THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-40-05124

Appellate Case No. 2020-001065

Trisha Gibbons,..... Respondent,

v.

Aerotek, Inc., ... Appellant.

RECORD ON APPEAL

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Attorneys for Respondent Trisha Gibbons

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
Trisha Gibbons,)	
)	
Plaintiff,)	
)	O R D E R
-vs-)	
)	C.A. # 2018CP4005124
Aerotek, Inc.,)	
)	
Defendant.)	
_____)	

This matter came before the Court upon Defendant Aerotek, Inc.'s Motion for Attorneys' Fees and Costs following a jury trial held on January 29-30, 2020 which resulted in a directed verdict in favor of the Defendant. The parties consented to having the hearing by way of telephone conference without a court reporter. Participating in the hearing were Paul Porter for the Plaintiff and William Corum and Patrick Quinn for Defendant.

The Plaintiff filed an action against Schneider Electric USA, Inc. and Aerotek seeking damages for her termination from a temporary job at Schneider Electric due to her absence from work because of a subpoena requiring her attendance at a court proceeding. Ultimately, the Plaintiff settled her claim against Schneider Electric but proceeded against Defendant Aerotek. In the Complaint, the Plaintiff asserted two causes of action against Aerotek: (1) Violation of S.C. Code Ann. § 41-1-70; and, (2) Breach of Contract. The case went to trial on January 29-30, 2020 and at the close of the evidence, Aerotek's Motion for a Directed Verdict was granted and the Plaintiff's Complaint Dismissed. An Order granting the directed verdict was issued on February 3, 2020. On February 13, 2020, Aerotek filed a Motion for Attorneys' fees and costs pursuant to the terms of the "Employent Agreement" between the Plaintiff and Aerotek.

In its Motion, Aeortek seeks attorneys' fees of $201,450.50 and costs of $10,365.10 in an action where the Plaintiff was limited to a recovery of approximately $25,000 under S.C. Code Ann. §41-1-70 (which limits the Plaintiff's recovery to one year's salary). The Court denies Aerotek's Motion for Attorneys' Fees and Costs on 2 separate grounds:

1) In response to the Complaint, Aerotek filed an Answer which set forth several affirmative defenses. The Answer did not contain a counterclaim against the Plaintiff seeking attorneys' fees and the final paragraph contains "boilerplate" language requesting a dismissal of the action and requested that the Court "award Aerotek its attorneys' fees and costs expended." Similar language requesting "attorneys' fees and costs" is included in most pleadings filed with this court, both Complaints and Answers, whether applicable or not. Other than this boilerplate language in the "Wherefore" clause at the conclusion of the Answer, there is no other reference to Aerotek's claim or basis for attorneys' fees. Since Aerotek is seeking a judgment against the Plaintiff for more than $200,000, the Court finds that the pleadings must comply with Rule 8(a), SCRCP, which requires the pleading contain "a short and plain statement of the facts showing that the pleader is entitled to relief" The Court finds that the Defendant failed to include allegations of any facts supporting its basis for a recovery attorneys' fees and costs and no reference to the provisions of the Employment Agreement. Aerotek cites *Baird Pac West v. Blue Water Sunset Park, Inc.* No 2004-011 (S.C. Ct. App. 2004) in its Memorandum supporting its argument that seeking attorneys' fees is not waived despite the fact this claim is not asserted in its Answer; however, Aerotek's reliance on this case is misplaced. First, the cited case is an unpublished opinion and therefore has no precedential value (Rule (d)(2), SCACR). Secondly, in that case the Court of Appeals found that waiver of attorneys' fees had not occurred because the claim had been asserted in a Motion filed months before the hearing on that issue and opposing counsel did not object to the request for attorneys' fees. Based on the review of the pleadings

and argument of counsel, the Court finds that Aerotek failed to sufficiently plead facts supporting its claim for this relief and put the Plaintiff on proper notice of the basis for the attorneys' fees and costs which it is seeking in the Motion filed after judgment was entered.

2) The Employment Agreement on which Aerotek bases its claim for attorneys' fees and costs was never introduced as evidence. Even though a copy of an employment agreement was attached to Aerotek's Memorandum in Support of its Motion, there was no affidavit from a representative of Aerotek as to the authenticity of the agreement or that it had been signed by the Plaintiff. Nor was the Employment Agreement introduced as evidence during the trial of the case. In opposition to this Motion, Plaintiff filed her affidavit stating that she did not recall signing the Employment Agreement, thus putting the authenticity of the agreement in issue. Therefore, Aerotek has the burden of establishing the terms of the Employment Agreement and that it was signed, physically or electronically, by the Plaintiff. *See*, *Pee Dee Prod. Credit Ass'n v. Joye*, 284 S.C. 371, 373, 326 S.E.2d 650, 652 (1984) (stating that once the authenticity of a signature is placed in issue, the burden of proof as to the genuineness of the signature is on the party claiming under the signature). Aerotek failed to provide any affidavit authenticating the Employment Agreement in question or confirming that the Plaintiff has signed it electronically as proposed. Since the Plaintiff did not stipulate to the authenticity of this Employment Agreement, the Court finds that Aerotek failed to meet its burden in proving the terms of the Employment Agreement or that it was signed by the Plaintiff.

Based on the grounds set forth above, the Court denies Aerotek's Motion for Attorneys' Fees and Costs.

It is so ordered.

Signature of Judge Gravely on following page

Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Attorney Fees

So Ordered

s/ Honorable Perry H. Gravely, #2755

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005124

Trisha Gibbons
PLAINTIFF(S)

Aerotek Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **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:

Motion for summary judgment is denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/02/2020 .

Bryson Moore Geer for Aerotek Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005124

Trisha Gibbons
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Aerotek Inc
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See page 2.

ORDER INFORMATION

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For Clerk of Court Office Use Only

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Bryson Moore Geer for Aerotek Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter was tried before a jury in Richland County on January 29-30, 2020. At the close of the evidence, Defendant moved for a directed verdict on the basis that the Plaintiff had failed to prove any elements supporting her claim. Pursuant to Rule 50(a) of the SCRCP, a directed verdict may be granted by the court "when upon a trial the case presents only questions of law." In the present case, Plaintiff failed to provide the court with facts to support her claim against this defendant and therefore, the Defendant's Motion for a Directed Verdict was granted and the case is dismissed with prejudice.
It is so ordered.

Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018-CP-40-
Trisha Gibbons Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	**SUMMONS**

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this Complaint upon the subscriber at the address shown below within thirty (30) days (thirty five (35) days if served by United States Mail) after service hereof, exclusive of the date of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

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October 1, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018-CP-40-
Trisha Gibbons Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	**COMPLAINT**

EMPLOYMENT CASE

The Plaintiff, complaining of the Defendants herein, would respectfully allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Trisha Gibbons is a citizen and resident of Lexington County, South Carolina.

2. Defendant Schneider Electric USA, Inc. is a Delaware Corporation engaged, as relevant, in the industry of manufacturing electrical components in Richland County, South Carolina.

3. Defendant Aerotek, Inc. is a Maryland Corporation engaged, as relevant, in the business of staffing workers at the Defendant's plant in Richland County, South Carolina.

4. Defendant Aerotek, Inc. staffed Plaintiff to work at Defendant Schneider's plant in Richland County, South Carolina.

5. This action alleges a violation of South Carolina Code Ann. § 41-1-70 and breach of contract against the Defendants.

6. The Defendants have sufficient connections to Richland County such that this Court may exercise personal jurisdiction over this matter.

7. Plaintiff demands a jury trial on all issues and claims.

8. Plaintiff requests damages in this matter not to exceed $75,000.00.

9. This Court exercises subject matter jurisdiction over this action because the claims arise under South Carolina common law and statutory law.

10. The events giving rise to this claim occurred in Richland County, and jurisdiction is proper.

FACTUAL ALLEGATIONS

11. Plaintiff was hired to work at Defendant Schneider by and through Defendant Aerotek on or around November 5, 2017 as a Panel Wirer.

12. Plaintiff met the legitimate expectations of her employment.

13. Plaintiff received no disciplinary actions in her employment other than the termination giving rise to this action.

14. Plaintiff was employed pursuant to a written agreement received upon her hire and was set to receive a $4 per hour pay increase from $12 per hour to $16 per hour after 90 days of employment.

15. Plaintiff accepted that agreement as a condition upon accepting employment.

16. Defendants did not honor that agreement and Plaintiff's pay remained stagnant after 90 days of employment.

17. Plaintiff was hired as a first shift employee but was started on second shift with the understanding that she would be able to transfer to first shift after days when a spot opened.

18. Plaintiff, who has children and related child care obligations, accepted employment on second shift pursuant to this agreement.

19. Plaintiff requested a transfer to first shift after completing 90 days and upon notice of open positions but was denied the same.

20. Plaintiff was served with a valid trial subpoena after February 1, 2018 for the week of February 12, 2018.

21. That subpoena would cause Plaintiff to miss work and be available to testify until released from the subpoena.

22. Plaintiff, upon receiving the subpoena, made a copy of the subpoena and attempted to give the subpoena to her supervisor at Defendant Schneider. The supervisor said she did not need the copy, would mark the absences on her calendar, and asked Plaintiff to let her know when she was able to return to work.

23. Plaintiff, upon receiving the subpoena, also informed her contact at Defendant Aerotek of the Subpoena verbally via telephone call.

24. Plaintiff's trial testimony was continuously delayed during the week of February 12, 2018 such that Plaintiff was sequestered and required to be at home and ready to travel to the Court for testimony each day that week until she was released by the Court.

25. Plaintiff was ultimately called to testify on Thursday February 13, 2018 at 11:00 AM. Plaintiff was released from the subpoena after her testimony by the judge.

26. Upon her release, Plaintiff called Defendant Aerotek to inform that she was able to return to work. On that phone call, Defendant Aerotek informed Plaintiff her contract was cancelled the day before by Defendant Schneider due to attendance.

FOR A FIRST CAUSE OF ACTION
Against the Defendants
(Violation of S.C. Code Ann. § 41-1-70)

27. Plaintiff realleges the foregoing where consistent.

28. Plaintiff was terminated by Defendants because she complied with a subpoena to testify in Court.

29. Defendants violated S.C. Code Ann. § 41-1-70 in terminating Plaintiff.

30. Plaintiff is entitled to recover from Defendants all damages available under S.C. Code Ann. § 41-1-70.

31. Plaintiff seeks damages not to exceed $75,000.00.

FOR A SECOND CAUSE OF ACTION
Against the Defendants
(Breach of Contract)

32. Plaintiff realleges the foregoing where consistent.

33. Plaintiff was employed pursuant to a written agreement received upon her hire and was set to receive a $4 per hour pay increase from $12 per hour to $16 per hour after 90 days of employment.

34. Plaintiff accepted that agreement as a condition upon accepting employment.

35. Defendants did not honor that agreement, and Plaintiff's pay remained stagnant after 90 days of employment.

36. The same constitutes a breach of contract for which the Defendants are liable.

37. Plaintiff is entitled to recover damages from the Defendants for the breach of contract for the actual and consequential losses she suffered.

38. Plaintiff seeks damages not to exceed $75,000.00

PRAYER FOR RELIEF

39. Plaintiff requests a jury trial on the above claims and any issues incident thereto including this Court's jurisdiction and ability to hear this matter.

40. Plaintiff seeks damages jointly and severally from the Defendants.

41. Plaintiff seeks damages to be assessed by the jury for the claims alleged above and any other equitable relief the Court deems just and proper.

42. Plaintiff does not seek more than $75,000.00 in damages.

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October 1, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124 **ANSWER OF DEFENDANT AEROTEK, INC.**

For its Answer to Plaintiff's Complaint, Defendant Aerotek, Inc. ("Aerotek") states as follows:

PARTIES AND JURISDICTION

1. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 1 of the Complaint and, therefore, denies the same.

2. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 2 of the Complaint and, therefore, denies the same.

3. Aerotek admits the averments in Paragraph 3 of the Complaint.

4. Aerotek admits the averments in Paragraph 4 of the Complaint.

5. Aerotek acknowledges that this action includes a claim that Defendants violated S.C. Code Ann. § 41-1-70 and a claim that they breached a contract; however, Aerotek denies that it is liable to Plaintiff under either claim.

6. The averments in Paragraph 6 of Plaintiff's Complaint constitute legal conclusions requiring no response by Aerotek. To the extent a response is required, Aerotek denies the averments in Paragraph 6.

7. Aerotek acknowledges that Plaintiff seeks a jury trial on some or all of the claims brought in this action; however, Plaintiff's entitlement to such a jury trial is a legal issue requiring no response by Aerotek.

8. Aerotek acknowledges that "Plaintiff requests damages in this matter not to exceed $75,000.00." While the case stated by Plaintiff's initial pleading is not removable, Aerotek reserves the right to remove this case to federal court upon receiving an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

9. The averments in Paragraph 9 of Plaintiff's Complaint constitute legal conclusions requiring no response by Aerotek. To the extent a response is required, Aerotek denies the averments in Paragraph 9.

10. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 10 of the Complaint and, therefore, denies the same.

FACTUAL ALLEGATIONS

11. Aerotek admits that it employed Plaintiff as a temporary contract employee in a position at Schneider Electric. Aerotek denies the remaining averments in Paragraph 11 of Plaintiff's Complaint.

12. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 12 of the Complaint and, therefore, denies the same.

13. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 13 of the Complaint and, therefore, denies the same.

14. Aerotek admits that Plaintiff was employed pursuant to a written Aerotek employment agreement, and that that agreement provides that Plaintiff would be paid at a regular rate of $12.00/hour; however, Aerotek denies that the written Aerotek employment agreement provides for a $4.00/hour raise after 90 days of employment.

15. Aerotek admits that Plaintiff signed the written Aerotek employment agreement. Aerotek denies any remaining averments in Paragraph 15 of the Complaint.

16. Aerotek denies that it failed to honor its obligations under the written Aerotek employment agreement. Aerotek is without knowledge or information sufficient to form a belief as to the truth of any remaining averments in Paragraph 16 of the Complaint and, therefore, denies the same.

17. Aerotek admits that Plaintiff initially worked on the 2nd shift. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 17 of the Complaint and, therefore, denies the same.

18. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 18 of the Complaint and, therefore, denies the same.

19. Aerotek admits that, on or about January 3, 2018, Plaintiff asked to move to the 1st shift. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 19 of the Complaint and, therefore, denies the same.

20. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 20 of the Complaint and, therefore, denies the same.

21. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 21 of the Complaint and, therefore, denies the same.

22. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 22 of the Complaint and, therefore, denies the same.

23. Aerotek denies the averments in Paragraph 23 of the Complaint.

24. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 24 of the Complaint and, therefore, denies the same.

25. Aerotek denies that February 13, 2018 was a Thursday. Aerotek is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 25 of the Complaint and, therefore, denies the same.

26. Aerotek admits that Plaintiff's Aerotek recruiter spoke with Plaintiff on the phone, on or about February 15, 2018, and told her that Schneider Electric ended Plaintiff's assignment for attendance reasons.

FIRST CAUSE OF ACTION
(S.C. Code Ann. § 41-1-70)

27. Aerotek incorporates its above responses as if fully set forth herein.

28. Aerotek denies the averments in Paragraph 28 of the Complaint.

29. Aerotek denies the averments in Paragraph 29 of the Complaint.

30. Aerotek denies the averments in Paragraph 30 of the Complaint.

31. Aerotek acknowledges that "Plaintiff seeks damages not to exceed $75,000.00"; however, Aerotek denies that Plaintiff is entitled to the requested damages or any relief whatsoever. Further, while the case stated by Plaintiff's initial pleading is not removable, Aerotek reserves the right to remove this case to federal court upon receiving an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

SECOND CAUSE OF ACTION
(Breach of Contract)

32. Aerotek incorporates its above responses as if fully set forth herein.

33. Aerotek denies the averments in Paragraph 33 of the Complaint.

34. Aerotek denies the averments in Paragraph 34 of the Complaint.

35. Aerotek denies the averments in Paragraph 35 of the Complaint.

36. Aerotek denies the averments in Paragraph 36 of the Complaint.

37. Aerotek denies the averments in Paragraph 37 of the Complaint.

38. Aerotek acknowledges that "Plaintiff seeks damages not to exceed $75,000.00"; however, Aerotek denies that Plaintiff is entitled to the requested damages or any relief whatsoever. Further, while the case stated by Plaintiff's initial pleading is not removable, Aerotek reserves the right to remove this case to federal court upon receiving an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

PRAYER FOR RELIEF

Aerotek denies that Plaintiff is entitled to either the relief specifically sought in Paragraphs 39–42 of the Complaint, or any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. To the extent Plaintiff has any damages, which Aerotek denies, Plaintiff's alleged damages are a product of Plaintiff's failure to mitigate.

3. The Complaint is barred, in whole or in part, by the doctrines of unclean hands, estoppel, waiver, and/or laches.

4. Aerotek did not take an actionable adverse employment action against Plaintiff, or dismiss her for purposes of S.C. Code Ann. § 41-1-70.

5. To the extent Aerotek did take an adverse employment action against Plaintiff, or dismiss her for purposes of S.C. Code Ann. § 41-1-70, there was no causal connection between Plaintiff alleged jury service in response to a subpoena and any employment decision made by Aerotek.

6. Plaintiff expressly waived any right to have her claims heard by a court or jury.

7. Aerotek currently is without knowledge or information sufficient to form a belief as to whether it may have additional, as yet unstated, defenses available. Aerotek therefore reserves the right to assert additional defenses, including affirmative defenses, if appropriate.

WHEREFORE, having fully answered Plaintiff's Complaint, Aerotek respectfully requests that the Court dismiss Plaintiff's Complaint in its entirety, and award Aerotek its attorneys' fees and costs expended, along with such other relief as the Court deems proper.

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Attorneys for Defendant Aerotek, Inc.

Columbia, South Carolina

November 21, 2018

Certificate of Electronic Notification

Recipients

Charles Manning - Notification transmitted on 11-21-2018 03:13:47 PM.

James Porter - Notification transmitted on 11-21-2018 03:13:47 PM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

–

A filing has been submitted to the court RE: 2018CP4005124

Official File Stamp:	11-21-2018 03:13:30 PM
Court:	CIRCUIT COURT
	Common Pleas
	Richland
Case Caption:	Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al
Event(s):	
Notice/Notice of Appearance	
Document(s) Submitted:	Answer/Answer
Filed by or on behalf of:	Patrick Devin Quinn

This notice was automatically generated by the Court's auto-notification system.

–

The following people were served electronically:

Charles F. Williams Manning, II for Schneider Electric Usa Inc

James Paul Porter for Trisha Gibbons

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Aerotek Inc

IN THE STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL DISTRICT
Trisha Gibbons, Plaintiff, vs. Schneider Electric USA, Inc. and Aerotek, Inc., Defendants.	Civil Action No.: 2018-CP-40-05124 **JOINT STIPULATION OF DISMISSAL**

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiff Trisha Gibbons, Defendant Schneider Electric USA, Inc., and Defendant Aerotek, Inc., by and through their undersigned counsel, dismiss this action as to Defendant Schneider Electric USA, Inc. with prejudice. Plaintiff and Defendant Schneider Electric USA, Inc. bear all attorneys' fees and costs as against each other. This does not end the case or amount to a dismissal of Plaintiff's claims as alleged against Defendant Aerotek, Inc.

Defendant Aerotek, Inc. consents to dismissal of Defendant Schneider Electric USA, Inc. from this action.

WE DO SO CONSENT:

Respectfully submitted,

CROMER BABB PORTER & HICKS, LLC

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September 18, 2019

Certificate of Electronic Notification

Recipients

Charles Manning - Notification transmitted on 09-18-2019 02:59:59 PM.

James Porter - Notification transmitted on 09-18-2019 02:59:59 PM.

Patrick Quinn - Notification transmitted on 09-18-2019 02:59:59 PM.

Benjamin Dudek - Notification transmitted on 09-18-2019 02:59:59 PM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

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A filing has been submitted to the court RE: 2018CP4005124

Official File Stamp:	09-18-2019 02:59:44 PM
Court:	CIRCUIT COURT
	Common Pleas
	Richland
Case Caption:	Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al
Document(s) Submitted:	Stipulation Of Dismissal
Filed by or on behalf of:	Charles F. Williams Manning, II

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

Benjamin Patrick James Dudek for Schneider Electric Usa Inc

Patrick Devin Quinn for Aerotek Inc

Charles F. Williams Manning, II for Schneider Electric Usa Inc

James Paul Porter for Trisha Gibbons

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Bryson Moore Geer for Aerotek Inc

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO. 2018-CP-40-05124 **PARTIAL** **STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff and Defendant Aerotek, Inc. (Defendant Schneider has been dismissed from this action) stipulate to dismissing the claim of breach of contract presently pending in this action. This stipulation *with prejudice*, with each side to bear its own costs and fees and is made pursuant to Rule 41(a)(1), SCRCP.

This **does not end** the case. A claim that Defendant Aerotek, Inc. violated S.C. Code Ann. § 41-1-70 remains pending.

WE STIPULATE:

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October 29, 2019

Certificate of Electronic Notification

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James Porter - Notification transmitted on 10-29-2019 09:21:44 AM.

Patrick Quinn - Notification transmitted on 10-29-2019 09:21:44 AM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

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A filing has been submitted to the court RE: 2018CP4005124

Official File Stamp:	10-29-2019 09:21:29 AM
Court:	CIRCUIT COURT
	Common Pleas
	Richland
Case Caption:	Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al
Document(s) Submitted:	Stipulation Of Dismissal
Filed by or on behalf of:	James Paul Porter

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

James Paul Porter for Trisha Gibbons

Patrick Devin Quinn for Aerotek Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Bryson Moore Geer for Aerotek Inc

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

DEFENDANT AEROTEK, INC.'S
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Under Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Aerotek, Inc. ("Aerotek") moves for summary judgment on all claims Plaintiff has asserted against it. The grounds for this motion are as follows:

1. Plaintiff's claim for violation of S.C. Code Ann. § 41-1-70 fails as a matter of law because:

(a) Plaintiff cannot establish that Aerotek was an "employer who dismiss[ed]" Plaintiff, as required by the statute, because Aerotek played no role whatsoever in the decision of Defendant Schneider Electric USA, Inc. ("Schneider Electric") to terminate Plaintiff's assignment at Schneider Electric; and

(b) Plaintiff cannot establish that Aerotek took any action with respect to her employment "because [she] complie[d] with a valid subpoena to testify in

a court proceeding," as required by the statute, because there is no evidence that Aerotek was even aware of, much less motivated by, Plaintiff's compliance with a trial subpoena.

2. Plaintiff breach of contract claim fails as a matter of law because her written employment agreement with Aerotek:

(a) did not provide that Plaintiff would receive an increase in her rate of pay after ninety days on the job; and

(b) included an integration/merger clause barring the alleged agreement upon which Plaintiff's breach of contract claim is based.

WHEREFORE, Aerotek respectfully requests the Court enter an Order granting summary judgment in favor of Aerotek on Plaintiff's § 41-1-70 and breach of contract claims. This motion is further based on the applicable case law of South Carolina and the memorandum of law filed in support of this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 11, 2019, a copy of the foregoing document was served, via email, on:

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

MEMORANDUM IN SUPPORT OF DEFENDANT AEROTEK, INC.'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Aerotek, Inc. ("Aerotek"), a staffing company, recruited and hired Plaintiff to work for Aerotek's client, Defendant Schneider Electric USA, Inc. ("Schneider Electric"), where Plaintiff worked for about four months, until Schneider Electric notified Aerotek that it was terminating Plaintiff's assignment. Plaintiff claims that the decision to end her assignment was based on her compliance with a trial subpoena and, thus, violated S.C. Code Ann. § 41-1-70. However, beyond merely notifying Plaintiff that Schneider Electric ended her assignment, Aerotek had no involvement in the termination decision. Further, before notifying Plaintiff that Schneider Electric ended her assignment, Aerotek had no knowledge that Plaintiff had even been served with a trial subpoena, much less that she had missed work in order to testify in a court proceeding. Therefore, to the extent it is asserted against Aerotek, Plaintiff's § 41-1-70 claim fails as a matter of law.

The same is true of Plaintiff's separate breach of contract claim, which is based on a non-existent contractual obligation. While Plaintiff claims that the parties' written contract of employment required Aerotek to increase Plaintiff's hourly rate of pay after ninety days on the job, the parties' only written employment agreement contains no such provision. Furthermore, the employment agreement includes an integration/merger clause barring any agreements not expressly set forth in the employment agreement or a written modification of the employment agreement. Therefore, to the extent it is brought against Aerotek, Plaintiff's breach of contract claim also fails as a matter of law.

II. FACTS

A. Aerotek and its relationship with Schneider Electric.

Aerotek is a staffing company. (**Ex. A**, Pl.'s dep. 14:10–12). In February 2016, Aerotek entered into a written Supplier Agreement with Schneider Electric's agent, a managed service provider ("MSP") called Volt Consulting Group, Ltd. (**Ex. B**, Pritchard aff. ¶¶ 4–5; **Ex. C**, Supplier Agreement). Under the Supplier Agreement, Aerotek was to provide temporary contract employees ("Contingent Workers") to perform services for Schneider Electric. (**Ex. C**, pp. 1–3).

While Aerotek was to be responsible for "administrative matters" concerning the employment of the Contingent Workers, Schneider Electric was to "exercise day-to-day supervision, direction and control" over the work performed by the Contingent Workers. (**Ex. C**, pp. 6–7). Further, Schneider Electric was to "determine whether Contingent Worker Services performed by Contingent Workers are satisfactory," and it retained the "right to reject, direct the removal or terminate . . . any Contingent Worker," as well as the

right to "terminate or change any assignment . . . by way of notice and request to [Aerotek]." (Ex. C, p. 7).

B. Plaintiff's assignment at Schneider Electric.

Plaintiff worked at Schneider Electric from October 2017 to February 2018. (Ex. A, 24:9–15). Shortly before she began working at Schneider Electric, Plaintiff entered into a written employment agreement with Aerotek. (Ex. D, Employment Agreement; Ex. A, 17:4–18:19; Ex. B, ¶ 5). As noted in the agreement, Plaintiff's employment with Aerotek was coextensive with and no greater than her assignment at Schneider Electric. (Ex. D, p. 1; Ex. A, 20:8–16). In other words, Plaintiff's employment would begin when Plaintiff started working at Schneider Electric, and would end whenever her assignment ended, whether at the direction of Schneider Electric or otherwise. Id.

The employment agreement provided for a regular rate of pay of $12.00/hour. (Ex. D, p. 1). It did not provide that Plaintiff's rate of pay would increase after any particular amount of time on the job. (Ex. D). Further, the employment agreement included the following "Integration/Merger" clause:

> [T]his Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement. No representations, promises, . . . or oral agreements have been made by any of the parties except as expressly set forth herein . . . . This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be of no effect.

(Ex. D, p. 3).

In accordance with the employment agreement, Plaintiff's starting rate of pay was, in fact, $12.00/hour. **(Ex. A**, 74:20–23). Although not guaranteed by, or even mentioned in, the employment agreement, Plaintiff had an understanding that she might be eligible for an increase in her rate of pay (to $15.00/hour) after ninety days on the job, depending on her job performance and attendance. **(Ex. A**, 74:24–75:18). She does not know who would have assessed her performance and attendance for purposes of a possible raise; however, she testified that her supervisors at Schneider Electric would have been in a position to do so. **(Ex. A**, 76:8–77:3).

Aerotek had no supervisory personnel at the Schneider Electric facility at which Plaintiff worked. **(Ex. A**, 33:19–22). According to Plaintiff, her supervisors were Schneider Electric employees: (1) Reba Horton (the "Production Supervisor"); (2) Delmar Lloyd (an "assistant supervisor"), and (3) a male possibly named Carter (her "immediate supervisor"). **(Ex. A**, 31:20–32:19, 51:20–23; **Ex. E**, Pl.'s Discovery Responses, Interrog. 1; **Ex. F**, Schneider Electric's Discovery Responses, Interrog. 1). Plaintiff worked at a Schneider Electric facility using tools provided by Schneider Electric. **(Ex. A**, 33:8–18).

C. The trial subpoena at issue in this lawsuit.

Plaintiff's only contact at Aerotek was a Recruiter named Parissa Ramezani, who worked out of an Aerotek field office. **(Ex. A**, 18:20–19:3, 21:11–22:8, 24:16–25:7; **Ex. E**, Interrog. 1). Plaintiff had two—and only two—conversations with Ms. Ramezani about the Smith v. CSL Plasma lawsuit, which involved a former employer of Plaintiff, and which gave rise to the trial subpoena at issue in this case. **(Ex. A**, 6:12–24, 11:7–12:21, 29:11–22, 30:20–25).

In the first conversation, which took place during the interview process before Plaintiff began working at Schneider Electric, Plaintiff told Ms. Ramezani that she was involved in a court proceeding and might, at some point in the future, need time off of work as a result. (**Ex. A**, 22:9–24:3). Plaintiff is "not exactly sure" when the second conversation occurred, but she knows that it occurred "well before" she received the subpoena at issue, meaning "at least a couple of weeks to a month before. At least." (**Ex. A**, 30:1–19, 31:1–5). During the second conversation, Plaintiff told Ms. Ramezani that she "thought it was going to be coming up soon for the CSL stuff." (**Ex. A**, 26:4–9). In response, Ms. Ramezani "told [Plaintiff] that whenever [Plaintiff] got served with the paperwork that [Plaintiff] needed to take it over to Schneider and give it to Reba [Horton] and them because they . . . were the ones that were in charge of the schedule and stuff." (**Ex. A**, 27:21–28:13, 31:6–16).

On February 1, 2018, an attorney in the Smith v. CSL Plasma lawsuit mailed Plaintiff the trial subpoena, which Plaintiff believes she received on February 5, 2018. (**Ex. G**, Letter and Subpoena; **Ex. A**, 49:16–50:19). The subpoena purported to require Plaintiff to be available to testify between Monday, February 12, 2018, and Friday, February 16, 2018. (**Ex. G**, pp. 2–3). Plaintiff's attorney for purposes of the Smith v. CSL Plasma lawsuit (not her attorney in the present lawsuit) kept Plaintiff apprised of when she actually needed to be available to testify. (**Ex. A**, 53:5–54:2, 55:9–14).

Upon receiving the subpoena on February 5, 2018, Plaintiff took it to her immediate supervisor at Schneider Electric, who would not accept it, and who told Plaintiff to wait until Production Supervisor Reba Horton came in to work that day. (**Ex. A**, 51:11–25).

When Ms. Horton arrived, Plaintiff gave her the subpoena; however, after reviewing it, Ms. Horton returned it to Plaintiff, said she did not want a copy, and said she would mark on her calendar that Plaintiff would be out. (**Ex. A**, 52:1–21).

The following week, Plaintiff did testify at trial, though not until Wednesday at the earliest. (**Ex. A**, 63:7–64:9).[1] On the days immediately preceding the date on which Plaintiff testified, Plaintiff's attorney notified Plaintiff, early each morning, that Plaintiff was not needed at trial that day. (**Ex. A**, 55:15–63:6). Nevertheless, on those days, though her scheduled shift did not start until 3:00 p.m., Plaintiff did not go into work or even talk to anyone at Schneider Electric, despite the fact that she was not needed at trial and did not go to court. (**Ex. A**, 55:15–63:6, 66:15–17).

D. The termination of Plaintiff's assignment at Schneider Electric.

Before she began working at Schneider Electric, Plaintiff understood that Schneider Electric would decide whether to accept Plaintiff as a temporary employee. (**Ex. A**, 19:22–20:2). Further, both before she began working at Schneider Electric, and while working there, Plaintiff understood that Schneider Electric could end her employment. (**Ex. A**, 20:17–22).

By email dated February 15, 2018, Johnda Burke, a Human Resources Business Partner at Schneider Electric, directed Ms. Ramezani at Aerotek to end Plaintiff's assignment, and notified Aerotek that Plaintiff "has been a no show for 2 days." (**Ex. H**, 2/15/18 emails; **Ex. B**, ¶ 5). Accordingly, Ms. Ramezani called Plaintiff and notified her that

[1] Plaintiff's Complaint includes an allegation that Plaintiff testified on Thursday (Compl., ¶ 25); however, at her deposition, Plaintiff claimed that said allegation is incorrect.

Schneider Electric "decided to end your assignment." (**Ex. I**, Voicemail transcript; **Ex. A**, 68:14–69:17, 72:10–73:6). Plaintiff does not know who made the decision to end her assignment at Schneider Electric. (**Ex. A**, 73:20–22).

III. ARGUMENT

In her Complaint, Plaintiff asserted claims for: (1) violation of SC § 41-1-70; and (2) breach of contract. To the extent Plaintiff's claims are asserted against Aerotek, they both fail as a matter of law.

A. Summary judgment standard.

On a motion for summary judgment, "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

The Supreme Court of South Carolina "has established that 'the plain language of Rule 56(c) mandates the entry of summary judgment against the party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007) (quoting Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545–46 (1991)). "Therefore, on a defendant's motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after only finding that a genuine issue of material fact exists as to one element of

the plaintiff's claim; rather, under Baughman, the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff's claim." Id. at 358.

B. There is no triable issue that Aerotek dismissed Plaintiff, much less that it dismissed Plaintiff because she complied with a trial subpoena.

In her First Cause of Action, Plaintiff alleged that "[she] was terminated by Defendants [plural] because she complied with a subpoena to testify in Court." Compl. ¶ 28. According to Plaintiff, the two "Defendants violated S.C. Code Ann. § 41-1-70 in terminating Plaintiff." Id. at ¶ 29. The statute at issue provides that:

> Any **employer who dismisses** . . . an employee because the employee complies with a valid subpoena to testify in a court proceeding . . . is subject to a civil action in the circuit court for damages caused by the dismissal.

S.C. Code Ann. § 41-1-70 (emphasis added). However, as demonstrated below, there is no evidence in the summary judgment record from which a reasonable jury could determine that Aerotek, the staffing company, was the "employer who dismiss[ed]" Plaintiff. Further, even if merely notifying Plaintiff of the termination of her assignment at Schneider Electric could somehow constitute a dismissal by Aerotek, there is no evidence that Aerotek was motivated to provide that notice by Plaintiff's alleged compliance with a trial subpoena, as opposed to a direction given by its client.

1. There is no evidence that Aerotek was the employer who dismissed Plaintiff.

Initially, it is important to understand both the nature of Plaintiff's employment at Schneider Electric and Aerotek's very limited role in that employment. Helpfully, a federal court in this State has declared the following:

> [T]oday's workforce is composed of increasingly large numbers of part-time employees provided by temporary employment agencies. Discrimination of some form among some of these temporary employment relationships will inevitably occur. Workplace discrimination will most likely come from the employer where a person works, not the temporary agency. As in the instant case, the temporary agency often will have little to no daily contact with the employee. In such a setting, a temporary employment agency would have no indication of any workplace discrimination without notice from the employee. It would be **grossly inequitable** to hold such an agency liable for discrimination that it was not aware of, had no reason to know was taking place, and of which it had no control.

Williams v. Grimes Aerospace Co., 988 F. Supp. 925, 938 (D.S.C. 1997) (emphasis added).

For that reason, where the employer is a **staffing company**, like Aerotek, an adverse employment action taken by the employer's **client**, like Schneider Electric, generally will not subject the staffing company to liability. *See, e.g.*, Watson v. Adecco Emp. Servs., Inc., 252 F. Supp. 2d 1347, 1357–58 (M.D. Fla. 2003) (granting summary judgment on employment discrimination claims brought against staffing company, which, as "a private company, cannot force its client, another private company, not to discriminate or run its business in a certain manner.").

Aerotek itself has obtained summary judgment on that very basis in courts around the country. For example, in McQueen v. Wells Fargo Home Mortg., No. 11-1580, 2013 WL 3357000 (N.D. Ala. June 28, 2013), Aerotek's client, Wells Fargo, "contacted Aerotek to request that [the plaintiff] be removed from her assignment at Wells Fargo because she had falsified loan documents, had low productivity, and failed to follow instructions." Id. at *7. Neither of the plaintiff's two Aerotek recruiters "had any input into Wells Fargo's decision to terminate the plaintiff's assignment." Id. at *3, 7. On the issue of whether

Aerotek took an adverse employment action against the plaintiff, the court stated the following:

> In this case, the evidence shows that only Wells Fargo had anything to do with the plaintiff's termination. There is no evidence that Aerotek participated in any way other than to inform the plaintiff that she could not return to Wells Fargo. For that reason, **the plaintiff's termination is not an adverse employment action attributable to Aerotek**.

Id. at *11 (emphasis added). Consequently, the judge granted Aerotek summary judgment on the plaintiff's race discrimination, age discrimination, and retaliation claims. Id. at *11, 16.

Similarly, in Payton v. Aerotek, Inc., No. 15-12222, 2017 WL 1164522 (E.D. Mich. Mar. 29, 2017), Aerotek's client, TSI, after reviewing the performance of a number of Aerotek's temporary contract employees, decided to offer some of them permanent employment with TSI, and to terminate the assignments of others, including plaintiff. Id. at *1. According to the court, "[s]ince TSI was the ultimate decision maker regarding Payton's employment, **Aerotek cannot be held liable for TSI's decision to terminate**." Id. at *4 (emphasis added). Therefore, the court held that "Payton cannot sustain a claim against Aerotek because **it did not engage in an adverse employment action** against Payton." Id. (emphasis added). As a result, the court granted Aerotek summary judgment on plaintiff's FMLA interference claim. Id. at *5.

Here, there is absolutely no evidence that Aerotek played any role in the decision to terminate Plaintiff's assignment at Schneider Electric. Instead, the evidence in the summary judgment record shows that Schneider Electric made the decision to end

Plaintiff's assignment, as was its right under the Supplier Agreement, and that it conveyed that decision to Aerotek, which, in turn, notified Plaintiff. As she admitted at her deposition, Plaintiff has no evidence to the contrary. Therefore, Plaintiff cannot possibly establish that Aerotek was the employer who dismissed her. As a result, to the extent it is asserted against Aerotek, Plaintiff's § 41-1-70 claim fails as a matter of law.

2. There is no evidence that Aerotek took any action with respect to Plaintiff's employment on the basis of her alleged compliance with a trial subpoena.

As set forth above, § 41-1-70 prohibits an employer from dismissing an employee "because the employee complies with a valid subpoena to testify in a court proceeding." S.C. Code Ann. § 41-1-70. A similar prohibition is found at § 41-1-80, which provides that an employer may not discharge or demote an employee "because the employee has instituted or caused to be instituted . . . any proceeding under the South Carolina Workers' Compensation Law . . . or has testified or is about to testify in any such proceeding." S.C. Code Ann. § 41-1-80.

"In order to prove a claim under § 41–1–80, a plaintiff must establish three elements: 1) institution of workers' compensation proceedings, 2) discharge or demotion, and 3) a causal connection between the first two elements." Hinton v. Designer Ensembles, Inc., 343 S.C. 236, 242, 540 S.E.2d 94, 97 (2000). "The appropriate test of causation under § 41–1–80 is the 'determinative factor' test." Id. "The determinative factor test requires the employee establish that he would not have been discharged 'but for' the filing of the workers' compensation claim." Id.

Although there is absence of case law (or a request to charge) setting forth the elements of a claim under § 41-1-70, it is fair to say, by comparison to § 41-1-80, that to prove such a claim, a plaintiff must show that her compliance with a trial subpoena was the determinative factor in the employer's decision to dismiss the plaintiff. Importantly, there can be no causal connection where the decision-maker does not know about the employee's protected activity. *See, e.g.*, Moshtaghi v. The Citadel, 314 S.C. 316, 322–24, 443 S.E.2d 915, 919 (Ct. App. 1994) (affirming summary judgment for state university/employer where decision-maker did not know plaintiff/employee testified as part of investigation into university board election).

Here, there is no evidence that Aerotek was aware of, much less motivated by, Plaintiff's compliance with a trial subpoena. Plaintiff testified that she never told Parissa Ramezani, or anyone else at Aerotek, about the trial subpoena she received on February 5, 2018, at any time before Ms. Ramezani notified her of Schneider Electric's decision to terminate her assignment. Therefore, even if merely giving Plaintiff notice of Schneider Electric's decision could somehow make Aerotek the employer who dismissed Plaintiff, which it cannot, Aerotek could not possibly have given that notice "because" Plaintiff complied with a trial subpoena of which Aerotek was unaware. The only evidence in the summary judgment record suggests that Aerotek told Plaintiff that her assignment was terminated because Schneider Electric directed it to do so. As a result, there is no evidentiary basis upon which to find that Aerotek harbored any retaliatory animus, and Plaintiff's § 41-1-70 claim against Aerotek fails as a matter of law.

C. There is no triable issue that Aerotek breached any alleged agreement to increase Plaintiff's hourly rate of pay.

In her Second Cause of Action, Plaintiff alleged that "[she] was employed pursuant to a written agreement received upon her hire and was set to receive a $4 per hour pay increase from $12 per hour to $16 per hour after 90 days of employment." (Compl., ¶ 33). Plaintiff further alleged that "Defendants did not honor that agreement, and Plaintiff's pay remained stagnant after 90 days of employment." (Compl., ¶ 35). However, Plaintiff's written employment agreement not only lacked the alleged provision for a pay increase, but also barred any alleged agreements not expressly set forth in the employment agreement or found in a written modification of the employment agreement. Furthermore, Plaintiff has admitted there was no guaranteed pay raise, and that Schneider Electric, not Plaintiff or Aerotek, would have determined whether any raise was warranted.

"The elements for a breach of contract are [1] the existence of a contract, [2] its breach, and [3] damages caused by such breach." Hotel & Motel Holdings, LLC v. BJC Enter., LLC, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012)). Here, Plaintiff cannot establish any of the three required elements.

First, the parties did not have a written contract under which Aerotek was required to pay Plaintiff $16.00/hour (or $15.00/hour) once she had been on the job for ninety days. As mentioned above, the employment agreement establishes a regular rate of pay of $12.00/hour, and it includes no provision whatsoever for an increase in pay at any point in time.

Further, the employment agreement's "Integration/Merger" clause precludes the alleged agreement upon which Plaintiff's breach of contract claim is based. "A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement." Silver v. Carolinas Med. Alliance, No. 17-233, 2018 WL 7824454, *27 n. 14 (D.S.C. Dec. 28, 2018) (quoting Davis v. KB Home of S.C., Inc., 394 S.C. 116, 128, 713 S.E.2d 799, 805 (Ct. App. 2011)). A defendant is entitled to summary judgment where the plaintiff's breach of contract claim is based upon an alleged agreement barred by the merger clause in the parties' written agreement. Id. at *22 (defendant entitled to summary judgment where record devoid of evidence that parties ever executed draft amendment to employment agreement requiring employer to cover cost of tail insurance for employee/doctor).

Here, Plaintiff claims that Aerotek breached an alleged agreement to increase her rate of pay after ninety days on the job. That alleged agreement did not find its way into the final version of the parties' employment agreement, nor is it embodied in any written modification of the employment agreement. Therefore, the alleged agreement is barred by the "Integration/Merger" clause.

Next, even to the extent the parties had an understanding (not incorporated into any contract) that Plaintiff might be eligible for an increase in her rate of pay after ninety days on the job, there is no evidence that Aerotek deviated from the parties' understanding. Plaintiff testified that an increase was not guaranteed, but rather contingent upon her job performance and attendance. Plaintiff further testified that her supervisors at Schneider Electric were the ones who could judge her job performance and attendance. There is

simply no evidence that Plaintiff's supervisors were impressed with Plaintiff's job performance and attendance. Therefore, Plaintiff cannot establish that Aerotek had any obligation to increase her rate of pay after ninety days on the job. As a result, to the extent it is asserted against Aerotek, Plaintiff's breach of contract claim fails as a matter of law.

IV. CONCLUSION

For the above reasons, Aerotek is entitled to judgment as a matter of law on both claims Plaintiff has asserted against it. Plaintiff's § 41-1-70 fails because Aerotek, though an employer of Plaintiff, was not the employer who dismissed Plaintiff. There is no evidence that Aerotek had any involvement whatsoever in Schneider Electric's decision to end Plaintiff's assignment. Further, even if Aerotek's decision to notify Plaintiff of Schneider Electric's decision could be deemed a dismissal by Aerotek, Plaintiff's alleged compliance with a trial subpoena was not the determinative factor in Aerotek's decision. In fact, it was not considered at all, because Plaintiff had not notified Aerotek that she had been served with a subpoena.

Plaintiff's breach of contract claim fails because Aerotek had no contractual obligation to increase Plaintiff's hourly rate of pay after she had been on the job for ninety days. Contrary to Plaintiff's allegation, no such obligation is found in Plaintiff's written employment agreement. Further, that agreement includes an "Integration/Merger" clause barring alleged agreements like the one upon which Plaintiff has based her breach of contract claim. Moreover, to the extent the parties had some extra-contractual understanding that Plaintiff could become eligible for a pay raise, Plaintiff agrees a raise

was not automatic, but rather dependent upon her Schneider Electric supervisors' assessment of her job performance and attendance.

To the extent Plaintiff has asserted them against Aerotek, the § 41-1-70 and breach of contract claims both fail as a matter of law. Therefore, Aerotek respectfully requests that the Court enter an order granting Aerotek summary judgment on all claims Plaintiff has asserted against it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 11, 2019, a copy of the foregoing document was served, via email, on:

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By: s/ Patrick D. Quinn

EXHIBIT A

In the Matter Of:

TRISHA GIBBONS

vs

SCHNEIDER ELECTRIC USA, ET AL

TRISHA G. GIBBONS

April 05, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS

TRISHA GIBBONS,

Plaintiff,

vs. CASE NO. 2018-CP-40-05124

SCHNEIDER ELECTRIC USA, INC., AND AEROTEK, INC.,

Defendants.

DEPOSITION OF: TRISHA G. GIBBONS

DATE: April 5, 2019

TIME: 10:03 a.m.

LOCATION: CROMER BABB PORTER & HICKS
1418 Laurel Street, Suite A
Columbia, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Susan M. Valsecchi, CRR
Registered Professional Reporter

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF
TRISHA GIBBONS:
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ALSO PRESENT:
Johnda Burke

I N D E X

E X H I B I T S

TRISHA G. GIBBONS
being first duly sworn, testified as follows:
EXAMINATION
BY MR. CORUM:

Q. Good morning, Mrs. Gibbons.

A. Good morning.

Q. My name is Bill Corum and I'm the attorney for one of the two Defendants in the lawsuit that you've brought that we're here to talk about today and I represent Aerotek, so my questions are going to largely focus on Aerotek and the interests of my client, perhaps obviously.

And the other lawyer that is here represents Schneider Electric and he may have some questions here before we're done. Hopefully we won't overlap too much. I know we're going to try to not do that.

Would you state your name and address for the record, please.

A. Trisha Gibbons.

Do you want my mailing address or my physical address?

Q. Physical address will be good.

A. 4371 Fairview Road, Lot B3, Leesville, South Carolina, 29070.

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Q. And then mailing address, if it's different.
A. It's P.O. Box 85621, Lexington, South Carolina, 29073.
Q. Okay. I appreciate that. Have you had your deposition taken before today in any other matter?
A. Yes.
Q. How many times?
A. With CSL, it was a couple, at least two.
Q. Okay. Do you remember what -- you said with CSL. What is CSL?
A. CSL Plasma, it was one of the prior companies that actually I had gotten subpoenaed for when all of this came up.
Q. Got it.
So you had your deposition taken in conjunction with that matter.
A. Yes.
Q. And you said a couple times.
Were both of them in conjunction with that same matter?
A. Yes, we ended up going to trial for it.
Q. Is that the only time you've been

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deposed in the past, in conjunction with that one case?
A. Yes.
Q. Well, then, fortunately for you, you're not an expert in this process --
A. No.
Q. -- so I'm going to go through a couple of the rules of the deposition process that I think hopefully will help us both today and also our court reporter, equally important.
First of all, I will do my best to try to ask good and clear questions. I will probably fail at some point along the way. And if I do, I need you to let me know that you didn't understand my question.
It's important for you to give me complete and honest and accurate answers and it's very difficult for you to do that if you don't understand my question.
So if I don't ask you a good question -- or you don't understand the question, more importantly -- let me know, and I will try to ask it better. Okay?
A. Yes, sir.
Q. You're doing good so far with the

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verbal answers.
A. Yes.
Q. The other thing to keep in mind -- and you may have heard this in your other deposition -- is we do need to answer verbally.
If we nod or shake our head or say uh-huh or uh-uh, it's very hard for the court reporter to record that.
I will understand you if you're nodding, but it won't be recorded on the record. So to the extent you can -- and everybody struggles with this -- but try to answer verbally so it can be recorded, okay?
A. Yes.
Q. The other thing that I find happens in just about every single deposition is that people have a tendency to talk over one another, especially getting into a conversation, and you know what I'm saying before I've finished and vice versa and we start to answer and talk over one another. And it's easy to do that in a normal conversation and it doesn't really matter.
But when you have somebody at the end of the table like our court reporter who is trying to record every word that is being said, it's very

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difficult when people are speaking at the same time. So let's try -- I will probably make this mistake as well -- but let's try, to the best of our ability, to wait until one another is done before we start talking, and then that will make it easier for the court reporter.
Okay?
A. Yes.
Q. Your lawyer may have objections to questions if he decides that a question is inappropriate, and that really is an evidentiary issue. It's his determination, if he makes that objection, that there's something inappropriate evidentiarly inappropriate about the question.
And that objection really is for the judge for another time, for the judge to assess the propriety of the question and whether the answer gets to be used or not used.
So those objections are not designed to instruct you in how to answer and they're not designed to tell you not to answer.
So if he makes those objections, you still have to answer my questions unless he specifically tells you not to, which is rather unusual. Otherwise, the objections are for the

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court reporter, they're for the record and they're for the judge and you need to answer despite the objection.

Understood?

A. Yes.

Q. Are you under the influence of any sort of medication or anything else that might impact your ability to understand and answer my questions today?

A. No.

Q. You understand it's important to tell the truth and that you're under oath, right?

A. Yes.

Q. What if anything did you do to prepare for today's deposition?

And I will tell you up front, I don't want to no know -- I don't get to know -- about communications you had with your lawyer; but other than that, what if anything did you do to prepare for this deposition?

A. Nothing.

Q. You didn't have a chance to review any documents or talk to anyone else about it?

A. No, I just reviewed the documents prior, but not recently.

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Q. Okay. Do you remember what documents you had a chance to review?

A. Just the ones I was given.

Q. You don't remember any of them specifically?

A. No.

Q. Okay. We're going to go over some of them today. You mentioned, I think, OSC [sic].

Was that the --

A. CSL.

Q. CSL, there you go.

It's been a long week.

What does that stand for?

A. It's a plasmapheresis place where they collect plasma and they use it to make medications.

Q. Okay. And you were involved somehow in some lawsuit relating to them?

A. Yes, we had a donor that named five people from the business where I was working at and it went to court eventually. It took a couple of years.

Q. You said you had a donor who named five people. I don't understand what you mean by that.

A. With the plasmapheresis process, there's different people involved and stuff like

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that and we had a donor that had a complaint and she named me. I was the medical staff that was involved with it and that's why I was named as one of the people.

Q. Named as a Defendant?

A. Um...

Q. Were you sued in that lawsuit?

A. Yeah, my -- CSL was, yes, and I was named as one of the five.

Q. Were you a witness in the case or were you a defendant? Did someone sue you and make a claim against you directly?

A. I think I was a witness in the case.

Q. Okay. And that's the case you said you provided a deposition for?

A. Yes.

Q. And also the case that you were ultimately subpoenaed to testify --

A. Yes.

Q. -- in conjunction with?

A. Yes.

Q. Have you been involved in any other lawsuits, civil lawsuits, either against you or lawsuits that you have brought against someone else?

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A. Besides child support and stuff like that.

Q. I don't really need to know about the child support issues, but thanks for asking.

Any others beyond that?

A. No.

Q. Have you ever filed any EEOC charges of discrimination against any employer you have ever worked with?

A. No.

Q. Have you been involved in any criminal matters at any point? And I'm not necessarily interested in speeding tickets, but anything much beyond a speeding ticket?

A. No.

Q. What about bankruptcies; have you filed bankruptcy?

A. Yes.

Q. How long ago was that?

A. It's been about nine years, probably, maybe a little bit more.

Q. And that was the last bankruptcy, nine years or so?

A. Yeah, it was discharged.

Q. Let's talk a little bit about Aerotek

and your history, I guess, and experience with Aerotek.

Had you ever worked with or through Aerotek in particular before the assignment at Schneider?

A. No, I don't think so.

Q. Had you ever even heard of Aerotek before the assignment at Schneider?

A. I had heard of them before.

Q. What was your understanding of what Aerotek was as a business?

A. They're a staffing agency.

Q. Had you ever worked through a staffing agency before the assignment at Schneider through Aerotek?

A. I had.

Q. What staffing agencies had you worked for before Aerotek?

A. I worked for one in Virginia. It's been several years -- Sentara Staffing.

Q. Sentara?

A. Yes.

Q. C-e-n?

A. I think it was S-e-n-t-a-r-a, Sentara.

Q. And that was a staffing agency in Virginia?

A. Yes, sir.

Q. Who did Sentara assign you to work for?

A. I worked for Norfolk General.

Q. How long did you work through Sentara at Norfolk or any other of their clients?

A. It was at least a year. I got hired on permanent through -- I went through their staffing agency and then I was hired on permanent.

Q. Other than Sentara, had you worked through any other staffing companies other than Aerotek?

A. No.

Q. How did you first learn of the potential job at Schneider?

A. It was posted online. I'm not 100 percent sure, but I think it was through Craig's List. She had posted it.

Q. Who is "she"?

A. Parissa.

I'm assuming Parissa was the one that posted it. She was the one that was handling the Aerotek/Schneider...

Q. So you were looking for a job online and came across this opportunity?

A. Yes.

Q. Once you found the online posting, whoever it may have been posted by, what did you do next?

Did you apply on line --

A. Yes.

Q. -- or did you call someone?

A. Yes, I applied on line and she called me for an interview.

It was within a couple weeks that we all got in there for the interview, the hiring process, take the test.

You kind of like did it all at once, took the test, filled out the paperwork and then waited for the assignment.

There was a couple of days. There was like six of us in a group.

Q. When you applied on line, do you remember what all you completed in terms of an online process, what the application or other paperwork might have been?

A. It was just the -- I think it was just the standard stuff, you know, like for -- I'm not quite sure. It's just the application process, prior work experience, stuff like that.

(DFT. EXHIBIT 1, Bates Aerotek0000117 through 000019, was marked for identification.)

BY MR. CORUM:

Q. Okay. So I have handed you what we've marked as Exhibit 1. If you will notice in the bottom right-hand corner, there's some numbers.

A. Yes, sir.

Q. Those are Bates or production numbers. This is part of the document that we've produced in this lawsuit to your lawyer. And the numbers at the bottom of the pages are 117 through 119.

A. Yes, sir.

Q. This is a document, I will represent to you, that was a part of your personnel file with Aerotek and it was produced to your lawyers in that form. Okay?

A. Yes, sir.

Q. If you look at the last page of this document, it has your electronic signature and it is dated September 14th, 2017.

Is this something that -- and I don't know how that date exactly correlates to your online application or your interview that you mentioned that you had with Aerotek before you went to work at Schneider, but is this something you

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would have completed and signed during that online application process, or during the interview, or do you remember?

A. I'm pretty sure this came afterwards because when I was there, we didn't have computers. We did everything -- we signed and initialed -- we had a little packet that was Schneider specific.

Q. Okay.

A. Because a couple of the things that we had to take in was like for our paths and stuff like that, because the facility is gated. And they had driving directions and stuff like that in there. But I'm pretty sure I did this after, because I would have had to do it on line --

Q. Okay.

A. -- so this was after.

Q. Okay. After the interview you described?

A. Yes, sir.

Q. Did you deal with anyone at Aerotek other than Parissa, during the pre -- well, let me ask it more simply -- before you began working at Schneider Electric?

A. No, sir. She was my contact, Parissa was.

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Q. Not only your contact, but she was the only one that you dealt with at Aerotek?

A. Yes, sir.

Q. And we're going to talk some more about that process, but I was trying -- I tried to go through these in a way that is sort of chronological and that also helps me understand all of the people that you dealt with so I can have sort of a comprehensive understanding of the story.

Okay. Take a look at the first line of the document that I have handed you what's marked as Exhibit Number 1.

And you will see it says: Aerotek, Inc., conditionally offers to employ Trisha Gibbons in the capacity of electrical/electronics tech commencing on 9/25/2017.

Then if you look down under the first Paragraph Number 1 where it says Ratification, it says you understand and acknowledge that this offer of temporary employment with Aerotek is subject to the final approval by the client.

Did you understand during the pre-employment hiring process that your assignment at Schneider was ultimately up to Schneider's decision as to whether to accept you or not accept

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you as a temporary employee?

A. Yes.

Q. If you look down at Paragraph 2, the number 2 -- I guess it's the third paragraph, but the one that's number 2 -- in the second sentence, it's -- well, let's read the whole thing, first couple sentences.

It says: You understand that your employment with Aerotek, Inc., will be coextensive with the assignment. In other words, your employment with Aerotek, Inc., begins when you first begin work for the client on the assignment and it ends if and when the assignment is ended by the client, or otherwise.

Do you see that?

A. Yes.

Q. And did you understand, both during the pre-employment process and also during the time you worked at Schneider, that your employment could be ended by the client, as this document says, in other words, by Schneider?

A. Yes.

Q. Did you ever have any interaction with Kimberly Carter at Aerotek? Does that ring a bell?

A. There was somebody at the desk but that

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would be the only other person. I never actually talked to her, like, specifically, if she was that person.

Q. Okay. Let me ask it this way.

You indicated that during the pre-employment process the only person that you dealt with was your contact --

A. Yes.

Q. -- Parissa Ramezani -- it's R-a-m-e-z-a-n-i.

During the time you were employed at Schneider, the several months you were there, did you have any dealings with anyone else at Aerotek other than Parissa?

A. I talked to the lady at the desk whenever I went in to check in.

So you go in, you tell her what you're there for, but that's as much interaction as I had with her, or whoever was at the desk. I'm not even sure it was that person.

Q. So it was some lady at like a reception desk?

A. Yes, sir. You go in, you give them your name and you tell them that you're here and then they tell you to sit down.

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Q. Anyone else that you can recall at Aerotek with whom you may have had any interactions or dealings other than this lady that was at the receptionist desk whose name you don't recall, or Parissa?
A. No.
Q. At any time?
A. No.
Q. As I understand it, Ms. Ramezani will testify, if needed, that during the interview process, you informed her that you were involved in a court proceeding of some sort and that you might need time off as a result of that court proceeding --
A. Yes, sir.
Q. -- at some point in the future?
A. Yes, sir.
Q. And that's something you told her during the preemployment process before you ever went to work at Schneider?
A. Yes, sir.
Q. My notes indicate that that would have been sometime in the middle of September. Is that roughly consistent with your recollection?
A. When it came through -- I'm not exactly

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sure about the dates, because --
Q. Either way, that message to Mrs. Ramezani -- that's a hard name -- at Aerotek was conveyed to her before you ever started with Schneider, right?
A. Yes.
Q. And is that court proceeding that you were telling her about, the matter for which you were ultimately subpoenaed to testify --
A. Yes.
Q. -- in early 2018?
A. Yes, yes, it was '18, yes.
Q. Other than your communication with Ms. Ramezani before you started working at Schneider about the court proceeding, did you have any other communication with her about that court proceeding before your assignment was ended at Schneider?
A. No.
Q. So whatever you told her before you were hired at Schneider about the court proceeding in which you were involved, that was the only time you communicated with her about that proceeding during the entire time you were employed at Schneider; is that fair?

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A. (Nodding.)
Q. You have to say it out loud.
A. Yes, I'm sorry.
Q. Thank you.
MR. PORTER: Can we take two seconds?
MR. CORUM: Yes, sure.
(A brief recess was held.)
BY MR. CORUM:
Q. You started working at Schneider Electric in October of 2017 and the employment at that location ended in, as I understand it, February of 2018.
Is that consistent with your recollection?
A. Yes, sir.
Q. Was Ms. Parissa Ramezani physically located at the Schneider site or was she at an Aerotek facility?
A. She was at the Aerotek facility.
Q. Was she ever -- during the time you were working at Schneider, was she working or located at the Schneider site at any point in time?
A. I never saw her.
Q. You never saw her ever or you never saw her -- you interviewed with her initially, right?

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A. Yes, but I never saw her at the Schneider facility.
Q. Got it. So you don't know if she has ever been to that location?
A. No.
Q. Correct?
A. Yes.
Q. During the time you were working at Schneider Electric between October of '17 and February of '18, what interactions, even if not in person, did you have with Ms. Ramezani?
A. I called her a few times because initially when we had gotten hired on, we were -- the position we had applied for was a first shift position.
Q. Okay.
A. And the class that she had open up was for second shift, so I took the position for second shift and I had discussed with her whether or not there would be openings on first shift so I could transfer to the first shift position when there were openings and I would check with her periodically and things like that.
Q. Okay. So you talked to her while you were working at Schneider --

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A. Yes.
Q. -- about a potential shift change?
A. Yes.
Q. Did you have any other occasion to talk to her about anything else other than the potential shift change?
A. I had mentioned that I thought it was going to be coming up soon for the CSL stuff, and that was pretty much it, just checking in.
You know, we had some scheduling issues with Schneider, they were -- because initially I had gotten hired on for Monday through Thursday, ten-hour days, and we ended up going to four ten-hour days, plus Fridays, and then Saturdays as well.
And there were some communication issues with them telling us about part time, whether or not it was mandatory for us.
So at the beginning, I did -- we did call her a good bit.
Q. Okay. Anything else that you can recall that you would have spoken to Parissa about during the time you were at Schneider other than the things that you just described for me?
A. Not that I'm aware of.

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Q. I want to reconcile one thing. I asked you earlier if you told Parissa during the pre-employment hiring process that you might need to be involved in this other court matter and you said you did.
And you also told me that you never talked to her about it at all during the time you were actually working at Schneider.
Is that accurate or not?
Because you just indicated that you may have said something to her about the CSL.
A. CSL.
Q. Yeah, you may have said something to her about that matter.
Do you remember if you actually talked to Parissa during the time you were working at Schneider?
I know you told her before you went to work there; you said that.
A. Yes.
Q. And that's frankly what my notes reflect too, that that conversation occurred. But during the time you were working, did you or did you not talk to Parissa about your potential need to participate in that process?

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A. I had spoken to her and just mentioned it to her. And she told me that whenever it would come up, that when the time came for the actual court case, when I got subpoenaed and all of that stuff, that I would need to contact Reba, because they were the ones that were handling the schedule and stuff for Schneider.
Q. And is that the only time you had talked to Parissa about that?
A. Yeah, I just mentioned it to her.
Q. And was that before or after you started working at Schneider?
A. It was after.
Q. Okay. So, again, I'm trying to make sure that we're all clear because you've said several times now that you did tell her before you started working at Schneider --
A. I did.
Q. -- that you had a court proceeding that you might need to participate in.
Did you have more than that one conversation with Parissa about that court proceeding?
A. It was not a long conversation. It might have been like -- I mentioned that it still

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hadn't come up and that it was, you know, going to be coming up soon.
Q. Let's do it this way.
So we, I think, have agreed that you had a conversation with Parissa about that court proceeding and your potential need to participate in it before you started at Schneider.
A. Right.
Q. Agreed?
A. Yes.
Q. Did you have more than that one conversation with her about that proceeding and your potential need to participate in it?
A. Yes.
Q. Okay. Did you have more than two conversations with her?
A. No.
Q. So you had exactly two conversations with Parissa Ramezani about this other court proceeding and your need to potentially participate in it?
A. Yes.
Q. One before you started working at Schneider, correct?
A. Yes.

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Q. And the other one was when?
A. I'm not exactly sure. I just know that I did speak with her about it. I don't know exactly what day it was or -- I don't know that part.
Q. That's okay. I would honestly be surprised if you remembered the precise day, so that's okay.
A. Yes.
Q. Let's do it this way.
It sounds like, based on something you said earlier, that it would have been before, at least before you received the Subpoena.
A. Yes, sir, it was well before.
Q. Okay. Was it a few days before? Weeks before? Months before? Give me an approximation, if you can.
A. I know it was at least a couple of weeks to a month before. At least.
Q. Okay. So two conversations with Parissa about this other court proceeding, one before you went to work at Schneider, one after you went to work at Schneider. No more than those two though, right?
A. Correct.

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Q. And the second one, the one that occurred while you were working at Schneider, was at least two weeks or a month, maybe more, before you were subpoenaed to testify?
A. Yes.
Q. Got it. And to the best of your recollection, during that second conversation with Parissa Ramezani, what did you tell her about this proceeding or what you understood you might need to do?
A. I told her that it looked like it would be coming up soon and she told me that whenever I got served with the paperwork that I just needed to take it over to Schneider and give it to Reba and them because they -- they were the ones that were in charge of the schedule and stuff. We had had some issues with the scheduling, and, you know, what we were supposed to be -- what I was supposed to be doing as a new hire.
Q. And Reba was Reba Horton?
A. Yes.
Q. And who was your supervisor? Who supervised your daily work while you were at Schneider? Was that Reba?
A. She was first shift and second shift,

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like, over panel wiring and structure wiring; my immediate person I reported to was Carter on my side for panel wiring and it was Delmar on the structure wiring side.
Q. Do you remember Carter's last name?
A. Actually, I think those are their last names. I'm not 100 percent sure.
Q. Okay. Are these males or females?
A. Males.
Q. Carter.
And what was the other person's name?
A. Delmar.
Q. Delmar.
A. Yes, sir.
Q. Do you know who Mr. Carter and Mr. Delmar worked for?
A. They worked for Schneider.
Q. Okay. And what about Reba Horton?
A. She worked for Schneider.
Q. You indicated that Parissa told you to talk to Schneider if you needed time off related to this court proceeding because they handled the scheduling.
Who, to your understanding, was it that set the hours that you were to work and the days

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that you were to work?
Is that Schneider or was that Aerotek?
A. There was -- I'm not 100 percent sure either about that.
Q. That's okay.
A. I don't know. It was a little bit of a mess.
Q. Okay. The facility that you were working at, was it a Schneider facility --
A. Yes.
Q. -- or an Aerotek facility?
A. Yes, it was a Schneider facility.
Q. Were you provided any tools or equipment with which to do your job at Schneider?
A. Yes.
Q. Who provided you those tools or equipment?
A. Schneider did.
Q. To your knowledge, did Aerotek have any supervisory personnel located at the facility where you were working?
A. Not to my knowledge.
Q. Let's talk for a minute about some attendance issues.
A. Okay.

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(DFT. EXHIBIT 2, E-mail from Reba Horton with attachment, was marked for identification.)

BY MR. CORUM:

Q. So I have handed you what we've marked as Exhibit 2. As I understand it, this is an e-mail. It looks like it came from Reba Horton. At the bottom of the first page, is what I'm looking at.

And there's a mention of Trisha Gibbons in the middle of that e-mail.

Do you see that?

A. Yes, sir.

Q. And it says: Repeated no show, no call on Saturday, December 23rd, December 30th, January 6th, January 20th. And then it also says she was absent no show/no call on 1/17.

Do you see that?

A. Yes.

Q. What's your recollection as to why you were not present for work on the days that Ms. Horton is indicating in that e-mail?

A. Because I was still within my -- within the 90 days. And we had asked several times about whether or not it was going to be required of us,

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because we were new hires.

I was already working Monday through Friday, ten-hour days. And then it started out it was supposed to be Monday through Thursday, ten-hour days, with an occasional overtime.

Then it went to Monday through Friday, mandatory Fridays. Saturdays became mandatory as well for us and I'd work 6 hours to 8 hours most Saturdays as well.

I did discuss this with Reba about the absences, because I have children and I pay child support to see my children, so I asked for Saturdays off so that I could go visit my children in Charleston. And that's why I was looking at changing from second shift to first, was so that I could have those days for my children.

Because I looked at these dates; most of them are Saturdays.

The one that -- the 17th, I'm not 100 percent sure on that, because I have pay stubs to coincide with those, except that last one. I don't know how many hours I worked that week.

Q. Do you agree that you were not present, didn't show and didn't call on the four Saturdays that are mentioned in that e-mail?

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A. The 12/30 and the 1/6, those are right there around the holidays. We weren't supposed to be working.

Q. My question, though, is, were you working on those four Saturdays.

Did you work?

Yes or no.

A. No, I didn't work.

Q. So you at least agree you weren't there --

A. Yes, yes.

Q. -- on those four Saturdays?

A. Yes.

Q. At what point did you learn that there was an expectation -- by someone, at least -- that you be there on those four Saturdays?

A. It was as soon as she came and told us that was going to be a problem.

Q. Was that before December 23rd, the first of these four Saturdays?

A. No.

Q. So let me ask it this way.

Let's start with the first one.

On December 23rd, 2017, did you know that there was an expectation that you were going

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to show up to work on that Saturday?

A. No.

Q. What about December 30th, 2017? Did you know by then that they expected you to be there on that Saturday?

A. No.

Q. What about January 6th?

A. That one as well.

Q. Still didn't know that they expected you to be there?

A. No.

Q. What about by January 20th, 2018?

By then did you know that they expected you to be there?

A. Yeah, and I did tell Reba I was going to be out for that day.

Q. I don't know. This is my one chance to ask you questions.

A. Yes, sir.

Q. So some of these things I just don't know, so I'm just asking.

It seems odd to me that Schneider would expect you to be there on those Saturdays -- the 23rd, the 30th and the 6th -- that you weren't there, and yet nobody brought it to your attention

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and said, Hey, where were you Saturday?
A. No, they -- we had these meetings where they had a whole bunch of us together and they would just tell -- I was -- we were still temporary employees. We're still in the green vests. You know, we weren't allowed to work without supervision and stuff like that.
And she was talking to Schneider employees. Those were the ones she brought over into the -- they were separated from us.
Q. Who is she?
A. Reba.
Q. Okay.
A. We were in different colored vests. So she talked to her group. And we were always standing off to the side. And when you asked her, she would tell you that it wasn't mandatory for us because we weren't out of our 90 days.
Q. Okay. So your testimony is that despite the fact that Ms. Horton is indicating in this e-mail her expectation that you were supposed to be there on December 23rd, December 30th and January 6th, your testimony is essentially that may have been her expectation, but nobody told me I was supposed to be there.

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A. Right.
Q. So you didn't know they expected you to be there on those Saturdays until sometime after January 6th, correct?
A. Right. For us, it was optional.
Q. Us being...
A. The rest of the people in my group, as far as what we were taking it as.
Q. I think the group you're referring to is a group of -- I'm assuming, you tell me if I'm wrong --
A. New hires that were hired the same time I was.
Q. Got it, that's what I thought. Thank you. That's what I thought.
At some point between January 6th and January 20th, did you learn that there was an expectation that you be there on Saturdays?
A. We were coming out of our 90 days. We were counting down. Our 90 days was up in January, so...
Q. Okay. Did you learn at some point that there was an expectation that you be there on Saturday?
A. Yes.

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Q. And do you remember when that was and how you learned that?
A. I don't know exactly what date it was, but we -- it was when we came out of the -- we were getting ready to come out of the green vests.
Q. Do you remember who advised you that there was an expectation that you work on Saturdays?
A. We had a meeting.
Q. Do you remember who advised you?
A. It was Reba, Carter, Delmar. It was both sections. We were all together.
(DFT. EXHIBIT 3, E-mails dated January 2018 between Johnda Burke, Parissa Ramezani, Jenny Dieter, Kimberly Carter, et al; Subject: End Assignment; Bates Aerotek0000019 through 0000021, was marked for identification.)
BY MR. CORUM:
Q. Did you realize that failing to show up at work on days that you were -- here, let me have that. Actually, I didn't want you to have that just yet. I just wanted to mark it.
Did you realize that not showing up at work on days that you were scheduled to work might lead to your termination? It kind of goes without

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saying, right?
A. Yes.
Q. I mean, if you don't show up at work when you're supposed to be there.
You knew that, right?
A. Right.
Q. I have handed you what we've marked as Exhibit Number 3. It's got production numbers 19 through 21. It should be three pages.
If you look at the bottom of the second page there's an e-mail from Johnda Burke to Parissa Ramezani dated January 26th.
Do you see that one?
A. Yes, sir.
Q. And in that e-mail it says, Parissa/Lauren, please end the assignment for Patricia -- or Trisha -- Gibbons. She's unable to work our required scheduled Saturdays.
Do you see that?
A. Yes, sir.
Q. Were you aware or did you become aware at some point that Schneider had on January 26th, 2018, sent a directive to Aerotek to end your assignment?
A. Yes.

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Q. How did you become aware of that?
A. When Parissa called me and I had talked to Reba about changing the position over so that I could work the hours, I could do the mandatory overtime, and --
Q. So Parissa called you --
A. Yes.
Q. -- and talked to you about this situation?
A. Yeah, but like the e-mail says, I came to work that Saturday and nobody said anything to me. And I went to work the following Monday and nobody said anything.
I didn't talk to Parissa until -- I'm not exactly sure. I kind of remember this. I remember that I missed that Friday and then I showed up like I was supposed to the next day.
Q. Take a look at the second page of that e-mail --
A. Yes, sir.
Q. -- that exhibit.
And above the e-mail from Johnda Burke asking Parissa, directing Aerotek essentially to end your assignment, there's another e-mail and that e-mail is from Parissa, it looks like, back to

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Johnda.
And it says: I attempted this weekend to reach out to Trisha.
And this e-mail, you will see, on the first page, was sent on Monday the 29th.
It says, I attempted to reach out to Trisha and she did not receive my messages and went to work on Saturday.
Do you recall receiving any message from Parissa or --
A. No, I didn't receive anything.
Q. Okay. Well, that's consistent with what she says. She did not receive my message.
So you agree with that.
A. Yes, and I showed up to work like I was supposed to on Saturday, and I kept working from then.
Q. So tell me what conversations you remember having, either that weekend or that following Monday on the 29th with Reba or with Parissa about this situation.
A. It was Reba. It was there at the Schneider facility. And she had told me point blank that if I couldn't work the schedule, that I wasn't going to be able to work.

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And I told her that I would buckle down and go ahead and do it because I was coming out of the 90 days. And she didn't have any other shifts open apparently.
Q. Okay. And did you talk to Parissa about it as well?
A. I'm sure I talked to Parissa about it. I mean, I might have, but I'm not sure. I don't remember.
Q. Look at the first page of that exhibit in the e-mail at the very bottom from Johnda to Parissa.
And it says: Parissa, Reba is out today. This is on Monday the 29th. I will need to check with her. Do not have her come in today.
And if you look at these in context, she's talking about you and she's telling Parissa not to have you come in on Monday the 29th.
Did you miss any work during --
A. I did miss Monday.
Q. You did miss Monday?
A. Yes, they counted it against me, but that was one of the days. And then I came back to work the next day like I was supposed to, but that Saturday, I didn't know that they had -- because

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nobody had gotten into contact with me.
So whenever something came up, I talked to who I needed to talk to about it and it was a scheduling issue. It was.
Q. Okay. Look, I'm just trying to understand your recollection of the story.
A. Yeah. It's kind of hard, because now looking at the dates, that's the -- I couldn't remember why the 20th or the 29th was on there as one of my absences, because it's a regular day of the week. It wasn't --
Q. Were you supposed to work the 29th, that Monday?
A. Well, it's a scheduled -- it would have been a scheduled day for me, so, yeah, I would have worked.
Q. Well, if you didn't talk to anyone over the weekend about the situation on Saturday and you said you didn't get the message, you didn't talk to anyone, how did you know not to work the Monday? Maybe I misunderstood you, but explain it to me.
A. It's like I said, I don't remember exactly -- I remember that I had talked to Parissa about it and all of the stuff came up and they had determined something and nobody got in

contact with me, because I showed up that Saturday to work and nobody said anything about it.

And then it was after the fact -- I must have -- I don't know, it was Monday sometime I had somebody contact me because I was working second shift, so I wouldn't come to work that day.

Q. All right. And, again, I'm not trying to trick you, so let me try to help you with this.

Take a look at that second page and maybe this will answer my question. It does indicate in that e-mail at the top of the second page that she did call us back today and she said she spoke with Reba and made Reba aware that she can work Saturdays.

A. Right, but that doesn't mean that I talked to her that day about it.

Q. Yeah, that's why I'm trying to understand.

A. It wasn't that day.

Q. You didn't talk to her on Saturday?

A. No.

Q. So help me with this, okay? I'm not trying to make it difficult, I'm trying to understand.

So if you were at work on Saturday,

which it looks like you were --

A. Uh-huh.

Q. -- the 27th --

A. Yes.

Q. -- it would have been -- and you didn't know there was an issue and you didn't hear from Parissa and you didn't talk to Reba and you didn't know there was a problem, why didn't you go to work on Monday?

A. Because somebody contacted me apparently and told me not to come to work on Monday, and I went back to work Tuesday, because I did go back.

Q. And that's what I'm trying to figure out, because you've told me you didn't talk to Reba or Parissa, so I just don't understand how you would have known there was an issue or how you would have known not to go to work on Monday.

A. I just don't remember who I talked to, but I know I had to have talked to one of the two to get me to go back in.

Q. But your recollection is that you didn't work that Monday?

A. I didn't work that Monday. I mean, that's even listed as one of the absences.

Q. Okay. How did this issue -- regardless of the precise day, how did it ultimately resolve through your conversations with Reba, Parissa?

Because you continued to work at Schneider, right?

A. Yeah, yeah. I told her that I would continue to work the shift that, you know, I was in and I was going to work that, the Saturdays.

And my attendance -- we had come to an agreement that I was going to be working from that point on, you know, whatever was mandatory, or whatnot, because I didn't have any more issues.

Q. Okay. I think you said earlier that you did learn at some point along the way that -- I think it was Exhibit 2 that we looked at -- that Schneider had directed Aerotek to go ahead and terminate your assignment.

So you knew that was at least the plan, correct?

A. Yes.

Q. And that was the directive that Aerotek had received, correct --

A. Yes.

Q. -- because of what Schneider at least perceived to be your un-excused absences, right?

A. Yes.

Q. But that was worked out?

A. Yes.

Q. And you made arrangements to work on Saturday and committed to doing that?

A. Yes.

Q. And you were allowed to continue to work there?

A. Yes.

Q. Got it.

(DFT. EXHIBIT 4, Letter dated February 1, 2018 to Trisha Gibbons from Mary D. LaFave, attaching a subpoena, was marked for identification.)

BY MR. CORUM:

Q. I have handed you what we've marked as Exhibit 4. And this one came from your lawyer to us, I believe.

A. Yes.

Q. And you'll notice in little tiny numbers in the bottom right-hand corner it says 001 through 004, so I think it's a four-page exhibit.

A. Yes, sir.

Q. And my understanding is this is a letter and I guess the subpoena that you

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received --
A. Yes.
Q. -- in conjunction with the matter that we talked about earlier --
A. Yes.
Q. -- the matter for which you ultimately had to go testify.
A. Yes.
Q. The matter for which you missed some work in February 2018?
A. Yes.
Q. The letter is dated February 1, 2018 and it says it was sent certified mail.
Do you remember when you received this?
A. I didn't get it until --
Q. And I will tell you, the first February was a Thursday, if that helps.
A. It was the following week.
Q. Do you remember what day?
A. I think -- don't quote me. I think it was either Thursday or Friday, because I brought this to -- to work.
Q. So you think it may have been as late as the 8th or 9th of February, which would have been the next Thursday or Friday after this letter

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is dated?
A. Do you have a calendar?
Q. Sure.
MR. MANNING: I can pull one up for her if it's more convenient.
MR. CORUM: I've got it.
BY MR. CORUM:
Q. There you go. February 1st was a Thursday.
A. This is the Monday.
Q. You believe you received the letter the following Monday, the 5th of February?
A. Yes, because it was a week before I had to be there. And I apologized to Reba about the fact that it was such short notice, because I didn't get it until -- I got it sometime over the weekend because they brought it to my landlord's house. That 4721 is actually my office landlord. And then she gave it to me over the weekend.
Q. Who at Schneider did you discuss this subpoena with?
A. First I brought it to Carter because he was my immediate supervisor, because I needed copies of it too. And he wouldn't take it. He told me to wait for Reba to come in.

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A little bit later, Reba came in and I gave it to her. Delmar was also there because they were talking about something.
And I just brought it over. She looked at it, flipped it over and told me to take it back, that she didn't need a copy of it.
Q. Okay. What conversation if any did you have with Carter, Reba, Delmar or anyone else at Schneider about the subpoena, beyond what you just described?
A. I gave it to Reba, I asked her to make copies so she could keep a copy of it. She said that wouldn't be necessary, that she was going to mark it on her calendar. She didn't want to keep a copy of it because her desk and her area wasn't locked.
And she said that she would mark it on her calendar that I wasn't going to be here, because I pointed out that they had sequestered me for the whole week and I wasn't sure when I was going to be actually testifying. And that changed.
Q. You said they had sequestered you for the whole week. What do you mean by sequestered?
A. Well, originally I was going to be testifying on that first day and that moved to the

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second day and then finally got onto the third day.
But I had to be within an hour of the courthouse and that's pretty much what -- I had to be available in case they called me up.
Q. How did you learn what you were required to do other than what's in this document in terms of your ability or how far you had to be from the courthouse?
A. My lawyer.
Q. Your lawyer?
A. Yes.
Q. What was your lawyer's name?
A. Trey, Trey Jones --
Q. To clarify --
MR. PORTER: -- the Third.
THE WITNESS: The Third. Trey Jones, III.
BY MR. CORUM:
Q. Where is Trey Jones located? What city?
A. I'm not actually sure. I always met him -- where is he actually located out of?
MR. PORTER: Do you want me to answer?
MR. CORUM: You can, sure.
MR. PORTER: At the time he was at

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Turner Padget in Columbia. He's now at McGowan Felder, a couple blocks from here.
BY MR. CORUM:
Q. Got it.
Any other communications that you had with anyone at Schneider about the subpoena or this court process that you were going to have to be involved in other than what you've just described?
A. No, not with Schneider.
Q. And you believe that that communication was on Monday the 5th of February 2018?
A. Yes, sir.
Q. Did you communicate with the lawyer who issued you the subpoena regarding what you were required to do in complying with the subpoena?
A. I'm a little confused. Are you talking about Vickie Smith or my attorney?
Q. Not your attorney. I assume your attorney didn't subpoena you.
A. No, I did not contact -- I wasn't in contact with Vickie Smith or any of the other people.
Q. Anyone from -- how do you say that last name, Crowe --
MR. PORTER: LaFave.

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MR. CORUM: LaFave.
THE WITNESS: I didn't talk to anybody else besides Trey.
BY MR. CORUM:
Q. Did you talk to anyone at the court --
A. No.
Q. -- about what you were expected to do?
A. No.
Q. So whatever knowledge or information you had about what you were required to do that week in terms of your location or how far from the courthouse, or anything else, came from whatever your lawyer told you?
A. Yes.
Q. Okay. Let's talk about that week, February 12th, 2018.
Did you go that Monday morning to the courthouse?
A. No. He ended up -- I got pushed back.
Q. Who is he?
A. Trey just told me that I was supposed to testify first so they could get it done. And they moved it a couple days.
Like every day it moved from I was going to be first, it was going to be at this time,

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and then it just kept moving around.
Q. So if you didn't go to the courthouse that Monday morning, then you had to learn sometime before you chose not to go to the courthouse that you didn't need to go to the courthouse, right?
A. Right.
Q. When did you learn that you didn't have to go Monday morning?
A. That afternoon, because --
Q. Which afternoon?
A. That Monday.
Q. How could you have learned Monday afternoon that you didn't have to go Monday morning?
A. Okay. For that Monday, he called me Sunday and we were talking until -- Trey called me at the house. We were talking probably until about one o'clock. So let me back up.
Then that Monday he calls me early and tells me that they're not -- I wasn't going to do it that day and then it was the next day. And they -- I talked to him in the afternoon.
Q. So you said you learned that you didn't have to go in on Monday and that they had moved it a couple of days?

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A. Me testifying. The case never stopped.
Q. Understood.
A. Yes.
Q. I'm asking, really, only about your involvement in the process.
And the record will reflect that I thought you said a minute ago that you learned that they moved your testimony and that you wouldn't be needed for a couple of days.
A. I didn't -- I didn't actually know that I was going to be -- he didn't know actually either, I don't think, either -- that I wasn't going to be called to the stand that day. It kept changing. So I was in contact with me lawyer. He would tell me --
Sunday, you know, we talked on the phone for a couple hours about Monday. And then Monday came and I got a phone call early saying that it looks like we're going to push you back a little bit further.
And I was like, okay.
So then Monday afternoon he calls and we go over what they went over that day in court.
And then he goes, It looks like we're going to do it tomorrow.

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Okay. So we talked about it and everything that they did. And then that day comes and he moves it again.

It wasn't necessarily -- I think it was the other side that was doing it. But they just kept moving when I was going to be testifying.

And they had finally called me on Wednesday. It was 9:30 or ten o'clock.

Q. When did you learn that you weren't going to be needed on Monday?

A. I didn't find out until -- it was early in the morning and then he wasn't sure and he asked, you know, about Tuesday and -- I just -- Monday. It was Monday in the morning.

Q. Okay. Do you remember what time?

A. No. I just know it was early. It was really early.

Q. What time were you scheduled to work at Schneider?

A. In the afternoon, about three o'clock.

Q. So if you learned early Monday that -- really early you said --

A. Yeah.

Q. -- on Monday that you weren't going to be needed on Monday, why not go to work?

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A. Because I had been up all night talking to my lawyer about this stuff. I mean, I was up until one, two o'clock in the morning on Sunday and he's --

Q. So you missed that Monday, at least --

A. Yes.

Q. -- not because of the subpoena and not because you were testifying, because you learned very early Monday morning that that wasn't going to happen on Monday. You missed that Monday, at least, because you were tired.

MR. PORTER: Object to the form. You may answer.

THE WITNESS: No, I also had the option of going to the court and actually sitting and watching as well.

BY MR. CORUM:

Q. But you weren't needed. Your lawyer told you that. Your lawyer told you that. That's what you just testified to, that you weren't needed that day.

You JUST testified that you learned very early Monday -- you said really early Monday -- that you were not going to be needed on Monday.

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So you knew from your lawyer, the only one you had any information from about your involvement in the process -- that's what you told me earlier -- he told you that you were not needed on Monday. So you knew that really early Monday.

I understand that members of the public can go hang out in the courthouse, but you weren't required to be there, so why not go to work?

A. Because Monday night when I got off, when I would have gotten off, because I was getting off at like 1:45 in the morning, I worked second shift, so in the afternoons is when my lawyer would call and we would talk about this stuff.

And then I was expected, the next morning, to be available very early for that stuff, so, yeah...

Q. For what stuff?

A. For my lawyer calling.

Q. But you just said your lawyer and you would talk in the afternoons. That's what you just said.

A. Right, but when we called -- when we moved it to Tuesday, he would call in the morning as well.

I mean, I was always on the phone with

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my lawyer, either in the afternoons or in the mornings, and, yeah...

Q. Okay, understood.

So if I'm understanding correctly, you did not miss work Monday because you were in court because you weren't in court, correct?

A. Yes.

Q. Is that correct?

A. Yes, I was not in court.

Q. You were not in court on that Monday, right?

A. Right.

Q. And you knew that you were not going to be in court early that day.

A. Right.

Q. What about Tuesday? When did you first learn that you would also not be needed in court on Tuesday? Because you didn't testify on Tuesday either, right?

A. Right.

Q. And you had to know that sometime -- did you show up that day in court?

A. I met him at his office.

Q. Did you go to court on Tuesday?

A. No, I did not.

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Q. So you knew at some point before the appointed time on Tuesday that you did not need to go to the court on Tuesday, correct?
A. Correct.
Q. You learned that. Yes?
A. Yes.
Q. When did you learn that you didn't have to go to court on Tuesday?
A. When did he call? It was in the morning. It was before I even went -- he even went to court, he went in session. I'm not exactly sure on the time.
Q. Sometime in the morning?
A. Yes, sir.
Q. So similar question to what I asked you about Monday. If you knew Tuesday morning that you were not going to be needed in court that day, why not go to work that day?
A. Because I was taking care of this stuff.
Q. Okay. So if I'm understanding you right, what you're telling me is you knew you weren't going to be in court Monday early Monday, you knew you weren't going to be in court Tuesday early Tuesday.

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You didn't go to work because you essentially needed to be on standby --
A. Yes.
Q. -- in case the lawyer called to talk some more?
A. Yes. Well, yes.
Q. Okay. Did you testify on Wednesday?
A. Yes, I did.
Q. Was that the one and only day you testified in the court proceeding?
A. Yes.
Q. Your lawsuit that we're here because of says: Plaintiff was ultimately called to testify on Thursday. I'm reading from Paragraph 25 of the Complaint.
Did you testify -- actually, it says Thursday February 13th, which --
A. That's not right, because that's not even the right date.
Q. I understand that, but I didn't write the Complaint.
So the lawsuit says you testified on Thursday, February 13th.
Did you testify on Thursday like the lawsuit says?

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A. No. I did it on Wednesday, which was Valentine's day.
Q. Okay. So it's both wrong -- Paragraph 25 of the Complaint is both wrong when it says Thursday and when it says February 13th?
A. Yes.
Q. Your testimony today is you testified on Wednesday the 14th.
A. Yes.
Q. Got it.
And was that the one and only day that you were involved in that court proceeding that week?
MR. PORTER: Object to the form. You may answer.
THE WITNESS: Yeah, I testified on that day.
BY MR. CORUM:
Q. Yeah, maybe it wasn't a great question. I told you I would ask bad questions at some point.
After you completed your testimony on Wednesday the 14th --
Strike that.
Did you complete your testimony on Wednesday the 14th?

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A. Yes.
Q. Did you testify at any point after that --
A. No.
Q. -- in that court proceeding?
A. Right.
Q. You did not?
A. I did not testify any further. The judge actually released me.
Q. On that Wednesday, February 14th?
A. After I testified, yes, she released me.
Q. Got it.
And did you then go back to Schneider the next day and show up for work?
A. I called her as soon as I got out of court and I already had a voicemail saying they had terminated me for attendance.
And I called Parissa, talked to her on the phone.
Q. Did you have any communication with anyone at -- you described earlier the communication you had on the 5th of February with Reba and with Carter and Delmar.
A. Yeah.

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Q. Did you have any communication with them or anyone else at Schneider after the 5th about this court proceeding?

In other words, did you tell them the Friday or Saturday before, Hey, guys, remember, I'm not going to be here on Monday?

A. I didn't see Reba, but I reminded Carter that I was not going to be in on that following Monday.

Q. Did you tell anyone else --

A. No.

Q. -- that you weren't going to be in that following Monday?

A. No.

Q. Did you talk to anyone at Schneider on Monday the 12th or Tuesday the 13th?

A. No, I didn't.

Q. How certain are you that the day you testified was Wednesday and not Thursday, like the Complaint says?

A. I'm 90 percent sure, but also there's a voicemail that is time-stamped with that date, so that's --

Q. And we'll get to that. I'm just asking for your memory.

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A. It was the 14th, I'm pretty sure.

(DFT. EXHIBIT 5, E-mail chain between Johnda Burke, Parissa Ramezani, Lauren Goodenough and others; Subject: End Assignments; Bates Aerotek0000029 through 0000030, was marked for identification.)

BY MR. CORUM:

Q. They call this process discovery partly because I'm trying to discover what happened. Some of these things I have a pretty good idea about and some of them I don't, so that's why I'm asking you questions.

A. Yes.

Q. If we look at what was marked as Exhibit 5, it's marked as Aerotek numbers 29 and 30 on the bottom right-hand corner. It should be a two-page exhibit.

A. Yes.

Q. The bottom of the first page is an e-mail from Johnda Burke to Parissa and it's dated February 15th on Thursday, February 15th.

Do you see that?

A. Yes.

Q. And it says: Please move forward and end the assignments of Bridge Smith before he starts work today and also Trisha Gibbons. She's been a no show for two days.

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A. Yes.

Q. Did you learn at some point that Ms. Burke had directed Aerotek to end your assignment?

A. I learned when I called to tell them that I was done testifying, that I was going to be going back to work.

(DFT. EXHIBIT 6, Transcription of a voicemail, was marked for identification.)

(Off-the-record discussion.)

BY MR. CORUM:

Q. I'm giving you what we've marked as Exhibit 6. My understanding is this is a transcript from a voicemail that was left for you.

And I believe your lawyer produced the voicemail.

Does this reflect the message that you were referring to that you received?

A. Yes.

Q. Okay. And it says -- it's not very long. It says: Trisha, this is -- it says Karissa but --

A. It's Parissa, yes.

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Q. -- it should have been Parissa, correct?

A. Yes.

Q. This is Parissa with Aerotek. I'm trying to get in touch with you in regards to your assignment with Schneider. I have gotten word that we do have to end your assignment from Schneider. Um, it looks like you have not showed up for the past two days of work. I do not recall getting anything. At this time they decided to end your assignment. Give me a call back so we can discuss this.

And she left a phone number.

Is this voicemail message that's reflected in Exhibit 6 how you learned that your assignment at Schneider had been ended?

A. Yes.

Q. Do you remember -- you said it was time-stamped. At least the written transcript I have of it is not.

A. Yes.

Q. Do you remember when that voicemail was left for you?

A. I don't know the exact time. I mean, I have the voicemail.

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Q. Do you remember the date?
A. Yeah, it would have been the day -- the 14th -- because I got it while I was actually in court. My phone was off.
Q. Okay. Look back at Exhibit 5, at the bottom of Exhibit 5, where I read before -- and you will see that's an e-mail dated the 15th at 6:47 a.m.
Do you see that?
A. Yes.
Q. And it says: Please move forward and end the assignment of Bridge Smith and also Trisha Gibbons.
That directive was first provided at 6:47 a.m. on Thursday, February 15th.
If you look up above that, the next e-mail -- because it's in sort of reverse chronological order -- there's an e-mail from Parissa later that day, also on the 15th, that says we have ended both Trisha's assignment and Bridge's assignment at this time.
Do you see that?
A. Yes, sir.
Q. That looks to me, at least, that Aerotek was directed to end the assignment the

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morning of the 15th and that they later did it and then they confirmed that same day that they had ended the assignment.
Does that refresh your recollection regarding when exactly you would have been advised that your assignment was ending?
A. I wish I had those.
Q. It looks to me like it was on the 15th. How certain are you that it was on the 14th?
A. I'm about 75 to 80 percent sure that it was on the 14th.
Q. And that's because you think it was received when you were in court testifying?
A. That the -- the voicemail.
And then I contacted her, she contacted Schneider, and then they told me that they weren't going to have me back. Because it wasn't that day, it was the next day that I actually heard.
Q. So you contacted Trisha [sic] in response to the voicemail?
A. Yes.
Q. Parissa.
A. Yes.
Q. Sorry.
A. Yes, I did.

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Q. I've got Karissa in the transcript, I've got Parissa and I've got Trisha.
Sorry, I'm getting confused.
MR. PORTER: And Trisha, we've been going about an hour 20, are you good or do you need a break?
THE WITNESS: I'm good. Thank you.
MR. PORTER: Okay.
BY MR. CORUM:
Q. So, again, the voicemail you received from Parissa is how you learned that your assignment had been ended, correct?
A. Yes.
Q. And you called her in response to that?
A. Yes, I did.
Q. In your lawsuit, in Paragraph 26, it says that you called Aerotek to inform Aerotek that you were able to return to work.
And on that phone call, Aerotek informed you that your contract had been cancelled by Schneider due to attendance.
So I'm trying to understand if you learned during a phone call that you placed to Aerotek, or if you learned through the voicemail and then you were responding to that voicemail.

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A. I responded to the voicemail.
Q. Okay. So you knew before you called Aerotek, based on the voicemail --
A. Yes.
Q. -- that the assignment had been ended?
A. Yes, and she called me.
Q. Okay. Tell me about the conversation you had with Parissa when you returned her voicemail regarding the termination of your assignment.
A. She told me that she was going to call and find out what happened.
And, yeah, I didn't hear anything back from her that day, I don't think. I'm not quite sure.
It was either that day or the next day when I definitely knew for sure that my position had ended, but she said she was calling to see exactly what had happened.
Q. Did you have any understanding as to who made the decision to end your assignment?
A. I don't know that.
Q. Okay.
A. I don't know who she called.
(DFT. EXHIBIT 7, Schneider wage detail;

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Bates Aerotek0000192 through 0000194, was marked for identification.)

BY MR. CORUM:

Q. Let me shift gears for a minute and talk about Count 2 of your lawsuit which is a wage claim claiming that you were entitled to be paid a few more dollars per hour than you received during at least part of your employment at Schneider.

Exhibit 7 is Bates numbered 192 through 194. It should be a three-page exhibit.

On the third page of that document -- first of all, have you ever seen this document before?

A. No, I'm not exactly sure where it's from.

Q. Okay. Take a look at the third page.

The third page under additional compensation, are you there?

A. Yes, sir.

Q. The second half of that section says: Wiring workers will start at 12 dollars an hour.

Is that what you started at?

A. Yes, sir.

Q. And then it says: Then go to $15 an hour after 90 days based on how well they are

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picking up the information, and their attendance.

Do you see that?

A. Yes, sir.

Q. Did you have an understanding at some point that you might be eligible for an increase in your hourly rate following 90 days?

A. Yes.

Q. Did you understand that that increase was contingent, at least in part, on your performance and your attendance?

A. Yes.

Q. So, in other words, if you weren't performing well or you weren't showing up for work, you weren't necessarily going to get the raise, right?

A. Yes.

Q. You understood that?

A. Yes.

Q. What -- if you hadn't seen this document -- and I'm not suggesting that you would have -- but how did you gain whatever understanding you did have regarding the potential increase?

A. We were told when we were -- you know, that was one of the things we went over in the initial hiring thing.

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And then there were other Schneider employees that had gone through the process, gone from the green to the -- you know, not part-time status, or whatever you call it.

And we asked them how long it was taking and we would kind of follow up with each other about how long the process took.

Q. Did you have any understanding as to who would assess your performance or your attendance to see if it was sufficient to justify the increase after 90 days?

A. I don't know who would have been doing that.

Q. You don't know?

A. No.

Q. Having worked there -- and you did for several months --

A. Yes, sir.

Q. -- who, in your opinion, if anyone, would have been in a position to assess your performance and your attendance?

A. Reba would have been the person.

Q. Anyone else?

A. Carter would probably have been like a team lead. You know, he was supervisor, but I

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don't think he was upper level to do those kinds of things.

Q. Got it.

Once your assignment at Schneider ended, you applied, if I'm reading my file right, for unemployment benefits; is that true?

A. Yes.

Q. And did you ultimately get those?

A. Yes.

Q. And do you remember what those paid and for how long you received them?

A. I got it through the six months, but I don't know exactly. I have the paperwork, what it was each week.

Q. Were you off for six months after the end of your assignment at Schneider?

A. Not quite, but pretty close.

Q. When did you first go back to work after your assignment with Schneider ended in February 2018?

A. I don't know the exact start date of where I was working at.

Q. Where did you go to work after Schneider?

A. I worked for Advantage Solutions. I

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went back to a previous employer.
Q. What is it called?
A. Advantage Solutions.
Q. Advantage Solutions, got it.
Do you remember exactly when you started at Advantage Solutions after Schneider?
A. I'm not exactly sure.
Q. Are you still working at Advantage Solutions?
A. Yes, I am.
Q. And what rate of pay did you receive once you started at Advantage Solutions?
A. I make $15 an hour.
Q. That's what you made when you started?
A. Yes.
Q. Okay. Is that still what you make?
A. Yes.
Q. Did you start at Advantage -- well, strike that.
It sounded to me, from your testimony a moment ago, that you thought you were on unemployment for a little bit less than six months; is that accurate?
A. Right around six months.
Q. Did you go to Advantage right at the

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time the unemployment ended or did it end because you went to Advantage?
A. Right when it ended.
Q. So roughly six months --
A. Yes.
Q. -- after you left Schneider you went to work at Advantage --
A. Uh-huh.
Q. -- making 15 dollars an hour?
A. Yes.
Q. How many hours a week did you work at Advantage when you started?
A. I work 24 hours.
Q. Is that the number of hours you worked per week when you started at Advantage in, let's say, the fall of '18?
A. Yes.
Q. Is that the number of hours you have worked at Advantage every week since you started working there --
A. Yes.
Q. -- or does it vary?
A. Yes, it is 24 hours.
Q. And have you had any other additional part time or other employment beyond Advantage

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since the fall of '18 when you started working at Advantage?
A. No.
Q. So Advantage has been your one and only employment since you started there in the fall of '18 and it's been 24 hours a week since you started?
A. Yes.
Q. 15 dollars an hour?
A. Yes.
MR. CORUM: Let's take a break.
(A recess transpired.)
BY MR. CORUM:
Q. I just have one other question that I want to ask you.
And that is, the day that you testified under the subpoena, whatever day that was -- whether it was Wednesday or Thursday -- you said you thought you were pretty sure it was Wednesday but you were not 100 percent sure.
A. Yes, sir.
Q. Whatever day it was, do you remember what time that day your testimony ended? Was it in the morning? Afternoon?
A. It was in -- well, about lunchtime.

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Q. Okay. So your testimony was over at lunchtime on that day?
A. Yeah, I'm pretty sure they were getting ready to go to break after that for lunch.
Q. If your testimony was over at lunchtime on Wednesday and your shift at Schneider didn't start until the afternoon, why didn't you go to work on Wednesday?
A. Because I had already had the voicemail saying that I had been terminated. And that's when I called Parissa and told her that I was in court and, you know, that's when...
MR. CORUM: Got it, got it.
Okay. Well, that's really all I have for you. I appreciate your time today. And I will pass the witness.
MR. MANNING: I'm not going to have any questions.
MR. PORTER: Ditto.
THE COURT REPORTER: Original? You want the original transcript?
MR. CORUM: Yes.
THE COURT REPORTER: And copy?
MR. MANNING: Yes.
(Off-the-record discussion.)

(The witness, after having been advised of her right to read and sign this transcript, waives that right.)

(The deposition was concluded at 11:45 a.m.)

CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 18th day of April, 2019 at Columbia, Richland County, South Carolina.

Susan M. Valsecchi, RPR, CRR
My Commission expires
December 4, 2024

EXHIBIT B

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FIFTH JUDICIAL CIRCUIT
Trisha Gibbons, Plaintiff, v.	CASE NO. 2018CP4005124
Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	

AFFIDAVIT OF JASON PRITCHARD

Comes now affiant, Jason Pritchard, and being duly sworn upon his oath states as follows:

1. I am over 18 years of age and am competent to testify as a witness. I have personal knowledge of the facts and information contained in this Affidavit.

2. I am currently employed by Defendant Aerotek, Inc. ("Aerotek") in the position of Employee Relations Manager.

3. Through my employment with Aerotek, I have personal knowledge of the following facts.

4. In February 2016, Aerotek entered into a written Supplier Agreement with Defendant Schneider Electric USA, Inc.'s agent, a managed service provider called Volt Consulting Group, Ltd. ("Volt").

5. The following exhibits accompanying Aerotek's Motion for Summary Judgment and the Memorandum in Support thereof are true and accurate copies of records maintained by Aerotek in the normal course of its business:

a. Excerpts of February 2016 Supplier Agreement between Aerotek and Volt.

b. The Employment Agreement Plaintiff electronically-signed on September 14, 2016.

c. Email correspondence dated February 15, 2017, between Parissa Ramezani of Aerotek and Johnda Burke of Schneider Electric.

d. Aerotek's electronic record of requisition received from Schneider Electric for the position of Wiring Assembler.

Further your Affiant sayeth naught.

Jason Pritchard

Subscribed and sworn to before me
this 3rd day of September, 2019.

Notary Public

NOTARY PUBLIC STATE OF OHIO

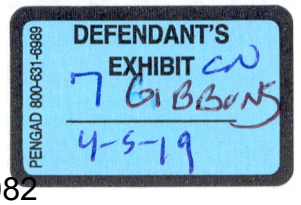
NICHOLAS A RING
Notary Public, State of Ohio
My Comm. Expires 05/25/2020

View Req Details: R-2571292

Account Name:	SCHNEIDER ELECTRIC USA, INC.	**Status:**	Closed
End Client:		**Stage:**	Qualified
Division:	Aerotek Commercial Staffing	**Draft Reason:**	
Segment:	Manufacturing_Production	**Created Date:**	09/06/2017
Job Code:	***Vol-General Production Worker***	**Qualified Date:**	09/06/2017
Main Skill:	***Uncategorized***	**Close Date:**	10/04/2017
Client Job Title:	***Wiring Assemblers***	**Created By:**	Carter,Kimberly Renee
Placement Type:	Contract To Hire	**Parent Opportunity:**	
Start Date:	09/11/2017	**Primary Req Contact:**	Burke, Johnda
Interview Date:	09/06/2017	**Contact Job Title:**	HR
Duration:	6 Months	**Phone Number:**	(803)776-7500
Quantity:	30 (Fill:30 | Wash:0 | Loss:0)	**E-Mail:**	johnda.burke@us.schneider-electric.com
Keywords/Search Tags:	***Wiring, Assembly, Schematics, Blueprint, sub assembly, electrical assembly***	**Worksite Location:**	8821 Garners Ferry Rd
Indicators:	Go To Work , Red Zone		Hopkins, SC 29061 USA

Terms

Pay Rate:	$12.00 to $12.00 USD	**Standard Burden:**	27.00 %
Bill Rate:	$17.64 to $17.64 USD	**Additional Burden:**	
Overtime Bill Rate:	$23.81 to $23.81 USD	**Total Burden:**	27.00 %
Yearly Salary:			



Direct Placement Fee:		**Estimated Spread:**	$96.00 to $96.00 USD

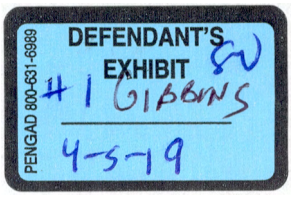
Top of Form

Bottom of Form

Top Three Skills:	***Assembly, blueprints, wiring***
Job Description:	Schneider Electric is looking for wiring assemblers for 2 different wiring areas. In one area they'll be hiring panel wirers, in the other they'll hire structure wirers. Job Responsibilities: Responsible for wiring panels and structures for custom orders. Responsible for keeping wiring area clean and neat for presentation for customers. Must be detail oriented to follow checklist, wiring labels, and bill of materials. Must have previous experience working with basic screwdrivers, strippers, snipps, and luggers. Must be able to interpret wiring and understand electrical diagrams.
Work Environment:	Schneider is a comfortable manufacturing enviroment that is climate controlled.
Qualifications:	Candidates must be able to read wiring, electrical diagram, or schematics to be a good wirer. The position requries strong attention to detail to follow checklist, wiring labels, and bills of materials. Workers will start in a simple wiring job (Kitters) and move to wiring larger panels once they gain more experience. Candidates should have some manufacturing experience.
Performance Expectations:	Good vs. Great A great candidate will have experiene interpreting wiring diagrams or schematics on day one. They will have a strong attention to detail to follow all of the labels and ability to learn new processes. They will start in kitters but great candidates will be able to move into new areas within a month. A good candidate will not be able to catch onto new processes near as quick. They won't have previous wiring experience but will be functional enough to learn less complex wiring and stay in wiring of simple units.
Interview Information:	These are GTW's.

	Candidates will be required to take 1 of the 2 written tests in our office prior to PEP. 1. wiring 2. combustion buss Passing score of 70% or better is required.
Additional Compensation:	Candidates will be responsible for working overtime as necessary. They're currently working either 5 days a week, 12 hours/day; or, 6 days per week, 10 hours/day. Wiring workers will start at $12/hr, then go to $15/hr after 90 days based on how well they're picking up the information & their attendance.
Additional Information:	First Day- Safety training & plant tour First week will consist of classroom training on 1st shift (6AM-2:30PM). Candidates will be moved to train on the floor for weeks 3-6 on 2nd shift (2:30PM-10PM) or 1st depending on their long term shift. CANDIDATES CANNOT BE LATE OR MISS ANY TIME DURING TRAINING. CONTRACTS WILL BE ENDED FOR THOSE THAT MISS ANY TIME OR ARRIVE LATE! Disqualifiers-Candidates must be able to use basic tools including screwdrivers, strippers etc.
Other Agencies Working on Req:	Yes
Client Working on Req:	Yes
Candidates Currently Interviewing:	Yes
Date Client Opened Positions:	09/06/2017
Background Check:	Yes
Drug Test:	Yes
Additional Compliance:	DT: 9 panel BG: 7 year Contractors must have steel toes on their first day. Additional PPE (bump cap, safety glasses, safety vests, ear plugs) will be provided by the client. No medical exam or monitoring is required.

EXHIBIT D



Aerotek

Aerotek, Inc conditionally offers to employ Trisha G Gibbons in the capacity of Electrical/Electronics Tech commencing on 09/25/2017 at its client, VOLT@SCHNEIDER ELECTRIC USA INC[IQN] ("Client") for services with the latter for a temporary period, to perform such duties and for such hours of work as may be assigned to you during the term of service (the "Assignment").

1. Ratification - You understand and acknowledge that this offer of temporary employment with Aerotek, Inc is subject to final approval by the Client and that you shall not be entitled to any wages or employment unless actually hired by Aerotek, Inc to work the specific Assignment for the Client pursuant to this Agreement. You also understand that this Agreement does not go into effect until you actually work on said specific Assignment. You acknowledge and understand that your employment with Aerotek, Inc is "at will", with no certain term of employment being offered or promised,and that you or Aerotek, Inc may terminate your employment, with or without cause, at any time. You agree that by reporting or remaining at work after signing this Agreement that you have ratified same. In addition, you represent and warrant to Aerotek, Inc that your employment with Aerotek, Inc will not violate the terms or conditions of any other agreement to which you are a party.

2. Scope of Employment with Aerotek, Inc - You understand that your employment with Aerotek, Inc will be co-extensive with the Assignment. In other words, your employment with Aerotek, Inc begins when you first begin work for the Client on the Assignment, and ends if and when the Assignment is ended by the Client or otherwise. Following the end of the Assignment, while you may remain eligible for future assignments with other Aerotek, Inc clients, you will not be employed with Aerotek, Inc unless and until you are re-hired and assigned to another client. You further understand that following the ending of the Assignment, while you may remain eligible for new assignments with other Aerotek, Inc clients, Aerotek, Inc has no obligation to find you additional assignments and has no ability to compel any client to hire you.

3. Reporting of Hours - You agree to submit completed time records to the Aerotek, Inc office immediately following completion of your work week, but in no event later than 10:00 a.m. on Monday of each week, written in ink and approved and verified by a Client supervisor, indicating the number of hours worked. You understand and acknowledge that improper preparation of, or falsifying time records may result in disciplinary actions under Aerotek, Inc policies as well as applicable law. Furthermore, you understand your supervisor is prohibited from completing your timecard unless extenuating circumstances exist, such as authorized travel or no access to the internet. If this box is checked , you agree to submit your hours worked electronically and provide a printed approval from the Client's electronic time collection system. Failure to submit completed time records before 10:00 a.m. on Monday may, subject to applicable law, result in disciplinary action. You acknowledge that Aerotek, Inc needs completed time records to obtain payment from the Client, and therefore you will accurately complete, sign and assist Aerotek, Inc in gaining Client's approval and verification of your time records each week. You acknowledge the Aerotek, Inc policy and practice of mandating daily recordation of all hours worked. Aerotek, Inc does not permit "off the clock" work or any similar practice of not recording hours worked. Any requests by the Client or other third party not to record all hours worked or to record hours to an incorrect funding source must be reported in writing by you to Aerotek, Inc.

4. Compensation - In consideration of your services, Aerotek, Inc agrees to pay you weekly on Friday at the following rates:

(a) $12.00 per hour for all hours worked (as reflected on time records) effective on the day you report to work at the Client and ending on the day of termination, or discharge of employment, regardless of cause or reason for discharge or termination.

(b) $18.00 per hour for hours worked (as reflected on time records) in excess of forty (40) per week (or as otherwise required by applicable law). Client-observed holidays, shutdowns, and regularly scheduled days off shall not be considered as time worked for purposes of qualifying for premium rate compensation.

Except as specifically set forth in this Agreement, you acknowledge and agree that you are not entitled to any other compensation or benefits (including, but not limited to, vacation or personal leave) from Aerotek, Inc or Client.

5. Sick Leave - If you work in a sick leave jurisdiction, your eligibility and ability to earn, accrue, and use paid sick leave is governed by applicable law, and you will receive additional information regarding the applicable sick leave policy.

6. Business Expenses - Any business related expenses for which you are eligible and request reimbursement must be approved in writing by Client and must be substantiated with legible, itemized receipts. Original receipts must be physically turned in to the Aerotek, Inc office or scanned and submitted electronically to your local Aerotek, Inc representative. Any receipts turned in after 90 days of transaction will be deemed untimely and not paid. Any expenses submitted to Aerotek, Inc without itemized receipts will not be reimbursed by Aerotek, Inc. If you would like a copy of the Aerotek, Inc Contract Employee expense reimbursement policy, please contact your Aerotek, Inc representative.

7. Restrictive Convenant - In consideration of the terms of employment and the efforts and costs incurred by Aerotek, Inc, you agree you shall not solicit Client or engage in a like or similar profession or occupation at Client's facility or any other facility at which you are directed to or actually perform services under this Agreement, either directly or indirectly, for a period of one hundred eighty (180) days following the termination of your employment under the terms of this Agreement, unless specific written authorization has been obtained from Aerotek, Inc. You agree any violation of this provision will result in you paying to Aerotek, Inc an amount equal to three hundred twenty (320) hours at the hourly rate as stated in 4(a) above.

8. Confidentiality - You agree not to disclose to anyone, either during or after your employment with Aerotek, Inc, any confidential or proprietary information of any kind obtained by you as a result of your employment without the written consent of executive officers of both the Client and Aerotek, Inc, and you further agree that on leaving the employment of Aerotek, Inc, you will not take with you, without written permission of executive officers of both the Client and Aerotek, Inc, any blueprint, drawing, or other reproduction, property or material of any kind. You also agree to execute any forms or documents required by Client with respect to the foregoing.

9. Information Security Matters - With respect to any technology and/or equipment, including but not limited to a laptop, desktop, mobile device, or technology platform ("Equipment") used in connection with your Assignment, you agree to use the Equipment in accordance with applicable information security and confidentiality policies of the Client, as well as the Aerotek, Inc Information Security Policy. In the event there is a conflict between the Client and Aerotek, Inc Information Security Policy, you shall follow the policy that bests ensures the protection and safekeeping of the Equipment and data contained on the Equipment. In the event you fail to fully comply with this provision or the confidentiality provision in Section 8 of this Agreement, you agree to indemnify the Client and Aerotek, Inc for any and all claims, matters, suits or other liabilities that arise directly or indirectly as a result of your breach of Section 8 or Section 9 of this Agreement.

10. Ownership of Work Product - You agree that you will disclose and assign full and absolute right, title, and interest to the Client of any and all inventions, improvements, or discoveries made by you of any kind or nature whatsoever during the tenure of this agreement, and you will execute any and all documents and instruments necessary to transfer the full and complete title of any such inventions, improvements or discoveries to the Client, and shall assist in any manner possible in obtaining patent letters in the name of said Client covering them. You also agree to execute any forms or documents required by Client with respect to the foregoing.

11. Trade Secret - Nothing in this Agreement prohibits you from reporting an event that you reasonably and in good faith believe is a violation of law to the relevant law-enforcement agency, or from cooperating in an investigation conducted by such a government agency. This may include disclosure of trade secret or confidential information within the limitations permitted by the Defend Trade Secrets Act (DTSA). You are notified that under the DTSA, no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (a) made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (b) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. And, an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except as permitted by court order.

12. Indemnification - You agree to indemnify and hold harmless Aerotek, Inc from any and all liability, loss, damages, attorneys' fees, or expenses which may be caused by your negligence, willful actions, omissions or failure to perform the Assignment and/or your obligations under this Agreement.

13. Termination - You shall give a minimum notice of ten (10) business days should you decide to terminate your position with Aerotek, Inc.You understand that the length of this Assignment is subject to the discretion and needs of the Client and, therefore, a five (5) day notice from Aerotek, Inc may not be possible and Aerotek, Inc is not required to provide such notice . Upon termination, and to the extent permitted by applicable law, you acknowledge and agree that any amounts owed by you to Aerotek, Inc will be deducted from any remaining wages owed to you and refunded to Aerotek, Inc.

14. Notification of Completion of Assignment - You agree that upon completion of the Assignment with Client, you will notify Aerotek, Inc that you have finished the Assignment. You understand that failure to contact Aerotek, Inc upon completion of the Assignment may affect your ability to receive unemployment benefits. You further understand that at all times between the ending of one assignment and the beginning of another, while you may remain eligible for potential assignments with other Aerotek, Inc clients, you are not employed by Aerotek, Inc and Aerotek, Inc has no obligation to find you employment or place you with any client.

15. Benefits - As a common law employee of Aerotek, Inc, you are eligible to participate in a variety of available benefit programs, including programs such as medical, dental, vision, disability and retirement. Aerotek, Inc will provide additional information regarding our benefits options including eligibility periods, coverage options and how to enroll. You acknowledge and agree that since you are a common law employee of Aerotek, Inc, and not the Client, you are not eligible for any benefit programs that may be provided by Client during your Assignment. By electing to participate in our benefit programs, you authorize Aerotek, Inc to deduct your portion of the applicable costs directly from your paycheck.

16. Acknowledgment of Employment Relationship - In addition to the rules, regulations and policies of Aerotek, Inc, you agree to be bound by any applicable rules, regulations or policies established by the Client wherever you perform services under this Agreement. You recognize and agree that you are an employee of Aerotek, Inc and you will look solely to Aerotek, Inc for all employee benefits in connection with your employment under this Agreement. You hereby waive any right you have or may have against the Client for benefits arising out of or resulting from employment hereunder, including, without limitation, rights under any medical/benefit plan, pension plan or vacation/holiday plan regardless of the length of Assignment.

17. Assignment of Claims - In the event Client has filed for bankruptcy or indicated an intent to file for bankruptcy, you hereby assign to Aerotek, Inc any and all claims you have against the Client for any wages earned and owed to you in connection with the work you performed on the Assignment, effective upon payment by Aerotek, Inc to you of such amounts, which Assignment shall be considered as in exchange for Aerotek, Inc's payment of such amounts.

18. Limitation of Liability - To the extent permitted by law, you, on your own behalf and on behalf of anyone claiming by or through you, waive any and all rights you have, or may have, to claim or assert a claim, suit, action or demand of any kind, nature or description, including without limitation, claims, suits, actions or demands for personal injury or death whether arising in tort, contract or otherwise, against Client or Client's customers, agents, officers, directors, or employees, resulting from or arising directly or indirectly out of your employment with Aerotek, Inc, except as to any claims you assign to Aerotek, Inc under this Agreement. You recognize and agree that Aerotek, Inc provides workers' compensation coverage for such things as on-the-job injuries or occupational diseases incurred while on Assignment for Aerotek, Inc, and to the extent permitted by law, you agree to look solely to Aerotek, Inc and/or its insurer for damages and/or expenses for any such claims, suits, actions, or demands relating to bodily injury, illness, or death incurred while on Assignment. In furtherance of the foregoing and in recognition that any work related injuries which might be sustained by you are covered by state Workers' Compensation statutes, and to avoid the circumvention of such state statutes which may result from suits against the Client based on the same injury or injuries, and to the extent permitted by law, YOU HEREBY WAIVE AND FOREVER RELEASE ANY RIGHTS YOU MIGHT HAVE to make claims or bring suit against the Client for damages based upon injuries which are covered under such Workers' Compensation statutes. You agree to notify Aerotek, Inc if you believe that there are any unsafe conditions at the Client worksite or facility.

19. Attorneys' Fees - To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc; or (b) seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved.

20. Integration/Merger - Except as expressly set forth herein, this Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement. No representations, promises, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements specifically identified herein. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be of no effect.

21. Severability - In the event any provision or clause of this Agreement is found to be unenforceable by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

If you accept this conditional offer in accordance with its stated terms, please indicate your acceptance by signing your name.

Accepted By:		**Accepted By: Aerotek, Inc**	
Trisha G Gibbons		Kimberly E Sweat	
(Contract Employee)		**(Aerotek, Inc representative)**	
Trisha G Gibbons (Electronic Signature)	09/14/2017	Kimberly E Sweat (Electronic Signature)	09/19/2017
(Contract Employee Signature)	**(Date)**	**(Aerotek, Inc representative Signature)**	**(Date)**

Electronically Signed on 14 Sep 2017, 12:37 PM EST
by Trisha G Gibbons

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-40-05124 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Aerotek, Inc.'s motion for summary judgment filed September 11, 2019 should be denied.

1. Introduction

The evidence in the record reasonably supports that Plaintiff was terminated by Aerotek, Inc., a staffing agency, from her assignment at former Defendant Schneider Electric, USA, Inc. because she complied with a valid trial subpoena. That termination facially violates S.C. Code Ann. § 41-1-70:

> Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.
>
> Damages for dismissal are limited to no more than one year's salary or fifty-two weeks of wages based on a forty-hour week in the amount the employee was receiving at the time of receipt of the subpoena.
>
> Damages for demotion are limited to the difference for one year between the salary or wages based on a forty-hour week which the employee received before the demotion and the amount he receives after the demotion.

S.C. Code Ann. § 41-1-70 (Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury.)

Aerotek essentially raises an empty chair defense in its motion and memorandum claiming that its former co-defendant Schneider was responsible for Plaintiff's termination. (Def. Memo pp. 2-3). Aerotek is trying to use the staffing agency-putative employer relationship as a shield. That might work in certain circumstances but does not work on this record.

Aerotek seeks to absolve itself of liability by citing to its supplier agreement, but it makes a **key omission**. Aerotek, citing its supplier agreement) writes:

> Further, Schneider was to 'determine whether Contingent Worker Services performed by Contingent Workers are satisfactory,' and it retained the 'right to reject, direct the removal or terminate . . . any Contingent Worker**,'** as well as the right to 'terminate or change any **assignment . . . by** way of notice and request to [Aerotek]"

(Def. Memo. pp. 2-3) (*Citing*, Def. Ex. C: Contract at pp. 7). The bolded language in the above inset quote is added for emphasis, but the **ellipses are original, as are phrase breaks,** to Aerotek's memo. The important language Aerotek omitted by ellipses or left out by phrase break, bolded below, reads:

> Customer may terminate or change assignment for **any lawful reason** by way of notice and request to Supplier.
>
> . . .
>
> Customer reserves the right to reject, direct the removal or terminate . . . any Contingent Worker . . . **for any legal reason** requested by Customer.

At bottom, Aerotek (by selectively parsing its staffing agency contract) is asking the Court to ignore its role as Plaintiff's statutory, rather than putative, employer in Plaintiff's **unlawful termination.** This artful wordsmithing does not cut it in the face of a statute that plainly says an employer cannot terminate an employee for complying with a subpoena.

2. Procedural History

Plaintiff was an employee of Aerotek, a staffing agency, working at Schneider Electric as a contingent worker until she was fired in mid-February after she was released from a valid trial subpoena which caused her to miss work for three days. (Complaint ¶¶ 11, 22-26).

Plaintiff sued Schneider Electric and Aerotek for violating S.C. Code Ann.§ 41-1-70 and Breach of Contract on October 1, 2019. (Complaint). Schneider originally attempted to dismiss the claims against it arguing that Aerotek was Plaintiff's sole employer and that it was not liable. (Schneider Motion). This Court denied that motion recognizing that S.C. Code Ann. § 41-1-70 reasonably applied to both putative employers and statutory employers under a joint employment theory. (Order – 2/11/19).

The parties conducted written discovery thereafter, and the Plaintiff was deposed.

The parties mediated on September 13, 2019. Two days before mediation, Aerotek filed this motion for summary judgment. (Def MSJ). The parties stipulated to the dismissal of Schneider Electric after mediation. (Stipulation of Dismissal – 9-18-19).

Although the breach of contract claim (relating to a promise to increase wages after 90 days of employment) was legally viable against both Defendants, it was more factually focused on the conduct of Schneider who is no longer a party. Thus, Plaintiff has offered to Aerotek that the parties stipulate to the dismissal of that claim and there is no need to brief it in this memorandum.

Therefore, the sole issue before the Court is whether Plaintiff can withstand summary judgment on her S.C. Code Ann. § 41-1-70 claim.

This motion is set to be heard on November 7, 2019 at 9:30 AM.

3. Facts

The record in this case pretty well indicates that Plaintiff was terminated for complying with a subpoena. The questions of fact in this case center around: (1) whether Aerotek had notice of Plaintiff's subpoena, and (2) the extent to which Aerotek is culpable for Plaintiff's termination. Overall, the facts in this case are not complicated:

1. Ms. Gibbons worked as a statutory employee of Aerotek who was staffed to work at former Defendant Schneider Electric as a Panel Wirer. (Ex. 1: 10/16/17 Email Chain).

2. She began working for Schneider as a Panel Wirer, through Aerotek, around October 11, 2017. (Ex. 2: 10/13/17 Email Chain).
3. Plaintiff received a Trial Subpoena for February 12, 2018 through February 16, 2018 issued on February 1, 2018 from plaintiff's counsel in a weeklong negligence trial over an alleged misdiagnosis of HIV to a client of her former employer CSL Plasma. (Ex. 3: Trial Subpoena).
4. Plaintiff was a key fact witness in that case and was possibly one of the Jane Doe Defendants. (*See*, Ex. 4: CSL Plasma Complaint). That trial ended in a defense verdict. (Ex. 5: Form 4-Judgment).
5. Plaintiff missed work as a result of that subpoena, and Defendant Aerotek terminated Plaintiff at Schneider's request on February 15, 2018. (Ex. 6: 2/15/18 Email Chain).
6. Schneider admitted, via requests to admit, that it had notice of Plaintiff's subpoena when it fired her and claims that it directed Plaintiff to tell Aerotek about the subpoena when she turned the subpoena in to her supervisor at Schneider. (Ex. 7: Schneider Responses to Requests to Admit).
7. Aerotek's contract with Schneider states that Schneider, generally, as the putative employer, had the right to terminate Plaintiff at will, but only where such a termination was lawful. (Ex. 8: Aerotek Contract p. 7 of 42). Aerotek did not produce this contract in discovery, but it did produce the excerpts attached here as Exhibit C to its Motion for Summary Judgment. (Def. MSJ Ex. C).
8. Aerotek claims it did not know about Plaintiff's subpoena when it terminated her at Schneider's request. (Def. Memo p. 1) ("Further, before notifying Plaintiff that Schneider Electric ended her assignment, Aerotek had no knowledge that Plaintiff has ever been served with trial subpoena, much less that she had missed work in order to testify in a court proceeding.")

9. However, the response Aerotek provided to the South Carolina Department of Employment and Workforce about why Plaintiff was terminated undermines that position. (Ex. 9: SCDEW Response Form) ("Final incident that caused claimant's discharge: Trisha was called to appear in court, she provided documentation for the absences to be excused. Client did not excuse the absences and terminated her.").

10. In fact, Aerotek's authorized agent for unemployment inquires, Equifax, explicitly told SCDEW, in writing: "Trisha was called to appear in court, she provided documentation for the absences to be excused. Client did not excuse the absence and terminated her." (Ex. 10: 4/4/18 Employer Response).

4. Standard of Review

"Summary judgment is a drastic remedy[.]" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "[U]nder Rule 56(c), SCRCP: 'summary judgment is proper when 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.'" *Dawkins*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101, 114–15–410 S.E.2d 537, 545 (1991); Rule 56(c), SCRCP. "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Dawkins*, 580 S.E.2d at 439. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)

5. Discussion

Aerotek's motion for summary judgment is more factual than legal arguing: (1) in the first instance (Def Memo pp. 8-11) that it had no authority to countermand Schneider's request to terminate Plaintiff, and (2) second (Def Memo pp. 11-12) that it did not know about Plaintiff's

subpoena. The problem for Aerotek is the record simply does not support its factual positions. First, Aerotek, by selectively supplying language from its contract with Schneider, **intentionally omitted** reference to the fact that it did have **contractual authority** to refuse an illegal termination. (Ex. 8: Aerotek Contract); (Def Memo pp. 2-3). Second, Aerotek's statements, via an authorized agent, to the South Carolina Department of Employment and Work Force facially refute its claim that it did not know Schneider was asking to terminate Plaintiff because of her subpoena. (Ex. 10: 4/4/18 Employer Response). A Defendant is not allowed to manipulate the record or manufacture "alternative facts" to obtain summary judgment in South Carolina. Here, on the issues of fact in play (scienter and culpability) the record either calls in to doubt or outright discredits Aerotek's position. As such, summary judgment, from a factual perspective, is improper.

Legally, Aerotek cites a handful of distinguishable unpublished district court cases for its contention that it is absolved from culpability by its staffing agency arrangement. (Def. Memo. pp. 9-11). The first case, which is the only South Carolina case, supports liability in this case. *Williams v. Grimes Aerospace Co.*, 988 F. Supp. 925, 938 (D.S.C. 1997) ("It would be grossly inequitable to hold such an agency liable for discrimination that it was not aware of, had no reason to know was taking place, and of which it had no control."). There, the District Court distinguished culpability (in the above cited portion) for a staffing agency where it had no notice of a discriminatory discharge from a situation where a staffing agency might have notice. Here, Plaintiff's Exhibit 10 indicates notice and Plaintiff's Exhibit 8 shows a right on the part of Aerotek to prevent an unlawful termination. As such, there is reasonable evidence to attach liability to Aerotek, and the *Williams* case helps (rather than hurts) Plaintiff's cause. The other cases cited by Aerotek are distinguished for these same reasons; here (unlike in those cases) there is actual record evidence of notice and a right to control. *See*, *Watson v. Adecco Employment Servs., Inc.*, 252 F. Supp. 2d 1347, 1357 (M.D. Fla. 2003) ("Plaintiffs have not shown, however, that Adecco failed to take corrective measures within its control.") *McQueen v. Wells Fargo*

Home Mortg., 955 F. Supp. 2d 1256, 1275 (N.D. Ala. 2013), *aff'd sub nom. McQueen v. Wells Fargo*, 573 F. App'x 836 (11th Cir. 2014) ("For these reasons, the court cannot grant summary judgment to Aerotek on the issue of whether Mardis's counseling of the plaintiff regarding her job performance issues is an adverse employment action *attributable to Aerotek*.") (Recognizing that Aerotek could not be liable for a termination it did not know was unlawful, but could be liable for other adverse actions for not taking remedial actions within its control*);* Payton v. Aerotek, Inc., No. 15-12222, 2017 WL 1164522, at *4 (E.D. Mich. Mar. 29, 2017) (Finding for Aerotek, but where there was no language from the contract cited – as is cited here – which showed Aerotek had the contractual right to refuse an unlawful termination). The facts that undermine Aerotek's claim to summary judgment also distinguish the cases it relies on, and as such it is not entitled to summary judgment.

S.C. Code Ann. § 41-1-70 is an unequivocal, remedial statute providing:

> Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.
>
> Damages for dismissal are limited to no more than one year's salary or fifty-two weeks of wages based on a forty-hour week in the amount the employee was receiving at the time of receipt of the subpoena.
>
> Damages for demotion are limited to the difference for one year between the salary or wages based on a forty-hour week which the employee received before the demotion and the amount he receives after the demotion.

S.C. Code Ann. § 41-1-70. The Court of Appeals has recognized that a 41-1-70 claim should go to the jury where an otherwise good employee was terminated right after returning from a jury summons *Connelly v. Wometco Enterprises, Inc.,* 314 S.C. 188, 191, 442 S.E.2d 204, 206 (Ct. App. 1994) ("Thus, in light of the timing of her discharge, evidence that she was a "good" worker was sufficient to support the judge's decision to allow the jury to decide the case."). In this case, as in *Connelly*, there is no

evidence of disciplinary actions in Plaintiff's record,[1] and she was terminated just after being released from her subpoena. Add to that, Plaintiff's exhibits give rise to compelling direct evidence of a retaliatory termination in violation of S.C. Code Ann. § 41-1-70. As such, beyond the staffing agency issue in play, Plaintiff presents a triable claim. Turning then to the staffing agency issue, that dynamic is no impediment to liability here against Aerotek where the record indicates that Aerotek knew about the retaliatory and unlawful basis for Plaintiff's termination and had the contractual right to prevent her unlawful termination. Therefore, here – unlike in other cases where staffing agencies did not have authority to stop a termination or notice of an unlawful motive – summary judgment to Aerotek should be denied.

6. Conclusion

Plaintiff respectfully requests that Aerotek's motion for summary judgment be denied because the record contains sufficient evidence upon which Aerotek can legally be held liable for terminating Plaintiff due to her compliance with a valid trial subpoena in direct violation of S.C. Code Ann. § 41-1-70.[2]

[1] There was some documentation produced that stated Plaintiff missed some weekend overtime workdays; however, this was ultimately established to be the result of a miscommunication, and Plaintiff was not disciplined as a result of the same.

[2] Plaintiff offered to stipulate to the dismissal of her breach of contract claim as against Aerotek since it was based on representations by Schneider, who is no longer a party to this action. Thus, that claim is not briefed here.

CROMER BABB PORTER & HICKS, LLC

BY: s/J. Paul Porter

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Attorneys for Plaintiff

October 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

DEFENDANT AEROTEK, INC.'S
MOTION FOR ATTORNEYS' FEES AND COSTS

Defendant Aerotek, Inc. ("Aerotek"), through its undersigned counsel, and pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and the Employment Agreement entered into between the parties, moves this Court for an award of attorneys' fees and costs in favor of Aerotek. The grounds for this motion are as follows:

1. The Employment Agreement between Plaintiff Trisha Gibbons and Aerotek contains a contractual attorneys' fees and costs provision, which states:

> To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc; or (b) seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fee and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved.

2. Contractual attorneys' fees and costs provisions, like the one entered into here, are routinely enforced under South Carolina law.

3. The contractual attorneys' fees provision in Gibbons's Employment Agreement obligates Gibbons to repay the costs and reasonable attorneys' fees to Aerotek as the prevailing party on both of her claims.

4. Aerotek is entitled to recover all of its' attorneys' fees incurred in defending this lawsuit, which amounts to **$201,450.50**.

5. Aerotek is entitled to recover all of costs incurred in defending this lawsuit, which amounts to **$10,365.10**.

WHEREFORE, Defendant Aerotek respectfully requests that this court enter an Order granting Aerotek attorneys' fees in the amount of **$201,450.50**, and costs in the amount of **$10,365.10**, representing the amount of attorneys' fees and costs incurred in defending against Gibbons's claims, and enter a Final Judgment of fees and costs including interest in favor of Aerotek therein, together with the granting such other and further relief as to this Court appears just and proper.

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

DEFENDANT AEROTEK, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES AND COSTS

Defendant Aerotek, Inc. ("Aerotek"), through its undersigned counsel, and pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and the Employment Agreement entered into between the parties, moves this court for an award of attorneys' fees and costs in favor of Aerotek. In support of this Motion for Attorneys' Fees And Costs, Aerotek states as follows:

I. INTRODUCTION

This case involves two frivolous claims brought by a former employee, Trisha Gibbons, against Aerotek, a staffing company, and its client, Schneider Electric ("Schneider"). Aerotek recruited and hired Gibbons to work for Schneider, where Gibbons worked for about four months, until Schneider notified Aerotek that it was terminating Gibbons' employment. Gibbons' primary claim in this action alleged that the decision to end her assignment was based on her compliance with a trial subpoena and thus, violated South Carolina Code Annotated § 41-1-70. However, beyond merely notifying Gibbons that Schneider ended her assignment, Aerotek had no involvement in the termination decision. Furthermore, before notifying Gibbons that

Schneider ended her employment, Aerotek had no knowledge that Gibbons had even been served with a trial subpoena, much less that she had missed work to testify in those proceedings. In addition to the statutory claim, Gibbons alleged that Aerotek breached its agreement to increase her wage after 90 days. However, Gibbons' Employment Agreement not only lacked the alleged provision for a wage increase, but also barred any alleged agreements not expressly set forth in the Employment Agreement or found in a written modification of the Employment Agreement.

Aerotek's counsel diligently sought early resolution of these claims. In fact, as early as the motion-to-dismiss phase, Aerotek's counsel informed Gibbons' counsel of its simple defense: that is, Aerotek, as the staffing company, had no involvement in Gibbons' termination and Aerotek had no knowledge that Gibbons had even been served with a trial subpoena when it notified her of the end of her assignment. Instead, Aerotek's counsel explained that its client, Schneider, made the decision to terminate her.[1]

Despite these straightforward and uncontested facts, Gibbons pushed forward the proceedings. At each step in the litigation, from summary judgment to mediation, Aerotek continued to attempt to resolve the matter for purposes of saving the court's and the litigants' resources. Although Gibbons voluntarily dismissed her breach of contract claim, Gibbons refused to read the proverbial tea leaves and dismiss her meritless claim that Aerotek violated South Carolina Code Annotated § 41-1-70. As such, the case proceeded, at *great* time and expense, to trial where Aerotek received a Directed Verdict and Judgment in its favor on that claim. As explained in more detail below, Aerotek could have avoided incurring **more than half of its fees** in the lead up to and at trial.

[1] Through her initial Complaint, even Gibbons claimed that Schneider was her employer and that Schneider ended her employment. *See* Compl. ¶¶ 11, 26.

Fortunately, the cost of Gibbons' efforts to proceed on these meritless claims all the way to trial are to be borne by Gibbons. That is, the Employment Agreement between Aerotek and Gibbons provides that Aerotek, as the prevailing party, is "entitled to recover reasonable attorneys' fee and all costs" for defending against claims "arising out of or relating in any way to [Gibbons'] employment or relationship with Aerotek." Accordingly, Aerotek is entitled to an award of the attorneys' fees and costs incurred in defending against Gibbons' claims for breach of contract and violation of South Carolina Code Annotated §, 41-1-70, as set for in the Affidavit of Attorneys' Fees and Costs of R. Anthony Costello of Husch Blackwell LLP ("Husch Blackwell") and Patrick D. Quinn of Nelson Mullins Riley & Scarborough ("Nelson Mullins"), contemporaneously filed herewith.

II. FACTUAL BACKGROUND

A. Employment Agreement and Relationship of the Parties

1. Aerotek is a staffing company. Aerotek entered into a Supplier Agreement with Schneider's agent, Volt Consulting Group, to provide temporary contract workers to Schneider.

2. Under the Supplier Agreement, Schneider exercised day-to-day supervision, direction, and control over the temporary contract workers. Similarly, per that Agreement, Schneider determined whether the temporary contract worker performed satisfactorily, and Schneider retained the right to terminate any temporary contract worker's assignment upon notice to Aerotek.

3. Gibbons began work at Schneider in October 2017.

4. Shortly before she began working at Schneider, on or about September 14, 2017, Aerotek and Gibbons entered in an Employment Agreement, a copy of which is attached hereto as **Exhibit A**.

5. Pursuant to that Agreement, the parties are entitled to recover all reasonable attorneys' fees and costs incurred in prosecuting or defending certain claims. Exh. A, ¶ 19.

6. Particularly, Paragraph 19 of the Employment Agreement between the parties provides that:

> To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc; or (b) seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fee and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved.

7. Schneider terminated Gibbons' assignment in February 2018.

B. Procedural History of the Case

8. On October 1, 2018, Gibbons commenced the present action by filing a two-count complaint alleging: (1) a violation of South Carolina Code Annotated § 41-1-70; and (2) a breach of contract.

9. As to Count 1, alleging a violation of South Carolina Code Annotated § 41-1-70, Gibbons alleged that she was served with a valid trial subpoena during her employment and she informed her supervisor at Schneider. Compl. ¶¶ 20, 22. She alleged Schneider and Aerotek wrongfully terminated her because she complied with the trial subpoena. Compl. ¶¶ 28, 29.

10. As to Count 2, alleging a breach of contract, Gibbons alleged that the parties' written contract of employment required Aerotek to increase her hourly rate of pay after 90 days on the job. Compl. ¶¶ 32–38.

11. Aerotek retained the services of Husch Blackwell as lead counsel to defend against Gibbons' action. Husch Blackwell attorney William E. Corum acts as lead counsel for Aerotek in litigation matters nationwide, and has extensive experience litigating civil matters across the country, having prosecuted and defended commercial/business disputes, employment matters,

personal injury claims, and construction/design issues for corporate clients in arbitration and state and federal courts in more than one hundred venues nationwide.

12. Aerotek also retained Nelson Mullins to act as local counsel in defending the action. Nelson Mullins attorney Patrick D. Quinn acted as local counsel in this matter, and he has extensive experience in both state and federal courts in South Carolina.

13. From the start, Aerotek had a strong defense against Count 1 of the Complaint (violation of South Carolina Code Annotated § 41-1-70). That is, beyond merely notifying Gibbons that Schneider ended her assignment, Aerotek, the staffing company, had no involvement in her termination. Further, before notifying Gibbons that Schneider ended her employment, Aerotek had no knowledge that Gibbons had been served with a trial subpoena.

14. Similar to Count 1, Aerotek had a valid and straightforward defense to Count 2 of the Complaint (breach of contract). Indeed, the Employment Agreement contained no provision allowing for a wage increase after 90 days. Moreover, the Employment Agreement included an integration/merger clause barring any agreements not expressly set forth in the Employment Agreement.

15. To begin, Aerotek filed an answer to Gibbons' Complaint on November 21, 2018. In that answer, Aerotek specifically pleaded and put Gibbons on notice that it was seeking "its attorneys' fees and costs expended." *See* Answer, p. 7.

16. However, its co-defendant, Schneider, filed a motion to dismiss Gibbons' Complaint, arguing that Aerotek, and not Schneider, was the employer of Gibbons.

17. On January 31, 2019, Aerotek's counsel traveled to South Carolina for the first time for a hearing on that motion. Aerotek's local counsel attended that hearing.

18. To facilitate an early resolution, Aerotek's counsel met with Gibbons' counsel after the hearing to explain Aerotek's defense and request that Gibbons dismiss the action against Aerotek. Gibbons declined to do so.

19. Thereafter, the parties proceeded with discovery. On April 5, 2019, Aerotek's counsel again traveled, for the second time, to South Carolina to conduct Gibbons' deposition.

20. Again, on that day, Aerotek's counsel met with Gibbons' counsel to discuss the frivolous nature of the claims against Aerotek. This discussion occurred immediately following Gibbons' deposition, during which she provided admissions fatal to her claims. Unfortunately, Gibbons refused to dismiss her claims against Aerotek.

21. Consistent with the several discussions with Gibbons' counsel, on September 11, 2019, Aerotek filed a motion for summary judgment seeking dismissal of Count 1 and Count 2 of Gibbons' Complaint based on the above-described defenses and the uncontested facts. *See supra* 13–4 .

22. Gibbons opposed that motion on October 28, 2019. But she agreed to stipulate to dismissal with prejudice Count 2 of her Complaint (the breach of contract claim) on October 29, 2019, *after* Aerotek had already briefed Count 2's dismissal for its motion for summary judgment. A copy of that stipulated dismissal is attached hereto as **Exhibit B.**

23. On September 13, 2019, Aerotek's counsel traveled to South Carolina for a third time to participate in mediation. During mediation, Gibbons settled her termination claim against Schneider for $12,500—arguably, more than the entire amount to which she entitled even if she prevailed. Though Aerotek offered to contribute an additional $2,500 to resolve the frivolous claim against it, that offer was not accepted, and Gibbons proceeded against Aerotek.[2]

[2] Gibbons dismissed her claims against Schneider on September 18, 2019.

24. On November 7, 2019, Aerotek's counsel traveled to South Carolina for the fourth time for a hearing to argue in support of its motion for summary judgment. Aerotek's local counsel also attended the hearing.

25. The court summarily denied Aerotek's motion for summary judgment, without providing any analysis or explanation, on January 3, 2020.

26. Despite its numerous attempts to resolve the remaining claim to avoid incurring the expense of preparing and conducting trial, Aerotek's counsel traveled to South Carolina for the fifth time for trial. Aerotek's local counsel also attended the trial.

27. The jury voir dire occurred on January 28, 2020 and trial commenced on January 29, 2020. Aerotek moved for directed verdict at the close of Gibbons' evidence on January 29, 2020.

28. On January 30, 2020, Aerotek presented its evidence and again moved for directed verdict. Concluding that the entirety of Gibbons' evidence was still insufficient to even allow the jury to consider it, the court granted Aerotek's motion for directed verdict and consistent with that verdict, on February 3, 2020, entered Judgment solely in Aerotek's favor. A copy of the Judgment is attached hereto as **Exhibit C**.

29. Before filing the instant motion, on February 3, 2020, Aerotek's counsel communicated with Gibbons' counsel to seek a stipulation to liability for attorneys' fees and costs based on the Directed Verdict, the Judgment in Aerotek's favor, and Paragraph 19 of the Employment Agreement, thereby avoiding the expense of briefing the issue of liability, and limiting that which needed to be presented to this Court to the narrow issue of the reasonable *amount* of fees and costs.

30. That same day, apparently opposing Aerotek's request, Gibbons' counsel stated that Gibbons "does not have the means to pay any sort of attorney's fees award." Gibbons did not otherwise communicate her agreement to stipulate to liability for fees and costs in that communication.

31. On February 6, 2020, Aerotek's counsel, again in an attempt to resolve this matter, and mitigate further fees, communicated with Gibbons' counsel that Aerotek intended to proceed with the instant motion for attorneys' fees and costs unless Gibbons agreed to stipulate to liability. Aerotek's counsel received response from Gibbons' counsel on February 7, 2020 that she would oppose the motion. A copy of the communication between Aerotek's counsel and Gibbons' counsel from February 3, 2020 to February 7, 2020 is attached hereto as **Exhibit D**.

32. The instant motion, addressing both liability for and the reasonable amount of fees and costs, proceeded despite Aerotek's efforts to streamline the matter.

III. ARGUMENT

A. South Carolina Law and the Employment Agreement Entitle Aerotek to Attorneys' Fees and Costs.

1. Contractual Attorneys' Fees and Costs Provisions, Like the One Entered Into Here, are Enforceable under South Carolina Law.

South Carolina follows the general rule that attorneys' fees and cost are not recoverable, "unless authorized by contract or statute." *Maybank v. BB&T Corp.*, 787 S.E.2d 498, 518 (S.C. 2016). Aerotek falls within the exception to the bar of recovering attorneys' fees and costs: the Employment Agreement between Gibbons and Aerotek contains a contractual attorneys' fees and costs provision. *See* Exh. A, ¶ 19. South Carolina courts have routinely enforced contractual attorneys' fees provisions similar to the provision at issue here. *See, e.g.*, *JASDIP Props. SC, LLC v. Estate of Richardson*, 720 S.E.2d 485, 489–90 (S.C. Ct. App. 2011) (remanding to the trial court to determine award of attorneys' fees and costs where contract contained a prevailing-party fees provision); *Charleston Lumber Co. v. Miller Housing Corp.*, 458 S.E.2d 431, 439 (S.C. Ct. App. 1995) (modifying the trial court award of attorneys' fees and cost to include fees for defense against counterclaim where contract contained a contractual fees provision regarding collection actions).

Thus, here too the court should enforce the contractual attorneys' fees provision between the parties.

2. The Contractual Attorneys' Fees and Costs Provision in Gibbons' Employment Agreement Obligates Gibbons to Repay the Costs And Reasonable Attorneys' Fees to Aerotek as the Prevailing Party.

To determine whether Aerotek is entitled to fees and costs requires a two-part inquiry. **First**, Gibbons' claims must fall within contractual attorneys' fees provision: either the claims (a) "aris[e] out of or relat[e] in any way to [Gibbons'] employment or relationship with Aerotek" or (b) Aerotek or Gibbons "seek to enforce the obligations contained in" the Employment Agreement. Exh. A, ¶ 19. **Second**, Aerotek must be a prevailing party. *See id.* It is clear both inquiries can be answered in the affirmative.

Here, Gibbons' claim arose out of or related to her employment or relationship with Aerotek. That is, Gibbons brought two claims: (1) a claim alleging Aerotek wrongly terminated her employment because she complied with a valid subpoena in violation of South Carolina Code Annotated § 41-1-70 (Compl. ¶¶ 27–31); and (2) a claim alleging Aerotek breached its agreement to increase Gibbons' hourly wage after 90 days (Compl. ¶¶ 32–38). These claims clearly arise out of or relate to her employment (e.g., her pay under her alleged agreement with Aerotek and the termination of her employment with Aerotek). As such, both of these claims fall within subsection (a) of the contractual attorneys' fees provision.

Additionally, Aerotek prevailed in this lawsuit. A prevailing party under South Carolina law is defined as "[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue," and "is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cty. of Aiken*, 394 S.E.2d 709, 711 (S.C. 1990). That is, "[a] court determines the prevailing party by evaluating the degree of success obtained." *Id.* Aerotek

successfully defended against both of Gibbons' claims—for breach of contract and for violation of South Carolina Code Annotated § 41-1-70. That is, as to the breach of contract claim, Gibbons voluntarily dismissed the claim against Aerotek. *See* Exh. B. And as to the South Carolina Code Annotated § 41-1-70 violation—the claim most vigorously litigated—the court granted a Directed Verdict to Aerotek and entered Judgment solely in favor of Aerotek. *See* Exh. C.

Because Gibbons' claims fall within the scope of the contractual attorneys' fees provision and Aerotek prevailed on both claims, the contractual attorneys' fees provision entitles Aerotek to attorneys' fees and costs from Gibbons.

B. Aerotek is Entitled to Attorneys' Fees.

Because Aerotek is a prevailing party whose defense is subject to the contractual attorneys' fees provision, the court must determine the extent to which the attorneys' fees properly claimed under the Agreement are reasonable. When a contract provides for attorneys' fees, as here, "the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Am. Fed. Bank, FSB v. Number One Main Joint Venture*, 467 S.E.2d 439, 442 (S.C. 1996).

In determining reasonable attorneys' fees under a contractual attorneys' fees provision, the South Carolina courts mandate consideration of six factors.[3] *See Dedes v. Strickland*, 414 S.E.2d 134, 137 (S.C. 1992). Those factors include:

[3] For purposes of statutory attorneys' fees, the South Carolina courts conduct a two-part analysis: (1) the courts consider the six factors for reasonableness of the fees; and (2) the courts determine the lodestar figure. *See Maybank*, 787 S.E.2d at 518 ("A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." (quoting *Layman v. State*, 658 S.E.2d 320, 322 (S.C. 2008)). Importantly, South Carolina courts may use a lodestar multiplier in cases of "exceptional success." *Id.* (finding trial court acted within discretion in applying lodestar multiplier for case involving 32 depositions, 60,000 pages of discovery, 10 motions for summary judgment, and seven motions in limine). Aerotek's counsel is not aware of a South Carolina case

1. The nature, extent and difficulty of the legal services rendered;

2. The time and labor necessarily devoted to the case;

3. The professional standing of counsel;

4. The contingency of compensation;

5. The fee customarily charged in the locality for similar legal services; and

6. The beneficial results obtained.

Id. To begin, Aerotek provides the court the hours and rates sought in its requested fees award. In light of those hours and rates, Aerotek next contends that the six factors clearly support that the attorneys' fees requested are reasonable. As explained in more detail below, Aerotek is entitled to **$201,450.50** in reasonable attorneys' fees.

1. Reasonable Hours and Rates Sought

Aerotek provides an affidavit from two attorneys working on this matter, R. Anthony Costello of Husch Blackwell and Patrick D. Quinn of Nelson Mullins. Mr. Costello's Affidavit is attached hereto as **Exhibit E**, and Mr. Quinn's Affidavit is attached hereto as **Exhibit F**. These affidavits support the rates sought and hours expended in lieu of appending the detailed invoicing between Aerotek and its counsel.[4]

assessing reasonable fees under a contractual attorneys' fees provision using a lodestar analysis. As such, Aerotek addresses *only* the six factors for determining reasonableness of its fees. *See, e.g.*, *Clardy v. Bodolosky*, 679 S.E.2d 527, 532 (S.C. Ct. App. 2009) (affirming fees award where the trial court assessed the six factors under South Carolina law when considering reasonable attorneys' fees under contractual attorneys' fees provision without mention of lodestar).

[4] Aerotek does not append the detailed invoices with its initial motion for fees and costs. However, the detailed invoices can be provided to the court for inspection upon request.

Aerotek seeks **$158,296.00** in attorneys' fees for Husch Blackwell, broken down as follows (*see* Exh. E, ¶¶ 10–17):

	Position	Hourly Rate	Hours	Total
William E. Corum	Partner	$410.00 per hour	61.1	$25,051.00
Megan A. Scheiderer	Partner	$375.00 per hour	109.7	$41,137.50
R. Anthony Costello	Senior Counsel	$375.00 per hour	166.6	$62,475.00
Katherine T. Pearlstone	Associate	$235.00 per hour (10/18-10/19) $275.00 per hour (11/19-01/20)	7.2 11.6	$1,692.00 $3,190.00
Sara A. Fevurly	Associate	$275.00 per hour	33.7	$9,267.50
Shawn Shipp	Paralegal	$195.00 per hour	43.6	$8,502.00
Emily Campbell	Paralegal	$195.00 per hour	35.8	$6,981.00

In addition, Aerotek seeks **$43, 154.50** in attorneys' fees for Nelson Mullins, broken down as follows (*see* Exh. F, ¶ 7):

	Position	Hourly Rate	Hours	Total
Bryson M. Geer	Partner	$455.00 per hour (2018) $480.00 per hour (2019)	0.6 0.3	$273.00 $144.00
Patrick D. Quinn	Associate	$315.00 per hour (2018) $325.00 per hour (2019) $300.00 per hour (2020)	6.0 39.3 83.1	$1,890.00 $12,772.50 $24,930.00
Elle E. Klein	Associate	$275.00 per hour (2020)	8.3	$2,282.50
Melanie S. Creech	Research Specialist	$210.00 per hour	1.2	$252.00
Lana R. Morrison	Paralegal	$185.00 per hour	3.3	$610.50

In total, Aerotek seeks **$201,450.50** (**$158,296.00** from Husch Blackwell and **$43,154.50** from Nelson Mullins) in attorneys' fees.[5] As argued below, the factors support that the hours expended and hourly rates charged are reasonable, which in turn, supports that the attorneys' fees sought are reasonable.

[5] Aerotek reserves the right to amend and supplement the requested attorneys' fees to include fees and costs associated with the litigation of the instant motion. *See, e.g.*, *Summers v. Adams*, No. 08-2265, 2010 WL 2179571, at *3–4(D.S.C. May 26, 2010) (awarding fees and expenses associated with preparation of motion for attorneys' fees and expenses under federal statutory-fee provision). It will submit fees associated with the instant motion when litigation of the issue concludes.

2. Factors Supporting Reasonableness of the Fees

The court must consider all six factors in making its decision, but "none of these six factors is controlling." *Horton v. Jasper Cty. Sch. Dist.*, 815 S.E.2d 442, 444–45 (S.C. 2018) (quoting *Baron Data Sys., Inc. v. Loter*, 377 S.E.2d 296, 297 (S.C. 1989)). Indeed, the court must "make specific findings of fact on the record for each of these factors." *Id.* at 445 (quoting Baron, 377 S.E.2d at 297). As such, Aerotek analyzes all factors, but admittedly, not all factors are relevant to assessing reasonableness of the fees.

The nature, extent, and difficulty of the legal services rendered

The claims in this case, a breach of contract claim and a violation of South Carolina Code Annotated § 41-1-70, are relatively simple. Additionally, the facts in the case were not otherwise complex. And the legal issues in the case were only slightly complicated by the fact that the case involved South Carolina Code Annotated § 41-1-70, which had little substantive precedent. Nevertheless, Aerotek's defense against the claims were otherwise simple and straightforward.

However, what otherwise was a simple case—with simple claims, issues of fact and law, and defenses—was unnecessarily complicated by Gibbons' refusal to dismiss her meritless claims. That is, Aerotek's counsel rendered legal services beyond what would otherwise be necessary in similar cases in light of Gibbons pushing forward frivolous claims for which Aerotek had to defend. Throughout the litigation, at the motion-to-dismiss, discovery, summary judgment, and mediation phases, Aerotek repeatedly sought to resolve the claims in order to minimize litigation expenses. As previously stated, Aerotek had strong defenses from the start to both the breach of contract and the violation of South Carolina Code Annotated § 41-1-70 claims. It was Aerotek's belief, which it shared with Gibbons' counsel on multiple occasions, that she could not prevail on either claim given these defenses—in light of the relevant and uncontested facts. Nevertheless,

she persisted with her claims, and at least in the case of one of her claims, she took it all the way to trial. As such, Gibbons was at fault for the extensive legal services required and rendered.

The time and labor necessarily devoted to the case

Aerotek's fees request is also reasonable in light of the significant effort required to defend against Gibbons' claims. As mentioned above, the actions of Gibbons and Gibbons' counsel in pursuing two meritless claims resulted in 16 months of litigation, including: (1) investigating Gibbons' claims; (2) drafting pleadings; (3) propounding and responding to discovery; (4) conducting Gibbons' deposition; (5) drafting and arguing dispositive motions; (6) attending mediation; (7) trial preparation; and (8) trial. All of these actions taken to defend Aerotek necessitated the amount of attorneys' fees expended in order to achieve a Directed Verdict and Judgment solely in favor of Aerotek.

Throughout the litigation, Aerotek sought to resolve the claims in order to spare the litigants' and the courts' resources. As previously stated, Aerotek informed Gibbons' counsel of its relatively straightforward and meritorious defense as early as the motion-to-dismiss phase. Gibbons declined to resolve the claims at that stage. Aerotek again sought resolution following the fatal admissions given by Gibbons in her deposition, through dispositive motion practice, and during mediation. Gibbons opposed Aerotek's motion for summary judgment, and Gibbons did not settle her claims with Aerotek at mediation. Up to January 3, 2020, when the court denied summary judgment, Aerotek had incurred **$90,784.00** ($75,452.50 in fees from Husch Blackwell and $15,331.50 in fees from Nelson Mullins).

Despite repeated efforts to resolve the claims, Gibbons persisted, leaving Aerotek to defend itself at trial, which came at *great* expense of time and money. Following the denial of Aerotek's motion for summary judgment, Aerotek incurred **$110,666.50** to prepare for trial and

try this case to conclusion ($82,843.50 in fees from Husch Blackwell and $27,823.00 in fees from Nelson Mullins).

The professional standing of counsel

In order to adequately defend against Gibbons' claims, Aerotek retained the services of William E. Corum of the law firm Husch Blackwell. Mr. Corum has extensive experience litigating civil matters across the country, having prosecuted and defended commercial/business disputes for corporate clients in over one hundred venues, including many cases in the state and federal courts. Mr. Corum is Aerotek's lead counsel for litigation matters nationwide, and is experienced in litigating issues relating to Aerotek's role as a staffing company. Mr. Corum has represented Aerotek since 2008, has handled hundreds of matters for Aerotek, and has litigated cases for Aerotek in well over half of the States—including South Carolina. The other attorneys from Husch Blackwell, including Megan A. Scheiderer and R. Anthony Costello, are part of Husch Blackwell's Aerotek team and also regularly litigate claims nationwide on behalf of Aerotek. Aerotek also retained the services of Patrick D. Quinn of Nelson Mullins to act as its local counsel. Mr. Quinn has extensive experience in both the state and federal courts in South Carolina. Given the extensive in-court practice, including two dispositive motion hearings and a jury trial, it was reasonable (and required) for Aerotek to utilize experienced local counsel.

The contingency of compensation

Aerotek's counsel did not take the case in a contingency fee arrangement. However, the fact that the case was not taken on contingency should not end the inquiry on whether the fees requested are reasonable. That is, unlike a contingency arrangement, Aerotek paid its attorneys at their customary hourly rates throughout the course of the litigation. Thus, the court should find the hourly rate actually incurred presumptively reasonable by virtue of the fact that Aerotek paid these rates, in the marketplace, without guarantee of indemnification. *See, e.g.*, *Palmetto Health Credit*

Union v. Open Sols. Inc., No. 08-3848, 2011 WL 11702, at *5 (D.S.C. Jan. 4, 2011) ("Given the fact that the fees were paid by a party who had no reassurance of indemnity, we believe that market considerations normally would render unnecessary resort to the time-consuming examination of individual expenses." (quoting *Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 774 (7th Cir.2010))).

The fee customarily charged in the locality for similar legal services

Both Husch Blackwell and Nelson Mullins charged hourly rates commensurate with the hourly rates customarily charged in South Carolina. *See* Exh. F., ¶ 8.

The beneficial results obtained

Aerotek's fees request is reasonable in light of the favorable result obtained. That is, Gibbons had extremely limited potential damages in the first instance. *See* S.C. Code Ann. § 41-1-70 ("Damages for dismissal are limited to no more than one year's salary or fifty-two weeks of wages based on a forty-hour week in the amount the employee was receiving at the time of receipt of the subpoena."). Even so, Aerotek paid Gibbons nothing in damages for this meritless claim.

Moreover, Aerotek successfully defended itself against both claims. Aerotek's counsel obtained a Directed Verdict and Judgment in favor at trial on Count 1 (violation of South Carolina Code Annotated § 41-1-70). *See* Exh. C. Additionally, Aerotek obtained a stipulated dismissal of Count 2 before trial (breach of contract). *See* Exh. B.

3. Conclusion Regarding Attorneys' Fees

Aerotek is the prevailing party under the terms of Paragraph 19 of the Employment Agreement, and is, therefore, entitled to recover reasonable attorneys' fees expended on claims or disputes arising out of or relating to Gibbons' Employment Agreement. Both of Gibbons' claims fall within the contractual fees provision of the Employment Agreement. In this case, Aerotek

incurred actual attorneys' fees in the amount of **$201,450.50**. *See* Exh. E, F. This amount includes the time spent by attorneys engaging in dispositive-motion practice, conducting discovery, mediation, attending multiple hearings on motions, and ultimately, trial. In consideration of the six factors addressed above, Aerotek is entitled to the entirety of the attorneys' fees requested (based on the reasonable hours and rates expended). As such, Aerotek respectfully requests the court enter an award for fees in that amount.

C. Aerotek is Entitled to Costs.

Because Aerotek is a prevailing party whose defense is subject to the contractual attorneys' fees provision, the court must determine the compensable costs under the Employment Agreement. Indeed, the Employment Agreement provides that Aerotek, as the prevailing party, is entitled to "all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved." Exh. A, ¶ 19; *see also* S.C. R. Civ. P. 54(d) ("[C]osts shall be allowed as of course to the prevailing party unless the court otherwise directs."); S.C. Code Ann § 15-37-10 ("In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party").[6] Aerotek provides the affidavit of R. Anthony Costello in support of its reimbursement of costs. Mr. Costello's Affidavit relating to costs is appended hereto as **Exhibit G**.

[6]South Carolina courts have "no specific enumerations of items of cost recoverable in [their] trial courts." *Black v. Roche Biomedical Labs.*, 433 S.E.2d 21, 24 (S.C. Ct. App. 1993). But arguably, because Aerotek is seeking costs and expenses pursuant to the Employment Agreement, not pursuant to statute, it should not be limited to recovery of categories of costs and expenses provided in South Carolina statute. *See, e.g., Palmetto*, 2011 WL 11702, at *9 (noting that party requesting costs sought "pursuant to a contractual agreement," not pursuant to a statute, so it was not limited in recovery to those categories permitted by statute). Nevertheless, Aerotek addresses the costs allowable under South Carolina statute and case law, where applicable and relevant, in an abundance of caution.

Filing & Witness Fees: Aerotek seeks reimbursement of $688.02 in filing fees. See Exh. G, ¶ 3. These filing fees included two pro hac vice applications for Husch Blackwell attorneys, a motion for summary judgment, a jury list fee, and a witness and subpoena fee. *See* S.C. R. Civ. P. 54(e)(2) (including in taxable costs "[a]ll filing and recording fees charged by the clerk of the court in which the action was pending"); S.C. R. Civ. P. 54(e)(5) (including in taxable costs "[a]ll witness fees and mileage").

Travel Expenses: Aerotek seeks reimbursement of $6,929.37 in costs associated with counsels' travel. Exh. G, ¶ 3. These costs represent the cost for airfare, lodging, ground transportation, and food for counsel in traveling to South Carolina. Aerotek's counsel traveled to South Carolina on five occasions (court-ordered hearing on motion to dismiss, deposition of Gibbons, mediation, court-ordered hearing on summary judgment, trial) during the course of the litigation. *See Black*, 433 S.E. 2d at 26 (addressing cost for "reimbursement for travel, lodging, car rentals, meals, parking, mailings, telephone calls, publications, and mileage," but finding cost claimant did not point to "rule of court or statute that authorizes these reimbursements").

Mediation Fees: Aerotek seeks reimbursement of $497.71 in costs associated with mediation. *See* Exh. G, ¶ 3.

Electronic Discovery Fees: Aerotek seeks reimbursement of $2,250.00 in services rendered in connection with electronic discovery storage, processing, and management of document production during the discovery phase of this litigation. *See* Exh. G, ¶ 3.

In total, Aerotek respectfully requests the court enter an order for costs in the amount of **$10,365.10** pursuant to Paragraph 19 of the Employment Agreement.

IV. CONCLUSION

Under the Employment Agreement between Gibbons and Aerotek, Aerotek is entitled to recover all attorneys' fees and costs in successfully defending against claims arising from or relating to Gibbons' employment with Aerotek. Gibbons' claims clearly fall within the scope of the contractual-fees provision. And Aerotek, who successfully obtained a directed verdict on one claim at trial and stipulated dismissal of the other claim before trial, prevailed within the meaning of that same provision. Accordingly, Aerotek is entitled reasonable attorneys' fees and costs. Aerotek respectfully requests that the court enforce the Employment Agreement and order Gibbons to pay Aerotek's attorneys' fees and costs in the amount of **$211,815.60.**

WHEREFORE, Defendant Aerotek respectfully requests that this court enter an Order granting Aerotek attorneys' fees in the amount of **$201,450.50**, and costs in the amount of **$10,365.10**, representing the amount of attorneys' fees and costs incurred in defending against Gibbons' claims, and enter a Final Judgment of fees and costs including interest in favor of Aerotek therein, together with the granting such other and further relief as to this Court appears just and proper.

[Signature Page Below]

Respectfully submitted,

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Attorneys for Defendant Aerotek, Inc.

EXHIBIT A

Aerotek, Inc conditionally offers to employ Trisha G Gibbons in the capacity of Electrical/Electronics Tech commencing on 09/25/2017 at its client, VOLT@SCHNEIDER ELECTRIC USA INC[IQN] ("Client") for services with the latter for a temporary period, to perform such duties and for such hours of work as may be assigned to you during the term of service (the "Assignment").

1. Ratification - You understand and acknowledge that this offer of temporary employment with Aerotek, Inc is subject to final approval by the Client and that you shall not be entitled to any wages or employment unless actually hired by Aerotek, Inc to work the specific Assignment for the Client pursuant to this Agreement. You also understand that this Agreement does not go into effect until you actually work on said specific Assignment. You acknowledge and understand that your employment with Aerotek, Inc is "at will", with no certain term of employment being offered or promised,and that you or Aerotek, Inc may terminate your employment, with or without cause, at any time. You agree that by reporting or remaining at work after signing this Agreement that you have ratified same. In addition, you represent and warrant to Aerotek, Inc that your employment with Aerotek, Inc will not violate the terms or conditions of any other agreement to which you are a party.

2. Scope of Employment with Aerotek, Inc - You understand that your employment with Aerotek, Inc will be co-extensive with the Assignment. In other words, your employment with Aerotek, Inc begins when you first begin work for the Client on the Assignment, and ends if and when the Assignment is ended by the Client or otherwise. Following the end of the Assignment, while you may remain eligible for future assignments with other Aerotek, Inc clients, you will not be employed with Aerotek, Inc unless and until you are re-hired and assigned to another client. You further understand that following the ending of the Assignment, while you may remain eligible for new assignments with other Aerotek, Inc clients, Aerotek, Inc has no obligation to find you additional assignments and has no ability to compel any client to hire you.

3. Reporting of Hours - You agree to submit completed time records to the Aerotek, Inc office immediately following completion of your work week, but in no event later than 10:00 a.m. on Monday of each week, written in ink and approved and verified by a Client supervisor, indicating the number of hours worked. You understand and acknowledge that improper preparation of, or falsifying time records may result in disciplinary actions under Aerotek, Inc policies as well as applicable law. Furthermore, you understand your supervisor is prohibited from completing your timecard unless extenuating circumstances exist, such as authorized travel or no access to the internet. If this box is checked , you agree to submit your hours worked electronically and provide a printed approval from the Client's electronic time collection system. Failure to submit completed time records before 10:00 a.m. on Monday may, subject to applicable law, result in disciplinary action. You acknowledge that Aerotek, Inc needs completed time records to obtain payment from the Client, and therefore you will accurately complete, sign and assist Aerotek, Inc in gaining Client's approval and verification of your time records each week. You acknowledge the Aerotek, Inc policy and practice of mandating daily recordation of all hours worked. Aerotek, Inc does not permit "off the clock" work or any similar practice of not recording hours worked. Any requests by the Client or other third party not to record all hours worked or to record hours to an incorrect funding source must be reported in writing by you to Aerotek, Inc.

4. Compensation - In consideration of your services, Aerotek, Inc agrees to pay you weekly on Friday at the following rates:

(a) $12.00 per hour for all hours worked (as reflected on time records) effective on the day you report to work at the Client and ending on the day of termination, or discharge of employment, regardless of cause or reason for discharge or termination.

(b) $18.00 per hour for hours worked (as reflected on time records) in excess of forty (40) per week (or as otherwise required by applicable law). Client-observed holidays, shutdowns, and regularly scheduled days off shall not be considered as time worked for purposes of qualifying for premium rate compensation.

Except as specifically set forth in this Agreement, you acknowledge and agree that you are not entitled to any other compensation or benefits (including, but not limited to, vacation or personal leave) from Aerotek, Inc or Client.

5. Sick Leave - If you work in a sick leave jurisdiction, your eligibility and ability to earn, accrue, and use paid sick leave is governed by applicable law, and you will receive additional information regarding the applicable sick leave policy.

6. Business Expenses - Any business related expenses for which you are eligible and request reimbursement must be approved in writing by Client and must be substantiated with legible, itemized receipts. Original receipts must be physically turned in to the Aerotek, Inc office or scanned and submitted electronically to your local Aerotek, Inc representative. Any receipts turned in after 90 days of transaction will be deemed untimely and not paid. Any expenses submitted to Aerotek, Inc without itemized receipts will not be reimbursed by Aerotek, Inc. If you would like a copy of the Aerotek, Inc Contract Employee expense reimbursement policy, please contact your Aerotek, Inc representative.

7. Restrictive Convenant - In consideration of the terms of employment and the efforts and costs incurred by Aerotek, Inc, you agree you shall not solicit Client or engage in a like or similar profession or occupation at Client's facility or any other facility at which you are directed to or actually perform services under this Agreement, either directly or indirectly, for a period of one hundred eighty (180) days following the termination of your employment under the terms of this Agreement, unless specific written authorization has been obtained from Aerotek, Inc. You agree any violation of this provision will result in you paying to Aerotek, Inc an amount equal to three hundred twenty (320) hours at the hourly rate as stated in 4(a) above.

8. Confidentiality - You agree not to disclose to anyone, either during or after your employment with Aerotek, Inc, any confidential or proprietary information of any kind obtained by you as a result of your employment without the written consent of executive officers of both the Client and Aerotek, Inc, and you further agree that on leaving the employment of Aerotek, Inc, you will not take with you, without written permission of executive officers of both the Client and Aerotek, Inc, any blueprint, drawing, or other reproduction, property or material of any kind. You also agree to execute any forms or documents required by Client with respect to the foregoing.

9. Information Security Matters - With respect to any technology and/or equipment, including but not limited to a laptop, desktop, mobile device, or technology platform ("Equipment") used in connection with your Assignment, you agree to use the Equipment in accordance with applicable information security and confidentiality policies of the Client, as well as the Aerotek, Inc Information Security Policy. In the event there is a conflict between the Client and Aerotek, Inc Information Security Policy, you shall follow the policy that bests ensures the protection and safekeeping of the Equipment and data contained on the Equipment. In the event you fail to fully comply with this provision or the confidentiality provision in Section 8 of this Agreement, you agree to indemnify the Client and Aerotek, Inc for any and all claims, matters, suits or other liabilities that arise directly or indirectly as a result of your breach of Section 8 or Section 9 of this Agreement.

10. Ownership of Work Product - You agree that you will disclose and assign full and absolute right, title, and interest to the Client of any and all inventions, improvements, or discoveries made by you of any kind or nature whatsoever during the tenure of this agreement, and you will execute any and all documents and instruments necessary to transfer the full and complete title of any such inventions, improvements or discoveries to the Client, and shall assist in any manner possible in obtaining patent letters in the name of said Client covering them. You also agree to execute any forms or documents required by Client with respect to the foregoing.

11. Trade Secret - Nothing in this Agreement prohibits you from reporting an event that you reasonably and in good faith believe is a violation of law to the relevant law-enforcement agency, or from cooperating in an investigation conducted by such a government agency. This may include disclosure of trade secret or confidential information within the limitations permitted by the Defend Trade Secrets Act (DTSA). You are notified that under the DTSA, no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (a) made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (b) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. And, an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except as permitted by court order.

12. Indemnification - You agree to indemnify and hold harmless Aerotek, Inc from any and all liability, loss, damages, attorneys' fees, or expenses which may be caused by your negligence, willful actions, omissions or failure to perform the Assignment and/or your obligations under this Agreement.

13. Termination - You shall give a minimum notice of ten (10) business days should you decide to terminate your position with Aerotek, Inc.You understand that the length of this Assignment is subject to the discretion and needs of the Client and, therefore, a five (5) day notice from Aerotek, Inc may not be possible and Aerotek, Inc is not required to provide such notice . Upon termination, and to the extent permitted by applicable law, you acknowledge and agree that any amounts owed by you to Aerotek, Inc will be deducted from any remaining wages owed to you and refunded to Aerotek, Inc.

14. Notification of Completion of Assignment - You agree that upon completion of the Assignment with Client, you will notify Aerotek, Inc that you have finished the Assignment. You understand that failure to contact Aerotek, Inc upon completion of the Assignment may affect your ability to receive unemployment benefits. You further understand that at all times between the ending of one assignment and the beginning of another, while you may remain eligible for potential assignments with other Aerotek, Inc clients, you are not employed by Aerotek, Inc and Aerotek, Inc has no obligation to find you employment or place you with any client.

15. Benefits - As a common law employee of Aerotek, Inc, you are eligible to participate in a variety of available benefit programs, including programs such as medical, dental, vision, disability and retirement. Aerotek, Inc will provide additional information regarding our benefits options including eligibility periods, coverage options and how to enroll. You acknowledge and agree that since you are a common law employee of Aerotek, Inc, and not the Client, you are not eligible for any benefit programs that may be provided by Client during your Assignment. By electing to participate in our benefit programs, you authorize Aerotek, Inc to deduct your portion of the applicable costs directly from your paycheck.

16. Acknowledgment of Employment Relationship - In addition to the rules, regulations and policies of Aerotek, Inc, you agree to be bound by any applicable rules, regulations or policies established by the Client wherever you perform services under this Agreement. You recognize and agree that you are an employee of Aerotek, Inc and you will look solely to Aerotek, Inc for all employee benefits in connection with your employment under this Agreement. You hereby waive any right you have or may have against the Client for benefits arising out of or resulting from employment hereunder, including, without limitation, rights under any medical/benefit plan, pension plan or vacation/holiday plan regardless of the length of Assignment.

17. Assignment of Claims - In the event Client has filed for bankruptcy or indicated an intent to file for bankruptcy, you hereby assign to Aerotek, Inc any and all claims you have against the Client for any wages earned and owed to you in connection with the work you performed on the Assignment, effective upon payment by Aerotek, Inc to you of such amounts, which Assignment shall be considered as in exchange for Aerotek, Inc's payment of such amounts.

18. Limitation of Liability - To the extent permitted by law, you, on your own behalf and on behalf of anyone claiming by or through you, waive any and all rights you have, or may have, to claim or assert a claim, suit, action or demand of any kind, nature or description, including without limitation, claims, suits, actions or demands for personal injury or death whether arising in tort, contract or otherwise, against Client or Client's customers, agents, officers, directors, or employees, resulting from or arising directly or indirectly out of your employment with Aerotek, Inc, except as to any claims you assign to Aerotek, Inc under this Agreement. You recognize and agree that Aerotek, Inc provides workers' compensation coverage for such things as on-the-job injuries or occupational diseases incurred while on Assignment for Aerotek, Inc, and to the extent permitted by law, you agree to look solely to Aerotek, Inc and/or its insurer for damages and/or expenses for any such claims, suits, actions, or demands relating to bodily injury, illness, or death incurred while on Assignment. In furtherance of the foregoing and in recognition that any work related injuries which might be sustained by you are covered by state Workers' Compensation statutes, and to avoid the circumvention of such state statutes which may result from suits against the Client based on the same injury or injuries, and to the extent permitted by law, YOU HEREBY WAIVE AND FOREVER RELEASE ANY RIGHTS YOU MIGHT HAVE to make claims or bring suit against the Client for damages based upon injuries which are covered under such Workers' Compensation statutes. You agree to notify Aerotek, Inc if you believe that there are any unsafe conditions at the Client worksite or facility.

19. Attorneys' Fees - To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc; or (b) seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved.

20. Integration/Merger - Except as expressly set forth herein, this Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement. No representations, promises, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements specifically identified herein. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be of no effect.

21. Severability - In the event any provision or clause of this Agreement is found to be unenforceable by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

If you accept this conditional offer in accordance with its stated terms, please indicate your acceptance by signing your name.

Accepted By:		**Accepted By: Aerotek, Inc**	
Trisha G Gibbons		Kimberly E Sweat	
(Contract Employee)		**(Aerotek, Inc representative)**	
Trisha G Gibbons (Electronic Signature)	09/14/2017	Kimberly E Sweat (Electronic Signature)	09/19/2017
(Contract Employee Signature)	**(Date)**	**(Aerotek, Inc representative Signature)**	**(Date)**

Electronically Signed on **14-Sep-2017, 12:37 PM EST**
by **Trisha G Gibbons**

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO. 2018-CP-40-05124 **PARTIAL** **STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff and Defendant Aerotek, Inc. (Defendant Schneider has been dismissed from this action) stipulate to dismissing the claim of breach of contract presently pending in this action. This stipulation *with prejudice*, with each side to bear its own costs and fees and is made pursuant to Rule 41(a)(1), SCRCP.

This **does not end** the case. A claim that Defendant Aerotek, Inc. violated S.C. Code Ann. § 41-1-70 remains pending.

WE STIPULATE:

s/J. Paul Porter
J. Paul Porter, Esquire (#100723)
CROMER BABB PORTER & HICKS, LLC
Post Office Box 11675
Columbia, SC 29221
Phone: (803) 799-9530
paul@cbphlaw.com

Attorney for Plaintiff

s/William E. Corum
William E. Corum, pro hac vice
HUSCH BLACKWELL,LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 641112
Phone: (816) 983-9139
William.Corum@huschblackwell.com

Patrick D. Quinn (#100215)
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina, 29201
Phone: (803) 255-9513
patrick.quinn@nelsonmullins.com

October 29, 2019

Certificate of Electronic Notification

Recipients

James Porter - Notification transmitted on 10-29-2019 09:21:44 AM.

Patrick Quinn - Notification transmitted on 10-29-2019 09:21:44 AM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

–

A filing has been submitted to the court RE: 2018CP4005124

Official File Stamp:	10-29-2019 09:21:29 AM
Court:	CIRCUIT COURT Common Pleas Richland
Case Caption:	Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al
Document(s) Submitted:	Stipulation Of Dismissal
Filed by or on behalf of:	James Paul Porter

This notice was automatically generated by the Court's auto-notification system.

–

The following people were served electronically:

James Paul Porter for Trisha Gibbons

Patrick Devin Quinn for Aerotek Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Bryson Moore Geer for Aerotek Inc

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005124

Trisha Gibbons
PLAINTIFF(S)

Aerotek Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **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:

See page 2.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/03/2020 .

Bryson Moore Geer for Aerotek Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter was tried before a jury in Richland County on January 29-30, 2020. At the close of the evidence, Defendant moved for a directed verdict on the basis that the Plaintiff had failed to prove any elements supporting her claim. Pursuant to Rule 50(a) of the SCRCP, a directed verdict may be granted by the court "when upon a trial the case presents only questions of law." In the present case, Plaintiff failed to provide the court with facts to support her claim against this defendant and therefore, the Defendant's Motion for a Directed Verdict was granted and the case is dismissed with prejudice.
It is so ordered.

Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

EXHIBIT D

Armstrong, Mary Ann

From: Paul Porter <Paul@CBPHLaw.com>
Sent: Friday, February 7, 2020 7:04 AM
To: Corum, William
Cc: Scheiderer, Megan; patrick.quinn@nelsonmullins.com
Subject: RE: Gibbons (Attorneys' Fees & Costs)

[EXTERNAL EMAIL]

William:

The precondition that you are entitled to fees is untenable from our perspective.

Ms. Gibbons has reasonable, good faith defenses to all aspects of your anticipated motion which I will assert if I have to.

I am happy to negotiate anything with you in good faith and with civility, if you will do the same.

The custom in employment matters in South Carolina is to waive costs/fees in exchange for an agreement not to appeal or file post-trial motions. Ms. Gibbons is willing to abide by this custom.

Even if Aerotek does not want to abide by this custom, I am not hiding the ball when I represent that Ms. Gibbons a working class, single female, mother of six (who is currently unable to work due to a physical injury) does not have any money. In this light, I would think the appropriate business decision would be to drop this issue and walk away content with the result at trial.

Please include the full email chain in your filing with the Court; so that the Court has the full context of our communique. If you can't, I will.

Sincerely, Paul

J. Paul Porter*
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

***CERTIFIED SPECIALIST IN LABOR AND EMPLOYMENT LAW**

From: Corum, William <William.Corum@huschblackwell.com>
Sent: Thursday, February 6, 2020 5:51 PM
To: Paul Porter <Paul@CBPHLaw.com>
Cc: Scheiderer, Megan <Megan.Scheiderer@huschblackwell.com>; patrick.quinn@nelsonmullins.com
Subject: RE: Gibbons (Attorneys' Fees & Costs)

Paul,

Having not heard back from you, we will proceed with the preparation and filing of the motion for fees/costs.

As Aerotek received a directed verdict, there is no room for argument that it did not "prevail." Further, the agreement clearly provides the prevailing party entitlement to reasonable fees/costs. Accordingly, I assume you have made sure your client knows that it is extremely probable that we will prevail on this motion, and that we will also be seeking all of the fees associated with bringing it. The fees/costs associated with bringing this motion could be avoided if she would simply concede that Aerotek is the "prevailing party" and entitled to fees/costs per the agreement—a point even you have not contested. Then, we could discuss the amount owed and a process through which to determine it, with court intervention only as needed.

When the time comes, I will provide the court with this e-mail reflecting our efforts to avoid the expense of a motion for fees/costs.

William E. Corum, Partner

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112-2551
Direct: 816.983.8139
Fax: 816.983.8080
William.Corum@huschblackwell.com
huschblackwell.com
View Bio | View VCard

From: Corum, William
Sent: Monday, February 3, 2020 3:46 PM
To: Paul Porter <Paul@CBPHLaw.com>
Cc: Scheiderer, Megan <Megan.Scheiderer@huschblackwell.com>; patrick.quinn@nelsonmullins.com
Subject: RE: Gibbons (Attorneys' Fees & Costs)

Thanks Paul.

I understand your position, but whether she has the "means to pay" is not a defense to the obligation to do so. If she wants to concede the obligation, and just leave it to you to argue the amount, that will certainly make this easier and less expensive. If not, we will file our motion and proceed.

Aerotek is the prevailing party. It has spent a great deal defending the frivolous claim you and Ms. Gibbons advanced, and it is entitled to a judgment against her for all reasonable fees and expenses relating thereto.

Let me know if she will agree to this obligation and we can discuss a way to determine the appropriate amount of the judgment against her.

William E. Corum, Partner

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112-2551
Direct: 816.983.8139
Fax: 816.983.8080
William.Corum@huschblackwell.com

huschblackwell.com
View Bio | View VCard

From: Paul Porter <Paul@CBPHLaw.com>
Sent: Monday, February 3, 2020 3:12 PM
To: Corum, William <William.Corum@huschblackwell.com>
Cc: Scheiderer, Megan <Megan.Scheiderer@huschblackwell.com>; patrick.quinn@nelsonmullins.com
Subject: RE: Gibbons (Attorneys' Fees & Costs)

[EXTERNAL EMAIL]

William:

Congratulations to you and Megan on your win at trial.

Trisha will agree not to carry the claim forward, but she does not have the means to pay any sort of attorney's fees award.

I would ask for you not to seek attorneys fees against Trisha given her limited means. If you want to discuss this with me feel free to call me.

Sincerely, Paul

J. Paul Porter
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

From: Corum, William <William.Corum@huschblackwell.com>
Sent: Monday, February 3, 2020 3:57 PM
To: Paul Porter <Paul@CBPHLaw.com>
Cc: Scheiderer, Megan <Megan.Scheiderer@huschblackwell.com>; patrick.quinn@nelsonmullins.com
Subject: Gibbons (Attorneys' Fees & Costs)

Paul,

Please find attached a copy of your client's employment agreement with Aerotek. As you will see, Article 19 of that agreement provides as follows:

"**Attorneys' Fees** – To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc.; or (2) seeking to enforce the obligations

contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved."

As Aerotek, Inc. has "prevailed" in the lawsuit brought by Ms. Gibbons, it is entitled to all reasonable attorneys' fees and costs incurred in conjunction with prevailing against her claims. It is also entitled to any and all reasonable attorneys' fees and costs associated with enforcement of Ms. Gibbons's obligations—including her obligation to pay the reasonable fees and costs associated with the underlying lawsuit. In other words, not just what has been expended to date in overcoming her claims, but also what will be expended enforcing her obligation to pay Aerotek's reasonable fees/costs to date.

If Ms. Gibbons will agree to end this matter now and agree to pay all *reasonable* fees and costs incurred to date, we can discuss a process to determine what is reasonable, and we will also agree to seek nothing additional from her relating to fees or costs incurred from this point forward. If we do not have that agreement by **COB this Wednesday, February 5, 2020**, we will proceed to seek all to which Aerotek is entitled under the agreement.

Please advise.

William E. Corum, Partner

HUSCH BLACKWELL LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112-2551
Direct: 816.983.8139
Fax: 816.983.8080
William.Corum@huschblackwell.com
huschblackwell.com
View Bio | View VCard

EXHIBIT E

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FIFTH JUDICIAL CIRCUIT
Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	CASE NO. 2018CP4005124

AFFIDAVIT OF ATTORNEYS' FEES

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

R. Anthony Costello, being duly sworn, deposes and says:

1. I am an attorney at the law firm of Husch Blackwell LLP.

2. I am authorized to make this statement.

3. The billing rates for the Husch Blackwell attorneys and paralegals that have worked on this file are as follows:

William E. Corum	$410.00 per hour (attorney)
Megan A. Scheiderer	$375.00 per hour (attorney)
R. Anthony Costello	$375.00 per hour (attorney)
Katherine Pearlstone	$235.00 per hour (10/18-10/19) (attorney)
	$275.00 per hour (11/19-01/20) (attorney)
Sara Fevurly	$275.00 per hour (attorney)

Shawn Shipp	$195.00 per hour (paralegal)
Emily Campbell	$195.00 per hour (paralegal)

4. William E. Corum was licensed to practice law in the State of Missouri in 1994, and the State of Kansas in 1995. Mr. Corum is also admitted to practice in the United States District Courts for the Western District of Missouri, Eastern District of Missouri, District of Kansas, District of Colorado, Eastern District of Wisconsin, Northern District of New York, Western District of New York, and the Eastern District of Michigan; the United States Circuit Courts for the 2nd, 4th, 8th, 9th, and 10th Circuits; the U.S. Court of Federal Claims; and the United States Supreme Court. Mr. Corum has extensive experience litigating civil matters across the country, having prosecuted and defended commercial/business disputes, employment matters, personal injury claims, and construction/design issues for corporate clients in arbitrations and state and federal courts in more than 100 venues nationwide. Mr. Corum acts as lead counsel for Aerotek in litigation matters nationwide.

5. R. Anthony Costello was licensed to practice law in the State of Missouri in 2001, the State of Illinois in 2002, and the State of Kansas in 2005. Mr. Costello is also admitted to practice in the United States District Court for the Western District of Missouri, the United States District Court for the Northern District of Illinois, and the United States District Court for the District of Kansas. Mr. Costello has extensive experience litigating civil matters for corporate clients in various jurisdictions across the country, including commercial/business disputes, employment matters, personal injury claims, and construction/design issues. Mr. Costello assists Mr. Corum on Aerotek matters nationwide.

6. Meghan A. Scheiderer was licensed to practice law in the State of Missouri in 2006, the State of Kansas in 2007, and the State of Illinois in 2018. Ms. Scheiderer is also admitted to practice in the United States District Court for the Western District of Missouri,

the United States District Court for the District of Illinois, the United States District Court for the District of Texas – San Antonio, as well as the United States Courts of Appeals for the 8th Circuit and the 10th Circuit. Ms. Scheiderer assists Mr. Corum on Aerotek matters nationwide, particularly in the area of e-discovery.

7. Katherine Pearlstone was licensed to practice law in the State of Missouri in 2016 and the State of Kansas in 2017. Ms. Pearlstone is also admitted to practice in the United States District Court for the District of Kansas, in the United States District Court for the Western District of Missouri, and in the United States District Court for the Northern District of Oklahoma.

8. Sara A. Fevurly was licensed to practice law in the State of Missouri in 2016 and the State of Kansas in 2017. Ms. Fevurly is also admitted to practice in the United States District Court for the District of Kansas, in the United States District Court for the Western District of Missouri, as well as the United States Courts of Appeals for the 10th Circuit. Ms. Fevurly assists Mr. Corum on Aerotek matters nationwide.

9. The attached billing history accurately reflects the hours expended and amounts billed by the above attorneys on this file.

10. The number of hours expended by William Corum through January 30, 2020 is 61.1 hours for a total amount of $25,051.00.

11. The number of hours expended by R. Anthony Costello through January 30, 2020 is 166.6 hours for a total amount of $62,475.00.

12. The number of hours expended by Megan Scheiderer through January 30, 2020 is 109.7 hours for a total amount of $41,137.50.

13. The number of hours expended by Katherine Pearlstone through January 30, 2020 is hours 18.8 for a total of $4,882.00

14. The number of hours expended by Sara Fevurly through January 30, 2020 is 33.7 hours for a total of $9,267.50.

15. The number of hours expended by Shawn Shipp through January 30, 2020 is 43.6 hours for a total amount of $8,502.00.

16. The number of hours expended by Emily Campbell through January 30, 2020 is 35.8 hours for a total amount of $6,981.00

17. The total amount of attorneys' fees billed by Husch Blackwell LLP through January 30, 2020 for which Defendant Aerotek, Inc. is seeking reimbursement is $158,296.00.

FURTHER AFFIANT SAYETH NAUGHT.

R. Anthony Costello

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

Sworn to and subscribed before me this 13 day of February, 2020, by **R. ANTHONY COSTELLO**, who is personally known to me.

NOTARY PUBLIC:
Sign Mary Ann Armstrong
Print Mary Ann Armstrong

My Commission Expires:
NW 2, 2020

MARY ANN ARMSTRONG
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Nov. 2, 2020
Commission # 12409172

EXHIBIT F

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

AFFIDAVIT OF ATTORNEYS' FEES

PERSONALLY appeared before me Patrick D. Quinn, who, being duly sworn, says:

1. I am over the age of 18 and competent to make the following affidavit.

2. I am an attorney in the law firm of Nelson Mullins Riley & Scarborough LLP ("Nelson Mullins") in Columbia, South Carolina. Along with co-counsel from the law firm Husch Blackwell, LLP ("Husch Blackwell"), Nelson Mullins represented Defendant Aerotek, Inc. ("Aerotek") in the above-captioned action. This affidavit is submitted in support of Aerotek's request for an award of attorneys' fees as the prevailing party in this matter.

3. Under *Dedes v. Strickland*, 414 S.E.2d 134, 137 (S.C. 1992), the Supreme Court of South Carolina has set forth the following factors to be considered in an award of attorneys' fees pursuant to a contractual attorneys' fees provision . These factors include: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. These factors, as applied in this case, are as follows:

4. The nature, extent and difficulty of the legal services rendered. As further detailed by Aerotek's motion for attorneys' fees and supporting exhibits thereto, Aerotek retained counsel to defend this lawsuit which alleged statutory and contractual liability for terminating Plaintiff's employment. There were no claims against Aerotek in this matter other than those brought by Plaintiff. As such, all time spent on this case was directly related to Plaintiff's claims, as opposed to any counter-claims or cross-claims. The case involved South Carolina law with little substantive precedent, which increased the complexity and difficulty of the matter. After discovery, dispositive motions, and mediation, the case was tried to a jury on January 29-30, 2020. At the close of Aerotek's case, Aerotek moved for directed verdict, which was granted by the Honorable Perry H. Gravely.

5. The time and labor necessarily devoted to the case. This case involved legal work over a 16-month period. Throughout this case, counsel for Aerotek worked efficiently and diligently to avoid unnecessarily duplicating time and efforts. Nelson Mullins was initially retained as local counsel to assist co-counsel from Husch Blackwell in this matter, and in that role, counsel actively sought to minimize unnecessary, duplicative involvement in the case. Once it became apparent that this case was proceeding to trial, my participation, and that of other Nelson Mullins attorneys and staff, increased. Along with co-counsel Megan Scheiderer from Husch Blackwell, I represented Aerotek at the trial of this matter, and the vast majority of Nelson Mullins' fees were incurred preparing for and attend the trial of this matter. The time and labor devoted to this case were necessary to properly prepare and try this case.

6. The professional standing of counsel. I graduated from the University of South Carolina School of Law in 2010 and have been licensed to practice law since 2010. I am licensed in all South Carolina Courts and the U.S. District Court for the District of South Carolina as well as the Commonwealth of Virginia. I routinely appear in state and federal courts and

administrative agencies in South Carolina as well as in other jurisdictions. My practice is focused on litigation of complex commercial and contractual claims. I am a member of the Richland County Bar Association, the South Carolina Bar, and the South Carolina Defense Trial Attorneys' Association. I believe and submit that I have a good professional reputation in the community.

The other Nelson Mullins attorneys involved in this case are also licensed in South Carolina, reside in South Carolina, and primarily practice in the field of commercial and complex civil litigation. The rates charged by each attorney (set forth below) reflect their experience and professional standing. Bryson M. Geer is a partner in Nelson Mullins' Charleston office with 22 years of experience in the field of commercial litigation and business torts. Elle E. Klein is an associate in Nelson Mullins' Columbia office with 2 years' experience in commercial and business litigation.

7. Contingency of Compensation. Nelson Mullins did not have a contingency agreement with Aerotek in this matter and instead billed its time by the hour. The billing rates and total billed fees for the Nelson Mullins attorneys and staff that have worked on this matter are as follows:

Name	Position	Hourly Rate	Hours	Total
Bryson M. Geer	Partner	$455.00 per hour (2018) $480.00 per hour (2019)	0.6 0.3	$273.00 $144.00
Patrick D. Quinn	Associate	$315.00 per hour (2018) $325.00 per hour (2019) $300.00 per hour (2020)	6.0 39.3 83.1	$1,890.00 $12,772.50 $24,930.00
Elle E. Klein	Associate	$275.00 per hour (2020	8.3	$2,282.50
Melanie S. Creech	Research Specialist	$210.00 per hour	1.2	$252.00
Lana R. Morrison	Paralegal	$185.00 per hour	3.3	$610.50
TOTAL				$43,154.50

Accordingly, the total amount of attorneys' fees billed by Nelson Mullins Riley & Scarborough LLP through January 30, 2020 for which Defendant Aerotek, Inc. is seeking reimbursement is $43,154.50.[1]

8. Fee Customarily Charged in the Locality for Similar Legal Services. I am aware from discussions with colleagues, clients, and other similarly situated attorneys and law firms in the midlands region of South Carolina that Nelson Mullins' fees are in line with the fees customarily charged by counsel with similar experience and at similar law firms, and that the rates set forth above are appropriate and reasonable.

In addition, based on my years of experience as an attorney in South Carolina and my personal knowledge of the legal services provided by the attorneys at Husch Blackwell LLP in this matter, I believe that the range of hourly rates charged by Husch Blackwell's attorneys—*i.e.*, $375-$410 for partner/of counsel attorneys, $235-$275 for associate attorneys, and $195 for paralegals—are fair, reasonable, and comparable to hourly rates charged by other attorneys and paralegals in the South Carolina market based on the varying level of skill and experience possessed by those attorneys.

I am aware that Husch Blackwell billed fees totaling $158,296.00 in this matter. That is not surprising given that Husch Blackwell's attorneys and staff spent significantly more time in this case i) investigating Plaintiff's claims; ii) drafting pleadings; iii) propounding and responding to discovery; iv) drafting and arguing dispositive motions; v) attending mediation; and vi) trial preparation. The difference between the fees billed by Husch Blackwell and those

[1] South Carolina courts have repeatedly held that it is proper to award staff fees, such as time billed by a paralegal, as part of an attorneys' fee award. *See Spriggs Grp., P.C. v. Slivka*, 738 S.E.2d 495, 502 (S.C. Ct. App. 2013), *superseded*, No. 2013-UP-497, 2013 WL 10343401 (S.C. Ct. App. Feb. 6, 2013) (citing *McElveen v. McElveen*, 506 S.E.2d 1, 11 (S.C. Ct. App. 1998) and *Charleston Lumber Co. v. Miller Housing Corp.*, 458 S.E.2d 431, 439 (S.C. Ct. App. 1995)).

billed by Nelson Mullins represent counsel's efforts to avoid duplication and minimize expense to the client.

9. Beneficial Results Obtained. Attorneys at Nelson Mullins and Husch Blackwell obtained beneficial results for Aerotek inasmuch as they obtained a stipulated dismissal of one claim and a directed verdict in favor of Aerotek on the other claim at the trial of this matter. Accordingly, it is submitted that beneficial results were obtained by this firm on the Plaintiff's behalf.

10. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the fee customarily charged in the locality for similar legal services, and the beneficial results obtained, I respectfully submit that an award of attorneys' fees to the full extent as set forth in this Affidavit is appropriate; therefore, Aerotek is entitled to recover $201,450.50 in attorneys' fees.

11. Finally, additional attorneys' fees have been incurred since January 31, 2020 although they have not yet been billed to Aerotek. It is also anticipated that additional fees may yet be incurred, and the amount listed above does not include a projection of time that may be billed to this matter in the future. As such, I respectfully reserve the right to supplement this affidavit to include additional fees which may be incurred.

FURTHER AFFIANT SAYETH NAUGHT.

Patrick D. Quinn

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE ME, the undersigned authority, appeared Patrick D. Quinn, who is personally known to me, who being first duly sworn, deposes and says that he has read the foregoing Affidavit and it is true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this 13th day of February, 2020.

Signature of Notary Public

Maria Keeve
Name of Notary Typed, Printed or Stamped

My Commission Expires 7/5/28

EXHIBIT G

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

AFFIDAVIT OF COSTS

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

R. ANTHONY COSTELLO, being duly sworn, deposes and says:

1. I am an attorney at the law firm of Husch Blackwell LLP.

2. I am authorized to make this statement.

3. The costs expended in relation to this litigation for which Defendant Aerotek, Inc. seeks reimbursement consist of the following:

Reimbursement Description	Amount
Husch Blackwell cost to South Carolina Supreme Court Clerk for William Corum pro hac vice. (Nov. 2018)	$250.00
Nelson Mullins cost for filing fee for William Corum's pro hac vice filing (Dec. 21, 2018)	$31.74
William Corum's travel expenses (airfare, lodging, taxi, food) for Defendant Schneider Electrics Motion to Dismiss (Jan. 31, 2019)	$656.71
Nelson Mullins cost for lunch following hearing on Defendant Schneider Electrics Motion to Dismiss (Jan. 31, 2019)	$34.70
William Corum's travel expenses (airfare, lodging, taxi, food) for Deposition of Trisha Gibbons (Apr. 5, 2019)	$1,754.02
Nelson Mullins cost for filing fee for Motion for Summary Judgment (Sept. 11, 2019)	$31.74
Nelson Mullins cost for mediation fees (Sept. 13, 2019)	$497.71

William Corum's travel expenses (airfare, lodging, taxi, food) for attendance at mediation (Sept. 2019)	$1,250.14
William Corum's travel expenses (airfare, lodging, taxi, food) for Hearing on Motion for Summary Judgment (Nov. 11, 2019)	$523.77
Nelson Mullins cost to South Carolina Supreme Court Clerk for Megan Scheiderer pro hac vice (Jan. 2020)	$250.00
Nelson Mullins cost for filing fee for Megan Scheiderer's pro hac vice filing (Jan. 2020)	$31.74
Megan Scheiderer travel expenses (airfare, lodging, taxi, food) for Trial (Jan. 2020)	$2,710.03
Nelson Mullins trial filing fees (jury list fee, witness and subpoena fee)	$92.80
Husch Blackwell services rendered in connection with electronic discovery storage, processing and management of document production during discovery phase (April 2019 to Jan. 2019)	$2,250.00

4. The total costs for which Aerotek seeks reimbursement equal $10,365.10

FURTHER AFFIANT SAYETH NAUGHT.

R. Anthony Costello

Sworn to and subscribed before me this 13 day of February, 2020, by **R. ANTHONY COSTELLO**, who is personally known to me.

NOTARY PUBLIC:

Sign Mary Ann Armstrong

Print Mary Ann Armstrong

MARY ANN ARMSTRONG
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Nov. 2, 2020
Commission # 12409172

My Commission Expires:

Nov 2, 2020

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO. 2018-CP-40-05124 **MEMORANDUM IN OPPOSITION TO MOTION FOR FEES & COSTS**

TO: The Hon. Perry H. Gravely, Circuit Court Judge.

Plaintiff opposes Defendant Aerotek Inc.'s Motion for Attorneys' Fees and Costs on the following grounds: (1) the unenforceability of Defendant's fee shifting contract based on (i) mutual assent/actual notice, (ii) unconscionability, and (iii) the absence of consideration; (2) the Defendant's failure to raise its contractual claim for fees prior to trial; and (3) the absolute unreasonableness of seeking $200,000.00 *plus* in costs and fees where the max liability faced was $24,960.00.

1. Introduction

Defendant mentioned its fee shifting contract for the first time after the Court granted it a post-trial directed verdict on January 30, 2020. Defendant then filed a motion on February 13, 2020 asking this Court for $211,815.60 in costs and fees. This claim arose under a statute which limited Plaintiff's available recovery to $24,960.00. S.C. Code Ann. § 41-1-70.

Plaintiff had no clue that the fee shifting agreement cited by Defendant even existed. She does not have the capacity to pay the Defendant $200.00 much less $200,000.00.

Indeed, the fee shifting provision consists of legalese, and is buried on the third page of the asserted contract in nondescript and inconspicuous typeface. The "contract" containing the fee shifting provision was presented to Plaintiff electronically on the same day that the Defendant

presented other documents to Plaintiff to review and sign by hand. That "contract" was described as standard onboarding material. Plaintiff got nothing of value for signing this onboarding material other than the potential of receiving a possible offer of "contingent" indirect employment by a third party – Schneider Electric USA.

This agreement is legally infirm and morally decrepit. The idea that a wage worker could be made to pay the largest employer in the United States $200,000.00 *plus* for attempting in good faith, but failing in part, to remedy a violation of a remedial employment law is constitutionally repugnant. The idea that an electronically signed, inconspicuous adhesion contract might be used to achieve that perverse objective is even more loathsome.

These basic premises and ideals find resounding support in well-reasoned, persuasive case law.[1] For instance, the lack of actual notice facially dooms this contract. *Reese v. Commercial Credit Corp.*, 955 F.Supp. 567, 569 (D.S.C. 1997) ("It is not too much to ask an employer to provide actual notice to its employees before significantly restricting rights created by decades of state and federal legislation."). Moreover, setting glaring contractual defects aside, the agreement – because it asks a pauper to pay the legal fees of an industry giant – is facially unconscionable. *Hall v. Treasure Bay Virgin Corp.*, No. CIV. 2005/0170, 2009 WL 689626, at *1 (D.V.I. Mar. 9, 2009), *aff'd sub nom. Hall v. Treasure Bay Virgin Islands Corp.*, 371 F. App'x 311 (3d Cir. 2010). ("Notwithstanding this paucity of evidence, the Court finds that the loser pays provision would deter Hall, with a pay rate of $8.00 per hour, from pursuing a meritorious claim for fear of being strapped with an unmanageable financial burden."). These, and other legal principles, expounded upon below, counsel the Court in favor of denying Defendant's motion for fees and costs.

[1] There is limited "governing" case law on point. Presumably, because most defendants decline (for self-evident reasons) to attempt to enforce adhesion loser pays provisions in the employment or consumer context.

The law, common sense, and the relevant record before the Court all suggest that Defendant's motion should be summarily rejected.

2. Relevant Facts

Defendant's description of the facts overlooks the most important set of facts to their motion – those facts that determine the enforceability of its "loser pays" contract.

Starting there, Plaintiff has "no contemporaneous memory of receiving or reviewing [the loser pays contract] in any form or fashion." (Ex. 1: Pl. Aft ¶ 5).

Plaintiff allegedly signed the agreement on September 14, 2017 but did not start working for Aerotek until October 16, 2017. (Ex. 1: Pl. Aft. ¶ 10); (Ex. 1 to Plaintiff's Affidavit; 10-13-17 Email).

Plaintiff received an email on September 14, 2017 that described the purported contract as "online onboarding paperwork." (Ex. 1: Pl. Aft ¶ 11); (Ex. 2 to Pl. Aft.; 9/14/17 Email). That email did not mention the loser pay's provision, other seriously restrictive contractual terms, that Plaintiff could or should consult with a lawyer about the agreement or that Plaintiff had the right to opt out of the agreement. (*Id.*). Instead, the email read like the agreement was a standard form that had to be filled out before Plaintiff could officially start. The email opened:

> Congratulations and welcome to Aerotek! We are very excited to be working with you. Before you start your new position, please complete your online onboarding paperwork.

(*Id.*) The email continued by stating "it takes approximately 60 minutes to complete [your onboarding paperwork]" and that "your paperwork must be completed within 48 hours of your receipt of this email." (*Id.*).

Aerotek never explained the significance of that paperwork to Plaintiff, but it had the opportunity to do so. (Ex. Pl. Aft. ¶ 6). The same day that Defendant gave Plaintiff 48 hours to electronically sign its loser pays agreement, Defendant had Plaintiff come to its office to fill out another agreement by hand. (Ex. 1 Pl. Aft. ¶ 12); (Ex. 3 to Pl. Aft; 9/14/17 Contract). That formal

contract was dually signed by hand and said nothing about a "loser pays" agreement with Defendant. That formal contract, signed in person, indicates that Defendant could have told Plaintiff about its loser pays agreement before she signed it. (Ex. 1: Pl. Aft ¶¶ 12-14).

Plaintiff "had no clue the 'Attorney's Fees" provision in the agreement even existed until after trial." (Ex. 1: Pl. Aft. ¶ 15).

Defendant did not mention it's "loser pays" agreement in its answer or plead it as an affirmative defense. Instead, in reference to attorney fees and costs, Aerotek's answer merely made a generic request for attorney fees no different from the same request in almost every other boilerplate responsive pleading. Defendant did not discuss its intent to seek fees from the Plaintiff during litigation – which would have conformed with custom had the Defendant intended to seek fees. Indeed, Defendant kept this agreement close-to-chest throughout. Specifically, Defendant did not mention its "loser pays" agreement in the only significant email chain between counsel about resolving this matter. (Ex. 2: 4/5/19 Email Chain). Further, Defendant buried the purported agreement in the literal middle of its initial 232-page discovery responses. (Ex. 3: Asserted Fee-Shifting Contract). Defendant did ask the Plaintiff about the contract briefly during her deposition but did not mention the "loser pays" provision on its third page. (Ex. 1: Pl. Aft. ¶ 9).

The document Defendant claims is a fee-shifting contract, first described as onboarding paperwork, opens on its face as a conditional offer of employment. (Ex. 3: Asserted Fee-Shifting Contract, Intro). The first and second paragraphs of the purported contract indicate that the documents' underlying consideration is illusory; such that Plaintiff's conditional offer of employment is "at-will" and "co-extensive" with her assignment. (*Id.* at ¶¶ 1-2). Indeed, the purported contract states that a third party, not a party to the subject contract, could end Plaintiff's employment at-will. (*Id.* at ¶ 2).

The conditional offer next states that Plaintiff will receive "$12.00 per hour." (Ex. 3: Asserted Fee-Shifting Contract, ¶ 4). Then on page 2, the contract binds the Plaintiff (a $12.00 per hour wage worker) to a 6 month non-compete agreement without geographical restrictions. (*Id.* at ¶ 7). Even though the contract states that Plaintiff is an "at will" employee subject to termination at any time by Defendant or a third party, it next binds Plaintiff to working out a mandatory 10-day notice period. (*Id.* at ¶ 13).

Finally, after 18 preceding paragraphs and three pages, the purported contract has an inconspicuous "loser pays" agreement which reads:

> **19. <u>Attorney Fees</u> –** To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment relationship with Aerotek, Inc.; or (b) seeking to enforce the obligations contained in this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all costs relating to the dispute or other claims and any process through which such a dispute or claims may be resolved.

(Ex. 3: Asserted Fee-Shifting Contract, ¶ 19). The typeface on this provision matches the typeface in the remainder of the agreement. The typeface does not employ an "all caps" function even though that function is employed to highlight a third-party prospective release in the preceding paragraph. (*Id.* at ¶ 18). The bolding and underlined used on the header is the same bolding and underlined used at the beginning of each of the purported agreement's 21 enumerated paragraphs. (*Id.*).

The purported agreement reads as if it was electronically signed by the Plaintiff on September 14, 2017 (one month before she started working for the Defendant) and electronically signed by Defendant's receptionist on September 19, 2017. (Ex. 3: Asserted Fee-Shifting Contract, p. 3).

Plaintiff would have had to work for Defendant for **17,651.3 hours** to pay it the **$211,815.60** it now seeks which amounts to ~ **8.5 years of work against a 40-hour work week.**[2]

[2] Defendant in its statement of facts makes two key mischaracterizations:

Defendant, within the cumulative fortune it seeks, makes no distinction between the fees and costs expended in defense of the Plaintiff's breach of contract claim and her statutory claim and appears to seek fees for both. Yet, Defendant stipulated to the dismissal of that contract claim **"with each side to bear its own costs and fees."** (Ex. 6: Stipulation of Dismissal).

3. Standard

"At common law, a judgment did not automatically carry with it an award of costs." *Black v. Roche Biomedical Labs., a Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 227, 433 S.E.2d 21, 24 (Ct. App. 1993). However, "[o]ver a hundred years ago, our Legislature adopted procedures to permit the prevailing party in a civil action to recover costs and disbursements from the losing party." *Id.* "Those procedures, now generally embraced in Rule 54(d) and S.C.Code Ann. §§ 15–37–10 to 220, provide that a prevailing party shall **ordinarily** be entitled to recover certain costs and disbursements. Such costs and disbursements do not, however, include attorney fees." The question of whether or not to tax costs against a party is within the discretion of the Court. Rule 54(C), SCRCP ("[C]ost shall be

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First, Defendant claims it made an offer to Plaintiff at mediation of $2,500.00 and that it made several attempts to resolve this lawsuit. (Def. MIS pp. 6 ¶¶ 18, 23). No offer from Defendant was ever conveyed to Plaintiff's counsel at mediation or otherwise. Had such an offer been made it would have been accepted as it would have brought Plaintiff to her pre-mediation goal in conjunction with co-defendant Schneider's offer to settle. Instead, it was Plaintiff who tried to settle several times. (Ex. 2: 4/5/19 Email Chain). (Ex. 4: Offer of Judgment).

Next, Defendant opines *ad nauseum* about how "frivolous" Plaintiff's claims were. (Def. MIS pp. 1; 6 ¶¶ 20 23; 13). Defendant won, but "technicality" instead of "frivolity" is more apt. Defendant's last-minute victory was based on Plaintiff's inability to show its culpability for Schneider's request to terminate. Plaintiff was unable to show that culpability because the Defendant challenged the foundation of its own contract with Schneider which restricted the right to request (and the responsibility to carry out) terminations to only lawful terminations. (Ex. 5: Contract pp. 6-7 §§ 2.7, 2.11). Defendant did not produce this document in discovery until right before trial, even though contract's relevance was self-evident, and it used the contract as an exhibit to its Memo in Support of Summary Judgment. In its memo on summary judgment, Defendant hid this key contractual language by selectively employing ellipses.

allowed as of course to the prevailing party, **unless the court otherwise directs**[.]"); *Black*, 433 S.E.2d at 25, and 25 n. 5; ("We find no abuse of discretion."), ("Federal courts have held the allowance of costs to the prevailing party under Federal Rule 54(d) is discretionary unless the matter is controlled by a federal statute or rule.").

"The award of attorney's fees under a contract is [also] left to the discretion of the trial court and will not be disturbed unless the court abused that discretion." *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 642, 720 S.E.2d 485, 489 (Ct. App. 2011); *Maybank v. BB&T Corp.*, 416 S.C. 541, 579–80, 787 S.E.2d 498, 518 (2016) ("The decision to award or deny attorneys' fees and costs will not be disturbed on appeal absent an abuse of discretion."). "Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute." *Maybank*., 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). Here, the Defendant claims it has a contractual right to attorney fees. Thus, the enforceability of that contract is paramount.

4. Discussion

Defendant's memo on fees ignores the question of whether its fee-shifting contract is enforceable and instead spends over 10 pages trying to justify spending $211,815.60 on a $24,960.00 case (arising under a statute where there are only 3 reported cases to read). Those overlooked basic flaws in the Defendant's adhesion contract for fees are dispositive from the outset.

4.1. Contract Defenses

"The necessary elements of a contract are an offer, acceptance, and valuable consideration. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012).

4.1.1. Actual Notice

A party cannot conceivably ascend to the terms of an adhesion contract they do not know about. Mutual assent is necessary to establish a valid offer and acceptance. ("Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by

the offer.") *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004); *qouting*, RESTATEMENT (SECOND) OF CONTRACTS § 50 (1981); *see also*, *W.E. Gilbert & Assocs. v. S.C. Nat. Bank*, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) ("Mutual assent to all the essential terms of the agreement is necessary to the formation of a contract."); *Vessell v. DPS Associates of Charleston, Inc.*, 148 F.3d 407, 410 (4th Cir. 1998). (The formation of a binding contract requires "the parties [to] have a meeting of the minds with regard 'to all essential and material terms of the agreement.'").

In the at-will employment context, actual notice is required to alter the terms of an ordinary employment relationship. *Reese v. Commercial Credit Corp.*, 955 F. Supp. 567, 570 (D.S.C. 1997) ("It is not too much to ask an employer to provide actual notice to its employees before significantly restricting rights created by decades of state and federal legislation."). The law, to modify even a unilateral employment contract, imposes a "reasonable notice requirement for modification [that] requires actual notice to the employee." *Fleming v. Borden, Inc.*, 316 S.C. 452, 463, 450 S.E.2d 589, 596 (1994); *see also*, *Fleming*, 316 S.C. 452, 463, 450 S.E.2d at 596 ("Whether the employer has provided actual notice of a modification of the employment contract created by an employee handbook in most cases will be for the jury to determine.").

Actual notice can be express or implied. *Strother v. Lexington County Recreation Com'n*, 332 S.C. 54, 63, 504 S.E.2d 117, 122 (S.C. 1998). Express actual notice has been found in employment cases when plaintiffs have received, read, understood, and signed new agreements. *See, Shelton v. Oscar Mayer Foods Corp.*, 319 S.C. 81, 89-90, 459 S.E.2d 851, 856-57 (S.C. Ct. App. 1995). However, the South Carolina Supreme Court has declined to find actual notice where "there [wa]s no evidence that [the plaintiff] had read and understood" an updated handbook. *Id.* 319 S.C. at 90. Actual notice can also be implied through an act, such as attending a meeting, personally disseminating information to others,

or filing a claim through mediation. *Hightower v. GMRI, Inc.*, 272 F.3d 239, 242 (4th Cir. 2001) (applying North Carolina law).

There is no evidence that the Defendant gave Plaintiff actual notice of the fee-shifting contract that it disguised as "on boarding paperwork." In fact, the evidence shows the opposite. (See pp. 3-4, above). Therefore, Defendant's fee-shifting contract is not a contract at all.

4.1.2. Unconscionability

The notion that fees can be awarded against employees in employment law claims has been soundly rejected in other jurisdictions. Neither of the two cases Defendant cites to on the general enforceability of a contract for attorneys' fees involves a claim for attorneys' fees against an employee or consumer. (Def. MIO pp. 8-9). The spectre of unconscionability is demonstrably heightened in the employment context on a "take it or leave it" contract.

The fee-shifting contract asserted here is an adhesion contract. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26–27, 644 S.E.2d 663, 669 (2007) ("An adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable."). "Adhesion contracts [] are not per se unconscionable; [] finding an adhesion contract is merely the beginning point in the analysis." *Id.*

The next step in the analysis is to determine whether this contract is so one-sided or oppressive as to be deemed procedurally or substantively unconscionable. *Simpson*, 644 S.E.2d at 670 ("Moreover, regardless of the general legal presumptions that a party to a contract has read and understood the contract's terms, we also find it necessary to consider the otherwise inconspicuous nature of the arbitration clause in light of its consequences."). The *Simpson* case found that depriving a party of a jury trial and available statutory remedies via an inconspicuous arbitration clause in a consumer context was unconscionable. On substantive unconscionability the *Simpson* Court noted that stripping the Plaintiff of available remedial claims and damages rendered the contract void against public policy.

Simpson at 671 ("The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution."). With respect to procedural unconscionability the Court opined that the arbitration clause at issue was inconspicuous and that the plaintiff did not have any meaningful choice with respect to the contract. *Id.* at 670 and 672 ("While certain phrases within other provisions of the additional terms and conditions were printed in all capital letters, the arbitration clause in its entirety was written in the standard small print, and embedded in paragraph ten (10) of sixteen (16) total paragraphs included on the page."), ("Accordingly, in light of Simpson's lack of meaningful choice in agreeing to arbitrate, the provision is unconscionable and unenforceable.").

The factors leading to the determination of unconscionability in *Simpson* are just as present here. This is undoubtedly a "take it or leave it" adhesion contract. The fee-shifting provision is buried at the end of this adhesion constrict inconspicuously. The fee-shifting provision did not explicitly take away statutory rights on behalf of the Plaintiff, but in effect it eroded all statutory rights on behalf of the Plaintiff. That is, absent 100% certainty of victory, no $12.00 per hour worker could ever be expected to attempt to remedy her rights as an employee when the costs of defeat are proportionally insurmountable. All of these things considered, the Defendant's asserted contract is unenforceable because it is unconscionable[3]

This conclusion is supported by similar decisions in other jurisdictions. The third circuit has signaled that "loser pays" agreements in the employment context are outright unenforceable:

> Whether a loser pays provision is unconscionable turns on an individual assessment of ability to pay. *See Parilla v. IAP Worldwide Services, VI, Inc.,* 368 F.3d 269, 283-84 (3d Cir.2004). Although Hall has

[3] *See also*, *Herron v. Century BMW*, 693 S.E.2d 394 (S.C. 2010) ("In determining whether there is an absence of a meaningful choice, as would support determination that contract is unconscionable, courts consider the relative disparity in the parties' bargaining power, the parties' relative sophistication, the nature of the injuries suffered by the plaintiff, whether the plaintiff is a substantial business concern, whether there is an element of surprise in the inclusion of the challenged clause, and the conspicuousness of the clause.").

> submitted evidence of the cost of arbitration, which Divi Casino has not disputed, she has not submitted evidence of what her expenses were at the time that she entered into the Hourly Employee Agreement. **Notwithstanding this paucity of evidence, the Court finds that the loser pays provision would deter Hall, with a pay rate of $8.00 per hour, from pursuing a meritorious claim for fear of being strapped with an unmanageable financial burden.** See *Alexander v. Anthony Intern., L.P.,* 341 F.3d 256, 269 (3d Cir.2003). 'Simply the prospect that the employee may have to pay the entire amount of the arbitrator's fees and expenses may serve to chill her willingness to bring a claim.' *Parilla,* 368 F.3d at 284. Therefore, the loser pays provision is also substantively unconscionable.

Hall v. Treasure Bay Virgin Corp., No. CIV. 2005/0170, 2009 WL 689626, at *1 (D.V.I. Mar. 9, 2009), *aff'd sub nom. Hall v. Treasure Bay Virgin Islands Corp.*, 371 F. App'x 311 (3d Cir. 2010); *Parilla v. IAP Worldwide Servs., VI, Inc.,* 368 F.3d 269, 285 (3d Cir. 2004) ("We therefore conclude that, as long as Parilla carries her burden to show an inability to pay the anticipated arbitral costs, the "loser pays" provision is just as unreasonably favorable to Appellants as would be a "fee splitting" provision."). As noted above (p. 5), Plaintiff would have to work for Defendant for 8.5 years (without paying taxes, filling her gas tank, or buying groceries) to pay Defendant the "reasonable" fees and costs they seek. This agreement if enforced would clearly "deter [Gibbons and her peers], with a pay rate of [$12.00] per hour, from pursuing a meritorious claim for fear of being strapped with an unmanageable financial burden."

Thus, even if a contract was formed, Defendant's asserted contract should not be enforced based on unconscionability.

4.1.3. Consideration

Plaintiff did not even get at-will employment for allegedly electronically signing the fee-shifting contract at issue. *See*, *Riedman Corp. v. Jarosh*, 290 S.C. 252, 253, 349 S.E.2d 404, 405 (1986) (At-will employment sufficient to support a noncompete agreement); *but see*, *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 272, 525 S.E.2d 898, 899 (Ct. App. 1999), *aff'd*, 345 S.C. 378, 548 S.E.2d 207 (2001) (Continued at-will employment not sufficient to support a noncompete agreement). Here, Plaintiff

was given a "conditional offer" of "co-extensive" employment. (Ex. 3: Asserted Fee-Shifting Contract). That means that the asserted contract did not guarantee her the commencement of employment in the first place as starting and continuing employment, according to the contract's language, was entirely contingent on the whims of a third-party, Schneider Electric. *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 275, 525 S.E.2d 898, 900 (Ct. App. 1999), *aff'd*, 345 S.C. 378, 548 S.E.2d 207 (2001) ("The promise of continued employment was illusory because even though Poole signed the covenant, Incentives retained the right to discharge her at any time."). The illusory offer to Plaintiff of "contingent employment" can hardly amount to sufficient consideration for Plaintiff to give up the grave rights at issue.

Forecasting, Defendant might argue that Plaintiff gained the prospect of fee-splitting in her favor as valid consideration. This suspected assertion overlooks the grave financial imbalance of either side to pay attorney fees and the true exchange of risk that occurred. Furthermore, many employment law statutes already grant a successful employee (but not a successful employer) attorney fees; again showing the Plaintiff got very little but gave up so much. Finally, there is no doubt that Defendant would have argued (had Plaintiff won and sought attorney fees) that case law precluded her from getting any relief other than the limited relief provided in S.C. Code Ann. § 41-1-70. *See*, *Patterson v. I.H. Servs., Inc.*, 295 S.C. 300, 309, 368 S.E.2d 215, 220 (Ct. App. 1988). Such an argument is consistent with the limiting outlook on Plaintiff's available recovery expressed by defense counsel at trial and in prior correspondence. (Ex. 2: 4/5/19 Email Chain).

Against this backdrop, Plaintiff received nothing of real value for allegedly electronically signing the purported fee-shifting agreement; therefore, it is not enforceable.

4.2. Equitable Defenses

Defendant did not mention its fee-shifting contract in its answer or during litigation. At no time, until after the Court's directed verdict, did Defendant insinuate that it would seek fees. Now, at

the 11th hour, with Plaintiff's back against the wall, Defendant asks the Court to bury Plaintiff under a mountainous debt she can never pay off simply because she tried in good faith to pursue a remedial right of action.

Recently, the Supreme Court held that a failure to plead the limiting statute on punitive damages as an affirmative defense amounted a waiver of that statute because the criteria in that law affected proof at trial and because the same amounted to a "limitation on damages." *Garrison v. Target Corp.*, No. 2017-000267, 2020 WL 216297, at *19 (S.C. Ct. App. Jan. 15, 2020), *reh'g denied* (Feb. 20, 2020). Admittedly, this holding and Rule 8's requirement that any "affirmative defense" or "other matter constituting an avoidance", would not necessarily require Defendant to plead their contract for attorney fees.

Nevertheless, ***equitably***, neglecting to mention the fee-shifting contract in its answer and then throughout the process of litigation can amount to a waiver. *Lyles v. BMI, Inc.*, 292 S.C. 153, 158–59, 355 S.E.2d 282, 285 (Ct. App. 1987) ("An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable."). The doctrine of laches is also implicated. *Hallums v. Hallums*, 296 S.C. 195, 198–99, 371 S.E.2d 525, 527 (1988) ("Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches."). Here, the equitable doctrines of laches and waiver provide additional, equitable grounds for the Court to disregard the Defendant's fee-shifting contract.

4.3. Unreasonableness of Fees & Costs Sought[4]

[4] An additional legal defense, not discussed in depth to maintain brevity, is that the noncompete within the purported contract invalidates the contract based on its lack of a geographical restriction which facially violates public policy.

Finally, the amount of fees and costs sought in this case does not pass the straight-face test. As Defendant points out, the factors to be considered in determining the reasonableness of attorneys' fees are:

> 1. The nature, extent and difficulty of the legal services rendered;
> 2. The time and labor necessarily devoted to the case;
> 3. The professional standing of counsel;
> 4. The contingency of compensation;
> 5. The fee customarily charged in the locality for similar legal services; and
> 6. The beneficial results obtained.

Dedes v. Strickland, 307 S.C. 155, 161, 414 S.E.2d 134, 137 (1992). Contextually, Defendant struggles on factors 1, 2, and 6.

One glaring problem for the Defendant from the outset is that they seek fees and costs on both the Plaintiff's statutory and contract claims even though they stipulated to the dismissal of the contract claim with each side to "bear its own costs and fees." (Ex. 3: Fee Shifting Agreement). This means substantial cuts to the $211,815.60 sought need to be made without any necessary analysis.

Moving on, the amount of fees sought do not comport with the total liability available under S.C. Code Ann. § 41-1-70 which defense counsel referred to as "$24,960—maximum" via email on April 5, 2019. (Ex. 2: 4/5/19 Email). Spending $211,815.60 on a $24,960 claim is ridiculous.

This was a simple case too. There are literally only three cases that mention the statute in play. *Connelly v. Wometco Enterprises, Inc.*, 314 S.C. 188, 442 S.E.2d 204 (Ct. App. 1994); *Patterson v. I.H. Servs., Inc.,* 295 S.C. 300, 368 S.E.2d 215 (Ct. App. 1988); *Wallace v. Milliken & Co.*, 300 S.C. 553, 389 S.E.2d 448 (Ct. App. 1990), *aff'd as modified,* 305 S.C. 118, 406 S.E.2d 358 (1991). Less than 600 total documents were produced in this case.[5] Only one person was deposed, and only one dispositive motion by Defendant was filed.

[5] Yet, the defense seeks $2,250.00 for document storage. (Def MIS: Ex. G).

Altogether, the undersigned (the lone involved attorney vs. apparently 6 attorneys for the Defendant) probably had to spend maximum 80 hours on this case.[6] Meanwhile, the Defendant used six lawyers to run up a $211,815.60 bill against max $25,000.00 in liability.

The recourses invested by Defendant on this case defy logic and basic common sense. Defendant should not be awarded for overkill.

5. Conclusion

Plaintiff, based on these several arguments, respectfully asks this Court to exercise appropriate discretion and deny Defendant's motion for fees and costs.

Respectfully Submitted By:

s/J. Paul Porter
J. Paul Porter (#100723)
CROMER BABB PORTER & HICKS, LLC
Post Office Box 11675
Columbia, South Carolina 29211
Street: 1418 Laurel Street, Ste. A
Phone: 803-799-9530 * Fax: 803-799-9533
Email: paul@cbphlaw.com
Attorney for Plaintiff

March 6, 2020
Columbia, South Carolina

[6] Plaintiff's Counsel did add a first-year associate to this case prior to trial to gain her trial experience.

Exhibit 1

Plaintiff's Affidavit

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc. and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO. 2018-CP-40-05124 **AFFIDAVIT OF TRISHA GIBBONS**

1. I, Trisha Gibbons, am over 18 and am competent to testify.
2. This affidavit is made voluntarily, truthfully, and upon my own personal knowledge.
3. I am the Plaintiff in this case.
4. Since the conclusion of the trial in this case, I was shown and did review a three-page electronic contract purported to be signed by me electronically on September 14, 2017.
5. I have no contemporaneous memory of receiving or reviewing that document in any form or fashion when I allegedly signed it electronically.
6. No one from Aerotek, Inc. ever discussed this purported contract with me or explained the significance of any of its terms including the "Attorney's Fees" provision at paragraph 19 of this contract.
7. Having reviewed the purported contract, I observe that the subject "Attorney's Fees" provision is buried on the agreement's 3rd of 3 pages in nondistinctive typeface without any special disclaimers or warnings.
8. I deny that I had actual notice of this contract, its terms, and especially of the subject term regarding fee shifting.
9. In my time as a party in this case, I did have limited interaction with the attorneys for Aerotek. Aerotek's attorneys did not mention the fee shifting provision in those proceedings or indicate

that they might intend to seek fees from me. Aerotek did ask me about other provisions of the purported contract during my deposition, but not the Attorney's Fee provision. My deposition testimony regarding the purported contract indicates that I had no contemporaneous knowledge of it at the time I was deposed on April 5, 2019 either.

10. Assuming I did electronically sign the subject agreement, I received nothing of value for doing so. Indeed, the purported agreement was signed on September 14, 2017 and I did not start working as an at-will-employee for Aerotek until October 16, 2017. (Ex. 1: 10-13-17 Email).
11. Presumably this fee shifting contract was sent to me on September 14, 2017 under the guise of being required "online onboarding paperwork." The email announcing that I needed to sign onboarding paperwork did not mention that I was supposedly giving up serious rights with respect to my ability to engage in competing work and the purported "Attorney's Fees" provision. Indeed, all the email said of substance was that I had only "48 hours of receipt of this email" to fill out the paperwork if I wanted to receive my "first paycheck [] timely." (Ex. 2: 9-14-17 Email).
12. I was called into Aerotek's office to fill out other paperwork by hand including the attached work agreement which does not mention any "Attorney's Fees" provision. (Ex. 3: 9-14-17 Signed Contract).
13. I am disappointed to learn that Aerotek apparently sent what it now claims was a serious waiver of legal rights (binding me to a loser pays attorney fees provision) to me via an online portal, disguised that information as generic "onboarding paperwork," gave me only 48 hours to review the subject paperwork, and did not even make an effort to explain the significance of the paperwork to me or my fellow staffing agency workers.

14. I am doubly disappointed that Aerotek did all of this when Exhibit 3 plainly demonstrates that it could have presented the paper to me for signing in person at no serious added costs to ensure that I was given actual notice of its provisions.

15. I had no clue the "Attorney's Fees" provision in the agreement even existed until after trial.

(SIGNATURE FOLLOWS)

Trisha Gibbons

SWORN to before me this
10th day of February, 2020.

Notary Public for South Carolina

My Commission Expires: 7/24/2027

Exhibit 1

10/13/17 Email Chain

Message

From: trish gibbons [epic.7.time@gmail.com]
Sent: 10/13/2017 12:34:52 AM
To: Ramezani, Parissa [pramezan@aerotek.com]
Subject: Re: Starting on Monday 10/16

Thank you. I look forward to starting on Monday.

On Oct 11, 2017 4:48 PM, "Ramezani, Parissa" <pramezan@aerotek.com> wrote:

Good Afternoon Trisha, **(please confirm receipt with a response)**

Congratulations on your job with Schneider Electric! You will be reporting for your first day on **Monday, October 16th** at **7 AM** please arrive no later than **6:45 AM**.

Please remember that the dress code requires work attire:

- Fingernails must be no longer than ¼ of an inch
- Steel Toe boots are **MANDATORY**
- You may wear jeans **(no tears, rips, or holes)**
- You may wear a t-shirt or polo shirt **(no holes, tears, political images/statements, or offensive images….. if you think it might be wrong, it probably is)**
- No jewelry, hats, or excessively loose clothing
- Long hair must be pulled up and secured at all times
- *Please remember there is a cafeteria on site and you are allotted a 30 minute lunch (they serve hot breakfast and lunch for 1st and 2nd shift- please note they also have refrigerators and vending machines as well)*

Please find address and location information below.

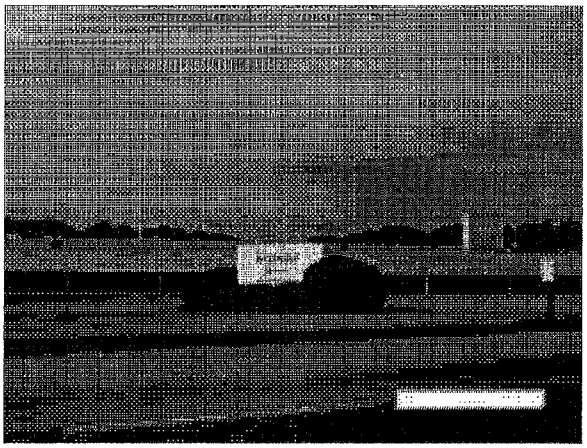
WHEN: Monday, October 16th

TIME: 7 AM (YOU SHOULD ARRIVE NO LATER THAN 6:45 AM)

WHERE: 8821 Garners Ferry Road, Hopkins, SC 29061

Please park in the front grass area by the visitor parking lot. You will move to the employee parking lot once you've completed your group orientation.

A picture of the building is below.



Have a great first day!

Thank you,

Parissa Ramezani

ACCOUNT RECRUITING MANAGER

COMMERCIAL MANUFACTURING

803-740-1301 Phone

803-451-3810 Fax

2000 Center Point Road

Suite 2100

Columbia, SC 29210

Aerotek.com

Exhibit 2

Onboarding Email

Paul Porter

From: trish gibbons <epic.7.time@gmail.com>
Sent: Monday, February 10, 2020 11:07 AM
To: Paul Porter
Subject: Fwd: Welcome to Aerotek

---------- Forwarded message ---------
From: <ksweat@aerotek.com>
Date: Thu, Sep 14, 2017, 11:00 AM
Subject: Welcome to Aerotek
To: <epic.7.time@gmail.com>

Dear Trisha Gibbons,

Congratulations and welcome to Aerotek! We are very excited to be working with you. Before you start your new position, please complete your online onboarding paperwork. Please carefully read the directions to ensure accuracy and do not hesitate to call your point of contact with any questions. You may access this information by clicking on the link below to set up your User ID and password.

Helpful tips for completing your onboarding paperwork:

- It takes approximately 60 minutes to complete depending on your client and work location.
- Your paperwork must be completed within 48 hours of receipt of this email to ensure your first paycheck is timely.
- Gather the necessary information such as your Social Security Number and banking information to minimize delays in completing your paperwork.
- The online paperwork works best with the following browsers - Chrome, Firefox, Internet Explorer 9 +, and Safari. Some fields may appear differently with older browser versions, however you will still be able to complete them. You may need to disable the pop up blocker for the website if you experience trouble downloading forms.
- Please write down the User ID and password you create as you will need this information during the onboarding process.
- You may log in multiple times to complete your paperwork.
- If you have questions as you complete your paperwork online, please consult the Frequently Asked Questions section, or call your point of contact.

Click here to register your user ID and password. For more information, **click here** for a quick guide on logging in and navigating the site.

If you have already registered, **click here** to start or continue the Onboarding process.

Welcome to the team!

Sincerely,
Kimberly E Sweat
Administrative Assistant/H

Exhibit 2

4/5/19 Email Chain

Paul Porter

From: Paul Porter
Sent: Friday, April 5, 2019 2:41 PM
To: 'Corum, William'; Manning, Fred
Cc: Kate Ray
Subject: RE: Trisha Gibbons v. Schneider & Aerotek

Bill & Fred:

The law does not speak to an interim earnings deduction in the case of dismissal; whereas, it does specifically speak to it for demotion. So I think there is a statory construction argument on whether interim earnings applies.

Also, while I'd concede the contract claim has issues. I *think* I am pretty good at getting claims to the finish line so it has a value too.

However, the bottom line is I am not going to negotiate against myself.

If you cannot come up with a counter offer, what I may do is:

1. Make an offer of judgment for a sum that I am quite confident I can get at trial to add 8% interest and costs into the mix.
    a. I will view the offer of judgment as my bottom line not anything to negotiate against; **or**
2. Settle with Aerotek separately for sum that more accurately reflects their level of fault and other consideration to be sorted out between counsel.

Let me know what you want to do?

I am available Monday if either of you need to call me.

Thank you, Paul

J. Paul Porter
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

From: Corum, William <William.Corum@huschblackwell.com>
Sent: Friday, April 5, 2019 2:02 PM
To: Manning, Fred <fmanning@fisherphillips.com>
Cc: Paul Porter <Paul@CBPHLaw.com>; Kate Ray <Kate@cbphlaw.com>
Subject: Re: Trisha Gibbons v. Schneider & Aerotek

Right. So, $12/hr x 40 hours x 52 weeks would be $24,960–maximum.

That amount then would be offset by what she actually received/made during that period, bringing her "maximum" recovery (if she prevailed) down to what, maybe $10k?

What am I missing?

Sent from my iPhone X

William E. Corum, Partner
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
816-983-8139 (direct dial)
816-225-6060 (cell)

On Apr 5, 2019, at 1:28 PM, Manning, Fred <fmanning@fisherphillips.com> wrote:

> [EXTERNAL EMAIL]
>
> We can discuss it, but the specific reference to 40 hours for 52 weeks does not allow for hours above that. Also, in keeping with statutory construction – the "not more" as opposed to the definitive "1 year" means the 40 hours/52 weeks will be subject to set-off by both unemployment and interim earnings.
>
> If you want to discuss with Ms. Gibbons and let us know Monday that is fine.
> Thanks,
> Fred
>
> **C. Frederick W. Manning II**
> **Partner**
> Fisher & Phillips LLP
> 1320 Main Street | Suite 750 | Columbia, SC 29201
> fmanning@fisherphillips.com | O: (803) 255-0000
> vCard | Bio | Website *On the Front Lines of Workplace Law℠*
>
>

From: Paul Porter [mailto:Paul@CBPHLaw.com]
Sent: Friday, April 5, 2019 1:18 PM
To: Manning, Fred <fmanning@fisherphillips.com>; william.corum@huschblackwell.com
Cc: Kate Ray <Kate@cbphlaw.com>
Subject: RE: Trisha Gibbons v. Schneider & Aerotek

Fred:

On the other hand, 41-1-70 upon 2nd glance, may cut out the OT depending on how you read it, but I think there is a good argument that that's not how that remedial statute was intended to be applied.

Nonetheless, I can reconfigure to play devil's advocate on the OT issue in response to a counteroffer, but I will not negotiate against myself.

Thanks, Paul

J. Paul Porter
CROMER BABB PORTER & HICKS, LLC

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Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

From: Paul Porter
Sent: Friday, April 5, 2019 1:15 PM
To: 'Manning, Fred' <fmanning@fisherphillips.com>; william.corum@huschblackwell.com
Cc: Kate Ray <Kate@cbphlaw.com>
Subject: RE: Trisha Gibbons v. Schneider & Aerotek

Fred:

Those damages were definitely within a year. The discovery responses were sent Jan. 2019. If recollection serves, I came up with the count based on the pay stubs in the record.

She was getting a ton of overtime.

Sincerely, Paul

J. Paul Porter
CROMER BABB PORTER & HICKS, LLC

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Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

From: Manning, Fred <fmanning@fisherphillips.com>
Sent: Friday, April 5, 2019 12:52 PM
To: Paul Porter <Paul@CBPHLaw.com>; william.corum@huschblackwell.com
Cc: Kate Ray <Kate@cbphlaw.com>
Subject: RE: Trisha Gibbons v. Schneider & Aerotek

Paul,
Good to see you as well. I will discuss your offer with Schneider Electric. Aren't her damages controlled by the statute "no more than one-year's wages"?


C. Frederick W. Manning II
Partner

Fisher & Phillips LLP
1320 Main Street | Suite 750 | Columbia, SC 29201
fmanning@fisherphillips.com | O: (803) 255-0000

vCard | Bio | Website *On the Front Lines of Workplace Law℠*

From: Paul Porter [mailto:Paul@CBPHLaw.com]
Sent: Friday, April 5, 2019 12:25 PM
To: william.corum@huschblackwell.com; Manning, Fred <fmanning@fisherphillips.com>
Cc: Kate Ray <Kate@cbphlaw.com>
Subject: Trisha Gibbons v. Schneider & Aerotek

Bill & Fred:

Good to see you both today.

I think we should be able to settle this case without putting in more discovery, because the damages are finite and the issues are simple.

I have opening authority at $40,000.00. This is the midpoint between the non-contract backpay and the contract backpay in or Answer to Aerotek Interrogatory 2.

Do you want to set up a conference call in the next week or two to talk about settling this case, or can you two work out a counter (or acceptance if so inclined) together?

Thanks, Paul

J. Paul Porter
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
Paul@cbphlaw.com
www.cbphlaw.com

Exhibit 3

Fee Shifting Agreement

Aerotek, Inc conditionally offers to employ Trisha G Gibbons in the capacity of Electrical/Electronics Tech commencing on 09/25/2017 at its client, VOLT@SCHNEIDER ELECTRIC USA INC[IQN] ("Client") for services with the latter for a temporary period, to perform such duties and for such hours of work as may be assigned to you during the term of service (the "Assignment").

1. Ratification - You understand and acknowledge that this offer of temporary employment with Aerotek, Inc is subject to final approval by the Client and that you shall not be entitled to any wages or employment unless actually hired by Aerotek, Inc to work the specific Assignment for the Client pursuant to this Agreement. You also understand that this Agreement does not go into effect until you actually work on said specific Assignment. You acknowledge and understand that your employment with Aerotek, Inc is "at will", with no certain term of employment being offered or promised,and that you or Aerotek, Inc may terminate your employment, with or without cause, at any time. You agree that by reporting or remaining at work after signing this Agreement that you have ratified same. In addition, you represent and warrant to Aerotek, Inc that your employment with Aerotek, Inc will not violate the terms or conditions of any other agreement to which you are a party.

2. Scope of Employment with Aerotek, Inc - You understand that your employment with Aerotek, Inc will be co-extensive with the Assignment. In other words, your employment with Aerotek, Inc begins when you first begin work for the Client on the Assignment, and ends if and when the Assignment is ended by the Client or otherwise. Following the end of the Assignment, while you may remain eligible for future assignments with other Aerotek, Inc clients, you will not be employed with Aerotek, Inc unless and until you are re-hired and assigned to another client. You further understand that following the ending of the Assignment, while you may remain eligible for new assignments with other Aerotek, Inc clients, Aerotek, Inc has no obligation to find you additional assignments and has no ability to compel any client to hire you.

3. Reporting of Hours - You agree to submit completed time records to the Aerotek, Inc office immediately following completion of your work week, but in no event later than 10:00 a.m. on Monday of each week, written in ink and approved and verified by a Client supervisor, indicating the number of hours worked. You understand and acknowledge that improper preparation of, or falsifying time records may result in disciplinary actions under Aerotek, Inc policies as well as applicable law. Furthermore, you understand your supervisor is prohibited from completing your timecard unless extenuating circumstances exist, such as authorized travel or no access to the internet. If this box is checked , you agree to submit your hours worked electronically and provide a printed approval from the Client's electronic time collection system. Failure to submit completed time records before 10:00 a.m. on Monday may, subject to applicable law, result in disciplinary action. You acknowledge that Aerotek, Inc needs completed time records to obtain payment from the Client, and therefore you will accurately complete, sign and assist Aerotek, Inc in gaining Client's approval and verification of your time records each week. You acknowledge the Aerotek, Inc policy and practice of mandating daily recordation of all hours worked. Aerotek, Inc does not permit "off the clock" work or any similar practice of not recording hours worked. Any requests by the Client or other third party not to record all hours worked or to record hours to an incorrect funding source must be reported in writing by you to Aerotek, Inc.

4. Compensation - In consideration of your services, Aerotek, Inc agrees to pay you weekly on Friday at the following rates:

(a) $12.00 per hour for all hours worked (as reflected on time records) effective on the day you report to work at the Client and ending on the day of termination, or discharge of employment, regardless of cause or reason for discharge or termination.

(b) $18.00 per hour for hours worked (as reflected on time records) in excess of forty (40) per week (or as otherwise required by applicable law). Client-observed holidays, shutdowns, and regularly scheduled days off shall not be considered as time worked for purposes of qualifying for premium rate compensation.

Except as specifically set forth in this Agreement, you acknowledge and agree that you are not entitled to any other compensation or benefits (including, but not limited to, vacation or personal leave) from Aerotek, Inc or Client.

5. Sick Leave - If you work in a sick leave jurisdiction, your eligibility and ability to earn, accrue, and use paid sick leave is governed by applicable law, and you will receive additional information regarding the applicable sick leave policy.

6. Business Expenses - Any business related expenses for which you are eligible and request reimbursement must be approved in writing by Client and must be substantiated with legible, itemized receipts. Original receipts must be physically turned in to the Aerotek, Inc office or scanned and submitted electronically to your local Aerotek, Inc representative. Any receipts turned in after 90 days of transaction will be deemed untimely and not paid. Any expenses submitted to Aerotek, Inc without itemized receipts will not be reimbursed by Aerotek, Inc. If you would like a copy of the Aerotek, Inc Contract Employee expense reimbursement policy, please contact your Aerotek, Inc representative.

7. Restrictive Convenant - In consideration of the terms of employment and the efforts and costs incurred by Aerotek, Inc, you agree you shall not solicit Client or engage in a like or similar profession or occupation at Client's facility or any other facility at which you are directed to or actually perform services under this Agreement, either directly or indirectly, for a period of one hundred eighty (180) days following the termination of your employment under the terms of this Agreement, unless specific written authorization has been obtained from Aerotek, Inc. You agree any violation of this provision will result in you paying to Aerotek, Inc an amount equal to three hundred twenty (320) hours at the hourly rate as stated in 4(a) above.

8. Confidentiality - You agree not to disclose to anyone, either during or after your employment with Aerotek, Inc, any confidential or proprietary information of any kind obtained by you as a result of your employment without the written consent of executive officers of both the Client and Aerotek, Inc, and you further agree that on leaving the employment of Aerotek, Inc, you will not take with you, without written permission of executive officers of both the Client and Aerotek, Inc, any blueprint, drawing, or other reproduction, property or material of any kind. You also agree to execute any forms or documents required by Client with respect to the foregoing.

9. Information Security Matters - With respect to any technology and/or equipment, including but not limited to a laptop, desktop, mobile device, or technology platform ("Equipment") used in connection with your Assignment, you agree to use the Equipment in accordance with applicable information security and confidentiality policies of the Client, as well as the Aerotek, Inc Information Security Policy. In the event there is a conflict between the Client and Aerotek, Inc Information Security Policy, you shall follow the policy that bests ensures the protection and safekeeping of the Equipment and data contained on the Equipment. In the event you fail to fully comply with this provision or the confidentiality provision in Section 8 of this Agreement, you agree to indemnify the Client and Aerotek, Inc for any and all claims, matters, suits or other liabilities that arise directly or indirectly as a result of your breach of Section 8 or Section 9 of this Agreement.

10. Ownership of Work Product - You agree that you will disclose and assign full and absolute right, title, and interest to the Client of any and all inventions, improvements, or discoveries made by you of any kind or nature whatsoever during the tenure of this agreement, and you will execute any and all documents and instruments necessary to transfer the full and complete title of any such inventions, improvements or discoveries to the Client, and shall assist in any manner possible in obtaining patent letters in the name of said Client covering them. You also agree to execute any forms or documents required by Client with respect to the foregoing.

11. Trade Secret - Nothing in this Agreement prohibits you from reporting an event that you reasonably and in good faith believe is a violation of law to the relevant law-enforcement agency, or from cooperating in an investigation conducted by such a government agency. This may include disclosure of trade secret or confidential information within the limitations permitted by the Defend Trade Secrets Act (DTSA). You are notified that under the DTSA, no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (a) made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (b) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. And, an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except as permitted by court order.

12. Indemnification - You agree to indemnify and hold harmless Aerotek, Inc from any and all liability, loss, damages, attorneys' fees, or expenses which may be caused by your negligence, willful actions, omissions or failure to perform the Assignment and/or your obligations under this Agreement.

13. Termination - You shall give a minimum notice of ten (10) business days should you decide to terminate your position with Aerotek, Inc.You understand that the length of this Assignment is subject to the discretion and needs of the Client and, therefore, a five (5) day notice from Aerotek, Inc may not be possible and Aerotek, Inc is not required to provide such notice . Upon termination, and to the extent permitted by applicable law, you acknowledge and agree that any amounts owed by you to Aerotek, Inc will be deducted from any remaining wages owed to you and refunded to Aerotek, Inc.

14. Notification of Completion of Assignment - You agree that upon completion of the Assignment with Client, you will notify Aerotek, Inc that you have finished the Assignment. You understand that failure to contact Aerotek, Inc upon completion of the Assignment may affect your ability to receive unemployment benefits. You further understand that at all times between the ending of one assignment and the beginning of another, while you may remain eligible for potential assignments with other Aerotek, Inc clients, you are not employed by Aerotek, Inc and Aerotek, Inc has no obligation to find you employment or place you with any client.

15. Benefits - As a common law employee of Aerotek, Inc, you are eligible to participate in a variety of available benefit programs, including programs such as medical, dental, vision, disability and retirement. Aerotek, Inc will provide additional information regarding our benefits options including eligibility periods, coverage options and how to enroll. You acknowledge and agree that since you are a common law employee of Aerotek, Inc, and not the Client, you are not eligible for any benefit programs that may be provided by Client during your Assignment. By electing to participate in our benefit programs, you authorize Aerotek, Inc to deduct your portion of the applicable costs directly from your paycheck.

16. Acknowledgment of Employment Relationship - In addition to the rules, regulations and policies of Aerotek, Inc, you agree to be bound by any applicable rules, regulations or policies established by the Client wherever you perform services under this Agreement. You recognize and agree that you are an employee of Aerotek, Inc and you will look solely to Aerotek, Inc for all employee benefits in connection with your employment under this Agreement. You hereby waive any right you have or may have against the Client for benefits arising out of or resulting from employment hereunder, including, without limitation, rights under any medical/benefit plan, pension plan or vacation/holiday plan regardless of the length of Assignment.

17. Assignment of Claims - In the event Client has filed for bankruptcy or indicated an intent to file for bankruptcy, you hereby assign to Aerotek, Inc any and all claims you have against the Client for any wages earned and owed to you in connection with the work you performed on the Assignment, effective upon payment by Aerotek, Inc to you of such amounts, which Assignment shall be considered as in exchange for Aerotek, Inc's payment of such amounts.

18. Limitation of Liability - To the extent permitted by law, you, on your own behalf and on behalf of anyone claiming by or through you, waive any and all rights you have, or may have, to claim or assert a claim, suit, action or demand of any kind, nature or description, including without limitation, claims, suits, actions or demands for personal injury or death whether arising in tort, contract or otherwise, against Client or Client's customers, agents, officers, directors, or employees, resulting from or arising directly or indirectly out of your employment with Aerotek, Inc, except as to any claims you assign to Aerotek, Inc under this Agreement. You recognize and agree that Aerotek, Inc provides workers' compensation coverage for such things as on-the-job injuries or occupational diseases incurred while on Assignment for Aerotek, Inc, and to the extent permitted by law, you agree to look solely to Aerotek, Inc and/or its insurer for damages and/or expenses for any such claims, suits, actions, or demands relating to bodily injury, illness, or death incurred while on Assignment. In furtherance of the foregoing and in recognition that any work related injuries which might be sustained by you are covered by state Workers' Compensation statutes, and to avoid the circumvention of such state statutes which may result from suits against the Client based on the same injury or injuries, and to the extent permitted by law, YOU HEREBY WAIVE AND FOREVER RELEASE ANY RIGHTS YOU MIGHT HAVE to make claims or bring suit against the Client for damages based upon injuries which are covered under such Workers' Compensation statutes. You agree to notify Aerotek, Inc if you believe that there are any unsafe conditions at the Client worksite or facility.

19. Attorneys' Fees - To the extent permitted by law, you agree that in the event of any dispute or claims: (a) arising out of or relating in any way to your employment or relationship with Aerotek, Inc; or (b) seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all costs relating to the dispute or claims and any process through which such a dispute or claims may be resolved.

20. Integration/Merger - Except as expressly set forth herein, this Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement. No representations, promises, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein or in other contemporaneous written agreements specifically identified herein. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be of no effect.

21. Severability - In the event any provision or clause of this Agreement is found to be unenforceable by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

If you accept this conditional offer in accordance with its stated terms, please indicate your acceptance by signing your name.

Accepted By:		**Accepted By: Aerotek, Inc**	
Trisha G Gibbons		Kimberly E Sweat	
(Contract Employee)		**(Aerotek, Inc representative)**	
Trisha G Gibbons (Electronic Signature)	09/14/2017	Kimberly E Sweat (Electronic Signature)	09/19/2017
(Contract Employee Signature)	**(Date)**	**(Aerotek, Inc representative Signature)**	**(Date)**

Electronically Signed on **14-Sep-2017, 12:37 PM EST**
by **Trisha G Gibbons**

Exhibit 3

Acknowledgement of Temporary Work Assignment

Attachment D

ACKNOWLEDGMENT OF TEMPORARY WORK ASSIGNMENT

I, the undersigned, an employee of the Supplier named below, agree to accept a temporary work assignment to Schneider Electric USA, Inc., and its Affiliates, ("Customer"). As a precondition to receiving such work assignment, I acknowledge, the following:

1. I understand that I am an employee of the Supplier and **I am not an employee of Customer**, and I will be paid directly by the Supplier.

2. I understand that the work assignment is a temporary one for a defined period of time, the length of which may be increased or decreased.

3. I understand that if I do not perform to the complete satisfaction of Customer, or leave my assignment prior to completion of my assigned work, I may not be assigned any continuing or additional temporary work at Customer.

4. I understand that any problems or complaints I may have regarding the work assignment must be directed to my Supplier Supervisor and not to Customer.

5. I understand that my rate of pay from the Supplier may be more or less than that received by other individuals who are performing similar services for Customer, regardless of whether they are employees of Customer or other agencies.

6. I understand that there have not been and will not be any representations as to any assurance or possibility of my being hired as a regular employee of Customer, and that since I am not an employee of Customer, no promotions or other forms of advancements or transfer by Customer are available now or in the future.

7. I understand that my work assignment is contingent upon execution of the Contingent Worker Agreement Regarding Intellectual Property and I have read and signed same.

8. I understand that Customer is relying on my representations herein, and I agree that if I assert any claim against any party except Supplier for employee benefits or against any party to enforce any right based on a claim that I am an employee of Customer, and my claim is not successful, I will reimburse such party for all expenses it incurs in defending itself against my claim, including reasonable costs for the time of in-house counsel.

9/14/17	
(Date)	(Signature)
Aerotek, Inc.	Trisha Gibbons
(Name of Supplier)	(Typed or Printed Name)

Exhibit 4

Plaintiff's Offer of Judgment

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018-CP-40-05124 **PLAINTIFF'S OFFER OF JUDGMENT**

PURSUANT TO SCRCP, RULE 68, and South Carolina Code of Laws § 15-35-400 the Plaintiff, through her undersigned counsel, hereby files and serves this Offer of Judgment upon counsel for **Defendant Aerotek, Inc.,** to take judgment in the Plaintiff's favor in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) DOLLARS. Should **Defendant Aerotek, Inc**. not accept this offer within twenty (20) days, it is deemed withdrawn and the Plaintiff shall proceed with preparation for trial.

This Offer of Judgment is being made twenty days before any trial date has been scheduled, and also pursuant to the rule, any offer of judgment may be withdrawn prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to defense counsel as provided for in the SCRCP. An offer is not considered rejected by a counteroffer and shall remain effective until accepted, rejected, or withdrawn as provided in the rule.

Please be advised that if this offer of judgment is not accepted and the Plaintiff obtains a verdict or determination at least as favorable as the rejected offer, the Plaintiff shall recover from the **Defendant Aerotek, Inc.** court costs from the date of the offer until the entry of the judgment and eight percent interest (8%) computed on the amount of the verdict or award from the date of the offer

to the entry of the judgment. This offer to **Defendant Aerotek, Inc.** is made only in an effort to avoid the otherwise unnecessary costs of preparing for trial of this case.[1]

CROMER BABB PORTER & HICKS, LLC

BY: s/J. Paul Porter
J. Paul Porter (#11504)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone: (803) 799-9530
Fax: (803) 799-9533

Attorney for Plaintiff

September 13, 2019
Columbia, South Carolina

[1] Plaintiff hand-delivered but did not file an earlier offer of judgment on today (September 13, 2019) that offer contained handwriting and required certain modification based on developments in this case. That earlier unfiled offer of judgment is hereby withdrawn. Rule 68, SCRCP ("Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney as provided in these rules.")

Exhibit 5

Contract with Schneider

SUPPLIER AGREEMENT

Between: Volt Consulting Managed Service Programs,
a division of Volt Consulting Group, Ltd.
1065 Avenue of the Americas, 20th Floor
New York, NY 10018
(Hereinafter "Volt Consulting MSP")

And: Aerotek, Inc.
Supplier Name
7301 Parkway Drive
Hanover, MD
21076
Supplier Address
(Hereinafter "Supplier")

WHEREAS, Volt Consulting MSP acting solely as a limited agent for Schneider Electric USA, Inc. ("Customer") wishes to engage Supplier to provide employees/personnel to perform services for Customer; and

WHEREAS, Supplier represents that it has the capability of providing temporary employees/personnel to perform services for Customer, according to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound, Volt Consulting MSP and the Supplier agree as follows:

Definitions:

For the purposes of this Agreement and the services provided hereunder the following definitions will apply:

Confidential Information	Any business or technical information of Customer or Volt Consulting MSP provided to Supplier, including but not limited to (i) any Volt Consulting MSP tools; computer programs; algorithms; databases; methods; techniques; processes; policies; procedures; concepts; designs, blueprints, plots, and drawings; know-how; show-how; research and test results; process development plans; technical and pricing approaches; information and data relating to the development, research, testing, implementation, cost and use of the System, and (ii) any information of Customer or Volt Consulting MSP that is specifically designated as confidential or proprietary prior to or at the time of disclosure; (iii) any information that is known to the receiving party, or should be known to a reasonable person given the facts and circumstances of the disclosure as being as confidential or proprietary to the disclosing party and (iv) the terms and conditions of this Agreement.

Consolidated Billing Cycle	The weekly billing period that begins at 12:00 a.m. Monday morning and runs through 11:59 p.m. Sunday evening.
Consolidated Billing Service	The process of combining all approved Supplier Charges reported by Supplier for Supplier Services rendered to, for or on behalf of the Customer.
Consolidated Billing Statement	A combined statement of all approved Supplier Charges reported by Supplier for Supplier Services rendered to, for or on behalf of the Customer
Contingent Worker:	An hourly temporary employee or other temporary personnel employed by Supplier and assigned to Customer that directly provides or performs Contingent Worker Services for Customer.
Contingent Worker Services	Work performed for Customer by a Contingent Worker provided by Supplier on a non-permanent hourly-paid basis.
Customer	Schneider Electric the company to which Supplier is providing Contingent Workers to perform Contingent Worker Services and a third-party beneficiary to this Agreement.
Electronic Billing Data	Supplier Charges reported by Supplier through the System.
Managed Service Program or MSP:	The managed service program administered by Volt Consulting MSP and described in this Agreement whereby Volt Consulting MSP provides management of suppliers for Customer including identification and qualification of suppliers and payment to suppliers for Supplier Services provided to, for or on behalf of Customer.
Processing Fees:	Volt Consulting MSP's fees for the provision of Managed Service Program.
Supplier Services:	The provision by Supplier of Contingent Workers to perform Contingent Worker Services for Customer, along with the administrative services required to maintain the Contingent Workers as the Supplier's employees.
Supplier Charges	All charges, including time, reimbursable costs/expenses such as travel or living, and any applicable sales/use taxes reported through the System, in addition to any invoices for the same for Supplier Services rendered to, for or on behalf of Customer.
System	A proprietary web-based time and expense reporting and approval system used in connection with the provision of the Managed Service Program for recording time and reimbursable costs/expenses of Contingent Workers. The term "System" includes any associated hardware, software, program documentation and manuals ("System

Documentation") and any updates, modifications, maintenance releases, bug fixes or work arounds which may be released from time to time.

1. **Term**

1.1 This Agreement is effective upon the last date of the signature by the parties ("Effective Date") and shall remain in effect unless terminated as provided for in this Agreement.

1.2 Both Volt Consulting MSP and Supplier shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the other.

1.3 Either party may terminate this Agreement at any time and without prior notice if the other party repudiates or materially breaches its obligations under this Agreement unless the repudiation or breach is cured within 10 days after written notice specifying the facts complained of. If Volt Consulting MSP terminates this Agreement, it may do so in part, and direct Supplier to continue to perform under one or more previously issued purchase orders and in compliance with the terms of this Agreement that by nature would survive such termination.

1.4 During the Term of this Agreement, Volt Consulting MSP shall act as agent for Customer in order to carry out the services under this Agreement. As agent for Customer, Volt Consulting MSP's sole duty is to hold this Supplier Agreement on behalf of the Customer and to manage the Services contemplated under this Agreement, to include paying Supplier for services rendered to Customer. Customer is a disclosed principal and Volt Consulting MSP does not take any liability for the acts of Customer or its agents.

1.5 If Volt Consulting MSP terminates this Agreement with Supplier because of Supplier's material breach of any provision of the Agreement, then Customer may hire immediately or reassign to any other supplier any Contingent Worker of Supplier with no further obligation to Supplier except to pay for Contingent Worker Services already provided, in order to have no interruption in Contingent Worker Services rendered to Customer. Supplier agrees that it will waive and make no attempt to enforce or recover any damages from Customer, Volt Consulting MSP, the other supplier to whom Supplier's Contingent Worker has been reassigned or Supplier's Contingent Worker based on any agreement between the Supplier's Contingent Worker and Supplier. If Supplier does attempt to enforce any such agreement it will indemnify Volt Consulting MSP, Customer, the other supplier to whom Supplier Contingent Worker has been reassigned and/or Supplier's Contingent Worker, as the case may be, for all costs and expenses of any kind incurred in defending such action, including, but not limited to, lost wages and attorneys fees.

1.6 In the event the Agreement is terminated at Supplier's initiative, other than for a material breach by Volt Consulting MSP or Customer which remains uncured after the expiration of a reasonable cure period, Supplier agrees that any restrictions regarding Customer's employment of Contingent Workers furnished to Customer during the term of this Agreement will be waived. Supplier will release, effective on the termination any limitation on Contingent Worker's subsequent employment in any manner by Customer.

2. **Scope of Work/Responsibilities**

This Agreement sets forth general terms and conditions under which Supplier will supply Contingent Workers to perform Contingent Worker Services for Customer. This Agreement includes all Attachments which are incorporated herein by reference.

Supplier agrees that:

2.1. Supplier shall provide qualified temporary employees, who are classified as form W-2 employees of Supplier pursuant to Internal Revenue Service guidelines, as Contingent Workers to perform Contingent Worker Services at the request of Customer or Volt Consulting MSP. Supplier shall conduct drug screening and background and reference checks of all such prospective Contingent Workers, as required by Customer and set forth in this section, and comply with all applicable laws in doing so.

All screening costs will be included as pass-through costs to Customer on the invoice for services provided. Suppliers cannot add any mark-ups or service processing costs to the screening costs required. Customer will only pay for the successful hires.

- Supplier will perform a criminal history, Criminal Felony & Misdemeanor, search in an unlimited number of counties for the assigned candidates as revealed by the Social Security Number Trace for each known residence county of such candidate for the prior seven (7) years.
- The search must include federal, state and county records for felony and misdemeanor violations of state, county and federal laws and reports of convictions, adjudications and pending prosecutions in each database searched as permitted by local state or federal law.
- Supplier will not refer candidates with any conviction for a violent crime (as defined in that jurisdiction), drug related charges or any form of theft, crimes of dishonesty, relating to one's character for truthfulness or crimes of moral turpitude as permitted by local, state and federal law, including the EEOC guidelines on Arrest and Conviction Records. If such candidate has maintained a clean arrest record for three years since the expiration of the sentence after conviction, prior to the referral and has at least a three year history of satisfactory employment performance, Schneider Electric will reserve the right to decline candidate on a case-by-case basis.
- Supplier shall submit the results of all background checks with referral.
- Supplier shall perform a credit check on all candidates where necessary and shall certify that each candidate meets Schneider Electric's requirements with the referral.

Supplier shall conform to Schneider Electric's Drug & Background check criteria:

Standard Drug & Background Check Package

- 7 year Employment History – Up to 5 previous employers
- Criminal Felony & Misdemeanor – 7 years – Unlimited # of counties as revealed by SSN Trace
- Education Report – Highest Degree - A selection and screening process that assures only those individuals that have fundamental (10th grade level) reading, writing, math and language skills (at least conversational English) are placed in our locations. Providing a high school diploma alone does not satisfy the requirement of literacy.
- SSN Trace
- Non-DOT Urine Drug Test – 9 Panel or 10 Panel Instant – with a Medical Review Officer (MRO) on all positive or preliminary results.

Work History and References

Supplier shall verify the employment history, for the previous 7 years (up to 5 employers), or all available information if less than 7 years, of each candidate referred, including references from previous employers. Supplier shall submit such information with each referral.

Drug Tests
Supplier shall perform drug screening tests consistent with those required by Schneider Electric. Supplier shall not refer any candidate who tests positive for any controlled substance, unless such substance is proven to be a validly prescribed medication. Supplier shall certify that each candidate meets Schneider Electric requirements with the referral.

Motor Vehicles
Supplier will search each state of residence for a referred applicant for the prior 5 years to verify license issuance/expiration dates, driver restrictions, license suspensions/reinstatements, point information and traffic violations. Supplier will not refer candidates with DUI convictions unless such candidate has maintained a clean arrest record for three years prior to the referral and has at least a three year history of satisfactory employment performance. Supplier will certify that each candidate meets Schneider requirements with the referral.

Additional screening for Schneider Electric's clients
At any time, if a candidate or Temporary Employee is required to perform work for a Schneider Electric' s client, Schneider Electric may request the Supplier to perform additional background investigations and/or drug screens, as required by Schneider Electric's client. All additional screening costs shall be quoted and submitted to Schneider Electric hiring manager for approval before the services are performed. All additional screening costs will also be included as pass-through costs to Customer on the invoice for services provided.

Oral swabbing
Supplier will be allowed, with Schneider Electric's corporate approval, to utilize oral swabbing to drug test Supplier Personnel. The qualification for Schneider Electric and any of its entities to allow this method of drug test will be determined by Schneider Electric based on the business model in which Schneider Electric orders Supplier Personnel.

Pre-employment Screening Package*

Social Security Trace	$ 0.83
Criminal - County Felonies & Misdemeanors - 7 yrs off trace	$23.65
Criminal - Federal - 7 yrs off trace	$ 5.50
Nationwide Criminal Database w/ Validation	$ 3.30
Verification - Education - highest degree earned	$11.00
Verification - Employment - past 7 years – up to 5 employers	$11.00 per employer checked
Drug Screen - 9 Panel / 10 Panel Instant	$24.04
Note: Includes international off international addresses but not alias names.	
Base Price	$79.32

* This schedule contains not-to-exceed charges for Supplier's preferred/drug screening vendor. Supplier shall only be reimbursed up to the not-to-exceed charges. However, if Customer directs Volt Consulting MSP or a Supplier to a specific lab vendor, Customer agrees that all screening costs, even those that exceed the above schedule, will be included as pass-through costs to Customer on the invoice for services provided. Customer agrees that costs are subject to change, irrespective of vendor.

** Base price includes checking one institution and one employer. Additional checks will increase the package price. Prices only apply to contiguous U.S. states.

2.2. Supplier shall maintain and be responsible for all administrative matters incidental to its relationship as employer of Contingent Workers provided under this Agreement, including but not limited to, the following:

(1) Payroll preparation, check processing and payroll distribution;

(2) FICA, FUTA, SUTA and any additional required payroll withholdings;

(3) Verification/Administration of W-4 and I-9 information;

(4) Handling of any Supplier Benefit Plan (enrollment/claims processing), and

(5) W-2 processing, federal, state, local tax reports and compliance.

2.3. Supplier shall compute its Contingent Workers' wages and withhold all applicable federal, state and local taxes, including but not limited to federal Social Security payments. Supplier shall remit its Contingent Workers' withholdings to the proper government authorities and make employer contributions for FICA and federal and state unemployment insurance payments and otherwise meet all other statutory obligations as the employer of the Contingent Workers.

2.4. Supplier shall maintain all necessary personnel and payroll records for Contingent Workers, including documents required under the Immigration Reform and Control Act of 1986 and any amendments thereto. Supplier certifies to Customer and Volt Consulting MSP that each Contingent Worker is authorized to be employed in the United States of America. Upon request by Volt Consulting MSP, Supplier shall provide confirmation that Supplier has verified each Contingent Worker's authorization to be employed in the United States of America. Volt Consulting MSP shall notify Supplier in advance if Volt Consulting MSP's Customer has notified Volt Consulting MSP that a position is subject to export control laws.

2.5. Supplier shall indemnify and hold Customer and Volt Consulting MSP harmless for any payroll liability to the Supplier's Contingent Workers.

2.6. Supplier shall utilize and instruct its Contingent Workers to utilize the System for entering time and reimbursable costs/expenses, which Supplier shall accept as the sole basis of payment for Supplier Services.

2.7. All Contingent Workers providing Contingent Worker Services to Customer under this Agreement shall be employees of Supplier. Supplier shall at all times act as an independent contractor to Customer and the common law employer of Supplier's Contingent Workers. None of Supplier's Contingent Workers shall be considered employees of Customer or Volt Consulting MSP. Supplier shall have the sole right and responsibility of administrative management of its

Contingent Workers including interviewing, recruiting, hiring, disciplining and terminating individuals assigned to the positions requested by Customer; matters pertaining to merit increases and promotions and other employment matters. However, Customer may terminate or change any assignment for any lawful reason by way of notice and request to Supplier. Contingent Workers will be subject to a twelve (12) month tenure limit, after which their mark-up rate will be reduced.

2.8. Neither Supplier nor its Contingent Workers or other employees, agents or representatives will be entitled or eligible, by reason of providing services under this Agreement or any purchase orders hereunder, to participate in any benefits or privileges given or extended by Customer or Volt Consulting MSP to their respective employees.

2.9. Contingent Workers provided by Supplier shall be qualified to perform Contingent Worker Services pursuant to Customer's directions and instructions. Customer shall have the right, but not the obligation, to select for assignment only those Contingent Workers that Customer, in its sole discretion, believes to best meet all standards of Customer. Specific standards for personnel qualifications shall be established by Customer and provided to Supplier. Volt Consulting MSP reserves the right to require Supplier to supply verification of education and experience and to request references for all Contingent Workers.

2.10 Customer shall exercise day-to-day supervision, direction and control of Contingent Worker Services performed by Contingent Workers and of Contingent Workers' compliance with Customer's regulations, including pertinent safety regulations and all other statutory requirements. However, Customer and Volt Consulting MSP shall not be responsible for and shall not interfere with employment-related matters reserved to Supplier and normally incident to Supplier's employer-employee relationship.

2.11 Customer shall determine whether Contingent Worker Services performed by Contingent Workers are satisfactory and in accordance with Customer's requirements. If Customer is dissatisfied with the performance of any Contingent Worker, Customer or Volt Consulting MSP will notify Supplier of such dissatisfaction for Supplier to discuss directly with its Contingent Worker. Further, Customer shall have the right to reject, direct the removal or terminate the Contingent Worker Services of any Contingent Worker whom Customer determines to be unqualified; whose productivity is below acceptable levels; whose workmanship is substandard or for any legal reason as requested by Customer. Volt Consulting MSP and/or Customer will give Supplier notice of such rejections or removals, and thereafter Supplier shall immediately and without delay, remove any such Contingent Workers assigned to Customer. Supplier further agrees that any additional time of persons so rejected or removed will not be charged to Volt Consulting MSP or Customer.

2.12 Supplier shall not reassign or terminate any Contingent Worker assigned to Customer prior to the termination of the purchase order for the Contingent Worker Services of that Contingent Worker except in the event of termination at the direction or request of the Customer. However, if Supplier terminates this Agreement, Supplier may, in its discretion, opt to either leave Contingent Workers on assignment until the termination of their respective purchase orders, or, on the condition that Supplier can find another supplier to transition its Contingent Workers too, release the Contingent Workers so that Customer may hire immediately or reassign to any other supplier any Contingent Worker of Supplier with no further obligation to Supplier except to pay for Contingent Worker Services already provided, in order to have no interruption in Contingent Worker Services rendered to Customer. Supplier agrees that it will waive and make no attempt to enforce or recover any damages from Customer, Volt Consulting MSP, the other supplier to whom

Supplier's Contingent Worker has been reassigned or Supplier's Contingent Worker based on any agreement between the Supplier's Contingent Worker and Supplier. If Supplier cannot find another supplier to transition the Contingent Workers too and Customer will not hire the Contingent Worker directly, Supplier must keep the Contingent Worker on assignment through the end of any applicable purchase order. The foregoing shall not be construed to affect the right of Supplier, in its sole discretion as employer, to reassign and/or terminate the employment of its employees. Supplier shall not be liable if any Contingent Worker voluntarily terminates his or her employment with Supplier.

2.13 Supplier shall immediately give written notice to Volt Consulting MSP of any and all known impending or existing labor complaints, disputes or controversies and the progress thereof involving its Contingent Workers. Supplier shall use every commercially reasonable efforts to resolve any such complaint, dispute or controversy.

2.14 Supplier warrants that Volt Consulting MSP and Customer shall have no liability or bargaining obligation under any collective bargaining agreement covering any Contingent Worker. Supplier agrees to provide Volt Consulting MSP with copies of any collective bargaining agreements existing covering any Contingent Worker and agrees to provide Volt Consulting MSP with prompt notice of any union organizing activity with respect to any Contingent Worker.

2.15 Supplier shall inform each Contingent Worker that Confidential Information of Customer may become available to him or her and, prior to placement with Customer, instruct the Contingent Worker to maintain the confidentiality of such information and require the Contingent Worker to agree to do so by signing the Contingent Worker Agreement Regarding Intellectual Property attached to this Agreement as Attachment C. Supplier must maintain signed copies and deliver them to Volt Consulting MSP when and in such manner as Volt Consulting MSP may direct.

2.16 Supplier shall maintain in effect during the term of this Agreement all applicable federal, state, and/or local licenses and permits which may be required to be maintained by employers or by companies engaged in the same business as Supplier.

2.17 Supplier shall comply with all applicable Customer policies and procedures and shall inform each Contingent Worker that all regulations and rules of Customer which may be in effect at the job site regarding employment, passes, badges, and conduct on the property shall be observed by Supplier's Contingent Workers.

2.18 Supplier agrees to require each Contingent Worker to acknowledge that they have received and will comply with all applicable Customer Policies. At a minimum, Supplier shall require Contingent Worker to sign the Acknowledgment of Temporary Work Assignment for Contingent Workers attached to this agreement as Attachment D. Supplier shall also require Contingent Worker to sign any other documents legally and reasonably required by Volt Consulting MSP and/or Customer including Attachments B, C, D, F, G, and H. Supplier must maintain signed copies and deliver them to Volt Consulting MSP when and in such manner as Volt Consulting MSP may direct.

2.19 Supplier shall meet and/or confer with its Contingent Workers assigned to Customer to review pay and benefits and other conditions of work and to address other pertinent matters arising under Supplier's employment relationship with such Contingent Workers.

2.20 Supplier shall not permit any Contingent Worker to begin performing Contingent Worker Services before the assignment has been administratively processed by Volt Consulting MSP; all required documentation has been submitted to Volt Consulting MSP and Volt Consulting MSP has issued an authorization for the Contingent Worker to begin performing Contingent Worker Services for Customer.

2.21 Supplier shall keep all usual and accurate records related to this Agreement including, but not limited to, all time and reimbursable costs/expenses and other records related to the provision of Supplier Services and/or Supplier Charges. Upon five (5) business days notice to Supplier, Volt Consulting MSP and/or Customer shall be given access to all records, documentation, correspondence, account books, invoices, canceled checks, insurance audits, payrolls and other records or files relating in any way to this Supplier Agreement and Supplier's compliance with same. Volt Consulting MSP and Customer shall have the right both to verify reports prepared by Supplier and also to perform an original audit of Supplier's records related to the provision of Supplier Services and/or Supplier Charges for a period of seven (7) years following the termination of this Agreement. In the event that an audit of Supplier records reveals any non-compliance with this Agreement, Volt Consulting MSP, at its election may choose to make any and all necessary adjustments to be in accordance with the terms of this Agreement or immediately terminate this Agreement. This right of termination and/or adjustment is in addition to any and all other rights and remedies to which Volt Consulting MSP may be entitled. Such audits shall be performed by Volt Consulting MSP or any of its designees and Supplier agrees to comply without charge to Customer or Volt Consulting MSP in connection with such audits.

2.22 Supplier shall use the MSP to provide Contingent Workers to Customer and agrees to work with the designated Volt Consulting MSP on-site representatives for this purpose. For purposes of this Agreement "Direct Sourcing" is any activity that results in Customer's engagement of a Contingent Worker outside of the MSP or any action by a Supplier to attempt to place a Contingent Worker outside of the MSP. Direct Sourcing includes, but is not limited to: Supplier negotiating directly with a Customer manager to engage candidate(s) from Supplier (regardless of who initiates the contact); Supplier giving resumes directly to Customer, or Supplier recommending a particular candidate to a Customer either before or after that candidate was submitted on a requirement. Direct Sourcing will be tracked and reported by Volt Consulting MSP to Customer. Repeated non-compliant placements made by Supplier may result in the termination of this Agreement.

2.23 Supplier will execute and comply with the End User License Agreement, which will be presented as a click-through agreement upon first login to the IQN Marketplace substantially similar to the version attached to this Agreement as Attachment E.

2.24 Unless and only to the extent otherwise expressly set forth in the applicable purchase order, neither Volt Consulting MSP nor Customer shall require Contingent Workers to (i) operate Contingent Worker or Customer owned, non-owned and/or hired motor vehicles during the performance of their day-to-day job duties for Customer or (ii) handle cash, securities or other valuables, without Supplier's prior written consent.

3 Fees

Volt Consulting MSP will deduct a Processing Fee from each payment by Volt Consulting MSP to Supplier for the Contingent Worker Services of each Contingent Worker whose time is reported through the System and paid as described herein. The fees are as follows:

Technical/Professional, Engineering	3.00%
Admin/Clerical	2.75%
Light Industrial	2.50%

4. Billing

4.1 All orders for Contingent Worker Services under this Agreement shall be processed through the MSP and provided through the System and secured with a purchase order (or other agreed upon release mechanism, which shall be deemed a purchase order for purposes of this Agreement) issued through Volt Consulting MSP. Any purchase order may be terminated at any time by Volt Consulting MSP without terminating this Agreement.

4.2 Volt Consulting MSP shall make available the Consolidated Billing Service for Supplier provided that Supplier and Contingent Workers utilize the System to report time and reimbursable costs/expenses. Volt Consulting MSP shall generate Electronic Billing Data using the System and use the Electronic Billing Data to furnish a Consolidated Billing Statement to Customer. Volt Consulting MSP will bill Customer weekly for all approved Supplier Charges reported and approved through the System.

4.3 Invoices are generated automatically through the System; therefore, the Supplier must not submit manual invoices unless otherwise instructed. Volt Consulting MSP or Customer, at their sole discretion, may require Supplier to submit manual invoices for any properly billable Supplier Charge. Volt Consulting MSP will notify Supplier and will mutually agree with Supplier on the form and method of delivery of such manual invoices.

4.4 **Time/Expense Reporting Requirements**:

4.4.1 To be eligible for a week's Consolidated Billing Cycle, all Supplier Charges must be input into the System by the close of business on Friday and Customer must approve the Supplier Charges by 12:00 p.m. the following Monday. Supplier Charges reported or approved after Monday at 12:00 p.m. will be allocated to the following week's Consolidated Billing Cycle.

4.4.2 All Supplier Charges must be submitted to Volt Consulting MSP within thirty (30) days of the payroll period ending date during which Supplier Services were provided, or payment may be delayed or withheld.

4.4.3 Although Contingent Workers are expected to submit time and reimbursable costs/expenses directly through the System, it is the Supplier's responsibility to ensure that all information is received in a timely manner and is complete. Any incomplete information will not be processed and the Supplier will be notified.

4.4.4 Where possible Volt Consulting MSP will provide Supplier with real-time electronic access to time and expense records residing on the System related to the hours worked and expenses incurred by each Contingent Worker assigned to Customer (including whether such hours or expenses are approved, rejected, open or pending).

4.5 Volt Consulting MSP will pay Supplier upon receipt of customer funds according to the terms of the Section of this Agreement titled Payment.

4.6 Supplier agrees that any expenses submitted will not include any mark-up and must be submitted through the System or, at Volt Consulting MSP's option, documented on a Customer-approved expense report.

4.7 At Volt Consulting MSP's election, the parties will institute electronic purchasing and payment options such as EDI or EFT.

4.8 Volt Consulting MSP's failure to adjust or correct Supplier's billing on a current basis, regardless of reason, shall in no way prejudice Volt Consulting MSP's right to make appropriate adjustments supported by or substantiated either in reports submitted by Supplier or upon audit of Supplier. In connection with either reports submitted by Supplier or estimated or actual audit adjustments prepared by Volt Consulting MSP, Volt Consulting MSP may withhold payment of amounts due to Supplier which are reasonable and necessary to offset potential audit adjustments due Volt Consulting MSP.

4.9 Volt Consulting MSP's reporting or billing statement requirements will be contingent on Volt Consulting MSP having full access to the entered data and such data shall be electronically formatted for Volt Consulting MSP's use per this Agreement, to include but not limited to, reporting and/or Consolidated Billing Services.

5 Overtime/Benefits

5.1 Customer reserves the right to request a Contingent Worker to work overtime without prior notice to the Contingent Worker or Supplier.

5.2 Contingent Workers will be paid for all hours worked. Overtime will be billed and paid at the agreed upon rate as specified in the applicable purchase order, in compliance with all federal and state laws regulating overtime.

5.3 Supplier represents that all Supplier Services furnished hereunder will be provided in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a).

5.4 Supplier also represents that all Supplier Services furnished hereunder will be provided in compliance with all other federal and state laws regulating overtime.

5.5 If Supplier fails to observe any of the provisions of this section, Supplier shall be liable to Customer to repay all payments made to Supplier in consideration of overtime due to Contingent Workers, even if Supplier subsequently pays its Contingent Workers for any uncompensated overtime.

5.6 Supplier will be solely responsible for any benefit offerings (such as holiday, vacation days, insurance, savings plans, etc.) made available by Supplier to its Contingent Workers.

6 Bonus and Bonus Markup

(i) From time to time Customer may direct Supplier to provide additional compensation in the form of a bonus to Supplier Personnel in acknowledgment of Supplier Personnel's satisfaction of certain eligibility requirements as determined solely by Customer. Customer will provide such direction to Supplier in writing. including the name and assigned position of the Supplier Personnel, the amount of the bonus, and documentation of the written approval of the Customer employee upon whose

authority the bonus is approved. In such event, Supplier shall (a) administer the payment of such additional compensation to the Supplier Personnel, and (b) be entitled to invoice Customer for the amount of such additional compensation. which shall be increased by the applicable Bonus Markup set forth herein below.

(ii) Supplier's Bonus Mark-Up Rate (to cover statutory costs and processing fees associated with the Bonus) shall be sixteen percent (16%).

7 Payment

7.1 If the Supplier Services provided by a Supplier to Customer are subject to sales, use, or a similar tax the Supplier is obligated or permitted by applicable law to collect from Customer, but excluding any taxes on Supplier's income (collectively "Taxes"), to the extent Supplier submits invoices for Services through a manual process, such Taxes shall be separately identified by Supplier in accordance with the law of the applicable taxing jurisdiction, itemizing the taxing jurisdiction(s) rate of tax and dollar amount of the tax for each line item contained or to be contained on Supplier's invoice or the consolidated billing. Regardless of whether Supplier submits invoices or whether Supplier Services and associated Taxes are automatically billed to the Customer by Volt Consulting MSP based on Supplier Services approved by Customer in the System, Volt Consulting MSP shall include the amounts of the Taxes in the consolidated invoice to Customer and will separately identify Taxes Supplier Services when billing Customer on behalf of Supplier. Following receipt of payment of the Taxes from Customer, Volt Consulting MSP, at its sole discretion, will remit such Taxes on behalf of the Supplier directly to the applicable taxing authority or, where Volt Consulting MSP deems appropriate, to the Supplier in which case the Supplier is obligated to remit and report the Taxes to the applicable taxing authority. The parties agree that Volt Consulting MSP, for sales, use, or similar tax purposes, is not the vendor, dealer, retailer, buyer or purchaser of the Supplier Services; that Volt Consulting MSP is not purchasing the Supplier Services from the Supplier for resale to Customer; and that the Supplier has the sole legal responsibility for its Taxes notwithstanding the parties' consent to Volt Consulting MSP acting on the Supplier's behalf in transmitting the Taxes to the applicable taxing authority, if any. Volt Consulting MSP will deliver to the Supplier appropriate sales tax resale or exemption certificates upon request. Upon request of Volt Consulting MSP or Customer, the Supplier shall provide all information required to accurately calculate and report any such Taxes that may be due as a result of the Supplier Services. Customer and Volt Consulting MSP further agree that decisions pertaining to the taxability of the Supplier Services rest solely with the Supplier and Volt Consulting MSP bills such Taxes to the Customer without independent review of the Supplier's decision on the application of tax to the Supplier Services. Customer and Volt Consulting MSP agree that should any Taxes apply to the Supplier Services, the sales tax rate applied to such the Supplier Services are determined solely by the Supplier without independent review by Volt Consulting MSP. Should Customer dispute any Taxes billed, either questioning the taxability of the Supplier Services or the sales tax rate applied to such Supplier Services, Supplier acknowledges that resolving the dispute is a matter between Customer and the Supplier. Any retroactive adjustments to Taxes will be processed by Volt Consulting MSP only after such adjustments are confirmed valid by the Supplier and are deemed to be refundable by the Supplier.

7.2 After the implementation of the vendor management system hosted by IQNavigator, Inc, should any applicable Taxes be billed to Customer by Volt Consulting MSP, the Parties agree that Volt Consulting MSP is billing such Taxes on the Supplier's behalf and any Taxes billed will be remitted by Volt Consulting MSP to Supplier so that Supplier may remit and report the Taxes to the

applicable taxing authority. If a taxing authority initiates a tax audit against Volt Consulting MSP in connection with Taxes under this agreement, the Supplier shall reasonably cooperate with Volt Consulting MSP in order to respond to any audit inquiries in an appropriate and timely manner, so that the audit and any resulting controversy may be resolved expeditiously. If any taxing authority assesses Volt Consulting MSP with respect to any Taxes on Services under this Agreement for any reason, including Supplier's failure to remit Taxes in a timely and appropriate manner, Volt Consulting MSP shall seek reimbursement from Supplier of all such taxes imposed on Volt Consulting MSP by the taxing authority and any penalty and interest.

7.3 Subject to the terms and conditions set forth below, Supplier's proper and approved Supplier Charges are payable from customer funds ten (10) calendar days from the receipt of customer funds by Volt Consulting MSP from Customer and provided that Customer has unconditionally provided available customer funds to Volt Consulting MSP to pay said invoice, Volt Consulting MSP being only a paying agent for Customer. It is understood and agreed that Volt Consulting MSP's obligation and/or duty to pay Supplier is expressly conditioned upon and shall arise only to the extent that Volt Consulting MSP has received payment from Customer for Supplier Services rendered to, for or on behalf of Customer in respect of Supplier's invoice. Volt Consulting MSP shall be under no obligation to pay Supplier Charges unless and until Customer pays Volt Consulting MSP for same.

7.4 It is the intention of the parties, and Supplier hereby acknowledges, that notwithstanding any contrary payment terms in Supplier's invoice or otherwise provided for in this Agreement, Supplier relies solely and exclusively on Customer and the credit of Customer, not the credit of Volt Consulting MSP, for payment for its Supplier Services. Supplier acknowledges that it is Supplier's obligation to verify and to monitor Customer's credit and that Supplier bears all credit risk.

7.5 Notwithstanding any contrary payment terms listed on Supplier's invoice or otherwise provided for in this Agreement, Supplier agrees that in the event of Customer's failure, refusal or inability (because of insolvency, bankruptcy or otherwise) to pay Volt Consulting MSP for the Supplier Services provided by Supplier, Volt Consulting MSP shall have no obligation to pay for any invoice covering such Supplier Services, receipt by Volt Consulting MSP of payment from Customer for Supplier's Supplier Services being an express condition precedent to Volt Consulting MSP's obligation to make payment to Supplier. It is further agreed that if such invoice is paid by Volt Consulting MSP, but not funded by Customer, then Volt Consulting MSP shall be entitled to recover the full amount of such payment from Supplier or, at Volt Consulting MSP's option, to deduct such amount by offset from any payments then or thereafter due to Supplier and, in such event, Volt Consulting MSP agrees to immediately assign to Supplier all right, title and interest (and Supplier agrees to accept assignment) to that portion of Volt Consulting MSP's receivables due from Customer on account of such services or expenses (or other obligation or liability) and all actions, rights and/or remedies relating to such services or expenses (or other obligation or liability) and Supplier will look to Customer, and not to Volt Consulting MSP, for collection of all amounts owed and Volt Consulting MSP will not be liable to Supplier for nonpayment for same. This provision shall survive the termination of this Agreement and/or any agreement between Volt Consulting MSP and Customer and/or between Volt Consulting MSP and Supplier.

7.6 Volt Consulting MSP will use commercially reasonable efforts to collect from Customer according to the payment terms in Volt Consulting MSP's Agreement with Customer, but shall have no obligation to institute litigation or arbitration proceedings.

7.7 **SUPPLIER VOLUNTARILY RELINQUISHES ANY CLAIM IT MAY HAVE AGAINST, AND EXPRESSLY COVENANTS AND AGREES NOT TO SUE, VOLT CONSULTING MSP FOR ANY SERVICES PERFORMED OR EXPENSES ADVANCED BY SUPPLIER OR ITS EMPLOYEES (OR FOR ANY OTHER OBLIGATION OR LIABILITY), EXCEPT TO THE EXTENT THAT CUSTOMER HAS ACTUALLY MADE UNCONDITIONAL PAYMENT TO VOLT CONSULTING MSP FOR SUCH SERVICES OR EXPENSES (OR OTHER OBLIGATION OR LIABILITY).** In the event Customer fails to make unconditional payment to Volt Consulting MSP, due to bankruptcy, insolvency, actual or disputed failure of performance, or any claimed inability or refusal to pay for any reason, or in the event Volt Consulting MSP is unable to collect from Customer and any payment is sixty (60) days past due to Supplier, or there is a recovery by Customer's estate in a preference proceeding, Volt Consulting MSP agrees to immediately assign to Supplier (and Supplier agrees to accept assignment of) all right, title and interest to only that portion of Volt Consulting MSP's receivables due from Customer on account of such services or expenses (or other obligation or liability) and all actions, rights and/or remedies relating to such services or expenses (or other obligation or liability) and Supplier will look solely to Customer, and not to Volt Consulting MSP, for collection of all amounts owed and Volt Consulting MSP will not be liable to Supplier for the nonpayment or any expenses in connection with the collection thereof.

7.8 Customer funds received pursuant to the payment provisions of this agreement and Volt Consulting MSP's agreements with its customers shall be deposited by Volt Consulting MSP into an account designated "Volt Consulting MSP Escrow Account," the funds in which shall be held for the benefit of, and shall be used by Volt Consulting MSP only to pay suppliers who provide services to Volt Consulting MSP's customers, provided, however, that Volt Consulting MSP may pay to itself, simultaneously with paying such suppliers, the fees which Volt Consulting MSP is permitted to retain under its agreements with its customers. Volt Consulting MSP's title to such funds (except as to the amount of such fees) shall be nominal only and Volt Consulting MSP shall have no equitable interest in the funds deposited in such account, except as to Volt Consulting MSP's fees, it being the express intention of the parties that the balance of such funds shall be held by Volt Consulting MSP as an escrowee solely for the benefit of such suppliers. In the event that Volt Consulting MSP fails to render payment to Supplier for any services for which Customer has paid Volt Consulting MSP, due to bankruptcy, insolvency or any claimed inability or refusal to pay, Supplier shall not be prohibited from any and/or all remedies available to it under the law as to such amounts actually paid to Volt Consulting MSP by Customer (as distinguished from amounts not yet paid by Customer to Volt Consulting MSP).

7.9 Subject to the terms of the Section Non-Solicitation of Volt Consulting MSP's or Customer's Business or Employees, nothing in this Agreement shall limit or prevent Supplier from offering to Customer services not covered by this Agreement, or from offering Services to any segment of Customer's business not participating in this Agreement

8 Right to Hire

Customer may hire Supplier's Contingent Worker as an employee at any time after 180 days for Engineering/Technical, or 120 days for all others, from the Contingent Worker's assignment start date with Customer. If Customer elects to hire a Contingent Worker any time less than 181 days for Engineering/Technical, or 121 days for all others, from assignment start date Volt Consulting MSP will pay Supplier a fee of a percentage of annual salary (excluding sign-up or yearly bonuses agreed to be paid by Customer to such Contingent Worker) as set forth in the Conversion Rates table set forth below. Volt

Consulting MSP will make payment to Supplier for such fee upon payment to Volt Consulting MSP by Customer.

Conversion Rates (U.S.)

Annualized (2,000 hrs on hiring pay rate)	
Admin/Clerical	
Hours of Service	Conversion Fee %
0-40	10.00%
41-80	5.00%
81-120	1.50%
121+	No Fee
Forklift Operators	
Hours of Service	Conversion Fee %
0-40	7.50%
41-80	4.50%
81-120	2.00%
121+	No Fee
Industrial Employees	
Hours of Service	Conversion Fee %
0-40	7.50%
41-80	4.50%
81-120	2.00%
121+	No Fee
Engineering Employees	
Days of Service	Conversion Fee %
0-30	18.00%
31-90	16.00%
91-120	7.50%
121 -180	7.50%
181 + calendar days	No Fee
Professional / Technical	
Days of Service	Conversion Fee %
0-30	18.00%
31-90	16.00%
91-120	7.50%
121 -180	7.50%
181 + calendar days	No Fee

9. Direct Hire

% Fee Based on Annual Salary

Base Annual Salary	Fee % of Annual Salary
Less than $25,000	10%
$25,000 to $59,999	15%
$60,000 to $99,999	18%
Over $100,000	20%

These are "not to exceed" rates". If it is

necessary to be creative for high volume orders, it is acceptable to use rates lower than listed, with approval from local Volt management.

Direct Hire Guarantee

• If a candidate is involuntarily terminated within 90 days of placement for reasons relating to performance or misconduct or voluntarily resigns employment with Schneider Electric, Supplier will refund 100% of the Direct Placement fee, less any applicable MSP fee, OR apply 100% credit of the fee, less any applicable MSP fee, against future payment.

• If a candidate is terminated within 90 days of placement for reasons not related to performance, misconduct, or voluntary resignation (such as project completion, layoff, or lack of funds), then Schneider Electric shall not be
entitled to any recoupment or offset of the fee paid.

10. Supplier Performance

10.1 Supplier guarantees Contingent Worker(s) performance for any work performed for Customer for the first five (5) business days of an assignment. If a Customer manager is not satisfied with the Contingent Worker Services performed by the Contingent Worker within the five (5) business day guarantee period, Customer or Volt Consulting MSP shall so notify Supplier and Supplier agrees to remove that Contingent Worker from assignment with no charge to Customer or Volt Consulting MSP for any Contingent Worker Services performed by the Contingent Worker during those five (5) days.

10.2 Supplier may be evaluated by Customer or Volt Consulting MSP on a quarterly basis. The performance evaluation may include, but is not limited to, competitive pricing, ability to meet target rates established by Volt Consulting MSP, quality of resume submittals, quality of Contingent Workers provided, and/or overall satisfaction by Customer and Volt Consulting MSP.

11. Rules, Regulations and Policies

11.1.1 Supplier will not discriminate against any Contingent Worker, employee or applicant for employment because of race, color, religion, sex, age, sexual orientation, national origin, or physical or mental disability. Such action will cover all aspects of the employment relationship including, but not limited to the following: application and initial employment; upgrading, demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, and employee benefit plans. Supplier agrees to post in conspicuous places, available to all employees and applicants at its facilities for employment, notices setting forth the provision of this non-discrimination clause.

11.1.2 The parties shall comply with all applicable provisions of any federal, state, or local laws and ordinances and all lawful orders, rules, and regulations issued thereunder including, but not limited to, the provisions of Title VII of the Civil Rights Act of 1964 and the Fair Labor Standards Act, Workers' Compensation and Occupational Disease Acts and the Williams-Steiger Occupational Safety and Health Act of 1970. The parties shall also comply with any provisions, representations or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in the Agreement resulting from acceptance of this Agreement and dealing with Equal Employment Opportunity, Employment of Veterans, Employment of Handicapped, Employment Discrimination Because of Age, Utilization of Disadvantaged Business Enterprises, and the related Acts and Executive Orders

as now or hereafter amended or codified. Supplier certifies that it is in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 60-1.8.

12. Supplier Reporting

If requested by Volt Consulting MSP, Supplier agrees to provide Volt Consulting MSP with a detailed monthly report of all Contingent Worker Services provided at each Customer site. The report may include but not be limited to; each Contingent Worker's name, location of the Contingent Worker Services, straight time hours worked, overtime hours worked, straight time direct labor hourly rate, overtime labor hourly rate, straight time hourly bill rate and overtime hourly bill rate. Report requirements may change as deemed necessary by Customer and/or Volt Consulting MSP.

13. Supplier Insurance Requirements

13.1 Supplier agrees, at its sole cost and expense, to procure and maintain in full force and continuous effect at all times during the term of this Agreement and the performance of services by Supplier Employees, insurance for itself and its employees, with insurance companies authorized to do business in the state(s) or province(s) where work is to be performed, covering all operations under this Agreement, of the following types and/or kinds of coverage and maintaining the following minimum policy limits:

13.1.1 Commercial General Liability including Contractual Liability covering the Indemnity provisions of this Agreement with Additional Insured Status as to Customer and its affiliates and their respective directors, officers and employees: Two million dollars ($2,000,000) Each Occurrence Combined Single Limit Bodily Injury and Property Damage;

13.1.2 Business Automobile Liability covering Any Auto, owned, non-owned, leased or rented, with Additional Insured Status as to Customer and its affiliates and their respective directors, officers and employees : Two million dollars ($2,000,000) Each Occurrence Combined Single Limit Bodily Injury and Property Damage;

13.1.3 Worker's Compensation: Statutory Limits with Waiver of Subrogation or Alternate Employer Endorsement;

13.1.4 Employer's Liability: Bodily injury by accident Two million dollars ($2,000,000) each accident; Bodily injury by disease Two million dollars ($2,000,000) each employee;

13.1.5 Professional Liability/Errors and Omissions: Five million dollars ($5,000,000) each claim;

13.1.6 Employee Dishonesty/Crime Bond: Including third party coverage, for dishonest acts, robbery, theft, and forgery committed by Volt, Supplier's or Associate Vendors' Employees against Customer with limits of One million dollars ($1,000,000) per loss. Customer shall be named loss payee on such insurance; and

13.1.7 Umbrella/Excess Liability Insurance with a minimum limit of Three million dollars ($3,000,000) each occurrence

13.2 The limits above may be satisfied through a combination of primary and umbrella / excess liability coverage

13.3 All insurance required under this agreement shall be rated A- with a financial strength rating of at least VII by A.M. Best Company and licensed to do business in the jurisdiction(s) where the Services are to be performed. The insurance requirements shall survive this Agreement. Customer shall have no obligation to review or verify the existence of insurance required

hereunder. The consent of Customer to the insurance and limits shown above shall not be considered as a limitation of liability under this Agreement nor an agreement by Customer to assume liability in excess of said amounts or for risks not insured hereunder. Failure of Supplier to maintain complete insurance does not lessen Supplier's liability and may be deemed a material breach allowing Customer or Volt Consulting MSP to terminate this Agreement. All Liability Insurance policies required hereunder shall waive rights of subrogation by insurers in favor of Customer, with the exception of Crime / Fidelity. If an Umbrella or Excess Liability Insurance policy is used to meet minimum insurance requirements the Certificate of Insurance must state the policy follows the form of the General Liability, Auto Liability and Employers' Liability Insurance policies as respects the requirements stated above.

13.4 Upon execution of this agreement and at least fifteen (15) days prior to the expiration of any insurance required herein, Suppliers shall furnish Volt Consulting MSP with a Certificate of Insurance evidencing the coverage detailed above. The Certificate of Insurance must be issued by an authorized representative of Supplier's insurance company and identify Customer and Volt Consulting MSP and their affiliates and their respective directors, officers and employees as additional insured on General Liability, Auto Liability and Umbrella/Excess Liability Insurance. The Certificate for all policies except Umbrella/Excess Liability shall also identify Supplier's insurance shall apply on a primary and noncontributory basis with respect to any insurance maintained by Customer and Volt Consulting MSP and waive their rights of subrogation against Customer and Volt Consulting MSP and their affiliates and their respective directors, officers and employees for all policies except Crime/Fidelity Insurance. The Certificate shall identify Customer as loss payee on the Crime/Fidelity Bond insurance. Should any of the above-described policies be canceled or materially changed before the expiration date thereof, notice will be delivered in accordance with policy provisions.

13.5 Should any insurance policy Supplier is required to maintain under this Agreement expire or be canceled before completion of the services or work, or termination of this Agreement, and Supplier fails to immediately procure replacement insurance as required, Volt Consulting MSP and Customer reserve the right (but do not have an obligation) to procure such insurance and to deduct the cost thereof from any sum due to Supplier under this Agreement. Volt Consulting MSP's or Customer's exercise of their right under this provision shall not in any way limit their right to demand performance by Supplier or to demand any other remedy provided for or permitted under this Agreement.

14. Indemnification

A. Liability. Except to the extent of Customer's or Volt Consulting MSP's negligence or willful misconduct, Supplier shall defend, indemnify and hold harmless Customer and Volt Consulting MSP, its parents and affiliates and each of their directors, officers, employees, agents and representative harmless from:

(i) Any and all loss, costs, liability, damage or expenses (including reasonable legal and expert fees and expenses) incurred by Customer or Volt Consulting MSP as a result of or related to any claim, demand, suit, judgment or cause of action, threatened, claimed or filed by any Supplier Employee/Supplier Personnel arising out of or related to such Supplier Employee's/Supplier Personnel's employment, including any claim that such employee is an employee of Customer; or any claim related to failure to adhere to the requirements of any law, rule or regulation; hiring; termination; promotion; compensation; benefits; injury, death or property damage; discrimination; working conditions and any and all other employment related claims of any kind. Supplier, on behalf

of itself and its insurer, waives all rights of subrogation against Customer and Volt Consulting MSP related to any claim by a Supplier Employee/Supplier Personnel.

(ii) Any and all loss, costs, liability, damage or expenses (including reasonable legal and expert fees and expenses) incurred by Customer or Volt Consulting MSP as a result or related to a claim by any third party arising out or related to the presence of Supplier Employees/Supplier Personnel on Customer premises or caused by the acts or omissions of Supplier, its officers, directors, employees, agents and representatives in the performance of this Agreement, including claims for violation of law, bodily injury property damage and infringement or misappropriation of third party confidential or proprietary information. Notwithstanding the foregoing, Volt Consulting MSP will not have any liability for any claim of infringement hereunder based upon intellectual property resulting from (a) the combination of the deliverable with software or equipment furnished other than by Supplier or its employees or a third party selected or contracted by Volt Consulting MSP, if absent such combination the claim would not have been valid, (b) the modification of the deliverable by anyone other than Volt's employees or a third party selected or contracted by Volt Consulting MSP, (c) Volt Consulting MSP's employee's adherence to Customer's instructions, specifications or directions.

(iii) Nothing in this provision shall be construed to limit either party's right to make a direct claim against the other for such party's acts or omissions in the performance of this Agreement. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST TIME, LOST PROFITS, OR FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OR BASIS OF THE CLAIM.

B. Supplier agrees and warrants to Volt Consulting MSP and Customer that all Contingent Workers it provides to perform Contingent Worker Services to, for, or on behalf of Customer shall be properly classified W-2 employees of Supplier and not sub-contractors, Independent Contractors, 1099 workers or any other worker classification other than W-2 employee. Supplier agrees to indemnify and hold Volt Consulting MSP and Customer harmless from any loss or liability of any kind arising from violation of this provision. If Volt Consulting MSP or Customer determines that any Contingent Worker provided to perform Contingent Worker Services to, for, or on behalf of Customer is not a W-2 employee of Supplier, then this Agreement and all purchase orders under it may be terminated immediately and Supplier will return to Customer all payments of any kind for all purchase orders issued under this Agreement, whether completed or not, without offset for any fees paid to or retained by Volt Consulting MSP.

15. Confidential Data and Disclosures

15.1 All information learned in connection with the performance of this Agreement or from contact with employees of Customer or Volt Consulting MSP shall be deemed to be Confidential Information. During the term of this Agreement and thereafter, Supplier shall not use or disclose such Confidential Information for any purpose (nor permit its use or disclosure by others who are under Supplier's supervision or direction) and Supplier shall require all Contingent Workers to execute any reasonable forms agreeing to such confidentiality and non-disclosure, except to the extent the use or disclosure of such information is necessary to perform work pursuant to this Agreement, or unless Supplier demonstrates to the satisfaction of Customer and/or Volt Consulting

MSP that such information was actually known to Supplier prior to this Agreement, or was independently properly obtained or developed by Supplier apart from any connection with Customer, Volt Consulting MSP or their respective employees, directly or indirectly, all without breach of any confidential relationships, or was publicly available.

15.2 Supplier represents that it has the full and unrestricted right to disclose any information, knowledge and data which it may disclose to Customer in the course of performance of its services hereunder, and that Customer shall have the full and unrestricted right to use, reproduce, and disseminate such information, knowledge and data. Volt Consulting MSP's confidential or proprietary software programs which are used by Volt Consulting MSP to provide the Managed Service Program and Volt Consulting MSP's agreement with Customer, including, but not limited to, REX, VSG-Gold™, HRP, HRPM, VoltTrak, Platinum, Vector, Consol and all enhancements, improvements, revisions, corrections, additions, subtractions, updates, modifications, derivative works, adaptations, versions, productions, transmissions, arrangements, changes and translations, and their framework and infrastructure, and all related software, source code, and object code, all scripts and applets, web content (which term does not include Customer's data or information, which is the property of Customer), navigational buttons, server configurations, algorithms, processes, and any and all patent rights, copyright and trademark rights, trade secrets and common law rights and all other attendant intellectual property rights and other rights, title and interest therein, are and shall remain the sole property of Volt Consulting MSP and no right, title or interest of any kind or description shall be transferred to Supplier. All of the foregoing shall be deemed Confidential Information and proprietary to Volt Consulting MSP and shall be considered and maintained as Confidential Information by Supplier.

15.3 Volt Consulting MSP may retain copies of and aggregate information Supplier enters into the System and use it to prepare generic reports to Volt Consulting MSP's Customer and potential customers, so long as such reports do not identify Supplier or any employee of Supplier. Supplier is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all entered information. Moreover, Supplier is responsible for compliance with any legal requirements relating to processing of personal data and any required notification to the competent authorities.

16. Warranties

16.1.1 Each party represents and warrants to the other party that (i) it is duly organized, validly existing, has all necessary authorizations to enter into this Agreement, and to fully perform its obligations hereunder; (ii) the execution, delivery and/or performance of this Agreement will not conflict with or result in any breach of any provision of the charter, by-laws or other governing instruments of such party or any agreement, contract or legally binding commitment or arrangement to which such party is bound; (iii) it is not subject to any limitation or restriction including, without limitation, non-competition, and confidentiality arrangements that would prohibit, restrict or impede the performance of such party's obligations under this Agreement; and (iv) it will comply with all laws, rules and regulations applicable to its business and its performance of its duties hereunder.

16.2 EXCEPT AS EXPRESSLY SPECIFIED IN THIS SECTION, VOLT CONSULTING MSP MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE OPERATION OR PERFORMANCE OF THE SYSTEM, OR THE MANAGED SERVICE PROGRAM, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR WARRANTIES

ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR THAT THE SYSTEM AND/OR ANY USE OF THE SYSTEM WILL BE ERROR-FREE, VIRUS-FREE OR UNINTERRUPTED.

17. Relationship of the Parties

Each party to this Agreement is an independent contractor, and nothing contained in this Agreement may be construed as creating a joint venture or partnership between the parties. No party by virtue of this Agreement has any right or power to create any obligation, express or implied, on behalf of any other party, except as otherwise expressed in this Agreement. No party, or employee of any party, will be deemed to be an employee of another party by virtue of this Agreement.

18. Captions

The captions appearing in this Agreement have been inserted as a matter of convenience and shall not be construed to define, limit or enlarge its scope or the meaning of this Agreement.

19. Use of Names

19.1 Supplier will not use Customer's or Volt Consulting MSP's name in any advertising or publicity releases without first securing the prior written approval of the name owner.

19.2 Supplier will not make any presentation or publication relating to Supplier's work hereunder or to information disclosed to Supplier or Contingent Workers by Customer in connection herewith without the prior written consent of Customer. Customer shall have the right to review and modify in advance any such authorized publication, both as to content and time of publication or presentation.

20. Notices

Notices and other communications by a party under this Agreement, other than time cards, shall be deemed given when deposited in the United States mail, first class, postage paid, addressed as follows:

Volt Consulting MSP Address: ATTN: Supplier Management Organization
Volt Consulting Managed Service Programs
10 Woodbridge Center Drive – Suite 140
Woodbridge, NJ 07095

With a copy to: ATTN: Director of Contracts
Volt Consulting Managed Service Programs
2401 N. Glassell Street
Orange, CA 92865

Supplier Address: SS&O Controller
Aerotek, Inc.
7301 Parkway Drive
Hanover, MD 21076

21. Governing Law

This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of California without regard to its conflicts of laws provisions.

22. Arbitration

Any dispute or controversy arising out of or related in any way to this Agreement or any breach hereof, or the termination of this Agreement, shall be settled by binding arbitration in accordance with the Rules of the American Arbitration Association, pursuant to the Federal Arbitration Act, brought in and applying the laws of the State of California. The arbitrator shall be entitled to award reasonable attorney's fees and costs to the prevailing party. Judgment upon any award may be entered in any court having jurisdiction. Should the foregoing arbitration agreement be unenforceable for any reason, Volt Consulting MSP and Supplier hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross complaint in any action, proceeding or hearing.

23. Non-Solicitation of Volt Consulting MSP's or Customer's Business or Employees

23.1 During the term of Volt Consulting MSP's contract with Customer to provide the Managed Service Program, Supplier agrees not to solicit or attempt to solicit Customer, either directly or indirectly, to provide the same or similar MSP services. This provision shall be deemed waived in the event that Customer issues a request for proposal to Supplier for the provision of MSP services.

23.2 Supplier agrees not to solicit employment of any employee of Customer or of Volt Consulting MSP with whom it is dealing under this Agreement, during and for a period of one (1) year subsequent to the termination of this Agreement, unless prior written consent to do so is obtained from Volt Consulting MSP.

23.3 Supplier acknowledges that Customer may deploy Contingent Workers provided by Supplier to Customer's customers and that such deployment constitutes an introduction by Customer of Supplier to such customers. During the term of this Agreement and for a period of one (1) year following its termination, Supplier agrees not to solicit the business of or perform the same or substantially similar services as those provided by Customer to its customers for any customer of Customer who was introduced to Supplier by Customer or to whom Customer has deployed Supplier's Contingent Worker. This provision shall not apply to provision of services not of the kind and type as those provided by Customer.

23.4 If applicable, Supplier agrees to require each of its employees assigned as a Contingent Worker to Customer to agree in writing to the same restriction on solicitation or performance of Contingent Worker Services for Customer's customer as Supplier agrees to in the preceding subsection and will make such agreements available to Customer at Customer's or Volt Consulting MSP's request.

24. Exhibits

The following attachments are hereby referenced and incorporated into this Agreement, except to the extent their terms are different, the initial business objective of the parties shall control in resolving such differences.

Attachment A Supplier Employees Travel
Attachment B Drug Testing / Drug Free Workplace Policy
Attachment C Contingent Worker Agreement Regarding Intellectual Property

Attachment D Contingent Worker Acknowledgement of Temporary Work Assignment
Attachment E End User License Agreement
Attachment F Contingent Worker Background Check Requirements.
Attachment G Schneider New Temp Orientation
Attachment H Social Events / Activities Waiver
Attachment I SLA / Safety

25. Assignment

Any assignment by Supplier of this Agreement, or any rights, interest or payment hereunder, without the prior written consent of Volt Consulting MSP, shall be void. Supplier shall not subcontract any work under this Agreement.

26. Force Majeure

Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such failure or delay is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control and occurring without the fault or negligence of the delayed or non-performing party.

27. Amendment

No term or provision of this Agreement may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of such changes, waivers, discharge or termination is sought.

28. Waiver

The waiver by a party of any breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of the same or any other provisions hereof by that party. Either parties' delay or failure to enforce any term or condition of this Agreement shall not operate to waive such term or condition, and such waiver shall only be effective if in writing and signed by both parties. The remedies available to either party under this Agreement are not exclusive, but are in addition to such other remedies available to both parties by law or equity.

29. Severability

If any section, subsection, sentence, or clause of this Agreement shall be adjudged illegal, invalid or unenforceable, the remainder of the Agreement shall continue to be in full force and effect.

30. Government Contracts

When purchase orders relating to Government contracts with the United States of America or any department thereof are involved, Customer, Volt Consulting MSP, or agents of Customer or Volt Consulting MSP shall have access to and the right to examine any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three years after final payment hereunder at all reasonable times upon reasonable prior request.

31. Survival

The expiration or termination of this Agreement shall not terminate the rights of either party from any liabilities or obligations incurred under this Agreement prior to or which by their nature are intended to survive expiration or termination, including but not limited to provisions relating to confidentiality, indemnification, and tax.

32. Third Party Beneficiary

Volt Consulting MSP and Supplier recognize and agree that Customer is a third-party beneficiary to this Agreement and may enforce its rights either directly itself or indirectly through Volt Consulting MSP.

33. Entire Agreement

This Agreement, including all matters expressly incorporated by reference, when signed by both parties, constitutes the entire and only agreement between the parties respecting the subject matter hereof, and there are merged herein all prior and pre-existing representations and agreements by and between Customer, Supplier and Volt Consulting MSP. This Agreement is intended by the parties as a final expression of their agreement with respect to such terms as are included herein, and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity for rejection. Any terms and conditions of sale appearing on Supplier's acknowledgment forms, invoices or quotations shall have no effect whatsoever and are hereby deemed null and void.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed and delivered, and represent that the persons whose signatures appear below are duly authorized to execute the Agreement.

Aerotek, Inc.	**Volt Consulting Managed Service Programs, A division of Volt Consulting Group, Ltd.**
By:	By:
Name: Leigh Marvin	Name: Gail Levine
Title: Controller	Title: Manager, Contracts Mgmt.
Date: 02/02/2016	Date: 2/4/16

Attachment A
SUPPLIER EMPLOYEES TRAVEL

1. General Matters

It is important to note that the most effective means of reducing travel costs is to not travel at all. When travel is required of Supplier Employees, hiring managers are responsible for ensuring that the following policy is followed.

1.1. Purpose

The objective of the Customer Travel Policy for Supplier Employees is to provide travel solutions that:

- ☑ Optimize the overall travel process
- ☑ Ensure traveler safety and security
- ☑ Reduce Customer's carbon footprint
- ☑ Provide better control of travel expenses

1.2. Scope

Compliance with this process is required for all Supplier Employees traveling at the request of Volt. Travel expenditures outside these guidelines shall not be reimbursed by Volt.

All travel reservations for Supplier Employee must be booked in accordance with this policy and approved prior to purchase.

1.3. Permitted Travel

Customer authorizes Supplier Employees to travel on behalf of the Customer when such travel is deemed necessary by the Customer Hiring Manager. Such travel will only be permitted within the United States. Hiring Managers wishing to send Supplier Employees on International trips must contact Supply Management for authorization prior to making any travel arrangements, all of which will be coordinated by Volt.

1.4. Safety and Security

Customer does not accept the Duty Of Care for Supplier Employees traveling on Customer business. Supplier Employees should consult with their employer to ensure that adequate insurance and liability coverage is in place.

1.5. Ownership and Endorsement

This policy will be reviewed and/or updated periodically as company needs and/or vendor relationships change.

2. Company Approved Travel Agency

It is mandatory that all Airline, Rail, Car Rental, and Hotel reservations be made through Customer's Contracted Travel Agency. The Contracted Travel Agency for North America is BCD Travel.

Booking through the internet or direct with suppliers is not acceptable and will not be reimbursed by Volt.

The Travel Agency will only offer travel options that are compliant with Customer programs and policies related to support of preferred vendors, traveler productivity, and total trip cost management. Travelers are not authorized to decline a lower cost option for the sole purpose of earning membership points with another vendor.

2.1. Telephone Reservations

For occasional Supplier Employee travel needs, Volt may make travel arrangements by telephone or email with the travel agency.

2.2. Use of the Company Approved Online Booking Tool

Non-Customer employees are not, under any circumstances, permitted to use the Online Booking Tool Customer makes available for employee travel. Access to the tool is restricted to Customer employees only.

Hiring Managers who regularly make travel arrangements for Supplier Employees may request access to do this in the Online Booking Tool by sending their request via email to schneidertravel@bcdtravel.com. Requests will be reviewed on a case by case basis by Volt. If approved, the Hiring Manager agrees to ensure that all reservations are processed by Customer Employees and that no Supplier Employee or non-employee is given access to the Online Booking Tool.

2.3. Use of Emergency/After Hours Support

The use of the Emergency/After Hours support desk is allowed in emergency situations only. Travelers should only call the Emergency/After Hours support desk outside of normal business hours and for needs related to travel that has already begun or will begin before the traditional reservation desk reopens

3. Air Booking

The Travel Agency will recommend preferred carriers whenever practical. Every attempt should be made to book the itinerary at the lowest possible cost. All flights must be booked based on cost effectiveness, not the traveler's personal preference or ability to gain frequent flyer credit.

3.1. Class of Service

Consistent with the policy for all employees, all air travel must be in economy class regardless of destination or flight time.

3.2. Advance Purchase

Every reasonable effort should be made to purchase airline tickets at least 14 days in advance.

3.3. Use of Restricted Fares

The use of Restricted Fares (non refundable tickets) is recommended when there is a reasonable certainty that the trip will be taken, even if there is a possibility the dates may change.

If travel plans are not firm, the Hiring Manager should consult with a travel agent to select the least expensive of the following options:

- ☑ Purchasing a non refundable ticket and possibly paying the change fee,
- ☑ Waiting until plans are firm to purchase a non refundable ticket (at a higher cost due to shorter advance purchase)
- ☑ Purchasing a refundable ticket

3.4. Non Direct Routing

In some cases lower fares may be available by accepting a connection. Travelers are required to consider connecting flight options and to accept the lowest fare unless the flight schedule associated with that fare does not allow the traveler to arrive at their destination at the time they are needed.

3.5. Decline low fare for upgrade

Supplier Employees are not permitted to decline a lower fare in order to book a higher-cost ticket which will allow an upgrade (personal or corporate) to be used.

3.6. Frequent Flyer Mileage Point Programs

Supplier Employees are permitted to earn frequent flyer mileage for their air travel and may use that mileage for personal travel. Declining a lower fare for the purpose of accruing frequent flier miles or status with another airline is not permitted.

4. Rail Travel

Often it is less expensive and more environmentally friendly to select rail travel over air travel. Travelers are encouraged to consider rail transportation where it is available.

5. Hotel Reservations

If a preferred hotel is available within 10 miles of the travel destination, travelers are required to use that hotel. In areas with no preferred hotel available, travelers should select the lowest-cost business-class (3-star) hotel available and should limit hotel cost to $90/night.

Travelers can participate in frequent guest program, however declining a preferred property for the purpose of accruing frequent guest credit with another hotel is not permitted.

6. Ground Transportation

Due to insurance restrictions, Supplier Employees are not permitted to drive personal automobiles on Customer business. Any Supplier Employees driving a personal automobile on Customer business is in violation of Customer policy and Customer and Volt disclaim all liability for any resulting claims.

When ground transportation is required, Schneider Hiring Managers will consider the amount of traveler flexibility needed and select the option that offers the necessary flexibility at the lowest cost from the following options:

- ☑ Hotel shuttle – recommended for transport between the airport, hotel, and office, where available
- ☑ Public transportation – recommended for local transportation where available
- ☑ Car Rental – recommended for all other cases

Customer preferred car rental vendors provide all required insurance. The Travel Agency will recommend the appropriate car rental vendor based on the travel need.

The smallest vehicle that meets the need in terms of number of travelers, distance, and cargo capacity, etc, must be used.

Supplier Employees are not, under any circumstances, permitted to drive any vehicle on Customer business outside the United States.

7. Other Expenses

7.1. Meals

Supplier will be entitled to invoice Volt for reasonable meal expenses supported by actual receipts, up to a maximum of $46 per day. In cases where the Supplier Employee dines with a Customer employee, Supplier Employee shall incur the expense.

7.2. Other Reimbursable Expenses

Supplier will be entitled to invoice Volt for reasonable and customary incremental travel expenses. See Appendix A for examples of reimbursable and non reimbursable items.

7.3. Non Reimbursable Expenses

Supplier shall not be entitled to invoice Volt for any expense not directly in relation to business travel. Expenses for personal matters or convenience are NOT Customer business and Supplier shall not be entitled to invoice Volt.

8. Payment of business travel expenses

8.1. *Airline tickets*

Customer has agreed that The Hiring Manager is responsible for purchasing any necessary airline tickets for Supplier Employees using a Customer credit card. Supplier Employees are not permitted to pay for airline tickets using a personal credit card and Supplier shall not be entitled to invoice Volt for these expenses. Customer Hiring Managers needing to make regular and frequent air ticket purchases for Supplier Employees may contact Customer Supply Management to request a billing account that may be used for airline purchases.

8.2. *Hotel*

The preferred method for paying hotel expenses is Direct Bill. The Travel Agency can assist Customer Hiring Managers in setting up a direct bill with hotels – please request this when making the reservation. If the hotel is unable to provide direct bill service, the Supplier Employee may pay the expense and submit the detailed hotel folio receipt for Supplier's submittal of invoice to Volt.

8.3. *Car Rental*

Car rental expenses may be paid by Supplier Employees and Supplier shall be entitled to invoice Volt. Customer Hiring Managers needing to make regular and frequent car rental reservations for Supplier Employees may contact Customer Supply Management to request a car rental billing account with a preferred car rental vendor.

8.4. *Other Expenses*

Incidental expenses not otherwise defined may be paid by the Supplier Employee and Supplier shall be entitled to invoice Volt for such expenses. Supplier shall be entitled to invoice Volt for all expenses when substantiated with original receipts.

Attachment B
DRUG TESTING AGREEMENT

NOTICE AND ACKNOWLEDGMENT OF DRUG FREE WORKPLACE POLICY FOR SUPPLIER TEMPORARY EMPLOYEES ON ASSIGNMENT TO SCHNEIDER ELECTRIC

Supplier recognizes that the misuse of drugs and alcohol can adversely affect the work environment, job performance as well as the quality of work performed by the employee. For these reasons, the sale, purchase, distribution, use, possession or being under the influence of alcohol, unauthorized drugs or controlled substances while on assignment is strictly prohibited.

PROHIBITIONS ON USE, SALES, DISTRIBUTION, DISPENSATION, MANUFACTURE, OR TRANSFER OF DRUGS

The non-prescriptive use, sale, possession, distribution, dispensation, manufacture, or transfer of drugs at any worksite where employees may be assigned, or elsewhere during work hours is strictly prohibited. Further prohibited is the use, sale, possession, distribution, dispensation, manufacture or transfer of drugs on non-working time where such use, sale, possession, distribution, manufacture or transfer is illegal or where it affects the reputation of the Company to the general public or threatens its integrity.

SUPPLIER'S DRUG TESTING PROCEDURE

Supplier reserves the right to require a drug test under the following conditions: (1) Pre-Assignment – conducted prior to an employee's placement on assignment; (2) Reasonable Suspicion – conducted when an employee is suspected to be under the influence of illegal drugs or alcohol on the job; or (3) Post Accident - conducted following a significant workplace incident/accident, where the employee involved in the incident/accident was assigned in a safety sensitive position and which resulted in injury to oneself, a co-worker or property.

SCHNEIDER ELECTRIC DRUG TESTING PROCEDURE

In addition to the Supplier Drug Testing Procedures detailed above, our customer Schneider Electric requires random drug testing of all Supplier Temporary Employees. Therefore, commencing on your first day of assignment to Schneider Electric, you will be included in Schneider Electric's random drug testing pool and will be provided with additional information regarding Schneider Electric's random drug testing program. Supplier will be allowed, with Schneider Electric's approval, to utilize oral swabbing to drug test Supplier Personnel. The qualification for Customer and any of its entities to allow this method of drug test will be determined by Schneider Electric based on the business model in which Schneider Electric orders Supplier Personnel. If requested by Schneider Electric, Supplier will conduct random drug testing of the Contingent Workforce at any requested Schneider Electric location, provided that random drug testing is legal at the requested location. The cost of these random drug tests will be included as pass-through costs to Schneider Electric on the invoice for services provided. Supplier will provide Contingent Worker with notice of the testing policy and receive the Supplier's Personnel's acknowledgement. The notice and acknowledgement, outlining the random testing policy, is included herein.. In general, Schneider Electric's Random Drug Screen Program procedures include the following:

1. A minimum of 5% of the total Supplier Temporary Employee population depending on the size of the site location. will be random drug tested monthly;

2. The Random Drug Tests will be conducted monthly;

3. All Supplier Temporary Employees will be chosen at random using computer generated selections;

4. For Supplier Temporary Employees on assignment to Schneider Electric, the random drug test will be a **5-panel screen** which will be administered by Supplier's vendor, and the detailed results will be reviewed solely by Supplier and will remain confidential. Pass/Fail results will be provided to Schneider Electric upon request.

The test will be scheduled, to the extent feasible, during your regular work hours at the nearest laboratory:

VIOLATION OF POLICY

As a condition of your employment with Supplier, you must abide by the terms of this policy. Any employee found to be in violation of the above will be subject to disciplinary action up to and including discharge. Additionally, positive test results may result in the termination of your assignment with Schneider Electric, as well as the termination of your employment by Supplier.

Please read and complete the attached Drug Testing Acknowledgement Form and return it to your Supplier Representative.

If you have any questions regarding the above please contact your Supplier Representative.

REFERRAL AND ASSISTANCE

Any employee in need of assistance due to drug or alcohol use can get confidential counseling, assistance and referral from the following outside sources:

National Hot Line Numbers:

Alcohol Hot Line	(800) 252-6465
Cocaine Hot Line	(800) 262-2463
American Council on Alcoholism Helpline	(800) 527-5344
Center for Substance Abuse Treatment	(800) 662-4357

National Assistance Groups:

Alcoholics Anonymous (www.aa.org)	(212) 870-3400
Food and Drug Administration (www.fda.gov)	(888) 463-6332
MADD (Mothers Against Drunk Driving) (www.madd.org)	(800) 438-6233
Narcotics Anonymous (www.na.org	(818) 773-9999
National Association Children of Alcoholics (www.nacoa.org)	(888) 554-2627
Parents Anonymous National Office	(909) 625-6304
Pride Drug Information Line	(800) 241-7946
Tough Love (www.toughlove.org)	(215) 348-7090

ACKNOWLEDGMENT OF RECEIPT OF THE NOTICE AND ACKNOWLEDGMENT OF DRUG FREE WORKPLACE POLICY FOR SUPPLIER TEMPORARY EMPLOYEES ON ASSIGNMENT TO SCHNEIDER ELECTRIC

I have received and reviewed Supplier Temporary Employee and Acknowledgment of Drug Free Workplace Policy for Supplier Temporary on assignment to Schneider Electric. I understand and acknowledge that I must abide by the terms outlined in this policy and that if I am found to be in violation of this policy I may be subject to disciplinary action up to and including discharge. I also understand and acknowledge that in order to be eligible for an assignment to Schneider Electric, I must submit to pre-employment, post-accident, reasonable suspicion and random drug testing. I further understand and acknowledge that positive drug test results may result in the termination of my assignment with Schneider Electric and the termination of my employment by Supplier.

Supplier Temporary Employee Signature Date

Print Name

Attachment C

CONFIDENTIALITY, NON-DISCLOSURE AND OWNERSHIP OF INTELLECTUAL PROPERTY AGREEMENT

I, the undersigned, an employee of the Supplier named below, agree to accept a temporary work assignment to Schneider Electric USA, Inc., and its Affiliates, ("Customer"). As a precondition to receiving such work assignment, I acknowledge and agree to the following:

Nondisclosure:

(a) I understands that, in connection with its engagement with Schneider Electric, it may receive, produce, or otherwise be exposed to Schneider Electric's trade secrets, business, proprietary and/or technical information, including, without limitation, information concerning customer lists, customer support strategies, employees, research and development, financial information (including sales, costs, profits, and pricing methods), manufacturing, marketing, proprietary software, hardware, firmware, and related documentation, inventions (whether patentable or not), know-how, show-how, and other information considered to be confidential by Schneider Electric), and all derivatives, improvements and enhancements to any of the above (including those derivatives, improvements and enhancements that were created or developed by Consultant under this Agreement), in addition to all information Schneider Electric receives from others under an obligation of confidentiality (individually and collectively "Confidential Information".)

(b) I acknowledge that the Confidential Information is the sole, exclusive and extremely valuable property of Schneider Electric. Accordingly, I agree to segregate all Confidential Information from information of other companies and agrees not to reproduce any Confidential Information without Schneider Electric's prior written consent, not to use the Confidential Information except in the performance of this Agreement, and not to divulge all or any part of the Confidential Information in any form to any third party, either during or after the term of this Agreement. Upon request of Schneider Electric, or upon termination or expiration of this Agreement for any reason, I agree to cease using and to return to Schneider Electric all whole and partial copies and derivatives of the Confidential Information, whether in my possession or under my direct or indirect control.

(c) I shall not disclose or otherwise make available to Schneider Electric in any manner any confidential and proprietary information received from third parties. I warrant that my performance of all the terms of this Agreement does not and will not breach any agreement I have entered with any other party, and I agree not to enter into any agreement, oral or written, in conflict herewith. In addition, I recognize that the Schneider Electric has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Schneider Electric's part to maintain the confidentiality of such information and to use such information only for certain limited purposes. I agree that I owe Schneider Electric and such third parties, during the term of my relationship with Schneider Electric and thereafter, regardless for the reason for the termination of the relationship, a duty to hold all such confidential or proprietary information in the strictest of confidence and not to disclose such information to any person, firm or corporation (except as necessary in carrying out his/her work for Schneider Electric consistent with Schneider Electric's agreement with such third party) or to use such information for the benefit of anyone other than for Schneider Electric or such third party (consistent with Schneider Electric's agreement with such third party.)

Ownership of Work Product:

(a) I agree to promptly disclose to Customer any and all Work Product. "Work Product" includes without limitation any and all of the Works, any and all notes, drawings, designs, technical data, know how, works of authorship, firmware, software, ideas, improvements, inventions, material, information, work or product conceived, created, written or first reduced to practice by Consultant or jointly with others in the performance of the Services under this Agreement and/or resulting from use of Confidential Information. I agree to assign and does hereby assign to Customer all right, title and interest, including without limitation any copyright, mask work, patent, trade secret, trademark (including the good will associated therewith) or other intellectual property rights in and to the Work Product. All works of authorship, firmware, software or other applicable Work Product shall be considered works for hire for Customer and all Work Product shall be the sole and exclusive property of Customer. Specifically, I hereby assigns all rights under copyright and the Copyright Act, 17 U.S.C. § 101 et seq. that may exist in and to the above Work Product to Customer. To the extent any Work Product created hereunder are not considered "works made for hire," I hereby assign my entire right, title, and interest, including but not limited to all Intellectual Property Rights in or appurtenant to any of the foregoing, in all such Work Product to Customer.

I hereby warrant that the Work Product is original and that I am the author of the Work Product; to the extent the Work product incorporates text passages, figures, data or other material from the works of others, I have obtained any necessary permissions. In addition, the foregoing applies to all future versions of the Work Product, edited by myself, an assistant, co-author or any person working with me. Upon expiration or termination for any reason of this Agreement, I agree to and shall provide Customer with all Work Product described under this Agreement.

(b) I also agree, at the request and cost of Customer, to promptly sign, execute, make and do all such deeds, documents, acts and things as Customer may reasonably require or desire to perfect Customer's entire right, title, and interest in and to any Work Product.

(c) I acknowledge Customer's exclusive right, title and interest in and to the Intellectual Property Rights and will not at any time do, or cause to be done, any act or thing impairing said rights. I agrees that the intellectual property rights of Customer shall remain the exclusive property of such party and that I shall not acquire any rights or interest in the intellectual property rights.

IN WITNESS WHEREOF, I hereto have executed this Agreement.

(Date)	(Signature)
(Name of Supplier)	(Typed or Printed Name)

Attachment D
ACKNOWLEDGMENT OF TEMPORARY WORK ASSIGNMENT

I, the undersigned, an employee of the Supplier named below, agree to accept a temporary work assignment to Schneider Electric USA, Inc., and its Affiliates, ("Customer"). As a precondition to receiving such work assignment, I acknowledge, the following:

1. I understand that I am an employee of the Supplier and **I am not an employee of Customer**, and I will be paid directly by the Supplier.

2. I understand that the work assignment is a temporary one for a defined period of time, the length of which may be increased or decreased.

3. I understand that if I do not perform to the complete satisfaction of Customer, or leave my assignment prior to completion of my assigned work, I may not be assigned any continuing or additional temporary work at Customer.

4. I understand that any problems or complaints I may have regarding the work assignment must be directed to my Supplier Supervisor and not to Customer.

5. I understand that my rate of pay from the Supplier may be more or less than that received by other individuals who are performing similar services for Customer, regardless of whether they are employees of Customer or other agencies.

6. I understand that there have not been and will not be any representations as to any assurance or possibility of my being hired as a regular employee of Customer, and that since I am not an employee of Customer, no promotions or other forms of advancements or transfer by Customer are available now or in the future.

7. I understand that my work assignment is contingent upon execution of the Contingent Worker Agreement Regarding Intellectual Property and I have read and signed same.

8. I understand that Customer is relying on my representations herein, and I agree that if I assert any claim against any party except Supplier for employee benefits or against any party to enforce any right based on a claim that I am an employee of Customer, and my claim is not successful, I will reimburse such party for all expenses it incurs in defending itself against my claim, including reasonable costs for the time of in-house counsel.

(Date)	(Signature)
(Name of Supplier)	(Typed or Printed Name)

Attachment E

End User License Agreement (Form)

As you know, Schneider Electric U.S.A., Inc. ("**Buyer**") via IQNavigator, Inc. ("**IQN**") operates this online marketplace (a "**Marketplace**") through which Buyer may procure services from independent contractors ("**Services**"). Buyer would like you, or, in the case that you represent a corporation or other organization, that corporation or organization (collectively, "**You**" or the "**Supplier**"), to request to participate in the Marketplace. This agreement and the IQN Privacy Policy [link to Privacy Policy] (collectively, this "**Agreement**") describes the terms and conditions under which You may enter a request to participate in the Marketplace, and, if invited to participate in the Marketplace by Buyer, access the Marketplace and bid to perform Services for Buyer.

[redacted]

I. SUPPLIER INFORMATION. In connection with Supplier's request to participate in the Marketplace, Supplier will be required to provide certain information to IQN relating to Supplier, Supplier's personnel, and Supplier's offering of Services (such information and any other information provided to IQN in connection with this Agreement or the Marketplace are referred to as the "**Supplier Information**"). By providing any Supplier Information to IQN, Supplier agrees as follows:

A. GRANT OF RIGHTS IN SUPPLIER INFORMATION. Supplier grants IQN a non-exclusive, worldwide, royalty-free license to incorporate the Supplier Information into a database of information regarding Supplier and other suppliers of Buyer (a "**Supplier Database**") and to use and modify the Supplier Information as needed to operate the Marketplace. As between IQN and Supplier, Supplier retains ownership of all Supplier Information.

B. SUPPLIER WARRANTY AS TO SUPPLIER INFORMATION. Supplier is solely responsible for the accuracy, quality, integrity, and reliability of all Supplier Information. Supplier represents and warrants that all Supplier Information supplied to IQN: (1) is accurate and does not violate any intellectual property rights or other rights of a third party; (2) is not unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable; and (3) does not violate any applicable law or regulation. Supplier represents and warrants that it has obtained all consents and waivers required under applicable law, including data privacy laws, for the provision, manipulation, retention, use and sharing of personal data of individuals as to whom information is supplied as part of the Supplier Information, and that it will retain such consents and waivers and provide them to IQN at any time upon request. Supplier further represents and warrants that (a) none of Supplier's personnel will be persons who are listed by the U.S. government or any agency thereof as persons with whom U.S. citizens or residents are prohibited from doing business and (b) Supplier has verified that Supplier's personnel have all required work permits, visas and other documentation required for them to legally perform work for Buyer, and Supplier will upon request provide to Buyer and IQN evidence of such individuals' legal right to work in the jurisdiction to which they are assigned by Buyer.

II. ACCESS TO THE MARKETPLACE. If Buyer desires to invite Supplier to participate in the Marketplace, IQN will notify Supplier and provide Supplier a password and other login information for accessing the Marketplace (the "**Account Information**"). By using the Account Information to access the Marketplace (either directly or through a third party), Supplier agrees as follows:

A. INVITATION AND SELECTION. An Invitation by Buyer to participate in the Marketplace is only an invitation to enter bids to perform Services for Buyer. IQN and Buyer make no commitment that Supplier will actually be selected to perform Services for Buyer. If Supplier is selected to perform any Services for Buyer, Suppliers performance of those Services will be subject to Supplier entering into an additional agreement containing the terms and conditions under which Supplier will perform the Services for Buyer.

B. SCOPE OF ACCESS TO THE MARKETPLACE; RESTRICTIONS TO THE MARKETPLACE. All access to and use of the Marketplace by Supplier (or anyone using the Account Information to access the Marketplace on behalf of Supplier) will be only for the purpose of participating in the Marketplace and will comply with the terms of this Agreement (and with any other terms and conditions posted on the Marketplace or provided by IQN to Supplier). In particular, Supplier will not, and will not permit any third party to: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Marketplace or any software, hardware, content, and other technology and methodologies underlying or utilized by IQN to make available, or otherwise made available through, the Supplier Database and the Marketplace (collectively, the "**IQN Property**"); (ii) modify or make derivative works based upon any of the IQN Property; (iii) reverse engineer or access any of the IQN Property; or (iv) attempt to access the Marketplace other than through the Account Information provided to Supplier. Supplier will immediately notify IQN of any unauthorized use of any Account Information and any other breach of this Agreement by Supplier or any third party. Supplier will abide by, and will cause its employees and agents to abide by, all applicable laws and regulations in connection with Supplier's and such agents' and employees' access and use of the Marketplace.

C. **Supplier Account Information.** Supplier is responsible for any use of Supplier's Account Information to access the Marketplace, whether or not Supplier knows of or consents to such use, including any bid entered or commitments made to provide Services to Buyer through the use of Supplier's Account Information.
D. **Suspension or Access.** IQN may indefinitely suspend Supplier's access to the Marketplace at any time, for any reason, upon notice to Supplier.
E. **Language.** Supplier acknowledges that the Marketplace is made available solely in English.

III. **ADDITIONAL TERMS.** The following terms will apply generally to Supplier's agreement to participate in the Marketplace and to any use of or access to the Marketplace by Supplier:

A. **Disclaimer of Warranties.** THE MARKETPLACE IS PROVIDED **"AS IS"** AND ON AN **"AS AVAILABLE"** BASIS. IQN, BUYER AND THEIR RESPECTIVE LICENSORS: (1) MAKE NO REPRESENTATION OR WARRANTY AS TO THE MARKETPLACE or ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE MARKETPLACE; (2) DO NOT REPRESENT OR WARRANT THAT THE MARKETPLACE WILL BE SECURE, TIMELY, UNINTERRUPTED, ERRORFREE, VIRUS-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE OR SOFTWARE; AND (3) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, TITLE OR NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NO ORAL OR WRITTEN ADVICE GIVEN BY ANY EMPLOYEE OR AGENT OF IQN SHALL CONSTITUTE OR CREATE ANY WARRANTY BY IQN. YOU RECOGNIZE AND ACCEPT THAT THE CURRENT STATE OF TECHNOLOGY DOES NOT ALLOW FOR ERROR-FREE USE OF THE MARKETPLACE AND THAT INTERRUPTIONS, CRASHES, DOWNTIME AND DELAY IN SERVICES BEYOND IQN'S CONTROL WILL OCCUR FROM TIME TO TIME.
B. **Limitation of Liability.** IQN AND BUYER WILL NOT BE LIABLE TO SUPPLIER FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING LOSS OF DATA, REVENUE, OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE MARKETPLACE, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE MARKETPLACE OR ANY CONTENT OR INFORMATION OBTAINED FROM OR THROUGH THE MARKETPLACE OR ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION IN THE MARKETPLACE OR THE CONTENT OR INFORMATION THEREIN, EVEN IF IQN OR
BUYER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AGGREGATE LIABILITY OF IQN AND BUYER IN CONNECTION WITH THIS AGREEMENT AND THE MARKETPLACE, AND FOR ANY CLAIMS MADE IN CONNECTION THEREWITH (INCLUDING UNDER SECTION 3(f) BELOW), WILL NOT EXCEED $500.
C. **Ownership.** IQN owns and will retain all rights in and to the IQN Property. This Agreement does not convey to Supplier, and Supplier will not obtain, any rights of ownership in or related to the IQN Property, or in the name, trademark or logo of IQN. All rights not expressly granted to Supplier under this Agreement are reserved by IQN.
D. **Confidential Information.** Each party acknowledges that it may be exposed to certain information of the other party that the other party considers to be confidential or proprietary in nature, including, without limitation, in the case of Supplier, the Supplier Information, and in the case of IQN, the IQN Property, the Supplier Database and the Marketplace (collectively, "**Confidential Information**"). The party receiving Confidential Information (the "**Receiving Party**") from the other party (the "**Disclosing Party**") will not disclose the Confidential Information of the Disclosing Party to any third party, except for the employees or contractors of the Receiving Party having a need to know such Confidential Information for the purposes of this Agreement. The Receiving Party will protect the Confidential Information of the Disclosing Party in the
same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature, but with no less than reasonable care. The Receiving Party's obligations with respect to any Confidential Information will terminate if such information: (i) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions or (ii) is, or through no fault of the Receiving Party has become, generally available to the public. The Receiving Party may disclose the Confidential Information to the extent that such disclosure is necessary for
the Receiving Party to enforce its rights under this Agreement or as required by law, *provided that* the Receiving Party notifies the Disclosing Party prior to such disclosure. Notwithstanding the foregoing, IQN may collect, use and distribute aggregated, anonymous, statistical data based on the Marketplace for any purpose not otherwise inconsistent with this Agreement.
E. **Termination.** This Agreement is effective upon Supplier clicking the button signifying its acceptance to the terms of this Agreement and will continue until terminated as set forth in this Agreement. IQN may terminate this Agreement effective upon notice to Supplier at any time, for any reason or no reason. Supplier may terminate its participation in the Marketplace effective upon notice to IQN. Sections 1 and 3 will survive the expiration or termination of this Agreement. Upon the termination or expiration of this Agreement for any reason, all rights of Supplier under this Agreement to access the Marketplace will end and Supplier will immediately destroy all Account Information and any Confidential Information of IQN or Buyer in all forms and media then in the possession or control of Supplier (including all copies thereof).

F. Indemnification. Supplier will indemnify, defend, and hold harmless IQN and Buyer, and each of their respective licensors, subsidiaries, affiliates, officers, directors, employees, and agents from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or related to: (i) any breach of this Agreement, including Supplier's warranties, by Supplier or its employees or agents; (ii) the acts or omissions of Supplier or its employees or agents; or (iii) any allegation against IQN or Buyer that the Supplier Information or the use thereof pursuant to this Agreement infringes the rights of, or has caused harm to, a third party. IQN or Buyer, as applicable, will provide prompt written notice of any claim for indemnification, and will make available information relating to the claim upon the other party's reasonable request.

G. Notices. IQN may give notice to Supplier by: (i) a general notice on the Marketplace; (ii) electronic mail to Supplier's e-mail address provided as part of the Supplier Information; or (iii) written communication sent by first class mail to Supplier's address provided as part of the Supplier Information. Such notice will be deemed to have been given upon the expiration of 48 hours after posting to the marketplace or after mailing if sent by first class mail or 12 hours after sending if sent by email. Supplier may give notice to IQN by written communication sent by first class mail to IQN's address posted on the Marketplace or on IQN's web site at http://www.iqnavigator.com/contact.html. Such notice will be deemed to have been given upon the expiration of 48 hours after mailing if sent by first class mail to such address.

H. No Assignment by Supplier. Supplier may not assign or delegate this Agreement or any of Supplier's rights or obligations under this Agreement without the prior written consent of IQN. Any purported assignment in violation of the foregoing will be null and void. Either Buyer and IQN may assign and delegate its rights and obligations under this Agreement to any third party, and Supplier hereby consents to such assignment.

I. Relationship. Supplier acknowledges, represents and warrants that no joint venture, partnership, employment, or agency relationship exists among any of Supplier, IQN or Buyer as a result of this Agreement, Supplier's use of the Marketplace, or Supplier's performance of any services for Buyer, and that any Supplier personnel or agents performing services for Buyer will not be deemed to be employees or agents of Buyer or IQN.

J. Export Controls. The information available on the Marketplace and all related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Supplier agrees to comply with all such laws and regulations and to obtain any licenses required for such export and import.

K. Taxes. Any fees payable to IQN by Buyer and/or Supplier in connection with the Marketplace do not include any transfer, gross receipts, value-added, sales, use, import, withholding, excise, customs or other similar taxes, imports or duties applicable to or imposed on or as a result of the transactions contemplated herein under any applicable law or taxing jurisdiction (collectively, "Transaction Taxes"). Regardless of the party on whom Transaction Taxes are imposed under applicable law, as between IQN and Supplier, Supplier shall be solely responsible for and shall pay all Transaction Taxes. If at any time in IQN's sole discretion IQN determines that IQN should collect any Transaction Taxes from Supplier and remit such Transaction Taxes to taxing jurisdiction under the laws of such jurisdiction, IQN may separately charge Supplier the amount of such Transaction Taxes and Supplier shall pay such Transaction Taxes to IQN. If any tax jurisdiction formally asserts that IQN is liable for any Transaction Taxes, Supplier agrees to indemnify, defend and hold harmless IQN and its affiliates from and against such claims, and shall immediately pay all such Transaction Taxes to the applicable jurisdiction on IQN's behalf, plus any corresponding interest, penalty interest, and penalties. If any tax jurisdiction formally asserts that IQN is liable for the payment of Transaction Taxes, and IQN pays such Transaction Taxes, Supplier agrees to promptly reimburse IQN for all Transaction Taxes, plus interest, penalty interest, and penalties, actually paid by IQN to such jurisdiction.

L. Governing Law. All rights and obligations of the parties under this Agreement, and any action or proceeding under this Agreement, will be governed by and interpreted in accordance with the laws of the State of Colorado, USA exclusively, as such laws apply to contracts between Colorado residents performed entirely within the State of Colorado, USA.

M. Dispute Resolution and Remedies. Any dispute that cannot be settled amicably will be resolved by binding arbitration, which will be the exclusive method of formal dispute resolution under this Agreement. Such arbitration will be held in the English language at a mutually agreeable location in accordance with the commercial arbitration rules of the American Arbitration Association (the "**AAA Rules**") before a single neutral arbitrator selected in accordance with the AAA Rules. The cost and expense of arbitration will be shared equally by the parties to the arbitration, regardless of which party or parties prevail(s). The arbitration will be conducted in accordance with the following time schedule unless otherwise mutually agreed to in writing by the parties to the arbitration: (i) no later than thirty (30) days after the appointment of the arbitrator, the arbitrator will schedule a hearing on the dispute and (ii) within sixty (60) business days after the date of that hearing, the arbitrator will render a decision. The decision or award of the arbitrator will be final and binding upon the parties to the arbitration to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction, and will be enforceable under the U.S. Federal Arbitration Act. The parties agree that any breach of a party's obligation under Sections 2(b) and 3(d) may result in irreparable injury to the other party for which there is no adequate remedy at law. Therefore, notwithstanding the other provisions of this paragraph (L), the parties will be entitled to seek equitable relief in any court of competent jurisdiction to prevent any threatened or ongoing breach of such provisions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or

unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

N. WAIVER; ENTIRE AGREEMENTS. The failure of either party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision. This Agreement comprises the entire agreement with regard to the Marketplace between Supplier and IQN and supersedes all prior or contemporaneous negotiations, discussions and agreements, whether written or oral, between the parties regarding the subject matter contained herein.

O. AMENDMENTS. Except as noted herein, this Agreement shall not be modified, amended or otherwise changed except by a subsequently dated written amendment signed on behalf of each party by their duly authorized representatives.

I ACCEPT I DECLINE

Attachment F
Contingent Worker Background Check Requirements

NOTIFICATION AND ACKNOWLEDGEMENT OF BACKGROUND CHECK CONSUMER REPORT/INVESTIGATIVE CONSUMER REPORT REQUEST

(the "Supplier") employment candidates who are being considered for an assignment to Schneider Electric and its Affiliates, must submit to a Background Check, which requires that a "Consumer Reporting Agency" and/or an "Investigative Consumer Reporting Agency," ("CRA"), prepare a "Consumer Report," and/or an "Investigative Consumer Report" concerning the candidate, as these terms are defined under the Fair Credit Reporting Act ("FCRA"), the California Civil Code Sections 1785, 1786 *et seq.*, and/or any other State or Local law. The report(s) will be used as a factor for determining eligibility for the employment assignment and may include an information inquiry about your character, general reputation, personal characteristics, mode of living, driving record, criminal history and background check, and could further involve interviews with sources such as neighbors, friends or associates. A summary of your rights under the FCRA is attached for your review and you may request, in writing, further information regarding the nature and scope of the report.

The CRA that will prepare the Consumer Report/Investigative Consumer Report is _____, _____, located at _____, Local or Toll Free Phone Number _____, Internet Website _____.

If an investigative consumer report is prepared by a CRA, you may inspect and/or obtain a copy of the investigative consumer report file from the CRA that prepares it during normal business hours upon reasonable notice. In order to inspect the investigative consumer report file, you must furnish proper identification (such as a driver's license, etc.) and appear in person or make your request in writing via certified mail. Alternatively, by providing proper identification and making a written request, you may obtain a summary of the information in the file by telephone. If you wish to obtain a copy of the file, you must pay the actual costs of duplication. The CRA that prepared the report will provide trained personnel to explain the information contained in the file, including a written explanation of any coded information in the file. If you so choose, you are permitted to be accompanied by one other person, who must also provide reasonable identification, when you inspect the file. The CRA may require you to provide written permission to discuss your file in the presence of such person.

☐ **(Check here if a *credit history report* is required for the position;** otherwise a credit check shall not be included) A credit history report may be necessary to evaluate a candidate's suitability for a certain position. A credit history may be warranted for many reasons, including that it is a requirement by law, a pre-requisite for a business to obtain or maintain insurance, it is an established bona fide occupational qualification and/or when otherwise substantially job related, such as where material functions or duties of the job includes access to or responsibility for financial information, credit/debit data, or dealings with negotiable instruments. In the event that you are being considered for such a position, a pre-employment/assignment credit history check is required to be performed. ***Candidate must initial approval here*** _____

I have read and acknowledge the above, with the understanding that during the application process and at any time during any subsequent employment, I hereby authorize the Supplier, or its designated agent, to procure the above referenced Consumer Report(s) and/or an Investigative Consumer Report(s).

Date: _____ Signed: _____

National ID/SSN: _____ Print Name: _____

California, Maine, Massachusetts, Minnesota, New Jersey and Oklahoma employment candidates may check the box below to receive directly from the CRA a free copy of any report provided to the Supplier.

☐ I request a copy of the Consumer Report/Investigative Consumer Report provided to the Supplier.

Attachment G
SCHNEIDER NEW TEMP ORIENTATION

Schneider
Orientation (Attach J

Note: Schneider Electric formerly known as Square D.

Attachment H
SOCIAL EVENTS AND ACTIVITIES WAIVER

I, the undersigned, , agree to accept a temporary work assignment to Schneider Electric USA, Inc., and its Affiliates, ("Customer"). As a precondition to receiving such work assignment, I acknowledge, the following:

I understand that Customer's temporary employees (contractors) may be invited to attend social events, activities and/or functions hosted or promoted by Customer and/or its clients.

I understand that my attendance at such events, activities, and/or functions is strictly voluntary and not within the scope of employment at Customer. Customer does not encourage, require, nor demand attendance at such functions as a condition of employment, promotion, or compensation.

I understand that it is against Customer policy for me to consume alcoholic beverages during working hours or while on Customer's premises. I understand that to consume alcoholic beverages will result in disciplinary action up to and including termination from employment with Customer. I agree that I will not consume alcoholic beverages during working hours or while on Customer's premises.

In consideration for being able to attend the social events, activities, and/or functions hosted or promoted by Customer and/or its clients, I hereby waive any and all legal and/or equitable rights or claims that I may have to bring legal action against Customer and/or its clients for damages, costs, expenses, or any of them incurred on amount of any injury, illness, and/or death resulting from caused by or arising out of participation in such social events, activities, and/or functions. Further, I release Customer, and/or its clients from any and all claims, demands, actions, causes of action, damages, liabilities, judgments, costs, and expenses, including reasonable attorney's fees and court costs, of every kind and nature whatsoever incurred by whomever on account of any injury, illness and/or death resulting from, caused by, or arising out of participation in such social events, activities, and/or functions whether caused by negligence or otherwise.

By signing below, I acknowledge that I have read the above, agree to the terms and agree to comply with the above stated Customer company policy.

_____
Supplier Employee's Signature Date

_____
Supplier Employee's Name Printed

Attachment I
SLA / Safety

Supplier shall adhere to the safety requirements below:

	Report Deliver	Performance Metric	Deliver
Safety Requirements		1. A selection and screening process that assures only those individuals that have fundamental (10 th grade level) reading, writing, math and language skills (at least conversational English) are placed in our locations. Just using the high school diploma doesn't guarantee that the candidates can even read. 2. The individuals complete an orientation session provided by the agency prior to being made an offer that explains the expectations and philosophy of our company (especially on safety and environment). The orientation should include a brief walk through of the plant environment including the actual job that the temporary is being considered for at the site. A sample for drug screening analysis should be taken at this time and submitted for analysis. The candidate can not start work until the negative results are returned. 3. The post offer worker (based on their respective job tasks as stated in the Schneider created job description) will go through a Post Offer Survey. If the survey indicates a potential issue, a medical opinion will be sought by a licensed medical professional. The capacity test will only involve what the Doctor deems as appropriate for the measurement of strength and durability as stated in the job description. Schneider will receive a Pass/Fail result only from the capacity test. Hearing and cardiovascular test are not required for this evaluation unless a medical professional sees a linkage that needs exploration. The Post Offer Survey will be conducted and maintained by Volt personnel to ensure employee privacy. Volt Loss Control is to have access to the observation of these job tasks in order to determine the applicable utilization of the Post Offer Survey. 4. Before a final decision to place the candidate is made the candidate is interviewed by the supervisor that they will report to and the safety department. Either individual may determine that the candidate does not fit our expectations and stop the hiring process. Any decision to stop the hiring process will be made in compliance with all applicable laws. 5. Once a decision is made to place the candidate the agency must assure that the candidate reports for their first day of assignment dressed appropriately including their safety shoes if required. 6. The first day on the job will be spent in a joint orientation conducted by the agency on site representative and Schneider Electric personnel including the SE safety team, the receiving SE supervisor, the candidates training buddy (temporary or SE employee as required) at a minimum. 7. The candidate must complete all safety training including any job specific prior to be assigned to a task. This may be completed by anyone of the members of the on-boarding team but it must be documented and filed for future reference. The candidate should not be allowed to work unless they successfully complete all the training.	

Incident Management • In case of a workplace injury/illness, Supplier shall report: **Communication Plan** • In addition to bi-weekly updates, Supplier and Volt agree to open communication with respect to an injured/ill employee.	Bi-weekly (once every two weeks)	• General status updates of injured employee, including general progress and complications, as applicable. • Communication of return to work plan o before the injured employee can return to work, when applicable and available o once the doctor has released the injured employee to light duty. o Communicate to the local Schneider personnel and to the Schneider point of contact Return to work plan communication may include restrictions or limitations (e.g., person is able to sit in chair for short periods, but not stand, person is able to use arm but not lift more than X# pounds, etc.), capabilities, time-frame and work hardening options • One point of contact for each party shall be established for communication of all discrepancies and concerns involving worker injury. A back-up may be identified as needed.	SE Program Manager / Volt Director of Loss Control

Exhibit 6

Partial Stipulation of Dismissal

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A NO. 2018-CP-40-05124 **PARTIAL** **STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff and Defendant Aerotek, Inc. (Defendant Schneider has been dismissed from this action) stipulate to dismissing the claim of breach of contract presently pending in this action. This stipulation *with prejudice*, with each side to bear its own costs and fees and is made pursuant to Rule 41(a)(1), SCRCP.

This **does not end** the case. A claim that Defendant Aerotek, Inc. violated S.C. Code Ann. § 41-1-70 remains pending.

WE STIPULATE:

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October 29, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Trisha Gibbons, Plaintiff, v. Schneider Electric USA, Inc., and Aerotek, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO. 2018CP4005124

DEFENDANT AEROTEK, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES AND COSTS

Defendant Aerotek, Inc. ("Aerotek"), through its undersigned counsel, submits this reply brief in further support of its Motion for Attorneys' Fees and Costs. In further support of this Motion for Attorneys' Fees And Costs, Aerotek states as follows:

I. Introduction

Gibbons's Opposition is long on emotional appeal and short on sound legal analysis. Specifically, in her opposition, Gibbons makes three arguments that fall on flat legal footing in opposing Aerotek's entitlement to attorneys' fees and costs. **First**, Gibbons argues, as a threshold matter, that the Aerotek Employment Agreement ("Agreement") is not enforceable based on: (1) lack of mutual assent; (2) unconscionability; and (3) the absence of consideration. In advancing the unenforceability argument, Gibbons does not deny that the Agreement contained the attorneys' fees-and-cost provision or that she signed acknowledging it on September 14, 2017. *See* Opp. at 3; Opp., Exh. 1 ¶¶ 4, 6–7. Instead, her argument that the Agreement is not enforceable hinges primarily on her claim that she "had no clue" the attorneys'

fees-and-cost provision in the Agreement "even existed until after trial." Opp. at 4 (quoting Opp., Exh. 1 ¶ 15). She further advances that she "does not have the capacity to pay the Defendant $200.00 much less $200,000.00." *Id.* at 1. Importantly, it is not a defense to enforcement of a contract that Gibbons did not read the attorneys' fees-and-costs provision in her Agreement before she signed it *or* that she is unable to pay any award against her under the attorneys' fees-and-costs provision in that Agreement. As such, the Agreement, including the fees-and-costs provision, is enforceable.

Second, Gibbons argues that Aerotek waived its right to move for fees and costs. Gibbons does not deny that Aerotek requested attorneys' fees and costs in its answer. Instead, she argues that Aerotek "merely made a generic request for attorney fees no different from the same request in almost every other boilerplate responsive pleading." Opp. at 4. Further, she argues that Aerotek had the burden to "discuss its intent to seek fees." *Id.* Although it may well be that her lawyer should have brought this to her attention (particularly as one of her claims was actually based on the Agreement, provided to her lawyer during discovery), Aerotek had no such duty to advise Gibbons. To the extent any "notice" was required, it was provided through the Answer and production of the Agreement.

Third, and finally, Gibbons argues that Aerotek seeks an unreasonable amount of fees and costs.[1] However, Gibbons does little to explain what amount of fees and costs would be reasonable under the circumstances. Instead, she argues the amount of fees and costs incurred is not reasonable because: (1) "[s]he does not have the capacity to pay [Aerotek] $200.00 much less

[1] Gibbons does not address her liability for fees and costs under the language in the Aerotek Employment Agreement. That is, she does not contest whether Aerotek is the prevailing party or whether the fees and costs associated with the litigation fall within the attorneys' fees-and-cost provision in the Agreement, as Aerotek argued in its Motion. *See* Motion at 8–10.

$200,000" (Opp. at 1); (2) this was a "simple case" with a small amount of potential damages (Opp. at 14); and (3) her attorney spent a "maximum 80 hours on this case" (Opp. at 15). None of these reasons so much as tread water. The requested fees are not unreasonable simply because Gibbons does not have an ability to pay the fees and costs Aerotek has incurred in defending itself from her claims. The requested fees are not unreasonable because this should have been a simple case—beyond paying her money for claims that had not even enough support to get to the jury, Gibbons gave Aerotek no option but to defend itself to and through trial. Finally, the requested fees are not unreasonable because opposing counsel spent less time analyzing, preparing, and prosecuting the case than Aerotek's counsel spent defending the case. Had he spent more time, perhaps he would have better understood the deficiencies that ultimately led to the failure of the claims. None of Gibbons's arguments change the fact that Aerotek is entitled to reasonable fees and costs under the Agreement based on its status as the prevailing party.

Aerotek will address Gibbons's three contentions in greater depth below. However, it would be remiss if it did not take this opportunity to make clear that Aerotek has proven its entitlement to fees and costs in its initial Motion. That is, Aerotek can answer in the affirmative the legal questions truly at issue: (1) whether Aerotek is entitled (statutory or contractual) to attorneys' fees and costs, (2) whether Aerotek's requests for attorneys' fees and costs falls within the attorneys' fees-and-cost provision under Agreement, and (3) whether Aerotek's request for attorneys' fees and costs is reasonable. As such, Aerotek is entitled to the $201,450.50 in fees and $10,365.10 in costs it requested.

II. Aerotek's Employment Agreement is Enforceable.

To begin, Gibbons argues that Aerotek is not entitled to fees under the attorneys' fees-and-cost provision because the underlying contract, the Aerotek Employment Agreement,[2] is not an enforceable contract. *See* Opp. at 7–12. Ironically, the Agreement that Gibbons now disavows as unenforceable is the **same agreement** Gibbons previously argued to this Court ***was*** enforceable in support of her breach of contract claim. *See* Compl. ¶¶ 14–16, 32–38. Nevertheless, Gibbons argues that the Agreement is not enforceable—for the first time at the post-trial phases of the litigation— for three reasons: (1) she did not have actual notice of the Agreement, and therefore, did not assent to the contract and its terms; (2) the Agreement is unconscionable; and (3) she did not receive consideration. Aerotek disagrees and will address each contention in turn.

First, Gibbons argues she did not assent to the Agreement, including the attorneys' fees-and-costs provision. *See* Opp. at 7–9. Under South Carolina law, the Agreement is "valid and enforceable," if Gibbons and Aerotek had "a meeting of the minds as to all essential and material terms of the agreement." *Mathis v. Brown & Brown of S.C., Inc.*, 698 S.E.2d 773, 778 (S.C. 2010) (quoting *Davis v. Greenwood Sch. Dist. 50*, 620 S.E.2d 65, 67 (S.C. 2005)). The "meeting of the minds" required to create a valid and enforceable contract is "not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made

[2] Throughout her opposition, Plaintiff colloquially refers to the underlying contract as the "fee-shifting contract." *See, e.g.*, Opp. at 7. However, Gibbons's name for the contract is a misnomer. Rather, the underlying contract, herein referred to more accurately as the Aerotek Employment Agreement, contains a variety of terms that governed Plaintiff's employment, including but not limited to provisions for attorneys' fees and costs, sick leave, compensation, reporting of hours, and benefits. *See* Opp., Exh. 3; Motion, Exh. A.

known or which, from all the circumstances, should be known." *Clardy v. Bodolosky*, 679 S.E.2d 527, 530 (S.C. Ct. App. 2009) (quoting *Player v. Chandler*, 382 S.E.2d 891, 894 (1989)).[3] There is no evidence that the Agreement, including the fees-and-cost provision, was secret. To the contrary, Gibbons admits that the Agreement contains the attorneys' fees-and-costs provision at issue. *See* Opp. at 3; Opp., Exh. 1 ¶¶ 4, 6–7. Gibbons does not deny that she electronically signed the Agreement. *See, e.g.*, *id.* at ¶ 10. The fact Gibbons electronically signed the Agreement is further evidenced by the copy appended to her opposition. *See* Opp., Exh. 3. These facts evidence that there was a "meeting of the minds" between Gibbons and Aerotek on the written terms in the Agreement, including the attorneys' fees-and-costs provision.

Second, Gibbons asserts that the attorneys' fees-and-costs provision in the Agreement is unconscionable because it is part of a contract of adhesion and she was not advised it was included in the contract. *See* Opp. at 9–11. An adhesion contract "is a standard[-]form contract offered on a take-it or leave-it basis with terms that are not negotiable." *Munoz v. Green Tree Fin. Corp.*, 542 S.E.2d 360, 365 (S.C. 2001). However, an adhesion contract is not per se unconscionable; instead, finding an adhesion contract is just the beginning of the analysis. *See Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 669 (S.C. 2007). Further, to be unconscionable, a party must demonstrate "the absence of meaningful choice on the part of one party due to one-

[3] The cases Gibbons cites in support of the failure to assent are inapposite. That is, Gibbons cites case law addressing the actual notice requirement for assent to modifications of terms in subsequent employee handbooks. *See Fleming v. Borden, Inc.*, 450 S.E.2d 589, 595–96 (S.C. 1994) (holding that to modify an implied employment contract with a subsequent handbook, the employer must give the employee actual notice of the modification); *Shelton v. Oscar Mayer Foods Corp.*, 459 S.E.2d 851, 856–57(S.C. Ct. App. 1995) (discussing holding in *Fleming*); *Reese v. Comm. Credit Corp.*, 955 F. Supp. 567, 570 (D.S.C. 1997) (discussing holding in *Fleming*). There is no issue of the modification of the terms in an employee handbook at issue here. Rather, the attorneys' fees-and-cost provision existed in the Agreement when she initially signed it and throughout her employment.

sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 606 S.E.2d 752, 757 (S.C. 2004). A lack of meaningful choice for a finding of unconscionability depends on "the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 644 S.E.2d at 669.

Gibbons asserts, with no citation to evidence or legal authority, that the Agreement is clearly a contract of adhesion. *See* Opp. at 10. This assertion does nothing to show how the Agreement meets the definition of an adhesion contract. Such a threadbare argument, unsupported by evidence or legal authority, amounts to a waiver. *See Bluffton Towne Ctr., LLC v. Gilleland-Price*, 772 S.E.2d 882, 892 (S.C. Ct. App. 2015) (determining an issue is waived "if the argument in the brief is not supported by authority or is only conclusory). Nevertheless, even if Plaintiff had provided some evidence or authority for her position, she fails to recognize the South Carolina courts' broad acceptance of contracts of adhesion. In fact, South Carolina courts recognize that form contracts "serve a very useful purpose in commerce." *Lackey v. Green Tree Fin. Corp.*, 498 S.E.2d 898, 902 (S.C. Ct. App. 1998) (recognizing that form contracts are "part of the fabric of our society" that "should neither be praised nor denounced" (quoting *Goodwin v. Ford Motor Credit Co.*, 970 F. Supp. 1007, 1015 (M.D. Ala. 1997))). As such, even if this Agreement were an adhesion contract, that conclusion in no way renders it unenforceable.

Even assuming the Agreement is a contract of adhesion, Gibbons has not demonstrated she had no meaningful choice in entering into the fees-and-cost provision and therefore, it is

otherwise unconscionable. Initially, Gibbons argues the fees-and-costs provision is unconscionable because there is a disparity in bargaining power between her and Aerotek. Opp. at 10. But that alone cannot suffice to make a provision unconscionable. Indeed, if unequal bargaining power were enough to create unconscionability, virtually all employment agreements would be unconscionable as employers generally have greater bargaining power than potential employees. Further, Gibbons argues that the fees-and-costs provision is unconscionable because it "eroded all statutory rights on behalf of the Plaintiff" because "absent 100% certainty of victory, no $12.00 per hour worker could ever be expected to attempt to remedy her rights." *Id.* This argument is without weight because it fails to recognize that the attorneys' fees-and-cost provision was mutual and applied *in both directions*. Gibbons could have, and presumably would have, enforced the provision if she prevailed. The fees-and-costs provision was not so unreasonably favorable to Aerotek as to strip Gibbons of her rights to bring a claim. To the contrary, the Agreement's fee provision actually created a scenario through which Gibbons *could have* recovered fees (had she prevailed)—a right beyond that provided to her under South Carolina law—making it easier, not harder, for her to bring such a claim.[4] Additionally, Gibbons argues that the fees-and-cost provision was hidden. *See id.* But this argument is belied by the Agreement. *See* Opp., Exh. 3. The fees-and-cost provision was conspicuous: that is, the fees-and -cost provision was part of only a three-page contract, with 21 total paragraphs, and in readable font in the same size as the other provisions.

[4] Of course, because it's mutually applicable, the attorneys' fees-and-cost provision also places on a party bringing a claim, a burden to make reasonable decisions about the pursuit of such a claim—and when to dismiss it. When it turns out that such a party pursues through trial, a claim with insufficient support to even get to a jury, they do so at the risk of bearing the burden of the fees the prevailing party incurred in defending that claim.

Finally, Gibbons cites *Hall v. Treasure Bay Virgin Corp.* to support her argument that a "loser pays" provision is unconscionable. No. 2005-170, 2009 WL 689626 (D.V.I. Mar. 9, 2009). In *Hall*, the United States District Court for the District of the Virgin Islands considered whether a "loser pays" provision in an arbitration agreement was unconscionable. *Id.* at *3. The court considered "an individual assessment of ability to pay" for determining unconscionability. *Id.* Because Hall submitted evidence of the high cost of arbitration and her inability to pay, the court determined "the loser pays provision would deter Hall, with a pay rate of $8.00 per hour, from pursuing a meritorious claim." *Id.* Not only is *Hall*, a federal district court case from another jurisdiction, in no way binding on this Court, but also *Hall* is distinguishable. That is, the "loser pays" provision in *Hall* prevented her from litigating in court and then required her to pay all the costs associated with the arbitration (e.g., attorneys' fees, the hourly rate of the individual arbitrator, the arbitration filing fees, etc.). Here, the attorneys' fees-and-cost provision does not prevent Gibbons from having her day in court before a jury, but merely requires her to pay the attorneys' fees and costs associated with that litigation if she does not prevail—and allows her to recover them if she does.

Third, Gibbons argues that Aerotek did not provide consideration for the Agreement. Opp. at 11–12. That is, Gibbons asserts that the Agreement offered her "contingent" employment that was co-extensive with the "whims of a third-party, Schneider Electric." *Id.* at 12. South Carolina recognizes the doctrine of at-will employment. *Baril v. Aiken Reg'l Med. Ctr.*, 573 S.E.2d 830, 836 (S.C. Ct. App. 2002). Under this doctrine, "a contract for permanent employment is terminable at the pleasure of either party when unsupported by any consideration other than the employer's duty to provide compensation in exchange for the employee's duty to perform a service or obligation." *Id.* That is, under South Carolina law, the employer's duty to pay in

exchange for the employee's duty to provide services is sufficient consideration to create a contractual relationship. *See id.* Even so, there is mutuality of promise in the attorneys' fees-and-cost provision—Aerotek would have been liable to Gibbons if Gibbons prevailed and Gibbons is liable to Aerotek because Aerotek prevailed. Had Gibbons prevailed, do you think she would be arguing this fee provision is unenforceable? Of course not. It cannot be enforceable for one party and not the other. There is clearly consideration for the Agreement, including the value to Gibbons of the attorneys' fees-and-cost provision itself.

III. Aerotek Did Not Waive The Right to Move for Fees and Costs.

Gibbons next argues that the equitable doctrines of laches and waiver should apply because Aerotek did not mention its entitlement to attorneys' fees and costs in its answer and otherwise discuss it during the litigation. *See* Opp. at 12 – 13. As to Aerotek's answer, Gibbons does not dispute that Aerotek requested attorneys' fees and costs in its answer. Opp. at 4 ("[I]n reference to attorney fees and costs, Aerotek's answer merely made a generic request for attorney fees no different from the same request in almost every other boilerplate responsive pleading."). Instead, Gibbons implicitly suggests that this request did not put her on ***sufficient*** notice of the possibility of liability for attorneys' fees and costs. However, the South Carolina courts find waiver of attorneys' fees and costs, *at most*, where the request is omitted from the answer entirely. *See Baird Pac. West v. Blue Water Sunset Park, Inc.*, No. 2004-011, 2004 WL 6248287, at *4 (S.C. Ct. App. Jan. 14, 2004) (finding that party did not waive attorneys' fees request even where it did not make it in its answer); *Premium Inv. Corp. v. Green*, 324 S.E.2d 72, 78 (S.C. Ct. App. 1984) (holding that a party does waive attorneys' fees when not requested in answer). Here, Aerotek need not even rely on those cases—because Aerotek unquestionably requested fees and costs in the Answer. Moreover, Aerotek is not aware of, nor has Gibbons cited, authority for the rather

bizarre proposition that a defendant must somehow discuss the potential of attorneys' fees and costs after filing its answer, but prior to filing a motion for attorneys' fees and costs, or risk waiver.[5] As such, the request in Aerotek's answer, even if generic, was more than sufficient to preserve the request.

IV. Aerotek's Fees and Costs are Reasonable.

Gibbons argues that the fees and costs associated with Aerotek defending itself all the way through trial were unreasonable. *See* Opp. at 13–15. Specifically, Gibbons contends that: (1) a portion of the fees and costs are associated with the stipulated dismissal of the breach of contract; (2) the fees and costs do not comport with the total liability; (3) the case was "simple"; and (4) the case did not take Gibbons's counsel as much time to prosecute as it took Aerotek's counsel to defend. Although Aerotek agrees with these assertions, it does not agree that these assertions make the fees and costs unreasonable and thereby warrant a decrease.

First, Aerotek agrees that it and Gibbons stipulated to the dismissal of the breach of contract claim with each side to bear its own costs and fees. *See* Opp., Exh. 6. Aerotek has reviewed its invoices and few, if any, fees can be associated solely with the breach of contract claim. Nonetheless, Aerotek can, if necessary, provide these invoices to the court upon request for purposes of adjusting its request downward excluding fees and costs associated solely with the breach-of-contract claim.

[5] This unsupported proposition is somewhat absurd. Either counsel is arguing Aerotek's counsel should have spoken to and advised his client—after she sued Aerotek and was represented by him—or he is arguing that Aerotek's counsel should have advised him. Aerotek provided him with the Agreement through discovery, as admitted in Gibbons' Opposition. *See* Opp. 2 (admitting that the Agreement was produced in Aerotek's initial production). It formed the basis of his client's breach-of-contract claim. If anyone had a duty to advise Gibbons regarding the terms of the Agreement upon which she was suing, one might argue it was her lawyer.

Second, Aerotek also agrees that Gibbons had limited possible recovery in this case. Throughout the litigation, Aerotek sought to resolve the claims in order to spare the litigants' and the Court's resources for this relatively small case.[6] As previously stated, Aerotek informed Gibbons's counsel of its straightforward and meritorious defense from the outset (e.g., the motion-to-dismiss phase). Aerotek continued to try to efficiently resolve the claims: at deposition when Plaintiff gave fatal admissions, at the summary-judgment phase, and at mediation. Up to January 3, 2020, when the Court denied summary judgment, Aerotek had incurred **$90,784.00**. But Gibbons persisted pushing forward her meritless and unsupportable claims, which left Aerotek no option but to go to trial. Following the denial of summary judgment, Aerotek incurred **$110,666.50** to prepare for and try the case.

Third, Aerotek agrees that this was a simple case. However, what otherwise was a simple case—with simple claims, issues of fact and law, and defenses—was unnecessarily complicated by Gibbons's refusal to dismiss her meritless claims. That is, Aerotek's counsel rendered legal services beyond what would otherwise be necessary in similar cases in light of Gibbons pushing forward frivolous claims for which Aerotek had to defend.

Fourth, Aerotek agrees that it spent a substantial amount of time more than Gibbons's counsel defending the case. As mentioned in its initial Motion, the actions of Gibbons and Gibbons's counsel pursuing 16 months of litigation, which ultimately culminated in a jury trial,

[6] Gibbons misrepresents a statement Aerotek made in its initial Motion regarding settlement efforts. In her Opposition, Gibbons alleges Aerotek did not make settlement efforts. Specifically, Gibbons states that "[n]o effort from Defendant was ever conveyed to Plaintiff's counsel at mediation or otherwise" regarding a $2,500 offer. Opp. at 6 n.2 (emphasis added). Aerotek has not claimed otherwise, and did not convey the settlement to Plaintiffs' counsel. Rather, Aerotek stated that it "offered to contribute an addition $2,500 to resolve the frivolous claim against it." Motion at 6. That offer was made to the co-defendant during mediation.

required more than 600 hours of attorney and paralegal time. .[7] The hours expended to defend Aerotek and achieve a Directed Verdict and Judgment solely in its favor reasonably resulted in the amount of attorneys' fees requested.[8]

V. Conclusion

In sum, the Agreement, containing the attorneys' fees-and-cost provision, is enforceable, Aerotek properly preserved its request for fees and costs, and Aerotek has requested a reasonable amount of fees and costs associated with defending 16 months of litigation, culminating in a jury trial. Aerotek respectfully requests the Court award Aerotek attorneys' fees in the amount of $201,450.50, and costs in the amount of $10,365.10.

Respectfully submitted,

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and

[7] Although entitled to collect fees associated with filing its Motion for Attorneys' Fees and Costs and this Reply under the Aerotek Employment Agreement, Aerotek is foregoing its right to seek these fees in the spirit of reasonableness.

[8] Aerotek is prepared to provide this Court and opposing counsel with copies of all invoices, reflecting the details of the work performed, down to the 1/10th of an hour, over the 16 months this case was litigated.

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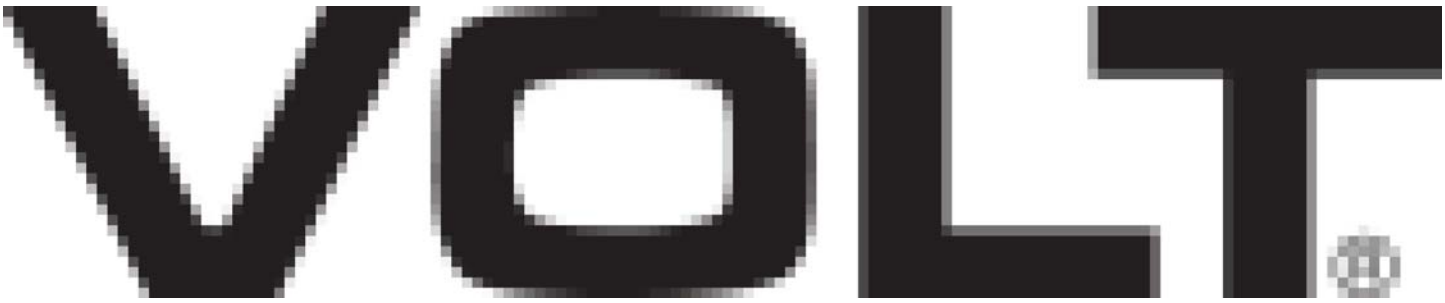

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Civil Action No. 2018-CP-40-05124

Trisha Gibbons,..... Respondent,

v.

Aerotek, Inc., ... Appellant.

NOTICE OF APPEAL

Aerotek, Inc. ("Appellant") appeals the order of the Honorable Perry H. Gravely, dated June 18, 2020, which denied Appellant's motion for attorney's fees and costs. A copy of the order is attached as Exhibit A. Appellant received written notice of entry of this order on June 18, 2020.

[Signature on Following Page]

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EXHIBIT A

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
Trisha Gibbons,)	
)	
Plaintiff,)	
)	ORDER
-vs-)	
)	C.A. # 2018CP4005124
Aerotek, Inc.,)	
)	
Defendant.)	
)	

This matter came before the Court upon Defendant Aerotek, Inc.'s Motion for Attorneys' Fees and Costs following a jury trial held on January 29-30, 2020 which resulted in a directed verdict in favor of the Defendant. The parties consented to having the hearing by way of telephone conference without a court reporter. Participating in the hearing were Paul Porter for the Plaintiff and William Corum and Patrick Quinn for Defendant.

The Plaintiff filed an action against Schneider Electric USA, Inc. and Aerotek seeking damages for her termination from a temporary job at Schneider Electric due to her absence from work because of a subpoena requiring her attendance at a court proceeding. Ultimately, the Plaintiff settled her claim against Schneider Electric but proceeded against Defendant Aerotek. In the Complaint, the Plaintiff asserted two causes of action against Aerotek: (1) Violation of S.C. Code Ann. § 41-1-70; and, (2) Breach of Contract. The case went to trial on January 29-30, 2020 and at the close of the evidence, Aerotek's Motion for a Directed Verdict was granted and the Plaintiff's Complaint Dismissed. An Order granting the directed verdict was issued on February 3, 2020. On February 13, 2020, Aerotek filed a Motion for Attorneys' fees and costs pursuant to the terms of the "Employent Agreement" between the Plaintiff and Aerotek.

In its Motion, Aeortek seeks attorneys' fees of $201,450.50 and costs of $10,365.10 in an action where the Plaintiff was limited to a recovery of approximately $25,000 under S.C. Code Ann. §41-1-70 (which limits the Plaintiff's recovery to one year's salary). The Court denies Aerotek's Motion for Attorneys' Fees and Costs on 2 separate grounds:

1) In response to the Complaint, Aerotek filed an Answer which set forth several affirmative defenses. The Answer did not contain a counterclaim against the Plaintiff seeking attorneys' fees and the final paragraph contains "boilerplate" language requesting a dismissal of the action and requested that the Court "award Aerotek its attorneys' fees and costs expended." Similar language requesting "attorneys' fees and costs" is included in most pleadings filed with this court, both Complaints and Answers, whether applicable or not. Other than this boilerplate language in the "Wherefore" clause at the conclusion of the Answer, there is no other reference to Aerotek's claim or basis for attorneys' fees. Since Aerotek is seeking a judgment against the Plaintiff for more than $200,000, the Court finds that the pleadings must comply with Rule 8(a), SCRCP, which requires the pleading contain "a short and plain statement of the facts showing that the pleader is entitled to relief" The Court finds that the Defendant failed to include allegations of any facts supporting its basis for a recovery attorneys' fees and costs and no reference to the provisions of the Employment Agreement. Aerotek cites *Baird Pac West v. Blue Water Sunset Park, Inc.* No 2004-011 (S.C. Ct. App. 2004) in its Memorandum supporting its argument that seeking attorneys' fees is not waived despite the fact this claim is not asserted in its Answer; however, Aerotek's reliance on this case is misplaced. First, the cited case is an unpublished opinion and therefore has no precedential value (Rule (d)(2), SCACR). Secondly, in that case the Court of Appeals found that waiver of attorneys' fees had not occurred because the claim had been asserted in a Motion filed months before the hearing on that issue and opposing counsel did not object to the request for attorneys' fees. Based on the review of the pleadings

and argument of counsel, the Court finds that Aerotek failed to sufficiently plead facts supporting its claim for this relief and put the Plaintiff on proper notice of the basis for the attorneys' fees and costs which it is seeking in the Motion filed after judgment was entered.

2) The Employment Agreement on which Aerotek bases its claim for attorneys' fees and costs was never introduced as evidence. Even though a copy of an employment agreement was attached to Aerotek's Memorandum in Support of its Motion, there was no affidavit from a representative of Aerotek as to the authenticity of the agreement or that it had been signed by the Plaintiff. Nor was the Employment Agreement introduced as evidence during the trial of the case. In opposition to this Motion, Plaintiff filed her affidavit stating that she did not recall signing the Employment Agreement, thus putting the authenticity of the agreement in issue. Therefore, Aerotek has the burden of establishing the terms of the Employment Agreement and that it was signed, physically or electronically, by the Plaintiff. *See, Pee Dee Prod. Credit Ass'n v. Joye*, 284 S.C. 371, 373, 326 S.E.2d 650, 652 (1984) (stating that once the authenticity of a signature is placed in issue, the burden of proof as to the genuineness of the signature is on the party claiming under the signature). Aerotek failed to provide any affidavit authenticating the Employment Agreement in question or confirming that the Plaintiff has signed it electronically as proposed. Since the Plaintiff did not stipulate to the authenticity of this Employment Agreement, the Court finds that Aerotek failed to meet its burden in proving the terms of the Employment Agreement or that it was signed by the Plaintiff.

Based on the grounds set forth above, the Court denies Aerotek's Motion for Attorneys' Fees and Costs.

It is so ordered.

Signature of Judge Gravely on following page

Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Attorney Fees

So Ordered

s/ Honorable Perry H. Gravely, #2755

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I served a copy of the foregoing document, via United States Mail, postage prepaid, on:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Civil Action No. 2018-CP-40-05124

Appellate Case No. 2020-001065

Trisha Gibbons,..... Respondent,

v.

Aerotek, Inc.,..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies 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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November 18, 2020