the Lender.

PAYMENT BY LENDER. Advances of principal, repayment, and redemptions may be made under this Agreement from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or redemptions hereunder during any period(s) this Agreement is in default. All advances made hereunder shall be charged to a loan account in Borrower's name on Lender's books, and Lender shall debit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan interest, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement excusing this Borrower within ten (10) days after such statement has been furnished.

INTEREST RATE AND SCHEDULED PAYMENT CHARGES. The initial variable interest rate on this Agreement will be 2% per annum above the Index, as defined below. This interest rate may change beginning March 1, 2006 and every day thereafter. Each time on which the interest rate may change is called the "Change Date". Beginning with the first Change Date, Lender will calculate the new interest rate based on Bank Prime published by the Bank of America or, at Lender's option, to prime rate published by any bank having offices in Greenville County, South Carolina, in effect on the Change Date (the "Index"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base rate which the actual rate of interest payable under this Agreement will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. The interest rate will never be greater than 10% or less than 7%.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. An increase in the interest rates will result in a higher payment amount, interest on this Agreement is calculated on a 365/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post Maturity Rate of Interest equal to the same fixed or variable rate basis in effect before maturity.

LATE PAYMENT CHARGE. If any required payment is more than 10 days late, then at Lender's option, Lender will assess a late payment charge of \$100.00 or 2% of the amount past due, whichever is lesser.

LINE OF CREDIT TERMS. This is an Obligatory Agreement. The Borrower and Lender agree that the Borrower may request an advance of all or part of the Line of Credit Limit at the time of the request upon the following conditions only:

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Underwriter has branches any of the terms, provisions, representations, statements or promises contained in this Agreement or any other agreement related thereto is in default.

- The Agreement or any other agreement relating thereto is in default.
- Underwriter makes a request for an advance after the Maturity Date and after,
- The Lender has deemed itself insolvent or there has been a material adverse change of conditions.
- The Lender is prohibited by law from making the advance.

Advances. Borrower and Lender agree that Borrower may borrow up to the maximum amount of principal over the one year.

Additional principal advances thereafter will be made to the Borrower subject to the following conditions:

- Advances of principal, repayment, and maturities may be made under this Agreement from time to time for Lender, in its sole discretion, may refuse to make advances or conditions hereunder until any provision(s) this Agreement is in default.
- Advances under this Agreement may be requested orally or in writing by the Borrower or by two authorized persons.
- The total of any advance requested and unpaid principal cannot exceed the available Limit of Credit Limit. The advances, amount but unpaid interest and outstanding fees not change.
- All advances made will be charged to a loan account in Borrower's name at Lender's bank, and the Lender shall debit in such account the interest of such advance, and with to such extent the account of each repayment made by Borrower.

Lender shall provide to Borrower a monthly statement of Borrower's loan account, which shall be deemed to be correct, says that such statement is finalized.

Repayment and Termination. Advances under this Agreement will be available until July 1, 2009, the Maturity Date. The Maturity Date is the date the Limit of Credit expires, the date the Limit of Credit is cancelled by Borrower, or the date the first advance will be made available to the Borrower.

SECURITY TO NOTE. Security (the "Collateral") for this Agreement is granted pursuant to the following security document(s):

- Security Agreement dated of even date herewith from Dye Software, LLC and Dye Software International, LLC

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Agreement against all Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with another person and all accounts Borrower may open in the future.

MATURITY DATE AND LENDER'S OPTION TO CONVERT THIS TO DEMAND NOTE. This is a term note. Payment is due on the Maturity Date, which is January 1, 2009. Lender, at its sole option, may convert this note to a demand note by providing to Borrower in the blank any form delivery of said notice, but will then the note shall remain a term note. Once the note is a demand note, no further advances will be made to Borrower.

DEMAND. Upon the occurrence of any one of the following events of default, Lender, at its option, may declare all obligations of Borrower to Lender under this Agreement, to be immediately due and payable: (a) Borrower's failure to make a payment as due or in the amount due; (b) any default by Borrower under any loan, agreement, security agreement, mortgage, or other agreement entered into in connection with this Agreement; (c) the death, dissolution, or liquidation of Borrower; (d) Borrower is successfully sued by Borrower or the appointment of a receiver; (e) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or the appointment of a receiver; (f) any other insolvency of Borrower or Lender or in any other similar shall become due and payable; (g) Lender, in good faith, believes Borrower's ability to repay its indebtedness under this Agreement, or Lender's ability to receive its full collateral, is or soon will be impaired, there being of the very essence.

OTHER APPLICABLE AGREEMENTS. If any Agreement is entered by a security agreement, mortgage, deed of trust, trust deed, security deed or lease agreement of even or previous date, it is subject to all the terms hereof.

GENERAL WAIVER. To the extent permitted by law, the Borrower hereby waives any required notice of proceedings, demand for arbitration, intent to arbitrate, protest and any other notice and defense due to collection of claims or other indulgence by Lender or its agents, subcontractors or release of collateral.

JOINT AND SEVERAL LIABILITY. If permitted by law, each borrower executing this Agreement is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Agreement is invalid as prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Agreement without invalidating the remainder of either the affected provision or this Agreement.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefit of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Agreement or any of its rights and powers under this Agreement without notice, with all or any of the Obligations, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. This Note represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no oral agreements between the parties.

COVERING LAW. This Agreement is governed by the laws of the state of South Carolina. In which it is written except to the extent that Federal law controls.

HEADING AND ORDER. The headings preceding text in this Agreement are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

ATTORNEY'S FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Agreement, Borrower agrees to pay all of the costs of the Lender in connection therewith, including reasonable attorney's fees, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Agreement hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Agreement or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Agreement, Borrower acknowledges reading, understanding, and agreeing to all its provisions.

BYTE SOFTWARE, LLC

Ernest E. Smith

BY: STONE INTERNATIONAL, LLC, by Stone International

LLC's Manager and Sole Member, Stone International LLC

Being authorized to execute this document on behalf of Byte

Software, LLC by Resolution of Byte Software, LLC's

Sole Member, Benjamin Goss

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EXHIBIT O

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

RESOLUTION OF SOLE MEMBER
OF BYTE SOFTWARE, LLC

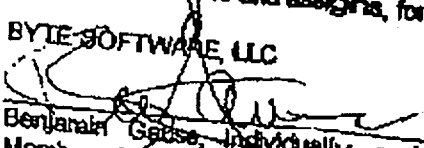
The undersigned, BENJAMIN GAUSE, hereby states and represents the following:

1. I Benjamin Gause am currently the only member of Byte Software, LLC, a South Carolina Limited Liability Corporation.
2. As a sole member of this LLC, I hereby adopt the statements contained herein as the resolution of said LLC to take certain actions as described herein.
3. Stone International, LLC, has loaned certain monies to Byte Software, LLC for its operations and there is currently due from Byte Software, LLC to Stone International, LLC as of February 28, 2008 the sum of Two Hundred Fifty-Nine Thousand Four Hundred Fifty and 00/100 Dollars (\$268,450.00). Stone International, LLC may, but is under no requirement to, advance other monies to Byte Software, LLC.
4. It is appropriate that Byte Software, LLC execute the documents needed in order to memorialize this debt and in order to secure this debt with the assets of Byte Software, LLC, including but not limited to its software program and service contracts with uses of this program. These documents are a Commercial Security Agreement and a Commercial Line of Credit Agreement and Note.
5. By prior agreement, Byte Software, LLC has authorized and empowered Stone International, LLC to operate certain aspects of its business and Byte Software, LLC hereby authorizes Stone International, LLC to execute the Commercial Security Agreement and Commercial Line of Credit Agreement and Note referred to above. The maximum amount of possible advances under the Commercial Line of Credit Agreement and Note is Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). The undersigned understands that Stone International, LLC, may, but is not required to, advance the difference between the present total of amounts advanced and Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) and that should portions of the debt be repaid from time to time, monies may be, but are not required to be, readvanced at the option of Stone International, LLC.

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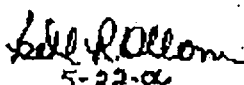
The undersigned Benjamin Gause Individually and as sole member of
Byte Software, LLC, and on behalf of Byte Software, LLC, makes the within
representations and adopts the within resolution, thereby binding said LLC, its
successors and assigns and binding himself, his heirs and assigns, forever.

BYTE SOFTWARE, LLC


Benjamin Gause, Individually and as Sole
Member of Byte Software, LLC
Whose Address and phone number are:

Phone:

DATED: 5-22-06


5-22-06

BYTE 000021

COMMERCIAL SECURITY AGREEMENT

EXHIBIT B

Collateral Owner Information

BYTE SOFTWARE, LLC, Borrower

AGREEMENT. For purposes of this document, the term "Agreement" is used when reference is made to this Commercial Security Agreement.

LENDER. "Lender" means STONE INTERNATIONAL, LLC, its successors and assigns.

DEBTOR. For purposes of this Agreement, the term "Debtor" refers to any party who has an interest in the Collateral defined in the "DESCRIPTION OF COLLATERAL" provision below. The Debtor includes each party (Borrower) identified herein throughout this Agreement references to Debtor are to be construed as specifically defined by Article 9 of the Uniform Commercial Code.

OBLIGOR. For purposes of this Agreement, the term "Obligor" refers to any party, with respect to an obligation secured by a security interest in the collateral, that: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. Throughout this Agreement, references to Obligor are to be construed as specifically defined by Article 9 of the Uniform Commercial Code.

SECURITY INTEREST GRANT. Debtor, in consideration of the Obligations to Lender, as defined in the "OBLIGATIONS" section below, hereby agrees to all of the terms of this Agreement and hereby hereby specifically grants Lender a nonexclusive security interest in the collateral described in the "DESCRIPTION OF COLLATERAL" provision below. Debtor further grants Lender a security interest in the proceeds of and accretions to, such collateral or interests therein; any and all deposits or other items of any kind created by or due from Lender in or to Debtor; and any and all instruments, documents, public, and certificated of ownership, recorded, good, account receivable, interest, or other property, cash, physical, and the proceeds thereof (whether or not the same are Collateral or proceeds thereof), whether Lender receives the same in whole or in part in connection with any debt or at any time hereafter in connection with the advance, and Debtor's grant of a continuing security interest in the foregoing described collateral secured to Lender this payment of all debt, every kind whatsoever, whether hereafter, now, or hereafter existing or arising between Lender and Borrower and may add all other obligations, whether primary, secondary, contingent, or otherwise.

OBLIGATIONS. As used in this Agreement, the term "Obligations" shall mean any and all of Obligor's or Debtor's obligations to Lender, whether they arise under this Agreement or the Note, or other evidence of debt executed in connection with this Agreement or under any other mortgage, trust deed, deed of trust, security deed, security agreement, note, lease, instrument, contract, agreement, or modification thereof, now or hereafter obtained by the Obligor or Debtor to Lender, including any renewal, extension, or replacement of this Lender may make under the terms of this Agreement or by operation of law. The Obligations shall also include all expenses, and attorneys' fees accruing to or incurred by Lender in enforcing the Obligations of Obligor or Debtor, all interest, taxes, prepayment, or liquidation of the Collateral, and any of the foregoing that may arise after the filing of any petition by or against Obligor or Debtor under the Bankruptcy Code, irrespective of whether the obligations do not accrue because of the automatic stay under Bankruptcy Code Section 362 or otherwise.

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copy of the record(s) existing upon its unique and identifiable, (ii) ensuring that the authoritative copy is maintained as well as the original copy by the Leader as the assigner of the record(s), and (iii) ensuring that the authoritative copy is maintained as well as the original copy by the Leader as the assigner of the record(s). Copies or versions that are changed or altered in any way from the authoritative copy can be made only with the participation of the Leader. Debtor agrees that each copy or authoritative copy and any copy of a copy shall be readily identifiable as a copy that is not the authoritative copy, and any version of any authoritative copy is readily identifiable as a non-authoritative or unauthorized version.

Specific Collateral. "Specific" refers to the specific property, together with all related rights, described below. The Debtor is limited to the extension of credit to the Debtor in providing Collateral, including any extensions and renewals thereof, plus related interest, costs, expenses, and attorney's fees as called for under the "SECURITY INTEREST GRANT" provision.

SPECIFIC COLLATERAL DESCRIPTION: That certain software product and all intellectual property interests and rights of every type related thereto, including all contracts with computers using this software, which software product is described as follows:

BYTE OPERATING SOFTWARE:

Byte Software consists of a series of software modules that form the context to provide Enterprise Resource Planning (ERP) system solutions for small to mid-sized companies as well as other solutions for Fortune 1000 companies. Byte's ERP management information system integrates areas such as planning, purchasing, inventory, sales, marketing and finance. Byte's unique style/collocation solution allows companies making soft goods to manage their business hundreds of thousands of individual stock keeping units. The client server based product offering having to do with in-house (ERP) and business-to-business (B2B) e-commerce, including their own e-commerce, methods engineering, modeling and product testing systems. Byte also provides premium customer support, on-site and remote training, extensive programming and project management.

An outline of the various modules of the Byte operating software is set forth in Exhibit A, which is attached to and made a part of this Commercial Security Agreement by reference thereto. This outline is intended to aid in describing the product and is not to limit in any way the pledge of all aspects of the Byte operating software, nor the pledge of copyright with computer which use the Byte operating software.

The properties and interests in property described in the paragraph above are hereinafter individually and collectively referred to as the "Collateral."

WARRANTIES. The Debtor warrants the following Debtor has or will acquire first and clear title to all of the Collateral, unless otherwise provided herein; the security interest granted in the Collateral shall be a first security interest, and the Debtor will defend same in security against the claims and demands of all persons; the Debtor will fully cooperate in placing or maintaining the Collateral in the Debtor's address specified at the beginning of this Agreement, unless otherwise specified in and agreed to by the Debtor, or, alternatively, in the possession of the Debtor; the Debtor will not remove or change the location of any Collateral without the Debtor's prior written consent; the Debtor will use the Collateral only in the conduct of its own business, in a lawful and proper manner; the Debtor will not, without the Debtor's prior written consent, sell, transfer, lease, license, hypothecate, or otherwise dispose of the Collateral, or any part thereof, or any interest therein, nor will Debtor enter into any lease, license, hypothecate, or transfer any interest therein other than that given in the beginning of this Agreement.

not change nor designate the type of business entity to be formed, except upon the prior written approval of the Lender, in which event the Lender agrees to execute any documentation of whatever character as herein amended by the Lender for filing or recording, at the beginning of this Agreement, before such change occurs; the information regarding Debtor's state of organization or formation as set forth in the formation documents of this Agreement is correct, and Debtor further warrants that Debtor will not change Debtor's state of organization or formation without the Lender's prior written consent and will notify Lender with any changes to any documents, filings, or other records relating to Debtor and the Collateral at the address specified in the address specified in this Agreement, subject within (b) is given to the Lender as best good condition and repair and will not sell or convey same except as to inventory in the ordinary course of business; the Collateral is created without defect, as described herein, and it has the power, and the power is being exercised, to carry out the business of the Debtor; the execution of this Agreement will not cause any breach of any provision of the Debtor's organizational documents (articles of incorporation and Bylaws if the Debtor is a corporation, Articles of Organization and Operating Agreement if the Debtor is a limited liability company, or Certificate of Limited Partnership if applicable) or Partnership Agreement if the Debtor is a partnership; or any other agreement in which the Debtor is or may become a party; all financial information and documents delivered by the Debtor to the Lender have been or will be true and correct and are prepared in accordance with generally accepted accounting principles; there are no actions or proceedings, including set-off or counterclaim, which are threatened or pending against the Debtor which may result in any material adverse change in the Debtor's financial condition or which might materially affect any of the Debtor's assets; the Debtor has duly filed all federal, state, municipal and other governmental tax returns, and has obtained all licenses, permits, and other filings which the Debtor is required by law to file or obtain, and all such taxes and fees for such licenses and permits required to be paid have been paid in full.

REPRESENTATIONS. The Debtor agrees that it will, at its own expense, fully insure the Collateral against all loss or damage for any risk of whatever nature to such contents, with such companies and under such policies as shall be satisfactory to the Lender. All policies shall expressly provide that the Lender shall be the first payee or, alternatively, if requested by Lender, mortgagee. The Lender is granted a security interest in the proceeds of such insurance and may apply such proceeds as it may require toward the payment of the Obligations, with interest and property damage insurance upon all its other property, to provide such policies to maintain, at its own expense, and to furnish the Lender with copies of other evidence of such policies and evidence of its payments of the premiums thereon. All policies of insurance shall provide for a minimum 10 day written notice of cancellation to Lender. At the request of Lender, such policies of insurance shall be delivered to and held by Lender. Debtor agrees that Lender is authorized to act as attorney for Debtor in obtaining, adjusting, settling, and carrying such insurance and conducting any other of its business in connection with this Agreement and from policies of insurance to prospective lenders of the Collateral if the Debtor at any time fails to obtain or maintain any of the insurance required above or pay any premium in whole or in part relating thereto, the Lender, without waiving any default hereunder, may make such payment or obtain such policies on the Lender's behalf, in its sole discretion, deemed advisable to protect the Debtor's property. All costs incurred by the Lender, including reasonable attorney's fees, court costs, expenses, and other charges thereby incurred, shall become a part of the Obligations and shall be payable as herein.

ACCOUNTS. As of the date any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Debtor shall be deemed to have warranted as to such and all of such accounts as follows: (a) Each account (and all papers and documents relating thereto) are genuine and in all respects what they purport to be; (b) each account is valid and enforceable and all papers and documents relating thereto are genuine and delivered to, or on or for, and for services therewith actually rendered by Debtor at the account actually and unconditionally owing except for normal cash discounts said to exist in the normal course of business; and (c) Debtor is the owner thereof free and clear of any charges, liens, security interests, or other claims, or of any and every other valid claim.

Lender shall have the right to its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Lender; in fully pay and all account debtors to make payments of

PROTECTION OF CONSTITUTION

PROTECTION OF COLLATERAL. Debtor agrees that Lender may, at Lender's sole option, whether before or after any event of default and without prior notice to Debtor, take the following actions to protect Lender's interest in the Collateral: (a) pay for the collection and charges related to the Collateral; or (c) file any other action to preserve and protect the Collateral or Lender's rights and remedies under this Agreement, as Lender may deem necessary or appropriate in its sole discretion. Debtor agrees that Lender is not obligated and has no duty whatsoever to take the foregoing actions. Debtor agrees to reimburse Lender promptly upon demand for any payment made by or on behalf of Lender in connection with the foregoing actions. Debtor agrees to indemnify Lender promptly upon demand for any payment made by or on behalf of Lender in connection with the foregoing actions. Payments and reimbursements made by Lender under this Agreement shall be secured by this Agreement and shall constitute additional obligations, shall be secured by this Agreement and shall constitute additional obligations, shall be secured by this Agreement and shall constitute additional obligations.

INFORMATION AND REPORTING. The Dealer agrees to supply to the Lender such financial and other information concerning its affairs and the status of its assets as the Lender, from time to time, may reasonably request. This Dealer further agrees to permit other physical assets, if any, and to permit the Lender, from time to time, to verify accounts receivable, inventory, and other bookkeeping records and files of the Dealer.

CROSS-COLLATERALIZATION. OnSight and Debit agree that any security interests provided in Collateral under this Agreement or any credit facilities of OnSight or Debit to Lender, whether or not such interests are stated by this Agreement, shall be deemed to be cross-collateralized by the parties at the time of recording such evidence of indebtedness, and shall be considered to be cross-collateralized by the parties at the time of recording such evidence of indebtedness. This cross-collateralization provision shall not apply to any Collateral that bears perfected goods or a perfected security interest.

[illegible]

REDAEMED. Upon the occurrence of an event of default, under the option, shall be entitled to exercise any one or more of the remedies described in this Agreement, in all documents evidencing the Obligations, in any other instruments executed by or delivered by Obligor or Debtor for benefit of Lender, in any sub-priority security agreements, mortgages, pledges, or guaranty notices.

SEVERANCE OF CONDITIONS OF LIABILITY. This Agreement is nonseverable. Leader shall from be released to release its remedies against Debtor, other collateral, or guarantor, or pursue any other remedies with Leader's power before being entitled to exercise its remedies hereunder. Leader's rights to the Collateral shall not be affected by the lack of validity or enforceability of the Obligations of Debtor, and this Agreement shall be fully enforceable irrespective of any conditionality with the Obligor may named on the underlying debt and notwithstanding any stay, modification, discharge, or extension of Debtor's Obligations arising by virtue of Debtor's bankruptcy, insolvency, or reorganization, whether occurring with or without Leader's consent.

NOTICES. Any notice or demand given by Leader to Obligor or Debtor in connection with this Agreement, the Collateral, or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Obligor or Debtor at the address designated at the beginning of this Agreement, or such other address as Obligor or Debtor may provide to Leader in writing from time to time for such purposes. Actual notice to Obligor or Debtor shall always be effective no matter how such notice is given or received.

WAIVERS. Debtor waives notice of Leader's acceptance of this Agreement, advance based on suretyship, and to the fullest extent Debtor and any maker, endorser, guarantor, surety, third-party obligor, and other party executing this Agreement that is liable in any capacity with respect to its Obligations hereby waives demand, notice of intention to sue, notice of consideration, notice of assignment, notice of assignment, present, notice of discharge, and any other similar notice whatsoever.

WAIVER OF JURY TRIAL. AS PART OF THIS AGREEMENT, Debtor waives to the fullest extent permitted by law any right to trial by jury with respect to any disputes, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship contemplated between them in this Agreement or any note or other instrument, document, or agreement entered or delivered in connection herewith or for the transactions related hereto.

JOINT AND SEVERAL LIABILITY. If this Agreement is executed by more than one Party, it is the declared and agreed that each such Party to this Agreement shall be jointly and severally bound and the word "Obligor" or "Debtor" as used herein shall be construed to be of each member or disponent(s) required.

SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid to the greatest extent possible, but in the event any provision of this Agreement shall be prohibited by or be void under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity and shall be severed from the rest of this Agreement without invalidating the remainder of such provision or the remaining provisions of this Agreement.

ENTIRETY. The rights and obligations of the Leader hereunder shall have to the benefit of its successors and assigns, and this Agreement shall be binding on all heirs, executors, administrators, assigns, and successors of Obligor or Debtor, and all or any of the Obligations, and in such event the subject shall have the same rights as if originally named herein in place of Debtor. Obligor or Debtor may not assign this Agreement or any benefit accruing to it hereunder without the express written consent of the Leader.

AUTHORIZATIONS. Debtor authorizes Leader, without notice or demand and without altering Debtor's liability to Leader's rights hereunder, from time to time to take such action which may alter the obligation of Obligor to Leader or Debtor's right to redemption or the terms of the Obligations or any part thereof, including increasing the rate of interest, (a) to extend, compromise, or otherwise change the time for payment of, or otherwise change the manner for any purpose; (b) to issue notes, including advance of face, with respect to including its rights with respect to the Obligations and collateral securing the Obligations; (c) to exchange, assign, waive, or release (whether irrevocably or irrevocably) any security for the Obligations or any part thereof or purchase such security at private or public sale; (d) to settle, release, compromise, or otherwise alter any debt, claim, or other obligation of the Obligations; (e) to impair the value of Leader's interest in Collateral through failure to obtain or maintain protection, failure to obtain or maintain recordings of an interest, or through failure to perform a duty owed to Debtor to preserve the Collateral; and (f) to apply all remedies available from Debtor and others or from Collateral to perform a Leader's function without in any way being required to exhaust remedies.

GOVERNING LAW. This Agreement has been delivered in the state of South Carolina and shall be construed in accordance with the laws of that state.

HEADINGS AND CROSS-REFERENCES. The headings in preceding text in this Agreement are for general convenience only in identifying subject matter; but have no limiting impact on the text which follows any particular heading. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.

MISCELLANEOUS. Terms of the contents of this Agreement. Except as otherwise defined in this Agreement, all terms herein shall have the meanings provided by the Uniform Commercial Code as it has been adopted in the state where these Lender is located. All rights, remedies, and powers of the Lender hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies, and powers given hereunder or in or by any other instrument or by the provisions of the Uniform Commercial Code as adopted in the state where the Lender is located, or any other laws, now existing or hereafter enacted. The Obligor specifically agrees that if it has heretofore or hereafter executed any loan agreement in conjunction with the Agreement, any modifications between this Agreement and any such loan agreement shall be construed under the provisions of the loan agreement, to the extent that it may be necessary to eliminate any such ambiguity. Obligor and Debtor release Lender from any liability which might otherwise exist for any act or omission of Lender related to the collection of any debt covered by this Agreement or the disposal of any collateral, except for the Lender's willful misconduct.

ORAL AGREEMENTS DISCLAIMER. This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no modifications and agreements between the parties.

ACKNOWLEDGMENT. Debtor acknowledges agreeing to all of the provisions in this Agreement, and further acknowledges receipt of a true and complete copy of this Agreement.

IN WITNESS WHEREOF, Debtor has executed this Agreement on the date and year shown below.

BYTE SOFTWARE, LLC

Benjamin G. Goss
BY: STONE INTERNATIONAL, LLC, by Stone International LLC's Manager and Sole Member, Stone International LLC being authorized to execute this document on behalf of Byte Software, LLC by Resolution of Byte Software, LLC's Sole Member, Benjamin Goss

BYTE 000032

EXHIBIT P

STATE OF SOUTH CAROLINA)
)
JUNTY OF GREENVILLE)

ASSET PURCHASE AGREEMENT

This agreement is entered into on April 1, 2009, between Byte Software, LLC a limited liability Company organized under the laws of South Carolina, with its principal office located in Greenville, (referred to as BSL or "Sellers"), and Byte Software Services, LLC, (referred to herein collectively as "Buyer").

In consideration of the mutual covenants of the parties, sellers and buyer agree:

1. **Sale of Business**

Sellers shall sell, assign, and deliver to buyer and buyer shall purchase and accept, on the closing date, the software owned by BSL or which it has any right, title, or interest inchoate or otherwise, including all good will, processes, research and development projects, designs, patents, claims, contract rights, the right to use the names Byte Software or any similar name or names in connection with any type of enterprise engaged in by seller business, and all other names, trademarks, or copyrights used by BSL in connection with its business or products, all as more specifically described and set forth in Exhibit 1, which is attached and incorporated by reference.

Consideration; Assumption of Liabilities

In consideration of the sale of assets and properties under this agreement and of all other things done and agreed to be done by Sellers, Buyer shall assume all obligations under prepaid maintenance and service agreements set forth in Exhibit 2.

3. **Instruments of Transfer**

The sales, assignments, and deliveries to be made to buyer pursuant to this agreement shall be effected by deeds, bills of sale, endorsements, checks, and other instruments of transfer in such form as buyer shall reasonably request. Sellers shall prepare appropriate forms of instruments of transfer and conveyance in conformity with this agreement and shall submit them to buyer for examination at least 10 days in advance of the closing date. Any time and from time to time after the closing date, on buyer's request, sellers will do, execute, acknowledge, and deliver all such further acts, deeds, assignments, transfers, and powers of attorney as may be required in conformity with this agreement for the adequate assigning, transferring, granting, and confirming to buyer of the assets and properties sold to buyer.

4. **Assignment of Contract Rights**

If any contract, license, lease, commitment, or sales or purchase order assignable to buyer under this agreement may not be assigned without the consent of the other party thereto, sellers will use their best efforts to obtain the consent of the other party to the assignment.

5. **Closing Procedures and Deliveries**

5.1 **Closing/Closing Date.** Subject to fulfillment of the conditions to Closing specified in this agreement and pursuant to the other terms and conditions hereof, the closing of the transactions provided for in this agreement (the "Closing") shall take place at the offices of BSL, at a mutually agreed time on April 10, 2010 or at such other date and time as may be agreed upon in writing by the parties hereto (the "Closing Date"), such closing to be effective as of the close of business on the Closing Date.

5.2 **Conditions to Closing.** The obligations of Buyer to purchase the Purchased Assets and of Seller to sell, transfer and assign the Purchased Assets as provided in this agreement are subject to the satisfaction, at the

Closing (except where specifically required or permitted to be satisfied prior to or after the Closing), of all of the respective obligations of Buyer and Seller set forth below:

(a) **Delivery of Purchased Assets to Buyer.** Seller shall deliver the Purchased Assets, by duly executed Assignment and Assumption Agreement and other appropriate assignments or other instruments of transfer and documents which conform to the requirements of the Agreement, including executed counterparts of all novation agreements with the United States government, its agencies and instrumentalities, and any other persons requiring them. Simultaneously with the consummation of the transfer, Seller, through its officers, agents, and employees, will put Buyer into full possession and enjoyment of all Purchased Assets to be conveyed and transferred by this Agreement.

(b) **Delivery of Purchase Price and Assumption of Liabilities.** Buyer shall deliver to Seller a duly executed Assignment and Assumption Agreement and other appropriate documents which conform to the requirements of the Agreement.

(c) **Certificate from Seller.** Seller shall deliver to Buyer a certificate, dated the Closing Date, signed by a duly authorized officer of Seller certifying that:

(i) the representations and warranties made by Seller herein or in any Exhibit or Schedule hereto remain true in all material respects on the Closing Date as though made on such date except for changes contemplated by the Agreement;

(ii) Seller has performed and complied in all material respects with all agreements, covenants and conditions required by the Agreement to be performed or complied with by Seller on or prior to the Closing;

(e) **Certificate of Buyer.** Buyer shall deliver to Seller a certificate, dated the Closing Date, signed by a duly authorized officer of Buyer certifying that:

(i) the representations and warranties made by Buyer herein or in any Exhibit or Schedule hereto remain true in all material respects on the Closing Date as though made on such date except for changes contemplated by the Agreement;

Buyer has performed and complied in all material respects with all agreements, covenants and conditions required by the Agreement to be performed or complied with by Buyer on or prior to the Closing;

(iii) no litigation, proceedings or other actions are pending against or affecting the Buyer which have resulted or reasonably could be expected to result either in an action to enjoin or the prevention of the consummation of the transactions contemplated by the Agreement; and

(iv) Buyer has received all consents required by the federal government, any state or local governmental body or any foreign government to the transactions contemplated by the Agreement, and such consents are in full force and effect.

(f) **Corporate Resolutions.** Buyer and Seller shall deliver to each of the other parties hereto copies of their respective corporate resolutions, certified by the appropriate corporate officer, authorizing the execution and delivery of the Agreement and the consummation of the transactions contemplated hereby.

(g) **Assumption of Liabilities.** Buyer shall execute and deliver to Seller the Assignment and Assumption Agreement required by this Agreement and other assumption instruments which conform to the requirements of the Agreement.

6. Representations of Sellers

Sellers represent, warrant, and agree:

(a) BSL is a limited liability Company duly organized, existing, and in good standing under the laws of the State of South Carolina, and is authorized and entitled to carry on its business in South Carolina and it has no subsidiaries. The members of BSL have full power and authority to enter into this agreement and to carry out all the terms and provisions hereof to be carried out by them, and all authorizations and consents necessary for the execution and delivery of this agreement by him have been given. This agreement, assuming authorization, execution, and delivery by the other parties hereto, constitutes a legal, valid, and binding agreement of sellers, enforceable against sellers in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, and similar laws affecting creditors, rights generally from time to time in effect and to equitable principles limiting the availability of the remedy of specific performance).

(b) None of sellers is a party to any employment agreement, labor union agreement, agreement for the

the purchase of materials, supplies, or equipment, sales agreement, pension, profit-sharing, or retirement plan or agreement, distributorship or sales agency agreement, or lease agreement that relates to any period beyond the closing date, whether written or oral, except as listed in Exhibit 6. Copies of all such written agreements have been supplied to buyer, and buyer has been advised of the terms of all such oral agreements.

6.1 Buyer's Representations and Warranties

Buyer hereby represents and warrants to Seller that:

- (a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia, with full corporate power to enter into, and to perform its obligations under, the Agreement.
- (b) The execution, delivery and performance of the Agreement by Buyer have been duly authorized by all necessary corporate action and do not, and will not, violate or conflict with the provisions of the Buyer's Certificate of Incorporation or Bylaws or the provisions of any indenture, agreement, or other instrument to which Buyer is a party or by which any of its property is bound. The Agreement constitutes a legal, valid and binding obligation of Buyer.
- (c) Buyer has not engaged or otherwise used the services of any broker or finder in connection with the Agreement or the transactions contemplated hereby and Buyer agrees to indemnify and hold harmless Seller from and against any liability for any fee, compensation, commission or expense (including attorneys' fees) arising out of any claim by any person acting or claiming to act on behalf of Buyer for fees, compensation, commission or expense with respect to the Agreement or the transactions contemplated hereby.
- (d) No authorization or approval of any governmental body is required to be obtained by Buyer in connection with the execution, delivery or performance of the Agreement, or, if so required, all such authorizations or approvals have been or will, prior to the Closing, be obtained by Buyer.
- (e) There is no action, arbitration, suit, notice, order, real estate tax contest or legal, administrative or other proceeding before any court or governmental agency, authority or body pending or, to Buyer's knowledge, threatened against or affecting Buyer which would prevent or interfere with the transactions contemplated by this Agreement.

6.2 Indemnification

Indemnity by Buyer.

Buyer shall indemnify, defend and hold harmless Sellers against and in respect of any and all Liabilities, including interest, penalties and reasonable attorneys' fees, that Sellers shall incur or suffer, which arise or result from, or relate to (a) any breach by Buyer of any of its representations and warranties contained in the Agreement or in any schedule, certificate, exhibit or other instrument furnished or to be furnished by it under the Agreement or the failure of the Buyer to perform any covenant or agreement contained in the Agreement, or (b) any and all claims, of whatever nature, asserted (with or without the commencement of legal action) against Sellers with respect to the Assumed Liabilities.

7. Expenses of Negotiation and Transfer

Each party shall pay the party's own expenses, taxes, and other costs incident to or resulting from this agreement, whether or not the transactions contemplated hereby are consummated. The costs of sellers shall include the preparation of documents of transfer and documentary stamp taxes. Buyer's costs shall include fees for the filing or recording of instruments of transfer.

8. Entire Agreement

This instrument contains the entire agreement between the parties with respect to the transaction contemplated. It may be executed in one or more counterparts, each of which shall be deemed

contemplated. It may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS, our hands and seals this the date and year first above written.

Witnesses:

Byte Software, LLC

Darlene Elrod

its:

[Signature]

President

Byte Software Services, LLC

Darlene Elrod

its:

[Signature]

member

STATE OF GEORGIA

Secretary of State

Corporations Division

315 West Tower

#2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

CERTIFICATE OF ORGANIZATION

I, Karen C Handel, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

BYTE SOFTWARE SYSTEMS, LLC

a Domestic Limited Liability Company

has been duly organized under the laws of the State of Georgia on 11/25/2008 by the filing of articles of organization in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta and
the State of Georgia on November 25, 2008



Karen C Handel
Secretary of State

**ARTICLES OF ORGANIZATION
FOR GEORGIA LIMITED LIABILITY CORPORATION**

The name of the Limited Liability Company is:
Byte Software Services, LLC

The Principal Mailing Address the Limited Liability Company is:
2134 Elysian Circle
Gainesville, GA 30501

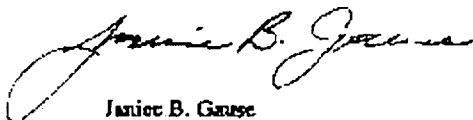
The Registered Agent is:
Janice B. Gause
2134 Elysian Circle
Gainesville, GA 30501
County: Hall

The Name and address of each organizer(s) are:
Janice B. Gause
2134 Elysian Circle
Gainesville, GA 30501

The optional provisions are:
No optional provisions.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization on the
date set forth below.

Signature



Janice B. Gause

Date:
May 1, 2009

NOISIAH SNOIYNOJAS
CORPORATIONS DIVISION
SECRETARY OF STATE
MAY - 5 AM 2009

EXHIBIT Q



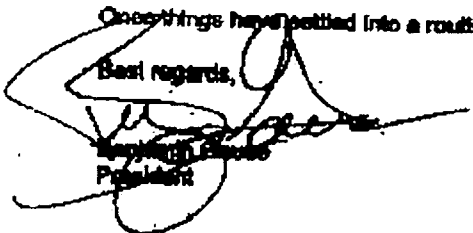
April 8, 2009

Dear Jack,

It seems that there is no light at the end of this ever lengthening tunnel and inasmuch as you are in breach of our option agreement I hereby terminate the management contract with you and Stone LLC effectively immediately.

Once things have settled into a routine we can all down and discuss any unresolved issues.

Best regards,


Kenneth J. Glavin
President

Byte Software, LLC - 317 Nasty Ferry Road - Norfolk, NC 23502 • (804) 290-7200 • (804) 290-4444 Fax

BYTE 000054

EXHIBIT R

EUGENE E. STONE, IV
Greenville, South Carolina

April 13, 2009

Mr. Benjamin Gause
c/o Byte Software, LLC
317 Necty Ferry Road
Mauldin, SC 29662

Dear Ben:

On Thursday morning, April 9, 2009, a person named "Fred", who claimed to be operating under your instructions, barred my entrance to Byte Software when I reported for work. He told me that the locks had been changed, that I was not to enter, and handed me the attached letter dated April 8, 2009, which you signed.

Under the Management Agreement you do not have the unilateral power to terminate the agreement and your attempt to do that is wrongful. Stone International, LLC has the authority under the agreement to exercise its option to purchase, pursuant to paragraph 9. It hereby exercises that option. You claim that there has been a breach of the option agreement, but you are well aware that that is not true.

Pursuant to the Commercial Line of Credit Agreement and Note and Commercial Security Agreement that matured on January 1, 2009, Byte Software, LLC owes Stone International, LLC in excess of \$200,000.00, exclusive of interest. Under the Commercial Security Agreement, the pledged assets (which amount to every asset of the business) are to be safeguarded for the benefit of Stone International, LLC. You specifically authorized that credit arrangement. Stone International LLC hereby demands all amounts due under that commercial line of credit, including all principal and interest.

Ben, your actions are ill-advised and will cause great harm to Stone International, LLC and to Byte Software, LLC. Legal actions will be pursued unless you recognize and respect the rights of Stone International, LLC.

Very truly yours,

STONE INTERNATIONAL, LLC

By: *Eugene E. Stone*
EUGENE E. STONE, IV

BYTE 000053

EXHIBIT S



April 15, 2009

Mr. Eugene E. Stone, IV
570 Hallion Rd
Apt 14202
Greenville, SC 29607

Dear Jack,

Your letter of 4/13/09 wrongly states that you were not in breach of our agreement. Many unilateral actions made by you breached not only the letter but the spirit of the option agreement.

An option with unspecified limits on right to extend, is like a note with no due date. It is not enforceable.

I have not been notified if any extension of the option agreement in 4 years and should be able to rely on the fact that it was no longer in force.

The fraudulent business practices entered into with the banks and some customers will certainly obviate any monies or rights due Stone International, LLC.

Its long past the time Stone has the right to exercise any option that previously existed but if you have an interest in making all of Byte's employees whole, including me, I would entertain an offer for you to purchase Byte Software, LLC

Best regards,

Benjamin Stone
President

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT
C/A No.: 2009-CP-23-5000

Stone International, LLC and
Eugene E. Stone, IV,)
)
)
Plaintiffs)
)

v.)

**ANSWER TO THIRD
AMENDED COMPLAINT**

Byte Software, LLC, Byte Software)
Services, LLC, Benjamin Gause,)
Janice Gause f/k/a Janice Archer)
f/k/a Janice Barnett; Carolina First)
Bank, Branch Banking and Trust)
Company, Greg Corbitt,)
Contemporary Solutions-USA, Inc.,)
International Modapts Assoc., Inc.,)
and SC Department of Employment)
and Workforce,)
)
Defendants)
)

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GREENVILLE CO. S.C.
AND S. HIGHWAY 101

The Defendants, Byte Software Services, LLC and Janice Gause, answering the third amended Complaint of the Plaintiffs, would allege and show unto this Honorable Court as follows:

1. Each and every allegation, not hereinafter specifically admitted, is denied.
2. That these Defendants are without sufficient information or belief to admit or deny the allegations of paragraphs 1, 2 and 3.
3. That allegations of paragraph 4 are admitted.
4. That the allegations of paragraphs 5 and 6 are admitted.
5. That the allegations of paragraphs 7, 8 and 9 are denied.
6. That this Defendant is without sufficient information or belief to admit or deny the allegations of paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51.
7. That the allegations of paragraphs 52, 53 and 54 are admitted.

8. These this Defendant is without sufficient information or belief to admit or deny the allegations of paragraphs 55, 56, 57, 58 and 59 and therefore deny same and strict proof demanded thereof.

9. That the allegations of paragraphs 60, 61, 62, 63, 64, 65, 66 and 67 are denied.

10. That the allegations of paragraphs 68 through 72 are not applicable to these Defendants are therefore denied and strict proof demanded thereof.

11. That the allegations of paragraphs 73, 74, 75, 76, 77, 78, 79, 80 and 81 are denied.

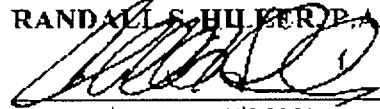
12. That the allegations of paragraphs 82 through 86 are not applicable to this Defendant are therefore denied and strict proof demanded thereof.

13. That the allegations of paragraphs 87, 88, 89, 90, 91, 92, 93 and 94 are denied.

14. That the allegations of paragraphs 95 through 111 do not apply to this Defendant and therefore are denied and strict proof demanded thereof.

WHEREFORE, having fully answered the Complaint of the Plaintiffs the Defendant would pray that the action of the Plaintiffs be dismissed, with costs.

RANDALL S. HILLER P.A.


Randall S. Hiller (#2513)

P.O. Box 1716

Greenville, SC 29602

864-232-0026 phone

864-242-4692 fax

Attorney for Defendant

June 29, 2012

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stone International, LLC,

Plaintiff,

v.

Byte Software, LLC, GrandSouth Bank,
Carolina First Bank, Branch Banking and
Trust Company, Greg Corbitt, and
Contemporary Solutions-USA, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
) BUSINESS COURT

FILED-CLERK OF COURT

GREENVILLE, SC C.A. No.: 2009-CP-23-5000

FILED-CLERK OF COURT

PLAINTIFF'S MOTION TO
COMPEL PRODUCTION

ENTERED COMPUTER

**TO: DEFENDANT BYTE SOFTWARE, LLC BY AND THROUGH ITS
ATTORNEY, RANDALL S. HILLER, ESQUIRE:**

Plaintiff Stone International, LLC (*hereinafter* "Stone"), by and through its undersigned counsel, hereby moves this Court for an order compelling Defendant Byte Software, LLC (*hereinafter* "Defendant") to produce the following to Plaintiff:

1. All documents requested to be produced in Plaintiff's First Request for Production of Documents, marked as "Exhibit A" and attached hereto.
2. Answers to Plaintiff's First Set of Interrogatories, marked as "Exhibit B," and attached hereto.

This motion is made pursuant to Rule 37(a), of the South Carolina Rules of Civil Procedure, and upon the following grounds:

1. Plaintiff served the abovementioned discovery requests (Exhibit A and B) on June 6, 2010.
2. A hearing on Plaintiff's Motion to Amend and Motion for Preliminary Injunction was held before the Court on July 15, 2010. During that hearing

the Court ordered the parties to engage in mediation and directed Defendant to produce financial information and documentation necessary for conducting such mediation in a meaningful manner.

3. Mediation was originally scheduled for August 3, 2010.
4. On July 26, 2010, Plaintiff sent a letter, attached as "Exhibit C," to Defendant listing in detail the documents Defendant needed to produce in order for the parties to conduct a meaningful mediation. That letter set a deadline of July 30, 2010 for production of the documents requested.
5. On July 30, 2010, Defendant contacted Plaintiff and informed them that the documents could not be produced until sometime after August 9, 2010. Due to Defendant's failure to provide this vital information, the mediation was postponed until August 18, 2010. Defendant agreed to provide the information requested in Plaintiff's July 26th letter by August 13, 2010.
6. Plaintiff sent Defendant a letter on August 5, 2010, marked "Exhibit D," memorializing these new terms and dates.
7. On August 13, 2010 Defendant sent Plaintiff an incomplete Profit and Loss statement and balance sheet and for the first time objected to the production of the other documents requested. (Exhibit E).
8. The same day Plaintiff responded requesting the other necessary documents; to which Defendant responded by providing a customer list and again objecting to production of the other information requested. (Exhibit E).

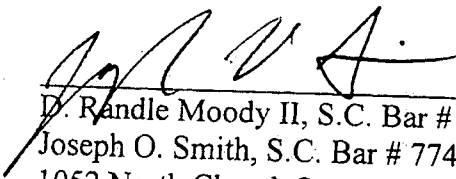
9. Mediation was conducted on August 18, 2010 during which the parties' agreed to provide one another with certain information and documentation necessary to facilitate settlement.
10. On August 19, 2010, Plaintiff sent Defendant a letter, marked as "Exhibit F," listing in detail the information and documents required for conducting due diligence.
11. On August 20, 2010, Defendant sent a letter, marked as "Exhibit G," refusing to produce any documentation or information.
12. Plaintiff responded by letter, marked as "Exhibit H," dated August 20, 2010, requesting Defendant participate in the agreed upon exchange of information and promising to abide by the terms of the agreement reached during mediation.
13. Due to Defendant's refusal to provide the information necessary to perform due diligence, the mediation reached an impasse.
14. On September 24, 2010 Plaintiff sent Defendant a letter, marked as "Exhibit I," requesting responses to the discovery requests. (Exhibits A and B).
15. Defendant has yet to produce any documents or otherwise respond to said discovery requests.

The Plaintiff seeks an order compelling the Defendant to answer their discovery requests, as well as for attorney's fees and costs associated with filing this motion.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,

ROE, CASSIDY, COATES & PRICE, P.A.



D. Randle Moody II, S.C. Bar # 14135
Joseph O. Smith, S.C. Bar # 77475
1052 North Church Street
Greenville, S.C. 29601
(864)-349-2600
(864)-349-0303 fax
RMoody@roecassidy.com
JSmith@roecassidy.com

October 4, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stone International, LLC,

Plaintiff,

v.

Byte Software, LLC, Benjamin Gause,
Carolina First Bank, Branch Banking and
Trust Company, Greg Corbitt, Contemporary
Solutions-USA, Inc., and International
Modapts Association, Inc.,

Defendants.

Byte Software, LLC and Benjamin Gause,

Third-Party Plaintiffs,

v.

Eugene E. Stone, IV,

Third-Party Defendant.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) **BUSINESS COURT**

) C.A. No.: 2009-CP-23-5000

) **MOTION TO BE REMOVED AS**
) **COUNSEL**

COMES NOW, Joseph O. Smith of the law firm Roe Cassidy Coates & Price, P.A.
and D. Randle Moody, II of the law firm of Jackson Lewis, P.C. and moves this Court to
be removed as listed counsel in this matter for the following reasons:

1. Undersigned counsel is currently the counsel of record for Plaintiff Stone International, LLC in the above-referenced matter.
2. Circumstances are such that counsel can no longer represent Plaintiff in this matter.

3. Counsel respectfully requests that the Court grant this Motion to remove them as counsel for the Plaintiff and allow Plaintiff adequate time to obtain substitute counsel.

WHEREFORE, the undersigned counsel respectfully requests that this Court grant this Motion to be removed as a counsel of record in this matter.

Respectfully Submitted,

s/ Joseph O. Smith
Joseph O. Smith, SC Bar No. 77475
ROE CASSIDY COATES & PRICE, PA
1052 N. Church Street (29601)
P.O. Box 10529
Greenville, SC 29603
(864) 349-2600
(864) 349-0303 (Fax)
jsmith@roecassidy.com

s/ D. Randle Moody, II
D. Randle Moody, II, SC Bar No. 14135
Jackson Lewis, P.C.
15 South Main Street
Suite 700
Greenville, SC 29601
(864) 672-8037
Randy.Moody@Jacksonlweis.com

April 5, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT
C/A No.: 2009-CP-23-5000

Stone International, LLC and)
Eugene E. Stone, IV,)
)
Plaintiffs)

v.)

**MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
OTHER RELIEF**

Byte Software, LLC, Byte Software)
Services, LLC, Benjamin Gause,)
Janice Gause f/k/a Janice Archer)
f/k/a Janice Barnett; Carolina First)
Bank, Branch Banking and Trust)
Company, Greg Corbitt,)
Contemporary Solutions-USA, Inc.,)
International Modapts Assoc., Inc.,)
and SC Department of Employment)
and Workforce,)
)
Defendants)

TO: JACOB HUGHES, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Please take notice that the undersigned attorney for the Defendants, Byte Software, LLC, Benjamin Gause, Byte Software Services, LLC and Janice Gause will, as soon as this matter can be heard, move for an Order of this Court granting these Defendants partial summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, on the grounds that the Defendants are entitled to judgment as a matter of law there being no issue of fact based upon the affidavit, depositions and exhibits to be submitted as to causes of action one, three, four, five, six and seven.

That the Court strike the complaint of the Plaintiffs upon the grounds that the Plaintiffs, during the pendency of this action have destroyed evidence which is essential to the presentation

of the Defendants' case and/or that Plaintiff's dilatory and inexcusable failure to prosecute the action has resulted in the loss of the ability to obtain or gather evidence supporting the Defendants' defenses and counterclaims including, but not limited to, the destruction of evidence, the death of at least one essential witness and the inability to locate one or more other essential witnesses.

RANDALL S. HILLER, P.A.

S/Randall S. Hiller
Randall S. Hiller (SC Bar #2513)
Attorney for Defendant
850 Wade Hampton Blvd.
Greenville, S.C. 29609
864/232-0026 phone
864/242-4692 fax

June 6, 2018

Greenville, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEEN JUDICIAL CIRCUIT
BUSINESS COURT

Stone International, LLC and Eugene E.
Stone, IV,

Plaintiffs,

vs.

Byte Software, LLC; Byte Software
Services, LLC; Benjamin Gause; Janice
Gause, f/k/a Janice Archer, f/k/a Janice
Barnett; Carolina First Bank; Branch
Banking and Trust Company; Greg
Corbitt; Contemporary Solutions-USA,
Inc.; International Modapts Association,
Inc.; and South Carolina Department of
Employment and Workforce,

Defendants.

CIVIL ACTION NO. 2009-CP-23-5000

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

TO: DEFENDANTS AND RANDALL S. HILLER, ESQ., THEIR ATTORNEY

PLEASE TAKE NOTICE that, as soon as they may be heard, at the Greenville County Courthouse, Plaintiffs Stone International, LLC and Eugene E. Stone, IV, will move, and hereby move pursuant to Rule 56, S.C.R.C.P., for summary judgment holding Defendants liable for the relief sought in Plaintiffs' complaint and dismissing Defendants' Counterclaims, on the grounds that there is no genuine issue of material fact, that Defendants have no evidence supporting their Counterclaims, and that Plaintiffs are entitled to judgment as a matter of law.

This motion is based upon the Affidavit of Eugene E. Stone, IV, the pleadings, the discovery responses, the deposition testimony, other affidavits, and the other matters of record in this action.

Respectfully submitted,

HUGHES LAW FIRM, L.L.C.

By: s/ Jacob M. Hughes
Jacob M. Hughes (SC #100646)
50 Marchbanks Drive
Greenville, SC 29617
(864) 569-2498
Attorneys for Plaintiffs

June 11, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Stone International, LLC, and)
Eugene E. Stone, IV,)

Plaintiffs,)

v.)

Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause;)
Janice Gause, f/k/a Janice Archer,)
f/k/a Janice Barnett; Carolina First)
Bank; Branch Banking and Trust)
Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association,)
Inc.; and South Carolina Department)
of Employment and Workforce,)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

CIVIL ACTION NO.:
2009-CP-23-5000

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

HUGHES LAW FIRM, L.L.C.

Jacob Michael Hughes
S.C. Bar #100646
50 Marchbanks Drive
Greenville, South Carolina 29617
(864) 569-2498
jacobmhughes@gmail.com
Attorney for Plaintiffs

February 12, 2019
Greenville, South Carolina

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TIMELINE OF KEY EVENTS

JUNE 1997 — Stone retains Byte to provide software and support services for its apparel manufacturing company.

JANUARY 2004 — Byte employee Carl Delaney contacts Stone. Delaney's opinion is that Byte will cease to operate within thirty days unless it obtains operating capital. Stone meets with Benjamin Gause ("Gause"), sole owner of Byte. Stone considers immediately acquiring the business but soon discovers Byte's significant income tax liabilities, both state (\$80,000) and federal (\$400,000).

FEBRUARY 16, 2004 — Stone and Byte execute the Management Agreement. Stone agrees to provide management services and operating capital in exchange for an option to acquire fifty-one percent of Byte.¹ The very same month, Stone assigns five full-time employees (the "Management Team") to Byte's offices in Mauldin, South Carolina. Stone provides Byte with \$200,000 throughout 2004 (the "initial capital infusion") and a total of \$2,132,832 operating capital during extensions of the Management Agreement (2004-09).² Stone agrees to provide Gause with "benefits" based upon the parties' understanding that Gause would pursue sales leads in Charleston.³

APRIL 2005 — Unknown to Stone, Gause forms Historic Renovations, LLC, in Charleston and undertakes the restoration of 104 Rutledge Avenue, a 1790s mansion. According to his brother, Gadsden, "until early 2008, . . . Gause's primary focus was renovating the house we had purchased. To my knowledge, . . . [he] had no involvement with Byte during this period." (Gadsden Gause Aff. ¶ 9.)

MAY 2006 — Stone and Gause sign the Commercial Line of Credit Agreement ("Note") and Security Agreement in order to secure a portion of Stone's capital contributions under the Management Agreement.

¹ After exercise of the option, Stone would then acquire the remaining 49% of Byte within five years for a total of 100%—what the Management Agreement defines as "fully realized."

² "If the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital provided under th[e] Agreement" (Management Agreement ¶ 9.)

³ From 2005-08, Stone pays Gause more than \$338,946 in "benefits."

DECEMBER 2008 — Stone retains D.G. Yarborough, Inc., a Charlotte, North Carolina, independent tax consulting firm, to resolve Byte's \$400,000 federal tax lien. By the end of 2007, Stone had satisfied the delinquent income taxes Byte owed to the State of South Carolina (originally \$80,000).

JANUARY-FEBRUARY 2009 — Gause and Janice Gause ("Mrs. Gause") move from Daniel Island to a rental house in Greenville County, near Byte's offices in Mauldin.

EARLY 2009 — Stone and Gause meet with Yarborough to review his restructuring strategy for resolution of Byte's \$400,000 federal tax lien. After hearing Yarborough's strategy, Stone advises, and Gause agrees, that he would exercise the option to purchase Byte. Stone reduces this decision to writing by an April 13, 2009 letter to Gause. (3rd Am. Compl. Ex. R.)

MARCH 29, 2009 — Unknown to Stone, Mrs. Gause organizes Byte Services, a Georgia LLC.

APRIL 1, 2009 — Mrs. Gause, signing for Byte Services, and Gause, signing for Byte, execute the Asset Purchase Agreement, which transfers Byte and all of its assets to Byte Services in Georgia. Mrs. Gause pays nothing.

APRIL 9, 2009 — Gause physically locks Stone and the Management Team out of Byte's offices in Mauldin. Gause and Mrs. Gause misappropriate the S.C. business *ultra vires* as "agents" of Byte Services.

APRIL 15, 2009 — Gause sends a letter to Stone rejecting his exercise of the purchase option and claiming that "[a]n option with unspecified limits on right to extend, [sic] is like a note with no due date. It is not enforceable." (3rd Am. Compl. Ex. S.)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Stone International, LLC, and)
Eugene E. Stone, IV,)
Plaintiffs,)
v.)
Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause;)
Janice Gause, f/k/a Janice Archer,)
f/k/a Janice Barnett; Carolina First)
Bank; Branch Banking and Trust)
Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association,)
Inc.; and South Carolina Department)
of Employment and Workforce,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

CIVIL ACTION NO.:
2009-CP-23-5000

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Plaintiffs, Stone International, LLC, and Eugene E. Stone, IV ("Stone" or "Plaintiffs"), submit the following memorandum in support of their Motion for Summary Judgment. The primary Defendants are Byte Software, LLC ("Byte"), Byte Software Services, LLC ("Byte Services"), Benjamin Gause ("Gause"), and Janice Gause ("Mrs. Gause") (collectively, "Defendants"). All other listed Defendants are secondary lien-holders and are not included in Plaintiffs' Motion.

SUMMARY

This matter involves bad faith, collusion, civil conspiracy, breach of contract, and misappropriation by Benjamin Gause and Janice Gause. Defendants acted improperly individually, as well as through both LLCs, to thwart Stone's purchase option, which they rejected, and to defraud Stone of his current and future ownership interest in Byte: its business, physical assets, intellectual property, prospective opportunities and profits. Stone seeks to pierce the

corporate veil of Byte and Byte Services because the Gause, personally, have misused both LLCs to perpetuate and protect their fraudulent conduct.

Founded in 1933, Stone Manufacturing Company survived the Great Depression and established successful operations across South Carolina. Stone's Cherrydale facility in Greenville, once acclaimed as the largest apparel production plant in the world, later became U.S. headquarters for Umbro International, Inc. The soccer brand Umbro sponsored and supplied uniforms to more than sixty professional clubs, including Manchester United, and to World Cup teams from England and Spain.

Around June 1997, Stone retained Byte, an information technology (IT) enterprise. Through a series of modules, Byte's IT system automatically collects and integrates business data. The software streamlined Stone's manufacturing operations. In January 2004, Byte employee Carl Delaney contacted Stone. According to Delaney, without additional capital, Byte would cease to operate within thirty days. Stone met with Gause, sole owner of Byte, who requested financial assistance. Preliminary due diligence revealed significant income tax liabilities against Byte, both state (\$80,000) and federal (\$400,000). Considering the tax debt and danger of imminent collapse, Stone offered to provide management services, including operating capital, in exchange for an option to purchase Byte. Gause accepted Stone's offer.

Stone and Byte executed the Management Agreement on February 16, 2004.⁴ Stone contributed \$200,000 operating capital "during the initial term of th[e] Agreement" (the "initial capital infusion") and a total of \$3,521,767 operating capital from 2004-09. Byte repaid \$1,388,935 of this amount, leaving a balance of \$2,132,832. Gause granted Stone an option to purchase Byte. The Management Agreement gave Stone "sole discretion" to exercise the

⁴ A copy of the Management Agreement and other documents referenced herein are attached as exhibits to the Third Amended Complaint and as exhibits to Plaintiffs' memorandum.

option and sole authority to extend the agreement for “additional, consecutive, successive 180-day periods”—with no limitation on the number of extensions. (Management Agreement ¶¶ 8-9.) Upon exercise, Stone would acquire 51% of Byte immediately and the remaining 49% within five years. See detailed discussion *infra* p. 12 . Stone’s option, “in [his] sole discretion, to acquire 51 percent of the business” existed “[d]uring the Initial Term and any Extension Term.” (Management Agreement ¶ 9.) According to the Management Agreement, “[i]f the Purchase Option is not fully realized, [Stone] will be entitled to payback of *all capital* provided under th[e] Agreement” (*Id.*) (emphasis added) Stone provided Byte with capital until April 2009, when Gause, having colluded and conspired with Janice Gause, rejected the purchase option in bad faith. Stone’s outstanding capital investment totals \$2,132,832.

After execution of the Management Agreement in February 2004, Stone assigned five full-time employees (the “Management Team”) to Byte’s offices in Mauldin, South Carolina. Stone paid the Management Team with capital contributions to Byte’s operating budget. As manager, Stone made immediate, positive impact. Byte progressed from the brink of collapse to a going concern. In 2004, Gause relocated to Charleston. The parties’ understanding was that Gause would pursue sales leads and receive “benefits” from Byte. (Stone Aff. ¶ 19, July 6, 2010; *see also* Management Agreement ¶ 9.) From 2005-08, Stone paid Gause more than \$338,946 in “benefits.” (Pls.’ Mem. in Supp. Ex. 1.) Despite these payments, Gause admittedly performed no services. (B. Gause Dep. 163:23-164:18, December 15, 2010.) Instead, he formed Historic Renovations, LLC, and supervised the multimillion-dollar restoration of 104 Rutledge Avenue, a mansion formerly owned by Edisto rice planter Thomas Bannister Seabrook. (See Gadsden Gause Aff. ¶¶ 6-11, July 13, 2010.) Stone was unaware that Gause had formed Historic Renovations and “retired from . . . the software business” to pursue “his hobby of restoring old homes.” See Pls.’ Mem. in Supp. Ex. 2 for Gause’s fall 2006 “Luxury Living” feature in *Charleston Regional Business Journal*.

Byte continued to require operating capital during extensions of the Management Agreement. Stone advanced Byte \$237,050 in 2005. When Byte again required operating capital the following year, Stone requested security for his increasing capital advances under the Management Agreement. On May 22, 2006, Stone and Gause executed the Commercial Line of Credit Agreement and Note ("Note"), as well as a Commercial Security Agreement, which granted Stone a security interest in all of Byte's assets. (3rd Am. Compl. Exs. N-O.) As manager of Byte from 2004-09, Stone contributed a total of \$3,521,767 in capital, \$1,388,935 of which was repaid, leaving a balance of \$2,132,832. Only part of this amount was secured under the Note. A record of secured capital advances and repayments was prepared by Byte's accountant, Dennis Watt. Stone failed to secure all capital contributions (1) because he probably overlooked it given his preoccupation with managing the business, and (2) because he expected to receive the option—that is, an ownership interest in Byte. According to the Management Agreement, however, whether the capital is secured has no bearing upon Stone's right to recover all of it: "If the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital provided under th[e] Agreement" (¶ 9.)

In managing the company, Stone shouldered Byte's income tax burden, part of the legacy of Gause. Stone soon reached a settlement with the S.C. Department of Revenue. By the end of 2007, Stone satisfied all amounts owed the State of South Carolina—originally \$80,000. Byte's \$400,000 federal indebtedness was a more difficult challenge on account of the Greenville IRS Office's loss of file documents and unexplained delays.

In December 2008, Stone retained D. G. Yarborough, Inc., a Charlotte, North Carolina, independent tax consulting firm, to resolve the \$400,000 federal tax lien. After reviewing the Management Agreement and Byte's history of negotiations with the IRS, Yarborough proposed a restructuring strategy: Byte would obtain a new name, new tax ID number, develop new products, and "remain compliant with all taxes in the future." (Yarborough Aff. ¶¶ 3, 9-

10, July 8, 2010.) The strategy “required Stone[’s] . . . participation in order to receive [IRS] approval.” (*Id.* ¶¶ 10, 12.) Yarborough presented his strategy “in early 2009 At th[e] meeting, Stone . . . and . . . Gause agreed that Stone . . . would exercise its option to purchase Byte” (*Id.* ¶ 10.) Stone memorialized his decision to exercise the option in an April 13, 2009 letter to Gause. (3rd Am. Compl. Ex. R.)

Based on a search of Greenville County records, as of the date of this memorandum it appears that Byte owes approximately \$37,950, plus interest, on a lien set to expire April 29, 2019. The difference between the original lien amount, \$400,000, and the current lien seems to account from expiration of the ten-year IRS statute of limitations. This reduced liability resoundingly confirms Stone’s decision to exercise the option and increases the value of his claims against Defendants by \$362,050, if not \$400,000.

Subsequently, however, Gause refused to recognize the validity of the option and Stone’s ownership interest. Stone had invested over two million dollars of capital in Byte, yet Gause viewed the option as worthless: “An option with unspecified limits on right to extend, [sic] is like a note with no due date. It is not enforceable.”⁵ Gause ignored the Management Agreement; the specific provisions granting Stone “sole discretion” to exercise the option and renew the contract; and the existence of twelve such renewals. Most important, Gause ignored Stone’s exercise of the option and fifty-one percent interest in Byte. Gause purportedly “terminated” the Management Agreement in violation of its express terms.

Benjamin Gause and Janice Gause collusively conspired to reject Stone’s option. While Stone was managing Byte, both spouses were scheming to misappropriate the company. In January 2009, the couple relocated from Daniel Island to Greenville County, near Byte’s offices in Mauldin. Mrs. Gause had already determined that her husband “wasn’t being paid,

⁵ See 3rd Am. Compl. Ex. S for a copy of Gause’s April 15, 2009 letter rejecting the option.

so when you don't pay for something, you take it back." (J. Gause Dep. 80:7-8, March 16, 2011.) On March 29, 2009, Mrs. Gause formed *Byte Services* in Georgia. On April 9, 2009, Gause physically locked Stone and the Management Team out of Byte's office building in Mauldin. Next, Mrs. Gause misappropriated the S.C. business under the guise of *Byte Services*, her Georgia LLC. *Byte Services* was organized, and is wholly owned, by Mrs. Gause, whose fortune financed their deceptive ploy.

With Stone illegally excluded, Gause solicited further aid from Yarborough. "Three days after the meeting with . . . Stone and . . . Gause, I received a telephone call [Gause] informed me that he had formed a new company in Georgia, Stone . . . had been removed from the management of Byte, and he [Gause] requested assistance implementing [my] strategy" (Yarborough Aff. ¶ 11.)⁶ Yarborough "refused to assist . . . Gause," whose "actions were directly contrary to the [parties'] agreement." (*Id.* ¶ 12.) Yarborough "informed the [IRS] Revenue Officer that [they] had reached an agreement, but [afterwards] Gause . . . removed Stone . . . from the management of Byte." (*Id.* ¶ 13.) At the revenue officer's request, Yarborough provided him written notification of the change in circumstances. (*Id.*)

At the time of signing the Management Agreement in February 2004, Byte owed state income taxes of \$80,000 and federal income taxes of \$400,000. Stone hesitated to exercise the purchase option and thereby assume Byte's tax debt. Because the Management Agreement set no limits on the option period, Stone properly extended the agreement until the early 2009 meeting with Yarborough, who had devised an IRS-approved strategy to resolve the \$400,000 federal tax lien. (As manager Stone had satisfied Byte's state income taxes by the end of 2007.) Confident in Yarborough's strategy, Stone exercised the option. The Gauses,

⁶ While Gause's call confirms his reliance on Yarborough's strategy, the Gauses violated the agreement with the IRS by removing Stone from Byte and misappropriating the S.C. business by means of a Georgia LLC, *Byte Services*. Their self-seeking scheme was a complete distortion of what Yarborough intended. (Yarborough Aff. ¶ 12.)

now deciding that they would prefer to own Byte without the \$400,000 federal tax lien and without an option for Stone to purchase, executed their conspiracy to misappropriate Byte and abandon Stone. Apparently, the Gauses ignored Yarborough's stipulation that no change be made in the ownership of Byte (other than Stone's majority interest pursuant to his exercise of the option). Instead, they decided to hijack Stone's interest in accordance with their erroneous, contorted version of Yarborough's strategy, thus to eliminate Stone's rights under the Management Agreement.

For no consideration, the Gauses transferred all of Byte's assets to Byte Services in Georgia. This fraudulent conveyance violated not only the Management Agreement but also the Security Agreement, as well as general laws of theft. After changing the locks, Gause took over Byte's office complex in Mauldin. He fired all Byte employees; Mrs. Gause, sole owner of Byte Services, rehired them the following day. During his deposition, Gause explained why he locked Stone out: "[b]ecause I would have . . . control over what went on." (B. Gause Dep. 157:15-158:9.) Benjamin Gause and Janice Gause have since looted and *destroyed* the Byte company. In September 2017, Mrs. Gause sold the S.C. Byte property for \$180,000.

Gause intentionally deceived Stone in signing the Management Agreement: He believed all the while that Byte was not bound by the option—that it was "not enforceable" on account of "unspecified limits on right to extend." (See 3rd Am. Compl. Ex. S.) At minimum, Gause reached this conclusion later, which made his decision to terminate the Management Agreement (1) a breach of contract and (2) likely the culmination of a delayed plan of deception—instigated months or years before. In any event, the rejection by Gause of Stone's purchase option, supported by Mrs. Gause, was *ultra vires* (an illegal act not protected by Byte or Byte Services) because it was either intentional deceit or a fundamentally unfair, fraudulent abuse of, and by, the LLCs, making the Gauses personally liable. Janice Gause personally joined

her husband through bad faith, collusion, conspiracy, misappropriation, and blatant fraudulent conduct.

Mrs. Gause encouraged and assisted in planning rejection of the Management Agreement. She was angry and pressured Gause about why he let “Jack [Stone] get away with not paying him.” (J. Gause Dep. 77:15-20.) In fact, Mrs. Gause concluded that Stone had breached the Management Agreement, lending supposed “legitimacy” to their illegal actions. Speaking of Stone, “When you don’t pay . . . somebody something, you violate a contract If you agreed to pay some[one] . . . and don’t do it, then somebody has to do something.” (*Id.* 80:9-15.) She *did* do something. She colluded with Gause to misappropriate Stone’s share of the business—in her own words, to “take it back.” (*Id.* 80:7-8.) Mrs. Gause financed the conspiracy. Her prime role as underwriter was confirmed by Gause: “I was afraid that I wouldn’t have the cash . . . and I had gotten a commitment from Janice to put some money in.” (B. Gause Dep. 181:9-15.) Gause could not have misappropriated the S.C. business without Janice Gause’s private wealth and her newly created Georgia LLC, Byte Services. The support she provided was the predominant, indispensable factor in conceiving and implementing the conspiracy to misappropriate Stone’s interest in Byte.

The Gauses’ actions constitute a collusive conspiracy. They confiscated (actual theft) Stone’s ownership interest in Byte, its physical assets, intellectual property, goodwill, business opportunities, and future profits. The Gauses transferred all of Byte’s assets to Byte Services in Georgia. Mrs. Gause, the “Buyer,” paid nothing. (*Id.* 184:22-185:21.) The physical assets so transferred include the Byte office building in Mauldin, sold by Mrs. Gause in 2017 for \$180,000, plus furnishings and equipment. Valuation of goodwill and business opportunities may be estimated by the history of sales. Compare revenues of Byte during Stone’s management (2005-08): \$909,000, \$1,452,000, \$1,310,000, and \$850,000, respectively. The Byte operating system created these sales figures and was Stone’s specific collateral under the

Security Agreement. Without the software, Byte could not generate income.⁷ The total value of the option is yet to be determined by the Court.

The Gausess' actions have also triggered a fundamental provision of the Management Agreement: "If the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital provided under th[e] Agreement" (§ 9.) The Gausess conspired to reject Stone as current majority owner of Byte (fifty-one percent) and eventual sole owner. They locked Stone out of the business and confiscated his interest, thus preventing Stone's option from being "realized" *at all*. As a result, Stone should rightfully recover all capital investment in Byte—\$2,132,832. See numbers 1(a)-(d) *infra* pp. 9-10.

If the Court determines that Stone exercised the option, the Gausess' collusion and civil conspiracy caused the "Purchase Option . . . not [to be] fully realized." Under either interpretation, whether the option was achieved or not, the Gausess thwarted its realization, requiring "payback of all capital" to Stone. Moreover, throughout this spectacle of self-dealing, bad faith, fraud, and misappropriation, Benjamin Gause and Janice Gause have acted as individuals, ignoring the requirements of limited liability. Gause, personally, and in collusion with Mrs. Gause, *destroyed* Byte, and with it they have destroyed Stone's rights under the Management Agreement—both the option and, alternatively, "payback of all capital" if not "realized." Therefore, Stone should not have to look solely to the LLC(s) for a remedy. He can look to Benjamin Gause and Janice Gause, personally. As a direct and proximate result of the wrongful actions by these Defendants, Stone has suffered the following damages:

1. Loss of \$2,132,832 ("all capital provided under th[e] Agreement"), as follows:

- (a) \$1,384,682 in capital contributions to Byte's operating budget in the form of salaries paid the Management Team for performing services;

⁷ At least one CPA has valued the Byte software at \$1,088,890.

(b) \$200,000, the initial capital infusion;

(c) \$209,204 in outstanding (secured) capital advances due under the Note; and

(d) \$338,946 in the form of "benefits" that Stone paid Gause under the Management Agreement (Pls.' Mem. in Supp. Ex. 1);

2. Loss of potential, future profits as eventual sole owner of Byte after five years (Management Agreement ¶ 9);

3. All amounts due under the federal tax lien, resolution of which the Gauses sabotaged by implementing their own twisted version of Yarborough's strategy, thinking erroneously that it would work for them without Stone;

4. Special damages, including loss of prospective business opportunities in the software industry, loss of profits that would have been generated under Stone's continued management of Byte, and damage to Stone's reputation in the software industry, as well as the business community in general; and

5. Punitive damages commensurate with the Court's evaluation of Defendants' collusion, civil conspiracy, bad faith breach of contract, misappropriation, and blatant fraudulent conduct.

Stone's actual damages for loss of capital contributions total \$2,132,832, plus special damages for civil conspiracy and punitive damages to be determined by the Court. Stone respectfully requests that the Court pierce the corporate veil of Byte and Byte Services, hold the individual Defendants and LLCs liable for breach of contract in rejecting the purchase option and refusing to honor Stone's exercise thereof and for civil conspiracy to misappropriate Stone's ownership interest in Byte, its assets, business opportunities, and future profits, and that the Court dismiss Defendants' Counterclaims on the grounds that there is no genuine issue of material fact, that Defendants have no evidence supporting their Counterclaims, and that Stone is entitled to judgment as a matter of law.

FACTS⁸

Stone began a business relationship with Byte around June 1997. Stone retained Byte to provide software and support services, which enabled more efficient operation of Stone's apparel manufacturing company. In January 2004, Byte programmer Delaney contacted Stone employee Dennis Garner and informed him that Byte was undergoing grave financial difficulty. Delaney felt sure that Byte would cease to operate unless capital was secured within thirty days.

Stone's IT system now had software that allowed real-time collection of data. The foreseeable failure of Byte posed present and far-reaching ramifications for Stone's business. Stone representatives arranged a meeting with Gause, sole owner of Byte. Gause confirmed the unfavorable reports and requested potential solutions from Stone. Accordingly, Stone began to consider acquiring Byte.

Stone, however, soon discovered that Byte had failed to pay withholding taxes during 2002 and 2003—then-current liabilities of \$400,000 (federal) and \$80,000 (state), plus interest and penalties. Given these outstanding obligations and in order to perform further due diligence, Stone decided against the immediate acquisition of Byte. As an alternative, Stone offered to provide management services, including operating capital, in exchange for an option to purchase the company. Byte accepted Stone's offer.

On February 16, 2004, Stone CEO Eugene E. Stone, IV, and Byte executed the Management Agreement. The Management Agreement provided that Stone would supply day-to-day financial expertise and oversight, sales, marketing, and other services. Stone further agreed

⁸ The facts are alleged in the Third Amended Complaint and the affidavits of Eugene E. Stone, IV, David Yarborough, and Gadsden "Shand" Gause, submitted along with this memorandum. For clarity, citation to the individual affidavits is generally omitted.

to advance Byte operating capital. In consideration of the management services and operating capital, Gause granted Stone an option to purchase Byte. The Management Agreement contained no deadline for Stone to exercise the option. Rather, that decision lay in Stone's "sole discretion." Upon his exercise of the option, Stone would instantaneously acquire 51% of Byte. The remaining 49% was to be acquired by Stone within five years: 5% per annum for four years and 4% at the end of the fifth year. At fifth year's end, Stone and Gause were to designate an independent expert who would value the remaining 25% of Byte; Stone would then issue payment to Gause for that percentage. The Management Agreement provided for an initial term of 180 days for the option, renewable for unlimited, additional 180-day periods at the sole discretion of Stone.

Following execution of the Management Agreement, Gause moved to Charleston, where he was to begin sales operations. Despite appreciable sales leads, Gause closed none and instead formed Historic Renovations in April 2005. The purpose of this business was collaboration with 104 Rutledge, LLC, a company owned by Gause's brother Gadsden Gause, to acquire, restore, and sell historic Charleston homes. Historic Renovations undertook a significant renovation project around June 2005, and Gause served as on-site manager. According to his brother, "until early 2008, . . . Gause's primary focus was renovating the house we had purchased. To my knowledge, . . . [he] had no involvement with Byte during this period." (Gadsden Gause Aff. ¶ 9.)

After executing the Management Agreement in February 2004, Stone immediately assigned five full-time employees to the Byte offices in Mauldin, South Carolina. Stone paid all members of the Management Team with his capital contributions. The Management Team focused on creating new sales, reconnecting Byte's website, and researching (as well as producing) Byte's 2002 and 2003 delinquent tax returns. When Stone assumed the management, Byte owed \$80,000 in state income taxes and \$400,000 in federal income taxes, resolution of

which was a key priority for the Management Team. In October 2005, Stone successfully acquired the New York-based software company Entel Systems ("Entel") on behalf of Byte. This purchase generated approximately twenty-five new customers and added \$500,000 to Byte's sales base.

As expected, Byte continued to require operating capital during extensions of the Management Agreement. Stone advanced Byte \$237,050 in 2005. The following year, Byte again required capital. Stone agreed to advance additional capital upon the condition that Byte secure such loans with its personal property. Stone and Gause signed the Note and Security Agreement, which collectively granted Stone a security interest in all of Byte's assets. (3rd Am. Compl. Exs. N-O.) Stone advanced Byte \$1,598,139 under the Note. Records prepared by Byte's accountant, Dennis Watt, show repayments of \$1,388,935 and an unpaid *secured* balance of \$209,204. This secured figure is a small fraction of Stone's total capital contributions (and actual damages), which equal \$2,132,832. The Management Agreement, however, does not require securitization of Stone's capital.

The Management Team sought to resolve Byte's income tax obligations so that Stone could exercise his option to purchase. In February 2004, the Management Team contacted the S.C. Department of Revenue and received instructions for resolution. Stone filed corrected tax returns in March 2004. Three months later, Stone reached a settlement, and Byte began making installment payments. By the end of 2007, Stone had satisfied Byte's tax liability to the State of South Carolina (originally \$80,000).

In March 2004, the Management Team contacted the Greenville, South Carolina, Office of the IRS. Stone faxed the 2002 and 2003 tax returns to the IRS on July 20, 2004. Yet the IRS later informed Stone that the revised returns could not be located. The Management Team then hand-delivered copies to the IRS office in Greenville, which were also misplaced. Further inquiries were made and appropriate documentation provided to the local IRS office

from 2004-08. Stone was told over and over by the Greenville office either to supply documentation that had already been provided or that the IRS was still reviewing the matter.

Plagued with financial difficulty, Historic Renovations (Gause's company in Charleston) ceased to do business in December 2008. Gause had approached the Management Team in 2008 regarding a potential licensing and/or distribution agreement between himself and Byte. Under the terms, Gause would have had exclusive rights in and use of Byte's trademark and proprietary software to develop technology solutions for the meat and poultry processing industry. Costly modification to the software would be necessary. Considering all circumstances at the time, Stone decided to reject Gause's proposal.

Gause came under increasing IRS surveillance in 2008; an agent in Charleston was assigned to investigate his personal tax obligations. Gause requested assistance from Stone. To resolve these escalating tax issues most effectively (both Byte's and Gause's), in December 2008 the Management Team contacted Yarborough, a Charlotte tax specialist, to negotiate a settlement with the IRS.

Soon thereafter, Yarborough presented Stone and Gause with a restructuring strategy to resolve Byte's \$400,000 federal tax lien. Yarborough also offered to assist Gause with his personal tax obligations. Gause met with the Management Team and representatives of Yarborough to review the strategy in early 2009. At this meeting, Gause agreed that Stone would exercise his option to purchase Byte and that Yarborough's strategy would be implemented forthwith. (Yarborough Aff. ¶ 10.)

Unknown to Stone, on March 29, 2009, Mrs. Gause organized Byte Services in Georgia. Mrs. Gause is the sole member, registered agent, and sole owner of all assets of Byte Services. Mrs. Gause, signing for Byte Services, and Gause, signing for Byte, executed the Asset Purchase Agreement on April 1, 2009. (3rd Am. Compl. Ex. P.) This so-called "asset purchase"

transferred ownership of Byte and all of its assets to Byte Services. Mrs. Gause paid nothing. (B. Gause Dep. 184:22-185:21.)

The Management Team reported for work at Byte's offices in Mauldin on April 9, 2009, but an agent of Gause physically barred their entry. Gause had sent his co-conspirator Fred Houk, who served Stone with a letter. (3rd Am. Compl. Ex. Q.) In the letter, Gause accused Stone of an *unspecified* breach of the Management Agreement: "I hereby terminate the management contract with . . . Stone . . . effectively [sic] immediately." (*Id.*) Four days later, Stone sent Gause a letter confirming that Stone had exercised his option to purchase Byte. (*Id.* Ex. R.) Stone also demanded payment of all amounts due under the terms of the Note and Security Agreement. Gause responded with a second letter. In this letter, Gause claimed that "[a]n option with unspecified limits on right to extend . . . is like a note with no due date. It is not enforceable." (*Id.* Ex. S.) He additionally misstated that Stone had failed to notice extensions of the Management Agreement, despite the existence of some twelve such renewals. (*Id.* Exs. B-M.) Gause further accused Stone of entering into fraudulent business practices with Byte's banks and customers. These allegations are wholly inaccurate and unsubstantiated. Even if Gause's remarkable letter of April 15 was factual, which it is not, his allegations have no relationship to or merit concerning the validity of the option.

After the lock-out on April 9, Gause ceased operating Byte. Without any payment to Stone, the Gauses transferred all of Byte's assets to Byte Services in Georgia. Gause contacted Byte customers and informed them that they would no longer receive software support unless they terminated their contracts with Byte and entered into new contracts with Byte Services. Stone believes that the majority of Byte's customers did so. These new contracts contained higher pricing for software support services. Various Byte customers were lost to competitors as a result. Gause manages the daily operations of Byte Services. Mrs. Gause is sole owner, oversees operations, produces payroll, and performs bookkeeping.

ARGUMENT

A motion for summary judgment invokes the pleadings, depositions, interrogatory answers, admissions, and affidavits to show that there is no genuine issue of material fact. Rule 56(c), SCRCP. The opposition party "may not rest on . . . [unqualified] allegations or denials . . . but must . . . point to specific facts [A] mere scintilla of evidence in support of the nonmov[ant's] . . . position" will not surmount a properly pleaded Rule 56 motion. *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ," the court should grant summary judgment. *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

I. Breach of Contract

Gause purportedly terminated the Management Agreement in violation of its express terms. Despite more than two million dollars of capital contributed by Stone, Gause attempted to deny Stone's option to purchase Byte. The option was Stone's *only* consideration, promised and confirmed by Gause, whose rejection of the Management Agreement is typical of his untrustworthy behavior.

Stone performed its portion of the contract. Stone assigned a full-time Management Team to operate Byte. These select Stone employees supplied day-to-day management: (i) services as General Manager of Byte's office complex in Mauldin, South Carolina; (ii) financial expertise and oversight; (iii) development of operational plans; (iv) maintenance of all Byte accounts; (v) marketing and sales consultation and support; (vi) maintenance of all required licenses and regulatory matters; (vii) coordination of tax and other professional services; (viii) filling or terminating positions and personnel; and (ix) other services as required. (Management Agreement ¶ 1.) As manager of Byte, Stone contributed a total of \$3,521,767 in capital, \$1,388,935 of which was repaid, leaving a balance of \$2,132,832. This figure includes the

\$200,000 initial capital infusion that Stone provided in 2004, a critical investment in the company (Byte would have failed otherwise). From 2004-09, Stone sought to resolve Byte's income tax obligations. Stone could not properly manage the business with merely \$200,000, and he continued to contribute operating capital until April 2009, when Gause, having colluded and conspired with Janice Gause, rejected the option in bad faith.

Defendants falsely allege that Stone "recklessly managed the business in such a manner as to . . . diminish its value." (Answer ¶ 28.) At all times, Stone managed Byte according to high standards, as is evidenced by performance. Stone enhanced revenues. Byte was at risk under Gause but increased in strength with Stone as manager. From 2005-06, Byte's sales rose from \$823,000 to \$1,452,000. Sales declined slightly in 2007 to \$1,316,000. In early 2008, Byte began to experience a substantial number of cancellations on new systems contracts. Because the banking system was undergoing tremendous stress, loans to the apparel and textile industry became very difficult to obtain, e.g. the crash of CIT Group.⁹ Byte's customers began cutting capital expenditures. The severe contraction in credit led to rapid cancellation of sales (\$850,000 in 2008). Stone simply notes Gause's educated guess that Byte Services would probably sell "[a]bout \$400,000" in 2010. (B. Gause Dep. 171:14-172:18.)

Defendants falsely allege that Stone failed to "[p]rovide financial expertise and oversight; . . . develop short-term operation plans and maint[ain] . . . accounts; . . . provide marketing and sales consultation support; [c]oordinat[e] tax . . . services; fill[] . . . positions and personnel; . . . [and] use its best efforts to provide the services." (Answer ¶ 31.) Stone provided significant financial expertise and oversight to Byte throughout his five years as manager. Sales surged dramatically. Stone developed short- and long-term operations and marketing

⁹ "CIT has provided funding to 2,000 firms that supply merchandise to more than 300,000 stores. About 60% of America's clothing industry depends on CIT for financing." Julia Kollwe, *US businesses at risk as lender CIT Group files for bankruptcy*, The Guardian, Nov. 2, 2009, <https://www.theguardian.com/business/2009/nov/02/cit-group-us-bankruptcy>.

plans. The Management Team remained in constant contact with accounts. Stone conducted customer surveys for quality assurance and supplied Byte with a line of credit (the Note). Stone also redesigned and reconnected Byte's website. Byte grew from 2004-08. Evidence of these efforts and progress was submitted to Defendants.

Stone coordinated the tax and professional services that Byte required. For auditing purposes, Stone hired Pope, Smith, Brown & King, P.A., a Greenville, South Carolina, certified public accounting firm. Stone satisfied Byte's obligations to the S.C. Department of Revenue. Stone also generated and filed Byte's 2002 and 2003 federal tax returns but was unable to obtain cooperation from the Greenville IRS Office. Stone even hired Defendants' counsel, Randall S. Hiller, Esq., who wrote the IRS a letter on behalf of Byte. Mr. Hiller received no response. In December 2008, Stone retained Yarborough to resolve the \$400,000 federal tax lien. Yarborough presented his restructuring strategy in early 2009, days before Gause locked Stone out of Byte as the climax of his collusive conspiracy with Mrs. Gause to misappropriate the business.

During the period of his management, Stone brought in his own Management Team, some of whom relocated from Columbia, including Stone. These employees managed Byte full-time and were paid with capital contributions from Stone's account. Stone held strategic planning sessions in 2007. He hired additional employees in order to better allocate responsibilities: Todd Porter (Senior Programmer); Noah Martinez (customer support); Pablo Palla (Vice President of International Sales); Chad Brawley (Assistant Head of Sales); Randolph Hernandez (External Sales Coordinator); and Darren Schwartzendruber (programmer).

Defendants falsely allege that Stone's exercise of the option to purchase was not effective because its duration was unlimited. In February 2004, Stone and Byte signed the Management Agreement. Its initial term of 180 days was "renewable for additional, consecutive, successive 180-day periods, at the option of the Manager." (Management Agreement ¶ 8.) When

Stone assumed the management, Byte owed \$80,000 in state income taxes and \$400,000 in federal income taxes. His reasonable “delay” in exercising the option was the result of concerns regarding these tax liens.

Stone soon reached a settlement regarding the \$80,000 originally due the S.C. Department of Revenue. In March 2004, the Management Team contacted the Greenville Office of the IRS. Stone faxed corrected tax returns to the IRS on July 20. These returns were “misplaced,” as were hand-delivered copies. Gause testified that “Stone had people trying to negotiate with them [the IRS] and they had lost the file more or less.” (B. Gause Dep. 140:20-24.) From 2004-08, Stone sought assistance from the local IRS office, providing the same appropriate documentation repeatedly. To resolve Byte’s \$400,000 federal tax lien, as well as to assist Gause with his personal obligations, Stone retained Yarborough in December 2008. Early the next year, Stone and Gause met with Yarborough in Charlotte. After reviewing Yarborough’s strategy, Gause agreed that Stone would exercise his option to purchase Byte. (Yarborough Aff. ¶ 10.)

Defendants ignore the text of the Management Agreement and attempt to extrapolate a term limit or an option deadline. Neither exists. Regarding the potential time involved to resolve Byte’s tax liens, Gause admitted, “My due diligence on that wasn’t good.” (B. Gause Dep. 115:17-116:4.) He further affirmed that “dissecting it now [the Management Agreement], I understand . . . that *it doesn’t have a limit to the number of extensions.*” (*Id.* 116:14-16.) (emphasis added)

Defendants’ counsel erroneously asserted that Stone “had a six-month trigger to exercise an option to purchase. . . . [He] stayed for five years, never pulled the trigger.” (Transcript pp. 10-11, ¶¶ 23-22, November 18, 2009.) This statement is untrue on multiple levels. First, no “six-month” restriction appears in the contract. Rather, the Management Agreement is renewable at the sole option of Stone, without limitation. (¶ 8.) Stone properly noticed all

extensions of the Management Agreement. (3rd Am. Compl. Exs. B-M.) Second, Stone did “pull the trigger.” At Yarborough’s office in early 2009, Gause witnessed and acknowledged Stone’s exercise of the option to purchase. Stone memorialized this decision in an April 13 letter to Gause, confirming his exercise of the option. Gause received Stone’s letter and responded two days later: He remarkably claimed that “[a]n option with unspecified limits on right to extend . . . is not enforceable.” (*Id.* Ex. S.) Gause confessed that “[i]f he [Stone] had exercised his option, he would have received part of the business.” (B. Gause Dep. 145:14-146:6.) Stone did exercise the option, and Gause refused to honor it.

In addition to managing the company, Stone worked diligently for five years to resolve Byte’s tax liabilities. He satisfied all amounts owed the S.C. Department of Revenue. Despite the outstanding \$400,000 federal tax lien, in early 2009 Stone exercised his option to purchase Byte, assuming a risk in reliance upon Yarborough’s strategy. Benjamin Gause and Janice Gause resorted to collusion, civil conspiracy, bad faith breach of contract, and misappropriation.

Defendants falsely allege that Stone did not pay Gause per the Management Agreement, which contains no specific provision for salary or wages. Stone agreed that “[a]ll benefits provided to . . . Gause by Byte shall stay in effect until the Purchase Option is fully executed. After the exercise of the Purchase Option (i.e., acquisition of the initial 51 percent), . . . Gause shall be retained at his then-current annual salary” (Management Agreement ¶ 9.) The word “salary” occurs here alone. Any entitlement thereto is contingent upon Stone acquiring fifty-one percent of Byte. Yet the Gauses conspired to reject Stone’s ownership interest. Thus, until he exercised the option, Stone was obligated only to provide Gause with “benefits,” not salary. Stone generously provided beyond mere benefits, paying Gause \$87,774 in 2005, \$87,999 in 2006, \$87,999 in 2007, and \$75,171 in 2008. See Pls.’ Mem. in Supp. Ex. 1 for records verifying the income received by Gause. Stone paid Gause “benefits” based upon the

parties' understanding that Gause would pursue sales leads in Charleston. (See Stone Aff. ¶ 19.)

In late 2008, the IRS assigned an agent to investigate Gause personally. Because cash flow was tenuous, Stone decided to stop paying Gause's "salary." Stone continued to make occasional cash payments to Gause when he would visit the Byte offices: "T'd go by and ask what was due me and they'd give me some cash every now and then." (B. Gause Dep. 161:21-22.) Gause acknowledges that Stone paid him at least \$350,000 for "little to no work." (*Id.* 163:23-164:18.) The only "services" Gause could allege were his rare visits to Byte's offices in Greenville County, evidently to ask for money: "[E]very now and then I would go up there and meet with them about one issue or another . . . but I wasn't doing any normal chores." (*Id.* 164:6-8.)

Defendants' arguments are sheer smokescreens to enshroud their collusion and bad faith misappropriation of Byte. The fact that Gause received \$350,000 from Stone—admittedly doing nothing to earn these payments—and now claims, along with Mrs. Gause, that Stone paid him too little further confirms their self-serving course of conduct. After execution of the Management Agreement, Gause was expected to begin sales operations in Charleston. Not only did he fail to follow up on any of the sales leads supplied by Stone, Gause also "retired from . . . the software business." See Pls.' Mem. in Supp. Ex. 2 for a copy of the fall 2006 *Charleston Regional Business Journal*, "Luxury Living" article in which Gause describes the restoration of a 1790s mansion to Federalist-era condition. Unaware that Gause had "retired," Stone in good faith *overpaid* him "benefits" of approximately \$88,000 a year (for a documented total of \$338,946), anticipating services in return which were never performed and all the while expecting to receive the option. Gause's admission that he performed no work creates a claim for recovery of this sum. (B. Gause Dep. 164:12-18.)

The actions of Gause, individually, including his machinations through Byte and Byte Services, are bad faith, intentional breach of contract and actual fraud, as well as collusion and civil conspiracy with Mrs. Gause. Stone's claims, including his claim for punitive damages, are supported by all of the aforesaid evidence, as well as the sworn testimony of Gause and Mrs. Gause. See discussion and deposition testimony *infra* pp. 23-26.

II. Civil Conspiracy

"A civil conspiracy is [1] a combination of two or more persons joining [2] for the purpose of injuring the plaintiff and [3] causing [him] special damage." *Lawson v. S.C. Dept. of Corrections*, 340 S.C. 346, 352, 532 S.E.2d 259, 261 (2000). Civil conspiracy involves acts that are "covert and clandestine and usually not susceptible of proof by direct evidence." *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 349, 565 S.E.2d 309, 314 (Ct. App. 2002). Criminal conspiracy hinges upon the agreement. By contrast, "in civil actions, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design." *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989).

Plaintiff must produce evidence "from which a [person] may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." 15A C.J.S. *Conspiracy* § 30 at 698-700 (1977). This inference can arise "from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators and other circumstances." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987). A trial judge therefore has "broad discretion" to permit "the admission of circumstantial evidence [that] tend[s] to establish a conspiracy and to connect those [individuals] advising, encouraging, aiding, abetting and ratifying the overt acts" carried out in furtherance of its object. *Id.* at 602, 358 S.E.2d at 153.

When Stone assumed the management in February 2004, Byte owed \$80,000 in state income taxes and \$400,000 in federal income taxes. These tax liens discouraged his immediate exercise of the option to purchase. The Management Agreement, however, provided for unlimited extensions of the option period at Stone's sole discretion, which allowed him time to address Byte's tax liens before making a final decision regarding the option. Stone satisfied the state tax liens by the end of 2007. From March 2004-08, Stone and the Management Team had continued dealings with the Greenville Office of the IRS, whose loss of file documents and unexplained delays—despite full cooperation from Stone—impeded any resolution of Byte's federal tax debt. As a result, in December 2008 Stone retained Charlotte tax consultant Yarborough to resolve the \$400,000 federal tax lien. Yarborough's proposed strategy gave Stone confidence to exercise the option, and he did so in early 2009.

Benjamin Gause and Janice Gause lived on Daniel Island from April 2007 until January 2009. (J. Gause Dep. 16:13-19; 20:10-17.) In January or February 2009, however, the Gauses began transporting furniture to a rental house in Greenville. (*Id.* 77:4-79:22.) Mrs. Gause admitted that "some planning [was] involved" before their move to Greenville. (*Id.* 78:9-24.) Asked if she had any discussions before April 2009 about retaking Byte, her reply was yes: "I asked him [Gause] why he let Jack [Stone] get away with not paying him," and it made her angry. (*Id.* 77:12-20.) Mrs. Gause determined that her husband "wasn't being paid, so when you don't pay for something, you take it back." (*Id.* 80:7-8.) She was fully aware (and a vital part) of Gause's scheme to misappropriate Byte. (*See id.* 79:7-22; 81:11-14.) After conversations with her husband, Mrs. Gause "had a vague idea . . . [t]hat they were going to come back up here [to Greenville] and go into Byte." (*Id.* 83:15-84:11.) While in Greenville, the Gauses continued to take over Byte, confident that they could rely upon their own erroneous version of Yarborough's strategy and walk away with the business, ignoring Stone's rights and reasonable expectations.

In early 2009, Stone and Gause met with Yarborough in Charlotte to review his restructuring strategy. Encouraged that Yarborough's strategy could finally solve the \$400,000 federal tax lien, Stone exercised the option to purchase Byte. Stone and Gause agreed that Yarborough's proposal would be implemented immediately. (Stone Aff. ¶¶ 36-37.) Yet, three days after their meeting, Gause called Yarborough with a completely different proposition. "[Gause] informed me that he had formed a new company in Georgia, Stone . . . had been removed from the management of Byte, and he [Gause] requested assistance implementing [my] strategy" without Stone. (Yarborough Aff. ¶ 11.) Yarborough rejected Gause's underhand offer: His "actions were directly contrary to the [A]greement," which "required Stone[']s . . . participation." (*Id.* ¶ 12.) Yarborough informed the IRS that the parties "had reached an agreement, but . . . Gause . . . subsequently removed Stone . . . from the management of Byte." (*Id.* ¶ 13.) Mrs. Gause organized Byte Services in Georgia on March 29, 2009. Through his co-conspirator Fred Houk, Gause changed the locks at Byte and barred Stone's entry on April 9. (Gadsden Gause Aff. ¶ 14; Stone Aff. ¶ 38.)

After Stone's exercise of the option, the Gauses set about removing him from Byte. In light of Gause's letter claiming that the option was void *ab initio* because it had no time limit ("An option with unspecified limits on right to extend . . . is not enforceable"), exactly *when* the Gauses decided to remove Stone is unclear, but apparently Gause believed that this removal could be done at any time. Once Yarborough proposed a plan to resolve the \$400,000 federal tax lien, the Gauses decided that they wanted Byte for themselves.

Benjamin Gause and Janice Gause conspired to misappropriate Byte. With Stone having exercised the option to acquire fifty-one percent, Gause refused to relinquish control of the company. Mrs. Gause endorsed, encouraged, and supported his scheme. She transferred their valuables from Daniel Island to Greenville. Civil conspiracy may be inferred not only from

the acts done and respective interests of the conspirators but also from the parties' relationship. *Island Car Wash*, 292 S.C. at 601, 358 S.E.2d at 153. Here, the husband-wife bond is probative of their mutual (unlawful) purpose. Mrs. Gause has summarized her rationale to "justify" their bad faith misappropriation: "Jack [Stone] didn't pay what he was supposed to pay. He didn't do what he was supposed to do." (J. Gause Dep. 38:21-23.) According to Gause, she then offered her financial support: "I had gotten a commitment from Janice to put some money in." (B. Gause Dep. 181:9-15.) The Gauses colluded to engineer a hostile, illegal takeover of Byte.

Common design is not enough. The conspirators must act. *Vaught*, 300 S.C. at 208, 387 S.E.2d at 95; see also *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 292-93, 278 S.E.2d 607, 611 (1981) (explaining that a conspiracy becomes actionable "once overt acts occur which proximately cause damage to the [plaintiff]"). Based upon a fictitious notion that Stone owed them more income, the Gauses acted blatantly to misappropriate Byte and to reject and exclude Stone's interest. Their corrupt objective was to remove Stone completely from Byte: "And the intent of that [plan with your wife] was to remove Jack Stone out of the business? A: Yeah." (B. Gause Dep. 189:9-15.) Asked what prompted the decision to lock Stone out of Byte, Gause stated that he preferred unilateral action "[b]ecause I would have . . . control." (*Id.* 157:15-158:9.) Thus, Gause admitted pure misappropriation.

By acknowledging the option under the Management Agreement, Gause would give up his all-important control. Unsettled by Stone's 51% ownership of Byte immediately and 100% ownership within five years, the Gause took collective action to thwart the option: "[W]hat you did [to Jack] is what you thought he was going to do to you? A: Pretty much." (*Id.* 182:9-11.) While hireling Fred Houk confronted Stone and the Management Team at Byte's offices in Mauldin, Gause was busy luring away Byte customers and employees wholesale. (*Id.* 168:6-8.) Gause fired "[e]verybody" at Byte, and Mrs. Gause "hired them back the next day

with Byte . . . Services.” (*Id.* 118:1-17.) Evidently emboldened by Yarborough’s strategy to avoid the \$400,000 federal tax lien, a strategy they twisted to fit their fraudulent purposes, the Gauses decided to take Byte for themselves, with total disregard of the legal consequences.

Janice Gause actively participated in the plot to misappropriate Stone’s interest. “The purpose of your husband going back . . . and locking Jack [Stone] out was to get Jack out of the company, right? A: Yes. Q: And you knew that? A: *Well, yeah, I knew that.*” (J. Gause Dep. 90:9-14.) (emphasis added) Her contributions were critical in order for Gause to recapture illegal control of Byte. “My wife formed a new business called Byte . . . Services, LLC.” (B. Gause Dep. 117:20-21.) She signed the corporate documents knowing full well the end result for Stone. (J. Gause Dep. 89:17-90:14.) Mrs. Gause organized Byte Services in Georgia just days before Gause changed the locks at Byte. On April 1, 2009, Mrs. Gause also executed the Asset Purchase Agreement, which transferred ownership of Byte, along with all of its assets, to Byte Services. No cash exchanged hands. Mrs. Gause “didn’t pay anything, period.” (B. Gause Dep. 184:22-185:21.)

True to purpose, the Gauses have caused Stone substantial injury. Personally, as well as via alter egos, Benjamin Gause and Janice Gause worked together to reject the option and remove Stone from Byte. They colluded, conspired, and physically confiscated all of the company’s assets. By misappropriating the business, the Gauses have deprived Stone of his ownership interest, his share in future profits and prospective opportunities, and his \$2,132,832 in capital contributions.

The crux of a civil conspiracy claim is damage done to the plaintiff. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 116, 682 S.E.2d 871, 875 (Ct. App. 2009) (“Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of . . . defendant’s conduct.”). The Gauses have caused Stone actual and special

damages, which include loss of prospective business opportunities in the software industry; loss of profits that would have been generated under Stone's continued management of Byte; damage to Stone's reputation in the software industry, as well as the business community in general; loss of physical assets of Byte in Mauldin, South Carolina; loss of Stone's ownership interest in Byte pursuant to his exercise of the option, which the Gauses ignored; and loss of capital contributions (\$2,132,832) as a result of the Gauses' collusive conspiracy to prevent Stone's option from being "realized."¹⁰

Stone respectfully requests judgment against Defendants in an amount to be determined by the Court. Stone also respectfully requests punitive damages against Defendants commensurate with the Court's assessment of their bad faith, collusion, civil conspiracy, misappropriation, and blatant fraudulent conduct, individually and through both LLCs.

III. Pierce the Corporate Veil of Byte and Byte Services

Generally, business owners may presume "that a corporation is . . . separate and distinct . . . and that [the corporation's] debts are not the individual indebtedness of its stockholders." *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir. 1976). The South Carolina Supreme Court, however, has recognized certain circumstances that advocate disregard of the corporate fiction. *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980). Where a rogue "entity is used to protect fraud, justify wrong, or defeat public policy," the law will deem the corporation "an association of persons," personally liable. *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984). The court of appeals in *Sturkie* endorsed a two-pronged test, which "looks to observance of . . . corporate formalities by the dominant shareholders" and next "requires . . . an element of injustice or

¹⁰ "If the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital provided under th[e] Agreement . . ." (Management Agreement ¶ 9.)

fundamental unfairness if the acts of the corporation [are] not regarded as the acts of the individuals.” *Id.* at 457-58, 313 S.E.2d at 318.

Before applying this analysis, it must be admitted that LLCs were not designed to protect criminal conduct. Byte Services has been purposefully “[mis]used to protect fraud . . . [and] justify wrong” ab initio. In fact, the Gauses created the Georgia company as a means to conceal their misappropriation of Byte, its assets, and Stone’s ownership interest. Byte Services contravenes the legislative intent of South Carolina’s Uniform Limited Liability Company Act of 1996 (“LLC Act”), which encourages flexibility, but not the freedom to engage in fraud. Moreover, “a fraudulent purpose in the conception or operation of an LLC should certainly be a valid reason for ‘piercing’ the LLC’s ‘veil.’” *Filo America, Inc. v. Olhoss Trading Co.*, 321 F. Supp. 2d 1266 (M.D. Ala. 2004) (citing Eric Fox, Note, *Piercing the Veil of Limited Liability Companies*, 62 Geo. Wash. L. Rev. 1143, 1169 (1994)) (“If it is in the public interest to disregard the legal fiction when those benefitting from that fiction commit fraud[] . . . , *it should not matter to the court whether the legal fiction is used by corporate shareholders or LLC members.*”) (emphasis added). Below, Stone will show that (1) Byte Services has ignored corporate form and that (2) injustice and fundamental unfairness result unless Benjamin Gause and Janice Gause are held personally liable for their individual, illegal acts.

A. The Gauses have ignored the corporate formalities required by law, acting as individuals in bad faith

The first prong of piercing the corporate veil examines the relationship between shareholder and corporation, *Multimedia Publ’g of S.C., Inc., v. Mullins*, 314 S.C. 551, 553, 431 S.E.2d 569, 571 (1993), and includes eight factors of varying importance:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of the debtor

corporation at the time; (5) siphoning of funds of the corporation by the dominant shareholder; (6) non-functioning of other officers or . . . directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant shareholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct. App. 1995); *see also* *Hunting v. Elders*, 359 S.C. 217, 225, 597 S.E.2d 803, 807 (Ct. App. 2004) (“Neither *Sturkie* nor any other case . . . require[s] that each factor be accorded equal weight with the others.”). A trial court’s “conclusion to disregard the corporate entity must involve a number of . . . factors, but need not involve them all.” *Dumas*, 320 S.C. at 192, 463 S.E.2d at 644. Stone addresses the most important: failure to observe corporate formalities, absence of corporate records, gross undercapitalization, siphoning of corporate funds, and the mere façade of Byte Services for the fraudulent activities of the Gause, personally.

Byte Services has flouted the corporate formalities required by S.C. law. After Mrs. Gause organized Byte Services on March 29, 2009, so that she and Gause could (and did) misappropriate Byte, a dark cloud obscures its operations. Defendants are unwilling, perhaps unable, to provide Stone with business records. They have ignored Stone’s discovery requests and have even ignored an Order of this Court.¹¹ “Defendants have provided virtually no documentation concerning the financial condition of [Byte Services]” Letter from Josh Smith, Esq., to Randall S. Hiller, Esq. (January 24, 2011) (on file with Plaintiffs). Following the Order, Defendants’ counsel conceded that information concerning the ownership of Byte Services did not exist. Letter from Hiller to Smith (February 3, 2011) (on file with Plaintiffs). Defendants’ counsel further admitted that profit and loss statements, balance sheets,

¹¹ The November 18, 2010 Order instructs “Defendant[s to] produce any and all information and documentation sought by the Plaintiff in their discovery requests, including information related to and documentation produced after April 9, 2009.” (Order Granting Pl.’s Mot. to Am. and Mot. to Compel Produc. at 4.)

monthly statements, cash flow reports, and tax statements had not been prepared. *Id.* Through contempt and calculated obstruction, Defendants continue to hinder Stone's case. In another circumstance, shareholders who refused to hand over documentation during discovery were found personally liable: "[A]bsence of evidence create[s] a strong inference that corporate formalities were not observed" *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 277, 442 S.E.2d 620, 623 (Ct. App. 1994).

While many elect the limited liability company for its flexibility and tax treatment, LLC members still owe a duty to maintain adequate corporate records, dereliction of which can jeopardize a limited liability defense. Like LLCs, statutory close corporations can carry on without a board of directors, bylaws, or annual meetings. S.C. Code Ann. §§ 33-18-210 *et seq.* (2006). And "[t]he failure of a statutory close corporation to [follow] . . . usual corporate formalities . . . is not . . . ground[s] for imposing . . . liability on the shareholders" § 33-18-250. The appeals court in *Hunting*, however, pierced the veil of a statutory close corporation, and it did so despite a "bare minimum of corporate records." 359 S.C. at 226, 597 S.E.2d at 808 (finding that "normal business records were . . . lacking in sufficiency"). The Official Comment to Section 33-18-250 was essential to the court's analysis.¹² S.C. Reporters' Comments clarify that exemption from annual meetings "does not mean . . . minutes documenting all significant corporate action . . . need . . . [not] be prepared." § 33-18-230 rpitr. cmt.

Gross undercapitalization is a factor that "all authorities consider significant[,] . . . particularly . . . in the case of the one-man or closely¹ held corporation." *Hunting*, 359 S.C. at 227, 597 S.E.2d at 685. Mrs. Gause puts personal money into Byte Services solely for the purpose of paying bills. (J. Gause Dep. 35:16-36:15; 102:10-19.) Gause estimated that "she might have

¹² "This section does not prevent a court from 'piercing the corporate veil' of a statutory close corporation if the circumstances should justify imposing personal liability on the shareholders were the corporation not a statutory close corporation." § 33-18-250 cmt.

put 15, 7, \$10,000 cash in to help make payroll.” (B. Gause Dep. 119:1-120:7.) The absence of corporate records and Defendants’ refusal to provide financial information create serious concern: How much capital has gone into (and out of) Byte Services? Mrs. Gause relies exclusively on the bank statements as a litmus test for the health of the company, “[j]ust to know if there’s enough money in there to pay the bills.” (J. Gause Dep. 101:17-102:12.)

The Fourth Circuit Court of Appeals has held that the “obligation to provide adequate capital begins with incorporation and is a continuing obligation.” *DeWitt*, 540 F.2d at 685. Defendants have denied Stone access to LLC banking records. Yet their deposition testimony speaks plainly: The only growth occurs within the Gauses’ pockets, not Byte Services’ operating account. This intentional underfunding is a failure to protect the LLC from foreseeable “risks and . . . liability associated with those risks.” *Hunting*, 359 S.C. at 227-28, 597 S.E.2d at 808.

Undercapitalization closely relates to *siphoning of corporate funds* and Byte Services being a *mere façade* for the operations of its dominant shareholder(s). *Id.* at 228-29, 597 S.E.2d at 808-09. Siphoning of funds bears not only upon the stockholder’s relationship to the company but also a subsequent finding of fundamental unfairness. *Id.* Although S.C. case law does not define “siphoning of funds,” the corporate attorney could argue “that siphoning . . . occurs when there are insufficient funds to pay *all* currently known and due claims and the dominant shareholder (knowing there are insufficient funds) prefers [her]self over some creditor.” Shawn M. Flanagan, *Piercing the Corporate Veil in South Carolina*, South Carolina Lawyer, Nov. 2006 at 35. One district court observed that “the repayment of loans from shareholders or other diversion of corporate assets at a time when the company’s finances are troubled may strongly indicate siphoning.” *Trs. of the Nat’l Elevator Indus. Pension v. Lutyk*, 140 F. Supp. 2d 447, 458 (E.D. Pa. 2001), *aff’d*, 332 F.3d 188 (3rd Cir. 2003). The “use of

corporate funds for personal benefits—again, particularly at a time of financial distress—also supports piercing the . . . veil.” *Id.*, 140 F. Supp. 2d at 459 (emphasis added).

Mrs. Gause has siphoned significant sums of money from Byte Services. This sense of entitlement may derive from the fact that she consistently commingles personal funds in the corporate account. (J. Gause Dep. 35:16-36:15.) Strangely, she could not quantify her “investment”: “I have someone there that keeps up with that.” (*Id.* 35:19-20.) Having commingled more than \$15,000 in Byte Services (B. Gause Dep. 119:1-122:9), Mrs. Gause arbitrarily takes cash from the company coffers, not a routine paycheck but based upon her personal preferences and current needs (J. Gause Dep. 103:10-12). When asked if she paid herself back for company “loans,” she responded, “Well, not specifically saying this is paying me back.” (*Id.* 37:5-10.) The implication is clear—yes, she pays herself, with no LLC records or relationship to what she has personally commingled. Nor is her compensation linked to services: “I take money out, but I don’t get a paycheck.” (*Id.* 103:8-9.) Mrs. Gause “give[s] all the [earnings] information to Ben.” (*Id.* 103:13-104:9.)

Gause himself has no source of income other than social security. (B. Gause Dep. 125:23-126:4.) He will occasionally request money from his wealthy wife. (*Id.* 173:10-14.) Gause always took a paycheck from Byte, even if the business could not afford to pay him. (*Id.* 51:1-17.) “I was on a salary and . . . had certain fringe benefits It grew over the years . . . but . . . didn’t fluctuate whether we were doing great or doing poorly.” (*Id.* 50:19-22.) Although Gause claims his salary from Byte Services is “zero” and that he is “trying to plow everything [he] can back into the company to grow it” (*Id.* 160:8-14), Defendants’ testimony reveals evisceration, not growth (*See, e.g., id.* 171:14-172:18). Gause has been convicted in federal court of conspiracy to commit fraud. (*Id.* 29:2-33:22.) A long history of tax evasion indicates Gause’s willingness to avoid his obligations without regard for the legal consequences. Such a pattern

of behavior strongly attests to his siphoning of LLC income in order to escape payment of Byte's/Byte Services' creditors, namely Stone.

Byte Services is a mere façade for the benefit of the Gauses. Mrs. Gause pays personal bills and expenditures with the LLC bank account. For example, Byte Services pays one thousand dollars per month for the couple's rented home in Greenville County. (J. Gause Dep. 33:14-34:2.) As individual owner of the Byte premises in Mauldin (before she sold it for \$180,000), Mrs. Gause used Byte Services to satisfy her monthly mortgage payments of \$2326. (*Id.* 105:5-106:8.) Asked if she ever receives a paycheck, Mrs. Gause said no, but "[i]f there's some in there and I feel like it can pay me some, I take some out." (*Id.* 103:7-12.) In 2004, before Stone was manager, Gause lavished \$26,500 from the company payroll upon his ex-wife, Roger. Though not a Byte employee, Gause explained that he "was paying [Roger] some money from time to time" because "she needed it I guess." (B. Gause Dep. 163:1-17.) The mere façade of Byte Services shelters its members, the Gauses, and conceals their fraud.

B. Shielding the Gauses' self-serving and fraudulent conduct would be fundamentally unfair

The second prong of piercing the veil "requires that there be an element of injustice or fundamental unfairness if the acts of the corporation [are] not regarded as the acts of the individuals." *Sturkie*, 280 S.C. at 457-58, 313 S.E.2d at 318. In order to prove fundamental unfairness, "the plaintiff [must] establish (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." *Id.* at 459, 313 S.E.2d at 319. The South Carolina Supreme Court has held that "a person is 'aware' of a claim against the corporation . . . [when] [s]he has notice of facts which, if pursued with due diligence, would lead to knowledge of the claim." *Multimedia Publ'g*, 314 S.C. at 554, 431 S.E.2d at 572 (1993).

The spirit of the fairness test is straightforward: “[A]n individual businessman [or woman] cannot be allowed to hide from the normal consequences of carefree entrepreneuring . . . through a corporate shell.” *Dumas*, 320 S.C. at 192-93, 463 S.E.2d at 644. Mrs. Gause knew the correct situation surrounding Stone and Byte. Yet she accepted (and encouraged) Gause’s duplicitous saga that painted Stone as the villain. (*E.g.*, J. Gause Dep. 38:21-39:17; 46:10-23.) Stone must prove only that Mrs. Gause had “notice of facts which . . . would lead to knowledge of the claim.” *Multimedia Publ’g*, 314 S.C. at 554, 431 S.E.2d at 572. At minimum, she was aware of Gause’s manifold tax obligations. (J. Gause Dep. 45:3-46:5.) Surprisingly, she still testified “[i]t’s my understanding that [Stone] was supposed to pay Ben certain things. [Stone] was supposed to pay some old taxes and he didn’t do it.” (*Id.* 38:5-14.) This false, self-serving “logic” was sufficient to give Mrs. Gause the go-ahead to misappropriate Byte (as she said, to “take it back”), in total disregard of Stone’s ownership and claims in the company property.

Byte Services’ entire existence has been built upon fraud. Aware that Stone had valid claims against Byte, Benjamin Gause and Janice Gause misappropriated the business, then secretly transferred all of its assets to a charlatan company for no consideration. The Gauses chose a deceptive course of self-enrichment. They have commingled funds, siphoned ill-gotten gain from the LLC account, paid large personal bills with the same, and distributed money for their own benefit. As recently as September 2017, Mrs. Gause sold the Byte South Carolina property for \$180,000.

The Gauses created Byte Services to conceal and “defraud[,] . . . obscuring their machinations behind the screen of corporate fiction.” *Parker Peanut Co. v. Felder*, 200 S.C. 203, 20 S.E.2d 716, 723 (1942) (citation omitted). However engrained in society, the principle of limited liability surrenders, as Mr. Chief Judge Cardozo observed, “when the sacrifice is so essential to the end that some accepted public policy may be defended.” *Anderson v. Abbott*, 321

U.S. 349, 362, 64 S.Ct. 531, 538 (1944). Fundamental unfairness and injustice result unless Benjamin Gause and Janice Gause are held personally liable for the acts of Byte and its illegitimate successor, Byte Services.

IV. Foreclosure of a Security Interest

In early 2006, Byte required additional capital. Stone agreed to advance additional capital upon the condition that Byte secure certain loans with its personal property. (Stone Aff. ¶ 28.) Stone explained to Gause the needs of Byte and gave him copies of the Note and Security Agreement. Gause seemed to avoid signing these documents. Following advice of counsel, Stone proposed that Gause sign the Resolution of Sole Member of Byte. (3rd Am. Compl. Ex. O.) Prepared by Mason Goldsmith, Jr., Esq., of Elmore Goldsmith, P.A., the Resolution contains the key terms of both the Note and Security Agreement. It specifically authorizes Stone to execute both agreements on behalf of Byte. Gause signed the Resolution on May 22, 2006.¹³

During the initial term and extensions of the Management Agreement (2004-09), Stone contributed a total of \$3,521,767 in operating capital, \$1,388,935 of which was repaid, leaving a balance of \$2,132,832. Stone failed to secure the entire \$2,132,832 because of his preoccupation with managing the business and his expectation that he would receive the option—an ownership interest in Byte. Whether or not Stone's capital was secured, however, has no effect upon his right to recover it all: "If the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital provided under th[e] Agreement" (Management Agreement ¶ 9.)

After husband and wife misappropriated Byte, Gause never made any effort to pay Stone for his capital contributions. The Gauses further breached the Note and Security Agreement by unlawfully transferring all of Byte's assets to Byte Services in Georgia and disposing of

¹³ "I remember Jack came down to Daniel Island one time and brought some papers Q: And you signed them? A: Yeah." (B. Gause Dep. 164:23-165:6.)

Stone's secured collateral. In September 2017, Mrs. Gause sold the Byte S.C. property for \$180,000.

V. Quantum Meruit

A quantum meruit claim has three elements: "(1) a benefit conferred upon the defendant by the plaintiff; (2) [defendant's] realization of that benefit . . . ; and (3) [defendant's] retention . . . of the benefit under conditions that make it unjust . . . without [him] paying . . . value." *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). Stone provided Byte with \$2,132,832 in capital contributions. Stone paid \$338,945 of that amount to Gause personally as "benefits." Stone satisfied Byte's obligations to the S.C. Department of Revenue and hired Yarborough to negotiate a settlement of the \$400,000 federal tax lien.

Done with the goal of revitalizing Byte and receiving the option, all of Stone's capital investment inured to the benefit of Defendants, who personally reaped the rewards. After Stone revived the company, Benjamin Gause and Janice Gause illegally reassumed control. The Gauses misappropriated Byte, robbing Stone of the value he conferred upon them. Stone suffers injustice unless Defendants pay \$2,132,832, the amount of his capital contributions.

VI. Promissory Estoppel

Estoppel may result from "(1) an unambiguous promise . . . ; (2) reasonable reliance on the promise by the promisee; (3) reliance . . . was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379-80, 769 S.E.2d 237, 241 (2015). Gause promised Stone an option to purchase Byte. Stone reasonably relied on this promise by providing operating capital, which Gause expected. Defendants, personally, rejected Stone's option. As a result, Stone has suffered the loss of \$2,132,832 in capital.

DENIAL OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants have submitted a motion for partial summary judgment. Stone filed the present action on June 12, 2009. At all times, Stone has been represented by counsel. Beginning in 2010, Defendants refused to cooperate with Stone's discovery requests. The Court issued an Order to Compel Production on November 17, 2010. Stone has yet to receive responsive information and documentation in accordance with the Order. By refusing to cooperate with discovery, Defendants have sabotaged efforts at settlement, including mediation.

Stone has not destroyed any evidence pertaining to Byte or Defendants' case during the pendency of this action. In 2017, Stone moved its offices. Anticipating the move and after reviewing records with the Greenville Historical Society, Stone identified decades-old Stone Manufacturing Company files and shredded them.

On March 15, 2017, the Court granted predecessor counsel's Motion to Withdraw. Stone hired current counsel on July 7, 2017. Stone has continually pursued a resolution, whereas Defendants have resorted to delay. Stone gave his deposition in December 2017. That same month, Defendants' counsel requested depositions of five additional witnesses. Stone hand-delivered their contact information to Defendants' counsel in January 2018. Despite multiple inquiries regarding progress, Stone received no response from Defendants' counsel until April. At the May 31st status conference, Defendants' counsel advised the Court that he *never intended* to take these individuals' depositions: He only wanted to see "if they were alive"—a fact already established four months earlier. Defendants have had ample opportunity to depose "essential" witnesses.

FINAL SUMMARY AND CONCLUSION

Set forth in the Management Agreement of February 16, 2004, Gause granted Stone an option to purchase Byte in exchange for operating capital and management services. Stone diligently managed Byte for five years. In 2004, Stone saved the company from collapse with

a \$200,000 initial capital infusion. During consecutive extensions of the option period (2004-09), Stone provided over \$1.5 million as capital contributions to Byte's operating budget, plus direct "benefits" to Gause personally (\$338,946), for a total of \$2,132,832 in capital. Simultaneously, Stone worked to resolve a \$400,000 federal tax lien against Byte—part of the legacy of Gause. Stone satisfied Byte's S.C. income tax debt, originally \$80,000, by the end of 2007. While these tax liabilities existed, Stone hesitated to exercise the option. But because the Management Agreement imposed no limits on the option period, Stone properly extended it as he dealt with the S.C. Department of Revenue and the IRS. In early 2009, the Management Team and Gause met with Yarborough, a Charlotte tax specialist whom Stone had hired to negotiate settlement of the \$400,000 federal tax lien. Yarborough's restructuring strategy gave Stone confidence, and he exercised the option to purchase Byte.

When Yarborough presented his strategy in early 2009, the Gauses executed their conspiracy (financed by the wealthy Janice Gause), implementing their own erroneous adaptation of Yarborough's plan. The Gauses terminated the Management Agreement in bad faith, rejected the option in principle, and purposefully ignored its clear exercise by Stone.

In accordance with the Management Agreement, "[i]f the Purchase Option is not fully realized, [Stone] will be entitled to payback of all capital" (§ 9.) Stone provided Byte with capital from February 2004 until April 2009, when the Gauses acted overtly to remove Stone and misappropriate the business. The Gauses prevented not only "full[] realiz[ation]" of the option (100% ownership of Byte by Stone) but any realization whatsoever. Thus, Stone is "entitled to payback of all capital provided under th[e] Agreement"—\$2,132,832.

Gause, *individually*, as the sole owner and officer of Byte, misrepresented to Stone the contents of the Management Agreement and the "effect" of the option (Stone's only consideration): "An option with unspecified limits . . . is not enforceable." Whether he believed this

from the beginning or gradually embraced the idea as time went along—at least after learning of Yarborough's proposed solution to the \$400,000 federal tax lien and deciding that Byte had significant value, enough for him and his wife to steal from Stone—Gause committed fraud by continuing to accept Stone's capital contributions in bad faith and later rejecting the option because he claims it was "unenforceable." His rejection of Stone's option, encouraged and accompanied by Mrs. Gause, was *ultra vires* (a fraudulent act not protected by Byte or Byte Services) as intentional deceit and/or a fundamentally unfair abuse of, and by, the LLC(s), making the Gauses personally liable.

Janice Gause, *individually*, joined her husband through bad faith, collusion, civil conspiracy, and misappropriation. The financing and other assistance she supplied was crucial to enable their conspiracy; Gause had no income, as well as persistent problems with the IRS. Consequently, he obtained "a commitment from Janice to put . . . money in[to]" retaking Byte. Mrs. Gause organized Byte Services in Georgia for the express purpose of misappropriating the S.C. business (Byte) and Stone's interest.

Together, the Gauses used Byte Services to facilitate their fraud. Gause, personally, and in collusion with Mrs. Gause, *destroyed* Byte, and with it they destroyed Stone's rights under the Management Agreement, including his option to purchase and right to "payback of all capital." Therefore, Stone should not have to look solely to Byte or Byte Services for a remedy. He can look to Benjamin Gause and Janice Gause, personally, because they have personally engaged in bad faith, fraud, collusion, civil conspiracy, misappropriation, and rampant misuse of Byte and Byte Services to perpetuate these schemes.

Stone's actual damages for loss of capital contributions total \$2,132,832, plus special damages for civil conspiracy and punitive damages to be determined by the Court. Stone respectfully requests that the Court pierce the corporate veil of Byte and Byte Services, hold the

individual Defendants and LLCs liable for bad faith breach of contract in rejecting the purchase option and for civil conspiracy to misappropriate Stone's ownership interest in Byte, its assets, and business opportunities. Stone also respectfully requests punitive damages against Defendants commensurate with the Court's evaluation of their bad faith, collusion, civil conspiracy, misappropriation, and blatant fraudulent conduct, individually and through both LLCs.

Respectfully submitted,

HUGHES LAW FIRM, L.L.C.

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Attorney for Plaintiffs

February 12, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Stone International, LLC and Eugene E.)
Stone, IV,)
Plaintiffs,)
v.)
Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause; Janice)
Gause, f/k/a Janice Archer, f/k/a Janice)
Barnett; Carolina First Bank; Branch)
Banking and Trust Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association, Inc.; and)
South Carolina Department of Employment)
and Workforce,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

CIVIL ACTION NO.: 2009-CP-23-5000

AFFIDAVIT
OF
JOSEPH O. "JOSH" SMITH

PERSONALLY appeared before me, Joseph O. "Josh" Smith, Esq., who being duly sworn, deposes and says:

1. Roe Cassidy Coates & Price, P.A. ("Roe Cassidy") represented the Plaintiffs, Stone International and Eugene E. Stone, IV, (*collectively*, "Stone") in this matter from on or about June 2009 to April 2017.

2. After some time, Stone was no longer able to pay its legal fees. Per the terms of engagement, Roe Cassidy withdrew from representation in April 2017.

FURTHER, THE AFFIANT SAYETH NOT.

SWORN to before me this 7 day
of June, 2018.

Carole H. Pegler
Notary Public for South Carolina
My Commission Expires: 8/28/25

Joseph O. "Josh" Smith

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2009-CP-23-5000

Stone International, LLC,	)

Plaintiffs	)

v.	)

Byte Software, LLC, GrandSouth	)
Bank, Carolina First Bank, Branch	)
Banking and Trust Company, Greg	)
Corbitt, and Contemporary	)
Solutions-USA, Inc.,	)

Defendants	)

**MEMORANDUM IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
OTHER RELIEF**

Byte Software, LLC and Benjamin	)
Gause,	)

Third Party Plaintiffs	)

v.	)

Eugene E. Stone, IV,	)

Third Party Defendant	)

FACTS

On February 16, 2004 Byte Software, LLC, ("Byte") a company solely owned by Defendant Ben Gause, entered into a management agreement with option to purchase with Stone International, LLC, ("Stone") a company solely owned by Eugene Stone.

The agreement required Stone to make a capital contribution to Byte in the amount of \$200,000.00 within the first twelve months. The contract was for a six month term. The contract further prohibited Stone from binding or attempting to bind Byte in any manner during the term of the agreement and provided Stone an option to extend the term of the agreement. (Exhibit 1)

Stone took over management of the company and over the course of 2004 completed the \$200,000.00 capital infusion. However, Stone never exercised the option to purchase and

instead purportedly executed and delivered to himself twelve consecutive six month extensions of the agreement.

In or around January and February of 2006, Stone represented to Gause that Byte was indebted to Stone for advances made in the amount of \$269,450.00 and induced Gause to agree to have Byte execute a line of credit note and security agreement with Stone. Stone then executed the agreements to itself. In fact, at the time the note was executed the amount due to Stone from Byte was \$164,250.00 and within ten months of the execution of the note, Stone caused Byte to transfer over \$551,200.00 from its account to Stone's account resulting in a negative note balance as of December 31, 2006 of \$231,850.00 (Ex. 2). Stone continued to transfer funds back and forth between Stone and Byte and as of the maturity date of the note, January 1, 2009, Stone had been repaid \$22,033.00 in excess of what had been loaned to Byte.

Also during this time Stone International had effectively ceased operations and had transferred all of its remaining employees into the Byte office. Gause had become concerned very early in 2009 due to the fact that the health insurance for the employees was cancelled for nonpayment, employee payroll checks were bouncing and employees were not being paid, including Gause. At the same time Gause was being prevented access to the financial information necessary to confirm the status of the company and in early 2009 Gause retook physical control of the company.

ARGUMENT

PLAINTIFF'S FIRST CAUSE OF ACTION

The Plaintiff's first cause of action is simply a recital of the hornbook elements of piercing the corporate veil. It is devoid of specifics, evidence or facts which would support the claim.

Accordingly, the Defendants are entitled to summary judgment as a matter of law as to this claim.

PLAINTIFF'S SECOND CAUSE OF ACTION

Plaintiff's second cause of action alleges a written contract and a breach of the contract thereby precluding an action for quantum meruit as contained within the Plaintiff's fourth cause of action. When the Plaintiff seeks relief under a quantum meruit theory that are encompassed within the terms of the expressed contract the Plaintiff may not recover under its quantum meruit. See Swanson v. Stratos, 350 S.C. 116, 564 S.C.2nd 117 (Ct. App. 2002)

Accordingly, the Defendant is entitled to summary judgment on the Plaintiff's fourth cause of action as a matter of law.

PLAINTIFF'S THIRD CAUSE OF ACTION

Plaintiff's third cause of action states a civil conspiracy against multiple Defendants. In order to state a claim for a civil conspiracy there must be special damages completely separate and distinct from the damages claimed in the breach of contract action (Plaintiff's second cause of action). Simply stating that they are special damages does not support a cause of action for civil conspiracy if, in fact, they are the same damages. These special damages alleged by the Plaintiff are nothing more than the same damages that are set forth in their breach of contract claim recast as somehow special. See Hackworth v. Hammett, 682 S.E.2nd 871 (Ct. App. 2009)

Accordingly, the Defendant is entitled to summary judgment on the Plaintiff's third cause of action as a matter of law.

PLAINTIFF'S FIFTH CAUSE OF ACTION

Plaintiff's fifth cause of action alleges promissory estoppel. In order to recover under a theory of promissory estoppel, in equity, a claimant must demonstrate (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury and reliance on the promise. Satcher v. Satcher, 570 S.E.2nd 535 (Ct. App. 2002) The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. Citizens Bank v. Gregory's Warehouse, Inc., 375 S.E.2nd 316 (Ct. App. 1988).

In addition to the Plaintiff being unable to demonstrate any of the elements necessary to justify the application of promissory estoppel, the equitable cause of action, by its very nature contemplates enforcement of an agreement that was not reduced to writing. In the instant case, the Plaintiff specifically alleges that a contract was entered into by and between the Plaintiff and the Defendant and that the Defendant breached the written contract in its second cause of action. The Plaintiff has specifically alleged an enforceable unambiguous contract and therefore any testimony or evidence necessary to establish the elements to be required to be demonstrated by the Plaintiff for a promissory estoppel claim would be Parol evidence and inadmissible in an action to enforce the contract. Thus, as a matter of law, a promissory estoppel claim could never

be applicable when there is an allegedly enforceable written contract since a "refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice".

Accordingly, the Defendant is entitled to summary judgment on the Plaintiff's fifth cause of action as a matter of law.

PLAINTIFF'S SIXTH CAUSE OF ACTION

Plaintiff's sixth cause of action alleges interference with a prospective contractual relationship between the Defendant and a third party. It fails to allege that the Plaintiff was in any way involved in any business type transaction with any third party that was purportedly interfered with by any of the Defendants. Stone has no claim or cause of action, nor a right to bring one on behalf of Byte, for an alleged interference of a contract between Byte and a third party.

Accordingly, the Defendants are entitled to summary judgment on this cause of action as a matter of law.

PLAINTIFF'S SEVENTH CAUSE OF ACTION

The Plaintiff's seventh cause of action seeks to foreclose a security interest securing a note executed by Stone on behalf of Byte on February 26, 2006. The maturity date stated in the note is January 1, 2009. Pursuant to the affidavit of the Defendant and based upon the summary of transaction produced by the Plaintiff's accountant, not only were no sums due under the credit line as of its maturity on January 1, 2009, Stone had actually caused Byte to overpay the balance due by \$22,033.00. (Ex. 2) The debt was fully paid on the maturity date and the note and security agreement were satisfied and of no further force and effect.

There being no factual dispute that the promissory note and security agreement were paid in full as of the date of maturity the Defendants are entitled to summary judgment on the Plaintiff's seventh cause of action as a matter of law.

DISMISSAL OF THE ENTIRE COMPLAINT FOR FAILURE TO PROSECUTE AND SPOILIATION OF EVIDENCE

This action was commenced by the filing of a complaint by the Gilreath Law Firm on June 12, 2009. In September of that year Pfeiffer, Gantt, Gleaton and Wyatt, P.A. had been substituted as counsel. Subsequently, in September of 2010 Roe, Cassidy, Coates and Price were substituted as counsel. The latter filed two amended complaints on behalf of the Plaintiff, the first in December of 2010 and the last in October 2011. During the course of 2010 and 2011

mediation occurred and depositions were taken by the Plaintiff and discovery requests were submitted by counsel for both Plaintiff and Defendant with responses were provided.

On April 2, 2017 Roe, Cassidy, Coates and Price moved to withdraw as counsel for the Plaintiff and an order was subsequently entered granting that motion and providing the Plaintiff be required to obtain new counsel and advise the court within 30 days after the order was served. Jacob M. Hughes, Esquire then assumed representation of the Plaintiff.

I wrote this memoranda over a period of days in the first week of February, 2019, nearly 10 years after the institution of this action by the Plaintiff. Ten years. During the course of that 10 year delay, solely resulting from the Plaintiff's dilatory practices, the most important witness, Dennis Watt, the bookkeeper during the time in question, has died. Mr. Stone testified repeatedly during his deposition in 2017 that he had disposed of, destroyed, erased or otherwise no longer had available virtually any of the financial records necessary to the presentation, of not only his case, but the defense, and that the records were destroyed after the commencement of the litigation. (See Ex. 3 and 4)

When asked about the accounting records on December 14, 2017 Mr. Stone replied as follows:

Q: Alright. Now let me ask you about....you said "documents somewhere". Do all of the computer accounting records that you maintain for Byte Software during the period of time that you operated the business still exist?

A: No Sir.

Q: What happened to them?

A: They just....we closed operations down and reduced the size of the operations, and we shredded just magnitudes of information.

Q: And did you also delete computer records of accounts?

A: Yes, we did.

Q: And when did that happen?

A: Before we moved. It must have been 4 or 5 years ago.

Q: It would have been after this litigation commenced, correct?

A: Yes sir it would have been after that.

The Plaintiff readily admitted to spoliation of evidence and at further points in his deposition acknowledged that it would be impossible to provide banking records or backup for

any of the transactions that occurred for the only relevant period of time, between the date of the contract and the date of the filing of this litigation. The date of the filing of the complaint and the date that this motion is being heard provides all of the factual background necessary for the Court to evaluate the failure to prosecute.

“Whether an action should be dismissed for failure to prosecute is left at the discretion of the trial court judge” and “The Plaintiff has the burden of prosecuting her action and the trial court may properly dismiss an action for Plaintiff’s unreasonable neglect in proceeding with her cause.” McComas v. Ross, 626 S.C. 2nd 902 (Ct. App. 2006) Rule 41(b), S.C.R.C.P., provides, “for failure of the Plaintiff to prosecute” an involuntary dismissal may be granted by the Court. The Fourth Circuit found it is appropriate to dismiss an action where there is a clear record of delay or contumacious conduct by the Plaintiff and in a case cited by McComas set forth four factors to be reviewed by the trial court before dismissing a case for failure to prosecute: (1) The Plaintiff’s degree of personal responsibility; (2) The amount of prejudice caused to the Defendant; (3) The presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal.

It is difficult to imagine a more textbook example of factors 1, 2 and 3 than exist in this litigation. The Plaintiff has had four different attorneys, never requested a trial date and essentially did absolutely nothing to prosecute the case, preserve evidence or even acknowledge the case was pending for a period of almost 6 years. Prejudice has clearly occurred as the bookkeeper who handled all of the affairs of both companies is now deceased and the Plaintiff has admittedly destroyed all of the records that are essential to the presentation of both parties’ claims. The fact that the case is 10 years old is all that needs to be said of the third factor. The record is devoid of any effort, motion or otherwise by the Defendant, to postpone, continue or otherwise seek to prevent the prompt disposition of the action. The fourth element cannot be satisfied with a lesser sanction of dismissal due to the prejudice which occurred by the destruction and spoliation of the documents and evidence necessary for presentation of the Defendant’s defense and counterclaims. No sanction, less than a dismissal, will bring those documents back, improve any of the surviving witnesses’ memory or place the parties back in the position they were back in 2009.

The Defendant has further been prejudiced by the Plaintiff sitting on his hands in that the Plaintiff seeks to enforce a contract to purchase the business. The Defendant had little choice but

to continue to operate the business while the action was pending and has now done so for 10 years while the Plaintiff sits idly by hoping to ultimately benefit from the Defendant's 10 years of efforts.

Indeed, spoliation of evidence alone is sufficient to strike a party's pleadings when the use of adverse jury instructions would not adequately account for the prejudice created. Stokes v. Spartanburg Regional Medical Center 629 S.C.2nd 675 (Ct. App. 2006) and QZO, Inc. v. Moyer, 594 S.C.2nd 541 (Ct. App. 2004).

For all of the forgoing reasons of failure to timely prosecute and spoliation of evidence, the Defendant is entitled to an order involuntarily dismissing the Plaintiff's complaint in its entirety.

RANDALL S. HILLER, P.A.

S/Randall S. Hiller
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February 8, 2019

Greenville, South Carolina.

EXHIBIT 1

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER SECTION 12 HEREIN. THIS AGREEMENT IS BINDING ON ALL PARTIES TO THIS AGREEMENT, THEIR SUCCESSORS, HEIRS, ASSIGNS AND TRANSFEREES, INCLUDING ANY PERSON OBTAINING FINANCIAL RIGHTS IN THE LIMITED PARTNERSHIP.

MANAGEMENT AGREEMENT
(With Option To Purchase)

This Management Agreement (the "Agreement") is entered into by and between Byte Software, LLC, a South Carolina Limited Liability Company (hereinafter "Byte") and Stone International, LLC, a South Carolina Limited Liability Company, or its designee (hereinafter "Manager") this 16th day of February, 2004.

Whereas, Manager is in the business, among other things, of the management of companies such as Byte and is ready, willing and able to provide management services to Byte, including but not limited to: oversight and management; financial management; site management and operations support; and the retention of necessary and proper professionals and outside vendors and contractors;

Whereas, Byte is a Corporation operating a software development and services business located in Greenville County, South Carolina, and requires the services offered by Manager in order to efficiently develop and maintain its business;

Whereas, the parties agree to the terms and conditions contained in this Agreement;

Now therefore, it is mutually agreed as follows:

1. **Services:** Manager will supply Byte with day-to-day management, oversight, sales and other services which Byte may require, including but not limited to:
 - a. Acting as General Manager of Byte's office complex located in Greenville County, South Carolina.
 - b. Providing financial expertise and oversight, including hiring professionals for all financial reports and audits, including but not limited to development of short-term operational plans and maintenance of all accounts of Byte, wherever located.
 - c. Providing marketing and sales consultation and support.
 - d. Maintaining all required licenses and regulatory matters of Byte.
 - e. Coordinating tax and other professional services for Byte.
 - f. Filling or terminating positions and personnel of Byte.

BYTE 000036

8. Such other services as may be required by Byte and agreed to by the Parties.
2. Standard of Service: Manager shall work diligently and use best efforts to provide the services under the terms of this Agreement and in good faith. Byte shall continue to provide software support services under the terms of an Extended Software Maintenance Agreement which renewed under its terms on January 1, 2004.
3. Capital to Byte: During the initial term of this Agreement, Manager shall provide operating capital to Byte in the amount of \$50,000 initially then \$35,000 per month to be provided bi-monthly on the first and fifteenth day of each month. Such additional money shall not exceed \$200,000.
4. Hours Worked: Manager's days and hours for performing such services are variable from day to day and week to week as determined by Manager, the needs of the customers and as a result of any other agreements between the parties contracting hereto.
5. Relationship: Byte shall not be liable for any negligent, reckless or intentional acts or omissions of Manager, nor shall Manager bind or attempt to bind Byte in any manner through its acts or delicts during the term of this Agreement in connection with management services of Manager. Likewise, Manager shall not be liable for any negligent, reckless or intentional acts or omissions of Byte, nor shall Byte bind or attempt to bind Manager in any manner through its acts or delicts during the term of this Agreement in connection with management services to Byte. Furthermore, nothing herein shall be construed as creating the relationship of employer and employee between the parties, but rather, Manager shall, and at all times, be deemed to be an independent contractor and free of any control by Byte in selecting the time or methods of work, transportation used, or any other such things as may be construed to constitute a relationship of employer and employee between the parties.
6. Insurance: Byte shall provide Manager with coverage under its general liability insurance policy for the duration of the term of this Agreement.
7. Non-Disclosure of Information: Manager shall not, at any time after the date hereof, directly or indirectly, divulge or disclose for any purpose whatsoever any information that has been developed or obtained by, or disclosed to, Manager by Byte at any time or after the date hereof (exclusive of such information as is in the public domain). Manager acknowledges that such confidential information is of a special and unique nature and value relating to matters of Byte's business, including, without limitation, Byte's customer information, computer programs, copyrights, other proprietary information, trademarks, systems, procedures, manuals, brochures, newsletters, customer handouts, confidential reports, records, operational expertise, locations and lists of customer and potential customers, pricing information and lists, marketing materials and methods, the nature and type of services rendered by Byte, the methods used and preferred by Byte's customers, and the fees paid by them (all of which are deemed for all purposes to be confidential, proprietary, and trade secrets of Byte). Any confidential information in Manager's possession shall be returned by Manager upon any termination or expiration of this

Agreement. In the event of any termination, cancellation of this management arrangement or expiration of the term of this Agreement, this Section 7 shall survive.

8. Term of Agreement: The term of this Agreement shall commence of even date herewith and shall have an initial term of 180 days from the date of execution (the "Initial Terms"). The parties, by mutual agreement in writing, may terminate this Agreement. This Agreement is renewable for additional, consecutive, successive 180-day periods, at the option of the Manager (an "Extension Term").

9. Option to Purchase: During the Initial Term and any Extension Term, Manager, in exchange for the management services provided herein and for such capital as may have been provided, shall have the right, in its sole discretion, to acquire 51 percent of the business of Byte (the "Purchase Option"). The Purchase Option may be in either ownership interests or via an asset purchase, in Manager's sole discretion. The remaining 49 percent of the business of Byte shall then be acquired by Manager within five years from the expiration of this Agreement. Upon the exercise of the Purchase Option, a buyout schedule will be provided by Manager. The Manager will Byte, and day-to-day management decisions will be determined by Manager. The Manager will be entitled to an additional 5 percent per year until the end of the fourth year; and an additional 4 percent at the end of year five. At that time, an independent valuation of the business will be done and the remaining 25 percent of the business will be purchased at 25 percent of the valuation. Such valuation to be provided by a business valuation expert, mutually agreed on, with appropriate certification(s) who has experience in the same line of business as Byte. All benefits provided to Ben Gause by Byte shall stay in effect until the Purchase Option is fully executed. After the exercise of the Purchase Option (i.e., acquisition of the initial 51 percent), Ben Gause shall be retained at his then-current annual salary and shall share all net profits of Byte with Manager on a 50/50 basis until the Purchase Option is fully realized (e.g., the acquisition of the 49 percent). If the Purchase Option is not fully realized, Manager will be entitled to payback of all capital provided under this Agreement from the proceeds of any future sale of Byte or its assets.

10. Assignment: This Agreement between the parties may not be assigned as to any of the parties' rights or duties under this Agreement without the prior written consent of both parties to this Agreement.

11. Law: This Agreement shall be governed and construed in accordance with the law of the State of South Carolina and shall be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns. Any disagreements between Byte and Manager shall be resolved through arbitration, as provided herein.

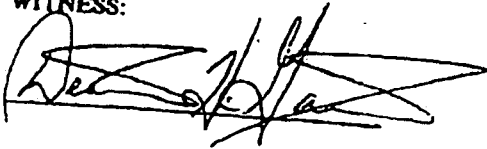
12. Arbitration: ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT OR ANY BREACH OR ALLEGED BREACH, HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL

ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY'S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC.

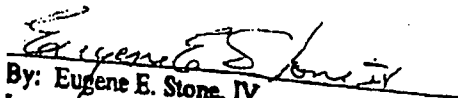
13. Amendments: This Agreement consists of this writing and its attachments identified herein, if any. This Agreement sets forth the full and complete understanding of the parties as of the date of even signature. This Agreement may only be amended in writing executed by duly authorized representatives of the parties.

Executed on this 16th day of February, 2004, in the county of Greenville, state of South Carolina, by:

WITNESS:



STONE INTERNATIONAL, LLC


By: Eugene E. Stone, IV
Its: Member



BYTE SOFTWARE, LLC

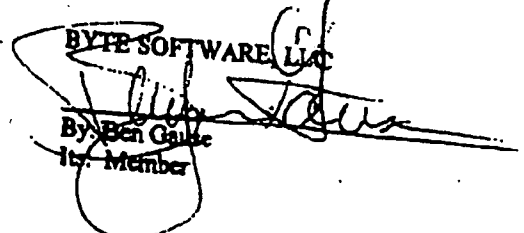

By: Ben Galle
Its: Member

EXHIBIT 2

1 2007 W-3 also prepared by Dennis Watt. This one was
2 signed by you. I think you signed all of them, is
3 that correct? .

4 A. I think I signed them all.

5 Q. So those would have been submitted to the
6 Social Security Administration reflecting all of the
7 people that are characterized as employees of Byte
8 Software, LLC?

9 A. That is correct, sir. And you'll note,
10 there is no Stone Manufacturing -- Stone
11 International people listed.

12 MR. HILLER: Let's mark that, please.
13 (Whereupon, the court reporter marked Defendant's
14 Exhibit Number 5 for identification.)

15 EXAMINATION RESUMED BY MR. HILLER:

16 Q. Mr. Stone, what's now been marked as
17 Defendant's Exhibit 5 is a summary that was provided
18 to me by your prior counsel. And it's marked in the
19 lower left-hand side as a final called, "Dennis/Byte
20 Financial/2008Bank.xis." Dennis, that would have
21 been Dennis Watt?

22 A. Yes.

23 Q. So he prepared this document?

24 A. I assume he did, sir.

25 Q. And would you agree with me that this

1 document purports to demonstrate the amount of money
2 advanced from Stone International to Byte?

3 A. And vice versa.

4 Q. And vice versa?

5 A. That is correct.

6 Q. All right. By you?

7 A. By Stone International.

8 Q. No, but he's broken it down by year?

9 A. Yes, by year. I didn't understand.

10 Q. Do you have any reason to believe that
11 this is not an accurate document?

12 A. I haven't looked it over. I have no
13 reason to believe that it is not accurate. And
14 Dennis was a thorough accountant.

15 Q. Okay. And so look at it with me for a
16 moment. On the first page, it shows that between
17 February the 17th of 2004 and July 13th of 2004, you
18 advanced \$200,000 to Byte, is that correct?

19 A. As per the management contract.

20 Q. Yes, sir. That's the number?

21 A. That's the number.

22 Q. You advanced \$200,000, as you were
23 required to do pursuant to the management agreement?

24 A. That is correct.

25 Q. All right. And then in 2005, the total

1 advanced to Byte was \$237,050?

2 A. That's what's noted on the document.

3 Q. Do you have any documents, or evidence, or
4 anything to contest that number?

5 A. I don't. Here, I don't. Is there a
6 record somewhere? It could be, but I assume that
7 this was reviewed. I think that's a good number.

8 Q. Well, it was produced to us from you.

9 A. Yes, sir.

10 Q. So your people prepared it?

11 A. Our people prepared it, and I think Mr.
12 Watt was the primary preparer, and he was a good
13 accountant.

14 Q. All right. Now, let me ask you about --
15 you said "document" somewhere. Do all of the
16 computer accounting records that you maintained for
17 Byte Software during the period of time that you
18 operated the business still exist?

19 A. No, sir.

20 Q. What happened to them?

21 A. They just -- we closed operations down,
22 and reduced the size of the operations, and we
23 shredded just magnitudes of information.

24 Q. And did you also delete computer records
25 of accounts?

Eugene E. Stone, IV

1 A. Yes, we did.

2 Q. And when did that happen?

3 A. Before we moved. It must have been four
4 or five years ago.

5 Q. It would have been after this litigation
6 commenced, correct?

7 A. Yes, sir, it would have been after that.

8 Q. Because we have these from then?

9 A. We had this from the records of the
10 company.

11 Q. But we no longer -- you're telling me that
12 we no longer have the ability to go back and verify
13 these numbers?

14 A. That is correct, sir.

15 Q. And that's because all of that was either
16 shredded or deleted?

17 A. That is correct.

18 Q. Now, going back to Exhibit 5, it also has
19 a total for 2006 of \$247,300 -- I'm on page 2.

20 A. Yes, sir.

21 Q. And all of those advances were made from
22 Stone International to Byte Software in 2006?

23 A. Correct. Yes.

24 Q. And then I note on here on this second
25 page, there are -- there's a line up above there for

1 "Jack personal checks to Byte," and those are
2 included in that \$237,050 for 2005, correct?

3 A. There were several instances I did that,
4 that's correct.

5 Q. And down below the 2006 totals, there are
6 also some that somebody has marked as "Jack
7 deposited directly to Byte"?

8 A. Yes, sir.

9 Q. And then going to the third page,
10 including the personal -- well, let me stop for a
11 minute. Withdraw that question.

12 Would you agree with me that anything
13 that's shown on here as "Jack personal checks to
14 Byte" would be what you are personally claiming
15 you're entitled to?

16 A. That would be correct.

17 Q. And anything that's shown as Stone to Byte
18 would be something that Stone International would
19 claim?

20 A. That would be correct.

21 Q. All right. So on page 3, we get a total
22 for 2007 of \$499,140, is that correct?

23 A. That's the number.

24 Q. All right. And then for 2008 at the
25 bottom of the page, \$405,411?

Eugene E. Stone, IV

1 A. Yes.

2 Q. And then it begins there, "Byte to Stone,"
3 .and we go to page 4, and it does the same thing for
4 those same calendar periods, same yearly periods of
5 what was transferred from Byte back to Stone?

6 A. That's correct.

7 Q. And so if we went in any particular
8 calendar year and compared what was transferred to
9 Byte for, say, 2006 and then we subtracted what you
10 show as Byte to Stone for 2006, that would show the
11 net amount, correct?

12 A. Yes.

13 Q. You agree with that?

14 A. Yes.

15 Q. So there was no amounts transferred from
16 Byte to Stone in 2004, but in 2005, they began
17 transferring funds back to Stone?

18 A. That's correct.

19 Q. And that occurred in 2005, 2006, 2007, and
20 2008, is that right?

21 A. That is what is on this document.

22 Q. All right. So from this document, we
23 could total the total amount that was transferred to
24 Byte from 2004 to 2008?

25 A. Yes.

Eugene E. Stone, IV

1 Q. And the total amount transferred from
2 Stone -- I mean from Byte to Stone?

3 A. Yes, sir.

4 Q. For that same period?

5 A. Yes.

6 Q. And arrive at the net amount that was due
7 from one company to the other?

8 A. Correct.

9 Q. Go to the last page for me. So on the
10 last page of the transfers from Stone, -- well,
11 actually these are transfers from Byte to Stone,
12 right?

13 A. Well, it gives a summary of a net payable
14 from Byte to Stone is the very last number.

15 Q. \$209,204.16?

16 A. That's correct.

17 Q. But the reality is that's really
18 \$9,204.16, because you were obligated under the
19 terms of the agreement to put \$200,000 capital into
20 it?

21 MR. HUGHES: Object.

22 THE WITNESS: We put \$200,000 in capital
23 into the business, that's correct.

24 EXAMINATION RESUMED BY MR. HILLER:

25 Q. But that's included in the Stone to Byte?

Eugene E. Stone, IV

1 A. I don't know that.

2 Q. Well, it's right there on the first page.

3 A. No, I know it's on the sheet. I don't
4 know how that was calculated in computing the
5 differences between the A part and the B part.

6 Q. Well, we just talked about that. You can
7 total them up, right?

8 A. You can total them up. I don't know if
9 the \$200,000 was included in that total. I just
10 have to go through and run the numbers. I just
11 haven't done that.

12 Q. But you could do that with this document?

13 A. You can do that with that document.

14 Q. So if you totaled all the Stone to Bytes
15 and all the Byte to Stones and you subtracted
16 whichever was the larger from the smaller -- I mean
17 the smaller from the larger, then would you arrive
18 at --

19 A. A number.

20 Q. -- a number?

21 A. Yes.

22 Q. And if that number was \$200,000, then
23 you're even, right?

24 A. Yes.

25 Q. Because your management agreement required

Eugene E. Stone, IV

1 you to put \$200,000 in?

2 A. For a particular reason, yes, because it
3 was there to purchase an option.

4 Q. Right. So hang on to that for a minute,
5 because I want to still ask you some more questions
6 about the last page, the Exhibit 5.

7 A. Yes, sir.

8 Q. Now, I notice on this Exhibit 5, beginning
9 actually on page 7 -- the last three lines of page
10 7, beginning in August of 2008 and going all the way
11 through the remainder of 2008, every single check or
12 every single credit from Byte to Stone is actually
13 to you personally, is that correct?

14 A. If I'm looking -- if I'm looking at page
15 8, this was -- there were not -- there were payments
16 to Hayne Hipp, to Greer State, there were a mixture
17 of payments in there. There were some to me and
18 some to others, but I can't recall the particulars
19 of why they were made out that way.

20 Q. When I look at page 8, I see two transfers
21 to Stone and every other one says Jack Stone, Jack
22 Stone, Jack Stone, Jack Stone, Jack Stone, Hayne
23 Hipp, whatever, but it was paying your bills or
24 paying you, correct?

25 A. Well, it was paying --

Eugene E. Stone, IV

1 Q. These were not Byte bills?

2 A. These were either loans that had been made
3 to us: -- made to me by these various parties; like
4 to Carolina First; Hayne Hipp; or Greer State; et
5 cetera. This was a summary of what I had arranged
6 to have infused into Byte.

7 Q. Right. I understand. My question is is
8 the reason that they're still accounted for as a
9 payment from Byte to Stone is because they were
10 paying obligations that were not directly incurred
11 by Byte?

12 A. They were infused into Byte for a period
13 of time, and this was in a repayment for that -- as
14 much as I could recall, it was a repayment for that
15 infusion.

16 Q. I understand. But instead of paying -- I
17 mean Byte transferring the money to Stone and then
18 Stone paying whatever source it got the money from
19 originally, it was just paid direct?

20 A. It was paid -- to the best of my
21 recollection, I don't recall check by check by any
22 means. I don't know how that was done.

23 MR. HILLER: Mark this for me, please.
24 (Whereupon, the court reporter marked Defendant's
25 Exhibit Number 6 for identification.)

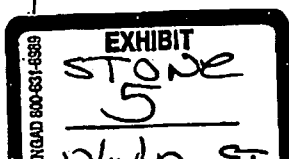
STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>		<u>ADVANCE</u> <u>AMOUNT</u>
02-17-04	WIRE TRANSFER TO BYTE	CONTRACT	
03-01-04	WIRE TRANSFER TO BYTE	CONTRACT	50,000.00
03-10-04	WIRE TRANSFER TO BYTE	CONTRACT	17,500.00
03-29-04	97763	CONTRACT	25,000.00
04-14-04	58882	CONTRACT	10,000.00
04-28-04	97895	CONTRACT	17,500.00
05-06-04	92345	CONTRACT	17,500.00
05-17-04	92349	CONTRACT	7,500.00
05-27-04	92363	CONTRACT	10,000.00
06-14-04	92380	CONTRACT	17,500.00
07-13-04	92398	CONTRACT	17,500.00
			10,000.00
TOTAL 2004 STONE TO BYTE			200,000.00

05-11-05	92611		
05-13-05	92612		4,000.00
05-16-05	92613		4,000.00
05-17-05	92618		3,000.00
05-19-05	92621		7,000.00
05-20-05	92622		3,000.00
05-25-05	92624		4,500.00
05-31-05	92631		500.00
06-01-05	92632		4,000.00
06-03-05	92633		3,500.00
06-24-05	92644		2,500.00
06-27-05	92646		2,000.00
06-28-05	92647		3,700.00
06-29-05	92648		2,000.00
07-15-05	92652		4,000.00
07-20-05	92654		10,000.00
07-22-05	92655		5,000.00
07-25-05	92656		4,000.00
07-26-05	92657		5,000.00
07-29-05	92660		4,800.00
08-01-05	92661		1,000.00
08-02-05	92662		6,300.00
08-03-05	92663		1,000.00
08-05-05	92664		4,500.00
08-08-05	92666		3,000.00
08-09-05	92668		5,000.00
08-10-05	92669		3,500.00
08-11-05	92671		3,500.00
08-15-05	92674		8,000.00
08-16-05	92675		5,500.00
08-17-05	92676		1,000.00
08-22-05	92677		3,500.00
08-23-05	92678		3,500.00
08-24-05	92679		3,500.00
08-26-05	92680		4,000.00
09-15-05	92684		4,000.00
09-16-05	92685		500.00
09-19-05	92686		3,000.00
09-20-05	92689		5,200.00
09-21-05	92690		1,000.00
09-23-05	92691		4,000.00
10-05-05	92692		2,000.00
07-05-05	99517		1,000.00
10-18-05	92695		8,000.00
11-03-05	92703		2,000.00
12-07-05	99785		2,100.00
			7,600.00

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STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE AMOUNT</u>
12-09-05	92715	
12-28-05	92722	7,350.00
12-29-05	92723	5,000.00
12-30-05	92724	2,000.00
		27,000.00
		215,050.00

JACK PERSONAL CHECKS TO BYTE

08-29-05	2347	
09-02-05		9,000.00
09-14-05	2366	7,000.00
		6,000.00

TOTAL 2005 STONE TO BYTE

237,050.00

01-03-06	92729	
01-04-06	92730	39,000.00
01-05-06	92731	7,000.00
02-01-06	92735	2,800.00
02-02-06	92736	10,000.00
02-06-06	92737	30,000.00
02-07-06	92742	2,200.00
03-01-06	92745	1,200.00
03-02-06	92747	16,000.00
03-03-06	99875	10,000.00
03-07-06	99896	12,500.00
03-09-06	99897	1,000.00
03-24-06	99907	2,000.00
04-04-06	99910	5,000.00
05-02-06	99930	16,000.00
06-01-06	99959	3,500.00
06-05-06	99967	7,100.00
06-30-06	92758	24,000.00
08-31-06	TRANSFER TO BYTE	20,000.00
09-01-06	TRANSFER TO BYTE	8,500.00
10-03-06	TRANSFER TO BYTE	24,500.00
12-19-06	TRANSFER TO BYTE	2,000.00
		3,000.00

TOTAL 2006 STONE TO BYTE

247,300.00

01-02-07	TRANSFER TO BYTE	
01-08-07	TRANSFER TO BYTE	600.00
01-08-07	TRANSFER TO BYTE	1,300.00
01-17-07	TRANSFER TO BYTE	50.00
01-31-07	TRANSFER TO BYTE	200.00
02-02-07	TRANSFER TO BYTE	22,000.00
03-02-07	JACK DEPOSIT DIRECTLY TO BYTE	2,000.00
03-06-07	JACK DEPOSIT DIRECTLY TO BYTE	5,000.00
05-02-07	TRANSFER TO BYTE	1,200.00
05-04-07	TRANSFER TO BYTE	13,000.00
05-09-07	TRANSFER TO BYTE	1,600.00
06-29-07	TRANSFER TO BYTE	1,740.00
06-29-07	TRANSFER TO BYTE	85,000.00
07-24-07	TRANSFER TO BYTE	50,000.00
07-31-07	TRANSFER TO BYTE	6,000.00
08-01-07	TRANSFER TO BYTE	30,000.00
08-03-07	TRANSFER TO BYTE	27,000.00
08-09-07	TRANSFER TO BYTE	1,500.00
		10,000.00

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STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE</u> <u>AMOUNT</u>
08-13-07	TRANSFER TO BYTE	
09-04-07	TRANSFER TO BYTE	5,000.00
10-01-07	TRANSFER TO BYTE	10,500.00
10-02-07	TRANSFER TO BYTE	25,000.00
10-12-07	TRANSFER TO BYTE	12,500.00
10-30-07	TRANSFER TO BYTE	5,000.00
10-31-07	TRANSFER TO BYTE	26,000.00
11-01-07	TRANSFER TO BYTE	45,000.00
11-02-07	TRANSFER TO BYTE	10,000.00
11-05-07	TRANSFER TO BYTE	1,200.00
11-15-07	TRANSFER TO BYTE	20,200.00
11-19-07	TRANSFER TO BYTE	15,000.00
11-20-07	TRANSFER TO BYTE	900.00
11-29-07	TRANSFER TO BYTE	2,200.00
12-03-07	TRANSFER TO BYTE	20,000.00
12-04-07	TRANSFER TO BYTE	25,000.00
12-07-07	TRANSFER TO BYTE	12,200.00
12-31-07	DEP IN BYTE BY JACK - CK NO 2780	3,800.00
12-31-07	TRANSFER TO BYTE	~~1,000.00~~
		458.00
TOTAL 2007 STONE TO BYTE		499,140.00

01-02-08	DEP IN BYTE BY JACK -	
01-03-08	TRANSFER TO BYTE	3,800.00
01-15-08	TRANSFER TO BYTE	8,700.00
01-31-08	TRANSFER TO BYTE	32,000.00
02-08-08	TRANSFER TO BYTE	12,000.00
02-12-08	TRANSFER TO BYTE	3,200.00
02-23-08	DEP IN BYTE BY JACK - CK NO 1025	19,500.00
02-29-08	TRANSFER TO BYTE	3,900.00
03-10-08	TRANSFER TO BYTE	15,000.00
04-17-08	TRANSFER TO BYTE	32,000.00
04-30-08	TRANSFER TO BYTE	3,000.00
05-02-08	TRANSFER TO BYTE	9,500.00
05-05-08	TRANSFER TO BYTE	26,000.00
05-05-08	TRANSFER TO BYTE	14,500.00
05-06-08	TRANSFER TO BYTE	1,000.00
05-19-08	TRANSFER TO BYTE	14,000.00
05-20-08	TRANSFER TO BYTE	3,310.00
05-28-08	TRANSFER TO BYTE	2,450.00
05-28-08	TRANSFER TO BYTE	37,000.00
07-31-08	DEP IN BYTE RETURNED	500.00
08-04-08	TRANSFER TO BYTE	7,800.00
08-28-08	JACK PAYMENT TO SUNTRUST	1,800.00
08-31-08	CASH DEPOSITS INTO BYTE	746.00
09-16-08	JACK DEPOSIT INTO BB&T	8,900.00
10-31-08	JACK DEPOSIT INTO BB&T	600.00
11-26-08	JACK TRANS FROM HANIE HIP	20,000.00
11-30-08	CASH INVESTED BY JACK	30,000.00
12-03-08	JACK CASH DEPOSIT	400.00
12-15-08	JACK CASH DEPOSIT-LN GREER ST BANK	6,720.00
12-15-08	JACK CASH DEPOSIT-WIRE TRANS IN	5,085.00
12-15-08	JACK CASH DEPOSIT	45,000.00
		37,000.00
TOTAL 2008 STONE TO BYTE		405,411.00

BYTE TO STONE

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R. 197

Pay to Stone
2005 TO 2008 BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE</u> <u>AMOUNT</u>
07-06-05	19303	
07-07-05	19304	14,000.00
07-13-05	19324	4,000.00
07-14-05	19337	15,000.00
08-15-05	19412	15,000.00
09-30-05	19543	2,000.00
10-04-05	19544	20,000.00
11-18-05	19646	10,000.00
11-21-05	19650	2,500.00
11-22-05	19651	3,000.00
11-30-05	19663	4,000.00
12-02-05	19664	2,200.00
12-21-05	19702	1,500.00
12-27-05	19712	22,000.00
		10,000.00
TOTAL 2005 BYTE TO STONE		125,200.00

01-26-06	19762	9,000.00
02-13-06	19776	1,000.00
02-24-06	19797	7,600.00
02-28-06	19802	3,500.00
04-01-06	19828	5,000.00
04-03-06	19828	20,000.00
04-13-06	19848	5,000.00
04-17-06	19863	30,000.00
05-04-06	19902	4,000.00
05-16-06	19916	55,000.00
06-12-06	19958	6,000.00
06-21-06	19944	25,000.00
06-27-06	19981	30,000.00
08-03-06	TRANSFER TO STONE	2,000.00
08-10-06	TRANSFER TO STONE	14,000.00
08-18-06	TRANSFER TO STONE	5,000.00
08-22-06	TRANSFER TO STONE	15,000.00
08-28-06	TRANSFER TO STONE	13,000.00
08-30-06	TRANSFER TO STONE	2,700.00
08-31-06	TRANSFER TO STONE	2,600.00
09-05-06	TRANSFER TO STONE	1,500.00
09-06-06	TRANSFER TO STONE	1,000.00
09-07-06	TRANSFER TO STONE	550.00
09-08-06	TRANSFER TO STONE	15,000.00
09-13-06	TRANSFER TO STONE	700.00
09-14-06	TRANSFER TO STONE	900.00
09-15-06	TRANSFER TO STONE	3,500.00
09-18-06	TRANSFER TO STONE	3,500.00
09-18-06	TRANSFER TO STONE	2,500.00
09-20-06	TRANSFER TO STONE	27,000.00
09-26-06	TRANSFER TO STONE	1,300.00
09-27-06	TRANSFER TO STONE	2,500.00
09-28-06	TRANSFER TO STONE	4,700.00
10-02-06	TRANSFER TO STONE	2,800.00
10-04-06	TRANSFER TO STONE	2,000.00
10-06-06	TRANSFER TO STONE	2,000.00
10-10-06	TRANSFER TO STONE	6,500.00
10-10-06	TRANSFER TO STONE	6,500.00
10-11-06	TRANSFER TO STONE	2,100.00
10-12-06	TRANSFER TO STONE	100.00
10-13-06	TRANSFER TO STONE	1,500.00

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 R. 198

STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE AMOUNT</u>
10-13-06	TRANSFER TO STONE	
10-20-06	TRANSFER TO STONE	3,000.00
10-24-06	TRANSFER TO STONE	3,000.00
10-25-06	TRANSFER TO STONE	6,800.00
10-28-06	TRANSFER TO STONE	800.00
10-30-06	TRANSFER TO STONE	16,000.00
10-31-06	TRANSFER TO STONE	16,000.00
10-31-06	TRANSFER TO STONE	10,000.00
11-01-06	TRANSFER TO STONE	10,000.00
11-03-06	TRANSFER TO STONE	5,200.00
11-03-06	TRANSFER TO STONE	4,800.00
11-07-06	TRANSFER TO STONE	4,500.00
11-14-06	TRANSFER TO STONE	3,500.00
11-17-06	TRANSFER TO STONE	3,000.00
11-20-06	TRANSFER TO STONE	1,350.00
11-21-06	TRANSFER TO STONE	7,000.00
11-22-06	TRANSFER TO STONE	5,000.00
11-24-06	TRANSFER TO STONE	10,000.00
11-24-06	TRANSFER TO STONE	5,000.00
11-28-06	TRANSFER TO STONE	4,000.00
11-29-06	TRANSFER TO STONE	2,000.00
11-30-06	TRANSFER TO STONE	8,000.00
12-04-06	TRANSFER TO STONE	1,100.00
12-04-06	TRANSFER TO STONE	4,000.00
12-05-06	TRANSFER TO STONE	2,800.00
12-05-06	TRANSFER TO STONE	12,000.00
12-06-06	TRANSFER TO STONE	15,000.00
12-08-06	TRANSFER TO STONE	1,000.00
12-12-06	TRANSFER TO STONE	2,000.00
12-13-06	TRANSFER TO STONE	3,100.00
12-14-06	TRANSFER TO STONE	5,000.00
12-15-06	TRANSFER TO STONE	5,000.00
12-18-06	TRANSFER TO STONE	2,000.00
12-26-06	TRANSFER TO STONE	35,000.00
12-26-06	TRANSFER TO STONE	3,000.00
12-28-06	TRANSFER TO STONE	500.00
		5,000.00
TOTAL 2006 BYTE TO STONE		569,000.00

01-08-07	TRANSFER TO STONE	
01-11-07	TRANSFER TO STONE	4,250.00
01-12-07	TRANSFER TO STONE	2,400.00
01-16-07	TRANSFER TO STONE	5,000.00
01-22-07	TRANSFER TO STONE	2,200.00
01-26-07	TRANSFER TO STONE	1,000.00
02-06-07	TRANSFER TO STONE	4,000.00
02-07-07	TRANSFER TO STONE	8,000.00
02-08-07	TRANSFER TO STONE	2,500.00
02-08-07	TRANSFER TO STONE	6,000.00
02-21-07	TRANSFER TO STONE	200.00
02-26-07	TRANSFER TO STONE	6,000.00
02-27-07	TRANSFER TO STONE	550.00
03-01-07	TRANSFER TO STONE	5,500.00
03-02-07	TRANSFER TO STONE	3,200.00
03-08-07	TRANSFER TO STONE	2,000.00
03-09-07	TRANSFER TO STONE	6,900.00
03-13-07	TRANSFER TO STONE	10,000.00
03-13-07	TRANSFER TO STONE	3,100.00
03-13-07	TRANSFER TO STONE	1,000.00
03-14-07	TRANSFER TO STONE	1,000.00
		500.00

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R. 199

STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE</u> <u>AMOUNT</u>	
03-19-07	TRANSFER TO STONE		
03-21-07	TRANSFER TO STONE	2,000.00	
03-23-07	TRANSFER TO STONE	3,700.00	
03-29-07	TRANSFER TO STONE	1,700.00	
03-30-07	TRANSFER TO STONE	1,600.00	
03-30-07	TRANSFER TO STONE	6,000.00	
04-02-07	TRANSFER TO STONE	1,300.00	
04-03-07	TRANSFER TO STONE	5,200.00	
04-04-07	TRANSFER TO STONE	5,000.00	
04-04-07	TRANSFER TO STONE	2,000.00	
04-04-07	TRANSFER TO STONE	1,000.00	
04-06-07	TRANSFER TO STONE	800.00	
04-12-07	TRANSFER TO STONE	6,000.00	
04-13-07	TRANSFER TO STONE	2,500.00	
04-17-07	TRANSFER TO STONE	1,800.00	
04-17-07	TRANSFER TO STONE	2,100.00	
04-24-07	TRANSFER TO STONE	600.00	
04-25-07	TRANSFER TO STONE	1,200.00	
04-25-07	TRANSFER TO STONE	1,900.00	
04-27-07	TRANSFER TO STONE	5,200.00	
04-30-07	CK NO. 20301 TO JACK STONE	6,100.00	
04-30-07	TRANSFER TO STONE	16,800.00	COPY WITH ENTRY
05-01-07	TRANSFER TO STONE	1,000.00	
05-03-07	TRANSFER TO STONE	750.00	
05-10-07	TRANSFER TO STONE	3,500.00	
05-10-07	TRANSFER TO STONE	300.00	
05-14-07	TRANSFER TO STONE	100.00	
05-16-07	TRANSFER TO STONE	10,000.00	
05-18-07	TRANSFER TO STONE	14,000.00	
05-23-07	TRANSFER TO STONE	1,000.00	
05-25-07	TRANSFER TO STONE	2,000.00	
05-25-07	TRANSFER TO STONE	2,000.00	
05-30-07	TRANSFER TO STONE	2,000.00	
06-01-07	TRANSFER TO STONE	11,000.00	
06-04-07	TRANSFER TO STONE	1,500.00	
06-05-07	TRANSFER TO STONE	5,000.00	
06-06-07	TRANSFER TO STONE	3,000.00	
06-07-07	TRANSFER TO STONE	3,000.00	
06-11-07	TRANSFER TO STONE	2,000.00	
06-13-07	TRANSFER TO STONE	2,000.00	
06-14-07	TRANSFER TO STONE	10,000.00	
06-15-07	TRANSFER TO STONE	5,000.00	
06-18-07	WIRE TO JACK FROM BYTE	7,000.00	
06-19-07	TRANSFER TO STONE	4,600.00	COPY WITH ENTRY
06-19-07	TRANSFER TO STONE	14,000.00	
06-21-07	TRANSFER TO STONE	4,500.00	
06-21-07	WIRE TO JACK FROM BYTE	4,500.00	
06-28-07	TRANSFER TO STONE	700.00	COPY WITH ENTRY
08-13-07	TRANSFER TO STONE	6,800.00	
08-15-07	TRANSFER TO STONE	3,000.00	
09-11-07	TRANSFER TO STONE	3,500.00	
09-14-07	TRANSFER TO STONE	4,000.00	
09-17-07	TRANSFER TO STONE	7,000.00	
09-25-07	TRANSFER TO STONE	4,500.00	
09-26-07	TRANSFER TO STONE	1,000.00	
09-27-07	TRANSFER TO STONE	9,600.00	
10-04-07	TRANSFER TO STONE	6,000.00	
11-06-07	TRANSFER TO STONE	3,000.00	
12-14-07	TRANSFER TO STONE	4,800.00	
12-17-07	TRANSFER TO STONE	3,500.00	
12-19-07	TRANSFER TO STONE	9,500.00	
		11,000.00	

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R. 200

STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE</u> <u>AMOUNT</u>
12-27-07	TRANSFER TO STONE	4,000.00
TOTAL 2007 BYTE TO STONE		345,450.00
01-14-08	BYTE CK NO. 20766 TO JACK	
01-14-08	TRANSFER TO STONE	2,700.00
01-28-08	TRANSFER TO STONE	3,500.00
02-04-08	TRANSFER TO STONE	4,000.00
02-21-08	TRANSFER TO STONE	240.00
02-25-08	TRANSFER TO STONE	3,500.00
02-28-08	TRANSFER TO STONE	8,500.00
03-03-08	TRANSFER TO STONE	7,900.00
03-14-08	TRANSFER TO STONE	4,900.00
03-19-08	BYTE CASHIERS CK TO JACK	6,000.00
03-19-08	TRANSFER TO STONE	1,175.00
03-26-08	TRANSFER TO STONE	1,500.00
03-28-08	TRANSFER TO STONE	500.00
03-31-08	TRANSFER TO STONE	12,500.00
04-01-08	TRANSFER TO STONE	4,000.00
04-02-08	TRANSFER TO STONE	4,500.00
04-07-08	TRANSFER TO STONE	2,200.00
04-07-08	TRANSFER TO STONE	3,900.00
04-08-08	TRANSFER TO STONE	7,000.00
04-10-08	TRANSFER TO STONE	5,800.00
04-11-08	BYTE WIRE TO JOHN LATHAM FOR JACK	8,500.00
04-15-08	TRANSFER TO STONE	10,000.00
04-21-08	TRANSFER TO STONE	1,400.00
04-21-08	TRANSFER TO STONE	700.00
04-23-08	TRANSFER TO STONE	4,600.00
04-29-08	TRANSFER TO STONE	900.00
05-01-08	TRANSFER TO STONE	9,375.00
05-06-08	TRANSFER TO STONE	200.00
05-10-08	TRANSFER TO STONE	4,910.00
05-12-08	TRANSFER TO STONE	1,470.00
05-12-08	TRANSFER TO STONE	16,000.00
05-27-08	TRANSFER TO STONE	200.00
05-27-08	TRANSFER TO STONE	5,000.00
05-27-08	TRANSFER TO STONE	3,050.00
05-30-08	TRANSFER TO STONE	1,000.00
06-03-08	TRANSFER TO STONE	600.00
06-03-08	TRANSFER TO STONE	2,300.00
06-05-08	TRANSFER TO STONE	1,500.00
06-10-08	TRANSFER TO STONE	3,000.00
06-11-08	TRANSFER TO STONE	1,700.00
06-12-08	TRANSFER TO STONE	50.00
06-13-08	TRANSFER TO STONE	1,550.00
06-17-08	TRANSFER TO STONE	2,850.00
06-17-08	TRANSFER TO STONE	550.00
06-24-08	TRANSFER TO STONE	1,800.00
06-26-08	TRANSFER TO STONE	10,000.00
06-27-08	TRANSFER TO STONE	2,000.00
06-30-08	TRANSFER TO STONE	8,450.00
07-07-08	TRANSFER TO STONE	1,000.00
07-07-08	TRANSFER TO STONE	800.00
07-07-08	TRANSFER TO STONE	1,750.00
07-14-08	TRANSFER TO STONE	100.00
07-31-08	PAYMENT TO CAROLINA FIRST	3,000.00
08-31-08	JACK STONE BB&T	5,250.00
09-02-08	JACK STONE CK 099	300.00
09-05-08	JACK STONE CK 050	500.00
		700.00

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BTYPE 003869
R. 201

STONE TO BYTE

<u>DATE</u>	<u>CK NO.</u>	<u>ADVANCE AMOUNT</u>
09-16-08	JACK STONE CK 051	650.00
09-16-08	JACK OUTGOING WIRE FROM BYTE	600.00
09-16-08	TRANSFER TO STONE	500.00
09-16-08	TRANSFER TO STONE	200.00
09-18-08	JACK STONE CK 052	100.00
09-20-08	JACK STONE CK 2001	7,500.00
09-20-08	JACK STONE CK 2002	1,050.00
09-22-08	JACK OUTGOING WIRE FROM BYTE	5,000.00
09-23-08	JACK STONE CK 2006	3,000.00
09-23-08	JACK STONE CK 2007	2,000.00
09-26-08	JACK STONE CK 2009	350.00
09-29-08	JACK STONE CK 2010	2,100.00
09-30-08	JACK STONE CK 2011	1,200.00
09-30-08	JACK STONE CK 2012	800.00
10-03-08	JACK STONE CK 2028	800.00
10-03-08	JACK STONE CK 2029	900.00
10-06-08	JACK DRAFT INS	6,000.00
10-07-08	JACK DRAFT INS	4,500.00
10-07-08	JACK TELEPHONE PAY TOYOTA	2,947.93
10-08-08	JACK DRAFT INS	5,200.00
10-09-08	JACK STONE CK 2040	1,000.00
10-09-08	JACK STONE CK 2084	8,500.00
10-10-08	JACK STONE CK 2051	1,100.00
10-14-08	JACK STONE CK 2064	400.00
10-14-08	JACK STONE CK 2085	600.00
10-18-08	JACK STONE CK 2071	400.00
10-27-08	JACK STONE CK 2076	500.00
10-28-08	JACK STONE CK 2079	100.00
10-29-08	JACK STONE CK 2088	107.91
10-31-08	JACK STONE CK 2090 HANIE HIPPI	20,000.00
10-31-08	JACK CASH WITHDRAWN	1,750.00
11-01-08	JACK STONE CK 2101	150.00
11-04-08	JACK STONE CK 2102	250.00
11-05-08	JACK STONE CK 2108	1,156.00
11-05-08	JACK STONE CK 2161	350.00
11-05-08	JACK STONE LOAN PAY CAROLINA FIRST	21,754.29
11-26-08	JACK STONE CK 2137	900.00
12-16-08	JACK STONE CASHIERS CK HANIE HIPPI	10,000.00
12-16-08	JACK STONE CASHIERS CK	1,000.00
12-17-08	JACK STONE CASHIERS CK	1,506.00
12-31-08	JACK STONE CK 2144 LN GREER STATE	26,036.31
12-31-08	JACK STONE CK 2145	2,418.08
12-31-08	JACK STONE CK 2147	100.00
12-31-08	JACK STONE CK 2158	350.00
12-31-08	JACK STONE WIRE TRANSFER	4,000.00
12-31-08	JACK STONE CK 2173	90.00
TOTAL 2008 BYTE TO STONE		349,284.52
NET 2004 STONE TO BYTE		200,000.00
NET 2005 STONE TO BYTE		111,850.00
NET 2006 BYTE TO STONE		(321,700.00)
NET 2007 STONE TO BYTE		153,690.00
NET 2008 STONE TO BYTE		56,126.48
INVESTMENT BALANCE 12-31-08		199,966.48
BYTE I/C PAYABLE TO STONE 5-31-08		9,237.68
NET PAYABLE BYTE TO STONE		209,204.16

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BTYE 003870
R. 202

EXHIBIT 3

1 International had a business income loss of
2 \$2,665,000?

3 A. Yes.

4 Q. Is it possible for you to enter into that
5 storage unit and tell us whether you still have the
6 tax returns for Stone International, LLC for the
7 period of time of 2000 -- calendar years 2005 and
8 2006?

9 A. It would take me a while, but yes.

10 Q. All right. And you would do that, and
11 then if you have them, provide them to your
12 attorney?

13 A. I will.

14 Q. Because for whatever reason, I didn't get
15 2005, 2006 when these were produced to me by your
16 prior attorney.

17 A. Okay.

18 MR. HILLER: I've got 2004, skipped to
19 2007, which I'm going to mark now.

20 (Whereupon, the court reporter marked Defendant's
21 Exhibit Number 11 for identification.)

22 EXAMINATION RESUMED BY MR. HILLER:

23 Q. So what we've now marked as Defendant's
24 Exhibit 11, which appears to be out of order, the
25 Depreciation and Amortization Form, 4562 is in the

1 front, but if you flip to the second page, that
2 would be the first page of the return, correct?

3 A. I think -- are you talking about -- we're
4 looking to compare the previous document. It's the
5 second page of the second document?

6 Q. Right. Which would typically -- that's
7 your first page of the partnership return --

8 A. Yes.

9 Q. -- which shows your gross receipts, a
10 summary of your expenses, and your net taxable
11 responsibility?

12 A. Yes.

13 Q. All right. And once again, it shows the
14 address of Stone International as 317 Neely Ferry
15 Road, Mauldin?

16 A. Yes, sir.

17 Q. And in that calendar year, there was a
18 loss of \$1,436,000 and some change, correct?

19 A. Yes, sir. And --

20 Q. Well, actually -- okay. Let's just -- can
21 we just take -- she miscopied. Take that first page
22 off. This is the 2005 return, right? Can we just
23 put a new sticker on that page with the page off,
24 the same Number. Let me put this Exhibit 11 on
25 there. Now, we've got it straight. What's now

Eugene E. Stone, IV

1 marked correctly as the 2000 -- I mean as
2 Defendant's Exhibit 11 is the 2005 return. The one
3 I don't have is 2006, but this was your 2005 tax
4 return for Stone International, LLC, correct?

5 A. That's what it says.

6 Q. All right.

7 A. It's not signed.

8 Q. No, it's not. Apparently, it was 2006 and
9 2007 that I don't have, so that's what I need you to
10 look for.

11 (Whereupon, the court reporter marked Defendant's
12 Exhibit Number 12 for identification.)

13 EXAMINATION RESUMED BY MR. HILLER:

14 Q. I've marked 2008 as Defendant's Exhibit
15 12, and it is difficult to read. This is a
16 handwritten return, correct?

17 A. It is.

18 Q. Did you prepare this return yourself
19 personally?

20 A. No, sir.

21 Q. Do you know who prepared it, because it
22 doesn't indicate a paid preparer?

23 A. I don't.

24 Q. And by this time, it doesn't appear that
25 the address up there is Neely Ferry Road but

1 something Way. Do you recall where you were at that
2 point?

3 A. I think Woodland Way.

4 Q. Woodland Way. Is that your residence?

5 A. No, I live on Camperdown -- I live on 600
6 University Ridge.

7 Q. Okay. So you don't recognize that
8 address?

9 A. I don't recognize that address.

10 Q. All right. And this shows that in 2008,
11 the total gross sales of Stone International, LLC
12 were \$39,415?

13 A. Yes, sir.

14 Q. And the total wages paid by Stone
15 International in 2008 were \$25,653?

16 A. That's what it says.

17 (Whereupon, the court reporter marked Defendant's
18 Exhibit Number 13 for identification.)

19 EXAMINATION RESUMED BY MR. HILLER:

20 Q. Mr. Stone, what we've marked as
21 Defendant's Exhibit 13 purports to be the 2009
22 Partnership Income Return for Stone International,
23 LLC, and it's a little more readable. That appears
24 to be Camperdown Way. Is that where you live, the
25 address?

Eugene E. Stone, IV

1 A. We were -- we had an office at East
2 Camperdown Way at that time.

3 Q. Okay. And for 2009, it's also handwritten
4 and this one is signed. It shows zero income?

5 A. Yes, sir.

6 Q. And I can't quite read it.

7 A. And that doesn't look like my signature.

8 Q. \$5800, something like that, in salaries.
9 Do you see that?

10 A. Yes.

11 Q. Can you read that?

12 A. Yes.

13 Q. And even though on line 21, it shows total
14 deductions, I believe it's \$38,300 and something,
15 you show a net loss of over \$150,000, is that
16 correct?

17 A. That's correct. This was after we had
18 been kicked out of Byte and were trying to determine
19 what our future would be, and found this location at
20 Camperdown Way, and started our research on
21 hydroponics and developing support for the
22 agriculture industry. That was -- and we were
23 winding down our business in Columbia. Of course,
24 we had no income from Byte.

25 Q. And no income from Stone International,

Eugene E. Stone, IV

1 LLC? It was no longer doing business?

2 A. It was in a dormant -- it was looking to
3 see what it could do, but it was not -- it was not
4 generating any income, it was not providing any
5 income during that time.

6 Q. Well, obviously, it had no gross receipts?

7 A. That's correct, but it did have expenses.

8 MR. HILLER: All right. Then let's mark
9 that, please.

10 THE WITNESS: Which is basically the rent.
11 (Whereupon, the court reporter marked Defendant's
12 Exhibit Number 14 for identification.)

13 THE WITNESS: But this was after -- we
14 were shut out of Byte in February, I think, of
15 2008, and so we relocated.

16 EXAMINATION RESUMED BY MR. HILLER:

17 Q. Well, the fact that Stone was no longer
18 allowed in the facilities of Byte should not have
19 had any impact on the operation of Stone
20 International, should it?

21 A. That is correct, except we were closing
22 down some of our manufacturing businesses. We were
23 in the underwear business, and we were closing that
24 business down.

25 Q. Right. But whether Stone International

1 made money or not didn't have anything to do with
2 the operation of Byte?

3 A. No, that's correct.

4 Q. What we've now marked as Exhibit 14
5 appears to be an amended -- if you look down under
6 G, there's a check on "amended return." Do you see
7 that?

8 A. I'm looking.

9 Q. Well, G is going to be right under the box
10 where it says the name.

11 A. Yes. "Check applicable boxes. Amended
12 return."

13 Q. For 2009?

14 A. For 2009.

15 Q. And this does appear to have been prepared
16 by a paid preparer, because there's a name there
17 that I can't read?

18 A. I concur. I can't read that either.

19 Q. Do you recall who that was that prepared
20 that return for you?

21 A. No, sir, I don't.

22 Q. Were you using an accountant during that
23 period of time?

24 A. We didn't have a full-time accountant at
25 that time. I don't know who we -- we probably just

1 went down the street and got somebody, an accountant
2 to -- because they certainly -- to prepare the
3 returns, based on the information we had at that
4 time.

5 Q. And this return on at least the front
6 page, the one that's signed and indicates illegibly
7 to me who prepared it has blanks in every box,
8 correct?

9 A. Yes.

10 Q. No income, no expenses?

11 A. No income and no expenses.

12 Q. And then on page 2, there's a completion
13 of the balance sheet?

14 A. Yes.

15 Q. And I haven't compared it back to the
16 earlier 2009 return, but I assume that was the only
17 -- well, that was part of the change as well?

18 A. Yes.

19 Q. And then there's a note, page 3, stating
20 that it changed to schedule L, line 19, is, "Notes
21 payable in more than one year." Are you aware of
22 any other modifications from the amended return than
23 that?

24 A. No.

25 (Whereupon, the court reporter marked Defendant's

1 Exhibit Number 15 for identification.)

2 EXAMINATION RESUMED BY MR. HILLER:

3 Q. Mr. Stone, what we've now marked as
4 Defendant's Exhibit 15 appears to be -- and this was
5 a document that was produced to me from your prior
6 counsel. It states it's an aged payables for Byte
7 Software LLC between the period of 1-1-2007 and
8 4-1-2009. Do you see that?

9 A. Yes.

10 Q. This would have been prepared by the
11 software that was used to manage the business during
12 that period of time?

13 A. I have no basis of answering that
14 question. I don't know.

15 Q. Well, you had it in your possession,
16 because your attorneys produced it to me.

17 A. Well, but I don't know who prepared the
18 document or how it was prepared.

19 Q. Did you have any reason to believe that
20 it's not accurate?

21 A. I would have to go through it and have --
22 I have no feelings about it at all.

23 Q. Well, we're going to go through it. If
24 you would, go back to page 1 and look at the very
25 first vendor, Alicia King. Do you know who that

1 vendor is?

2 A. Alicia King had worked for Byte.

3 Q. She worked for Byte?

4 A. She had -- she was an employee of Byte
5 that had some children and was working at home doing
6 -- with several accounts, if that's the Alicia that
7 this is referring to. I don't recall her last name.

8 Q. All right. Did she ever work for Stone
9 International?

10 A. No, sir.

11 Q. Turn over to page 2 for me. The bottom of
12 the page, there's an entry for Bob Stan. Do you
13 know who that is?

14 A. Bob Stan was the original owner of Intel,
15 the company that we purchased from Canada. And we
16 retained him on the payroll to help us transition
17 his accounts into using Byte software.

18 Q. Okay. Flip over to page 3 for me. Right
19 under the end of Bob Stan, there is one called
20 "bonus." Do you have any idea what that means?

21 A. Not a clue.

22 Q. Not a clue. And it appears to be \$265 on
23 a monthly basis?

24 A. Yeah, I have no idea what that's for.

25 Q. All right. Below that is Carolina First

Eugene E. Stone, IV

1 Bank. Do you know what that is?

2 A. We probably had some obligation to the
3 bank, and that was payment to the bank.

4 Q. Do you know whether that was a Byte
5 obligation or a Stone obligation?

6 A. I don't know that.

7 Q. Would you have any records that would?

8 A. I don't know, sir.

9 Q. Flip over to page 4 for me. Do you know
10 who Corbitt is?

11 A. There was a Greg Corbitt. I think he did
12 sales, but I don't know, I don't recall. But he was
13 a Byte -- he was associated with Byte, he had
14 nothing to do with Stone.

15 Q. Flip over to page 6 for me. Down at the
16 next to the last vendor on that page, there's
17 something called "Find Great." Do you know what
18 that is?

19 A. I think that was a company that's called
20 Find Great People that was a recruiting company for
21 people, and that's the only thing that I could think
22 that that would be, and that would have been a Byte
23 expense.

24 Q. So in that time period between January
25 first, 2007 and April 21st, 2009, you incurred

1 almost \$102,000 liability to that company?

2 A. Apparently, that's correct.

3 Q. Do you recall what you were looking for?

4 A. Looking for personnel during a very --
5 during that very difficult '07-'09 period of time,
6 but I don't recall the amounts or anything else like
7 that.

8 Q. If you would flip over to page 8 for me,
9 the third vendor down is Hinkle. Was that a human
10 being?

11 A. Wait a minute. Let me make sure I'm in
12 the right place.

13 Q. Well, they're alphabetical.

14 A. I'm sorry. I was on the wrong page.

15 Q. Page 8, Hinkle.

16 A. No, sir, I have no recollection.

17 Q. You don't know anything about them?

18 A. No.

19 Q. And the next to the last vendor on that
20 page is something SECUR. Do you have any idea what
21 that was?

22 A. SECUR, I only have RS on my sheet.

23 Q. Mine says -- well, after "Hinkle," it's
24 "IMA," and then there's something, "IR SECUR."

25 A. I have no idea.

1 Q. But you incurred \$64,000 in liability to
2 them in that year?

3 A. I have no idea.

4 Q. Do you have any idea of who RS is, which
5 is the next vendor?

6 A. No.

7 Q. Could that be IRS based on the --

8 A. It could be, it could be, but I do not
9 know.

10 Q. All right. Page 9, it says, "Jack." Is
11 that you?

12 A. I would imagine, but I don't know.

13 Q. And it shows that you received \$109,467,
14 right?

15 A. That's correct. That's the amount, but I
16 don't know if that's me or not.

17 Q. And the next to the last vendor, Kim
18 Gardner, was she a -- or King Gardner?

19 A. Kim -- there was a Kim Gardner that was
20 associated with Byte, but more of a consulting
21 basis, if I remember right.

22 Q. Well, apparently she wasn't an employee
23 because she was receiving net checks, wasn't she?

24 A. No, she was not an employee.

25 Q. And when you say she was associated with

Eugene E. Stone, IV

1 Byte, what were her responsibilities for Byte?

2 A. I think she was doing -- trying to do
3 sales or a sales service, but I'm not clear on that,
4 I don't remember.

5 Q. And apparently she was not paid from June
6 of 2008 until July of 2008. There was left owing to
7 her of \$3757. Do you see that?

8 A. Yeah, we were out of there after the first
9 part of 2009, so I can't speak to that issue.

10 Q. Well, no, this is through 2008.

11 A. I don't know.

12 Q. Were you having difficulty paying the
13 employees during the 2008?

14 A. We had a couple of weeks -- or a couple of
15 months where we had some disruption in the pay, and
16 then we made that up to -- we eventually made all
17 that up.

18 Q. And did you have to cancel -- their health
19 insurance policies get cancelled during that period
20 of time?

21 A. We didn't have the health insurance.

22 Q. Well, you did originally, and then you
23 sent everybody a memo and said you were canceling
24 it?

25 A. That's correct.

1 Q. So originally they all had health
2 insurance at Blue Cross Blue Shield, including Mr.
3 Gause?

4 A. Yes.

5 Q. And at some point, you cancelled that?

6 A. We cancelled it.

7 Q. Do you know who Kirk is? That's the --

8 A. No.

9 Q. You don't know whether that's a human
10 being or --

11 A. No.

12 Q. On page 11, "Nelson," is that a
13 consultant, an employee, a human being?

14 A. I don't know.

15 Q. The next one is, "Nermin." That was an
16 employee, was it not, or a consultant?

17 A. I think that was an employee, but that
18 name -- that's not clear to me. I don't know that.
19 I couldn't speak to that.

20 Q. It would have never been an employee of
21 Stone International?

22 A. No.

23 Q. NuVox, is that phone service?

24 A. I imagine that was the phone service.

25 Q. On page 13, almost at the bottom, there's

1 a vendor called Seams, S-e-a-m-s. Do you have any
2 idea what that is?

3 A. No, sir.

4 Q. Would that have been a vendor that you
5 would have dealt with when you were operating Stone
6 International?

7 A. No, sir.

8 Q. It doesn't have anything to do with the
9 textile industry?

10 A. It would -- things have seams on them, but
11 nobody that I recognize.

12 Q. Okay. Page 14, "Todd Porter"?

13 A. Todd Porter was an employee of -- he was a
14 software -- if I remember right, he was a software
15 writer for Byte.

16 Q. Page 16, "Wells."

17 A. No idea.

18 Q. I looked at some of the notes over on the
19 right-hand side that lead me to believe that could
20 be the landlord?

21 A. It could be the what?

22 Q. The landlord for Neely Farm.

23 A. I don't recall.

24 Q. Well, do you see the note over there on
25 the right-hand side with the "Wells - 2," vendor

1 total where it says the lease amount is \$403.45,
2 insurance has been deducted 187.84, total \$215.70.
3 Were you leasing something from them?

4 A. Not that I recall.

5 MR. HILLER: Let's mark that, please.

6 (Whereupon, the court reporter marked Defendant's
7 Exhibit Number 16 for identification.)

8 EXAMINATION RESUMED BY MR. HILLER:

9 Q. Mr. Stone, this is what we've marked as
10 Exhibit 16. It is also a document that was produced
11 to us by your former counsel. It purports to be a
12 general ledger report for Byte Software, LLC from
13 1-31-05 through 12-31-05. Do you see that?

14 A. Yes.

15 Q. Any reason to believe this is not
16 accurate?

17 A. I have no reason to say one way or the
18 other.

19 Q. Do you know who would have prepared this?

20 A. I suspect Mr. Watt would have done this.

21 Q. Okay.

22 A. If it has to do with accounting, I would
23 suspect it's Mr. Watt.

24 Q. The reason I ask about this is because
25 somebody has written on it, "reversed, reversed,

Eugene E. Stone, IV

1 reversed, reversed," on a number of these
2 transactions. Do you have any knowledge of what
3 that means?

4 A. No, sir, and I don't recognize the
5 handwriting at all.

6 Q. Is there anybody that you're aware of that
7 could tell us what this document reflects?

8 A. No, sir, not that I'm aware of. No.

9 Q. So they couldn't tell us -- like one of
10 them says, "September AP Distribution, Net \$20,000,"
11 and then somebody handwrote "reversed."

12 A. I have no idea at all. Kind of a strange
13 document.

14 Q. If you would just look at the rest of the
15 pages and tell me if you agree that those
16 essentially account for some of the same things that
17 we talked about earlier; transfers between Stone
18 apparel and -- or Stone International and Byte?

19 A. I would suggest that's what that --

20 Q. Because when we get to the very last page
21 --

22 A. Yes.

23 Q. -- it comes up with the same total of
24 \$199,966.48, which we saw on the balance sheet
25 earlier?

1 A. Yes.

2 MR. HILLER: Mark that, please.

3 (Whereupon, the court reporter marked Defendant's
4 Exhibit Number 17 for identification.)

5 EXAMINATION RESUMED BY MR. HILLER:

6 Q. Mr. Stone, what we've marked as
7 Defendant's Exhibit 17 is similar to a document we
8 earlier marked. This is dated December 27th, 2005
9 and appears to be a payroll check register for
10 December 30th, 2005. McCallum, Hurst, Redding,
11 Watt, Pike, Pringle. Are those all employees of
12 Stone International?

13 A. I can't recall Hurst, but McCallum was;
14 Redding was; Watt was; Pike was; I don't recall
15 Pringle.

16 Q. Okay. The second page appears to be this
17 401-K status for that calendar year and what the
18 company match amount was. Does that look like what
19 I'm looking at?

20 A. I think that's what that would be.

21 MR. HILLER: Mark that, please.

22 (Whereupon, the court reporter marked Defendant's
23 Exhibit Number 18 for identification.)

24 EXAMINATION RESUMED BY MR. HILLER:

25 Q. Mr. Stone, what we marked as Defendant's

1 Exhibit 18 is a handwritten document that was
2 produced to us that states at the top that it is,
3 "Stone September Payroll Paid On Byte." Do you see
4 that?

5 A. Yes.

6 Q. And it indicates Suzy Harvey, and it has a
7 Byte check number and a dollar amount, and then
8 Dennis Watt, a transfer from Byte, and a Byte check
9 number totaling \$3,250, is that correct?

10 A. That's correct.

11 Q. And would you agree with me that it
12 appears that Byte is paying their salary in
13 September of 2008?

14 A. I can't interpret what it says. "Stone
15 September Payroll Paid On Byte," that is totally --
16 I think that's very misleading.

17 Q. Well, it indicates that there are Byte
18 checks to those people that were written on those
19 dates, correct?

20 A. Byte check, yes, but, "Stone September
21 Payroll Paid On Byte," I don't know what that means.

22 Q. And the second page also indicates, "Stone
23 October Salaries Paid On Byte," again it references
24 check numbers for DW and SH.

25 A. And I don't know who that would be.

Eugene E. Stone, IV

1 Q. Well DW, you know who that is?

2 A. Dennis Watt.

3 Q. And SH is the same person on page 1, Suzy
4 Harvey, wasn't it?

5 A. Suzy Harvey.

6 Q. And that totaled \$8,634.58, correct?

7 A. Yes, sir.

8 Q. So in late 2008, it appears that Byte had
9 taken over paying the salary of Mr. Watt and Ms.
10 Harvey, at least by then?

11 A. I can't speak to that.

12 Q. Who could?

13 A. Mr. Watt.

14 Q. But he can't?

15 A. No, sir.

16 Q. And do you know where Byte -- what bank
17 Byte was -- had an account with in 2008?

18 A. No.

19 Q. Would you have any banking records for
20 Byte for 2008?

21 A. I doubt it, but we can look. But I doubt
22 it.

23 Q. All right. Well, will you do that?

24 A. Yes.

25 Q. And if you find any, you will turn them

Eugene E. Stone, IV

1 over to your attorney?

2 A. Yes.

3 Q. From any bank?

4 A. Yes. Excuse me one minute.

5 Q. Do you need to take another break?

6 A. Just a very, very, very short one.

7 (Whereupon, a luncheon recess was taken.)

8 MR. HILLER: Back on the record.

9 EXAMINATION RESUMED BY MR. HILLER:

10 Q. Mr. Stone, we're back from our lunch
11 break. I'm going to do the best I can to get
12 through these remaining documents and questions as
13 quickly as possible.

14 A. Thank you.

15 MR. HILLER: Mark that for me, please.
16 (Whereupon, the court reporter marked Defendant's
17 Exhibit Number 19 for identification.)

18 EXAMINATION RESUMED BY MR. HILLER:

19 Q. Mr. Stone, I'm showing you what's been
20 marked as Defendant's Exhibit 19. It appears to be
21 a general ledger report for Stone Apparel produced
22 to us by your previous attorneys. It says, "Period
23 end range date 10-31-2008 through 10-31-2008."
24 Would that have been something that Mr. Watt would
25 have prepared, based on the software utilized to

1 account for Stone International?

2 A. I can only imagine that's the case, but I
3 don't know.

4 Q. There are some charges here on 10-31. It
5 says, "Payroll Paid On Byte Payroll." There are
6 five of those, correct? Do you see those?

7 A. "Payroll paid on Byte."

8 Q. Do you know what that means?

9 A. No, sir.

10 Q. Anyone other than Mr. Watt that you're
11 aware of that would know what that meant?

12 A. Not to my knowledge, no.

13 Q. Would you have any of those records still
14 available?

15 A. I'm sure we do not, but we will --

16 Q. Search for those as well?

17 A. -- search for those. But it is -- and
18 I'll talk to an accountant to see if they can
19 interpret what this is.

20 Q. Who would that be?

21 A. I don't know yet. I'll just find one that
22 I think might.

23 (Whereupon, the court reporter marked Defendant's
24 Exhibit Number 20 for identification.)

25 EXAMINATION RESUMED BY MR. HILLER:

1 Q. Just for the record, also, you understand
2 that subsequent to the taking of this deposition --
3 this case is likely to be scheduled for trial
4 sometime next year. And, of course, if you're going
5 to have an expert review any documents, your
6 attorney will need to know that and disclose it to
7 me in advance.

8 A. And we will fully disclose it, yes, sir.

9 Q. We've now marked Exhibit 20, another
10 document that was produced to us that is captioned,
11 "Byte Payroll Gross - July 2006." Do you see that?

12 A. Yes, sir.

13 Q. Have you ever seen that document before?

14 A. No, sir, not to my knowledge.

15 Q. Do you recognize the names of the people
16 that are listed on the left-hand column?

17 A. I do, and all of the upper group, I'm
18 pretty sure are Byte personnel; and Dennis, and
19 Suzy, and Hazel were Stone personnel.

20 Q. Do you have any idea why they would be
21 shown on a Byte payroll?

22 A. I have no idea, sir.

23 Q. Do you know whether they were, in fact,
24 being paid by Byte?

25 A. No, sir, they were not. I'm sure Hazel

Eugene E. Stone, IV

1 McCallum -- Hazel McCallum had nothing whatsoever to
2 do with Byte.

3 Q. Would you have any records showing that.
4 Stone International was paying the salaries of
5 Dennis Watt, Suzy Harvey, and Hazel McCallum for the
6 calendar year 2006?

7 THE WITNESS: If you'll make a note
8 (indicating Mr. Hughes). 2006, how many years
9 ago is that?

10 EXAMINATION RESUMED BY MR. HILLER:

11 Q. 11.

12 A. I doubt it.

13 Q. Where was Stone International banking in
14 2006?

15 A. I don't recall, sir.

16 Q. You wouldn't have any bank statements, or
17 records, or cancelled checks from that period?

18 A. Not to my knowledge.

19 Q. Would you have still had those documents
20 in 2009?

21 A. I doubt it. We were fighting for room,
22 and grinding up papers, and just cleaning up old
23 stuff.

24 MR. HILLER: Mark that, please.

25 (Whereupon, the court reporter marked Defendant's

1 Exhibit Number 21 for identification.)

2 THE WITNESS: Can I make one comment on
3 this one that we just did here?

4 EXAMINATION RESUMED BY MR. HILLER:

5 Q. 20?

6 A. Just looking at it, it looks like that
7 this was a record of what old salaries had been and
8 then there was some increases given. So it seems
9 like to me that this is more of an information piece
10 as to who got raises during that time. And I'm
11 assuming that's what that is. That all that is is
12 showing what the old amount had been prior to that
13 date and what the new amount would be afterwards.
14 That's my best guess as to what that document is.
15 And I would not need an accountant to tell me that.

16 Q. You're looking now at what we've marked as
17 Exhibit 21. This is styled a, "Resolution of Sole
18 Member, Byte Software LLC"?

19 A. Yes, sir.

20 Q. The second page appears to be signed by
21 Benjamin Gause?

22 A. Yes, sir.

23 Q. Dated 5-22-06?

24 A. Yes, sir.

25 Q. Do you know who prepared this document?

1 A. Andy Goldsmith.

2 Q. And did he do it at your request?

3 A. I think we did it at his recommendation.

4 Q. And was he working for Byte Software, LLC
5 or Stone International?

6 A. No, Stone.

7 Q. And so Stone would have paid him to do
8 this?

9 A. Yes, sir.

10 Q. And this states that in paragraph four,
11 it's appropriate that Byte Software execute the
12 documents needed in order to memorialize this debt
13 and to secure this debt, correct?

14 A. Yes, sir.

15 MR. HILLER: I'm not finished with that,
16 but let's mark this.

17 (Whereupon, the court reporter marked Defendant's
18 Exhibit Number 22 for identification.)

19 EXAMINATION RESUMED BY MR. HILLER:

20 Q. Now, this states that as of February 28th,
21 2006, \$269,450 had been -- is due from Byte Software
22 to Stone International, LLC, is that correct?

23 A. As of that moment.

24 Q. And how did you arrive at that number, do
25 you know?

Eugene E. Stone, IV

1 A. Asked our accountant.

2 Q. Mr. Watt?

3 A. Yes, sir.

4 Q. All right.

5 A. And I am imagining -- I have no
6 recollection of that, but I am imagining that's
7 where I would go to get that number.

8 Q. We've also marked, I believe, and you have
9 been handed Defendant's Exhibit 22.

10 A. Yes, sir.

11 Q. And that appears to be a Commercial Line
12 of Credit Agreement and Note?

13 A. Yes..

14 Q. With a line of credit limit up to
15 \$350,000? --

16 A. That is correct.

17 Q. From Byte Software?

18 A. It was -- there was a note from Stone, who
19 was the lender, and to the borrower, Byte Software.

20 Q. And the maturity date is January of 2009?

21 A. Yes, sir.

22 Q. Do you know what date this agreement was
23 signed?

24 A. There was -- it was signed in May of 2006.

25 Q. Because it too reflects \$269,450 as being

1 currently --

2 A. Well, it was felt like that this -- in
3 order to make sure that there was clarity in terms
4 of what was being done here, that the two documents
5 were appropriate to put together.

6 Q. All right. And the resolution that we
7 talked about with regards to Exhibit 21 and this
8 note, which is Exhibit 22, they were produced with
9 information that you provided to Mr. Goldsmith, who
10 was representing Stone International?

11 A. Yes, sir.

12 Q. And you signed the note from Byte Software
13 back to your company, Stone International?

14 A. Being authorized -- and that was what
15 triggered their -- being authorized to execute this
16 document on behalf of Byte by Benjamin Gause. He
17 authorized me to sign it. And so we voiced that in
18 this document right here with some simplification of
19 what was in this document stated in here so it was
20 very clear as to what it was that was being
21 accomplished here.

22 Q. And so I take it, from that answer, that
23 subject to your clarification, yes, you signed the
24 note?

25 A. I signed the note with his blessing --

1 with Mr. Gause's blessing.

2 Q. Based on Mr. Gause giving that blessing
3 because you informed him that there was a \$269,450
4 debt?

5 A. I informed him that the needs of the
6 business going forward looked like it was going to
7 need a line of credit, and I wanted to formalize
8 that in a commercial line of credit, and he
9 understood that.

10 MR. HILLER: Let's mark that, please.
11 (Whereupon, the court reporter marked Defendant's
12 Exhibit Number 23 for identification.)

13 EXAMINATION RESUMED BY MR. HILLER:

14 Q. Mr. Stone, what we've now marked as
15 Exhibit 23 is a Commercial Security Agreement. Do
16 you recognize that document?

17 A. Is it different than this document
18 (indicating)?

19 Q. Well, the first document -- or the second
20 document, Exhibit 22, is a note, right? And this is
21 the effective version of a mortgage secured by the
22 note, but it's on personal property and not real
23 property. Do you understand that distinction?

24 A. Yes.

25 Q. The last page has a signature line. Is

Eugene E. Stone, IV

1 that your signature?

2 A. Yes, sir.

3 Q. And would you agree with me that Mr.
4 Goldsmith would have prepared this agreement on
5 behalf of Stone International, LLC?

6 A. Yes, sir.

7 Q. And you signed it?

8 A. I did.

9 Q. Subject to the qualifications you gave
10 earlier on behalf of Byte?

11 A. That is correct, and on the blessing of
12 Mr. Gause.

13 Q. Mr. Stone, when that note was paid below
14 zero, did you terminate and cancel the security
15 agreement?

16 A. No, sir.

17 Q. Why?

18 A. It was a note that had a termination date
19 of January of 2009, and we felt like that there
20 would be additional demands on the business. There
21 were already beginning to be some signs that the
22 industry was going to be pushed pretty hard.

23 Q. Do you know what the balance due
24 purportedly under that note was as of its maturity
25 date in January of 2009?

Eugene E. Stone, IV

1 A. I was -- I thought it was about \$200,000.

2 Q. Which would be below the amount that you
3 were obligated to invest as capital in the company
4 pursuant to the original management agreement?

5 A. Well --

6 Q. Correct?

7 A. This had nothing to do with the \$200,000
8 that went in.

9 Q. Well, I think we've already established.
10 that as of the end of calendar year 2008, the amount
11 invested by Stone into Byte was just slightly under
12 \$200,000, correct?

13 A. Just for the moment.

14 Q. As of December 31st, 2008?

15 A. I'd have to go back. The needs of the
16 business were going up and down, and we wanted to
17 make sure that we had adequate capital to be able to
18 maintain the business. And there were signs that --
19 there was some signs that the industry was going to
20 be facing some pretty hard times.

21 Q. And what date do you allege that you were
22 wrongfully dispossessed from the operation of the
23 business?

24 A. In February of 2009.

25 Q. And so that would have been no more than

1 two months after the end of calendar year 2008?

2 A. That's correct, sir.

3 Q. Are you aware of any advances to Byte
4 between December 31st, 2008 and the date you were
5 dispossessed from Stone International?

6 A. Not -- I don't recall any. It could have
7 been, I don't know. It was depending on -- we had
8 -- we were operating the business in a very
9 difficult climate and at a very difficult time. We
10 had the security -- we had the factoring agreement
11 with the bank and so the demands on the cash flow of
12 the business changed day to day.

13 Q. But what we have to establish, Mr. Stone,
14 is whether this was a debt due from Byte to Stone as
15 of the date you claim you were wrongfully
16 dispossessed.

17 A. Well, we're just going to have to go
18 through all the numbers. And unfortunately, Mr.
19 Watt is not with us, and so we will have to do the
20 best we can in terms of assembling this. We have
21 this information that was assembled. You know, I
22 don't know -- none of them were signed. We will go
23 through them and see what it is. But what we do
24 know was that in -- that the country faced one of
25 the worst times it could have faced in 2008, and it

Eugene E. Stone, IV

1 was a real struggle to maintain the cash to keep the
2 business afloat during that time.

3 Q. Well, and that's also because Stone
4 International was no longer in the position to
5 transfer any money into Byte, correct?

6 A. Well, we could have transferred.

7 Q. According to the 2008 and 2009 tax
8 returns, Stone lost money both those years.

9 A. Yes, but there were some funds available
10 to us through -- if we had gone to the bank, we
11 could have secured additional funds if we --

12 Q. You would have had to have borrowed the.
13 money?

14 A. I would have had to have borrowed to do
15 it.

16 Q. But you didn't? You didn't borrow to do
17 it?

18 A. We did not, to my knowledge, during that
19 time --

20 Q. Well, at some point -- I'm sorry.

21 A. -- in January and February. It was
22 business going forward with dealing with the real
23 concern that 2008 was going to have a very -- it was
24 going to have an impact on 2009, and we were doing
25 -- we were preparing the company to deal with what

EXHIBIT 4

1 we had all employees working full-time for that
2 business.

3 Q. Well, Dennis Watt was never working
4 full-time for that business?

5 A. Yes, sir.

6 Q. Well, then why is he preparing documents
7 for Stone?

8 A. Because he was working on behalf of Stone,
9 as well as Byte.

10 Q. So he wasn't working full-time at Byte.
11 He may have been sitting there, but he's doing Stone
12 business?

13 A. He was doing the Stone business relative
14 to what we needed for Byte.

15 Q. Well, we put into evidence a bunch of
16 documents here where he was doing general ledger
17 awards for Stone Apparel?

18 A. Yes.

19 Q. That wasn't benefiting Byte, was it?

20 A. But he did it on extra hours or overtime.

21 Q. Do you have any documents or records in
22 your possession that would establish the total
23 amount of the salaries paid to the people you claim
24 were working full-time at Byte and being paid by
25 Stone?

Eugene E. Stone, IV

1 A. I don't know what records we have, and
2 that's what we will have to research to see. But
3 those people were paid -- I know that somewhere
4 there is a record of what was paid to the Stone
5 personnel --

6 Q. Well, wait.

7 A. -- that were working for Byte.

8 Q. Are you claiming that Byte owes you back
9 the money that you paid the Stone employees during
10 the entire period that you were managing the
11 business?

12 A. I am saying to you that had we exercised
13 the 51 percent option and taken over the business,
14 then we would have had -- we had the ownership, we
15 would have then reached out to be paid for the work
16 that those people did on behalf of Byte.

17 Q. And so obviously, you would have had proof
18 of everything that had been paid at that time?

19 A. We would have had absolute proof of what
20 they paid in either W-2's or the statement.

21 Q. As of that date, did you exercise the
22 option?

23 A. Yes, sir.

24 Q. And so why don't we have it today?

25 A. Because it was quite some time ago, and I

1 don't know -- and we have discarded it and chopped
2 up a lot of our records. What you have here is a
3 good majority of what had been retained.

4 Q. So what I'm trying to establish, because
5 this is -- you know, this is what we have to do in
6 court is as we sit here today, you have destroyed
7 all of the documents that would have been your
8 evidence --

9 MR. HUGHES: Objection.

10 EXAMINATION RESUMED BY MR. HILLER:

11 Q. You have destroyed all the documents that
12 would have been your evidence of what you spent on
13 your employees at Stone?

14 MR. HUGHES: Object.

15 THE WITNESS: I am unaware. I don't know
16 what we have. And what we had indicated to you
17 is that we would go back and look and see what
18 documents we have. And if we have documents
19 that are relevant, we will get you copies.

20 EXAMINATION RESUMED BY MR. HILLER:

21 Q. Okay. But as of -- I mean you understood
22 the significance of that, because you would have had
23 to produce that when you sent your letter exercising
24 your option, correct?

25 A. I don't see the -- I was only exercising

Eugene E. Stone, IV

1 the option.

2 Q. You told me you were going to get your
3 money back when you exercised your option.

4 A. I did not.

5 Q. I thought you said you were going to get
6 paid back for all these employees' salaries
7 that you paid?

8 A. Yes, over time.

9 Q. But you would have had to have some
10 documentation to show that you actually incurred
11 that expense?

12 A. I would have and --

13 Q. And you no longer do?

14 A. I don't know.

15 Q. But you're going to find out?

16 A. I'm going to find out.

17 Q. So what was the group's name in Charleston
18 that you were working with?

19 A. Yarborough.

20 Q. And who paid Yarborough?

21 A. Stone did.

22 Q. You think Stone paid Yarborough?

23 A. Yes, sir.

24 Q. And when was the meeting in Charlotte?

25 A. It was two days before we were locked out

1 MR. HILLER: And what we are now marking
2 as Defendant's Exhibit 30.

3 (Whereupon, the court reporter marked Defendant's
4 Exhibit Number 30 for identification.)

5 EXAMINATION RESUMED BY MR. HILLER:

6 Q. That is the bank statement for Carolina
7 First from the period January 31, 2009 through
8 February 28, 2009, is that correct?

9 A. Yes, sir.

10 Q. Now, that statement would encompass the
11 final period in which you were in control and
12 managing Byte Software, would it not?

13 A. That's what I believe.

14 Q. Okay. It wouldn't have gone past the
15 February 28th date?

16 A. That's correct.

17 Q. And if I look at the January 31 -- well,
18 I'm sorry, the December 31, 2008 through January 31,
19 2009, that shows that zero dollars were deposited
20 into the account. That would be Exhibit 29. The
21 December 31, Exhibit 29, indicates that no money was
22 deposited into Byte's accounts during the month of
23 January, correct?

24 A. Correct.

25 Q. And the January 31 through February 28

Eugene E. Stone, IV

1 shows that no deposits were made into the account .
2 during that period as well?

3 A. That's what it says.

4 Q. Do you know if there was no income to the
5 business, or whether another account had been
6 opened, or what?

7 A. We were dealing with the factor.

8 Q. The factor?

9 A. The factor.

10 Q. So the factor didn't collect any, or you
11 didn't provide them any additional invoices?

12 A. It was a question of where we allocated
13 the money. There was no pressure from Carolina
14 First and so we used the funds to operate the
15 business at a very, very difficult climate.

16 Q. When you say the funds, were you getting
17 the funds directly from Grand South at that point
18 and not depositing them into the Carolina First
19 account?

20 A. I don't recall.

21 Q. Did you ever have a checking account or --
22 or did Byte ever have a checking account with Grand
23 South, to your knowledge?

24 A. It must have been a checking account that
25 was just where they would deposit the money that

1 they received and that they would pay us. That's
2 just the only thing I can imagine.

3 Q. So when you generated invoices, did you
4 physically carry those invoices to Grand South in
5 order to receive --

6 A. Or either mail them, because they were a
7 block away.

8 Q. Either way, they got them, when they got
9 them, they advanced 85 percent?

10 A. That's correct.

11 Q. Did they write a check or did they credit
12 an account?

13 A. I don't recall.

14 Q. Do you have any records from any of those
15 transactions for factoring with Grand South?

16 A. Not to my knowledge.

17 MR. HILLER: I think that's all I have.

18 MR. HUGHES: Just very briefly, I have a
19 few questions.

20 - - -
21 EXAMINATION
22 - - -

23 BY MR. HUGHES:

24 Q. Mr. Stone, if you'll recall back at the
25 beginning, we discussed at length what's been marked

1 as Defendant's Exhibit 1.

2 A. Yes, sir.

3 Q. Do you have that in front of you?

4 A. Yes.

5 Q. Just to get a little bit of a background,
6 why was this document entitled, "Management
7 Agreement," why was it necessary?

8 A. We were operating a significant apparel
9 business using as our operating system the things
10 that kept track of production and kept track of
11 overhead -- or payrolls and things, we were using a
12 Byte Software system. That system constantly needed
13 to being dealt with. Occasionally, you would have a
14 hiccup, and Byte would have to correct the software.

15 And the owner of Byte let it be known to
16 us that the -- Byte's software was in financial
17 difficulty and would likely close. And
18 consequently, the support to our operating system,
19 the people who really knew the details of the
20 software would have been lost, and it would have
21 greatly affected the ability by us to manage our
22 apparel business, and so we met with Mr. Gause and
23 worked out this arrangement here called the
24 "Management Agreement."

25 Q. Why didn't you at that point -- I



31 I

BYTE SOFTWARE LLC
317 NEELY FERRY RD
MAULDIN SC 29662

Notice of change in terms: Zero balance and inactive for 90 days and over.
Effective 4/1/2009 accounts (excluding Treasury Services and Health Savings
accounts) with a zero balance and inactive for 90 days will be closed
automatically. Please contact us for any questions 800-476-6400.

January 31, 2009 - February 28, 2009

Account Number

Page 1 of 2
No enclosures

FREE SMALL BUSINESS CHECKING

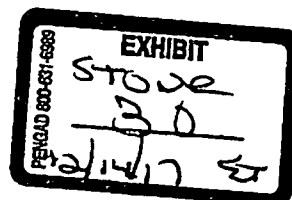
Summary

Previous Balance	+ Deposits Credits	- Checks Debits	- Service Charges	+ Interest Credits	New Balance
-30,313.24	0.00	104.95	0.00	0.00	-30,418.19

28 Days in Statement Period

Described Debits

Date	Description	Amount
02-02	Caroline Service Fees - Oct	9.95
02-02	DAILY OVERDRAFT FEE	5.00
02-03	DAILY OVERDRAFT FEE	5.00
02-04	DAILY OVERDRAFT FEE	5.00
02-05	DAILY OVERDRAFT FEE	5.00
02-06	DAILY OVERDRAFT FEE	5.00
02-09	DAILY OVERDRAFT FEE	5.00
02-10	DAILY OVERDRAFT FEE	5.00
02-11	DAILY OVERDRAFT FEE	5.00
02-12	DAILY OVERDRAFT FEE	5.00
02-13	DAILY OVERDRAFT FEE	5.00
02-17	DAILY OVERDRAFT FEE	5.00
02-18	DAILY OVERDRAFT FEE	5.00
02-19	DAILY OVERDRAFT FEE	5.00
02-20	DAILY OVERDRAFT FEE	5.00
02-23	DAILY OVERDRAFT FEE	5.00



BYTE SOFTWARE LLC
317 NEELY FERRY RD

Account Number [REDACTED]

Page 2 of 2

Described Debits (continued)

<i>Date</i>	<i>Description</i>	<i>Amount</i>
02-24	DAILY OVERDRAFT FEE	5.00
02-25	DAILY OVERDRAFT FEE	5.00
02-26	DAILY OVERDRAFT FEE	5.00
02-27	DAILY OVERDRAFT FEE	5.00
Total Described Debits		\$104.95

Daily Balance Summary

<i>Date</i>	<i>Balance</i>	<i>Date</i>	<i>Balance</i>
01-31 Beginning Balance	-30,313.24	02-13	-30,373.19
02-02	-30,328.19	02-17	-30,378.19
02-03	-30,333.19	02-18	-30,383.19
02-04	-30,338.19	02-19	-30,388.19
02-05	-30,343.19	02-20	-30,393.19
02-06	-30,348.19	02-23	-30,398.19
02-09	-30,353.19	02-24	-30,403.19
02-10	-30,358.19	02-25	-30,408.19
02-11	-30,363.19	02-26	-30,413.19
02-12	-30,368.19	02-27 Ending Balance	-30,418.19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	BUSINESS COURT
	)	
Stone International, LLC; and Eugene E. Stone, IV,	)	CIVIL ACTION NO.:
	)	2009-CP-23-5000
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	RESPONSE TO DEFENDANTS'
	)	MOTION TO MODIFY OR AMEND
Byte Software, LLC; Byte Software Services, LLC; Benjamin Gause; Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett; Carolina First Bank; Branch Banking and Trust Company; Greg Corbitt; Contemporary Solutions-USA, Inc.; International Modapts Association, Inc.; and South Carolina Department of Employment and Workforce,	)	
	)	
Defendants.	)	
	)	

Plaintiffs, Stone International, LLC, and Eugene E. Stone, IV (collectively, "Stone"), submit the following response to Defendants' Motion to Modify or Amend:

1. Stone objects to an amended order that would eliminate reference to Plaintiffs' Motion to Compel, to this Court's November 18, 2010 Order to Compel Production, and to defense counsel's failure and refusal to comply with said Order.

2. Mr. Hiller claims his non-compliance with the Order is "irrelevant and factually incorrect." Stone strongly disagrees. As evidence, Stone attaches two letters from his prior counsel, Josh Smith, Esq., to Randall S. Hiller, Esq., dated December 13, 2010, and January 24, 2011. Both letters confirm that Mr. Hiller refused to produce the "vital information" requested by Stone, ignoring the rules of discovery and even ignoring an order of this Court:

"Unfortunately, however, the production was incomplete and failed to contain what we have consistently maintained is the most important information for our client to obtain—information and documentation regarding the financial condition of the business since the Defendants locked Stone International out of the Byte facilities on April 9, 2009. Notwithstanding all

the protections for the production of this information already in place, your client appears to refuse to provide this vital information. *We have unfortunately encountered an on-going series of delays during the past seven months regarding this issue.*" (emphasis added)

"You[r] client's failure to produce the information requested is a violation of the Court's November 18th Order It is unfortunate that the good faith production of the relevant discovery information and materials we have sought since June continues to be an issue. We are disappointed that we cannot get this basic information even under an Order of the Court."

"After a careful review of the documents provided, we have found that the production is still incomplete. Defendants have provided virtually no documentation concerning the financial condition of the business since Defendants locked Plaintiff out on April 9, 2009."

"The Defendants' continuous failure to provide the documents requested by Plaintiff is a violation of Judge Miller's Order of November 18, 2010. . . . We have been consistently disappointed by your client's failure to provide the documents requested even under the Order of the Court."

3. Mr. Hiller has asked that the Court amend its Order of Dismissal of March 7, 2019.

In light of his Motion to Modify or Amend and the attached letters confirming Stone's position, Stone respectfully requests that the Order be amended as follows: "Defendants' counsel not only ignored the relevant rules of discovery but also blatantly ignored the November 18, 2010 Order of the Court to produce this vital information sought by Stone. Such failure and refusal to produce is defense counsel's contribution to the delay in this case."

4. Stone submits its previous Proposed Order reflecting the above-suggested alterations.

Respectfully submitted,

HUGHES LAW FIRM, L.L.C.

By: s/ Jacob Michael Hughes
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Greenville, South Carolina 29617
(864) 569-2498
jacobmhughes@gmail.com
Attorney for Plaintiffs

March 13, 2019
Greenville, South Carolina

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
 2) COMMON PLEAS
 3) THIRTEENTH
 4) JUDICIAL CIRCUIT
 5) BUSINESS COURT
 6)
 7)
 8)
 9 Stone International, LLC, and)
 Eugene E. Stone, IV,)
 10)
 11 Plaintiffs,)
 12)
 13 V.) CASE NO:
 14) 2009-CP-23-5000
 15)
 16 Byte Software, LLC; Byte Software)
 17 Services, LLC; Benjamin Gause;)
 18 Janice Gause, f/k/a Janice Archer,)
 19 F/k/a Janice Barnett; Carolina)
 20 First Bank; Branch Banking and)
 21 Trust Company; Greg Corbitt;)
 22 Contemporary Solutions-USA, Inc.;)
 23 International Modapts Association,)
 24 Inc.; and South Carolina)
 25 Department)
 Of Employment and Workforce,)
 Defendants.)
 -----)

ORIGINAL

February 19, 2019
 Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

Julie A. Cendroski,
 Circuit Court Reporter
 Seventh Judicial Circuit

1 A P P E A R A N C E S

2 JACOB M. HUGHES, ESQUIRE
3 For The Plaintiffs.

4 RANDALL S. HILLER, ESQUIRE
5 For Defendants

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I N D E X

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 STONE INTERNATIONAL, LLC V. BYTE SOFTWARE, LLC

2 THE COURT: All right. Who wants to go first?

3 MR. HUGHES: I will, Your Honor.

4 THE COURT: All right.

5 MR. HUGHES: Good morning, Judge. My name is
6 Jacob Hughes. I represent Stone International and
7 Eugene E. Stone, IV. Across the aisle is my esteemed
8 antagonist, Randall S. Hiller, esquire who represents
9 Byte Software, Byte Software Services, Benjamin Gause
10 and Janice Gause.

11 Your Honor, this matter involves bad faith,
12 collusion, simple conspiracy, breach of contract and
13 misappropriation by Benjamin Gause and Janice Gause.
14 These defendants acted individually and improperly
15 through two LLCs to reject Stone's purchase option and
16 to defraud Stone of his current and future ownership
17 interest in Byte. That includes its business, physical
18 assets, intellectual property, perspective opportunities
19 and profits.

20 Plaintiffs seek to pierce the veil of Byte
21 Software and Byte Software Services because the Gause's
22 personally have misused both LLCs to perpetuate and
23 protect their fraudulent conduct. Mr. Stone's father
24 founded Stone Manufacturing in 1933. Of course, the
25 facility at Cherrydale was a mainstay of Greenville for

1 many years.

2 Around June 1997, Stone International retained
3 Byte Software, an information technology enterprise.
4 Byte software had a certain series of modules that
5 allowed its IT system to automatically collect and
6 integrate business data. Software streamlines Stone's
7 manufacturing operations.

8 Business proceeded blithely along until January
9 of 2004 when a Byte employee called Delaney contacted
10 Stone. According to Delaney, without additional
11 capital, Byte would fail within 30 days. Naturally this
12 concerned Mr. Stone because his business had become
13 dependent upon the Byte software.

14 Quick due diligence revealed that Byte owed
15 significant income tax liabilities. Both state,
16 \$80,000, and federal \$400,000. In consideration of this
17 debt, as well as the danger of imminent collapse of Byte
18 software, Stone offered to provide operating capital in
19 exchange for an option to purchase Byte.

20 Benjamin Gause, the sole owner of Byte, accepted
21 Stone's offer. In February of 2004, Stone and Byte
22 executed the management agreement. Stone contributed
23 \$200,000 during 2004 and a total of 2 million, 132 --
24 832 dollars during extensions of a management agreement.

25 In consideration of his operating capital, Gause

1 granted Stone an option to purchase Byte. Now, the
2 management agreement gave Stone sole discretion to
3 exercise the option. And he gave them sole authority to
4 extend the agreement for, quote, additional consecutive
5 successive 180-day periods with no limitations on the
6 number of extensions.

7 When Stone exercised the option, he would retain
8 and enquire 51 percent of Byte immediately, and the
9 remaining 49 percent of the company within five years.
10 Again, Stone's option in his sole discretion to acquire
11 51 percent of Byte existed, quote, during the initial
12 term and any extension term.

13 There's a key provision in the management
14 agreement, Your Honor, which states if the purchase
15 option is not fully realized, Stone will be entitled to
16 payback of all capital provided under this agreement.
17 Mr. Stone provided Byte with capital until April of 2009
18 when Gause, having colluded with his wife, Janice Gause,
19 rejected the purchase option in bad faith. At that time
20 the outstanding capital investment from Stone totalled
21 \$2,132,000.

22 After executing the management agreement in
23 February of 2004, Stone assigned five full-time
24 employees to the Byte offices in Mauldin, South
25 Carolina. And we will refer to them as the management

1 team.

2 Stone paid the management team with capital
3 contributions to Byte's operating budget. As manager,
4 Stone made an immediate impact. Byte went from the
5 verge of absolute collapse to a growing concern.
6 Revenues increased dramatically.

7 In 2004, Benjamin Gause, the sole owner of Byte,
8 moved to Charleston. Now, the parties had an
9 understanding that Gause would pursue sales leads in
10 Charleston and received in return benefits from Byte.

11 From 2005 until 2008 Stone paid Gause more than
12 \$338,000 in, quote, benefits, end quote. Despite these
13 payments, Gause admittedly performed no services. He
14 admitted multiple times in his deposition that this was
15 the case. Instead he formed Historic Renovations, LLC
16 in Charleston and chose to supervise the multi-million
17 dollar restoration of 104 Rutledge Avenue.

18 A mansion formerly owned by Edisto for Mr. Thomas
19 Bannister Seabrook. Stone was unaware of this. He was
20 also unaware that Gause had, quote, retired from a
21 career in the software business, end quote.

22 Gause published a fall 2006 article in the
23 Charleston Regional Business Journal, which stated that
24 he had retired from his career in the software business
25 to pursue, quote, his hobby of restoring old homes. And

1 that article, Your Honor, is attached as the last
2 exhibit to Plaintiff's memorandum.

3 Byte continued to require operating capital
4 during extensions of the management agreement. In
5 managing the company, Stone also shouldered the ominous
6 task of satisfying Byte's tax burden, which was the
7 legacy of Mr. Gause.

8 Stone soon reached a settlement with the South
9 Carolina Department of Revenue. By the end of 2007,
10 Stone had satisfied all amounts owed to the State of
11 South Carolina, originally \$80,000.

12 On the other hand, Byte's \$400,000 federal
13 indebtedness was a more difficult dilemma. And that was
14 due largely, if not totally, to the Greenville IRS
15 office had lost the file documents and unexplained
16 delays. So Mr. Stone properly extended the agreement as
17 he was doing it with the IRS.

18 In December 2008, Stone retained DG Yarborough,
19 Inc., a Charlotte, North Carolina independent tax
20 consulting firm to resolved the \$400,000 federal tax
21 lien. Mr. Yarborough also agreed to assist Gause with
22 his personal tax obligations of which they were many.

23 Yarborough proposed a restructuring strategy.
24 Byte would obtain a new name, a new tax ID number,
25 develop new products and, quote, remain compliant with

1 all taxes in the future, end quote.

2 This strategy, quote, required Stone's
3 participation in order to receive approval from the IRS.
4 Yarborough presented this strategy in early 2009. At
5 this meeting, Stone notified Gause and Gause agreed that
6 Stone would exercise its option to purchase Byte.

7 Stone later memorialized his decision in a letter
8 of April 13, 2009, to Gause. Subsequently, however,
9 Gause refused to recognize the validity of the option in
10 Stone's ownership interest. Despite the other
11 \$2,000,000 of capital, which Stone had invested in Byte,
12 Gause considered the option invalorous.

13 In his letter to Mr. Stone of April 13th, Gause
14 stated, quote, an option with unspecified limits on
15 right to extend is like a note with no due date. It is
16 not enforceable. Gause ignored the management
17 agreement, the specific provisions granting Stone,
18 quote, sole discretion both to exercise the option and
19 renew the contract. But most importantly, Gause ignored
20 Stone's exercise of the option and 51 percent interest
21 in Byte.

22 Back up a minute. Benjamin Gause and Janice
23 Gause colluded to reject Stone's option. While Stone
24 was managing the business, both spouses were scheming to
25 misappropriate the company. In January of 2009, prior

1 to the meeting with Yarborough, the couple relocated
2 from Daniel Island to Greenville County near Byte's
3 offices in Mauldin.

4 Mrs. Gause had already determined that her
5 husband, quote, wasn't being paid. So when you don't
6 pay for something you take it back. This is a
7 remarkable admission of misappropriation under oath.

8 On March 29th, Mrs. Gause formed Byte Services in
9 Georgia. On April 9th, Gause physically locked Stone
10 and his management team out of Byte's office building in
11 Mauldin. Mrs. Gause then misappropriated the South
12 Carolina business under the guise of her new LLC, Byte
13 Software Services. Mrs. Gause, a millionaire, financed
14 this deceptive ploy and conspiracy.

15 With Stone illegally excluded three days after
16 the meeting with Yarborough, Gause called Yarborough on
17 his own. He said, quote -- this is Yarborough -- three
18 days after the meeting with Stone and Gause I received a
19 call from Gause. Gause informed me that he had formed a
20 new company in Georgia. Stone had been removed from the
21 management of Byte, and Gause requested assistance
22 implementing my strategy, end quote.

23 Yarborough refused to assist Gause, whose actions
24 were directly contrary to the parties' agreement. He
25 then informed the IRS that the parties had reached an

1 agreement, but Gause subsequently locked Stone out of
2 Byte.

3 Just to reiterate, and we have mentioned this
4 multiple times in our memorandum, at the time of signing
5 the management agreement, Byte owed substantial income
6 taxes both to the State of South Carolina and to the
7 federal government, some \$480,000-plus. Stone hesitated
8 to exercise the option while these tax liabilities
9 existed reasonably.

10 Because the management agreement set no limits on
11 the option period. Stone properly extended the
12 agreement until the early 2009 meeting with Yarborough,
13 who had devised an IRS strategy to resolve the \$400,000
14 federal tax lien.

15 Confident in Yarborough's strategy, Stone
16 exercised the option. At this point, the Gause's now
17 deciding that they would prefer to own Byte without the
18 \$400,000 federal tax lien and without the option for
19 Stone to purchase, they executed their conspiracy to
20 misappropriate Byte and abandon Stone.

21 Apparently they ignored Yarborough's stipulation
22 that no change be made in the ownership of Byte, other
23 than Stone's majority interest pursuant to his exercise
24 of the option. They decided instead to hijack Stone's
25 interest in importance with their erroneous, totally

1 tortious burden of Yarborough's strategy.

2 For no consideration, the Gause's ---

3 THE COURT: Let me interrupt. This is very
4 interesting. It's very detailed, but we're here on a
5 Motion for Summary Judgment and tell me why you think I
6 should do that.

7 MR. HUGHES: Because, Your Honor, both individual
8 defendants have admitted under oath that they
9 misappropriated the business; that they conspired to
10 remove Mr. Stone from the business because supposedly
11 Gause was not being paid, even though he received
12 \$338,000 from Jack Stone from 2005 to 2008.

13 Gause actually says and gives a reason for what
14 they did: Because I would have control over what went
15 on. We have more admissions, Your Honor, from both
16 individual defendants as to why they misappropriated the
17 business.

18 Mrs. Gause admitted, quote, that some playing was
19 involved, quote, for their move to Greenville. She was
20 asked if she had discussions before April 2009 about
21 retaking Byte. Her reply was that, quote, I asked him,
22 Gause, why he let Jack Stone get away with not paying
23 him and it made her angry.

24 Mrs. Gause also said that her husband, quote,
25 wasn't being paid, so when you don't pay for something

1 you take it back. She also, quote, had a vague idea
2 that they were going to come up here to Greenville and
3 go into Byte.

4 Mr. Gause also stated in his answer to a
5 deposition question that is: And the intent of that
6 plan was to remove Jack Stone out of the business?
7 Yeah.

8 So both defendants individually, Your Honor, have
9 admitted misappropriation. They did it through the
10 guise of the newly created Georgia, LLC, which was
11 expressly created to conceal their fraud. And Mr.
12 Hiller ---

13 THE COURT: Is that an admitted fact?

14 MR. HILLER: No.

15 MR. HUGHES: They admitted to misappropriating
16 the business.

17 THE COURT: Well, it's a compound issue. You
18 just said they admitted that they created this other
19 entity to do that. Is that --

20 MR. HUGHES: No, sir, I didn't mean ---

21 THE COURT: -- a fact beyond, a fact beyond
22 dispute?

23 MR. HUGHES: No, sir, I didn't mean to imply that
24 they admitted that, but that's our contention.

25 THE COURT: Well, that's your contention. Is it

1 -- is there any issue as to that? It's a material fact,
2 right?

3 MR. HUGHES: Yes, sir.

4 THE COURT: Is there some question about that?
5 Is there -- is -- I mean, does everyone admit that
6 that's the case?

7 MR. HUGHES: Everyone admits that Mrs. Gause
8 created that company on March 29th.

9 THE COURT: Okay.

10 MR. HUGHES: Several days before her husband
11 locked Mr. Stone out of the South Carolina business.
12 And it now owns ---

13 THE COURT: Strong evidence, but is there some
14 question -- I mean, there's a question about the purpose
15 of the creation of that. I mean, I'm gonna hear it from
16 Mr. Hiller. He's gonna tell me that no, no that's not
17 why they created this. If he gets up and says, yeah,
18 that's why they created it, then there's no question it
19 is a material fact.

20 Am I right about that, Mr. Hiller?

21 MR. HILLER: You're right about that I'm going to
22 contest that, Your Honor.

23 THE COURT: Okay. Is there -- I mean, this is
24 all about facts beyond dispute, so... Let me ask, how
25 long has it been since we last met? Has it been a

1 while?

2 MR. HILLER: It's been ---

3 MR. HUGHES: Since June 2018.

4 THE COURT: Yeah. And y'all were gonna try and
5 see if you couldn't get together on this? No, no chance
6 of that?

7 MR. HILLER: No, sir.

8 THE COURT: All right. I'm not gonna grant -- I
9 don't know, do you want to talk about your summary
10 judgment?

11 MR. HILLER: I'd like to, yeah.

12 THE COURT: Okay. Well, I don't mean to cut you
13 off, Mr. Hughes, but I think that there are issues as to
14 the -- you know, there are questions as to the facts.
15 They're not beyond dispute, is what I'm -- let's let him
16 see -- let's see what he says ---

17 MR. HILLER: And then ---

18 THE COURT: I mean, it's been a very precise and
19 well stated rendition, but --

20 MR. HUGHES: Thank you, Judge.

21 THE COURT: -- let's see what he's got to say.
22 Thank you.

23 Yes.

24 MR. HILLER: Your Honor, this case was filed in
25 2009.

1 THE COURT: Yes.

2 MR. HILLER: Ten years old.

3 THE COURT: Yes.

4 MR. HILLER: Mr. Hughes has not supported any of
5 his allegations in any way for his, you know, his
6 argument for summary judgment with any kind of documents
7 or evidence that would indicate that anything is an
8 undisputed fact that wouldn't even raise an inference of
9 an undisputed fact.

10 When this litigation commenced or resurfaced by
11 the time Roe Cassidy took over the case, originally it
12 was Bob and another attorney took over. And then Roe
13 Cassidy took over. They took over, according to the
14 affidavit filed by Mr. Hughes, in June of 2009.

15 Their third amended complaint contained nine, I
16 believe nine causes of action or seven causes of action.
17 And only one is what we're here about, and that's the
18 second cause of action and it's a breach of contract
19 between, alleged by Stone against Byte and by Byte
20 against Stone. And that's that management agreement.

21 And, of course, I, you know, read Mr. Hughes
22 memorandum and I listened to him. And, you know, he
23 keeps pleading, but not presenting any, any evidence
24 that support any of those pleadings. And it's pretty
25 much -- of course, the numbers change. I mean, it's

1 \$2,000,000 now. It was never even alleged in any of the
2 complaints. Not the first, the second or the third
3 amended complaint. It was nowhere closed to that.

4 I don't know where those numbers come from. For
5 the first time ever he's alleging that Stone paid Mr.
6 Gause. Mr. Stone is Mr. Stone. Stone International is
7 who had the contract with Byte Software Services. Byte
8 Software paid Mr. Gause. It was Byte's money that paid
9 Mr. Gause. They didn't pay a dime to Mr. Gause. They
10 don't have any right to re -- I mean, collect any
11 payments made to Mr. Gause during the course of his
12 employment with the company.

13 But we had supported our arguments with excerpts
14 from the depositions. And, of course, my memorandum set
15 forth that as to a number of the causes of actions, more
16 of a legal argument that we're entitled to partial
17 summary judgment on those.

18 I did not ask for partial summary judgment on the
19 second cause of action, which is the cause of action for
20 breach of contract because there are disputed facts
21 about that. There's no question about that. Everything
22 that went on here is my clients allege he breached the
23 management agreement and that's why they had to go back
24 in and take over the operation of the company.

25 He claims my clients breached the management

1 agreement and he's been damaged as a result of that.
2 But the, the first cause of action is that -- and I'm
3 not gonna restate everything that's contained within my
4 memorandum, Your Honor. I mean, it's a, I believe it is
5 a pierced corporate veil. It's just a hornbook
6 recitation of the elements. They haven't produced, as
7 we sit here today, one single scrap of evidence that
8 would support a claim for the necessary elements for
9 that.

10 The second cause of action is the breach of
11 contract, which I am not, as I said, seeking summary
12 judgment on. The third cause of action is the civil
13 conspiracy. I go through the elements of that in my
14 memorandum and the necessary requirements for it. Prior
15 special damages, which have not been alleged or pled.

16 You can't call them special if they aren't
17 different than the damages you're seeking under the,
18 under the breach of contract claim. They claim quantum
19 meruit, as I'm sure the Court's aware that's an
20 inconsistent action. That's an admirable cause of
21 action that occurs when you didn't have a contract.

22 But they claim they did have a contract. They
23 are seeking to enforce the contract. They're, in fact,
24 asking for specific performance of the contract. And,
25 therefore, they could never meet the elements or even

1 present the evidence necessary to establish an quantum
2 meruit promissory estoppel.

3 They've got an interference with the contract
4 claim where they're claiming that Gause interfered with
5 the contract between Byte and somebody else. Not Stone.
6 I mean, Stone wasn't involved, so clearly they don't
7 have the right to bring that claim. They didn't bring
8 the derivative or anything like that. And, again, I
9 went through all this and attached documents or
10 deposition testimony related to it.

11 The second cause of action we supported with our
12 affidavit. That is a promissory note that was executed
13 in 2007 from Byte back to Stone International. I have
14 attached Mr. Stone's deposition testimony with regards
15 to that, as well as the summary of transactions that
16 occurred between Stone International and Byte, back and
17 forth money changing hands.

18 And that note matured on January the 1st of 2009,
19 per the undisputed facts contained within the record,
20 which are attached to my memorandum. That summary of
21 transactions. The transactions between the parties to
22 the note, Byte and Stone International.

23 Byte had overpaid by over \$22,000 the note, as of
24 its maturity date on January 1, 2009. There's no
25 evidence to the contrary. Therefore, we are entitled to

1 summary judgment from the standpoint that there's no
2 factual dispute as to that seventh cause of action,
3 which is the foreclosure of this note and securing it.

4 But overall -- so all of that was designed, Your
5 Honor, to narrow this thing down to the meat and
6 potatoes and so that we could have a -- if we're gonna
7 have a trial, actually have a trial that is on the
8 relevant portion. And it is ultimately a breach of
9 contract.

10 Of course, I have also requested, Your Honor, and
11 I have attached a number of statements from Mr. Stone's
12 deposition. And apparently has been supported by Mr.
13 Hughes by his affidavit from Josh Smith at Roe Cassidy.
14 That, you know, we have asked that you dismiss,
15 involuntarily dismiss the complaint under Rule 41(e) and
16 case law and also as a result of exfoliation of
17 evidence, the entire case for failure to prosecute and
18 spoliation of evidence.

19 It's a ten-year old case, Your Honor. They filed
20 an affidavit from Mr. Smith which said exactly what I
21 would have expected it to say, that they took over
22 representation in 2009 and they withdrew in 2017 because
23 they didn't get backed or they weren't getting backed.

24 If you can go back and look at the file record
25 and you'll see that there wasn't any there, not one

1 thing filed or done by Roe Cassidy between 2011 and
2 2017, other than they're filing finally a Motion to
3 Withdraw.

4 During that period of time, according to Mr.
5 Stone in his deposition, he destroyed all the records.
6 All the bank records, all the supporting data,
7 documentation. You know, Mr. Hughes is sitting here
8 saying it's 2 million, 100 -- \$2,132,000. But their
9 pleadings say from 2004 until 2008 Stone International
10 advanced to Byte 1 million, 588.

11 Defendant, Byte, repaid 1 million 388, so it's a
12 \$200,000 difference in their complaint and that is
13 2 million. There's nothing in here about salary and
14 Gause. Now it's \$388,000. And yet they don't have any
15 documents.

16 Mr. Stone, I asked, I said:

17 And when did that happen?

18 It must have been four or five.

19 Years ago. It would have been.

20 After this litigation commenced,

21 Correct?

22 Yes, sir, it would have been after
23 that because we have these from them.

24 We had these from the records of the
25 company.

1 You're telling me that we no longer
2 have the ability to go back and verify
3 these documents?

4 That is correct, sir. His response.
5 And that's because all that was either
6 shredded or deleted?

7 That is correct.

8 They have destroyed everything. So one of the
9 things we were complaining about since Roe Cassidy was
10 involved is I kept asking him what year. You're asking
11 for all this. You know, you're claiming that Stone
12 International paid all this money and I need to see
13 their records. I can't even get their tax returns.

14 Mr. Hughes said again to me yesterday what he
15 claimed to be their 2004 to 2009 tax return. I've got a
16 one-page tax return from 2004 from Stone International.
17 One page. Just the first page. I got a 2005 that has
18 at least eight times that says see statement one, see
19 statement two, see statement three. I got no
20 statements.

21 I don't -- I've never seen a 2006 tax return,
22 even though he claimed he said it to me yesterday.
23 There's just no such thing. It doesn't exist. And by
24 '07, they were out of business. They didn't do -- they
25 got zero revenue in 2007 and zero revenue in 2008, but I

1 still don't have those whole tax returns either.

2 So if you're going to bring a case and claim all
3 these dollar amounts and claim all this and that and the
4 other, you know... And even in Mr. Hughes recitation
5 earlier he said, well, Mr. Stonewall brought it in and
6 turned it into a going concern problem for business.

7 And then five minutes later he says we continue
8 to require capital. None of those things happened, but
9 we can't, we can't even present it anymore because of
10 the destruction of the documents and that.

11 And also, Your Honor, and, of course, I talk
12 about this at some length in my memorandum. There is,
13 there is a significant prejudice and/or windfall
14 associated with sitting on your hands for ten years. My
15 client, Mr. Gause, has continued to operate the
16 business. Really didn't have any choice.

17 You know, I guess he could have walked away and
18 just let it fail, but he's operating it for ten years.
19 Ten years. And now after ten years, Mr. Stone wants to
20 come in and exercise an option to purchase it and gain
21 all the benefit of that ten years additional work and
22 effort by my client.

23 So there's a huge prejudice to my client based
24 upon the failure to prosecute this case. And we would
25 ask -- we don't believe that there's any kind of jury

1 instructions to correct the spoliation of evidence
2 issue. And we'd ask the Court to involuntarily dismiss
3 his claim pursuant to 41(e).

4 THE COURT: Okay.

5 MR. HUGHES: May I respond, Your Honor?

6 THE COURT: Yeah.

7 MR. HUGHES: First of all, Mr. Hiller's
8 memorandum is full of errors and inaccuracies. The
9 second sentence is a misstatement. It says: The
10 agreement required Stone to make capital contributions
11 to Byte in the amount of \$200,000 within the first 12
12 months.

13 That's totally incorrect. The term of the
14 agreement was for 180 days, which could be renewed. So
15 Mr. Stone contributed \$200,000 within the first six
16 months.

17 Back to this claim that we have no evidence to
18 verify our causes of action, that is also completely
19 false. And with all due deference, Your Honor, I simply
20 cited those statements from the individual defendant's
21 depositions earlier to show that both these individuals
22 have admitted to taking the company. They have admitted
23 to planning to take over the company. In the words of
24 Mrs. Gause, to take it back. So I cited those
25 deposition quotes as remarkable admissions under oath of

1 conspiracy and misappropriation.

2 Now, Mr. Hiller says that we have not provided
3 documents. That's also false. Mr. Stone is still
4 waiting for Mr. Hiller's response to Your Honor's order
5 of November 18, 2010, when you instructed the defendants
6 to produce any and all information and documentation
7 sought by the plaintiff in their discovery request,
8 including information related to and documentation
9 produced after April 9, 2009. This was November 18,
10 2010. And Mr. Hiller has failed repeatedly to respond
11 to Stone's request and an order of this Court.

12 We were asking for that information in order to
13 get an assessment of Byte Services, the company that
14 Mrs. Gause formed in Georgia because that was the
15 illegitimate successor of Byte. It owns all the assets
16 -- or rather, Mrs. Gause has sole owner, owns all of the
17 assets now with Byte.

18 So we sought information related to Byte Services
19 in order to get it sent to the condition of the company
20 so that we could perhaps reach a settlement. And I know
21 I'm not at liberty to talk about the mediation, but the
22 mediation failed because Mr. Hiller failed to provide
23 that information. That's an order of this Court from
24 November 18, 2010. We have no information about Byte
25 Services. And that is a key part of our case and Mr.

1 Hiller has refused to comply and he has hijacked our
2 case in a sense because we don't have that information
3 and we just don't know what Byte Services existence
4 really is.

5 But we made the argument in our memorandum that
6 Gause and Mrs. Gause destroyed Byte. And in so doing,
7 they have destroyed Stone's rights under this management
8 agreement, which Mr. Hiller in his memorandum doesn't
9 even refute. He uses his second cause of action
10 argument, which is breach of contract to Gause from
11 quantum meruit. Quantum meruit is simply a subsidiary
12 cause of action that we had in our complaint. We're not
13 relying upon quantum meruit. We have a clear breach of
14 contract. He doesn't deny that in his memorandum.

15 THE COURT: Well, do you agree that those are
16 sort of mutually exclusive?

17 MR. HUGHES: I do agree, yes. But I think
18 they're illustrative of the fact, such as promissory
19 estoppel. We had a promise by Gause to provide Stone
20 with the option. He supplied over \$2,000,000 of which
21 we do have records of capital in expectation of
22 receiving that option.

23 When he did receive -- when he exercise the
24 option, Gause snatched it away. He and his wife
25 transferred all the assets to this new LLC in Georgia.

1 So that is simply illustrative, but we do rely upon
2 breach of contract and we can prove clear breach of
3 contract by Gause.

4 THE COURT: What about the allegations of the
5 defense that there's spoliation of the evidence?

6 MR. HUGHES: Your Honor, I know Mr. Hiller has to
7 bring that up because he can't really prove his other
8 claims with sufficiency, but I think ---

9 THE COURT: His other --

10 MR. HUGHES: -- the reason ---

11 THE COURT: What do you mean his other claims?
12 I'm not...

13 MR. HUGHES: Well, he can't refute breach of
14 contract.

15 THE COURT: So you're talking about his
16 assertions, not his claims?

17 MR. HUGHES: Yes, sir.

18 THE COURT: You've got a, you've got a
19 counterclaim, too, Mr. Hiller; is that right?

20 MR. HILLER: I do.

21 MR. HUGHES: I think ---

22 THE COURT: What about that?

23 MR. HUGHES: I think Mr. -- if I could address
24 spoliation, I think Mr. Hiller is referring to the
25 deposition statement of Mr. Stone.

1 THE COURT: Well, do you think it's important
2 that the tax returns are provided?

3 MR. HUGHES: Yes, sir. To my knowledge, those
4 were provided by Roe Cassidy, Mr. Stone's former
5 counsel. Mr. Hiller said that he hadn't received
6 certain of them. It was unclear which he had received,
7 but I would ---

8 THE COURT: Well, he's denying -- he's grabbing
9 something. It looks like he's gonna show you what he's
10 got.

11 MR. HILLER: Well, exactly. What he e-mailed me
12 yesterday.

13 MR. HUGHES: Yesterday, for good measure, I
14 resent what had already been filed to have Bates numbers
15 all over the bottom. And I resent, or actually sent for
16 the first time, documents that my client provided me
17 last week. Copies that he retained recently. So from
18 what I understood, those documents had already been
19 provided to Mr. Hiller.

20 As far as spoliation, Your Honor, Mr. Stone is
21 adamant that he has not destroyed any documents of Byte
22 or defendant's case. And we filed an affidavit
23 yesterday that says that exactly.

24 MR. HILLER: I was reading from his deposition,
25 Your Honor.

1 THE COURT: That's in direct conflict with the
2 deposition testimony given under oath?

3 MR. HUGHES: I believe ---

4 THE COURT: Is that right? I mean, I ---

5 MR. HUGHES: I would argue ---

6 THE COURT: I don't know. You two have been
7 doing the case.

8 MR. HUGHES: Yes, sir.

9 THE COURT: So if he answered questions and then
10 files an affidavit in direct contradiction to that,
11 where does that leave us?

12 MR. HUGHES: I think that Mr. Stone misunderstood
13 the question, but he has always told me that the records
14 he destroyed were of Stone Manufacturing. Old records
15 of general correspondence and files that had no relation
16 to Byte. And at that time Mr. Stone was represented by
17 Roe Cassidy. And certainly they didn't sanction that.

18 MR. HILLER: No, you were -- you -- I took his
19 deposition last year after Mr. Hughes.

20 MR. HUGHES: Right. But you were referring to an
21 event that occurred four or five years prior when Stone
22 moved its offices.

23 THE COURT: What about, what about his
24 counterclaim? What do you say about that?

25 MR. HUGHES: I say ---

1 THE COURT: He's saying you've breached the
2 contract and you owe him money.

3 MR. HUGHES: I say that's totally false. I've
4 seen no evidence that Stone International breached the
5 contract. It validly extended the agreement while
6 contributing operating capital in its management
7 services until early 2009 when it exercised the option
8 in the presence of Gause.

9 Now, Mr. Hiller seems to have presented no
10 evidence that I can, that I can recall that refutes our
11 claim. He -- Mr., Mr. Gause retook control of the
12 company and that was the breach in the contract when he
13 refused to award Stone the option for which he ---

14 THE COURT: What are you trying to get out of
15 them, Mr. Hiller?

16 MR. HILLER: To leave us alone. My client's the
17 same age as Mr. Stone. They're both not ---

18 THE COURT: Lived long, full lives.

19 MR. HILLER: Not in good health, though.

20 THE COURT: Okay.

21 MR. HILLER: But, you know, when my client walked
22 back in there, every single bank account was \$20,000 in
23 the red. And he brought it back alive and has managed
24 to keep it afloat primarily to pay the employees ---

25 THE COURT: Are you looking to get money out of

1 Mr. Stone, right?

2 MR. HILLER: No, sir. It, you know, if we had
3 been, I would have probably poked a hot stick at Roe
4 Cassidy sometime during the six years that they were
5 sitting on them in their hands. You know, but I would
6 prefer the case go away. And that's what I preferred
7 then and I prefer now.

8 THE COURT: Okay.

9 MR. HILLER: But anyway...

10 MR. HUGHES: Your Honor, I ---

11 MR. HILLER: But, but, but I will, I want to say
12 this, that, you know, if Roe Cassidy didn't believe that
13 I had responded to a court order in 2010, they've had
14 adequate opportunity -- I believe I must have. But, you
15 know, to be honest with you, Judge, I have never had a
16 case that lasted ten years.

17 I've been practicing almost as long as you
18 practiced. And ten years is a long time. Maybe not
19 with multiple appeals, but a long complicated case
20 that's never been to trial. And I can't remember
21 everything about it, but I'm confident that Mr. Smith
22 and Mr. Moody would have filed --

23 THE COURT: Okay.

24 MR. HILLER: -- knowing them, a Motion to Compel
25 if I had not complied.

1 THE COURT: All right. Well, I'm gonna think
2 about all this and I will get back with you all. And
3 it's time to resolve it. All right.

4 MR. HUGHES: Thank you, Judge.

5 THE COURT: Okay.

6 MR. HUGHES: May I address one more thing? Mr.
7 Hiller timely read the affidavit of Josh Smith. But,
8 again, I will repeat after sometime Stone was no longer
9 able to pay it's legal fees or the terms of engagement.
10 Roe Cassidy withdrew from representation in April of
11 2017.

12 So at all times Mr. Stone has been represented by
13 prominent counsel. At some point he was unable
14 personally and financially to pursue his claims against
15 defendants. That should not go to their merit. He was
16 represented by prominent counsel and then I took over.
17 That may be a difference, but I have pursued this matter
18 zealously when I took over. And, and last time ---

19 THE COURT: Yes, you have.

20 MR. HUGHES: Last time when we were before you,
21 Judge, Mr. Hiller stated that ---

22 THE COURT: We're not, we're not here to judge
23 the representation of former counsel, okay?

24 MR. HUGHES: I'm not ---

25 THE COURT: I don't know if that's an issue or

1 not, but that's not what I'm thinking about and not what
2 I'm looking at, okay? So we'll -- let me go through all
3 this and I'll get back with you all. Thank you very
4 much.

5 MR. HUGHES: Thank you.

6 MR. HILLER: Thank you, Your Honor.

7 THE COURT: All right.

8 (Whereupon, hearing concluded at 10:23 a.m.)

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11 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 19th day of February, 2019.

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

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

December 13, 2010

VIA ELECTRONIC MAILRandall S. Hiller
Randall S. Hiller, PA
850 Wade Hampton Blvd. #850B
Greenville, SC 29609**RE: *Stone International, LLC v. Byte Software, LLC, et al.*
 C.A. No. 2009-CP-23-5000
 RCCP # 1814.0001**

Mr. Hiller:

Following the hearing on our Motion to Compel, the Court issued an Order on November 18, 2010 ordering "that Defendant produce any and all information and documentation sought by the Plaintiff in their discovery requests, including information related to and documentation produced after April 9, 2009." On December 2, 2010, I called you to inquire as to when we should expect the remainder of the discovery to be produced since there are five depositions scheduled in this matter for December 14-15, 2010. You informed me that your client had been actively gathering the remaining discovery and that you were meeting with him on Thursday December 9, 2010 at which time he would produce to you the remaining discovery. You further informed me that following your review of the production, you would provide us the discovery the morning of Friday, December 10, 2010. On December 10th we called your office to inquire as to what time we should expect the discovery. My paralegal was informed that we could pick it up at your office at 2:00 p.m., which we did. The documents produced included both confidential and non-confidential materials as contemplated by the Court's November 18th Order. The non-confidential materials included the following:

- (1) Byte Software LLC Carolina First bank statements from 4/30/05-5/31/09
- (2) Byte Software LLC BB&T bank statements from 8/29/08-6/30/09
- (3) Byte Software LLC GrandSouth bank statements from 9/30/08-6/30/09

The remaining materials, which were contained in an envelope stamped "confidential" with handwritten notation "for attorneys' eyes only" contained the following:

- (1) Byte Software Services LLC 2009 tax documents
- (2) W-3 Payroll Reconciliation 2009 (no company identification)
- (3) Byte Personnel Salary List (no year specified)
- (4) Form Software Extended Management Agreement
- (5) Asset Purchase Agreement dated 2/1/02
- (6) 2007 Byte Software Income Statement
- (7) 2007 Byte Software Balance Sheet
- (8) Customer List

(9) 2 CDs containing thousands of emails of Byte personnel

(10) 1 CD with 2005-2009 Invoices, 2004-11/15/09 Credit Memos; and an IRS Tax Penalty Notification from 2009.

As an initial note, none of the documents were bates stamped, all the hardcopies appeared to be originals, and the documents contained in the envelope marked "confidential" were not marked "confidential" themselves. While we are in a serious time crunch due to the extremely short amount of time between the production and the depositions, we plan on scanning in the production, bates stamping, and marking the documents claimed as privileged accordingly.

Unfortunately, however, the production was incomplete and failed to contain what we have consistently maintained is the most important information for our client to obtain—information and documentation regarding the financial condition of the business since the Defendants locked Stone International out of the Byte facilities on April 9, 2009. Notwithstanding all the protections for the production of this information already in place, your client appears to refuse to provide this vital information. We have unfortunately encountered an on-going series of delays during the past seven months regarding this issue.

Specifically, in Plaintiff's request for production served on June 6, 2010, we requested "[a]ll bank records, statements, cancelled checks, and/or related documents created between February of 2004 and the present time for accounts held individually or by Defendant Byte and/or Benjamin Gause or in which Defendant Byte and/or Benjamin Gause has or had an interest." The bank statements provided all cut off shortly after April 9, 2009, the day Plaintiff was locked out, and do not afford us the information requested. Nor do the bank statements include all the accounts requested. In those same requests we requested "[a]ll documents that reflect Byte's financial status from February of 2004 until the present time, including but not limited to reports, ledgers, balance sheets, statements of account, and/or related documents." The documents provided regarding Byte's financial condition were few and seemingly random. The vast majority of the documents again failed to provide information related to the financial condition of Byte since the lockout in April of 2009, and those dated after that point cannot be utilized to ascertain this vital information. In addition, we also requested

"All documents that reflect:

- Defendant Byte's payroll records from 2004 until the present time
- communications between Plaintiff and Defendant Byte and/or Benjamin Gause
- Defendant Byte's outstanding collectible, collected receivables, and/or related documents
- in whole or in part, any contracts, agreements, and/or understandings entered into between Defendant Byte and/or Benjamin Gause and any company, individual, or other entity that has performed technology and or business related research and/or development services on behalf of Defendant Byte and/or Benjamin Gause from February 2004 until the present time." and
- "All documents that reflect, in whole or in part, any contracts, agreements, and/or understandings entered into between Defendant Byte and any company, individual, and/or other entity that currently utilizes products and/or services offered by Defendant Byte and/or Benjamin Gause."

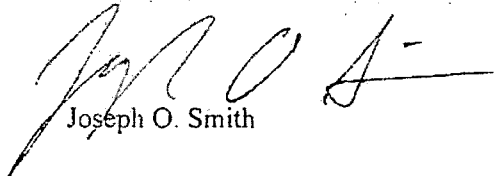
You client's failure to produce the information requested is a violation of the Court's November 18th Order that mandates "that Defendant produce any and all information and documentation sought by the Plaintiff in their discovery requests, including information related to and documentation produced after April 9, 2009." It is unfortunate that the good faith production of the relevant discovery information and materials we have sought since June continues to be an issue. We are disappointed that we cannot get this basic information even under an Order of the Court. We have been patient and willing to spend the weekend prior to the depositions processing this information and documents in preparation for tomorrow's depositions. As we stand now, we will press forward on the depositions and will hold them open regarding the information that has not been produced. We will also ask the Court for fees and expenses that your client imposes as a result of his failure to provide the financials under the Court's Order. If you have a suggestion to the quandary caused by your client, we are always willing to listen to a solution.

If you have any questions or concerns regarding this matter please feel free to contact me any time.

With kind regards, I am,

Sincerely,

ROE CASSIDY COATES & PRICE, P.A.



Joseph O. Smith

JOS/esg

cc: Jack Stone
Mitchell Goldsmith

January 24, 2011

VIA EMAIL AND U.S. MAIL

Randall S. Hiller
Randall S. Hiller, P.A.
850 Wade Hampton Blvd. #850B
Greenville, SC 29609

RE: *Stone International, LLC v. Byte Software, LLC, et al.*
C.A. No. 2009-CP-23-5000
RCCP #: 1814.0001

Dear Mr. Hiller:

The purpose of this letter is to request your assistance in obtaining documents we have previously requested. As you will recall, we served Plaintiff's First Request for Production of Documents on June 6, 2010. We received some documents responsive to our requests in Defendant, Byte Software, LLC, Responses to Requests for Production on November 13, 2010. After reviewing those documents, we have identified a number of additional documents that are responsive to our requests but have yet to be produced.

We filed a Motion to Compel on October 4, 2010. Following the hearing on the motion on November 18, 2010, the Court ordered that Defendant produce the discovery requested by Plaintiff. (Order Granting Pl.'s Mot. to Am. and Mot. to Compel Produc. at 4). We subsequently scheduled depositions of Defendants' employees for December 14-15, 2010. Mr. Smith telephoned you on December 2, 2010, to determine when you would provide the remainder of the discovery. You informed Mr. Smith that your client was going to provide the remaining documents to you for review no later than December 9, 2010, and you would produce those documents to us no later than the morning of December 10, 2010.

When we telephoned you on December 10th, you informed us we could retrieve the documents from your office at 2:00 p.m. that day. The documents produced included materials that were non-confidential and confidential pursuant to the Court's Order. When we received the documents, none had been bates stamped and all the hardcopies appeared to be originals. Because of the short amount of time between the production on Friday, December 10th and the depositions on Tuesday, December 14th, we scanned the documents, bates stamped them, and marked the purported "confidential" documents as such.

After a careful review of the documents provided, we have found that the production is still incomplete. Defendants have provided virtually no documentation concerning the financial condition of the business since Defendants locked Plaintiff out on April 9, 2009. When we spoke with you on December 14th about this irregularity, you responded that on or about April 9, 2009, Byte Software, LLC ceased to operate. You explained that on that date Defendant Gause transferred all of Byte's assets to a Georgia limited liability company, which is known as Byte Software Services, LLC. You further explained that documents concerning Byte Software

Services, LLC were not produced because the Plaintiff had requested no such documents. You further explained that profit and loss statements, balance sheets, and associated documents for Byte Software Services, LLC had not been produced because none exist.

As to the first claim, Plaintiff has requested documents relating to Byte Software Services, LLC. The instructions included in Plaintiff's requests for production state: "All references to Byte Software, LLC also refer to any successor, parent, subsidiary, division, and/or affiliate of Byte Software, LLC." (Pl.'s First Req. for Produc. at 2.). Byte Software Services, LLC qualifies as a successor, subsidiary, or affiliate of Defendant Byte. During the deposition of Defendant Gause, he admitted that most all of the assets of Byte Software Services, LLC were obtained through an alleged transfer or sale of Defendant Byte's assets. (*See* Gause Dep. 182:12-19, Dec. 15, 2010). Defendant Gause further admitted that Byte Software Services, LLC has many of the same employees, does many of the same things, and utilizes most of the same software framework as Defendant Byte. (*See id.* at 167:7-14). Consequently, documents concerning Byte Software Services, LLC fall within the scope of Plaintiff's requests for production.

As to the second claim, we discussed the necessity of obtaining a profit and loss statement and balance sheet during Defendant Gause's deposition, and he confirmed that no such documents existed even though he admitted that such documents are necessary to properly manage a business. (*See id.* at 119:18-23; 57:12-58:14). However, Defendant Gause stated that a balance sheet would be created at the end of the year in order to complete Byte Software Services, LLC's state and federal tax returns. (*See id.* at 119:15-17). The 2010 calendar year has now passed, and the time for the company to file its tax returns is drawing close. Accordingly, we expect that there should be no further obstacles to producing these documents to us.

In an effort to simplify the list of documents that we are requesting and better facilitate your client's compliance with the Court's Order, we are specifically listing the documents that we are requesting below:

- (1). Request Number 1: any agreements or documents that reflect the ownership, including shares, assets, or other property, of Byte Software, LLC or Byte Software Services, LLC, including any documents executed by Mrs. Janice A. Gause;
- (2). Request Number 2: any letters, emails, facsimiles, memorandums, text messages, and/or transcribed voice messages that reflect communications between February of 2004 and the present time concerning the ownership of Byte Software, LLC or Byte Software Services, LLC or the assets of either entity;
- (3). Request Number 3:
 - (a). Profit and loss statements and balance sheets that include the second quarter of 2009 through the present time for Byte Software, LLC or Byte Software Services, LLC;
 - (b). Monthly profit and loss statements, balance sheets, and cash flow reports that include the second quarter of 2009 through the present time Byte Software, LLC or Byte Software Services, LLC;

- (c). All invoices, corresponding credits, receivables reports, ledgers, estimates or reports concerning uncollectible accounts, and any correspondence concerning collections efforts generated between 2004 through the present time Byte Software, LLC or Byte Software Services, LLC;
- (4). Request Number 5: All bank records for all accounts in which Byte Software, LLC, Byte Software Services, LLC, and/or Benjamin Gause had or have an interest from 2004 through the present time;
- (5). Request Number 6: A copy of the customer contract, agreement, or understanding, including a price matrix, utilized by Byte Software, LLC or Byte Software Services, LLC;
- (6). Request Number 8: Contracts, agreements, or understandings entered into between Byte Software, LLC, Byte Software Services, LLC, and/or Benjamin Gause with any third party investor, including Janice A. Gause, from 2004 through the present time;
- (7). Request Number 9: Budgets, sales forecasts, cash flow statements, retained earnings statements, receivable reports, and reports reflecting sales by customer for Byte Software, LLC or Byte Software Services, LLC; and
- (8). Request Number 11: W-3 Transmittal of Wage and Tax Statements for the second quarter of 2009 through the present time for Byte Software, LLC or Byte Software Services, LLC.

The Defendants' continuous failure to provide the documents requested by Plaintiff is a violation of Judge Miller's Order of November 18, 2010. The Order requires that "Defendant produce *any and all* information and documentation sought by the Plaintiff in their discovery requests, including information related to and documentation produced after April 9, 2009." (Order Granting Pl.'s Mot. to Am. and Mot. to Compel Produc. at 4) (emphasis added). We have been consistently disappointed by your client's failure to provide the documents requested even under the Order of the Court. We would appreciate your assistance in remedying this situation. Please provide the documents and/or information requested within ten (10) days of your receipt of this letter so that we may move forward with the case and put these discovery issues finally behind us.

If you any questions or concerns, please contact me any time.

With kind regards, I am,

Sincerely,

ROE CASSIDY COATES & PRICE, P.A.

Joseph O. Smith

HUGHES LAW FIRM, L.L.C.

March 15, 2019

VIA ELECTRONIC MAIL

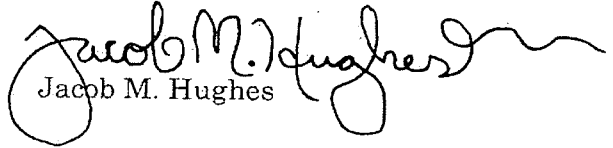
The Honorable Edward W. Miller
Greenville County Courthouse
305 E. North Street, Suite 219
Greenville, S.C. 29601

RE: *Stone International, LLC v. Byte Software, LLC*
Case No.: 2009-CP-23-5000

Dear Judge Miller:

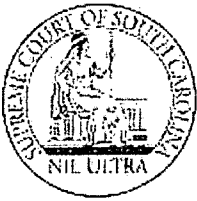
To supplement Plaintiffs' Response of March 13, 2019, Mr. Hiller's Motion to "Modify or Amend" is explicitly based on Rules 55 and 60, SCRCP, neither of which appear to have any relevance to his motion or to this case.

Respectfully,


Jacob M. Hughes

cc: Randall S. Hiller, Esq.

50 MARCHBANKS DRIVE • GREENVILLE, SOUTH CAROLINA 29617
TELEPHONE: (864) 569-2498 • E-MAIL: JACOBMHUGHES@GMAIL.COM



Greenville County 13th Judicial Circuit Public Index



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Switch View

Stone International LLC , plaintiff, et al vs. Byte Software LLC , defendant, et al

Case Number:	2009CP2305000	Court Agency:	Greenville County Common Pleas	Filed Date:	06/12/2009
Case Type:	Common Pleas	Case Sub Type:	Debt Collection 110	File Type:	Jury
Status:	Appeal	Assigned Judge:	Miller, Edward W.		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	03/07/2019	Disposition Judge:	Miller, Edward W.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Stone International LLC	Amended Notice of Appeal to Court of Appeals	Action		04/09/2019-13:17		
Stone International LLC	NEF(04-08-2019 01:17:06 PM) Appeal/Notice of Appeal to C...	Filing		04/08/2019-14:29		
Stone International LLC	Appeal/Notice of Appeal to Court of Appeals	Action		04/06/2019-13:43		
Stone International LLC	NEF(04-05-2019 01:43:39 PM) Appeal/Notice of Appeal to C...	Filing		04/05/2019-14:53		
Byte Software LLC	NEF(04-05-2019 09:35:21 AM) Order/Dismissal	Filing		04/05/2019-09:35		
Byte Software LLC	Order/Dismissal-Amended	Order		04/05/2019-09:35		
Byte Software LLC	NEF(04-05-2019 08:43:57 AM) Order/Order Cover Sheet \$25....	Filing		04/05/2019-09:06		
Byte Software LLC	Order/Order Cover Sheet \$25.00	Filing		04/05/2019-08:43		
Byte Software LLC	NEF(03-08-2019 09:47:37 AM) Motion/Alter and/or Amend	Filing		03/08/2019-10:57		
Byte Software LLC	Defs/Byte Software Motion/Alter and/or Amend	Motion		03/08/2019-09:47		
Stone International LLC	NEF(03-07-2019 11:17:42 AM) Order/Dismissal	Filing		03/07/2019-11:18		
Stone International LLC	Order/Dismissal	Order		03/07/2019-11:17	03/07/2019-11:17	
Stone International LLC	NEF(03-06-2019 01:06:32 PM) Proposed Order/Dismissal	Filing		03/06/2019-15:37	03/07/2019-15:37	
Stone International LLC	Order/Order Cover Sheet \$25.00	Filing		03/06/2019-13:06	03/07/2019-13:06	

Stone International LLC	NEF(02-18-2019 12:34:39 PM) Affidavit/Affidavit of	Filing		02/18/2019-12:49	03/07/2019-12:49	
Stone International LLC	Affidavit/Affidavit of Joseph O. "Josh" Smith	Filing		02/18/2019-12:34	03/07/2019-12:34	
Stone International LLC	NEF(02-18-2019 11:59:33 AM) Affidavit/Affidavit of	Filing		02/18/2019-12:04	03/07/2019-12:04	
Stone International LLC	Affidavit/Affidavit of Eugene E. Stone, IV	Filing		02/18/2019-11:59	03/07/2019-11:59	
Byte Software LLC	NEF(02-15-2019 03:03:26 PM) Memo/Memo in Support	Filing		02/15/2019-15:57	03/07/2019-15:57	
Byte Software LLC	Memo/Memo in Support	Filing		02/15/2019-15:03	03/07/2019-15:03	
Stone International LLC	NEF(02-15-2019 10:41:06 AM) Response	Filing		02/15/2019-11:24	03/07/2019-11:24	
Stone International LLC	Response to Affidavit of Ben Gause	Filing		02/15/2019-10:41	03/07/2019-10:41	
Byte Software LLC	NEF(02-11-2019 10:37:55 AM) Affidavit/Affidavit of	Filing		02/11/2019-10:44	03/07/2019-10:44	
Byte Software LLC	Affidavit/Affidavit of Ben Gause	Filing		02/11/2019-10:37	03/07/2019-10:37	
Hughes, Jacob Michael	2/19/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/28/2019-16:56	03/07/2019-16:56	
Hiller, Randall Scott	2/19/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/28/2019-16:56	03/07/2019-16:56	
Stone International LLC	Motion/Set for Hearing	Motion		01/28/2019-16:55	02/19/2019-16:55	
Stone International LLC	NEF(06-11-2018 12:03:28 PM) Motion/Summary Judgment	Filing		06/11/2018-14:01	03/07/2019-14:01	
Stone International LLC	Plts/Stone International Motion/Summary Judgment	Motion		06/11/2018-12:03	03/07/2019-12:03	
Byte Software LLC	NEF(06-06-2018 11:47:58 AM) Motion/Summary Judgment	Filing		06/06/2018-13:33	03/07/2019-13:33	
Byte Software Services LLC	Defs/Byte Software Motion/Partial Summary Judgment	Motion		06/06/2018-11:47	03/07/2019-11:47	
Hughes, Jacob Michael	5/29/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		04/16/2018-14:39	03/07/2019-14:39	
Stone International LLC	5/29/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		04/16/2018-14:39	03/07/2019-14:39	
Stone, Eugene E IV	5/29/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		04/16/2018-14:39	03/07/2019-14:39	
Hiller, Randall Scott	5/29/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		04/16/2018-14:39	03/07/2019-14:39	
Stone International LLC	Status Conference	Motion		04/16/2018-14:39	05/31/2018-14:39	
Hughes, Jacob Michael	10/30/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/11/2017-09:08	03/07/2019-09:08	
Hiller, Randall Scott	10/30/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/11/2017-09:08	03/07/2019-09:08	
Stone, Eugene E IV	10/30/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/11/2017-09:08	03/07/2019-09:08	
Stone International LLC	10/30/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/11/2017-09:08	03/07/2019-09:08	
Stone	Archived Document	Filing		10/09/2017-	03/07/2019-	

International LLC				00:00	00:00	
Hughes, Jacob Michael	10/9/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		09/06/2017-10:27	03/07/2019-10:27	
Hiller, Randall Scott	10/9/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		09/06/2017-10:27	03/07/2019-10:27	
Stone International LLC	Status Conference	Motion		09/06/2017-10:26	11/02/2017-10:26	
Stone International LLC	Notice/Notice of Appearance	Filing		07/07/2017-16:33	03/07/2019-16:33	
Stone International LLC	Order/Relieve Counsel	Order		05/15/2017-12:26	03/07/2019-12:26	
Stone, Eugene E IV	Motion/Relieve As Counsel	Motion		04/06/2017-10:50	03/07/2019-10:50	
Stone International LLC	Affidavit/Publication	Filing		07/13/2012-09:35	03/07/2019-09:35	
	Answer/Answer To Third Amended Complaint And Service	Filing		06/29/2012-00:00	03/07/2019-00:00	
	Service/Proof Of Service on Janice Gause	Filing		06/22/2012-00:00	03/07/2019-00:00	
	Amended/Summons	Filing		06/06/2012-16:50	03/07/2019-16:50	
	Service/Affidavit Of Non Ser S/C on Byte Software	Filing		05/25/2012-00:00	03/07/2019-00:00	
	Service/Certificate Of Service	Filing		05/24/2012-12:49	03/07/2019-12:49	
	Petition/Order Of Publication	Filing		05/24/2012-12:48	03/07/2019-12:48	
	Order/Publication	Order		05/24/2012-12:47	03/07/2019-12:47	
	Service/Affidavit Of Non Ser S/C on Byte Software LLC	Filing		05/23/2012-00:00	03/07/2019-00:00	
	Service/Affidavit Of Non Ser S/C on Janice Gause	Filing		05/23/2012-00:00	03/07/2019-00:00	
	Service/Affidavit Of Service S/C on Janice Gause	Filing		05/23/2012-00:00	03/07/2019-00:00	
	Accept of Serv of Third Amend C of Secretary of State	Filing		05/14/2012-00:00	03/07/2019-00:00	
	Plts' Reply/Service To Third Amended Answer & Counterclaim	Filing		12/09/2011-00:00	03/07/2019-00:00	
	Summons To Answer Counterclaim	Filing		10/26/2011-00:00	03/07/2019-00:00	
	Answer/Ans & Counterclaim And Ser To Third Amended Complaint	Filing		10/26/2011-00:00	03/07/2019-00:00	
	Amended/Third Amended Complaint	Filing		10/13/2011-00:00	03/07/2019-00:00	
	Service/Cert Of Ser By Mail Third Amend Comp On Atty Hiller	Filing		10/13/2011-00:00	03/07/2019-00:00	
	Order/Granting Plts Motion to Amend	Order		10/11/2011-12:13	03/07/2019-12:13	
Stone International LLC	Motion/Motion Filing Fee	Filing		09/27/2011-16:02	03/07/2019-16:02	
Hiller, Randall Scott	Notice of Motions Roster Publication Sent	Action		05/17/2011-16:58	03/07/2019-16:58	
Smith, Joseph Owen	Notice of Motions Roster Publication Sent	Action		05/17/2011-16:58	03/07/2019-16:58	
Gleaton, Ralph Lee II	Notice of Motions Roster Publication Sent	Action		05/17/2011-16:58	03/07/2019-16:58	
Pfeiffer, Fredrick Scott	Notice of Motions Roster Publication Sent	Action		05/17/2011-16:58	03/07/2019-16:58	
Moody, D.	Notice of Motions Roster Publication	Action		05/17/2011-	03/07/2019-	

Randle II	Sent			16:58	16:58	
Moody, D. Randle II	Notice of Motions Roster Publication Sent	Action		05/16/2011-12:58	03/07/2019-12:58	
Smith, Joseph Owen	Notice of Motions Roster Publication Sent	Action		05/16/2011-12:58	03/07/2019-12:58	
Hiller, Randall Scott	Notice of Motions Roster Publication Sent	Action		05/16/2011-12:58	03/07/2019-12:58	
Gleaton, Ralph Lee II	Notice of Motions Roster Publication Sent	Action		05/16/2011-12:58	03/07/2019-12:58	
Pfeiffer, Fredrick Scott	Notice of Motions Roster Publication Sent	Action		05/16/2011-12:58	03/07/2019-12:58	
Stone International LLC	Motion/Motion Filing Fee	Filing		05/16/2011-09:49	03/07/2019-09:49	
	Stone Int's 2nd Motion to Amend Complaint (Business Court)	Motion		05/13/2011-12:51	07/26/2011-12:51	
Hiller, Randall Scott	Notice of Motions Roster Publication Sent	Action		01/14/2011-14:15	03/07/2019-14:15	
Smith, Joseph Owen	Notice of Motions Roster Publication Sent	Action		01/14/2011-14:15	03/07/2019-14:15	
Gleaton, Ralph Lee II	Notice of Motions Roster Publication Sent	Action		01/14/2011-14:15	03/07/2019-14:15	
Pfeiffer, Fredrick Scott	Notice of Motions Roster Publication Sent	Action		01/14/2011-14:15	03/07/2019-14:15	
Moody, D. Randle II	Notice of Motions Roster Publication Sent	Action		01/14/2011-14:15	03/07/2019-14:15	
Stone International LLC	Motion/Motion Filing Fee	Filing		01/05/2011-11:04	03/07/2019-11:04	
	Plaintiff's Motion/Dismiss or Strile 3rd Party Complaint	Motion		01/04/2011-08:19	03/11/2011-08:19	
	Plt's Reply/Ser To Cnterclms Of Byte Software, LLC And Gause	Filing		01/04/2011-00:00	03/07/2019-00:00	
	Jury Trial Requested	Filing		12/16/2010-00:00	03/07/2019-00:00	
	Ans, Cnterclaim & Third Party Comp And Ser Of Byte And Gause	Filing		12/02/2010-00:00	03/07/2019-00:00	
	Summons To Answer Counterclaim	Filing		12/02/2010-00:00	03/07/2019-00:00	
	Order/Granting Plts Motion to Amend/Compel Production	Order		11/18/2010-15:12	03/07/2019-15:12	
Stone International LLC	Second/Amended Complaint	Filing		11/18/2010-09:44	03/07/2019-09:44	
Stone International LLC	Hearing on Pending Motions	Event		11/05/2010-09:30	11/05/2010-10:00	
Stone International LLC	RESERVE TIME	Event		11/05/2010-09:30	11/05/2010-10:00	
Stone International LLC	RESERVE TIME	Event		11/05/2010-09:30	11/05/2010-10:00	
Stone International LLC	Plaintiff's Motion/Compel Production	Event		11/05/2010-09:30	11/05/2010-10:00	
Stone International LLC	Plaintiff's Motion/Amend Complaint	Event		11/05/2010-09:30	11/05/2010-10:00	
	Plaintiff's Motion/Compel Production	Motion		10/08/2010-08:04	03/07/2019-08:04	
	Notice/Notice of Motion Hearings Sent	Filing		10/07/2010-16:33	03/07/2019-16:33	
Stone International LLC	Motion/Motion Filing Fee	Filing		10/06/2010-11:03	11/05/2010-11:03	

Stone International LLC	ADR/Proof of ADR	Filing		09/28/2010-13:21	09/16/2010-13:21	
	ADR/Proof of ADR	Filing		09/27/2010-00:00	03/07/2019-00:00	
Stone International LLC	ADR/Mediation Results Report	Action		08/27/2010-09:54	08/20/2010-09:54	
	ADR/Proof of ADR	Filing		08/24/2010-00:00	03/07/2019-00:00	
Stone International LLC	TRO Hearing	Event		07/15/2010-14:00	07/15/2010-14:30	
Stone International LLC	Motion/Motion Filing Fee	Filing		07/08/2010-10:40	07/15/2010-10:40	
	Order/Motion/Sub of Plaintiff Counsel	Order		07/07/2010-11:45	03/07/2019-11:45	
	Plaintiff's Motion/Preliminary Injunction	Motion		06/29/2010-00:00	03/07/2019-00:00	
Stone International LLC	Plaintiff's Motion/Amend Complaint	Event		06/28/2010-10:30	06/28/2010-11:00	
	Order/Assignment to Business Court Pilot Program	Order		06/14/2010-15:23	03/07/2019-15:23	
	Assignment to Business Court	Motion	Business Court Pending Cases Greenville - NOT A MOTION ROSTER	06/14/2010-10:22	03/07/2019-10:22	
Stone International LLC	Motion/Motion Filing Fee	Filing		06/04/2010-14:31	07/15/2010-14:31	
Stone International LLC	Plaintiff's Motion/Substitution of Counsel	Event		05/25/2010-10:00	05/25/2010-10:30	
	Plaintiff's Motion/Amend Complaint	Motion		05/21/2010-16:47	03/07/2019-16:47	
	CP Non-Jury Motion Notice Sent	Document		05/21/2010-00:00	03/07/2019-00:00	
Stone International LLC	Motion/Motion Filing Fee	Filing		05/21/2010-10:31	06/28/2010-10:31	
Hiller, Randall Scott	Notice of Roster Publication Sent	Action		05/13/2010-09:08	03/07/2019-09:08	
Pfeiffer, Fredrick Scott	Notice of Roster Publication Sent	Action		05/13/2010-09:08	03/07/2019-09:08	
Gleaton, Ralph Lee II	Notice of Roster Publication Sent	Action		05/13/2010-09:08	03/07/2019-09:08	
Stone International LLC	Motion/Motion Filing Fee	Filing		04/13/2010-11:08	06/28/2010-11:08	
	Plaintiff's Motion/Substitution of Counsel	Motion		04/08/2010-10:20	03/07/2019-10:20	
Stone International LLC	Notice/Appearance	Filing		04/08/2010-09:28	03/07/2019-09:28	
	Documents Received at 11/18/09 Hearing	Filing		11/30/2009-08:15	03/07/2019-08:15	
	Order/Form 4 Mtn For Appt Of Receivership Denied	Order		11/19/2009-13:38	03/07/2019-13:38	
Stone International LLC	Plaintiff's Motion/Appointment of Receiver	Event		11/18/2009-11:00	11/18/2009-11:30	
	Affidavit/Affidavit Of Eugene Earle	Filing		11/17/2009-	03/07/2019-	

	"Jack" Stone IV			00:00	00:00	
Stone International LLC	Motion/Motion Filing Fee	Filing		10/27/2009-10:57	05/25/2010-10:57	
	Plaintiff's Motion/Appointment of Receiver	Motion		10/26/2009-08:06	03/07/2019-08:06	
	Certificate/Certificate Of Service	Filing		09/02/2009-10:11	03/07/2019-10:11	
	Motion/Order For Substitution Of Counsel	Motion		09/02/2009-10:10	03/07/2019-10:10	
Stone International LLC	Motion/Motion Filing Fee	Filing		08/25/2009-11:38	11/18/2009-11:38	
Stone International LLC	Affidavit/William M Hogan	Filing		07/21/2009-09:31	03/07/2019-09:31	
	Plt's Reply/Service To Counterclaim Of Byte Software, LLC	Filing		07/02/2009-00:00	03/07/2019-00:00	
	Summons To Answer Counterclaim	Filing		07/01/2009-00:00	03/07/2019-00:00	
	Answer/Answer & Counterclaim And Ser Of Byte Software, LLC	Filing		07/01/2009-00:00	03/07/2019-00:00	
	Service/Affidavit Of Service S/Amend C On GrandSouth Bank	Filing		06/24/2009-00:00	03/07/2019-00:00	
	Affidavit Of Ser S/Amend C On Contemporary Solutions-USA Inc	Filing		06/24/2009-00:00	03/07/2019-00:00	
	Affidavit Of Service S/Amend C On Carolina First Bank	Filing		06/24/2009-00:00	03/07/2019-00:00	
	Service/Affidavit Of Service S/Amend C On Byte Software LLC	Filing		06/24/2009-00:00	03/07/2019-00:00	
	Service/Affidavit Of Service S/Amend C On BB&T,CT Corp	Filing		06/24/2009-00:00	03/07/2019-00:00	
	Letter/Letter From CT	Filing		06/18/2009-00:00	03/07/2019-00:00	
	Amended/Summons And Amended Complaint	Filing		06/15/2009-00:00	03/07/2019-00:00	
Stone International LLC	Summons & Complaint	Filing		06/12/2009-10:46	03/07/2019-10:46	
Stone International LLC	ADR/Alternative Dispute Resolution (Workflow)	Action		06/12/2009-10:46	01/25/2010-10:46	

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas for the Thirteenth Circuit

Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2019-000601

RECEIVED
APR 27 2020
SC Court of Appeals

Stone International, LLC, and Eugene E. Stone, IV, ...Appellants,

v.

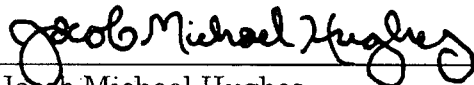
Byte Software, LLC; Byte Software Services, LLC; Benjamin Gause;
Janice Gause, f/k/a Janice Archer, f/k/a Janice Barnett; Carolina First Bank;
Branch Banking and Trust Company; Greg Corbitt; Contemporary
Solutions-USA, Inc.; International Modapts Association, Inc.; and
South Carolina Department of Employment and Workforce, ...Defendants,

Of Which

Byte Software, LLC, Byte Software Services, LLC,
Benjamin Gause, and Janice Gause are the Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any
of the parties and not any other material.



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April 20, 2020
Port Royal, South Carolina

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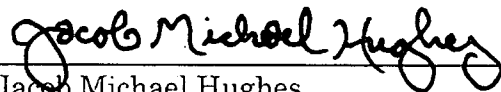
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CERTIFICATE OF COUNSEL

I certify that the Record on Appeal has been redacted in accordance with the Supreme
Court's Order on redaction of private data and personal identifiers.



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